THE STUDENTS' VIEWS ON THE EUROPEAN INTEGRATION OF THE WESTERN BALKANS REGION

Anetrec

Academic network supporting EU policies
towards Western Balkans with emphasis on
regional cooperation based on reconciliation

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Maribor, 2022

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Contents

HUMAN RIGHTS, DISCRIMINATION, MINORITIES' RIGHTS, MULTICULTURALISM

FOREWORD

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Taking into account the political, economic, security, inter-ethnic and other relevant circumstances has ISCOMET Institute from Maribor, Slovenia in 2018 prepared a proposal of the academic Network, which program is supporting the EU policy towards Western Balkans with emphasis on regional cooperation based on reconciliation – ANETREC. The European Commission (Erasmus + programme) has entrusted a consortium of 7 universities and 2 research institutions from Albania, Bosnia and Hercegovina, Croatia, Kosovo, Montenegro, Northern Macedonia, Serbia and Slovenia, the execution of that 4-year project (2019-2023).

The project brought together – directly or indirectly - more than 80 professors and researchers from previously mentioned countries. They work for the realisation of the project program with enthusiasm, as the modest funds of the project do not allow us to enumerate appropriate their cooperation. The ANETREC project is currently the only project, which combines in a common programme such high number of universities and individuals from Western Balkans, Slovenia and Croatia.

The main goal of the ANETREC project is the academic support to the process of implementation of EU policies towards Western Balkans with emphasis on regional cooperation based on reconciliation as a prerequisite for peace, stability and general development in the region.

The main goals of the ANETREC project – some of them were already realised - are:

1. The development of a common teaching program, which consists of six inter-linked subjects:

- Different aspects of EU policies towards Western Balkans with emphasis on the specific nature of each of the countries,

- Theoretical and practical aspects of reconciliation as a prerequisite for peace, stability and development of cooperation in the region,
- The concept of multiculturalism in theory and practice of the Western Balkans,
- Human rights and elimination of all forms of discrimination as the basis for a democratic management of relationships within societies of the Western Balkans,
- The role of religion in developing tolerance, mutual respect and the reconciliation process in Western Balkans,
- The problem of migrations in Western Balkans in the context of the EU relationship towards these problems.

To realize this curriculum, the ANETREC management recorded 82 lectures of 45 professors from all participating universities. These lectures will be held in the ANETREC data base hosted by the ISCOMET Institute in Maribor, and will be from the winter of the 2022/23 academic year onward available to use them for online lectures at the participating universities. The subjects will be held independently or as part of existing study programmes. Universities will also have the option to accredit the curriculum as a whole.

The ANETREC project partners do hope that the realisation of this program in the education will have a long-term positive impact on spreading the spirit of reconciliation, tolerance and cooperation among the countries of Western Balkans, Slovenia and Croatia.

Besides, after the ANETREC project ends, the study materials gathered represents a good basis for future development of different forms of common studies and research programmes in the Western Balkans. More than 80 especially young professors and researchers who were indirectly involved in the ANETREC project expressed their willingness to participate in the proposed or similar topics in both education and research. The EU should firmly support these common endeavours!

2. In addition to development of study programme, the ANETREC project also gives attention to two political questions:

- In Bosnia and Herzegovina, we are preparing an analysis of segregation in the educational system with suggestions for gradual improvement of current state of affairs, which is deepening the ethnic and religious cracks in their society.
- A team of professors from Pristina and Beograd, alongside with other colleagues from the project, is preparing a possible academic program of common actions and cooperation between academics and students of both countries, in order to contribute to the creation of positive atmosphere for searching solutions for a gradual, long-term normalization of relationships between the two countries.

The results of both researches will be debated at the ANETREC Summer school and on specially organized meetings as well.

3. The long-term goal of the ANETREC project is to prepare a proposal to establish an EU reference centre for Western Balkans issues, which would offer the EU structure informational support in dealing with the Western Balkans issues and would serve as an educational, research and meeting centre for those dealing with the European integration challenges of this region. The success in realizing this proposal is of course dependant on the engagement of the government of the country that would wish to host such a reference centre.

4. The concluding international conference, which will be held in Maribor in 2023, will be an opportunity to not only present and discuss the project's results but to offer a deeper evaluation of the EU policies towards the Western Balkans and to elaborate suggestions for searching solutions of existing problems.

5. But one of the most outstanding so far achievement of the ANETREC project has been the preparation of the present publication with 42 essays of students from the partner universities in Albania, Croatia, Bosna and Hercegovina, Kosovo, Montenegro, North Macedonia, Slovenia. Students expressed their views and standpoints on different aspects of EU policies towards Western Balkans, the problems of these countries in relationship with the EU and the relevant state of affairs concerning reconciliation, human rights, minorities' rights, multiculturalism and similar topics.

The management of the ANETREC project will invite the authors of the awarded essays to the ANETREC Summer School on September 4-11, 2022 in Bitola, North Macedonia. This will be a unique gathering of students from all the western Balkans countries, Slovenia and Croatia. The lectures by 19 professors from these countries will enlarge their knowledge about the topics connected with the EU policy towards western Balkans and stimulate their personal views on issues that are of paramount importance for the process of European integration and development of their countries and the region as a whole.

Students will have the opportunity to present the topics they have elaborated in their essays and express their views on other topics regarding EU policy towards Western Balkans and on "open issues" regarding their countries way along the European integration.

More details about the project are in the ANETREC project website www.anetrec.eu.

YOUTH FOR THE BETTER FUTURE

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1. Introduction

Whenever I reflect on myself and my personality in my attempt to find out what made me the person I am today, I always find several main influences: the fact I am born in the Balkans, thefact I am born in Bosnia and Herzegovina, the fact that I live in culturally enriched city Zenica. I was, and still am, also influenced by my environment and above all, by my mother. All of them taught me that diversity is a blessing. I am aware that I was lucky enough to live in such an inclusive environment, to live in a family that celebrates all religious holidays, to have my elder neighbours invite me over for Easter and prepare their traditional dishes for me even thoughI was only a kid. This cultural diversity was never seen by me as diversity, but as humanity, the way of living, the way things are, it came naturally to me. I was shocked when I realized not allcommunities exist in this way and I was depressed when I realized those communities are satisfied with their homogenous environment. I was shocked when I realized that they perceivemy community as the wrong one. I understand the trauma that people from different communities carry on their backs, but that is not how it should be done. Lately, I am trying to teach other young people valuable lessons. The lesson is: diversity is a treasure. It always has been. It will always be. Nowadays, diversity is mostly perceived as a danger and that is wrong.Ignorance, prejudice, and generalizations are the only danger.

2. Cooking Peace

Recently I was in Belgrade at a very important event for me. I participated in the seminar that should teach me how to facilitate the topics regarding peacebuilding and peacekeeping. The assignment was given to me and my two friends from Serbia and Albania, we should find our way to facilitate topics such as peacebuilding to our

colleagues from Serbia, Albania, and Bosnia and Herzegovina. We came to an idea to create a workshop named "Cooking peace", the task we gave to our participants is to gather in 3 groups, one with members from Serbia, one with members from Albania, and one with members from Bosnia and Herzegovina. Then we told them to give us their traditional recipes for a meat pie and to present them to other participants. The results were the following: the team from Albania uses the usual base for thepie, but in Albania, they also put tomatoes with the meat and add several spices alongside the salt and pepper. The meat used for pie is usually beef. Also, the meet is preprepared in the wayit is firstly fried in a pan. The team from Serbia mostly prepares its meat pie with pork or beef or the combination of thesetwo types of meat. The team from Serbia also puts the oil on the baking pan before putting thefirst layer into it.

The team from Bosnia and Herzegovina prepares this dish similar to the team from Serbia, butfor the meat pie in Bosnia and Herzegovina, beef is strictly used. Also, there is a difference in name. For example, the rest of the Balkans collectively uses the name "burek" for all the pies regardless of the main ingredient. Yet in Bosnia and Herzegovina "burek" marks only the pie with meat, while other pies are called variously on their main ingredient.

As a conclusion, we pointed out that the meat pie is traditional in every Western Balkans state,it is brought to the Balkans through the Ottoman Empire. This dish in the Western Balkan statesdiffers a lot from the one in nowadays Turkey. And there is a lot of symbolism there. The statesfrom the Western Balkan were occupied by the Ottoman Empire, which affected and influencedtheir culture but they all coped with that differently and added something theirs and authentic. The result is the ways we make or even name the meat pie are different, but at the end of the day, it's still the same dish. We have a varsity of tastes and that is good and that is a treasure ofthe Balkans. The same goes for the different cultures, religions, and ethnicities. It all enriches Balkan and its people. We do have certain differences and those should not be neglected but should be appreciated and recognized as valuable factors in the Balkans. Balkan was never homogenous nor it should ever be. And the young people to whom my friends and I held an education are fairly aware of that. They proved it when we gave them a second task. We againdivided them into three groups. Now, these groups had a member from each state. Groups hadfive members, from Serbia, Albania, and Bosnia and Herzegovina. Each group had a specific task. One had a task to put on the paper past

narratives and events regarding their state and theBalkans, the second group had a task to put on the paper current narratives and situations regarding their state and the Balkans, and the third group had a task to put on the paper desirablefuture narratives regarding their state and the Balkans. It was important to everyone's voice beheard and opinion respected. The results were interesting. The first group noted mostly events such as wartime during the 90s, the dissolution of Yugoslavia, the Kosovo war, NATO bombings, different regimes, independence. The keywords noted were: dangerous narratives, lack of mutual trust, political manipulations, generalization, etc. The second group noted eventssuch as recent non-paper scandal, reconciliation, the negation of the past events, cooperation, populism, nationalism, migrations with immigrations and emigrations included, and dealing with the past in general. The third group gave us outstanding proposals regarding the future. They put the following proposals and narratives: there is no one universal truth, they want fewer limits and more openness, acceptance of each other, respect your country's neighbour, don't youknow that helping others helps you, always hear the other side of the story, you have the freedom to be yourself, we are all different but we are all unique. Bearing all this in mind, we can't change the past, but we can change the present and positively influence the future. And not only we should do that, but we are obligated to do so.

3. Problems

Of course, obstacles for prosperity are there, but our differences are not even one of them. It isthe system. Kind of system that cherishes divisions instead of diversities. It is especially easy to spot this problem in the state where I come from. In the state of Bosnia and Herzegovina. The educational system, media, and even culture are forced to work to separate instead of uniting. This all affects human security. Human security, according to Gregoratti, is an approach to national and international security that gives primacy to human beings and their complex social and economic interactions.

For this essay, I will put my focus on the complexity of social interactions. Such is often determined by the educational system and values it promotes to its students. On the other hand,the educational system is determined by the politics and ruling parties. The result is a lack of adequate critical thinking that is not invoked or even valued in schools. What kind of danger hides behind such an approach? Let's reflect on the

lack of political literacy among young people in Bosnia and Herzegovina. Where the roots of such a phenomenon are? The past is a heavy burden for both the present and the future if it is treated in the wrong way. We remember the past, not so much the historical facts, as the strong emotions, pain, loss, victimization, injustice, myths, and narratives that developed around them. Because so much pain is associated with the past, it is very difficult to deal with it constructively and that is why building peace and reconciliation are not easy processes at all. If we are talking about the distant past, we can even have a case of "chosen trauma" - trauma not as a consequence of something shocking that we have experienced, but something that has been experienced by previous generations (Volkan 2001, 9-10). If many members of the groups have not come to terms with it, in that case, the past is very easily used for political purposes. As Giordano describes, in most cases, "intellectual and political elites manage the past and produce both the history and the memories of society, and thus the opposing truths. The latter is a specific social construction of reality that results from careful re-elaboration, reinterpretation, manipulation or even re- inventing of the past into the present" (Giordano 2005, 56).

Bearing all of this in mind, it is quite understandable why the educational system is the most targeted one. It's not just the educational system that is targeted alone, but special focus is placed on specific subjects. Those subjects are history and democracy. For example, Bosnia and Herzegovina is a state of three constitutive ethnical groups: Bosniaks, Serbs, and Croats. Problem is, those three ethnic groups were engaged in a war against each other during wartime in Bosnia and Herzegovina. There are still doubts about what exactly has happened and that is why the subject of history is so sensitive and yet crucial. It's not that just a period of wartime is perceived differently, but also the entire history of the region and the Balkans is perceived differently. We will not exaggerate if we say that the future of every state depends on the strength and development of its education system. Erasmus of Rotterdam[1] thought in a similar way when he said that the greatest strength of any country lies in the proper education of young people. In Bosnia and Herzegovina, it is very difficult to reach a consensus on

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1 Erasmus of Rotterdam (Desiderius Erasmus Roterodamus, real name and surname Geert Geerts) is a Dutch humanist, Erasmus of Rotterdam (Desiderius Erasmus Roterodamus, real name and surname Geert Geerts) is a Dutch humanist, writer, philologist and philosopher (Rotterdam, 28 October 1466 or 1469 - Basel, 12 July 1536). Prolexis encyclopedia: https://proleksis.lzmk.hr/19893/ (Accessed: 28. 6. 2021.)

what is "appropriate education for young people". The final result is three dysfunctional education systems or more precisely, three educational systems functional only for the purpose of war rhetoric and making divisions deep in the core of society. School curricula and subjects that best reflect the disunity within the education system itself are subjects of history. As it was stated before, narratives not only shape our perception of social movements within the current social and political context but are influenced by historical events and shared memories of collective traumas, celebrations, or difficulties. Historical narratives can construct important symbols and memories of past events to encourage solidarity in the group and that is the path we should take, but they can also revise historical events to promote a favourable narrative for a particular group. All these events that can be instrumentalized by historical narratives are visible in school textbooks, historical monuments, and public commemorations. All of these different narratives continue to provoke tension and symbolize division in conflict-affected regions (Bartulović 2006, 11-14).

The subject of history is of great importance for a country that thirty years ago has suffered war conflicts and everything that they imply, and beyond because the world was shocked by the dishonest and inhumane methods of warfare that were applied on the territory of Bosnia and Herzegovina and in the region. History is a science that the children of Bosnia and Herzegovina have been interacting in school since they were twelve years old. The absurdity of the Bosnian and Herzegovinian education system is, among other things, reflected in the fact that when learning about history, children are taught that at least thirty years must pass since an event in history before it can begin to be studied from a historical aspect. Three years later, children have the opportunity to notice how the theory is violated in practice and how science in Bosnia and Herzegovina does not adhere to its postulates and they learn about the act of aggression o Bosnia and Herzegovina (Bosniak's narrative)/ armed conflict in Bosnia and Herzegovina (Croatian narrative) / civil war in Bosnia and Herzegovina (Serbian narrative) less than 30 years after the event. This raises the problem and the threat of establishing a constructive dialogue in the future. Ignorant individuals like to describe this phenomenon as three truths. There are no three truths. There is one truth and three interpretations and perceptions of one truth. This is dangerous for the generations to come that will live in the belief that their people are "sinless" and that all other nations have "sinned" against their people. There are few who seek the truth.

The research of the war situation in Bosnia and Herzegovina mainly comes down to finding data that supports our already taken position with the main goal of disputing every claim of the second and third party, regardless of how accurate that claim is. The same trap is falling on educators who, in most cases, were themselves participants in past events. It is logical to conclude that educators who have not undergone addition-al training and certain therapies to combat PTSD[2] will project their subjective views and experiences on the younger generations. Thus, we have generations with the so-called "chosen trauma" (Volkan 2001, 8). Nationalist parties for example in Bosnia and Herzegovina (but any other Western Balkan country can provide an example) also have a large share, rooted in human insecurity for twenty-five years, and they are most often the constructors of historical revisionism and the replacement of theses. Nationalist parties especially benefit from the Bosnian-Herzegovinian ethnocentric education system, because such a system creates nationalist youth with preferences towards nationalist parties, perceiving them as saviours and guardians of the people, tradition, culture, and ethnic values. Here we come to the topics of political literacy and the ability to think critically, which our education system also does not nurture, and which will be discussed in more detail below.

Bosnia and Herzegovina is a country that belongs to democratic systems. The charac-teristics of democratic systems are regular and fair elections and equal opportunity for political participation for all adults. Political participation implies a much broader activity than mere participation in elections in the role of a candidate or voter. It is important to distinguish between voters and electors. Every person who goes to the polls is a voter, but not every voter is an elector. What does that mean? It means that voting and electing are two different civic responsibilities. Electing is a broader term than voting because it implies an active interest in politics through monitoring pre-election drips, plans and programs of candidates, critical reflection on candidates and election promises, critical reflection on changes made during the term of the current government, monitoring political events in general, and finally performing civic duty and voting for candidates. Unlike electors, a voter is a citizen who performs his / her duty on election day by going to the polls. It is in this difference that we en-counter a major problem in BiH. Turnout in the 2020 local elections in BiH was only

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2   PTSD- Post-traumatic stress disorder is a recurrent, intrusive memory of a severely traumatic event. MSD Diagnostic and Therapy Manual. http://www.msd-prirucnici.placebo.hr/msd- prirucnik / psychi-atry / anxious- disorders / post-traumatic-stress-disorder. (Accessed: 27. 6. 2021.)

50%. In the general analysis of the Central Election Commission (Centralna izborna komisija BiH-CIK), this number was significantly lower in some municipalities[3]. When the turnout is so low, then we can only imagine the small percentage of those citizens who, in addition to being voters, are also electors. The education system in BiH is largely to blame for this frivolous understanding of the most serious process of every democratic society and every democratic state.

There are several reasons why I cite the education system of BiH as the culprit. The main reason is that the education system in Bosnia and Herzegovina does not nurture or develop critical thinking for its students. For democratic societies, authoritarian communist / socialist regimes are not the greatest danger, as it was commonly thought during the Cold War. For democratic societies, terrorist groups are not the main threat as they began to be considered after the attack on World Trade Center in 2001[4]. Every democracy is most endangered by a population that cannot think critically. Every government, even the best one, should be criticized. Otherwise, if we accept every decision of the government affirmatively without considering its possible negative consequences, we are creating an autocratic government. Having a democratic system means having both the ability and the freedom to think critically. Democracy, as we know it today, is also characterized by the division of power into legislative, executive, and judicial. It is also characterized by values such as freedom and equality. With this in mind, it can be concluded that democracy of its present form originated from the French Revolution of 1789. It is Voltaire and Rousseau who are considered to be the originators of these ideas and values on which democracy is based. What is forgotten to be said is that neither Voltaire nor Rousseau in their time thought democratically, but critically. They criticized the rule of one man and the subservience of all others. Because of their critical thinking, Europe and the world are recording human prosperity and are going through a new era of Humanism and the Renaissance known as the Enlightenment era. In this example, we see the importance of critical thinking. Without such a critical approach of only two men, Europe would perhaps still be tapping in the dark serving the bizarre demands of kings who would become

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3   The information is based on the analysis of the confirmed results of the 2020 local elections. Source: CEC - Central Election Commission: Voter turnout at the 2020 Local Elections by 7 pm https://www.izbori.ba/Documents/Lokalni_izbori_2020/Odziv/Odziv_Lokalni_izbori_2020_19_.p.p (Accessed: 21. 6. 2021.)

4   For more information, visit the following source: History.com https://www.history.com/topics/21st-century/9-11- attacks September 11 Attacks. (Accessed: 27. 6. 2021.)

more and more cruel and greedy as a day goes by. A lack of critical thinking also means a lack of need to change something. In democratic societies, change comes on thewings of elections. This important democratic process has been pushed aside in the educationsystem of Bosnia and Herzegovina. It often happens that the subject of "Democracy" is taughtby professors who are either not interested or are not competent enough to bring the importanceof democracy closer to students or are a combination of these two. As a result, students, futurevoters, and electors do not understand democracy or the importance of mass participation in electoral processes. This long post-war period resulted in the elderly population determining the future and direction of the state. For a long time, it was hard to find a way to motivate young people, but also citizens in general, to go to the polls and vote. Citizens were sceptical that voting could change anything. Such scepticism still exists today, although we are witnessing the changes that took place in the 2020 local elections. Until these changes, the dominance of nationalist parties in front of all three constitutional ethnical groups was evident. It was their dominance that was the source of political insecurity because the dominantexistence of nationalist parties in one ethnic group created a kind of security dilemma[5] in the other groups. The analogy is reflected in the fact that at the very moment an ethical group notices an increase of nationalistic narratives and pretensions in the other two ethnic groups, itbegins to use the same narrative as a form of defense and protection. This indicates that the nationalist parties have been in power for so long thanks to each other and the third party, even though the voters imagined that they are in power despite each other and the third party. This is how Bosnia and Herzegovina, with its citizens, has been spinning in a circle for thirty years because of nationalism. The problem of nationalism stood in the way of every other progress. In Bosnia and Herzegovina, some questions can be answered without answering thequestions posed by nationalism. Regardless, all possibilities were ignored and the focus was put only on differences and stumbling blocks. Thus, ethnic groups became hostages tothemselves, and institutions became the subject of political turmoil and play. Such a policy attitude towards important

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5   The security dilemma is related to the conflict model of international (but also interethnic, interfaith, etc.) relations. The security of one state can only be achieved at the expense of another state. To achieve a satisfactory level of security, states maximize their capabilities and power which should enable them to achieve a certain level of security. But their behavior causes a dilemma and a sense of insecurity in another state, which, to achieve its security, begins to behave identically. Neither side is aware (or does not see) that it is its actions that are the factor that causes insecurity (Both and Wheeler, 2008).

institutions, such as the judiciary, has resulted in a loss of citizens' trust in Bosnia and Herzegovina's institutions. More recently, there have been unsolved cases of the murders of David Dragičević and Dženan Memić, followed by many scandals that have shown that in some places there are people who are unable to do the jobs they are in charge of.Distrust in state institutions poses a new threat to security. The situation with the outbreak of the COVID-19 pandemic indicates how important citizens' trust in the state and its institutionsare. We were convinced that this is sorely lacking in Bosnia and Herzegovina because we couldsee various forms of civil disobedience and non-compliance with measures. Distrust ofinstitutions can very easily resemble some milder form of anarchy. Here it is important to strikea balance. Trust in government is important and desirable, but it must be grounded and have its limits. Unconditional trust is something that is not appropriate for democracy, nor for citizens who need to nurture it with critical thinking. In this regard, according to Baloban and Rimac, it is necessary to start from the assumption that trust is a fundamental element of political culture, i.e. that it is the main indicator to "channel conflicts and conflicts within the political system" (Baloban & Rimac 1998, 664).[6]

4. Conclusion

In provided examples, mostly related to the situation in Bosnia and Herzegovina, we can easilyspot both problems and the solutions for the Western Balkan. Bosnia and Herzegovina, with itsvarsity of cultures, religions, ethnic groups, and ideologies can represent the micro version of the Western Balkan. Problems that Bosnia and Herzegovina faces are the problems that are shared among the rest of the Western Balkan states. As stated in the introduction, the ways wemake something may vary but the final result are the same. The final result all Western Balkanstates share is untapped potentials for the development of each state. Even the goals are the same: the main one is becoming part of the EU. Only "united in our diversities"[7], but also unitedin our similarities (because it is important to bear in mind that states and people of Western Balkan have a lot in common) we can make a progress. What is the solution? First of

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6   Quote taken from the source: Smajić Mirza, Seizović Zarije, Turčalo Sead (2017). Human security in a post- conflict context. Faculty of Political Sciences. p. 167 Sarajevo. Source of the taken quotation: Boloban, Stjepan and Ivan Rimac (1999). "Trust in Institutions in Croatia". Theological Review Vol. 68 No. 4.

7   "United in diversity" is the official motto of the European Union, which first came into use in 2000.

all, we should combat the problems such as dangerous narratives, political illiteracy, lack of knowledge, and critical thinking. Also, media can play a massive role to make a better atmosphere among people and they should do so. Sensationalism to whom media aspire latelyshould be rather switched sensitive language and fair reporting on situations. Boosting the economy through cooperation and exchange of information and knowledge should also be placed in the spotlight. By cooperating with each other, we will boost our economy and that will lead to new investments in this area. When an area cooperates and when states are mutuallyimportant partners, they easily find solutions in case new disputes occur. The risk of new conflict is decreased to the minimum because states that cooperate and benefit from the cooperation will not risk it all in a new conflict. They are less likely to engage in new wars or even minor conflicts. In my personal opinion, the idea of Mini-Schengen Area could provide agreat solution. Mini-Schengen is an idea that is completely natural for the Western Balkan territory. People from the Western Balkans have cooperated for a longer time than current narratives are willing to admit. Differences are there only to enrich this area, not to disturb cooperation and communication. We share similar past, culture, heritage, tradition even language. We can understand each other easily, we can easily meet and adjust our needs and desires. We should make sure that young people interact with each other through student exchanges and job opportunities. That way we can break all the prejudices, that way we can prevent the spreading of the dangerous narratives, that way we can beat the stereotypes, that way we can change the present and create a better future. The problems do exist and the solution is not to neglect, ignore or deny them. We should embrace them to face them so we can deal with them and, in the end, solve them. It is not as hard as authorities like to present; the solutionis simple. We need more interaction, more cooperation, more mutual trust and we need to realize that our differences are a treasure, not an obstacle.

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WESTERN BALKANS' EUROPEAN INTEGRATION

EU POLICY TOWARD WESTERN BALKAN COUNTRIES - CURRENT AND FUTURE CHALLENGES

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1. Introduction

This essay discusses European Union (hereinafter: EU) policies towards the Western Balkan (WB) countries - Albania, Bosnia and Herzegovina, Croatia, North Macedonia, Montenegro, Serbia, and Kosovo. Above all, it looks into EU conditionality towards the WB countries. The essay portrays a view of the EU policy, mainly focusing on the challenges that have been posed to the Western Balkan countries, which are unquestionably very sensitive cases that the EU should try to handle with the utmost care. The essay brings up challenges that have been a part of this process since its very beginning while elaborating what the author believes are more problematic. The main points tackled by this paper are focused on whether the EU has paved a tougher road for the Western Balkan countries, rather than the previous candidates, and if these challenges are worth overcoming by these countries. Has the accession process shed light on the fact that maybe the EU is applying a double standard to slowly integrate the Western Balkan?

2. A snapshot of EU policy

Geographically in Europe, however, not a part of the European Union. With Croatia's flag now embedded alongside 26 other countries, the remaining six countries of the Western Balkan have been trying to bind their future to the EU, still, the light at the end of this tunnel for these countries has been rather dim.

The launch of the Stabilisation and Association Process (SAP) of the EU set in motion one of the most successful tools to resolve disputes in the Western Balkan countries - to

shape and reinvigorate ties of neighbouring countries, in exchange for a membership. It has been a long way since these countries have tried to pave their way towards the EU, which has and continues to challenge them. Old challenges have diminished, new ones have arisen, but most of these challenges are still there, and overcoming them does not seem that easy.

Right from the start, the EU has tried to develop the already used methodology on the Central and Eastern European (CEE) countries, in the sense of concluding bilateral Stabilisation and Association Agreements (SAAs) that include a strong element of conditionality and integrating the EU *acquis* as a method of preparing the associated countries for their EU accession. To encourage long-term reforms, the EU has predominantly relied on rewarding these countries' compliance with human rights, democracy, the rule of law, and the fight against corruption with the beginning of accession negotiations and, ultimately, membership. However, notwithstanding the outcomes of these agreements and the considerable similarities thereof, it was clear from the very beginning that a distinct type of association was nevertheless deemed necessary to tackle the particular challenges of the Western Balkans (Phinnemore 2008, 81).

The Thessaloniki European Summit in 2003 marked the Western Balkan countries as 'potential' candidates. Since then, almost 18 years have passed and the results are rather disappointing. It seems that the EU's 'box-ticking exercise' to their enlargement policies seems to be going slow. The EU has maintained enlargement as its policy priority towards the region, however, despite the 2013 entry of Croatia into the Union, the European enlargement process in the Western Balkans is in trouble. Croatia managed to get into the EU, while Albania, Montenegro, North Macedonia, and Serbia levelled up to 'candidates'. On the other hand, Bosnia and Herzegovina together with Kosovo seem to be stuck as 'potential candidates'.

However, this is not entirely upon these countries and is partly on the EU, which is postponing this enlargement due to its reasons. The economic, financial, and political crisis which has been tearing up the Union since 2008 is also a crisis that is reflected in the EU's difficulties to formulate and sustain a vision of itself and its role in the Western Balkan and beyond. Simply put, the EU is strengthening a 'wait-and-see' attitude towards the region (Grabbe/Knaus/Korski 2010, n.n.).

3. The accession conditionality

While the EU has made accession conditional on the fulfilment of requirements first articulated at the 1993 Copenhagen Council, which were intended as a guideline for aspiring new members from Central and Eastern European countries, it has taken lessons from its previous enlargement errors and transformed these criteria more into a barrier for aspiring new members, rather than a roadmap to carrying out domestic reforms required for membership.

For openers, since 1993 the *acquis communautaire* has grown to 140,000 pages long. Unavoidably, this does increase both the political and bureaucratic difficulty to transpose and implement this expanding body of EU legislation to aspiring new members. Furthermore, not only has the *acquis* expanded but also the Copenhagen criteria have also grown significantly (Belloni and Brunazzo 2017, 26).

Because of Bulgaria's and Romania's disappointing situations - both of which are troubled with severe governance issues - the negotiations with candidate states now begin with the chapters on the judiciary, justice, and home affairs, which are the most difficult to address. Both scholars and policymakers now agree that the admission of Romania and Bulgaria was expedited, and as a result, the EU compromised on Rule of Law requirements. A realisation has also occurred that if a country becomes a member, the prospects for further change are greatly reduced, and mechanisms intended to do this lack leverage (Zweers 2019, 5; Borzel and Schimmelfenning 2017, 285). Most notably, in addition to the Copenhagen conditions, members of the European Council have proposed separate conditions for each candidate state, posing concerns about the consistency and legitimacy of the accession process and leading candidate states to worry about double standards (Belloni and Brunazzo 2017, 27).

At times, it may seem that the EU is stuck in its ways, not because it sees or believes in real and long-standing changes in the Western Balkans, but because it has already spent so much financial and political resources in the area that admitting any bit of failure severely damages and undermines the credibility of its self-proclaimed soft power (Ham 2013, n.n.).

Are the veto-players playing by the rules?

If we take a look at the bigger picture, it is the EU Member States that have posed political demands to aspiring members. The introduction of veto points for the Member States during the 2012 reform of the accession process adds a real political dimension to it. It goes without saying that increasing Member State involvement has had positive effects, among which to turn enlargement into more than just a European Commission-run process, where the Members States are now in a much better position to raise and express their concerns throughout this process. As a result, they are not confronted with a 'take it or leave it to offer at the end but are more in control (Vogel 2018, 16). But, on the other hand, Member States are now able to put forward their political demands into what should be a fairly clear and straightforward process (Zweers 2019, 4), more or less like it was for current EU members.

Since then, it is clear that this reform has made the WB6 clash through several obstacles raised by the Member States themselves. The only recently settled Greek-Macedonian dispute over the latter's name, which Greece claimed as its heritage, is one of the most notorious examples of how political expediency by the EU Member States stifles progress. Despite favourable recommendations from the European Commission, Greeks have consistently blocked the beginning of accession talks with (now North) Macedonia since 2004. Not only that, but the resistance of France, the Netherlands, and Denmark to initiate accession talks with North Macedonia and Albania appears to be motivated by domestic political concerns. As declared by French President Macron, the official reason for such reluctance is that before taking in new members, '*a real reform to allow a deepening and better functioning of the European Union*' would be needed. However, opening accession talks and taking in new members differ considerably, as the first one only constitutes a step in the direction of the latter. Therefore, it seems that his government's decision is at least partially motivated by the immigration concerns in France itself (Reuters 2018, n.n.). Regardless, criticism has been thrown towards them in response. Former EC President Juncker found this blockade to be "*a grave historic mistake*", while the former EU's Enlargement Commissioner Hahn stressed that this "*was not a moment of glory for the EU but a matter of deep disappointment*". The region's reactions were similar, with North Macedonia's Foreign Minister Dimitrov emphasizing that "*the least the EU owes the region is to be straightforward with us. If there is no further consensus on the European future of the Western Balkans...the*

citizens deserve to know", whereas Albanian Prime Minister Rama talked of a "*heavy psychological shock in the country*" that has undermined the EU's reputation (Požgan, Fenko and Kočan 2020, 1128).

 In February 2020, just before the actual start of the Covid-19 pandemic, the European Commission issued a new communication on EU policy towards the Western Balkan with the title "Enhancing the accession process – A credible EU perspective for the WB". Some authors label this as a "face-saving exercise" (Vurmo 2020, n.n.) to try to regain some lost credibility after the long-stagnant accession process (Cameron and Leigh, 2020, n.n.).

Still and all, North Macedonia keeps being directly targeted for its history, or in these cases its lack thereof. In a move that should have set off alarm bells at the time, the Bulgarian government issued a unilateral statement endorsed by all political parties in the Bulgarian parliament, outlining the requirements that North Macedonia must meet before accession negotiations could begin. These included an acceptance by North Macedonia that its language had Bulgarian roots, and that a 'Macedonian language' or ethnicity did not exist before 1944. In addition, they demanded to end the "state-sponsored anti-Bulgarian ideology", as well as the abandonment of any claims to the "existence of a Macedonian minority" in Bulgaria, and presented what can be regarded as a one-sided portrayal of the region's history.

Stopped at another red light, North Macedonia's Deputy Prime Minister Nikola Dimitrov told POLITICO: "*If any nation in Europe has to choose between their identity and joining the EU, then there is something wrong with that set of options*".

It is simply undisputed that the region is packed with disputes, whether it is over territory, the rights and existence of national minorities, the nationality of a historical figure, or even the entire existence of history itself. Any one of these could easily become the cause of instability or conflict if not handled properly. Leaving the resolution of these disputes in the hands of the countries directly concerned will not work, especially if one of the countries is involved in an EU member state and it has such power as to block a country from making further progress.

It has been proposed that what is required is a proactive diplomatic engagement by the instances of the EU, whether it is the High Representative of the EU or the Special

Representative for the Western Balkans or some other high-profile personality or entity, due to the shown need for an independent neutral body that can provide third-party mediation whenever such disputes emerge (Fouere 2021). It is the EU's credibility and capacity to act effectively that is at stake here. EU should step up their game regarding this issue since North Macedonia is not the only party affected by these obstacles. This veto has also affected Albania since EU members see the accession of Skopje and Tirana as a 'package deal'. Lack of concrete progress plays into the hands of Western European countries, notably France, whose public opinion has grown sceptical of further EU enlargement (Brzozowski and Makszimov 2021, n.n.).

The use of the Bulgarian veto to block the beginning of accession talks with North Macedonia was not only considered as another abuse of power by a member state, but it also shows the EU's utter lack of understanding of Western Balkan's complex politics and the heavy history weight. The Balkan history will keep posing a problem, as such the EU should start tackling the problems related to Balkan history and its influence on these countries' accession. If this trend continues, the EU might be known as the organization that rewrites history, or rather the one that sits back while history is rewritten on its watch.

Europeanisation Fatigue

Not only the EU has been experiencing a profound crisis with implications for its willingness to accept new members, but also states in the Western Balkans are displaying various degrees of Euro-scepticism. The EU is less attractive today than it was in 2003 when it promised an open-door policy for the Western Balkan states. Indeed, Europe's current attractiveness is easily overstated. The attitude prevailing in the Western Balkans is a mix of resigned and fatalistic Euro-realism and growing Euro-scepticism (Hillion 2010, n.n.). For example, in Croatia, the youngest EU member state, support for EU integration was around 70-80% when the country applied for membership in 2003 (Franc and Medugorac 2013, n.n.). In 2012, 66.2% of citizens voted 'yes' in the referendum on admission to the Union, but only 43.5% of all citizens went to the polls (Cipek 2020, 555). Even public polls in North Macedonia indeed show that support under Macedonian citizens for joining the EU decreased from 96% in April 2008 to 72% in January 2016. Taking the scepticism to another level, in Serbia, which started accession negotiations in January 2014, the Eurobarometer report shows that

only 36% of citizens believe that joining the EU would be a 'good thing' - the lowest support for European integration recorded in a candidate country so far. On the other hand, in comparison, 90% of Albanians are in favour of joining the EU (Belloni and Brunazzo 2017, 30).

Although not a new phenomenon, EU fatigue is now deeply associated with the Western Balkans. It has been asserted that for the sake of its institutional stability and external coherence, the EU simply could not afford the accession of any more institutionally weak ex-Communist East European States, and as such putting them on the 'slow track of accession' (Brennan 2014, 226).

4.   Is the EU a 'blessing' in disguise?

Despite rather unfavourable conditions, the Western Balkans have experienced progress ineffective and democratic governance-building, compared with other post-conflict countries in the world, the Western Balkan countries are relatively well-off. Since the Balkan Wars, the likelihood of violent conflict has been significantly decreased, governance capacities have increased, and all states have demonstrated, although slowly and with setbacks, progress toward democratization. In a sense, this approximation of the Western Balkans to the European Union has had a rather conflict-moderating impact. For example, the 2009 demarcation agreement between North Macedonia and Kosovo and, above all, the 2013 Kosovo-Serbia agreement which granted extensive local autonomy to Serbian municipalities in Northern Kosovo while formally integrating these municipalities into the Kosovar state, would have been almost impossible without a significant EU involvement.

Likely, the EU has somewhat forced candidates to agree to their terms to further proceed in the accession process. For instance, Serbia's cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) shows that accession conditionality still induces target governments to cooperate with EU requirements–when the conditions are exerted credibly and in a timely manner. Serbian compliance was the product of significant pressure applied jointly by the US government and the EU Commission (Lamont 2007, 8). Moreover, smaller and more easily accessible incentives, such as the promise of aid and cooperation agreements, were crucial to enhance collaboration with the ICTY.

Even though Kosovo has posed a problem to the EU with regards to the approach it should take toward it, they have been rather creative in finding the necessary loopholes. The most recent Stabilisation and Association Deal (SAA) with Kosovo are unique in the sense that it is concluded as an EU-only agreement with the clear provision that it does not entail recognition of Kosovo as an independent state (SAA, Article 2). The term 'potential candidate Member State' is deliberately avoided in the preamble of the SAA with Kosovo, but uses a diplomatic formula, by which one implementing the SAA '*will lead to progress in Kosovo's European perspective and rapprochement with the EU, should objective circumstances so permit, and Kosovo fulfil the criteria defined by the European Council in Copenhagen on 21-22 June 1993 and the aforementioned conditionalities*'. This distinguishes it from the rest of the SAAs, which ones have the term included. However, while seeking to build a functioning democratic state in Kosovo, the European Union Rule of Law Mission in Kosovo operated under the UN Resolution 1244, which sought "neutrality" on Kosovo's status question (Wessel/Larik). But how does one create a functioning state without recognizing it as one?

The Balkan history is filled with conflict after conflict; hence, the EU has tried to take this part very seriously and has long supported the European perspective of the Western Balkans by trying to maintain its peace. The Communication of the EU Commission as of 2018, further stated that the future of the region as an integral part of the EU is in the *Union's very own political, security, and economic interest.* With strong political will, delivery of real and sustained reforms, and definitive solutions to disputes with neighbours, the EU predicts membership for some of the candidates. The Commission went on and set out that accession is and will remain *a merit-based process* fully dependent on the objective progress achieved by each country (EU Commission Communication 2018, n.n.).

Former High Representative of the Common Foreign and Security Policy (CFSP) Javier Solana back in 2001 stated that "*the security of Europe depends on stability in the Balkans. They are also a test case for Europe's enhanced Common Foreign and Security Policy. Nowhere more than the Balkans is the EU expected to deliver*". This statement further engraves the EU's intention - to invest in these countries to maintain the peace in the region, hence peace in Europe.

Are we really that far away from the EU?

The Balkan countries were significantly successful in attracting foreign investment and developing a stable export market. Nevertheless, as reported by the World Bank Group, overall unemployment is still high. Concerns about the EU market overtaking domestic production have been raised by Eurosceptic politicians. Their allegations, while one-sided, are not unfounded and attract a significant electorate (Wentholt 2020, n.n.). Even though membership in the EU has clear economic benefits, such as access to bailout funds, various ways of economic convergence between the EU and the Western Balkans also exist (Barlett and Prica 2013, n.n.), hence, making full membership less appealing and the lure less effective.

Trade liberalisation has been established between the EU and the region, thereby removing all barriers to the entry of Western Balkan products into the EU. Almost ⅔ of all commercial exchange takes place between the region and the Union (Belloni and Brunazzo 2017, 31), and both Montenegro and Kosovo have unilaterally adopted the euro as their currency. Furthermore, citizens of North Macedonia, Montenegro, and Serbia have enjoyed visa-free entry to the Schengen area since 2009, a privilege extended to Albanians and Bosnians in late 2010. Using the tools it currently possesses, the EU can encourage regional reform through healthy competition at no additional expense. This visa liberalisation in the Western Balkans demonstrates how the EU can effectively use its soft power to gain leverage and progress in the region (Korski 2010, n.n.). As a result, without taking into account Kosovo - the only isolated country in this region, the Western Balkans are already largely integrated into Europe.

However, it seems that the membership leverage, among others, is being used to reach a very difficult goal - stabilisation in the Western Balkan region, hence, trying by all means to avoid conflicts between these countries. The EU is strengthening a 'wait-and-see' attitude towards the region (Grabbe/Knaus/Korski 2010, n.n.), but the Balkans are not known for their patience, and prolonging the process seems to be testing just that. Although this approach to the Western Balkans has resulted in substantial improvements, there is still great debate about whether the glass is half full or half empty.

5. Conclusion

Despite numerous promises towards the Western Balkans that their accession to the EU will happen soon, such promise does not seem to have been fulfilled over the last decade. This paper showed that the parties of both sides of this process - the EU and the Balkans - have to try and hold their end of the bargain. One cannot move forward without the other.

As clearly shown, it is undisputed that the EU was a crucial factor in helping the development of the Western Balkan countries. However, the sensitivity of these countries has made it harder for the EU to plan and execute its next steps. Even though the countries seem to have been somewhat tired of this process, they are continuing to push forward. As such, the EU should reward the objective progress of these countries, by allowing them to move to the next stage of their European path.

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WESTERN BALKANS AS AN AREA
OF EUROPEAN UNION'S INFLUENCE

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1. Introduction

When first immigrants stepped on the land of decaying Western Roman Empire now called Western Balkans, they did not discover just new ground to cultivate, they encounter whole new culture and that is when influence of Europe over the area began. As mentioned, Europe, especially European Union, has influence over Western Balkans, which has its origins way back in history. Nowadays this influence can be divided in two groups, political and economic. Political is shown through conditioning, with which Union condition reforms for various benefits from common market, free movement of people and so on, while economic influence, even though is connected with political, is shown manly through trade. The theme will be examined in three sections. First one is historic overview of Europe's influence over Western Balkan focused on 20th century, especially on events during Yugoslavian civil war, second is covering Europeans Union's impact on region, in which are addressed conditioning and problems of it, reasons for enlargement, introduction of EU's soft and hard power, trade relations and various programmes from EU to help Western Balkans countries. In last section will be covered influence of third countries over Western Balkans, especially the most problematic Chinese. In essay I will try to prove that the European's influence is so strong that is defining path of Western Balkans and that Europe has a long-term plan for region.

2. Historic overview

Influence of European countries on Western Balkans started soon after Slavs populated the area, worth mentioning are effects of Bavarians and Franks, especially on agriculture and social structures, Christianization of Slavs and occupation of Serbia,

Bosnia and Herzegovina and Montenegro in 15th century by Ottoman Empire. Some of the long-term consequences of this era are still visible in today's society, but relevant influences on Western Balkans for this essay started, when Napoleon establish Ilyrian Provinces on the North and East coasts of the Adriatic Sea. French were stimulating development of nations, which had resulted in Spring of Nations in March 1848 and in many reforms in Habsburg Empire, which made nations under it more autonomous. In 1908, as a result of its colonial tendencies, Austria carried out annexation of BiH. (Sečen 2016, 1) They had taken economic advantage of country and exploited religious and national differences between Bosnian Muslims, Catholic Croats and Orthodoxy Serbs to keep people under control. After Second Balkan War in Budapest peace conference superpowers interfered in inner policy of countries and determined their borders, which resulted in creation of new country Albania, but Macedonians remained forgotten and were still divided between Serbia and Greece, countries had no other choice than to obey them, because superpowers were using economic and military threats to impose their will. (Balkan Wars 2020, 2-7) After the First World War president of the USA Woodrow Wilson made the biggest impact on region with his fourteen points including the right to self-enforcement, that was extremely important to Slovenes, Croats and Serbs living in the area of former Austro-Hungary. They were forced to quickly unite with Serbia, because they were living in the territory of country defeated in war, this unification was made mainly under conditions of Serbia and it did not take into account differences between nations, which had just accelerated reasons for disintegration of the country. After the Second World War Western Balkans nations, except for Albania, had united in newly formed communist country Yugoslavia. Tito was at first relaying on the Soviet Union, but after the Tito-Stalin split (Perović 2007, 32) he started looking for allies in the Western Europe, even in the USA, until he found them in co-founders of the Non-Aligned Movement. Albania was relaying on Yugoslavia until dispute between Tito and Stalin, then on Soviet Union till early sixties, when they connected with China. Albania and rest of Europe had by the nineties just economic relations.

Fall of the Berlin Wall had, in combination with poor economic situation and lack of mutual trust between nations, caused secession of Slovenia and Croatia, which resulted in national war. After declaration of independence from Slovenia and Croatia, Yugoslavian army first attacked Slovenia, but withdraw after few days of fighting,

people in Croatia and BiH were not that lucky, war lasted approximately for four years. The USA indulge the Yugoslavian crisis to Europe, but their actions were ineffective. Europe tried to control the crisis through the United Nations and their peace forces, which were headed in the area to prevent further conflicts between Serbs and Croats as well as Serbs and Bosnians, but their actions and efforts were unsuccessful. Serbs and Croats had committed serious war crimes against each other and Bosnians, among which stand out Srebrenica Genocide, where Serbian army had killed around 8000 Bosnians. (Agence France-Presse 2017, 3) After a failed attempt of intervention from UN forces, international community decided for more strict measures. NATO's bombing Serbians strategic points and Croatian counteroffensive, in which they committed war crimes over Serbian population, had change power ratio in war and forced Serbia to peace negotiations. (Agence France-Presse 2017, 4) The result of diplomacy was Dayton Agreement, in which leaders of Serbia (Milošević), Croatia (Tuđman) and Bosnia (Izetbegović) under supervision of leaders from USA, Spain, France, Germany and United Kingdom declare, that BiH stays one country, divided in two federations. (Dayton Peace Agreement 1995, 2-3) The Dayton Agreement did not mean, that all problems in region were fixed, Serbia was still controlling large part of former Yugoslavia, but the most problematic was their suppression of Albanians in Kosovo. (Agence France-Presse, 4-5) Kosovar Albanians decided for armed rebellion and established Kosovo Liberation Army, which were fighting for freedom, but committed war crimes over Serbs living in the territory. (Sullivan, Colleen 2014, 2-3) After Serbian army's mass killing of Albanians in villages of Kosovo NATO decided to bomb Serbia again, which resulted in withdrawal of Serbia's forces from Kosovo in June 1999. (Agence France-Presse 2017, 4-5) Kosovo has declared independence in 2008, which has shaken Serbian national identity, but it is still not recognised in some countries in European Union.

3. Influence of European Union over Western Balkan

European Union's biggest advantage becomes its biggest disadvantage, when it comes to foreign policy. Coordinating interests of 27 countries takes a lot of hard work and compromises even in domestic politics, but in relations with third countries is sometimes almost impossible to harmonise acts of all members of Union. Joseph Borell has argued in his book on European foreign policy in times of Covid-19, that

EU citizens needs to see outside problems as residents of Union and not as citizens of each individual country, he said: "*We must stop seeing Europe as a collection of national interests and instead define, and defend together the common European interest.*" (Borrell Fontelles 2021, 24) EU has one of the most powerful "soft power" toolboxes with powerful trade and competition policies, significant aid volumes and the new possibilities offered by investment-screening mechanisms, it is also the most important norm setter worldwide (Borrell Fontelles 2021, 23), because of all that, companies and countries interested in economic relations with Union must adapt their products and policies so they can operate in European market. EU is using soft power for making indirect changes on every external subject that wants to benefit from having relations with EU. Union's "hard power" is resulting in more than 5000 people deployed around the globe, mainly in UN missions (Borrell Fontelles 2021, 24). Around 400 of them, depending on the security situation, are stationed in Albania and Montenegro in Frontex operations, in which they, along with officers of both countries, are preventing illegal migrations, cross border smuggling and identifying possible risks a threats related to security. This kind of operations are possible, because Status Agreement has been concluded between European Union and the country. EU is with this type of operation trying to minimise external threats before they reach borders of the Membership and exchange operational information, professional experiences and best practices (correspondence with Frontex), but every light has its shadow. From time to time immigrants and refugees are accusing Frontex officers of violently returning them to the country of their arrival.

European Union's tremendous influence on countries of Western Balkan is on political level. EU is conditioning membership in Union with fulfilling Copenhagen criteria, if countries want to accomplish them and join Community, they must accept fundamental reforms, which are changing country's political and judicial system. Conditioning of EU has developed from Union's programs to help East and Central Europe, as well as similar programs from UN, IMF, World Bank … Using conditioning is a safety strategy and it shows, that EU wants to transform Western Balkan. (Ješe Perkovič 2016, 38). In theory are two different types of enlargement, in inclusive theory the community first accept the candidate country and then teaches novice values and rules of community, in exclusive theory the community first addresses its values and rules to the candidate country, which has to internalise them, so it can become member of the

community. (Ješe Perkovič 2016, 36) EU has, in the case of Western Balkan, chosen the exclusive approach. Rational reasons for enlargement are economic, safety and political nature, if enlargement happens companies in the EU will have free access to new market of over 18 million consumers for their products, expansion will create new jobs, Union as whole will be more influential on a global scale and safety of new as well as old members will increase, because region lies along the Adriatic Sea, which is very important trading route for Slovenia, Italy and Croatia as well as countries of Central Europe, and over region's territory runs important trading route from Greece to Central Europe, so it is better for EU to have control region under control than some third country such as China or USA.

Candidate countries can join Union, when they have fulfilled three criteria, 1. political: stable institutions guaranteeing democracy, the rule of law, human rights and respect for minorities, 2. economic: functioning market economy, 3. legal: incorporation of the Community acquis. With Copenhagen criteria EU directly addresses political organisation of candidate countries, promoting democratic - pluralistic voting system, rule of law and respecting human rights, (Ješe Perkovič 2016, 85) because demands of Union are multifaceted and hard to check, European Commission publish a report on how candidate countries are fulfilling the Copenhagen criteria and where they need to improve, in this reports we can see how big influence the European Union has on candidate countries specially on politicians, if they do not improve field, that Commission marks as problematic country will receive negative evaluation and their popularity among people will fall. This can be seen especially in Western Balkan, because the idea of joining the European Union is extremely popular with Balkans, so leaders of the countries must, if they want to be re-elected, take steps to approach full membership. However, conditioning in Western Balkan has significantly smaller transformational power then it had in Eastern and Central Europe, (Ješe Perkovič 2016, 209) one part of responsibility is on the leaders of candidate countries, who are working for their own interests and do not want to implement reforms, because they are in conflict with their own and interests of oligarchs close to the political elite. One reason why the conditioning is less effective lies in Western Balkan's complicated history, democratic transition was seriously affected by ethnic violence between nations, which I mentioned in historic part of this essay, and anti-liberal democracies in the nineteens, (Ješe Perkovič 2016, 209) especially time of Milošević presidency and his

deprivation of 2000's election results. The final reason for smaller effects of conditioning is caused by the actions of the Union itself. EU is sometimes with its demands demolishing the national identity of the country, worth mentioning are Greece's request to North Macedonia for changing its name, EU's conditioning of finding general Gotovina and bringing him in front of International Criminal Tribunal for the former Yugoslavia for war crimes caused during conflicts in the Balkans in the nineteens and EU's conditioning dialogue between Beograd and Priština, which is extremely painful in the eyes of Serbs, who are seeing Kosovo as a place where Serbian nation started its existence. EU forced Serbia to sign Brussels Agreement, but Beograd is seeing it as political document, which is not binding, Priština on the other hand ratified it (Ješe Perkovič 2016, 210-211). Problem with these demands is that they are as previously mentioned demolishing nation's identity, and are also causing rise of nationalism and populism, which is going to be a problem when countries join Community. Important is to mention that all countries in Western Balkans concluded Stabilisation and Association Agreements. *SAAs are tools which provide for the economic development and political stabilisation of the countries in the region, and for the creation of a close, long-term association between the EU and the Western Balkans. In effect, the SAAs constitute the legal instrument for alignment to the EU acquis and progressive integration into the EU market.* (European Commission 2021, 2)

European Union is not causing changes in region just in political, but also in economic area. Community is leading trading partner for all countries of Western Balkan accounting for little less than 70% of the region total trade, notwithstanding that the region's share of total EU trade is just 1.4%. Trade with region has grown for over 130% from the 2009 to 2019 and with total trade in 2019 reaching almost 55 billion euros. Trade plays an important role in the Union's efforts to promote stability, freedom, peace, and economic prosperity in the region, also EU is allowing nearly all exports from Balkans without customs or limits on quantities, (European Commission 2021, 1-2) which cannot cause harm on EU's influence. On 6. October 2020 European Commission adopted a Economic and Investment Plan for the Western Balkans, wherewith Commission is aiming to stimulate long-term economic recovery of the region, support a green and digital transition, foster regional integration and convergence with the European Union. (European Commission 2020, 1). Presenting this new plan Commissioner for Neighbourhood and Enlargement, Olivér Várhelyi, commented: *We will mobilise up*

to €9 billion of funding for investment flagships in the areas of transport, energy, green and digital transition, to create sustainable growth and jobs. The Plan also offers a path for a successful regional economic integration to help accelerate convergence with the EU and close the development gap between our regions, ultimately speeding up the process of EU integration. This plan should help to transform the Western Balkans into one of the most attractive region for investments in the world. Implementation of course will need to go hand in hand with reforms. (European Commission 2020, 2) His statement is perfect description of conditioning financial help with reforms. European Commission is working closely with European Investment Bank, blending EU grants with EIB investment loans to achieve optimal financial package. EIB is in Western Balkans providing large project loans directly to public and private sectors mainly for infrastructure, but in the last decade they have expended into new areas such as healthcare, education, research and development of private and public sector. EIB is also providing loans for small and medium-sized enterprises via their local partner banks or through European Investment Fund. (EIB 2021, 1-2) In addition to the EU's grant funding, the Union can provide guarantees to reducing risks of potential investors and reduce cost of financing investments. This support through Western Balkans Guarantee facility, under the EU External Action Guarantee and the European Fund for Sustainable Development, is expected to mobilise potentially investments of up to 20 billion euros in the next decade. (European Commission 2020, 3) European Union becomes guarantor for investors, if costumers struggle with payment, local currency depreciates its value, laws change unexpectedly or political situation is unstable. (European Commission 2021, 2) Existence of this support system is conditioned with strong commitment of Western Balkans to implement reforms, deepen regional economic integration and develop a common regional market on the basis of the EU *acquis* in order to make the region a more attractive investment area. (European Commission 2020, 4) EU also wants to implement the Green Agenda in the Western Balkans, which includes all important environmental steps to prevent global warming and pollution of area. (European Commission 2020, 5) Any pollution in the region is directly affecting European Union, because Western Balkan is surrounded with members of the Union and it shares the Adriatic Sea with EU countries. Researches are showing that the Adriatic is the dirtiest sea in the world in terms of litter concentration on the seabed, (Scmid, Cozzarini, Zambello 2021, 1) so further pollution will decrease biotic diversity, which could have serious effects on fishing industry and environment in general, EU

must implement reforms that will reduce pollution not just in Western Balkans, but also in EU members with access to Adriatic.

4. Influence of other countries over Western Balkan

As I mentioned in the beginning of the essay Western Balkan is the region where throughout the history various superpowers were having great influence over countries and this has not changed today. We can detect influences of Russia in Serbia and Montenegro, countries of Arabian Peninsula in Muslim's parts of Bosnia and of China in the whole region. Russia influence in Serbia can be taken for granted. Russia was one of the first countries that supported them when Austro-Hungarian Monarchy declared war to Serbia, every few years Russian president Putin visits the country or Serbian top politicians pay him a visit in Moscow, even Gazprom, Russian energetic giant, is sponsoring football club Crvena Zvezda, their vaccine Sputnik is one of the most popular in the country and currently are coming to an end bilateral talks about making vaccine in Serbia. Arabic countries have influences mainly over Muslims in region, Arabs are paying for Muslim churches (in example financial help from Kuwait for building mosque in Ljubljana) and for preservation of important Muslim heritage sites. Chinese influence over Balkan countries is rapidly rising since China launched Belt and Road Initiative (BRI) and it is the most concerning. BRI gathers nearly 70 countries and it is one of the largest development plans for the world. In Balkans is named 17+1 Initiative, which gathers countries from Eastern and Central Europe. China wants through BRI connect regions of Europe, Asia and Africa, by improving mainly infrastructure (railways, ports, energetic sector …) and is promoting so called win-win cooperation. Chinese has focused on two crucial projects, Port of Piraeus and Belgrade-Budapest railway. (Zakić, Radišić 2021, 29-30, 42) China has turned Piraeus Port into the largest port in Greece and second largest port in the Mediterranean (CGTN 2019, 2) and if it was not for Covid-19 epidemic, it would took first place from Valencia Port. Wharf is important for undisturbed flow of Chinese goods in Europe, but for transporting them into EU is crucial second project Belgrade-Budapest Railway, which is only the first part of Budapest - Belgrade - Skopje - Athens Railway, the aim of it is to connect Port of Piraeus with the heart of Europe, which will boost Chinese trade with members of the Union. Beijing announced a 10 billion dollars worth credit line to support Chinese investments in the region but also to facilitate co-operation

and commitment in two-way trade, (Zakić, Radišić 2021, 42) which is very similar to EU's Economic and Investment Plan for the Western Balkans. Almost all loans are financed through Chinese Export-import Bank (China Eximbank) and have repayment period set between 20 and 30 years with contract stipulating that Chinese company is the main contractor, but some parts of the contracts are not visible for general public. (The Economist 2021, 1) Problems with Chinese loans are showing now in Montenegro, country has borrowed around billion dollars from Chinese banks and if debts remain unpaid, contract stipulates that banks will be repaid in parcels of ground in Montenegro. (Boštjan 2021, 1-2) Fear is that countries have already taken too big loans, which they will not be capable to repay in time and Chinese banks would have to be repaid with other types of payment, most likely with parcel grounds from the country, which will cause tremendous problems not just for country itself, but for whole region and also European Union. Limitation of Chinese influence over Western Balkans must be one of the EU priority, China has one of the most aggressive external politics and because of its political organisation it can afford actions that only few countries can without consequences and is using Covid-19 epidemic to expand and strengthen its influence in region with providing medical equipment and vaccines for countries, while EU, apart from autonomous actions of some individual countries, is not as effective in direct medical help, but is providing financial funds.

5. Conclusion

Western Balkan is, as it can be discerned from documents and statements from commissioners, one of the priorities for European Commission, after it was neglected under Juncker, which caused some challenging problems, regarding mainly influence of China in the region. Influence of EU over Western Balkans is extraordinarily important, because the region is practically surrounded with EU and across it runs one of the most important trading routes, connecting ports of Greece with hearth of Europe, enlargement is a geostrategic investment in a stable, strong and united Europe. Influence is important also from the safety point, no country of the membership want to deal with Chinese, Russian or American presence in the neighbourhood. From influence over Balkan does not benefit only Union, but also countries in the region. Between nations are still many unresolved issues alluding to their national and religious differences, I cannot think of better international organisation for people of different nationalities

and religions than European Union. From membership will, from this point of view, benefit the most Bosnia and Herzegovina and Kosovo, but just if in Community will be also Serbia and Albania. Tensions between them can escalate in shockingly short time, sometimes it is just for EU and its influence that there is no military conflict. European Union must be careful when is using conditioning to not set demands that will demolish national identity and consequently cause rise of nationalism. Western Balkan countries can use conditioning from EU to implement reforms that will limit one of the biggest region's problem corruptions, improve education, judicial system and economy, which will make lives of people significantly better. EU must be aware of unresolved issues between countries and have in mind that some of them can heal only time. Union must offer support for countries in dealing with these issues and also be careful that with conditioning demands do not deepen them.

In my opinion future of Western Balkan is in Europe Union, but I also think that answer to the question when Balkan will be united in EU will remain unresolved for quite some time.

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THE BERLIN INITIATIVE: A NECESSARY BOND BETWEEN THE EU AND WESTERN BALKANS

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1. Introduction

My own personal experience living in Bosnia and Herzegovina and the Western Balkans motivated me to write this paper, titled: "The Berlin Initiative: A necessary bond between the EU and the Western Balkans". People of the former Yugoslavia states live in same or similar socio-political circumstances. Many of them present serious obstacles to the progress of all regional countries. Moreover, people of the former Yugoslavia states share borders, language(s), territory, and history which makes them highly interdependent. Mutual cooperation is an essence due to common life circumstances. Cooperation has been a popular topic for years, but the (Western Balkans) Region fails to achieve significant, long-term, and complete progress which would be indicated, among other factors, by EU membership. One of the current ongoing initiatives is the Berlin Process – initiated by the German Chancellor Angela Merkel in 2014, with the aim "to advance the EU's agenda in three dimensions: economic growth and connectivity, good neighbourly relations and regional cooperation, and civil society development and people-to-people connectivity." (Marciacq 2017, 5) The Process is far from a successful ending but is still active. Moreover, it is essential if the countries of the region want to stop negative trends, such as brain drain, dangerous hate rhetoric, the backwardness of small and rural areas, poverty, low life standard, and many others.

In the following chapters, I will explain the idea of the Berlin Process and its current phase. I will present my stance on the future development of the process and elaborate on the importance of the Berlin Process for WB 6, especially for Bosnia and Herzegovina, but for the EU as well. It is often being claimed that the Berlin Process substitutes EU integration/enlargement and I will explain why I understand this as a

wrong perception. The idea of regional cooperation seems to be poorly represented in political agenda and media in Bosnia and Herzegovina. I will try to explain why is it so and why is it problematic. I will give my stance on omissions made in the Process and answer the question: "Who is responsible if the Berlin Process fails in the end?".

The focus will be more on Bosnia and Herzegovina (but with the reference to other WB states) due to the specific problems of this state and its weak position in the process of EU integration/enlargement.

2.   What is the Berlin Process and what it could be?

The Berlin process came from Germany as a confirmation that regions, as a geographical whole and as a political and demographical environment, matter. It was initiated by Angela Merkel in 2014. The general aim was to strengthen and revitalize ties among EU and Southeast European countries (Markiewicz 2021). However, within one general aim what was important for Germany (and some other EU member states) and recognized by the Western Balkan states is an implementation of numerous reforms with regard to the judiciary, security, regional and bilateral relations, economy (open market and foreign investment), transport, energy, and youth employment (Mulaosmanović *et al*. 2018, 7). More precisely, the Process has been designed to enhance regional cooperation through the resolution of bilateral disputes, build connectivity in energy, infrastructure to boost economic development, and enhance cooperation between people – youth, civil society, businesses – building bridges in the Region (Emini 2018, 9).

The initiative is supported by other EU states, as well, which should bring optimism when talking about EU enlargement on the territory of the Western Balkans. The process involves Austria, Bulgaria, Croatia, France, Greece, Germany, Italy, Poland, Slovenia and so the UK as a former EU member state. (Markiewicz 2021) It is important to see in this group France, Italy, Germany, Austria, as one the largest, most populated or countries with high GDP in the EU (European Union 2021a). Also, Germany and France contribute the highest amount of money to the EU Budget. In 2018 France contributed € 20.573 billion to the EU budget, and Germany €25.267 billion (European Union 2021b). This should tell us that Europe's most influential countries stand with Western Balkans and its EU perspective. The Western Balkan countries involved in

this are Montenegro, Serbia, North Macedonia, Albania, Bosnia and Herzegovina, and Kosovo (Markiewicz 2021) The presence of the WB6 neighbour countries, Bulgaria, Slovenia, Croatia, and Greece must also be considered as the strength of the Berlin process, but EU enlargement process, as well. A stable, prosperous, and secure region undoubtedly suits them, too.

The EU institutions also participate in the Process (Rudan 2018, 7). The participants of the Berlin process use to meet on annually organized summits, hosted by EU member states who participate in the process, too. Until now, there have been six summits organized by this order: Berlin (2014), Vienna (2015), Paris (2016), Trieste (2017), London (2018), Poznan (2019), and Sofia (2020). The next one is going to be organized in Berlin again in 2021. The Process was meant to last until 2018, but the Western Balkans countries failed to accomplish much of the commitments they said they were determined to. However, the process did not stop.

The question that arises is how long the EU and its members, who supported the Process, are going to be willing to "guide" and educate the WB leaders on how to develop state and society? Judging by the remaining issues, the Process could be active in at least the next five years. Germany's Minister of Foreign Affairs, the host of the upcoming Summit in Berlin, stressed the current omissions in the areas of the EU accession process, regional cooperation and reconciliation, rule of law, fighting corruption and organized crime, protection of media freedom, and creating spaces in which democracy can flourish (European Western Balkans 2021). The list of stated problems is telling us that the WB6 lacks progress in society segments that the EU strictly demands.

EU relented in cases of Bulgaria, Romania, and Cyprus and thus imported their internal immaturity in order to keep its geopolitical interests, but today EU has 27 members whose behaviour lowers the reputation of the Union as a 'democratic paradise' and it is unlikely they will import more problematic states[1]. Apart from that, EU solidarity was questioned by the COVID-19 pandemic whilst BREXIT challenged the unity of the EU.

However, it is unlikely that the EU will give up on the region. European Commission strategy for "A credible enlargement perspective for and enhanced EU engagement

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1   Rise of the populist parties in Hungary and Poland or violence committed by Croatian police towards migrants are few of the many examples.

with the Western Balkans" from 2018 unequivocally confirms that. Moreover, the presence of Turkey, China, and Russia is going to keep the Union in the Western Balkan. Former European Commission President Jean-Claude Juncker stated: "We must find unity when it comes to the Western Balkans, once and for all. Should we not, our immediate neighbourhood will be shaped by others." (Fouere 2019). Even so, if the countries keep being passive in accomplishing their own promises, the WB region might become similar to the child who is carefully watched by his "aunt", but who is without intention to become his guardian.

3. Why is the Berlin process necessary?

The Process is significant for both the Western Balkan 6 and the European Union. It is not due to the Process itself, but due to the importance of a stable, progressive, and connected region. Bosnia and Herzegovina must understand this and "grab" its chance. I will first offer my argumentation on why the process is important for the Western Balkans, secondly, why is it (particularly) important for Bosnia and Herzegovina and, finally, why is it important for the EU.

Why is it important for the Western Balkans 6?

People connections to the other region states
People living in Western Balkan countries have different ties with neighbouring states, which often requires them to travel across the region. Some of them have family in other states or they work and study abroad. Some of them prefer to spend their vacation in neighbouring states, some of them have real estate there. Cultural sameness and similarities make people more likely to often move from one regional country to the other for a bunch of reasons. That is why the Region must cooperate in terms of transport, border crossing procedures and communication-it facilitates maintenance of everyday people relations.

Imperative of living in the culture of security, trust, and peace
The Region is laden with violent past, ethnic and religious conflicts, followed by bilateral disputes, separationist rhetoric and tendencies, unwillingness to condemn war crimes and war criminals, and many other deviant phenomena which exist in everyday life

(Fouere 2019, 3-6). Thus, the Region exists in a culture of fear, insecurity, and mistrust. This state is unsustainable, regarding the arguments mention above, among others. Intensive cooperation, in all fields, but especially reconciliation and youth exchanges, change the thinking pattern. People must be sure they are not endangered and that violent past is unlikely to repeat. At that moment, the focus can move from the past to the progressive future. Real cooperation, with visible results, will convince people in mature and stable relations. At least, it can be assumed that no one is likely to easily destroy achievements that cost a lot (finance, energy, time, pressure).

Safe ground for successful EU integration
The Western Balkans countries are officially determined to EU membership, at least declaratively. Whatever the assessment of their success regarding EU Integration is, the WB belongs to Europe, both geographically and culturally, and it shall aspire to join EU, which is by far, with all its omissions and faults, the longest, the strongest, the most successful, most stable and most prosperous representation (and guard) of European identity and European territory, which is, in my own opinion, essentially positive. If not all, then most of the values demanded by the EU seem to be universally applicable values (rule of law, cooperation, freedom…) and can be understood as imperative for any human environment. What the Berlin Process seeks to foster is exactly what the EU demands from the Region, but in an informal and more relaxed manner. If the Region proves to be able to successfully finalize the Process, then it proves maturity to become part of the European Union[2].

It makes the WB region a positive diplomatic role model
The Region is often seen as a single actor in geopolitics and multilateral initiatives. It is justified by cultural sameness and similarities, common history, and geography.

After the era of Tito's Former Socialist Republic Yugoslavia which enjoyed "worldwide prestige" thanks to his (Tito's) diplomacy and leading role in the Non-Aligned Movement (Trültzsch 2017), during the '90's the Region became a diplomatic challenge for the others and thus its future became subjected to foreign diplomacy, mainly that of the USA. If the Berlin Process proves to be a success story, due to willingness and

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2   This is not to say that sucessful ending of Berlin Process means automatically EU membership for WB countries, but rather to help WB countries in buliding the reputation of confident partners which might function in multilateral community like the EU.

persistent efforts, concrete actions of Western Balkan states, not just to implement proposals, but to create and propose, it can grow and be seen as a role model for regional diplomacy. The Region will be experienced for future issues, for diplomacy within the EU but also for the diplomacy with actors like China, Turkey and Russia which observe the entire region as the single area of interest. (Hake *et* Radzyner 2019, 6-9) This demand is more important if one thinks about the obvious need for some of the Berlin Process summits to be held in WB city or cities if we talk about multiple summits. The Summit on WB hosted by on WB state would send the message: "Western Balkan can take care of its own future!"

Why is it particularly important for Bosnia and Herzegovina?

It strengthens BiH state capacity and contributes to the image of BiH as the sole and stable regional partner
Bosnia and Herzegovina often suffer from "political paralysis", which authorities are "too weak to govern". (Bargues *et* Morillas 2021, 1320) The barrier to normal functioning is the primary of ethnonational politics, which constantly revitalizes violent and secessionist rhetoric, stressing the impossibility of a modern, progressive, democratic state with a citizen as the bearer of it. This perception is often seen in the neighbourhood, too. If BiH approaches the Process by bringing constructive ideas and by doing its best to accomplish promises, it will present itself as a stable state which works and stands for the good of the entire population and territory, leaving a little space and legitimacy for neighbouring countries to cooperate with one part or even one political party within BiH. Of course, this seems like a "piece of cake", but it is not, since those people who hold leading positions are the same who prevent the state from progress and intentionally avoid any action that can strengthen Bosnia and Herzegovina as a stable country. But at this point media, civil society, and progressive politicians matter, to stress, educate and demand regional cooperation and participation in Berlin Process, but not by saying it will strengthen the state. What is primarily important are the effects listed above and below.

Infrastructure, economic development and life standard
Infrastructural and economic projects might be seen as a medium of long-term cooperation which results in stability and economic recovery (Uvalic 2019, 280). Indeed,

a lot (of money, energy and time) has been invested in this sector, producing plans like the Multi-annual Action Plan for a Regional Economic Area (MAP REA) adopted on Trieste Summit in 2017 (Uvalic 2019, 282) or Connectivity agenda, launched in 2015 to help the region improve "key transport and energy connections", with a financial pledge of 1 billion EUR, as stated in brochure "EU Connectivity agenda for the Western Balkans". Investing in, for instance, travel infrastructure facilitates everyday life, making a movement easier, safer, and faster, encouraging people to work and study in other places or simply visit them, as tourists. Building modern infrastructure demands engagement of BiH population, engineers, administrative workers and builders, for instance. In short, these initiatives "create jobs, boost trade, enhance cooperation and ease mobility in the region". (Bargues *et* Morillas 2021, 1327).

Change of the "perpetual status"
Bosnia and Herzegovina has been a potential EU Candidate since 2003. In short, this means that BiH does not meet Copenhagen criteria and cannot start negotiating with the EU about adopting the *acquis communitaire*. To make it simple and to the point, it means that BIH citizens are too far from the numerous EU benefits which facilitate everyday life. There is a wide range of issues that hinder BiH from changing its status, noted precisely in European Commission Report on BiH for 2020. Many of them belong to the category of internal BiH issues. However, the Report states the importance of "Good neighbourly relations and regional cooperation", by saying that these "form an essential part of Bosnia and Herzegovina's European integration process". Participation of BiH in the Berlin Process will present the state as an actor who knows how to and is ready to coexist in a multilateral community. The perceptions will be changed.

This is not to say that success in regional cooperation guarantees the candidate status, but politics and decisions derived from it do not exists independently in the non-human area. Political decisions are exclusively human creations and therefore are subject to specific circumstances and perceptions. The Republic of Cyprus joined the Union 17 years ago, even if it still faces long-term internal dispute and the (considered illegal) presence of a foreign (Turkish) army on its territory. The point of the argument is that BiH shall act in favour of potential outcomes that are undoubtedly necessary for the general country's improvement and advancement, even when not granted. Priorities and circumstances continually change.

Why is it important for the European Union?

The EU is affected by the stability and security in the Region
The migrant crisis shows how the EU gets involved in issues produced far outside its territory. Issues arising from unstable Western Balkan would not spare the neighbouring EU. Since the wars from 1990's the EU has faced constant individual and family migration from this region, especially Germany, Austria, Slovenia, and Scandinavian states. This is not an allusion to new armed conflicts, but this state of low life standard, insecure future and bad social policy, toxic interstate relations, corruption and plutocracy, and inefficiency of legal armed forces and judiciary does not and will not keep people in their motherlands.

The EU cannot be an eternal escape for the Balkan population. The rise of population burdens their social policies, even if most of the people contribute to the economy, but the question is also whether these countries will be willing to easily host foreigners forever, despite a commitment to values stated in the Charter of Fundamental Rights of EU and similar documents. The EU is, also, a main trading partner in the region (Dabrowski *et al.* 2018) and they surely care about a stable market, which is an additional reason why is the investment in the Region actually "an investment in the EU's security, economic growth, and influence", as stated in "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans" European Commission document (2018).

EU cares about primary influence in the Region
"We must find unity when it comes to the Western Balkans, once and for all. Should we not, our immediate neighbourhood will be shaped by others." is the sentence of former European Commission President Juncker (Fouéré, 2019). Regardless of the slow EU Integration Process and many internal problems affecting this region, Western Balkan culturally and geographically remains part of Europe, intending to join European Union. The Union is undoubtedly aware of that. But this regional European culture and territory are being influenced by states that either do not share values of the EU or even have long-standing disputes with it (as it is Turkish invasion of the northern part of the EU member, Cyprus). Current "rivals" in the Region are Russia, Turkey, and China.

Turkey has bilateral agreements with all WB countries, Russia has significant influence in the energy sector, "where crude oil and natural gas comprise between 75 and 95 percent of imports from Russia." (Hake *et* Radzyner 2019, 6-7). Both of these countries have strong cultural and historical relations with WB states and apply "soft power" in the Region. China invests in projects like high-speed railway (Serbia), highway and thermal power plants (BiH, which was criticized by European officials for not being in accordance with European policy of carbon reduction), highways in Montenegro and North Macedonia (Babulik 2021). As noted by Babulik, "China does not condition its investments in democratization or respect for human rights." And this kind of relationship affects EU Integration negatively. China also applies soft diplomacy through Confucius Institute (Babulik 2021). For all these reasons, the EU must be more active if wants to keep its neighbourhood territory safe from states promoting opposed values.

4. Does the Berlin Process substitute the EU Integrations?

It has often been assumed that the Berlin Process was created to substitute EU Integration Process. The Berlin Process started in 2014, aiming to end in 2018. But in 2021, it is still going on with no expected accomplishments. It did not accelerate EU Integrations. (Wiśniewski *et* **Żornaczuk** 2019, 1) This fact is mainly producing pessimism across the Region and creating theories about the Process as the replacement for EU Integration. Even if the prognosis is not promising, one shall not distract the idea of the WB from the aspiration for further enlargement. Why is that the case?

It is often being directly claimed how the Berlin Process "aims to support European integration, not to replace it" (Wiśniewski *et* **Żornaczuk** 2019, 1) For instance, Federica Mogerhini, former High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the European Commission, was also very direct in her interview for the *European Western Balkan* portal (2017), saying: "It is not a substitute, not a competitor, but on the contrary a facilitator of our common work". Of course, actions speak louder than words, but let's consider the arguments in favour of Mogerhini's statement, among others. The burden of enlargement is not exclusively on the Region's back. The EU has been intensively committed to the idea of WB enlargement since 2003, but not only by using statements. The EU invested diplomacy, money, and time in the Region. The EU currently has its delegations/of-

fices in all WB countries, as in many European and world countries, but the activities and spendings differ. The delegations themselves demand spendings, be it financial means or human resources. Significant examples of the EU devotion to the regional states are IPA Funds, engagement of special representatives for regional issues, such as Belgrade-Pristina relations, the EU-WB summits, such as the Zagreb Summit held in 2020, or debates on the Region within the European Parliament, which result with resolutions and reports adoption, and funds directed to civil society organizations (CSO). All this means that the EU "has an eye on the Region", which further implies that Western Balkan matters for future enlargement. It is worthy to emphasize the reasons noted above, regarding the question of why is the Berlin Process important to the EU. However, if one asks why is the WB still so far from the EU (BiH is still a potential candidate, North Macedonia and Albania are still waiting for the pre-accession negotiations to be opened), one must take into consideration the real potential of each WB state to become EU members. If we carefully look in EU Commission reports, we see the list of burning problems that hold the Region outside of the Union.

For instance, in the EC Report for Bosnia and Herzegovina has been written: "the Parliamentary Assembly of Bosnia and Herzegovina was blocked for political reasons, which resulted in a legislative backlog", "No progress was made in improving the electoral framework in line with European standards and ensuring transparency of political party financing.", further it has stated that "there was no progress on ensuring a professional and depoliticized civil service and a coordinated countrywide approach to policymaking.". Regarding corruption, the report says "Corruption remained widespread and is a serious concern, with all levels of government showing signs of political capture directly affecting the daily life of citizens". These are all real problems faced by BIH citizens, not an EU's imagination.

"The patchy rule of law, lack of delivery on the fight against corruption and a market still dominated by monopolies are the common denominator of the stagnation and regress in all six Western countries." (Emini 2018, 7). Solving bilateral disputes became a key factor in the EU membership process and conditionality (Kosovo-Serbia-political dispute, BiH-Kosovo dispute, or other border demarcation dispute) (Emini 2016, 5-7). The EU will not tolerate bilateral dispute anymore, since it aims to "integrate a stable and prosperous region into the EU." and show determination to gain credibility to its commitment to promoting stability in the Region (Emini 2016, 5). Kosovo is still

unrecognized by 5 EU states, Spain, Greece, Romania, Slovakia, Cyprus. The reasons for non-recognition differ, but it is mainly up to the secession or minority issues that they face, as well. (Rexhepi *et al*. 2020, 14).

To conclude the argumentation, it is an undeniable truth that the Western Balkan countries deal with issues that impede their progress and comfortable living area. The EU, as it was argued before, does not want and shall not import more issues, since it already deals with its own. On the other hand, the initiatives launched by the EU or its members clearly show the importance for the Region to be integrated, but it is not exclusively up to them.

5. Does the Berlin Process need media coverage (in BiH) and how much of the media space does it occupy?

The purpose of media coverage (of any event or problem) is to inform a wide range of people about it. If they shall be informed, it means that a certain topic is in their interest and they can act to influence the outcome of it. It has already been argued why is the Berlin Process significant for the everyday life of the Western Balkan citizens, which clearly explains the need for constant and intensive media coverage in the WB.

Berlin Process brings a fresh idea in the process of regional development and EU integration, and that is regional youth cooperation and civil society, which is seen as "the most tangible outcome of the Berlin Process" (Nicić *et al.* 2016, 7). As a result of the initiative for intensive regional youth cooperation, the Regional Youth Cooperation Office was established in 2016, by signing the Agreement at the WB Summit in Paris (RYCO official website). The work of this organization is the most relevant fact for the young people since they gain space to educate themselves, to influence youth politics, to be heard by the WB leaders on annual summits, and to travel across the Region. This is the component that empowers them to sustain and improve the success of society in the future. If the society is committed to raising further generations for these tasks, then the society must assure that young people know about spaces where they can develop themselves and why is that worth of effort. Therefore, the Process has a very crucial impact on youth, but if the media does not inform them, they would lack all the benefits. Additionally, if the media does not make pressure on key stakeholders

of the Berlin Process, it would remain on the status quo or the improvement will be slow which leads the Region to nowhere.

Media coverage of the Berlin Process in Bosnia in Herzegovina is low. State leaders do not talk about the Berlin Process in the media and they do not focus their interviews on this topic. Apart from that, if one does a google search typing the keywords regarding the Process, it will be noticed how Berlin Process appears in the media content (in BiH media) mainly as news about summits or certain events that are in touch with the Process. The media space lacks deep, analytical, and informative interviews and reports about the Berlin process, both with the officials (members of Presidency, Council of Ministers Chairman, Minister of Foreign Affairs…) and political analysts. This is not to say that there is an absolute absence of reporting of this topic, but the Berlin process does not take place as one of the most important and current elements of BiH foreign, regional, and EU policies that highly influence the domestic situation.

This poor representation might be interpreted as the immaturity of BiH society to deal with topics of progress, future and regional cooperation, due to the difficulties when it comes to cooperation within the country. Apart from that, it might be interpreted as a lack of interest in this kind of politics and policies, due to the primate of everyday internal problems, such as corruption and other scandals-misuse of funds, inefficient bureaucracy, poor health care system, Covid-19 pandemic, etc. In the worst case, it might be the lack of will for this kind of initiatives, starting from those who should lead it.

6. What could be improved and who is responsible if the Berlin Process fails?

The fact that the Berlin Process did not end in 2018, as it was planned, tells us that the Process lacks expected success. Here is the outline of some key failings and omissions made by both parties, the EU countries, and WB countries.

Bilateral disputes seem to remain one of the least progressive fields of the Process. "There has been no significant advance with regards to political disputes, border disputes, minority rights issues, property restitution, succession issues, or implementation of transitional justice mechanisms, i.e. issues that originate from the violent dissolution of the former Yugoslavia" (Nechev *et al.,* 9) It has already been said that

Pristina-Belgrade relations put a great challenge in front of Serbia and Kosovo. These elements noted above provokes emotional reactions among the population with regard to identity and past. It is especially stressed when it comes to the recognition of Kosovo by Serbia and Bosnia and Herzegovina. This makes the finalization of the dispute very difficult and sometimes seems as impossible.

Another critic addressed to the Process is missing "a built-in steering and monitoring mechanism" (Marciacq 2017, 8) The problem is the lack of one single institution with the task of oversight the development. The follow-up is the responsibility of the state which hosts the last summit (Marciacq 2017, 8).

The fact that Berlin Process is not supervised by any institution can be interpreted with regard to the fact that the Process is established to help countries, not to force them. The countries are not obliged to participate and it is being considered that key stakeholders from the WB know how to work for their own good and have a common sense for that. Building a new infrastructure for supervision would demand more financial and human resources, as well as more effort. It is questionable if that approach would help in terms of success, even though it hardly can damage the Process. Let's consider the fact that in the process of EU Integration there is a European Commission that supervises the advancement of each (potential) candidate country and published annual reports about it. It helps to determine key obstacles and advancements but does not help directly in solving them (obstacles) which is the crucial part. The pressure that comes from reports, resolutions and media statements does not make the Process faster or more successful.

Failures and success of the Berlin Process is the topic for specific paperwork, but this part aims to highlight two often stressed critics which set the question of the finalization of the Process. Will and when (will) the Berlin Process end? How?

The Berlin Process is started by Germany, later joined by other member states, but the recipients are the Western Balkan countries. EU member state are responsible for setting up the approach and expectations. For sure, expectations determine success and this is a question for long and serious debate. The initiators of the Berlin Process must consider, for instance, what means for both Serbian and Kosovar people to recognize Kosovo and change relations. For the already mentioned reasons, it is not something that can be done over the night. On the other hand, definite solutions are

imperative. Time passes and it demands long-standing issues to be solved. The final solutions must come from the WB states.

The idea of the Berlin Process is, in my opinion, positive *per se*. It favours advancement and final EU enlargement on the Western Balkans, but as time passes the Process is shaped by its actors and depends on them if the Process will end as a successful or failed.

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WHAT SHOULD CROATIA'S ROLE BE IN EU POLICY TOWARDS WESTERN BALKANS 6

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1. Introduction

The Western Balkans is a term coined by the European Union used to describe a geographical and political region which consists of 6 nations: Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia. Main policy of the EU towards the Western Balkans is to integrate these countries as members of the union. Originally this policy included Croatia as its 7th member, but it joined EU on 1st July 2013. (europarl.europa.eu 2020). Regardless, Croatia must remain devoted to the group and along with 26 other member states work towards full integration of the Western Balkans into EU. For the EU this is a vital strategic interest. As stated by the President of European Commission Ursula von der Leyen during the EU-Western Balkans Zagreb Summit "The Western Balkans belong in the EU. There is no question for us about this. And this is why I firmly believe that the European Union has a special responsibility in assisting its partners in the region" (ec.europa.eu 2020). Despite these optimistic words the EU itself is in a crisis. The Coronavirus pandemic struck Europe more than a year ago as of writing this. This has postponed or concluded most of the plans as the focus has shifted to dealing with the pandemic. Croatia has been hit especially hard as it has experienced the pandemic along with two devastating earthquakes, one in Zagreb with magnitude 5.3 and a 6.3 in Banovina region. Along with the pandemic this has crippled Croatia and put the focus on dealing with the aftermath.

All this means that EU and Croatia's focus on the Western Balkans could resume once these crises have been dealt with. After resuming, Croatia could make a greater effort in the cause. Unlike most members, except Slovenia, it shares a common past and has cordial relations with most of the Western Balkans. Therefore, it should take the role of connecting the Western Balkans with the EU. Regardless of Croatia's role in

the policy, focus must be on the 6 mentioned countries and their interest in joining the EU. Out of them, only Serbia and Montenegro obtained candidate status and have opened chapters for accession. Albania and North Macedonia obtained candidate status, and recently an addition of a draft negotiating framework regarding membership. Bosnia and Herzegovina and Kosovo share the status of potential candidates (ec.europa.eu 2021).

2.   General EU policy towards the Western Balkans

On the legal basis expansion of the European Union is defined by the Copenhagen criteria and Article 49 (Official Journal of the European Union, C 202, 7.6.2016, p. 43–43) which states:

Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

This Article is related to the admission of a new member. But in the opinion of the European Commission none of these candidates are ready for membership. Thus, to become members the Western Balkans countries should increase their efforts in political reforms, improve the rule of law, competitiveness, regional cooperation and reconciliation. These are the main points of the EU's policy towards the Western Balkans. The policy also includes points such as transportation, digitalisation, education, ecology, migration etc. The EU expects that some of the countries could fulfil these points by 2025. The Commission concluded that Serbia and Montenegro could

be ready by then (European Commission 2018). Obviously, this opinion is likely prone to changes because of the recent events.

Croatia isn't a stranger to this process as it became the newest member in 2013. Croatia applied for membership in 2003, gained candidate status in 2004 and opened negotiations in 2005. After this, a long and exhausting process ensued until the conclusion came in 2011 after 6 years of negotiations. Thus, Croatia became a member in 2013 (sabor.hr 2021). In reference to policy realisation in the Western Balkans, Croatia should take steps in a general manner and along with that tailor its activity towards every country separately to make the greatest impact. Regarding the general manner, Croatia could share its experience of being the newest EU member to other Western Balkan countries. This could prove to be a great boost for them since Croatia's accession is still recent. Thus, Croatia could provide them with its expert advisors who contributed to her accession. Along with this Croatia should share data on how EU membership transformed Croatian society. A great example would be the recent educational reform funded by the European Union which helped Croatia make a quick turn to online classes when the Coronavirus pandemic hit in March 2020. Digitalisation, which is an important EU policy, has also swept across Croatia in a great extent. Although there is still great room for progress in the field with EU support the process should occur faster. This experience could be of great value in speeding up the process of digitalisation in the Western Balkans. These are just some examples of how EU policies have been implemented in Croatia. Overall, Croatia has many things to offer, and it is in her own interest that Western Balkans countries enter the EU. That is why it should lobby for better cooperation between the EU and the Western Balkans. A great example of this cooperation was seen during Croatia's EU presidency and the 2020 Summit in Zagreb, but in my opinion there is a lot of room for improvement in the future. Now I would like to switch my focus on how Croatia should make separate approaches for the realisation of the EU's policy tailored towards specific countries.

3.   Policy towards Albania

Croatia and Albania share a great partnership and friendly relations exist between them. Both are members of NATO and cooperate in the alliance. Many bilateral agreements have been signed and Croatia would be pleased with Albanian entrance

in the EU. But for this to be realised, Albania still has a lot to do. Crippled by its in-stitutions and being labelled as a poor country by most factors means that it has to reform. Crime rates and corruption are still rampant. According to the Key findings of the 2020 Report on Albania positive changes have been made with political criteria, public administration and the judicial system. Progress still must be made regarding corruption, migration and organised crime (European Commission 2020). Along with this many other policies should be addressed. Croatia could provide help with a few.

In my opinion ecology is one of the main policies where Croatia should act. It mostly goes under the radar, but it is a fact that Albania has a rubbish problem. Many of its citizens don't have basic waste disposal facilities and a lot of that waste gets thrown into rivers which drain into the Adriatic. This waste then goes upstream and gets washed up as far away as Dubrovnik, the famous tourist destination in Croatia (euronews.com 2017). This shows how vital this policy realisation is to Croatia. Unfortunately, Croatia doesn't have much to offer regarding this problem and policy realisation. It should push to sway the EU's opinion regarding this policy in Albania. Along with this Croatia should provide its advisors for expert missions regarding ecology.

Regarding organized crime and drug trafficking, Albanian mafia is one of the strong-est in Europe with links across the whole EU. Albania has also been labelled as the "Colombia of Europe" and this label moves it further away from joining the EU (in-dependent.co.uk 2019). Croatia could aid Albania in dealing with this. The countries could form a joint patrol squad in the Adriatic Sea and establish greater control over imported goods which could help prevent smuggling by sea. Croatia should share its experience regarding imposing EU regulated border controls which are targeted to stop smuggling and crime.

4. Policy towards Bosnia and Herzegovina

Bosnia and Herzegovina is a country of utmost importance and interest for Croatia, as Croatia has several vital interests in Bosnia. The most important one is the status of the Croatian ethnicity in Bosnia. According to The World Factbook by the CIA, Croats make up about 15% of the population. Bosnia also shares its longest border with Croatia, 945 km in length. Bosnia has a 20 km coastline that cuts Croatia in two. According to the Dayton Agreement, Bosnia is divided into 2 constituent parts. The Federation of

Bosnia and Herzegovina, where Croats and Bosniaks make up the majority, and the Republic of Srpska where Serbs are the majority (cia.gov 2021). All of this contributes to the current political climate in Bosnia where the government basically doesn't function, therefore slowing the county's progress towards EU membership. As stated in the Key findings of the 2020 report on Bosnia and Herzegovina, the EU notes that Bosnia has made slow progress towards political stability and the EU membership. It is in early stages of administrative and judiciary reforms. The fight against corruption and crime is far from done. The problems of fundamental rights and migration are still present in the country (European Commission 2020). The unfortunate truth is that these problems will likely remain in the future unless a miracle occurs. In the case of Bosnia, Croatia should act more decisively toward policy realisation, because the stability of Bosnia and Herzegovina directly transmits to Croatia. In my opinion there are few policies where Croatia might act: migration and border security, peaceful coexistence between ethnicities and helping Bosnia deal with the aftermath of the war in terms of active mines, missing persons, war crimes etc.

Migration and border security became a "hot topic" in recent years after the migration crisis. Ever since the opening of the infamous "Balkan route" Croatia and Bosnia have been in the midst of the process. Croatia is seen as a gateway to the EU, while Bosnia holds the status of a transit zone for migrants. In the core of this problem lies the length and shape of the border between the two countries which is hard to protect. With the backing of the EU, Croatia has essentially fortified its border frontier and therefore many migrants remained in Bosnia and have been resettled into camps. Recently, many of them had tried to cross the border on foot which led to some deaths and scandals regarding the brutality of the Croatian police when dealing with the migrants. This has to stop in the future. But for this to occur many joint steps have to be taken between the EU, Croatia and Bosnia. The first step should be towards migrant safety and humane living conditions in the camps. Secondly, the EU should work towards a humane solution how to remove migrants from the camps, Croatia could offer to take in some of the migrants. Lastly, Croatia and Bosnia should combine their efforts in border controls to prevent deaths and inappropriate deeds by the police.

Peaceful coexistence and war aftermath are closely tied in together. The scars of war are still present and divide the Bosnian society. Croatia ought to push for reconciliation and peace efforts between Croats and Bosniaks because ethnic segregation still

exists even in the Federation part. A notable example being mentioned in the article by Barbara Surk in the New York Times about education. The article describes how each ethnicity in the Federation part has a different curriculum and enrols in separate schools (nytimes.com 2018). This is a tough puzzle to solve, but efforts should be made towards solving this problem with a combined initiative by Croatia and Bosnia and at least break some barriers. This would make progress in education and coexistence policies mandated to Bosnia by the EU. Regarding war aftermath, Croatia must provide details of her citizens that are suspected of war crimes and extradite them to Bosnia. Combined effort has to be made on the case of missing persons and Croatia could provide Bosnia with mine removal gear and personnel after this unfortunate problem gets solved in Croatia. In the case of Republic of Srpska, Croatia's goal should be to stabilize the situation and push the entity towards cooperation with the Federation, not incite division. This is easily said but in reality, this could prove to be a Sisyphean task even if the EU steps in. In conclusion, the role of Croatia in Bosnia should be to push the country towards internal stability by cooperation. After the stabilisation, progress on the other EU policies could occur and reap benefits which could begin to transform the society in Bosnia and Herzegovina.

5. Policy towards Kosovo

Of the six Western Balkans states, Kosovo is the one furthest away from membership. By international standards Kosovo technically isn't a legitimate country. According to the latest list 117 countries recognize Kosovo. This number isn't even the biggest problem for Kosovo's status as a legitimate country. The biggest one is its relationship with Serbia. Serbia doesn't recognize Kosovo and considers it an integral part of the country. Many factors come into play but the key for resolution lies in negotiations between the two sides. Many rounds of negotiations have occurred, the latest being held in September of 2020 in Brussels, when the agenda revolved around the Serb minority and economic recovery support from the EU (srbija.gov.rs 2020). So far, these talks have maintained a status quo and will likely continue to do so unless the EU makes a greater effort. This could be possible if the EU was united on this matter. This isn't the case because of the fact that four EU countries still don't recognize

Kosovo[1]. This means that there isn't a unanimous agreement about Kosovo even on the level of EU. Croatia's role must be to put in an effort towards resolving talks between Kosovo and Serbia, or at least push for EU unity on the matter. It is a fact that only when Serbia decides to recognize Kosovo there could be a chance for Kosovo to become a member. After this occurs Croatia could maybe offer its assistance to Kosovo regarding the realisation of other policies such as crime, migration and social policy.

6. Policy towards Montenegro

Despite becoming independent from Serbia in 2006, Montenegro sees its future in the EU and in the West, not in the grips of Serbia. Regardless of recent political turmoil in the country which saw the downfall of pro-European Milo Đukanović and his DPS party and its replacement with a modest government with doubtful interests. The new government has assured the EU that Montenegro has picked its side and remains devoted to EU membership (euronews.com 2021). The EU has an optimistic opinion on Montenegro and it assumes that it could become the next member, only the date isn't set in stone as recent events have postponed the 2025 plan. Based on the Key findings report on Montenegro it is stated that Montenegro showed good progress, but many reforms still need to be undertaken. Main focus should be on economic, administrative and judiciary reforms to align them to the EU's standards (European Commission 2020). Both Croatia and Montenegro are NATO members and are actively cooperating in the alliance, they have also shared a cordial relationship ever since Montenegro's independence. If this relationship persists only time will tell., Croatia should take an advisory role towards Montenegro. People from these two countries can understand each other without problems, therefore Croatian experts could be of great use to Montenegro. In the context of other policies Croatia could help with sea related policies, push for better transport linkage with Montenegro and help with security and migration.

In the context of transport policy, after the completion of the Pelješac bridge and other roads which would connect Croatia's mainland with the Dubrovnik region, Croatia and Montenegro should develop plans to extend this road towards Montenegro, therefore helping the transfer of goods and people between the two countries. Great benefit

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1   Why this is the case - https://emerging-europe.com/news/the-explainer-the-eus-kosovo-refuseniks/.

from this could be in the tourist sector because this continuation would link the famous destinations of Dubrovnik in Croatia and Kotor in Montenegro, respectively. Better transport linkage with Montenegro is in the interest of both nations because if Montenegro enters the EU its only link with other EU countries is across Croatia. Because of this Croatia and Montenegro should make a joint lobbying effort to push for the improvement of infrastructure to boost the flow of goods and people. Regarding security and migration, Croatia could help with maritime security by providing its resources to Montenegro.

7. Policy towards North Macedonia

North Macedonia wants to see its future inside the European Union. But for this to occur, many obstacles remain. It joined NATO in 2020 unlike Croatia and Albania that joined in 2009. It all has to do with the troublesome past of this region. To explain why this is the case, I have made a brief summary. Formerly named The Former Yugoslav Republic of Macedonia (FYROM) it had a dispute with its neighbour Greece regarding the name Macedonia, which Greece deemed unacceptable because of the name's historical links with Greek culture and its northern province with the same name. Despite becoming independent in 1991, the dispute was resolved only recently in 2018 with the Prespa Agreement. It mandated that Macedonia (FYROM) change its name to North Macedonia, therefore resolving the name dispute with Greece. After its ratification by both parties in 2019, North Macedonia became the newest member of NATO as Greece lifted the ban for membership (europeanwesternbalkans.com 2019). Most would think that after this dispute was settled there would be no more barriers for North Macedonia, but this isn't the case. After becoming a NATO member and the agreement of creating a negotiation framework with the EU, Bulgaria stated that is would put a veto against North Macedonia's membership because of cultural disputes. Bulgaria has problems with the Macedon identity, it considers the people of Macedonia as ethnic Bulgarians living outside Bulgaria and it has stated that the Macedonian language is a dialect of Bulgarian (euobserver.com 2021). Regardless of the validity of the facts upon which this veto is based, this is a new blow for North Macedonia's EU membership. A lot of time and effort should be invested in the resolution of this problem which could take years to resolve. And this isn't the only problem for North Macedonia. According to the Key findings of the 2020 Report on North Macedonia,

although significant progress has been made towards aligning with the EU standards many policies require improvement (European Commission 2020).

Croatia and North Macedonia have great ties and often cooperate. Therefore, Croatia should provide as much help to North Macedonia as it can, which unfortunately, isn't a lot. Croatia could provide advisory help for the realisation of EU policies such as ecology, migration, crime and finance. Related to the dispute with Bulgaria, Croatia could take the role of a mediator between the parties and lobby for EU support in the context of resolving it. After the dispute is resolved North Macedonia is certain to become a member of the European Union.

8.   Policy towards Serbia

Of the six countries, Serbia could be viewed both as the one closest to and the one furthest away from EU membership. According to the poll data by the Serbian Ministry of European Integration, 54% of the population would vote in favour of joining the EU, yet only 42% think that EU membership would be a good thing, many even consider EU membership as their ticket out of Serbia (Republic of Serbia - Ministry of European Integration 2019). This is a bleak and blurry picture of the Serbian opinion regarding the EU. If you include high level politics in the game, the picture gets even blurrier. Serbia often cooperates with the EU, especially regarding Kosovo, but it always holds an ace up its sleeve. This ace is Russia which is seen as the big brother of Serbia and its influence is prevalent throughout Serbia, in recent years China stepped in as well. A recent example of this is the situation where Serbia has approved Russian and Chinese vaccines. In the recent years many have started calling Serbia a "Trojan horse" for the EU. The name is related to the foreign interests Russia and China have in Serbia, which could prove to be a potential security problem for the EU because it doesn't want involvement from other powers in its territory. This situation moves Serbia further from EU. According to the Key findings of the 2020 report on Serbia there are a lot of problems in Serbia, many of them are political, such as lack of political freedom, elections and the Kosovo question. Others range from economy to corruption and crime (European Commission 2020).

To define Croatia's role towards Serbia is a hard task. Croatia and Serbia share a history of mutual hatred and conflict, which has to stop and must be left in the past

if there is to be a brighter future between them. This relationship can be seen in the context of Croatia's support for Serbia's accession in the EU. Croatia supports Serbia's accession but only after some conditions are met. Many of these are connected to the war in Croatia and the status of the Croatian minority in Serbia. So far, few of these have been met by Serbia after the opening of the negotiation chapters with the EU. Croatia will continue to stand by these conditions, as was the case with Slovenia when Croatia wanted to enter. To fulfil them, a greater cooperation should be established in the future, and Croatia must push for this to occur. This is easier said than done, but if Serbia decides to cooperate it could be a turning point in the relations between the two countries, one which would lead to a brighter future and the healing of past war scars. Regardless of this Croatia could provide help to Serbia regarding other EU polices if needed, but its main role should be to push for reconciliation and friendly relations with Serbia by cooperation.

9.   Conclusion

To conclude, the Western Balkans is a term most commonly associated with chaos and disorder, but with mutual cooperation between the six mentioned countries and the European Union it could become a term associated with transformation and progress. On one hand, the Western Balkan countries have to reform, push for progress and policy realisation which will lead to an eventual membership in the EU. On the other, EU must encourage and provide help with this process. In addition, Croatia should get involved as much as possible because of its political, economic and historical ties with the region. Unfortunately, worldwide events have postponed the realisation of the EU's policies, but hope must prevail that they will be realised in the near future. In my opinion the Western Balkans have a great potential for progress and reform. With the help of the EU there is a great chance for a better, stable and more prosperous society in the region. This society in the Western Balkans is unfortunately still a dream because of the inner struggles and conflict. To see if it turns into reality only time will tell, but everyone should try to make an effort so that at least future generations can live a happier life far from poverty, hate and conflict.

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LEGAL PROTECTION OF TRADE SECRETS, AS A NEED FOR PROGRESS AND DETERMINANT OF KOSOVO'S EU INTEGRATION

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1. Introduction

Kosovo declared its independence in 2008, thus becoming the youngest state in the old European continent. Based on the preamble of the Constitution, Kosovo proclaims its aspiration to follow the European integration processes. The Assembly of Kosovo at the beginning of November 2015 approved Law No. 05/L-069 on Ratification of the Stabilization and Association Agreement (SAA) between the Republic of Kosovo, of the one part, and the European Union and the European Atomic Energy Community, of the other part.[1] (Hereinafter referred to as SAA) Among other things, the SAA pays attention to and gives instructions for action and interaction related to intellectual property, mentioning here with special emphasis Article 77 which deals with general aspects of intellectual property, and Annex VII which lists the important documents regarding intellectual, industrial, and commercial property rights. The Parties confirm the importance that they attach to ensuring adequate and effective protection and enforcement of intellectual, industrial, and commercial property rights.[2]

For the beginning of any analysis of positive legislation and chronology of developments in this field, it is important to underline the deadline set within the SAA, the

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1   The Stabilization and Association Agreement signed on 27.10.2015, is considered ratified at the time of entry into force of the Law No. 05/ L-069. An integral part of the Law is the Stabilization and Association Agreement, including its Annexes and Protocols. Law No. 05/ L-069 was approved by the Assembly of the Republic of Kosovo on 02.11.2015 and was promulgated by Decree No. DL-031-2015, dated 19.11.2015 by the President of the Republic of Kosovo. The Law was published in the Official Gazette no. 34/2015 on 01.12.2015.

2   See article 77 par. 1, Law No. 05 / L-069 on Ratification of the Stabilization and Association Agreement between the Republic of Kosovo, of the one part, and the European Union and the European Atomic Energy Community, of the other part, (https://gzk.rks-gov.net/actdetail.aspx?actid=11239).

deadline dedicated to the Kosovo side to guarantee a level of protection of these rights. This is explicitly stated in Article 77.2 of the SAA which states, I quote: "*Kosovo shall take the necessary measures to guarantee no later than five years after entry into force of this Agreement a level of protection of intellectual, industrial and commercial property rights similar to that existing in the EU, including effective means of enforcing such rights*". This deadline gives us an indication to reflect the importance of protecting these rights and what is the priority of this area of law for progress in the integration process, investor protection, encouraging foreign investment, and, above all, making of Kosovo a partner or a serious candidate to be part of the EU and a focus of European investors.

In November 2013, the European Commission proposed a new trade secrets directive to harmonize the law in the EU and thereby encourage European cross-border investment, competition, and innovation.[3] Consequently, after consultations at the institutional level and, public debate with key private and public stakeholders, the "Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure"[4] (Hereinafter referred to as: EU Directive 2016/943) entered into force on 5 July 2016.

Trade secrets protect confidential business information that generally gives its owner a competitive advantage in the provision of services and goods in the market, in production, etc. Trade secrets that a business owner may wish to protect can include formulas, methods, programs, techniques, processes, customer lists, customer requirements, product specifications, pricing strategies, and recipes.[5]

Non-Disclosure Agreements – legal arrangements between parties exchanging information for the confidentiality of information under the relevant terms have a great

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3   Morrison Foerster, Harmonization of Trade Secrets in Europe and New U.S. Trade Secrets Law Gets the Green Light, 01.08.2017. Retrieved lastly on 4 April 2021 from https://www.mofo.com/resources/insights/170801-harmonization-of-trade-secrets.html .

4   EUR-Lex, (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0943).

5   Lawrence G. Townsend, The importance of protecting trade secrets, 16.05.2017. Retrieved lastly on 7 April 2021 from https://www.lgt-law.com/blog/2017/05/the-importance-of-protecting-trade-secrets/.

deal of relevance in the protection of trade secrets.[6] Thus, trade secrets are protected by establishing non-disclosure agreements with various partners, and including them in the points of license agreements, partnership agreements, contracts, etc.[7]

Under the EU Directive 2016/943, a "*trade secret*" means any information that: (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; (b) has commercial value because it is secret; and (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

According to the Treaty on the Functioning of the European Union (hereinafter referred to as TFEU) "*a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods*".[8] Article 288 of the TFEU stipulates that directives "*have two characteristics, they are binding on states, not within states*".[9] Based on these definitions, we understand that the implementation of EU directives, in member countries and those with integration aspirations, can only be done through national legislatures which incorporate and implement those directives.

In recent years after the entry into force of the SAA, Kosovo has taken concrete steps in the field of legislation and that of drafting government policies, but from the assessments given by European institutions and those with a mission in Kosovo, it seems that Kosovo has not managed to act with intensity and prioritization according to the SAA and National Programme for Implementation of the SAA (NPISAA). One of the shortcomings is estimated to be the lack of a legal framework for trade secrets that would implement EU Directive 2016/943 in Kosovo.

The European Union has repeatedly mentioned the lack of a trade secret protection law in its annual Progress Reports for Kosovo. In the framework of the Report, every

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6   Oda Ekonomike Amerikane në Kosovë, Pronësia Intelektuale në Kosovë dhe Bashkim Evropian, January 2019. Retrieved lastly on 7 April 2021 from https://www.amchamksv.org/wp-content/uploads/2019/01/E-Drejta-e-Pronesise-Intelektuale-ne-Kosove-dhe-BE.pdf.

7   World Intellectual Property Organization, About IP: Industrial Design, Retrieved lastly on 4 April, 2021 from: https://www.wipo.int/designs/en/.

8   See article 288, Treaty on the Functioning of the European Union.

9   See Hajredin Kuci, Hyrje në Sistemin Ligjor në Kosovë, GIZ, Prishtinë, 2019, Pg. 83.

year, the EU has paid attention to issues related to intellectual property, concluding that Kosovo has made progress, but continues to have its legislation partially in line with that of the EU.

In the 2019 Progress Report, the European Commission stated that "*in industrial property rights, the legislative framework still needs to be further aligned with the acquis, including trade secrets*" adding a few lines later that "*there is a need for a government strategy for IPRs*". In 2020, the Commission reiterates the same need by stating that "*On industrial property rights, Kosovo laws and administrative instructions are partially aligned with most of the EU acquis. Further progress has been made with changes to the Patent law adopted in July 2019. Legislation on patents, topographies, and industrial models is partially harmonized. New legislation on trademarks, trade secrets, patents, the industrial model, and integrated circuit topography is needed.*"

2. The importance of the legal framework for foreign investment

From a careful and general perspective on Kosovo's legislation, government policies (in the sectors such as industry, investment, entrepreneurship, and trade), considering the need and necessity of legal progress in this sphere, first of all, it is important to ask some research questions, such as follows: How does Kosovo stand with the applicability of the SAA in terms of the legal protection of trade secret?; Does Kosovo have the capacity to implement the requirements arising from the EU Directive on trade secrets? and, How positively does the growth trajectory of foreign investment move in appropriate circumstances, following the EU Directive?

One of the important indicators for the drafting and adoption of the law on the protection of trade secrets is the promotion of foreign investments and, the protection and encouragement of current investors. Foreign Direct Investment (FDI) is an important component of global financial flows and perhaps the most beneficial type of cross-border financial flow for local economic growth.[10] In its 2020 Report for Kosovo, the European Commission in its section addressing macroeconomic stability states that "Strong GDP growth since 2015 has not resulted in competitiveness gains and a

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10 Kandilov, Leblebioglu, Trade Secrets Protection and Foreign Investment, June 2020, Pg. 2.

shift to higher value-added activities. GDP growth in 2015-18 averaged 4.1%. In 2019, economic activity expanded by 4.2% /…/ Investment growth was driven mainly by private investment and foreign direct investment (FDI) while public investment almost stagnated."

Cross-border investment is welcomed in developed economies as well, where local policymakers often provide generous incentives to entice foreign multinationals to choose their site for a foreign subsidiary.[11] Regardless, such a goal belongs to every state, but the feasibility and profitability of foreign investors come when they are convinced that they have the space and the appropriate conditions to invest, including legal protection and legal regulation.

A vital part of any review that a serious company makes of a country before investing or initiating proceedings for an economic and commercial purpose is of course the protection of trade secrets. It may include confidential business information, such as a firm's customer lists, price lists, or marketing strategies; know-how, such as facts about manufacturing methods or processes for achieving certain results; and technical information, such as blueprints, algorithms, and chemical formulae.[12] In short, a trade secret is information that is not generally known, has commercial value, and is protected by the trade secret holder to keep it secret.[13]

Kosovo currently has a law on foreign investment that mentions *"intellectual property and other assets"* in the enacting clause of the article that talks about respecting rights. The enacting clause states that "*public authorities shall recognize and respect all rights of a foreign investor relating to a foreign investment in the Republic of Kosovo, especially when such rights relate to immovable and movable property, intellectual property and other assets, contract rights, and the rights established by this Law*"[14].

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11 Ibid.

12 Schultz and Lippoldt, "Approaches to Protection," January 22, 2014, 8, 12-13.

13 Morrison Foerster, Harmonization of Trade Secrets in Europe and New U.S. Trade Secrets Law Gets the Green Light,01.08.2017 (https://www.mofo.com/resources/insights/170801-harmonization-of-trade-secrets.html).

14 See article 12, Law No. 04/ L-220 on Foreign Investment, Official Gazette of the Republic of Kosovo No.1/9 January 2014.

3. Legislation in force for procedures and protection of trade secrets

The Law on Trade Secrets, trademark protection, and harmonization of current laws is an initial need for a successful and competitive business in Kosovo and the opportunity for investors to come /…/ the absence of this Law is affecting the departure of foreign investors.[15] Nevertheless, although in another context and not sufficient, commercial secrecy is protected by Article 286 of the Code No. 06/L-074 Criminal Code of the Republic of Kosovo.

The enacting clause of this article of the Criminal Code provides for a fine and imprisonment of 1 to 5 years for actions within the framework of what the Code provides.[16] EU Directive 2016/943 does not provide for criminal sanctions, the same Directive in Article 16 [Sanctions for non-compliance with this Directive] states that "The *Member States shall ensure that the competent judicial authorities may impose sanctions on any person who fails or refuses to comply with any measure adopted according to Articles 9, 10 and 12*" and that "*the sanctions provided for shall be effective, proportionate and dissuasive.*" In this regard, para. 1 of Article 9 [Preservation of confidentiality of trade secrets in the course of legal proceedings] states that "The *Member States shall ensure that the parties, their lawyers or other representatives, court officials, witnesses, experts, and any other person participating in legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret, or who has access to documents which form part of those legal proceedings, are not permitted to use or disclose any trade secret or alleged trade secret which the competent judicial authorities have, in response*

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15 Telegrafi.com, "Të mbrohet sekreti tregtar i bizneseve", 20.09.2018. Retrieved lastly on 8 April 2021 from https://telegrafi.com/oda-e-afarizmit-te-mbrohet-sekreti-tregtar-biznesve/.

16 See article 286, para. 1-6, Code No. 06/L-074 Criminal Code of the Republic of Kosovo: "(1.) Whoever, in violation of his or her duties to protect business or trade secrets communicates or conveys information about a business or trade secrets to another person or otherwise enables any unauthorized person to access such information or collects such information with the intent to convey it to an unauthorized person shall be punished by a fine or imprisonment of up to three years. (2.) Whoever, with the intent to use in an unauthorized way, unlawfully acquires information that is protected as a business or trade secret as provided for in paragraph 1 of this Article shall be punished as provided in paragraph 1 of this Article. (3.) When the information provided for in paragraph 1 or 2 of this Article is of such special importance or if it is conveyed to another person with the intent to transmit such information outside of the Republic of Kosovo, or if the act is committed with the intent to obtain a material benefit, the perpetrator shall be punished by a fine and imprisonment of up to five years. (4.) When the offense provided for in paragraph 1 or 3 of this Article is committed by negligence, the perpetrator shall be punished by a fine or imprisonment of up to one year. (5.) Whoever, with the intent to convert a trade secret to the economic benefit of anyone other than its owner, steals, or without authorization takes, or by fraud or deception obtains information provided for in paragraph 1 of this Article shall be punished by a fine and imprisonment of up to five years."

to a duly reasoned application by an interested party, identified as confidential and of which they have become aware as a result of such participation or access. In that regard, Member States may also allow competent judicial authorities to act on their initiative."

In the framework of the proposals for the amendment of the legislation in the field of IPR, the experts of the European Union have recommended deleting paragraphs 7 and 8 of Article 286 of the Criminal Code and to transpose the Directive using the "*literal*" approach. The Criminal Code in force, entered into force in 2019, in paragraphs 7 and 8 of Article 286 made the definitions of two terms, respectively "*business secret*" and "*trade secret*". Concretely, the Draft Law on Trade Secrets in its enactment has provided that these two articles can be replaced with paragraphs 1.4, 2, 3, and 4 of article 3 of the Draft Law.[17]

According to the Code, *"business secret"* means information designated as such by law or by the provisions of a business organization or legal person, and which represents a manufacturing secret, the results of research or design work, financial, business, scientific, technical, economic or engineering information, including patterns, plans, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, codes or other information which the owner has taken reasonable measures to keep secret, and the disclosure of which to an unauthorized person could have harmful effects on the economic interests of the business organization or legal person.[18] Also, the term *"trade secret"* means information designated as such by law or by the provisions of a business organization or legal person, or which represents a manufacturing secret, the results of research or design work, financial, business, scientific, technical, economic or engineering information, including patterns, plans, formulas, prototypes, methods, techniques, processes, procedures, programs, codes or other information which the owner has taken reasonable measures to keep secret, and the disclosure of which to an unauthorized person could have harmful effects on the economic interests of the business organization or legal person.[19]

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17 See article 20, Para. 2, Draft Law on Trade Secrets, Consolidated Document 2020.

18 See article 286, Criminal Code, para. 7.

19 See article 286, Criminal Code, para. 8.

It is worth noting in this section that the Law that is expected to be adopted, as specified in the current Draft Law, shall not affect national laws on intellectual property in relation to criminal procedures.[20]

Among others, Law No. 03/L-006 on Contested Procedure,[21] although not explicitly, regulates measures relating to trade secrets, with the same articles as those applicable to other property matters. Decision over a proposal for insurance before the charges are raised for initiating a contestation procedure or during that procedure is done by the court which acts according to the claim. The verdict over the amount of insurance is issued by the court which acts in the first instance, while the highest court will issue it when the proposal for issuing the verdict is presented after the case file is sent according to the complaint in this court.

4. Draft law on trade secrets and harmonization with the EU directive

The Draft Law on trade secrets is in the process of being reviewed by the editorial board. The draft law is drafted by a professional expert in the field and as proclaimed in Article 1 [Purpose] it concerns Directive (EU) 2016/943 of the European Parliament of June 8th, 2016, on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use, and disclosure (O.J. L157, p.1, 15.6.2016).[22]

The draft contains four chapters, therefore, by addressing in the first part the scope, purpose, and definitions, and continuing in the other chapters with the acquisition, use, and disclosure of TS; measures, procedures, and remedies; and sanctions and final provisions. It is argued in the report of the draft law that as a result of weak legal protection and increased risk of misuse of trade secrets by certain entities, those business advantages which are based on trade secrets are at risk.[23]

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20 See article 2, para.4, Draft Law on Trade Secrets, Consolidated Document 2020.

21 Law No. 03/L-006 on Contested Procedure, Official Gazette of the Republic of Kosovo No. 38/2008.

22 See article 1, para. 2, Draft Law on Trade Secrets, Consolidated Document 2020.

23 Monitor, Sekreti tregtar, gati projektligji që forcon mbrojtjen dhe masat për dëmet që i shkaktohen biznesit, 24.06.2020, Albanian, Retrieved lastly on 10 April 2021 from https://www.monitor.al/se-kreti-tregtar-gati-projektligji-qe-forcon-mbrojtjen-dhe-masat-per-demet-qe-i-shkaktohen-biznesit/.

The EU Directive sets out rules on the protection against the unlawful acquisition, use, and disclosure of trade secrets, but it specifies only a minimum harmonization of trade secrets protection in the EU.[24] Member states and those aspiring to EU integration have the discretion to raise the standard by regulating other details but must always take into account international obligations and the rights and obligations that the parties have accepted through international law, mainly European law. The EU Directive does not address criminal sanctions but does provide for civil rights and remedies. Member States remain free to maintain existing criminal sanctions.[25]

In the national context, Kosovo in its draft has determined that the provisions of the Law shall apply to undisclosed know-how and business information (trade secrets) that have a prospective effect within the Republic of Kosovo territory.[26] Paragraphs 2 of the Draft Law stipulate that the Law shall not affect a) the exercise of the right to freedom of expression and information set out in Article 11 of the Charter of Fundamental Rights of the European Union; b) the application of national rules requiring trade secret holders to disclose; c) the application of national rules requiring or allowing national public authorities to disclose information submitted by businesses which those authorities hold according to, and in compliance with, the obligations and prerogatives set out in national law; and d) the autonomy of social partners and their right to enter into collective agreements.

Regarding the definition, it is worth noting that the Draft has incorporated Article 2.1 of Directive (EU) 2016/943, which is stated in subparagraph (d) of Article 3.1.4 of the Draft that *"/.../ and is very important to keep the same words".* When in this Article the expression "*reasonable steps*" is mentioned, it includes, among others, the registration process. In the EU, trade secrets, briefly defined as private business information, are subject to certain conditions for protection, but there are no procedures to follow for registration and the duration of registration is unlimited.

Concerning sanctions, based on the existing Draft, Article 18 provides that "*the competent Court may impose sanctions on any person who fails or refuses to comply with*

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24 Morrison Foerster, Harmonization of Trade Secrets in Europe and New U.S. Trade Secrets Law Gets the Green Light, 01.08.2017. Retrieved lastly on 10 April 2021 from https://www.mofo.com/resources/insights/170801-harmonization-of-trade-secrets.html.

25 Ibid.

26 See article 2, para. 1, Draft Law on Trade Secrets, Consolidated Document 2020.

any measure adopted according to Articles 11, 12 and 14" and "*the sanctions provided for shall include the possibility of imposing recurring penalty payments in the event of non-compliance with a measure adopted according to Articles 12 and 14. Those sanctions shall be effective, proportionate and dissuasive*". In the event of violations, the Draft provides for temporary preventive measures such as the cessation or, where appropriate, the temporary use or disclosure of trade secrets. Second, the prohibition of the production, delivery, placing on the market or use of infringing goods, or the importation, exportation, or storage of infringing goods for those purposes. The articles referred to in Article 18, respectively Articles 11 [Preservation of confidentiality of trade secrets during legal proceeding], Article 12 [Provisional and precautionary measures] and Article 14 [Injunctions and corrective measures] define, inter alia, the competence and jurisdiction of the Court, procedure, rights and obligations in the procedure, decision-making, etc.

Acquisition of trade secrets is considered lawful if it is carried out by an independent discovery or creation, by the observation, study, disassembly, or testing of a product or object which has been made available to the public, or which is lawfully possessed by the recipient of information, which is free from any legal obligation that places restrictions on the acquisition of trade secrets.[27]

Kosovo, in addition to the domestic laws and legislation of the EU, which it has directly incorporated through its legislation, in Annex VII of the SAA has stipulated that Article 77 (3) of the agreement concerns a considerable number of Multilateral Conventions.[28]

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27 Monitor, Sekreti tregtar, gati projektligji që forcon mbrojtjen dhe masat për dëmet që i shkaktohen biznesit, 24.06.2020, Albanian. Retrieved lastly on 12 April 2021 from: https://www.monitor.al/se-kreti-tregtar-gati-projektligji-qe-forcon-mbrojtjen-dhe-masat-per-demet-qe-i-shkaktohen-biznesit/.

28 SAA, Annex VII, Referred to in Article 77: Article 77(3) of this Agreement concerns the following Multilateral Conventions: Convention establishing the World Intellectual Property Organization (WIPO Convention, Stockholm, 1967, as amended in 1979); Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971); Brussels Convention Relating to the Distribution of Programme Carrying Signals Transmitted by Satellite (Brussels, 1974); Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (Budapest, 1977, as amended in 1980); Hague Agreement Concerning the International Deposit of Industrial Designs (London Act, 1934, The Hague Act, 1960 and the Geneva Act, 1999); Locarno Agreement Establishing an International Classification for Industrial Designs (Locarno, 1968, as amended in 1979); Madrid Agreement concerning the International Registration of Marks (Stockholm Act, 1967, as amended in 1979); Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol, 1989); Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks (Geneva, 1977, as amended in 1979); Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967, as amended in 1979); Patent Cooperation Treaty (Washington, 1970, as amended in 1979 and modified in 1984); Patent Law Treaty (Geneva, 2000);

5. Conclusions

The Republic of Kosovo is a key factor for the stability of the Western Balkans region, moreover, Kosovo is oriented to meet the criteria and obligations taken to successfully pass through the integration processes. This should happen with a high level of attention and intensity of institutional and social engagement, with special emphasis on the private sector, which should always be in the role of advisor, reprimanded, and observer of the Government and processes.

More than a fulfilment of an international obligation, the Law on Trade Secrets is a need of time to make Kosovo a safe environment for investment and trade. The law on trade secrets is a necessity and a determination for the protection of innovation, current investors, and the promotion of foreign investments.

Based on official reports such as the Progress Report, but also on government programs, it is to be concluded that Kosovo is unsatisfactory in terms of legal and sub-legal regulation of issues related to areas such as industry, investment, entrepreneurship, and trade. Kosovo is in the early stages of preparation in these areas, with little progress in building administrative capacity.

Considering the efforts of Kosovo in the function of trade and regional commitments, the implementation of the EU Directive 2016/943 and the issuance of the Law on Trade Secrets would be extremely positive and a stimulus for foreign investments. The Law on trade secrets strengthens the credibility of institutions and legal security for businesses, especially foreign ones. In this context, the advancement of the legal framework for the improvement of the business environment and the increase of competitiveness, are considered as steps for the improvement of welfare and the increase of jobs.

It is also to be concluded that the implementation of the EU Directive 2016/943, the Law on Trade Secrets, and the drafting of Government Policies per the findings of the

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International Convention for the Protection of New Varieties of Plants (UPOV Convention, Paris, 1961, as revised in 1972, 1978 and 1991); Convention for the Protection of Producers of Phonograms against Unauthorized Duplications of their Phonograms (Phonograms Convention, Geneva, 1971); Strasbourg Agreement Concerning the International Patent Classification (Strasbourg, 1971, as amended in 1979); Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (Vienna 1973, as amended in 1985); WIPO Copyright Treaty (Geneva, 1996); WIPO Performances and Phonograms Treaty (Geneva, 1996); The European Patent Convention; WTO Agreement of Trade Related Aspects of Intellectual Property Rights.

Progress Report, mark a breakthrough in ensuring free movement, rule of law, and the acceptance of an EU legislation, which as such or indirectly are marked as conditions in the country's EU integration aspiration.

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ALBANIA AND ITS WAY TO EUROPEAN UNION

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1. Introduction

Albania[1], officially the Republic of Albania, is a country in South-eastern Europe. It is located on the Adriatic and Ionian Sea within the Mediterranean Sea, and shares land borders with Montenegro to the northwest, Kosovo to the northeast, North Macedonia to the east, Greece to the south; and maritime borders with Greece, Montenegro and Italy to the west. Tirana is its capital and largest city, followed by Durrës, Vlorë and Shkodër.

Geographically, Albania displays varied climatic, geological, hydrological, and morphological conditions, defined in an area of 28,748 km^2. In the 20th century, the Kingdom of Albania was invaded by Italy which formed Greater Albania before becoming a protectorate of Nazi Germany. Enver Hoxha formed the People's Socialist Republic of Albania after World War II, modelled under the terms of Hoxhaism[2]. The Revolutions of 1991 concluded the fall of communism in Albania and eventually the establishment of the current Republic of Albania.

Politically, Albania is a unitary parliamentary constitutional republic and a developing country with an upper-middle income economy dominated by the service sector, followed by manufacturing. It went through a process of transition following the end of communism[6] in 1990, from centralized planning to a market-based economy. Albania provides universal health care and free primary and secondary education to its citizens. Albania is a member of the United Nations, World Bank, UNESCO, NATO, WTO, COE, OSCE, and OIC. It is an official candidate for membership in the European Union. It is one of the founding members of the Energy Community, including the Organization of the Black Sea Economic Cooperation and Union for the Mediterra-

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1   "Albania". CIA The World Factbook. Retrieved 1 February 2021.

2   "A Brief Guide to Hoxhaism". The Red Star Vanguard. 11 June 2011. Retrieved 23 February 2021.

nean. The term Albania is the medieval Latin name of the country. The two terms are popularly interpreted as "Land of the Eagles" and "Children of the Eagles".

Albania declared independence from the Ottoman Empire on 28 November 1912, accompanied with the establishment of the Senate and Government by the Assembly of Vlora on 4 December 1912. Its sovereignty was recognized by the Conference of London.

2.   The Climate of Albania

Albania has a typically Mediterranean climate[3] characterized by mild winters with abundant precipitation and hot, dry summers. The annual mean air temperature varies widely over the territory from 7°C over the highest zones up to 15°C in the coastal zone. In the south west, temperatures reach up to 16°C. In the lowland, an almost stable distribution of annual mean temperature (between 12 and 14°C) can be observed. The lowest recorded temperature was 25.8°C and the highest43.9°C. Total mean annual precipitation over Albania is about 1,485 mm per year. The southeast part of the country receives smaller amounts of precipitation (an annual value of up to 600mm.The highest precipitation total is recorded in the Albanian Alps[4], where values reach as much as 2,800 to 3,000 mm per year. Another area with abundant rainfall is the mountainous southwest zone, where total precipitation is up to 2,200 mm. Precipitation levels follow a clear annual pattern, with the maximum in winter and the minimum in summer. Albania belongs to the subtropical Mediterranean climate. It is characterized by mild winters with abundant precipitation and hot, dry summers. The mean annual precipitation total over Albania is about 1,485 mm/year. The highest precipitation total (70%) is recorded during the cold months (October - March). With its coastline facing the Adriatic and Ionian seas in the Mediterranean sea, its highlands backed upon the elevated Balkan landmass, and the entire country lying at a latitude subject to a variety of weather patterns during the winter and summer seasons, however it has a high number of climatic regions for such a small area The coastal lowlands have typically Mediterranean climate while the highlands have a continental climate. In both the lowlands and the interior, the weather varies mark-

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3   "Mediterranean Sea". Encyclopaedia Britannica. Retrieved 23 February 2021.

4   Marash Rakaj: Floristic and chorological news from north Albania, in: Botanica Serbica, Institute of Botany and Botanical Garden Jevremovac, Belgrad 2009. Retrieved 23 February 2021.

edly from north to south. Under the Köppenclimate classification, the country has hot Mediterranean climate, Warm Mediterranean climate, Subtropical climate, Oceanic climate, Continental climate and Subarctic climate.

3. Economy in Albania

The transition from a socialist planned economy to a capitalist[5] mixed economy in Albania has been largely successful. The country has a developing mixed economy classified by the World Bank as an upper-middle income economy. In 2016, it had the 4th lowest unemployment rate in the Balkans with an estimated value of 14.7%. Its largest trading partners are Italy, Greece, China, Spain, Kosovo and the United States. The lek (ALL) is the country's currency and is pegged at approximately 132,51 lek per euro. The cities of Tirana and Durrës constitute the economic and financial heart of Albania due to their high population, modern infrastructure and strategic geographical location. The country's most important infrastructure facilities take course through both of the cities, connecting the north to the south as well as the west to the east. As part of the pre-accession process of Albania to the European Union, farmers are being aided through IPA funds to improve Albanian agriculture standards. The country's proximity to the Ionian Sea and the Adriatic Sea give the underdeveloped fishing industry great potential. The World Bank and European Community economists report that, Albania's fishing industry has good potential to generate export earnings because prices in the nearby Greek and Italian markets are many times higher than those in the Albanian market. The fish available off the coasts of the country are carp, trout, sea bream, mussels and crustaceans. Albania has one of Europe's longest histories of viticulture. Albania has the second largest oil deposits in the Balkan peninsula after Romania, and the largest oil reserves in Europe. Albania is a significant minerals producer and is ranked among the world's leading chromium producers and exporters. The nation is also a notable producer of copper, nickel and coal. The tertiary sector[6] represents the fastest growing sector of the country's economy. 36% of the population work in the service sector which contributes to 65% of the country's GDP. Previously one of the most isolated and controlled countries in the world, telecommunication industry

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5   Prof. Dr. Anastas Angeli, "Transition and economic freedom inAlbania", Tirana 2007, the publishing house "GEER ". Retrieved 11 March 2021.

6   "Labor force, total - Albania" data.worldbank.org. World Bank. Retrieved 11 March 2021.

represents nowadays another major contributor to the sector. It developed largely through privatization and subsequent investment by both domestic and foreign investors. The increase of foreign visitors has been dramatic. Albania had only 500,000 visitors in 2005, while in 2012 had an estimated 4.2 million, an increase of 740 percent in only 7 years. In 2015, tourism in summer increased by 25 percent in contrast the previous year according to the country's tourism agency. In 2011.Transportation in Albania is managed within the functions of the Ministry of Infrastructure and Energy and entities such as the Albanian Road Authority (ARRSH)[7], responsible for the construction and maintenance of the highways and motorways in Albania, as well as the Albanian Aviation Authority (AAC), with the responsibility of coordinating civil aviation and airports in the country. The international airport of Tirana is the premier air gateway to the country, and is also the principal hub for Albania's national flag carrier airline, Air Albania. The airport carried more than 3.3 million passengers in 2019 with connections to many destinations in other countries around Europe, Africa and Asia. The country plans to progressively increase the number of airports especially in the south with possible locations in Sarandë, Gjirokastër and Vlorë.

4. Biodiversity in Albania

A biodiversity hotspot[8], Albania possesses an exceptionally rich and contrasting biodiversity on account of its geographical location at the center of the Mediterranean Sea and the great diversity in its climatic, geological and hydrological conditions. Because of remoteness, the mountains and hills of Albania are endowed with forests, trees and grasses that are essential to the lives for a wide variety of animals, among others for two of the most endangered species of the country, the lynx and brown bear, as well as the wildcat, grey wolf, red fox, golden jackal, Egyptian vulture and golden eagle, the latter constituting the national animal of the country. The estuaries, wetlands and lakes are extraordinarily important for the greater flamingo, pygmy cormorant and the extremely rare and perhaps the most iconic bird of the country, the dalmatian pelican. Of particular importance are the Mediterranean monk seal, loggerhead sea turtle and green sea turtle that use to nest on the country's

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7   "MisionidheHistoriku". ARrSh. Retrieved 11 March 2021.

8   UNESCO. "Albania" whc.unesco.org. Retrieved 12 March 2021.

coastal waters and shores. The common bottlenose dolphin is a frequent visitor to the waters of the Albanian Adriatic and Ionian Sea Coasts.

5. Freedom of religion

Albania is a secular and religiously diverse country with no official religion and thus, freedom of religion, belief and conscience are guaranteed under the country's constitution. Culturally, religious tolerance is one of the most considerable values of the tradition of the Albanians. It is widely accepted that they generally value a peaceful coexistence among the believers of different religious communities in the country. Pope Francis hailed Albania during his official visit in Tirana as model of religious[9] harmony, due to the long tradition of religious coexistence and tolerance.

At this point, they were mostly Christianized. Islam arrived for the first time in the late 9th century to the region, when Arabs raided parts of the eastern banks of the Adriatic Sea.

During modern times, the Albanian republican, monarchic and later communist regimes followed a systematic policy of separating religion from official functions and cultural life. The country has never had an official religion either as a republic or as a kingdom. The communist regime persecuted and suppressed religious observance and institutions and entirely banned religion. The country was then officially declared to be the world's first atheist state. Religious freedom has returned, however, since the end of communism. The preliminary results of the 2011 census seemed to give widely different results, with 70% of respondents refusing to declare belief

6. Accession of Albania to the European Union

Albania is on the current agenda for future enlargement of the European Union (EU). It applied for EU membership on 28 April 2009, and has since June 2014 been an official candidate for accession. Accession talks started in March 2020. Until 2020, Albania had been receiving €1.2bn of developmental aid from the Instrument for Pre-Accession Assistance, a funding mechanism for EU candidate countries. Officially recognised by

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9   Opinion.al. "TOLERANCA FETARE, REALITET APO MIT?" Retrieved 12 March 2021.

the EU as a "potential candidate country" in 2000, Albania started negotiations on a Stabilisation and Association Agreement (SAA)[10] in 2003. This was successfully agreed and signed on 12 June 2006, thus completing the first major step toward Albania's full membership in the EU. Albania applied for European Union membership on 28 April 2009. Following in the steps of countries joining the EU in 2004, Albania has been extensively engaged with EU institutions, and joined NATO as a full member in 2009. After Albania's application for EU membership, the Council of the European Union asked the European Commission on 16 November 2009 to prepare an assessment on the readiness of Albania to start accession negotiations. On 16 December 2009, the European Commission submitted the Questionnaire on accession preparation to the Albanian government.

7.   Albania in EU

Detailing the challenges Albania faces in its EU accession process may seem like an insurmountable task for a short opinion piece, but in considering some often over-looked concepts I can gain a better understanding of the situation. The tendency to focus solely on EU accession criteria and conditions has created a myopic view of Albania's challenges. It has distracted from what I would argue are the true challenges: the political process, the Albanian inferiority complex, and cultural integration. Too often has the focus been on making sufficient progress on judicial and anti-corruption reforms[11]. This in a way has prevented moving talks along beyond the technical con-ditions and making meaningful strides. Why did the EU Council in June opt to delay the process and not to fully approve the EU Commission's recommendation in April to start talks with Albania immediately? In order to understand why it only reluctantly agreed to open accession talks with Albania in June 2019, we must first understand the reasons why the accession criteria were set up in the first place. The Copenhagen criteria were defined during the European Council summit in the Danish capital in 1993 to ensure that future member states would not destabilize the EU and to persuade anti-enlargement member states. Apart from the political, economic and legal criteria, a fourth criterion was added: the absorption capacity of the EU. The first three criteria

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10 "Albania - EU-Albania relations". European Commission. Retrieved 14 March 2021.

11 Hysa, E. (2011). Corruption and human development: Albania and EU-27. Social Studies Journal, 5(2), 43-52. Retrieved 14 March 2021.

are both supra-national and technical in nature where the EU Commission and the EU Parliament are involved. This is the technical process that includes measurable indicators. Albania at this stage fulfils these technical conditions and received a yes vote. The fourth criterion is inter-governmental and political in nature where the EU Council and the Parliaments of member states are involved. It guarantees member states with asymmetrical power in the negotiations with candidate countries. This is the political process.

Could it be that Albania is not perceived as a capable nor as a deserving European nation-state?

I cannot provide an answer here but what I can say is that the reverse was true for Romania and Bulgaria. They received a no vote for the technical conditions in 2006 but a yes vote for the political conditions in 2007.Albania received a yes vote from the Commission in 2016 too, but the Council's decision was put on hold because of national elections in France and Germany in 2017. The truth is that the Copenhagen criteria are a myth in the sense that the demands are politicized and the goalposts keep on being moved. They are conditioned by the geo-strategic interests of key member states. The challenge for Albania is not solely to fulfil the criteria but to further convince everyone that is a deserving and a serious European partner. Albania must work much harder than its Serbian and Montenegrin neighbours to join in the next decade. But let's not forget that both Serbia and Montenegro, which have already begun accession negotiations, also have huge problems with organized crime, corruption and the rule of law. Nonetheless, Albanians share some of the blame for this delay. On the one hand, the previous governments arguably did not take the accession process seriously. On the other hand, Albanians suffer from the Impostor Syndrome[12], a psychological phenomenon in which people are convinced that they do not deserve the success they have achieved. Delays in EU accession talks, whilst watching neighbouring countries make important strides, has fuelled this inferiority complex further creating a vicious circle; many Albanians are now saying that they do not deserve to join the EU. How can we expect to be legitimized as a European nation-state when we ourselves are in doubt? This is a Hamletian problem! That's unfortunate as Albania has a very rich history, which is in fact European and without

12 Alexander, J. (2011). "The Impostor Phenomenon". International Journal of Behavioural Science. Retrieved 14 March 2021.

historical deficiencies. Also, it is one of few nations in Europe to have two states (Albania and Kosovo, Greece and Cyprus, Germany and Austria, etc.). This shows resilience, not weakness. How symbolic it would have been if the accession negotiations would have begun this year, which marks the 550th anniversary of the death of Albania's emblematic national hero George Kastriot Skanderbeg?

He is the irrefutable proof that Albanians are a genuine European nation with a historic state-building attitude. Lastly, it should be highlighted that the integration challenge is multifield and universal; in addition to the technical and political dimension, there is also the decisive yet implicit criterion of cultural integration. Therefore, it is vital to showcase Albanian history conceptualized as European cultural history. This would demonstrate that Albania is in fact a European nation with citizens from many different backgrounds and religious beliefs living harmoniously. Thus, dispelling the idea that Albania is simply a Muslim-majority a point that is crucial as anti-Muslim sentiments continue to rise in the EU and in the US. This would also help address the perception of Albania as one of the biggest exporters of gangsters in Europe. Crime is not a gene, it is not part of the DNA of any nation including the Albanians, Serbians, Montenegrins, etc. It is simply a symptom of post-communist transition which has created systemic economic inequality.

The technical challenge of the next stage could be met by Albania. The biggest challenges remain the political process, the inferiority complex, and cultural integration. The EU would gain from Albania joining; it has a secular nationalism rooted in language not religion. Albania's role is to help the EU understand this. All resources and knowledge should be focused on this objective. In this regard, and in fulfilling the technical conditions, the current government has seriously done a much better job than the previous government. But now it must mobilize every one of us to increase the pressure on the EU Council to start accession negotiations as soon as possible.

8. Conclusion

For this task I decided to talk about my native country and its purpose to join the European Union. Throughout the project I talked about Albania, described where Albania is located geographically, mentioned the most important parts about Albanian history, highlighted the politics of Albania and also putted into focus the origin of the

name Albania. In order for the Albania to be known better I decided to talk about Albanian climate, Albanian Economy, Albanian Biodiversity and also freedom of religion which is a characteristic we are proud of without denying the natural beauty. After described the values that my country has, i described Albania as a potential candidate for European Union. Nonetheless, the challenges that Albania and its citizens face are numerous and this is well described by the end of the project. Albania is a nation with citizens from many different backgrounds and religion beliefs living harmoniously. The biggest challenges remain the involvement of citizens in political processes, freedom of media, law system and the least but not by importance, corruption. Democracy is the collective self-governance that aims at achieving the common goals of the society. In similarity with any other system based on a given model of governed citizens, democracy is based on the public sphere, a physical or virtual space where citizens are engaged in critical public debate. This presumes active and engaged citizenship and informed choices in the context of a plurality of governing offers. In Albania, one cannot yet speak of a sound civic engagement reality. Achievement paradigms[13] in Western representative democracy models, such as free and fair elections, democratic institutions, and media freedom in the framework of economic liberalization have been formally embraced by Albania over the last 30 years, using mechanisms and agendas imposed from above, in the form of legal requirements for European integration. To understand the context of civic involvement in political processes, one needs to look at two contextual descriptive presumptions, which are at the root of all elements describing the context in which democracy in Albania is exercised, from the perspective of international and national experts:

- Inefficient legal revolutions;
- Mistaking economic liberalization for political liberalization.

Both aspects lead to mistrust in the democratic processes and low public turnout not just in elections, but also in healthy democratic processes, in a spiral that downwards democracy.

Legal revolution is a term used by Blocker to describe the journey towards establishing a liberal democratic constitutional order in countries without a democratic tradition,

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13   Democracy, Human Rights and Governance. usaid.gov Retrieved 16 March 2021.

which has in the past suffered under totalitarian regimes. This journey presumes the establishment of democratic constitutional and legal "rules of the game" that does not address consolidated power, do not democratize the society, are dictated from above, and are not internalized by the texture of the society. They are the dichotomy of the Albanian citizens, who are split between two realities, that of the existing for-malist-legal state and the informal reality dictated by private and party interests. This dichotomy undermines trust in the election processes, political party structures, and even media freedom. Scientific data show that the effects of historical institutions continue long after those institutions have ceased to exist. This is a result of the im-portance of behavioural norms that have been established in various forms as "infor-mal institutions" or "culture"[14] to distinguish them from official institutions. Pandey secures direct evidence that connects historic power concentration institutions with the later political behaviour and provision of public services. A 2016 World Bank study of development policies distinguishes institutional norms, between healthy political norms related to transparency, accountability, citizens engagement, and unhealthy norms of political behaviour such as those supporting forms in political competi-tion, where political support is gained based on ensuring targeted private interests and not the common public good. The existence of the institutional secret and the decision-making concentration in a few individuals, are models that exist especially in elected, but also appointed bodies. This leads to a form of government lacking reflection or public accountability, and to a lack of drive to vote based on institutional performance: The primary thesis that voter behaviour depends on their evaluation of the "government policies from the point of view of their impact on daily life" may be applied to an election process or reality, but not to the overall 20-year electoral behaviour in Albania. In the same line, the Final OSCE/ODIHR10 Monitoring Report on the 2017 general elections in Albania, recommends a revision of the measures taken against pressures related to voters' employment, as an issue that has not been effectively addressed by the public administration[15] institutions, and as an element that connects institutional behaviour to the drive to participate in elections. Lack of civic education and political education of citizens. The overall political spectrum, from left to right, as well as their dominant guiding theories, are missing in the Albanian

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14 "Robert Elsie: Arti Shqiptar". www.albanianart.net. Retrieved 22 March 2021.

15 "Ligjipër Vetëqeverisjen Vendore" . Retrieved 28 March2021.

ideological-political landscape, whether being in education, beliefs, examples, or applied models. In political rhetoric, it is talked about "integrity or opportunism", and this touches all political fractions. The media has no role in the political education of citizens. On the contrary, all statistics and each of the respondents indicated the great focus of public debate on charismatic persons and leaders, rather than on political processes and agendas. In this context, it is worth mentioning the fact that Albania has a marked lack of training or ideological beliefs, which is also mentioned by studies and interviews. The privatization process in Albania took place mostly in the public sphere as a whole. The contribution to this configuration is jointly made, so, to change the consequences, the approach of everyone to the system should be altered. This is due to the bad practices of the institutions and their unfavourable climate, but also due to the lack of awareness of citizens on the instruments in their hands and their deep distrust in their ability to change the configuration. The most important intervention is related to the aspect of development and corruption. The social inequalities generate a great power for a certain group of interest and a great vulnerability for others. The job guarantee, the means to provide a dignified life, and a good distribution of income provided by a state of public welfare is the qualitative step for democracy from transition to consolidation.

9. Recommendations

It is needed to fight more for the transparency and accountability of institutions, with the option of withdrawing their legitimacy. The reporting of violations/corruption and holding the institutions accountable for their work is much more important than sectorial or public administration reforms. Strengthening the capacity of media to be independent, aiming for self-regulation, or greater administrative sanctions for failure of institutions to duly provide information are some of the solutions. The supervision and monitoring of consultation and information processes are relevant, as well as the education of citizens on access to institutions. However, further interventions are needed from media self-regulatory bodies, the journalists' associations, the transparency-oriented donors through projects that strengthen the media, fight censorship, and self-censorship. Interventions with projects for quality journalism, effective and ethical reporting are also needed. Fake news is a worldwide concern connected with the disoriented voting behaviour based on the multitude of informa-

tion and the incapacity to control every time the sources of information. The solution does not come with the anti-defamation package and targeting of critical journalists, but with self-regulation, the application of the Code of Ethics, and supervising the universally accepted ethical norms in the use of social media. Political education is needed. The paradigms should be changed. Studies indicate that it is true that people are poor and therefore do not participate in the political processes. It is likewise true that they do not participate in political processes and therefore they remain poor. Political education programs among young people are needed, as well as political ideologies, knowledge on activism, and the rights they have and can exercise. Models of initiatives among young people are needed. It is needed to return debate in the public spaces. In this regard, and in fulfilling Albanian values, I strongly believe that Albania should be part of the European Union and every citizen is hoping to hear the good news since Albania is on the current agenda for future enlargement of the European Union. It applied for EU membership on 28 April 2009, and has since June 2014 been an official candidate for accession.

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THE BENEFITS AND WEAK POINTS OF THE EUROPEAN INTEGRATION OF MONTENEGRO (FOCUSING ON CHAPTER 10 – INFORMATION SOCIETY AND MEDIA)

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1. Introduction

In the era of rapid digitalization and overwhelming advancement of technology many countries aspiring to join the European Union are struggling to ensure equal availability of online services to the citizens. There is a certain fear that the accelerated digital shift will leave many behind, but at the same time there is a whole new space for innovation and improvements.

On the other hand, only the citizens who are capable of using such services can be active participants in modern societies, pushing the institutions to be more proactive, thus ensure transparency that is still lacking not only in Montenegro but in all of the Western Balkan countries.

The outbreak of the Coronavirus is still challenging the world, but it also serves us as a good example to see what accelerated digital advancement brings, and how long the road in front of us is.

The pandemic brought up a lot of pre-existing problems, and the lack of policy responses, enforced institutions to get out of the ''routine'' and made us realize that the human factor is influencing digital progress far more than the technology does.

Digital transformation is not coincidentally one of the most common terms recently used to describe the processes related to the advancements in Chapter 10 and even the European Union in 2021. published Europe's digital transformation compass with the targets to be achieved by 2030. These targets can be found on European Com-

mission's website, under the section A Europe fit for the digital age - Europe's Digital Decade: digital targets for 2030.

Digitalization has a serious influence on the media too, not only in terms of the ways that the media are dealing with sustainability but also in the way that policy responses are lagging, especially in regulating the online space.

Digital literacy and media literacy became entangled and inseparable, but more importantly, crucial for combating the misinformation and false pieces of information that are producing damage on multiple levels. This topic has become a burning issue, and many individuals and organizations are putting efforts on spreading the importance of the awareness rising and constant education in these areas.

In this essay, I will try to highlight the key points of the Montenegrin response to the abovementioned issues, as well as some positive examples that are pushing our country towards its way to the EU.

2.   Chapter 10 - Information society and media

As stated on the website of the European Integration Office, Chapter 10 can be divided into three key sub-areas: electronic communications, information society services, and audio-visual media policy.

It should also be noted that Montenegro opened this Chapter in 2014, and to close it, our country has to achieve two major benchmarks. Firstly, it needs to harmonize its legislative framework with the mentioned acquis when it comes to the independence of the National Regulatory Authority of electronic communications and audio-visual media services. Secondly, it needs to demonstrate that it has enough capacities in terms of administration to showcase the successful implementation of the acquis in practice.

European Commission monitors the progress of the country on all opened Chapters, and the feedback is given through the yearly reports'. The report for 2020 entitled ''COMMISSION STAFF WORKING DOCUMENT Montenegro 2020 Report, Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic, and Social Committee and the Committee of the Regions,

2020 Communication on EU Enlargement Policy'' mentions the achievements of Montenegro when it comes to the defined benchmarks for Chapter in question.

The main European Commission's remarks are (EC Montenegro 2020 Report, 85):

- To ensure operational independence of the media regulators and public service broadcaster from undue political interference;
- To grant the Agency for Electronic Media (AEM) powers to impose a complete set of measures, including warnings, fines, suspensions, and revocation of licenses ensuring proportionality and effectiveness;
- To establish a track record to demonstrate the administrative capacity to enforce the EU acquis for electronic communications, information society services, and audio-visual media services, including as regards regulatory independence.

It can be seen that there is still much to be done, especially when it comes to demonstrating that Montenegro obtained and can maintain the standards in pre-defined key sub-areas of Chapter 10.

3. Legislative framework

According to the Digital Agenda Observatory (DAO) Country Report and Roadmap for Digital Agenda advancement in Montenegro, our country has done a lot in terms of harmonizing the legislative framework, especially in recent years, after the consultation process with EU institutions.

Among the Strategies, Action Plans, and other laws covering the area of the Information Society, some of the most important are (DAO Country Report, 2020, 17-19): Strategy of Public Administration Reform 2016-2020, Cyber Security Strategy for Montenegro 2018-2021, Strategy for Development of the Information Society in Montenegro, National Action Plan for Open Government Partnership, Law on Electronic Administration, Law on Electronic Document and Law on Electronic Identification and Signature, Law on the Protection of Personal Data, and the Law on Free Access to Information.

All these documents enabled, or at least should enable, democratic advancement in a digitally-oriented era on one hand, but also the transparency of the institutions and increased civic engagement on the other.

Two particularly important documents should be highlighted in this sense. The first one is more related to the Constitutional right on the freedom of speech, and the other is crucial for the development of e-Government and interoperability among the Montenegrin institutions.

Law on Free Access to Information ("Official Gazette of Montenegro", No. 44/12 and 30/17), especially with the suggested Amendments in 2019, stirred many reactions from the media and civil society organizations (CSOs). A group of 44 CSOs has launched an initiative (Paragraph. me, 2019) to withdraw the Draft Law on Amendments to the Law on Free Access to Information, which is estimated to introduce new restrictions and drastically reduce the transparency of institutions, contrary to the international standards that Montenegro should strive to.

Media representatives have also had strong reactions to the suggested Amendments, which can be well illustrated by the quote below (DAO Report, 2020, 21):

The situation with this Law is a won freedom that would be effectively abolished, and we would return to the situation from 10 years ago when we were fighting for that very right. It would be a degrading trend where you go backward and not forward with the things that should have already been adopted.

When it comes to media in the online space, several gaps need to be tackled in the following period. For example, the term "hate speech on the Internet" is not regulated within our legislation, as stated in the "Online Hate Speech" Montenegro country report (2013, 4). Combating fake news and misinformation has been especially relevant during the pandemic, where on one hand we had a large increase of this type of news, especially on social media, and on the other, an increasing number of citizens with the tendency to spread and believe in conspiracy theories.

In Article 48 of the Electronic media, it is stated that "an AVM service must not incite, enable incitement or spread hatred or discrimination on the grounds of race, ethnic background, skin colour, language, religion, political or other belief, national or social background, financial standing, trade union membership, education, social status, marital or family status, age, health status, disability, genetic heritage, gender identity or sexual orientation", and includes "all services of electronic publications utilizing electronic communication networks", which can be seen as one of the legal

mechanisms for combating hate speech in online space along with the Constitution (Articles 7 and 8), and Criminal Code (Article 370).

Another crucial document for enabling Montenegrin citizens to fully reap the benefits of digitally developed societies is the Law on Electronic Document, but also the Law on Electronic Identification and signature. To provide citizens with a fully verified digital identity while making the citizen-institution communication smoother and easier is one of the main reasons why these two laws are among the most important ones. The countries that are highly digitally developed, such as Estonia, are long before us when it comes to unlocking the full potential of the so-called electronic ID-s.

The use of digital identification and digital signature is one of the necessary steps for enriching the business sector environment, and since the Digital single market is a highly rated priority of the EU in recent years, it is a good foundation for the years to come.

4.   The disparity between the legal framework and implementation

It can be argued that since 2014, when Montenegro opened the negotiations with the EU for Chapter 10, the activities of the Government aimed towards providing the relevant legal space and infrastructure have been sufficient.

The evident disparity between the legal framework and implementation is often mentioned among relevant stakeholders on all levels. For example, the Ministry of Public Administration, Digital Society, and media often emphasize digitalization, as it is among the most important parts of public administration reform, but several big undertakings are still on a rather low level. There is the issue of the interoperability of data. To be able to follow the trends in the EU, Montenegro must work on improving the communication between institutions not only in the human-to-human sense but also in data-to-data one. The awareness about the significance of interoperability is still low.

What does interoperability of data among institutions mean in practice? This means that a citizen doesn't need to give personal information such as a registration number each time he or she needs something from the institution. Moreover, if a citizen uses an electronic service such as enrolling a child in school online, once it enters

the personal data of the child once, all necessary paperwork such as Certificate of residence, health insurance certificate, etc, are automatically provided by the system.

Unfortunately, in Montenegro, there are very few examples of such services. Several factors contribute to the disparity between the existent legislative foundation and the practice. First of all, the mindset of the public servants that are resistant to change the routines they are accustomed to for years. Technology has brought up terms such as ''lifelong learning'', constant ''skill update'', and even the policy response lags in some areas, but the most visible lag is the inability to adapt, and even more, to change the mindset that follows the rapid digital advancement.

Another factor that is also visible and relevant is the generational gap. The report entitled Western Balkans Labour Market Trends 2020 stated that the age of the average workforce in the Western Balkans is between 15 and 64 years old. This implies that there is a big difference between people who are born in the era of ever-changing technology on one hand and those who were introduced to technology later in their lives on the other.

Having in mind that Montenegro aspires to become a member of the European Union and that it still has to harmonize with the EU standards in terms of democracy, the rule of law, while showcasing that it has successfully reached the benchmarks defined in 2014, all aspects of digitalization, including media in online space and its influence are still the issues that should be tackled on multiple levels.

The main role of the governments is to enact the necessary legal adjustments, but also to provide the necessary infrastructure for digital advancement. This is relevant for both – citizens and the media.

Based on the data from January 2021, published by Simon Kelp on Digital 2021: Montenegro, the number of internet users in our country is 477.3 thousand, while more than 70% of that number are active users of social media. It is also interesting that among the ten websites searched in the previous year there are three Montenegrin online media outlets, Google and Facebook.

Contrarily, when asked about the digital literacy of the citizens, representatives of the institutions, civic sector, and media do not think that the level of digital literacy of the citizens is satisfying (DAO Report. 2020, 36-39), and the main reasons are inconsistent

implementation, the resistance of the citizens and overall, they see the problem in the price and the speed of the internet too. This raises the question of the digital divide that is one of the rising topics within the EU.

A positive example ''Uci doma'' should be highlighted in this sense. This project, which is a product of need in the period whereas the whole country was facing strict measures due to the critical numbers of the COVID-19 infected showcased that Montenegro has the potential to speed up its advancement towards closing Chapter 10. With the coordinated action between institutions, the online media, TV stations, and the business sector, in a record time, the schooling system got the way to continue functioning.

Media literacy and digital literacy

Harmonizing the Laws is indeed perceived as a dominant factor for the EU membership, but without implementation, and direct and visible benefits to the citizens and the living standard in general, the desired results relevant to the EU won't be reached.

The interconnection between media literacy and digital literacy grows by the day, and in 2021 they are both necessary for anyone living in a democratic society, with the ability to fully exercise his or her civil rights and freedoms.

There is a constant need for education in this area, as it represents the baseline of citizens' awareness of many other important topics related to the rapidly evolving digital society and media, such as cybersecurity, cyberbullying, fake news, manipulations, etc.

Furthermore, it can be said that the media literate and digitally literate citizen is a citizen empowered to find information, decides if it is relevant or not, understands the context. It's the citizen able to find the source of information, and at the same time use the technology smartly, ethically, and efficiently.

When it comes to digital literacy, two more distinctions became relevant in recent years. They are defined as digital skills and digital competencies. Digital skills are basic tool-related skills, but they also include skills that are relevant for media literacy, such as problem-solving skills, creativity skills, prolonged learning skills, etc. On the other hand, digital competencies are closely defined within the European Digital

Competence Framework for citizens, which includes a broader list of skills and abilities that enable full participation in modern societies.

Online space has become as relevant as the physical one. Along with the benefits, there are many negative sides to it. And it is no secret that citizens of Montenegro, as well as citizens of many people in the Western Balkans, are not conscious enough about it. There is a constant need for education and awareness-raising. This is a topic that can't be pushed by an individual or a certain group in Montenegro. It is a topic that has to be pushed by all relevant actors, including politicians and political parties who are not particularly enforcing any of the topics mentioned in this essay.

Obstacles to overcome and what should be done

One of the things that are often overlooked when talking about the Chapter 10 is that many decision-makers don't fully understand what digital transformation means, and why it is so important.

Another thing that is sometimes taken lightly is the mindset of generations used to online environment. They don't recognize the concept of borders, so it can be overlooked that Montenegro still is a country in transition. There is a certain ''inheritance'' that still follows when it comes to the everyday life of the citizens in this sense.

Apart from that, the main obstacles to the Government are the expectations. Especially in terms of speed and efficiency of the services. The main reasons are the services provided by the business sector and online tools used on daily levels. They are driven by profit, but since the citizens are the main beneficiaries, the goal of the Government should be the user (citizen) oriented. Overcoming the digital divide means that the Government services should be inclusive, thus be available to the citizens of different ages, in all regions of Montenegro, in different languages, and also accessible to the people with disabilities, while ensuring stable and affordable internet connection.

Having in mind the direction of development of the media and its products that are more and more adjusted to online space, all of the above-mentioned activities along with the increased effort to educate are inevitably necessary to reach the pre-determined conditions to close Chapter 10.

5. Conclusion

The year behind us has drastically influenced the speed of digital advancement and enforced Montenegrin citizens to explore and exploit online space whether they want it or not. Terms such as ''remote work'' were introduced to all, which means that even public servants couldn't neglect the necessity of the digital.

At the same time, the media faced an enormous increase of fake news and misinformation, while the sustainability of the traditional media is also questioned.

It is important to have long-term, result-oriented goals because the world has long shifted from process-oriented results. To achieve this, the focus should be shifted from a ''project-oriented'' mindset. This means that Montenegro needs strategic shift in education. Not only for the generations to come but for the citizens living and working in Montenegro right now. It can be overlooked that the inputs for change in both, legal and implementing sense, come from those who are current citizens of the country.

Inclusivity is not a choice, but an obligation, so to close the Chapter in question, citizens from all parts of Montenegro, regardless of their age or social status, and with sensitivity to minorities should be taken into consideration.

All in all, the ultimate goal of the EU integration process is to have citizens that can request a change, according to their own needs.

And while there is visible progress, Montenegro still has to work on improving cooperation and communication among institutions, on educating public servants, on providing support to the civic society organizations in its role to educate and empower citizens to demand more quality services, while encouraging the freedom of speech.

Perhaps the most challenging step that remains is fostering the concept of a civil state and tolerant society both online and offline.

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CHINA'S POSITION TOWARD WESTERN BALKANS: COMMITTED PARTNERSHIP OR ENTRY TICKET FOR THE EU

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1. Introduction – forming of a versatile triangle

The perspective of the Western Balkans countries as part of the EU is a declared commitment throughout the past two decades. However, giving the traumatic experience of the dissolution of Yugoslavia, the economic, social and political wounds that scared the countries and the time needed for their healing, the present neighbouring issues that the EU tends to avoid, make this process a long-lasting story that is open to different influences and turnings off the road.

By emphasizing the membership perspective as a joint vision, EU tends to strengthen and maintain not only peace and stability among the six WB countries, but also economic and political prosperity transposing its norms and values. In that manner, the EU membership criteria known as the Copenhagen Criteria, which consist of the most important institutional, political and economic requirements for aspiring EU members, had been upgraded particularly for the Western Balkans with additional conditions regarding regional cooperation and good neighbourly relations in the process of stabilization and association[1].

The relation of EU and WB is a unique example of engagement that cannot be categorized as a typical foreign policy, neither by the EU itself nor by any other state and non-state actor. The EU has developed a comprehensive approach, that includes not only foreign but a great deal of internal policies, in order to support more effectively the inclusion of the region. It is therefore irresponsible to assume and predict the

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1   More on this: https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership_en, [accessed June 2021].

European Union allowing accession of a WB state that has not completed the processes of democratization and improvements to the principle of rule of law, having in mind the particular focus on these fundamentals, according to the 2020 revised enlargement methodology.

In parallel to this, the economic expansion of China came, rotating mainly around objectives of infrastructure investment and development, manly as part of the Belt and road initiative. In that manner, China's main interest in the Western Balkans is not particularly to the countries themselves, but to the region as a connection and entrance to the market of the European Union. At the beginning this came as a no threat at all, having in mind that infrastructure development is also something supported and promoted by EU itself through its pre- accession funds. Based on the values it promotes, the EU believed that it may even benefit from increased Chinese investments in the WB, having in mind the need of external financing to implement all the required adjustments in the process of association.

However, it was later on acknowledged, that China is not doing anything just for the sake of doing it. Economic investments thus, are highly related and interdependent on China's geopolitical interests in the region, and its values towards these issues are different from the EU to such an extent that parallel presence of both in the Western Balkans leads to numerous controversial choices of direction of the governments of the WB countries, which threaten to slow down and complicate the already long-lasting process.

2. The different frameworks as divider or a link?

As in almost every aspect of its functioning, EU has set a highly intensive and bureaucratic relations to WB countries that are effected on different levels. First, there are the instruments of Stabilization and association, the accession process, regional cooperation and the visa-free travel, all introduced to support and improve the development of the region and its integration in the EU (EP, 2020). The number of treaties, regular high-level summits, as well as active participation from the Directorate-General for Neighbourhood and Enlargement Negotiations and the High Representative for Foreign Affairs and Security Policy, is the institutional level to which constant monitoring and support of the processes is given to the WB countries. Finally, there are the EU

Delegations located nationally in respective countries for every aspect that cannot be followed and supported on central level. Also, particularly in the case of Western Balkans there is an institutionalized political engagement for boosting regional cooperation in parallel with the process of integration, that is the Berlin process initiative[2].

On the other hand, China does not have such institutional framework particularly for the Western Balkans and its foreign relations with the respective countries are maintained at bilateral level. However, very important aspect of the overall multilateral policy of China with the broader region is the 17+1 mechanism, which is a form of cooperation of China with Central and Eastern Europe region (CEE). All of the Western Balkans countries except Kosovo are members of the 17+1 mechanism and these are the only non-EU members in the group, which is of no significance to China in regards to the cooperation within the mechanism.

Comparatively seeing these two forms of cooperation, we can observe very strong and firmly settled cooperation of EU with WB as a region in general, but also individually with the countries. This cooperation is founded on different levels and covers many aspects of development and democratization. The relations with China on the other side, are more loose in institutional manner, and only include WB as part of the CEE region and the bilateral relations with respective countries. No particular institutional framework for the WB is developed nor it is planned to be in the near future. However, in the case of EU-Western Balkans-China relations, it seems that the most institutionalized is not necessarily the strongest tie. In some WB countries political and economic ties with China, are growing exponentially. This does not necessarily indicate withdrawal from EU integration per se', but definitely an open door for different options.

3.   What is so attractive in Chinese support for the WB?

Generally speaking, EU is known as a strict rule-maker. Its fundamental values couldn't be promoted and supported throughout the years and so many phases of enlargement if it wasn't for its strict policies and conditions that all present and aspiring members have to fulfil and implement. On the other hand, China seems very superficial in setting

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2   More on this: https://berlinprocess.info/ [accessed, June 2021].

rules and conditions when providing support and aid, and those who choose to move along the line of least resistance, may easily be convinced to go that way.

For example, one of the most important conditions for the aspiring members, as for the WB countries, is the principles of rule of law and good governance, expressed through chapters 23 and 24 of the *acquis communautaire*. (judiciary and fundamental rights; justice, freedom and security) as reflected by their inclusion in the 'fundamentals' cluster in the revised enlargement methodology. And this are conditions not only set for improving the stated areas per se, but as well as for accessing financial and other assistance form EU. When it comes to economic investment form China, there is no such conditioning. In other words, China will invest in WB countries, no matter the lack of transparency and accountability, the risks of corruption and undemocratic practices, or lack of mechanisms for protection of human rights and providing security for its citizens.

Moreover, human rights and freedom of expression are central to the functioning of democracy and are part of the EU's core values. In that manner, media freedom is a crucial part of freedom of expression and it is generally acknowledged that independent media plays an important role in exposing political bad behaviours, and therefore crucial part of a functioning democracy. While it is unclear whether and what media actors in the Western Balkans are directly or indirectly influenced by Chinese entities, it is well known that China enforces a media campaign of expanding its influence abroad, so there is no reason to believe that this tendency will not continue in the WB, if it hasn't already. One example of media enforcement of Chinese presence in the Western Balkans happened in May 2020, when billboards portraying Chinese president Xi Jinping with the text "Thank you, brother Xi!" ("Hvala brate Si!") were published in Belgrade, which is a clear sign that pro-Chinese discourse is spreading throughout Serbia (Chapple, 2020).

And here comes the most important issue towards this matter - Chinese standards on media freedom and human rights are very low comparing to the EU. China is ranked 177 out of 180 in the World Press Freedom Index (RSF, 2020). This may come handy for those political elites of the WB that show autocratic tendencies since it means an economic support without human rights and democratic values conditions, but that is completely opposite of EU's vision and its requirements of the aspiring member states.

We may be fooled to think it is a sign of respect to not interfere in these areas when providing economic support at the beginning, but this is the point where we should ask the question: what is the cost of this investment that should improve our societies but at the same time allows us to go backwards in development and democratization?

And this list could go on and on, counting different areas and aspects to which Chinese influence directly or indirectly interferes with the process of integration of the WB countries. From energy and green policies, through security and data protection all the way to public procurement and macro-economic policies, there is an inversely proportional dependence of requirement of China and EU from the WB countries that brings them in a position of hardly possible balance, but rather of choice from two completely opposite directions.

4. Covid-19 and beyond: Firmly founded solidarity vs. media-praised altruism

The EU has been undoubtedly biggest partner and supporter of the WB countries during the pandemic. Having a blown media coverage or not, a fact is that EU together with EIB mobilized €3,3 billion to support WB in tackling corona-virus health crisis and support post-pandemic socioeconomic recovery (EC, 2021). The EU has provided significant support in medical equipment and vaccine distribution, as well as information and civil protection. However, EU had faced difficulties in initial coping with the pandemic as well as in the process of vaccine distribution, even though not particularly related to its positioning towards WB, this situation was used to promote different agendas in the region.

As in many other areas, after the initial dust is settled, we can conclude that the pandemic did not drastically alter what was already developing as either a good practice or a threat. Same goes for geopolitical interests of China that continued reinforcing and promoting its soft power and intentions toward WB. Once it managed to contain the spread of the virus, China dedicated its resources in full capacity in improving international position and image. As a very skilful player, it used the disease that initially appeared in its territory, to not only spread political influence but also show itself as a generous leader towards smaller and weaker countries. This help, as reported by Chinese media, was followed by the announcement of the establishment of the "Silk

Health Road" (Xinhua, 2020), thus indirectly imposing China's intention to take full control of the corona-virus narrative, coping and consequences.

Chinese diplomacy during the pandemic was strongest at its flexibility. Since the declaration of global COVID-19 pandemic in March 2020, China's aid was mainly consisted of medical supplies and staff (the mask diplomacy). In parallel, China was investing strongly in development of vaccines, so at the beginning of 2021 the efforts continued in vaccine supplies (the vaccine diplomacy). In neither of these two phases, the aid was not spread by accident, not throughout the world generally, nor in the WB particularly. Serbia, for instance, received the first and biggest aid and this is the country that has significant economic and political ties with China, one of the key traces of the BRI and the country that marked every gesture of solidarity to and from China with great media coverage. Additionally, the fact that a significant part of these aid was provided by private companies such as Huawei and Alibaba is worth noting, although these are not completely free market actors, giving the control of the Government and the Communist party in China over the private sector. Furthermore, if the equipment and supplies coming from/through EU has undergone strict quality regulations, Chinese had often been criticized for consisting of poor quality.

Although China did not come even close to offering aid related to pandemic as much as EU to the Western Balkans, many reactions in the region are aimed at promoting China as the main donor of health assistance. Again, media coverage, blowing every act way out of proportion, as well as intentionally spreading of fake news and conspiracy theories which became a practice in the time of pandemic, played a key role in the process of shifting of positions in the political scene.

However, not only for the sake of considering mare numbers and facts, but also giving the importance of the overall prosperity and development beyond the health crisis, we should have in mind core values of democratization, rule of law and human rights at all times, since they are the foundation of our societies as we are so hardly trying to build upon.

5. Conclusions: Which exit will WB6 take on the roundabout?

The future of the Western Balkan countries is within the European Union and that is a statement that should be noted before concluding anything else regarding this matter. Different influences will come from different sides eventually, having in mind

the integration of the WB is a lasting process and the membership of EU is not just a question of status but a question of shared principles, values and regulation that will bring our societies to a higher level of democratization.

When it comes to China's objectives in the WB, they are not officially opposite to what EU is promoting in the region. Economic and infrastructure investment and development in the Western Balkans are the areas where China has a great influence and exponentially growing presence, but these are shared objectives by the three sides of this story. On the other hand, the EU and WB relations are very firmly settled, with multi-level institutionalization that by no means can be affected by the economic or even political engagement of China in the region.

However, the intentions of China of very serious engagement in the Western Balkans are a reality and we should make no mistake that these intentions are purely economic. The highly proactive and aggressive diplomacy, that adjusts its moves in real time as circumstances occur, is entering the WB in a big way, and it is welcomed with standing ovations from certain structures present in every of the 6 WB countries.

The European Commissioner Johannes Hann was right warning on the putting of China's 'Trojan horses' in several positions in Europe including Western Balkans in 2018: "We should be aware about the strategic concept by China and react in an adequate manner. I think this will be one of the great challenges of Europe." (Heath, Gray, 2018). Every adventure comes at a price and engagement of the WB countries with China involves political choices that are incompatible with EU acquis and EU standards.

Furthermore, the EU enlargement toward Western Balkan countries that has been a many times declared commitment, seems to last longer that it should have. Different crises EU has been dealing with, along with the Covid-19 crisis, have led to serious misunderstandings and unequal decisions of member states, regarding several issues including enlargement. That led to EU sending mixed signals to WB countries thus leaving space for different interpretations and scepticism. In many different occasions it seems that the Member States increasingly prefer to put national priorities and interests in the first place, with national agendas dominating over the Union's long-term interests. In particular, using or more precisely misusing of the veto power by specific Member States, as in the case of Bulgarian veto for initiating opening negotiations with North Macedonia (solely by national interests regarding history and identity), has

made enlargement more politicized and nationalized and lowered EU's credibility in Western Balkan countries. Delaying accession by using the veto especially when it is provoked only by national interest and agendas, neglecting broader interest of the EU as a whole, could seriously compromise not only the integration of Western Balkans, but also the EU's long-term approach and strategies.

In the meantime, China is presenting itself in the region bigger than ever, taking advantage of every crisis and issue that appears with the speed of light. What might have started as economic investment that will benefit all is rising into a firmly settled political presence in all aspects of the WB societies. What might come out of this is strengthening the positions of autocratic elites in the region, who will instead of EU turn to the Asian great power that puts no democratization and rule of law conditions on them. They will most certainly sell this to the public as a sign of respect for the national interests of the country, but the truth is that behind the curtain lies an agenda for development illiberal practices that will slow down or completely stop the process of stabilization and association of the region.

The real question here is who is circling endlessly on the roundabout at this point? Is it the WB region that cannot decide which exit to take and which partner to choose, or is it the EU that cannot put a bold line between national agendas and joint long-term strategies? At risk of giving this exposure a subjective thread, I will end noting that opening negotiations with North Macedonia will be the breaking point to this dilemma that will trace the path for the whole Western Balkan region and the future of its relations to other actors.

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HUMAN RIGHTS, DISCRIMINATION, MINORITIES' RIGHTS, MULTICULTURALISM

PROTECTION OF HUMAN RIGHTS AND NON-DISCRIMINATION

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1. The concept of Human Rights and Discrimination.

"All human beings are born free and equal in dignity and rights."[1]

It has always been spoken about human rights all around the world, but what is the main concept of them? Human rights are the basic rights that belong to every person in the world, from the moment of their birth until they die.

The concept of human rights has not always been this developed and elaborated. The need of respecting human rights, came mostly after the World War II, where a lot of people suffered a really difficult period. The implementation of respecting human rights happened firstly on 10 December 1948, where The Declaration of Human Rights (The UDHR) was proclaimed by the United Nations General Assembly in Paris. The document includes 30 fundamental rights, including here different types of human rights, such as civil or political rights. Seen on a historical point, this event was really important, because for the first time, fundamental human rights were universally protected.

The UDHR has a bigger importance, because it has served as an example for the implementation of other treaties between countries and different regions all around the world. Protection of human rights it is seen as an important part of the development of a country, because a lot of countries have still some work to do on this part.

A complementary concept with human rights, it is the concept of discrimination. On those moments and places where human rights are not protected, we have to deal

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1   Article 1, Universal Declaration of Human Rights.

with discrimination. Discrimination is the unfair or prejudicial treatment of people and groups based on characteristics such as race, gender, age or sexual orientation.[2]

There are a lot of reasons why discrimination occurs in different countries, but at a bigger importance is the way we have to deal with it and reduce it as a phenomenon for the universal good.

2. Protection of human rights and of non-discrimination in the context of the European Union integration process in my country – what has been and what is necessary to do?

As it was mentioned before, promoting and respecting human rights and non-discrimination is really important for all countries on their policies, but especially for developing countries on their way of creating a strong democracy and a safe environment for all.

Since Albania is looking forward about the integration process in the European Union, human rights and non-discrimination are widely known as a concept. After the communism era, where even fundamental rights did not exist, nowadays, where protecting human rights, has become a hot topic, citizens have become aware of each other's rights.

Based on different reports or statistics, Albania has made progress on different aspects of human rights, mentioning here mostly social and economic rights, such as education, health or protection of children, because one of so-called Copenhagen Criteria, requires a candidate country to have stable institutions that guarantee democracy, the rule of law, human rights and respect for and protection of minorities.[3]

The Amnesty International Report.[4]

The Amnesty International Report (2020) on Human Rights has straightened out some indicators in Albania, because during the pandemic period (31 March and 23

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2 Discrimination, what it is and how to cope?https://www.apa.org/topics/racism-bias-discrimination/types-stress, Accessed on 10.04.2021.

3 Albanian's EU Membership: http://em-al.org/en/albanias-eu-membership-process/, Accessed on 10/04/2021.

4 Amnesty International Report, Albania 2020: https://www.amnesty.org/en/countries/europe-and-central-asia/albania/report-albania/, Accessed on 10/04/2021.

June 2020), Albania derogated from certain European Convention on Human Rights obligations in the name of pandemic COVID-19.

Violence against women and girls

Gender-based violence worsened during the lockdown. A women's rights NGO reported a threefold annual increase in calls to the national Counselling Line for Women and Girls during the March-May period.

Discrimination

In April, Roma activists protested discrimination in the government's allocation of financial emergency assistance that did not cover those working in the informal sector. Parliament adopted amendments to the law on discrimination, significantly expanding the scope of groups covered by legal protection.

Freedom of expression

In March (2020), the Prime Minister threatened media organizations with closure for "spreading panic" over COVID-19. The authorities retracted a controversial anti-defamation law that threatened online media freedom.

On the other hand, even though there are still measures to be taken on promoting a healthy environment about protecting human rights and non-discrimination, citizens, especially youth, have raised awareness about the topic. Based on the United Nations 2020 Progress Report in Albania about Sustainable Development Goals[5], Albania has made progress on different fields, such as: gender equality, governance and rule of law, education and child protection. Mentioning here:

- 26% increase in the number of child rights violations cases handled by People's Advocate.
- 470 persons at risk of statelessness assisted with administrative and judicial procedures.
- 119000 persons benefited from expansion of costumer care standards.

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5   UN Progress Report 2020: https://albania.un.org/sites/default/files/2021-03/GoA%20-%20UN%20 Progress%20Report%202020_0.pdf, Accessed on 11/04/2021.

- More than 24000 vulnerable individuals received quality social care services.

- 52 schools implemented methodology to combat violent extremism – increased awareness of 15000 children, 25000 parents and over 15000 teachers. In order to improve the actual situation, a lot of workshops and trainings have constantly been organized from different NGOs. The non-formal learning helps every participant to understand the importance of the rule of law and protection of human rights, because as Martin Luther King Jr, has said "*A right delayed, is a right denied*."

3. How to overcome the discrimination in my country based on race, sex, age, ethnicity, social position?

Discrimination is defined as any differential treatment of a person or group of persons based on a prohibited ground, which has no objective and reasonable justification. [6]

Discrimination is a real problem in Albania and it needs to be reduced. In my opinion, the solution of the problem should start from the top to bottom (government and legal institutions to citizens).

The first step every country should take is implementing and approving non-discriminatory policies, because people tend to accept the rule of law. For as long as law prohibits such tendencies, citizens of a country will obey to them, otherwise it will have consequences by the specific institutions that protect every human right. These policies should include promotion of tolerance and peace between each other. Albania had significantly improved its legal and policy frameworks for the protection of national minorities by adopting on 13 October 2017 a specific Law for the Protection of National Minorities, which was based on European standards and international expertise through a comprehensive and transparent consultation process with different stakeholders, including minority representatives.[7]

6   EU Human Rights Guidelines on Non-discrimination in External Action: https://data.consilium. europa.eu/doc/document/ST-6337-2019-INIT/en/pdf, Accessed on 11/04/2021.

7   Committee on the Elimination of Racial Discrimination considers the report of Albania:https:// www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23976&LangID=E, Accessed on 11/04/2021.

Another instrument that in my opinion can solve discrimination, is education. The educational system should embrace new curricula where it should be spoken more about tolerance and the acceptance of different mindsets of different people. On a universal world, people see things in different ways and based on this fact, having different perceptions, it does not mean that someone is right or wrong. People should learn to accept each other's points of view, in order to maintain a safe environment for everyone to present and feel themselves. Another important part on education that it should be mentioned, is the fact that teachers should not promote discrimination, should be professionals and not biased.

Normally, in order for these instruments to work, they should be monitored. Monitoring consists on regular reports on the responsible institutions that need to take care on reducing the phenomenon of discrimination. The monitoring process may also include international actors, such as European Union, United Nation or Council of Europe. If the public institutions do their work correctly and are considered strong by the citizens, this would also help them more to report different cases of discrimination. The non-discrimination "campaign" should be spread all around a country, in order to see even a small change. It should be spread everywhere equally and different NGOs or civil society members may help to raise awareness by non-formal learning and practice. Discrimination in Albania is mostly seen based on gender, age and social position, because Albania is a homogeneous population and discrimination on ethnicity, comes mostly from the history of our country and the relations we have had with other Western Balkan countries. Opinions on other ethnicities are only based on history and usually are biased and this creates discrimination. The key solution on this one, is the acceptance and the understanding of what happened in the past, because we cannot change it, but we have the choice to make it worse or better in the future. The most important thing for the Western Balkan countries at the moment, is collaboration, because it will only lead on development.

Discrimination based on sex/gender is a real problem in Albania. Sex discrimination involves treating someone (an applicant or employee) unfavourably because of that person's sex.[8] Some steps are made, because we see women empowerment on a

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8   Sex based discrimination: https://www.eeoc.gov/sex-based-discrimination#:~:text=Sex%20discrim-ination%20involves%20treating%20someone,in%20violation%20of%20Title%20VII, Accessed on 11/04/2021.

lot of fields, such as politics, science or art. Women are encouraged to pursue their dreams. Discrimination based on sex can be reduced by educating everyone with the concept of being equal. People say a lot that men and women are equal, but de facto they are not treated equally, because they get lower salaries for a job that is made in the same way by men. People should also confront gender stereotypes and try to see things on an objective way, the way things are in the real world and not how they imagine things on their minds. Another common thing is discrimination, based on social position (classism). Classism is defined as discrimination against someone who belongs to a particular social class. The prejudice can be based on the perception of someone's wealth education, or job and is usually underpinned by social stereotypes about particular social classes.[9] People's social status can affect the way they see things on many issues. In my opinion, we should highlight the fact that society is created by every social position and every one of them, has its own importance and we should work together to make a safer social environment for everyone to accept and feel themselves.

4. United Nations, Council of Europe and EU standards on human rights and non-discrimination- how to enhance their implementation in WB countries.

United Nations.[10]

The United Nations promotes respect for the law and protection of human rights in many ways, including:

- There are 10 human rights treaty bodies, which are committees of independent experts, that monitor the implementation of the core international human rights treaties, including the Convention on the Rights of the Child.

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9   The class ceiling: "Tackling class discrimination in recruitment" : https://www.beapplied.com/post/social-class-discrimination-and-fairness-in-recruitment#:~:text=Classism%20is%20defined%20as%20discrimination,stereotypes%20about%20particular%20social%20classes, Accessed on 11/04/2021.

10   The United Nations and Human Rights: https://www.unicef.org/child-rights-convention/united-nations-human-rights, Accessed on 11/04/2021.

- Under the United Nations Human Rights Council, the Universal Periodic Review is a review of the human rights records of all Member States. This State-driven process provides an opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations.
- The United Nations also has an Office of the High Commissioner for Human Rights that is mandated to promote and protect the enjoyment and full realization by all people of human rights.
- The United Nations may also appoint experts (sometimes called special rapporteurs, representatives or independent experts) to address a specific human rights issue or particular country. These experts may conduct studies, visit specific countries, interview victims, make specific appeals and submit reports and recommendations.

United Nations has also presented the Agenda 2030 and the Sustainable Development Goals[11] which is a project that aims to leave no one behind and helps countries with some indicators in order to protect and promote more human rights and fulfil them.

Council of Europe (Commissioner for Human Rights)[12]

The Council of Europe Commissioner for Human Rights is responsible for promoting respect for human rights in the 47 Council of Europe Member States through reports, dialogue, and recommendations to States. The Commissioner is intended to be an independent and impartial entity, led by an individual human rights expert. The Commissioner's responsibilities include assisting Member States in implementing regional human rights standards, promoting understanding and awareness of human rights in the region, identifying gaps in protection, facilitating the activities of National Human Rights Institutions and similar actors, and providing advice and information on human rights protection in Europe.

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11 Sustainable Development Goals: https://sdgs.un.org/goals, Accessed on 11/04/2021

12 Council of Europe Commissioner for Human Rights: https://ijrcenter.org/council-of-europe-commissioner-for-human-rights/, Accessed on 12/04/2021.

European Union (EU)[13]

There are two main streams of human rights policy and action within the European Union. One is to protect the fundamental human rights for EU citizens, and the other is to promote human rights worldwide. The EU Charter of Fundamental Rights guarantees EU citizens' rights. The Charter lays down the fundamental rights that are binding upon EU institutions and bodies. It also applies to national governments when they are implementing EU law. The European Union is based on a strong commitment to promoting and protecting human rights, democracy and the rule of law worldwide. Human rights are at the heart of EU relations with other countries and regions.

EU policy includes:

- promoting the rights of women, children, minorities and displaced persons,
- opposing the death penalty, torture, human trafficking and discrimination,
- defending civil, political, economic, social and cultural rights,
- defending human rights through active partnership with partner countries, international and regional organizations, and groups and associations at all levels of society,
- inclusion of human rights clauses in all agreements on trade or cooperation with non-EU countries.

Bilateral trade agreements and the various association and cooperation agreements between the European Union and third countries or regional organizations include a human rights clause defining respect for human rights as an 'essential element'.[14] The integration process of Albania in European Union requires the protection, fulfilment and promotion of some criteria. On 2010 the Albanian lawmakers voted and adopted the landmark "Law on Protection from Discrimination" which regulates the application of the principle of equality and established the Commissioner for the

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13 European humanitarian values: https://europa.eu/european-union/topics/human-rights_en, Accessed on 12/04/2021.

14 Legal Basis of Human Rights, European Parliament:https://www.europarl.europa.eu/factsheets/en/sheet/165/human-rights#:~:text=The%20EU's%20founding%20values%20are,of%20the%20TEU%3A%20EU%20objectives, Accessed on 12/04/2021.

Protection of Discrimination to ensure more equal rights for vulnerable groups and fighting discrimination in the public and private domain.[1516]

An objective way of monitoring the progress of a country that aims to be part of a bigger organization is the accomplishment of the indicators. Statistics and regular reports on international institutions, show how much work is done and where it needs to be done more. For example, The Agenda 2030 is related with the sustainable development goals, where every country works on achieving the indicators and getting a higher ranking each year. Based on these indexes, Albania should work more for the next couple of years in order to approach with the wanted standards of United Nations.

If we talk about all the Western Balkan countries, citizens of these places should be aware of the fact, that a lot of institutions on international organizations exist to do justice and take care of everyone to feel equal. We should all use these institutions for our own good and utilize all of their tools. In my opinion, another good practice related with the enhancement of international strategies are exchanges between youth (including youth from EU countries, but also Western Balkan countries.) Sharing experiences and different points of view between youth helps opening new windows on the way we see and understand things. All Western Balkan countries are pretty much in the same situation about their integration process, so taking what is good from each-other, will help us. The experience of EU member states will help us understand how things work and what to do better for our future.

5. The position of national minorities in the legal system of my country – how to surpass the gap between the adopted legal and other norms and their implementation?

Historically, the country of Albania has been singled by for the harmonious co-existence between the dominant society and ethnic minorities. The Roma community in Albania is defined as a linguistic minority group.[17]

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15 Council of Europe in Albania:https://www.coe.int/en/web/tirana/-/romacted-programme-at-the-week-against-discrimination-in-albania, Accessed on 13/04/2021.

16 https://www.uart.edu.al/media/150329Ligji%2010221_%202010%20per%20mbrojtjen%20nga%20%20diskriminimi.pdf, Accessed on 13/04/2021.

17 National Strategy for Improving Roma living conditions: https://www.osce.org/files/f/documents/6/8/21232.pdf , Accessed on 13/04/2021.

Fundamental principles of anti-discrimination are embodied in Western Balkan constitutions, as well as in legislation and strategic documents adopted at the central level on minorities. The Albanian Constitution prohibits unjust discrimination on various bases, including ethnicity. While the Constitution guarantees cultural rights to members of national minorities, Roma are not legally entitled to this protection because they are not recognized as a national minority in Albania, but rather as a linguistic one.[18]

Albania is part of the main universal and European human rights treaties and these ones are relevant to the integration process of minorities.

United Nations Treaties[19]

- The International Covenant on Civil and Political Rights (ICCPR) guarantees universal human rights. Article 26, guaranteeing protection against discrimination, and Article 27, guaranteeing the rights of persons belonging to ethnic, religious or linguistic minorities to enjoy their culture, religion and language, are the most relevant to Roma integration.
- The International Convention on the Elimination of all Forms of Racial Discrimination (CERD) is more specific, as it guarantees protection against racial discrimination. It first gives a broad definition of racial discrimination and, in Article 2, states that parties should "undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.

Council of Europe treaties[20]

- The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) guarantees universal human rights. Protocol 12 calls for general protection against discrimination.

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18 Best Practices for Roma Integration Regional Report on Anti-discrimination and Participation of Roma in Local Decision-Making: https://www.osce.org/files/f/documents/a/2/102083.pdf, Accessed on 13/04/2021.

19 Best Practices for Roma Integration Regional Report on Anti-discrimination and Participation of Roma in Local Decision-Making:https://www.osce.org/files/f/documents/a/2/102083.pdf, Accessed on 13/04/2021.

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- The European Framework Convention for the Protection of National Minorities (FCNM) has also been signed and ratified by all states in the Western Balkans. Articles 3 and 15 of the FCNM are the most relevant with respect to Best Practices for Roma Integration.

Measures that can reduce discrimination

We can take care about some measures in order to reduce discrimination on national minorities in our country.

- Raise awareness about discrimination as a problem. Not only Roma people, but everyone should be informed about different forms of discrimination and where to address their concerns, in order to receive a solution.
- Creation of policies to address these minorities directly. Minorities are often marginalized as vulnerable groups. Government should approve different policies that will help these minorities to address their community needs.
- Secure the implementation of the policies. Policies should be functional de facto in every day's life of the minorities. They should bring concrete changes in their daily lives.
- International institutions should join forces with public institutions of our country, but also with civil society organizations in order to increase knowledge of the general public about the existence and rights of national minorities, but also marginalized groups of our society. The Government in Albania had made considerable progress in meeting the targets outlined in the National Action Plan for the Integration of Roma and Egyptians 2016-2020.[21]

6. Conclusion

The main focus of this essay was a general personal view of concepts of human rights and non-discrimination in Albania. There are some pillars that need more attention and consideration from public institutions in accordance with international policies that affect these concepts.

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21 Committee on the Elimination of Racial Discrimination considers the report of Albania: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23976&LangID=E, Accessed on 13/04/2021.

In conclusion, as a country in development, Albania is constantly taking measures on improving life quality on her citizens. Trying to protect and promote human rights and non-discrimination even in government's policies, my country is trying to fulfil some indicators that are presented by international organizations, such as United Nations and European Union. In order to understand the personal growth and the progress of a country, constant reports and surveys are some good indicators of change and of what it needs to be done more. If we relate this topic with international institutions and organizations, collaboration and cooperation between countries is really important and helpful for the situation that the Western Balkan countries are living right now. Exchanging different policy models, may actually help to bring a new era someplace, especially for legislators.

If we leave behind international cooperation for a moment and focus on a specific country policy, then our population and their commitment on promoting human rights can help to change a lot of the situation we are living in. If we want to change something, we should all work together to make that happen. In the end of the day, human rights and non-discrimination policies are our every day's life and affects us everywhere we go and on everything we do.

In order to raise awareness on the commitment of the population, I would suggest regular inspections on every public and private institution related to the protection of human rights. In cases of the violation of law, responsible institutions should apply higher fines and more severe punishments, because protecting human rights is basic for the democracy of a country. In coherence with what was previously mentioned, people should also get used to the idea of reporting every case of human rights violations, because, they "force" in some ways the rule of law and help the specific institutions do their job better.

Last, but not least, education is one of the most important tools that we can use to inform people about their rights. Education about such concepts should start since on an early age and continue for as long as we are part of a society, because it will always affective. Firstly, education is one of the most important human rights, but at the same time is essential to make other human rights work. Education provides us the tools to improve our life quality. This way we learn to make the right choices and perform our duties properly. Learning more about the human rights on a national and

international level, will help us understand how much bigger this system is, because of its importance and how things work. An educated citizen promotes personal growth, but an educated population represents empowerment.

If we have one job to change something, this is the one. Everyone deserves to feel equal and live with all of their rights.

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PROTECTION OF HUMAN RIGHTS AND NON-DISCRIMINATION

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1. Human rights

The general principle of equality and non-discrimination is a fundamental element of international human rights law.

During its historical development, the catalogue of human rights has expanded, first in domestic and later in international law. It was the result of recognizing as yet unrecognized values, recognizing the wider autonomy and dignity of men and women, and strengthening the idea of democracy. This development is not complete, there are constant demands for the recognition of new rights. These new rights were standardized in international instruments and then legalized. The interpretation of already recognized human rights has been expanded by the case law of international judicial institutions.

"Without the life and freedom of every human being, as well as the protection of his physical integrity, a discussion of the corpus of basic human rights would make no sense. This group of human rights includes: the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of slavery or similar forms of denial of liberty and forced labour, freedom and security of person, freedom of movement and the right to asylum." (M. Paunović, B. Krivokapić, I. Krstić 2013, 45;)

Human rights are a special type of natural rights, as they are derived from the natural state. Their essence is not of a positivist character. They are original, universal and inalienable. Human rights are based on the moral assumptions of modern man. This idea permeates all international human rights instruments. Of course, this view of human rights also raises a number of issues related to naturalism in the theory of law.

In everyday life, in most situations we all enjoy human rights. Also, in many cases, some of our human rights can be endangered or violated. For example, if you find yourself in a situation where you need legal protection, we are guaranteed the right to equality before the law, regardless of whether you are an activist of a trade union organization or a political party, a member of a national minority or a woman. When you go to the polls or vote to participate in the election of the future government, you exercise your right to vote. Every individual also has the right to private life, which means that he can live as he wants, protected from the public. This implies that no one, not even the state authorities, can arbitrarily and without orders review other people's letters and eavesdrop on conversations, and the inviolability of the apartment is guaranteed.

On the other hand, when someone tells you that even though you meet all the conditions, you will not be hired because you are a woman, discrimination has been committed.

When you want to travel somewhere and you have to pay a tax to the state for leaving the country, your right to freedom of movement is endangered.

If you wait in line for hours to receive a confirmation, excerpt or duplicate of a document from the municipal authorities, and for others to complete the same work "through a connection" in a few minutes, the impartiality and conscientiousness of the administration is in question.

If you are dissatisfied with the amount of compensation for your work and appear at demonstrations whose holding is prevented by the police or you are prevented from being fired for participating in a strike, your rights to peaceful assembly or strike rights have been violated.

Of course, not all rights that belong to an individual are basic human rights. Most rights require certain conditions, which are prescribed by the laws of one state. For example, in order for a person to be a high school teacher, he must have a university degree, in order for someone to be able to establish a marital union or employment, a certain age limit is set by the regulations adopted by the state, etc.

Human rights do not depend on the state, nor does it provide them to individuals, but the human being has them simply because he is a human being. This means that your

right to life belongs to you simply because you are a human being, and not because it is prescribed in some legal text.

Therefore, it can be said that human rights are above the state and that it must respect them because man enters the state union of his own free will as a free being with some rights that cannot be taken away from him. Human rights are not prescribed by legal regulations, nor are they approved, but are guaranteed.

Most human rights are directed towards the state. Requests to the state can be formulated as requests for refraining from doing something, is as demands to be exempt from a particular type of state interference (e.g., the right to freedom of subsistence) or to be required to act actively by the state (e.g., securing the right to unemployment benefits).

It can be said that human rights exist to limit the power of the state.

„Human rights have some special characteristics:

- All human rights are universal, indivisible, interdependent and interconnected:
- They are universal, which means that they belong to every human being equally. Like any other type of right, human rights are protected by various mechanisms - the Constitution, laws, international treaties and the like.
- Human rights are inalienable, inseparable from the individual. They are not and cannot be a matter of merit, reward or choice, they cannot be sold, given away, earned or taken away.
- Human rights are inviolable, which means that the state or someone else cannot revoke them. Human rights are indivisible. They are of equal importance and interdependent, so that one group of rights cannot be achieved at the expense of another group of rights." (Vučinić 2001, 145.)

Human rights are, therefore, common to all individuals on the basis that they are human beings, they provide a minimum of protection and authority that is available to all. They are the minimum requirements we can place on society or on other people just by being human.

2.   Human rights restrictions

Endangering human rights or the public interest, in the ranks of which next, we will address the issue of permissible restrictions on human rights. States parties to all international treaties guaranteeing the rights and freedoms are authorized to exercise these rights and freedoms in precisely defined situations subject to restrictions, and even to put some of them out of force for a while. Pre above all, the enjoyment of every right is limited by the rights of others.

The first type of human rights restriction concerns the repeal of certain rights and freedoms in extraordinary circumstances. For example, in a state of war danger, rebellion larger or other dangers to the people and the state caused by natural disasters or disasters, most of the rights and freedoms guaranteed by international treaties it is possible to abolish, but only temporarily, ie. until those circumstances pass. This condition the dangers must contain a threat to the physical existence of the population of one state. More which abolish these rights must be the most necessary, the only remaining necessary measures which eliminate the existing danger and must be in accordance with the obligations of the state which it has under international law.

Certain rights are absolutely protected, i.e. they cannot be limited except in cases imposed by the use of those same rights and freedoms by others. List rights that cannot be restricted are found in various international documents. U depending on the time of adoption of individual documents, that list is shorter or longer. So, the shortest list of absolute rights is in the European Convention on Human Rights which was adopted in 1950. It refers to: the right to life, the prohibition of torture, inhuman or degrading treatment, prohibition of slavery or servitude, prohibition retrial of persons already convicted or acquitted on the same criminal offense.

In some later adopted international instruments as absolutely protected rights include freedom of thought, conscience and religion, family rights, children's rights, the right to citizenship and the right to participate in government.

The second type consists of the so-called. built-in restrictions. Unlike repealing certain freedoms and rights, some of which are permanently restricted. For example, the right to freedom (one of the basic human rights) is constantly restricted because the law

allows it that anyone suspected of endangering someone else's right be arrested, ie. Deprived the right to liberty.

In addition to these explicit restrictions, some people have a narrower ability to enjoy certain rights. Thus, the right to persons serving a prison sentence is narrowed respect for family life or correspondence.

A special form of permissible restrictions on human rights are optional restrictions, which authorize the state to limit in the general social interest exercising certain rights and freedoms. These restrictions must be prescribed by law and be necessary in a democratic society in order to protect the basic values of each state, such as national security, public health, morals or freedoms and the rights of others. Optional restrictions only give states the right to decide on the extent of their enjoyment rights and freedoms.

3.   Protection of human rights

The European Court of Human Rights was established by the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. He started working two years later, as it is his jurisdiction recognized by eight States Parties to the Convention. The seat of the Court is in Strasbourg, France, where the Council of Europe, of which the Court is a part, is located, as one of its organs.

With the entry into force of Protocol no. 11 European human protection system rights has become simpler, more efficient and free of certain interstate and political elements. The new protection mechanism has been simplified in that the single and permanent court has now taken over the functions of three different bodies (the European Commission, the European Court of Justice and the Committee ministers). Contrary to the earlier system where states are periodic, out of three years to five years, renew their acceptance of the jurisdiction of the Court,

Article 19 of the Convention provides that the High Contracting Parties shall establish, in order to comply with their obligations under the Convention, the European Court of Human Rights. In addition, protection has become more effective by giving citizens the right to apply directly to the Court who, in accordance with his unique

competence, examines their acceptability and reasonableness. Finally, Protocol no. 11 abolishes the European

„Commission as a para-judicial body and deprives the Committee of Ministers of decision-making power, thus establishing the preconditions for a genuine judicial protection of human rights. By establishing a permanent, unique and mandatory jurisdiction of the Court this institution is profiled as genuine supranational court instance." (cit. United Nations, New York 1989, 189)

The Court currently has 47 judges - as many as the Contracting State Conventions. In an effort to ensure their independence, the Convention prescribes the conditions for performing the judicial function, the manner of their election and the length of the term. Thus, persons who are elected must be elected judges meet high moral requirements and meet the conditions for performance high judicial titles, ie which are recognized legal expert.

No state may introduce discrimination into its regulations, either covertly or in an open manner, and is obliged to prevent and prosecute it if it is committed by any subject, including private individuals. Of course, the state cannot control all its citizens to force them not to discriminate in their relationships. However, she must combat discrimination even where the enjoyment of rights depends on the actions of private individuals.

It is allowed, on the other hand, for states to benefit members of groups that have been throughout history they have often been discriminated against and take positive action, which is commonly referred to as positive discrimination or affirmative action. The goal of these measures is to correct the historical one injustice and to bring all people into a state of real equality.

An example is the US regulations that require all higher and higher schools are obliged to accept a certain percentage of black students, Mexican and other "minority" candidates, regardless of their previous success in education. The provisions contained in the laws of many countries have a similar purpose in terms of the privileged position of women in employment.

It should be pointed out that "positive discrimination" measures must be in place of a temporary nature, ie to last until the position of the members of the neglected group don't fix it.

Although many countries have accepted the obligation to protect and promote human rights by signing international agreements, this did not mean automatic respect for these rights. For countries with a long democratic tradition, this was not a major problem, but dictatorships and countries without a strong democratic tradition have, given that they have tried to cover up or commit human rights violations to a lesser extent.

Thus, in the East, there was a whole defence system based on the ideology of which are civil and political rights (freedom of expression, peaceful assembly, etc.) bourgeois fabrication. On the other hand, some democratically organized states were closing down eyes before dictatorships, such as those in Chile or Argentina. After the end of the ideological conflict, which marked forty years of the Cold War, the idea of human rights is growing considers a fulcrum around which a comprehensive system can be built generally acceptable solutions concerning the relationship between the individual and society. With the demolition of Berlin wall as a world trend there is an insistence on respect for human rights.

„The state responsible for human rights violations does not receive any immediate sanctions, but there are indirect or political sanctions. A country that violates human rights first criticized by other states, her case may appear before various authorities." (Dimitrijević, Paunović, Đerić 1997, 88).

Resolutions and declarations with the United Nations can be adopted against its condemnation. With increasing human rights violations, the country is gradually entering the international arena isolation, is marginalized, its position becomes unfavourable economically, political and many other plans.

Human rights have ceased to exist on their dynamic development path an internal matter of one state, and the state has to some extent renounced its absolute sovereignty in favour of international obligations. The dynamism of human rights is also reflected in their constant expansion. In recent times, there has been an accelerated tendency to increase their number, and the recognition of new rights is sought.

The evolution of human rights will certainly continue. On the one hand, new ones will be noticed dangers to human rights and human dignity, on the other hand, will always exist the need to recognize new rights. Two circumstances need to be pointed

out along the way. First, new and different rights should not suppress existing or recognized rights.

Secondly, it is not everything that is beautiful, desirable, or attractive in itself is right. One is something to admit as the value to be aspired to, and the other is to claim to be entitled to that value. That's how it is case with claims that there is a right to tourism. Those who think they will value values or needs to be strengthened by declaring them rights, the very notion of human rights to some extent trivializes and thus reduce the authority of already recognized rights. (Kreća 2008, 398.).

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SOCIAL EXCLUSIONS OF THE LGBTIQ + POPULATION IN THE REPUBLIC OF SERBIA AND THE ROLE OF THE EUROPEAN UNION

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1. Introduction

Years back, research in Serbia showed poor statistics on the protection of the rights of members of the LGBTIQ+ (Lesbian, Gay, Bisexual, Trans, Intersex, Queer +) population. Having all that information in mind, I become interested in the issue myself, paying attention to what people in my environment consider to be legitimate treatment of members of the LBGTIQ+ community. The results are quite poor and seem to be at odds with the principles of equality that Serbia, as a modern state, aspires to. According to social research, LGBTIQ+ community members and people living with HIV are among the most discriminated groups in Serbia. Many people in Serbia have social distance from members of the LGBTIQ+ population and there is an equal distance within the family. Until 2008, the Ministry of Health considered homosexuality a disease, and transsexuality is still considered a mental disorder in Serbia (United Nations Development Programme, Being LGBTI in Eastern Europe: Serbia Country Report 2017, 11). The situation in Serbia on this issue has stagnated for years and it is necessary to deal more with this topic in order to find adequate solution.

2. Recommendations of the council of Europe to Serbia on improving the position of the LGBTIQ+ population

The 2009 Discrimination Act explicitly prohibits discrimination based on a sexual orientation and gender identity. The Republic of Serbia is bound by almost all United Nations agreements in the field of human rights, the European Convention on Human Rights and numerous conventions of the Council of Europe. International

organizations and state institutions for the protection of human rights, nevertheless, constantly point out the problems of weak and inconsistent protection of the rights of LGBTIQ+ people in practice. The Council of Europe has issued recommendations for improving the position of LGBTIQ+ people (Recommendation of the Committee of Ministers of the Council of Europe CM/Rec 2010),[1] which, in my opinion, should be consistently adhered to and made possible in practice. Recommendations to Serbian government were:

- To draft a comprehensive Antidiscrimination strategy that would include interests of LGBT people, along with an Action Plan that would list activities aimed at improving the position of LGBT people, responsible bodies, along with adequate funds for such actions.
- To adopt an Action Plan for implementing the Committee of Ministers of the Council of Europe Recommendation.
- To adopt legislation that would regulate same-sex partnerships.
- To adopt legislation that would regulate gender reassignment processes and legal recognition, as well as legal regulation of medical aspects of the gender reassignment processes.
- To amend draft Law on Amendments and Addendums of the Law on Extrajudicial Proceedings in such a way to exclude the requirement of a court's permission to undergo gender reassignment.
- To assure freedom of peaceful assembly for LGBT people.
- To create a comprehensive statistical system that would include data on prevalence and nature of discrimination and violence based on sexual orientation and gender identity.
- To conduct regular research about levels of acceptance / hostility towards LGBT people.
- To conduct regular research about the effectiveness of existing laws, when it comes to sexual orientation and gender identity.
- To conduct regular and large-scale media campaigns to end homophobia and transphobia in the Serbian society.

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1   https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a, last visited 30 March 2021.

- To create a working group for the analysis of all primary, secondary school and university textbooks in order to map and eliminate discriminatory and inaccurate content in all teaching aids, and in order to include affirmative and accurate information about LGBT persons.

- To introduce continuous trainings for educational staff at all educational levels, to pupils and students, as well as for employees of the Ministry of Education, Institute for the Advancement of Education and the National Educational Council.

- To introduce effective measures that would protect LGBT pupils and students, as well as LGBT teaching staff, from bullying, harassment and discrimination in the educational settings.

- To introduce continuous trainings and other educational programs about sexual orientation and gender identity for employees of the Ministry for Internal Affairs, prosecutors and judges.

- To introduce continuous trainings and other educational programs about sexual orientation and gender identity for medical, mental health and social service professionals.

- To end mandatory sterilization of transgender people.

- To establish safe houses for LGBT people and effective measures that would prevent homelessness of LGBT people.

- To create programmes, campaigns and codes of conduct for employers and employees both in private and public sectors, in order to provide working environments free of discrimination based on sexual orientation and gender identity. (Recommendation of the Committee of Ministers of the Council of Europe CM/Rec (2010)5, 6-7).

Legal protection of LGBTIQ+ population in Serbia according to the previous recommendations of the Council of Europe

In December 2012, an aggravating circumstance was introduced into the Criminal Code of the Republic of Serbia for hate crimes, in order to contribute to a more efficient prosecution of suspects for violence and other acts against LGBTIQ+ people, which includes both verbal and physical abuse. The effect of these measures is being called into question because no hate crime court has ruled, and there are no official centralized data on the number of reported crimes motivated by homophobia and

transphobia. According to a survey conducted in the LGBTIQ+ community in Serbia in 2015, it was concluded that their highest priority is to achieve an appropriate level of personal security. At the same time, another study showed that 70% of respondents, members of the LGBTIQ+ community, experienced psychological violence and harassment, while 23% of them stated that they also encountered physical violence (United Nations Development Programme, Being LGBTI in Eastern Europe: Serbia Country Report 2017, 8). During 2015, a crowdsourcing portal was launched "Let it be known!" to provide support to victims and as a place where records of cases of violence and discrimination will be kept in place. That state institutions do not do enough can be concluded from numerous researches and reports, both domestic and foreign, which talk about the situation in Serbia. As if the government must not do more for the LGBTIQ+ community, fearing that by fulfilling such demands in practice, it will lose the support of the people. I consider it a progress that in 2017. Ana Brnabić, who publicly declares herself a lesbian, became the Prime Minister of the Republic of Serbia. She is also the first woman in Serbia to become Prime Minister and the second ever LGBTIQ+ prime minister in the world. In addition, she was the first Prime Minister in Serbia to attend the Pride Parade. Unfortunately, when asked whether her election as Prime Minister has improved the situation in Serbia in terms of improving the rights of the LGBTIQ+ population, the answer was no. Contrary to expectations, she did not particularly advocate for the improvement of the rights of the LGBTIQ+ population, but followed the example of her predecessors and remained quite restrained from such actions. As the commission from the Council of Europe advised Serbia to pass a law on same-sex unions (Recommendation of the Committee of Ministers of the Council of Europe CM/Rec 2010, 5), the draft law entered the procedure of public debate and the procedure of drafting laws in the National Assembly of the Republic of Serbia at the end of April 2021. The President of the Republic of Serbia, at the beginning of May 2021, stated that he could not sign such a law and that he would return it to the National Assembly, given that it contradicts the existing Constitution of the Republic of Serbia, Article 62 of which shows that marriage considered a community of man and woman. By delaying the adoption of such a much-needed law, Serbia is certainly moving away from resolving the problems of human rights and the rule of law, which will apply equally to all its citizens. If, as the President said, the adoption of such a law would be in conflict with the existing Constitution, it would be necessary to change that

part of the Constitution in order that such a law be adopted. It will take significantly more time to change the Constitution with amendments.

3. Health care and personal data protection of LGBTIQ+ people in Serbia

I would like to point out the problem of health care for members of the LGBTIQ+ community, which is a big problem, and which is insufficient or even non-existent. The Constitution protects the right to health care and obliges the state to help develop health. Healthcare law contains anti-discrimination provisions, but does not explicitly mention LGBTIQ+ members. Access to health services is difficult, especially in rural areas, due to insufficient resources needed for the health sector and inadequate coverage population to doctors and other health professionals. There are numerous shortcomings in the legislative framework for the protection of health-related medical data. The Commissioner for Information of Public Importance and Personal Data Protection warned that patients' personal data is insufficiently protected in the Ministry of Health's IZIS electronic database. Under the Law of Protection of Personal Data one's sexual orientation is considered to be particularly sensitive data and, with the exception of special circumstances, can be processed only on the basis of free, written consent by the person, provided that he or she has been previously informed about the purpose and all other relevant information in the connection with the processing. The Commissioner for the Protection of Equality established the existence of a discrimination practice in a state-run clinic for students, where a regular systemic medical exam questionnaire included a question on a patient's sexual orientation. End of processing and deletion of the collected data was ordered by the Commissioner for Information of Public Importance and Personal Data Protection. A 2012 survey indicated that only one in ten LGBTIQ+ people consider health facilities adequately respond to their physical and mental needs. Based on previous negative experiences, many LGBTIQ+ people fear that coming out could lead to stigmatization and secondary victimization as a consequence of an unprotected environment, where confidentiality is compromised. LGBTIQ+ individuals are sometimes reluctant to disclose their sexual orientation even when such information is medically relevant.

What should be done in Serbia regarding health and personal data protection of the LGBTIQ+ population in Serbia

According to the recommendations of the European Union and with the help of the policy towards the Republic of Serbia, the most adequate solution would be, in addition to financial investments of our country in health, cooperation of our health care institutions and medical workers with the health care system in European Union and exchanging experiences and knowledge on how to improve health care in this field. Mental health is important, and so in this case, always equal to all and available to all. By launching sites that are free and accessible to everyone, as well as free and secret counselling centres within health centres, much would be done for the mental health of people in the LGBTIQ+ community. Such things already exist in the countries of the European Union, and that should not be a problem for Serbia, to be guided by the experiences and example of other countries, to introduce more[2] such programs. For example, Synergy health programs and Beyond Blue are sites that offer free support to LGBTIQ+ people who for some reason need this kind of help and is available to everyone. I am sure that such sites would be successfully run in Serbia and in the Serbian language, and that by launching and promoting them, awareness would be raised about the equal importance of the mental health of all citizens of the Republic of Serbia. As one of the most drastic examples of discrimination against LGBTIQ+ people in the health system, participants in a recent survey pointed out to the restriction of rights that would otherwise be available to partners in a heterosexual relationship, and they encompass a number of rights such as the right to visit patients, to make health decisions for someone, or to possess health care insurance. There is also a problem when it comes to issuing documents to transgender persons or documentation that is in line with the person's current gender identity. There are still no appropriate legal solutions in Serbia for such issues.

4. The main requirements of LGBTIQ+ organizations in Serbia

The Constitutional Court of Serbia pointed out such an omission and stated that the non-definition of such an issue violates the right to respect for private life guaranteed

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2   In Serbia, there is, as will be stated below, for example the website Geten, which is intended for this purpose (https://www.transserbia.org)).

by Article 8 of the European Charter of Human Rights. Some of the main demands of LGBTIQ+ organizations in Serbia are the following:

- Ensuring sustainable and permanent cooperation with state institutions and institutions for the protection of human rights;
- Continuous monitoring and improvement of the work of state institutions for the protection of the rights of LGBTIQ+ citizens, and cooperation with relevant institutions with the goal of a multidisciplinary and comprehensive approach to finding solutions to the problems of LGBTIQ+ citizens;
- Continuous capacity building and strengthening of the LGBTIQ+ community. Improving the visibility and participation of LGBTIQ+ citizens in social processes and decision making;
- Engaging with the general population in order to establish dialogue and eliminate social distance, homophobia, transphobia, and other forms of discrimination. (Being LGBTIQ+ in Eastern Europe: Serbia county report 2017, 32)

5. Recommendations on the role of the European Union towards Serbia in order to improve the position of the LGBTIQ+ population

As some of the recommendations of the European Union to the Republic of Serbia, I would point out:

- The European Union should reiterate its unequivocal support for the European perspective of Serbia whenever possible, and clearly state the future of Serbia is within the European Union;
- Strengthening the rule of law and respect for human and minority rights should remain the very foundation of Serbia's accession to the European Union, ensuring the protection of the rights of LGBTIQ+ persons as a fundamental part of the process;
- The European Union should continue to demonstrate public support for the rights of LGBTIQ+ persons within Serbia's accession process and request a formal dedication from Serbia to advance the rights of LGBTIQ+ persons by the adequate implementation of the existing laws and policies and amend its legal and policy framework in order to fill the gaps;

- The European Union should continue with its comprehensive and crucial support for LGBTI civil society and human rights defenders;
- The European Union should continue its efforts to address the lack of data on the life experiences of LGBTIQ+ persons in Serbia, and support Serbia in achieving equality for its LGBTIQ+ citizens through the proper usage of such data;
- Any future LGBTIQ+-related strategic documents adopted within the European Union should also refer to the candidate countries, including Serbia. (Raičević 2020, 30).

6. position of LGBTIQ+ people in Serbia according to the latest European Commission

The annual report of the European Commission on the situation in Serbia, for 2020, regarding the improvement of the position of the LGBTIQ+ population, states that the situation is mostly unchanged compared to previous years. It is also stated that the application of the law on hate crimes, including the basis of sexual orientation, remains inadequate. In Serbia, there is still no official database on hate crimes committed by bias motivation. Due to mistrust in institutions and out of a justified fear of stigmatisation and victimisation, cases of violence and general discrimination in society towards LGBTIQ+ persons are often not reported. Transgender persons are particularly vulnerable to violence, abuse and discrimination. Intersex persons remain invisible both socially and legally. It can be concluded that the existence of satisfactory legal acts and formal legal equality is not enough to improve the position of the LGBTIQ+ population in society.

7. General recommendations

In our society, structural discrimination appears as the biggest problem, and therefore deeper structural changes are needed at the level of everyday life. To overcome this, diversity must be recognized and displayed. As well, it is necessary to change the ingrained negative attitude of the majority of Serbian citizens[3] regarding same-

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3   In 2015, almost 90% of respondents said they were against holding a pride parade (National Democratic Institute data). Information available on the following website: https://www.ndi.org/central-and-eastern-europe/serbia, last visted 29 March 2021.

sex relationships and transgender people. The introduction of structural changes is especially important in the field of education (so-called queer inclusion), in order to accept an affirmative view of the LGBTIQ+ population. Major change strategies should focus on raising awareness through formal and non-formal education channels. One of the ideas is to include in the textbooks for children, high school and university students, as well as all other literature, appropriate contexts in which members of the LGBTIQ+ population are not discriminated against and their community is presented as an integral and in all respects equal part of every society. However, although Serbia is progressing slowly on the issue of discrimination against members of the LGBTIQ + community, a slight shift can be seen, especially in the last decade. There are organizations such as Geten which provide support and antidiscrimination policy. Geten is the first all-inclusive organization that, in addition to lesbian and gay men, brings together bisexual, transgender people, as well as intersex, queer and heterosexual people, affirming their rights, needs, problems, existence and culture. Geten received international awards for his work: the European Pride Award in 2001 and the Grizzly Bear Award in 2001 (together with Labris, for organizing the LGBTIQ+ Pride Day, 2001). If, with the help of the state authorities and the European Union, more support was directed to organizations of this type, as well as constant campaigns to raise people's awareness of all kinds of diversity, many results in that field could be achieved. The policy of European Union towards Serbia should be encouraging and provide incentives for assistance in the form of advice by which EU member states have improved or solved the problem of social exclusion of the LGBTIQ+ community members. Professional help is needed in the form of more experienced associations and organizations for the protection of human rights that will share their knowledge and advice to associations in Serbia. This can be realized through numerous mobilities, international seminars, online meetings, etc. This would successfully foster international cooperation in the field of sharing experiences and fostering a campaign on non-discrimination. As in the recommendations received by the Council of Europe, Serbia should adhere to these recommendations and conduct a campaign that could start the process of eradicating homophobia and transphobia by the influence of the media, as well as with the participation of influential people, athletes and others. The problem arises because the authorities and institutions in Serbia still do not apply in practice the sufficiently prescribed laws and penalties for acts committed out of hatred and discrimination against same-sex communities. In the meantime, we should

certainly make the recommended advice of the European Union on this topic and gradually strive to meet the goals and prepare for the law, when it is adopted, to actually be applied in practice. In the current circumstances in Serbia, civil society should play a crucial role. By changing our own views on the differences present everywhere around us, it will be easier for the institutions to adopt laws relating LGBTIQ+ rights and thus reduce the problem of discrimination in society. Everyone should keep in mind that members of the LGBTIQ+ population are equal in rights and obligations just like all other citizens of the country and that this is guaranteed by the Constitution.

8. Conclusion

The process of European integration of the Republic of Serbia is not easy, but certainly with the engagement and participation of institutions, authorities and citizens, with the encouraging and inclusive policy of the European Union, that process can be significantly facilitated. Through numerous mobility and international cooperation of the member states of the European Union with the Republic of Serbia, a greater degree of harmonization in future work and cooperation is achieved. By including members of the LGBTIQ+ population in these processes, an environment is created in which homophobia and transphobia are best "cured". Implementation is the key, as is acceptance. LGBTIQ+ community members should never be seen as something foreign and unusual, different from others. I believe that the state of Serbia and its citizens are ready to face the problem and respond to the demands needed to overcome this social exclusion.

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PROTECTION OF HUMAN RIGHTS AND NON-DISCRIMINATION - DISCRIMINATION BASED ON SEX

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1. Introduction

The right to equality and non-discrimination is a right enshrined and protected by various international instruments. This right is promoted by both: regional international agreements, as well as universal international agreements. The right to equality and non-discrimination is recognized in Article 2 of the Universal Declaration of Human Rights (UDHR), Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR), Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 2 of the Convention on the Rights of the Child, and Article 5 of the Convention on the Rights of Persons with Disabilities (CRPD). Also, two United Nations (UN) human rights treaties are established explicitly to prohibit discrimination, namely the Convention on Elimination of All Forms of Racial Discrimination (ICERD), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Alongside UN, the countries of the European Community have also recognized the right to equality and non-discrimination through Article 14 of the European Convention on Human Rights (ECHR), Article 21 and Article 23 of the Charter of Fundamental Rights of the European Union (CFR).

Over time, under the influence of the case-law of international bodies, this right has acquired a multidimensional meaning. Although this right is formally proclaimed in many international instruments, often in reality across different states, individuals are victims of discrimination. Even at the national level, this right is also formally proclaimed by the Constitution of Kosovo and legal acts, however the reality is different. A very common form of discrimination present in Kosovo is the discrimination based on sex. The influence of centuries-old traditions has made it difficult to extinguish the

patriarchal form of social organization. Therefore, in most cases women are victims of discrimination based on sex. The failure of state bodies to take concrete steps to address such a problem has prevented women from enjoying and exercising their constitutional and legal rights. However, women are not the only victims of sex-based discrimination. In certain cases, men also appear as victims.

Ensuring the right to gender equality and non-discrimination and achieving ECHR standards regarding this right, remains a challenge for Kosovo. This paper aims to give a reflection of the situation in Kosovo about how much gender equality is respected. The questions that will be addressed through this paper are: How gender discrimination affects the position of women in society? Is domestic violence considered to be a form of discrimination? What are the cases where men appear as victims of gender discrimination? What are the steps that the state should take to eradicate gender discrimination?

2. The Legal Framework for the Protection of Gender Equality in Kosovo

Article 14 of the European Convention on Human Rights expressly prohibits all forms of discrimination. This article provides that "the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status" (ECHR, 1950). This general norm of non-discrimination has acquired a multidimensional meaning based on the case law of the European Court of Human Rights (ECtHR). The purpose of such a norm is to create an environment where equality prevails.

At the national level the Constitution of the Republic of Kosovo has a special position regarding human rights and fundamental freedoms. Article 22 of the Constitution of Kosovo provides that "human rights and fundamental freedoms guaranteed by the international agreements and instruments, listed in this article, are also guaranteed by the Constitution, and are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions" (Constitution of the Republic of Kosovo, 2008). Among others, the European Convention on Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women are also listed in this Article. Furthermore, Article 7 of

the Constitution of Kosovo qualifies gender equality as a fundamental value for the democratic development of society, and provides the obligation of the Republic of Kosovo to safeguard it.

In addition to these constitutional provisions, the Law on Gender Equality, (which deals exclusively with the issue of gender discrimination), and the Law on Protection Against Discrimination, have also been adopted in Kosovo. Gender equality is also formally provided in Article 42 of the Family Law, and Article 3 of the Law on Inheritance.

Although formally, the Constitution of the Republic of Kosovo and other legal acts put gender equality on the pedestal and require its implementation as a fundamental democratic value, the reality does not comply with these constitutional requirements nor with the ECtHR's standards.

3.   The Influence of the Canon of Lekë Dukagjini on the Right of Inheritance of Albanian Women

The European Court of Human Rights has held that "references to traditions, general assumptions or prevailing social attitudes in a particular country were insufficient justification for a difference in treatment on grounds of sex" (Konstantin Markin v. Russia, 2012). For example, "States were prevented from imposing traditions that derive from the man's primordial role and the woman's secondary role in the family" (Ünal Tekeli v. Turkey, 2004).

For centuries, "the Albanian traditional law has been preserved in its most comprehensive form in the "Kanuni i Lekë Dukagjini" (The Canon of Lekë Dukagjini)" (Trnavci, 2010, 201). Even though "the code is popularly attributed to Lekë Dukagjini in fact, like other bodies of customary law, it is not the work of any one person, but rather represents a set of maxims or precepts transmitted orally and evolving over a long period" (Bracewell, C. 1993, 166). "It was initially an unwritten code of law that, for centuries, strictly governed social behaviour and everyday life in almost all Albanian settlements" (Boman et al. 2012, 1). The Kanun was later codified. "It has been used mostly in northern and central Albania, Kosovo, and surrounding areas formerly in Yugoslavia like Montenegro, Macedonia, where there is a large ethnic Albanian population" (Bregasi, 2016, 99). "The Kanun has had a profound influence on Alba-

nian culture and civil law, and even though the Kanun is not legally binding today, it is widely respected and still practiced with certain changes in parts of Albania and Kosovo" (Trnavci, 2010, 201-202).

The Kanun of Lekë Dukagjini denies a woman the right to inherit. Article 20 of the Kanun talks about the legacy of the Albanian woman, according to which the Albanian woman has no inheritance in her parents. This article of the Kanun word for word states that it considers the woman as a surplus. Even though the Kanun is not legally in force, it's still practiced and respected in some parts of Kosovo. This has influenced for women not to appear as the heir of the property of the testator. The inheritance law in Kosovo provides for the possibility of renunciation of inheritance in the article 130. This right of renunciation is very often exercised by women. This is done for various reasons either because they think they are taking the property from their brother(s), or because they do not want to ruin the relationship with their family. Despite the fact that Article 3 of the Law on Inheritance in Kosovo classifies all persons under the same conditions, as equal in inheritance, the customary norms which, have been applicable for a long time have left their mark. These customary norms have established the general attitude of society that women do not have the right to inherit. As a result of such a mentality, women often end up not exercising their inheritance rights even though such rights are recognized by the constitution and the laws.

According to the data of the Kosovo Business Registration Agency, (the data being obtained and visualized by the platform "Bizneset e Hapura", developed by the NGO Open Data Kosovo), only 11.31% of the businesses registered are owned by women, while 74.09% are owned by men. Through this data we see that businesses are run by men and do not include women or daughters of the family.

Based on research published by the non-governmental organization Communication for Social Development (CSD) in 2017, "73% of citizens in Kosovo do not have basic knowledge about their property rights, only 3.8% of women in Kosovo inherit real estate from their parents, only 19% of women in Kosovo own real estate in their own name" (CSD, 2017, 4).

Based on these data, we can see that the situation in Kosovo is almost alarming in terms of gender equality. Over the years there have been several attempts from the civil society to improve this situation, among others through the revision of textbooks

with sexist content. However, there is still much to be done in this regard in order to eliminate discrimination based on sex. Therefore, cooperation between the governing bodies, civil society and other actors is needed in order to achieve the goals of guaranteeing gender equality as a constitutional requirement.

4. Domestic Violence as a Form of Discrimination

The Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter "the CEDAW") defines discrimination against women under Article 1 as

"... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (Convention on the Elimination of All Forms of Discrimination Against Women, 1979).

The Committee on the Elimination of All Forms of Discrimination Against Women has found that "gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men and is thus prohibited under Article 1 of the CEDAW" (Opuz v. Turkey, 2009). According to the General Recommendation No. 19 of the CEDAW Committee paragraph 24 (t), "States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence" (General recommendation No. 19: Violence against women Background, 1992, 5).

The European Court of Human Rights also considered that "the State's failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional" (Opuz v. Turkey, 2009). Accordingly, the ECHR considers domestic violence to be a form of discrimination against women and emphasizes the obligation of the state to protect victims of domestic violence.

Even at the national level in Kosovo, the Law on Gender Equality "states that gender-based violence is a form of discrimination" (Law on Gender Equality of Kosovo, 2015). There is a legal framework for the protection of victims of domestic violence in Kosovo, namely in 2010 the Law on Protection from Domestic Violence was adopted.

Also according to Article 248 of the Criminal Code of Kosovo "domestic violence is considered a criminal offense" (Criminal Code of Kosovo, 2018).

However, domestic violence, according to various researches, is of a high level in Kosovo. According to research conducted in 2019 by the OSCE mission in Kosovo, "based on the statistics of the Kosovo Police, in the period January-September 2018, in the Kosovo's Police Office 1,129 cases of domestic violence were reported, representing an increase of 148 cases for the same period of 2017. During this period the Kosovo's Police reported 7 deaths as a result of domestic violence" (OSCE, 2019, 4).

Very often despite the fact that women seek protection from the authorities, their cases are not taken seriously. In this regard, they become victims of murder as a result of domestic violence. Two cases that have received media attention are the case of Diana Kastrati and Zejnepe Bytyqi Berisha. In these two cases despite the fact that these women have sought protection from the authorities their claims have not been taken into account. Following the submissions of the requests for protection, these two women were killed by their husbands. The Diana Kastrati's case was filed in the Constitutional Court of Kosovo, by her parents, requesting that the Municipal Court in Prishtina be held accountable for its inaction (regarding Diana's submission of the request for protection), contrary to its legal obligation. In assessing the merits of the case, the Constitutional Court concluded that the Municipal Court in Prishtina was responsible for taking the actions provided by the Law on Protection from Domestic Violence and that its inaction constituted a violation of constitutional obligations (Gëzim and Makfire Kastrati v. Municipal Court in Prishtina and Kosovo Judicial Council, 2013). Also in the case of Ms. Bytyçi-Berisha, "in contravention of the legal framework applicable in Kosovo – including the international standards incorporated therein – none of the steps foreseen under the Criminal Procedure Code or the Law on Protection against Domestic Violence appear to have been taken by the police or the prosecution" (OSCE, 2015, 3).

Under normal circumstances, domestic violence has been a concern in Kosovo. Taking into consideration that "a global surge in domestic violence cases since the COVID-19 pandemic outbreak has been noticed, particularly in countries with high numbers of COVID-19 reported cases" (Goh et al. 2020, 612), the situation is even more alarming. In such a situation, action by the institutions to address the problem of increased

domestic violence cases is an urgent need. The urgency of situation is also reflected on the Report (A/75/274) of the Secretary-General of the UN (2020). "Emphasis in the report is placed on the urgent need for efforts to eliminate violence against women in the context of the coronavirus disease (COVID-19), as well as on the process for reporting on advances in the elimination of sexual harassment" (Secretary-General of the United Nations, 2020, 1).

5. The Legal Manner of Regulating Parental Leave as a Form of Gender Discrimination

The European Social Charter of the Council of Europe in Part 1 paragraph 16, states that "The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development" (The European Social Charter, 1961). This instrument considers the family to be the fundamental unit of the society.

The importance of the family is multidimensional. This fundamental unit of society has many functions, the most important ones being reproduction and education of the children. As stipulated by the European Social Charter, in order for the family to attain its functions successfully, the state must take all necessary actions to ensure its development. In this regard, a very important issue which directly affects the development of the family is the legal manner of regulating parental leave.

According to the Labour Law in Kosovo, Article 49 sets forth "that women are guaranteed maternity leave of 12 months, where 6 months she is paid by the employer with 70% of salary, 3 months she is paid by the Government of the Republic of Kosovo with 50% of salary and 3 months' unpaid leave" (Labour Law of Kosovo, 2010).

According to the Think Tank "Gap-Institute of Advanced Studies" in Kosovo, in research made in 2011, "Businesses have begun to reconsider the positions of women and employment policies, being more selective during the engagement of the new staff process, and there are those companies that have started to apply for a monthly contract for their workers" (GAP, 2011, 4). Even though these provisions of the Labour Law regulating maternity leave at first glance seem favourable, however if analysed more deeply, it turns out that they are consisting of discrimination against women in

the labour market, by not giving them the opportunity to secure a long-term job. In other words, in order to avoid the obligation to provide maternity leave to women and the payment of 70% of their salary for 6 months while she is on leave, the employer simply just hires men.

Article 50 of the Labour Law in Kosovo specifies that "the father of the child is entitled to two (2) days paid leave on the occasion of the birth of a child or the adoption of a child and 2 weeks of unpaid leave" (Labour Law of Kosovo, 2010). Such a large imbalance between the duration of maternity leave and the father's leave on the occasion of the birth of a child, causes numerous problems.

The Resolution 1274 (2002) by the Parliamentary Assembly of the Council of Europe in paragraph 3 declares that "The issue of parental leave is closely linked to that of the role of men in family life, since it permits a genuine partnership in the sharing of responsibilities between women and men in both the private and the public sphere" (The Resolution 1274, 2002, 1). Thus, the manner of legal regulation of parental leave directly affects the sharing of responsibilities between men and women. Such a long maternity leave for women and such a short paternity leave for men is based on the stereotype that women are responsible for housework and raising children, while men are responsible for the financial support of the family.

I believe that the most adequate legal regulation of parental leave is in the Nordic countries. "Sweden is often considered as the most developed example of the dual-earner and dual-career family mode" (Aidukaite, et al. 2020, 83). "To combat stereotypes to some extent, the Swedish parental leave policy aims to stimulate men's leave taking" (Evertsson, 2016, 27). "Sweden far exceeds the current EU interpretation of the Principle of Equal Treatment. Working parents are provided with 240 working days each of paid parental leave" (Browne, 2013, 158). "However, one parent can sign over days for the other parent to use (which is most often done from fathers to mothers). All days except the quota (90 days reserved exclusively for each parent) can be transferred" (Duvander et al. 2019, 1508). "In Iceland, three out of the nine-month-long parental leave package is reserved exclusively for the mother, three months of parental leave are reserved exclusively for the father that can be taken at the same time as the mother's leave, and parents can divide between them the other

three months. They can negotiate and decide how to split the transferable part of the leave" (Gaslason et al. 2012, 37-38).

The manner of legal regulation of this issue in Kosovo in addition to creating grounds for discriminating against women, it also provides direct discrimination against men. The ECtHR in the Case of Konstantin Markin v. Russia in paragraph 99 held that "there is no objective or reasonable justification for the difference in treatment between men and women as regards entitlement to parental leave. The Chamber further condemned gender stereotypes in the sphere of child-raising" (Konstantin Markin v. Russia, 2012).

In this regard, I consider the legal manner of regulating of parental leave in Kosovo to be based on stereotypes and inconsistent with the social needs. I think that efforts should be made in the approximation of legislation in Kosovo with the legislation of the Nordic countries regarding this issue. By guaranteeing a longer parental leave for the father, the employer will have no grounds to discriminate against women during the employment process, there would be a genuine partnership in the sharing of responsibilities between men and women in the public and private sphere, men would be given the opportunity to play a greater role in the raising of the child and not be discriminated against solely on the basis of their sex.

6. Conclusion

Through this paper we conclude that gender equality is a very deep problem in Kosovo. This problem is especially reflected in the protection from domestic violence by the state organs. As a result of the neglect and unserious treatment of requests for protection from domestic violence by the state authorities, women often pay with their lives. Also the issue of women's inheritance must be addressed by the state. I think that Kosovo should start applying policies that encourage women not to renounce but to rather exercise their inheritance rights, as provided by the constitution and laws. I consider the legal manner of regulation of parental leave duration in Kosovo to nurture gender inequality and discrimination solely on the basis of sex. To get out of such an alarming situation in terms of gender equality, concrete steps must be taken regarding the amendment of laws that nurture inequality and discrimination based on sex. Also, I think that close attention should be paid to the revision of textbooks with sexist content. In this regard a special contribution can be made by civil society

through the organization of awareness-raising activities in order to help eradicate the patriarchal way of life and the installation of values of equality.

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HOW THE ALBANIAN LAW PROTECTS THE LGBTIQ HUMAN RIGHTS AND WHAT IT NEEDS TO BE CHANGE TO PROGRESSIVELY DEVELOP AND BROADEN THE STANDARDS OF FREEDOM, EQUALITY AND NON-DISCRIMINATION FOR THEIR COMMUNITY?

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1. Introduction

"Love is never wrong. We are all one connected thing. We are all from the same exact molecules."

During the communist regime and until '95 homosexual relations were sanction by the Albanian domestic law, as a criminal offense. Up until then homosexual acts were punishable with up to 7 years imprisonment. Membership in the Council of Europe and ratification of the European Convention for Protection of the Human Rights and Fundamental Freedoms for a General Prohibition of Discrimination resulted in the improvement of the domestic legal framework and the abolition of punishment of homosexual relations. Albania has also signed the UN Declaration on Sexual Orientation and Gender Identity in 2008 and has become the first of the four Western Balkans countries in this study to reform its criminal code to incorporate sexual orientation and gender identity into existing hate crime and hate-speech laws (SOGIE, 2019).

To continue, The Constitution of the Republic of Albania (Article 12) defines the general rights, through the sanctioning of the principle of the equality without discrimination. Moreover, these recent years, Albania has made a significant progress in protecting the human rights of LGBTIQ community in the legislative and political levels. The National Action Plan 2016-2020 (NSAPGE, 2016) for LGBTIQ community, constitutes the

main political document for the protection of community's human rights in several areas such as education, employment, health services etc. In 2010 the Parliament unanimously adopted a non-discrimination law which prohibits discrimination based on sexual orientation and gender identity (SOGIE, 2016), which explicitly promotes equal access to different areas. Likewise, the Labour Code prohibits discrimination at work, moral and sexual harassment or degrading and insulting comments due to sexual orientation. Code of Administrative Procedures prohibits discrimination and transfers the burden to its subject alleged to have committed discrimination. Equally, the Law on the Pre-university Education prohibits discrimination because of sexual orientation and LGBTIQ victims from domestic violence have the right to a free legal aid.

Despite the progress achieved, there are number of concerns identified by the international organizations, which shows and confirms that enforcement of human rights protection mechanisms remains to be strengthened. In the following paragraphs, it is presented a legal analysis of four of the LGBTIQ human rights concretely in family matters, health services, labour rights and the prohibition of the hate speech and hate crimes that continue to be violated despite the protection secured by the domestic law and international conventions ratified by the Albanian state itself.

2. Family matters

The Human Rights Act protects the right to marry and found a family. Concretely, Article 12 of ECHR reads as follows:

"*Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right*".

Analysing this fundamental article, we conclude in the fact that everyone has the right to marry and have a family and there is no discrimination about it. The humankind acquires these rights with birth, and carries them throughout his life. This essential human right is closely linked to Article 8 of this Convention, which provides the right to private and family life.

Even though the article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex, it is obligatory for the Member States to adopt standards of freedom, equality and non-discrimination. Referring

to the Albanian legal system, the Family Code (Article 163) defines marriage as an institution between a man and a woman, which essentially prohibits the right to marriage and cohabitation for the LGBTIQ community. To this point, they are denied the right to have a legal marriage and a legal cohabitation because of the way the Family Code describes marriage, it excludes members of this community to enter into a legal marriage and legal consequences for them. Actually, 2020 was the year of the birth of the first two children with two mothers in our country (Historia ime, 2020). The current child registration procedures did not allow the newly established family to register with the authorities and enjoy the same rights as other families in the Republic of Albania, because of the legal prohibition in the domestic code. Moreover, the legislation does not recognize gay marriages linked in other states which allow for marriages between persons of the same sex. Such a legal relationship with foreign elements will not be recognized or be valid in the Albanian territory. In the event that in the Court of Appeal a lawsuit will be filed for the recognition of a gay marriage linked in a foreign country, the court will overturn the lawsuit announcing its lack of competence (Kadi, 2014).

Regarding this sensitive issue, there have been frequent reactions by the Ombudsman and the Commissioner for Protection from Discrimination, requesting to the Ministry of Justice to make legal changes to the specific articles of the Family Code that would allow same-sex couples to legally coexist, but no particular steps were taken by the domestic institution to amend the code (Ombudsman website, 2021). The European Commission against Racism and Intolerance (ECRI), part of the Council of Europe, in its fifth cycle monitoring report, noted that the Albanian LGBTIQ community is discriminated against in terms of marriage and recommended that Albania sees the opportunity to equip couples of the same sex with legal means and to solve practical problems related to the social reality where they do live (ECRI, 2015). The identical conclusion was noted also in its sixth cycle monitoring report in which ECRI believes that the absence of recognition of same-sex partnerships can lead to various forms of discrimination in the field of social rights (ECRI, 2020). In this regard, it draws the attention of the authorities to the above-mentioned Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity (CoE, 2015) . In February 2017 Human Rights Watch reported that the Alba-

nian NGO, Pro-LGBT, had announced that the organisation would be filing a lawsuit requesting recognition of same-sex partnerships (Human Rights Watch, 2017).

To conclude the matter, ECRI on June 2020 renewed a call it made in 2017 for Albania to outlaw discrimination on the grounds of sexual orientation and gender identity (ECRI, 2020) and recommended that the Albanian authorities provide a legal framework that affords same-sex couples, without discrimination of any kind, the possibility to have their relationship recognized and protected in order to address the practical problems related to the social reality in which they live.

Another important issue of concern, regarding the violation of human rights which the Albanian NGO Pro-LGBTIQ are paying special attention, is the right of LGBTIQ community to adopt. According to the Law of Adoption Nr.9695, date 19.3.2007, same-sex partners cannot adopt children together, because a minor cannot be adopted by more than one person unless these persons are spouses, meaning husband and wife. Specifically, the legal provision stated in the Law of Adoption (Article 16/2), says that the person applying for child adoption must meet the conditions under the Family Code, which means to be in a marital relationship. So, the LGBTIQ community can therefore adopt a child only as individuals, not as couples.

For this matter, the Commissioner for Protection from Discrimination has address legislative recommendations aiming to avoid discriminatory provisions and to adopt the laws in accordance with the Law "On Protection from Discrimination" (CPD, 2014) and even though these addresses are taken into account by the relevant institution, no concrete legal amendments is done to the domestic law.

3. Health Care/Services

The right to reproductive health care, health insurance and mental health is known to all, but LGBTIQ people do not enjoy them in practice. Gay and lesbian people do not have access to reproduction technology assisted, transgender people are not offered sex reassignment surgery in public hospitals, intersex people are forced to perform medical interventions, which is contrary to their right to bodily integrity and withal, expenses of their health needs are not covered by health insurance schemes. Even though, the domestic legal system sanctions their human right to benefit from

health care services on the same basis as other citizens, there are many cases where is ascertained the fact that the LGBTIQ community lacks full access to health services and suffers from poor quality of services. In 2016, the NGO Pro-LGBT convened thirteen cases of discrimination in LGBTIQ community's access to health services (ILGA, 2017) which are increasing day by day.

In July 2020, the Albanian Ministry of Health released a "Medical Protocol for the Assessment of Children with Atypical Genital Development" as binding guidelines and a practical guide for health professionals. Unfortunately, despite some positive aspects, it failed in fully embracing the intersex human rights standards that the European Intersex Community, international Human Rights bodies and Council of Europe bodies have established in the past decade. The Organisation Intersex International Europe (OIIE), though acknowledged positive aspects, stated that Albania missed the opportunity to clearly protect intersex children's health and bodily autonomy. More concretely was said:

"*Respecting the primacy of the child's self-determination would have brought better results. Moreover, we are convinced that more precise media coverage would help in better communicating such delicate – and often misinterpreted – human rights issues*" (OIIE, 2020).

Restrictive measures of social isolation and exclusion during Covid-19 pandemic have had particularly detrimental consequences for the LGBTIQ community, especially those rejected by their families, who have mental health problems, or who suffer from physical or psychological violence. However, there are no medical records for the LGBTIQ community as the doctors automatically presume that person is heterosexual, and therefore the specific health needs associated with sexual orientation and gender identity are unquestioned. There is no health survey for the health needs of LGBTIQ community and school programs do not address the rights of LGBTIQ students to health care. On top of that, the Ministry of Health and Social Protection's plan for years 2013-2022 does not mention LGBTIQ persons as a group endangered by suicidal ideation (ERA, 2013).

On May 18th 2020, the Order of Psychologists of Albania announced that it will prohibit it's members from offering any "conversion therapy" or pseudo-therapeutic attempts to change a person's sexual orientation or gender identity (OBCT, 2020). According to

the international groups for the defence of individual rights, this was considered as a very positive decision and as a progress for the protection of the community's human rights, as the data showed that people who have experienced the therapy were 8.4 times more likely to commit suicide and they are 5.9 times more exposed to high levels of depression (France 24, 2020). Despite that, there is a lot of work regarding to the freedom of sexual orientation, as the Albanian parents choose to impact on his/her lesbian or gay child through faith and consequently causing mental health problems.

To conclude the matter, the ECRI, in its sixth cycle monitoring report (ECRI, 2020), has noted that there are no provisions to regulate gender reassignment procedures and to provide predictable and accessible mechanisms to have a change of gender administratively recognized, including changes to relevant identity documents. The ECRI again recalls Recommendation CM/Rec (2010) in this respect, as well as other existing Council of Europe guidance and relevant ECtHR case law (CoE, 2010). In this monitoring cycle, the ECRI also covers the situation of intersex persons and after being informed by the authorities that it is not mandatory in Albania to carry out so called "sex-normalising" surgery on newly-born intersex babies, draws the authorities' attention to look more closely into the needs of intersex persons in the country.

4. Employment/Labour Code

Following an intensive work by the Ministry of Social Welfare and Youth, the Ombudsman, the Commissioner for Protection from Discrimination and LGBTIQ organizations in the country, the Albanian Parliament adopted amendments to the Labour Code by providing protection against discrimination in the workplace due to sexual orientation and genital identity (CURRI, 2018). Specifically, Article 9 of the Labour Code, which covers employment in both the public and the private sectors, prohibits "every type of discrimination in employment or professional life". The same article continues by defining discrimination as "any exclusion or preference based on race, colour, sex, age, religion, political convictions, ethnicity, social position, family relations, physical or psychological defects". Moreover, the Ministry of Labour, Social Affairs and Equal Opportunities with support from the Sexual Orientation and Gender Identity (SOGI) Unit of the Council of Europe recently developed the National Action Plan 2015-2020 with significant input civil society and the LGBTIQ community (HeadHunter, 2019).

Although there are no legal limitations of the right to employment in Albania, and paragraph 1, of Article 9 above, prohibits any kind of discrimination, the transgender community in Albania finds it very difficult to be employed, almost impossible, a fact that confirms once again that, unfortunately, even within the LGBTI community itself there is a hierarchy of marginalization, where the transgender community, which at the same time challenges more critical norms and gender stereotypes of Albanian society, remains the most discriminated.

In 2016, the LGBT Alliance reported 43 cases of discrimination in the workplace and / or discrimination in recruitment and job selection (SOGI, 2019). These were cases of LGBTI persons having encountered difficulty finding work due to stigma and prejudice, had experienced sexual harassment during job interviews, or had been fired from work because the employer had learned about their sexual orientation. As a result of this, involvement in sex work is seen as the only way to survive by many members of the LGBTIQ community; however, they are not protected by the domestic law, as the work in sex industry is sanction as a criminal offence. As many trans individuals have no other choice of survival but through sex work, this law makes their lives more difficult. They are forced to take more risks and several have already paid the consequences of this law. In 8th July 2016, in the concluding observations of the fourth report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) for Albania, the Committee noted that disadvantaged groups of women, including lesbian, bisexual and transgender, are not protected and discriminated against in terms of their access, inter alia, to health services and work place (OHCHR, 2016).

The LGBTIQ Alliance has done an online study, which aimed to identify the consequences of the Covid-19 pandemic among the community and the results showed that 47 percent of the community are unemployed (Historia ime, 2020). However, during the pandemic, some of them found it impossible to work also as sex workers and as a result lost their income, necessary to meet basic needs such as food, shelter, medicine. It was concluded that one of the main reasons why the unemployment rate among the LGBTIQ community is higher than the unemployment rate of the general population in Albania (World Bank Study), relates with the fact that the LGBTIQ community already suffered from a high number of systemic unemployment since before the declaration of the state of emergency. In addition, LGBTIQ organizations have long

175

identified discrimination, bullying, and the exclusion of the LGBTIQ community from the education system as one of the main reasons for the high unemployment rate.

To conclude the matter, the Danish Institute noted that LGBT individuals are not open about their sexual orientation or gender identity in the workplace, out of fear of being fired or facing discrimination (ERA, 2016). It is unclear how prevalent this fear is following the non-discrimination law as data on the topic still needs to be collected. Transgender individuals have lower employment opportunities and often utilize sex work to survive. This line of work increases their likelihood of contracting STI's and makes them more vulnerable to violence.

5. Hate crimes/speech

The rights of LGBTIQ community are now protected through changes that are amended in the criminal code. In 2013 the Albanian Parliament amended the Criminal Code to specifically define crimes motivated by sexual orientation and gender identity as "hate crimes". The same year Parliament passed a new law prohibiting the dissemination of homophobic information, with a punishment of a fine and potential jail time. However, Albania has no official data collection on hate crimes.

An opinion poll carried out in 2015 by the US-based National Democratic Institute (NDI, 2015) revealed that 76% of LGBTI people surveyed in Albania have been verbally harassed or abused because of their sexual orientation or gender identity. The poll also revealed that 32% of the LGBTI people surveyed in Albania had suffered physical violence because of their sexual orientation or gender identity. During 2018, the LGBTIQ Alliance documented 45 cases of hate crimes against LGBT people (ILGA, 2018). None of these cases were prosecuted by the police. In one reported case, the police officer requested the victim, a transgender woman, to withdraw the complaint, assuring her that the officer would ensure her safety. Two weeks later she was attacked by the same perpetrator and hospitalised. Most victims have difficulty accessing the justice system. The only way to ensure action from the police is to go to the station accompanied by a member of Alliance's staff.

In 3ᵈ March 2020, the organizations LGBTIQ Alliance and Pro LGBTIQ, in cooperation with the State Police, the Security Academy and with the support of the Dutch partners, have published an informative brochure on policing crimes against the LGBTIQ community and how police officers should react to hate crimes and discrimination (Brochure, 2021), based and oriented on the Council of Europe Handbook "Policing Hate Crime Against LGBTIQ People: Training for a Professional Police Response" (Policing hate crimes, 2017), giving this issue a special importance for the protection of the LGBTIQ human rights.

To conclude the matter, as part of its fifth monitoring cycle, the ECRI published a report on Albania in June 2015 when it requested that national authorities start gathering systematic data on attitudes towards LGBT people and the discrimination that they suffer. To combat hate crime, ECRI recommended that the police build stronger links with NGO's and the LGBT community. In its sixth monitoring cycle, the ECRI recommends (ECRI, 2020) that the authorities establish a comprehensive monitoring system for hate speech incidents and work closely with, the People's Advocate, the Commissioner for Protection from Discrimination, the prosecution service, the police and relevant civil society organisations, regarding this sensitive matter.

6. Conclusions

Albania is a democratic country that has on its foundations respect for human rights, however evidence suggests that is in fact a problematic country related to the LGBTIQ community's human rights. It is noticeable on the parts of this evidence-based analysis that there are still significant capacity gaps between policymakers and law enforcement when it comes to safeguarding the rights of the LGBTIQ community in Albania, reflecting the complete absence of similar approaches in the past towards the community based on direct interventions. In this regard, I suggest that significant changes should be implemented which includes measures for legislation, social policy, public administration and services, in order to create a culture of inclusion and openness to diversity and strengthening the LGBTIQ community and to provide an effective protection and respect for the rights of LGBTIQ people in Albania, non-discrimination and equality in all aspects of daily life.

Some of these recommendations related to the sensitive issues analysed in this essay are:

- Ensure that LGBTIQ community and their organizations are consulted related to the amendments of the national legislation and inclusive policies that affect their rights by taking into the consideration their recommendations regarding the gaps in the legal framework in the area of protection of rights and non-discrimination. Specifically, significant legal changes should be made in the Family Code by recognizing them the right to coexistence, concretely Article 163.
- Provide awareness to the health workers about the health needs of LGBTIQ community, including the areas of health and reproductive rights, suicide prevention, HIV / AIDS and psychotherapy services for the trauma.
- Address issues of violence and discrimination against LGBTIQ community by establishing an effective system of statistical data and easily accessible reporting discrimination cases in the relevant fields. Ensure an institutional monitoring about the mandatory implementation of international human rights standards at the national level.
- Ensure the establishment and implementation of the necessary measures such as drafting non-discriminatory working protocols, which provide effective protection against discrimination based on sexual orientation or gender identity in employment in the public and private sectors.
- Ensure the collection and analysis of data necessary to identify the predominance of the type and nature of discrimination and intolerance due to sexual orientation or gender identity, and in particular on "hate crimes" and hate-motivated incidents related to sexual orientation or gender identity.

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HOW TO OVERCOME THE DISCRIMINATION IN BOSNA AND HERZEGOVINA BASED ON RACE, SEX, AGE, ETHNICITY, SOCIAL POSITION?

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1. Introduction

Discrimination is one of the most prominent features of Bosnian society, noticeable in various segments of everyday life. In a way, Bosnia and Herzegovina is still in the process of transition. One of the reasons why this process takes so long is certainly systemic discrimination that slows down the process of Euro-Atlantic integration. Currently, the main goal of Bosnia and Herzegovina is to join the European Union. In order for that to happen, Bosnia and Herzegovina must meet a number of criteria. Among them is certainly ensuring non-discrimination in society. In this paper, we will analyse the key problems that cause discrimination in Bosnian society. While analysing discrimination, we will briefly define the terms listed in the title of this paper. Finally, we will draw a few conclusions about how various forms of discrimination can be overcome.

2. Ethnic discrimination

At the beginning, we need to differentiate terms *ethnicity* and *race*. Importance of distinguishing these terms is especially required in context of interrelations in Balkans. The term *Race* reflects to group of people with "common hereditary morpho-physiological traits" (Lavić 2014, 577). This term has been used for the first time by German anthropologist Friedrich Blumenbach. In the eighteenth century he divided humans into five races: Caucasian, Mongolian, Malayan, Ethiopian and American. According to contemporary anthropological explanations, all human races belong to the same stage of human development – *Homo sapiens*. Accepted opinion today is that the

human race is a single race and that races were created by the migration of certain groups of people throughout history and their adaptation to different living conditions. Furthermore, difference between races could be overcome in future due to more intense mixing of races (Lavić 2014, 577). *Ethnicity* or *ethnic group* implies organized group of people within the wider ethnic and cultural community. Ethnicity can also be defined as group of people who are firmly bound by ethnic, linguistic, cultural and other bonds (Lavić 2014, 204-205).

In the case of Bosnia and Herzegovina, as in the case of the countries of the Western Balkans, it is more accurate to talk about ethnic differences than about racial ones. In the context of Bosnia and Herzegovina, the notions of ethnicity and nation over-lap. The reason is as follows; according to Benedict Anderson, nations are *imagined communities*: "It is imagined because members of even the smallest nation will never meet most of the other members of their nation, or even hear about them, yet the image of their togetherness lives in the minds of each of them" (Anderson 1998, 17). In the sociological literature, nation and ethnicity are not synonymous. A nation usually implies a political community of people, formed on the basis of language, culture and awareness of common belonging. In accordance with the Constitution of Bosnia and Herzegovina, which is part of the Dayton Peace Accords (Annex IV), Bosnia and Herzegovina consist of two entities - the Republic of Srpska and the Federation of Bosnia and Herzegovina. Bosnia and Herzegovina is home to three constituent peoples – Bosniaks, Croats and Serbs. Also, there are "Others". The word "Others" refers to ethnic groups living in the territory of Bosnia and Herzegovina and having the citizenship of Bosnia and Herzegovina, and yet don't belong to any of these three constituent peoples. The way I see it, in accordance with sociological terminology, all citizens of Bosnia and Herzegovina, including Bosniaks, Croats, Serbs and Others, are Bosnians and Herzegovinians by nationality. This nationality is their primary identity. Bosniaks, Croats, Serbs, Roma, Jews, Albanians, Hungarians, etc. are ethnic groups living in the territory of Bosnia and Herzegovina and have the citizenship of Bosnia and Herzegovina.

All ethnic groups have the same rights – political, religious, gender, etc. In this case, the sociological terminology is applied, and a distinction is made between the no-tions of ethnicity and nationality. If majority of Bosnian and Herzegovinian citizens thought so, or at least in a similar way, the situation would not be as complicated as

it is now. The current political situation and ethnocentrism are blocking the path to Euro-Atlantic integration. Ethnic discrimination is also widespread. The constitutional category of "Others" is the most discriminated against, primarily in the realm of political rights. According to the Constitution of Bosnia and Herzegovina, individuals belonging to this category cannot run for a member of the Presidency of Bosnia and Herzegovina or for the House of Peoples of Bosnia and Herzegovina, which is upper house of national parliament. These positions can be hold only by Bosniaks, Croats and Serbs. Due to this constitutional arrangement, there was a well-known case of *Sejdić-Finci v. Bosnia and Herzegovina*. The European Court of Human Rights found this to be discrimination. This court decision was made more than ten years ago, and still Bosnian and Herzegovinian authorities hadn't changed discriminatory constitution. This case is not the only one in which the European Court of Human Rights has found the constitution discriminatory (Rochford 2019).

The constitution of Bosnia and Herzegovina also discriminates against Bosniaks, Croats and Serbs. For example, if a Bosniak or Croat lives in the Republic of Srpska, he or she cannot run for a Bosniak or Croatian member of the Presidency (e.g. case *Pilav v. Bosnia and Herzegovina*). Likewise, a Serb living in the territory of the Federation of Bosnia and Herzegovina cannot run for a member of the Serbian member of the Presidency (e.g. case *Pudarić v. Bosnia and Herzegovina*). According to the Constitution of Bosnia and Herzegovina, candidates for the Bosniak and Croatian members of the Presidency must live on the territory of the Federation of Bosnia and Herzegovina and the candidate for the Serbian member of the Presidency must live on the on the territory of the Republic of Srpska. In reality, there are lot of Serbs living in Federation of Bosnia and Herzegovina and lot of Bosniaks and Croats living in the territory of Republic of Srpska. These people have been deprived of the right to run for the highest political positions. Also, if citizen of Bosnia and Herzegovina declares herself or himself as Bosnian and Herzegovinian, he or she cannot run for member of Presidency or House of Peoples (e.g. case *Zornić v. Bosnia and Herzegovina*). Only constitutional categories Bosniaks, Croats and Serbs can be elected on these positions.

Ethnicities are not only discriminated against by constitution. A member of any ethnic group may be discriminated against if he finds himself in an environment in which he is an ethnic minority. This happens because nationalist ideologies, which were the cause of the war in the 1990s, are still present in the habitus of a large number of

individuals. The reason for this is the rule of the nationalist parties of all three ethnic majorities in the last thirty years. They remain in power by presenting themselves as the only right choice for their people and this applies to all three ethnic majorities. For example, Bosnian Serbs leading political party, SNSD, promotes the policy of ethnic segregation and the irredentist politics of creation of a separate country, or in some cases, integrating Republic of Srpska into borders of Republic of Serbia. Similar policy is also led by Bosnian Croats leading party HDZ. There is no third entity in Bosnia and Herzegovina defined by constitution in which Bosnian Croats would be majority, like Serbs are in Republic of Srpska. Although there is no administrative-territorial unit defined by the constitution in which Croats would be the majority, in one region of the Federation of Bosnia and Herzegovina they are the majority. These geographical areas are being presented as exclusively Croatian by their nationalist parties. They have been striving for the establishment of a third entity for the last thirty years. These kinds of politics led by Bosnian Croats and Bosnian Serbs political leadership is slowing down Euro-Atlantic integration.

Nationalism is one of the causes of very long political transition, or better said, political stagnation of Bosnia and Herzegovina. Moreover, these ideologies have a strong impact on the broad masses of people, causing inter-entity hatred and xenophobia, which we unfortunately encounter on a daily basis. How do nationalist politicians maintain an ideology based on ethnocentrism? The answer is, through media. Many media sources in Bosnia and Herzegovina have been manipulated by certain nationalist parties. They use what Chomsky calls *Manufacturing Consent*. In democracies, public opinion is the subject of an ideological industry.

Democracy allows the voice of the people to be heard, and it is the task of intellectuals to ensure that that voice has the stamp of the right course. Propaganda to democracy is the same as violence to totalitarianism. The techniques are honed into high art (Chomsky 2003, 32).

Thus, in line with Chomsky's theory, the leading Serbian and Croatian nationalist parties seek to present members of other ethnic groups as enemies and seek to impose the view that the disintegration of Bosnia and Herzegovina is the best solution. Due to all the above, I have previously stated that ethnicity and nationality overlap in Bosnia and Herzegovina. Nationalist ideologies seek to create a collective national

consciousness among members of ethnic groups by making up and changing history and creating ethnocentric attitudes, all with the aim of disintegrating Bosnia and Herzegovina. It should be noted that there are many citizens of Bosnia and Herzegovina who have a developed Bosnian and Herzegovinian national consciousness, regardless of ethnicity. Additionally, there are many politicians in the opposition who are willing to work hard on EU integration.

I believe that it is possible to take certain steps to overcome ethnic discrimination. The Constitution of Bosnia and Herzegovina is an integral part of the Dayton Peace Accords (Annex IV). This constitution was the best solution to stop the war 26 years ago. Today, this constitution is discriminatory towards all citizens of Bosnia and Herzegovina and it needs to be changed. First of all, it is necessary to change the parts related to the election of members of the Presidency and delegates in the House of Peoples so that all citizens, regardless of ethnicity, have the right to run for these positions. The next step that needs to be taken is the education of citizens. Since a large number of media are under the influence by nationalist parties, citizens must learn to recognize the relevant media. We need a unified education system at the level of Bosnia and Herzegovina, in order to reduce the possibility of the influence of ideology on the education system. I believe that more subjects on democracy and human rights in curricula would increase the political literacy of young people. If citizens were more politically literate, they would realize that the current government is not doing much on Euro-Atlantic integration, but on strengthening ethnocentrism and separatism among ethnic groups. I believe these could be the initial steps that, hopefully, would lead to reconciliation in Bosnia and Herzegovina.

3. Gender discrimination

There is a difference between terms *sex* and *gender*. *Sex* is a biological category. This is what defines us as women and men and gender roles (male and female) are determined by the appearance of our genitals (Čaušević and Gavrić 2012, 433). *Gender* refers to the socially constructed identities. "This includes norms, behaviours, and roles associated with being a woman, man, girl, or boy, as well as interpersonal relationships" (World Health Organization). Gender identities may vary from society to society. Also, they are not static and can change. Terms like *sex* and *gender* are

often used in the same context, but distinction needs to be made. "Gender identity refers to a person's deeply felt, internal and individual experience of gender, which may or may not correspond to the person's physiology or designated sex at birth" (World Health Organization). Since gender is a social concept and it is broader than the concept of sex, I will address the problem of gender discrimination, which is very prevalent in Bosnian society.

In the transitional period, many efforts have been made to develop a legal and policy framework for the application of the principle of gender equality (UNCIEF 2009). For example, there is a Law on Gender Equality, and the Agency for Gender Equality has been established. Also, there is a Law on Prohibition of Discrimination. Despite the existence of a legal framework for non-discrimination, there is still high level of gender discrimination, mostly against women. It is primarily reflected in the labour. There are many cases of harassment at work by colleagues or superiors, but also discrimination during employment. During the job interview, women are often asked if they are planning a family or a pregnancy. It also happens that women get fired if they get pregnant or married. In Bosnia and Herzegovina, women often do household chores, making it impossible for them to do other paid work. In Bosnia and Herzegovina, there is still a discriminatory opinion that there are *male* and *female* jobs. Society is still largely patriarchal when it comes to women's labour, especially in less developed environments. In addition to discrimination in the labour market, it is necessary to point out the problem of domestic violence, whose victims are mostly women. Although activism in this area is present, violence is very much alive. There are also cases when domestic violence is justified by patriarchy in society.

When we talk about gender discrimination, we must emphasize discrimination against LGBTQ people. This category is particularly discriminated against, as alternative sexual orientations are still considered a deviant in Bosnia and Herzegovina. The marginalization of this social group is often justified by traditional family values and religious regulations. Every religion forms an attitude about a social phenomenon and therefore about LGBTQ people. Although the LGBTQ community did not receive approval from religious institutions in Bosnia and Herzegovina, religious community leaders did not support violence against this group. Any assault on the LGBTQ population, although very rare and mostly verbal, was not directly caused by the official attitude of religious communities in Bosnia and Herzegovina, although actors invoked religious

regulations. It is also necessary to point out the great progress when it comes to the fight for the rights of the LGBTQ population. In 2019, the first Pride March was held in Sarajevo. It is especially necessary to point out that Bosnia and Herzegovina is the only country in this part of Europe in which no incident was recorded during the first Pride March. Although Bosnian and Herzegovinian society has passed this first major test of acceptance of the LGBTQ population, a number of steps still need to be taken to reduce discrimination against this group. The rights of this population need additional institutional protection, so that they can have the same rights as other citizens.

I believe that certain steps must be taken to protect women's rights. As a short conclusion, it is necessary to protect the rights of women in the field of labour so that they have the same rights as men. This can be achieved by increasing transparency in employment, especially in private companies. Many women get fired if they become pregnant or get married and this can be prevented if sanctions are imposed on employers by unions and the authorities. When it comes to domestic violence, greater education is needed for the population, especially young people about gender equality. Violence against women is partly a product of patriarchy, which is mostly present in less developed areas of the country. Additional education on gender equality is most needed in these areas.

4. Age discrimination

When it comes to age discrimination, it is present in the labour market, but also as a systemic problem. In Bosnia and Herzegovina, it is very difficult for people over the age of 40 to find employment. One of the reasons for unemployment in this category lies in the fact that they come from companies that were destroyed in the transition period (Tanić 2014). There is a big difference in the way of working and functioning of the companies in which they used to work and modern companies. In times of transition, companies founded under socialism were restructured by privatization to fit the capitalist market. In accordance with the capitalist rules, workers are qualified by abilities and knowledge, not previous years of work or university degrees. Also, young job seekers fit more easily into the capitalist demands of employers and are more familiar with new technologies, which have proven to be a primary ability in the labour market. Moreover, there are cases when the previously acquired education of

the older unemployed is no longer acceptable. Their diplomas were valid in socialism, but not in the capitalism to which society aspires. In these circumstances, additional education is needed to make the older population competitive in the labour market. Certainly, additional education costs and funds from the public budget are not enough to provide additional education to everyone.

Accordingly, the older unemployed found themselves in a very difficult situation as they were marginalized in the labour market. Discrimination against the elderly in the labour market could be reduced if funds from the public budget were provided for additional education of this category. They need new knowledge and skills to be active in the labour market. Elderly and retirees are also discriminated against in Bosnia and Herzegovina. Pensions are very low and enable them to meet only basic needs. Elderly often feels lonely and socially excluded. Their family members, often due to obligations, are unable to take care of those in need and often elderly and their families do not have enough funds to pay for the retirement and nursing centres. Although there are not enough places for elderly in Bosnia and Herzegovina for all those who want to seek this type of service, on the other hand, prejudices about these institutions are very prevalent. Many members of society perceive these homes as prisons for the elderly, through which people try to get rid of their family members. "Older people living in homes often feel rejected, although families often visit them, and most daily activities encourage socialization between users" (Pisker 2017). The home care system has not been developed in Bosnia and Herzegovina either. Also, there is no institutional support for home care for families caring for the elderly who are immobile or otherwise dependent on the care of others. Engagement of all society members is needed to reduce discrimination against the elderly population. More programs need to be implemented to integrate the elderly population into the community.

It is necessary to break down the prejudices that most have about retirement and nursing centres. Taking these steps would reduce the social exclusion of older people and the feeling of rejection. Changes in the health care system are also needed, in order to provide elderly people who are immobile with nursing care at home, which would be paid from the public budget.

5.   Social position discrimination

The notion of social position is very extensive and can be interpreted in several ways. Social inequalities can arise on the basis of individual characteristics, such as intelligence, skills and talent, but also from the social division that assigns social roles to individuals. Social divisions that arise on the basis of differences between individuals are called social differentiation. Another type of social inequality is social stratification. It implies inequalities that are produced in the social structure. Such a form of inequality is permanent. This form of inequality refers to differences between social groups, which often develop their own systems of values and norms (Kukić 2004, 160-162). According to functionalist theory in sociology, social inequalities are necessary for society to function normally. Marxist theorists believe that inequality is disintegrating and socially harmful (Kukić 2004, 163).

Inequalities are present in the society of Bosnia and Herzegovina. If we consider functionalist theory, inequalities are necessary in our society. Although inequalities alone are not the cause of discrimination, they, unfortunately, attribute to its presence and prevalence. I'll define social position as place which individual takes in society due to social inequalities, namely those caused by social stratification. Those who are at a lower level in the system of social stratification are most discriminated against. Members of the lower classes do not have the same opportunities as those of the upper classes. Education can be a starting point. Lower-income parents are often unable to fund their children's education. Most lower-class children start doing jobs after high school, which are often underpaid. A minority of teenagers from this class enrol in college and even fewer graduate. The reason is that they are in a hurry with employment in order to improve the financial situation in their households. On the other hand, higher-income parents can provide their children with better schooling conditions. Children of parents from higher classes have better educational opportunities, namely the opportunity to graduate from prestigious international universities.

Regardless of knowledge and skills, young people in Bosnia and Herzegovina do not have the same educational opportunities. The quality of education depends on social position. Lower classes are also discriminated against in other parts of society. For example, the public health care system is of lower quality than that provided by private hospitals and the services of those hospitals are very expensive. Only a small

number of citizens have the opportunity to pay for their treatment. Also, bribery and corruption are present in all parts of Bosnian society. Although these acts are considered deviant and harmful to society, in Bosnia and Herzegovina they have become normal and acceptable way for achieving certain goals. Even if they wanted to, members of the lower classes would not be able to achieve their goals in this way because they do not have the financial means. They are also discriminated against in this way, as members of the upper classes have the opportunity to achieve their goals using these methods.

Social inequality exists in Bosnian and Herzegovinian society. Inequality by itself is not discriminatory (referring to functionalism), but it is discriminatory that people in the lower classes do not have the same rights, or access to these rights, as those in the higher classes. We have previously mentioned only some examples of discrimination with regard to social status, but it is present in all layers of society, especially when it comes to the poor part of society. It is particularly difficult for an individual from the lower classes, regardless of knowledge and abilities, to improve her or his social position. I believe that there are certain ways in which it is possible to overcome discrimination based on social position. In the first place, it is necessary to make certain changes in the education system so that all students are equal. Education should be free or as inexpensive as possible, so that those with lower incomes have the same chance of success in the field as those from the upper classes. Likewise, the public sector must provide better financial support to good students from lower classes, so that they do not leave school due to employment. Policies need to be implemented more firmly in order to fight corruption in Bosnian and Herzegovinian society. Thus, those with higher incomes would be denied privileges in achieving certain life goals.

6. Conclusion

After analysing the basic forms of discrimination in Bosnia and Herzegovina's society, changes that need to be made can be divided into several groups. The first group implies constitutional changes, so that all citizens of Bosnia and Herzegovina, regardless of ethnicity have the opportunity to run for leading political positions. In that way, one of the most important conditions for Bosnia and Herzegovina's entry into the European Union would be fulfilled. The second group of changes are legal

changes. Regardless of the existence of a basic legal framework on the prohibition of discrimination, members of the LGBTQ community need to be guaranteed the same rights as other members of society. For example, legal changes may allow the LGBTQ population to marry. Also, through legal changes, women should be better protected from exploitation at work.

The next group refers to changes in the policies of some public sectors. The employment sector must provide retraining and additional education to older people in the labour market and the health sector must provide better care to the elderly population who are unable to take care of themselves. The public sector should provide students from lower social classes with funding for education so that they do not leave school to work. In the end, I would like to state the most important segment that needs to be improved. It is an education system. The current education system affects discrimination in society both directly and indirectly. It directly affects the fact that young people from the lower classes are not able to finance their education. On the other hand, a change in the education system can indirectly reduce all forms of discrimination.

Increasing literacy, especially media, information and political literacy of the citizens of Bosnia and Herzegovina would certainly overcome ideologies based on ethnocentrism and segregation. Media run by nationalist parties would lose influence. I reckon that there would be a change of the current government under these circumstances and right people would get a chance to govern and accelerate the process of reconciliation and Euro-Atlantic integration. Educating the population about gender equality, especially in less developed places, could reduce the impact of patriarchy, gender discrimination and domestic violence. Also, the position of the elderly could be significantly improved by educating the population about the rights of the elderly and breaking down prejudices about nursing homes. All the changes that the society of Bosnia and Herzegovina needs, which listed above, may sound like a utopia, but I am firmly convinced that the Bosnia and Herzegovina's society can achieve them. These changes may have already been achieved, but the current government in Bosnia and Herzegovina is pursuing a policy of segregation rather than integration of Bosnia and Herzegovina's society.

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DISCRIMINATION ETHNIC MINORITIES IN CROATIA

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1. Introduction

According to the 2011 census, 4,284,889 citizens are registered in the Republic of Croatia, of which 328,738 are members of a national minority, which amounts to a total of 7.76% of Croatia's population. Some of the largest minorities in Croatia are Serbs (4.36%), Bosnians (0.73%), Italians (0.42%), Albanians (0.41%), Roma (0.40%), Hungarians (0.33%), Slovenes (0.25%), Czechs (0.22%), Montenegrins (0.11%), Slovaks (0.11%), Macedonians (0.10%), Germans (0.07%), Rusyns (0.05%), Ukrainians (0.04%), Russians (0.03%), Poles (0.02%), Austrians (0.01%), Bulgarians (0.01%), Romanians (0.01%), Turks (0.01%), Jews (0.01%) and Vlachs (0.00%) (Središnji državni portal 2021). To gain a better understanding of these national minorities and their place in society, special attention needs to be directed towards the topic of discrimination that those minorities face in Croatia.

Stereotypes, prejudices and discrimination are important terms when it comes to understanding relationships between the majority and the minority groups in a certain society. Each attitude consists of three components: cognitive, emotional, and behavioural. The cognitive component refers to thoughts, beliefs and knowledge about the object of one's attitude, the emotional component refers to positive or negative emotions towards the object of their attitude, and the behavioural component refers to the degree to which people tend to behave in accordance with their attitude (Abdija and Kunac 2018, 61-78). Closely related to the notion of stereotypes, which refer to the cognitive component of one's attitude, is the notion of prejudices that have an emphasis on the emotional component. Prejudices are unfounded, most often negative attitudes towards members of a group, and they are based exclusively on their affiliation with that group. Most of the time they refer to a select group based

on defining characteristics such as race, ethnicity or religion. Prejudices also have an emphasized behavioural component that refers to the tendency of negative and hostile behaviour towards group members only on the basis of their belonging to these groups, and this phenomenon is called discrimination (Abdija and Kunac 2018, 61-78).

When trying to identify the occurrence of discrimination in a select society, analysing the discourse that is ever present is a good way to approach the task. One way in which these negative attitudes can be expressed, even though occasionally subconsciously, is for example through curse words. In Croatia curse words and insults based on nationality are a very frequent phenomenon in everyday language, and can be possibly understood as a reflection of many historical and current interethnic tensions. Swear words are understood as words or sentences that are often vulgar and can serve as the means of expressing or inciting aggression. There are frequent examples of swear words which mention members of minority groups, and they contain pejorative expressions to describe those people (Knežević 2017). They can imply the existence of a number of social problems related to ethnic relations in a society. Curse words can be indicators of the domination of the person who utters the curse words over the person to whom the curse words are addressed. That is why swear words based on nationality could be a problem for a society that strives for equality. In Croatia, slurs such as "*Gypsy*", "*Chetnick*" and "*Shqiptar*" are often used to put down members of specific ethnic minorities, or simply represent insults in general. Even though they are commonly used, people generally consider the use of these kinds of swear words as unacceptable and uncultured behaviour (Knežević 2017).

Taking this all into consideration, it can be seen that Croatians somewhat understand the deprivation of national minorities in Croatia, but they do not have the tendency to take action themselves in order to improve those conditions. The Croatian majority often exhibits prejudices towards minority ethnic groups and expresses disinterest in issues pertaining to the complex position members of these minorities find themselves in (Knežević 2017). Ethnic minorities are often viewed in negative terms, for example, Albanians and Turks are not understood as ethnic minorities, but are rather seen as intruders and immigrants who rob the local population of employment and business opportunities. When it comes to Roma people, their deprivation was notices, for example in terms of education, but their desires or attempts to change their quality of life were not taken into account. All of this points to a type of ethnocentrism,

regardless of the fact that the respondents do not show prejudices to a greater extent towards ethnic minorities in general (Knežević 2017).

Besides in the discourse, discrimination can often be seen in school, during employment and in public places (Škiljan and Babić 2014, 141-159). This, and the fact that Croatians are more likely to express prejudice towards members of the Roma minority than any other ethnic group, are the reasons why negative attitudes against this minority are going to be studied in more detail in this paper. After Roma, Croatians are most likely to hold negative stereotypes against Albanians and therefore this group deserves a closer look as well (Knežević 2017). Serbs are by far the largest ethnic minority in Croatia (Središnji državni portal 2021) and due to the complex history and tense relations between Croatians and Serb they also require a separate analysis.

2. Roma minority

Roma are the largest ethnic minority in Europe. Over 8,000,000 Roma live across Europe, with the largest communities residing in Romania, Bulgaria, Spain, Hungary, and Slovakia. In Croatia, there are 16,975 Roma, making them one of the largest minorities in the country, or more precisely 0.40% of the population (Središnji državni portal 2021). Recently, the number and share of Roma in Croatia has been on the rise. The social distance that is present between them and the rest of the Croatian society is a result of both structural positions, such as socioeconomic status or political power, and the sociopsychological processes and patterns such as stereotypes, prejudices and stigmas (Škiljan and Babić 2014, 141-159). This can also be seen in everyday discourse, where Croatians often use the word "Gypsy" as an insult, and by doing so they do not initially pay attention to the fact that this is actually insulting to the minority they are mentioning (Knežević 2017).

Roma are often perceived negatively, much more so than any other ethnic group, which is an obstacle in their inclusion in the Croatian society. Some empirical research shows that education is much more difficult for Roma, and they are sometimes even denied participation in practical education (Škiljan and Babić 2014, 141-159). One study shows 87% of the surveyed Roma women and 75% of men are without completed primary education. Roma children often live in unfavourable living conditions, in segregated settlements in which they do not have the opportunity to socialize with

Croatian children and learn the Croatian language. Coupled with the fact that their parents are often denied a job due to their insufficient education and discrimination, it is impossible to expect equal results in the education of Croatian and Roma children (Škiljan and Babić 2014, 141-159).

An example of discrimination against Roma in schools is an affair in villages Macinec, Podturen and Orehovica where classes were segregated. Parents of fifteen Roma students sued four primary schools, the Ministry of Education and Sports, Međimurje County and the Republic of Croatia for racial discrimination and violations of the right to education. Croatian courts rejected their lawsuit claiming Roma children were placed in separate classes because they needed additional education in the Croatian language. In February 2007 the Constitutional Court of the Republic of Croatia concluded that the separate classes for first-graders are not unconstitutional since Roma lack knowledge in Croatian language, but they should not be allowed in later stages of education. The lawsuit was also filed to The European Court of Human Rights, which concluded in 2010 that the placement of Roma children in separate classes was not justified and that the Croatian authorities did not provide sufficient care for their special needs. Nevertheless, segregated classes are still very common in Croatian schools. In addition, a common occurrence is that parents of non-Roma children don't want their children and Roma children to be in the same classes (Škiljan and Babić 2014, 141-159).

Even after graduation, it is difficult for them to gain employment. All of this leads to a sociological phenomenon, known as the "self-fulfilling prophecy". Poverty and their marginal social position make it extremely difficult for the Roma population to integrate into Croatian society, which serves as "confirmation" to the majority of their negative ideas of Roma. The result is a continuing circle of their perception as "others" and their position as a marginalized group. Although laws officially protect the rights of national minorities, at the local level these laws are very rarely implemented in practice (Škiljan and Babić 2014, 141-159). An important step in solving discrimination based on ethnicity is better law enforcement. In large towns, these problems are much more visible. They boil down to problems of discrimination based on racial affiliation, which is an incentive for all other types of discrimination. When it comes to employment, in 2008 only 437 Roma persons were employed through the Employment Service and the largest number of them have only completed primary

school, while a large percentage of them haven't even finished primary school. It is estimated that only 6.5% of Roma in Croatia are permanently employed. In addition, it has been proven that Roma who are qualified for a job require much more effort to prove their qualifications than others (Škiljan and Babić 2014, 141-159).

Roma integration in Croatia faces a number of specific difficulties, one of which is culture. Extrinsic culture such as the way they dress, their dialect or established habits are more often an obstacle in Roma integration than intrinsic cultures, such as language, beliefs or traditional values. With the Roma population, a specific acculturation happened as they accepted customs, religion, tradition and sometimes the language of the majority group, while retaining a specific way of life, more specifically tribal organization, and external symbols of diversity. Therefore, they did not have the opportunity for selective integration or assimilation. While on the one hand they were pressured to renounce their culture, on the other hand their structural integration was simultaneously prevented due to social distance, isolation, prejudice, stereotypes and other reasons mentioned beforehand (Hrvatić 2004, 367-386). In order to improve the status of the Roma national minority in Croatia, in addition to improving their socio-economic position, integration into all segments of society is crucial. Progress in their social integration can be achieved only through prompt but systematic activity towards the consistent implementation of the achieved standards of other national minorities. Any further lack of initiative marginalizes over and over again Roma, who in Croatia, based on historical experiences and reality, can be a valuable and a recognizable part of a multicultural environment (Hrvatić 2004, 367-386).

3. Serbian minority

Serbs and Croatians have a complex history so it is important to take a look at their current status in Croatia. Serbs are the biggest ethnic minority in Croatia, with 186,633 of them living in the country (Središnji državni portal 2021). A defining feature of an ethnic minority is their identity. The main elements of the traditional identity of Serbs in Croatia are also present in their modern identity. Some of the most prominent ones include the Cyrillic alphabet and Orthodoxy (Škiljan 2014, 111-134). One research that was conducted by interviewing Serbs in Croatia shows that the respondents for the most part harbour a pessimistic outlook when it comes to the future of Serbs and

their identity in Croatia. The fact that in 1991 they made up 12.16% of the Croatian population, but today make up only 4.58% justifies this belief. They fear extinction and assimilation. The survival of Serbian identity is threatened in some areas of Croatia, for example in cities, where the number of Serbs is declining sharply due to mixed marriages and ethic mimicry, which in this case stands for mimicking the behaviour of Croatians by Serbs (Škiljan 2014, 111-134). Most Serbian villages in Croatia today are deserted, and a significant number of Serbs living in cities no longer declare themselves as Serbs. There is no doubt that Serbs in Croatia today are on the verge of extinction. Assimilation, which has been present since the war especially in north-western Croatia and in large cities, was accelerated after the war by the stigmatization of Serbs (Škiljan 2014, 111-134).

Nevertheless, their fears of losing their identity and not being accepted by Croats now and in the future can somewhat be pacified by the fact that Croatians are with time becoming more willing to improve ethnic relations with Serbs. One research was conducted in 2001 and again in 2007 on a sample of Serbian and Croatian students and parents in Vukovar about their mutual attitudes. The research examined attitudes they have towards some aspects of ethnic relations in the community, such as integration of children in and out of school, multiculturalism, assimilation of minorities and tendencies to discriminate. The mutual contacts of the minority and the majority have also been examined (Čorkalo Biruški and Ajduković 2008, 377-400). The research shows that participants had more interethnic contacts in 2007 than in 2001. A correlation was found between attitudes and behaviour in children and their parents, and that the tendency to discriminate in children can be predicted based on attitudes of their parents. The results showed a small but significant shift in interethnic attitudes towards positive values. In the majority group, it was determined that in 2001 there was a greater similarity in the attitudes of children and their parents towards the minority, but this correlation has reduced over time. This probably reflects the greater diversity of the wider social impacts the children in the majority group have been exposed to. The obtained results indicate significant changes in attitudes in the examined aspects of interethnic relations over time. The attitudes of majorities and minorities have become more similar over the six-year period. Those changes in absolute terms are not ideal, but they speak of a continuous, though very slow social recovery in the community. The attitudes of the minority remain mainly those

of positive values, while the attitudes of the majority are changing more drastically. Their stances are heading in the same direction, towards greater tolerance based on their differences (Čorkalo Biruški and Ajduković 2008,377-400).

In addition, the study shows that if the majority parents are more in favour of the integration of their children in school, their children will be less likely to discriminate against the other group, and the more parents advocate assimilation, the more likely their children are to be prone to discrimination. In 2001 in the minority sample, unlike the majority, the discriminatory tendencies of parents were a large predictive factor of the discrimination of their children. It can be assumed that if there is a tendency for ethnic discrimination in a minority family, there is a necessity to make those attitudes clearer to children since the majority is simply harder to avoid. Nevertheless, six years later, the tendency for children to discriminate against the minority could not be predicted on the basis of attitudes and behaviours of their parents, clearly reflecting a greater diversity of attitudes of members of the minority. The attitude towards assimilation is the only subject where there were fundamentally different attitudes between the majority and minority group. The majority supports it, and the minority does not, but their attitudes are becoming more similar even in this aspect. Small and positive changes that were noted in the interethnic sphere were also followed by small but positive changes in attitudes on reducing interethnic discrimination (Čorkalo Biruški and Ajduković 2008,377-400).

These changes confirm the important role of the socio-political context in which Interethnic relations take place. Attitudes, as well as interethnic relations, are not static structures. Attitudes are learned, and they are changed based on the social context, which confirms they have a predominantly social, rather than a personalistic nature. It could be said that the changing attitudes in Vukovar reflect the general progress in interethnic relations in Croatia as a whole. Society in general is moving towards tolerance, so even the highly traumatized local community of Vukovar is following this trend (Čorkalo Biruški and Ajduković 2008,377-400). Another indicator for this claim can also be the fact that in different research, where respondents claimed that they do not find insults in which the Serbian national minority is mentioned acceptable and show sensitivity towards those kinds of insults specifically. Nevertheless, they are often present in the everyday discourse. At the same time, these respondents do not show enough factual knowledge about the relationship of the Croatian majority

and the Serbian minority in Croatia, and many do not know how to achieve changes towards improving that relationship (Knežević 2017). In addition to this, it should be noted that the aforementioned improvements are in fact only minor changes, and that the reducing interethnic discrimination is less prominent with children than it is with adults. This fact can have serious and long-term consequences, as the experience of growing up in an ethnically divided community can reinforce discrimination on the basis of ethnicity. Nevertheless, it seems that today, when segregated schools have become a social reality, the integration of children is still a very difficult thing to accomplish (Čorkalo Biruški and Ajduković 2008,377-400). The betterment of the position of Serbs in Croatia is further aggravated due to bad relations between the countries of Croatia and Serbia, specifically the bad treatments of the Croatian community in Serbia, where currently their position in many segments of the social, political and cultural life is not yet at a satisfactory level (Bara 2012, 147-16).

4. Albanian minority

One study showed Croatians are very likely to hold negative stereotypes of Albanians (Knežević 2017), and considering the large number, or more specifically 17,513 of Alabanians living in Croatia, it is worth taking a closer look at whether they face discrimination (Središnji državni portal 2021). Half of the total Albanian population lives in Albania, while a significant percentage of Albanians live in Kosovo and western Macedonia. Albanians came to Croatia during several periods. During the Venetian era, at the time of Turkish conquests and during Yugoslavia (Abdija and Kunac 2018, 61-78). The disintegration of Yugoslavia came with a lot of turmoil, Kosovo Albanians faced constant unrest and riots over Kosovo's status as an Autonomous Province from 1963 and the wars that took place between 1987 and 1999 in Kosovo. This is why, in search of a more peaceful life, many of them migrated to other countries, including Croatia, which in the meanwhile became an independent state. Communist leader, Enver Hoxha and his cruel communist system of rule in Albania, was also the reason for the great wave of emigration of Albanians from Albania to Croatia and in other Western European countries in the 1990s (Abdija and Kunac 2018, 61-78).

About 90% of Albanians in Croatia are self-employed, so therefore Albanian entrepreneurs are an important group to be examined. Albanians traditionally work in

jewellery stores, bakeries, confectioneries, they are engaged in catering and fruit growing and are owners of various trades and businesses. According to estimates, most Albanian capital in Croatia is found in places with developed tourism, such as Istria and Dalmatia. Entrepreneurs within the Albanian minority are mainly younger men (Abdija and Kunac 2018, 61-78).

One research was conducted to question autostereotypes and heterostereotypes of the Albanian minority in Croatia. Autostereotypes refer to perception of one's own group, whereas heterostereotypes relate to the perception of members of an external group. Most respondents claimed that they think Albanian entrepreneurs are accepted in Croatia, but Croatian respondents believe this to a higher degree than Albanian respondents. These results indicate the need for a higher level of acceptance of Albanian entrepreneurs in Croatia. A significant number of Albanian respondents (41%) answered neutrally to the question whether Croats have prejudices against Albanian entrepreneurs, and a smaller portion consider that they do. A large number of Croatian respondents, on the other hand, believe that Croats do have prejudices against Albanian entrepreneurs. When asked if the existence of prejudice has a negative impact on Albanian entrepreneurs, most of the respondents answered neutrally, but almost a third of the respondents think that it does. Answers were similar regardless of the nationality of the respondents. The most significant deviations in answers of the two groups of respondents is on the issue of employment, where Croats claim that Albanian entrepreneurs employ members of their own nationality, while Albanian entrepreneurs state that they employ Croats to a large extent. Another significant deviation relates to the fact that Albanian entrepreneurs consider their position in Croatia more difficult in relation to Croatian entrepreneurs, while Croatians do not share this opinion (Abdija and Kunac 2018, 61-78).

Interestingly enough, citizens of Croatian nationality indicated a significant presence of positive stereotypes and a small presence of negative stereotypes about Albanian entrepreneurs. Albanian entrepreneurs in Croatia are perceived as hardworking, persistent, communicative and brave (Abdija and Kunac 2018, 61-78). This is in contrast with the previously mentioned research which showed that Croatians hold many negative stereotypes against Albanians. This also proves that the subject of the Albanian minority in Croatia is not sufficiently researched, and therefore, more research should be conducted on this topic in order to understand their position and

to ultimately improve their conditions. Some authors claim that in order to combat stereotypes and prejudices against ethnic minorities, there needs to be an emphasis on education as well as a greater representation of the minority in the media (Abdija and Kunac 2018, 61-78).

5. Conclusion

Ethnic discrimination is still a problem that Croatian society needs to face, affecting many ethnic communities. Following the interviews of one research on discrimination of ethnic minorities, many respondents realized a large number of contradictions in their own views. Based on these realizations, they showed an interest in meeting and understanding problems related to the perception of ethnic minorities in Croatia. This implies that raising awareness on this subject can result in the greater acceptance of ethnic diversity. It also goes to prove that prejudices can, and should be changed, and that as such can be overcome through the practice of tolerance and understanding (Knežević 2017). Another important aspect of improving relations with ethnic minorities should be the integration of children, where the first step should be decreasing the number of segregated schools. There should be an increased access to more special programs for learning the Croatian language, especially for Roma, in order to achieve the integration, they strive for, rather than using their lack of knowledge of the language as an excuse to keep them segregated. In addition, actions also need to be taken in terms of employment, taking into account the low employment numbers in the Roma community. Studies that show Croatians harbouring positive attitudes towards Albanians (Abdija and Kunac 2018, 61-78), and the decreased level of inter-ethnic discrimination towards Serbs (Čorkalo Biruški and Ajduković 2008,377-400) do not show the whole picture, but can lead to optimistic conclusions that interethnic relations are not static structures but rather can be, and will be changed if enough effort is shown.

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INTEGRATION IN NORTH MACEDONIA – THE RELATION BETWEEN MINORITY RIGHTS AND POLITICS

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1. Introduction

All human beings are born free and equal in dignity and rights (article 1, Universal Declaration for Human Rights). From this we can conclude that human rights are absolute, indivisible and inalienable. They can be individual or collective. The collective rights are related to the economic, social and political status of a certain group in a society and their cultural background. Those rights usually are related to ethnic groups (in the text further-ethno), and they deserve the States' full attention and protection through its distributive justice and instruments, so they don't suffer violation and deprivation from the majority.

Throughout the constitutional development of North Macedonia, the ethnos that live on its territory were recognized, with the exception of the LVI Amendment from 1989 which extracted the ethnic groups as constituent people. This was corrected and their position was restored in 1992 with the Constitution of independent Republic of Macedonia. Ten years after that, due to inter-ethnic issues, a conflict erupted and for the purpose of peace safeguarding, the Ohrid Framework Agreement (in the text further- OFA) was signed on 13 August 2001. Under the auspices of this document the ethnic minorities' social position was to be enhanced through series of constitutional and legal interventions, thus creating a multicultural society.

The problem with minority rights in North Macedonia is related and tied with the division of ethnos. Therefore, the goal of the State is to integrate the citizens of North Macedonia into a multicultural society with the guidance of the OFA. From

Will Kymlicka's perspective, all the theories[1] that invoked multiculturalism, have a common "liberal multicultural hypothesis", according to which "*states can adopt multicultural policies to fairly recognize the legitimate interests of minorities in their identity and culture without eroding core liberal-democratic values*" (Kymlicka, 2011, pg. 6). Further, he explains that multi-cultural policies (in the text further- MCPs) can target three social groups: refugees, national minorities and indigenous people. In this essay we will elaborate on two MCPs in North Macedonia that are aimed at the national minorities: language rights and affirmative actions.

2. The roots

The current North Macedonian Constitution is based on a civil sovereignty and recognizes the citizenship as a general principle of the democratic state. The civil sovereignty prefers democracy as a political regime because the citizens are the source and holder of state power (Shkarik and Siljanovska-Davkova, 2009; pg. 171). The Constitutional recognition of national minorities in North Macedonia has been dynamic[2]:

- *The Constitution for the future state organization of Macedonia from 1880* stipulated a multinational sovereignty which presupposed the national groups as the constitutional entities i.e. the Macedonian people and the nationalities: Turks, Albanians, Greeks, Jews, Vlachs, Roma and other. In the spirit of coexistence and the principle of proportional representation of the national groups in all branches of Government (from legislative, executive, administrative and judicial to the military and police), they were distributed by their percentage representation in the society (Cvetanova, 2007; pg.147).
- The documents of the first session of the *Anti-fascist Assembly for National Liberation of Macedonia (AANLM)* defined the State as a Federal unit part of the Yugoslav Federation with limited and both national and popular sovereignty and notes the sovereign will of the people in Macedonia, not the Macedonian people.

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1   Philosophical theories like the Ideal theories of justice, theories of liberal justice and etc.

2   The chronological segments are retrieved from: Svetomir Shakrikj and Gordana Siljanovska- Davskova, "Contitutional Law", Kultura, 2009 Skopje; pg. 289-299.

- The *Constitution of the people's Republic of Macedonia* from 1946 stipulates a popular sovereignty and a ban on actions directed against the sovereignty, equality and the national liberty of the Macedonian people.
- The *Constitutional Law for the Foundations of the Social and Political Organization of the Government Bodies from 1953* determines the working class as the holder of the sovereignty. Emphasizing the middle/working class, instead of differentiation between ethnic groups.
- The *Constitution of the Socialist Republic of Macedonia (SRM) from 1963 and 1974*, also recognizes the working class as the holder of power and defines a nation-state of the Macedonian people and of the Albanian and Turkish nationalities in it. The amendment LVI from 1989 stipulated a one-national sovereignty excluding the Albanian and Turkish nationalities as constituent people.
- The *Constitution from 1992* determined the citizens as the source and holder of the sovereignty. Permanent coexistence between (its citizens) the Macedonian people with Albanians, Turks, Vlachs, Roma and other nationalities that live in the Republic of Macedonia is promoted.

With the end of the Yugoslav wars, Macedonia (like the other Federal Units of Yugoslavia) voted for independence on 8 September 1991. In that period, the Albanian minority group laid out four demands: the Albanians to be a constituent ethnic group; for questions related to culture and its development to use a double voting in the State Assembly; equality in the educational system to be ensured; and to get a wider local autonomy (Ivanovski, 2008; pg. 37). These suggestions weren't recognized and from then series of activities led to an armed conflict[3]:

- In January 1992 in west Macedonia, the Albanian flag was displayed everywhere, with the explanation that it doesn't symbolize a State but the Albanian nation.
- The Albanian led National Liberation Army (NLA) in North Macedonia was formed on 20 January 2000 and according to the conclusions adopted by the Macedonian Parliament, it was qualified as "an armed extremist group".

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3   The chronological segments are retrieved from: Sandra Ismanovski, "The Conflict in Republic of Macedonia 2001- Terrorism or Fight for Justice"; Foundation Institute Open Society, Skopje, 2008; pg. 38-58.

- The civil war started on 22 June 2000 with the attack of a police station in Tearce in Skopje by the NLA.
- On 13 August 2001 under international supervision (EU and USA), the negotiations between the State and the NLA ended with the signing of the OFA, which shapes the legal and political system of North Macedonia even now, 20 years afterwards.

This situation left heavy burdens and scars on the society. A citizens opinion (expressed in a research) states that "*very few citizens are ready for coexistence and socializing […] especially after 2001, it was as if we closed and isolated ourselves. It is very important to find models of living together*" (Atanasovski, 2017; pg. 68). Obviously, this demanded action towards achieving integration and coexistence.

Some theorists define conflicts like this as competitions between societal groups. The competition can be understood as striving for scarce objects under rules, which limit the damage, competitors can inflict on each other (Hanauer, Miller, 2015; pg. 7). The scarce objects in this case are the social goods like identity expression, use of language and equal representation, but with the absence of rules. To be precise, we are discussing a collective ethnic conflict, that undoubtedly manifested in a form of turmoil i.e. a civil war.

3. Approaches

We can see that violation of human rights intensify conflict situations. So, peaceful coexistence can be achieved only by respecting certain fundamental rights that have an impact on ethnic or linguistic interests (de Varennes, 1999; pg. 309). Human rights, including minority rights, are based on the acknowledgement and acceptance of the human person in all of his or her diversity (de Varennes, 1999; pg. 308). The Government sought to solve the conflict with a non-territorial autonomy approach. The concept of a multicultural society was the way to go for North Macedonia, using the method of integration under the guidance of the OFA that has the goal of- "*promoting peaceful and harmonic development of civil society, at the same time respecting the ethnic identity and interests of all Macedonian citizens*" (OFA, 2001), and international legislation.

The Power sharing principles are: Integration which means

"*taking human differences into account and accommodating them to the extent possible and practicable that individuals may be able to participate in the life of the linguistic and cultural community to which they belong as well as in the life of the wider society of the State as a whole*" (de Varennes, 1999, pg. 309).

The rights of minorities need to be seen as measures aimed at reaching a balance of inclusion and harmony rather than exclusion and conflict (de Varennes, 1999; pg. 310). Autonomy ensures that minorities are able to participate in political institutions and offers opportunities to protect and advance minority cultures (Hanauer, Mille, 2012; pg. 16). Power-sharing is a form of non-territorial autonomy approach similar to a consociational political system. It ensures the effective political representation of minority groups and protects minority cultures in an effort to prevent domination by the majority. It has five elements (Hanauer, Miller, 2012; pg. 18): (i) guaranteed representation in the executive and legislative branches of government; (ii) minority groups are granted some form of veto over decisions to protect their critical interests; (iii) proportionality in the allocation of government jobs—particularly in the civil service, police, and military—to give minorities "a permanent voice within the structures of the state; (iv) institutionalized dispute resolution mechanism, such as an appeal to an outside arbitrator or a requirement of a referendum and; (v) government in condominium, in which two external powers share sovereignty or control over the territory in question.

Furthermore, OFA aims at five categories: (i) Decentralization; (ii) Non-discrimination and equal representation; (iii) Special Parliament procedures; (iv) Education and use of language; (v) Expressing identities. In comparison with the five elements of power-sharing we can see the resemblance. OFA also has five principles: (i) Eliminating the use of force as a means for political goals; (ii) Sovereignty and territorial integrity of North Macedonia and the unitary character of the state are invulnerable; (iii) Preserving the multi-ethnic character of North Macedonian society; (iv) The constitution must provide the highest standards; (v) Development of the Local Government.

4. Operationalizing the approaches

OFA contains three types of interventions: (i) Constitutional intervention- Constitutional Amendments; (ii) Legal intervention- changes in legislation and (iii) Measures for building trust. This document influenced the largest constitutional amendment and set the foundations for future redefinition of the North Macedonian political system- form a liberal-democratic political system with a parliament democracy to a moderately consocial political system (Ilik, 2012; pg. 6).

The North Macedonian Government is a coalition in which the ethnic Albanian political party "Democratic Union for Integration" (DUI) is part of the government for over 20 years and has strong influence. The Ministry for Political System and Inter-Community Relations (MPSICR) was installed for overseeing and implementing the OFA and its representatives from the beginning were members from DUI.

The (controversial) rule of 20%, was introduced, which implies that the minority group that is represented with 20% will be granted certain benefits. From the last State Census from 2002 we know that the population consists of 64.18% Macedonians, 25,17% Albanians, 3,85 Turks, 2.66% Roma, 2,78% Serbs, 0,84% Bosnians, 0,48% Vlachs and 1.04% others. From them 66,49% use the Macedonian language and 25,17% use the Albanian as a mother language (Galeva, 2001; pg. 73). This policy only asserts two dominant ethnic groups which represents a bi-national organization undermining the other ethnicities. Particular attention is needed to ensure the rights of smaller non-majority communities, for them to be respected and their under-representation to be addressed (EC, 2020; pg. 35).

Further, we'll analyse only the affirmative actions and the use of language, because I personally believe that these two MCPs can be either a precursor for integration or segregation.

Affirmative actions

The State aims to achieve balance in representation between the ethnic groups with affirmative actions through the principle of adequate and equitable representation

incorporated in the Constitution (Amendment VI, XII, XV) and numerous Laws[4]. This principle demands that the employment in public institutions should reflect the situation in the country. For that purpose, quotas were introduced in job openings in the public sector and to encourage members from minority groups to apply, the job openings are published minimum in two daily news-papers, one of which is on the language that is spoken by at least 20% of the citizens. The Ombudsman oversees the implementation of the principle and in he's last report, (which is from 2018) significant progress is shown (table 1). But, the problem here is, with the unnecessary overcrowding of the public sector and the incorrect recruitment. The performance of the administration has been lowering and the State Commission for Prevention of Corruption (SCPC) continued to address cases of nepotism, cronyism and political influence in the process of recruitment of public sector employees (EC, 2020; pg. 12). In April 2021 the Director of the Market Inspectorate was dismissed from his post because he refused to employ 35 people (minority members) assigned be the MPSICR, due to their under-qualification. The Governments explanation for his dismissal was unprofessional conduct[5]. In addition to the low performance of the public sector, 45% out of 41 heads of public institutions don't have the relevant experience for the job (Popovik, Dimovska-Simjanovska, 2021; pg. 7). So, the spoil overruled the merit system in the name of apparent equality.

I am not in any way stating that the affirmative actions alone established the spoil system, but that it went along the lines of the present partocracy and clientelist political culture and it contributes to cementing the spoil system in Macedonian society. Many laws don't contain provisions for educational background of public servants. So, instead of filling this legal gap in good faith and in accordance with the principle of expertise and competence, the Government demonstrates its partocratic manners and uses this gap to employ party members, thus as a consequence establishing a clientelist political culture. In this process, the affirmative actions are used as a tool for the partocratic machinery to establish power and control. Regarding this problem, a respondent (in a research) states that „*There's too much partisanship. What is the*

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4   52 laws were amended, including: the Law on Labour Relations, the Law on Public Enterprises, the Law on Protection and Prevention of Discrimination, the Law on the Promotion of the Rights of Communities represented by less than 20%, the Law on Organization and Work of State administrative bodies.

5   News report on the case: https://360stepeni.mk/vladata-go-razreshi-stojko-paunovski/ .

value of the OFA when only eligible people from the political parties are employed? Only now, they are not Macedonians, but still party members. It's even worse. In our country the political parties are dominant, there is no space for the citizen" (Atanasov, 2017; pg. 63).

Year	No. of public in-stitutions	Total Employed	Macedonians	Albanians	Turks	Roma	Serbs	Vlachs	Bosnians	Other
2018	1.374	138.326	103.014	26.261	2.683	2.052	967	2.052	635	914
			74%	19%	1.9%	1.5%	0.7%	0.7%	0.5%	0.7%
2012	1.101	107.336	80.667	19.083	2162	1.380	1701	735	584	1024
			75,2%	17,8%	2,0%	1,3%	1,6%	0,7%	0,5%	1,0%
2007	360	59.629	49.923	6.429	649	464	1.050	405	201	508
			83.7%	10,8%	1,1%	0,8%	1,8%	0,7%	0,3%	0,9%

Table 1 - North Macedonia Ombudsman Report on the implementation of the principle of adequate and equitable representation.

In Education affirmative actions were introduced through quotas for university en-rolment according to the same 20% rule. In the early 2000's when enrolment criteria were strict, the quotas excused the students and this policy increased the number of students from minority groups enrolled in university. But, when comparing graduated students from the Macedonian ethnic groups versus those from the minority groups, the second were employed in public institutions also through positive discrimination, although they received lower GPA (Ristov, Stanojoska; 2013; pg. 7-10). So, this adds up to the problem of overcrowding and spoiling the public administration in North Macedonia.

Use of language

In 2005, the citizens had the opinion that besides religion, the language is also one of the biggest obstacles in the communication between Macedonians and Albanians (Atanasov, 2017; pg. 73).

Article 2 of the UNDRPBNERLM[6] asserts that "[…] persons belonging to minorities have the right to […] use their own language, in private and in public, freely and without interference or any form of discrimination". In addition, Article 10 Paragraph 1 of the FCPNM[7] states that "[…] every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing". Acting accordingly, Amendment 5 to Article 7 of the Constitution of North Macedonia asserts that

"*The official language on the entire territory of North Macedonia and in its internationalal relations is the Macedonian language and its Cyrillic alphabet. Another language spoken by at least 20% of the citizens is also the official language and its alphabet, as defined by this article*".

The rule of 20% also applies for issuance of personal document and communication with Local or Central Government (Article 16 Law for General Administrative Procedures) as well as court and parliamentary procedures.

Article 1 paragraph 2 of The Law on the use of languages in North Macedonia, specifies that the language which 20% of the people speak is Albanian, thus making the second official language. Here we have two problems. First the law itself shouldn't stipulate the Albanian language as the second official. The provision should be of an open/general character, because the demographics in a country naturally changes. Second, the concept itself (establishing two official languages) imposes financial implications and practical difficulties. In North Macedonia, 4 in 32 municipalities and in the city of Skopje have one or more official language besides the Macedonian language. The Albanian language is used as an official language in 24 municipalities in Macedonia and in 4 municipalities of the city of Skopje, in 4 municipalities is used

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6   UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

7   Framework Convention for the Protection of National Minorities, 1998.

the Turkish language, in one municipality the Romani language (together with the Macedonian and Albanian language) and in one municipality Serbian language (along with Macedonian and Albanian) (Galeva, 2013; pg. 72-73).

The language policies like the affirmative actions, stretch to the education system. Article 14 of the FCPNM stipulates that: (i) everyone has the right to learn his/her mother language; (ii) In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, they have opportunities to learn the minority language or receive instruction in this language (iii) without prejudice to the learning of the official language or the teaching in this language. North Macedonia has gone a step forward and accordant to its Law, the Elementary and Secondary schools to be organized in the student's mother tongue. But the multi-ethnic elementary and high school system in cities like Tetovo, Struga, Skopje and Gostivar are organized in different/segregated shifts, due to violence between students over ethnic tensions (Galeva; 2013; pg. 77). The language as a communication barrier *is largely felt by young people attending parallel education systems. Segregation policy in education makes language an even greater obstacle of communication, especially between Macedonians and Albanians* (Atanasov, 2017; pg. 79).

Article 13 of the FCPNM asserts that members of national minorities have the right to set up and to manage their own private educational and training establishments without entailing any financial obligation for the State. Again, going a step further, North Macedonia according to the Law for higher education, finances public universities organized in the language that is different from Macedonian that 20% of the people speak. The University of South East Europe (USEE) in Tetovo was financed by international organizations, was organized in Macedonian and Albanian language, it satisfied all the international standards and the provisions of the OFA, and was a place where students from different groups can truly interact and integrate. But, instead, the University of Tetovo acquired the status of a State University and public financing. This University now has a mono-ethnic student composition as opposed to the idea of multiculturalism and represents an obstacle for integration in society (Cvetanova, 2007; pg. 126).

Furthermore, the Oslo Recommendations Regarding the Linguistic Rights of National Minorities, propose a balance between the right of persons belonging to national

minorities to maintain and develop their own identity, culture and language and the necessity of ensuring that they are able to integrate into the wider society as full and equal members[8]. Ensuring private use of the mother language and requiring one official language wouldn't mean discrimination, but a practical policy. So, an individual's freedom of expression and the State's public interest are balanced together. Also, the public interest in this case is to integrate the citizens in a multicultural society, but that cannot be established with policies that segregate and differentiate the society even more.

5.   The forgotten ones

According to the State Census from 2002, 53.879 people (2.7%) identify as Roma, although the real number is significantly higher: the Council of Europe estimates that in North Macedonia the Roma population varies from 134.000 to 260.000 (CE, 2012). This indicates that there is a problem with the documentation of Roma people and those people usually don't even have a citizenship. On the last State Census in 2002 there was a category "person without a citizenship" and 17.652 people registered as such[9]. In 2016 there were 599 stateless people or at risk of statelessness (MAYL, 2016; pg. 7), later in 2019 over 700 Roma people were registered without a birth certificate and therefore cannot access any basic services or benefits offered by the state[10]. Stateless persons don't have access to health care, education, employment, social assistance and security benefits, and are at risk of being detained for lack of documents proving their identity (MAYL, 2016; pg. 5). Most vulnerable among them are children who grow up believing that fundamental rights are a privilege (MAYL, 2016; pg. 7).

Poverty hits the Roma population to the point where from a total of 337 registered begging children on the streets, only nine were not of Roma ethnicity[11]. From a healthcare aspect, 40% of Roma women are without health insurance and need to

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8   Oslo Recommendations Regarding the Linguistic Rights of National Minorities, Explanatory Note, p. 14.

9   Parliamentary Institute of NM Retrieved from: https://www.sobranie.mk/content/PI/4-2019.pdf .

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pay for laboratory tests during pregnancy and childbirth, although these services are free and children are not vaccinated regularly (Spitalski, 2018). They live in houses of 5m^2 per person with absence of drinkable water, electricity, heating and sanitary conditions (Spitalskil, 2018; pg. 5). Roma representation in public institutions is 1.3% of the required 2.6%, they are at the lowest ranks and very few are in managerial positions (EC, 2020; pg. 35).

Implementation of the Roma inclusion policies is slow and lacking sufficient capacity, coordination and monitoring, thus Roma people have limited economic opportunities and many fail to earn a living (EC, 2020; pg. 35). By not ensuring the economic liberties through which a person satisfies its basic needs the State violates their right to dignity. By selectively treating minority groups, it violates their rights. Lastly, by not ensuring their security from all aspects, it fails to establish the concept of a welfare state, which is stipulated in article 1 of the Constitution.

6. Did the end justify the means?

Since submitting the application for membership in the EU, the North Macedonian Government has emphasized that the implementation of the OFA is a central segment in meeting the political criteria for EU membership (IEP, 2016; pg. 35). But, is this notion still valid?

According to the Copenhagen criteria, EU demands functional democratic institutions and an integrated society with a high degree of minority rights recognition. So, what did we end up with? The Affirmative actions in the education system lowered the standards and criteria, thus when it met the affirmative actions in the public administration it only overcrowded and contributed to lowering its performance and enhancing the clientelist political culture. The language policies created a general situation of contempt between citizens of different ethnic groups and a segregated educational system which disables further integration. The Romani population obviously wasn't covered with the veil of integration leaving them to struggle, striped from their basic human rights. Through the text we said that North Macedonia is taking steps forward regarding the international standards, but it seems that it's taking steps backwards. It is the citizens opinion (expressed in a research) that

"*the citizens are poor and the standards are low. They don't have the resources to oppose the political parties, nor do the NGOs. Only the ruling parties have enough resources to govern and no one can oppose them. The citizens are forced to join them if they want to survive, to get a job, start a business or whatever*" (Atanasovski, 2017; pg. 66).

From an ontological lens, the Government states that the essence of these MCPs is coexistence, but they didn't reach balance of inclusion and harmony, it enhanced segregation and just frozen the conflict which can be activated easily. Although the perceptions of the citizens regarding the multi-ethnicity are positive, still, some Macedonians and Albanians state that in fact they do not want to live together (Atanasov, 2017; pg. 96).

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THE PROTECTION OF HUMAN RIGHTS AND NON-DISCRIMINATION AS PART OF THE EU INTEGRATION PROCESS IN NORTH MACEDONIA, THE BENEFITS AND WEAK POINTS. WHAT HAS BEEN AND WHAT IS NECESSARY TO DO?

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1. Introduction

The values promoted by the European Union should be the base of any society with a desire for democratization and modernization. These values are freedom, respect for rule of law and justice, freedom of movement, economic development and prosperity, equality, democracy, human dignity and human rights. The last two values of the list will be the main topic of elaboration, which is the protection of human rights and non-discrimination as part of the EU integration process specifically in North Macedonia.

The European Union integration process of Republic of North Macedonia, begun from the moment the country declared its own independence (1991). Although North Macedonia managed to avoid a military conflict, unlike the other neighbouring countries, the country was still presented with a series of challenges. First, we have to acknowledge that North Macedonia was the first country in the region to sign the Stabilization and Association Agreement, which entered into force in 2004. (INTERNATIONAL SCIENTIFIC CONFERENCE (2016), Republic of Macedonia on the Road to the European Union (2020). And since 2009, the Commission has recommended to open accession negotiations with North Macedonia. In June 2018 Conclusions, the Council acknowledged the progress achieved in the coun-

try and set out the path towards opening accession negotiations in June 2019. Furthermore, the Commission has continued to closely monitor developments and reported that North Macedonia has increased its efforts and results in the key areas to strengthen democracy, the rule of law, and greater protection of human rights. (Commission staff working document- North Macedonia, 2020) But we have to acknowledge that somehow all of these efforts are not enough and we will elaborate further down why this is the case.

2.   Human Rights

"All human beings are born free and equal in dignity and rights" (The Universal Declaration of Human Rights)**.** Everyone is entitled to all the rights and freedoms set forth in the Universal Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, there should be no distinction on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs. The Universal Declaration of Human Rights is the main document on the road to freedom and equality. It protects human rights everywhere, at any time. All human rights are equally important, and all governments must treat human rights in a fair and equal manner, on the same basis and with the same emphasis, and they need to promote and protect all human rights for everyone without discrimination.

Furthermore, as a follow to the Universal declaration, there is also the European Convention on Human Rights (ECHR) that protects the human rights of people in countries that belong to the Council of Europe. It was developed to ensure that governments would never again be allowed to dehumanize and abuse people's rights. The creation of the ECHR led to the establishment of the European Court of Human Rights. It was set up in 1959 and is based in Strasbourg, France. The Court exists to safeguard the ECHR, providing a forum for people who believe their rights have been denied, allowing them to have their cases heard.

3. Human rights in North Macedonia

North Macedonia has ratified most international human rights instruments, but the country needs to make additional efforts to ensure and address the recommendations of international monitoring bodies.

Roma population in North Macedonia

North Macedonia is a small country with many minorities living on its territory. The largest minority groups are Albanian and Roma, followed by Turks, Serbs, Vlachs, Bosnian. Since the integration process of the country begun, the discrimination, unemployment and education were the biggest problems and barriers on the way to EU. Within the framework of the protection of human rights and in the process of anti-discrimination, the greatest progress has been made in the area of minorities, which has significantly increased the level of equality and reduced the level of bias. So, one of the biggest minorities, the Roma, begun to receive increased attention from both the national and the local authorities. The government of North Macedonia has increased funding for Roma integration policies, although the poor absorption of the funds remains a problem. Roma people are one of the few groups with limited economic opportunities and many fail to earn for a living. Only 3% of the Roma people have benefits from active labour market policies. The housing is poor, most of the Roma live in illegal settlements or unhygienic environments. They are also often victims of racism, discrimination and segregation, despite the existence of legal frameworks for protection of human rights. Nothing has been done for the issue of street children and child beggars including young mothers and babies that are recorded on the streets. The Roma community is particularly vulnerable in the context of the COVID-19 crisis and it is essential to guarantee full access to health services in order to control the spread of the virus. Overall, many Roma continue to live in poverty, and face unemployment and substandard living conditions. Their access to education, housing, health, employment and justice remains a concern.

Furthermore, the employment of Roma is also another problem in the country. The long-term and low-skilled unemployed and people with disabilities are supported by the guaranteed minimum assistance scheme introduced by the Law of Social Protection and expected to bring further reduction of poverty through higher coverage and

larger benefit. Although the number of Roma benefiting from active employment, has increased, it is still 10 times lower than for non-Roma population. Roma employment rate needs to be higher, and in that way the discrimination would be lower. (Commission staff working document, North Macedonia, 2020 Report) Furthermore, there are also other significant challenges of inclusion of the Roma in the labour market, especially the youth and the Romani women. The high unemployment rate is associated with the low-level of education and absence of skills for performing certain jobs. Large majority of Roma are included in collection of secondary waste materials and the women in cleaning services. A relatively low number of Roma use the services of the Agency for Employment and the active employment measures, compared to the total number of users at the national level. There is a large part of Roma that are registered in the Agency of employment only for the purpose of benefiting from the social welfare system, and most of them are not acquainted with the active labour market measures. In relation to the earnings, the amount that Roma earns per month is very low compared with the consumer basket for 2018. There are some recommendations for the Roma and their progress in this segment. The municipalities and civil society organizations should cooperate and through social entrepreneurship, support the at-risk social groups such as: persons who collect secondary raw materials or household hygienists. Furthermore, the Municipalities in cooperation with the Employment Agency through the Active Employment Measures, should invest in the legalization of the businesses and in particular to provide subsidies for supporting the setting up of start-ups, small and medium enterprises. (Thematic evaluation of EU to Roma communities and Roma social mapping, July 2019). Moreover, another thing that needs to be solved in the years ahead for the Roma population in North Macedonia is the issue of child beggars, including young mothers and babies that are recorded on the streets.

Albanians in North Macedonia

When discussing equality and anti-discrimination in the process of Macedonia's integration into the EU, great attention is focused on minorities, and the goal of reducing discrimination against Roma and Albanians as the largest ethnic groups, but not limited to only these two ethnic groups.

Albanians are the largest minority in North Macedonia. According to the 2002 census there are 509,083 Albanians in North Macedonia, or 25 per cent of the population. Dur-

ing the Socialist Federal Republic of Yugoslavia, Albanians were the largest nationality without the status of a nation; they were concentrated in Macedonia and Kosovo. As a result of the Ohrid Framework Agreement, important guarantees have been provided for ethnic Albanians, particularly in regards to language use and participation in public life, including public-sector employment. The University of Tetovo (an Albanian speaking university) has been recognized by the authorities which is another big step that was made as well as the forming of Albanian classes in primary schools. The Framework Ohrid agreement promotes the peaceful and harmonious development of civil society, at the same time respecting the ethnic identity and interests of all Macedonians citizens. (Dr. Michael Seraphinoff). The Agreement also lays out municipal decentralization as a tool to reconnect Albanians with the state and to enjoy some degree of self-government. Similarly, the Agreement emphasizes the need of the state to be inclusive and promote its diversity, the measures the Agreements stipulate focus on enhancing the inclusion of the Albanian community meaning it extended the minority rights of all minority communities, in particular the Albanian community. The key aspects of the reforms focus on increased recognition of Albanians and the expansion of Albanian-language education. And one could measure the success of the Ohrid Framework Agreement by the absence of conflict, and from this perspective, the agreement is a success. (One Decade after the Ohrid Framework Agreement: Lessons (to be) Learned from the Macedonian Experience, Friedrich Ebert Stiftung and Center for Research and Policy Making Skopje, 2011)

To continue with, the principle of non-discrimination and the equal treatment for all citizens in North Macedonia is part of the Ohrid agreement. In the past years, since the implementation of the agreement, around 130 laws and legal amendments were brought into force. The newest law was one for the use of language. It was adopted with the aim of translating legal amendments into the language spoken by at least 20% of the population. This law regulates the principles, manner and responsibility of the institutions to enable official use of the language spoken by at least 20% of the citizens, the right of the citizens to use and apply that language in official procedures. At the same time, the use of other languages spoken by the citizens of the communities that are less than 20% is regulated. Furthermore, the Agency for Language Application has a mission to build an institutional environment that respects the constitutional and legal obligations, protects, promotes, preserves and strengthens the language

right of all citizens of the Republic of North Macedonia, through: development of language policies and unification of administrative terminology in cooperation with relevant experts and institutions in and outside the country, training of translators in all institutions in the country, providing software for translation for central institutions. In January 2019 the Albanian-language bill became law. That is proof that the government is constantly trying to protect human rights of the minorities in the country and to reach the point of equality. Previously, Albanian was the official language only in areas where the community comprised at least 20 per cent of the population. According to the new legislation, its use will become more widespread, especially at the national level. However, ethnic Albanians remain over-represented among the unemployed, still underrepresented in state employment, and those who live in areas where they do not constitute 20 per cent of the population face problems with language use in public administration and access to education in their mother tongue. Ethnic Albanians are often victims of hidden discrimination. As all minority groups in North Macedonia, they face problems because the education system is segregated and heavily influenced by political parties. And this is one of the problems that need to be solved it if the country wants to become part of the EU family.

4. Benefits and weak points

With the accession of the Republic of North Macedonia, its citizens will face significant challenges, but also great opportunities. All the previously mentioned steps taken by the country have the same outcome and that is peace and security.

In 2012, the Government of the Republic of Macedonia adopted the first National Equality and Non-Discrimination Strategy covering the 2012-2015 period. In order to assess the progress made, the Strategy implementation and establishing whether the desired results were reached, in cooperation with the OSCE Mission in Skopje, in 2015, the Ministry of Labour and Social Policy made an Evaluation of the Strategy, which produced guidelines and provided the basis for the new National Strategy for the 2016-2020 period. The alignment of the anti-discrimination law with the international human rights standards contributed to the government's decision to reform the law in 2016. The draft new anti-discrimination law, was finalized on 5 March 2019. And in its first Article of the law: ,,This law regulates the prevention and prohibition of

discrimination, forms and the types of discrimination, the procedures for protection against discrimination, as well as the composition and the work of the Commission for Prevention and Protection against Discrimination." (Anti-discrimination law, 2019)

Weaknesses in terms of budgetary allocations and implementation of the 2016-2020 national strategy for equality and non-discrimination remain. The Ombudsman's Office received 60 complaints on discrimination and issued 24 opinions. Amendments to the Criminal Code adopted in December 2018 clarified provisions on hate crime and expanded the protected grounds. However, people are still not adequately protected against hate speech and discriminatory speech. Non-systematic collection of data on hate speech remains an issue. The country should make better use of its observer status in the Fundamental Rights Agency in this regard. *(*Commission staff working document, North Macedonia, 2020).

Furthermore, the rights of national minorities in the Republic of North Macedonia have been advanced with the Constitution of 1991, supplemented and amended by constitutional amendments stemming from the Ohrid Agreement. It is considered that with the signing of the Ohrid Agreement, on 13 August 2001, a more significant advancement of the position of national minorities took place. This agreement represents the basis for Macedonia's democratization and a compromise on the fundamental rights and freedoms of national minorities in the country.

5. Conclusion

Human rights belong to all human beings regardless of their national or ethnic origin. Human rights are interlinked, interdependent and indivisible. They are universal and are guaranteed under laws, conventions, customary and international law, as well as under general principles and other sources of international law. Non-discrimination is a comprehensive principle of international human rights law. This principle is set forth in all core human rights conventions and is the central topic of certain international human rights conventions. (National equality and non-discrimination strategy 2016-2020)

To conclude, The Republic of North Macedonia is a country that is constantly trying to reach the values and set the laws in order to become a member of the EU. By be-

coming a member, North Macedonia will have greater support, will provide greater protection of human rights, and will fight discrimination, and there will be reconciliation between different ethnic groups, good neighbourhood relations, and a society that guarantees better future for all.

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THE LEGAL AND FACTUAL POSITION OF NATIONAL MINORITIES IN NORTH MACEDONIA – CHALLENGES AND IDEAS FOR IMPROVEMENT

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1. Introduction

Whole Balkan peninsula has specific history – the wars between the small countries located on this part of the world were often in the history. Especially, the Western Balkan has stormy history. Even if the wars between the countries stop for a longer period, the clashes between different ethnic groups, between the majority and the minorities happen. That is why there is a necessity of some effective legal mechanisms, which the countries in the Western Balkans must take, in order to keep the peace and their normal existing. The main reason is because these countries are multicultural – different ethnic groups, along with the majorities, live in the Western Balkans.

The Macedonian state, as a typical Western Balkans country, in which ethnic majorities are around 36% of the whole population, according to the last census, which was made in the year 2002. It means that the Macedonian society is multicultural. Around 25% of the whole population are Albanians, making them the biggest minority in this country. In the 90ties, Albanians were thinking that they have not enough rights, which was reason for them to rebel against the Macedonian state. The culmination of the rebels was the 2001 insurgency, in which some part of the Albanians, represented by the terroristic Albanian National liberation army, started armed riot against the state, which ended with the Ohrid agreement. This agreement's implementation was meaning that important changes should be made in the Macedonian constitution from 1991. That amendments totally changed the position of the ethnic minorities in the Macedonian country.

In this essay, I am going to try to analyse the position of the ethnic minorities in the independent Macedonian state, since its secession from Yugoslavia, generally divided in two periods – the period between 1991 and 2001, and the period after 2001, or, in other words, the period in which the amendments from the Ohrid agreement took effect.

2. History of the minority rights in the Macedonian republic – the period between 1991 and 2001

In this period, the Macedonian state, according to the constitution, was a democratic state. This constitution proclaimed that it was a national country of the Macedonian folk, country with which a full civil equality between the Macedonian folk and the minorities (Albanians, Turks, Romani, Aromanians and the others) is established. Initially, the constitution was a typical constitution of modern, civil state, in which the ethnic affiliation does not matter. Article 7 of the Macedonian constitution proclaimed the Macedonian language as an only official language on the whole territory. Also, in this article, the question about the official languages in the local self-governments was determined. Official languages in the municipalities, besides the Macedonian, was the language which was mother tongue of the majority of the concrete municipality.

The positive discrimination in this period did not exist in the Macedonian law system. The governments in this period were strict about the use of any different ethnic symbols, who were not Macedonian. The highlighting of national symbols of other countries was prohibited. In 1997, two city mayors of municipalities who are with Albanian majority, highlighted the Albanian national flag in front of the municipalities' buildings. It ended with strict reaction from the Macedonian police, and in the end, Albanian flags were moved away.

We can conclude that in this period, the Macedonian state was strictly national state of the Macedonian people, but as the constitution proclaimed equality between the majority and the minorities, it was clear that Macedonian republic was a modern, liberal, democratic state. In my opinion, the Macedonian law system was functioning better. In this period, there was no positive discrimination, which, even if it is called positive, it is still a kind of discrimination. No one was discriminated from the state institutions because of his ethnical affiliation, and it was not a criteria for a work place in the public administration. The strictness of the Macedonian law about the

national symbols maybe was exaggerated, but it is not enough reason for starting a war. However, the rebels encouraged by the position of the minorities (an important thing is that only the Albanian minority was making those rebels) were more often, and it culminated with the events from 2001.

3. The events from 2001, the Ohrid agreement, and the position of the national minorities in the period after 2001

The 2001 insurgency in Macedonia was ended with the Ohrid agreement. This agreement was seen as an opportunity for bigger rights for the minorities, and for more equality in the Macedonian society. It required changes in the constitution, and in other acts. Generally, the Ohrid agreement required changes in few segments: parliamentary procedures, decentralization, employment in the public sector, education etc.

The main change in the parliamentary procedures was introducing the new type of voting for the constitutional changes and for part of the codes. It was the double majority, or, as it is often called, the Badinter majority, named after Robert Badinter, a French lawyer, who was involved in the creation of the Ohrid agreement, and who suggested this principle. The double majority requires majority of the whole number of the assembly members, and majority from the members of the assembly who do not belong to the major ethnic group, or, in other words, who do not feel as Macedonians by ethnicity. Analysing this principle, we can notice that there are legitimate arguments who support it, but there are also legitimate arguments who are against it. This principle is good because it removes the danger of an appearance, called "the tyranny of the majority". It means that majority has the whole power to make a decision, even if the concrete questions are much more important for the minorities. In this situation, the minority's representatives would be outvoted, and they would not be able to fulfil the expectations of their voters. But, on the other side, the double majority has negative effects, because it gives much power to the representatives, based only on their ethnic affiliation. They are able to block important decisions, even if they are not represented with many members in the assembly. This is called "the tyranny of the minority". The double majority principle is functional in the Macedonian assembly, but also the blockades are common.

Employments in the public sector are really painful topic, when we analyse the rights of the ethnic minorities in the Macedonian republic. The amendment VI of the Macedonian constitution, requires the so called "equitable representation" in the public sector. Actually, this is the implementation of an institute of the international human rights law, called "positive discrimination". It is one of the affirmative actions, which in the theory of the human rights law is known as a measure for eliminating the discrimination in the society inclusion. According to the Macedonian constitution, and the codes whose topic is the employment in the public sector, every ethnic group should be represented in the public sector, based on their percentage of the whole population of the state. For example, if 25% of the population is Albanian, then 25% of the employees in the state institutions must be Albanian. Even if this type of measures are known and implemented worldwide, they have one characteristic which is forgotten in the Macedonian system: they are temporary, until the society accepts the discriminated group. In Macedonia, the "equitable representation" in the public sector is a constitutional principle, which means that there is no will for eliminating this measure from the system. Besides the positive effects of the positive discrimination, whose number is much smaller than the negative, as I said, in the theory of the human rights law, the positive discrimination is temporary measure, and once it gives an effect, it is eliminated. In Macedonian public administration, the ethnic affiliation is 2 decades a condition for employing, often pushing the quality in second place. A study published in 2017 shows that in the period 2006-2015, the number of the employees in public administration is in continual growth (Goceski, 2017, pg. 14). That is caused by the bad governing of the employing in public sector, but its part here has the insisting of the ethnicity as a condition for employment. In my opinion, the Macedonian society showed that it does not discriminates the ethnic minorities in the employment in public sector, and that is why the positive discrimination must be eliminated as a measure. It causes many negative effects, such as lower quality, unnecessary number of employees in the public sector, which causes expenses for the state budget etc.

One of the most positive sides of the Ohrid agreement is its insisting on the decentralization, and bigger competences for the local governments. This agreement caused transferring many of the competences from the central to the local governments, whose

number was really small before 2001. Use of the national symbols was also leaved in power of the local governments, which removed the potential riots for this topic.

One of the most popular specifics of the Ohrid agreement is its language policy. The amendments who came up as a product of this agreement, transferred the Macedonian republic in a de facto bilingual country. The amendment V elaborates these questions. According to this amendment, besides the Macedonian language and its Cyrillic letter, official language on the whole territory of the state is the language spoken from at least 20% of the population and its letter. At the moment, that language is the Albanian language, but eventual changes in the ethnical structure of the Macedonian society would change this situation, because this part of the constitution does not recognize the Albanian language as official, but the language spoken from 20% of the population. That is why the Ohrid agreement is also called "the framework agreement". However, the amendment V is clear about the usage of minority languages. It describes how those languages will be used, and also leaves some questions to be elaborated in the codes. In this amendment is emphasized that the personal documents of the citizens who spoke official languages different than the Macedonian, will be issued on both languages – Macedonian, and the language they speak.

We can find interesting solutions about the language usage in the municipalities. In every municipality in which there is a language, which is spoken at least by the 20% of the municipality's population, and which is different from the Macedonian, according to the legal system, is official. But the law gives an opportunity to the municipality council to officialise a language, on a municipal level, even if it is spoken by less than 20% of the population. This is a solution who opens an opportunity for affirming of the languages who are spoken by the smaller minorities.

There is a study from 2014 which topic is the usage of the minority languages in the local governments. In the Macedonian state, there are 80 municipalities, and the City of Skopje as a separate unit of local self-government. Thirty municipalities, including the City of Skopje, have a legal obligation to enable official use of non-majority language. The most common non-majority language in the local self-government units is Albanian, which is official in 27 municipalities. These are the municipalities of Aracinovo, Bogovinje, Vrapciste, Zelino, Lipkovo, Saraj, Tearce, Brvenica, Gostivar, Debar, Kicevo, Struga, Studenichani, Tetovo, Chair, City of Skopje, Butel, Dolneni,

Zelenikovo, Jegunovce, Krushevo, Kumanovo, Petrovec, Sopishte, Caska, Cucer Sandevo and Suto Orizari.

In eight municipalities, Turkish is the official language, and in two of them (Centar-Zupa and Plasnica), the Turkish ethnic community is majority, in one it is over 20% (Mavrovo and Rostuse), while in the other five, it is official, although there is no legal obligation for that (Vrapciste, Dolneni, Gostivar, Studenicani and Chair).

The Serbian ethnic community is represented by over 20% only in the municipality of Chucher- Sandevo. In addition to this municipality, Serbian is official in Kumanovo and Staro Nagorichane.

Roma are the majority in Suto Orizari. The Romani language is also official in Kumanovo, where Roma are below 20%. Bosniak and Vlach are minority languages. Although these ethnic groups are not 20% in any municipality, however, their languages are official, each in one municipality. The Bosniak is official in Dolneni, and the Vlach in Krushevo. Out of 31 multilingual municipalities, 27 are bilingual, 7 are trilingual and 2 are quadrilingual (these are the municipalities of Kumanovo and Dolneni). Eight municipalities have introduced an official language, though it was a native of less than 20% of the municipal population. Two of these eight local self-government units have done that for two languages (Dolneni for Turkish and Bosniak in 2005 and Kumanovo for Serb and Roma in the Council in 2010). Except Dolneni, Vrapciste (2006), Gostivar (2009), Studenichani (2013) and Chair (2013) have introduced Turkish as an official language. Apart from Kumanovo, Serbian was introduced as an official language in Staro Nagorichane (2010). The Municipality of Krushevo also uses the Vlach language as official since 2006 (Bliznakovski, "Local language policies for the minorities", 2014, pg. 23-25).

These statistics show that many of the municipalities in the Macedonian state are multilingual. This is proof that the local language policy is good for the less spoken languages, besides its positive effects for the languages native to the bigger minorities, especially to the Albanian language.

Most important codex for the usage of the second official language on state level is the Codex for the usage of the languages, which was adopted in 2018. This codex expends the usage of the Albanian language. This codex requires bilingual banknotes,

postal stamps etc. Also, in its first article, this codex proclaims that it is elaborating the usage of the Albanian language, which is not harmonized with the constitutional amendments, who came up as a result from the Ohrid agreement, which is also known as "the framework agreement", which means that the guaranteed rights would refer to every ethnic group who is represented by at least 20% of the whole population of the Macedonian state. The procedure for its adopting was also controversial, and had many irregularities. The Venice commission also had a negative position on this language, but it was never taken into account by the Macedonian government. However, this codex is a subject of a few initiatives before the Constitutional court, and the destiny of this codex is unknown.

4. Conclusion

From the analyse which was a topic of this essay, it can be concluded that the status of the ethnic minorities in the Macedonian state is really well. According to some experts, the Macedonian republic even exceeds the European standards for the national minority rights. However, generally, the minority rights often depend only on the Albanian minority, which is biggest in the country, while the rights of the other minorities are skipped. For example, it is a bit unfair for the other minorities Albanian to be a state official country, when they are still a minority, and their number in the whole population is much smaller than the number of the ethnic Macedonian population. Also, I think that all the citizens of the country must speak the Macedonian language, because it is a condition for normal functioning of the country. This is not a case in my country. There is a solid percent of the population who cannot speak Macedonian, and that should change in future. With actual solutions, especially with the last Codex for the usage of the languages from 2018, Macedonian state more looks like a binational, not multi-ethnical state. That is a negative trend and it should be removed.

Also, I think that the insisting on the positive discrimination causes a real damage on the society. With every employment of a group of candidates in the public sector, the ethnic structure of the candidates should be specific, and this condition eliminates the quality of the public sector. The administration becomes less effective, and it costs the state budget much funds. That is why a reform in the public administration

is needed. One of the measures surely would be eliminating the employment based on an ethnic line, which is one of the main reasons of the problems.

Also, the Ohrid agreement, besides its positive effects on the status of the national minorities, with its insisting on the ethnic affiliation of the people, maybe causes some problems. I think that first version of the Macedonian constitution from 1991 was more modern, more democratic, more liberal, because it was not insisting of the ethnic affiliation of the citizens. With its principles, Macedonian state was a real civil democracy, in which the ethnic affiliation did not matter.

Maybe it is time for revision of the solutions who were created with the Ohrid agreement. It was proofed that the Macedonian society does not discriminate its minorities, and that all the ethnicities can be included in the institutions without any problem made by the majority. That is why I think that we should not refer any more to the ethnic affiliation. For me, as a Macedonian, sometimes it is painful to watch that some people hold good positions in the institutions, not because of their quality, but because of their ethnicity. In my opinion, dividing the people based on their ethnic affiliation should go in the history, and I think that the folks, if they are governed by right people, can learn that the ethnicity does not matter. It should be a challenge for the European union to promote the battle against discrimination based on ethnic affiliation. But, with the current legal system in the Macedonian republic, we have a discrimination, even if it is defined as a "positive" discrimination. I think that maybe the European union, as a more powerful side, should promote the leaving of this principle and the benefits from it. But, with the current situation, I do not think that this is possible. It is too easy for nationalist politicians to wake the hate in the folks if the Ohrid agreement's revision would came up as a topic in the society, and that would only increase the damage.

So, the nationalism is easy to wake in the Western Balkans. That is why the states should start with eliminating it through the educational system. Building a good, effective educational system can produce many positive effects. One of them is eliminating the hatred based on ethnical affiliation. Maybe if we build a solid educational system, the hatred in the next generations would be much smaller. But, for now, the Macedonian state has one of the worst educational systems in Europe, and the changes must come from here. With the current legal system, the minorities have a right to visit a school on

their native language. But, that by default means creating a classes based on ethnicity. For me, it is a negative trend. I think that the classes should be mixed, and most of the learning should be on Macedonian language, not because I am Macedonian, but because it is the most spoken language in this country. Surely, the right for learning on its native language should not be eliminated for the minorities, but there should be created some mixed educational system, with which both things would be realized.

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THE PROTECTION OF HUMAN RIGHTS IN KOSOVO - WHAT HAS BEEN AND WHAT IS NECESSARY TO BE DONE

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1. Introduction

Human rights are basic and essential rights that identify us as human beings, individuals, and civil members of society. As such, they are organized as a vast set of moral norms and legal rules to protect and preserve our identity, integrity, and dignity, that is, the complete image that represents us completely as "human beings". We have these rights since we are human beings endowed with intellectual-emotional consciousness and with moral, cultural, and ethical values, which universal values must be recognized, guaranteed, and protected by the state and its competent legislative, executive, and judicial bodies, and by no means these should be harmed and violated by various potential threats and ongoing abuses within society.

Human rights are universal, which means that they belong to every individual wherever he lives, regardless of origin, race, ethnicity, gender, cultural, religious, and political views, etc.

Article 1 of the Universal **Declaration of Human Rights (UDHR)** states: **"**All human beings are born free and equal in dignity and rights." Freedom from discrimination, set out in Article 2, is what ensures this equality.[1] Discrimination is a negative phenomenon that deeply stagnates a society and its living members to have genuine relationships with each other, without falling prey to the stereotypes and centuries-old social prejudices that are still present, unfortunately, in different social classes in society and many areas of daily life.

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1   Article: "What are Human Rights", Section 4 "Equal and non-discriminatory", published on the United Nations Human Rights Office of the High Commissioner official website.

I think that a state and a society to be as fair, secure, stable, and united as possible, must guarantee all the fundamental freedoms and essential rights to all its members without distinction to provide them a peaceful environment where they can freely grow and fully develop, be educated with high ethical and moral values, and to be employed properly and fairly. All this makes a state free, civilized, progressive, peaceful, democratic, and also powerful and recognizable in the national and international arena. Such a progressive approach should be pursued and exercised under control, carefully and precisely, to influence the state to be recognized and integrated into the various key prevailing international mechanisms.

As a process, integration constitutes a kind of solidarity between societies and states, which contributes to the building of prosperity and the promoting of international cooperation between them. All these create common support, protection, assistance, work, market, and a peaceful policy among each other. For these processes to take place, each aspiring member must embrace pure and high moral, ethical and democratic values in every field of law and daily life.

Although many international conventions and national laws have been adopted, the phenomenon of human rights violations is still present, especially in the totalitarian, undemocratic, underdeveloped states and at those in the transition process. This is due to the form of the government and administration that these states exercise, to maintain a one-party system of government and to have extremely high control over public and private life. Apart from this factor, another reason is that often in underdeveloped countries or those with an excessive lack of human resources and adequate competent institutions to fight injustices and legal violations, it is not insisted in time and not enough work is done to take precautionary measures, to stop the numerous wrongdoings in the violation of human rights.

It is the job of a state and its civil population to contribute and work together to protect human rights.

A healthy society guarantees rights to its members at a proper and satisfactory level. Such a society creates prosperity, longevity, stability, and security. Therefore, the protection of human rights by the state based on the application of relevant laws is of primary importance, since we as human beings and as the most populated members of a society are the ones who help and work together to strengthen the country.

The field of human rights is a wide and diverse topic, and it is never-ending. Due to such a comprehensive nature, this field can neither be treated theoretically nor practically in narrow terms. This is because it provides a large set of rules and legal mechanisms to deal with many events of daily life, which we as individuals are faced with.

2. Kosovo – "A Small Country"

Kosovo's Legal Framework on the Promotion and Protection of Human Rights

Kosovo is a small country in Southeast Europe with a land area of 10,887 km2 and a population of 1.8 million inhabitants.[2] Its history and origin date back to the earlier years before the new era, from the era of the first Illyrian tribes. Its independence was declared on February 17, 2008, and since then it has gained diplomatic recognition as an independent and sovereign state by 98 member states of the United Nations, 22 of which are also members of the European Union.

Kosovo is a democratic parliamentary republic with a multi-party system of government and with its legislative, executive, and judicial institutions.

In addition to the predominantly Albanian community in a total percentage of 92.9%, in its territory also live the following 7 communities: Ashkali (0.9%), Bosniak (1.6%), Egyptian (0.7%), Gorani (0.6%), Roma (0.5%), Serb (1.5%), and Turkish (1.1%).[3]

Kosovo is a country in transition and until the first years after the war of 1999, and even now is still considered a country with a low economy and insufficient budget revenues. Despite the initiating actions taken towards strengthening the state, Kosovo remains a state that suffers the consequences and traces of the many years of occupation regimes of the past, the subsequent political upheavals, and the 1999 war on its territory.

The Constitution is the supreme and highest legal-political act of the Republic of Kosovo. Regarding the promotion and protection of freedoms and human rights, the Constitution of Kosovo contains a large number of constitutional norms and provi-

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2   Article: "Kosovo", the Introduction part, published on the Wikipedia.

3   Article: "Kosovo", the Introduction part, published on the Wikipedia.

sions to regulate this area.⁴ This is seen in particular by the prominence of Article 21 paragraph 1 of its second chapter entitled *"Fundamental Rights and Freedoms"*, which states: *"Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo."*, and of the Article 23 paragraph 1, which states: *"Human dignity is inviolable and is the basis of all human rights and fundamental freedoms"*. This means that the Constitution of Kosovo in all its content gives primary importance to the field of implementation and protection of human rights.

Also, Article 22 paragraph 1 of the Constitution states that: *Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in case of conflict, have priority over provisions of laws and other acts of public institutions:*

- Universal Declaration of Human Rights;
- European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
- International Covenant on Civil and Political Rights and its Protocols;
- Council of Europe Framework Convention for the Protection of National Minorities;
- Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination Against Women;
- Convention on the Rights of the Child;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Although Kosovo has not yet been able to formally become a party to international human rights mechanisms and conventions, it has incorporated these documents into its national law and as such are directly applicable in the justice system of Kosovo.

In addition to the inclusion and treatment of human rights within the Constitution, Kosovo has also adopted several specific laws regarding the protection of certain rights or certain groups of individuals in the society, such as *Law No. 05 / L-020 on Gender Equality, Law No. 05 / l-021 on Protection from Discrimination, Law No. 03 / L-047 on*

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4   Bajrami, A. and Muçaj, F. (2018). Constitutional Law, Pristina, Kosovo.

the Protection and Promotion of the Rights of Communities and their members in the Republic of Kosovo, etc.

Despite the existence of such a legal framework, Kosovo is thought to lack a comprehensive human rights action strategy that would include all of these specific existing policies and laws into a key common document. Also, despite the prohibition and legal punishment of human rights violations, their violations continue to occur in everyday life and this remains a deeply serious problem.

3. How have some of the Civil and Political Human Rights been implemented and protected in Kosovo?

The Prohibition of Torture and Inhuman Treatment

The Constitution of Kosovo prohibits the perpetration of any kind of act of torture, inhuman and cruel treatment exercised against the individual, where this is explicitly stated in Article 27 paragraph 1, which states: *"No one shall be subject to torture, cruel, inhuman or degrading treatment or punishment."* This prohibition is also provided by the European Convention on Human Rights (ECHR) in Article 3, paragraph 1, which states: *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."* Such a prohibition and punishment of these acts is provided by the Criminal Code of the Republic of Kosovo in Article 196 paragraph 1 of the eighth chapter entitled *"Criminal Offenses against Freedoms and Human Rights"*, which states: *"An official person or a person who, acting under the influence or with the tacit consent or tacit consent of an official person, commits an act of torture, shall be punished by imprisonment of one (1) to fifteen (15) years."*

Although the Constitution and the laws strictly prohibit the application of torture and cruel and inhuman treatment of prisoners and convicts, such practices have unfortunately been applied during this year and this is confirmed by the various accusations of ill-treatment of some detainees exercised by police and correctional service personnel. The Ombudsperson Institution acts as a national preventive mechanism for the implementation of legislation in this area.

In October 2020, the Ombudsperson Institution reported that it had received a total of 21 complaints from detainees about the ill-treatment of them, of which only seven were considered admissible. Six of the complaints were filed against police and one against correctional service staff. A total of three cases were investigated by Kosovo's Police Inspectorate, while the Ombudsperson Institution undertook the remaining four cases.[5]

As a result of the Covid-19 pandemic, this Institution had encountered difficulties in following and investigating precisely and continuously the cases in question.

By August 2020, the Police Inspectorate, a body that is at the service of investigating and preventing criminal offenses committed by Kosovo police, had investigated a total of 360 police officers in connection with 935 complaints from citizens regarding police conduct. The Police Inspectorate found disciplinary violations in 545 of these complaints and forwarded them to the Professional Standards Unit of the Kosovo Police. The same institution investigated 23 criminal cases from the year 2019 and filed 29 criminal charges for disciplinary violations.[6]

"Prisons are meant to be rehabilitation centres more than punishment centres, particularly when crimes are relatively minor." – a quote cited by Yahya Ashraf, the researcher at Euro-Med Monitor.

Among other things, the Kosovo Rehabilitation Center for Torture Victims (KRCTV) documented gaps and redundancies in essential conditions in Kosovo's prison health care system and reported an insufficient number of employees as mental health professionals. On the other hand, attorneys for persons with disabilities blamed the Government for the regular accommodation of pre-detainees diagnosed with mental disabilities together with the other pre-detainees with sound mental disabilities. *The law requires that the convicted criminals with documented mental health issues should be held in facilities dedicated to their mental health care, but these prisoners were often placed in standard prisons due to the overcrowding of this category of convicts in public mental health institutions.*

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5   2020 Human Rights Country Report/ Section 1. Respect for the Integrity of the Person (Kosovo, March 30, 2021) published by U.S. Embassy in Kosovo.

6   2020 Human Rights Country Report/ Section 1. Respect for the Integrity of the Person (Kosovo, March 30, 2021) published by U.S. Embassy in Kosovo.

Due to such circumstances present in not providing the proper conditions of stay in prisons such as lack of hygiene, lack of natural light, the very poor ventilation system in the cells, etc., and is not providing regular medical checks and medications to prisoners, prisoners often felt afraid to demand these rights because they were rudely mistreated by the correctional service personnel, and therefore they hurt themselves to draw attention to their medical treatment needs and other essential needs. Staying in the cells is very difficult for prisoners, and it often happens that in addition to being mistreated by the correctional officers, they are also physically and verbally abused by other prisoners. This phenomenon also occurs because there is no categorization of prisoners in special cells, as is the actual case in Kosovo. After all, there is a lack of conditions and funds to build and invest in separate cells rooms, and that the capacity of the physical space of prisons is beyond crowded. Often these kinds of situations and inadequate living conditions cause many prisoners to become seriously ill physically and mentally, to suffer from chronic lung disease, severe loss of weight, and mental illnesses such as depression, schizophrenia, paranoia, etc.

On the positive side, it is worth mentioning some of the improvements that were made in this field during the period 2019-2020, such as: carrying out renovations in the physical space of Dubrava's Prison and of Pristina's High-Security Prison, the employment of the additional staff at the Prison's Health Department, providing access to prisoners during the pandemic to the Skype app and other social networks to communicate with their relatives, the production of anti-Covid face masks at the Women's Correctional Center in all its spaces, etc.[7]

Freedom of Expression and the Right of Access to Information

Article 40 paragraph 1 of Kosovo's Constitution states:

1. Freedom of expression is guaranteed. Freedom of expression includes the right to express oneself, to disseminate and receive information, opinions, and other messages without impediment.

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7   2020 Human Rights Country Report/ Section 1. Respect for the Integrity of the Person (Kosovo, March 30, 2021) published by U.S. Embassy in Kosovo.

Meanwhile, the freedom of expression is also provided in more detail in Article 10 paragraphs 1 and 2 of the ECHR, which states:

1. Everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television, or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions, or penalties as are pre-scribed by law and are necessary for a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Regarding the freedom of expression, we note that the national legislation of Kosovo is in full compliance with the jurisprudence of the European Convention on Human Rights (ECtHR) and the European Union. In January 2019, in Kosovo, Law no. 06 / L-085 on the Protection of Whistleblowers has entered into force, the purpose of which is to enable the reporting of violations in the public and private sector and the protection of whistleblowers. This law was adopted in line with the Council of Europe's recom-mendation on the protection of whistleblowers.[8]

Although the Constitution of Kosovo and national laws state that the freedom of expression and the rights of the press should be guaranteed and protected, many reports have stated that some public officials, politicians, businesses, disgruntled individuals, and suspected criminals took violent measures against the press such as physical assaults, various verbal threats, and bids for financial gain as forms taken with the intent to intimidate, to corrupt or manipulate journalists and editors to refrain from critical investigative reporting related to the personal issues and those of public interest, not to publish any specific article related to the Government's policies and the presentation of high levels of corruption inside the Government. In September 2020, the Association of Journalists of Kosovo and the media reported 18 cases of

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8   2019 Human Rights Country Report/ Section: Civil and Political Rights (Kosovo, June 2020) published by Kosovo's Civil Society Organizations.

government officials, businesses, community, and religious groups violating press freedom by physically and verbally assaulting and threatening journalists.

Consequently, we can say that the freedom of expression, especially in the media sector, is not respected to a sufficient degree and that it cannot be considered independent, immune, or unaffected by the public opinion, the government, etc., due to the many influences and interventions exercised by the government's politics, it's officials and other individuals. Because the state of Kosovo is considered a state with a very low average wage in the labour sector, an underdeveloped economy, and high poverty, the opportunity to engage in criminal acts of the abuse of power and authority, the application of coercive and threatening measures, manipulating and illegally profiting, is very high in such states, and this situation is unfortunately present in both the media and editorial sector. The fact that the journalists get paid with low wages and have no employment contracts, and that there is a lack of transparency in the process of overseeing and controlling the sources and dissemination of media information, are situations in which the media sector can be involved and overwhelmed by various illegal corrupt acts and practices.

Also, problems continue to be encountered concerning the implementation of the right of access to information and public documents. In September 2020, the Ombudsperson Institution investigated 20 complaints of violations of the right of access to public documents, 7 of which were filed by civil society organizations and 13 by individuals.[9] It was concluded that Kosovo's public institutions could not respond to requests for access to public documents and often failed to provide legal justification for denying or restricting this access.

The Promotion of Minority Rights in the field of Employment

"If a country does not recognize minority rights and human rights, including women's rights, you will not have the kind of stability and prosperity that is possible." - a quote cited by Hillary Clinton, former United States Secretary of State.

Numerous discriminations existed against various minorities in Kosovo, in particular against the Roma, Ashkali, and Egyptian minorities in the field of employment, as

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9   2020 Human Rights Country Report/ Section 1. Respect for the Integrity of the Person (Kosovo, March 30, 2021) published by U.S. Embassy in Kosovo.

most of their members were employed into state's low-level positions. This issue was noted by the Office of the Prime Minister for Community Affairs and the Ombudsperson Institution. Although the law stipulates that 10% of employees at the national level of the Government of the Republic of Kosovo should be from ethnic minorities, this was not applied in practice and their representation remained limited in both the public and private sector.[10] The Romani, Ashkali, and Balkan-Egyptian minorities often lacked access to basic hygiene, medical care, and education and were heavily dependent on humanitarian aid for subsistence.

Many minority representatives in Kosovo stated that they faced major problems on the way to entering inside Kosovo's labour market, thus due to the language they spoke, their race, origin, religious beliefs, and cultural traditions that they followed, they fell prey to many social prejudices of Kosovo's society and also many other linking factors made it difficult for them to properly interact with individuals and enter to the labour sector. Inadequate provision of school education, employment opportunities, and necessary training programs and practices affected the members of these minorities to face deep economic and financial difficulties and as a result, this led to the lack of their essential vital needs.[11] I think that these factors influenced this marginalized group to encounter obstacles to their full personal growth and development and into their interaction and socialization with members of the Albanian community and other communities.

It is a 2011 case of Habib Tahiri (now 42 years old), a member of the Roma community from the village of Gjurkovc in Kosovo, who after more than 10 years of many efforts to get a job to support his large family, managed to finally become a welder thanks to the assistance provided by the OSCE Mission in Kosovo. Habib was one of eight members of the Roma Community from different regions of Kosovo who attended a six-month professional course on welding techniques, organized by the OSCE Mission in Kosovo.[12]

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10 2020 Human Rights Country Report/ Section 6. Discrimination, Societal Abuses, and Trafficking in Persons/Members of National/Racial/Ethnic Minority Groups (Kosovo, March 30, 2021) published by U.S. Embassy in Kosovo.

11 Human Rights Country Report/ Section: Minority Rights (Kosovo, June 2020) published by Kosovo's Civil Society Organizations.

12 Article: OSCE Mission in Kosovo helps disadvantaged in Kosove find jobs, published on 5 January, 2012 and written by Mevlyde Salihu and Nikola Gaon.

4. Conclusion

It can be concluded that the legal framework of Kosovo, starting from its Constitution and the specific laws adopted within the "Human Rights Package", together constitute a wide range of Fundamental Rights and mechanisms for their protection that can be considered comparable to the mechanisms and norms of EU member states. Unfortunately, the effect of these provisions has been challenged by a general lack of concrete knowledge in practice and by the misuse of legal remedies by law enforcement agencies, public administration, and courts. The human rights situation in Kosovo continues to be hampered by several inconsistencies, contradictions, mis-interpretations, and inaccurate implementation of laws, thus making their protection weak and deficient in practice.

EU provides numerous instruments and legal platforms for the protection of human rights, in particular for the prohibition of discrimination, which phenomenon by many local and foreign experts has been found to continue to be present in Kosovo.

5. Recommendations

I think that improvements in the field of the protection of prisoners' rights, in particular regarding the provision of proper medical care and the preservation of their mental health, would be the legal, fair, correct, and transparent employment of adequate experts and professionals of the area in higher numbers, as well as the consistent provision of medical examinations. Among other things, the urgent need would be the formation of special counselling, informative and educational groups like group therapies being held on a more frequent time basis, where prisoners would be able to freely discuss their emotional-psychological concerns, to be re-educated as successfully as possible and also, to socialize with other prisoners. In addition to enhancing their ability to improve and re-educate themselves as individuals, it would also help them to become aware of the mistakes and violations they have done and committed in the past, and to realize that through work, group support, education, and socialization in society, they would and can be enabled to achieve great things in life fairly, and not through the pursuit of the criminal path.

Regarding the freedom of speech and the right of access to public documents, I think that the existing legal sanctions against violators of these rights should be clearly defined. In addition to the complete and clear definition of these sanctions, it would be necessary in cases of violations in this area, to act quickly and promptly from the moment of occurrence of violations, so that the competent institutions of state do not encounter difficulties and delays in the procedures of investigation and solution of these cases in practice.

Regarding the provision of the right to education and employment to members of different minorities in Kosovo, an appropriate solution would be a higher involvement of the youth minorities members in special educational-cultural seminars, training on human rights and on learning to build a healthy society and to live in it based on peace and social welfare while trying to avoid as much as possible the misuse and extremist use of social prejudices, and in working practices and vocational educational programs, so that in the future they can have higher possible access to the labour market. It reminds me of a favourite saying of former US President Franklin D. Roosevelt: *"We cannot always build the future for our youth, but we can build the youth for our future."*, which leads me to think that we as Kosovo's youth must learn to socialize and work with each other to have big common support and a strong understanding between each other to achieve our common goals and desires for a better and a brighter future ahead!

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THE POSITION OF NATIONAL MINORITIES IN THE LEGAL SYSTEM OF MONTENEGRO – HOW TO SURPASS THE GAP BETWEEN THE ADOPTED LEGAL AND OTHER NORMS AND THEIR IMPLEMENTATION

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1. Introduction

One of the preconditions for any country striving for European integration is respect for the fundamental human rights of every human being. Without this step, there is no path to democratic values. That is why preserving the rights of all people, especially those who make up national minorities, should be put on the agenda among the main focuses.

When we talk about national minorities, we always talk about the relationship between those who are the majority to them. However, one of the specifics of Montenegro is reflected in the fact that according to the last census (2011), an absolute national majority does not exist, which indicates that the richness of diversity that is present in this area. However, throughout history, and which is a warning for the future, ethnic and national differences have often been the initiator of conflicts in this area, which has resulted in bloody clashes. As a highly multi-ethnic country, Montenegro must build its progress and peace on tolerance. Authorities and public officials play an essential role in that. However, they often send messages through their statements that can only contribute to raising interethnic tensions. In this context, the extremely turbulent situation that arose before and after the parliamentary elections can only be calm down through public speeches aimed exclusively at messages of peace and calming tensions.

The normative-legal framework consists of international agreements, the Constitution, and several applied laws in various fields. The Constitution's first article (2007) defines Montenegro as a civil, democratic, ecological, and social justice state based on the Rule of Law. Through harmonization with European legislation, Montenegro wants to improve the position of minorities. And if there is a good legal basis, which is not completely comprehensive, there are often problems through the implementation of the laws themselves, which we will deal with during this paper.

However, the general assessment is that the position of ethnic minorities has improved in recent years.

2. Terminology question

When we speak about national minorities, we often clumsily omits parts of entire groups of people. For the classification and definition of minorities, it is more appropriate to use the term ethnic minority, which is much comprehensive than the national one. In this way, we include the groups of people that live in Montenegro like Muslims and Roma population, groups that do not have their nation.

However, whether we are talking about ethnic or national minorities, in both cases, we are talking about a minority community in relation to the majority community in a particular territory or State. This distinction between minority and majority communities is based on the specific characteristics of these communities, which, in addition to following different national or ethnic feelings, mainly refer to different religions, languages, cultures.

At the international level, there have been many attempts to define minorities. The United Nations Declaration on the Rights of Minorities (1992, Art. 1) refers that States shall protect the existence and the national or ethnic, cultural, religious, and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity and adopt appropriate legislative and other measures to achieve those ends.

Perhaps the most acceptable definition of a minority is given by special rapporteur of the United Nations Sub-Commission on Prevention of Discrimination Francesco Capotorti in 1977 that minority defines as a group numerically inferior to the rest of the

population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language (United Nations 2010, 2).

The European Convention for the Protection of Human Rights and Fundamental Freedoms (1993, Art. 1) the expression "national minority" refers to a group of persons in a state who reside on the territory on that State and are citizens thereof, maintain long-standing, firm and lasting ties with that State, display distinctive ethnic, cultural, religious or linguistic characteristics, are sufficiently representative, although smaller in number than the rest of the population of that State or of a region of that State, is motivated by a concern to preserve their culture, their traditions, their religion or their language.

Respect for human rights is incorporated in the Constitution of Montenegro, which we will discuss later, but there is no clear definition of national or ethnic minorities. This can be found in the Law on Minority Rights and Freedoms (2006, Art. 2).

Minority people and other minority national communities, in terms of this Law, are any group of citizens of Montenegro, numerically smaller than the rest of the majority population, which has common ethnic, religious, or linguistic characteristics, different from the rest of the population, is historically related to Montenegro and motivated is the desire to express and preserve national, ethnic, cultural, linguistic and religious identity.

All States have one or more minority groups within their national territories, characterized by their own national, ethnic, linguistic, or religious identity, which differs from that of the majority population. Even if there is no international legally binding act of the definition of minorities, it is now commonly accepted that recognition of minority status is not solely for the State to decide but should be based on both objective and subjective criteria.

3. The legal system of national minorities

According to the Statistical Office Monstat (2011) census data, Montenegro is an extremely ethnically diverse country. Absolute majority nations do not exist, and most are Montenegrins with almost 45 percent, Serbs 28.73 percent, Bosniaks 8.65 percent,

Albanians 4.91 percent, Muslims 3.34 percent, Roma population is about 1 percent, and Croats 0.97 percent.

The Constitution of Montenegro defines respect for fundamental human freedoms. In addition to the Constitution, many other legal norms are more or less correlated with the protection of national minorities. In addition to the Law, the judiciary has a significant role and many other independent organizations such as the non-governmental sector, the media, the institution of Ombudsman, who by their actions indicate that respect for minority rights.

The Constitution of Montenegro (2007) guarantees the inviolability of human rights and freedoms (Art. 6), the prohibition of incitement to hatred (Art. 7), and the prohibition of discrimination on any grounds (Art. 8). According to the same article, the introduction of special regulations and measures to create conditions for achieving national, gender, and overall equality of persons who are in an unequal position on any basis, thus making affirmative action measures (Art.15) (which can be used for the benefit of national minorities), shall not be considered discrimination became a constitutional category.

Article 80 prohibits the violent assimilation of persons belonging to minorities and other minorities. In the practice of states, there are different legal solutions relating to members of various minorities, depending on the area in which they live.

In addition to defining the concept of minorities The Law on Minority Rights and Freedoms (2006) is a guarantor of preserving the identity of national minorities and their equality with other citizens. Article 8 allows national minority communities and their members the right to express, preserve, develop, transmit and publicly express national, ethnic, cultural, religious, and linguistic identity as part of their tradition.

In the context of media representation, Article 12 (2006) is important.

The competent administrative and program bodies of the media founded by Montenegro provide an adequate number of hours for broadcasting informational, cultural, educational, sports, and entertainment programs in the languages of minority people and other minority national communities and their members, as well as programs related to life, tradition and the culture of minority people and other minority national communities and provide funding to fund these program contents.

Content related to the life, culture, and identity of minority people and other minority national communities is broadcast at least once a month, in the official language, through public services.

In addition to other articles, Articles 6 and 7 are particularly important, which harmonize normative practice at the international level and develop strategies for further improving the position of minorities. "Montenegro concludes international agreements with other countries on protecting the rights of members of minority people and other minority national communities" (2006, Art. 6).

Article 7 is addressed to the government, which is obliged to adopt a Minority Policy Strategy.

In addition, especially important, minority people may establish their own bodies in order to preserve their culture.

"A minority people or other minority national community and their members, in order to preserve their overall national identity and promote their freedoms and rights, may establish a council of that minority people or other minority national community" (2006, Art. 33).

So today we have National councils of Serbs, Bosniaks, Muslims, Albanians, Roma and Croats. Their activity is reflected in the struggle to improve the position of their people in Montenegro. The law stipulates that these councils are financed from the budget in the amount of at least 0.05% of the current budget.

Other laws address minor rights to a lesser extent.

The mentioned Minority Policy Strategy was adopted for the period 2019-2023. It defines specific goals aimed at improving the position of minorities in line with EU standards. The directions of this development are based on education, employment, culture and identity of minorities, political participation of minorities.

"In Montenegro, there is a fairly widespread network of institutional forms of protection of human rights and freedoms, based on the institution of the Protector of Human Rights and Freedoms of Montenegro and the judiciary, misdemeanour authorities and inspection services" (Ministry of Human and Minority Rights 2019, 18).

The Ministry of Justice, Human and Minority Rights plays a key role in the executive system. With the change of government in the elections on August 30, 2020, there was a change in the organization of the work of this ministry. The then separate Ministry of Human and Minority Rights was abolished to join the then separate Ministry of Justice.

Within the legislature, there is a permanent working body in the Assembly - the Committee on Human Rights and Freedoms.

In the Strategy (2019, 19), their activity is defined as follows:

The Committee on Human Rights and Freedoms of the Parliament of Montenegro, under its competencies, considers draft laws, other regulations and general acts and other issues related to: freedoms and rights of man and citizen, with special reference to minority rights, application of ratified international acts relating to the exercise, protection, and promotion of these rights; wash realization of documents, measures, and activities for the promotion of national, ethnic and other equality.

Also, the Parliament of Montenegro established the Fund for the Protection and Exercise of Minority Rights of Montenegro to support activities important for the preservation and development of ethnic peculiarities of minorities (2008, Article 1), and The Center for Preservation and Development of Minority Culture of Montenegro which is a unique institution financed from a budget to promote minority rights in the field of culture and affirmation of multiculturalism - coexistence, as one of the fundamental values of modern Montenegro.

The Constitution of Montenegro (2007, Art. 79) guarantees rights and freedoms that can be used individually and in the community with others through the Council's establishment for the Protection and Promotion of Special Rights.

Each Council has its representative in the board of directors of the Fund for the Protection and Exercise of Minority Rights and the Council for Cooperation with Emigrants.

The Protector of Human Rights and Freedoms of Montenegro is an independent and autonomous institution whose task is to protect and promote human rights and freedoms when they are violated by an act, action, or inaction of public authorities and when it comes to protection against discrimination to the entire private and public sector. (Ministry of Human and Minority Rights 2019, 19)

The protection of the rights of minority people and other minority national communities is provided by courts and state and local self-government bodies.

By enjoying their recognized rights, minorities are obliged to respect the rights of others. These rights can be reduced to respecting the violation of legislation, respecting the rights of members of majorities or other national minorities, and refraining from undertaking activities or performing acts contrary to the basic principles of international Law, especially the territorial integrity of the State (Krivokapić, Krstić, Paunović 2016, 295).

4. Their implementation and suggests

There are three forms of group-specific rights: the right to self-government, polyethnic rights, and representation rights. One of the mechanisms for exercising the right to self-government is federalism, which shares competencies between central and regional entities. (Kymlicka 2004, 45-46)

This principle is challenging to apply to Montenegro due to its territorial size. Still, a step in that direction has received the status of a municipality and which are mostly inhabited by national minorities: such as the municipality of Tuzi, Gusinje, Petnjica. This created the conditions for these municipalities to be financed from the budget, which will contribute to the further economic development of these cities.

Polyethnic rights

Constitutional and legal harmonization with international documents is a good starting point for improving the rights of ethnic minorities. The relevant international and domestic institutions assess that the position of minorities has significantly improved in the past period, but that there is still space for further progress.

Positive practices are visible through the education system. All textbooks for primary and high school education have been translated into Albanian (Ministry of Human and Minorities Rights 2019, 32). Educational programs in institutions with classes in the Montenegrin-Serbian, Bosnian and Croatian language contain topics from literature, history, art, and culture of minorities and other contents that promote mutual

tolerance and coexistence. For example, a textbook in Montenegrin contains works by famous Albanian writers.

Following the recommendations of the Committee of Experts of the European Charter for Regional or Minority Languages (1992) in local self-government units in which members of minority people and other minority national communities make up the majority of five percent of the population, the language of those minority people and other minority national communities is in official use.

The official use of minority languages includes in particular: the use of languages in administrative and judicial proceedings and the conduct of administrative and judicial proceedings, in the issuance of public documents and the keeping of official records, on ballots and other election material, and in the work of representative bodies (Ministry of Human and Minority Rights 2019, 33).

One of the main obstacles to improving the position of minorities is their representative employment. According to the Government Strategy (2019, 41), one of the economic imperatives of Montenegro is equally regional development:

This fact is also very important from the aspect of protection and promotion of minority rights. A large number of minorities are concentrated in less developed northern areas. The Strategy of minority policy recognizes the economic development of the environment with significant participation of the minority population as an area to which even greater attention should be paid. The strategic goal of strengthening the socio-economic integration of members of minority people and other minority national communities into Montenegrin society through existing normative solutions and employment instruments is envisaged.

According to the Information on the Representation of Minority People and Other Minority in state authorities (2015, 33) 82.11 percent of them are Montenegrins, Serbs are 7.30 percent, Albanians 1.32 percent, Bosnians 4.89 percent, Muslims 2.19 percent, Roma population 0.03 percent, Croatians 0.40 percent. In local government bodies, there are 57.58 percent Montenegrins, 20.65 percent Serbs, 5.67 percent Albanians, 7.54 percent Bosnians, 2.77 percent Muslims, 0.00% Roma population, and 1.55 percent Croats.

According to the Information on the Representation of Minorities in the Police Directorate, according to the 2016 report, 83 percent are Montenegrins, 6.60 percent Serbs, 5.09 percent Bosnians, 2.49 percent Muslims, 1.33 percent Albanians, Roma population and Croats are 0.09 percent.

If we compare the above data with the data from the 2011 census, we can speak of ethnic discrimination in employment. The numbers show that in these positions, there is a disproportionately small number of Serbians according to their number in total population. At the same time, there is convincingly the highest number of Montenegrins in these jobs, disproportionate to their actual number in the general population. Also worrying is the attitude towards national minorities, of which only Bosnians and Muslims are partially representative. There are drastically fewer Albanians, and in the worst position are members of the Roma population, who are not represented in local governments at all. At the same time, there are very few of them in other positions.

These data cannot be ignored outside the context of the policy of those in power from that period. One of the biggest criticisms of the government was related to institutional party employment, which often has the mark of a national one.

The trend according to which the diversity of nationally employed in local self-governments differs drastically in relation to other spheres is also worrying. It seems that political structures that are recognized by national colour in those municipalities where they exercise power employ mostly members of their nationality.

The CEDEM[1] research (Bešić 2020) shows a declining trend in citizens' perceptions of discrimination in society, 56.7% believe that there is discrimination, which is 10 percent less than in 2018, but which is still a large number. According to the survey, the highest levels of discrimination are visible in employment, more than 50%

Of particular concern is that according to discrimination, the RE[2] population is at the top, and according to them, hate speech is the most pronounced of all groups (2020, 18). The data show that discrimination based on nationality and religion is below discrimination regarding political belief and gender (2020, 19).

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1   Center for Democracy and Human Rights (CEDEM) is NGO established as a non-profit association of citizens, in order to advance and spread conscience on importance of proper and successful democratic transition.

2   Roma and Egyptian population.

In education, the perception of discrimination based on nationality was measured at 14.8% in 2008 (24.1% in 2018) and by religion 15.9% (22.9% in 2018). In the field of health care, however, negative trends have changed, namely, discrimination according to national criteria is 26.8% (in 2018, it was 19%), while according to religion criteria, it was 25.9% (in 2018, it was 16.7%)

These figures look somewhat worse when ethnic minority respondents are taken.

41.4% of citizens estimate that Montenegro is investing in the fight against discrimination, which is a slight growth trend (2020, 39)

The work of National Councils at the level of all citizens is not particularly highly rated by all citizens (Ministry of Human and Minority Rights 2019, 30). However, members of minority nations rated 'their' Councils significantly higher than the total population, except for Serbs who rated their the National Council lower.

Low scores indicate that their transformation is needed, i.e., that minorities are not satisfied with the work of their representatives.

Political representation

For this reason, the Strategy focuses on increasing the degree of inclusion of members of minority national communities in leading positions in public administration and the judiciary, and the extent to which this will be achieved remains to be seen.

The Law on the Election of Councillors and Members of Parliament (Official Gazette of the Republic of Montenegro 2011) guarantees minorities authentic representation in the Parliament of Montenegro.

A small number of lists submitted by political parties is sufficient to confirm the list representing a minority national community. A key segment is that if national communities do not meet the defined census of 3% of the total number of valid votes, and individually receive at least 0.7% of valid votes, they gain the right to participate in the distribution of seats as one - collective electoral list with the total number of valid votes with that which will be recognized for the calculation of the mandate by the sum that provides the conquest to three terms. An exception to this rule is the Croatian national minority, for whose representatives if none of the electoral

lists for the election of deputies from this nation meets the above conditions, the most successful of the lists with at least 0.35% of valid votes acquires the right to one deputy mandate.

According to the letter of the Law, the Roma population belongs to them, the largest minority that does not have its political representation in the Parliament of Montenegro. The government's Strategy and goal of enhancing the political representation of minorities (2019, 49) envisage the possibility of forming a concrete proposal to change the electoral legislation, and if the existing normative regulations enable such a narrow (Law on the Election of Councillors and Deputies) authentic political representation of the Roma community. It was planned for the realization of this idea in 2020, and nothing has been done in this plan except letters on paper.

Daily political situation

Apart from the institutional sense, the rights of national minorities need to be protected on every place. The tense political and social situation in Montenegro has caused many divisions among citizens. After 30 years in power of one system, on August 30, 2020, the government changed for the first time in the democratic parliamentary elections. Until that period, political representatives of national minorities exercised power and had representatives in ministerial positions and in certain positions of state institutions and companies. Without going deeper into the reasons, they now have almost no such function after the change of government. The divisions in society that have deepened even more seem to have been inspired by political elites, who, by instrumentalizing individuals, want to create discord among fellow citizens, all to benefit the political parties themselves. Policymakers must be aware of the gravity of these moves because it is clear from the experience of this climate that only one wrong move can lead to unforeseeable tragic consequences.

The challenge for the new government will be the balanced development of all municipalities in Montenegro, which was one of the criticisms of the previous government that in those municipalities where national minorities live predominantly, they were neglected.

5. Conclusion

The Constitution pays great attention to the protection the identity of minority people and other minority national communities which guarantee rights and freedoms that can be used individually and in the community with others.

It is clear from the above that there is a good legal basis whose implementation should be strengthened in practice which are special importance for the process of Montenegro's accession to the European Union. Concrete moves must be more visible through further strengthening of affirmative action, primarily through political inclusion of the Roma population, consistent monitoring of the implementation of measures and activities from legal and strategic documents, and proportional and authentic representation in public services local self-government bodies and state bodies. The presence of minority people in the media and the civil sector also needs to be systematically improved so that their voices can be heard more strongly. It is essential to strengthen the role of national councils, their consultative and proposing function in all matters of interest to the minority groups and to encourage additional financial support for the realization of the project and other activities (Protector of Human Rights and Freedoms of Montenegro 2017, 4).

One of the biggest challenges will be to calm down the current political situation, which has led to great divisions in society, often having the hallmark of a national one. That is why the responsibility lies primarily with the holders of political power and all representatives of national minorities.

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THE PATH TOWARDS EQUALITY IN SERBIA - HOW TO OVERCOME GENDER-BASED DISCRIMINATION IN EMPLOYMENT?

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1. Introduction – Gender-based discrimination in the labour market and in the workplace

"I would venture to guess that Anon, who wrote so many poems without signing them, was often a woman." (Virginia Woolf)

As stated in the Universal Declaration of Human Rights "all human beings are born free and equal in dignity and rights".[1] However, it seems that in reality this principle is often being denied. In that regard, this paper focuses on the issue of gender-based discrimination in employment.

On one hand, "at the heart of the concept of decent work is the principle of equality, especially equality between men and women, in terms of the requirement to eliminate discrimination based on sex, as well ensuring full participation of men and women in the world of work!" (Kovačević 2018, 97). On the other hand, gender is one of the most common grounds for discrimination in employment (Doyle 2020; Equality and Human Rights Commission 2020; Wolfe 2020).[2]

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1 Article 1 of the Universal Declaration of Human Rights.

2 In that regard, it is important to note that there is certain dispute regarding the terms sex and gender. In that sense, the term gender as a, generally considered, wider term which reflects also the cultural and social differences instead of putting emphasis on the biological, is related to feminist ideology (Busfield, Campling 1996, 31; Stanford Encyclopaedia of Philosophy, 2017). General practice is that "even though the terms sex and gender do not signify the same things, they are often used interchangeably in discrimination laws" (Embroker 2021). We note that the Serbian language also provides for both terms. On one hand, Serbian Act on the Prohibition of Discrimination prohibits discrimination both based on "sex" and "gender identity" while the Serbian Employment Act only includes the term "sex". In that sense, suggestion would be to question the terminology in Serbian legislation in order to make it more consistent regarding the use of these terms. Even though at the first glance such change would seem to be "only" linguistic, it could also resolve potential dilemmas.

In order to understand the roots of inequality, we must turn to history. Taking a glance at the history gives a perspective of the traditional family based on the so-called breadwinner model, referring to men as the ones who provide for the family, i.e., work outside the home. So, "gender stereotypes regarding women's roles both at work and at home constrain their work opportunities and perpetuate the socio-economic model of a male breadwinner – a model which is no longer the reality in many developing and developed countries" (Offenberger 2014, 1). The question also arises whether the patriarchal tradition and history of the Western Balkans (WB) countries also contribute to the unequal position of women in society in general and in the labour market (Lazarević, Tadić 2018, 10).

The past century was marked by the struggle of women to achieve equality with men in the labour market. One must not overlook the great impact of the feminist theory and importance of writing by feminist authors (see Crossman 2020; Dietz 2003; Ferguson 2017; Radtke 2017; Smith 2018).

Precisely such "revolution" has shaken to core this traditional model which supposes that woman mainly focus on the house work, while men make money outside the home. Namely, "with the development of the society, the homogeneity and dominance of the patriarchal matrix is beginning to collapse and being called into question by the birth of modern society and modern man" (Vujadinović 2013, 61).

However, it seems that there is still a lot of work that has to be done as women are still faced with many challenges including the so-called glass ceiling, i.e., the impossibility to be in managerial positions even though they are qualified for them.

Such barriers are caused by different (unjustified and unjustifiable) reasons (Equality and Human Rights Commission 2019). Namely, the functioning of the labour market is conditioned by the legislative and institutional framework, but also by "cultural differences in gender roles and in what is considered as good motherhood and fatherhood" (The European Foundation for the Improvement of Living and Working Conditions

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It is interesting to mention that in the years 1860s–80s instead of the term feminism was used the term "womanism"(Stanford Encyclopaedia of Philosophy 2018) – however, due to changes that have happened "in the meantime" we can conclude that using such terminology would in today's world not cause the desired effect.

[Eurofound] 2007, 8). Therefore, barriers to employment continue to influence the professional choices made by women (Tiraboschi *et al*. 2013, 17).

2.   Gender equality in the European Union and guidelines for Serbia

European Union (EU) has set gender equality to be one of its crucial goals (Eurofound 2017), but also a condition which the countries that wish to become EU members should strive to achieve. Namely, the EU founding treaties promote gender equality – Treaty on the EU (TEU) states that the crucial values for the EU are, among other, *human dignity and equality*, while it also provides for promotion of "equality between women and men".[3] What is more, the Treaty on Functioning of the EU (TFEU) clearly stipulates the principle of equality: "In all its activities, the Union shall aim to eliminate inequalities, and to *promote equality, between men and women*."[4]

EU promotes gender equality and women's empowerment in its international partnerships, political and human rights dialogues with third countries, EU trade policy as well as in the EU's neighbourhood and enlargement policies, including in the context of accession negotiations and the Stabilization and Association Process (European Commission [Commission] 2020a, 17).

Finally, it is a stance of the EU that achieving equality in practice, i.e., the greater role of women in the labour market is not "only" necessary for a more just world, but also a benefit for the economy (Commission 2021).

The principle of gender equality itself is considered to be "essential condition for an innovative, competitive and thriving European economy", as well as the "key principle of the European Pillar of Social Rights" (Commission 2020a, 1). Guarantees of gender equality are also present in the EU directives and especially the Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment

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3   Article 2 and Article 3 of the TEU.

4   Article 8 of the TFEU.

of men and women in matters of employment and occupation (further on: Directive) which provides for comprehensive solutions that ought to be followed.[5]

As it is an intent and objective of Serbia to become the EU member state, it must close all the remaining chapters in the accession process. In that sense, particularly important are chapters 19 (Social Policy and Employment)[6] and chapter 23 (Judiciary and Fundamental Rights), both of them in a more or less explicit manner *dealing with gender equality*. However, it is important to mention that the so-called "revised enlargement methodology" based on six clusters instead of thirty-five chapters, shall be applied to Serbia (European Council, Council of the European Union 2021). It will certainly keep the gender equality on top of the agenda, primarily as a part of the first cluster dealing with the "fundamentals", which is natural, since the basic condition for the EU membership set in the article 49 of the TEU are that it is a "European State which respects the values referred to in Article 2 and is committed to promoting them"[7], while equality in general and equality between women and men are listed among the core values of the EU.

Based on EU's report on Serbia in 2020 (further on: Report), one of the key recommendations for Serbia is exactly to ensure policies regarding employment of women (Commission 2020b, 94 – 95), while data from the Report have been quite worrisome:

In the area of equal opportunities between women and men in employment and social policy, the employment rate for men (15-64 years) is 12.8 percentage points higher and their activity rate 13.6 percentage points higher than those for women (Commission, 2020b, 96).

It is interesting (and indicative) to mention that in period between 2004 and 2010, the effects of crisis were more visible and had left more negative effects for women in the labour market (Arandarenko 2011, 23). Further on, results of one research conducted

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5   Besides this Directive, other important directives regarding gender equality are:
      - Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding;
      - Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation;
      - Directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity.

6   Chapter 19 has not yet even been opened.

7   Article 2 of the TEU.

in Serbia in 2019 show that "out of the total number of surveyed women in Serbia, 46.2% state that they need additional information and training on recognition, responses and protection from gender-based discrimination" (Beker, Janjić, Lepojević 2020, 32). To the existence of gender-based discrimination in Serbia also testify the data from Commissioner for Protection of Equality in 2020:

During 2020, 105 complaints were submitted to the Commissioner on the basis of gender as a personal ground. Most complaints were filed by individuals, 63 women and 29 men. What is characteristic of this basis of discrimination is that most of the complaints relate to the area of work and employment, mainly due to discrimination against women. Discrimination against women is most common in relation to childbirth, motherhood and child care, which is why this basis often appears with the basis of discrimination of marital and family status (Commissioner for Protection of Equality 2021, 147).

The Report also reiterates the fact that the expected Gender Equality Act has not yet been adopted in that moment (Commission 2020b, 37). However, in May 2021 the Gender Equality Act in Serbia has been adopted which is a great step forward. One more important issue (and criticized solution) in Serbin legislation is the fact that maternity leave payments have been reduced based on amendments to the Act on financial support for families with children in 2018 (Commission 2020b, 96).

Further on, it should be emphasized that the issue of discrimination becomes that larger as it often "multiplies" for many women which are discriminated for being a woman and based on other personal grounds (European Institute for Gender Equality; European Union Agency for Fundamental Rights 2013; Jubany, Güell, Davis 2011). By definition – "Certain groups of women, due to the combination of their sex with other factors […] are in an especially vulnerable position" (Gender Equality Commission, Council of Europe, 11).

Multiple discrimination has always existed; yet it has not always been recognized as a legal concept […] There is a growing appreciation, therefore, that individuals facing inequality at work often experience discrimination on more than one ground at the same time (Sheppard 2011, 1 – 2).

Precisely women in *employment are often victims of discrimination based on multiple grounds* (Zorić, Dičić, Petković 2008, 21) *so when analysing the position of women in employment,* one must have in mind the very often multiplied struggles that a woman faces. One of the most common examples is that women are discriminated both based on gender and based on family duties.

3. Achieving equality – the path with rose thorns?

There are three "paths one should take" in order to improve the status of women on the labour market, i.e., to overcome gender-based discrimination in Serbia. These paths refer to amending the legislation, making changes in practice and fighting genderbased stereotypes. When analysing the ways to fight gender-based discrimination in Serbia, we should have in mind the guidelines posed by the EU given that the EU has so far put and continues to put great efforts in preventing gender-based discrimination.

Amendments to legislation in order to achieve equality

The first path refers to amending Serbian legislation, among other, by following the solutions posed in the Directive. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) obliges the states that have ratified CEDAW (including Serbia) "to take all appropriate measures, *including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women*".[8]

Namely, even though countries in the WB have a normative framework regarding discrimination, it seems that there is a need for more consistency in legislation. For example, the presence of anti-discriminatory provisions in Serbian legislation both in the Employment Act and Act on the Prohibition of Discrimination is on one hand a benefit and a testimony of great efforts to fight discrimination. However, different sets of provisions regarding discrimination, generally speaking, could also lead to confusion. Therefore, when amending legislation in Serbia, it is important to take care of the fact that provisions are not creating confusion by being provided in more

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8   Article 2 of CEDAW.

than one act. Also, it is crucial to have in mind the goal to achieve not (only) formal, but substantive equality in the labour market (De Vos; Strand 2006).

Equality must be guaranteed prior to and during employment. In that sense, the Directive reiterates the principle of equal opportunities during employment (pay and working conditions), *but also prior to employment, in access to employment*.

First suggestion to amend Serbian legislation refers to fighting gender-based discrimination in the selection process for employment. Namely, prior to employment, it is necessary to have certain mechanisms to prevent discrimination. Such mechanisms refer to blind hiring and asking questions to candidates for employment. In short, the so-called blind hiring/recruitment refers to applying for a job by a depersonalized application in order to prevent the employer from discriminating candidates. As this concept is not provided for in the Serbian legislation, it should be addressed in the Serbian Employment Act.

Even though the Serbian Employment Act provides for prohibition of asking certain questions to candidates for employment[9], as it is generally considered that such prohibitions are necessary in order to prevent discrimination (Heathfield 2020; International Labour Organization [ILO] 2013, 58), the suggestion would be to regulate in more detail mechanisms that the candidate for the job has if such questions are being posed at the job interview.

As for the suggestions to combat gender-based discrimination which occurs during the employment in Serbia, they are listed in the continuation.

Suggestion is to introduce a person who would specialize for dealing with discrimination in employment. In Serbia, the person to turn to regarding gender-based discrimination is the Commissioner for Protection of Equality. However, taking a step further in this sense in Serbia would be amending the Serbian Act on the Prohibition of Discrimination by introducing a person assisting of the Commissioner for the Protection of Equality and specialized for discrimination in employment. (Sindikat rs, 4).

Another suggestion refers to amending the Serbian Act on Inspection Supervision regarding special training of labour inspectors to recognize discrimination when it

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9   Article 26 paragraphs 2 and 3 of the Employment Act.

occurs in practice (Sindikat rs, 4). Finally, we should not overlook the great role that representatives of workers can have. Even though the Serbian Employment Act regulates the issues related to representatives of employees, possibly the representatives could be given a wider scope of rights and duties. By doing so, there would be more room for taking action by the representatives of workers aimed to protect workers from gender-based discrimination. "Workers, through their representatives, can be management's strongest ally in combating discrimination" (ILO).

Making changes in practice in order to achieve equality

The second path of changes in Serbia refers to making practical changes which are aligned with the normative framework. It is of great importance to mention that the Directive in the Preamble provides *for the understanding the legislation is not the only path that to be taken in order to combat discrimination*.

In that regard, in the following are the proposed ideas how to overcome gender-based discrimination in practice in Serbia:

In the first place it is necessary to devote attention to the issue of organization of work – fair distribution of assignments (De Pater *et al* 2009; Pekarinen, Vartiainen 2002). In that sense, it is a suggestion to introduce control mechanisms regarding this issue in Serbia.

Secondly (but of utmost importance), it is necessary to strive for achieving work-life balance for both males and females. Gender Equality Strategy 2020-2025 also deals with the issue of work-life balance, i.e., the fact the family duties "belong" to both women and men, and not only to women, as traditionally considered (Commission 2020a, 8).[10] In that regard, Directive 2019/1158 EU on work-life balance for parents and carers includes the solutions which relate family duties to both males and females, and flexible work arrangements.[11] On the other hand, in practice, both generally and in Serbia there is almost a rule that family duties are placed on the shoulders of the

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10 A very commendable move was also made by the Belgian Government that introduced a special parental leave caused by the COVID-19 – "This measure grants parents a right to unpaid parental leave for the period where schools and childcare centres are closed due to COVID-19." It is a possibility for parents with a child up to 12 years old, as well as parents that take care of a dependent person, whether it be an adult or a child and the leave grants for 500 EUR allowance (Commission 2021).

11 Directive (EU) 2019/1158 of the European Parliament and of the Council.

women. Therefore, it is crucial to focus on equal "share" of family duties for both males and females in practice (Applebury; Gežová 2015; Kresal 2011, 2; Solomon-Moore *et at* 2017). The Serbian Employment Act provides for some solutions regarding pregnant women and taking care of children. However, it is necessary to provide equal share of family duties in practice in Serbia, contrary to common stance in Serbia that women are the one to deal with family duties.

The importance of understanding and dealing with the issue of discrimination based on family duties in relation to gender-based discrimination is manifested in the fact that "studies show that motherhood triggers the strongest form of gender discrimination […] This bias may carry over into situations where women care for frail or ill older family members" (Williams *et al* 2012, 9). The issue of equality is not to be analysed without taking into account the family duties, i.e., family and social context (Kovačević, Novaković 2018, 432 − 433).

Hence, the suggested solution refers to assistance with children (Commission, 2020c, 7). which would primarily help women (and hopefully in the future both males and females equally) with children so that they could balance their professional and family duties (Sardelis, Oester, Liboiron 2017). Such solution in practice should also be a guideline for Serbia.

Finally, adequate monitoring policies in Serbia should be provided − "A key prerequisite for successful monitoring (as well as periodic evaluations) is the collection of data on a selected set of indicators which can demonstrate progress in policy implementation" (Lazarević, Tadić 2018, 20).

Fighting gender-based stereotypes

The "third path" refers to improving the knowledge and understanding of existence gender-based discrimination in Serbia. This path means "putting a fight against bias" as stereotypes are the starting point for gender inequality (Beker 2019, 102; Commission 2020a, 5). As stated in the EU Gender Equality Strategy 2020 − 2025 guarantees safety to everyone in their workplaces − "Women and men, girls and boys, *in all their diversity, should be free to express their ideas and emotions, and pursue their chosen educational and professional paths without the constraints of stereotypical gender norms*" (Commission 2020a, 3).

In short, "whether you are a woman or a man should not influence the career you pursue" (Commission 2020a, 13).

How to fight against stereotypes and their consequences?
Firstly, we must be aware of the types of bias and stereotyping which tend to occur in employment. It could in short be said that such stereotypes relate to considering women less intelligent, less competent, less efficient and generally less combined with any adjective with positive connotation (Avery, 254; Malo 2015). Some types of stereotypes that are globally present, but also a common practice in Serbia, are listed below.

There are the so called "Like-me" bias which refers to the ones in charge of employing that give a chance only to the ones that resemble them, i.e., the reflection of them-selves (The Percipio Company 2019). As men are more often in the leading positions (sometimes due to discrimination), it is clear that this type of bias creates a "vicious circle" which excludes women.

Further on, there are double standards – what's considered assertive regarding men, is attributed to women as negative.

Specifically, double standards most often lead to the manifestation of the glass ceiling phenomena. In that sense, "to help break the glass ceiling, the Commission will push for the adoption of the 2012 proposal for a Directive on improving the gender balance on corporate boards which set the aim of a minimum of 40% of non-executive members of the under-represented sex on company boards" (Commission 2020a, 13). In order to eliminate often presence of the glass ceiling (ILO 2019; Meyerson, Fletcher 2000) the legal organs should "increase mentorship and other efforts to boost the number of women in traditionally male occupations and in positions of political leadership" (Lumen).

To fight such bias, one should "educate employees about their own unconscious bias – although this does not guarantee that attitudes will change, it does help employees to understand their biases and to work towards eliminating them" (Fuhl 2020) and it is a path that ought to be followed in Serbia.

272

4. Conclusion

Based on everything mentioned, it can be concluded that society has come a long way regarding the equal treatment in general, and in the labour market and relations. Taking a glance at history, and at this situation only a couple decades ago testifies of truly great steps taken in order to achieve equality.

However, specifically in relation to gender-based discrimination, there is still a lot that has to be done for reaching equality in practice and not only within the normative framework, i.e., on the paper. Unfortunately, gender-based discrimination is extensively present in practice. What is more, often, a person is discriminated based on gender and other personal ground which leads to multiple discrimination. In that regard, the EU provides for a comprehensive framework and solutions which Serbia should follow – the issue of gender equality in all spheres of life (including employment) has to be(come) a priority.

The paper provides for three possible categories of solutions to combat gender-based discrimination in Serbia. There is a necessity of applying solutions in a cumulative manner given that legislation without practical solutions remains only as letter on a piece of paper, while both legislation and practical solutions will remain without effect if the employers have stereotypes which "prevent them" from making rational choices, i.e., giving equal opportunities to males and females. Solutions refer to amending legislation in order to achieve a higher level of protection. Secondly, it relates to making changes in practice, superficially regarding family duties and their relation to gender-based discrimination. Finally, fighting against discrimination remains impossible as long as there are gender-based stereotypes that result in depriving certain persons from being equal.

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SERBIA ON THE PATH TO ELIMINATING DISCRIMINATION AGAINST WOMEN AND ACHIEVING GENDER EQUALITY

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1. Introduction

Discrimination against women is present in many spheres of society in Serbia. Although this is changing and improving, many changes are often slow or insufficient. According to the Census, there is 51.3% of women in Serbia, i.e. women are the majority population (Zavod za statistiku Republike Srbije [RZS], 2011). However, cadastral records show that in Serbia, including rural and urban areas, out of almost 25 million registered realestates, women own all or have a share in only 6.43 million. (Nacionalna alijansa za lokalniekonomski razvoj [NALED], 2020). Women are paid less than their male colleagues, and have a lower pension by 8.7%. The largest number of women from the village, i.e. 59.9%, have health insurance through their husbands (Ženska platforma za razvoj Srbije, 2019). These are just some of the data from different socio-economic spheres, which show how much more needs to be done in order to achieve equality and protect women from discrimination and violence.

Taking this data into account, this essay is intended to provide answers to the following open questions on gender equality in Serbia:

- how much progress has been made towards eliminating discrimination against women,
- which areas remain particularly problematic and
- why and how to overcome existing obstacles and make substantial progress?

Serbia should be faced with the problem of discrimination against women as an important obligation, since this is a long-term problem, which is deeply rooted. Con-

sequently, serious work and substantial changes are needed, both *de jure* (which has been done in recent years), but also *de facto* (which is still missing), in order to make a change in situation so that women can gain significantly greater, if not full equality. Since women have a number of responsibilities, but are still denied of certain rights.

2.   Positive steps for Serbia

The contribution of the European Union (EU) in the field of reducing genderdiscrimination is significant in multiple fields for Serbia. Numerous policies of the EU are aimed at reducing discrimination, there are numerous anti-discrimination laws adopted, on various grounds - ethnic, religious, racial issues, including gender, which belongs to the core values of the EU. Such actions of the EU have an impact on reducing discrimination inSerbia also, since our country aspires to become a member-state of the EU, and currently has the status of a candidate country, and is therefore obliged to make changes that will reduce discrimination in various aspects. Serbia has passed a significant number of legal regulations and laws related to non-discrimination and equality in accordance with the lawsof the European Union. The European Commission reported that "anti-discrimination legislation is generally in line with European standards, although alignment with the *acquis*is still needed" (Equal Rights Trust 2019, 30).

Serbia has also international obligations originating from ratified 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, in which Article 14 directly refers to the prohibition of discrimination on different grounds, including gender. Serbia has also ratified the Council of Europe`s Convention on Preventing and Combating Violence against Women and Domestic Violence. Most recently, Serbia has adopted the second National Action Plan (2017-2020) which was intended to ensure the implementationof Resolution 1325 of the United Nations Security Council - Women, Peace and Security.

Mention should also be made of the 2030 Agenda for Sustainable Development, where Goal 5 is specifically focused on gender equality. According to this goal, it is necessary to ensure the protection of sexual and reproductive health of women, and providing them with equal rights to economic resources, such as land and property (United Nations Development Programme Serbia [UNDP], 2021).

The Gender Equality Strategy for the period 2020-2025, presented by the European Commission in 2020, is also important for Serbia. This strategy, although primarily focused on countries that are already members of the EU, represents the principles of gender equality policy that indirectly apply to countries with candidate status, and thus to Serbia. Some of the key goals of this strategy are: ending gender-based violence; closing gender gaps in the labour market; resolving differences in gender salaries and pensions; achieving gender balance in decision making and in politics (Poverenik za zaštitu ravnopravnosti 2021).

The Commissioner for the Protection of Equality of the Republic of Serbia is a full member of the European Network of Equality Bodies (EQUINET). Employees who work to promote equality are actively involved in the work of this network. This enables the exchange of experiences and acquaintance with anti-discrimination practices as well as with the standards of work of equality institutions in Europe (Poverenik za zaštitu ravnopravnosti 2021). This is an extremely valuable experience that should be used so that the already existing good practices begin to be applied in Serbia as well.

Serbia has ratified eight of the nine UN human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The CEDAW Committee document, in addition to the recommendations, provides a detailed overview of what has been done well, and what is still not working as it should and needs to be improved. That is why it is very important to take the recommendations very seriously and to approach responsibly to the improvement of what has been stated as a still critical area.

When it comes to legislative reforms, the Committee commended, for example, the adoption of gender responsive budgeting by the Law on Budget System (2015), and adoption of the Law on Prevention of Domestic Violence (2016), which introduces urgent measures for perpetrators of violence against women. But it was also stated that the Committee was concerned about the constant lack of awareness among women on their rights under the Convention as well as on legal remedies available to them, especially by putting emphasis on the most vulnerable groups - rural women, Roma minority women, women with disabilities, older and migrant women (Komitet za eliminasanje diskriminacije žena [CEDAW] 2019).

This is singled out, because it is indicated that the changes that are being made in Serbia in the field of equality often do not sufficiently affect the positions of many citizens. The fact that women are not aware of their rights indicates that the progress that has been made is not appropriate yet because it continues to bypass many women who are therefore denied their rights. The reason for this is the insufficient engagement of people who are in power in Serbia to create changes that will substantially improve the position of women. Many changes seem to be on a very superficial level, so laws often remain just a word on paper, because they do not go a step further to ensure their implementation in practice.Also, no campaign was conducted to inform women more properly, and no budget funds were set aside to ensure positive change in behaviour of key stakeholders.

3. Existing issues

In addition to the changes that have taken place, discrimination against women is still present, and gender equality has not been achieved at sufficient level in Serbia yet. Serbia has brought the most changes in the field of legislature. Although there are still a number of places that should be further regulated, it can still be said that the legal framework governing the issue of discrimination against women has been changed and improved. However, the fact is that the problem of discrimination is still very common. This can be deduced from other available data, some of which have already been briefly mentioned, and others will be discussed in more detail below.

One of the key obstacles is the problem of law enforcement. In the report from 2018, the European Commission stated that Serbia should improve the effective implementation and enforcement of anti-discrimination laws (Equal Rights Trust 2019, 30).Numerous patriarchal attitudes continue to dominate in Serbia, which is also an obstacle to achieving gender equality. What is particularly detrimental to the improvement of the position of women in society are the numerous examples of anti-gender discourse in public.

Misogynist and sexist statements could be frequently heard in the media. This presents a negative image of women in the public with approval of offensive behaviour and thus furtherretaliates against women in their fight for equality.

The report of the Commissioner for the Protection of Equality on discrimination (2021) in the field of work and employment states that the socio-economic status of womenis significantly lower than the status of men. During 2020, 107 complaints were submitted to the Commissioner on the grounds of gender as a personal characteristic. Thus, the genderbase was found to be the most common. Most of the complaints are related to the area of work and employment, primarily due to discrimination against women. Discrimination against women in this area is most common in relation to childbirth, motherhood and childcare (Poverenik za zaštitu ravnopravnosti 2021).

In its assessment of the Serbian Economic Reform Program 2019-2021, the European Commission concluded that the important challenge is "poor integration of women in the labour market". Also, it is stated that the gender gap in the employment rate (15-64 years) is 13.6 percent, and that the unemployment rate of women, especially young women, remains higher than that of men - 3.7 percent in 2018 (Sekulović 2020, 17). There is 62.72% of working men, out of all men older than 15, and there is 47.10% of working women older than 15 (Pajvančić, Petrušić, Nikolin, Vladisavljević, Baćanović 2020).

Women from rural areas are in a particularly complex situation. They often do not have access to health care, do not have enough opportunities for formal employment, and are not even close to equality with men when it comes to land ownership. Thus, women make up 11% of landowners, while most of the property is registered to men. When inheriting, sons have an advantage, and daughters are expected to give up in-heritance in favour of their brothers. Also, over 74% of women registered to work in agriculture work as unpaid family members. Those women who are unemployed, as well as women who are employed in the informal sector, do not have social security. The percentage of women whomanage agricultural households is very low, i.e. only 15.9% of women. (CEDAW 2019).

The number of women entrepreneurs is very limited. An additional difficulty for women to become entrepreneurs is related to the fact that they often do not own real estate, thus reducing their ability to take out a loan for entrepreneurship, because the bank cannot place a mortgage (Ženska platforma za razvoj Srbije 2019).

Women's unpaid work in the household, i.e. in the family, is still very poorlyrecognized, not only among men, but also among women. As many as 96% are women who are

inactive in the labour market when it comes to people who are not looking for work because they take care of children or adults with disabilities (Beker, Janjić, Lepojević 2020). It is often heard from the women themselves that housework is a woman's job and that they feel it is their personal duty to do the work themselves. According to the data of the Republic Bureau of Statistics, women spend 4.5 hours a day on unpaid jobs and men,on average, spend two hours a day on unpaid work (Republički zavod za statistiku Srbije [RZS] 2011).

A particularly problematic area is alimony. According to (Pajvančić and others, 2020),79% of single-parent families are mothers with children. According to (CEDAW 2019, 14),mothers with children make up the majority of single-parent families, and only one-third of them regularly receive child support.

Violence against women is also an indispensable topic and a problem that must be addressed more responsibly and consistently. According to the survey conducted in Serbia in 2018, the following was established: two out of five women surveyed stated that theyhad experienced sexual harassment after the age of 15, and 18% of women stated that they had such an experience in the last 12 months. While 22% of women stated that they had suffered physical or sexual violence by a partner or a person who was not a partner after theage of 15. Out of the women surveyed, 10% who currently have a partner stated that they had experienced physical or sexual violence by the current partner (Organization for Security and Co-operation in Europe [OSCE] 2019). According to (CEDAW 2019), there isa particularly high presence of physical violence against older women, as well as anincrease in all forms of gender-based violence against women with disabilities in institutions.

There is no single SOS hotline for victims of violence against women and domestic violence in Serbia that covers the entire country and meets standards related to accessibility,anonymity and confidentiality. The hotline established by the Ministry of Labour, Employment, Veteran and Social Affairs in 2018 does not meet the needs and contemporarystandards. This service at the local level can also be provided by the public sector (this refers to the centres for social work), but then there is often no special telephone line. SOS hotline of women's non-governmental organizations that have knowledge and experience inthis work, do not have the financial support of local governments (Autonomni ženski centar 2019).

Although there are no public and precise data on the capacities of safe houses for women victims of violence, it is known that the existing capacities are not sufficient, and that they are not geographically adequately distributed. They are more difficult to bereached for a certain group of women (women with disabilities, rural women and other vulnerable categories of women). An additional aggravating circumstance is that the accommodation is provided on the basis of directives, and it can be worsened if the victimis not from the territory of the municipality that finances the service (Autonomni ženski centar 2019).

Although adopted, the Law on Free Legal Aid has a serious shortcoming. Instead of facilitating access for women to legal aid, it does just the opposite in practice. This law makes difficult for women to access justice and excludes the option for experienced civil society organizations to provide them with legal assistance. Under the same law, with the exception of victims of domestic violence, victims of various forms of gender-based violence may be denied to receive free legal aid. This greatly affects women who do not have economic independence (CEDAW 2019).

Many female citizens in Serbia still do not know what is meant by discrimination, as well as to whom they can turn to if they become a victim. Among those who know how to help them, there is the following dilemma - insufficient trust in institutions. As a result, many women give up reporting discrimination and violence. Thus, the problems that exist in the field of discrimination against women are systemic and cover many aspects of society. Therefore, in order to really address them, they need to be approached comprehensively, with long-term plans covering all categories of women.

Women by themselves can contribute a lot, too. The representation of women in politics is, among other things, very important because of all unresolved issues. It enables women to make decisions that will enable positive changes that will reflect all women in Serbia and improve their position in society. When we look at the situation in politics, progress is obvious having in mind greater representation of women than before. The introduction of quotas has significantly changed the ratio of representation of women in the Serbian Parliament to 40%, and the representation of women is incomparably higher today than it was before. However, there are still some problems. What the problem is can be formulated in the following question:

do women, in addition to the representation provided by the quota, have real power to make and implement decisions?

The answer to this question maybe can be found in the following fact. According to Ombudsman, the degree of representation of women decreases as the position in decision-making level is going up (Zaštitnik građana Republike Srbije Ombudsman, 2018). Although women are sufficiently represented in the current Government of Serbia – the Prime Minister is a woman, and almost equal number of minister positions are occupied by women and men, the representation of women in local self-government units is still low. It is very important to ensure greater participation of women in decision-making positions at all levels, to strengthen women's forums in political parties and to empower women to be actively involved in political life.

4. Women during a pandemic

In the specific circumstances imposed on all citizens by the COVID-19 pandemic, it is necessary to look at the difficulties and risks faced by women since the pandemic began. The way of organizing and functioning during the pandemic is such that it has significantly burdened women and put them at risk so that certain rights that women have won begin todeteriorate, while the burden of their obligations have been increased.

Women make up the majority in the health sector where workload is intensified. This created additional difficulties for women when it comes to the obligations of everyday life and caring for children. Here, special emphasis is placed on single-parent families in which usually women are a parent-guardians. Also in grocery stores, the volume of work has been boosted, which has burdened employees, most of whom are women (Pajvančić and others, 2020). Obviously, the sectors in which women are traditionally mostly employed have been particularly burdened with additional work under the influence of the pandemic.

The closure of schools and kindergartens, and additional obligations of care for minor children, and care for elderly and chronically ill family members, as well as the fact that contacts with older family members were reduced, produced also new burdens that usually falls on women (Pajvančić and others 2020). Moreover, we must not forget

that women were at a higher risk of suffering violence than usual during a pandemic, because of limitedmovement and social isolation during lockdown, which has led to increased domestic violence.

5. Conclusion

It is evident that women's equality is greater today than it was in the past, and our predecessors fought for the opportunities that women have today. It is important thatwomen today continue to fight for greater equality and thus provide themselves and future generations of women with a better position. In Serbia, there are several policy fields that must be constantly covered by gender-oriented activities and that are key to eliminating discrimination against women. This includes education, information, strengthening of institutional support, cooperation with the civil sector and allocation of larger budget funds for policies and programs aimed at eliminating discrimination.

In the first part of the essay, the role of the European Union in the steps that Serbia has taken on the path of eliminating discrimination against women is noticeable. What must be strengthened is the better understanding and good will in decision-making places in Serbia to solve the problem of discrimination and to make available to women in everyday life all the rights that are prescribed by law. The situation in Serbia must be improved, not only in visible places, but the changes must also include women from rural areas, women with disabilities, older women and all other categories of women. It is necessary that the decisions that are made are not for the purpose of simulating the better position of women, but for the purpose of real and substantial progress.

When it comes to education, it must not be focused only at educating people who need to legally protect women who have suffered discrimination. If a certain woman does not know that the behaviour, she has experienced is discriminatory and prohibited by the law,and if she does not know where she can seek protection, she will not even get a professionaland educated lawyer. This is supported by the data according to which as many as 46.2% ofsurveyed women in Serbia stated that they need information as well as training on the topic of recognizing, reacting and protection against gender-based discrimination. The sameresearch states that this topic is most represented among young women, even 100%, andthat it is least represented among women from rural areas, i.e. 23% (Beker, Janjić, Lepojević 2020).

Education programs should be implemented with women of different ages, school degrees, with women from both the village and the city, members of national minorities andother groups of women. This is necessary to make women aware of their rights and of whom they can turn to for help if someone violates those rights, as well as to empower them to react in case of violence. Also, education programs should be organized at schools, both for male and female students.

In this regard, in addition to organized education programs, the media have an important function, which should also have the role to educate and to inform. There is alack of greater public empowerment of women as well as greater support for women. There are countless examples of completely inappropriate reporting on women in the media. This is especially problematic when it comes to women who have suffered some form ofviolence. Not only that this can negatively affect these women, but it can also influence other women to give up asking for help if they are in a similar situation. There should be more educational and informative content in the media that deal with the topics of eliminating discrimination and reacting in case of violence through which women would beinformed and encouraged. In addition to traditional media, the younger generation shouldbe informed and educated about discrimination through the media they most often use, i.e. through social networks.

The work of the civil sector in this area is extremely important, the civil sector has experience and knowledge and is very committed to supporting women and achieving gender equality. However, the civil sector often encounters inadequate reactions from high-ranking politicians. Such reactions do not help women who need the support of these organizations, nor the civil sector itself in their work. That is why there is a need for better coordination with the civil sector, more appreciation of their work and proposals andgreater support for these organizations.

It happens that gender responsive policies` budgeting is missing and thus prevents the implementation of numerous activities. So, these policies needs to be appropriately funded in order to effectively implement the changes that affect the reduction of discrimination against women. Serbia has an obligation to its citizens to make more efforts to eliminate all forms of discrimination against women. Women's rights are human rights and must not be a privilege or continuously disputable issue - instead, respect of women`s rights should be fully valued and consistently applied.

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HOW TO OVERCOME THE DISCRIMINATION IN SLOVENIA BASED ON RACE, SEX, AGE, ETHNICITY, SOCIAL POSITION?

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1. Introduction

When I started writing the essay, I had in mind that I should start with how lucky I am to live in a country where discrimination is not present to the same extent as elsewhere. But after a more thorough study of the topic, I found out how wrong I had been, because we should not talk about luck, but actually about fundamental right. At the same time, it's not about being completely immune to discrimination, but I've never really experienced it. But come to think of it, it's been here all along… That said, is it possible that we're so used to the incorporation of discrimination into our daily lives that we simply don't perceive it anymore? Or worse, we may perceive it, but we accept it anyway.

In this essay, I will present various types of discrimination – racial and ethnic discrimination, sex discrimination, discrimination against the elderly and discrimination based on social status, and also how we fight against discrimination in Slovenia. In overcoming discrimination, we focus on the legal solutions, NGOs and anti-discrimination strategies.

2. Discrimination

Equality reflects the ideal in the social construction of reality. However, it is more than just an ideal, it is a fundamental human right. This is one of those legal principles that seems easy to understand at first glance, but when we go into an in-depth discussion of the dilemmas associated with the legal meaning of the term "equality", we find that

we can draw continuous parallels from Aristotle to the present day. But this parallels, however, do not lead to absolutely clear answers (Fredman 2011, 3).

Assuming that equality merely reflects the fact that equal individuals must be treated equally, the question quickly arises – when is one individual equal to another? And even if two individuals are the same, does that mean they should be treated the same? Wrong equal treatment can lead to inequality. So how do we clarify that equal treatment can lead to inequality, while sometimes unequal treatment is necessary to achieve equality (Fredman 2011, 3). And when we talk about equality, discrimination is the other side of the coin.

Discrimination in general

Discrimination at first glance is a theoretically simple concept, but upon examination, it is perceived that causes more problems than we imagine (Andrew 2020).

In Slovenia, in addition to the Constitutional Regulation (Article 14), discrimination is defined in Article 4 of the Protection against Discrimination Act (ZVarD) as any unjustified factual or legal unequal treatment, differentiation, exclusion, restriction or omission of conduct due to personal circumstances, which aims to prevent or reduce the equal recognition, enjoyment or exercise of human rights and fundamental freedoms, other rights, legal interests and benefits.

We distinguish between direct and indirect discrimination, harassment, instructions for discrimination, incitement to discrimination, victimization and discrimination through connection. However, when we talk about discrimination, we need to be careful, because any unequal treatment based on personal circumstances does not necessarily mean a breach of the prohibition of discrimination (Zagovornik načela enakosti 2020).

Alongside this I should also mention positive discrimination, which is well-intentioned discrimination. It is about the privilege of certain minority groups that have been traditionally neglected or discriminated for a long time (Novak, vol. 2003, no. 41, pp. 27).

Types of discrimination

As previously mentioned, we can talk about discrimination when unequal, less favourable treatment is based on a certain personal circumstance of an individual. These

are innate or acquired personal characteristics that are usually permanently and inextricably linked to a particular individual and his personality. Personal circumstances include gender, nationality, race/ethnic origin, language, religion, disability, age, sexual orientation, social status, education, wealth, etc. (Zagovornik načela enakosti 2020).

In the continuation of this essay, I will briefly present discrimination on the basis of racial and ethnic affiliation, gender, age and social status, and how we in Slovenia fight against the certain types of discrimination.

Racial/ethnic discrimination
Racial or ethnic discrimination means any discrimination, exclusion, restriction or preference based on race, colour or national/ethnic origin, which has the purpose or actual effect of disabling or depriving anyone of the equal recognition, enjoyment or exercise of human rights and fundamental freedoms in the political, economic, social, cultural and any other sphere of public life (Mirovni inštitut 2003, 3).

It is seen in various areas of our daily lives (housing policy, education, employment…) (B. Reskin 2012, 17-35). Racial differences in educational achievements present strong evidence of the effects of separating children based on their race (Mickelson 2003, 1052-1086). Discrimination in housing markets has long been considered a key problem for the social integration of ethnic/racial minorities, as it increases the cost of housing for ethnic minorities (Auspurg, Andreas and Hinz 2019, 95-114). Discrimination is also present in the labour market, where differences are observed in job allocation, wages and unemployment (B. Reskin 2012, 17-35). Discriminated people are also disadvantaged in all aspects of access to health care (Williams and Mohammed 2009, 20-47). Racial/ethnic discrimination has a negative impact primarily on health, either through the direct harmful effects of racial violence or through the indirect effects of chronic or acute stressors (Cave et al., 2020, 2).

In Slovenia, an example of this type of discrimination is the employment service, which often does not accept Roma job candidates, or the housing policy office, through which Roma receive more or less substandard housing (Mirovni inštitut 2003, 6). At the time of Slovenia's independence, immigrants from the former Yugoslavian nations and "The Erased" suffered greater discrimination.

Slovenia adopted the Convention on the Elimination of All Forms of Racial Discrim-ination in 1991 (International Convention on the Elimination of All Forms of Racial Discrimination 1991), so it must regularly report to the Committee on the Elimination of Racial Discrimination, which is a UN body. I see this as a positive control over the situation in my country. At the same time, I see the publication of information on the human rights of various ethnic groups and raising public awareness as possible solutions to overcome this type discrimination. More concrete problems of ethnic inequality start in the school years and continue to be a vicious circle of events – as children cannot develop their skills properly during school, which will lead to poorer employment, lower income and poorer quality of life in the future. As a result, the school system should be altered as a first major step in changing ethnic discrimination (Brezigar 2017, 73-88).

Gender discrimination

The prohibition of gender discrimination is enshrined in a number of lower-level le-gal acts as well as in political declarations, statements and resolutions (Vuksanović, Pravna praksa Vol. 2010, No. 21, 22). Our Constitution follows the most important sources of international law (Tekavc 1999, 519-535). In Slovenia, the main basis for the prevention of discrimination on the grounds of gender is the Act on Equal Op-portunities for Women and Men (ZEMŽM) and gender equality is also regulated in the National Assembly Elections Act (ZVDZ, Article 43) and the Local Elections Act (ZLV, Article 70a). Compared to the Gender Equality Index in the European Union, the level of gender equality in Slovenia is slightly higher than the EU average, but despite the progress made, challenges remain that will soon need to be addressed (Vuksanović, Pravna praksa Vol. 2010, No. 21, 22)**.**

In Slovenia, legislation and other measures ensure equal treatment of the genders, which means that discrimination on the grounds of gender is prohibited in all areas of public and private life: political, economic, social, educational and others. But it can still be detected mainly in the field of employment, where the labour market is marked by horizontal and vertical gender segregation. Gender discrimination in the workplace is based on a historical view of men as more capable, skilled and smarter (Jogan 2017, 255-274), so women are mainly employed in more easily accessible and less paid jobs. Gender discrimination in the workplace most often occurs in organiza-

tions with an unbalanced gender structure, and the victims are members of a gender that is in the minority (Brečko 2010, 46).

As a solution to overcoming gender discrimination was to change legislation over the past decade and introduce a gender quota. Slovenia's accession to the EU should certainly not be neglected, as the most important activities were often carried out within the framework of individual projects and with the support of EU funds. The feminist movement also made an important contribution to the establishment of gender equality policy. In 2002, the National Assembly passed the Equal Opportunities for Men and Women Act, which aims to provide a general basis for improving the situation of women and ensuring equal opportunities for women and men in all spheres of social life (Ministrstvo za delo, družino, socialne zadeve in enake možnosti 2021). Despite the current legislation, the national mechanism for ensuring gender equality contains a number of serious shortcomings. At the government level, gender policy tasks have been transferred to a sector within one of the ministries, where only a small number of cases are considered due to the small number of staff. These elements show that Slovenia has not yet provided an effective system of protection against discrimination (Humer 2015, 38).

It is certainly controversial to over-advocate for full gender equality, which is impossible because of biological differences, but it is no less dangerous to think that the genders are so different because of their physique and psychological characteristics that traditional division of roles is justifiable or even desirable.

Discrimination of the elderly

The most frequently perceived problems of the elderly in Slovenia are the deterioration of the material situation. Especially older women are characterized by an extremely low employment rate, and are also one of the social groups most exposed to the risk of poverty and social exclusion. Older people experience discrimination in many areas of social life. In the field of healthcare, this is reflected in rising prices of medicines and services. There is also an inadequacy of the way of giving information and instructions to the elderly, most of whom do not know how to use new technologies. In the field of employment, the elderly are finding it increasingly difficult to maintain jobs. Access to appropriate education is difficult, and older professionals face intellectual discrimination. In the field of social care, thousands of people are waiting for home

care and its prices are rising. With the abolition of certain transport lines, it is difficult for the elderly to access a doctor and other necessary services. The closure of small shops has made it more difficult to access basic necessities of life. The media offer less and less content adapted to the elderly. Also, older people often do not dare to talk about the fact that they are experiencing violence, as they often experience it from people on whom they depend to a large extent (Volasko Tratnik 2012, 56-64).

The proposed measures to overcome age discrimination are: reforming the health care financing system in terms of compliance with the principle of solidarity; raise awareness among politicians and health professionals; adapt instructions and information on healthcare and the entire treatment process; place more emphasis on the education of doctors and medical staff in the field of treatment and life of the elderly. Slovenia is also one of the few EU countries that does not have regulated long-term care, so it is necessary to adopt the Long-Term Care and Long-Term Care Insurance Act as soon as possible. It is necessary to systematically investigate the causes of violence towards elderly and look for ways to eliminate/prevent it (Volasko Tratnik 2012, 56-64).

Social position discrimination

In all societies, people with qualities valued by their society had greater opportunities, gained a reputation, established social ties more easily and had easier access to social goods. Their status in society was higher. Social categories are being formed – layers that are in a hierarchical relationship with each other (Počkar et al. 2009, 32).

Social stratification refers to the categorization of members of society on the scales of socioeconomic levels based on factors such as wealth, income, race, education, and power. People who have multiple resources represent the highest layer of the social structure of stratification. Other groups of people who have less and less resources, however, represent the lower layers of society. The factors that define stratification vary from one society to another. One of the key factors of social status is also the social position of our parents (Keirns and Strayer 2012, 186).

The solution to overcoming discrimination against different social classes is to change the country's economic policy – to reduce economic inequality: raise the minimum wage, build housing for working families, invest in education, regulate legislation in a more progressive direction and end housing segregation.

It is worth mentioning that Article 2 of the Constitution of the Republic of Slovenia stipulates that Slovenia is a welfare state. We provide social security through a number of measures in various fields, including health, labour law, housing, education etc. An important part of providing social security is the field of social protection, which provides individuals without sufficient means with a range of services and cash benefits. Through social welfare programs, we try to solve the social hardships of individual vulnerable groups of the population, thus improving the lives of the lower class, but in no way eliminates stratification (Ministrstvo za delo, družino, socialne zadeve in enake možnosti 2020).

Precisely because of the strong ingrained social stratification, I believe that this will be the most difficult to overcome (of all the forms of discrimination described, discrimination based on social classes is the least discussed).

3. How do we fight against discrimination in Slovenia?

In Slovenia, protection against discrimination is provided in various areas of social life, in the exercise of human rights and fundamental freedoms, in the exercise of rights and obligations and in other legal relations in the political, economic, social, cultural, civil or other fields, but not in private relationships between different individuals (Zagovornik načela enakosti 2020). In describing different types of discrimination, I have tried to give some solutions to overcome discrimination in Slovenia. Now I am going to present some general solutions to overcome discrimination.

Legal solutions

The prohibition of discrimination and the principle of equality are enshrined in all fundamental international human rights instruments. At the same time, the EU attaches great declaratory importance to the prohibition of discrimination. Slovenia has fulfilled its obligations regarding the transposition of European anti-discrimination directives into national law (Human european consultancy 2005).

In the Slovenian system, the prohibition of discrimination is already enshrined in the Constitution, where Article 14 already stipulates that everyone in Slovenia is guaranteed equal human rights and fundamental freedoms, regardless of nationality, race,

gender, language, religion, political or other beliefs, material status, birth, education, social status, disability or any other personal circumstance. Furthermore, the prevention of discrimination is also provided for in the legislation. The most important law on this topic is the Protection against Discrimination Act (ZVarD) (Kresal 2015, 1208).

Legal ways for ensuring protection against discrimination are also provided. The most effective out-of-court protection is provided through mediation. In judicial protection, we can talk about civil proceedings, where we can get compensation, and we have the right to demand an end to the violation of personal rights. In the event of discrimination against a large number of people, a collective action is possible. In the field of labour, we have the possibility of protecting the rights in labour disputes. Legal ways of providing protection against discrimination are also provided in criminal and constitutional proceedings (Božič 2019, 11-27).

Besides other legal ways, I should mention the Advocate of the Principle of Equality and the Ombudsman. An Advocate of the Principle of Equality is an independent state body established to promote equal treatment and ensure protection against discrimination. The Ombudsman supervises the conduct of all branches of government in our country and possible interferences with the human rights and fundamental freedoms of individuals (Urad Vlade Republike Slovenije za komuniciranje 2019).

Non-governmental organizations

Non-governmental organizations (NGO), which are essential for successful development and for the efforts of the country to achieve its goals in the fields of peace, democracy, good governance, health, prosperity and equality, certainly play an important role in the fight against discrimination. A major anti-discrimination NGO is Amnesty International (Amnesty International 2013).

Given the role they can play in combating discrimination, NGOs should take advantage of the various roles available to them under Articles 7 and 12 of Council Directive 2000/43 / EC and Articles 9 and 14 of Council Directive 2000/78 / EC. The role of NGOs as an instrument of civil society in the fight against discrimination may include: providing the means to express and actively address the needs of people who are discriminated; supporting victims of discrimination in access to justice; promoting diversity and equality in society through awareness-raising activities; integrating non-

discrimination and equality into policies; monitoring, documenting and condemning discrimination, etc. (Bojarski, in drugi 2012, 35-38).

In summary, the role of many NGOs is to review, monitor and criticize the activities of government and private units to complement and add to the role of government in fighting against discrimination, and to help individuals and groups claim their rights (Mirovni inštitut 2005).

Strategies for prevention of discrimination

Reducing discrimination by changing social norms
One variable that makes us less prejudiced is education. People who are more educated express fewer stereotypes and prejudice in general. The effects of education on reducing prejudice are probably due in large part to the new social norms that people are introduced to in school. Social norms define what is appropriate and inappropriate, and we can effectively change stereotypes and prejudice by changing the relevant norms about them.

Reducing prejudice through intergroup contact
A good way to reduce stereotypes and prejudices is to help people create closer connections with members of different groups. People will be more favourable toward others when they learn to see those other people as more similar to them. If children from different ethnic groups play together, their attitudes toward each other should improve. And if we encourage college students to travel abroad, they will meet people from other cultures and become more positive toward them. Successful intergroup contact tends to reduce the perception of outgroup homogeneity. Contact also helps us feel more positively about the members of the other group, and this positive affect makes us like them more.

Moving others closer to us: the benefits of recategorization
Stereotyping and prejudice begin from social categorization—the natural cognitive process by which we place individuals into social groups. A problem is that social categorization distorts our perceptions of others such that we tend to exaggerate the differences between social groups while at the same time perceiving members of groups as more similar to each other than they actually are. Once we begin to

categorize other people, it then becomes very easy to apply our stereotypes to the members of the groups.

Because social categorization is a basic human process that provides some benefits for us, stereotypes and prejudices are easy to develop but difficult to change. But stereotypes and prejudice are not inevitable. The positive effects of education on reducing prejudice are probably due in large part to the new social norms that people experience in school.

Intergroup attitudes will be improved when we can lead people to focus relatively more on their concerns for others and relatively less on their desires to feel good about themselves.

Education and re-education
Educational prejudice-reduction initiatives build on contact theory through the premise that activities such as cooperative learning and multi-cultural curriculum will help to reduce prejudice in a way that contact alone might not be sufficient to. Educational initiatives are concerned with promoting positive relations through challenging stereotypes and 'myths' about out-groups (University of Minnesota 2015, 542-564).

Raising awareness

While some people are aware of their prejudices against certain groups and knowingly discriminate these groups, most members of society are not aware of their discriminatory behaviour. Also, many victims of discrimination are not aware of their rights and what to do and who to turn to for help. It is therefore important to raise public awareness, to educate victims, public and private sector employees, educational institutions, etc. Awareness-raising can take place through the provision of information, the organization of campaigns, education and training, the conduct and publication of research, networking and the establishment of alliances, and by media work. We should be raising awareness of existing means of protecting people from discrimination, on preventive measures, on ways to challenge actions that violate anti-discrimination legislation, on organizations set up for the purpose of operating in various fields of discrimination, etc.

Influence on policy and law development

In particular, NGOs play an important role in monitoring and influencing the development of policies and law due to their independent position, through which they can draw the attention of the authorities to problems and propose their solutions to the situation.

Supporting victims

It is of primary importance to provide support to victims, which is most successfully achieved through NGOs that have the knowledge and resources to provide counselling and support. NGOs should provide broad-based support to victims of discrimination (setting up a helpline, providing information to victims, providing expert advice, connecting victims with other victims, providing specialist research on equality…).

Establishment of a group of lawyers

We should establish a group of lawyers who can provide the necessary legal knowledge to challenge discriminatory acts and are willing to represent the discriminated.

Networking and building alliances

Talking to relevant groups and associations (for example, if an NGO deals with age discrimination, talk to associations that bring older people together) in order to get their opinion, which will help the organization set up an up-to-date database with useful contacts, could be one of the solutions. Networking is useful for exchanging knowledge and information and establishing relationships and contacts, as well as expanding the base of operations.

The media

In today's society, where thinking is controlled by the media, the media is the most powerful tool for ensuring general awareness and influencing public opinion, and should be used as a tool to spread relevant information and raise public awareness (Mirovni inštitut 2005, 51).

Working with EU

We must not forget to work with the EU and other international organizations. There are various ways the EU is informing people about their rights to fight discrimination. The EU supports non-governmental organisations, social partners and equality bodies to combat discrimination, supports equality policies at a national level between EU countries, establishes anti-discrimination training activities and pushes for diversity management in companies (European Commission 2021).

4. Conclusion

Although it is unacceptable to talk about discrimination in the 21st century, it is only so ingrained in society that it is pointless for us to shut our eyes to the fact that it will not be soon eliminated. Certainly, the long-term goal is to eradicate discrimination, but we currently need to focus on the short-term goal of dealing with the current situation itself. I am a middle-class woman who wants to achieve success in both professional and private areas, so I will probably face discriminatory obstacles in my life. However, because we need a glimmer of hope nowadays, I want to look at the situation from a positive point of view, to look back and see all the progress that has already been made in this area. The development of the field of human rights so far can fill us with confidence that the concept of human rights will finally be transformed into the global value of human civilization.

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THE THEORETICAL AND LEGAL CONCEPTS AND PRACTICES OF MULTICULTURALISM IN THE WESTERN BALKANS COUNTRIES

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1. Introduction

Western Balkans is a geopolitical term that has a goal to mark particular countries and entities of south eastern Europe gathered in their will to join the European Union (but also NATO). This is a pretty simple definition coming from Dragan Đukanović (2016) for something that's complicated in reality. This territory has gone through a total change of ethnic structure starting from 1991. This transition was not evolutional (achieved during a period of peace), but revolutional instead (it happened during the civil war). This period created new ethnic minorities in countries of Western Balkans and created the complicated picture of multiculturalism.

Recent heating up of nationalism and ethnic conflicts from daily political situations prove that fostering multiculturalism is ever so important. Even these countries and entities have more or less acquired international law regulations in the field of protecting ethnic minorities and made a promise to comply their national laws with these regulations, there are many examples that theoretical and legal concepts are one thing, and their practice is something totally different.

After falling apart of Yugoslavia each country and entity created their own new legislation and new rules for data surveys. This left space for manipulation, presenting the result of the censuses in favour of the majority, or not even presenting them at all (North Macedonia in 2011). The goal of this manipulation was to minimize the presence of certain minorities and reduce the rights of that ethnic group. Even worse is that in some countries these ethnic groups weren't/ aren't recognized by constitutions. That is really badly affecting multiculturalism and human rights in these countries,

because listing each minority group by its name in law articles, most importantly in the constitution of the county, is crucial for judicial recognition of these minorities.

Positive thing is that the general assessment is that the position of ethnic minorities has improved in recent years. This might be because of the tendency of Western Balkans' countries and entities to join the EU and regulating the status of ethnic minorities is crucial for that path. Bilateral relations within Western Balkans themself and with their neighbours that are already part of the EU (Croatia, Hungary, Greece, Bulgaria, and Romania) have big impact on multiculturalism.

All this makes this topic really important and relevant for investigation and discussion. In this essay we will approach multiculturalism through the work of Dragan Đukanović (2016) while updating it with newer facts and daily political situations, investigating the legal actions fostering multiculturalism in these countries, and seeing things from an outsider perspective by citing Andor Végh (2012) from Center of the Eastern Mediterranean and Balkan Studies, Hungary.

2. Bosnia and Herzegovina

As the former central republic of Yugoslavia, Bosnia and Herzegovina has a complex multicultural identity. Before war years we had a better picture of various ethnic minorities varying from Jews, Slovenians, Albanians to Roma and Turkish people. Nowadays politicians and media are focusing on a more homogenous image of Bosnia and are pointing out everlasting conflicts between constitutional trio (Bosniaks, Croats, and Serbs). Everything started with Dayton's conformation in the constitutional act of Bosnia and Herzegovina tide to deep and (tri)ethnic division of power (Đukanović, 2016). This division of power is seen on the local level of entities and the level of the state.

An interesting thing about human rights is that Bosnia and Herzegovina has three ombudsmen (one for each constitutional ethnic group). Good thing is that they also have Council of National Minorities in BiH as part of the parliament, plus the ministry exclusively for human rights and refugees. Recent effort of Ministry is Law on Protection of the Rights of Members of National Minorities in BiH. This law has been analysed by Council of Europe (2018). Council points out that some parts of it are not harmonized with The Framework Convention for the Protection of National Minorities, and that quotas

are too big for national minorities to realize their rights and use them in practice. They suggested that this law should be amended to facilitate and improve different cultural identities of ethnic minorities, mostly focusing on change in media. The main focus of these legal actions is to create great coexistence between ethnic minorities there are still many examples of conflict and mistreatment of these ethnic groups in entities where they present minority. Đukanović (2016) lists cases that went in front of the European Court of Human Rights as proof. These examples show that the position of minorities in society still isn't on a good level because of ever-present discrimination.

There is still room for improvement for the rights of Bosniaks, Serbs, and Croats, these conversations are stealing all the attention from other ethnic minorities that are also present in Bosnia and Herzegovina. There is also a different perspective of multiculturalism, there are lots of Turkish, Arab, Kuwaiti people living in this country. There are lots of Ukrainian people in the municipality of Novi Grad. Traditionally there are also lots of Roma and Jewish communities in this territory. It's worrying this part of multiculturalism is often ignored by officials and the general public.

3. Albania

With the falling apart of Yugoslavia, the states becoming independent developed their own data surveys, which brought on several methodology problems to the examination of Western Balkans. One of the biggest problems for the investigation of multiculturalism in this territory is Albanian aloofness (Végh, 2011). The ethnic structure of Albania has been unknown because there hasn't been a relevant census (data survey) in the period between 1989. and 2011. This way of treating ethnic minority questions violated contemporary European practice (Đukanović, 2016).

Data survey happened in 2011, but even these results are not reliable according to analysis from insiders. Census showed that in 2011. there were 83% Albanians and 14% didn't want to specify (INSTAT, 2014). This leaves lots of space for interpretation and uncertainty that affects all minorities that are in fact living on the territory of Albania.

Data survey shows that second biggest ethnicity (after Albanian) in this country is Greek 0,8%, followed by Roma and Aromanian people 0,3% and Macedonians 0,2%. They consider Serbs and Montenegrins to be one ethnicity, and the results claim that there

are just 366 of them (0,01%). Insiders claim that in reality there are tens of thousands of people from these ethnicities. This is a big problem because recognition is the first step to multiculturalism and acceptance of minority rights of these groups. Thankfully these ethnicities were recognized by the Constitution, but only in recent years. This is important for the basic rights of these groups because the Albanian constitution from 1998. doesn't specifically define minorities but just lists them instead (Đukanović, 2016). Serbian officials are often opening questions about their minority in Albania. They insist on better regulation for ethnic and collective rights for their people. They are fighting for language rights among other things (use of their mother tongue, being informed in their language...).

The Greek minority is dominant and has been recognized by Constitution, there have been recent cases of ethnic discrimination. Law on Protection of Human Rights (2017), often compared to Bosnian law mention in previous chapter, is set to be in accordance to Framework Convention for the Protection of National Minorities. They had a goal to extended rights of ethnic minorities in country, European Parliament thinks otherwise. They think it's restricting rights of Greek ethnic minority. „This law does not guarantee, in practice, the right to self-determination by concentrating such powers into the hands of the prime minister and the government in power. The consequence of this is that the rights of the Greek ethnic minority, the largest minority in Albania, are directly affected. In particular, rights regarding mother tongue, education, the possibility of using the Greek language in public life, and respect for the property rights of the Greek national minority are violated, as minority rights are exclusively applicable in the so-called 'minority zones' under the policy of the Albanian government" (European Parliament, 2018).

Đukanović (2016) points out questions regarding ethnic minorities might not affect Albanian path to EU, these kinds of situations badly affect multiculturalism in this country.

4. Kosovo

Continuing with „Albanian states" (Végh, 2012) we have Kosovo where the proportion of minorities is also insignificant and hardly noticeable. Tendencies of increase of Albanian part in total population went from 77,4% in 1981 to 93% in 2011 (Đukanović, 2016). The second-largest part of the population is Serbs and according to the result

of the census from 2011. they make 1,47% of the population in Kosovo. There are also Bosniaks and other ethnicities (Turkish, Roma, Ashkali, Egyptian, and Gorani communities) that make less than 1% of the total population according to these statistics. All these minorities are acknowledged by The Constitutional Framework on Interim Self-Government (2001) and later by the Constitution (2008). This means that these listed minorities have the right to have their representatives in the Assembly of The Republic of Kosovo. Despite having homogenous results of data surveys, they try to promote multiculturalism through their laws and Constitution. They also offer Law on The Protection and Promotion of The Rights of Communities and Their Members in Kosovo. Article 1 of this law says that „Kosovo regards its national, ethnic, linguistic, and religious diversity as a source of strength and richness in the future development of a democratic society based on the rule of law." Despite these good legal tendencies, deep problems between Serbs and Albanians stay a relevant and big problem for this territory.

A bad side of legal concepts of multiculturalism in Kosovo is that they don't accept Montenegrins and Croats as minorities, they are traditionally very present. They are not mentioned in Constitution, and in the laws, they are hidden behind the term „other communities". Both Podgorica and Zagreb have been outlining the importance of change in the Constitution. Officials from Montenegro and politicians from the Association of Montenegrins of Kosovo have been asking for an amendment of the Constitution that would acknowledge their ethnic presence in Kosovo and allow them to have a guaranteed place in the Assembly. The Association of Montenegrins of Kosovo has been hoping for this change since 2012. and they continue to ask for improvement of their ethnic rights to this day. Positive changes are in talks for Kosovo's data survey set for 2022, where we can expect to see the Montenegrin community for the first time in the census on this territory (Politika, 2019).

5. North Macedonia

North Macedonia is also set to have a new data survey that should fix problems that have been brought on to minorities and legislation of their rights in the past. Census in this country will be held in 2021. after 19 years of hiatus. There's no need to explain how this big break between data surveys has affected the transparency of the multi-

cultural situation in North Macedonia and resulted in a restriction of ethnic rights for people that are in reality living on this territory. This big problem occurred because back in 2011. „a few days after the start (of data survey), the operation was stopped by the then authorities, on suspicion of forgery" (Kuzmanovski, 2021). The importance of this census is big because only getting the full picture of ethnicities present in North Macedonia will make laws regarding ethnic rights ready for practice. Some of the rights from the Constitution are only applicable to communities that make at least 20% of the total population, so to activate these minority laws it's crucial to see the result of the census.

The last relevant census happened in 2002. when it showed a positive trend of multiculturalism. Macedonians made up 64% of the total population, followed by Albanians (a bit more than 25%), and Bosniaks, Turks, Serbs, Vlachs, and Roma people are also significantly present. Besides Serbian attempts to enable activities of the Serbian Orthodox Church in North Macedonia, mother countries of these ethnicities aren't invested in their status in this country (Đukanović, 2016).

The biggest problems regarding multiculturalism and ethnic rights happen with the Greek and Bulgarian minority. They are not even recognized by the Constitution of North Macedonia. These two member states of the EU were the biggest obstacles on the way of Macedonia to the Euro-Atlantic Integrations. Greece was insisting on the name change for the Republic of Macedonia and after 27 years of these disputes, they agreed on the name North Macedonia. Macedonians are not pleased with this change, and even 60% of Greeks are not content (BBC, 2019) this helped North Macedonia on its path to integrations.

The big problem is that Bulgarians and Greeks are still invalidating the identity and specifics of Macedonian ethnicity. They are throwing away the use of „Macedonian" as an adjective, they are not accepting their language, church, and all the other identity features (Đukanović, 2016).

Change of relations with Albanian minority happened in 2001. after clashes between the Macedonian army and police with Albanian demonstrators. These armed disputes led to the amendment of the Constitution and the creation of the Ohrid Framework Agreement that improved the rights of the Albanian minority and turned Macedonia into (duo)ethnic country.

The situation of multiculturalism in North Macedonia is complex and filled with problematic moments in recent history, but as it is getting closer to the EU, we can see ethnic questions finally be resolved.

6. Serbia

Like all the other countries from Western Balkans, Serbia is also on its path to EU integrations, but unlike these countries, it's not interested in joining NATO. In the past ethnic conflicts made a big scar on multicultural image of Serbia, but thankfully they turned their back to nationalism and made big improvements in the field of ethnic rights since the Yugoslav wars in the 90s.

When talking about multiculturalism we must talk about Vojvodina and Sandžak province. Vojvodina had significant autonomy in Yugoslavia after 1945. because of all the minorities living in this province. Although Serbs are the majority, the biggest minority on this territory are the Hungarians, followed by Slovaks, Rusins, Romans, Croats, and Montenegrins (Végh, 2012). This province is great representative of multiculturalism, thanks to migrations during different times in history and excellent agricultural potentials. After 1945. most people searching for new homes flooded this place during the period of socialist land reform and colonization. Végh (2012) points out that the presence of Montenegrins on this territory is due to that. Most of the refugees (BiH, Kosovo, and Croatia) of the wars settled here. After 1950. most Serbs from other Yugoslavian republics started migrating to Vojvodina. „These Serbian immigration waves in addition to continuously increasing the population of Serbs in the province also raised the level of intolerance against the minorities at the time, due to that not only assimilation increased, but resulted in the emigration of certain minorities" (Végh, 2011). This mostly affected German, Hungarian, and Croatian communities in Vojvodina.

Sandžak has also had some better and some darker days in Serbian history. In recent years, Serbia turned to European values and met its obligation to establish a national/ minority council (2009). This trend was meant to increase the rights of all minorities including Bosniak one (mostly located in Sadžak), this opened the door for new problems. Council was created for native language, educational, and culture matters, and this is where the Bosniak Cultural Community list saw an opportunity to create

cultural-educational autonomy for local Bosniaks in Sandžak. For this purpose, they formed Bosniak National Council (2010), that is not accepted by the Constitution and Ministry of Human Rights and Minorities in Serbia.

Besides these specific territories regarding multiculturalism, there are many ethnic communities present on a national level. According to the census from 2011 there lives 83% of Serbs, 3,5% of Hungarians, 2,05% of Roma people, and other communities (Croats, Montenegrins, Vlachs, Romanians, Macedonians, Bulgarians, and Albanians) make up 1% of the total population. Dragan Đukanović (2016) offers us a great outlook on recent relations between mother countries of minorities and Serbia.

Croatia often has demands for improvement of the right of their ethnic community in Serbia, and this way, it has the biggest impact on their path to the EU. They insisted on the opening of chapters 23. and 24. that among other things deal with ethnic rights. In 2016. Croats were asking for guaranteed seats in the Assembly.

Albania also has many propositions for the improvement of the status of their ethnic minority in Serbia, but unlike Croatia, they don't have such an impact on the Serbian path to the EU integrations. As mention at the very beginning of this chapter, Serbs are not interested in NATO so Albania can't offer favours in this field, in exchange for the union of Albanian municipalities on the sought of Serbia.

Romanians on the other hand can impact Serbian goals towards the EU, and use that power improvement of Vlach community. The great thing is that they are content with the treatment of the Romanian community in this country.

Bulgarians are also not aggressive in their will to help their community in Serbia. They are just trying to strengthen relations with their ethnic minorities mostly located in Bosilegrad and Dimitrovgrad in Serbia while offering them full collective rights (books in their mother tongue, activities of their church...). The only thing that is creating a problem in these peaceful deals is that Serbs are not happy that these towns popu-lated by Bulgarians are often referred to as „Western provinces".

Finally, we have Montenegrins that are also, amongst other things, asking for collec-tive rights for their communities in Serbia. Language specifics of Montenegrins are recognized on a local level. In 2012. Montenegrin has been recognized as an official language in the municipality of Mali Iđoš, followed by the same demands in Vrbas,

Kula, and south of Serbia. The religious question is also really present regarding the status of the Montenegrin Orthodox Church. Currently, there are lots of talks about this question because of events that have been happening in Montenegro in recent years.

7. Montenegro

After Montenegro declared its independence in 2006. it stayed on the path of multiculturalism with the new Constitution (2007) declaring that this is a democratic and civil state. „The commitment of the citizens of Montenegro to live in a state in which the basic values are freedom, peace, tolerance, respect for human rights and liberties, multiculturalism, democracy and the rule of law," as stated at the beginning of the Constitution.

Besides listing them in the Constitution, ethnic minorities are recognized by the census. Serbian, Muslim/Bosniak, Albanian, Croatian and other communities were strongly present both on the census from 2003. and the one from 2011. Interesting thing is that according to these statistics Montenegro doesn't have an absolute majority, and „this state of really small territory has an onion-skin like ethnic structure, whose only tight core is made up by Montenegrins" (Vérgh, 2012). Looking at this topic through these words of Hungarian author makes this case even more surprising.

Besides the transparent listing of its ethnicities, Montenegro has a good legal concept for minority rights. These legal concepts arise from membership in international organizations and ratification of international agreements. On the one side is this international law and on the other are Montenegrin laws made for the protection of minorities. Key documents for this matter of human rights are Act on Minority Rights and Freedoms (2006) and Strategy for Minority Policy (2008). The Ministry for the Protection of Human and Minority Rights is crucial for the implementation of these acts.

Looking at the relations with ethnic communities in Montenegro we can start with more positive ones. In this country, there are 6000 Croats, and their language is considered official amongst Serbian, Bosniak, and Albanian. Croatian community also shares the right to have a national council like all the other minorities listed in the Constitution. Croats also have their own radio station in the Bay of Kotor (Radio Dux). But unlike in the time when Dragan Đukanović (2016) wrote his paper about these relations, the

Croatian minority doesn't have its representatives in the Assembly of Montenegro. Croatian Civil Initiative (known as the HGI party) is a yearlong partner of the DPS party and thanks to that it was part of the reigning coalition. Everything changed in 2020. where different Croatian party was formed in Montenegro, the Croatian Reformative Party (known as HRS). This dispersed an already small number of votes; and as a result, neither of these parties reached the census and they don't have their representatives in the Assembly. Elections from 2020 also had unfavourable outcomes for Muslim and Bosniak minorities that are partially represented.

There are lots of attempts to help Roma people, but most of them are changing things in theory but not so much in practice. Strategy for Social Inclusion of Roma and Egyptians and work from NGO sector are showing slow, but positive changes.

The Serbian community is the dominant ethnic minority in Montenegro. Relations between Serbs and Montenegrins have always been complex, but problems from their relations are now arising at a large level. On one side we have Serbs fighting for the collective rights of their minority in Montenegro, and then we have Montenegrins that are fearing for their ethnic specifics. Religious question is one of the biggest topics of this dispute, dominant in recent years. The Serbian community is fighting for the preservation of rights of the Serbian Orthodox Church and another wave is fighting for recognition of Montenegrin Orthodox Church. Daily politics in Montenegro are now filled with these ethnic questions followed by news regarding new problematic things in this field. From using slurs to violent incidents. Journalists are also suffering from these disputes no matter if incidents were caused by „the Serbian" or „Montenegrin side". All eyes are now set on the new government that needs to find a solution that would keep Montenegro on its multicultural and peaceful path towards the EU integrations.

8. Conclusion

The Western Balkans have gone through a lot since the falling apart of Yugoslavia and the civil wars in the 90s. They thankfully turned their back to radical nationalism and started embracing multiculturalism. They share their will to join the European Union (or NATO in some cases). They ratified acts of international law and started embracing diversity and human rights. They recognized the importance of ethnic minority rights so they included these matters in their constitutions. These countries also created

ministries that specifically deal with these issues and adopted their own laws and acts regarding the protection of minority rights. Legal problems arise when these legal concepts ignore the presence of some minorities in their country, and by doing that they deny their ethnic rights. Sometimes this is the case because these certain countries have disputes with the mother countries of these minorities (for example North Macedonia and the Greek minority). Besides avoiding to list ethnicities in constitutions, big problems arise from lack of transparency and from the forgery of census results.

Along with these legal problems we have many problematic cases in practice. These acts are adopted or ratified; they often just stay on the paper. Discrimination continues to exist in reality. There are still lots of stereotypes, misconceptions, and slurs that sometimes go to extents that can affect all aspects of life (education, work conditions, access to health care) of discriminated minorities.

Some authors think that there is a trend of homogenization of ethnicities in Western Balkans there are lots of positive, but also negative examples of national awareness. Lots of minorities like to keep their traditions and foster their ethnic-specific, often with the help of legal actions or grants. This way multiculturalism stays very present in our countries. On the other hand, this national pride, but also the memory of ethnic clashes from the past, create big problems nowadays.

Hopefully, these bad examples won't ruin the image of multiculturalism and will become exceptions. Hopefully, a good legal concept helps on that path and changes things for the better. Censuses happening in these countries in 2021. and 2022. and future strategies for minority policies can help multiculturalism see its full potential.

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RECONCILIATION IN WESTERN BALKANS

RECONCILIATION IN THE POST-CONFLICT ENVIRONMENT IN THE WESTERN BALKANS

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1. Introduction

Post-conflict reconciliation in the Western Balkans remains an aspiration that is key for meaningful democratization and Europeanisation. In this essay, I first examine the understanding of the necessity to acknowledge what reconciliation entails, and second, the process of reconciliation in these countries, with a specific focus on Kosovo. To better understand the reconciliation process, I found it proper to discuss a little about the history of Yugoslavia, since from its beginning to its dissolution, one can still see the effects within the Western Balkans. This leads me to my main focus, which is how Kosovo has been dealing with its process of reconciliation.

2. Reconciliation as a key aspect of peacebuilding

Reconciliation is a much-used term, with very few authors agreeing on exactly what the concept constitutes. For some, reconciliation is the re-establishment of a conciliatory state (Commission of Canada 2015, n.n.). Many scholars maintain that reconciliation is a multifaceted process that 'revolves around the complex relationships among trauma, truth, history/politics and justice' (Ferati-Sachsenimaier 2019, 312). Reconciliation is often seen as an important (if not necessary) part of the successful process of normalizing and rebuilding societies emerging from conflicts, especially as a tool that can help heal suffering by promoting justice, accountability, and rebuilding trust, and cooperation in post-traumatic situations (Žagar 2010, 144).

However, for this essay, the definition of reconciliation consists of the value approach to normalization, reconstruction, and improvement in post-conflict societies, which can be effective only if all relevant actors agree with it and truly accept it with all the

consequences, and fully commit to the process and its success (Žagar 2010, 145). Despite that, reconciliation is the ultimate objective in all post-conflict societies.

Within the Western Balkans, it is exceptionally critical to (re)establish communication, (re)build basic economic and social infrastructure and trust, as well as develop and constantly reconfirm common interests as the basis for the future common existence, cooperation, and development of all distinct communities in those environments (Žagar 2010, 146).

Moreover, Hamber and Kelly consider that reconciliation includes five interrelated dimensions that include a temporal, relational, cultural, and structural aspect. Therefore, the reconciliation process rests on the development of a shared vision of the future with the simultaneous recognition and assumption of responsibility for the past, by establishing various mechanisms for attaining justice, healing, restitution, reparation, and restorations (Hamber, B., Kelly 2004, 3-4).

According to Bar-Tal and Bennink, reconciliation is a process that is a very important element of peacebuilding and involves several actors of different social levels that participate synergistically and complementarily in that process (Bar-Tal & Bennink 2004, 16). Reconciliation is also viewed as an adequate foundation for the future development of diverse and asymmetric post-conflict societies, particularly those that were characterized as divided societies (Žagar 2010, 145).

From these definitions it is conceivable to infer three imperative characteristics: to begin with, reconciliation is a process in which practically all social actors participate, at all levels from individual to the macro level. Secondly, at the structural level, the process of reconciliation requires that social institutions introduce innovations that contribute to the idea of reconciliation. Thirdly, reconciliation at the cultural level rests on redefining and transforming the relationship between the conflicting parties at all social levels, from institutional to individual relations.

Indeed, a broad understanding of reconciliation includes the healing of social relations (Long & Breck 2003, 160). Therefore, the foundation for the building of peace and reconciliation is the "healing" of connections and interpersonal relations between these countries.

3. A short history of Western Balkans

The Balkans, for a measurably long time, has been an ethnically diverse region in Europe. It served as a border of Western, Eastern, and Islamic worlds. Its long history consists of many independent kingdoms as well as even more empires attempting to conquer this region. The Byzantines, Ottomans, and all Austrians took their chance in this region (Winkle 2005, 6-10). However, as nationalism took hold in the late 19th century, things started to change.

The founding of the first state of Yugoslavia was also the result of war. When, at the end of World War I, the Austro-Hungarian Habsburg monarchy collapsed and much of Europe was redeveloped, the opportunity arose to revive the old dream. The Yugoslav state emerged in 1918 when Serbia and Montenegro united with the South Slav provinces of a smashed Austria - Hungary on December 1 (they formally united in the State of Slovenes, Croats, and Serbs) (Helsinki Committee for Human Rights in Serbia 2017, 18). The new state would be a constitutional monarchy. The kingdom was recognized internationally at the Paris Peace Conference in May 1919 (Calic 2014, 66).

From the start, however, the kingdom faced major problems: ethnic hatred, religious competition, language barriers, and cultural conflicts. Trouble soon besets the young kingdom as the opposing political interests of the Serbs and Croats made it clear that it would be impossible to agree upon a constitution.

The question of central versus federal power sharply divided Serbs and Croats. The tension between the center and the parties is one of the common threads in the history of Yugoslavia. Serbs wanted a central government that they could rule over. Croats wanted a federal system to give them (and many other peoples) more autonomy. (Winkle 2005, 9). This was a balance that Yugoslavia never achieved. The lack of it eventually tore the federation apart.

In the late 1930s, Croatia was pressured by Nazi Germany and Fascist Italy into pushing for more autonomy, and perhaps even independence. In 1941, the kingdom was invaded, divided, and conquered (Winkle 2005, 10). After four years, in 1945, the Socialist Federal Republic of Yugoslavia was established (Calic 2014, 168). The country was a federation of six socialist republics: Bosnia and Herzegovina, Croatia, Macedo-

nia, Montenegro, Slovenia, and Serbia. In addition, Serbia owned two autonomous countries, Kosovo and Vojvodina.

The Socialist Federal Republic of Yugoslavia did not last long as the countries began to demand their independence. The death of Yugoslav President, Josip Broz Tito, in 1980 incited a series of national revival movements throughout the region. For instance, on June 25th, 1991, both the republics of Slovenia and Croatia declared their independence, beginning Yugoslavia's very violent government collapse. Macedonia as well passed the referendum and left Yugoslavia (Winkle 2005, 16).

However, this does not come to an end here, since other countries as well started to fight to finally leave Yugoslavia. Yugoslavia found itself embroiled in civil war after several republics declared secession in the early 1990s (Sullivan 2019, n.n.).

When it comes to Kosovo, after a while, the Kosovars Albanians living in Kosovo lost patience with peaceful resistance. The international peace efforts in the former Yugoslavia during the 1990s failed to deal with their concerns. And so, in 1997 the Kosovo Liberation Army (KLA) began armed resistance (Bekaj 2010, 20). Its main goal was independence for Kosovo. After the end of their autonomy, Milosevic's program to regain power from the Kosovo Serbs led to active repression over the Albanians in Kosovo. The first documented record of the KLA's existence was its Communiqué No. 1, dated 17 November 1994 (Bekaj 2010, 20). After Milosevic became president of Yugoslavia in '97 and the KLA responded with attacks on police stations and army posts. Serbian response to the early KLA attack was, as expected, cruel and targeted at civilians. The Serbian massacre of 58 people in Prekaz in February 1998 became a turning point for the Kosovar Albanians to lose patience and so the internal war escalated (The Independent International Commission in Kosovo 2000, 68).

In '98 when Milosevic started to take action against this, as a consequence, around 13.000 people were murdered. NATO quickly responded with a massive bombing campaign in Kosovo and Yugoslavia in 1999. This eventually forced Milosevic to sign off on the Kumanovo Agreement in June 1999. Yugoslav troops would withdraw from Kosovo and be replaced with U.N. soldiers (Duke 1998, 4)

In spite of everything, the Balkans have been in an ongoing conflict for centuries and the obstacles to reconciliation in the Western Balkans Divisions and controversies

in the Western Balkans can be traced way back in history. Given the word and time constraint presented for this essay, I am only going to focus on discussing how Kosovo is dealing with reconciliation.

4. Addressing reconciliation in Kosovo

The reconciliation process in Kosovo is confronted by the far-reaching consequences of previous conflicts between Kosovar Albanians and Serbs. The previous section sought to briefly highlight the ongoing conflict between Kosovo and Serbia.

Independent Kosovo faces the uneasy task of dealing with its recent violent past, which is frequently interpreted as either traumatic and/or heroic. The latest war in Kosovo (1999) resulted in numerous victims (of different crimes such as murder, torture, imprisonment, rape, etc.) and a displaced population. These previous severities, even nowadays are causing ongoing hostility of mutual oppression and disrespect among communities living in Kosovo. In addition to healing the traumas of the recent war, Kosovo also struggles with an absence of an effective institutional attempt for implementing a comprehensive dealing with the past process in Kosovo (Kosovo Foundation for Open Society 2017, 17).

However, if reconciliation is about establishing mechanisms for peaceful dialogue and building trust between communities, then the first step must be the cessation of conflict and an agreement on the basic rules within which such a dialogue will take place. Preferably, such an agreement should be formalized through an official conflict settlement (Buerma 2013, 9).

Although formal diplomatic settlement instruments, including UN Resolution 1244 and the 2007 Comprehensive Proposal for the Kosovo Status Settlement (the so-called 'Ahtisaari Plan'), were drawn up, the latter was rejected by Serbia (Strapacova 2016, n.n.).

The 2007 Comprehensive Proposal for the Kosovo Status Settlement, which concluded negotiations with Serbia for Kosovo independence, included an obligation to undertake transitional justice initiatives to deal with the past, and promote reconciliation:

Kosovo shall promote and fully respect a process of reconciliation among all its Communities and their members. Kosovo shall establish a comprehensive and gender sensitive

approach for dealing with its past, which shall include a broad range of transitional justice initiatives (Ahtisaari 2007).

After independence in 2008, this obligation was incorporated into the Kosovo Constitution along with the entire comprehensive proposal on the Kosovo Status Agreement.

In 2012, the International Civilian Office, established in 2008 to oversee the implementation of the Proposal, tried to operationalize this obligation to undertake transitional justice initiatives, deal with the past and promote reconciliation through a commitment to work with the Government to adopt a strategy supporting reconciliation and dealing with the past (The International Civilian Office 2012, n.n.). Following this declaration, a series of workshops were held with government staff and civil society members in early 2012, followed by a one-day international conference on 22 May 2012. At the international conference, the Minister of Justice announced the intention to establish an inter-ministerial working group (IMWG DwPR) to address the past and reconciliation. The IMWG DwPR was established on 4 June 2012 by the Government of Kosovo Decision No. 03/77, which outlines the composition, purpose, mandate and standards of the group (Government of Kosovo 2012).

According to chapter II, article of the Decision No. 03/77, the purpose of the IMWG DwPR is to:
… deal with gross human rights violations and serious violations of international humanitarian law in the past in Kosovo including the last war and the transition period taking into consideration the views of all communities in Kosovo in order to promote reconciliation and lasting peace, inter alia, by ensuring accountability, serving justice, providing remedies to victims, facilitating truth-seeking, promoting healing, taking all measures needed to restore confidence in the institutions of the State and implementing the rule of law in accordance with international human rights law and transitional justice standards.

Under Government Decision No. 03/77 in 2014, the IMWG DwPR developed and approved a Work Plan for Drafting the National Strategy on Transitional Justice in Kosovo 2015 – 2017. According to the Work Plan, and guided by the IMWG DwPR mandate, the IMWG DwPR established four sub-groups on truth-seeking, reparations, justice, and institutional reform (Government of Kosovo 2012).

However, the 2012 Inter-Ministerial Working Group on Dealing with the Past and Reconciliation (IMWG-DwPR) concluded its work unsuccessfully in 2016 without producing a national strategy on transitional justice as its work was hampered by a lack of meaningful domestic political commitment and capacity and insufficient involvement of affected communities (Gëzim Visoka & Besart Lumi 2020, 10).

5. Access to justice

An issue at the centre of the reconciliation process is access to justice. In Kosovo, the prosecution of war crimes committed by both sides during the conflict has been severely neglected. To date, the International Criminal Tribunal for the former Yugoslavia (ICTY) has found just seven people guilty of war crimes committed concerning the Kosovo conflict, while Serbia, through its Special War Crimes Chamber at Belgrade District Court, has delivered seven final judgments on war crimes in Kosovo (Amnesty International 2012, 10).

Before the 2008 declaration of independence, the Kosovo court system fell under the authority of UNMIK, which completed just 40 war crime cases between 1999 and December 2008. Since 2008, the executive responsibility for prosecuting war criminals has been assumed by EULEX, which inherits 1,187 war crimes cases from UNMIK. As of April 2012, EULEX had closed 300 cases, resulting in the prosecution of 20 cases by the Office of the Special Prosecutor of the Republic of Kosovo, and 76 others are under investigation (Amnesty International 2012, 19).

There are a number of reasons behind this low number of war crimes trials, including a general absence of rule of law in the aftermath of the conflict: as Serbs fled Kosovo in large numbers, the administration of Kosovo which they had managed 'vanished', and with it disappeared general law and order (Judah 2008, n.n.).

Moreover, problems with witness protection have long plagued war crimes prosecution in relation to the Kosovo conflict: the UN High Commissioner for Human Right named problems with witness protection as being among its 'long-standing concerns' (UN News Centre 2011) while Amnesty International has called it 'woefully inadequate' (Amnesty International 2009, 9). Finally, a fair share of the responsibility for inadequate transitional justice lies with the international community in general and particularly

with UNMIK, which carried the primary responsibility for the justice sector for most of the post-conflict period. Although successful in other areas, it failed to 'develop any coherent strategy for the justice sector', resulting in 'significant damage [...] done to UNMIK's attempt to foster reconciliation and engender respect for the rule of law' (Marshall & Inglis 2003, n.n.). Although EULEX has developed a better record, their impact has remained limited and, according to Amnesty International, 'hundreds of crimes under international law remain to be investigated' (Amnesty International 2009, 10). These judicial failings have had serious consequences for the reconciliation process.

6.   Missing persons

Furthermore, when discussing reconciliation, the issue of missing persons is often among the most pressing concerns raised by both Albanian and Serb communities (Buerma 2013, 14). According to Amnesty International, more than 3,000 Albanians and 800 Serbs, and members of other minority communities were victims of "enforced disappearances and abductions" (Amnesty International 2009, 3). As Janine Clark argued in the case of Bosnia and Herzegovina, a lack of information on missing persons causes affected families and friends to remain 'locked in the past' and 'unable to move on with their lives', thus contributing to interethnic tensions and impeding reconciliation (Clark 2010, n.n.).

To this day, there are still 1640 people missing, thus making it extremely difficult to be able to look forward and find peace and reconciliation amongst ourselves, when on the other side you have a country that openly calls for non-disclosure of mass grave locations in Serbia (Exit 2020, n.n.).

Besides governments and institutions, reconciliation also involves a more forward-looking process–the change in the relationship between communities from a state of conflict to civic trust and democratic dialogue. The establishment of such positive relations requires both '"horizontal" trust among citizens and [...] "vertical" trust between citizens and their institutions' (Greiff 2003, 44-48).

In relation to "horizontal" trust between communities, it should be noted that interethnic relations in southern Kosovo have seen some gradual but significant improvements. For example, there has been a steady decrease in ethnicity-related

incidents and an improvement in the freedom of movement of the Serb community (European Commission 2010).

7. Civil society contribution

It is important to mention non-governmental organizations' (NGOs) efforts for the process of reconciliation. Many civil society organizations are deeply involved in the search for missing persons, including the Association of Families of the Missing Persons, the Kosovo Red Cross Committee for the Protection of Human Rights and Freedoms, and the Centre for Humanitarian Law. In 2001, more than 20 associations came together to set up the Kosovo Missing Family Association Coordinating Committee (A Summary of Institutions and Initiatives 2017, 12-14).

Besides this, regional initiatives were developed to support publicizing facts about war crimes and other serious violations of human rights committed in the territory of former Yugoslavia from 1991-2001 such as RECOM, a regional commission of non-governmental organizations (Kosovo Foundation for Open Society 2017, 274).

RECOM is a regional commission of non-governmental organizations which, began at the First Regional Forum for Transitional Justice in May 2006 as a debate on the instruments of truth-telling and for the disclosure of truth about the past (REKOM n.d.) The Coalition for RECOM was established as an intergovernmental committee at the IV Regional Forum for Transitional Justice on October 28, 2008. The coalition is made up of more than 2,000 members, organizations and individuals from all the countries of the former Yugoslavia (A Summary of Institutions and Initiatives 2017, 289). During the Forum, representatives of NGOs and family associations of missing persons and victims of the former Yugoslavia voted for the creation of a regional body responsible for establishing the truth about war crimes.

The presidents of the former Yugoslavia in 2013 appointed special envoys to RECOM. Atifete Jahjaga, the fourth president of Kosovo, appointed her legal as the envoy from Kosovo. The mission of the special envoy ended in 2014 after holding four meetings, and their proposed Amendments to the RECOM Statute Proposal were adopted by the RECOM Coalition.

However, despite all the endeavours from the former Yugoslavian countries to appoint envoys, RECOM War Victims Project has politically failed, since Serbia has not appointed any envoys to RECOM (Total Croatia News 2019, n.n.).

8. Conclusion

The reconciliation process is certainly very difficult, especially for countries that, although of different ethnicities, once coexisted as a single kingdom. From all the research I have done while writing this essay, I have concluded that the countries of the Western Balkans still have a long way to go regarding the process of reconciliation. Although their efforts have not been lacking, governments and civil society need to work harder to jointly assist in the reconciliation process.

With regards to Kosovo, it is crucial to first identify what type of reconciliation we want to focus on, and only once we do that, we can start a national conversation. Neighbourly reconciliation differs from political reconciliation, and as such it is important to be able to have a bottom-up approach on deciding which way we want to focus.

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RECONCILIATION IN THE POST-CONFLICT ENVIRONMENT IN THE WESTERN BALKAN

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1. Introduction

The Western Balkans is called the region that has produced more conflict than it could handle. In the area that once included Yugoslavia, the former republics became independent, and Albania was added to it, while Slovenia and Croatia became members of the European Union, and thus the term Western Balkans was intensified in the geopolitical sense. It includes countries that have largely emerged from the conflict and are in various stages of approaching the European Union.

The painful legacy of conflict in the region still exists. The biggest challenge facing all societies emerging from conflict is dealing with the past. This confrontation is necessary to be such that it can bring reconciliation and lasting stability, and it is also a long and painful process. On that path, the biggest obstacles are deeply divided societies that "live" from nationalist rhetoric and divisive politics.

Reconciliation in this region is one of the key goals of the Berlin Process (a series of summits of the Western Balkans countries). At the inaugural meeting in 2014, the Chairman's Declaration emphasized that a series of meetings should provide a framework for real progress in resolving bilateral issues, improving economic cooperation and laying the foundations for sustainable development. To achieve these goals, the Berlin Process projects address the economy, society and politics as three key dimensions of regional connectivity. In this process, most projects were launched in the areas of economic integration and ambitious infrastructure projects, but this did not have a direct consequential impact on improvements in the areas of rule of law, security, bilateral issues, or reconciliation, which remain major problems of the region.

The reconciliation process is hampered by unfinished issues in painful and sensitive areas, such as the cause of the disappearance of missing people, and the lack of zero tolerance for war crimes, which presupposes the judiciary's complete invulnerability to political influences that has not been realized yet.

In addition to war crimes trials, an important reconciliation mechanism could be the formation of intergovernmental fact-finding commissions on war crimes and victims, the conclusions of which would reduce the possibility of manipulation. Its formation requires the political will of the all leaders in the Western Balkans countries that were involved in conflicts.

Today, it seems that the reconciliation process is no longer at the top of priorities of the Western Balkan countries, although it is not over. The unfinished reconciliation process is becoming a threat to regional security.

The effort of reconciliation implies communication, strength, courage, perseverance and patience. There is no alternative to complete this process. Undoubtedly, the European Union, non-governmental organizations, mostly political representatives of the Western Balkan countries, representatives of religious communities can give their contribution to reconciliation, and young people also have a significant place in all this.

2.   The role of EU in the process of reconciliation in the Western Balkans

More successful and faster economic development as well as the reduction of economic and social disparities between the countries belonging to the Western Balkans region is the main basic goal of European Union regional policy.

Majlinda Bregu, the Secretary General of the Regional Cooperation Council (RCC), said at the Second Western Balkans Digital Summit (WBDS), which was held on April 4 and 5, 2019 in Belgrade, that reconciliation of the Western Balkans would be achieved more quickly through economic integration than through political:

The EU originated from the European Coal and Steel Community, which was founded by Germany and France after the Second World War. I think that this message is also

relevant in the Western Balkans, that reconciliation through the economy will yield results faster than reconciliation through politics."[1]

At that summit, a regional agreement was reached on the abolition of roaming payments in the region, starting on July 1st 2021, which will certainly contribute to a stronger connection between the inhabitants of the region.

Following the principle above, European Union encourages connecting transport and energy infrastructure, which is a driver of growth and employment and helps attract investment to the region. In this way, connections are created and new opportunities are opened for the economy and people, and conditions are created for good neighbourhood relations. The construction of roads, railways, gas pipelines alone is not enough. The countries of the Western Balkans need to make greater efforts to implement accompanying measures to open up the market and create frameworks that would raise investor confidence.

In addition to the funds that European Union has already invested in the region, in October 2020, European Commission adopted the Economic and Investment Plan which envisages the allocation of up to nine billion euros in grants for projects in the Western Balkans by 2027 and in the following ten years provides a guarantee fund that would engage up to 20 billion euros of funds from various international financial institutions, primarily the European Investment Bank (EIB).[2]

These funds are mostly intended for infrastructure projects that connect the region with EU as well as the countries of the region with each other. Thus, European Union will participate in the construction of the "Peace Highway" between Nis and Pristina,[3] in a modernization of the railway connection between Serbia and Croatia and Serbia and Northern Macedonia, in solving "bottlenecks" on the Danube, modernization of the Belgrade-Bar railway, rehabilitation of the Belgrade-Pristina railway, and mentioned is also an assistance in the construction of the Belgrade-Podgorica highway (Corridor 11).

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1   „Economy brings reconciliation to Western Balkans faster, RCC official says", https://rs.n1info. com/english/news/a473847-economy-brings-reconciliation-faster-than-politics-to-western-balkans-rcc-official-says/, last visited 17 March 2021.

2   Economic and Investment Plan for the Western Balkans, https://europa.rs/western-balkans-an-economic-and-investment-plan-to-support-the-economic-recovery-and-convergence/?lang=en, last visited 22 March 2021.

3   Peace Highway Moving Toward with EU support, https://webalkans.eu/en/news/peace-highway-moving-forward-with-eu-support/, last visited 18 March 2021.

In the field of energy, EU will assist in the construction of Trans-Adriatic Pipeline (TAP), a gas connection between Northern Macedonia and Serbia the Trans-Balkan electricity transmission corridor as part of an interconnection between Serbia, Montenegro and Bosnia and Herzegovina. All these investments will help build bridges between countries and people, open opportunities for cooperation, and focus on what connects the Western Balkans countries and does not separate them.

European Union also encourages fields of cultural cooperation in the Western Balkans with an aim of encouraging reconciliation and good neighbourhood relations through cultural cooperation and creativity.

In addition to the importance of economics between the countries in the region in which European Union wholeheartedly participates, EU should not neglect a political moment, i.e. it should not betray expectations about prospects of the region's accession to European Union, because when the EU attractiveness subsides, internal destructive forces begin to strengthen, and all this can have a negative impact on the process of reconciliation in the Western Balkans.

3. The role of civil society in developing the process of reconciliation between the Western Balkans countries

The role of civil society in a process of reconciliation in the Western Balkans region is one of the key ones. Given the historical heritage and weak institutions in this region, a contribution of civil society to creating accountability in government can be very significant.

One of the most comprehensive efforts to establish a mechanism for the promotion of truth and reconciliation in the Western Balkans is so-called Initiative for founding RECOM (Regional Commission for Establishing the Facts about War Crimes and Other Gross Violation of Human Rights Committed on the Territory of the former SFRY from January 1, 1991 to December 31, 2001). The Initiative was launched in 2008, and was signed by over 550,000 citizens of post-Yugoslav countries, as well as the highest holders of executive power in the countries of the region. The Initiative for RECOM brought together an impressive network of civil society organizations and individuals advocating for the establishment of a Regional Commission for Establishing the

Facts about War Crimes and Other Gross Violation of Human Rights Committed on the Territory of the former SFRY from January 1, 1991 to December 31, 2001. The European Union is financially supporting activities of the Initiative and mentioned its role in the Strategic Document on EU Engagement in the Western Balkans from 2018, which was published by the European Commission. However, this initiative has yet to receive more than the verbal support of the region's leaders. Words are not enough to provide concrete action. Representatives of all countries in the region should join the Commission, and the longer political leaders refuse to (except rhetorically) accept the need for a mechanism to deal with the past and then reconcile, the less chance there is of lasting stability.[4]

In addition to the RECOM Initiative, there are numerous organizations and projects aimed at achieving regional reconciliation in the Western Balkans.

Thus, the Regional Youth Cooperation Office (RYCO) brings together youth organizations from across the region. The role of the project is to promote the process of reconciliation and encourage cooperation through youth exchange programs.[5]

In Northern Macedonia, the Nansen Dialogue Center operates in several schools. The development of joint history textbooks would significantly contribute to the elimination of attempts to rewrite history and perpetuate negative stereotypes between countries and ethnic communities in the Western Balkans region.[6]

The European Movement is organizing an International Summer School focusing on the role of friendship in creating ethnic reconciliation in the region.[7]

The Regional Women's Lobby for Peace, Justice and Security in Southeast Europe (RWLSEE) is a regional peacebuilding organization. RWLSEE members are prominent and influential women in politics and human rights activists from Serbia, Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Kosovo. The organization focuses on gender equality and women's empowerment in decision-making processes,

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4   More on the RECOM official website, https://www.recom.link/, last visited 12 March 2021.

5   RYCO official website, https://www.rycowb.org/, last visited 12 March 2021.

6   Nansen Dialogue Centre Skopje, https://ndc.org.mk/, last visited 16 March 2021

7   More about the activities of the European Movement see official website, https://www.emins.org/en/, 22 March 2021.

peace, security and justice in the Western Balkans, and advocates for women's full participation in post-conflict recovery, peacebuilding and conflict prevention.[8]

A common feature of these and other movements and initiatives is to show that there are a multitude of common endeavours and experiences that can lead to reconciliation and friendship between the Balkan peoples, and that there are far more of them than what causes hostility.

4. Cross-border cooperation and "Mini Schengen" - the basis for reconciliation and economic development

With the emergence of new states in the former Yugoslavia many municipalities that were in the center of once formed development regions within a country, became border municipalities, state borders interrupted the free circulation of people, schools that educated staff for the unified economy happened in neighbouring cities and became foreigners with completely different school programs. And that is why cross-border cooperation is an instrument that should eliminate those negative consequences. Cross-border cooperation between local communities of different countries is a real indicator of the stability of relations between neighbouring countries.

The European Union, for its part, is investing heavily in the development of cross-border cooperation in the region. For example, one of the projects within the Cross-Border Cooperation Program of Serbia and BiH (IPA II) is the project "Establishing the system of sustainable bulky waste management, on the territories of cities of Uzice and Tuzla". The project, in which the European Union invests close to 600,000 euros, will increase the number of users of the improved municipal waste management system by another 200,000. Containers for separate collection of bulky waste will be distributed in each of the 30 urban and 40 rural local communities of these two cities. Part of the project are special machines for shredding waste (shredders), as well as two recycling yards at landfills in Uzice and Tuzla. Project activities started on March 1 this year and will last for the next year and a half.[9]

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8   Regional Women's Lobby for Peace, Justice and Security in Southeast Europe (RWLSEE) http://rwl-see.org/, last visited 18 March 2021.

9   https://srb-bih.org/en/project/establishing-the-system-of-sustainable-bulky-waste-management-on-the-territories-of-the-cities-of-uzice-and-tuzla-bulky-waste-less-bwl/ and https://www.danas.rs/vesti/drustvo/arheoloski-park-iz-doba-neolita/ last visited 11 March 2021.

Reconciliation requires, as already emphasized, courageous political steps to overcome old stereotypes and encourage mass cross-border cooperation. Some politicians in the Western Balkans have taken such steps, stressing that only reconciliation and co-operation can lead to stability and progress in the region. However, much remains to be done on this issue.

"Mini Schengen" represents the idea of a common single market of the Western Balkan countries and should enable the realization of four European freedoms: free movement of people, capital, goods and services in the region. Citizens of the region would have the opportunity to travel freely and find employment in any country that has acceded to the agreement. Companies and individuals from one country would have the opportunity to invest capital in any Member State under the same conditions that apply to domestic legal entities and domestic citizens. An economy free of customs barriers would accelerate and develop, and greater competition from producers of goods and service providers would certainly be in the interest of citizens. And young people would certainly travel more, which would lead to breaking stereotypes and prejudices in a region burdened by nationalism.[10]

This initiative has so far been supported by Serbia, Albania and Northern Macedonia, and it would realize its meaning in full capacity if it were joined by other countries in the Western Balkan region.

"Mini Schengen" is supported by both the European Union and the United States. Politics and politicking is what stands in the way of full implementation of this project. This primarily refers to the unresolved status of Kosovo, which is important for relations between Serbia and Kosovo, as well as the views of some political leaders in the region that this initiative leads to the creation of "Great Serbia", "Great Albania" and the like, and that it is in the interest of the countries with stronger economies, and those with weaker economies do not benefit from it. Proponents of this thesis could be asked why Luxembourg, Slovenia, the Baltic and other smaller countries are in an economic union with an economically powerful Germany? Of course, they would not have an answer to such a question.

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10 More on: https://www.euractiv.com/section/enlargement/news/three-countries-agree-mini-schengen-in-the-balkans/, https://europeanwesternbalkans.com/2020/12/15/mini-schengen-regional-economic-area-and-common-regional-market-what-is-what/, last visitred 15 March 2021.

Recently, there has been more and more talk about the economy as a driver of reconciliation between countries and peoples of the Western Balkans, so that this primarily economic initiative can play a significant role in achieving this goal. Let's hope so. However, the priority of all countries in the Western Balkans region is the membership in European Union and "Mini Schengen" should certainly not be a substitute for that, but only an intermediate phase that will facilitate an access to these countries in fulfilling the conditions for full EU membership.

5. The role of young people in developing the reconciliation process in the Western Balkans

If the term youth represent an age group between 15 and 30 years, it means that from the current time distance today's young people were either just born during the war in the former Yugoslavia, or were born and raised in the post-conflict period. So, young people can change the world, because young people have not even quarrelled.

However, on the other hand, young people are subject to various influences and that is why one of the projects most supported by the international community in the Western Balkans is precisely the process of reconciliation among young people. Some research in the region has shown that over 70 percent of the region's young people believe in reconciliation and believe that it is very important for the future. That percentage is higher than in the middle-aged generation, in which about 60 percent of the population believes in the possibility of reconciliation.

Young people of the Western Balkans have a lot of prejudices about their peers from neighbouring countries, they do not have enough knowledge about other cultures, and a significant number of them have never travelled outside the borders of their country. It is necessary to eliminate these shortcomings and to work on eliminating a lack of trust among the youth of the region, which in itself will have a positive impact on the reconciliation process. The youth of the Western Balkans will determine the future of the region.

A desirable way to overcome prejudice, the creation of which is mostly contributed by the populist rhetoric of politicians aimed at the alleged defence of patriotism, nationalism, tradition and religion, is the concept of youth exchanges which give young

people the opportunity to gain direct experience and build personal attitudes. An exchange of young people for purposes of post-war reconciliation was first realized by Germany and France in 1963, and practice has shown that this project was successful.

One of the projects aimed at youth and reconciliation in the Western Balkans is the already mentioned Regional Youth Cooperation Office (RYCO). Regional connectivity and youth exchange are key to the region's progress.

Also, one of such projects is the Balkan Tour project with the motto "Journey to Europe in the Western Balkans" launched by the Austrian embassies in the Western Balkans and regional NGOs. Twenty-seven young people from the countries of the region travelled together, visiting Belgrade, Skopje, Pristina, Tirana, Podgorica and Sarajevo. They were received by representatives of Austrian embassies and political representatives of the host countries in the field of economy and culture. The goal of the trip was the message that young people are at the center of regional integration and strive for peace, cooperation and economic progress in the Western Balkans.

It is obvious that there are positive examples of cooperation among young people, that progress has been made in the reconciliation process, but it is necessary for young people to be even more active in terms of regional mobility.

6. Other factors and their role in the reconciliation process in the region

Religion and religious communities have a great influence and significance in the reconciliation processes that take place in the Western Balkans. Religious communities, due to their institutional power and strength, can contribute a lot in this field. At the heart of the teaching of religious communities is a conversation that takes place through religious customs, rituals, texts. Tolerance is a desirable attitude among members of all religious communities. Spreading religious teachings among believers would undoubtedly affect tolerance and lead to conversation and would significantly contribute to reconciliation.

Education should encourage young people's awareness of reconciliation and living together. Families also play an important role in the education chain. If parents express praise for other nations and religious communities and if they socialize with people from those other communities, they will certainly pass that on to their children.

And last but certainly not least, is the role of the media. The media, aware of their influence and importance, should take full social responsibility. They should by no means serve daily political needs, but they should give through the promotion of common interests and advantages of different cultures, both in the short and long term, their full contribution to building mutual trust and tolerance among the peoples of the Western Balkans.

7. Reconciliation and Peacebuilding - Case Study: The Demarcation Process between Serbia and BiH

After the disintegration of the SFRY, territorial and border disputes brought problems to the former Yugoslav republics. Freedom of movement has not been a problem for a long time for the population living on both sides of the administrative line that separated the former republics of the former common state. The ties between the communities on both sides of that administrative line were strong. People who live near the border often have a need to cross it, and the reasons for this can be different: from a need to cultivate a land that was "left on the other side of the border", to going to work or school, to visiting relatives and friends who now live in another state.

European Commission cannot provide direct assistance to parties who have a territorial or border dispute, because the demarcation process is considered a bilateral issue for which EU is not competent. However, European Parliament has given a clear directive to the Western Balkans that they do not expect to join EU until, among other things, it resolves border disputes.

Discussions between Belgrade and Sarajevo on the demarcation have been conducted since 2003, after which the Demarcation Agreement was initialled, which was not ratified due to several disputed points: Zvornik Hydropower Plant and Bajina Basta, which are owned by Elektroprivreda Srbija (Electric power industry of Serbia), part of the Belgrade-Bar railway passing through the municipality Rudo, and Međurečje (a small place in BiH the size of 4 square kilometres which is surrounded on all sides by the territory of Serbia). Serbia's proposal was an exchange of territories, while there is no consensus on that in BiH for now. Also, the topic of conversation is an issue of land in the Mačva region, where the river transferred it to the territory of another state,

and now it significantly bothers people who live there because they have a problem with managing their country.[11]

In order to resolve the listed disputable issues, a dialogue is necessary. The points that need to be resolved are known and there are not many doubts. An agreement is possible if both sides give up on maximalist demands and act in accordance with a fact that everyone must lose something in order for everyone - citizens and businessmen, as well as the state - to gain. If the commissions of Serbia and BiH cannot resolve these issues in a foreseeable future, these two countries should not avoid initiating international arbitration.

As for the free flow of people, goods and capital, it would certainly be best for BiH to join the "Mini Schengen" initiative, and for it to come to life in the same scope as the "Great Schengen". Then the border between the two countries would really again become a kind of administrative line that would be easily crossed and thus at least three of four disputed points would be largely resolved.

Until that happens, controls and procedures at local borders should be organized as efficiently as possible in order to shorten a waiting time at border crossings. The Ministries of Interior, Finance and Agriculture should equalize working hours at border crossings. The infrastructure at border crossings needs to be improved. It is necessary for the competent ministries to improve the position of local farmers as much as possible and to facilitate their production and sale of goods across the border.

The competent commissions need to investigate the possibility of establishing temporary border crossings for those people living in the border area. The local population should be involved in resolving this issue. Through the media and social networks, it is necessary for the border police to report to citizens about the crowds at border crossings and direct them to those crossings where they can complete border formalities the fastest.

It could be concluded that reasons that encourage the process of reconciliation in the Western Balkans are: a need to get close to European integration.

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11 For a more detailed study on the relationship see, M. Igrutinović, M. Paunović, Ka trajnom rešavanju otvorenih pitanja Srbije sa susedima, Centar za primenjene evropske studije, Beograd, 2019.

and the EU, objective orientation of neighbours towards each other, given the limited national markets, the need for infrastructure development, the need to use common resources and trade liberalization.

On the other hand, the process of reconciliation and cooperation has numerous obstacles, such as: still unsurpassed regional disputes, differences in political, economic and national absorptions of countries in the region, lack of long-term idea of collaboration, limited financial, human and other means for cooperation etc.

In the Western Balkans, useful aspects of diversity and equality should be strongly promoted in order to curb hate speech, to improve relations between the peoples of the Western Balkans, to criticize and reject the duplicitous moves of officials, to support various cross-border initiatives, strongly defend democratic freedoms, and strengthen institutional capacities, mutual cooperation, and no tolerance for corruption, glorifying war criminals, etc.

The reconciliation process is therefore complicated and requires a lot of investment. Trust and reconciliation are built day by day, step by step. Goodwill alone is not enough to make greater progress in this process. Any kind of cooperation between various factors is useful, because a transfer of experiences reduces prejudices and acquired stereotypes. Above all, young people of the Western Balkans need to use their great intellectual potential, strength and energy in favour of reconciliation process.

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INITIATIVES FOR REGIONAL COOPERATION THAT COULD CONTRIBUTE TO RECONCILIATION BETWEEN NATIONS AND STATES OF WESTERN BALKAN

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1. Introduction

The Western Balkans (WB) are a group of countries that include former SFRY republics, excluding Croatia and Slovenia, and including Albania. They are irrevocably linked by history, heritage and demographics but also share quite a turbulent past that involved numerous conflicts and wars that resulted in regional instability. It is difficult to discuss the current status of cooperation amongst these countries without having in mind this region's complex history. Despite all of their differences and disputes, each WB country shares the same desire towards joining the European Union (EU).

Since the WB countries are alike in so many aspects, European integration and regional cooperation are inextricably linked. Most WB countries are on the similar socio-economic level of development, therefore sharing the same issues that are crucial factors in the EU integration process.

On the basis of bilateral connections, financial assistance, political engagement, economic relations, and regional cooperation, the EU provides help to WB countries. Many EU-sponsored initiatives and large-scale projects are now underway in the region. Because the majority of them involve issues that affect the entire region or parts of it, they can only be resolved by cooperation among the WB states.

In this essay, the author will explore key EU-sponsored projects that are currently underway in all, or the majority, of WB countries. Said projects are categorized into 5 groups depending on their goals: *social*, *environment*, *energy*, *public sector devel-*

opment and *culture*. Each of the projects is to be closely examined focusing on the impact it has on the relationships between the WB countries.

2. Social sector

The Regional Housing Programme (RHP) is one of the most significant social development programs in WB countries. The RHP is a joint initiative by Bosnia and Herzegovina, Croatia, Montenegro and Serbia. Its focal mission is to help provide long-term housing solutions to the most vulnerable refugees and displaced persons in the aftermath of the 1991-1995 conflicts on former Yugoslavia's territory, including internally displaced persons in Montenegro from 1999.[1]

The RHP is made up of four separate Country Housing Projects, each of which Is introduced at the state level. Unlike other housing projects in the region, the RHP seeks to develop the institutional capacity of Partner Countries[2] to provide affordable and durable housing solutions not only to RHP beneficiaries but also, over time, to other populations groups with housing needs. Furthermore, because of its regional character, the RHP encourages the four Partner Countries to work closely together in day-to-day problem solving, thus strengthening neighbourly ties and promoting regional security and stability. **(**Council of Europe Development Bank, RHP Operational Report 2020**)**

History and prospects

After Slovenia and Croatia proclaimed independence in 1991, long-simmering political, ideological and ethnic tensions within the republics of SFRY emerged, and were aggravated by Bosnia and Herzegovina's secession in 1992. Armed confrontations followed as a result, accompanied by grave human rights violations, that resulted in large forced displacement and the biggest refugee crisis in Europe since World War II. (Zitnanova 2014, 12-13)

More than three million people were forcefully moved across former Yugoslavia, leaving behind their former lives. Since then, the majority of those affected have been able to return home or find other long-term solutions thanks to joint efforts of

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1   RHP, http://regionalhousingprogramme.org/mission-and-history/, Accessed April 8, 2021.

2   Partner Countries include Serbia, Bosnia and Herzegovina, Croatia and Montenegro.

the four affected states as well as the help from the international community. Despite these efforts, nearly half a million people are still displaced today across the region. Following the Joint Declaration in 2011, the RHP originally intended to benefit close to 74.000 people and its cost was assessed to be approximately 590 million EUR. Overwhelming support of the international community has allowed the development of 31 sub-projects that are projected to provide living arrangements to 36.000 most vulnerable persons by the end of 2022. (Council of Europe Development Bank, RHP Operational Report 2020)

Finances

The total cost of currently arranged projects is estimated to be 290 million EUR, out of which 82% is to be financed by the RHP Donors (Figure 1) and the rest, 18% by the national contribution of the four Partner Countries. (RHP, Mission and History) To raise funds for the RHP, an international Donors' Conference was held in Sarajevo in April 2012. During this conference, the EU, the United States of America, dozens of European countries, as well as, the former United Nations High Commissioner for Refugees, pledged millions of EUR in support of the RHP. As of 2020, 247 million EUR was committed to the RHP Fund. **(**Council of Europe Development Bank, RHP Financial Report 2020**)**
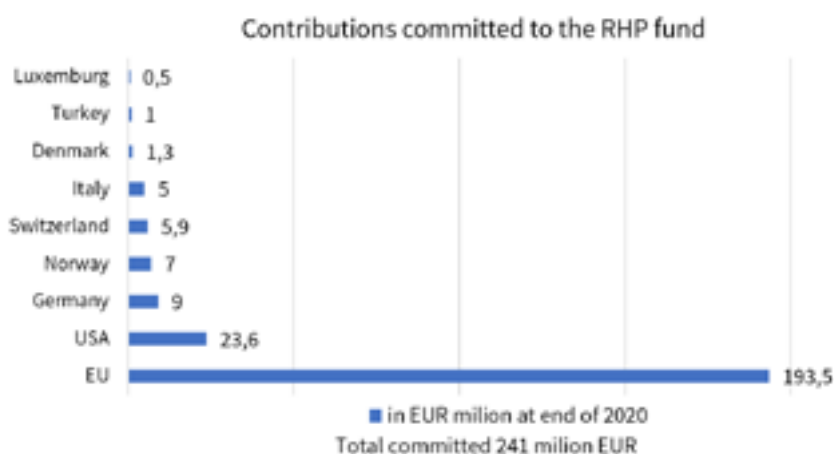

Figure 1: Regional Housing Programme, RHP donors.

The grants are distributed per the Partner country's share of the Programme. (Figure 2) Serbia accounts for the majority of funds disbursed so far, 110 EUR million out of 181 million EUR, or 61% (Regional Housing Programme, RHP fund).
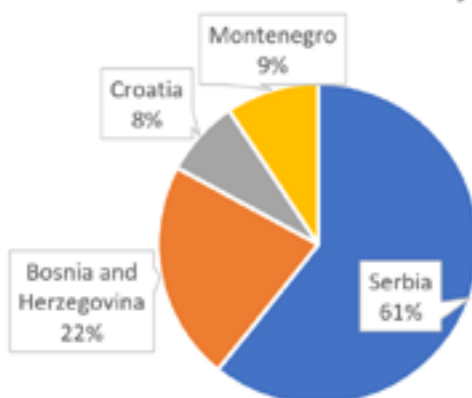
Figure 2: Regional Housing Programme, RHP fund.

Execution

The implementation of the housing projects started in 2013 with the launch of information campaigns and the selection of the first beneficiaries. The housing solutions include construction of apartment buildings, pre-fabricated houses, provision of materials for reconstruction of existing dwellings/living accommodation, and purchase of houses in rural areas. By the end of 2020, sustainable housing was provided to 11.800 most vulnerable families or over 36.000 people across four Partner Countries. Nearly half of the goal set at the Joint Declaration is already executed which is a great success. The project is set to end in 2022. (Western Balkans investment framework, Regional Housing Programme on Durable Solutions for Refugees and Displaced Persons).

However, the greatest achievement of this project is its part in enforcing cooperation among states to resolve issues caused by former conflicts and war. The ethical and religious background of beneficiaries is set aside by Partner Countries and a new prosperous future is being built along with houses.

3. Environmental sector

Ecology is regularly overlooked in transitioning countries, such as in the WB region. It is considered a "first world problem" and as such pushed back in the state's agendas. This mindset has led to the fact that the WB region is currently facing many environmental challenges.

Due to poor air quality, lack of wastewater management plants, recycling systems etc. WB states place far behind EU states when compared annually by their environmental performance index. (Yale University, Epi results) While this is an important issue, it cannot be easily solved on a state level. Environmental problems are transnational and could be solved most efficiently by regional cooperation.

The Regional Environmental Center

One of the most significant organizations in this area is *The Regional Environmental Center for Central and Eastern Europe* (REC). It is an international organization with offices in most WB countries. It is centered around "building resilience to climate change, promoting clean energy solutions and strengthening environmental governance in member states". (The Regional Environmental Center, Area of expertise) This organization has numerous projects in WB but they are mostly low scaled with focus on educating civil society and changing previously mentioned mindset.

The CRESSIDA project

One of REC`s major project in WB is the CRESSIDA project. It is funded by the United States Environmental Protection Agency (US EPA) and its overall project value is said to be 440,000 EUR. Its main objective is to create „a resilience-focused approach for Western Balkan communities in the Drini and Drina river watersheds with the goal of safeguarding public health and the environment. " (Maryann R. Cairns, 2017).

The Beneficiary countries consist of Albania, Bosnia and Herzegovina, Kosovo*[3], North Macedonia, Montenegro, and Serbia. The project is positively impacting local authorities' efficiency in terms of compliance with the EU Water Framework Direc-

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3   This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo* declaration of independence.

tive by encouraging local efforts and building capacities, as well as assisting local communities to contribute to sustainability through their everyday activities. Since the beginning of the project ten pilot interventions, most involving two to four neigh-bouring communities, were carried out to increase the ability of local monitoring networks, assess the ecological condition of water bodies, and establish river basin management plans and programs of measures. (The Regional Environmental Center, REC Project Factsheets (CRESSIDA)).

Environmental future of WB

While at first glance CRESSIDA and other project in this field don't seem to do much practical work, it is important to acknowledge their efforts. Ecological issues cannot be simply solved. They require time, funding and in this region particularly – educa-tion and spreading awareness. As mentioned before, this issue is transnational, it effects every state in the WB region and as such, greater goals can only be achieved through teamwork. Via the REC, WB countries have shown interest in cooperation on this matter which is a great first step.

4. Energy sector

Insufficient and ageing infrastructure, high dependence on fossil fuels, late adoption of renewables beyond hydropower and residential biomass, low energy efficiency and productivity, high rates of energy poverty despite typically high levels of direct and concealed energy subsidies (mostly geared towards fossil fuels), and limited market mechanisms and private sector participation, characterize the Western Balkans' energy sector.

The potential, on the other hand, is tremendous. Via multi-country projects and tap-ping into a broad renewable energy and energy efficiency capacity, the sector could be a regional growth driver, helping to achieve greater energy security in the region and contributing to the countries' Paris Agreement pledges and goals.

The Western Balkans Investment Framework (WBIF), alongside the Energy Commu-nity, provides technical assistance and investment grants to the WB region. Energy

is WBIF's second most active sector, with more than 50 projects funded. (Western Balkans investment framework, WBIF Factsheet May 2020).

Regional Energy Efficiency Programme for the Western Balkans

The energy intensity of the six Western Balkan countries is roughly three times that of the European Union as a whole, due to old and obsolete energy infrastructure as well as poorly managed and/or outdated energy-consuming capital stock. Furthermore, the WB has an increasing need for cleaner energy while reducing its reliance on imported energy sources. In order to address these investment needs, the European Commission developed the Regional Energy Efficiency Programme (REEP) for the Western Balkans in 2013, in collaboration with the Energy Community Secretariat and the European Bank for Reconstruction and Development. The REEP provides support to beneficiary countries which include: Albania, Bosnia and Herzegovina, Kosovo*, North Macedonia, Montenegro and Serbia.[4]

The REEP goals and financing

The REEP main focuses can be separated in 3 groups:

• Policy dialogue and creation of the energy service company or energy savings company (ESCO) concepts.

First group engages in policy discussions with authorities to improve the regulatory structure that allows the ESCO definition to function. This will make energy efficiency projects easier to implement, particularly in the public sector. Backing is also offered for identifying and planning ESCO projects.

• Funding and grants to financial institutions for on-lending to private and public sector energy efficiency and renewable projects.

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4   Western Balkans investment framework, Establishment of a Regional Energy Efficiency Programme (REEP) for the Western Balkans, https://wbif.eu/project/PRJ-MULTI-ENE-006, Accessed May 6, 2021.

The second group provides local partner financial institutions with grants, incentives, and technical assistance to help them expand their energy efficiency and renewable energy activities. This group has 92 million € in funding available.

- Direct financing of larger renewables and energy efficiency projects, mainly for industrial companies

The third group focuses on mid-sized energy efficiency and renewable energy programs. To date, 73 million € has been allocated, mostly to renewable energy initiatives that will reduce CO_2 emissions.

The total cost of this project is 195 million €. Loans account for 167 million of the totals, WBIF grants account for 35 million euro, with the remainder coming from outside sources[5] (Figure 3).

PROJECT FINANCING

External grant 2%

WBIF grant 12%

Loans 86%

Figure 3: (Western Balkans investment framework, Establishment of a Regional Energy Efficiency Programme (REEP) for the Western Balkans).

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5   Ibid.

5. PRIVATE SECTOR DEVELOPMENT

Private sector development is a necessary requirement for all Western Balkan economies to enhance their competitiveness. Enterprise policy, public administration reform, and infrastructure growth are all related to the development of the private sector.

The European Commission has emphasized the importance of economic governance and structural reforms to increase investor confidence on multiple occasions addressing issues such as competitiveness, small and medium-sized enterprises (SMEs) policy and financing, human capital development and research and innovation.

The key project in this area is the establishment of *The Western Balkans Enterprise Development & Innovation Facility*, (WB EDIF) an EU-funded initiative. Its aim is to improve SMEs' access to finance in the Western Balkans, as well as the local economy and regional venture capital markets. (Western Balkans investment framework, Private sector development)

Establishment of the Western Balkan Enterprise Development and Innovation Facility

In the Western Balkans, small and medium sized enterprises (SMEs) are the foundation of the local economies. At the same time, they are extremely vulnerable to volatile markets and often lack access to financing that is available in more developed markets. Local companies are at a considerable disadvantage as a result of the underdeveloped SME infrastructure, which also hinders a sector that is a significant source of economic growth and job creation. Companies need investment capital for equipment as well as working capital in order to adapt to ever-changing market forces and competitive pressures. Meeting the EU acquis and related standards is a necessary part of staying competitive in the process of joining the EU. However, meeting these standards requires investment.[6]

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6   Western Balkans investment framework, Establishment of the Western Balkan Enterprise Development and Innovation Facility, https://www.wbif.eu/project/PRJ-MULTI-PRI-001, Accessed May 12, 2021.

Financial Instruments under the Western Balkan Enterprise Development and Innovation Facility

The WB EDIF was created to provide complementary financial engineering instruments to address the full spectrum of SME financing needs in the Western Balkans. The Facility consists of four different pillars:

- 1st Pillar: SME Equity Financing - WB EDIF offers two equity funds aimed at early-stage innovation companies (the Enterprise Innovation Fund) and later stage companies in their expansion phase (Enterprise Expansion Fund).
- 2nd Pillar: SME Loan Guarantee - It provides a guarantee instrument that covers a portion of the risk that banks face while lending to SMEs; this risk coverage allows banks to provide funding on more favourable terms, such as lower collateral and interest rates.
- 3rd Pillar: SME Lending - The EU is contributing EUR 15 million for the grant part of the program, with the European Bank for Reconstruction and Development contributing up to EUR 140 million for lending to local commercial banks and credit institutions in Western Balkans countries for on-lending to local SMEs.
- 4th Pillar: Support Services - Tackle a variety of issues that need attention in order to foster a favourable investment environment and long-term market conditions that will enable SMEs to thrive.[7]

6. Culture Sector

Culture is the lifeblood of a thriving community, manifesting itself in the various ways we tell tales, celebrate, recall the past, amuse ourselves, and envision the future. Culture has significant social and economic value in addition to its intrinsic value. This sector is particularly significant in the WB because it contains a diverse range of religions, ethnicities, and traditions. After a turbulent history of wars, disputes, unity as well as separation in the region, it is critical that the relationship between states remains stable and that the younger generation grows up without discrimination for cultural differences.

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7   See: About WBEDIF." The Western Balkans Enterprise Development & Innovation Web Page. http://www.wbedif.eu/about-wbedif/, Accessed May 12, 2021.

Creative Europe Programme

Creative Europe is the European Commission's framework program for cultural and media support of the WB countries. With a budget of 1.46 billion €, Creative Europe will support:

- Initiatives in the culture sector, such as cross-border cooperation, platforms, networking, and literary translation,
- Initiatives in the audio-visual field, such as those supporting the development, distribution, or accessibility of audio-visual works,
- A multi-sectoral strand that includes a cross-national policy collaboration.

The program is divided into two sub-programmes: Culture sub-programme, which promotes the culture area, and Media sub-programme, which supports the audio-visual area. The Culture sub-programme assists organizations in operating transnationally, as well as promotes the cross-border movement of cultural works and the mobility of cultural performers. Its main aim is to fund projects that aim to share cultural content across borders while fostering European values. Priorities for the program include audience development, transnational mobility.[8]

Audience Development

Project creators found that people in the WB region rarely participate in the most common cultural activities, such as going to the cinema or reading books. Hence audience development has emerged as one of the most important challenges confronting the cultural sector across WB.

By aiding individuals and communities in experiencing, and appreciating art, as well as participating in creative activity, the Cultural Europe project enables cultural organizations to make their programs more widely available. The concept of audience development could be advantageous in a variety of ways, including cultural (by exposing bigger audience to cultural works), economic (additional income), and social (intercultural dialogue, exposure to various communities, social activism). It is especially important to emphasize that audience development may reduce the

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8   Kreativna Evropa official website, http://kultura.kreativnaevropa.rs/eng/creative-europe/about-the-program, Accessed May 12. 2021.

likelihood of social conflict emergence. As a result, the Creative Europe Program funds organizations to build new audiences both in and outside of their home countries.[9]

Transnational mobility

Cross-border agility of artists is critical for building an audience, as well as the creation and exchange of cultural goods and services. Although mobility of artists isn't all about making their art wider spread. Encouragement of mobility has an impact on the creation of new businesses and job opportunities for artists and cultural professionals, thereby contributing to employment in the cultural sector and enhancing economic growth.

The Creative Europe Program is working toward the advancing mobility of artists and other cultural professionals as they recognize the fact that agility has become a prerequisite for the professional development.[10]

7. Conclusion

As a result of their shared objective of joining the EU and thanks to numerous initiatives and projects backed by the European Union, countries in the Western Balkans have progressed greatly in both economic and political terms over the previous two decades. Nowadays cooperation between neighbouring countries is no longer seen as a last resort but as a practical option.

All of the projects and initiatives presented in this work contribute significantly to the WB countries' cooperation. Even though some of these projects could be potentially carried out at the state level, regional cooperation yields far superior results.

Due to the regular projects that the WB countries undertake together and to day-to-day problem solving, the states are the most connected they have been since the separation of Yugoslavia. Each of the presented projects is making large improvements in their sector not only to the WB region, but to Europe as a whole.

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9   Ibid.

10 Ibid.

Current stability will not only contribute to accession of WB countries to the EU, but it may also help the region maintain long-term peace. Despite all the differences between the WB states, it is encouraging to see them collaborating for a better future.

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IS ECONOMIC AND POLITICAL "WESTERN BALKANS UNION" POSSIBLE AND WHAT COULD IT BRING TO THE WESTERN BALKAN COUNTRIES?

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1. Introduction

What is the future of Western Balkans[1]? Full membership in the European Union (EU) has been proclaimed as a strategic goal and determination of all the countries in the region. However, littlehas been done on the path to EU membership. Consequential to the unfavourable reports in the fields of rule of law and freedom of media, for the first time since the commencement of the accession negotiations with Serbia, in 2020 not a single negotiation chapter has been opened. The beginning of the accession talks with Albania and North Macedonia, despite their recent efforts especially on the Macedonian side, is still uncertain. Having meagre results in the rule of law, fight against corruption, public administration, and freedom of media reforms is delaying any advancement of the Western Balkan countries on their path to the EU membership (Grieveson, Grübler, and Holzner 2018). Yet again, dedication to the enlargement of the Union itself is also questionable. Due to the enlargement fatigue[2] and internal political climate of some member states that remain defiant to calls for further enlargement (Grieveson *et al*. 2018, 18), theEuropean perspective of the region in the forthcoming period remains unclear. Caught in between the unwillingness of the Union to make

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1   On various interpretations of the term Western Balkans see: (Степић 2012). In this paper, the term Western Balkans is understood as encompassing the following states: Albania, Bosnia and Hercegovina, Kosovo* (this designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence), North Macedonia, Serbia, and Montenegro.

2   On the enlargement policy of the Union after 2004 and the enlargement fatigue see: (Schimmelfennig 2008).

a credible commitment to the region and its unwillingness to substantial reforms, it seems that the Western Balkans is on its own. In line with this remark, in the past two years, we have seen a significant number of regional initiatives most significant of whom are definitely liberalization of the movement of people (Mini Schengen) and the Common Regional Market. The question is, what is the final reach of these integration processes, and what might be their impact on the future of the region?

In the first section, by analysing the economic and political constellation in the Western Balkan countries in the light of economic integration theory I find that, at least in the medium term, the creation of the economic union as the utmost form of economic integration is highly unlikely. However, there is still plenty of room for further liberalization of economic relations and such a trend is to be expected. In the second section, using the concepts of political integration, I find that the forming of the political union in the Western Balkans is fairly improbable in the foreseeable future. Moreover, the process of political integration is still in the beginning stages and due to the numerous challenges, it is difficult to expect any significant improvement in the short term. In the third section, I discuss the potential advantages and disadvantages of forming a regional union. I find that accelerated economic development and advanced neighbourly relations, as an incentive for the peaceful resolution of conflicts, are the biggest advantages. On the other hand, as one of the potential scenarios most unfavourable for Montenegro and Serbia, I identify being tied-up to the entire region's advancement on the EU accession path.

2.   Economic Union

"Economic integrations are a process that encompasses measures designed to abolish discrimination between economic units belonging to different national states" (Balassa 1994, 126). At the last step of economic integration, there are no barriers to economic activities between the units coming from different states (Bretschger and Steger 2004, 2-3). The theory of economic integration identifies several steps in between representing varying degrees of integration. The first step and the lowest form of integration is a free-trade area. In a free-trade area, tariffs and quantitative restrictions between the participating countries are abolished, but each country retains its own tariffs against non-members (Balassa 1994, 126). In the next phase of integration,

establishing a customs union leads to the harmonization of tariffs and other forms of trade restrictions towards the third countries. Furthermore, the complete abolishment of restrictions on the free movement of people, goods, services, and capital is attained in the common market. Afterward, the last stage of integration embodied by the economic unionpresumes a common monetary, fiscal, and social policy as well as a supranational decision- making process with the binding decisions for all members.

A significant number of initiatives for integrations and liberalization of economic relations have been undertaken according to the described model. Up until now, the highest number of such attempts represented a regional instead of a wider, global association (Baldwin and Venables 1995, 1598-99). There are various differences amongst these attempts, ranging from those whoseimplementation has been less successful to those whose accomplishments have had far-reaching consequences for the political landscapes of the participating countries (*ibid*.). The most impor- tant example of economic integration is certainly the EU, but even the Union has not successfully completed the last step of integration. It seems that, despite the crisis of the euro andthe recession caused by the Covid-19 pandemic which has shown the necessity for deeper cooperation, the commencement of common fiscal and social policies, as a final step of integration, will still be awaited. Several important steps precede the mentioned last step, whichit took Union almost seven decades to accomplish. Western Balkans is, despite the Common Regional Market initiative, still in the beginning phases of integration. Additionally, transferring fiscal, monetary, and social policy jurisdictions onto the supranational body demands a high level of confidence and trust between the participating states, that not even the EU member stateshave achieved, as well as an optimally harmonized economic development (Bean 1992). By transferring the mentioned powers onto the supranational body, the governments would exhaust some of the most important instruments of responding to cyclical economic challenges. Moreover, fiscal and social policies are often used as means of retaining power and persuading the voters and public opinion. In the region of falling democratic standards in which fiscal policyis crucial due to the Keynesian approach to economic policy, in which there is a broad mistrust between the ethnic groups and a high disparity in economic development, forming of a functional eco- nomic union seems highly unlikely.

On the other hand, there is a swath of examples of successful free-trade areas[3], including the CEFTA in which the Western Balkan countries already participate. The previously mentioned initiative for the creation of the Common Regional Market, even though the announcements that it will be accomplished by 2024 seem over-ambitious, is a significant step forward in the process of economic integrations of the region. Numerous fields of cooperation still await the improvement and gradual liberalization of the movement of people and labour, through theacknowledgments of diplomas and qualifications, is to be expected. Diminishing the quantitative but technical barriers to trade as well, that increase the costs for consumers and lower competitiveness of companies seems probable in the near future. Additionally, harmonization of regulations and joint efforts on attracting foreign direct investments, in an 18 million people market contrary to lesser national markets, is also to be expected. However, despite the expected enhancement, it is unlikely that the four freedoms of the common market will be implemented fully. The complete implementation would open up labour, goods, and services to the competition from the other 5 states, with the conditions on these markers being harsh as it is and especially after the pandemic, complete liberalization seems like a highly unpopular move that governments would try the avoid. Moreover, creating a common customs policy towards thethird states would effectively render the existing bilateral trade agreements with the third states[4] abundant, which seems, at least in a short term, highly improbable.

3. Political Union

Political integration is often seen as a method to overcome still predominant concepts of the nation-state and complex interdependency of the modern world. As such, the political integrationin its core represents the unification of different political actors and centralization of the decision-making process (Hoppe 2001, 109). As the end result of the political integration, a new political community, superimposed over the pre-existing ones, is established with the common legal framework, institutionalized

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3   Some of which are ASEAN, NAFTA, EEC, MERCOSUR. For more on these examples and the degree of integration see: (Baldwin and Venables 1995, 3).

4   Even though most of the Western Balkan countries participate in similar trade agreements, it is worth mentioning bilateral free-trade agreements between Serbia and Russia, Belarus, and Kazakhstan; Albania and Turkey; Bosnia and Hercegovina and Croatia in the fields of agriculture and food; For more details see: https://www.trade.gov/free- trade-agreements.

decision-making at the new central level, and a new identity based on the sense of belonging to the new political community (Ilievski 2015, 39-40). Lindberg (1994) describes political integration as a "process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new center, whose institutions possess or demand jurisdiction over the pre-existing national states[5]". In the last stage of integration, when a functional political union has been created, nation-states cede some of the most important features of sovereignty and transfer jurisdiction for conducting the foreign and security policy onto the newly-formed political community(Ilievski 2015, 44). In the regional integration process, Castaldi (2007) identifies overcoming the unanimity decision-making method as a key obstacle to the transition of international organizations into the supranational political entities (Castaldi 2007, 37).

Analysing the described concepts of political integration, I conclude that the forming of a Western Balkans political union as a newly-created political community with the authority to conduct foreign and security policy is virtually impossible. One of the most important political questions for Serbia, the final solution for Kosovo, is for every other country in the region, except Bosnia and Hercegovina, already a finished matter. Additionally, Russia and China are quintessential Serbian allies, not only in the matter of Kosovo but also in the geopolitical and economic expansion of the country, whilst Prishtina and Tirana are in return faced towards Washington. Serbia has been proclaimed as a militarily neutral country while on the other side, Montenegro, Albania, and North Macedonia are all members of NATO. The burden of history puts further stress on the relations between the Western Balkan countries. The fall of Yugoslavia led to a bloody war in Bosnia, where the three implicated sides could not reach reconciliation to this day. Moreover, recent initiatives to modify the Dayton composition of Bosnia and Hercegovina have been met with resentment in Belgrade. The status of the Republic of Srpska inside the BiH federation potentially might be problematic for the whole region in the future. Thetransition of power in Montenegro, mostly instituted by the discontent of the Serbian people in Montenegro, once again brought to light the vast mistrust between the people of WesternBalkans. Terms such as "Great Serbia" and "Great Albania" are still politically significant and

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5   For the detail discussion about the term political integration and different use of it see: (Lindberg 1994, 99-109).

produce potent anxiety amongst the neighbouring nations. Mentioned mistrust and countlesschallenges plaguing the relations between the nations of Western Balkans make the creation of supranational institutions that are not based on unanimous decision-making, creation of a common foreign and security policy, and creation of common identity - virtually impossible.

On the other hand, even though the creation of a political union, in a full sense of the word, is outof reach, there is still plenty of potential for further cooperation. The creation of a common legal framework through the harmonization of regulations as the first step of integration seems like a probable course of events. The Common Regional Market initiative, which has been mentionedin the previous section, would imply harmonization of regulations in numerous fields. Castaldi (2007) argues that political integration often does begin with the simple harmonization ofregulations, mainly as an intergovernmental process based on consensus between thegovernments (*ibid*.). It is not until the next stage where the integration implies the creation of common institutions which, though, still make decisions unanimously, securing the "final say" for the national authorities (*ibid*.). Nevertheless, it seems that in the medium term it is difficult toexpect the establishment of such common institutions. Their very existence would presume a common goal and a certain degree of dedication and trust which is currently absent in the Western Balkans. Despite the resolution of all the countries in the region at the Sofia Summit to participate in the common market initiative, the conviction of Kosovo and Montenegro remains questionable. Trust between the countries of the region remains humble and their relations are burdened by the unresolved issues. Therefore, in the foreseeable future harmonization of regulations mostly limited to economic cooperation and essentially an intergovernmental approach without common institutions is to be expected.

4.   Potential benefits and disadvantages of closer cooperation

It is possible to identify several benefits of closer cooperation on various issues. First of all, liberalization of movement, the convergence of regulations and legislative activity, and recognition of diplomas and qualifications (all expected in the future), would mean an increased degree of legal security for citizens on the territories of other states. In return, this could lead to amplified intra-regional connectivity, a higher number of

tourism arrangements, inter-state investments, and additional business opportunities. This turn of events might contribute to better understanding and acceptance of cultural differences, to trust between the people of Western Balkans and it could provide a decisive stimulus to the peaceful resolution of still open and any future unresolved issues that may arise. Peaceful resolution of disputes and increased degree of trust would, without a doubt, incentivize the creation of a security community in which any useof armed forces would be unimaginable. Moreover, it is unclear what kind of influence would deeper cooperation have on democratic standards, but, we could expect that the public administration capacities, encouraged by the competition between the regions due to the increased mobility and legal security that would enable a higher number of alternatives for dissatisfied citizens, would significantly advance as the governance competition theory would suggest (Baldwin and Wyplosz 2009, 119-20). Possible creation of common institutions would, as in the European Union example, additionally contribute to the public administration capacities[6]. Furthermore, concrete economic implications of deeper cooperation are difficult to distinguish without a far-reaching analysis that goes beyond the scope of this paper. Nonetheless, the theory of economic integration offers us some guidelines. Regional integration and gradual abolishment of tariffs, quantitative restrictions, and technical barriers to trade would lower the cost of trade and consequently the consumer prices whilst increasing the competitiveness and profit of companies in the region (Balassa 1994, 133). As a market of 18 million consumers, in contrast to the smaller national markets, the Western Balkans region would be a more attractive destination for foreign, but domestic investors as well. Common Regional Market action plan suggests that the mentioned integration could lead up to the creation of numerous jobs as well as an increased economic development for as much as 6.7% of the region's GDP (Regional Cooperation Council). Additionally, according to the regional cooperation action plan, all the initiatives would be conducted in accordance with the *acquis communautaire* of the EU, thus speeding the process of harmonization of regulations with the Union[7].

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6   More on the public administration capacity deficit as an obstacle to the further advancement on the EU path see: (Grieveson, Grübler and Holzner 2018).

7   European Union at its core is an economic union and the highest number of negotiation chapters is related specifically to economic relations. Forming an economic union in the Western Balkans, or at least the initiation of this process, in line with the legal framework of the Union would speed up the advancement of the region on its path to full membership. More on the importance and extent of economic challenges facing the region on its EU accession path see: (Grieveson, Grübler and Holzner, op.cit.).

On the other hand, it is possible to identify several potential downsides of deeper cooperation forcertain Western Balkan countries. For example, authorities in Prishtina would eventually lose theability to use the trade policy as means of leverage in negotiations with Belgrade. Both sides would, after a certain time period, forsake arguments to delay the legally binding agreement that would certainly have serious political repercussions especially for the ruling elites in Belgrade. Consequent to the economic and political harmonization, claims of the Republic of Srpska, and part of the public in Serbia, regarding the independence and prospective of a merger with Serbia, would in time render abundant. Moreover, the creation of a "Western Balkans Union" could turn out to be an incentive for what Grieveson *et al*. (2018) call "Balkan express" or joint accession tothe EU of the whole region at once, contrary to the "Balkan regatta" or individual accession (Grieveson *et al*. 2018, 18). The mentioned approach would, as in the big enlargement of 2004, give the Union time to sort out its internal differences and prepare for another wave of enlargement. However, for the countries such as Montenegro, which opened all the negotiation chapters, and Serbia, which opened 18 negotiation chapters, such scenario would be suboptimal and less desirable. Namely, the beginning of the accession talks with Albania and North Macedonia is still uncertain, but even when they are initiated it is questionable at what speed they might transpire. Bosnia and Hercegovina, on the other side, have not yet been granted a candidate status without any indications of when might that happen, whilst Kosovo has not even been recognized as an independent state by the 5 EU member states. The described scenario would tie up Montenegro and Serbia to the advancement of the entire region that remains fairly distant to the fulfilment of the criteria for membership in the Union.

5. Conclusion

Building functional economic and political union between the Western Balkan countries seems, in the foreseeable future, as an impossible task. A range of unresolved issues, the burden of history, mistrust between the countries, and the degree of economic, institutional, and democraticdevelopment make the goals of integration unattainable. Nevertheless, even though it is difficult to imagine the transfer of powers onto the common, supranational institutions in the areas such as monetary, fiscal, social, foreign, and security policy, there is still plenty of room for enhanced

cooperation. Namely, removal of intra-regional trade restrictions, harmonization of regulations inthe economic sphere, and common position towards the foreign investors are to be expected. Liberalization of the movement of people, with the liberalization of movement of goods, services, and capital to some extent, without the forming of a customs union, also seemsprobable in the coming period. As some of the most important advantages of the enhanced regional cooperation, I find the accelerated economic development and a contribution to good neighbourly relations as an incentive to the peaceful resolution of unresolved issues. On the other hand, I find that due to the deeper regional cooperation Montenegro and Serbia might get additionally "stuck" on their European path waiting for the entire region to reach satisfying standards for accession.

In the end, predictions in political science could prove to be quite unrewarding, with the Balkans a fertile soil for the unexpected to happen. The question remains whether the five different nations, two often opposed religious groups, which are brought together the most by the sheer fact that they are not yet, but strive towards the full membership in the EU and are geographically located in the Balkans, do actually care for deeper collaboration. If the answer is positive, and there is a strong political will and commitment of the elites, which still play a crucial role in the initial stages of integration, not even a rapid development seems impossible. The European Union, as we know it today, had similar inception. However, it seems that fornow, the answer is negative and that the regional cooperation is nothing but a distraction in anticipation of a brighter European future.

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THE ROLE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY) IN ESTABLISHING TRANSITIONAL JUSTICE: A STEP TOWARDS RECONCILIATION

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1. Introduction

This essay examines the role of the ICTY (Tribunal) in establishing transitional justice during and after the armed conflicts in Western Balkans in 1990s and to what extent its legacy can be used in the reconciliation process among the ethnic groups and individuals in the former Yugoslavia.

In this case, the main idea behind the possibility of a reconciliation is based on a criminal transitional justice (for other types of transitional justice see Teitel, Ruti. 2000. *Transitional Justice*. Oxford, UK: Oxford University Press). For the purposes of this essay, transitional justice, whose main pillars are justice, truth and reconciliation, refers to the judicial means, specifically criminal prosecutions, of addressing massive human right abuses (What is Transitional Justice. *ICTJ*. http://ictj.org/about/transitional-justice [accessed 15 May 2021]; United Nations Security Council. Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies. UN Doc. S/2004/616, 23 August 2004, para. 8) occurring in the Yugoslav wars in 1990s. By aiming to achieve accountability of war criminals, the ICTY strove to find truth, serve justice and provide a foundation for reconciliation.

A usual critique of international criminal justice holds that domestic institutions are in a better position to shape local perspectives. Nevertheless, my submission is that in a situation like the one in the former Yugoslavia, where the deeply rooted inter-ethnic tensions further escalated with the outbreak of the armed conflicts and where the degree of pluralistic civilizing capabilities is low, only an outside, neutral

and impartial authority can ensure justice. Although the international criminal trials are usually highly selective and thus reflect only a piece of all incidents and charges raised in the particular time period, while at the same time heightening tensions among its addressees, it is still better equipped to ascertain the truth, given its large financial resources, greater capacity to obtain evidence, engagement to procedural rules etc (see Horovitz, Sigall. 2006, 54. "Transitional Criminal Justice in Sierra Leone." in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, edited by Naomi Roht-Arriaza and Javier Mariezcurrena, 43-69. New York: Cambridge University Press). While the domestic institutions in the Western Balkans are often susceptible to political influence and thus not sufficiently independent, a foreign institution must likewise ensure the prerequisites of impartiality and legitimacy in order to be positively regarded by the local communities.

After ascertaining the role of justice in reconciliation process and the impartiality and legitimacy of the Tribunal rendering that justice, I further examine the importance of the ICTY in establishing truth and what attitude different ethnic groups hold towards it. To that end, the issues of perceiving the ICTY justice among local communities, as well as the denial and acknowledgment of wrongdoings is discussed. Consequently, I elaborate on the impact and contribution of transitional criminal justice provided by the ICTY to the inter-ethnic reconciliation in Western Balkans.

2. Justice as a pathway to reconciliation

As a starting point, justice is absolutely necessary for social reconstruction and reconciliation, in the words of the ICTY's Registrar a '*condicio sine qua non*' (Hocking, John. 2012. 'Remarks of John Hocking, Opening of the Arusha Branch of the Mechanism for International Criminal Tribunals', 2 July 2012. http://www.unmict. org/fi les/statements/120702_registrar_hocking_arusha_en.pdf (accessed 4 October 2013) quoted in Clark, Janine Natalya. 2014, 54. *International Trials and Reconciliation: Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia*. New York: Routledge). The underlying idea of the transitional criminal justice is that the ICTY can foster reconciliation by rendering justice to the people of the former Yugoslavia (Scharf, Michael P. and Paul R. Williams. 2003, 190. "The Functions of Justice and Anti-Justice in the Peace-Building Process". *Case Western*

Reserve Journal of International Law 35(2): 161-190). ICTY Judges and Prosecutor Richard Goldstone stated in the same vein that justice and accountability are necessary components for post-war reconciliation, reconstruction and for breaking the cycle of hatred (The Tribunal welcomes the parties' commitment to justice. *International Residual Mechanism for Criminal Tribunals*. https://www.icty.org/en/press/tribunal-welcomes-parties-commitment-justice-joint-statement-president-and-prosecutor [accessed 15 May 2021]). The paramount value of justice is reflected in its role for the consolidation of peace, as that cannot be achieved if the redress for grievances is not obtained through legitimate structures of rendering justice (UN Doc. S/2004/616, para. 2).

Taking this into account, the quintessential point is that justice must be done and must be seen to be done. This aspect heavily impacts the perception of the ICTY by the local people in the former Yugoslavia. A common problem of international criminal courts around the globe, including the ICTY, is precisely their difficulty of satisfying victims that justice has indeed been done. Stemming from the inevitable perception of justice through lenses of ethnicity in deeply divided society in the former Yugoslavia, according to some it appears virtually impossible to reach a cross-ethnic consensus that justice has been done (Horovitz 2006, 58). The victims' assessment is primarily focused on whether the punishment corresponds to the gravity of crimes, hence whether it validates their trauma and suffering. To that end, short sentences imply denial and failure to recognize severity of their grievances.

As a factor of retributive justice, punishment is often presented as a main instrument of the international criminal justice in contributing to peace, stability, and eventually reconciliation (Bachmann, Klaus and Aleksandar Fatić. 2015. *The UN International Criminal Tribunals: Transition without Justice*. New York: Routledge). Besides retributive justice, the specific circumstances in contextually based transitional justice in the former Yugoslavia identified also the need for restorative justice that should serve the direct needs of the victims and affected communities (Tromp, Nevenka. 2019, 15. *Smrt u Hagu: Nezavršeno suđenje Slobodanu Miloševiću*. Sarajevo: University Press – izdanja Magistrat).

To achieve the objects of delivering justice, the ICTY had an essential task to establish a public belief among local communities in the former Yugoslavia that it's delivering

of justice is transparent and that it enshrines due process of fair proceedings (see Horovitz 2006, 61).

3. Tribunal's impartiality and legitimacy

The UN Secretary-General emphasised the decisive factor for international justice to be absolutely impartial, and to be seen by the local communities as such, if its reconciliation purposes are to be realized (Report of the Secretary-General on the work of the Organization, para. 55 quoted in Zyberi, Gentian and Jernej Letnar Černič. 2015, fn18. "Transitional Justice Processes and Reconciliation in the former Yugoslavia: Challenges and Prospects". *Nordic Journal of Human Rights* 33(2): 132-157).

In a divided environment with opposing ethnic narratives, it was inevitable for the ICTY to be considered by many as biased (Subotić, Jelena. 2015, 26. "Truth, justice and reconciliation on the ground: normative divergence in the Western Balkans". Journal of International Relations and Development 2015(18): 361-382). Having the main task of preventing further atrocities after its creation in 1993 (United Nations Security Council. Resolution 808 (1993). UN Doc. S/RES/808, 22 February 1993) and failing to do so, the question of impartiality was obviously raised (Tromp 2019, 10).

In that sense, the ICTY Prosecutor additional selection of cases to be prosecuted, relying heavily on crimes committed by the Bosnian Serbs (concentration camps, Srebrenica genocide etc.) left the impression of anti-Serb bias (Bachmann and Fatić 2015, 91). Nevertheless, the UN Security Council Resolution 1503 (2003) confirmed that the prosecution is to be concentrated on the perpetrators allegedly bearing the highest level of responsibility. That confirmed the Prosecutor's independence in selecting cases (Ibid., 123).

Questioning the impartiality of the ICTY refers to its legitimacy. As a starting point, the International Court of Justice (World Court) as a principal judicial organ of the UN heavily relied on the ICTY findings in the *Bosnia Genocide case* (Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007, p. 43). Differently from the Nuremberg and Tokyo trials, emerging as a result of massive atrocities committed during the World War Two, that are broadly considered as a "victor's justice",

the ICTY is the first international criminal court that paid particular attention to the rights of the accused (Jelačić, Nerma. 2013, 13. *Naslijeđe MKSJ-a u bivšoj Jugoslaviji.* Haag: Outreach program MKSJ). This argument enhances the Tribunal's legitimacy.

According to Koskenniemi, international criminal justice is generally endangered by performance of show trial, when the accused negates the version of truth proposed by the prosecutor as well as broader legitimacy of the tribunal (Koskenniemi, Marti. 2002, 1. "Between Impunity and Show Trials." in *Max Planck Yearbook of United Nations Law*, Volume 6, 1-35. Leiden: Brill, Nijhoff). That was most notably evident in the case against former Serbian President Slobodan Milošević and his well-known wording „I consider this Tribunal false Tribunal" and describing it as an „illegal organ" in his initial appearance before the ICTY (International Criminal Tribunal for the former Yugoslavia (ICTY). 2001. "Excerpt from the Initial Appearance of Slobodan Milošević on 3 July 2001." Uploaded in May, 2014. Youtube video, 3:09 min. https://www.youtube.com/watch?v=A5AnfAglPbI [accessed May 15, 2021]). Having such reputation in his home country, these words crucially affected the opinion of majority of Serbs about the ICTY. That being said, the communities disregarding the Tribunal would accept the justice only if it would be rendered by an institution or individual whom they consider an authority.

4. Significance of finding truth in reconciliation process

Insisting on the pursuit of truth through accusatorial proceedings of the ICTY is more appropriate for the reconciliation process, deeming truth, alongside justice, to be one of its constitutive elements (Tromp, Nevenka, 2007, 51. "A Troubled Relationship: The ICTY and Post-Conflict Reconciliation." in *Regional Co-operation and Reconciliation in the Aftermath of the ICTY Verdicts: Continuation or Stalemate?,* edited by Ernst M. Felberbauer and Predrag Jureković, 47-65. Vienna: Republic of Austria, Federal Ministry of Defence and Sports). Seeking truth should never be compensated on an account of reconciliation. Truth cannot contribute to reconciliation if it is circumvented. To remain silent or to relativize the truth would further diminish victims, whose role is paramount in the process of reconciliation. During that process in South Africa, President Nelson Mandela underlined that people must remember their dreadful past so they can deal with it and to forgive, but never to forget (Rosoux, Valerie. 2009, 548. "Reconciliation

as a Peace-Building Process: Scope and Limits." in *The Sage Handbook of Conflict Resolution*, edited by Jacob Berovitch, Victor Kremenyuk and I. William Zartman, 543-563. London: Sage Publications). Desmond Tutu, the leader of the reconciliation in South Africa similarly stated the need for forgiveness with full awareness of historical truth (Ibid.). Only once the facts are completely unquestioned and accepted, the forgiveness and consequentially the reconciliation may proceed. For that reason, the discussion about factual circumstances of Yugoslav war should not stop.

The vital element of truth was expressed by the US Ambassador Madeleine Albright in light of the US support for a UN Security Council Resolution creating the ICTY, where she emphasized that „the only victor that will prevail in this endeavour is the truth /…/ only the truth can cleanse the ethnic and religious hatreds and begin the healing process" (Provisional Verbatim Record, U.N. SCOR, 3217th meeting, at 12, UN Doc.S/pV.3217 (May 25, 1993) quoted in Orentlicher, Diane. 2018. *Some Kind of Justice: The ICTY's Impact in Bosnia and Serbia*. Oxford: Oxford University Press).

Considering that the Preamble of the UN SC Resolution provides merely for restoration and maintenance of peace, in line with the UN Charter core purposes (see Article 1(1)), the Judges and Prosecutors themselves assumed responsibility of finding the truth about the Yugoslav wars (Bachmann and Fatić, 2015, 147). They have announced it before trials (Ibid., 238) and during the evaluation of the ICTY work (Jelačić 2013, 20). Establishing truth leads to catharsis which is a precondition of reconciliation (Hazar, Pierre. 2010, 37. *Judging War, Judging History: Behind Truth and Reconciliation*, Stanford, CA: Stanford University Press). In that sense, in one of the ICTY President's Report to the UN SC it is stated that justice's cathartic effects promise hope for recovery and reconciliation in the former Yugoslavia (United Nations Security Council. Report to the UN Security Council and General Assembly. UN Doc. S/1997/792, 18 September 1997, para. 192). In the *Erdemović case*, the Judges declared that the ICTY "has a duty, through its judicial functions, to contribute to the settlement of the wider issues of accountability, reconciliation and establishing the truth behind the evils perpetrated in the former Yugoslavia" (*Prosecution v. Dražen Erdemović, Sentencing Judgment*. IT-96-22-Tbis, 5 March 1998, para. 21). Some even consider that the Tribunal's most meaningful part of legacy is the establishment of truth (Orentlicher 2018, 100).

5.   Relationship towards established truth: acknowledgment or denial?

The truth may, on the flip side of its pursuit, frustrate rather than facilitate reconciliation. The public is sometimes not ready to digest the truth (Ibid., Orentlicher, 256.). For the purposes of reconciliation through transitional justice process, some scholars claim that local people should endorse and internalize that truth (Clark 2014, 55). Without acknowledgment and with further denial of committed war crimes, the truth cannot contribute by virtue of its healing effect (Clark, Janine Natalya. 2011, 250. "Transitional Justice, Truth and Reconciliation". *International Criminal Law Review* 11(2): 241-261). Yet, that is a very idealistic approach. Human beings are not robots, and they are frequently led by emotions rather than rational motives.

For instance, many Serbs deny the crime of genocide in Srebrenica, or describe it merely as massacre, many Croats dispute the ICTY judgment and find it difficult to condemn war crimes in Herzegovina, while at the same time many Bosniaks struggle to acknowledge the crime of torture in Čelebići prison camp. Without going further, these are just some of the most striking examples of the war crimes recognized as such through the ICTY judgments, by armies representing all three nationalities on the territory of Bosnia and Herzegovina between 1992-1995.

The insurmountable obstacle towards reconciliation in the Western Balkans is enshrined in the competing versions of truth of every ethnic group, only partial acknowledgment and widespread denial of established truth (Clark 2011, 257). Narratives of individual ethnic communities are often comprised of half-truths and selective misinterpretations of past events. For that reason, the Tribunal's President called upon the ethnic groups to not solely rely on a truth sought by the ICTY, but also to explore common understandings as a way of overcoming hindrances to reconciliation (United Nations Security Council. Report to the UN Security Council and General Assembly. UN Doc. S/2917/662, 1 August 2017, Annex Recommendations: non-judicial legacy, para. 4).

Many citizens of Western Balkans vested their hope to justice with the ICTY, desiring that a definitive factual record delivered by the Tribunal could dispel denial, foster acknowledgment, triggered remorse and construct shared understanding of the Yugoslav wars (Orentlicher 2018, 260). Whilst the ICTY managed to achieve some of these expectations, leaving a legacy of truth as a weapon against denial (Kandić, Nataša. 2005, 789. "The ICTY Trials and Transitional Justice in Former Yugoslavia".

Cornell International Law Journal 38(3): 789-792) the prevailing portion of each ethnic group seems to follow the denial policy and remains very reluctant in condemning war crimes of their co-nationals.

The diverse degree of guilt between the army of each ethnic group (United Nations Security Council. Final Report of the Commission of Experts Established Pursuant to Security Council 780 (1992). UN Doc. S/1994/674) is without correlation to the degree of denial or acknowledgment of each ethnic group. In other words, regardless of the fact that the army representatives of some ethnic groups committed considerably more or less war crimes in comparison to others, the lack of acknowledgment of wrongdoings vastly appears by majority of individuals of each ethnic group.

In these societies, denialism appears as a result of social pressure stemming from the fear of critique from their co-nationals, whereas the acknowledgement would challenge the self-esteem and established beliefs (Orentlicher, 2018, 277-283). In the view of Bosniaks, as they have endured the vast majority of war crimes during the armed conflicts in 1990s, expressive condemnation of war crimes of the Bosnian Army is considered as equalizing guilt, as their firm statement dictates that the Bosnian Army was fighting for freedom and independence of their own territory, while their enemies were committing aggression. Similar belief is shared by the Croats in Croatia, to the extent that they characterize the war in Croatia as a 'Homeland War' (*Domovinski rat*). Furthermore, an individual's statements about Yugoslav wars rises to the level of identifying with one's own ethnic group. If one does not follow the established narrative of particular ethnic group, he/she is disregarded from it. On top of that, political elites act as they have some kind of right to challenge the truth, instead of supporting transitional justice and act as role-models for the citizens of their countries to support reconciliation.

On the other side, Germany today represents probably the most notable example of acknowledging war crimes committed by their army and sets 'the gold standard for guilt' (Engert, Stefan. 2016, 30. "Germany – Israel: a prototypical apology and reconciliation process." in *Apology and Reconciliation in International Relations,* edited by Christopher Daase, Stefan Engert, Michel-Andre Horelt, Judith Renner and Renate Strassner, 29-50. New York: Routledge), publicly considering Nuremberg trials in a very positive manner (Orentlicher, 2018, 434). Moreover, contemporary German interna-

tional lawyers qualify as the most enthusiastic proponents of international criminal justice. Yet, the acknowledgment has not erased the memory and many Germans may still feel anxious once the topic of Second World War is raised.

Ethnic division in former Yugoslavia, in comparison, lays much more complex ground, thus drawing parallels with the German example becomes complicated (Ibid., 431). Further distinction between both cases echoes in the facts that there was no outright victor at the end of Yugoslav wars, the atrocities of Yugoslav wars have not caused millions of victims, the condemnation of war crimes has not reached large-scale degree world-wide etc. In the absence of such social pressure to acknowledge war crimes by your own co-nationals, the denial is followed by almost no consequences for an individual, or, in a more extreme approach, is often even required.

6. Different views of the ICTY by different ethnic groups

While each ethnic group is, due to the aforementioned issues of denial and acknowledgment, far away from the level required for the prosperous reconciliation aims, there is a striking correlation between views of the Tribunal and the ethnic group to which an individual belongs (Ibid., 92).

Since Bosniaks were victims of the majority of the atrocities, they have generally expressed much stronger support for the Tribunal's work. Having probably unrealistic expectations as to the scope to which the ICTY could provide justice, Bosniaks' victims in particular remained deeply disappointed for many reasons: sentences handed down were too short, lengthy proceedings, insufficient number of war criminals prosecuted, show trials, use of plea bargains, etc. These outcomes falling short of satisfying Bosniak's multiple sorrows and demands for greater justice failed to endorse their experiences and consequently contributed to their infectious trauma, self-victimization and culture of victimhood.

A majority of Serbian citizens, on the other hand, have consistently disputed the legitimacy of the ICTY and considered it a political court (see also Milanović, Marko. 2016, 240-241. "The Impact of the ICTY on the Former Yugoslavia: An Anticipatory Postmortem". *American Journal of International Law* 110(2): 233-257). They, alongside many Croats, blame it for negating victimhood of their co-nationals and prosecuting their

"heroes". A critique shared by all ethnic groups in former Yugoslavia is based on some of the most notable acquittals, such as in the cases of Perišić, Gotovina, Haradinaj etc.

Submitting differently, those who eagerly oppose the mission of the ICTY and its justice should rather express their support in order to enhance criminal responsibility of the individuals and exclude themselves from the notion of collective guilt of the whole nations. As declared by Judge Cassese in the very first Presidential Report to the UN SC, if responsibility for the war crimes "is not attributed to individuals, then whole ethnic and religious groups will be held accountable" (United Nations Security Council. Report to the UN Security Council and General Assembly. UN Doc. S/1994/1007, 29 August 1994, para. 16). The history of the former Yugoslavia region demonstrated that feelings of such a primitive concept of collective responsibility degenerates into resentment and hatred (Ibid.).

7. Bringing the faraway ICTY from The Hague to the Western Balkans

Such perception of the ICTY and the justice it renders is due also to the Tribunal's distance. In the early years of the ICTY, its then president, Gabrielle Kirk McDonald, and then Prosecutor, Louise Arbour, realized that the Tribunal was "absolutely misunderstood" in former Yugoslav states and that local officials "were knowingly misrepresenting the Tribunal," yet the Tribunal had "no capacity to work in the region and no capacity to speak in the regional language" (Orentlicher, 2018, 309). Judge McDonald hence launched the ICTY's Outreach Programme (Ibid.) Under its auspices, the program 'Bridging the Gap with local communities' enhanced that after a final conclusion of an individual case, the ICTY officials and staff travelled to the town where adjudicated crimes occurred and met with local citizens and officials to explain how they investigated the crimes, describe the outcome of cases, and respond to questions (Briding the Gap with local communities. *International Residual Mechanism for Criminal Tribunals*. http://www.icty.org/en/outreach/bridging-the-gap-with-local-communities [accessed May 15, 2021]). Inasmuch this approach deserves compliments, its success depends entirely on the authority of the institution in the eyes of the addressed people. International criminal justice system abides by strict rules, procedures, and lengthy session to adjudge upon complex legal issues. Adding language barriers further proves the difficulty of accessing the Tribunal's justice by the local communities.

Another problem I see is that people in the Western Balkans do not read the ICTY judgments. Discussing complex legal issues, they are, admittedly, troublesome to understand, yet individuals do not even read summaries or Tribunal's press releases. This is a result of a region which significantly lacks legal culture. The population rather becomes subconsciously influenced by the media that sensationally reports some of the most spectacular events, such as capturing fugitives etc. This same media is in high percentage under the ownership of political parties. Therefore, the media is used as a means to 'infect' people with the specific narrative of political elites who control that same media.

8. ICTY as a tool of reconciliation

Opinions whether the Tribunal's task is to foster reconciliation diverged, even amongst the ICTY Judges of the same bench. According to some of the Reports addressed to the UN SC, the Tribunal is vested with the task of reconciliation (Report 2000, para. 217). Yet, neither the chambers not Judges ever explained how to define reconciliation in the Tribunal's practice (Bachmann and Fatić, 2015, 116). Differently, after a decade of working at the ICTY, Judge Cassese derogated his earlier expectations and went even further by discerning that some proceedings adversed to the effect that they resulted in rising nationalism and inter-ethnic animosity (Cassese, Antonio. 2004, 595. "The ICTY: A Living and Vital Reality". *Journal of International Criminal Justice* 2(2): 585–597). In the view of Judges Pocar and Meron the ICTY task was "merely" to hold trial and punish atrocities, the former deeming reconciliation as a 'political' goal that the ICTY cannot pursue (Orentlicher 2018, 115).

However, there is a broad agreement that the ICTY justice needs to be followed by the domestic institutions and local communities in order for reconciliation to be fostered (Jelačić 2013, 119). With regards to institutions, namely national courts in the first place, ethnical and religious tensions especially in Bosnia and Herzegovina contaminate justice system to the extent that it is rendered inoperative to impartially hold proceedings for war crimes (Ibid., 48).

On an individual level, those who supported the ICTY are more likely to express readiness for reconciliation, their level of personal and social tolerance towards members of other ethnic communities is higher as well. Judicial truth, rising over the prevalent

views of who did what to whom seemed to have a somewhat positive impact for the reconciliation. Yet, victims of wartime suffering, although supportive of the ICTY, are evidently less likely to reconcile with individuals from other ethnic groups (Meernik, James and Jose Raul Guerrero. 2014, 395-400. "Can international criminal justice advance ethnic reconciliation? The ICTY and ethnic relations in Bosnia-Herzegovina". Southeast European and Black Sea Studies 14(3): 383-407). According to Gibson, there is a correlation between the proportion of the population being directly affected by the conflict and the likeliness to reconcile (Gibson, James L. 2006, 426. "The Contributions of Truth to Reconciliation: Lessons from South Africa". The Journal of Conflict Resolution 50(3): 409-432). Following these criteria and considering the large number of victims in the former Yugoslavia (some 200,000 killed in Bosnia and Herzegovina alone) and the deep-rooted historical grievances, reconciliation seems quite unlikely in the short term (Clark 2011, 260).

Besides the support of at least the majority of society, reconciliation requires active efforts of each side's leaders (Rosoux 2009, 553). To that end, Charles de Gaulle, for instance, initiated French people to overcome resentment towards Germans, while the Germans' demonstration of remorse was also expressed by its highest-ranking State officials (Engert 2016, 30). Another positive example in this regard is Nelson Mandela in South Africa (Rosoux 2009, 552). In the Western Balkans, despite some individual examples of political leaders who have expressed their remorse and apology on behalf of their nation, this made no significant impact on the wider spectre of local communities for changing their views of the people from other ethnicities. What is missing is the continuity, as not every political representative in the Western Balkans further fostered that significant moves forward of their predecessors.

Additionally, middle-level leaders, including prominent figures in ethnic, religious, intellectual and other circles can largely influence the implementation of reconciliation policies (Ibid., 552). French Jean Monnet and German Robert Schuman have availed themselves of their influence and focused on shared interest of both nations concerned, launching the mutual project of the European Coal and Steel Community, regarded as a predecessor of today's European Union (Ibid., 546). In case of Western Balkans, such approached could be advanced by religious leaders, especially the most influential ones, since there is a high percentage of religious population of all confessions. A shared principle of morality should be used as a basis of condemning all war crimes,

regardless of the nationality of perpetrator, whereas victims' rights should enjoy full support. A striking example of such practice by a religious leader is a very successful management of the reconciliation in South Africa by the Archbishop Desmond Tutu.

9. Conclusion

There is indeed a long way to the reconciliation in the Western Balkans. The ICTY managed to provide some amount of contribution to that process by punishing war criminals and satisfying the needs of some victims, but has also deepened the inter-ethnic division even more with some of its judgments. After ceasing its mission, the ICTY remaining legacy which the local communities should avail themselves of is the Tribunal's archive that can further contribute to accepting factual record and internalizing truth as a precondition to reconciliation.

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RECONCILIATION PROCESS BETWEEN BELGRADE AND PRISTINA

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1.   A brief story of the past conflict

Beginning at the grass root level, the history of partiality in-between countries of South- Eastern Europe started with the falling of the Ottoman Empire, followed by the inception of new independent states based firmly on ethnicity. After the separation of Albanian territory by the Great Forces in London, during 1912-1999 'Kosovo' was formerly a province of the Ottoman Empire. Kosovo and Metohija (the name by which Belgrade continues to refer to the territory) was incorporated into Serbia in 1912, and subsequently into Yugoslavia.

The situation began to deteriorate in the 1980s, with separatist riots by Kosovar Albanians, inter-ethnic tensions and the withdrawal of Kosovo's autonomy in 1989. The President of Serbia, Slobodan Milosevic, restructured the Serbian Constitution to reduce Kosovo's provincial autonomy (Davies 2017, 28). Kosovar Albanians began rioting in response, eventually leading the Albanians to proclaim the creation of the Republic of Kosovo in 1991. In 1996, due to widespread ethnic cleansing of the Kosovar Albanians, the Kosovo Liberation Army (KLA) formed to fight back against Serbian aggression. After a decade of unrest, open conflict between Serbian government forces and Kosovar separatists broke out in 1998. After an American intervention and summit in Moscow, the UN Security Council passed Resolution 1199 calling for an immediate cease-fire, Serbian withdrawal, and the return of Albanian refugees. Several failed peace negotiations took place following Resolution 1199. During peace negotiations in Paris, Kosovar Albanians and the KLA agreed to an autonomy plan, yet Serbs refused and began additional military training exercises in Kosovo the following day. Unprecedently, NATO launched a 78-day air strike in the region until Milosevic agreed to withdraw troops. The UN sent the Kosovo Peace Implementation Force

(KFOR) and NATO to monitor the peace process as Kosovar Albanians had begun to carry out revenge attacks against the Serbs.

During the time of the UN Interim Administration Mission in Kosovo (UNMIK), Kosovo built its state-like institutions. In February of 2002 a power sharing deal was reached were Ibrahim Rugova, a Kosovar Albanian, was elected President and Bajram Rexhepi, a Kosovar Serb, became Prime Minister. Kosovo became a provisionally self-governed territory under UN administration. In 2007, a plan for Kosovar independence negotiated by former Finnish President, Martti Ahtisaari, was rejected by Serbia (EU 2018). In spite of failing to reach a unified position on Kosovo's independence, the EU managed to find a way to remain involved, and established its rule of law mission in Kosovo (EULEX) on the eve of Kosovo's declaration of independence. It was not until 2008, however, that major European powers and the United States recognized Kosovo's independence from Serbia. Kosovo's unilateral declaration of independence was recognized by most European countries and the United States. The declaration of independence was not likely to be recognized by Serbia, and in an attempt to roll back international recognition of Kosovo's independence, Serbia asked the UN General Assembly to request an advisory opinion from the International Court of Justice on the legality of Kosovo's 2008 declaration, which it did. In 2010 the International Court of Justice ruled that Kosovo's declaration of independence had not violated the international law (ICJ 2010, 8).

Nowadays, 23 EU Member States have recognized Kosovo as an independent state. The five non-recognizing states are Spain, Cyprus, Greece, Romania and Slovakia. To accommodate these differences, the EU's approach is one of 'diversity on recognition, but unity in engagement'. To signal diversity, EU documents avoid referring to Kosovo as an independent country. Engagement means offering Kosovo a 'clear European perspective', potential candidate status, a 2015 stabilization and association agreement on the lines of those signed with other Western Balkans countries, and guidance with the reforms needed to prepare for possible EU membership (EU position).

2. The normalisation of relations between Belgrade and Pristina

Rebuilding trust post-conflict is a lengthy process because hatred can be inherited from generation to generation. Reconciliation has two facets. It requires the restoration

of both 'vertical trust' – the trust between citizens and institutions – and 'horizontal trust' – the trust between neighbours. In the post-conflict context – the stabilisation and state-building phases, which progressively led into the EU accession phase – the EU (in tandem with other donors) was engaged in political mediation in the Western Balkans, deployed considerable humanitarian relief, offered support to refugees and the displaced, and provided massive financial support and technical assistance for reconstruction (Ioannides 2018, 1).

Negotiations between Kosovo and Serbia, begun in 2006, have resolved many of the bilateral issues that mattered most to the everyday lives of Kosovo's Serbian population and others affected by its split from Serbia, from the provision of internationally recognized license plates and personal documents to the facilitation of cross-border trade (ICG 2021). Nevertheless, European and U.S. mediators are a little closer to bringing the parties to a political settlement. Both Serbia and Kosovo aspire to EU membership – Serbia as a candidate country and Kosovo as a potential candidate. The EU insists that Serbia must normalize its relations with Kosovo before joining. Since 2011, with the help of EU mediation, the two neighbours have resolved some of the technical issues, but disagreements prevent normal day-to-day interaction between them in areas such as trade, energy supplies and cross-border travel (Russell 2019, 1). In 2011 direct EU-mediated talks between Serbia and Kosovo began for the first time since the latter's declaration of independence. The first meeting between Kosovo and Serbia were held at the so called 'technical level' where, within two years, agreements were reached on issues of freedom of movement, civil registry books, cadastral records, customs stamps, mutual acceptance of education diplomas, integrated border management, regional representation, telecommunications and energy (Gashi 2017, 538).

The EU-facilitated Dialogue primarily focuses on integration of the Serb community into the Kosovo state and normalisation of relations between Kosovo and Serbia. The first major breakthrough came in April 2013 with Brussels Agreement, the first agreement of principles governing the normalisation of relations (BIRN 2015). This is the first high level agreement between the two states, and it shows that Serbia can deal with Kosovo as an equal. The agreement specifies creation of an "Association/Community of Serb majority municipalities". The dual name is another sign of trouble ahead: for Serbia, it is a Zajednica (union or community) of municipalities, a

governing entity newly established by the agreement, while for Kosovo; it is merely an inter-municipal association like one that already exists to help local governments coordinate and share expertise (Prelec 2013).

Serbia returned copies of original civil registries to Kosovo, and now recognizes Kosovo customs stamp. Since the 2013 Agreement, more than 100,000 Kosovo Serbs have registered and been issued Kosovo personal identification documents. A unitary system of justice is being established throughout the country, albeit slowly. In 2014-2015, the new EU high representative for foreign affairs and security policy, Federica Mogherini, convened a second round of prime-ministerial talks that sought in part to remedy Pristina's lack of progress toward establishing the Community/Association, which Belgrade had promoted to Kosovo's Serbs as justification for other compromises under the 2013 Brussels Agreement (ICG 2021). This round of talks added deals on energy, telecommunications and a bridge joining North and South Mitrovica. Kosovo got its own international dialling code; Kosovo Serbs' mobile telephony would now be handled by a subsidiary of Serbia's Telekom registered in Kosovo. Likewise, Kosovo Serb energy was to come through a subsidiary of Serbian companies registered locally. From 2008 to about 2014, Serbia employed plainclothes police and operated municipal governments and courts in Serb-majority areas; it has since mostly closed them down. Belgrade still runs virtually all the schools, including a university, as well as health services used by Serbs in Kosovo; employs tens of thousands in various jobs; and pays welfare and other social benefits to thousands more. Many, perhaps most, Kosovo Serbs depend in one way or another on these Serbian institutions for salaries and benefits (ICG 2021)

After the Brussels Agreement, decentralization of governance to create six new Serb majority municipalities, ten guaranteed seats in the Kosovo Parliament, leadership of a number of Ministries (Local Government Administration and Return sand Communities), creation of the President's Communities' Consultative Council, creation of a separate public TV channel for minority communities (Radio television of Kosova 4), and extraterritoriality of orthodox cultural heritage were affirmative measures enacted to facilitate integration of the Serb minority. Though exceedingly even some European practices, such concessions were seen as necessary as they led to the reward of independence and guaranteed recognitions (BPRG 2017, 18). Establishing

better state-to-state relations is much more important than administrative details governing the North.

Since 2015, little progress has been made on reaching new agreements or on implementing the ones previously concluded. A series of confrontations has brought relations to a new low. Historically, diplomatic ties between Serbia and Albania were highly influenced by Kosovo, as such, the only disputed or challenge in between these two states was the status of Kosovo. The Albanian– Serbian relations were influenced by a number of factors such as nationalism, culture, ideology, but most importantly the Kosovo issue (Harris 2016). Relations of both Albania and Serbia together have intensified in the past years aiming to push the EU agenda for both countries (Associated Press 2016). The Regional Youth Cooperation Office of the Western Balkans (RYCO) is the most laudable agreement signed within the Berlin process mostly led by Albania and Serbia (RYCO 2016). RYCO will be aiming to promote the spirit of reconciliation and cooperation between the youth in the region through exchange. The agreement was signed during the Paris Summit and included leaders from all six western Balkan states.

While it is clear that Albania and Serbia are strengthening their diplomatic ties, the case of Kosovo should be treated in a different platform including all parties, Albania, Kosovo and Serbia. Additionally, NGOs like the Organization for Security and Co-operation in Europe (OSCE) and the European Union Rule of Law Mission in Kosovo (EULEX) promote tolerance and non-discrimination in the region. The OSCE works with religious leaders, youth, and school officials to promote inter-faith dialogue, implement anti-discrimination policies, and address hate speech. They produce guidelines for educators to counter intolerance among their students and organize conferences to embrace diversity (OSCE).

The EU is by far the single largest donor providing assistance to Kosovo and the Western Balkan region, and is at the forefront of the reconstruction effort (Commission2020). Eighteen EU countries maintain representative offices in Kosovo, and numerous non-governmental organizations from EU countries are active there. In the context of the Stabilisation and Association Process (SAP) that is seeking to bring Kosovo into line with European norms, that include a mixture of trade concessions, economic assistance (Instrument for Pre-Accession Assistance Program) and treaties (Stabilisation and Association Agreements). On 17 July 2017, the Council approved the Framework

Agreement between the EU and Kosovo on the general principles for the participation of Kosovo in EU programs. In 2018, Kosovo joined the Erasmus+, COSME, and Europe for Citizens and Creative Europe programs (Commission Kosovo 2020, 106).

 In August 2018 Kosovar and Serbian presidents, Hashim Thaçi and Aleksandar Vučić, floated the idea of a 'border correction' as a way out of their impasse, but the proposal quickly ran into opposition and is not an option anymore. Later in 2018, Kosovo brought in 10 % customs duties on imports from Serbia, subsequently raised to 100 %, after Serbia blocked Kosovo's efforts to join Interpol (Commission 2020), which under USA pressure were lifted in 2019.

Kosovo has a clear European perspective as part of the wider Western Balkans region. Also, regarding the normalisation of relations with Kosovo, Serbia has remained engaged in the dialogue. However, Serbia needs to make further efforts and contribute to the establishment of circumstances conducive to the full normalisation of relations with Kosovo (EC 2018). The European Union has seen regional cooperation based on reconciliation as a precondition for peace, stability and progress of the region. Reconciliation is a long-term process that must apply to both sides of the conflict. The term 'reconciliation' refers to both the process and desired outcome (Bloomfield 2006).

The trajectory of 'normalization of relations' is on the same line and/or is essentially the same with the countries' path to 'Europe'. At times, it appears that the dialogue is not (only) important for its actual relevance – that both countries will agree on pending matters – but most importantly because the dialogue is first and foremost a 'European spirit' (Barroso 2013, 2). Finally, what the EU's discourse reveals with regard to the mediated dialogue is indeed an overemphasis of the dialogue of former foes, facilitated and promoted by the EU (Gashi 2017, 550).

3. European enlargement and the integration process

The EU itself defines the enlargement process as 'an investment in peace, security and stability in Europe: the prospect of EU membership has a powerful transformative effect on the partners in the process, embedding positive democratic, political, economic and societal change' (EC 2018). The process of the dialogue is embedded

in the context of European integration, as both Kosovo and Serbia have put accession to the EU as their prime foreign policy goal (Gashi 2017, 534).

Bilateral disputes are still present and can seriously disrupt EU integrations process. While some disputed are open and being tackled by the EU, there are many potential disputes involving WB states and EU member countries sharing the borders with the region. Tackling such disputes in the framework of this process is of crucial importance firstly due to fact that the EU Enlargement Strategy highlights good neighbourhood relations and regional cooperation as crucial elements for the integration of the WB countries to the EU (EC 2015), but also a stable a less unpredicted enlargement process for the region. Moreover, any failure to resolve the disputes and produce tangible results will mark the Berlin Process like "every other initiative" previously launched in the region (Emini 2016, 5).

Both Kosovo and Serbia ran into domestic legal and institutional complications, especially in cases which required legislative change. There is some evidence (but still limited to date) that the agreements have improved people's lives (BIRN 2015). There are also a number of critical uncertainties, which can reverse the normalization process. The main critical uncertainty is how the implementation of agreements will reshape political and institutional life in Kosovo and what role it will have in fostering local peacebuilding and ethnic reconciliation (JMCS 2016, 873). The legal framework broadly guarantees the protection of human and fundamental rights in line with European standards. However, additional efforts are needed regarding enforcement in Kosovo. Implementation of human rights strategies and legislation is often undermined by inadequate financial and other resources, particularly at local level, limited political prioritization and lack of coordination (EC 2018). More needs to be done to effectively guarantee the rights of persons belonging to minorities, including Roma and Ashkali and displaced persons, to ensure gender equality in practice, to set up an integrated child protection system and to advance the protection of cultural heritage.

Another critical uncertainty is the EU integration dynamics of Serbia and Kosovo, which serve as a key incentive for both sides' engagement in the normalization dialogue. The rise of euroscepticism, refugee crises and regional instability has made enlargement unpopular within the European Union. The 2020 enlargement debate is qualitatively different from that of the 2000s: the narrative has changed, although the capacity of

European institutions and the Union itself to absorb new members will always be at issue. We now face obstacles viewed as existential, focusing more on questions of political governance, trust, equality, legitimacy, and identity (Economides 2020, 3).

Despite these difficulties, the progress made since 2011 compared to previous international engagement is clear, especially in opening the prospects for resolving key outstanding issues (Birn 2015). It is situational, flexible and contingent to the availability of political will among parties to find technical solutions to political questions as a transitory approach toward normalizing and reconciling relations. (JCMS 2016, 874)

The European Parliament's recommendation of 19 June 2020 on the Western Balkans recalled the need for enlargement as a positive EU agenda that must be accompanied by strong and tangible incentives. Also, since the 'European Union Global Strategy' of 2016 introduced the idea of 'principled pragmatism' as a cornerstone of EU foreign policy, stressed the equal importance of interests and values, and made the case for the pursuit of geopolitical goals, the EU seems to have taken a policy turn (at least in rhetorical terms). And this is echoed in the language of the EU with respect to recent offerings on its relations with the WB where "A credible accession perspective for the region is of enormous strategic importance to the Union and to the region itself" (EC, 2020), and where WB accession "is in the Union's own political, security, and economic interest … a geostrategic investment", and a "driver of transformation in the region [that] enhances our collective security and prosperity" (Commission 2020).

Parliament stressed that the "enlargement process fosters and strengthens capacities to resolve bilateral disputes and strives for reconciliation between societies in the region". Parliament supported the appointment of the EUSR Miroslav Lajčák to seek comprehensive normalisation of relations between Serbia and Kosovo and advance good neighbourhood relations. It also called for visa liberalization for Kosovo, as the country has fulfilled all the visa liberalization benchmarks endorsed by Council already in 2018.

As the enlargement reports of EU states, in these past two years, the main framework and underlying basis of EU-Kosovo relations have not changed. Kosovo is still committed to follow its European path, and the institutions of the European Union, especially the European Parliament, are committed to help Kosovo reach stability and prosperity (EU 2020). Nevertheless, the situation regarding the international recognition of

Kosovo has not improved significantly. Many of the social and economic challenges are remaining the same for Kosovo. Unfortunately, from the side of the European Union, they were unable to deliver their promise on providing visa-free travel to the citizens of Kosovo, even though the Commission and the Parliament have reiterated their support a number of times in the past two years (Stanicek 2020, 3).

4. The pandemic year: Recent situation of economic and political approaches

Economic approaches

The COVID-19 pandemic is a global shock that has not spared the Western Balkans. It represents an unprecedented burden on their health and social protection systems. The final extent of its footprint in terms of loss of human lives and damage to the economies is still difficult to assess, but early Commission estimates foresee a drop of between 4 and 6% of Gross Domestic Product in the region. Thousands of citizens are at risk of losing their jobs, and temporary government support measures (unemployment benefits, deferrals/waivers to tax and social security contributions, etc.) have an important fiscal impact (Commission 2020).

The European Union – both its member countries and its institutions, notably the European Commission – play a prominent role in the economic reconstruction and development of Kosovo and Serbia (EPRS 2020).

Kosovo has received more than €2.3 billion in EU assistance since 1999, and close to €1 billion in support to international presence since 1999. Things stabilized in the 2000s in the region and there was an upswing in economic activity. With the financial and economic crisis after 2008 and all that followed, economic progress slowed down. While it initially focused on emergency relief actions and reconstruction, it now concentrates on promoting Kosovo's institutions, sustainable economic development and Kosovo's European future. Furthermore, Parliament supported the EU decision to mobilize over €410 million in reallocated bilateral financial assistance to support the western Balkans during the coronavirus emergency (EPRS 2020). To Serbia, the EU allocated €93 million, of which €15 million for emergency care and €78 million for economic recovery. To Kosovo, it allocated €68 million, of which €5 million in imme-

diate support for the health sector and €63 million in support for social and economic recovery. In addition, on 22 April 2020, the European Commission submitted a proposal for a decision for macro-financial assistance (MFA) to support ten enlargement and neighbourhood partner countries in their efforts to mitigate the economic and social consequences of the coronavirus pandemic, for a total amount of €3 billion (Stanicek 2020, 1). In May 2020, Parliament agreed on post-coronavirus economic macro-financial assistance for the western Balkans and neighbourhood region for the total of €3 billion. On 14 August, the Assembly ratified the EU Macro-Financial Assistance loan agreement worth EUR 100 million, which aims to help Kosovo limit the economic fallout of the pandemic (Commission 2020).

 Under IPA II, Serbia continues to benefit from pre-accession assistance with a total allocation of EUR 1.4 billion for the period 2014-2020. The IPA National Programme 2019, adopted in November 2019, amounts to EUR 138.5 million overall, with most of the funding supporting alignment with the EU acquis, rule of law, competitiveness, research and development and innovation, as well as helping to improve the capacities for civil protection and disaster resilience. The first part of the IPA National Programme 2020 amounting to EUR 70.2 million was adopted in February 2020. The programme supports Serbia's EU integration and negotiation process, local development and sustainable social development and economic growth. An additional EUR 40 million in 2019 and EUR 45 million in 2020 were allocated to the IPA Rural Development programme (IPARD). As part of the response to the COVID-19 pandemic, EUR 15 million has been refocused for urgent medical equipment and EUR 78.4 million for socio-economic recovery measures under IPA II. Other programmes have also been reoriented to help reduce the impact of the pandemic. The EU has continued to support Serbia in border and migration management following the refugee crisis of 2015-2016 (Commission-Serbia 2020, 121).

In 2020, Kosovo joined the Customs 2020 and Fiscalis 2020 programmes (Commission- Kosovo 2020, 106). Serbia also benefits from the IPA multi-country and regional programmes and participates in four cross-border cooperation programmes, as well as in transnational cooperation programmes. Serbia participates with IPA support in EU programmes, including Horizon 2020; COSME; Customs and Fiscalis 2020; Erasmus+ and Creative Europe; Europe for Citizens; Employment and Social Innovation.

Political approaches

In place of the substantive negotiations that had been planned with Thaçi, Vučić met Kosovo's Prime Minister, Avdullah Hoti, at a Washington summit on 4 September 2020 that produced an Oval Office photo opportunity and a pair of unusual documents, one signed by each leader. Both comprised a repackaging of earlier commitments, with a number of promises to honour U.S. foreign policy goals unrelated to the Balkans, and very few items of bilateral importance (ICG 2021). Among the more meaningful provisions was a year-long diplomatic "ceasefire" in which Kosovo foreswore attempts to join international organizations and Serbia promised to halt its de-recognition campaign. Another was a "feasibility study" on sharing the waters of the strategically vital Gazivode Lake, discussed further below.

Finally, the arrangements concluded in Washington provided for Israel to agree to recognize Kosovo, while Belgrade and Pristina agreed to open embassies in Jerusalem. In a setback to Serbia's campaign to stop countries from recognising its former province, the Kosovo and Israel Foreign Ministers signed documents completing the process of mutual recognition – under which Kosovo will soon open its embassy in Jerusalem (Bami&Stojanovic2021). The opening of the embassy in Jerusalem goes against European foreign policy based on Resolution 2334 (2016) of United Nations "…the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace." , but it does not determine that Kosovo has changed her European path.

The fact is that the European Union, especially through the voice of French President Macron, impeded the move of North Macedonia and Albania, while provided they met all the necessary conditions to become members. This was seen as a supremely negative sign in the whole region because it was a negation of a promise made a long time ago, in 2003 at the Thessaloniki Summit of the European Union; when the road to EU membership for the Western Balkans was open (Vejvoda 2020). However, the European Union has never reneged on that in all official statements from all the commission and council presidents over the years. And it is also repeated by current Council President Charles Michel. The promise and commit to further enlargement

exists. There was also a Zagreb summit of the European Union in May 2020, which reiterated those commitments.

The European Union has shown its commitment to support Kosovo and Serbia, including in the upcoming MFF (Macro Financial Fund). The social, economic and health challenges caused by the outbreak of the COVID-19 pandemic are unprecedented; nevertheless, the situation showed the good and close cooperation between Kosovo, Serbia and the European Union. In a number of fields, Kosovo's legal commitments and the implementation are showing considerable divergence. After a decade of talking and dozens of partially-fulfilled agreements, Kosovo's new leadership established in February 2021 says it wants a review and a 'reset' of the European Union-mediated dialogue with former master Serbia (Balkan Insight 2021).

Given the potential EU future of both Kosovo and Serbia, the resolution of all 'bilateral disputes and issues' will have to be agreed within the EU-facilitated dialogue, perhaps at the very end of the process, and cannot be separated from other, more economic elements. The EU itself will take the lead in this process, as both countries wish to join the EU. Transatlantic cooperation and consultation Belgrade-Pristina dialogue will be crucial (EU, 2021). The solution for Kosovo can be found in conjunction with efforts of the European Union and the United States. The European Union clearly takes the lead given that this is part of Europe's geography and history and culture (Vejvoda 2020). There are expectations that the new US administration will cooperate more closely with its EU allies on a range on global and regional issues as it takes the 'opportunity to reset transatlantic relations'.

The 2020 report of US Department of State reflects the unique challenges that nations had to confront as the COVID-19 virus spread throughout the world. The pandemic impacted not only individuals' health, but their abilities to safely enjoy their human rights and fundamental freedoms. Some governments used the crisis as a pretext to restrict rights and consolidate authoritarian rule. Other governments relied on democratic values and processes, including a free press, transparency, and account-ability, to inform and protect their citizens (CRHRP 2021). Women and children faced heightened risk as the prevalence of gender-based and domestic violence increased due to lockdowns and the loss of traditional social protections. Other marginalized

populations, including older persons, persons with disabilities, and LGBTQI+ persons, experienced particular vulnerability (CRHRP 2021).

Significant human rights issues included: undue restrictions on the press, including violence or threats of violence against journalists; government corruption and impunity; and attacks against members of ethnic minorities or other marginalized communities. The government took steps to identify, investigate, prosecute, and punish officials who committed human rights abuses, but at times lacked consistency. Many in the government, the opposition, civil society, and the media reported instances of senior officials engaging in corruption or acting with impunity. The government sometimes suspended or removed offenders from office, and the justice sector sometimes took steps to prosecute and punish those officials who committed abuses, offenses, and crimes. Many corrupt officials, however, continued to occupy public sector positions (CRHRP, 2021).

US Department of State has recently congratulated the people of Kosovo on their successful parliamentary elections. When it comes to the dialogue with Serbia, the United States strongly support the EU-facilitated dialogue between Kosovo and Serbia aimed at a comprehensive normalization agreement which should be centered on mutual recognition (US, 2021). They look forward to working with the government, once formed, on priority issues to advance peace, justice, and prosperity in Kosovo and the broader region, and counsel the new government to prioritize those negotiations.

5.   The path towards the future

Kosovo should be moving where opportunities exist to create a safer international and regional environment, and Serbia thinks about its future, its future is brighter if it is a member of the European Union. One way to improve the situation of Kosovo would be to gain membership in other international organizations that admit new members by majority vote. For example, Kosovo could seek membership in two organizations to which Serbia already belongs – the Council of Europe and the International Court of Justice. Besides international standing, admission to these bodies could provide an additional channel of dispute resolution. The Council of Europe requires a two-thirds majority of its members to approve a candidate, and more than that number already recognize Kosovo. Joining the Council would extend the European Court of Human

Rights' jurisdiction to Kosovo, which would allow minorities (and others) to appeal to a respected, international body. Kosovo could also try to join the International Criminal Court (ICC), if it first wins permanent observer status at the UN General Assembly – as Palestine has done, for instance (ICG 2021).

A sustainable agreement between Serbia and Kosovo that entails mutual recognition and good neighbourly relations looks unlikely even because of France, as long as it refuses to change its position on enlargement. Without France supporting Serbia's accession process, Belgrade will have no incentive to work to conclude a peace agreement with Kosovo (BIRN 2021). Failing to enlarge to the Western Balkan poses a security threat not only for the vulnerable countries of the region, but also creates risks for the EU and its member states. A change in position could push forward progress in two related areas: the relationship between Kosovo and Serbia, and the strengthening of security in the region (BIRN 2021). France can also deliver more in Kosovo. It can start by lifting its veto on EU visa liberalization for Kosovars, a policy that relies on unsustainable arguments about the only Western Balkans country left without a visa-free regime with the EU.

Kosovo still aspires to NATO membership, and is strongly supported in this by the United States, but the member states Greece, Romania, Slovakia and Spain have prevented Kosovo from joining NATO's Partnership for Peace and, given the organization's consensus-based approach to decision-making, they would be able to keep it out of the alliance altogether. In the meantime, however, Pristina could explore concluding a defence pact with one or more NATO members such as the U.S., which might use this engagement to encourage some or all of the governance reforms and capacity building that normally accompany NATO accession (ICG 2021).

It is important to say that the slowness is not only because of the so-called fatigue in the European Union or the criticism from these countries but, also because of the slow pace of reforms in our countries, in the Western Balkans. Deeper cooperation between Kosovo institutions and the majority population would be unrealized and the Association would cement ethnically divided governance. The failure/success of institutions to implement historical lessons can also provide key insight into the future of ethnic tensions in the region. The results will also have implications for future ethnic conflicts. For example, if lessons from transitional justice are success-

fully applied in Kosovo and Serbia, hopefully the results can be replicated in future conflicts (Davies 2017, 16).

At this point a serious threat exists to Kosovo's sovereignty and territorial integrity with the risk of dysfunctional governance and creation of an entity akin to Bosnia's Republika Srpska infamously known for rendering difficult the running of state affairs. The closer Serbs are to the events, the more it affects their views, exemplified by the Kosovar Serbs in south of the Ibar who, at large, prefer full integration and stable relations with Albanians (BPRG 2017, 27).

At conclusion, as the most of European countries fear too, any territorial or competences exchange risks sparking instability by calling into question other Western Balkan borders. Despite the fact that the wheel of history turned after the attacks by NATO, rectifying an old mistake made by Great Powers in 1913 (confirmed by a declaration of Sir Edward Grey in that time), this wheel nowadays cannot go back and put Kosovo under Serbian influence and power again. Only recognition could normalize relations between the new independent country and the country who recognizes it (Puto 2010, 264).

The only path toward the future for Belgrade, Pristina and other countries in the WB region is the European path. Brussels institutions and member states have to invite their political capital and will to help the Western Balkans resolve bilateral disputes, deal with and acknowledge the past and help them reach full reconciliation. Meanwhile, we, our people and politicians have to embrace through faith and cooperation all the fundamental western values to fully integrate into the European family, of which we are an inalienable part.

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SEGREGATION IN EDUCATION IN BOSNIA AND HERZEGOVINA

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1. Introduction

Bosnia and Herzegovina (B&H), much like other Eastern-European countries, has faced a brief period of transition from the socialist system to capitalism. However, this transition was interrupted in B&H by a brutal war which lasted four years. The social systems and infrastructure were damaged or destroyed, including education, which was harnessed during the war to divide the country and then perpetuate these divisions. The paper deals with some of the strongest and most enduring impacts that the war has had on education, which even now, more than 29 years after the war, pose a serious threat to this country. The most obvious struggles are the divisions of youth according to nationality, religion or language, the unequal positions of certain groups in education, and very clear segregation and discrimination. The most frequent and overt ways are intolerance towards other nationalities which is displayed through textbooks, used in some parts of B&H subject to a struggle for independence during the war. The future of education in Bosnia is uncertain. What is certain, however, is that conflicts do not simply end once the fighting stops, often, as it is the case of Bosnia and Herzegovina, they continue to exist but they migrate into different domains such as education. Education performs a crucial function within modern national states as it is the apparatus through which a state's societal culture is inculcated into new generations of citizens. Two decades after the Dayton Agreement, in a divided Bosnia and Herzegovina, schools are the new battlefields.

2. The Dayton Agreement

The Dayton Agreement in B&H was aimed to provide a basis for segregation in education, the social and political conditions in the country were inappropriate after the

war. The country's recovery after the war was of a steady pace. Priority was given to physical reconstruction of land, construction of houses, bridges, buildings, and land reclamation. However, the war continued in a modified form and especially in the education sector. Namely, the division of the country, the conquest of the territory, the ethnic cleansing that could not be achieved with weapons, continued after the conclusion of peace. Verifiable, bridges, roads, houses and many schools were repaired, but almost nothing was done in those years to influence the content of education. On the contrary, indirect war followed to make efforts in dividing the country on a national basis, its system and its education. Furthermore, the language was gradually divided into: Bosnian, Croatian and Serbian. This serious problem of the education system whose negative impersonation cannot be fully followed, but will certainly lead the reconciliation process in B&H. In order to facilitate the establishment of primary and secondary education, the OSCE has organized the so-called "Two schools under one roof" – an unusual invention for a separate school.

3. Segregation in education

As the war in Bosnia started in 1992, education fell victim to it. During the first year of the war, the schools were divided according to the military positions and front-lines so that the army in control of the area also regulated the curriculum which was used. In reality, Bosnian Serb-controlled areas, started using the Serbian curriculum, Bosnian Croat-controlled areas used the Croatian curriculum and areas under the control of the Bosnian state army quickly developed a new Bosnian curriculum. Of course, many schools were also closed and most of them functioned in most uncommon conditions. It was also suggested that education was considered a powerful agent of the Yugoslav state communism, the change of doctrine was believed to be in the real system (i.e. Communism) and the change into another (i.e. Nationalism) was found possible, even easy.[1]

In this fragmented socio-political environment, a segregated education system has developed. Since the Dayton Peace Agreement (DPA) did not give guidelines concerning the actors in charge of reforming the education, its administration fell into the hands of the RS and the Federation. This made room for the development of

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1   Retrieved from: segregated_education_and_texts_ijwp2009.pdf (helsinki.fi) (2021).

different curricula: while the RS follows the standards developed by the RS Ministry of Education, within the Federation there are at least three different curricula. Curricula are also ethnically-differentiated. The language of teaching differs according to the children's ethnic group. The language differentiation traces back to the Dayton Peace Agreement (DPA), which recognized the existence of three national languages, the Bosnian, the Croatian and the Serbian, which are actually very similar but were politicized as different during the conflict.

The presence of ethnicity issues in curricula proves how the education system is highly politicized. Schools in B&H are battlefields where war narratives are perpetuated and even in multi-ethnic schools children are separated during the teaching of national subjects. This politicization is considered a form of educational protectionism which aims to strengthen the nationalistic feeling of belonging to different ethnic groups. If the origin of this geopolitical structure and of the educational system traces back to the Dayton Peace Agreement (DPA), its politicization and fragmentation resulted from the political unwillingness to change it. Several authors state that given the ethnically-based political system, national and sub-national politicians deliberately use segregated education to strengthen divisive narratives and to remain in power. Currently, it does not seem that this system is going to change: for example, in February 2018, the RS announced the willingness to unify the curriculum of the national subjects with the one issued in Serbia and Bosnian recent elections, held on October 7th, confirmed this tendency, but the electoral programs of the winning parties, like the Croatian Democratic Union that won the seats of the Bosnian-Croatian people, clearly revealed the will to keep the status quo of the education system. The 'two schools under one roof' which comprises of only a small portion of B&H schools, continues in today's education system.

Two decades after the signing of the Dayton Peace Agreement, as Bosnia and Herzegovina sits on the brink of gaining EU membership, the country has done much to distance itself from a bloody and conflict-ridden past. The conflict in Bosnia was the bloodiest in modern European history and the first recognized case of genocide in Europe since the Second World War. Three years and eight months of conflict resulted in an estimated 100,000 deaths, of which around 38,000 were civilians, and the atrocities perpetrated were on such a scale that the term "ethnic cleansing" was coined in relation to the actions committed. In addition, 3 million people were displaced world-

wide. During the past two decades of 'peace', the European Union has been involved in Bosnia on and on-going basis. While its role changed from that of peace-building in the initial stages of conflict recovery to a more long-term peacekeeping in the last decade, the EU is still actively involved in the country, and in October 2014 renewed its mandate in order to support Bosnia as it progresses towards joining the EU. Three years prior to that, in 2011, Bosnia ratified the Stabilization and Association Agreement (SAA) expressing its wish to join the European Union. While the agreement has not yet entered into force, the country is a potential candidate country for the time being[2].

Despite these improvements, significant challenges remain:

First, Bosnia still experiences high degrees of inter-ethnic discrimination and marginalization. The European Commission against Racism and Intolerance (ECRI) published its third report on Bosnia on February 28, 2017, denouncing the lack of a political will to build an inclusive society in the country. The report stresses high levels of inter-ethnic discrimination and notes that the political discourse, including the media, is still characterized by the frequent use of hate speech.

Second, post-conflict Bosnia remains a geographically divided society. Territorially, it is divided between the "Federation" consisting of mostly Muslim and Croat populations and "Republika Srpska" mainly inhabited by the Serbian population. Academic research conducted over the past decades, along with reports conducted by international organizations monitoring progress in Bosnia, indicate significant divisions along ethnic lines and not only poetically but in all social spheres. There is also a significant level of mistrust, alienation, and ghettoization between ethnic populations. Asim Mujkic, a Bosnian sociologist and philosopher and long-time observer of socio-political changes in post-conflict Bosnia, argues that the country is an "Ethnopolis" – a community characterized by the political priority of ethnic group(s) over the individual and a state where a citizen's membership in a political community is determined by their membership in an ethnic community. Mujkic calls the political narrative and practice intended to justify this ethnically based social contract ethnopolitics[3].

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2   Retrieved from: Bosnia and Herzegovina – Two Decades After Dayton - Political Violence at a Glance (2021).

3   Retrieved from: Bosnia and Herzegovina – Two Decades After Dayton - Political Violence at a Glance (2021).

One of the most prominent examples of ethnopolitics in Bosnia is the country's segregated education system, a topic which is currently researched as part of the GATED project based at the Sié Chéou-Kang Center for International Security and Diplomacy and the Irish School of Ecumenics in Trinity College, Dublin. In particular, the phenomenon of 'two schools under one roof' is of central concern. 'Two schools under one roof' (TSUOR) describes schools in Bosnia which are based on the ethnic segregation of children. Children from different ethnic groups attend classes in the same building but are physically separated into different classrooms and are taught a different curriculum by teachers from their own respective ethnic group.

'Two schools under one roof' is not just a practice of separate education, but a policy of segregation between Bosnian Muslims and Bosnian Croats within the Federation (Bosnian Serbs are further segregated within Republika Srpska), which was created two decades ago by the Dayton Peace Agreement.[4]

4. Recommendations for desegregation

A useful starting point and the first recommendation would be to recognize education as a security issue as suggested by OSCE. This would stress the role of education as part of security considerations when drafting peace agreements and similar documents thereby giving education more political weight in such negotiations. Here the new discourse in the context of transitional justice can also be significant. The next important step and second recommendation is the recognition of education as a long-term development issue rather than a humanitarian crisis issue. This means that from the start and also in the middle of humanitarian efforts of reconstruction, the educational planning should be done with long-term focus on development and education rather than crisis management orientation and training. The long-term project and funding dealing with education in post-conflict situations has been noted in other post-conflict cases too. From this follows the third recommendation which stresses the importance of evaluation and analysis on different levels when planning the initiatives on the education sector. The evaluation and analysis would be required at least on the local political level, on the implementation level (who implements and

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4   Retrieved from: Bosnia and Herzegovina – Two Decades After Dayton - Political Violence at a Glance (2021).

how) and on the coordination level. These levels require different competencies and a multi-professional approach. The fourth recommendation which states the obvious: there should be a common long-term goal and vision to which all international stakeholders sign onto. This would lead to a coherent strategy and more efficient use of finds as they would be targeted on a strategy that follows the shared vision. Through this we should be able to avoid ad hoc projects and continuous change of winds in terms of priorities and finding in the education sector. The OSCE report in 2007 suggested two priorities that OSCE identified as means towards the goal of "better, fairer, and juster way of educating … than now" in Bosnia and Herzegovina: establishment of a body that could both initiate and enforce a common set of standards of educational knowledge and achievement throughout the country, and the development of curriculum that is similar throughout the country.

The good news is that the story of Bosnia and Herzegovina 25 years after the Dayton Peace Agreement is not only one of destructive effects of the state captured by unaccountable elites on the economy and society, it is also a story of remarkable societal resilience and individual triumphs in entrepreneurship, sport, and the arts, withstanding decades of divisive politics and irresponsible governance.[5] The story is also one of successful governance initiatives headed up by reformist municipal and cantonal leaders. Together, these figures and organizations from the private sector to civil society, to local government can be the agents of change that Bosnia and Herzegovina needs to overturn the state capture holding the country back.

There are positive aspects to Bosnia and Herzegovina's current situation. Twenty-five years after the signing of the Dayton Peace Agreement, a large number of citizens accept the fundamental existence and legitimacy of the Bosnian state. This is despite decades of divisive political discourse promoted by Bosnia's ethno-nationalist leaders. On average, 74 per cent of the population is proud of having Bosnian citizenship. This sentiment is the strongest in the Brcko District, where 88 % say they are proud of their citizenship; in the FB&H, 82 % do. And 66 % of those living in the Republika Srpska share this view – despite decades of messaging from the Republika Srpska leadership either criticizing the Dayton arrangements or even calling for secession. Individual success stories illustrate society's overall resilience to the destructive ef-

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5   Retrieved from: Hostage state: How to free Bosnia from Dayton's paralysing grip – European Council on Foreign Relations (ecfr.eu) (2021).

fects of opportunistic nationalist politics. Arts, culture, and civil society are particular sources of hope. The Sarajevo Film Festival hosts large numbers of artists and guests from the region each year. Rock bands from Sarajevo can attract up to 12,000 people a time when performing. And the Bosnian football association removed ethno-political quotas. Across the country, there are inspiring stories of how the state could be run differently and not along the Dayton lines of tripartite ethnic representation.[6]

The question to these problems of separation on the basis of nationality is "What about those OTHERS who are not constituent peoples, and are there many of them?" Where do they belong? Which school should they go to? " There are 17 national minorities in B&H and they all belong to the OTHERS, but there are also all those who want their nationality to be Bosnian or Herzegovinian, or the two combined, which is common from the viewpoint of practice in other countries, to have the nationality of the country in which you live in. Everything else is details. The Swiss live in Switzerland, the Belgians in Belgium, and the Germans in Germany. The fact that one of them is Bavarian, Walloon or Flemish, in fact comes in second place. People from OSCE believe that only one case, brought on by only one parent from a segregated school before the Council of Europe's human rights court in Strasbourg, could bring down this incredible system of educational apartheid in B&H, but unfortunately not a single parent stood out for this. Twenty generations have been educated in such a segregated system. Bosnia and Herzegovina has a difficult present, but it is difficult to imagine what is in store for it in the future with the generations being raised in such an educational system. Thanks to such an education system, we are largely educating generations for the future that have nothing in common they are educated in three supposedly different languages within three different education systems, learn different histories of their country and, worst of all, have no contact with each other. What kind of future can these generations create for this country, when one day they will be the helm of this country? Since the key decisions for education are made by the cantonal ministries, it is clear that the only way out of this situation is the existence of a state-wide ministry of education, which the Dayton Constitution does not provide for. Such a ministry would only be possible if the ruling political parties agree. Experience from the post-Dayton (post-war) years, however, shows that national parties cannot agree on this. For them,

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6   Retrieved from: Hostage state: How to free Bosnia from Dayton's paralysing grip – European Council on Foreign Relations (ecfr.eu) (2021).

segregated education is especially important in the process of prolonging their power. Through such education they nurture new generations who will always vote for them in every subsequent election. Such educated generations are the guarantor of their endless stay in power. Therefore, a change in the education sector will happen when the power of national parties changes and when those whose citizens come first come to power, and not the "constituent peoples".

The segregated system affects not only students, but teachers as well, as they continue to be appointed based upon ethnic criteria. For instance, there is an unwritten rule that a Croat teacher cannot teach the subjects Geography or History in Republika Srpska, while a Serb cannot teach those subjects in the Federation. However, they can teach other, more benign subjects, such as Art, Mathematics, foreign languages, or Physics since schools have to fulfil ethnic "quotas". Furthermore, the names of dozens of primary and secondary schools are also contributing to ethnic intolerance. Instead of being named after recognized scientists, writers, or other major contributors to the country's cultural heritage, schools in Bosnia and Herzegovina often carry the names of military commanders or politicians from the recent war, or historical figures linked to a specific ethnic group who have nothing to do with education.[7]

5. Conclusion

Education is a crucial issue for the future of Bosnia and Herzegovina and is a high priority area for the International Community. It is essential for the future of B&H that schools become beacons for a peaceful future marked by tolerance and understanding. They are a long way from that now. Far too often, schools in B&H are still being used to spread ethnic hatred, intolerance and division. The quality of schooling provided in Bosnia and Herzegovina today does not meet commonly accepted European norms and standards. The intellectual reconstruction of the school system is far more challenging than the mere reconstruction of buildings. The International Community cannot do this alone, but it also cannot allow politicians to take the children of this country hostage to a narrow, nationalistic agenda. OHR is working with other International Organizations in particular, the Council of Europe, UNESCO, the European Union, the World Bank and OSCE and the national authorities to coordinate changes that must be achieved

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7   Retrieved from: Bosnia and Herzegovina: Teaching Intolerance - Open Society Foundations (2021).

in the school systems of Bosnia and Herzegovina. The textbook review process has led to the removal of offensive materials from schoolbooks all over B&H. The Ministers of Education of both entities have committed themselves to this process while the International Community has performed spot-checks in schools to verify compliance with the relevant agreements. Textbooks that have Croatia and the Federal Republic of Yugoslavia as their country of reference will no longer be used. Curriculum reform will ensure respect for the identity of all children in Bosnia and Herzegovina: Based on the Swiss model, each constituent people will develop curricular modules with regards to culture, language and literature that will be integrated into the curricula of the other constituent peoples. Both alphabets and the linguistic/literary heritage of the three communities will be taught throughout B&H, in a balanced and meaningful way. Shared core elements will be introduced in all curricula, especially in the field of Human Rights and Civics education making use of existing excellent materials developed by the Council of Europe, UNESCO and Civitas International. Furthermore, freedom of movement in the education system will be ensured: Pupil's school certificates and reports as well as the professional qualifications of teachers and teacher trainers will be mutually recognized throughout B&H. At the same time, teachers from other constituent peoples will be hired in order to teach subjects which will meet the rights and needs of all returnee children in B&H in terms of cultural and linguistic distinctiveness.

Universities and other institutions of higher learning must become more efficient: Management structures have to be created, sector-wide funding, qualification and accreditation requirements have to be adopted. The Council for Higher Education has to be made operational to establish a basis for co-ordination and strategic development of the higher education sector. Discrimination against minority groups, that is Serbs, Croats and Bosniacs in parts of B&H where they are a minority, and national minorities such as the Roma people will not be tolerated in any part of the educational system.

The children of Bosnia and Herzegovina are the future of Bosnia, and they must receive the best possible education. This means education which responds to the requirements of the present, education that will ensure employment, and education which will assist in creating a prosperous future for Bosnia and Herzegovina. Bosnia and Herzegovina needs education that is in accordance with European standards, and which instils in children a cosmopolitan and tolerant spirit and teaches them to think critically.

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WESTERN BALKANS MIGRATION FLOWS, THE POSITION OF MIGRANT WORKERS IN THE EU

MIGRATION ROUTES TO THE EU AND THE POSITION OF WESTERN BALKAN REGIONS

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1. Introduction

Human migration is a phenomenon which has accompanied the whole evolutionary process of human society. However, at the point the migration became widespread, i.e. global phenomenon certain actions and measures had to be taken in specific response to it. Whether or not this was an adequate and long-term applicable response will be considered more fully later in this text. In fact, people decide to leave their ancestral homelands and to settle in another country due to various reasons. Therefore, we can talk about mixed migration flows which involve various categories of migrants, refugees, internally displaced persons and so on. What matters is to make a clear distinction between these terms in order to eventually make possible the understanding of the migration crisis concept in its true sense. The European Union, in fact the Member States but also the countries on the transit routes are facing the situation that necessitates a clear concept which may be converted into an emergency situation response.

2. The character of migrant crisis

Main reasons for population migratory movements are demographic pressure (the growth of world population), the absence of security (wars, natural and environmental disasters) as well as the aspiration for a better life (Avramov, 2017, 221). Recent international migration flows are above all response to extreme global inequality between countries of origin and destination countries (Collier, 2003: Župarić – Iljić, Kuti, etc., 2015, 1). Migration has always been part of human behaviour, people were seeking employment, career advancement, maintenance of family ties and other things like that. Now the question is when exactly and what for did migratory movements as a

social phenomenon start to bear a negative connotation and grow into an issue called migrant crisis? What are the basic features of migrant crisis? In fact, the primary feature of the migrant crisis is its happening on a massive scale. Precisely because of the high number of people mass migration becomes the global problem that requires timely response of the international community. This community is interested in bringing them under the control and to keep them as internally displaced person within the country of origin or at least within the borders of neighbouring countries for as long as possible (Miladinović, 2018, 233). Next migrant crisis characteristic reflects the fact that a lot of people is moving around but for diverse reasons. Diversity of reasons causes the mixed character of migration flows. Therefore it is impossible to talk about just one reason for migration so it indicates that is also impossible to talk about just one category of "people on the move". For this purpose, it is important to make a distinction between following terms: migrant, refugee, internally displaced person, displaced person without citizenship. Despite the diversity of migration flows in which "people on the move" come from war-torn areas marked by political and economic instability, it is more fair and precise to call them refugees than migrants. However, they are above all involuntary and in most cases forced migrants (Collier, 2003: Župarić – Iljić, Kuti, etc., 2015, 1). The major reasons that determined their status were mainly warfare or political instability. In that respect political instability usually comes down to religious intolerance and ethnic hatred and it is often followed by terrorist attacks (Miladinović, 2018, 230). Although the year 2015 has usually been considered the starting point of migrant crisis, that was in fact the period when migration reached its peak, while the increased influx of migrants was detected already in 2011. That was the year holding the power for more decades caused serious South Africa and the Middle East were shaken to its core by the political upheavals of the rulers (Radinović, 2018, 272). The overthrowing of Moammar Gaddafi's government and the Syrian Crisis or so called the Arab spring are mentioned as two crucial moments that influenced further migration progress. The Syrian Crisis was preceded by decades of political instability throughout the Mideast and Central Asia since the beginning of war in Afghanistan in 1973 and the war in Iraq in 2003. Protests against Syrian President Bashar al-Assad and the entire government resulted in civil war between government supporters (regular Syrian Army) and Free Syrian Army. The conflict got even more complicated due to conflict between Kurdish forces in northern Syria and Iraq, all that after protracted, but kept under wraps protests and conflicts of Kurds with government forces which endured

since 2004. The army so-called Islamic State in Iraq and the Levant (ISIL) involved in war during 2014 and very quickly seized great parts of western Iraq, eastern and central Syria, so today some 10 million people live in territory under ISIL control (Erlich, 2014: Župarić – Iljić, Kuti, etc., 2015: 52). Things that all these emigrant countries have in common, and I primarily think of Syria, Afghanistan, Iraq and Iran, are poverty, high unemployment rates, the lack of basic resources for normal and healthy life and particularly noticeable slow rate of economic growth and development.

3. European Union and the migration crisis

The unique feature of the EU is that, although the Member States all remain sovereign and independent states, they have decided to pool some of their 'sovereignty' in areas where it makes sense to work together. In practice, what the „Member States do is to delegate their decision-making powers to the shared institutions on supranational level they have created". The products of that process are democratically made decisions on specific matters of common interest (European Union, 2018, 7).

The EU has developed a common migration and asylum policy to manage the many challenges generated by migration into the Union, including of people seeking international protection. This policy includes the following actions aimed at dealing with the crisis. „The EU has dedicated over €10 billion to dealing with the refugee crisis, financing projects to address the most urgent humanitarian needs of refugees arriving on European shores. The EU also provides humanitarian aid to refugees and migrants in countries outside the EU, and supports work to address the root causes of irregular migration. Based on a European Commission proposal, Member States agreed to relocate asylum seekers from Greece and Italy to other EU countries. The EU also wants to create safe and legal ways for asylum seekers to enter the EU. A voluntary resettlement program agreed by Member States envisages the transfer of 22 500 people from outside the EU to an EU Member State. The EU is working to increase the rate of returns to their home country of irregular migrants with no right to stay in the EU. The EU and Turkey agreed in March 2016 that irregular migrants and asylum seekers arriving on the Greek islands from Turkey may be returned to Turkey (European Union, 2018, 7). Although this Agreement stopped the mass entry of migrants, it opened major concerns such as doubts about the feasibility of agreed cooperation,

which the heads of states and governments of several Union members expressed. The idea was for Turkey to take migrants who illicitly came on Greek islands from Turkey, and in return the European Union agreed to take for every refugee returned from Greece legally one Syrian refugee, who has found shelter in one of the refugee centres in Turkey (Dragović, Hasanović etc., 2018, 254). This has led to a major decrease in irregular arrivals to the islands. The EU has made available €3 billion to address the needs of refugees hosted in Turkey. The basic principle will remain the same: people should apply for asylum in the first EU Member State they enter unless they have family elsewhere, but whenever a Member State is overwhelmed, there must be solidarity and a fair sharing of responsibility within the EU (European Union, 2018, 12). Part of the unique European asylum system makes the Dublin system. The Dublin System that determines which Member State bears responsibility for examining each individual asylum application (international protection) is also part of The Common European Asylum System. The Dublin Regulation aims at preventing more than one Member States deciding on asylum application when an asylum seeker transfers from one European Union Member State to another. The Dublin regime was originally established by the Dublin Convention but in 2003 it was replaced by the Dublin Regulation. There was a regulation established for the effective application of the Dublin Convention and it is called EURODAC regulation. According to it, fingerprints are taken from all asylum seekers and irregular migrants who irregularly cross the border without being returned to third country. This Regulation was also replaced by the new one which now allows national police forces and Europol to compare fingerprints linked to terrorist and serious crimes investigations with those contained in EURODAC (Mikac, Dragović, 2018, 145).

In the light of diversity of Member States, not only regarding the extent of their exposure to migratory pressures but also their own financial capability for ensuring the appropriate reception and integration of a migrant, the humanitarian crisis has posed a significant challenge to EU, particularly when it comes to unity and solidarity of all Member States aiming at solving the migrants crisis in the spirit of avowed values, mutual trust and application of refugee law and international humanitarian law. When it comes to migrations nowadays and political processes linked to it, it seems that one of the priorities of the Migration Policy is to achieve coherence between various political levels within the European System. Achieving the abovementioned

is as equally significant as achieving the coherence between European organs dealing with the migration crisis (Đečević, 2011, 21).

Frequently bringing up resolving the refugee crisis in the countries of origin, in major refugee-hosting countries (Turkey) or in transit countries that serve for the largest number of refugees to enter Europe (Greece) suggests that EU has not approached to solving refugee crisis systematically and effectively yet. It is particularly evident in Turkey due to creating a buffer zone for refugee detention in camps, where they are being held while their displacement and limited prospects are prolonged. The current refugee crisis is extremely complex so that any EU attempt to implement ad hoc solutions and individual measures adopted by the Member States are inadequate and doomed from the very start. Due to its prevalence, intensity and consequences to which it leads, the migrant crisis requires a systemic approach with clearly defined course of action with narrowed improvisatory possibilities and coordinated action of every Member State.

4. A European Agenda on Migration

In May 2015, the European Migration Program was adopted. It is a strategic document of the European Union which refers to the area of migration and asylum. It combines short-term and long-term measures concerning the management of irregular and asylum migration in the European Union. Furthermore, it is stated that it has shown a comprehensive European policy on this issue, which requires urgent action indicates the existence of serious doubts in migration policy at the time of crisis, the need to integrate migrants to European economic demands given the demographic decline (Mikac, Dragovic, 2018: 144-145).

This program brings a number of measures and activities that need to be taken urgently: saving lives at sea, combating smuggling networks, responding to the large number of arrivals within the EU, relocation and a common approach to providing protection to displaced persons in need of protection, partnership cooperation with third countries to address migratory inflows and the use of EU instruments to help the most vulnerable Member States. "This program is aimed at finding solutions that will enable progress in the short and medium term, and four pillars of better migration management have been identified:

- Reducing the incentives for irregular migration;
- Border management – saving lives and securing external borders;
- Europe's duty to protect: a strong common asylum policy;
- A new policy on legal migration" (European Commission, 2015).

5. The Balkan Route and the position of the Western Balkan countries

To clarify, one of the key reasons is geopolitical position of the Balkan Peninsula since this part of Europe is a bridge or corridor between East and West. Furthermore, in comparison to the ''deadly'' Central Mediterranean route migration through the Balkans has been assessed being a safer, more cost-efficient but also considerably shorter since the majority of refugees originates from the Middle East. In 2014 Greece built a fence along its land border with Turkey and in 2014 Bulgaria did the same. It caused redirecting migratory flows across the Aegean Sea to Greece, and then through Macedonia to the north towards EU. The last reason is the existence of visa-free regime between the EU and Balkans countries. This leads to reduced border controls (EPRS, 2016).

It follows from the foregoing that in 2015 migratory flows shifted towards the east and that the Balkans countries became the main entry points to Europe, that is to say that these are the transit countries on the way to Germany, Sweden, Austria and other Western European countries. The countries within the Balkans Route (Turkey, Greece, Macedonia, Serbia, Croatia, Slovenia) have responded to this challenge in different ways (regarding letting migrants pass through toward the Western Europe), whether they are EU Member State or candidate for EU membership. They had to act in this way in the absence of relevant guidance and clearly identified policies at the EU level (Bobić, Šantić, 230).

The Hungarian border closure and redirecting migration flows towards the Western Europe (heading for Croatian territory) triggered the major change among the Balkan Route. It continued in November the same year when the migrants' profiling started and new restrictions were implemented allowing only Syrians, Afghanis and Iraqis to cross the Greek-Macedonian border, since they were considered refugees. The other migrants were recognized as economic migrants and they were stopped at this border with the aim of bringing them back to their home countries. At the end of 2015 and in

early 2016 a series of regional conferences and meetings at the highest international levels has been organized to reduce irregular migration in certain EU Member States, such as Austria and Slovenia, which found themselves under the major pressure caused by the migration crisis. This triggered domino effect along the Balkan Route because the countries within it introduced restrictive measures for the reception of migrants. Surely, the biggest change took place in March 2016 when the EU signed an agreement with Turkey aimed at official closure of this route (Šantić, et al. 2017, KIRS, 2016). The official closure of the Balkan route in 2016 resulted in significantly reduced number of migrant crossings but migration flows have not been completely stopped.

The vast majority of migrants to Europe have come directly from home in countries affected by crisis, primarily Syria, Afghanistan and Iraq. The majority have been young, with 68% aged under 25, while males (69%) outnumber females (31%) (UNHCR, 2016, 10). "Most travelled with immediate family members from their area of origin, with an increase in the proportion of families observed in Syrian, Iraqi and Afghan groups over the past six months."(REACH, 2016, 10). Many migrants are educated, with experience of stable, skilled employment, although large proportions took on debt and/or sold property and assets to finance their journey. Despite these general trends, people migrating to Europe should not be considered as a single, homogenous group (REACH, 2016, 10).

Syrians have consistently made up the largest proportion of assessed migrants in Europe via the Western Balkans, followed by Afghans and Iraqis, a finding in line with the broader migration trends to Europe. According to overall arrivals data from UN-HCR, other countries of origin are represented by much smaller numbers of migrants and include Pakistan, Eritrea, and Nigeria (each accounting for 3% of arrivals by sea in 2016), and Iran and Gambia (each 2%) (UNHCR, 2016, 11). These top countries of origin have been all been affected by ongoing or recent conflict and insecurity, while Syria, Afghanistan, Iraq and Eritrea also count among the top ten refugee-producing countries worldwide. The majority of assessed groups (82%) lived in owned or rented accommodation prior to leaving their area of origin. 17% reported more vulnerable shelter types such as tents (6%), unfinished buildings (5%), hosted accommodation (4%), public buildings (1%) or no shelter at all (1%). Groups travelling from other locations than their home were much more likely to report living in vulnerable shelter types prior to departure. Of these, the largest proportion of (42%) lived in rented

accommodation, while around a third of groups lived in tented accommodation or camps (30%). Smaller proportions lived in unfinished buildings (10%) or reported no shelter at all (7%). Large proportions of adult migrants had completed formal education, while significant proportions had experience of higher education as well. Over half of interviewed groups (55%) contained adults that had completed at least primary or secondary education. One in five groups (20%) were reported to contain individuals that had completed university, while 17% contained individuals that had started, but not completed university (REACH, 2016: 14). Overall, the primary reported push factors among interviewed groups were active conflict (35%) or generalized violence and insecurity (24%). Other commonly reported push factors include a lack of income to pay for living costs (20%) and lack of access to basic services (9%) – all factors linked to or exacerbated by years of protracted conflict and instability. When examined by nationality, Syrians were the most likely to report the presence of active armed conflict as their reason for leaving (64%), followed by Iraqis (43%), and Afghans (30%). In contrast, people of "other" nationalities were much less likely to report conflict, violence or insecurity, and instead reported a lack of income (64%) of a lack of access to basic services (11%) (REACH, 2016, 16).

Overall, reported pull factors—the reasons for travelling to Europe—mirrored the push factors provided by each nationality. The presence of safety and security was the primary reported reason for wishing to travel to Europe for 29% of Syrians, 32% of Iraqis and 30% of Afghans, while "other" nationalities were more likely to report access to job opportunities (32%) as the primary pull factor. Access to services and state support was also a commonly reported pull factor, reported by 23% of Afghans, 17% of Syrians and 15% of Iraqis, closely followed by access to job opportunities (REACH, 2016, 17).

6. Conclusion

Countries in the Western Balkans are at different stages of developing their asylum and migration systems and often face country-specific concerns. However, the cross-border nature and complexity of mixed movements raise a number of challenges that are common to all. Regional exchange of experiences and good practices will provide the opportunities for cross – border cooperation on this complex issue. On the top of

the priorities is the need for coherent policies in the field of migration and asylum. A harmonized regional may lead to that aim. Common regional answer on this issue is important also in the light of the joint aspirations for EU accession.

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HUMANITARIAN CRISIS IN BOSNIA AND HERZEGOVINA AND THE ROLE OF EUROPEAN UNION

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1. Introduction

This essay deals with the currently ongoing migrant and refugee crisis on the territory of Bosnia and Herzegovina, which started in 2017 when the first wave of migrants and refugees arrived through Greece mostly from Pakistan, Afghanistan, Iraq, Iran and Syria. More precisely, this essay examines the responsibilities and possible solutions that could be offered by the European Union, in which the large number of incoming people are not welcome. The fact that more and more third-country nationals, have been arriving to the European Union in search for better life or fleeing from conflicts in their home countries during the past decade or so, received much attention from the EU decision-makers. Thus, the EU started the formation of the Common European Asylum System (CEAS) to regulate the issue of migrations, when the huge migrant influx became a challenging matter for the Member States, especially those on the Union's external borders.

The tenacious work of EU institutions, during the period of asylum policy and CEAS reforms, has shifted competencies on a supranational level for the purposes of achieving a common and functioning system of dealing with the great influx of migrants into the Union so that it can maintain the security within its borders. Now, after the mistake that the EU, or rather Germany and Angela Merkel herself, has made in the late 2015, when she accepted around 1 million Middle Eastern and Asian refugees, the EU is struggling to keep its borders closed for the new people that are arriving. According to International Organization for Migration (IOM), the vast majority of people that are crossing BiH in order to reach EU, are moving from their countries of origin in search for safety and better life are single men, they also comprise families

with children, unaccompanied and separated migrant children, and other vulnerable individuals (IOM 2020).

From the report published in January 2021, number of migrants, refugees and asylums seekers from the beginning of the crisis till the day of publishment of the report is 59,139 (IOM 2021) and between 7,000 and 8,000 migrants are constantly present in Bosnia. From the very beginning, this migrant and refugee crisis has been threating to become a humanitarian crisis since there is no permanent reception center and these people are being resettled from one camp to another in which conditions are often described as inhuman, or they are simply left alone in and unmonitored in the street woods, etc. Since it is, unfortunately, not uncommon for these camps to be overcrowded, migrants and refugees are forced to sleep outside on the extremely low temperatures during winter season, with very poor or even without hygiene means, poorly dressed and with little to no food at all. However, ambiguities related to whether it is right to refer to this issue as 'humanitarian crisis' or not is a complex problem that has been receiving much attention for the past four years, when it became obvious that the situation is getting out of control of local government as well as European Union and international organizations that are actively engaged in helping the people and keeping the issue from escalating before the solution can be found.

However, one might argue that the situation has escalated a long time ago. The question of whether the situation has turned into 'humanitarian crisis' or not and what would it take to become one has been only superficially discussed, mostly among politicians from Bosnia and Herzegovina and European Union, as well as in media, but it hasn't been dealt with it in depth. This essay examines European Union's possibilities and responsibilities in the context of the migrant and refugee crisis and the responsibilities of the Union in order to prevent the crisis of taking on the characteristics of a 'humanitarian crisis'.

The paper is organized as follows. First section deals with the origin of the migrants and refugees that are a part of this transnational migration process and their goals for future. Section after outlines some of the difficulties they experience when they go into the so-called ''Game''. Third section analyses how do the failure of institutions of Bosnia and Herzegovina to solve this problem reflects on the development of the crisis and the previous work done by the European Union's institutions in order to

reduce the pressure on its external borders and hopefully find a solution that will satisfy both its Member States and problems of the people that are fleeing their states of origin because of war or bad economical and societal situation.

2. Who are migrants that are coming to Bosnia and Herzegovina and why are they are coming?

One of the surveys on the origin of migrants and refugees coming to the territory of Bosnia and Herzegovina has been conducted for the purposes of the book called ''Migranti i Mi'' (*''Migrants and Us''*). For this study, the authors have surveyed three focus groups of 31 migrants in total located in migrant camps 'Borići' and 'Sedra' about their lives, their goals, physical and mental health, their relationship with and perspective on domestic population, etc. Groups consisted of 10 women, 11 men and 10 mixed participants (7 men and 3 women). Given that these findings are based on a small number of migrants and refugees when compared to the total number of them in Bosnia, the results from such analyses should be considered only as a good insight into their experience, hard situation that they are facing on a daily basis and their thoughts about future.

Results show that majority of migrant respondents originate from Iran (22,1%), Syria (19,3%), Iraq (16,4%), but also from Afghanistan, Pakistan, Algeria, Tunisia, Yemen, Somalia, Morocco, Libya, Kurdistan, etc. (Dušanić *et al*. 2019, 59). However, it should be taken into consideration that the number of migrants fluctuates from month to month and so does the information on origin of migrants. Also, it has been reported numerous times, by the Bosnian and Herzegovinian and Croatian border police officers, that origin of majority of migrants and refugees that are entering the state or trying to cross the Croatian border is determined solely based on their statements since most of them don't have their identification documents. Therefore, these figures have got to be taken with caution as they might not be completely accurate. Moreover, data on this matter should be re-examined or updated, especially due to fact that this is an ongoing crisis and it should be checked whether the data is changing.

Regarding the motives for migration, more than a half of surveyed migrants answered that they left their countries of origin because of ongoing conflicts, while some of them were motivated by bad economic conditions in their homeland. These motives

stayed the same throughout the whole crisis and they are useful in making a clear distinction between referring to those people as migrants or refugees. Following the definition from The UN Refugee Agency (UNHCR 2016) migrants are moving in search for work, family reunion or even education, while refugees are fleeing armed conflict or persecution. It is important to make a clear distinction of these two groups of people, especially in legal but also in political terms, since they are not protected by the same laws and different protocols must be applied to them. However, making such a distinction is in practice harder than one would have thought.

Not only conflict and bad economic conditions in origin states made these people expatriates, but respondents also stated that they were motivated for migration because of political problems, fear for their life, lack of freedom, conflicts between ethnicities, etc. (Dušanić *et al.* 2019, 60). It is worth noting that many of those who are coming to Bosnia and Herzegovina, don't intend to settle in it, but rather perceive BiH as a transit route for their final destination – EU member states such as Germany, France, Italy, Netherlands, Spain, Sweden, etc. Only around 8% of them, according to the survey noted above, want to spend some time in Europe, probably make money, and then go back to their country of origin. To repeat, BiH is only a temporary place of stay but since its border with Croatia is closed, those migrants are stuck in the Unsko-Sanski Canton that is the closest to the border. Hence, it is clear that responsibilities for taking care of this issue and ensuring security and a decent life of the incoming migrants exceeds the competencies of local institutions of BiH and requires more intensified engagement of EU institutions.

3. Everyday struggles

It is not uncommon that migrants and refugees who have that luck to be in a reception center, often live in, as it is described, non-human conditions, with only one meal per day from the Red Cross or other humanitarian organizations that are operating on the field. They are being constantly moved from one camp to another because of the lack of coordination between governing bodies of the entity of Federation of Bosnia and Herzegovina (Federal Ministries), local representatives and IOM. According to the MIRA report from 2018 by UNCT, many of the refugees and migrants cross the border in an irregular manner, namely via non-official border crossing points and the

majority arrives from Montenegro and Serbia. There is an ongoing accumulation of refugees and migrants at variety of potential exit points along the border with Croatia particularly visible in Velika Kladuša and Bihać, but also short-stay accumulations at entrance points in Trebinje and Goražde (UNCT 2018).

Migrants refer to crossing the border from Bosnia and Herzegovina to Croatia as "the Game" – as it is often repeated due to the amount of adversity faced. Term 'the Game' is a slang used for border crossing in order to make progress on their way towards, what they believe will be a more promising future in countries of the European Union. One of the ways for getting to their final destination is by paying the local smugglers for the transportation over the border and in the interview conducted by UNHCR many migrants spoke about being robbed or extorted, many women but also men of all age have been victims of sexual assault (Dušanić *et al.* 2019, 40). Police brutality, unfortunately, is something that happens very frequently for the people who engage in "the Game''. Many of these cases have been covered by the media and by various NGOs and international organizations worldwide with the headlines such as ''Is the EU an accomplice to Croatian police brutality?'' (DW 2020), '' Witness: ''If You Scream, They Will Beat You More'' '' (HRW 2021), and this issue is thus receiving a lot of public attention. One of the integral parts of Danish Refugee Council (DRC) called Border Protection Monitoring (BPM) publishes ''unfortunate and striking records related to pushbacks to Bosnia and Herzegovina'' (DRC 2020) on a monthly basis. These pushbacks are defined by the European Center for Constitutional and Human Rights (2021) as a set of state measures by which refugees and migrants are forced back over a border – generally immediately after they crossed it – without consideration of their individual circumstances and without any possibility to apply for asylum or to put forward arguments against the measures taken.

The pushbacks, as such, are extremely problematic as they ''violate – among other laws – the prohibition of collective expulsions stipulated in the European Convention on Human Rights'' (ECCHR 2021). In the last Danish Refugee Council (2021) border monitoring snapshot from January and February 2021, BPM teams registered 547 cases of pushbacks from Croatia, from which 45 of them are chain pushbacks from Slovenia, through Croatia and then back to the territory of Bosnia and Herzegovina. What is shocking from the reports published by DRC are the large numbers of migrants and refugees who revealed that they have experienced physical abuse, most of it de-

scribed as beatings with batons, wooden sticks or tree branches, punches and kicks. Moreover, some of the migrants have experienced sexual abuse, and being humiliated in numerous ways, like being forced to strip naked. For the purpose of a clearer picture of a brutal violence and humiliation, I will single out the testimony, of a disturbing content, from DRC October snapshot (2020, 7) of a migrant originally from Pakistan:

[…] They forced us to strip naked and then they made a circle out of us, we were curled up like a fetus and one of us was inside the circle. We looked like a soccer ball and they beat us with their feet and batons. We only guarded our heads with our hands. We heard only how we moan. They changed our positions after a few minutes, and chose who would be inside the circle. Then they brought other people and beat them in the same way. We were naked the whole time they beat us; when our clothes were returned, only our pants and T-shirts were returned, without underwear and jackets.

Migrants are also experiencing negative and unfriendly attitude of local people towards them. At first, when the first wave of migrants and refugees arrived in Bosnia and Herzegovina, locals were supportive and ready to help them and they justified their intentions of searching for better life in EU by saying ''Well, we were also refugees once'' remembering the time when a large number of Bosnians fled the war. However, public opinion has changed mostly because of the criminal activities of migrants and refugees and because people are becoming already fed up with this, what seems to be a never-ending crisis. It occurs very frequently that media publishes a story of migrants' criminal activities, even if one journalist that deals with this topic a lot in her work argues that statistics show that it is a low percentage of those people that participate in criminal activities and even if they do it is usually acts of robbery, which include entering abandoned buildings, stealing food and the like (Ahmetašević, 2021). Nonetheless, the picture of them presented in the media has a major impact on public opinion and locals seem to be more and more impatient while waiting for the crisis to end. This just adds on to the already difficult situation of migrants and refugees in Bosnia and Herzegovina and hinders their chances of entering the EU territory and getting to the desired countries. The bad image of these people that media launches into the public, can especially make Member States more determined to refuse to accept them.

4. Problem of Bosnia and Herzegovina or European Union: legal difficulties and distribution of competences on the state level and responsibilities of European Union

Bosnia and Herzegovina struggles to exercise control over the crisis, because of non-existent strategy in that aspect and absence of mutual coordination between state's institutions and different levels of government (entity, cantonal). For this reason, international institutions that are dealing with the migrant crisis had to step into the crisis through their agencies and via similar channels and not through state institutions. European Union has an important role in helping through a significant financial support. To illustrate, the EU has contributed around €89 million to Bosnia and Herzegovina directly and through IOM and other implementing partners since early 2018 as a part of humanitarian assistance for the migrant and refugee crisis in Bosnia and Herzegovina (European Commission 2021). Among all the other activities that EU Delegation does in Bosnia and Herzegovina concerning this issue, it is also dealing with disputed reception centres. However, this sphere of its engagement has received a lot of negative opinions and bad ratings from local public.

One of the still unclear decisions made by EU, is the Union's refusal to finance accommodation of migrants in 'Agrokomerc' premises, explaining that they are not suitable for migrants and refugees because they are too close to the Croatian border but shortly after that financed camp 'Miral', a private property nearby already mentioned 'Agrokomerc' building. The public stood in opposition to such a decision and the EU has received many accusations of corruptive, and similar, activities. However, government of Bosnia and Herzegovina hasn't been ignorant to the issue of finding a reception center for accommodating migrants and it has even at one point decided to include state Armed Forces, that have been entitled for setting up a temporary accommodation in camp 'Lipa' for the winter. Finding the right location for the camps is even harder with only half of the country being at IOM's disposal since the government of entity Republika Srpska is sticking to its decision of not accepting these people on this entity's territory. During the whole dispute on the locations of reception centres, EU officials, such as most recently Josep Borrell, have been urging Bosnian politicians from this entity to accept migrants on their territory so that the responsibilities are fairly shared and distributed across the whole country. Such actions weren't successful

as the EU might have expected them to be, since the officials from Republika Srpska are strongly holding to their stances on this question.

Generally speaking, official visits of the Ambassadors from the EU, heads of IOM and national level governmental representatives, that happen very often, are pressuring the authorities of Bosnia and Herzegovina, but ''remain stop-gap solutions to broader migration management issues beyond Bosnia and Herzegovina's control" (Karabegović 2021). On the other hand, authorities in Bosnia and Herzegovina seem to be furious when it comes to the ways financial resources are being distributed. Accusations of non-transparent inflow and money expenditure come from many state institutions. For instance, officials of CPI Foundation[1] stated their opinions on the grants that Bosnia and Herzegovina is receiving from EU, saying that the biggest portion of the whole amount is spent on financing employees, offices and per diems of the EU organizations, rather than on their main goals, which is solving the crisis and helping migrants and refugees. Even if the European Union has been blamed by citizens and state leaders for not handling this migrant/refugee crisis well, the truth is that this issue is in jurisdiction of Bosnia and Herzegovina, since those migrants and refugees are on its territory, and not on the territory of any EU Member state.

European Union should, however, expect the rise of the number of migrants and refugees that are entering its territory via illegal and unmonitored border crossings, which could possibly be an even bigger problem for the EU's Member States than it would be if it would accept these people like it once did not so long ago. On the other hand, if EU decides to maintain its position that is not a very welcoming one for the migrants and refugees, it should then expand and strengthen its policies to the border of Bosnia and Herzegovina with Croatia and put the work of its institutions, such as IOM, in order. This crisis can't continue like this, as it violates human rights and people are already becoming desperate and tired of going to 'the Game' and it is becoming more and more obvious that the local government has no means of dealing with the issue in the right way. It is urgent for Member States of the EU to reach an agreement on the universal solution that satisfies all of their wishes, as the situation now shows that border states have to carry the heavy burden of the migrant/refugee

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1   Center for Advocacy for Civic Interests - CPI Foundation is a non-governmental, non-profit organization that actively supports civil society building by collecting, analysing and publishing data of interest to citizens and promoting them. More information available at: https://www.devex.com/organizations/cpi-foundation-fondacija-cpi-135636, accessed on 10.06.2021.

inflow, some states such as Hungary don't want to take in any asylum-seekers and EU's great states such as Germany are complaining that migrants in the end either way end up moving within their borders. All of them are postponing the discussion and are behaving ignorant to the problem, but the solution is not going to come by itself. Yet, the situation is getting worse with every month and is negatively affecting the image of Bosnia and Herzegovina on an international stage, thus hindering its path to become the Member State of the European Union itself.

5. Humanitarian crisis?

As mentioned in the section above, internal divisions and problems of Bosnia and Herzegovina are reflecting on migrant and refugee crisis. Besides nongovernmental organizations and international organizations that are engaged in this issue, European Union has been the loudest in criticizing the way in which the government of Bosnia and Herzegovina treats this problem, believing that the decentralization of the state will lead to a humanitarian crisis but now it seems like this difficult situation has reached that point. Out of more than 8,000 migrants in Bosnia, at least 2,000 of them are sleeping outdoors, in forests and open fields, because migrant camps are full capacity.

Thus, Dunja Mijatović, the current Council of Europe Commissioner for Human Rights, and High Representative of the European Union Josep Borell both stated that the migrant and refugee crisis has become just as what it was expected to become- a humanitarian crisis. In accordance, Peter Van der Auweraert, the Western Balkans co-ordinator and former representative of IOM in BiH, also clearly stated that the situation in Bosnia is in fact a humanitarian crisis. He also expressed his concerns regarding the bad conditions that migrants live in, but also that there is a certain possibility of emerging death cases caused by freezing, when they are forced to spend the winter on the streets or improvised shelters that they make for themselves. For this reason, IOM and its partner organizations, European Union and Council of Europe are, as already mentioned above, calling out on the Bosnian government to approach this issue the right way with the consensus at the state level. Although there is no univer-sally accepted definition of the term 'humanitarian crisis', United Nations adopted a definition that ''a humanitarian crisis is an event or series of events that represents

a critical threat to the health, safety, security or well-being of a community or other large group of people, usually over a wide area'' (''Humanitarian Crisis'', p. 24) .

Taken into account the presented situation, it is now possible to conclude that the migrant and refugee crisis satisfies all the conditions for being a humanitarian crisis: migrants and refugees are exposed to a threat to their health especially during this challenging time of COVID-19, since they lack adequate protection measures from the virus, medical care and appropriate hygiene, while thousands of them remain at risk of even freezing to death during winter as they are abandoned and without a proper shelter. Local people in the Unsko-Sanski Canton, Sarajevo and other places that host the largest number of migrants and refugees, don't have a sense of security and safeness because of increased criminal activities of migrants. However, migrants and refugees among themselves also represent a threat in some sort of way. Given the differences among them based on their origin or religion and because all of them are individually fighting for their survival on their way to desired countries in the European Union, there have been cases of internal conflicts and even fatal accidents reported by the press.

6. Conclusion

The wave of migrant and refugees that are currently stuck mostly on the north-west part of Bosnia and Herzegovina is also affecting the European Union itself and its Member States, but also the whole region of Western Balkans because of all the paths these people are crossing in order to enter the territory of the EU. The Union has been doing everything in its power, by providing huge financial help packages and through the work of its institutions and organizations on the field, all in order to stop these people from coming to their desired countries such as Germany, Sweden, Spain, etc. However, such actions have terrible consequences for those people that left their countries of origin, as they are stranded in the state with no clear strategy or agreement between its institutions on how to deal with the situation. The reforms of the CEAS and asylum policies that the EU has introduced in the first huge wave of migrants in 2015 have shown to be efficient, but now EU is failing to deal with the ongoing crisis in Bosnia and Herzegovina. Of course, the EU has financially supported local government, NGOs and international organizations, but it didn't provide any

clear solution of the crisis except from the constant refusals of taking in the people. The task of the EU is not easy at all, and one should keep in mind that the problem is legally in jurisdiction of Bosnia and Herzegovina, as the people are located within its borders. EU should, in any case, demonstrate more intensified engagement in solving the issue because migrant and refugee population who aspire to cross borders and migrate to the EU are only circumstantially forced to be in Bosnia, being stranded there. All in all, the solution is nowhere to be seen and it seems like this situation, or rather this humanitarian crisis, is not going to change soon.

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MIGRANT FLOWS MANAGEMENT ON THE "BALKAN ROUTE" IN SERBIA

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1. Introduction

¨A refugee is the sin of God and human shame - it is difficult to understand refugee, and easy to sin against him/her.˝ (Unknown author)

Armed conflicts in the Middle East have had devastating consequences for the lives of people in this territory. The inhabitants lost their civic status en masse - and set off, now as refugees or migrants, on a distant quest, saving their lives and the lives of their loved ones. The road most often led through Turkey, Greece, North Macedonia, Serbia, Bosnia and Herzegovina and further on to Western Europe in several directions. This route was soon dubbed as the "Balkan Route". The competent institutions responsible for managing the migration process in the Republic of Serbia have rapidly implemented or adjusted procedures for an urgent response to the emerging migration crisis. In order to provide migrants with protection from social endangerment, discrimination and marginalization, but also to ensure the safety of the indigenous population, the legislation had to be harmonized with the new circumstances.

For the purposes of this essay, several key hypotheses will be discussed that should demonstrate the complexity of the whole situation in which Serbia was found as a state within the "Balkan Route", as well as the success of the Serbian authorities' response in the process. The hypotheses to be considered are as follows:

- For the purposes of an urgent response to the emerging migrant crisis, it was necessary to understand both the legal and institutional framework for managing migrant flows in Serbia;
- Continuously there have been new crucial challenges of the migrant issue in Serbia, and constructive modalities have been found for their successful resolution;

- Successful management and resolution of problems caused by the migrant crisis required coordination and assistance from the most relevant international organisations;
- The home population's attitude towards migrants in the migrant crisis process has changed, but humanitarian approach has prevailed.

2. Harmonization and changes of the institutional and legal framework for managing migrant flows in Serbia

The first migrant wave via the "Balkan route" was launched in 2015, and it has already become transparent in the first phase that the Republic of Serbia for migrants is a transit country - where they have not lingered for long. This whole period has been quite dynamic and it is not quite possible to determine the exact number of migrants who have in some way been in contact with the territory of Republic of Serbia. According to the UNHCR data, more than a million refugees and migrants came to the European Union (EU) in 2015, and more than 80 percent of them first came by the sea and then continued their travel by land, in various directions, including Serbia (Dragović, Hasanović, Mikac, Mamić 2018, 247-268). In the spring of 2016, the borders of the surrounding countries were closed, and entry into Serbia as well as exit was on a declining trend. The registered figures for the number of migrants from that year are not very different from those recorded in the following years, so the situation has stabilized and the number of migrants on the territory of the Republic of Serbia is assessed at around 6,000 people.

If all of the above-mentioned migrants were subjected to the procedure of determining refugee status in a credible and systematic manner, we would perceive a high need to grant refugee status to many of them. So, the character of this migration flow could be defined as a "mixed migration flow" with a high percentage of refugees (IOM 2019: 141). It should be noted that Serbia has extensive experience and examples of good practice in integrating refugees from the former Yugoslavia. Many of these experiences have been extremely useful and could be applied in this situation, noting that previous experiences and applications of aid were mainly related to members of the same people and religion, but were certainly valuable for adjusting new aid measures for newly arrived migrants. The Republic of Serbia is a signatory to the 1951 UN Convention on

the Status of Refugees[1] and is the fundamental basis for the protection of refugees in Serbia. Although all migrants, regardless of status, are holders of refugee rights, due to changes in the last few years in this area, it is increasingly difficult for states, including Serbia, to provide an adequate answer to the issue of mass population migration.

Managing the mass migration process required the establishment of a complex, well coordinated, flexible and comprehensive institutional framework for managing migration flows on the territory of the Republic of Serbia. The first phase included institutions that were intended for the response and management of migrant flows, in a direct or indirect way in Serbia: Law on migration management in 2012 designated at the first place the Commissioner for Refugees and Migrations as a body that analyses migration movements, coordinates and monitors the overall implementation of migration policies. In addition, the Ministry of Interior, the Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Health and the Ministry of Defense were involved in this process from the first moment. Cooperation with the Office of the UN High Commissioner for Refugees (UNHCR) in Belgrade has also been established from the first moment. In the next phase, the Working Group of the Government of the Republic of Serbia was formed,[2] a body that brings together representatives of all relevant participants in the process and is tasked with coordinating cooperation between the governmental and non-governmental sectors, of which the Citizens` Protector (Ombudsman) was most engaged, as well as domestic and international non-governmental organizations such as: Doctors Without Borders, Save the Children, Danish Refugee Council, Centre for Protection and Assistance to Asylum Seekers, UN Women, Jesuit Refugee Council, Belgrade Centre for Human Rights and Red Cross Serbia.

Independent bodies were also involved in the process of adapting the legislative framework to the needs of crisis management – the Ombudsman made a major contribution in proposals aimed at the humanitarian aspect of managing this crisis. In addition to the involvement of the Ministry of Interior and the Commissioner for Refugees, coordination and cooperation with international organisations has been established, especially with the UNHCR from which significant professional and

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1   The 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol: http://www.unhcr.org/4ec262df9.html (06.05.2021).

2   Odluka o obrazovanju Radne grupe za rešavanje problema mešovitih migracionih tokova, Službeni glasnik RS, br. 54/2015, 60/2015 i 72/2015) http://demo.paragraf.rs/demo/combined/Old/t/t2015_08/t08_0200.htm (01.05.2021).

logistical assistance has been received. An act has been drafted and forwarded to the competent authorities with 30 recommendations for improving the treatment of foreigners, migrants and refugees. The essence of the recommendations is the establishment of full control of competent institutions over all forms of the migration process as well as on improving asylum protection in Serbia. Migrations by its very nature cannot be just a national problem. They require cross-border and international cooperation. To that end, the Republic of Serbia has accepted suggestions from the UNHCR, which stressed that it is very important to limit the two categories of migrants, those seeking international protection and economic migrants.

The UNHCR also pointed out that the future Asylum Law should allow all persons in need of international protection to enter into adequate legal procedures as soon as possible – so that they can start the asylum application process. Registration and clear definition of the legal status of all refugees, migrants and asylum seekers who are in Serbia is crucial to effective law enforcement in the area of asylum and the rights of foreigners. This also ensures the safety of local citizens, which is one of the priorities of the state. Another advantage of registration is that it provides insight into whether someone is a person with specific needs or belongs to a vulnerable group. In order for a person to be eligible for asylum or refuge, or he/she need international protection, it must have real access to relevant information about asylum procedures.

Serbia has shown, by accepting these recommendations, that it is ready for coopera-tion in this area, if these recommendations could be effectively implemented by the constitutionally guaranteed law, which will enable sanctuary or asylum to those in an urgent need. First-hand experience with migrants/refugees very soon indicated the need for blueprinting of a new migration management law, as the previous one was passed in November 2012 and was done according to the estimates and needs of a much smaller number of migrants.[3] The emerging migrant crisis highlighted the urgent need to develop an effective asylum and migration management system in Serbia. Since the beginning of the crisis, the government has had a proactive approach to the crisis and has treated migrants humanely and effectively. But, the current law on asylum was adopted in 2008, and according to the new situation it was concluded

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3   Migration Management Act, Official Gazette of the Republic of Serbia. No. 107/2012.

that a new one needed to be drafted, which, based on newly founded experiences, was finally adopted in 2018 and is in compliance with EU directives.[4]

The new asylum law details the status issues, rights and obligations of asylum seekers and persons who have been granted with protection. All of this increases the efficiency of the asylum system and reduces the possibility of abuse of asylum rights. In the process of drafting this law, there were public discussions, international organisations have been consulted, and the draft law was then delivered to the European Commission, which came out positively and accepted the draft. The process of drafting the law underscores the need to strengthen the capacity of the Asylum Office, as the main enforcer of the new law in practice. In addition to the law, a decree on tolerated residency has been prepared, which will regulate the position of migrants who do not want asylum, but are forced to be on Serbian territory for a period of time. Instead of one more comprehensive asylum procedure, it was proposed the introduction of a special procedural guarantee, which refers to special accelerated border procedures, such as on the territory of the airport, which did not exist under the old law.

One of the important changes in the new law is the introduction of the Administrative Court, as a second-instance body in the process of deciding on the right to asylum, rather than the asylum commission that was previously in charge. The UNHCR said that transferring this authority to the Administrative Court would certainly increase the efficiency and quality of asylum decisions made. The process of drafting this law is appreciated by the fact that the migration phenomenon is multi-sectoral, and that it is necessary for this topic to be contained, for example, in local development strategies and in national strategies in the field of education and employment.

Legislative body – The Serbian Parliament was also involved in the process of supervision of the migration management process on the territory of the Republic of Serbia. Since 2015, the monthly monitoring of housing and social care of refugees and migrants has been conducted, and the competent authorities are subject to make reports to the parliamentary Committee on Labour, Social Affairs, Social Inclusion and Poverty Reduction. The summary of these oversight meetings was that Serbia has made a major contribution in the care of refugees, which has been confirmed and praised by the EU. One of the EU's main notes was that in addition to funds that were mostly

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4   Asylum and Temporary Protection Act, Official Gazette of the Republic of Serbia. No. 24/2018.

from donations, funds should be provided directly from the Serbian budget, and with the help of an EU fund set up for the needs of the migrant crisis.

Discussions conducted in plenary sessions and on committees in the Serbian Parliament, as well as controversial writings in the media, which contained both negative stereotypes and prejudices about migrants, i.e. refugees, indicated need for additional information of both citizens and MPs about the rights of migrants, their right to work, education, health care, welfare, housing, family reuniting and citizenship, because Serbia has assumed these obligations by ratifying the international acts governing these issues.

Refugees - i.e. migrants - can not only be seen as a problem, but should be seen as humane capital resources - as people who can contribute to the community and the country they are in. Therefore, it is extremely important to design and implement information campaigns that promote their rights and encourage local communities to enable them to be involved in local social life in addition to providing pure humanitarian assistance. Cooperation with local communities is one of the most important aspects in terms of maintaining the local population's tolerance towards migrants. In particular, the UNHCR office stepped up its activities to help the Serbian government and local communities where migrants were concentrated, and funds to that end have been significantly increased.

3. Challenges and possible solutions in migration management in the Republic of Serbia

It has already been said that Serbia was a transit country in the migratory movement of the "Balkan Route" – both the entry and the exit country. This has made it somewhat easier for Serbia to respect and to protect the human rights of migrants, and the principles and norms of the humanitarian law. In order to ensure adequate support for migrants, but also to maintain public order and peace and security of its citizens, the main courses of action of the competent institutions of the Republic of Serbia were aimed at ensuring protection and emergency assistance and conditions for accepting and caring for those in need. The activities were aimed at providing adequate assistance to migrants, acceptance, temporary accommodation, health care, food and medicine assistance, to give them information about asylum procedures

and to fully ensure their human rights. Housing migrants in transit reception centres and permanent asylum centres was the only possible and acceptable solution. On a number of occasions, accommodation facilities have been increased according to the number of persons arrived. Five permanent centres for asylum seekers have been established, 19 checkpoints, and a capacity of 5,500 to 6,000 places, with a reserve of 700 more places, if the need arises.

To implement the above, the Serbian government adopted a Plan for Response in case of a mass influx of migrants[5] and established a Working group to carry out the activities envisioned in this plan. In particular, it emphasizes the need to step up the relocation of migrants from the city center of Belgrade and the border area with Hungary. Accommodation in reception centres provided migrants with all available assistance that the Republic of Serbia has at that time, with the aim of avoiding all the security risks of their stay outdoors, as well as significantly reducing certain health risks for the indigenous population. It should be emphasized that his was the period in 2015/2016, therefore, a few years before the outbreak of the world health crisis caused by the COVID19 pandemic, but starting from then the Republic of Serbia was paying attention to the health risks of migrant movements. As we can see, after the World Health Organization (WHO) declared the COVID19 pandemic in 2020, migrants all over Europe, and the world around are likely to get a negative public health hazard label.

It is extremely important to emphasize the position of the most vulnerable groups among migrants, and the ways in which they have been provided with assistance and protection. Particularly important was the state's response when it came to children, especially those without parental escorts (so-called UASC, Unaccompanied or separated children). In order to protect these children, all social work centres in Serbia have received instructions saying they are obliged to provide these children with the same family-legal protection as for the indigenous population. It said that any child's best interest would have to be determined *in concreto*, and one way of helping could be to place them in foster care families. This means that they are first dedicated with temporary guardians and after that all necessary measures to protect children could be undertaken until their final family status is determined.

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5   Government of the Republic of Serbia, Response plan in case of increased migrant influx, September 2015, https://www.minrzs.gov.rs/sites/default/files/2018-11/Plan%20Vlade0001.pdf (10.05.2021).

The second most vulnerable group among the migrants were women. It is known that position of women in exile is very difficult, because most of them come from environments where they had insufficient education, and therefore their communication is limited due to their ignorance of any foreign language. It can be said that Serbia acted and reacted quite well in this segment. Safe houses have been set up for women victims of domestic violence or human trafficking. Between 50 and 100 women and children were sheltered there, providing them with professional assistance. Another problem noted by examples from world practice within the refugee population is the forced compulsion of many girls into involuntary marriage. In order for victims to be identified and to be assisted, further networking of all organisations and institutions involved in the process is needed. And that certainly requires responsible work, because such cases are difficult to identify.

4. Coordination and support of the EU in solving the problem of the migrating crisis

A more obvious form of solidarity is concrete support for the country in resolving the problem of mass movement across its territory through the provision of staff, funds and money. Immediately after the government's adoption of the Migrant Response Plan, the EU Delegation in the Republic of Serbia, together with the competent services, approached the formulating of an appropriate project document that was supposed to provide funding for its implementation. It also ensured that some savings in pre-access (IPA) funds are repurposed and directed to ensure that the conditions for accepting migrants are provided. In addition to pre-accession funds that cannot be used in the short term due to their programming and spending,[6] significant funds are provided from ECHO (European Civil Protection and Humanitarian Aid Operations) funds.

The EU was Serbia's biggest donor and partner in managing this crisis, also by the EU Regional Trust Fund in the response to the Syrian crisis – so called "The Madad Fund". These funds were used in the form of adaptation and equipping of facilities intended to accommodate migrants, as well as in the form of financing activities of various

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6   Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC.

NGOs and international organisations in order to provide the necessary services to vulnerable groups of persons. This provided support for the health and social care and education system, as well as the feeding of migrants.

Some of the funds are provided for directly covering the cost of operating accommodation facilities, hiring the necessary staff, but also for organizing and forcing voluntary return to the country of origin for person's not entitled to international protection. Funds are also provided for the procurement of equipment and funds assigned for the protection of the state border. Also, through the Civil Protection Mechanism that Serbia activated as early as September 2015, EU member states have provided significant amounts of goods necessary to care for migrants, such as tents, beds, blankets, sleeping bags, hygiene products. In addition to the European Commission and other EU institutions, significant support has been given by member states through the implementation of bilateral projects.

In the migrant crisis, Serbia has shown a clear and unequivocal commitment to provide adequate assistance guaranteed by international legal instruments and the Constitution of the Republic of Serbia. With the exception of individual, isolated cases, the entire society has shown humanity and tolerance. Taking into account Serbia's aggravated economic situation, the EU has provided significant support through its mechanisms, enabling Serbia to implement its management policy towards migrants. EU institutions have allowed active inclusion of crisis-hit countries to participate in formulate measures to address the mass influx of migrants. Although there is no EU obligation to non-member states affected by the refugee immigration crisis, the fact is that both solidarity and burden-sharing as the basic principles of EU functioning have been applied in the management of migrant crisis together with the Western Balkans countries.

This allowed Serbia to turn the risks carried by the migrant crisis into new opportunities and contribute to creating a positive image in the international public. However, it is worth pointing out here that there is no excessive transparency about the spending of funds received to help migrants. On the official website of the Commissioner for Refugees there is a section on public procurement where data on the announced and allocated procurements and origin of funds for their realization can be accessed. It

can be seen, and it is indicative that in many cases there was only one offer for public procurement submitted.

5. Domestic population and migrants

It can be essentially noted that in Serbia, in the past period, xenophobia has not been overly pronounced, such as in Hungary, for example, regardless of the factual existence of its sporadic elements. In Serbia, however, no extreme violence against migrants was reported. Yet there have been confusing and contradicting attitudes towards migrants, because of their living conditions. Prolonged stay in one place, limited movement, overpopulation and deteriorating hygiene and other unhealthy conditions have resulted in increased anxiety and tensions amongst them and against them, and in some centres there have been incidents and clashes between migrants from different countries of origin.

On the other hand, and from the perspective of the indigenous, local population, the most important aspect of the migrant crisis was attitudes towards migrants from a security perspective. Although there have been recorded cases of intolerant attitudes towards migrants, they can be reduced to isolated incidents. Mostly on social networks, certain mainly right-wing groups were creators of hate speech and support for various actions against migrants, expressing xenophobia, hate speech and bigotry. Contrary to these false alarm claims, official data are showing that the number of migrants residing in Serbia has not changed much, and that there have been few asylum applications submitted and approved, and those migrants who were awaiting departure have not been perpetrators of any significant number of crimes. Official Ministry of Interior`s figures show that immigrants committed 55 of the 96,237 crimes in 2016, and two years later, in 2018, 101 cases of the 92,874 total crimes in Serbia. In the first 11 months of 2019, 113 migrant crimes have been reported. The most common were cases of fighting, theft and burglary mentioned. Therefore, based on this data, it can be concluded that migrants on the territory of the Republic of Serbia posed no security threat to peace and public order, or to the safety of the local population.

6. Conclusion

Based on the data presented and analysis of the mechanisms for managing the migration crisis in 2015/2016, it can be concluded that the state – Republic of Serbia has managed to bring the migrant crisis under control, and effectively coped with the migration flow process. Serbia was able to adapt its institutional and legislative mechanisms to new challenges and maintained networking and coordination of its official bodies and institutions with the UNHCR, EU and international and humanitarian organisations, as well as with the local NGO sector, which contributed to the dynamic, widely scooped, and flexible management of the migration flow process.

Nevertheless, trends observed in the migration process via the "Balkan route", on the territory of the Republic of Serbia pointed to numerous obstacles and dangers of uncontrolled migration - the rise of human trafficking, attempts to abuse asylum procedures and inhumane treatment of (i)regular migrants. In the perspective of ending the COVID19 pandemic, and reopening of international borders, new security challenges can be expected - when migrant movements are expected to restart. All of this will lead to a review and tightening of policies towards regulating and managing migration, while the most effective measures and mechanisms will be further strengthened.

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THE (POSSIBILITIES OF) ACCESS OF THIRD COUNTRY NATIONALS TO THE EU CITIZENSHIP: NATURALISATION OF THIRD COUNTRY NATIONALS IN THE EU MEMBER STATES

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1. Introduction

In the essay below, I will be discussing the legal nature of the citizenship of the European Union, followed by possible approaches for obtaining the EU citizenship, focusing on the requirements for naturalisation set forth in the Slovenian, German and Austrian legal systems. The research will be based on an examination of the provisions of the relevant legislation on this matter in each Member State, including case law.

The reason behind the selected EU Member States lays in a large number of migrations from the Western Balkan countries. Therefore, the objective is mainly in figuring out whether the conditions vary greatly as well as whether the requirements are set stricter for naturalisation of third-country nationals. In pursuance of the objective, I have put forth the following thesis: In relation to the requirements for naturalisation, the legislation of the Slovenian, German and Austrian legal systems favours EU nationals in comparison to third-country nationals.

2. The citizenship of the European Union

»*Union citizenship is destined to be the fundamental status of nationals of the Member States*.« The latter is a quote by the judges of The Court of Justice of the European Union (CJEU) in the Grzelczyk case (2001). Hereinafter, CJEU set forth one of the most paramount aspects of the EU citizenship, which is enabling those who find themselves

in similar situations to enjoy the same treatment in law irrespective of their nationality. Subsequently, »*citizenship is a legal status, defined by the rights and duties that appertain to all those who are acknowledged to be citizens, and a normative ideal*« (Menéndez 2019, 3).

Verica Trstenjak and Maja Brkan raised a question of whether the EU citizenship may be interpreted as the fifth freedom of the internal market, therefore existing alongside the free movement of goods, capital, persons and services, or whether it has already grown into a constitutional category. The authors concluded on the latter. In doing so they particularly emphasized the importance of the *civis europeus sum* phrase, and compared it to the roman *civis romanus sum*, which ascribed every roman citizen certain rights and offered them great protection. The same is applicable for civis europeus sum, which is beneficial for every national of each Member State when migrating to another Member State (Trstenjak and Brkan 2019, 548-549).

The Paris Treaty (1951) obliged Member States to remove restrictions on employment based on the nationality of workers in this industry. Hence, the concept of citizenship within the EU is the result of a process rooted in the history of free movement of labour. In foreign relations, the concept was introduced via a report, issued by the Commission, entitled *Toward European Citizenship*, which highlights the implication of EU citizens' entitlement of receiving the same treatment in each and every Member State (Marrero González, 2017, pp. 178-179). Ultimately, the concept was in its entirety introduced in the Treaty on European Union (1992) - TEU, complemented by the provisions of the Treaty on the Functioning of the European Union (2012) - TFEU.

3. The acquisition of the EU citizenship

As stated in Article 20 TFEU and Article 8 TEU, EU citizenship is derivative of Member State nationality (Bauböck 2014, 7), therefore the conditio sine qua non for obtaining the EU citizenship is the mere existence of the citizenship of any Member State (Hojnik and Knez 2015, 223). Furthermore, the EU citizenship is complementary to the Member State citizenship without replacing it. Consequently, the EU citizenship does not constitute dual citizenship. All of the above represent the reflection of EU prompting Member States into working not only in the interest of their citizens but rather in the interest of all EU citizens (Trstenjak and Brkan 2019, 551). The decision

as to whom to grant citizenship falls within the jurisdiction of each Member State (Hojnik and Knez 2015, 223). As indicated by CJEU, every Member State has a duty under international law to set down the conditions for the acquisition and the loss of citizenship, accordingly with EU law. It is not however *"permissible to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided in the Treaty"* (Mario Vicente Micheletti and Others v Delegación del Gobierno en Cantabria 1992).

A fundamental feature of nationality law in modern states is the automatic acquisition of citizenship, which is feasible by descent from a citizen parent (*ius sanguinis*) or by birth in the state territory, *ius soli* (Bauböck 2014, 3). Ius sanguinis therefore implies that the nationality of a specific Member State is acquired by a chid due to the fact that he has a parent, who is a national of that country. The overriding factor is the fact that the parent is recognised as such in the State involved, what is truly important is the legal tie of parentage, rather than 'blood relations'. Ius soli on the other hand, enables the acquisition of citizenship of all children due to them being born in the State (de Groot and Vonk 2018). The importance of ius soli acquisition is the most visible through the Zambrano case (2011). In this case, spouses Zambrano were Colombian citizens, living in Belgium, where Mr. Zambrano was working without a work permit, regardless, he regularly paid taxes and social security contributions. After losing his regular income, the Belgian authorities denied the family's request for social benefits and even the right to reside within their territory. CJEU affirmed the entitlement of their child, who was born in the Belgium territory, to Belgian citizenship, and on that basis, established the right of his parents to reside in Belgium, and to be provided with a working permit.

In this day and age, most countries practice both ius soli and ius sanguinis, nevertheless the latter is more typical for the continental European countries, meanwhile the Anglo-Saxon countries have traditionally had enacted ius soli (Tratnik 2018, 45-46).

The alternative is the acquisition through naturalisation. It is the most debated form of access to citizenship (Bauböck and Wallace Goodman 2010, 1). Naturalisation is a process, whereby a person becomes a formal member of the community, within which they intend to stay on permanently (Kostakopoulou 2008, 6). The process begins with

the applicant's submission of the application to the competent authority, who grants him citizenship by an administrative act with constitutive effect (Tratnik 2018, 48). This process is of importance not only for migrants and established citizens, who naturally have an interest in who will join them, but also State authorities. Thus, they may insist on certain requirements (Seglow 2009, 1). The requirements can be summarised into three categories: structural conditions in the country of residence, the situation in the country of origin, and individual characteristics (Reichel 2011, 9). At the end, the applicant's success depends on the availability of information and courses, the costs and the types of documentation and assessments required as well as the amount of discretion, bureaucracy and judicial review (Huddleston 2020).

4. Acquisition of citizenship through naturalisation in the Slovenian, German and Austrian legal systems

The acquisition of citizenship in the Republic of Slovenia is regulated by the Citizenship of the Republic of Slovenia Act - ZDRS (1991). Meanwhile, RS is a relatively young State, Germany's regulation of citizenship dates back to 1913, although the currently valid act was passed 8 years after the Slovene one (Gesetz zur Reform des Staatsangehörigkeitsrechts - StAG 1999). Austria's Staatsbürgerschaftsgesetz - StbG (1985) was enacted in 1985, but has been amended multiple times since, the last one being in December 2020 (2020). The legislation in all of the indicated countries presupposes naturalisation as means of acquiring citizenship (Article 3 ZDRS, Article 6 StbG and Article 3 StAG).

The conditions for naturalisation and how it differs for third-country citizens

The most common requirement, present in all three legal systems, is the time of permanent residency, prescribed by law. Both ZDRS and StbG require the minimal amount of 10 years of lawful and continuous residing within the State, including 5 years as a settled citizen for the Austrian (Paragraph 1, Article 10 StbG) and 5 years of uninterrupted residency immediately prior, for the Slovenian citizenship (Paragraph 1, Article 10 ZDRS). Article 11.a StbG introduces certain deviations, which reduce the lawful and uninterrupted residency down to 6 years, one of them in favorem nationals of States that are parties to the European Economic Area Agreement (EEA) as

stipulated in subparagraph 2 of the fourth paragraph, which includes EU nationals. In addition, according to the second paragraph of Article 10, a residence ban imposed on the applicant by another EEA State, among others, constitutes justification for the refusal of the citizenship (see Subparagraphs 3-5). Nevertheless, neither the required residency nor the basis for the refusal of citizenship is taken into account subject to the provisions under Paragraph 4, Article 10. Paragraph 8, Article 10 ZDRS further clarifies the occurrences involving the requirement of residency, therefore stipulating the applicant's duty of being physically present on Slovenia's territory and of Slovenia as the centre of his interests, which is determined based on his professional, social and other relations. Germany's StAG on the other hand sets forth 8 years of legitimate residency in the State (Paragraph 1, Article 10 StAG), which is a result of the Reform of German citizenship law of 2000, which up to that point required 15 years of residency (Vink and Falcke 2020). The second subparagraph of the first paragraph of said article additionally stipulates the grant of the citizenship provided the applicant possesses an EU Blue Card or his family member possesses a residence permit on the basis of the Agreement of 21 June 1999 between the European Community and its Member States on one hand and the Swiss Confederation on the other hand, et cetera. Furthermore, RS insists on the condition, that the applicant has not been dismissed from his residence in Slovenia and Austria conditions the acquisition on having no expulsion order imposed against the applicant.

Moreover, Slovenia's legislator explicitly stipulated that the applicant must be 18 years of age (Subparagraph 1, Paragraph 1, Article 10). StbG equally stipulates the age of 18 under Subparagraph 5, Paragraph 1, Article 14. However, the first Paragraph of Article 37 StAG determines 16 years of age as the limit for performing procedural actions pursuant to this Act.

A common requirement is also the sufficiently ensured livelihood of the applicant. Under ZDRS, the applicant must possess sufficient financial resources, which cover his material needs, including the needs of the people he is obliged to take care of, and social security (Subparagraph 4, Paragraph 1, Article 10). Finances can derive from employment, retirement, annuity or other permanent source of monthly subsistence (Končina 1993, 49). Similarly, StAG includes a provision, under which the applicant must have sufficient resources in the amount, which provide the State with an assurance that the applicant will not recourse to social welfare allowances from authorities

(Subparagraph 3, Paragraph 1, Article 10). StbG further stipules, that the livelihood is adequately secured, if at the time of the decision, the applicant is able to enclose evidence of regular and permanent income whether from employment, statutory maintenance claims or insurance benefits, with the exception of when the reason for not being able to permanently or sufficiently ensure an income is not his responsibility (especially if it is based on a disability or a long-term severe illness – Paragraph 1b, Article 10). As an example, I can bring forth the judgement of the Constitutional Court, where they found that unconditional income requirements with no exceptions are discriminating against persons with disabilities, hence unconstitutional (2013).

In Slovenia the acquisition through naturalisation is also contingent on having settled tax liabilities (Subparagraph 9, Paragraph 1, Article 10 ZDRS). The latter is provable by a certificate, issued by the Financial Administration of the Republic of Slovenia, which must be attached to the application for naturalization (Tratnik 2018, 168).

Furthermore, the acquisition is dependent upon the knowledge of the official language of a specific State. Therefore, the applicant must be familiar with the basics of the language for the purposes of everyday communication, which he proves by receiving a certificate of a successful completion of the language exam (Subparagraph 5, Paragraph 1, Article 10 ZDRS). The examination is conducted before a commission, appointed by the Slovenian government, and consists of a written and an oral assessment (Paragraph 3, Article 10). This condition is presumed to be met in situations, where the applicant has achieved a certain level of education within the country's territory. According to Article 10.a, the same is required in Austria, as well as the need of knowledge of the democratic system and the history of Austria and of the federal province concerned. Paragraph 4, Article 10 StAG requires knowledge on a B1 level, oral and written. If the applicant has not yet reached 16 years of age, these requirements are proportionately met by linguistically appropriate language development. Besides, in order to naturalise, the applicant must possess knowledge of the legal system, society and living conditions in the State and guarantee that he accepts German social norms, in particular the prohibition on polygamous marriages. The hindmost is a result of German case law (2018), where the applicant fraudulently deceived the state's authorities by concealing his second marriage, contracted under Syrian law (and the first under German law), which led to amendments of the Act due

to the fact that the existing provision at the time did not require a commitment to the principle of civil-law monogamy.

Moreover, in accordance with all three legislations, the condition of having no convictions must be met in order to acquire citizenship. ZDRS prescribes having no convictions by a final judgement for an unconditional prison sentence exceeding 3 months, or not having a conditional prison sentence with a probation period longer than a year. Austria's legislator further specified a comparable provision by explicitly forbidding convictions by not only domestic but also foreign courts. Austria also demands no sentence of imprisonment of a domestic court for a fiscal offence and no pending criminal proceedings or a fiscal offence in a domestic court, which would make him liable to a sentence of imprisonment. StAG requires similarly, not being sentenced for an unlawful act and not being subject to any court order (Subparagraph 5, Paragraph 1, Article 10).

Public safety also represents a determinant on the basis of which citizenship is assessed. Hence, the applicant's admission to the citizenship should not pose a threat to public order, security or the defence of the state (Subparagraph 8, Paragraph 1, Article 10 ZDRS). The Supreme Court of the RS for example ruled, that the plaintiff's actions of leaving Slovenia and joining the armed forces of Bosnia and Herzegovina during the war, portrays circumstances, which could pose a danger to the defence of the State (2001). Similarly, StbG contains several provisions, which contribute to the public safety. Consequently, by the grant of the citizenship, the international relations of Austria must not be significantly impaired. The applicant must not have any relations with foreign states of such nature, which by granting the nationality would be detrimental to the interests of the Republic. The applicant must have no close links with extremists or terrorists (Subparagraph 7, Paragraph 2, Article 10). Besides, the applicant must guarantee a positive attitude towards the Republic and neither represents a danger to law and order of the State. The latter is comparable to the oath, every applicant is subject to under ZDRS, when the citizenship is granted (see Subparagraph 10, Paragraph 1 and Paragraph 11, Article 10). The first paragraph of Article 10 contains a similar provision, under which the applicant must confirm his commitment to the free democratic constitutional system enshrined in the law of Germany and that he does not support nor ever has supported any activities aimed at subverting the political system or jeopardizing foreign interests of Germany through

use of violence. In case of concrete grounds of such activities, naturalisation is not allowed (Paragraph 1, Article 11 StAG).

An additional common denominator is the loss of previous citizenship. ZDRS requires a release from previous citizenship or at least verification of obtaining one, given the Slovenian one is granted. Furthermore, the legislator set forth the presumption, of having this condition met, provided the applicant meets the requirements set out in the second paragraph of article 10. The third Paragraph of Article 10 StbG states, that the applicant's citizenship will not be granted, if he fails to take necessary steps to relinquish his previous nationality even though such steps are possible and reasonable, or in situations where he deliberately retains his previous citizenship. The fourth paragraph of Article 10 StAG acquires the same, the loss of his previous citizenship. However, this condition is waved under two prescribed situations. First and foremost, the condition is waved provided the applicant is unable to give up his citizenship or the process is burdensome; when the law of the foreign state consists of no provisions for giving up its citizenship; when the foreign state regularly refuses to grant release from citizenship; when the foreign state refuses to grant release from citizenship for reasons beyond the applicant's control and others. As the Federal Administrative Court set forth in the judgement *BVerwG 5 C 3.06* (2007), a foreigner can also apply for the citizenship if he belongs to an ethnic group which is being discriminated against in respect to the release from their nationality, and therefore cannot apply for the loss of citizenship in a legal manner in his foreign state. Additionally, the condition is waved provided the foreigner holds the citizenship of another Member State of the EU (Paragraph 1 and 2, Article 12). ZDRS exempts EU citizens from providing proof of compliance with the condition of loss of existing citizenship, if there is reciprocity between these two specific states. Meaning, when the other state allows Slovene nationals to keep their citizenship after naturalisation, the same applies for them in Slovenia. Germany also imposed a condition of reciprocity, but had it removed in 2007 (Tratnik 2018, 156).

5. Conclusion

In conclusion, the acquisition of the EU citizenship is dependent upon the acquisition of the citizenship of one of its Member States, which falls within the jurisdiction of

States. The conventional way of obtaining the citizenship is by ius soli or ius sanguinis, although the most debated method is through naturalisation.

Surrounding naturalisation, the legal systems put forth in this essay, do not differentiate by a lot. ZDRS, StAG and StbG presuppose a certain number of years of residence have passed prior to filling the application. In all instances, the applicant must receive sufficient income for maintaining his lifestyle in the State, he must not be subject to any Court convictions and be aware of at least the basics of the official language. Slovenia explicitly stipulates settled tax liabilities within the country. In addition, the grant of citizenship shall not present itself as a threat to public safety. StbG prescribes that the international relations of Austria must not be impaired due to the grant, and StAG demands no supporting activities, aimed at subverting an established system or jeopardizing foreign interests of Germany. Furthermore, ZDRS as well as StbG explicitly specify the age of 18 as the age at which an individual may apply for the citizenship, meanwhile under StAG provisions, an applicant may qualify by the age of 16 years.

The loss of previous citizenship represents a huge factor in the process of granting citizenship. This is a requirement, where the legislations of Slovenia and Germany favour the EU nationals, resulting in my confirmation of the thesis laid down beforehand. In Germany such a condition is waved, provided the foreigner holds the citizenship of another Member State. The same is applicable in Slovenia, however only in situations, where there is reciprocity between two specific states. In Austria, the legislation favours EU citizens and other countries, which are parties to the EEA, in a way it enables only 6 years of permanent residence in order to obtain the citizenship.

Such favouritism of EU citizens in each of the specified Member States indubitably presents as an issue, especially for Western Balkan nationals. In addition to being able to freely enter, live and seek employment in other Member States under EU internal market law, EU citizens are also subject to important facilitations concerning the longevity of the residence and the loss of previous citizenship in the process of naturalisation. Ultimately, due to the rights of other EU citizens in Slovenia, Germany and Austria already being equivalent to the rights of actual citizens of the specific country, the question of expediency of such regulation arises. Therefore, mitigating those differences might be a step towards reconciliation of the Western Balkan countries.

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THE POSITION OF THIRD COUNTRY NATIONAL MIGRANT WORKERS IN THE EU

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1. Introduction

Every individual realizes for himself the rules of conduct which are established by the state, through active participation in society. Of great importance for the existence of a person in any state and society is his legal status, which serves as a legal basis and a tool for increasing social activity.

In this regard, the study of the legal status of migrant workers from third countries in the European Union is relevant, because the modern world is characterized by constant population movements. Often migrant workers are not aware of their rights in foreign country, which leads to various violations.

The paper analyses the legal nature of labour migration, as well as their emergence in modern globalization. A study of the legal status of migrant workers from third countries in the European Union. The reasons and peculiarities of labour migration of the citizens of the Western Balkans to the European Union are considered separately. Elaborated on illegal labour migration and its impact on the member states of the European Union. Violations of the rights of migrant workers from third countries in the European Union are outlined.

Despite many years of efforts to fully regulate the rights of migrant workers, this has not happened to this date, so the aim of the essay was to confirm or refute the following thesis: "The legal status of migrant workers from third countries in the European Union is fully regulated by European legislation or legislation of the Member States ".

A number of general scientific and special sociological methods are used in the work: logical-semantic - for analysis and deepening of the conceptual apparatus of the concept of labour migration; comparative analysis of the results of statistical and specific

sociological studies of migration; modelling the risks faced by migrant workers from third countries in the European Union.

2.   Migration processes in the modern dimension

In modern conditions, which are characterized by a global trend of intensification of migration processes, the need for international legal regulation of migration flows is crucial. Over the last fifteen years, the countries of the EU (European Union) have become the center of attraction for migrants from around the world. The phenomenon of migration is multifaceted in its manifestations and is associated not only with new opportunities for growth and development for the host society, but also with extremely high risks of instability and potential conflicts. Due to the constant political and social changes in the EU member states, the search for tools for the active development of a comprehensive European migration policy and the regulation of the migration market are becoming the object of increased attention in the European Union and international organizations.

The most common type of economic migration and, at the same time, the most numerous global migration flow has always been and remains labour migration. Labour migration in the world plays a key role in the redistribution of labour between countries, regions and continents, thus changing the situation in national, regional and global labour markets.

Foreign labour has a number of positive effects on the economy of the host country. First, foreign labour allows the market to function normally (in the event of a shortage of workers, it represents a stock). Second, migrant workers compensate for the low geographical and functional mobility of domestic workers. This makes it easier for Europe to adapt to potential changes in the labour market while reducing the cost of retraining domestic labour. There is also a shortage of highly skilled labour force worldwide, which is obtained from abroad (Münz, Straubhaar, Vadean F.,& Vadeaan N., 2007, 9).

With the entry of foreign laborers into the market, labour supply increases, so employers pay lower wages. Foreigners are willing to work for such a salary, but locals are not. This leads to a different redistribution of income. It should be emphasized

that this phenomenon occurs only in the short term. In the long run, the wages of migrants are equated with the wages of the indigenous population (European Commission, 2008, 50).

The main reasons for the population to migrate: uneven development of countries, living and working conditions, wage levels, high unemployment, low social protection, political instability, human rights violations, environmental disasters.

Labour migration from the Western Balkans to the EU: causes and current situation

Third-country nationals are categorized as non-citizens of the EU and the European Economic Area (EEA) and are therefore subject of specific restrictions on entry into the EU, labour market situation and, last but not least, social rights.

The countries of the Western Balkans have a difficult and contradictory history of relations with the European Union. The geographical proximity of the Western Balkan countries to European countries, political, economic and cultural causes are becoming the main reason for labour migration to EU countries.

The Western Balkans region has traditionally tended to migrate to Western European countries. The disintegration of Yugoslavia, the political unrest and the wars in the Balkans between 1991 and 1996 triggered the displacement of 4.5 million people. The crisis in Kosovo, the deterioration of the political situation in Bosnia and Herzegovina between 1999 and 2002 are the main causes of labour migration to neighbouring countries (Croatia, Slovenia). Proximity to a native environment, similar language, minor barriers to integration are just some of the reasons for immigration from these areas. Over the last 15 years, the political picture of the countries of the Western Balkans has been slowly changing, linked to the uncertainty and crisis of the political apparatus (Martynov, 2019, 107).

The cultural causes of migration in the Western Balkans are also a very important segment of migration. Cultural factors cause migrants to turn to more culturally coherent environments (Malačič, 2003, 171). Communication characteristics represent an important basis for the quality work of migrant workers. The Europeans has shown itself to be a tolerant to migrant workers, which is the basis for the faster integration of migrants.

The economic causes of migration from the Western Balkans are mainly the result of the country's poor economic situation and high unemployment. The poor economic situation of former Yugoslavian countries is the result of socialist's way of economy. Migrant workers strive for higher living standards, better working conditions and opportunities for intellectual advancement.

Evidence of economic aspect is the data on wages in countries with higher living standards. As of October 2020, the highest minimum wages were observed in Luxembourg (€ 2,142); Great Britain (€ 1,760); Ireland (€ 1,707); The Netherlands (€ 1,654) and Belgium (€ 1,594). It should be noted that the proposed vacancies in the labour market of these countries require appropriate qualifications from the migrant worker (Statutory minimum wages (2020) Eurofound).

3. EU migration policy and the rights of migrant workers from third countries

Member States are creating a legal order in the field of labour migration on the basis of EU directives, but it is important to emphasize that the transposition of directives into the national legal order of countries has not yet ensured their implementation in practice. When third-country workers cross EU borders, they are subject of EU laws. EU law gives them rights and also imposes certain obligations that they must be aware of.

The European Commission, in order to ensure the further development and implementation of the common migration policy, calls on the member states to unite their efforts. Since there is no horizontal EU legislation concerning the rights of third-country nationals, their legal positions vary, depending on their nationality and the legislation of their host member state. However, there are laws that define the basics of migration policy and set certain obligations to the community.

Freedom, security and justice, non-discrimination and Union citizenship are areas where fundamental rights are especially relevant, according to the European Commission, the principle that the member states must uphold fundamental rights when implementing EU law is particularly important there. Under Article 67(2) of the TFEU, the common immigration policy shall be fair towards TCNs. The aim of fair treatment of TCNs is reiterated in Article 79, providing a specific legal basis for developing a

common migration policy. Consequently, the TCNs legally residing in the EU have a constitutional right to fair treatment, which is to be realized by the EU legislator. This obligation was not contained in the TEC before Lisbon, even though already the European Council in Tampere in 1999 called upon EU institutions to ensure fair treatment of TCNs legally residing in the EU. Among those relevant for regular migrants rights are all the rights listed in the preambles to the migration directives discussed in this article, in particular: respect for private and family life (Charter of Fundamental Rights Article 7 - Respect for private and family life; Case C-413/99, Baumbast, ECLI:EU:C:2002:493; Case C-109/01, Akrich, ECLI:EU:C:2003:491; Case C-157/03, Commission v Spain, ECLI:EU:C:2005:225), freedom to choose an occupation and right to engage in work (Charter, art 15(3)), the right to property, workers' right to information and consultation within the undertaking, the right of collective bargaining and action, fair and just working conditions, family and professional life - all applied in accordance with art 6 TEU (Directive 2014/36/EU).

Fundamental rights form an integral part of the general principles of Union law, the observance of which the CJEU must ensure (Case 29/69, Stauder v. City of Ulm, ECLI:EU:C:1969:57). Here we are referring to principles that are part of the substantive constitutional law of the EU. General principles, when it comes to the protection of fundamental rights, refer to the common constitutional law.

In the field of protection of migrants' rights, international norms require equal treatment in the field of labour as to foreigners who are legal grounds are in the country and to their own citizens. And the main ones human rights must be ensured regardless of the legal migrant status. European Union citizenship rights are drafted in such a way that two of them can be enjoyed by 'any person', EU citizens and third-country nationals alike. Although this is not stated directly in the text of Article 24 TFEU, the wording of this provision contains references to Articles 227 and 228 TFEU and Articles 43 and 44 of the Charter of Fundamental Rights, spelling out the same right in a broader context.

Rights can also be guaranteed to third-country nationals through agreements between the EU and a third country. For example, the Association Agreement between the EU and Turkey, concluded in 1963. Under this Agreement, after four years of legal work for Turkish citizens, any restrictions on access to labour markets in EU member states were lifted.

Before the entry into force of the Treaty of Amsterdam in 1999, EU law merely regulated the status of TCNs in so far as they were family members of EU citizens who had exercised their free movement rights or in their condition as nationals of third countries with whom the Communities had signed an agreement. Third-country workers also enjoyed mobility rights as posted workers when they were employed by a company established in one Member State that provided services in another (Case 43/93, Raymond Vander Elst v. Office des Migrations Internationales, ECLI:EU:C:1994:310).

In 1999, the Tampere European Council Conclusions acknowledged the need to ensure fair treatment of TCNs by granting them rights and obligations comparable with those of EU citizens. Council Directive 2003/109/EC concerning the status of third-country nationals who are long term residents was a response to the Tampere European Council Presidency Conclusions. Directive was a veritable breakthrough in the legal position of the third-country nationals who are long term residents. In addition, a person residing legally in a member state for a determined time and holding a long-term residence permit should be granted in that member state a set of uniform rights which are as near as possible to those enjoyed by the EU citizens. Integration of third-country nationals who may be: long term residents, EU citizens' family members, students, researchers, highly qualified employees, or even seasonal workers in member states, is crucial for economic and social cohesion. Promotion of these values is a fundamental objective of the EU stated in the Treaty.

Similarly, the European Parliament and Council stated that all TCNs legally residing and working in the EU should enjoy at least basic equal treatment rights as the nationals of their respective host member state, regardless of their purpose of, or basis for, admission.

While Directive 2003/109 has significantly improved the rights for third-country nationals, it has not to the fullest extent implemented the internal market, which is 'an area without internal frontiers in which the free movement of goods, persons, services and capital in ensured.

The Directive failed to abolish the inferior position of long-term resident third-country nationals vis-à-vis EU citizens.

In 1999 upon acceptance of Treaty of Amsterdam, the EU is given additional powers to develop a common policy on migrant workers arriving in the Community from third countries (Treaty of Nice amending the Treaty on European Union, ART 137 (g)).

In 2003, the Council of Ministers of the EU adopted Council Regulation (EC) No 859/2003 about the legal status of third-country nationals who have resided continuously in the territory of the Member States for a long time. The Directive refers to third-country nationals who are provided with a stable source of income, health insurance, are lawful and do not pose a threat to public policy or public safety of residence. According to this document, a non-EU citizen who has received the status of a permanent resident has the right to employment in a different EU state than the one that granted him such status; a non-EU citizen who is employed in the EU is entitled to social insurance.

In December 2004, The Hague program: Strengthening freedom, security and justice in the European Union (2005/C 53/01) was accepted, which defined the directions of development, including the legal regulations of international labour migration. A commission was set up to develop a political plan for legal migration and admission. The Commission proposed a policy plan of legal labour migration, which became the basis for decision-making of this issue within the EU. The result of this plan was a tough EU policy towards migrants.

In 2009 was accepted, Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. The EU has developed and adopted a project on the issuance of special visa permits for highly qualified professionals. Third-country nationals have also been given the opportunity to realize their right to work in the territory of the EU Member States, based on the provisions on secondary rights, through liaison with employees or an EU company.

It can be concluded that the EU has many legal acts relevant to the field of labour migration of third-country nationals in the EU, but Member States still have the right to "determine the number of third-country nationals who may come to their territory". The system that limits the number of third-country workers on an annual basis is called the quota system. The system works in such a way that the employer must continue to try to hire an EU citizen worker, a migrant worker can only be hired when he cannot find a suitable candidate for an EU citizen worker. This means that

migrant workers are highly dependent on employers insofar as their rights are linked to employment with a particular employer.

Citizens of Member States do not need a visa to enter another Member State. Council Regulation (EC) No 539/2001 determines which third-country nationals need a visa to enter the EU and which are exempt, and they can reside in the Member States for up to three months or transit through EU territory.

Admission of migrant workers to the territory of the country of employment requires a work visa, for which the candidate must have an officially confirmed invitation from the employer or employment contract. However, sometimes a visa is issued without an invitation. This is a special type of job search visa that is a means involvement of initiative workers from abroad. This type of visa is introduced in Austria, Germany, the Netherlands and other countries.

The employment process of third-country nationals in the EU is regulated by Directive 2011/98/EU. The directive stipulates that third-country nationals must obtain a residence permit and a work permit when employed in the EU.

A residence permit is issued by the authorities of a Member State which guarantees the lawful residence of a third-country national in its territory for the purpose of work. When issuing a single permit, Member States shall use the format set out in Council Regulation (EC) No 1030/2002. The holder of a single license shall, during the period of validity of the license, be entitled at least to enter and reside in the territory of a Member State and may pursue specific professional activities authorized by the single license in accordance with national law.

Council Directive 2003/109/EC provides that Member States are to grant long-term resident status to third-country nationals who have resided legally and continuously in their territory for five years before submitting the relevant application. Conditions for obtaining long-term resident status:

- five years of legal and continuous residence in a Member State (in the case of studies, only half of the periods of residence are taken into account);
- adequate evidence of continuous and regular resources sufficient for maintenance;
- health insurance.

The legal status of third-country nationals should be approximated to that of Member States' nationals. A person, who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit, should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens; e.g. the right to reside, receive education, and work as an employee or self-employed person, as well as the principle of non-discrimination vis-à-vis the citizens of the state of residence.

Directive 2014/36/EU laid down the conditions for entry and residence of third-country nationals for the purpose of employing seasonal workers. Seasonal workers are allowed to stay legally and temporarily in the EU to carry out activities that depend on the change of seasons, provided that they maintain their permanent residence in a third country during that time. A seasonal work permit can be issued for stays of up to 90 days as well as stays of more than 90 days.

Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer seeks to facilitate companies' temporary relocation of managers, professionals or employees on training to subsidiary of the company in the country or in the EU. The Directive allows such mobility workers short-term or long-term mobility within the EU.

4. Illegal migration and its impact on EU member states

One of the most acute problems facing European countries in admitting third-world migrants to their borders is the escalation of security issues, the rise of crime and the spread of terrorism. In order to minimize risks in this area, governments take preventive measures, which firstly regulate the admission to the border of such migrants, and secondly, conduct socio-psychological and adaptive programs that allow migrants to adapt more quickly and give them opportunities to implement in the new society.

The implementation of the border regime has caused new problems, as by restricting the possibility of an entry in a legal way, it has significantly increased illegal migration from direction of south-eastern countries. The following are "illegal immigrants":

- who have crossed the national border without passports;
- who entered the country legally and took up employment without a work permit ("undeclared work");
- who entered the country legally and remained in it even after the expiration of the residence permit or visa.

Illegal migration is a growing problem. The European Commission (2011) estimates that around 50 million people live and work abroad illegally. The education of migrants varies from country to country of origin. People with a very low level of education (primary school, often incomplete) come from Bosnia and Herzegovina, Serbia and Montenegro, Albania and Macedonia.

Modern European migration policy in the field of combating illegal migration is conducted according to the Single Course Plan, which was adopted in Seville at the summit of EU member states in 2002. It is an attempt to integrate these plans into a single foreign policy and policy EU security in relations with third countries.

Measures to combat illegal migration:

- forced deportation of illegal migrants;
- strengthening measures against international criminal groups involved in smuggling and human trafficking into EU;
- development and implementation of measures that will facilitate the voluntary return of refugees to home.

5. Violation of the rights of migrant workers

Various legal acts regulate the situation of migrant workers and provide them de jure with the rights they receive from paid employment, but in practice their situation is certainly not as defined by law. Migrant workers from third countries are often not informed of their rights, which is why labour law is violated.

Many migrants from "third countries" in the European Union work as unskilled laborers, often independent of their education and work experience. This means that they perform the most difficult work in poor working conditions for very low pay; many are exposed to abuse, violations of labour rights and labour laws. At the same

time, many work in the informal labour market, where they are even less protected, left to the arbitrariness of employers and thus pushed into even greater marginality.

Many violations of worker's rights from third countries:

- non-payment of social security contributions;
- violation of the statutory 40-hour working day;
- prevention of the use of leave;
- non-payment of meals, regress and overtime (Rights of migrant workers in Europe, Office of the high commissioner for human rights, 2010, 10).

6. Conclusions

The EU's common migration policy provides a flexible system of measures that should ensure the socio-economic development of the EU market, promote partnerships between countries participating in the migration process and achievement of common goals. Today, this policy should be implemented in the following main areas:

- encouragement of labour migration;
- fight against illegal migration;
- common legal norms for the implementation of visa policy;
- active fight against human trafficking;
- control of migration volumes between all EU member states.

Migration policies are still not effective enough to prevent illegal migration and control the quality integration of migrant workers from third countries. We link this to the fact that there is a lack of cooperation between countries to effectively control migration policy.

Based on our research, we came to the conclusion and answer to the thesis that the legal status of migrant workers from third countries in the territory of the European Union is regulated by European legislation or the legislation of the member states, but not completely. A number of directives and laws are in force, but questions remain unanswered regarding the protection of the violated rights of migrant workers and the gap between legislation and the actual implementation of provisions in the Member States.

The process of regulating the legal status of migrant workers from third countries is quite difficult and time-consuming, but it should be noted that the EU is already on the way to establishing common rules and standards of legal and social protection of migrant workers with a clear and long-term strategy. It should provide for clear action by Europeans for a year, two, three, five, ten years so that management can forecast migration trends in the short, medium and long term.

The EU legal framework on the legal status of third-country migrant workers needs to be constantly supplemented and improved in line with modern conditions. Migration policy must be based on the principles of human rights, security, transparency and the rule of law. To implement these principles, EU member states must:

- simplify the procedure for issuing work permits;
- sign a clear agreement on basic social protection of migrant workers from third countries;
- ensure a flexible pan-European visa policy;
- overcome any manifestations of discrimination;
- promote self-employment and the development of their own business among migrants.

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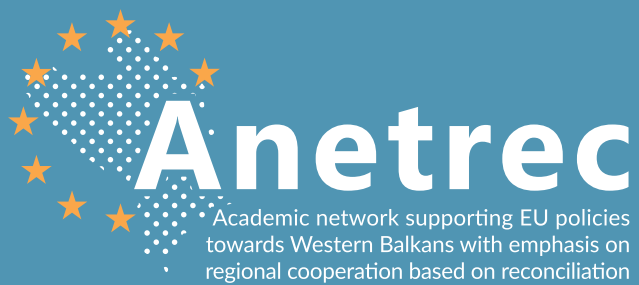
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Academic network supporting EU policies
towards Western Balkans with emphasis on
regional cooperation based on reconciliation

Views of the students regarding European integration of Western Balkans region