CONTENTS

https://doi.org/10.55843/SG2211007n

NORMATIVE FRAMEWORK FOR APPROACHING THE GLOBAL PANDEMIC WITH TECHNICAL GOVERNEMENT -THE CASE OF NORTH MACEDONIA

Assoc.prof. Abdulmecit Nuredin[1], Ass.prof. Vesna Poposka[2],

ABSTRACT

When the global pandemic occurred, North Macedonia was ruled by Technical Government, with strictly limited powers and clear mandate to organize elections. In conditions of a declared coronavirus pandemic by the WHO, a state of emergency may be declared in North Macedonia according to the Constitution. As the Assembly was dissolved in the run-up to the early parliamentary elections scheduled for April 12, 2020, the decision to declare a state of emergency was only possible to be made by President of the State and "submitted to the Assembly for confirmation as soon as it is able to meet." This opened huge debate among experts and politicians, since this case was not covered by the existing legal and constitutional framework. The technical government came up from the Przhino agreement with clear and very limited mandate.

However, institutional mechanisms were used to enable legal and operational environment for the citizens, providing successful transfer towards political normality. This case study provides analysis of that sui generis situation.

Keywords: North Macedonia, pandemic, Przhino agreement, bylaws, Constitution

Assoc.prof. Abdulmecit Nuredin

Faculty of Law, International Vision University, Gostivar, N.Macedonia

e-mail: nuredin @vizyon.edu.mk

Ass.prof. Vesna Poposka

Faculty of Law, International Vision University, Gostivar, N.Macedonia

e-mail: vesna.poposka @vizyon.edu.mk

UDK:

342.51]:616.98:578.834}
036.22(497.7)"2020/2021"

Declaration of interest: The authors reported no conflict of interest related to this article.

Introduction

The global pandemic is ongoing challenge to even strongest world's governments. The Western Balkan countries were also heavily heat in the second quarter of 2020, and even nowadays, approaching the 2021, the rates of newly diagnosed patients are raising.

North Macedonia faced another challenge: the fact that when pandemic occurred, the country was led by technical government with very limited mandate to operate, and dismissed parliament- in according with the Przhino agreement of 2015 and the Law on government that was adopted after the political agreement was signed.

The Przhino agreement and the Law on Government do not affect the roles and responsibilities of the institutions in state of emergency or crisis, that are regulated by different laws- the Law on crisis management and the Law on protection and rescue that are not fully harmonized. So, it was quite unique situation that was overcome only by the expressed political will of the stakeholder and the appropriate interpretation of law.

Context

In December 2019, in the city of Wuhan, in the province of Hubei in the People's Republic of China, a new coronavirus appeared and began to spread in a short time in other provinces of the People's Republic of China. This disease is an acute respiratory infection in category B (based on the Guidelines for the Prevention and Treatment of Infectious Diseases of the People's Republic of China). With a series of preventive and treatment measures, the epidemic in the People's Republic of China has

finally stabilized by hundreds, up to a few cases a day. The other provinces in the People's Republic of China are recovering from the epidemic, while the spread outside the People's Republic of China is constantly growing (Vlada, 2019).

On March 11, 2020, the World Health Organization declared a pandemic of the new coronavirus COVID-19, due to the fact that it is a new type of coronavirus, as well as due to the fact that it has spread to several continents. With this, the World Health Organization sent a strong and clear message to all countries in the world that the situation with COVID-19 is extremely serious and that every country, according to its set-up and health system, must begin to prepare to deal with this crisis.

This virus in Europe, at that time, was spread mostly in the Republic of Italy, where the speed of spread reached enormous proportions. The first case officially registered in North Macedonia was the head of deramotvenerology clinic who despite the warnings flee to Italy for a winter holiday and ignored the first symptoms of the virus ("„Докторката Која Не Се Грижеше За Сопственото Здравје“: Твитер Реакции За Директорката Нина Цаца Биљановска - Емагазин" 2020).

The (technical) Government of the Republic of Northern Macedonia, at the session held on March 18, 2020, based on Article 125 paragraph 1 of the Constitution of the Republic of Northern Macedonia concluded to the Parliament of the Republic of North Macedonia to submit a Proposal to the Assembly of the Republic of North Macedonia to determine the existence of state of emergency on the territory of the Republic of North Macedonia in order to prevent the introduction, spread and management of coronavirus COVID-19, and according to a pandemic epidemic declared by the World Health Organization as a new type of virus that has

spread to all continents and spread to the territory of the Republic of Northern Macedonia (Влада, 2019)

Background

The autumn of 2019 was politically tense for North Macedonia. The opposition led by conservative VMRO DPMNE urged for early parliamentary elections for some time, but on the other side citizens were already tired of the repetitive electoral processes in the last decade, due to the fact that for the last decade, there were early parliamentary elections nearly every two years.

The next regular parliamentary elections were scheduled for November 2020, but Prime Minister Zoran Zaev called for early elections after the European Council failed to come to an agreement on starting talks with North Macedonia on joining the European Union in October 2019 (European Commission, 2019). Announcing the early election on October 19th, Mr Zaev said: "I am disappointed and angry and I know that the entire population feels this way". He also added that Macedonian citizen should now "decide the road we are going to take" alluding to the announcement of the early elections ((www.dw.com) 2020).

The decision to hold early elections meant that a so-called technical government would have to be formed 100 days ahead of the elections, scheduled for April 12th. The requirement to form a technical government stems from the 2015 Przino Political Agreement(Agreement, 2015), which was reached between the main political parties with the mediation of the European Union amid a deep political crisis in 2015. According to the Agreement, 100 days ahead of elections, a technical government is to

be formed, so that opposition ministers and deputies are included in several key posts in order to ensure a fair vote and to remove doubts about political pressures impacting the electoral process. Additionally, according to the Agreement the Prime Minister's post should be replaced by a new Prime Minister from the ranks of the ruling party. In accordance with these requirements, Prime Minister Zoran Zaev resigned on the 3rd of January, 2020. After confirming the resignation of the Prime Minister, the President of the country, Stevo Pendarovski, gave the mandate to Oliver Spasovski who was at that time Minister of interior from SDSM . The obligation arises from Article 43 of the Law on Government, which states: "One hundred days before the parliamentary elections, and after the previous resignation of the Prime Minister, the Assembly will elect a new, transitional government to conduct parliamentary elections, led by "from a new Prime Minister nominated by the largest political party forming the governing majority."

So, when the pandemic occurred, the country was led by technical government and the electoral dates were getting near.

The Przhino Agreement –why the technical Government matters

The Przino agreement is the result of painstaking quarterly talks to find a way out of a political crisis that has intensified with each newly announced "bomb" (public press conference held by PM Zoran Zaev, at that time chief of opposition, producing wiretapping materials which revealed systematic irregularities and corruption). Concluding the so-called Agreement from Przino finally happened at the seventh inter-party meeting held on June 2, 2015 at the residence of the EU Ambassador Aivo Orav in the area called Przhino near Skopje . The first of the seven

meetings of the four largest parties was held on March 30 in Brussels; the second on April 15, again in Brussels; the third on May 14, in the Club of MPs in Skopje; the fifth on May 19, in Strasbourg; a the sixth penultimate meeting on May 26, again in the Club of MPs.

The first serious progress in the negotiations was made on 2 June 2015, after eight hours of negotiations, when EU Commissioner Hahn announced that the leaders of the four largest political parties have agreed to hold early parliamentary elections in April 2016, and until then will be the so-called transition period. Ever since Hahn arrived in Skopje and convening a leadership meeting at the highest level could expect Commissioner Hahn determined to achieve any solution to the crisis.

The final agreement was reached on July 15, 2015, and in the intervening period two meetings were held: the first on June 19 and the second on June 29. On 15 July 2015, again in the presence of the European Commissioner Hahn, the final Przino Agreement was reached, which regulates the key issues for holding parliamentary elections on 24 April 2016. The obligations undertaken with the agreement among the other things urge for:

- *Reaching an agreement between the parties on the exact way of organizing the government that will prepare the elections.*
- *Revision and modification of the composition of the State Electoral Comission.*
- *Return of the opposition to the Parliament.*
- *No further publication of any material from wiretapped conversations.*

- *Transfer of all wiretapped materials by SDSM to the competent public prosecutor.*
- *Increase the powers of the State Electoral Comission to ensure free and fair elections, with equal conditions for all political parties.*
- *Appoint a new special public prosecutor with full autonomy to conduct communications interception investigations, as well as everything that arises from wiretapping.*
- *Commencement of work and issuance of the first report of the parliamentary commission (chaired by a representative of SDSM) which will oversee the work of the UBK and the interception of communications.*
- *Facilitate negotiations between stakeholders to ensure greater media freedom.*
- *Appointment of a new Minister of Interior (nominated from SDSM).*
- *Appointment of a new Minister of Labor and Social Policy (nominated by SDSM).*
- *Appointment of a new Deputy Minister of Finance with the right to veto (nominated by SDSM).*
- *Appointment of a new Deputy Minister of Agriculture, Forestry and Water Economy with a veto (nominated by SDSM).*
- *Appointment of a new Deputy Minister of Information Society and Administration with a veto (nominated by SDSM).*
- *Submitting a formal resignation of the current government to the Assembly.*

- *Appointment of a new Prime Minister proposed by VMRO-DPMNE.*
- *Holding fair and democratic parliamentary elections.*

The agreement ended the Macedonian political and institutional crisis in the first half of 2015 and led to change of government in power after 12 years.

The declaration of state of emergency

The Parliament was officially dismissed due to the requirements of Przhino Agreement and the Law on Government- however, the MPs were still receiving their salaries until the constitution of the new mandate. Thus, huge debate occurred, starting with linguistic analysis of the constitutional construction on the possibilities of declaring a state of emergency. The constitution states in article 125 that "A state of emergency occurs when major natural disasters or epidemics occur. The existence of a state of emergency on the territory of the Republic of Macedonia or its part is determined by the Assembly on the proposal of the President of the Republic, the Government orat least 30 MPs. The decision determining the existence of a state of emergency is made by two-thirds majority of the total number of MPs and lasts 30 days. If the Assembly cannot convene, the decision is adopted by the President of the Republic and submitted to the Assembly on confirmation as soon as it is able to meet". (Sobranie, 2020)

The ability of the Parliament to meet was a subject of enormous analysis and debate. A group of 35 MPs urged from the President of the Assembly, although the Parliament was officially dismissed, to recall them based on Article 63 point 4 of the Constitution that states that the mandate of the MPs may be prolonged due to the declared state of emergency or crisis ((www.dw.com) 2020)) . However, the fact that the Assembly was already dismissed when the State of emergency was declared was the reason the President of the Assembly, Talat Xaferi, did not recall the MPs.

This decision was backed up by a very few constitutional experts who sticked to the interpretation that the Constitution allows the extension of the mandate of the Members of Parliament in a state of crisis or emergency only in case when the Assembly is caught by such a state and when its four-year mandate is coming to an end, referring to previous decisions of the constitutional court over the effect of the decision to dissolve and extend the mandate of the dissolved Assembly that creates legal uncertainty and means a violation of the rule of law(Шкарик 2020).

There was not however a consensus among the constitutional experts- in a analysis published by the Macedonian academy of sciences, a group of law professors state that the only way out of the complex legal situation with the declaration of a state of emergency, closest to the postulates of that principle is to convene the Assembly and assume that it is its duty to do so, determined by the constitutional provisions on the state of emergency. If MPs, ie their parties, are unable to reach a consensus on such a proposal, it remains as a matter of fact to be decided by the Constitutional Court with a decision to annul the decision on dissolving the Assembly, and thus returning things to their proper constitutional way (Kamovski and others, 2020).

So, under the pressure of the seriousness of the situation, President of the State, Stevo Pendarovski undertake the political risk and of the legal uncertainty and declared State of emergency in duration of 30 days (MIA, 2019). He brought another decision on the state of emergency when the first one expired and the last one of 8 days when parties finally agree how would electoral process continue (Радио Слободна Европа, 2020)

The importance of the declaration of state of emergency

The state of emergency represents not only a period in which special measures have been put in place to tackle the coronavirus. It can also be viewed as an extraordinary situation whose daily outcomes will depend on the effective and efficient coordination between various institutions. As such it will surely represent a litmus test for the capacity of the state and its various institutions to manage specific crisis situations, to communicate and streamline their various operations and decision making process, as well as to locate the specific weaknesses and possible strengths that emerge out of the specific challenges faced and their resolution. Besides, in a situation there was not operational Parliament, it gave the necessary power to the Government to pull all the capabilities in the struggle with the pandemic.

The declaration of the state of emergency was essential for the Government, in order to be able to allocate resources and manage the situation effectively, since according to article 126 of the constitution, in case of martial law or state of emergency, the Government, adopts decrees with legal force. In a situation where the Parliament was not functional, that was the only way to coordinate institutions and resources effectively.

The authorization of the Government to adopt decrees with legal force lasts until the end of the martial law or the state of emergency, which is decided by the Assembly.

This was the first time in the history of independence National state of emergency was declared.

The declaration of a state of emergency coincided with the accession of RSM to NATO and the decision of the EC (March 25, 2020) to start membership negotiations with the EU. The health crisis, which will surely spill over into the area of economy and in other social spheres, complicates the functioning of the state and public institutions in timely preparation and provision of all necessary resources (human, material, institutional) to start negotiations. (Kambovski and others, 2020)

It also affected the electoral process- On the 22d of March 2020, the Government announced its decision to delay the early Parliamentary elections that had been scheduled to take place on the 12th of April with a decree. (OSCE, 2020)

Thus, it could be argued that there are three main reasons why the state of emergency had been declared at a stage when the number of cases had not yet reached alarming levels (42 confirmed cases on the 18th of March). Firstly, this was a way to anticipate a peak that would coincide with the elections a month away in mid April. Secondly, declaring a state of emergency was the only constitutionally viable way to postpone the elections. Thirdly, in the context of the corona crisis another justification for delaying the elections was to prevent the health crisis from becoming another pre-electoral battlefield and to allow all political energy to be focused on fighting the epidemic. Previously in early March the opposition VMRO-DPMNE accused the Government for "an insubstantial response" to the growing crisis. In reaction to the

accusations, the SDSM responded with a statement saying "VMRO-DPMNE should stop chasing political points and creating a public hysteria at a time when all the institutions and all the citizens are focused on dealing with the coronavirus" (Prizma, 2020).

Thus, postponing the elections was also a means to avoid the continuation of the ping pong political fighting characteristic of pre-electoral periods, and to allow for the attention to be focused on fighting the spread of the coronavirus.

In spite of the justifiability of the curfew in the context of the pandemic, there were also those who opposed it. The concerns expressed mainly on social media related to fears that States of emergency can also be used as a rationale or pretext for suspending rights and freedoms guaranteed under a country's constitution.

The continuing of electoral processes and election of new government

After a prolonged stalemate over the date of new elections, the main political parties in North Macedonia have finally agreed that the country should go to the polls on July 15.

At June 15th, President Stevo Pendarovski declared a state of emergency for 8 days. The state of emergency is to enable the smooth preparation of the elections, and especially the implementation of measures for protection of public health during the election process, in conditions of a pandemic. Pendarovski's Cabinet announced that the eight-day state of emergency will enable the election process to continue uninterrupted, a decision on the elections to be made by the President of the Assembly and a changed schedule by the State Election Commission to hold the

elections.Late at night, the government passed a decree related to early parliamentary elections. It stipulates that the election campaign will start on June 24, 2020 and will last for 20 days. On July 13, those infected with covid-19 who are being treated at home and people who have been given a measure of self-isolation will vote, and the next day - July 14, the weak and sick will vote. Voting on election day on July 15 will last from 7 am to 9 pm. (InStore,2020). The electoral process passed well, however the web of the state electoral commission was hacked so the results were delayed (SDK 2020). Following the tight results the formulation of new coalition was also prolonged. The new government was finally elected on the 30th of August.

Conclusions

Insufficient and confusing constitutional and legal regulations on the state of emergency leave space for improvisations and political conflicts over the interpretation of the terms for declaring a state of emergency, the powers of the Government, judicial control over the legality of the decisions of the Government, the possibility and the duty of the dissolved Assembly to be re-convened, ordinances with legal force, the necessary restrictions on human rights and the duration of the effects of intervention measures in the economy and other areas. (Kambovski, 2020)

The case study analysis shows that although the provided normative framework was weak, the institutions managed to overcome the situation due to the political will and proactive approach to their duties and capabilities. The technical government de facto and de iure fulfilled the mission of the given mandate by Przhino agreement – organized elections. The technical government faced, in a manner of obstacles and challenges, probably th e most in a row, since country's independence. Although the

institutional and legal framework provided before the pandemic occurred, did not contain specific instructions for the context that occurred, there was institutional framework that was operative and effective, thanks to the political will for overcoming of the situation, as result of exercising power in a broader manner. Being not "prescribed by law" does not mean legal uncertainty in this case.

The wider approach towards its duties and obligations led to successful dealing with the crises for the period given. If the technical government kept strictly to the given mandate, the country would face a dead end. If the President of the country did not announce state of emergency, the government could barely manage to keep the situation under control. Political burden took by the President Pendarovski and TPM Spasovski is not to be underestimated.

The effectiveness of the technical government as a whole is recognized by the European Commission progress report, whose executive summary states that " In terms of political criteria, Northern Macedonia continued to implement EU-related reforms throughout the reporting period. Efforts to strengthen democracy and the rule of law have continued, including by activating existing mechanisms of control and balance and through discussions and debates on key political and legislative issues." (European Comission, 2020)

It is necessary to question the content of the ordinances with legal force and their relation to the existing legislation to be precisely regulated with a new Law on State of Emergency so that it will be explicitly determined that with the decrees with legal force the government can only change, suspend or amend existing laws in the country. It is also necessary to regulate the issue of the legal effect of the decrees with legal force after

the ending of the state of emergency. Namely, the legal is needed regulation to contain an explicit legal provision determining the termination the validity of the decrees with legal force adopted by the Government itself lifting the state of emergency.

Reference list

1. „Докторката Која Не Се Грижеше За Сопственото Здравје“: Твитер Реакции За Директорката Нина Цаца Биљановска - Емагазин". 2020. Емагазин. https://emagazin.mk/doktorkata-ko-a-ne-se-grizheshe-za-sopstvenoto-zdrav-e-tviter-reakcii-za-direktorkata-nina-caca-bi-anovska/.
2. "Избори На 15 Јули-Ќе Се Гласа 3 Дена". 2020. *Instore.Mk*. https://instore.mk/record/8/9385/izbori-na-15-juli-kje-se-glasa-3-dena.
3. "Короната И Принудното Зреење На Политичката Класа - Призма". 2020. *Призма*. https://prizma.mk/koronata-i-prinudnoto-zreene-na-politichkata-klasa/.
4. "Одлуки Од 22 Седница На Владата: Владата Предложи Собранието На Република Северна Македонија Да Утврди Постоење На Вонредна Состојба На Територијата На Република Северна Македонија Заради Спречување На Внесување, И Ширење И Справување Со Коронавирус". 2020. *Влада На Република Северна Македонија*. https://vlada.mk/node/20588.
5. "ПАДНА САЈТОТ НА ДИК СО РЕЗУЛТАТИТЕ ОД ИЗБОРИТЕ - Сакам Да Кажам". 2020. *Сакам Да Кажам*.

https://sdk.mk/index.php/makedonija/padna-sajtot-na-dik-so-rezultatite-od-izborite/.

6. "Пендаровски Прогласи Вонредна Состојба Од Осум Дена". 2020. *Радио Слободна Европа*. https://www.slobodnaevropa.mk/a/30672457.html.
7. "Прогласена Вонредна Состојба - МИА". 2020. *МИА*. https://mia.mk/pretsedatelot-pendarovski-proglasi-vonredna-sosto-ba/.
8. 2020. *Sobranie.Mk*. Constitution of the Republic of North Macedonia" available at https://www.sobranie.mk/content/Odluki%20USTAV/UstavSRSM.pdf.
9. *Consilium.Europa.Eu*. 2020 The Republic Of North Macedonia". https://www.consilium.europa.eu/en/policies/enlargement/republic-north-macedonia/#:~:text=The%20European%20Council%20on%2017,in%20Zagreb%20in
10. Deutsche. 2020. "Уставот Дава Можност Собранието Повторно Да Се Состане | DW | 22.04.2020". *DW.COM*. https://www.dw.com/mk/%D1%83%D1%81%D1%82%D0%B0%D0%B2%D0%BE%D1%82-%D0%B4%D0%B0%D0%B2%D0%B0-%D0%BC%D0%BE%D0%B6%D0%BD%D0%BE%D1%81%D1%82-%D1%81%D0%BE%D0%B1%D1%80%D0%B0%D0%BD%D0%B8%D0%B5%D1%82%D0%BE-%D0%BF%D0%BE%D0%B2%D1%82%D0%BE%D1%80%D

0%BD%D0%BE-%D0%B4%D0%B0-%D1%81%D0%B5-%D1%81%D0%BE%D1%81%D1%82%D0%B0%D0%BD%D0%B5/a-53205943.

11. Deutsche. Welle 2020. "Заев: Одиме На Брзи Предвремени Избори | DW | 19.10.2019". *DW.COM*. https://www.dw.com/mk/%D0%B7%D0%B0%D0%B5%D0%B2-%D0%BE%D0%B4%D0%B8%D0%BC%D0%B5-%D0%BD%D0%B0-%D0%B1%D1%80%D0%B7%D0%B8-%D0%BF%D1%80%D0%B5%D0%B4%D0%B2%D1%80%D0%B5%D0%BC%D0%B5%D0%BD%D0%B8-%D0%B8%D0%B7%D0%B1%D0%BE%D1%80%D0%B8/a-50898091.
12. European Commission, 2020, Progress Report on North Macedonia 2020 available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/north_macedonia_report_2020.pdf
13. Kambovski, Vlado and others, 2020 " Legal aspects of the state of emergency" http://manu.edu.mk/wp-content/uploads/2020/06/Lektor-2-%D0%90%D0%BD%D0%B0%D0%BB%D0%B8%D0%B7%D0%B0_%D0%BF%D1%80%D0%B0%D0%B2%D0%BD%D0%B8%D1%82%D0%B5-%D0%B0%D1%81%D0%BF%D0%B5%D0%BA%D1%82%D0%B8-%D0%BD%D0%B0-%D0%B2%D0%BE%D0%BD%D1%80%D0%B5%D0%B4%D0%BD%D0%B0%D1%82%D0%B0-%D1%81%D0%BE%D1%81%D1%82%D0%BE%D1%98%D0%B1%D0%B0_%D0%9C%D0%90%D0%9D%D0%A3_04.05.2020_%D1%84%D0%B8%D0%BD%D0%B0%D0%BB%D0%BD%D0%B0-1.pdf

14. МСЕТ, 2016, 26ти извештај достапен на http://mcet.org.mk/gridfs/data/id/c6c1bbd30cbcf46217e01aa3
15. OSCE 2020 Peridoical report availale at https://www.osce.org/files/f/documents/b/8/451372.pdf
16. The Agreement, 2015 (Agreement of Przhino, signed among the leading political parties of North Macedonia with support and guarantees of international community) https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_agreement.pdf
17. The Law on government of North Macedonia, available at https://vlada.mk/sites/default/files/dokumenti/zakoni/zakon_za_vladata_na_republika_makedonija.pdf
18. Короната И Принудното Зреење На Политичката Класа - Призма". 2020. *Призма*. https://prizma.mk/koronata-i-prinudnoto-zreene-na-politichkata-klasa/.
19. Шкарић, Светомир. 2020. "Распуштеното Собрание Не Може Да Се Врати". *Respublica.Edu.Mk*. https://respublica.edu.mk/mk/blog/2020-05-18-09-18-19.

https://doi.org/10.55843/SG2211025p

PRESPA AGREEMENT THROUGH THE PRISM OF INTERNATIONAL LAW AND ITS IMPLEMENATATION IN THE NATIONAL LEGAL SYSTEM OF NORTH MACEDONIA

Ass.prof. Vesna Poposka[1], Assoc.prof. Abdulmecit Nuredin[2]

ABSTRACT

The name issue is a constant factor in a Balkan puzzle with many variables. For the Macedonians, the name issue has turned into identity question. That should not have been the case: identity is a matter of self-determination, not recognition. Macedonians hoped that electoral victory of Syriza in 2015 would bring to office a government that would be more leftist than populist, which did not happen. Additionally, the Greek Orthodox Church has joined with inflammatory discourse, playing a political role that one would think that a leftist government wouldn't allow them to play. Both governments, in Athens and Skopje, face different challenges since the beginning of the process. Although it was considered that Athens enjoys a historical, institutional, and geopolitical advantage, as it always did in this dispute and it was Greece has little to lose in the barraging game except "exclusive possession over history" the Prespa agreement was not accepted with applause. On the other side North Macedonia was supposed to negotiate between its past and future, and the agreement brough mixed feelings and polarization of the society. Opposition was calling for invalidity of the treaty and protest were held in both capitals. The aim of this paper is to provide legal analysis of the process and the agreement from the point of international public law relieved from daily politics and populism.

Keywords: International law, Prespa agreement, Security Council, constitutional amendments

Ass.prof. Vesna Poposka

Faculty of Law, International Vision University, Gostivar, N.Macedonia

e-mail: vesna.poposka @vizyon.edu.mk

Assoc.prof. Abdulmecit Nuredin

Faculty of Law, International Vision University, Gostivar, N.Macedonia

e-mail: nuredin @vizyon.edu.mk

UDK:

341.24(497.7:495)

Declaration of interest: The authors reported no conflict of interest related to this article.

Introduction

"Final agreement on overcoming the differences described in Security Council resolutions 817 (1993) and 845 (1993), termination of the 1995 Interim Accord and establishment of a strategic partnership between the two parties" is the full name of the Macedonian-Greek agreement settled in Prespa in June 2018 (Влада, 2018). Although it has been referred to as the "name dispute" by the general public, in fact the subject of the contract is much more comprehensive. De facto, it addresses the decades-old name dispute, but, de jure, it is an act based on Security Council resolutions that are legally binding.

Whatever the content of the agreement and how unpleasant it is for the signatory parties and the general public, it is undoubtedly historic and will find its place in textbooks of international law.

Background and contextualisation

The Prespa agreement was reached in 2018 between Greece and the Republic of Macedonia, under the auspices of the United Nations, resolving a long-standing dispute between the two. Apart from resolving the terminological differences, the agreement also covers areas of cooperation between the two countries in order to establish a strategic partnership between them. Signed beside the mutually shared Lake Prespa, from which it took its name, and ratified by the parliaments of both countries, the agreement went into force on 12 February 2019 when the two countries notified the UN of the deal's completion, following the ratification of the NATO accession protocol for North Macedonia on 8 February 2020 (North Macedonia joins NATO as 30th Ally, 2022) . It replaces the Interim Accord of 1995 and sees the Republic of Macedonia's

constitutional name changed to the Republic of North Macedonia erga omnes (UN, 1995).

The legal basis

The international legal position of the agreement is crystal clear: the agreement finds its legal basis in the resolutions of the UN Security Council and emanates the clearly expressed will of the international community to resolve the disagreements between the two countries.

Namely, there are two Security Council Resolutions on which the dispute resolution is based, dating from the first years of independence of North Macedonia. The first one is brought following the consideration of the Republic of Macedonia's application for admission to the United Nations (UN), on 7 April 1993 the UN Security Council adopted Resolution 817 (1993). In the preamble of this resolution, the Council reaffirms that the Republic of Macedonia meets the criteria for membership in the United Nations, but underlines that there is a difference in the name of the country and notes that the difference should be resolved in the interest of maintaining peaceful and good neighborly relations. With this resolution, the UN Security Council recommends to the UN General Assembly that the Republic of Macedonia be admitted as a member of the United Nations, and for all purposes within the UN to temporarily call the country "the former Yugoslav Republic of Macedonia" Macedonia) until the name dispute is resolved (UNSCR 817,1993).

This happened as a result of the Greek opposition to the request of the then Republic of Macedonia for full membership in the UN, and based on the recommendation of UN Security Council Resolution 817 (1993), the country was admitted as a member of the United Nations on April 8, 1993, with recommendation to be temporarily addressed with the reference "the

former Yugoslav Republic of Macedonia" until the final settlement of the name dispute. The Secretary-General of the United Nations was tasked with assisting in the settlement of the dispute, for which purpose he appointed a Personal Representative (MFA,2022).

United Nations Security Council resolution 845, adopted unanimously on 18 June 1993, after recalling Resolution 817 (1993) and considering the secretary-General's report pursuant to it, the council urged both Greece and the Republic of Macedonia to continue efforts to settle the naming dispute (UNSCR 845,1993).

Security Council resolutions are legally binding on all member states of the international community, in accordance with Article 25 of the Charter of the United Nations (UN, 1945). The framework for reaching international agreements, on the other hand, is given in the Vienna Convention on the Law of Treaties, which is largely a codification of international custom (UN,1969). The Vienna Convention, on the other hand, as an international agreement accepted by both parties, is the primary source of law under Article 38 of the Statute of the International Court of Justice - the Supreme Court of the United Nations based in The Hague (ICJ, 1946).

The Vienna Convention on the Law of Treaties states in Article 7 who has "full power" to sign international agreements. In paragraph two of Art. 7 it is said that he is the one who "produces adequate full power" or "it is obvious from the practice of the States involved or it follows from other circumstances that the State intended to treat that person as producing" adequate full power ".

Paragraph two of the same article, line one, states that these are the Heads of State and Government and the Ministers of Foreign Affairs, in order to

carry out all the acts necessary to conclude the agreement. In this case, the agreement was signed between the ministries of foreign affairs although the Prime ministers were also present. The Interim Accord was signed by foreign ministers, not only because of the legal powers, but also because of the nature and specificity of the agreement and probably the desire for the act to be treated in the field of foreign policy.

Article 26 of the Vienna Convention refers to the archaic legal principle: pacta sunt servanda, meaning: treaties are to be respected, in bona fides. Good faith is also a principle that should be applied in the interpretation of contracts, as set out in Article 31 of the Convention, which stipulates that the primary method of interpreting contracts is linguistic. Article 27 states that the domestic law of a state cannot be an obstacle to the implementation of an international agreement.

Potential for the invalidity theory

Vienna Convention (UN,1969) very precisely defines the grounds for the invalidity of an international treaty and none of the views expressed in this regard overlaps with its provisions.

With regard to the grounds for the invalidity of an international treaty, the Convention recognizes fraud, corruption, coercion or contrary to the treaty in accordance with the international law. This means that A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations. A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. The peremptory norms of international law are also known as ius cogens and are a generally accepted principle of the international community - something that is understood to be the norm in itself - and are a real obligation regardless of whether they are part of an international agreement of a specific country

is a party to that agreement - it is obliged to respect the peremptory norms. They arise from international custom and are not defined in a separate instrument, but the case law of international judicial institutions as well as the interpretations of prominent lawyers know how to point out some norms as peremptory. The ban on genocide, for example, is treated as such. This is how the right to self-determination is treated, but the way the law is interpreted is far from a consistent legal regime, so that a clear practice can be extracted that would benefit the resolution of the dispute.

Constitutional consequences for Macedonian side

The constitutional position of international law in North Macedonia is supreme, ie, international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law, as determined by Article 118 of the Constitution. Although the Constitution further states that international agreements are concluded by the President as a rule, and the Government as an exception, we must not forget that the Vienna Convention, to which Macedonia has long acceded, provides for the possibility for foreign ministers to be signatories to agreements.

The four amendments to the constitution of North Macedonia

Based on the Prespa agreement, four constitutional amendments were proposed by Macedonian government to the Parliament (Влада, 2017). The central change is the thirty-third amendment, which states that "In the Constitution the words" Republic of Macedonia "are replaced by the words" Republic of Northern Macedonia ", and the word" Macedonia "is replaced by the words" Northern Macedonia ", except in Article 36. “Article 36, on the other hand, refers to the rights of the fighters from the

national liberation wars of Macedonia, and such a solution is logical in a historical and temporal context**.**

Amendment 34 refers to the Preamble and reads: "In the Preamble of the Constitution of the Republic of Macedonia the words" decisions of ASNOM "are replaced with the words" Proclamation from the First Session of ASNOM to the Macedonian people for the session of ASNOM ", after the word" year "are add the words "and the Ohrid Framework Agreement", and delete the words "decided to".

Amendment 35 states that "the Republic shall respect the sovereignty, territorial integrity and political independence of neighboring States", supplementing Article 3 of the Constitution, which deals with territorial integrity. Respect for the territorial integrity and political independence of all states, not just neighboring ones, is a recognized cognitive (mandatory) norm of international law, integrated into the UN Charter, the Helsinki Final Act, the Declaration of Friendship and other international instruments.

Amendment 36 states that “The Republic protects, guarantees and nurtures the historical and cultural heritage of the Macedonian people. The Republic protects the rights and interests of its citizens living or residing abroad and promotes their ties with the homeland. The Republic takes care of the members of the Macedonian people living abroad. The Republic will not interfere in the sovereign rights of other states and in their internal affairs. "This amendment replaces Article 49 of the Constitution of the Republic of Macedonia which reads:" The Republic cares for the position and rights of the Macedonian people in neighboring countries. and for the emigrants from Macedonia, it helps their cultural development and

promotes the relations with them. "The Republic takes care of the cultural, economic and social rights of the citizens of the Republic abroad."

Just like the previous amendment, it does not mean anything that is no longer an existing obligation or a already regulated matter at a higher level. On the other hand, what has so far been explicitly stated as a constitutional obligation has not helped minorities in neighboring countries much to improve their position.

Legal regıme of identity conflicts

The demand to recognize equal value for different cultures is a reflection of the deep human need to be unconditionally accepted. The sense of such acceptance, which implies acknowledgment of ethnic particularity and the universal potential of individuals – is an essential part of a sense of identity. The policy of equal dignity is based on the idea that all people deserve equal respect (Frchkoski,2016).

States exist on the basis of principles established by international law. Although there are several theories about the role of recognition in the constitution of the state and the system of collective security is at least declaratively based on the principle of sovereign equality, each state has emerged in its own specific constellation. Macedonia has had the good fortune or misfortune to be a glaring example for which articles on international law will be written as a case of sui generis, but whether it stays there as an example of a lesson learned or a serious political failure depends mostly on its citizens and the wisdom of political elites.

Although identity is perceived as an emanation of sovereignty, identity is not a legal category. It is not a matter of recognition but a state of mind. It is not the nation that is recognized, but the state. Nation-states were born centuries ago and are slowly dying out under the blows of globalization,

and ideas born during the Romantic era were brutally abused in the previous century, escalating into the chaos of World War II. In other words, nation-states find it difficult to adapt to civil society.

The determination of the name and symbols is not regulated by a special international legal regime. In principle, the name is usually a reflection of identity, with the exception of a stumbling block and a subject of agreement, as was the case with Ireland and Northern Ireland - although any parallel between two cases of identity conflict is inappropriate and ungrateful. However, the geographical determinant North, which is indicated exclusively as such, is not what it defines: just as the adjective does not define the noun. The noun exists in and of itself. At a very simplistic level, it is a counterpart to identity determination.

Fairness of international law and real politic

Is this setting of international law and reaching such an agreement fair? Fairness is probably rarely a legal category, but the purpose of the legal norm is to strive for fairness so that legality is always as legitimate as possible. Therefore, a well-known principle in international relations is that "big fish swim alone, and small ones always move in flocks."

Geography is a matter of fate, but history is created when diplomacy seizes or squanders the moment. Maybe we owe this "historic" chance to many others, previously gambled.

The agreement goes far deeper and PR services forget to mention a crucial issue: that it is not the name, but the temporary reference that has been negotiated. The general legal principle is that no one can transfer more rights to another than they have: thus, the Macedonian government (led by any ruling party) can not negotiate the name even if it wants to, but

only the temporary reference. (Former Yugoslav Republic of Macedonia-FYROM) . The successes of Macedonian diplomacy then in bilateral relations towards the recognition of the state under its constitutional name and the demands for a double formula were probably the farthest one could go.

The Prespa agreement was reached in very sensitive political surrounding and provoked polarization within society. However, in a legal manner, it is a crystal clear evidence of the implementation of the national law, shaped by geopolitical constrains.

BILBIOGRAPHY

1. Government of North Macedonia (2018) Целосен текст на Конечниот договор за решавање на македонско - грчкиот спор за името и за стратешко партнерство, available at https://vlada.mk/node/17422
2. United Nations, The interim accord, 1995 available at https://peacemaker.un.org/sites/peacemaker.un.org/files/MK_950913_Interim%20Accord%20between%20the%20Hellenic%20Republic%20and%20the%20FYROM.pdf
3. United Nations Security Council (1993) Resolution 817/1993 available at http://unscr.com/en/resolutions/817
4. United Nations Security Council (1993) Resolution 845/1993 available at http://unscr.com/en/resolutions/845
5. Ministry of foreign affairs of North Macedonia (2022) Прашањето за името available at https://www.mfa.gov.mk/mk/page/1504/prashanjeto-za-imeto
6. United nations (1945) Charter of the UN available at https://popp.undp.org/_layouts/15/WopiFrame.aspx?sourcedoc=/UNDP_POPP_DOCUMENT_LIBRARY/Public/Charter%20of%

20the%20United%20Nations.pdf&action=default&utm_source=EN&utm_medium=GSR&utm_content=US_UNDP_PaidSearch_Brand_English&utm_campaign=CENTRAL&c_src=CENTRAL&c_src2=GSR&gclid=CjwKCAjw4ayUBhA4EiwATWyBrg72sGlykP-rjt3ePVpmXWeB2bvUH7XT4JKyjW78PPLiDEeMA1KQUBoC298QAvD_BwE

7. United Nations (1946) Statute of the International Court of Justice, available at https://www.refworld.org/docid/3deb4b9c0.html
8. United Nations (1969) Vienna Convention on the Law of Treaties, 1969, available at https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
9. Собрание на Република Северна Македонија, Устав на РМ, 1991 available at https://www.sobranie.mk/ustav-na-rm.nspx
10. Влада на Република Северна Македонија, Текст на нацрт амандманите, 2017, available at https://vlada.mk/nacrt-amandmani
11. NATO. 2022. North Macedonia joins NATO as 30th Ally. [online] Available at: <https://www.nato.int/cps/en/natohq/news_174589.htm> [Accessed 23 May 2022].
12. Frchkoski, Lj.D 2016 Restless nationalism available at https://www.libraryofsocialscience.com/assets/pdf/Frckoski_Restless_Nationalism.pdf

https://doi.org/10.55843/SG2211036k

RATIONALIZATION OF PARLIAMENTARISM IN THE CONTEXT OF GOVERNMENTAL SYSTEMS AND ITS APPLICABILITY TO THE MACEDONIAN CONSTITUTIONAL ORDER

Assist. Prof. Azam Korbajram, Phd – Ass.Elif Hoca. LL.M

ABSTRACT

Undoubtedly, the philosophical basis of the proposed new constitution should be in accordance with the understanding of democratic, liberal, pluralistic and open society. With the 1991 Constitution, it aimed to pass from socialism to democracy, to transition to a multi-party system in the light of the theory of separation of powers, and thus to a majoritarian parliamentarism. On the basis of the idea of the nation-state, it was aimed to establish a secular, democratic, rule of law and the new constitution was adopted in 1991. Countries that prefer parliamentarism, systemic blockages and weaknesses that differ from country to country during the development of the system have emerged, and techniques for strengthening the parliamentary system called rationalism have been put forward. On the other hand, it is an inevitable fact that this systematic and radical change, which has been made in the axis of the ideology of the construction of the modern state, which is being tried to be made in Macedonia, has brought along some deficiencies. Actually, it was deemed appropriate to select and make the constitutional arrangements of Scandinavian countries, which are similar to the preferred majoritarian parliamentary system and social structure, as a role model. In this context, some differences have emerged and the solution proposals to eliminate them in accordance with the spirit of parliamentarism, together with their justifications, constitute the subject of this article. First of all, the basic features of the government systems and rationalized parliamentarism techniques are explained, then the systematic deviations in the Macedonian constitutional order are determined and the legal procedures are presented as a solution, which is the subject of the article.

Keywords: Theory of Separation of Powers, Governmental Systems, Rationalized Parliamentarism, 1991 Constitution of the Republic of North Macedonia.

Assist. Prof. Azam Korbayram, Phd

Faculty of Law, International Vision University, Gostivar, N.Macedonia

e-mail: azam.korbayram @vizyon.edu.mk

Ass.Elif Hoca

Faculty of Law, International Vision University, Gostivar, N.Macedonia

e-mail: elif.hoca@vizyon.edu.mk

UDK:

342.4(497.7)”1991”
342.53(497.7)

Declaration of interest: The authors reported no conflict of interest related to this article.

1. Introduction

In this issue, first of all, various classifications made in the doctrine are examined in terms of the relations between the legislative and executive powers in the axis of the theory of separation of powers and according to the degree of separation of powers. From this perspective, the basic features of these systems, which have been subjected to traditional (classical) binary division as the presidential system, which is called the rigid separation of forces and the soft separation of forces, that is, the parliamentary government system that foresees cooperation, are explained. Afterwards, rationalized parliamentary system and implementation techniques aiming to bring functionality to the executive are explained in detail under a special title. In addition, a transparent and accountable administration was aimed through the coalition protocols to be made in advance of the qualified governments in accordance with the spirit of rationalization by detecting the systemic deviations and bottlenecks in the constitutional order of the Republic of North Macedonia, where the 1991 Constitution was drawn up. In accordance with the symmetry of the arms, solution proposals were written such that the power of termination should be given to the government.

2. Parliamentarism

The parliamentary government system, which emerged in England and has a long history, has been shaped by the conflicts and struggles between the king and the parliament. By its doctrinal definition, the parliamentary system is characterized as a moderate or flexible separation of legislative and executive powers, as well as a system in which the powers are equal and cooperate with each other and participate in the functioning of each other to a certain extent and have mechanisms to

influence each other. Generally, the legislative function is exercised by the parliament, while the executive function is exercised by the cabinet and the president or the king. (Erdoğan, 2017, pp. 453-459).

Considering the emergence of the parliamentary system through various processes until today, we can state that there are various forms of implementation. . (Deskoska, Ristovska, & Trajkvska-Hrstovska, 2021, pp. 493-497).

The first of these is expressed as the dualist (Orleanist) parliamentary system, the second as the monist parliamentary system and the third as the majoritarian parliamentary systems. Due to the active role of the president in the Orleanist type of government system, the concept of dualist or dualist system is used in the doctrine. This system, which was applied in the European continent, has the characteristics of a system applied in the period when the power held by the king was limited by the parliament, especially during the transition from absolute monarchy to limited monarchy. In Orleanist parliamentary systems, the president has a strong and effective position in terms of authority and plays the role of balance between the government, parliament and president. In addition, this government model is compared to the semi-presidential government system due to its significant overlap, with the only difference being that the president is not elected by the people. (Deskoska, Ristovska, & Trajkvska-Hrstovska, 2021, pp. 495-496).

The monist system, on the other hand, still maintains its effectiveness in European countries today. Contrary to the dualist parliamentary system, in this system, the president does not play an active role in the country's politics, but has a purely symbolic position. In other words, the president consists of the office that has symbolic powers and is a symbol of the unity and integrity of the country. If we look at the system in general, the president, which is the irresponsible wing with ceremonial

powers in the executive wing, is kept in the background, and there is a structure in which the government, namely the council of ministers, is kept in the foreground, and it forms the wing that is both effective and responsible to the parliament. (Anayurt, 2020, pp. 367-368).

Majoritarian parliamentary system is also called westminister or cabinet government system in the literature. In this system, it is defined as a government model that plays an important role because there is a strong and stable government with a parliamentary majority and it holds this power throughout the legislative period. . (Lijphart & Bulsun, 2014, pp. 25-38). In this system, the executive and legislative power is combined in the government or in the hands of the prime minister, depending on party discipline. As a result, it cannot be said that the legislature is very successful in overseeing the executive. The government, which has the majority of the parliament, will have eliminated the budget control and laws as a means of control at this point.

However, practice has shown that in this system, it has evolved from the power of the legislature to oversee the executive, to the method of controlling the power of the opposition, which is in the minority within the legislature. The parliamentary government system, which is not majoritarian, has also taken its place in the literature as it is implemented. It has a field of application in countries where there is a multi-party political life. In this system, since none of the political parties can have a parliamentary majority alone, it is seen that they do this by forming coalitions. As a result, fragile and weak governments emerge and there is almost no political party that takes responsibility for the people. (Anayurt, 2020, p. 371).

In fact, there are five distinct basic principles of the parliamentary government system, and these are the basic and first feature of the system, which distinguishes it from other systems, the equality of the legislature and the executive, and the cooperation between them, the dualistic

structure of the executive, the president and the government, which constitutes the irresponsible side of the executive. It means that it is the responsible party against the legislature and that the executive has the power to terminate the legislature. (Turhan, 1989, pp. 44-55). Due to the nature and philosophy of the parliamentary system, the legislative and executive organs are equal and cooperate with each other, that is, there is a soft separation. What is meant by this is that these organs behave respectfully towards each other and do not turn into conflict. In other words, mutual interaction (balance and control) mechanisms are envisaged for the legislative and executive bodies in order to ensure this equivalence and cooperation. In particular, the executive coming out of the parliament can mean that the executive directs the legislature. So much so that the purpose of all these balance and interaction mechanisms is to provide functionality and stability to the system. While doing this, it aims to prevent the legislative and executive organs from entering the competition for supremacy and to prevent their conflicts. The proponents of this system emphasize the importance of mechanisms where it is very important that the system encourages the cooperation of actors compared to other government systems, especially compared to presidential and semi-presidential systems, that it foresees the easy formation of coalitions in line with flexible management, and that the government that loses legitimacy can be overthrown with a vote of no confidence. (Freeman, 2000, pp. 257-258).

The dualist execution or the dual (dual) executive structure is another distinguishing characteristic of the system. One side of the two-structured executive is run by the president, and the other side is run by the council of ministers, that is, the government. While the president refers to the irresponsible side that represents the unity and integrity of the country and nation with symbolic powers, the government, which is the

responsible side of the executive, is the locomotive of the executive and is equipped with the powers of executing daily politics. Although constitutional lawyers who hold the view that this feature is not important maintain its existence, the prevailing view in the doctrine is that the system should have a dualist structure in order to be defined as a parliamentary system, which is one of the most important issues. Of course, it includes the counter-signature rule, which means that the prime minister or the relevant minister will be responsible for the actions of the president. The president is the king/monarch in constitutional monarchies and the president in republican parliamentary systems. The Council of Ministers also constitutes the National Assembly wing of the executive and is also called the cabinet or government. At the head of the council of ministers, the prime minister is the first among equals (primus inter pares). (Sartori & Translator Ozbudun, 1997, pp. 138-140).

Depending on the characteristics of the country, the legislative body, namely the parliament, can be unicameral or bicameral. For example, while Italy is based on a bicameral parliament, the Netherlands has adopted a unicameral parliament. Similarly, the Balkan countries, especially the former Yugoslavia countries such as Macedonia, Serbia, Croatia, and Slovenia, work on the basis of a unicameral parliament.

The president, which is the irresponsible wing of the executive, is mainly elected by the parliament in the parliamentary system, and the method of being elected by the people is not common. However, Article 80 of the 1991 Constitution of Macedonia provides for the president to be elected directly by the people. The president has powers such as appointing the prime minister and cabinet members, accepting their resignations, signing international treaties, issuing laws and sending them back to the parliament if necessary, signing decrees, and announcing the dissolution of the parliament. In the Macedonian constitutional order, the fact that the authority and mechanism of the government to dissolve the

legislature has not been established, and that the institution of self-annulment has been included instead reveals a difference at this point.

Again, due to its nature, another of the features of the parliamentary system is the importance of the counter-signature institution in the executive and responsible legal proceedings of the president, that is, the situation where his signature alone will not have legal consequences. In view of this feature, when we look at the Macedonian constitution, it is shown that there is no counter-signature institution and the president has symbolic and ceremonial powers. (Skarikj, 2015, pp. 695-700).

The Council of Ministers, which is the responsible party of the executive, emerges from the parliament. The Council of Ministers consists of a collective structure in which ministers participate under the leadership of the prime minister, who is the first among equals. In Macedonia, the government leaves the parliament, but ministers are prohibited from being members of parliament. Therefore, it is possible for the prime minister to choose the ministers who will take office in the cabinet from among the deputies in line with her own views, as well as from the outside. However, in the parliamentary system, the fact that the prime minister and ministers must have the status of deputies is stated as a requirement of the system, and even the government system chosen by external appointment is considered as contrary to the spirit of the parliamentary system. (Anayurt, 2020, p. 373).

Another essential feature of the parliamentary government system is the irresponsibility of the president. Three types of irresponsibility of the president are accepted in the doctrine, these are; political, civil and criminal irresponsibility. In the parliamentary governmental system, the president can be a hereditary monarch (such as England, Belgium, Netherlands, Sweden), the president can be elected by the people (such as Austria, Ireland, Portugal, Turkey, Macedonia) or the President elected by

the parliament for a certain term of office (Turkey until 2014, as in the case of Macedonia in the first election in 1991). The irresponsibility of the president, who has symbolic powers, maintains its importance as a generally accepted principle, based on the principle of whoever has the authority, which is one of the basic principles of public law. (Erdoğan, 2017, pp. 453-459). The general practice in parliamentary systems is the signing of a legal act by the Prime Minister or the relevant ministers as a requirement of political irresponsibility, that is, the rule of counter-signature. In principle, it means that the government, which is responsible for the irresponsibility of the president, assumes this responsibility. In terms of criminal and civil liability, heads of state are also held irresponsible in matters related to their duties. In other words, the criminal and political responsibility of the president for serious crimes such as treason or violation of the constitution is decided by the Constitutional Court with a majority of 2/3 (Statute of Constitutional Court of RNM., article 58-61).

The government's responsibility to the parliament is again one of the distinguishing features of the parliamentary system. Ministers are held accountable before parliament both for their personal duties (individual responsibility) and for the policy of their ministers (collective responsibility). (Lijphart, 1999, p. 118). The legislature carries out this control with its parliamentary questioning, general debate, censure motion, parliamentary inquiry and paramentary investigation. These control methods, which are the characteristic features of the parliamentary system, have been implemented in the same way in many countries and one of them has been the Republic of Macedonia.

The executive's power to dissolve the legislature again expresses one of the distinguishing and basic features of the parliamentary government system. The principle of equality and balance between the legislative and executive bodies in parliamentary government claims remains valid. In

the system based on this philosophy, the legislative oversight mechanisms require the executive to have a political weapon against the legislature. This balance mechanism is provided with the annulment institution and it has been described as "*symmetrical political weapon*". (Karamustafaoğlu, 1982, p. 465). The power of dissolution was conceived as the executive's means of dissolving the legislature as opposed to the parliament's power to overthrow the government. It is also described as the termination of the disagreements and conflicts between the legislative and executive, namely intimidation. The parliamentary system, as the traditional type of dissolution, has given the power of dissolution to the prime minister, who is the responsible party and head of the executive. However, in practice, in countries such as Hungary and Bulgaria, the power of termination has been vested in the president. In the case of Macedonia, however, the executive is not authorized to dissolve, and the parliament itself dissolves. In the literature, this type of termination is referred to as self-termination. Other types of termination institution that have entered the literature are the termination of the executive body, self-termination, automatic termination, mutual termination and public recall. (Anayurt, 2020, pp. 385-387). First, the type of annulment, which is the dissolution of the executive branch, constitutes the traditional and classical type. It constitutes a strong power vested in the executive over the legislature. In his philosophy lies the nature of balancing defense against legislation and responsibility. From this perspective, the institution of annulment is considered as a criterion that characterizes the system as a parliamentary government system.

The self-termination (self-annulment) institution, which constitutes another type of annulment institution, has been generally accepted as a natural consequence of the fact that the legislature has an independent existence and identity, which can take place in parliamentary systems. It

means that the parliament, not by the executive but on its own initiative, decides to end its existence without any outside interference and before the end of the legislative period, and resorting to elections, that is, to the arbitration of the people. Various measures have been taken to prevent abuse as a form of practice around the world. So much so that some constitutions provide for a certain period of time, in other words, the parliament cannot use its right to dissolve before a certain period of time has passed after the establishment of the parliament (for example, according to the 1992 Constitution of the Republic of South Africa, the power of termination cannot be exercised before three years). In addition, there are constitutions that stipulate that the power of termination can be used with a 3/5 or 2/3 majority. In the 6th paragraph of Article 63 of the 1991 Constitution of the Republic of Macedonia, it is regulated that "The Assembly can dissolve itself in line with the decision to be taken by the absolute majority of the deputies".

3. Presidentialism

While examining the presidential system, Sartori emphasized three distinctive features of the president based on his position. He formulated it as the president to take office by popular vote, to have a fixed term of office, and to have a monist or monist structure of the executive. (Sartori G. , 1997, p. 115). The single-headed (structured) executive body; constitutes the main distinguishing feature of the presidential system. Unlike the parliamentary system, the executive branch does not have two wings in the form of the president and the prime minister, but it is clear that the presidential system essentially has a monist structure. In the parliamentary system, the powers shared between the president and the prime minister are under the control of the president in a single unit in the presidential system. The element of having a monist structure is described

by constitutional lawyers as a necessary but not sufficient condition of the system. (Anayurt, 2020, p. 398).

The President has the power to elect his own cabinet as the most authoritative unit. He does not need anyone's approval when appointing and dismissing the secretaries (ministers) he wants to work with. In other words, the secretaries serve under the president and are only responsible to the president. Secretaries have the position of senior bureaucrats who are assigned and authorized on certain issues within the presidential government system, and there is no collective body relationship between them. Due to the nature of the system, namely the principle of strict separation of powers, these secretaries are not members of the legislature, and since the government structure does not exist in the parliamentary system, institutions such as votes of confidence and no-confidence are not included in the system. (Markovic, 2012, pp. 183-187).

According to the generally accepted understanding, on the basis of the presidential system; It is expressed as a system in which the existence and continuity of the executive does not depend on the legislature. It should also be taken into account that there are some exceptions to the subject. For example; in South Korea, the president, who is elected by popular vote, elects the prime minister and submits it to the legislature's approval. In this example, the prime minister and his cabinet need the trust of the legislature. (Uluşahin, 2007, p. 4).

Another example that can be given is the American presidential system. In the American system, the cabinet formed by the president is submitted to the Senate's approval, and this has become a custom, since the Senate, which was submitted to its approval, generally does not exercise its refusal power.

The President is elected directly by the people; It is one of the main features of the system. The president, who is the head of the executive, is

directly elected by the people. This feature is one of the most important features that distinguish the presidential system from the parliamentary system. The election of the president by the people shows that the president is in a position independent from the legislature and her existence is not dependent on the legislature in the presidential regime. (Akçalı, 2007, p. 61). Accordingly, the president cannot be removed from office by a vote of no confidence in the legislature before his normal term of office expires. This shows that the executive does not have any responsibility before the legislature.

The independence of the organs and the failure of the executive to rely on the trust of the legislature; Another essential element of the presidential system, which distinguishes it from the parliamentary system, is the establishment of the system on the basis of the principle of rigid separation of powers. I think that it would be appropriate to consider the independence of organs as being independent in their functions and in the relations of the organs with each other in the main task. In particular, the fathers of ideas who established the system in the USA acted with the thought that it would be right for both organs to be directly elected by the people, with the idea of making equals within the check and balance mechanisms of the forces. Hatta bir adım ileri gidilerek, sistemi anlamlı kılmak adına farklı tarihlerde seçilmelerini öngörmüşlerdir. (Shugart & Samuels, 2003, p. 15/1). It is clearly seen that there is a separation at the source of the powers, since the president is not directly elected by the legislative body, but by popular vote, and that both the legislative and executive organs derive their legitimacy directly from the people. Although the term of office of the president, who is elected by the people, is certain from the very beginning, he continues to serve until the end of the specified term. It is not necessary for the president to rely on the confidence of the legislature to remain in office during this specified period. Because of her failure to rely on the confidence of the legislature,

the president cannot be removed from office on the basis of a vote of no confidence in the legislature, until she has served her term determined at the beginning of the election. (Lijphart, 1988, p. 45).

The independence of the organs in their duties, that is, their functional independence, constitutes one of the main distinguishing elements of the presidential system. The legislative and executive functions are carried out in full and rigid independence, and the legislative function is carried out by the parliament, that is, by the Congress in the USA. Parliaments can be bicameral or unicameral, therefore, it is not a necessary condition for the legislature to consist of a single or bicameral parliament. The head of the executive, namely the president and the ministers (senators) under his administration, cannot participate in legislative activities in any way. It is not possible to propose or be involved in legislation, only the right to speak in Congress once a year is possible under the name of a message, through which it communicates its goals to members of Congress. On the other hand, the legislature cannot participate in the executive activities in any way.

The founding fathers envisaged that in this system, on which the principle of strict separation of powers was based, the organs would never be able to terminate each other's duties, and they foresee the necessity of mutual understanding and cooperation in order to endure each other and maintain their unity. Duverger likened this situation to "*marriage without the right to divorce*". (Anayurt, 2020, pp. 401-403).

The presidential system is seen by various authors as a more stable system of government compared to other systems, and this is stated as the stability of a democratic system necessitates the existence of stable governments. (Uluşahin, 2007, p. 78). Parlamenter sistem içerisinde yürütmenin yasamanın güvenine ihtiyaç duyması ve yasama organında yaşanacak sandalye değişiklikleri hükümeti önemli ölçüde

etkileyebilmektedir. This situation is seen as an obstacle to the stable continuity of the government. However, the absence of such shaky situations in the presidential system ensures the continuity of the government's democracy and the stability of the system. In line with the different perspectives of various writers, some sympathize with the presidential system and see it as an important factor for the continuity of governments, while others have a dislike for the presidential system, arguing that the resolution of any conflicts that may occur in the presidential system is possible through undemocratic methods.

4. Rationalized Parliamentarism

Although the parliamentary system is a system that has managed to preserve its essential elements until the 20th century, there are countries that are applied in its classical form as well as countries that are implemented in different ways. Therefore, it is envisaged to add some institutions to the system in order to add dynamism to the parliament and especially to stabilize the government, which is the responsible wing of the executive, and to make it sustainable. In the literature, all of these institutions are expressed as a rationalized parliamentary system. (Kuzu, 2017). Boris M. Guetzevitch, who introduced this concept to the legal literature, drew attention to the necessity of taking the following measures under the concept of rationalization for situations that do not have an absolute majority in the parliament or have been lost over time. These, respectively, are to give power and stability to the government, to prevent the government from being easily overthrown, to ensure the establishment of minority governments (the state of not having a sufficient majority), and to enable minority governments to continue their existence. (Guetzevitch, 1938). Therefore, the main purpose of the rationalized

parliamentary system is to strengthen the executive and increase the productivity dynamism of the legislature. (Yücel, 2009).

In this respect, Akartürk, drawing attention to the importance of the strengthened parliamentary system, makes the following definition, which includes the distinctive and basic features of the system; "A pluralist and participatory democracy understanding prevails, governmental stability and efficiency is preserved, an effective parliamentary control is carried out, a strong council of ministers is under the leadership of the prime minister against an impartial President with symbolic powers, a transparent and accountable administration is valid in public administration, and the state is in every state. He defined a strengthened parliamentary system for the political order in which all kinds of actions and transactions are subject to a strong and effective control by the independent judiciary. (Akartürk, 2021, pp. 98-106).

Based on the definition, the author wanted to bring clarity and measure to the subject by revealing the basic elements of the system. Thus, the actors of the strengthened parliamentary system (election of the president, the council of ministers and the prime minister, the level of duty and authority), the constitutional guarantees of government stability and efficiency, the strengthening of parliamentary control, the strengthening of pluralist and participatory democracy, a transparent and accountable administration and the integration of all these elements. It has characterized the distinctive features of the system by including the elements of ensuring the independence of the judiciary and strengthening the judiciary so that it can exist. (Akartürk E. A., 2010).

Rationalized parliamentarism, in its simplest and shortest definition, is "*a parliamentarism that includes legal instruments to give power and stability to governments that do not rely on a solid parliamentary majority*". (Gözler, 2016, pp. 255-257).

In particular, the strengthening of the parliamentary system or the rationalized parliamentary system, to significantly eliminate the systemic bottlenecks, political and power conflicts and crises that have arisen over time, to stabilize the unstable administration of the governments that do not have a significant majority in the parliament and generally coalition governments, to increase the dynamism of the parliament and to significantly increase the operability of the system. referred to as a trend. (Tanchev, 1993, p. 33).

The tools applied to ensure the stability and effectiveness of the government are envisaged, and the first of these is the *constructive vote of confidence* (proposition) procedure. In the parliamentary system, one of the methods that terminates the government's mandate is the motion of no confidence given to the prime minister, and as a result, the method envisaged by dismissing the prime minister and the government. Therefore, since this power that belongs to the parliament is regulated so that the deputies can use it whenever they want, there may be abuses. In order to prevent such situations and to stabilize the government, a *constructive vote of confidence* method has been developed. According to this procedure or mechanism, in order for the prime minister to be overthrown by the parliament with a vote of no confidence, the deputies have to elect a new prime minister by absolute majority, that is, the parliament cannot dismiss the current prime minister unless the new prime minister is elected and appointed by the president. Akartürk, one of the famous constitutionalists for this method, "to do to break". (Akartürk, 2021, p. 140). On the other hand, Anayurt, on the same philosophical basis, used the phrases "first to establish, then to take over" in their works. (Anayurt, 2020, p. 391). The *constructive vote of confidence* mechanism was regulated in Article 67 of the 1949 Federal German Constitution and took its first form of implementation. In the following periods, the Spanish Constitution (art. 113), the Polish Constitution (art. 158) and the Belgian

Constitution (art. 94) included regulations envisaging similar mechanisms. Thanks to this mechanism, the overthrow of the existing government will be made more difficult and the uncertainty after the fall of the government will be prevented, provided that the new prime minister is determined.

Constructive vote of no confidence, which is one of the most important methods of the rationalized parliamentary system to provide stability to the government, regulates the vote of confidence method under the pressure of termination, which is a second measure or regulation or method for cases where it is ineffective. Thus, the government, which does not hold the parliamentary majority, but cannot be overthrown when a new prime minister cannot be elected, will remain weak and will not be able to have much effectiveness. While this is the case, the power of termination given to the president can be a solution to the deadlocks to be experienced. (Akartürk, 2021, p. 141). Article 68 of the 1949 Federal German Constitution regulates this procedure, and according to this article, if the majority of the Bundestag deputies and the President do not accept the request for a vote of confidence, the President can dissolve the Bundestag within 21 days upon the request of the prime minister. In this way, it is expressed as a method of forcing the parliament to give a vote of confidence to the prime minister by putting pressure on the President with the power to dissolve the parliament.

Another method envisaged to strengthen the hand and effectiveness of the executive before the legislature is the guillotine method introduced by Satori, or in other words, the method called either accept the bill or overthrow the government. (Sartori G. , 1997, pp. 214-219). This method retains its importance as a procedure that allows the government, which the parliament cannot overturn, but which does not have the necessary majority, to enact laws. This method is regulated by paragraph 3 of Article

49 of the Constitution of the V. French Republic. According to the article regulation; "*The Prime Minister may take the responsibility of the government before the National Assembly for the adoption of a text, after deliberation in the Council of Ministers. In this case, if a motion of no confidence has not been submitted according to the previous paragraph within 24 hours, this text is deemed to have been accepted by the National Assembly*". As a result, the guillotine method has been considered as a method (method) that facilitates the passing of the laws necessary for the government, which does not have a parliamentary majority, to use the executive power, and thus aims to increase its efficiency. (Gözler, 2016, p. 257).

Another method is the block voting method, or in other words, the "*accept or reject*" method. The law-making process, which is the primary duty of the legislatures, is slow, since there are situations that affect the fate of the whole country and the nation due to its nature. Therefore, speeding up the adoption process of the laws and ensuring the internal consistency of the laws. The legislature is left to vote on the bill submitted by the government as a whole, not on individual articles, and it is seen that it provides convenience to the government by envisaging voting on the basis of either accept or reject. (Akartürk E. A., 2010, p. 142).

While the powers vested in the executive branch within the framework of the rationalized parliamentary system provide convenience, there are some constitutional lawyers who draw attention to the fact that the legislature also needs to ensure this integrity. In this direction, it is stated that it would be appropriate to take some measures in order to ensure integrity and to prevent parliaments from falling behind. The first of these can be described as measures or methods to ensure the effective functioning of the parliament. Since the taking of both laws and other decisions is made according to a certain process and a certain procedure, the slow and slow functioning of the parliaments comes to the fore. In this

context, in the work of Anayurt, limiting the meeting and speaking times in commission work, adopting the electronic voting method in order to obtain faster and more reliable results, easing the conditions for the parliament to convene easily and taking decisions, in other words, reducing the quorum for meetings and decisions, a decree having the force of law in the executive. Such a method has been envisaged in order to increase the efficiency of the legislature and to ensure integrity with the executive by making arrangements such as giving the legislative body the power to enact the right to issue some decisions, automatic termination in case the legislature cannot take some decisions. (Anayurt, 2020, pp. 394-395).

Finally, in our opinion, the establishment of protocols and the announcement to the public so that political parties that will aspire to power, which are trying to be developed especially for countries where coalition governments are common, are established and announced to the public, is an appropriate and accurate determination. Considering the large number of political parties such as Macedonia, the diversity of ideologies and ethnic differences, and the constitutional and political conjuncture, the formation of coalition protocols and their announcement to the public, in accordance with the principle of transparency and accountability, based on the fact that coalition governments have an executive function. We believe that it will be appropriate to place it on the ground. (Akartürk, 2021, p. 143).

At this point, the efforts of different political parties to form a government express the generally accepted situation as the weakness of the coalition governments at the point of accountability and responsibility of the coalition parties to the voters and the nation. Therefore, the existence of the coalition protocol will be important in terms of the

transparency of the coalition process and the responsibility of the political party that does not comply with the protocol.

Secondly, since government policies regarding the country's problems will be determined in the protocol, it is aimed to prevent the collapse of the coalition in the smallest crisis. Considering the aforementioned factors, we believe that dealing with such a regulation in the constitutional dimension and making such a regulation in the countries governed by coalition governments will have a positive effect on the system.

5. Conclusion

It is seen that the 1991 Constitution of the Republic of Macedonia includes the institution of "*self-dissolution*" or "*auto-dissolution*", which is held by the parliament. In other words, the Republic of Macedonia, which has adopted this system, which is one of the characteristic features of the parliamentary government system and where the executive is given the power to dissolve the legislature in return for the vote of confidence held by the legislature, envisages the parliament to take a more important and powerful position in the authority scale with its self-dissolution authority.

Article 63, paragraph 6 of the 1991 Constitution of the Republic of Macedonia is regulated as "*the parliament can dissolve itself in line with the decision to be taken by the absolute majority of the deputies*". It was also stated that if the government was overthrown by a vote of no confidence, early elections would be held. However, it is inevitable that the government, which holds the majority of the deputies, can use this trump card in order to extend the term of office, and the drawbacks we have mentioned may arise. Considering the abuse situation and in order to prevent this, it is one of the issues that should be discussed on making

changes within the framework of the additional rules determined by the UK.

In Macedonian state tradition and political history, the possibility that the president was preferred by the people, not the parliament, is expressed, as an effect of the existence of the monarchy order and being under the rule of the Kingdom, that is, the presence of the culture of the Kingdom, and on the other hand, in terms of not being a tool for the political bargaining of the deputies within the parliament. Regarding the formation of the cabinet, the president cannot appoint the prime minister without the proposal of the parliament, the dismissal of the cabinet is only possible with a vote of no confidence or a no-confidence vote.

So, we believe that it would be appropriate to apply the model applied in England. The fact that it has been foreseen that it can only be applied in two cases by the "*Fixedterm Parliaments Act"* is a positive example in this regard. In the first case, it is regulated that the early election proposal is approved by 2/3 of the number of deputies, and in the second, it can be put into action in case the government requests a vote of confidence but fails to receive a vote of confidence and a new government cannot be formed within 14 days. In particular, the fact that the governments in Macedonia act as a coalition reveals the necessity of a similar arrangement. In this way, it will be possible to prevent abuse of the termination institution. Similarly, while there is no annulment power as regulated in the Norwegian Constitution, in Sweden, early elections are conditional, that is, the newly established National Assembly is elected to complete the term of office of the previous Assembly. (Boyunsuz, 2014, p. 46). Leif Lewin, on the other hand, points out the prevalence of minority or coalition governments, based on the number of political parties that aspire to form a government, and describes this type of government system as "*minority parliamentarism*". (Lewin, 1988, 21(3), pp. 195-206).

It is seen that the requirement for the executive to be in a dualist structure was included in the 1991 Macedonian Constitution. Considering the way and source of his appointment, it is clear that there is a condition that the government leaves the parliament and can take office after receiving a vote of confidence. Another of the basic conditions is the responsibility of the executive before the legislature. We believe that the absence of the counter-signature rule in the legal proceedings of the President and the absence of the relevant minister or prime minister's obligation to sign as the responsible wing stem from the fact that the President has symbolic and ceremonial powers. Another fundamental and essential feature of the parliamentary government system, the executive's power of annulment against the legislature, appears as an unforeseen element in the Macedonian constitutional order. Although the reason is not known clearly, the opinion that the executive should be given the authority to dissolve the legislature against the legislative confidence vote mechanism within the framework of symmetric arms, which is in line with the philosophy of the parliamentary system, would be correct. Since the rationalized parliamentary system and its implementation techniques, which have been discussed before, have been explained in detail, it will not be discussed again, and only suggestions will be contented here.

In line with the information given above, the stipulation in the Macedonian Constitution of "*constructive vote of confidence* ", which is an effective technique for the situations in which this technique is ineffective, and which is an effective technique, in which these regulations, in which certain techniques are envisaged, are envisaged, in the Macedonian Constitution, in terms of the country's government system, ensure stability and We believe that it will make a positive contribution to securing the event. The *constructive vote of confidence* procedure refers to the procedure in which the deputies elect a new prime minister by an absolute majority so that the prime minister, who is the

responsible wing of the executive, can be overthrown by the parliament with a vote of no confidence.

Especially, the fact that the multi-party system is established in the Macedonian political scene and that no political party can have a legislative majority alone causes the government to be composed of different political parties. Only in this way is it possible to form a coalition government with a parliamentary majority. In this direction, coalition governments have an important place in Macedonian political life as a requirement of conciliatory and pluralist democracy.

This system brings with it political differences of opinion, which are influenced by ethnic, ideological and cultural polarizations. When the issue is approached from a doctrinal from this perspective, it is observed that the accountability of the government is difficult and the political parties in the coalition actually avoid responsibility by putting the responsibility on each other. Another issue is that the meetings held behind closed doors during the establishment of the government are far from public and are likely to bring along some crises. These crises and bottlenecks have brought with them the fact that it is essential to take some measures in order to establish stable and effective governments. Based on the suggestions of the constitutional lawyer Akartürk, which he correctly stated in his work, we think that the creation of "*coalition protocols*" and their announcement to the public will contribute positively to the effectiveness and stability of the coalition governments in the solution of the country's main problems. In this context, the parties that are likely to form a coalition government will share the negotiations and the results of the negotiations with the public before forming the government, and in the event that an agreement is reached as a result of these negotiations, the signing and public disclosure of the coalition agreement will express the understanding of transparent and accountable management. These

regulations, which are aimed to bring efficiency and stability to the executive, are aimed to make two main positive contributions. Based on the principle of transparency, it is possible for political parties to comply with the coalition protocols they have signed and to prevent the collapse of the coalition as a result of crises and disagreements that may arise in line with the policies of the government regarding the country's problems and to ensure this. (Akartürk, 2021, p. 143). In line with the information and solution proposals given above, we believe that blockages in the Macedonian constitutional order can be prevented, as well as rationalized parliamentarism techniques and systemic deviations will be resolved. We reiterate the view that the inclusion of coalition protocols is a positive step in terms of conciliatory democracy and will contribute significantly and positively to the effectiveness and stability of coalition governments.

References

Akartürk. (2021). *Güçlendirilmiş Parlamenter Sistem (Teori ve Uygulama).* Ankara: Adalet Publishing.

Akartürk, E. A. (2010). *Parlamenter Rejim Uygulamaları ve Parti Sistemleri.* Istanbul: Yeditepe University Publishing.

Akçalı, P. (2007). *Siyasal İstikrar ve Başkanlık Sistemi: Amerika Birleşik Devletleri Örneği", Başkanlık Sistemi ve Türkiye.* İstanbul: Kalkedon Publishing.

Anayurt, Ö. (2020). *Anayasa Hukuku - Genel Kısım (Temel İlkeler, Kavram ve Kurumlar).* Ankara: Seçkin Publishing.

Boyunsuz, Ş. (2014). *Başkanlı Parlamenter Sistem.* Istanbul: XII Levha Publishing.

Deskoska, R., Ristovska, M., & Trajkvska-Hrstovska, J. (2021). *Ustavn Pravo.* Skopje: Prosvetno Delo Publishing.

Erdoğan, M. (2017). *Anayasa Hukuku.* Ankara: Orion Kitapevi Publishing.

Freeman, M. (2000). Constitutional Frameworks and Fragile Democracies: Choosing Between Parliamentarism, Presidentialism and Semi-Presidentialism. *Pace International Law Review*, Vol. 12, 257-258.

Gözler, K. (2016). *Anayasa Hukuku Genel Esaslar.* Bursa: Ekin Publishing.

Guetzevitch. (1938). *Hukuku Esasiyede Yeni Temayyüller.* Ankara: Türk Hukuk Kurumu.

Karamustafaoğlu, T. (1982). Yasama Meclislerini Fesih Hakkı. *AÜHF*, 465.

Kuzu, B. (2017). *Her Yönü İle Başkanık Sistemi – Yeni Sistem Cumhurbaşkanlığı Modelimiz.* Istanbul: Babali Kültür Publishing.

Lewin, L. (1988, 21(3)). Majoritarian and Consensus Democracy: the Swedish Experience. *Scandinavian Political Studies*, 195-206.

Lijphart, A. (1988). *Çağdaş Demokrasiler.* Ankara: Yetkin Publishing.

Lijphart, A. (1999). *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries.* London: Yale University.

Lijphart, A., & Bulsun, T. (2014). *Demokrasi Modelleri-Otuz Altı Ülkede Yönetim Biçimleri ve Performansları.* Istanbul:Ithaki Publishing.

Markovic. (2012). *Ustavno Pravo.* Beograd: Pravni Fakultet Univerzitet u Beogradu Publishing.

Sartori, G. (1997). *Karşılaştırmalı Anayasa Mühendisliği.* Ankara: Yetkin Publishing.

Sartori, G., & Translator Ozbudun. (1997). *Anayasa Mühendisliği.* Ankara: Yetkin.

Shugart, M., & Samuels, J. D. (2003). Presidentialism, Elections and Representation. *Journal of Theoretical Politics*, 15/1.

Skarikj, S. (2015). *Ustavno Pravo.* Skopje: Kultura Publishing.

Tanchev, E. (1993). Parliamentarism Rationalized. *East European Constitutional Review*, 33.

Turhan, M. (1989). Hükümet Sistemleri ve 1982 Anayasası. *DÜHFY*, 44-54.

Uluşahin, N. (2007). *Saf Hükümet Sistemleri Karşısında İki Başl Yürütme Yaplanması.* Ankara: Yetkin Publishing.

Yücel, B. (2009). *Parlamenter Hükümet Sisteminin Rasyoneleştirilmesi ve Türkiye Örneği.* Ankara: Adalet Yayınevi Publishing.

https://doi.org/10.55843/SG2211062d

THE ROLE OF THE WIPO ARBITRATION AND MEDIATION CENTER IN INTELLECTUAL PROPERTY DISPUTES

Ass. Prof. Dr. Jordan Delev

ABSTRACT

Legal, economic and social entities in the 21st century operate in a technological age characterized by a high degree of innovation, competition and digitalization. This way of functioning contributes to the development of intangible rights, and thus to the development of intellectual property. The use and enforcement of intellectual property rights is characterized by the emergence of disputes that require a system of adequate resolution. The purpose of this paper is to determine the suitability of intellectual property disputes for alternative dispute resolution methods. The focus is on the main international institution in the field of intellectual property, the World Intellectual Property Organization (WIPO). Within this institution there is an Arbitration and Mediation Center that promotes alternative dispute resolution in the field of intellectual property. Through the application of the method of analysis, in the paper have been determined the position of the WIPO Arbitration and Mediation, its functioning and administrative structure. The Center has rules through which the parties to the dispute are offered a choice of different procedures guided by the nature of the dispute. The use of the method of comparison in the paper contributed to diagnose the advantages and disadvantages of alternative methods for resolving intellectual property disputes. The paper synthesizes conclusions and guidelines that define the necessary development of procedures and the application of alternative methods of dispute resolution, taking into account the development of technology, global trends and the nature of intellectual property rights.

Keywords: World Intellectual Property Organization, WIPO Arbitration and Mediation Center, Intellectual Property Disputes, Intellectual Property Rights, International Intellectual Property Law

Ass. Prof. Dr. Jordan Delev

Faculty of Law, International Vision University, Gostivar, N.Macedonia

e-mail: jordan.delev @vizyon.edu.mk

UDK:

347.78:341.6

Declaration of interest: The authors reported no conflict of interest related to this article.

INTRODUCTION

The development of intellectual property internationally has developed significantly in recent decades. (Tekinalp, 2002, p. 63) This fact is confirmed by the pronounced activity of concluding international agreements in the field of recognition and protection of intellectual property rights and the active work of international organizations that ensure compliance with these agreements. However, the recognition of the intellectual property right of the is insufficient in terms of protection, at the same time it is necessary to recognize the rights and powers of the holders in the existence of disputes arising from the violation of rights regarding the choice of appropriate, valid method of resolution of disputes. Hence the methods of resolving intellectual property disputes gained an increasing role internationally. In this context, in particular two international organizations, the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO), have begun to play an important role in resolving disputes arising from intellectual property rights.

Advances in technology and the development of international trade have not only expressed the importance of intellectual property rights, but have also contributed to the increase of disputes related to them, and in parallel with the increase, the need for a fair and speedy resolution of these disputes has emerged. (Smit, 2000, p.1) The new conditions directly popularized the idea of using alternative methods in resolving intellectual property disputes. The positive experiences, ie the advantages of the alternative methods of resolving disputes, which were observed during the settlement of international trade disputes, can automatically be used for intellectual property disputes as well. (Bozkurt Yüksel, 2009, p. 335) The fast technical and commercial way of functioning of the social order, highlights the alternative methods of resolving disputes as an

economically viable solution, in comparison with the national court systems that are characterized by a large volume of work. This is especially evident in the selection of arbitrators / mediators who are trusted in their expertise in quickly resolving intellectual property disputes with technical characteristics and in ensuring the confidentiality of intellectual property information in intellectual property disputes. (Plant, 1999, p. 18)

The WIPO Arbitration and Mediation Center was established in 1994 as an administrative unit of WIPO, a body of the United Nations based in Geneva, Switzerland. The Center is the only international entity that provides specialized services for alternative dispute resolution of intellectual property. The purpose of this Center is to promote alternative dispute resolution mechanisms, such as arbitration and mediation in resolving intellectual property disputes.Овој центар се карактеризира со независност и непристрасност. The Center has its own rules appropriate to any alternative dispute resolution method prepared according to the characteristics and needs of the intellectual property dispute, and in particular as regards evidence, confidentiality and interim measures. (WIPO, 2020, p. 2)

1. CONCEPT AND TYPES OF INTELLECTUAL PROPERTY DISPUTES

Before defining the concept of intellectual property disputes, it is necessary to give an overview of the concept of intellectual property. The concept of intellectual property is defined in Article 2 of the 1967 WIPO Convention. This article exhaustively lists the elements that make up the concept of intellectual property. According to Article 2, intellectual property should include rights relating to literary, artistic and scientific

works; performances of performing artists, phonograms, and broadcasts; inventions in all fields of human endeavor; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. (Article 2, WIPO Convention)

This definition gives the most important characteristic of the law of intellectual property, i.e. it emphasizes that the basis of intellectual property is knowledge and what arises from the human mind. Such a definition should not be interpreted narrowly, but broadly in the context of technological development and the possibility of the emergence of new rights that could be included in this concept. Intellectual property rights are absolute, intangible, territorial rights that are the product of intellectual effort, and the majority of them are limited in time. The intangible characteristic of these rights creates the problem of determining their value. The value of intellectual property rights is determined when the rights are exercised by the owner or when he disposes of them and transfers them to other persons. (Mills, 1996, p. 227)

The rapid and unstoppable growth of technological development in the current high-tech era looms large over the problems that may arise in the protection of intellectual property rights. The increasing intensity of communication and technology makes it difficult to protect these rights despite the international community's growing efforts to provide effective protection. (Çalışkan, 2008, p. 15-16) Intellectual property rights are recognized as particularly commercially important, and developed countries are therefore seeking to take measures to secure and facilitate the process of harmonizing national systems with regard to protection. The development of international economic relations and the increase of commercial activities between multinational companies, leads to an increase in transactions involving intellectual property rights, hence the

emergence of disputes between the parties in these trade relations. Mechanisms for resolving disputes related to intellectual property rights are an inevitable and effective part of the protection system.

Theoretically analyzed international intellectual property law, disputes arising from intellectual property rights are generally divided into disputes arising from contracts between the parties and non-contractual disputes. (WIPO, 2018, p. 19) The majority of disputes arise from agreements between the parties. This type of dispute can be categorized into three groups as: a) disputes arising from intellectual property rights licensing agreements; b) agreements for transfer of intellectual property rights and c) agreements for development of intellectual property rights. (Werner, 1998, p. 847) However, disputes can arise between legal entities even if there is no agreement between them. In the field of intellectual property, due to the intangible character of the rights, it is most pronounced in property disputes and disputes for violation of intellectual property rights. Non-contractual disputes because they are not based on agreement, the use of alternative methods of resolving these disputes creates problems. Nevertheless, alternative dispute resolution methods can be appropriately applied in non- contractual intellectual property disputes. (Niblett, 1995, p. 66)

2. ELIGIBILITY OF INTELLECTUAL PROPERTY DISPUTES FOR ALTERNATIVE DISPUTE RESOLUTION METHODS

Intellectual property rights are relevant in the 21st century due to the rapid growth of technology and therefore the disputes related to them have a strong national and international character. As a result of trade relations between legal entities from different countries, goods and services related to intellectual property rights may be transferred from one

country to another and consequently contractual or non-contractual disputes may arise in these relations. Disputes related to intellectual property rights with a foreign element can be resolved by the parties in national courts or through alternative dispute resolution methods. (Lamb, 2008) Increased international commercial and technological development with globalization emphasizes the need for effective use of alternative dispute resolution methods in intellectual property disputes. (Mills, 1996, p. 230)

Due to the nature of intellectual property rights, there are differing views on the suitability of disputes arising from intellectual property rights to be resolved using alternative dispute resolution methods. The classical view limits or does not envisage the use of alternative methods of resolving intellectual property disputes. According to this view, the foundation of protection is confidentiality and public interest, which are guaranteed through the concession given by the state, and thus the automatic functioning of economic development and free trade is excluded. Therefore, alternative dispute resolution methods should not be an option in terms of scope and protection of intellectual property rights. (Dessemonet, 2007, p. 86-87) The contemporary view advocates that intellectual property rights disputes can be the subject of alternative dispute resolution, with the exception of determining the validity of the right. According to this view, although intellectual property rights are registered and established by the state, they are privately owned and the owner of this right can freely trade with them. The parties may in no case extend the scope of protection afforded by the State, but may express their will in the manner of resolving disputes arising out of these rights. This view is justified by the fact that intellectual property does not enter directly into the regulatory domain of the state. Intellectual property rights, although characterized by a monopoly nature that can lead to high profits when the price that other individuals in society are obliged to pay

to the owner, the powers of the state in this area can not go beyond administrative protection measures. (Dessemonet, 2007, p. 87-89)

Starting from the legal nature of intellectual property rights, there are certain advantages and disadvantages in using alternative dispute resolution methods. The main advantages can be listed as follows: single procedure, expertise, autonomy of the parties, neutrality, cost and time efficiency, confidentiality, preservation of long-term relationships and finality and international enforcement of arbitral awards. The single procedure involves the possibility of avoiding the costs and complexity of multi-jurisdictional litigation and the risk of inconsistent decisions, by choosing a center that offers alternative dispute resolution methods. Achieving high quality results in the field of dispute resolution is made possible by the appointment of neutral arbitrators, mediators or experts with specific knowledge, expertise and experience in the relevant legal, technical or business field. The autonomy of the parties derives from the private nature of alternative dispute resolution methods and allows the parties through the choice of place and language of the procedure as well as the law to be applied, to exercise greater control over the manner in which their dispute is resolved. The neutrality of alternative methods precludes any advantage that a national court may afford to one of the parties to possess in litigation. Alternative dispute resolution methods enable the effective and speedy resolution of disputes which is essential in intellectual property disputes. These methods generate significant cost savings and shorten the deadlines that the parties can further adjust. (Akıncı, 2007, p. 33-34) Confidentiality is one of the most important advantages provided by alternative methods of dispute resolution, because often intellectual property disputes are related to commercial reputation and trade secrets and through the confidentiality of the procedure the dispute is isolated from public influence. (Plant, 1999, p.18) Preserving

long-term business relationships is a basic postulate of the functioning of business entities, and alternative dispute resolution methods take into account business interests and thus develop sustainable long-term solutions by using less confrontational mechanisms. Arbitration as a popular method of resolving disputes is characterized by making arbitral awards that are usually final and binding and not subject to appeal. Through the application of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, arbitral awards are treated on the same level as judgments of national courts, which facilitates the cross-border enforcement of awards. (Wollgast, 2016)

On the other hand, although the parties have great discretion in determining the rules of procedure for alternative dispute resolution methods, there are some drawbacks to using these methods. In the first place comes the application of temporary protection measures and the offer of various solutions at the end of the procedure for alternative dispute resolution. (Martin, 1997, p. 947) In resolving intellectual property disputes, it often means taking protective measures to secure the rights, in order to eliminate in a short time the damages arising from the nature of the subject of the dispute and the violation of the rights. The rules governing the procedures for the alternative settlement of intellectual property disputes contain the authority of the arbitrators / mediator to determine interim protective measures. However, the effect of interim protective measures, and in particular the inability to produce an effect on third parties, is considered a lack of arbitration. (Çalışkan, 2008, p. 22) A second disadvantage of alternative dispute resolution methods is the ability to make creative decisions and to protect trade relations. Although a feature is often described as an advantage, in some cases, arbitrariness and decision-making can be seen as a disadvantage for the parties. (Çalışkan, 2008, p. 22)

3. WIPO ARBITRATION AND MEDIATION CENTAR

Before analyzing the WIPO Arbitration and Mediation Center, it is necessary to provide introductory guidelines for the organization within which this Center operates. WIPO is one of the seventeen specialized agencies of the United Nations, located in Geneva, Switzerland. WIPO was established by the Convention for the Establishment of the World Intellectual Property Organization, signed in Stockholm in 1967 and entered into force in 1970, as an organization to support the protection of intellectual property rights through the administration of international treaties and conventions. (Abbott et al., 1999, p. 303) The number of member states of the World Intellectual Property Organization is 193. (https://www.wipo.int/members/en/) The idea for the founding of the World Intellectual Property Organization dates back to the 19th century, when the Paris Convention for the Protection of Industrial Property of 1883 and the Berne Convention for the Protection of Literary and Artistic Works of 1886 were signed. The main goal of WIPO is to ensure the protection of intellectual property rights at the international level and to develop administrative cooperation between intellectual property associations. In order to achieve satisfactory protection of intellectual property rights at the international level, WIPO undertakes activities that encourage the signing of new international agreements on intellectual property rights. In this regard, it implements activities leading to the modernization of national intellectual property regulations, provides technical assistance in the field of intellectual property to developing countries, absorbs and distributes intellectual property information to Member States, provides various services, especially for the protection of inventions, trademarks and industrial designs in various countries, and

also provides for administrative cooperation in the field of intellectual property between its Member States. (Çalışkan, 2008, p. 43)

The provision of alternative intellectual property dispute resolution services does not constitute a service designed for the World Intellectual Property Organization since its inception. Over time, the development and circulation of intellectual property rights The World Intellectual Property Organization has recognized the need for a specialized institution for resolving intellectual property disputes. To determine whether the World Intellectual Property Organization should provide this service, a Working Group of Non-Governmental Organizations on Arbitration and Other Extra-Judicial Mechanisms for the Resolution of Intellectual Property Disputes Between Private Parties (the Working Group) was established. This group was composed of representatives of intellectual property NGOs, arbitration institutions, professional arbitrators' associations and leading international arbitration experts, who can provide advice on possible services that could be made available to the WIPO for dispute resolution by intellectual property between private parties. (https://www.wipo.int/amc/en/history/) The working group has focused on examining the unique characteristics of intellectual property disputes and whether they are suitable for settlement through arbitration, i.e. using alternative methods of settlement. The scope of the Working Group included the obligation to examine the existing arbitration rules. (Lew, 1994, p. 44)

The industrial sector is one of the most affected sectors where the protection of intellectual property rights has a great impact. Therefore, when examining the suitability for resolving intellectual property disputes by using one of the alternative dispute resolution methods, the effect that would be caused in the industrial sector was taken into account. The conducted researches have shown that in the period of functioning of the Working Group it is preferable to initiate proceedings before the national

courts in relation to arbitration in resolving intellectual property disputes. It is also generally established that intellectual property disputes have different characteristics from other disputes and that these disputes are characterized by special needs arising in the settlement process. (Caron, 2003, p. 441)

In the international trade practice so far, the International Chamber of Commerce has taken a central place, within which an Arbitration Center operates, which bears the epithet of a respected and well-known arbitration institution. This Center deals with all types of trade disputes, including construction contracts, investment contracts, financial contracts, joint ventures, maritime trade, insurance law and intellectual property disputes. However, this Center does not specialize in intellectual property disputes. The main conclusion derived from the conducted research indicated the need for a special arbitration center and the preparation of special rules for resolving disputes given the needs arising from the nature of intellectual property disputes. Given the fact that the World Intellectual Property Organization is an institution specializing in intellectual property, at the General Congress of the World Intellectual Property Organization held on September 23, 1993, it was accepted to establish a center for resolving intellectual property disputes between private legal entities. The WIPO Arbitration and Mediation Center began serving as the administrative unit of the World Intellectual Property Organization on 1 July 1994. The Centre's activities are overseen by the WIPO Arbitration and Mediation Council, which consists of experts in the field of international arbitration and intellectual property. The Center is part of the World Intellectual Property Organization as an independent and impartial body.

The WIPO Mediation, Arbitration and Expedited Arbitration Rules were developed by an international group of renowned arbitration

experts, as well as by the WIPO Arbitration Supervisory Board, which later in 2001 became the WIPO Arbitration and Mediation Council. These rules, as well as contract clauses and model contracts entered into force and were published on 1 October 1994. (https://www.wipo.int/amc/en/history/) Rules were prepared taking into account the characteristics of intellectual property disputes.

The Center's focus, while primarily focused on providing arbitration and mediation services in intellectual property disputes, also invests considerable resources in establishing an operational and legal framework for administering Internet and e-commerce disputes. Today, the Center is recognized as a leading provider of dispute resolution services arising from improper registration and use of Internet domains. (Lew et al., 2003, p. 40)

3.1. Functioning and administrative services of the WIPO Arbitration and Mediation Center

Private legal entities are the only entities that can use the services of arbitration and mediation in intellectual property disputes provided by the WIPO Arbitration and Mediation Center. The structure of the Center is qualified as international, independent and impartial. The principle of non-discrimination is the basis in the work of the Center, every private legal entity can use the services, regardless of nationality or be connected in any way with a government institution or contract. The center offers its services equally to individuals and legal entities. It is possible for a state institution, when it appears as a party to a dispute, ie when it does not act in the capacity of *ius imperium*, to address the Center. (WIPO, 1994, p. 193)

The WIPO Arbitration and Mediation Center has prepared rules for arbitration, mediation, expedited arbitration and expert determination

in dispute resolution. A key feature, however, is that these rules, although designed according to the characteristics of intellectual property disputes, can be used to resolve other trade disputes as an alternative. (Abbott et al., 1999, p. 1733) In principle, the Center was established with the intention of specializing in intellectual property disputes. This by no means means that the Center is limited to intellectual property disputes. Therefore, there is an unnecessary dilemma between the parties to the dispute if their dispute is brought before the WIPO Arbitration and Mediation Center and it is not a dispute related to the right to intellectual property. The Center is not limited to intellectual property disputes, the appointed arbitrators, i.e. mediators in any case seek to resolve the dispute for which an alternative method of resolution has been requested. (WIPO, 1994, p. 194)

The advantages given by the selection of the WIPO Arbitration and Mediation Center, as a specialized center are usually in the direction of the continuity it provides, its specialization and impartiality, as well as the existence of its own rules and harmonized application of these rules. The continuity as a positive feature of the Center is based on the fact that it is a unit of WIPO, which on the other hand is a well-established organization that has been functioning smoothly for many years. This continuity is a guarantee for legal certainty and that there will be no interruption in the dispute resolution process. Impartiality between parties of different nationalities stems from the international character of WIPO, as an international organization with an international secretariat. The fact that WIPO is a specialized organization in the field of intellectual property contributes to its Arbitration and Mediation Center having a specialization in the field of intellectual property disputes. The rules applicable to mediation and arbitration proceedings conducted by the WIPO Arbitration and Mediation Center have been prepared in order to reach prompt and cost-effective solutions in accordance with the terms of the dispute. WIPO

Arbitration Rules introduce modern and flexible approaches to classic problems that may arise in alternative dispute resolution procedures. (Redfern et al., 2004, p. 54)

The administrative services offered by the WIPO Arbitration and Mediation Center primarily refer to the assistance of the parties, i.e. direct the parties in applying the procedures for alternative dispute resolution offered by the Center. In this context, the Center directs the parties on which of the alternative dispute resolution methods to choose and how it works on the chosen method. (WIPO, 2020, p. 3)

The WIPO Arbitration and Mediation Center assists the parties in selecting mediators and arbitrators. For that purpose, a list of impartial experts who have appropriate qualifications for commercial disputes, intellectual property disputes, disputes of information-technological nature has been prepared. (Bozkurt Yüksel, 2010, p. 8) If an arbitration procedure is chosen, the Center guarantees that the arbitration procedure starts, runs smoothly and that the arbitral tribunal is properly formed. The communication between the parties, regardless of whether it is written or other type of communication until the establishment of the arbitral tribunal is done through the Center. If the parties could not choose the arbitrator (s) in due time or if they did not determine the method of selection of the arbitrator (s), the Center shall appoint the arbitrator (s) taking into account the opinions of the parties. In accordance with the Arbitration Rules, the Center, in consultation with the arbitrators and the parties, shall determine the fee to be paid to the arbitrator. (Art. 19, WIPO Arbitration Rules) If the mediation procedure is chosen, if the parties themselves have not chosen a mediator or have not established a selection procedure, the Center shall appoint it taking into account the opinions of the parties. (Art. 7, WIPO Mediation Rules) This is crucial in the mediation procedure because the trust of the parties in the mediator is of great importance. The fee to be paid to the mediator is determined in a manner determined by the

Center and in accordance with the Mediation Rules. (Art. 23, WIPO Mediation Rules) The Center ensures smooth communication between the parties and the arbitrators or the mediator in order to realize an efficient resolution process. (WIPO, 2020, p. 4)

The WIPO Arbitration and Mediation Center provides all the spatial and technical conditions that could be imposed during the dispute resolution procedure. This refers to a space for hearing parties and holding meetings, recording equipment, interpreting rules and translating communication, as well as secretarial services, if requested by the parties. The appointment of the WIPO Center for Arbitration and Mediation to resolve this dispute does not necessarily mean that the settlement will be in Geneva or Singapore (since 2010 the Center has its offices in Singapore). The parties are free in their disposition to designate another place as a place of arbitration or mediation. This means that the parties, according to the characteristics of the dispute, and guided primarily by their mutual relations, the national systems concerned, the place of performance of the contract, the place of alleged breach of contract, the language, the right agreed upon by the parties to apply in the proceedings, may to determine differently the place for resolving the dispute from the headquarters of the Center. If the parties have not determined a place for settlement, the Center determines the place for settlement, taking into account the characteristics of the dispute. The Center assists the parties in arranging meetings outside Geneva or Singapore, as well as in terms of administrative, secretarial and other necessary services, in the dispute resolution process, for which it charges additional fees. (WIPO, 2020, p. 4)

Following the established deadlines in accordance with the dispute resolution procedure falls within the scope of services provided by the Center to the parties to the dispute. When performing these services, it is

guided by the rules prepared for the procedure chosen for resolving the dispute. The Center also assists in dismissing or replacing arbitrators or mediators for which it seeks the opinion of the WIPO Mediation and Arbitration Advisory Committee. As a result of the received deposits before the commencement of the dispute settlement procedure, the Center manages the payments of the parties during the procedure. At the end of the procedure, the deposits together with the calculated interest are transferred to the account of the parties. The WIPO Arbitration and Mediation Center is technically processing the decision that is a result of the conducted procedure for resolving the dispute. (WIPO, 2020, p. 4)

3.2 Dispute Resolution Procedures Provided by the WIPO Arbitration and Mediation Center

The WIPO Arbitration and Mediation Center, within the services it provides, gives the parties to the dispute the opportunity to choose one of the methods for alternative dispute resolution. Among the methods, mediation and arbitration stand out in the first place, but the Center also offers expedited arbitration and expert determination. If the dispute can not be resolved through mediation, the Center is aware of the possibility of resolving it through one of the remaining methods (arbitration, expedited arbitration or expert determination) that are available to the parties.

The dispute resolution process first begins with the appointment of the WIPO Arbitration and Mediation Center as the authorized body to resolve the dispute. This can be done by concluding a special agreement by which the parties agree that the already existing dispute to be resolved through one of the alternative settlement methods offered by the Center. The second modality to which the authorization can be issued is through a clause for alternative resolution of future disputes that would arise from

the basic agreement, which explicitly states that all future disputes from the agreement will be resolved before the WIPO Arbitration and Mediation Center. The first step is the negotiations where with the assistance of the Center the parties can, if they have not previously agreed on the method of resolving the dispute, agree on the most appropriate method in accordance with the characteristics of the dispute. The second stage in the resolution is the implementation of the procedure in accordance with the choice of the resolution method and in accordance with the Rules that will be applied in the procedure. The last stage is the resolution of the dispute which can be by settlement using mediation as a method of resolution or by an arbitral award if the dispute was resolved through arbitration. (WIPO, 2020, p. 2)

From the analysis of the alternative dispute resolution methods offered by the Center, it can be noticed that mediation is characterized by the existence of an impartial mediator who aims to reach a joint solution that will satisfy both parties. The mediator has no authority to force the parties to accept the proposed settlement. The settlement it offers is not binding on the parties. The main responsibility of the mediator is to help the parties understand their own situation in the dispute and it is only a tool that the parties use to reach a solution themselves. The settlement reached as a result of mediation by the parties is signed as an agreement. The parties can reach a consensus at any stage of the mediation procedure and thus sign an agreement. (Bozkurt Yüksel, 2010, p. 11) Mediation is a method of resolving disputes that the parties choose voluntarily and can leave at any stage. For the mediation procedure to be successful, the parties must approach in good faith and want to find a solution, and the mediator must be impartial, competent and at the same time a person who instills trust in the parties. The mediation procedure that takes place within the WIPO Arbitration and Mediation Center creates a less competitive

situation between the parties compared to the court proceedings. The cooperation between the parties continues during the mediation process. In addition, the mediation procedure is also an appropriate way of overcoming cultural differences that may prevent the resolution of the dispute. (WIPO, 1994, p. 202-203).

In order for the dispute to be resolved through arbitration, the parties must first apply to the WIPO Arbitration and Mediation Center to resolve their dispute. The next stage involves the appointment of arbitrators by the parties or in accordance with the rules chosen by the parties to administer the arbitration. The parties may also choose rules that will apply to the materiality of the dispute. Contrary to mediation, once the parties have agreed to settle the dispute through arbitration, the parties can not unilaterally withdraw and are bound by the arbitral award. (WIPO, 1994, p. 195)

Within the WIPO Arbitration and Mediation Center there is a possibility of applying expedited arbitration which is a method of resolving disputes in which certain changes are made in the arbitration process in order to reach a solution in a shorter time and at lower cost. The changes made in the arbitration process are in order to achieve greater economy of the procedure through shorter deadlines in the procedural actions. Hearings in the expedited arbitration procedure are on a tight agenda and shorter. The expedited arbitration procedure offered by the WIPO Arbitration and Mediation Center differs from the arbitration, in terms of cost-effectiveness, the parties and arbitrators have more limited options in accordance with the rules governing expedited arbitration. The Expedited Arbitration Rules regulate the provisions regarding what the parties must do within the specified time frame during the arbitration process and in principle it is decided on the basis of written evidence in the files, generally without holding a hearing. This is a particularly favorable procedure for parties whose financial situation is not conducive

to resorting to long-term trials before national courts. (Çalışkan, 2008, p. 94)

The WIPO Arbitration and Mediation Center is aware of the possibility of expert determination and has developed special rules named WIPO Expert Determination Rules. The expert determination is a consensual procedure in which the parties submit a specific issue, usually a technical issue, to one or more experts who decide on the issue. The parties may agree that the outcome of the expert opinion shall be binding. Depending on the choice of parties, the expert determination may be preceded by mediation or arbitration. Any dispute or difference of opinion between the parties arising out of or in connection with a provision of the basic contract and any subsequent amendments to the contract may be subject to expertise. The decision made by the expert will not be binding on the parties. (WIPO, 2020, p. 3)

The WIPO Arbitration and Mediation Center also practices a combination of alternative dispute resolution methods. This means choosing a method whose use is limited in time. If the selected method does not offer a binding solution within the specified time, another method of resolving the dispute is applied. In principle, the dispute is first sought to be resolved through mediation. If this cannot be resolved (60 or 90 days is the usual recommended time), either party may resort to arbitration to settle the dispute by binding decision. That's a combination of mediation and arbitration. (Abbott et al., 1999, p. 1734)

In the past five years (2017-2021) there has been a significant increase in the activity of the WIPO Arbitration and Mediation Center in terms of alternative resolution of intellectual property disputes. During this period, the Center faced 915 actions regarding mediation, arbitration and expert determination. The appointment of the Center as an instance before which disputes are resolved is in most cases based on the existence

of contractual clauses, but there is also appointment as a result of a special agreement after the dispute. 30% of the cases envisage combined action, i.e. they envisage resolving the dispute through mediation, but if the dispute can not be resolved through mediation then it should be resolved through arbitration or expedited arbitration. Regarding the nature of the dispute, it is striking that the Center acts on disputes arising from all types of intellectual property rights. The most common disputes with a share of 29% are disputes arising from patents, followed by 24% of copyright disputes, with a share of 20% of the total disputes are those where trademarks are treated. 14% of the disputes are basically information-technological in nature and the remaining 12% fall into the group of trade disputes. In terms of which of the alternative dispute resolution methods offered by the Center is the most preferred, and at the same time the most effective, the statistics show that mediation has the primacy with 70% success and arbitration with 33%. (https://www.wipo.int/amc/en/center/caseload.html)

CONCLUSION

The technological development and the growth of the economic turnover of the intangible rights between the international entities have imposed the need for intensive international protection of the intellectual property rights through the adoption of technical and legal regulations. In light of global trends, an effective international dispute resolution mechanism has become a necessity, especially in intellectual property disputes. The focus of international organizations, especially WIPO, is not only on the protection of intellectual property rights, but also on dispute resolution methods that can be used to resolve disputes that arise or are likely to arise over these rights.

The World Intellectual Property Organization is committed to developing appropriate alternative methods of resolving intellectual property disputes. The WIPO Arbitration and Mediation Center provides a specialized service that includes mediation, arbitration, expedited arbitration, and the expert determination. As a trusted, impartial and specialized institution, the Center offers rules for alternative dispute resolution methods suitable for today's conditions. The rules prepared by the Center contain comprehensive and modern provisions. These rules are prepared taking into account the characteristics of intellectual property disputes, but there is no impediment to the application of the rules in other disputes. (Bozkurt Yüksel, 2010, p. 119)

In recent years, there has been increasing development in resolving intellectual property rights through the application of alternative methods of resolving both contractual and non-contractual disputes. The question of the appropriateness of resolving intellectual property disputes through alternative methods is constantly raised, especially in the implementation phase of the decisions. In relation to this issue, the law applicable in the place where the resolution procedure takes place and the law applied in the place of execution of the decision in disputes arising from intellectual property rights should be considered first. This discrepancy exists because certain states state that for economic, political and social reasons and especially their close connection to public order, alternative dispute resolution methods cannot be applied to issues related to the validity of intellectual property rights. (Çalışkan, 2008, p. 197)

The alternative dispute resolution services provided by the WIPO Arbitration and Mediation Center are a convenient opportunity to reach an effective settlement to international trade disputes, especially intellectual property disputes.

REFERENCES

Abbott, F., Cottier, T., Gurry, F. (1999). *The International Intellectual Property System Commentary and Materials*. Part I. Netherlands: Kluwer Law International.

Akıncı, Z. (2007). *Milletlerarası Tahkim*. 2. Baskı. Ankara: Seçkin.

Bozkurt Yüksel, A. E. (2009). ‘‘Fikri Mülkiyet Uyuşmazlıklarında Tahkim’’. *Banka ve Ticaret Hukuku Dergesi*, C. XXV, S. 2. 335-402.

Bozkurt Yüksel, A. E. (2010). *Dünya Fikri Mülkiyet Örgütü (WIPO) Tahkim Sistemi*. Ankara: Adalet Yayınevi.

Çalışkan, Y. (2008). *Uluslararası Fikri Mülkiyet Hukukunda Uyuşmazlık Çözüm Mekanizmaları: WIPO Tahkimi ve Dünya Ticaret Örgütü*. İstanbul: Değişim Yayınları.

Caron, D. D. (2003). “The World of Intellectual Property and the Decision to Arbitrate”. *Arbitration International,* Vol.19, No.4. 441-449.

Dessemonet, F. (2007). ‘‘Fikri Mülkiyet ve Tahkim’’. translated by: Orak, C. Ç. *Ankara Barosu Fikri Mülkiyet ve Rekabet Hukuku Dergisi*, Y.7, C.7, S.1. 85-98.

Lamb, S. & Garcia, A. (2008). “Arbitration of Intellectual Property Disputes”. The European & *Middle Eastern Arbitration Review.* http://globalarbitrationreview.com/reviews/3/sections/5/chapters/66/arbitration-intellectual-property-disputes/

Lew, J. D. M. (1994). “ICC Working Party on Intellectual Property Disputes and Arbitration”, *Objective Arbitrability Antitrust Disputes Intellectual Property Disputes Conference*, 19 November 1993. Swiss Arbitration Association Special Series. 44-52.

Lew, J. D. M., Mistelis, L. A., Kröll, S. M. (2003). *Comparative International Commercial Arbitration*, Netherlands: Kluwer Law International.

Martin, J. A. (1997) "Arbitrating in the ALPS rather than Litigating in Los Angeles: The Advantages of International Intellectual Property-Specific Alternative Dispute Resolution". *Stanford Law Review*. 917-970.

Mills, J. (1996). "Alternative Disputes Resolutiona in International Intellectual Property Disputes". *Ohio State Journal on Dispute Resolution*. 227-241.

Nilblett, B. (1995). "Intellectual Property Disputes: Arbitrating the Creative". *Dispute Resolution Journal*, Vol. 50. 64-67.

Plant, D.W. (1999). *Resolving International Intellectual Property Disputes*. Paris: ICC Publication.

Redferen, A., Hunter, M., Blackaby, N., and Partasides, C. (2004). *Law and Practice of International Commercial Arbitration*. London: Sweet and Maxwell.

Smit, H. (2000). ''Introduction''. *WIPO Arbitration and Rules: Commentary and Analysis*. New York: Juris Publishing.

Tekinalp, Ü. (2002). *Fikri Mülkiyet Hukuku*. Güncelleştirilmiş 2. Bası. İstanbul: Vedat Kitapçılık.

Werner, J. (1998). "Intellectual Property and Arbitration, A Comment on a Recent ICC Report". *The Journal of World Intellectual Property* 1 (5). 841-886.

WIPO. (1993). "WIPO Arbitration Center". *Objective Arbitrability Antitrust Disputes Intellectual Property Disputes Conference, 19*

November 1993. Swiss Arbitration Association Special Series. https://www.wipo.int/amc/en/events/conferences/1994/index.html

WIPO. (2018). *WIPO Guide on Alternative Dispute Resolution (ADR) Options for Intellectual Property Offices and Courts*. Geneva: WIPO Publication.

WIPO. (2020). *WIPO Mediation, Arbitration, Expedited Arbitration and Expert Determination Rules and Clauses*. Geneva: WIPO Publication.

Wollgast, H. (2016). "WIPO Alternative Dispute Resolution – Saving Time and Money in IP Disputes". *WIPO Magazine*. https://www.wipo.int/wipo_magazine/en/2016/si/article_0010.html

https://doi.org/10.55843/SG2211086i

DYNAMICS OF JUVENILE CRIME IN REPUBLIC OF NORTH MACEDONIA WITH AN EMPHASIS ON PHENOMENOLOGICAL CHARACHTERISTICS

Assist. Prof. Ebru Ibish, Phd

ABSTRACT

Juvenile crime poses a serious threat to society. Taking into account the fact that when we talk about juvenile crime the "actors" or more precisely the perpetrators are juveniles under the age of 18, it can therefore be concluded that these are children who from a very early age build their criminal career, get acquainted with different types of crimes and mostly commit crimes against property with the target of an easier way of satisfying their material (financial) needs. This process brings another problem such as: building criminal career and becoming a professional criminal. From the phenomenological point of view in order to identify the forms of juvenile crime, it is important to mention the scope, dynamics, structure and characteristics of the juvenile crime in the Republic of North Macedonia in order to obtain a general picture of the situation. The key factor of increasing the number of perpetrators of crimes, apart from the main criminogenic factors, including poverty, wealth and unemployment from an etiological point of view, the most important think is the inefficiency of the system of punishment against juveniles, and not taking preventive measures from an early age towards the juveniles

Keywords: Juvenile crime, juvenile delinquency, phenomenology, statistics of crime, recidivism

Assist. Prof.
Ebru Ibish, Phd

Faculty of Law, International Vision University, Gostivar, N.Macedonia

e-mail: ebru.ibis @vizyon.edu.mk

UDK:

343.91-053.2/.6(497.7)

Declaration of interest: The authors reported no conflict of interest related to this article.

Introduction

Juvenile crime is a problematic phenomenon especially in countries in transition, in this case it is so important to mention the criminogenic factors which directly affects juvenile crime and the role of the state in preventing juvenile crime.

The role of the state has a key point on preventing crime especially when we analyze the main criminogenic factors such as: poverty, wealth and unemployment. In the past period there is a rapid development of the means of communication. Mobile phones, the Internet and computers enable young people to reach the necessary information in a very short time. Their claims are rising day by day, and the crisis in which Republic of North Macedonia is located, does not favor the satisfaction of children's needs.

Dissatisfaction with needs is a sufficient reason for the juvenile to activate his criminal career. Poverty always appears as a major factor in this phenomenon. Children are aware if parents are not able to meet all their demands and because of this they become part of the criminal activities, and most often commit crimes against property. In recent years, wealth as a criminogenic factor has proved to be very dominant in juvenile delinquency.

In this case it is very important to mention that juvenile crime is different from juvenile delinquency. Juvenile crime covers the criminal acts committed by child perpetrators, while juvenile delinquency is more complex and it covers: criminal acts, misdemeanors, social-pathological phenomena.

1. Phenomenological characteristics of juvenile crime

Particular importance to criminal phenomenology is the study of the forms of crime. In criminology, the term phenomenology is used to indicate external manifestations and forms of criminality. Based on contemporary scientific research on juvenile crime, it has been established that: total crime is in rapid growth, but the juvenile crime and delinquency is even more pronounced. In addition to the risk factors affecting juveniles in order to create delinquent behavior, at the same time, there is a greater participation of juveniles in socio-pathological phenomena such as alcoholism, prostitution, drug addiction, begging, vagrancy, suicide etc.

In recent years, juveniles have been increasingly involved in acts of violence and organized crime, there has been an increase in the recidivism of juveniles. Due to the social danger and specificity of the person, juvenile delinquency requires a special intervention of the society and the need to react to the competent authorities of the criminal prosecution. (Velkova, 2006)

In Republic of North Macedonia the statistics for juvenile crime are analyzed by the bodies of internal affairs, the public prosecutor's offices, the state statistical office, the Ministry of Justice, first instance courts and the centers for social work that keep data (statistics) of the juvenile perpetrators of criminal acts and other delinquent behavior according to the criteria of juvenile delinquency. (Josifovski, 1963)

In order to be able to assess this issue, we will analyze the statistics that will cover the period from 2010 to 2021, on the basis of which we will show a general picture of the structure and dynamics of juvenile delinquency.

2. Dynamics and structure of juvenile crime

The totality of crime, is one of the primary quantitative features of this phenomenon. In general, dynamics of crime not only for juvenile crime, but also for every type of crime, is crucial because crime is not a static phenomenon, it is dynamic and variable. (Arnaudovski, 2007)

The economic, social and cultural changes directly affect the dynamics of juvenile. Regarding the forms of juvenile crime within this paper, we will cover following characteristics: gender, age, recidivism and material (financial) situation. The part about the structure of juvenile crime covers the data, types of crimes and the structure of crimes.

2.1 Dynamics of juvenile crime

The dynamics or movement of crime refers to the changes in the volume of crime over a period of time and in a certain area. In general, the dynamics provide an explanation for the decrease or increase of the crime rate in a certain period of time. The totality of juvenile crime can be determined for each year or for longer and shorter periods of time, for the whole country or for one region, etc. The totality of juvenile crime, but also the totality of general crime can be determined by:

- criminal reports against children (reported children in conflict with the law),
- indictments against children (accused children in conflict with the law) and
- convicted children in conflict with the law.

Tables number 1, 2 and 3 show the statistics on reported, accused and convicted children in conflict with the law, as well as the index covering the period 2008-2017. For the purposes of this paper it is important to explain the terms: reported, accused, convicted.

"Reported child" is a child against whom the legal procedure after the filed charges was not raised (the charge was rejected), against whom the proceeding has been stopped or a proposal has been applied for pronouncing a penalty or educational measure. "Accused child" is a child against whom the proceeding in front of the Council has been stopped or no legal sanctions have been pronounced, as well as a criminally insane child against whom a decision for security measures has been pronounced. "Convicted child" is a child perpetrator of crime against whom with a Court decision a legal sanction has been pronounced - child imprisonment or educational measures. (www.stat.gov.mk, 2022)

Table nb.1 Number of reported child perpetrators in the Republic of North Macedonia in the period of 2009-2017

Years	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Reported	1355	1519	1244	1163	1001	1005	972	772	587	578
Index	0.00	112	81,9	93,4	86,1	109,1	96,7	79,3	81,5	98,3

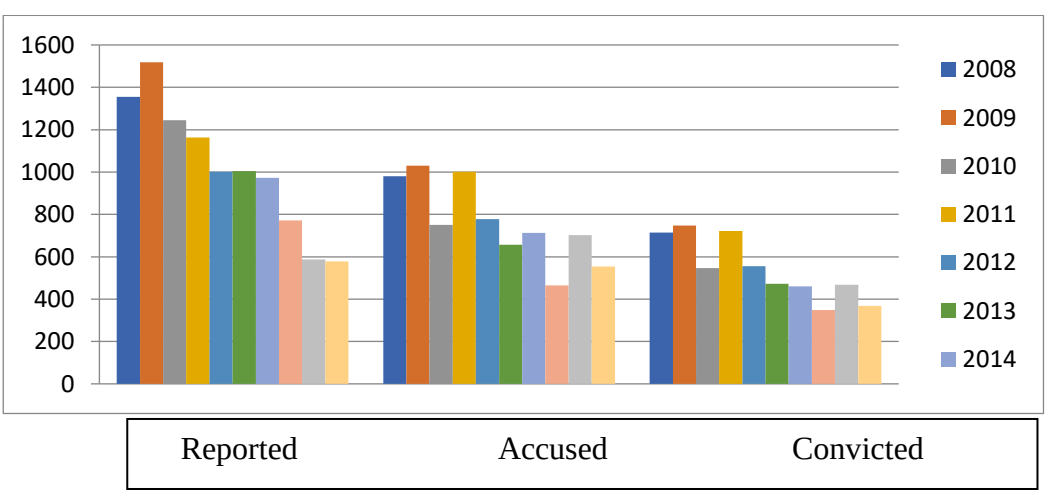
Table nb. 2 Number of accused child perpetrators in the Republic of North Macedonia in the period of 2009-2017

Years	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Accused	981	1030	750	1002	778	657	712	465	702	554
Index	0.00	101	75,6	113	77,6	91,8	108	64,9	161	78,8

Table nb. 3 Number of convicted child perpetrators in the Republic of North Macedonia in the period of 2009-2017

Years	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Convicted	715	748	547	722	556	473	461	348	468	368
Index	0.00	104	73,1	131	77,1	92,1	97,4	75,5	142	78,4

Graph nb. 1 Total number of reported, accused and convicted child perpetrators in the Republic of North Macedonia in the period of 2009-2017



2.2 Characteristics of juvenile crime

The characteristics of juvenile crime are perceived through certain variables: gender, age, material (financial) situation etc. All of the above variables as factors directly influence the development of the juvenile. The contemporary juvenile crime is characterized by the organization of young people in juvenile groups or gangs for the commission of criminal offenses. In different countries, juvenile gangs have different names, so in England they are called "teddu nays", in the United States "teenagers" in France "blausos noires" in Japan "tao zoku". (Dinitz, 1969)

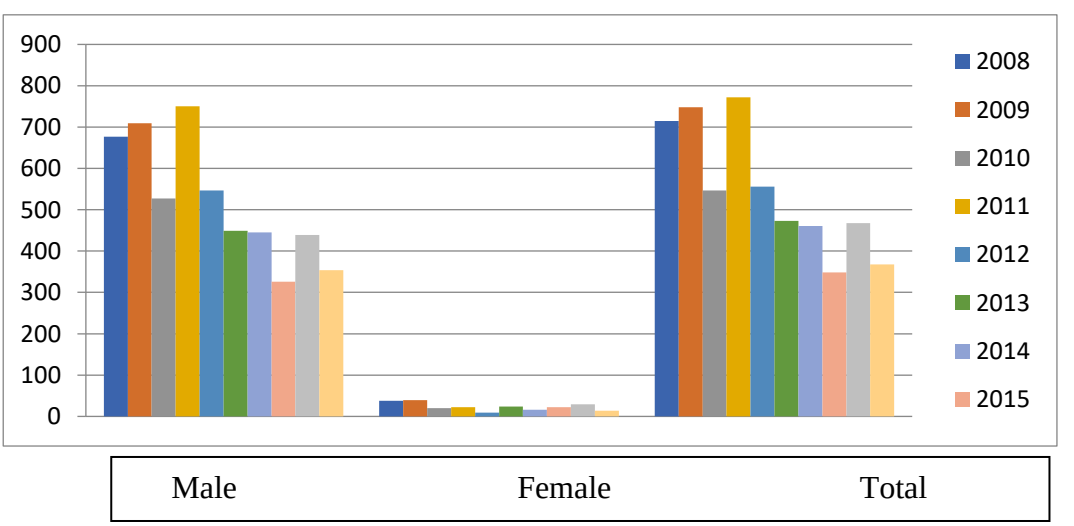
2.2.1 Gender

Juvenile crime in general is still in characterized as a male phenomenon. The participation of female juveniles in crime is much lower than male juveniles. But if we make a classification regarding the participation of juveniles in criminal acts by gender, then it is important to mention that, male juveniles are more involved in violent crime, while female juveniles mostly participate in prostitution as a socio-pathologic phenomenon. In general female adults and juveniles are more involved in prostitution then male adults and juveniles. Youth prostitution is usually the result of family conflicts or involvement with other socio-pathological activities. It turns out that the number of underage prostitutes is constantly increasing. (Arnaudovski L. , 1983)

Table nb. 4 Number of convicted child perpetrators by gender in the Republic of North Macedonia in the period of 2009-2017

Years	2009	2010	2011	2012	2013	2014	2015	2016	2017
Male	709	527	750	547	449	445	326	439	354
%	94.7%	96.3%	97.1%	98.3%	94.9%	96.5%	93.6%	93.8%	96.1%
Female	39	20	22	9	24	16	22	29	14
%	5.2%	3.6%	2.8%	1.6%	5%	3.4%	6.3%	6.1%	3.85
Total	748	547	772	556	473	461	348	468	368

Graph nb. 2 Number of convicted child perpetrators by gender in the Republic of North Macedonia in the period of 2009-2017



2.2.2 Age

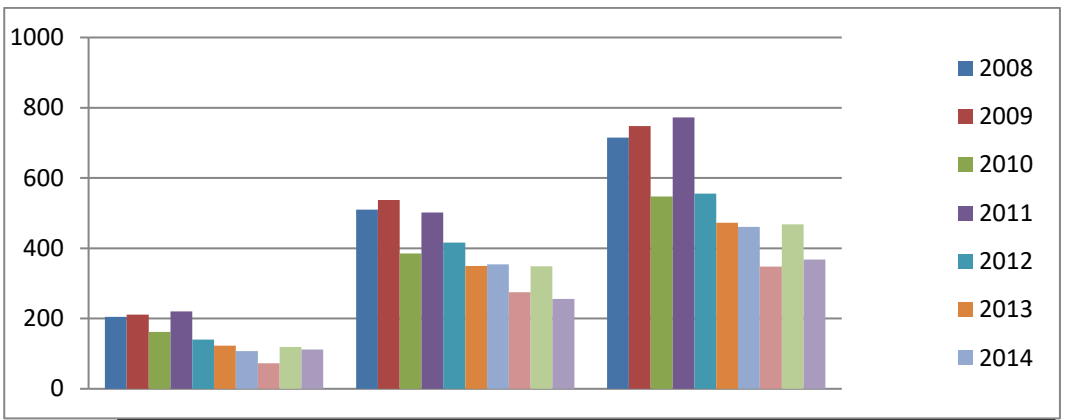
Age plays an important role within the framework of juvenile crime. The childhood psychology is also interested in the age of juveniles as a special conception of research. About the developmental stages of child, it is very important to mention characteristic such as: abilities,

motivational-emotional dispositions, social dispositions, cognitive factors (intelligence, communication and character) and temperament. (Stankovska Gordana, 2011) It is interesting that children from 4 to 12 years of age are more likely to participation in begging, in the category of children from 14 to 16 years of age, there is a change in behavior and character, and children mostly become a part of: fights, vagrancy and most of the juveniles commits a crimes against property. In the case of older juveniles, (16-18 years old), criminal acts are commonly reported against: property, public transport security, life and body and public order.

Table nb. 5 Number of convicted child perpetrators by age in the Republic of North Macedonia in the period of 2009-2017

Years	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
14-16	211	162	220	140	123	107	73	119
%	28.2%	29.6%	28.4%	25.1%	26%	23.2%	20.9%	25.4%
16-18	537	385	502	416	390	354	275	349
%	71.7%	70.3%	65%	74.8%	82.4%	76.7%	79%	74.5%
Total	748	547	772	556	473	461	348	468

Graph nb. 3 Number of convicted child perpetrators by age in the Republic of North Macedonia in the period of 2009-2017



2.2.3 Recidivism

The rising number of recidivism, is an important indicator of the negative effects of sanctions and the criminal politics. The application of penalties shows that it does not give the expected results. It has been noted that most of recidivists started their criminal career as juveniles. Factors that influence the reduction of repetition among juveniles are the following: school success and abilities, the style of learning, the ability to empathy and establishing relationships, the will to change behavior, the motivation for resolving life problems, etc. (Kovachevikj Ranko, 2014) Recidivism is a specific problem to which special attention is paid from criminological, criminal, legal and criminal-political aspects. Recidivism among juveniles statistically is not so high, because four years (14-18) is a relatively short period of time for recidivism. (Drakulevski)

2.2.4 Material (financial) status of delinquent

In the Republic of North Macedonia, the material (financial) status of families is a variable category. Unemployment and poverty become one of the reasons for the disruption of the relationship between the child and

the parent. The low socio-economic status of the family is the main reason for deviant, asocial and anti social behavior of juveniles. The relationships between parents and children, and total supervision over the child can overcome the poor economic situation.

Conclusion

Children do not feel the changes in society, because they have lots of new things around them that attract their attention, such as the environment, the school, the activities they do in their free time.

Taking into account the data the main reasons of juvenile crime are: poor primary upbringing by the family, insufficient parenting and especially criminogenic factors such as unemployment and poverty that directly affect family and children.

The development of the national legal framework in the field of juvenile justice and the adoption of different international conventions are not enough to reduce the juvenile crime. Society and social institutions should always assume the reasons and taking into account all assumptions to prepare programs before the problem arises.

In field of preventing juvenile crime it is so important to create "programs for the prevention of juvenile crime" that have proved to be very effective in developed countries through the education of juveniles, their families and the social context

References

1. Арнаудовски, Љупчо (2007),“Криминологија, 2-ри Август – Штип, Скопје
2. Арнаудовски, Љупчо (1983),“Социјална Патологија“, Студентски збор, Скопје
3. Велкова, Татјана (2006), “Феноменологија на малолетничкиот криминалитет во Република Македонија во периодот1982-2000 година“, 2-ри Август Ц-Штип, Скопје
4. Груевска-Дракулевски, Александра (2008), “Рецидивизам код малолетничког криминалитета у Републици Македонији као индикатор за (не)ефикасност казнене политике“ у Зборник радова Двадесет и првог сусрета на тема: Право и индивидуалне вредности, Правни живот, часопис са правну теорију и праксу, Копаоничка школа природног права Удружења правника Србије, Београд
5. И, Јосифовски(1965), “Криминалитетот и другите облици на девијантно поведение како израз на отуѓеност на човекот, Докторска дизертација, Љубљана
6. И. Јосифовски, Љ. Арнаудовски (1963),“За статистиките за криминалитетот“ Институт за социјални и политичко правни истражувања, Скопје
7. Ковачевиќ, Ранко, Суљагиќ, Семир, Љуца, Џенита, Муфиќ, Един (2014), “Рецидивизмот по третман во дисциплински центар за малолетници“, Факултет за специјална едукација и рехабилитација, Тузла
8. Љ.Чонева, В.Чачева, Љ.Арнаудовски, М.Станкова, М.Марковиќ, Г.Станковска (2007),“Малолетничкиот криминалитет во транзицијата во Република Македонија“, Институт за социолошки и политичко-правни истражувања, Скопје

9. Љубичик, Станко, "Малолетнички криминалитет", Конзулт студио, Нови Сад
10. Станковска, Гордана, Руси, Муќереме (2011), "Медицинска психологија", Пергамент публик, Скопје
11. Dinitz, Simon, Dynes, Rowe Russell, Clarke, Alfred (1969), "Deviance; studies in the process of stigmatization and societal reaction", Oxford University Press, London
12. УНИЦЕФ(2004),"Ефикасноста на мерките што се применуваат спрема малолетните лица", Институт за социолошки и политичко правни истражувања, Скопје
13. http://www.stat.gov.mk