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CONTENTS

DIPLOMACY AS A TOOL FOR CONFLICT PREVENTION AND MANAGEMENT

Anita Gligorova, Qazime Sherifi, Zoran Filipovski , page 9-28

ABSTRACT

The European continent and the whole world has been accompanied by civil wars within nations - revolutions, secessionist wars, a numerous conflict between states and different ethnic groups. Meanwhile, because of the conflicts, incomparable economic damage has been caused, suffering, bloodshed, and great loss of human lives.

This article highlights the meaning of Preventive Diplomacy in International Relations, the role and importance of preventing conflicts, and their management. Then is elaborated the role, importance of engagement International Organization, Regional Organization, and other mechanisms, including other forms of states engagement in Preventive Diplomacy.

In short, the authors emphasized the forms by which the various mechanisms in international relations, achieve the prevention, management of conflicts, and the establishment of peace in the hotbeds of conflicts. In the end, authors mentions the challenges and elements for success which followed preventive diplomacy on conflict prevention.

Key words: Preventive Diplomacy, International Relations, International Community, International Organizations

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1. Introduction

The continent of Europe, but unfortunately also the rest of the world has been accompanied by civil wars within nations - revolutions, secessionist wars, a numerous conflict between states and different ethnic groups. Meanwhile, because of the conflicts, incomparable economic damage has been caused, suffering, bloodshed, and great loss of human lives.

Ideas aimed to prevent a war, date back to the nineteenth century, so that isn't something new in International Relations (hereinafter IR). In some conferences and congress, the main topic was the steps and measures that should take to prevent the war "The Congress of Vienna set the pattern of substituting the aim of managing a consensus among the great powers - in what today we would call preventive diplomacy (Weisbrode, Kenneth 2014, p. 33)".

Conflict prevention (hereinafter CP), but only as a term and unfortunately not as a concept, is also found in the Covenant of the League of Nations. To maintain peace between nations, threats and war were considered a concern for the League of Nations, and measures aimed at preventing conflict were envisaged. Article 16 of The Covenant of the League of Nations also outlines the measures that will be taken against any member of the League of Nations in the event of war, disregarding Articles 12, 13, or 15.

To the state in question, will be acted immediately, starting to subjugate it until the termination of all commercial or financial relations, the prohibition of all relations between them, the prevention of all financial, commercial, or personal relations. (Evans, D, Malcolm 1991, p.16). In the absence of such a concept, World War II breaks out, which determines the failure of the League of Nations, and as e result the end of its existence.

Witnesses of great tragedies that the world experienced from the two World wars, the need for the existence of an international mechanism, was seen and valued as immediate in the international community (hereinafter IC). In this context, the IC took concrete action in this direction, and in 1945 the United Nations (hereinafter UN) was established, as the successor to the League of Nations, which had as its main goal world peace, and based on which it was created.

2. The Meaning, role, and importance of Preventive Diplomacy

The term Preventive Diplomacy (hereinafter PD) is recent in the context of its use in IR. As a notion, but also in the context of the innovative idea, it originated and articulated first time by the former Secretary General of the UN, Dag Hammarskjold during his leadership of this mechanism in the period 1953-1960 (Ramcharan, G, Bertrand, 2008 p.1).

PD from the end of the Second World War, until today, has evolved in its concept, in relation to the prevention of conflict and its management. In the period of the Cold War, the IC has faced tensions, threats, and wars of an interstate character. With the end of the Cold War and the creation of a new order in the IC, another nature of conflicts begins to emerge "the phenomenon of intra-state conflicts has been a dominant feature of international relations since the end of the Cold War, the international community seems to have been caught off-guard by the proliferation of sub-national ethnic claims (Murithi, Tim 2009, p. 4)".

As a result of the new circumstances created in the IC, the need arose for a new and more pragmatic approach of PD. Some definitions are given in relation to the notion of PD, Example cause, Michael Lund defines PD as "actions taken in vulnerable places and times to avoid the threat or use of armed force and related forms of coercion by states or groups to settle the political disputes that can arise from destabilizing effects of economic, social, political, and international change (Swanström, P.L Niklas & Weissmann, S. Mikael 2005,p.22)".

But extraordinary role and contribution regarding PD, including the notion, the approach that should be used by the PD according to the new circumstances created in IR, the new circumstances created in IR, has given by former Secretary General of the UN Boutros Ghali in his report: An Agenda for Peace, An Agenda for Development and An Agenda for Democratization. In his report Agenda for Peace (1992), Boutros Boutros Ghali emphasizes the notion of PD as: "Preventive diplomacy is action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur. —Boutros Boutros-Ghali, An Agenda for Peace (1992) - (Steiner,H, Barry 2004, p.3)".

The report Agenda for peace of the former UN Secretary General Boutros Boutros Ghali, marks an important turning point in international

relations in terms of approach to conflict prevention, first through Preventive Diplomacy, then another step for lasting and permanent peace. Referring to conflict prevention, it contains a multi-dimensional concept including "diplomacy to relax tensions before they result in conflict, direct repression of the conflict in its early stages, and preventing the recurrence or reversal of the suspended conflict (Marina Mitrevska & Anton Grizold at all 2009, p.65)".

During addressing to Security Cuoncil, through his rapport the An Agenda for Peace, at the request of the latter, referring to new conflicts, former UN Secretary General Boutros Ghali foresees and argues the proactive approach of the UN towards peacemaking. Among other things, Boutros Ghali mentions four major areas of activity for lasting peace, that UN should respond quickly and effectively to threats to international peace and security like, "preventive diplomacy; peacemaking; peacekeeping; and post-conflict peacebuilding (Murithi, Tim 2009, p.87)".

As an idea in IR, the concept of third-party peacebuilding as a method of conflict management dates to the seventies. It was Swedish sociologist Johan Galtung (1976), who argued during the 1970 s that peacebuilding – along with peacekeeping and peacemaking – was one of the "three approaches to peace (Mason, David & Meernik, D, James 2006 p.54)". But in addition to the discussion that this idea conveyed to the IC, it was ignored till 1992, respectively until the report of the UN Secretary General- Boutros Ghali in Agenda for peace.

The forms used in PD in terms of CP are various and numerous. In general, PD uses different methods in prevention conflicts, like good offices, facilitation, mediation, conciliation, adjudication, arbitration, human rights etc to resolve disputes before they become violent. Inter alia, the Boutros Ghali Agenda for Peace, contains a range of ideas for the use of PD at the UN.

• To ease tensions before they result in conflict.

• If conflict breaks out, to acts swiftly to contain it and resolve its underlying causes.

• Preventive diplomacy be performed by the Secretary-General personally or through senior staff or specialized agencies and programmed, by the Security Council or the General Assembly, and by regional organizations in cooperation with the United Nations.

• Preventive diplomacy requires measures to create confidence.

• Preventive diplomacy needs early warning based on information gathering and informal or formal fact-finding.

• Preventive diplomacy may involve preventive deployment and, in some situations, demilitarized zones. (Ramcharan, Bertrand & Ramcharan, Robin 2020, p.x).

The role and contribution in advancing the ideas of Boutros Ghalit in relation to the PD, has given almost every subsequent secretary to the UN. The next UN Secretary General, Kofi Annan, has done much to advance the idea and practices of preventing violent conflicts. Annan has done much to advance the idea and practice of preventing violent conflicts, among his more crucial initiatives has been to move the UN from a 'culture of reaction to a culture of prevention (Ackermann, Alice 2003, p. 340).

The transition from a culture of reaction to a culture of prevention by the IC is very important in CP. This approach implies early warning conflict and then use of that entered in the domain of the PD, like problem identification, rapid collection of information, problem recognition, analysis, clear conclusions then proceeding with conflict management towards peacemaking, peacekeeping, and peacebuilding.

In all this process, is necessary that following actions by IC should, be a rapid and unified nature in conflicts. Another point to achieve lasting peace is the will of the parties involved in the conflict to achieve peace, and that is very important and necessary in this process.

3. International Organisation on Preventive Diplomacy

Peace, stability, and security are concepts that are intended to be achieved by states and international organizations. Conflict resolution is a responsibility of all subjects of international law, and of course, each mechanism carries its own role of responsibility in creating and guaranteeing an environment that offers freedom, security, and prosperity. In the ic operate a considerable number of regional, inter-regional organizations, various ngo-s, and various groupings of states, which for the purpose have cp.

Based on this goal, many organizations, the CP, and peacekeeping is one of the primary goals and objective in the field of their action, thus placing it in their preamble and statutes.

In the meantime, the UN is the largest organization in terms of the number of members, the extent, but above all the role and responsibility it has and carries in relation to CP and peacekeeping in the world. Example causa, in Chapter I : Purposes and Principles: Article 1, the UN undertakes: "To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace".

Charter of the UN contains a large number of articles, by which it authorizes, at the same time obliges the Security Council, as provided in Article.24 / 1 as the main body in the maintenance of international peace and security to take action in the direction of conflict prevention, peacekeeping, encouragement, but also an obligation to the parties to the conflict, to respect the measures taken by the UN. This is provided for in Article 40: "In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures".

International mechanisms, namely the UN, through preventing tools within the PD, for example, causa mediation, have been crucial in preventing some conflicts in the post-World War II period. We can emphasize the crisis during the Cold War period, when thanks to the use of preventive diplomacy, namely the mediation and intervention of former UN Secretary General Thant, a dramatic success was achieved, thus avoiding a conflict nuclear known as the "Cuban crisis". "There have been dramatic successes, such as in the Cuban missile crisis of 1962, when preventive diplomacy by Secretary-General U Thant helped head off a nuclear confrontation between the Soviet Union and the United States (Ramcharan, G, Bertrand 2008, p.1)".

The UN has been involved in the prevention of conflicts through other means which enter the framework of preventive diplomacy, respectively have been points within the Agenda for Peace of Boutros Ghalit. Specifically, referring to the inter-ethnic conflict in Macedonia, the UN to react for the first time through "preventive deployment" like a preventive tool, through a body called the United Nation Preventive Deployment Force (UNPREDEP) "as e first UN peacekeeping operation that has a preventive mandate **(**Özçelik, Sezai 2006, p.105)".

Regional, inter-regional organizations and other mechanisms can undoubtedly contribute to the maintenance of international peace and security.

In this context, the Charter of the United Nations in accordance with Chapter VIII, Article.53 and Article.54 allows regional organizations to take measures that lead to the maintenance of international peace and security, but with the obligation that in advance for any of their actions inform the Security Council. Article 54: The Security Council shall always be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

Partnership and cooperation that has started between the UN on the one hand, with regional and inter-regional mechanisms, as well as coordination and interaction between regional mechanisms themselves, like Europe Union (here in after EU), North Atlantic Treaty Organisation (hereinafter NATO) and Organisation for Security and Cooperation in Europe (hereinafter OSCE) has led to the establishment of mutual relations and at the same time are seen as complementary in the prevention of conflicts, various crises, and their management.

Among the inter-regional organizations, the OSCE like an NGO, is the largest organization in terms of both membership and cross-continental alignment. The OSCE works to build and sustain stability, peace, and democracy for more than one billion people, through political dialogue and projects on the ground.

In the last fifteen years of the Cold War, the OSCE and for the period we refer to as the Conference on Security and Cooperation in Europe (here in after CSCE), according to the author Alexandra Gheciu has been a bridge of communication and a key factor in maintaining balance and managing the contradictory situation between east and west.

This has been achieved **"**by establishing a framework for continuous dialogue and elaborating a comprehensive set of principles and commitments, followed by practical steps for their implementation (Gheciu, Alexandra, 2008, p.119)".

The EU also increased its role last decades in CP, the EU has legitimized the cooperation with the UN in statement No. 14, Protocol No. 10, and a series of provisions of the TEU and TFEU.

In fulfilling the objectives that lead in the direction of protection of values, preservation of peace and security, human rights, etc. among other things, he has foreseen the prevention of conflict, which entered the domain of measures in the PD. Article.21 -2 –C according to TEU or TFEU, EU: (c) to maintain peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the Charter of the United Nations, the principles of the Helsinki Final Act and the purposes of the Paris Charter, including those relating to external borders;

NATO, in accordance with Article 7 of the North Atlantic Treaty, signed in Washington on 4 April 1949, has expressed its readiness to "assist fruitfully, in the prevention of conflict and to engage vigorously in crisis management." including crisis response operations (Manual i NATOs, 2006 p.272)".

In the nineties, in the Western Balkans, because of the changes that resulted after the end of the Cold War, appeared many hotbeds of crises with real potential for escalation into armed conflict, which later followed by wars. In the context of CP, NATO together with the Western European Union (WEU) has been involved in coercive operations, in order of implementation the Security Council resolutions aimed at preventing the spread of conflict in the former Yugoslav Republics by imposing arms embargoes (Manual I NATOs, 2006 p.272).

In addition to regional, inter-regional organizations and other mechanisms mentioned above, contribution to the CP and making the peace, there are other actors, for example, causa individual states with influence in the region have made an indisputable contribution in this regard.

Example of diplomacy, effective mediation as a tool in the PD, by Tanzania, as well as the Organization of African Unity (OAU) in the civil

war of 1992-1993 in Rwanda, ended a bloody conflict where they were killed about 800,000 people in a four-month period between April and July 1994.

On the success of Diplomacy and mediation in resolving conflicts in Africa, referring to the conflict in Rwanda, as well as the possibility for Africans to solve their own problems through diplomacy, respectively mediation, very optimistic was also declared Salim Ahmed Salim, Secretary-General of the OAU in August 1993 "Rwanda is a complete African product, a clear example of mediation done for Africa by the Africans themselves. This is a triumph of reason, a triumph of African diplomacy. We have proved that it is possible for the OAU to and a solution to most of our problems. We intend to build on this experience and use mediation as a means of ending conflicts on our continent (Druckman, Daniel & Donohue, William 2007 p.58)".

The role and contribution of regional actors - inter-regional, government organizations, NGOs, experts, individual actors in empowering the PD, by the IC but also by the regional actors themselves - is seen and understood as a need and necessity in peace building, so their integration is very important, and one of the main tools in strengthening the PD.

The need for regional and inter-regional integration is a conclusion of the various conferences, example causa this finding, like a conclusion came from the Mediterranean Conference held in Spain in May 2016 "One of the key tools for strengthening preventive diplomacy is regional integration. There is a strong correlation between regional integration, peace, and sustainability. Therefore, investing in regional integration means investing in peace and stability (Report of Ministry of Foreign Affairs and Cooperation of Spain, pg.5)".

However, there are cases when the PD, namely the international community was seriously challenged in conflict prevention, and in certain cases, it has failed.

We can mention some conflicts throughout the world, for example, causa conflicts in the Balkans, Kosovo, Bosnia, and Herzegovina, and on the other parts like Afghanistan, Chechnya, Colombia, Ethiopia / Eritrea, Lebanon, Nagorno-Karabakh etc.

But in general, regional organizations have had a positive impact on CP through the PD. It is also cited by Autor Dennis J.D.Sandole "It is even more important to view the OSCE as an organization that along with other

regional organizations, especially the European Union, has played a major part in long-term peacebuilding and conflict prevention in Europe (Sandole,D,J Dennis, 2007 p.XII)".

4. Measures in Preventive Diplomacy

Conflicts in the IC come because of various factors, evolve, varying by the threat and the nature of reflection. In this context, the UN as a key mechanism in maintaining security and peace, but also other regional mechanisms, inter-regional, etc, in addition to preventive measures have provided additional measures that will fully support the process, defining platforms and agendas in this direction.

In the framework of the UN Charter, respectively Chapter VI-Article 33, are foreseen some forms which are used by the UN in the context of conflict prevention such as:"The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice".

Growing disputes between the parties in the international community increase the need for strengthening mediation as a preventive tool in conflicts. In the UN to support the Department of Political Affairs (DPA) in terms of increasing effectiveness-capacity was created the Mediation Support Unit, as a center of expertise and a resource on mediation for the Department of Political Affairs (DPA), but the UN in this process of mediation will be as supportive actor (Murithi, Tim 2009 p.88).

As support measures by international mechanisms in support of PD, in direction of post-conflict peacebuilding are many, and should be in continuity. In this context, the UN has undertaken concert actions, through different programs in separate fields, for example, causa: Disarmament, Demobilization and Reintegration (DDR), Security-Sector Reform (SSR) human rights etc.

On the importance of demilitarization, arms control, human rights, etc., the former secretary Boutros Ghali was also declared

"Demilitarization, the control of small arms, institutional reform, improved police, and judicial systems, the monitoring of human rights, electoral reform, and social and economic development can be as valuable in preventing conflict as in healing the wounds after conflict has occurred (Meernik, D, James & Mason, David 2006, p.81)"

In the following, the table will reflect the steps taken by the international community within the GDR in different countries which were hotbeds of conflict (Robert Muggah 2009, p.5).

Table I.1 A typology of contexts for DDR

Context	Typical intervention	Financial support	Examples
Pre-crisis/ conflict	Military/policing downsizing or 'right sizing	Bilateraldefence cooperation, and/or multilateral/ loan/credit, nationally led	CAR, South Africa, Djibouti Uganda(1992-1995)
During conflict	Limited demobilization and reintegration combined with amnesty and prosecution	Nationally led, multilateral funding	Colombia, Northen Uganda, Cote, Divoire, Mindanao (Philippines)
Post 'cross border' conflict	Demobilization reinsertion and reintegration	Nationally led, multilateral/bilateral funding	Ethopia, Eritrea, Iraq, Afganistan
Post 'Internal' conflict	Disarmament, demobilization reinsertion and reintegration together with reconciliation and rehabilitation	UN or World Bank-led DPKO or regional involvent, multilateral/bilateral financing, nationally led	Angola, DRC, Rwanda, Timor-Leste, Aceh,El Salvador,Kosovo,Sudan

In support of the measures to be used in the DP, the UN has opened Regional Offices for CP on the Continent of Asia and Africa, for example, causa UNOCA - UN Office for Central Africa, UNOWAS – UN Office

for West Africa and the Sahel, UNRCCA - UN Regional Office for Preventive Diplomacy for Central Asia.

On the agenda of these Offices will be, among other things, the promotion of dialogue between the parties to the conflict, the building of trust, and genuine partnership. The opening of the UNRCCA for Central Asia took place on May 16, 2007. Terrorism, as a threat that had already crossed national borders, extremism, drug trafficking, organized crime, and environmental degradation were some of the threats that pushed the countries of Central Asia to agree by consensus on the establishment of this Center in Ashgabat (Ramcharan, Bertrand & Ramcharan, Robin 2020 p.85).

Specialized agencies within the UN, like United Nations Development Programs (UNDP) through various programs in more than 100 countries around the world. The purpose of UNDP is to support Justice Institutions, Institutions that promote and protect human rights, help in building national capacities aimed at conflict prevention, dispute resolution, economic assistance and access to justice for women and girls."For instance, in 2003 and 2004, UNDP and the Department of Political Affairs collaborated in supporting key national actors in Niger in developing a common vision of national priorities through the National Forumon on Conflict Prevention and then implementing the recommendations from the forum. This program of support was executed through the UNDP country office **(**Ramcharan, G, Bertrand 2008, p.53)".

UNDP's commitment and contribution continue to be consistent in conflict-affected countries, in a multidimensional sense. Beginning in restoring justice and security services during and in the immediate aftermath of conflict, crisis, or largescale violence to rebuild confidence in national systems, reinforce political settlements, and contribute to peace dividends and community resilience **(**Ramcharan, Bertrand & Ramcharan, Robin 2020, p.21).

The presence of weapons, including weapons of mass destruction, conventional arms, and new weapon technologies, is seen as an obstacle to peace and security in the future. So, the disarmament process, demobilization was seen as immediate in terms of creating a safer environment, creating a new moment towards a generation with

perspective, serious multilateral dialogue, as a goal of joint efforts for peace and security.

According to these issues the Secretary-General Antonio Guterres, on 24 May 2018 launched "Securing our Common Future". The Agenda for Disarmament, as summarized by United Nations Office for Disbarment Affairs.The Agenda for Disarmament rests on four pillars: Disarmament to save humanity, disarmament that saves lives, Disarmament for future generations, and strengthening partnerships for disarmament (Ramcharan, Bertrand & Ramcharan, Robin 2020 p.14).

AU in cooperation with UN offices in the African continent, and other Regional Organizations has worked hard to strengthen the Agenda for Disarmament, as well as various diplomatic agendas that focus on sustainable development, the proper justice system, etc in its preventive strategies. In this context, UNOWA reflects by action in a broad framework for peace and security.

UNOWA together with UN offices in Africa, ECOWAS, and other regional Organizations, like with European Union (EU), adopted a framework of action for peace and security. Except the DDR- Inter alia the Framework contains:

- Improving governance and protecting
- Electoral assistance and observation
- Conflict management coordination human rights
- Peace agreements

As we mentioned earlier, involving as many actors as possible, including those at the local level in preventive diplomacy is essential to preventing conflict and building lasting peace. In this regard, the AU has paid attention to the role of women as ambassadors in peacebuilding **"**The AU now has a cadre of female ambassadors for peace, and we are adding more and more prominent names to our cadre **(**Ramcharan, Bertrand & Ramcharan, Robin 2020 Ch.VII)".

After transformation by CSCE in Organization for Security and Cooperation in Europe, it determined her internal restructuring, through the creation of institutions, as well as a new approach to the concept of PD through early reaction methods.

Early warning threats, conflict prevention, crisis management, and post-conflict rehabilitation are the main purpose of OSCE, so regarding this "The OSCE already has unique and well-tested structures and processes for early warning and conflict prevention in place: institutions, field operations, the Conflict Prevention Centre, the High Commissioner on National Minorities (Sandole, D, J, Denis 2007, p.16)"**.**

The measures taken by the OSCE to build and maintain peace and security are multidimensional but can be defined in three: "political-security, economic and environmental and human dimension. OSCE assistance to conflict-affected countries is continuous through various programs, through trained personnel, providing funding in the short, medium, and long term, for example, causa in Croatia 1992, the OSCE has supported the annual plan of the Croatian Government in the direction of judicial reform (Mason, David & Meernik, D. James 2006, p.95).

In the decade we have entered, it is a very hopeful long-term goal set by the UN, in conflict prevention and peacekeeping, and a step forward to a more secure future for humanity.

Respect for human rights, promote the rule of law, strengthen relevant national institutions, sustainable development is some of the points set out in the UN Agenda, known as the UN Agenda 2030 Sustainable Development Goals (SDGs) 16.

Inter alia, the SDG 16 maintain:

- Significantly reduce all forms of violence and related deaths rates everywhere.
- Promote the rule of law at the national level and international levels and ensure equal access to justice for all.
- Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in developing countries, to prevent violence and combat terrorism and crime.
- Promote and enforce non-discriminatory laws and policies for sustainable development**.**

(Bertrand Ramcharan • Robin Ramcharan, 2020, p.16)

5. Challenges and elements for success

PD is accompanied by various challenges in CP and management, and this comes because of many factors in IR.

The end of the Cold War, inter-state conflicts, those of interethnic character, the creation of new states which resulted in changes in the geographical aspect, reforms in the socio-political system, then terrorism, extremism, climate change, poverty, cybercrime, possession of nuclear weapons, etc are just some of the existing problems faced by the PD in conflict prevention. "The withering away of the Cold War and simultaneous transformation of political communities around the world presents new challenges as far as conflict resolution and peacebuilding are concerned (Murithi, Tim 2009 p.44)".

The creation of new states, meanwhile, increases the appetite of different ethnic groups in their independence, if we take into account the fact that a large number of different ethnic groups live in multi-ethnic societies, then new hotbeds of crisis should be expected "The existence of the multi-ethnic state around the world means that this issue is bound to continue to be a recurring problem for the international community and a challenge to efforts to promote and build peace (Murithi, Tim 2009, p.51)".

Failure to treat ethnic groups by nation-states, fairly, not seeing cultural and ethnic diversity as a value in multi-ethnic societies, but applying the prevailing practice, certainly the likelihood of conflict will always be present and tend to shift to conflict.

The lack of quick reaction in the hotbeds of conflict, the underestimation of the situation, respectively the lack of serious treatment of the problem by the international community, and the non-unification of the international factor are also challenging that accompany preventive diplomacy. "Many states and regional organizations see little or no point in working with conflict prevention since there are no military conflicts. The old saying "why fix it when it is not broken" becomes a sad reality. This is the same as saying "why to buy insurance if you are not sick". The simple answer is that when you need the insurance, it is too late to get it (Niklas, L.P. Swanström &Mikael S. Weissmann, p.27-28)".

An element of success in the DP is undoubtedly the logic of thinking differently, respectively the change of approach by the IC in relation to CP.

The transition from a culture of reaction to a culture of prevention means early access of the IC to the pre-conflict hotbeds, not allowing the conflict to start, going to discover the roots of the conflict, not just solving the problem, coming down to the parties to the conflict, their involvement as an actor in solving the problem, since the parties to the conflict know better the roots of the problem will certainly be one of the elements of success in the PD " People caught in a violent conflict know their particular challenges better than any outsider. Thus, empowering those people and listening to them is an important element of planning project interventions (PASTRANA, A. & Solimano at all)".

An element of success is also the platform developed by the IC, respectively the UN in the long run in the prevention and management of conflict, known as the Agenda for Peace which includes many activities in this regard.

The Agenda for Peace includes various projects by international organizations, NGOs and other actors through assistance in various forms, including that with trained staff as well as financial assistance.

Conclusions

The period after the Second World War, as well as the one after the Cold War, has marked new developments in the international community, and at the same time has determined new approaches, new methods in relation to preventive diplomacy, respectively the creation of a concept within Preventive Diplomacy to prevent conflicts.

The main purpose of Preventive Diplomacy will be action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts, and to limit the spread of the latter when they occur.

Extraordinary role and contribution regarding these issues in Preventive Diplomacy, has given by former Secretary General of the

United Nations Boutros Ghali in his report: An Agenda for Peace, An Agenda for Development and An Agenda for Democratization.

In the context of conflict prevention, the Agenda for peace of the former UN Secretary General Boutros Boutros Ghali, marks an important turning point in international relations in terms of approach to conflict prevention, also regarding new threats to peace and security have been identified four major areas of activity have that United Nations should respond quickly and effectively, like preventive diplomacy, peacemaking, peacekeeping, and post-conflict peacebuilding.

The tools used in preventive diplomacy are diverse and numerous, like mediation, good offices, arbitration, deployment, etc. In this context, the international community has taken a very important step towards conflict prevention, going through "culture of reaction to a culture of prevention".

Within the culture of prevention**,** early warning conflict, problem identification, rapid collection of information, problem recognition, analysis, and clear conclusions are a clear view for International Community for the way how to approach the conflict.

Also, rapid and unified nature actions by the International Community in conflicts, the will of the parties in conflict for peace, are a key towards preventive diplomacy, peacemaking, peacekeeping, and post-conflict peacebuilding.

The contribution of the United Nations, as well as other mechanisms in conflict prevention through Prevention Diplomacy, conflict management has been crucial in some conflicts in the post-World War II period, and after Cold War.

The investment of the International Community in conflict prevention, respectively the measures that have been taken in terms of conflict prevention are various and numerous. In this regard, important is the legal framework that has been created within these mechanisms, and the creation of internal mechanisms for the implementation of prevention tools within the Preventive Diplomacy.

Mediation Support Unit, Commissions, various Departments as well as Regional Centers on different continents are some of these mechanisms. The investment of the international community will continue through the support in the establishment of Institutions in post-conflict

countries, the financing of various projects, cooperation, and assistance through experts in various fields.

Strengthening preventive diplomacy in the international community is seen, and understood as a need and necessity in peacebuilding, so the integration of regional actors - inter-regional, government organizations, NGO- s, experts, individual actors, but also groups of different entities in is very important, and one of the main tools in this direction.

Of course, Preventive Diplomacy in the future will be challenged in conflict prevention, and this comes because of many factors in international relations. Interethnic problems, inter-state ones, reforms in the socio-political system, new forms of violence such as terrorism, extremism, then climate change, poverty, cybercrime, possession of nuclear weapons, etc, are just some of the existing problems.

The creation of new states, meanwhile multi-ethnic societies increase the appetite of different ethnic groups in their independence, failure to treat ethnic groups by nation-states, the lack of quick reaction in the hotbeds of conflict, the underestimation of the situation, respectively the lack of serious treatment of the problem by the international community and the non-unification of the international factor are also challenges that accompany preventive diplomacy.

The transition from a culture of reaction to a culture of prevention, involving as many actors as possible, in preventive diplomacy to preventing conflict are only some elements of success.

Quick reaction in the hotbeds of conflict, the serious treatment of the problem by the international community, unification of the international factor, and the platform known as the UN Agenda 2030 Sustainable Development Goals (SDGs), as well as the mechanisms that will take care of the implementation of these measures, will be an element of success in Preventive Diplomacy.

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FOSTERING AUTONOMOUS LEARNING IN EFL: A KEY TO MOTIVATING STUDENTS

Arafat Useini, page 29-48

ABSTRACT

This paper aims to introduce the concept of student autonomy in the foreign language learning and teaching. The whole picture here is presented to provide a deeper understanding of the concept of autonomous learning. Learner autonomy is an important concept in educational fields. This section will consider what learner autonomy is, what skills autonomous learners need and why learner autonomy is important. The paper also looks at how learner autonomy can be developed, as well as considering the cultural aspects of learner autonomy. This article examines whether the English Language Preparatory School students at the International Balkan University are prepared to be engaged in autonomous language learning. The questionnaire used in the research are administered to 34 students. Students' responses are rated on five points for each item as: 1.Strongly Agree, 2.Agree, 3.Unsure, 4.Strongly Disagree, and 5.Disagree. According to the results of the questionnaires, the students show their attitudes towards the autonomous learning. Some pedagogical implications for fostering student autonomy will be recommended and also some suggestions for further researches will be offered.

Keywords: Autonomous learner, autonomous learning, Teaching English as a Foreign Language, learning, teaching. Court of Justice, Sanction.

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INTRODUCTION

The definition 'learner autonomy' has been used in education since the early 1980s, when it was first used by the educator Henri Holec. Holec defined learner autonomy as the learner's ability to take charge of his/her own learning. Other writers since Holec have modified this definition, in part depending on whether they see learner autonomy as a means to an end, or the end product itself. In taking responsibility for their learning, learners need to work in partnership with the teacher and other students.

The purpose of this research paper is to assess the impact of autonomous learning in the study of English as a foreign language. The broader aim of the paper is to demonstrate a deeper understanding of the concept of autonomous learning as a whole, by reviewing relevant literature, and further to a more specific understanding of the importance of autonomous learning throughout this process, particular emphasis on the development of reading skill.

ENGLISH LANGUAGE TEACHING AND AUTONOMOUS LEARNING

Nowadays, the education theories put greater emphasis on student activity than on teachers. According to Duroc (2012:96), autonomous learning is a process by which individuals control their own learning. A particular interest that has always provoked us, is student self-learning. Holec (1981) on independent learning asks for taking responsibility and control over the student's learning process. Thomson (in Lee, 1998) and Useini (2019) argue that language learning is a lifelong endeavor, and Richards & Renandya (2002:87) emphasizes that language learning is an individual process, from which we can conclude that language learning is a lifelong activity. As Benson (2001) argues, "the importance of helping students' being more independent in their learning has become a more emphasized topic". Self-learning is a very important concept in language learning. In fact, it is a natural tendency for students to learn to take control of their learning. In parallel, Thomson (in Lee, 1998) believes that human beings are born alone. Autonomy is so important that it can be found both in the institutional and outer-institutional context of learning.

The development of an independent student approach became crucial during the 1980s and 1990s. In these definitions, capability sometimes replaced by capacity or independence becomes autonomy.

Many researchers such as Marton & Salio (cited in Ade-Ojo, 2005: 192) who have contributed to the development of student autonomy believe that student autonomy is mandatory for the following three reasons: First, autonomous learning is necessary because education needs aim to help people think, act and learn independently in their lives. Second, while there is a shift in focus from teacher to student, the only (special) goal of how to improve teaching is to raise concerns about how individual students are progressing in their learning. Third, "Students with greater responsibility for their own learning are more likely to take a more serious approach to learning, which in turn leads to greater success." In emphasizing autonomous learning in education today, English teachers face challenges to develop and implement new curricula and approaches that can effectively improve the autonomous learning capacity of the learner.

DEFINITIONS, RELATED CONCEPTS AND RELATIONSHIPS WITH AUTONOMOUS LEARNING

Learning theories refer to and are found in the literature on different definitions of autonomy. According to Benson (2001:1), autonomy can be defined as "the capacity or role of taking control of one's own learning". In other words, it is a means by which students transcend the boundaries of their immediate learning environment (Byram, 2004). Another researcher, Holec (1981), defines autonomy as "the ability to take responsibility for one's own learning". In addition, Dickinson (1987:11) defines autonomy as "a situation in which the learner is fully responsible for all learning-related decisions and for the implementation of those decisions." He also argues that the autonomous learner is the one who takes over responsibility for one's own learning and does so without the intervention of the teacher or outside the formal part of the program.

Literature on autonomy abounds in definitions ranging from the simplest to the most complex (Ade-Ojo, 2005:193). Some of the most famous definitions in the current literature are the following:

-Autonomy is an adaptive ability, enabling students to develop support structures within themselves, rather than raising them around (Trim, cited in Esch, 1996: 37).

-Autonomy is a situation in which the student is fully responsible for all decisions concerning his learning and the implementation of those decisions (Dickinskon, 1987: 11).

-Autonomy is the capacity - for separation, critical thinking, decision making, and for independent action (Little, 1991: 4).

-Autonomy is the recognition of the rights of students in educational systems (Benson,1997:29).

-An autonomous person is one who chooses what to think and what to do (Kupfer, 1990: 2).

Dickinson (1993: 330) describes autonomous students as those who can discover as:

- Clearly identify learning objectives for teaching.
- Formulate their own learning objectives.
- To consciously select and implement appropriate learning strategies.
- Identify strategies that are ineffective or inadequate and replace them with others.
- And develop a rich repertoire of effective strategies.

Autonomy in the field of language teaching and learning has a history of almost thirty-five years. Holec (1981:1) explains that the concept of autonomy first entered the field of language teaching through the Council of Europe's Modern Languages Project, established in 1971. One of the results of the project is the establishment of the Center de Recherces et d'Applications en Langues (CRAPEL) at the University of Nantes, France, which soon becomes a central place for research and practice in the field. Yves Chalon, founder of CRAPEL, is regarded by many as the father of autonomy in language learning (Useini,2019:14).

AIM OF THE STUDY

Student autonomy is a prerequisite for effective learning (Benson, 2001:7). Promoting student autonomy in higher education in the Republic of Macedonia is a challenge for all language teachers as students are educated in traditional classrooms, where they are more passive learners. According to Xhaferi (2011: 151), students' autonomy was not encouraged and individual learning styles were insufficiently considered. Many students have difficulty learning autonomously due to insufficient knowledge of how to learn or learn a foreign language and lack of knowledge and skills on how to develop their language competences. Students should therefore be trained in such a way that they should be able to take control of their own learning procedures. The purpose of this research is to examine the effectiveness of the proposed tasks for

autonomous learning and to examine the attitudes of students towards autonomy.

The findings of this study may indicate to what extent students are trained as autonomous or to what extent they are autonomous. Further, this research may raise students' awareness of the concept of autonomy and its importance in language teaching and learning.

RESEARCH QUESTIONS OF THE STUDY

- What are the students' attitudes on taking responsibility for their own learning?

MOTIVATION AS A KEY ROLE FOR AUTONOMOUS LEARNING AND TYPES OF MOTIVATION

The basic theories of autonomous learning also refer to motivation as a key role in language learning. According to Yağcıoğlu (2015:431), motivation is essential for the development of language teachers, as they can achieve very useful activities in their classrooms and can often follow the latest innovations within their professions if well motivated or if they know how to motivate. New perspectives are always crucial in motivational teaching. Motivation is defined as performance, desire, or emotion that encourages second language learners to aspire to learn it (Gardner, 1985; Tavakoli,2011:210). Homola (1969:7) and Useini (2019) states that motivation is a general term for all the conditions that determine every human activity. Tatarko (Tatarko, 2008:84) adds that when we say that the individual is motivated, we are referring to the fact that he is doing something with a specific purpose and putting a lot of effort into it. In addition, this effort is related to the desire and willingness to reach the goal, as well as the positive attitude towards the activity that the individual intends to do. Gardner (1985: 50), a specialist in the psychology of learning a foreign language, creates a broader perspective on motivation. He argues that motivation includes four elements - goal, voluntary behavior, desire to achieve goal, and positive approach to activity, in the description of learning a foreign language. He (1985: 51) also argues that if we are to describe the motivation for learning English, it is necessary to know the specific reasons associated with the purpose of learning. If you ask the student, "Why are you studying English?" And the answer is "Because I have to," it will be considered as a reason why the student is in the classroom, but would not be considered as any motivation

for learning English. If we want to specify language learning goals, we need to link them directly to learning English.

In an article on the relationship between motivation and autonomy, Spratt, Humphreys, and Chan (2002: 245) emphasize the role of motivation in enhancing autonomous learning. They emphasized that motivation influences students' readiness for autonomy. This is why teachers need to focus on motivation before training their students to be more autonomous. Gardner & Lambert (1959) discuss two types of motivation: integrative and instrumental. Here, on the one hand, motivation is built on the desire of students to identify with or integrate with the target culture, and on the other, it is related to their education prospects or career progression. It is believed that integrally motivated learners put more effort into the learning process and enjoy it more (Lamb, 2004). On the other hand, Tavakoli (2009) argues that an instrumentally motivated learner has more pragmatic thinking in his or her mind about learning a second language (L2), such as getting a job or earning more money. An instrumentally motivated learner approaches language learning for practical purposes.

The other division of motivational types is most commonly known by teachers - intrinsic and extrinstic motivation is essential. Simply put, if the only reason for something is getting something, not just the activity itself, for example: passing an exam, getting paid, etc., we are talking about external motivation. Internal motivation is defined as “motivation to get involved in an activity because that activity is enjoyable and satisfying.” (Deci & Ryan, 1985: 39) Internal motivation is related to the motivation that comes from oneself, internally. It is accompanied by the enjoyment of the activity itself or the pleasure it derives from the activity created by doing a particular job. Penny Ur (1991: 280) defines essential motivation as a shared desire to learn for oneself. She also argues that it is related to students' previous attitudes, ie that learning is useful or has a positive respect for the target language and its cultural, political and ethnic components. Whereas external motivation refers to the activities that are performed to achieve an instrumental end, such as rewarding or avoiding punishment (Deci & Ryan, 1985).

AUTONOMOUS LEARNING AND LANGUAGE LEARNING STRATEGIES

Chamot (cited in Yurdaışık, 2004: 9) states that learning strategies are the conscious thoughts and actions that participants take to achieve the learning objective. Strategic learners have a metacognitive knowledge of their own thinking and learning approach, a good understanding of what the task entails, and the ability to direct strategies that best meet the task requirements and their own learning abilities. Before examining reading strategies, which is a specific problem, it is better to introduce a more general concept: language learning strategies. Oxford (1990, 1) defines language learning strategies as "steps taken by students to improve their learning skills. Learning strategies are defined as techniques for understanding, remembering and using information that is intentionally used and consciously controlled by the learner (Pressley & McCormick, 1995; Bjailstok, 1990; cited in Rahimia & Katala, 2011: 570). Strategies are especially important for language learning as they are tools for active, self-directed engagement, which is essential for the development of communication competence.

Wenden (cited in Geramia and Bainghloub, 2011: 1568) defines strategies as "the mental steps or operations that participants use to learn a new language and regulate their efforts to do so." Richards, Platt&Platt:1992) define them as "... the deliberate behavior and thinking students use during learning to help them better understand, learn or memorize new information."

RESEARCH METHODOLOGY AND OBJECTIVES OF THE STUDY

It is considered that traditional teaching methods are not widely used in the education system in the Republic of Macedonia. In addition, schools are formed in a structure that unfortunately does not give the importance to students' autonomy in developing and as a result, individuality and creativity are less encouraged. As a result of this system, students tend not to assume responsibility for their own learning during their education. Most of the older students have learning difficulties due to insufficient knowledge of how to learn a foreign language and lack of knowledge and skills on how to develop language competence. Students should therefore be trained in such a way that everyone should be able to take control of their learning processes. This situation alerts theorists and

foreign language teachers to focus on the key role of the student's autonomy in the teaching of English.

This paper basically aims to introduce the concept of student autonomy and independent application in foreign language learning. The purpose of this paper is to examine whether students are willing to be involved in autonomous language learning. The research was conducted to 34 first year English Language Preparatory School students.

MATERIALS AND DATA COLLECTION PROCEDURE

Students are asked to rate their opinions about attitudes towards taking responsibility for their own learning. The results of the questionnaire are also evaluated according to relevant procedures.

RESULTS

This chapter provides an analysis of the results and interpretation of the data collected from the student questionnaire. The data collected were very helpful in finding answers to the research questions:

'***What are the students' attitudes on taking responsibility for their own learning?'***

The main objective of this paper is to measure the success of 34 students to see their attitudes towards taking responsibility for their own learning. Accordingly, the challenges faced by students were examined. Designed surveys for examining attitudes are given to a group of 34 students. The results of the research will help to consider the implications of using questionnaires to develop and maintain student autonomy. This section gives a general picture of how students perceive or think about autonomous learning in teaching and learning the language. The results were obtained from the questionnaire, which included 39 of the closed type (from five response scales such as:1.Strongly Agree, 2.Agree, 3.Unsure, 4.Strongly Disagree, and 5.Disagree. The results of the questionnaire reveal that the majority of students have a positive attitude towards English language learner autonomy, as many students answered Completely agree or Agree with most of the answers in the questionnaire. The average grade point average is 3.93, indicating that the students agree with the statements given regarding the student's autonomy. The results of the answers of the questionnaire on attitudes related to the impact of autonomy on their achievements by students are given in the following Table 1.

Results of the questionnaire

Question items of the survey	Strongly Agree	Agree	Unsure	Disagree	Strongly Disagree	Average score
1. Students need to make decisions and set goals for their learning	11	17	3 (%8,8)	2	1	4,02
	Total 28 (82.4 %)			Total 3 (8,8 %)		
2. Students should make good use of their free time in studying English	10	16	1 (3 %)	5	2	3,79
	Total 26 (76,5 %)			Total 7 (20,5 %)		
3. Students should keep notes and write a summary of their lessons	12	14	5 (14,7 %)	1	2	3,97
	Total 26 (76,5 %)			Total 3 (8,8 %)		
4. Students should practice English outside the classroom, such as recording their voice; talking to other people in English	14	13	3(8,8 %)	3	1	4,05
	Total 27 (79,4 %)			Total 4 (11,8 %)		
5. Students should individually and independently use the library to improve English	11	8	10(29,4%)	2	3	3,68
	Total 19 (55,9 %)			Total 5 (14,7 %)		
6. Students should note their strengths and weaknesses in studying English and need to improve them	12	12	5(14,7)	1	4	3,79
	Total 24 (70,6 %)			Total 5 (14,7 %)		
7. In addition to the content of the lesson, students should read	8	9	9 (26,5 %)	5	3	3,41
	Total 17 (50 %)			Total 8 (23,5 %)		

additional materials in advance.						
8. When students achieve success or progress in learning, they should be rewarded: to buy new things, celebrate, and so on	10	11	7 (20,5 %)	4	2	3,67
	Total 12 (35,2 %)			Total 6 (17,6 %)		
9. Students should use the Internet and computers to learn and improve English	18	10	2 (5,8 %)	2	2	4,17
	Total 28 (82,4 %)			Total. 4 (11,8 %)		
10. Students must be responsible for finding their own ways of learning a language	15	13	1 (2,9 %)	4	1	4,09
	Total 28 (82,4 %)			Total 5 (14,7 %)		
11. Students should use self- study materials to learn English	13	15	3 (8,8 %)	2	1	4,09
	Total 28 (82,4 %)			Total 33 (8,8 %)		
12. Students need to evaluate themselves to learn better.	15	12	5 (14,7 %)	1	1	4,14
	Total 27 (79,4 %)			Total 2 (5.9 %)		
13. Students should have the right to be involved in choosing the content of the lesson or lesson	13	14	4 (11,8 %)	1	2	4,02
	Total 27 (79,4 %)			Total 3 (8,8 %)		
14. Students should be involved in the choice of learning tasks and teaching activities.	14	11	3 (8.8 %)	4	2	3,91
	Total. 25 (73,6 %)			Total 6 (17,6 %)		
15. Students should be responsible for their own learning	11	16	3 (8.8 %)	3	1	3,97
	Total 27 (79,4 %)			Total 4 (11,8 %)		

16. Students need to assess their own progress.	11	14	4(11,8%)	2	3	3,82
	Total 25 (73,5 %)			Total (14,7 %)		
17. Students should plan their time while studying English	14	12	6 (17,6 %)	2	0	4,11
	Total 26 (76,5 %)			Total 2 (5,8 %)		
18. Students should look for better ways to learn English	17	12	2 (5.8 %)	1	2	4.20
	Total 29 (85,2 %)			Total 3 (8,8 %)		
19. Students should exchange ideas with their friends and / or teachers on how to learn English.	14	9	6 (17,6 %)	2	3	3,85
	Total 23 (67,7 %)			Total 5 (14,7 %)		
20. Students (rather than the teacher) should be responsible for assessing how much they have learned	11	12	7 (20,6 %)	3	1	3,85
	Total 23 (67,7 %)			Total 4 (11,8 %)		
21. A lot of learning can be done without a teacher	8	9	10 (29,4 %)	5	2	3,47
	Total 17 (50 %)			Total 7 (20,6 %)		
22. Teachers should be responsible for persuading students to understand the language.	13	12	5 (14,7 %)	2	2	3,94
	Total 25 (73,5 %)			Total 4 (11,8 %)		
23. Teachers should point out the students' errors.	11	12	6 (17,6 %)	4	1	3,82
	Total. 23 (67,7 %)			Total (14,7 %)		
24. Teachers not only have to teach 'what' English is but should also teach 'how' to leam English.	15	14	2 (5.9 %)	1	1	3,24
	Total 29 (85,2 %)			Total 2 (5,8 %)		

25. The teacher should allow students to find their mistakes	14	11	5 (14,7 %)	2	2	3,97
	Total 25 (73,5 %)			Total 4 (11,8 %)		
26. Teachers should engage students in group work activities in which they work towards their common goals	16	10	5 (14,7 %)	1	2	4,23
	Total.17 (50 %)			Total 3 (8,8 %)		
27. The teacher is a figure of authority in the classroom	12	11	8 (23,5 %)	2	1	3,91
	Total 23 (67,7 %)			Total 3 (8,8 %)		
28. Knowledge is something to be 'transmitted' by teachers rather than 'discovered 'by learners themselves	8	9	11 (32.3 %)	4	2	3,50
	Total 17 (50 %)			Total 6 (17,6 %)		
29. Students of all ages may develop student autonomy.	9	16	4 (11,8 %)	2	3	3,76
	Total 25 (73,5 %)			Total 5 (14,7 %)		
30. Learning English gives me a pleasure	17	14	2 (5,8 %)	1	0	4,38
	Total 31 (91,1)			Total 1 (2,9 %)		
31. Vocabulary is the most important part in studying the foreign language.	11	13	6(17,6 %)	3	1	3,88
	Total 24 (70,5) %			Total 4 (11,8 %)		
32. Student's autonomy is promoted through activities that enables them to learn from each other.	12	10	8(23,5 %)	2	2	3,82
	Total 22 (64,7 %)			Total 4 (11,8 %)		

33. The autonomy of students is promoted when students have some choice in the type of activities they do	11	9	7 (20,6 %)	2	5	3,55
	Total 20 (58,8 %)			Total 7 (20,6 %)		
34. The autonomy of students is promoted when students are free to decide how their learning will be judged	12	16	4 (11,8 %)	2	0	4,11
	Total 28 (82,3 %)			Total 2 (5,8 %)		
35. Students keep records of their learning, such as keeping a diary, a portfolio, etc.	11	13	5 (14,7 %)	2	3	3,79
	Total 24 (70,5 %)			Total 5 (14,7 %)		
36. Students can consciously implement the appropriate reading strategies	11	15	6 (17,6 %)	2	0	4,02
	Total. 26 (76,5 %)			Total 2 (5,8 %)		
37. Students think that using materials improved understanding the texts	12	14	4 (11,8 %)	3	1	3,97
	Total 26 (76,5 %)			Total 4 (11,8 %)		
38. Students think that the use of reading materials develops knowledge of the themes of the texts.	13	16	3 (8.8 %)	3	0	4,11
	Total 29 (85,2 %)			Total 3 (8.8 %)		
39. They like students when the teacher explains what to teach.	17	14	2 (5,8 %)	0	1	4,35
	Total 31 (91,1 %)			Total 1 (2.9 %)		

As shown in Table 1, almost all students (91.1%) expressed their agreement (completely agree/disagree) with the statement under no. 30 (Learning English is my pleasure) and no. 39 (Students like it when the

teacher explains what to teach.). These are the two highest value statements: the mean score was 4.38 for the statement under no. 30 and 4.35 under no. 39. The results reveal that most students show positive opinions about language learning and say that they like it when the teacher explains what to teach.

In addition, students with a high percentage of responses expressed (strongly agree / agree) with statements No.24 (Teachers should not only learn "what" English is, but should also learn "how" to learn English.), No. 18 (Students should look for better ways to learn English.), No. 1 (Students need to make decisions and set goals for their learning), No. 9 (Students should use the Internet and computers to learn and improve English), No.35 (Students keep records of their learning, ie keep a diary, portfolio, etc.), No.38 (Students think that using reading materials develops their knowledge of the topics of the texts). Statement under No.10 (Students must be responsible for finding their own ways of learning the language) and statement No. 11 (Students need to evaluate themselves to learn better) are percentages of 3x85.2%, 3x82.4%, 82.4%. and 82.3%. Average value rating for statement under No.24 is 4.24, and for No. 18 is 4.20, for No.9 is 4.17, for No.34 is 4.11 and for No. 38 is 4.11, for No. 10 is 4.09 and for No. 11 is 4.09. Their views on these statements were that they need to know how to learn, look for better ways and evaluate themselves to learn better, to make decisions, to know how to use the Internet and computers, to keep track of his teaching in English. Students show that using reading materials enriches their knowledge of the topics of the texts. This indicates that students show a high level of agreement with their attitudes, and this demonstrates the important role of students in autonomous learning.

In addition, the students also expressed (strongly agree / agree) with the statement under No. 27 (The teacher is the authority in the classroom) average grade 3.91, No. 19 (Students should exchange ideas with their friends and / or teachers on how to learn English.) With a mean score of 3.85 and No. 32 (Student autonomy is promoted through activities that allow students to learn from each other) with a mean score of 3.82. Although students have a positive attitude about autonomous language learning, 67.7 perceive the teacher as having authority in the classroom.

On the other hand, the relatively low percentage of students has a statement under No. 33 (Student autonomy is promoted when students have some choice in the type of activities they do.) With a mean score of

3.55, No. 5 (Students should use the library individually and independently to improve English.), No. 21 (Much can be learned without a teacher.) With an average grade of 3.47, No. 7 (In addition to the content of the lesson, students need to read additional material in advance.) Mean score 3.41, No. 8 (When students achieve success or progress in learning, they should be rewarded.) With an average grade of 3.67, more than half of the students expressed agreement.

It can be concluded that students generally show positive attitudes towards independent learning in language teaching and learning. The mean value of the statements ranges between 3.41 and 4.38. Although many students have a positive attitude towards autonomy, it is surprising that they still have a feeling of dependence on the teacher as the main source of classroom. Proof of this is the statement under no. 7 (In addition to the content of the lesson, students should read additional material in advance.) And no. 21 (Much can be learned without a teacher.) Have the lowest values of 3.41 and 3.47. Such findings are also supported by Joshi's study (2011: 24), which states that students defined the role of the teacher "as an important component of their learning." In addition, Balcıkanlı (Balçıkanlı,2010:99) confirms that students define the teacher's role "more as an authority than as a facilitator."

CONCLUSION

The conclusion of this research is the determination of the student's autonomy as "the ability to take responsibility for one's own learning" (Holek,1981:1), that is, to have responsibility for all decisions regarding all aspects of this learning. He elaborates this basic definition as follows: establishing the goals of the language; defining content and progress; selection of methods and techniques to be used; following the procedure for acquiring and evaluating what has been learned. Learning itself is often seen as a necessary element of autonomous learning. Horvath (2005: 1) points out that autonomous learning is a complex and highly expressive construct. It can be defined as the capacity of students to self-direct their own learning, which means taking responsibility for decisions about different aspects of the learning process.

PEDAGOGICAL IMPLICATIONS

This research focuses on the application autonomous learning activities through tasks in reading as a foreign language. As Dewey states (cited in Balçıkanlı, 2008: 8), the primary purpose of education should be to prepare students to take an active part in social and political life by acquiring the skills and attitudes they need for democratic and social participation. Stevenson and Laycock (cited in Balçıkanlı, 2008: 8) point out that the capacity for self-reflection, learning and behavior is often considered an outcome in higher education. Thus, the development of autonomous learning is necessary because education should aim to help people think, act and learn independently in their lives. Students need to make decisions and set goals for their learning.

According to Littlewood (cited in Genç, 2015: 24) the primary importance of a learner's focus on language instruction is to help the learner acquire learning skills that ultimately lead to autonomous and continuous learning. Students need to plan their time while learning English.

Koçak (2003, 98) describes that increased motivation is a condition for the promotion of student autonomy. From this we can conclude that students 'motivation can be increased through some training programs designed to help students reduce their teachers' dependence and take responsibility for their own learning, be able to control their own learning and attribute their success and failure to their own efforts, not external factors, to developing goal setting and planning skills, building a sense of self-confidence.

Several researchers have emphasized the effectiveness of out-of-classroom learning. Students should practice English outside the classroom, such as: recording their own voice; speaking to other people in English.

To be truly useful in learning, students need to be engaged and fully involved in the learning process. Van Lier (quoted in Lee, 2005: 25) points out that learning is only possible if students are autonomous, in other words, if they make the choice to learn and are responsible for their own learning. Students must be responsible for finding their own ways of learning the language and can develop student autonomy at all ages.

According to Xhaferi (2011: 150) students' responsibility for their learning shows that the use of different techniques can promote students'

autonomy in higher education in Macedonia. So we as educators in educational institutions need to involve students in curriculum design, teaching methods, and thereby establish richer, unified and cutting-edge programs. Students should be involved in the choice of learning assignments and teaching activities.

Balçıkanlı (2010: 90) emphasizes that innovations such as student-centered approaches and ideas, technology-based approaches and communication approaches clearly indicate that students need to be able to take responsibility for their own learning in foreign language teaching, especially in the setting of learning English as a foreign language to meet the requirements for effective language learning. Language teachers play a key role in fostering student autonomy by taking extra activities and measures in the classroom.

To learn the target language the environment needs to be equipped, as is the case with school libraries in terms of target language. Daskalovska (2010c: 249) argues that "a prerequisite for introducing extensive reading as an integral part of the English language learning program is to equip school libraries with English literature."

This research also draws on the attention of teacher trainers to train them on how to change their roles from being the main authority to being the only source of knowledge for facilitators and facilitators of learning. Teacher trainers should include the idea of autonomous learning in their curriculum agenda.

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CONSTITUTIONAL AUTHORITY OF THE PRESIDENT OF REPUBLIC OF MACEDONIA

Azam Körbayram, page 49-65

ABSTRACT

It is very important to determine the level of authority of the head of state, who is directly elected by the people, in the classification of the government systems of the countries. In this sense, although the traditional theory is insufficient, it will be useful to benefit from the modern theory. Therefore, it is important to determine the level of authority by using the measurement table of Shugart and Carey developed by Metcalf for the determination of the level of authority of the president elected by the people in the 1991 Constitution of the Republic of Macedonia and to determine the government system applied in this context. Compared to the semi-presidential government system (prototype of the French Republic V) or the mixed dualist government systems, unlike the traditional parliamentary government system, the President of the Republic of Macedonia is considered as a factor that increases the democratic legitimacy of the election of the President directly by the people, not by the parliament.

However, if the powers of the head of state are not symbolic, election by the people will increase the possibilities that may cause a shift in the axis, and especially if the head of the political party with the parliamentary majority comes to the presidency advocates the idea that systemic problems may arise and therefore it would be more beneficial to return to the method of electing the head of state by the parliament in order to avoid such drawbacks. In addition, it should be emphasized that the counter-signature rule must be foreseen within the constitutional order. From this point of view, the subject of this study will examine the constitutional powers of the President of the Republic of Macedonia according to the 1991 Constitution and the level of these powers.

Keywords: Republic of Macedonia 1991 Constitution, Separation of Powers Theory, Governmental Systems, President, Level of Authorization.

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INTRODUCTION

In line with the theory of separation of powers of the state, the formation of the legislative and executive organs and their relations between them also differ from country to country. In this respect, the classification of the government systems of the countries is made according to the level of authority of the legislative and executive organs, especially the heads of state, and from this point of view, the authority level of the head of state becomes important. According to the traditional theory, there is a tripartite division of government systems as parliamentary, presidential and semi-presidential. However, in the course of time, ideas have been put forward that the traditional classification of heads of state according to the election method and level of authority is no longer sufficient and that different modern classifications are needed.

One of the most distinctive and basic features of democratic parliamentary government systems is the Presidency in the wing that represents the state, depending on the principle of duality in the executive. In pure parliamentarism, the two-headed executive is the Head of State on the one hand, and the Council of Ministers or cabinet on the other, which links the Head of State with the parliament. In a two-headed executive, the President is irresponsible in principle.

Mathew Shugart, who argues that there are subtypes of the parliamentary system according to the election and powers of the President, distinguishes the systems in which the President is directly elected by the people and has important constitutional powers from the parliamentary government systems, and classifies the other parliamentary systems into two main groups as pure parliamentary and presidential parliamentary systems. (Shugart, 1993, pp. 30-32)

It is seen that other theoreticians, except Duverger, mostly place the President in the subgroups of the parliamentary system, not as a separate system depending on the election of the President by the people and the degree of his constitutional powers (Boyunsuz, 2014, p. 54)

The two-headed executive structure expresses one of the main features of the parliamentary government system. The parliamentary government system is shared between the president, who is not responsible to the parliament, which has the authority to represent the state

at the highest level, and who has generally ceremonial powers, and the council of ministers (cabinet/government), which acts as a collective body that constitutes the responsible wing, which is the main element of the executive function.

If we look at the traditional functions of the executive, it would be correct to rank as follows: it would be appropriate to classify it as enforcing the laws, ensuring internal and external security, making the regulation processes of the executive, and determining and implementing the general policy of the country (Anayurt, 2018, pp. 603-606).

The Constitution does not include any provision in the form of an article regarding the definition of the executive function. However, since the President and the government are organized under separate headings, it is clear that there is a dual-headed executive. The 1991 Constitution of the Republic of Macedonia regulates the executive power in the third part, under the second title, the president, which is the irresponsible wing of the executive, in articles 79 to 87, and under the 3rd title, the government, which is the responsible wing of the executive, namely the council of ministers, in articles 88 to 97. The president is directly elected by the people, while the government emerges from the parliamentary majority. On the other hand, article 88 of the constitution clearly states that the council of ministers is the main authorized institution of the executive. In other words, the duty of the locomotive of state affairs has been given to the government, and this is an indication that the president does not have the powers that can be considered important.

The Macedonian Constitution, which foresees the President to be elected directly by the people, makes the President of the State equal to the legitimacy given to the Parliament. In parliamentary democracies, the unit of measurement for the principle of legitimacy is the majority of votes. So, if the President has more votes than the majority of the Assembly in the elections, it can be considered that he has stronger legitimacy than the Speaker of the Assembly and the majority of the Assembly. As a rule, it is accepted that the President has equal legitimacy with the Parliament in the government systems that foresees a two-headed executive (Markovic, 2012, p. 321).

On the other hand, since the President of the Republic is directly elected by the people, it means that he is elected by the Assembly and

through the consensus of the political parties, it stands out as the factors that facilitate the President's ability to use the powers he has received directly from the Constitution in terms of independence and increase his legitimacy (Skarikj, 2015, p. 848).

The fact that the President is directly elected by the people means that he has a more democratic legitimacy than he is being elected by the Parliament. According to the Serbian constitutionalist Markovic, defends the view that it is of vital importance in order to keep the Presidential office away from the pressures of political parties and to avoid being under the control of certain circles, it is necessary to personalize a Presidential office directly elected by the people, and in this sense to frequently use the powers obtained from the Constitution for the public interest and to implement the parliamentary government system in accordance with the principles of rule of law and democracy (Markovic, 2012, p. 32).

CONDITIONS FOR ELECTION AND ELECTION PROCEDURE OF THE PRESIDENT

The conditions and procedures regarding the candidacy and election of the President are regulated in Articles 80 and 81 of the 1991 Constitution. Its elaboration is regulated by the Election Law and the Presidential Election Law (1994).

The President is elected for a duty period of five (5) years, through general and direct elections, by secret ballot of the people. According to the Macedonian Presidential election system, a person can be elected President twice. As it is known in pure parliamentary systems, Presidents are not directly elected by the people, because the implemented system will have deviated from the pure parliamentary system. As a requirement of the pure parliamentary system, the President is elected by the Parliament (Parliament). In Germany, this is within the jurisdiction of a special election board.

As in other countries that have adopted parliamentary democracy, the Presidential candidate in the Republic of Macedonia must first be a citizen of the Republic of Macedonia. In addition to the citizenship requirement, according to the 5th paragraph of Article 80 of the

Constitution, in order to be a candidate, it is required to have lived within the borders of the country for 10 years in the 15 years before the elections.

Macedonia takes part in the group as in the same group belong states such as Turkey, Bulgaria, Greece and Germany, provided that the age limit is forty (40) years old. The constitutions of these countries actually set two age limits. The lower limit is the age limit of 18 years old, the upper limit consists of the limit of 40 years of age on the election day.

If we look at the procedure of the presidential election system, the first paragraph of Article 81 of the Constitution states that the presidential candidate will be possible with the nomination of 10,000 voters or 30 deputies. In Slovenia, the political parties can nominate candidates with a petition of at least 5,000 voters, provided they are supported by at least 10 members of the Parliament, at least 3 deputies, or by 3,000 voters. In Slovakia, at least 15 members of the Parliament or 15,000 voters can nominate the candidates. In Iceland, 1,500-3,000 voters can come together and nominate candidates, while in Bulgaria the nominating committees for political parties and independents have this authority (Boyunsuz, 2014, p. 111).

In elections held in a single region, majority system and and in general suffrage elections, the candidate who has the absolute majority of the valid votes, that is, 51% of the votes, is being elected as President. If the elections are foreseen as two rounds and the simple majority vote foreseen in the first round is not achieved, the second round of voting is held 14 days after the voting. The two candidates who received the most votes in the first round will have the right to participate in this voting, and the candidate who receives the majority of the valid votes will be elected President (Election Law art. 121).

On the other hand, the condition of participation, namely the quorum, was also foreseen and this was stated as the absolute majority of the electorate. In Macedonia, the minimum turnout rate, which was 51%, was reduced to 40% by making changes in the constitution and election law, since the presidential elections held in Macedonia could not ensure that the participation requirement in the determined elections, that is, the quorum of 51%, could not be reached and the elections were constantly going to the second round (Article 81 of the 1991 Constitution of the

Republic of Macedonia, paragraph 5, is regulated by the Constitutional Amendment No. XXXI of 9 January 2009).

By making arrangements in this way, in practice, it was aimed that the Presidential elections would be more successful and stability would be ensured due to the decrease in the interest of the voters. The problem that the participation condition could not be met, that is, the public did not show interest in these elections, brought along discussions and the option of electing the President by the Assembly came to the fore again. In case the sufficient participation rate is not reached, the re-election calendar must be announced within 40 days.

According to Article 14 of the Election Law, it is foreseen that it will be held 60 days before the expiry of the term of office of the previously elected President. Under the conditions that will be explained in detail later, if one of those conditions is fulfilled and the President's term of office has expired before, the elections will be held within 40 days. If the required majority vote is not obtained in the second round, the elections are repeated. Likewise, even if a candidate is nominated, the elections will be repeated if he/she does not have the determined majority in the first round. (Election Law Article 122, paragraph 2).

Article 82 of the 1991 Constitution, regulates the conditions for the termination of the Presidency and the power of attorney. Accordingly, in the event of death, resignation and incapacity, the presidency is terminated pursuant to the constitution. In such a situation, this position will be held by the President of the Assembly of the Republic of Macedonia by proxy, until the new President is elected. During the term of the President of the Assembly, the Speaker of the Assembly continues its activities without having the authority to make decisions.

DUTIES AND AUTHORITIES OF THE PRESIDENT OF STATE

In parliamentary republics, the heads of state are given some duties related to the executive, that is, the government, the legislature and the judiciary in a constitutional dimension. The powers and duties of the President are regulated in Article 84 of the 1991 Constitution of the Republic of Macedonia. However, we should immediately point out that all constitutional duties and powers are not included within the framework

of this article, therefore, other duties and powers of the Presidency regulated in different articles of the Constitution will also be specified.

According to Article 84 of the Constitution; "a) The President gives the authority to form the government, b) appoints/sends diplomatic representatives to foreign countries, c) receives foreign diplomatic representatives sent to the Republic of Macedonia, d) proposes two members of the Constitutional Court, e) proposes two members of the Council of Judges, f) Macedonia to appoint three members of the Security Council of the Republic, f) appoints three members for the Security Council of the Republic of Macedonia, g) presides over the Security Council, h) proposes the members for the International Council, i) deemes worthy for and presents with the state medal, j) *declares amnesty in cases specified by law, k) makes proposals to the Assembly and the Government on security and defense issues, l) In addition, it fulfills the duties of election and appointment and other duties specified in the Constitution and the law, and exercises authority."*

In addition to these powers, promulgates laws, send laws to the Assembly for reconsideration (delayed veto power), signs the international treaties on behalf of the state, represents the Commander-in-Chief of the Armed Forces, decides on the use of the Armed Forces, appoints the President of the National Intelligence Organization, complies with all or certain provisions of the Parliament's Bylaws. It has been stated before that he has certain constitutional powers, such as filing an annulment action in the Constitutional Court for the supervision of conformity in terms of form and substance, appointing ministers upon the proposal of the Prime Minister, and dismissing them from their duties. If they are handled and examined in turn, the Constitution gives the President the duty to represent the state in international politics and other foreign states. The meaning that comes out of this can be stated as sending (appointing) ambassadors and diplomats to foreign states upon the proposal of the government and accepting foreign state representatives, suggesting that the country joins or exits the union, and signing international agreements on behalf of the country.

The issue that needs to be mentioned is that international agreements have been expanded by law and left to the government. In fact, the 1998 Law on Conforming International Treaties clearly states that the President

has the authority to sign “agreements on international law matters”. Prime Ministry, on the other hand, he has the authority to cover the fields of "economy, finance, science, culture, education, sports, communication and relations, environment and urbanism, construction, nature protection, agriculture, forestry, social policy, human rights, diplomatic and consular relations, defense and security" (Frckoski, 2012). In other words, the authority to make international agreements covering many daily issues from education to the economy is stated as the authority and duty of the Council of Ministers, so the President's powers are deemed to have been taken away in this case.

The President is also given certain powers in matters of defense and security. The President is the Commander of the Armed Forces, that is, he decides on many issues including the strategy and planning, use, mobilization and development of the Armed Forces. In addition to these powers, it also has the power to appoint and dismiss the Chief of Staff and senior Generals. Although attempts were made to shift authority in favor of the Ministry of Defense in this regard, the Constitutional Court stated that the powers were within the context of the constitutional powers of the President. (Sud, p. 251-253) Section III of the Law on Defense regulates the distribution of powers in articles 19 to 21, that is, it regulates in detail the powers given to the Council of Ministers and the Ministry of Defense as well as the Presidency.

When it comes to security, the President is the Chairman of the Security Council of the Republic of Macedonia. (A.Y. article 1, paragraph 1) The Security Council refers to an institution that discusses the problems of the country in the field of defense and security and has an active role. In line with his work, he advises both the Parliament and the Government. According to the second paragraph of Article 86 of the Constitution, the Speaker of the Assembly, the Prime Minister, the Minister of Interior, the Minister of Foreign Affairs, the Minister of Defense and three outsiders are appointed by the President to cover the general public. (1991, p. art. 86) The second important issue is that the Head of the State Intelligence Agency is appointed by the President for a four-year term. The intelligence agency was established as an independent institution tasked with carrying out studies against threats that may come from outside, and

was made responsible only to the President of the Republic in the context of its activities.

It is obligatory for the laws brought by the Assembly with a simple (absolute) majority to be published by the President with a decree (указ), but the President may not sign the law decree and send it back to the Assembly for re-negotiation. Law The President has to sign the decree to promulgate the law as a result of simple majority voting. Let us immediately point out that the President has no veto power on laws that require a two-thirds (2/3) majority of the total number of deputies. This form of veto power is known as a delaying veto in the doctrine (Şkarikj, 2015, p. 859-860). The discretion of the President to make a statement while exercising his veto power is left to his own discretion, so that if he makes a statement, it is considered as a positive step towards the principles of democracy and the rule of law.

The veto power means the President's direct influence (intervention) on the legislature, that is, it means the mechanism that prevents the legislature from making a regulation that would be unconstitutional (Constant, 1993, p. 33). From the point of view of constitutional theory, it can be said that the President performs two basic functions with his veto power: firstly, it refers to the participation of the head of state in legislative functions, and secondly, it expresses the power of supervision in the abuse of legislative and executive organs (Skarikj, 2015, p. 862).

If we look at Article 52 of the Constitution, it is regulated that laws and parliamentary decisions are published in the Official Gazette after seven (7) days at the latest. The result of this regulation can be expressed as the fact that the signing or vetoing of the law by the President must take place within 7 days. Therefore, contrary to the American system, in the Macedonian constitutional doctrine, the President's silence means his disapproval (Klimovski,2012, pp.430-431).

With the arrangement made in Article 173 of the Rules of Procedure of the Assembly, it is regulated that if the President does not sign the decree, the third reading of the bill is made within 30 days. In other words, if the President does not sign the decree within 7 days, the Assembly has tried to impose a time limit by foreseeing that the law will be amended within 30 days. According to Article 89 of the Constitution of the

Republic of Turkey, the President shall promulgate the laws adopted by the Grand National Assembly of Turkey within 15 days.

In our opinion, this 30-day period takes its place in the doctrine as a restriction on the decision-making of the Assembly rather than the President, and this issue has not been fully clarified until today.

Another issue arises both within the framework of Articles 52 and 75 of the Macedonian Constitution, as well as with the decision of the Constitutional Court, stating that "without a decree signed by the President, there is no law", and this situation reveals some legal obstructions. For example, it is debatable what will happen if the President does not approve of a law text which is not approved by the President and which is in conformity with the Constitution in terms of form.

At this point, the important issue to be emphasized is that in Turkish constitutional law and as regulated by the 1982 Constitution, the nature of the President's law issuance is an administrative act, not a legislative one, and the President's signature is not important for the law to be enacted. (Önder, 2007, p. 78) Similarly, the 1937 Irish Constitution (art. 25), the 1976 Portuguese Constitution (art. 137), the Greek Constitution (art. 42) and the promulgation of laws by the President are regulated by the Constitution (Gozler, 2001, p. 160).

However, as the Article 75 of the 1991 Macedonian Constitution clearly states, the regulation as "*There is no law/cannot be promulgated without a decree bearing the signature of the President and the unpublished law does not qualify as a law*" means that the decree of the President for the promulgation of the law is a legislative act and the law is presented as a condition of existence.

Although the subject is not clear either by the Constitution or the Bylaws, in such a case, no responsibility is imposed on the President. In other words, within the framework of Article 87 of the Constitution, no other legal solution is foreseen, except for the opening of an impeachment investigation against the President's legal responsibility with a 2/3 majority of the Assembly. Considering this situation, it is inevitable for the President to take advantage of this emerging law gap.

Academics on the subject stated that he was influenced by the French Constitutional law and that the isdar (promulgation) process was observed by the President, who constitutes a wing of the executive, resulting from the interpretation of the Macedonian Constitution.

Ozbudun, who adopts the opinion of Jasques Cadart, defines the insistence/isdar process as the fact that the head of state gains executive power after a certain date by making the law official and signing it after determining that it complies with all the procedures foreseen in the constitution in making laws (Ozbudun, 2017, p. 234-235). In accordance with this, Macedonian constitutional lawyers also argue that the President's not having the law published by decree is in accordance with the Constitution, that the President has the authority not to sign laws that may disrupt the unity of the state and the nation or negatively affect the constitutional order, and in this way act as the guardian of the legal order. They clarified the issue by underlining the need for it (if there is no decree, there is no law) (Klimovski, 2012, p. 432).

According to the Constitution, a law that does not bear the signature of the President cannot be published, and even if it is published, it is deemed not to have entered into legal force. That being this case, Is s the President's delaying veto power an absolute veto power in this context? raises the question. Most scholars agree that in this form of the Constitution (whether consciously or unconsciously) the President actually has absolute veto power.

The first paragraph of Article 85 of the Constitution regulates that the President must inform the Assembly about his powers and duties at least once during the working year. Shkarikj argues that although it is not as effective as veto power, it can be used effectively. With this authority, which he considers as "spiritual power", he defends the view that he can influence the deputies and the public through the Assembly.

In addition, since the Constitution includes the expressions "at least once" within the framework of the authority granted to the head of state, the head of state can use this authority more than once throughout the year and can make statements to change the work carried out by other state authorities. It can play an active role in political life by directly addressing deputies, political actors and especially the public from the parliamentary rostrum. Authorization for the formation of the government

also expresses one of the powers specific to the President. After the general elections are held, with the Assembly meeting and taking office, the head of state gives the authority to form the government to the political party that receives the most votes within 10 days (A.Y. art. 90, parag. 1).

The Prime Minister candidate submits the government program and the list of ministerial candidates to the Cabinet within 20 days. If the Prime Minister candidate with this authority does not have a majority or if the program presented by the Parliament is not accepted, then the government is not be formed. Nevertheless, what is expected from the President is to act in accordance with the principles of democracy and the rule of law, and to present the authority to form the government to the political party that received the second highest vote. There is also a legal gap in this regard, that is, the constitution does not impose an obligation on this issue. If none of them has the majority and can form the government, the elections will have to be renewed.

The point that should be emphasized in particular is that the head of state has ceremonial, that is, symbolic authority, that is, the government program and the list of those who will form the cabinet are presented to the Parliament, so it is clear that it is under the authority of the legislature. The President is symbolically limited to the task of forming the government only by authorizing the political party actors who have the majority of the votes or the majority of the parliamentary seats and who can form the government.

The powers of the Head of State regarding the judicial organs are not very broad. The Council of Judges is empowered to propose two members and to propose two members to the Constitutional Court.

According to the 1991 Constitution of the Republic of Macedonia, the President seems to have broader powers in cases of state of emergency and declaration of war (martial administration). The head of state, who has the authority to present the proposal to declare a state of emergency and war across the country or in certain regions, is envisaged to pass to the Presidency if the Assembly cannot convene, and to declare a state of emergency or martial law and submit it for approval when the Assembly convenes (AY art. 21, 54, 63 and 122 - 128). In the event that the Assembly cannot convene within the period of the State of Emergency

and the declaration of war, the head of state has unlimited authority to appoint and withdraw senior officials of the state, especially the government, on matters that are under the authority of the Assembly in ordinary periods. In many countries that have adopted the parliamentary government system as it is included in the constitutional law doctrine, although the authority to issue "decree decrees" during the state of emergency and war periods is a power granted to the Council of Ministers convened under the chairmanship of the President, the Republic of Macedonia Constitution is a power granted only to the Council of Ministers as regulated in Article 124 of the constitution. has taken its place in legal doctrine. It is obvious that the power to issue a decree-law (DL) (known in Macedonian constitutional law terminology as - Уредба со законска сила) is not the right one given to the government instead of the President, and in terms of the security of the state, some problems may arise in the part of decision-making during the war and state of emergency. Therefore, this situation needs to be rearranged and corrected urgently in terms of the Constitution by following the constitutional practice (Şkarikj, 2015, p. 864).

Finally, the decisions and qualifications that the President can make based on the Constitution and the law will be examined. The head of state's legal decision-making authority can be classified into four different categories: strategy, planning, decree and decision. Strategy and planning are of a general nature and express the regulations of the Presidency for the defense of the country and the Armed Forces. It is the Presidential decisions and decrees that concern us more. So, the Presidential decisions can be general or specific (personal) depending on their character. For example, the decision taken regarding the development of the military administration or the decision of the state of emergency or the declaration of war are general decisions, while a decision made about a private person constitutes a personal decision. In other words, the process of presenting a rank to a military personnel or dismissing the general or assigning him to the general position is a special (personal) decision. Declaring a special amnesty or mitigating or abolishing the sentences of certain people has also taken its place in the doctrine as a special decision (Skarikj, 2015, pp. 865-866).

Decree can be expressed as the decision-making form or mechanism that the Head of State usually and frequently resorts to and

uses to carry out most of the proceedings. The President of Macedonia carries out many of his actions with Presidential decrees. The authority to publish this decree is in the nature of a declaration. Together with the Speaker of the Assembly, the process of promulgation and enactment of the laws, that is, the approval of the laws, takes place with the Presidential decree.

These transactions, which have a general nature regarding the laws, may also be in question for special cases. The President carries out all the processes of sending state representatives to foreign countries, appointing, recalling or dismissing ambassadors, appointing high-level state officials within the scope of the duties and powers of the President, as well as the appointments of generals, and state decorations presented to local and foreign individuals through Presidential decrees. The presidential cabinet or residence (on all matters related to personnel and functions) also regulates their issues by decrees.

Apart from the strategy and planning legal procedures regulated by the Defense Law, only Presidential decrees are foreseen for the President as a legal action mechanism. The fact that the 1991 Constitution allows the President to carry out every legal action only by decree is seen as a deficiency by academics and the issue of expansion in this regard comes to the fore.

CONCLUSION

The measurements of Shugart and Carey, corrected by Lee Metcalf to measure the level of the President's powers, are the current and modern measure in terms of giving the most consistent results (Metcalf, 2000, p. 660). The author's size chart consists of two parts; the first is legislative powers and the second is non-legislative powers. Gathering legislative powers under seven headings, Metcalf stated that i) package veto, ii) partial veto, iii) decree-law, iv) legislative proposal, v) budgetary authority, vi) submitting laws to referendum and vii) a priori constitutional jurisdiction. These criteria are realized in the form of scoring between zero and four (0-4).

Accordingly, the President of Macedonia has the veto power, which is exceeded by an absolute majority (it will have 2 points), since partial veto power is not foreseen, therefore it is not authorized (unauthorized, that is, 0 points), the head of the state does not have the power of decree-law (0 points), the power to propose laws The head of state has only the authority to propose a constitutional amendment (0 points), the budget proposal and negotiations are also under the authority of the parliament (0 points), the proposal to submit the laws to a referendum also has no authority (0 points) and due to the absence of a priori control over the constitutional judiciary, there is also a lack of authority (0 points). In other words, according to Metcalf's authority level measurement table, it is clearly determined that the presidential office of the Republic of Macedonia has symbolic powers and therefore it is not so important that it derives its legitimacy from the people.

Another proof of the symbolic powers of the head of state in the Macedonian constitutional and political order is the absence or nonpredictability of the "counter-signature rule". The fact that the signature of the prime minister or the relevant minister in the capacity of the responsible wing is not required regarding the legal actions taken by the head of state is also in the view that it may be due to the symbolic authority of the head of state. Therefore, it is highly probable that a head of state who represents the integrity of the state and the nation and has symbolic powers may have been chosen by the people to eliminate the risk of being the subject of political bargaining by the deputies.

Under the title of extra-legislative powers, which the authors stated in the second category, it was determined as i) formation of the cabinet, ii) dismissal of the cabinet, iii) no-confidence, and iv) dissolution of the parliament. Regarding the formation of the cabinet, the head of state 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. At this point, it is seen that the executive's power of termination, which is the main feature of the parliamentary government system, has not been fully recognized by the executive. Constitutional lawyers aim to categorize whether the applied government systems belong to the semi-presidential system or to the parliamentary government systems with the president they advocate by determining the level of

authority of the heads of state on the basis of the fact that the head of state is elected by the people.

However, the President of Macedonia, as the irresponsible wing of the executive, the authority representing the integrity of the state and the nation, It pushes us to think that it has ***"symbolic"*** and ***"ceremonial"*** powers or ***"authorities close to it"*** in terms of the narrowness of the powers it holds, which has constitutional regulations in a way that has a low level of effectiveness in political life, that is, in a way that has the characteristics of the parliamentary system.

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WAYS OF CHANGES IN PROPERTY RIGHTS

Funda Nezir, page 67-78

ABSTRACT

There are legal transactions that directly affect a right in the property of a person, transferring that right to another person, limiting it, changing or terminating its legal content. With the execution of legal transactions, the absolute and relative rights in the assets of the person are affected, causing changes in the concept of right ownership. Peculium process are usually done to settle a loan that is charged with a debt transaction. Absolute rights, relative rights and legal relationship in assets are among the rights that may be subject to peculium process. In our study, theoretically, in a narrow sense, the effect of legal transactions on assets has been discussed. Based on this scope; The effect of disposition on the right has been examined in terms of the peculium process, the types of affecting the right, and finally the absolute and relative rights in the assets.

Keywords: Assets, Peculium Process, Rights.

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1. THE EFFECT OF THE PECULIUM PROCESS ON THE RIGHTS

1.1. The Effect of Rights on Assets

The main subject of the peculium process consists of rights. The right in the assets of the right owner; It can be transferred, limited, terminated, or its content can be changed. While defining the peculium process, we see that in the doctrine, most authors have made a narrow definition of the peculium process and limited the definition only to the case when the right is affected[1]. A group of authors in the doctrine that defines the concept of the peculium process, based on the affected right, argue that a legal relationship may also be the subject of a disposition transaction. As a matter of fact, some group of authors only made the definition of the disposition process and did not add the affected legal relationship element to this definition because they did not start from the affected right. In the peculium process, which can be divided into narrow and wide, the subject of the peculium process in a broad sense is the right or legal relationship. In a broad sense, the definition of the peculium process is as follows[2]. Peculium process is a legal transaction that directly affects an existing right or legal relationship, transfers, restricts, terminates or changes its content. The doctrine argues that the right is subject of the peculium process[3]. According to Flume, the subject of the peculium process consists only of rights. If a legal relationship is canceled or if the right to withdraw from the contract for any reason whatever is used, it is not the legal transaction itself that is affected, but the right within this transaction and the subject of the transaction is affected. In the narrow sense, the peculium process includes only the right, while it is known that the peculium process in the broad sense includes the right or legal relationship[4].

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[1] Mustafa Dural, Suat Sarı, **Türk Özel Hukuku Cilt I Temel Kavramlar ve Medeni Kanunun Başlangıç Hükümleri**, İstanbul 2012, N. 1132; Hugo Oser,Wilhelm Schönenberger, **Kommentar Zum Schweizerischen Zivilgesetzbuch Das Obligationenrecht**, Erster Halbband: Art.1-40, Zürich 1929. N. 50.

[2] Lorenz, **a.g.e.**, s. 489; Bayerle, **a.g.e.**, s. 1079.

[3] Flume, a.g.e., 5b.

[4] Robert Lauko, **Art. 152 Abs. 3 OR und die aufschiebend bedingte Abtretung**, Zürich 2012. s. 17; Andreas Von Tuhr,Hans Peter, **Allgemeiner Teil des Schweizerischen Obligationenrechts**, Erster Band, S 25, Zürich 1979, s. 194.

While explaining the peculium process, Von Tuhr, who discussed the peculium process more broadly, stated that it could be the subject of all kinds of rights or legal transactions that can be changed at the will of the parties. While it is not possible for the assets to be subject to the peculium process as a whole, it is concluded that only an element included in the asset may be subject to the peculium process. The right subject to the peculium process is affected as a result of this transaction, while this effect is either in the form of transferring, limiting, terminating the right or creating a change in the content of the right, consequently reducing the assets of the person making the transaction. What should be understood from peculium process in goods is actually peculium process on property[5]. When the subject of peculium process is not the item, it is the right on the goods and there is no peculium on the goods[6]. Depending on whether the right has a value that can be measured in money, the right is subjected to the distinction between the right of individual existence and right to property. Since the right to personal property does not have a monetary value and is excluded from the right of assets, it cannot be subject to disposal. Since the asset right has a quality that can be measured in money, it is divided into two as absolute rights and relative rights. Absolute right is divided into real right and intellectual right; In the relative rights group, there is the right to receive. Absolute rights and intellectual property rights can be subject to disposal, as they are property rights that can be measured by money[7].

1.2. Effect on Rights Not Included in Assets

In order for a right to be the subject of a peculium process, as we have stated before, this right must be included in its assets. If the right is included in the assets, it will naturally be the subject of the peculium process. In the borrowing transaction, which paved the way for the formation of the peculium process, the inclusion of the right in the assets was not sought. If the person wishes, he can make a debt transaction regarding a right that is not included in his assets and this borrowing transaction is valid. This situation does not mean the same for the

[5] Nuşin Ayiter, **Mamelek Kavramı Üzerinde İnceleme**, Ankara 1968, s. 27.
[6] [6] Von Tuhr,Peter, **a.g.e.**, s. 194; Haedicke, **a.g.e.**, s. 967; Kudret Ayiter, **Medeni Hukukta Tasarruf Muameleleri**, İstanbul 1953, s. 17.
[7] Von Tuhr, **a.g.e.**, s. 239.

peculium process and raises the following question. Can a person make a right that is not included in his / her assets the subject of a peculium process? A right that is not included in a person's property may belong to another person or a right that does not exist in the realm of law[8]. The right belonging to someone else can be a right that the person can have later or a right to which he is not connected in any way. If a peculium process has been made regarding the right belonging to someone else, if the owner of the right approves this transaction later, or if the unauthorized person gains the right in this peculium process later in any way, the transaction becomes valid. Can this rule be applied to the right that does not exist? Subjecting a non-existent right to a disposal process and then applying the above-mentioned rule in any way constitutes a violation of the law in line with the principle of certainty. In terms of absolute and relative rights, it is not possible to attribute the state of disposition of non-existent rights to a general rule, but it is necessary to examine the issue by making a distinction between absolute rights not included in assets and relative rights not included in assets. The application of this principle to the disposition of the non-existent right would be contrary to the expression of the law.

2. WAYS TO EFFECT THE RIGHTS

While defining the peculium process, we stated that it is a legal transaction that directly affects the right. The right is affected in various ways. For example, in the transfer of ownership, when a right is transferred in the transfer of receivables; a right is restricted in establishing an easement right on the property; In the debt relationship, the content of the receivable right changes with the granting of a new period to the debtor and the right ends when the movable ownership is waived. As can be seen, the peculium process occurs in the form of transfer, termination, limitation and content change**.**

2.1. Transfer of the Right with the Peculium Process

The most common peculium process is the one in which a right is transferred. The peculium process causes the connection between the right

[8] Andreas Von Tuhr, **"Verfügung über Künftige Forderungen"**, JZ, 1904/9, s. 428.

and the former owner to disappear as a result of the transfer of the right[9]. With the transfer of the right in the peculium process, the bond between the person and his right ends, and a new bond is established between the transferred right and the new person. With the transfer process, while the right is directly affected, the owner of the right also changes. The process of waiving a right and the transfer of the right does not mean the same situation. When a right is waived, there is no new bond between another person and the right, while in a peculium process where a right is transferred, the connection between the former owner and the right ends and the new owner of the right takes this place.

In order for a right to be a subject of transfer by being directly affected by the peculium process, the right must be a right that can be transferred. The inalienability of a right may arise from either the law, the nature of the right itself or the conclusion of a transfer prohibition agreement between the parties in terms of the right to receive. It is not possible to waive or limit this authority by any legal action. It is not possible to make a transferable right inalienable with the agreement of the parties, that is to prevent the transfer. In the transfer process, the person who transfers the right becomes the owner of this right from the moment of transfer.

The agreement of the parties that the transfer transaction has a retroactive effect is not valid because the transfer transactions create a forward-looking effect. Transfer transactions can be in the form of mutual or unrequited gains. Most of the transfers are usually done in a mutual form. An example for unrequited gains can be given a donation agreement. While the right is transferred in this kind of peculium process, the right is acquired without any need for transfer and gratuity since the person who earns the right does not make a payment in return for this transfer. Savings in order to transfer a right must be made by contract[10]. Even if the connection with the former owner of the right is terminated after the transfer, some liabilities may continue. After the transfer of the property right with the contract of sale, if the former owner has given a guarantee, his liability continues. In terms of absolute and relative rights, the transfer

[9] Jale G. Akipek,Turgut Akıntürk, **Eşya Hukuku**, İstanbul 2009, s. 461
[10] Von Tuhr,Peter, **a.g.e.**, s. 147.

of the right may have different results. In the transfer of the receivable right, the new owner has the right to demand the receivable[11].

2.2. Termination of the Right with Peculium Process

Peculium process is another way of transaction that terminate the right. The peculium process that terminates a right, a connection is not established between the right and a new person, the right is not transferred to another person, that is, the bond between the right and the right owner is definitively terminated. Regardless of whether the peculium process terminating the right is a unilateral transaction or contract, it is safe to use the word waiver for these transactions. Because renunciation means that the right owner relinquishes his right without transferring a right in his property to another person and without creating a new right[12]. To be able to waive a right, that right must be a waiver. Because if the right is not transferable, the peculium process made in this case will not be valid. It is not possible to render a right that is waived at the parties own free will. This process in this direction refers to the limitation or abolition of the disposal authority through a contract. As a matter of fact, this transaction, which the person has promised not to waive with the borrowing transaction is valid, and on the contrary, the waiver may result in debt. The waiver takes effect with effect on the provisions. It is not possible to effectively relinquish absolute rights or claims to the past[13]. The waiver implicitly gives a right to the person, that is, the waiver of a right creates conditions suitable for the gain of another person, as this right will become unclaimed. In addition, the waiver can make another person's situation more favorable. As a result of a waiver of a limited right in rem, the owner becomes more favorable.

As we have mentioned before, the peculium process can manifest as a gaining and subtractive process. The type of transaction that terminates a right without transferring it, which is generally done as a unilateral transaction and does not provide a gain for another, is called a subtractive

[11] Von Tuhr, **a.g.e.**, s. 59.
[12] [12] Von Tuhr, **a.g.e.**, s. 265; Heinrich Simons, **Der Verzicht im Bürgerlichen Gesetzbuch**, Köln 1935, s. 12.
[13] Von Tuhr, **a.g.e.**, s. 272;

transaction. In the field of absolute rights, the person can disown this right by terminating and relinquishing his right of his own will, but this situation is unacceptable in terms of the right to claim. The removal of the receivable right from its assets is always a profitable transaction for another person, and in this case, the peculium process is a profitable peculium process. When we look at the right in the property, it is accepted that the right is a subtractive peculium process due to the waiver of the property of the person without entering the property of another person. A person can abandon an item in his possession and abandon this item. However, it is not possible to disown the debt right by unilateral waiver.

As an example of an exception to the rule that the right to claim will not be subject to a unilateral waiver, we can give the case where the will of the will waiver waives the claim right and this exception is accepted in the doctrine[14]. As we have stated, a claim rights cannot be the subject of a unilateral waiver, while a legal relationship cannot be subject to unilateral waiver. In order to abolish the legal relationship, that is, to be deleted from the legal realm, the parties must make a rescission agreement. Restraint agreement is a type of contract in which the parties of a legal relationship terminate by agreeing to their rights and receivables arising from the contract and their qualifications to be a party in the contract, in a broad sense of the nature of a peculium process.

2.3. Limitation of the Right by Peculium Process

While the acquisition of the right is in the form of transfer and actually acquisition, another type of acquisition is the establishment of the right. Establishing the right, based on a right in the property of the person, a right that was not included in the property independently before is established and another person immediately gains this right when this new right is established[15]. When limiting a property right to a limited real right or a right of debt to a pledge or usufruct right, a right that is actually included in the property is limited to another right, thus a right that was not previously included in the property of the person is established, that

[14] Von Tuhr, **a.g.e.**, s. 270.
[15] Hatemi, **a.g.e.**, s. 8; M. Kemal Oğuzman,Nami Barlas, **Medeni Hukuk**, İstanbul 2012, s. 237; Rona Serozan, **Medeni Hukuk**, II S 7, İstanbul 2008, N. 3; Mustafa Dural,Suat Sarı, **Türk Özel Hukuku Cilt I Temel Kavramlar ve Medeni Kanunun Başlangıç Hükümleri**, İstanbul 2012. s. 1189.

is, the new right is established and the new right is acquired by another. A right included in the assets can give more than one authority to its owner. The person can use his / her own property right, benefit from his / her benefits or consume it. In the establishment of the right, one or more of these powers that are included in the original right are separated from the original right.

Another right is derived with the peculium process restricting the right and this derived right belongs to someone else. As a result of the independence of one or more powers belonging to the original right, the derived right and the original right have a negative content. In other words, the original right owner is under the obligation to refrain or bear due to the derived right. While the original right may be subject to peculium process with the right that limits itself, the derived right may also be subject to peculium process in a separate form. In order for a right to be restrict able, it must have this feature. If the original right is transferred to another person, the new right owner will also be the owner of the limited derived original right. In case of waiver of the real right or the relative right, different situations arise in the derived right. If the right to be waived is the same right in kind, then the derived right continues to exist. If the relative right is waived, it will end in the derived right, so the derivative right holder must also consent to this situation. It allows the establishment of more than one derived right due to its proprietary right content. If there is more than one derived right on the same item, their relationship with each other is only determined according to the priority between them.

2.4. Changing the Content of the Right with the Peculium Process

It can be in the form of changing a right without losing its quality, changing its content or changing its side. As a result of the change in the content of a right with the peculium process, the content of the right changes without any change in the right owner[16]. With the change of the content of the right, the right strengthens, weakens or even if the content of the right has changed, the right may remain as it is. For example, the right to claim is strengthened by annotation to the title deed of the lease

[16] Erich Schulz, **Der Begriff der Verfügung**, Breslau 1903, s. 41.

contract, and if the annotation is abandoned, then the right will be weakened. In order for a change to be made in the content of the right, the right must be changeable. Changing the content of the right may be prevented due to the provision of law or the agreement between the parties. For example, while it is not possible to change the property right due to the principle of commitment to type, it is possible to change the way of using the limited real right.

Transaction regarding the change in the content of the right are proactive and the parties cannot ensure that this change has an impact on the past. As a matter of fact, while this rule finds an application area without exception in terms of absolute rights, it is possible that the peculium process aimed at changing the right to claim can be retroactive. By changing the borrowing transaction or the right to claim, the debt transaction or credit right does not disappear, but only changes. The creditor is deemed to have made a disposition on the right to receive or legal relationship in the transactions of undertaking the debt, participating in the debt, undertaking the contract or participating in the contract. In undertaking the debt, the debtor changes, in participating in the debt or contract, someone else stands with the debtor as the debtor.

In these transactions, it should be accepted that the creditor accepts the change in the status of the debtor and this change made in terms of the debtor is a changing peculium process that directly affects the receivable right. In the event that the right of credit or the debtor of the contract changes, this may create a more beneficial or less beneficial situation for the creditor than before. Thus, in cases where the debtor of the right to receive changes or when a new debtor is added to the debtor, the transaction in which the debtor of the contract changes or a new debtor joins the debtor is a peculium process in a broad sense.

CONCLUSION

In our study, we have examined the transfer of real estate and movable properties, limitation, renunciation of ownership rights, and transfer of receivables, which are considered to be a peculium process. The law seeks the existence of two elements in order for the transfer of a real estate property to be valid, that is, to make a provision. The first of these

elements is the existence of a valid legal reason and the second is the request for registration. It should be accepted that the registration request is in the nature of a real contract. There are many indications to accept that the registration request is in the nature of a contract in kind. First of all, in the process of transfer of movable ownership, the existence of the same contract has been accepted. The same conclusion should be reached in terms of real property ownership. In the process of acquiring the real property of the buyer, a clear acceptance declaration is not required and if the proposal made within the appropriate time is not rejected, the parties in kind will be concluded.

The process of acquiring movable ownership is completed with the debt transaction, contract and transfer of possession. Even though the same contract is a peculium process, it does not result in the acquisition of the property right alone in the transition of the movable property. It is necessary to add a transfer of possession to the same contract. The transfer of possession without a real contract does not affect the right, nor does it affect the right to make a real contract on its own. In this process, the peculium process is created together with the same contract and the transfer of possession. The rule stating that the peculium process cannot be stipulated is also valid in terms of the peculium process regarding the movable property. The transfer of claims rights is a peculium process. Two transactions are required for the right of receivables to be transferred from the assets of the creditor to the assets of the new creditor. The first transaction is the borrowing transaction or the contract for the transfer of receivables, and the second is the peculium process.

The transfer of the receivable right to the assets of the transferee depends on the validity of the promise of transfer of the receivable that is a debt transaction. Otherwise, the receivable continues to remain in the assets of the transferring party, and in this case, there is no need for a refund request. The principle of commitment to cause must be accepted in the transfer and release of the receivable. The principle of dependence on cause is sought in the field of relative rights, during and after the disposal process. Thus, the reversal from the borrowing transaction regarding the relative right has the same effect and creates the result that the receivable right is automatically transferred to the assets of the former creditor without any transaction. As a result, the peculium process made in both the area of absolute rights and relative rights depend on the cause.

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CUSTOMS PROCEDURES WITH ECONOMIC IMPACT AND FISCAL EFFECTS FROM THE USE OF THESE PROCEDURES IN KOSOVO

Yll Mehmetaj, page 79-94

ABSTRACT

The paper addresses some of the important issues related to customs procedures with economic impact in the Republic of Kosovo, their functioning, impact on budget revenues in Kosovo, and their fiscal role in economic growth and development of the country.

Customs procedures with economic impact are procedures that are developed and applied in order to achieve economic prosperity, and since small and open economies have to devote most of their activity to import, and particularly to the export component, then the use of these procedures will serve greatly to faster economic development and will have a direct impact both in the growth of imports and exports as well as in the possible improvement of overall economic performance

Keywords: : Customs Procedures, Customs tax, VAT, customs warehous

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1. General Concept on customs procedures with economic impact and their role in economic development in Kosovo

In open economies, the economic operators have repeatedly requested the suspension of payments in order to postpone the payment deadline for goods intended for re-export or later sale in the country after a certain processing. For goods that are imported in the country and for which import duties are paid, it is considered that at the time they are put in free circulation they change their status from non-domestic goods they become goods of domestic status.

If there is a request for the same goods to be re-exported, economic operators are also obliged to calculate the customs tax in the sales price. In this case, they will come at high prices and will not be competitive in the international market, regardless of whether they have franchise for those goods in the particular region.

If a domestic manufacturer has technical possibilities for processing the imported goods into a compensating product (finial or semi-finished), he will face the import tax for raw materials, in which case they will be non-competitive products in the region and beyond.

If there is a possibility for processing a domestic raw material in another country, when such goods are returned in the country as a product, operators must pay against the new value of goods that are being re-imported. If, under certain circumstances, the import goods are charged with import duties while the product that is acquired as result of processing is

Exempted from such duties on the basis of the classification, domestic producers of the goods released from import duties will be in disadvantage compared to the direct importers of that product;

All these and many other issues of concern that preoccupy economic operators would have remained unresolved without the existence of customs procedures with economic impact.

The customs procedures are granted by competent customs units, however, the relevant authorization must be obtained from these units, which means that the person who has customs liabilities should submit his request for initiation of respective procedure when submitting the customs declaration. The applicant is responsible for *the accuracy of the data and*

documents and for the compliance with the obligations arising from the authorization given for the use of these procedures.[1]

If importing company applying for a customs procedure with economic impact meets the requirements for approval of such requested procedure, the authorization is issued as result of the application for approval filed properly by the company and then takes into consideration the fact that company meets all the necessary conditions in order to be able to implement such procedure. The approvals are granted only to:

Persons or companies providing all the necessary guarantees for proper implementation of the activity in the procedure and customs authority may supervise and monitor the procedure without the need to introduce administrative activities in proportion with economic benefit of the approved procedure.

The customs authority may supervise and monitor the procedure without the need to introduce administrative activities proportionate to the economic benefit of the approved procedure.[2]

The authorization will not be issued to persons who do not possess all the warranties necessary for the proper conduct of the procedure, or in cases where the customs administration is not able to carry out reasonable economic oversight and monitoring of the procedure.

Types of customs procedures with economic impact applicable in Kosovo Procedures with economic impact are grouped as follows:

- Customs warehouse (DD) (Customs warehousing);

- Temporary import (IP);

- Internal Processing (BP);

- External Processing (PJ); and

- processing under customs control

All these procedures allow the import / export of goods by applying suspensive regimes in order to benefit by postponing them until the next customs treatment.

[1] Biljanoska,J(2003):Carinski system i carinsko rabotne,FTU,Ohrid,str 191

[2] Rečkoski R (2009) :Carinska Postapki Fakultet za Turizam i Ugostitelstvo, Ohrid

The abovementioned procedures gave the opportunity to economic operators to come up with cheaper prices, both in the domestic and foreign markets. The legal basis for these procedures derives from the kosovo customs and excise code, which lays down legal provisions on the procedures, authorization, evidencing, transfers, compensatory interest, treatment forms, etc. It should be emphasized that the role of customs as institution in modern societies, where in addition to collection of import and export duties (if such fiscal measure will ever been set) and maintaining security (fighting smuggling of dangerous goods), it also plays a role in regulation of internal market and creating conditions for performance of business activities, which should particularly be in favour of capital investments in kosovo. With the market regulation we mean:

- Accelerating procedures when processing transactions at the customs;

- Fighting against smuggling; and

- Application of customs facilities provided in the customs code.

All these functions (roles), if applied successfully, will provide for a good investment climate and kosovo will be a market where free trade rules will apply, where there will be economic development opportunities, creation of new jobs and where fiscal and commercial policy measures will be in the taxpayers' service.

2. Customs warehouses (customs warehousing)

Customs warehouse means any place approved by and under the supervision of the customs where goods may be stored under the conditions laid down[3].

Customs warehousing provides the possibility of placing goods under customs supervision in a place authorized by the customs (customs warehouse) without paying import duties, thus postponing the payment of customs duties until they are released for free circulation.

The customs warehouse consists of one or more closed rooms, clearly marked and appropriately separated from other environments and spaces.[4]

if necessary, the customs authority may approve goods placed under the

[3] Customs and Excise Code of Kosovo, article 103, paragraph 2

[4] Dapčević- Marković Lj.(2011): Carine i carinsko poslovanje, Bar. Str.181.

customs warehousing procedure to be moved from one customs warehouse to another.[5]

When they are released for free circulation, the entity shall pay the customs duties for that quantity of goods placed in the market. It also provides the opportunity for re-export of goods to a foreign market, with no duty charged.

It should be borne in mind that goods placed under this procedure must always be covered by a bank guarantee (as a security instrument) for the amount of duty on the goods that are deposited.

The customs warehousing procedure will allow the storing of:

a) non-Kosovo goods without being subject to import duties or trade policy measures;

b) kosovo goods, when kosovo legislation regulating specific areas provides that placing them in the customs warehouse requires application of measures relating to the export of such goods.

As with the regular clearance, when goods are placed in the customs warehouse, data on such goods are verified in terms of type, quantity, quality, origin and value of goods.[6]

A customs warehouse can be either public or private

Public warehouse is authorized for use by warehouse keepers, whose main job is warehousing of goods stored by other traders (depositors), whereas the private warehouse is for warehousing goods deposited by individual authorized traders as warehouse keeper. It is not necessary for the warehouse keeper to be the owner of goods, but it must be depositor.

Advantages of customs warehousing

Customs warehousing is especially useful if the warehouse keeper/ depositor:

(a) wants to postpone the payment of customs duties and/ or vat on its imported goods that are deposited
(b) wants to postpone the customs treatment applicable to imported goods

[5] Rečkoski R (2009) : Carinska Postapki Fakultet za Turizam i Ugostitelstvo, Ohrid

[6] Rraci,Y,(2010),Bazat e sistemi doganor,Prishtinë,fq 177

(c) wants to re-export non-domestic goods (whereby duties and vat may not be paid at all)

(d) there are difficulties in fulfilling certain specific conditions at the time of import (such as special import permits)

(e) wants to discharge any other customs procedure (such as inward processing) without having to physically export goods; or

(f) wants to use any customs warehouse for co-deposition of goods that are subject to any other customs procedure (such as free circulation, inward processing (ip), processing under customs control (ccp).

Public warehouse is authorized for use by warehouse keepers, whose main job is the warehousing of goods deposited by other traders (depositors).

Private warehouse is for storing goods deposited by individual traders authorized as warehouse keepers. Warehouse keeper does not necessarily have to be owner of goods, but it must be the depositor.

The warehouse keeper must maintain and operate the warehouse facility in such a way that it meets all the requirements of health legislation. There is a number of requirements that need to be met in order for the subject to be authorized to use customs warehouse. The authorization for storage of goods at the customs warehouse also includes the security for covering liabilities - customs duties.

In this concrete case, a bank guarantee is required. The bank guarantee will be valid for one year period - with extension of the validity period for as long as authorization is valid/ until the customs procedure is completed. The acronym used for customs purposes in the customs procedure with economic impact is im7.

3. Temporary import

temporary import - allows temporary importation of non-domestic goods with full or partial exemption of import duties. Temporary import presents a specific type of foreign trade, during which the status of the owner of goods will not change. Temporary import mainly enables different persons or entities to import goods that are exempt from import duties.[7]

[7] Biljanoska,J (2003): Carinski sistem i carinsko rabotne,FTU,Ohrid,str 191

goods must not be processed or repaired apart from the usual (routine) maintenance required for keeping them in the state in which they are imported. There are different types of exemptions for temporary import, for example, goods that are meant for fairs, medical equipment, items for actions, various items for testing and laboratory analysis, transit passenger goods, etc.

The temporary import procedure may be granted at the request of the person who wishes to use such goods or takes necessary measures for their use. In all cases and depending on the type of imported goods, entities or persons who want to use this procedure should be located within or outside of kosovo.

For most cases of imports of goods under the temporary import procedure, the person concerned or different entities must submit a bank guarantee equivalent to the full amount of debt which may unexpectedly arise in respect to import obligations, especially in cases where customs supervision (under which goods are declared - temporary import) is not respected for various reasons.

In all cases when the goods are removed from customs supervision without customs clearance, the amount presented in the bank guarantee may be requested as compensation together with the additional compensatory interest. Whereas in cases where the goods are re-exported or released for free circulation, the person depositing the guarantee is entitled to receive back this guarantee deposited in the customs account.

In order to place goods under temporary import it is required to have an authorization and necessary documentation, which should be presented to customs when goods enter the border.

Temporary importation works in:

- temporary importation with total relief [of import duties], and

- temporary importation with partial relief

Temporary importation with total relief for importation of goods under the temporary importation procedure means all goods, which are exempt from customs duties as long as they are authorized by an authorization issued by the customs of the country. In this case, they must deposit a bank guarantee equivalent to the amount of customs duties that would be paid if these goods would be imported for release for free circulation.

Temporary importation with partial relief from import duties may be claimed to be compensated if the goods do not comply with identified conditions or if they are not listed for total relief.

The full guarantee for the eventual amount of import duties will be required when placing goods under the temporary importation procedure. Once the goods would leave the country, the liability that should be paid (e.g. 3% of the import duties for each month, or fractions (parts) of a month for which goods stayed in the country) must be paid. This means that, together with the declaration of re-export, downloading of the ip (provisional import) procedure, import declaration, must be filed for payment of liabilities.

What is specific in the customs procedure with economic effect "temporary import" is that the temporary imported goods should remain in unchanged condition. In other words, only the repair and maintenance is allowed, including repair and regulation or measures for preserving goods, mainly to meet technical requirements for its use. The purpose of this procedure is to simplify and harmonize procedures with a view of promoting economic, humanitarian, cultural, and social and tourist purposes.

3 .processing under customs control (ccp)

The procedure of processing under customs control allows non-domestic goods to be used domestically in operations that change the nature or condition of goods without being subject to import duties or trade policy measures, and allows the products generated as a result of these operations to be released for free circulation at the rate of import duty that is appropriate to them, and these products are referred to as "processed products".

This procedure is of great importance especially for the companies, which, when importing different reproductive material, the customs duty for those materials is much higher, same as for the goods that come out as the final product of that material. Therefore, by using this procedure when importing goods, the duties are suspended, goods enter in processing procedure under customs control, and once the final product is generated it would be subject to tax only as a final product.

The customs tariffs in kosovo are regulated in such a way that in most cases the processed (produced) goods carry a higher rate of duty than the raw material or constituent parts from which they are produced. In some

cases, however, final products have a lower duty rate than the materials from which they are produced. In some cases, these tariff abnormalities may make it more economical to import ready-made products directly from outside kosovo than to import raw material or constituent parts and to produce products in kosovo.

The pkd procedure is a trade facilitation measure intended to encourage processing in kosovo by allowing some raw materials or certain components to be imported through the duty suspension procedure. After processing, processed products may be declared for free circulation with lowest-rate corresponding to the rate of the raw material. Therefore, in the case of applying this procedure, employment opportunities will increase and production companies will be more competitive with their products in the domestic and foreign markets.

4. Outward processing

The outward processing procedure foresees the relief of duties when importing from other countries goods, which are produced from domestic materials that were exported earlier. This enables businesses to use the lowest labour cost outside kosovo, while encouraging the use of domestic raw materials for processing final products. Goods may also be temporarily exported in order to be subjected to processes that are not available in kosovo.

This procedure also enables defective goods to be returned to foreign countries for repair or replaced with equivalent goods within the so-called standard exchange system (ses). When a person uses the outward processing procedure, this enables him to benefit from the relief from import duties on domestic goods that have been exported for the purpose of processing, provided that he can prove that the exported goods are used for production, or are an integral part of the products that he is importing. However, before benefiting from exemption under op (outward processing), this person should be authorized to use the procedure.

To be eligible for exemption under the op procedure, exported goods must be domestic goods. Domestic goods are either goods originating from kosovo or goods which have been imported for free circulation within kosovo after all customs formalities have been completed and after import duties have been paid. There are also some special procedures for placing goods from the procedure for release for inward processing (ip) to the procedure for release for outward processing (op).

When a person exports goods under the op procedure, he cannot claim restitution of funds or relief from import duties or any other compensation or financial benefit. He should also pay all export duties or other payments in full.

The standard exchange system (ses) can be used to import replacements of those goods that were exported earlier for repair. If the person concerned needs replacement goods, for example machinery, only for a short time until his goods are repaired and returned to him, it would probably be more appropriate for that person to use the temporary import procedure (ti) – replacement means of production.

The concerned person may need to import replacement products before exporting the goods with errors. This is called "preliminary import". If he wishes to apply ses with preliminary importation, the customs will require him to provide a guarantee for potential liabilities that he must pay for goods he imports.

Under normal conditions, there are only two situations when customs requires a guarantee for goods in op. These are:

• when the person concerned is authorized to use the standard exchange system with preliminary importation or,

• when the person concerned has to clear his goods faster by the customs, but he is not able to submit the required documents to demand relief from duties.

The outward processing procedure is a broadly applied procedure in developed countries, given that their economy is oriented to find places where the workforce is cheap and establish their activities in those countries. This is a "double-edged knife"; it causes the loss of jobs, but at the same time reduces the cost of processing goods, which creates opportunities for calculating favourable market prices.

The fundamental purpose for which it is used or it is important because of the opportunity it gives to various economic entities to send damaged equipment (machinery, devices, etc.) For repair outside the country. It should be emphasized that the repaired value (repair or maintenance invoice) of goods that were sent for repair is declared to the customs administration upon return and the same represents a new added customs value, which is also subject to the customs duty according to the applicable legal provisions.

5 .Inward processing procedure

Economic development of a country depends from many factors; mainly industrial development and investment in the manufacturing sector are a prerequisite for increasing revenues of a country. The trends in the world trade have influenced the large economic powers to concentrate on cheap labour. We bear witness to the great movement of the economic giants towards the far east.

The economy of our country has a low level of development where the private sector is limited in terms of its international rights (note: because of status recognition), while the social sector has stagnated due to the weak intensity of the privatization process.

However, investments are expected to come to kosovo, especially in specific economic areas such as mines and energy. However, in order to create conducive conditions for investment in kosovo, the ip procedure (inward processing) did not have such a small impact. The fact that investors are interested in simple processing processes in kosovo has shown the need for movement of goods in the form of raw materials without being subject to customs duties for the purpose of processing and re-exporting such goods as compensating products (final or semi-finished).

Inward processing allows imported raw materials or semi-finished products to be processed (processed, refined or repaired) for re-export without paying import duties and vat on goods.[8]

Customs duties will be collected for those products (compensating products) which fail to be re-exported or even for those residues which will still have a commercial value (secondary compensating products).

This procedure is one of the most important customs procedures. This procedure will largely help domestic manufacturers to preliminarily import raw materials for the purpose of processing and re-exporting. Application of this procedure increases employment opportunities, and manufacturing companies will be more competitive with their products in the foreign market. This procedure also requires application for and approval (authorization) by the customs authorities.

When submitting the application, economic interest for using this procedure as well as all information about the goods to be imported and

[8] Jovanovski, P (2006): Javni finansiji, Evropski Univerzitet, Skopje,

methods of identification of goods before and after the proceeding should be presented in full. Customs will continuously verify the accuracy of these data. The decision on the authorization/ rejection when applying for this procedure will be taken within 30 days. There are two systems in the inward processing procedure.

There are two systems of relief from customs duties, the suspension system and the drawback system. In both cases, there should be the intention to re-export/export generated compensation products from kosovo and an authorization to import goods under lpb is mandatory. The goods must be processed within a specified timeframe and records must be kept for all performed operations. If the suspension system is used then it is required to present a report (discharge list), detailing the receipt and departure of the goods.

The inward processing procedure allows the importation of goods for the purpose of processing and re-exporting them as compensating products suspending import duties during the importation (suspension system) or paying them during the importation but with the right to receive the money back in case of re-export (drawback system).

6. Fiscal effect from the use of procedures with economic impact in kosovo

There is no doubt that one of the most important factors for economic development of countries, which would contribute to social welfare, poverty reduction and economic development of those countries and citizens is facilitation as much as possible of the trade exchange and trade in general.

In this regard, customs play a very important role, not only because they achieve government objectives and measures, but also in securing effective revenue controls in accordance with national laws, guaranteeing security and protecting the society as a whole. Customs procedures with economic impact, i.e., their implementation, had a significant impact on the economic competitiveness of countries, but they also have an impact on increasing turnover in international trade.

Unlike other types of taxes, whose main function is fiscal, at the customs, as a tax type, this function is secondary and the main function is protective function. The imported product is charged with certain custom duties and therefore, it may have a higher price compared to the same product that is produced domestically, which in turn reduces competition, which is the

basic function of customs. Subject of customs clearance, e.g., tax, is the import of goods (rarely export), and the customs base is the value of imported goods.

We may say that in general, customs today is a public mechanism that the state mobilizes for foreign trade, mainly when goods are imported, in order to protect the profitable economy for economic growth and development of national economy. They represent an instrument for regulating international exchange of goods and services. Therefore, customs are the most important instrument for protecting domestic production from external competition. Thus, if a country wants to protect domestic production, it is likely to impose additional duties on imports of these goods, causing a rise in the price of foreign goods. However, foreign producers often complain about long and inefficient procedures related to the conduct of customs procedures. If some goods have it difficult to pass through customs procedures, they are not only charged with additional duties (tariffs), but they may also lose some of the competitive features. For these reasons, customs procedures with economic effects and their introduction may bring an additional benefit to economy.

The level of customs remains unchanged, while the efficiency in providing for the needs of foreign goods may be transferred into providing more efficient domestic production.[9]

Benefits are great, but kosovo still needs to work on their promotion and presenting them as opportunity for foreign investors, especially to large manufacturing companies, which by using these procedures would have it much easier to establish subsidiaries of manufacturing or processing companies in kosovo, thereby creating jobs, using other resources and exporting goods abroad, thus helping economic growth and social welfare and stimulating the export of goods outside of kosovo.

Below we will present a table of the amount of the fiscal revenues from customs (customs duties, vat and excise tax) which have been collected by years based on regular imports and fiscal revenues collected by customs in procedures with economic impact.

[9] Poposki, Z (2011): Fiskalni efekti od koristewe na poednostavenite carinski postapki, FTU, Ohrid, str.53

Table no. 1. Amount of customs revenue on regular imports and customs revenues in procedures with economic impact (in million euros)

YEAR	*CUSTOMS REVENUE FROM REGULAR IMPORT*	*CUSTOMS REVENUES FROM THE IMPORT WITH CUSTOMS PROCEDURES WITH ECONOMIC IMPACT*	*TOTAL REVENUES*
2014	*756,035.47 €*	*98,852.56 €*	*854,888.03 €*
2015	*830,268.25 €*	*105,913.98 €*	*936,182.23 €*
2016	*802,066.03 €*	*249,353.33 €*	*1,051,419.36*
2017	*773,137.04 €*	*347,960.06 €*	*1,121,097.10*

Source: the analysis issued by the author, based on official data from the customs administration of Kosovo

As we can see in table no. 1 on the structure of fiscal revenues that have been collected in kosovo for the period 2014-2017, since their introduction in 2014, a considerable amount of fiscal taxes have been collected from customs procedures with economic impacts starting at 11.56% compared to total fiscal revenue collected for 2014, and 11.31% in 2015 and a slight increase in 2016 to 23.71% and in 2017 the fiscal taxes from procedures with economic impact will increase to 31% of the total revenues collected by customs.

From the data above we may conclude that in recent years there is an increase of revenues from taxes resulting from the use of customs procedures with economic impact as the easiest form of economic activity that businesses can use for facilitating trade, and the objective of the Customs Administration of the Republic of Kosovo is gradual abolition or replacement of all procedures that complicate economic activity, and enable the use of procedures that are in the function of trade facilitation.

7. Conclusions

The purpose of this paper was to analyse fiscal impacts achieved with the application of customs procedures with economic impact in Kosovo. We can say that the general impression is that the benefits gained from its application are huge, primarily, emphasizing the reduced costs and clearance time.

Customs procedures with economic impact are an important link in the customs procedure, which enables the performance of customs clearance faster and at lower cost, with higher security, and reduces some risks. The benefits of temporary importation, import and export for processing as well as other customs procedures with economic impact will provide to any small and open economy fiscal revenues and other economic benefits that are of greater interest for economic growth of the country.

Customs procedure with economic impact is a complex issue that includes specific rules, regulations and ways through which the goals set for import and export are realized. In order to be able to place goods in a customs procedure with economic impact, it is necessary for the procedure to be approve. This part represents the most important sub-system of customs policy and starts with goals, determinants and criteria, which also represent instruments aimed to achieve certain goals.

This paper emphasizes the importance of Customs Administration as part of the state administration for the development of international trade, as well as the development of the competitive advantage of the state. The Customs Administration in developed world economies plays an active role in increasing competitiveness of its business entities and thus from their previous fiscal roles they become more entities in the service of economy.

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THE EFFECTS OF POLITICIANS ON BUDGET AND PUBLIC SPENDING

Mehmet Sena Ekici, page 95-107

ABSTRACT

When political economy is mentioned, the intervention of the state with the economy comes to mind as either discretionary or informal. The function of the state in the economy, the role it will play and how it can be more effective are the problems that remain. When the insufficiency of economics alone is determined in answering these problems, the need for political science emerges. In this case, the insufficiency of only one discipline in the solution of these problems evolves in the need to include the two sciences together. Because, while it is up to the economists to reveal the alternatives to the problems in the economic life, the politicians fall into the implementation of the alternatives and to bear the risks. There is a chain of responsibilities for them, including the accountability and the cost. The applicability of the decisions in the economy and the dominance of trust in social life cannot be achieved with the economy-policy pair. It is necessary to take into account the effects of events, socio-psychological, even religion and traditions. While the main field of economic science is the endless need for profit with scarce resources, it focuses on how the science of politics is directed towards legislative and executive execution to achieve the goals of the state. The effects of politicians on the regional, personal and sectoral distribution of resources in the country and the degree of realization of the concept of justice do not go unnoticed. Determining the type and amount of public revenues, determining the resources and services and allocating the appropriations according to the budgetary rules is another requirement. The political institution is also effective here. The expenditures (appropriation) to be allocated for the supply of goods and services are tried to be determined accordingly. The direct income transfer to the lower income group is what is expected from the state expenditures that we call transfer expenditures, which are distributed free of charge by the state. On the other hand, while making investments and current expenditures, it does not stay away from the influence of politicians. As an example of health expenditures, city hospitals were examined and some concrete information was revealed. From the results of a survey, it is possible to see the characteristics of the social state and the location of Turkey. Compared to the place of transfer expenditures in GDP between 2000 and 2016, Italy was 27%, while the US was 18% and Turkey was 13%.

Keywords: Economics, Political Economy, Public Expenditure, Health Expenditure, Transfer Spending

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Introduction

In addition to the political institution, which we can accept as the determination of the purpose and method of state activities, economics is also accepted as the branch of science that aims to meet the human needs that are infinite with a limited number of resources and examines the relationship of production distribution.

Depending on the economic, social and cultural conditions of the countries, the relationship between the economy and politics can be observed in different dimensions in each country, but the importance of this relation in terms of economic analysis is explained as the determination of the economic policy targets and the fact that the economy by using politics out of the ordinary course and causes different economic problems. Although the effects of politics on the economy are seen more during the election period, it is especially observed in developing countries that experience the election process frequently. If you need to observe from this frame, It would not be wrong to say that politics tends to steer the economy significantly in developing countries such as Turkey. This study aims to investigate and explain the impact of politicians on budget and public spending.

Political Economy

Political economy, a new discipline in which economics and political science are effective in decision and practice, is based on theoretical and methodological basis. Political economy, in addition to international uses Turkey are also often used in academic and other fields.[1]

There are two main opinions about the place of the state in economic life. The first of these basic views is the liberal thought that started with Adam Smith and had an impact until the 1929 economic crisis. According to this view, free market economy is accepted as the most basic tool of economic success and growth and believes that the decisions in this system should be determined by the market without the intervention of the state. The second known view was put forward by

[1] Davut Ateş, Gülizar Samur Gökmen, (2013). Bir Akademik Disiplin Olarak Uluslararası Politik Ekonominin Sınırları, Afyon Kocatepe Üniversitesi Sosyal Bilimler Dergisi, C.XV, S.1.

Keynes after the Second World War and carried its effect until the 1970 Stagflation crisis. According to this view put forward by Keynes, the private sector of the state after the Second World War came to the fore especially in underdeveloped and developing countries with its regulatory role. The stagflation crisis in 1970's brought liberal thought to the fore again.[2]

Politics-Economics Relationship

Sometimes, the theories we see universally lose their value over time and are replaced by other theories. In economics, it can be viewed from this perspective. It can be considered as an attempt to guide or explain new emerging situations.

When the importance of economics is taken into consideration in the problem solving feature in social life, it can be seen that it is not the only authority and responsible in this regard. So much so that with the science of politics, the politician; economics and economists complement each other in guiding society towards specific goals. Here, an inseparable form of economics and politics emerges. The use of political economy belongs to the last period. The name of the science of economics two centuries ago is "political economy"[3]

Political economics is obligatory in the relationship of the state with the economy. Because the intervention or avoidance of intervention in the state-economy relationship are covered. The state realizes these relationships through legal regulations. While trying to determine these relations, the state includes its functions not only with economic rules but also with political science. Political economics is a branch of science that not only examines the rules of economics-policy sciences in two ways but combines this in determining and regulating the economic functions of the state.[4]

Economics-politics relationship in developed and developing countries can be determined by the degree of affecting the stability of the problems. Developed countries, which have gained an institutional

[2]Linda Weiss and J.M. Hobson, (1999), Devletler ve Ekonomik Kalkınma, Çev: Kıvanç Dündar, Dost Kitabevi Yayınları, Ankara, p.5.
[3] Vural Savaş, (1994), Politik İktisat, Beta Yayınları, İstanbul, 2. Baskı
[4] Vural Savaş, a.g.e., p.2.

judgment, are more stable in this regard. While making arrangements, it is not insensitive to rent-seeking activities in the society, and making arrangements escapes public attention. Thus, the economy-politics relationship does not escape the attention of the citizens and the economic problems turn into political problems. In addition to the situations in which the institutional structure is directly effective, it is made open to the suggestions and criticisms of the business community and professional organizations with the policy suggestion. Implementation results also affect citizens positively or negatively.

The reflection of implementation results to the politician appears in the elections. The politician is a decision maker within the policy recommendations. No matter which policy the politician made his choice, he agreed to bear the cost of it. However, here, due to the importance of the economy, the risk of leaving decisions and alternatives to the decision of the politician-economist requires consideration.

Because, considering the cost and benefit dimensions of an economic rule as a political choice, it is true that it is affected by other variables considering the cost and benefit dimensions of an economic rule as a political choice.

The state cannot limit its decision to reduce and increase income and expenses and to eliminate an economic problem only with the political and economic dimensions in question. How the participation or reactions of individuals with these decisions will develop can be predicted with the help of other disciplines.

It turns out that even the economic policy relationship will not be sufficient alone without the help of other disciplines. In democracies aiming at individual freedoms, political economy has become the art as well as being a positive-normative branch of science.[5]

Effective Distribution of Income

Tax system, free or supported goods and services provided by the state and transfer expenditures can be listed as ways to achieve effective redistribution of income in developed and Developing Societies. These expenditures, which we call transfer expenditures, are essentially the

[5] Vural Savaş, a.g.e., p.9.

equivalent of services for the purpose of justice in income distribution and can be explained as having a direct effect on income distribution.[6]

Any change in the state's sphere of influence will directly affect the people and the economy within the country. If it is necessary to evaluate from another point of view, the change in the area of influence of the market also affects the distribution and allocation of the power of the state. The relationship that exists between states and markets may differ between societies, as well as may differ in the same society over time. This explains why the relationship between states and Markets is dynamic, not static. It is possible to summarize this situation, which we can explain as a bilateral relationship, as both states affect markets and markets affect states. Therefore, this situation also appears in policy designs.

To summarize from a broad framework, states distribute and allocate existing power. Therefore, the choice of who will use the power and where to use it is done by the state, and the state decides on the distribution and allocation of the power. This reveals that politicians' effects on budget and public spending should be investigated.

Today, the changes seen in the direction of human life and the development of the society cause significant changes in the structure of the services provided by the state and the expenses made accordingly. These changes, in a sense, increase public expenditures in both quantity and proportion, on the other hand, lead to the emergence of new needs and expenses. Transfer expenditures that we can examine from this framework, in the liberal system, which existed until the first half of the twentieth century, the state undertakes the production of only certain goods and services, while the production of a large part of social needs is carried out by the private sector.[7]

[6] Richard A. Musgrave ve Peggy B. Musgrave, (1989), Public Finance In Theory and Practice, McGraw-Hill Book Company, Singapore, p.24

[7] Nihat Edizdoğan, Özhan Çetinkaya, Erhan Gümüş, (2012), Kamu Maliyesi, 4.Baskı, Ekin Basım Yayın Dağıtım, Bursa..

What is Transfer Spending?

The concept of transfer expenditure has been accepted by Pigou (1947) as the type of expenditure to regain state reliability.[8] R. Musgrave (1987), on the other hand, explained the transfer expenditures not as the goods and services being produced, but as the payments used in the purchase of existing economic values.[9]

While classifying public expenditures, it is done by considering several criteria. One of these classifications is the economic classification. Transfer expenditures in the economic classification are one of the three classification elements. This group includes elderly, widowed salaries, unemployment benefits and pensions. The characteristic of transfer expenditures is that the government does not pursue any response when making for social, economic and social purposes. The resources of the public sector are re-distributed among the individuals through transfer expenditures.

The state pays unrequitedly to some segments of society rather than directly consuming its goods and services. In this action, it is accepted as a requirement of being a social state. In scope, social, economic and financial transfer expenditures consist of debt interest payments.

Within the scope of social transfers, there are student scholarships, aids to the elderly and the poor. These social transfers are important for ensuring justice in income distribution. In addition to social transfers, it is given to individuals and companies that meet certain criteria in order to ensure the development of backward regions in the economic field and to increase investment and export. Thanks to these expenditures, they cause increases in total supply in the areas of incentives. In addition, social supports and subsidies can be evaluated in this category.[10]

Another factor accepted in transfer expenditures is the interest paid on domestic and foreign debts. Considering the structural situation of state

[8] A.C. Pigou, (1947), A study in Public Finance, Third Edition, Macmillan and Co. Ltd., p.19.

[9] Richards A. Musgrave, (1987), Kamu Maliyesi Teorisi 1, Çev. Orhan Şener, Fatih Yayınevi Maatbaası, İstanbul, p.269.

[10] Nazım Öztürk, (2020), Kamu Maliyesi, Ekin Yayınları, 5.Baskı, Bursa, p.131.

lenders, high income can be mentioned as an income transfer from other segments. In addition, with interest payments, there is an income transfer from domestic to foreign private sector to public sector.

In addition to the effect of transfer expenditures, it is possible to say the following. Transfer expenditures have no role as they are not flexible in terms of short-term policies. In the long term, it is accepted as a means of improving income distribution. Because tax revenues are taken from high incomes and transferred to the poor and the elderly. With this feature, especially through " redistribution of income ", there is an improvement or regulation in income distribution in the economy. Unemployment benefits automatically increase demand during periods of unemployment, and ensure that the demand remains alive and stagnation is prevented. When unemployment decreases and the economy comes to life, the transfers decrease automatically, thus preventing excessive demand.[11]

Transfer expenditures do not create additional demand for goods and services in a certain period, their effects vary depending on the quality of the transfer. Social transfers are aimed at raising people's standard of living, reflecting disposable income on the purchase of goods and services. It is a demand related to consumption. Transfers are in the form of subsidies, as well as production and investment incentives. While it does not generate demand as it exits from the budget, it creates demand for goods and services according to the tendency of the companies and individuals who receive the transfer.[12]

Transfer spending and purchasing power shift between social strata. Direct payments made in social strata without provision have an indirect effect on production and consumption.

It is possible to summarize the concept of transfer expenditures as the expenditures that the state distributes to the people, without using any production factor. These transfers are sometimes made to individuals, sometimes to companies.[13] These transfer expenditures directly affect the country's economy. When transfer expenditures are

[11] Vural Savaş, a.g.e, p.60.
[12] Abuzer Pınar, (2010), Maliye Politikası Teori ve Uygulama, Naturel Yayınları. 3. Baskı p.38
[13] T.C. Başbakanlık Hazine Müsteşarlığı, (1997), Ekonomik Kavramlar ve Göstergeler Kamu Maliyesi, Ankara, Ağustos, p5, p.69

analyzed, it is seen that the effects of politicians on budget and public expenditures are quite high.

Public Spending and the Role of Government Relations in Budget

Public spending by the state mainly refers to the common spending of the society. Financing of the services provided by the state is also realized by collecting some income from the society, especially taxes. This explains that the public budget, which is the legitimate instrument of the state's authority to make joint expenditures and collect joint revenues, is in fact the share of all citizens living in that country. The main basis of this idea is that the expenses made to cover the expenses of the citizens living in that country are made from the public budget. This means that the public budget, as well as the individual's personal budgets, is actually the common budget of the society. Public budget, with the effects of differences in state understandings and also politicians, it is a concept that is perceived differently by the social layers under and therefore needs to be discussed and emphasized.[14]

An Example: Health Expenditures

Health services in Turkey constitute an important part of welfare measures and it also constitutes an important proportion of social policy expenditures. Health services are provided either by public and private insurances or national health services. In the first case that can be accepted, working, day, premium conditions can be put in order to be insured; the second case aims to provide a universal health service and health services are provided free of charge. The Bismarker system, also known as the insurance system, largely covers the financing of health services with insurance funds; In the national health system, also known as the AngloSaxon system, financing is provided through national taxes.[15]

Parliament is considered a policy-making body at the national level. The main body responsible for the distribution of health services

[14] Mehmet Selim Bağlı, (2012). Teorik ve tarihsel açıdan bütçe hakkı. Yasama Dergisi, 20, 39-77: 46-52

[15] Süleyman Özdemir, (2006). Başlangıcından Günümüze Refah Devletlerinde Sosyal Harcamaların Analizi. Sosyal Siyaset Konferansları (Prof. Dr. Nevzat YALÇINTAŞ'a Armağan Özel Sayısı). 50, 153-204.: 108, 109)

should be considered as the Ministry of Health. For example, while there were many institutions and a complex structure before 2005, but with the reforms made after 2005, their duties were transferred to the Ministry of Health. The institutions as SSK, Bağ-kur and Emekli Sandığı are gathered under the frame of SGK and currently only hospitals belonging to universities and the Ministry of National Defense are still in service except the Ministry of Health. In addition, there are private hospitals and hospitals owned by non-profit organizations.[16] The financing of health services in the current situation in Turkey has four basic sources: premiums paid by employees and employers, taxes (premiums for those who cannot pay their premiums, education expenses, Protective Services and GSS contribution etc.), direct out-of-pocket payments (contributions), and pay private health insurance.[17]

An Example: City Hospitals

Because of the increase in health expenditures in Turkey and the current burden of health expenditures in the budget, cooperation with the private sector in the field of health services, such as highway, bridge, tunnel, airport construction, comes to the agenda. Within the scope of health transformation, financing models in health services have been developed and in this context, with the addition of an Additional Article to the Law No. 3359 in 2005, various models have been applied with the regulation regarding the possibility of leasing private law persons for the provision of health services.[18]

Ministry of Health has signed a contract for 21 city hospitals as of 19.07.2019 and in other words, PPP, also used as "Public and Private Partnerships" model for 21 city hospitals implementation has actually started (sygm.saglik.gov.tr). The health risk is shared between the state and the private sector by encouraging the private sector investor to invest in the health sector with the establishment of health facilities integrated

[16] Fahreddin Tatar, Mehtap Tatar, İsmet Şahin (1997), Hastane Hizmet İhaleleri: Teori Ve Türkiye'deki Uygulamaları. Amme İdaresi Dergisi 30(3):77-96.
[17] A. Erdal Sargutan, (2010). 84 Ülke ve Türkiye'nin Karşılaştırmalı Sağlık Sistemleri. Sayı 3030).
[18] T.C. Resmi Gazete, Tarih: 22.07.2006, Sayı: 26236.

with PPP model application in health services, that is, the establishment of city hospitals.[19]

Conclusion

If we look at the broad framework of a city hospital in Turkey, airports, Kanal Istanbul Project, budget expenditures, foreign aid, earthquake tax, unemployment fund usage, management of the masses, saving power in privatizations, how much public budgets have been collected in the last 20 years and how they have been spent are just a few of the topics that need to be investigated. Considering the relationship of budget and transfer expenditures with government policies, the types of taxes collected from the public, loss leakage in electricity bills, TRT deduction, Tubitak, KOSGEB, Development Agencies, Use of incentives and funds provided by the ministries, budgets allocated to universities require this research. Such that, military expenditures, education expenditures and state transit commitment and bridges that are seen during the planned periods are also expected to be investigated and explained.

Research shows that transfer expenditures such as unemployment benefits and pensions for fair income distribution are higher in developed countries compared to other countries. Developed countries keep their social aid to retirees, elderly people, needy citizens and unemployed high, which is important in terms of showing the level of development. This leads to an increase in the proportion of transfer expenditures in the total public expenditures in developed countries. While transfer expenditures are used as a means of providing justice and improving quality of life in developed countries, this situation in developing countries can also turn into a situation against the country due to lack of supervision. In this case it explains that there is a disproportionate improvement on the budget and spending.

When the economic data of our country is evaluated, one of the most important problems in the country is the employment problem. New job opportunities cannot be created. The main reason for this is that production is extremely limited and production planning and investments / expenditures are not made. When the history of the Republic of Turkey's

[19] E. Acartürk ve S. Keskin (2012), Türkiye'de Sağlık Sektöründe Kamu Özel Ortaklığı Modeli. Süleyman Demirel Üniversitesi İktisadi ve İdari Bilimler Dergisi, 17(3); 25-51.

largest investment is examined, the construction of Istanbul Airport, which is stated to be built with a figure of approximately 40 billion euro, is the result of the government's political preference, ideology and a state / human model that it wants to create. In other words, it is a political economic decision whose results are political. Passenger guaranteed highways, airports, hospitals, etc. investments are ideological reflections of the model the government wants to create. Where and how public budgets are spent are among the most basic parameters that reveal the identity of the government. In addition, minimum wage policies and a minimum wage model applied throughout Turkey and taxes within the framework of which ideological attitudes and perspectives are determined and collected issues are among the main agenda items in the field of political economy and are important in our country.

On the other hand, when the social developments realized as a result of economic data are examined, it is expected that the importance of human development will be given and qualified developments will be achieved in order to overcome this threshold in our country. This reveals the fact that social developments are accelerated.

Social developments begin primarily with the provision of material resources. Afterwards, these opportunities / opportunities should be filled. When we evaluate from this point of view, it is necessary to conduct quality oriented studies rather than quantity.

When we start from the idea that economics and politics affect each other in every field today, it is worth reminding that the political reasons for solving a problem related to economics and the economic reasons for solving problems related to politics should be investigated. The impact of politicians on budget spending needs to be examined and the economy needs to be resolved in the context of these relationships. In the context of this relationality, to reveal the relationship between economy and politics and solve problems related to both issues will be of great importance when examining budget and public expenditures.

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NON-CONTRACT LIABILITY OF THE EUROPEAN UNION MEMBER STATES

Elif Hoca, page 109-125

ABSTRACT

The European Union has succeeded in creating its own sui generis legal system within the period of political and economic integration. Due to the sui generis structure in question, the member states were obliged to transfer their sovereignty to the EU. In the line of the membership process, the candidates who want to take be as a part of the European Union, States admitted to the union according to EU law, at the national level are responsible for the systematic, correct and effective implementation of EU legal rules. This means responsibility towards the EU both in the Union and outside the Union. In this respect, upon the completion of the membership process, the members are obliged to fulfill the duties they have undertaken.

Member states may face an infringement action that may be brought by the Commission or other member states before the Court of Justice of the European Union (CJEU) due to an action or inaction that violates the Union Law, which they accept with the membership. Besides, If individuals are harmed due to the act, according to the nature and degree of the violation in question, then rectification of this damage will appear. In case of such situations, the principle of state responsibility, which emerges depending on the decisions of the EU Court of Justice, plays a role in reaching a solution. The principle in question is an important legal instrument in terms of protecting the rights arising from Union law. Conditions regarding the contractual and non-contractual liability of member states are set out in the case-law of the CJEU.

Keywords: European Union Law, State Responsibility Principle, Member States, European Union Court of Justice, Sanction.

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INTRODUCTION

The European Union (EU) has succeeded in creating a unique and effective legal system within the process of economic and political integration. The Court of Justice of the European Communities (CJEU) plays an important role in the development of the European Community (EC) legal system and its effective implementation in the member states. Having the authority to ensure the rule of law within the EC legal system, to supervise the implementation of EC law in the member states, to determine the validity and interpretation of the EC norms, CJEU has ensured the formation of a uniform legal system that binds all member states. However, the EC law to be an effective legal system depends on its implementation in the member states. The enforcement of this law in the member states is the national courts. Therefore, national courts also play an important role in the development of the EC legal system and its effective implementation in member states.[1]

With the European Communities changing shape over time and becoming the European Union, it has been determined that a candidate state has to accept the Union system, known as the Union acquis, and its rights and obligations tied to the Union's institutional framework, within the process of accession to the European Union. The EU egal acquis constitutes the entirety of the EU's legal system and rules in force in all areas concerning social life.

As a result of the membership agreement between the EU and the states, the states that have the title of member states have responsibilities towards the EU both within the framework of the EU and in the non-union area.

In the context of the principles of the protection of universal order and peace, which is one of the main purposes of the Union, it is aimed to protect fundamental rights, the European Union Declaration of Fundamental Rights and fundamental rights and freedoms by clearly laying out in a Declaration in the light of social progress, scientific and technological developments.[2] In addition to contractual responsibilities, the states also have non-contractual responsibilities towards the union.

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[1] [2]Selda Kıraç / Buket İlhan, European Union Formation Process and Common Policies, National Education, Issue 188, Fall / 2010, p. 5

[2] https://www.avrupa.info.tr/tr/avrupa-birligi-temel-haklar-bildirgesi-708 online: 02.05.2020 14:34

The responsibilities of countries in the international arena are not only limited to written sources, but some of these responsibilities are based on customary international law. We divide international customs into two as the material and the spiritual elements. Material elements are the constant repetition of the same behaviors. Spiritual elements, on the other hand, express the psychological elements of custom. It has a great impact on the formation of customs and traditions in political and humanitarian attitudes. [3]

I. INTERNATIONAL LIABILITY

1. Liability of the States under International Law

In the international arena, there are mutual liablities against actions, attitudes or human rights violations that take place. These liabilities have become binding in the international arena, based on the agreements of the states, with the agreements and contracts between the states or between the states and the international organizations that have been realized. However, states have responsibilities that are not written in the contracts. These responsibilities, apart from specific contracts, appear as binding in international law and jus cogens rules.

Liability of states consists of the principles laid down in law about how and when a state should be held responsible for the violation of an international obligation. In this respect, these rules are the secondary rules that identify the main problems related to responsibility and seek remedies against violations of primary and material norms, such as provisions on the use of armed forces.[4] Because of this generality, these rules can be treated independently of the primary provisions on liability. These rules set forth the conditions under which an act will be considered a wrongful act in terms of international law, the conditions under which states will be held responsible for the actions of public officials, private and other persons, the objections raised against responsibility and the consequences of responsibility.

[3] Yasemin Işıktaç, Beginning of Law, Filiz Bookstore, Istanbul, 2015, p. 183.

[4] [5] Sevin Toluner, Right of Jurisdiction and Self-Defense in the Case of Military and Similar Activities Against Nicaragua, Istanbul 1993, p. 392.

The issue of the responsibility of states is one of the first 14 issues tentatively determined by the international law commission in 1949. When the International Law Commission listed the issues subject to codification in 1953, the issue of "states' responsibility" was separated from the issue of "treatment of foreigners", which was regulated as a separate heading. This situation raises the issue that the responsibility of states includes the violation of an international obligation.

2. Codification

The issue of the responsibility of states is one of the first 14 issues tentatively determined by the international law commission in 1949. When the International Law Commission listed the issues subject to codification in 1953, it was noted that the "responsibility of states" was separated from the "treatment of foreigners", which was regulated as a separate heading, reflecting the growing understanding that "states' responsibility includes the breach of an international obligation".

3. General Rules in International Law and Regional Customary Law

General rules of international law are generally not binding and are often applied in the form of general principles of law or customary law. CJEU uses general rules of international law and customary rules as a source in some of its decisions. With its unique resources, qualifications, enforcement mechanisms and subjects, EU law has the feature of being a different legal system from traditional international law. With this feature, the effect of the EC legal system on the legal systems of the member states is different from the international law. As a result of the ECJ case-law, the EC Treaties, beyond being an international agreement in the traditional sense, have transformed into the EC Constitution, which is applied as the 'superior' law in all member states. This transformation process has resulted in the restriction of the legislative powers of the member states. In this sense, EC legal integration is based on the transfer of legislative powers of member states.

4. International Unlawful Action

Depending on the agreements concluded in the international arena, an act contrary to international law,

"a) attributable to a State recognized by international law" and

"b) It must be an act that constitutes a violation of an international obligation of that state". [5]

"Violation of an international obligation" is defined as "an act contrary to the obligation to comply with that obligation". In addition, states cannot avoid liability by citing some legal justifications arising from their own domestic law. States are strictly responsible for the actions of their officials rather than the actions of private individuals.

In the case of private persons, it may be necessary to prove (fault) that the state has failed to control private persons before enforcing the responsibility of the state. The draft articles leave the determination of whether the illegality of an action is based on intent, fault, negligence or other reasons to the primary provisions regarding that obligation.[6]

II. DISCRIMINATION OF CONTRACTUAL LIABILITY AND NON-CONTRACTUAL LIABILITY IN EU LAW

The binding sources of EU law, as adopted by the CJEU, are the founding treaties, agreements amending the founding agreements and additional protocols, accession agreements, regulations, directives, decisions, some international agreements concluded by the EU, general principles of law and international customary rules. In European Union (EU) Law, all actions and transactions of institutions, bodies, offices and agencies must comply with European Union law. Union institutions and member states are obliged to comply with this law in all their actions and transactions.

In the European Union, which is defined as a "Legal Union", it is an indisputable reality that member states must fulfill their obligations to the union in accordance with the general principles of law.

Contractual liability for the Union is regulated in paragraph 1 of Article 340 of the AFEU (Agreement on the Functioning of the European Union) as follows: "The contractual liability of the Union is determined according to the law applicable to the contract in question." The contract

[5] Draft Articles on the Responsibility of States for Internationally Wrongful Acts, Report of the ILC on the Work of its Fifty-third Session, UN GAOR, 56th Sess, Supp No 10, p 43, UN Doc A/56/10 (2001).

[6] Melda Sur, Principles of International Law, Beta Publications, Istanbul 2006, p. 72.

may be a public or private law contract concluded by and on behalf of the Union.

The law to be applied to the contract will be determined according to the public law or private law nature of the contract. If the contract falls under public law, EU public law will be applied.[7] Otherwise, national law will have to be applied.8 It is the CJEU that will make this assessment.

Member states of the European Union have responsibilities to fulfill their obligations due to contracts. If they do not fulfill their obligations, the contract will be violated, for which it is possible to file a violation lawsuit. In order for a violation action to be filed, it is sufficient for the Member State to have violated EU law in any way. However, it is not possible for individuals to open this case. Violation action can only be brought against another member state by the Commission and by member states if certain conditions are met.

Likewise, the decision to be rendered as a result of the aforementioned case consists of a "detection" provision, and as a result of the decision, the relevant member state must take the necessary measures. Therefore, if individuals are harmed by the actions and actions of the member states, it is not possible to file this lawsuit against the member states with the mention that EU law has been violated.

1. Individual Compensation Actions Against States Not Applying EC Law

There is no provision in the Treaties that the member states are obliged to pay compensation to individuals who have been harmed by acts and transactions contrary to EC law. Despite the existence of tort law in each country as a requirement of the general principles of law, the principles of this obligation specific to EC law have been established by the CJEU case law. As the source of this obligation, the CJEU indicates the 10th article of the EC Treaty and the requirements of the legal system established by the Founding Treaties. The absence of provisions in the Founding Treaties regarding the consequences of the violation of the obligations arising from the EC law by the member states in the domestic law provided the CJEU with broad powers in this regard. According to the

[7] Sanem Baykal, İlke Göçmen, European Union Institutional Law, Seçkin Publishing House, Ankara 2016, p.477 -478.

CJEU every norm that carries the principle of direct effect also includes the non-contractual responsibility of the state.[8]

The effective application of EC law requires the existence of effective sanctions and compensation possibilities in case of violation of EC law by the member state. For this purpose, the CJEU has stipulated that individuals who have suffered damage due to the state's violation of EC law can file a claim for compensation before the national courts. In fact, the principle of direct action provides a minimum of coercion in the application of EC law and is not sufficient on its own. Since the possibility of seeking rights in national courts is limited to norms with direct effect, it does not provide the opportunity to guarantee all the rights of individuals arising from EC law.[9]

Liability for the legal systems of the member states is the principle of the liability of the state, which the CJEU put forward especially in relation to the non-translation of the directives. Conditions of such liability and compensation principles are determined by CJEU decisions. This legal responsibility created by the CJEU decisions continued to function with the revision of the EC to the EU later on.

III. STATES' LEGAL LIABILITY OF STATES

1. Principle of State Liability - Emergence of Non-Contractual Liability

The principle of non-contractual liability in international law, also known as State Liabilitty , was first encountered in the time of the European Communities. The non-contractual liability of the member states arising from the violation of EU law first emerged with the Francovich decision of the CJEU. With this decision, the Francovich case and its decision and the non-contractual liability of the member states arising from the violation of EU law have emerged. However, the Court expanded the scope of the liability of the states with its jurisprudence in the following years. Especially with the Factortame III decision, the

[8] Josephine Steiner,"From Direct Effects to Francovich: Shifting Means of Enforcement of Community Law", European Law Review, Vol. 3, p. 10-11

[9] KAPTEYN, P.G., - VAN THEMAT, P. VerLoren, Introduction to the Law of the European Communities, Netherlands: Kluwer Law International, 1998, p. 566

conditions of this responsibility have been made more clear.

The obligation of the member state to compensate the damages of individuals who have suffered damage due to the violation of EC law has been envisaged by the CJEU in many cases. For example, in a decision made in 1975, the CJEU stated that the member state is obliged to compensate the damage suffered by individuals due to the violation of EC law.[10]

With the Köbler decision, the definition of liability has been made for the damages caused by the judicial organs to the individuals. Especially with the Factortame III decision, the conditions of this responsibility have been made more specific. [11]

After the emergence of the principle of liability of the state, the weaknesses of the existing legal protection methods were eliminated and individuals were given the right to file a claim for compensation against the state that violated the EC law. In this way, it has been tried to ensure that the member state implements the EC law effectively and that individuals are compensated in the case of violation.

The fact that EC law imposes certain rights and duties on individuals and that national courts are tasked with securing these rights creates the state's liability for compensation. Such a system complies with the CJEU case law on the concept of direct impact and does not create any contradictions; on the contrary, it complements the system of forcing the member state to apply EC law.[12] Moreover, the negative consequences of refusing horizontal effect in the directives can be compensated for. In this context, the Francovich decision emerges as a result of the direct impact and priority principles developed by CJEU over many years.

1.1. The Frankovich Case

The deepest details of the State Liability Principle have been brought into law by the Francovich decision. The Francovich case, which

[10] Hacer Soykan Adaoğlu, National Courts and European Communities Court of Justice in the Application of European Community Law in Member States, Ankara University Press, Ankara 2006, p. 106

[11] Gökçe Topaloğlu, Non-Contractual Responsibility of Member States in European Union Law, Journal of Eurasian Social and Economic Research (ASEAD), 2017, p. 511.

[12] Steiner, a.g.e. 1993, s. 9

appeared in the European Communities, is a case arising from the failure of the Italian government to enact a directive on the protection of workers' claims in the event of the employer's bankruptcy.

Since the directive was not passed into Italian law within the specified period, the Commission filed a lawsuit against Italy before the CJEU and the CJEU decided that Italy had violated its obligation on the subject. Despite this decision, until 1991, Italy insisted on not transposing the directive into domestic law.

In 1991, an Italian national named Francovich sued both his employer, Bonifaci, and the Italian government in the national court, based on this directive. The Italian court, proceeding the case, applied to the CJEU through a preliminary decision, since there is no compensation or similar legal protection in the domestic law regarding this issue, and whether the relevant directive had a direct effect and the state that does not properly enact the directive, asked whether the workers were obliged to pay the wages they were entitled to receive pursuant to article 3 of this directive. Upon this application, the ECJ firstly determined that the relevant directive was not suitable for creating a direct effect, however, it stated that the state would be liable to the individuals who suffered damage. The decision of the CJEU on this issue can be summarized as follows:

As in this case, in the event that the effectiveness of the EC norms depends on the member state's performance of certain actions, and in the absence of these actions, in the event that individuals cannot use their rights brought by the EC norm, it is inevitable that the member state will be liable for the compensation.

From this point of view, the obligation of the state to compensate the damage suffered by individuals due to the violation of EC obligations is included in the integrity of the system established by the Treaties.[13]

1.2. Factortame III

After the Francovich decision, it remained unclear whether member states were also liable to individuals for other violations of EC law, with the exception of non-translation of the directives. With the Factortame III decision, it has been accepted that liability may arise due

[13] Andrea Francovich and Danila Bonifaci v. İtalian Republic, paragraph: 31-36.

to laws enacted in violation of EC law, and the conditions specified in the Francovich decision have been adapted to the new situation.[14]

With the Factortame III decision, the conditions regarding the liability of the member states have changed. While the Court re-examined the principles of responsibility in the Francovich decision, the application of these principles was not limited to the non-implementation of the directives. If there is an inconsistency between the result that the directive wants to achieve and the domestic legal regulations, in this case, the liability of the member states may arise if individuals are harmed.[15]

According to the judgment in Factortame III, the responsibility of the Member States should be identified with the principles on which the responsibility of the Union institutions is based. However, this identification is not so easy to make. Because the enactment of a directive in EC law and its transposition into domestic law are two separate processes and involve the participation of two separate authorities in the said process. For this reason, with the Factortame III decision, CJEU revised the conditions regarding the non-contractual liability of the member states and listed them as follows:

- The violated rule of law should aim at conferring a right on individuals.
- The violation must be serious enough.
- There must be a direct causal link between the injured party and the State's breach of the relevant obligation.[16]

As can be seen, although the first and third conditions specified in the Francovich decision are preserved with minor changes, it can be stated that the second condition is completely different. With the expression "violated legal rule" in the first condition, it is underlined that this may not only be due to an unenforced directive. Thus, CJEU expands the application area of the principle of state responsibility.

[14] Elspeth Berry, Sylvia Hargreaves, European Union Law Second Edition, Oxford, 2007, p. 134.

[15] Gökçe Topaloğlu, a.g.e., s. 513.

[16] Brasserie du pecheur v Bundesrepublik Deutschland and The Queen / Secretary of State for Transport, ex parte Factortame and Others, Joined Cases C-46/93 and C-48/93,

Although these two cases were before the European Communities, they also led to the formation of the rules of European Union law over time. In line with the decisions made, the scope of the responsibility of the states expanded with the jurisprudence in the following years. Especially with the Factortame III decision, the conditions of this responsibility have been made more specific, and the Köbler decision has made the definition of responsibility for the damages inflicted by the judicial organs.[17]

There may also be non-contractual liability of the EU and its member states. Pursuant to paragraph 2 of Article 340 of the AFEU: "With regard to non-contractual liability, the Union shall indemnify its institutions or officials for damages caused in the performance of their duties, in accordance with the general principles common to the laws of the Member States." Here, the EU is liable for the damages caused by the organs or institutions of the Union while performing their duties.

It is possible for anyone who has suffered damage to file a lawsuit, and at the end of the lawsuit, compensation is awarded in line with the damage suffered by individuals.[18] For this reason, this lawsuit is called "compensation action" in EU law. Although the EU's non-contractual liability is regulated in the AFEU, a regulation on the non-contractual liability of the member states is not included in the founding treaties. This responsibility has been developed with CJEU jurisprudence.

The non-contractual liability of the member states is based on the principle of "state responsibility"[19] developed by the CJEU. The compensation action to be filed based on this principle is based on the non-contractual liability of the member states, in other words, the liability arising from their tortious acts.[20]

1.3. Köbler Decision

With the Factortame III decision, many issues related to the non-contractual liability of the member states have been clarified by the CJEU.

[17] Hacer Soykan Adaoğlu, "The Principle of State Responsibility in EC Law from Francovich to Köbler", AUHFD, Vol 54, No 2, 2005, p. 256.

[18] Ergun Özsunay, European Union Law and Turkey-EU Relations, Vedat Kitapçılık, Istanbul 2015, p. 246.

[19] It is stated as "State Liability" in the original texts of the decisions of the Court of Justice of the European Union.

[20] Gülören Tekinalp, Ünal Tekinalp, European Union Law, Beta Publishing, Istanbul 2000, p. 266.

Seven years after the Francovich decision, in 2003, in case the judicial bodies also violate EC law, the principle that the state is responsible for the damages suffered by individuals came with the Köbler decision.

In the relevant decision, a university professor named Köbler had worked at universities for 15 years and demanded the seniority pay he was entitled to in accordance with the relevant EC regulation from Austria, of which he was a citizen. After the university refused his request, Köbler applied to the Austrian local courts. The District Court stated that the professor had also worked in other EC member states for a large part of the aforementioned 15-year period, therefore the relevant wage could not be paid, and only Austria had to have worked in order to be able to pay the seniority wage. Upon this decision of the court, he applied to the Köbler Regional Civil Court, since there was no other application authority in domestic law, and filed a lawsuit alleging that the Austrian State violated the EC law. The District Court, on the other hand, consulted the CJEU through the pre-judgment procedure.

2. Simultaneous Responsibility of Member States and the EU

From time to time, it is possible for individuals to be harmed as a result of the implementation of a measure arising from EU law by the member states. In such cases, it is stated in the case-law of the CJEU that domestic remedies should be exhausted before the final decision of the CJEU. According to the CJEU, there is no obligation to exhaust domestic remedies if the domestic courts are unable to adequately and effectively compensate the plaintiff.[21]

3. Consequences of Liability

Article 40 of the Articles Regulating the Liability of States for International Torts makes it possible for a state to claim aggravated liability on two conditions. Accordingly, in the event of a "grave violation" of a state's "obligation arising from a mandatory provision of international law", all other states as well as the aggrieved state may claim

[21] Gökçe Topaloğlu, a.g.e. s. 517.

the liability of the state that violated its obligation[22] States have only legal liability and not criminal responsibilities in international law. From a de facto point of view, amicable solutions are often the way to go. From a de facto point of view, friendly solutions are often the way to go.

3.1. Compensation

In European Union (EU) Law, all actions and transactions of institutions, bodies, offices and agencies must comply with European Union law. The binding sources of EU law, as adopted by the CJEU, are the founding treaties, agreements amending the founding agreements and additional protocols, accession agreements, regulations, directives, decisions, some international agreements concluded by the EU, general principles of law and international customary rules. Union institutions and member states are obliged to comply with this law in all their actions and transactions.

In determining the compensation, the CJEU stated that in order to provide effective protection, judgment should be made in proportion to the losses and damages suffered by individuals due to tortious acts. Here, the CJEU referred to the principle of proportionality. According to the CJEU, it is possible to reduce the amount of compensation under the principle of proportionality and equality, but it is unacceptable to award compensation by excluding obvious specific interests, such as loss of profits or damage to individuals' property. Likewise, the compensation to be paid should cover the damage to be incurred and should be of such a nature as to eliminate all the consequences of the damage. Each member state will bring its own regulations in the determination of compensation within the framework of the above-mentioned criteria. However, these criteria should not be less favorable than those applied to similar claims on the basis of domestic law and should not make it unduly difficult or impossible to obtain compensation.[23]

[22] Ceren Zeynep PIRIM, Aggravated Liability of States in International Liability Law: A Theoretical Evaluation, Public and Private International Law Bulletin, Volume: 32, Issue: 2, 162.

[23] Baykal, Göçmen, a.g.e. s. 618

3.1.1. Equal Treatment Principle

In the absence of any regulation in EU law on how the rights arising from EU law will be protected in national courts and what legal protection will be provided, it is essential to apply the national legal rules. Member states do not have to make new regulations specific to violations of EU law or create new legal protections that do not exist in domestic law. In other words, the rules existing in the domestic law of the member states regarding the protection of individuals from the unlawful acts and actions of the administration will also be applied for violations of EU law. This issue was addressed in the Rewe-Handelsgesellschaft case:

... Although the treaties give individuals the right, under certain conditions, to bring action directly to the CJEU, they do not oblige national courts, in the application of Community law, to provide legal protection other than that applied to individuals in domestic law.

With this decision, individuals have the opportunity to benefit from the existing legal protection in domestic law, even in the case of Community norms, without the need for any special regulation. The principle of equal treatment did not lead to significant changes in the legal systems of the member states.[24] Moreover, another aspect of this principle, the principle of the absence of obligation to create new means of legal protection, facilitated the work of national courts.

3.1.2. Prohibition on Making the Claim of Rights Granted by EU Law Impossible

Although member states are not obliged to create new legal protections to protect the rights arising from EU law, they are also obliged to abolish or at least not to apply domestic legal regulations that would make the exercise of these rights impossible. To this issue, Ferwerda v. is mentioned in the Produktschap case:

The procedural rules in national law regarding the protection of rights arising from EU law should not bring about a regulation less favorable than the norms regarding the protection of rights arising from national norms. In any case, the national courts have a duty to protect Regulations should not be envisaged that would make it impossible to

[24] Sacha Prechal, "Community Law in National Courts: The Lessons from Van Schijndel", Common Market Law Review, 1998, Vol.35, s. 687.

assert the rights to which it is entitled.

In the light of these decisions of the CJEU, it is possible to reach the following conclusion: In case the existing legal protection methods in the member states comply with the qualifications and standards stipulated by the CJEU, the national law will be applied. However, if the national norms do not comply with the qualifications stipulated by the CJEU, either the legislature will bring a new regulation or the judicial organs will try to adapt the existing legal protections to EU law in the light of the CJEU's decisions. This situation, which had been more or less evident up to this point, became more complex with the CJEU's emphasis on the principle of effectiveness.[25]

CONCLUSION

With the adaptation of the rules of EU law to the internal laws of the member states, in case of violation of the rights of real persons during the functioning of the EU institutions and organs, the liability of the member states arises as well as the obligation to remedy these grievances. However, the fact that non-contractual responsibility is not regulated in the EU founding treaty reveals/presents a significant deficiency in the elimination of violations.

Thanks to the decisions from the Francovich and Fartortame III cases, the rules were established in terms of the conditions of the states' liability and the degree of compensation.

With the jurisprudence of the CJEU, the issue of the responsibility of the states will be clarified to a large extent and the regulation of the issue by the current EU law will both facilitate the application opportunities of individuals before the courts and ensure legal certainty.

[25] Hacer Soykan Adaoğlu, a.g.e. 2006, s. 117-118.

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THE EFFECT OF THE PANDEMIC PERIOD ON MENTAL HEALTH

Esra Baki, page 127-138

ABSTRACT

During the pandemic period, the feeling most commonly experienced as a result of the epidemic that affected the whole world is the feeling of anxiety about someone's own health or the health of his relatives.

Although being a subjectively negative internal experience, anxiety is also useful because its presence at a certain level will cause the person to stay away from dangers, to be cautious, and comply with the precautions.

The fact people are exposed to life threats by a virus that they cannot fully see and do not know how to function also triggers a sense of uncertainty. It causes feelings of fear and anxiety about the uncertainty created by the pandemic. Stress, as a result of the individual's environment and situation during the pandemic period, many factors such as restriction of some habits, social distancing, quarantine period, economic problems trigger the emergence of the stress to be experienced more severely.

People show a normal distribution and diversity in terms of their psychological responses to the pandemic. If it does not progress in the same way in every individual, that is, if some individuals show very severe symptoms and some individuals survive without realizing it; The psychological effects created by the pandemic process also vary between individuals. The majority of people experience a moderate level of anxiety, thus minimizing risks and maintaining their functionality.

The uncertainty created by the pandemic period causes individuals to experience the feeling of stress above normal, and this is due to the pressure created by the feeling of anxiety on the individual. Dealing with the most important psychological factors caused by the pandemic process is to remember that emotions such as anxiety, fear, uncertainty and anger felt by the person are useful as long as they are not excessive and don't eliminate the functionality of the person.

Keywords: Pandemic, Stress, Anxiety, Psychological and Behavioral Reactions.

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THE EFFECT OF THE PANDEMIC PERIOD ON MENTAL HEALTH

The covid-19 virus causes health problems in two ways. The first is the physical health problems directly caused by the virus, and the other is mental health problems such as anxiety, panic, and anxiety associated with the epidemic.

The covid-19 virus should not only be considered as medical health crisis but also a mental health emergency situation. Outbreaks were found to affect not only the physical health of individuals but also the psychological health and well-being of the entire population, whether infected or not.

In the early days of the epidemic, the physical consequences of the virus attracted more attention and did not focus on the mental health consequences. However, even if the epidemic ends and when we return to our normal life, the post-epidemic psychological consequences will continue to effect after months and years later.

According to Janoff-Bulmann and Timko, they emphasized in their statements that diseases should be treated as traumatic negative events. In the face of this epidemic disease, typical trauma reactions, denial, shock, and surprise reactions are expected to be observed in individuals.[1]

Accordingly, denial is known to be a spiritually defensive reaction that all people use as a means of coping at the beginning, and therefore the forced behavior in accepting the disease is due to this.

Especially in the early days of the epidemic, the rapid and random burial of the corpses and the massive and ruthless burning of the corpses in the middle of the streets in some countries caused billions of people to watch without censorship in any way.

[1] Rüstem AŞKIN, Yasemin BOZKURT, Zekiye ZEYBEK, Covid-19 Pandemisi: Psikolojik Etkileri Ve Terapötik Müdahaleler, İstanbul Ticaret Üniversitesi Sosyal Bilimler Dergisi Covid-19 Sosyal Bilimler Özel Sayısı, Sayı:37, 2019, S.307-308

Such images have a terrible place in people's minds. Although people are unaware of this, a small trauma in their subconscious may cause psychological problems that will deeply affect them in their future lives.

It is observed that the high stress they have experienced will seriously affect the future social and business lives of individuals. In the first days of the epidemic, the emptying of food shelves, closure to homes, interpretation of every bodily sensation as a symptom of COVID-19, exposure of minds to dirty information with social media posts, watching programs about the epidemic for long hours on the internet and TV, also cause fear and panic to increase significantly.

A realistic perception occurs with the acceptance that comes after the first shock experienced with the pandemic. However, the individual will start to act with the thought of 'I must protect' by the motive to protect himself and his family. The process of adaptation to restrictions and prohibitions imposed by state authorities has also increased.[2]

Fear, unhappiness, hopelessness, despair such as feelings that are felt by uncertainty and anxiety about illness give rise. These emotions cause people to feel exhausted and tired. All negative emotions experienced during this time, according to experts, were expected to be seen in a very normal way. Apart from this, it has been observed that individuals also negatively affect their sleep quality.

Healthcare personnel are the ones in closest contact with infected people in the outbreak. By combating the epidemic in the process, they play a very active role in the treatment against them, so these people can get a high level of the virus and in the same way, they can carry the virus.

Besides, it was observed as a result of the research that the mental health of healthcare personnel working in intensive care and emergency units was seriously affected. As a result of a study, it was observed that the healthcare personnel who worked during the SARS epidemic still had a very high-stress level even a year after the epidemic.

[2] Rüstem AŞKIN, Yasemin BOZKURT, Zekiye ZEYBEK, a.g.e.. s.308

1. Pandemic and Mental Health:

This global epidemic is primarily a traumatic event that threatens the lives and assets of individuals and is distressing for everyone. These traumatic effects will vary within the framework of the individual's class structure, socioeconomic status, cultural characteristics, individual characteristics, and mental background, and the impact process will continue.

It is observed that the individual experiences intense anxiety in the environment where he is, with the fear of getting sick, uncertainty, the disease will infect him or his family, the place where he lives is unsafe, and similar evaluations.

Even more dangerous problems will experience when isolation and quarantine begin. The behaviors and reactions of those who have symptoms, those who do not have symptoms, those who suffer from the disease will also have different results. Separation from loved ones, restriction on freedom, uncertainty about the course of the illness can have traumatic consequences on the mental structure. Anger problems, related behavioral problems, communication difficulties can experience.

In the first days of the quarantine-isolation process, more acute stress reactions also occur. It manifests itself with the symptoms of depression and anxiety where it is quite normal that during this period occur behaviour disorders and adjustment disorders.

2. Spiritual Effects of Quarantine:

As a result of the researches, it has been observed and proven over a long period that the long-term effects of quarantine include behavioral changes such as avoiding crowds and washing hands with extreme caution, and some people cannot return to normal life for months. Accordingly, can be seen frequently in individuals' psychological complaints and mental disorders[3]

[3] Burhanettin KAYA, Pandeminin Ruh Sağlığına Etkileri, Klinik Psikiyatri Dergisi, Sayı:23, 2020 S.123-124.

2.1. Common mental health complaints during quarantine:

• Confusion, poor concentration,
• Fear,
• Anger,
• feeling of guilt,
• Feelings of mourning,
• Drowsiness,
• Feeling exhausted,
• Insomnia due to anxiety.

2.2. Common mental disorders during quarantine:

• Acute Stress Disorder,
• Post Traumatic Stress Disorder,
• Major Depression,
• Common Anxiety Disorder,
• Adjustment Disorder.[4]

3. Psychological Problems During Pandemic Period:

The most important psychological effect of the process experienced during the pandemic period emerges when a deep feeling of insecurity and anxiety manifests itself effectively. The most important psychological effect of the process experienced during the pandemic period emerges when a deep feeling of insecurity and anxiety manifests itself effectively.

Therefore, when this situation is examined, some people want to escape when faced with a stressful situation, while others want to fight. It is quite normal to experience a certain aspect of stress symptoms due to the Covid-19. This causes the basic sense of security and the existence of people to be shakened to a certain extent.

Anxiety is a feeling that occurs with negative thoughts in our mind and has a disturbing quality. As we see concerns about many things in our daily life, these concerns are slowly starting to emerge against the coronavirus, which negatively affects a large community around the world.

[4] İrem YILDIZ, Uğur ÇIKRIKÇILI ve Şahika YÜKSEL, Karantinanın Ruhsal Etkileri Ve Koruyucu Önlemler, Türkiye Psikiyatri Derneği Ruhsal Travma ve Afet Çalışma Birimi, 2020, S.2-3, Website: file:///C:/Users/Luka170916/Desktop/YÜKSEK%20LİSANS%20TEZ%20KONU%20MALZEMESİÖNEMLİİ/KarantinaCOVID.pdf (çevrimiçi tarih: 25.10.2020)

Since the Covid-19 outbreak, posts have been made on television and internet portals to raise awareness of individuals about the disease. As a result, many people can feel a lot of feeling like they have a sore throat, chest tightness, and dyspnoea. The equivalent of this in psychology can be explained by the concept of psychosomatic symptoms. In other words, it can be defined as psychologically based bodily complaints.

When these complaints are looked at, the person does not have a physical problem but feels anxiety as if something happens in his body and begins to believe that there is something in his body.[5]

In such a case, the person should call the relevant health institution to get the correct information, then apply to an institution that offers free mental health services. Thus, the psychological problems experienced by the individuals are helped to be overcome more easily with the help of experts.

Another factor that raises coronavirus concerns is the uncertainty about the virus. The absence of a specific treatment for the disease may cause stress and anxiety to increase more than normal and reflect on the individual's daily life and behavior.

It is accepted as a "normal situation" for individuals to experience fear, anxiety, unhappiness, excitement, anger, and many other negative emotions in the face of difficult life events. In situations of experiencing difficult life problems, disturbances in biological routines such as affectivity, sleep, and nutrition are seen as a form of stress.

Coronavirus pandemic; It is an abnormal condition that makes life difficult and threatens mental health for individuals of all ages in psychological, physiological, societal/social, and emotional terms.

Images and articles shared about Covid-19 cause high levels of stress, fear, panic, and anxiety in people; It causes disturbances such as phobias, sleep problems, feeding problems, and obsessive thoughts, and this effect increases beyond normal. With the prolongation of this process,

[5] Mehmet KANDEMİZ, Hasan ATAK, COVİD -19 Pandemisi Döneminde Ruh Sağlığı Rehberi (Stres ve Stresle İlişkili Belirtilerle Başa Çıkma), Kırıkkale Üniversitesi, Danışma Rehberlik Uygulama ve Araştırma Merkezi, 2020, S.4-5, Website:file:///C:/Users/Luka170916/Desktop/YÜKSEK%20LİSANS%20TEZ%20KONU%20MALZEMESİ ÖNEMLİİ/covid19-14nisan2020.pdf (çevrimiçi tarih: 25.10.2020).

it causes symptoms such as hopelessness, unhappiness, pessimism, and helplessness to manifest themselves effectively along with anxiety-oriented stress reactions.

After this negative emotional state is experienced, it causes the person to move away from their personal and social life areas and avoid entering these areas. The individual may also experience a depressive mood by closing themselves at home or being deprived of activities that will make them feel happy and peaceful.[6]

4. Psychological Reactions in Pandemics:

Educational and behavioral intervention is very important for pandemic management. Individuals experience emotional stress in terms of feeling threatened and becoming infected. To understand the destructive social behaviors that can occur after infections, it is necessary to be aware of the information about psychological factors beforehand.

Most people are psychologically resistant. It is thought that he will survive the highly threatening event without psychological damage. However, the next outbreak is likely to cause further concern due to the previous outbreak. Anxiety and fear are among the emotions that will be experienced during the pandemic period and these feelings are also considered normal.

Psychological reactions of people to pandemics are different from each other. While some people are more resistant to stress, it can be said that other people have a higher rate of stressful mood when faced with threatening events such as a pandemic infection.

While some people survive these emotional problems without problems after the threat has passed, some people have a longer effect. Socially destructive behaviors can occur in certain conditions. However, it is seen that socially supportive behaviors are more effective during pandemic periods.

[6] Mehmet KANDEMİZ, Hasan ATAK, COVİD -19 PandemisiDönemindeRuhSağlığıRehberi (Stres ve Stresle İlişkili Belirtilerle Başa Çıkma), Kırıkkale Üniversitesi, Danışma Rehberlik Uygulama ve Araştırma Merkezi, 2020, S.6-7, Website: file:///C:/Users/Luka170916/Desktop/YÜKSEK%20LİSANS%20TEZ%20KONU%20MALZEMESİ-ÖNEMLİİ/covid19-14nisan2020.pdf (çevrimiçi tarih: 25.10.2020)

Anxiety in the face of social events such as a pandemic can reveal the desire to cooperate and act together among individuals. However, some individuals who experience excessive anxiety can harm others as a result of wrong behavior when they are not predicted by the intensity of their emotions.[7]

5. Methods of Coping With Stress During Pandemic Period:

Stress also arises from external factors and their perspective towards the world. Stress is a concept that should be in our lives.

However, we must eliminate the damage caused by stress. Making stress a tool that we can use in our development also helps our lives become more meaningful.

5.1. Stress Coping Strategies:

In coping with stress, first of all, it is necessary to determine the useless and harmful reactions to the individual and to investigate what they cause, and find out as much as possible. Stress coping methods aim to minimize stress by providing specific skills that will enable the individual to change these reactions (Ozmen and Onen, 2005).

Coping strategy is also used conceptually to determine the motivation of the individual in the cognitive field. Ways of coping with stress can be classified into three groups related to body, mind, and behavior.

5.1.1. Body Techniques

The ways of coping with the body aim to eliminate the negative effect of stress on the body as much as possible by affecting the central nervous system and the sympathetic nervous system.

Therefore, the excessive stress experienced affects our performance, health, and quality of life in a terrible way. In particular,

[7] Paul Flowers, Mark Davis, Davina Lohm, Emily Waller ve Niamh Stephenson, Pandemik influenza davranışını anlama: Keşifsel bir biyopsikososyal çalışma, Sağlık Psikolojisi Dergisi, Cilt:21, Sayı:5, 2016, S.266-268

there is a stronger connection between bodily functions and stress than is thought.[8]

5.1.1.1. Relaxation Exercise:

It is thought that the purpose of the relaxation exercises performed is to facilitate the transition of the body to the parasympathetic nervous system naturally, to provide physical relaxation, and finally mental relaxation.

Relaxation exercises help our body to slow down palpitations, contraction functions and improve the thinking system more effectively, thanks to feelings such as fear, excitement, and anxiety.

5.1.1.2. Breathing Exercises:

There is a strong connection between controlling the body and healthy breathing. Learning to breathe in a healthy way to handle stress impacts a very important behavior in our life. This situation allows the relaxation of all the muscles of the body and also the relaxation of the body. As breathing itself is relaxation, they prefer to be used as a part of all relaxation exercises.

5.1.1.3. Meditation:

Meditation involves inner concentration and calmness to rest the body physically and emotionally. Meditation helps individuals to get away from stressful situations and reduce stress symptoms as much as possible.[9]

5.1.2. Techniques for Behaviors:

5.1.2.1. Developing Social Skills:

They detect problems occurring from interpersonal relationships as an important source of stress. To eliminate stress, it is also very important to develop social skills together. Good social relationships will

[8] LEUNG Mei – Yung, LIU Anita M. M. and WONG, Maggie Mei-Ki; "Impact Of Stress -Coping Behaviour On Estimation Performance", Construction Management And Economics, V. 24, N. 1, 2006, s.55

[9] Önder YAMAÇ, Üniversite Öğrencilerinin Algıladıkları Sosyal Destek İle Stresle Başa Çıkma Stilleri Arasındaki İlişki, Yayınlanmış Yüksek Lisans Tezi, Selçuk Üniversitesi, Sosyal Bilimler Enstitüsü, Konya,2009, S.40-42.

contribute to the enhancement of the functionality of the social support resource to be applied.

5.1.2.2. Changing Environmental Impacts:

Another approach in stress management can be said to be an environmental approach that aims to change the objective qualities of external conditions and make them less stressful. In this approach, it is a process that helps people to cope with stress by changing the conditions specific to the environment they live in.[10]

CONCLUSION

It was observed that the individuals in the pandemic period experienced a state of stress, uncertainty about the future, and as a result, uncontrollable high stress occurred in the individual.

It is thought that individuals experiencing high stress during the pandemic period will seriously affect their future social and business lives.

In the first days of the epidemic, the emptying of food shelves, closure to homes, interpretation of every bodily sensation as a symptom of COVID-19, exposure of minds to dirty information with social media posts, watching programs about the epidemic for long hours on the internet and television, causing fear and panic to increase significantly.

Therefore, how the individuals will continue the epidemic period, whether the disease will lose its effect, the risk of transmission of the disease, the global change affecting the world, economic difficulties, and most importantly, the psychological depression and stress situation can be considered as factors that affect individuals.

If individuals are in a high-stress position during the pandemic period, they can take control by using stress coping methods.

[10] Nesrin HİSLİ ŞAHİN, Murat GÜLER, H. Nejat BASIM, A Tipi Kişilik Örüntüsünde Bilişsel ve Duygusal Zekanın Stresle Başa Çıkma ve Stres Belirtileri İle İlişkisi, Türk Psikiyatri Dergisi, 2009, S:11.

If the feeling of stress they experience causes some insurmountable psychological reactions and stress in the individual, psychological support should be obtained from experts.

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WOMEN'S DIVORCE CASES IN THE 17TH CENTURY IN ISTANBUL QADI REGISTERS

Melek Nuredini, page 139 - 147

ABSTRACT

Through registers we can see important information about family law from the Ottoman period. According to what we have learned from the data obtained, the amount of mahr (reward) given to women from the marriage contract is frequently seen in the sharia registers in case of divorce. Alimony is a woman's pursuit of her legal rights and the protection of these rights by the court in various matters. Economic structure was basically determined by the principles of Islamic law. In many areas of Ottoman and Middle Eastern studies, registers have been used extensively as primary historical sources. Women's studies, Muslim and non-Muslim relations, material culture of society, Ottoman law studies and other subjects have witnessed new readings and understandings through the use of registers. We see that subject such as the city, economy, family, law, biography of women, army, foundations, population, disease, slaves are emphasized. In this study, we focused mostly on the divorce of men and women, the emancipation of concubines, and the position of women and children in the society in social, cultural, legal and economic issues in the Ottoman society in the 17th century Istanbul registers.

Keywords: woman, child, divorce, registers, qadi.

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Introduction

Şer'iyye (Sharia) Registers are important sources in terms of reflecting the social and economic status of the region where they were registered, the social and family structure, the townships and sub-districts, social institutions and foundations in this region, political, administrative, economic and military situation of the Ottoman Empire in general. Qadi Registers; Starting from the second half of the 15th century to the first quarter of the 20th century, the Ottoman Empire constitutes one of the main sources of Turkish culture and history, since it is closely related to social, economic and political life.

One of the most regular collections among the qadi registers that document the legal and administrative activities of the Ottoman State courts are the books belonging to the qadi of Istanbul, Üsküdar. It is an important field of study in terms of illuminating the social structure in the classical period when Ottoman state institutions were established and developed. In order to illuminate the disintegration process of the family, which is the basic structural unit of the Ottoman society, the sharia records, which include the records kept in the Ottoman courts, are among the most important sources. The inequalities experienced by women and their ability to exist in society only as wives and mothers are a common problem for all women. The people did not go to the courts only to settle the disputes between them. On the contrary, it was applied to the court for almost every daily events that take place in the society, from a simple appointment of a proxy to bail, from buying-selling to renting, from marriage to divorce. For this reason, the qad' registers are the mirror of the society at that time. The family has been the basic unit of all societies. For the establishment of this unit, men and women must demonstrate their desire to live together in a contract called marriage in the presence of witnesses.

In Ottoman society, although continuity in marriage is essential for the protection of family unity, it was possible to terminate marriage contracts in various ways when it became impossible to maintain harmony in the family. According to Islamic law, which is the basis of Ottoman family law, in principle,

the right to divorce belongs to the man. Even the man's unilateral declaration of his divorce from his wife, verbally, was considered sufficient. It is not legally required to register the situation with the court. However, many divorce documents that appear in court records show that divorces were recorded in Ottoman society.

The books belonging to the Istanbul court, which are in the 17th century Istanbul qadi registers, have been our subject because they are important for the socio-cultural history of the period, these books have been examined in detail and the cases in which women and children are directly or indirectly have been examined and these cases have been classified according to their subject. In this study, it was aimed to reach information about the general situation of the society in the specified period and region by analyzing some of the records we obtained in the 17th century, based on the Istanbul Court records, and analyzing the cases involving women and children. It will be tried to examine how the Ottoman State followed the cases involving women and children and to what extent it adhered to the principles of Islamic Law in practice.

1. Women in Ottoman Society (Marriage Status in Ottoman Law)

Throughout Turkish history, the position of women in society has been an undeniably important point. The fact that women are not ignored in the reception and hosting of ambassadors and in the administration of the state indicates the political and administrative position of women in Turkish society. (Hatun) who joined the expeditions with the Sultan, has a say in the administration as in the old Turks. Among them were those who directed the state policy, those who were the head of the state and those who administered the state as regents (Kafesoğlu, 2007, s. 207).

With the adoption of Islam in the former Turkish government has continued importance given to women. The common image of the Ottoman city woman is the housewife and it can be said that she has the most active role in the survival and continuation of the family. The woman was the most active person

in the large Ottoman family, where there were many individuals in child care and upbringing. (Doğan, 2009, s. 83).

One of the main titles of Islamic family law in fiqh books is marriage. Engagement before marriage is the man's offer to marry the woman and the woman's acceptance of this offer. However, engagement is not a binding contract. Since it is not accepted as a contract, one of the parties always has the right to abandon the engagement. In the applications of Ottoman law reflected in the documents, marriage is possible for minors with the permission of their parents or guardians.

The most important concept of the marriage contract is the mahr, as can be seen in the registry records. In the marriage permit documents consisting of eighty-six examples of the period examined, the status of the woman is defined as bikr-i baliga (adult single girl), divorced woman, woman whose husband died, freed concubine, daughter close to puberty. The forms of marriage permission records are similar to each other.

1.1. Mahr -Reward

It is seen that the mahr is given in two ways according to the payment methods in the Ottoman society. The first one is given before the marriage and it's called the mahr muaccel. Secondly, after the marriage or in case of death, the mehri paid to the spouse before the distribution of the estate is majjal. It is seen that the mehri mueccel was recorded in the books during the marriage contract. It is seen that in some of the marriages that were held during the Ottoman Empire, a payment was made by the man, both under the name of mahr and a thick-headdress.

Mahr continued to exist side by side in the Ottoman state as a legal institution and a thick title as a social institution. Due to the fact that the bold title is not legally binding, there are many records related to the subject of mahr in the examined books, but the name of the bold title was never mentioned (Ortaylı, 2000, s. 35).

İn the Qadi registers Registry No. 3 of the Bab Court (H. 1077 / M. 1666 - 1667), Registry No. 3 of the Bab Court (H. 1077 / M. 1666 - 1667), vol: 17, page: 217, Registry No. 3 of the Bab Court (H. 1077) / M. 1666 - 1667) volume: 17, page: 253,

Judgment no: 270, Registry No. 3 of the Bab Court (H. 1077 / M. 1666 - 1667) volume: 17, page: 272 Judgment no: 295, Bab Court Registry No. 11 (H. 1081 / M. 1670-1671) volume: 53, page: 168 (http://www.kadisicilleri.org/)It is seen that there are lawsuits related to mahr. In the notebooks that are the subject of our study, there are more than one example of such cases. However, there is no information as to whether the money was paid as a result of the lawsuit.

The judges were accustomed to prevent any kind of interference with the women's rights, and the cases related to the mahr were generally decided in favor of the women. Female marriage It is seen that he has all kinds of right of disposition on the mahr during and after the marriage (Büyükşahin, 2013, s. 30).

We see that in some cases, women give up the mahr received in marriage contracts as a divorce price. Such situations are encountered especially in cases where the woman demands divorce. It is known in court records that women consent to divorce their spouses in return for a certain price.

1.2. Family Relations Reflected in Legal Texts During Marriage

The separation of property, which is reflected in the legal texts between husband and wife, is an effort to legalize who belongs to the property and property of the family. Apart from the purchase and sale contracts, men and women discharge each other's embezzlement from their expenditures. In the legal relations between the husband and wife, it is seen that the women mostly sell all the belongings, other property and similar things in the house belonging to their husbands and do not get the price of them, and again, they acquit their husband's embezzlement by taking the full or partial price of the mahr-i-mueccel. Likewise, disputes between spouses with their relatives due to marriage with their mother-in-law and father-in-law are mostly encountered in debt-credit cases.

2. Divorce in Ottoman Law

In Islamic family law, divorce is divided into three parts. As can be seen in the registers, these are the judge's decision to separate the spouses in case the complaint of the woman who wants to divorce by filing an application to the court is valid and proven. In talaq type divorce, the husband can divorce the woman without justification. The most common dispute in the registry is a consensual divorce. In these divorces, the case is generally transferred from the mouth of the woman and the man consents.

In Islamic Law, spouses are given the right to divorce. Although the general opinion is that this right is granted only to men, women are also given the right to divorce under certain conditions. Although the man has been granted the right to divorce his wife, with the name of talak, of his own free will and without the intervention of a judge or a clergyman, every measure has been taken to prevent abuse of this right (Akgündüz, 1989, s. 122).

A woman's separation by mutual agreement by waving some of her rights takes place in three ways: hul or muhâla'a, and termination of marriage with a qadi's decision for certain reasons. As stated by Islamic scholars, the right to divorce is available to both parties, but since the concept of family is highly valued in Islam, the conditions of divorce are also aggravated.

2.1. Types of Divorce and Conditions of Divorce

It is seen that it was applied in Ottoman family law and types of divorce were formed. As in matters related to marriage and inheritance, non-Muslims in Istanbul also apply to Ottoman courts for divorce cases. Conditional talaq, which is seen in the records, is stipulated and if the condition is fulfilled, the woman is considered to be divorced even without being face to face with the man.

One of the conditions that men run for divorce is to state that his wife will divorce him if he does not return within a certain period of time, while going from his place of residence to another place. There is no need to be in the same place at the same time in a divorce with talaq. It is sufficient for the husband to send the news by saying that he is divorcing her in a parliament where his

wife is not present, or just stating that he is sweetening his wife in the presence of witnesses and proving the situation with witnesses is sufficient for divorce with talaq. The reasons for divorce in the qadı registers are; There are cases such as adultery, intent on life, ill-treatment and dishonorable behavior, committing a crime or leading a dishonorable life, abandonment, mental illness, dissolution of marital union, agreement of spouses in divorce, failure to establish a common life. Cases related to divorce in qadi registers Eyüb Court (Havass-ı Refia) Registry No. 74 (H. 1072 - 1073 / M. 1661 - 1662), volume: 28, page: 127, Judgment no: 102, Üsküdar Court Registry No. 84 (H.999-1000/ M.1590-1591) volume: 10, page: 126. It is cited as judgment no: 76. (http://www.kadisicilleri.org/)

2.3. Status of Women and Children After Divorce

After the divorce, the attitude of the woman during the lawsuit determines the situation of the woman, and different results emerge depending on the agreement on alimony, the right to shelter and the mahr. It is obligatory for the man to fulfill his alimony and residence rights as if he were married until his iddah ends. In fact, the woman can continue to live in her husband's house during her iddah, provided that they are in separate rooms. Mostly, after the divorce, he goes to a separate house, for example, to his father's house and almost completely cuts off the relationship. Again, in divorces, agreement is essential. Pregnant women can receive alimony. But there are many instances where the woman often gives up asking for her own maintenance, childcare expenses, to get out of marriage. It shows that if the woman remarries, there may be some exceptions for the removal of the child from her.

Conclusion

The concept of crime has emerged with the existence of human beings and has been seen in different ways in every society. It is seen that Islamic Law is applied as the basis for the punishment to be given to a crime committed in the Ottoman legal system. Penalties to be given to crimes are largely stated in the laws and the limits of the punishment are also drawn. In Ottoman Law, after a crime was committed, if there was no previous provision regarding the punishment of this crime, the punishment of the perpetrator was left to the discretion of the judges, but they were not given unlimited authority. Although the conditions change in every society where marriage exists, the concept of divorce exists. With the divorce, not only the spouses but also the society is affected. For this reason, the lives of the people who make up the society, and thus the societies, have been affected by it. This system, which also dates back to ancient times, has gradually become modernized over time.

Giving equal rights to everyone is the most important example of this. In Islamic Law, the right of divorce has been given to women, especially to men, but it has been considered as religiously forbidden. For this reason, very strict rules have not been determined. The man has the right to talak, the woman the right to muhala, and both the man and the woman have the right to separate. Although the decision of divorce has been given, there is a certain period of iddah. These are the concepts that form the basis of divorce. The basis of both laws is human. For this reason, no matter how much history has changed, how much people have developed, the problems have remained the same. The same is true for marriage and divorce. In both, it is the spouses and society that are affected. Their forms and conditions change with laws. However, if we consider our Civil Code, since Islamic Law comes from its origin, it has a lot in common. As a result, although the two legal systems have a lot of similarities, there have been differences with the change of many law articles arranged to pass from Islamic rules to European style.

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