

# **South East Europe Student Research Conference 2010**

**Conference Proceedings**

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# South East Europe Student Research Conference 2010 28–29 May 2010, Prishtina, Republic of Kosovo

## **CONFERENCE PROCEEDINGS**

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## CONFERENCE AGENDA:

10:00-10.30

### REGISTRATION

10:30 – 11:10

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Mr. Alejtin Berisha, Organizing Committee, Universum Institute

Mr. Enver Hoxhaj, Minister of MEST

Ms. Edita Tahiri, Minister of Public Administration and Universum Institute

Ms. Besa Luzha, Friedrich Ebert Stiftung

**Keynote address:** Dr. Anna Di Lellio, New School of Social Research, NY

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11:30 – 13:00

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(Part 1)

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Big Hall, Third Floor

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14:00 – 15:30

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Closing Remarks

**13:00 – 14:00**

LUNCH

**PANEL 4**

**WESTERN BALKANS EU  
INTEGRATION CHALLENGES**

**PROCEEDINGS/PAPERS**

# BEYOND LIBERAL PEACEBUILDING. THE ROLE OF THE EU IN KOSOVO AND THE QUESTION OF SOVEREIGNTY

Marius-Ionut Calu

## BEYOND LIBERAL PEACEBUILDING. THE ROLE OF THE EU IN KOSOVO AND THE QUESTION OF SOVEREIGNTY

Marius-Ionut Calu<sup>1</sup>

Key terms: state-building, liberal & republican peacebuilding, local ownership, sovereignty, external imposition, European Union, Kosovo, Bosnia and Herzegovina, EULEX.

### INTRODUCTION

The efficiency of the European Union's strategy for enlargement has been tested by the integration process of East European countries after the fall of communism and giving the successful transition to liberal-democracy there are good reasons to support the EU's involvement in the Balkans. The European Union Rule of Law Mission in Kosovo (EULEX) is the largest civilian mission ever launched under the European Security and Defence Policy (ESDP) and thus a crucial test for the EU's ambition to act as collective actor. By combining the logic of pro-European constituencies with the aims of EULEX, the process of state-building in Kosovo can be more competent than the UN model of peacebuilding and create a sustainable and permanent transition to peace. This area of research has been nonetheless little explored and creates incentive for thorough empirical analysis. In the case of state-building in Kosovo success may be conditioned by the principle of local ownership and by a strong sense of sovereignty.

One of the aims of my paper is to explain why it is important to understand that peacebuilding functions when it aims not only to stop a conflict and to bring peace, but also to maintain peace. Nonetheless, the main challenge that I employ in my research project is regarding the element of sovereignty and the sense of statehood that in the context of developing local ownership for Kosovo may affect the transition to shared sovereignty as a requirement of the process of European integration.

Research questions and theoretical/empirical challenges:

Is the sense of local ownership a sufficient variable to create a strong state with self-rule capacity and that can guarantee sustainability for democratic institution-building, economic development and rule of law? What is the guarantee of long-term local ownership in the context of a prospective full transition from „guided sovereignty to „shared sovereignty within the EU? Is there a paradox of self-rule which is restricted to EU's guidelines? Will a potential success of the EU's missions in Kosovo confirm the necessity to develop alternative approaches to post-conflict statebuilding?

### Hypotheses:

The premise of my research is that if external peacebuilding can fail to stimulate and implement a strong autonomous state, the ongoing European Union's assignment in Kosovo, which follows the logic of EULEX can be successful because of its strategy to advise, mentor and cooperate instead of imposing.

- A successful completion of the process of statebuilding in Kosovo may be facilitated by the EU's strategy in Kosovo, which is defined by elements of European integration. In other words, by giving priority to the political, economic and social requirements of EU conditionality, objectives such as self-governing capacity, legitimacy and democratization can be achieved effectively.
- A key challenge for the EU is not only to facilitate a functional transition from guided sovereignty to the final objective of shared sovereignty inside the EU, but also to balance this transition with the innovative support for local ownership.
- If the strategy applied by the EU is to mentor, advise and monitor rather than impose, then the mission in Kosovo represents a departure from the Liberal model of statebuilding and it is closer to the **Republican norms of deliberation, representation and constitutionalism.**

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## Focus:

My research focuses upon state-building in Kosovo as an alternative to international-lead state-building attempts such as Iraq and Bosnia where priority has been given to democratisation and development of an active liberal society. I thus look at the negative consequences of liberal peacebuilding and I contrast them with the advantages of the mission in Kosovo: accepting local ownership and being more interested in constructing strong, legitimate and trustworthy state institutions and rule of law as prior conditions to make democracy work. As Michael Barnett has highlighted, one of the limits of liberal peacebuilding is that “an illegitimate state is an unstable state” (2006: 96).

On the other hand, state-building in Kosovo follows the logic of: Advising (professional counselling), Monitoring (watch, asses) and Mentoring (the relationship between EU staff and Kosovo institutions). In particular, my paper evaluates the direct role of EULEX in the areas of police, judiciary and customs, and also the efforts invested in developing Rule of Law institutions consistent with the criteria of: sustainability (assessing the quality of the government institutions in developing nations), accountability (presenting accounts of all their activities and providing comprehensive and self-consistent documentation of what they do) and neutrality (free from political interference).

## Theoretical Framework: Literature review

The issues presented above are mainly explored theoretically by making use of the framework of Michael Barnett's “republican peacebuilding”. His account is used to compare and contrast with the model of peacebuilding put forward by Liberalism and implemented so far by the UN missions. It is therefore of fundamental importance to differentiate between post-conflict peacebuilding and post-conflict state-building as defined by the UN or the EU. The elements that make possible this differentiation have been explored in depth by the scholarly literature on the evolution of peacebuilding (Barnett, M., Kim, H., O Donnell, M., and Sitea, L., 2007; Chandler, 2004a & 2004b, Economides, 2007; Lederach, 1997, Grävingsholt., Stefan; Sebastian, 2009).

All in all, in order to achieve a correct theoretical evaluation of state-building it will be necessary to examine in detail the objective causes of conflict, while the competing solutions that are given for transition to peace are to be assessed by looking at the results. Furthermore, I employ a Republican perspective of International Relations so as to evaluate the functionality of state-building in Kosovo. My paper will try to identify the advantages of focusing on the local context in which the republican strategy operates. The challenge for republican state-building is to demonstrate how a lawful state with capacity to self-govern is likely to develop a strong democratic character as well; conversely, external liberal peacebuilding prioritizes democratization but faces the more complex problems of unconsolidated state power and long-term dependence on the international community.

## Liberal peacebuilding

Peacebuilding has definitely been the most challenging type of post-conflict activity. First of all, “the underlying goal is to eliminate the root causes of conflict, to promote human security, and to create a stable peace” (Barnett, 2005:3) and this is the reason why liberal peacebuilding missions support democratisation, establishing a legislative framework, equal rights, free elections and development of a civil society. As a consequence, the goal is to spread the liberal peace, to create states that are at peace with each other and at peace with themselves. States organized around liberal principles, including democracy, free markets, and the rule of law, are posited to be pacific toward their neighbors and have the internal legitimacy that generates stability and nonviolent conflict resolution. Because liberal states have these desirable dispositions, peacebuilders have attempted to transplant and nurture these attributes. Exhibiting their own brand of shock therapy, international peacebuilders attempt to transform nearly all features of the state and society, accomplishing in a matter of months what took decades in the West. (Barnett, 2005:3).

The emphasis has constantly been on exporting liberal norms: central role of liberty, representation, constitutions, progress, development, rights. My paper analyses the role of the international com-

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munity in the post-conflict peacebuilding missions not only by evaluating the significance of these pre-established elements (that characterize the objectives), but mainly by looking at the dimensions of peacebuilding which confirm whether the stage of implementation has been successful or not. Three dimensions can be identified: create stability (focus on the security/military factors-eliminate sources of conflict), restoration of state institutions and socio-economic dimension (develop the socio-economic infrastructure and underpin economic development) (Barnett, 2007: 49).

Michael Barnett and several other researchers (2007) have concluded that, in general, the second dimension that refers to building state institutions has been neglected by peacebuilding activities in comparison with the other two dimensions. For this reason, they have underlined the fact that peacebuilders are more concerned about the kind of state that they try to construct, thus the preference for a “liberal state, which respects human rights; protects the rule of law; constrained by representative institutions, a vigilant media, and periodic elections; and protects markets”(Barnett, 2007: 51). It has also been observed that even though these kinds of peacebuilding projects aim to establish liberal peace, they often end up by regenerating the conditions for conflict. This is why there is at the moment a need for rethinking peacebuilding operations. As the main argument of my thesis affirms, a better alternative can be “republican peacebuilding” so as to establish “security and stable institutions before seeking the prize of liberalization and democracy” (Barnett, 2007: 51).

## Republican peacebuilding

The ideas of peacemaking and peacebuilding are very strong examples of the liberal progressive way of thinking about international security. Michael Barnett attempts to portray republicanism as a better alternative, mainly because of Liberalisms occasional failure to manage post-conflict states and eliminate the initial causes of conflict. The main gist of his article is that republican peacebuilding is more successful because, unlike Liberal peacebuilding, it is more interested in developing strong state institutions rather than building an active liberal society. The interaction of three key elements would make the implementation of this republican model possible: deliberation, constitutionalism and representation. The result of these policies is a post-conflict state with a high/increasing level of stability and legitimacy.

Therefore, in the first phase it essential is to get over the states crisis of legitimacy by showing its capacity to provide security for its people. Barnett analyses each of the key elements mentioned above. Deliberation is an essential factor to engage local actors on deciding what the objectives are and how to achieve it, suggesting perhaps the idea of reform from within.

Deliberation does not only facilitate a sense of community but also makes collective decisions legitimate. The second element, representation refers to the necessity to consider the interests of all those affected by a decision before it is actually made. This principle implies an unelected body/authority that must have both inclusivity (make sure all different groups are represented) and publicity (transparency and reasoning of decision-making). The third element of constitutionalism and divided power emphasises the reasons why a legitimate set of rules is essential to limit arbitrary power, conflict of interests and stimulate cooperation in sharing power (interim period). The ultimate goals are again stability and legitimacy but by following a more gradual implementation of principles, unlike liberal peacebuilding. Furthermore, from this republican point of view, peacebuilders must partner with the local authorities instead of imposing their principles.

This difference between imposing and cooperation will be the main criteria of comparing and contrasting between the case-studies that I use in this paper.

## Aims and rationale

Giving the empirical study of Kosovo, the purpose of my research is to stimulate a re-evaluation of the peacebuilding theoretical framework that has been developed so far. My research aims to identify and evaluate detrimental effects of imposing the liberal set of values that are considered to be universally applicable and to show why external liberal peacebuilding fails when it neglects the local context to

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which these values might have different meanings. They can nonetheless be incompatible with particular ways of understanding what the purpose of government is. I also seek to understand why liberal peacebuilding has failed to demonstrate the advantage of prioritizing liberal norms (Cox, 2001 & 2003; Chandler, 2000 & 2004; Wouters, and Naert, 2001). An essential dilemma is whether liberal peacebuilding can stop acting as a universal and institutionalized framework and try developing ways of building peace through strong cooperation, not through imposition. This is why my research project will examine the concept of sovereignty as a key element of the efforts made to solve the Kosovo puzzle. As Stefano Recchia (2007) observes in his article on peacebuilding in Bosnia and Herzegovina, a prolonged international control in postwar societies faces the major risk of completely undermining the local ownership and responsibility.

Recent articles have looked at the main challenges that EULEX faces in Kosovo as a transitional mission from UNMIK (Pond, 2008; Weller, 2008;; Stroschein, 2009) and have evaluated the manner in which the aim to generate legal, political, social and economic reforms is favoured by the EU's role as a supervisor that helps to build permanent capacities and institutions (local ownership). The research findings indicate that the incentive to overcome ethnic problems, crime or corruption is mainly provided by the EU conditionality factor.

Other authors (Tansey, 2007; Sahun, 2009) have focused on the relationship between democratization and the state with reference to the political developments of Kosovo prior to its declaration of independence. Tansey, for instance, identifies three separate dimensions of statehood - recognition, capacity and cohesion. His analysis of Kosovo suggests two conclusions: first, that international recognition of statehood should not be viewed as a prerequisite for democratization, and second, that problems of state capacity or state cohesion present far more fundamental challenges to successful democratic regime change. The post-1999 Kosovo has definitely been following international standards of democratization and despite the administration of UNMIK, local actors have also gradually increased their authority.

Conclusions confirm the original political and institutional evolution of Kosovo in the absence of international recognition of statehood and stimulate further analysis of the democratization process in the different stages of state-building.

## CONCLUSION

Given the empirical and theoretical argument employed in my paper, there are good reasons not to reject the idea that „limited/shared sovereignty can be sufficient for and compatible with the functionality of the EU statebuilding mission, which seeks to avoid imposition and encourages local ownership. Moreover, the rationale behind the process of European integration could suggest that the EU is not inevitably installing limited sovereignty and that limited autonomy can coexist with a strong sense of local ownership.

Giving the recent academic work on Kosovo I think it is necessary to further analyse essential elements of statebuilding such as:

- **Local ownership vs. EU guidance**
- **Role of EU conditionality & impact on state sovereignty**
- **Top down policy vs. Bottom-up process**

As regards the priority dilemma in the Liberal-Republican debate on statebuilding, the challenge is to identify what is more necessary and what is sufficient. Statebuilding failures indicate that even though none are individually sufficient, a strong state can become capable of implementing liberal principles, whereas liberal ideals are not sustainable in a weak state. In other words, the priority to develop a strong state (Republican), which involves self-governing capacity, local ownership, rule of law, constitutionalism and security has long-term advantages in comparison to missions that prioritise democratization (Liberal model): quick implementation of elections, civil society development, liberal norms.



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The analysis of the EU mission in Kosovo shows that the innovative approach complements republican ideas about how to develop a strong state in balance with requirements of democratization. However, the paradox between acting in support of local ownership and the principles of external statebuilding remains unsolved and clearly suggests a research challenge that persists and that I am ready to take on in my paper. By looking at the relationship between the European Union and Kosovo as regard of the importance and the meaning of sovereignty it will be motivating to assess the evolution of statebuilding in trying to link the status of limited autonomy with that of local ownership. More precisely, it will not be easy for the EU to complete the phase of statebuilding in Kosovo (strong independent institutions/local ownership) giving the already set-up EU integration goals which include among many other things the pre-accession conditions. These conditions are ought to lead to shared sovereignty within the EU and become consistent with international legal sovereignty, an idea that we identify in Stephen Krasners paper (2004) on the concept of sovereignty in failed/collapsed states.

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# **POLITICAL STABILITY AND THE POLITICAL CONDITIONALITY FROM AN EU INTEGRATION PERSPECTIVE IN SEE**

Theodora Borissova

## **POLITICAL STABILITY AND THE POLITICAL CONDITIONALITY FROM AN EU INTEGRATION PERSPECTIVE IN SEE**

Theodora Borissova<sup>1</sup>

### **INTRODUCTION**

After five successful waves of enlargement, the European Union (EU) comprises 27 Member States, represents the biggest Internal Market in the world and is striving to be a significant global actor, capable of imposing peace and stability outside its borders. It is namely the final borders that set the biggest challenge ahead of the EU—defining its determinate frontiers is a major task, which will lead to the inclusion of all the pieces left so far outside United Europe’s puzzle and would add further sense of integrity and completeness to the Union. It would also contribute to putting an end to the successive widening and initiate a process of further deepening the integration, thus introducing new incentives for the Member States to overcome the widely spread recent enlargement scepticism and fatigue and resolve the institutional impediments which prevent its smooth functioning.

### **The Western Balkans challenge**

The Western Balkans (WB) countries are the last bits of Europe, left outside the borders of the European Union and expecting accession in the near future. The term “Western Balkans” was invented during the 90s to indicate the countries, involved in the break-up of Yugoslavia, including Albania, but excluding Slovenia. It originally serves the purpose to ease the European Union, when referring to this turbulent region, lagging behind and defined by inter- and intra-state conflicts. Integration into the EU has significant implications of practical and symbolic nature to all these countries individually and to the initially known as a „powder-keg” region as a whole.

Its pacification and stabilization, which would be achieved solely through an EU accession, would definitively prevent any kind of future renaissance of the type of conflict, which disrupted Europe’s peace at several occasions during the last two decades. Successful EU integration proves to be the preliminary and obligatory requirement in order to transform the Western-Balkan states into stable and legitimate democracies.

The EU has repeatedly manifested its determination to grant the WB with a clear European perspective. Its approach towards the region is determined by the Stabilisation and Association Process (SAP), whose ultimate objective is to successfully integrate the countries into the Union. It is an ambitious programme, providing them with guidelines for carrying out the necessary reforms. The SAP is a flexible, tailor-made and mainly bilateral framework. It combines a large scale of different instruments and criteria, which the countries should fulfill before starting accession negotiations. Their progress on the way towards full integration is graduated - they are assessed on their own merits and reform implementation. The process builds on the regional approach and includes the cooperation between the countries as a pre-requisite for signing the Stabilisation and Association Agreements (SAA). These comprehensive agreements are the benchmark to measure countries’ rapprochement towards the EU. Despite the fact that countries’ development is evaluated by each country’s own pace, the SAP undergoes severe critics, including the incapacity of this package approach to deal with so many and distinctive countries, the excessive conditionality and, in some cases, the alleged preferential treatment towards certain states from the region. It is rather clear that the substantial framework implemented in the WB has not succeeded so far in solving all the stumbling blocks in the region. A glimpse at the present state of play in the countries reveals several on-going impediments which hinder further integration:

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- Unsettled regional issues due to the ongoing process of Kosovo's independence recognition and the name dispute between Greece and Macedonia;
- The inability of Albania and Bosnia and Herzegovina to implement various reforms on-time in order to qualify for a short-stay visa waiver within the visa liberalization dialogue;
- Delayed ratification of Serbia's SAA depending on the condition of its full cooperation with the International Criminal Tribunal for former Yugoslavia (ICTY) – all of which represent significant challenges that slacken the integration pace.

The resolution of every subsequent problem depends on the settlement of the previous one, thus forming a chain reaction which is still to be addressed by the EU. Relevant questions to answer in this respect are how is the Union trying to solve these open problems and would its strategy be sufficient and lead to the successful accession of the countries.

This research paper analyses some of the prerequisites for the successful completion of SAP's main goals. It argues that in order for the SAP to achieve its task in providing an impetus for the countries' accession, the EU's present strategy has to be enhanced by efforts to strengthen the relationship between the countries and the European Union. The WB integration has to be a "joint venture", a partnership, based on political will and mutual trust. Furthermore, the countries have to be continuously assessed according to their own merits, while intensifying regional cooperation and transferring responsibility for the progress accomplished to the local authorities.

### Integration vs. disintegration

Before discussing the integration perspective, it is indispensable to take into consideration the region's constantly changing and mostly turbulent past, when significant instability brought the region to total collapse, starting from the war in Croatia (1992), BiH (1992-5) and Kosovo (1999) and followed by armed ethnic conflicts in Serbia (2000), FYROM (2001) and again Kosovo (March 2004, March 2008), thus leaving behind unresolved statehood issues, perplexed ethnic models and a burden, related to the legacy of war.

These factors not only delayed the transition of the region towards an Europeanized model of well-functioning, democratic states but also imposed specific conditions for tackling the countries' specific problems. Hence, the WB represent a "special case" for the EU, unlike any previous countries the Union had to deal with. Its integration would differ substantially from any other round of enlargement beforehand because for the EU, membership of WB countries is part of a broader regional strategy of peace and stability where integration comes as a way to secure stability. Therefore, the suggested specific model that is to be applied in the Balkans is namely "integration before stabilisation", where EU accession is the necessary pre-condition for the countries' prospects for peace.

The integration is the necessary basis for addressing another problem – the challenge of changing the perception of the region, seen as a "marginalised ghetto". Tagging the countries with the group label "Balkans" adds significant negative connotations to their already grim image. This is due to the fact that "Westerners have traditionally identified "the Balkans" with peculiarly intractable characteristics of political fragmentation, bitter "tribal" feuding, social parochialism and chronic economic backwardness"<sup>2</sup>. The reasons for the concept of a "Balkanisation"<sup>3</sup> model, related do chaos and instability and contrary to the logic of Europeanisation<sup>4</sup> are above all related to the historical determinism of long-term external domination and salient internal animosities. The nations in the region "first had a common roof imposed on them by the empires of the past, later Yugoslavia provided a common roof"<sup>5</sup>. The turbulent break-up of Yugoslavia left behind weak states, where unresolved status, constitutional and persisting nationalism issues pull the region back to isolation and instability. Subsequent efforts on behalf of the international community to restore and successfully impose law and order are embodied in some international accords, which, among others that followed later, form the "backbone of peace in the Balkans... - the Erdut Agreement of November 1995 that brought to an end the armed conflict

2 Judy Batt, The stabilisation/integration dilemma in "The Western Balkans: Moving On", Chaillot Paper No 70, Institute for Security Studies, October 2004, p.11.

3 Balkanisation seen as the fragmentation of a region into small and hostile units, suffering by constant ethnic, territorial and other disputes and having negative connotations.

4 Europeanisation, in the case of the Balkans, would mean gradual stabilisation, democratisation and eventually – integration into the EU and has positive connotations.

5 Jaques Rupnik, The demise of Balkan nationalisms? A sceptical view in "The Western Balkans: Moving On", Chaillot Paper No 70, Institute for Security Studies, October 2004, p. 110.

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between Croats and Serbs and the Dayton/Paris Peace accords that put an end to the war in Bosnia in November/December 1995".<sup>6</sup>

Problems, related to the dysfunctional federations (Serbia and Montenegro, BiH) and international protectorates (BiH again, later Kosovo), established as a result of above-mentioned agreements and Yugoslavia's dissolution, entail constant attempts to change the status quo. The latter, on the other hand, afflicts all the countries in the region and has major implications on their political stability and development. "Great Serbia" and "Great Albania" revived aspirations were fostered by the unresolved status issues and the "profound weakness on institutions and administrative capacity that is characteristic of the Western Balkans region as a whole"<sup>7</sup>.

Having weak states makes the issue of WB integration in the EU critically different, compared to previous enlargements, namely because "The EU lacks experience in the integration of weak states".<sup>8</sup>

The Union also lacks experience when it comes to the Balkan case of spread "self-centred, obsessive nationalism...leading to political introversion and estrangement from the rest of Europe"<sup>9</sup>.

As a result of the break-up, nationalist authoritarian regimes emerge in the former Yugoslav states, namely in Serbia, Croatia and BiH.

This and other examples show that recovering from the wars of the 90s and the acute difficulties that they cause for the countries' transition have to do primarily with the unresolved statehood issues in Serbia, which have been the momentum of nationalist policy in the past. Going out of the decade-long isolation presupposes dealing with the significant implications that the status-related problems entail regarding Montenegro, BiH and mainly Kosovo.

Furthermore, returning back to Europe implies tackling much more sophisticated issues, such as the "impact on patterns of political economy and social psychology in postwar Balkans, where exhaustion and frustration are deeply rooted"<sup>10</sup>.

The transformation of such weak countries into legitimate, well-functioning and democratic states will be more violent and chaotic, given those premises. In order to address these specific challenges in the region and progress on the way towards EU membership, WB countries need to be granted with a clear perspective of a forthcoming "common European roof", which would assist them to complete the transition from Balkanisation to Europeanisation.

### **The EU Approach**

The EU however missed the opportunity to provide this common roof for the WB countries which seriously diminished its role in the region. The Union's response in 1991-92 and the subsequent catastrophic wars in Croatia and Bosnia was considered inconsistent and reactive.

When the ethnic tension in Kosovo escalated, the EU still lacked the necessary determination and capabilities to respond efficiently to such complex ethnic-nationalist conflict. "The EU left the Balkans mandate in the hands of the international community...whenever decisive action was taken, the initiative was always on the part of Washington"<sup>11</sup>.

The Union couldn't respond proactively and handle successfully the Yugoslav crisis at its early stage due to, among other reasons, the lack of expertise of the perplexity of the Balkan model. The insufficient knowledge and understanding of the region coincided with the inexistence of a coherent European vision and political will to take the lead and handle the crisis in the most adequate way. The region was initially perceived as heterogeneous composite of different ethnicities and no specific strategy was applied to it.

The ongoing upheaval and uncertainty in the region, caused by the continuing interethnic tensions in Kosovo clearly demonstrated that only an EU membership perspective can achieve long-term peace and stability in the Balkans. Therefore, "in June 1999, a time when the degree of West European in-

6 Dimitrios Triantaphyllou, The Balkans between stabilisation and membership in "Partners and neighbours: a CFSP for a wider Europe", Chaillot Paper No 64, Institute for Security Studies, September 2003, p. 63.

7 Batt, op. cit., p. 14.

8 International Commission on the Balkans, The Balkans in Europe's Future, Sofia 2005, p.28.

9 Batt, op. cit., p. 17.

10 Ibid.

11 Stanislaw Tekieli, "European prospects of the Western Balkan", Warszawa 2004, p. 52.

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volvement with the region was at its height owing to the recent Kosovo conflict, the European Union appeared to significantly reassess its approach to the Western Balkans".<sup>12</sup>

The Union's new and enhanced strategy was supposed to "entail the development of a stabilisation and association process, which would in effect offer higher incentives than before to the countries concerned".<sup>13</sup>

This Stabilisation and Association process (SAP) offers for the first time the prospect of EU membership to the countries of the region. SAP emphasizes the assessment of each state's development towards the Union which is judged by its own state of reforms. "Countries that move faster to prepare themselves would be admitted first, on the basis of the so-called "regatta principle", that the yachtsmen who used the wind to their advantage comes in first".<sup>14</sup>

This reassures the fore-runners in the accession race that the package approach wouldn't hold back their accession to the EU.

"The so-called 'own merits' (or 'catch up') approach allows each SAP country to move ahead towards the prospect of accession on its own pace – depending, of course, on its ability and willingness to implement the necessary political, legal and economic reforms".<sup>15</sup>

Political conditionality is strengthened and the criteria which the countries have to fulfill are the same already established for the Central and Eastern European Countries by the European Council in Copenhagen in 1993.<sup>16</sup>

Furthermore, the process encompasses the provisions, set forth in the Council Conclusions on the Principle of Conditionality, adopted in 1997, together with the general and country-specific requirements.<sup>17</sup>

The instruments and practices that the SAP encompasses can be subdivided in two groups. Firstly, the economic prospect foresees enhanced and asymmetric trade liberalisation, economic, financial and budgetary assistance and humanitarian aid for refugees and displaced persons. Furthermore, from a more political perspective, the process includes adoption of the *acquis*, establishment of a regular political dialogue, justice and home affairs cooperation and help for democratisation and civil society building. In addition to these practices, the majority of which were already in operation, the SAP offers a new comprehensive instrument – the Stabilisation and Association agreements (SAA). These accords replace the traditional cooperation agreements with the countries from the region. They are "a new kind of contractual relations, taking into account the individual situation of each country".<sup>18</sup>

Hence, the signing of the SAA is made conditional again and depends on the country's own pace of reform implementation. The "catch-up" approach of the SAP allows for the signing of an agreement at an already advanced stage of their way towards the EU, requiring the highest level of conditionality. Criteria, related to the signing of SAA, are subject to the graduated approach – the start of the negotiations demands a lower level of compliance than the actual conclusion of the agreement. Therefore, SAP requires series of steps to be taken prior to the conclusion of the SAAa, ranging from setting up of taskforces, feasibility studies, negotiations and signing of the agreement, which is viewed as a result of the efforts to fulfil the conditions, formulated by the Union and as a recognition of the progress achieved from the country along these lines. The ratification of the SAA opens the way to application for membership and the actual implementation of the agreement finally leads to accession. Going through every stage of the process is an arduous task, demanding a significant amount of work and studded with stumbling blocks along the way.

In order to further reduce the gap between the SAP and the pre-accession process, the agenda is enriched with some enlargement-strategy instruments, namely the establishment of European Partnerships, the opening of community programmes, administrative twinning, etc. The European Integration

12 Tom Gallagher, *The Balkans in the New Millennium. In the shadow of war and peace*, 2005, Routledge, p.181.

13 European Commission, *Stabilisation and Association Process for Countries of South-Eastern*

Europe: Bosnia and Herzegovina, Croatia, Federal Republic of Yugoslavia, Former Yugoslav Republic of Macedonia and Albania. COM (99) 235 final, 26.05.1999.

14 The Former Yugoslav Republic of Macedonia's long and winding road to the EU, European Policy Center Event Report, Policy Briefing, 20 February 2007, S11/07

15 Christian Pippan, *The Rocky Road to Europe: The EU's Stabilisations and Association Process for the Western Balkans and the Principle of Conditionality*, in *European Foreign Affairs Review* 9, 2004, p. 229.

16 European Council, *Presidency Conclusions*, Copenhagen 21 June 1993; SN 180/93; Bull. EG 6- 1993.

17 European Council, *Conclusions on the Principle of conditionality governing the development of the European Union's relations with certain countries of south-east Europe*, Bulletin EU 4 – 1997.

18 European Commission, *Stabilisation and Association Process...*, op. cit.

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Partnerships provide the countries with a detailed roadmap for accession, outlining a set of reform priorities to serve as a check list for measuring progress. “The participating countries are expected to draw up National Plans for the implementation of the Partnerships, including timetables and details on how they plan to address the relevant priorities”.<sup>19</sup>

### Partnership vs. Tutorship

The Partnership concept is however subject to criticism due to the overwhelming topdown approach of the EU. Its strategy to determine criteria and short and mediumterm priorities to be fulfilled excludes the SAP countries from participating in their design and implementation assessment. Hence, the absence of active participation of the WB states in shaping the SAP agenda questions the perception of the process as a partnership. The countries from the region had almost no say when the framework was introduced. The EU’s “take-it-or-leave-it approach”<sup>20</sup> is witnessed in the monitoring process – the annual assessment on the SAP progress is done on the basis of information from the EC delegations, Member States embassies, other international organisations and independent bodies, but falls short of consulting the countries. This intensely interventionist approach is criticised of being “too often poorly-coordinated and over-bureaucratised”.<sup>21</sup>

Furthermore, WB countries perceive the conditionality and priorities prescribed as being “externally imposed” due to the fact that the SAP and the SAA, containing the criteria, are actually not “internal” to the accession process. “As long as the SAP is perceived to be exogenous to the enlargement process, its impact on the domestic political agenda is going to be minimal”.<sup>22</sup>

Consequently, for the process to be sufficiently efficient, it might need to be integrated into the enlargement strategy and not be an external framework, leading to pre-accession. Even the strong commitment to integrate the region, embraced firmly in Feira (June 2000), Zagreb (November 2000) and later-on in Mhessaloniki (June 2003), did not entail the promise of the full membership reward at the end of the reform process.

Therefore, the expectations of the WB countries for receiving a candidate status were deceived as they were considered from then only as potential candidates. The distinction between candidates (Croatia and FYROM) and potential candidate countries (Albania, BiH, Montenegro and Serbia) affects the disbursement of financial assistance under the Instrument for Pre-accession Assistance (IPA)<sup>23</sup>

, as the instrument differentiates the aid components according to the granted status.

“There is a serious risk that the candidates, given the tight timetable for accession, will receive a much greater share of that assistance than the non-candidate countries of the Western Balkans”.<sup>24</sup>

Since the countries need increased assistance in order to implement the necessary reforms, the status differentiation needs to be attenuated and a clear political perspective for accession given to the potential candidates. The necessary steps in order to consolidate stabilisation and foster the reform process include an earlier signing of SAA and granting candidate status to all the countries. This tangible reward will significantly increase EU’s influence and further assure the countries of the membership perspective. “It is not that either elites or societies of the region believe they will realistically be ready for membership any time soon, but that the lengthy time-scale not only reinforces self-doubt but also weakens the incentive effect of the EU accession prospect. Both elites and societies need constant reassurance and encouragement”.<sup>25</sup>

Indeed, the prospect of accession is of immense importance to the countries, which was clearly demonstrated at first by Croatia and FYROM and later-on by Albania and Montenegro, all applying for membership before their SAA came into force. On the other hand, for the countries, the label “potential members” evokes vague and remote intentions of a potential, rather than real candidacy. The adoption of this terminology has in fact raised “not the expected response of gratitude and optimism for the future but misgivings and suspicion”.<sup>26</sup>

19 Pippan, op. cit., p. 242.

20 Ibid.

21 Tom Gallagher, *The Balkans in the New Millennium. In the shadow of war and peace*, 2005, Routledge, p.184.

22 Triantaphyllou, op. cit., p.69.

23 European Council, Regulation, establishing an Instrument for Pre-Accession Assistance (IPA), (EC) No 1085/2006, 17 July 2006, L 210/82.

24 Marie-Janine Calic, *The Western Balkans on the Road Towards European Integration*, Berlin, Friedrich Ebert Stiftung, December 2005, p.6

25 Batt, op. cit., p.13.

26 Ibid.



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Another strong incentive for reform for WB candidate countries would be the setting up of indicative target dates for accession. The EU is reluctant to grant such dates because of the general perception that the rationale of such stimulus is debatable. The European Council in December 2006 stated that target dates for accession will not be set until negotiations are close to completion. However, the EU could nevertheless set up certain timetable which would mean properly rewarding the efforts, made by the aspirant countries by bridging the gap between signing an SAA and membership. The sheer fact that Macedonia, given candidate status in December 2005 has not yet started accession negotiation demonstrates a decrease in strength of the European commitment. The latter can be seen as a clear indicator that the timing is not the only challenge in front of countries' accession.

### **CONCLUSIONS**

Despite the flaws in the process, the latter is of crucial relevance for the countries in the region, given the clear EU commitment that it manifests. The prospect of future membership has indeed proved to have a considerable transformative capacity – the promise of the integration's "golden carrot" gives the countries the incentives to proceed with the difficult socio-economic reforms. Indeed, passing through the painful learning process as a result of the Kosovo war, the Union has moved from a strategy of reactivity to a strategy of pro-activity by developing a long-term approach towards the region. The SAP succeeded in bringing the region closer to the EU, but a necessary question would be if it would manage to tackle the challenges in front of the enlargement process that lie ahead. Recently emerged "fatigue" moods, related to enlargement can prove disastrous for the European project. "If the EU commitment to the WB wavers with the prevalence of such current moods...then the policies and instruments of the EU will drift apart"<sup>27</sup>.

Therefore, there is a need of a new kind of policy approach and specific measures to address these new challenges and to clear the way for enlargement success.

One of the fundamental obstacles that countries willing to accede will face in the future is referred to as the Union's "absorption capacity". This term reflects EU's ability to take in new members while maintaining the momentum of integration. Besides the general/country specific conditionality, laid down by the Council Conclusions in April 1997, the candidate and potential countries have to comply implicitly with this condition, turned into an additional, formal criterion. This requirement and, in particular, recent debates as regards the concept of absorption capacity, refer to the identity crisis that EU is suffering as a result of the "big-bang" enlargement in 2004. The "enlargement fatigue", as the absorption is commonly referred to, is in the core of the debate about the widening and deepening the integration or the link between further enlargement and the capacity of the Union to welcome new members. The absorption capacity-related agenda has negative consequences concerning the current state of affairs in the WB. In this respect, "...talk of 'enlargement fatigue' keeps alive uncertainty as to whether the Union is serious about its commitment to the region"<sup>28</sup>.

Having in mind that only the European perspective can ensure a continuation of the transition process and lead to stability and prosperity in the region, doubts about EU's commitment have serious moral and political implications in the countries concerned.

Legitimising significant efforts that each country has to undertake in order to comply with EU's conditionality and requirements becomes a fairly difficult task for national governments. Fears that enlargement fatigue would "translate into policy paralysis towards the region, postponing the accession of the Western Balkan states into the distant future"<sup>29</sup>

add to the negative record of the EU in the region. The latter result from the EU insufficient involvement during the wars in former Yugoslavia, thus, "...from the perspective of the region, the EU failed them in the 90's, it could do so again"<sup>30</sup>.

In order to overcome the fatigue and to additionally strengthen the European perspective, the EU

27 Lucia Montanaro-Jankovski, "The interconnection between European security and defence policy and the Balkans", Southeast European and Black Sea Studies, Vol. 7, No 1, March 2007., p. 152.  
28 Graham Avery and Judy Batt, Balkans in Europe: why, when and how?; EPC Policy Brief, March 2007  
29 Calic, op. cit., p. 1  
30 Batt, op. cit., p. 13

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should change the rhetoric related to enlargement, which so far has had negative connotations - “either we export stability to the Balkans or the Balkans import instability to us”.<sup>31</sup>

Westerners’ fear of this deeply troubled region neglects the fact that “promise of EU membership for the Balkans was not made out of altruism, but for reasons of practical self interest”.<sup>32</sup>

The process of “lessons learned” has made it clear that conflicts in the EU’s backyard represent a considerable threat to Europe’s stability and peace. Hence, the mutual interest from keeping the prospect of integration open and credible should be further emphasized in both applicant countries and current Member States.

Transforming the negative arguments into a positively-charged message requires communicating more efficiently the benefits of enlargement, for which the Union has accumulated considerable knowledge from previous rounds. The Commission commonly insists on efforts to ensure public support for enlargement, demanding Member States to take the lead and explain to their citizens that the prospect of EU accession entails clear benefits for the EU in terms of growth, stability and security.

Communicating efficiently the enlargement process is, indeed, one of the principles of EU’s enlargement policy. However, in April 2010, while speaking in front of the EU assembly of local and regional representatives, the newly-appointed commissioner for enlargement, Mr Štefan Füle, stated that he would “make sure countries are fully prepared for membership at the moment they join...There will be no free-rides nor any short-cuts. We are first and foremost interested in the quality of the accession process...”<sup>33</sup>

Moreover, the organisers of the WB conference, marking the 10th anniversary of the Zagreb summit (2000), which will take place in June 2010 in Sarajevo, refer to the enlargement process in moderate language “in what is clearly an attempt to avoid conflict with EU partners such as Germany or the Netherlands, which advocate a cautious enlargement policy”.<sup>34</sup>

The latter statements, together with the unwillingness to reassure the countries by granting candidate status or giving target dates for accession, can entail negative implications on the public opinion in the WB and might foster the spreading of euro-scepticism. Combating this eurosceptic trend can be done by presenting a clear timetable and by enhancing the political relationship with official and potential candidates.

The political relationship has to be strengthened and the commitment confirmed not only at a state level - societies in the WB should be given a tangible proof of the European perspective. In order to satisfy the need of making a significant improvement in the lives of ordinary people, the Union has to improve its visibility in the region. Programmes of exchange and enhanced partnerships have been introduced since the Thessaloniki Summit, with the purpose of increasing the impact of the Union at political and societal level. The introduction of visa-free regime for the citizens of Macedonia, Montenegro and Serbia from 19th December 2009 is therefore “a truly major practical and symbolic step towards overcoming the isolation and marginalisation that so afflicts morale in the region”.

What is left to be achieved is to apply the visa-waiver to all the WB countries, including Albania, Bosnia and Herzegovina and Kosovo, which have to comply with all the benchmarks, agreed under the visa liberalisation dialogue.<sup>35</sup>

Another barrier that has to be overcome in order to ensure the success of the European integration process, lies in the commonly used nowadays “ownership” concept. The idea currently implies taking over responsibility in the region from its leaders and involving local governments in solving common problems at a regional level. In a broader sense, however, the concept refers to the general ownership of governance at national level and means that in every country, authorities and society should have reached a consensus about the reforms to be achieved. “People in the region need to drop the passive stance of ‘takers’ of externally-imposed conditions and see that they can become ‘makers’ of their own future”.<sup>36</sup>

31 Chris Patten, Speech at the Western Balkans Democracy Forum in Thessaloniki, April 2002, EU Newsletter, April 2002, Delegation of the European Commission, Skopje

32 Avery and Batt, op. cit, p. 2.

33 “Enlargement: concrete reality counts, not commitments, says CoR”, RAPID press releases, COR/10/35, Brussels, 15 April 2010.

34 Zeljko Pantelic, “No need for new commitments on enlargement, say Madrid and Rome”, <http://waz.euobserver.com/?aid=29641>.

35 Visa liberalisation for Western Balkan countries Brussels, 30 November 2009, 16640/09 (Presse 349); [http://www.se2009.eu/polopoly\\_fs/1.25716!menu/standard/file/111561.pdf](http://www.se2009.eu/polopoly_fs/1.25716!menu/standard/file/111561.pdf).

36 Avery and Batt, op. cit., p.3.

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This popular consensus focuses on the learning process and not on direct guidance by the European Union. The relationship between the applicant countries and the EU should be based on an equal footing and be a partnership, not a tutorship. The EU should refrain from abrupt interference and supervision but offer help and assistance when asked for. The countries, on the other hand, have to refrain from seeking constant guidance from the EU or EU member states but try to find the way-through themselves, based on the principle “learning by doing”.

### **Some positive thoughts for the future.**

In short – the European Union can not afford to leave the Balkans out. The geographical proximity and crucial importance makes the region a major challenge for the EU’s external relations. It is not only the main field of action and efficiency assessment of the EU - failing the WB would undermine the Union’s credibility as an international actor. On the other hand, integrating the countries from the region will be a landmark success for the EU, enabling it to further consolidate its role as a global actor. Therefore, the Union should uphold its promises and reaffirm the European perspective for the Balkans. Before offering the ultimate reward of full integration however the Union has to deal with the remaining challenges that obstruct WB countries’ accession aspirations. It has to overcome the overall scepticism and fatigue and use the remaining time to change them for the better. A sustained reform momentum in the region, as well as implementing the improvements, outlined above, will further the process of transition.

Setting up clear timetables, completing the visa liberalisation process and enhancing the dialogue with the WB states will eventually strengthen the commitment from both sides and lead to a successful sixth round of enlargement. Then, as Mark Leonard argues, Europe will succeed in “remaking the world in its own image through its unique transformative power”

and shaping a new and better world order. Only then the Union will be able to complete the process of unification and define its final borders.

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# UNDERSTANDING THE EU 2020 IN THE AUSTERITY CONDITIONS OF BULGARIA

Philippine Colson

## UNDERSTANDING THE EU 2020 IN THE AUSTERITY CONDITIONS OF BULGARIA

Philippine Colson<sup>37</sup>

**Key Words:** Bulgaria; Economic Growth; European Union; EU 2020; Stability and Growth Pact

### INTRODUCTION

By focusing on austerity measures, the Bulgarian government is failing to ensure long-term sustainable economic growth. I argue that the top priority should in fact be education and innovation. By attempting to maintain government expenditure under control, it is avoiding endangering its position within the Stability and Growth Pact. According to the European Commission, the Stability and Growth Pact is a framework for the “coordination of national fiscal policies in the economic and monetary union [...]” to ensure the long-term sustainability of public finances (European Commission, “Stability and Growth Pact”). The latest Council Opinion on the Updated Convergence Program of Bulgaria, 2009-2012, recognises that the deterioration of the general government balance in 2009 was largely due to the financial crisis, and that currency board requirements meant that the government did not adopt stimulus measures.

Budgetary outcomes have been viewed positively rather than negatively, which means that there is a potential for problems should revenue be lower than planned in 2010 (Council of the European Union, 2010). I also argue that measures taken because of the currency board and the Stability and Growth Pact risk failing to address long-term growth requirements of the country. This is in fact a bad calculation in my opinion, as education a central component of long-term economic growth. This is because even basic education is a necessity for integrating the modern economy.

The European Commission’s EU 2020 strategy aims at sustainable growth through investment in R&D and reducing the number of early school leavers. Attention and resources must be devoted to education, retaining those in research and stimulating the development of ideas. Government austerity measures are at odds with this. Investment must be targeted towards educational institutions at all levels. It is foreseen that measures aimed at R&D will facilitate access by the private sector and fulfil that requirement. Unfortunately, this could not work for education on a mass level, as the private sector will not ensure accessibility as publicly funded education would. This paper will explore the apparent contradictions between these policy directions and attempt to understand if they can be consolidated.

### Policy Contradictions: Discussing Bulgarian Policy in the EU

Is it possible to combine austerity measures in a national economy, while simultaneously attempting to achieve a competitive economy composed of well-trained individuals, in employment? The EU 2020 is meant to help coordinate efforts across European Union (EU) Member States (MS), so as to help the EU economy be more competitive as a whole. My fieldwork has shown thus far that there are essentially two opinions about the effectiveness of the EU 2020 (previously the Lisbon Strategy): it is either useful because it helps Member States share best practices and progress together; or it serves no purpose because Member States engage in the policy areas concerned anyway, and all it does is create supplemental bureaucracy. What is interesting in this context then, is that Bulgaria is pursuing austerity measures, even though it is very difficult to combine them with appropriate public investment in education and R&D (amongst other things).

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The lack of public funding in such areas is problematic, and indicates the need for private investment. It is problematic because education (at all levels and of all types) is at the core of a well-trained and productive population. Economic growth and competitiveness rests partly on having a population that can contribute to these two aspects, as well as a population that is qualified to fill the positions needed. A lack of investment in education creates an initial hurdle, which can then lead to other problems, including unemployment (that may be prolonged in cases where a lack of training means a lack of lifelong learning capacity and adaptation to new needs in the economy). If a lack of public funds for education and R&D (which sits at the upper end of the education spectrum, but which represents the culmination of the cycle) means that private funding is the only option, a new hurdle is encountered. The 2007 financial crisis has created a situation whereby it is difficult for both public and private parties to access credit, also partly due to the loss of capital value in many areas (depending on the sector and the country). Assuming, therefore, that private funding may be an option to counterbalance the diminishing public funding, it is unlikely to be easily accessed. Bulgaria would likely face more difficulties attracting private investment in the area of education and R&D because it is essentially a service economy, and has difficulty attracting Foreign Direct Investment (FDI) in non-service sectors. In this case, what good would the EU 2020 do? How would sharing best practices help? It is difficult to share best practices when the problem is not of know-how but of capabilities.

Compounding this problem, education and R&D are not necessarily strongly integrated in the Open Method of Coordination (OMC – which was the tool of the Lisbon Strategy, and for which the new form has yet to be determined) due to their strong political role and a lack of desire across MS to permit much (if any) input from the European Commission (Bogdanov, 2009). If there is no real purpose to the EU 2020 then, this indicates that concerns are above all economic rather than economic and social at the level of the Bulgarian government. The EU 2020 does not appear to have any teeth. This is unfortunate to a certain degree, as it has the potential of providing some degree of impetus to a coordination of economic and social policies across MS. Indeed, it is impossible to disassociate the two aspects. Without economic policies that take into account the effect of harsh economic measures on people, the people become the victims of the economy. It may be assumed that the economy will correct itself in the long term, and that achieving a low budget deficit will support the economy by making it more stable and attractive, but the fact remains that a temporary lack of funding can still have long-term implications. Bad quality education is difficult to correct, and will hamper the training of people who can later contribute to the economy; lack of investment in R&D will lead to brain drain in many cases. The question then becomes, who are the austerity measures good for? The EU or Bulgaria?

As the MS have become more integrated and the globalisation of markets has advanced, it has become increasingly difficult for MS to adjust their economies using traditional tools such as fiscal or monetary policy. By joining the EU, Bulgaria has been able to show banks and investors that it is a member of a group of states that are generally considered relatively stable and attractive. This benefit is not negligible. Unfortunately, the EU also has a tendency of being a union by, and for, the strong MS. A country such as Germany, for example, does not have a comparable situation. Population alone makes it significantly bigger than Bulgaria (2006 data indicates a population of 7,718,750 in Bulgaria, versus 82,437,995 in Germany (Eurostat, Total Population). Additionally; “Germany was the most specialised Member State in the manufacture of machinery and equipment and motor vehicles in 2006, Spain in construction, France in other transport equipment and the United Kingdom in computer and related activities as well as research and development.” (Eurostat, Specialisation Ratios).

Bulgaria does not appear at the top of any of these sectors. This is not necessarily a surprise, but it does mean that it risks facing difficulties when attempting to create a competitive advantage by carving out a niche for itself in one of the main sectors. This means that the austerity measures depend on a future improvement of the economy, both nationally and internationally, to compensate current budget cuts. If the population will not be fully capable of contributing in the future to its fullest potential because of current budget cuts, even an improvement will not garner the expected return.

There is also the problem of current unemployment, low pensions and health care. Individuals cannot be treated in isolation. If the public budget is low and the public service is cut, this section of the

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population will go into unemployment or under-employment, unless the private sector can compensate. The private sector is currently facing difficulty accessing credit and is playing it safe until the economic outlook improves. This means that unemployment is not easily resolved with a transition to the private sector. Once unemployment increases, problems begin with unemployment benefits (which are not necessarily high enough for people to survive off of in the first place). The burden then falls upon families to provide for themselves, which can become more difficult if more than one individual is unemployed, or if those in employment cannot earn sufficient wages to support a family alone. The burden of caring for the elderly contributes to this on a more constant basis than temporary unemployment. Less people in employment contribute to further funding problems for the health care system, and those in unemployment, once again, cannot make the transition to private health care in most cases. There is thus a cycle that cannot be easily broken once it is entered into, unless employment or full employment can be increased to bring people back into the workforce. Bulgaria faces the problem of having a smaller population size, which can be an issue in simple resource terms, but it has been compounded by the population decreasing consistently, with a spike in 2001 (data available from 1998) (Eurostat, Population Change). This means that when looking at policies that assume future growth, it is difficult for Bulgaria to position itself so as to reap full benefits in the future.

Creating a competitive advantage is a clear requirement, but this requires public or private investment, and brings us back to the initial problem. The lack of leeway in terms of targeted policies because of the integrated markets prevents Bulgaria from acting on what is in its best interests. The EU could provide a balance to this, but I argue that it does not. Indeed, Bulgaria has been under closer scrutiny in terms of performance than older MS that have not necessarily been models of policy behaviour. Data from 2000-2009, for example, indicates that (as a percentage of GDP) Bulgaria ranged from -3.9-3.0, while Germany respectively ranged from -4.0-1.3, and France ranged from -7.5--1.5 (Eurostat, Government Deficit/Surplus, Debt and Associated Data). What this indicates, in my opinion, is that a stronger country can afford to go more in debt because it has a better credit rating, while a country like Bulgaria has to perform especially well to access the same conditions.

### CONCLUSION: ALL BENEFIT IN THE LONG RUN?

Is this a problem? It is impossible for all MS to be equally strong in all areas, or to be the strongest in one sector or the other. There is therefore bound to be differences across MS. I have argued, though, that there is a clear connection between the different issues raised thus far. I have argued that the EU 2020 does not serve much purpose in terms of strength it can lend or impact it can have on MS. On the other hand, the aim of the Stability and Growth Pact, or more immediately the stability of the EU economy, means that certain policies may be promoted above others. So is it possible to say that there is a benefit to the Stability and Growth Pact, as the EU 2020 does not appear to be able to balance social and economic policies, which I argue is an essential aspect. The core argument is that “restoring macro-economic stability and returning public finances on a sustainable path” are the prerequisites for growth and jobs (European Council, 2010). Unfortunately, for countries that could benefit from a stimulus program, the incapacity to do so means that growth may be lower than planned. The question then seems to be whether countries that begin from further behind simply need to be patient, or if these measures are more interesting for the MS that can access credit more easily, and therefore benefit from a more stable macro-economic environment. If Bulgaria’s benefits from the EU 2020 or the Stability and Growth Pact are not immediately apparent, in what ways may it benefit? Is there a strong state-weak state relationship that means it can benefit by association? Or perhaps the question does not lie there, and it can be safely assumed that Bulgaria does benefit from being a EU MS more than it does standing alone.

As a point of comparison, the Bulgarian trade balance has been negative throughout the 2000-2008 period, but the trend has been negative (National Statistical Institute). Comparing similar data for Serbia (a country that can be compared due to its geographical location and transitional situation), the trade balance for the 2000-2008 period has also been negative, with a negative trend (Statistical Office of the Republic of Serbia). A negative trade balance may be detrimental to the extent that it

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indicates domestic weaknesses and a loss of foreign currency reserves. For a country like Bulgaria, which cannot change its exchange rate relative to the Euro, it is difficult for this to be rectified, except by a change to domestic demand. This brings us once more to the need to strengthen its competitive advantage, for which it needs investment capacity.

The comparable situation also seems to indicate that being a MS of the EU does not necessarily ensure a more favourable position, though it does significantly reduce national fiscal and monetary leeway. What this appears to conclude is that Bulgaria is stuck in a vicious cycle, unless it will benefit in the long-run from fiscal austerity and low budget deficits (as compared to other MS that are allowed to run bigger budget deficits). The conclusion would be that there is an apparent contradiction and a situation of “do as I say, not as I do” on behalf of stronger MS. This would indicate the need for time series analysis of the Bulgarian economy so as to evaluate the effectiveness of the measures.

What this paper has shown is that several intersecting factors appear to influence the strength of the Bulgarian economy, and that it is not self-evident that it has benefited from following the policy direction dictated by the European Commission. Further research may help explain this better, so as to understand where new MS with less of a voice situate themselves in the policy spectrum of the European Commission.



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# FROM REGIONAL TO EUROPEAN? DISCUSSING THE EU OPTIONS AND PATHS FOR INTEGRATION IN THE BALKANS

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### ABSTRACT

The post-communist countries of South East Europe have begun their journey of European integration amidst many difficulties. As with other regions, the EU is striving to help and assist these countries in order to catch up with the new members of EU. In this paper I will be arguing on the inadequacy and insufficiency of the regional strategy that EU has adopted related to South East Europe. For this purpose, the paper focuses on one of the main components of the Stability Pact, the liberalization of trade in the region. I will argue that the process of creating a free trade area in the region didn't achieve the expected goals, as this experiment had proved in other regions in the past. This happened for two main factors: firstly, the that the countries of the region have specific structure and needs in terms of trade relations. The second factor concerns the fact that the EU followed this process partially, without considering other necessary element needed for the integration and the success of the project.

### BACKGROUND

The EU perspective of the Balkan countries has experienced different processes and events. Each country had and have its own relations and path towards the EU membership. Since the early years of post-communism the EU tried to establish its role in the democratization process within these countries. As we well know, the 1990s were very difficult years for the Balkan region especially due to ethnic and national conflicts that caused armed conflicts and wars. It was clear that the strategy that the EU used for the Central Europe post-communist states couldn't work in the Balkan region. Thereby, after the last terrible war of Kosovo, the EU decided to elaborate and implement a more concrete and designed path for the region. The purpose of this paper is to explain and discuss the different policies that EU has implemented in the Balkan region trade sector in order to promote stability and prosperity. The hypothesis is related to the fact that EU strategy for a regional integration of the Balkans didn't give the expected results, because of two main factors: first, the fact that the countries of the region have specific structure and needs in terms of trade relations. The second factor concerns the fact that when the Stability Pact wasn't sufficiently integrated and didn't consider other necessary element needed for its success. In this paper I will argue that both these elements determined the weak or lack of success in the regional approach of the EU.

After the great destabilization that the Balkan countries experienced during the first decade of transition in post-communism, on 10 June 1999 the Stability Pact for South Eastern Europe was launched in Cologne. The Pact was created since 1998 as a general idea, but the NATO intervention in Kosovo convinced the EU to implement it as soon as possible. Even though it is an EU initiative, the Stability Pact involves many countries and organizations. The partner countries are Canada, Japan, Norway, Russia, Switzerland, USA and Turkey. The international financial institution partners in the Stability Pact are the World Bank, the International Monetary Fund (IMF), Council of Europe Development Bank (CEB), European Investment Bank (EIB), European Bank for Reconstruction and Development (EBRD). Almost all these institutions were active in Albania since 1992, but in this joint project their role would be more crucial. It also involves different international organizations such as: UN, OSCE, Council of Europe, UN-HCR, NATO, OECD. The Stability Pact is focused in nine countries in the region: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Moldova, Montenegro, Romania, Serbia and The Former Yugoslav Republic of Macedonia. The key word in the Stability Pact was of course regional co-operation.

First of all, this was crucial for South Eastern Europe in itself. The countries of the region had quite the same needs from fighting organised crime to increasing trade and attracting investments. It is obvi-

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ous that as these issues are cross-border and regional issues they can be addressed more efficiently through co-operation and coordination of strategies between the national governments. Secondly, regional co-operation, as a concept and as a policy, is a criteria for the Euro-Atlantic integration. Both, NATO and the EU has inserted this criteria as a prerequisite for membership (Stability Pact, 1999). Thereby, the main motivation for these countries in creating and improving cooperation is the perspective of membership in the Euro-Atlantic structures and organizations. All the partners share a common strategy on their activities in these countries. Therefore, with the Stability Pact, it became common speaking about Euro- Atlantic integration. The general aims, that were declared in the founding document of the Pact, claimed about “efforts to foster peace, democracy, respect for human rights and economic prosperity in order to achieve stability in the whole region” (Stability Pact, 1999). As Gligorov (1999) remind us, the Stability Pact is an outcome of some regional initiative that already existed before. They include the Royaumont Process, the South-East European Co-operation Initiative (SECI) and the Central European Initiative (CEI). All these initiative had the main objective of securing stability in the region by promoting co-operation in different areas, such as culture, economy, politics and security. There have been several critics from different authors to the Stability Pact. Mainly, they deal with the level of abstractness of the concept.

Of course, it is seen as an important factor that would lead to development and prosperity. This would be achieved through securing peace, democracy, open and market economies and civil societies. But the problem is that the Stability Pact didn't go in details. For example, in economy, it claimed market economies integrated with the EU and the world and sound macroeconomic principles. Also, through bilateral and multilateral co-operations it would promote free trade and good neighbourly relations, but it didn't go in details and didn't explain how and with what exact policies and instruments all these goals could be achieved.

These doubt were partially solved when the Stability Pact started its work for implementing the strategies announced. The introduction of the Stabilization and Association Process (SAP) in the Western Balkans gave clear guidelines to the countries for each area. To enable the countries to meet the objectives, the EU offered financial support through a new instrument that was named CARDS (Community Assistance for Reconstruction Development and Stabilization). CARDS replaced PHARE and OBNOVA programs and would be a specific instrument for implementing the Stabilization and Association Agreements. The clear division in main areas make CARDS more efficient than its predecessors and help in focusing in concrete projects. The areas were: justice and home affairs, administrative capacity building, economic and social development, environmental and natural resources, democratic stabilization. Even though these sound like general objectives, they have clear divisions in sub-categories aiming improvement with several projects and assistance.

Gligorov (1999) makes a comparison of the Balkan situation and the Post-War Western Europe. The key notion of the process of EU integration was exactly stability through reconstruction, development and liberalization. All these issues should work together. This happened thanks to the enduring presence of the USA and the Marshall Plan in Europe. It provided strong financial support and investments which helped growth and development, and the Stability Pact would aim at the same approach (Gligorov, 1997). As we will see, the Stability Pact didn't look at all like the Marshall Plan. The Stability Pact work is divided through three main Working Tables: Democratization and Human Rights, Economic Reconstruction, Co-operation and Development, and Security Issues (with two Sub-Tables: Security and Defence, and Justice and Home Affairs).

The area that we are discussing falls under the competences of the second Working Table. The Working Table on Economy declared two overall objectives since the beginning. The first one aims to “ensure that both the countries of the region and the international community take a regional strategic approach to infrastructure development based on co-financing and institutionalised partnerships including transport, energy and telecommunications, with a view to prioritising capital investment in order to benefit from economies of scale”. The second goal, which is closer to the arguments of this paper, declares that it is necessary “to foster a business climate conducive to investment, trade and

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employment, through the implementation of the free trade agreements (FTA) and the use of monitoring processes such as the critical time bound targets of the Investment Compact, thereby fostering capital and know-how transfer and thus the basis for sustainable economic development in South Eastern Europe” (Stability Pact, 1999).

Therefore, the main objective of the Stability Pact in the trade sector is the liberalization and facilitation of trade in the Balkan region. In order to achieve these objectives, the programmes would aim the reduction and elimination of tariffs and non-tariff barriers to trade and through the implementation of measures to facilitate trade. The basis document for the beginning of this process was the Memorandum of Understanding on Trade Liberalization and Facilitation of 27 June 2001. In this memorandum, the South-East European countries committed themselves to create and develop a network of free trade agreements, in compliance with the WTO rules and in accordance with the process and commitments relevant to each country’s relationship with the EU. The import duties or charges that have equivalent effect would be abolished on at least 90% at the end of the transition period, which was claimed that would have been less than six years. All quantitative restrictions also would be removed during this period. The parties would also co-operate in other issues related to trade liberalization and facilitation, such as the implementation of standards, technical regulations, conformity assessment, testing, metrology and accreditation system that should be compatible with European and international principles. Another important measure to be taken was the harmonisation of legislation on company law, company account and taxes and banking law with the EU law (Stability Pact, 2000). It was thought that all these measures would increase trade and economic relations between the countries of the region.

### Towards a Single Free Trade Agreement?

As we can see, all these goals sound really ambitious. It is not just because of the incapacity of the institutions to implement such important reforms in such short period of time, but it is also for the multi-directional character and the different contemporary processes that they had to afford in the same time. The liberalization of trade moved in three directions. The first, as the memorandum requested and as the countries committed to do, concerns the signature and the implementation of a whole network of bilateral free trade agreements in the region. The second is the process that each country had started with the World Trade Organization in terms of accession and membership. The third, of course, is the steps of liberalizations that the Balkans needed to take with the EU. All these three processes are of course similar and in some cases complementary, but they need important instruments and capacities especially in term of human resources.

Also, due to barriers and political and legal uncertainties, there is a significant level of smuggling in this region, but there are no real estimates on the volume of this “trade”. There are several reasons for which Gligorov doesn’t think that regional trade would increase easily in the Balkan. He doesn’t consider the Balkan as an economic region. He claims that these countries do not fulfil the conditions for regional integration for because:

- first of all, most of the region is quite underdeveloped. If all the region must converge to the characteristic of the all region, it would remain underdeveloped in the future too.
- secondly, the main trading partners and the most important investors of the Balkan are in the EU. Also no country in the Balkan has an optimal currency. They all are anchored to the Euro. This means that no local currency can play the role of an anchor currency and can serve as a vehicle of integration.
- there is no financial closeness in terms of a working payment system or a working bank system. Thereby, foreign direct investment internal and between these countries is really low (Gligorov, 1997). This situation and these reasons predicts a low level of trade and investments and the result will be a low level of regional integration.

Figures of regional trade after these agreements have confirmed Gligorov’s prediction. Since the Memorandum of Understanding on Trade Liberalization and Facilitation, a lot of work has been done. The eight countries of South-East Europe have built a network of 28 bilateral free trade agreements.

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Respectively, Albania, Bosnia-Herzegovina, Croatia and Macedonia has applied free trade agreements with all the countries in the region, including Kosovo. The other countries also has already signed and implemented free trade agreements with all the region.

This is supposed to create a market of 55 million of consumers, would increase trade and become attractive for foreign investments. All these agreements are in line with the obligations that these countries have with the WTO and the EU. The Memorandum in 2001 decided as main targets the 90% threshold in terms of tariff lines and imports liberalized preferentially, and some provisions to be included in the free trade agreements. The thresholds reached by the FTA-s has shown important progress for some countries and less for others. There is a difference also in terms of kind of products. Industrial products are heavily liberalized almost in all countries but for the agricultural products the situation is different (Messerlin and Miroudot, 2004).

In 2004, many authors and institution actors started thinking about transforming and harmonizing these FTA-s into one single free trade agreement. It seemed a difficult process because 28 agreements imply many procedures and many commitments that needed to be transfer to a single draft. For this reason, some EU actors called this network “a spaghetti bowl”, due to the number of agreements and their relations to each other. Anyway, if we have a look at the full texts of these agreements we can notice that they are very similar and don't have substantial or important changes. Initially there were three main options that were discussed. Messerlin and Miroudot help us in illustrating them properly. The first one concerned and expanded Trade Working Group (TWG). This option proposed to keep unchanged the FTA-s texts and to minimize the costs of operating a web of 28 agreements by expanding the role of the Trade Working Group that was related to them. This option would limit the harmonization just for the operating and implementing rules and would not deal with competition rules, exceptions, contingent protections and new trade issues. All these issues were included in the General Provisions of the FTA-s. Keeping the whole network of agreements with their own specificities for a long time would increase disputes between the countries. Of course this option is characterized by small costs in financial terms but it also implies small benefits and wouldn't help for the main goal.

This alternative requires a minimal institution-building. It would simply increase the role of the Working Group, by increasing the frequency of their meetings. As Messerlin and Miroudot point out “these small net benefits suggests that a mere expansion of the role of the Trade Working Group cannot address, in a satisfactory way for the business community, the tensions raised by the legal trade instrument currently available – a web of the 28 FTA-s – and its potential outcome – the threshold achieved are capable to open the opportunity of an effective regional FTA in almost all the industrial goods and in a non-negligible portion of farm products” (Messerlin and Miroudot, 2004).

The second option available was an expanded CEFTA (Central European Free Trade Agreement). The CEFTA text would expand to cover the whole region. This option presented different problems at the beginning because the network of FTA-s didn't include some provisions of CEFTA. Many trade-policy analysts claimed that this was not a good option for two main reasons. First of all, the three countries of the region which already had signed CEFTA, Bulgaria, Croatia and Romania would have of course small costs, but also small benefits. Second, the CEFTA solution would be really costly for the other countries of the region. They have to adopt a new Treaty after the existing FTA-s. The benefit for this shift is limited because “ CEFTA is a treaty with deficient provisions on traditional trade issues and with no provision on the new trade issues essential for the growth of the region's economies, such as services or public procurements. Therefore, the cost-benefit balance of a shift to CEFTA is probably positive, but small and transitory, for the three countries of the region having already such a Treaty in their legal trade book. And it may be slightly positive for the other signatories, because the economic soundness of key CEFTA provisions is doubtful” (Messerlin and Miroudot, 2004).

The third option was more complex and with several sub-options as alternatives. It aimed to the creation of a single South-East Europe Free Trade Agreement specific for the region, SEEFTA. The first sub-option was a minimal SEEFTA. This presented lacks in many issues and had limited objectives of aligning on the best available text.

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But most important, it raises problems of inconsistency, economic concerns and divergence from the EU *acquis communautaire*. A second sub-option, of a maximal classical SEEFTA, would put the intra-SEEFTA trade into strong economical rules. Authors often compare these rules to those which govern the intra-EC trade. It would adopt EU-types rules for the competition rules and the rules on state aid, but they will keep the WTO rules for extra-SEEFTA trade. This option implied hard and constant work and would create a different legal scenario from the present one.

The last sub-option was the modern SEEFTA. It is modern because it is focused on the emerging trade relations in services, public procurements, intellectual property rights, etc. Thereby, the role of the harmonization is very important. The modern SEEFTA would adopt the two EC principles of mutual recognition and the country of origin principle. In this way, it will put the region in the same path as the EC and will facilitate its integration to the EC services, technology and public procurement markets (Messierlin and Miroudot, 2004). The outcome of this last option would have been very positive especially in the long term. Although this, it presents technical difficulties related to the capacities of the countries in implementing them. And also, as I mentioned above, it will show its best results in the long term. This creates some political problems in these countries, which are not keen to mention the words “long term” often, especially when questioned about integration process.

The main challenge requested to the Trade Working Group was to prepare and facilitate the elaboration and conclusion of a single FTA. The most important objective would be “to boost foreign trade and direct investments in the countries of South-East Europe, by simplifying the trade regime and improving transparency for business and enabling better administration of trade and trade related regimes by governments. It should also lay down solid foundations for full ownership of the regional trade liberalisation process by the adherents to the Memorandum of Understanding on trade liberalisation and facilitation and contribute to the development of each participant’s relations with the EU and its full integration into the international trading system (WTO)” (Stability Pact Progress Report, 2005). The group agreed on some main points. The deadline for the Single FTA to be signed was Summer 2006 and it entered into force in 2007. The Trade Working Group would have the main role in the negotiations, but international community would also be involved. The group should make efforts to minimise the costs of transaction in terms of time and procedures.

This was an ambitious project in a limited period of time. But time wasn’t the first and main problem to face. In 2005, the Stability Pact hadn’t decide yet which of the options mentioned above would adopt. They had already decided that the new single free trade agreement would be related to CEFTA. But it wasn’t yet clear if it would have been an enlargement of CEFTA or a new agreement based on the CEFTA text.

Other issues were also how to ensure inclusive eligibility criteria, how to make possible that countries would follow strict trade policy criteria, what would be the scope of the agreement in terms of new trade policy areas that the CEFTA text didn’t mentioned such as intellectual property and the institutional framework required to ensure that the agreement would be implemented properly.

From a network of FTA-s to CEFTA.

The first official step to establish a single free trade agreement was taken in June 2005 during the SEE Ministerial meeting in Sofia. On their joint statement, the Ministers agreed on this policy and mandated the Stability Pact Trade Working Group to prepare it. In November of the same year, the amendment of entry criteria for membership of CEFTA was presented in Zagreb.

On 14 February, in Berlin, the future project started to have a real form. The proposal of Romania, as Chair of CEFTA, of an enlargement and amendment of CEFTA was supported by the other CEFTA members. This was seen as an important facilitation and simplification approach in order to allow the Single free trade agreement to be created. The formal launch of the process of enlargement and amendment of CEFTA was at the High-Level Political Meeting in Bucharest, on 6 April. In conclusion to this meeting there was a joint declaration by the Prime Ministers of the SEE that were supported by the EU Presidency, the European Commission and the Stability Pact. The joint declaration was focused on

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the aims and the principles of the new CEFTA.

The new agreement should modernise and improve CEFTA by:

- including harmonised provisions on modern trade policy issues such as competition rules and state aid, government procurement and protection of intellectual property, trade in services, in full conformity with the rules and procedures of the WTO.
- including clear and effective procedures for dispute settlements in accordance with the WTO rules.
- facilitating the gradual establishment of a zone of diagonal cumulating of origin between the EU and Western Balkan countries.
- providing a suitable framework to manage the agreement and review its implementation (Stability Pact Progress Report, 2006).

From the end of May 2006, an intensive schedule of technical negotiations were held in June, July, September and October. These meetings were chaired by the Director of the Working Table for Economy, hosted by the European Commission's Directorate General for Trade in Brussels and supported by the Secretariat of the Trade Working Group. It is not a matter of this paper to enter in the details of the technical negotiation of those months, therefore we will focus only on the final round and the overall conclusions. The last meeting on 19-20 October was characterized by substantial progress and by the breaking of some deadlocks in sensitive areas such as agriculture, public procurements, the use of safeguard measures and institutional support structures. All this intensive work gave as result a new modernised trade agreement that aims to harmonise trade rules across the region and incorporates new provisions such as trade in services, intellectual property rights, public procurement and investment promotion. The new agreement was completely in line with the rules of the World Trade Organization and with the other obligations that parties had towards the EU.

One of the most important things is that this agreement will replace the network of 32 bilateral free trade agreements (in the end of 2006) that ruled the trade relations in the Balkan region. Of course bilateral free trade agreements will continue until the new agreement comes into force. During this transition time, the Trade Working Group has also announced its commitment to tackle non-tariff barriers. This was the main issue discussed during the technical meeting in July 2006 in Ljubljana. Once the CEFTA agreement will come into force it will create for the South-East European countries a forum for the development and implementation of regional trade policy. This forum would assume the main responsibilities of the Stability Pact Trade Working Group. The implementation of the new agreement should provide an important boost to intra-regional trade and increase the ability of the region to exploit trade measures offered by the EU (Stability Pact Investment Report 2007).

The agreement was signed at the CEFTA Summit in Bucharest on 19 December 2006. The summit was hosted by Romania, as the current Chair of CEFTA, and was attended by all the Prime Ministers of the region, EU Commissioners and the Special Co-ordinator of the Stability Pact. All the main institutions of the EU welcomed and supported the signing of the new Central European Free Trade Agreements. The signatories of CEFTA were: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Moldova, Montenegro, Romania and Serbia (including Kosovo as defined in UNSC resolution 1244). Romania and Bulgaria had to leave CEFTA few days later as they became members of the European Union.

Various declarations followed the signature and they all had the same kind of message. The EU Trade Commissioner Peter Mandelson said that "CEFTA will replace the spaghetti bowl of regional FTA-s in South Eastern Europe with a single agreement that will boost trade and attract investments. The expanded CEFTA will offer real economic benefits to all sides. But they also send an important political signal. Closer trade relations in South Eastern Europe are a foundation for stability and growing prosperity" (EU Commission, 2006). With reference to the improvement that the new agreement would bring in the other ongoing processes that the SEE countries has with the European Union, the EU Enlargement Commissioner Olli Rehn said: "The CEFTA complements the Stabilisation and Association



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Agreements Commission has or is negotiating with the countries of the Western Balkans. It makes an important contribution to constructive regional co-operation. For candidate and potential candidate countries CEFTA is an apprenticeship in the close economic cooperation that is an inevitable part of membership of the European Union”.

Practically, the agreements created a regional free trade area, based on the existing bilateral free trade agreements which liberalise quite 90% of trade, especially for industrial goods. It is important the role of the agreement in simplifying into a single system the complex relations that the network of 32 free trade agreements created. This should have made trade easier and increase its role in promoting economic growth in the region. But there were also non enthusiastic voices on that new agreements. David Kernohan, in his paper for the Centre for European Policy Studies, CEPS, claimed for a more muscular approach in the form of a customs union. He said that CEFTA doesn't respond to the specific situation in Southeast Europe. Non tariff barriers and technical barriers at the borders are still present. Vladimir Gligorov, of the Vienna Institute for International Economic Studies, also supported the creation of a customs union. But, instead of speaking about a question of a more concentrated effort in the region, he claimed about a question of time. CEFTA would have been efficient in 2000, but now it's too late. Croatia and Macedonia are not so interested in it for example (Anna McTaggart, 2006). But although criticism, the Stability Pact and the EU institutions remain certain that CEFTA would have been successful in its goals. If we look at the figures 3 years after the agreement, we can clearly see that the trade liberalization process in the region did not meet the expectations. Intra regional trade remains still weak, even though tariffs went down (eliminated for some categories). Once again, this confirmed the lack of a long term and well-thought strategy of the European Union for the Balkans.

### CONCLUSIONS

The EU perspective of the Balkan countries has experienced different processes and events. Each country had and have its own relations and path towards the EU membership. The role of the EU in the South East Europe has been and still is very important. However, as we could see from our analysis, EU activities in the region have been characterised by a lack of strategy and long term policy. In the case of the trade liberalization process we showed that uncertainties were visible during the first phases, when choosing between alternatives and then after when the agreement entered into force. As Gligorov and other authors had predicted, removing trade barriers in the region didn't increase trade too much. This came also because a more integrated platform was missing. Differently from past experiences in other regions, this time the EU didn't prepare an inclusive strategy where trade liberalization would go hand in hand with other factors, such as a custom union and free movement.

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**ABSTRACT**

From the Human Resources point of view, performance is a clue point. In this paper we express the importance and the impact that Ethics and Ethical dilemmas has on public administrator performance. Main goal of this paper is to give a complete picture of all the components of public administration ethics and the way they are managed in our public administration. Main new concepts of ethical public administrator are represented as balancing competing values, instrumental ethics, institutional basis to an ethical decision making, law and ethics. This paper has dealt with the argument that, despite repeated efforts to clarify ambiguities and ethical practice, ethics of public administration remains essentially unethical.

**Methodology:** for this paper we used the literature related to our hypotheses and interviews with managers, employees and public administrator.

**Key words:** *Ethics, Ethical dilemmas, performance, public administrators*

**INTRODUCTION**

Public administration ethics - a set of core principles that define minimum standards and govern the conduct of all those involved in public life - is a widespread notion, and measuring the western democracies. It is the fundamental feature of public administration, which ensures continuity and consensus values of a range of professions and organizations unmatched otherwise. These ethics have an institutional status as provide elements that keep the government together. As consequence to challenge such a notion, means challenging of one of the central pillars of modern democracies. This paper, however, asserts that the ethical principles of public service are by nature unethical precisely because they are institutionalized structure of values that define and limit behavior. Four issues form the core of this argument:

1. Ethical principles in public service are by nature vague and imprecise. They take a kind of sense only when placed in specific political or organizational situation.
- 2 A variety of agencies and organizations that are added constantly in the modern world of public service weakens the ability of the government or society to set meaningful standards that exceed organizational boundaries. Consequently ethical standards often provide only a smaller denominator among organizations, rather than the ideals of this joint public life.
3. Ethical dilemmas in public life primarily related to achieving a balance between competing or conflicting values. For this reason, the civil servant may be considered one that is able to assess and give meaning to these competing values within a clear framework of moral values.
4. It seems as if political institutions provide a moral framework for ethical decision making. However, the nature of political institutions and bring the implementation of conventional codes which act as a representative of the true ethical behavior. Consequently, the civil servant's responsibility for ethical behavior invalidated by his or her existence within the political institutions. In this paper will analyze each of these issues in detail and then analyze the impact of this argument in modern public administration.

Hypothesis

A great part of ethical dilemmas in public administration are borne from the lack of information, confusion, and pressure that exists in public institutions related to this argument. This ambiguities and ethical practices, shows that ethics of public administration remains essentially unethical.

**Equivocal Meaning of the Public Administration Ethics**

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Finding an acceptable and portable definition of ethics, which make sense as the modern structures of public administration as well as potentially evolving structures of public service, is a complex task somewhat impossible. As well argued and Stanford N. Dale S. Wright McConkie we make statements on ways of bringing the disciplines should expect from us and should be followed by them without paying the same attention means for the transmission of these aspirations from one generation to another. From self confidence point of view, each of us remains uncertain whether our commitments to personal values approved by colleagues as a basis for renewal of theory and administrative practices<sup>40</sup>

. Indeed, they noted a lack of consensus between academics or public administrators regarding the exact nature of ethics and its meaning in specific cases, although they accept that there is some compatibility in terms of general principles which supported public life. Therefore, what comes out of discussions on public service ethics, is the high level of consensus on basic values expected of civil servants (Whether those representatives elected or appointed officials) but also a high degree of uncertainty regarding the meaning of such values in certain situations. For this reason, Alan Lawton argues that 'virtue' of public service leaders is a key factor that reconciles the abstract values and principles set forth on the one hand, and ethical behavior in specific circumstances, on the other.

In this regard, the existence of 'virtue' in public service management is key to ensuring that abstract principles are translated into an ethical practice - ethical practice, which matches the expectations of the norms of society. The difficulty in this argument, is that virtue is displayed as an intuitive feature. Own uncontrolled intuition can lead to uncertainty about how individuals interpret the principles in practice. Despite the lack of knowledge about how the values and general principles interpreted in practice, public administration has on the majority of the Organization for Economic Cooperation and Development (OECD) attempted to develop a "list of control" to review "ethical regimes, again focusing on the ability of governments to ensure that such principles are the foundation of public service (OECD, 1996). Although I accept changes OECD political, cultural and constitutional to each of its member states, it is understandable that in developing such a list control, it only considers a package of essential values, such as supporting public service in all modern democracies. In this way there is a general opinion among the nations on the fundamental values that form the basis of public service. These could even articulate the fundamental principles, centered around terms such as dispassionate bureaucrat and politician responsible and honest and open.<sup>41</sup>

Where these notions are clearly stated and understood across organizations, there is less uncertainty. Displayed uncertainty about their interpretation of the institutional and organizational context specific, especially when essential principles met or oppose each other. Another feature of this uncertainty is related to the range of issues that arise from it.<sup>42</sup>

Following the schedule of increasing administrative ethics as a field of academic study in the United States during the last century, Terry L. Cooper notes that how the attention shifted from the former focus on administrative efficiency at the end of the 19th century, in the interest of neutrality of civil servants and equality in public service delivery, to switch attention recently on the virtue of civil servants and his connection to broader notions of citizenship and democracy.<sup>43</sup>

The result is that the ethics of public service could mean everything from attention to the elimination of corrupt practices and to observe exemplary standards of conduct, from a framework of legal codes and practices in comprehensive whole moral values, and wide package responsibilities in a specific system of accountability. Rather than help clarify the meaning of ethics, such a broad application of the concept inevitably multiplies its inherent uncertainty. The raised issue is not that core values of modern public service are unclear. Indeed, the normative framework by which come the actual concepts of public service is relatively clear and non equivocal. Furthermore, the emergence of structures and new methods in public management associated with recent scandals in various parts of the public sector, served to a devoted greater attention to basic moral values and degree with which latest experiences challenges or changes these

40 Wright and McConkie, (1988), pg. 2.

41 Montanheiro, (1998)

42 Cooper, (1994)

43 Cooper, (1994)

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values.<sup>44</sup>

In other words, here arises the idea that public service ethics are unclear, despite the clarity that was given basic values of public administration. The limits of public administrators to understand the processes through which values and basic principles are interpreted in the ethical practice when interacting with the wide range of issues which currently cause ethical challenges, leading to a high level of uncertainty, to the point where decisions are made ethical. Without doubt, this uncertainty, not necessarily leads to a kind of an unethical behavior of public servants but it opens the door to possible errors in how the basic principles are interpreted in practice in specific situations.<sup>45</sup>

## **Main instrument of an ethical decision making**

Ethical decision making is not an instinctive response to ethical dilemmas but is a process, as such it has its own instruments that help the public administrator to lead this process to the best or fairest decision. These instruments consist of:

- a) Code of ethics that is one of the most important formalized ethical instruments. A code of ethics is a balanced harmonized set of values.
- b) The code of conduct that is nothing more than a sophisticated manner to give a set of rules that help the public administrator to translate the set of values given in the code of ethics in real everyday activities.

All the ethical instruments have to be in harmony with the strategic management, organizational culture and diversity.

**So the process of ethical decision making passes through all these main instruments as shown in fig 1.**

But the real challenge of this process is the way these instruments are communicated to the public administrator. Experience tells that most part of Albanian public service has very qualitative ethical instruments through which public administrators try to conduct their behavior, but most of the time these instruments are not correctly transmitted to them. One thing is to write good ethical codes and good codes of conduct, and totally different thing is to make people understand and do what you have written there.

## **Methodology**

As we have mentioned the big challenge for public administration structures is the communication of the ethical instruments and its implementation in every one's member of public administration behavior. To investigate how much this goal is achieved in our public service we conducted a survey.

## **Subjects**

100 public employees took part in this study. These participants were randomly selected from Ministry of Interior, Ministry of finance, Ministry of Labor and Social affairs, Ministry of Education and Sciences, Regional Education Directorate of Tirana, Durres and Shkoder, University of Shkoder, University of Durres, Financial supervision authority, Bank of Albania, University Hospital Centre, Central Elections Commission, Albanian Electricity Power Corporation, Parliament of Albania, Tirana Library, Albanian Army. These organizations were chosen to create a diverse sample of participants who represented a broad range of governmental occupations. As expected, the respondents represented a diverse mix of public sector occupations, some of which were: finance and budgeting specialist, lawyer specialist, HRM specialist, R&D specialist, academic staff, medical doctor, maintenance staff, security guard. The respondents were also demographically diverse by their age, gender, and educational attainment.

<sup>44</sup> Greenaway,(1995), Pratchett and Wingfield, (1996).

<sup>45</sup> Ferrell & Gresham's contingency model of ethical decision (1995).

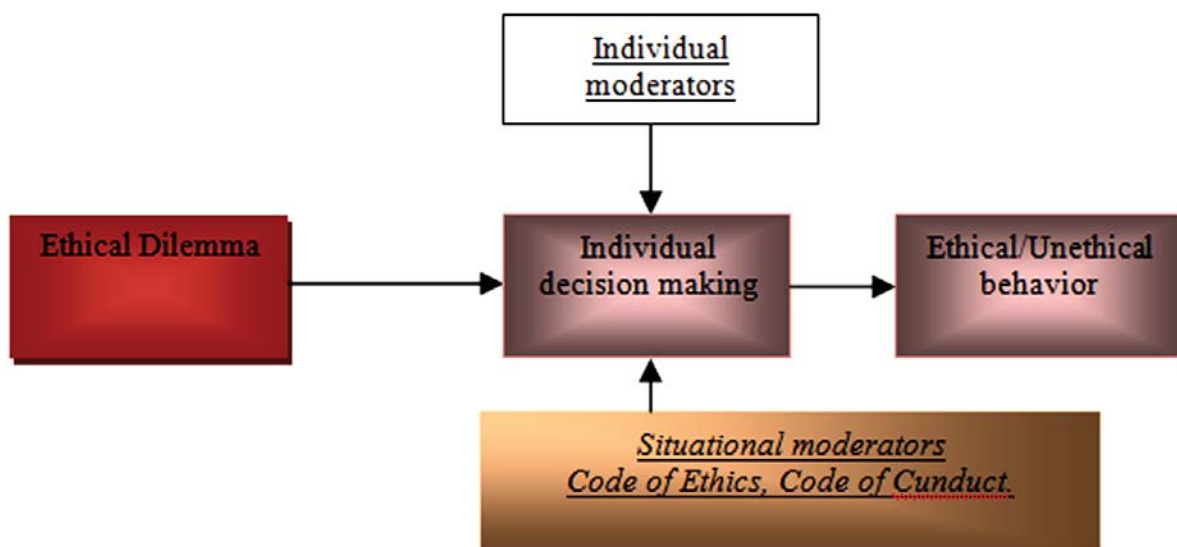
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Table 1 makes a description of the control variables in the sample. The respondents were granted complete anonymity. As a result, the survey did not collect any identifying information that can be used to generate an accurate response rate for each participating organization. However, after reviewing the respondents' job titles, the author was confident that each participating organization was evenly represented.

Table 1: Survey Sample Control Variables (N = 100)  
Age average = 35.37 years  
Tenure average in Public Sector = 10.47 years

	Frequency	Percentage
<b>Education level</b>		
High school diploma	2	2
Bachelor's degree	51	51
Master's degree	44	44
PhD	3	3
<b>Gender</b>		
Male	33	33
Female	67	67

The questionnaire was made by 15 closed questions separated in three main groups, the first group represented the questions about the knowledge that has the public administrator has about instrumental ethics (Code of Conduct, Code of Ethics, Regulation Statement of Mission, Vision and organization philosophy.ecc). The alternatives were from 1-no knowledge to 5-exellent knowledge and 60% of the questionnaires show that the public administrators have a vague knowledge about these instruments. Only 10% have excellent knowledge and from these 10% half were in high levels of management. 50% of this 60% has this information from informal sources or from their own interest.



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The second group of questions were about the formal and informal knowledge that the public administrator has about the job description and characteristics of the job. 50 % of the respondents don't have any formal information about their job description of ethical job characteristics. Only 20% have excellent knowledge and from these 10% were in high levels of management.

The third and last group of questions were about the initiative the public administrator has to arise questions and problems that has to do with ethical dilemma. It is very interesting that about 90 of the respondents think that there is always place for improvement and 10% think that is all to be redone regarding ethics in public administration. But 10% of the respondents take initiatives to move things when they face ethical dilemmas for themselves and when they see others having ethical conflicts.

## **Ethical Public Administrator: Balancing Competing Values**

Another source of ethical dilemmas in public administration is the process of balancing competing values. Even if it is possible to identify fundamental principles that constitute the smallest common denominator of ethical standards in public organizations, such principles ignore the fact that different individuals bring with them different values that will be taken to account for measuring each relative importance. Richard A. Chapman argues that these values have an essential importance:

'Personal values of civil servants are the most important element in public service ethics. These values have different sources including family history and early integration of the officials, their education, their career choice and selection phase of recruitment, training and integration after employment; continuous change of values in society, the impact political environment; embodiment of some of the values and other factors in the constitution, codes and regulations, and requirements of national law (and sometimes international)',<sup>46</sup>

In developing an analysis of the manner in which the values are changing the public sector, M. Van Wart identifies five main sources of values that is pertinent to mention here as individual values, professional, organizational, legal and public interest values. Apparently, the most widely accepted values are individual values, which are related to the degree of purity of image that is expected from public administrator: Purity of the figure gives civil servants a great responsibility because of the acceptance of the employee in the public service implies active acceptance of civil principles generally supported by society. Public administrators are expected to have 'acted citizen image', which means appreciating the constitution and laws of the country and respecting political system. Without respect for the general system of authoritative decision-making and without appreciation for its legitimacy, civilian officials will see laws as obstacles to be avoided, if no one minds.<sup>47</sup> Although Van Wart accept a degree of universal consensus on the notion of enacted civil image, again not much imagination is needed to foresee instances in which different individuals will hold different views in certain circumstances and still consider themselves to behave with integrity - ie., the integrity, consistency, coherence and reciprocity. For example, courts of first instance are often criticized for not having the same treatment against law violations by minors, because some courts have applied the more severe penalties to offenders than others. Professional Values may easily clash with the legal requirements to undertake specific tasks. Organizational requirements may not necessarily match the preferences of individual beliefs or values. According to Van Wart is a conflict between resources of competing values that is located in the heart of civil service ethical dilemmas:

- Much more challenging and dealing with the work of the majority of managers are situations in which they have to throw down a vague law, they have to make equilibrium to the rival public interests, choose form the organizational ego the right organizational interests, take under consideration the highest professional standard, but expensive and not abandon personal interests. For the most part, the toughest administrative decisions are these that have to deal with two or more sources of legitimate values that compete among themselves to be considered.<sup>48</sup>

46 (Chapman, 1993, pp. 168)

47 Van Wart, 1998, pp. 8-9

48 Van Wart, 1998, p. 23



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These conflicts give impetus something more than the resulting classical duality between tool and goal: viz., between deontological considerations of ethics as “fair process” compared to the theological interests of ethical ideals. More than that, they also emphasize the equal legitimacy of a number of sources of values in ethical decision making- values that may contradict each other in specific contexts, but that despite this, have equal legitimacy to influence the ethical decisions making. As a result, civilian officers as individuals, become the main center of ethical decision making. From this viewpoint, the practice of public service ethics is not an organizational issue, but is essentially an individual activity, which involves assessing and balancing competing values and demands in order to achieve a more appropriate decision on the ethical, as will be defined by regulations. Two important affirmations are: First, civil servants must understand the nature of their individual responsibility in making decisions - saying the words of Cooper <sup>49</sup> they must become “a responsible leader.” Second, organizations should support administrative discretion in such a way that ‘the administrator responsible’ have the opportunity to behave responsibly. In other words, civil servant must be able to understand and make in equilibrium all competing values and preferences, which may affect a particular decision - and organizations must give civil servants of all possible options for the articulation and careful balancing of these competing values. Only then might be considered as ethical decisions in the context of the process as well as in the outcome. Despite the formal view, this is not an argument for greater administrative freedom, because as notes, the requirements of civil servants to exercise this freedom are equivalent to the requirements to govern. However, this means accepting reality.<sup>50</sup>

Unique context of any ethical dilemma requires individuals to have moral and intellectual capacity, the operational capability of balancing competitive imperatives in order to achieve the ethical decisions. Again, accepting this path doesn't lead in unethical practices in essential among public administrators. It simply transfers the burden and responsibility to individuals for ethics in public services. Consequently, the public administrator ethics is one that can prove and weight carefully all values before making a final decision.

## Institutional basis of ethical decision making

If we call the individuals responsible for their ethical decisions, you should consider the organizational and institutional pressure that could determine their understanding of special circumstances. Literature of new Institutionalization <sup>51</sup> provides us a useful reference framework to achieve this understanding. Young Institutionalisms positions try to take the attention to informal norms and customs that go beyond individual organizations. These institutions are structures that have broad power which determine the manner of behavior in specific circumstances. In this respect, shared values, which are thought to represent the ethos of public administration can be seen as a culture, which determines and structures the conduct of public administrator.<sup>52</sup> New Institutionalism is not a theoretical premise, but a diverse range of academic attitudes associated with them by convincing the simple but important that ways of organizing political life is important.<sup>53</sup> Thus, developing an attitude of political science in the context of analyzing the new institutionalization, March and Olsen <sup>54</sup> explicitly reject many of the reductionists issues, utilitarian, functionalist and instrumentalists to study the existing policy in favor of a stay, the which emphasize the relative autonomy of social and political institutions, and processes focused on the symbolic as well as the effective results. However as an analytical framework, new institutionalism is useful, as notes three features of informal institutions that have special ties with the argument that is being treated here: those of simplification, symbolism and order.

Simplification: refers to the manner in which political institutions simplify complex situations for individuals, providing them a ‘package’ of rules concerning what means of appropriate behavior. Consequently, the existence within the political institutions are imposed duties and obligations to actors,

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49 Cooper's (1982)  
50 John A. Rohr (1989)  
51 (Lowndes, 1996)  
52 Pratchett and Wingfield, 1996  
53 Blom Hansen, 1997  
54 March and Olsen (1984, 1989)

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limiting the scope of their personal choices and taking decisions through a 'logical' suitability. Symbolism refers to the manner in which institutions are rich with practices that confirm that the decisions are taken in a manner that should be taken. In other words, following the familiar institutional practices, civil servant provided that the events are conducted properly. Indeed, March and Olsen note that in many institutional contexts political rituals give players a fun and natural to conclude that 'the policy process may be more important than their results'.<sup>55</sup> Finally, the order relates to the manner in which institutions provide a coherent and sustainable structure in a potentially complex political world and multidimensional. By providing simplified complexity and symbols of 'fair process', institutions help individuals to understand the world. Thus, institutions provide the image of order - a sense of historical progress and the time in which events are held in accordance with a set of rules and norms.

## **Ethics and Law**

This is an imperative subject, because it raises relevant ethical questions, namely in the new developments framework. Is law the ultimate ethical frontier? How can we harmonize ethics and the juridical perspective? The guarantee of law enforcement allows citizens to have reliance on the public administration and on the State. In effect, the legality is one of the main characteristics of the *Etat de Droit*, its crucial pillar. For that reason, and in a very simplistic conception, in the State genesis rests the communion of collective interests and desires, that only through the congregation of efforts and wills can be achieved. Consequently, laws can be defined as the last frontier, but not as a moral frontier. If not, and in a considerably reductive vision, law would be a simple norm that must be followed and we should all be obedient to norms, even if they were immoral or unethical.

In our Albanian context, this relationship between law and ethics has a curious nuance, designated previously, however, procedures and regulations of the old bureaucratic model are not totally erased. This state of affairs leads us to a situation, where public employees have to face an attitude of cognitive dissonance, not knowing who and what to follow. But does we have an ethical law, of course this question deserves a different wider treatment and more specialized.

## **PROBLEMS AND CONCLUSIONS**

The main problem of public administration ethics remains the bureaucracy in communication, which makes very difficult and dies the dynamism for which the ethical dilemmas need.

This bureaucracy and this lack of information about the instruments of ethics in public administration make a real confusion, and despite repeated efforts to clarify ambiguities and ethical practice, ethics of public administration remains essentially unethical. A variety of organizations, which increasingly are becoming part of public administration results in ethical principles that ensure only the smallest denominator common ethical practice, and devote a greater attention to the importance of the circumstances. Given the ambiguities of ethical principles and values and the role of competition in giving meaning to their particular situations, ethical practices are related to the level of personal responsibility to measure and to balance conflicting demands.

The ability to make decisions based on a careful trial of various existing values in any circumstance is the main characteristic of the ethical public administrator. Political institutions and destroy this fundamental characteristic of giving importance to ethical decision-making norms and customs and not the situation. So while the public service may have in appearance high ethical standards, in practice it is by nature unethical: civilian officers have rarely had the opportunity to reflect carefully on competing claims affecting a given situation, the freedom from constraints and structures of institutions that impose order and structure in everyday life.

Without a strong framework of clear, ethical behavior would lead to conflicting results, not only within organizations but also across the public sector. On one hand, institutions provide a framework of reference and give a kind facility features an extremely chaotic and complicated of political environment.

# **ETHICS AS A LEADING INSTRUMENT TO GOOD PERFORMANCE IN PUBLIC ADMINISTRATION (ALBANIAN PUBLIC ADMINISTRATION CASE)**

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They are a needed and requested feature of political life, as they enable individuals to make sense of their environment. On the other hand, by their own nature, destroy the political institutions and replace the notions of individual responsibility in institutional standards and norms that structure and constrain individual behavior. From this point of view they are essentially negative for ethical practice. In fact, the way in which institutions evolve, suggests that the process of repeated learning and adjustment between individual values and wider institutional norms is an inevitable feature of institutional life. Right at the changes framework, institutions exhibit greater threat on ethical practice in public service. Even when situations are favorable, the service ethic is basically unethical because of the way in which institutions liberate individuals from their duties and ethical obligations, regardless of the results of public administration can not be far worse from this lack of ethics. However, during periods of major administrative changes, the risk of liberation of civil servants from their ethical obligations can be made more visible. Essentially unethical basis of ethics of public service could lead to major conflicts of interest, namely when administrative reforms start scour Western democracies. Lastly does we have an ethical law, of course this question deserves a different wider treatment and more specialized, but we have to think things in this way also.

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# **ETHICS AS A LEADING INSTRUMENT TO GOOD PERFORMANCE IN PUBLIC ADMINISTRATION (ALBANIAN PUBLIC ADMINISTRATION CASE)**

Gentiana Kraja

## **LESSONS LEARNED: MACEDONIA'S ANTI-CORRUPTION FRONT**

Svetla Baeva<sup>56</sup>

### **INTRODUCTION**

In the immediate post-Cold war period, the priority of the day was ensuring stability and peace in the Southeast Europe (SEE) region by hoisting former-Soviet and Yugoslav states onto the right path. Now stability seems to have been replaced by a call for strengthening rule of law and with that come the problems of governance such as corruption. The 2009 Global Corruption Barometer reported a rise in perceived corruption amidst the financial crisis particularly among SEE countries that are being targeted to reduce corruption. Despite the rise in growth and investments in the region, why is corruption still prevalent? Croatia, Bulgaria, Macedonia and Kosovo all face high-perceived corruption within the judiciary sector, but only Macedonian government reforms and anti-corruption policies seem to be perceived as effective. Why is this the case? Do policy differences exist and if so what are they? Furthermore, the EU can do much to promote the fight against corruption in SEE, particularly with its membership leverage and high involvement in the region. Furthermore, the EU outlined in its European Security Strategy (ESS) in 2008 the need to enforce rule-of-law within its borders and its neighbors. What kind of mechanisms does the EU use to promote anti-corruption policies? The paper will also try to answer why the EU has had trouble in successfully promoting its policies, despite its strong influence over the four cases, particularly having in mind the rise in corruption following the accession of Bulgaria to the EU in 2007. Macedonia can learn much from the accession process of Bulgaria and Romania.

### **LITERATURE REVIEW**

From the 1990s on, corruption has increasingly been seen as a problem in Central and Eastern Europe (CEE). States face similar causes of corruption such as the “excess participation of the state in economic transactions and inefficient mechanisms of public sector control” (Michael 2004: 1). Nevertheless, privatization, enterprise restructuring and poor corporate governance rank among the top causes of corruption in Eastern Europe. While other developing countries also share these problems, the scale of resource transfers involved in CEE has raised serious corruption concerns specifically regarding centrally-planned economies.

Furthermore Mungiu-Pippidi (2006) suggests that what is labeled as corruption in developed countries is not the same phenomenon as in post-communist countries. Regarding the latter, the term often refers to individual cases, while in the former corruption means “‘particularism’ – a mode of social organization characterized by the regular distribution of public goods on a nonuniversalistic basis that mirrors the vicious distribution of power within such societies” (Mungiu-Pippidi 2006: 87). In societies, where particularism is the norm, the roots of corruption lie in the distribution of wealth itself. Since I will discuss political corruption, I will adopt Transparency International’s definition of corruption: the abuse of public office for private gain. The definition rests on the assumption that the state operates under the norm of universalism, which suggests the equal treatment of citizens. A historical overview briefly shows that until modern times most societies did not boast a clear division between public and private spheres and the goal of the government is to provide public welfare for all citizens is only a new phenomenon (Mungiu-Pippidi 2006; Huntington 1968). Thus, corruption can only be understood as pertaining to a particular stage of development of state or society. Max Weber states that it is only in the modern state that the public office is no longer thought to be a source of income to be exploited:

‘It is decisive for the modern loyalty of an office that, in the pure type, it does not establish a relation-

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ship to a person, like the vassal's or disciple's faith under feudal or patrimonial authority, but rather is devoted to impersonal and functional purposes' (Mungiu-Pippidi 2006: 87).

Mungiu-Pippidi offers a systematic typology of corruption that enables to see at what stage a country finds itself and how best to approach anti-corruption strategies. This typology runs from a state of patrimonialism to competitive particularism, where corruption explodes and ends in universalism. Most SEE states, including Macedonia are suggested to be competitive particularist states. In these cases, institutions lack accountability and distribution of power is tipped in favor of certain social or ethnic groups. The main reward in the power struggle is the state and all of its resources.

To counter the rising perception of corruption in Eastern Europe, international donors such as the World Bank, UNDP and USAID increasingly adopted anti-corruption programmes – targeting the civil service, municipalities, politicians, customs officials, police, judges, investigative journalists, legislators and their staffs, international civil servants, NGOs and youth organizations. Overall, fighting corruption has grown into an industry, estimated to be at least \$100 million (Michael 2004; Mungie-Pippidi 2006). Bryane Michael (2004) illustrates that anti-corruption has come in two waves. The first wave, which started in the early 1990s, was largely concerned with “awareness raising.” This stage has involved the passing of overall anti-bribery and anti-corruption laws and sometimes accompanied by complementary legislation targeting specific sectors. Although awareness raising has contributed to increased debate on the subject of corruption, previously considered to be taboo, nevertheless, enforcement appears to be weak

The increase in public awareness of anti-corruption is also a result of the institutionalization of anti-corruption programmes, including corruption prevention councils and anti-corruption agencies. Many of the programmes were not developed in Eastern Europe but “diffused from abroad.” (Michael 2004: 3). Thus, it is seen as essential that countries become “owners” of these programmes and develop context-bound programmes that deal with specific measures rather than broad aims. Corruption is related to many aspects such as governance or transparency, thus “ambiguity and technical veneer has allowed the anti-corruption agenda to become so broad that it encompasses all parts of social, political and economic life” (Michael 2004: 5). Although, donor agencies tend to adopt technocratic language in order to avoid being political, the programmes they put forward are inherently political as they deal with the political process. According to Kaufmann (2003), “the usefulness of anti-corruption ‘campaigns’, creation of new institutions or the passage of laws, as well as much of the traditional public sector management and legal reform approaches, may have been overrated” (Kauffman 2003). Furthermore, although awareness has been successfully raised, it is unclear how effective these broad range of anti-corruption programmes have been. Many guides refer to projects in progress but do not speak about effectiveness or impact. Thus, if Eastern Europe wants to take over their own anti-corruption programmes, they need to move away from awareness and engage in skills and capacity building – the second wave of anti-corruption.

Participation of civil society in anti-corruption efforts is thought not only to increase transparency but also have a positive impact on stimulating political reform. Despite this assumption, it is difficult to pinpoint a correlation between civil society involvement and transparency. Furthermore, many NGOs dealing with anti-corruption activities often heavily rely on donor funding. This in turn can lead to an overemphasis on civil society involvement in design programmes. Nevertheless, civil society plays several important roles as a ‘pillar’ outside the government. Although far from being free of corruption, civil society can work to influence the state to reform, particularly where that political will is lacking.

### **Analysis: Macedonia's Reform Process**

According to the 2009 Global Corruption Barometer, the judiciary is the single institution perceived as the most affected by corruption in Bulgaria, Croatia, Kosovo and Macedonia. Most of these countries also face significant problems in other sectors. Overall, only 31% of respondents reported that their government's actions were effective in the fight against corruption. Furthermore, Macedonia is the only state on the Balkans that 65% of respondents stated that their government is effective in fighting corruption (TI 2009: 33). While the index is perceptions-based and may not always be entirely convergent



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with reality, it does provide insight that Macedonia may be employing more effective policies. Furthermore, following a brief civil war in 2001, Macedonia has progressed quickly up the corruption perceptions index (CPI) ladder.

The EU has been a prominent actor in Macedonia not only as a donor but also through directly intervening in the post-2001 period. This has in many ways helped the country put in place police standards at an early stage. In December 2003, it launched a police mission – EUPOL Proxima, which emphasized EU's interest in consolidating rule of law and stability in the region. Lasting a period of two years, the policing mission played an important part in the context of EU's wider strategy of encouraging the reform process including institutional building, administrative and judicial reforms and the fight against organized crime and corruption.

Macedonia was granted EU candidate member status in December 2005 but has not yet started accession negotiations. Furthermore, the image of the government has been helped by successful police operations over the last five years. Nevertheless, real progress in the areas of corruption and reform have been sidelined due to the name dispute between Macedonia and Greece (Stojanovska 2010). The debate over the name status has taken away attention from fighting corruption. Nevertheless, Macedonia's accession to NATO, an unofficial prerequisite for EU membership, has also prompted more pressure for the fight against corruption. This has resulted in several key police operations resulting in convictions. In the November 2007 EC: Macedonia with Substantial Economic Advancement report stated that, "progress was made in anti-corruption policy and measures. The legal and institutional framework was strengthened and strong political commitment yielded some results. There were court decisions in a number of high profile cases, including those of a former deputy minister, a former customs director, judges, lawyers, notaries, and police officers" (Zoran 2008).

In October 2009, a Commission progress report gave positive feedback and commended Macedonia's continued anti-corruption efforts. The report stated that Macedonia has made good progress in strengthening and implementing the anti-corruption framework, which is now considered a key priority of the Accession Partnership. It has successfully reformed the electoral code, the law on financing of political parties and the law on conflict of interest in order to strengthen transparency and new provisions on illicit enrichment. The report noted that there were further indictments and convictions in high-profile cases and further cooperation between agencies. The fact that the 2007 and 2009 EC reports reiterate similar language suggests that Macedonia is successfully moving along its anti-corruption strategy. Furthermore, EU Enlargement Commissioner Stefan Füle stated that 2009 was a good year for Macedonia, reform-wise, and encouraged the country to keep up the same reform pace (Jovanovska 2010).

Established in 2002, Macedonia's State Commission for Prevention of Corruption has been involved in raising awareness and regional cooperation. The commission, unlike anti-corruption agencies set up to mirror the success stories of Hong Kong and Singapore, is an institution with "preventive and coordinative functions, whose prerogatives are limited to creating anticorruption strategies and plans, monitoring their implementation, advising the government" (Smilov 2009). It previously engaged in a public awareness campaign. Its goals were to promote awareness of the costs of corruption and to encourage citizens' involvement by feeling comfortable to report corruption. The campaign was conducted through the usage of information brochures, posters, TV and radio announcements (USAID 2010). It also joined an anti-corruption network in February 2009 to foster cooperation. The move allows the commission to share information with other members of the Anti-corruption Practitioners Network, an alliance in Eastern Europe and CIS states.

Overall, the EU has viewed corruption as a matter of criminal justice and harmonized legislation and this has shaped the type of assistance provided. On the other hand, donors have often placed the corruption issue within the development debate. As previously suggested, capacity building will be essential to strengthening existing institutions and institutionalizing various practices, something that the EU does not encourage enough. Recently, the Regional Anti-Corruption Initiative (RAI) in collaboration with the Academy for Training Judges and Public Prosecutors of Macedonia organized a summer school for junior magistrates, not only from Macedonia, but from across the SEE region in order to promote inter-

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national standards and cooperation in fighting corruption. Although, such professional development activities may seem insufficient, they have contributed to awareness raising as well as forging regional relationships.

The NGO sector in Macedonia, although still considered to be incipient and donor-based, has been involved in judicial reform aimed to curb corruption practices. Judicial reform began in 1995 and has been supported by some NGOs through technical know-how and financial support. There have been a series of NGOs actively involved, campaigning for raising awareness but also acting as a watchdog. Transparency –Zero Corruption, a partner of Transparency International is an active representative of civil society. It recently published a report aiming to establish a permanent anti-corruption monitoring system in Macedonia, in order to ensure the fulfilling of the Copenhagen criteria and SAA conditions. The project has two target groups – the government and associated institutions and civil society organizations.

The Anti-Corruption Resources Centre reports that “effective anti-corruption strategies could be achieved by moving away from large scale awareness and broad NGO coalitions towards mobilizing well-defined constituencies behind focused governance reform” (Chene and Dell 2008: 6). Thus, NGOs should seek to organize themselves to bundle their interests around concrete and sector-related goals alongside participating in broad all-encompassing anti-corruption coalitions.

## **LESSONS LEARNED: BULGARIA AND ROMANIA**

By the beginning of the 21st century, the EU embraced enlargement as its most important tool to stabilize and democratize the Balkan states. The accession of Bulgaria and Romania and the realization that corruption is widespread has raised a debate on EU's leverage and whether new tools need to be implemented. The EU's accession requirements focused on the reform of the state and the economy, reducing the role of the state in the economy and improving the transparency and efficiency of state institutions. Many believed that a rapid, ‘big bang’ approach to privatization would be best despite disregarding the lack of rule of law, believing the market would later create the incentives and demand to strengthen rule of law – a process that is nevertheless gradual and long.

Thus, in the period leading up to the 2004 enlargement, the EU was effective in requiring candidate states to adopt and implement the *acquis communautaire*. Generally more attention was placed on the performance of state institutions and economic actors in the internal market (Vachudova 2009: 48). While, fighting corruption is not outlined in the *acquis*, it does however tackle the issue indirectly. “However, the experiences of Bulgaria and Romania, show that these indirect measures alone are insufficient when a critical mass of high-level politicians are corrupt, when organized crime has thoroughly penetrated the economy and when the judiciary is weak and corrupt” (Vachudova 2009: 50). Furthermore, the fact that corruption has been viewed through a criminal justice perspective, has made it more difficult for Bulgaria and Romania as criminal justice is “the least harmonized area in the EU, so the Commission could offer Bulgaria little in the way of guidance” (Todorov 2008: 2).

In many ways, the EU has entered uncharted waters, taking on more responsibility in the region. Having to deal directly with corruption for the first time, the EU has taken more time in developing tools. Such a tool is the cooperation and verification mechanism (CVM). According to the European Commission, its purpose is “to smooth the entry of both countries and at the same time safeguard the workings of its policies and institutions” (EC 2010). While previous progress reports have been criticized for being too broad, the CVM reports addressed various issues in detail, tracking the progress of specific institutions and looking into high-level criminal cases. Nevertheless, during the accession process the EU did little to tackle the difficult issues of measuring and monitoring corruption in candidate states that would have made it easier to create benchmarks.

In 2008, corruption and organized crime took center stage of the EU's agenda and forced the European Commission find new ways to address the matter. Many analysts have suggested that there was a lack of strong domestic pressure to reform (Vachudova 2009; Mungiu-Pippidi 2002). The Commission suggested that both Bulgaria and Romania need “to show that [they] have put in place an autonomously functioning, stable judiciary, which is able to detect and sanction conflicts of interest, corruption and organized crime and preserve rule of law” (Commission 2009b; Commission 2009c). In general, the

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respective populations, bearing much of the social and economic costs of corruption, have welcomed a more aggressive stance from the Commission as it has placed more pressure on corrupt officials. The EU will need to learn from its experience with Bulgaria and Romania, in order to deal with the Western Balkan countries that are queuing up for membership. These countries are facing not only the challenges of corruption and organized crime but also of building an efficient state administration and independent judiciary.

If the courts are too close to corruption and legislation is not implemented, it is difficult to invoke change. In competitive particularist states, “civil society is a more effective auditor and a more credible ombudsman than public institutions in such societies, and it should be supported financially so that it may perform these functions until the state becomes mature enough to take over” (Mungiu-Pippidi 2006: 98). Furthermore, great political turning points provide good environments for change and reform. One example is joining the EU. The EU has had difficulty in creating channels to incorporate non-state stakeholders in anti-corruption efforts. “Most other Bulgarian institutions with a stake in advancing good governance – the judiciary, the private sector, civil society, the media, and municipal councils – remained fairly marginalized” (Todorov 2006: 3). On the other hand, bilateral donors often have relied on a mix of local programme people and expatriates which to some extent is able to escape the paradox of a corrupt state trying to reform itself. What is worrying is that many of these bilateral anti-corruption monitoring and strategies were ended after donors pulled out in the aftermath of EU membership. For candidate countries, such as Macedonia, a significant phase out period should be in place since although anti-corruption programmes may overlap, they often usually tackle different issues. In December 2009, the EU stepped up its efforts in fighting corruption by including an anti-corruption stipulation in the five-year plan for the European Union’s Justice and Home Affairs (Stockholm Programme) (TI 2009). The Stockholm Programme is a plan “whose implementation will define EU action to evaluation and fight corruption, including crucial areas affecting the security of EU citizens such as police and customs cooperation, rescue services, criminal and civil law cooperation” (TI 2009). The anti-corruption stipulation is based on the United Nations Convention against Corruption (UNCAC). This will in turn shape EU’s future policy towards the Western Balkan candidates and possibly encourage reform at an earlier stage. The EU has yet to learn from its previous experiences in order “to complement assistance conditional on political reforms with support for social and economic transformation” (Todorov 2008: 4).

### CONCLUSIONS

In the post-Cold war period, the EU has been slow to adapt to the changing geopolitical atmosphere on the old continent and its increasing role in the SEE region. The EU has adopted a comprehensive enlargement programme, creating incentives for reform. “Despite problems with consistency and the enforcement of the membership requirements, the EU’s pre-accession process had had a vastly greater impact on reforming the state and the economy than the efforts of any other external actor” (Vuchudova 2009: 59). Macedonia, over the last several years, has seen numerous high-level convictions, which strengthen the trust in the government over time. This is not true for Bulgaria or Kosovo for example. It has also received positive feedback from the European Commission and is generally not very prominent among the media for corruption scandals, largely due to the media attention to its name status that is complicating the possibility of starting EU membership negotiations.

The EU has also responded to change and unforeseen difficulties in the fight against corruption and organized crime. Furthermore, the EU has learned that its leverage lies in the pre-accession period, when it can apply strong conditionality and that creating domestic pressure is also essential for reform to take place. The media, electorate and civil society have proven to be the most effective promoters of anti-corrupt politics. The EU should seek to engage these non-state channels and learn from the development rhetoric of bilateral donors. Otherwise, these channels may be marginalized after joining the EU as in the experience of Bulgaria. Bottom line, the EU holds its most leverage in the pre-accession period when it can apply conditionality. Awarded candidate status, Macedonia has taken its lessons from the Bulgarian experience and pushed harder for reform, in an atmosphere of enlargement fatigue.

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Senada Reçi<sup>57</sup>

### INTRODUCTION

Albania is one of Western Balkan countries that has signed the Stabilization and Association Agreement (SAA) with European Union (EU) on 12 June 2006. This agreement entered into force on 1 April 2009, and its general framework is based on four pillars: political dialogue and regional cooperation, trade provisions related to the progressive liberalization of exchanges until the establishment of a free trade area between the parties, community freedoms, and cooperation in priority areas, especially in the area of justice and home affairs. Toward the long process of membership in EU, Albania has to fulfill the Copenhagen criteria of 1993, **the political criteria, the economic criteria and criteria of *acquis communautaire* that include** the obligation to adopt gradually, according to the deadlines agreed in the SAA, the *acquis communautaire*. Justice and Home Affairs (JHA) matters are accorded special importance in the Stabilization and Association process for the Western Balkan countries, (the Treaty of Amsterdam stipulates that one of the priorities of the European Union is establishing an area of freedom, security and justice) and the "Thessaloniki Agenda" emphasized the growing importance of JHA issues in the relations between the EU and the Western Balkans, especially as concerns organized crime and trafficking, harmonized asylum, migration, visa policies and practices as well as efficient border control and police cooperation that are essential to the combat of organized crime and illegal migration. This paper analyses the latter harmonization of Albanian legislation with *acquis communautaire*, focusing the harmonization done in justice and home affairs (JHA) and the development of institutional infrastructure necessary for the accomplishment of European standards. The research in this paper aims to present a concrete situation of the harmonization of Albanian legislation with the *acquis* in JHA analyzing the commitments, reforms and achievements done by Albanian state toward an area of justice freedom and security. The evolution of the approach and harmonization with the *acquis* of Albanian legislation in the fields of international judiciary cooperation, personal data protection, visa, asylum and migration policy, border management, also organized crime and illegal traffickings, police, is the focus of this research paper to present all the dynamic steps Albania has done regarding the regional cooperation in justice and home affairs to have effect at visa liberalization and free movement of persons in Schengen area, and also the problems and difficulties it has, to fulfill required terms of agreement. The challenges that Albania has are in implementing the *acquis* in fight against organized crime and illegal trafficking, in visa policy implement the security of identity documents in line with EU standards, improve the border management and cross-border cooperation, enhance the implementation of migration and asylum laws, increase the capacity of police in investigating the organized crime and corruption and the cooperation with the prosecution and the judiciary and improve the management of human resources. The developments on these challenges for Albanian state depending from the steps forward to achieve the required terms, are the key to open the door of Schengen zone for Albanians citizens to move freely. But the future is to be seen.

**Research question:** Which are the achievements of Albania in the harmonisation of Albanian legislation with *acquis communautaire* in justice and home affairs and the challenges toward a fulfillment of required terms?

**Hypothesis:** Is visa liberalisation depending on the reforms and accomplishments of harmonization with *acquis* of Albanian legislation in JHA?

### Latter Harmonization of Albanian Legislation with *Acquis* in JHA

The Stabilisation and Association Agreement between EU and Albania came into force on 1 April 2009 and its general framework is based on four pillars: political dialogue and regional cooperation, trade provisions related to a free trade area between the parties, community freedoms, and cooperation

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in priority areas, especially in the area of justice and home affairs. Toward the long process of membership in EU, Albania has to fulfill the Copenhagen criteria, **the political criteria, the economic criteria and criteria of *acquis communautaire***. The *acquis* criteria include the obligation to adopt gradually, according to the deadlines agreed in the SAA, the *acquis communautaire* (or as it is referred after entering into force of Lisbonne treaty, the European union law), to ensure appropriate implementation of EU legislation. This chapter handles fundamental rights and sector policies of the internal market, and cooperation in justice and home affairs<sup>58</sup>. In the same way the objectives of the European Partnership<sup>59</sup> (partnership created by the Thelassoniki agenda for Western Balkans guidance) focus on accelerating the fulfillment of the criteria for SAA implementation, which include intensification of the cooperation in Justice and Home Affairs with the view to establish an area of freedom, security and justice. As Albania is one of the Western Balkan countries both with Bosnia and Herzegovina that has not yet benefit from visa liberalization and free movement of persons and the key of this process is JHA area, the harmonization with *acquis* in cooperation in JHA is exactly the focus that we will discuss in this paper.

Since 2006, year in which Albania, signed the SAA with the EU, agreement that provides a framework of mutual commitments on a wide range of political, trade and economic issues, a wind of transformations began for the Albanian legislation. This means that besides fulfillment of the political and economic criteria, Albania has to take on the obligations of membership in the EU. This to ensure the harmonization of legislation with *acquis* that in practice is the adoption of legal norms of *acquis* into the national legislation. In order to do so Albania should carry out a number of administrative, organizational, and human resource improvements and in this context there might be the need for substantial modifications to the existing legislation to be in accordance with the European union legislation or as it is used to say *acquis communautaire*.

For this there has been adopted a National Strategy for Development and Integration<sup>60</sup> and a National Action Plan for implementation of the SAA<sup>61</sup> that aims to implement and guarantee the Copenhagen criteria regarding the creation of an area of justice, freedom and security. In this chapter (besides fundamental rights, and sector policies of the internal market), justice and home affairs is a very important field, where Albanian state has committed to do all the necessary reforms. This cooperation, calls for Albania, to strengthen institutions at all levels, but especially, those that deal with the implementation of law, and the administration of justice. The key points of this cooperation focus on personal data protection, visa regime, asylum and migration, border management and the fight against organised crime and trafficking of human being and police. The free movement of Albanian citizens in Europe is linked closely with progress in this field. The commitments, reforms and building of the indispensable administrative infrastructure to develop *acquis* criteria, regarding above mentioned field is focus of the analysis to see how these sectors performed during last 4 years. There have been some important achievements if we see the evolution of the approach in JHA and also the harmonization done, and an important influence has the Thessaloniki agenda for Western Balkans with assistance programs and other way o cooperation.

According to visa administration and management there are some progress to be noted. Albania, in terms of documents security, has approved new micro-chipped biometric passports and ID cards in line with EU standards and since last year, there have been implemented the administrative offices that ensure facilities for citizens to have new identity documents. Distribution of these documents is based on the data of civil registry electronic database<sup>62</sup>. There have been introduced new more secured diplomatic and service passports. Albania operates a visa free regime for EU member states. With Montenegro and Macedonia, Albania has a visa free regime and with Bosnia-Herzegovina too. With Serbia there is not yet a visa free regime but this is to be seen according the agreements that will be between both countries in the future.

At border control there has been approved a new law<sup>63</sup>, and the government has adopted a national

58 National plan for implementation of SAA 2007-2013. Available from: [www.mie.gov.al](http://www.mie.gov.al)

59 Strategic documents /European partnership 2003. Available from: [www.mie.gov.al](http://www.mie.gov.al)

60 See National Strategy for Development and integration 2007-2013. Available from: [www.mie.gov.al/strategic\\_documents](http://www.mie.gov.al/strategic_documents)

61 See National Action Plan for implementation of SAA 2009-2014. Available from : [www.mie.gov.al/strategic\\_documents](http://www.mie.gov.al/strategic_documents)

62 Progress report of EU Commission 2009, (pg 1). Available from: [www.mie.gov.al](http://www.mie.gov.al)

63 Λα.ω No.9861 δα.τεδ 24.01.2008 "On state border control and surveillance". Available from: [www.asp.gov.al/legislation](http://www.asp.gov.al/legislation)



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integrated border management strategy and action plan to establish effective, efficient and integrated border management systems, in order to reach the common goal of open, but controlled and secure borders<sup>64</sup>. For better border control, the new law on the organisation of the police has provided improvements in the structure of the border and migration police.<sup>65</sup> There is a new infrastructure at 15 cross points to assure border control. The construction of the new terminal at Tirana international airport in March 2007 and the Joint cross-border with Montenegro in Muriqan-Sukobine in June 2009 in line with European standards is another progress toward fulfillment of required terms<sup>66</sup>. Regarding migration Albania has done progresses last two years. We can say that concerning law approach and harmonization in migration field there has been established a coordination and monitoring plan for implementation of national strategy on migration. Albania signed protocols implementing the EC-Albania readmission agreement with Austria, Benelux countries, and draft protocols with Greece and Czech Republic.<sup>67</sup> With Croatia and FYR of Macedonia has been signed readmission agreements. Albania has also ratified the European Convention on the legal status of migrant workers and the UN Convention on the protection of rights of migrant workers. The 2008 is the year where have been noted some considerable progresses on migration. The new law of foreigners came into force introducing distinctions among residence permits depending on the length of stay and including provisions on carrier's liability<sup>68</sup>. Albania, Bosnia-Herzegovina, Croatia, FYROM and Montenegro, Serbia too, signed a memorandum of understanding on sharing data on illegal migration and regional system of advance notification. These achievements demonstrate the will and the commitment of Albania to cope with European standards on migration. Besides this, there are some other important steps done about expulsion. In case of illegal resident third-country nationals, the expulsion is regulated by the law of foreigners with a possibility to appeal against removal orders<sup>69</sup>. in line with EU standards. Albanian state has continued accomplishments on signing readmission agreements in form of a protocol with Italy in 2008, with Croatia in February 2009 and a readmission agreement and its implementing protocol with Bosnia-Herzegovina in March 2009<sup>70</sup>. Regarding asylum we can note some good achievements. In 2009 the law on asylum was revised in order to be in line with EU and international standards. This law besides other important revisions, permit that appeals against decisions of the Department for Citizenship and Refugees (DCR) can be lodged directly before a court<sup>71</sup>. The DCR responsible for managing asylum procedure ensure in this way a good management of procedure for asylum seekers and take decisions of first instance on asylum claims. Albania has achieved to provide with the necessary documents all asylum seekers and refugees constructing also two shelters, one for asylum seekers and a national reception center for victims of trafficking. The JHA area include as a priority field of the European Partnership the fight against organized crime and trafficking in human beings. As organized crime remains a very serious problem in Albania with negative effects at the stability of public security the efforts in the fight against it have a limited progress compared with the approach and harmonization in other fields. Some developments are in the international cooperation to combat organized crime. By means of Interpol at bilateral level, there has been reported a number increased of extraditions. Albania has cooperation agreements with Bosnia-Herzegovina, France, Kosovo, Denmark, Iceland, and Norway. In fight against trafficking of human beings there is an important step forward harmonization, as has been implemented the national strategy for the fight against child trafficking and on the protection of the child victims of trafficking<sup>72</sup>. The office of the National Anti-trafficking Coordinator (ONCAT) has carried out extensive work on prevention and public awareness raising to combat trafficking. The administrative capacity of ONCAT has improved, but the implementation of both strategies requires additional human and financial resources.<sup>73</sup> Then is to be emphasized that cooperation with neighbouring and other countries has improved and Albanian government has continued to investigate and prosecute against the trafficking of human

64 See National Strategy on integrated Border management and its Action Plan. Available from: [www.asp.gov.al/legislation](http://www.asp.gov.al/legislation)  
65 Strategy of state police 2007-2013, (pg 26). Available from: [www.asp.gov.al/legislation](http://www.asp.gov.al/legislation)  
66 Progress report of EU Commission 2008, (pg 1 ). Available from: [www.mie.gov.al](http://www.mie.gov.al)  
67 Progress report of EU Commission 2007, (pg 3). Available from : [www.mie.gov.al](http://www.mie.gov.al)  
68 Progress report of EU Commission 2008 ,(pg 2). Available from: [www.mie.gov.al](http://www.mie.gov.al)  
69 Law nr 9959 dt 17.07.2008 " On foreigners ", (art 78.) Available from: [www.asp.gov.al/legislation](http://www.asp.gov.al/legislation)  
70 Progress report of EU Commission 2009, (pg 3). Available from: [www.mie.gov.al](http://www.mie.gov.al)  
71 Some additions and amendments in Law NO 10060 dated 26.01.2009 "On asylum in the Republic of Albania", (art 24). Available from: [www.asp.gov.al/legislation](http://www.asp.gov.al/legislation)  
72 See National strategy for the fight against child trafficking and on the protection of the child victims of trafficking . Available from: 2008-2010 [www.asp.gov.al/legislation](http://www.asp.gov.al/legislation)  
73 Progress report of EU Commission 2009, (pg 5). Available from: [www.mie.gov.al](http://www.mie.gov.al)

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beings. In this framework there has been opened a nationwide toll-free help line for trafficking. Albania has ratified the Convention on action against trafficking of human beings of CoE. Regarding the trafficking victims the Ministry of Labour social Affairs and equal opportunities has implemented a micro-loan programma for female victims of trafficking helping them to start small businesses, foster reintegration and prevent re-trafficking. Also the installation of Total Info Management system in the cross-border points has brought positive results in combating trafficking and drugs.

The international judicial cooperation, together with police cooperation, is a corner stone in the fight against crime and in particular against organised and other forms of serious crime. International judicial cooperation means proceedings of requests for assistance of judicial authorities (courts, prosecutor's offices, notaries public) by a competent legal authority in the territory of another country. International judicial cooperation includes both civil and criminal matters<sup>74</sup> Albania has made some necessary achievements in the implementation of commitments undertaken within the framework of this cooperation, to make this cooperation in the field as effective and complete as possible. Concerning the standards Albania has ratified the following conventions:

- European convention on extradition that entered into force on 1998
- European convention on Mutual assistance in criminal matters entered into force on 2000
- **European Convention on the Transfer of Proceedings in Criminal Matters** entered into force on 2000
- **Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime** entered into force on 2002
- **European Convention on the International Validity of Criminal Judgments** entered into force on 2004
- **Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters** entered into force on 2004
- **Convention on Cybercrime** entered into force on 2004
- **Protocol amending the European Convention on the Suppression of Terrorism** entered into force on 2004
- **Council of Europe Convention on the Prevention of Terrorism** entered into force on 2007
- **Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism** entered into force on 2008.

The ratifications of the above mentioned conventions, are an indication of commitments of Albanian state to achieve EU standards.

Police field as part of JHA area is another field with some considerable transformations in both sides, juridical and administrative. An important change toward de-politicisation of the police has been brought by entering into force of the new law of state police<sup>75</sup>, which devolves the functions of the state police from the Ministry of Interior to the Police. The Minister of Interior approved also a new organizational structure for the police contributing in this way at more professional work by the police, example of which, is the work done during electoral elections in 2009 and local government elections in 2007. An operational action plan for the implementation of the strategy on community policing that cover the period 2008-2010 mark an other effort to strengthen the activity of the police in different matter. With the new law entered into force the police has made progresses in border and port securities, training reforms and establishment of border control information systems, such as databases and passports and fingerprint control IT systems<sup>76</sup>. Albania has ratified the South-East Europe Police Cooperation Convention as part of European and international cooperation in police matters.

Personal data protection is the area that has had accomplishments in harmonization in line with EU standards. To ensure this, the law on personal data protection is of 1999 has been revised and the new law entered into force in april 2008<sup>77</sup>, and after five months the parliament appointed the authority

<sup>74</sup> International judicial cooperation/freedom, security and justice. Available from: [www.europa.eu](http://www.europa.eu)

<sup>75</sup> State police law. Available from: [www.asp.gov.al/legislation](http://www.asp.gov.al/legislation)

<sup>76</sup> Progress report of EU Commission 2008, (pg 5). Available from: [www.mie.gov.al](http://www.mie.gov.al)

<sup>77</sup> See Law No 9887 dated 10.03.2008 "On personal data protection". Available from: [www.kmdp.al](http://www.kmdp.al)

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to ensure application of the new law, the Commissioner for data protection, that is an administrative structure with an internal regulation and code of ethics. The Commissioner has started to review complaints on personal data protection.

There is to be emphasized that in the long process of approach and harmonization of legislation with *acquis*, Albania has the support of the EU programme Cards in JHA as in the other areas, the assistance programmes also. As for example the project of German Agency for Technical Cooperation (GTZ), project that aimed at drafting strategies, using instruments on information and constant qualification of public authorities and courts, which are in charge of using, interpreting and implementing the harmonization of the new Albanian legal framework with the Community legislation extended till December 2009 with beneficiary institutions Ministry of Integration, Authority of Competitiveness, State Aid Directorate (METE), and School of Magistrates<sup>78</sup> etc.

So far the harmonization process has made achievements in the area of JHA on the approach and harmonization of the existing legislation with the *acquis*, approving new laws, new strategies and action plans, implementing new structures and institutions to carry into execution the new European law. But there are also a lot of challenges for Albanian state to fulfill the required terms by the *acquis communautaire*, for the establishment in Albania of an area of justice, freedom and security.

### Challenges of Albania in harmonization with the *acquis* of the domestic legislation

The results of good functioning of Albanian legislation harmonized with the *acquis*, depend from the execution in practice of the new laws, by the administrative structures. But still, Albania has some challenges in JHA area in its path into visa liberalization and achievement of free movement of persons. Besides a number of considerable reforms and progresses attained, the challenges facing Albanian state, are a lot, and hamper the liberalization of visas or so called visa free regime. The progress reports of EU Commission are the scan of the proceedings of reforms and accomplishments of the harmonization and implementation of *acquis* in Albania. From this point of view, the progress reports, are very important documents, declaring in form of recommendations and suggestions, the challenges and problems to be resolved in some fields of JHA to achieve the standards required by the EU. According to this Albania need improve the visa policy, that means a proper implementation of visa facilitation and readmission agreements and progress at border management, travel document security, and the fight against organized crime. The law on foreigners need a further harmonization to be in accordance with the *acquis*.

Albania need the harmonization of positive and negative lists with the EU list, the developing of an e-visa system and the establishment of an e-visa centre in line with EU standards.<sup>79</sup> At border management there is a lack of institutionalization of cross-border cooperation, that need to be improved. The infrastructure and the training of staff are another problem to be resolved at borders. The law on asylum need a full implementation, and a more effective data management system for asylum and migration too. In migration area Albania must make efforts to implement the legislation and enhance administrative capacity and institutional cooperation<sup>80</sup>. In police area, Albania need to improve the management and disposal of small arms, and explosives and also increase investigative capacity, enhance cooperation with the prosecution and the judiciary and improve also human resources management.<sup>81</sup> The most serious issue is the fight against organizing crime and trafficking of human beings that Albania must continue efforts to advance further, because organizes crime and trafficking is a humper for achievements in other areas also. The bigger problem is the implementation of the *acquis* harmonized into the Albanian legislation, for that could have its effects in fight against organized crime and trafficking of human beings. At personal data protection there is a partial implementation of the law and the Commissioner of personal data protection is required to work more effectively. In few words the panorama offered by Albania regarding developments and challenges in *acquis* criteria, concretly JHA area harmonization of legislation with the *acquis*, indicate the priorities that must be emphasized with much more results in due time for Albania. This would be the solution of a very important

78 EU financial assistance . Available from: [www.mie.gov.al](http://www.mie.gov.al)

79 Progress report of EU Commission 2009, (pg 1). Available from: [www.mie.gov.al](http://www.mie.gov.al)

80 Progress report of EU Commission 2009, (pg 2). Available from: [www.mie.gov.al](http://www.mie.gov.al)

81 Progress report of EU Commission 2009 , (pg 6). Available from: [www.mie.gov.al](http://www.mie.gov.al)

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issue for Albanian citizens, that is the free movement in Schengen zone. And for Albania a step forward into integration and membership in the EU.

### CONCLUSIONS

In general, the process of harmonization of the domestic legislation with the *acquis communautaire* is very difficult and in JHA area specially. For this Albania has adopted a national strategy and a national action plan that aim to harmonise the domestic legislation with the *acquis* in JHA area, that is one of the priorities on the implementation of SAA and to achieve the standards required by the EU. Analysing the fields of JHA area, we can conclude that, Albania has important developments and progresses achieved in visa policy, but still need to improve implementation of visa facilitation and readmission agreements and progress at border management, travel document security, and the fight against organized crime. Albania must have major commitments in a further harmonization of the law on foreigners and law on asylum for it could be in accordance with the *acquis*. Albania need the harmonization of positive and negative lists with the EU list, the developing of an e-visa system and the establishment of an e-visa centre in line with EU standards<sup>82</sup>. Enhance the capacity of institutionalization of cross-border cooperation, and border management and administration that means better learning from other countries that have had such experience, to achieve goals of harmonization of the legislation with *acquis* and good implementation of it in practice. At the most serious issue the fight against organizing crime and trafficking of human beings, Albania must continue efforts to advance further, because organized crime and illegal trafficking, is a hump for achievements in other areas also. At personal data protection there is the need to an improvement of implementation of the law and a more effective work of the Commissioner of personal data protection.

In few words, the biggest challenge that includes most of the fields of JHA, that Albania need to face, is the full harmonization and implementation of the *acquis* in practice, ensuring in this way the achievement of an important priority of SAA (depending from the results of JHA area), that is the visa liberalization. And after failing to achieve the goals and objectives mostly in JHA for visa liberalization as required by the EU and in due time, (July was expected before), now Albania has to wait for that the EU Commission assess by July 2 or 3 if there has been sufficient progress, that would able the EU to prepare a decision in August or September, and then take a final vote in October, November or December, depending from the agenda of JHA Council. Only if Albania would accomplish the standards required in JHA then the visa free travel would become a reality. This is to be seen in the future.

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# ADMINISTRATIVE REFORMS IN THE REPUBLIC OF MACEDONIA IN CONTEXT OF THE EUROPEAN INTEGRATION

Natasha Bogoevska - Svetlana Trbojevik

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### INTRODUCTION

**EAS Standards:** requirement for membership in the European Union

In the 90's of the past century, the countries of Central and Eastern Europe clearly expressed their aspiration for EU membership. Determining the membership criteria at the European Council meetings in Copenhagen and Madrid, the European Union has positioned administrative issues high on the enlargement agenda. The Union coordinates the administrative policy with the membership policy, thus the administrative capacity to undertake the obligations arising from the membership has become an important criterion for admission in the Union. The EU membership aspirant countries were subjected to strong pressure towards modernizing their administrative systems, in terms of developing a professional public administration and building and strengthening the institutional capacity for implementation of the European legislation.

The administrative preparations towards enlargement of the Union in Central and Eastern Europe have shown that no exact legal and functional criteria in relation to the national administration have been established as requirements for membership. In addition, limiting factor appeared to be the absence of a unique model of a public administration which could be transferred from the European Union to serve as an organizational model to the countries aspiring for membership, and this adds to the absence of a coherent reform policy in the Union.

In the framework of the European Union there is no *acquis communautaire* on the system of governance and organization of administrative structures of member-countries. Not one legal text of the Union provides a model of the public administration that can be implemented in all countries. The issues like distribution of legal and executive competences, design of organizational structures, composition and size of the public administration are left to the discretion of national legislations. The member-countries have a big degree of autonomy in relation to the installment of an administration and management system, as long as that system is installed and functions in the framework of a democratic political regime, supporting it at the same time. Their administrative systems are old and stable structures affected to a great extent by the national tradition, national history and administrative culture. However, in spite of the relative absence of direct authorizations, the European Union affects the way its members organize their administrative structures. As a result of the integration processes, legal and administrative systems of member-countries pass through a process of adaptation in order to fulfill the requirements arising from the introduction and application of the European legislation. The Union has imposed to the member-countries obligations expressed in results to be accomplished, which meant that they could set up their administrations at their own discretion, having to move in the direction which could provide effective and adequate execution of all tasks set forth by the Union in context of achieving the goals of established policies (Fournie, 1998).

The public services of member-countries exchange a certain number of principles of the public administration, including: (I) a system founded on the separation of the public from the private sphere; (II) structures that are founded on the separation of political from administrative level; (III) clearly defined rights and obligations of public servants, high degree of stability and protection. Among the countries there is a consensus on the basic components of good governance which include the following principles of the rule of law: reliability, predictability, responsibility and transparency, as well as technical and managerial ability, organizational capacity and participation of citizens in the process of decision-making. Such consensus has led to establishment of principles of the public administration that are common for the EU member-countries with different legal traditions and different governance systems. These principles have been defined and refined with the decisions of the national courts, as well as

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with the decisions of the European Court of Justice. The common principles of public administration among the member-countries of the European Union represent the requirements for European Administrative Space (EAS). The idea of European Administrative Space has been taken from the renowned ideas for European Economic Space and European Social Space. The European Administrative Space operates and builds on the common European principles, rules and regulations that apply to relevant territories in a unified manner (Cardona, 1999). EAS includes a group of common standards for acting in the framework of the public administration, and these are defined by law and put in practice by means of procedures and mechanisms of responsibility. In addition to the fact that the European Administrative Space formally does not represent an integral part of the *acquis communautaire*, the established principles and rules were guidelines of the process of reforms in the context of creating a modern and efficient administrative system (Sigma paper, 1999).

## Strategy for reform of the public administration in the Republic of Macedonia

EU membership, as a strategic goal of the Republic of Macedonia, presupposes fulfillment of Copenhagen criteria, as well as fulfillment of certain standards in the public administration and building sustainable institutions. In the National Strategy for Integration of the Republic of Macedonia in the European Union, top priority, which horizontally binds all sector reforms and is essential factor of their success, is building a public administration that will be able to carry the burden of integration, plus the obligations arising from the membership.

- The Republic of Macedonia has lagged behind other countries from Central and Eastern Europe in implementing administrative reforms. Upon getting independence, the Republic of Macedonia undertook, from the aspect of legal grounds for regulating the functioning of the public sector, only formal steps for adaptation to the new political system, which did not mean root change of the principles of organization of the services of public interest and the functioning of the administration. Although the administrative system itself conditions to a great extent the successful implementation of reforms, aimed at democracy of society and social growth, the public reform did not evolve in parallel with the reform projects in other areas.
- In the years after getting independence, the emphasis in the Republic of Macedonia was set on the political recognition of the country and on the macro-economic stabilization of economy. The public sector reform became actual when it reached certain democratic and economic advancement, by which the realization of the reforms, particularly that of the public administration, appeared as an imperative for successful continuation of such processes.
- The Government of the Republic of Macedonia has started the implementation of a comprehensive and complex process of reform of the Macedonian public administration system in order to improve services and transform it in an efficient service of citizens. The ultimate goal of the reforms should be creation of a modern, professional and efficient administrative system compatible with the standards and principles of the European Space. The institutional structure for management and implementation of this process was established in 1998. The Commission for Public Administration Reform was founded to serve as an inter-ministerial body directly responsible for running the process of public administration reform headed by the Minister of Justice. Later, the reform competence was transferred to the General Secretariat of the Government of the Republic of Macedonia. In May 1999 the Government of the Republic of Macedonia adopted the Strategy for Reform of the Public Administration which provided for the goals and priority areas of the public administration reform, as follows:
  - Small-size public administration, that is small "state" with changed nature of the state intervention aimed at regulatory functions, before all, and monitoring functions;
  - Simple structure of the public administration system in accordance with the principle of parliamentary democracy – as less separated structures as possible which are not encompassed and not under the leadership of a body whose head has a direct parliamentary responsibility;
  - Democratic administration which, within the Constitution, is guided by the law when realizing public powers and using the means that have been entrusted to it;
  - Protection of the administration during executing authorizations against political and other in-



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terests and control of the same through transparent mechanisms by independent institutions;

- Responsive, citizens-oriented public administration, as an efficient service for the citizens and legal entities in achieving their rights;
- De-concentrated model of public administration

**The Strategy for Reform of the Public Administration states the following areas as reform activities towards structural and functional adaptation of the public administration:**

1. The system of state administration;
2. The system of public administration in a broader sense;
3. The system of local self-government;
4. Redefining the role of the state;
5. Exercising and protecting the rights of citizens;
6. Restructuring public finances;
7. Developing the information system.

One of the directions/areas of the public administration reform in the Republic of Macedonia was the redefining of the role of the state, that is change of the nature of the state intervention in this area. This long-term goal of the reform is realized by:

- Re-examining the possibility of transfer of certain functions from the public to the private sector or the possibility of introducing market elements in the work of the public sector;
- Simplifying the legislation in order to more efficiently accomplish the regulatory function of the state;
- Decentralization/de-concentration of state's competences.

The adoption of the Strategy for Public Administration Reform has created legal and institutional prerequisites for the start of the reform process in the Republic of Macedonia.

## **Administrative reforms in the Republic of Macedonia**

The Government of the Republic of Macedonia has started the reforms in the public sector through adopting the Strategy for Reform of the Public Administration (1999) in an environment of still not finalized constitution of the executive power. "To be able to speak of a consistent reform of the public administration, first we should provide fulfillment of the principal legal prerequisites for the constitution of executive power in the Republic of Macedonia. And this could be accomplished by adopting basic/principal laws which will define the role and position of the executive power in the political system and then to approach to the final reforms of the administration, as a segment of the realization of the executive power in the state. Of particular importance for the public administration reform is the adoption of a law to set up the foundations of the public sector (Law on Public Services or Public Institutions), which as a technical (functional) decentralization shall contribute to greater efficiency in achieving human rights and freedoms before the public administration bodies" (Davitkovski, 2001).

Such review of the commenced reforms has led to adoption of the first group of laws with which the executive power in the Republic of Macedonia was constituted.

1) Law on Government and Law on Organization and Operation of State Administration Bodies: Considering that the overall legislation which regulated this area was in function of realization of the parliamentary system (system of unity of power), in 2002 was introduced a new legal framework in accordance with the basic values of the constitutional order in the Republic of Macedonia, particularly the principle of division of the power and political pluralism. In fact, the adoption of the two system laws - Law on the Government of the Republic of Macedonia and Law on Organization and Operation of State Administration Bodies – facilitated complete arrangement of the organization, manner of operation and competences of the Government of the Republic of Macedonia in accomplishing the functions of the executive power of the state, as well as the organization, competences, operation of the state administrative bodies as part of the executive power which performs the functions of the state with the goal to efficiently realize the rights and duties of citizens and legal entities.

2) The Law on Local Self-government was adopted as a system (body) law, a foundation and princi-

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pal normative framework in which the decisions of the European Charter on Local Self-government and the Macedonian constitutional concept of local self-government were made operative. The functional, administrative and fiscal dimension of the decentralization should strengthen local self-government as a counterpoise to central power, deepen democracy at local and central level, from the aspect of civil and ethnic interest, as well as provide better, cheaper and prompt services at local level ” (Siljanovska-Davkova, 2005).

3) Law on Institutions and Law on Public Enterprises: By the adoption of these two laws, the legal status of organizations performing public services as public services of public interest was regulated on uniform bases.

The second group of laws covered the system of public and civil service. The specific status of civil servants imposed the need for the legislation related to them to be separated from the common working legislation. In an environment where the state is employer, duties and responsibilities of the civil servant cannot be agreed upon between the state body and the individual by means of work contract in the area of the common working legislation. The provisions of the Law on Work Relations are not sufficient to regulate the status of the servants who are delegated authorizations by the state in executing power. The adoption of the new legal framework on public and civil service was initiated when it was ascertained that there existed “an old-fashioned model of organization of the civil service which involved rigid and outdated techniques of human resources management, maintained insufficiently defined rights, obligations and responsibilities of civil servants and unclear rules of selection, recruitment, rewarding and promotion based on capabilities (Trendafilova, 2001). The second group of laws includes:

1) The Law on Civil Servants regulates the status, rights, duties, obligations, responsibilities of civil servants, as well as the system of salary and allowances for civil servants. In the Republic of Macedonia is maintained the limited concept of state administration. The term state administration covers the administration of the three branches of power: legislative, executive and legal, the administration of other state bodies and municipal administration. The new system of organization of civil service in the Republic of Macedonia, in contrast to that of most of the Eastern and Central Europe countries in transition, which have decided to establish a system of career, represents a system of open jobs. In the new system of state administration, this Law introduced a special body of horizontal competence to implement and coordinate the processes of human resources management – that is the Civil Servants Agency. The Law on Civil Servants has been amended and supplemented on several occasions in order to identify the bodies to whose employees the Law will apply, and to strengthen professionalization and de-politicization of the civil service, improve the recruitment procedure, introduce additional elements of career in the development of civil servants, strengthen the role of the Agency from the aspect of performing supervision over the application of the Law. 2) Law on Public Servants - the adoption of which was provided for in the National programme for Adoption of the EU Law. Additionally, the Republic of Macedonia had the obligation, as member of GREKO (Group of States against Corruption) within the Council of Europe, to establish a regulative framework of modern administrative principles for a large number of civil servants, which will correspond, to an extent as high as possible, to the regulations that apply to civil servants. The Law on Public Service (education, health, culture, science, labor and social affairs, social and children welfare) that is to put in order status issues of the public administration as well, in a uniform legislation framework compatible with the one already established for the civil service. The third group encompasses a collection of administrative standards and procedures by which the principles of EAS have been transposed in the national legislation (Law on General Administrative Procedure, Law on Administrative Disputes, Law on Public Information Access, Law on Civil Associations and Foundations, Law on Public-Private Partnership and Concessions, Law on Conflict of Interests). Basic objective of this quite heterogenic group of laws is incorporating principles of good governance into legislation. Part of them have already been introduced with the adoption of the legislation on transparency, freedom of information, anti-corruption measures, network management and the agenda of equality.

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## CONCLUSION

Administrative reforms have been implemented for the last ten years as a complementary part of the activities towards European integration. This process of reforms is not completed yet in the Republic of Macedonia, because institutions and capacities necessary for a contemporary democratic society to function and move towards EU succession are still built. The success of administrative reforms seen through the time prism of ten years is relative. It is not a process that can be assessed isolated from other social developments. On the contrary, governance has a great impact on issues concerning human rights exercising, democratic principles and the development of the state in general. On the other hand, the success of the reforms depends on an array of factors:

- Objectives of the reforms: values, norms, principles;
- Reform assets: resources, expertise, technology;
- Reform programmes: privatization, deregulation, management;
- Institutional context of the reforms: legal regulations, political relations;
- External pressures: European integration and globalization;
- Historic context: historic heritage and national tradition.

The biggest remarks of the European Commission presented in the annual reports in which it assesses the progress of the Republic of Macedonia on its way to the European Union related to: (I) full implementation of the Law on Civil Servants, depolitization of employment and career advancement of civil servants and other persons in the public administration, as well as introduction of merit-based career, (II) improving transparency of administration, (III) providing efficient implementation of the Code of Ethics for civil servants, (IV) providing adequate cooperation of all state bodies with the Ombudsman and improving the monitoring of its recommendations, (V) establishing transparent and responsible local administrative structures and developing internal control and revisions in managing decentralized funds.

Finally, considering that the state administration is the proponent of the reform, and the object of the reform at the same time, the realization of the reform goals shall depend both on setting the legal framework, successful implementation of the laws and on the changes in the system of values, administrative culture and habits of public and state administration. Or, as Davitkovski puts it, it is this very existing administration (state and public) that is the greatest inhibitor of reforms! Even more, is it that nobody wants to disturb their own commodity? (Davitkovski, Grizo, 2001).

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