SLOVAK BALKAN PUBLIC POLICY FUND

COLLECTION OF PAPERS

RULE OF LAW
IPA GRANTEES
PART I
ALBANIA · BOSNIA · MONTENEGRO

B | T | D The Balkan Trust for Democracy

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FOREWORD

According to recent studies on civil society development in the Western Balkan countries such as CIVICUS Civil Society Index, USAID Sustainability Index etc. civil society is maturing. While facing many different country-specific challenges, however, there is one in particular faced by all – lacking influence on the development of laws and policies that affect daily lives of ordinary citizens. Considering that all countries are on the path of EU membership, this process, no matter how long, always requires massive changes of laws, bylaws and policies (usually termed by experts as "harmonization" and "transposition"), sometimes even overnight.

In such a context our network felt it was one of its strategic goals to work on development of advocacy knowledge and skills among civil society actors as a base for their greater impact. Setting up of the Slovak-Balkan Public Policy Fund (SBPPF) was a natural consequence when contemplating how to embark on such a huge task as building of research and advocacy capacities of CSOs in different areas of work. Starting as a small pilot initiative that initially included only three countries, SBPPF quickly grew to be a recognized, multi-donor and network-supported project, covering six countries and producing twice as many policy products in its second round.

Considering that the EU accession process is the key transformation and reform factor, we have focused our effort on assisting both CSOs and individual young researchers in the development of concrete policy products that analyse considerably different but equally important topics. Among the 21 policy papers, there are those that aim to open up state budget for citizens' in Macedonia to understand how public money is being

spent; improve possibilities of young Bosniacs who have studied at foreign universities and want to return to BiH and work in public administration; improve integration and well-being of families and victims and missing persons during 1999 conflict in Kosovo; improve transparency and citizen participation to urban development process in Serbia, push for implementation of environmental standards in Albania under the Aarhus Convention…

The energy, the passion, the work and the commitment behind each CSO and individual researcher working on these and other papers, those of the project team and mentors who helped in their development and are presented via this collection testify that there is a wealthy potential among CSOs and researchers to give relevant, timely and concrete contribution to solving the array of issue being tackled in the papers. We hope that this collection will be a serious step in helping them promote, pressure and influence among public institutions and other relevant stakeholders in their countries.

Enjoy the read.

Tanja Hafner Ademi
Executive Director
BCSDN

SLOVAK - BALKAN PUBLIC POLICY FUND

Civil society actors often do not have the capacity to engage and influence civil society related policies and programmes and thus need to build their expertise and understanding of how the EU and national institutions function, as well as the possibilities and existing tools for advocacy. On the other hand the institutions also lack the awareness about the benefits and the added-value from working with CSOs and the policy options and solutions they might offer. It is for this purpose that BCSDN, in cooperation with Pontis Foundation and supported by Slovak Aid, the European Commission (EC) and the Balkan Trust for Democracy (BTD), has been administrating the Slovak - Balkan Public Policy Fund, an initiative that aims to support civil society actors form the Western Balkans to develop their research and advocacy capacities and increase their engagement into the creation of public policy in regards to the EU integration process.

The Slovak - Balkan Public Policy Fund operates through a programme of small grants and tailor-made capacity-building support allocated to CSOs and individuals that are involved in the shaping of the public debate. In the first phase, the Fund focused on providing local CSOs a concrete, practical, learning-by-doing support, including a training on public policy and a mentor, to develop a policy product and organize a public debate event in their area of work. In the pilot phase in 2011-2012, the grant scheme targeted 3 countries: Albania, Macedonia and Montenegro, and 11 small grants (between EUR 3,000 and EUR 5,000) were offered, out of the 113 applications recieved, in total amount of EUR 42,000.

In 2013, the Slovak - Balkan Public Policy Fund continued its program for enabling CSOs and individual researchers from the Western Balkans to develop their advocacy skills and contribute to the reform process and policy making in their respective countries, but increased its coverage to include also Bosnia & Herzegovina, Kosovo and Serbia. In this second round, a total of 167 applications were received, out of which 21 projects were selected for funding (12 for Albania, BiH and Montenegro covered from the European Commission and BTD funds and 9 covering Kosovo, Macedonia and Serbia supported by Slovak Aid) and a total amount of EUR 84,000 was granted. The Call and application documents and process was coordinated and developed in cooperation with BCSDN member CRNVO who also acted as partner for sub-granting and monitoring of this project activity.

The awarded organizations and individuals received a training on advocacy and policy paper writing as well as continuous support in the implementation of the project by BCSDN, Pontis and assigned mentors. After the successful development of the policy products, in 2014, the majority of the projects were publicly presented in front of relevant stakeholders at national level, aiming to present the research data and the main policy recommendations, to raise public awareness about the addressed topic, and to advocate and lobby for improvement of public policies among the representatives of the CSOs, public institutions, donors and other relevant stakeholders who attended the presentations.

The policy outputs of this second round of the SBPPF program are revolving around two priority themes: 1) Democracy and the rule of law and 2) Non-majority communities. With regard to *Democracy and Rule of Law*, the focus is put on analyzing one or several of the following issues: policy-making and policy implementation/enforcement, corruption,

media, access to public information, administration capacity and transparency of public institutions; while within the second priority theme, *Non-majority communities*, special attention is given to: respect and protection of non-majority, social groups and groups in position of other forms of discrimination and people with disabilities.

The Slovak Balkan Public Policy Fund has proved to be a successful support model for boosting reserach and advocacy skills of CSOs in the Western Balkan countries, as projects supported in both rounds have demonstrated tangible results from their policy work. BCSDN is convinced that the selection conducted by an evaluation committee, composed of experts on public policy issues, advocacy and civil society development from the Western Balkan Countries and EU countries, produced successful policy outputs and empowerd civil society actors with great advocacy potential and opportunity for real impact in the policy-making process.

Balkan Civil Society Development Network (BCSDN) is a network bringing together 15 civil society organizations (CSOs) from the Balkan region, both new member states and (pre)-accession countries; a network which exists since 2003 and has been officially formalized in 2009. Its mission is to empower the civil society and influence European and national policies towards a more enabling environment for civil society development in order to ensure sustainable and functioning democracies in the Balkans. Its work mainly focuses on advancing the concerns of local CSOs and other stakeholders to EU institutions, regional inter-governmental forums, and national governments relevant for enlargement policies in the countries.

The Pontis Foundation is a Slovak non-profit non-governmental organization established in 1997. It encourages individuals and businesses to take responsibility for those in need and for the world around them, contribute to the building of democracy in non-democratic countries, create awareness about this need in Slovakia, and advocate for values-oriented Slovak and EU foreign policies. The Pontis Foundation promotes corporate philanthropy, corporate responsibility and is active in development cooperation, where has a track record of successful projects aimed at transferring Slovak transition and EU integration experience and know-how, especially in the Western Balkans and the Eastern Partnership countries. Through the projects in the field of democratization and development abroad, the Pontis Foundation promotes Slovak and EU foreign policy based on democratic values such as respect for human rights and solidarity.

Center for Development of Non-Governmental Organizations (CRNVO) is not-for-profit, non-governmental association founded and registered in September 1999. The mission of CRNVO is to provide support to development of non-governmental organizations in Montenegro and contribute to creation of a favorable environment for citizens' participation in public policy issues and civil society development. CRNVO provides help to the beneficiaries through educational programs, publishing programs, legal aid, researches and representations of citizens and non-for-profit sector.

RULE OF LAW PART I

LIST OF POLICY PAPERS

ATTRACTING EXPERTISE FOR BOSNIA AND HERZEGOVINA CIVIL SERVICE FROM ABROAD

Emina Ćosić
Adnan Ovčina

SUMMARY & RECOMMENDATIONS

The key principles of effective public administration are: legal certainty and predictability; openness and transparency; accountability; efficiency and effectiveness.[1] Currently the overall Bosnian and Herzegovinian (BiH) socio-economic and political landscape has created an environment of ever growing dissatisfaction of BiH citizens with the government(s), and increasing distrust in the public administration, pointing to the very fact that public administration is not fulfilling these principles.

BiH has been lagging behind in its public administration reforms, compared to other counties in the region. It is still lacking administrative capacities to respond to process of EU integration. Furthermore it is not transparent and merit based, remaining highly politicized, and human resources are still lacking the adequate skills to for successful implementation of the Copenhagen Criteria.[2]

A detailed review of reports, legislation and policy documents alongside interviews with institutions relevant to Public Administration Reform as well as experts, show that the public administration reform is extremely challenging, demanding and at times overwhelming process for BiH institutions.

1 SIGMA (2013), Priorities, SIGMA, Bosnia and Herzegovina, available at: http://www.sigmaweb.org/publications/public-governance-assessment-reports.htm

2 European Commission (2006), Progress report of state level civil service recruitment process in Bosnia and Herzegovina, ACIP, Bosnia and Herzegovina

The reform necessitates adequate skills and knowledge of human resources to carry it forward. Towards this end skilled human resources may be recruited via brain-gain practices directed towards BiH diaspora, which possesses enormous potential and pool of expertise and knowledge. However for such a practice to materialize the public administration employment procedures have to modernize, primarily in relation to merit based employment, establishment of distance based employment systems, and these efforts have to go hand in hand with the education reform, primarily moving forward the diploma recognition procedures.

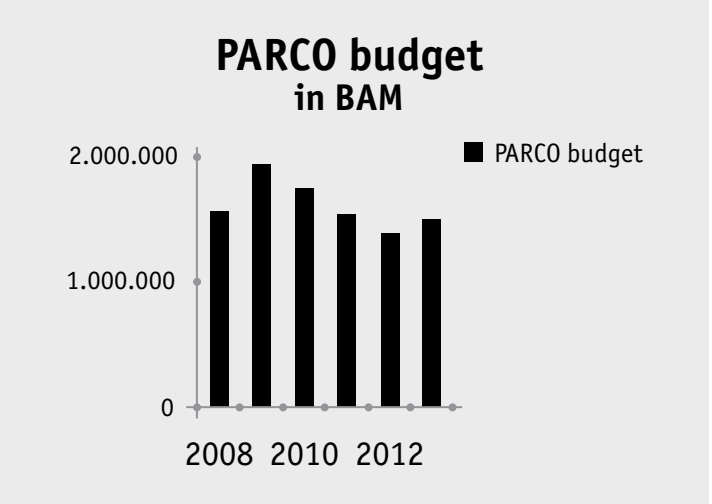
Considering that the PA reform has been staling, in order to catch up with the neighboring countries it needs move forward with a much faster pace than so far. Continuing trainings and capacity building of the existing Human Resources in the PA is one step in this direction, but more importantly, the adopted decision of the Council of Ministers (CoM) on reorganization needs to be systematically and well implemented in order to modernize it and align it with the ongoing Education reform. Therefore the following is recommended:

- Alignment of Higher education definition with National Qualification Framework
- Enabling distance application and evaluation procedure for employment in Civil Service.
- Clustering ADS independent experts for employment evaluation commission according to expertise.

BIH ACTIONS FOR REFORMED PUBLIC ADMINISTRATION

General progress of BiH on the EU path is characterized by the country's failure to comply with key political criteria of the European Union, including the constitutional reform that needs to eliminate discriminatory clauses, in accordance with the decision of the European Court of Human Rights in 2009. The protracted failure of political elites to achieve consensus has set the country on a reversed paths on its way to EU.

Table 1 - Source PARCO annual reports 2007-2013



Public administration reform (PAR) is on par with this trend, progress initiated by the 2006 PAR Strategy has been slowing down. The lack of political will is evident from the fact that Public Administration Coordinators Office (PARCO) heavily depends on donor support for its activities, and is therefore driven by external actors. The domestic financial resources show no significant increase in support, which itself serves as a testimony as to the urgency and priority to reform the PA.[3] (see table one for illustration of BiH financial support).

3 A feasibility study has been conducted with the support form UNDP and presented to the CoM. However no action to date has followed. More information available on PARCO webpage at: http://parco.gov.ba/latn/?page=221 PARCO.

HUMAN RESOURCES FOR REFORM

From the onset of the PAR Strategy, experts have warned that insufficient attention was placed on human resources management, capacities and skills, claiming that PAR Action Plans (1 and 2) will not be able to achieve the intended objectives.[4] These primarily were related to the lack of adequate skills, knowledge and education of civil servants for the reform processes.[5] Envisioned establishment of an institute for Public Administration is one example of the measures intended to address this gap and provide services for improvement.

In such a situation, where necessary skills have not been systematically developed, there is a need for the country to focus its strategic objectives in pooling all available resources to mitigate for the shortcomings of its Human Resources in order to accelerated reform processes.[6] These resources are available among BiH citizens, and to a large degree beyond its borders.

BIH POOL OF EXPERTISE BEYOND ITS BORDERS

Bosnia and Herzegovina has been characterized by a large scale emigration, with the war in the 1990's the country has faced an exodus of its population. Half of the population has been displaced, and over a million had become refugees, of which only half returned. The emigration trend has continued after the war due to unfavorable economic and political. conditions. Today the Ministry for Human Rights and refugees estimates that the size of BiH diaspora is over two million.

Among these two millions, there is a large number of highly qualified individuals. Estimates are that the emigration rate of highly educated individuals was 23.9%[7] up to 2000, that 30% of professionals in the field of medical and IT sciences have left the country up to 2004[8]. Recent studies show that this

4 ACIPS (2007), Improvement of state level civil service recruitment process in Bosnia and Herzegovina, ACIPS, BiH; Zivanovic, M. (2007), Public Administration Reform (PAR) in Bosnia and Herzegovina Capacity Assessment of Education and Training in Public Administration, Open Society Fund, BiH; Jeftić, A. (2011), Importance of human resource management quality for public administration reform in BiH, International University of Sarajevo, BiH

5 Ibid

6 PARCO, Annual Report 2007; 2008; 2009;2010; 2011; 2012; 2013, PARCO, BiH

7 MHRR (2012), Informacija o bosanskohercegovačkoj naučnoj dijaspori i mogućnostima njenog korištenja za razvoj Bosne i Hercegovine, MHRR, BiH available at: http://www.mhrr.gov.ba

8 Data available at the official website of the Academy of Science and Arts at: www.anubih.ba

trend shows no signs of subsiding, considering that over 86% of youth would leave if the opportunity presented itself. However, those with skills are likely to materialize their ambitions considering the Brain Gain practices in the EU.[9] In addition to the departed skilled individuals - new ones are continually being educated abroad. Large proportion of youth with origins from BiH is participating in tertiary education abroad. Recent research estimates show that in Norway there is 38%[10] participation, and 35% in United States.[11]

Relevant skills that are continually sought domestically in both public administration and private sector seem to be available among the Bosnians living abroad. Surveys conducted on BiH emigrants show that their main field of study are management, IT, research, banking/finance. Correspondingly their field of work is in management, IT, advertising, research.[12] Furthermore, research also indicates that there is a high level of those willing to return permanently or temporary[13]. Some of the main preconditions for such an action include finding employment within their field of expertise, along financial stability.[14]

Although the emigration statistics are insufficient to precisely estimate the potential of BiH diaspora the Ministry for Human Rights and Refugees (MHRR) recommends that BiH, along with its partners, primarily the EU, needs to work on utilizing BiH diaspora potentials for the development of the country. The recommendations included the need for BiH institutions to take active action towards attracting of human capital to BiH. Albanian Brain Gain project showed that, relevant expertise in public administration can accelerate the EU integration processes.[15]

This would in the long run lower the cost of civil servants' education on the job considering that they can transfer managerial skills and knowledge on how to comply with the EU requirements, particularly Chapter 22 of the Copenhagen criteria.

9 Institute for Youth Development KULT.

10 Valenta, M., Žan Štrabac (2013) Bosanci u Norveškloj: Integracija bosanskih migranata i njihovih potomaka u norveškom društvu in Migracije iz BiH. MHRR

11 Data presented at workshop on migrations in BiH in 2012 by the Ministry of Human Rights and Refugees and the Institute for Social Research of the Faculty of Political Sciences in Sarajevo

12 Oruć, N. (2012) Reversing the Bosnian "Brain Drain": Opportunities and Challenges, LSEE-FREN Workshop "Skills and the Labour Market in the Western Balkans", Belgrade, 11.05.2012.

13 Ibid.

14 Ibid.

15 Pavlov, T. (2013) Brain Gain Policies and Practices in the Western Balkans. Group 404, Belgrade.

While there has been significant attention in broadly identifying key issues with the Public Administration, there has been little in depth research into the crucial aspects of strengthening administrative capacities via merit based employment e.g. the selection procedure for civil servants, who form the foundation of the public administration. Most assistance efforts have been directed towards education of already employed civil servants and training. These actions are necessary for BiH, however, if the employment procedures continue to omit merit achievements, the civil service education may become a black hole in the long run. The employment procedures still lack adequate framework to ensure the merit based and professional standards in the evaluation process for employment in public service.[16]

GETTING INTO THE PUBLIC ADMINISTRATION: EMPLOYMENT PROCEDURE

Employment procedure in public administration sector can be considered to be transparent insofar as the vacancies are published and they are open to everyone.[17] However what remains problematic is that current employment procedures do not *per se* ensure merit based employment. Also, political parties usually use formal criteria such as ethnic quotas to employ party members.[18] Politicization of employment in civil service is highly criticized in every EU Commission Progress Report as well as in the Enlargement Strategy. "*The process lacks the necessary political support. The issue of financial sustainability of public administration at all levels needs to be addressed. Continued fragmentation and politicization of the civil service system remain an issue of concern. The development of a professional, accountable, transparent and efficient civil service based on merit and competence requires further attention at all levels of government. The supreme audit institutions should resume cooperation*. "[19]

The Law on Civil Service in conjunction with the Law on Protection of the Personal Data lifts away all accountability of the selection committees, by making the composition of the commission anonymous to general public as well as the evaluation by individual members anonymous. There is a number of issues related to the lack of transparency in the current framework or practice. (See box 1 for details)

16 European Commission, Progress reports 2007, 2008, 2009, 2010, 2011,

17 SIGMA (2013), Priorities, SIGMA, Bosnia and Herzegovina 2012, 2013, European Commission, Brussel

18 European Commission, Progress reports 2007, 2008, 2009, 2010, 2011, 2012, 2013, European Commission, Brussel

19 European Commission: Progress Report 2013

The Civil Service Agency (CSA) function can be described as the Government's advertizing company, where the only transparency is related to publishing the vacancies. What remains highly contested is the fact that the CSA takes no precautionary actions in checking the existence of conflict of interest in employment procedures. This is the responsibility of members of the evaluation commission and the candidate/applicants itself.

Box 1

a) ***Transparency of commissions***
Each applicant for the position in Civil Service has the right to know the names of the members of the commission is stipulated in article 25 of the Law on Civil Service. However, this does not by any means indicate transparency of the procedure. Unless the applicant specifically request that information he/she will not be notified on the members of the commission. At the same time it is expected that the applicant or the member of the commission state if there is any conflict of interest or other issues in relation between the candidate and the commission.

b) ***Composition of commissions***
One of the most problematic features is composition of the evaluation commissions for employment in public administration. Commissions are composed of five members, which is regulated by the article 24 of the Law on Service in State Institutions in Bosnia and Herzegovina. Three members are chosen from the list of experts, while other two members of commissions are members of the institutions in which candidate should be employed. However criteria for becoming member of commissions nominated by the Agency for Employment in Public Service remain unknown. Additionally the only individuals qualified to become experts are those already in Civil service. Thus the experts are pooled within the institutions, who often have decisive influence to the results of selection despite their numerical disadvantage. Further issue with the experts, is that there is no clustering of expertise for particular areas, and consequently, frequent complaints are that individuals conducting the evaluation procedure are not qualified/adequate by means of knowledge, degree or the sector to evaluate the prospective civil servants.

c) ***Anonymous grading of candidates***
However what remains highly contested is the very fact that members of commissions do not have obligation to provide explanation of their grades. In one case reported by the CIN, two members of Commission have given 90 points to candidate for the position in the Ministry of Finance and Treasury one gave 95, while other two gave 65 points (CIN, 2012). Minimal number of points needed for candidate is 75. This shows high discrepancy in grading candidates. Furthermore, according to CIN, members of commission are not obliged to provide explanation of their grades. Inexistence of standardized testing procedures, such that it allows for the same test to obtain scores from failing to excellent by different commission members (case of Translator). Practice shows that usually this discrepancy occurs already at the first stage of testing to separate the candidates by grade points on the written evaluation, so that in the next verbal evaluation the candidates have little or none prospects in catching up with the lead candidate.*

* Interviews with applicants for position to civil service.

Furthermore, the CSA cannot improve and standardize the exam procedures beyond the current legislation. Currently the whole process is in the hands of the commissions. The CSA only participates in selecting three independent experts for the commission, again without clear standardization of criteria and thus we have the cases, such as when an expert from the list is actually not an expert in the desired field and cannot adequately evaluate the candidates.

UNFAVOURABLE CIVIL SERVICE CONDITIONS FOR INDIVIDUALS RESIDING ABROAD

Devising a strategy for PA administration Human resources needs to be guided by systematic evaluation of skills needed, and the ways to attract those skills from wherever possible. Countries have tried recruitment methods by introducing Brain Gain policies. Primary aim of those policies is the retention and return of qualified individuals to the countries of origin. In Bosnia, however, this step needs to be preceded by elimination of some existing obstacles that create extremely unfavorable conditions for individuals living abroad to seek employment within public administration.

LOSS OF SOCIAL NETWORKS

On the side of informal disadvantages, loss of social capital, networks and collaborations with BiH institutions is more damaging to those abroad. Recent case studies by the Centre for Investigative Journalism (CIN) demonstrated that the connection with institution prior to the opening of the position is very favorable toward the applicant and in a number of cases these had resulted with permanent employment in the Civil Service**.** CIN demonstrated that previous engagement in the PA and strong association with the PA is a favorable condition for those seeking employment in Civil service, either through some contractual agreements for services that are not subject to public procurement, but a discretionary right of the head of institution. CIN and they draw the conclusion that they manage to exercise a certain amount of lobby around the Commissions for employment, an advantage that the diaspora does not have.

OBTAINING THE NECESSARY DOCUMENTS AT DISTANCE AND BEING PRESENT AT THE EVALUATION

Formal conditions are mainly related to the established practices requiring necessary documents that can be obtained only by a personal visit to the issuing authority, such as proof of citizenship. Although most documents in theory are obtainable via consular services, these options are rarely used and they most likely will take more than 21 days timeframe provided to file an application for employment.[20] Despite the fact that the CSA is planning to conduct the whole application procedure online, and that proof for all related conditions (documents) will have to be delivered post selection procedure, these changes will have minor effect for those living abroad as the person still has to be presented at the evaluation process. The changes planned will increase the efficiency and ensure the ability for distance application. However, considering that the procedure may last for a long period of time the written and verbal evaluation procedure usually occurs at two different dates. It requires physical presence of the individuals to take part in the exams/evaluation, yet the travel expenses for this exercise have to be covered by applicants, as a result of which they may opt not to pursue their chances with public administration in BiH after all.

Considering the size of the BiH emigration and their potential, employment procedure in public administration needs to include methods of distance evaluation opportunities at least for those residing abroad, as the potential option for covering the travel expanses is economically not efficient.

DIPLOMA RECOGNITION

The process of diploma recognition in BiH remains fragmented between governance levels and uncoordinated, complicated for those needing to undergo the process, and not unified across BiH. A third of individuals claiming to have initiated the process failed to complete it.[21]

BiH still has a very low understanding of the importance of diploma recognition procedures. Its purpose is to enable mobility and exchange by recognition and not comparison or equalization,

20 Law on Civil Service in the Institutions of Bosnia and Herzegovina

21 Oruč, N. (2012) Reversing the Bosnian "Brain Drain": Opportunities and Challenges, LSEE-FREN Workshop "Skills and the Labour Market in the Western Balkans", Belgrade, 11.05.2012. Power Point presentation available at: http://www.lse.ac.uk/europeanInstitute/research/LSEE/Events/PDF_Files/2012_Belgrade_Workshop/Oruc.pdf

colloquially know as '*notstrification'* process. Bosnia and Herzegovina has a very high emigration rate of highly qualified individual, and BiH students are increasingly using EU programmes for higher education, while at the same time it would be hard to claim that BiH is attracting foreign students at its universities, notwithstanding those from the former Yugoslav countries. The personnel at the CSA, consistent with the overall situation in BiH, call this process a '*nostrification'*.[22]

Diploma recognition, within the Civil Service has not been a significant problem. The current criteria (position description) is outdated, and requires in most cases the lowest University degree. Additionally the higher degree level does not necessarily mean a better evaluation, i.e. it is not even considered as an asset to the candidate.[23]

The Council of Ministers has in 2013 adopted the Decision on the Principles for Internal Organization of Institutions of BiH, that oblige institutions to a revision of criteria for the positions[24]. It is expected that prior to developing the new criteria for the positions the institutions will carry out a detailed analysis for the required skills and knowledge, and avoid designation of required qualification in line with traditional qualifications within academic disciplines (such as social sciences, political sciences, medicine etc). This is because growing number of interdisciplinary degrees will be hard to categorize within a single discipline. The Centre for Information and Diploma Recognition (CIP) has stated that these were particularly difficult for the members of the evaluation committees, and most requests towards CIP were to identify in what discipline a foreign diploma was obtained in.

Only experts in a particular field may be able to utilize the Diploma Supplements and evaluate if an applicant has the necessary skills and knowledge for the job. This is another reason why evaluation commissions, particularly the independent experts from the ADS independent expert list need to be standardized and categorized according to field of expertise.

Furthermore, Article 40 of the Decision on the Principles for Internal Organization of Institutions of BiH provides a definition of Higher education degree which stipulates that to cycle one, two and three of the bologna process or degree VII of the old qualification framework constitute Higher education

22 Interview conducted with officials in the Civil Service Agency. 20.03.2013.

23 Interviews with applicants for position to civil service.

24 ODLUKA O NAČELIMA ZA UTVRĐIVANJE UNUTRAŠNJE ORGANIZACIJE ORGANA UPRAVE BOSNE I HERCEGOVINA (Official Gazette 30/13)

qualification. The current draft law on National Qualification Framework, particularly in relation to educational cycles one does not correspond to the same definition as this article. This may cause significant trouble for the institutions (and later) employment evaluation commissions to identify which degree is most adequate for a given position, considering the difference in obtained ECTS Credits.

RECOMMENDATIONS

Considering that the PA reform has been staling, in order to catch up with the neighboring countries it needs move forward with a much faster pace than so far. Continuing trainings and capacity building of the existing Human Resources in the PA is one step in this direction, but more importantly, the adopted decision of the Council of Ministers (CoM) on reorganization needs to be systematically and well implemented in order to modernize it and align it with the ongoing Education reform.

- **Alignment of Higher education definition with National Qualification Framework.** Furthermore, considering the discrepancies between Article 40 and of the Decision on the Principles for Internal Organization of Institutions of BiH and the draft law on National Qualification framework these need to be addressed in order to prevent future legislative gaps and challenges, which will not only affect the Diploma recognition process, but also the future graduates form BiH who have completed their education in the reformed education system.

- **Enabling distance application and evaluation procedure for employment in Civil Service.** It has to be underlined, that this procedure has to go hand in hand with the establishment of higher degree of transparency in the employment procedures, particularly those related to merit based evaluations. The addition of distance based application and evaluation would secure an additional step towards the more efficient and modernized procedures, and encourage individuals that are interested to return, who have desirable qualifications and skills to apply and enter into the completion for Civil Service position on equal footing as those domestically. Diploma recognition need to be implemented in compliance with the Lisbon Convention, the institutions on the lower level of governance need implement the recommendations from CIP and utilize their resources and knowledge in this process.

- **Clustering ADS independent experts** for employment evaluation commission **according to expertise.** Considering the growing number of interdisciplinary degrees, the current selection of ADS independent experts for evaluation of candidates for Civil Service has to ensure that experts posses the necessary expertise, knowledge, and experience for evaluation of the candidates.

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» Andrej Rodinis, BiH Archive

TESTIMONIAL

The process of research and drafting of the policy brief "Attracting expertise for BiH Civil Service From Abroad" has shown to be very challenging, It is a policy endeavor crosscutting all administrative levels and areas, requiring careful coordination in areas such as education, corruption and in this paper also migration.). This research project was very positive experience because we were able to understand process of decision-making in the field of the public administration reform.

This project empowered us to tackle procedural gaps and to analyze potential that lies in the domestic experts trained abroad for the public administration reform. So far little attention has been placed on the employment practices in BiH's administration, and this paper has opened up several specific questions and identified problems of the interest to many of the institutions that we have been in touch with (PARCO Office, Civil Service Agency, Ministry for Human Rights and Refugees etc.)

As a result we have established close cooperation with the individuals and organizations dealing with specific areas such as migration, who are interested to further elaborate the policy and advocate for the options provided in this policy brief.

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STRENGTHENING THE CAPACITY OF THE CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA: HOW TO IMPROVE DECISION IMPLEMENTATION AND ENFORCEMENT?

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CENTRE FOR POLITICAL STUDIES

SUMMARY & RECOMMENDATIONS

The Constitutional Court of Bosnia and Herzegovina (CCBiH), as the highest judicial authority in the country that monitors the work of all types and levels of government, has an important role as a protector of the constitutional order and constitutionally guaranteed rights and fundamental freedoms. However it is not enough for the constitutional court to make decisions; those decisions must also be implemented.

Bosnia and Herzegovina is a divided and transitional post-conflict society, and this social context determines the regard for judicial power and implementation of courts' decisions. Bosnia and Herzegovina is going through a double transition: the transition to a truly democratic society and the transition to a peaceful post-conflict society. The underdeveloped democratic political culture is reflected in the *deficit of responsibility* of political power holders, especially when they are named as the executors of decisions of the Constitutional Court. In fact, the legal system in Bosnia and Herzegovina lacks one essential sociological element: the culture of the rule of law.

This research sheds light on the failure to implement decisions of the CCBiH in the domain of review of constitutionality, i.e. on the inaction of the legislative bodies obligated by the Constitutional Court to harmonize unconstitutional legal acts with the Constitution of Bosnia and Herzegovina and/or applicable international legal acts. Research has shown that the root of this problem is political in its nature, which makes it a difficult subject for policy approach. Nevertheless, some legal changes can have a positive effect on the implementation of decisions of the Constitutional Court of Bosnia and Herzegovina.

Proposing solutions and their implementation should be placed in the context of BiH society. As stated above, Bosnia and Herzegovina is a divided post-conflict transitional society without a long democratic tradition or the culture of law. Societal fragmentation introduced consociational democracy with a high degree of federalization and decentralization of the state, and a system of *de jure* and *de facto* obstructions by the political elites. This system of blockades is especially strongly reflected in non-implementation/delays in implementation of decisions of the Constitutional Court that have the potential to affect the changes in the constitutional and political system in Bosnia and Herzegovina.

During our research we have identified key issues that have to be improved in order to strengthen the capacity of Constitutional Court and we have presented these recommendations:

- Adopt the Law on the Constitutional Court of Bosnia and Herzegovina;
- Formally determine the responsibility of the Council of Ministers of Bosnia and Herzegovina to monitor and implement the decisions from the appellate jurisdiction of the Constitutional Court;
- Make the interpretations of decisions of the Constitutional Court on constitutionality legally binding;
- Appoint the author of the new law or amendment in a decision on constitutionality.

INTRODUCTION

The Constitutional Court of Bosnia and Herzegovina (CCBiH), as the highest judicial authority in the country that monitors the work of all types and levels of government, has an important role as a protector of the constitutional order and constitutionally guaranteed rights and fundamental freedoms. However it is not enough for the constitutional court to make decisions; those decisions must also be implemented.

Bosnia and Herzegovina is a divided and transitional post-conflict society,[1] and this social context determines the regard for judicial power and implementation of courts' decisions. Bosnia and Herzegovina is going through a double transition: the transition to a truly democratic society and the transition to a peaceful post-conflict society.[2] The underdeveloped democratic political culture is reflected in the *deficit of responsibility* of political power holders, especially when they are named as the executors of decisions of the Constitutional Court. In fact, the legal system in Bosnia and Herzegovina lacks one essential sociological element: the culture of the rule of law.[3] Failed or late implementation of court decisions in Bosnia and Herzegovina is one of the systemic problems of the internal legal system, as is evident from the increasing number of appeals to the European Court of Human Rights due to violations of Article 6 of the European Convention.[4] Given the long-term deficiencies of democratic political culture and the rule of law, it should not come as a surprise that representatives of the government and other authorities often do not implement courts' decisions.

This research sheds light on the failure to implement decisions of the CCBiH in the domain of review of constitutionality, i.e. on the inaction of the legislative bodies obligated by the Constitutional Court to harmonize unconstitutional legal acts with the Constitution of Bosnia and Herzegovina and / or

1 Banović, Damir: Political Culture in Post-Conflict and Divided Societies: The Case of Bosnia and Herzegovina. In Jovanović, A. Miodrag/Vujadinović, Dragica (Hrsg.): Identity, Political and Human Rights Culture as Prerequisities of Constitutional Democracy. The Hague: Eleven International Publishing 2013, pg. 149–164

2 Hanušić, Adrijana: *Small steps - big effects: Optimizing the execution of decisions of the Constitutional Court of Bosnia and Herzegovina,* Fond Open Society Bosna and Herzegovina, Sarajevo, 2010, pg. 6

3 Hanušić, Adrijana: *Small steps - big effects: Optimizing the execution of decisions of the Constitutional Court of Bosnia and Herzegovina,* Fond Open Society Bosna and Herzegovina, Sarajevo, 2010, pg. 4

4 Hanušić. Adrijana (op.cit), pg. 9.

applicable international legal acts.[5] Research has shown that the root of this problem is political in its nature, which makes it a difficult subject for policy approach. Nevertheless, some legal changes can have a positive effect on the implementation of decisions of the Constitutional Court of Bosnia and Herzegovina.

JURISDICTION OF THE CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA AND ENFORCEMENT MECHANISMS

The jurisdiction of the Constitutional Court of Bosnia and Herzegovina is prescribed exclusively in the Constitution of Bosnia and Herzegovina,[6] and therefore the legislator has no right to prescribe additional powers. Those powers are:

1. Protection of vital national interest of constituent peoples (Article IV/3.f. of the Constitution of BiH);
2. Institutional disputes (Article VI/3.a of the Constitution of BiH)
3. Abstract review of constitutionality (Article VI/3.a of the Constitution of BiH)
4. Review of the constitutionality of special parallel relations between entities and neighboring countries (Article VI/3.a. of the Constitution of BiH)
5. Appellate jurisdiction (Article VI/3.b. of the Constitution of BiH)
6. Protection of the status of Brčko District (Article VI/4. of the Constitution of BiH)
7. Concrete review of constitutionality (Article VI/3.c. of the Constitution of BiH)[7]

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5 The analysis and conclusions are based on interviews that were done by researchers of the Centre for Political Studies in the period between November 2013 and March 2014, as well as on the written sources. Interviews were conducted with representatives of the Prosecutor's Office of Bosnia and Herzegovina, academic legal experts, and politicians in the legislature at the state and entity level. Unfortunately, the Constitutional Court of Bosnia and Herzegovina did not authorize a representative for an interview in due time.

6 The Constitution of Bosnia and Herzegovina. available at: http://www.ccbh.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf. (last time visited: 25.2.2014.)

7 Ademović, Nedim/ Marko, Joseph/ Marković, Goran: *Constitutional Law of Bosnia and Herzegovina, the Konrad Adenauer Foundation office in Bosnia and Herzegovina*, Sarajevo, 2012, pg. 202.- 203.

DECISIONS OF THE CONSTITUTIONAL COURT OF BIH WITIN THE APPELLATE JURISDICTION

Regarding the appeals, the Court generally annuls the disputed decision and returns it to the competent authority for an emergency retrial and a new decision. Exceptionally, the Court itself can decide on the merits of the case and submit the decision to the competent authority for implementation.[8] All decisions of the Court are final and binding. The Court itself determines which subjects should implement the decision, the measures that need to be taken, and the time limits within which the measures are to be implemented. The Court's decisions are implemented directly rather than in a separate executive procedure as is the case with ordinary courts.

DECISIONS OF THE CONSTITUTIONAL COURT OF BIH WITHIN THE JURISDICTION OF REVIEW OF CONSTITUTIONALITY

The Constitutional Court of Bosnia and Herzegovina has a great degree of freedom in decision making. The Court can determine whether the decision will be valid *ex nunc* or *ex tunc*. Its decision can fully or partially repeal an act or some of its provisions, which cease to be valid the day after the publication of the decision in the Official Gazette of Bosnia and Herzegovina. The Court may delay the repeal for up to six months to leave enough time for its harmonization. By declaring an act unconstitutional, i.e. by removing it from the legal system, the decision of the Court is thereby considered executed.

FAILURE TO ENFORCE DECISIONS OF THE CONSTITUTIONAL COURT OF BIH AND THE ROLE OF THE PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

The Constitutional Court of Bosnia and Herzegovina usually undertakes an active role in the monitoring of the implementation of its decisions. It requests information from the competent authorities regarding those decisions and, if justified, leaves an additional period of time for implementation. For example, the Constitutional Court issued a statement in 2007 in which it repeated its conclusions from decisions regarding missing persons, stating concern about non-implementation of these decisions and inviting again the competent authorities to fulfill their obligations. Also, the Constitutional Court noted that the adoption of Rulings on failure to enforce did not lead to any progress in resolving

8 Rules of Procedure of the Constitutional Court of Bosnia and Herzegovina, article 64.

this delicate issue, and that the rulings were submitted to the Prosecutor's Office of Bosnia and Herzegovina.[9]

The authorities that fail to implement the decisions of the Constitutional Court state various reasons for failure, and the Court examines these reasons in each case. If the Court finds that there are valid reasons for failure, it marks the decision as justifiably unimplemented in its internal document *Information about non-implementation*, which is adopted periodically. The Court continues to monitor the execution of such decisions in the following *Information,* where it sometimes comes to the conclusion that the decision has been implemented in the meantime. Otherwise, it adopts the Ruling on failure to enforce.

Any person who has a legal interest may request the implementation of a decision of the Constitutional Court. All authorities are obligated to implement the decisions of the Court and to notify the Court about the implementation. In cases of non-implementation, the Court issues a Ruling on failure to enforce stating that the decision has not been implemented, and may determine how the decision should be implemented. The Ruling on failure to enforce is submitted to the state prosecutor. The submission of the Ruling (which is not in itself considered a charge for criminal offense) may lead to the initiation of criminal proceedings.

According to the Article 239 of the Criminal Code of Bosnia and Herzegovina An *official person in the institutions of Bosnia and Herzegovina, institutions of the entities and institutions of the Brčko District of Bosnia and Herzegovina, who refuses to enforce a final and enforceable decision of the Constitutional Court of Bosnia and Herzegovina, Court of Bosnia-Herzegovina, Human Rights Chamber or the European Court of Human Rights, or if he prevents enforcement of such a decision, or if he prevents the enforcement of the decision in some other way, shall be punished by imprisonment for a term between six months and five years.*[10] This provides an additional protection for the implementation of decisions of the Constitutional Court of Bosnia and Herzegovina.

According to information from 2009, a total of 85 decisions of the Constitutional Court of Bosnia and Herzegovina were not implemented at the time. The Prosecutor's Office of Bosnia and Herzegovina

9 The Constitutional Court of Bosnia and Herzegovina. Herzegovina. Announcement. 17.9.2007. http://www.ccbh.ba/bos/press/index.php?pid=2327&sta=3&query=nestale+osobe (last time visited 25.2.2014.)

10 Criminal Code of Bosnia and Herzegovina. Available at: http://www.sudbih.gov.ba/files/docs/zakoni/ba/Krivicni_zakon_BiH_-_precisceni,_nezvanicni_tekst.pdf. (last time visited 25.2.2014.)

had launched an investigation into 60 of these cases, 21 of which had already been closed due to lack of evidence of criminal wrongdoing.[11] The Prosecutor's Office of Bosnia and Herzegovina has not filed any charges for non-compliance with the decision of the Constitutional Court. The only such indictment was filed at the request of the appellant after the judgment of the Constitutional Court in his favor.[12] It is the opinion of the Prosecutor's Office that criminal prosecution for failure to enforce a decision of the Constitutional Court is not the best solution, citing limited organizational capacitiy of the state Prosecutor's Office: only five prosecutors work on these cases, and each has an average of 350 cases.[13]

OBSTACLES TO ENFORCEMENT OF DECISIONS OF THE CONSTITUTIONAL COURT

In response to a query of the Centre for Political Studies for the purpose of this study, the Constitutional Court of Bosnia and Herzegovina submitted information on 80 Rulings on failure to enforce (conclusive March 11, 2013). The Constitutional Court has the option of not issuing these rulings, so the number of unenforced decisions may be greater than the number of rulings. On the other hand, the issuing of the Ruling does not mean that the decision remained permanently unenforced. I.e. it may have been implemented with a significant delay relative to the deadline determined by the Constitutional Court.

11 CIN. Politicians above the Constitution. https://reportingproject.net/court/index.php?option=com_content&task=view&id=26&pop=1&page=0&Itemid=1&lang=English last time visited 24.2.2014)

12 CIN. Politicians above the Constitution. https://reportingproject.net/court/index.php?option=com_content&task=view&id=26&pop=1&page=0&Itemid=1&lang=English (last time visited 24.2.2014)

13 CIN Politicians above the Constitution. https://reportingproject.net/court/index.php?option=com_content&task=view&id=26&pop=1&page=0&Itemid=1&lang=English (last time visited 24.2.2014)

COURT JURISDICTION	TOTAL NUMBER OF DECISIONS	NO. OF RULINGS ON FAILURE TO ENFORCE
Protection of vital national interests of the constituent peoples	11	0
Abstract review of constitutionality, institutional disputes and constitutional review of parallel relations between entities and neighboring countries	61	5
Appellate Jurisdiction	21054	73
Protection of the status of Brčko District	0	0
Concrete review of constitutionality	13	2

The data about the number of decisions in each category was obtained from the official website of the Constitutional Court of Bosnia and Herzegovina (www.ccbh.ba), while the data about rulings on failure to enforce comes from direct correspondence with the Constitutional Court.

It is evident that decisions made under the competence to protect vital national interests of the constituent peoples are executed, while problems with non-enforcement occur in the domain of appellate jurisdiction and review of constitutionality. Even though the number of unimplemented decisions regarding appeals is higher, the number of non-enforcements as a *percent of total number of decisions* on constitutionality is much larger. Therefore, this paper focuses on the analysis of issues with the execution of decisions on constitutionality and on recommendations that would reduce the harmful consequences of non-enforcement of those decisions.

FAILURE TO ENFORCE DECISIONS FROM THE DOMAIN OF REVIEW OF CONSTITUTIONALITY: AN ANALYSIS

The problem of noncompliance of the legislative bodies with decisions of the constitutional or supreme court is certainly not unique to Bosnia and Herzegovina. According to data collected at the XV Congress of the Conference of European Constitutional Courts in 2011, this problem is also present in other countries. For example, in Belarus 77 of the total 292 decisions of the Constitutional Court

were not implemented.[14] The legislature in Hungary has failed to act in 18 of a total of 103 cases.[15] In Lithuania the legislative authority failed to implement 39 of 140 decisions of the Constitutional Court until 2010.[16] In Moldova only two decisions of the Constitutional court remained unexecuted.[17] Poland[18] also faces problems in the work of the legislature in implementing decisions of the Constitutional Court on constitutionality.

Regardless of the differences in individual systems of review of constitutionality in these states, the root of this problem is necessarily identical: in political systems based on the separation of judicial, legislative and executive power, no state authority – not even the constitutional or supreme court – can force the legislature to adopt a law or change it. The interviewees[19] in this study affirmed the same principle. The legal structure of Bosnia and Herzegovina allows the Constitutional Court to order the legislative body at any level of government to harmonize a law (or a part of a law) with the Constitution of Bosnia and Herzegovina. However, the Constitutional Court does not have jurisdiction over *the mechanism* that would ensure the execution of these commands. That is, the Court cannot order the individual representatives in the legislative body to vote for the adoption or change of a law or other act for the purpose of executing its own decision on constitutionality.

Criminalization of non-implementation of the Constitutional Court's decisions according to the Article 239 of the Criminal Code of BiH is not helpful in this case. The opinion of the state Prosecutor's Office is that it is very difficult to prove criminal responsibility in cases of failure to implement decisions of the Constitutional Court that appoint the legislature or the government as executors.

14 Conference of European Constitutional Courts. Constitutional justice: Function and relationship with the other public authorities. 2011. (Belarus: http://www.confeuconstco.org/reports/rep-xv/BELARUS%20eng.pdf, pg. 15)

15 Conference of European Constitutional Courts. Constitutional justice: Function and relationship with the other public authorities. 2011. (Hungary: http://www.confeuconstco.org/reports/rep-xv/HUNGARY%20eng.pdf, pg. 11)

16 Conference of European Constitutional Courts. Constitutional justice: Function and relationship with the other public authorities. 2011. (Lithuania: http://www.confeuconstco.org/reports/rep-xv/LITUANIA%20eng.pdf, pg. 34)

17 Conference of European Constitutional Courts. Constitutional justice: Function and relationship with the other public authorities. 2011. (Moldova: http://www.confeuconstco.org/reports/rep-xv/MOLDOVA%20fr.pdf, pg. 12)

18 Conference of European Constitutional Courts. Constitutional justice: Function and relationship with the other public authorities. 2011. (Poljska: http://www.confeuconstco.org/reports/rep-xv/POLAND%20eng.pdf, pg. 7)

19 Interviews were conducted during the period of December 2013- February 2014 with: Ismeta Dervoz (Parliamentary Assembly of Bosnia and Herzegovina), Peđa Kojović (Assembly of Sarajevo Canton and the Federation Parliament), Goran Marković (Professor of Constitutional Law, University of East Sarajevo), Ahmed Mešić (legal expert), Biljana Simeunović (The Prosecution of Bosnia and Herzegovina)

The problem in these cases is individualization of responsibility. The Criminal Code limited liability to an official person. The Prosecutor's Office maintains that in the legislative and executive bodies of the government it is nearly impossible to find an official person who could be responsible for failure to execute a decision of the Constitutional Court under Article 239 of the Criminal Code. Such a person could be charged for committing a criminal offense only in exceptional cases, for example in the case that he or she intentionally hides correspondence from the Constitutional Court. However, those are not the obstacles to implementation of the Court's decisions. The failure to implement the Constitutional Court's decisions on constitutionality is due to an absence of relevant legislative action. As soon as a representative of the legislative body shows that steps have been taken towards the execution of the decision of the Constitutional Court – for example, by ordering the Council of Ministers to suggest the required legal solution – the possibility to charge any official person from that body for criminal liability is lost, regardless of the ultimate outcome of such a proposal. Voting of delegates and representatives in the legislature cannot have elements of criminal offense simply because it does not lead to the implementation of a decision of the Constitutional Court.

In some European countries (such as Czech Republic, Georgia, Lithuania, Macedonia, Norway, Portugal or Serbia),[20] the constitutional court does not set a deadline for the legislative body to harmonize the unconstitutional legal provisions with its decision, so it is difficult to speak about their „failure to enforce". In these countries, the lack of reaction of the legislative body to a decision on constitutionality is not considered a problem, or is considered a problem only in cases where it leads to serious legal uncertainties. As in Bosnia and Herzegovina, in a number of European countries the decision of the Constitutional Court on the constitutionality of any law (or part of a law) in itself constitutes the execution of that decision, i.e. the law or the part of the law that is declared unconstitutional, is repealed and can no longer be applied. These approaches to review of constitutionality suggest that the failure of the legislature to replace or amend an act in accordance with a decision of the Constitutional Court does not in itself constitute a problem. The problem occurs only when repealing the law creates a legal void that can lead to violations of the rights of citizens or other harmful consequences.

20 Conference of European Constitutional Courts. Constitutional justice: Function and relationship with the other public authorities. 2011. (Czech Republic: http://www.confeuconstco.org/reports/rep-xv/CEHIA%20eng.pdf, str. 22; Georgia: http://www.confeuconstco.org/reports/rep-xv/GEORGIA%20eng.pdf, str. 6; Lithuania: http://www.confeuconstco.org/reports/rep-xv/LITUANIA%20eng.pdf, str. 35; Macedonia: http://www.confeuconstco.org/reports/rep-xv/MACEDONIA%20na.pdf, str. 19; Norway: http://www.confeuconstco.org/reports/rep-xv/NORVEGIA%20eng.pdf, str. 7; Portugal: http://www.confeuconstco.org/reports/rep-xv/PORTUGALIA%20fr.pdf, pg. 18; Serbia: http://www.confeuconstco.org/reports/rep-xv/SERBIA%20eng.pdf, pg. 18.)

Throughout Europe different mechanisms are applied in cases when repealing a law (or part of a law) creates a harmful legal gap. In Czech Republic, for example, the Constitutional Court can fill the legal gap by its own interpretative decision in exceptional cases.[21] In Germany[22] and Slovenia,[23] constitutional courts have the power to determine the mechanism of implementation of a decision on constitutionality, which both courts have used in cases of inaction of legislature.[24] In Italy, Latvia and Lithuania,[25] regular courts must refer to other legal sources, primarily the constitution, instead of a repealed law in case of a legal gap. This ensures the protection of rights of citizens regardless of the lethargy of the legislature. The position of the Constitutional Court of Lithuania explains the principle behind this approach:

> [...] If the opportunities of courts to apply law, first of all the supreme law -the Constitution- depended on whether a certain law-making subject did not leave gaps in the legal regulation (legal acts) that he has established, and if courts were able to decide cases only after these legal gaps are filled by way of law-making, then one would have to hold that the courts, [...]that they administer justice not according to law, but only formally apply articles (parts thereof) of legal acts, that constitutional values, inter alia the rights and freedoms of the person, may be injured (and not compensated, nor redressed) only because a corresponding law-making subject has not legally regulated certain relations [...] the empowerments of the courts to fill the legal gaps which emerged as a result of a failure of a law-making institution to act or due to improper actions thereof prevent arbitrariness of state authorities and legal nihilism, and strengthen the trust of the person in the state and law.[26]

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21 Conference of European Constitutional Courts. Constitutional justice: Function and relationship with the other public authorities. 2011. (Czech Republic: http://www.confeuconstco.org/reports/rep-xv/CEHIA%20eng.pdf, pg. 22.)

22 Federal Constitutional Court Act, Article 35. Available at http://www.iuscomp.org/gla/statutes/BVerfGG.htm#35

23 Constitutional Court Act, Article 40(2). Available at http://www.us-rs.si/en/about-the-court/legal-basis/constitutional-court-act/iv-review-of-the-constitutionality-and-legality-of/

24 To see: http://www.confeuconstco.org/reports/rep-xv/GERMANIA%20eng.pdf, pg. 42 and http://www.confeuconstco.org/reports/rep-xv/SLOVENIA%20eng.pdf pg. 14.

25 To see: http://www.confeuconstco.org/reports/rep-xv/ITALIA%20eng.pdf, pg. 8, http://www.confeuconstco.org/reports/rep-xv/LETONIA%20eng.pdf, pg. 13 i http://www.confeuconstco.org/reports/rep-xv/LITUANIA%20eng.pdf, pg. 35.

26 http://www.confeuconstco.org/reports/rep-xv/LITUANIA%20eng.pdf, pg.. 36.

This attitude shows that in searching for solutions to the problem of failure to implement decisions of the Constitutional Court on constitutionality, we should not forget the primary values: the protection of the rights guaranteed by the Constitution, regardless of the action or inaction of the legislature.
In the end, the attitudes of politicians, members of the academic community and experts collected during this research indicate the following: the inaction of the legislature reflects primarily a lack of political will to implement some of the decisions on constitutionality that would bring about changes to the political system. The Constitutional Court of Bosnia and Herzegovina makes decisions that are very controversial and politically sensitive, which is inevitable because, as an interpreter of the Constitution, the Court also advances it. The Constitutional Court through some of its decisions significantly affects the nature of the constitutional system and the political relations in Bosnia and Herzegovina. The political elites that find those decisions unfavorable have the option to obstruct the enforcement of such decisions. The decisions will ultimately be executed - relevant legislative bodies have already harmonized at least two unconstitutional legal provisions with the relevant decisions of the Constitutional Court (U-9/11 and U-3/11), after the rulings on failure to enforce were issued – but for every political elite the precise moment when that harmonization will take place is important because the relative balance of political power changes over time.

It is extremely important to keep in mind this key role of politics in the failure to enforce decisions of the Constitutional Court of Bosnia and Herzegovina, because that role significantly restricts the range of possible solutions. It is impossible to find and propose any appropriate *legal* or *institutional* solution to a problem that is fundamentally *political* in its nature. In this case the legislature in Bosnia and Herzegovina reflects the current level of political responsibility of the government toward citizens, and it is expected that improvements in this field are a long-term project. Therefore, in the approach to solving this problem it is only possible to focus on short and medium term measures that would contribute to the protection of the rights and freedoms of citizens when, as a result of repealing an act in whole or in part coupled with an untimely reaction of the legislator, a legal gap emerges, threatening those rights and freedoms. Such measures should aim to empower the Constitutional Court of Bosnia and Herzegovina and the country's judicial sector in general, so that the rights and freedoms of citizens could be protected even when the relevant legislative authorities fail to do their work.

RECOMMENDATIONS

1. Adopt the Law on the Constitutional Court of Bosnia and Herzegovina

The implementation of decisions of the CCBiH, as well as others important procedures, are not regulated beyond internal rules of the Court, which is not an adequate solution. Mechanisms and procedures related to the work of the Court should have the force of law. Adoption of the Law on Constitutional Court of Bosnia and Herzegovina, which would regulate important issues such as responsibility for monitoring the implementation of decisions, procedures in cases of non-compliance, etc., would strengthen the legal status of the Court.

2. Formally determine the responsibility of the Council of Ministers of Bosnia and Herzegovina to monitor and implement the decisions from the appellate jurisdiction of the Constitutional Court

Unlike the mechanisms of implementation of decisions of the constitutional courts at the entity level and in some neighboring countries (Croatia) where the prime minister or the government ensures their enforcement, the Council of Ministers of Bosnia and Herzegovina is not legally burdened with ensuring the implementation of decisions of the Constitutional Court of Bosnia and Herzegovina. The CCBiH itself monitors this, which creates an additional burden to the court that already has a large number of cases. In an interview in 2013 the Court's Registrar Zvonko Mijan stated there were more than 8,000 pending cases at the Court, with an addition of 4500 to 5000 new cases every year. The majority of these are appeals, the solutions to which citizens wait for up to three years. Appointing the Council of Ministers to monitor the implementation of decisions of the CCBiH would produce a double benefit. First, it would release resources in the Constitutional Court, which would allow it to focus on solving the cases and monitoring the implementation of decisions from the remaining jurisdictions, which are not numerous. Second, seeing how the Council of Ministers, as the executive level of the government, is a very operational and dynamic institution, it is very likely that it could enable a faster and more effective enforcement of decisions, as well as an effective response through its executive offices in cases of non-compliance. Given the current structure, this mechanism would have a favorable impact on the access of citizens to protection of their rights and freedoms.

3. Make the interpretations of decisions of the Constitutional Court on constitutionality legally binding

In cases where legislative body fails to harmonize unconstitutional legal provisions with the Constitution of Bosnia and Herzegovina or applicable international law within a period determined by the Constitutional Court, it is necessary to ensure that this legal gap does not lead to violations of citizens' rights. It is clear that citizens should be legally protected both from being subject to legal provisions that are not in accordance with constitutional values and from legal uncertainty. In order to eliminate legal uncertainty in the period between repealing a legal provision and its harmonization with the Constitution by the legislative body, the Constitutional Court should have the ability to provide detailed explanations on the application of the Constitution or other laws to which regular courts could refer in relevant cases. This option would not constitute a usurpation of legislative power by the Constitutional Court because its decisions are binding for all anyway. Therefore, lower courts are obliged to respect those decisions in cases where they are applicable regardless of the inaction of the legislator; detailed instructions by the Constitutional Court as the interpreter of the Constitution would only facilitate implementation and ensure its consistency.

4. Appoint the author of the new law or amendment in a decision on constitutionality

Under current practice, when the Constitutional Court finds that a legislative provision is unconstitutional, it orders to the relevant entity or state legislature to harmonize that provision with the Constitution of Bosnia and Herzegovina. As elaborated here, this mechanism is completely ineffective when members of the relevant legislature do not support the decision of the Constitutional Court, because the issue at hand is political in its nature. However, it is possible to make this procedure more efficient and easier in cases where there are no political obstacles to the implementation of the decision, or when those obstacles are not serious. Specifically, since the Constitutional Court determines the executors of its decisions, it would be preferable that in those decisions where a legal provision is declared unconstitutional, the sponsor of an act be determined precisely. When the Constitutional Court names a legislative institution as the executor of a decision on constitutionality, this institution passes the decision on to an authorized sponsor (e.g. the Parliamentary Assembly of BiH obligates the Council of Ministers to propose a solution). This indirect path of the decision to an authorized sponsor is a waste of time that can be eliminated through direct communication between the Constitutional Court and authorized sponsors.

CONCLUSION

Proposing solutions and their implementation should be placed in the context of BiH society. As stated above, Bosnia and Herzegovina is a divided post-conflict transitional society without a long democratic tradition or the culture of law. Societal fragmentation introduced consociational democracy with a high degree of federalization and decentralization of the state, and a system of *de jure* and *de facto* obstructions by the political elites. This system of blockades is especially strongly reflected in non-implementation/delays in implementation of decisions of the Constitutional Court that have the potential to affect the changes in the constitutional and political system in Bosnia and Herzegovina. The obstruction is applied regardless of whether the decision at hand is on vital national interest or constitutionality of a law. This broader social, legal and political context should be kept in mind also when it comes to individual appeals at the Constitutional Court. The problem is further compounded by structural problems in the judiciary and in general by problems with the length of judicial and administrative proceedings, as well as by difficulties in implementing court decisions. In the long term it is necessary to work on the advancement of the legal culture of respect for courts' decisions, as well as a political culture that would include the willingness to make compromises in this complicated state.

TESTIMONIAL

Constitutional Court of Bosnia and Herzegovina is the most prominent institution in the country representing democracy and the rule of law, and its functioning is of high importance for all citizens. This research had analyzed its performance and obstacles to its work with the aim of collecting specialized recommendations for more effective work in the future and enabling its role in the process of democratization and integration. Through an interdisciplinary approach, we defined the difficulties that the Constitutional Court faces and recommended concrete policy changes taking into account expert opinion. This research was the first of its kind and we are working on making it the basis for further studies in constitutional law in Bosnia and Herzegovina. Also, policy paper has been distributed to the Constitutional Court of Bosnia and Herzegovina, Parliamentary Assembly of Bosnia and Herzegovina, The Prosecutor's Office of Bosnia and Herzegovina, High Judicial and Prosecutorial Council of Bosnia and Herzegovina, Public Institution Centre for Judicial and Prosecutorial Training of Federation of Bosnia and Herzegovina, NATO, OSCE, Public International Law and Policy Group and other civil society organizations in Bosnia and Herzegovina and we received positive feedback from the representatives that were interested in our recommendations and who want to make a change.

This research had very positive results, especially as it was also presented on the meeting with Delegation of European Union in Sarajevo on the consultations for Progress Report, and conclusions and recommendations from policy paper are found in the Alternative Progress Report of EU integrations of Bosnia and Herzegovina in 2014. Also, there was a big interest from other international organizations and NGOs from Bosnia and Herzegovina for this issue and we have had meetings with them to present them our findings and to plan next activities regarding the strengthening of the capacity of BiH Constitutional Court.

ABOUT THE RESEARCHERS AND AUTHORS

Damir Banović (1983, Sarajevo, BiH) graduated at the Law Faculty of University of Sarajevo and holds a L.L.M. Since 2007 he has been working as a Senior teaching assistant at the Law Faculty of University of Sarajevo. In 2013 he became an Executive director of the Association for Research and Political Studies – Centre for Political Studies, an independent think tank organization that deals with the various issues, such as Bosnian and comparative political systems, the process of European integration and green politics. His areas of interest are multicultural legal theories, comparative political and constitutional systems, politics of identity and theory, and practices of LGBT human rights. He is the author of various texts and books in these areas of research.

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IMPLEMENTATION OF AARHUS CONVENTION IN ALBANIA: STRUGGLE AND POLICY IMPLEMENTATION

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SUMMARY

The ratification of Aarhus Convention, which is also called "democracy in the environmental field", is one of the most important acts in the environmental legislation in Albania. Although Albania has ratified this convention in 2001, there are still things to be done in order to fully implement it.

This policy paper analysis the implementation of Aarhus Convention in Albania, problems that have arisen during this implementations, and puts forward policy options and recommendations for the Albanian decision makers in regard to Aarhus Convention implementation. The paper also explores the issues that the public has in implementing Aarhus Convention.

Conclusions from the analysis and the research, indicate that Albania has a legal framework which favors transparency; however, public participation and access to justice are the pillars where there need for specific amending laws and by-laws, in order to facilitate the implementation of the legal framework. This is very important to clarify the roles and responsibilities of the two levels of government-central and local, and for clarifying these roles and responsibilities within the same level of government. Another key point is that the implementation of the three pillars of Aarhus Convention (access to information, public participation, and access to justice) is still weak. The respective authorities are equipped badly in terms of necessary knowledge and skills for their implementation. There are still problems like: lack of deep knowledge of the Convention from the civil servants in the central and local governments; lack of financial resources and technical infrastructure; need for more harmonization of the actual legislation with the Convention; and lack of practical implementation of the pillars of the Convention.

Even though several projects have been implemented in the last years in Albania, with the aim of developing capacities of the civil servants and dissemination of the Aarhus Convention to the Albanian public, there is still need for further actions to make this Convention known to the civil servants and to the public, especially in: improving of the legislative framework in line with the Convention; capacity building of respective state authorities; change of the work culture in line with the Convention; better steering and informing of the public for the issues that the Convention addresses.

Aarhus centers in Albania need more competencies to be transferred from the Ministry of Environment, so that they can serve as dissemination and information centers on Aarhus Conventions. To do that, the Ministry of Environment needs to create a line in their budget for financing the work of these centers, as these centers are the main actors in disseminating information on Aarhus Convention. The Ministry of Environment needs to increase the coordination with other ministries connected to Aarhus Convention implementation, as well as with the Judiciary and the Prosecutor Office, in order to duly implement the Convention. More training is needed for the staff of ministries and for the judiciary and the prosecutor office.

This paper aims at informing and lobbying the decision makers from the central and local governments in Albania, and to somehow inform the civil society and the public about the implementation of the Aarhus Convention.

CONCLUSIONS AND RECOMMENDATIONS

1. Albania has built a relatively satisfactory legislative framework, however there is lack of some normative acts regarding addressing the court. Albanian legislation should be brought into line in order to fulfill the requirements and obligations of the Aarhus Convention, and the terminology and definitions should be the same with those of the Convention to avoid any misunderstanding. Convention pillars should be more implementable in practice, where legislation could significantly help;
2. Specific legal and normative acts should be more detailed in showing how provisions of different laws are implemented;
3. The Ministry of Environment of Albania should give competences to Aarhus Centers in Albania so that they can be part of the public hearings and in the decision taking during the Environmental Impact Assessment process, given that these centers are the main actors in informing the public on the rights and obligations that stem from Aarhus Convention. The information and experience that these centers have, is necessary in cases of public hearing and decision taking for environmental issues;
4. The Ministry of Environment should create a yearly fund to finance the work of Aarhus Centers in Albania. This should be done in agreement with the Centers, by calculating the optimal financing that the Centers need to manage the work volume they have, and to increase their capacities and staff of these centers, which would allow them to perform the awareness raising and training work regarding Aarhus Convention;
5. State bodies should try more to inform and to attract the public in using the possibilities that Aarhus Convention gives to the latter. As mentioned above, awareness raising can be done through financial support of Aarhus Centers in Albania;

6. A monitoring mechanism for public hearings should be created. The fact that only 30% of public hearings are carried out and are carried out in a formal way, shows that there is no monitoring to oblige the private subjects to perform the public hearings according to the legal obligation;
7. Improve and ease the procedures of public hearings by announcing them at the due and reasonable time for the public to participate in these hearings, and to take into account public's comments. Organize a series of hearings for actual case that is being processed, and not just one public hearing, just to be in line with law. The time period for getting the information on official documents should also be shortened;
8. A digital system should be created, that assesses and monitors pollution and the starting of projects or works that impact environment in Albania should be created, which would bring a more complete and actual information on the status of environment in the country;
9. Line ministries should coordinate their work regarding the implementation of Aarhus Convention;
10. Develop the capacities of Environment Regional Agencies-the staff of these Agencies should participate in all public hearings in order to have a successful process, and they should also be trained more on Aarhus Convention. There is a need to improve the infrastructure of these centers and increase the number of employees there;
11. Sanctions should be put in place for civil servants who do not give proper information or do not give it in time, or who do not participate in the public hearings, like in the case with Environment Regional Agencies;
12. Training for the judiciary is needed, regarding the implementation of the Aarhus Convention. The Ministry of Environment should deepen the cooperation and exchange of information with the Judiciary and the Prosecutor office, to help coordinate the implementation of the Aarhus Convention, and to decrease the barriers from the judiciary side on the right of access to justice when related to the Convention;

13. Increase the number of employees that work on the implementation of Aarhus Convention in the Ministry of Environment;
14. Strengthen the cooperation between the environmental NGOs regarding this issue, and decrease the financial judicial barriers for NGOs, as this will help in an easier implementation of the Convention.

HYRJE

Projekti kreu një studim e hulumtim të gjendjes së zbatimit të Konventës së Aarhusit në Shqipëri, 13 vjet pas hyrjes së saj në fuqi. Projekti mblodhi informacionet e duhura nëpërmjet studimit dhe analizimit të legjislacionit në fuqi, raporteve, dokumenteve të politikave të ndryshme dhe studimeve të mëparshme në lidhje me zbatimin e Konventë së Aarhusit në Shqipëri, si dhe me anë të intervistimit personal dhe me anë të pyetësorëve të përfaqësuesve të organeve shtetërore, palëve të interesuara dhe shoqërisë civile. Faza e dytë e projektit ishte shkrimi i dokumentit të politikave, ku u shtjellua problematika dhe u nxorën përfundime e u dhanë rekomandime. Faza e fundit e projektit ishte shpërndarja e informacionit të nxjerrë nga ky dokument politikash, dhe lobimi i rekomandime te vendimmarrësit shqiptarë dhe palët e interesuara.

ZBATIMI I KONVENTËS SË AARHUSIT NË SHQIPËRI

VËZHGIM I PËRGJITHSHËM

Konventa e UNECE (KEEOKB-Komisioni Ekonomik për Evropën i OKB-së), e së Drejtës së Informacionit, Pjesëmarrjes Publike në Vendimmarrje, dhe Qasjes në Drejtësi në Çështje Mjedisore, u miratua më 25 qershor 1998 në qytetin danez të Aarhusit (Århus), nga mori dhe emrin "Konventa e Aarhusit", dhe ku u nënshkrua edhe nga Shqipëria. Parlamenti shqiptar e ratifikoi konventën më 26 tetor 2000. Konventa hyri në fuqi më 30 tetor 2001.

Konventa është një dokument juridik ndërkombëtar që vendos një sërë të drejtash për publikun dhe detyrime për autoritetet shtetërore. Konventa përmban tre shtylla themelore:

1. E drejta e publikut për të patur e për të kërkuar informacion mjedisor;
2. E drejta e publikut për të marrë pjesë në vendimmarrjet publike për çështje të mjedisit;
3. E drejta e publikut për t'u ankuar në gjykatë për çështje të mjedisit.

QENDRAT AARHUS NË SHQIPËRI

Tri Qendrat e Informacionit Aarhus me bazë në Tiranë, Shkodër dhe Vlorë janë krijuar në kuadër të Memorandumit të Bashkëpunimit midis Ministrisë së Mjedisit dhe zyrës së OSBE-së në Shqipëri, "Mbi Bashkëpunimin në fushën e Informacionit Mjedisor dhe Zbatimin e Konventës së Aarhusit në Shqipëri" të nënshkruar në korrik 2006. Këto tri qendra mbështesin Ministrinë e Mjedisit dhe institucionet e saj në sigurimin e informacionit mjedisor, si dhe promovojnë Konventën në mënyrë të vazhdueshme. Tri qendrat kanë bërë një sërë fushatash të ndërgjegjësuese ku pjesëmarrësve u paraqitet në mënyrë të detajuar Konventa e Aarhusit në një nivel praktik dhe me metoda konkrete. Promovimi kryesisht bëhet te grupe si nxënësve të shkollave, institucioneve shtetërore, dhe publikut në përgjithësi.

PROBLEMATIKA NË PUNËN E QENDRAVE AARHUS

Nga intervistimet e kryera në Qendrat Aarhus, dolën këto mangësi në punën e tyre për të promovuar Konventën (sidomos në Qendrat e Shkodrës e Vlorës):

- Mungon mbështetja financiare për punën që kryejnë nga ana e shtetit. Qendrat deri tani kanë funksionuar duke marrë mbështetje nga OSBE-ja dhe nga projekte të ndryshme të financuara nga donatorë të ndryshe, si p.sh. REC në Shqipëri;
- Ka mungesë kapacitetesh brenda qendrave (këto qendra përfaqësohen nga vetëm një përfaqësues, gjë që e bën të vështirë menaxhimin e punës);
- Qendra kërkojnë mbështetje zyrtare nga Ministria e Mjedisit që të bëhen pjesë e konsultave me publikun (d.m.th t'u jepen kompetenca), dhe të marrin pjesë në marrjen e vendimeve gjatë procesit të Vlerësimit të Ndikimit në Mjedis.

ZBATIMI I TRI SHTYLLAVE TË KONVENTËS SË AARHUSIT NË SHQIPËRI

Shtylla e Parë:

Analizimi i kuadrit ligjor tregon se kuadri legjislativ ekzistues siguron një kornizë të mirë ligjore në përgjithësi, por ka mungesa në aktet nënligjore dhe dispozita të sakta dhe detajuara për procedurat

e zbatimit të Konventës, dhe gjuha e përdorur ndryshon nganjëherë nga formulimi i përdorur në Konventë. Ky problem theksohet edhe nga raporti mbi zbatimin e Konventë së Aarhusit i Qendrës Rajonale të Mjedisit (REC) i shkurtit të 2011-ës[1].

Shteti shqiptar ka marrë masa administrative për të zbatuar Konventën, si vendosja e një adrese poste elektronike, numër telefoni dhe person kontakti për të dhënë informacione mjedisore, dhe ka formuluar një kërkesë tip për publikun e interesuar, formular që është i gjendshëm në faqen e internetit të Ministrisë së Mjedisit. Gjithashtu, Ministria e Mjedisit ka firmosur një memorandum bashkëpunimi me OJF-të mjedisore më aktive (rreth 30 OJF), por vihen re mangësi në zbatimin të memorandumit të bashkëpunimit midis Ministrisë së Mjedisit dhe OJF-ve.

Kërkesat e Konventës janë pasqyruar në Kushtetutën e Republikës së Shqipërisë, duke i përshtatur në Nene konstitucionale. Në të tëra këto akte ligjore, të drejtat për informacion janë siguruar pa një interes të caktuar. Kohëzgjatja e kthimit të përgjigjes në rastet kur ka kërkesë për informacion është caktuar në ligjin "Për të drejtat e informimit për dokumentet zyrtare" dhe është **40 ditë** nga paraqitja e kërkesës. Përgjigjja për këto kërkesa ka qenë e menjëhershme dhe numri i kërkesave ka qenë i ulët, me 6-7 persona në ditë, ku numri më i madh janë studentë dhe vetëm 20% e kërkesave vjen nga OJF-të.

Shtylla e Dytë:

Vendimmarrja është një nga shtyllat më me rëndësi të Konventës së Aarhusit. Gjatë intervistave të kryera, rezultoi se konsultat me publikun janë në shumë raste fiktive dhe nuk realizohen me publikun e prekur nga veprimtaria në mjedis, si dhe gjatë vendimit nuk merret parasysh mendimi i publikut. Përfshirja e publikut ndodh vetëm në rastet e aktiviteteve të një kategorie të madhe, që ka bërë bujë e zhurmë në media, dhe kur investitori detyrohet t'i realizojë këto konsulta. Gjithashtu, ka mungesë kontrolli nga Agjencitë Rajonale të Mjedisit, të cilat e kanë për detyrë të marrin pjesë gjatë konsultave me publikun. Kjo gjë sjell mungesë korrektësie dhe moszbatueshmëri të procesit.

Shtylla e Tretë:

Shtylla e tretë e Konventës së Aarhusit duket dhe më problematikja në zbatimin e kësaj Konvente në Shqipëri. Gjatë studimit tonë kemi evidentuar një sërë rastesh që kanë të bëjnë me zbatimin e kësaj shtylle, të cilët lënë shumë për të dëshiruar. Megjithëse ka pasur një sërë trajnimesh për gjyqtarët

1 Albania: Strengthening Aarhus Convention Implementation Project, Feb.2011, The Regional Environmental Center (REC), Szentendre, Hungary

rreth shtyllës së tretë të Konventës së Aarhusit, hulumtimi jonë tregon se ata ende nuk kanë njohuri të thelluara rreth detyrimeve ndaj kësaj Konvente.

Rastet e evidentuara gjatë studimit:

- **Rasti i parë**

Rasti i një stalle derrash, e cila ishte jashtë kushteve teknike dhe shkaktonte ndotje në mjedisin përreth në zonën e Lezhës, ku ankesa është kryer nga banorët që jetonin përreth mjedisit ku gjendej stalla. Me praninë e një avokati privat, kjo çështje shkoi në gjykatë ku dhe çështja u fitua. Kjo është një nga rastet e rralla ku parimi i shtyllës së tretë të Konventës së Aarhusit u mor parasysh.

- **Rasti i dytë**

Fabrika e firmës Rozafa (firmë që merret me përpunimin dhe paketimin e peshkut) në qytetin e Shkodrës lëshonte një erë mbytëse në mjedisin përreth, përpos shkaktimit të zhurmave të mëdha nga kompresorët që përdoreshin për procese të ndryshme në fabrikë. Duke qenë se gjendja në mjedisin përreth u bë e padurueshme, kjo gjë çoi në bashkimin e komunitetit për të ndryshuar këtë gjendje, në mbështetje të të cilëve erdhi dhe Qendra Aarhus Shkodër dhe një avokat, dhe së bashku iu drejtuan gjykatës për bërë ankesën. Ankesa u pranua nga gjykata, por gjykatësi nuk i ka dhënë asnjë afat kohor subjektit (Rozafës) për të marrë masat e nevojshme. Kjo çështje është ende e hapur në gjykatë dhe deri tani asnjë nuk po merret me përfundimin e çështjes.

- **Rasti i tretë:**

Reagimi lindi nga ardhja e një anije me farëra të modifikuara gjenetikisht (OMGJ) në Shqipëri. Shoqëria civile reagoi, dhe ankesa u bë nga Z. Lavdosh Ferruni, aktivist i njohur në mbrojtje të mjedisit dhe bujqësisë organike. Ankesa u mor parasysh dhe ngarkesa me farëra OMGJ u kthye mbrapsht dhe nuk u shkarkuar në Shqipëri.

PROBLEMATIKA ME ZBATIMIN E KONVENTËS

Nga shqyrtimi i artikujve, raporteve dhe materialeve të ndryshme në internet, doli që janë vërejtur probleme me zbatimin e Konventës së Aarhusit që nga ratifikimi dhe hyrja në fuqi e saj. Konventa detyron palën shtetërore që të shpërndajë në mënyrë aktive informacionin mjedisor që ata zotërojnë. Nga intervistat dhe anketimet që zhvilluam, dolëm në përfundim se ligji nuk përcakton qartë detyrat për informimin e qytetarëve nga ana e autoriteteve publike, dhe nuk bëhet përcaktimi i qartë i asaj se çfarë është "autoriteti publik:, çështje e ngritur edhe nga Baraku[2] e cila thekson se ligji shqiptar nuk përkufizon "autoritetin publik" sipas përkufizimit të Konventës[3].

Nga anketimet me anë të pyetësorëve dhe me anë të intervistave personale me individë nga autoritetet shtetërorë, qendrat Aarhus në Shqipëri (në Shkodër, Tiranë e Vlorë) dhe me shoqërinë civile, rezultoi se:

- Nga hulumtimi jonë doli se vetëm 30% e lejeve mjedisore kryejnë konsultat me publikun, kurse pjesa tjetër nuk i kryen ato;
- Kemi një publik i cili ndjehet mosbesues ndaj zhvilluesit dhe agjencive në konsultat gjatë proceseve të vlerësimit të ndikimit në mjedis, dhe në shumicën e rasteve kemi një publik pasiv që nuk shfaq ndonjë interes për t'u bërë pjesë e këtyre konsultave;
- Procesi i informimit të publikut në pjesën më të madhe të rasteve bëhet në mënyrë formale dhe jo në kohën e duhur dhe në vendin e duhur. Shumica e projekteve të cilat kanë një ndikim në mjedis, nuk njoftojnë paraprakisht banorët përreth projektit, dhe në shumicën e rasteve kur bëhen konsulta, ndiqet praktika që në fillim fillojnë punimet për objektin/ projektin, dhe më pas fillojnë konsultat duke i vënë banorët nganjëherë para faktit të kryer;
- Ka një mungesë të thellë të njohjes së Konventës së Aarhusit dhe detyrimeve që rrjedhin nga ajo, nga ana e punonjësve të administratës publike, madje edhe në institucione që janë më përgjegjëse për zbatimin e kësaj Konvente si: Ministria e Mjedisit, ministritë e të tjera të linjës dhe Agjencitë Rajonale të Mjedisit;

2 Irma Baraku: "*E Drejta për Informim mbi Çështjet e Mjedisit: Legjislacioni Shqiptar në Vështrim Krahasues me Konventën e Aarhus-it*", Revista Shqiptare për Studime Ligjore Vol. 5 (2013)

3 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters: http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf

- Ka mungesë bashkëpunimi dhe ndërveprimi mes Ministrisë së Mjedisit, që është koordinatori kryesor i Konventës së Aarhusit, me organizatat jofitimprurëse. Ky problem ka qenë theksuar dhe më parë nga OJF-të mjedisore shqiptare në një letër pozicionimi drejtuar Ministrisë së Mjedisit, Këshillit të Ministrave dhe organizmave të tjerë kombëtarë e ndërkombëtarë[4];
- Ka mungesë infrastrukture teknike dhe pajisjesh për mbarëvajtjen e punës, kryesisht në zonat provinciale larg kryeqytetit, duke vështirësuar procesin e punës, dhe gjatë projekteve të shumta që kërkojnë aparatura e mjete pune. Më problematike tani për tani, është niveli i burimeve financiare dhe teknike në dispozicion të ARM-ve (Agjencive Rajonale të Mjedisit), ku disa prej të cilave nga kanë as një numër të mjaftueshëm kompjuterësh, nuk kanë lidhje me internet, etj. Ka vonesa në publikimin e gjendjes së mjedisit, gjë që kryhet Agjencia Kombëtare e Mjedisit, dhe që si rezultat i mungesës së fondeve për të kryer monitorimin vjetor;
- Gjendja e burimeve njerëzore për të mbështetur zbatimin e Konventës janë të kufizuara në Ministrinë e Mjedisit e cila është koordinatorja kryesore për zbatim. Dy personat të cilët janë drejtpërdrejt më përgjegjës për këtë, mund t'i kushtojnë kohë dhe vëmendje vetëm pjesërisht zbatimit të Konventës.
- E njëjta gjë vlen dhe për stafin e Ministrive të linjës dhe ARM-vë. Disa persona nga stafi i tyre janë trajnuar dhe njohin përmbajtjen e Konventës, përgjegjësitë dhe detyrimet, por për shumicën e stafit çështjet e lidhura me Aarhusin nuk janë pjesë e punës së përditshme dhe si rrjedhim i kushtohet pak vëmendje se çfarë duhet bërë në kuadër të Konventës. Vërehet gjithashtu mungesë kapacitetesh te punonjësit e këtyre institucioneve, të cilët kanë njohur të përcipta të Konventës;
- Kushtet financiare dhe teknike për të mbështetur punën për çështje lidhur me Aarhusin janë, gjithashtu, jo të përshtatshme dhe është e nevojshme të përmirësohen;
- Në gjyqësor ka njohuri të pakta të ekzistencës së Konventës dhe në fazën aktuale, për shkak të mungesës së mekanizmit të duhur institucional, kërkesat për të drejtën për t'iu drejtuar gjykatës nuk janë zbatuar;

4 Letër Pozicionimi *"Për garantimin e pjesëmarrjes së publikut në fushën e mjedisit"*, 2010, Pika 4: http://milieukontakt.net/en/wp-content/uploads/2010/01/Dokumenti-i-pozicionimit_Public-Participation_final.pdf

PËRFUNDIME DHE REKOMANDIME

1. Shqipëria ka ndërtuar një kuadër legjislativ përgjithësisht të mirë, por ka mungesa në disa akte nënligjore në lidhje me drejtimin ndaj gjykatës. Legjislacioni shqiptar duhet të përafrohet që të përmbushë plotësisht të gjitha kërkesat e detyrimet e Konventës së Aarhusit, si dhe terminologjia dhe përkufizimet të jenë të njëjta me atë të Konventës për të shmangur keqkuptimet. Shtyllat e Konventës duhet të jenë më të zbatueshme në praktikë, ku dhe legjislacioni mund të jepte një ndihmesë të madhe;

2. Aktet ligjore dhe nënligjore specifike duhet të jenë më të detajuara që të tregojnë sesi zbatohen dispozitat e ligjeve të ndryshme;

3. Ministria e Mjedisit duhet t'u japë kompetenca Qendrave Aarhus, që të bëhen pjesë e konsultave me publikun si dhe në marrjen e vendimeve gjatë procesit të Vlerësimit të Ndikimit në Mjedis, duket qenë se këto qendra janë aktorët kryesorë në informimin rreth të drejtave dhe detyrimeve që dalin nga Konventa e Aarhusit. Përvoja dhe informacioni që këto qendra zotërojnë, është shumë i nevojshëm në rastet e dëgjesave publike dhe marrjes së vendimeve për çështje mjedisore;

4. Ministria e Mjedisit duhet të krijojë një fond të përvitshëm, për financimin e punës së Qendrave Aarhus në Shqipëri. Kjo gjë duhet të bëhet në marrëveshje me Qendrat, duke llogaritur sa do të ishte financimi optimal që Qendrat të menaxhojnë volumin e punës që kanë, dhe të shtonin kapacitetet dhe stafin brenda qendrave, gjë që do t'u jepte mundësi këtyre Qendrave të bënin punën informuese e trajnuese rreth Konventës së Aarhusit;

5. Organet shtetërore duhet të përpiqen më shumë për të informuar dhe për ta tërhequr publikun në përdorimin e mundësive që Konventa e Aarhusit i jep publikut. Siç e thamë më lart, informimi mund të kryhet nëpërmjet mbështetjes financiare të Qendrave Aarhus në Shqipëri;

6. Të krijohet një mekanizëm monitorimi për kryerjen e konsultave me publikun. Fakti që dëgjesat publike kryhen në masën 30% dhe kryhen më shumë në formë fiktive, tregon që nuk ka monitorim që t'i detyrojë subjektet private t'i kryejnë konsultat sipas detyrimit ligjor.

7. Të përmirësohen dhe lehtësohen procedurat e dëgjesave publike, duke nxjerrë njoftimet në kohë të duhur e të arsyeshme që publiku të marrë pjesë në dëgjesa, si dhe të merren parasysh komentet e publikut, e të organizohen një sërë dëgjesash për një çështje në fjalë, e jo thjesht

një dëgjesë sa për respektuar ligjin. Të shkurtohet gjithashtu afati kohor për marrjen e informacionit mbi dokumentet zyrtare;

8. Duhet krijuar një sistem i digjitalizuar i vlerësimit dhe monitorimit të ndotjes në të gjithë Shqipërinë, si dhe fillimi i projekteve apo punimeve që ndikojnë në mjedis, gjë që do të sillte një informacion më të plotë dhe në kohë, rreth gjendjes aktuale të mjedisit;
9. Ministritë e linjës të bashkërendojnë punën e tyre në lidhje me zbatimit e Konventës së Aarhusit;
10. Të zhvillohen kapacitet e Agjencive Rajonale të Mjedisit, dhe stafi i këtyre Agjencive të marrë pjesë në të gjitha dëgjesave publike që të ketë mbarëvajtje të procesit, si dhe të trajnohen më tepër stafi i këtyre agjencive rreth Konventës së Aarhusit, Infrastruktura e këtyre qendrave duhet përmirësuar, dhe numri i stafit të tyre duhet të shtohet;
11. Vendosja e sanksioneve për nëpunësit shtetërorë të cilët nuk u përgjigjen siç duhet dhënies në kohë apo me cilësinë e duhur të informacionit, ose nuk marrin pjesë në dëgjesat publike, siç është rasti i Agjencive Rajonale të Mjedisit;
12. Të bëhen trajnime në gjyqësor rreth zbatimit të Konventës, si dhe Ministria e Mjedisit të thellojë bashkëpunimin dhe shkëmbimin e informacionit me Gjyqësorin dhe Prokurorinë, për të ndihmuar në bashkërendimin e punës në zbatimin e Konventës së Aarhusit, dhe për të ulur pengesat që ka nga ana e gjyqësorit për të drejtën për t'i drejtuar gjykatës në rastin kur lidhet me Konventën;
13. Të shtohet numri i punonjësve përgjegjës në Ministrinë e Mjedisit që merrem me zbatimin e Konventës së Aarhusit;
14. Të forcohet bashkëpunimi me OJF-të mjedisore rreth kësaj çështjeje, si dhe zvogëlohen barrierat financiere gjyqësore për OJF-të, pasi kjo ndihmon në zbatimin më me lehtësi të Konventës.

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EU ACCESSION NEGOTIATIONS INSTITUTIONAL FRAME FOR ALBANIA: IN QUEST OF EFFICIENCY AND MULTI-ACTOR INVOLVEMENT

Blerta Hoxha
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EUROPEAN MOVEMENT ALBANIA

SUMMARY

With the obtaining candidate status in June 2014, Albania is now undergoing a positive moment concerning EU accession and will likely be the next country to open accession negotiations. In this phase of optimism, different strategic and institutional preparations are being made for completing reforms and opening accession negotiations, hence it is essential that all measures be accompanied by broad political consensus.

The policy paper "EU accession negotiations institutional frame for Albania: In quest of efficiency and multi-actor involvement" explores the current level of institutional readiness and some experiences from previous EU accession countries, specifically the experience from Croatia, Bulgaria and Romania. Further, it seeks to suggest an optimal transition of preparations for negotiations, drawing from best practices. In particular, the paper explores the opportunities for involvement of a large share of actors in the accession process as a mean to make it more democratic and legitimated.

Overall, Albania is at very early, though encouraging, stages of organising the institutional set up for the opening of accession negotiations. In order to enhance inclusiveness and efficiency and drawing from the experience of other countries, there are a number of issues to be taken into account in Albanian accession negotiation institutional frame, such as:

- Official, written commitment to include civil society must be sought to be enshrined in the key documents (e.g. negotiation framework, national strategies and/or others).

- Official consultations at the earliest stages of policy/legislative process should become a consolidated practice.
- During negotiations, possibilities for monitoring, consultation and input of civil society must be clearly set, publicized and guaranteed in practice both from the side of the executive and of the Assembly.
- The national convention on EU integration, involving the executive on one side and civil society and interest groups on the other, should be set up and works should be organized by chapters. Political consensus from all actors should be sought regularly, as a means for democratic legitimacy of the ongoing negotiation process.
- A discussion on the publicity of documents should take place and agreement should be found before the start of negotiations and screening process(screening lists and screening reports, positions, acquis translated eventual benchmarks, and other legislation/documents being prepared)
- Changes in the law on the on the role of the Assembly, should seek to strengthen its oversight role over the executive, particularly concerning EU accession negotiations.
- The institutions in place concerning negotiations, their competencies and procedures as well as appointed staff must be public at all stages. In order to keep the public objectively informed and diminish the weight of political speculation, reforms undertaken should be carried out from the Ministry of European Integration.

INTRODUCTION: ACCESSION NEGOTIATIONS APPROACHING?

The European membership perspective of Albania became more and more tangible first at the Thessaloniki summit of EU leaders in 2003 and later through the stabilisation and association process. The intensification of relations between Albania and the EU, particularly the implementation of the Stabilisation and Association Agreement (SAA) and access to Instrument of Pre-accession (IPA) funding, implied the adaptation of existing administrative structures and setting up of new ones. However, experience shows that these processes were at times slow and very challenging for the country, which is characterized by weak planning and management capacities.[1] As Albania heads towards the next step of EU integration – opening of accession negotiations - experience to date clearly makes the case for building a vision and planning in advance.

In 28 April 2009, Albania formally applied for membership in the European Union. Following the answers to the EU Questionnaire on the country's readiness to open accession negotiations, in December 2010, the Commission issued an Opinion on the application, without granting candidate status, but laying 12 key priorities to be met. They almost exclusively concerned political criteria, where improvements in parliamentary life, fight against corruption, justice and public administration reform as well as respect of fundamental and civil rights were the most important.

Today, Albania has fulfilled the majority of the abovementioned priorities and the five remaining are meeting progress as well. Consequently, the country was granted candidate status in June 2014.

The June 2014 Council conclusions however do not openly refer to the opening of negotiations. Instead, they lay some further efforts that the country should pursue, notably to ensure a sustained, comprehensive and inclusive implementation of the reform of the public administration and the judiciary, the fight against organised crime and corruption, the protection of human rights and anti-discrimination policies including in the area of minorities and their equal treatment, and implementation of property rights.[2]

1 European Movement Albania, Policy Study: Part II Albania's challenges in benefiting from the Human Resources Development Component (IPA IV), Tirana, November 2012, pg. 16

2 Council of the European Union, Conclusions on Albania, GENERAL AFFAIRS Council meeting, Luxembourg, 24 June 2014

The path for monitoring progress in the abovementioned areas is provided by the High Level Dialogue between the EU and Albania, an instrument launched in December 2013 and developed through regular meetings. The High Level Dialogue was explicitly set up to help Albania complete remaining reforms leading to the opening of accession talks and screening process. A Roadmap prepared by the Ministry of European Integration, proposes an ambitious timeframe of actions to address the five key priorities, most of which within one year up to one year and a half. Following this period, the country should prepare for the potentially approaching accession negotiations.

Taking into account the positive momentum for EU integration for Albania and the ambitious goals set to complete reforms and open accession negotiations, this paper explores the current level of institutional readiness and some experiences from previous EU accession countries. It seeks to suggest an optimal transition of preparations for negotiations, drawing from best practices. In particular, the paper explores the opportunities for involvement of a large share of actors in the accession process as a means to make it more democratic and legitimated.

WHAT TO EXPECT: EU ACCESSION NEGOTIATIONS IN BRIEF

Experience shows that the institutional set up of accession negotiations on the side of the candidate country may be quite complex, with different instances and levels of responsibility. This is due to the fact that the process must continuously involve virtually all actors in different policy areas, from line ministries, the assembly, independent institutions, interest groups, etc. This requires distinct coordination capacities and above all, inclination for and efficiency in inclusiveness.

EU ACCESSION NEGOTIATIONS IN BRIEF

During accession negotiations, the negotiating positions of the EU are represented by the Presidency of the Council of the European Union, on behalf of the Member States, while negotiations are conducted on behalf of the candidate country by the State Delegation for Negotiations. Apart from the Head of the State Delegation (in most cases elected at ministerial level), the State Delegation for Negotiations of the candidate country includes the Chief Negotiator and the Negotiating Team. Negotiations are conducted within the framework of a bilateral Intergovernmental Conference held by

representatives of the EU Member States on one side and representatives of the candidate country on the other. Representatives of the European Commission also take part in the Conference.

Sessions of the Intergovernmental Conference at the level of heads of delegations are held once during each Presidency of the European Union (twice a year). Sessions at the level of deputies are arranged held in between.

As it is widely observed by experience, de facto, the candidate country does not negotiate on the EU acquis itself, which is organised in 35 chapters, but rather on the conditions and ways for its own legislation to be harmonised with it and on the means for its implementation. It is precisely for this reason that accession negotiations are not considered to be negotiations in the classical sense, but a process of harmonisation on the part of the candidate country to the values and to the legal, economic and social system of the European Union.

If a candidate country considers that for justifiable reasons it will require a longer period of time for harmonisation in a particular chapter, during negotiations on that chapter it may request so-called transitional periods, i.e. additional periods in which the candidate country will complete the harmonisation of national legislation with the acquis in a particular area after accession to the EU.[3] These should be however limited in time and scope, should not interfere with free market competition, and should not affect the internal market of the Community. In exceptionally rare cases, candidate countries may also request derogations from the acquis, in other words permanent exceptions in particular areas.

The formal opening of the negotiating process is followed by the analytical overview and evaluation of the degree of harmonisation of national legislation with the EU *acquis* known as screening. The screening process is aimed at determining the differences that exist between the national legislation and the EU *acquis* for every chapter with which the national legislation needs to be harmonised by the date of accession.[4] This analysis determines the eventual need for transition periods. Screening is conducted for every chapter individually. The duration of the screening process for individual chapters depends on the extent and the amount of the EU *acquis* for the respective chapter and can last from one day to several weeks. Overall, the screening process usually lasts for a year. In

3 Transitional periods for the adoption of the EU acquis can also be agreed on in the interest of the EU.

4 The lists comprise parts of the EU acquis for the specific chapter, as well as other legislation, i.e. soft law, which mainly consists of relevant judgements of the European Court.

the screening process, the EU is represented by delegates of the European Commission. Members of the Working Groups for the preparation of negotiations on the individual chapters, in dialogue with representatives of state administration bodies, participate in this process on behalf of the candidate country.

The screening process provides a basis to define the negotiating framework and to identify possible needs for a transition period for certain chapters. At the same time, screening allows the European Commission to evaluate the readiness of the candidate country for the opening of substantive negotiations on individual chapters.

The European Commission, in consultation with the candidate country, draws up a report on the results of the screening process for every chapter. These reports are forwarded to the EU Member States, as well as to the candidate country. The reports reflect the European Commission's evaluation of the candidate state's readiness to adopt and implement the EU acquis and may recommend the opening of substantive negotiations for individual chapters. If the European Commission considers that the candidate country is not ready to open negotiation for a specific chapter, it will recommend the setting up of **benchmarks** (minimum requirements) which need to be met before the negotiations for a respective chapter can be opened.

NEGOTIATIONS

After screening is completed, the decision on the opening of negotiations for individual chapters, depending on the evaluated readiness of the candidate country, is made by the Member States within the Council of the European Union. With the opening of negotiations for individual chapters, the substantive phase of the negotiations begins. During this phase, the subject of negotiations is the conditions under which the candidate country will adopt and implement the EU *acquis* in the respective chapter, including transitional periods which the candidate country might have requested.

Negotiations are conducted on the basis of the negotiating positions of the European Union and the candidate country which are prepared for each negotiating chapter after the screening results.

ACCESSION NEGOTIATION EXPERIENCE OF CROATIA: WHAT CAN WE LEARN CONCERNING TRANSPARENCY AND INCLUSIVENESS?

Accession negotiations for Croatia were formally opened on 3 October 2005 at the first session of the Intergovernmental Conference between EU Member States and the Republic of Croatia, where the exchange of General Positions of the European Union and the Republic of Croatia took place. The screening lists were fulfilled by the members of the Negotiating Team with the support of the relevant state administration body and its EU coordinator, as well as the Secretariat of the Negotiating Team. Prior to submission to the European Commission, the screening lists were regularly forwarded to the National Committee for Monitoring the Accession Negotiations of the Republic of Croatia to the European Union.

The following bodies of the **Croatian Negotiating Structure**[5] were involved in the process of preparing the negotiating positions:

1. The State Delegation of the Republic of Croatia for Negotiations on the Accession of the Republic of Croatia to the European Union
2. The Coordinating Committee on the Accession of the Republic of Croatia to the European Union
3. The Negotiating Team for the Accession of the Republic of Croatia to the European Union
4. The Working Groups for preparation of negotiations on the individual chapters of the EU acquis
5. The Office of the Chief Negotiator
6. The Secretariat of the Negotiating Team.

5 See Annex I for detailed information on Croatian negotiation structures.

PARLIAMENTARY BODIES

The National Committee for Monitoring the Accession Negotiations of the Republic of Croatia to the European Union functioned as a special working body of the Croatian Parliament which supervised and evaluated the course of the negotiations, providing opinions and guidelines on behalf of the Croatian Parliament on the prepared negotiating positions, as well as analysed and assessed the performance of individual members of the Negotiating Team. The National Committee, via the Chairperson of the Committee, held regular consultations and exchanges information with the President of the Republic of Croatia, the President of the Government and the President of the Croatian Parliament, and with the Head of the State Delegation and the Chief Negotiator on the progress of the negotiations, on the open issues of the negotiations, and on possible ways of closing individual chapters. The Committee constituted an important hub for inclusion of civil society, as besides members of the Croatian Parliament, representatives from the Office of the President of the Republic of Croatia, it foresaw the participation of academic community, employers' associations and trade unions.

PREPARATION OF THE EU COMMON POSITION

The European Council unanimously decides on the EU's common position on the basis of the draft negotiating position defined and proposed by the European Commission, taking into account the negotiating position of the candidate country. In addition, the EU's common position defines the benchmarks which the candidate country needs to fulfil before negotiations on specific chapters can be temporarily closed. Benchmarks may refer to the harmonisation of legislation, the results of the implementation process, administrative or judicial capacity and/or adherence to the obligations under the association agreement.

After agreement has been reached between the EU and the candidate country on an individual chapter, and when the set benchmarks have been met, the respective chapter is considered to be temporarily closed. If, before the Accession Treaty has been concluded, new provisions for a specific chapter of the EU acquis are adopted, or if the candidate country does not meet the set benchmarks or obligations assumed under the respective chapter, negotiations for the chapter in question can be reopened. This implies that a candidate country not only must align with existing EU acquis, but ought to keep up with developments as well.

During the overall accession process, the European Commission continuously monitors and supervises the progress of the candidate country in the course of meeting the membership criteria and obligations

assumed for individual chapters and issues regular reports on the progress of the candidate country in this respect. The European Parliament is regularly briefed on the course of the negotiations. During the whole negotiating process, the European Parliament and the National Committee for Monitoring the Accession Negotiations of the Republic of Croatia to the European Union were regularly briefed on the course of the negotiations and the progress made.

The Croatian parliament has played an important political and legislative role in the process of integration of Croatia to EU. It has intervened in EU Accession Negotiation through its three parliamentary committees working bodies: European Integration Committee and Croatia-EU joint Parliamentary Committee. European Integration Committee was established in 2000 and is in charge of monitoring the harmonization of the Croatian legal system with the acquis. While Croatia-EU Joint Parliamentary Committee was established under the Stabilization and Association Agreement as a new form of cooperation and political dialogue. During accession negotiations, the members of the Committee meet twice a years in order to exchange their experiences on the most important aspects of Croatia's accession to EU and discuss on further development. The National Committee from 2005 to 20011 has the role as a special working body competent for monitoring the negotiations for Croatia's accession to EU. It consisted of representatives of all parliamentary political parties. Its functions included forum for debate and consultations between parliamentary bodies and Government, and raise public awareness on European issues in Croatia. Finally, it has played an essential role for follow-up of negotiations.

Croatia tends to be seen as a positive model in the region and it is effectively the country that disposes the highest administrative and management capacities. However, in terms of transparency and inclusiveness of various actors in the process, the country has been at odds with different challenges which it has adjusted along. One of the key challenge encountered was discrepancy between stated political commitments to transparency and inclusiveness and the actual negotiation and policy-making practices which were driven by a sense of urgency and even fear that public disclosure of negotiation documents, public consultations on acquis-related legislation and extensive public debates might stifle the process, would weaken Croatia's position.[6]

As mentioned earlier, due to the very nature of the accession process and its particular methodology, the actual space for negotiations and therefore for input from civil society is relatively limited.

6 Marina Škrabalo, GONG Research Centre, Croatia Transparency in retrospect: preliminary lessons from Croatia's EU accession process, Discussion paper commissioned by the Greens / EFA in the European Parliament, Zagreb, November 8, 2012

Interestingly, in the case of Croatia, the Negotiation Framework does not refer to transparency nor does it provide any guidance on the desirable or acceptable degree of confidentiality of the negotiation process, even though there are other documents, yet not of such central political standing, which highlight the importance of civil society engagement, public communication information and parliamentary oversight of the accession process.[7]

The National Committee, a parliamentary body for parliamentary oversight of negotiations, chaired by the opposition with equal number of members from ruling and opposition parties, also engaging representatives of academia, trade unions and employers and the Office of the President played an important role in civil society inclusiveness.

Moreover, of the over 1800 experts engaged in the negotiations, a third were from outside public administration (mostly from business, academia and public institutions but also some from trade unions and civil society organizations). This may be considered as an indicator of inclusiveness, but also of the need of the administration to complement its capacities with those from other sectors in such a complex process.

Overall, today most experts would argue that the lack of exhaustive rules on publicity and inclusiveness during negotiations, along with the tradition of closed policy making process characterizing the Western Balkans, may constitute an obstacle to efficient involvement of non state actors in the negotiation of different chapters of the EU acquis. Therefore, provisions must be taken at very early stages.

NEW APPROACH TO OPENING ACCESSION NEGOTIATIONS

The history of EU enlargement is also one of adaptation and evolution of mechanisms accession after accession. The Croatian experience of negotiations, in which some chapters were considered to have been opened "late" and took longer to conclude, such as the one concerning corruption, brought a change in EU's integration methodology approach, the so called "new approach". The new approach

7 *Ibid*.

defines that the chapters 23 and 24, "Judiciary and Fundamental Rights" and "Justice, Freedom and Security" should be tackled early within the negotiation. This would allow the sufficient time to establish the necessary legislation, institution and solid track record of implementation before the closure of negotiations. Hence, negotiations with Montenegro and Serbia started with chapters 23 and 24.[8] Starting the accession negotiations on 29th of June 2012, Montenegro overtook Macedonia, Serbia and Albania in its European journey. The negotiating framework for Montenegro was more explicit and detailed as regards chapters 23 and 24 than the one for Croatia, reflecting the new approach adopted by the EC in 2011.[9] Thus, the negotiating framework stated the concerns of some Member States related to the rule of law, corruption and organised crime. In this context, in addition to setting the benchmarks for opening and closing each chapter of the acquis, new procedures regarding chapters 23 and 24 were included.

THE MEETING OF STANDARDS CONTINUES EVEN AFTER ACCESSION

It is important for countries like Albania to understand since the early stages that alignment with the EU acquis is not a one-time exercise, but a continuous effort to implement legislation and therefore observe standards. The experience of conditions post-accession set to Bulgaria and Romania is a good example of this.

ROMANIA AND BULGARIA COOPERATION MECHANISM[10]

Bulgaria and Romania have joined the European Union on January 1st 2007, but under the condition to continue the reforms in the area of justice and rule of law. The compromise was sealed by a special monitoring mechanism, called Control and Verification Mechanism (CVM). Under that mechanism the European Commission monitors the implementation of reforms in several benchmarks and makes recommendations. Each year, the Commission presents a general report in July and an interim document in the beginning of the year.

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8 See Accession negotiation framework Montenegro and Serbia, respectively: http://ec.europa.eu/enlargement/pdf/st20002_05_mn_framedoc_en.pdf http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/140676.pdf

9 European Movement Albania, Beyond the candidate status - new approach towards EU accession, Tirana, October 2012, pg. 8.

10 For more detail and reports, see: http://www.euinside.eu/en/subjects/cooperation-and-verification-mechanism-bulgaria-2012

THE WAY FORWARD FOR ALBANIA

In a climate of major challenges faced by the European integration project, EU enlargement evidently becomes less focal a policy. The lack of clear timeline of membership for Albania and the region towards membership is proof of this.[11] However, with the obtaining candidate status, Albania is now undergoing a positive moment concerning EU accession and will likely be the next country to open accession negotiations. In this phase of optimism, different strategic and institutional preparations are being made for completing reforms and opening accession negotiations. It is essential that all measures be accompanied by broad political consensus.

The recently adopted National Plan for European Integration[12] provides an integrated framework of reforms and strives to build a vision on the next steps of EU integration. In order to improve management and coordination in the EU integration process, the Prime minister issued two orders in early 2014, one for the composition and operation of the Interagency Working Groups for European Integration and the other for the preparation and review of the National Plan for European Integration 2014-2020. Order no. 107, dated 28.02.2014 "On establishment, composition and functioning of the Interagency Working Groups (IWG) for European Integration" reorganized existing IWG created for each chapter of the *acquis*.

The following constitute the key activity of the IWG: Implement interagency communication and cooperation at the technical level, with a view to implementing the commitments under the policy documents for European integration; Oversee the implementation of the Stabilization and Association Agreement (SAA); Contribute in the arrangement of meetings of the Committee and Subcommittee of SAA as well as follow up and implement the recommendations provided in these meetings; In collaboration with the Ministry of European Integration, coordinate annual reviews of the National Plan for European Integration 2014-2020 in the respective chapters, as well as ensure consistency of the National Plan with the annual work plan of the Government as well as with the National Strategy for Development and Integration (2014-2020) as well as with other national strategy; Coordinate and supervise the process of approximation of legislation, respecting the deadlines set out in the

11 Amid criticism, the incoming president of the European Commission has explicitly listed as third priority on foreign policy "a pause on enlargement". For more details, see: http://ec.europa.eu/enlargement/pdf/st20002_05_mn_framedoc_en.pdf

12 Decision of the Council of Ministers on the National Plan for European Integration, 2 July 2014.

National Plan for European Integration 2014 - 2020; Coordinate and ensure timely distribution of EU *acquis* between line ministries and other relevant authorities, as well as serve as a forum for resolving ministerial disputes over the allocation of *acquis;* Periodically monitor developments regarding EU legislation, including proposals for new legislation, recently enacted legislation and jurisprudence of the Court of Justice of the European Union; Regularly inform relevant staff in line ministries, expert services near parliament and other authorities responsible for the most recent changes in the EU *acquis;* Periodically analyze the institutional capacity in relevant fields and make appropriate recommendations; Set priorities and monitor implementation of the plan for translating the EU *acquis;* Identify strategic priorities and needs in relation to the European Integration process to formulate proposals for assistance from EU and other donors, in close cooperation with the Ministry of European Integration and the department near the Council of Ministers; develop and provide recommendations to the Interagency Coordination Committee for European Integration (ICEI);

Each group is headed by the Deputy Minister of the responsible ministry for the respective chapter and coordinated by the Director of the European Integration Unit of that ministry. Interagency Working Groups for European Integration are composed by representatives from the Prime Ministry, Ministries, their subordinate institutions and public institutions under the scope of the EU *acquis*. Regardless of the *acquis* chapter, representatives of the Ministry of European Integration and the Ministry of Finance attend all meetings of the IWG's.

Order no. 107 provides that the GNP of European Integration should hold regular monthly meetings to analyze the developments and decide on the course of action. Working groups may meet in extraordinary meetings (ad hoc), if necessary. IWG Secretariat consists of members from the main institutions for each chapter of the *acquis*. IWG Secretariat responsibilities include technical assistance and information flow within the IWG.

The National Plan for European Integration 2014-2020 serves as a basis for planning the process of EU integration. The plan is prepared in full accordance with the annual work plan of the Government and, when updated, will be fully compliant with the National Strategy for Development and Integration to be adopted in December 2014, as well as other national strategies. Preparing National Plan for European Integration 2014-2020 and its annual updates are coordinated by the Ministry of European Integration in cooperation with the IWG. It is up to the Ministry of European Integration to provide guidance and methodologies for the preparation and annual updates to the National Plan for European Integration.

On the side of the Assembly, preparations are being made to review and update the role of this institution in the EU integration process. An initiative to review the so-called "Zela Law" was launched in early June and is under way, in cooperation with civil society. Reflections provided by experts to date evidence that several aspects of the Zela law were ignored, lessening the role of the Assembly in the EU integration process.[13] The current revision sets a highly ambitious timeline[14] and seeks to correct these aspects and prepare for opening of accession negotiations. The new law is expected to cover issues of political dialogue; accession negotiations; EU acquis approximation; oversight role and reporting of institutions; monitoring of use of funds and public information. A close cooperation between the Assembly and the Ministries of European Integration and of Relations with the Parliament will be needed to make sure that legislative and executive are in synergy with the powers attributed to each side.

In terms of involvement of civil society in the EU integration process, the debated has much intensified in the last years. Upton request of Commissioner for Enlargement Stefan Fule, the opening of the High Level Dialogue in November 2013 included a request to officially involve civil society in the process. Despite a commitment to do so by setting up a National Convention, the executive has yet to yield results in this direction. From a broader perspective of inclusiveness in policy making, it must be noted that the delayed revision and introduction, respectively of laws on access to information and public consultation is not an encouraging sign for a country chronically suffering from a closed environment. Similarly, the experience of other accession countries shows that inclusion of civil society may result challenging due to different factors.

CONCLUSIONS AND RECOMMENDATIONS

Overall, Albania is at very early, though encouraging, stages of organising the institutional set up for the opening of accession negotiations. With a view to enhancing inclusiveness and efficiency and drawing from the experience of other countries, there are a number of issues to be taken into account.

13 The 2010 Analytical report of the EC pointed out the many limits of Albania's parliamentary life, among which weakness vis à vis the executive from a general prospective, and the integration process is a reflection of that.

14 The chairwoman of the Committee on European Integration recently announced the revision of the law would take place within the July 2014.

- Firstly, official, written commitment to include civil society must be sought to be enshrined in the key documents (e.g. negotiation framework, national strategies and/or others).
- Given other countries' experiences and Albania's lack of institutionalized relations between state and non state actors, issues concerning content and implementation of laws on access to information and public consultation should be addressed well before the approaching of accession negotiations. Official consultations at the earliest stages of policy/legislative process should become a consolidated practice.
- During negotiations, possibilities for monitoring, consultation and input of civil society must be clearly set, publicized and guaranteed in practice both from the side of the executive and of the Assembly.
- The national convention on EU integration, involving the executive on one side and civil society and interest groups on the other, should be set up and works should be organized by chapters.
- The institutions in place concerning negotiations, their competencies and procedures as well as appointed staff must be public at all stages.
- A discussion on the publicity of documents should take place and agreement should be found before the start of negotiations and screening process. As a reference, this should include screening lists and screening reports, positions, acquis translated eventual benchmarks, and other legislation/documents being prepared.
- Changes in the law on the on the role of the Assembly, should seek to strengthen its oversight role over the executive, particularly concerning EU accession negotiations.
- Political consensus from all actors should be sought regularly, as a means for democratic legitimacy of the ongoing negotiation process.
- Finally, fact-based public information campaigns on the stage of the process and reforms undertaken should be carried out from the Ministry of European Integration, in order to keep the public objectively informed and diminish the weight of political speculations/propaganda.

TESTIMONIAL

Overall, the actions supported through this project were successful. In particular, all activities have been extremely timely, considering the context - Albania obtaining candidate status, different strategic documents being adopted, the role of the Assembly in the EU integration process being reviewed, and the High Level Dialogue (which launched and supported the involvement of civil society in the process). Therefore, both the paper and the round table met the interest of relevant actors.

The action achieved to raise a public discussion on the issue of institutional setup for accession negotiations, readiness, and spaces for involvement of civil society. Helped by the findings of the research EMA's experts are currently involved in the consultations of the Committee on European Integration on reviewing legislation on the role of the parliament in the EU integration process. Another relevant activity related to this research is the participation of EMA in the setting up of the national convention on European integration, a body meant to include civil society in the next steps of EU integration reforms.

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European Movement Albania (EMA) is a think tank exploring political, economic and social challenges that Albania and the Western Balkans are facing in their road toward EU membership. It is devoted to making the policy-making process more transparent and accountable. EMA's work is organised around four programme areas: promotion of European values and European Integration process of Albania, democracy and good governance, economic and social dimensions of EU integration, regional cooperation. Considering the needs and challenges of Albania in this transformation process, our work develops through: policy research, analysis, advice and advocacy; capacity building and training; public debates and policy forums.

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PROMOTE PARTICIPATORY EVIDENCE BASED POLICY MAKING ON CRIME AND CONFIDENCE: THE BENEFITS OF TRUST

Klodjan Seferaj, PhD Candidate

SUMMARY

The rationality behind this research lays on critical situation of confidence in the justice sector. Different reports show that public confidence in what concerns the Albanian justice sector is low. The key element in creating public confidence is the belief that rules agreed in a democratic manner are followed by the entire society and by state structures; based on that concept, with a non-functioning justice sector, people generally feel insecure.

Albania is making growing use of indicators in order improve its policy making and monitoring through Performance Assessment Matrix, but limited progress has been made in what concerns criminal justice. Less attention has been paid to crucial but hard-to-measure indicators about public trust in justice. Without such indicators, there is the risk that crime policies may become over focused on short-term objectives regarding crime control, at the expense of equally important longer-term objectives relating to justice.

The policy brief is based on assumption that an effective justice system must assess itself not only against narrow criteria of crime control, but also against broader criteria relating to people's trust in justice, their commitment to rule of law, and their sense of security. In the long term, public compliance with the law depends on the legitimacy of justice institutions as they command if people recognize that they are fair, and provide public security.

European experience has developed tools to enable "evidence-based assessment of public trust in justice and feelings of security across Europe". This research puts

its efforts to analyze actual experience of Albania and to test the use of a scientific indicators standardized system that will measure confidence in criminal justice and the public's security feelings. These questions are designed to yield trust indicators that will serve the specific needs of the Government and other actors.

It will always be hard to assemble absolutely clinical evidence that fair and respectful treatment of how the public builds legitimacy and thus consent to the justice sector. However, there may be scope for testing a range of procedural justice hypotheses more rigorously. In the meantime, I am hopeful that this research will help to create new insights into the different ways in which institutional legitimacy may be constructed and maintained in Albania.

BACKGROUND

The rationality behind this research lays on critical situation of confidence in justice sector. Different reports show that public confidence in what concerns the Albanian justice sector is low. The key element in creating public confidence is the belief that rules agreed in a democratic manner are followed by the entire society and by state structures; based on that concept, with a non-functioning justice sector, people generally feel insecure.

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The methodology ensured a three-month research with the aim to produce a policy brief, which was evidence-based on primary and secondary data collected through both qualitative and quantitative approaches in order to fully explore, describe, and understand the phenomena of public trust in

justice in Albania. The methodology comprised: desk research and literature review; data analysis and information collection through direct meetings, and questionnaires; involved key actors in providing concrete inputs to policy brief and its recommendations; and organization of a round table for dissemination purposes.

STATE OF PLAY

The research carried out among government officials, experts, and civil society members in Albania, showed a range of policy stances towards public trust in justice. There was a continuum ranging from who attach great importance to building public confidence in justice to those for whom public confidence is unimportant, relative to making objective improvements to the functioning of justice.

The need for measuring public trust in justice. The research revealed that there is a general consensus that the application of public confidence indicators would have significant potential benefits. There were also various expectations about the potential impact of such indicators ranging from reforming the criminal justice system to changing the perceptions of the public towards its operation.

BENEFITS

- The indicators could diagnostics the existing system of criminal justice, i.e. public confidence indicators are viewed as a tool for identifying weaknesses and deficiencies of the system.
- At the policy level the use of indicators is seen as an instrument for the design of better and fairer criminal justice policies.
- Public confidence indicators are also seen as a useful monitoring instrument which could help strengthen the civic control over the justice system.
- To have national indicators comparable at international level would help compare our system with other and transfer best international practices.
- Indicators are seen as the potential basis for various decisions such as decisions for drafting legislative changes, managerial and budgetary decisions concerning individual bodies of the criminal justice system, decisions regarding the recruitment policies within the system, decisions related to the design of crime prevention policies, etc.

- Insufficient attention to questions about why people comply with the law and too much attention to questions about why people break the law.
- Exploring ways regarding how people can accept the rule of law because they believe it is right to do so.
- A functional and reliable system on measuring perception may transform the public from simple 'consumers' to actively influence the justice system and decrease crime trends when the trust increases.

CONCERNS

- The indicators might be misused or that excessive weight may be attached to them. Possible scenarios, such as the use of indicators to justify the introduction of populist measures, or their misinterpretation for short term political gain, or their exploitation for political purposes by political parties or the media.
- There are also concerns that such indicators would oversimplify the actual situation, in the same time missing information on other essential factors.
- The significant differences between the criminal justice systems of individual countries that might turn into an obstacle for the design and implementation of international indicators.

The status of measuring trust in justice in Albania. The paradigm of human security during these twenty years in Albania has fluctuated between traditional security concepts and attempts to define it in different ways. Low trust in internal institutions that enforce rule of law like the judiciary system is a consequence of people's disappointment with their performance. Low trust in local institutions that enforce rule of law undermines the core principle of their democratic functioning since citizens seek solution from their problems into international institutions rather than into internal ones.

After the start of the democratic changes, surveys were done sporadically and unsystematically by different institutions and organisations, under different methodologies, which made them incomparable and fractured. Research reviewed the state of the art in measuring trust in justice in Albania by looking at the national instruments and tools applied in comparison with EU Member States experience and best practices.

In Albania, there is no comprehensive and regularly applied system of indicators measuring the public confidence in criminal justice. There are occasional studies and surveys of the public confidence in

the entire judiciary system or in its individual branches but there is no comprehensive and uniform system of indicators measuring the public trust in the criminal justice system as a whole. Most of these surveys are regarded as not sufficiently comprehensive to include the entire justice sector, and have not influenced the design of criminal justice policies in the country. Almost all the surveys were funded by international donors and/or were conducted by international or local important think tanks/NGOs as IDM, IDRA, Soros Foundation, AIIS, IPLS and Data Centrum, etc.

***The European and world indicators of trust and legitimacy*.** One of the social indicators approach in what concerns the trust in justice recognizes that the police and criminal courts, even the ones at European level, need public support and institutional legitimacy if they are to operate effectively and fairly. In order to generate public cooperation and compliance, these institutions must demonstrate to the citizens that they are trustworthy and that they possess the authority to govern. Those indicators shouldn't be underestimated as it seems that the breakdown in trust appears in the center of problems in what concerns political institutions, sectarian and religious conflicts, and the series of financial crises that Europe is facing. It is not surprising, therefore, that also criminologists have become interested in questions about trust in justice, legitimacy of justice institutions, and people's commitment to the rule of law.

ne of the best examples of high comparative qualitative data on public confidence justice is the fifth round of the ***European Social Survey (ESS)*** – which included a Trust in Justice rotating module conducted in 2010 in 28 European countries. The module has been proposed by the Euro-Justis project which was designed to provide EU institutions and Member States new indicators for assessing public confidence in justice. Its remit was to develop a standardized system of scientific survey indicators on trust in justice in order to enable evidence based on public assessment of criminal justice across Europe.

Another important methodology is the ***World Justice Project Rule of Law Index*** which measures how the rule of law is experienced in everyday life in 99 countries around the globe, based on over 100,000 household interviews. It is the most comprehensive index of its kind and the only to rely solely on primary data.

PROSPECTS FOR ALBANIA

If we want to improve the justice sector we need a way to measure it. Developing standard and periodic survey indicators for trust in justice in Albania faces several challenges, including constant funding, consensus, uniformity and professionalism in developing the methodology, and implementation. Based on the Albanian experience, an optimistic scenario may be explored for the future. Ministry of Justice and Minister of Internal Affairs, in consultation with donors and independent agencies in the justice sector, may discuss the possibilities of having a yearly based survey which should conducted by and independent and specialized organization. The decision concerning which model to be selected depends on the coverage depth and extent which is desired. Another option may be the creation of a free-standing survey dedicated to this purpose or to insert questions in an established survey instrument, which would be conducted periodically.

The most indicative model for developing survey indicators is the replication of the 45 questions trust in justice module used by ESS fifth round. A free-standing set of 45 survey questions used in the ESS, provide key measures in what concerns trust in justice (police, courts, etc.), perceptions of legitimacy, cooperation with justice and compliance with the law.

The key advantage of using the ESS survey example is that of international comparability. The ESS survey findings may also go behind theory to tell us in practice terms how people experience the justice sector in day to day lifes and how that compares to other people around the world. In this way the index acts as a diagnotisc tool for evaluating the strengths and weaknesses of justice sector in Albania. The questions to be included will depend on policy priorities, based on three sub-components: trust that justice system will be fair and respectful; trust that justice system will be effective; and its values will be aligned with those of public. ESS module is composed of two sections: i) trust in the justice system; ii) legitimacy, cooperation and compliance.

i) trust in the justice system includes indicators related trust in the range of criminal justice agencies; trust in the effectiveness of the criminal justice system; trust in the fairness of the criminal justice system (police treatment, police decision-making, police distributive justice, court fairness).

ii) legitimacy, cooperation and compliance includes indicators related to obedience, normative justifiability and perceived legality; cooperation with police and courts; and compliance with the law.

Another important example is the ***World Justice Rule of Law Index***. Adherence to the rule of law is assessed using 47 indicators organized around nine themes: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, informal justice and criminal justice. The index has been recommended to be taken in consideration as part of the Albania's National Strategy for Development and Integration 2014-2020 which is expected to be approved before the end of 2014.

It will always be hard to assemble absolutely clinical evidence that fair and respectful treatment of how the public builds legitimacy and thus consent to the justice sector. However, there may be scope for testing a range of procedural justice hypotheses more rigorously. In the meantime, I am hopeful that this research will help to create new insights into the different ways in which institutional legitimacy may be constructed and maintained in Albania

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Klodjan Seferaj has completed economic studies at the Academy of Economic Studies in Bucharest, Romania; has continued the master studies in finance at the Economics Faculty (Tirana University) and is completing his PhD in the field of efficiency of public spending in the education sector in Albania at the same university. In terms of professional experience Klodi has been engaged during February 2004 – January 2010 as project manager, researcher, expert and consultant in various projects funded/ implemented by national and international organizations (EU Delegation, WB, IFC, USAID, IFAD, GTZ, U.S. Brookings Institution & the Results for Development Institute, EBRD, IOM, the Soros Foundation, Partners Albania, etc.). During the period May 2008 – May 2009 he has worked as a financial management consultant for the program "Excellence and Equity in Education" implemented by the Ministry of Education and Science; while during July 2009 – February 2013 has been engaged at the Department of Strategy and Donor Coordination at Albania's Council of Ministers as a policy consultant for the Integrated Planning System Programme and later as a coordinator for foreign aid. During the period February 2013 – October 2013 worked as Director for the Instrument of Pre–Accession at the Ministry of European Integration. He is also involved as external lecturer at the Faculty of Economics (Tirana University).

ADVOCATING POLICY SOLUTION TO EFFECTIVE LEGAL REMEDIES

Sergej Sekulović
Centre for Civil Freedoms (Montenegro)

SUMMARY & RECOMMENDATIONS

The aim of the Centre for Civil Freedoms with this paper is to increase the responsibility of the Constitutional Court in order for it to successfully fulfil its obligation to harmonize the legal system of Montenegro with EU and Council of Europe standards. Constitutional judges are not common officials and they must have a creative role in interpretating the Constitution in the context of protection of human and minority rights.

The effective application of constitutional appeal is burdened by the normative lack of a compensation component. Unlike some EU countries who have a high level of constitutional and legal protection of human rights, the Constitutional Court of Montenegro does not have legally prescribed authorization to decide on a legal matter on merits, even in situations when the constitutional appeal proves well founded, and/or to award fair redress to the petitioner, as modelled upon the European Court of Human Rights. Morover, such authorization is not given to any other body within the legal system of Montenegro. According to the practice of the European Court of Human Rights, the possibility for a legal matter to be reconsidered after the abolishment of an enactment does not meet the criteria of effectiveness and such criteria have even lesser chance of being met through the possibility of the appellant to subsequently start a civil action against the state by lodging a claim for compensation.

Based on the research findings, the policy paper presents the following recommendations:

- To enable deciding on merits regarding constitutional appeals, by amendments and supplements to the Law on Constitutional Court.
- To enable awarding compensation for damage i.e. fair redress, modelled on the European Court of Human Rights, by amendments and supplements to the Law on Constitutional Court.
- In cases of lack/non-passing of enactments, and based on the actions, to enable passing of judgements by amendments and supplements to the Law on Constitutional Court.
- By amendments and supplements to the Law on Constitutional Court, to stipulate that, with exceptions, constitutional appeal may be lodged even prior to the exhaustion of legal courses of action (legal remedies available to parties), if this is in the general interest i.e. if this goes beyond special interest of the applicant and/or if the previous exhaustion of remedies would cause irreparable damage to the applicant.
- Strengthen capacities of staff in professional and administrative service of the Constitutional Court in the context of extending competences regarding the constitutional appeal.
- Establish the Institute for theory and practice in the area of human rights and fundamental freedoms which would, among other, provide support to the professional and administrative service and the work of judges of the Constitutional Court.
- Creative cooperation must be established iInstead of the conflict situation existing between the Supreme and Constitution court. (Decision of the Constitutional court and general opinions of Supreme Court to be formal source of law and in the area of human rights protection of the special interest common meetings).

INTRODUCTORY PROVISIONS

The right to effective legal remedy is one of the fundamental human rights and an integral part of the right to fair trial. Montenegro is signatory to the relevant international human rights instruments (the Covenant on Civil and Political Rights; the Covenant on Economic, Social and Cultural Rights; the European Convention on Human Rights and Fundamental Freedoms; etc.), which establish minimum standards for the protection of human rights in the areas they regulate. An efficient and effective protection of human rights is the primary duty of each state and thus, the incorporation of protection mechanism is the main obligation of a national legal system. To that extent, through the Declaration and the Action Plan, the European High-Level Conference organised in Interlaken, Switzerland, has committed each member state of the Council of Europe to organize its legal system in the manner which will provide for actual and effective protection of human rights and freedoms. In this regard, through the institution of constitutional appeal, the Constitutional Court of Montenegro should play the key role as the last instance institution in the protection of human rights and fundamental freedoms.

The introduction of the constitutional appeal in the text of the Constitution of Montenegro of 2007 was the subject of numerous controversies, partly due to the negative experience with the Constitution of the Republic of Montenegro of 1992. The Constitutional provision of Article 149 paragraph 1 item 3, which stipulates that the Constitutional Court decides on constitutional appeal due to the violation of human rights and freedoms guaranteed by the Constitution, after all other effective legal remedies have been exhausted, came about as a challenge and as a chance. The initial results were discouraging. In 2011 Progress Report of the Representative of Montenegro before the European Court of Human Rights concerns were expressed that the European Court of Human Rights would treat a constitutional appeal as a remedy which lacks effectiveness, with all consequences for the international reputation of legal system and institutions i.e. the state of Montenegro arising therefrom[1]

1 In the case of Milić v. Montenegro and Serbia (application No. 28359/05 of 11-12-2012) in paragraph 59.: "The Court found that a constitutional appeal cannot be considered an effective domestic remedy in respect of length of proceedings (see Boucke, cited above, § 79; see, also, Mijušković v. Montenegro, cited above, §§ 73-74). It sees no reason to hold otherwise in the present case. "The Government's objection in this regard must, therefore, be dismissed." Further, in paragraph 76: "The Court concludes, for the same reasons, that there has been a violation of Article 13 taken together with Article 6 § 1 of the Convention on account of the lack of an effective remedy under domestic law for the applicant's complaint concerning the length of non-enforcement at issue (see Stakić v. Montenegro, no. 49320/07, §§ 55-60, 2 October 2012 (not yet final); see,

In particular: The 2010 report of the Representative of Montenegro before the European Court of Human Rights in Strasbourg states that within the legal system of Montenegro, lack of the appropriate practice of the Constitutional Court of Montenegro is identified as a serious problem regarding the proceedings on constitutional appeal. The Report of the Constitutional Court of Montenegro submitted to the Representative on the received and resolved constitutional appeals shows that in 2009 a total of 205 constitutional appeals were lodged, out of which 77 were resolved until 31 December 2009. Out of the total number of resolved constitutional appeals, 66 were denied, 11 were dismissed, whereas no case of the violation of human rights and freedoms guaranteed by the Constitution of Montenegro was established. In 2010, the Constitutional Court denied 144 constitutional appeals, in one case it decided to dismiss the proceedings whereas 3 constitutional appeals were accepted.[2]

This trend of accepting constitutional appeals continued in the subsequent years so that now it reaches two digits and mostly relates to the areas of freedom of expression, ordering custody and prolongation of detention (the right to liberty and security of the person), access to court and presumption of innocence (right to a fair trial). On the other hand, the acceptance of a particular number of constitutional appeals started a conflict between the Supreme Court of Montenegro and the Constitutional Court which is basically reflected in the Constitutional Court arguing that the rescinding of decisions of this court undermines the constitutional system of the separation of powers and derogates the position of the Supreme Court as the highest instance.

The aim of this paper lies in the elimination of systemic obstacles to further development of this institution in order to meet the standard of an effective legal remedy which will facilitate the building of Montenegrin legal system, notably in accordance with the standards of the European Convention for the Protection of Human Rights and the practice of the European Court of Human Rights. This approach becomes even more important when had in mind that the EU will access the European Convention for the Protection of Human Rights and Fundamental Freedoms and will thus be committed to accept the standards and principles created through the jurisprudence of the European Court of Human Rights. In the context of Montenegro'sprocess of accession to the European Union, which particularly relates

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also, Stevanović v. Serbia, no. 26642/05, §§ 67-68, 9 October 2007; and, *mutatis mutandis*, Rodić and Others v. Bosnia and Herzegovina, no. 22893/05, §§ 84-85, 27 May 2008). Relevant is also paragraph 74: "As noted above, the existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see paragraph 49 above)." Therefore, the effectivenes of a constitutional appeal, regardless of a certain progress made, remains the problem in the practice of the Constitutional Court. Source: www.sudovi.me/odluke

2 file:///D:/PODACI/Downloads/8_57_27_2_2010.pdf

to the chapter 23 (judiciary and fundamental rights), Montenegrin citizens should be provided an accessible and effective (of sufficient quality to be able to produce a desired legal consequence) legal remedy in the function of an efficient protection of their fundamental rights.

Further structure of the paper will be divided into two parts. The first part will attempt to present positive and negative aspects of the current solution through two cases selected from the practice of the Constitutional Court of Montenegro, with the presentation of solutions which go below and beyond the desired normative changes. Publication of clear recommendations intended to serve as the basis for a policy action will constitute the final part of the paper.

DE LEGE LATA SOLUTIONS - POSITIVE SHIFTS AND SETBACKS

As mentioned, the introduction of constitutional appeal in the text of the Constitution of Montenegro of 2007 was not met with general approval[3], despite being an institution recognized by numerous legislations. The experience with the Constitution of the Republic of Montenegro of 1992, which was then the member of the Federal Republic of Yugoslavia, from the perspective of constitutional appeal cannot be characterized as positive since, according to the undivided opinion, the constitutional appeal remained no more but a proclamation which in no aspect met the criteria of an effective legal remedy. In the course of work on the text of the Constitution of Montenegro as an independent state, numerous objections were raised that it was a procedural remedy introduced under an external pressure which would eventually paralyse the work of the Constitutional Court and change the character of this institution. The opinion was that the jurisdiction should be divided between the Supreme Court and the Constitutional Court, in accordance with their position within the system of those who pass enactments which are challenged and eventually, that the solutions were defined in too restrictive manner and need further normative elaboration. It could be said that the intensity of this controversy indicated further problems in application.

3 Institution of the constitutional appeal exists, among others, in the constitutional systems of: Austria, Germany, Switzerland, Russia, Spain, Portugal, the Check Republic, Slovakia, Cyprus, Malta, Hungary, Croatia, B&H, Macedonia; more informations can be found: M.Pavjančić: Constitutional law-Constitutional Institutions;Novi Sad 2007.

Starting with the current solution and its positive results, as implied, we consider that this can be best shown through the very activity of the Constitutional Court. As a case study, we have selected the systemic position regarding the right of access to court and legal reasoning regarding the conflict between the two principles: the freedom of expression and the right to honour and reputation.

a) RIGHT OF ACCESS TO COURT - BETWEEN LEGALITY AND LEGITIMACY

Prior to citing the explanation of the decision of the Constitutional Court we feel obliged to make a short introduction which will clarify the legal matter that was the subject of consideration. Namely, reconsideration is an extraordinary legal remedy in civil proceedings which may be used in certain circumstances. One of the prerequisites is contained in the value of dispute. Thus, reconsideration is not allowed in property disputes where the petition does not relate to a pecuniary claim, livery or some other performance, if the value of dispute does not exceed EUR 5.000. The Supreme Court, in particular case, decides that the value of dispute is below EUR 5.000 and dismisses reconsideration as prohibited, evaluating the value of dispute based on the paid court fees. As the amount of the paid court fee was EUR 10, based on the then applicable Law on Court Fees, the Supreme Court found that the value of dispute did not exceed legally prescribed minimum. The value of dispute was obviously above EUR 5.000, which was accepted by the lower instance courts, setting it in the course of proceedings to the amount of EUR 17.000. However, the Supreme Court adopted formal approach when setting the value of dispute concluding that it is solely established through the amount of the paid court fee. The Constitutional Court in its decision, in the most important particulars concludes:

"Court actions must be conducted in accordance with the principle of the rule of law as the highest value of the constitutional system of Montenegro. Its implementation must not be reduced only to the request for lawfulness of the actions of the state authorities but alsomust include the request according towhich legal consequences must be appropriate tolegitimate expectations of the parties in each particular case, whereby, at the same time, the right to a fair trial is exercised, as stipulated in Article 32 of the Constitution and/or Article 6 paragraph 1 of the Convention. Such expectations, according to the Constitutional Law, undoubtedly include the expectation that the dispute will be resolved by application of legal standards effective at the time of its initiation. In particular case, applicants had a legitimate expectation that the decision in their dispute will end up before the reviewing court since lower instance court accepted the set value of the subject matter of dispute.

The right of access to court is not absolute; it is subject to limitations which must not reduce the individual's access in such a way or to such an extent as to impair the very essence of the right i.e. access to the legal remedy. Such limitations, according to the practice of the European Court of Human Rights, will only be compatible with Article 6 § 1 of the European Convention if they are in accordance with the relevant domestic legislation and other regulations, pursue a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim pursued."[4]

The Constitutional Court decided: "The applicant should not suffer any detriment on account of the courts' failure to order the applicant to pay the difference between the court fees that had been paid and the fees that corresponded to the established values of the claim."[5]

According to the effective legal solution, the effect of the decisions of the Constitutional Court comes down to the possibility to abolish the enactments and return to reconsideration, after all other effective legal remedies have been exhausted, within the limits of the filed claim. As regarding the particular analysed case, such solution proved sufficient. In the disputed case, the decisions were made upon reconsideration and in similar cases the procedure was the same, meaning that potential setbacks of the systemic nature were eliminated. The weaknesses of the current normative solutions can be seen in the second selected case.

b) FREEDOM OF EXPRESSION VERSUS PROTECTION OF HONOUR AND REPUTATION: IS THE DAMAGE PRESUMED?

Brief overview: The Supreme Court gives precedence to the right to protection of honour and personal reputation over the freedom of expression whereas the Constitutional Court does quite the opposite. The public dispute between these two courts leads to confusion about which body is competent to issue legally binding orders in the area of fundamental human rights and liberties. Ordinary courts apply the usual practice and look up to the Supreme Court as the body the legal conclusions of which are to be followed. To that extent, particular judgements of ordinary courts, in their explanations and conclusions, maintain the position of the Supreme Court, even after the judgement of the

4 Judgement of the European Court of Human Rights Golder v. United Kingdom, of 21 February 1975, series A, number 18 paragraph 35; Philis v. Greece, judgement of 27. August 1991, series A, number 209 paragraph59)

5 Judgement of the European Court of Human Right Garzi~i} v. Montenegro, application number 17931/07 of 21 September 2010)

Constitutional Court. Impossibility of the Constitutional Court to pass the judgement on the merits in particular cases appears as the main weakness of the system. The minimum point of compromise lies in the change of the Law on Constitutional Court along these lines.

The most important excerpts from the judgements of the Supreme and Constitutional Court in this case:

"…In addition, it should be borne in mind that the existence of mental anguish, its intensity and duration did not require forensic medical expertise whichis groundlessly emphasized in reconsideration, since insulting, mocking and ridiculing must cause a serious disturbance of psychological and emotional balance in any person, including the claimant, due to which, according to the assessment of this Court, corresponding expertise in connection therewith is not necessary.[6]

…As opposed to that, the Constitutional Court holds that the existence of mental anguish, as the consequence of the injury to honour i.e. reputation, is neither a commonly known fact, nor a fact which can be presumed. Instead, this is the fact which ordinary courts must establish in each particular proceedings by the presentation of evidence, conscientious and careful assessment in accordance with the said provision of Article 9 of the Criminal Procedure Code. It is also understood that the principle referred to in Article 217 paragraph 1 of the Law on Civil Procedure, under which each party shall present facts and propose evidence that serve as a basis for his/her claim or that serve to contest statements and evidence of the adverse party, must be applied in the cases concerning the injury to honour and reputation.

… Conclusions of the High and Supreme Court that the negative statements and false statements about the claimant published in "Monitor weekly" automatically caused injury to honour, reputation, and personal dignity of the claimant as well as the establishment of the amount of damage, which was also automatic, according to the assessment of the Constitutional Court, are based on the arbitrary application of the substantive law.

… According to the assessment of the Constitutional Court, the said provisions of the law do not imply the possibility for the court to establish the grounds of the claim for compensation in connection with the injury to honour and reputation.., without the presentation of evidence, solely according to the judge's own assessment of the presumed damage, trust was given to the words of the claimant i.e.

6 Conclusions of the Supreme Court found at: www.sudovi.me/odluke ; www.ustavni sud.me

it was concluded that the publication of the disputable text and "false statements", by themselves, without any explanation and evidence, could cause the damage to the claimant. In this particular case, the claimant stated that the damage has occurred, but did not submit evidence to that extent, and the High and Supreme Court, took the fact that the damage exists as the established fact, applying the principle that "it is sufficient that the presentation of false fact could lead to the damage to the claimant".

... The freedom of expression is*conditio sine qua non* for the functioning and survival of any democratic society and the guarantee of all other human rights and freedoms ... However, that does not mean that the freedom of expression is absolute and unlimited. Since the absolute freedom and absolute right are*contradictio in adjecto*, the method of interpretation and application of an established legal principle at the same time remains crucial and disputable in practice. Thus, the task of an independent judiciary in each particular case is to clearly distinguish between reasonable and necessary and unreasonable and unnecessary limitations which confirm a principle as a rule or negate it only declaratory."

The assessment of the Constitutional Court is that the said exception, which does not exclude the personal liability, according to the generally accepted rule, must be interpreted restrictively (*exceptiones sunt strictissime interpretationis*). To that extent, the question is raised in which situations the texts published in press may be deemed offensive statements of facts? According to the understanding of the Constitutional Court, this would be the case if from the content and the general tone of the disputed text it can be clearly established that its sole and main purpose was to present offensive statements.

POSITION OF THE CIVIL SECTOR - DE LEGE FERENDA

The civil sector mainly stated that the process of changing the Constitution of Montenegro, also followed by the amendment to the Law on Constitutional Court, was not adequately utilized to improve the effectiveness of the protection of human rights in the part relating to the deciding upon the constitutional appeal, in accordance with the recommendations of the Venice Commission. [7] In

7 See the Report of Coalition of 16 NGOs for monitoring negotiations, chapter 23 (judiciary and fundamental rights) Report can be found: www.crnvo.me

particular, the Venice Commission recommendation to introduce to the Law on the Constitutional Court the possibility for this court to exceptionally accept to decide upon the constitutional appeal, even prior to the exhaustion of all other remedies, in those cases when it is obvious that otherwise the petitioner could suffer irreparable consequences, was not adopted.

In addition, it was pointed out that the Law should obligate the Constitutional Court to assess, in each particular case, whether the remedies exhausted by the claimant or which have been available to it prior to addressing such court, are actually effective. It is pointed out that the court should be enabled to decide on the violation of human rights by action or failure to pass the enactments, and not only in case of existence of individual enactment (this would enable legal remedy e.g. in case of failure to enforce the judgement or conduct effective investigation). As an additional guarantee of the effectiveness and efficiency of the constitutional appeal as legal remedy in the event of violation of constitutional and human rights, it is necessary that the Constitutional Court is given concrete powers to order the reestablishment of rights, set the compensation of damage i.e. take other actions (momentarily release from prison and the like). To that extent, by the amendment to the law, the Constitutional Court should be enabled, in addition to the abolishment of the individual enactment, to decide on the merits for the purpose of more effective protection of human rights (e.g. to order the release of persons who were unconstitutionallydeprived of liberty or to award fair redress).

In addition, Article 55 of the Law[8] should be amended so that the Constitutional Court may decide on the violation of right to which the constitutional appeal does not expressly relate. It is necessary to point out the opinions that the adoption of the constitutional appeal should create the possibility - which will exhaust its legal effect - for the interested party to reopen the court proceedings at its own procedural initiative, in order to eliminate the objection that in the matter of jurisdiction the Constitutional Court poses as superior to the Supreme Court. This would, in many cases, reduce the character and effect of the decision of the Constitutional Court to mere declaration and without additional mechanisms to strengthen the effects of the decision this would mean a step back. It should be pointed out that the idea of constitutional appeal is contained in the direct application of the Constitution and in the special protection of the fundamental human rights and freedoms prescribed by the Constitution and international human rights instruments. Any further weakening of the position of the Constitutional Court would serve to strengthen the lack of effectiveness of the constitutional appeal.

8 Constitutional Court Law: www.sluzbenilist.me

FINAL CONSIDERATION PRIOR TO GIVING RECOMMENDATIONS

In the procedure of constitutional amendments regulating the judiciary system, changes occurred in the part relating to the Constitutional Court. Changes are not of a material nature, at least when it comes to the constitutional appeal, however, the possibility that the new composition of the Constitutional Court will accept thedenial of jurisdiction of the Constitutional Court to decide in the matters concerning the operation of courtscannot be excluded in the event the procedure for the assessment of constitutionality of this solution is initiated. From the aspect of the protection of human rights and fundamental freedoms this would be a setback since, if we logically follow the consequences, we would come to the abolishment of this remedy. On principle, recommendations rely on positions maintained by the part of a non-governmental sector. However, certain corrections are also made which, according to our opinion, are necessary as we share the opinion that the heavy workload of the Constitutional Court would be counterproductive, regardless of the introduction of the tribunal in charge of constitutional appeals with the purpose to step up the proceedings and the needs to strengthen administrative and professional services, proposed in recommendations. In addition, it is important to mention that while this subject was elaborated, interviewswith the President and Secretary of the Constitutional Court were published, where the positions to the issue of constitutional appeal were presented.[9] The positions of the Constitutional Court are mostly in accordance with the measures proposed in recommendations and, to that extent the Constitutional Court sent an initiative to the Ministry of Justice to change the current normative solutions. It is important to note that the positions presented in 2013 Montenegro Representative's Report to the Court of Human Rights are similar to the presented recommendations.[10]

9 The interviews were done during decem.2013.

10 The effective application of constitutional appeal is burdened by the normative lack of compensation component. Unlike some EU countries who have a high level of constitutional and legal protection of human rights, the Constitutional Court does not have legally prescribed authorization to decide on a legal matter on merits, in situations when the constitutional appeal proves well founded, and/or to award fair redressto the petitioner, modeled upon the European Court of Human Rights, nor such authorization is given to another body within the legal system of Montenegro. According to the practice of the European Court of Human Rights, the very possibility for the legal matter to bereconsidered after the abolishment of an enactment does not meet the criteria of effectiveness andsuch criteria have even lesser chance of being met through the possibility of the appellant to subsequently start a civil action against the state by lodging a claim for compensation. Report of the Representative of Montenegro to the European Court of Human Rights number 15-3/2014; of 21-01-2014 pp.22-24

RECOMMENDATIONS

- To enable deciding on merits regarding constitutional appeals, by amendments and supplements to the Law on Constitutional Court (e.g. as was regulated by the Law on Court of Serbia and Montenegro).
- To enable awarding compensation for damage i.e. fair redress, modelled on the European Court of Human Rights, by amendments and supplements to the Law on Constitutional Court.
- In cases of lack i.e. non-passing of enactments and based on the actions,to enable passing of judgementsby amendments and supplements to the Law on Constitutional Court (e.g. in the event of non-effective investigations as procedural and legal aspect of the right to life or prohibition of torture i.e. non-enforcement of final and enforceable judgements and administrative decisions, violation of right to trial within a reasonable time).
- By amendments and supplements to the Law on Constitutional Court, to stipulate that, exceptionally, constitutional appeal may be lodged even prior to the exhaustion of legal courses of action (legal remedies available to parties), if this is in the general interest i.e. if this goes beyond special interest of the applicant and/or if the previous exhaustion of remedies would cause irreparable damage to the applicant (modelled upon the solutions in the legislation of Germany and Austria).
- Strengthen the capacities of staff in professional and administrative service of the Constitutional Court in the context of extending competences regarding the constitutional appeal.
- Establish the Institute for theory and practice in the area of human rights and fundamental freedoms which would, among others, provide support to the work of professional and administrative service and judges of the Constitutional Court.

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TESTIMONIAL

The executive director of the Centre for Civic Freedoms (CCF) held a public presentation of the main policy paper ideas at a round table organized by the Montenegrin Jurist Organization, which was open with a presentation by the State Representative before European Court of Human Rights. Information about the round table were published in the most prominent national jurist magazine, reaching out to a greater targeted public. Based on an intensive media campaign (e.g. interview given to MINA agency and published by the portals: www.vijesti.me; www.cdm.me; www.pobjeda.me; and newspapers: Pobjeda; Blic CG) CCF managed to draw the attention of the public and interested parties regarding the constitutional appeal changes in context of the effectiveness of the legal remedies. The media visibility and positive public reaction to the project results have created a positive ambient for potential future initiatives.

In addition to presenting and distributing the policy paper to the justice department and relevant officials, certain ideas from the policy paper about constitutional appeal have been taken into consideration during the public discussions about the Draft version of the new Constitutional Court Law, while the main result of the project activities is expected to be achieved when the new Constitution Court Law will come to procedure.

In the following period, during which another round table is also planned, the established connection with the Representative of Montenegro before European Court for Human Rights, the Constitutional Court officials and the MP's, who have expressed their support of some of the policy paper ideas, will be used as an advantage for further advocacy of the policy paper recommendations.

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THE ROLE OF INSPECTIONS IN FIGHT AGAINST CORRUPTION

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SUMMARY

Administration for Inspection Affairs is a new and independent administrative body, by which establishment the inspection affairs were centralized in Montenegro.

The Public Administration Reform Strategy in Montenegro 2011-2016 (AURUM) assessed that the organization of inspections as internal organizational units of the ministries and other administration bodies has a negative impact on overall status of the inspection in the system, and therefore on their independence as necessary prerequisite for conducting inspection affairs. On this basis, a solution was reached that has centralization in its essence and is supposed to integrate 28 inspections, while inspection control in the area of public administration (Administration Inspection), defense and security, protection and rescue, transportation of hazardous and explosive substances, as well as transport safety and security will remain outside of this system.

From the system point of view, the work of the Administration for Inspection Affairs must grow into a key mechanism for monitoring implementation of the law in the practice, on the field. Recognizing the importance of the Administration for Inspection Affairs, in the Centre for Civic Education (CCE) we have decided to contribute through our project activities to the affirmation of this newly established institution's work, its more quality relation with citizens, as well as recognition of the Administration's potential in the fight against the pervasive corruption, and especially in its potentialy preventive aspect. Therefore, it is an overall objective of the project, of which one of the products is this publication before all of you, to contribute to the increase of public confidence in criminal-justice sector through implementation of effective *watchdog*

activities for monitoring reaction of the executive branch to findings, reports and indications of illegal actions and corruption. The specific objective of the project is to monitor activities and strengthen capacities of the Administration for Inspection Affairs' work as a body of the executive branch, which through the conduct of its inspection units, as first and closest instruments available to citizens, is providing an extensive system for fight against corruption and misconduct in Montenegrin society. Target groups are inspectors employed in the inspection units of the Administration for Inspection Affairs and beneficiaries of services that the institution provide. Final beneficiaries are all citizens of Montenegro who will benefit from increased level of responsibility and capacities of the Administration for Inspection Affairs for prevention and fight against corruption in its first manifestation. The project is supported through The Crminial Justice Civil Society Program (CJCSP) which is financed by the Embassy of the USA in Podgorica, International Narcotics and Law Enforcement Affairs Bureau of United States (INL). Co-financing, which refers to producing of this study, was provided by the European Union through the EU Instrument for Pre-Accession Assistance (IPA) Civil Society Facility (CSF), though the Balkan Network for Civil Society and Center for Development of non-governmental organisations.

Overview of the work of the Administration for Inspection Affairs was made on the basis of official reports of the Administration for Inspection Affairs, as well as numerous other laws, regulations, government reports, strategies, followed by the Action Plan for Chapter 23 (Judiciary and Fundamental Rights), Report No. 1 of the Action Plan for Chapter 23 (Judiciary and Fundamental Rights) and the Report of the European Commission on progress of Montenegro in 2013. In addition, the CCE team has monitored media coverage of the work of the Administration for Inspection Affairs, and conducted three focus groups with a total of 19 inspectors who themselves were able to evaluate the effectiveness of this model, challenges that they are facing in practice, as well as some of recommendations for improvement of their position and the overall position of the Administration for Inspection Affairs in order to achieve the required efficiency and effectiveness of this institution's work. During six street actions in Podgorica, in the period from March to May 2014, CCE activists have been encouraging citizens to report corruption and other illegal activities that are the responsibility of the Administration for Inspection Affairs, and the part of their perceptions from these direct communications is also included in this study. In summarizing the regional

experience, laws of the Republic of Croatia, Bosnia and Herzegovina and the Republic of Serbia in this area were used, as well as relevant reports of international organizations and media archives.

CONCLUSTIONS AND RECOMMENDATIONS

The Administration for Inspection Affairs, in the nature of its jurisdiction, is among one of the key bodies of whose impartiality and professionalism in conduct depends the effective fight against corruption and often in such a form that affects citizens most directly. At the same time, this is still an early stage of development of a centralized system of a body that is in high-risk for corruption emergence. It is a branched system that covers the entire territory of Montenegro, treating a wide variety of social relations and issues, therefore it is all the more important that such body is essentially independent, without undue political or other influences. Precisely the doubts that such influence on the work of the Administration exist continue to be one of the reasons due to which it has not yet positioned itself in the public as a body whose impartiality is not suspected.

Since the very establishment of the Administration, the number of inspectors was smaller than it was prescribed by systematization, while their administrative burden was enormous. The fact that this number has been reduced in certain inspections (e.g. inspection of public procurement) is worrying and points to problems with the management of human resources.

Therefore, it is necessary to:

- Work to develop integrity within the internal documents, with an emphasis on prohibited influences, primarily political, and especially given the specificity of the Administration as a body that must have an Integrity Plan that is multiply profound and proportional to jurisdiction that inspectors have, while taking into account the context of their work;

- Establish a single information system on the level of the Administration as a key prerequisite for increase of the efficiency and effectiveness of work, as well as harmonization of inspectors' practice of conduct in the performance of inspection control;
- Simplify procedures of conduct in the performance of inspection control with the use of a single information system that provides type-drafting of the necessary documentation by simply filling out the forms and their automatic forwarding to a central server;
- Strict compliance to the rules by the inspectors, which are easily accessible to potential subjects of control and published in the Official Gazette of Montenegro;
- Strengthen the preventive function of inspection control and limit usage of the repressive one only in exceptional cases, since the sanctions that inspectors impose, as a consequence would have to have an efficient and effective solution of a problem, which would be a clear, and one of the most important pieces of reporting on specific control;
- Immediately access to the development of methodologies for risk analysis in the performance of inspection control, in accordance with the provisions of the Law on Inspection Control, with the aim of pro-active action in the prevention and early detection of corruptive actions and other acts with elements of corruption, according to which the inspection control would be conducted;
- Provide all necessary conditions for inspectors' work (a sufficient number of official vehicles, the required amount of fuel, modern equipment for the purposes of performing the inspection control), as well as spatial capacity for necessary administrative and professional work, but also adjust earnings of inspector to risk that this proffesion entails within itself;
- Align the system of training of inspectors in the Administration with the specific needs of the system of inspection control in Montenegro;
- In case of attack on inspector, the Administration for Inspection Affairs must stand behind its employee in the full capacity, with insisting on processing and in accordance with the assessment of joining to prosecution;

- Abolish the re-election of inspectors and convert it into a regular assessment of knowledge and performance, and in the case when inspector does not meet the required level of results in the area where he/she performs the inspection initiate the dismissal procedure;
- Provide substantive and full budgetary autonomy of the Administration for Inspection Affairs, whose financial operations, after determining resources for work in the Budget of Montenegro, must be independent and unhindered, which does not exclude audit of these operations by the competent authority;
- Presentation of the effects of inspection control in the public must focus on application and compliance with the law, and secondary, an emphasis on financial effects of inspection should be made, through collected fees for the penalties imposed;
- An important part of the control of inspectors' work should be carried out within the work on appeals, as well as periodically informing public about the work of inspection (quarterly);
- Transparency of the work must include easily accessible regulations, procedures, submittance of reports, educational materials, answers to frequently asked questions, a risk assessment in certain high-risk areas and supervised entities, detailed notice of the criminal charges filed with respect to the presumption of innocence;
- Citizens who submit a report must get feedback on the measures taken and diagnosis of the performed inspection control findings as soon as possible.

UVOD

Uprava za inspekcijske poslove je nov i samostalan organ uprave, čijim formiranjem su centralizovani inspekcijski poslovi u Crnoj Gori.

Strategijom reforme javne uprave u Crnoj Gori 2011-2016 (AURUM)[1] ocijenjeno je da organizovanje inspekcija kao unutrašnjih organizacionih jedinica ministarstava i drugih organa uprave ima negativan uticaj na opšti položaj inspekcija u sistemu, a samim tim i na njihovu samostalnost koja je nužna za obavljanje inspekcijskih poslova. Na osnovu toga se došlo do rješenja koje u svojoj osnovi ima centralizaciju i treba da objedini 28 inspekcija, pri čemu će van tog sistema ostati inspekcijski nadzor iz domena državne uprave (Upravna inspekcija), odbrane i bezbjednosti, zaštite i spašavanja, prevoza opasnih i eksplozivnih materija, kao i sigurnosti i bezbjednosti saobraćaja.

Sistemski gledano, rad Uprave za inspekcijske poslove mora izrasti u ključni mehanizam praćenja primjene zakona u praksi, na terenu. Prepoznajući taj značaj Uprave za inspekcijske poslove, u Centru za građansko obrazovanje (CGO) smo se opredijelili da kroz svoje projektne aktivnosti damo doprinos afirmaciji rada novoformirane institucije, njenom kvalitetnijem odnosu sa građanima/kama, kao i prepoznavanju potencijala Uprave u borbi protiv sveprisutne korupcije, a posebno u njenom mogućem preventivnom aspektu. Stoga je i opšti cilj projekta, čiji je jedan od rezultata i studija pred vama, doprinos povećanju povjerenja javnosti u krivično-pravni sektor kroz sprovođenje učinkovitih *watchdog* aktivnosti za praćenje reagovanja izvršne vlasti na saznanja, prijave i indicije o nezakonitim radnjama i korupciji. Specifični cilj projekta predstavlja praćenje aktivnosti i jačanje kapaciteta Uprave za inspekcijske poslove kao organa izvršne vlasti, koji kroz postupanje svojih inspekcijskih jedinica, kao prvih i najbližih instrumenata na raspolaganju građanima/kama, obezbijeđuje široko postavljen sistem borbe protiv korupcije i nedozvoljenog ponašanja u crnogorskom društvu. Ciljne grupe su inspektori/ke zapošljeni u inspekcijskim jedinicama Uprave za inspekcijske poslove i korisnici/e usluge koje institucija obezbijeđuje. Krajnji korisnici/e su svi građani/ke Crne Gore koji će imati koristi od povećanog nivoa odgovornosti i kapaciteta Uprave za inspekcijske poslove za spriječavanje i borbu protiv korupcije u njenom prvom pojavnom obliku. Projekat je podržan kroz Program podrške civilnom društvu u oblasti krivičnog pravosuđa (CJCSP) a koji finansira Ambasada SAD u Podgorici, Biro Stejt dipartmenta za borbu protiv međunarodne

1 http://media.cgo-cce.org/2013/03/Strategija-reforme-javne-uprave-u-Crnoj-Gori-2011-2016-AURUM.pdf

trgovine drogom i sprovođenje zakona (INL). Konfinansiranje, koje se odnosi na izradu ove studije, je obezbijeđeno od strane Evropske unije kroz EU Instrument za predpristupnu pomoć (IPA) podrške civilnom društvu (CSF) i Balkanskog fonda za demokratiju preko Balkanske mreže za razvoj civilnog društva.

Presjek rada Uprave za inspekcijske poslove napravljen je na osnovu zvaničnih izvještaja same Uprave za inspekcijske poslove, ali i drugih brojnih zakona, uredbi, vladinih izvještaja, strategija, zatim Akcionog plana za poglavlje 23 (Pravosuđe i temeljna prava), Izvještaja br. 1 o realizaciji Akcionog plana za poglavlje 23 (Pravosuđe i temeljna prava), kao i Izvještaja Evropske komisije o napretku Crne Gore u 2013.godini. Dodatno, tim CGO-a je pratio izvještavanje medija o radu Uprave za inspekcijske poslove, i sproveo tri fokus grupe sa ukupno 19 inspektora/ki koji su sami bili u prilici da daju ocjenu učinkovitosti ovog modela, izazova sa kojima se u praksi suočavaju, kao i neke od preporuka za unaprijeđenje svoje pozicije i ukupne pozicije Uprave za inspekcijske poslove radi dostizanja potrebne efikasnosti i efektivnosti rada ove institucije. Tokom šest uličnih akcija u Podgorici, u periodu od marta do maja 2014.godine, aktivisti/kinje CGO-a su ohrabrivali građane/ke da prijavljuju korupciju i druge nedozvoljene radnje koje su u nadležnosti Uprave za inspekcijske poslove, a dio njihovih percepcija iz tih direktnih komunikacija je uključen i u ovu studiju. U sumiranju regionalnih iskustava, korišćeni su zakoni Republike Hrvatske, Federacije Bosne i Hercegovine i Republike Srbije u ovoj oblasti, kao i relevantni izvještaji međunarodnih organizacija i medijske arhive.

Na kraju studije, predstavljeni su ključni zaključci i preporuke za unaprijeđenje postojećeg stanja.

1. UPRAVA ZA INSPEKCIJSKE POSLOVE

a) NORMATIVNA OSNOVA

Uredbom o organizaciji i načinu rada državne uprave[2] stvorene su normativne pretpostavke za osnivanje Uprave za inspekcijske poslove kao samostalnog organa uprava, a istom je propisan i utvrđen njen širok djelokrug rada i djelovanja. Zakon o inspekcijskom nadzoru[3], kao noseći u ovoj oblasti, propisuje načela i postupak vršenja inspekcijskog nadzora.

Sistemski posmatrano, zakonska osnova da se kroz Uredbu o organizaciji i načinu rada državne uprave definiše Uprava za inspekcijske poslove, i to kao samostalan organ uprave, nalazi se u Zakonu o državnoj upravi[4]. Osim sistemske osnove, ovaj Zakon daje važnu smjernicu koja definiše zabranu političkog organizovanja i djelovanja političkih organizacija u organima državne uprave. Taj princip predstavlja bitan preduslov depolitizacije državne uprave, pa samim tim i Uprave za inspekcijske poslove. No, državni organi u praksi još uvijek trpe neprimjeren politički uticaj, kako se ocjenjuje i u Izvještaju o napretku Crne Gore u 2013.godini[5], što ima direktnu posljedicu u smislu relativno niskog stepena povjerenja građana/ki u vladine institucije.[6] Uprava za inspekcijske poslove, po prirodi svojih nadležnosti, spada u red ključnih organa od čije nepristrasnosti i profesionalnosti u postupanju zavisi efektivna borba protiv korupcije. Istovremeno, to je i visokorizičan organ za pojavu korupcije u radu, zbog čega bi razrada integriteta sa posebnim akcentom na mogući politički uticaj morala biti posebno tretirana u njenim internim aktima.

Iz Izvještaja o radu Uprave za inspekcijske poslove za 2013.godinu[7] može se vidjeti da su osnova za rad i postupanje bili brojni planski i strateški dokumenti, kao što su Godišnji program rada (čiji sastavni dio je i Plan pojačanog nadzora u turističkoj sezoni), zasnovan na propisanim nadležnostima

2 Službeni list Crne Gore, br. 05/12 od 23.01.2012, 25/12 od 11.05.2012, 61/12 od 07.12.2012

3 Službeni list Crne Gore, br. 39/03 od 30.06.2003, 76/09 od 18.11.2009, 57/11 od 30.11.2011,18/14 od 11.04.2014

4 Službeni list Crne Gore, br. 38/03 od 27.6.2003; 42/11 od 15.8.2011

5 http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/montenegro_2013.pdf

6 http://www.vijesti.me/vijesti/glasaci-dps-a-vjeruju-da-su-izbori-fer-simpatizeri-df-a-imaju-drugacije-misljenje-clanak-181356

7 http://www.uip.gov.me/ResourceManager/FileDownload.aspx?rid=162271&rType=2&file=Godi%C5%A1nji%20izvje%C5%A1taj%20Uprave%20za%20inspekcijske%20poslove%20za%202013%20godinu.docx

i iskustvima iz inspekcijskog nadzora u prethodnom periodu, zatim strateški i programski dokumenti Vlade Crne Gore i resornih ministarstava (Strategija tržišnog nadzora i Program tržišnog nadzora za 2013. godinu[8], Nacionalni program zaštite potrošača 2012-2015.[9] i Akcioni plan za njegovu realizaciju[10], Akcioni plan za suzbijanje sive ekonomije za 2013 i 2014.[11], Akcioni plan za borbu protiv korupcije i organizovanog kriminala 2013-2014[12], Akcioni plan za poglavlje 23[13], itd). Takođe, Uprava je realizovala i aktivnosti po zahtjevima i inicijativama za sprovođenje inspekcijskog nadzora.

Izvještaj Evropske komisije o napretku Crne Gore za 2013.godinu navodi da "usvajanje podzakonskih akata za Zakon o inspekcijskom nadzoru, koji je koncipiran tako da podvede inspekcijski nadzor pod jedan organ i unaprijedi poslovnu klimu, ide po planu", ali i ukazuje na probleme, poput sljedećeg: "...Tržišna inspekcija je odgovorna za kontrole zaštite intelektualne svojine, ali inspektori nijesu specijalizirani za prava intelektualne svojine...". Takođe, Izvještaj konstatuje da "Inspektori rada su obučeni u nekim oblastima pravne tekovine. Kapacitet Uprave za inspekcijske poslove, uključujuć i inspektorat rada, nije adekvatan zbog ograničenih finansijskih resursa i nedostatka adekvatnog IT sistema. Pripreme u ovoj oblasti počinju." Izvještaj EK prepoznao je nedovoljne kapacitete inspekcijskih organa i u drugim oblastima, ali se nije detaljnije bavio pitanjem integriteta, uz opštu ocjenu da je razvoj ovog centralizovanog sistema inspekcijskog nadzora u začetku.

b) ORGANIZACIONA STRUKTURA

U Izvještaju o radu Uprave za inspekcijske poslove iz 2012.godine navodi se da je sistematizovano 335 radnih mjesta, od kojih 269 inspektora/ki. U praksi, u Upravi je tokom te godine radilo manje ljudi i ta je cifra bila 279 zaposlenih, od čega 245 inspektora/ki.

Po podacima iz godišnjeg Izvještaja o radu za 2013.godinu, u Upravi je sistematizovano 347 radnih mjesta, od čega 262 za inspektore/ke, pri čemu se navodi takođe da je broj zaposlenih 294, od

8 http://www.mek.gov.me/ResourceManager/FileDownload.aspx?rid=50656&rType=2&file=1263569695.pdf

9 http://www.ti.gov.me/ResourceManager/FileDownload.aspx?rId=116070&rType=2

10 http://www.ti.gov.me/ResourceManager/FileDownload.aspx?rId=160157&rType=2

11 http://www.gov.me/ResourceManager/FileDownload.aspx?rid=125952&rType=2&file=2_15_21_03_2013.pdf, http://www.gov.me/ResourceManager/FileDownload.aspx?rid=160202&rType=2&file=3_60_13_3_2014.pdf

12 http://www.mrt.gov.me/ResourceManager/FileDownload.aspx?rid=138046&rType=2&file=Komunikaciona%20strategija%20odr%C5%BEivog%20razvoja%20Crne%20Gore%202011-2013.pdf

13 http://www.gov.me/ResourceManager/FileDownload.aspx?rid=146778&rType=2&file=AP23%20CG.pdf

kojih je 237 inspektora/ki, a 121 inspektor/ka se nalazi sa mjestom rada u Podgorici, dok su ostali raspoređeni u drugim gradovima.

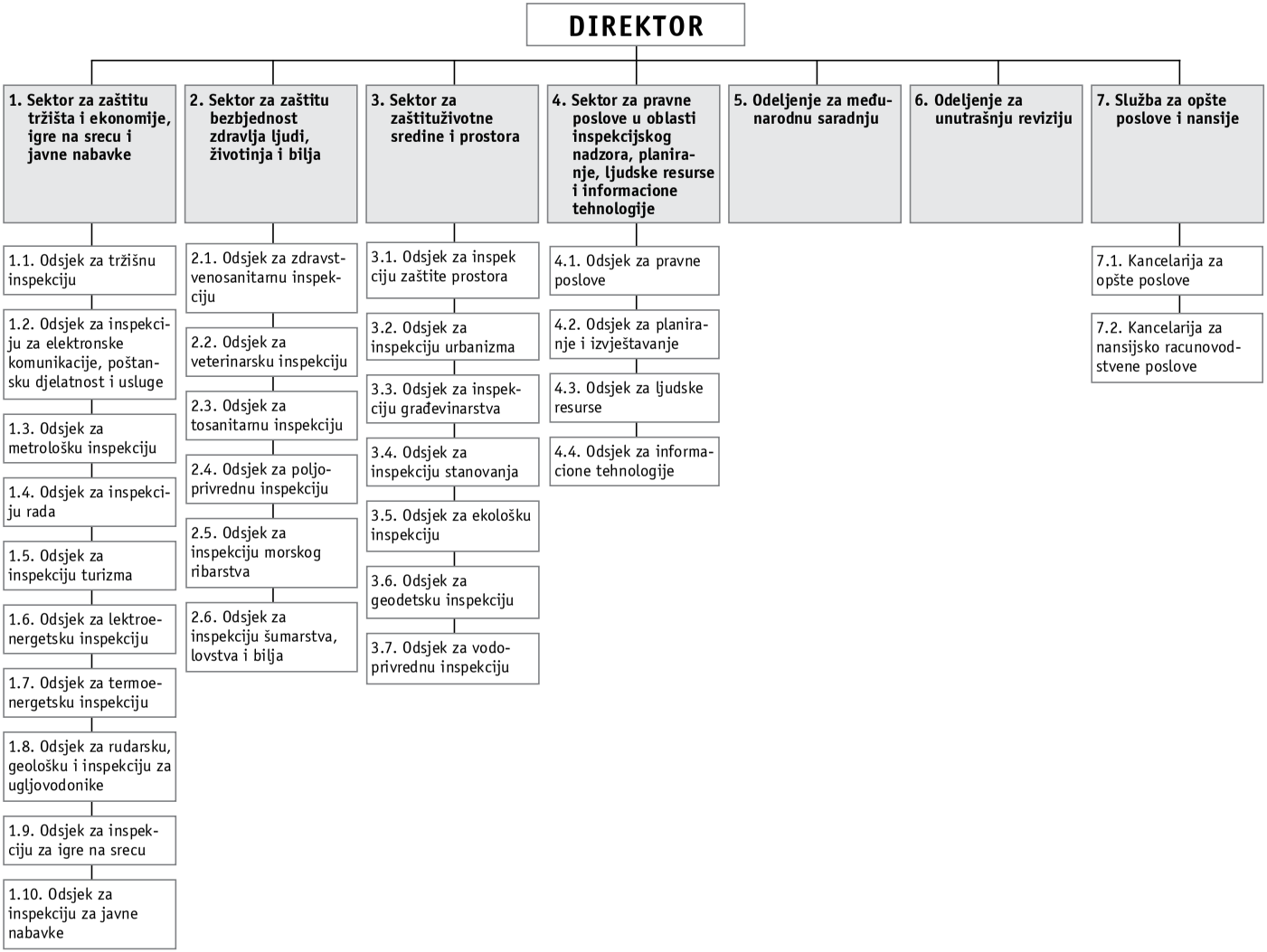
Iako Upravu čini 28 inspekcija, tokom 2013.godine ona je ostvarivala nadležnosti preko 24 inspekcije koje je preuzela u prvoj fazi centralizacije ovog sistema[14], dok u dvije inspekcije to nije bio slučaj, iako je postojao pravni osnov.[15] Integrisanje Poreske inspekcije i Prosvjetne inspekcije je planirano za drugu fazu centralizacije.

Sama Uprava se sastoji od sedam sektora, tj. organizacionih jedinica: Sektor za zaštitu tržišta i ekonomije, igre na sreću i javne nabavke; Sektor za zaštitu i bezbijednost zdravlja ljudi, životinja, bilja i šuma; Sektor za zaštitu životne sredine i prostora; Sektor za pravne poslove u oblasti inspekcijskog nadzora, planiranje, ljudske resurse i informacione tehnologije; Odjeljenje za međunarodnu saradnju; Odjeljenje za unutrašnju reviziju; i Služba za opšte poslove i finansije, pri čemu su u okviru prva tri sektora raspoređene 24 inspekcijske jedinice[16]:

14 Tržšna, inspekcija rada, inspekcija za turizam, elektronenergetska, termoenergetska, rudarska, geološka, metrološka inspekcija, inspekcija za elektronske komunikacije i poštansku djelatnost, inspekcija za usluge informacionog društva, inspekcija za igre na sreću, inspekcija za javne nabavke, zdravstveno-sanitarna inspekcija, poljoprivredna, inspekcija šumarstva, lovstva i zaštite bilja, inspekcija morskog ribarstva, veterinarska, ekološka, građevinska, inspekcija zaštite prostora, inspekcija za urbanizam, inspekcija za stanovanje, vodoprivredna i fitosanitarna.

15 Geodetska i inspekcija za istraživanja i proizvodnje ugljovodonika

16 http://www.uip.gov.me/organizacija



Organogram Uprave za inspekcijske poslove

Najbrojniji je Sektor za zaštitu tržišta i ekonomije, igre na sreću i javne nabavke koji obuhvata 12 inspekcija (tržišnu, turističku, elektro-energetsku, termo-energetsku, metrološku, rudarsku, geološku, kao i inspekciju rada, inspekciju za igre na sreću, inspekciju za elektronske komunikacije i poštansku djelatnost, inspekciju za usluge informacionog društva, inspekciju za javne nabavke). U Sektoru za zaštitu i bezbijednost zdravlja ljudi, životinja, bilja i šuma je šest inspekcija (veterinarska, fitosanitarna, zdravstveno-sanitarna, poljoprivredna, zatim inspekcija šumarstva, lovstva i zaštite bilja, i inspekcija za morsko ribarstvo), kao i u Sektoru za zaštitu životne sredine i prostora (inspekcija zaštite prostora, zatim građevinska, ekološka, urbanistička, stambena i vodoprivredna inspekcija).
Radi se o razgranatom sistemu koji pokriva teritoriju Crne Gore, tretirajući širok zahvat raznih društvenih odnosa i pitanja, pa je tim važnije da takav organ bude suštinski nezavisan, bez neprimjerenih političkih ili drugih uticaja. Upravo su sumnje da postoji politički uticaj na rad UIP-a i dalje jedan od razloga zbog kojih se Uprava za inspekcijske poslove u javnosti još uvijek nije pozicionirala kao organ u čiju se nepristrasnost u cjelosti vjeruje. U tom kontekstu, primjer kroz koji se može prepoznati problem razgraničenja između profesionalnog i političkog angažmana direktora Uprave predstavlja predmet zabrinutosti. Naime, tokom kampanje za lokalne izbore u opštini Berane, mediji su zabilježili prisustvo direktora Uprave na dan održavanja izbora, odnosno da je službeni auto Uprave koji koristi direktor Vuksanović bio parkiran ispred partijskih prostorija vladajuće Demokratske partije socijalista (DPS). Direktor Uprave je direktno negirao da je njegovo prisustvo na bilo koji način vezano za izbore, kao i sama Uprava[17]. U komunikaciji koju je CGO imao sa Upravom za inspekcijske poslove utvrđeno je da Uprava nema posebnu evidenciju o radnim subotama i nedjeljama rukovodilaca.[18] No, činjenica je da se po podacima zvaničnog sajta DPS-a može utvrditi da se direktor Uprave, Božidar Vuksanović, nalazi na spisku članova Glavnog odbora DPS-a pod rednim brojem 37[19]. Zakon o državnim službenicima i namještenicima[20] propisuje obavezu uzdržavaja od javnog ispoljavanja svojih političkih uvjerenja, te bi u tom kontekstu trebao i direktor Uprave strogo da poštuje duh zakona. Političko djelovanje i uticaj mogu se ostvarivati i van radnog vremena, kao i tokom radnog vremena, a spriječavanje tih pojava mora biti jedna od osnova izgradnje integriteta samostalnog organa uprave, poput Uprave za inspekcijske poslove, i ona mora počivati na punoj depolitizaciji i izgradnji povjerenja sa građanima/kama, što je zahtjevan proces.

17 http://www.vijesti.me/vijesti/vuksanovic-bio-sam-inspekciji-a-ne-zbog-izbora-clanak-186046

18 Izbori u Beranama su održani dana 9.marta (nedjelja) 2014.godine

19 http://www.dps.me/nasa-partija/glavni-odbor

20 Zakon o državnim službenicima i namještenicima ("Sl. list Crne Gore", br. 39/11 od 04.08.2011, 50/11 od 21.10.2011, 66/12 od 31.12.2012), član 9

Izražavanje političkih uvjerenja u vršenju poslova, propisano je kao teža povreda službene dužnosti u članu 83, stav 1 tačka 8) Zakona o državnim službenicima i namještenicima. Etičkim kodeksom držanih službenika i namještenika[21] propisano je da su isti dužni da načinom odjevanja ne izražavaju političku, vjersku ili drugu ličnu pripadnost koja bi mogla da dovede u sumnju njihovu nepristrasnost i neutralnost u vršenju poslova. Norme naglašavaju potrebu depolitizacije državne uprave, ali nijesu do kraja precizne i jasno izvedene. Primjera radi, treba naglasiti da su inspektori/ke državni službenici/e sa posebnim ovlašćenjima, što znači i većim rizikom da bi njihov politički uticaj mogao bitno uticati na pojedine građane/ke u artikulisanju njihovih političkih stavova i opredjeljenja.

REGIONALNA ISKUSTVA: HRVATSKA, SRBIJA, BIH

REPUBLIKA HRVATSKA

Poslove inspekcijskog nadzora je do 2014. godine u Republici Hrvatskoj obavljao Državni inspektorat, uspostavljen Zakonom o državnom inspektoratu 1999. godine, koji je po nekim svojim karakteristikama bio sličan današnjoj crnogorskoj Upravi za inspekcijske poslove.

Državni inspektorat bio je državna upravna organizacija Republike Hrvatske koja je obavljala „... *inspekcijske poslove koji se odnose na nadzor obavljanja poslova i provedbu propisa o: trgovini i uslugama, radu i zaštiti na radu, elektroenergetici, rudarstvu, opremi pod tlakom, obračunu, naplati i uplati boravišne pristojbe, ugostiteljskoj djelatnosti i pružanju usluga u turizmu*."[22] Rad Državnog inspektorata bio je organizovan u pet područnih jedinica, sa centrima u Rijeci, Splitu, Osijeku, Varaždinu i Zagrebu, a njime je upravljao glavni inspektor imenovan i razriješavan od strane Vlada Republike Hrvatske[23]. U okviru Državnog inspektorata bila je uspostavljena institucija višeg inspektora-specijaliste, sa mandatom vršenja inspekcijskog nadzora "*koji se odnosi na primjenu zakona i drugih propisa iz djelokruga Državnog inspektorata*."[24]. U okviru Inspektorata djelovao je i Sektor kontrolno-instruktivnog nadzora čiji je zadatak bio da obavlja i sprovodi kontrolno-instruktivni nadzor nad radom inspektora "*koji se odnosi na pravilnost vođenja inspekcijskog, upravnog te postupka koji prethodi sudskim postupcima, a s ciljem utvrđivanja kvantitete i kvalitete obavljenih inspekcijskih poslova te ujednačavanja rada*", a takođe je predlagao i preduzimanje mjera

21 Etički kodeks državnih službenika i namještenika ("Sl. list Crne Gore", br. 20/12 od 12.04.2012)

22 Član 2, Zakon o državnom inspektoratu, NN 116/08, 123/08, 49/11, i član 33 Zakona o ustrojstvu i djelokrugu ministarstava i drugih središnjih tijela državne uprave, NN 150/11.

23 Član 8. i 9. Zakona o državnom inspektoratu, NN 116/08, 123/08, 49/11.

24 Član 12, Zakon o državnom inspektoratu, NN 116/08, 123/08, 49/11.

zbog povrede službene dužnosti u obavljanju inspekcijskih poslova, naročito u dijelu neizvršavanja i nesavjesnog izvršavanja službeničkih obaveza.[25]

Nakon 15 godina postojanja Državnog inspektorata, u sklopu mjera reforme Vlade Republike Hrvatske za fiskalnu konsolidaciju za period 2014-2016.godine, između ostalog, predviđena je i transformacija ovog organa, odnosno, prelazak inspekcijskih službi pod okrilje nadležnih resornih ministarstava. Vlada Republike Hrvatske je u septembru 2013. godine donijela Smjernice ekonomske i fiskalne politike za period 2014.-2016. i Mjere za smanjenje deficita kojim je utvrđeno devet reformskih mjera za ciljem fiskalne konsolidacije u periodu od 2014. do 2016. godine. U tom smislu, usvojen je Projektni plan za sprovođenje dugoročnih reformskih mjera fiskalne konsolidacije za period 2014.-2016. Mjere fiskalne konsolidacije donešene su radi smanjivanja deficita, a u okviru onih čije sprovođenje je predviđeno u 2014. godini je i transformacija Državnog inspektorata. Hrvatska Vlada je transformaciju Državnog inspektorata objasnila činjenicom da se takav sistem pokazao nejedinstven uslijed postojanja više od 40 inspekcija od kojih je većina djelovala u okviru centralnih tijela državne uprave a šest njih u okviru Državnog inspektorata, kao i da su njime: "*tijela državne uprave u obavljanju poslova iz svojeg djelokruga stavljena u nejednak položaj*".[26] Obrazloženje daje i očekivanje od ove transformacije u smislu racionalizacije funkcionisanja državne uprave u toj oblasti i povećanja efikasnosti, kao i smanjenja troškova, učinkovitije naplate prihoda, efikasnijeg otkrivanja i suzbijanja "sive ekonomije", racionalizacije inspekcijskih službi i uštede finansijskih sredstava.[27]

Tako je stupanjem na snagu Zakona o izmjenama i dopunama Zakona o ustrojstvu i djelokrugu ministarstva i drugih središnjih tijela državne uprave[28] prestao sa radom Državni inspektorat, a njegove poslove, ali i ljudske i tehničke resurse, "*preuzimaju Ministarstvo financija, Ministarstvo gospodarstva, Ministarstvo rada i mirovinskoga sustava, Ministarstvo poljoprivrede i Ministarstvo turizma*".[29] Danas, u okviru Ministarstva rada i mirovinskoga sustava djeluju inspektori rada, a u

25 Član 32a, Uredba o unutarnjem ustrojstvu Državnog inspektorata, NN 31/12 i 23/13.

26 Reformske i druge mjere fiskalne konsolidacije za razdoblje 2014.-2016, Vlada Republike Hrvatske, 2013, str. 8.

27 Reformske i druge mjere fiskalne konsolidacije za razdoblje 2014.-2016, Vlada Republike Hrvatske, 2013, str. 8.

28 Zakon o ustrojstvu i djelokrugu ministarstava i drugih središnjih tijela državne uprave, url. http://narodne-novine.nn.hr/clanci/sluzbeni/2011_12_150_3085.html

29 Član 10. i 11, Zakon o izmjenama i dopunama Zakona o ustrojstvu i djelokrugu ministarstva i drugih tijela

okviru Ministarstva turizma ekonomski inspektori koji vrše inspekcijski nadzor u oblasti ugostiteljske djelatnosti i pružanja usluga u turizmu. Ministarstvo finansija je preuzelo obavljanje inspekcijskih poslova u dijelu prometa roba i usluga, zaštite intelektualne svojine, boravišne dozvole, sprečavanja neregistrovanih i nezakonitih djelatnosti i trgovine kao i u dijelu naplate budžetskih prihoda iz oblasti turizma, ugostiteljske djelatnosti i prometa roba i usluga. Zatim, Ministarstvo ekonomije je preuzelo poslove Inspektorata u dijelu ekonomije: zaštite potrošača, opreme pod visokim pritiskom, i poslove rudarske i elektroenergetske inspekcije; i konačno, Ministarstvo poljoprivrede je preuzelo inspekcijske poslove iz oblasti poljoprivrede i kontrole hrane.[30]

Broj zapošljenih inspektora u Državnom inspekoratu je varirao, i uglavnom je na godišnjem nivou taj broj bio oko 800 zapošljenih. Posljednji dostupni podaci, navedeni u Izvještaju o radu Državnog inspektorata iz maja 2013, pokazuju da je u to vrijeme bilo zapošljeno 817 državnih službenika i 1 namještenik (ukupno 818 zapošljenih). Oni su sada preuzeti od strane pet nadležnih ministarstava.

Pored inspekcija koje su navedene prethodno, i čiji su poslovi preuzeti od strane navedenih nadležnih ministarstava, u okviru Ministarstva uprave u Hrvatskoj djeluje i Upravna inspekcija, sa dva odjeljenja: za inspekciju državne uprave i za inspekciju lokalne i područne (regionalne) samouprave. Djelatnost Upravne inspekcije se fokusira na: "*inspekcijske poslove koji se odnose na primjenu zakona i drugih propisa o ustrojstvu, djelokrugu i načinu rada tijela državne uprave i drugih državnih tijela, tijela jedinica lokalne samouprave i jedinica područne (regionalne) samouprave; nadzor u provedbi zakona i drugih propisa o državnim službenicima i namještenicima, o službenicima i namještenicima u tijelima jedinica lokalne i područne (regionalne) samouprave; nadzor u provedbi opć eg upravnog postupka, posebnih upravnih postupaka, uredskog poslovanja u tijelima državne uprave i tijelima jedinica lokalne i područne (regionalne) samouprave i pravnih osoba s javnim ovlastima*" [31]. Upravna inspekcija, također, učestvuje i u sprovođenju upravnog nadzora u drugim jedinicima i obavlja druge poslove koji su predviđeni zakonima i drugim propisima. U njoj je zapošljeno ukupno 12 službenika.[32]

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državne uprave, NN 125/2013.

30 Državni inspektorat Republike Hrvatske.: http://www.inspektorat.hr/

31 Više o tome na: http://www.uprava.hr/default.aspx?id=641

32 Detaljan pregled broja službenika i namještenika je moguće pronaći na: http://www.uprava.hr/default.aspx?id=648

Pored potpune organizacione decentralizacije inspekcijskog sistema, donešeni su i brojni zakoni u pojedinim oblastima inspekcijskog djelovanja[33]. Na primjer, Zakon o turističkoj inspekciji[34], kojim se posebno uređuje ustrojstvo, poslovi i način rada inspektora u dijelu vršenja nadzora turističke inspekcije, kao i uslovi za imenovanje, i prava, obaveze i ovlašćenja turističkih inspektora. Podsjeć anja radi, turistička inspekcija djeluje u okviru Ministarstva turizma Republike Hrvatske.[35]

Reakcije iskazane u hrvatskim medijima oko transformacije Inspektorata su bile različite, od ocjena da će novo rješenje uticati pogubno po nepristrasnost inspektora jer će oni morati da kontrolišu i sankcionišu one sa kojima rade na istom mjestu, a koje su dolazile uglavnom od nekadašnjih rukovodilaca Državnog inspektorata do stavova da će ovom reformom biti povećana efikasnost rada, kao i sama ovlašćenja inspekcija.[36]

REPUBLIKA SRBIJA

Poslovi inspekcijskog nadzora u Republici Srbiji su, shodno Zakonu o državnoj upravi, povjereni nadležnim ministarstvima, a vrše ih inspektori odnosno druga ovlašćena lica u skladu sa zakonom, s tim da se: *„pojedini poslovi inspekcijskog nadzora zakonom mogu poveriti organima opština, grada Beograda, gradova i autonomnih pokrajina*".[37] Istim zakonom se propisuju i prava, dužnosti i ovlašć enja inspektora, kao i njihova samostalnost i odgovornost.

Inspekcijski sistem je u Republici Srbiji organizovan tako što postoje 33 inspektorata koji se kao organi nalaze u sastavu 14 ministarstava.

Inspekcijski poslovi nijesu regulisani jednim jedinstvenim zakonom već postoji više od hiljadu zakona i podzakonskih akata koji uređuju ovu oblast. Iako je Zakon o državnoj upravi predvidio donošenje zakona kojim bi se oblast inspekcijskog nadzora posebno uredila, to još nije učinjeno. Međutim,

33 Posebni zakoni donešeni su, između ostalog, u oblasti turističke inspekcije, prosvjetne inspekcije, građevinske inspekcije, sportske inspekcije, a postoje prijedlozi zakona o ekonomskoj inspekciji i inspekciji cestovnog prometa i cesta.

34 Zakon o turističkoj inspekciji, NN 19/14, http://narodne-novine.nn.hr/clanci/sluzbeni/2014_02_19_364.html

35 O Turističkoj inspekciji, detaljnije na: http://www.mint.hr/default.aspx?id=12752

36 Gasi se Državni inspektorat, unos na: Novi list, url.: http://www.novilist.hr/Vijesti/Hrvatska/Gasi-se-Drzavni-inspektorat , http://dalje.com/hr-hrvatska/gasi-se-drzavni-inspektorat-jordanic--ovo-rjesenje-je-van-pameti/485970

37 Član 22 i 28, Zakon o državnoj upravi, „Sl. glasnik RS", br. 20/92, 6/93 - odluka USRS, 48/93, 53/93, 67/93, 48/94, 49/99 - dr. zakon, 79/2005 - dr. zakon, 101/2005 - dr. zakon i 87/2011 - dr. zakon.

prepoznata je potreba za postojanjem jednog takvog zakona i Ministarstvo pravde i državne uprave je pristupilo izradi Zakona o inspekcijskom nadzoru obrazujući u junu 2013. godine radnu grupu koja je utvrdila polazne osnove za izradu Zakona.[38] Taj dokument konstatuje nedostatak koordinacije u organizaciji inspekcijskog nadzora, fragmentiranost postojećeg sistema i posljedično lošu efikasnost inspekcijskog nadzora i izuzetno opterećenje subjekata nad kojima se vrši inspekcijski nadzor.

U istom dokumentu se analiziraju i rezultati USAID ankete privrednika[39] na osnovu koje su izdvojeni neki suštinski problemi u funkcionisanju inspekcija u Srbiji. To su, prije svega: nepostojanje efikasnog sistema za ulaganje žalbi na rad inspekcija, odsustvo koordinacije, preklapanje nadležnosti i preklapanje kontrola različitih inspekcija. Korupcija je kao problem u radu inspekcija prepoznata od strane čak 36% ispitanika. Rad inspektora koji nije definisan jasnim propisanim procedurama takođe je problem, kao i učestalost i trajanje inspekcija, ali i preklapanje inspekcija, odnosno kontrolisanje istih stvari od strane više različitih inspekcija.[40]

S obzirom na prethodno navedeno, ali i na postojanje formalno-pravnog razloga[41] za donošenje jednog sveobuhvatnog zakona u oblasti inspekcija, kao i sugestije samih rukovodilaca nekoliko inspekcijskih organa, jasno je da je potreba za donošenjem Zakona o inspekcijskom nadzoru opravdana i značajna. Kao najvažniji razlog za usvajanje ovog zakona navodi se potreba za postojanjem jednog akta koji bi uredio status i ovlašćenja inspektora, postupke koji se primjenjuju u inspekcijskoj kontroli i koordinaciju rada inspekcijskih organa. Već sada je evidentno da su očekivanja od ovog zakona velika, a prije svega u dijelu obezbijeđenja jedinstvenog postupanja inspekcija i uspostavljanja jedinstvenih standarda za sve inspekcije; zatim da jasno propiše opšta ovlašćenja inspektora, uključujući ovlašćenja prema neregistrovanim subjektima; da uspostavi mehanizam za razmjenu informacija i koordinaciju planiranja i sprovođenja inspekcijskog nadzora; da obezbijedi primjenu načela javnosti u radu inspekcija; da uvede obavezu planiranja inspekcijskog nadzora na osnovu procjene rizika; i da uspostavi efikasne mehanizme za postupanje po pritužbama na rad inspekcija. Očekuje se, takođe, da će rad na ovom zakonu pokrenuti pitanje organizacije inspektorata i formiranja

38 Polazne osnove za izradu Zakona o inspekcijskom nadzoru moguće je naći na: http://www.mpravde.gov.rs/vest/3398/nacrt-zakona-o-inspekcijskom-nadzoru-.php

39 Anketa dostupna na: http://www.bep.rs/documents/business-survey-2013/USAID%20BEP,%20Anketa%201000%20preduzeca%202013,%20Kompletan%20izvestaj.pdf

40 Detaljnije o vezi inspekcije i privrede dostupno na: http://www.policycafe.rs/documents/briefers/c1/Inspekcije%20i%20privreda%20-%20%20koordinacijom%20svi%20dobijaju.pdf

41 Donošenje zakona o inspekcijskim poslovima predviđeno je Zakonom o državnoj upravi Republike Srbije.

organizacionih jedinica prema teritorijalnom i funkcionalnom principu, odnosno, da li pojedina pitanja iz ove oblasti treba regulisati Zakonom o inspekcijskom nadzoru ili ih treba ostaviti postojeć im zakonima. U tom smislu, još uvijek nema procjene da li postoje preduslovi za organizaciono objedinjavanje inspekcijskog nadzora u jedan organ. U okviru prednosti objedinjavanja, prepoznato je povećanje djelotvornosti i efikasnosti nadzora, bolje korišćenje resursa, objedinjavanje relevantnih informacija inspektora različitih oblasti o subjektu koji je nadziran, kao i smanjenje troškova unutrašnje organizacije organa. Svakako, prepoznati su i nedostaci u tom dijelu, a najznačijniji dolazi od bojazni da će objedinjavanje inspekcija dovesti do pretjerane koncentracije moći u rukama rukovodilaca tog jednog organa.

U aprilu 2013.godine, u Narodnoj Skupštini Republike Srbije je održan VI Evropski pravni i politički forum koji je bio posvećen pitanjima inspekcijskog sistema u Srbiji, njegovom nedostacima, problemima i preporukama za reformu. Tom prilikom adekvatan sistem inspekcijskog nadzora je prepoznat kao imperativ za Republiku Srbiju na putu ka Evropskoj uniji.[42] Ocjene o postojeć em sistemu inspekcijskog nadzora i njegovim nedostacima su bile usaglašene u dijelu da je Srbiji neophodan jedan krovni dokument koji će regulisati oblast inspekcijskog nadzora, a već ina govornika je bila jednoglasna podržavajući organizaciju inspekcijskih službi na centralizovan način. Kao razloge su navodili povećanje efikasnosti zaštite javnog interesa, kvalitetnije borbe protiv sive ekonomije, modernizaciju rada inspektora, prevazilaženje postojeće nedovoljne saradnje između inspekcijskih organa ali i jačanje transparentnosti rada, kao i preventivne funkcije, umjesto dominantno represivne.

I Evropska komisija je u svom Izvještaju o napretku za Srbiju za 2012.godine prepoznala pojedine nedostatke inspekcija u Srbiji. Naime, kroz različita poglavlja čije stanje ocjenjuje Evropska komisija, najčešći primijećeni nedostaci odnose se na funkcionisanje inspekcije u određenim oblastima. Tačnije, ukazano je na slabe administrativne kapacitete nadležnog inspektorata u oblasti poštanskih usluga; zatim na nedovoljne administrativne i inspekcijske kapacitete resornog ministarstva u oblasti finansija; nepostojanje inspekcija i kontrola u oblasti unutrašnjeg ribolova; neophodno jačanje kapaciteta za sprovođenje i inspekcije u riječnom i drumskom saobraćaju; potreba za otklanjanjem

42 Izvodi iz održanog foruma, kao i postojeći video materijal sa tog događaja dostupni su na: http://www.legalreform.rs/index.php/sr/vi-evropski-pravni-i-politicki-forum-kako-inspekcije-mogu-zastiti-gradane-srbije-i-ekonomiju, kao i na: http://www.euractiv.rs/srbija-i-eu/5674-srbiji-potreban-novi-zakon-o-inspekcijama

nedosljednosti i nepotpunosti u zakonodavstvu u cilju jačanja inspekcija u oblasti životne sredine i klimatskih promjena; kao i potreba regulisanja uloge centralne budžetske inspekcije, itd.[43]

Kao zasebna inspekcija u Republici Srbiji djeluje Upravna inspekcija koja je regulisana Zakonom o upravnoj inspekciji iz 2011. godine.[44]Struktura Upravne inspekcije se zasniva na Upravnom inspektoratu koji se kao tijelo nalazi u sastavu Ministarstva pravde i državne uprave, a obavlja poslove upravnog nadzora nad primjenom zakona i drugih propisa iz svoje nadležnosti, kao i poslove inspekcijskog nadzora nad primjenom Zakona o matičnim knjigama, Zakona o političkim strankama, Zakona o udruženjima, Zakona o slobodnom pristupu informacijama od javnog značaja i Zakona o jedinstvenom biračkom spisku, kao i druge poslove iz oblasti upravnog nadzora.[45]

S obzirom da je inspekcijski sistem u Republici Srbiji izuzetno neorganizovan, da njegov rad nije definisan jedinstvenim zakonom, kao i da postoje nejasnoće u ovlašćenjima inspektora i preklapanja u inspekcijama, nije moguće izdvojiti tačan broj inspektora koji su zapošljeni na poslovima inspekcijskog nadzora. Ipak, primjetno je da se kroz medijske izvještaje povodom vršenja inspekcijskog nadzora u određenim oblastima ukazuje na manjak broja inspektora, a najveća zabrinutost u tom dijelu je iskazana u oblasti kontrole hrane, odnosno broju sanitarnih inspektora (samo 155), zatim u oblasti rada (259 inspektora), u oblasti obrazovanja (126 inspektora) ali i u drugim; uz naglašavanja potrebe za reformom inspekcijskog sistema u Srbiji i povećanje broja inspektora.

FEDERACIJA BOSNA I HERCEGOVINA

Inspekcijski nadzor u Federaciji Bosne i Hercegovine regulisan je Zakonom o inspekcijama u Federaciji Bosne i Hercegovine iz 2005. godine, koji propisuje da inspekcijski nadzor vrše federalne inspekcije organizovane u okviru Federalne uprave za inspekcijske poslove i kantonalne inspekcije organizovane u kantonalnim upravama za inspekcijske poslove.[46] Federalna uprava za inspekcijske poslove je formirana krajem 2006. godine a počela je sa radom u januaru 2007.godine.

43 Radni dokument osoblja Evropske Komisije u naslovu Izvještaj o napretku Srbije za 2013, dostupan je na: http://www.seio.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/izvestaj_ek_2013.pdf

44 Zakon o upravnoj inspekciji, „Sl. glasnik RS“, br. 87/2011.

45 Detaljnije o Upravnom inspektoratu na: http://www.drzavnauprava.gov.rs/tekst/834/upravni-inspektorat.php

46 Član 5, Zakon o inspekcijama u Federaciji BiH, „Službene novine FBiH“, broj 69/05.

Zakon o inspekcijama iz 2005.godine kao ključnu izmjenu unosi centralizaciju, odnosno raniji inspekcijski organi koji su bili u sastavu federalnih ministarstava postaju dio centralizovanog organa, odnosno Federalne uprave za inspekcijske poslove. Federalnu upravu, čije je sjedište u Sarajevu, čini 15 organizacionih jedinica. Detaljnije, tu su 10 inspektorata za različite oblasti inspekcijskog nadzora: Inspektorat tržišno-turističke inspekcije, Inspektorat sanitarno-zdravstveno-farmaceutske inspekcije, Inspektorat inspekcije rada, Inspektorat urbanističko-ekološke inspekcije, Inspektorat saobraćajne inspekcije, Inspektorat poljoprivredne inspekcije, Inspektorat šumarske inspekcije, Inspektorat vodne inspekcije, Inspektorat veterinarske inspekcije i Inspektorat tehničke inspekcije. Dodatno, pet sektora pruža podršku inspektoratima: Kabinet direktora, Sektor za pravne i opšte poslove, Sektor za žalbe i pravnu zaštitu, Sektor za materijalno-finansijske poslove, Sektor za tehničku podršku i plansko-analitičke poslove. Pored ovih inspekcija, Vijeće ministara BiH je u januaru 2014. godine usvojilo program rada kojim se, između ostalog, predviđa izmjena Zakona o finansiranju institucija u BiH, kojim bi se uspostavila finansijska inspekcija, tako da se očekuje i osnivanje i te dodatne inspekcije.[47]

Nadzor nad radom Federalne uprave za inspekcijske poslove vrši Vlada FBiH, dok nadzor nad radom kantonalnih uprava za inspekcijske poslove vrše vlade kantona. Federalnom upravom rukovodi direktor, kojeg imenuje Vlada Federacije na prijedlog premijera i zamjenika premijera, a on je za svoj rad odgovoran Vladi Federacije. Na rukovodećim pozicijama u Federalnoj upravi nalaze se i sekretar, pomoćnik direktora i glavni federalni inspektori. Pored Federalne uprave, inspekcijski nadzor vrše i kantonalne inspekcije u okviru kantonalne uprave za inspekcije koja je samostalni kantonalni organ uprave sa sjedištem u sjedištu kantona.[48]

Postupak inspekcijskog nadzora se pokreće po službenoj dužnosti, ali je Federalna uprava dužna da izvrši inspekcijski nadzor na zahtjev Vlade Federacije kao i na zahtjev federalnog ministra iz upravne oblasti koja je u nadležnosti ministarstva, dok je kantonalna uprava dužna da izvrši inspekcijski nadzor na zahtjev vlade kantona, kantonalnog ministra iz upravne oblasti koja je u nadležnosti ministarstva, i na zahtjev Federalne uprave.

47 Detaljnije o tome na: http://novovrijeme.ba/uskoro-formiranje-financijske-inspekcije-za-nadzor-institucija-bih/

48 Član 23, Zakon o inspekcijama u Federaciji BiH, „Službene novine FBiH", broj 69/05.

Zakon o inspekcijama u FBiH uređuje, također, i odnos između uprava, inspekcija i inspektora, te propisuje da su Federalna uprava i kantonalne uprave za inspekcije dužne da sarađuju, i međusobno se obavještavaju i pomažu, dok se zahtjevi inspekcije za pravnu pomoć od strane druge inspekcije smatraju hitnim i po njima se mora postupiti najkasnije 3 dana od dobijanja zahtjeva.[49]

Po Programu rada Federalne uprave za inspekcijske poslove za 2013. godinu u Upravi je zapošljeno 120 federalnih inspektora, od toga 10 glavnih inspektora, 45 inspektora angažovanih na graničnim prelazima i carinama, i 65 inspektora u unutrašnjoj kontroli, kao i 11 ostalih državnih službenika i 20 namještenika, što je ukupno 151 službenik odnosno namještenik.[50] Međutim, Pravilnikom o unutrašnjoj organizaciji radnih mjesta Federalne uprave predviđeno je 219 izvršilaca, odnosno zapošljenih lica, od čega čak 159 federalnih inspektora.[51] Dakle, kako se navodi u Programu rada Federalne uprave za inspekcijske poslove, nedostaje 67 izvršilaca prvenstveno inspektora dok je neophodna popuna makar 16 izvršilaca o čemu je Uprava dobila saglasnost od Vlade Federacije BiH.

Pored Federalne uprave, na nivou FBiH djeluje i Upravna inspekcija, kao zasebni organ, nezavisan od ostalih inspekcija, a nalazi se u okviru Ministarstva pravde BiH. Upravna inspekcija vrši kontrolu primjene propisa, a svaki organ uprave i ostali organi nad kojima Upravna inspekcija ima ovlašćenje za vršenej inspekcijskog nadzora obavezni su da omoguće upravnom inspektoru obavljanje svog posla i pruže neophodne podatke.[52]

Na nivou Federacije BiH, u okviru entiteta **Republike Srpske** djeluje Inspektorat Republike Srpske. Njegovo ustrojstvo i rad su uređeni prvenstveno Zakonom o inspekcijama u Republici Srpskoj, koji reguliše obavljanje inspekcijskog nadzora u Republici Srpskoj u svrhu osiguranja izvršavanja zakona i drugih propisa i opštih akata, organizovanja organa za inspekcije, i definiše nadležnost inspekcija, prava, obaveze i odgovornost inspektora, međusobne odnose inspekcija i druga pitanja od značaja

49 Član 149, Zakon o inspekcijama u Federaciji BiH, „Službene novine FBiH", broj 69/05.

50 Program rada Federalen uprave za inspekcijske poslove FBiH dostupan je na: https://www.google.me/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCUQFjAA&url=http%3A%2F%2Fwww.fuzip.gov.ba%2Fuploaded%2Fprogrami%2F2013%2520PROGRAM%2520%2520FUZIP-A%2520.doc&ei=ptNPU9X9IqOuygPLyIGgCA&usg=AFQjCNFAbkPOp7x6SBG0Q-nkN-Y9s4_QWQ&bvm=bv.64764171,d.bGQ

51 Pravilnik o unutrašnjoj organizaciji Federalne uprave za inspekcijske poslove dostupan je na: http://www.fuzip.gov.ba/uploaded/zakoni/PRAVILNIK%200%20UNUTRASNJOJ%200RGANIZACIJI%20FEDERALNE%20UPRAVE%20ZA%20INSPEKCIJSKE%20POSLOVE.pdf

52 Detaljnije o Upravnoj inspekciji: http://www.mpr.gov.ba/organizacija_nadleznosti/upravna_inspekcija/default.aspx?id=1114&langTag=bs-BA

za sprovođenje inspekcijskih poslova u Republici Srpskoj.[53] Inspekcijski sistem Republike Srpske čine Republička uprava za inspekcijske poslove, odnosno Inspektorat, kao i posebne organizacione jedinice za obavljanje inspekcijskih poslova u administrativnim službama jedinica lokalne samouprave.[54] Inspektorat Republike Srpske je samostalna republička uprava koja vrši inspekcijske poslove, sa sjedištem u Banjaluci, organizovana u sjedištu, područnim odjeljenjima, odsjecima i drugim organizacionim jedinicima.

U okviru Inspektorata Republike Srpske djeluje 13 inspekcija: tržišna, poljoprivredna, šumarska, veterinarska, vodna, tehnička, saobraćajna, urbanističko-građevinska i ekološka, zdravstvena, prosvjetna, inspekcija rada, inspekcija za hranu i inspekcija zaštite od požara.[55] Inspektorat Republike Srpske je organizovan po funkcionalnom principu, gdje su inspekcijski sektori osnovne organizacione jedinice, a u cilju efikasnijeg obavljanja inspekcijskog posla na cijeloj teritoriji zemlje, formirana su područna odjeljenja sa sjedištima u Banjaluci, Prijedoru, Doboju, Bijeljini, Istočnom Sarajevu i Trebinju. Inspektori su smješteni u područnim odjeljenjima Inspektorata, dok su tržišni, fitosanitarni, zdravstveni i inspektori za hranu prisutni i na 14 graničnih prelaza u Republici Srpskoj u cilju vršenja inspekcijskog spoljnotrgovinskog nadzora.

Kako je naglašeno u brošuri Inspektorata Republike Srpske, prioritet Inspektorata nije kažnjavanje već preduzimanje preventivnih i korektivnih mjera u cilju pomoći subjektima da svoje poslovanje usklade sa zakonom.[56] Ovim preventivnim djelovanjem nastoji se smanjiti opterećenje na one subjekte koji poštuju propise, i povećati kontrole u rizičnijim oblastima.

U posljednjem dostupnom Izvještaju o radu Republičke uprave za inspekcijske poslove, za 2012. godinu, navodi se da je u okviru 13 prethodno navedenih inspekcija zapošljeno 229 inspektora koji vrše inspekcijski nadzor nad primjenom oko 150 zakona i 700 podzakonskih akata.[57] U Izvještaju

53 Član 1, Zakon o inspekcijama u Republici Srpskoj, „Službeni glasnik Republike Srpske“, broj 74/10.

54 Član 2, Zakon o izmjenama i dopunama Zakona o inspekcijama u Republici Srpskoj,„Službeni glasnik Republike Srpske“, broj 109/12.

55 Pregled inspekcija Inspektorata dostupan je na: http://www.inspektorat.vladars.net/index.php?option=com_content&view=section&id=19&Itemid=58

56 Brošuru je moguće naći na vebsajtu Inspektorata Republike Srpske: http://www.inspektorat.vladars.net/index.php?option=com_content&view=section&layout=blog&id=25&Itemid=1

57 Izvještaj o radu Republičke uprave za inspekcijske poslove moguće je pronaći na: http://www.inspektorat.vladars.net/index.php?option=com_content&view=article&id=344:----2012-&catid=86:2008-07-29-20-38-03&Itemid=115

se ukazuje i na nedostatak dovoljnog broja inspektora u tehničkoj, poljoprivrednoj, prosvjetnoj i zdravstvenoj inspekciji, kao i na potrebu za rudarskim inspektorima u sklopu tehničke inspekcije. Pored toga, u Izvještaju se zaključuje da se mora nastaviti sa kadrovskim i materijalnim jačanjem Inspektorata; zatim učiniti rad Inspektorata transparentnijim; poraditi na nadogradnji informacionog sistema Inspektorata; ojačati saradnju sa sudovima kako bi se poradilo na generalnoj prevenciji; ali i poraditi na reorganizaciji inspekcijskog sistema Republike Srpske.

Poseban organ za inspekcijski nadzor djeluje i u okviru **distrikta Brčko**, odnosno Inspektorat distrikta Brčko koji obavlja poslove kontrole i nadzora nad primjenom zakona, propisa i opštih akata iz nadležnosti organa i institucija BiH i Brčko distrikta BiH.[58] Inspektorat je sektor Vlade Distrikta koji samostalno obavlja svoje poslove, a za svoj rad je odgovoran Vladi i gradonačelniku.[59]

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Iz navedenih iskustava Republike Hrvatske, Republike Srbije i Federacije Bosne i Hercegovine kristalizuju se dva moguća modela rada inspekcijskih organa: centralizovani i decentralizovani. U Republici Hrvatskoj i Federaciji Bosne i Hercegovine postoji tendencija da se inspekcijska tijela organizuju na mnogo više decentralizovani način, za šta je zaslužna i administrativna podjela države. U Hrvatskoj tako postoji pet zasebnih područnih jedinica Državnog inspektorata. U Bosni i Hercegovini je ovo čak primjetnije, s obzirom da postoji Federalna uprava za inspekcijske poslove, zatim kantonalne uprave za inspekcijske poslove, Inspektorat Republike Srpske i Inspektorat distrikta Brčko. Republika Srbija je, s druge strane nešto drugačiji slučaj, s obzirom da postoji čak 33 inspekcija, ali je svakako i specifičan s obzirom da Srbija još uvijek nema jedinstveni Zakon o inspekcijskom nadzoru.

58 Član 1, Zakon o inspekcijama Brčko distrikta Bosne i Hercegovine, ‚Službeni glasnik Brčko distrikta", broj 24/08.

59 Član 12, Zakon o inspekcijama Brčko distrikta Bosne i Hercegovine, ‚Službeni glasnik Brčko distrikta", broj 24/08.

2. INSPEKCIJSKI NADZOR

Postupak inspekcijskog nadzora regulisan je Zakonom o inspekcijskom nadzoru[60]. Usvajanje izmjena i dopuna Zakona o inspekcijskom nadzoru u 2011. godini imalo je za cilj otklanjanje postojećih problema, poput nedostatka saradnje, preklapanja i dupliranja djelokruga rada inspektora, česte i dugotrajne kontrole, itd. što je sve u značajnoj mjeri umanjivalo efikasnost inspekcijskog nadzora, ali i efikasnu kotrolu rada i kvaliteta roba i usluga. Konačna verzija ovog zakona, koja propisuje postupak nadzora i utvrđivanje ovlašćenja inspektora s jedne, i prava i obaveza subjekata nadzora, s druge strane, trebala bi dovesti do smanjenja korupcije. No, u cilju toga neophodno je uspostaviti i djelotvoran sistem kontrole rada inspekcija, pravovremeno i odgovarajuće postupanje po pritužbama, i precizirati mehanizme kontrole koji bi rezultate inspekcijskog nadzora učinile vidljivim.

Izmjenama i dopunama Zakona o inspekcijskom nadzoru od 11.04.2014.godine propisano je da inspekcijski nadzor u oblastima prosvjete, sporta, zaštite kulturnih dobara i kulturne baštine, arhivske djelatnosti, naplate javnih prihoda, kontrole dostavljanja finansijskih izvještaja, sprečavanja pranja novca i finansiranja terorizma do 31. decembra 2014. godine, vrše organi državne uprave određeni zakonima kojima su uređene te oblasti. Odredbe zakona kojima je određena nadležnost organa državne uprave za vršenje poslova inspekcijskog nadzora u oblastima iz stava 1 ovog člana prestaju da važe 31. decembra 2014. godine.

Inspekcijski nadzor vrši se u oblastima određenim zakonom kod fizičkih lica, nevladinih organizacija, privrednih društava i drugih oblika obavljanja privrednih djelatnosti, javnih preduzeća, javnih ustanova i drugih pravnih lica, državnih organa i službi, organa državne uprave, organa lokalne samouprave, organa lokalne uprave i službi opštine, Glavnog grada, Prijestonice i drugih oblika lokalne samouprave. Inspekcijski nadzor se vrši u pogledu pridržavanja zakona, drugih propisa i opštih akata, kao i preduzimanja upravnih i drugih mjera i radnji u cilju da se utvrđene nepravilnosti otklone i obezbijedi pravilna primjena propisa. Inspekcijski nadzor se vrši neposrednim uvidom kod odredjenih institucija, organa i fizičkih lica; te drugih subjekata; i to u pogledu pridržavanja zakona, drugih propisa i opštih akata. Inspekcijski nadzor se vrši po službenoj dužnosti shodno planiranim aktivnostima (redovan inspekcijski nadzor), kao i po nalozima i inicijativama. Pojačani nadzor je

60 Stupio na snagu 8.07.2003. godine, čime je prestao da važi raniji Zakon o inspekcijskoj kontroli koji je uređivao ovu oblast

organizovan u akcedentnim situacijama, u turističkoj sezoni, u drugim vremenskim periodima za koje je praksa potvrdila veći stepen kršenja propisa, kao i po nalozima i inicijativama. U vršenju inspekcijskog nadzora inspektor treba da postupa u skladu sa propisanim načelima.[61] Osim inspektora inspekcijski nadzor vrši i službenik sa posebnim ovlašćenjima i odgovornostima.

Tokom 2013.godine, inspekcijski nadzor je bio sprovođen u sljedećim oblastima[62]:

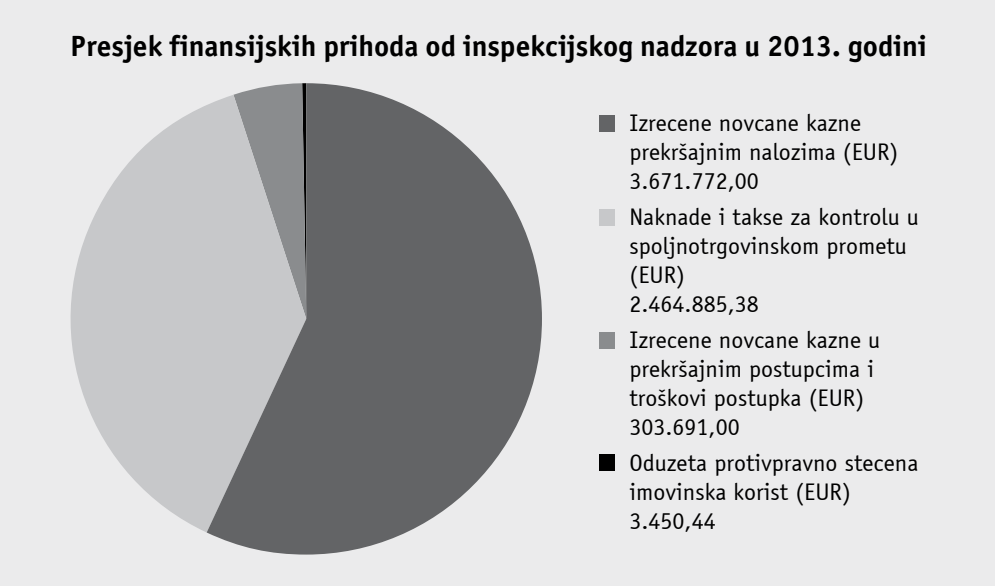
- tržište roba i usluga, sa akcentom na legalnost transakcija, bezbjednost roba i usluga, zaštitu potrošača, zaštitu prava intelektualne svojine i fer konkurenciju;
- zaštita zdravlja stanovništva sa akcentom na pružanje zdravstvenih usluga, proizvodnju i promet ljekova i namirnica;
- zaštita zdravlja životinja i bilja i primjena veterinarskih i fitosanitarnih mjera;
- zaštita životne sredine, voda, šuma, mineralnih sirovina i drugih prirodnih resursa;
- prostorno i urbanističko planiranje, građenje i stanovanje;
- elektroenergetika, termoenergetika, elektronske komunikacije i poštanska djelatnost, usluge informatičkog društva i metrologija;
- radni odnosi i zaštita na radu;
- igre na sreću i javne nabavke.

U tim oblastima, tokom 2013.godine, izvršeno je 138.558 inspekcijskih pregleda, od čega se 72.008 pregleda koja se odnose na unutrašnji nadzor po programu rada i inicijativama i u kojima je utvrđeno 33.443 nepravilnosti, a izdato je 14.671 prekšajnih naloga kojima su izrečene novčane kazne od ukupno 3.671.772,00 EUR. Dodatno, 303.691,00 EUR je prikupljeno kroz izrečene kazne u prekršajnim postupcima i troškovima postupka, zatim 2.464.885, 38 EUR kroz naknade i takse za kontrolu u spoljnotrgovinskom prometu i 3.540, 44 EUR kroz oduzetu protivpravno stečenu imovinsku korist. U konačnici, ukupni finansijski efekti inspekcijskog nadzora u 2013.godini bili su 6.443.798, 82 EUR[63]

61 Pojam inspekcijskog nadzora, Zakon o inspekcijskom nadzoru, član 3, "Sl. list RCG", br. 39/03 od 30.06.2003, "Sl. list Crne Gore", br. 76/09 od 18.11.2009, 57/11 od 30.11.2011,18/14 od 11.04.2014)

62 Izvještaj o radu Uprave za inspekcijske poslove za 2013.godinu

63 Izvještaj o radu Uprave za inspekcijske poslove za 2013. godinu



Takođe, inspekcije su tokom 2014.godine napravile 12.688 rješenja, podnijeli 687 zahtjeva za pokretanje prekšajnog postupka i 164 krivične prijave. Ukazivanja je bilo 15.375.

Iz ovog je vidljivo da su inspektori u domenu otklanjanja nepravilnosti u značajnom broju koristili represivna ovlašćenja (izricanje novčanih kazni, podnošenje zahtjeva za pokretanje prekršajnog postupka, podnošenje krivičnih prijava), a manje preventivne (ukazivanje na nepravilnosti i određivanje roka za njihovo uklanjanje, naredba za preduzimanje odgovarajućih mjera i radnji u roku koji odredi). Iz samog Izvještaja o radu Uprave se ne može jasno utvrditi koliko je izdato naloga za privremenu zabranu vršenja djelatnosti i drugih radnji.

a) NAČELA INSPEKCIJSKOG NADZORA

Zakon o inspekcijskom nadzoru propisuje da u vršenju inspekcijskog nadzora, inspektor treba da postupa u skladu sa propisanim načelima, i to: načelom preventivnosti, načelom srazmjernosti, načelom javnosti, načelom samostalnosti, načelom zaštite javnog interesa, načelom istine, i načelom supsidijarnosti. Praksa donosi i izvedene principe kao što su efikasnost i efektivnost, transparentnost, ujednačavanje prakse i sl.

Načelo preventivnosti nalaže da inspektor obavlja prvenstveno preventivnu funkciju, a preduzima upravne mjere i radnje kada se preventivnom funkcijom ne može obezbijediti svrha i cilj nadzora. Tokom 2013. godine za utvrđene nepravilnosti (33.443) izdato je ukupno 15.375 ukazivanja, što je manje od 50% preventivnog i edukativnog djelovanja inspektora na subjekte nadzora, u odnosu na broj utvrđenih nepravilnosti. Upravne mjere su se odnosile na inspekcijski nadzor u oblasti urbanizma, gdje je izrečeno ukupno 12 mjera i veterinarski inspekcijski nadzor gdje je izrečeno ukupno 904 upravne mjere.

Inspektor u vršenju nadzora mora preduzimati one mjere i radnje koje su srazmjerne učinjenim nepravilnostima, a ni slučajno izazvati nesrazmjeran teret za pravno ili fizičko lice, u odnosu na neko drugo, izricanjem blaže ili strožije kazne jer se ovim direktno krši *načelo srazmjernosti*, kojima bi trebalo da se na način povoljan za subjekta nadzora postigne cilj i svrha inspekcijskog nadzora. Utisak je da ovo načelo u praksi često izostaje i da građane/ke nerijetko upravo najviše boli nepravda koju trpe zbog nesrazmjernog postupanja inspekcijskih organa i osjećaja da se drugačije pristupa upravo onim subjektima koji imaju više političke ili ekonomske moći nego drugima.[64] To dovodi u pitanje postulate vršenja inspekcijskog nadzora čiji bi cilj trebao biti, da afirmiše jednake uslove poslovanje zasnovane na poštovanju propisa.

Putem web sajta Uprave za inspekcijske poslove (www.uip.gov.me), ali vezanih sajtova (www.ti.gov.me, www.potrosac.me), zatim Call centra (080 555 555), email-a: (prijaveŽuip.gov.me), kao i drugih telefona i e-mail adresa objavljenih na ovim sajtovima, ostvaruje se *načelo javnosti* i otvorenosti Uprave prema javnosti kako u informacijama o radu same Uprave, utvrđenim generalnim nepravilnostima u postupku inspekcijskog nadzora, tako i u instrumentima za prijavljivanje nepravilnosti inspekcijskim jedinicama. Međutim, po mišljenju građana/ki koji su se obratili CGO-u, gotovo da ne postoji mogućnost dobijanja informacija o postupanjima u konkretnim slučajevima, mimo onih informacija koje su dostupne na ovim adresama, a kojih je suštinski još uvijek malo ili se mogu dobiti šture informacije. Ovo je u direktnoj suprotnosti sa jednim od postulata kojih se inspektori/ke moraju držati prilikom vršenja nadzora – «inicijative građana i drugih subjekata prioritetno rješavati – svaka inicijativa primljena na bilo koji od načina i u bilo kojoj drugoj formi (neposredno, pismeno, telefonom) evidentira se i odmah dostavlja na obradu inspektoru; inspektor

64 Komunikacije aktivista/kinja CGO-a sa građanima/kama tokom šest uličnih akcija u Podgorici u periodu mart-maj 2014.godine, kao i komunikacijama sa građanima/kama koji su se javljali na SOS liniju CGO-a u periodu oktobar 2013.godine – maj 2014.

je dužan o rezultatima nadzora obavijestiti podnosioca inicijative».[65] No, u Izvještaju o radu Uprave za 2013. godinu navodi se da je Uprava prema nadležnim organima inicirala izmjene i dopune jednog broja zakona i odgovarajućih podzakonskih akata (npr. Zakon o inspekcijskom nadzoru, Zakon o prekršajima, Zakon o uređenju prostora i izgradnji objekata, Zakon o zabrani nelegalnog vršenja djelatnosti, Zakon o turizmu, Pravilnik o evidenciji nabavke i prodaje robe i pružanju trgovinskih usluga, Pravilnik o načinu vođenja evidencije inspekcijskog nadzora itd.). Inspektori/ke su ukazali na činjenicu da nijesu konsultovani prilikom izrade novih zakona koji regulišu i njihov posao, što rezultira da zakoni koji se u tom dijelu usvajaju najčešće ne budu dovoljno racionalni i efikasni, odnosno nijesu prilagođeni stanju u praksi.[66] Tako su se očekivanja da će se novom organizacijom inspekcijskih tijela unaprijediti zakonska rješenja koja su se nalazila u više pravnih akata pokazala za sada nerealnim.

Sukob nadležnosti, nedostatak tehničkih sredstava za rad, izdavanje odobrenja/naređenja od rukovodstva Uprave za inspekcijske poslove imaju negativan uticaj na opšti položaj inspekcija u sistemu, a samim tim i na opštu samostalnost inspektora koja je nužna za njihovo obavljanje funkcija u vršenju inspekcijskog nadzora u okviru prava i dužnosti koje su utvrđene zakonom i drugim propisima, što direktno utiče na neostvarivanje *načela samostalnosti* inspektora. Dodatno, činjenica da su inspektori/ke takođe imali u jednom periodu tzv. kovertirane ostavke, kao i da podliježu reizbornosti, da nemaju adekvatnu zaštitu tokom obavljanja svojih zadataka ozbiljno dovodi u pitanje ovo načelo u praksi[67].

Dosljedno poštovanje *načela zaštite javnog interesa* dovelo bi do povoljnije poslovnog ambijenta i atmosfere saradnje države sa poslodavcima, što bi vodilo i većem stepenu pravne sigurnosti privrednih subjekta i ukupne zaštite javnog interesa, kao i interesa pravnih i fizičkih lica kada je to u skladu sa javnim interesom. Sam postupak nadzora se pokreće i vodi po službenoj dužnosti i može biti pokrenut od bilo kojeg lica. No, problemi se javljaju zbog prioriteta u postupanju i nejednakog postupanja inspekcija u praksi, i često nejasnog javnog interesa u nekim postupcima. Takođe, činjenica da se određena područja uzimaju kao prioritet, kao što je to bilo tokom 2013. godine kada je riječ o zaštiti potrošača, može voditi zanemarivanju i drugih važnih oblasti[68].

65 Izvještaj o radu Uprave za inspekcijeske poslove za 2013. godinu

66 Fokus grupe sa inspektorima koje je sproveo CGO tokom oktobra i novembra 2013. godine

67 Fokus grupe sa inspektorima koje je sproveo CGO tokom oktobra i novembra 2013.godine

68 U ovoj oblasti tržišna inspekcija je tokom 2013.godine izvršila 9.726 pregleda, Izvještaj o radu Uprave za inspekcijske poslove za 2013.godinu

Načelom istine je proklamovano da inspektor, po službenoj dužnosti, utvrđuje činjenično stanje i izvodi dokaze u postupku nadzora, ali i da subjekat nadzora, može da predlaže i podnosi dokaze u cilju utvrđivanja potpunog i pravilnog činjeničnog stanja. U tom pravcu, inspektori moraju voditi inspekcijski pregled na način da se u što manjoj mjeri ometa rad subjekta nadzora (provjera podataka i dokumentacije neophodne za utvrđivanje materijalne istine u cilju donošenja zakonite odluke u postupku nadzora). Navodi građana/ki koji su se obraćali CGO-u ukazuju da oni koji ne poznaju dovoljno zakon i načela poput ovog nijesu od strane inspektora/ki poučeni na adekvatan način, ali i da su inspektori/ke djelujući kroz novi sistem u mješovitim timovima znali praktično blokirati njihov rad tokom postupka nadzora.

Načelom supsidijarnosti stvara se normativna osnova za donošenje posebnih propisa u vezi regulisanja pojedinih pitanja koja nijesu uređena Zakonom o inspekcijskom nadzoru ili posebnim propisom. U 2013. godini, shodno mjeri 2.1.6.1. predviđenoj AP-om za Poglavlje 23, od strane Uprave za inspekcijske poslove inicirana je samo izmjena i dopuna jednog zakona, i to Zakona o javnim nabavkama, što je nedovoljno shodno potrebama i ovlašćenjima inspektora. Inicijativa je bila usmjerena na izmjenu članova 148 Zakona o javnim nabavkama, i odnosila se na blagovremenost zaključivanja i pravilnost sprovođenja ugovora o javnoj nabavci, kao i na član 149 ovog Zakona, kojim su precizirane obaveze naručioca.[69] No, u Izvještaju o radu Uprave za 2013. godinu navodi se da je Uprava prema nadležnim organima inicirala izmjene i dopune jednog broja zakona i odgovarajućih podzakonskih akata (npr. Zakon o inspekcijskom nadzoru, Zakon o prekršajima, Zakon o uređenju prostora i izgradnji objekata, Zakon o zabrani nelegalnog vršenja djelatnosti, Zakon o turizmu, Pravilnik o evidenciji nabavke i prodaje robe i pružanju trgovinskih usluga, Pravilnik o načinu vođenja evidencije inspekcijskog nadzora itd.). Inspektori su ukazali na činjenicu da nijesu konsultovani prilikom izrade novih zakona koji regulišu i njihov posao, što rezultira da zakoni koji se u tom dijelu usvajaju najčešće ne budu dovoljno racionalni i efikasni, odnosno nijesu prilagođeni stanju u praksi[70]. Tako su se očekivanja da će se novom organizacijom inspekcijskih tijela unaprijediti zakonska rješenja koja su se nalazila u više pravnih akata pokazala za sada nerealnim.

69 Informaciju je CGO dobio od Uprave za inspekcijske poslove po osnovu Zahtjeva za slobodan pristup informacijama

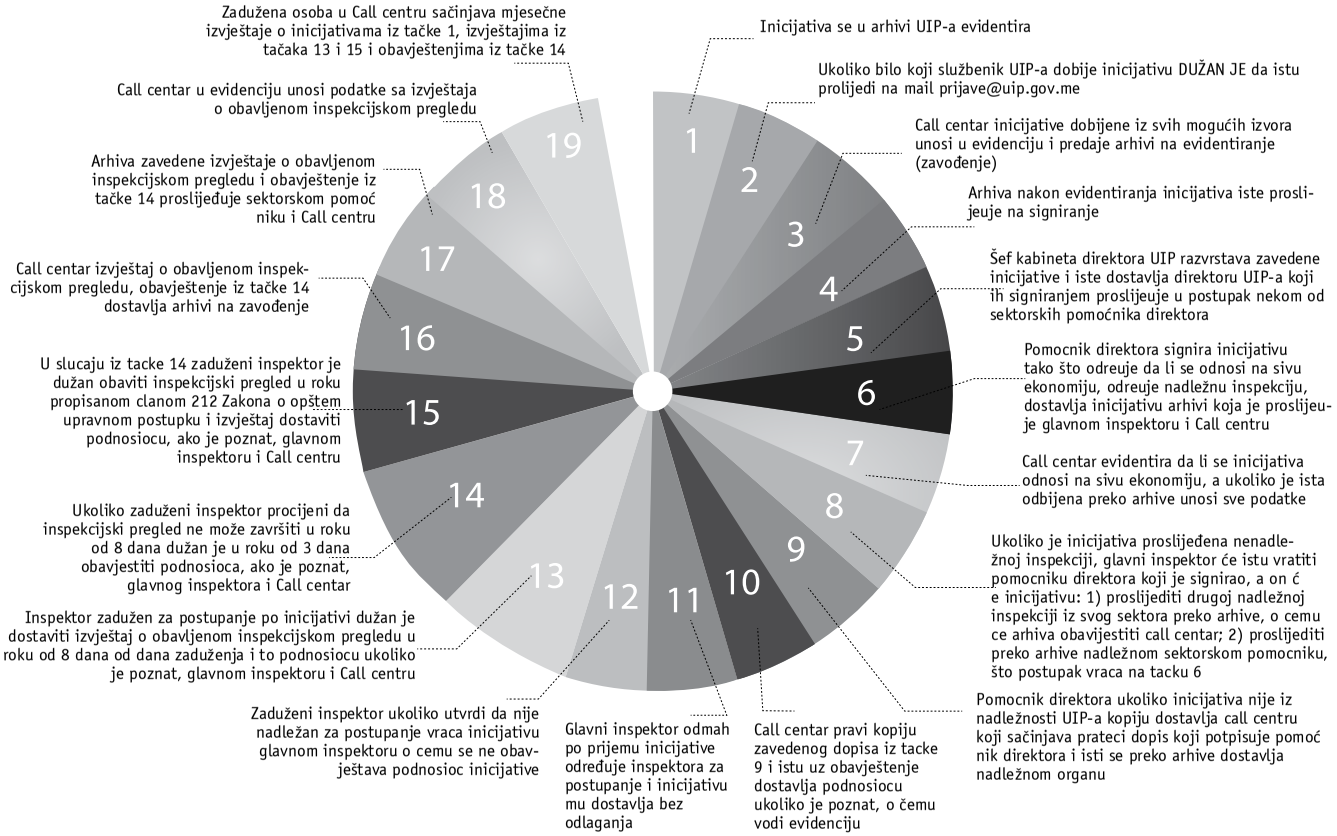
70 Fokus grupe sa inspektorima koje je sproveo CGO tokom oktobra i novembra 2013.godine

Praksa ukazuje na očigledne propuste u smislu efektivnosti internih pravila i procedura, što direktno utiče na kvalitet rada, kao i poštovanje načela i principa. Prvo, iz internih procedura[71] se ne vidi kriterijum po kojem se inicijative prihvataju i odbacuju, iako je cilj tih procedura bio da se uspostavi sistem praćenja prijema i postupanja inspektora po prijavama i inicijativama za sprovođenje inspekcijskog pregleda. Ove procedure propisuju da svaki službenik Uprave kada dobije inicijativu istu mora proslijediti na jedinstveni mail, odakle arhiva zavodi inicijative i prosljeđuje ih na signiranje. Šef kabineta direktora Uprave razvrstava inicijative i prosljeđuje ih direktoru, koji ih dalje signiranjem prosljeđuje u postupak nekom od sektorskih pomoćnika direktora, koji ih dalje preusmjeravaju glavnim inspektorima, a ovi inspektorima i sve se evidentira kroz arhivu. Ova vrsta koncentracije moći kabineta direktora Uprave prevazilazi okvire funkcionalne subordinacije, a otvara i prostor za uticaj, jer su ključne odluke koncentrisane u kabinetu direktora. Dodatno, čitava procedura je nepotrebno administrativno opterećena, što čitav postupak značajno usporava. Takođe, ne postoji jasna obaveza da se daju objašnjenja za nepostupanje po inicijativama, a imajući u vidu da je takvih odbačaja u 2013.godini bilo, u dijelu inicijativa koje su stigle putem Call centra, skoro 90% (1.854 inicijative su odbačene od ukupno primljenih 2.094) ovo predstavlja pitanje zabrinutosti i svakako nije ohrabrenje građanima/kama da se obraćaju Upravi kao faktički prvoj adresi kojoj mogu prijaviti brojne nepravilnosti.

Dodatno, problem internih procedura je mogućnost rješavanja nadležnosti. Naime, što se dešava ako je inicijativa proslijeđenja nenadležnom inspektoru? Osim što postoji obaveza da se svako upućivanje inicijative, bilo da se šalje ili se vraća zbog utvrđene nenadležnosti arhivski evidentira, ostaje nejasno što se dalje dešava, ko odlučuje o nadležnosti u to slučaju.

71 Interna procedura za praćenje inicijativa koje stižu u Upravu za inspekcijske poslove, odobrena od strane Vlade Crne Gore

Interna procedura za pracenje inicijativa koje stižu u Upravu za inspekcijske poslove



b) OBAVEZE I OVLAŠĆENJA INSPEKTORA

Inspektori tokom vršenja inspekcijskog nadzora imaju *obavezu* da: razmotre inicijativu za pokretanje postupka inspekcijskog nadzora i o tome obavijeste podnosioca inicijative; obavijeste odgovorno lice subjekta nadzora o početku obavljanja inspekcijskog nadzora (osim ako smatraju da bi obaviještenje umanjilo efikasnost inspekcijskog nadzora); ukažu subjektu nadzora na prava koja može koristiti u postupku inspekcijskog nadzora; sačine zapisnik o izvršenom inspekcijskom nadzoru; vode evidencije o izvršenim pregledima, kao i druge propisane evidencije; čuvaju državnu, službenu, poslovnu ili drugu tajnu; postupaju zakonito, blagovremeno i u skladu sa etičkim kodeksom državnih službenika[72].

Zakonska ovlašćenja inspektora u inspekcijskom nadzoru su prilično široka, pa tako oni imaju pravo da: pregledaju objekat i prostorije, zemljište, opremu i uređaje, sredstva rada i druge predmete, proizvode koji se stavljaju u promet, robu u prometu, vršenje prometa robe i pružanje usluga, poslovne knjige, evidencije i registre, ugovore, javne isprave i drugu poslovnu dokumentaciju; utvrđuju identitet subjekta nadzora i drugih lica; uzimaju izjave od subjekta nadzora i drugih lica; uzimaju uzorke koji su potrebni za utvrđivanje činjeničnog stanja; narede preduzimanje odgovarajuć ih mjera i radnji radi obezbjeđenja vršenja nadzora; privremeno oduzme dokumentaciju, predmete i druge stvari koje su neophodne radi utvrdjivanja činjeničnog stanja; zabrane vršenje određenih radnji; obezbijede izvršenje naloženih mjera; preduzimaju i druge propisane mjere kojima se obezbjeđuje vršenje inspekcijskog nadzora.[73]Uz to, posebnim zakonima koji regulišu oblast za koju su nadležni, inspektorima mogu biti data i neka druga ovlašćenja.

U sprovođenju inspekcijskog nadzora, tokom 2013. godine, akcenat je stavljen na: planiranje inspekcijskih nadzora na osnovu analize rizika; preventivno i korektivno djelovanje; zajedničke kontrole od strane različitih inspekcija u cilju racionalizacije korišćenja resursa i efikasnosti nadzora, ali i smanjenje opterećenja za subjekte kontrole; uspostavljavanje detaljnih i konzistentnih procedura, koje pokrivaju svaki korak u inspekcijskim postupcima (standardizovani obrasci zapisnika o inspekcijskom pregledu, rješenja o otklanjanju nepravilnosti, prekršajnog naloga, zahtjeva za

72 Zakon o inspekcijskom nadzoru, član 13, "Sl. list RCG", br. 39/03 od 30.06.2003, "Sl. list Crne Gore", br. 76/09 od 18.11.2009, 57/11 od 30.11.2011,18/14 od 11.04.2014

73 Zakon o inspekcijskom nadzoru, član 13, "Sl. list RCG", br. 39/03 od 30.06.2003, "Sl. list Crne Gore", br. 76/09 od 18.11.2009, 57/11 od 30.11.2011,18/14 od 11.04.2014

pokretanje prekršajnog postupka); izvještavanje o inspekcijskim pregledima putem standardizovanih obrazaca.[74]

Nova organizacija nije ispunila očekivanja inspektora da će olakšati administrativni teret koji nose, tako da oni imaju obavezu da pored redovnih inspekcijskih aktivnosti rade i administrativne poslove i pored postojanja Službe za opšte poslove u okviru Uprave. Inspektori su u obavezi da pišu dnevne, nedjeljne i mjesečne izvještaje, kao i da prate status prekršajnih naloga koje su pokrenuli, da odgovaraju na svu vrstu pošte koja im bude dostavljena, da vode iscrpnu komunikaciju sa subjektima nad kojima je izvršen nadzor, a sa uspostavljanjem besplatnog call centra – i da prate i primaju sve prijave koje stižu na adresu UIP - što sve dodatno ograničava njihovo efektivno vrijeme za inspekcijski nadzor.[75]

c) SVRHA INSPEKCIJSKOG NADZORA

Uredba propisuje širok djelokrug rada Uprave, čiji je opis poslova u nadležnosti 28 inspekcija što bi trebalo dovesti do veće efikasnosti vršenja kontrole, pojačanja aspekata ekonomičnosti nadzora, spriječavanja sukoba nadležnosti, postizanja adekvatnije međusobne saradnje inspekcijskih organa, povećanja profesionalnosti inspektora i suzbijanja eventualnih elemenata korupcije, kao i poboljšanje saradnje inspekcija sa drugim organima u vršenju inspekcijskog nadzora. Unutrašnja organizacija bi trebala da obezbjedi vršenje zajedničkih inspekcijskih pregleda, čime se povećava efikasnost inspekcijskog nadzora, a smanjuju se troškovi vezani za njegovo sprovođenje.

Ovo ukazuje da bi inspekcije morale u kontinuitetu doprinositi uspostavljanju ili povećanju nivoa zakonitosti u oblastima za koje je nadležna Uprava za inspekcijske poslove (vidjeti detaljnie str 31-34).

U praksi, svrha inspekcijskog nadzora se više vidi u represiji nego u prevenciji, što pokazuju podaci iz godišnjeg izvještaja, kao i redovnih medijskih izvještaja gdje se u prvi plan ističu pokazatelji represivnog dijelovanja inspekcija. Preventivne mjere ili bolje reći kapacitet inspekcija da preventivno dijeluju su sekundarne prirode i oni se rijetko pominju. Građani/ke takođe vide uglavnom represivnu stranu, što dugoročno nije dobro rješenje, a posebno imajući u vidu selektivnost inspekcijskog djelovanja na koju građani/ke ukazuju. Takođe, u javnim nastupima zvaničnici Uprave navode

74 Izvještaj o radu Uprave za inspekcijske poslove za 2013. godinu

75 Fokus grupe sa inspektorima koje je sproveo CGO tokom oktobra i novembra 2013.godine

podatak o izdatih 356 rješenja o rušenju i podnešenih 117 krivičnih prijava u 2013.godini "a sve u cilju očuvanja kvaliteta životnog prostora, ali i njegove valorizacije imajući u vidu da je Crna Gora zbog atraktivnosti prirodnog okruženja sve interesantnija destinacija za investitore"[76]. Upravo su čitavi gradovi, poput Budve, primjer da takvih rušenja nema tamo gdje se ponajviše uništava kvalitet životnog prostora, i gdje postoji najviše osnova sumnje u upitnost zakonitosti gradnje. Dodatno, u godišnjim izvještajima, pa i redovnim medijskim izvještajima, u prvi plan se ističu pokazatelji represivnog dijelovanja inspekcija. Preventivne mjere ili bolje reći kapacitet inspekcija da preventivno dijeluju su sekundarne prirode. Važno je navesti da se u Upravi počinje prepoznavati potreba vršenja inspekcijskog nadzora sa što manje "ometanja" subjekta nadzora. Ovdje se krije osnova budućeg, moguće u značajnijoj mjeri preventivnog dijelovanja inspekcija.

3. INSPEKCIJE KAO MEHANIZAM OTKRIVANJA I PROCESUIRANJA KORUPCIJE

a) INTEGRITET INSPEKTORA

U osvrtu na institut integriteta inspektora/ki, prvo treba ukazati na položaj samih inspektora/ki u sadašnjem sistemu Uprave za inspekcijske poslove, naročito imajući u vidu promjenu koja se u odnosu na inspekcijska tijela desila osnivanjem Uprave za inspekcijske poslove i objedinjavanjem velikog broja inspekcija u okviru jednog centralizovanog organa.

Kroz tri sprovedene fokus grupe sa inspektorima, predstavnici CGO-a su bili u prilici da direktno, od samih inspektora/ki, saznaju što oni misle i kako gledaju na svoj položaj i svoj rad, kao i koji su to problemi sa kojima se suočavaju.

Nalazi tih fokus grupa ukazuju da uslovi za rad u većini inspekcija uglavnom nijesu na zadovoljavajuć em nivou, posebno kad su u pitanju tehničko-logistička pitanja, poput službenih vozila, računara i prateće opreme. Dakle, sve ono što ne bi trebalo da bude u nadležnosti inspektora/ke već opšte službe čiji je zadatak da obezbijedi potrebnu logistiku koja bi olakšala posao inspektorima/kama i pružila im podršku u tom tehničkom aspektu. Ovaj problem je prepoznala i sama Uprava za

76 http://portalanalitika.me/ekonomija/tema/137898-od-inspekcije-u-budet-65-miliona-eura-

inspekcijske poslove u svom godišnjem Izvještaju o radu za 2013.godinu: *„Evidentan je i problem voznog parka, tj. nedovoljan broj službenih vozila, visok stepen amortizacije postojećih, što zajedno sa nedostatkom sredstava za gorivo onemogućava veću mobilnost inspektora na terenu*."[77] Upravo su neadekvatne uslove inspektori/ke naveli kao najčešći razlog što kvalitetni i stručni ljudi napuštaju posao i odlaze, ali i što onima koji ostaju značajno otežava rad.

Radno vrijeme, takođe, predstavlja jedan od problema, s obzirom da su uprkos formalnom radnom vremenu (od 9h do 17h), inspektori/ke u obavezi da budu dostupni nerijetko u bilo koje doba dana, uključujući vršenje inspekcijskog nadzora u kasnim noćnim satima, za vrijeme vjerskih i ostalih praznika, vikendima, tokom ljetnjeg odmora, i sl. Istovremeno, oni imaju samo jedan dan odmora u nedjelji, što je predviđeno i internim aktima Uprave.[78]

Uprkos odredbi da: "*Državni službenik, odnosno namještenik ima pravo na napredovanje i stručno usavršavanje. Napredovanje zavisi od stručnih i radnih sposobnosti, kompetencija, kvaliteta rada i ostvarenih rezultata rada*"[79], inspektori/ki su ukazali na činjenicu da se u njihovom radu ista ne sprovodi u dovoljnoj mjeri, te da nemaju mogućnost za napredovanje, niti da postoji adekvatan sistem nagrađivanja. Kad je stručno usavršavanje u pitanju, inspektori/ke imaju obavezu pohađanja najmanje šest obuka godišnje. Međutim, najčešće pored inspekcijskih i administrativnih poslova nijesu vremenski u mogućnosti da to ispune, a oni koji uspjevaju u tome suočeni su sa dodatnim izazovima. Naime, u slučaju ako je inspektor/ka iz sjevernog ili južnog dijela države, dolaze u situaciju da moraju sami platiti putne troškove radi učešća na nekoj obuci jer se sve one organizuju u Podgorici. Inspektori/ke iz Podgorice su u tom dijelu u prednosti, i većina njih može prisustvovati obukama, a naročito onima koje organizuje Uprava za kadrove. Ipak, kad su u pitanju obuke sa učešć em stranih predavača, inspektori/ke su naveli da najčešće nemaju mogućnosti da stečena znanja primijene u praksi, s obzirom da predstavljeni materijal ne odgovara stanju u Crnoj Gori, što ukazuje na neusklađenost obuka koje im se nude.

Zabrinjavajuća je i činjenica da inspektori/ke u vršenju inspekcijskog nadzora na terenu, nijesu dovoljno obezbijeđeni i zaštićeni. Naime, inspektori/ke mogu pismeno podnijeti zahtjev za asistenciju, odnosno da ih prati policijsko lice tokom nadzora, ukoliko drugačije ne mogu izvršiti

77 Izvještaj o radu Uprave za inspekcijske poslove za 2013. godinu

78 Dinamički plan aktivnosti koordinacionog tima za praćenje turističke sezone 2014.

79 Zakon o državnim službenicima i namještenicima, Službeni list Crne Gore, broj 39/2011, član 11

inspekcijski pregled. Zakon o inspekcijskom nadzoru propisuje dužnost saradnje policije: "*Na poziv inspektora, policija je dužna odmah da preduzme mjere kojima se inspektoru obezbjeđuje nesmetano obavljanje inspekcijskog pregleda*."[80] Međutim, na odgovor se mora čekati nekoliko dana, što je neodgovarajuće kad se neka inspekcija mora hitno sprovesti. Vezano s tim, inspektori/ke su mišljenja da Uprava nije dovoljno afirmisana, i da nije dovoljno urađeno na institucionalnom autoritetu, s obzirom da su inspektori/ke ti koji pojedinačno, svaki za sebe, grade svoj autoritet. Tako, ukoliko se desi da prilikom vršenja inspekcijskog nadzora, inspektor/ka dožive ozbiljnu neprijatnost ili fizički napad, oni su praktično prepušteni sami sebi, čak stavljajući po strani prijetnje koje mogu dobiti od nadziranih subjekata. Inspektor/ka može podnijeti krivičnu prijavu, nakon što se takav događaj desi u ličnom svojstvu, a Uprava se ne pridružuje krivičnom gonjenju što njihovu poziciju čini ranjivom. S druge strane, ako neko lice podnese krivičnu prijavu protiv inspektora/ke, on/a bivaju automatski suspendovani.

Kad je u pitanju vršenje inspekcijskih nadzora, inspektori/ke se suočavaju sa velikim obimom posla, s obzirom da iz jednog centra pokrivaju cijelu zemlju. Nedostatak dovoljnog broja inspektora je, takođe, problem.[81] Ovdje dolazi do izražaja organizacija inspekcijskih tijela u odnosu na administrativno uređenje države, odnosno, da li je realnije i efikasnije uspostaviti inspekcijsko tijelo na nivou regija, sa svojim sjedištima u tim regijama i glavnim inspektorom za svaku regiju, čime bi se moguć e olakašalo vršenje inspekcijskih poslova. Ovo se pitanje, međutim, i dalje formalno ne postavlja.

Inspektori/ki su iskazali i nezadovoljstvo lošom komunikacijom između Uprave i svojih inspekcija, kao i odnosom sa Službom za opšte poslove koja, kako navode, mahom ne pruža dovoljnu podršku. Problem koji postoji sa komunikacijom moguće je objasniti i samom fizičkom organizacijom Uprave. Naime, i pored formalnog objedinjavanja, zapošljeni u Upravi su samo u Podgorici, kao sjedištu Uprave, smješteni na 12 različitih lokacija, a Uprava nema svoj sopstveni poslovni prostor. U godišnjem Izvještaju o radu Uprave za 2013.godinu, prepoznat je i ovaj problem i navedeno da je "*objedinjavanje inspekcija na jednom mjestu, što bi sobom donijelo i jedan šalter za prijem pismena, neophodan uslov za jače povezivanje inspektora u cilju bržeg ujednačavanja metoda rada i neposrednije*

80 Zakon o inspekcijskom nadzoru, Službeni list RCG, br. 39/03 od 30.06.2003, br. 76/09 od 18.11.2009, 57/11 od 30.11.2011, član 29

81 U svom Izvještaju o radu za 2013.godinu, Uprava za inspekcijske poslove je ukazala i na problem kadrovskog deficita i najavila pripremanje novog akta o sistematizaciji koji će unaprijediti administrativne kapacitete Uprave

razmjene iskustava, ali i za smanjenje materijalnih troškova i jednostavnije telekomunikaciono umrežavanje."[82]

Kao najveći problem, inspektori/ke su istakli institut reizbornosti. Mandat inspektora/ki je ograničen na 4 odnosno 7 godina, a ukoliko inspektoru/ki prestane radni odnos, on/a čekaju da budu raspoređeni na drugo radno mjesto koje ne postoji uvijek. Kad se aktivira institut reizbornosti, inspektori/ke prolaze kroz razne nivoe testiranja i kontrole kako bi bili ponovno izabrani na svoja radna mjesta. Njihovo je uvjerenje da je propis o reizbornosti diskriminatoran. Dodatno, tokom ovih fokus grupa, inspektori/ke su naveli da su morali da kovertiraju što je svakako bio dodatni pritisak na njihov rad.

Zakonom o državnim službenicima i namještenicima, u dijelu *Postavljanje inspektora i ovlašćenog službenog lica,* određeno je da se inspektori/ke postavljaju na 7 godina. Nakon isteka tog mandata, raspisuje se konkurs za popunjavanje radnog mjesta. Pravo prijavljivanja na konkurs imaju i javni službenici/e zaposljeni u tom tijelu, u ovom slučaju Upravi za inspekcijske poslove. Nakon pristiglih prijava, organ za upravljanje kadrovima sačinjava listu kandidata/kinja koji ispunjavaju konkursne uslove. Kako bi izvršio provjeru priloženih podataka organ za upravljanje kadrovima će kontaktirati prethodnog poslodavca kandidata/tkinje. Međutim: *„Ako je kandidat državni službenik, odnosno namještenik, podaci o njegovim stručnim i radnim kvalitetima utvrđuju se uvidom u evidenciju o državnim službenicima i namještenicima koju vodi organ za upravljanje kadrovima (u daljem tekstu: Centralna kadrovska evidencija)*." – dakle, podaci o sposobnostima službenika, u ovom slučaju inspektora, morali bi da se nalaze u evidenciji, za svakog inspektora i inspektorku pojedinačno. Ono što zakon dalje propisuje jeste da se izvrši provjera sposobnosti za vršenje poslova radnog mjesta za koje je raspisan konkurs. Komisiju koja vrši provjeru sposobnosti čine predstavnik organa za upravljanje kadrovima, predstavnik državnog organa u kojem se zasniva radni odnos i stručnjaci za provjeru onih vještina koje se traže za to radno mjesto. Dakle, inspektori/ke moraju proći provjeru sposobnosti, koje variraju u najširem mogućem smislu, i to od poznavanja Zakona o inspekcijskom nadzoru pa sve do psihološkog testa, što je iscrpljujuće a nerijetko i uznemiravajuće. Nakon što prođu provjeru sposobnosti, i sve testove iz tog dijela, oni nemaju garanciju da će biti reizabrani, s obzirom da organ za upravljanje kadrovima sačinjava listu od 5 najboljih kandidata/kinja među kojima mogu, ali i ne moraju, da se nađu inspektori/ke koji su do tada obavljali taj posao.[83] S obzirom da provjera sposobnosti i izbor najboljeg kandidata/kinje traju prilično dugo, nerijetko

82 Izvještaj o radu Uprave za inspekcijske poslove za 2013. godinu

83 Zakon o državnim službenicima i namještenicima, Službeni list Crne Gore, broj 39/2011.

i mjesecima, inspektori/ke za čije radno mjesto je raspisan konkurs dolaze u situaciju da i dalje obavljaju taj posao formalno nelegalno, jer nijesu reizabrani a istekao im je mandat, a pored svega toga moraju da strijepe da li će na kraju biti ponovo izabrani. Jednoglasno mišljenje iskazano na svim fokus grupama od strane inspektora/ki bilo je da institut reizbora za inspektore/ke predstavlja poniženje jer čini njihovu poziciju stalno nesigurnom, a svaki put prolaze proceduru kao da se prvi put prijavljuju, čime se poništavaju njihovi prethodni učinci.

Kad se na to doda sve prethodno navedeno, obaveze i zahtjevi koji se sa raznim sadržajem upućuju inspektorima/kama, nemogućnost napredovanja i nepostojanje sistema nagrađivanja, mala primanja, nezaštićenost na terenu, nedovoljna motivacija - postavlja se pitanje koliko su inspektori/ke u stanju da budu nezavisni i objektivni u vršenju svog posla, odnosno – koliki je zapravo prostor koji predstavlja rizike za pojavu korupcije u inspekcijskim organima?

Svaka državna ustanova, uključujući i Upravu za inspekcijske poslove, ima obavezu da donese Plan integriteta, „*na osnovu procjene podložnosti određenih radnih mjesta za nastanak i razvoj korupcije i drugih oblika pristrasnog postupanja državnih službenika, odnosno namještenika na određenim poslovima*“, a koji sadrži „*mjere kojima se sprječavaju i otklanjaju mogućnost za nastanak i razvoj korupcije, u skladu sa smjernicima organa uprave nadležnog za antikorupcijske poslove*“.[84] Plan integriteta je, dakle, dokument koji predstavlja sopstvenu procjenu institucije koja ga donosi o njenoj izloženosti rizicima za pojavu korupcije i sličnih nepravilnosti. Donosi se sa ciljem da se unaprijedi ukupan integritet jedne institucije, ali i da se uspostave mehanizmi koji će unaprijediti rad institucije kroz jačanje odgovornosti, povećanje transparentnosti, kontrolisanje diskrecionih ovlašćenja, osnaživanje etike i uvođenje efikasnog sistema nadzora i kontrole. Kad se ima u vidu specifičnost Uprave za inspekcijske poslove kao organa, jasno je da zahtjevi koje postavlja Plan integriteta moraju biti višestruko produbljeni i srazmjerni ovlašćenjima[85] koje inspektori imaju, ali i specifičnosti njihovog posla.

84 Zakon o državnim službenicima i namještenicima, Službeni list Crne Gore, broj 39/2011, član 68

85 „*U vršenju inspekcijskog nadzora inspektor ima ovlašćenja da: pregleda: objekte i prostorije, zemljište, opremu i uređaje, sredstva rada i druge predmete, proizvode koji se stavljaju u promet, robu u prometu, vršenje prometa robe i pružanje usluga, poslovne knjige, evidencije i registre, ugovore, javne isprave i drugu poslovnu dokumentaciju; utvrđuje identitet subjekta nadzora i drugih lica; uzima izjave od subjekta nadzora i drugih lica; uzima uzorke koji su potrebni za utvrđivanje činjeničnog stanja; naredi preduzimanje odgovarajućih mjera i radnji radi obezbjeđenja vršenja nadzora; privremeno oduzme dokumentaciju, predmete i druge stvari koje su neophodne radi utvrđivanja činjeničnog stanja; zabrani vršenje određenih radnji; obezbijedi izvršenje naloženih mjera; preduzima i druge propisane mjere kojima se obezbjeđuje vršenje inspekcijskog nadzora*.“ Zakon o inspekcijskom nadzoru, Službeni list RCG, br. 39/03 od 30.06.2003, br. 76/09 od 18.11.2009, 57/11 od 30.11.2011, član 14

b) ODNOS INSPEKCIJA SA KLJUČNIM ORGANIMA U BORBI PROTIV KORUPCIJE

Uprava za inspekcijske poslove se u postojećem crnogorskom antikoruptivnom okviru ne prepoznaje kao posebno važan organ, pa nema ni svog predstavnika u Nacionalnoj komisiji za sprovođenje strategije za borbu protiv korupcije i organizovanog kriminala. Dodatno, nijesu bili zastupljeni ni u Radnoj grupi koja je radila na nacrtu Zakona o sprečavanju korupcije, za koji se očekuje da sistemski uredi ovu oblast.

Ipak, Uprava razvija posebnu saradnju sa pojedinim organima u oblasti borbe protiv korupcije među kojima u svom izvještaju o radu za 2013.godinu izdvaja Upravu za antikorupcijsku inicijativu, Upravu za javne nabavke, Državnu komisiju za kontrolu postupaka javnih nabavki, itd.

Uprava za inspekcijske poslove učestvuje i u projektu „*Uključivanje građana u borbu protiv sive ekonomije*" a posredstvom njega u projektu „*Budi odgovoran*" preko čijeg sajta (http://www.budiodgovoran.me) Uprava za inspekcijske poslove prima prijave ili inicijative građana/ki. Projekat obuhvata aktivnosti Uprave za inspekcijske poslove, Poreske uprave i tima „Budi odgovoran", a finansira ga UNDP sa ciljem da se građanima/kama omogući lako i pravovremeno prijavljivanje nepravilnosti vezanih za sivu ekonomiju.[86]

U okviru projekta „*Jačanje sistema javnih nabavki u Crnoj Gori*", koji je finansirala Delegacija EU u Crnoj Gori, bilo je predviđeno uspostavljanje nove inspekcijske službe u skladu sa odredbama Zakona o javnim nabavkama, a u cilju razvoja kapaciteta u oblasti javnih nabavki, jačanje institucionalnog okvira, objedinjavanja javnih nabavki i sprovođenja postupka javne nabavke od strane drugog naručioca. Nosilac projekta je bila Uprava za javne nabavke.[87] Delegacija Evropske unije je putem ovog projekta pružila podršku daljem razvoju sistema javnih nabavki, a u cilju poboljšanja efikasnosti, konkurentnosti i transparentnosti u sistemu javnih nabavki.[88] U tom smislu, Odsjek za inspekciju

86 Izvještaj o radu Uprave za inspekcijske poslove za 2013, str. 5. i 104.

87 Detaljnije o tome u Izvještaju o realizaciji mjera definisanih Akcionim planom pripremljenim u skladu sa principima Inicijative Partnerstvo otvorenih vlada. Izvještaj dostupan na: https://www.google.me/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CC0QFjAB&url=http%3A%2F%2Fwww.srr.gov.me%2FResourceManager%2FFileDownload.aspx%3Frid%3D143652%26rType%3D2&ei=WZFPU5K8F8uBywOByoH4BQ&usg=AFQjCNENblVh_JY6I5EsvBODRtjqAT3VZw&bvm=bv.64764171,d.bGQ

88 Više o tome na: http://www.ujn.gov.me/wp-content/uploads/2012/12/Jacanje.pdf

za javne nabavke počeo je sa radom u novembru 2013. godine u okviru Sektora za zaštitu tržišta i ekonomije, igara na sreću i javne nabavke Uprave za inspekcijske poslove Crne Gore.
U Izvještaju o radu za 2013, Uprava za inspekcijske poslove navodi i napore u dijelu uvođenja određenih novih aplikacija i sistema, a jedan od njih je i podnošenje IOPPD obrasca[89], u okviru čega Uprava sarađuje sa Poreskom upravom. Ova saradnja se tiče povezivanja i korišćenja informacionih sistema drugih državnih organa, pri čemu Uprava za inspekcijske poslove koristi veb aplikaciju Poreske uprave.

Uprava za inspekcijske poslove je posredstvom svoje Tržišne inspekcije ostvarila saradnju i sa Upravom carina. Radna grupa sačinjena od predstavnika ove dvije institucije je pripremila Katalog saradnje u cilju lakšeg i efikasnijeg sprovođenja zajedničkih aktivnosti. Ova aktivnost je samo nastavak saradnje uspostavljene 2009. godine Memorandumom o saradnji između Tržišne inspekcije i Uprave carina.[90]

Među drugim, za ovu oblasti značajnim, organima i institucijama sa kojima je Uprava za inspekcijske poslove uspostavila saradnju su i: Lučka kapetanija, Uprava policije, Ministarstvo unutrašnjih poslova[91]

c) GRAĐANI/KE I INSPEKCIJE

S obzirom da je Uprava za inspekcijske poslove novoosnovani organ i postoji od 2012. godine, u toku svog rada imala je dva izvještajna perioda o radu, za 2012. i 2013. godinu. Ovo je, svakako, imalo uticaja na vidljivost samog organa i njegovih aktivnosti, ali i na upoznavanje građana sa nadležnostima iste, pa samim tim i na saradnju i koristi koje su građani mogli imati.

Najveći dio aktivnosti u toku 2012. godine je upravo bio usmjeren na turističku sezonu, pa je tako, na primjer, Tržišnoj inspekciji upućeno 406 inicijativa od strane građana/ki. Broj podnijetih inicijativa Inspekciji rada bio je tako 1335, a broj izvršenih uviđaja 49, ali se u izvještaju Uprave ne vidi jasno da li su isti izvršeni po pritužbama. Prema Izvještaju o radu Uprave za inspekcijske

89 IOPPD dokument sadrži podatke o obračunatim i plaćenim porezima i doprinosima fizičkih i pravnih lica

90 Izvještaj o radu Uprave za inspekcijske poslove za 2013, str. 27, takođe: http://www.ti.gov.me/vijesti/113000/Potpisan-Memorandum-o-saradnji-Trzisne-inspekcije-i-Uprave-carina.html

91 Memorandum o saradnji potpisan 14. marta 2014. http://www.pobjeda.me/2014/03/14/dogovor-mup-uprave-za-inspekcijske-poslove-potpisali-memorandum-o-saradnji/

poslove za 2012. godinu, u 2012.godini je funkcionisao sajt Tržišne inspekcije (www.ti.gov.me), putem koje se javnost mogla informisati o njenim nadležnostima i aktivnostima i komunikacirati samo sa ovom inspekcijom. Na ovom sajtu, potrošači su mogli naći informacije o svojim pravima prilikom kupovine roba i usluga, kao i o načinu njihovog ostvarivanja i zaštite. Na pripremljenom obrascu mogu dostaviti žalbu, postaviti pitanje, obavijestiti o nepravilnostima na tržištu, kao i dati druge inicijative. U izvještaju je navedeno da je *"Tržišna inspekcija u izvještajnoj godini ostvarivala kontinuiranu saradnju sa privrednim subjektima i građanima-potrošačima, kako bi poslovni subjekti pravilno primjenjivali propise u vršenju djelatnosti, kao i u cilju podizanja svijesti potrošača o njihovim pravima i obavezama prilikom kupovine robe i usluga. Pri tome, jedan od ciljeva TI jeste i informisanje ovih subjekata o svojim nadležnostima i aktivnostima."*[92] Predmetna saradnja ostvarivana prije svega preko dežurnog inspektora koji prima i registruje inicijative i daje kraće savjete i odgovore na pitanja licima koja se obrate putem telefona ili neposredno. Ovu dužnost dežurnog inspektora je, prema Izvještaju, u 2012. godini obavljalo naizmjenično 14 inspektora u kancelariji sjedišta Tržišne inspekcije u Podgorici. Nakon završetka radnog vremena, potrošači i drugi zainteresovani subjekti imali su mogućnost da ostavljaju poruke na automatskoj telefonskoj sekretarici.

Podaci iz Izvještaja za 2013.godinu ukazuju na pomake u komunikaciji sa građanima/kama, kroz akcije poput osnivanja Call centra kao servisa koji građanima/kama treba da omogući podnošenje prijava putem besplatne telefonske linije. Na ovaj način, u 2013.godini, «putem Call centra primljeno je ukupno 2.094 inicijativa, od čega je 240 proslijeđeno nadležnim organima na dalje postupanje». U dodatnoj komunikaciji sa predstavnicima Uprave za inspekcijske poslove[93], zbog nejasnoće u ovom izrazu, CGO je dobio informacije da je preko Call centra od avgusta 2013.godine do maja 2014.godine primljeno 2.120 inicijativa, od čega je 240 proslijeđeno drugim nadležnim organima jer nijesu bile u nadležnosti Uprave, a od ukupno 1.880 inicijativa koje su ušle u razmatranje riješeno je u istom periodu 74%, pri čemu kod skoro 50% nijesu utvrđene nepravilnosti, dok su po ostalim inicijativama postupci u toku. Ovo ukazuje na nedovoljno kvalitetan stepen saradnje sa građanima/kama.

Kampanja u koju je UIP uključen *"Budi odgovoran. Od tebe zavisi. Siva ekonomija 0%"* koja se realizuje u okviru projekta *"Uključivanje građana u borbu protiv sive ekonomije"*, prema odluci Vlade biće produžena do kraja 2014. godine. Od početka realizacije projekta građani/ke su ukazali na više

92 Izvještaj o radu Uprave za inspekcijske poslove za 2012. godinu: file:///C:/Users/user/Downloads/39_16_28_03_2013.pdf

93 Pisana komunikacija od 27.maja 2014.godine sa predstavnicima Uprava za inspekcijske poslove

od 1.000 nepravilnosti[94], a najviše u oblastima neizdavanja fiskalnih računa, rada na crno i kršenja potrošačkih prava, po osnovu kojih su inspekcijske službe izrekle preko 300.000 eura kazni. Građani/ke mogu ukazati na nepravilnosti iz oblasti sive ekonomije preko web sajta www.budiodgovoran.me, od novembra 2013.godine, Android i iOS aplikacije "Budi odgovoran", kao i pozivanjem Call-centara Poreske uprave (19707) i Uprave za inspekcijske poslove (080 555 555).[95] Prijave/inicijative se primaju i preko Arhive, e-mail adrese: prijaveŽuip.gov.me.

Pored ovog projekta, Uprava za inspekcijske poslove potpisala je Memorandum o saradnji sa Centrom za građansko obrazovanje (CGO) koji se odnosi na saradnju u okviru projekta "*Inspekcijom protiv korupcije*", za koji je CGO dobio podršku kroz Program krivičnog prava za civilno društvo (The Criminal Justice Civil Society Program – CJCSP) koji finansira američki Stejt dipartment, a njegova svrha je praćenje aktivnosti i jačanje kapaciteta Uprave za inspekcijske poslove i inspekcijskih jedinica kao građanima/kama najbližeg instrumenta za adresiranje korupcije i loših praksi u poslovanju. U okviru istog CGO je otvorio i SOS liniju za prijavu korupcije inspekcijskim organima putem koje građani/ke, kao i pravni subjekti, mogu prijaviti konkretne primjere koruptivnih radnji iz domena djelovanja inspekcijskih organa direktno CGO–u. Ta linija je dopuna već postojećoj SOS liniji Uprave za inspekcijske poslove. CGO je na ovaj način prikupio 75 validnih prijava koje su se uglavnom odnosile na: nezakonito postupanje i korupciju u oblasti nelegalne gradnje, adaptacije i nadograđivanja objekata, zatim na rad bez ugovora, nepoštovanja ugovora o radu, neuplaćivanje poreza i doprinosa, odsustvo primjene mjera zaštite na radu posebno kod rada na građevinskim objektima, neizdavanje fiskalnih računa, nezakonit uvoz robe, različite vidova kršenja potrošačkih prava, zloupotrebe službenog položaja, nezakonito rušenje objekata, nuđenje ili traženje mita, selektivni pristup inspekcijskih kontrola, itd. Veliki broj obraćanja građana/ki se odnosio na nepostupanje inspekcijskih službi, kao i na traženje pomoći za dobijanje informacija o podnešenim prijavama direktno Upravi za inspekcijske poslove jer od iste nijesu mogli dobiti te povratne informacije o preliminarnim ili konačnim nalazima inspekcijskog nadzora. U tim komunikacijama, građani/ke su navodili i da imaju iskustva sa situacijama selektivnog pristupa inspekcija koje su opisivali kao oblik svojevrsnog pritiska jer su se kontrole i pored urednih nalaza učestalo ponavljale, a istovremeno su drugi slični subjekti ostajali van interesa istih inspekcija a bez jasnog objašnjenja. Takođe, građani/ke su navodili da su bili i svjedoci pritisaka na same inspektore/ke, kao i da imaju saznanja da su neki od njih iz različitih

94 Informacija dobijena u direktnoj komunikaciji koju je CGO imao sa predstavnicima Uprave za inspekcijske poslove

95 http://aktuelno.me/ekonomija/budi-odgovoran-od-kazni-protiv-sive-ekonomije-prikupljeno-300-000-eura

razloga, koje opisuju kao koruptivne, postupali na način koji nije garantovao jednake šanse svim subjektima nadzora. Po utisku građana/ki, inspekcije ne postupaju po njihovim prijavama u skladu sa zakonom i ne preduzimaju potrebne mjere za adekvatno procesuiranje.

Sami inspektori/ke vide kao prepreku efikasnosti veliko administrativno opterećenje, koje ide od toga da pišu veliki broj izvještaja od dnevnih, preko sedmičnih do mjesečnih, pored tekućih obaveza, uz dodatnu obavezu da odgovaraju čak i na poštu koja zaluta. Takođe, inspektori/ke osjećaju pritisak od statistike koja «traži» podatke o kaznama, pri čemu se u drugi plan stavljaju propisana načela ili pitanje suštinskog rješenja problema[96]. Drugi problem internih procedura su u nejasnoć ama u pogledu riješavanja nadležnosti, na primjer u situacijama ako je inicijativa proslijeđenja nenadležnom inspektoru. Osim što postoji obaveza da se svako upućivanje inicijative, bilo da se šalje ili se vraća zbog utvrđene nenadležnosti arhivski evidentira, ostaje nejasno šta se dalje dešava, ko odlučuje o nadležnosti u drugom koraku.

d) SARADNJA SA CIVILNIM SEKTOROM

Uprava za inspekcijske poslove je u svom Izvještaju o radu za 2013.godinu navela da je „*Svjesna značaja saradnje sa NVO sektorom, asocijacijama privrednika i drugim organima i institucijama*“,[97] i to potkrijepila nizom zaključenih memoranduma i protokola o saradnji sa sljedećim organizacijama i institucijama: Centrom za građansko obrazovanje (CGO), Centrom za monitoring i istraživanje (CEMI), Institutom sertifikovanih računovođa Crne Gore, Unijom poslodavaca Crne Gore (UPCG), Agencijom za ljekove i medicinska sredstva, uz očekivanje da će se uskoro biti potpisan i memorandum o saradnji sa Javnim preduzećem za upravljanje morskim dobrom i mađarskim nacionalnim organom za zaštitu potrošača.[98]

Uprava za inspekcijske poslove je u svom Izvještaju naročito izdvojila projekte u okviru kojih sarađuje sa nevladinim organizacaijama CGO i CEMI.

Kad je u pitanju CGO, Uprava je navela projekat „*Inspekcijom protiv korupcije*!“, koji se realizuje uz podršku Programa krivičnog prava za civilno društvo a finansira se od strane američkog Stejt

96 Fokus grupe sa inspektorima koje je sproveo CGO tokom oktobra i novembra 2013.godine

97 Izvještaj o radu Uprave za inspekcijske poslove za 2013, str. 105.

98 Izvještaj o radu Uprave za inspekcijske poslove za 2013, str. 105. i 106.

dipartmenta, za koji je sa CGO-om potpisala Protokol o saradnji.[99] U vezi sa CEMI-jem, Uprava je navela saradnju sa ovom organizacijom na projektu *„Monitoring upravnih postupaka u oblasti prostornog planiranja i izgradnje*“, koji podržava Ambasade Kraljevine Norveške, i u okviru kojeg je potpisan i Memorandum o saradnji sa ciljem razmjene informacija i saradnje na sprovođenju projekta.[100]

Dodatno, projekat „*Inspekcijski organi i zaštita od diskriminacije*“ koji je započeo u januaru 2014. godine, doveo je do saradnje Uprave za inspekcijske poslove i Centra za antidiskriminaciju EKVISTA. Projekat podržava Ambasada Kraljevine Norveške.

U Izvještaju Uprave za inspekcijske poslove se, takođe, navodi i prethodno pomenut projekat „Budi odgovoran“, kojim su, kako se ocjenjuje u Izvještaju: *„objedinjeni stručni, tehnički i kadrovski kapaciteti civilnog sektora i nadležnih državnih organa i istim se doprinosi podizanju nivoa svijesti o značaju društvene odgovornosti*.“[101] Takođe, u Izvještaju se izražava očekivanje da će ovim projektom građani/ke: *„biti motivisani da aktivno učestvuju u prijavljivanju sive ekonomije, s obzirom da će se dio sredstava od naplaćenih kazni izdvajati za rješavanje nekog pitanja od društvenog značaja*“, odnosno da će polovina sredstava naplaćenih po osnovu inicijativa primljenih preko aplikacije „Budi odgovoran“ kao i Call centra Uprave biti usmjereno *„za unaprijeđenje pitanja od društvenog značaja, a koje će birati sami građani*“.[102]

Uprava za inspekcijske poslove je uspostavila saradnju i sa poslodavačkim udruženjima, poput Montenegro biznis alijanse, odnosno ugovorila buduće potpisivanje protokola o saradnji kojim ć e se potvrditi spremnost za saradnju ovih dviju institucija kad je u pitanju unaprijeđenje ukupnog poslovnog ambijenta i pružanje pomoći u rješavanju problema sa kojima se suočavaju privrednici u svom radu.[103]Takođe, Uprava je potpisala Protokol o saradnji i sa Unijom poslodavaca u cilju

99 Više o samom projektu na: http://www.uip.gov.me/press-centar/saopstenja/136715/Pozovi-sprijeci-ili-lijeci-korupciju.html

100 Više o tome dostupno na: http://www.uip.gov.me/press-centar/saopstenja/133126/Potpisan-Memorandum-o-saradnji-izmedu.html

101 Izvještaj o radu Uprave za inspekcijske poslove za 2013, str. 104.

102 Više o tome na: http://www.uip.gov.me/press-centar/saopstenja/134076/Pokrenut-projekat-Budi-odgovoran-radi-aktivnog-ucesca-gradana-u-borbi-protiv-sive-ekonomije.html

103 Više o tome na: http://www.uip.gov.me/press-centar/saopstenja/130217/Utemeljena-saradnja-sa-Montenegro-biznis-alijansom-kako-bi-privredni-sektor-i-inspekcije-zajednicki-doprinijele-obezbijedivanju.html

uspostavljanja saradnje u obliku razmjene iskustva i informacija radi unaprijeđenja ambijenta za privređivanje i sprovođenje koncepta partnerstva javnog i privatnog sektora. U cilju realizacije ovog Protokola, obje institucije su se obavezale na formiranje Koordinacionog tijela, sastavljenog od po pet predstavnika.[104]

4. INSPEKCIJE U PROCESU EVROPSKIH INTEGRACIJA

Uprava za inspekcijske poslove ima svoje predstavnike/ce u 14 radnih grupa za pripremu pregovora po pojedinim poglavljima[105], shodno svojim nadležnostima, a u jednoj od njih, za Poglavlje 28, i šeficu radne grupe.[106] Sama Uprava je bila uključena i u pripremu Programa pristupanja Crne Gore Evropskoj uniji 2014 - 2018.

a) ISPUNJENOST OBAVEZA UPRAVE ZA INSPEKCIJSKE POSLOVE PREDVIĐENIH AKCIONIM PLANOM ZA POGLAVLJE 23

Pregovaračko poglavlje 23 (Pravosuđe i temeljna prava) predstavlja jedno od najvažnijih sa aspekta demokratizacije crnogorskog društva i uspostavljanja sistema vladavine prava. U njemu, Uprava za inspekcijske poslove nema predstavnika.

Akcioni plan za Poglavlje 23, u dijelu II – borba protiv korupcije predviđa pet obaveza za čiju realizaciju je, u različitim obimima, zadužena ili je bila zadužena Uprava za inspekcijske poslove, i čija je ispunjenost takođe na različitom nivou:

104 Više o tome na: http://www.uip.gov.me/press-centar/saopstenja/130218/Unija-poslodavaca-i-Uprava-za-inspekcijske-poslove-zakljucili-Protokol-o-saradnji.html

105 Poglavlje 1 (Sloboda kretanja robe), Poglavlje 2 (Sloboda kretanja radnika), Poglavlje 3 (Pravo osnivanja preduzeća), Poglavlje 5 (Javne nabavke), Poglavlje 7 (Pravo intelektualne svojine), Poglavlje 10 (Informatičko društvo i mediji), Poglavlje 11 (Poljoprivreda i ruralni razvoj), Poglavlje 12 (Bezbijednost hrane, veterinarstvo i fitosanitarni nadzor), Poglavlje 13 (Ribarstvo), Poglavlje 15 (Energetika), Poglavlje 19 (Socijalna politika i zapošljavanje), Poglavlje 27 (Životna sredina), Poglavlje 28 (Zaštita potrošača i zdravlja), Poglavlje 32 (Finansijski nadzor)

106 Rada Marković, pomoćnica direktora Uprave za inspekcijske poslove za zaštitu tržišta i ekonomije, igre na sreć u i javne nabavke

2.1.6.1 - *Usvojiti Izmjene i dopune Zakona o javnim nabavkama* koje će obuhvatiti izmjene načina imenovanja predsjednika i članova DKKPJN (imenovanje od strane Skupštine); obavezu da najmanje jedan član Komisije za otvaranje i vrednovanje ponuda mora posjedovati sertifikat o položenom stručnom ispitu za rad na poslovima javnih nabavki; pravni osnov za donošenje pravilnika kojim će se urediti jasni kriterijumi za postupak i način izbora članova Komisije za otvaranje i vrednovanje ponuda i njihova ovlašćenja i odgovornosti; *propisati ovlašć enja inspektorima UIP da vrše kontrolu sprovođenja dodijeljenih ugovora*; uvođenje negativne reference ponuđača uključujući i: zabranu učešća ponuđačima u postupku javnih nabavki ukoliko su prije toga kršili rokove i/ili druge odredbe ugovora o javnim nabavkama; unaprijeđen sistem kontrole konflikta interesa u postupku javnih nabavki; unaprijeđen sistem evidencije koju vode naručioci i sadržaj izvještaja Uprave za javne nabavke o javnim nabavkama **–** *ova mjera nije realizovana* u inicijalnom roku koji je bio decembar 2013.godine, iako se došlo do nacrta predmetnog Zakona. *Uprava za inspekcijske poslove je inicirala izmjene i dopune Zakona u dijelu koji se odnosi na kontrolu sprovođenja ugovora odnosno ovlašćenja inspektora za javne nabavke u dijelu nadzora nad sprovođenjem antikorupcijskih mjera*[107]*, ali realizacija mjere nije u cjelosti u nadležnosti Uprave, pa samim tim ni odgovornost za kašnjenje*. Nema novih jasnih rokova kada će ova mjera biti zaista realizovana.

2.1.6.3 - *Pratiti unaprijeđenje sistema kontrole postupka javnih nabavki*: *utvrditi metodologiju analize rizika u vršenju kontrole, sa ciljem proaktivnog djelovanja u prevenciji i ranom otkrivanju koruptivnih radnji i drugih djela sa obilježjima korupcije*; *vršiti kontrole u skladu sa utvrđenom metodologijom*; pripremiti godišnji izvještaj Uprave za javne nabavke – ova mjere bila je u Akcionom planu koji je usvojen u junu 2013.godine navedena kao odgovornost Uprave za javne nabavke u saradnji sa Upravom za inspekcijske poslove. Ipak, u kasnijim zvaničnim izvještajnim dokumentima Vlade, *Uprava za inspekcijske poslove prestaje biti odgovorna za ovu mjeru, odnosno ona ostaje isključiva odgovornost Uprave za javne nabavke*. Tako u posljednjem Izvještaju[108] u okviru indikatora rezultata stoji: «Odlukom od 14. marta 2014. godine formirana je radna grupa za utvrđivanje metodologije analize rizika u kojoj su ušli predstavnici: Uprave za javne nabavke, Državne komisije za kontrolu postupka javnih nabavki, Uprave za inspekcijske

107 Podaci dobijeni od strane Uprave za inspekcijske poslove na osnovu zaključenog Memoranduma o saradnji sa CGO, kao i tekst same Inicijative za izmjenu Zakona o javnim nabavkama u dijelu u kojem je to bila odgovornost Uprave

108 Izvještaj o realizaciji Akcionog plana za poglavlje 23 od 31.03.2014.godine

poslove, Uprave za antikorupcijsku inicijativu, Ministarstva finansija i NVO Institut Alternativa i održan je prvi sastanak. »[109] Dodatno se navodi u dijelu u indikatorima uticaja, kada je riječ o procentu institucija u kojima je izvršena kontrola na godišnjem nivou u odnosu na ukupan broj naručioca, kao i brou utvrđenih nepravilnosti u odnosu na prethodni period, da je u «2013. godini Inspekcija za javne nabavke izvršila ukupno 84 inspekcijska pregleda (38 redovnih, 27 po inicijativama i 9 kontrolnih) i utvrdila 67 nepravilnosti. U cilju otkladanjanja utvrđenih nepravilnosti izricane su mjere ukazivanja, a u slučaju kada su konstatovane nepravilnosti otklonjene tokom pregleda, sačinjavane su službene zabilješke. Izdato je 19 prekršajnih naloga na ukupni iznos od 24, 000 EUR.» Na oko 4, 000 sklopljenih ugovora na godišnjem nivou, izvršena su svega 84 inspekcijska pregleda, sa vrlo visokim procentom utvrđene nepravilnosti, što dodatno potvrđuje potrebu za hitnim ojačavanjem kapaciteta inspekcije u oblasti javnih nabavki.

2.1.6.4 – *Ojačati kapacitete nadležnih organa za nadzor nad sprovođenjem dodijeljenih ugovora (za javne nabavke, prim. autora) kroz povećanje broja ovlašćenih službenika i povećanje broja sistemskih kontrola* – ova mjera je isključiva nadležnost Uprave za inspekcijske poslove, a rok za realizaciju bio je januar 2014.godine, *pri čemu ista nije realizovana*. Važećim aktom o unutrašnjoj organizaciji i sistematizaciji Uprave za inspekcijske poslove predviđena su tri inspektora za kontrolu javnih nabavki. U pismenoj komunikaciji sa Upravom za inspekcijske poslove, CGO je dobio informaciju da je 10.11. 2013. godine te poslove radio samo glavni inspektor za javne nabavke, a od tada je počeo sa radom još jedan inspektor, kao i da je u okviru novog akta o unutrašnjoj organizaciji i sistematizaciji Uprave, koji je u pripremi, predviđeno povećanje broja inspektora za kontrolu javnih nabavki za još jednog izvršioca, što je u skladu sa postavljenim indikatorom rezultata u Akcionom planu**.** No, u direktnoj komunikaciji sa predstavnicima Uprave, CGO je saznao da je jedna inspektorka za javne nabavke napustila Upravu i da je *trenutno stanje identično onom od 10.11.2013.godine, odnosno nema suštinskih pomaka*. U samom Izvještaju se konstatuje «Realizacija ove mjere je u toku iako se mnogo kasni sa realizacijom ove mjere. Prema informacijama iz sektora za ljudske resurse u toku je priprema za raspisivanje internog oglasa između državnih organa za prijem jednog inspektora. Trenutno poslove inspekcijskog nadzora obavlja samo Glavni inspektor za javne nabavke»[110]. Samim tim nije ispunjen ni indikator uticaja koji se odnosio na povećan broj

109 Izvještaj o realizaciji Akcionog plana za poglavlje 23 od 31.03.2014.godine

110 Izvještaj o realizaciji Akcionog plana za poglavlje 23 od 31.03.2014.godine

obavljenih kontrola, odnosno taj broj je ostaj na prethodnom nivou, dok je pri sprovedenim kontrolama izrečena jedna četvrtina sankcija, a navodi se da je procenat smanjenja utvrđenih nepravilnosti 10%.

2.1.7.4 - *Efikasno pratiti sistem za prijavu nelegalne gradnje i uspostavljanje jasnih i preciznih procedura za postupanje po žalbama i prijavama građana na rad inspekcije* – je mjera koja je u isključivoj nadležnosti Uprave za inspekcijske poslove, realizuje se kontinuirano, ali u izvještajima se ne može vidjeti koliki je stvarni efekat jer su dati samo statistički parametri koji nijesu dovoljni za cjelovitu sliku stanja. Tako je Uprava za inspekcijske poslove u pismenoj komunikaciji informisala CGO da je «u periodu od 01.06. do 31.12.2013. godine izvršeno ukupno 2218 inspekcijskih kontrola bespravne gradnje. Od toga je u 788 slučajeva prijava podnešena od strane građana, dok je u 1430 slučajeva kontrola izvršena po službenoj dužnosti. U tom periodu donešeno je 226 rješenja o rušenju objekata, podnešeno je 47 krivičnih prijava protiv subjekata nadzora. U 120 slučajeva, prijave su odbačene ili proslijeđene drugom organu na dalje postupanje zbog nenadležnosti. Izvršeno je rušenje 60 objekata, dok je u 153 slučaja investitor postupio po nalogu inspektora i sam uklonio objekat.»[111] U Izvještaju se dodaje i da je «U periodu od 01.01. do 25.03.2014.godine, izvršeno je ukupno 466 inspekcijskih kontrola bespravne gradnje. Od toga je u 204 slučaja prijava podnešena od strane građana, dok je u 262 slučaja kontrola izvršena po službenoj dužnosti. U tom period donešeno je 45 rješenja o rušenju objekata, podnešeno je 16 krivičnih prijava protiv subjekata nadzora. U 43 slučaja, prijave su odbačene ili proslijeđene drugom organu na dalje postupanje zbog nenadležnosti. U 10 slučajeva investitor je postupio po nalogu inspektora i sam uklonio objekat». Kroz indikatore rezultata se navodi da je procenat procesuiranih prijava u odnosu na ukupan broj prijava 100% (1044 prijave bespravne gradnje su procesuirane), kao i da je uspostavljen sistem za praćenje prijave bespravne gradnje ali bez detaljnije informacije na koji način, i da nije bilo nijedne prijave na rad inspekcije.

2.1.7.6 - *Formiranje i redovno objavljivati listu investitora i izvođača radova za koje je utvrđeno da krše propise koje regulišu oblast uređenja prostora* – takođe predstavlja isključivu odgovornost Uprave za inspekcijske poslove i *realizuje se kontinuirano,* a direktan rezultat je

111 Podaci dobijeni od strane Uprave za inspekcijske poslove na osnovu zaključenog Memoranduma o saradnji sa CGO

formirana i objavljena navedena lista na sajtu Uprave za inspekcijske poslove, koja se ažurira[112]. U Izvještaju se navodi da je Inspekciji za građevinarstvo «u periodu od 01.01-31.12.2013. godine dostavljeno 511 inicijativa za vršenje inspekcijskog nadzora i 372 prijave radova na osnovu izdate građevinske dozvole. Inspekcija za građevinarstvo je izvršila 462 inspekcijska pregleda, sačinila 462 zapisnika pri čemu je donijela 15 rješenja o zabrani građenja i 2 rješenja o rušenju»[113]. Tokom 2014.godine, odnosno u periodu od 01.01. – 01.03.2014.godine istoj inspekciji je dostavljeno 66 inicijativa za vršenja inspekcijskog nadzora i 30 prijava radova na osnovu izdate građevinske dozvole, na osnovu čega su izvršena 52 inspekcijska pregleda i donešena 2 rješenja o zabrani građenja.

Pored gore navedenih mjera, Akcioni plan predviđa i:

2.1.3.6 – *Utvrditi metodologiju analize rizika u vršenju inspekcijskog nadzora, shodno odredbama Zakona o inspekcijskom nadzoru, sa ciljem proaktivnog djelovanja u prevenciji i ranom otkrivanju koruptivnih radnji i drugih djela sa obilježjima korupcije*. Rezultat bi trebao biti vršenje kontrola u skladu sa utvrđenom metodologijom, a rok za njenu konačnu realizaciju je prvi kvartal 2015. godine, nakon čega bi inspektori/ki mogli u cjelosti da primjenjuju predmetnu metodologiju. Ova mjera je i predmet Memoranduma o saradnji Uprave i CGO-a. Kao indikator rezultata predviđa se utvrđena metodologija, broj zapisnika o inspekcijskoj kontroli kojima su uz utvrđene nepravilnosti konstatovane i otkrivene koruptivne radnje i/ili druga djela sa obilježjima korupcije, godišnji izvještaj o radu UIP-a, sa preciznim podacima. Kao indikatori uspjeha će cijeniti povećan broj donijetih upravnih mjera na osnovu inspekcijskog nadzora, prekršajnih i krivičnih prijava na osnovu izvršenih kontrola i podnijetih pritužbi u odnosu na predhodni period, čime bi se mjerila i efikasnost rada Uprave za inspekcijske poslova. Ovo daje i smjernicu u kojem pravcu treba razvijati kapacitete Uprave, ali do sada nije urađeno dovoljno da se sa sigurnošću može reći da će ova mjera biti ispunjena u predviđenom roku, iako je jedna od ključnih u uspostavljanju sistema borbe protiv korupcije.

112 http://www.uip.gov.me/ResourceManager/FileDownload.aspx?rid=161517&rType=2&file=Lista%20investitora%20i%20izvo%C4%91a%C4%8Da%20radova%20_kr%C5%A1enje%20propisa_01.01-31.12.2013.%20godine.docx , http://www.uip.gov.me/ResourceManager/FileDownload.aspx?rid=161298&rType=2&file=Lista%20investitora%20i%20izvodjaca%20radova_%20povreda%20propisa_od%2001.01%20do%2001.03.%202014.docx

113 Izvještaj o realizaciji Akcionog plana za poglavlje 23 od 31.03.2014.godine

b) UTVRĐIVANJE OSNOVE METODLOGIJE ZA ANALIZU RIZIKA U VRŠENJU INSPEKCIJSKOG NADZORA

Analiza rizika u vršenju inspekcijskog nadzora shodno odredbama Zakona o inspekcijskom nadzoru prvenstveno je vezana za omogućavanje poštovanja načela po kojima inspektori treba da postupaju.

Ostvarivanjem i utemeljenjem prakse primarno preventivnog dijelovanja inspekcija, gdje bi se upravne mjere i radnje preduzimale samo izuzetno kada se preventivnom mjerom ne može postići cilj, prvi su preduslov za rano lociranje i otkrivanje koruptivnih radnji.

Bitno je da je inspekcijski nadzor uvijek javan. Javnost se ne postiže samo "zatečenom javnošću" kod subjekta nadzora već se sistemski razvija kroz uspostavljanje jedistvenog informacionog sistema na kojem su sve potrebne informacije dostupne građanima/kama, proaktivnim djelovanjem kroz razne oblike obavještavanja građana/ki o radu i postupanju inspektora, sa akcentom na "osjetljive" slučajeve. U sklopu obavještavanja i potpunosti informacije mora stajati i eventualno preduzeta mjera protiv postupajućeg inspektora/ke.

Samostalnost u radu inspektora/ki osnova je njegovog/njenog integriteta i zdravo postavljenog sistema odgovornosti. Centralizovan sistem koji osporava inicijativnost inspektora/ki i puno preuzimanje odgovornosti za svoj rad demotivišuće djeluju i bude sumnju u pojavu nedozvoljene kontrole rada inspektora/ki i korupcije na visokom nivou.

Konačno, Uprava za inspekcije poslove nije u punom smislu finansijski nezavisna. I inspektor i Uprava bi morali da imaju godišnji plan rada i finansijski plan koji bez smetnje realizuju. Trenutno, planovi postoje, ali i smetnje u realizaciji. Inspektori su na dnevnoj osnovi pod "kontrolom" kabineta direktora Uprave, a sama Uprava često u realizaciji aktivnosti za koje je potrebno obezbjediti sredstva zavisi od "volje" Ministarstva finansija.

5. ZAKLJUČCI I PREPORUKE

Uprava za inspekcijske poslove, po prirodi svojih nadležnosti, spada u red ključnih organa od čije nepristrasnosti i profesionalnosti u postupanju zavisi efektivna borba protiv korupcije i to nerijetko u onom obliku koji građane/ke najdirektnije pogađa. Istovremeno, radi se o još uvijek početnoj fazi razvoja centralizovanog sistema inače visokorizičnog organa za pojavu korupcije. To je razgranat sistem koji pokriva teritoriju čitave Crne Gore, tretirajući širok zahvat raznih društvenih odnosa i pitanja, pa je tim važnije da takav organ bude suštinski nezavisan, bez neprimjerenih političkih ili drugih uticaja. Upravo su sumnje da postoje takvi uticaji na rad Uprave i dalje jedan od razloga zbog kojih se ona u javnosti još uvijek nije pozicionirala kao organ u čiju se nepristrasnost ne sumnja.

Od samog osnivanja Uprave manji je broj inspektora/ki nego što je to predviđeno sistematizacijom, a veliko je njihovo administrativno opterećenje. činjenica da se taj broj u pojedinim inspekcijama (npr. Inspekcija za javne nabavke) smanjio zabrinjava i ukazuje na probleme sa upravljanjem ljudskim resursima.

Stoga je neophodno:

- Raditi na razradi integriteta u okviru internih akata a sa akcentom na nedozvoljene uticaje, prije svega političke, posebno imajući u vidu specifičnost Uprave kao organa koji mora imati Plan integriteta koji je višestruko produbljen i srazmjeran ovlašćenjima koje inspektori/ke imaju, a uvažavajući i kontekst njihovog rada;
- Uspostaviti jedinstveni informacioni sistem na nivou Uprave kao ključnu pretpostavku za povećanje efikasnosti i efektivnosti rada, kao i ujednačavanja prakse postupanja inspektora/ki pri vršenju inspekcijskog nadzora;
- Pojednostaviti procedure postupanja prilikom vršenja inspekcijskog nadzora uz upotrebu jedinstvenog informacionog sistema koji obezbjeđuje tipsko sačinjavanje potrebne dokumentacije jednostavnim popunjavanjem obrazaca i njihovo automatsko proslijeđivanje na centralni server;
- Striktno pridržavanje propisa od strane inspektora/ki koji su lako dostupni mogućim subjektima nadzora i objavljeni u Službenom listu Crne Gore;
- Pojačati preventivnu funkciju inspekcijskog nadzora a represivnu koristiti samo u izuzetnim slučajevima, jer sankcije koje inspektori/ke izriču kao posljedicu bi morale imati efikasno i

efektivno rješenje problema, što bi bio jasan i jedan od najvažnijih dijelova izvještavanja o konkretnom nadzoru;

- Hitno pristupiti izradi metodologije za analizu rizika u vršenju inspekcijskog nadzora, shodno odredbama Zakona o inspekcijskom nadzoru, sa ciljem proaktivnog djelovanja u prevenciji i ranom otkrivanju koruptivnih radnji i drugih djela sa obilježjima korupcije, po kojoj bi se sprovodio inspekcijski nadzor;
- Obezbijediti sve potrebne uslove za rad inspektora/ki (dovoljan broj službenih vozila, potrebna količina goriva, savremena oprema za potrebe vršenja inspekcijskog nadzora), kao i prostorne kapacitete za neophodni administrativni i stručni rad, ali i prilagoditi zaradu inspektora/ki rizicima koje ovaj poziv nosi sa sobom;
- Uskladiti sistem obuke inspektora/ki u Upravi sa konkretnim potrebama sistema inspekcijskog nadzora u Crnoj Gori;
- Uprava za inspekcijske poslove u slučaju napada na inspektora/ku mora stati u punom kapacitetu iza svog zapošljenog, uz insistiranje na procesuiranju i u skladu sa procjenom pridruživanju krivičnom gonjenju;
- Ukinuti reizbor inspektora/ki i pretvoriti ga u redovnu provjeru znanja i učinaka, i u slučaju da inspektor/ka ne ispunjava potreban nivo rezultata u oblasti u kojoj vrši inspekcijski nadzor pokrenuti postupak razriješenja;
- Osigurati suštinsku i punu budžetsku samostalnost Uprave za inspekcijske poslove, čije finansijsko poslovanje, nakon određivanja sredstava za rad u Budžetu Crne Gore, mora biti samostalnost i neometano, a što nikako ne isključuje reviziju tog poslovanja od strane nadležnog organa;
- Prezentaciju efekata inspekcijskog nadzora u javnosti fokusirati na primjeni i poštovanju zakona, a sekundarno vršiti isticanje finansijskih efekata inspekcijskog nadzora, kroz prikupljene naknade po osnovu izrečenih kazni;
- Bitan dio kontrole rada inspektora realizovati kroz rad po žalbama, kao i periodično upoznavanje javnosti sa radom inspekcija (kvartalno);
- Transparentnost rada mora podrazumijevati lako dostupnu regulativu, procedure, podnošenje prijava, edukacioni materijal, odgovore na najčešće postavljena pitanja, procjenu rizika kod pojedinih visokorizičnih oblasti i subjekata nadzora, detaljno obavještenje o podnijetim krivičnim prijavama uz poštovanje pretpostavke nevinosti;
- Građani/ke koji podnose prijavu moraju dobiti povratnu informaciju o preduzetim mjerama i utvrđenim nalazima izvršenog inspekcijskog nalaza u najkraćem roku.

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TESTIMONIAL

The project "**Through the inspection against the corruption! (Inspekcijom protiv korupcije!)"** aimed to contribute to the increase of public trust in the criminal justice sector through implementation of effective watchdog activities to track the government responses to reports of illegal activities and corruption. Specific objective of the project was to monitor the activities and enhance capacities of the Administration for Inspection Affairs and Inspection units as the first and citizens' closest instrument to tackle corruption and misconduct in public institutions in Montenegro.

Within the project following results were achieved:

- Assessed level of satisfaction of inspectors employed in the Administration for Inspection Affairs on the re-organisation of work within the Inspection units and the main problems/concerns in the implementation of work;
- Monitored capacities of the Administration for Inspection Affairs to prevent and act as first response to corruption;
- Strengthened active participation of citizens in reporting cases of corruption and misconduct.

The policy paper "The Role of Inspections in Fight against corruption" produced is the outcome of the above listed results and it encloses the first assessment of the Administration for Inspection Affairs in Montenegro, since it is rather newly formed institution with quite different approach to the inspections then it used to be in the previous period. As such, the study will serve also as the baseline for future research in this respect. The recommendations underlined in the policy paper by the project team were disseminated to all stakeholders and assessed as very useful for their future work in this field.

The project team has underlines that it is necessary to:

- Work on development of integrity within internal acts and with focus on non-allowed influences, primarily political, especially having in mind specificity of the AIA as a body which must have Integrity plan, multiple profound and proportionate to authorities of inspectors, taking into account the context of their work;
- Establish the unique information system at the AIA level as a key prerequisite for enhancement of efficiency and effectiveness of the work, and unification of practices of inspectors during the inspection;
- Simplify proceedings during the inspection with the use of unique information system which provide type-making of necessary documentation by simply filling in a form and automatic forwarding to central server;
- Inspectors strictly comply with the norms which are available to possible subjects to inspection and which are announced in the Official Gazette of Montenegro;
- Increase preventive function of inspection, while repressive should be used only in exceptional occasions, because sanctions imposed by inspectors should have efficient and effective problem solution as a consequence, which would be clear and one of the most important part of reporting on particular inspection;
- Immediate access to the development of methodology for risk analysis regarding inspection, in accordance with the provisions of the Law on inspection, with aim at proactive action, early detection of corruptive activities and other acts of corruption, after which inspection would be performed.
- Provide all necessary conditions for the work of inspectors (a sufficient number of official vehicles, required quantity of fuel, modern equipment for the purposes of inspection) as well as spatial capacities for necessary administrative and professional work, but also it is necessary to adapt incomes of inspectors to the risks that this profession contains;
- Harmonize training system of inspectors in the AIA with the particular needs of the inspection system in Montenegro;

- The Administration for Inspection Affairs should, in the case of attack on inspector, protect its employees with full capacity, including insisting on the prosecution in accordance with assessment of joining to prosecution;
- Abolish re-election of inspectors and turn it into regular test of knowledge and results, and in the case that inspector does not fulfill necessary level of results in the field in which performs inspection, the dismissal should be initiated;
- Ensure substantive and full budgetary independence of the Administration for Inspection Affairs, whose financial affairs, after the determination of the funds for the work in the Budget of Montenegro, shall be independent and undisturbed, which do not exclude revision of management by the authorized body;
- Present the effects of inspection with focus on application and compliance with law and secondarily to highlight the effects of inspection, through collected fees for the penalties imposed;
- Important part of the control of the work of inspectors shall be realized through the work on appeals, as well as through periodically informing about the work of inspections (quarterly);
- Transparency of the work must involve an easily accessible regulations, procedures, applications, educative material, answers regarding frequently asked questions, risks estimation regarding some high-risk areas and subjects to inspection, detailed notifications related to submitted criminal charges with respect for presumption of innocence;
- Citizens who submit an application must receive a feedback regarding taken measures and diagnosis related to performed inspection findings, as soon as possible.

These recommendations were disseminated to all stakeholders and assessed as very useful for their future work in this field.

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Boris Marić graduatedat the Law Faculty of theUniversity of Montenegro, and is finishing his postgraduate studies at the Faculty for State and European Studies in Podgorica. Additionally, he specialized at the European Integration School, organized by the Centre for Civic Education (CCE), the Centre for Development of NGOs (CDNGO) and the European Movement in Montenegro, with the support of FOSI ROM, and the School of Democratic Leadership, organized by Nansen Dialogue Centre in Montenegro and the Council of Europe, as well as a series of trainings in the field of public policy and organizational management. He began his work engagement in the CDNGO as the editor of the *NGO Bulletin*, followed by the further work in local government within the Secretariat for Sport, and in the public enterprise "Water and Sewerage", which he left from the position of a department director. Afterwards, he was director of a parliamentary political party, within which he was the head of its councilors' club in the Assembly of the Capital City. He is the member of the Working Group for the preparation of negotiations on the accession of Montenegro to the EU for Chapter 23 – Judiciary and Fundamental Rights, in front of the CCE, as well as the Executive Board of the widest national coalition of NGOs „Through Cooperation to the Aim". He is a lecturer in the Democracy School, organized by the CCE and supported by the Friedrich EbertStiftung. He is author of numerous articles in the area of democracy and European integration and co-author of publications *Europe in my city – civil society, local government, citizens – the role and place in the European integration process, citizens' attitudes and perceptions about the integration processes, Europe in my town – what are we negotiating about and what do negotiations with the EU bring us*, and *Judiciary and Court of Public*. His hobby is writing and painting. Fluent in English.

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Željka Ćetković is currently pursuing her master's degree, at the Department of International Relations at the Faculty of Political Science, University of Montenegro, where she previously specialized in International Relations and acquired Bachelor's degree in the same department. She has finished the Democracy School in the organisation of the Centre for Civic Education (CCE) and Friedrich Ebert Stiftung, as well as the regional Democracy School organized by the FES, Centre for International

Relations Banja Luka and the Centre for International Studies Zagreb. In addition, she completed the summer school "Week of Social Democracy" organized by the Friedrich Ebert Stiftung and the Centre for Study of Social Democracy. She also specialized through seminar "Montenegro in the European and Euro-Atlantic integration", organized by the Centre for Democracy and Human Rights and the Konrad Adenauer Foundation, as well as during the study visit in Germany organized by FES. She was a volunteer at the CCE and in the PRONI office for social education of young people in Ulcinj. Also, she was a scholar of municipality Ulcinj during the academic year 2010/2011. She is fluent in English, with basic knowledge of German language.

Tamara Milaš, Programme Associate

Tamara Milaš completed postgraduate specialist studies in Civil Law study programme of the Law Faculty at the University of Montenegro, where she previously graduated. She completed the Human Rights School, in organisation of the Centre for Civic Education (CCE) under the sponsorship of the Commission for the allocation of part of revenue from lottery games of the Government of Montenegro, and the Democracy School organized by CCE and the Friedrich Ebert Stiftung (FES). In addition, she specialised through training programmes in women's rights and project proposals writing, and also was staying in Germany through study visit within the programme of the FES. She was a participant of the Kopaonik School of Natural Law, organized by the Association of Lawyers of Serbia, under the sponsorship of UNESCO and the GIZ. During her studies she was a member of the student organization ELSA Montenegro anda director of the sector for academic activities in the same organization. She has also been a volunteer for the Red Cross and CCE, and an activist at the YIHR Montenegro.She began her lawyer work experience in NGO MANS. She is a member of the redaction of publication "How does the European Parliament sees Montenegro in the process of joining the EU?", published by the CCE, with the support of FES, and a co-author of publications *Europe in my town – what are we negotiating about and what do negotiations with the EU bring to us* as well as *Equality – legislation and reality in Montenegro*. Fluent in English, with basic knowledge of Italian language.

Svetlana Pešić, Programme Associate

Svetlana Pešić has specialized Politicology at the Faculty of Political Science, University of Montenegro, where she had previously acquired a Bachelor's degree in Journalism. She completed the "School of Sophie Scholl-We will not be silent", organized by the NGO

Anima from Kotor, followed by training in the management of projects financed from EU funds in the organization of TACSO office in Montenegro. In addition, she attended a seminar on effective policy papers proposals writing, organized by the Faculty of Political Science, University of Montenegro. Also, she completed Democracy School, in the organization of the Centre for Civic Education and Friedrich Ebert Stiftung. She is a member of the redaction of the *European Pulse*. Previously, she worked as a project assistant at the NGO "Alliance of non-governmental organizations of Bijelo Polje". She was a scholar of Bijelo Polje during 2008/2009 and 2011/2012 year. Fluent in English, and has basic knowledge of Russian language.

Snežana Kaluđerović, Active Citizenship Programme Coordinator

Snežana Kaluđerović graduated at the Law Faculty at the University of Montenegro. She completed professional exam for work in state authorities and currently is preparing judicial exam. In addition, she successfully passed a training for creditors within bankruptcy process in the organization of the American agency for international development, as well as training for trainers of election procedures organized by the Centre for Monitoring (CEMI). She finished the European Integration School, organized by the Centre for Civic Education (CCE), the Centre for Development of NGOs and the European Movement in Montenegro, with the support of FOSI ROM. Previously, she completed the Oratory School at the Law Faculty, during which she took part in numerous competitions in the country and abroad, where she won individual and group awards. During the studies, she was working as a project assistant at the OSCE on trial monitoring. After graduation, she was engaged as programme associate within Union of Employers of Montenegro. She did her trainee stage, and got extensive working experience, in Basic Court in Podgorica, where she worked for four years. Previously, she used to be party active. She is a member of the Working group for development of the Draft Law on Anticorruption Agency within the Ministry of Justice, as well as Working Group for Development of the Strategy of support of the talented pupils in the Ministry of Education. In addition, she is a member of redactions and editorial boards of several publications. She is a co-author of publications: *Human Rights in Montenegro 2010 and 2011; Europe in my town – what are we negotiating about and what do negotiations with the EU bring us; Judiciary and Court of Public;* as well as *Equality – legislation and reality in Montenegro*. She speaks English language.

TOWARDS A BETTER REGULATION OF PUBLIC-PRIVATE PARTNERSHIP AND CONCESSIONS IN MONTENEGRO

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SUMMARY

Establishment of a separate legal framework for public-private partnership has been an emerging trend in the past ten years in most countries in transition. Although these countries – almost by default – already had concession laws in place, these laws appeared insufficient for the regulation of PPP, while the use of other legal provisions pointed to the need for enhancing and unifying the laws in the framework of one single legal act. Bearing in mind that Montenegro lacks a defined legal framework in the field of PPP, and that its current legislation in the area of concessions is not aligned with the relevant EU provisions, the goal of this analysis is to demonstrate how this matter is regulated in transition countries.

Comparative experience shows that aligned legal and institutional frameworks, along with transparency, clearly defined strategic development goals and careful preparation of projects, are crucial for successful implementation of public-private partnership. However, an improved legal and institutional framework does not guarantee quick success in the implementation of PPP. They are, nevertheless, a starting point for creating favourable conditions for foreign investment and obtaining loans from international investment banks. In order to establish such an 'environment' in Montenegro, it is necessary to:

- Prepare mid-term strategic framework for the development of PPP, which would allow for further planning of projects per sectors.

Adopt a legal framework for public-private partnership which shall:

- Establish clear and transparent procedures for PPP and concessions in line with the EU acquis;
- Establish precise division of tasks and competences between the central level and local self-governments, which will allow local administrations to monitor the receipt of concessions indemnities and to realistically assess their revenues annually and in the long-run;
- Create the basis for establishing an electronic database of PPP contracts with complete contracts and plans for financial payments, which would be updated upon the signing of the contract.

Establish an independent unit for PPP which shall:

- Provide expert assistance in the preparation of PPP projects;
- Approve PPP project proposals;
- Manage the registry of contracts on PPP and concessions;
- Perform monitoring of the implementation of PPP contracts;
- Provide training for state and local administration employees involved in PPP;
- promote PPP concept in the country and abroad;
- Perform evaluation of PPP projects.

Public-private partnerships (PPP)[1] represent an optimal, yet complex model (contractual relation) of overcoming the gaps between the need for enhancing public services and infrastructure on the one hand, and the lack of financial resources for these investments on the other. The lack of funds for enhancing the quality of services is especially evident in countries in transition which have limited budgets for capital investments and a much greater need for infrastructure investment compared to developed countries (5% of GDP). Compared to traditional forms of establishing and securing services, PPP stimulates savings in terms of innovation costs and improvement in terms of risk management (risk share). However, this is exclusively the case if the public sector has an adequate legal framework and the necessary competences to manage such projects. Well-defined and harmonised legal, economic and political framework is a precondition for foreign investment and hence for successful implementation of PPP.

Why does Montenegro need a Law on public-private partnerships?

- There is an increased need for infrastructure investment and for enhancing the quality of services.
- Budget deficit and public debt are high.
- To secure transparent procedures for the implementation of PPP as exceptionally complex projects and instruments to compensate for budget deficit.
- To allow for infrastructure investments or provision of services to be *cost-effective*.
- To have the possibility of risk sharing between the public and private partners.

PPP AND CONCESSIONS FRAMEWORK IN MONTENEGRO

As most neighbouring countries, Montenegro also has a high budget deficit, which additionally limits the possibilities for infrastructure investments. In 2012, this deficit amounted to 5.6% of GDP, which was significantly higher than the predicted 2.4% deficit, while the public debt rose to 54% of GDP.[2] Hence, PPP has been identified as an efficient model to compensate for the budget deficit. However, despite numerous announcements from the government that the PPP would be more frequently

1 "PPP is the cooperation between the public and the private sector with the aim to procure the financing, development, refurbishment, and management of infrastructural objects and the service sector. That is, PPP entails the financing of those projects and services that are traditionally procured by the public sector..", *Public-private partnerships in Montenegro – accountability, transparency and efficiency*, Institute Alternative, 2010, p. 6

2 Montenegro 2013 Progress Report, p. 17

implemented,[3] the adoption of the Law on public-private partnership is still pending and is not even planned in the government's Work Programme for 2014.[4] Currently, over 40 sector laws regulate cooperation between the public and private sectors in the provision of public services.[5] Bearing in mind that there is no legal act which regulates the area of public-private partnership, the institutional framework for the implementation of PPP has not been established and there is no authority which would approve and secure assistance in the preparation of projects and which would monitor the enforcement of contracts. At the national level, the Council for privatisation and capital projects determines which facilities and business entities are to be privatised via public tender, through stock market sale or via PPP.[6] However, the hitherto implementation of PPP has not been subject to systematic planning, while the national plan for the development of this area is yet to be adopted.

With regard to concessions in Montenegro, this area is regulated by the Law on concessions, adopted in 2009.[7] The law defines concession as granting of the right to exploit a natural resource, a public good, or to conduct a business of public interest, i.e. to 'finance, research, design, construct or reconstruct, use, maintain, re-vitalise and transfer facilities, devices or plants, within the prescribed deadline, into the property of the grantor, including other similar forms'[8] which is a wider definition compared to the Directive 2014/18/EC.[9] Although the definition includes conducting a business of public interest, an additional problem lies in the fact that the concessionaire does not use the public good in order to provide services for citizens; instead it is used for personal interest. 'That is why the concession contract is more about granting a licence by the competent body rather than obliging the

3 See: Vujica Lazović, Deputy PM for Economic Policy and Financial System: 'Montenegro is entering the phase of public-private partnership', Portal analitika, 16 May 2012, available at: https://portalanalitika.me/ekonomija/vijesti/61063-lazovi-crna-gora-ulazi-u-fazu-privatno-javnih-partnerstava.html

4 The programme foresees adoption of the Strategy and Action Plan for the development of public-private partnership in healthcare, which should be adopted in the second quarter of 2014. See: 2014 Work Programme of the Government of Montenegro, January 2014.

5 2013 Annual Report of the Commission for concessions, p. 86

6 See: 2014 Privatisation Plan, available at: http://www.gov.me/vijesti/134885/Savjet-za-privatizaciju-i-kapitalne-projekte-usvojio-Predlog-odluke-o-planu-privatizacije-za-2014-godinu.html

7 Law on concessions, "O.G. of Montenegro", No. 08/09 of 4 February 2009, applicable to the areas of mining, forestry, water industry, education, transportation and maritime affairs. Besides this Law, the area of concessions is regulated by other laws and regulations, such as the Law on mining, Law on waters, Law on forests, etc.

8 Article 4 of the Law on concessions of Montenegro

9 This directive is no longer in force following the adoption of the Directive 2014/24/EU on public procurement on 26 February 2014

contracting party to provide services for citizens.'[10] The law does not define concessions for works, or the procedures for allocating concessions, in line with EU regulations.[11] Although the European Commission has been pointing out to the problem of non-alignment of this Law with the a*cquis*[12] for several years now, there is still no law which would enhance the regulation of this area, while the working group tasked with drafting amendments to improve the existing law has been formed back in 2011.

Knowledge about concessions at national and local levels is very poor. A small number of employees in these institutions are knowledgeable about the area of concessions and modalities for its implementation.[13]

In Montenegro, there is no institution regulating the area of concessions. The Commission for concessions is a second-instance body, i.e. it acts upon complaints submitted by those who participate in the procedure of allocation of concessions, with regard to evaluation and ranking on the allocation of concessions; it creates and keeps records of concession contracts; approves extension of deadlines for allocating concessions or expanding the space for performing concessionary activities.[14] Since its establishment in 2009, the Concessions Commission has acted upon a total of 13 complaints in procedures for concession allocation. This number includes deliberation on complaints submitted to the Administrative Court against the decisions of this Commission.

Number of complaints addressed by the Concessions Commission

2010	2011	2012	2013
7	3	2	1

Despite the limited number of activities that fall under its competence, the Concessions Commission receives significant funding for its work. It is interesting to note that until 2014, funding has been allocated from the state budget to the Concessions and BOT Arrangements Commission, established

10 Montenegro 2011 SIGMA Assessment, 2011, p. 27

11 Limited procedure and competition dialogue

12 Montenegro 2013 Progress Report, p. 21

13 Report on the fulfillment of obligations from concession contracts, January 2013

14 Article 11 of the Law on Concessions

in 2003[15], although the 2009 Law does not identify this body as competent for the procedure of concessions allocation. Furthermore, the Law foresees that this body would perform the duties of the Concessions Commission until the establishment of the new commission (2009). Annual performance reports of this body are not available.

Budget funding allocated for the work of the Concessions Commission

2010	2011	2012	2013	2014
Concessions Commission				
77 415, 20	95 815,20	88 634,73	96 500,00	95 500,00
Concessions and BOT Arrangements Commission				
26 100,00	29 100,00	35 590,47	22 500,00	/

Apart from the inadequate institutional framework in the field of concessions, the coordination among institutions at national and local levels is poor, which is reflected in the fact that the municipalities do not adopt concessions plans, although it is their legal obligation to do so.[16] In addition, municipalities do not have any information on the type of concessions which is the basis for payments made at the national level, i.e. revenues from the State Treasury. Hence, municipalities are unable to realistically assess their revenues annually or in the long-run.

Total revenues on the basis of concessions indemnities

2011	2012	2013
25 699 255,23 €	**12 706 115,31 €**	**13 233 490,18 €**

Concessions payments are managed through the Ministry of Finance, in cooperation with the Tax Administration. The competent state authorities submit the decisions on concessions indemnities to the Tax Administration, while the Tax Administration is in charge of concessionaires' debts and payments of concessions indemnities on that basis, i.e. it monitors the realisation of payments.

15 Compare: Decision on the establishment of the Commission for concessions and BOT arrangements 'Official Gazette ofRoM, No.48/03

16 Article 7 of the Law on Concessions

In case obligations are not met, the Tax Administration can apply measures of forced payments.[17] However, this system of payments of concessions indemnities has shown a number of problems in practice.

Debts based on the obligations the concessionaires failed to meet are rising every year. As of December 2012, these debts amounted to EUR 12 249 306.44 compared to April 2011 when this debt amounted to EUR 8 154 721.94.

Another limitation in the system of control of the implementation of contracts on allocated concessions, as well as the control of payments of concessions indemnities, lies in the inspection control. This problem is not only due to the lack of administrative capacity of the Administration for inspection affairs in this area, but also due to incomplete inspection controls.

Inspection controls in 2013[18]

INSPECTION CONTROL SUBJECT	DEPARTMENT IN THE ADMINISTRATION FOR INSPECTION AFFAIRS	NUMBER OF CONTROLS
Concessionaires exploiting forests	Department for the inspection of forestry, hunting and plant protection	234
Concessionaires who concluded contracts with the government of Montenegro on right to research and exploitation of mineral materials	Geological inspection	29

Insufficient transparency

It is necessary to enhance transparency, especially when it comes to updating records on concessions and publishing concessions agreements and payments.[19]

17 Law on Tax Administration,'O.G. RoM', No. 29/05

18 2013 Annual Performance Report of the Administration for Inspection Affairs, March 2014

19 Montenegro 2013 Progress Report, p. 28

Lack of transparency in the area of concessions is largely a result of an incomplete central registry of concessions, bearing in mind that the registry kept and updated by the Concessions Commission does not contain plans for concessions payments, nor complete contracts on allocated concessions.

Contents of the concessions registry in Montenegro

Date of registration	Name of concessionaire	Name of the contracting party	Subject of concession	Date and number of the contract on concession	Duration of the contract on concession	Remarks

The concessions registry in Montenegro contains the subject and duration of the allocated concession, as well as the names of concessionaires and the contracting party. A single database of contracts concluded within the framework of public-private partnership has not been established. In contrast, examples from the region show all types of information to be contained in such registries.

So for instance, besides the data available in the registry in Montenegro, the public-private partnership registry in Croatia also contains a detailed account of the purpose and contents of the concluded contract, including the obligations of the public and of the private partner. The registry further includes indemnities which the private partner is bound to pay to the public partner, as well as the total capital expenses of the PPP project.

Table: Example of good practice – contents of the public-private partnership registry in Croatia[20]

Registration number
Public partner
Private partner
Date of signature
Start of implementation
Public-private partnership model
Purpose of the contract
Subject of the contract
Area of implementation
Key activities
DPN
Public partner's obligations
Indemnities paid by the private partner to the public partner
Private partner's obligations
Objects
Location of objects
Capital expenses of the PPP project

On the basis of the existing Law, a total of 183 concessions have been allocated, of which 23 have been terminated. Only three concessions were allocated in the area of 'services'.[21] In 2013, only two concessions contracts have been signed, which demonstrates the difficulties in the implementation of this Law.

The absence of a PPP framework, non-alignment of the existing Law on Concessions with the acquis, as well as the problems in the implementation of this Law, indicate that there is an urgent need to define legal provisions which would regulate these areas in line with the relevant EU regulations and good practice of the countries which have more experience in the implementation of this type of projects.

PPP REGULATIONS IN COUNTRIES IN TRANSITION

In the past ten years, most countries of the region and those still considered in transition, have enhanced their legal and institutional framework in the area of PPP.

Until 2004-2005 a significant number of countries had a legal framework exclusively for concessions, while PPP used to be regulated by the existing laws, mostly those regulating public procurement. Having in mind that there is a set of legal rules at the EU level which may serve as guidelines for regulating this area[22], more and more countries introduced a separate law on PPP in addition to a

20 Available at the website of the Public-Private Partnership Agency: http://www.ajpp.hr/naslovnica/registar.aspx

21 2013 Annual Report of the Concessions Commission, p.23

22 Works Directive (93/27/EEC), Supplies Directive (93/36/EEC), Services Directive (92/50/EEC), Utilities Directive (93/38/EEC), Guideliness for Successful Public-Private Partnerships, 2003, Green Paper on Public Private Partnerships and Community law on Public Contracts and Concessions, 2004.

law on concessions, or they recognise concessions as a form of PPP within a single law. The need for additional law is based on the possibility of recognising and regulating other PPP mechanisms vis-à-vis concessions,[23] i.e. on the possibilities of enhancing the legal solutions which recognise concessions as the only operational model of public-private partnership.

	LEGAL FRAMEWORK FOR PPP AND CONCESSIONS	
	Single	Separate
Albania	☐	
Bulgaria		☐
Croatia		☐
Macedonia	☐	
Serbia	☐	

In Bulgaria, although the Law on concessions was adopted in 2006, the legal framework for PPP was incoherent and fragmented with a large number of laws regulating this area.[24] The Law on public-private partnership was adopted in 2012 in Bulgaria and entered into force in 2013. In Croatia, the Law on concessions was adopted in 2008, as well as the Law on PPP which was subsequently amended in 2011, while additional amendments are currently subject to a public discussion. In Serbia, the Law on public-private partnership and concessions was adopted in 2011.

Laws on public-private partnership were adopted by Bosnia and Herzegovina (2009), Latvia (2009),[25] Kosovo (2011), Poland (2009), Romania (2010)[26] and Slovenia (2006), while Albania (2013) and Macedonia (2012) have a single law regulating PPP and concessions. Countries that are yet to adopt separate legislation for PPP are, inter alia, Estonia, Lithuania,[27] Hungary,[28] Slovakia,[29] etc.

23 Contracts on management of external contractors; BOT; DBFO, etc.

24 According to the 2009 research, this number amounted to over 30.

25 Law on concessions adopted in 2000

26 Adopted in 2010, but the procedure for amending this law began in 2013

27 Law on concessions was adopted in 1999, and amended in 2011

28 Hungary implements PPP on the basis of the Law on public procurement, local administration and Civic Code.

29 Law on public procurement allows for the implementation of PPP projects.

INSTITUTIONAL SETUP FOR PPP

Since most countries regulate their procedures for the selection of private partners on the basis of models defined in accordance with relevant directives in the area of concessions and public procurement, one of the key questions for regulating public-private partnership is the optimal institutional framework for the preparation, implementation and monitoring of PPP.

Qualified and motivated staff in the public administration sector dealing with PPP may help in defining the role of the public sector, as well as in institutional capacity building for project-management at all levels.[30] Therefore, most countries which adopted the legal framework for PPP also established a central unit in charge of providing expert assistance in preparing projects on the basis of this model. There are three most frequently used models of specialised institutions for PPP which may be established by the executive: centralised/central independent unit; unit within the ministry competent for financial affairs (or another ministry); one or more units competent for PPP in different sectors.[31] The duty of these units is to, inter alia, provide the so-called *policy* advice and guidelines for enhancing the regulatory framework; provide expert assistance to state bodies in the preparation of projects and approving them; manage records on concluded contracts, etc.

In 2012, Croatia established the Agency for public-private partnership which approves proposals for PPP projects (upon previous consent of the Ministry of Finance), manages records on contracts and monitors the implementation of projects. The Administrative Council of the Agency is appointed and dismissed by the government and is composed of a president and four members, i.e. ministers of economy, finance, construction and judiciary. The President of the Administrative Council is the Deputy Prime Minister. The Agency is managed by the director who has a deputy and four advisors for: legal, technical and financial aspects, as well as for international cooperation. Besides this Agency, in Croatia there is also the Centre for monitoring of activities in the energy and investment sector, which has a separate department for PPP in charge of providing expert assistance in the preparation of documents for the selection of private partners in public bidding.[32]

30 "Guidelines for Successful Public-Private Partnerships", European Commission, 2003

31 Dedicated Public-Private Partnership Units, A Survey of Institutional and Governance Structures, OECD, 2012, p. 33

32 More about this Centre at: http://www.cei.hr/

In Serbia, the Commission for public-private partnership was established through the Law on public-private partnership and concessions. This Commission provides expert assistance in the implementation of PPP, i.e. it assists in the development and preparation of PPP proposals. The Commission, composed of nine members, is appointed by the government at the proposal of the Prime Minister. It is run by the representative of the ministry competent for economic affairs and regional development, while its members are from the ministries competent for financial, infrastructure, mining, communal, environmental affairs and those in charge of the autonomous provinces and the city of Belgrade.[33]

Moldova has a PPP unit within the Agency for public property, under the Ministry of Economy, while Bosnia and Herzegovina, Latvia and Slovenia do not have separate units/institutions specialised in PPP. Instead, it is the ministries competent for economic and financial affairs that are in charge of coordinating this area in these countries. Slovakia used to have a PPP unit within its Ministry of Finance, but it was abolished in 2010. Placing the PPP unit within the ministry competent for financial affairs may be good because of the direct connection with other expenditures, investments, capital investments, but also bad due to the possibility of political preferences influencing the evaluation of PPP projects.[34]

The Laws on PPP in these countries also regulate conditions for appointment of persons working in these bodies. So, for example, a member of such a Commission in Serbia is appointed for a period of five years, with the possibility of one additional term, and (s)he has to possess expert knowledge of the PPP area, public procurement and concessions or the EU law. In Croatia, director is appointed for a term of four years, renewable once, and must possess knowledge of legal, economic or technical science, and have ten years of relevant working experience.[35]

33 Article 65 of the Serbian Law on public-private partnership and concessions, 'O.G. RS', No. 88/2011

34 Dedicated Public-Private Partnership Units, A Survey of Institutional and Governance Structures, p. 32

35 Article 27 of the Croatian Law on public-private partnership, NN 78/12

ENHANCED REGULATORY FRAMEWORK FOR PPP – PRECONDITION FOR PROGRESS IN PRACTICE?

In Croatia, between 2011 and today, a total of 14 PPP contracts have been signed,[36] while in Serbia, during the first year of the implementation of the Law, only one project was prepared and approved. A well-defined legal and institutional framework for PPP does not necessarily mean expansion of these projects. However, clearly defined procedures reduce corruption risks, they create a fertile soil for foreign investment, and they motivate the public sector to invest in strengthening its capacity. 'PPP model is never an imperative on its own'[37] but it is precisely the goal of comprehensive analyses preceding investments, to examine whether greater added value and savings for tax payers are to be obtained through traditional projects, via PPP model or through an entirely privatised object. However, an additional argument for the public sector to consider implementing projects according to the PPP model lies in the fact that an aligned regulatory framework allows for funding with loans provided under favourable conditions by the international investment banks, which again leads to creating competitive conditions.

CONCLUSIONS AND RECOMMENDATIONS

Montenegro does not have significant experience in the implementation of public-private partnerships. The legal framework for PPP is incoherent and encompasses over 40 sector laws, while the legal framework for concessions is not aligned with the EU *acquis* and is not operational in practice. With no adequate legal framework, there can be no plan for the development of this area. Montenegro does not even have an expert nucleus for PPP, i.e. a central institution which would enhance the process of preparation of such complex projects. Planning, concluding and monitoring of PPP contracts require special know-how and skills in comparison to the preparation of traditional projects and

36 See: PPP contracts registry in Croatia, available at: http://www.ajpp.hr/naslovnica/registar.aspx

37 Taken from the internet presentation of the Croatian Centre for monitoring of energy and investment sector activities: http://cei.hr/javno-privatno-partnerstvo/

public procurement. Hence, the lack of knowledge on the 'logics' behind the implementation of these projects is yet another limiting factor affecting their more intensive use.

An additional problem is reflected in the lack of the necessary expert knowledge in these areas, both at national and at local levels. There is no institution which is competent for regulating concessions, while the Concessions Commission acts as a second-instance body when it comes to deciding on complaints, and since 2009 – when this body was established – it acted upon a total of 13 complaints. Nevertheless, this Commission receives significant funding from the budget every year.

Access to PPP contracts is hampered by the absence of an electronic database. In terms of concessions, the registry updated by the Concessions Commission only contains information on the subject of concession, duration of concession and names of contracting authority and concessionaire. Poor coordination between the competent national and local administration bodies is reflected in the fact that municipalities do not have annual concessions plans although they are legally bound to adopt them. An additional limitation is posed by the inefficient system of concessions payments, managed by the Ministry of Finance and Tax Administration, so the concessionaires' debts are rising every year. In January 2013, this debt amounted EUR 12 249 306.44. Poor control of the implementation of concessions contracts is contingent upon the lack of capacity for all areas, i.e. in all departments of the Administration for Inspection Affairs.

Comparative experience shows that aligned legal and institutional frameworks, along with transparency, clearly defined strategic development goals and careful preparation of projects, are crucial for successful implementation of public-private partnership. However, an improved legal and institutional framework does not guarantee quick success in the implementation of PPP. They are, nevertheless, a starting point for creating favourable conditions for foreign investment and obtaining loans from international investment banks. In order to establish such an 'environment' in Montenegro, it is necessary to:

- Prepare mid-term strategic framework for the development of PPP, which would allow for further planning of projects per sectors.

Adopt a legal framework for public-private partnership which shall:

- Establish clear and transparent procedures for PPP and concessions in line with the EU acquis;

- Establish precise division of tasks and competences between the central level and local self-governments, which will allow local administrations to monitor the receipt of concessions indemnities and to realistically assess their revenues annually and in the long-run;
- Create the basis for establishing an electronic database of PPP contracts with complete contracts and plans for financial payments, which would be updated upon the signing of the contract.

Establish an independent unit for PPP which shall:

- Provide expert assistance in the preparation of PPP projects;
- Approve PPP project proposals;
- Manage the registry of contracts on PPP and concessions;
- Perform monitoring of the implementation of PPP contracts;
- Provide training for state and local administration employees involved in PPP;
- promote PPP concept in the country and abroad;
- Perform evaluation of PPP projects.

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Centre for monitoring of energy sector and investments - http://www.cei.hr/

Commission for public-private partnership of Serbia - http://www.ppp.gov.rs/

TESTIMONIAL

Based on an intensive media campaign, Institute Alternative drew the attention of the public and interested parties on the problems in the existing regulation of public-private partnerships and concessions and uncoordinated actions by the Government towards the improvement of the legal and institutional framework in these areas.

In March, IA's Research Coordinator has been appointed as a member of the working group that is dealing with a new proposal of the Law on public-private partnerships and concessions. With activities in the working group that is drafting a law on PPPs and concessions, IA pointed out the way it should regulate specific solutions to manage these areas.

In June, Institute Alternative launched an initiative to the Parliamentary Committee for Economy, Finance and Budget to conduct a consultative hearing regarding the serious problems in the implementation of the concession policy.

In June, IA's research coordinator participated at the first PPP Network Meeting – Capacity Building on Public Private Partnership in the Western Balkan Countries in the framework of the Public Service Day in the Regional School of Public Administration (ReSPA). Our presentation at a workshop entitled "Benchmarking approach to the public investment – Assessing the consumer paid services (outsourcing)" was a great opportunity to present criteria that need to be met in order for public-private partnerships (PPPs) to be implemented in accordance with the "*value for money*" principle.

Through distribution of the brief to stakeholders,[38] especially representatives of the EU, IA put the focus on these issues in the context of negotiations in Chapters 5 (Public

38 Policy brief is distributed to target groups: representatives of the Cabinet of the Deputy Prime Minister; the Ministry of Economy; the Commission for Concessions; Members of the Committee for Budget, Economy and Finances in the Parliament of Montenegro; to all local self-governments, journalists who are covering issues related to the economic affairs. A copy is sent to all members of the Parliament of Montenegro, chambers of commerce and business associations, non-governmental organizations dealing with these issues. Also, English version is provided to the representatives of the diplomatic and consular missions and international organizations.

Procurement) and 23 (Judiciary and Fundamental Rights). Recommendations from analysis were included and presented within regular (written) IA contribution to the Progress Report and at the meetings with Mr. Dirk Lange, Head of Unit for Montenegro within the European Commission's Directorate General for Enlargement, held on May 22nd in Brussels, and July 7th in Podgorica.

ABOUT THE AUTHORS

Jovana Marović holds a PhD from the Faculty of Political Sciences, University of Belgrade. She has been working at the "Institute Alternative", a Podgorica-based think tank, as a research coordinator, from 2010. She also worked as a counselor for European Integration at the Ministry of Foreign Affairs and the Municipality of Budva from 2004-2009. Jovana has successfully completed several specialized diplomatic programs, including the Diplomatic Academy organized by MFA and the Faculty of Law, University of Montenegro. Since March 2012 she is a member of the working group for Chapter 23 – Judiciary and Fundamental Rights, in preparation for the accession of Montenegro to the EU.

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Institute Alternative (IA) is a non-governmental organization, established in 2007. Institute functions as a think tank or a research centre, focusing on the overarching areas of good governance, transparency and accountability. On the basis of five main programmes (public administration; accountable public finance; security and defence**;** parliamentary programme; and social policy), IA monitors the process of accession negotiations with the EU, actively participating in working groups 23 (Judiciary and Fundamental Rights) and 32 (Financial Control). Institute Alternative received the official certificate from the Ministry of Science to conduct research activities in the filed of social science in 2013.

Web: www.institut-alternativa.org

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BALKAN CIVIL SOCIETY DEVELOPMENT NETWORK

IPA Balkan CS Acquis, Strenthening the Advocacy and the Monitoring Potential and Capacities of CSOs

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RULE OF LAW – PART II

SLOVAK AID GRANTEES

KOSOVO · MACEDONIA · SERBIA

SlovakAid

RULE OF LAW
SLOVAK AID GRANTEES
KOSOVO · MACEDONIA · SERBIA
PART II

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FOREWORD

According to recent studies on civil society development in the Western Balkan countries such as CIVICUS Civil Society Index, USAID Sustainability Index etc. civil society is maturing. While facing many different country-specific challenges, however, there is one in particular faced by all – lacking influence on the development of laws and policies that affect daily lives of ordinary citizens. Considering that all countries are on the path of EU membership, this process, no matter how long, always requires massive changes of laws, bylaws and policies (usually termed by experts as "harmonization" and "transposition"), sometimes even overnight.

In such a context our network felt it was one of its strategic goals to work on development of advocacy knowledge and skills among civil society actors as a base for their greater impact. Setting up of the Slovak-Balkan Public Policy Fund (SBPPF) was a natural consequence when contemplating how to embark on such a huge task as building of research and advocacy capacities of CSOs in different areas of work. Starting as a small pilot initiative that initially included only three countries, SBPPF quickly grew to be a recognized, multi-donor and network-supported project, covering six countries and producing twice as many policy products in its second round.

Considering that the EU accession process is the key transformation and reform factor, we have focused our effort on assisting both CSOs and individual young researchers in the development of concrete policy products that analyse considerably different but equally important topics. Among the 21 policy papers, there are those that aim to open up state budget for citizens' in Macedonia to understand how public money is being

spent; improve possibilities of young Bosniacs who have studied at foreign universities and want to return to BiH and work in public administration; improve integration and well-being of families and victims and missing persons during 1999 conflict in Kosovo; improve transparency and citizen participation to urban development process in Serbia, push for implementation of environmental standards in Albania under the Aarhus Convention…

The energy, the passion, the work and the commitment behind each CSO and individual researcher working on these and other papers, those of the project team and mentors who helped in their development and are presented via this collection testify that there is a wealthy potential among CSOs and researchers to give relevant, timely and concrete contribution to solving the array of issue being tackled in the papers. We hope that this collection will be a serious step in helping them promote, pressure and influence among public institutions and other relevant stakeholders in their countries.

Enjoy the read.

Tanja Hafner Ademi
Executive Director
BCSDN

SLOVAK - BALKAN PUBLIC POLICY FUND

Civil society actors often do not have the capacity to engage and influence civil society related policies and programmes and thus need to build their expertise and understanding of how the EU and national institutions function, as well as the possibilities and existing tools for advocacy. On the other hand the institutions also lack the awareness about the benefits and the added-value from working with CSOs and the policy options and solutions they might offer. It is for this purpose that BCSDN, in cooperation with Pontis Foundation and supported by Slovak Aid, the European Commission (EC) and the Balkan Trust for Democracy (BTD), has been administrating the Slovak - Balkan Public Policy Fund, an initiative that aims to support civil society actors form the Western Balkans to develop their research and advocacy capacities and increase their engagement into the creation of public policy in regards to the EU integration process.

The Slovak - Balkan Public Policy Fund operates through a programme of small grants and tailor-made capacity-building support allocated to CSOs and individuals that are involved in the shaping of the public debate. In the first phase, the Fund focused on providing local CSOs a concrete, practical, learning-by-doing support, including a training on public policy and a mentor, to develop a policy product and organize a public debate event in their area of work. In the pilot phase in 2011-2012, the grant scheme targeted 3 countries: Albania, Macedonia and Montenegro, and 11 small grants (between EUR 3,000 and EUR 5,000) were offered, out of the 113 applications recieved, in total amount of EUR 42,000

In 2013, the Slovak - Balkan Public Policy Fund continued its program for enabling CSOs and individual researchers from the Western Balkans to develop their advocacy skills and contribute to the reform process and policy making in their respective countries, but increased its coverage to include also Bosnia & Herzegovina, Kosovo and Serbia. In this second round, a total of 167 applications were received, out of which 21 projects were selected for funding (12 for Albania, BiH and Montenegro covered from the European Commission and BTD funds and 9 covering Kosovo, Macedonia and Serbia supported by Slovak Aid) and a total amount of EUR 84,000 was granted. The Call and application documents and process was coordinated and developed in cooperation with BCSDN member CRNVO who also acted as partner for sub-granting and monitoring of this project activity.

The awarded organizations and individuals received a training on advocacy and policy paper writing as well as continuous support in the implementation of the project by BCSDN, Pontis and assigned mentors. After the successful development of the policy products, in 2014, the majority of the projects were publicly presented in front of relevant stakeholders at national level, aiming to present the research data and the main policy recommendations, to raise public awareness about the addressed topic, and to advocate and lobby for improvement of public policies among the representatives of the CSOs, public institutions, donors and other relevant stakeholders who attended the presentations.

The policy outputs of this second round of the SBPPF program are revolving around two priority themes: 1) Democracy and the rule of law and 2) Non-majority communities. With regard to *Democracy and Rule of Law*, the focus is put on analyzing one or several of the following issues: policy-making and policy implementation/enforcement, corruption,

media, access to public information, administration capacity and transparency of public institutions; while within the second priority theme, *Non-majority communities*, special attention is given to: respect and protection of non-majority, social groups and groups in position of other forms of discrimination and people with disabilities.

The Slovak Balkan Public Policy Fund has proved to be a successful support model for boosting reserach and advocacy skills of CSOs in the Western Balkan countries, as projects supported in both rounds have demonstrated tangible results from their policy work. BCSDN is convinced that the selection conducted by an evaluation committee, composed of experts on public policy issues, advocacy and civil society development from the Western Balkan Countries and EU countries, produced successful policy outputs and empowerd civil society actors with great advocacy potential and opportunity for real impact in the policy-making process.

Balkan Civil Society Development Network (BCSDN) is a network bringing together 15 civil society organizations (CSOs) from the Balkan region, both new member states and (pre)-accession countries; a network which exists since 2003 and has been officially formalized in 2009. Its mission is to empower the civil society and influence European and national policies towards a more enabling environment for civil society development in order to ensure sustainable and functioning democracies in the Balkans. Its work mainly focuses on advancing the concerns of local CSOs and other stakeholders to EU institutions, regional inter-governmental forums, and national governments relevant for enlargement policies in the countries.

The Pontis Foundation is a Slovak non-profit non-governmental organization established in 1997. It encourages individuals and businesses to take responsibility for those in need and for the world around them, contribute to the building of democracy in non-democratic countries, create awareness about this need in Slovakia, and advocate for values-oriented Slovak and EU foreign policies. The Pontis Foundation promotes corporate philanthropy, corporate responsibility and is active in development cooperation, where has a track record of successful projects aimed at transferring Slovak transition and EU integration experience and know-how, especially in the Western Balkans and the Eastern Partnership countries. Through the projects in the field of democratization and development abroad, the Pontis Foundation promotes Slovak and EU foreign policy based on democratic values such as respect for human rights and solidarity.

Center for Development of Non-Governmental Organizations (CRNVO) is not-for-profit, non-governmental association founded and registered in September 1999. The mission of CRNVO is to provide support to development of non-governmental organizations in Montenegro and contribute to creation of a favorable environment for citizens' participation in public policy issues and civil society development. CRNVO provides help to the beneficiaries through educational programs, publishing programs, legal aid, researches and representations of citizens and non-for-profit sector.

RULE OF LAW PART II

LIST OF POLICY PAPERS

HOW MUCH THE POLLUTERS REALLY PAY IN MACEDONIA?

RESEARCH ON THE IMPLEMENTATION AND ENFORCEMENT OF THE LAW ON ENVIRONMENT ARTICLES, IN RELATION TO ENFORCEMENT OF THE PRINCIPLE FOR POLLUTER PAYMENTS IN MACEDONIA

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Citizens' Association Front 21-42 (Macedonia)

FRONT 21|42

December 2013 – June 2014

SUMMARY

Integration of the environmental, economic and social development becomes a paradigm of our time and while more and more countries in the world prove the validity of the concept of sustainable development, in Macedonia not only do we still discus "the environment or the economy?", but the common reply is "the economy first and then we'll see about the environment".

This attitude brings us in conflict with one of the key principles of the related policy of the European Union (a club we want to join): the economy strongly depends on the resources and therefore long-term economic development is not possible without appropriate protection of the environment. The policy is directly manifested in the *Polluters Pay* principle, one that is also among the main pillars of our recent (EU harmonized) national environmental legislation. To put this principle in a simple language: the more you pollute – the more you pay, because we all pay anyway! So, it is economically smarter to invest in prevention, clean production, etc. than to continue with old polluting technology and/or neglecting the environment.

Pollution always costs – the only question is whether it is paid by us – the citizens, or the ones who made profit while causing it.

Hence - Article 9 of the Law on Environment: The polluter is obliged to compensate the expenses for elimination of the environmental pollution threats, to cover the expenses for remediation and pay equitable amount for the damage, as well as bring the environment, to the greatest possible degree, in the state as before the pollution took place.

We decided to focus our research on this article and find out whether the polluters really pay in Macedonia, if yes – how much, and where do this money go? After 4 months of research and many meetings, requests for information, etc. the short answer to all these questions is – it's impossible to know. Not because the authorities refuse to provide the data, this time because the payment system is a labyrinth in which the authorities themselves get lost.

Establishing a separate Environmental Protection Agency in Macedonia would greatly improve the implementation of the Polluters Pay principle. This agency alone would be responsible for the calculation and payment of all environment related charges (deriving from the Law on Environment and other related laws). Meanwhile, what can be relatively simple to do is to create one electronic data base which would be automatically updated by all different institutions and departments which are responsible for various charges related to environmental protection. This data base should be publically available, as all public money management is supposed to.

According to the data we collected, out of 3.514.980,50Euro, for which we know that were required from the polluters in 2012 (the actual amount is most probably much higher because we didn't get information from all the institutions) – the Ministry of Environment got less than 10.000,00 Eyp!

Possible solutions:

- The money collected by the (previously elaborated) Environmental Protection Agency from the polluters should go for environmental projects, only then the Polluters Pay principle actually makes sense.
- Public Revenue Office should define separate income codes, at least to distinguish payments made by different laws – as it is the case now with personal taxes. This way payments from the polluters can be easily traced and invested in the environmental sector.
- Considering the fact that even if all payments from the polluters go solely for environmental projects, it will be far from enough for our country's harmonization with EU standards, but first and foremost because of the need for healthier environment for Macedonian citizens – we suggest to follow

the example of several EU countries, like Slovakia for example, and give the citizens an opportunity to invest a portion of their personal taxes to public interest sectors and projects (environment, education, health, etc.)

ENVIRONMENTAL PERMITS

Environmental permits were introduced in the Macedonian legislation through the Integrated Pollution Prevention and Control Directive (IPPC) and they manifest the core meaning of the *Polluters Pay* principle – if properly implemented this Directive can be one of the main drives for the industry's investments in cleaner technology (the cleaner the production – the lower the fees). According to the information we got from the authorities, in the period 2008-2012 the big polluters were asked to pay a total of around 750.525,00 Euro and the smaller ones paid around 71.000,00 Euro to the 16 municipalities, for period 2010-2013. The conclusions from our analysis of the data we received on the payment warrants issued under the IPPC Directive are following:

1. Despite the legal obligation MOEPP did not issue any payment warrants for any year for 11 big polluters (out of 29 which have a permit or have submitted request for A permit)! The requested payments from the majority of the companies are incomplete, e.g. "forgotten" for some years and in fact can be considered at least partially in compliance with the law only for 8 polluters.

2. The analysis of the data we got from the Ministry showed that there is no established system and payments under this Directive are quite chaotic. For example: warrants for one company (Feni) for both 2012 and 2011 were issued in 2013 (according to the law they have to be issued on annual basis, each year); again in the case of Feni – the Ministry sent 2009 warrant before the one for 2008; there is no logic in several calculations of the requested amounts: Johnson Metti Request for a change of the permit is double the amount of the annual fee for the permit (should be 10%)

and several times higher than the initial Request for permit; the new owner of Silmak (Feroalojz) asked for a change of the permit (and got one) because the old one did not invest anything he was obliged to, and yet for the same company the calculations for the period 2008-2010 (the old owner time) vary from 11.000.000 to 270.000 denars! According to the law the annual monitoring fee is 10% of the fee for possessing the permit – in Johnson Meti case the Ministry calculated that 10% of 48.837 MKD (the permit fee) is 6.105 MKD! No warrants were issued in 2013, not even for the companies which submitted a Request for permit in this year (according to the law the Request has to be paid right with the submission); etc. Some of the companies we had meetings with informed us that they get the calculations in extremely non-professional way – in word doc. format and with additional hand written calculations and explanations. The chaos in the payment system is not the only problem with the IPPC Directive – our team, the expert we cooperated with (Liljana Peeva) and the companies we contacted, all agree that there are serious problems in the fee calculation formula. Here are some of them:

- The emissions of pollutants have a key role in the formula but the monitoring of these emissions is done twice a year on random choice days. If the company "is lucky" to have monitoring on a day with lower emissions (reduced production for example) – it will pay much less than the real pollution for the whole year!
- The formula does not include diffused emissions and yet in some cases they cause serious pollution, like in the case of Makstil – one of the biggest polluters in the country, located in the capital of Skopje.
- The calculation of the quantity of the emissions is not clearly defined at all – it's unclear whether the formula includes surpassing of the legal emissions limits or emission limits defined in the permit for the specific operator (they can vary in the given period quite a lot); it is not defined whether the surpassing is calculated as "x100%" or as "+100%" - this makes a huge difference and in one case (Feni) the operator received a calculation with "x100%" one year and with "+100%" the next.
- The formula does not include the quantities of the emitted pollutants, just their concentration in a unit of measure – this way a factory with a chimney of

1 meter diameter and one with 10 meters wide chimney have the same values for the emissions!

- It is completely unclear how the calculations for some operators are done when there are is no information on their emissions (there is no monitoring). This is the case with "Jugohrom Feroalojz", "Swiss Method", "October 11th", etc.

The long period of the procedure for getting the permit is still the biggest problem and obstacle on the way of *Polluters Pay* principle – it allows some of the biggest polluters in the country (Makstil, Okta, REK Bitola) not only to avoid all payments related to the permit, but to get away and pay nothing even when they release pollution way above the legally allowed limits! The authorities, on the other hand, by prolonging the procedures for these companies indirectly support unfair market competition.

OUR PROPOSALS:

1. For the calculation formula:

   - To calculate the emissions according to the annual working hours - they are clearly stated in the Request for permit and regularly reported each year.
   - To add a new parameter – quantity of released pollutants, so the payments can match the real pollution.
   - To introduce a lump sum for the fugitive emissions which cannot be measured, for all operators which have significant pollution of this kind.
   - To define the surpassing of the limits (Parameter Di) and to take the legal limits as a value, not the limits in the permit.
   - To define the percentage of the surpassing (as "x100%", not as "+100 %").
   - In the integrated permits (unlike in the permits for adjustment) to take away Parameter Di (for surpassing the emissions) and in case of surpassing to charge the polluters with already defined fines.

2. The corrected formula should be transferred in excel sheet, which should be publically available. This way the citizens and the operators can always check the sums and even calculate them in a simple way, just by filling in the specific values (like monitored emissions, surface area, etc.). These sheets should be part of the electronic Register which was introduced in our legislation seven years ago and there is still no sign of it.

3. To prepare a bylaw for financial guarantee and fines (in case of non-compliance with the measures in the permit).

4. To issue as soon as possible warrants for all operators which "were completely forgotten" for several years.

5. All payments under the IPPC Directive, A-permits for big polluters, should be made to the Ministry of Environment and used for capacity building of the IPPC Department and improvement of the implementation of the Directive.

PENALTIES/FINES:

Penalties and fines in all cases of breaching the Law on Environment (e.g. surpassing the legal limits of polluting emissions) are also transposing the *Polluters Pay* principle. They are defined in the Chapter XXII of the Law on Environment and there are three categories of penalties/fines in Macedonian legislation. To collect data on these warrants and/or payments is very complicated and, again, the main obstacle is the complicated system which includes more than one entity responsible for different misdemeanors. For category one and two the responsible institution is the State Inspectorate for Environment and for category three – misdemeanor courts, 26 in total. It is impossible to gather data on the warrants that were actually paid: the misdemeanor penalties are issued by the State Inspectorate, but if they don't get paid the department for misdemeanor procedures starts a legal procedure and if it does not

end with payment of the penalty the warrant goes to the Public Revenue Office. The payments then go directly to the State Budget, under a joint code for all debts to the State. The Inspectorate never gets any feedback.

During the four year period the State Inspectorate issued fines with a value of 103.000 Euro and collected only 3.000 Euro!

OUR PROPOSALS:

- To establish a separate detailed evidence system for misdemeanor fines and to make it publically available on internet – a good example which should be followed is the system for criminal offences by the State Statistical Office.
- The misdemeanor policy should be more strict with higher penalties and fines, sufficiently so to divert the polluters in a proportional way to the pollution.
- To improve the capacities of the State Inspectorate in relation to evaluation of the damage, preventive measures and measures for remediation.
- During the research we detected gaps in the Law on Environment regarding the Environmental Liability Directive – the right of legal and/or physical entities to submit an initiative for action by the authorities in case of environmental damage. The Law on Environment and corresponding bylaws should be corrected in this manner and improve the transposition of the ELD Directive.

This way, maybe the citizens of Skopje could, at least have a legal right to ask for liability for the extreme air pollution they suffer almost every day.

CONCLUSION

From the data we gathered looks like the policy of Macedonia is that main polluters in our country are traders with used goods – they participate with 75% in the total amount required on the basis of *Polluters Pay* principle. On the other hand some of the biggest industrial polluters, thanks to the years long permit procedures, don't pay anything, they are even protected during the process from penalties and fines and can breach the law without any financial consequences.

"The economy first and then the environment" attitude is at the core of this situation, but it is also a misuse of the difficult economic situation of the citizens, especially the high unemployment rate.

The pollution always costs and affects the economy – it is only fair that the price is paid by the ones who make profit by causing it.

In this manner we see the growing number of citizens' protests against the pollution as a promising start of the change.

ИЗВРШНО РЕЗИМЕ

Одржливиот развој, кој ги обединува трите столба: заштита и унапредување на животната средина, економски и социјален развој - станува парадигма на нашето време. Развиените држави се појасно ја докажуваат оправданоста на овој концепт. За жал во нашата земја сеуште се поставува прашањето „екологија или економија?“, а одговорот, од речиси сите страни (институции, приватен сектор, дури и од голем број граѓани) најчесто е: „прво економија, потоа екологија“.

Ваквиот став не доведува во судир со еден од клучните принципи на Европската Унија на оваа тема: нема економија без екологија. Принцип кој најдиректно е преведен во начелото „Загадувачот плаќа“, а кое е еден од столбовите и на нашето поново законодавство.

Со обичен, секојдневен јазик, според законот:

Колку повеќе загадуваш – толку повеќе плаќаш, односно плаќаме сите! Затоа многу повеќе се исплатува да се инвестира во превенција, чисто производство, итн. одколку да се продолжи со застарена технологија и/или да не се води грижа за животната средина.

Според Студијата на Светска Банка Македонија губи околу 1350 животи годишно само како резултат на загадувањето на воздухот. Во 2011 година поради предвремена смртност и загуби во продуктивноста на работа или отсуство од работа, загадувањето само со суспендирани честички (ПМ10) ја чинело домашната економија 253.000.000 €, односно 3,2 % од БДП. Ваквата состојба бепе главниот мотив за да го истражиме барем првиот чекор – дали воопшто, колку и кои загадувачи навистина плаќаат во Македонија.

Основниот заклучок од истражувањето е дека речиси е невозможно да се дојде до точни податоци која година колку средства се собрани врз основа на начелото Загадувачот плаќа (одредбите од Законот за животна средина). Не затоа што надлежните одбиваат да ги дадат податоците, овојпат затоа што системот на наплата е вистински лавиринт во кој не можат да се снајдат ни тие кои се дел од истиот.

Нашиот став е дека за доследна имплементација на начелото „Загадувачот плаќа“ неопходно е формирање на посебна агенција за животна средина која, покрај останатото, ќе биде надлежна за пресметка и наплата на сите надоместоци по основ на Законот за животна средина и останатите релевантни закони.

За почеток, она што може релативно едноставно да се направи е единствена електронска база на податоци во која сите вклучени страни автоматски ќе ги внесуваат податоците за сопствените налози/наплати кога се работи за начелото „Загадувачот плаќа“**.**

ВОВЕД

Правните начела се норми од општ карактер кои укажуваат на целта кон која треба да се стремат конкретните одредби од правните акти во една држава.

Во Договорот за функционирање на Европската Унија (ДФЕУ) утврдени се правните начела за заштита на животната средина и тие претставуваат интегрален дел од примарното право на Унијата.

Согласно чл.191, ст.2 од ДФЕУ, „Политиката на Унијата за животна средина има за цел високо ниво на заштита, земајќи ја предвид различноста на состојбите во различните региони на Унијата”.

Во македонското законодавство општите начела се интегрирани во рамковниот Закон за животна средина, поглавје II (чл. 6 – 19).

Нашето истражување се фокусира на Членот 9, односно Начелото „Загадувачот плаќа“:

Загадувачот е должен да ги надомести трошоците за отстранување на опасноста од загадување на животната средина, да ги поднесе трошоците за санација и да плати правичен надомест за штетата причинета врз животната средина, како и да ја доведе животната средина, во најголема можна мера, во состојба како пред оштетувањето.

Ова начело е директно или индиректно поврзано со неколку други начела, кои исто така неминовно ги допревме со истражувањето:

- **Начело на висок степен на заштита** *(Член 6: Секој е должен при преземањето активности или при вршењето дејности да обезбеди висок степен на заштита на животната средина и на животот и здравјето на луѓето);*

- **Начело на претпазливост** *(Член 13: Доколку постои основано сомневање дека одредена активност може да предизвика штетни последици врз животната средина, се преземаат неопходни мерки за заштита пред да стане достапен научниот доказ дека такви штетни последици би можеле да настанат);*
- **Начело на превенција** *(Член 14: Мерките и активностите за заштита на животната средина се преземаат пред да дојде до штетни последици);* и
- **Начело на почисто производство** *(Член 15: Со цел да се намалат ризиците за животот и здравјето на луѓето и за животната средина, како и да се зголеми економската и еколошката ефикасност, се поддржува примената на сеопфатна стратегија за заштита на животната средина и тоа во поглед на суровините, производствените процеси, производите и услугите)*.

Преводот на сите овие правни изрази во обичен, секојдневен јазик, или уште попрецизно, нивната суштина во една реченица би била:

Колку повеќе загадуваш – толку повеќе плаќаш! Затоа многу повеќе се исплатува да се инвестира во превенција, чисто производство, итн. одколку да се продолжи со застарена технологија и/или да не се води грижа за животната средина.

Во секој случај загадувањето некој го плаќа. И најлогично е тоа да биде загадувачот. Онака како што сега стојат работите го плаќаме ние, граѓаните (преку нарушеното здравје, но и сите трошоци поврзани со лечењето) и државата (преку сите средства кои се излеваат од буџетот за јавното здравство, покривање на изгубените работни денови, итн.).

Според Студијата „Зелен раст и климатски промени во Македонија“ (ноември, 2012), финансирана од Светската банка секоја година во нашата земја:

- Како последица на загадувањето на воздухот со суспендирани честички (ПМ10) се губат 1.350 животи;
- Роради хроничен бронхитис и астма се губат по неколку илјадници работни денови;
- Рредвремените смртни случаи и изгубените работни денови ја чинат нашата економија 253 милиони евра (во 2011 оваа сума била 3.2% од БДП).

Доколку емисиите на ПМ10 и ПМ2.5 во Македонија се намалат до законски дефинираните гранични вредности, секоја година во нашата земја ќе се спасат преку 800 животи, а Фондот за здравство ќе заштеди 151 мил. еур.

Ова е само еден мал дел од трошоците кои ги предизвикува загадувањето, а ги плаќаме сите ние.

А колку всушност плаќаат оние кои го предизвикуваат загадувањето?

Одговорот на ова прашање е речиси невозможно да се дознае.

ПАТОТ ДО ПОДАТОЦИТЕ

Секоја година во Извештајот на Европската Комисија за напредокот на Македонија кон унијата се констатираат недоволните инвестиции во заштитата на животната средина. Во последниот извештај од 2013 година во Поглавје 27 (Животна средина и клима) заклучокот на Комисијата е: *„Инвестирањето во секторите и понатаму е на исклучително ниско ниво во однос на потребите“*.

„НЕМА ПАРИ!“ – ова е многу чест одговор кој го добиваме од разни институции кога бараме мерки или проекти за подобра заштита на животната средина. Дури и дел од граѓаните се убедени дека „Екологија може да си дозволат богатите земји, ние немаме пари за тоа“.

Во повеќе наврати се обидувавме во паузи за кафе, меѓу мејлови... за своја душа, да дознаеме колку навистина нема пари за еколошки проекти кои ќе ни донесат на сите почист воздух, вода, почва, подобро здравје.

Најпосле решивме да го истражиме барем првиот чекор – дали воопшто, колку и кои загадувачи навистина плаќаат во Македонија.

Уште на самиот почеток – да се дојде до точни податоци која година колку средства се собрани врз основа на начелото Загадувачот плаќа (одредбите од Законот за животна средина) е речиси невозможно. Не затоа што надлежните одбиваат да ги дадат податоците, овојпат затоа што системот на наплата е вистински лавиринт во кој не можат да се снајдат ни тие кои се дел од истиот.

На пример налозите за прекршочните казни ги издава Инспекторатот за животна средина, но ако истите не се наплатат (а праксата покажува дека речиси никогаш не се наплаќаат) прекршочното одделение покренува прекршочна постапка, после која, доколку нема резултати (повторно – и ова речиси редовно се случува) налозите се праќаат на извршување на Управата за јавни приходи. Средствата кои се уплаќаат од страна на прекршителите (загадувачите) одат директно на буџетската сметка на Република Македонија. Инспекторатот не добива повратен одговор дали, кога и колку средства се навистина наплатени. Всушност и не е возможно да се добијат овие информации кога средствата ќе се влеат во буџетот бидејќи истите одат под заедничка шифра за сите наплати по основ на долг кон државата.

И покрај тоа што Министерството за животна средина и просторно планирање (МЖСПП) е надлежно за спроведување на Законот за животна средина, во пресметката и наплатата на надоместоците, казните итн. кои произлегуваат од овој закон, се вклучени повеќе институции: МЖСПП, Министерство за финансии, Царинска управа, УЈП... Надлежното министерство, освен за средствата собрани по основ на регистрација на возила и пловни објекти, не добива никакви повратни информации од останатите институции. Овие средства се истовремено и единствените кои се влеваат на сметаката на МЖСПП, за реализација на годишните програми. Истите не се ни приближно доволни за постигнување на европските стандарди во заштитата на животната средина.

Навистина „нема пари“(?)

Во реалноста, со постоечкиот систем, не може да се знае колку пари всушност има или нема, а уште помалку за што се трошат средствата добиени по основ на заштита на животната средина.

Дури, ни Министерството за финансии, иако тоа е неговата главна задача, нема увид колку и врз основа на кој член се влеваат средствата во буџет од областа на животната средина.

Поаѓајќи од детектираните проблеми ги препорачуваме следниве

МОЖНИ РЕШЕНИЈА:

Формирање на посебна Агенција за животна средина која, покрај останатото, ќе биде надлежна за пресметка и наплата на сите надоместоци по основ на Законот за животна средина и останатите релевантни закони (како Закон за води, Закон за отпад, итн.). Ова е пракса речиси во сите држави на унијата, а и во Македонија се планира и најавува во разни политички програми веќе со години. Собраните средства, особено по основ на начелото Загадувачот плаќа, треба да се користат исклучиво за подобрување на заштитата на животната средина;

Во меѓувреме, она што може релативно едноставно да се направи е единствена електронска база на податоци во која сите вклучени страни автоматски ќе ги внесуваат податоците за сопствените налози/наплати;

- УЈП би требало да дефинира посебни приходни шифри, барем во релација со различните закони, за наплата на долговите кон државата – по примерот на персоналните даноци кои се многу јасно одделени со специфични шифри.

ОБИД ЗА ПРЕГЛЕД НА ИЗДАДЕНИ (И НАПЛАТЕНИ?) НАЛОЗИ

И покрај тоа што од сите надлежни органи побаравме податоци за 2010, 2011,2012 и 2013 година – од различни институции добивме податоци за различни години и некаков општ преглед можевме да направиме само за 2012 година.

Од оваа категорија од Царинската управа, и покрај законската обврска да ги поседуваат бараните информации, не добивме никакви податоци за следниве надоместоци: Увоз на возила; Увоз на проектирани или употребувани гуми; Увоз на употребувани фрижидери, замрзнувачи или други уреди за ладење и замрзнување; и Увоз на употребувани магнетофони и други апарати за снимање звук, видео монитори и видео проектори.

За надоместоците поврзани со Б-еколошките дозволи, за кои е надлежна локалната самоуправа, добивме повратен одговор од следниве 16 општини: Велес, Крива Паланка, Штип, Охрид, Битола,

Прилеп, Демир Капија, Чешиново-Облешево, Гостивар, Струга, Илинден, Пробиштип, Берово, Македонски Брод, Гевгелија и Босилово.

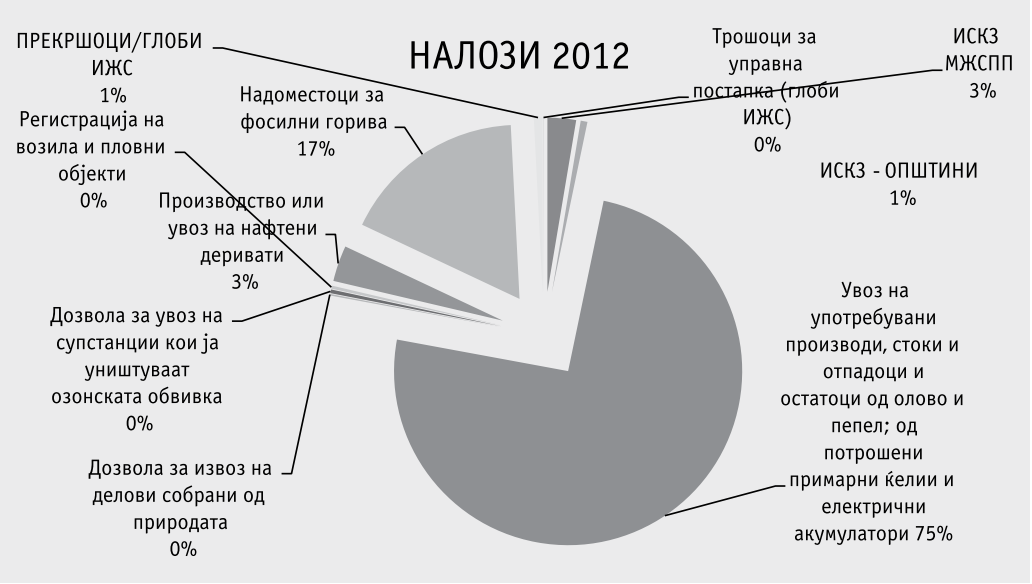
Во однос на податоците добиени од МЖСПП, а за надоместоците за А- еколошките дозволи (А-ИСКЗ) и Б – дозволите (Б-ИСКЗ) за кои е надлежно Министерството (инсталации во заштитени подрачја) мора да напоменеме дека еден од операторите ни стави јасно до знаење дека наведените суми никогаш не ги платил.

Како што веќе беше споменато – средствата чија постапка ја води УЈП може да се претпостави со голема веројатност дека се наплатени, но сепак истото не може да се тврди без никаков доказ, а дополнително ако се, не може да се знае кога се наплатени.

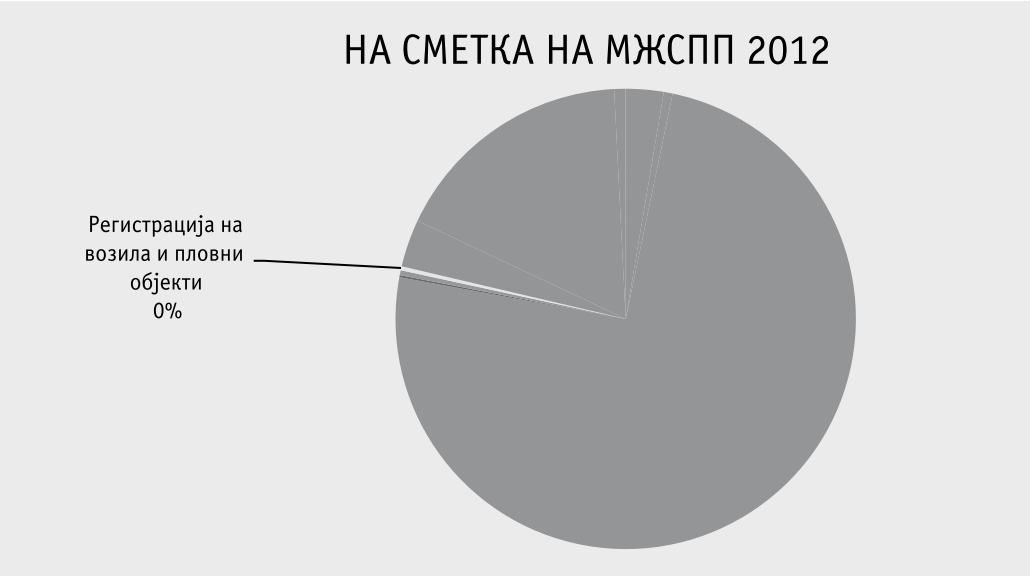
Во оваа смисла прегледот го гледаме како приближен приказ на реалноста, кој сепак нуди почетна слика за анализа:

ЗАКОНСКИ ОСНОВ	ИЗДАДЕНИ НАЛОЗИ (МКД)
Еколошки дозволи - МЖСПП	5.727.185,29
Еколошки дозволи - ОПШТИНИ	1.349.277,00
Увоз на употребувани производи, стоки и отпадоци и остатоци од олово и пепел; од потрошени примарни ќелии и електрични акумулатори	161.327.695,00
Дозвола за извоз на делови собрани од природата	307.204,00
Дозвола за увоз на супстанции кои ја уништуваат озонската обвивка	745.395,00
Регистрација на возила и пловни објекти	606.295,00
Производство или увоз на нафтени деривати	7.210.361,00
Надоместоци за фосилни горива	37.159.188,50
ПРЕКРШОЦИ/ГЛОБИ ИЖС	1.709.700,00
Трошоци на постапка (глоби ИЖС)	29.000,00
ВКУПНО 2012	**216.171.300,79**
ВО ЕУР ВКУПНО 2012	**3.514.980,50**

Сликовито прикажано табелата изгледа вака:



Од вкупно 3.514.980,50 Еур за кои знаеме од добиените инфромации дека се побарани од загадувачите (реалната сума веројатно е многу повисока) на сметката на МЖСПП се уплатиле помалку од 10.000,00 Еур!



Според Националниот план за апроксимација за целосна имплементација на законодавството на ЕУ во областа на животната средина ќе бидат потребни околу 2.3 милијарди Еур.

НАША ПРЕПОРАКА:

Поради високите трошоци за приближување на земјава кон ЕУ во областа на животната средина, но пред се поради потребата за поздрави и поквалитетни услови за живеење, а кои не би се обезбедиле дури ни со целосна алокација на средствата собрани по основ *Загадувачот плаќа!* предлагаме граѓаните да имаат можност одреден процент од персоналниот данок да наменат за проекти и програми од општ интерес, каде секако влегува и животната средина.

Ова е пракса во неколку држави, како на пример во Словачка.

ПОЕДИНЕЧЕН ПРЕГЛЕД СПОРЕД ЗАКОНСКИ ОСНОВИ ИНТЕГРИРАНО СПРЕЧУВАЊЕ И КОНТРОЛА НА ЗАГАДУВАЊЕТО (ИСКЗ ДИРЕКТИВА)

Во оваа категорија влегуваат надоместоците за еколошките дозволи за големите загадувачи (А-дозволи кои ги издава МЖСПП) и помалите (Б-дозволи кои ги издаваат општините, освен за оние кои се во заштитени подрачја за кои е надлежно МЖСПП).

Поентата на оваа директива ја одразува суштината на начелото „Загадувачот плаќа“. Доколку навистина се спроведува истата би требало да биде најголем мотив за индустријата да инвестира во почисто производство, а сите ние да живееме во поквалитетна животна средина.

Поаѓајќи од значењето на овие законски одредби решивме да им дадеме посебен простор.

Во нашата земја работите стојат вака:

Налози МЖСПП

Компанија, број на дозвола	Надоместок при поднесување на барање за дозвола	**2008** Надоместок за годишно поседување на дозвола и годишен надзор **(МКД)**	**2009**	**2010**	**2011**	**2012**	Вкупно **(МКД)**
ФЕНИ ИНДУСТРИ, с. Возарци, о.Кавадарци бр.11-3311/1 22.04.2008	Нема податоци за решение за наплата	7.020.186,00	10.483.518,00	Нема решение за наплата	1.492. 258,90	1.484.337,80	20.480.300,7
Силмак Јегуновце (Југохром Фероалојс), с.Јегуновце, о. Тетово бр. 11-3643/10 04.07.2008	Да, заедно со надоместокот за годишно поседување на дозвола и годишен надзор во 2008	11.392.586,00	4.821.753,75	217.580,00	3.628.956,15	3.544.990,49	23.605.866,39
Швис Метод, бр. 11-7244/1 20.08.2009 с. Чегране, Гостивар	Нема решение за наплата	/	/	Нема решение за наплата	Нема решение за наплата	Нема решение за наплата	00.00
ФЗЦ 11 Октомври, Куманово бр.11-8943/1 15.10.2009	Да, заедно со надоместокот за годишно поседување на дозвола и годишен надзор во 2009	/	77.127,00	Нема решение за наплата	172.480,00	172.480,00	422.087,00
МАКПЕТРОЛ, населба Илинден, Скопје бр. 11-713/2 09.03.2010	Нема податоци за решение за наплата	/	/	Нема податоци за решение за наплата	Нема податоци за решение за наплата	Нема податоци за решение за наплата	00.00
ВЕСНА САП, Пробиштип бр. 11-2486/2 09.03.2010	Да, заедно со надоместокот за годишно поседување на дозвола и годишен надзор во 2010	/	/	163.561,00	172.960,00	172.960,00	509.481,00

Компанија, број на дозвола	Надоместок при поднесување на барање за дозвола	**2008** Надоместок за годишно поседување на дозвола и годишен надзор **(МКД)**	**2009**	**2010**	**2011**	**2012**	Вкупно **(МКД)**
ХУЛУСИ КОМЕРЦ, с.Черкези, Куманово бр. 11-11502/2 17.12.2010	Нема решение за наплата	/	/	/	Нема решение за наплата	Нема решение за наплата	00.00
Вардар ДОЛОМИТ, Гостивар бр. 11-8805/3 05.10.2010	1.827,50	/	/	/	Нема решение за наплата	Нема решение за наплата	1.827,50
ТЕ-ТО АД Скопје, бр.11/31/55 23.02.2011	Да, заедно со надоместокот за годишно поседување на дозвола и годишен надзор во 2012	/	/	/	Нема решение за наплата	10.245,00	10.245,00
ПЕЛАГОНИЈА АД Гостивар, с.Краста, Гостивар бр. 11-2443/1 08.03.2011	Нема решение за наплата	/	/	/	Нема решение за наплата	Нема решение за наплата	00.00
УСЈЕ 07.03.2011 Скопје бр. 11-2402/1	21.000,00	/	/	/	101.750,00	153.234,00	275.984,00
5 (пет) дозволи за ТГС Технички гасови АД Скопје **бр.11-10507/1 бр.11-10504/1 бр.11-10503/1 бр.11-10506/1 бр.11-10505/1** **сите од** 30.11.2009 год.	За ниедна нема решение за наплата	/	/	За ниедна нема решение за наплата	За ниедна нема решение за наплата	За ниедна нема решение за наплата	00.00

Компанија, број на дозвола	Надоместок при поднесување на барање за дозвола	**2008** Надоместок за годишно поседување на дозвола и годишен надзор **(МКД)**	**2009**	**2010**	**2011**	**2012**	Вкупно **(МКД)**
6 (шест) дозволи за ГРАНИТ АД Скопје бр.11-954/1 бр.11-958/1 бр.11-914/1 бр.**11-956/1** бр.11-957/1 бр.11-955/1 сите од 28.01.2011 год.	За ниедна нема решение за наплата	**/**	**/**	**/**	За ниедна нема решение за наплата	За ниедна нема решение за наплата	00.00
Б - дозвола за усогласување со оперативен план ДГ „ Макаљб Компани “ ДОО, Скопје. бр.11-1005/1 02.02.2009	Да, заедно со надоместокот за годишно поседување на дозвола и годишен надзор во 2009	**/**	17.126,00	16.720,00	16.720,00	16.720,00	67.286,00
Макпетрол АД Скопје, Инсталација за Биодизел FAME бр.11-713/2 09.03.2010	Нема решение за наплата	**/**		31.491,00	39.479,00	39.479,00	110,449,00
Б - дозвола за усогласување со оперативен план Сентис АГ ДООЕЛ Џепчиште, Тетово, бр.11-7979/3 20.09.2011	Нема решение за наплата	**/**	/	/	Нема решение за наплата	Нема решение за наплата	00.00
Алкалоид АД – Скопје, ПЦ Фармација Автокоманда, бр.11-3636/1 06.04.2012	Да, заедно со годишна дозвола и надзор за 2012 и 2013	**/**	/	/	/	77.797,00 (за барање и две години: 2012, 2013)	77.797,00

Компанија, број на дозвола	Надоместок при поднесување на барање за дозвола	**2008** Надоместок за годишно поседување на дозвола и годишен надзор **(МКД)**	**2009**	**2010**	**2011**	**2012**	Вкупно **(МКД)**
Жито Малеш,с. Смојмирово Берово бр.11-6662/1 03.07.2012	Нема решение за наплата	/	/	/	/	Нема решение за наплата	00.00
Скопски Легури ДООЕЛ увоз – извоз Скопје бр.11-7263/5 09.08.2012	Нема решение за наплата	/	/	/	/	Нема решение за наплата	00.00
ТДГПТУ " Илинден" Струга бр.11-8684/1 12.09.2012	Нема решение за наплата	/	/	/	/	Нема решение за наплата	00.00
Пивара Скопје АД Скопје бр.11-7427/3 08.08.2012	Нема издадено решение за наплата	/	/	/	/	Нема решение за наплата	00.00
ДГТ "Жикол" Струмица бр.11-6611/1 02.07.2012	Нема издадено решение за наплата	/	/	/	/	Нема решение за наплата	00.00
Џонсон Мети ДООЕЛ Скопје бр.11-5187/5 07.09.2012	19.463,00 надомест за поднесување на Барање за дозвола + 91.570,00 Надомест за поднесување на Барање за измена на дозволата	/	/	/	/	48.837,00 за поседување на дозвола + 6.105,00 за годишен надзор	165.975,00
РЕК Осломеј Кичево Сеуште не е издадена дозвола	16150,00	/	/	/	/	/	16150,00

Компанија, број на дозвола	Надоместок при поднесување на барање за дозвола	**2008** Надоместок за годишно поседување на дозвола и годишен надзор **(МКД)**	**2009**	**2010**	**2011**	**2012**	Вкупно **(МКД)**
РЕК Битола Сеуште не е издадена дозвола	254800,00	/	/	/	/	/	254800,00
Рудник САСА ДООЕЛ Македонска Каменица Издадена дозвола во 2014 година	71500,00						71500,00
ОКТА рафинерија за нафта Илинден Издадена дозвола во 2014 година	44700,00						44700,00
Оранжерии Хамзали Босилово Издадена дозвола во 2014 година	10100,00						10100,00
МЗТ Леарница АД Скопје Сеуште не е издадена дозвола	4842,00						4842,00
Топлификација – Топлана Исток АД Скопје	4359,00						4359,00
Нема име на оператор	23550,00						23550,00
ВКУПНО							**46.157.299,59**

Табелата со добиените податоци ја прикажуваме во целост бидејќи така најдобро се воочуваат голем број на недоследности:

- За добар дел од операторите никогаш не е издаден никаков налог за наплата!
- Нема координиран систем за наплата: датите на решенијата покажуваат стихијност и конфузност: на пример кај Фени во 2013 се издаваат решенија за наплата за 2012 и 2011; се издава прво решение за 2009, а потоа за 2008);

- Има поголем број на нелогични пресметки: кај Џонсон Мети барањето за измена на дозволата е двојно повисоко од годишната дозвола и надзор, и многу повеќе од првото барање; сумите во 2010 отскокнуваат од сите други години речиси кај сите оператори; Силмак, односно новиот сопственик Фероалојз побара измена на дозволата со подолги рокови со објаснение дека „ништо не е инвестирано“, а сепак истата инсталација, без никакви мерки во периодот 2008 - 2010 има налози од 11.000.000 до 270.000; годишниот надзор според законот треба да биде 10% од надоместокот за поседување на дозволата - кај Џонсон Мети 6.105 се 10% од 48.837 мкд; иста инсталација пред да инвестира во мерки плаќа двојно помалку одколку после мерките (што е сосема спротивно на логиката на директивата);

- Нема ниедно решение издадено за 2013 (ниту за барањата на дозволите кои се издадени во 2013).

Непостоењето на систем, односно хаосот во наплатата не е ни одблиску единствениот проблем со финансиските аспекти на ИСКЗ дозволите. И нашите анализи (во соработка со домашниот експерт Лилјана Пеева) и повратните информации од дел од операторите резултираа со многу слични заклучоци и забелешки:

Законски дефинираната формула за пресметка на надоместоците има сериозни пропусти

- Емисиите имаат клучна улога во формулата, но мониторингот на емисии се прави два пати годишно, во ден по случаен избор. Ако тој ден операторот има повисоки емисии ќе добие една сума за цела година, доколку „има среќа“ мерењата да бидат во ден со пониски емисии – ќе плати далеку помалку за целата година. Овој начин на мониторирање на емисии ја прават формулата/пресметката многу несигурна, подлежна на манипулации, и истата не одговара на реалната состојба, односно реалното загадување;
- Ваква каква што е формулата фугитивните емисии не се пресметуваат (за нив не се плаќа). Истите не ни може да бидат прецизно пресметани бидејќи немаат емисиони точки, но сепак кај некои загадувачи имаат многу битна улога – на пример кај Макстил (наведено и во самата апликација);
- Начинот на пресметување на големината на емисијата (Di) е посебно проблематичен во формулата - за секој процент на надминување над пропишаните граничните вредности на било кој вид на емисија на загадувачи што се одобрени во дозволата, големината на

емисијата (Di) се пресметува на следниот начин: збир од големина на емисија (D) на надоместокот на секој вид на емисија на загадувач (C)* процентот на надминување + процентот на надминувањето.

Воопшто не е јасно за какво надминување станува збор – на гранични вредности или на дозволени емисии во дозволата?

Процентот на надминување, онака како што е сега може да се толкува и ПО 100% и ПЛУС 100%. Искуството на Фени е токму тоа – еднаш добиле налог за наплата со едната пресметка, следниот пат со другата, а овој „мал детал" прави огромна разлика!

- Според експертот Лиле Пеева нема никаква логика воопшто да стои процент на надминување во интегрираните А дозволи (за разлика од Дозволите за усогласување со оперативен план) – таму секако не смее да има никакви надминувања на дозволени граници, а ако има следи прекршочна казна (глоба);
- Во формулата, повторно кај емисиите, не се зема предвид количината на испуштени загадувачки материи, туку само концентрацијата на единица мерка. На овој начин и фабрика која има оџак со дијаметар од 1 метар и друга со дијаметар од 10 метри имаат исти вредности на емисиите;
- Во формулата една од клучните вредности е површината на инсталацијата, а истата не е наведена во ниту еден јавно достапен документ, вклучувајќи ги и Барањата за дозвола. Тоа значи дека освен надлежните кои ги издаваат налозите за наплата никој друг не може да ја провери точноста на пресметката;
- Воопшто не е јасно врз основа на што се вршат пресметките кај оператори за кои нема никакви податоци за емисиите, ниту пак истите се мониторираат
- Од консултациите со дел од операторите дознавме дека пресметките ги добиваат во ворд документ, без никакви објаснувања и крајно непрофесионално. Министерството за животна средина не поседува (автоматски) систем за пресметка на надоместокот;

Најголемиот проблем со ИСКЗ дозволите сепак е долгиот период на добивање на дозволата кај дел од инсталациите, вклучувајќи ги и големите загадувачи како Макстил, Окта и РЕК Битола.

На овој начин државата индиректно помага нелојална конкуренција – оние што имаат дозвола и плаќаат за истата секоја година и инвестираат во мерки за почисто производство,

додека оние кои „чекаат“ дозвола со години не само што немаат никаква обврска да инвестираат во чиста технологија и не само што не плаќаат никакви средства за дозволата и годишниот надзор – туку во текот на процесот се заштитени и не може да им се изрече казна за надминување на граничните вредности на емисиите на штетни материи.

ПРЕПОРАКИ:

1. Во однос на формулата за пресметка на надоместокот:

   - Емисиите да се пресметуваатво однос на работните часови на годишно ниво (во апликациите за дозвола сите оператори го наведуваат бројот на работни часови, а и во секој извештај согласно директивата мора да известат за истите);
   - Да се додаде параметар количина на испуштени загадувачки материи (за реално плаќање на реалното загадување);
   - Да се воведе паушална пресметка за фугитивни емисии за сите кои имаат ваков тип на емисии во значителни количини;
   - Параметарот Di (односно надминувањето на дозволените емисии) да се дефинира и тоа да бидат граничните вредности, а не вредностите во дозволата;
   - Да се дефинира процентот на надминување (ПО 100%, не ПЛУС 100%);
   - Во Интегрираните дозволи да се изземе членот Di, а за надминувањата да се наплаќа казнена законската глоба.

2. Одкако ќе се среди формулата, истата да биде преведена во ексел табела која ќе биде јавно достапна на интернет и во која ќе бидат наведени конкретните емисии, површина, итн. На овој начин и граѓаните ќе може да ја проверат пресметката и операторите да ја пресметаат сумата на надоместокот за дадената година со едноставно внесување на вредностите. Оваа табела би требало да биде дел од јавно достапниот Регистарот, кој и по седум години од неговото транспонирање во законодавството, сеуште не е на повидок.

3. Да се изготви Правилник за финансиска гаранција и казнени пенали (во случај кога не се исполнуваат мерките наведени во дозволата).

4. Што поскоро да се издадат налози за наплата за сите „заборавени“ оператори. Одделението за ИСКЗ би требало да има соодветен мониторинг, односно контрола во однос на редовноста и целовитоста на издавање на налози.

5. Средствата по основ на ИСКЗ да се уплаќаат на сметката на МЖСПП (за дозволи за кои е надлежно Министерството) и истите да се користат за градење на капацитетите на одделението за ИСКЗ и многу потребното подобрување на спроведувањето на оваа директива.

НАПОМЕНА: Министреството за животна средина и просторно планирање сериозно заостана со процесот на издавање на еколошките дозволи. До април 2014 година (рок кога загадувачите требаше да го усогласат своето работење со најдобрите достапни техники) Министерството за животна средина сеуште ги немаше издадено и процесирано сите барања за добивање ваква дозвола. Предизвикот сега е уште поголем ако се има предвид дека Директивата за интегрирано спречување и контрола на загадувањето е заменете со новата Директива за индустриски емисии која предвидува уште построги правила во однос на емисиите како и целосно ревидирање на веќе издадените еколошки дозволи. Министерството за животна средина треба плански и координирано да пристапи кон ревизија на законски одредби како и самите дозволи во согласност во новата директива имајќи ги предвид грешки и проблемите со кои се сочии во спроведувањето на оваа директива.[1]

1 „Интегрирано спречување и контрола на загадувањето: од теорија во пракса“ Истражување за спроведување и извршување на ИСКЗ Директивата во РМ, Фронт 21/42, јуни 2012

Б-ЕКОЛОШКИ ДОЗВОЛИ ВО НАДЛЕЖНОСТ НА ЛОКАЛНАТА САМОУПРАВА

Поради големиот простор кој би бил потребен за сите табели од сите општини, го пренесуваме само вкупниот приказ на приливи по општини:

Општина	Издадени/наплатени налози **2010 – 2013 (МКД)**
Охрид	494.243,00
Гостивар	231.450,00
Берово	77.200,00
Чешиново - Облешево	101.122,00
Македонски Брод	61.381,00
Битола	169.647,00
Илинден	29.137,00
Прилеп	1.222.749,00
Демир Капија	309.289,50
Гевгелија	4.070,00
Пробиштип	161.935,00
Босилово	102.734,00
Струга	586.275,00
Велес	569.414,00
Крива Паланка	172.880,00
Штип	67.274,00

ПОЕДИНЕЧЕН ПРЕГЛЕД НА ПРЕКРШОЦИ/ГЛОБИ

НАШ ЗАКЛУЧОК

За разлика од МЖСПП, нашето искуство покажува дека општините се многу поревносни во наплатата на надоместоците и добро организирани во однос на пристапот до информациите за наплата (се однесува на оние општини кои одговорија на барањето за пристап до информации од јавен карактер). Ова е логично ако се земе предвид дека истите се влеваат во општинските буџети.

Во речиси сите општини (со мали исклучоци) се издаваат редовно и навремено налозите. Операторите не се секогаш исполнителни, но сепак речиси сите ненаплатени налози се од 2013.

Добар пример е општина Македонски Брод каде операторот „АД СИЛИКА увоз извоз“ поради неплатен налог за поднесувањето на барањето (од 12.800 ден.+600 ден. административна такса) заработил глоба во износ од 6.800 еур.

Како и кај еколошките дозволи за големите загадувачи и тука ги потенцираме проблемите кои потекнуваат од самата формула за пресметка на надоместокот. Исто како и кај А- еколошките дозволи емисиите не се пресметуваат врз основа на работните часови, ниту врз основа на количинскиот испуст. Параметарот Di (односно надминувањето на дозволените емисии) е исто така проблематичен во формулата за пресметка на Б- еколошките дозволи.

Препораките за подобрување на формулата како и за подобрување на транспарентноста на постапката во пресметките важат и за Б – еколошките дозволи.

Еколошките дозволи се само дел од законски дефинираните начини за спроведување на начелото Загадувачот плаќа. Законот предвидува и финансиски казни (глоби) за сите кои не ги почитуваат одребите од законот за животна средина, како на пример кога испуштаат загадувачки материи над максимално дозволените граници.

Суштината на глобите предвидени во прекршочните одредби е да го одвратат потенцијалниот сторител, односно загадувач. Ова допира уште едно од основните начела во Законот за животната средина - начелото на превенција, т.е. превземање мерки и активности за заштита на животната средина пред да дојде до штетни последици.

Во Законот за животна средина прекршоците се уредени во глава XXII (212-ѓ прва категорија; 212-е втора категорија; 212-ж трета категорија).

Да се соберат целосни информации за изречените и наплатените глоби во периодот кој го истражувавме не е воопшто лесно и едноставно. Повторно – главна причина е комплицираниот систем кој вклучува различни надлежни институции за различни категории на прекршоци од истиот закон. Прекршочните санкции врз основа на член 212-ж од ЗЖС (прекршоци од III категорија) ги изрекуваат надлежните судови. Тоа значи дека за да се добие целосна слика за овие прекршоци треба се добијат податоци од секој прекршочен суд во Македонија – во земјава има вкупно 26 вакви судови. За останатите два члена (212 –ѓ и 212- ж), односно прекршоци од I и II категорија, надлежен е Државниот инспекторат за животна средина.

Информациите пак за реално наплатените глоби е уште потешко, односно невозможно да се добијат. Казните кои Државниот инспекторат за животна средина нема да успее директно да ги наплати од загадувачите ги процесира прекршочното одделение во Министерството за животна средина. Доколку прекршочното одделение исто така не успее да ја наплати изречената глоба ја праќа на извршување во УЈП. Од тука парите се влеваат во буџетот (оние кои навистина се влеваат). Со други зборови повторно не постои збирна евиденција, а патот до целосни информации е лавиринт.

Од тоа што го добивме како информација од Државниот инспекторат за животна средина сликата изгледа вака:

Прекршоци од I категорија, надлежен орган Државен инспекторат за животна средина							
Година	Изречени глоби	Вредност/ЕУР	Наплатени	Пратени на извршување кај друг орган	Административни трошоци на постапка/ Ден.	Наплатени	Пратени на извршување кај друг орган
2010	3	6.000	0	6.000	8.000,00	0	8.000,00
2011	8	13.400	0	10.400	20.000,00	0	20.000,00
2012	5	12.800	0	12.800	17.000,00	0	17.000,00
2013	4	12.000	0	6.000	12.000,00	0	12.000,00
вкпуно	**20**	**44.200**	**0**	**35.200**	**57.000,00**	**0**	**57.000,00**

Прекршоци од II категорија, надлежен орган Државен инспекторат за животна средина							
Година	Изречени глоби	Вредност/ЕУР	Наплатени	Пратени на извршување кај друг орган	Административни трошоци на постапка/ Ден.	Наплатени	Пратени на извршување кај друг орган
2010	4	1000	0	1000	2.000,00	0	2.000,00
2011	2	6.000	0	6.000	8.000,00	0	8.000,00
2012	4	15.000	0	15000	12.000,00	0	12.000,00
2013	14	36.800	3000	27.300	22.000,00	1.000,00	21.000,00
вкпуно	**24**	**58.800**	**3000**	**49.300**	**44.000,00**	**1.000,00**	**43.000,00**

ЗАКЛУЧОК:

Во текот на четири години Државниот инспекторат изрекол казни во висина од **103.000 Еур, а** наплатил само 3.000 Еур**!** Повеќе од очигледно е дека казните изречени од ДИЖС се испраќаат до Управата за јавни приходи со цел присилна наплата. Овие приходи не се одвоени како приходи од животна средина (туку од присилна наплата на долг).

НАШИ ПРЕПОРАКИ:

- Да се воведе **единствен детален систем за евиденција на изречените прекршочни глоби** и истиот да биде **јавно достапен**. Системот за евиденција може да биде превземен од оној на Државниот завод за статистика за кривични дела;
- Да се изврши **заострување на прекршочната политика** со зголемување на висината на глобите во согласност со начелото на пропорционални кривични санкции со одвратувачки ефект;
- Да се **зголеми капацитетот на УЖС и ДИЖС** во однос на проценка на значителност на штета, превентивни мерки и мерки за ремедијација.

За време на истражувањето детектиравме и законски пропусти во однос поефикасно спроведување на одредбите за одговорност за настаната/односно опасност од настанување на штета. Имено, во законот недостасува правото на засегнато правно или физичко лице да побара преземање на акција (да поднесе иницијатива) во случај на настанување на еколошка штета или непосредна закана од еколошка штета. Дополнително, спротивно на духот на Архуската Конвенција, не е гарантирано правото на жалба/тужба пред независен орган против решение или дејство (сторување или несторување) на надлежниот орган (МЖСПП) при еколошка штета.

ПРЕПОРАКИ ВО ОДНОС НА ЗАКОНСКИТЕ ПРОПУСТИ И ПРЕКРШОЧНАТА ПОЛИТИКА:

- Да се овозможи правото на **иницијатива за отпочнување на прекршочна постапка од страна на засегнато правно или физичко лице** во случај на настанување на еколошка штета или непосредна закана од еколошка штета;
- Усвојување на соодветните **подзаконски акти со цел спроведување на одребите за одговорност за еколошка штета** и целосна имплементација на Директивата на ЕУ за Одговорност за еколошка штета (*Directive* 2004/35/EC Environmental Liability Directive).

На овој начин граѓаните на Скопје, на пример, би имале барем законска можност да побараат одговорност (и финансиска) од главниот загадувач за прекумерното аерозагадување со кое живеат речиси секој ден.

И?

Кој е одговорот на прашањето со кое го започнавме истражувањето? Дали и колку плаќаат загадувачите во Македонија?

Не може да се знае. Но секако дел од најголемите загадувачи во нашата земја не плаќаат ништо за загадувањето кое го трпиме (и плаќаме) сите ние**.** Имено, со одолговлечувањето на процесите за добивање на еколошка дозвола надлежните органи им овозможуваат на дел од најголемите загадувачи во државата со години да не плаќаат ништо, дури да бидат заштитени и од плаќање на казни кога ги надминуваат законски дозволените гранични вредности.

Од информациите кои ги добивме може да заклучиме дека според политиката на нашата држава најголеми загадувачи во Македонија се трговците, поточно увозниците на употребувани стоки – во истражуваниот период тие учествуваат со 75% од сите побарани средства по основ на начелото Загадувачот плаќа. Индустријата, односно големите загадувачи, од друга страна учествуваат со едвај 3%.

Според нас во основата на ваквата реалност е ставот „прво економија – потоа екологија". Став кој нема долготрајна економска логика, а може да подразбира злоупотреба од страна на загадувачите на лошата економска состојба и особено високата невработеност во нашата земја. Клучното решение за надминување на ваквата состојба се активен граѓански сектор и информирани и едуцирани граѓани – граѓани кои се запознати со принципите на одржливиот развој и свесни за реалните трошоци кои ги предизвикува загадувањето.

Во оваа смисла надеж влеваат се почестите и помасовни граѓански протести против загадувањето.

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GOOD GOVERNANCE THROUGH BETTER FISCAL TRANSPARENCY: RECOMMENDATIONS FOR IMPLEMENTATION OF THE AD-HOC COMMISSION'S RECOMMENDATIONS

Marjan Nikolov
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ЦЕНТАР ЗА ЕКОНОМСКИ АНАЛИЗИ (ЦЕА)

Center for Economic Analyses

SUMMARY & RECOMMENDATIONS

The events that happened in December 2012 in Macedonian Parliament didn't happen unexpectedly. They came as a result of a number of aspects that were closely related with the budget process in Republic of Macedonia, and more widely with the level of accountability in democracy, fiscal rules and fiscal transparency, and also strong politicization of almost every aspect of practicing democracy in the country.

In connection with that politicization we want to point out the indicative fact that the report of the ad-hoc commission, that was formed after these events, isn't available on the web page of the Assembly of Republic of Macedonia neither on the web page of the VMRO-DPMNE.

A public finances system is expected to have transparent procedures and rules that will regulate the budget process. Well set procedures and rules reduce the possibility of leading fiscal policies discretionally. In theory, fully informed voters should provide an environment for politicians to adopt socially optimal policies.

In numerous countries a new institution in the system of public finances is formed and it serves for ex-ante assessment of the soundness of the executive power's fiscal policy. They are known as fiscal councils and their role is to help the parliamentarians and the public to provide accountability of the executive power.

Time inconsistency: With the beginning of the crisis, the Government began cumulating arrears related to the right to VAT refund. The promises to increase the salaries of employees in the administration due to the effects of reduction the fiscal space were violated.

Procyclicality: The positive effects of the positive production gap on the budget revenues should have been used for improving the position of the central government's deposits. This would have prevented the accumulation of arrears to the economy and would have provided better coping with the negative effects of the global crisis over the Macedonian economy in 2012 when we experienced the crisis' double deep.

The common pool problem as a failure of the discretionary policies: Basically we are talking about a problem when the voters can't see the time limits of the budget and because of that, when the Government works with programs that are financed with deficit, the voters overestimate the value of the current consumption at the expense of the future tax burdens.

Deficit bias as a failure of the discretionary policies: The Government regularly overdraws the plan for the budget balance, doesn't follow its own fiscal rules and shows bias toward budget deficit.

According to Open Budget Initiative, the transparency in the public finances helps towards less costly international lending, improved efficiency in the public spending, while increased non-transparency leads towards reduced fiscal discipline.

According to International Monetary Fund, the fiscal transparency in the public finances is a key element of the good governance that further leads to a macroeconomic and fiscal stability and is a determinant for higher rates of economic growth. The fiscal transparency can also serve for early identification of potential risks in the fiscal results, and this leads towards early warning and adequate fiscal reaction at changed fiscal assumptions. Furthermore, the fiscal transparency provides accountability to citizens- tax payers, and also provides for better creditworthiness in the international capital market.

The budget process needs to be well integrated with the management and the planning processes of the Government. But the budget process cannot be managed without involving all stakeholders, and those are the parliament, the government, the citizens, the businesses and the civil society. Only with complete integration of all stakeholders

in the budget process, they can be informed about the decision making for efficient allocation of the scarce resources to those programs and plans that ensure the most effective accomplishment of the objectives of the national economy.

According to the last ranking of the Open Budget Initiative and the International Budget Partnership in 2012, Macedonia was ranked in the before the last group of countries that provide minimal information about the budget process with index value of 35, that is on 68th place out of 100 countries.

According to the simulator of the International Budget Partnership, and dully to our recommendations, we get a result that the transparency in Macedonia will increase, and from an index value 35 that Macedonia had in 2012, in 2014 the value of this index will go up and will reach 47. If a Pre-budget statement is made, the index value will reach 50. And if a Citizen's budget is made that represents a simplified version of the state budget, Macedonia's transparency and fiscal discipline in the budget preparation process will increase and the index value will reach 54, which is an improvement on 19 index points compared to 2012.

In accordance with our analysis and in accordance with the recommendations from the ad-hoc commission concerning the revision of the provisions of the Rules relating to the procedure for adoption of the budget, in this paper we provide specific recommendations for the budget process in Macedonia in the chapter "Possible ways to improve the budget process in Macedonia."

In accordance with the recommendations from the ad-hoc commission concerning the revision of the provisions of the Rules relating to the procedure for adopting the budget in the report and according with the procedure of consideration of the proposed budget of Republic of Macedonia in the Parliament of Republic of Macedonia described in this paper, we give concrete recommendations for improving the process of reviewing the proposed budget in the Parliament of Republic of Macedonia in the chapter "Possible ways to improve the process of reviewing the proposed budget in the Parliament of Republic of Macedonia."

Possible ways to improve the budget process in Republic of Macedonia

- To prepare an analysis about the need of Budget calendar revision which will incorporate the real time limitations for the administration of the budget users and the units of the central and local government
- To start preparing Pre-Budget statement and Citizen's Budget
- To prepare analysis about the need of performance budgeting in Republic of Macedonia
- The Fiscal strategy to be considered and adopted in the Assembly of Republic of Macedonia
- The Public Investment Program to be reviewed and adopted in the Assembly of Republic of Macedonia

Possible ways to improve the procedure for reviewing the Budget proposal in the Assembly of Republic of Macedonia

- Change in the Law on Budget regarding the anticipated deadline for submission of the Budget proposal to the Assembly of Republic of Macedonia (earlier than the current 15th November)
- Bigger transparency of the Budget proposal (changes in the budget items)
- To have order in submission of appropriate documents to the Assembly of Republic of Macedonia that are basis for preparing the Budget proposal
- Clear distinction and adherence of the Members of Parliament of what is general debate and what is amendment debate
- Apart of the Minister for finances, ministers from other ministries to attend the amendment debate for the Budget proposal at the Commission for budget and financing.Basic training for the Members of Parliament, especially the new ones, about the Budget structure
- Continuous trainings for the employees in the Assembly of Republic of Macedonia about the Budget process in order to be provide help

ЦЕЛИ НА ПРОЕКТОТ

Наша цел со овој проект е да се работи на подобрување на фискалната и буџетската транспарентност во државата, бидејќи фактите за случувањата од декември 2012 година се веќе вклучени во извештајот на ад-хок комисијата. Политичките партии, политичарите и Владата се инволвирани страни во овие случувања и затоа ЦЕА како независна страна може да обезбеди непристрасен преглед на извештајот и може да ја обезбеди својата експертиза за тоа како да се имплементираат препораките од извештајот кои се однесуваат на фискалната транспарентност и буџетскиот процес. Сето ова е во согласност со нашата мисија и нашето претходно искуство кога делуваме за подобрен економски раст и развој на Р.Македонија, а со тоа и кон поголема транспарентност и отчетност на Владата, што на крајот ќе доведе, се надеваме, до подемократска држава.

МЕТОДОЛОГИЈА НА ИСТРАЖУВАЊЕТО

За постигнување на целите на овој проект се послуживме со квантитативен и квалитативен метод на истражување. Квалитативниот дел се состоеше од проучување на Извештајот на ад-хок комисијата[1] формирана за да ги расветли причините за настаните кои се случија за време на носење на Буџетот на Р.Македонија за 2013 година и да дадат препораки како тие несогласувања и спротивставени ситуации да се надминат; Законот за буџетите[2]; Деловникот на Собранието на Р.Македонија; Прирачникот на ММФ за фискална транспарентност[3]; Најдобрите практики за буџетска транспарентност на OECD (Организација за економска соработка и развој[4]). Се консултиравме и со примената на новиот код за фискална транспарентност на ММФ[5] кој е применет на Ирска, а кој ни беше достапен по поканата од ММФ до ЦЕА да учествува на состанокот

1 Сакаме да напоменеме дека индикативен факт за висока политизираност на општеството во кое не се владее со консензус туку се владее преку исклучивост е дека извештајот не е достапен на веб страницата на Собранието на Р.Македонија ниту пак на веб страницата на ВМРО-ДПМНЕ туку јавно е објавен на веб страницата на СДСМ: http://www.sdsm.org.mk/upload/documents/Izvestaj%20na%20Komisijata%20za%2024%20dekemvri%202012.pdf.

2 http://finance.gov.mk/files/u6/_____5.pdf.

3 http://www.imf.org/external/np/pp/2007/eng/101907m.pdf.

4 http://internationalbudget.org/wp-content/uploads/OECD-Best-Practices-for-Budget-Transparency.pdf.

5 http://www.imf.org/external/pubs/ft/survey/so/2013/POL061713A.htm.

на бордот на гувернери минатата година во Вашингтон[6]. Го искористивме и искуството на ЦЕА од своето досегашно работење за да дадеме предлози за подобрување на буџетскиот процес во Р.Македонија[7].

За анализа на неуспеси од дискрециono водење на фискална политика на случајот на Р.Македонија ги користиме правилата презентирани од ММФ институтот и тоа: временска неконзистентност на предложените ставки во буџетот, феномен на заеднички базен (common pool problems), пристрасност кон дефицит (deficit bias) и процикличност.

Во квалитативниот дел се консултиравме и со растечката литература од областа на независни финансиски институции како Debrun 2011[8], Cottarelli 2012[9], Kopits 2011[10]. Се консултиравме и со извештаи на независни финансиски институции како Советот за буџетска одговорност на Словачката Република[11] и Фискалниот совет на Србија[12].

Исто така одржавме и низа на состаноци (види Анекс 1). Прво, одржавме состанок со Претседателот на ад-хок комисијата, а воедно и декан на Правниот факултет „Јустинијан Први“ во Скопје, проф д-р. Борче Давитковски. Со него подетално беше разговарано за подготвениот извештај за настаните кои се случија на 24.12.2012 година во Собранието на Р.Македонија за време на носење на Буџетот на Р.Македонија за 2013 година, и за препораките кои беа дадени. Одржан беше состанок и со г-н Маријанчо Николов, претседател на Комисијата за финансирање и буџет со кого беше разговарано за Законот за буџет и процесот на носење на Буџетот на државата.

На одржаниот состанок со г-н Драган Пулевски, државен советник и член на Комисијата за финансирање и буџет беше разговарано за процесот и постапката на носење на Буџетот на Р.Македонија, од доставувањето на предлог буџетот во Собранието на Р.Македонија од страна на Владата на Р.Македонија; неговата проверка од страна на службите во Собранието на Р.Македонија; потоа неговото разгледување во Комисијата за финансирање и буџет; давањето

6 http://www.cea.org.mk/documents/CEA%20Marjan%20Macedonia%20Report_1.pdf.

7 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1443394.

8 https://www.imf.org/external/pubs/ft/wp/2011/wp11173.pdf.

9 https://www.imf.org/external/np/pp/eng/2012/080712.pdf.

10 http://www.oecd.org/gov/budgeting/Independent%20Fiscal%20Institutions.pdf.

11 http://www.rozpoctovarada.sk/download2/compliance_with_rules2013_final_en.pdf.

12 http://fiskalnisavet.rs/lat/.

амандмани на предлог буџетот од страна на пратениците; разгледувањето на амандманите и на крај носење на Буџетот на државата.

На состанокот со г-ѓа Марија Пулевска, државен советник и член на Комисијата за финансирање и буџет се задржавме повеќе на можноста за разгледување на предлог буџетот од страна на други заинтересирани работни тела кои го разгледуваат соодветниот Раздел од Буџетот во зависност од тоа која материја покриваат заинтересираните тела. Исто така се разговараше и за процедурите за носење на Ребалансот на Буџетот на Р.Македонија. Со г-н Игор Ивановски, член во паритетна комисија за имплементација на препораките на ад-хок комисијата беше разговарано за текот на имплементација на препораките од комисијата и за начинот на носење на Буџетот.

Состанок имавме и со г-н Питер ван Хут, набљудувач-експерт на работата на ад-хок комисијата номиниран од ЕУ со кој беше разговарано за неговите видувања на настаните кои се случија на 24 декември 2012 година како и за неговото искуство од работата на комисијата. Ја контактиравме г-ѓа Владанка Авировиќ член на Комисијата за финансирање и буџет во врска со нашите предлози за ревидирање на одредбите од Деловникот кои се однесуваат на постапката за носење на буџетот и нашите предлози за поефикасен буџетски процес но за жал не добивме повратна информација за нашите предлози. Иако баравме средба не добивме повратен одговор од г-н Илија Димовски.

На крај, квантитативниот дел на истражувањето се состои од подготвување на симулација со симулаторот на International Budget Partnership (http://survey.internationalbudget.org/#profile/MK) за тоа што ќе се случи и на кој начин ќе влијаат препораките кои ќе ги дадеме во ова истражување врз ситуацијата во Р.Македонија во однос на транспарентното и отчетно работење (види Анекс 2).

Значи, прво ќе презентираме анализа на контекстот на случувањата од 24 декември 2012 година, потоа презентираме насоки за подобрување на буџетскиот процес како и насоки за подобрување на процедурите во Собрание на Р.Македонија во врска со донесување на буџетот. На крај презентираме можно рангирање на Р.Македонија со симулација на ОБИ индексот за Р.Македонија доколку се усвојат препораките кои ги нудиме.

ШТО СЕ СЛУЧИ ПРИ НОСЕЊЕТО НА БУЏЕТОТ НА Р.МАКЕДОНИЈА ЗА 2013 ГОДИНА?

Како што е наведено во извештајот на ад-хок комисијата, по влегувањето на Буџетот на Р.Македонија во собраниска процедура на 3 ноември 2012 година, и по одржаната редовна координација, бил договорен терминот за почнување и завршување на работата на Комисијата за финансирање и буџет (КФБ). По поднесените 1225 амандмани од страна на опозицијата почнуваат да настануваат застои во работата на Комисијата за финансирање и буџет. Поради големиот број неразгледани амандмани, одобрена е и дополнителна недела за комисиска расправа за буџетот. Но и покрај ова продолжување сеуште имало голем број амандмани кои не се разгледани. Поради овие пролонгирања, се пролонгира и почетокот за работа на Законодавно-правната комисија (ЗПК) која треба да започне со работа веднаш по завршувањето на Комисијата за финансирање и буџет и да ја разгледа нејзината работа, односно која ќе ја оцени законитоста на предложениот текст и текстовите на амандманите. Според извештајот, за да се добие на време, ЗПК започнува со работа и покрај тоа што не е завршена расправата за Предлог буџетот на Комисијата за финансирање и буџет притоа разгледувајќи го само она што е завршено во КФБ. Но, пратениците од опозицијата го попречувале започнувањето на работата на ЗПК поради оваа причина. Тука почнуваат и првите физички пресметки. Се исклучувале микрофони и не се дозволувало започнување на расправата во Комисијата. Во тој период, опозицијата до Собранието на Р.Македонија доставила предлог план за буџетски заштеди за кои велат дека ако се прифати, како знак на добра волја тие ќе ги повлечеле сите амандмани кои ги имале дадено на Предлог буџетот. Поради се понефункционалната работа на двете комисии, претседателот на собранието Трајко Вељаноски јасно го посочил датумот до кога треба да се заврши нивната работа и да се почнело со разгледување на Буџетот во Собранието за да се запази крајниот рок за негово носење (31 декември). Исто така, поради големиот број поднесени амандмани и неможноста сите да се разгледаат на седниците на КФБ, било одлучено истите да ги разгледа Министерот за финансии односно Владата на Р.Македонија и за нив писмено да се произнесе дали ги прифаќа или не. Тој извештај бил прочитан на седниците на КФБ и ЗПК.

Конечно, по рекордно долгите расправи на комисиите, на 24.12.2012 година во Собранието на Р.Македонија пристигнал дополнетиот предлог буџет на Р.Македонија за 2013 година. Но проблемите и тензиите не застанале тука. Според извештајот на Комисијата, картиците за

седницата не биле поделени на вообичаеното место па поради ова пратениците од опозицијата сакале да ја спречат расправата за буџетот и ја запоседнале говорницата во Собранието. Како одговор на ваквото однесување, претседателот на Собранието на Р.Македонија поднел барање за постапување до Одделението за внатрешно обезбедување во Собранието на Р.Македонија. Отстранети се новинарите од галеријата во салата исто како и 42 пратеника од опозицијата. Во обидите на отстранување на пратениците од салата, имало и повредени пратеници. Вратата од салата била заклучена и имало полициско обезбедување пред истата. Собранието работело со мал дел од опозицијата и го донело Буџетот на Р.Македонија за 2013 година.

КАКО ТЕЧЕШЕ НОСЕЊЕТО НА БУЏЕТОТ НА Р.МАКЕДОНИЈА ЗА 2014 ГОДИНА?

За разлика од претходната година, а после промените во деловникот на Собранието на Р.Македонија, оваа година носењето на Буџетот на државата за 2014 година помина во помирна атмосфера и без инциденти.

Во тек на десетдневниот рок за амандманска расправа за Буџетот, собраниската Комисија за финансирање и буџет разгледала 291 амандман од вкупно поднесените 684, а прифатила пет[13]. Причината за ова е тоа што расправата морала да биде прекината бидејќи изминал рокот од десет дена предвиден во Деловникот за разгледување на амандманите. Сите амандмани што не биле дел од претресот биле дел од Извештајот составен од Комисијата и испратен до претседателот на Собранието.

Буџетот на РМ во Собранието бил донесен на време со запазување на рокот предвиден во Деловникот од 5 дена за расправа и потоа изјаснување од страна на пратениците за Предлог буџетот дали го прифаќаат или не. Мора да се напомене дека ни овој пат не беа одбегнати обвинувањата и навредите помеѓу пратениците поради различните мислења.

13 http://www.sobranie.mk/ext/materialdetails.aspx?Id=a2d15086-102a-43e6-be46-d66cb7554eaf.

АНАЛИЗА НА КОНТЕКСТ

Од еден систем на јавни финансии се очекува да има воспоставено транспарентни процедури и правила кои ќе го регулираат буџетски процес. Добро поставени процедури и правила ја редуцираат можноста од дискреционо водење на фискални политики. Во теорија, целосно информирани гласачи би требало да обезбедат амбиент за политичарите да донесат општествено оптимални политики. Но, за жал вообичаени се неуспесите од повеќе или помалку дискреционо водење на фискални политики и тоа: временска неконзистентност на предложените ставки во буџетот, феномен на заеднички базен (common pool problems), пристрасност кон дефицит (deficit bias) и проциклична, пристрасност кон расходната композиција на буџетот, проблеми со одржливост на долгот и сето тоа може да води до неизвесност за економските актери од очекувањата за идните потези на владата.

Во еден современ систем на јавни финансии покрај извршната власт која го подготвува и извршува буџетот јасна е функцијата на пратениците во донесување на финансискиот план на државата, но и во надзорот на извршувањето и на завршната сметка. Собранието го има, меѓудругото, екс-пост инструментот во улога на Државниот завод за ревизија[14] за оценка дали:

- Извршната власт работи во согласност со законите и прописите.
- Извршната власт го троши буџетот за утврдени цели и намени.
- Финансискиот менаџмент на институциите функционира добро.
- Граѓаните на Р.Македонија ја добиваат вистинската вредност за потрошените пари

Дека се уште има простор за подигнување на свеста на граѓаните и на функционерите во Р.Македонија за тоа како треба да функционира една парламентарна демократија и која е улогата на институциите во системот на јавни финансии во Р.Македонија е и последниот случај со Директорот на Агенцијата за странски инвестиции кој не го признава извештајот на Државниот завод за ревизија во кој беа обелоденети серија неправилности во работењето на Агенцијата. Тој објави дека ќе плател независна ревизорска куќа да го преиспита извештајот што го направи

14 http://dzr.mk/Uploads/RIRACNIK_Voved_vo_revizorski_izvestai_MKD.pdf.

државната ревизија[15]. Повеќе не би ја коментирале оваа изјава на директорот, но токму поради ваквите изјави и индолентноста на Владата кои се индикатор за потенцијал за дискреционо носење на одлуки во извршната власт, во повеќе држави се формира нова институција во системот на јавни финансии на екс-анте оценка на здравоста на фискалната политика на извршната власт. Такви институции се познати како фискални совети и нивната улога е да помогнат на парламентарците и на јавноста да се овозможи отчетност на извршната власт (тие совети се независни и во нив членуваат стручни лица). На пример, советот за буџетска одговорност на Словачка е одговорен за[16]: подготовка на извештаи за долгорочната одржливост на јавните финансии, дава оценка дали извршната власт ги почитува сопствените фискални правила и дали транспарентноста е компромитирана, дава мислења за законските акти и дава оценки и врши мониторинг на развојот на јавните финансии. Интересен е и примерот на Унгарија и краткиот живот на нивниот фискален совет како посебна лекција за политичарите[17] [18].

Бидејќи во Р.Македонија немаме ваков совет, фискалната транспарентност се влошува[19], а постојат и одредени асиметричности поради тоа што владата не може да ги задоволи преференциите на сите гласачи и асиметричности поради тоа што гласачите не може да ги знаат однапред вистинските намери на политичарите (Dubron 2011) би сакале да ги искористиме правилата презентирани од ММФ институтот за анализа на потенцијал за неуспеси од дискреционо водење на фискална политика на случајот на Р.Македонија и тоа: временска неконзистентност на предложените ставки во буџетот, феномен на заеднички базен (common pool problems), пристрасност кон дефицит (deficit bias) и процикличност. Во овој документ нема да можеме посистематски да ги анализираме потребите, институционалните и други карактеристики на независните финансиски институции но тоа е секако последната мантра на меѓународните финансиски институции после кризата од пред пет години.

Во ЦЕА сме убедени дека контекстот на неуспехот на системот на јавните финансии во Македонија од декември 2012 година е силно поврзан со правилата на кои лежи еден современ систем кој

15 http://alsat.mk/index.php/vesti/od_zemjata/6834-%D1%84%D0%B8%D0%B4%D0%B0-%D0%BD%D0%B5-%D0%BC%D1%83-%D0%B2%D0%B5%D1%80%D1%83%D0%B2%D0%B0-%D0%BD%D0%B0-%D0%B4%D0%B7%D1%80.html.

16 http://www.rozpoctovarada.sk/eng/rozpocet/125/what-do-we-do.

17 http://www.oecd.org/gov/budgeting/Independent%20Fiscal%20Institutions.pdf.

18 http://www.imf.org/external/pubs/ft/scr/2012/cr1213.pdf.

19 http://www.cea.org.mk/documents/CEA%20press%20release%20-%200BI%20makedonija%202012.pdf.

треба да почитува фискални правила и фискална транспарентност и затоа со оваа анализа даваме контекст на настаните од 24 декември во рамките на јавните финансии на Р.Македонија.

ВРЕМЕНСКА НЕКОНЗИСТЕНТНОСТ НА ПРЕДЛОЖЕНИТЕ СТАВКИ ВО БУЏЕТИТЕ

Ќе наведеме неколку примери на можна временска неконзистентност во фискалната политика на владата. Во 2006 година владата воведе политики на рамен данок, а во 2008 година ЦЕА направи оценка на ефектите од воведувањето на рамниот данок[20]. Од истражувањето произлезе дека најголема придобивка за бизнисите беше симплифицирањето на пресметката на данокот и зголемената дисциплина за плаќање на даноците. Но од друга страна беше посочено од бизнисите дека даночните закони пречесто се менуваат па оттука за нив се јавува временска неизвесност. Оваа неизвесност од пречестото менување на даночните закони секако дека може имплицитно води и до временска неконзистентност на предложените ставки во буџетите.

График 1. Нејасни економски закони како удел во ограничувачки фактори за зголемување на производството. Извор: Државен завод за статистика.

20 http://www.cea.org.mk/documents/proekti/CEA%20Final%20fiscal%20report_final.pdf.

Од друга страна пак од графикот погоре јасно се гледа нејасните економски закони се се помал проблем за македонските бизниси. Па оттука не може да заклучиме дека по тој основ може да има проблем на временска неконзистентност.

Економската ситуација се влоши со почетокот на глобалната криза во 2008 година како што е тоа илуструрано на наредните графици.

График 2. Оценка за сегашната економска состојба на деловниот субјект. Извор: Државен завод за статистика.

Во 2008 година даночните стапки на персоналниот данок на доход и на данокот на добивка беа дополнително намалени на 10% од 12% претходно. Почнувајќи од 2009 година почна со примена даночното решение според кое само добивката распределена за дивиденда подлежи на оданочување по законската стапка од 10%. Ова, како и падот на економската активност во земјата резултираше со значително намалување на приходите по основ на данок на добивка. Во однос на давачките кои го товарат личниот доход, во 2009 година беше регистрирано раст на наплатата, што се објаснува со реформата Бруто-плата.

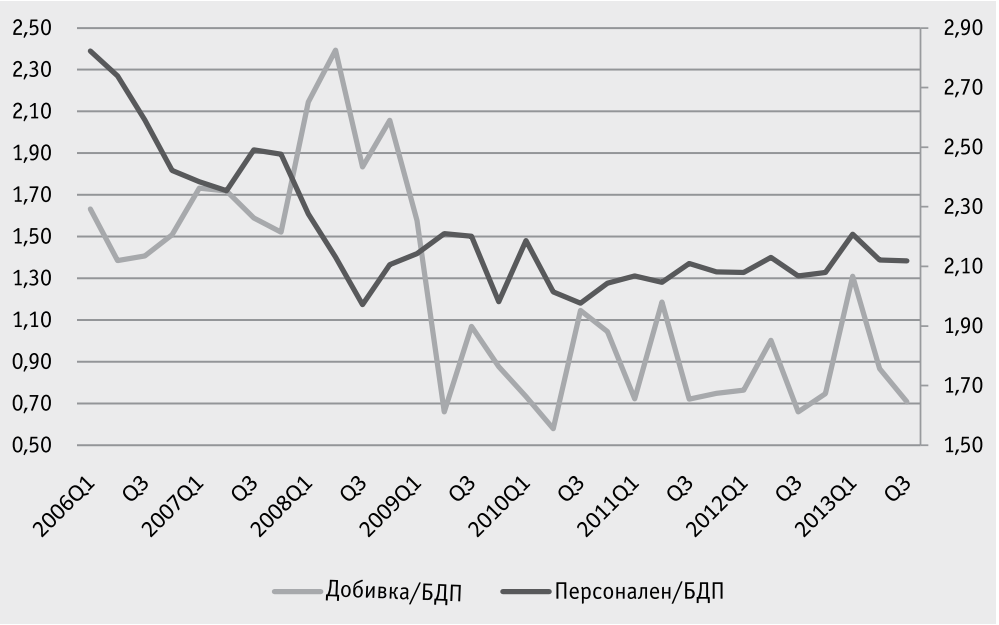


График 3. Данок на добивка врз БДП (лева оска) и ѝперсонален данок на доход врз БДП (десна оска) сезонски ѝприлагодени од 2006 до 2013Q3

Во периодот кога започна глобалната криза глобално се водеше дебатата за причините, должината, типот (V-тип, W-тип или L-тип) и решенијата за проблемите од истата. За Р.Македонија јасно беше дека таа криза и нејзините ефекти ќе се почуствуваат со временско задоцнување во Р.Македонија. ЦЕА се вклучи во дебатата преку работата на Комисијата за финансирање и буџет при Собранието на Р.Македонија[21] и во стручни дебати[22] каде меѓудругото, јасно укажавме дека:

- Продолжувањето на практиката на донесување на два ребаланси на буџетот во текот на 2008 година укажува на: 1) премногу честите ад-хок иницијативи на владата кои ги нарушуваат постојните буџетски проекции, и 2) недоволно професионалниот пристап во планирањето на средствата од страна на буџетските корисници.
- Од тие причини значително се намалува употребливоста на фискалната стратегија и среднорочната фискална рамка, а буџетските ставки, иако со третман на законска материја,

21 http://www.cea.org.mk/documents/forumi/CEA%20komisija%20za%20budzet.pdf.

22 http://www.soros.org.mk/CMS/Files/Documents/deklarativnoto_i_realnoto_preku_brojki.pdf.

го губат обврзувачкиот карактер. Во крајна линија, честото менување на буџетските износи преку ребаланси или пренамена на средствата, ја ослабнува и фискалната дисциплина.

- Овие елементи од буџетското планирање, извршување и мониторинг доведува до ситуација на недоволна транспарентност на буџетскиот процес, прекумерна централизираност на одлуките во Министерството за финансии, слабо извршување на капиталните проекти, неусогласеност на долгорочни цели со краткорочни очекувања.

На наредниот график се илустрирани сезонски прилагодените движења на данокот на додадена вредност врз БДП. Од графикот може да видиме дека кризата во Р.Македонија може да е од W-тип.

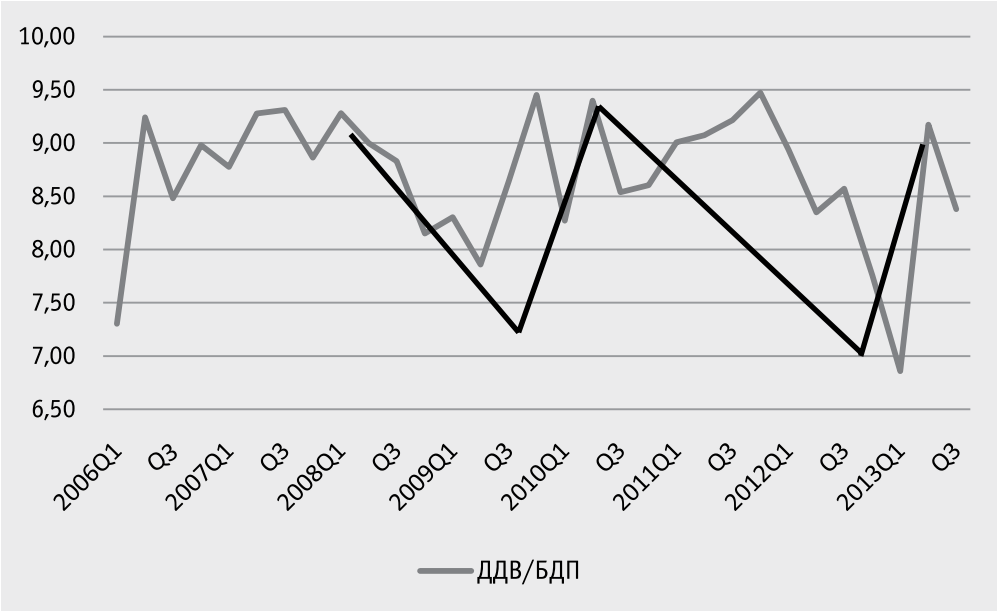


График 4. Данок на додадена вредност сезонски прилагоден од 2006 до 2013Q3

Со почетокот на кризата, владата почна да кумулира обврски по основ на правото на враќање на ДДВ. Јавноста никогаш не доби јасна и транспарентна пресметка или податок за висината на неплатените обврски кон бизнис секторот. Ова е само дел од временската неконзистентност кои имаат рефлекција и во буџетот на Р.Македонија. Насетувајќи дека кризата е од поголем обем и дека ќе има подлабоки ефекти во државата, ЦЕА предложи во 2009 година во Комисијата за

финансирање и буџет и во јавноста[23] наместо проциклична политика во тој период, владата обилните буџетски приливи да ги искористи за зголемување на депозитите на централната државна власт. Но тоа не се случи. Наскоро и ветувањата за зголемување на платите на вработените во администрацијата поради ефектите од намалување на фискалниот простор беа прекршени. Ова се примери на временската неконзистентност на фискалната политика на владата.

По наше мислење, силен ефект има негативниот шок од глобалната криза чии ефекти се мултиплицираа поради неколкуте имплементирани политики кои водеа кон намалување на приходите во централниот буџет на краток рок (со очекување дека на долг рок преку поповолен амбиент и зголемена економска активност ќе се зголемат и приходите во буџетот). Но она што владата пропушти да направи е да ја зголеми транспарентноста во креирањето на политиките, да го искористи буџетскиот процес за градење на консензус во општеството за главните цели на македонската економија, особено во услови на криза, и пропушти да воведе пракса на инклузивност и партиципативност наместо политика на исклучивост во водењето на јавните финансии. Ова пак не води до вториот неуспех од дискрециono водење на политики, а тоа е феноменот на заеднички базен.

ФЕНОМЕН НА ЗАЕДНИЧКИ БАЗЕН (*COMMON POOL PROBLEMS)*

Литературата за политичка економија во фискалната политика добро е разработена со одличен преглед на конкурентните теории уште во Alesina & Perotti 1994[24]. Се чини сепак дека за Р.Македонија доста е релевантно објаснувањето од теоријата на јавниот избор-за фискалната илузија. Во основа се работи за проблем кога гласачите не можат да го видат временското ограничување на буџетот и поради тоа кога владата ќе оди со програми кои се финансирани со дефицит гласачите ја преценуваат вредноста на тековната потрошувачка за сметка на идните даночни товари. Едноставно на она што го добивате денес од владата во вид на секакви трансфери, а поради тоа што се соочувате со намалена фискална транспарентност, му давате висока вредност за сметка на дисконтирање на товарот за идните генерации со висока дисконтна стапка. Ова се случува независно дали сте економски агент-граѓанин или економски агент-бизнис. Во вакви услови на principal-agent проблем секогаш постои ризикот било која влада која сака повторно да биде избрана да ги направи стабилизационите Кејнсови политики асиметрични т.е. додека е криза да се потпираат на автоматските стабилизатори но кога рецесијата ќе помине некако тешко

23 http://www.soros.org.mk/CMS/Files/Documents/deklarativnoto_i_realnoto_preku_brojki.pdf.

24 http://www.nber.org/papers/w4637.pdf.

се оди кон политики на суфицити. Гласачите пак не ги казнуваат таквите политичари поради нивната фискална илузија.

Во услови пак на висока сиромаштија Cukierman & Melzer 1989[25] докажуваат дека додека релативно побогатите граѓани се индиферентни на владини задолжувања, поголемиот број на сиромашни граѓани, за кои не важи воедначувањето на Рикардо, гласаат за проекти финансирани со дефицити т.е. за повисоко задолжување за да може да си го добијат својот трансфер од буџетот. Оттука во услови на висока сиромаштија општествениот избор е тој кој пресудува за повисок јавен долг.

За да биде сликата за заедничкиот базен (common pool) целосна мора да ја претставиме и опозицијата која сугерира, критикува, но практикува и критизерство, дава понекогаш предлози за алтернативна политика или практикува чисто политиканство. Но проблемот е што владата има секогаш спремен одговор на било која активност од опозицијата дека мнозинството го дало гласот за политиките на владеачките партии и тука завршува дебатата. Уште еднаш укажуваме на пропуштените можности од страна на владата за препознавање на конструктивност од страна на стручната јавност и од страна на опозицијата што доведе до исклучивост во практицирање на владеењето без инклузивност и партиципација. Оттука се раѓаат разни фрустрации кои кулминираат со инциденти од типот на 24 декември. Во последно време опозицијата не можејќи да наметне дел од својата визија за буџетот (од која чекаме да слушнеме за некоја конзистентна политика или визија за Македонија настрана флоскулата за враќање на средна класа-што и да се мисли под средна класа), а за да го привлече гласачкото тело влегува во копирањето на политиките на владата кои претежно се однесуваат на зајакната улога на државата во економијата и зајакнување на трансферите од централниот буџет. За таквите ветувања на опозицијата Alesina & Tabellini 1990[26] имаат покажано дека нив опозицијата нема да може да ги задоволи бидејќи ќе мора да се фокусира на враќање пред се на долговите од претходната влада. Оттука за граѓаните во Р.Македонија останува проценката дека и во иднина може да очекуваме водење на политики на исклучивост, заедничкиот базен да станува се потесен за политичките актери, се повеќе да се става фокус кон клиентелизам и фрагментација на општеството и се повеќе да зајакнува улогата на државата во економијата.

25 http://www.jstor.org/discover/10.2307/1827928?uid=3737528&uid=2&uid=4&sid=21103376290921.

26 http://dash.harvard.edu/bitstream/handle/1/3612769/alesina_positivetheory.pdf.

ПРИСТРАСНОСТ КОН ДЕФИЦИТ *(DEFICIT BIAS)* И ПРОЦИКЛИЧНОСТ

Укажавме дека намалувањето на фискалната дисциплина, неусогласеност на долгорочни цели со краткорочни очекувања резултираат со намалена фискална транспарентност, намален квалитет на предвидувањата на макро-фискалните варијабли, губење на смислата на планирање на среден и долг рок и неможност на економските агенти да ги планираат и сопствените идни економски активности.

На пример, на следниот график ги гледаме со задебелена линија актуелните годишни буџетски биланси на Р.Македонија, а потенките линии ги прикажуваат предвидените буџетски биланси согласно претпристапните економски програми-ПЕП на владата.

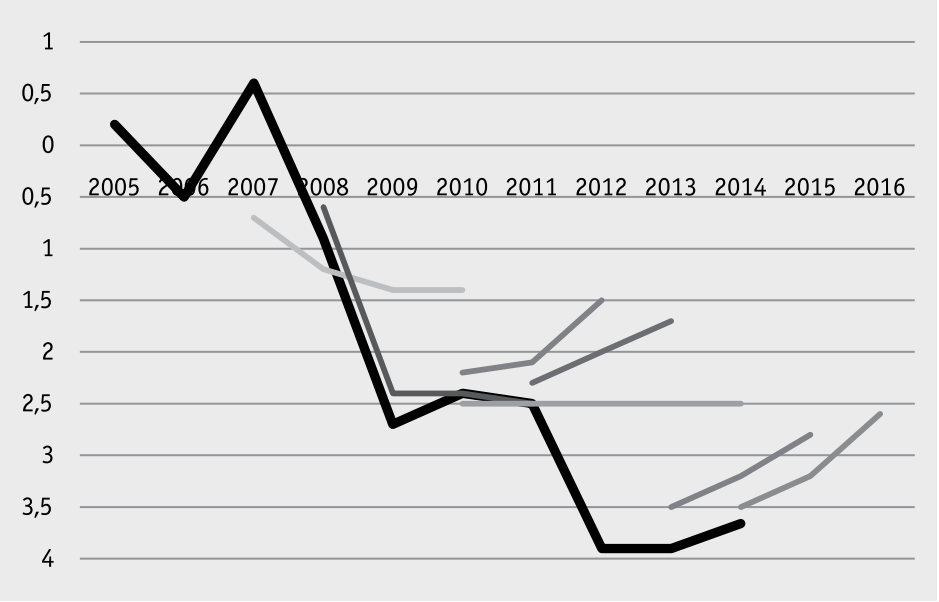


График 5. Буџетски биланс на централна влада во процент од БДП од 2005-2016 [27] и предвидени буџетски биланси од ПЕП на владата.

Јасно може да видиме од графикот дека владата редовно го пробива планот за консолидирање на буџетскиот баланс, не ги почитува сопствените фискални правила и покажува пристрасност кон буџетски дефицити (deficit bias).

27 Извор: ПЕП на Македонија и Министерство за финансии.

Владата редовно проценува и пристрасни, многу повисоки стапки на раст со голема статистичка грешка што укажува на низок квалитет на макроекономските проценки. На следниот график ги гледаме со задебелена линија актуелните стапки на раст на БДП на Р.Македонија, а потенките линии ги прикажуваат предвидените стапки на раст на БДП согласно претпристапните економски програми-ПЕП на владата.

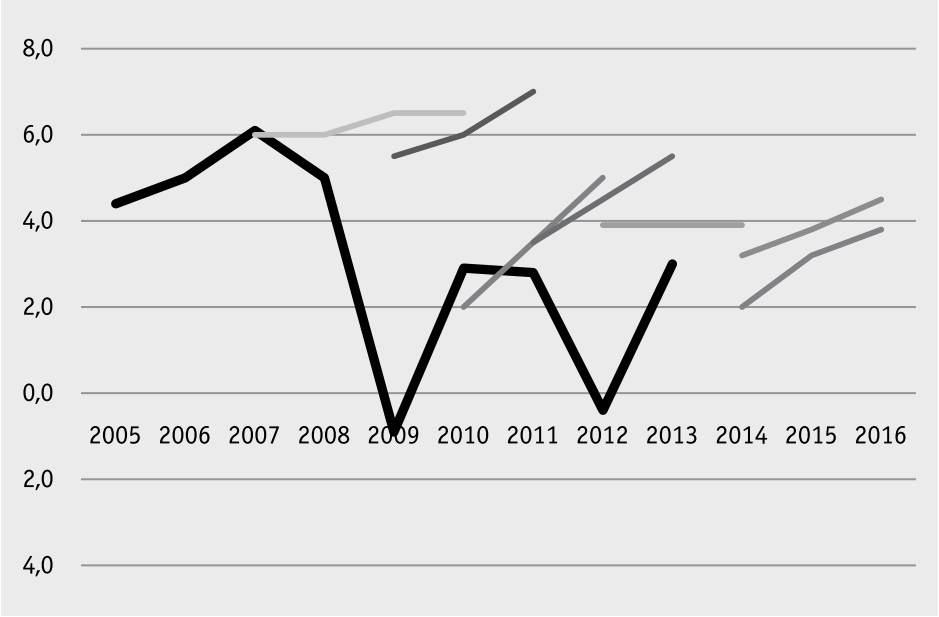


График 6. БДП раст на Р.Македонија и проценети стапки на БДП раст од ПЕП на владата од 2005-2016[28.]

Дополнително на тоа, ЦЕА пресметките покажуваат исто така дека за да го задржи нивото на задолженост на вкупен долг на централна влада на сегашно ниво од 34,3% владата ќе треба да има во 2014 година буџетски суфицит нешто над нулата, а не дефицит согласно буџетскиот план за 2014 година од 3,6%. Оттука индикативно е дека владата има пристрасност кон буџетски дефицит но појавува и епизоди на проциклична како што е илустрирано на следниот график.

28 Извор: ПЕП на Македонија и Министерство за финансии и НБРМ.

График 7. Производен јаз[29] и примарен биланс на Р.Македонија за периодот 2006К1-2013К3 година[30]

Од графикот може да се види дека во анализираниот период се забележуваат епизоди на процикличност и контрацикличност на фискалната политика. Во 2007 година доаѓа до прегревање на економијата, односно се забележува позитивен производен јаз. Примарното буџетско салдо е позитивно, со исклучок на последниот квартал, што укажува на контрациклична фискална политика.

Во 2010 и 2011 година се забележува одредена процикличност на фискалната политика, односно во услови на позитивен производен јаз примарното салдо е негативно. Позитивните ефекти од позитивниот производен јаз врз буџетските приходи требаше да бидат искористени за подобрување на позицијата на депозитите на централната власт, со што ќе спречеше акумулација на неплатени обврски кон стопанството и подобро справување со негативните ефекти на должничката криза во еврозона врз македонската економија во 2012 година кога го пречекавме double deep на кризата.

29 Во пресметката за производен јаз земени се во предвид Филипсова крива и законот на Окун преку модел на необсервирани компоненти. Податоци од ММФ и Министерство за финансии. Пресметки на ЦЕА.

30 Податоци од ММФ и Министерство за финансии. Пресметки на ЦЕА.

ЗОШТО Е ВАЖНА ФИСКАЛНАТА ТРАНСПАРЕНТНОСТ?

Според ММФ, фискалната транспарентност во јавните финансии е главен елемент на доброто владино управување кое понатаму води кон макроекономска и фискална стабилност и е детерминанта за повисоки стапки на економски раст. Фискалната транспарентност може да служи и за рано идентификување на потенцијални ризици по фискалните резултати што пак води кон рано предупредување и соодветна фискална реакција при променети економски претпоставки. Понатаму, фискалната транспарентост овозможува отчетност кон граѓаните-даночни обврзници, а и овозможува подобра кредитоспособност кон меѓународниот пазар на капитал[31].

На следните графици се илустрирани корелациите на ОБИ (open budget initiative) индексот на фискална транспарентност[32] со БДП по глава на жител на околу стотина држави и корелациите на ОБИ индексот на фискална транспарентност со индексот на перцепција за корупција[33].

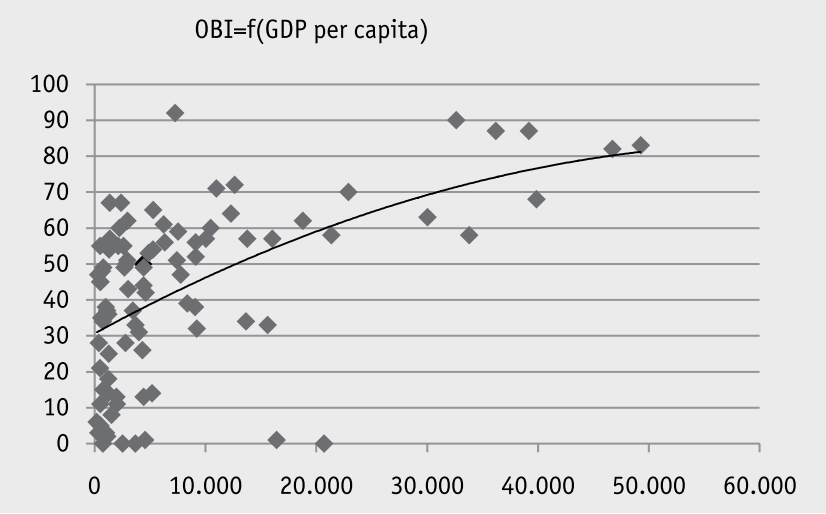


График 8. Корелации на ОБИ индексот на фискална транспарентност со БДП по глава на жител на околу стотина држави

31 Види повеќе на: http://www.imf.org/external/np/exr/facts/fiscal.htm.

32 http://survey.internationalbudget.org/#home.

33 http://cpi.transparency.org/cpi2013/.

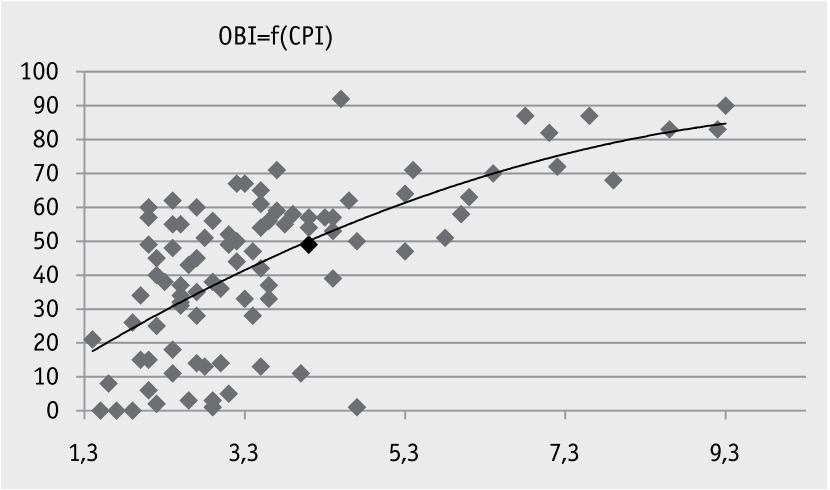


График 9. Корелации на ОБИ индексот на фискална транспарентност со индексот на перцепција за корупција на околу стотина држави

Графиците иако индикативни даваат насоки за важноста од зголемена фискална транспарентност. Според ОБИ[34] транспарентноста во јавните финансии помага за поефтино меѓународно кредитирање, помага за подобрена ефикасност во јавното трошење додека зголемена нетранспарентност води кон намалена фискална дисциплина. Според истражувањата на ММФ неочекувани зголемувања на долг се резултат од:

- 23% поради некомплетни информации
- 37% поради потценување на влијанието на шоковите
- 18% поради дискрециони политики

Дополнително, во ЦЕА исто така веруваме дека повисоко ниво на фискална транспарентност специфично за РМ ќе значи и:

- Поголема **партиципација** во буџетскиот процес.
- **Релаксација** на дебатата при донесување на буџетот во Собрание на РМ.

34 http://internationalbudget.org/wp-content/uploads/OBI2012-Report-English.pdf.

- **Градење на консезус** помеѓу политичките елити/актери.
- **Подршка за реформи** од администрација (централна и локална), јавност, бизниси и цивилен сектор.
- **Иновативни пристапи** за поефикасен и поефективен буџетски процес.
- **Поповолно рангирање на РМ** од кредит рејтинг агенциите.

Буџетскиот процес мора да е добро интегриран со управувачкиот и планирачкиот процес на некоја влада. Но буџетскиот процес не може да се води без да бидат вклучени сите заинтересирани страни, а тоа се парламентот, владата, граѓаните, бизнисите и цивилниот сектор. Само со целосно интегрирање на сите овие групи во буџетскиот процес ќе се овозможи нивна информираност за донесување на одлуки за ефикасна алокација на ограничените ресурси кон оние програми и планови кои ќе овозможат најефикасно остварување на целите на националната економија. Заради тоа од најголем интерес на Владата и Собранието е да ги вклучи сите заинтересирани страни во овој процес.

ПРЕПОРАКИ ОД ИЗВЕШТАЈОТ НА КОМИСИЈАТА

Со овој труд сакаме да дадеме придонес кон операционализирање на препораките од комисијата што се однесуваат на ревидирање на одредбите од Деловникот кои се однесуваат на постапката за носење на буџетот. Тие препораки согласно извештајот од комисијата се:

- Да се предвиди ефикасна постапка за усвојување на Буџетот, со точно прецизирани и утврдени рокови.
- Предлог буџетот треба да биде поднесен до Собранието благовремено, за да може Собранието соодветно да го разгледа. Во ниту еден случај ова не смее да биде подоцна од три месеци пред почетокот на фискалната година. Буџетот треба да се усвои од страна на Собранието пред почетокот на фискалната година.
- Предизборниот извештај служи за транспарентност на општата состојба на финансиите на Владата непосредно пред избори. Истиот служи за информирање на гласачите и за поттикнување на јавна дебата. Овој извештај треба да биде објавен најдоцна две недели пред почетокот на изборите. Истиот ги содржи информациите содржани во полугодишниот

финансиски извештај. Посебно внимание треба да се посвети на обезбедување на целосност на таквиот извештај.

- Да се преиспита потребата ЗПК да расправа за Буџет.[35]

Согласно препораките од извештајот на комисијата и согласно претходните истражувања на ЦЕА и одржаните состаноци би сакале да ги понудиме следните препораки.

МОЖНИ ПРАВЦИ ЗА ПОДОБРУВАЊЕ НА БУЏЕТСКИОТ ПРОЦЕС ВО Р.МАКЕДОНИЈА

Фискалната транспарентност претставува отвореност кон јавноста за структурата и функциите на Владата, намерите во фискалните политики, сметките на јавниот сектор и фискалните проекции. Прирачникот на ММФ за фискална транспарентност[36] имплицитно разликува две категории и тоа категорија на основни претпоставки без кои не би можело да има основа за здрава фискална транспарентност. Овие основни претпоставки не се минимум стандарди туку добра стартна основа за градење на здрав фискален систем. Втората категорија се добрите практики кои се докажале во пракса и кои би требало да бидат конечна цел кон фискална транспарентност. И двете категории се поделени во четири столба кои ги користевме во анализата на македонскиот случај[37].

ПОЗИТИВНИ КАРАКТЕРИСТИКИ НА МАКЕДОНСКИОТ БУЏЕТСКИ ПРОЦЕС

Од институционална и правна гледна точка, во Македонија постои соодветна законска регулатива за буџетскиот процес (види Анекс 3 за буџетскиот процес) кој пропишува соодветен буџетски календар и е добра основа за стабилност и предвидливост во самиот процес. Особено е значајно

35 Види во: Извештај на Комисијата за испитување на настаните во Собранието на РМ од 24.12.2012 година.

36 http://www.imf.org/external/np/pp/2007/eng/051507m.pdf.

37 Види повеќе во: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1443394. Овој извештај е правен врз основа на анализа на на резултатите од прашалник изработен од ЦЕА и спроведен во повеќе испитанци од државната администрација при буџетските корисници како на централно така и на локално ниво.

што сепак тековно од година за година иако со бавно темпо се воведуваат подобрувања во буџетскиот процес и тоа од аспект на легислатива, институционално, при планирање, извршување, мониторинг, известување и таа пракса и понатаму треба да продолжи (закон за буџети, програмско буџетирање, основање на внатрешна ревизија, воведување на развоен дел на буџетот). Во фискалниот дел би можело да се објавува пред-буџетска изјава и сублимат на буџетот, како и граѓански буџет.

НЕГАТИВНИ КАРАКТЕРИСТИКИ НА МАКЕДОНСКИОТ БУЏЕТСКИ ПРОЦЕС

Иако постои буџетски календар тој не се почитува и не дозволува доволна временска рамка според буџетските корисници. Постои потреба стратешкото планирање подобро да се усогласи со буџетскиот процес. Постои потреба од зајакнување на стратешките сектори при министерствата како и нивната комуникација со останатите сектори. Министерствата имаат свои стратешки документи кои немаат карактеристика на интегрираност помеѓу себе. Потребно е воведување на мерење по резултати (performance budgeting).

Иако министерството за финансии почнува да ги поставува и контролира лимитите за буџетските корисници, сепак поради недостаток на мерење на перформанси на буџетите мотивацијата на буџетските коризници од прва линија е кон максимизирање на апсолутниот волумен на финансиски средства.

Иако постои прогрес во техничко предвидување на економско-фискални варијабли сепак се уште има недостаток на целосни анализи на оценки на влијанија, анализа на ризици, подготовка на сценарија. Иако постои тригодишна фискална стратегија која има начелен опис на приходите, расходите и ризиците сепак недостасува соодветна буџетска рамка на среден рок која ќе биде употреблива за наредните години на пример анализа на главните детерминантни на расходите, интегрирање на планови за одржување за нови основни средства, да се обезбеди фискален простор и за нови иницијативи, оценка на сензитивност на расходи при промена на макроекономски сценарија, продлабочена анализа на приходи, расходи, странска помош, менаџирање со природни ресурси и разработен систем за управување со ризиците (на пример квазифискалните активности од деловни субјекти во државна сопственост) значи потреба од анализа на фискални ризици, квазифискални активности, даночен трошок и прикажување и анализа на неплатени обврски. Предлагаме фискалната стратегија да се разгледува и усвојува во Собранието на Р.Македонија.

Фискалната стратегија треба да содржи фискална анализа на претходната фискална година од независни тела со што ќе придонесат дополнително кон фискалната трансапрентност. Кај програмата за јавни инвестиции-ПЈИ (која како да не се подготвува веќе) недостасува појасна поврзаност за стратешките приоритети и со целите, се очекува подобра поврзаност во буџетскиот процес преку развојниот дел на буџетот, потребна е подобра поврзаност на капиталните со тековните расходи и со проект менаџмент потребите. Предлагаме ПЈИ да се продолжи да се подготвува нода се разгледува и усвојува во Собрание на Р.Македонија. Во оваа насока битно е да се напомене дека наместо да се интегрираат, се уште има големо раздвојување помеѓу владините политики, администрацијата и буџетот на Македонија.

ОСТАНАТИ ПРЕПОРАКИ

Останува да се зајакне подобрувањето на презентирање на квазифискалните активности од јавните претпријатија, транспарентност во дискреционите расходи (зајакнување на одговорноста и контролите во трошењето на средствата од разделот функции на државата), презентација на обврските, поширок опфат на вкупно владините активности, а во таа смисла и подобрување на трансферите кон локалната власт, како и зајакнати внатрешна и надворешна ревизија.

Потребно е изготвување на пообемна анализа на заинтересирани страни во буџетскиот процес која ќе ги идентификува сите страни, ќе ги анализира нивните потреби, цели, ќе го анализира начинот на нивна вклученост во буџетскиот процес, а со тоа ќе се обезбеди поголема комуникација, консензус и подршка на буџетскиот процес и на самиот буџет. Со неизготвување на ваква анализа на потребите на корисниците на услугите од владата всушност не би се разбрале до крај ни потребите на корисниците на програмите.

Согласно анализата и препораките на комисијата што се однесуваат на ревидирање на одредбите од Деловникот кои се однесуваат на постапката за носење на буџетот во извештајот ги даваме следните конкретни препораки за буџетскиот процес**:**

- Да се направи анализа за потребата од ревизија на буџетскиот календар каде ќе бидат вградени реалните временски ограничувања за администрацијата кај буџетските корисници и единки од централната и локалната власт.

- Од аспект на документи кои не се подготвуваат, а добрите практики ги препорачуваат да се подготвуваат ги предлагаме:
  - Пред-буџетска изјава
  - Граѓански буџет
  - Предизборниот извештај кој ќе служи за транспарентност на општата состојба на финансиите на Владата непосредно пред избори.
- Да се подготви анализа на потребата од подготовка на буџет базиран на резултати (performanse budget) за Р.Македонија.
- Фискалната стратегија да премине во буџетска рамка на среден рок и да се разгледува и усвојува во Собрание на Р.Македонија.
- Програмата за јавни инвестиции да се разгледува и усвојува во Собрание на Р.Македонија.

Во овој контекст треба да се напомене дека согласно препораките на ад-хок комисијата и Законот за изменување и дополнување на изборниот законик (Сл. Весник на РМ бр. 14 од 24.01.2014 година) во член 2 став 4, кој уредува обврска за Министерство за финансии да поднесе предизборен финансиски извештај, во кој треба да се даде преглед на сите планирани и реализирани приходи и расходи од Буџетот на Република Македонија по ставки, во периодот од почетокот на фискалната година до денот на поднесувањето на извештајот (две недели по распишување на изборите) [38], Министерството за финансии го изготви Предизборниот финасиски извештај и го објави на неговата официјална веб страна.

ПОСТАПКА НА РАЗГЛЕДУВАЊЕ НА ПРЕДЛОГ БУЏЕТОТ НА Р.МАКЕДОНИЈА ВО СОБРАНИЕТО НА Р.МАКЕДОНИЈА

Во продолжение ви ја претставуваме постапката за разгледување на предлог буџетот на Р.Македонија во Собранието на државата. Согласно член 68 од Уставот на Република Македонија Собранието на Република Македонија го донесува Буџетот на Република Македонија и Завршната

38 http://finance.gov.mk/files/u12/Predizboren_finansiski_izvestaj.pdf.

сметка на Буџетот. Согласно член 30, став (1) од Законот за буџетите, Владата Предлогот на Буџетот го доставува до Собранието на Република Македонија најдоцна до 15 ноември во тековната година. Собранието на Република Македонија не може да го разгледува Предлогот на Буџетот на Република Македонија пред да поминат 20 дена[39] од денот кога истиот бил доставен до Собранието на Република Македонија.

Собранието на Република Македонија го донесува Буџетот на Република Македонија најдоцна до 31 декември. Предлогот на Буџетот Владата го доставува во Собранието во пишана форма и по електронски пат. По неговото добивање се пристапува кон проверка од страна на службите во Собранието на Република Македонија во смисла на тоа дали ги содржи сите потребни елементи. Пишаната и електронската форма треба да бидат идентични. Доколку ги содржи сите елементи Предлогот на Буџетот се става во собраниска процедура, односно се става како пристигнат документ на официјалната веб страница на Собранието и на е-парламент, со што станува достапен за пратениците и за службите во Собранието. Веб страницата може да ја користат и надворешни лица, што не е случај со е-парламентот кој може да го користат само пратениците и вработените во Собранието.

Потоа се закажува седница на матичното работно тело, односно Комисијата за финансирање и буџет која го разгледува Предлогот на Буџетот. Притоа се остава одреден временски период за да можат пратениците да го разгледаат и проучат и да поднесат амандмани. Овој временски период не е стриктно дефиниран и фиксен, односно во досегашната пракса некогаш се закажувала седница на Комисијата во рок од седум дена од неговото пристигнување, некогаш 14 дена, некогаш и повеќе. Седницата на матичното работно тело се закажува во пишана форма и по електронски пат, односно на веб страницата на Собранието и на е-парламент.

За седницата, покрај членовите и замениците на членовите на Комисијата се поканува Владата како предлагач на Буџетот, претставници од Министерството за финансии како изготвувачи на Предлог Буџетот, како и претседателот на Судскиот буџетски Совет и претседател на Судскиот совет на Република Македонија (тоа е една личност, која се повикува да присуствува на седницата на Комисијата согласно Законот за судски буџет). Секако на седницата може да присуствуваат и да се вклучат во расправата и останатите пратеници, како и други ресорни министри и претставници од останати државни органи.

39 Овие 20 дена се мисли за пленарна седница, а не за разгледување на работно тело (Комисија за финансирање и буџет).

Согласно Деловникот на Собранието на Република Македонија секоја пратеничка група и секој пратеник поодделно имаат право да поднесуваат амандмани на Предлогот на Буџетот. Согласно Деловникот, амандмани може да се поднесуваат најдоцна два дена пред почетокот на седницата на Комисијата за финансирање и буџет. Исто така амандмани може да поднесе и Комисијата за финансирање и буџет по предлог на член на Комисијата доколку со предлогот се согласи мнозинството од присутните членови. Се практикува Комисијата да поднесува амандмани, разгледува и гласа на сите претходно поднесени амандмани во рокот предвиден со Деловникот на Собранието на Република Македонија.

Сите поднесени амандмани се прикачуваат на е-парламентот на соодветниот број на седница на Комисијата за финансирање и буџет на која се разгледува Предлогот на Буџетот. На е-парламентот увид на амандманите може да имаат само пратениците и вработените во Собранието. Тие не се објавуваат на веб страницата на Собранието и не се достапни за надворешни лица.

Членовите, замениците на членовите на Комисијата за финансирање и буџет, координаторите на пратеничките групи добиваат по еден примерок од сите поднесени амандмани. За сите пратеници се подготвува список на поднесените амандмани кои се подредени според одреден редослед (според големината на бројот на Разделот) и по тој редослед се води амандманската расправа.

Амандманите ги подготвуваат (пишуваат) вработените во Секторот за работни тела (односно Комисијата за финансирање и буџет), потоа во Секторот за законодавство и асистентите на пратеничките групи. Во Комисијата за финансирање и буџет моментално има тројца вработени.

Покрај матичното работно тело, согласно Деловникот на Собранието, Предлогот на Буџетот може да го разгледуваат и заинтересирани работни тела кои го разгледуваат соодветниот Раздел од Буџетот во зависност од тоа која материја покриваат заинтересираните тела. (на пример Разделот на Министерството за здравство го разгледува Комисијата за здравство, Разделот на Министерството за економија го разгледува Комисијата за економски прашања и.т.н.). На нивните седници не се разгледуваат амандмани. Седниците може да ги одржуваат пред почетокот на седницата на Комисијата за финансирање и буџет или пак додека трае седницата на Комисијата за финансирање и буџет. За одржаната седница тие треба да достават Извештај до Комисијата за финансирање и буџет. На седницата се води општ претрес по Предлог на Буџетот, а откако ќе заврши општиот претрес седницата продолжува со разгледување на поднесените амандмани.

Од причина што разгледувањето на Предлог Буџетот предизвикува посебен интерес кај јавноста и во насока на поголема транспарентност, седниците на Комисијата за финансирање и буџет кога се разгледува Предлог Буџетот се пренесуваат директно на собранискиот канал и по правило за периодот додека трае седницата на Комисијата не се одржуваат пленарни седници. По исклучок доколку треба да се одржи некоја итна пленарна седница, во тој момент Комисијата за финансирање и буџет не заседава, а ќе ја продолжи својата работа после завршување на пленарната седница. Претседателот на Комисијата за финансирање и буџет поднесува писмено барање до претседателот на Собранието на Република Македонија да одобри директен пренос од сеницата на Комисијата за финансирање и буџет за време на расправата по Предлогот на Буџетот на Република Македонија.

Директниот пренос на седницата од Комисијата по расправата за Предлог Буџетот претставува исклучок. Имено, сите останати седници на Комисијата за финансирање и буџет кога се расправа по други точки, како и седниците на сите останати матични тела и совети во Собранието не се пренесуваат директно, односно истите се прикажуваат одложено (репризно) на собранискиот канал. Со измените на Деловникот на Собранието на Република Македонија од февруари 2013 година е ограничено времетраењето на седницата на Комисијата за финансирање и буџет за разгледување на Предлогот на Буџетот и на Ребалансот на Буџетот.

Имено согласно член 180-а од Деловникот на Собранието на Република Македонија претресот (општиот претрес и претресот по амандманите) по Предлогот на буџетот и по Ребалансот на седницата на матичното работно тело и на Законодавно-правната комисија може да трае вкупно десет работни дена. Член на работното тело и пратеник во текот на општиот претрес може да говорат повеќе пати во траење од вкупно 20 минути, а координатор на пратеничка група вкупно од 30 минути. Претставникот на Владата во општиот претрес може да говори повеќе пати но не повеќе од 30 минути вкупно. Во текот на претресот по амандманите пратеник може да говори само еднаш во траење од десет минути. Координатор на пратеничката група или еден пратеник определен од пратеничката група или од координаторот на пратеничката група во претрес по амандманот може да говори само еднаш во траење од 15 минути. Претставникот на Владата во однос на прифатливоста на амндман може да говори само еднаш во траење од 5 минути. Само подносителот на амандманотот може да даде образложение и да говори по амандманот во времетраење од вкупно десет минути, а доколку подносители на амандман се двајца или повеќе пратеници само еден од подносителите може да даде образложение и да говори по амандманот во времетраење од вкупно десет минути.

Пратениците може и да повлечат некои од поднесените амандмани. Тоа може да го направат со писмо со кое го известуваат претседателот на Собранието на Република Македонија и го доставуваат до архивата на Собранието, а потоа за тоа се известува и претседателот (или претседавачот) на Комисијата за финансирање и буџет. Во писмото се наведуваат архивските броеви на амандманите кои се повлекуваат. Исто така амандман може да биде повлечен и усно на говорница во моментот кога почнува расправата по амандманот од страна на подносителот или од еден од подносителите на амандманот доколку подносители се двајца или повеќе пратеници во моментот кога ќе дојде редоследот да се разгледува тој амандман за време на одржување на седницата на Комисијата.

Откако амандманот ќе биде образложен од подносителот или од еден од подносителите на амандманот се бара изјаснување од претставникот на Владата (министер или заменик министер за финансии) за тоа дали амандманот е прифатлив или не. Потоа се отвара дебата по предложениот амандман и по исцрпување на расправата по амандманот истиот се гласа од страна на членовите или замениците на членовите на Комисијата. Независно од ставот на претставникот на Владата пресудно е гласањето на членовите или замениците на членовите на Комисијата дали амандманот ќе биде прифатен или не и ќе стане составен дел на Дополнетиот предлог на Буџетот. Во досегашната пракса имало случаи кога претставникот на Владата се изјаснил дека амандманот не е прифатлив, но членовите или замениците на членовите на Комисијата за финанирање и буџет да го изгласаат амандманот и тој да стане составен дел од Дополнетиот предлог на буџетот.

Во текот на расправата по амандманите, претставникот на Владата може да се изјасни дека амандманот кој се разгледува е делумно прифатлив, односно да се прифати дел од предложената сума со која се предлага зголемување на определена ставка во одреден раздел (буџетски корисник) или пак да искаже согласност за пренасочување на средства од друга ставка. Во тој случај подносителот на амандманот се изјаснува дали го прифаќа предлогот на претставникот на Владата. По завршување на претресот на амандманот истиот се става на изјаснување од страна на членовите на Комисијата.

Откако ќе заврши општата расправа и ќе се разгледаат сите амандмани се подготвува Извештај од расправата по Предлогот на Буџетот односно Ребалансот во кој се соджани изнесените мислења забелешки предлози и изјаснувањата по амандманите, Овој Извештај се доставува до преседателот на Собранието на Република Македонија и до Владата на Република Македонија

односно до Министерството за финансии. Извештајот се објавува и на е-парламентот. Откако ќе бидат разгледани на Комисијата за финансирање и буџет, амандманите кои се прикачени на е-парламентот се означуваат електронски кој е усвоен, кој е повлечен и кој не е усвоен. Ова го прават лицата вработени во Комисијата за финансирање и буџет.

Покрај на седницата на Комисијата за финансирање и буџет, сите поднесени амандмани мора да бидат разгледани и на Законодавно-правната комисија на Собранието. Амандманите кои се прикачени на е-парламентот се означуваат електронски кој е усвоен, кој е повлечен и кој не е усвоен. Ова го прават лицата вработени во Законодавно-правната комисија.

Врз основа на добиените извештаи од Комисијата за финансирање и буџет и Законодавно-правната комисија, Владата на Република Македонија изготвува Дополнет предлог на Буџет односно Ребаланс во кој се вградени амандманите кои се усвоиле на Комисијата за финансирање и буџет и на Законодавно-правната комисија и измените и дополнувањата кои ги направила Владата.

Напомена: Во врска со изработката на Дополнетиот предлог може да се спомне еден исклучок. Имено, за сите останати закони, по нивното разгледување во матичните работни тела, доколку се усвојат одредени амандмани, Дополнетиот предлог по соодветниот закон го изготвуваат службите во Собранието на Република Македонија и потоа тој Дополнет предлог се разгледува на пленарна седница на Собранието на Република Македонија. Ова не е случај кај Буџетот на Република Македонија, односно Дополнетот предлог на Буџетот на Република Македонија го изготвува исклучиво Владата и потоа го доставува до Собранието на Република Македонија кој се разгледува на пленарна седница.

Доставениот Дополнет предлог на Буџет до Собранието на Република Македонија задолжително треба да содржи Образложение кое исто така го изготвува Владата и во него има податоци за тоа кои работни тела на Собранието на Република Македонија го разгледувале Предлогот на Буџетот, потоа се наведува бројот на поднесени амандмани, колку од нив се усвоиле, кои биле подносители на амандманите и целта на амандманите. Во Дополнетиот Предлог на Буџетот е наведено која ставка е променета со зборот „амандман“, а која ставка е променета со зборот „измена“ која ја направила Владата.

Откако ќе се достави Дополнетиот предлог на Буџет следи истата процедура како и при поднесувањето на Предлогот на Буџетот, односно негова проверка и објавување на веб страницата на Собранието и на е-парламентот. Потоа се закажува пленарна седница на која ќе се разгледува Дополнетиот Предлог на Буџет на Република Македонија во рок од намалку десет работни дена пред денот определен за одржување на седниците, а во итни случаи и во пократок рок од десет работни дена. По Дополнетиот предлог на Буџетот може да се поднесуваат амандмани само на оние ставки кои се променети поради усвоен амандман на седница на Комисијата за финансирање и буџет и на Законодавно правната комисија или изменети од Владата. Амандмани може да се поднесуваат најдоцна три дена пред почетокот на пленарната седница на Собранието.

Дополнетиот Предлог на Буџет не го разгледуваат матичните работни тела. Во досегашната пракса на Дополнетиот предлог на Буџет се доставени незначителен број на амандмани. На пленарна седница се води општа расправа и расправа по амандманите доколку има поднесено. Согласно Деловникот на Собранието на Република Македонија претресот по Предлогот на Буџетот, односно по Дополнетиот Предлог на Буџетот на седница на Собрание трае најмногу пет дена. Пратеникот во текот на претресот може да говори повеќе пати во траење од вкупно 20 минути, а координатор на пратеничка група вкупно 30 минути. Претставникот на Владата може да говори повеќе пати, но не повеќе од 30 минути. Доколку има поднесено амандмани на Дополнетиот предлог на Буџет, тогаш подносителот или еден од подносителите има право да го образложи амандманот во траење од три минути. По образложување на амандманот истиот се става на изјаснување (гласање), односно не се води дебата по него.

При гласањето за Предлог Буџетот најпрвин се гласа поединечно за Буџетот на Разделот на Државниот завод за ревизија, потоа за Буџетот на Разделот на Ревизорското тело за предпристапна помош и за Буџетот на разделот на Народниот правобранител, а потоа се пристапува кон гласање за Буџетот на Република Македонија во целина. Буџетот на Република Македонија се донесува со просто мнозинство. По неговото донесување истиот се објавува во Службен весник на Република Македонија и почнува да се применува од 1-ви јанари.

Процедурата која што е наведена за Предлог Буџетот важи и за Предлогот за измени и дополнувања на Буџетот, односно за Ребаланс. Разликата е во тоа што согласно Законот за буџетите Ребалансот мора да биде изгласан (донесен) најдоцна до 15 ноември во тековната година, а Буџетот до 31 декември.

МОЖНИ ПРАВЦИ ЗА ПОДОБРУВАЊЕ НА ПОСТАПКАТА НА РАЗГЛЕДУВАЊЕ НА ПРЕДЛОГ БУЏЕТОТ ВО СОБРАНИЕТО НА Р.МАКЕДОНИЈА

Согласно препораките на комисијата што се однесуваат на ревидирање на одредбите од Деловникот кои се однесуваат на постапката за носење на буџетот во извештајот и согласно постапката на разгледување на предлог буџетот на Р.Македонија во Собранието на Р.Македонија опишана во претходното поглавје ги даваме следните конкретни препораки за подобрување на постапката на разгледување на предлог буџетот во Собранието на Р.Македонија:

- Измена во Законот за буџетите во однос на предвидениот краен рок за доставување на Предлог Буџетот до Собранието на Република Македонија за негово разгледување. Наместо сегашниот 15 ноември кој е предвиден како краен рок тој рок да се помести, односно Предлог Буџетот да се доставува порано за разгледување до Собранието на Република Македонија. Би можело тој рок да биде отприлика во текот на месец септември или до крајот на октомври. Со тоа би им се овозможил на пратениците поголем период за проучување на Предлог Буџетот со цел подобро да се подготват за дебата по истиот. Исто така би се создала порелаксирана атмосфера за работа и подобар распоред и функционирање на Собранието во целина. На пример и ОЕЦД добри практики велат дека и три месеци пред почетокот на фискалната година може да се достави буџетот до парламентот[40];
- Поголема транспарентност на самиот Предлог на Буџет како документ кој се доставува на разгледување во Собранието (измени во самата презентација на буџетските ставки). Имено, би можело да содржи податоци за капитални инвестиции кои се планираат да се реализираат со Буџетот, а не фигурираат како посебни Програми или потпрограми во Предлог Буџетот. Добро решение би било на крајот од Предлог Буџетот како додаток да бидат наведени инвестициите кои можеби повеќе имаат локален карактер (како на пример водовод и канализација, училишта, локални патишта и друго) и да биде наведено место каде ќе се реализира поодделен проект, потоа поединечната сума за секој проект и

40 http://internationalbudget.org/wp-content/uploads/OECD-Best-Practices-for-Budget-Transparency.pdf.

рок на реализација. Моменталната структура на Буџетот дава само општ податок како на пример Изградба на основни училишта и вкупната сума која се планира да се потроши за таа намена за соодветната година, но не се наведени детални податоци поодделно за секое училиште колкава сума се планира, во кој град се наоѓа, кога ќе се заврши градбата и т.н. Така пратениците не можат однапред да знаат кое основно училиште се планира да се изгради или реновира, во кое населено место се наоѓа и колкав е потребниот износ за секој ваков проект поединечно и затоа се случува да се поднесуваат амандмани за училишта кои веќе се планирани за изградба или реновирање. Доколку Предлог Буџетот ги содржи овие податоци, пратениците би биле многу подобро информирани и би се намалил драстично бројот на поднесени амандмани со што би се постигнала поефикасна работа на Комисијата, а секако и поекономична.

- Во Предлог Буџетот да постои колона со податоци за износите на сите ставки за Буџетот од претходната година. Тоа ќе им овозможи на пратениците полесна компарација за тоа колку средства за одредена намена имало во минатата година, а колкави износи се предлагаат за ставките за годината за која се однесува Предлогот на Буџетот.
- Да постои соодветен редослед во доставување на соодветни документи до Собранието кои се основа за подготвување на Предлог Буџетот. Таков е на пример случајот со Фискалната стратегија која ја изготвува Министерството за финансии. Би било добро Фискалната стратегија да се доставува пред доставување на Предлог Буџетот до Собранието, а не откако е започната расправата во Собранието по предлог Буџетот или кога истиот е веќе изгласан/донесен. Навременото доставување на Фискалната стратегија ќе придонесе за подобра подготовка на пратениците за разгледување на Предлог Буџетот. Во спротивно впечатокот е дека прво се распределени парите, а потоа се презентира политиката.
- Во однос на расправата по Предлог буџетот потребно е јасно разграничување и придржување на пратениците кон тоа што е општ претрес, а што аманмданска расправа. Моментално, прво на Комисијата за финансирање и буџет се води општ претрес. По завршување на општиот претрес се преминува на амандманска расправа, но многу малку се расправа по конкретен амандман, односно се образложува намената на амандманот, а преостанатиот дел од дозволеното време за говор се користи повторно за општа дебата која не е поврзана со предложениот амандман. Доколку има јасно разграничување на општиот претрес и амандманската расправа би се постигнала поголема ефикасност во работата на Комисијата за финансирање и буџет.

- Би можело додека трае амандманската расправа по Предлогот на Буџет на Комисијата за финансирање и буџет покрај претставник од Министерството за финансии (министер или заменик на министер за финансии кои задолжително треба да бидат присутни) да присуствува и ресорен министер или неговиот заменик во зависност од тоа за кој Раздел во моментот се разгледуваат амандманите. На пример, доколку во моментот се разгледуваат амандмани од Разделот на Министерството за економија, да присуствува и министерот или заменикот на министерот за економија, или амандмани од Разделот на од Министерството за труд и социјална политика, тогаш министер или заменик на министер од Министерството за труд и социјална политика и.т.н. Ова од причина што ресорниот министер е најдобро запознаен со проектите од соодветното Министерство за кое е надлежен и ќе може најдобро да придонесе за квалитетна дебата при амандманската расправа.
- Основна обука на пратениците, особено при нов парламентарен состав и пратеници на кои им е прв пратенички мандат за запознавање со структурата на еден Буџет. Кои се негови делови, значењето на одредени Програми и Потпрограми и друго.
- Исто така потребна е и континуирана обука на вработените во Собранието на Република Македонија во чиј делокруг на работа спаѓа и Буџетот на Република Македонија. Со тоа би можеле поефикасно да им се излегува во пресрет на барањата на пратениците за некои информации околу Буџетот.

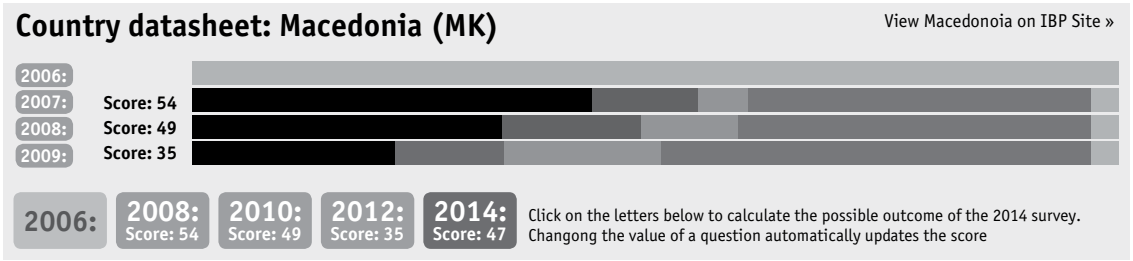
КВАНТИТАТИВНА АНАЛИЗА И СИМУЛАЦИЈА ЗА МОЖНОТО ПОДОБРУВАЊЕ НА РАНГИРАЊЕТО НА Р.МАКЕДОНИЈА ВО ОБИ ИНДЕКСОТ

Користејќи го симулаторот на International Budget Partnership (http://survey.internationalbudget.org/#home) кој е специјално создаден за тестирање на отвореноста на Владите ширум светот, можеме да видиме како имплементацијата на нашите препораки дадени погоре од страна на властите во Р.Македонија, ќе влијае врз подобрување на нивното транспарентно и отчетно

работење. Односно, дали имплементацијата на овие препораки ќе ја подобри или влоши сегашната ситуација во државата.

Доколку се отвори линкот кој е даден погоре во текстот, и се одговорат дадените прашања (Види Анекс 3), во овој случај соодветно со нашите препораки, добиваме дека транспарентноста во Р.Македонија ќе се зголеми, и од вредност на индексот од 35 кој го имала Р.Македонија во 2012 година, во 2014 година вредноста на овој индекс ќе се зголеми и ќе изнесува 47. Ова значи дека Р.Македонија ќе ја подобри својата позиција, и од групата на земји кои обезбедуваат минимални информации за буџетските документи и буџетскиот процес, ќе се искачи во следната група на земји кои обезбедуваат некои информации за буџетските документи и буџетскиот процес како што тоа е илистрирано на следната слика.

Слика 1: Рангирање на Р.Македонија со прифаќање на препораките

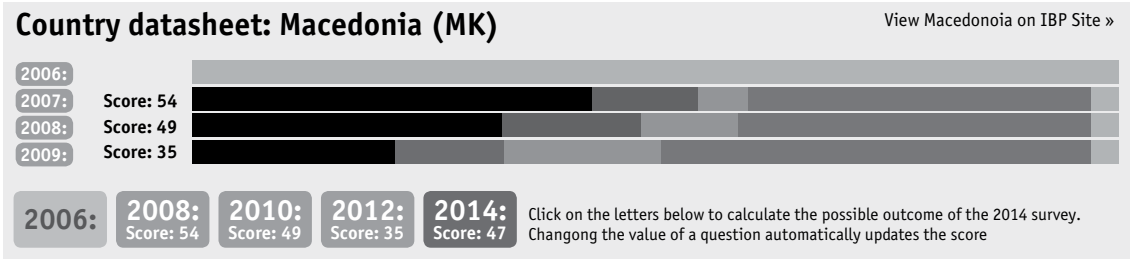


Извор: Симулатор на International Budget Partnership

Ако пак се изработи и Пред-буџетска изјава, симулацијата ќе покаже резултат како што е илустрирано на следната слика, односно ќе го подобри своето рангирање и вредноста на индексот ќе изнесува 50. Според Најдобрите практики на OECD за фискална транспарентност, Пред- буџетската изјава всушност служи за поттикнување дебата за буџетските агрегати и каква ќе биде нивната интеракција со економијата. Како таква, таа исто така служи и за создавање соодветни очекувања за самиот буџет. Таа треба да ги содржи владините долгорочни економски и фискални политички намери за предстојниот буџет и барем за следните две фискални години[41].

41 http://internationalbudget.org/wp-content/uploads/OECD-Best-Practices-for-Budget-Transparency.pdf

Слика 2: Рангирање на Р.Македонија со изработка на Пред- буџетска изјава



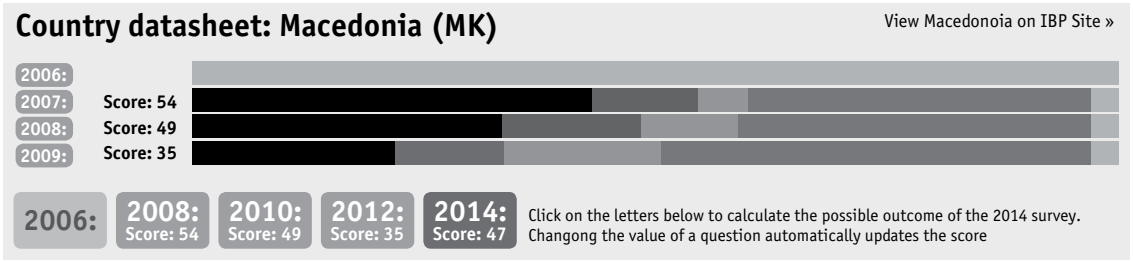
Извор: Симулатор на International Budget Partnership

Доколку пак на ова се додаде и изработка на Граѓански буџет кој претставува поедноставена верзија на Буџетот на државата, Р.Македонија би ја подобрила својата транспарентност и фискална дисциплина во процесот на подготовка на буџетот и би го зголемила својот индекс на 54, што е подобрување за 19 индексни поени во однос на 2012 година. Со Граѓанскиот буџет, секој граѓанин ќе може подобро да се информираат за тоа кои се изворите на средства во Буџетот, за кои приоритети се трошат нивните пари и како тече буџетскиот процес во државата, а со текот на времето ќе обезбеди и поголема мотивација и партиципативност во креирањето на политиките на Владата и во носењето на Буџетот. Уште еднаш да напоменеме дека ЦЕА го изработи првиот Граѓански буџет на Република Македонија за 2013 година[42], меѓутоа таа обврска во иднина треба да ја преземе Министерството за финансии на Р.Македонија со што ќе се зголеми фискалната транспарентност во државата. Сето тоа ќе води кон поголема политичка конструктивност од страна на политичките актери, поголема понуда на алтернативи за поголема вредност за парите на даночните обврзници, зголемување на политичката култура и конечно релаксирање на дебатата за Буџетот и натамошно зајакнување на демократијата во Р.Македонија. Во продолжение следува сликовит приказ за вредноста на индексот кој би го имала Р.Македонија доколку Р.Македонија почне да го изработува Граѓанскиот буџет како документ[43]. Ова значи дека Р.Македонија ќе ја подобри својата позиција, и од групата на земји кои обезбедуваат минимални информации за буџетските документи и буџетскиот процес, ќе се искачи во следната група на земји кои обезбедуваат некои информации за буџетските документи и буџетскиот процес.

42 http://www.cea.org.mk/documents/GraganskiBudgetFinalS.pdf.

43 http://internationalbudget.org/wp-content/uploads/OECD-Best-Practices-for-Budget-Transparency.pdf.

Слика 3: Рангирање на Р.Македонија со изработка на Граѓански буџет



Извор: Симулатор на International Budget Partnership

Или изразено графички, сето погоре кажано би изгледало вака:

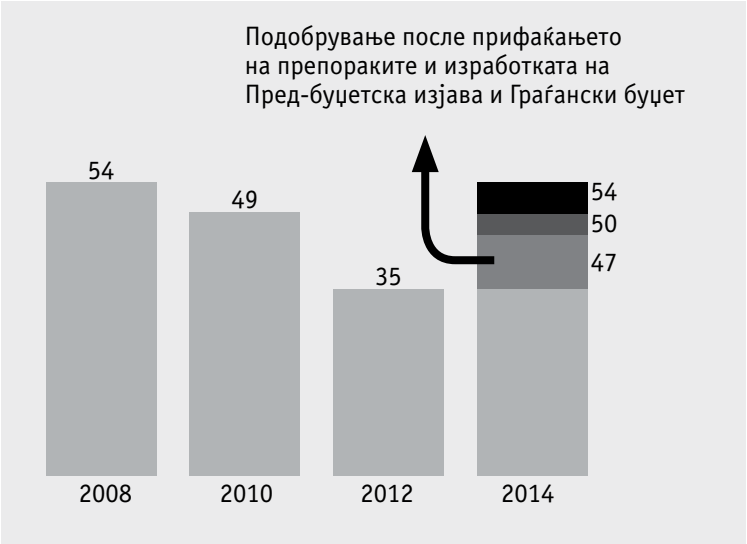
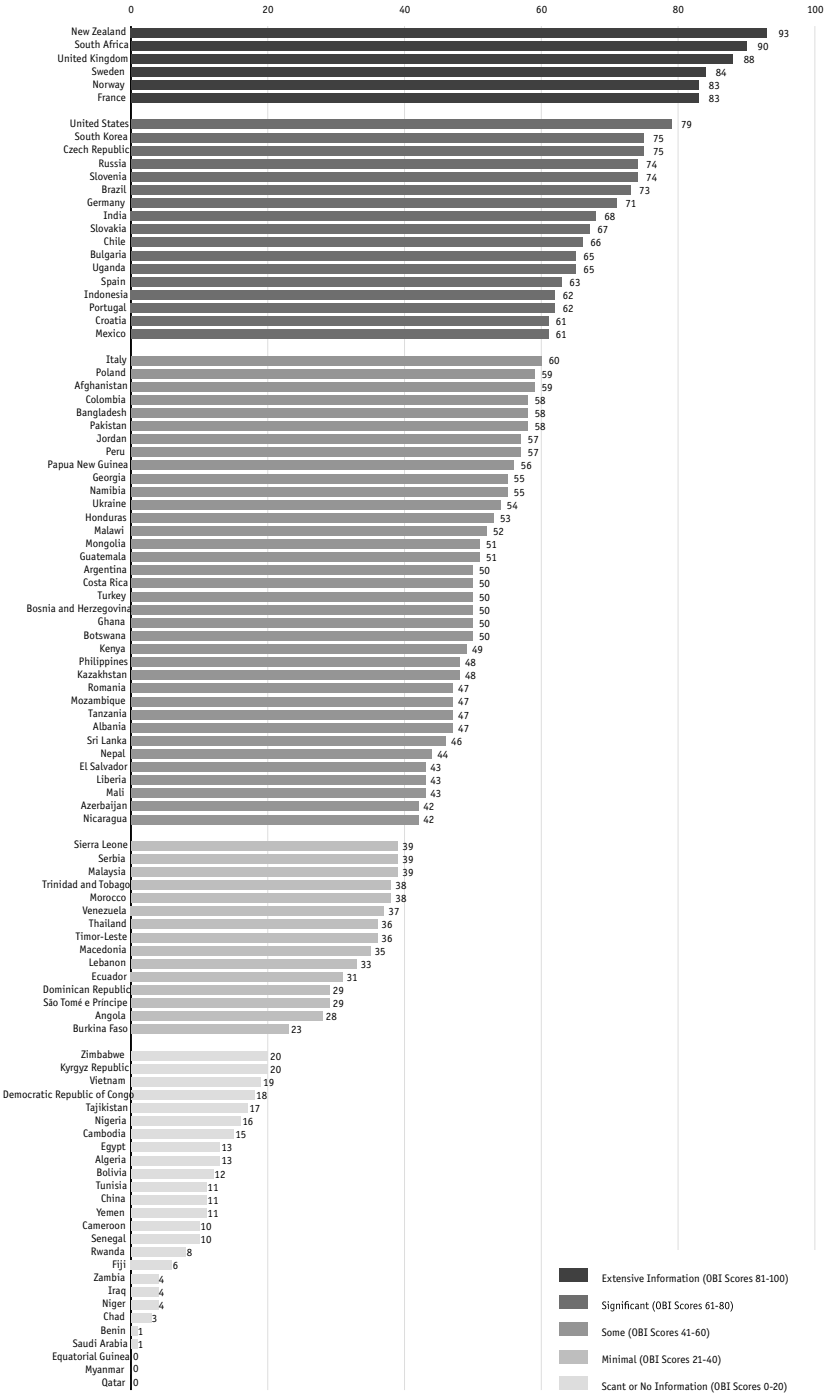


График 10. Симулација на подобрување на позицијата на Р.Македонија со индексот на фискална транспарентност на ОБИ

Од симулацијата произлегува дека Р.Македонија од групата на земји кои обезбедуваат минимални информации за буџетските документи и буџетскиот процес, ќе се искачи во група на земји кои обезбедуваат некои информации за буџетските документи и буџетскиот процес.



Слика 4: ОБИ рангирања на сите 100 земји во истражувањето

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Marjan Nikolov PhD, was born on 16 April 1968. He graduated at the Faculty of Mechanical Engineering in Skopje in 1996, and has master degree for international economy and finance from the University of Iceland in 2000.Successfully defended his doctoral dissertation at the Faculty of Economics at the University of Ljubljana in 2013. Marjan Nikolov, PhD deals with management of public finances almost 15 years, has completed numerous IMF trainings, participated as a fellow of the IMF annual meeting of Governors, he is a member of the IBP's research team of fiscal transparency and worked as a public finances expert on numerous projects for international financial institutions as well as organizations home and abroad. Marjan Nikolov is president of the Center for Economic Analyses-CEA.

Katerina Bogoevska was born on 19 January 1989. She graduated at the Faculty of Economics in Skopje in 2011 and currently is student on postgraduate studies at the Department Statistical methods for business and economy at the same faculty. Katerina Bogoevska has worked on many projects in the area of fiscal transparency and accountability as well as public finances. She participated in numerous trainings for fiscal decentralization, advocacy and lobbying. Katerina Bogoevska is part of the Center for Economic Analyses since 2012.

ENERGY AND SECURITY SECTOR GOVERNANCE IN MACEDONIA: HOW TO IMPROVE ITS EFFICIENCY?

Magdalena Lembovska
Ana Stojilovska

analytica
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SUMMARY

The Republic of Macedonia, due to its EU and NATO integration endeavors is experiencing many policy reforms. Especially the country's energy and security sectors have been exposed but reluctant to the reform processes, the first due to its capital intensity and the second due to the communist system's legacy, both also important for national security. This paper analyzes the Macedonian energy and security sector governance (Ministry of Economy, Energy Agency, and Ministry of Interior) by focusing on the institutions' efficiency in order to draft policy recommendations. The recommendations incorporate the best practices and lessons learnt from the example of the Slovak Republic, a former communist country and an EU and NATO member state, as the Slovak experience has been identified as very relevant. Efficiency is a component of good governance and is defined as making best use of resourses at institutions' disposal.

The analysis goes in three tracks: human resources, financial resources and the process of policy making. The human resource analysis showed that the civil servants working in the security and energy sector institutions have been exposed to training and capacity building activities, but their human capacities are still insufficient and there is a need for better inter-sector cooperation. The research identified high level of temporary staff engagement, especially in the case of the Energy Agency, and insufficient utilization of the CSOs' input. The paper recommends better planning of the human resources, staff specialization, reduced outsourcing for preparing legislation and using the donor support for transfer of "know-how".

The human resource management is closely related with the budget spending and rebalance of the budget affects the human resource development in the institutions. High amounts for contractual services (including consultant services) and low transparency when increasing specific budget items are some of the identified deficiencies. The recommendations for this section vary from considering client-oriented activities in the case of the Energy Agency, reallocation of funds for employment of permanent staff, avoidance of severe budget cuts to strengthened role of the State Audit Office.

Moving to the area of strategic planning, uneven practices and standards among the different ministries have been identified. The research identified frequent change of legislation, certain delays of the projected activities and centralization of the decision making. The paper recommends better transparency regarding the strategic plans and annual reports of the ministries, project application specialization and project planning in accordance to the institutions' capacities for implementation.

This paper brings to surface the fact that it is a first energy and security sector focused research dealing with a specific aspect of good governance. It is one of the first steps towards assessing efficiency as a component of good governance, trying to establish the basic criteria upon which this specific component could be evaluate

RECOMMENDATIONS

Human Resources:

- Planning of the human resources in the energy and security sectors needs to be significantly strengthened. Better human resource management should enable specialization of the staff and reducing the use of temporary staff;
- Outsourcing for preparing legislation and implementing capacity building activities especially in the energy sector should be reduced to the extent that is used only for necessary additional expertise and excluded the possibility of being the dominant implementation body since it does not strengthen the internal capacities. The security and energy institutions' permanent staff should perform the main substantive work as preparation of legislation;
- The security and energy institutions should explore all possibilities for applying for foreign donor support as a good way of getting funds for additional staff and training. Donor's assistance should be factor of development and transfer of "know-how";
- The input of the CSO in the policy making processes should be taken under consideration by the security and energy institutions. The CSO working in the energy and security areas should continue participating in the policy making processes in the areas by giving research-based input.

Management of Financial Resources:

- The Energy Agency should consider client-oriented activities as well as project funds as source of additional funding since having different sources of financing ensures greater sustainability and independence;

- Part of the funds that have been used for outsourcing especially relevant for the energy institutions should be reallocated for employment of permanent staff or training on the current staff, based on the institution's needs;
- Severe budget cuts for the security and energy institutions after budget rebalance should be avoided;
- The energy and security institutions should implement the recommendations provided by the State Audit Office and remove detected irregularities.

Strategic Planning and Policy Making:

- The Ministry of Economy and the Ministry of Interior should be more transparent regarding their strategic plans and annual reports;
- Since projects bring possibilities for additional resources and training, the security and energy institutions should consider developing a project preparation unit also enabling certain public servants to specialize in project applications;
- The security and energy institutions should plan their projects in accordance with their capacities to implement them and in case of delays should analyze and address the reasons.

INTRODUCTION

The Republic of Macedonia, due to its EU and NATO integration endeavors is experiencing many policy reforms. Especially the country's energy and security sectors are both characterized with low transparency and limited openness for cooperation – the first due to its capital intensity[1] and the second due to the communist system's legacy, both also important for national security. As a result, they have been exposed but reluctant to the reform processes and have many deficiencies in their governance. Some of the identified issues include insufficient capacities, lack of financial means, delays in adopting the respective legislation and in implementing projects, all of which indicate low efficiency in these sectors' performance.

On the other hand, the Slovak Republic, also a former communist country and an EU and NATO member state showcases good examples of capacity building and institutional efficiency in the respective sectors. Its ten year-long Euro-Atlantic integration enabled gaining good experience with the reform processes in the two sectors. Additionally, according to the Worldwide Governance Indicators the Slovak Republic has better governance scores than Macedonia.[2] Thus, the Slovak Republic can be considered as a valuable resource for applying its learnt lessons in the Macedonian case.

Therefore, the aim of the policy paper is to analyze the Macedonian energy and security sector governance by focusing the institutions' efficiency for the purpose of preparing policy recommendations for improving the challenges by drawing lessons from positive Slovak examples. This paper is important since it will focus on two „closed" sectors in Macedonia, with the overall aim of contributing to better application of the good governance principles such as efficiency of institutions as well as strengthened rule of law in the two sectors in Macedonia. It focuses on the concept of efficiency as a component of good governance; whereas efficiency is defined as making best use of resources at institutions' disposal.

1 Capital intensity means business process or an industry that requires large amounts of money and other financial resources to produce a good or service. This refers to the fact that large scale energy projects demand large amount of finances.

2 The Worldwide Governance Indicators report six governance indicators for over 200 countries and territories for the period 1996-2012. Worldwide Governance Indicators, Country data reports, available at: http://info.worldbank.org/governance/wgi/index.aspx#countryReports

The methodology includes review of relevant studies and reports; the main field research was a questionnaire used for an interview or sent by utilizing the Law on free access to public information. Interviews were conducted with Slovak stakeholders[3]; while questions were sent utilizing the Law on free access to public information to the Macedonian stakeholders.[4] For the purpose of this paper, the Macedonian security sector is focused on the Ministry of Interior and in particular its Unit for Strategic Planning and Development; while the energy sector included the Energy Department in the Ministry of Economy and the Energy Agency.[5] Positive Slovak examples were drawn from the Slovak Ministry of Interior regarding security issues while the Slovak Ministry of Economy (Energy and Raw Materials Policy Department) and Slovak Innovation and Energy Agency represented the Slovak energy sector. The paper is organized in a way that after the introduction and explanation of the key notions, the relevant sectors' key institutions' efficiency is analyzed through their human resources, management of financial resources and implementation of their key policies, as best areas for identifying the efficiency challenges to the respective institutions. The paper ends with conclusions and recommendations for the respective Macedonian institutions.

3 Slovak stakeholders interviewed for the purpose of this paper are: Ministry of Economy, Slovak Innovation and Energy Agency, Ministry of Interior, Energy Centre Bratislava, Slovak Foreign Policy Association and Centre for European and North Atlantic Affairs (CENAA).

4 The Macedonian stakeholders were reluctant to give an interview. Therefore, the questionnaire in adjusted and shortened version was sent by utilizing the Law on free access to public information to the Macedonian stakeholders: Ministry of Economy, Ministry of Interior and Energy Agency. The questionnaire focused on three aspects: human resources, financial resources and policy planning and implementation.

5 In order to make the research more concrete, the security and energy sectors were focused on these mentioned institutions, despite that these sectors include other set of stakeholders.

NOTION OF GOOD GOVERNANCE AND EFFICIENCY

Governance was defined by UNDP as the exercise of economic, political, and administrative authority to manage a country's affairs at all levels[6]; The United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) has simply described it as the process of decision-making and the process by which decisions are implemented or not implemented. Based on the latter, an analysis of governance focuses on the formal and informal actors involved in decision-making and implementing the decisions made and the formal and informal structures that have been set in place to arrive at and implement the decision.[7] Governance is closely related to the notion of good governance; the latter which was defined by the World Bank as "… epitomized by predictable, open and enlightened policy making; a bureaucracy imbued with a professional ethos; an executive arm of government accountable for its actions; and a strong civil society participating in public affairs; and all behaving under the rule of law."[8] This concept has eight major characteristics according to UNESCAP, one of them is efficiency.[9] Efficiency according to UNESCAP means making best use of resources at institutions' disposal. It refers to the quality of process or "doing things right"; efficiency means the ability to do something or produce *something without wasting time, cost or effort*; and it can be measured by the *ratio of output to input*.

HUMAN RESOURCES

In countries going through transition such as Macedonia, strengthening the human capacities of the institutions, especially in areas significantly affected by the reform process such as the security and

6 Internet page of the World Bank http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/MENAEXT/EXTMNAREGTOPGOVERNANCE/0,,contentMDK:20513159~pagePK:34004173~piPK:34003707~theSitePK:497024,00.html

7 UNESCAP, What is good governance? http://www.unescap.org/sites/default/files/good-governance.pdf

8 Internet page of the World Bank http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/MENAEXT/EXTMNAREGTOPGOVERNANCE/0,,contentMDK:20513159~pagePK:34004173~piPK:34003707~theSitePK:497024,00.html

9 Other elements are: rule of law, transparency, responsiveness, consensus oriented, equity and inclusiveness, effectiveness, accountability and participation; UNESCAP shows effectiveness and efficiency jointly as one characteristic.

energy sectors, has remained a challenge. The European Commission's progress reports for Macedonia over the years have indicated the need of strengthening the capacities of the Energy Agency, Ministry of Economy's Energy Department or of various bodies or sections under the Ministry of Interior.[10] In fact, for efficient completion of tasks and obligations, sufficient human capacities are a necessity. In order to identify the efficiency weaknesses regarding human resources, analyzed were the number and background of staff, awarding and promotion system, evaluation system, division of responsibilities, training and similar.

Most visible was the limitation in the state budget for new employment over the years as noted by the Energy Agency.[11] This is repeatedly stated in its programs for work that the Agency is seriously challenged in completing all the planned activities on time and well with only few employees.[12] In 2012 the Energy Agency had 5 permanent employees and 6 temporary employees as volunteers, interns or consultants[13], which means that more than half of the whole staff was employees likely to leave the Agency after the end of their contract. That means that the skills and knowledge acquired by the temporal staff through their work will be lost for the Agency when the temporal staff leaves. Employees both in the Energy Agency and the Energy Department are of various educational backgrounds and these institutions have not experienced frequent staff changes.[14] Although asked for, information about the profiles of the civil servants in the Unit for Strategic Planning and Development was not given; the Unit briefly replied the civil servants to fulfill the conditions for their work positions.[15] The Ministry of Interior has the largest number of employees. The official data show a decrease of

10 To be precise, the progress reports for 2012 and 2013 indicated that the capacity of the Energy department of the Ministry of Economy needs to be strengthened; the progress reports for 2011 and 2012 spoke about the Energy Agency's limited capacity. In the report for 2013 regarding the security sector as insufficient capacities or capacities need strengthening was mentioned the strategic capacity for managing migration flows and the Illicit Drugs Department.

11 Energy Agency of the Republic of Macedonia (2013), Annual report for work for 2012; Energy Agency of the Republic of Macedonia (2012), Draft report for work for 2011; Energy Agency of the Republic of Macedonia (2011), Report for work for 2010.

12 Energy Agency of the Republic of Macedonia (2013), Program for work for 2014; Energy Agency of the Republic of Macedonia (2012), Draft program for work for 2013; Energy Agency of the Republic of Macedonia (2011), Draft program for work for 2012

13 Energy Agency of the Republic of Macedonia (2013), Annual report for work for 2012

14 Ministry of Economy, Information obtained by utilizing the Law on free access to public information, May 2014; Energy Agency, Information obtained by utilizing the Law on free access to public information, April 2014.

15 Ministry of Interior, Information obtained by utilizing the Law on free access to public information, April 2014.

the number of employees from year to year[16] which could mean enhanced efficiency in public service delivery of this Ministry.

On the subject of awarding and penalty mechanism and evaluation of the work of the civil servants or employees, the Unit for Strategic Planning and Development and the Energy Department listed written laws or procedures which apply to civil servants or authorized employees[17] depending on the status of their employees[18] respectively, showcasing a uniform way of managing their human resources. Additionally, each sector in the Ministry of Economy on request of seniors once a month or every three months submits a report about its work progress.[19] The Energy Agency does not have a classical career system; which will be changed after receiving the status of administrative servants.[20] The Energy Agency was also not able to develop monetary awarding system and after the harmonization with the Law on administrative servants, the Agency believes to establish a career development system for its employees.[21]

Concerning the division of responsibilities, the Unit for Strategic Planning and Development engages in team work for more complex work tasks[22], whereas each employee in the Energy Agency's has several responsibilities, tasks and obligations.[23] The Agency as an institution has its advantages such easier management of human resources as it has less number of employees and a less complicated vertical management structure than ministries,[24] having as such preconditions for high efficiency. However, when it comes to deciding about employment of staff with funds from the state budget, the Ministry of Finance has a crucial say as it is included in the approval process of the biannual reports of the Agency jointly with the Ministry of Economy and the Government[25]; which could be of disadvantage

16 Source: Ministry of Finance, Budget of the Republic of Macedonia for 2009, 2010, 2011, 2012, 2013 and 2014. All budgets are available at: http://finance.gov.mk/view/budget2013

17 Ministry of Interior, Information obtained by utilizing the Law on free access to public information, April 2014; Ministry of Economy, Information obtained by utilizing the Law on free access to public information, May 2014

18 The employees in the public institutions have various statuses, meaning not all of them are civil servants.

19 Ministry of Economy, Information obtained by utilizing the Law on free access to public information, May 2014

20 The Law on administrative servants will enter in February 2015.

21 Energy Agency, Information obtained by utilizing the Law on free access to public information, April 2014

22 Ministry of Interior, Information obtained by utilizing the Law on free access to public information, April 2014.

23 Energy Agency, Information obtained by utilizing the Law on free access to public information, April 2014

24 The systematization of the Energy Agency envisages a director and 7 units each managed by a head of unit http://www.ea.gov.mk/images/untitled.JPG

25 Energy Agency, Information obtained by utilizing the Law on free access to public information, April 2014

to the Agency as some of the Agency's plans as hiring more staff may not be approved. The latter has already happened in 2009 when the Ministry of Finance did not approve the requests of four new employees due to lack of state funds.[26] Positive development about the management in the Energy Agency is its ISO 9001:2008 certificate[27] stating that the Agency uses the management system with this standard for preparing energy strategies, developing programs with focus on renewables and energy efficiency and similar.[28]

Since the weak human capacities undermine the performance of the institutions in question, a step in the right direction is strengthening them through training and capacity building programs. All of the mentioned institutions subject to this analysis replied that their employees attend training sessions; whereas the Energy Agency additionally explained that it does not plan separate training sessions on the long term due to many obligations of its employees. However, the Agency adds that the ongoing IPA[29] project about strengthening the capacities of the Energy Department in the Ministry of Economy and of the Energy Agency will enable an analysis of the needs for training of the employees by end of 2014; therefore from 2015 for each employee separately there will be longer training sessions.[30] Interesting for analysis is this mentioned two year IPA project. It will assess the resources and an organization scheme of the Energy Department will be prepared[31], which represents a step in the right direction as it would provide a basis for more efficient allocation of resources to contribute to strengthening the capacities of the under-staffed Energy Department. However, further information about this project – that there are consultants tasked for realization of this IPA project; that in cooperation with them some legal acts and strategic documents in the energy area will be prepared or developed; and the impression that the IPA experts prepared a report about this project[32], leads to

26 Energy Agency of the Republic of Macedonia, (2009), Report for work for 2009

27 ISO 9001:2008 Quality Management System certification is an internationally recognized quality management system standard showing the commitment to quality and customer satisfaction. Internet page of IPS: http://ipslibya.com/group-companies/iso-certification/iso-9001/

28 ISO 9001:2008 Quality Management System certification of the Energy Agency http://www.ea.gov.mk/images/stories/ISO_Kvalitet/Agencija_za_energetika_Sertifikat.pdf

29 IPA means Instrument for Pre-Accession Assistance. It offers assistance to countries engaged in the accession process to the EU.

30 Energy Agency, Information obtained by utilizing the Law on free access to public information, April 2014; Ministry of Interior, Information obtained by utilizing the Law on free access to public information, April 2014; Ministry of Economy, Information obtained by utilizing the Law on free access to public information, May 2014

31 Ministry of Economy, Report for the work of the Ministry of Economy in 2013

32 Ministry of Economy, Report for the work of the Ministry of Economy in 2013

the conclusion that the external consultants do the capacity building job for the institutions that need to be strengthened. Capacity building is effectively done when the stakeholders that need to be strengthened are themselves actively engaged in building up their capacities with additional external assistance or facilitator; and is not to be left to external experts to do the job for the institutions as these experts may not know the local context and it should be a capacity building exercise for the institutions themselves. This trend of outsourcing expertise and reliance on outside assistance also continues with other concrete examples related to the energy institutions: all the major energy documents[33] were prepared by donors, international financial institutions or the Macedonian Academy of Science and Arts. The Energy Department replied that for preparing the key legal acts they need assistance outside their own capacities. One positive conclusion could be that the projects allow transfer of knowledge to the staff, also confirmed by the Energy Department.[34] In addition the Energy Agency admits that without new employments and without good training for the employees, not sufficiently well will some of its activities be executed such as issuing opinions on municipalities' energy efficiency programs, preparing the energy balance, assessing the energy savings and similar.[35]

Positive finding is the Ministry of Interior's awareness about its need to strategically plan the strengthening of its human capacities. First, the Ministry's Strategy for training of the employees in the Ministry of Interior envisages various training sessions for all of its employees; also being aware about its weaknesses such as lack of overall analysis about the needs for training and no measurements of the training's effects.[36] In this line, the Ministry of Interior identifies strengthening of its human resources and training as means for improving the efficiency and effectiveness of its work as stipulated in its Strategic plan for the period 2009-2011. The Strategic plan has concrete indicators for the sub-program management of human resources – 10% increase of employees' efficiency and effectiveness. This Strategic plan also identifies the lack of institutional culture regarding strategic planning, lack of coordination and cooperation of the capacities for strategic planning and policy making and lack of continuous training of the police to be some of the Ministry of Interior's weaknesses.[37] The Unit for

33 Key documents such as the Law on energy, the Energy Strategy, the Renewable Energy Strategy, the Energy Efficiency Strategy, the First Action Plan on Energy Efficiency, the Second Action Plan on Energy Efficiency, the Program for Realizing the Energy Strategy and Renewable Energy Action Plan. Ministry of Economy, Information obtained by utilizing the Law on free access to public information, May 2014

34 Ministry of Economy, Information obtained by utilizing the Law on free access to public information, May 2014

35 Energy Agency of the Republic of Macedonia (2013), Program for work for 2014; Energy Agency of the Republic of Macedonia (2012), Draft program for work for 2013

36 Ministry of Interior, (2011), Strategy for training of the employees in the Ministry of Interior, Internet page of the Ministry of Interior http://www.mvr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=548

37 Ministry of Interior, (2008), Strategic plan for the period 2009-2011 http://www.mvr.gov.mk/uploads/

Strategic Planning and Development if faced with lack of human resources rearranges the employees in the Ministry via an internal announcement.[38]

Unlike the case with the Macedonian Energy Department relying on outside assistance, the Slovak Ministry of Economy for example reported that the employees in the Energy Department prepared the Energy Act relying on their own in-house capacities. This was done in cooperation with the public and specialists in the Government, but they did not use outsourcing for preparation of this Act. The Slovak Ministry of Economy reported about the process of strengthening their capacities over the years: when they entered the EU their capacities were not sufficient, but have sufficient capacities now. They do not need capacity building; they had training programs for specialization when entering the EU and attend training sessions in case of new legislation comes from the EU. For complex tasks dealing with energy efficiency and renewable energy, they create teams for example of lawyers and engineers; also inter-sector cooperation exists in forms of teams.[39]

Also, the Innovation and Energy Agency of the Slovak Republic reported that its staff does most of its work. They however cooperate with other experts depending on the projects.[40] Energy Centre Bratislava, a civil society organization (CSO) in the Slovak Republic dealing with energy efficiency and renewables, stated that the Slovak Innovation and Energy Agency has lot of capacities, but lot of tasks, and these tasks demand more capacities.[41] The Slovak Ministry of Economy considers itself efficient since when compared to other ministries or other member states such as Poland, has fewer employees.[42] Having fewer employees and still performing the tasks on time may be explained with having staff with good qualifications and experience. From a perspective of a CSO, for the Slovak ministries in the security sector it is convenient to hire them as organization instead of employing someone additionally on a project as reported by the Slovak Foreign Policy Association.[43] This can be understood as institutions recognizing the need for CSO's input and CSO having expertise to help

strateski%20plan%202009-2011,%20fevruari%202009.pdf

38 Ministry of Interior, Information obtained by utilizing the Law on free access to public information, April 2014

39 Interview with Peter Dvorak, Principal State Counsellor and Miroslav Jarabek, Director, Energy and raw materials policy department, Slovak Ministry of Economy, conducted on 12.02.2014

40 Interview with Eduard Jambor, Communication Department and Karel Hirman, Director of Energy Policy Department, Slovak Innovation and Energy Agency, conducted on 13.02.2014

41 Interview with Marcel Lauko, Director, Energy Centre Bratislava, conducted on 13.02.2014

42 Interview with Peter Dvorak, Principal State Counsellor and Miroslav Jarabek, Director, Energy and raw materials policy department, Slovak Ministry of Economy, conducted on 12.02.2014

43 Interview with Alexander Duleba, Director, Slovak Foreign Policy Association, conducted on 12.02.2014

institutions in their work. This way of collaboration could contribute to more efficient performance of institutions if the CSO provides the input the institutions need.

Further good example from the Slovak Republic comes from the security sector stating that self-reforming is a step towards own capacity building for management of larger scale projects. In fact, the Slovak Ministry of Interior is the body responsible for the overall public administration reform, which aim is it to be more client-oriented and business friendly. The responsibility for managing this public administration reform was given to the Ministry of Interior since it is the largest ministry and was the first institution to reform itself in order to save finances.[44]

MANAGEMENT OF FINANCIAL RESOURCES

Sound management of financial resources at disposal is an important component when assessing efficient performance of the state institutions. In this section, main accent will be put on management of resources, whether the budget is sufficient for the envisaged activities, difference between planned and spent financial resources as well as the donor support in order to provide clear picture on how the public funds, important efficiency factors, are managed by the three institutions that are subject of analysis in this paper.

According to the Law on the budget,[45] all budget users are responsible for preparation of a three-year strategic plan. The budget of the Ministry of Interior ranges between 150 -160 000 000 Euro annually, without dramatic changes in the total amount. The Ministry of Interior's budget has several sections[46], out of which administration, security and decentralization have more or less the same value throughout the years. Significant oscillations could be noted when analyzing other sections. Namely, the budget envisaged for 2014 for state security section has been increased 6,5 times compared to 2013 – from nearly 590 000 Euro to almost 3 900 000 Euro. This budget item had faced significant changes also in the previous years. In fact, the state security section is the one envisaged for the Directorate for

44 Interview with Samuel Arbe, Advisor for the programming of European structural and investment funds, Slovak Ministry of Interior (interview given in personal capacity), conducted on 12.02.2014.

45 Law on the budget, Official Gazette of Republic of Macedonia (consolidated text), article 15a http://finance.gov.mk/files/u6/_____5.pdf

46 All the sections are: administration, security, training center, state security, NATO integration, decentralization, strengthening the rule of law and EU integration

Security and Counterintelligence (DSCI). [47] Taking into consideration the secrecy in the work of the DSCI, there is a need for increased oversight and control. For instance, there is no explanation whether there are any emerging security threats, buying of new expensive equipment etc.[48] Additional and more general remark is the insufficient data provided by the Ministry of Finance in the state budget. Namely, up to 2009, there had been information on the results achieved throughout the previous year and priorities and objectives for the following year, breaking them down to separate programs including indicators for each program.

Moving to the energy sector, the budget dedicated for energy development has not seen any major oscillations, apart from the sharp increase in expenditures covered by donations. The planned budget has realization percentage of 85-90% and according to the Energy Agency, reasons for derogation include complexity of the project activities and in some cases, they admit it is due to incompatible project planning.[49] On the other side, the Energy Department within the Ministry of Economy highlights that they are making maximum effort to fully implement the budget as envisaged.[50]

As stated in its annual reports, the Energy Agency is very satisfied from the cooperation with the Ministry of Economy and the Ministry of Finance in regards to the readiness for reallocation and increasing the amount of particular items.[51] However, the reports reveal modest financial resources of the Energy Agency due to budget rebalance or anti-crisis measures of the Government. The planned funds for renting, accounting, legal services and other contracts were not sufficient. In the same time, as there is no possibility for new employments, significant amount goes to volunteering, internship or consultants contracts. The Energy Agency says that "taking into consideration the limited budget of the Agency, outside expert support is sought only in case the needs exceed the internal capacities of the Energy Agency or any other relevant institution in Macedonia".[52] Still, the Energy Agency spends

47 Budget of the Republic of Macedonia for 2009, 2010, 2011, 2012, 2013 and 2014. All budgets are available at: http://finance.gov.mk/view/budget2013

48 For more information regarding the oversight and control of the security sector, please see: Bogdanovski A. and Lembovska M., (2012) Towards 2nd generation of security sector reform in Macedonia http://analyticamk.org/images/stories/books/pub-ssr-web.pdf. For financial oversight of the intelligence sector, please see: Lembovska, M., (2013), Comparative analysis of regional practices for parliamentary financial oversight of intelligence services http://analyticamk.org/images/stories/files/report/Financial_oversight_english.pdf

49 Energy Agency, Information obtained by utilizing the Law on free access to public information, April 2014.

50 Ministry of Economy, Information obtained by utilizing the Law on free access to public information, May 2014

51 Energy Agency of the Republic of Macedonia (2013), Annual report for work for 2012

52 Energy Agency, Information obtained by utilizing the Law on free access to public information, April 2014

significant amount for engaging external experts.[53] These data indicate inefficient spending instead of investing in the employees within the Agency to improve their capacities according to the Agency's needs.

A positive example could be seen in the Slovak Innovation and Energy Agency which combines three sources of financing: the state budget, EU funds and commercial activities.[54] This provides them the needed sustainability which could be applicable for the Macedonian Energy Agency. The sources from projects were also acknowledged by the Macedonian Energy Agency not to cause any fiscal implication in the state budget, but to increase the capacity of the Agency's employees in their concrete support of the Government's policies and in implementing the energy action plans. The sources from the projects in fact enable temporal employment of high qualified persons.[55] The positive effect from funds for getting additional staff is recognized; it seems that the real challenge lies in keeping this staff after the project ends.

On the topic of donor support, the Ministry of Interior's Unit for strategic planning and development does not utilize donor support[56], despite the fact that the Ministry of Interior is one of the biggest beneficiaries of foreign donor support (from governments of other countries and international organizations), mainly in the form of expertise and equipment.

An important role in ensuring sound management of financial resources plays the State Audit Office (SAO). However, as an institution it has a weak positioning in the governance structure and represents an overlooked oversight body. The European Commission Progress Report on Macedonia highlights that "the quality of the Office's reports and recommendations has contributed to identifying reform challenges", but in the same time notes that "while its aggregate annual reports are reviewed by parliament, there is still limited follow-up of the reports' findings".[57] The last audit performed by SAO in the Ministry of Economy and the Ministry of Interior took place several years ago and the data from

53 For instance, in 2011, the Energy Agency paid more than 16 500 Euro for five consultants, while the gross salaries of the permanent employees (including pensions and health insurance) made 42 500 Euro.

54 Interview with Eduard Jambor, Communication Department and Karel Hirman, Director of Energy Policy Department, Slovak Innovation and Energy Agency, conducted on 13.02.2014

55 Energy Agency of the Republic of Macedonia, (2011), Program for work for 2011; Energy Agency of the Republic of Macedonia (2011), Draft program for work for 2012

56 Ministry of Interior, Information obtained by utilizing the Law on free access to public information, April 2014

57 European Commission's Progress Report for Macedonia for 2013

it cannot represent indicator for the current performance.[58] It is positive that both ministries are part of the annual program of SAO for 2014.

Besides the state audit, internal audit, a component of the complex system of public internal financial control,[59] also plays an important role in ensuring financial accountability and efficiency in spending the public funds. The number of internal auditors in the Ministry of Interior is four[60] and the Ministry of Economy has only one internal auditor.[61] The ministries do not stand out from the other budget users. The Energy Agency has been subject of audit performed by an independent audit institution (Mur Stivens), the Ministry of Finance and independent audit for specific foreign projects.[62]

Another important segment in ensuring efficient usage of public funds is the existence and implementation of anti-corruption policies. The energy sector institutions have answered that there have been no indications of corruptive behavior.[63] For the security sector, important is to note that the corruption within the police officers is considered to be more serious than corruption exercised by other employees within the state institutions.[64] The Sector for Internal Control and Professional Standards which is responsible for anti-corruption activities regularly publishes its annual anti-corruption programs and action plans on Ministry of Interior's website. However, one might easily note that they are very general, descriptive, repeating the same declarations from year to year. The action plans lack concrete tasks and measurable indicators of achievement. For instance, "improving the professionalism" cannot be a measurable indicator of successful completion of the envisaged activity.

58 Ministry of Economy has an audit for the financial statements in year 2008 and the Ministry of Interior for the year 2007. Notable to mention is that the audit of the Ministry of Economy was positive with several irregularities mainly connected with the internal control system and the internal systematization. On the other side, the State Audit Office detected more irregularities in the Ministry of Interior and they are connected with the application of legal provisions, public procurements, systematic deficiencies, irregular accounting, irregularities in the financial statements etc.

59 More on the public internal financial control could be found at the website of the Ministry of Finance www.finance.gov.mk

60 As of April 2014. Source: Ministry of Finance/ List of internal auditors in the public sector on central level http://www.finance.gov.mk/files/u16/i_navnatresni_revizori__centralno-30_04_2014.pdf

61 Ibid.

62 Grand Torton for the project Ener Supply financed by the EU and GEF project for sustainable energy financed by the World Bank

63 Energy Agency, Information obtained by utilizing the Law on free access to public information, April 2014; Ministry of Economy, Information obtained by utilizing the Law on free access to public information, May 2014

64 Ministry of Interior, (2014), Anticorruption program

STRATEGIC PLANNING AND POLICY MAKING

Efficient performance of the relevant institutions' tasks is determined by proper strategy planning, implementation of the drafted plans, meeting the deadlines, absence of highly centralized decision making and cooperation with other stakeholders including the civil society, all which were analyzed.

To begin with, access to public information and transparency of institutions remains low as concluded by the European Commission in the 2013 progress report[65]; additionally having in mind the "closedness" of the energy and security sector, getting in-depth information about these sectors is even more difficult. The work of the Energy Department within the Ministry of Economy is strategically planned and stipulated in the Ministry's Program for work; and its implementation reported in a report for implementing the Annual program for work of the Ministry of Economy. These programs and reports are to be published at the Ministry's website, although not all of them are actually accessible. As regards to the security sector, the strategic plans of the Ministry of Interior are classified documents and not available to the public[66], thus preventing more detailed analysis about the efficiency goals of the Ministry. This is contrary to the directions set in the Manual for strategic planning prepared by the Government where it is said that transparency in the process is one of the preconditions for successful strategic planning.[67] The last available declassified strategic plan of the Ministry of Interior is for the period 2009-2011.

Unlike the ministries analyzed in this paper, the annual planning and reporting is done best by the Energy Agency. It contains detailed budget planning and spending, sufficient information about the projects and planning of strengthening its human resources. The Energy Agency, which is responsible among other things for support of the energy policy implementation and has to initiate energy strategies,[68] has begun its work with few projects and has gained over the years many more responsibilities and activities. In the past few years it is not only a project implementing institution, but also issues documents, has more concrete projects, prepares secondary legislation, gives feedback

65 European Commission's Progress Report for Macedonia for 2013

66 Ministry of Interior, Information obtained by utilizing the Law on free access to public information, April 2014

67 Government of the Republic of Macedonia, (2007), Manual for Strategic Planninghttp://arhiva.vlada.mk/files/GS/Priracnik.pdf

68 Law on the establishing of the Energy Agency of the Republic of Macedonia, Official Gazette of the Republic of Macedonia 62/05

to documents, works on identifying projects etc[69]. This clearly shows a development in its capacities, meaning a greater amount of work with almost no change in number of permanent staff. This could serve as an indicator of increased efficiency.

One criticism about the Agency's clarity of obligations which also could affect the efficiency of its performance was given back in 2010 by the State Audit Office having found the Law on establishing the Energy Agency not to clearly define the Agency's duties.[70] The Law was amended in 2014, but tackles a small part of Agency's obligations and will be put into effect one year after its adoption.[71]

Timely implementation of the drafted policies indicates efficiency which has to do with proper capacities of the implementing institutions. If the Ministry of Economy's annual reports are analyzed, the impression is that Macedonia is on track with adopting energy reform policies. Also, evident is delay in some activities such as legislation adopting or construction projects.[72] The Energy Department explained the reasons for possible delays and problems with the implementation to be limited human and financial capacities and certain open questions in the inter-institutional cooperation.[73] The Energy Agency has also experienced some of the projects in which it was involved to be suspended or delayed,[74] although were overcome later.[75] Furthermore, if the last two public investment programs are compared and the energy projects are analyzed, an extension of some of the projects' deadlines or their delay is evident: for example the project construction of the hydro power plant Sv Petka has an extension of deadline from 2009 till 2011 and the revitalization of large hydro power plants of 2012 was delayed till 2014.[76] Similarly, the Ministry of Interior also faces delays in the project

69 Energy Agency of the Republic of Macedonia (2011), Draft program for work for 2012;Energy Agency of the Republic of Macedonia (2012), Draft report for work for 2011; Energy Agency of the Republic of Macedonia (2013), Program for work for 2014; Energy Agency of the Republic of Macedonia (2012), Draft program for work for 2013

70 State Audit Office, Annual report for 2010 http://www.dzr.gov.mk/Uploads/Godisen_izvestaj_2010.pdf

71 Law amending the Law on the establishing of the Energy Agency, available at: http://www.ea.gov.mk/images/stories/E_Izdanija/Izmeni%20na%20zakonot%20za%20osnovanje%20na%20aerm.pdf

72 Delays such as: Energy law was planned to be amended in 2010, but a new one was adopted in 2011; Action plan for energy strategy was envisaged to be adopted in 2012, but was adopted in 2013. (Source: Ministry of Economy, (2010), Report for 2010; Ministry of Economy, Report on the Program for work of the Ministry of Economy for 2011; Ministry of Economy, Report on the Program for work of the Ministry of Economy for 2013)

73 Ministry of Economy, Information obtained by utilizing the Law on free access to public information, May 2014

74 Energy Agency of the Republic of Macedonia (2012), Draft report for work for 2011

75 Energy Agency of the Republic of Macedonia (2013), Annual report for work for 2012

76 Government of the Republic of Macedonia, (2009), Public investment program 2009 – 2011 http://www.finance.

implementation. Such project is establishing of National Criminal Intelligence Database, envisaged for December 2012.[77] One year after, the EU Progress report for 2013 notes that the database is not yet operational.[78]

Further efficiency flaws are seen in frequent changes in the legislation, especially the legislation that is under competency of the Ministry of Interior. As an example, the Law on foreigners has been subject to change each year since it was adopted (2006) and was changed even two times in 2013.[79] Similar situation occurred with the Law on internal affairs – after changing it several times, in March 2014 the Ministry of Interior came out with a new law.[80] Frequent changes in the legislation could be an indicator of improper strategic planning. Other possible reasons could be alignment with EU legislation. The Ministry of Interior did not answer the questions regarding the formulation of policies as well as planning and realization of activities, preventing further efficiency analysis in the area. Positive remarks for the Ministry of Interior can be given for its IPA Unit which coordinates the Ministry's activities in the process of defining the project ideas, prepares project fiches[81]; which also speaks about the its capability to manage and raise funds.

Factors influencing meeting the deadlines include also good inter-sector cooperation especially in case the particular project is under the jurisdiction of several institutions. In this line, SAO had some findings about the concessions on water for construction of small hydro power plants. It concluded some of the main factors affecting the efficiency of the issued concessions to be: that the procedures for concessions were realized without prepared study for concession project and that the concessionaires are facing ownership issues. All this affects the deadline for getting the construction permit and starting the construction of the small hydro power plants.[82] This means that for this energy project to be realized without delay, good inter-sector cooperation and coordination is needed, since the ownership issues in this case are under jurisdiction of other stakeholders. The Slovak experience

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also raises the question about a more coordinated energy efficiency policy. In fact the Energy Centre Bratislava considers that in the Slovak Republic there should be a single body for energy efficiency.[83] This could mean discussion about one-stop-shop systems, which means that a single institution offers multiple services.

Not only should important policies be well planned and implemented, but they need to be able to serve their target group in best possible way by taking the input from the interested parties. A recent analysis about the cooperation between civil society and the security and energy sectors found that the energy and security sector are less cooperative than other sectors and that it is a real challenge for the CSO to influence the policy making process in the energy and security sector domain and especially to be provided with feedback on the submitted opinions on emerging legislation.[84]

Further analysis of the security and energy institutions' work especially in relation to CSO indicated existence of very centralized top-down decision-making, i.e. practices which imply that for simple matters, the minister has to be asked for approval which usually takes much time. Such indication is their rejection to give an interview or not giving approval for it; thus CSO have to use the Law on free access to public information. For the questions that tackle the Unit for strategic planning and development, but are of Ministry's importance and mean communication with outside subjects, the minister decides.[85] While the Energy Agency is a small institution with only few employees and the centralization of decision-making could be understandable, the ministries (both Ministry of Economy and Ministry of Interior) have complex structures covering broad areas of work. Thus, centralization could contribute to less efficiency. Unlike the case of Macedonia, the Slovak institutions approved the interview requests in a short time period, directly from the departments of the paper's research interest.

Cooperation is a way of work for the Slovak security and energy institutions. It takes place not only between institutions, but also extensively with civil society and on regional level too. The ministries cooperate with CSOs when preparing legislation and they have public meetings as well.[86] On regional

83 Interview with Marcel Lauko, Director, Energy Centre Bratislava, conducted on 13.02.2014

84 Stojilovska A. and Lembovska M., (2013), Security and energy sectors' cooperation with the civil society in Macedonia – friends or foes? Analytica think tank http://analyticamk.org/images/stories/files/briefs/TRAIN_en_za_website.pdf

85 Ministry of Interior, Information obtained by utilizing the Law on free access to public information, April 2014

86 Interview with Samuel Arbe, Advisor for the programming of European structural and investment funds, Slovak Ministry of Interior (interview given in personal capacity), conducted on 12.02.2014; Interview with Peter

level, the cooperation also takes place in the V4[87] group, which as a region has a stronger voice enabling the countries to learn from each other, to help each other and push for issues that are important to them.[88] For example, in the energy area, the ministers dealing with energy issues of the V4 countries have a Declaration stating that they support further development of the regional cooperation in the energy sector and listing concrete aspects and activities. They even have a Road Map towards regional gas market among V4 countries.[89] The Slovak Innovation and Energy Agency cooperates with universities, research and development institutions, ministries, municipalities, CSO, agencies abroad etc.[90]

The cooperativeness of the Slovak energy and security institutions was confirmed by all interviewed CSO. The CSO Energy Centre Bratislava answered that they are invited to seminars, give comments to documents sent to them by the energy institutions, or give guidelines how to implement directives. The Centre says that the energy institutions accept many of their comments and in case they do not, it is because they have stronger arguments. The Centre considers to be helping the energy institutions with its contribution – the Centre is dealing with energy on daily basis with municipalities, small and medium enterprises etc., which is not easy to be done by the energy institutions.[91] This shows that by being formidable as a CSO means an influence in the policy making and contribution to better formulated policies. The Centre for European and North Atlantic Affairs (CENAA), a CSOs focusing on security matters, highlighted the importance of personal contacts that enhance the cooperation. Situations when persons transfer from the state institutions to the civil society and vice versa are not unusual in Slovakia, and this is considered to contribute to transferring the knowledge and building the trust between the state and civil sector.[92] The Slovak Foreign Policy Association also replied that they closely cooperate with the security sector institutions and are project partner of the Ministry of Interior.[93]

Dvorak, Principal State Counsellor and Miroslav Jarabek, Director, Energy and raw materials policy department, Slovak Ministry of Economy, conducted on 12.02.2014

87 V4 countries are the Visegrad countries: Czech Republic, Hungary, Poland and Slovakia. V4 reflects the efforts of the countries of the Central European region to work together in a number of fields of common interest within the all-European integration. http://www.visegradgroup.eu/about

88 Interview with Peter Dvorak, Principal State Counsellor and Miroslav Jarabek, Director, Energy and raw materials policy department, Slovak Ministry of Economy, conducted on 12.02.2014

89 Internet page of the Slovak Ministry of Economy http://www.economy.gov.sk/strategy-documents/131028s

90 Internet page of the Slovak Innovation and Energy Agency http://en.siea.sk/

91 Interview with Marcel Lauko, Director, Energy Centre Bratislava, conducted on 13.02.2014

92 Interview with Marian Majer, Senior Research Fellow, CENAA, conducted on 13.02.2014

93 Interview with Alexander Duleba, Director, Slovak Foreign Policy Association, conducted on 12.02.2014

Good practices that can be learnt from the Slovak Innovation and Energy Agency about efficiency is from its profile: it is expert body for energy efficiency, renewable energy and central heating, not for all energy related areas the Ministry deals with[94]; it has various set of activities among which interesting are implementation of EU structural funds, technical expertise for energy legislation, consultancy in the field of energy efficiency and renewables and has as a long-lasting experience in the implementation of international projects within various EU community programs.[95] In other words it is an expert body in the area capable for assisting other stakeholders on the way of energy policy implementation.

Last but not least is the matter whether the security and energy sectors are "closed" which makes their governance not a best example. Having confirmed the "closed" status of these sectors in Macedonia, in the case of the Slovak Republic it was concluded that both sectors in the Slovak Republic were closed in the past, but things started changing more than a decade ago with the Euro-Atlantic integration process and finally nowadays this is considered to be an overcome issue. This gives the assumption that the way for improving the security and energy sectors' governance is a continuous and long-term one.

CONCLUSIONS

The paper analyzed the Macedonian energy and security sector governance by focusing on the institutions' efficiency in order to draft policy recommendations for improving the challenges by drawing lessons from positive Slovak examples. The analysis went in three tracks: human resources, financial resources and the process of policy making and several bottlenecks were identified.

The civil servants working in the security and energy sector institutions have been exposed to training and capacity building activities. However, their human capacities are still insufficient and there is a need for better inter-sector cooperation. The human resource analysis showed high level of temporary staff engagement, especially in the case of the Energy Agency. The main expertise should not come from outside, but the institutions should have it "in the house", like in the Slovak case. Engagement of temporary staff and consultants for specific projects is due to unavailability of funds for regular employment as well as lack of expertise of the current staff. In addition, unlike the Slovak case where

94 Interview with Eduard Jambor, Communication Department and Karel Hirman, Director of Energy Policy Department, Slovak Innovation and Energy Agency, conducted on 13.02.2014

95 Internet page of the Slovak Innovation and Energy Agency http://en.siea.sk/

the institutions utilize the CSO's input in order to improve their performance, this kind of cooperation is underused in the Macedonian case.

The human resource management is closely related with the budget spending and rebalance of the budget affects the human resource development in the institutions. In the case of the Energy Agency, it was noted that the total amount spent for contractual services exceed the total amount spent for salaries. Speaking about the finances, there is a need for greater transparency in the case of Ministry of Interior when increasing specific budget items by multiple times, like the item for state security. The financial professionals from the SAO provide sound analysis of the financial statements of the institutions, but unfortunately, there is little follow-up on their recommendations.

Moving to the area of strategic planning, uneven practices and standards among the different ministries have been identified. A positive example could be found in the Energy Agency which regularly publishes annual programs and annual reports that include comprehensive information for all aspect of the Agency's work. On the other side, the strategic plans of the Ministry of Interior are classified and the Ministry does not provide at least basic publicly available version. The research identified frequent change of legislation, certain delays of the projected activities – all of this could serve as an indicator that the quality of strategic planning is not at the satisfactory level. Finally, the closedness of the energy and security sector when trying to approach them for an interview showed the centralization of decision making, low transparency and accountability towards the civil society.

This paper brought to surface the fact that it is a first energy and security sector focused research dealing with a specific aspect of good governance. It is one of the first steps towards assessing efficiency as a component of good governance, trying to establish the basic criteria upon which this specific component could be evaluated.

RECOMMENDATIONS

HUMAN RESOURCES:

- Planning of the human resources in the energy and security sectors needs to be significantly strengthened. Better human resource management should enable specialization of the staff and reducing the use of temporary staff;

- Outsourcing for preparing legislation and implementing capacity building activities especially in the energy sector should be reduced to the extent that is used only for necessary additional expertise and excluded the possibility of being the dominant implementation body since it does not strengthen the internal capacities. The security and energy institutions' permanent staff should perform the main substantive work as preparation of legislation;
- The security and energy institutions should explore all possibilities for applying for foreign donor support as a good way of getting funds for additional staff and training. Donor's assistance should be factor of development and transfer of "know-how";
- The input of the CSO in the policy making processes should be taken under consideration by the security and energy institutions. The CSO working in the energy and security areas should continue participating in the policy making processes in the areas by giving research-based input[96].

MANAGEMENT OF FINANCIAL RESOURCES:

- The Energy Agency should consider client-oriented activities as well as project funds as source of additional funding since having different sources of financing ensures greater sustainability and independence;
- Part of the funds that have been used for outsourcing especially relevant for the energy institutions should be reallocated for employment of permanent staff or training on the current staff, based on the institution's needs;
- Severe budget cuts for the security and energy institutions after budget rebalance should be avoided;
- The energy and security institutions should implement the recommendations provided by the State Audit Office and remove detected irregularities.

STRATEGIC PLANNING AND POLICY MAKING:

- The Ministry of Economy and the Ministry of Interior should be more transparent regarding their strategic plans and annual reports;
- Since projects bring possibilities for additional resources and training, the security and energy institutions should consider developing a project preparation unit also enabling certain public servants to specialize in project applications;

96 For cooperation of the CSOs with the energy and security sector and more recommendations for improving such cooperation, please see: http://analyticamk.org/images/stories/files/briefs/TRAIN_en_za_website.pdf

- The security and energy institutions should plan their projects in accordance with their capacities to implement them and in case of delays should analyze and address the reasons.

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TESTIMONIAL

Analytica is dedicated to improving democracy and good governance in Macedonia. As Macedonia is undergoing reforms in all public sectors, the role of civil society organizations is increasingly important to help shape democratic reforms and improve policies. Having been granted the project called *„Energy and security sector governance in Macedonia: how to improve its efficiency?"* funded under the Slovak and Balkan Public Policy Fund Programme with the support of Slovak Aid, we've conducted a research aiming to analyze the energy and security sector governance in Macedonia by focusing on the energy and security sector institutions' efficiency in order to draft recommendations for its improvement by drawing lessons from positive Slovak examples, a newer EU and NATO member and former communist country which has noted good development in the mentioned two sectors.

As part of the project, we had the possibility to go to Bratislava and conduct part of the research there. This trip was an essential part of the research as it enabled us a first-hand knowledge about how the Slovak institutions from the two respective sectors have developed over the years, resulting with policy recommendations for the Macedonian institutions drawn from the best practices of the institutions from the Slovak Republic. Moreover, the field visit to Bratislava enabled us to establish contacts with Slovak CSOs and institutions from the security and energy sector, opening many opportunities for future cooperation and partnerships.

The policy paper that we've produced is especially important in light of the fact that it is the first analysis of the efficiency of the institutions as a specific component of the concept of good governance, when dealing with the energy and the security sector. Not only that it sets the basic criteria for researching the efficiency from the perspective of the civil society, but it is also provides an inter-sectoral analysis linking two sectors that do not have much in common at a first glance. The policy paper was

presented by the researchers of the project and authors of the paper – Magdalena Lembovska and Ana Stojilovska at a promotional event attended by members of the civil society, embassies and state institutions. The opening speech was given by the Deputy Ambassador of the Slovak Republic in Macedonia Patricia Dudova. At that event the paper was disseminated in hard-copy version and afterwards in electronic form to a wide list of relevant domestic and regional stakeholders. The paper was prepared in original English and translated into Macedonian, and is available at Analytica's website: in English http://analyticamk.org/images/stories/files/2014/Energy_and_security_sector_governance.pdf and in Macedonian http://analyticamk.org/images/stories/files/2014/Slovak_paper_FINAL_WEB_MK.pdf. In this way, a large interested audience has been reached. The Ambassador of the Slovak Republic in Macedonia H.E. Martin Bezák also showed interest in the project, inviting us to a meeting after the event when we had the opportunity to present the paper's recommendations and to discuss about cooperation between the Visegrad Group and the Western Balkans countries.

Analytica as part of its ongoing and future activities in the energy and security areas will continue to disseminate the paper's findings to the respective Macedonian institutions and other stakeholders. The paper's findings will also be sent out to the Government for its annual call for suggestions for input in its upcoming program for work of the Government. In addition, they will be used when commenting on draft legislation proposed by the Ministry of Interior and the Ministry of Economy; at future events on energy and security issues, at future meetings with relevant Macedonian and regional stakeholders and similar. Having in mind the identified closedness of the Macedonian energy and security sectors, and the stated finding that the process of improving these sectors' governance is a long-term commitment; thus the work of improving their governance is not yet completed and needs to be followed by other similar projects.

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Magdalena Lembovska (1988) works as a Security Research Fellow in Analytica since 2012, dealing with contemporary security issues and the concept of good governance. Her interests include: security sector reform, the process of democratization, irregular migration and financial control and oversight of the security sector institutions. She has authorized several policy papers and commentaries, but is also actively engaged in advocacy activities such as organization of conferences and participation in policy relevant events. Ms Lembovska has participated in professional development programs such as the Young Faces Network 2013 of the Geneva Center for the Democratic Control of Armed Forces (DCAF) and the TRAIN Programme (Think Tanks providing Research and Advice through Interaction and Networking) run by the German Council on Foreign Relations (DGAP). She holds B.A. in Political Science degree from the University "Cyril and Methodius" Faculty of Law, Justinianus Primus, Skopje and is M.A. Candidate in Security and Financial Control at the St. Clement of Ohrid University - Bitola. She may be contacted at: **mlembovska@analyticamk.org** and **lembovska_m@yahoo.com**

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INCREASING THE USE OF GOV.MK WEBSITES AS TOOLS FOR TRANSPARENCY, ACCOUNTABILITY AND E-PARTICIPATION

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Skopje, June 2014

SUMMARY

The aim of this public policy paper is to examine the current level of use of the websites of central and local authorities in the Republic of Macedonia (mostly using .gov.mk domains) in the areas of transparency, accountability and e-participation of the citizens in the decision making process, and to offer recommendations on how to overcome the obstacles preventing the citizens to use the full potential of the new technologies in these areas.

New technologies offer effective and cheaper means for including citizens in the decision making processes, but their potential is not completely used in Macedonia. The research was conducted in the period from December 2013 to May 2014, through an examination of the possibilities offered by 220 websites run by government bodies and institutions of the state administration, and through structured interviews with 10 public institutions and 17 experts from various fields related to public citizen participation and the internet.

The research findings indicate that the websites of the public institutions lack public data, particularly in the area of fiscal transparency and accountability, and there is also a lack of mechanisms that allow citizen e-participation and inclusion in the decision making process.

The Republic of Macedonia has a legal framework governing civic e-participation, but it is necessary to implement it consistently, and to raise the awareness of citizens and institutions, about the existing opportunities, and about the importance of using new media - in this case websites as tools for transparency, accountability, and e-participation. The development of these systems depends on the political will of the Government and the officials from the subordinate institutions. The development must be based on standards that place the citizen and his needs at the center of the system and simultaneously promote the principles of e-inclusion and protection of human rights in the digital sphere.

CONCLUSIONS AND RECOMMENDATIONS

- The existing legal framework in the Republic of Macedonia regulates civic e-participation, but it is necessary to consistently implement it and to raise the awareness of citizens and institutions about the existence of opportunities and about the importance of using new media, in this particular case - the websites as tools for transparency, accountability, and e-participation.
- It is necessary to raise the awareness of the institutions about the importance of the role of the websites as tools and platforms for transparency, accountability and civic participation. Almost all processes taking place without the use of new technologies ("on paper") can be optimized with the application of new technologies, enabling a more efficient use of the financial and human resources and the time of civil servants and citizens.
- As one of the major problems cited by the institutions on a local level (municipalities) is the lack of funds intended for maintenance of the institution's website, and for a person in charge of that task. It is therefore recommended to regulate the role of the people in charge of administering the websites through a systematization of jobs, and to transfer funds from the budget of the institutions for this purpose.
- Users often indicate that they encounter difficulties in finding specific information on particular websites, and sometimes the information is dispersed on more than a single website. Therefore, it is necessary to connect all the resources and important websites in order to provide easier access to the information and increased transparency.
- It is necessary to create improved visibility and access to information on the websites. One of the possible solutions is to standardize the format and layout of the websites by using a template to achieve a uniform appearance and location of the information on each webpage, thereby promoting e-inclusiveness from

all aspects in order to enable access to the services for all citizens – by also applying all the appropriate languages spoken in the Republic of Macedonia, and applying the W3C standards in the design itself, enabling access to persons with disabilities. Furthermore, the use of open standards for the published documents will increase and facilitate the search and access to published information.

- The domain names of the public institutions are chosen arbitrarily, leading to different solutions and inconsistencies – use of different languages regardless of the content, inconsistent application of the .gov.mk or .mk extensions, and cases of using .org.mk and even foreign .com domains (for instance, dojran-info.com).This makes finding and using the websites more difficult for the citizens. It is recommended that the method of selection of the domain names is consistent for all the institutions through a predetermined methodology.
- An inconsistency was also observed in the visibility of information about the spending of the institutions' funds. It is necessary to develop a system for review of finances and their allocation by the institutions in order to achieve greater transparency and accountability before the citizens. Aside from the required fulfillment of the legal obligations by publishing fiscal data in their original form, in order to increase the citizens' insight and participation it is important to develop systems for automated data processing and display in context, for instance by using visualizations. An example of such a system developed by the civil society sector is the sledigiparite.mk platform.
- Almost all of the institutions have their own website, which means that the first effort has been made, but what is missing is content relevant for the user, i.e. the citizen. More agile maintenance of these systems is needed, as well as timely updates with the necessary information.
- Although they are binding, the public consultation processes are taking place formally and are insufficiently reflected in the specified online mechanisms. Many of the laws are adopted in short procedures, making it difficult for the citizens to participate with their own proposals. An important demotivating factor for the citizens and organizations to participate in the consultative

processes are the previous experiences when their needs and the public interest were not taken into consideration when adopting the legislation. Content published on the websites is relatively informative, but insufficiently participatory. Greater participation is necessary as well as its facilitation, which would lead to the drawing of conclusions from that participation.

- The systems are mainly used for providing (one-way) information to the citizens, but a more active two-way communication is needed, as well as mutual instigation of initiatives. Information needs to be published more transparently, especially when it comes to passing laws, public debates and open calls for participation in public debates.
- Since there are instruments for both participation in and control over the public institutions (adequate functioning of the State Audit Office, with a mechanism for sanctions and personal responsibility of those who do not comply with these mechanisms), these instruments must be used more actively.
- There are numerous tools offered by the institutions, but respondents indicate that there is inadequate use of these tools by the civil servants themselves, who are responsible for updating these tools, and on the other hand, insufficient activity by the public - both the expert and the general public, i.e. the citizens themselves. The capacity building of the public administration for exercising greater transparency, accountability and inclusion of the stakeholders in the decision-making process is essential.
- There is a lack of publicly available policies regarding the use of social networks and comment moderation by the public administration or by individual institutions. The development and application of such policies, compliant with the legal regulations - especially the ones related to the fight against hate speech, would provide a suitable environment for an enhanced interaction with the citizens.
- Demonstrating awareness and concern for the protection of human rights in the digital sphere is an important aspect of building trust between the institutions and the citizens. A step forward in this direction is the posting of privacy policies, as well as other documents, such as regulations and codes that would guarantee this, within the competences of the institutions.

- The institutions are becoming aware of the importance of the web, and there is an increasing number of e-services being offered. The state should be a leader in this field. It is therefore necessary to work on the fulfillment of the principles of e-inclusion and to address the issues related to accessibility, as well as the issues related to people with disabilities.
- E-inclusion and e-participation are a reflection of the democratic capacity of the government. The democratic capacity of the authorities is currently a greater challenge than the instrument through which they realize their willingness to ensure transparency and participation in the decision-making process. The current efforts of the public institutions should be enhanced by capacity building and harmonization of the centrally adopted policies and their dispersion in all levels of the government and public administration.

INTRODUCTION

This public policy paper examines the current level of use of the websites of central and local authorities in the Republic of Macedonia (i.e. the websites with .gov.mk domains) in the areas of transparency, accountability and e-participation of the citizens in the decision making process. The public policy paper offers recommendations on how to overcome the obstacles preventing the citizens to use the full potential of the new technologies in these areas.

In 2014, many Macedonian citizens are using digital technologies, and most of the citizens have some form of direct internet access and/or use mobile technologies. Various estimates (imprecise due to a lack of relevant census data) indicate that over 60% of the citizens use the internet and more than 50% use the social networks (data from Facebook's marketing department).

While almost all government institutions in the country have some kind of online presence, a very small part of their websites provide services for citizens, particularly in the area of civic participation and for completing a number of other daily tasks. The institutions are mostly using the web and other information and communication technologies (ICT) as tools for providing unidirectional, selective information, or as digital "identity cards". The main motive for this research was the need to precisely determine the key parameters related to this area, as a basis for further development.

Governments in the world are trying to cope with the major social changes arising from the increasing application of new technologies through the transformation towards a comprehensive application of the e-Government concept which includes not only "the use of ICT, and especially the internet, for achieving better governance" (OECD, 2003), but also a complete change in the relations between governments, citizens and businesses, and between the different levels of government with the use of ICT (World Bank, 2009). This transformation encompasses more efficient government services, i.e. e-government services or e-services, an improved interaction with the private sector, and increases the power of the citizens by enabling access to information and more efficient management. The desired outcome of these transformations: reduced corruption, increased transparency, ease of use, increase of revenues and/or reduction of costs.

As a result of the need for worldwide coordination, the Open Government Partnership (OGP) was established in 2011, as an international platform uniting reformers from the government sector and

the civil society sector from 64 countries in an effort to make the governments more responsible, accountable and open to the citizens. As a member of this partnership, Macedonia has an obligation to promote the following priority areas:

- participatory policy making,
- improved electronic services and procedures
- open data
- protection of consumers and citizens
- open information on a local level

According to the progress report on Macedonia within the framework of the Partnership for the period 2012-2013., out of the total of 35 commitments, the Republic of Macedonia has completely fulfilled 2, significantly fulfilled 6, partially fulfilled 17 commitments and is yet to start fulfilling 10 remaining commitments. At the time of this research, the new National Action Plan is being prepared.

According to the "Measuring the Information Society" report of the International Telecommunication Union identifying key elements of ICT development for the UN and monitoring the costs and availability of ICT services in line with internationally established methods through the index for ICT development, the Republic of Macedonia held the 57th place according to the 2012 global ranking, and the 55th place in 2011 (ITU, 2013).

Metamorphosis is an active participant in the development of information society in Macedonia and the region since 1999, with a series of efforts based on the premise that the citizen must be at the center of his development. Metamorphosis held the position that the e-government concept is not a concept of "old government" plus internet, but that this new concept relates more to the "government" part or organizational changes in management and procedures, rather than just the "e-" part i.e. the introduction of electronic devices and software. Metamorphosis participated in the preparation and adoption of a number of key documents, such as the National Strategy for Information Society (2004-2005), the ICT strategy for the judiciary (2006), the National Strategy for Electronic Communications (2007), and in the development of key documents for public policies in the field of e-government (including the implementation of USAID's e-Gov project in 2011). In addition, Metamorphosis had a positive impact on the inclusion of the values of inclusion of all members of society, protection

of the human rights in the digital sphere and promotion of the active citizen participation on a public policy level. The e-Citizens section of the National Strategy from 2005 explicitly states that: "E-services taking into account the needs of citizens are one of the main reasons for the overall transformation to a knowledge-based society. They will bring real improvement to the quality of life of citizens, as well as increased participation."

This research also builds on the research for web presence of municipalities conducted by Metamorphosis in 2010, which found that almost half of the municipalities practically have dysfunctional websites (or no websites at all) and only partially fulfill the obligations from the Law on Free Access to Information of Public Character.

Although new technologies offer effective and cheaper means for including citizens in the decision making processes, their potential is not completely used in Macedonia. This research was conducted in the period from December 2013 to May 2014, on a sample of 383 internet domains, i.e. 220 websites owned by government bodies and institutions of the state administration, providing a detailed insight into the situation with and the use of the government websites as tools for transparency, accountability and e-participation.

Apart from the review of the content available at the gov.mk websites and the functionalities of the government websites, 17 structured interviews were conducted with experts in various fields, answering questions about their expert opinion on the situation with government websites in Macedonia, for what functions and to what extent do the government bodies use the new technologies, in order to provide relevant information and e-participation of citizens, what information is missing, what are the standards, laws and regulations governing civic e-participation in the Republic of Macedonia, what's missing in RM in terms of standards at EU level guaranteeing the participation of citizens in the decision-making process by using new technologies, and what should the Republic of Macedonia do to enhance the opportunities for civic e-participation.

Ten interviews were also conducted with representatives of government bodies in order to determine which new technologies are used by their institution, what functions are they mostly using the websites for, what are the standards, laws and regulations governing civic e-participation, what steps are taken to improve the transparency, accountability and civic e-participation, what information of public character is available and what information is proactively published on their websites, what

mechanisms for e-participation are they using, how do they familiarize citizens with the institution's e-services and mechanisms for e-participation, how much do they consult citizens and how often do they update their websites.

In order to analyze the initial results from the research, Metamorphosis organized a public consultation meeting on June 2, 2014 attended by 13 representatives of public and private institutions, as well as representatives of the NGO sector who shared their opinions, remarks and comments. Public insight and an opportunity for consultation with the general public were provided over the internet in May and early June 2014.

The purpose of this public policy paper is to contribute to raising the awareness of the key stakeholders: government officials and employees, the business sector, civil society activists and the media, about the level of development of e-government services related to civic participation and to serve as a roadmap for their improvement on a local and national level.

All data collected for the purposes of this public policy paper, and the results from the structured interviews are available as open data in the section "Publications: Research" on the www.metamorphosis.org.mk website.

CURRENT DEVELOPMENTS AND RESEARCH FINDINGS

THE SITUATION IN MACEDONIA

The websites of government bodies, mostly using the gov.mk extension, are focusing on one-way communication and offer limited opportunities for interaction.

Over the past few years, the Government of the Republic of Macedonia has established several mechanisms related to citizen participation, transparency and accountability. In 2006, the Law on Free Access to Information of Public Character was adopted and its implementation was initiated. In 2008, the National Electronic Registry of Regulations of the Republic of Macedonia (ENER.gov.mk) was established as part of the Regulatory Impact Assessment (RIA) process which implies the implementation of appropriate and coordinated consultations with the public by submitting proposals, opinions and comments, with an opportunity to include the stakeholders in the creation of regulations in a timely manner. In 2011, the Government of RM adopted the Code of good practice for

civil participation in the policy making process through the Department for Cooperation with NGOs of the General Secretariat (nvosorabotka.gov.mk). That same year, the Code for consultation with the public during the preparation of the regulation with accompanying guidelines was also adopted, and in 2012 the Ministry of Information Society and Administration launched the e-democracy portal (e-demokratija.mk), aimed at increasing citizen participation with similar functions as ENER, but with additional features: forum and blog.

STRUCTURE OF THE SAMPLE

As part of this research, and in order to determine the extent to which the regulation and the tools available to the institutions in the Republic of Macedonia are used for transparency, accountability and e-participation – all websites that could be determined as belonging to the bodies of the central and local government were reviewed. These websites are a representative sample that reflects the general situation, although it is possible that there are other government websites that were not included in the research. For example, these could be websites without gov.mk domains, or websites using subdomains of level 4, on some of the identified domains.

The initial source for obtaining a list of such websites was the list of government domains registered on the Macedonian Academic and Research Network - MARNet (whois.marnet.mk). The criterion for identifying government domains was the use of the gov.mk extension.

Although the registry of .MK domains is specified as one of the open data collections within the framework of the Open Government Partnership, the list of domains could only by obtained by performing a manual review. The reason for this is that the data are not available in a form that allows processing and MARNet rejected the request to provide a list of domains owned by government bodies, due to its Rulebook (indicating non-compliance with the principles for open data). Part of the process for requesting this data included arbitration by the Directorate for Personal Data Protection, determining that the request for the list of domains owned by the government bodies of Macedonia is not contrary to the Law on Personal Data Protection.

In the interest of time, the registry of MARNet was manually searched (which according to the independent service domejn.ot.mk contains over 28,000 domains) and 373 registered gov.mk domains were found. After April 1, 2014 by applying a concept of liberalization, MARNet transferred a part of its competences to private registries, and the list with all the .MK domains is no longer publicly available, and citizens can only check whether a particular domain is already registered or not.

In addition to the .gov.mk domains from MARNet's registry, the sample for this research was supplemented with an additional 10 domains in possession of state administration organs and government bodies, associated with the protection of citizens' rights, as a precondition for e-participation. They mostly use other forms of domains, mainly in the form *institution.mk* or *abbreviation.mk*. An additional search was carried out by a manual review of the base of public information holders on the website of the Commission for Protection of the Right to Free Access to Information of Public Character (komspi.mk) in the sections "State Institutions" and "Municipalities in the Republic of Macedonia". This search also served to verify the already obtained list of .gov.mk domains.

With the initial review of these 383 domains, it was determined that 62% or 236 of the domains are active and lead to a functional website, whereas 4% (16) of the domains are redirecting to a website that uses a different domain as the default. 34% of the reviewed domains are not working (do not lead anywhere or lead to a server page). By examining where these domains are directing, it was established that there are 220 unique government websites.

Table 1: Structure of the sample of examined domains and functional websites

	Domains	Web sites
.gov.mk	373	210
other types of domains	10	10
Total	**383**	**220**

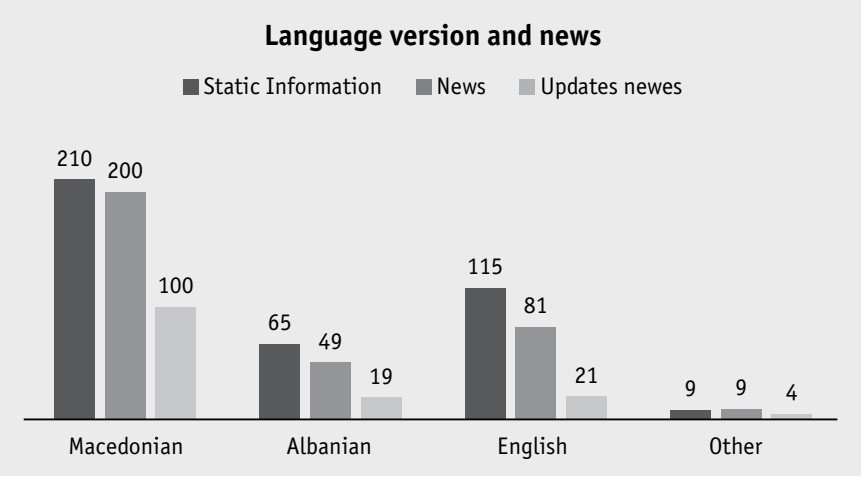
In terms of languages used for the domain names, 65% of the reviewed domains are in Macedonian, 11% in English and 2% in Albanian language. When visiting domains that lead to active websites, 87% of the content that appears first on the websites is in Macedonian, 7% is in Albanian and 6% is in English, and 1% of the websites show content in another language or a combination of the foregoing languages.

BASIC INFORMATION

All interviewed representatives from the government bodies confirmed that the website of their institution is mostly used to inform the citizens about the ongoing projects and activities of the institution, and for publishing information of public character.

Out of the total of 220 reviewed websites, 95% have Macedonian language versions, 52% have English versions, 30% have Albanian, and 1% have versions in Turkish, German and Spanish language, while 0.005%, i.e. one website has Italian, and another website has a French version. In addition, the contents in different languages are mutually synchronized in 16% of the total number of websites.

The research indicated that 91% of the websites have a news section or periodically publish news in Macedonian, 22% of the websites have a news section in Albanian and 37% have a news section in English language. By comparing the date of the last update with the date of the visit, it was established that:



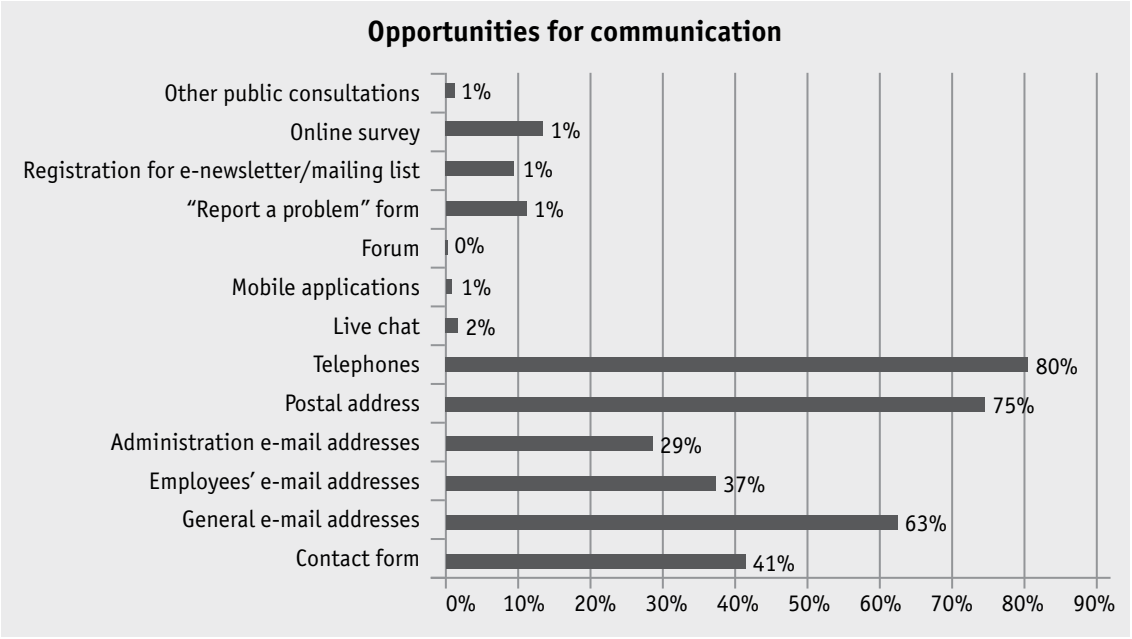
- 50% of the news in Macedonian language have been updated during the previous month, 17% have been updated during the previous 1-2 months, 17% were updated more than 2 months prior to the research (2009-2013), and it could not be determined for 17% of the websites when they were updated because no dates were specified;
- 39% of the news in Albanian have been updated during the previous month, 22% have been updated during the previous 1-2 months, 20% have been updated more than two months ago (2010-2013), and it could not be determined for 16% when they were updated because no dates were specified, and the news sections of 2% of the websites are not working due to other problems.

- Least updated are the news in English, 26% of which were published during the previous month, 20% during the previous 1-2 months, 31% were published more than 2 months ago (2007-2013), the date of publication could not be determined for the news sections of 17% of the websites, and 6% of the website are not working due to other problems.

According to the surveyed institutions, state institutions are mostly using their websites and the social media to provide the citizens with relevant information and opportunities to participate in the decision-making process. Representatives of the government bodies who participated in the research said they generally introduce citizens to the e-services and mechanisms for e-participation offered by their institution through press releases and information on their website.

OPPORTUNITIES FOR COMMUNICATION

41% of the reviewed websites have made available a contact form, and 11% have a form for reporting problems. A general contact e-mail is available on 63% of the websites. E-mail addresses for contacting the staff are available on 37% of the reviewed websites, and e-mail addresses for contacting members of administrative structures are available on 29% of the reviewed websites.



In order to test whether they respond to questions via e-mail, invitations for participation in the research were sent via e-mail to a total of 179 institutions, through the addresses published on the 220 reviewed websites. Only 8 of them responded (0.04%).

Information about the address of the institution is available on 75% of the reviewed websites and 80% of the websites provide telephone numbers.

Only 2% of the institutions have a Live chat option on their websites, and 1% have developed mobile applications that are available on their website.

As for communication via the social media, 23% of the government websites have set up an option for linking to a Facebook profile/page, and 88% of these links lead to a Facebook profile/page of the institution. 10% of the institutions are present on Twitter, and 76% of the linked Twitter profiles belong to an institution. 13% of the institutions have their own YouTube channel, out of which 96% are registered to the institution that has set the link on its website.

The remaining presences on social networks are mostly registered to the head of the institution. This practice creates many questions, for instance, about the ownership of such a profile/page - whether it is owned by the institution or the politician himself. In such cases, citizens who are interested in the work of the institution are forced to become followers of a certain politician (at the same time sharing personal data). The politician also receives an additional social capital that he can use after his mandate is over, or for electoral purposes outside of institutional competences. During 2013, and especially before the start of the election campaign in 2014 for promotion of the Facebook pages of high government officials, paid ads were posted, and the officials were first presented with their title, and then with their party affiliation or personally. Information about the payment for these ads (personal, partisan, or from the Budget of RM) was not available to the public.

Another aspect of inconsistency in the use of social networks is that some of the state institutions have banned access to the social networks, while the institutions themselves maintain their profiles and pages. One such example is the Assembly of the Republic of Macedonia. This approach adversely affects the inclusion of the citizens and the interaction with the employees and with the elected officials through these channels for communication.

ACCESSIBILITY

E-accessibility and the development of an inclusive e-government are priorities from the National Strategy for e-Inclusion 2011-2014, with the Ministry of Information Society and Administration in charge of its implementation. The measures that are related to the subject of this research and that are arising from the first priority include the preparation of a Guide for the implementation of the WCAG 2.0 standard and its promotion, which was accomplished, but the Ministry has not announced the extent to which the measure "Application of the WCAG 2.0 standard for web-accessibility of the websites and electronic services of the state administration bodies" has been fulfilled. According to this measure, the state administration bodies should be obliged to "additionally develop their websites to comply with the recommendations of the W3C Consortium for web-accessibility through the published Guide for implementation of WCAG 2.0."

Regarding accessibility, 80% of the interviewed representatives of government bodies stated that their websites are not optimized to meet the needs of persons with disabilities. The remaining 20% responded that their websites are partially optimized. Overall, the reviewed websites do not fully adhere to the standards for persons with disabilities. The review with the WAWE tool (wave.webaim.org) which is recommended by W3C, on a sample of 22 websites that were identified as good examples in the research indicated errors in all of the websites. The number of errors is smaller for websites that use some kind of standardized software for presenting content (CMS) and HTML5. Some of the errors identified with this tool were related to the contrast (easier viewing for visually impaired persons) which depends on the graphic design.

Another aspect of accessibility is also the use of different languages understandable for the citizens of the Republic of Macedonia, especially the mother tongues of the ethnic groups. With the lack of a clear standard and commitments, the development of different language versions depends on the political will of the governing structures of the institutions, leading to the inconsistency which is evident from the results listed in the Basic Information section.

Data published on the reviewed websites is mostly in a form that allows easy automatic processing. In cases that are designated as open data sets in terms of fulfillment of the obligations under the Open Government Partnership, we can often find information published as part of articles (for instance, by the Ministry of Interior, MARNet), and not as complete sets/databases in standardized formats that can be downloaded.

Although the Search function is expected to be a default function for any website, only 50% of the reviewed websites offer the functionality to search through the content available on their webpages. The Search function was not working on some of the websites, such as president.gov.mk during the time of the review (on March 15 – before the presidential elections, and on April 25, May 20 and June 5).

The most common format of the published documents is PDF (75%), followed by MS Office (26%). 100% of the interviewed representatives of the government bodies stated that PDF is the most common format they use for publishing documents on their website. In some cases, the documents in this format consist of images - scanned documents that have not been subjected to automatic text conversion, and are therefore unreadable for specialized screen readers, and users cannot search through their text.

TRANSPARENCY

When asked about the steps taken by their institution for improving transparency, accountability and e-participation of citizens through their website, all respondents said their website is being updated with important information about their work.

On the other hand, the review the websites indicated that only 10% of the government bodies and institutions have published the annual work program for the current year on their websites. An additional 15% of the reviewed websites have made available a general annual program of the body/ institution covering the current 2014.

57% of the reviewed websites have a section for the relevant legislation for the specific institution, such as laws, rulebooks and regulations. This research was limited to only determining the presence of this section, and due to the limited resources it could not be determined whether the section contains *all* applicable regulations pertaining to the institution, and whether they were updated, which may be the subject of other research. In some cases this section contained draft-laws without any information whether they were adopted or fair copies without a date or information whether there were any amendments in the meantime. Furthermore, 17% of the institutions publish an Official Gazette or their official bulletin.

As for providing access to information of public character, a special section/page for free access to information of public character is available on 33% of the websites of the government institutions, and this page is easily accessible, often through a clearly visible link in the main menu. In addition, 24% of the institutions provide complete information in terms of the applicable regulations (contact person, list of documents of public character).

Most of the interviewed representatives of government bodies (70%) responded that part of the information of public character is available on their website.

When asked about what kind of information of public character they are publishing proactively on the web, without the need for citizens to submit a special request, the representatives of the government bodies replied: information pursuant to the Law on Free Access to Information of Public Character and in accordance with the Law on Personal Data Protection; announcements, reports, information about the work of the Municipal council and its committees, as well as information about the activities of the Mayor; programs and strategies for work in the field of public services and local economic development; financial statements; public procurements; urban planning documentation; statistical data and annual reports; financing, budget, annual statements, action plan; official gazette of the municipality; as well as information about the activities in the schools, kindergartens, cultural events, information about the construction of infrastructural facilities, urban equipment, lighting and other information from a communal aspect.

On the other hand, the majority of the interviewed experts believe that the government websites are usually missing information of public character (53%) and fiscal data (76%).

During the review of the websites, we were not able to determine a correlation with the claim of 40% of the surveyed representatives of institutions that the information of public character requested by citizens are also published online, apart from being sent to the information seekers. On the other hand, it is exactly because of this low level of engagement of the institutions in this regard, that the civil society organizations have launched the web platforms spinfo.org.mk and slobodenpristap.mk, used for publishing the answers to citizens' questions received in accordance with the Law on Free Access to Information of Public Character.

50% of the reviewed websites have made available information about the officials, such as board members, members of a municipal council, or MPs.

Only 8% of the government bodies/institutions publish their answers to questions of general interest in a separate section of their website.

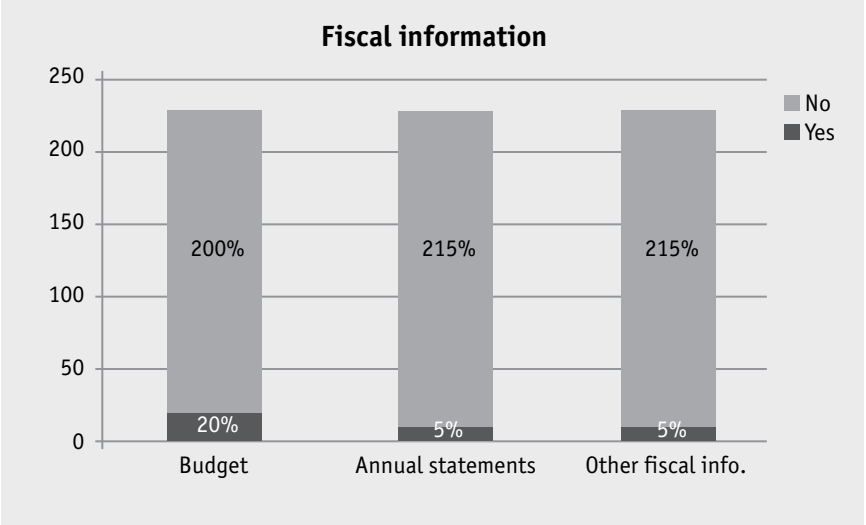
Only 5% of the websites covered with the research have privacy policies, and 90% of these websites make their privacy policies available on their homepage. Having a privacy policy is not a legal requirement, but it is a good practice for the entities from the public and private sector to explain to their users what data of theirs is being controlled and processed and what measures are taken to protect the data in accordance with the Law on Personal Data Protection. This is an important factor for strengthening the trust between the users and the institutions, i.e. the service providers.

Only a small portion of the websites (2%) has a section/page for open data (sometimes titled as "Отворено владино партнерство", according to the initial translation of "Open Government Partnership"). As an obstacle for the development of the public consultations on this topic during 2014, experts and representatives of government bodies indicate the lack of communication between the institutions, and emphasize the need for increased awareness among those responsible.

ACCOUNTABILITY

The availability of fiscal data was used as an indicator for accountability in this research. It was examined whether and in what form the institutions publish their budgets, annual statements and other data in this field.

The availability of fiscal data is limited. In fact, 9% of the government institutions have published their budget on their website, 2% have published their annual statements, and 2% have shared other fiscal data. Furthermore, the institutions are legally obliged to publish their budgets in their official gazettes/bulletins, but official bulletins are only present on 17% of the reviewed websites.



On the other hand, 50% of the interviewed representatives of government bodies responded that financing schemes, data on tenders and signed contracts are available on the websites of the ministries and easily visible. 40% responded that these are not available at all. This indicates that in some institutions there is willingness for greater accountability and transparency, which is reflected through the willingness to participate in this kind of research.

E-PARTICIPATION

The utilization of the websites of government bodies and institutions as mechanisms for public consultations on a level of the central and local government is low. Only 12% of the interviewed experts believe that the government websites are used for enabling citizen participation in the decision-making processes, and 70% believe that there is room for their improvement.

As much as 60% of the interviewed representatives of the government bodies responded that the citizens are not consulted during the preparation of draft-laws by the Ministries and they are not able to comment and submit petitions in electronic form through the website of the institution. This was also confirmed with the structured interviews with the experts, of whom 82% said that so far, they have not been consulted through the mechanisms for e-participation during the decision making process.

Online surveys for citizens' opinion are available on 14% of the websites, and registration for an e-newsletter or mailing list is offered by 10% of the websites. Other opportunities for public consultation are available on 1% of the reviewed websites, such as: "Give us an idea", "Free line for consumers," "Questions from citizens".

Only one of the reviewed websites, e-Democracy, offers an opportunity for consultations through the "Forum" section, whereas ENER also provides an opportunity for registered users to leave comments. In addition, 150 discussions in 15 categories with a total of 173 comments were published in the Forum of e-Democracy before the research, with the last comment posted on November 17, 2012. Only a small part of the large quantity of new laws and amendments adopted by the Assembly are published for a public debate through ENER. For example, in the period from December 24, 2012 to February 25, 2013, 90 new laws were adopted, 36 of which were adopted in a shortened procedure (FOSM, 2013), whereas during the same period only 24 new draft-laws were posted on ENER. In addition, the draft-laws posted on ENER are marked with "Status: Open", i.e. there is no information whether they have been adopted and in what form, or whether they were changed by the Assembly via amendments. Only a part of them contain responses from the competent institutions to the comments from the citizens. The small number of opportunities for public discussion through open forums is actually a deterioration of the situation, because dozens of websites of institutions of the central and local government in the first decade of the 21st century offered forum sections. During the public consultation on this topic in the period 2007-2009, some of the representatives of the institutions cited the inability to hire additional civil servants who would serve as moderators, as the reason for termination of the forums. This is contradictory to the increased number of employees in the public administration during the mentioned period, and in the following period.

40% of the interviewed institutions responded affirmatively to the question "Do you consult the citizens through the mechanisms for e-participation when making a decision?" and cited an example of doing this through their websites and on the social networks, through public debates with the citizens on the draft versions of the documents, stating that the calls for these public debates are announced on their websites, as well as the reports from the public debates, ENER and e-Democracy, and the citizen surveys.

On the other hand, 30% of the interviewed representatives of the institutions stated that their institution is never using ENER or e-Democracy during the initiation of changes to the legislation (laws, bylaws, regulations).

Almost all of the interviewed representatives of the institutions and representatives of the civil society sector and the private sector indicated that there is a low level of awareness about the existence of mechanisms for consultation, and that their visibility is also low. This was confirmed with the review of the websites in terms of informing the citizens on this subject. There is a generally low level of connection of government websites with other websites that may offer useful general information and opportunities for e-participation of the citizens. Namely, 24% of the websites link to the sobranie.mk website, 18% link to uslugi.gov.mk, 4% link to e-demokratija.mk, and only 2% of the websites link to ener.gov.mk using banners, while only 1% of the reviewed websites link to the specialized government website for open data opendata.mioa.gov.mk.

E-SERVICES

The level of e-services was evaluated according to the methodology used in the EU, developed by "Capgemini". According to this approach, the process of providing e-services is conducted on the following levels: (1) information, (2) one-way interaction, (3) two-way interaction, (4) transaction, (5) targeting/personalization.

Research on the development of e-government services in the past established that in the initial period of development of this area in Macedonia priority was given to the development of e-services bringing revenue to the state, that are among the 20 core services on an EU level, enabling the strengthening of the reputation of the country on the international comparative ranking lists.
50% of the reviewed websites provide downloadable forms for services to the citizens.

2% of the gov.mk websites offer e-services: e-employment; electronic exchange of documents with the Customs Administration of the Republic of Macedonia (with a login system); report a problem; login system for bidding in auctions; cadastral data, cost of living index calculator; electronic travel registration and e-taxes.

When asked whether their institution offers e-services, 20% of the interviewed representatives of government bodies responded negatively. Those who responded affirmatively cited the following e-services: e-registration of residence, scheduling appointments for applying for personal documents, e-applications from citizens, e-requests and payments for personal documents, e-journal, e-map, e-catalogue, e-tax system, e-building permit, report a problem, e-problems, issuing of building permits, e-reminder.

SPECIFIED EXAMPLES

The interviewed respondents specified the following websites as positive examples in certain fields.

Ease of use	**Easy navigation and search**	**Regularly updated**	**Application of most progressive technology**
ipard.gov.mk	sobranie.mk	ipard.gov.mk	katastar.gov.mk
uslugi.gov.mk	strumica.gov.mk	uslugi.gov.mk	sobranie.mk
katastar.gov.mk	uslugi.gov.mk	sobranie.mk	e-demokratija.mk
strumica.gov.mk	ujp.gov.mk	ujp.gov.mk	e-nabavki.mk
ujp.gov.mk	veles.gov.mk	vlada.mk	meteo.gov.mk
caska.gov.mk	ener.gov.mk	caska.gov.mk	veles.gov.mk
veles.gov.mk	mtsp.gov.mk	veles.gov.mk	mon.gov.mk
ener.gov.mk		mvr.gov.mk	ener.gov.mk
sec.mk		mon.mk	ujp.gov.mk
avrm.gov.mk		e-nabavki.gov.mk	avrm.gov.mk
sobranie.mk		nvosorabotka.gov.mk	bjn.gov.mk
		aerodrom.gov.mk	crm.com.mk

POLICY MAKING OPPORTUNITIES

The adoption of public policies that affect the increased use of websites owned by government institutions and state administration bodies as tools for transparency, accountability and e-participation is directly dependent on the political will of the highest levels of government.

The general conclusion of the respondents is that the existing legislation is satisfactory, but additional stipulation is needed with documents on a national level (strategies and action plans), and with rules adopted by individual institutions, thereby ensuring its implementation, regardless of staffing and other decisions. By specifying the responsibilities of institutions, their work would be facilitated, and citizens would have a clear insight into the ways in which they could influence the fulfillment of the obligations assumed by the institution.

The introduction of clear standards that would obligate the institutions to implement additional mechanisms for transparency, accountability and civic participation, and to promote the existing mechanisms, could be conducted by adopting procedures for decisions made by the Government of RM, at the proposal of the Ministry of Information Society and Administration. An additional impetus and incentive in this process is Macedonia's membership in the Open Government Partnership, making the fulfillment of the obligations a priority, and the expansion of the scope of future national action plans in this area.

Additionally, the relevant institutions can despite the legal obligations voluntarily adopt rulebooks and develop e-services in this area, and some of them can apply methods for self-regulation - for example, municipalities by using the ZELS decision-making infrastructure.

In all these cases, the role of the citizens and civil society organizations that represent their interests is also crucial. Their proactive and continuous engagement through consistent requests to the institutions to consistently use the existing mechanisms for transparency, accountability and e-participation and to develop new ones in accordance with the expressed needs, as a factor that

- The existing legal framework in the Republic of Macedonia regulates civic e-participation, but it is necessary to consistently implement it and to raise the awareness of citizens and institutions about the existence of opportunities and about the importance of using new media, in this particular case - the websites as tools for transparency, accountability, and e-participation.
- It is necessary to raise the awareness of the institutions about the importance of the role of the websites as tools and platforms for transparency, accountability and civic participation. Almost all processes taking place without the use of new technologies ("on paper") can be optimized with the application of new technologies, enabling a more efficient use of the financial and human resources and the time of civil servants and citizens.
- As one of the major problems cited by the institutions on a local level (municipalities) is the lack of funds intended for maintenance of the institution's website, and for a person in charge of that task. It is therefore recommended to regulate the role of the people in charge of administering the websites through a systematization of jobs, and to transfer funds from the budget of the institutions for this purpose.

- Users often indicate that they encounter difficulties in finding specific information on particular websites, and sometimes the information is dispersed on more than a single website. Therefore, it is necessary to connect all the resources and important websites in order to provide easier access to the information and increased transparency.
- It is necessary to create improved visibility and access to information on the websites. One of the possible solutions is to standardize the format and layout of the websites by using a template to achieve a uniform appearance and location of the information on each webpage, thereby promoting e-inclusiveness from all aspects in order to enable access to the services for all citizens – by also applying all the appropriate languages spoken in the Republic of Macedonia, and applying the W3C standards in the design itself, enabling access to persons with disabilities. Furthermore, the use of open standards for the published documents will increase and facilitate the search and access to published information.
- The domain names of the public institutions are chosen arbitrarily, leading to different solutions and inconsistencies – use of different languages regardless of the content, inconsistent application of the .gov.mk or .mk extensions, and cases of using .org.mk and even foreign .com domains (for instance, dojran-info.com).This makes finding and using the websites more difficult for the citizens. It is recommended that the method of selection of the domain names is consistent for all the institutions through a predetermined methodology.
- An inconsistency was also observed in the visibility of information about the spending of the institutions' funds. It is necessary to develop a system for review of finances and their allocation by the institutions in order to achieve greater transparency and accountability before the citizens. Aside from the required fulfillment of the legal obligations by publishing fiscal data in their original form, in order to increase the citizens' insight and participation it is important to develop systems for automated data processing and display in context, for instance by using visualizations. An example of such a system developed by the civil society sector is the sledigiparite.mk platform.
- Almost all of the institutions have their own website, which means that the first effort has been made, but what is missing is content relevant for the user, i.e. the citizen. More agile maintenance of these systems is needed, as well as timely updates with the necessary information.
- Although they are binding, the public consultation processes are taking place formally and are insufficiently reflected in the specified online mechanisms. Many of the laws are adopted in short procedures, making it difficult for the citizens to participate with their own proposals.

An important demotivating factor for the citizens and organizations to participate in the consultative processes are the previous experiences when their needs and the public interest were not taken into consideration when adopting the legislation. Content published on the websites is relatively informative, but insufficiently participatory. Greater participation is necessary as well as its facilitation, which would lead to the drawing of conclusions from that participation.

- The systems are mainly used for providing (one-way) information to the citizens, but a more active two-way communication is needed, as well as mutual instigation of initiatives. Information needs to be published more transparently, especially when it comes to passing laws, public debates and open calls for participation in public debates.
- Since there are instruments for both participation in and control over the public institutions (adequate functioning of the State Audit Office, with a mechanism for sanctions and personal responsibility of those who do not comply with these mechanisms), these instruments must be used more actively.
- There are numerous tools offered by the institutions, but respondents indicate that there is inadequate use of these tools by the civil servants themselves, who are responsible for updating these tools, and on the other hand, insufficient activity by the public - both the expert and the general public, i.e. the citizens themselves. The capacity building of the public administration for exercising greater transparency, accountability and inclusion of the stakeholders in the decision-making process is essential.
- There is a lack of publicly available policies regarding the use of social networks and comment moderation by the public administration or by individual institutions. The development and application of such policies, compliant with the legal regulations - especially the ones related to the fight against hate speech, would provide a suitable environment for an enhanced interaction with the citizens.
- Demonstrating awareness and concern for the protection of human rights in the digital sphere is an important aspect of building trust between the institutions and the citizens. A step forward in this direction is the posting of privacy policies, as well as other documents, such as regulations and codes that would guarantee this, within the competences of the institutions.
- The institutions are becoming aware of the importance of the web, and there is an increasing number of e-services being offered. The state should be a leader in this field. It is therefore necessary to work on the fulfillment of the principles of e-inclusion and to address the issues related to accessibility, as well as the issues related to people with disabilities.

- E-inclusion and e-participation are a reflection of the democratic capacity of the government. The democratic capacity of the authorities is currently a greater challenge than the instrument through which they realize their willingness to ensure transparency and participation in the decision-making process. The current efforts of the public institutions should be enhanced by capacity building and harmonization of the centrally adopted policies and their dispersion in all levels of the government and public administration.

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TESTIMONIAL

The aim of the project "Increasing the Use of .gov.mk Websites as Tools for Transparency, Accountability and e-Participation" was to examine the current level of use of the websites of central and local authorities in the Republic of Macedonia (mostly using .gov.mk domains) in the areas of transparency, accountability and e-participation of the citizens in the decision making process, and to offer recommendations on how to overcome the obstacles preventing the citizens to use the full potential of the new technologies in these areas. The purpose of the public policy paper is to contribute to raising the awareness of the key stakeholders: government officials and employees, the business sector, civil society activists and the media, about the level of development of e-government services related to civic participation and to serve as a roadmap for their improvement on a local and national level.

This research was the first wide-ranging research on the topic of the use of gov.mk web-sites as tools for transparency, accountability and e-participation in Macedonia. It included several aspects of the use of gov.mk web-sites that were previously not assessed. Additionally, the research gives a basis for additional studies of the use of gov.mk web-sites, since the limited resources did not allow more detailed analysis of some additional aspects of the matter. This research provides comparisons with standards in the areas of transparency, accountability and e-participation proscribed by national laws, and the best practices from the region. The established baseline data will be used for advocacy in order to incite the government institutions to improve their online presence and to generate demand by the general public for proper implementation of the mechanism for public consultations.

Through this project, Metamorphosis has built upon the experiences of previous policy efforts, including the National Strategy and Policy for Information Society Development (2004-2005), as well as the advocacy for implementation of the Law on Free Access to Public Information, as well as number of projects related to increasing transparency and

accountability, and improvement of e-governance. Knowledge was gained regarding several aspects of the use of new technologies on the gov.mk web-sites such as basic communication: What kind of information is published on the websites and in which manner, what is lacking; Accessibility: Which languages are used and are the websites accessible to people with disabilities?; Transparency: whether the institutions adhere to the Law on Free Access to Information of Public Character; Accountability: what mechanisms the institutions use in the area of fiscal policy; e-Participation: Are public consultation mechanisms at central and local level used and for which purposes?

The results of the project will be further used to create policy products to be used to advocate for greater transparency, accountability and provision of online mechanisms for active citizen participation. Further research on the use of governmental websites will continue, using the research results as benchmark, enabling longitudinal approach, but also inclusion of additional aspects of the use of .gov.mk websites.

The further advocacy efforts and the further research built upon the policy paper will contribute to raising awareness of key stakeholders, primarily government officials, civic activists and the media, about the level of development of e-government services and will serve as a roadmap for their improvement at local and national level. At regional le vel, Metamorphosis will continue dissemination of the research results and spurring of advocacy efforts in order to achieve higher levels of civic engagement and government responsibility through the network ACTION SEE - Accountability, Technology and Institutional Openness Network in South-East Europe. Metamorphosis is co-founder of ACTION SEE alongside with leading NGOs from Bosnia and Herzegovina, Serbia, Montenegro and Albania which work on using the new technologies' strategies for empowering citizens and increasing public institutions' accountability through Truth-meter projects and organizing four POINT conferences on Political Accountability and New Technologies in the region and beyond.

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CITIZENS IN CITY DEVELOPMENT: THE STATE, EXPERIENCES AND RECOMMENDATIONS

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SUMMARY

During 2014 Mikro Art has conducted research on the national and local policies, legal framework which defines the process of urban and spatial planning and experience of citizens in relation to the urban planning. The research has been conducted in several cities of Serbia: Subotica, Belgrade, Kragujevac and Novi Sad. The policy paper *Citizens in City Development: State, Experience and Recommendations* was created on the basis of the research findings and it confirmed an initial hypothesis of the research that citizens can be an efficient corrective of urban planning and that they can help in defining and protecting the public interest. With this summary of the policy paper we want to offer a few systematic recommendations for including the public into spatial and urban development.

The importance of citizens' participation in decision making and the need for creating a framework which enables it are recognized in strategic documents of Republic of Serbia. Among the others, Spatial Plan of Republic of Serbia from 2010th to 2020th states: „Elementary postulate of this strategy is that the benefits should be on the side of the citizens as a conscious and active participants in the development of the area in which they live, which implies both the territory of the local community and the state where the local community is located. Therefore, it is essential that citizens have the opportunity, the right and responsibility to make decisions on spatial development of their territory (settlement and associated area), but also to participate in decision-making on the spatial development of their region and their state. "

However, the legislation that regulates the spatial and urban planning, as well as associated practice, does not reflect the strategic commitment to transparent and participatory decision-making of (sustainable) spatial and urban development. Mechanisms provided by existing legislation show that the role and effective impact

of citizens are negligible and serve more to fulfill the form than genuinely involve the people in the process which directly shapes their environment. The problems of citizen participation in urban planning can be detected in all structural requirements for recognizing interests of all stakeholders and actively engaging citizens:

1. Citizens are not duly and timely informed: In the current procedure, the public is informed with the process of making urban plan only twice (through an official gazette and an ad in local newspaper): when a decision for a development of the plan is made (which suggests very little about what is a planned direction of the development) and when the plan comes to public review (meaning that the plan has been mostly completed and is subject only to minor changes). To have information on public review online or in the area covered by the new plan is a rare practice. In such circumstances, the people who are most directly affected by the approved changes learn about them only when implementation of the plan and construction begins. An additional problem is that public review and public hearings take place only on weekdays during working hours and in space which can be located far from the subject area or a workplace of the person who would come to the hearing.

2. Citizens do not understand the planned development and its consequences: Urban plans are composed of drawings and texts that are strictly professional so general population cannot easily grasp the planned changes. For this reason, the Rulebook on the Content, Manner and Procedure for the Preparation of Planning Documents states that the local government authority in charge of spatial and urban planning provides the necessary information and technical assistance to all interested individuals and legal entities in regards to presented documentation and writing of complaints on proposed solutions. However, the effectiveness of these measures in practice depends solely on the willingness of public officials to guide interested parties in the details of the plan and to explain them what developments of the subject area may occur.

3. Citizens are consulted only pro forma in the final stage of making planning documentation: The experience of successful initiatives shows that the impact citizens can have on the final version of an urban plan is not guaranteed through mechanisms provided by the law (written complaints on a draft of the plan). Instead, pressure on

the institutions through mobilization, media and direct contacts with stakeholders is necessary. Public hearings, as a form of communication with citizens within the plan-making procedure, allows only the elaboration of already filed complaints and responses and thus does not open a space for a true public discussion. In addition, the conclusions of Commission for plans are not available to the public so citizens are not aware of the final version of the plan which goes to an assembly for adoption, although this is also the instance in which they could react through the members of the municipal assembly.

Citizens' involvement in defining the public interest is also important because, without public control, planning professionals are under pressure to make decisions that are not in accordance with the professional standards and are against the interests of the community. Greater involvement of citizens supports experts in making professional decisions, which enables the necessary balance of interests in the process of urbanization.

RECOMMENDATIONS

A general recommendation to public authorities in the Republic of Serbia for improving the involvement of citizens in the urban planning decision-making is to harmonize the Law on Planning and Construction and the by-law documents (above all, the Rulebook on the Content, Manner and Procedure for the Preparation of Planning Documents) with the Spatial Plan, the National Strategy for Sustainable Development and other strategic documents and thus effectively enable public participation in spatial and urban development.

1. THE PROCESS OF INFORMING CITIZENS ABOUT URBAN DEVELOPMENT SHOULD BE IMPROVED: Duly and timely information allows citizens not only to be familiar with the process, but also to collect additional information that will help them to understand it, articulate their interests and constructively engage in planning.

1.1. Providing information in the subject area: It is necessary to physically present the information in the area covered by a plan in the making, as soon as the process begins, similar to information provided on construction sites. Information on the development of a plan and the possibilities of participation can be submitted directly by mail to citizens living in the subject area. Public review should also be organized outside of standard working hours, allowing access to more citizens. Additionally, public hearing may be organized physically closer to the location to which the plan refers, while public presentations of the draft of a plan should be mandatory. This is an opportunity for citizens to get familiarized with the content and effects of planned development. Also, discussion of proposed solutions allows a better understanding of the plan and articulating opinions of a wider circle of people.

1.2. Providing information via the Internet: Urban plans at all stages of their creation (concept and draft) and with complete documentation (textual and graphical parts) should be made available online, to give citizens an easier insight not only into the final solution but also in the course of development and thus provide better understanding of the planned changes and its effects. The reports of commissions for plans should also be available to guarantee the public control of their work and insight into the decisions relevant to the planning process.

2. CITIZENS SHOULD BE CONSULTED IN ALL STAGES OF URBAN DEVELOPMENT DECISION-MAKING: Only citizens' involvement in all phases of making urban plans enables a real participation and inclusion of the interests of all stakeholders. Public discussion which allows a dialogue between investors, workers, representatives of local government and citizens should be introduced to guarantee a better articulation of public interest. Also, it is necessary to introduce an active participation of citizens through the Internet, at least by enabling electronic submission of complaints to the draft planning documents.

UVOD

Urbani i prostorni razvoj Srbije nije centralna tema ni javnih rasprava ni političkih izbora, on nije bitan ni u okviru pregovora o priključenju Evropskoj uniji, i kao takav ostaje izvan važnih društvenih tokova. Čak i kada se raspravlja o velikim građevinskim poduhvatima (kakav je odnedavno "Beograd na vodi") naglašavaju se investicije i očekivani privredni razvoj a zanemaruju se i previđaju posledice po društvenu zajednicu. Tako se urbanizam sve češće svodi na takozvani „investitorski urbanizam" u okviru koga je razvoj grada prepušten tokovima kapitala i moći. "Beograd na vodi" posebno slikovito dočarava takav odnos države prema procesu urbanog razvoja pa tako Privremeno veće grada Beograda, bez skupštinske rasprave, donosi odluke o izradi Izmena i dopuna Generalnog plana Beograda[1], povezanih planova i ukidanju nepovoljne studije po projekat[2] a javnost se ne upoznaje ni sa prirodom investicije ni sa detaljima planiranog razvoja. I dok, zbog pompeznosti ovog projekta, javnost bar zna da se nešto dešava, urbanistički i prostorni planovi u celoj zemlji se donose po sličnom šablonu uz sistemsku neinformisanost i isključenost javnosti, kako stručne tako i opšte, iz procesa planiranja.

Nalazimo da je samorazumljivo da to ne bi trebalo da je tako: gradovi postoje zbog građana i njihovo je pravo da učestvuju u procesima koji oblikuju sredinu u kojoj žive.[3] Prostorni i urbani razvoj čine prostornu dimenziju celokupnog razvoja društva pa je zato rasprava o prostornom i urbanom razvoju zapravo rasprava i o tome u kakvom društvu želimo da živimo.

Ovim dokumentom želimo da pokažemo da je uključivanje građana u procese planiranja strateško opredeljenje Republike Srbije izraženo u nizu relevantnih dokumenata, što se ne reflektuje u zakonskom okviru planiranja niti u praksama koje raspravu o javnom interesu razumevaju kao dijalog političke i ekonomske elite. Sa druge strane, skromno ali značajno iskustvo građana koji su se

1 Pošto je po postojećem planu predviđen međunarodni konkurs za predmetnu lokaciju.

2 Sve ove odluke se nalaze u Službenom listu grada Beograda broj 36/2014

3 To kaže i Prostorni plan Republike Srbije od 2010. do 2020. godine: "Elementarni postulat ove strategije je da dobrobit treba da bude na strani građana kao svesnih i aktivnih učesnika u razvoju teritorije na kojoj žive, što podrazumeva kako teritoriju lokalne zajednice tako i države u kojoj se lokalna zajednica nalazi. Radi toga, nužno je da građani imaju mogućnost, pravo i obavezu da odlučuju o prostornom razvoju svoje teritorije (naselje i pripadajući atar), ali i da učestvuju u odlučivanju o prostornom razvoju svoga regiona i svoje države."

organizovali i uključili u procese urbanističkog planiranja, i na osnovu kojeg je ovaj dokument i nastao, potvrđuje da građani mogu da budu efikasan korektiv urbanog planiranja i da mogu da pomognu pri definisanju i zaštiti javnog interesa. Na kraju, donosimo i nekoliko sistemskih preporuka za uključivanje javnosti u prostorni i urbanistički razvoj.

U daljem tekstu se fokusiramo na urbanističke planove pošto su zbog većeg stepena razrade relevantniji za lokalne zajednice kao i zato što su inicijative čije iskustvo čini našu primarnu građu radile na ovom nivou planiranja. Smatramo da se naši nalazi i preporuke odnose i na prostorne planove.

Na kraju, želimo da se zahvalimo svim predstavnicima grupa građana i udruženja koji su svojim iskustvom i spremnošću na saradnju doprineli kvalitetu naših nalaza, kao i stručnjacima i prijateljima koji su pomogli svojim znanjem i komentarima. Sve greške idu nama na čast.

PROBLEM JAVNOG INTERESA U URBANOM RAZVOJU: GRADI ONAJ KOJI IMA PARA - ONO ŠTO HOĆE

Razvojni dokumenti, od nacionalnih strategija do urbanističkih planova jednog gradskog bloka, donose se kako bi se utvrdio javni interes u daljem razvoju društva. U kapitalističkoj demokratiji to je nominalno pluralna kategorija, tj. nastaje kroz interakciju velikog broja pojedinačnih i grupnih interesa koji su neretko konfliktni. I dok neki stabilniji sistemi relativno uspešno balansiraju između kvaliteta života građana, ekonomskog rasta, brige o marginalnim grupama, zaštite životne sredine i drugih interesa zajednice, u postsocijalističkim zemljama je drugačije. Usled narušenih razvojnih principa, poremećene socijalne strukture i političke neravnoteže, javni interes definišu oni koji su najmoćniji. U praksi su to međusobno zavisne političke i ekonomske elite koje u cilju sopstvenih interesa očuvanja moći i uvećanja kapitala zanemaruju interese zajednice i građana.

To se slikovito može videti u prostornoj dimenziji društva, gde je Srbija pretrpela radikalne promene u poslednje dve ipo decenije. Pre toga, u vreme SFRJ, urbanizam je imao značajno mesto u političkom sistemu. Javni interes je, u skladu sa ideološkim ciljevima, bio strogo definisan: trebalo je izgraditi i unaprediti gradove, povećati stambeni fond i učiniti gradove boljim mestom za život. Urbanizmu

se pristupalo planski i o njemu se debatovalo. Literatura o urbanizmu je bila široko rasprostranjena, novi urbanistički planovi su bili opširno predstavljani na televiziji i u drugim medijima a stručna rasprava je pratila izradu većine planova regulacije. Tvrdeći ovo ne zaboravljamo da je ovaj sistem u osnovi bio centralizovan i da su interesi i potrebe građana u velikoj meri bili inferiorni u odnosu na političku volju i planove.

Sa strukturalnim promenama celokupnog političkog sistema, i značaj i odnos prema urbanizmu su se radiklano promenili. Pre svega, odustalo se od razvojnih planova i stambene politike. Urbanizacija je uglavnom prepuštena slobodnoj inicijativi, bilo da je reč o porodičnoj kući ili izgradnji komercijalnih projekata. Tako se i javni interes u planskim dokumentima definiše *ad-hoc,* po potrebi investitora i često ne uzimajući u obzir druge relevantne dokumente. Toleriše se bespravna gradnja (koja je postojala i ranije ali u manjoj meri) kao i uzurpacija prostora. Jedina odlika urbanizma iz prethodnog perioda koja je zadržana je prevaga političkih interesa nad građanskim, sada intezivno prožeta partikularnim interesima pojedinaca sa ekonomskim kapitalom. U kombinaciji sa netransparentnim procedurama izrade planskih i građevinskih dokumenata, sve ovo je dovelo do neprimerenih građevinskih projekata (kako urbanistički tako i bezbedonosno i estetski), opterećivanja postojeć e infrastrukture i uopšte narušavanja kvaliteta života u urbanim sredinama.[4] O razmerama haosa govori i to da je od 2000. godine sprovedeno nekoliko legalizacije bespravnih objekata kojima je planirano uknjižavanje 1 300 000 objekata.[5]

Dok je u početku ovakvo stanje bilo pravdano ratovima u kojima Srbija zvanično nije učestvovala, pratećim velikim prilivom prislinih migranata i sveopštim društvenim haosom, promene sa početka 2000-ih godina su paradigmu urbanog razvoja u kojoj je odlučujuća sprega političke i ekonomske elite samo "normalizovale". Specifično shvaćena "tržišna ekonomija" postala je srce te nove razvojne paradigme a princip „gradi onaj koji ima para - ono što hoće" nesputan sa beskrajno labilnim „javnim interesom" uz poslovični nedostatak mehanizama građanske participacije u donošenju relevantnih odluka. Netransparentnost celog procesa i pripadajuća korupcija samo pojačavaju konačne efekte.

Prostorni plan Republike Srbije od 2010. do 2020. godine[6] između ostalih problema prostornog razvoja urbanih naselja navodi: „Stanje izgradnje u Republici Srbiji karakterišu mnoge ad hoc odluke,

4 O političkim osnovama urbanizacije nakon Drugog svetskog rata videti opširnije u: Ksenija Petovar, Naši gradovi između države i građana, 2003.

5 Zapisnik 9. sednice Odbora za prostorno planiranje, saobraćaj, infrastrukturu i telekomunikacije održane 7. marta 2013. godine.

6 Službeni glasnik RS, br. 88/2010

odsustvo regulatornih mehanizama, nejasan odnos prema standardima gde su stari odbačeni ili već im delom negirani, a novi još uvek ne postoje ili nisu prihvaćeni, i gde pravila izgradnje i uređivanje gradskog prostora definišu pre svega interesi investitora a tek zatim interesi građana odnosno javni interes. Time gradovi Republike Srbije u velikoj meri gube kvalitet urbane strukture."

AKTERI URBANOG RAZVOJA I PRINCIPI UKLJUČIVANJA GRAĐANA: GOLIJAT I DAVID

Kako bi bolje razumeli sam proces koji dovodi do ovakve situacije pogledajmo ko su akteri urbanog razvoja. Pomalo ogoljeno, razlikujemo četiri grupe:

- ***Političke strukture*** koje utvrđuju i štite javni interes
- ***Investitori*** koji ulažu kapital u izgradnju zarad zadovoljavanja svojih (ekonomskih) interesa
- ***Građani*** koji žive u datoj sredini, kao i oni koji su na bilo koji drugi način zainteresovani za njen razvoj
- ***Stručnjaci*** koji operacionalizuju interese svih aktera kroz konkretne planske dokumente

U lokalnim političko-ekonomskim okolnostima (u kojima se razvoj izjednačava sa ekonomski rastom a on dalje sa neupitnošću investicija) evidentna je tendencija da se pojedinačni ekonomski interes tretira kao javni. (Pritom, samorazumljivo je da je interes investitora da maksimalizuje svoj profit.) Zbog toga je neophodno da postoje mehanizmi koji vrše korekciju i omogućavaju da na kraju, u urbanističkom i prostornom planu, što širi spektar interesa bude uzet u obzir. Jednostavno: javni interes definisan planskim dokumentima treba da korespondira sa samom javnošću. To bi trebalo da garantuje politička struktura.

Uloga stručnjaka koji se bave prostornim razvojem u svemu tome je da, poštujući profesionalne standarde, pomire širi javni interes, interes investitora i interes građana. Ako interes investitora nije sputan zahtevima vezanim za javni interes, tj. javni interes niko ne brani, ni stručnjaci, po pravilu, ne mogu da se suprotstave namerama investitora pa se njihova uloga svodi na tehničko iscrtavanje investitorskih želja. Stručnjaci nisu autonomni u odnosu na političko-ekonomske strukture jer one

finansiraju njihov rad i nisu skloni da javno govore o problematici javnog interesa u kontekstu urbanog razvoja i investitorskog ponašanja. To potvrđuje i činjenica da se ovom društvenom trendu (kao i konkretnim projektima u kojima se flagrantno ugrožava javni interes) glasno suprotstavljaju uglavnom stručnjaci koji su u penziji.

Konačno, poslednja brana stapanju javnog interesa sa partikularnim interesima pojedinaca su građani koji čine sam grad i čijom dobrobiti se javni interes nominalno i definiše. Da bi građani mogli da se uključe u definisanje javnog interesa, nužno je da postoje mehanizmi koji im to omoguć avaju.

Značaj učešća građana u odlučivanju i potreba za stvaranjem okvira koji to i omogućava prepoznati su u strateškim dokumentima Republike Srbije. Tako Nacionalna strategija održivog razvoja Republike Srbije[7] kao drugi princip navodi: „Otvoreno i demokratsko društvo - učešće građana u odlučivanju. Garantovati građanska prava, obezbediti pristup informacijama i osigurati dostupnost pravde. Obezbediti odgovarajuće konsultacije s građanima i učešće građana u donošenju odluka...“ U Strategiji reforme javne uprave u Republici Srbiji[8] usvojeni su principi Evropskog administrativnog prostora pa tako i „otvorenost i transparentnost upravnog sistema i unapređenje učešća građana i drugih društvenih subjekata u radu javne uprave“. Prostorni plan Republike Srbije od 2010. do 2020. godine[9] usvaja i sledeće principe: „aktivna implementacija politike prostornog razvoja i učešć a javnosti“, „unapređenje pristupačnosti informacijama i znanju preko elektronskih mreža razvijenih da pokrivaju čitave regione/državu“, „permanentna edukacija građana i administracije“, „striktno poštovanje zaštite javnog interesa, javnih dobara i javnog prostora“ i „veća transparentnost kod odlučivanja o prostornom razvoju.“[10] To su naravno samo neki od strateških dokumenata koji su u duhu međunarodnih konvencija koje je Republika Srbija potpisala i korespondiraju sa procesom pregovora o članstvu u Evropskoj uniji.

7 Službeni glasnik RS, br. 57/2008; Po strategiji “Održivi razvoj podrazumeva izradu modela koji na kvalitetan način zadovoljavaju društveno-ekonomske potrebe i interese građana, a istovremeno uklanjaju ili znatno smanjuju uticaje koji prete ili štete životnoj sredini i prirodnim resursima.”

8 Službeni glasnik RS, br. 09/2014

9 Službeni glasnik RS, br. 88/2010

10 Isti dokument u institucionalne odgovornosti svrstava i sledeći zadatak: “razviti zakonom propisane ali i lokalno uslovljene i neformalne oblike participacije u procesu odlučivanja (građani i njihova udruženja, akteri prostornog razvoja, udruženja i političke stranke), čime se razrešava konflikt na relaciji javno -- privatno, smanjuje otpor razvojnim inicijativama, i stvara podrška realizaciji politika, strategija i planova koje se na ovaj način donose”

Realno, građani uspevaju da zaštite svoje interese samo vaninstitucionalnim organizovanjem, trošeći velike resurse a neretko se i fizički konfrontirajući. Ono što je indikativno u primerima koji slede jeste da institucije, posle uspešnog pritiska građana, postaju odgovornije u svom poslu. Najilustrativniji je primer grupe "Almašani" iz Novog Sada. Oni su za javni uvid (koji se po nepisanom pravilu za sporne planove dešava u vreme godišnjih odmora) saznali 10 dana pre isteka roka za primedbe, uspeli da se organizuju i podnesu primedbu čije su javno obrazlaganje spremili u saradnji sa pravnicima i urbanističkim stručnjacima. Nakon njihovog ukazivanja na sve nepravilnosti i sporne momente novog planskog rešenja za Almaški kraj, predlagači su priznali propuste i ušli u novu proceduru izrade plana. U novom procesu, osim konsultacije sa Almašanima, angažovana je i agencija za istraživanje javnog mnjenja koja je na uzorku od 1000 građana područija obuhvaćenog planom sprovela anketu.

Organi lokalne samouprave najčešće navode nedostatak novca i drugih resursa kao razlog što aktivnije ne obaveštavaju i ne uključuju građane u proces planiranja. U tom smislu zahvalan je primer grupe "Nasmeši se Subotici" koja je pri donošenju novog plana generalne regulacije dobila isti takav odgovor na pitanje: zašto nisu obavešteni bar oni ljudi čije su kuće predviđene za rušenje? Pošto su sami obavestili građane o planiranim promenama, javnost se uzbunila i plan je povučen a gradonačelnik je (našao sredstva i) svima poslao pismo da njihove kuće neće biti dirane.

Da je pritisak građana plodotvoran za zaštitu javnog interesa pokazuje i primer inicijative "Zaštitimo Zvezdarsku šumu" čije aktivnosti su dovele do toga da Sekretarijat za zaštitu životne sredine promeni originalno stanovište i stane u zaštitu nekoliko hektara šume koji su originalnim nacrtom plana bili predviđeni za seču. Ovo ukazuje na još jedan vrlo značajan aspekt uključivanja građana u definisanje javnog interesa. Naime, bez kontrole javnosti, stručnjaci (koji su uključeni u proces planiranja od izdavanja uslova do izrade plane) su, kao što je već rečeno, izloženi pritisku investitora da donesu odluke koje nisu u skladu sa strukom i protive se interesu zajednice. Veće angažovanje građana je podrška stručnjacima u donošenju profesionalnih odluka, što omogućava neophodnu ravnotežu interesa u procesu urbanizacije.[11]

Nažalost, ni jedna od uspešnih priča pomenutih inicijativa nema nastavak koji bi bio poželjan: one ne uspostvaljaju nove, slične prakse, ne menjaju standarde ponašanja, ni u lokalu, a kamoli

11 Iskustvo inicijativa koje su ukazivale na odluke koje su u suprotnosti sa javnim interesom pokazuje da su stručnjaci zaposleni u lokalnoj samoupravi često, privatno bili na strani inicijativa ali se nisu suprotstavljali i izjašnjavali javno, zbog pritiska koji je na njih vršen.

šire. Svaka nova situacija iziskuje novo organizovanje i novi pritisak na institucije, entuzijazam aktera, snalažljivost, mnogo vremena i energije. Neodrživost takvog modela je očigledna: građani se retko organizuju u zaštiti svojih interesa, kako zbog neinformisanosti i nerazumevanja predloženih rešenja, tako i zbog toga što to iziskuje okolnosti i kapacitete kojih često nema.. Dodatni problem održivosti ovog aktivističkog modela u zaštiti društvenih interesa je i to što organizovana grupa građana može uspešno da štiti svoje interese ali ti interesi se ne moraju nužno poklapati sa interesom šire zajednice, tj. javnim interesom. Dalje, uspeh svake od inicijativa je direktno povezan sa resursima kojim raspolaže (ljudstvo, vreme, znanje, kontakti) kao i time ko je „na drugoj strani" (što zbog uticaja koji može imati unutar institucija tako i zbog mogućih grešaka koje su napravljene u proceduri i predloženom rešenju). Sve to sugeriše da kao što se javni interes ne može definisati *ad hoc* u planskim dokumentima, ne može se očekivati ni da će biti odbranjen *ad hoc* akcijama građana.

Da bi proces planiranja uvažio interese svih zainteresovanih strana i aktivno uključio građane neophodno je ispuniti neke strukturalne zahteve:

1. Građani treba da su adekvatno i blagovremeno informisani
2. Građani treba da razumeju planirani razvoj i njegove posledice
3. Građani treba da budu konsultovani u svim fazama procesa planiranja

Zakonodavstvo koje uređuje proces prostornog i urbanog planiranja[12], kao ni prateća praksa, ne reflektuju stratešku opredeljenost ka transparentnom i participativnom odlučivanju o (održivom) prostornom i urbanom razvoju. Mehanizmi predviđeni postojećim zakonskim rešenjem pokazuju da su uloga i efektivni uticaj građana zanemarljivi, tako da više služe ispunjavanju forme nego iskrenom uključivanju ljudi u proces koji direktno menja njihovu životnu sredinu. Da bismo razumeli prepreke učešću građana u procesu urbanog planiranja, pogledajmo kako funkcioniše sama procedura donošenja urbanističkih planova.

12 Zakon o planiranju i izgradnji (Službeni glasnik RS, br. 72/2009, 81/2009 - ispr., 64/2010 - odluka US, 24/2011, 121/2012, 42/2013 - odluka US, 50/2013 - odluka US i 98/2013 - odluka US) i Pravilnik o sadržini, načinu i postupku izrade planskih dokumenata (Službeni glasnik RS, br. 31/2010, 69/2010, 16/2011)

PROCEDURA DONOŠENJA URBANISTIČKIH PLANOVA – REBUS ZA GRAĐANE

Od toga da li Inicijativu za izradu plana pokreće javna institucija ili privatno lice (najčešće preko preduzeća koje je registrovano za izradu urbanističkih planova) zavisi i to ko će je finansirati i realizovati. Inicijativa se upućuje nadležnom organu lokalne samouprave (Sekretarijat/Zavod/ Odeljenje za urbanizam). Ako je prihvati, nadležni organ sastavlja Odluku o izradi plana koja sadrži osnovne elemente (obim i površina plana, cilj izrade, imenovanje obrađivača plana i finansijera izrade). Odluka se upućuje Komisiji za planove. Komisija, nakon što da pozitivno mišljenje, Odluku prosleđuje Skupštini grada na usvajanje. Kada se Odluka objavi u Službenom listu lokalne samouprave stiču se pravni uslovi za izradu plana.

U prvoj fazi, obrađivač pravi koncept plana na osnovu interesa investitora a u skladu sa uslovima koje propisuju javna preduzeća. Koncept se sastoji od grafičkog i tekstualnog dela kojima se definišu: građevinsko područje sa predlogom površina javne namene, podela na urbanističke celine i zone, planirane trase, koridori, regulacija površina javne namene i osnovna mreža javne komunalne infrastrukture. Koncept se predaje nadležnom organu lokalne samouprave koji ga zajedno sa svojim mišljenjem prosleđuje Komisiji za planove na stručnu kontrolu. Sama stručna kontrola podrazumeva proveru usklađenosti planskog dokumenta sa planskim dokumentima šireg područja, odlukom o izradi, zakonskim aktima, standardima i normativima, kao i proveru opravdanosti planskog rešenja.

Nakon što koncept prođe stručnu kontorlu, odnosno dobije pozitivno mišljenje Komisije, pristupa se izradi Nacrta plana koji sadrži sve elemente detaljno razrađenog finalnog plana.. Komisija za planove vrši i stručnu kontrolu Nacrta plana nakon čega ga upućuje na javni uvid. Nadležni organ lokalne samouprave oglašava javni uvid u lokalnim dnevnim novinama i u periodu od 30 dana omogućava građanima da po prvi put vide sadržaj plana.

Sva zainteresovana pravna i fizička lica mogu da podnesu primedbe na izloženi plan u toku trajanja javnog uvida u pisanom obliku. Po završenom javnom uvidu, Komisija za planove održava javnu sednicu na kojoj podnosioci primedbi mogu usmeno da ih obrazlože. O svakoj podnetoj primedbi obrađivač plana javno iznosi svoj stav a konačnu odluku donosi Komisija za planove na zatvorenoj sednici na kojoj se sačinjava i Izveštaj o obavljenom javnom uvidu, na osnovu kojeg, po potrebi,

obrađivač koriguje nacrt. Kada se Nacrt plana koriguje, nadležni organ lokalne samouprave ga prosleđuje Skupštini grada na usvajanje.

ULOGA GRAĐANA U URBANOM RAZVOJU: NEPOŽELJNI STATISTA

Problemi učešća građana u procesu urbanističkog planiranja se pokazuju u sva tri strukturalna zahteva:[13]

GRAĐANI NISU ADEKVATNO I BLAGOVREMENO INFORMISANI

U predviđenoj proceduri , javnost je upoznata sa procesom donošenja urbanističkog plana samo u dva navrata: kada se donese odluka o izradi plana (u kojoj je poznato samo koja površina je obuhvać ena novim planom, ko finansira, ko izrađuje i šta je opšti cilj, iz čega se sve zajedno može naslutiti jako malo o tome šta je planirani pravac razvoja) i kada plan dođe na javni uvid (odnosno kada je plan već završen i podložan samo sitnijim izmenama). Zakon propisuje da se odluka o izradi plana objavljuje u Službenom listu dok se javni uvid oglašava još i jednim oglasom u lokalnim dnevnim novinama. Retka praksa je da se javni uvid objavi i na sajtu lokalne samouprave ili da se okači na tabli mesne zajednice koja je obuhvaćena novim planom, Slanje pisama svim građanima koji se nalaze na teritoriji obuhvaćnoj novim planom je već incident.

U takvim okolnostima, građani koji su najdirektnije pogođeni usvojenim promenama za njih saznaju tek kada počne izgradnja zbog koje je plan i donošen. Grupe građana koje su uspele da reaguju u toku javnog uvida, za njegovo postojanje su, uglavnom, saznali slučajno. Službeni list, oglasna tabla u opštini i niskotiražni lokalni list nisu kanali komunikacije koji garantuju da će informacija o javnom uvidu doći do građana koji bi za njega bili zainteresovani. Dodatni problem je i sam termin

13 Ovo je prepoznato i u, već citiranoj, Nacionalnoj strategiji održivog razvoja, u kojoj se navodi: "Na učešć e javnosti u odlučivanju uopšte, a posebno u oblasti zaštite životne sredine najviše negativno utiče to što građani nemaju iskustva i znanja o tehnikama i metodama učešća u odlučivanju, ali i to što nisu dovoljno izgrađeni mehanizmi i procedure učešća javnosti u odlučivanju (na primer, javnosti se ostavlja veoma kratak rok da se upozna s predlozima nekih propisa, akata i planova; pojedini planovi, mere, postupci nisu objavljeni i nisu predstavljeni javnosti, odnosno nisu dostupni javnosti, što takođe utiče na smanjivanje učešća javnosti u odlučivanju)."

javnog uvida i javne sednice: oni su, po pravilu, radnim danima, u radno vreme (a nekad samo u periodu između 13h i 15h i sl.) u jedinici lokalne samouprave (koja može biti udaljena i nekoliko desetina kilometara od samog područija o kom je reč ili radnog mesta onoga ko bi došao na uvid), Sve to, jako ograničava mogućnost informisanja o detaljima plana.

GRAĐANI NE RAZUMEJU PLANIRANI RAZVOJ I NJEGOVE POSLEDICE

Kada građani, ipak, saznaju za postojanje javnog uvida i upute se u prostor u kome je dokumentacija izložena (u beogradskom Sekretarijatu za urbanizam i građevinske poslove javni uvid se organizuje u hodniku suterena) to nikako ne znači i da će razumeti planirani razvoj. Urbanistički planovi se sastoje od crteža i teksta koji su usko stručni, pa laiku nije lako da ih razume i pronikne u planirane promene. Iz tog razloga, Pravilnik o sadržini, načinu i postupku izrade planskih dokumenata propisuje da „organ jedinice lokalne samouprave nadležan za poslove prostornog planiranja i urbanizam, svim zainteresovanim fizičkim i pravnim licima koja vrše uvid u izloženi planski dokument pruža potrebne informacije i stručnu pomoć u vezi sa pojedinim rešenjima i eventualnim davanjem primedbi na planski dokument“ kao i da „obezbeđuje povremeno prisustvo predstavnika obrađivača urbanističkog plana.“

Efikasnost ove mere zavisi od spremnosti službenika da uputi zainteresovana lica u detalje plana i da im objasni do kakvog razvoja predmetne oblasti može da dođe. Stvar se dodatno komplikuje kada je sam plan u suprotnosti sa drugim planskim dokumentima i urbanističkim standardima, kakav je najčešće kada prati vulgaran investitorski interes: da se postigne što veći profit od izgradnje, na uštrub postojeće infrastrukture i kvaliteta života građana. To najbolje potvrđuju iskustva inicijativa koje su se ovakvim planovima suprotstavljale. U tom procesu, ljudi su morali da savladaju obimnu urbanističku i pravnu materiju i da nađu profesionalce da im u tome pomognu.. Tako je zastupanje interesa zajednice koja je pogođena razvojnim planovima prepušteno vaninstitucionalnoj samoorganizovanosti građana i mogućnosti da angažuju neophodne resurse.

GRAĐANI SE KONSULTUJU SAMO PRO FORME U ZAVRŠNOJ FAZI IZRADE PLANSKIH DOKUMENATA

Iskustva uspešnih inicijativa pokazuju i to da uticaj koji građani mogu da imaju na konačni izgled urbanističkog plana nije garantovan mehanizmima koji su predviđeni zakonom (pisane primedbe na nacrt plana) već je neophodan pritisak na institucije kroz mobilizaciju, medije i direktne kontakte sa

glavnim akterima. Naime, kako se građani uključuju u proces planiranja tek kada je plan već gotov, oni ne učestvuju u određivanju pravca razvoja već više su u prilici da se izjašnjavaju o tehničkim detaljima. Da sama procedura donošenja plana ne sadrži nameru da se suštinski uvaže interesi zajednice pokazuje i primer neformalne grupe iz mesne zajednice Aerodrom u Kragujevcu koja se okupila kako bi sprečila izgradnju novih višespratnica u tom naselju. Po njihovim procenama, preko 300 građana je, tokom javnog uvida, podnelo pisane primedbe kojima se obrazlaže neprimerenost planiranih izmena; te primedbe nisu imale nikakav efekat na konačnu verziju plana.

Javna sednica, kao forma komunikacije sa građanima u okviru procedure donošenja urbanističkog plana, omogućava samo elaboraciju već podnetih primedbi i odgovor obrađivača ali ne i javnu raspravu.Mada retke lokalne samouprave imaju praksu dostavljanja pisanog odgovora za svaku podnetu primedbu, može se reći da to nije dovoljno i da postojeća procedura onemogućava dijalog i artikulaciju interesa šireg kruga građana.
Zaključci Komisije za planove nisu dostupni javnosti pa tako javnost nije upoznata sa finalnom verzijom plana koja ide u Skupštinu na usvajanje, iako je i to instanca u kojoj bi moglo da se reaguje, preko odbornika. Koliko je rad Komisije za planove obavijen velom tajne govori iskustvo inicijative "Zaštitimo Zvezdarsku šumu". Oni su uvid u zapisnik Komisije dobili tek nakon intervencije Poverenika za pristup informacijama od javnog značaja, i to im nisu dostavljene kopije dokumenta već im je omogućeno da ga pročitaju na licu mesta.

PREPORUKE DRŽAVI ILI SAVETI PRI DONOŠENJU URBANISTIČKOG PLANA

Tražeći odgovore na pitanja: na koji način bi se građani mogli aktivnije uključiti u proces urbanog planiranja i samim tim pomoći artikulaciji i garanciji javnog interesa u razvoju grada, na osnovu svega što je rečeno, dolazimo do nekoliko strukturnih preporuka.[14]

14 U Srbiji je bilo pokušaja pilotiranja nekih naprednijih mehanizama uključivanja građana u urbanističko planiranje o čemu svedoči i publikacija "Vodič za participaciju u planiranju urbanog razvoja" nastala u sklopu projekta „Unapređenje upravljanjem zemljištem na nivou lokalne samouprave u Srbiji" koji je sproveo "Ambero consulting" (Publikacija je dostupna na http://www.ambero-icon.rs/wp-content/uploads/2013/10/Vodic-za-participaciju-u-planiranju-urbanog-razvoja.pdf). Mi ćemo se fokusirati na jednostavnije intervencije, za čiju implementaciju procenjujemo da nije potrebno mnogo više od - političke volje.

5.0. Opšta preporuka organima javnih vlasti u Republici Srbiji je da usklade Zakon o planiranju i izgradnji i podzakonske akte (pre svih, Pravilnik o sadržini, načinu i postupku izrade planskih dokumenata) kako bi ih uskladili i sa Prostornim planom, Nacionalnom strategijom održivog razvoja i drugim strateškim dokumentima i tako efektivno omogućili učešće građana u prostornom i urbanističkom razvoju.

TREBA UNAPREDITI PROCES INFORMISANJA GRAĐANA O URBANOM RAZVOJU

Adekvatno i blagovremeno informisanje omogućava građanima ne samo da budu upoznati sa procesom već i da prikupe dodatne informacije koje će im pomoći da ga razumeju, artikulišu svoje interese i konstruktivno se uključe u planiranje.

5.1.1. Informisanje na licu mesta

Neophodno je plasirati informaciju u područije koje je obuhvaćeno planom u izradi, čim proces počne. To se može postići postavljem table (na vidno mesto, na zgradi mesne zajednice ili opštine), koja bi, poput gradilišne table, sadržala sve relevantne podatke (elementi koji se nalaze u odluci o izradi plana). Na taj način građani bi bili informisani i o tome ko izrađuje plan pa bi o njegovom sadržaju mogli i direktno da se informišu.

Informacije o izradi plana i mogućnostima učešća se mogu dostaviti i direktno, putem pošte, građanima koji žive na području obuhvaćenom urbanističkim planom u izradi; najjednostavnije, dodavanjem lista sa informacijama uz račun za Infostan. Na taj način se obezbeđuje najveća izvesnost da su svi najdirektnije pogođeni izmenama, informisani o procesu.

Javni uvid takođe treba učiniti dostupnijim građanima, tako što će biti omogućen i van standradnog radnog vremena (barem jednom nedeljno). Dodatno, javni uvid se može i fizički približiti lokaciji na koju se odnosi, tako što će biti organizovan u prostorijama lokalne mesne zajednice ili gradske opštine. Na taj način će se detaljnije informisanje o planiranom razvoju učiniti dostupnijim lokalnoj zajednici a lokalna rasprava o posledicama i interesima izvesnijom.

Javnu prezentaciju Nacrta urbanističkog plana treba učiniti obaveznom (poput javne prezentacije Nacrta prostornog plana). To je prilika da građani podrobnije budu upoznati sa sadržajem i efektima

planiranog razvoja. Takođe, diskusija o predloženim rešenjima omogućava bolje razumevanje samog plana i artikulaciju mišljenja šireg kruga građana.

5.1.2. Informisanje putem interneta

Ova praksa sporadično postoji, ali je treba učiniti obaveznom, kako bi informacije o planovima bile jednostavno dostupne najširoj javnosti. Ovo je u skladu sa još jednim strateškim principom reforme državne uprave -- modernizacijom državne uprave (E-uprava).

Treba učiniti dostupnim urbanistički plan u svim fazama njegovog nastanka (koncept i nacrt) i u potpunosti (tekstualni i grafički deo) da bi građani imali uvid, ne samo u konačno rešenje, već i u pravac razvoja i tako bolje razumeli planirani razvoj i njegove efekte. Takođe, sa disperzijom informacija, postiže se i šire uključivanje građana (koji ne moraju da budu direktno vezani za predmetno područije i koji ne bi otišli na javni uvid ali) koji svojim znanjem mogu da doprinesu razumevanju plana i raspravi o njegovoj utemeljenosti.

Treba učiniti dostupnim izveštaje Komisije za planove, kako bi se postigla kontrola javnosti nad njihovim radom i uvid u odluke relevantne za proces planiranja. Ovo se posebno odnosi na izveštaj o obavljenom javnom uvidu u kome se nalaze i odluke o usvajanju ili neusvajanju podnetih primedbi, od kojih zavisi i konačna verzija plana. Bez ove informacije, građani ne znaju šta je plan koji ide u Skupštinu na usvajanje, što je ujedno i poslednja instanca u kojoj mogu da intervenišu pre usvajanja plana.

TREBA KONSULTOVATI GRAĐANE U SVIM FAZAMA DONOŠENJA URBANISTIČKIH DOKUMENATA

Samo uključivanje građana u sve faze procesa donošenja urbanističkih planova omogućava stvarnu participaciju i uključivanje interesa svih zainteresovanih aktera. Kodeks dobre prakse za građansko učešće u procesu donošenja odluka Saveta Evrope[15] podrazumeva uključivanje javnosti, na svakom koraku, od postavljanja programa rada, preko izrade nacrta, donošenje odluke, sprovođenja politike, monitoringa do preformulisanja politike.

15 Usvojen na Konferenciji Ingos84 na sastanku 1. oktobra 2009. godine i u prevodu dostupan na: http://www.fosserbia.org/view_file.php?file_id=341

Plan mora biti na uvidu i dostupan komentarima već u ranoj fazi izrade. Nacrt zakona o uređenju prostora i izgradnji[16] koji je predložila Vlada u prethodnom sazivu u tom smislu daje zanimljiv predlog (iako generalno daje dodatnu prednost interesu investitora nad javnim interesom) uvođenjem ranog javnog uvida, na kojem se javnost upoznaje sa „opštim ciljevima i svrhom urbanističkog plana, mogućim rešenjima za urbanu obnovu ili razvoj prostorne celine, koja se bitno razlikuju od postojeć e, kao i efektima planiranja." Na ovaj način se građanima omogućava da daju komentar dok se još uvek utvrđuje pravac planiranog razvoja.

Treba uvesti javne rasprave (koje se i dalje mogu odigravati u mesnim zajednicama) na kojima informacija nije jednosmerna (kao kod javne prezentacije ili pisanih primedbi i odgovora na javnoj sednici) već omogućava dijalog između investitora, obrađivača, predstavnika lokalne samouprave i građana. Takav proces pomaže u razumevanju planiranih izmena i artikulaciji javnog interesa. Ako je konstruktivan (a ne ponovo *pro forme*) on dodatno osnažuje socijalni kapital zajednice.

Potrebno je uvesti i aktivno učešće građana putem interneta. Pre svega, treba omogućiti elektronsko dostavljanje primedbi na nacrte planskih dokumenata. Na taj način se smanjuje potrebna energija i vreme kako bi se građanin uključio u proces i stimuliše se šira javnost da uzme učešće u planiranju razvoja zajednice.

16 Ministarstvo građevinarstva i urbanizma, novembar 2013.

TESTIMONIAL

The research and produced analysis proved the starting assumptions the procedure of making urban and spatial plans needs to be more participatory and transparent in order to define public interest more consistently to the needs of the community. Experience of groups which gathered around problematic urban plans in the procedure shows that organized efforts of citizens can influence the final outcome to be more on the side of the public interest, making civil society a natural changemaker in this field.

We organized a public presentation of the policy paper and distributed it to civil society organizations. Policy brief was distributed to national stakeholders. The public presentation was held on June 19th, 2014 at Media Center in Belgrade. Besides the authors of the policy document, speakers on the presentation were Rade Djuric from *Transparency Serbia* and Vladimir Martinovic from group *Save Zvezdara forest*. Twenty participants attended (urban planning professionals, members of citizens' initiatives, journalists) and several media (B92, SeeCult) published articles on the event and the document. The policy paper was disseminated to 90 organizations and made available online while policy brief, in the light of new proposition for the Law on Planning and Construction was distributed to 16 different decision makers and stakeholders (Ministry of Construction, Traffic and Infrastructure, Ministry of State Administration and Local Self-Government, Standing Conference of Towns and Municipalities, and all parliamentary groups).

Besides the newest attempt to change the Law on Planning and Construction which opens an opportunity for some of the project's recommendations to be adopted (either in this law or its bylaws), another important occurrence coincided with the

end of the project. The Serbian government started the realization of the project of reconstructing the city center with private investor from UAE by changing General Plan of Belgrade without legal basis and in contrary to the practice and norms of planning. This, for the first time, gathered substantial number of civil society actors around the issue of changing urban plans. On the very first debate on the project (June 24th), Rastko Novakovic, a housing activist based in London, suggested that: "*the policy paper "Citizens in City Development" should be used as basis for further systematic campaigning in Serbia*". Also, we tested some of the mechanisms we suggest in the policy paper (advertising the public inquiry in the changes of the plan and providing the context necessary for understanding its consequences) and together with another initiative *KO GRADI GRAD* we organized a public event for writing complaints on the changes of the plan. Around 100 people gathered (from professionals to ordinary citizens) and produced 15 different argumented complaints which were submitted more than 1200 times. The remaining part of the procedure once again demonstrated that it exists only to include citizens *pro forme* but the action got media coverage and initiated the debate on how plans are changed.

In the further struggle for making more transparent and participatory procedure of making urban plans, products of the project "Towards transparent urban development process" create a solid basis that is already being referenced by various actors.

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The opinions presented in the publication are of the authors exclusively, and not of the Pontis Foundation, Slovak Aid or BCSDN.

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FOREWORD

According to recent studies on civil society development in the Western Balkan countries such as CIVICUS Civil Society Index, USAID Sustainability Index etc. civil society is maturing. While facing many different country-specific challenges, however, there is one in particular faced by all – lacking influence on the development of laws and policies that affect daily lives of ordinary citizens. Considering that all countries are on the path of EU membership, this process, no matter how long, always requires massive changes of laws, bylaws and policies (usually termed by experts as "harmonization" and "transposition"), sometimes even overnight.

In such a context our network felt it was one of its strategic goals to work on development of advocacy knowledge and skills among civil society actors as a base for their greater impact. Setting up of the Slovak-Balkan Public Policy Fund (SBPPF) was a natural consequence when contemplating how to embark on such a huge task as building of research and advocacy capacities of CSOs in different areas of work. Starting as a small pilot initiative that initially included only three countries, SBPPF quickly grew to be a recognized, multi-donor and network-supported project, covering six countries and producing twice as many policy products in its second round.

Considering that the EU accession process is the key transformation and reform factor, we have focused our effort on assisting both CSOs and individual young researchers in the development of concrete policy products that analyse considerably different but equally important topics. Among the 21 policy papers, there are those that aim to open up state budget for citizens' in Macedonia to understand how public money is being

spent; improve possibilities of young Bosniacs who have studied at foreign universities and want to return to BiH and work in public administration; improve integration and well-being of families and victims and missing persons during 1999 conflict in Kosovo; improve transparency and citizen participation to urban development process in Serbia, push for implementation of environmental standards in Albania under the Aarhus Convention…

The energy, the passion, the work and the commitment behind each CSO and individual researcher working on these and other papers, those of the project team and mentors who helped in their development and are presented via this collection testify that there is a wealthy potential among CSOs and researchers to give relevant, timely and concrete contribution to solving the array of issue being tackled in the papers. We hope that this collection will be a serious step in helping them promote, pressure and influence among public institutions and other relevant stakeholders in their countries.

Enjoy the read.

Tanja Hafner Ademi
Executive Director
BCSDN

SLOVAK - BALKAN PUBLIC POLICY FUND

Civil society actors often do not have the capacity to engage and influence civil society related policies and programmes and thus need to build their expertise and understanding of how the EU and national institutions function, as well as the possibilities and existing tools for advocacy. On the other hand the institutions also lack the awareness about the benefits and the added-value from working with CSOs and the policy options and solutions they might offer. It is for this purpose that BCSDN, in cooperation with Pontis Foundation and supported by Slovak Aid, the European Commission (EC) and the Balkan Trust for Democracy (BTD), has been administrating the Slovak - Balkan Public Policy Fund, an initiative that aims to support civil society actors form the Western Balkans to develop their research and advocacy capacities and increase their engagement into the creation of public policy in regards to the EU integration process.

The Slovak - Balkan Public Policy Fund operates through a programme of small grants and tailor-made capacity-building support allocated to CSOs and individuals that are involved in the shaping of the public debate. In the first phase, the Fund focused on providing local CSOs a concrete, practical, learning-by-doing support, including a training on public policy and a mentor, to develop a policy product and organize a public debate event in their area of work. In the pilot phase in 2011-2012, the grant scheme targeted 3 countries: Albania, Macedonia and Montenegro, and 11 small grants (between EUR 3,000 and EUR 5,000) were offered, out of the 113 applications recieved, in total amount of EUR 42,000

In 2013, the Slovak - Balkan Public Policy Fund continued its program for enabling CSOs and individual researchers from the Western Balkans to develop their advocacy skills and contribute to the reform process and policy making in their respective countries, but increased its coverage to include also Bosnia & Herzegovina, Kosovo and Serbia. In this second round, a total of 167 applications were received, out of which 21 projects were selected for funding (12 for Albania, BiH and Montenegro covered from the European Commission and BTD funds and 9 covering Kosovo, Macedonia and Serbia supported by Slovak Aid) and a total amount of EUR 84,000 was granted. The Call and application documents and process was coordinated and developed in cooperation with BCSDN member CRNVO who also acted as partner for sub-granting and monitoring of this project activity.

The awarded organizations and individuals received a training on advocacy and policy paper writing as well as continuous support in the implementation of the project by BCSDN, Pontis and assigned mentors. After the successful development of the policy products, in 2014, the majority of the projects were publicly presented in front of relevant stakeholders at national level, aiming to present the research data and the main policy recommendations, to raise public awareness about the addressed topic, and to advocate and lobby for improvement of public policies among the representatives of the CSOs, public institutions, donors and other relevant stakeholders who attended the presentations.

The policy outputs of this second round of the SBPPF program are revolving around two priority themes: 1) Democracy and the rule of law and 2) Non-majority communities. With regard to *Democracy and Rule of Law*, the focus is put on analyzing one or several of the following issues: policy-making and policy implementation/enforcement, corruption,

media, access to public information, administration capacity and transparency of public institutions; while within the second priority theme, *Non-majority communities*, special attention is given to: respect and protection of non-majority, social groups and groups in position of other forms of discrimination and people with disabilities.

The Slovak Balkan Public Policy Fund has proved to be a successful support model for boosting reserach and advocacy skills of CSOs in the Western Balkan countries, as projects supported in both rounds have demonstrated tangible results from their policy work. BCSDN is convinced that the selection conducted by an evaluation committee, composed of experts on public policy issues, advocacy and civil society development from the Western Balkan Countries and EU countries, produced successful policy outputs and empowerd civil society actors with great advocacy potential and opportunity for real impact in the policy-making process.

Balkan Civil Society Development Network (BCSDN) is a network bringing together 15 civil society organizations (CSOs) from the Balkan region, both new member states and (pre)-accession countries; a network which exists since 2003 and has been officially formalized in 2009. Its mission is to empower the civil society and influence European and national policies towards a more enabling environment for civil society development in order to ensure sustainable and functioning democracies in the Balkans. Its work mainly focuses on advancing the concerns of local CSOs and other stakeholders to EU institutions, regional inter-governmental forums, and national governments relevant for enlargement policies in the countries.

The Pontis Foundation is a Slovak non-profit non-governmental organization established in 1997. It encourages individuals and businesses to take responsibility for those in need and for the world around them, contribute to the building of democracy in non-democratic countries, create awareness about this need in Slovakia, and advocate for values-oriented Slovak and EU foreign policies. The Pontis Foundation promotes corporate philanthropy, corporate responsibility and is active in development cooperation, where has a track record of successful projects aimed at transferring Slovak transition and EU integration experience and know-how, especially in the Western Balkans and the Eastern Partnership countries. Through the projects in the field of democratization and development abroad, the Pontis Foundation promotes Slovak and EU foreign policy based on democratic values such as respect for human rights and solidarity.

Center for Development of Non-Governmental Organizations (CRNVO) is not-for-profit, non-governmental association founded and registered in September 1999. The mission of CRNVO is to provide support to development of non-governmental organizations in Montenegro and contribute to creation of a favorable environment for citizens' participation in public policy issues and civil society development. CRNVO provides help to the beneficiaries through educational programs, publishing programs, legal aid, researches and representations of citizens and non-for-profit sector.

NON-MAJORITY COMMUNITIES

LIST OF POLICY PAPERS

IMPLEMENTATION OF THE DISABILITY POLICY IN BOSNIA AND HERZEGOVINA 2008-2013 – ANALYSIS AND RECOMMENDATIONS

Project coordinator and main researcher
Olivera Mastikosa

Research team members:
Sanja Malić
Sandra Dobrijević Šipka
Tanja Mandić Đokić

Banjaluka, april 2014.

SUMMARY

The main aim of the research was to determine the change and progress in disability issues in BiH since the Disability policy adoption in 2008 until 2013 in relation to objectives defined in the document. The assessment and analysis was performed in co-operation with government institutions at the state level, entity levels, local communities and organizations of persons with disabilities for education, social protection, health protection, employment and private life as well as organization of persons with disabilities.

The objectives and tasks of the analysis were to determine connection of improvements and progress in stated areas of disabled persons lives with implementation of Disability policy, as well as its influence on changes that occurred in these areas. The first step was to define the level of progress and areas where there were evident improvements and to identify difficulties in realization and implementation of defined objectives from the Disability poicy. The final task of the analysis was to state recommendations for overcoming difficulties in implementation of defined objectives from the Disability policy in BiH.

For the purpose of analysis, we used the following techniques in order to gather relevant information. Primarily, we performed the analysis of available documentation (legislation, relevant literature related to disability issues and human rights) and then we performed interviews and questioning using specially designed questionnaires. We used two different questionnaires one of which was created for organizations of disabled persons and the other one for decision makers at the BiH level, entity levels

(including District Brcko), and local communities including different questions for each area of interest important for disabled persons lives.

There was used selected sample of participants which included the level of decision makers on issues related to protection of disabled persons and the level of organizations of disabled persons both relevant for comprehensive analysis. The response from selected sample was important indicator of attitudes towards disability issues. Interviews were realized with the Ministry of Civil affairs at BiH level (for all four areas of interest) and competent ministries for each area of interest at entity levels as well as available funds and institutes. These interviews were mostly successful. Some entity institutions did not reply to the questionnaire and interviewe appointment but we were facing a great crisis in Federation of BiH Government at the time of project implementation so we cannot for sure state that they did not show interest in answering the questionnaires. At local communities level we sent questionnaires to the departments for social affairs and the cabinets of mayors/chiefs and their response was indicator of their attitudes and awareness of their role in implementation of the Disability poliy. The least response was received from District Brcko where we gathered only information related to health protection (25%). In relation to the field of interest, we received the gratest response and information regarding health protection 41%, then social protection 36%, employment/labor 25% and the least response and information regarding education 23%. These figures show in fact the level of development and progress as well as relationship and awareness of authorities on needs of disabled persons in different fields of everyday life.

Analyzing the situation with Organizations of persons with disabilities sending questionnaires in ninieteen organizations (6 of them, or 31,6%, Unions at entity level and 13 of them, 68,4%, at local level) we received back all ninieteen questionnaires filled with information. Nine organizations are organized by the type of disability while four of them are cross disability organizations. Their reply speaks for their interest in disability issues and their efforts in improving the status of disabled persons.

The analysis of gathered information showed that Disability policy in BiH is not adequately implemented in practice, sharing the destiny of many strategic documents in BiH. Organizations of persons with disabilities stated their opinion that the Strategies resulted from Disability policy in BiH are not regularly monitored and no one surely stated that there was or was not any progress in implementation of these documents. Organizations of persons with disability stated that the greatest progress was made in the field of social protection, then in health protection, education and imployment/ labor, and the smallest in the field of family life. The progress in accepting the inclusion philosophy of issues related to disability in the mainstream was not significant in the past five years. There is still situation that organizations of persons with disabilities are not recognized as part of the community with influence and participation in all aspects of life. Disability is still mostly seen through social and health protection. Based on the responses of entity authorities and the interview with the Ministry of civil affairs in BiH, we can conclude that political structure of Bosnia and Herzegovina significantly influences implementation of Disability policy and the position of disabled persons in general. Due to current situation, the realization and implementation of Disability policy falls to entities while BiH institutions only have the role of coordination of authorities without any mechanism of coordination. The fact is that legal framework is very good in all fields of interest and disabled persons do have mechanisms to be used. Both entities created Strategies which determine directions to be taken in order to provide for improvement of the position of disabled persons and equalization of possibilities for all citizens with disability, but there are still no official reports on the progress in implementation of the Strategies.

Analysis confirmed already known attitudes that strategic documents in Bosnia and Herzegovina are not fully respected and implemented in practice. In this case, additional reason for not implementing the Disability Policy in BiH is the fact that it relates mostly to so-called civil persons with disabilities who are not represented as a very important interest group in the society. Other significant problem that influences the implementation is organizational structure of the Country which is really complicated and has no clear connection channels among different parts of Bosnia and Herzegovina. This fact is partly proved through the indicator that there are no plans for improvement of any field of life of disabled persons in Brcko district. On

the other hand, entities that adopted Strategies for implementation of the Disability policy do not have reports on implementation of the Strategies for three years after their adoption.

Furthermore, we noticed that there was a change of personnel in strategic positions at entity governments, and that new personnel are not familiar with the Disability Policy in BiH. This project additionally served as a tool for introducing Disability policy document as we sent the copy of the Policy together with the questionnaires not only to the entity level institutions but to all local communities included in the research. This way we influenced the level of their awareness of the document and general information.

Yet, the biggest problem is low level of understanding of local authorities on their role in implementation of the Policy, Strategies and Laws which bring reforms. Authorities in local communities do not identify persons with disabilities and do not understand their specific needs and ways in which they can help these people to solve different issues. The interview held in Istočno Sarajevo confirmed the need for more intensive actions and activities aimed at education of politicians to satisfy needs of persons with disabilities.

RECOMMENDATIONS

With a goal to improve the implementation of the Disability policy we suggest the following **general recommendations:**

- establish mechanisms for preparation of the Report on progress in implementation of the Disability policy for BiH Parliaments every two years, which would be created from entity reports on implementation of Strategies and local action plan for Brcko District.
- in Brcko Distict there should be created a Local action plan in accordance with the Disability policy in BiH which would answer questions on improvement of the position and equal possibilities for persons with disabilities.
- organizations of persons with disabilities should demend for the public to be regularly informed about implementation of the Disability policy and belonging Strategies.
- using public campaigns to draw attention of the public to participation of persons with disabilities in society as equal citizens, and indirectly to promote family life and preconditions for its realization.
- at all levels of authorities in BiH, entities, municipalities in all systems should be provided separate budgeting for implementation of the Disability policy and supporting Strategies.
- establish systems of financial support to organizations of disabled persons based on their results in activities and work done in accordance with needs of their members.

For implementation of Disability policy in **social protection** it necessary to:

- provide for legislation which would ensure equalization of assessment of disability in all systems where disabled persons regardless of geographical origin and disability origin.
- legislation on social services should stimulate development of social services and independent living of disabled persons.

- more intensive programs in the Ministries competent for social protection which could be supported from programs co-financed by Governments but implemented by organisations of disabled persons with experience in training organization.

For implementation of the Disability policy in **health protection** system it is necessary to:

- raise awareness of professionals in health protection system through continuous education of health professionals aimed at raising awareness of issues of disabled persons and change of the approach from medical model to social inclusion model.
- equalisation of the assessment methods od disability among different groups of disabled people.
- separate budget lines in health institutions aimed at improvement of conditions for disabled persons in health protection system.
- maintain more frequent consulting with associations of users when creating legislation respecting differences in disability.
- provide for medical appliances according individual needs of disabled persons based on functiona assessmen, not based on their diagnosis.
- organisations and associations of disabled persons should ask for practical implementation of their rights prescribed by legislation.

Recommendations aimed at more comprehensive implementation of the Disability policy in raising the quality of inclusion and **education** in general include:

- more comprehensive support to children with special needs in education system through better cooperation and interaction of education sector and social protection sector where assessment of needs and orientations is performed for children with developmental impairments.
- local communities should invest more resources in adaptaions and support to schools with a goal to improve the quality of education in general, and to remove barriers to inclusive education.

- use of existing resources and work on raising awareness on all relevant levels and in all relevant systems on inclusive education as life philosophy and main precondition for more comprehensive participation of disabled persons in all segments of live as equal members of society.
- ensure equal possibilities for students with developmental impairments and teachers who work with them regardless of geographical position of their local community.
- establish resource centres and other forms of professional support with a goal to ensure comprehensive assessment and adequate planning of educational work in mainstream schools, and provide for each child with disabilities to have individual plan of support.
- systematically planned employment and engagement of professionals with professional competence to work with special needs children in order to provide adequate support to a child and to a teacher.

For adequate implementation of the Disability policy and improvement of **employment** of disabled persons it is necessary to:

- ensure clear guidelines for competent ministries (Ministry of Labor and Social Welfare for Federation of BiH and Ministry of Labor and War Veterans and Disabled Persons' protection for RS) in order for them to have systematic and planned programs and budgets relying on the Disability policy and supporting Strategies, and to prescribe the obligation for reporting related to above mentioned documents.
- implement activities for raising awareness of employers on significance of employment of disabled persons, their abilities and possibilities as well as benefits prescribed by laws.
- implement activities of information spreading, empowerment and raising awareness of persons with disabilities and their families on rights related to employment and mechanisms of its fulfillment.
- promote good practices of employment of disabled persons.
- raise awareness of local communities on importance of employment of disabled people as an issue of local community and urge them to participate in its realization.

1. UVOD

Vijeće Ministara BiH usvojilo je Politiku u oblasti invalidnosti BiH na 46. sjednici održanoj 08.05.2008. godine (Službeni glasnik BiH 76/08). Proces donošenja politike je uključivao blizu stotinu eksperata i lica s invaliditetom koje su obavile istraživanje stanja u oblasti invalidnosti u BiH i objavili Studiju politike u kojoj se prikazalo stanje u oblasti invalidnosti u BiH prije donošenja Politike.

Politika u oblasti invalidnosti je zasnovana na sljedećim principima: ljudska prava, jačanje socio-kulturalnih kapaciteta i institucija, jačanje lokalnih zajednica, uključivanje lica sa invaliditetom, ravnopravnost polova, socijalna uključenost, međusektorska saradnja, politika mješovite zaštite i dostupnost informacija svim licima sa invaliditetom.

Cilj ove politike Bosne i Hercegovine, njenih entiteta Federacije Bosne i Hercegovine, Republike Srpske i Distrikta Brčko, je da omogući svim licima sa invaliditetom da dostignu najviši kvalitet životnog potencijala, poštovanja i digniteta, nezavisnosti, produktivnosti i jednakog učešća u društvu u najproduktivnijem i što pristupačnijem okruženju.

Politika je dokument kojim se objedinjuju stavovi lica sa invaliditetom i institucija vlasti na osnovu inkluzivnih Standardnih pravila Ujedinjenih nacija za izjednačavanje mogućnosti lica sa invaliditetom i Konvencije Ujedinjenih nacija o pravima lica sa invaliditetom.

Standardna pravila Ujedinjenih nacija o izjednačavanju mogućnosti za lica sa invaliditetom Bosna i Hercegovina je prihvatila 2003. godine i obavezala se da će preduzimati aktivnosti s ciljem razvijanja svijesti u društvu o licima sa invaliditetom, njihovim potrebama, te potencijalima za njihovo uključivanje u društveni život. Politikom se zagovara princip koji osigurava da su pitanja invalidnosti uključena na svim nivoima saradnje relevantnih učesnika, da postoje komplementarne komponente koje će omogućiti da lica sa invaliditetom ravnopravno učestvuju sa ostalima u svrhu eliminacije postojeće diskriminacije lica sa invaliditetom.

Bosna i Hercegovina je ratifikovala Konvenciju o pravima osoba sa invaliditetom i Fakultativni protokol 12.03.2010. godine (bez rezervacija ili izjava). Za Bosnu i Hercegovinu, Konvencija je stupila na snagu 11.04.2010. godine, tridesetog dana nakon deponovanja instrumenta o ratifikaciji.

Usvajanjem Politike u oblasti invalidnosti BiH, njeni entiteti – Republika Srpska i Federacija BiH, kao i Distrikt Brčko, obavezali su se da u okviru svojih ustavnih nadležnosti preduzmu odgovarajuće korake ka unapređenju ove oblasti, što, između ostalog, podrazumijeva i izradu Strategije i akcionih planova za unaprijeđenje društvenog položaja lica sa invaliditetom.

Politika je implementirana u Strategije koje su izradila oba entiteta:

- Strategija unapređenja društvenog položaja lica sa invaliditetom u Republici Srpskoj 2010–2015
- Strategija za izjednačavanje mogućnosti za osobe sa invaliditetom u Federaciji Bosne i Hercegovine 2011- 2015
- U Distriktu Brčko nije izrađen strateški dokument.

Strategija je u Republici Srpskoj usvojena 2010. godine, a u oktobru 2011. godine predstavljena Odboru za jednake mogućnosti pri Narodnoj Skupštini RS i donešen je zaključak da Vlada RS na godišnjem nivou dostavlja izvještaj o realizaciji Strategije ovom Odboru na razmatranje. U skladu sa ciljevima Strategije (Cilj 1.2.), a da bi se osigurala koordinacija i primjena strateških dokumenata, preporučuje se osnivanje Kancelarije za lica sa invaliditetom. Vlada RS je u oktobru 2011. godine zaključkom obavezala Ministarstvo zdravlja i socijalne zaštite i Ministarstvo rada i boračko-invalidske zaštite da izrade projekat za osnivanje kancelarije. Obrazloženje zašto se to do danas nije desilo je ekonomska kriza zbog koje prijedlog nije ni iznesen pred Vladu RS.

Strategija za izjednačavanje mogućnosti za osobe sa invaliditetom u Federaciji BiH 2011. – 2015. usvojena je 28.7.2011. godine, a njeno praćenje i implementaciju trebalo bi obezbijediti kroz Ured Vlade Federacije BiH za pitanja invaliditeta koji je osnovan u decembru 2013. godine.

Oba entiteta su u obavezi godišnjeg izvještavanja o primjeni Strategija, ali se još nijedan zvaničan izvještaj nije pojavio pred organima entitetskih vlasti.

Parlamentarna Skupština BiH je na 56. sjednici Predstavničkog doma održanoj 08.07.2009. godine i 33. sjednici Doma naroda 23.07.2009. godine usvojila Zakon o zabrani diskriminacije koji jasno definiše oblike diskriminacije koji uključuju diskriminaciju po osnovu invaliditeta u svim oblastima života.

Usvajanje ovih nekoliko dokumenata optimistično djeluje na stanje ljudskih prava osoba sa invaliditetom u Bosni i Hercegovini. Koliko se stanje stvarno promijenilo u posljednjih pet godina, i da li se Politika u oblasti invalidnosti primjenjuje u praksi, pokušali smo sagledati kroz istraživanje koje smo usmjerili na nivo Vijeća ministara BiH, entiteta (Federacija BIH, Republika Srpska i Distrikt Brčko) i lokalne zajednice. Oblasti u okviru kojih smo analizirali primjenu Politike u oblasti invaliditeta su: obrazovanje, zdravlje, socijalna zaštita, rad, porodični život i položaj organizacija osoba sa invaliditetom u društvu.

Vijeće Ministara BiH je donijelo odluku o formiranju Vijeća za osobe sa invaliditetom BiH na svojoj sjednici 19.10.2010. godine. Vijeće ima 20 članova, jednu polovinu čine predstavnici svih nivoa vlasti, a drugu predstavnici organizacija osoba sa invaliditetom od društvenog interesa u entitetima. U opisu poslova kojim se Vijeće bavi nije striktno navedena Politika u oblasti invalidnosti BiH (Službeni glasnik br. 21 od 22.03.2011. godine).

Bosna i Hercegovina je u Razvojnoj strategiji BiH koja se priprema u predpristupnim obavezama prema Evropskoj Uniji definisala potrebu izrade posebnog dokumenta pod nazivom Strategija socijalnog uključivanja Bosne i Hercegovine. Ovaj dokument je u formi nacrta izrađen u junu 2010. godine i sadrži posebno poglavlje Poboljšati položaj osoba sa invaliditetom u okviru kojeg su identifikovana 3 prioriteta koja treba regulisati na svim nivoima vlasti kroz primjenu 11 mjera. Dokument još uvijek nije usvojen i pitanje je kada će dobiti odobrenje jer su razmatrane oblasti za socijalno uključenje pitanje entiteta i Distrikta Brčko, a ne države Bosne i Hercegovine.

Prva jedinstvena evidencija lica sa invaliditetom ostvarena je kroz popis stanovništva 2013. godine. Rezultati popisa još uvijek nisu objavljeni. U okviru popisa postavljeno je pet Evrostat pitanja o invalidnosti koja će nam prvi put pokazati funkcionalno stanje kod osoba sa invaliditetom.

Nekoliko lokalnih zajednica u BiH ima planove potreba za osobe sa invaliditetom, ali ni oni još uvijek nisu zaživjeli kao stvarna politika lokalne zajednice već više deklarativna.

2. ANALIZA PRIMJENE POLITIKE U OBLASTI INVALIDNOSTI U BIH

2.1. ANALIZA PROMJENA U PERIODU 2008. – 2013.

Promjena stanja od donošenja Politike u oblasti invalidnosti 2008. godine do 2013. godine – vladine institucije na državnom, entitetskim, lokalnim nivoima i organizacije osoba sa invaliditetom

Predmet analize

Predmet analize je napredak koji je postignut/nije postignut u oblastima: obrazovanje, socijalna zaštita, zdravstvo, rad i organizacije osoba sa invaliditetom, u periodu 2008 – 2013. godina a u odnosu na ciljeve definisane Politikom u oblasti invalidnosti u BiH.

Ciljevi i zadaci analize

Cilj analize je utvrditi povezanosti napretka u navedenim oblastima i implementacije Politike u oblasti invalidnosti, te uticaj na promjene koje su nastupile u oblastima obrazovanje, socijalna zaštita, zdravstvo, rad i organizacije osoba sa invaliditetom.

Kao zadatke analize definisali smo definisanje nivoa napretka i oblasti u kojima je evidentiran napredak, kao i identifikovanje poteškoća za realizaciju ciljeva definisanih Politikom u oblasti invalidnosti. Kao zadatak analize smo definisali i izradu preporuka za prevazilaženje poteškoća u realizaciji ciljeva definisanih Politikom u oblasti invalidnosti.

Metodologija

Za potrebe analize korištene su sljedeće tehnike:

- analiza dokumentacije (dostupnih zakonskih i podzakonskih propisa, relevantne literatute iz oblasti zaštite osoba sa invaliditetom) i
- tehnike anketiranja i intervijua.

Kao instrumeni su korišteni dva različita upitnika, posebno kreirana za potrebe ovog istraživanja. Jedan upitnik je bio namijenjen organizacijama osoba sa invaliditetom, a drugi upitnik donosiocima odluka na nivou BiH, entitetskim novoima (odnosno na nivou Distrikta), te na lokalnim nivoima, a u odnosu na pomenute oblasti života koje se ispituju.

Uzorak

Za potrebe analize definisan je namjerni uzorak koji obuhvata:

» nivo donosioca odluka o pitanjima zaštite osoba sa invaliditetom i

» nivo organizacija osoba sa invaliditetom što smatramo reprezentativnim za provođenje analize.

Nivo donosioca odluka – u ovom dijelu uzorka analizom su obuhvaćena tri nivoa donosioca odluka i to nivo BiH, entitetski nivo i lokalni nivo u opštinama i gradovima. Na nivou BIH smo obuhvatili Ministarstvo civilnih poslova, na entitetskom nivou resorna ministartsva (za oblasti rada, socijalne zaštite, zdravstva, obrazovanja), dostupne fondove, zavode, a na lokalnom nivou resorna odjeljenja za društvene djelatnosti i kabineti gradonačelnika/načelnika. (vidjeti prilog-Tabelarni prikaz poslanih/dobijenih upitnika). Sa predstavnicima Ministarstva civilnih poslova smo obavili intervju i pribavili podatke za sve četiri oblasti. Odziv entitetskih vlasti i opština je bio izuzetno mali sa nepotpunim odgovorima. Najmanji odziv je bio u Distriktu Brčko u kojem smo odgovore dobili samo iz oblasti zdravstva (25%). U odnosu na oblast, najviše odgovora smo dobili za oblast zdravstva 41%, zatim socijalna zaštita 36%, oblast rada 25% i oblast obrazovanja 23%.

Nivo organizacija osoba sa invaliditetom - Upitnik smo uputili u devetnaest organizacija osoba sa invaliditetom od kojih je šest (31,6%) Saveza na entitetskom nivou i 13 (68,4%) organizacija na lokalnom nivou. Svih devetnaest organizacija osoba sa invaliditetom koje smo kontaktirali odgovorilo je na dostavljene upitnike. Od lokalnih organizacija četiri organizacije su takozvane *cross disability* organizacije, a devet organizacija po tipu oboljenja.

2.1.1. Socijalna zaštita

Prvi preduslov kvalitetnog sistema socijalne zaštite je obezbjeđenje socijalne sigurnosti. U Republici Srpskoj donesen je novi Zakon o socijalnoj zaštiti, kao i novi pravilnici o načinu ostvarivanja prava iz Zakona. Novim Zakonom su povećani iznosi davanja za osobe sa invaliditetom koje su korisnici socijalnih usluga. Zakonom o socijalnoj zaštiti u RS utvrđena su prava u socijalnoj zaštiti (novčana pomoć, dodatak za pomoć i njegu drugog lica, podrška u izjednačavanju mogućnosti djece i omladine sa smetnjama u razvoju, smještaj u ustanovu, zbrinjavanje u hraniteljsku porodicu, pomoć i njega u kući, dnevno zbrinjavanje, jednokratna novčana pomoć i savjetovanje). Prioritetno, navedena prava u socijalnoj zaštiti ostvaruju lica koja su nesposobna za rad, a koji su bez vlastitih prihoda i prihoda porodice kao i podrške srodnika, te lica koja su zbog svog fizičkog i zdravstvenog stanja zavisna od pomoći druge osobe, kao i ona lica koja se iz nekog specifičnog razloga nađu u stanju socijalne potrebe. Tokom 2013. godine, a u sklopu primjene Zakona i Pravilnika o utvrđivanju sposobnosti lica u postupku ostvarivanja prava iz socijalne zaštite i utvrđivanju funkcionalnog

stanja korisnika, centri za socijalni rad su obavili postupak preispitivanja i usklađivanja visine iznosa prava na Dodatak za pomoć i njegu drugog lica sa funkcionalnim stanjem korisnika.

U FBiH se očekuje donošenje novog zakona, koji je pripremljen ali još uvijek nije u proceduri. Ponuđeni zakoni još uvijek ne uzimaju u obzir povećane troškove koji nastaju kao posljedica invaliditeta.

Kada je u pitanju obim prava u socijalnoj zaštiti, 21,1 % ispitivanih organizacija i saveza organizacija osoba sa invaliditetom smatra da nije postignut značajan napredak u povećanju obima prava, dok je daleko veći postotak onih koji smatraju da je u ovoj oblasti postignut značajan napredak (31,6%). Sa aspekta implementacije POI ovo je značajan podatak imajući u vidu složen sistem socijalne zaštite na svim nivoima vlasti.

Reforma penzionog sistema koja se kontinuirano provodi nije omogućila bolji status osobama sa invaliditetom u BiH. U tom sistemu su izbačena sva dosadašnja prava po osnovu invalidnosti, a preostalo je samo pravo na invalidsku penziju.

Kada su u pitanju programi za deinstitucionalizaciju može se reći da je to opšte opredjeljenje sistema, ali otežavajuća okolnost je recesija koja je nastupila 2008. godine. Tako su mnogi programi i projekti svedeni na minimum održivosti, a novi programi su se sveli na projekte koje provode uglavnom udruženja građana uz podršku međunarodnih donatora. U Federaciji BiH posebno se ističe razvijanje programa stanovanja uz podršku (projekat provodila organizacija „Sumero“), dok se u Republici Srpskoj posebno isticao trend razvoja usluge dnevnih centara, što prestavlja značajan pomak u odnosu na prethodni period. Anketirane lokalne zajednice ističu kao napredak razvoj partnerstva sa nevladinim organizacijama. Analizirajući stavove organizacija i saveza organizacija osoba sa invaliditetom, saznajemo da je u oblasti stvaranja uslova za deinstitucionalizaciju smanjen trend smještanja u ustanove socijalne zaštite. Organizacije OSI smatraju da je u ovoj oblasti postignut napredak sa čak 80% odgovora. Ovaj podatak je značajan iz razloga sto je na nivou sistema i dalje potrebno zagovarati razvijanje sistema programa podrške u zajednici kao i programe deinstitucionalizacije.

Novim zakonom o socijalnoj zaštiti u Republici Srpskoj definisana su proširena prava iz socijalne zaštite. U Banja Luci je počev od 2008. godine razvijeno nekoliko dnevnih centara. Upućivanje

u Dnevni centar vrši se preko Centra za socijalni rad. Izbor i vrsta usluge zavise od statusa i potrebe osobe sa invalididtetom. Prilikom uvođenja sistema socijalnih usluga Banja Luka je provodila višegodišnji projekat kojim su bili obuhvaćeni korisnici, njihova udruženja, stručni radnici i donosioci odluka. Odluke o proširenim pravima dostupne su na sajtu Grada Banja Luka u Službenim glasnicima Grada, kao i na zvaničnom web sajtu Centra za socijalni rad Banja Luka. U Bijeljini nove socijalne usluge koje su uvedene određene su Odlukom o proširenim pravima Skupštine Grada Bijeljina, a korisnici imaju mogućnost izbora na podnošenje zahtjeva za neko određeno pravo i imaju mogućnost izbora pružaoca usluga. Gradiška je po ugledu na Banja Luku razvila uslugu personalne asistencije za lica sa invaliditetom. U Trebinju proširena prava su prava ustanovljena Odlukom o proširenim pravima u socijalnoj zaštiti Grada Trebinja (Službeni glasnik grada Trebinja broj 3 od 5.4.2013.godine) a pregled proširenih prava dostupan je zvaničnom web sajtu Centra za socijalni rad Trebinje.

Analizirali smo i postojanje posebnih službi za rad sa osobama sa invaliditetom kao i osoblje obučeno za rad sa osobama sa invaliditetom. Organizacije osobe sa invaliditetom smatraju da je postignut značajan napredak sa 15,8% dok veći procenat smatra da nije postignut napredak u ovoj oblasti.

Napredak u ovoj oblasti je ostvaren uz podršku vladinih programa obuke za stručne radnike, a posebno obukama koje su pripremale organizacije OSI (obuke za gestovni jezik, obuke za rad sa tjelesnim invalidima, obuke za provođenje usluge personalne asistencije).

Pitanje dostupnosti usluga za korisnike kolica, gluhe, slijepe osobe u odnosu na specifičnost potrebe, organizacije osoba sa invaliditetom ocjenjuju sa većim procentom manjeg napretka i to 57,9%. Manji broj organizacija smatra da je u ovoj oblasti postignut napredak i to 10,5% organizacija.

Kada su u pitanju programi socijalne inkluzije, ispitivane organizacije osoba sa invaliditetom cijene da u ovoj oblasti nije postignut značajan napredak, te se 47,4% organizacija izjašnjava da je postignut minimalan napredak, dok samo 10,5% smatra da je postignut napredak u ovoj oblasti. Ovaj podatak govori u prilog potrebe zagovaranja potrebe implementacije ove oblasti zaštite.

U oblasti socijalne zaštite sprovođena su istraživanja, u Vladi FBiH navode da su većinu istraživanja provodili uz pomoć konsultanata Sjetske banke, UNDP, IBHI i drugih organizacija. Usvojeni su zakoni o znakovnom jeziku, a uz pomoć raznih projektnih aktivnosti se provode obuke za Brajevo

pismo. Provode se javne kampanje u okviru implementacije Strategije za izjednačavanje mogućnosti za osobe sa invaliditetom u Federaciji BiH 2011. – 2015., zatim kampanje za jačanje svijesti o potrebama osoba sa invaliditetom u okviru djelovanja Vijeća za OSI BiH. U Gradu Banja Luci istraživačke projekte uglavnom provode organizacije OSI, a JU „Centar za socijalni rad" radi redovno istraživanje potreba postojećih korisnika prava.

Većina lokalnih zajednica ne provodi posebna istraživanja u ovoj oblasti, i očekuju da istraživanja uglavnom provode nadležna ministarstva. Razlog tome uglavnom se nalazi u manjku stručnih kadrova za provođenje istraživanja.

Kao osnovne faktore koji utuču na implementaciju ciljeva POI u oblasti socijalne zaštite osoba sa invaliditetom ispitivani uzorak je izdvojio osnovna tri faktora:

- Veća integracija različitih programa zaštite na svim nivoima
- Bolji raspored sredstava koja su na raspolaganju lokalnoj zajednici
- Efikasnija koordinacija različitih službi unutar lokalnih zajednica

Kao najodgovornije institucije za poboljšanje navedenih faktora navode se entitetske vlasti kao i organizacije osoba sa invaliditetom koje treba da budu značajan faktor u iniciranju promjena na svim nivoima. Lokalne vlasti su navedene kao značajan faktor u neposrednoj implementaciji zaštite OSI.

2.1.2. Zdravstvo

Uzrok invalidnosti, mjesto boravka i odsustvo ujednačenih kriterijuma shodno kojima se ostvaruju prava rezultovali su neujednačenošću prava lica sa invaliditetom. Nije došlo do značajne promjene u diskriminaciji po osnovu invalidnosti, bilo da se radi o razlikama po osnovu vrste invaliditeta tj. načina na koji je stečen, kao i geografskog porijekla. Prema ocjenama anketiranih predstavnika vlasti, još uvijek je obim prava ratnih vojnih invalida i civilnih žrtava rata u oblasti zdravstva već i nego kod ostalih osoba sa invaliditetom. Zakon o pravima boraca, vojnih invalida i porodica odbrambeno-otadžbinskog rata RS (Službeni glasnik RS broj 134/11, 09/12 i 40/12) je definisao da navedena lica imaju prednost u korištenju usluga u republičkim organima, ustanovama i ostalim pravnim subjektima prilikom rješavanja svojih prava i interesa. Druge osobe sa invaliditetom prednost ostvaruju u zavisnosti od odnosa osoblja u medicinskoj ustanovi manje više sa prednošću ali ne na osnovu prava.

Procjena stepena invalidnosti i dalje se u Bosni i Hercegovini vrši neujednačeno i samo na osnovu medicinskog modela, bez primjene Međunarodne klasifikacije funkcionisanja Svjetske zdravstvene organizacije.

Decentralizovanost zdravstvenog osiguranja i zdravstvene zaštite u Federaciji Bosne i Hercegovine, kao i različite ekonomske moći entiteta, Federacije Bosne i Hercegovine i Republike Srpske, kao i kantona, čine da osigurana lica ne ostvaruju jednaka prava iz obaveznog zdravstvenog osiguranja niti imaju ravnopravan pristup svim nivoima zdravstvene zaštite i odgovarajućim zdravstvenim ustanovama. Situacija u posljednjih pet godina se nije značajno promijenila. Lica sa invaliditetom imaju jednake uslove kao i drugi građani da ostvare zdravstveno osiguranje. Postoje beneficije koje omogućavaju znatno manju participaciju u liječenju nego kod ostalih stanovnika. Najveći problem i dalje čini problem neisplaćivanja plata radnicima koji povlači i neuplaćivanje zdravstvenog osiguranja tako da lica sa invaliditetom ukoliko su zaposlena u takvim uslovima ne samo da nemaju osnovnu egzistenciju već su i bez zdravstvenog osiguranja.

Proširena je mogućnost zdravstvenog osiguranja kroz Zakon o socijalnoj zaštiti, tako da lica sa invaliditetom mogu ostvariti zdravstveno osiguranje ukoliko su regulisali pravo na dotatak za pomoć i njegu drugog lica. Djeca do tri godine koja ne mogu ostvariti pravo na dodatak za pomoć i njegu drugog lica, a roditelji nemaju osiguranje, predstavljaju još uvijek najugroženiju grupu. U Federaciji BiH je Zakon o zdravstvenoj zaštiti donešen na nivou Federacije, a kantoni donose svoje posebne zakonske i podzakonske akte što je u konačnici doprinijelo neravnomjernom pristupu pravu na zdravstvenu zaštitu.

Iako je Zakon o zdravstvenoj zaštiti u federaciji BiH (Službene novine Federacije BiH 46/10) obavezao poštivanje osnovnih ljudskih prava, nije naglašeno da se dostupnost zdravstvene zaštite obezbjeđuje osobama sa invaliditetom tako da ne možemo reći da je dosljedno primjenjena Politika u oblasti invalidnosti BiH.

Predstavnici organizacija OSI su pokazali zadovoljstvo zdravstvenim osiguranjem koje je ocijenjeno sa prosječnom ocjenom četiri na rangu od 1- 5.

Dostupnost zdravstvenih usluga je poboljšana u odnosu na 2008. godinu jer se npr. u Republici Srpskoj izmijenio Pravilnik o minimalnim uslovima za početak rada zdravstvene ustanove, koji je

obavezo sve državne ustanove da ispunjavaju standarde za fizičku pristupačnost. Za sada su promjene uglavnom u obezbjeđenju pristupačnosti u primarnoj zdravstvenoj zaštiti. U nekim slučajevima se kod novih objekata u potpunosti omogućila pristupačnost dok se u nekim slučajevima obezbijedila djelimična pristupačnost (primjeri iz Brčko Distrikta, Rehabilitacionim centrima). Pristupačnost u bolnicama i klinikama nije značajno promijenjena pa je bolničko liječenje još uvijek problem za fizičke invalide. Predstavnici organizacija OSI su ocijenili da je pristup kolicima u zdravstvenim ustanovama djelimično poboljšan, ali i dalje nedovoljan.

Ne postoji obaveza da u ustanovama radi lice koje poznaje gestovni govor, ali je Zakonom o zdravstvenoj zaštiti RS (Službeni glasnik RS broj 106/09) definisano da se prema potrebi može obezbijediti tumač. Praksa pozivanja tumača nije uspostavljena.

Na svim nivoima vlasti prepoznaju se Centri za mentalno zdravlje i Centri za rehabilitaciju u zajednici kao oblik rehabilitcije koji je dostupan osobama sa invaliditetom i novitet u našoj sredini, iako je proces reforme započeo 1996. godine. Pristup mobilnim zdravstvenim uslugama zavisi od opštine do opštine. U nekim slučajevima postoje mobilne laboratorije, patronažne službe i slično, ali ne postoje usluge rehabilitacije, dok u nekim opštinama uopšte ne postoje mobilne usluge. Organizacije osoba sa invaliditetom su posebno naglasile loše uslove zdravstvene zaštite žena, osoba sa invaliditetom na selu i osoba sa mentalnom retardacijom.

Fond zdravstvenog osiguranja RS proširio je usluge potpisujući ugovor sa ustanovom za rehabilitaciju oboljelih od skleroze mulitipleks i time proširio program.

Obuku kadrova i bolje uslove za rehabilitaciju pružaju veći rehabilitacioni centri koji su shvatili važnost tržišnog poslovanja. Primjer Zavoda za fizikalnu medicinu i rehabilitaciju „dr. Miroslav Zotović“ koji se otvara prema korisničkim udruženjima uslugama koje nisu isključivo zdravstvene, pokreće pitanje funkcionisanja pacijenata u njihovim kućama i zapošljava osoblje koje može podržati ovakav princip rada.

Situacija sa pomagalima se nije značajno promijenila jer je ekonomska kriza od 2008. godine do danas značajno uticala na smanjenje iznosa koji su namijenjeni za sva pomagala. Smanjenje cijena se vrši linearno procentualno neuviđajući razliku u važnosti za funkcionisanje. Primjer je linearni procenat smanjenja iznosa za cipele, tj. participacije od 60 KM ili elektromotornih kolica 2000 KM.

Navodi se da je smanjenje cijena u korist korisnika da plaćaju manju participaciju pri čemu se ne uviđa da je smanjenje cijene uticalo na smanjenje kvaliteta, a nije došlo do smanjenja rokova za korišćenje pomagala.

Još uvijek postoji razlika u ostvarivanju prava na pomagala, diskriminacija po uzroku nastanka i vrsti invaliditeta kao i prebivalištu, gdje se pravo na isto pomagalo ostvaruje ili ne ostvaruje pod različitim uslovima. Pomagala koja mogu da se nabave preko fondova zdravstvenog osiguranja su najčešće neodgovarajuća i ne prate tehnička dostignuća, a za pojedina lica sa invaliditetom njihova nabavka preko fondova uopšte nije moguća.

Usluge za pojedine kategorije lica sa invaliditetom kao što su stomatološke usluge za mentalno nedovoljno razvijena lica ili ginekološke usluge za žene u kolicima još uvijek su sporadično razvijene u nekim većim sredinama, ali u većini opština ih nema, niti postoji razvijena svijest o tome da su potrebne. Organizacije osoba sa invaliditetom su ocijenile dostupnost specijalista određenog profila sa srednjom ocjenom jer u nekim slučajevima uopšte nema specijalista potrebnih za podršku toj vrsti invaliditeta, a u drugim slučajevima osoblje u oblasti zdravstva postoji.

Prevencija invaliditeta postoji putem nekih standardizovanih preventivnih programa: prevencija nezaraznih bolesti, prevencija malignih oboljenja, dijabetesa, tuberkuloze, sistematski pregledi i slično.

Fond zdravstvenog osiguranja RS uveo je zaštitnika prava osiguranika koji pomaže svim građanima pa i osobama sa invaliditetom.

Kao osnovne faktore koji utuču na implementaciju ciljeva POI u oblasti zdravstvene zaštite osoba sa invaliditetom ispitanici su od ponuđenih devet konstatacija izabrali osam raličitih faktora:

- Jasna linija odgovornosti i podjela zadataka između entiteta i lokalne uprave,
- Bolji vertikalan protok informacija i osiguranje jasnih smjernica za provođenje od strane nosioca implementacije pojedinih područja politike
- Veća sredstva na raspolaganju za implementaciju politike
- Pravovremeno i sistemsko planiranje aktivnosti lokalne zajednice
- Bolji raspored sredstava koja su na raspolaganju lokalnoj zajednici
- Bolji raspored sredstava koja su na raspolaganju entitetima

» Efikasnija koordinacija različitih službi unutar lokalnih zajednica
» Učestalije konsultacije sa organizacijama osoba sa invaliditetom i osobama sa invaliditetom o prioritetima u implementaciji

Kao odgovorne za sprovođenje Politike su prepoznali sve nivoe državnih vlasti, a kao poteškoću idetifikovali preklapanja koja nastaju između entiteta i Distrikta Brčko.

2.1.3. Obrazovanje

Zakonska regulativa u Bosni i Hercegovini koja definiše oblast obrazovanja izmijenjena je u pravcu unapređenja poštivanja prava lica sa invaliditetom u vaspitno obrazovnom procesu prije usvajanja Politike u oblasti invalidnosti (pregled stanja prikazan u analizi dokumentacije). Izuzetak je Okvirni zakon o srednjem stručnom obrazovanju i obuci BiH koji je usvojen u julu 2008. godine i sadrži nediskriminirajuće odredbe. Na svim nivoima vlasti omogućena su jednaka prava i moguć nosti licima sa invaliditetom od predškolskog obrazovanja do obrazovanja odraslih. Strateški pravci razvoja obrazovanja BiH sa planom provođenja 2008.- 2015. kao jedan od glavnih pravaca razvoja obrazovnog sektora vide unapređenje procesa inkluzije u obrazovanju djece sa posebnim potrebama, kroz osiguranje odgovarajuće školske infrastrukture, programa i obuke nastavnika, te ustanovljavanje specijalnih ustanova kao resursnih centara i ekspertize za djecu i mlade sa izrazitim teškoćama u razvoju i učenju.

U svrhu analize primjene Politike u oblasti invalidnosti za oblast obrazovanja kreiran je upitnik koji je distribuiran resornim ministarstvima na nivou Bosne i Hercegovine, oba entiteta i Distriktu Brčko, te u šest lokalnih zajednica. Obavljena su dva intervjua, na nivou BiH i u Ministarstvu prosvjete i kulture RS, dok je od lokalnih zajednica odgovore dostavila samo Banja Luka. Ovaj podatak pokazuje da lokalne zajednice još uvijek nemaju razvijenu svijest da mogu doprinijeti o svojoj ulozi u primjeni POI s obzirom da su uglavnom upućivali na Republički pedagoški zavod kao glavnu instancu koja ima sve podatke o vaspitanju i obrazovanju lica sa invaliditetom.

Republika Srpska putem resornog ministarstva ulaže maksimalne napore da unaprijedi inkluzivnu praksu, politiku i kulturu u obrazovnom sistemu kada su u pitanju osobe sa invaliditetom. Prema njihovom mišljenju došlo je do pozitivnih promjena u proteklom periodu po pitanju školovanja djece sa smetnjama u razvoju. Broj lica sa invaliditetom u obrazovnom sistemu se svakodnevno povećava i u skladu sa propisanim zakonskim i podzakonskim aktima sva djeca ostvaruju pravo na školovanje

u redovnom sistemu obrazovanja bez diskriminacije i izdvajanja. Inkluzivno obrazovanje omogućeno je na svim nivoima obrazovanja i podaci su dostupni u okviru godišnjih programa rada obrazovnih institucija. Značajan broj škola ima pristupnu rampu na ulazu, ali ne i liftove i adekvatne toalete za osobe sa invaliditetom. U praksi je evidentirano sve više odobrenih asistenata za nastavu u školama putem sistema obrazovanja za sve, ali još uvijek nedovoljno. U Federaciji BiH, situacija je slična s tim da je u većini izvještaja istaknut nedostatak specijalizovanih ustanova za opservaciju u cilju sveobuhvatne procjene u većini kantona. I dalje je u oba ova entiteta značajan broj djece sa smetnjama u razvoju školuje u specijalizovanim ustanovama jer škole nemaju kapacitete da im omoguće adekvatnu podršku.

Obrazovanje djece sa posebnim potrebama u Brčko Distriktu nalazi se u nadležnosti Odjela za obrazovanje u okviru koga je i Pedagoška institucija u kojoj radi stručni savjetnik za socijalnu i mentalnu zaštitu koji koordinira i prati rad stručnih timova u školama (pedagog, psiholog, defektolog, logoped, tiflopedagog, socijalni pedagog, surdoaudiolog, oligofrenolog i drugi) i u predškolskoj ustanovi. Na području Distrikta ne postoje specijalne škole, ali u smislu člana 50. stav 3. Zakona o obrazovanju u osnovnim i srednjim školama BDBiH djeca sa izraženim teškoćama u psihofizičkom razvoju pohađaju nastavu u posebnim odjeljenima u školama po adaptiranim nastavnim planovima i programima.

Ministarstvo prosvjete i kulture RS nema posebnu budžetsku liniju za podršku inkluziji, ali izdvaja sredstva za podršku obrazovnim institucijama kroz finansiranje defektologa i logopeda koji pružaju podršku redovnim osnovnim i srednjim školama, plaćanje asistenata za djecu sa autizmom, te nadoknadu nastavnicima koji u odjeljenjima imaju djecu sa smetnjama u razvoju. Trenutno je angažovano do 12 defektologa u okviru mobilnog tima za podršku inkluziji i oni su na raspolaganju nastavnom osoblju u 45 škola. Na žalost, mobilni timovi uglavnom pokrivaju područje Banje Luke, dok su ostale opštine nepokrivene i nastavnici nemaju adekvatnu podršku stručnjaka. Obrazovni sistem podržava asistente u nastavi za djecu sa pervazivnim razvojnim poremećajima i asistenti se angažuju u skladu sa brojem upisanih učenika sa autizmom u redovnoj školi. Još uvijek nije jasno definisana uloga asistenata u inkluzivnoj školi (oni samo pomažu djetetu i nemaju nikakve obaveze prema nastavniku). Obrazovni sistem ne prepoznaje personalnu asistenciju s obzirom na činjenicu da je to socijalna komponenta koja zahtijeva podršku socijalnog aspekta. Ostaje pitanje definisanja pedagoškog asistenta kao podrške nastavniku u organizaciji i realizaciji časa u razredima u kojima ima dijete sa smetnjama u razvoju. Ministarstvo prosvjete i kulture finansira troškove prevoza za svu

djecu koja pohađaju osnovnu školu, dok su troškovi smještaja i hrane finansirani od strane lokalnih zajednica. U cilju podrške u izjednačavanju mogućnosti za djecu sa smetnjama u razvoju, Zakon o socijalnoj zaštiti Republike Srpske („Službeni glasnik Republike Srpske", broj 37/12), predvidio je plaćanje troškova prevoza samo za djecu sa posebnim potrebama u srednjoj školi i na fakultetu. U nekim lokalnim zajednicama (Banja Luka) na nivou lokalne zajednice usvojene su odluke o proširenim uslugama u oblasti socijalne zaštite, pa tako i odluka o finansiranju troškova prevoza za pratioce učenika sa smetnjama u razvoju u osnovnoj školi prema procjenama stručnih timova.
Programi životnih vještina utkani su u ciljeve vaspitanja i obrazovanja koje nastavno osoblje realizuje kroz sadržaje nastavnog plana i programa. Trenutno postoje kreirani posebni nastavni planovi i programi za osnovne i srednje škole kako bi se omogućila bolja pristupačnost, odnosno odgovarajuća upotreba nastavnih sredstava, pomagala, literature. Ovi planovi i programi obavezuju na realizaciju sadržaja u skladu sa smetnjama koje učenik ima (oštećenje sluha, oštećenje vida...), kao i na upotrebu znakovnog jezika, Brajevog pisma i slično. Nema podataka o tome koliko su ovako kreirani planovi i programi opravdani i korisni za nastavno osoblje s obzirom na činjenicu da je svako dijete individua za sebe i da mu u skladu sa specifičnim potrebama treba kreirati individualni plan. U radu sa učenicima koji imaju senzorna oštećenja, nastavnici koriste udžbenike iz redovne nastave uz prilagođavanja.

U pripremi je projekat koji će biti podržan od strane organizacije UNICEF, a koji će biti fokusiran na izradu novih nastavnih planova i programa. Pored Republičkog pedagoškog zavoda, koji inače pravi prijedloge nastavnih planova i programa, u pripremu će biti uključeno 200 stručnjaka iz škola. Nadamo se da će novi nastavni planovi i programi biti fleksibilniji za nastavnike i da će predstavljati okvir za djelovanje, dok će svaki učenik u skladu sa svojim individualnim potrebama imati izrađen individualni plan i program, te da ministar neće donositi posebne planove i programe prema vrsti i stepenu ometenosti u razvoju kako to propisuje član 87 Zakona o osnovnom obrazovanju RS.

Dodatno obrazovanje nastavnog kadra nije sistemski riješeno i ne postoje godišnji planovi stručnog usavršavanja. Republički pedagoški zavod u Republici Srpskoj u skladu sa svojim mogućnostima realizuje programe dodatnog obrazovanja uz podršku resornog ministarstva i nevladinog sektora. Već ina seminara koji su u proteklim godinama realizovani bila je usmjerena na inkluzivno obrazovanje u cilju podizanja svijesti o inkluziji kao filozofiji života i podizanja nivoa kompetentnosti nastavnika i stručnih saradnika. Jedan od značajnijih programa obuke realizuje se u 2014. godini u organizaciji ministarstva prosvjete i kulture, i uz finansijsku podršku organizacije UNICEF, a koji se odnosi

na primjenu inkluzije u osnovnim školama. Projekat obuhvata obuku nastavnog osoblja za izradu individualizovanih planova i programa u 10 lokalnih zajednica i opremanje i otvaranje dvije resursne sobe u dvije geografski fokusirane lokalne zajednice, te formiranje resursnih centara po školama.

Pitanje servisa za podršku ostalo je na nivou podrške koju obezbjeđuju i pružaju specijalne ustanove. Dakle u sredinama u kojima nema specijalnih ustanova izostaje i podrška. Resursi koji trenutno postoje, ali koji nisu u dovoljnoj mjeri iskorišteni su Dokumentacion centar ili Centar za obrazovnu dokumentaciju i inovaciju koji je oformljen uz podršku organizacije EducAid, ali koji nije profunkcionisao i nije iskorišten kao postojeći resurs i servis za podršku inkluziji. Zavod za slijepe u Derventi za potrebe nastavnog osoblja štampa udžbenike na Brajevom pismu i pruža podršku školama koje se obraćaju za podršku. Savez gluvih i nagluvih RS i lokalno udruženje u Banjoj Luci povremeno organizuju obuku za znakovni jezik za nastavnike i druge zainteresovane. Veliki je uspjeh što je pri Univerzitetu u Banjoj Luci sa radom počeo Centar za podršku studentima sa invaliditetom, ali je i dalje ovaj resurs nedovoljno iskorišten. Tu je i biblioteka za slijepe pri Savezu slijepih RS koja ima kapacitete za izradu prilagođenih udžbenika i trenutno aktuelan projekat Talking Books.

Roditelji djece sa smetnjama u razvoju su u određenoj mjeri uključeni u provođenje inkluzije jer su dio školskog stručnog tima. Oni dolaze na sastanke i učestvuju u donošenju odluka koje se tiču školovanja njihove djece i to kroz savjet roditelja. Ipak, situacija u pojedinačnim konkretnim slučajevima saradnje sa nastavnim osobljem koje radi sa djecom u razredu nije uvijek na zadovoljavajuć em nivou. Nastavnicima je potrebna je podrška u radu sa roditeljima koji su vrlo često nerealni u svojim očekivanjima.

Osnovni nedostatak u procesu inkluzije djece sa smetnjama u razvoju koji je istaknut jeste nedostatak rane dijagnostike i ranog tretmana. Javni fond dječije zaštite je u nekoliko lokalnih zajednica provodio program ranog otkrivanja djece sa smetnjama u razvoju i time omogućavao centrima za socijalni rad da uz dodatne resurse identifikuju djecu u najranijoj dobi kako bi dobila odgovarajuću podršku i prije upisa u osnovnu školu. Centar za socijalni rad Banja Luka ima potpisan memorandum o razumijevanju i saradnji sa akterim u lokalnoj zajednici iz zdravstvenog, socijalnog i obrazovnog sektora u cilju ranog otkrivanja djece sa smetnjama u razvoju. Ovim dokumentom je definisana razmjena informacija o djeci koja se pojave u bilo kom sistemu kako bi se porodicama pružila pravovremena podrška u ostvarivanju njihovih prava u bilo kojoj oblasti. Međutim, ovo nije slučaj u drugim lokalnim zajednicama jer je vrlo često slučaj da djeca sa smetnjama u razvoju prvi

put budu procjenjivana na upisu u školu kada je već kasno za rani tretman koji im mnogo znači u daljem razvoju.

Kao prioritete za djelovanje u pravcu unapređenja pristupa obrazovanju i kvaliteta obrazovanja lica sa invaliditetom ispitanici su istakli sistematsku obuku nastavnika za rad sa djecom sa smetnjama u razvoju (na čemu se do sada radilo parcijalno kroz projekte), zatim izradu novih nastavnih planova i programa kao i udžbenika koji će biti prilagođeniji djeci sa različitim potrebama, te potpuniju primjenu pedagoških standarda i normativa, te izradu novih zakona o osnovnom i srednjem obrazovanju i pratećih pravilnika koji će jasnije definisati način školovanja djece sa smetnjama u razvoju. Posebno je istaknuta potreba uvezivanja škola sa ostalim sistemima u cilju bolje obaviještenosti o dostupnim sistemima podrške.

Kao osnovna prepreka u implementaciji ciljeva iz Politike u oblasti invalidnosti navodi se nedostatak finansijskih sredstava. Organizacija adekvatnih obuka nastavnog osoblja i izrada nastavnih planova i programa izdvojeni su kao koraci koji se mogu implementirati sa trenutnim resursima.

Organizacije osoba sa invaliditetom su u ovom istraživanju ocjenjivale napredak u oblasti obrazovanja od usvajanja Politike do danas u nekoliko segmenata. Prema njihovom mišljenju, u oblasti obrazovanja lica sa invaliditetom napravljen je manji napredak prvenstveno u zakonskoj regulativi, dok je primjena iste u praksi izostala. Napredak po pitanju dostupnosti adekvatnog broja asistenata u nastavi predstavnici organizacija su vrednovali srednjom ocjenom 1,84 čime je evidentiran određeni pomak u ovom segmentu. Ipak, najveći procenat ispitanih konstatovao je da je napravljen zaista mali napredak u odnosu na potrebe. Nešto veća srednja ocjena evidentirana je kod odgovora na pitanje o tome da li je djeci sa invaliditetom omogućeno pohađanje redovne nastave (srednja vrijednost odgovora 2,11). Gotovo 50% ispitanih dalo je ocjenu 2 od mogućih 5 u vrednovanju napretka u ovom segmentu. Ocjenjujući rezultate vaspitno-obrazovnog rada sa licima sa invaliditetom, organizacije osoba sa invaliditetom su konstatovale da je ipak došlo do pomaka po pitanju broja obrazovanih lica sa invaliditetom (srednja ocjena 2,21). Značajan procenat ispitanih dao je ocjenu 2 i 3 za ovaj indikator uključenosti lica sa invaliditetom u vaspitno-obrazovne procese. Ista srednja ocjena od 2,21 evidentirana je kod odgovora na pitanje o tome da li je licima sa invaliditetom obezbijeđen pristup vannastavnim aktivnostima (kursevi računara i jezika, različite sekcije, i slično). Najveći procenat ispitanih dao je ocjenu 2 za napredak u ovom segmentu. Po pitanju profesionalne rehabilitacije lica sa invaliditetom, organizacije su za svoje članove konstatovale da

ipak nije došlo do značajnog pomaka u ovom segmentu dajući srednju vrijednost napretka od 1,84. Odgovori su ravnomjerno raspoređeni na prva tri stepena napretka.

Procjenjujući faktore koji bi mogli uticati na unapređenje provođenja POI u oblasti obrazovanja dobili smo odgovore da je potrebno bolje uvezivanje i saradnja Ministarstva prosvjete i kulture sa predstavnicima lokalnih vlasti i nosiocima socijalne zaštite u lokalnim zajednicama. Tri faktora koji bi mogli pozitivno uticati na implementaciju Politike u oblasti invalidnosti u obrazovanju su:

- Bolji vertikalan protok informacija i osiguranje jasnih smjernica za provođenje od strane nosioca implementacije pojedinih područja politike
- Veća sredstva na raspolaganju za implementaciju politike
- Učestalije konsultacije s organizacijama osoba sa invaliditetom i osobama s invaliditetom o prioritetima u implementaciji

2.1.4. Zapošljavanje

Analizom odgovora dobijenih od Ministarstva rada i boračko invalidske zaštite RS, odnosno Ministarstva rada i socijalne zaštite Federacije BiH, primjetno je da su sve aktivnosti vezane za stvaranje povoljnijih uslova u društvu za zapošljavanje lica sa invaliditetom prebačene na Fondove za profesionalnu rehabilitaciju, osposobljavanje i zapošljavanje. Ministarstva sama uglavnom nisu razvijala posebne programe sa ciljem provođenja mjera definisanih Politikom u oblasti invalidnosti, odnosno entitetskim Strategijama, a ako su imali aktivnosti vezane za unaprjeđenja oblasti zapošljavanja one su bile vezane za projekte koji se provode preko Fondova za profesionalnu rehabilitaciju, osposobljavanje i zapošljavanje invalida/osoba sa invaliditetom.

Entiteti nemaju programe, niti pravni osnov za davanje prednosti zapošljavanju lica sa invaliditetom u javnim ustanovama, pod uslovima posjedovanja jednake kvalifikacije, što, s obzirom na opšte nisku svijest o licima sa invaliditetom, iste stavlja u nepovoljan položaj. U Ministarstvu rada i socijalne zaštite Federacije BiH navode „kvotni sistem koji se teško primjenjuje“ kao jedini osnov koji prednost pri zapošljavanju daje licima sa invaliditetom.

Za praćenje zapošljavanja lica sa invaliditetom u oba entiteta su zaduženi Fondovi za profesionalnu rehabilitaciju, osposobljavanje i zapošljavanje. Prema podacima Fonda za profesionalnu rehabilitaciju i zapošljavanje invalida RS u 2013. godini je zaposleno 137 lica sa invaliditetom. Međutim, u

praksi se ne vidi značajan pomak na ovom polju, o čemu govore i podaci i mišljena dobijena od Organizacija osoba sa invaliditetom.

U Federaciji je, nakon usvajanja politike, 2010. godine, donesen Zakon o profesionalnoj rehabilitaciji, osposobljavanju i zapošljavanju osoba sa invaliditetom (Sl. Novine FBiH 9/10), a u Republici Srpskoj Zakon o profesionalnoj rehabilitaciji, osposobljavanju i zapošljavanju invalida (Službeni glasnik RS 37/12). Ova dva zakona, pored entitetskih Zakona o radu čine osnovu zakonskog okvira koji se odnosi na zapošljavanje lica sa invaliditetom. Ova oblast je uređena i mnogobrojnim podzakonskim aktima (*Pravilnik o evidenciji zaposlenih invalida*, *Pravilnik o radnim mjestima i poslovima za prioritetno zapošljavanje invalida*, *Pravilnik o uslovima u pogledu prostora, opreme i stručnosti radnika koje mora ispunjavati ustavo za profesionalnu rehabilitaciju* i dr.) i svi su načelno usklađeni sa Politikom u oblasti invalidnosti.

Zakoni propisuju da se zapošljavanje lica sa invaliditetom u BiH odvija na osnovu dva osnovna modela: zapošljavanje na otvorenom tržištu pod jednakim uslovima i zapošljavanje pod posebnim uslovima (posebni programi, beneficirani uslovi zapošljavanja, preduzeća za zapošljavanje lica sa invaliditetom, zaštitne radionice), a po osnovu sklapanja ugovora o radu ili samozapošljavanjem. Bez ulaženja u dublju pravnu analizu, zakonske mjere su u oba entiteta slične, a predviđaju zakonsku obavezu državnih ustanova i institucija da na svakih 16 zaposlenih zaposli 1 lice sa invaliditetom, odnosno stimulativne mjere za privatne poslodavce, ako zapošljavaju lica sa invaliditetom, u vidu poreskih olakšica.

Ukoliko nemaju potreban cenzus za tzv. obavezno zapošljavanje, moraju izdvajati određen iznos na bruto plate zaposlenih u Fondove za profesionalnu rehabilitaciju, osposobljavanje i zapošljavanje. Pravna lica koja nemaju obavezu zapošljavanja (npr. nevladine organizacije) takođe izdvajaju određen iznos koji je procentualno manji nego u slučaju državnih subjekata. Posebno je definisan status preduzeća za zapošljavanje lica sa invaliditetom, pa tako u FBiH privredno društvo za zapošljavanje lica sa invaliditetom treba imati najmanje 40% zaposlenih sa takvim statusom, a u RS najmanje 51%.

Uprkos činjenici da zakon predviđa da lice koje se može zaposliti kao lice sa invaliditetom, pod posebnim uslovima, mora imati 40% invaliditeta odnsosno 70% tjelesnog oštećenja, vrlo rijetko se zapošljavaju lica sa funkcionalno velikim oštećenjim, npr. korisnici/ce invalidskih kolica i sl.

Pored stimulativnih mjera definisanih zakonom, u RS „kroz projekte zapošljavanja poslodavci su stimulisani za zapošljavanje lica sa iznosom sredstava (različito po projektima).“

Politika u oblasti invalidnosti, odnosno njeni ciljevi koji se odnose na zapošljavanje lica sa invaliditetom nisu prepoznati kao posebna stavka prilikom kreiranja budžeta. Planiraju se i izdvajaju sredstva za finansiranje Fondova za profesionalnu rehabilitaciju i zapošljavanje, ali ne kao posljedica nastojanja implementacije Politike ili Strategija u oblasti invalidnosti.

Generalni utisak je da Politika u oblasti invalidnosti, ali ni prateće Strategije, nisu izazvale uvođenje novih mjera, programa ili akcija za unaprjeđenje oblasti zapošljavanja lica sa invaliditetom. Umjesto toga, već postojeći mehanizmi se nastoje prikazati kao dovoljni da formalno zadovolje djelovanje u skladu sa Politikom u oblasti invalidnosti.

Aktivnosti promocije zapošljavanja i samozapošljavanja lica sa invaliditetom provode se, uglavnom preko fondova za profesionalnu rehabilitaciju i zapošljavanje. Fond za profesionalnu rehabilitaciju i zapošljavanje invalida RS svake godine provodi aktivnosti na promovisanju podsticaja za zapošljavanje i samozapošljavanje invalidnih lica. Te aktivnosti uključuju prije svega organizovanje i održavanje okruglih stolova na navedenu temu kroz učešće predstavnika invalidskih organizacija, poslodavaca i predstavnika lokalnih zajednica, širom Republike Srpske. Nadležna entitetska ministarstva takođe preuzimaju inicijativu na polju promocije, prepoznajući značaj iste, pa tako u Ministarstvu rada i boračko invalidske zaštite RS, kao primjere navode: „Promocije i informativne kampanje o primjeni Zakona o profesionalnoj rehabilitaciji, osposobljavanju i zapošljavanju invalida, manifestacije *Izbor poslodavca godine koji zapošljava lica sa invaliditetom*.“

Lokalne zajednice nemaju direktnih obaveza u odnosu na zapošljavanje i nisu dale nijedan konkretan primjer aktivnosti.

Organizacije osoba sa invaliditetom na lokalnim i entitetskim nivoima nisko na skali ocjenjuju napredak postignut o oblasti zapošljavanja od usvajanja Politike u oblasti invalidnosti. Generalni napredak u zapošljavanju u odnosu na period prije donošenja Politike u oblasti invalidnosti 7 organizacija ocjenjuje ocjenom 3 (na skali od 1 do 5). Možemo pretpostaviti da je za ovu srednju ocjenu zaslužna zakonska i podzakonska regulativa.

Međutim, ukupno 20 organizacija lokalnog, entitetskog i BiH nivoa, bilježe ukupno 57 svojih članova koji su zaposleni, dok su podaci Fondova za profesionalnu rehabilitaciju i zapošljavanje znatno veći, samo za 2013. godinu. (npr. prema podacima Fonda RS u 2013. godini je zaposleni 137 lica sa invaliditetom). Organizacije navode da je radno mjesto adaptirano za 30 osoba sa invaliditetom. Ovu razliku u podacima i utisku u zapošljavanju lica sa invaliditetom možemo tumačiti činjenicom da se određen broj lica sa invaliditetom zaista zapošljava, ali to su uglavnom lica sa lakšim funkcionalnim oštećenjima kojima ne treba prilagođavanje radnog mjesta i koji najčešće nisu dio oragnizacija osoba sa invaliditetom i aktivisti pokreta osoba sa invaliditetom. Honorarno angažovanje lica sa invaliditetom većina organizacija negativno ocjenjuje, što govori o tome da je mogućnost privređivanja lica sa invaliditetom na svim poljima vrlo mala.

Nadležne institucije su identifikovale faktore koji bi mogli pozitivno uticati na implementaciju Politike u oblasti invalidnosti, među kojima su oni prepoznali:

- češće konsultacije sa osobama sa invaliditetom i njihovim organizacijama,
- bolji raspored sredstava koja su na raspolaganju lokalnoj zajednici,
- pravovremeno i sistematsko planiranje aktivnosti,
- veća sredstava na raspolaganju za implementaciju Politike,
- bolji vertikalni protok informacija i osiguravanje jasnih smjernica od strane nosioca implementacije.

2.1.5. Ostvarenje ljudskog dostojanstva, ličnog integriteta, društveni, intimni i porodični život

Politika u oblasti invalidnosti definiše ostvarenje ljudskog dostojanstva, ličnog integriteta, društveni, intimni i porodični život kroz više indikatora, kao što je porodični život, ostvarenje kulturnih, sportskih i vjerskih potreba.

U anketiranim lokalnim zajednicama, centri za socijalni rad nemaju osobe obučene za savjetovanje porodica koje imaju članove lica sa invaliditetom. Takođe, ne vode se posebne evidencije za žrtve porodičnog nasilja gdje je žrtva osoba sa invaliditetom.

U Banja Luci se provode usluge za samostalan život osoba sa invaliditetom (personalna asistencija, dnevni boravak za mentalno nedovoljno razvijena lica, pomoć u kući, dnevni boravak za lica sa problemima u mentalnom zdravlju, dnevni boravak za stara lica koje posjećuju i lica sa invaliditetom,

smještaj u sopstvenu porodicu za djecu sa teškim smetnjama). Navedene usluge utiču na socijalizaciju i ukupnu uključenost osoba sa invaliditetom. Grad Banja Luka sufinansira i aktivnosti prevoza za lica sa invaliditetom.

Neke opštine, kao npr. Bijeljina, imaju kao proširena prava i usluge, dodatna novčana davanja u vidu prava na smještaj u vlastitu porodicu. Lica sa invaliditetom imaju podršku kroz prava iz Zakona o socijalnoj zaštiti i radom na terenu socijalnih i drugih stručnih radnika centra. Programi podrške porodicama koje imaju člana sa invaliditetom i samim osobama sa invaliditetom u porodičnim savjetovalištima ne postoje u okviru Domova zdravlja.

U sistemima socijalne i zdravstvene zaštite nema dovoljno savjetovališta za porodicu, a posebno savjetovališta za osobe sa invaliditetom i njihove porodice. U sistemu socijalne zaštite je pozitivno ocijenjen napredak u 16% slučajeva, a u ostalim negativno. činjenicu potvrđuju i odgovori organizacija na pitanje o porodičnim savjetovalištima koji su u 68% slučajeva da nema nikako i 31,6% da nema pomaka u posljednjih pet godina. Na pitanje dostupnosti usluga za korisnike kolica, gluhe ili slijepe i ostvareni napredak u posmatranom periodu 100% organizacija osoba sa invaliditetom ocjenjuje negativno ili kao *status quo*. Očigledan primjer su usluge ginekologa za žene korisnice kolica gdje su sve organizacije potvrdile da ne postoji ta vrsta usluge. Posmatrajuć i ove negativne odgovore vidimo da je broj osoba koje su ostvarile porodični život izuzetno mali i organizacije ne smatraju da je tu došlo do značajnih pomaka, samo jedna organizacija smatra da je u toj oblasti došlo do pomaka, a preostalih 94,7% ne vide da je pomak ostvaren.

Osobe sa invaliditetom nemaju značajne mogućnosti da pristupe i da se iskažu u kulturnim i sportskim sferama jer je samo 5,3% (1) konstatovalo da u toj sferi ima pomaka dok je preostalih 94,7 (18) ocijenilo da nema pomaka ili da je stanje isto.

Slična situacija je i sa vjerskim objektima jer je 10,5% (2) konstatovalo da je pristup vjerskim objektima poboljšan a ostalih 89,5 % smatra da nema značajnih pomaka. Još uvijek je mali broj djece i žena uključeno u sportske aktivosti. Stavovi fokus grupe mladih na okruglom stolu u decembru 2013. godine pokazuju da je mali broj sportova za osobe sa invaliditetom uopšte i da postoje predrasude da je sport naporan za osobe sa invaliditetom. Na isti način su ocijenili i stanje u kulturi. Postoje određeni programi koji se razvijaju i osobe sa invaliditetom učestvuju u njima, ali je to još uvijek nedovoljno.

Svi ovi preduslovi obeshrabrujuće djeluju za afirmaciju žena sa invaliditetom pa nije postignut značajan napredak u afirmaciji žena sa invaliditeom unutar organizacija osoba sa invaliditetom i cijeloj zajednici (pozitivan odgovor samo tri organizacije 15,8%).

Nedostatak porodične podrške i predrasude javnosti utiču i na opšti status osoba sa invaliditetom u političkom životu što potvrđuje negativna procjena organizacija osoba sa invaliditetom u 94,5 % slučajeva.

2.1.6. Status organizacija osoba sa invaliditetom u društvu

Status organizacija osoba sa invaliditetom je posebno prepoznat u Politici u oblasti invalidnosti BiH kao oblast na osnovu koje treba mjeriti ukupan status osoba sa invaliditetom u društvu. U Republici Srpskoj postoji pravilnik o načinu na koji organizacije stiču status od društvenog interesa i postigli su ga svi Savezi koji su po tipu invaliditeta što im omogućava da imaju osnovno finansiranje rada saveza putem Ministarstva za lokalnu upravu i samoupravu. Opštinske organizacije se finansiraju iz lokalnih budžeta ali uglavnom u veoma malim iznosima nedovoljnim za osnovni rad. U Federaciji BiH se finansiranje ovih organizacija bazira na finansiranju iz sredstava Lutrije BiH, budžeta Federacije, kantona i opština. Situacija sa finansranjem na lokalnom nivou zavisi od ekonomske situacije u pojedinom kantonu tako da u nekim slučajevima kao što je kanton Sarajevo finansiranje je zadovoljavajuće, a u drugim uopšte nemaju finansiranje rada udruženja.

Analizu ovih pitanja smo usmjerili ka ovoj oblasti kroz dio upitnika namijenjen organizacijama osoba sa invaliditetom. Na osnovu odgovora ispitanika možemo vidjeti da u većini opština tj. na nivou entiteta (73%) nema sistem vrednovanja rada organizacija osoba sa invaliditetom. Velika već ina (84%) orgaizacija tvrdi da nisu imali povećanja budžeta za rad organizacija od 2008. godine do danas. Analogno tome možemo zaključiti da se i raspodjela sredstava za rad organizacija vrši po *ad hoc* sistemu.

Još uvijek se ne poklanja dovoljno pažnje pitanjima invaliditeta na entiteskim i lokalnim nivoima jer su organizacije potvrdile da u najvećem broju slučajeva ne postoje planovi potreba za lica sa invaliditetom na lokalnom nivou što upućuje da se tema invalidnosti ne nalazi na dnevnom redu skupština opština. Ovu tvrdnju smo potvrdili i uvidom u podatke dostupne na web stranicama ispitivanih opština. Postoji izvjesna sklonost opštinskih vlasti za poboljšanje uslova za rad jer je

52% organizacija dalo odgovor da su dobili podršku kroz stvaranje boljih uslova za rad, ali su ta sredstva bila dovoljna samo u 55% organizacija. Kod ostalih četiri organizacije su donacije bile djelimične.

Jedno od mjerila uvažavanja organizacija osoba sa invaliditetom kao važnih sagovornika vlastima, jer zastupaju prosječno 10% populacije, postavlja se konsultantsko učešće u procesima donošenja pravne regulative. Možemo reći da se situacija ukupno poboljšava jer je 68% ispitanika potvrdilo da učestvuje u konsultacijama.

Organizacije osoba sa invaliditetom su se rijetko pozivane na događanja od važnosti za cjelokupnu zajednicu, a taj pokazatelj govori o društvenom priznanju i organizacija i njihovih članova. Manji napredak po pitanju broja događaja na koji su pozivani, a koji nemaju direktnu vezu sa invaliditetom, ostvaren je prema 21% odgovora, dok u 79% slučajeva nema napretka ili je stanje loše. Ovi pokazatelji govore da nema napretka u prihvatanju filozofije uključivanja pitanja invalidnosti u glavne tokove u društvu na svim nivoima društva.

Ove tvrdnje potvđuju i činjenice da u posljednjih pet godina nije bilo značajnog napretka u broju poziva i učešća na seminarima u odnosu na period prije 2008. godine. Samo 20% ispitanika je navelo da je povećan broj poziva, ostali 80% smatra da je na istom nivou ili čak manje nego ranije. Nekoliko ispitanika ima sumnju prema povećanju broja poziva jer se uglavnom radi o seminarima namijenjenim osobama sa invaliditetom. U komentarima su registrovali da je povećan broj organizacija kojim osobe sa invaliditetom nisu ciljna grupa, a vode veće projekte namijenjene osobama sa invaliditetom.

Novoformirane organizacije koje svoje članove okupljaju na principu i filozofiji samostalnog života (cross-disability organizacije) nisu priznate u zajednici i uglavnom se finansiraju na osnovu projekata ili socijalnih usluga stranih donatora.

2.2. ANALIZA DOKUMENTACIJE

Za potrebe istraživanja analizirali smo zakonsku regulativu za svaku oblast pojedinačno. Također smo se koristili izvještajima koji su objavljeni o stanju u oblasti invalidnosti od 2008. godine do danas (Inicijalni izvještaj o primjeni UN Konvencije koji je BiH dostavila dvije godine poslije

ratifikacije, Izvještaj organizacija osoba sa invaliditetom u sjeni i druge materijela iz liste u prilogu ovog izvještaja).

Obzirom da nismo imali zadovoljavajući odziv iz opština analizirali smo rad njihovih Skupština putem web sajtova. Posmatrajući dnevne redove Skupština uvidjeli smo da se tema invalidnosti ne nalazi na njihovim razmatranjima.

Ministarstvo civilnih poslova BiH ima samo kooridnirajuću ulogu u oblasti socijalne zaštite, zdravstva, obrazovanja i rada, a prava regulisanja ove oblasti su na nivou entiteta i Distrikta Brčko.

Oblast socijalne zaštite lica sa invaliditetom u Bosni i Hercegovini regulisana je aktuelnim zakonima o socijalnoj, dječijoj i porodično-pravnoj zaštiti i spada u nadležnost entitetskih vlada. Dva entiteta primjenjuju dva različita sistema socijalne zaštite regulisania različitim zakonima. Na nivou Entiteta u Republici Srpskoj odgovornosti su podijeljene između entitetskog i lokalnog nivoa, a u Federaciji BiH odgovornost je podijeljena između entiteta, kantona i lokalnih zajednica.

U Republici Srpskoj je u maju 2012. godine stupio na snagu novi Zakon o socijalnoj zaštiti kojim je regulisan širi obim prava, te predviđeni prateći pravilnici koji dodatno regulišu oblast zaštite osoba sa invaliditetom u skladu sa Politikom u oblasti invalidnosti BiH i UN Konvencije o pravima osoba sa invaliditetom. Tri su osnovna zakona koja obezbjeđuju zaštitu osoba i porodica osoba sa invaliditetom Zakon o socijalnoj zaštiti RS (Službeni glasnik RS 39/12), Zakon o dječijoj zaštiti RS (Službeni glasnik RS 4/02), Porodični zakon (Službeni glasnik RS 54/02).

Prava prema Zakonu o socijalnoj zaštiti RS predviđena su prava: novčana pomoć,dodatak za pomoć i njegu drugog lica, podrška uizjednačavanju mogućnosti djece i omladine sa smetnjama u razvoju, smještaj u ustanovu, zbrinjavanje u hraniteljsku porodicu, pomoć i njega u kući,-dnevno zbrinjavanje, jednokratna novčana pomoć, savjetovanje.

Osiguranje većeg dijela prava je obaveza Republike Srpske, znači sredstva se osiguravaju iz bužeta entiteta i Fonda dječije zaštite, dok opštine obezbjeđuju sredstva za finansiranje 50% prava na novčanu pomoć, dodatak za njegu i pomoć drugog lica i zdravstveno osiguranje, te 100% sredstava za realizaciju ostalih prava iz socijalne zaštite i funkcionisanje centara za socijalni rad.

U Federaciji BiH pripremljeni su radni tekstovi zakona koji uređuju oblast zaštite osoba sa invaliditetom, ali na žalost još uvijek nisu u proceduri usvajanja. Prava iz socijalne zaštite osiguravaju se kroz federalni i kantonalne zakone o socijalnoj zaštiti, zaštiti civilnih žrtava rata i zaštiti porodice sa djecom (u daljem tekstu Federalni zakon). Prava iz socijalne zaštite se u Federaciji BiH ostvaruju na nivou kantona. Ukoliko neka prava nisu određena kantonalnim zakonima primjenjuje se Federalni zakon. Prava koja su Utvrđena zakonom Federacije BiH: novčana i druga materijalna pomoć, osposobljavanje za život i rad, smještaj u drugu porodicu, smještaj u ustanove socijalne zaštite, usluge socijalnog i drugog stručnog rada, kućna njega i pomoć u kući.

Socijalna zastita u Distriktu Brcko je regulisana Zakonom o socijalnoj zaštiti,Porodičnim zakonom I Zakonom o dječijoj zaštiti. Navedeni zakoni su doneseni na nivou Skupstine Distrikta Brčko BiH, a dostupni su na web sajtu Skupštine Distrikta Brčko.

U oblasti zdravstva uspostavljeni Zakoni su u domenu entiteta i distrikta Brčko, tako da smo analizirali Zakone o zdravstvenom osiguranju i Zdravstvenoj zaštiti kao i odgovarajuće pravilnike. Značajan pomak je postignut jer se u novim Zakonima poziva na ljudska prava svih građana pa i osoba sa invaliditetom.

U skaldu sa zakonom o ministarstvima i drugim organima uprave u Bih, Ministarstvo civilnih poslova ima prvenstveno kooridnirajuću ulogu u oblasti obrazovanja, uključujući nadzor nad primjenom okvirnih zakona iz oblasti obrazovanja u BiH.

U Federaciji Bosne i Hercegovine, u skladu sa Ustavom Federacije Bosne i Hercegovine, kantoni su nadležni za utvrđivanje obrazovne politike i donošenje propisa o obrazovanju i osiguravanje obrazovanja. U Republici Srpskoj, ova oblast je u nadležnosti Ministarstva prosvjete i kulture. Distrikt Brčko reguliše pitanja obrazovanja putem Odjeljenja za obrazovanje u Vladi Brčo distrikta. Vijeće ministara BiH je 2012. godine, na prijedlog Ministarstva civilnih poslova, donijelo Odluku o usvajanju Okvirne politike unapređenja ranog rasta i razvoja djece u Bosni i Hercegovini. Okvirna politika stavlja, između ostalog, u fokus ranu intervenciju u djetinjstvu, što predstavlja ohrabrujuć i napredak. Ovo je novi pristup za Bosnu i Hercegovinu i omogućava usluge podrške za razvojne aktivnosti za porodice sa novorođenčadi i malom djecom koja imaju teškoće u razvoju, imaju invaliditet ili atipično ponašanje, sa ciljem promovisanja „zdravog“ razvoja djeteta i njegove lakše inkluzije u školu i zajednicu.

U Okvirnom zakonu o predškolskom odgoju i obrazovanju u BiH u članu 6. (Zabrana diskriminacije) se navodi da svako dijete ima jednako pravo pristupa i jednake mogućnosti učešća u odgovarajućem vaspitanju i obrazovanju bez diskriminacije po bilo kom osnovu.

Okvirnim zakonom o osnovnom i srednjem obrazovanju u BiH regulisano je pitanje zabrane diskriminacije. članom 3. definisani su opšti ciljevi obrazovanja, koji podrazumijevaju zagovaranje poštovanja ljudskih prava i osnovnih sloboda, i pripremu svake osobe za život u društvu koje poštuje načela demokratije i vladavine zakona (tačka c) i osiguranje jednakih mogućnosti za obrazovanje i mogućnost izbora na svim nivoima obrazovanja, bez obzira na pol, rasu, nacionalnu pripadnost, socijalno i kulturno porijeklo i status, porodični status, vjeroispovijest, psihofizičke i druge lične osobine (tačka e).

Pitanja vaspitanja i obrazovanja djece sa smetnjama u razvoju na entitetskom nivou u Republici Srpskoj su riješena Zakonom o predškolskom vaspitanju i obrazovanju koji obavezuje ustanove da obezbjede uslove za jednako učešće djeci sa posebnim potrebama.

Na entitetskom nivou, pitanje pristupa osnovnom obrazovanju je riješeno Zakonom o osnovnom obrazovanju i vaspitanju. Ovim zakonom se, takođe, propisuje da svako dijete ima jednako pravo pristupa i jednake mogućnosti u osnovnom obrazovanju i vaspitanju bez diskriminacije po bilo kojem osnovu.

U Okvirnom zakonu o srednjem stručnom obrazovanju i obuci u BiH, u članu 3. (Ciljevi srednjeg stručnog obrazovanja i obuke), navodi se da se, osim opštih ciljeva obrazovanja definisanih Okvirnim zakonom o osnovnom i srednjem obrazovanju u BiH, u okviru srednjeg stručnog obrazovanja i obuke pod jednakim uslovima učeniku osigurava pravo na srednje stručno obrazovanje i obuku u skladu sa njegovim interesima i sposobnostima.

Članom 21. Okvirnog zakona o srednjem stručnom obrazovanju i obuci u BiH naznačeno je da škole mogu organizovati obuku odraslih u okviru svojih registrovanih aktivnosti, uz saglasnost nadležnih obrazovnih vlasti.

U Okvirnom zakonu o visokom obrazovanju u BiH u članu 7. navodi se da pristup visokom obrazovanju imaju svi oni koji su završili četverogodišnju srednju školu u Bosni i Hercegovini.

U dokumentu Strateški pravci razvoja obrazovanja u BiH sa planom implementacije 2008 – 2015 pod tačkom 4.5. (Podsticanje trajnog profesionalnog razvoja nastavnika, direktora i drugih zaposlenih u vaspitno-obrazovnim ustanovama) navodi se da iza svake uspješne reforme obrazovanja stoji stručan, kompetentan, motivisan i komunikativan kadar koji je spreman na stalno lično usavršavanje.

Republika Srpska je donijela Strategiju razvoja obrazovanja Republike Srpske 2010-2014 u kojoj se posebna pažnja posvećuje i djeci sa posebnim potrebama i poboljšanju njihovog položaja. Jedan od opštih ciljeva je i podići nivo obrazovanja. Oblast obrazovanja razrađena je i u Strategiji unapređenja društvenog položaja lica sa invaliditetom u Republici Srpskoj 2010–2015.

Oblast rada je regulisana na entitetskom nivou za koju postoji razvijena opšta zakonska regulativa, zakoni namijenjeni osobama sa invaliditetom i njihovoj profesionalnoj rehabilitaciji, kolektivni ugovori i ostala prateća regulativa u skladu sa Međunarodnom organizacijom rada.

3. ZAKLJUČCI I PREPORUKE

3.1. ZAKLJUČCI

Prema stavovima ispitanika, Politika u oblasti invalidnosti BiH se ne primjenjuje u praksi na odgovarajući način, po čemu dijeli sudbinu mnogih strateških dokumenata u BiH. Organizacije osoba sa invaliditetm su iznijele mišljenje da se primjena Startegija proizašlih iz Politike u oblasti invalidnosti BiH ne prati redovno i niko ne može sa sigurnošću reći da li postoji napredak u realizaciji ovih dokumenata.

Analizirajući odgovore organizacija osoba sa invaliditetom možemo reći da je najveći napredak ostvaren u socijalnoj zaštiti, zatim zdravstvu, dok obrazovanje i zapošljavanje imaju jednake vrijednosti, a najmanji napredak je u oblasti porodičnog života.

Napredak u prihvatanju filozofije uključivanja pitanja invalidnosti u glavne tokove nije značajan u posljednjih pet godina. Još uvijek se ne uvažavaju organizacije osoba sa invaliditetom kao dio zajednice koji ima učešće u svim sferama života. Invalidnost se još uvijek najviše sagledava kao sfera socijalne zaštite i zdravstvene zaštite.

Na osnovu odgovora entitetskih vlasti i obavljenih intervjua sa Ministarstvom civilnih poslova BiH zaključujemo da politička struktura Bosne i Hercegovine značajno utiče i na sprovođenje Politike u oblasti invalidnosti i ukupno položaj lica sa invaliditetom. Koordinirajuća uloga BiH organa im ne omogućava da adekvatno prate sprovođenje Politike u oblasti invalidnosti BiH. U Ministarstvu civilnih poslova kao instituciji zaduženoj za implementaciju Politike u oblasti invalidnosti zapažaju „deklarativan ton" politike, ali i ističu da institucije na nivou BIH imaju samo „koordinacijsku nadležnost, ali bez mehanizama koordinacije", tako da realizacija Politike ostaje na entitetima. Takođe, ističu da postoji dobar zakonski osnov u svim oblastima, te da je osobama sa invaliditetom na taj način ostavljen prostor, odnosno mehanizmi za djelovanje, koji bi trebalo da iskoriste.

Oba entiteta su izradila Startegije koje određuju pravce kretanja poboljšanja položaja i izjednačavanja mogućnosti za građane sa invaliditetom, ali još uvijek nema zvaničnih izvještaja o napretku u sprovođenju strategija.

Distrikt Brčko nema jasno definisanu politiku u odnosu na osobe sa invaliditetom pa su i napretci u ključnim oblastima bili mali. Zadužena lica za pojedine oblasti ne prepoznaju potrebu definisanja ciljeva rada u skladu sa Politikom u oblasti invalidnosti BiH.

Prateći analizu stanja u oblasti socijalne zaštite možemo zaključiti:

- Analiziranjem poteškoća u provođenju ciljeva definisanih POI u ispitivanom uzorku vladinih organizacija kao najveće poteškoće se navode neusvajanje novog Zakona u FBiH kao i nedostatak sredstava za povećanje obima prava.
- Razumijevanje pitanja invalidnosti nije dovoljno razvijeno kod stručnih radnika jer još uvijek postoje stavovi da troškove invalidnosti treba da snosi sama osoba sa invaliditetom ili njena porodica ukoliko ima status iznad socijalnog minimuma.
- Određeni napredak u RS je ostvaren novim Zakonom o socijalnoj zaštiti ali su socijalne usluge još uvijek slabo razvijene u većini opština u BiH.
- U anketiranim lokalnim zajednicama, centri za socijalni rad nemaju osobe obučene za savjetovanje porodica koje imaju članove lica sa invaliditetom. Takođe, ne vode se posebne evidencije za žrtve porodičnog nasilja gdje je žrtva osoba sa invaliditetom.

Prateći analizu stanja u oblasti zdravstva možemo zaključiti:

- Uslovi za zdravstvenu zaštitu osoba sa invaliditetom su dijelom zakonski regulisani, ali se u praksi teško sprovode. Zakonska regulativa formalno prepoznaje pitanje invalidnosti, ali osoblje ga ne razumije i ne sprovodi na adekvatan način.
- Najveći problemi su za lica sa oštećenjem sluha koja imaju pravo na jednake uslove pri liječenju, ali to se još uvijek ne dešava jer nemaju mogućnost da koriste gestovne tumače i da se pravilno upute u toku liječenja.
- Postoje evidentne razlike u procjeni stepena invaliditeta od sistema do sistema i u odnosu na geografsko područje što prouzrokuje diskriminaciju u oblasti zdravstva, ali i realizaciji drugih prava koja se realizuju na osnovu procjene stepena invaliditeta.
- Pitanja pomagala se rješavaju u odnosu na finansijske potrebe i lične procjene članova komisija, a ne na osnovu stvarnih potreba korisnika.

Analizirajući stanje u oblasti obrazovanja lica sa invaliditetom možemo zaključiti:

- Zakonska regulativa u oblasti obrazovanja u Bosni i Hercegovini predstavlja povoljan okvir za konkretne aktivnosti u cilju unapređenja procesa inkluzije na svim nivoima obrazovanja.

- Ne postoje razvijeni sistemski mehanizmi rane dijagnostike i ranog tretmana u cilju smanjenja potreba djeteta u kasnijem razvoju.
- Svijest o inkluzivnom obrazovanju kao filozofiji života nije dovoljno razvijena jer nema inicijativa za prilagođavanje sistema svakom pojedinačnom djetetu već se dijete sa svojim specifičnostima pokušava uklapati u postojeće okvire.
- Postojeći resursi nisu u dovoljnoj mjeri iskorišteni i nema razmjene informacija između sistema o dostupnim vidovima podrške.
- Nivo pripremljenosti škole za prihvatanje djece sa smetnjama u razvoju zavisi od stepena razvijenosti lokalne zajednice i geografskog položaja.
- Specijalne ustanove za vaspitanje i obrazovanje djece sa smetnja u razvoju nisu u dovoljnoj mjeri iskorištene, a imaju značajne kadrovske potencijale i profesionalna iskustva
- Nastavnici nemaju adekvatnu dodiplomsku obuku za rad sa djecom sa smetnjama u razvoju u redovnoj nastavi, a stručna usavršavanja nisu planska već zavise od projekata nevladinih i međunarodnih organizacija.
- U većini škola širom BiH izostaje podrška nastavnicima koji u razredu imaju dijete sa smetnjama u razvoju. Ne samo da škole nemaju adekvatnu stručnu službu (nedostatak defektologa) već su im često nedostupni i ostali vidovi stručne podrške u smislu savjetovanja i davanja fleksibilnosti u radu i primjeni nastavnih planova i programa u radu sa ovom djecom.
- Lokalne zajednice nemaju razvijenu svijest o svojoj ulozi i mogućnostima podrške školama u procesu inkluzije.
- Nedostatak finansija najčešća je prepreka unapređenju kvaliteta obrazovanja lica sa invaliditetom i djece sa teškoćama u razvoju.

Iz analize stanja u oblasti zapošljavanja možemo zaključiti:

- Oba entiteta su obezbijedila zakonsku regulativu i mehanizam za njeno provođenje, ali je problem zapošljavanja prepušten prije svega Fondovima. Organi vlasti na svim nivoima ne poštuju zakone i rijetko zapošljavaju odgovarajuću kvotu osoba sa invaliditetom.
- Praksa pokazuje da i pored stimulativnih mjera iz zakona, relativno mali broj poslodavaca koristi ove mogućnosti i da radije biraju da izdvajaju sredstva za Fondove nego da se upuštaju u zapošljavanje lica sa invaliditetom.
- Postojeća zakonska regulativa nije stimulativna za zapošljavanje osoba sa invaliditetom koje trebaju asistenciju na poslu.

- Vlada distrikta Brčko, ni nakon nekoliko urgencija nije dostavila odgovore na pitanja iz oblasti zapošljavanja što upućuje na pretpostavku da nemaju razvijene procedure koje bi poboljšale zapošljavanje osoba sa invaliditetom.
- Vidljivo je da lokalne zajednice, bez obzira na to što nisu direktno delegirane za provođenje mjera vezanih za zapošljavanje, ne prepoznaju značaj zalaganja za unaprijeđenje zapošljavanja lica sa invaliditetom, čime bi smanjili broj socijalno ugroženih porodica, a to jeste u direktoj vezi sa nadležnostima lokalnih zajednica.
- Nadležne institucije su identifikovale faktore koji bi mogli pozitivno uticati na implementaciju Politike u oblasti invalidnosti na polju zapošljavanja: „češće konsultacije sa OSI i njihovim organizacijama OSI“, „bolji raspored sredstava koja su na raspolaganju lokalnoj zajednici“, pravovremeno i sistematsko planiranje aktivnosti“, veća sredstava na raspolaganju za implementaciju Politike“, „bolji vertikalni protok informacija i osiguravanje jasnih smijernica od strane nosioca implementacije“.

3.2. PREPORUKE

U cilju poboljšanja primjene Politike u oblasti invalidnosti BiH, predlažemo slijedeće generalne preporuke:

- Uspostaviti mehanizme pripreme Izvještaja o napretku u primjeni Politike u oblasti invalidnosti za Parlament BiH svake dvije godine, a koji bi se kreirao iz entitetskih izvještaja o sprovođenju staregije i lokalnog akcionog plana za Distrikt Brčko.
- U distriktu Brčko izraditi Lokalni akcioni plan koji bi u skladu sa Politikom u oblasti invalidnosti BiH odgovorio na pitanja poboljšanja položaja i izjednačavanja mogućnosti osoba sa invaliditetom.
- Organizacije osoba sa invaliditetom trebaju tražiti da se javnost redovno izvještava o primjeni Politike u oblasti invalidnosti i njoj pripadajućih Strategija.
- Javnim kampanjama skrenuti pažnju javnosti na učešće osoba sa invaliditetom u društvu kao jednakopravnih građana, a posredno promovisati porodični život i preduslove za njegovu realizaciju.
- Na svim nivoima vlasti BiH, entiteta, opština u svim oblastima treba obezbijediti posebne budžetske linije za provođenje Politike u oblasti invalidnosti i Strategija proisteklih iz njih.
- Uspostaviti sisteme finansiranja organizacija osoba sa invaliditetom na osnovu njihovih rezultata rada u skladu sa potrebama članova.

Za primjenu Politike u oblasti socijalne zaštite neophodno je :

- Obezbijediti Zakonsku regulativu koja bi omogućila izjednačavanje procjene invalidnosti u svim sistemima u kojima se pojavljuju sobe sa invaliditetom bez obzira na geografsko porijeklo i porijeklo invaliditeta.
- Zakonima o socijalnim uslugama stimulisati razvoj socijalnih usluga i samostalan život osoba sa invaliditetom.
- Intenziviranje programa obuke koji se mogu podržati iz programa koje sufinansiraju vlade, a implementiraju organizacije osoba sa invaliditetom koje imaju iskustvo za organizovanje treninga.

Za primjenu Politike u oblasti zdravstva neophodno je:

- Podizanje svjesti stručnjaka u oblasti zdravstva putem kontinuirane edukacije zdravstvenih radnika u cilju osvještavanja o problemima osoba sa invaliditetom, izmjene pristupa baziranog na medicinskom modelu ka modelu socijalne inkluzije,
- Izjednačavanje načina procjene invaliditeta između različitih grupa osoba sa invaliditetom,
- Odvajanje budžetskih linija za poboljšanje uslova za osobe sa invaliditetom u zdravstvenom sistemu.
- češće konsultacije sa korisničkim udruženjima uvažavajući različitosti invalidnosti.
- Obezbjeđenje pomagala u skladu sa individualnim potrebama osoba sa invaliditetom, a ne na osnovu dijagnoze.
- Organizacije osoba sa invaliditetom trebaju tražiti da se u praksi realizuju prava koja su im data u zakonima.

Preporuke u cilju potpunije primjene Politike u oblasti invalidnosti i podizanja kvaliteta inkluzije i obrazovanja uopšte:

- U cilju sveobuhvatnije podrške djeci sa posebnim potrebama u sistemu obrazovanja naglašena je potreba da se bolje uvežu i više sarađuju sistemi vaspitanja i obrazovanja i sistem socijalne zaštite u okrivu koga se vrši procjena potreba i usmjeravanje djece sa smetnjama u razvoju.
- Lokalne zajednice trebaju uložiti više resursa u adaptiranje i podršku školama u cilju unapređenja kvaliteta obrazovanja uopšte, te otklanjanje prepreka inkluzivnom obrazovanju.

- Iskoristiti postojeće resurse i raditi na podizanju svijesti na svim nivoima i u svim sistemima o inkluziji u obrazovanju kao filozofiji života i osnovnom preduslovu za potpunije uključivanje lica sa invaliditetom u sve segmente društvenog života kako bi bili ravnopravni članovi društva.
- Obezbijediti jednake mogućnosti učenicima sa smetnjama u razvoju i nastavnicima koji sa njima rade bez obzira na geografski položaj lokalne zajednice u kojoj žive.
- Razvijati resursne centre i druge oblike stručne podrške u cilju sveobuhvatnije procjene potreba i adekvatnog planiranja vaspitno obrazovnog rada u redovnim školama, i obezbijediti da svako dijete sa smetnjama u razvoju ima individualni plan podrške.
- Potrebno je sistemski planirati zapošljavanje i angažovanje stručnjaka koji posjeduju profesionalne kompetencije za rad sa djecom sa smetnjama u razvoju kako bi se nastavniku i djetetu pružila adekvatna podrška.

Za dosljednu primjenu Politike u oblasti invalidnosti i unapređenje zapošljavanja osoba sa invaliditetom neophodno je:

- Osigurati jasne smjernice za nadležna ministarstva (Ministarstvo rada i socijalne zaštite za FBiH odnosno Ministarstvo rada i boračko invalidske zaštite za RS) da svoje programe sistematično i planski formiraju i budžetiraju oslanjajući se na Politiku u oblasti invalidnosti i prateće Strategije, te propisati obavezu izvještavanja u odnosu na pomenute dokumente.
- Provoditi aktivnosti za podizanje svijesti poslodavaca o značaju zapošljavanja lica sa invaliditetom, njihovim mogućnostima ali i benefitima koji su propisani zakonom.
- Provesti aktivnosti informisanja, osnaživanja i podizanja svijesti lica sa invaliditetom i njihovih porodica o pravima iz oblasti zapošljavanja i načinima njihovog ostvarivanja.
- Promovisati primjere dobre prakse zapošljavanja lica sa invaliditetom.
- Podići svijest lokalnih zajednica o tome da pitanje zapošljavanja lica sa invaliditetom ipak jeste pitanje lokalne zajednice i podsticati ih da se uključe u njegovo rješavanje.

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TESTIMONIAL

HO Partner Banja Luka is an organization recognized in society as organization which is profoundly dedicated to its goals and as responsible accountable organization. This fact was truly helpful in some situations where we lobbied to get responses through the questionnaires. Due to the fact that we actively participated in the process of creation of the Disability policy, we are acknowledged as an organization which is relevant and competent to implement a research on its application in practice.

During this action we re-established cooperation with some state officials and nongovernmental organizations and reconsidered possibilities for joint future actions. This action had significantly improved our relationships and contacts which can be of crucial importance for future activities planned with a goal to implement recommendations stated in the document in practice.

ABOUT THE AUTHORS

Olivera Mastikosa was born on December 18th 1964 in Sarajevo, Bosnia and Herzegovina. Master of Science in Technology and Master of Social Work. For twenty years in disability movement, as a person with muscular dystrophy she started working in the Union of people with dystrophy in 1993. After that she worked on many international projects dedicated to persons with disabilities. She published scientific and professional papers in this field, manuals for working with persons with disabilities as well as for persons with disabilities themselves. She was founder and director for the first ten years of Humanitarian organization Partner, and now she is a volunteer there. For the last eight years she works at the Social Work Centre on introduction of new services and performing analysis in the field of social protection. She is also appointed as National coordinator for persons with disabilities with the Ministry of health and social welfare. Married with one child she lives in Banja Luka, BiH.

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CONTRACTING NGOs FOR SOCIAL SERVICES IN BOSNIA AND HERZEGOVINA

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SUMMARY & RECOMMENDATIONS

The government sector has been slow to recognize the value of NGOs as service providers and offer its full support, either through providing funding or by entrusting NGOs with delivering certain services, which would increase the quality and quantity of the services needed. Non-governmental organizations in BiH can play an important role in delivering services, especially due to their experience in many areas in which they are active. They have a hands-on experience and direct insight to the needs and gaps of target groups they are assisting, and the capacity, experience and flexibility to provide the services they need.

This paper is focused on the role and modalities that the non-governmental sector may take in providing social services. There are over 12,000 registered NGOs in Bosnia and Herzegovina with large potential to deliver services in social areas where public institutions are not efficient enough and the private sector does not find attractive for the lack of profit. This potential has not been evaluated and the role of NGOs in providing social services has not been considered.

Successful partnerships in delivering social services can be implemented together with NGOs as they can provide good local networks and knowledge on needs and gaps that services need to address. Examples from other countries show that social services provided by NGOs tend to be more effective, more client oriented and utilized more frequently than public facilities.

This paper presents two options for partnering with the NGO sector for delivering social services, one that is project based and executed through grants or donations and the

other that arranged like public private partnership in which services are outsourced to NGOs. Advantages of each option are considered and a set of recommendations made.

Experiences from countries that regularly contract NGOs for services show that there are certain preconditions that have to be met in order to make this arrangement viable and long-term sustainable. Those include:

- a reliable source of funding must be secured for at least mid-term long period. Without this, contracts cannot be executed and accountability for results and the quality of services will not be possible.
- a transparent and open competitive process with clear and precise requirements of the services to be delivered together with the evaluation and selection criteria have to be developed.
- a well and precisely defined contract, including detailed description of the services to be provided together with expected results is another important precondition for successful outsourcing to NGOs.
- a well developed system for monitoring contractors' work and the quality of services provided need to be established. It is absolutely necessary to require reporting and accountability to ensure that organizations use the funds and deliver services in the intended manner.

NON-GOVERNMENTAL SECTOR IN BIH

Significant development of the NGO sector in Bosnia and Herzegovina started during the war in the 1990s and intensified after the war. This development was mainly influenced by the large number of international organizations, humanitarian mostly, that were implementing projects and a locally established NGO would usually be one of the results of their work. At first, those were mainly organizations dealing with humanitarian issues and used to work in a small geographic area, mostly in large cities. Almost two decades after the end of the civil war in BiH there is no doubt that the non-profit sector has developed and accumulated remarkable capacities.

Today, civil sector in BiH includes a diversity of actors that range from individual citizens and organizations, modern NGOs, community service organizations, informal and grassroots organizations, sports, cultural and arts organizations, veterans groups, political organizations and workers unions to NGO coalitions and networks operating in various fields. Even though dominated by sports associations, civil society organizations in BiH work in a range of areas including children, youth, women's issues, education, environmental protection and volunteering and advocacy. While there is no reliable data and comprehensive database of all registered civil society organizations in the country, it is estimated that there are over 12,000 registered organizations, however, only about 6,600 seem to be active (UNV, 2011). When this number of organizations registered is compared to other countries in the region, the results show that BiH is among the countries with the most NGOs relative to the number of population in the Western Balkans (IBHI, 2012).

Most available sources indicate that the NGO sector in BiH receives almost all of its funds from donors through grants or donations. While, on one hand, NGOs heavily depend on support from the international community, on the other hand, funding from local sources, including government, private, and corporate donors, remains negligible and primarily benefits organizations such as charities, sports associations, and veterans associations (USAID, 2013).

The reliance on the international community forces organizations, especially those working for the public benefit, to operate on project based funding in areas that match donors' interests and priorities. As a result, NGOs in BiH are often not able to focus on activities and projects that are in line with local development needs and priorities (UNV, 2011).

NGO SECTOR CAPACITIES

An important question for further discussing outsourcing to NGOs for social services delivery is their readiness, professionalism, and capacity to take on this role and adequately deliver services.

An overview of the development and capacities of the NGO sector in the country is available from the USAID assessment "*2012 CSO Sustainability Index for Central and Eastern Europe and Eurasia*". This assessment is published yearly and provides an overview of the strength and overall sustainability of the NGO sector in 29 countries in the region, allowing thus comparisons among countries and subregions over time. The assessment provides analysis and ratings to seven components: legal environment, organizational capacity, financial viability, advocacy, service provision, infrastructure, and public image.

Organizational capacity of BiH NGOs is rated 3.4[1]. While some other sources state that overall capacities in the sector are low and only few NGOs managed to become fully professional (UNV, 2011) USAID index rating is showing slow but steady improvement in overall capacities over years.

In terms of service provision, BiH NGOs scored 3.9[2]. The report states that there were no significant changes compared to previous years as NGOs continue to provide a variety of services to marginalized groups, youth, and rural communities, among others. However, the report points out that the majority of issues addressed reflect the current trends and demands of the EU and donor community in BiH and not necessarily the needs and priorities of the local population (USAID, 2013). NGOs continue to be leaders in the provision of basic social services, such as soup kitchens, elderly care, and informal education. Despite this, the government is slow to recognize their importance and offer its full support, either in terms of finances or certifications that would enable these NGOs to offer better quality services.

In 2004, a DFID supported project conducted a qualitative study on the status of the NGO sector as a stakeholder in employment and provision of social services. The study concluded that the NGO sector

1 Ratings range from 7 (The civil society sector's sustainability is significantly impeded by practices/policies in this area) to 1 (The civil society sector's sustainability is enhanced significantly by practices/policies in this area)

2 Ibid.

in BiH provided services to 29% of the total BiH population in 2004, where the main activity sectors were: culture and sports, provision of economic and social services, civil services and advocacy. Organizations on average spent 57% of their time on service provision, 27% on advocacy and 16% on other activities (SDC, 2008).

GOVERNMENT – NGO RELATIONSHIP

Low levels of cooperation and coordination are the main characteristics of NGOs and government institutions relationship across all levels in BiH. NGO/government or government/NGO interactions and relationships including financial ones, tend to be based on self-interest over interests common to both parties and are characterized by a certain level of distrust (UNV, 2011).

One of the main reasons for this as well as for still limited number of examples of outsourcing social services to NGOs, lies in mistrust between state and NGO sectors. Governmental sector still engages NGO mostly on donor or development partner insistence and with donor funds. Further, the Government sector still sees NGO sector as non-transparent and this perception of the lack of financial transparency can significantly undermine the image and perception of the civil society sector in the eyes of both the public and government. The lack of transparency – financial or otherwise – prevents members of the public and government from being able to judge whether or not NGOs are actually conducting the work that they have been mandated with. This lack of accountability also undermines the credibility of NGOs when calling for increased government transparency and accountability, with respect to the allocation of government funds or outsourcing certain services to NGOs (UNV, 2011). Further, the government still does not perceive the NGO sector as competent and despite all capacities demonstrated there is still fear that if outsourced the service will not be provided adequately and eventually will come back to the state service.

Laws at different level in BiH determine the legal framework for providing social services and overall there are no major legal obstacles for NGOs to engage in providing social services. Most of competencies are within the local level government, with few exceptions when entity or cantonal levels are in charge.

THE BENEFITS OF CONTRACTING SERVICES TO NGOs

When governments, for any reason, are not able to deliver good quality and affordable services, alternative models should be considered. There are several mechanisms that can be employed to provide alternative to governments delivering services. Some of them include inter-municipal cooperation, public private partnerships (PPP) and contracting of either non-profit organizations or private entities. Any of these measures, if implemented properly, can improve service delivery without increasing overall public sector spending.

Despite complex political and administrative/institutional system in BiH[3], and various levels of mandates and responsibilities, there are overall no legal barriers at any level that would prevent the administration to use any of these modalities for alternative service delivery. The only discouraging factor is the Law on Public Procurement that allows local governments to contract out service delivery for the period of only one year.

When service providers are government entities they usually lack incentives to improve their performance. In BiH, municipal service providers operate in an information vacuum (The World Bank, 2009). They are completely isolated from the feedback they need to receive in order to improve performance. In addition, there are no performance standards and monitoring in order to be able to evaluate the quality of services provided and to improve the performance.

One of the options commonly used in many countries is engaging NGOs and contracting out certain social services. NGOs have large potential as contractors to local administrations for providing social services and many NGOs are already involved in these services such as counseling, special education, personal assistance services to people with disabilities, employment support and many other areas where local governments have the primary responsibility.

Positive aspects of such arrangements are that priority needs are met through the provision of service and also interventions are locally owned, which helps improve the relationship and trust between

3 According to the BiH Constitution adopted as an Annex IV of the General Framework Peace Agreement for BiH (Dayton Peace Agreement), BiH is a complex state consisting of two Entities - the Federation of BiH that is further divided into ten Cantons, and Republika Srpska. There is one more administrative entity - the Brcko District. Both entities/Cantons in FBiH are further divided into cities and towns.

beneficiaries and institutions. Also, by outsourcing services, the government sector can focus on its core function. And finally, such models of cooperation allow service providers to compete for provision of services in a transparent way and under the same conditions.

Advantages that NGOs bring along when contracted to deliver social services are numerous as NGOs bring a significant and valuable experience as a number of them have been active in these areas for years.

Next, NGOs will be able to provide services at lower price than the private sector as their operating costs and resources used are significantly lower than in private companies.

As NGOs are already working in all these areas and are working as non-profit organizations, it is assumed that their dedication to providing good quality services to beneficiaries will lead to client satisfaction.

NGOs AS SERVICE PROVIDERS – "PROJECTISATION" OPTION

One of the most common ways to engage NGOs in delivering social services is through grants and project based. In BiH, most NGOs working in the social sector operate through projects that are donor funded and that are not always addressing needs of their beneficiaries. Therefore, the so called "projectisation" of NGO services is a prevailing model of cooperation between the Government and the NGO sector and still there are no discussions to move toward more systemic solution and contracting or outsourcing social services to NGOs.

There are examples of successful contracting of NGOs to provide social services in BiH, mostly between international donors and organizations (UNICEF, SIDA, UNDP, etc.) and local NGOs. These examples demonstrate the ability of certain NGOs to identify needs and gaps in services provision, address those trough implementing targeted and well designed activities, ensuring at the same time sustainability of actions (e.g. securing budget allocations from municipalities).

Civil Society Promotion Centre in its recent study shows when NGOs are engaged to provide certain services, those are almost always short or mid-term contracts. One of the obstacles for long-term contracts is government budget planning cycle, which is still done on a yearly basis (CSPC, 2014). In addition, if an NGO as a service provider is to be selected through a procurement process it also can be done for one year only as those are current provisions according to the BiH Law on Public Procurement.

The same source reveals that when projects are awarded to NGOs, the entrusted service provision has a complementary character, as usually the government institution does not have the capacity or resources to provide particular services. In such cases, NGOs or the private sector actors are engaged and receive funding to implement the activities or services in question. In contrast to European countries, there are no cases in BiH where provision of a service in one sector, for example in social or health care, is completely entrusted to NGOs (CSPC, 2014).

Shortcomings from such type of partnerships are mostly along the lines that since all these arrangements are within limited timeframe, usually there is little control over services provided and their quality (CSPC, 2014). Even though, there are no obstacles in the legislative framework to monitor and control services provided by NGOs, monitoring is limited to periodical reporting back to institutions as there is no incentive for institutions to develop a comprehensive monitoring framework. Access to information on provision of services and service quality is available mainly on the websites of relevant institutions or NGOs that delivered services.

Finally, the issue of issue of sustainability and scaling up is also a significant one, as all those examples were still project driven and not the solution at the system level.

NGOs AS SERVICE PROVIDERS – "OUTSOURCING" OPTION

Outsourcing services in the social sector to NGOs, especially at the local level, has become a common practice in developed countries and has already demonstrated effectiveness compared to government institutions providing such services (Struyk, 2003). In line with this so called "new public management" administrations in developed countries are encouraging the outsourcing of as many administrative tasks and services as possible.

Governments contracting out and outsourcing to NGOs and even to private sector companies for the delivery of certain services is, in many cases, an efficient alternative to providing the same services with government own resources. This allows getting better quality services at lower costs. Besides improving efficiency in service delivery, outsourcing can increase transparency and accountability of using public resources. Contractors will tend to request payments for services provided and limit the ability of administration to shift funds to other, non-service related purposes.

In terms of monitoring the quality of services provided, outsourcing provides the possibility to properly monitor and evaluate results achieved through the service delivery by NGOs. When government institution or agency is a service provider, it is by default being monitored by its beneficiaries, but as such arrangements are usually monopolistic no other institution is supervising or correcting the quality of services delivered. When services are outsourced to NGOs to provide them, both the administration and end users or beneficiaries are monitoring the quality and effectiveness of services. If, for any reason, any dissatisfaction with the quality of services delivered exists, corrections to services can be made or the NGO providing services can be easily replaced, which is simply not possible when the government is service provider.

THE WAY FORWARD

Governments all over the world enter into agreements with NGOs to deliver services. This trend has been increasing in the US and Western Europe, however, in BIH it is still at the initial, piloting phase. Experiences show that this type of partnership positively contributed to both governments and NGOs. Since the government already is and will increase to be a critical source of funding for many nonprofits, the manner in which that funding is executed has an effect on the efficiency and costs incurred by NGOs.

Governments can use two modalities to enter into partnerships with NGOs: grants and contracts. While contracts are more demanding and more challenging to manage and execute because they assume the procurement process, compared to grants that would normally be awarded in a simple competitive process, they are still preferred option for partnering NGOs in delivering services.

Experiences from countries that regularly outsource services to NGOs show that there are certain preconditions that have to be met in order to make this arrangement viable and long-term sustainable (Struyk, 2003).

First, a reliable source of funding must be secured for at least mid-term long period. Without this, contracts cannot be executed and accountability for results and the quality of services will not be possible. Since local government administration is mandated for most of social services, the majority of funding should come from this source.

Next, a transparent and open competitive process with clear and is precise requirements of the services to be delivered together with the evaluation and selection criteria have to be developed. Currently government support for NGOs is most often channeled through public calls for funding proposals and the legal framework enables timely, informative, transparent and fair allocation procedures. Even though, there are no legal barriers in BiH to outsource service delivery to NGOs, BiH Public Procurement Law allows the administration to contract out service delivery for the period of only one year. Even though this provision is closely linked to the government planning and budgeting cycle, which is also one year, it should be changed or adjusted to allow multiyear contracting. The involvement of the NGO (or private sector) in the provision of services requires the existence of long-term contracts and this provision within the legislation discourages institutions from considering PPPs and outsourcing.

Third, a well and precisely defined contract, including detailed description of the services to be provided together with expected results is another important precondition for successful outsourcing to NGOs. Government administration at all levels in BiH is already contracting out for some kind of services, be it garbage collection, building renovation, housing, roads construction, etc, so there should be adequate capacities and experience in defining contracts and outsourcing. In terms of payments, two most commonly used payment methods are cost-reimbursement and fixed-price or flat payments and the contract should specify the type of payment that will be used. While cost-reimbursement payment option might be more appropriate to private sector players, upfront payments are preferred options for NGOs. The initial step that could be considered is developing some kind of operation guidelines for the administration to support them in properly designing contracts. This can also be done with the assistance of the NGO sector.

Finally, a well developed system for monitoring contractors' work and the quality of services provided need to be established. It is absolutely necessary to require reporting and accountability to ensure that organizations use the funds and deliver services in the intended manner. An initial solution could be to engage an international partner that could act as a mentor for this, especially in overseeing first phases of outsourcing and assist in developing a proper monitoring framework.

Once these preconditions are all in place and the administration has capacities to implement them properly, the question is why NGOs would be preferred partners to some other players that can also provide services such as private sector companies. There is no doubt that a significant number of NGOs are already involved in providing services, most of which are social services (e.g. services to marginalized groups, youth, women, people with disabilities, education, etc.). Numerous benefits of contracting NGOs were previously described. In addition to that, one of the strongest arguments for contracting NGOs, is that private sector companies can be more flexible and adjust more effectively to changing needs in delivering social services, so there is always the possibility that companies may go too far in pursuing efficiency, at the expense of service quality (Struyk, 2003).

Compared with traditional government agencies providing social services there is no doubt that NGOs would be better organized and exercise greater control, especially when the service is outsourced and operating under contracts, versus receiving grants.

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TESTIMONIAL

Under the project, a research was carried out to identify the potential role that the NGO sector in BiH may take in providing social services through some kind of PPP or contracting modality. The research covered identification of current situation in this area as well as main gaps and barriers to expanding this practice to more areas of social services as well as to include more NGOs in their delivery. Main recommendations to overcome barriers and obstacles were provided.

The analysis of BiH institutional and legal framework for social services delivery and PPPs, discussions with relevant stakeholders at entity levels as well as NGOs, and with current social service providers were conducted. Two main products were produced - policy paper and policy brief. The main purpose of the policy paper is to inform the policy making process and to serve as a decision making tool. On the other hand, the policy brief was developed with the purpose of convincing policy and decision makers of the importance of the issue and need to expand social services delivery to the NGO sector. Policy brief was printed in the leaflet form in both BHS languages and English. A presentation of the research was organized in April 2014 in Banjaluka, BiH. Policy briefs were distributed and the more detailed policy paper presentation made to participants that included representatives of the NGO sector, local and entity institutions representatives as well as media.

Discussion with both sides, in this case NGOs as potential service providers and institutions as potential contract providers were positive. Both sides agree that the current level of cooperation should be upgraded and short –term engagement of NGOs for services delivery need to become recognized as an asset and expanded both in terms of timeframe and services provided. Further, during the implementation of this project, our vision and understanding of the situation in the field has improved significantly and this kind of activities will influence our work in the future, therefore, we will continue to advocate for greater NGO involvement in social services delivery.

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COUNTERING MARGINALIZATION AND DISCRIMINATION THROUGH THE PRODUCTION OF ALTERNATIVE DISCOURSES IN THE PUBLIC SPHERE:
THE CASE FOR A 'ROMA COMMUNITY RADIO' IN ALBANIA

Blerjana Bino

Tirana, September 2014

SUMMARY

The research project addresses the discourses of discrimination regarding marginalized groups with a particular focus on the Roma community in Albania. The research project investigates how the production of alternative discourses in the public sphere, for instance through the establishment of a 'Roma Community Radio', could enable the marginalized groups to resist multifaceted marginalization and exclusion from a dominant mainstream transcript (ideology, policy and discourses). This research project suggests that the establishment of a 'Roma Community Radio' could serve as a platform to construct subaltern counterpublics, i.e. alternative public spheres of marginalised Roma community. This will contribute towards the enhanced participation and engagement of Roma community in the policy-making processes and the public sphere as the radio offers opportunity for them to voice their issues; raise awareness and hold the government accountable. In addition, these alternative public spheres and discourses will generate positive transformations in regards to the interrelations between the Roma community and Albanian mainstream society, a better understating of the Roma culture and values and a mutual coexistence whereby the rights of the Roma people, their lifestyles and culture and fully respected. The research adopts a qualitative methodology approach by using document analysis, in-depth interviews and critical discourse analysis.

CONCLUSIONS AND RECOMMENDATIONS

The research shows that the dominant approach in Albania has been that of refusing to acknowledge the existence of the 'other different' by claiming to be homogeneous society. In addition the main policy approaches have the normalisation approach and the integration one, which do not fully recognize the 'other' as a social actor. In this sense, the main issues hindering the development of alternative communication spaces for the marginalised communities in Albania: the attempt to patronize minorities by bracketing their complex identities and diverse profiles and attempting to make them more like 'us'; the reproduction of already existing negative perceptions and stereotypes of Roma and Egyptian communities through the mainstream media: (beggars, thieves, delinquents, a danger to the rest of the society, not educated, not cleaned etc.); very limited communicative spaces for the Roma communities to 'tell their version of the world' and create their own meanings based on their own terms, not those of the majority.

Drawing from the literature and the insights from the qualitative date of the research project, the principle merit of alternative media such as a community radio, is the encouragement of the grassroots access to media as well as participation in producing media formats and content. The fundamental idea of the alternative media is that they are citizen-owned medium and serve as alternatives to the mainstream media and telecommunication organisations. Community radio is of particular relevance in the case of the Roma community in Albania because of low literacy levels and it can serve as a medium to improve community interrelations, distribute information and empower the community by creating alternative communication spaces. However, community radio can also be destructive if it is used for hatred speech and contents.

Despite of the constraints of alternative media, it is considered as a basic democratic procedure to empower marginalised communities, encourage their self-management and the production of alternative formats and contents. Community radio as an

alternative radio implies the involvement of people into programming, management and distribution. Therefore the potential of the community radio for the Roma in Albania as in other cases of alternative media lies in the external and internal pluralism. External pluralism refers to the provision of different voices and perspectives as opposed to the public or private media organisations. Internal pluralism refers to being internally democratic, non-commercial and non-professional and not institutionalised, thus providing a platform for diversity of formats, content and styles.

Recommendations for the development of alternative media:

- it all starts from the assessment of needs of the community – fully understanding their context, their perspectives, their needs, their aims, their vision for their future;
- it cannot be done as another benevolent act of the majority to the minority – the communities need to be enabled to develop alternative communicative spaces themselves;
- education is key but also concrete training on certain competences and capacity development on media, projects, communication, writing skills etc.;
- working with the community activists and leaders and promoting the role models;
- working with diverse groups: Roma, Egyptian, Albanians and enable them to build networks (alliances) for the present and the future.

1. INTRODUCTION

1.1. RESEARCH BACKGROUND AND PROBLEM STATEMENT

The Roma community in Albania faces social and economic exclusion, negative perceptions from the mainstream society and thus is placed at the margins of the society. There is a lack of understanding and appreciation for their culture, values and lifestyles. The discourse in the public sphere in Albania regarding the Roma community reinforces already existing aspects of their social deprivation, marginalization and discrimination. They are not represented in politics and decision-making processes and they lack a medium, such as newspaper, radio, website etc. to make their voices heard. In this light, some of the key concerns are: (i) lack of civic and political engagement and participation of Roma community in policy making processes and public sphere in Albania; (ii) lack of understanding and sometimes negative connotations about the Roma community culture, their language and the dynamics of their lifestyles; (iii) lack of intercultural understanding between the mainstream society and the marginalized groups such as the Roma in Albania; (iv) limited deliberation in the public sphere (media, academia, politics) about the existing and emerging issues about the Roma such as their civic and political engagement, participation and representation; (v) the need to improve the skills, competences and capacities of Roma community and particularly young people.

A review of the current scholarship in this regard, shows that there are relatively limited efforts to examine the policy discourses of the mainstream public sphere on Roma community and the role that alternative media could play towards their civil and political empowerment. Roma community in Albania cope with multifaceted marginalisation and discrimination. An important dimension here is the lack of communication instruments to make their voices heard and to counter discriminatory discourses of the mainstream settings: media, policy or society at large. Also, there is limited deliberation in the public sphere (media, academia, policy) about the existing and emerging issues of the Roma such as their civic and political engagement, participation and representation. The critical discourse analysis on policy framework shows that the discourse on the Roma community in the public sphere (re)produces and reinforces already existing aspects of social deprivation, marginalization and discrimination. There are limited efforts to elaborate the concepts of 'marginalised community' and 'Roma' and that there is confusion in policy regarding the use of the terms. In addition, research shows two main policy approaches: (i) correctional or repressive-oriented policy approach invite intervention programmes that tend to 'normalise' Roma; (ii) protective or rehabilitative policy approaches, i.e.

emphasising Roma needs and aiming at protecting and re-integrating them in mainstream society. The paper takes a critical stance on the current policy discourse and the consequent policy approaches of 'normalisation' and 'integration' and argues for the importance of producing counter discourses and constructing subaltern counterpublics which can be possible via the establishment of the Roma Community Radio.

1.2. RESEARCH OBJECTIVES

The research project addresses the discourses of discrimination regarding marginalized groups with a particular focus on the Roma community in Albania. The research project is interested in investigating how the production of alternative discourses in the public sphere, for instance through the establishment of a 'Roma Community Radio', could enable the marginalized groups to resist multifaceted marginalization and exclusion from a dominant mainstream transcript (ideology, policy and discourses). This research project explores how the establishment of a 'Roma Community Radio' could serve as a platform to construct subaltern counterpublics, i.e. alternative public spheres of marginalised Roma community. The analysis focuses on the impact that alternative media could have towards participation and engagement of Roma community in the policy-making processes and the public sphere. In addition, these alternative public spheres and discourses will generate positive transformations in regards to the interrelations between the Roma community and Albanian mainstream society, a better understating of the Roma culture and values and a mutual coexistence whereby the rights of the Roma people, their lifestyles and culture and fully respected. The research adopts a qualitative methodology approach by using document analysis, in-depth interviews and critical discourse analysis.

1.3. RESEARCH PROJECT RELEVANCE

This project is highly relevant as it tackles some of the major priorities regarding the situation of Roma community in Albania and it seeks to involve Roma NGOs, individuals and other actors on social inclusion and human rights. The policy recommendations of the research project will be distributed to relevant stakeholders in a time when the national strategies and policy framework on social inclusion are being re-designed for the period 2014-2020.

2. RESEARCH METHODOLOGY

The research project included two main research phase, i.e. desk research and field work. The first phases included the literature review, the development of the conceptual framework on alternative media and marginalisation as well as the review of policy documents in place in Albania regarding the Roma community. The field work refers to the collection of the primary data through the use of in-depth interviews with relevant stakeholders and focus groups with Roma community. The data gathered was then interpreted through critical discourse analysis. The sample of the research project was six in-depth interviews with representatives of Roma NGOs, international as well as government organisations in order to explore the intervention programmes and strategies on Roma communication channels. In addition, two focus groups with Roma and non-Roma NGOs working with marginalised groups were organised in order to assess and understand the needs of the Roma community in regards to developing their own medium of expression and communication channel.

3. CONCEPTUAL FRAMEWORK

3.1. THE PUBLIC SPHERE AND MARGINALISATION

3.1.1. *Conceptualising multiculturalism and marginalised communities*

Multiculturalism as a paradigm, stance, discourse, policy and practice is associated with the politics of identity and the narrative of 'recognition', i.e. as recompense to historically marginalized groups who have suffered multifaceted exclusion and discrimination from the mainstream transcript (ideology, policy and discourses). Multiculturalism is thus embedded in the demand for recognition of marginalised groups such as ethnic and cultural minorities based on their group identity. This conceptualisation of multiculturalism entails an embodiment with essentialist notions of group identity as already-formed or pre-given identity. This paper takes a critical stance on essentialized conceptualisation of group identities as it fails to capture the dynamics and complex interrelations between '*unconscious identifications, conscious alliances and strategic affiliations that shape many people's experiences today*' (Cornell & Murphy, 2002: 421). In terms of political representation, Laclau and Mouffe (2001) argue that there is more to representation than a transparent reflection of already formed and pre-given identities interest and wills. According to this perspective, political

representation must be considered as a site of political struggle. A major contribution in the conceptualization of multiculturalism and political representation is that of Anne Phillips (2008; 2009) which will be reviewed below and followed by the elaboration of the merits and limits of the concept of public sphere in regards to political representation of marginalized groups.

Phillips (2009) attests to a non-corporatist notion of multiculturalism which rejects essentialized conceptions of culture and identity and gives priority to the needs and rights of individuals, rather than groups. In this sense, Phillips (2009: 9) concentrates on the role of human agency and challenges the dominant discourses on multiculturalism that overemphasizes the group by defining individuals through their cultures. The dominant discourses on multiculturalism promote cultural stereotypes by exaggerating the extent of cultural differences and referring to highly homogenized conceptualization of culture (Martineau & Squires, 2010: 147). These discourses have highlighted the relevance and legitimacy of cultural diversity in order to point out the inequalities, exclusion and marginalisation along cultural and ethnic lines that marginalised groups encounter. Whereas the non-corporatist conceptualization of multiculturalism questions the explanation of human behaviour through invoking cultural explanatory variables and maintains that actions can be explained in '*cross-cultural and human terms*' (Phillips, 2009: 47). In this light, Phillips (2009: 165) argues for a '*multiculturalism without culture, i.e. in developing a case for multiculturalism, it is the rights of individuals, and not the rights of groups, that matter*'. The implication here is the rejection of an over-emphasised notion of culture and cultural differences and the understanding of culture more in terms of human agency and rights of the individual. There is a tension in the attempt to advocate for multiculturalism without culture and at the same time to assert that culture is still relevant and it matters because it describes the ways in which we inhabit our world (Martineau & Squires, 2010: 149). The tension is theoretically overcome by Phillips (2009) as she points to a coherent account of multiculturalism that is suspect of essentialized and reified conceptions of culture and group identity. The theory on multiculturalism, cultural diversity and group identity affects the ways in which political representation of marginalized groups functions in practice.

The non-corporatist notion of multiculturalism, i.e. multiculturalism without culture as developed by Phillips (2008; 2009), entails practices and mechanisms for political representation of marginalized groups that focus on the individuals rather than on the unity of the group. Phillips is in favour of instruments that seek to increase the representation of marginalized groups, while '*avoiding imposing unity upon disparate groups and installing representatives as the definitive voice of "their" group*' (Phillips, 2008: 558). The acknowledgement that there is a need for greater political representation of

marginalised groups couched in terms of individuals is informed by the idea that the 'interests of the group' do not reflect and encompass the diverse range of identities, interests and perspectives that individuals within a group hold (Phillips, 2009: 166). The 'group' is not a homogenous and unified entity; rather it is characterised by internal disagreements which cannot be underestimated. In this sense, while a non-corporatist notion of multiculturalism supports mechanisms for increasing the political representation of marginalised groups, it rejects the attempt to emphasise the group rights over the individual ones. This is so based on non-essentialized and reified conceptions of culture and group identity. Martineau and Squires (2010: 151) raise the question of whether it is politically effective to reject essentialized and reified conceptions of culture and group identity and yet continue to promote a version of multiculturalism. The attempt to endorse political representation of marginalized groups drawing from 'multiculturalism without culture' may in practice reproduce the essentialist accounts of multiculturalism based on group identity. The concept of the public sphere is relevant in this discussion as it implies some key aspects such as public associations, discussions, consensus, identity and difference.

3.1.2. *Habermasian model of public sphere*

Habermas (1974) defines the public sphere as the realm where all citizens come together as private individuals to form the public opinion. Access is guaranteed to all citizens, as well as the freedom of assembly and association and the freedom to express and public their opinion on matters of general interests. In the words of Habermas: '*the bourgeois public sphere may be conceived as the sphere of private people come together as a public…to engage them in a debate over the general rules governing relations in the basically privatized but publicly relevant sphere of commodity exchange and social labor. The medium of this political confrontation was: people's public use of their reason*' (Habermas, 1989: 27). The public sphere mediates between society and state, whereby the public organizes itself as the bearer of public opinion. The Habermasian public sphere is based on the Enlightenment paradigm and the unfinished project of modernity and its main premises are: (i) access to the public sphere is guaranteed to all citizens as well as freedom of association and freedom to express and public ones opinions; (ii) private individuals come together as a public body to discuss matters of general interest, not private issues or private interests; (iii) individuals are formed in the private realm, which is the realm of freedom and has to be protected from the dominance of the state authority.

Habermas conceives bourgeois public sphere as a category that is typical for an epoch that cannot be abstracted from the unique developmental history of that 'civil society' originating in the European

High Middle Ages (Calhoun, 1992:6). According to Habermas the concept of public sphere and public opinion were introduced for the first time in the eighteenth century and they arose from certain historical conditions of the bourgeois society (Habermas, 1974:50). The bourgeois public sphere emerged as the sphere of private individuals assembled together into a public body, who used intellectual newspapers against the public authority. The bourgeois public sphere institutionalized not just a set of interests and an opposition between the state and society, but a practice on rational critical discourse on political matters. The very idea of the public was based on the notion of general interest and the discourse about it needed not be distorted by private interests (Calhoun, 1992). According to Habermas the concept of public sphere, the medium of public discussion was unique and without historic precedents: people's public use of their reason. The means of the bourgeois public sphere were: newspapers, journals, pamphlets, coffee shops, salons. Britain, France and Germany served as the model of the development of the public sphere. As per this model of public sphere, at that time (19th century), newspapers and the press in general remained institutions of the public itself, effective in the manner of mediator and intensifier of public discussions. They were not just mediums for spreading the news and not yet the medium of a consumer culture.

The Habermasian model of public sphere is considered to be a liberal model for it conceives the public sphere as mediating between society, as a sphere of private autonomy, and the state, restricted to a few functions. Habermas (1989) argues that the liberal model of the public sphere cannot be applied to the conditions of the advanced industrialized societies which are organized in the form of welfare state mass democracy. The conditions in which the public sphere emerged were transformed in the twentieth century in the following main ways: (i) the sharp delineation of state and society has become blurred and individuals have become increasingly dependent upon the state; (ii) the relationship of the individual to the state has increasingly become one of the client or consumer of services, rather than citizen; (iii) political debate and discussions in the public sphere are not based on consensus and rationality, but on utilitarian discussions about distribution of resources and private interests. In addition the debate is monopolised by professional politicians and public relations experts and not the citizens; (iv) the meaning of public opinion has been reduced to merely statistical results of polling surveys. Under the influence of Adorno and Horkheimer critique on culture of mass production and consumption, Habermas (1974; 1989) argues that public opinion is no longer the ultimate authority, but an object and target of intervention strategies designed to manipulate and control it.

Consequently, the historical conditions of the emergence of the public sphere have been transformed in the contemporary political systems. The new developments at that time related to the capitalist economy and national state led to an idea of society separated from state and of private realm separated from the public (Calhoun, 1992:7). When this clear separation began to be undermined by the development of welfare social state mass democracy, the bourgeois public sphere started its decline, to which Habermas (1974) refers to as the degeneration of the bourgeois public sphere or as *Refeudalization*. The structural transformation of the public sphere came about as state and society became interlocked, thus undermining the very condition of the bourgeois public sphere: the separation between private and public realm (Habermas, 1989:175-176). However, the public sphere may be instructive for contemporary political systems in terms of its requirements for information to be accessible to the public. Habermas is concerned with the social conditions for a rational-critical debate about public issues conducted by private individuals. Therefore, the concept of the public sphere is relevant to the political representation and democratic theories. In Habermasian terms, public discourse as communicative action is a mode of coordination of human life as well as market economies and state power. The main difference is that state and market economy are non-discursive mode of coordination, while public sphere is a discursive mode of human coordination (Habermas, 1989). The importance of the concept of the public sphere lies in its potential as a mode of societal integration.

Critiques of Habermasian model of public sphere can be divided in two main perspectives: historical and conceptual. Many scholars (Dahlgren, 1997; Sparks, 2001; Fraser, 1993; Benhabib, 1992, 1996) have criticized the historical perspective of the Habermasian public sphere. Drawing from revisionist historical investigations, Fraser maintains that Habermas does not take into account other public spheres that existed in the XVIII-XIX century: non liberal, non bourgeois competing public spheres (Fraser, 1993:7). However, the main aim of this essay is to focus on the conceptual criticism on Habermas, rather than on the empirical or historical one. Within the conceptual criticism of Habermasian model of public sphere I will make a distinction between two levels of critical commentaries. On one hand, there are scholars (Fraser, 1993, Benhabib 1992, 1996) who remain within the Enlightenment paradigm of rationality and agreement. On the other hand, one may identify scholars (Laclau & Mouffe 2001; Mouffe, 1999, 2000; Foucault, 1978) who reject the Enlightenment approach.

3.1.3. *Identity, difference and the public/private dichotomy*

The central presuppositions of Habermasian model of the public sphere that will come under critical assessment in this paper are: (i) the metaphor of the sphere; (ii) issues of identity and bracketing difference; (iii) the dichotomy of public versus private realm; (iv) issues of language and reaching agreement; (v) the issue of consensus and rationality within the paradigm of unfinished project of modernity. Addressing the model of the public sphere in quantitative terms implies dealing with the issue of openness and accessibility, boundaries and limits of participation. While a qualitative addressing implies dealing with the issues of identity of the (non)participants, of bracketing or thematizing difference.

In academia, public sphere is understood as an abstract notion, not a venue. As Hartley and McLee have argued the public sphere is not a sphere, it is a metaphorical term that is used to describe the virtual space where people can interact (McLee, 2004:4). Furthermore Sparks claims that '*public sphere as a reality does not exist and has not existed in the past, the only justification for retaining the concept in circulation is its normative status*' (Sparks, 2001:76). Even though it is neither a sphere nor a concrete place, the metaphor of *the sphere* is very relevant to the discussion about the flaws of the concept of public sphere. The idea of the sphere presupposes, drawing from geometry, that there is a centre from which every other point is equidistant and that the sphere has an internal symmetry. As Gitlin argues the metaphor of 'the public sphere' is based on the suppositions that: (i) it is singular, *the* sphere, not *a* sphere; (ii) it has a unity image; (iii) the sphere has a perfect symmetry, it permits no privileged vantage point; (iv) no direction is superior to any other direction (Gitlin, 1998:68). This way of conceptualizing the space of interaction and communication between individuals as a sphere, a closed entity with an internal perfect symmetry, is problematic. From an empirical or historical point of view one may argue that the public sphere has never been a unified all-inclusive space of interaction (Dahlgren, 1997; Sparks, 2001; Fraser, 1993; Benhabib, 1992, 1996). From a normative point of view one may say that this metaphor of the sphere is not even desirable, for it does not embodies the diversity and the dimension of differences in society, which are crucial points in the discussions about marginalized groups.

Many scholars criticize Habermas' model of a singular, overarching public sphere, where all citizens enter as private individuals to discuss matters of general interests. Taking this as a starting point, scholars like Fraser, Benhabib, Asen move towards multiplicity and they discuss about public spheres not *the* public sphere. Asen (2000) points out that the conceptual movement toward multiplicity of

public spheres recognizes the social complexity and sociocultural diversity, which were ignored by the model of a singular encompassing public sphere. In the same line is also Benhabib (1996), who rejects the notion of a singular, overarching public sphere in favour of a 'plurality of modes of association', but, who is, as Dahlberg (2005) points out, one of the sympathetic critics of Habermas, who attempt to develop, rather than discard, the Habermasian public sphere. In addition, rather than deconstructing the Habermasian model of the public sphere, Fraser (1993) critically examines it and then reconstructs the model as a valid category for theorizing the limits of actually existing democracy. Fraser uses the term *subaltern counterpublics* to refer to the alternative publics of subordinated groups: 'they are parallel discursive arenas where members of subordinated social groups invent and circulate counter discourses, so as to formulate oppositional interpretations of their identities, interests and needs' (Fraser, 1993:14).

Fraser's reading of *Structural Transformation of the Public Sphere* is first of all concerned with the issue of bracketing status differentials in public deliberation. Fraser (1993) claims that the problem with the Habermasian model is that it requires the bracketing of inequalities and status differentials rather than their elimination. Her main point is that for participatory parity in the public sphere, elimination of social inequalities is required. While Fraser has a good point when arguing against the bracketing of inequalities and differences and claiming for their thematization, the conclusions she draws are also problematic. As Goode (2005) suggests, the claim for substantive social justice is a noble one, but it is based on an undifferentiated notion of equality and it is oversimplified in Fraser's critique, for it does not embrace a wider discussion about justice and equality. Fraser's inferences from her critique on bracketing differential positions and inequalities do not offer an adequate alternative to the flaw of Habermasian conception of identity issues and difference.

Concepts of individual and social identity, difference and plurality are salient to the issues of political participation and representation of marginalized groups in political institutions and media. The way issues of identity and difference are elaborated in the Habermasian model represents another conceptual flaw, which consequently is inappropriate for addressing theoretically and politically matters of marginalized groups. Habermas' conception of individuals as fully constituted and shaped in the private realm before participating in the public deliberation in the public sphere, omits the impact of language and discourse in constituting identities.

Habermas is right when he claims for a model of public sphere, where quality of discussion and the issue of openness and accessibility matter. As Calhoun argues '*a public sphere adequate to a democratic*

polity depends upon both the quality of discourse and the quantity of participation' (Calhoun, 1992:2). However, the flaw rests upon the way Habermas conceives the quality of discussion and the quantity of participation. In the Habermasian model of the public sphere the quality of discourse refers to the rational critical debate, in which the best arguments are essential, rather than personal statutes, identities or social differential positions. First, this conception, as mentioned above, leads to the exclusionary character of the public sphere, for rational critical discussion was conducted by educated and property-owner men of the European society of that time. Most importantly the emphasis on rational-critical debate in the public sphere falls short to adequately consider issues of identity and difference.

A valid observation is made by Calhoun (1992), who maintains that in the Habermasian model individuals are understood to be formed in the private realm, which is considered as a realm of freedom to be defended against the state intervention. Calhoun argues that the treatment of identities and interests as settled within the private world and then brought fully formed into the public sphere, impoverishes the Habermas' own theory (Calhoun, 1992:35). Habermas ignores the possibility that individuals' interests, opinions or identities might be challenged, influenced or even changed by the discourse in the public sphere. Public deliberation is not only about already established interests or common good, it is a way of clarification of the common good (Fraser, 1993) or even constitution of interests and identities (Calhoun, 1992). Referring to Wittgenstein's philosophy of language, one may argue that social identities are artificial constructs, created by language and discourse, i.e. by the perspective of the world that language and discourse offer. This is why, contrary to Habermas perspective, individuals who enter the public sphere to discuss matters of general interests are affected by public deliberation. As Mouffe rightly argues 'political practice in a democratic society does not consist in defending the rights of preconstituted identities, but rather in constituting those identities themselves' (Mouffe, 1999:753).

Habermas' distinctions between justice and good life, public matters of norms as opposed to private matters of value, public interest versus private needs, are reflected in the distinction between public and private realm. In the public sphere participants discuss about issues of justice, not of good life, issues of public interests not of private needs, issues of norms not of values. This dichotomy presents another conceptual flaw when addressing issues of political participation of marginalized groups, for it has been part of a discourse of domination, which excludes certain issues from the arena of public deliberation. Fixing an already established ordering of public and private often advantages those in

power by silencing the concerns of excluded persons and groups. Moreover the dichotomy 'public' versus 'private' assumes *a priori* distinctions between 'public' and 'private', but 'public' and 'private' are not fixed, content-specific categories that structure the public sphere prior to discourse. Rather, 'public' and 'private' emanate from social interaction and discussion (Asen & Brouwer, 2001).

Another implication of this perspective is that these distinctions are external to deliberation in the public sphere, the participants in the public sphere deliberate within this given framework of these dichotomies. Consequently, differentiation between 'public' and 'private' does not allow for questioning and discussing the notion itself of what is a public or a private issue (Benhabib, 1992). Participants in the public sphere do not discuss or question these distinctions themselves, they are pre-defined before entering the discussion in the public sphere. Another constraint implies the questions of who define which issues are of public interests and which are not. The difficulty is where to draw the line between 'public' and 'private' and who has the legitimate power to draw such a line. One may argue that those who make this decision have the power of excluding from the public deliberation important issues only by considering them as private. This is a particularly sensitive issue for marginalized groups, for it implies the possibility for a discourse of domination, which confines marginalized groups' issues as private, thus legitimizing their oppression. Instead, Benhabib (1992) claims that one of the most important function of public debate is to challenge and redefine conceptions of common good and what constitutes general interests. However, her conception of public sphere is still within the paradigm of rational agreement: *'central to practical rationality is the possibility of free public deliberation about matters of mutual concern to all'* (Benhabib, 1996: 87). Contrary to this, a critical approach to rationality and consensus of the public sphere has been developed by other scholars drawing from the critical social theory.

3.1.4. *Rationality, consensus and the Enlightenment paradigm*

Scholars (Asen and Brouwer, 2001; Laclau and Mouffe, 2001) who criticize Habermas on a more fundamental level would deal with his conceptions of rationality and consensus. Scholars argue that consensus needs not to be viewed as the end of discourse in the public sphere. Besides deliberation oriented toward agreement, discourse in the public sphere may serve a number or purposes, including expressing identity, raising awareness, celebrating difference, enabling play (Asen and Brouwer, 2001:12). Also McCarthy points out the tension between the reality of multiple value-perspectives and the ideal of rationally motivated consensus (McCarthy, 1992:63). Political participation of marginalized groups in public deliberation is closely linked to the recognition of difference, plurality,

multiple viewpoints and differential contexts. These sensitive issues are ignored in the Habermasian model of deliberation in public sphere, which is based on rationality and which aims at consensus and reaching agreement. Laclau and Mouffe's criticism on Habermas offer a more adequate perspective to deal with political participation of marginalized groups.

Habermas elaborates a communicative notion of rationality, whose focal points are dialogue, the force of the best argument and the exchange of reasons. Habermas' conception of rationality is developed within the framework of the 'unfinished project of modernity', which allows him to make a claim for the emancipatory potential of the rational, that is he considers Enlightenment and the process of rationalization as potentially more enlightened and democratic way of organizing society (Roberts & Crossley, 2004:7). Contrary to the Habermasian perception that the critique of Enlightenment universalism and rationality will undermine the modern democratic project, is Laclau and Mouffe's deconstruction of universal values and rationality as perceived in the Enlightenment paradigm.

Mouffe refers to Wittgensteinian perspective on language as a form of life and agreement on the use of language as a way of deconstructing the basic assumptions of Habermasian model of public sphere: consensus and the procedures of reaching rational agreement. Wittgenstein argues that in order to have agreement in opinions, we must agree on the use of the language and this implies agreement in forms of life. Wittgenstein (1953) conceives language as a "form of life", it is what we do, what we are, how we behave that gives meaning to the language, so the meaning of the word is just a way it is used in a language game. Following Wittgenstein, Pleasants, similar to Mouffe, criticizes the Habermasian conception of communication and reaching rational agreement. He argues that Habermas perceives the idea of rationality as intrinsic in the structure of language: rationality is understood to be purely procedural (Pleasants, 1999:156). On the contrary, to Wittgenstein (1953) agreement does not mean Habermasian rational consent, it means 'language games'. Wittgenstein says that agreement is not based on grounds; it is not reasonable or unreasonable. It is there like our life. '*It is what human beings say that is true or false, and they agree in the language they use*' (Wittgenstein 1968: 241, quoted in Pleasants, 1999: 156). As Mouffe (1999) argues, this implies to reintroduce in the deliberation scene the rhetorical dimension, which Habermasian discourse model tries to discard. Wittgenstein's conception of agreement on the use of language is at odds with Habermasian idea that people reach agreement/understanding before they can mean anything at all.

Mouffe' critique then turns to the 'ideal speech situation'. While Habermas and his followers consider the limitations of the 'ideal speech situation' to be empirical, due to limitations of social life, Mouffe

counter argues that these limitations are in fact ontological. Mouffe (1999) draws from Lacan approach, to conclude that one has to give up the Habermasian idea that discourse is non-authoritarian, based on intersubjectivity communication free of constraints where only the best argument wins out, that is the free and unconstrained public deliberation is a conceptual impossibility.

Habermasian conception of rationality and consensus are closely related to issues of power and discourse in public sphere. Habermasian model of public sphere, which implies the elimination of power and reaching consensus through rational debate in public deliberation, can be strongly criticized by the Foucauldian conception of power as constitutive of the political and that cannot be dismissed. Foucault suggests that power is co-extensive with the social body, that there are multiple forms of relations of power and that there are no relations of power without resistance (Foucault, 1998: 142). Contrary to Habermas and based upon the work of Foucault on power relations, Laclau and Mouffe (2001) would argue that power need not be eliminated, but it should be acknowledged as constitutive of the social. By asserting the hegemonic nature of social order, Laclau and Mouffe (2001) are claiming, in opposition to Habermas, that power is not necessary a threat to democratic project. Their concept of hegemony, which entails the link between legitimacy and power, is very useful when discussing about deliberation of marginalized groups in the public sphere. This implies a reference to Laclau and Mouffe's interpretation of Gramsci's concept on cultural hegemony: the domination of a discourse that tries to transform the values of the 'dominant' group in universal ones, through a common language, a public space and a dominant discourse.

Mouffe's critiques on Habermas, based on a post-structuralist approach, are of particular importance for the discussion of political participation of marginalized groups. Contrary to Habermas, who excludes passions from rational debate in the public sphere, Mouffe recognizes the role of passions in public deliberation and defends a conception of public sphere as 'multiplicity of voices and complexity of power structures in society' (Mouffe, 1999: 757). What is at stake for Mouffe's agonistic democracy, as an alternative to Habermasian deliberative democracy, is '*to acknowledge the existence of relations of power and the need to transform them, while renouncing the illusion that we could free ourselves completely from power*' (Mouffe, 1999:753). Mouffe recognizes the role of passions in public deliberation and defends a conception of public sphere as '*multiplicity of voices and complexity of power structures in society*'(Mouffe, 1999:753). Mouffe is very critical of the rationalistic and universalistic approach of Habermas and his followers. She claims that democratic theory and practice is on the wrong track because they are based on the belief that a universal rational consensus is

possible. She maintains that universal ration consensus is impossible even from a conceptual point of view. Instead of designing institutions which would reconcile all conflicting interests and values, the task for democratic theorists and politicians should be to envisage the creation of a vibrant agonistic public sphere of contestation where different hegemonic political projects can be confronted.

3.2. THE CONCEPT OF PUBLIC SPHERE AND ALTERNATIVE MEDIA

So far, it has been argued that even though the public sphere is a key concept for democratic theories and democratic political practice regarding multiculturalism and marginalized communities, the model elaborated by Habermas is conceptually flawed and it is not adequate when addressing issues of communication and media of marginalized groups, for: (i) it presupposes a metaphor of sphere as an enclosed entity with internal symmetry; (ii) by considering individuals as fully formed in the private realm before entering the public sphere, it discounts the impact that discourse have in creating meanings and constituting identities; (iii) the separation between 'public' and 'private' has been part of a discourse of domination, which excludes certain issues from the arena of public deliberation, mostly those concerning marginalized groups; (iv) rationality and procedures of rational debate as are conceptually impossible. Habermas does not consider that deliberation in public sphere may have other functions expect of reaching agreement; (v) power and conflict cannot be eliminated, for they are constitutive part of the 'political'.

Habermasian model of the public sphere was assessed from two main levels of normative criticism: for and against the Enlightenment paradigm. Even though Fraser and Benhabib follow the Enlightenment paradigm of rationality, it is worth mentioning two important critical points of their respective commentaries on Habermas - Fraser's critique on bracketing difference and Benhabib's critique on the dichotomy 'public' versus 'private' – which are significant for the discussion of communication spaces of marginalized groups. Mouffe's main point is that Habermasian model of public sphere and deliberative democracy is missing the dimension of the political and the relevance of passions and conflicts in politics, thus it is not able to offer a good understanding of democratic practices. In conclusion, in order to explore the role of alternative media in countering marginalization, it is thus necessary to consider Fraser's concept of public spheres rather than one public sphere.

4. FINDINGS AND ANALYSIS

4.1. MAINSTREAM VS. ALTERNATIVE MEDIA IN THE CONTEXT OF ALBANIA

After the breakdown of communist regimes, countries in Central, Eastern and South Eastern Europe went through various political, economic and social changes, which also affected the structure, the landscape and the functions of media. Mass media have a significant impact on the quality of democratic institutions and processes in post-communist countries and therefore on the issues of social inclusion of marginalised communities including representation, participation and communication spaces. However, this relation between media and democratization is not self-evident and it is a very complex one. After the collapse of communist regime Albanian media had to redefine their role in society within a different economic and political system. Albanian had to adopt a new legislation on media to replace restrictive media laws of communist regime. Print media is mostly based on self-regulation instead of too much regulation by the Parliament. The Law on Press, which was adopted by the Parliament after the political changes of the early '90s, sanctions: 'The press is free; Freedom of press is protected by law' (Law on Press, no. 8239, 1997). Albanian legislation on print media is very vague and leaves room for various interpretations, which implies that the press is operating in a landscape of freedom from government interference, but also that there are abuses and speculations. According to Freedom House report, the Albanian media market is saturated, but fragmented, as evidenced by the high number of daily newspapers and low circulation. There are 27 national dailies with fewer than 100,000 copies sold altogether, which is an imbalance for a country with 3.5 million people. The ways in which marginalised communities are represented in the daily press constitutes an important dimension of the media marginalisation of the Roma community in Albania.

The study of Albanian media system carried out in the frame of South Eastern Network for the Professionalization of Media observes that, in contrast to print media, the broadcast media is regulated by a fairly detailed Law on Public and Private Radio and Television and a regulatory body, National Council of Radio and Television (Londo, 2004:41). Broadcasting media is regulated also by: the Commercial Law, applicable to media companies similar to other businesses and companies; and the Competition Law, which aims to provide the rules against market concentration and distortion of competition. According to the National Council on Radio and Television, Albania has 85 television

stations and 49 radio broadcasters, including the national public Albanian Radio Television. The access of the Roma community in the mainstream broadcasting media is very limited.

Even though the Albania's Constitution guarantees freedom of expression and freedom of the press and the government has made a commitment to press freedom, Albanian media face various challenges, which limit media' ability to advance democratic processes. As Freedom House and Reporters without Borders suggest, financial resources and ownership structures in the media market continue to be a concern, as well as state interference and difficult access to public information and politically-inspired distribution of government advertising. Another problem is considered to be journalistic independence from media owners, media legislation does not include provisions that would explicitly address editorial independence from the publisher or owner, nor mechanisms for ensuring such independence (Hrvatin & Petković, 2004:31). However, this essay will argue that what contributes to democratic processes in post-communist Albania is not editorial independence, rather the only media independence that should be required as a normative demand is that of independence from state interference. These concerns directly impact the opportunities of marginalised communities such as Roma to participate in mainstream media in Albania.

This research shows that the main assumptions of the reproduction of discriminatory discourse on development through media representation of the 'Other' are: (i) the dichotomy of 'us' versus 'they', i.e. 'us as' the majority Albanian society and 'they' as the Roma community or other marginalised communities; (ii) there is one direction of progress and development, i. e what the Albanian majority considers a normal course of evolution and progress has to be considered as the universal truth and all the rest of the groups have to embrace this course of evolution and progress; This is not only the case in Albania, but it is observed in other countries, whereby the majority holds the monopoly of 'the truth'; (iii) the messianic claim of salvation of the Roma community by normalisation and integration approach or the modernization of 'the other' by bracketing their differences and patronizing them; (iv) the paternalistic attitude of the Albanian majority and policy discourse towards the Roma community, i. e the majority knows what is best for the rest of the society; (v) what is different is considered to be abnormal and the majority defines what is 'normal'. In order to give voice for political representation and participation for the Roma community, alternative public sphere and communication spaces need to be developed. Alternative media could be one of the instruments to achieve this.

4.2. ALTERNATIVE MEDIA AND THE REPRESENTATION OF THE 'OTHER'

The research project uses media in a wider sense, referring to not only the press, the radio, the television or the internet, but also to literature, work of art and the world of cinema. In the liberal tradition, media's main functions are: (i) inform citizens and the diverse interest groups in society with "objective" information; (ii) to exercise critical surveillance over the activities of the government; (iii) to stimulate an arena of meaningful and quality public debate on politics which will affect society; and (iv) to serve as platforms of access for groups and politicians to put their positions forward, as well as educational and cultural tools for citizens to have knowledge about their nation and the world (Blumer & Gurevitch, 1995:97). Scholars argue that media do not only provide information to the citizens or just foster an arena of debate, actually media provide the conceptual framework in which this information is located and also media set the agenda of the issues and topics to be discussed (Lichtenberg, 1990). The media's ability to define a certain conceptual framework and to set the agenda of discussion is particularly relevant in the case of media representation of the 'Other'. As Bourdieu argues, 'the journalistic field produces and imposes to the public a particular vision of the political field, a vision that is grounded in the very structure of the journalistic field and in their specific interests produced in and by that field' (Bourdieu, 1998:2). The media and their role in representing the 'Other' are highly relevant to the issue of alternative communication spaces for marginalized communities.

Furthermore the relation between the media and individual political attitudes and the relation of the structure of media systems and politics (Gunther & Mughan, 2000) are very complex and do not always follow the normative standards about media functions. This is why it is important to acknowledge the impact of the market and the government on media as well as economic and political pressures. Political elites have developed media policies and regulation that best serve their political, economic and social interests and goals, for they do consider the media to be very important means of influencing, structuring and shaping public opinion and citizens' attitudes and behaviours (Gunther & Mughan, 2000:3). The media impact in shaping and influencing public opinion is also very significant in the case of media representation of the 'Other'.

Another aspect of media, which is related to the discussion of media representation of the 'Other', is the use of language and symbolic power. Media are situated in a complex landscape and power relations are a constitutive part of it as well as conflict, passion and antagonism. Media's symbolic

power is reflected in their ability of producing representations and of the construction of social reality. Referring to media symbolic power Bourdieu argues that 'television does not record reality, it creates the reality' (Bourdieu, 1998:22). Bourdieu's work on language and media as symbolic power is very interesting for the purposes of this paper. Bourdieu (1991) rejects a semiotic analysis of language as elaborated by Saussure, for they focus on the internal constitution of language structure and do not consider social or historical conditions. Building on this line of criticism on the semiotic analysis of language, I will adopt a constructionist approach to meaning in language, which argues that we construct meaning using representational systems – concepts and signs (Hall, 1997:25).

Hall defines representation as 'the production of meaning through language' (Hall,1997: 16). Furthermore he argues that meaning can never be finally fixed, for it is not the result of something fixed in nature, but it is a result of our social, cultural and linguistic conventions and utterances (Hall: 1997:23). The question is: Where is meaning produced? Hall lists three main 'venues': (i) meaning is produced and exchanged in every personal and social interaction; (ii) meaning is produced in mass media; and (iii) meaning is produced whenever we express ourselves in, make use of, consume or appropriate cultural things (Hall, 1997:3). The production and circulation of meanings through mass media is particularly significant for arguing that the way Western-media represent the 'Other' contributes in reproducing the Eurocentric discourse on development.

Media are the mediums or the means by which ideas, project, concepts, feelings; political programs and so on are represented through language, whether being sounds, written words, images or objects. Therefore the way the media use language is very important in the production and circulation of meanings and viewpoints about the world. Drawing from the work of Wittgenstein in the philosophy of language, one may argue that social, cultural and political identities are constructed by language, i.e. is by the production and circulation of meanings. Wittgenstein (1953) conceives language as a "form of life", it is what we do, what we are, how we behave that gives meaning to the language, that is the meaning of the word is just a way it is used in a language game. Two main points can be made here: (i) things in themselves rarely if ever have anyone, single, fixed and unchanging meaning (Hall: 1997:3). It is through cultural practices that we give meaning to things or, in Wittgenstein's term, meanings rest upon 'forms of life'; (ii) the necessity to acknowledge diversity of meanings and different ways of interpreting the world. So far I have argued, building from the work of Hall (1997) and Wittgenstein (1953), that culture is about shared meanings and common ways of interpreting the world; meanings and viewpoints about the world are constructed by language, which is conceptualized as a 'form of life'.

Another important insight related to language and meaning is that of discourse as developed by the Foucault, who is more concerned with discourse and power relations rather than with language. Foucault (1998) argues for a discursive formation sustaining a regime of truth, that is knowledge linked to power, not only assumes the authority of the 'truth' but has the power to make itself true (Hall, 1997: 48-49). This is why Foucault (1998) claims that different power means different knowledge. In each period discourse produced different forms of knowledge, for meanings exist only within discourse formation in a certain context. Foucault conceives power in terms of relations and not domination, power is constitutive of the social, it circulates and it is never monopolized by a centre.

Based on Foucault conception of discourse and power, Laclau and Mouffe (2001) have also developed a discourse analysis of society. They are concerned about the construction of meaning and the constitution of identities, rather than the existence of objects. Laclau and Mouffe argue that physical objects do exist, but they have no fixed meaning; they only take on meaning and become objects of knowledge within discourse (Hall, 1997:45). Based on Wittgenstein, they argue that it is impossible to determine the meaning of an object outside of its context of use. Laclau and Mouffe (2001) argue that society is discursively construed, it is a field of meaning where identities do not have an inherent positivity or essential core, but are relational, constituted in a system of differences.

The role of the 'Other' is very important in the constitution of individual and collective identities. Taking as a starting point the psychoanalytic approaches to the constitution of the *I*, one may draw similarities with the way collective identities are constructed. The origin of such a discussion dates back to the work of Freud in psychoanalysis. However, Freud conception of individual identity was an essentialist one. For Freud the ego is represented as a psychical map, a projection of the surface of the body. Therefore the ego is the representation of the subject's perceived and libidinalized relation to its body (Grosz, 1990:32). While for Lacan, who developed further more Freud's psychoanalysis, the role of the other is very important. Lacan (1966) emphasises the role of the 'other' in constituting individual identity through what he refers to as the 'mirror stage'. The mirror stage is a process of identification, the child is able to constitute the *I* through the presence of the 'other' (the mother) (Lacan, 1966:2-6). The mirror stage is conditioned on the child's first recognition of a distinction between itself and the (m)other, thus the ego is partially a consequence of socially structured psychological relations between itself, the others and its body image (Grosz, 1990:32). This psychoanalytic perspective is relevant to our discussion about the representation of the 'other' in Western media, for it gives

insights of how media help to reproduce the Eurocentric discourse on development and to create continually the distinction between us and them, the necessity of a negative identification through the presence of the 'other.

4.3. PARTICIPATION AND ALTERNATIVE MEDIA

Some of the main problems with mainstream media are related to the barriers of entry, the unresponsive nature, the high costs and strict deadlines (Beckett: 2008, 46). On the contrary, alternative media offer a solution to these issues. The new media and alternative media are characterized by permeability, interactivity, infinite technology, cheap costs, 24/7 news platform, multiple platforms and multi-dimension (Beckett: 2008, pp. 47-48; Dalhgren, 2001: p. 67-69). According the Beckett's conceptualization of networked journalism, the latter creates quality by adding value to the news in three main ways: (i) editorial diversity as it creates more substantial and varied news from various sources and perspectives; (ii) connectivity and interactivity, the audience is active and participatory and generates content; (iii) it relates to audiences and subjects in ways that create new ethical and editorial relationships to news (Beckett: 2008, p. 52). The downturn is that quantity does not necessarily mean quality of information and editorial plurality. Diverse, plural and strong media outlets are paramount for the democracy and the freedom of expression in society.

Participatory media and diverse online new platforms offer an opportunity to marginalised groups to express themselves and discuss their interests, issues and perspectives, which are not covered by the mainstream news media. As the mainstream media is becoming more diverse and fragmented with the digital switchover and online platforms, ethnic minorities abandon traditional news for a diversity of satellite and digital offerings (Beckett: 2008, p. 25). Citizen journalism and participatory media overcome and absolutist interpretation of media neutrality and impartiality and thus offer various social groups the opportunity to participate in public debates and represent themselves in the public space (Carpentier et.al., 2009: p. 171). Citizen journalism and participatory media are rhizomatic, i.e. they are characterized by diversity and cut across different boundaries generated by the state and the market (Carpentier et.al., 2009: p. 172). In this light, citizen journalism offers a number of opportunities for the citizenry to engage in public debate and participate in news production.

5. CONCLUSIONS AND RECOMMENDATIONS

The research shows that the dominant approach in Albania has been that of refusing to acknowledge the existence of the 'other different' by claiming to be homogeneous society. In addition the main policy approaches have the normalisation approach and the integration one, which do not fully recognize the 'other' as a social actor. In this sense, the main issues hindering the development of alternative communication spaces for the marginalised communities in Albania: the attempt to patronize minorities by bracketing their complex identities and diverse profiles and attempting to make them more like 'us'; the reproduction of already existing negative perceptions and stereotypes of Roma and Egyptian communities through the mainstream media: (beggars, thieves, delinquents, a danger to the rest of the society, not educated, not cleaned etc.); very limited communicative spaces for the Roma communities to 'tell their version of the world' and create their own meanings based on their own terms, not those of the majority.

Drawing from the literature and the insights from the qualitative date of the research project, the principle merit of alternative media such as a community radio, is the encouragement of the grassroots access to media as well as participation in producing media formats and content. The fundamental idea of the alternative media is that they are citizen-owned medium and serve as alternatives to the mainstream media and telecommunication organisations. Community radio is of particular relevance in the case of the Roma community in Albania because of low literacy levels and it can serve as a medium to improve community interrelations, distribute information and empower the community by creating alternative communication spaces. However, community radio can also be destructive if it is used for hatred speech and contents.

Despite of the constraints of alternative media, it is considered as a basic democratic procedure to empower marginalised communities, encourage their self-management and the production of alternative formats and contents. Community radio as an alternative radio implies the involvement of people into programming, management and distribution. Therefore the potential of the community radio for the Roma in Albania as in other cases of alternative media lies in the external and internal pluralism. External pluralism refers to the provision of different voices and perspectives as opposed to the public or private media organisations. Internal pluralism refers to being internally democratic, non-commercial and non-professional and not institutionalised, thus providing a platform for diversity of formats, content and styles.

Recommendations for the development of alternative media:

- it all starts from the assessment of needs of the community – fully understanding their context, their perspectives, their needs, their aims, their vision for their future;
- it cannot be done as another benevolent act of the majority to the minority – the communities need to be enabled to develop alternative communicative spaces themselves;
- education is key but also concrete training on certain competences and capacity development on media, projects, communication, writing skills etc.;
- working with the community activists and leaders and promoting the role models;
- working with diverse groups: Roma, Egyptian, Albanians and enable them to build networks (alliances) for the present and the future.

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INSTITUTIONAL MECHANISMS FOR PREVENTION AND PROTECTION FROM FAMILY VIOLENCE AND THEIR APPLICATION IN MONTENEGRO

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SUMMARY

SOS telephone for Women and Children Victims of Violence - Podgorica (SOS Podgorica) has conducted an assessment of existing policies and their practical implementation in the field of protection from domestic violence in Montenegro. The subject of the analysis was to review the field of development and quality of social and other support services to victims of domestic violence, collaborative support networks, policies, procedures, mechanisms and criteria according to which are functioning existing institutions and their departments responsible for the implementation of the "Protocol on the treatment, prevention and protection from domestic violence" (centers for social work, health and police services, judicial authorities, educational institutions and non-governmental organizations are recognized as service providers in this area).

As the Protocol organizes the joint work of all the systems in the implementation of laws and conventions related to domestic violence, it is of big concern that the Protocol is not in a visible place in any of the surveyed institutions, nor is it easy available to employees or to potential customers. Except the members of Multidisciplinary teams (who are functioning at the level of the Centres for Social Work), other officials, particularly in health and education institutions, are not familiar with the content of the Protocol and the obligations prescribed in it.

Regardless of the fact that the Protocol requires urgent establishment of cooperation between all stakeholders in the protection of victims of domestic violence, it seems that the relevant institutions consider that the formation of multidisciplinary teams in 10 Montenegrin municipalities was enough for an effective response to violence.

They all seriously ignore the fact that the multidisciplinary teams are only a link in the chain of support, and they can not be effective if other officials with whom the victim comes into contact (especially in the acute phase of violence), don't know how to react appropriately. The Protocol gives clear treatment guidelines, but for the officials responsible for its implementation, there are still a number of uncertainties, and lack of basic tools for effective treatment - such as clear matrix for risk assessment and the development of individual plans for support of adult victims of domestic violence - make this problem even more complicated.

Key problem areas identified during this research are: the inability for good monitoring of the phenomenon of domestic violence in all its forms; incompatibility of laws and institutional mechanisms; lack of capacity of all relevant entities who provide services for victims of domestic violence in accordance with the Protocol; high degree of uninformed stakeholders (both employees of institutions and the victims themselves) about existing mechanisms of assistance and protection; lack of coordination and networking of entities relevant for the implementation of this legislation. In accordance with the identified problems the following **recommendations** are given**:**

- **Monitoring of domestic violence:**

  It is necessary to design a uniform questionnaire unique for all Centres for the social work, police, justice, health services and non-governmental sector, and in accordance with Article 12 of the Protocol it is necessary at least twice annually to submit reports to the relevant ministries.

- **Laws and institutional mechanisms:**

  Urgently prepare proposals for amendments to the Law on Free Legal Aid, which will include the possibility of free legal assistance to all victims of domestic violence (not only those who are without any property and income). It is also necessary to create conditions for the implementation of Article 4 of the Protocol, which refers to the taking of testimony over a child outside the official premises. It is necessary to create individual forms of treatment for all institutions in the system of protection and design a program of psychosocial treatment for violators (abusers) with the aim to effectively implement the existing protective measures.

- **Capacities:**

It is necessary to provide adequate training for the staff of all institutions that in the execution of their daily tasks come into contact with victims of domestic violence. All institutions involved in the protection of domestic violence need to establish their internal team for dealing with violence, and those teams should have preventive work as well. In police departments it is mandatory to systematize workplaces and introduce the position of main inspector for domestic violence. It is necessarily to design matrix of risk and Plan for support to adult victims of domestic violence.

- **Awareness**

For officials of all institutions it is necessary to provide the required information on the methods of using the possibility of Law on free legal assistance in Montenegrin courts. It is necessary to print and distribute leaflets / information sheets with the address book of institutions, organizations and other associations that can be contacted by victims of domestic violence for support and services, and ensure that these information booklets are placed in a visible place in institutions and are easily available to users. It is mandatory to highlight the phone numbers of the Centre for Social Work and NGOs dealing with protection against domestic violence in visible places in the ambulances. It is also necessary to ensure informative/ educational materials designed for teachers and children victims and potential victims of violence;

- **Coordination and networking:**

All institutions need to delegate a person to monitor the Protocol, and each of the institutions and organizations in the chain of protection from domestic violence needs to precisely define the scope of their work in this area. It is necessary to improve cooperation between all institutions, especially educational and health institutions with the Centers for social work, and a minimum once in six months to ensure meetings of cross-sectoral character in order to exchange knowledge, experiences and examples of good and bad practice.

1. UVOD

Nasilje u porodici je ozbiljan i složen problem sa kojim se susreću kako same porodice, tako i obrazovne i socijalne ustanove, organi unutrašnjih poslova i institucije pravosudnog sistema. Analizom postojećih ratifikovanih dokumenata, zakona, strategija i pravilnika, može se sa sigurnošću ustvrditi postojanje snažnog utemeljenja za uvođenje politika i procedura u skladu sa međunarodnim standardima, međutim sva navedena dokumenta koji tretiraju problem nasilja u porodici u praksi su teško primjenjiva, što čini da se problem i posljedice nasilja u porodici minimalizuju, ne razvijaju odgovarajući programi prevencije i zaštite koji su u skladu sa potrebama osoba ugroženih nasiljem u porodici, a samim tim onemogućava adekvatna intervencija društva.

SOS telefon za žene i djecu žrtve nasilja Podgorica je sproveo procjenu postojećih praktičnih politika i njihove implementacije u oblasti zaštite od nasilja u porodici u Crnoj Gori. Rezultati monitoringa su obezbijedili podatake koji precizno definišu problem, uslove zaštite i slabe tačke intervencije u svim fazama, ali i mogućnosti i potencijale za efikasniju implementaciju zakona i politika, što ć e obezbijediti šansu za razvijanje konkretnih praktičnih predloga za poboljšanje zaštite i socijalne sigurnosti žrtava i igradnju pozitivne prakse na lokalnom i nacionalnom nivou.

"Nasilje nad ženama je možda najsramnije kršenje ljudskih prava. Ono ne poznaje ni geografske ni kulturne granice, niti granice bogastva. Sve dok se ono nastavlja, mi ne možemo tvrditi da činimo istinski pomak ka jednakosti, razvoju i miru"

***Kofi Annan**, bivši Generalni sekretar UN-a.*

Svrha istraživanja je analiza institucionalnih i administrativnih kapaciteta i transparentnosti rada javnih ustanova relevantnih za sprovođenje Protokola o postupanju, prevenciji i zaštiti od nasilja u porodici. Predmet analize nalazi se na polju preispitivanja razvijenosti i kvaliteta socijalnih i drugih servisa podrške žrtvama nasilja u porodici, saradničkih mreža, pravila, procedura, mehanizama i kriterijuma po kojima funkcionišu postojeće službe. Kako je Protokolom uređen zajednički rad svih sistema u toku sprovođenja zakona i konvencija vezanih za nasilje u porodici, oblasti istraživanja su Centri za socijalni rad, zdravstvene i policijske službe, pravosudni organi i obrazovne institucije. Analizom su obuhvaćene i nevladine organizacije prepoznate kao dugogodišnji pružaoci servisa u ovoj oblasti. U cilju realizacije postavljenih zadataka izvršena je:

- Analiza ključnih ratifikovanih međunarodnih konvencija i nacionalnog institucionalno-pravnog okvira
- Analiza prikupljenih statističkih podataka o vrsti i broju evidentiranih slučajeva nasilja u porodici tokom 2013 godine u centrima za socijalni rad, upravi policije, državnom tužilaštvu, osnovnim sudovima, organima za prekršaje i NVO na teritoriji Crne Gore.
- Procjena postojećih kapaciteta u državnom i NVO sektoru i optimalnih kapaciteta za pružanje stručne podrške žrtvama porodičnog nasilja;
- Definisane su ključne problemske oblasti u socijalnoj i drugoj zaštiti i obezbijeđene smjernice za planiranje i dizajniranje efektivnih programa zaštite od nasilja.
- Metodologija postavljena kao okvir za postizanje planiranih ciljeva sastojala se iz metoda i tehnika koje čine osnov participativnih istraživanja (Analiza statističkih podataka; Polustruktuirani intervjui; Anketna ispitivanja; Uporedna analiza). Upotrijebljene tehnike i instrumenti su obezbijedili sagledavanje problema iz različitih perspektiva (stručnjaci, krajnji korisnici) uključujući i ključne preporuke za poboljšanje administrativnih kapaciteta, koji su pretpostavka za sprovođenje zakona i umrežavanje nadležnih subjekata za primjenu legislative.

2. OPIS PROBLEMA

2.1 SOCIJALNI KONTEKST

Najčešći a najskriveniji vid nasilja kojim se osigurava moć i dominacija je nasilje muškaraca nad ženama u međupartnerskim odnosima. Istraživanja pokazuju da je nasilje muškaraca nad ženama posebno rasprostranjeno u zemljama u tranziciji kojima pripada i Crna Gora. Smanjena socijalna i ekonomska sigurnost, povećana nezaposlenost, siromaštvo i socijalni stres, koji prate proces tranzicije, pojačavaju agresivnost i nasilničke sklonosti muškaraca. Visok stepen tolerancije nasilja u skladu sa patrijarhalnim društvenim kontekstom u velikoj mjeri podržava nasilničko ponašanje. Naslijeđeno iskustvo patrijarhalne moći, koje muškarcima daje pravo na privilegovan položaj u odnosu na žene, još uvijek je jedna od ključnih prepreka u ostvarivanju prava na zaštitu od nasilja u porodici koje su žene spremne dugo da tolerišu. Prema podacima posljednjeg istraživanja, 68,6% žena doživjelo je neki oblik nasilja od muža - partnera. U Crnoj Gori većina žena još uvijek prihvata patrijarhalni model raspodjele moći u porodici i međupartnerskim odnosima. Sa tvrdnjom da dobra

žena uvijek treba da sluša muža, slaže se ili nije sasvim sigurno da se ne slaže preko 37% žena, dok četiri od pet žena misli da o problemima nastalim u porodici samo u porodici treba i razgovarati. Znatan broj žena, svih starosnih grupa, vjeruje, ili je neodlučno u uvjerenju, da postoje situacije u kojima muž ima razloga da primijeni nasilje nad ženom. Procenat žena koje ne prihvataju postojanje razloga za nasilje partnera" je 57%. Ostale žene prihvataju mogućnost opravdavanja razloga nasilja partnera ili su neodlučne.[1]

2.2 RASPROSTRANJENOST I VRSTE NASILJA U PORODICI

Centri za socijalni rad na nivou Crne Gore su u 2013 god. evidentirali 637 slučajeva nasilja od čega su u 42% slučaja žrtve nasilja bila djeca, 45% žene, 8% osobe muškog pola i 4% stare osobe. Koz rad multidiscipilnarnih timova koji funkcionišu u 10 crnogorskih gradova obrađeno je 65% (385) predmeta koji pripadaju kategoriji porodičnog nasilja. U slučajevima porodičnog nasilja nad ženama i drugim punoljetnim članovima porodice najčešće je prepoznato emocionalno, fizičko i ekonomsko nasilje. Kod evidentiranog zlostavljanja djece od strane roditelja i bližih srodnika zabilježeno je fizičko, seksualno i emocionalno zlostavljanje djece, podsticanje na prosjačenje, razvijanje loših navika, neodržavanja ličnih odnosa sa djetetom sa kojim ne živi.

Najveći broj preduzetih mjera odnosio se na savjetovanje, zatim psihološku podršku, pravnu pomoć, procjenu rizika, izradu individualnog plana za žrtvu, određivanje voditelja slučaja[2], smještaj u postojeća skloništa i određivanje povjerljivog lica od strane CSR. Određivanje voditelja slučaja se ne odnosi na odrasle žrtve porodičnog nasilja, jer ovaj sistem rada koji zahtijeva postojeća reforma socijalne zaštite je tek u razvoju, već se isključivo odnosi na djecu i uglavnom u slučajevima sa elementima maloljetničke delikvencije. Imajući u vidu broj predmeta obrađenih u centrima za socijalni rad iznenađuje mali broj usluga povjerljivog lica[3] pruženih od strane CSR (svega 9 na nivou Crne Gore), što može da bude pokazatelj nedostatka povjerenja klijenata u zaposlene u centrima, ali i nespremnosti samih službenika za ovakvo angažovanje, koje bi službenicima centra i onako opteretć im mnogobrojnim i zahtjevnim zadacima predstavljalo dodatni napor.

1 Radulović,J., Ljaljević, A.: Rodna ravnopravnost i zdravlje žena u Crnoj Gori, Univerzitet Crne Gore, Filozofski fakultet – Nikšić, 2009.

2 "Voditelj slučaja" označava stručnog radnika koji je zadužen za konkretan slučaj koji utvrđuje i koristi potrebne profesionalne i druge resurse iz centra ili iz drugih ustanova i organizacija u lokalnoj zajednici

3 Povjerljivo lice - član 16 Zakona o zaštiti od nasilja u porodici. Žrtva može izabrati lice koje će prisustvovati svim postupcima i radnjama u vezi zaštite. Povjerljivo lice može biti član porodice, lice iz organa, ustanove, nevladine organizacije i drugog pravnog lica ili drugo lice u koje žrtva ima povjerenje. Povjerljivo lice ne može biti učinilac nasilja.

Uprava policije je tokom 2013. god. procesuirala 1198 slučajeva nasilja u porodici, od kojih je 164 kvalifikovano kao krivično djelo, a 1034 kao prekršaj. Ukupan broj žrtava u 2013. godini iznosio je 1350 lica. Od 190 žrtava krivičnih djela iz nasilja u porodici, 149 (78,4%) su osobe ženskog pola, 36 (18,9%) osobe muškog pola i 5 (2,6%) maloljetnih lica. Žrtve izvršenih prekršaja su 1160 lica, od čega 745 (64,1%) čine osobe ženskog pola, a 335 (28,9%) osobe muškog pola, kao i 80 (7%) maloljetnih lica. Podaci za 2013 pokazuju porast broja žrtava nasilja u odnosu na 2012 godinu za 100%. Nedostatak jedinstvene forme evidentiranja na nivou centara bezbjednosti otežava analizu podataka jer podaci po polnoj strukturi žrtava krivičnih djela i djela prekršaja ne daju jasnu sliku o međupartnerskom nasilju. Nedostaju pojašnjenja o rodbinskom odnosu između žrtve i počinioca nasilja zbog čega postoji rizik od pogrešne interpretacije postojećih podataka.

Državno tužilaštvo je u prethodnoj godini primilo krivične prijave protiv 211 lica. Iz ranijeg perioda prenijete su u rad prijave protiv 41 lica, što ukupno čini krivične prijave protiv 252 lica. Državni tužioci su imali ukupno u radu 238 optuženja, zajedno sa optuženjima koja su prenijeta u rad iz ranijih godina, dok je krivični postupak završen protiv 139 lica. U završenim krivičnim postupcima u 82% predmeta donešena je osuđujuća presuda, dok preostalih 18% čine oslobađajuće i odbijajuć e odluke i obustava postupka. Podaci državnog tužilaštva odnose se na krivično djelo nasilje u porodici ili u porodičnoj zajednici iz člana 220 KZ-a.

Osnovni sudovi su u 2013. godini za krivična djela nasilja u porodici ili porodičnoj zajednici riješili 132 predmeta, od čega su 63 (48%) bile osuđujuće presude, 19 (14%) oslobađajuće i 50 (38%) odbijajuće. Visok nivo presuda oslobađajućeg i odbijajućeg karaktera, je osnov za pretpostavku blage kaznene politike, koju potvrđuju i vrste kazni u osuđujućim presudama, od kojih 64,5% čine uslovne kazne, 6,5% novčane, dok zaštitne mjere ili mjere bezbjednosti čini svega 5,5%. Nefunkcionisanje sistema u praćenju izvršenja uslovnih osuda i praksa nastavljanja vršenja nasilja u tom periodi, dovodi u pitanje svrhu izricanja ovolikog broja uslovnih kazni, posebno u situacijama kada je kontinuitet u vršenju nasilja prepoznat.

Organi za prekršaje su imali ukupno u radu 1129 predmeta, od čega je na kraju godine završeno 942 ili 83,43% predmeta, na način što su u 336 (35,5%) izrečene novčane kazne, kazne zatvora u 109 (11,5) predmeta, uslovnih osuda 114 (12%), opomena 89 (14%), obustava 15 (2,4%), vaspitnih mjera 4 (0,6%), odbačaja 7 (1%), oslobađajućih 225 (35%) i zaštitnih mjera 267 (41,5%). Najveć i je procenat predmeta gdje su izrečene zaštitne mjere, što je veliki pomak u odnosu na prethodne

godine, ali brine broj novčanih kazni koje čine 35,5% i broj oslobađajućih presuda kojih je 35%. Ukupno je bilo 970 žrtava nasilja, od čega 658 (67,83%) ženskog pola i 312 (32,17%) muškog pola. I u ovim podacima kao i kod ostalih institucija nedostaje prikaz rodbinskih odnosa između žrtve i počinioca nasilja. Podaci pokazuju da je oko 7% maloljetnih žrtava nasilja u porodici, što je pozitivan pomak u otkrivanju i sankcionisanju ovih djela.

Zdravstvene ustanove u Crnoj Gori su evidentirale svega 86 slučaja nasilja u porodici, od čega je 50 evidentirano u Ugrentnom centru a 36 slučajeva i 3 sumnje na porodično nasilje u ostalim zdravstvenim institucijama. Jedino u protokolima Urgentnog Centra porodično nasilje koje je prijavljeno od strane povrijeđene osobe se posebno obilježava, dok u drugim zdravstvenim službama takva praksa ne postoji.

Nevladine organizacije koje koje obezbijeđuju servise podrške žrtvama nasilja u porodici su u prethodnoj godini imale 1025 klijentica. Besplatna pravna pomoć obezbijeđena je za 528 klijentkinja. U Skloništa je smješteno ukupno 237 osoba od čega 152 žene i 174 djece. Psihološka pomoć je pružena za 126 klijentkinja od čega je 5-oro djece. Broj usluga povjerljivog lica je 248, dok je grupama samopodrške obuhvaćeno 80 žena.

3. ANALITIČKI OKVIR

3.1 MEĐUNARODNE KONVENCIJE KOJE JE CRNA GORA RATIFIKOVALA ODNOSNO ČIJA JE ČLANICA

Crna Gora je potpisnica mnogih međunarodnih pravnih akata Ujedinjenih nacija i Evropske unije. Neka od ključnih dokumenata značajnih za priznavanje nasilja u porodici kao kršenja ljudskih prava po međunarodnom pravu, kao i za priznavanje odgovornosti države za privatne akte nasilja nad ženama su:

- **Deklaracija Ujedinjenih nacija o ukidanju svih oblika nasilja nad ženama** (1993.) koja problematiku nasilja nad ženama sagledava kroz nejednakost muškaraca i žena u društvu.
- **UN Konvencija o eliminaciji svih oblika diskriminacije nad ženama CEDAW** (1979.) koja predviđa usvajanje zakona koji će osigurati zaštitu žena od svih oblika diskriminacije i

nasilja kao i pravnu zaštite kroz afirmativne akcije i programe bez odlaganja – što znači da se ova obaveza države ne može odložiti uz opravdanje teške ekonomske situacije u zemlji.

- **Opšta preporuka br.19 Komiteta za eliminaciji svih oblika diskriminacije nad ženama** iz 1992.godine UN DocA/47/38(1992) usvojena radi jačanja CEDAW-a kao sredstva za osiguranje ženskih ljudskih prava, posebno u oblasti nasilja u porodici.
- **Pekinška deklaracija i Platforma za akciju** (1995.) sadrži specifične aktivnosti vlada, nevladinih organizacija, privatnog sektora, obrazovnih institucija i drugih subjekata koje treba da preduzmu u cilju suprostavljanja i borbe protiv nasilja nad ženama, uključujući i jačanje nacionalnog pravnog sistema u vezi sa nasiljem u porodici.
- **Preporuka Rec (2002) 5 Odbora ministara državama članicama o zaštiti žena protiv nasilja** zahtijeva pravne reforme i efikasnu primjenu prava, zaštitu i podršku žrtvama, sprečavanje sekundarne viktimizacije, programe rehabilitacije za počinitelje, obrazovanje i usavršavanje državnih službenika, podizanja svijesti javnosti, uspostavljanje sistema prikupljanja podataka i monitoring na nacionalnom nivou.
- **Konvencija Savjeta Evrope o sprječavanju i suzbijanju porodičnog nasilja i nasilja nad ženama**, poznata kao Istambulska konvencija, predviđa zaštitu, prevenciju, procesuiranje, sankcionisanje i kreiranje politike rada u oblasti borbe protiv nasilja nad ženama i nasilja u porodici. Konvencija je potpisana 11. maja 2011. godine. Zakon o potvrđivanju donesen je 2013. god.

Međutim, ovi jako važni međunarodni akti nijesu konkretizovani u dovoljnoj mjeri u našem zakonodavstvu, iako na to obavezuje Ustav CG, koji navodi da „ratifikovani međunarodni ugovori i opšteprihvaćena međunarodnog prava imaju primat nad domaćim zakonodavstvom i neposredno se primjenjuju kada odnose uređuju drugačije od unutrašnjeg zakonodavstva". Navedena definicija jeste afirmativna za međunarodne propise, ali je njena primjena u praksi otežana jer je uspostavljen primat nad „domaćim zakonodavstvom", ali ne i nad Ustavom, kao i time što se neposredno primjenjuje samo ako se prethodno dokaže da „odnose uređuju drugačije od unutrašnjeg zakonodavstva". Izostalo je i važno uputstvo da će se međunarodni dokumenti primjenjivati u skladu sa njihovim tumačenjem od strane međunarodnih tijela nadležnih za nadzor nad njihovom primjenom.[4]

4 Međunarodni standardi ljudskih prava i ustavnih garancija u Crnoj Gori (Akcija za ljudska prava, 2008)

3.2 NACIONALNI INSTITUCIONALNO - PRAVNI OKVIR

Ustav Crne Gore (2007.) u članu 8, stav 2 navedi da se diskriminacijom ne smatra primjena posebnih mjera koje su usmjerene na stvaranje uslova za ostvarivanje rodne ravnopravnosti, dok članovi 19. i 21. „garantuju pravo na zaštitu jednakih prava i sloboda i na pravnu pomoć".

Krivični zakonik Crne Gore (2004.god.) članom 220 propisuje krivično gonjenje za djela nasilja u porodici koje se vrši po službenoj dužnosti. Izmjenama i dopunama (2013. god.), uvedene su dvije nove mjere bezbjednosti: zabrana približavanja (član 77a) i udaljenje iz stana ili drugog prostora za stanovanje (član 77b), koje se mogu izreći prema učiniocu krivičnog djela nasilje u porodici ili u porodičnoj zajednici.

Porodični zakon (2007.god.) ne sadrži odredbe o zaštiti od nasilja u porodici, ali definiše moguć nost suda da u slučajevima nasilja donese odluku o odvajanju djeteta od roditelja kao i ograničavanje prava djeteta da održava lične odnose sa roditeljem sa kojim ne živi.

Zakon o zaštiti od nasilja u porodici (2010.) propisuje sprečavanje i suzbijanje nasilja u porodici, zaštitu osoba izloženih nasilju i primjenjuje se u prekršajnom postupku. Zakon daje jasnu definiciju radnji koje predstavljaju nasilje u porodici i autentično tumačenje ko se smatra članom porodice, određuje institucije nadležne da se bave zaštitom od ove vrste nasilja (policija, Organ za prekršaje, Državno tužilaštvo, Centar za socijalni rad, zdravstvene ustanove...) i definiše mogućnost odabira povjerljivog lica. Ovim zakonom su po prvi put u naš pravni sistem uvedene zaštitne mjere za žrtve nasilja i to: udaljenje iz stana ili drugog prostora za stanovanje; zabrana približavanja; zabrana uznemiravanja i uhođenja; obavezno liječenje od zavisnosti; obavezni psihosocijalni tretman.

Zakon o besplatnoj pravnoj pomoći, usvojen 5. aprila 2011. godine, građanima/kama slabijeg imovinskog stanja obezbjeđuje pravo na besplatnu pravnu pomoć koje obuhvata pravno savjetovanje, sastavljanje pismena, zastupanje u postupku pred sudom, Državnim tužilaštvom, Ustavnim sudom, kao i u postupku za vansudsko rješavanje sporova. Zakonom je omogućeno pružanje besplatne pravne pomoći siromašnima i osjetljivim kategorijama, kao što su korisnici materijalnog obezbjeđenja porodice, dijeca bez roditeljskog staranja, lica sa posebnim potrebama i žrtve krivičnog djela nasilje u porodici ili u porodičnoj zajednici.

Strategija zaštite od nasilja u porodici (2011.-2015.) sadrži ciljeve i mjere za unapređenje socijalne i druge zaštite, sa akcentom na podizanje nivoa svijesti građana/ki o problemu nasilja, razvoj programa prevencije nasilja; podršku porodici; razvoj normativnog okvira u oblasti zaštite; jačanje saradnje organa, ustanova, organizacija koja se bave zaštitom; sticanja novih znanja i vještina; unapređenje sistema za prikupljanje i analizu podataka i izvještavanje.

Protokol o postupanju, prevenciji i zaštiti od nasilja u porodici (decembar 2011.) definiše procedure i institucionalnu saradnju u toku sprovođenja zakona i konvencija, kao i obaveze preduzimanja potrebnih mjera za osiguranje organizovanosti, opremljenosti i edukovanosti dovoljnog broja specijalizovanih stručnjaka. Potpisnici protokola su Ministarstvo pravde, Vrhovni sud, Vrhovno državno tužilaštvo, Ministarstvo prosvjete i sporta, Ministarstvo zdravlja, Ministarstvo rada i socijalnog staranja, Uprava policije i Vijeće za prekršaje Crne Gore.

4. INSTITUCIONALNI I ADMINISTRATIVNI KAPACITETI JAVNIH USTANOVA I DRŽAVNIH ORGANA

4.1 CENTRI ZA SOCIJALNI RAD

Zakon o zaštiti od nasilja u porodici jasno definiše uloge i odgovornosti socijalnih službi i navodi ih kao ključne ustanove nadležne da se bave zaštitom žrtava porodičnog nasilja, koje su dužne da bez odlaganja pruže zaštitu i pomoć žrtvi i omoguće joj pristup svakom obliku pomoći i zaštite. Centri su dužni da obavezno prijave policiji učinjeno nasilje za koje saznaju u vršenju svoje djelatnosti, izrađuju i prate Plan pomoći žrtvi, formiraju multidisciplinarne timove od predstavnika te ustanove, organa i službi lokalne uprave, policije, nevladinih organizacija i stručnjaka koji se bave pitanjima porodice, i po potrebi podnose zahtjev za određivanje zaštitne mjere. Ali kadrovska struktura centara često nije usklađena sa opisom poslova i zadataka, koji su im zakonom povjereni. Nešto manje od dvije trećine zaposlenih stručnih radnika pripada pomagačkim profesijama, četvrtinu zaposlenih čine pravnici a ostale profesije čine približno petinu zaposlenih među stručnim osobljem.

4.2 MULTIDISCIPLINARNI TIMOVI ZA PREVENCIJU I ZAŠTITU OD NASILJA U PORODICI

Ministarstvo rada i socijalnog staranja je iniciralo formiranje multidisciplinarnih timova u 10 centara za socijalni rad u Crnoj Gori, koji su tokom 2012/2013 god. formirani u Podgorici, Bijelom Polju, Beranama, Pljevljima, Plavu, Rožajama, Nikšiću, Baru, Kotoru i Herceg Novom. Nadležnost multidisciplinarnih timova proširena i na zaštitu djece od nasilja i izvan porodice, što zahtijeva ozbiljno preispitivanje uloga i odgovornosti članica/ova MT, same strukture tima, a posebno načina evidentiranja slučajeva razmatranih u radu tima. CSR Podgorica izradio je i usvojio Poslovnik o radu tima, dok je izrada sličnog pravilnika u ostalim centrima u toku.

Za procjenu rizika i individualni plan za odrasle žrtve još uvijek ne postoje precizne forme, već se članovi/ice tima oslanjaju na matrice uspostavljene u radu sa djecom žrtvama nasilja. Sastav tima, pored članova/ica iz Centara za socijalni rad čine i prestavnici policijskih i zdravstvenih službi, pravosudnih organa, obrazovnih institucija, nevladinih organizacija i lokalne uprave. Struktura timova nije u svakom centru odgovarajuća, što znači da u nekim centrima nedostaju predstavnici organa za prekršaje, službi hitne medicinske pomoći, lokalne uprave.
Posmatrajući profil profesionalne orijentacije članova/ica timova, može se zaključiti da još uvijek preovlađuje prisustvo stručnjaka koji se bave zaštitom djece, čije je prisustvo dragocjeno, ali iskustvo u radu sa djecom ne garantuje bezuslovno znanja i vještine potrebne u radu sa odraslima, što zahtijeva dodatno stručno osposobljavanje i edukacije.

4.3 UPRAVA POLICIJE

Zakonom o zaštiti od nasilja u porodici otvaraju se nove mogućnosti i ingerencije službenika policije u ovoj oblasti. Policijski službenik može radi otklanjanja opasnosti po fizički integritet žrtve narediti učiniocu nasilja udaljenje ili zabranu vraćanja u stan ili drugi stambeni prostor, koja ne može trajati duže od tri dana. Ministarstvo unutrašnjih poslova je donijelo ***Pravilnik o bližem sadržaju i izgledu obrasca naređenja o udaljenju ili zabrani vraćanja u stan ili drugi prostor za stanovanje***, ali i pored toga je na nivou Crne Gore tokom 2013 godine izdato svega 40. naredbi, od čega je 32 izdato od strane ovašćenih policijskih službenika iz CB Nikšić, što pokazuje izuzetnu nespremnost policijskih službenika za korišćenje mjere koju je zakonodavac u cilju efikasnije zaštite, posebno u dijelu hitnosti, dao u nadležnost policijskim službenicima.

Posebnu ulogu službenici imaju u oblasti izvršenja zaštitnih mjera koje se izdaju/izriču radi sprečavanja i suzbijanja nasilja, otklanjanja posljedica učinjenog nasilja i otklanjanja okolnosti koje pogoduju ili podstiču vršenje novog nasilja. Donijet je *Pravilnik o bližem načinu izvršenja ove zaštitne mjere* koji nalaže procjenu ugroženosti žrtve, plan izvršenja i obavezu podnošenja izvještaja o sprovođenju zaštitne mjere. Iako su sudovi izdali 267 zaštitnih mjera, Uprava policije raspolaže podacima o 111, što stvara osnov za ozbiljnu sumnju u kvalitet praćenja izvršenja zaštitnih mjera.

Bez obzira na ingerencije policijskih službenika i zahtjevnost njihovih zadataka, trenutno samo u Podgorici postoje sistematizovana radna mjesta za oblast porodičnog nasilja u okviru Stanice kriminalističke policije za suzbijanje krvnih delikata i nasilja u porodici. Takođe, u samoj Upravi ne postoji sistematizovano radno mjesto za službenika koji bi imao ulogu „Glavnog inspektora za nasilje u porodici". Uprava policije je trenutno u fazi izrade novog Pravilnika o unutrašnjoj organizaciji i sistematizaciji MUP CG, u okviru kojeg se planira uvođenje - sistematizacija radnog mjesta „inspektora za porodično nasilje", što je veliki pomak u odnosu na trenutno stanje.

4.4 SUDOVI

Osnovni sud je ključna institucija za porodično nasilje u krivičnim predmetima. Zakonska regulativa kojom se uređuje rad sudova obezbjeđuje potrebne preduslove za adekvatan institucionalni odgovor na potrebe žrtava porodičnog nasilja. Zakon o sudovima i Sudski poslovnik (*"Sl. RCG", br. 36/2004.*) pružaju mogućnost da u pojedinoj pravnoj oblasti bude raspoređen samo jedan ili dvojica sudija, što stvara uslove da se u crnogorskim sudovima formiraju organizacone jedinice i za oblast porodičnog nasilja. Poslovnik nalaže i da se predmeti svrstavaju prema hitnosti, prirodi i značaju. Kako ni Zakonom ni Poslovnikom ne postoji jasna kvalifikacija predmeta koji se u rad uzimaju po hitnom postupku, pretpostaviti je da je na sudijama da procijene, osim vremena prispjeća predmeta, prirodu i značaj samog predmeta. Sama priroda sporova iz porodičnih odnosa zahtijeva kraće rokove i hitnost u postupanju, ali u krivičnom zakonu je nasilje u porodici djelo kao i svako drugo i tu zakon ne obavezuje dodatno nikakvu hitnost.

Besplatna pravna pomoć

Službe za besplatnu pravnu pomoć u osnovnim sudovima, formirane su sredinom 2012. god. godinu dana nakon usvajanja Zakona o besplatnoj pravnoj pomoći. Međutim, besplatnu pravnu pomoć u skladu sa ovim zakonom, mogu koristiti samo žrtve **krivičnog** djela nasilja u porodici, što znači da peko 80% žrtava nasilja u djelima procesuiranim prema Zakonu o zaštiti od nasilja u porodici (koji

spada u domen prekršaja) nemaju šansu da ostvare ustavom zagarantovani pristup pravdi. Bez obzira što je pravo koršćenja blagodeti ovog zakona ograničeno na žrtve krivičnog djela nasilja u porodici, začuđujuće je mali broj pružene pravne pomoći u ovoj oblasti (svega 12 na nivou CG), iako je već ina žrtava nasilja u porodici slabog imovnog stanja, a često i korisnik materijalnog obezbjeđenja porodice ili nekog drugog prava iz socijalne zaštite.

U svim sudovima koji postupaju u krivičnim predmetima ustanovljena je **Služba za pružanje podrške oštećenima/svjedocima** u predmetima koji obuhvataju i nasilje u porodici ili porodičnoj zajednici. Zaposleni su u okviru podrške žrtvi dužni dati informacije o krivičnom postupku, obezbjediti zaštitu tj. eliministi mogućnosti fizičkih nasrtaja ili vrijeđanja oštećenog/svjedoka prije i nakon suđenja u prostorijama suda. I ako je zadatak ove Službe da obezbijedi sigurno i bezbjedno svjedočenje, predstavnici policijskih, zdravstvenih i socijalnih službi uključenih u rješavanje problematike nasilja u porodici, nemaju saznanje o postojanju i ingerencijama ove službe, a od strane sudova nijesu pokretane nikakve javne akcije informisanja šire javnosti.

4.5 TUŽILAŠTVO

Tužioci su obavezni poštovati rokove u toku postupka, uz dužno poštovanje pravila o prioritetima u rješavanju predmeta. Kodeks državno-tužilacke etike, reguliše odnose sa sudom, policijom i drugim državnim organima koji učestvuju u predkrivičnom postupku, ali i odnos sa osumnjičenim i okrivljenim. U dijelu koji definiše odnos tužioca i oštećenih stranaka jasno je naznačeno da tužioci moraju posebnu pažnju obratiti na žrtvu krivičnog djela i njene najbliže, te zaštiti njihove interese. Eticki kodeks nije skup nepromjenjivih pravila već se podvrgava periodičnom preispitivanju i svake dvije godine se ponovo razmatra, što ostavlja realnu mogućnost da se u njemu nađu preciznija uputstva o odnosu tužioca prema žrtvama porodičnog nasilja.

4.6 ORGANI ZA PREKRŠAJE

Organi za prekršaje su nosioci Zakona o zaštiti od nasilja u porodici s obzirom da se radi o zakonu koji nasilje procesuira kroz prekršajni postupak. Ovim Zakonom se omogućava izdavanje hitnog naloga ili mjere/a za zaštitu, bilo od strane policije ili prekršajnog organa po prijavi žrtve porodičnog nasilja. Zakon omogućava žrtvi da i sama podnese zahtjev za izricanje zaštitne/ih mjere/a, ali mali broj žrtava zna za ovu zakonsku pogodnost. Ali, stiče se utisak da se organi za prekršaje pretjerano oslanjaju na zakonske odredbe koje omogućavaju učešće drugih institucija u pribavljanju dokaza, te se zapostavlja izjava žrtve koja bi trebalo da bude dovoljna da bi se izrekla zaštitna mjera.

4.7 KAPACITETI I SERVISI U NEVLADINIM ORGANIZACIJAMA

U 10 crnogorskih gradova funkcioniše 16 ženskih NVO koje obezbjeđuju servise podrške ženama i djeci žrtvama nasilja u porodici (Podgorica, Nikšić, Pljevlja, Bijelo Polje, Berane, Plav, Rožaje, Ulcinj, Bar, Kotor). Organizacije pružaju pravnu pomoć, psihosocijalnu podršku, posredovanje kroz institucije sistema, uslugu povjerljivog lica, programe samopodrške, siguran i bezbjedan smještaj. Organizacije ističu dobru međusektorsku saradnju prije svega sa policijim, zatim pravosudnim organima, zdravstvenim službama i centrima za socijalni rad.

Osnovni problem u njihovom radu je nedostatak finansijskih sredstava za održivost servisa, koji stvara ekonomsku nesigurnost angažovanih i često dovodi do osipanja kadra edukovanog za rad sa žrtvama nasilja. Bez obzira na tekući proces reforme sistema socijalne i dječije zaštite i tendenciju da se u skladu sa decentralizacijom finansiranje usluga podrške žrtvama nasilja velikim dijelom prebaci na lokalne samouprave, upitna je spremnost i praksa Vlade CG i Loklanih uprava da ulažu u vaninstitucionalne servise. Ovu tvrdnju potkrjepljuje podatak da iznos novčanih sredstava dobijen za rad ovih organizacija iz vladinih fondova za 2013. god. iznosi 2,4% ukupnog budžeta ovog fonda, dok je cjelokupni godišnji iznos dobijen iz fondova Lokalne uprave 2500 eura. Iako se u svom radu suočavaju sa teškoćama, najveći broj organizacija (94%) smatra da postojeći servisi treba da ostanu u „vlasništvu" NVO-a, jer posjeduju potrebna znanja, iskustva, senzibiliditet i edukovanost, klijetice im vjeruju više nego institucijama sistema, a servisi su specijalizovani, nezavisni i prilagođeni interesima žena.

5. SPROVOĐENJE PROTOKOLA O POSTUPANJU, PREVENCIJI I ZAŠTITI OD NASILJA U PORODICI U PRAKSI

5.1 POLICIJSKE SLUŽBE

Iskustva policijskih službenika u sprovođenju Protokola pokazuju da bez obzira na određeni napredak, još uvijek postoji niz problema u praktičkoj primjeni. Već prvi član Protokola koji definiše potrebu upućivanja na mjesto događaja i službenice ženskog pola je skoro nemoguće ispuniti jer u

policijskim stanicama ne postoji dovoljan broj zaposlenih žena. Lišenje slobode počinioca nasilja je takođe diskutabilno jer policajac na licu mjesta najčešće ne zna da li je počinjeno krivično djelo ili prekršaj. Zapisnik o uviđaju sačinjava se samo kod krivičnih djela nasilja u porodici a foto dokumentacija samo u ,,najtežim slučajevima", u prekršajima nikada. Odredba o legalnom ili ilegalnom oružju, se primjenjuje često, ali procedure sa tužiocima i sudijom za istragu su komplikovane, što predstavlja problem, posebno kada se intervencije sprovode u večernjim časovima (22h-06h).

Razgovor sa žrtvom i učniocem nasilja se uvijek vodi odvojeno, ali nasilnik i žrtva se veoma često sretaju u hodniku službenih prostorija. Službenici policije uglavnom upoznaju žrtvu nasilja s njenim pravima, obavještavaju je o mogućnostima odlaska u sklonište i vode u isto, ali se u praksi često dešava da se taj podatak odaje učiniocu nasilja ili drugim članovima porodice, što je suprotnosti sa odredbom 14. Protokola. Kada je u pitanju "analiza rizika" i „siguronosni plan za žrtvu nasilja" službenici policije nemaju jasnu predstavu šta oni predstavljaju, kako se izrađuju i sprovode, prije svega zato što još uvijek nemaju jasne instrukcije, kao ni forme/matrice za sprovođenje ovih zadataka.

Saradnja službenika policije se najviše ostvaruje sa centrima za socijalni rad i NVO koje se bave zaštitom žrtava nasilja. Ipak, bez obzira na poboljšanu saradnju sa CSR, prijave za nasilje koje se u vidu službenih zabilješki radnika Centra prosljeđuju policiji su često bez opisa događaja, datuma kad je djelo izvršeno, i sl. kao i podataka o preduzetim mjerama i radnjama iz nadležnosti te ustanove. Saradnje i komunikacije sa obrazovnim ustanovama skoro da nema. Od strane škola nema nijedna prijava nasilja u porodici nad djecom i mladima. Nakon nekoliko godina kvalitetnih izvještaja, ponovo se dešava da iz Službi hitne medicinske pomoći dolaze šturi izvještaji ljekara u vezi povreda, a ljekari iz UB KC CG ne daju kvalifikaciju težine povrede. Službenici policije tvrde da mnogi u lancu podrške nijesu upoznati sa sadržajem Protokola, a i kada jesu, često se stiče utisak da reaguju po princuipu „obavijestiti policiju i na taj način skinuti odgovornost sa sebe".

Ključni problemi unutar policijskih službi su nedovoljan broj policijskih službenika koji isključivo rade na zaštiti od nasilja u porodici, neobučenost i nesenzibilisanost službenika JRM, nebučenost inspektora za izradu sigurnosnog plana za žrtvu nasilja i analize rizika učinioca nasilja, nekvalitetne zabilješke policijskih službenika koji prvi izlaze na mjesto događaja, nedostatak vozila za inspektore Jedinice za zaštitu od nasilja u porodici, nesenzibilisanost drugih službenika za rad, minimiziranje problematike nasilja u porodici i nepostojanje svih potrebnih podzakonskih akata.

Osnovni, optimalni kapaciteti neophodni za pružanje stručne podrške žrtvama porodičnog nasilja po mišljenju policijskih službenika su: uvođenje rada u paru (po mogućnosti muško-žensko), stalna obuka, zapošljavanje pravnika koji bi pred Područnim organom za prekršaje zastupao zahtjeve za pokretanje prekršajnog postupka koji se procesuiraju iz CB, bolja tehnička opremljenost, sistematizacija radnih mjesta, posebne prostorije u kojima bi se mogao obaviti neometan razgovor sa žrtvom, multisektorski sastanci, informativne brošura za žrtve nasilja; forme matrice rizika i plana podrške žrtvi.

5.2 SOCIJALNE SLUŽBE

Iskustva zaposlenih u centrima za socijalni rad u sprovođenju Protokola su uglavnom pozitivna, bez obzira na određene probleme na koje nailaze tokom postupanja. Službenici Centra odmah kontaktiraju žrtvu nasilja, nakon saznanja o nasilju, ali, ukoliko se radi o anonimnoj prijavi prvo se provjeravaju dobijene informacija, od čega zavisi dalji redosljed radnji. Uvijek se radi početna službena zabilješka, izvještaji i zapisnici se uredno rade i vode, ali nastavak preduzetih radnji i kontakata se ne bilježi uredno i vrlo se često izostavlja. Obaveza "žurnog formira spisa predmeta" se sprovodi na različite načine, nekada to rade stručni radnici a nekada članovi MT-a. Žrtva se upoznaje sa njenim pravima i načinima ostvarivanja prava, međutim kao problem se ističe da su žrtve često pod stresom i ponekad jednostavno zaborave šta im je rečeno, a u centrima ne postoje brošure sa jasnim upustvima za žrtvu koje bi olakšale proces. Ispitanici tvrde da sa „posebnom pažnjom" omogućavaju žrtvi da ispriča sve činjenice vezane za porodičnu situaciju i nasilje, ali ostavljaju rezervu da se u nekim centrima dešavaju i drugačije situacije jer nijesu svi podjednako senzibilisani za ovu problematiku. U slučajevima porodičnog nasilja nad djecom, službenici centra se rukovode načelom najboljeg interesa djeteta, ipak kada je u nekom slučaju potrebno postaviti staratelja to se najčešće izbjegava uraditi. Sa službama zdravstvene zaštite i obrazovno-vaspitnim ustanovama jako je teško razviti Plan podrške za dijete - žrtvu nasilja. Procjena rizika se pravi uvijek kada su u pitanju maloljetna djeca, ali to nije slučaj sa odraslim osobama. Bez obzira na tvrdnje dijela ispitanika da se uvijek radi procjena rizika, mora se imati u vidu da za odrasle žrtve nasilja u porodici ne postoji jasna martrica koja bi olakšala rad službenicima centra. Dio ispitanika tvrdi da se uredno za svaku žrtvu nasilja u porodici pravi Sigurnosni individualni plan zaštite, dok drugi tvrde da se" plan u nekom obliku napravi ali on nikada nije u obaveznoj formi i nejasno je kako on treba da izgleda i šta sve treba da sadrži". CSR pravi kontakte sa ustanovama i organizacijama koje žrtvi mogu da pruže sklonište, ali većina nema tu mogućnost jer na nivou lokalnih zajednica takvi servisi ne postoje. Žrtva se priprema za sud uglavnom ukoliko postupak prate od samog početka i u toku su sa svim

preduzetim radnjama, ali se prati na sud samo ukoliko su pozvani u svojstvu svjedoka. Još uvijek u praksi ne postoji mogućnost određivanja jedne osobe za vođenje slučaja sa kojom će žrtva nasilja uvijek kontaktirati (voditelj/voditeljka slučaja).

Saradnja socijalnih službi sa drugim institucijama generalno se procjenjuje kao dobra, s tim što se navodi da se saradnja odvija uglavnom na inicijativu CSR. Procjena je da u ovoj komunikaciji najviše smeta neiformisanost predstavnika institucija o obavezama iz Protokola ali često i nedovoljna senzibilisanost stručnjaka koji rade u ovoj oblasti. Ipak, slučajevi se sada rješavaju mnogo brže i adekvatnije, posebno kada su u tu problematiku uključeni članovi MDT-a. Generalni je stav da su u procesu podrške najmanje uključene škole i zdravstvene službe. Škole izlaze u susret socijalnim radnicima kada ih kontaktiraju, ali se jako rijetko desi da im škola zvanično prijavi neki oblik nasilja nad djetetom. Takođe, ni zdravstvene ustanove socijalnim službama ne prijavljuju slučajeve nasilja, prijavljuju nasilje policiji, ali sa Centrima nemaju direktnu saradnju.

Ključni problemi unutar socijalnih službi su jako mali broj stručnih radnika koji rade na ovoj problematici, nedovoljno finansijskih sredstava za materijalne pomoći žrtvama nasilja u porodici, nepovjerenje žrtava u institucije sistema, suviše veliki obim posla stručnih timova u centrima, neupućenost žrtve nasilja o njenim pravima, nedovoljan broj socijalnih radnika i nerazvijeno urgentno hraniteljstvo neophodno za djecu žrtve nasilja. Problem pravi i to što se još uvijek nasilnik rijetko izdvaja iz porodice, "izdvaja" se žrtva što iziskuje obezbjeđivanje smještaja u skloništa kojih je u CG jako malo. Dio centara, posebno na sjeveru, nije tehnički obezbijeđen, nemaju prostoriju za razgovor sa žrtvama nasilja, ni poseban prostor za djecu. Takođe, ne posjeduju adekvatan prostor za sastanke multidisciplinarnih timova.

5.3 ZDRAVSTVENE SLUŽBE

Iskustva zdravstvenih radnika/ca u sprovođenju Protokola pokazuju da se nasilje u porodici, a posebno sumnja na nasilje, na nivou zdravstvenih službi rijetko prijavljuje, jer smatraju da im „ljekarska etika" ne dozvoljava da to urade ukoliko to žrtva izričito ne zahtijeva. Ne postoji propisani formular o mogućim fizičkim povredama i o učiniocu nasilja, pa se stoga nasilje u porodici ne evidentira. Ljekari Hitne medicinske službe daju povrednu listu (ljekarski izvještaj) po službenoj dužnosti i bez naplate, ali još uvijek postoje slučajevi gdje se ove zdravstvene usluge naplaćuju, što je u suprotnosti i sa zakonom i sa Protokolom. O slučavima nasilja obavještavaju policiju a ne i socijalne službe, ali ni ostale službe zdravstvene zaštite, jer je odgovornost za dalji tretman na

samom pacijentu. Ljekari imaju ozbiljnu sumnju da je „obaveza da se nadležnim organima da na uvid dokumentacija i svi dostupni podaci od značaja za potrebu dokazivanja kažnjive stvari“, u suprotnosti sa Zakonom o zaštiti ličnih podataka i Zakonom o pravima pacijenata. Posebno je za njih problematično pitanje, da li te podatke dati socijalnim službama, te da li CSR pripadaju „nadležnim organima“. Ljekari nisu nadležni da donose odluke „obaveznog liječenja“ već sud, a u slučaju sumnje da je počinilac osoba sa psihičkim smetnjama, opet na zahtjev suda, mogu predložiti mjeru upuć ivanja na psihijatrijsko posmatranje. U slučaju dolaska žrtve nasilja u službu hitne pomoći, još uvijek se nedovoljno obraća pažnja na povrede i cjelokupno stanje pacijenta koje bi moglo upućivati na nasilje u porodici. Izvještaji ljekara su šturi sa nedovoljno dobrim opisom povreda. Plan podrške za dijete - žrtvu nasilja se na nivou zdravstvenih službi ne radi. Izuzeci su samo onda kada ih socijalne službe uključe u proces podrške. Poseban problem je napuštanje zdravstvene ustanove o kojem se nadležne službe rijetko obavještavaju a žrtva nasilja nikada.

Saradnja sa drugim institucijama u sprovođenju Protokola morala bi se znatno poboljšati, posebno kada je CSR u pitanju. Pisma i zahtjevi od strane centra su često nejasni bez dobrog obrazloženja u koju svrhu se traže podaci o osobi, što imajući u vidu Zakon o zaštiti podataka i Zakon o zaštiti prava pacijanata može da bude ozbiljan problem. U MT ne postoji dovoljan broj pedijatara, ni predstavnika službi hitne pomoći. U Protokolu zbunjuje čl.2 koji kaže da zdravstveni radnik treba da ispuni propisani formular o mogućim povredama i o učiniocu nasilja, jer takav formular ne postoji. Većina zdravstvenih radnika/ca posebno u Hitnim službama, nema informaciju da u socijalnim službama postoje dežurni socijalni radnici dostupni 24h. Kada je u pitanju međusektorska saradnja u ovoj oblasti, ističu nevladin sektor, konkretno organizacije koje obezbjeđuju podršku žrtvama nasilja sa kojima se ljekari često konsultuju.

Ključni problemi unutar zdravstvenih službi su nepoznavanje sadržaja Protokola i potpuni izostanak edukacije koja bi im obezbijedila bliže sagledavanje i shvatanje problematike, bolje razumijevanje sopstvene uloge i uloge drugih sistema. Izabrani ljekari se ne uključuju dovoljno, ne prijavljuju sumnju na nasilje u porodici, a zbog nepostojanja propisanog formulara, niti šifre za evidentiranje, ne bilježe se ni prepoznati procesuirani slučajevi nasilja. Ljekari ističu kao problem težak način opisivanja povreda koje nijesu vidljive, kao na primjer šamar, čupanje za kosu i imaju dilemu kojem specijalisti uputiti takvog pacijenta.

Osnovni, optimalni kapaciteti neophodni za pružanje stručne podrške žrtvama porodičnog nasilja su bolja tehnička opremljenost službi Hitne pomoći, upustva za ljekare, kratka lako čitljiva, sa dobrim savjetima i brojevima telefona postojećih servisa podrške, jednostavna administartivna procedura evidentiranja nasilja koja nebi dodatno otežavala posao ljekarima. Neophodno je delegirati i dobro obučiti osobe na nivou zdravstvenih institucija koje će biti ključni kontakt zaposlenima u situacijama nasilja u porodici. Imajući u vidu da veliki broj zdravstvenih službi raspolaže sa svim neophodnim kapacitetima, kako ljudskim tako i prostornim, bolja organizacija rada i obuka stučnjaka bi dovela do kvalitetnije iskorišćenosti tih kapaciteta.

5.4 PRAVOSUDNI ORGANI

Iskustva zaposlenih u pravosudnim organima u sprovođenju Protokola pokazuju da se hitnost u postupanju i donošenju odluka obezbjeđuje kroz prekršajni postupak, ali načelo hitnosti ukoliko su krivična djela u pitanju se ne poštuje i predmeti uglavnom teku kroz redovni postupak. O pokretanju prekršajnog i krivičnog postupka, nadležnim centrima za socijalni rad se uvijek i obavezno dostavlja obavještenje, ali samo u slučajevima kada je žrtva nasilja dijete. U slučaju procjene da dolazak u sud žrtve nasilja može ugroziti bezbjednost žrtve od strane nasilnika, sud u koordinaciji sa policijskim službama obezbjeđuje njen nesmetan dolazak i boravak u prostorijama suda. Bez obzira što svi sudovi nemaju posebnu prostoriju za uzimanje iskaza žrtve, obezbjeđuje se fizičko izdvajanje žrtve od učinioca nasilja tokom davanja iskaza. Žrtva se uvijek obavještava o njenim pravima, ali u praksi te informacije su ograničene na prava u sudskom postupku, rijetko se informišu o ostalim moguć nostima, pa čak i o različitim postojećim servisima unutar Suda. U slučajevima potrebe u postupak se uvijek uključuju centri za socijalni rad, ali za sada uglavnom u svojstvu svjedoka, ali ne i u svojstvu voditelja/voditeljke slučaja

Saradnja tužilaštva, po prirodi poslova je najintenzivnija sa policijom, sa kojom ističu odličnu saradnju, ali i ne manje značajnu dobru komunikaciju sa drugim institiucijama i nevladinim sektorom. Predstavnici Suda i Organa za prekršaje su suštinski zadovoljni komunikacijom ali smatraju da se informisanost različitih službi vezano za Protokol mora poboljšati kako bi se djela uspješnije otkrivala, a shodno tome i obezbjeđivali kvalitetniji materijalni dokazi. Istovremeno mišljenja su da sve službe, uključujući i one unutar pravosuđa moraju da iznađu model kvalitetnijeg informisanja klijenata o mogućnostima podrške, posebno u dijelu pravne pomoći.

Ključni problemi u pravosuđu su uglavnom trajanje sudskih postupaka kod krivičnih djela nasilja u porodici. Na izvještaje stručnih lica (vještaka) se u nekim slučajevima čeka mjesecima, a nalazi su nerijetko nejasni i zahtjevaju dodatna objašnjenja. Sudovi već izriču mjere obaveznog psihosocijalnog tretmana za koji postoji samo urađen Pravilnih ali ne i program po kojem bi se radilo sa nasilnikom. Takođe, kada je u pitanju zaštitna mjera obaveznog liječenja od alkoholizma ili narkomanije, zbog nedostatka kapaciteta u specijalnoj bolnici u Kotoru, na izvršenje se čeka u nekim slučajevima i više od godinu dana. Sve navedeno obesmišljava izrečene mjere, jer za svo to vrijeme, nasilnici i dalje zlostavljaju svoju porodici i mnoga lica kojima su izrečene mjere zaštite se ponovo nađu u sudskim postupcima. Što se samog Protokola tiče, pravosudni organi uspijevaju da odgovore obavezama koje iz njega proističu. Ali, kada je u pitanju dio Protokola koji se tiče postupanja pravosuđa u slučajevima kada su u pitanju djeca žrtve nasilja, važno je napomenuti da postoje dvije tačke Protokola koji je jako teško realizovati i to: tačka 4 koja se odnosi na uzimanje iskaza od djeteta van službenih prostorija i tačka 17 koja nalaže zaštitu dijece od medijske zloupotrebe, jer i ako pravosudni organi neće davati informacije medijima, nije isključeno da to neće učiniti prisutni advokati. Na nivou pravosuđa ne postoji lice formalno zaduženo za sprovođenje Protokola, ali postoje predstavnici različitih pravosudnih organa uključeni u rad Multidisciplinarnih timova, što je svakako od izuzetnog značaja.

Osnovni, optimalni kapaciteti neophodni za pružanje stručne podrške žrtvama porodičnog nasilja su obučeni i senzibilisani nosilaci pravosudnih funkcija, određivanje lica zaduženo za sprovođenje Protokola u svim pravosudnim organima, koje će se između ostalog baviti prikupljanjem i analizom podataka, kao i angažovanje službenika za praćenje i kontrolu tj. nadzor izvršenja zaštitnih mjera. Neophodno je poboljšati tehničku opremljenost sudova pomagalima za ispitivanje djece žrtava porodičnog nasilja. Odjeljenje sudske prakse Vrhovnog suda da prikuplja odluke važne za sudsku praksu u oblasti porodičnog nasilja a Centar za edukaciju sudija, u saradnji sa NVO da dizanira i sprovodi program obuke za sudije i tužioce;

5.5 OBRAZOVNE INSTITUCIJE

Iskustva zaposlenih u obrazovnim institucijama ukazuju na ozbiljne probleme u implementaciji Protokola. U slučaju sumnje na nasilje u obrazovnim ustanovama tvrde da odmah preduzimaju profesionalne mjere i obavljaju razgovor sa djetetom saglasno etici i struci, o čemu se sačinjava izvještaj koji članovi stručne službe upisuju u svoj Dnevnik rada. Obaveza prijavljivanja sumnje na nasilje policiji, za stručnjake iz obrazovnih institucija je vrlo je diskutabilana. Vrlo često se desi

da dijete pomene u toku savjetodavnog razgovora da ima jednog roditelja, obično oca, koji ga/je maltretira i to obično bude psihičko nasilje, ili je otac alkoholoćar, ali u tim slučajevima se obično ništa ne radi već se razgovara sa drugim (nenasilnim) roditeljem. U slučaju sumnje na nasilje uprava ustanove pismeno obavještava centar za socijalni rad samo ako je u pitanju fizičko nasilje. U svim ustanovama postavljena je kutija sa nazivom „Svi moji problemi" koja je stavljena na mjesto dostupno djeci, ali sumnjaju da je ovaj model primjenjiv u srednjim školama. Kod člana koji nalaže da stručnjaci ustanove „drugim institucijama omoguće uvid u službene zabilješke" ispitanici postavljaju pitaju kojim to institucijama? Pedagozi na primjer, svoj dnevnik rada pokazuju samo svom nadzorniku i to da pogleda da ga imaju i ništa više. Plan podrške u ustanovi obično sadrži psiho-socijalnu podršku kao i mjere poboljšanja obrazovno-vaspitnog postignuća (dopunska nastava, individualan rad i vannnastavne aktivnosti) U dogovoru sa službama socijalne i zdravstvene zaštite rijetko se razvija Plan podrške za dijete žrtvu nasilja. Školskim profesionalcima nije jasno sa kim iz službe CSR - da li je to multidisciplinarni tim ili neki poseban specijalizovani tim na nivou centra?

Saradnja sa drugim institucijama po procjeni školskih profesionalaca nije na zadovoljavajućem nivou. Zaposleni u obrazovnom sistemu su izuzetno rijetko uključeni u programe obuka koje organizuju različite institucije i nevladine organizacije, a tiču se nasilja u porodici i principa međusektorske saradnje. Stručne službe najčešće kontaktiraju sa centrima za socijalni rad, od kojih se očekuje dalji angažman pa i prijavljivanje samog nasilja policiji. Stiče se utisak da se obrazovni sistem, bez obzira na svoj preventivni i vaspitni značaj, našao negdje po strani, izvan glavnog toka dešavanja i ostao na neki način „zatvoren", na način da se tokom rješavanja problema više oslanja na sebe i svoje kapacitete nego na ostale institucije u lancu podrške. Sa ostalim akterima poput nevladinih organizacija postoji saradnja na različitim programima, ali ta saradnja nije strateška već se uglavnom zasniva na projektnim aktivnostima.

Ključni problemi unutar obrazovnih institucija su nepostojanje lica zaduženog za sprovođenje Protokola, neinformisanost stručnog osoblja a posebno nastavnog kadra. Brine ih sam način postupanja, posebno "kada i ko prijavljuje moguće nasilje posebno ako dijete ne želi da se za to zna". Generalni utisak jeste da postupanje zavisi od modela samog direktora/ice, njegove zainteresovanosti, motivacije i stavova prema nasilju u porodici, kao i stepena autonomije koji ima stručna služba. Prepoznata je pojava da se ovoj problematici još uvijek prilazi kao tabuu, da nije postignut zahtijevajući nivo aktivnog, građanskog i profesionalanog odnosa prema ovoj pojavi. Još uvijek je uvriježen stil da se na druge prenosi odgovornost, prebacuju očekivanja, zauzima stav „neprimjećivanja" problema, „nezamjeranja".

Osnovni, optimalni kapaciteti neophodni za pružanje stručne podrške žrtvama porodičnog nasilja su prije svega osobe obučena za rješavanje problematike, ali i praćenje i evidentiranje pojave nasilja u školi u svim svojim oblicima. Većina ispitanika smatra da obrazovne institucije posjeduju sve potrebne kapacitete za pružanje stručne podrške žrtvama porodičnog nasilja, osim sa izuzetkom manjih škola koje po zakonu u odnosu na „mali" broj učenika ne mogu imati psihologa. Smatraju da uz dodatne edukacije, jačanje saradnje sa drugim relevantnim sektorima i obezbjeđivanjem edukativno/informativnog materijala namijenjenog nastavnicima i djeci mogu dati svoj puni doprinos većoj sigurnosti i zaštiti i prevenciji nasilja u porodici.

6. ZAKLJUČCI

Analizom postojećih ratifikovanih dokumenata, zakona, strategija i pravilnika, može se sa sigurnošću ustvrditi postojanje snažnog utemeljenja za uvođenje politika i procedura u skladu sa međunarodnim standardima. Međutim, sva ova značajna međunarodna dokumenta, nacionalno zakonodavstvo, strategije i protokoli koji tretiraju problem nasilja u porodici, u praksi su još uvijek teško primjenjivi. Kako je Protokolom o postupanju, prevenciji i zaštiti od nasilja u porodici, uređen zajednički rad svih sistema u toku sprovođenja zakona i konvencija vezanih za nasilje u porodici, opšti je utisak da nadležne institucije nijesu ovom značajnom dokumentu posvetile neophodnu pažnju. Osim članova multidisciplinarnih timova, ostali službenici, posebno u zdravstvu i obrazovanju, nijesu upoznati sa sadržajem Protokola i obavezama koje iz njega proističu. Ni u jednoj instituciji Protokol se ne nalazi na vidljivom mjestu, niti je dostupan zaposlenima ni potencijalnim klijetima. Istovremeno ni u jednoj instituciji, osim centara za socijalni rad ne postoji lice zaduženo za njegovo sprovođenje.

Bez obzira što Protokol zahtijeva hitno uspostavljanje saradnje svih subjekata u zaštiti žrtava porodičnog nasilja, očigledno je da nadležne institucije smatraju da je formiranje multidisciplinarnih timova u 10 crnogorskih gradova dovoljno za efikasan odgovor na nasilje, pri čemu se ozbiljno zanemaruje činjenica da su multidisciplinarni timovi samo karika u lancu podrške, te da ne mogu biti efikasni ukoliko ostali službenici sa kojima žrtve prvo stupaju u kontakt (posebno u fazi akutnog nasilja), ne posjeduju potrebna znanja i vještine neophodne za rad u oblasti porodičnog nasilja.

Analiza je pokazala da bez obzira što Protokol naizgled daje jasne smjernice postupanja, među službenicima relevantnim za njegovo sprovođenje postoji niz nejasnoća u vezi sa pojedinim članovima. Ispitanici iz svih institucija navode dobru međusektorsku saradnju, ali se često previđa činjenica da to što institucije „dobro sarađuju" ne garantuje uvijek efikasnu intervenciju i zadovoljnog korisnika, posebno ako predstavnici tih institucija nijesu u dovoljnoj mjeri senzibilisani za problematiku. Stav velikog broja stručnjaka da „bez greške", potpuno stručno i profesionalno obavljaju svoj posao može biti ozbiljna barijera za sticanje, tj.primanje novih znanja i vještina u skladu sa savremenim metodama rada.

U velikoj mjeri je primjetan nedostatak osnovnih alatki za efikasno postupanje kao što su jasna matrica za procjenu rizika i izradu individualnog plana za podršku odraslim žrtvama nasilja u porodici. Teškoće u sprovođenju Zakona, nejasni Pravilnici, Zakon o besplatnoj pravnoj pomoći koji žrtvama nasilja u porodici uskaraćuje ustavom zagarantovani pristup pravdi, nepostojanje programa za sprovođenje mjera psihosocijalnog tretmana, neiskorišćenost kapaciteta službe za zaštitu svjedoka/oštećenih u crnogorskim sudovima, neefikasnost pravosudnog sistema pri kršenju zaštitnih mjera, blaga kaznena politika, predstavljaju dodatne ključne otežavajuće okolnosti koje onemogućavaju efikasnu podršku žrtvama.

Ključne problemske oblasti koje usporavaju proces implementacije u praksi, prepoznate tokom istraživanja su: nemogućnost kvalitetnog praćenja pojave porodičnog nasilja u svim njegovim oblicima, neusklađenost zakona i institucionalnih mehanizama za sprovođenje Zakona i Protokola, nedostatak kapaciteta svih relevantnih službi za rad sa žrtvama nasilja u porodici u skladu sa Porotokolom, visok stepen neinformisanosti kako zaposlenih u institucijama sistema tako i samih žrtava o postojećim mehanizmima pomoći i zaštite, nedovoljna koordinacija i umreženost subjekata relevantnih za primjenu legislative kao i nepostojanje odgovarajućih servisa podrške žrtvama na lokalnim nivoima i neadekvatna prateća infrastruktura postojećih.

7. PREPORUKE (PREDLOG MJERA)

Praćenje pojave nasilja u porodici

- Dizajnirati uniformne upitnike jedinstvene za sve CSR, centre bezbjednosti, pravosuđe, zdravstvene službe i nevladin sektor, koji će osim broja i vrste djela obuhvatiti i podatke o polu, starosnoj dobi, rodbinskom odnosu, dužini trajanja postupaka i sl. te izraditi jedinstvenu bazu podataka o nasilju u porodici.
- U skladu sa čl.12 Protokola najmanje dva puta godišnje nadležnim ministarstvima podnositi izvještaje

Zakoni i institucionalni mehanizami

- Hitno pripremiti predloge za izmjenu Zakona o besplatnoj pravnoj pomoći koji će se odnositi na uvođenje mogućnosti besplatne pravne pomoći za sve žrtve nasilja u porodici, definisanje pravne pomoći za koju će biti nadležne NVO, kao i uspostavljanje fonda na nivou države za finansiranje pravne pomoći na nivou NVO.
- Pokrenuti inicijativu za izmjenu Krivičnog zakonika u dijelu izricanja zaštitnih mjera kao što je to definisano u Zakonu o zaštiti od nasilja u porodici i u dijelu definisanja pojma „grubo nasilje“ iz čl.220,
- Izraditi „uniformni“ Poslovnik/Pravilnik o radu MT, kako bi se obezbijedio istovjetni postupak u radu multidisciplinarnih timova na nivou svih centara za socijalni rad.
- Na nivou pravosuđa stvoriti uslove za sprovođenje tačke 4 Protokola, koja se odnosi na uzimanje iskaza od djeteta van službenih prostorija,
- Na osnovu Protokola izraditi individualne forme postupanja za sve institucije u sistemu zaštite;
- Dizajnirati program psihosocijalnog tretmana nasilnika u cilju efektivnog sprovođenja postojeće zaštitne mjere.
- Izvršiti pritisak na Odjeljenje sudske prakse Vrhovnog suda da prikuplja odluke važne za sudsku praksu u oblasti porodičnog nasilja;

Kapaciteti

- Obezbijediti odgovarajuću obuku za službenike svih institucija koje u svom svakodnevnom izvršenju zadataka dolaze u kontakt sa žrtvama nasilja u porodici.
- Uvesti sistematizovana radna mjesta na nivou centara bezbjednosti i organa bezbjednosti, kao i mjesto glavnog inspektora za nasilje u porodici na nivou Uprave policije.
- Obezbijediti obuku i mogućnost razmjene iskustva službenika policije o izdavanju „Naređenja o udaljenju ili zabrani vraćanja u stan ili drugi prostor za stanovanje", kao i obuku o načinu izvršenja zaštitnih mjera udaljenje iz stana, zabrane približavanja i zabrane uznemiravanja i uhođenja žrtve i izvještavanju o sprovedenom nadzoru.
- Centri za socijalni rad da izvrše analizu strukture profesionalnog kadra u multidisciplinarnim timovima i uključe nedostajuće profesionalce sa iskustvom u oblasti porodičnog nasilja.
- Dizajnirati Matricu rizika i Plan pomoći za odrasle žrtve nasilja u porodici.
- Izvršiti pritisak na Ministarstvo zdravlja da obezbijedi kapacitete neophodne za sprovođenje zaštitnih mjera obaveznog tretmana zavisnika
- Sve institucije koje se bave zaštitom od nasilja u porodici da formiraju svoje interne timove koji će i preventivno djelovati;
- U okviru Centra za edukaciju sudija, u saradnji sa NVO dizanirati program obuke za sudije i tužioce
- U svim crnogorskim gradovima formirati multidisciplinarne timove i ojačati njihove tehničke kapacitete
- Obezbijediti kontinuiranu finansijsku podršku NVO pružaocima usluga iz vladinih budžeta

Informisanost

- Obezbijediti potrebne informacije i edukaciju službenika svih institucija o načinu i moguć nostima korišćenja besplatne pravne pomoći i Službi za podršku oštećenima/svjedocima u crnogorskim sudovima.
- Štampati i distribuirati liflete/informatore u svim službama i postaviti ih na vidno mjesto kako bi bili dostupni korisnicima, sa adresarom ustanova, organizacija i drugih institucija kojima se žrtve nasilja mogu obratiti kako bi im bila pružena pomoć;
- Izraditi brošuru dobre prakse za ljekare, sa preciznim upustvima koje bi trebale sačinjavati i najčešći opis povreda žrtve, postupanje kada žrtva nema vidljivih povreda, a bila je psihički maltretirana ili izgladnjivana, redosljed postupanja institucija kao i pitnja koja bi trebalo postaviti žrtvi kako bi ona što lakše potvrdila izvršeno nasilje nad njom.

- Obavezno na vidnim mjestima u ambulantama i dispečerima istaknuti broj telefona Centra za socijalni rad i NVO koje se bave zaštitom od nasilja u porodici
- Obezbijediti edukativne publikacije, brošure, postere namijenjene nastavnicima i djeci žrtvama i potencijalnim žrtvama nasilja;

Koordinacija i umrežavanje

- Na nivou svih institucija delegirati osobu za praćenje Protokola
- Svaka od institucija i organizacija u lancu zaštite od nasilja u porodici da prvenstveno dobro razradi procedure postupanja i precizno definiše djelokrug svog rada.
- CSR da daju povratne informacije policiji o preduzetim mjerama po obavještenjima koje dobijaju iz policije u vezi svakog konkretnog događaja po kome se postupa;
- Poboljšati saradnju obrazovnih i zdravstvenih ustanova sa CSR kao ustanovom koja koordiniše planom zaštite žrtava nasilja;
- Minimum jednom u 6 mjeseci obezbijediti sastanke međusekrorskog karaktera kako bi se razmijenila znanja, iskustva i primjeri dobre i loše prakse;

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TESTIMONIAL

This research provided data that will have a direct impact on public institutions that are crucial for the promotion and application of laws and procedures that define domestic violence. Policy paper provided the necessary tools of pressure on the government to fulfill obligations in accordance with national and international human rights standards and the creation of conditions for the access to justice without discrimination. Policy paper also provided key recommendations for improving the administrative capacity, which are a prerequisite for the implementation of laws and networking of entities responsible for the implementation of the legislation.

Immediately after the preparation of the Policy paper, the part covering the analysis of the work of Multidisciplinary teams has been taken by Ministry of Labour and Social Welfare and used for their Annual Report to the Government. One segment of the Policy paper covering the work of the police in accordance with the Protocol has been used for designing the training for police officers, which SOS Podgorica in cooperation with the Police and OSCE will implement in the second half of 2014. in 21 municipalities in Montenegro. Also, Police Directorate took complete analysis from Policy paper connected to the work of the police services for victims of violence to use it in their future work and planning of police operations related to domestic violence.

Part of the Policy paper focuses on the work of educational institutions, and will be used to produce a Guide for teachers, that will be an integral part of the Training program for teachers whose accreditation is expected by the end of the year. Carriers of these activities are SOS Podgorica, the Ministry for Human and Minority Rights, Department of Education and the Center for Vocational Education.

The results of the research made for this Policy paper are already included as an integral part of the *Report on the Implementation of Strategy on protection from violence for year 2013*, that Ministry of Labour and Social Welfare presented to the government in September 2014.

During the preparation of this research and Policy paper, the cooperation with government and institutional representatives has improved, which is very important having in mind that the findings and presentation of facts about current situation and the relation of the government towards the issue of domestic violence were not so positive. However, willingness of managers and employees in all relevant departments for cooperation was high, which resulted in the good quality of the collected data and information provided, as well as good proposals for practical policy improvement that has been given by the professionals - the key actors in the protection of domestic violence.

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MISSING LINKS: HOW KOSOVO'S INSTITUTIONS AND SOCIETY ARE FAILING CIVILIAN WAR FAMILIES IN MITROVICA

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SUMMARY AND RECOMMENDATIONS

The Centre for Research, Documentation, and Publication's (CRDP) report titled *"Missing Links: How Kosovo's institutions and society are failing civilian war families in Mitrovica,"* contains the results of CRDP field research with civilian war widows in Mitrovica and their children, municipal officials, representatives of the local NGO sector, officials at the Ministry of Labour and Social Welfare, as well as experts in the fields of psychology and social work in Kosovo.

By focusing on civilian war widows as a demonstrably vulnerable group in Kosovo's society, CRDP concludes that their needs for adequate shelter, economic independence, and psychosocial support places them at risk to experience ongoing poverty and potential mental health problems. The report documents the problems that exist at the municipal level which make providing social services for civilian war widows difficult, such as the lack of funds for Mitrovica's Directorate of European Integration and Social Welfare, the lack of support for gender budgeting and gender mainstreaming within local government, and the decline of social services offered by the NGO sector in Mitrovica.

Although the policies and social welfare schemes of the Ministry of Labour and Social Welfare provide the main source of income for civilian war widows, there are no long-term strategies in place for the reduction of poverty on a national level, nor are there affirmative action policies at the central level that would contribute to the economic independence of female war victims as a whole.

The lack of institutional support for a sensitive group such as civilian war widows creates conditions in which their poverty and untreated psychological trauma could

potentially be "passed on" to their children. In CRDP interviews with civilian war widows, their concerns about their children's education and future employment were documented. These concerns were echoed in CRDP interviews with the children of civilian war widows, as well as their need for communication on their family loss and the way they feel perceived by Kosovar society.

CRDP puts forth the following recommendations as a practical starting point for institutions to meet the needs of civilian war widows and their children:

- **Use NGO expertise in implementing and drafting policy**

  The expertise of the NGO sector is not utilized as well as it could be by municipalities. CRDP believes there is room for greater cooperation and coordination of services. For example, in the municipality of Mitrovica this could take on the form of a formalized working group on poverty reduction, created in coordination with the directorate for social welfare and NGOs that deal with local welfare cases.

- **A coordinated, national policy on poverty reduction**

  There is a lack of clear policy on social welfare and policy reduction on a national level, which Kosovo sorely needs. Policy of this kind could be sponsored by the Ministry for Labor and Social Welfare, in coordination with the Ministry for Economic Development and with the support and input social welfare directorates of Kosovo's municipalities and sympathetic parliamentary deputies.

- **Policies that generate loans for low-income women**

  CRDP respondents' lack of access to capital had a direct impact on their economic well being. Financial institutions, in cooperation with the Ministry for Economic Development and the Ministry of Labour and Social Welfare can create a legal framework to enable a system of loans that will allow them to start a small to medium-sized business.

- **An increased focus on psychotherapy treatment in the public health sector**

Municipalities need an increased municipal budget for mental health services, and the Ministry of Health needs to provide a policy focus on psychotherapy treatment in the public sector which can provide ongoing support to all Kosovar citizens who need it - and particularly those touched by war.

- **The inclusion of Article 8 of UN Resolution 1325 into Kosovo's National Action Plan for the Implementation of UN Resolution 1325**

Although Kosovo's National Action Plan for the Implementation of UNSCR 1325 provides comprehensive support for women in Kosovo's police and security sector, as well as survivors of wartime rape. The National Action Plan should also cover the requirements of Article 8 of UNSCR 1325, which would provide a space for Kosovo's civilian women, and particularly women who were directly exposed to war, to have a say in Kosovo's reconstruction process and how Kosovo's institutions should address their needs.

- **More research on the mental, physical and economic wellbeing of the children of war victims**

This paper attempts to not only address the wellbeing and institutional treatment of civilian war widows, but also to analyze the potential consequences of war on their children. Comprehensive research on the health and education prospective of the children of war survivors in Kosovo must be conducted in order to draft and implement policies that are greater suited to meeting their needs. Psychosocial support and greater access to education are a must.

1. INTRODUCTION

Kosovo's war victims[1] make up a sizeable amount of the population. Nearly half of the population has been affected[2] in one way or another by the conflict of 1999, and adequate measures to provide for their psychosocial needs have yet to be met by Kosovo's institutions. According to the Humanitarian Law Center, approximately 13,526 deaths and/or disappearances occurred during the conflict, spanning January 1, 1998 and the beginning of 2000[3].

The number of disappearances has decreased to approximately 1,700, but the number of surviving family members who continue to live with the trauma of being war survivors has not. In CRDP's 2013 monitoring report on the implementation of Law Nr.4/L-054[4], CRDP estimated that approximately 78,000 Kosovars have been exposed to violence during the conflict and can be classified as war victims in Kosovo's social welfare schemes. Our research has established that while the needs of Kosovars overall are great, war victims, both civilian and otherwise, are a sensitive portion of the population that needs not only financial support, but a special system of social support that includes preference for employment and psychosocial services.

Institutional support for war victims is comprehensively covered by Law Nr.4/L-054, and is also covered by the Law on Missing Persons, and the Law on the Kosovo Liberation Army Veterans. Law Nr.4/L-054 was adopted in 2012, and introduced a variety of additional services and benefits not provided by previous UNMIK legislation. This law was recently amended in March 2014 to include persons who suffered sexual violence during the war as a distinct beneficiary group.

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1 Law No.4/L-054 classifies several groups of victims as victims of war, including: the KLA deceased and their surviving family members, the civilian deceased and their surviving family members, KLA and civilian invalids, survivors of wartime rape, as well as KLA and civilian missing persons and their surviving family members.

2 Pg 58. "Monitoring of Law No.4/L-054 'On the Status and Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims of War and their Families." December, 2013. Centre for Research, Documentation, and Publication. Retrieved from: http://crdp-ks.org/wp-content/uploads/2014/03/2014-raporti-mbi-ligjin-WEBFINAL.pdf

3 "Kosovo Memory Book." Humanitarian Law Center. May 27, 2011. Retrieved from http://www.hlcrdc.org/?cat=218&lang=de

4 Pg. 58, "Monitoring on Law No.4/L-054 On the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims of War and their Families." The Centre for Research, Documentation, and Publication. December, 2014. Retrieved from: http://crdp-ks.org/wp-content/uploads/2014/03/2014-raporti-mbi-ligjin-WEBFINAL.pdf

The number of families that have sought monthly pensions from the government's social welfare scheme for war victims has slowly risen over the past 7 years, from 11,508 in 2008[5] to 13,196 in 2013[6]. More than half of these individuals[7] are categorized as civilian victims, defined as the family members of civilian missing persons, civilian invalids and their caretakers, and the families of civilian victims.

War victims are entitled to preferential treatment at health and educational institutions, certain forms of tax relief, and discounted utility costs, as well as a monthly pension. Civilian victims are entitled to smaller pensions than KLA veterans and their family members (135 euros per month as opposed to 358-534 euros per month). Their associations tend to be poorly funded, and lack a clear advocacy agenda on a national or municipal level. As such, institutions are not pressured to adequately address their needs and their needs are not collectively addressed.

CRDP's 2013 monitoring report on the implementation of Law Nr.4/L-054 noted the lack of coordinated institutional support for Kosovo's war victims. The report noted several obstacles to the law's full implementation. A few of the more pressing obstacles include:

1) The lack of coordination between the central and local levels of government for providing services to war victims,
2) A lack of easily available information for beneficiaries on the full extent of their rights and benefits,
3) A lack of adoption of all the sublegal acts necessary for the law's implementation on the part of ministries, thereby delaying the access of beneficiaries to all of their rights and services,
4) A lack of professionals at the municipal level to provide much needed social welfare and psychological support.

Until the points raised above are addressed by Kosovo's institutions, war victims' access to the full range of their rights and benefits will continue to be limited.

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5 Pg.12, "Statistikat e mireqenies sociale ne Kosove, 2008." Kosovo Statistics Agency. June, 2009. Retrieved from: http://ask.rks-gov.net/publikimet/doc_details/624-statistikat-e-miraeumlqenies-sociale-2008

6 Pg. 9, "Statistikat e mireqenies sociale ne Kosove, 2013." Kosovo Statistics Agency. March, 2014. Retrieved from: http://ask.rks-gov.net/publikimet/doc_details/1092-statistikat-e-miraeumlqenjes-sociale-2013

7 CRDP found that in 2013, 13,196 individuals received governmental pensions as beneficiaries of Law No.4/L-054. 5710 beneficiaries were family members of KLA veterans, while 7486 were civilian victims. Pg. 20, "Statistikat e mireqenies sociale ne Kosove, 2013." Kosovo Statistics Agency. March, 2014. Retrieved from: http://ask.rks-gov.net/publikimet/doc_details/1092-statistikat-e-miraeumlqenjes-sociale-2013

Additionally, CRDP's 2012 War Victims Needs Assessment concluded that the primary needs of Kosovo's war victims are: economic security, better health services, justice for their missing/killed loved ones, recognition of their suffering, and greater institutional support (i.e. access to better health care and mental health services, greater opportunities in employment and education, clearer communication on the scope of their rights and benefits)[8].

CRDP is of the opinion that Law Nr.4/L-054 unfairly covers civilian war victims, as evidenced by the discrepancy between the monthly pensions received by surviving family members of KLA soldiers and family members of the civilian dead/missing. The majority of the beneficiaries interviewed by CRDP for the purposes of this paper stated that their primary source of income is the 135 euro pension they receive for being the surviving family members of civilian killed/missing persons. Their monthly pension is the only regular form of institutional support that they and their children receive.

CRDP observed an additional layer of discrimination when war victims were women, particularly when women became the heads of households as a result of the death or disappearance of their closest male family member. It was difficult for them to take on the role of provider, due to high rates of overall poverty, their low skill sets, and a lack of opportunities for professional training. The perception of women's inferior role in the Kosovar family structure and social prejudices against the employment of women also hindered their attempts to rebuild their lives. This leaves women victims of war and their children particularly vulnerable to poverty and abuse.

Thanks to the efforts of Kosovo's Agency for Gender Equality, Kosovo's government recently adopted a National Action Plan for the implementation of UN Resolution 1325 on Women, Peace, and Security, which provides for the inclusion of women in post-conflict, decision-making processes. Kosovo's National Action Plan, while comprehensive with regards to women in security forces and the protection and rehabilitation of survivors of wartime rape, does little to forward the requirements of Article 8 of Resolution 1325, which requires the inclusion of women in peace processes. "Peace processes" in this sense implies a wide range of issues, spanning economic reconstruction, reforms in legislation and the security sector, and empowering women and girls affected by war.

8 Pg. 71, "Needs Assessment of Kosovo Victims." CRDP, December 2012. Retrieved from: http://crdp-ks.org/wp-content/uploads/2013/01/20131210-web-crdp-publikimi.pdf

The empowerment of women is also a requirement of the UN Millennium Development Goals (MDG), which Kosovo has committed to fulfilling. UNDP's 2006[9] report on the implementation of the MDG stated that while a legislative framework exists with regards to gender equality, "no satisfactory progress" was yet achieved in the implementation of gender equality policies.

Kosovo has also integrated the Convention on the Elimination of all Forms of Discrimination Against Women within its constitutional framework, and adopted a comprehensive Law on Gender Equality in 2004.

This policy paper attempts to examine the implementation of such legislation and international agreements, insofar as they apply to war victims. To do so, CRDP has decided to focus on the needs of one category of war victim in one municipality. As such, the focus of this study is on the needs of civilian war widows (defined as women who have missing/dead civilian husbands[10] as a result of the 1999 conflict) in the municipality of Mitrovica (the municipality with the second highest number of Law Nr.4/L-054 beneficiaries in Kosovo).

The context of Mitrovica is particularly problematic in many respects. Once the most industrialized city in Kosovo, Mitrovica's economy has stagnated over the past few decades, in great part due to the lack of investment in the Trepca mine. The mine, which used to employ the majority of the municipality's inhabitants, now only employs a fraction of its former workforce[11]. Poverty is an ongoing problem, and approximately 60 percent of the population is registered as unemployed. According to the Ministry of Labor and Social Welfare, approximately 55,000 residents of Mitrovica are registered as unemployed[12].

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9 Pg. 37, "Second Millennium Development Goals Report for Kosovo." UNDP & Riinvest Institute, 2006. Retrieved from: http://www.undp.org/content/dam/undp/library/MDG/english/MDG%20Country%20Reports/Kosovo/English%202nd%20report%202006.pdf

10 The death/disappearance of sons during war also had a significant negative effect on the quality of life of women and their children – in the traditional structure of Kosovar Albanian households, the eldest son becomes the primary breadwinner when the father is no longer of working age.

11 The historical economic importance of the Trepca mine in the municipality of Mitrovica, as well as difficulties in its revitalization, are described in this ESI report titled "Trepca: Kosovo's industrial giant." Retrieved from: http://www.esiweb.org/pdf/esi_document_id_62.pdf

12 "Informatat e Tregut te Punes ne Kosove, Shtator 2013." Department of Work and Employment, Ministry of Labour and Social Welfare. Number of unemployed as of September, 2013. Retrieved from: https://mpms.rks-gov.net/Portals/0/Librat/0913%20Informatat%20ne%20tregun%20e%20Punes.pdf

According to Kosovo's Statistics Agency, the overall population of Mitrovica is approximately 84,000[13]. The number of economically active women is woeful, at 29%[14]. In this context, the war widows interviewed by CRDP supported themselves and their families through their monthly pensions, charity offered by NGOs or religious institutions, and family assistance.

2. METHODOLOGY

Given that access to this group of women is rather difficult, CRDP's interviews with war widows were facilitated by an association called "The Parents' Voice" (Zëri i Prindërve). CRDP first held a preparatory meeting with a sample of fifteen civilian war widows, during which the scope and structure of the research was explained to them in detail. A focus group discussion followed, which covered each woman's personal history as well as their experiences with Kosovo's institutions. Individual follow-up interviews were also held with three women, in order to gain greater insight on their daily struggles. All of the women interviewed were contacted beforehand by "The Parents' Voice" (Zëri i Prindërve). The majority of the women interviewed were middle aged, with at least high school education. All women were confronted with the responsibility of generating income and raising their children without their husbands. They also had to deal with various forms of community pressure such as being constantly observed by neighbors and in–laws, as well as struggles with their property rights and freedom of movement. In conversations with them, CRDP noted that their primary needs were better economic conditions, access to information and institutions, as well as greater family and community support.

CRDP approached the focus group and interviews with our standard guidelines for ethical research, meaning participants were informed ahead of time about the aim and structure of the research. CRDP took all reasonable measures to ensure that consent was given to record both the focus group and individual interviews, and also ensured that participants' input and personal information was kept confidential. Our intention was to interview the sample of civilian war widows in private settings, one-on-one with CRDP researchers. However, due to the short period of time available for research, and the fact that more time was needed to build trust between CRDP researchers and participants, we were not

13 Pg. 10, "Atllasi i Regjistrimit te Popullsise/Kosovo Census Atlas, 2011." Kosovo Statistics Agency. December, 2013. Retrieved from: http://ask.rks-gov.net/popullsia/publikimet-e-statistikave-te-popullsise/doc_details/1076-atllasi-i-regjistrimit-te-popullsise

14 Pg. 54, "Grate dhe Burrat ne Kosove, 2011." Kosovo Statistics Agency. June, 2013. Retrieved from: http://ask.rks-gov.net/popullsia/publikimet-e-statistikave-te-popullsise/doc_details/1019-grate-dhe-burrat-ne-kosove-2011

able to obtain much information on the dynamics within families of missing persons/civilian victims, particularly the dynamics between war widows and their children.

CRDP researchers also conducted interviews with six children of missing persons and war victims. It was difficult to obtain detailed information about their family lives, due to the social labeling that comes with being the child of a war victim. We recognize the labeling attached to such victims in our society, which often results in their feelings of isolation, exclusion and embarrassment. Unofficially, our respondents (the widows), revealed that their grown up sons are not comfortable speaking in public about the poverty they face, claiming that being poor reduces their chances of meeting potential spouses and feeling "established" in society.

The input received from our interviews could not be fully verified, and as such, limits the scope of this paper. It was difficult for CRDP researchers to gain access to the homes of the women interviewed, due to difficulties in collaborating with victims' association "The Voice of Parents," and also due to the social stigma associated with inviting a stranger into one's house (CRDP was told that this signaled to neighbors that the woman in question was probably a victim of wartime rape). CRDP was informally told of cases of domestic violence in the households of civilian war widows[15], inflicted by the widows' sons and husband's relatives. In recorded interviews, CRDP respondents stated that their families were able to resolve conflicts easily.[16]

15 Research on domestic violence in Kosovo shows that women are predominantly the victims of violence, while their male family members tend to be the perpetrators. Kosova Women's Network publications on domestic violence describe cases of violence perpetrated by sons toward their mothers (pg. 20, "*Exploratory Research on the Extent of Gender Based Violence in Kosova and its Impact on Women's Reproductive Health*"), of widowed women being denied custody of their children and access to marital property (pg. 60, "*More than words on paper*"), as well as statistics which show that 1 percent of perpetrators of violence are children, and 13 percent are in-laws (pg. 20, *Exploratory Research on the Extent of Gender Based Violence in Kosova…*, data collected from the Centre for the Protection of Women and Children).
Pg. 20, "*Exploratory Research on the Extent of Gender Based Violence in Kosova and its Impact on Women's Reproductive Health.*" Kosova Women's Network, 2008. Retrieved from: http://www.womensnetwork.org/documents/20130120165614663.pdf
Pg. 60, "More than Words on Paper? The Response of Justice Providers to Domestic Violence in Kosovo." Kosova Women's Network, October 2009. Retrieved from: http://www.womensnetwork.org/documents/20130120165443203.pdf

16 CRDP initially held consultations in order to assess the grounds for conducting research with members of the families of victims of war and missing persons. On December 8, 2011, CRDP staff travelled to Mitrovica to meet with women from the Mitrovica region who had lost close family members as a result of the violent conflict. Over an informal lunch, more than thirty women had the opportunity to discuss their struggles and hopes for the future. Many of the participants spoke candidly about their economic hardship, family pressures and

In order to gain a comprehensive picture of the range of public services available to these women and their children, CRDP also conducted stakeholder interviews with officials at the municipality of Mitrovica, the Ministry of Labor and Social Welfare, local NGOs, trauma therapists/psychologists, and high school principals.

3. FINDINGS ON ECONOMIC NEEDS

3.1 FINANCIAL INDEPENDENCE

Poverty is a big issue in the families of victims and missing persons. This issue was brought up regularly in CRDP's focus group with civilian widows, with women voicing their children's and their own distress with their lack of money. One of the respondents told us that her son forbade her from appearing on TV to complain about their poverty. He found it degrading and embarrassing when his mother publicly complained about the lack of certain services the government is supposed to provide.
Now [after 15 years] the biggest crisis has come. My son is saying, 'There is no life for me. I would be better off if I dealt drugs, or engage in illicit businesses."

The primary need identified by CRDP respondents is greater financial independence. The majority of women interviewed by CRDP had at least high school education, but for the most part was not trained to practice any profession.

For all women interviewed, their monthly pension is their primary source of income for their children and themselves. Housing and employment are two sensitive areas where civilian war widows and their children need institutional support. Their main sources of assistance are the Municipal Directorate for European Integration and Social Welfare in Mitrovica, the Ministry of Labor and Social Welfare (which distributes their monthly pensions), international and local NGOs, mosques, or the Kosovo Islamic Community (in Alb. Bashkesia Islame e Kosoves).

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the challenges of raising children without their husbands. They stated their needs for trauma therapy, better employment opportunities, as well as more family and community support. There were voices among the women who claimed they faced a lack of access to property rights, as well as physical and sexual violence committed against them by their male in-laws. By gaining a better understanding of these women's needs, CRDP was able to develop further inquiry and prepare recommendations for relevant national and international institutions to address some of the problems that continue to plague victims of war.

During the focus group, some women felt a general sense of failure to provide their children with support that would give them a better future. These women expressed their efforts in terms of a necessity to do everything to ensure that their children would not grow up to blame them for their unmet needs in education, shelter, or their overall wellbeing. The small amount of social assistance that these women receive makes it impossible for them to cater to their children's needs.

The lack of employment of civilian war widows and their children is a complex problem. The overall rate of unemployment in Mitrovica is quite high, and the existing labor market in the municipality is primarily driven by micro, family-owned enterprises. Mitrovica has among the highest unemployment rates in the country at approximately 60%,[17] and currently does not have an economy driven by production or development. Strategies for Mitrovica's economic revival exist on paper, but there aren't clear measures to mark the progress of the plan's development, and it is not clear if Mitrovica's relatively new administration is committed to its fulfillment.

The head of Mitrovica's municipal directorate for European Integration and Social Welfare explained that the directorate is overwhelmed and underfunded - two problems that stand in the way of meeting the needs of the public. The municipal directorate provides a range of services, including payment of renovation/construction costs, food, assistance paying rent, and providing collective housing.

Requests for assistance are typically made in person at Mitrovica's town hall, and are then processed through the directorate's two divisions: one for invalids and family of martyrs, and the other for social welfare. The claimants' needs are verified by a field visit, and then approved or rejected. The directorate typically receives approximately 100 requests per month, and more than four hundred claims were registered between January-March, 2014.

The economic independence of war widows had a direct influence on the quality of life of their children. Many of the women CRDP interviewed expressed their dissatisfaction with their inability to provide adequate shelter and resources for their children, and worried about their future prospects

17 The 60 percent figure is calculated based on number of registered unemployed persons within the total population of the municipality. According to this table of unemployment figures in Kosovo in September 2013, published by the Ministry of Labor and Social Welfare, Mitrovica has the second highest number of unemployed citizens, after Prishtina. "Informatat e Tregut te Punes ne Kosove, Shtator 2013." Ministry for Labour and Social Welfare, June 2014. Retrieved from: https://mpms.rks-gov.net/Portals/0/Librat/0913%20Informatat%20ne%20tregun%20e%20Punes.pdf

in education and employment. All of the women interviewed were the heads of their households – a rarity in Kosovo, where women lead only 8 percent of all households[18].

3.2 INHERITANCE, AND PROPERTY RIGHTS

Some of the women interviewed by CRDP had barely managed to secure shelter for their families. One of them had moved in an office space available in a building built for social assistance beneficiaries. She explained that they had no heating in that improvised living space, and that the windows were broken. Sometimes, when there is snow and she and her 14-year-old son cannot stand the cold, she sleeps at her sisters' house, the respondent told CRDP.

The issue of shelter came up also in cases of cohabitation with the family members of the deceased or missing husband. One of the respondents explained that she was relieved that she had managed to improvise a separate door for her entryway within her in-laws' house. Before that, she indicated that her deceased husband's family was not nice to her sons. Instead of providing emotional support, one of her brothers-in-law had beaten up her son, his nephew.

Inheritance rights are a key missing part of women's economic independence in Kosovo, and are particularly sensitive in the case of poorer, rural women. Although laws on inheritance and gender equality guarantee equal inheritance rights before the law, many women waive their rights to inheritance due to pressure from their in-laws or families. Customary law in Kosovo demands that property and other forms of inheritance go only to male members of the family. This is done via informal agreements, which are then presented to the courts and made official before the law.

According to a study completed by NORMA[19], a lawyers' association that monitors women's civil rights, in many cases municipal authorities do not properly attribute property acquired during marriage as joint property, which leaves married women vulnerable to contesting claims after the husband's death. Deaths and inheritors in many cases are also not properly documented at the municipal level, with some cases of only male family members being listed as surviving family members after an individual's death. The same research documented[20] that in the municipality of Mitrovica, 233 women

18 Pg. 9, "Grate dhe Burrat ne Kosove, 2011." Kosovo Statistics Agency. June, 2013. Retrieved from: http://ask.rks-gov.net/popullsia/publikimet-e-statistikave-te-popullsise/doc_details/1019-grate-dhe-burrat-ne-kosove-2011

19 Pg.22, "Research and monitoring the implementation of the law on gender equality." NORMA, 2012. Retrieved from: http://www.norma-ks.org/repository/docs/norma_eng_(2)_(1).pdf

20 Pg. 28, "Research and monitoring the implementation of the law on gender equality." NORMA, 2012. Retrieved from: http://www.norma-ks.org/repository/docs/norma_eng_(2)_(1).pdf

and 441 men were potential inheritors in 2008 - however only 91 women and 307 men claimed their inheritance. In 2009, 347 women and 719 men were potential inheritors – however only 134 women and 510 men claimed their inheritance.

There are various social reasons for this discrepancy in claiming inheritance rights. According to research[21] published by the Kosovar Gender Studies Center, women are hesitant to claim their inheritance for several reasons: fear of being shunned and ignored by their families or in-laws, of being obstructed by their families, or of being threatened. Although 75 percent of the women surveyed by KCGS[22] agreed that property should be divided equally, their dependence on the goodwill of their families for survival made them very wary of staking their claims.

Kosovo's judicial system fails to adequately ensure that female inheritors are accounted for and considered during inheritance proceedings[23], while cadastral offices do not tend to register property acquired during marriage as joint property, despite a legal obligation to do so[24].

Difficulty in claiming inheritance rights has a direct, negative effect on the economic independence of women such as the wives and mothers of the civilian dead and missing. Not only does the loss of a father or son place them in the position of the head of the household, but dependency on their families, in-laws, charity, and Kosovo's flimsy social welfare system places them in a constant struggle for survival. Their lack of property hinders access to loans, making it difficult to invest in ventures such as a small business[25].

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21 Pg. 33, "Women's Property Inheritance Rights in Kosovo." Kosovar Gender Studies Center. March, 2011. Retrieved from: http://kgscenter.net/images/stories/pdf/trashegimia-ang-web.pdf

22 Pg. 35, "Women's Property Inheritance Rights in Kosovo." Kosovar Gender Studies Center. March, 2011. Retrieved from: http://kgscenter.net/images/stories/pdf/trashegimia-ang-web.pdf

23 Pg.23, "Research and monitoring the implementation of the law on gender equality." NORMA, 2012. Retrieved from: http://www.norma-ks.org/repository/docs/norma_eng_(2)_(1).pdf

24 Pg.21, "Research and monitoring the implementation of the law on gender equality." NORMA, 2012. Retrieved from: http://www.norma-ks.org/repository/docs/norma_eng_(2)_(1).pdf

25 Only a small portion of businesses in Kosovo is owned by women (as per the Kosovo Statistical Agency's reports, "Men and Women in Kosovo", pg.128, and "Rezultatet e Ankeses se Buxhetit te Ekonomive Familjare" pg.18), in part due to their lack of access to readily available capital or credit. Despite microbusiness and start-up development projects (such as the Kosovo Women's Fund and the Women in Innovation network) and short-term awareness raising initiatives spearheaded by the NGO sector (i.e. the USAID-funded Women's Economic Empowerment Program, and the Swiss Agency for Development and Cooperation's Women Business Development Project - concluded in 2008), Kosovo still lacks sustained entrepreneurship training for women, gender sensitive credit schemes, and increased gender awareness among financial institutions (as per recommendation 10 of SHE-ERA's report "An overview of businesses owned by women in 2006").

3.3 LACK OF STRATEGY PERPETUATING POVERTY

Without employment perspectives and a low chance of receiving their share of familial wealth, civilian war widows' ability to ensure their own well-being and that of their children's is jeopardized. This carries the risk of simply continuing the cycle of poverty from the mother to her children.

One of the respondents said that she could not support her son's undergraduate studies in Prishtina, so he had to return to Mitrovica. Her son had been accepted at the University of Prishtina, on his own efforts, and had met the required criteria in the entrance exam to enter the Faculty of Law. However, his mother could not afford his living costs, or his expenses for textbooks, so he had to come back home during the second semester of his freshman year. She said that the fact that he had gotten accepted based on his own efforts made her sad, because it reminded her of her son's potential and of her failure to provide him the opportunity to realize that potential.

"It would be so much easier for me if he didn't score that many points in the entrance exam. I would tell him [my son] that you didn't make it on your own; and the fault would not be my own. I know that he does not blame me for stopping his undergraduate studies, but my heart knows how difficult it is to say no to my son's education."

The NGO sector formerly provided the bulk of social welfare services for Mitrovica's vulnerable groups, including but not limited to: charitable donations, support groups for women, psychological counseling, microbusiness support, and advocacy work. International donations for charitable NGOs in Mitrovica have declined since the immediate aftermath of the war, and local NGO practitioners have difficulty delivering the same quantity (and quality) of services they offered immediately after the 1999 conflict. Social welfare beneficiaries must increasingly rely upon Kosovo's institutions to meet their needs[26].

Pg. 128, "Grate dhe Burrat ne Kosove, 2011." Kosovo Statistics Agency. June, 2013. Retrieved from: http://ask.rks-gov.net/popullsia/publikimet-e-statistikave-te-popullsise/doc_details/1019-grate-dhe-burrat-ne-kosove-2011

Pg. 18, "Rezultati i Anketes se Buxhetit te Ekonomive Familjare, 2013." Kosovo Statistics Agency, June 2013. Retrieved from: http://ask.rks-gov.net/konsumi-i-ekonomive-familjare/publikimet/doc_details/1117-rezultatet-e-anketaeumls-saeuml-buxhetit-taeuml-ekonomive-familjare-2013

Pg. 42, "Women Entrepreneurs in Kosovo: An overview of businesses owned by women in 2006." SHE-ERA, 2006. Retrieved from: http://she-era.org/~sheera/eng/wp-content/uploads/2013/08/WOMEN-ENTERPRENURS-IN-KOSOVO-ANALYSES.pdf

26 Despite the wide range of services provided by women's NGOs (including domestic violence shelters for women and children, counseling for women war victims, economic empowerment initiatives, among others) research

The Ministry of Labor and Social Welfare does not have a national strategy or vision for the elimination of poverty on a national level, and no long-term strategy for poverty reduction is in place at the municipal level in Mitrovica. Limited budgets and institutional inefficiency[27] at the level of Kosovo's ministries means that beneficiaries do not have access to the full range of services and benefits guaranteed to them by social welfare laws. As such, Kosovo's social welfare schemes primarily provide monthly welfare payments, limited health coverage, inadequate housing, and ad-hoc, donor driven acts of charity.

The World Bank's Poverty Assessment for Kosovo states that the country's current welfare system has a low impact on beneficiaries' overall wellbeing[28] - understandable, considering the low percent of the GDP dedicated to social welfare schemes. Apart from expanding social protection schemes, the same assessment encouraged the formation of policies which:

a) link economic growth with high levels of employment,
b) positively affect access to education for social welfare cases,
b) provides opportunities for economic development to struggling municipalities,
c) lower the number of dependents per household.

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completed by the Kosova Women's Network has also noted the gradual decline of direct donations to women's NGOs. International donations fell from 8.02 million euros in 2000 to 3.88 million euros in 2013. NGOs that specifically deal with the economic empowerment, health, and education of women have received approximately 1.9 - 2.9 million euros in international donations from 2000-2013. This decline is attributed changes in donor trends. Since the declaration of Kosovo's independence in 2008, an increasing amount of donor funding earmarked for gender equality has gone directly to governmental institutions. Cooperation between women's NGOS and governmental institutions currently remains limited, except in cases where NGOs are engaged as service-providers contracted by the government (i.e. domestic violence shelters are provided with subsidies by the Ministry of Labor and Social Welfare.
Pgs. 26, 37, 62, 63, "Where's the money for women's rights? A Kosovo Case Study." Farnsworth, Nicole & Gashi, Eli. Kosova Women's Network, Alter Habitus, November 2013. Retrieved from: http://www.womensnetwork.org/documents/20140109133636572.pdf

27 Pg. 72, "Monitoring on Law No.4/L-054 On the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims of War and their Families." The Centre for Research, Documentation, and Publication. December, 2014. Retrieved from: http://crdp-ks.org/wp-content/uploads/2014/03/2014-raporti-mbi-ligjin-WEBFINAL.pdf

28 Pg. 30, "Kosovo Poverty Assessment, Volume I: Accelerating Inclusive Growth to Reduce Widespread Poverty." Poverty Reduction and Economic Management Unit, Europe and Central Asia Region, World Bank. October, 2007. Retrieved from: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/11/01/000020439_20071101092530/Rendered/PDF/397370XK.pdf

Without the adoption and implementation of such policies, Kosovo's welfare scheme will only prevent already vulnerable families from falling into a state of abject poverty. CRDP has observed that all the civilian war widows interviewed received state and/or nongovernmental assistance of some kind after 1999, two sources which provided a kind of supplemental income to their regular pensions. With the decline of support from NGO donors, Kosovo's institutions must increasingly take on the full weight of the economic and employment needs of the country's poor.

4. GENDER EQUALITY POLICIES AT THE MUNICIPAL LEVEL

The gender dimension of Mitrovica's civilian war widows cannot be ignored, as statistics prove that overall, Kosovar women are less likely to be employed[29], are less educated[30], and are more prone to experience violence[31] compared to their male counterparts. Without their husbands as breadwinners, civilian war widows are even more vulnerable to dependence on Kosovo's limited institutional resources and/or remittances from family members abroad. According to a report[32] sponsored by the Kosovar Agency for Gender Equality, households led by women tend to have higher rates of poverty (39.8% as opposed to 29%).

Kosovo's Law on Gender Equality lays the groundwork for providing equality and institutional support for women. The law spans a wide range of issues such as political representation, labor practices, inheritance rights, access to education, hate speech, and the work of Kosovo's Agency for Gender Equality (AGE). AGE's mandate involves monitoring the implementation of the Law on Gender Equality, mainstreaming gender in governmental policy and doing public advocacy work at the governmental and local level. Gender Equality officers are present in every governmental ministry and municipality in Kosovo, and must report to the Agency for Gender Equality on a regular basis.

29 Pg. 126, "Grate dhe Burrat ne Kosove, 2011." Kosovo Statistics Agency. June, 2013. Retrieved from: http://ask.rks-gov.net/popullsia/publikimet-e-statistikave-te-popullsise/doc_details/1019-grate-dhe-burrat-ne-kosove-2011

30 Pg. 105, "Grate dhe Burrat ne Kosove, 2011." Kosovo Statistics Agency. June, 2013. Retrieved from: http://ask.rks-gov.net/popullsia/publikimet-e-statistikave-te-popullsise/doc_details/1019-grate-dhe-burrat-ne-kosove-2011

31 Pg. 19, "Exploratory Research on the Extent of Gender Based Violence in Kosova and its Impact on Women's Reproductive Health." Kosova Women's Network, 2008. Retrieved from: http://www.womensnetwork.org/documents/20130120165614663.pdf

32 Pg.18, "Kosovo Country Gender Profile" ORGUT Consulting. Farnsveden, Ulf; Qosaj-Mustafa, Ariana; & Farnsworth, Nicole. April, 2014. Retrieved from: http://www.womensnetwork.org/documents/20140513160130237.pdf

The Agency for Gender Equality has achieved some important successes in pushing forth new legislation at the national level, but has yet to achieve the same level of effectiveness across Kosovo's municipalities. Municipal Gender Equality Officers are managed and paid for by the municipality, and often have other tasks and responsibilities in their portfolios. Many municipalities do not set aside a sufficient budget line for gender equality policies[33], and the ones that do offer sums that greatly constrain the ability to undertake ambitious projects or serious advocacy work.

When CRDP researchers visited Mitrovica's Gender Equality Officer, we learned that the officer spent a large amount of time lobbying for an annual budget on the part of the municipality (the current municipal budget set aside for municipal gender issues is 10,000 euros). Projects were small-scale, mostly public outreach initiatives on symbolic days like International Women's Day.

Mitrovica's Gender Equality Officer stated that despite a collegial work environment, a perception persists at the municipal level that gender equality is an issue that only pertains to women. Despite the obligation of municipal institutions to include gender equality officers in the drafting of policies and budgets, the officer states that she has yet to be invited during budgetary planning sessions or discussions on public policy.

Without internal support for proactively integrating gender equality in municipal policies and practices, the officer plans on utilizing the support of the Group of Women Deputies, an association of women representatives in Mitrovica's municipal assembly, to push for greater political and institutional engagement with gender equality practices.

Mitrovica's municipal assembly only has 12 women deputies out of 35. The lack of representation of women in political parties is a national problem, corrected in part by Kosovo's required 30% gender quota for national and local assemblies. Kosovo-based think-tank KIPRED's 2010 report on women in Kosovo's security sector and the municipal decentralization process[34] noted that the lack of women in decision-making structures of political parties negatively impacts equal gender representation nationally and in municipal governments.

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33 Pg.6, "Kosovo Country Gender Profile" ORGUT Consulting. Farnsveden, Ulf; Qosaj-Mustafa, Ariana; & Farnsworth, Nicole. April, 2014. Retrieved from: http://www.womensnetwork.org/documents/20140513160130237.pdf

34 Pg.10, "Strengthening Women's Citizenship in the Context of State-Building: Kosovo Security Sector and Decentralization." Qosaj-Mustafa, Ariana. KIPRED. July, 2010. Retrieved from: http://www.fride.org/download/IP_Women_Citizenship_Kosovo_ENG_ag10.pdf

Gender mainstreaming in municipal budgets and projects also remains limited due to the lack of data and research on gender-specific needs. USAID initiatives have ensured that municipal officials are more informed and aware of the need for gender mainstreaming, although limited funds and human resources make implementation difficult. The Gender Equality Officer interviewed by CRDP stated that she was determined to provide her input in the upcoming municipal budget of Mitrovica.

5. MENTAL HEALTH CONCERNS

Nearly every participant in CRDP's focus group complained about their health issues and how this affected them and their families. They reported that the lack of psychosocial support only worsened their physical and mental health. CRDP is not equipped to conduct an assessment or diagnosis of participants' psychological needs – therefore in this section we present the findings of psychologists, trauma experts, and academics that have worked directly with the psychological needs of war victims. The need for greater access to psychosocial support was expressed in our 2012 Needs Assessment of Kosovo Victims. [35]

Research completed by Nexhmedin Morina and Paul M.G. Emmelkamp in 2012[36] studied the mental health needs of 206 women who had firsthand experience of the 1999 conflict. The results showed that 96% of widows who lost their husbands as a result of the conflict had experienced a "major depressive episode, an anxiety disorder or a substance use disorder as compared with 54.9% and 60% in married groups." Widowed, single women also displayed a higher risk for committing suicide than married women, as well as higher rates of post-traumatic stress and depression.

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35 Excerpt from CRDP's Needs Assessment of Kosovo Victims, pg. 60: "A small number of participants mentioned that greater access to traditional psychoanalysis and psychotropic medications would help individuals suffering from severe, clinical depression and other psychological disorders. According to victims, these services were not covered by their current medical insurance plans. While facilitators that could clinically evaluate the mental state of the participants did not run the focus groups, their own assessments suggested that depression and isolation were common themes in their daily lives. For one woman in Mitrovica, the emotional trauma left over from the war had prohibited her from connecting to the outside world: "I have remained isolated. Be it in my own house, with my own friends. In my own sister's wedding!'"
"Needs Assessment of Kosovo Victims." CRDP, December 2012. Retrieved from: http://crdp-ks.org/wp-content/uploads/2013/01/20131210-web-crdp-publikimi.pdf

36 "Mental Health Outcomes of Widowed and Married Mothers after War." Morina, Nexhmedin & Emmelkamp, M.G. British Journal of Psychiatry, 012 Feb;200(2):158-9.

The same research also hypothesized that Kosovar society does not provide coping mechanisms for widows, who are expected not to remarry and thus live a kind of "forced" widowhood. Three CRDP respondents stated that they leave the house almost exclusively in the company of their children, due to fear of surveillance and gossip by their community. Inadequate health and social services were also presented as potential negative factors hindering economic independence and psychological health.

A coordinator with the Kosovar Rehabilitation Centre for Torture Victims (KRCT), stated that although the legal infrastructure is in place to provide material support for civilian war victims, their psychological needs remain great. When asked what kind of psychological support the widows of missing persons/civilian victims need, the coordinator explained each individual case requires a needs assessment.

Although progress has been made in rebuilding Kosovo's mental health infrastructure since the end of the war, the burden of caring for the post-traumatic stress needs of Kosovo's war victims has fallen primarily on the NGO sector. Kosovo's existing mental health system primarily provides services for more severe mental health problems that require psychiatric treatment or institutionalization, at the expense of psychotherapy treatment. Local family health centers are in a position to reach a high number of people for counseling and other forms of psychological support, but often don't have time to dedicate to individual cases over a long period of time. In many cases, individuals suffering from PTSD, depression, anxiety, and other mental health problems, are not aware that their symptoms are a direct result of the conflict.

Not adequately treating Kosovo's war victims carries the risk of passing on trauma to the next generation - in the case of Mitrovica, the war widows identified by CRDP do not have an outlet for properly processing their feelings of loss and trauma. This puts them and their children at a greater risk for continued mental health problems.

Lynne Jones et al.'s research[37] on the needs of Kosovar children who lost a parent during war also echo Morina and Emmelkamp's findings of greater prevalence of depression, PTSD, and anxiety - which negatively affects their overall quality of life.

Research on the long-term psychological effects of war-induced trauma in Kosovo is an ongoing need. CRDP interviews with six adolescent children of missing persons/civilian victims were unable to glean

37 "Mental Health Services for War-Affected Children: Report of a survey in Kosovo." Jones, Lynne; Rrustemi, Alban; Shahini, Mimoza; & Uka, Aferdita. British Journal of Psychiatry, 01/2004; 183:540-6.

information about their family dynamics and psychological health, but did establish their need for both economic and psychosocial support. CRDP interviewees discussed their difficulties in talking about the past with their family members, the lack of sensitivity they felt they experienced from society as a whole, and the effect their family's insecurity had on their ability to fund their education. In certain cases, CRDP was told that children of missing persons/civilian victims had found support in religious organizations and mosques.

6. CONCLUSION AND RECOMMENDATIONS

"Every war has its consequences, and we are one of them."

The quote above is taken from a CRDP interview with the adolescent grandchild of two civilian victims, his grandmother and grandfather. The results of our research make it clear that the treatment of civilian war widows is a complicated issue, which requires a coordinated national action plan involving poverty reduction, employment schemes, proactive inheritance rights, access to comprehensive psychosocial support, and the full implementation of existing laws and international commitments, such as UN Resolution 1325, the UN Millennium Development Goals, and Law Nr.4/L-054.

Donor relationships with Kosovo's civil society sector are on the decline, and Kosovo's institutions are increasingly called upon to carry the burden of supporting the victims of the 1999 conflict. Faced with inadequate opportunities for employment, the civilian war widows interviewed by CRDP were forced to depend upon their monthly governmental pensions, family members, remittances from abroad and charity - sourced from both the NGO sector and religious institutions.

The psychological burden of providing for their families is compounded by the lack of access CRDP interviewees had to ongoing, long-term psychological support. Kosovo's existing mental health infrastructure emphasizes the treatment of acute mental health problems, and does not provide adequate access to counseling and other forms of psychotherapy. As a result, CRDP interviewees stand at a greater risk of suffering from PTSD, depression, general anxiety, and other forms of mental health problems - which can also potentially have a negative impact on the mental wellbeing of their children.[38]

38 CRDP is not equipped with the expertise to diagnose the psychological health needs of war victims. Our comments are based on extensive research and interviews with psychologists, trauma experts, and peer-reviewed, academic work.

The women interviewed by CRDP face an additional set of obstacles because of their gender. Employment discrimination, restrictive societal norms, and their lack of higher education/trade training made them all the more prone to dependency on family members, governmental institutions, as well as non-governmental and religious organizations. Without fully integrating women war victims in the post-conflict economic recovery process, the cycle of dependency is perpetuated across generations.

Taking into account the time and investment which a multilayered, national response requires, CRDP puts forth the following recommendations, as a practical starting point in the absence of a wider institutional focus on providing support for war victims:

- **Use NGO expertise in implementing and drafting policy**

The expertise of the NGO sector is not utilized as well as it could be by municipalities. CRDP believes there is room for greater cooperation and coordination of services. For example, in the municipality of Mitrovica this could take on the form of a formalized working group on poverty reduction, created in coordination with the directorate for social welfare and NGOs that deal with local welfare cases.

- **A coordinated, national policy on poverty reduction**

There is a lack of clear policy on social welfare and policy reduction on a national level, which Kosovo sorely needs. Policy of this kind could be sponsored by the Ministry for Labor and Social Welfare, in coordination with the Ministry for Economic Development and with the support and input social welfare directorates of Kosovo's municipalities and sympathetic parliamentary deputies.

- **Policies that generate loans for low-income women**

CRDP respondents' lack of access to capital had a direct impact on their economic well being. Financial institutions, in cooperation with the Ministry for Economic Development and the Ministry of Labour and Social Welfare can create a legal framework to enable a system of loans that will allow them to start a small to medium-sized business.

- **An increased focus on psychotherapy treatment in the public sector**

Municipalities need an increased municipal budget for mental health services, and the Ministry of Health needs to provide a policy focus on psychotherapy treatment in the public sector which can provide ongoing support to all Kosovar citizens who need it - and particularly those touched by war.

- **The inclusion of Article 8 of UN Resolution 1325 into Kosovo's National Action Plan for the Implementation of UN Resolution 1325**

Although Kosovo's National Action Plan for the Implementation of UNSCR 1325 provides comprehensive support for women in Kosovo's police and security sector, as well as survivors of wartime rape. The National Action Plan should also cover the requirements of Article 8 of UNSCR 1325, which would provide a space for Kosovo's civilian women, and particularly women who were directly exposed to war, to have a say in Kosovo's reconstruction process and how Kosovo's institutions should address their needs.

- **More research on the mental, physical and economic wellbeing of the children of war victims**

This paper attempted to not only address the wellbeing and institutional treatment of civilian war widows, but also to analyze the potential consequences of war on their children. Comprehensive research on the health and education prospective of the children of war survivors in Kosovo must be conducted in order to draft and implement policies that are greater suited to meeting their needs. Psychosocial support and greater access to education are a must.

The core value of transitional justice lies in ensuring that conflict never occurs again. The findings of this report suggest to CRDP that ongoing poverty, despair, and a lack of institutional support carries the risk of causing the children of war victims to become frustrated, angry, and burdened with feelings of deep abandonment well into adulthood. This affects all of Kosovo's society, and creates conditions for potential conflict in the future. With simple and effective policy measures, institutional willpower, NGO expertise, and community support, CRDP believes that this can, and must, be avoided.

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TESTIMONIAL

This report documents the lack of institutional long-term planning in providing efficient and effective social welfare services for civilian war widows and their children in the impoverished municipality of Mitrovica in Kosovo. *"Missing Links: How Kosovo's institutions and society are failing civilian war families in Mitrovica"* reveals an overall lack of initiative at the level of Kosovo's municipalities and ministries to create policies that would directly benefit women of vulnerable groups, particularly those who became the head of their households as a result of the death or disappearance of their husbands during the 1999 conflict.

This is troubling, as overall, women who lead households in Kosovo tend to be statistically poorer with less access to employment, putting them at risk to be continually dependent on governmental welfare and/or family support. Furthermore, civilian victims of the 1999 conflict receive considerably less social welfare assistance than their non-civilian counterparts – hence the report's focus on the widows of civilian victims.

CRDP fieldwork revealed that due to their lack of economic independence and difficulty in accessing adequate governmental services, it is very difficult for civilian war widows to ensure that their children complete their education and become economically independent adults. The government's current policy focus on monthly welfare payments does not address the larger issue of cyclical poverty experienced by families of civilian war widows and the additional burden placed on them by the gender inequality present in Kosovo's society. As such, CRDP believes that this paper has scratched the surface of the multi-generational consequences of such shortsighted policy-making.

"Missing Links" provides an initial needs assessment of civilian war widows and their children, a vulnerable and overlooked group in Kosovo's society, and CRDP believes it can be used by governmental bodies as a starting point on simple policy changes that can be implemented to better meet their needs.

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Nora Ahmetaj is a cofounder of the Centre for Research, Documentation and Publication (CRDP). From 2010-2012 Ahmetaj was a member of the Regional Coordination Council of the Coalition for setting up the Regional Truth Commission (RECOM) for war crimes committed during 1991-2001 in the Former Yugoslavia. She specializes in human rights, peace and conflict transformation, and transitional justice. Ahmetaj previously worked as a consultant for the European Commission and also managed the production of the Human Development Reports for UNDP in Kosovo. During the Kosovo conflict, she worked for the Humanitarian Law Centre, and supported the staff of Human Rights Watch, the ICTY and the ICG in Kosovo and the Former Yugoslavia. Ahmetaj was trained to apply first-class research and leadership skills towards solving human rights problems at Harvard Kennedy School, at the Carr Center for Human Rights Policy in 2000. She earned a Master's degree in Philosophy in Peace and Conflict Transformation Studies from the University of Tromsø in Norway in 2005 and was trained at the Tufts University Fletcher Summer Institute for the Advanced Study of Non-violent Conflict in 2008. In 2010, Ahmetaj was trained in an Advance Learning Course for Professionals on Dealing with the Past in Switzerland. Ahmetaj often gives talks at universities in Kosovo and internationally.

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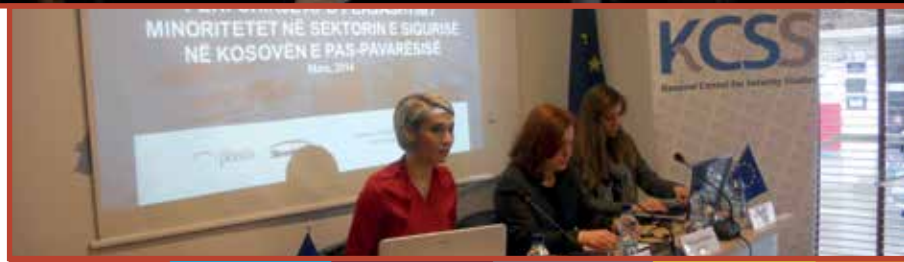
INCLUSION OR EXCLUSION?
MINORITIES IN THE SECURITY SECTOR IN POST-INDEPENDENT KOSOVO

Donika Emini

KCSS
Kosovar Center for Security Studies



Prishtina
March 2014

SUMMARY

The inclusion of ethnic minorities in the security sector in Kosovo started immediately after the conflict. As security institutions began developing in Kosovo, the introduction of legal framework in 1999 created institutional conditions for proportional representation of ethnic groups. Such conditions were further embedded in the Comprehensive Proposal for Settlement of the Kosovo Final Status (the Ahtisaari Plan) which served as the basis for the declaration of the Kosovo's independence. All of the provisions of the Ahtisaari Plan, including those dealing with ethnic minorities' inclusion in public sector, became indispensable part of the Constitution of the Republic of Kosovo (2008). Few years after the declaration of independence (in 2008), participation of ethnic minorities in Kosovo has reached a satisfactory level; however it requires more time and effort to guarantee consistency, especially within the Kosovo Security Force (KSF). Nonetheless, despite the progress achieved to date, the inclusion of ethnic minorities in the security sector in Kosovo still seems to be a challenge. While immense attention has been paid to the integration and inclusion of the Serb minority in Kosovo's security sector, the integration and inclusion of the (non) Serb minorities in Kosovo, especially Roma, Ashkali and Egyptian (RAE) and their access to security institutions is concerning. This situation, in most part, is attributed to the low level of education, the extreme poverty and life conditions in which these communities are living.

RECOMMENDATIONS

- The Kosovo Police should create mobile teams to inform and reach to ethnic minorities, especially Roma, Ashkali and Egyptians.
- The Kosovo Police shall create mechanisms to ensure consistency. The current data show satisfactory result, however with the integration of the former MUP members the KP should be careful and not allow extremist elements within the force. Otherwise the position of the Serbian community would be seriously affected.
- The Kosovo Security Force should introduce basic language courses (Albanian and Serbian) serving the communication of the Albanians and Serbs for the purpose of complex operations.
- Serbian Elites shall encourage the Serbian community to participate in the KSF. The latest agreements set a turning point in term of integration of the Serbian community, thus the Serbian elite should give their contribution and lobby for better inclusion in the KSF.
- The international community should make all the necessary efforts to convince Serbia not to negatively influence the Serbs in Kosovo, nor antagonize them with security institutions in Kosovo, especially the KSF.

INTRODUCTION

Security in all its dimensions is fundamental to protecting Human Rights, especially for minority ethnic groups in Kosovo. Kosovo's aspiration for Euro-Atlantic integrations has led to overall institutional reforms; hence, the introduction of the Security Sector Reform (SSR), among other issues, had a special focus on the ethnic minorities in the security sector (KCSS, 2012:77-78).

This policy brief aims to advocate to the Kosovo's security institutions and policy makers. Subsequently, this paper aims to contribute to the current general institutional reforms of the security sector in Kosovo, by tackling the inclusion of ethnic minorities. The audience and the stakeholders of this paper are the security institutions in Kosovo, the Government of Kosovo, and the international community involved in this process. Also, this paper seeks to provide an analytical framework on the existing state of affairs with respect to representation and inclusion of ethnic minorities in Kosovo's security sector.

METHODOLOGY

A wide variety of data collection methods, both qualitative and quantitative, have been used for the purposes of this paper. Qualitative methods predominantly relied on face-to-face interviews and three focus groups organized with key stakeholders. Other qualitative methods were applied as well such as the second hand sources (or desk research), mainly to support the legal framework analysis. This paper also relied on the quantitative data of the Kosovo Security Baromete, the KCSS led quantitative program aiming to measure public opinion perceptions on security policies and institutions in Kosovo.

The paper begins with a short description on the establishment of security institutions in Kosovo. It also maps the main actors in the security sector in Kosovo. The second part of the paper continues by offering a brief critical assessment to the current legal framework dealing with the inclusion of ethnic minorities in the security sector, as well as mechanisms and institutional responsibility for the inclusion of ethnic minorities. The last part of the paper offers an assessment to the current situation of ethnic minorities' inclusion and participation in the Kosovo Police (KP), the Kosovo Security Force (KSF) and the Kosovo Security Council (KSC) along with the challenges these institutions face in fulfilling the requirements provided by the legal framework. The Kosovo Intelligence Agency (KIA) is left out of this analysis due to the hermetic nature of the institution and various legal limitations which makes it impossible to collect the information about the institution.

LEGAL FRAMEWORK FOR MINORITY INCLUSION IN KOSOVO'S SECURITY SECTOR

LEGAL FRAMEWORK ON PROTECTION OF ETHNIC MINORITIES: GENERAL

The Kosovo security legislation strikes a balance between all ethnic groups living in Kosovo as well as promotes individual human rights of uniformed and civilian personnel. The Constitution of the Republic of Kosovo defines Kosovo as a multiethnic state while the primary legislation on security institutions defines further the ethnic composition (Constitution of the Republic of Kosovo 2008: Art 125). This is particularly important for the security sector as it would ensure national unity and cohesion.

In theory, Kosovo's legal framework tends to comply with the best international practices in terms of the establishment and operation of the security institutions as such (OSCE, 2012: 8-9). The Constitution of the Republic of Kosovo encompasses all the necessary human guarantees for ethnic minorities; subsequently all the laws and regulations in the post-independence Kosovo, especially those covering the security sector, take into account best practices and models with respect to human rights protection. Kosovo's legal framework, for example, has adopted articles from the **United Nations Universal Declaration of Human Rights** (UDHR,1948: Art. 2); **International Covenant on Civil and Political Rights** (ICCPR, 1966: Art 26, 27); and **European Convention on Human Rights and Fundamental Freedoms** (ECHR, 1966: Art 1, 24). This has created a sound legal basis for the inclusion of ethnic minority groups in Kosovo's institutions (See Annex A).

Several laws directly deal with the protection of the rights of ethnic minorities in Kosovo. For example, **The law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo** (LPPRCM No. 03/L-047),[1] ratified on the 13th of March 2008, explicitly sets up the general provisions on minority rights in order to ensure full and effective equality for all communities living in Kosovo. This law ensures and guarantees the protection of ethnic minorities' identity, culture, religion, access to education, health care, and full political and public participation. This Law also ensures ethnic minority groups' political participation in both local and national level. Consequently,

1 Approved on the basis Article 65(1) of the Constitution of the Republic of Kosovo

it sets the ground for establishing the **Community Consultative Council** with the purpose of coordination and consultation for all communities in Kosovo. Despite the abovementioned rights, the law **on the Use of Languages** ratified on the 26th of July 2007 sets Albanian and Serbian as two official languages, and other languages, such as Turkish, Bosnian and Roma as the languages applied only in the municipal (or national level) in compliance with the **Law on the Use of Languages** (Law No. 02/L-37: Art. 1). On the other hand, the **Anti-Discrimination Law,** ratified on the 19th of February 2004, (Law No.2004/3) is another law guaranteeing the protection of ethnic minorities from any type of discrimination with respect to career development and access to jobs (ADL 2004/ 3, Art 2).

Moreover, the **Law on the Local Self- Government** (Law No. 03/L-049) was passed on the 20th of February 2008 to increase the position of the local communities, specifically Serbian community living in Kosovo. This law provided more competencies for the municipalities in which Serbian community represents a local majority (LLSG, 2008: Art. 23). Despite the fact that Kosovo has shown a very detailed legal framework protecting minorities, the need to improve the existent framework was identified immediately after the Declaration of the Independence of Kosovo as well as the adoption of its Constitution (Qehaja F. 2013: 4).

LEGAL FRAMEWORK ON THE PROTECTION OF ETHNIC MINORITIES: POLICE

After the declaration of independence in 2008, the mandate of the Ministry of Internal Affairs (MIA) and the KP was defined by the Constitution of the Republic of Kosovo. Article 128 of the Constitution of Kosovo clearly defines the structure of the Kosovo Police and states that: "*the Police shall be professional and reflect the ethnic diversity of the population of the Republic of Kosovo*" (Constitution of the Republic of Kosovo, 2008, Art 128/2). Additionally, **the Law on Police** ratified on the 2nd of March 2012 (Law no. 04/L-076) includes provisions that guarantee participation and equal representation of ethnic minorities in the structures of the Kosovo Police.

Article 35 of this Law states that *"the ethnic composition of the Police Officers assigned within a municipality shall, to the extent possible; reflect the ethnic composition of the population within the municipality*" (LKP 03/L-076 Art. 35) Also, Article 41 of the same Law (which deals with Station Commanders) states that in "*municipalities where the largest ethnic community is Serbian, Station Commanders of Police Stations and commanders of substations shall be selected by the General Director with the participation of Municipal Assemblies"* (LKP 03/L-076 Art 41).

Moreover, there are additional guarantees as a result of the First Brussels Agreement between Kosovo and Serbia reached on the 19th of April 2013. The agreement deals with the Police matter in the northern part of Kosovo. Points 7, 8 and 9 of the agreement define elements of the police structures in the northern part of Kosovo. The agreement explicitly points out that all police members in the northern part of Kosovo should be integrated into the Kosovo Police and the latter should be the only police force in Kosovo. The eighth point of the agreement set the ground for integrating other Serbian security structures in equivalent Kosovo structures. To ensure full integration of the Serbian community in the northern part of Kosovo, a specific point has been reserved for the Police Regional Commander in the four northern Serb majority municipalities[2]. Similarly to other municipalities, the composition of the KP in the north shall reflect the ethnic composition of the population, and the commander shall be a Kosovo Serb nominated by the MIA and provided by the four mayors on behalf of the Community/Association (Kosovo – Serbia Agreement, 2013: Point 7,8 and 9). This topic will be further expanded in the next sessions elaborating the real situation in regard to minority inclusion in the KP.

LEGAL FRAMEWORK ON PROTECTION OF ETHNIC MINORITIES: KSF

After the declaration of independence, Kosovo established the Kosovo Security Force along with the Ministry for the Kosovo Security Force (MKSF). The initial basis for the establishment of FSK and MFSK was clearly set in the Ahtisaari Plan[3]. In this regard, it is important to emphasize the adoption of the Law on the Ministry of KSF, an institution governed and controlled by a civilian body.

Furthermore, the Constitution of Kosovo, section on the KSF points out that the force *"shall protect the people and Communities of the Republic of Kosovo based on the competencies provided by law"*, and "*that the KSF should reflect ethnic diversity of the Republic of Kosovo"*(Constitution of the Republic of Kosovo, 2008: Art 126/2-4)

The law on the KSF adopted on the 13th of June 2008 (Law No. 03/L-046) explicitly points out that the force is an all-volunteer force drawn by all strata of society no matter the ethnic and religious background (Law on Kosovo Security Force 03/L-046 , 2008: Art 9). Minority inclusion in the KSF has also been regulated by **the Law on Service in KSF** which was also adopted on the 13th of June 2008 (Law No. 03/L-082). It defines that each member of this force should be treated fairly without any

2 Northern Mitrovica, Zvecan, Zubin Potok and Leposavic.

3 Also adapted in the constitution of the Republic of Kosovo in June 2008

discrimination on the ethnic or gender basis (Law on Service in KSF 2008: Art 3). According to this law and the human resources strategy and recruitment policies, the quota of 10% has been set to be fulfilled by ethnic minorities living in Kosovo.[4] Having in mind a law clearly defining ethnic inclusion within the force, the law also foresees that the official languages of the force shall be Albanian and Serbian. The English language could be applied in communication with international organizations (03/L-046, 2008: Art. 9).

To ensure more political responsibilities on the ethnic communities, Ahtisaari Plan foresaw the creation of the Kosovo Security Council (KSC). Unquestionably, KSC is one of the main pillars of security sector in Kosovo. KSC was created based on the Law No. 03/L-050[5]. **The law on KSC** (adopted on the 13th of March) provides an advisory and deliberative mandate to this institution with the exception of the state of emergency when this body assumes executive role (03/L-050, 2008, Article 1.1, 1.2 and 1.3).

The next session will analyze and elaborate the actual situation and the challenges of implementing the above mentioned laws, strategies and regulations. As stated in the beginning of the document, the main focus will be on the KP, KSF and KSC.

MINORITY INCLUSION IN KOSOVO'S SECURITY SECTOR: IMPLEMENTATION OF THE LEGAL FRAMEWORK

KOSOVO POLICE

It is evident that the current general legal framework as well as those pertaining to the Kosovo Police provide for adequate protection and equal inclusion of all communities residing on the municipal territory. Some municipalities[6] developed a good strategy to achieve these goals, while some still fail to ensure fair representation (OSCE, 2009: 3).

4 Interview with MKSF representatives

5 Also based on Chapter IX article 127 of the Constitution of the Republic of Kosovo

6 The inclusion should be in proportion to the municipal ethnic composition hence it remains the responsibility of local (municipal) authorities.

The Kosovo Police operates under the authority of the Ministry of Internal Affairs (MIA) and is composed of approximately 7,527 police officers and 1143 civilian staff (Interview with KP officials, 2014). Accordingly, the ratio between the number of police officers and the total population in Kosovo is approximately 1 to 245.21 which is considered to be similar to other European countries[7]. In the meantime, the Kosovo Police is constantly working on accomplishing the legally indicated ethnic composition. Despite some challenges to integrate ethnic minorities within the institution, the KP is considered to be the "frontrunner" in this regard, compared to other security institutions in Kosovo. Since its establishment, the KP has achieved a satisfactory level of ethnic minorities' participation, especially, the inclusion and integration of the Serb minority in Kosovo (see table 1 below).

According to the KP statistics, the KP has an overall good performance when it comes to implementing laws that deal with the inclusion of the ethnic minorities within the institution. By the end of 2013, around 84.22% of the KP staff were Albanian, 11.49% were Serbs while around 5% were members of other ethnic groups (Interview with KP officials, 2014).

ETHNICITY STATISTICS (KP- SO - CIV)	TOTAL	TOTAL %
Albanian	7,302	84.22%
Serbian	996	11.49%
Bosnian	205	2.36%
Turkish	73	0.84%
Roma	15	0.17%
Egyptian	7	0.08%
Ashkalia	20	0.23%
Goran	40	0.46%
Others	12	0.15%
TOTAL	8,670	99.87%

Table 1 Ethnic Compositions within Kosovo Police (Uniformed and Civilian Staff)

7 Statistically speaking, Kosovo stands similar to Turkey, Albania, Moldavia, Austria, Serbia, Montenegro, Macedonia, Slovenia and Greece.

KOSOVO POLICE STATISTICS ON ETHNICITY (UNIFORMED)	TOTAL	TOTAL %
Albanian	6,280	83.43%
Serbian	904	12.01%
Bosnian	191	2.53%
Turkish	67	0.89%
Roma	14	0.18%
Egyptian	7	0.09%
Ashkaelia	19	0.25%
Goran	36	0.47%
Others	9	0.11%
TOTAL	7,527	100%

Table 2 Ethnic Compositions within Kosovo Police (Uniformed Staff)

ETHNICITY STATISTICS (CIVILIANS)	TOTAL	TOTAL %
Albanian	1022	89.41%
Serbian	92	8.04%
Bosnian	14	1.60%
Turkish	6	0.52%
Roma	1	0.08%
Egyptian	0	0.00%
Ashkaelia	1	0.08%
Goran	4	0.34%
Others	3	0.26%
TOTAL	1143	100%

Table 3 Ethnic Compositions within Kosovo Police (Civilian Staff)

The KP has been widely admired by the international community for its strong commitment for minority representation, in particular towards the Serbian minority, making the KP, thus, as a model

institution not only in Kosovo, but in the region and Europe as well (IGC, European Report 2009: p. 13). Nonetheless, achieving the current satisfactory results did not pass without challenges and difficulties. Speaking from a political point of view, the KP was constantly challenged by members of Serb ethnic minority, threatening for example, to leave the institution after the declaration of independence in 2008. This was a result of constant political pressure coming from the Government of Serbia. A number of them left the institution, to which the Government of Kosovo, in coordination with EULEX, had set June 2009 as the deadline by when those who left can return to their previous positions. This strategy had a positive outcome, since most of the Serb officers returned after realizing that they would lose their jobs and that Serbia could not financially support them (ICG, European Report, 2009: 14).

In 2013, the KP was considered to be a relatively bright spot for ethnic minority groups, the most diverse institution in the country, with strong Serb and other minority representation at all levels and enjoying a reputation for honesty among all communities (ICG, 2012: 6-7). The large number of members from minority groups has been accepted thus the KP was applauded widely by the citizens as well. As a result, many agree that this brought sustainability, consistency and respect within the force, specifically in the areas largely inhabited by these communities. Many argue that being a multi-ethnic institution and having the local police members of all communities helped facilitating the interaction and cooperation among the officers and local population.

As for the cooperation between police officers and other members of the KP, it is worth mentioning that the mandatory courses in both languages (Albanian and Serbian) has led to good cooperation at all levels within the force (Focus Group, 2014).

Comparing to the situation in the southern part of Kosovo, the inclusion of the Serb ethnic minority of the northern part of Kosovo remained a challenge especially after the declaration of independence in 2008. During this period, the Kosovo Police officers were more accountable to Belgrade than to Prishtina. They would report to Prishtina only through the mediation of EULEX, which too, had a limited access during this period (ICG, 2011: 2-3). Belgrade maintained its Ministry of Internal Affairs (MUP), Intelligence Agency (BIA), and other security structures throughout this period. However, after the First Brussels Agreement was cut, the gradual integration of the Kosovo Police officers and the former Serbia's MUP structures working in the north has begun. Police stations operating in northern part of Kosovo have been closed while salaries from Serbia have been ceased; Serbian courts have stopped working; and municipal assemblies in the four northern municipalities have been dissolved

(EC, 2013: 1). In accordance with the First Brussels Agreement, around 300 former MUP members are expected to become part of the KP, while the application of recruitment criteria that is currently being applied for the former MUP members remains questionable among both Serbian and Albanian communities living in Kosovo (Kosova Press, 2013). The "accelerated" steps of the recruitment process and signing of the employment contracts between the Kosovo Police and the former MUP members was not seen as a fair and open process (Focus Group, 2013).

According to some sources, as of end of February 2014, around 80 former Serbian police officers had completed their induction and transition to the KP, later on this number has now grown to a total of 142 officers, who have already been deployed for active duty in the northern regional command. It is expected that some 100 additional officers would complete their induction and assume duties in the North shortly (SRSG, 2014: 1). The recruitment process of the former MUP members is still ongoing. Their process of integration has been seen in positive light by both governments (Kosovo and Serbia) and by the international community, implying that this shall ensure full establishment of the rule of law in the northern part of Kosovo (KFOR, 2014). The recruitment and integration of the former MUP members into the KP is being received with enthusiasm especially in Prishtina and the international community present in Kosovo, because this would ensure Prishtina's control over the northern part of Kosovo, perhaps for the first time after the declaration of independence in 2008.

While immense attention has been paid to the integration and inclusion of Kosovo Serbs in KP, the integration and inclusion of other communities in Kosovo, especially Roma, Egyptian and Ashkaelia and their access to security institutions is concerning. Access to education is a crucial factor in order to proceed with other steps of recruitment in security institutions; therefore, as it will be shown in the next section, these groups are poorly represented in security institutions in general.

As briefly argued, there is no quota system in place within KP in place to enhance the representation of other ethnic groups. Therefore, many police generations have graduated with a very low number of cadets from other ethnic groups and very often recruiting and graduation process ended up with zero members from these three communities. Despite the fact that these groups are left aside due to their poor educational background, the lack of information sources has been considered one of the other factors to their low level of integration in the KP. While most of the demands in the KP recruitment is related to knowledge about the social, legislation and security situation in Kosovo, members of these groups have limited information on security and safety due to lack of local newspapers and electronic media coverage or other sources in their mother language.

Kosovo has a number of neighborhoods with a significant population from these communities. In order to build trust and improve inter-ethnic relations among these communities with the Kosovo Police, an adequate number of police officers from these communities have to be employed within the KP for Community Policing. In this regard, a specific preparatory training for other communities with the focus on Roma, Ashkali and Egyptian applicants for the KP is planned in order to prepare them for the entry test to the KP. Also, OSCE, in co-operation with KP, will undertake an awareness raising campaign targeting other non-Albanian communities. It is expected to be focused also on Roma, Egyptian and Ashkali communities in Kosovo to enhance their knowledge about security and safety related issues within their neighborhoods (Muharremi, 2014).

KOSOVO SECURITY FORCE

Ethnic minorities' representation in the KSF is lower compared to their representation in the KP. However, the recently, participation of ethnic minorities in Kosovo is generally increasing and that is being reflected within the KSF as well. Inclusion of the Serb minority within the KSF has been very limited, and their lack of motivation to join the institutions has to do with political factors.

Despite the fact that equal access to the KSF for all ethnicities in Kosovo is guaranteed by the legal framework in Kosovo (Constitution and other laws), participation of the Serb minority in particular, has been challenging and one of the most difficult processes within the KSF (KCSS & FCI, 2011: 13). Nevertheless, both the MKSF and the KSF are making efforts on continuous basis to encourage participation of all ethnicities in Kosovo. In order to ensure full participation of all ethnic minorities, the MKSF and the KSF also cooperate with the Office for Community Affairs (OCA)[8] - a governmental body created to serve as a focal point within the Government of Kosovo for community issues. The task of the OCA is to contribute to the implementation of laws and regulations of the KSF, in promoting a higher standard in respecting the rights of all members from all ethnic minorities (KSF, 2010:21).

The number of active members in the KSF has reached 2,294 (Syla, 2014) and according to the KSF data, during 2013, the percentage of ethnic minorities within the KSF has reached up to 8.85% (KSF, 2012:15). Compared to the KP, the representation of ethnic minorities within the KSF is lower, having in mind low representation of the Serb minority, which stands at around 1.83% of the total staff hired.

8 The Office for Community Affairs (OCA), created by Cabinet Decision Nr. 06/34 on the Creation of the Office, on 3 September 2008

KSF STATISTICS ON ETHNICITY	TOTAL	TOTAL %
Albanian	2,091	91.15%
Serbian	42	1.83%
Turks	55	2.40 %
Bosnian	49	2.14%
Ashkaelia	29	1.26%
Egyptian	19	0.83%
Roma	3	0.13%
Gorani	2	0.09%
TOTAL	2,290	99.83%

Table 4 Ethnic Composition in the Kosovo Security Force

GENERAL NUMBER OF PERSONNEL IN THE MKSF/KSF		STRUCTURE	VACANCIES	COMPLETED	TOTAL MINORITIES
MKSF	CIV	134	2	132	8
	MIL	68	7	61	0
LFC	CIV	100	6	94	1
	MIL	245	16	229	8
OSB		808	45	763	49
RRB		1,122	105	1,017	132
TRADOC		194	6	188	15
Non-systematized Officers		63	0	5	
TOTAL PERSONNEL		2,500	179	2,263	204
Uniformed (%)		100%	7.16%	90.52%	9.01%
Civilian in MKSF		234	8	226	9
Civilian (%)		100%	3%	97%	4%
RESERVE		800	322	478	10
(%)		100%	40%	60%	2%
Cadet in CUS				39	1
TOTAL OF MIL/C		3534	509	3005	224
TOTAL IN %		100%	9%	91%	7.45%

Table 5: Composition of the KSF in 2013

Since the establishment of the KSF, the Serbian minority has had a negative attitude towards the force. Seemingly, the force has been strongly linked to the status of Kosovo; therefore, the Serbian minority has barely shown interest to become part of the force. The political pressures from Belgrade (along with the radical groups within Kosovo) have continuously pressured the local Serbs consequently harming the process of inclusion. The KSF does not appear to be popular among the ethnic Serb minority, as it is seen to be representing a crucial element of statehood (Focus Group, 2014). Ethnic Serb minorities in Kosovo also view the KSF as a derivative of the Kosovo Liberation Army (KLA) that fought against the Serb forces in the end of 90's. This because when the KLA was disbanded after the war, most of its members were recruited to the Kosovo Protection Corps (KPC), which performed as a civil protection institution in the post-war period. As a result of the declaration of independence, the KPC was transformed into the KSF which, for the ethnic Serb minority, still represents a link between the KLA and the KSF of today.

Along political factor challenging the inclusion of ethnic minorities in the KSF, there are other factors that contribute to their exclusion. For instance, unlike KP, the use of both, Albanian and Serbian, languages is not strongly triggered within the ranks of the institution. While both languages are used for distant daily communication, the same did not take place during operations and other levels of communications. Courses for both Albanian and Serbian languages are introduced to the members of this force; however, these courses are only optional and not mandatory as in the case of the KP (Focus Group, 2014). This project, has been recently introduced within KSF and only small groups of 30 people have been interested to take the language courses offered.

Nevertheless, the KSF efforts and constant campaigns in the Serb inhabited regions have brought a positive result. There has been an increase of interest by ethnic minorities, especially by the Serbs living in Kosovo; however, as argued above, the political factors still remain a challenge. The enormous influence of the radical circles among the Kosovo Serbs and officials from Belgrade on their kin in Kosovo continues to be an impediment to their integration in the FSK.

KOSOVO SECURITY COUNCIL

As for the composition of Kosovo Security Council (KSC), according to the Constitution of the Republic of Kosovo (Article 127) this organ should have at least one member from ethnic minorities in Kosovo. The KSC members include: the Prime Minister (who chairs the KSC), the Deputy Prime Minister, the Minister of the MKSF, the Minister of Foreign Affairs, the Minister of Justice, the Minister of Finance

and Economy, the Minister of Internal Affairs, and the Minister for Returns and Communities, in accordance with the Law on the KSC (No. 03/L-050) (KCSS, 2008:5). The KSC is supported by the Secretariat, the Situation Center, and the Intelligence Committee. The secretariat staff is proposed by the Secretary and approved by the KSC. **Regulation No. 01/2009 on the Organization and the Work of the Kosovo Security Council Secretariat** approved on the 28th of January 2009 does not explicitly include minority members; however, it is expected that at least a member from an ethnic minority in Kosovo to be included, especially in cases when issues tackling their rights and inclusion in the security sector is concerned (Regulation No. 01/2009: Art 4).

ETHNIC MINORITY GROUPS PERCEPTION ON KOSOVO'S SECURITY INSTITUTIONS

PERCEPTIONS: KOSOVO POLICE

Participation of ethnic minorities in institutions has the tendency to automatically translate into more trust and satisfaction with those respective institutions. The latest results of the Kosovo Security Barometer (KSB) show that around 50.33% of Serbs in Kosovo interact with the KP on daily basis and 40.10% of other ethnic minorities declared that they have interacted with the police. Actually cooperation between the KP and ethnic minorities appears to be better comparing to the cooperation with the Albanian majority, as indicated in the figure below. The fact that the KP has a proper representation of ethnic minorities, especially in areas and municipalities where ethnic minorities constitute a majority, clearly boosted cooperation between citizens and police officers.

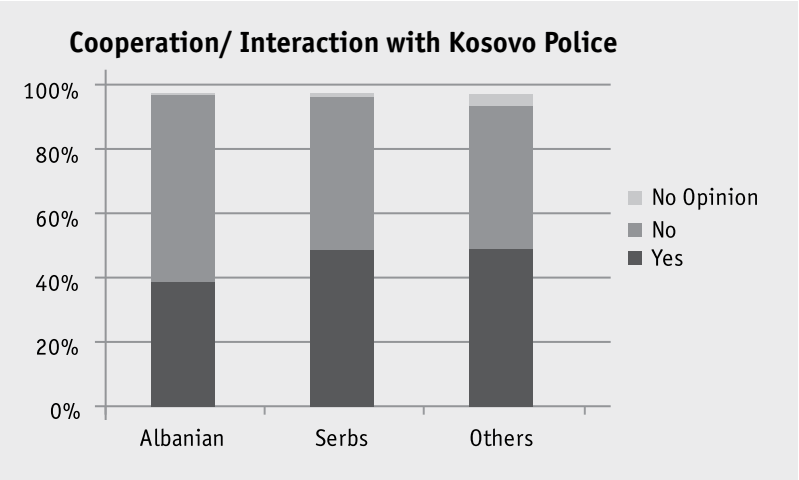


Figure 1 Cooperation/Interaction with Kosovo Police by Ethnicity

Nevertheless, the almost reverse trend appears when analyzing the satisfaction and trust towards the KP. Members of the ethnic Serb minority have a neutral perception when asked if they trust the KP (27.90%) responded positively, while 51.61% from other minority groups' trust in the KP. The level of distrust towards the KP is quite high among Kosovo Serbs, almost 47% of the respondents do not trust the KP, while other minority groups responded negatively by 19.35%. When asked about the level of satisfaction towards the KP, more than 29% of the Serbian population in Kosovo appears to have negative perception towards the KP, while around 26% of the respondents from other minority groups in Kosovo seem to be not-satisfied with the KP.

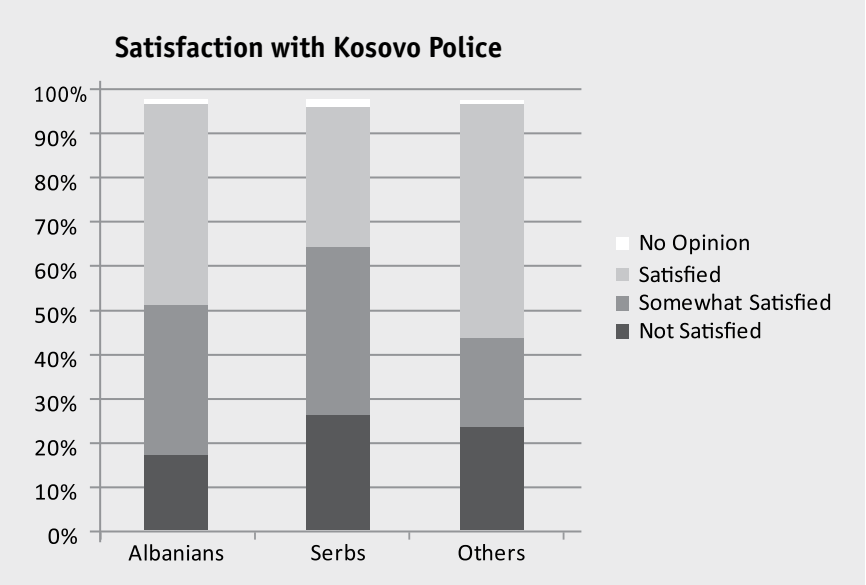


Figure 2 Satisfaction with Kosovo Police by Ethnicity

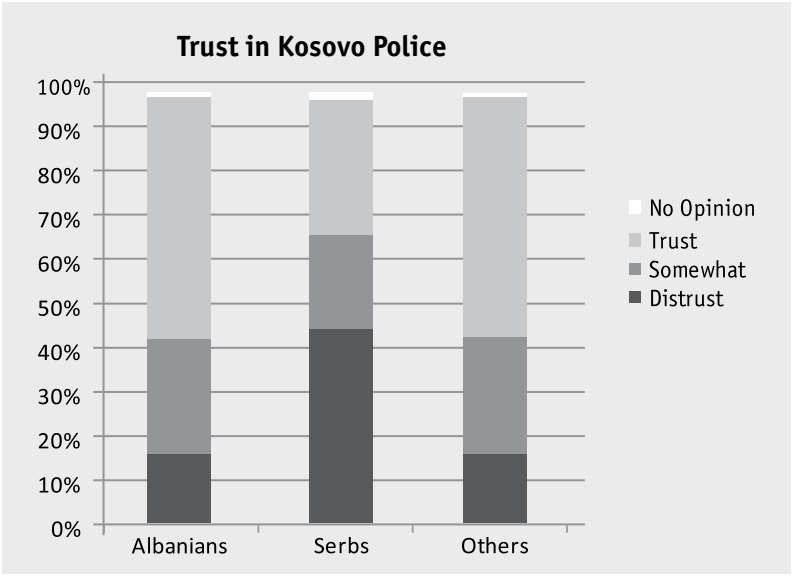


Figure 3 Trust in Kosovo Police by Ethnicity

PERCEPTIONS: KOSOVO SECURITY FORCE

The latest results of the Kosovo Security Barometer (KSB) show that around 80%-90% of the Kosovo population in general (Albanians, Serbs and other minorities) have a predominately low interaction with the KSF. Unlike the KP, KSF represents a different nature of security institution, thus daily interaction with the KSF members is quite low in general.

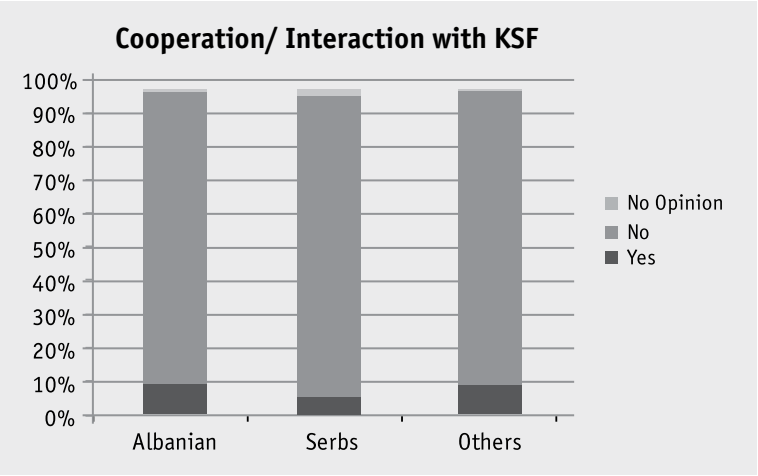


Figure 4 Cooperation with Kosovo Security Force

Unlike the KP, the KSF does not seem to have a good reputation among the ethnic Serb minority in Kosovo. As shown in the figure below, most of the ethnic Serbs in Kosovo are either not satisfied (25%) with KSF's work or have no opinion at all (61.60%), while 64.60% of other ethnic minorities in Kosovo are satisfied with the KSF. Clearly, the ethnic Serbs in Kosovo have been influenced by current political situation, and the constant external (from Belgrade officials) and internal (from the domestic elites) pressures. When asked about the trust towards the KSF, most of ethnic minorities decided not to answer, (77.48% of Serbs and 58.60% of the other ethnic minorities).

The Kosovo Security Barometer findings show that only around 20% of Kosovo Serbs are satisfied with the work that KSF is actually performing in Kosovo (KCSS, 2013:3). The low satisfaction with the KSF can also be explained by the KLA – KSF dichotomy as mentioned in the previous sections.

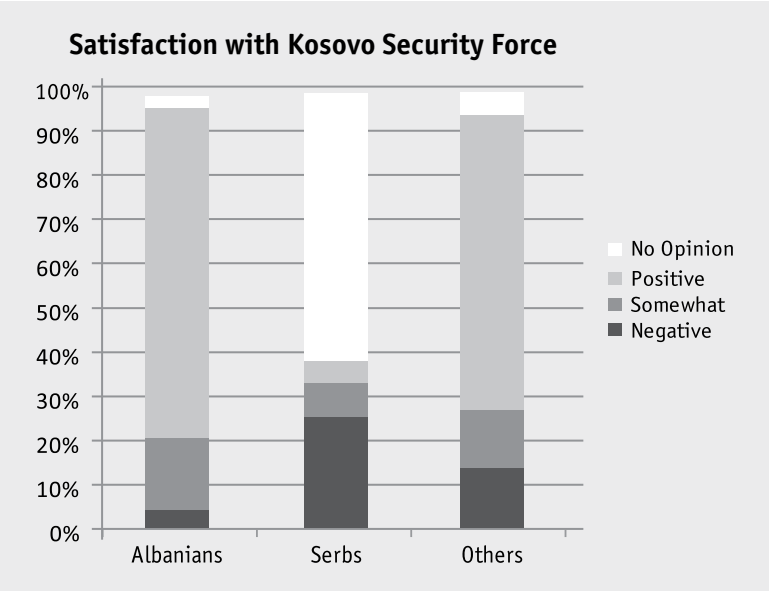


Figure 5 Satisfaction with Kosovo Security Force by Ethnicity

Figure 6 Trust with Kosovo Security Force by Ethnicity

CONCLUSIONS

The security sector in Kosovo, despite being new, it immediately initiated the SSR process with the aim to fulfill country's aspirations for Euro-Atlantic integration. In this regard, full inclusion of ethnic minorities in the security sector in Kosovo has been a challenge not only for national institutions, but for international community as well. It is evident, however, that each security institution has made some progress.

Full integration of ethnic minorities is one of the prerequisites for establishing a sustainable security sector in Kosovo, meaning that all ethnicities in Kosovo should be fully and equally integrated in security structures. (Qehaja & Vrajolli, 2012: 76-77). The legal framework in Kosovo which ensures and guarantees equal and proportional representation of ethnic minorities in all public institutions, including the security sector is already present; however there should be a higher and better implementation of the respective laws.

Besides efforts by the international community, above all the UN and the EU, to promote and affirm the multi-ethnic character of Kosovo security sector, there is still left a lot of work to be done by local institutions. The current administrative capacities and infrastructure for ethnic minorities in Kosovo in the security sector are consolidated and strengthened as a result of constant attention and support in this regard. While the KP is strongly supported by large donors in promoting minority rights, the KSF has been constantly supported by the NATO led organizations in enhancing the expertise and technical facilities, and encouraging minorities to join the force.

Nevertheless, minority inclusion in the security sector is not an internal process only, it is more often a process highly influenced by other external factors. This element is remarkably noticed when it comes to the full integration of the ethnic Serb minority within Kosovo security sector. The constant political and other external pressures made the ethnic Serbs in Kosovo grow more hesitant to join Kosovo security institutions. The Prishtina-Belgrade dialogue promises that its outcomes will contribute to the Serbian minority inclusion in the security sector - especially the KSF. However, more attention should be paid towards other ethnic minorities in Kosovo as well which more often are being left aside.

Moreover, the First Brussels Agreement of April 2013 between Kosovo and Serbia marks a new step towards the integration of the ethnic Serb minority of the northern part of Kosovo - especially their

integration in the security structures. The beginning of the integration of the former MUP members in the northern part of Kosovo marks the initial steps of tackling the security issues in the north institutionally. As for the KSF, the force is constantly cooperating with other governmental bodies to ensure minority inclusion and fulfill the criteria for NATO membership. However, the high level talks between Kosovo and Serbia did not produce yet an agreement that will influence the Kosovo Serbs to integrate into the KSF in the future.

RECOMMENDATIONS

- The Kosovo Police should create mobile teams to inform and reach to ethnic minorities, especially Roma, Ashkali and Egyptians.
- The Kosovo Police shall create mechanisms to ensure consistency. The current data show satisfactory result, however with the integration of the former MUP members the KP should be careful and not allow extremist elements within the force. Otherwise the position of the Serbian community would be seriously affected.
- The Kosovo Security Force should introduce basic language courses (Albanian and Serbian) serving the communication of the Albanians and Serbs for the purpose of complex operations.
- Serbian Elites shall encourage the Serbian community to participate in the KSF. The latest agreements set a turning point in term of integration of the Serbian community, thus the Serbian elite should give their contribution and lobby for better inclusion in the KSF.
- The international community should make all the necessary efforts to convince Serbia not to negatively influence the Serbs in Kosovo, nor antagonize them with security institutions in Kosovo, especially the KSF.

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TESTIMONIAL

The project tackled a very important and crucial topic related to the current situation in Kosovo, specifically the inclusion of minority groups in Kosovo security sector.

The project on "Minority inclusion in Kosovo Security Sector" is one of the first projects which specifically aimed to tackle the issue of minority inclusion in the security sector institutions in Kosovo. The project through research conducted and analysis has identified the various challenges of implementing the legal framework on minority rights. And promoting research findings resulted in a very successful advocacy for the upcoming events planned by the KCSS.

The three roundtables organized by the KCSS as part of this project have managed to gather all representatives of security institutions, independent agencies, Assembly and civil society organizations. Also, the final vent, the conference was covered by a large number of media, by transforming this topic in one of the top stories of the week.

The final event - the conference served as a very good opportunity for discussions to identify challenges facing security institutions in Kosovo and identify best practices to improve institutional capacity for better minority inclusion. In the near future, KCSS intends to continue organizing similar activities.

Besides, the project was widely accepted by the broad public and the media in Kosovo. Presentation of the main report findings got a wide media coverage, such as the national media (KTV, RTK 2, Rrokum) also the daily newspapers and electronic portals.

KCSS Researcher, Donika Emini participated in a morning show "SOT" (Today) to discuss and present the main findings of the analysis. The show was live and the broad public was able to participate and give their contribution by phone. The available link for the show is here. And radio BlueSky – the morning show to present the preliminary findings of the report.

KCSS is planning to extend advocacy for a period of time to advocate for better inclusion of ethnic minorities in security sector institutions and full implementation of the

European Convention on Minority Rights and legal European practices on minority rights in the security sector.

The paper entitled: "Inclusion or Exclusion? Minorities in the Security Sector in Post-Independent Kosovo had a double impact that in one hand it is expected to increase accountability and commitment of Kosovo institutions to increase the minority inclusion and also in the other hand it will increase awareness to the minorities of Kosovo for active participation in security sector and their rights to such actions. This research paper was presented and provided to the decision makers and Kosovo public in order to enhance Kosovo citizen participation and awareness of security sector institutions.

Also, the paper will offer a basis for further research and advocacy, us the partnership with organizations and institutions to continue asses the SSR process and the implementation of the Kosovo- Serbia agreement. Despite the abovementioned activities, KCSS will continue to implement the Kosovo Security Barometer program to measure the public perception in regard to security institutions in Kosovo, including here the perceptions of each ethnic group residing in Kosovo.

The Kosovar Center for Security and the partners continue to address the minority inclusion issues by seeking more funds and enlarging the project in the near future, both in assessing the progress in this field and advocating for better inclusion.

Undoubtedly, this project set the basis for advocacy and capacity building for both, security institutions and civil society organizations in promoting minority rights and their inclusion in the security sector. Therefore, KCSS is determined to continue with the implementation of similar projects related to human rights and minority rights in general.

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Donika Emini is a fellow of Konrad Adenauer Stiftung (KAS Foundation). From November 2013 Ms. Emini is working as a researcher at the Kosovar Center for Security Studies as part of the Think Tank Young Professional Development Program. She previously worked as a Researcher/Project Manager at the Balkan Policy Institute in Pristina, Transparency International - Berlin and The General Consulate of the Republic of Kosovo in New York. Her fields of expertise include international peace and security; local government reform, human rights and diversity management in Kosovo; public procurement and consumer protection; and anti-corruption reform in Kosovo. She holds a Master's degree in Public Policy from the Willy Brandt School of Public Policy at the University of Erfurt. Emini also graduated from the University of Pristina with a degree in Political Science.

LOCAL LANGUAGE POLICIES FOR NON-MAJORITY COMMUNITIES

POSSIBILITIES FOR MORE EFFECTIVE IMPLEMENTATION

Jovan Bliznakovski

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SUMMARY

Adequate linguistic competence is an important factor for effective citizen participation in democratic processes and in public life. This represents a rationale for states to adopt concessions which permit and support use of non-majority languages, most notably in official communication and education. From 2001 onward the Republic of Macedonia liberalized the sphere of official use on non-majority languages in regard to both the central and local levels of governance. This process was launched with the incorporation of the Ohrid Framework Agreement (OFA) in the legal system. However, the issue of effectiveness of language policies directed at non-majority communities and stipulated through Amendment V to Article 7 of the Constitution has been a much neglected problem in the Macedonian public sphere.

The Institute for Democracy "Societas Civilis" Skopje (IDSCS) prepared and published the public policy study *"Local language policies for non-majority communities: possibilities for more effective implementation"* (April 2014), with the aim to contribute to more successful implementation of the OFA language provisions. The study focused on only one aspect of the implementation of language policies directed at non-majority communities – the issue of official communication with the basic units of the Macedonian system of local governance, the local self-government units (LSGUs).

The public policy study has been prepared in the framework of the policy research project *"Local language policies for non-majority communities: tools for more effective implementation"* supported by the Slovak and Balkan Public Policy Fund. The goal of the project was to inform the decision-making and policy-making bodies of Macedonia's local self-government units (LSGUs), as well as the decision makers in the national state

institutions, on the problems, challenges and success stories regarding the implementation of multilingual official language policies at the local level in Macedonia. As a **second objective**, the project aimed to articulate and publicly promote available policy choices for the LSGUs' policy-makers which would make the process of implementation of the right to use one's mother tongue in official communication more effective for the members of non-majority communities.

The policy research project "Local language policies for non-majority communities: tools for more effective implementation" was divided in two phases. The first involved research (November 2013 – March 2014), while the second involved advocacy activities (April 2014). The research phase involved an extensive two-step methodology to gather data. As a first step, IDSCS surveyed 17 municipalities which use more than two languages in official communication (the Macedonian language and one non-majority language). The survey was done through the use of standardized questionnaire. Questionnaires were distributed to all 30 municipalities which use more than one language, however only 17 responses were received. The City of Skopje as an LSGU with special status in the Macedonian system of local governance was not surveyed, however it was covered in the second phase of research.

The standardized questionnaire used in the survey was divided in five groups of questions: I) Official languages in the LSGU; II) Spheres of use of languages; III) Staff engaged to provide official use of languages; IV) Finances; and V) Timeliness and consistency of communication, as well as possibilities for more effective implementation. A total of 18 close-ended questions were included. The goal of the whole process of surveying was to gather data that would show the general "state of play" and situation with the implementation of local language policies directed at the non-majority communities.

As a part of the second phase of research, the IDSCS team selected six LSGUs in which semi-structured interviews were conducted with official LSGU representatives (politicians, civil servants in the LSGU administration and translators/interpreters). A total of 15 semi-structured interviews were conducted with LSGU officials in this phase. The topics of the interviews resembled to the topics of the survey questionnaire. However given that in

most of the six LSGUs, several persons were interviewed had different positions, this gave the researchers insights into various perspectives on the main challenges related to local language policies. The researchers were able to acquire an in-depth understanding of the situation in each of the six case-studies.

The six LSGUs covered in the second research phase were the following: the City of Skopje, Kumanovo, Gostivar, Chair, Studenichani and Dolneni. These LSGUs were selected considering several LSGU characteristics: first, more advanced implementation of local language policies was required in the sample (the City of Skopje and Gostivar were considered as most advanced); second, use of more than two languages as official (all considered LSGUs except the City of Skopje); third, inclusion of both urban and rural LSGUs was intended (Studenichani and Dolneni are rural); fourth, variations in the model of language policy that can be shown (Kumanovo is a primary example here); and fifth, recent introduction of "new" languages in official communication was also considered (this is the case with Chair and Studenichani which introduced the Turkish language in official use during 2013).

On the basis of the gathered data through the surveys and the semi-structured interviews, as well as official documents and other secondary sources, the public policy study portrays the situation in the six selected case-studies in one of its parts with an in-depth analysis.

Additionally, in the second research phase, meetings were held not just with LSGU representatives, but also with representatives of other relevant stakeholders: representatives of the Secretariat for Implementation of the Ohrid Framework Agreement (SIOFA), the Association of the Units of Local Self-Government in the Republic of Macedonia (ZELS) and the OSCE Mission to Skopje. Through these meetings even more

insights were gained on the "state of play" regarding the implementation of local language policies.

The main conclusions and recommendations derived from the research project are presented in five separate thematic areas. In general, this study advocates for:

- More inclusive and thoughtful decision making at the local level (this can be somewhat influenced by a more systematic legal framework);
- More and better information for the users of local language policies (the citizens) on the possibilities of use of their mother tongue in official communication;
- Certain reorganization of translation/interpretation activities for the more advanced LSGUs and better tracking of implementation;
- More support and assistance by the central government towards the small and resource-limited LSGUs; as well as
- Better monitoring and strategic planning of the process at the central level.

INTRODUCTION

This public policy study has been prepared in the framework of the policy research project *"Local language policies for non-majority communities: tools for more effective implementation"*, implemented by the Institute for Democracy "Societas Civilis" – Skopje (IDSCS), and supported by the Slovak and Balkan Public Policy Fund. The goal of the project is to inform the decision-making and policy-making bodies of Macedonia's local self-government units (LSGUs), as well as the decision makers in the national state institutions, on the problems, challenges and success stories regarding the implementation of multilingual official language policies at the local level in Macedonia. As a second objective, the project aims to articulate and publically promote available policy choices for the LSGUs' policy-makers which would make the process of implementation of the right the use one's mother tongue in official communication more effective for the members of non-majority communities. Finally, on the basis of this document, IDSCS will continue to advocate improvement of the implementation of Article 7 of the Constitution of the Republic of Macedonia, which provides the basis for the use of non-majority languages as official languages at the local level and will continue to promote the registered problems in implementation, as well as possible policy scenarios that could prospectively contribute to a more effective implementation.

The policy research project "Local language policies for non-majority communities: tools for more effective implementation" can be divided in two specific phases. The first involves research, while the second advocacy activities. The research phase was conducted in the period November 2013 – March 2014. It involved an extensive two-step methodology to gather data. As a first step, IDSCS surveyed 17 municipalities which have more than one language in official use. Questionnaires were distributed to all 30 municipalities which use more than one language, however only 17 responses were received. The City of Skopje as an LSGU with special status in the Macedonian system of local governance was not surveyed, however it was covered in the second phase of research.

The following LSGUs responded to the survey: Bogovinje, Brvenica, Centar Zhupa, Chair, Chashka, Chucher Sandevo, Dolneni, Gostivar, Jegunovce, Kichevo, Lipkovo, Saraj, Sopishte, Struga, Studenichani, Tearce and Tetovo.

The LSGUs which did not respond in the assigned time-frame of 30 days were: Arachinovo, Butel, Debar, Krushevo, Kumanovo, Mavrovo i Rostushe, Petrovec, Plasnica, Shuto Orizari, Staro Nagorichane, Zhelino, Zajas and Zelenikovo.

The distribution of questionnaires for the LSGUs was done through e-mail and fax. IDSCS's team contacted the official persons responsible for public relations in all LSGUs prior to the distribution of the questionnaire. Additional efforts were made through more intensive telephone contacts to assure that an official LSGU person will respond to the survey, however some of those efforts have been in vain. Some LSGUs which finally did not respond were contacted on specific issues through telephone (example are Kumanovo and Shuto Orizari), however those inquiries were quite limited in comparison to the questionnaire. For some LSGUs which did not respond even the issue of which languages are in official use remained an unknown area. The IDSCS team submitted freedom of information requests in order to access precise data and it must be said that this process was successful. The following LSGUs replied to the formal requests: Vrapchiste, Krushevo, Petrovec and Staro Nagorichane. In essence, this means that during the first phase of the research (the survey and its follow-up), IDSCS managed to receive data from 23 out of a total of 30 municipalities that were initially envisaged.

The standardized questionnaire was divided in five groups of questions: I) Official languages in the LSGU; II) Spheres of use of languages; III) Staff engaged to provide official use of languages; IV) Finances; and V) Timeliness and consistency of communication and possibilities for more effective implementation. A total of 18 close-ended questions were included. The goal of the whole process of surveying was to gather data that would show the general "state of play" and situation with the implementation of local language policies directed at the non-majority communities.

As a part of the second phase of research, the IDSCS team selected six LSGUs in which semi-structured interviews were conducted with official LSGU representatives (politicians, civil servants in the LSGU administration and translators/interpreters). A total of 15 semi-structured interviews were conducted with LSGU officials in this phase. The topics of the interviews resembled to the topics of the survey questionnaire. However given that in most of the six LSGUs, several persons were interviewed had different positions, this gave the researchers insights into various perspectives on the main challenges related to local language policies. The researchers were able to acquire an in-depth understanding of the situation in each of the considered six case-studies.

The following LSGUs were covered in the second research phase: the City of Skopje, Kumanovo, Gostivar, Chair, Studenichani and Dolneni. These LSGUs were selected with the consideration of several LSGU characteristics: first, more advanced implementation of local language policies was required in the sample (the City of Skopje and Gostivar were considered as most advanced); second, use of more than two languages as official (all considered LSGUs except the City of Skopje); third, inclusion of both urban

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On the basis of the gathered data through the surveys and the semi-structured interviews, as well as official documents and other secondary sources, this document in one of its parts portrays the situation in the six selected case-studies, to present an in-depth analysis.

Additionally, in the second research phase, meetings were held not just with LSGU representatives, but also with representatives of other relevant stakeholders: representatives of the Secretariat for Implementation of the Ohrid Framework Agreement (SIOFA), the Association of the Units of Local Self-Government in the Republic of Macedonia (ZELS) and the OSCE Mission to Skopje. Through these meetings even more insights were gained on the "state of play" regarding the implementation of local language policies. A list of all persons which were interviewed or met for the purposes of the research project is available at the end of this public policy study.

A PLAN OF THE STUDY

This study is divided in five sections:

The section titled *"Local Language Policy beyond the OFA"* introduces the reader with the concept of language policy, as well as with the specifics of the Macedonian case. It is intended to serve as a starting point of this study, as well as to portray the available information on the current progress and future challenges. The second section *"Legal Framework for Local Language Policy"* analyzes the legal framework relevant for language policy at the local level. An overview of all relevant provisions is given and spheres of language use are identified. Section three *"State of Play"* gives an overview of all LSGUs that employ more than one language in official use, as well as their demographic specifics. Since such a list is not publically available, this part of the study is of great importance. The fourth section *"Case Studies"* provides an analysis of the six case-studies which were analyzed in-depth by the IDSCS researchers. Some of the trends found in the six LSGUs in question are repeatedly found in other LSGUs not included in the case studies sample. Section five *"Conclusions and Recommendations"* gives an overview of the findings and proposes recommendations that are derived from the conclusions and directed at various stakeholders. The goal is to provide meaningful insights on how

the implementation of local language policies can be improved and made more efficient towards the end-users: the individuals from non-majority ethnic background.

I. LOCAL LANGUAGE POLICY BEYOND THE OFA

INTRODUCTION TO LANGUAGE POLICY

Every state in the world employs at least one language on which official state "business" is conducted, i.e. a *language in official communication*. Some states employ more than one language for official use, while others may employ several. Some states give possibilities for use of languages that are not official at national level in specific geographical areas or territories or in specific spheres. These variations in so-called *language policy* of the state are dependent on several factors: the degree of linguistic diversity in the states' borders, the territorial concentration of linguistic groups, the overall relations between the so-called "titular", majority group and the minority groups, the ability of state institutions to function on more than one language etc.

Since 2001 the Republic of Macedonia has somewhat altered its language policy towards the non-majority ethnic communities as a result of the incorporation of the Ohrid Framework Agreement (OFA) in the legal system. A second language in official use was brought-in at the national level and state-sponsored higher education on a non-majority language was introduced. Moreover, within the local self-government units (LSGUs), several languages of the non-majority communities were employed as official. This public policy study is dedicated to this last aspect of Macedonian language policy, namely the implementation of the local language policy in the post-OFA period.

Here, language policy is understood as "a systematic, rational, theory-based-effort at the societal level to modify the linguistic environment with a view to increasing aggregate welfare… typically conducted by official bodies or their surrogates and aimed at part or all of the population living under their jurisdiction" (Grin 2003, 30).

In relation to Grin's definition three points need to be emphasized:

First, in this policy study we are interested in policy implemented by the state bodies and organs, more specifically we are interested in the policy implemented by bodies of local governance in the Republic of Macedonia, i.e. the LSGUs. This means that we are excluding language policies implemented

by the national institutions, but also those implemented by private entities, such as companies, non-governmental organizations etc. which also may implement actions that target the linguistic environment for their own purposes. Second, we understand language policy as a systematic and rational effort rooted in theory, which basically means that we are looking at a coherent and planned structure of a strain of public policy, not a spontaneous act of the state bodies. Policies are planned, designed and executed, rather than unsystematically conducted. Third, language policies target the population, or one part of it and their basic goal is to modify the linguistic environment for the sake of increasing aggregate welfare. Language may be an important barrier for the individual when communicating in the public sphere, especially in relatively "stressful" situations, such as the court procedure or in the educational system. Thus, modifying the linguistic environment by assigning more than one languages in official communication may be beneficial for the members of linguistic communities which are not native speakers of the "first" official language.[1] Thus, aggregate welfare is increased if the welfare of a particular linguistic group is increased by assigning the language of the group in official communication.

At this point we arrive at the main focus of this policy study in relation to language policy. It needs to be emphasized that we are interested in situations of coexistence of languages and linguistic groups as a part of public policy and the availability of those languages to be used in official communication. Linguistic environment may be altered towards codification of a specific language, previously colloquial, to be used in official state "business" (this falls under the rubric of language planning and each state goes through that process, see Kaplan and Baldauf, 1997). However, we are interested in the processes that address the relations of several languages, rather than activities which aim to alter the use and function of one single language. Moreover, we are interested in a specific context – the languages on the territory of the Republic of Macedonia, the groups related to those languages and the policy of local self-government units aimed to answer to extensive linguistic diversity in the Macedonian state.

INTRODUCTION TO MACEDONIAN LANGUAGE POLICY

As it is very well known, following 2001 the incorporation of the Ohrid Framework Agreement (OFA) in the Macedonian legal and political system, the public policy of language use has been greatly liberalized. Two general spheres of language use were treated: official communication and education. In the sphere of education, since 2001 higher education in mother tongue is available for the members of the largest

1 The idea that unequal linguistic "equipment" has consequences towards individuals in their acts in the public sphere has been elaborated by authors which discuss language policy from the perspective of normative political theory. See: Pool (1991), Patten (2001) and Van Parijs (2002).

non-majority community, the Albanian. At the same time, the area of official communication has been greatly liberalized in two senses: first, the Albanian language was introduced in official use (with some specific conditions) at the national level; and second, the rules for assigning a language as official at the local level were amended to give status of official use to those communities which consist at least 20% of the population in a specific LSGU. Previously, the legal framework made a requirement that a 50% of the population should belong to one ethnic non-majority community so that their language can be used as official within the LSGU. This study will focus only on the issue of official communication, and only on the aspect related to official communication at the *local level*, thereby excluding the national level, including use of language in the court procedure, in the electoral procedure, in the communication with and within national bodies and organs etc.

Since 2001, beside liberalization of the policy sphere of use of non-majority languages (i.e. introducing a second official language at the national level, and more than one at local), Macedonia also had a challenge to define the spheres of use of the languages of the non-majority communities. This became a necessity since the amendments of the Constitution in 2001, agreed through the OFA, did not place effective equality between the use of the Macedonian and the Albanian language, and in third degree – the other languages used by the "smaller" communities. This situation opened the question of the policy spheres in which the Macedonian language is exclusively used (only the sphere of use in international relations was, however, stipulated as exclusive for the use of Macedonian). This inconsistency was somewhat treated with the adoption of a specific law in 2008. However, this law was at times criticized by political representatives of the non-majority communities, firstly, on the grounds of its quality and vagueness, and second, because of implementation deficits caused by the bodies and organs responsible.

The latest Eurppean Commission Progress Report on Macedonia (2013) assessed that "with regard to inter-community relations, […] progress is still needed on systemic issues relating to […] use of languages […] (and that) monitoring of issues such as the use of languages […] is lacking […]"[2]. In a 2012 report on the implementation of the OFA, published by the national Secretariat for Implementation of the Ohrid Framework Agreement (SIOFA), the following points were made regarding the problems with the use of the non-majority languages at the local level:

First, it was assessed that there is need for employment of additional number of translators/interpreters in the state institutions (including bodies and organs of the LSGUs), as well as continuous training for

2 The Former Yugoslav Republic of Macedonia 2013 Progress Report. SWD (2013) 413 final. Brussels,16.10.2013, pp. 12.

already employed translators/interpreters. Second, the citizens need to be better informed on the rights of use of mother tongue in both general policy spheres of official use and education. Third, In the LSGUs where there are costs related to the right of use of mother tongue, it is concluded that those LSGUs should provide a specific budget line in their budgets that addresses these costs. This is not a practice in multilingual LSGUs. Fourth, there is need for comprehensive information on the implementation of the right to use mother tongue in the LSGUs, and the Association of Units of Local Self-Government of the Republic of Macedonia (ZELS) has been charged to prepare this type of information.[3]

In the period 2007-2008, ZELS implemented a project which goal was to support the LSGUs through procurement of equipment for simultaneous translation for the Municipality Councils. The financial means for that were obtained through a donation of the Swiss Agency for Development and Cooperation (SDC). 29 LSGUs were supported with booths for interpreters, earphones, microphones and other necessary equipment for simultaneous translation. In some LSGUs which use two non-majority languages, two interpretation booths were acquired. With this, nearly all Macedonian LSGUs which used non-majority languages in official use at the time were completely equipped to implement multilingualism at the plenary sessions of the Municipality Councils.[4]

In 2010, through a joint effort of SIOFA and the OSCE Mission to Skopje, a process was started to develop an Action Plan for implementation of the 2008 *Law on Use of Languages Spoken by at Least 20 percent of the Citizens of the Republic of Macedonia and in the Local Self-Government Units*. A Working Group consisted of representatives of several relevant ministries was created to draft the Action Plan. The whole process was concluded in 2012, however the Plan is still not adopted by the Government, thereby the process has halted.[5]

Also, in 2012, a special *Unit for monitoring of the processes of education, culture and use of languages* was established in the framework of SIOFA, as a body which could support the process of language use for the non-majority communities through giving input to national and local policy makers. However, since then, the Unit is still not equipped with personnel and thus not function with all its potential in accordance with its role.

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3 Izveshtaj po odnos na sostojbata za implementacijata na site politiki shto proizleguvaat od Ohridskiot ramkoven dogovor (Report on the status of the implementation of all policies arising from the Ohrid Framework Agreement). Government of the Republic of Macedonia, Secretariat for Implementation of the Ohrid Framework Agreement, Skopje 2012, pp. 85.

4 This information was communicated during the interview with the ZELS official.

5 This was communicated to the researchers during the interviews with the officials from SIOFA and the OSCE Mission to Skopje.

Effective delivery of the right of the individuals from non-majority ethnic background to use their mother tongue in official use is an obligation derived from the Constitutional Amendment V to Article 7 (2001) which sets the basis of Macedonian language policy. Even though the official use of non-majority languages is not an international norm, there are many international documents which encourage and support official use of minority languages, especially in areas and territories which are considerably inhabited by members of minority groups.[6] In the "spirit" of Amendment V, as well as most advanced international recommendations, this study will derive recommendations for policy stakeholders, based on evidence and gathered data in order to support more effective implementation of local language policies.

KEY POINTS:

1. Since 2001 Macedonia has greatly liberalized its public policy of language use in two general spheres: education and official communication (national and local levels).

2. This study is focused on a single aspect of Macedonian language policy: the policies pursued by the local self-government units (LSGUs), i.e. at the local level. As such, the study disregards from its analytical focus the use of non-majority languages in education, or official use at the national level.

3. Implementation of local language policies has been fraught with difficulties: lack of staff for implementation and budget means, as well as lack of information for citizens on the rights of language use.

4. However, in the past few years, the LSGUs have been equipped with equipment for simultaneous translations for Council meetings and an Action Plan for implementation for the "Law on Languages" has been drafted, though still not adopted. Also, a special Unit was set up in the framework of SIOFA for monitoring of the use of languages, but it still has not functioned in its full potential.

6 Some of the most advanced international documents that contain provisions related to minority languages are the recommendations of the OSCE High Commissioner for National Minorities. Namely, the Hague Recommendations Regarding the Educational Rights of National Minorities (1996), the Oslo Recommendations Regarding the Linguistic Rights of National Minorities (1998), the Lund Recommendations on the Effective Participation of National Minorities in the Public Life (1999) and the Ljubljana Recommendations on Integration of Diverse Societies (2012) cover different aspects of the issue of use of minority languages. All these documents accompanied by explanatory notes are reffered in the References section of this study. Additionaly, provision on linguistic rights of minorities are an integral part of documents adopted in the framework of the United Nations (UN), and, at the European level, in the framework of the Council of Europe.

II. LEGAL FRAMEWORK FOR LOCAL LANGUAGE POLICY

CONSTITUTIONAL PROVISIONS

Language policy at the level of local self-government units (LSGUs) i.e. the local level, is legally regulated through the Constitution and relevant laws. Amendment V to Article 7 of the Macedonian Constitution, introduced through the Ohrid Framework Agreement (OFA)[7], stipulates that:

> "In the units of local self-government where at least 20 percent of the population speaks a particular language, that language and its alphabet shall be used as an official language in addition to the Macedonian language and the Cyrillic alphabet. With respect to languages spoken by less than 20 percent of the population of a unit of local self-government, the local authorities shall decide on their use in public bodies."
>
> **(Amendment V to Article 7, Constitution of the Republic of Macedonia, 2001)**

This means that the LSGUs have constitutional obligations to provide official use of languages for those communities that consist at least 20 percent of the population within the unit. Moreover, a possibility is left open – if a community consists less than 20 percent, the introduction of the language of that community is subject to a positive decision by the LSGU bodies. In all of these cases the use of a non-majority language comes next to the use of the Macedonian language, as stipulated in the Constitution. It is worth noting that prior to 2001 a similar provision was in place in Article 7 of the Macedonian Constitution. However, before 2001, 50 percent were required as a part of the population for a language of a particular community, different than Macedonian, to be introduced as official. In the same manner, a decision by the LSGU authorities was required to introduce a language of a community consisting less than 50 percent of the population as official at the local level.

Thus, there are two basic rules through which an LSGU can "shape" its multilingual local language policy. First, LSGUs are obliged to guarantee official use for those languages used by the non-majority community which represents 20% of the population within a specific LSGUs. Second, relevant decision-making bodies of the LSGUs are responsible to grant a status of official use to a particular language, if the community that uses the language represents less than 20% as a part of the population in a specific LSGU. In this manner, *we can differentiate between guaranteed and conditioned use of the*

7 The Full text of the Ohrid Framework Agreement can be accessed at: http://www.ucd.ie/ibis/filestore/Ohrid%20Framework%20Agreement.pdf (last visit: 17 april 2014).

languages of non-majority communities. For an overview of which languages receive guaranteed use or have received conditioned use and in which particular LSGUs, the reader can turn to Section III of this study.

LAW ON LOCAL SELF-GOVENRMENT AND THE LAW ON THE CITY OF SKOPJE

Amendment V to Article 7 of the Constitution, containing the provisions relevant for establishing local multilingual language policies, however does not fully define the policy sphere and additional laws were needed and adopted post-2001. The Law on Local Self-Government from 2002[8] and the Law on the City of Skopje from 2004[9] contain specific parts relevant for local language policies (*Part IV. Official languages in the municipality* from the Law on Local Self-Government and *Part VI. Use of languages of the communities in the City of Skopje and in the municipalities in the City of Skopje* from the Law on the City of Skopje). The provisions relevant for the municipalities are identical to those from the Law on the City of Skopje. Here, the provisions from the Law on Local Self-Government are presented, while the reader should have in mind that identical provisions are inserted in the Law on the City of Skopje.[10]

Articles 89 and 90 of the Law on Local Self-Government establish rules for language policy at the local level. It is stipulated that the Macedonian language and its Cyrillic alphabet are official in the LSGUs, but also that the languages and alphabets of the communities which consist at least 20 percent of the population are also official. Moreover, this law introduces a role of the Municipality Council – the collective representative body of LSGUs – who is identified as responsible for creation of local language policy – for those communities that consist less than 20 percent of the population in the LSGUs. Article 90, paragraph 2 stipulates that:

> "The Municipality Council shall decide on the use of languages spoken by less than 20 percent of the population in the municipality."
>
> **(Article 90, paragraph 2, Law on Local Self-Government, 2002)**

This provision is important because it introduces a role for the Municipality Council, the collective representative body of the LSGU, as a central decision making body regarding issues of language

8 Law on Local Self-Government, Official Gazette if the Republic of Macedonia, no. 5/02, 29 January 2002.

9 Law on the City of Skopje, Official Gazette if the Republic of Macedonia, no. 55/04, 16 August 2004.

10 The City of Skopje represents an LSGU with special status, derived from its character as a capital city of Macedonia. This is stipulated in Article 4 of the Law on Local Self-Government, while the Law on the City of Skopje closely regulates the status of the City of Skopje.

policy for the "smaller" communities, i.e. those communities that represent less than 20% of the population in a particular LSGU.[11] Decisions on issues related to the use of languages are also subject to a specific decision making procedure. The Law on Local Self-Government stipulates that:

> "Regulations that affect [...] use of languages spoken by less than 20 percent [...] are adopted by majority of votes from the present council members, while there must be obtained majority of votes from the present council members which belong to the communities not in majority in the municipality."
>
> **(Article 41, paragraph 3, Law on Local Self-Government, 2002)**

This type of decision making became increasingly known in the Macedonian public sphere as the "double-majority voting" mechanism or the "Badinter majority"[12] mechanism. The goal of the mechanism is to assure protection for the communities not in majority from outvoting by the ethnic group in majority. This procedure was firstly introduced in the Macedonian Parliament with the incorporation of the OFA in 2001. Limited to specific issues, i.e. those that affect education, culture, use of languages and symbols, it was firstly intended to serve as a protective mechanism for the non-majority communities at the national level. However, the same rules were later employed for decision-making at the local level, i.e. in the work of the Municipality Councils.

Additional body of relevance for local language policy within the LSGU is the Committee for Inter-community Relations (CICR) which is established in LSGUs where a particular non-majority community consists at least 20% of the population, as stipulated with Article 55 of the Law on Local Self-Government. These committees, consisted of representatives of all communities within the LSGU, have a consultative function towards issues relevant to inter-community relations. The official use of the languages of the communities is also an issue under consideration of the CICRs.

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11 Article 32, paragraph 1 of the Law on Local Self-Government defines the Municipality Council as 'a representative body of the citizens which decides upon issues under municipality jurisdiction'. The members of the municipality councils (the councilors) are elected on general, direct and free elections (Article 33, paragraph 1) with a four year mandate (Article 35, paragraph 1). The numerical composition of the council is determined by the population of the municipality, i.e. the smallest municipalities (up to 5000 inhabitants) are composed by 9 councilors, while the biggest (over 100000 inhabitants) are composed by 33 councilors (Article 34). Depending on the number of inhabitants a municipality council can thus be composed of 9, 11, 15, 19, 23, 27, 31 or 33 councilors.

12 The name of the mechanism derives from the surname of French law professor Robert Badinter (1928).

"THE LAW ON LANGUAGES"

The central law which regulates the policy sphere of language use in the Republic of Macedonia is the 2008 *Law on Use of Languages Spoken by at Least 20 percent of the Citizens of the Republic of Macedonia and in the Local Self-Government Units*.[13] Colloquially known as the 'Law on Languages', it contains a specific part on the use of languages at the local level (*part V-Other Uses, 11. Local Self-Government, articles 41-43*). The rules previously stipulated through the Constitution and the Law on Local Self-Government are reaffirmed through the Law on Languages, i.e. the status of the Macedonian language as the official language used in the LSGUs, the status of the languages of the communities which consist at least 20 percent of the population within the LSGU, the status of the languages used by communities below 20 percent of the population in the LSGU, the role of the Municipality Council as a decision maker in issues of local language policy for the communities below 20%, as well as the use of the double-majority voting in the LSGUs and the City of Skopje.

The Law on Languages systematically united all relevant provisions of language use that were previously scattered in various laws. In regard to language use at the local level, the Law on Languages simply reconfirmed the already-existing rules previously introduced constitutionally, and through the laws on Local Self-Government and the City of Skopje.

SPHERES OF LANGUAGE USE

Relating to the provisions relevant for language use from the laws on Local Self-Government, the City of Skopje and the Law on Languages, this study analyzes five broad spheres of language use:

1. Use of languages in the municipality councils (both oral and written use);
2. Use in communication between citizens and LSGUs bodies and organs (both oral and written use, including the process of obtaining information from public character);
3. Use in communication between citizens and public enterprises formed and managed by LSGUs (both oral and written use);
4. Use for informative purposes: when publishing the Official Gazette of the LSGU, the LSGU bulletin board, the LSGU web-site, the newspaper of the LSGUs etc.;
5. Use for inscriptions on municipal buildings and municipal property, when writing road signs and directions, names of streets, bridges and other infrastructure facilities.

13 Law on Use of Languages Spoken by at Least 20 percent of the Citizens of the Republic of Macedonia and in the Local Self-Government Units, Official Gazette of the Republic of Macedonia, no. 101/08, 13 August 2008.

When examining the overall "state of play" of local language policies in Section III, as well as the situation in the selected case studies in Section IV, IDSCS's researchers focused on these five spheres of language use. This does not mean that there might not be any other relevant spheres that can be examined through other additional research endeavors. However, it is important to emphasize that the analysis here is focused on the above identified spheres.

KEY POINTS:

1. The sphere of official language use is primarily defined through Article 7 of the Constitution and since 2008 with the so-called "Law on Languages".

2. There are two most basic rules for local language policies: LSGUs have obligations to provide "guaranteed use" for the communities consisting 20% of the population; and LSGUs decide on the use of languages of the communities that consist less than 20%, i.e. "conditioned use".

3. The Municipality Council decides over issues of language policy through the double-majority voting procedure.

4. In this public policy document IDSCS identifies and analyses five broad spheres of language use.

III. STATE OF PLAY

RELEVANCE OF LOCAL LANGUAGE POLICIES: LSGUS AND OFFICIAL LANGUAGES[14]

Since 2013 Macedonia is territorially divided in 80 municipalities and the City of Skopje which is a total of 81 local self-government units (LSGUs).[15] More than one third of all LSGUs (30 in total, including the City of Skopje) have an obligation to guarantee official use of one of the non-majority languages and 1

14 The data used in this sub-section is taken from the last conducted census in the Republic of Macedonia (2002) in accordance with the territorial organization of local self-government from 2004. See: Popis na naselenieto, domakjinstvata I stanovite vo Republika Makedonija 2002, spored teritorijalnata organizacija od 2004 (Kniga XIII) (Census of Population, Households and Dwelings in the Republic of Macedonia in 2002, According to the Territorial Organization from 2004 [Book XIII]). State Statistical Office of the Republic of Macedonia, Skopje, May 2005

15 Macedonia territorially reorganized local governance in 2004 with a separate law. However, reorganization was conducted in several phases. In 2004, the number of municipalities was reduced from 123 to 84, while in 2013 this number was further reduced to 80. See the Law on Territorial Organization of Local Self-Government in the Republic of Macedonia, Official Gazette of the Republic of Macedonia, no. 55/2004, 16.08.2004.

LSGU has introduced a non-majority language without having a formal obligation (i.e. without having a community over 20% of the population). In 27 LSGUs the Albanian is in official use according to the rule of guaranteed official use. In those 27 LSGUs, the Albanian community consists at least 20% of the population. Some of these LSGUs (Arachinovo, Bogovinje, Lipkovo, Saraj, Tearce, Vrapchishte and Zhelino) have a considerable majority of ethnic Albanian population (close to 90% or over). Other group of LSGUs have an ethnic Albanian majority (over 50%), but also other ethnic groups are present, such cases are Brvenica, Chair, Debar, Gostivar, Kichevo, Struga, Studenichani and Tetovo. In a third group of LSGUs, ethnic Albanians are a community in minority, but are still over 20% of the population: the City of Skopje Butel, Chashka, Chucher Sandevo, Dolneni, Jegunovce, Kruchevo, Kumanovo, Petrovec, Shuto Orizari, Sopishte and Zelenikovo. In addition, in the City of Skopje, ethnic Albanians consist 20.49% of the population, which also provides guarantees for official use of the Albanian language in the capital.

3 LSGUs have an obligation to provide official use of the Turkish language, due to presence of at least 20% ethnic Turks as a part of the population. Centar Zhupa and Plasnica are two small municipalities by the number of population which have a large ethnic Turkish majority (80.17% and 97.82% respectively), while in Mavrovo and Rostushe nearly one-third of the population is of Turkish ethnicity. In addition, the Turkish language has been introduced as official in 5 LSGUs, even though the Turkish population there represents less than 20%: Chair, Dolneni, Gostivar, Studenichani and Vrapchiste.

The ethnic Serbian population consists 28.56% of the population in Chucher Sandevo, and thus the Serbian language has a guarantee for official use within this municipality. In addition, the Municipality Council of Staro Nagorichane introduced Serbian in official use in 2010. The ethnic Romani population represents a majority in the Municipality of Shuto Orizari (60.60%) and also has a legal right of official use of the Romani language in the municipality. Both Serbian and Romani have been introduced as working languages of the Municipality Council of Kumanovo, with a decision from 2010. The Vlach language has been introduced as official in the Municipality of Krushevo with a Council decision (the Vlach population represents 10.53% of the LSGU population). The Bosniak language have been introduced as official in Dolneni, an LSGU in which the Bosniak ethnic group represents 17.54% of the population.

Thus, in a total of 22 of all 31 LSGUs in which we find official multilingualism, i.e. at least one non-majority language is used as official in addition to Macedonian. In 7 of the 31 LSGUs two non-majority languages are used as official, and in 2 of the 31 LSGUs three non-majority languages are in official use. Table 1 gives a precise overview (as in April 2014) of all LSGUs which have multilingual language policies, together with the languages in official use and their ethnic composition.

A total of 8 LSGUs have introduced a language of a non-majority community which is representing less than 20% of the population in the LSGU. 2 of these LSGUs have done this for two languages (Dolneni for Turkish and Bosniak in 2005 and Kumanovo for Serbian and Romani in the Municipality Council in 2010). Beside Dolneni, Chair (in 2013), Gostivar (in 2009), Studenichani (in 2013) and Vrapchiste (2006) have also introduced Turkish in official use. Beside Kumanovo, Serbian was also introduced in official use in Staro Nagorichane with a Council decision in 2010. Krushevo has introduced the Vlach language in official use in 2006. Table 2 gives an overview of all these cases.

Table 1: LSGUs in which non-majority languages are used by official, including languages and ethnic composition (as in April 2014). Languages marked with an asterisk (*) have been granted a status of official use through decision of municipality councils in their respective LSGUs

	LSGU	OFFICIAL NON-MAJORITY LANGUAGE(S)	ETHNIC COMPOSITION
1	City of Skopje	Albanian	MAC: 66.75%, ALB: 20.49%
2	Arachinovo	Albanian	ALB: 93.81%, MAC: 5.14%
3	Bogovinje	Albanian	ALB: 95.23%, TUR: 4.08%
4	Brvenica	Albanian	ALB: 61.62%, MAC: 37.52%
5	Butel	Albanian	MAC: 62.25%, ALB: 25.19%
6	Centar Zhupa	Turkish	TUR: 80.17%, MAC: 12.49%, ALB: 6.96%
7	Chair	Albanian and Turkish*	ALB: 57%, MAC: 24.13%, TUR: 6.95%, ROM: 4.76%, BOS: 4,55%
8	Chashka	Albanian	MAC: 57.28%, ALB: 35.23%, TUR: 5.10%
9	Chucher Sandevo	Serbian and Albanian	MAC: 47.32%, SRB: 28.56%, ALB: 22.88%
10	Debar	Albanian	ALB: 58.07%, MAC: 20.01%, TUR: 13.73%
11	Dolneni	Albanian, Turkish* and Bosniak*	MAC: 35.90%, ALB: 26.65%, TUR: 19.14%, BOS: 17.54%
12	Gostivar	Albanian and Turkish*	ALB: 66.68%, MAC: 19.59%, TUR: 9.86%
13	Jegunovce	Albanian	MAC: 55.26%, ALB: 43.02%

14	Kichevo	Albanian	ALB: 54.51%, MAC: 35.74%, TUR: 5.82%[16] TUR: 3.25%
15	Krushevo	Albanian and Vlach*	MAC: 62.79%, ALB: 21.31%, VLA: 10.53%,
16	Kumanovo	Albanian, Serbian* and Romani*	MAC: 60.43%, ALB: 25.87%, SER: 8.59%, ROM: 4.03%
17	Lipkovo	Albanian	ALB: 97.42%, SER: 1.37%
18	Mavrovo and Rostushe	Turkish	MAC: 50.46%, TUR: 31.10%, ALB: 17.21%
19	Petrovec	Albanian	MAC: 51.44%, ALB: 22.86%, BOS: 17.47%
20	Plasnica	Turkish	TUR: 97.82%
21	Saraj	Albanian	ALB: 91.53%, MAC: 3.89%, BOS: 3.16%
22	Shuto Orizari	Romani and Albanian	ROM: 60.60%, ALB: 30.32%, MAC: 6.53%
23	Sopishte	Albanian	MAC: 60.18%, ALB: 34.34%, TUR: 4.30%
24	Staro Nagorichane	Serbian*	MAC: 80.70%, SER: 19.13%
25	Struga	Albanian	ALB: 56.85%, MAC: 32.09%, TUR: 5.72%
26	Studenichani	Albanian and Turkish*	ALB: 68.83%, TUR: 19.05%, BOS: 9.64%
27	Tearce	Albanian	ALB: 84.39%, MAC: 12.20%, TUR: 2.30%
28	Tetovo	Albanian	ALB: 70.32%, MAC: 23.16%
29	Vrapchishte	Albanian and Turkish* (info pending)	ALB: 83.08%, TUR: 12.34%, MAC: 4.10%
30	Zhelino	Albanian	ALB: 99.20%
31	Zelenikovo	Albanian	MAC: 61.86%, ALB: 29.58%

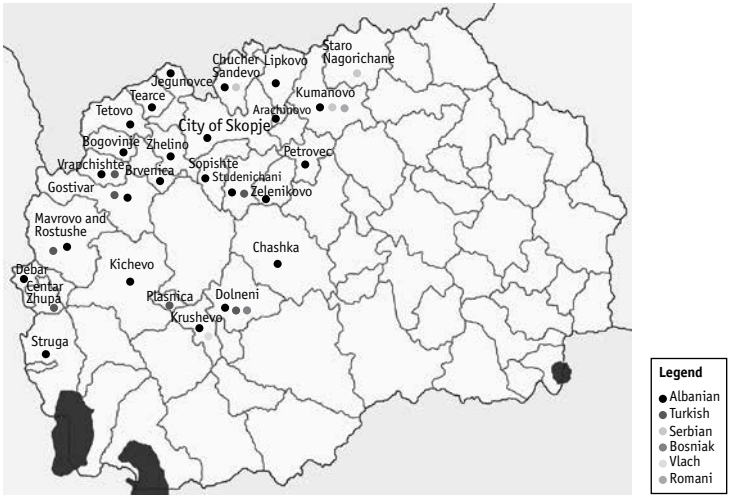
16 In absence of official data, the demographic composition for the Municipality of Kichevo is calculated through aggregation of available data from the former municipalities Kichevo, Zajas, Vraneshtica, Drugovo and Oslomej. These five LSGUs have been merged in a single LSGU, the Municipality of Kichevo in 2013.

Table 2: LSGUs which have introduced in official use languages of non-majority communities representing less than 20% of the population as official, with the introduced of languages, dates of council decision, entry into force of decisions and projected implementation date (if applicable).

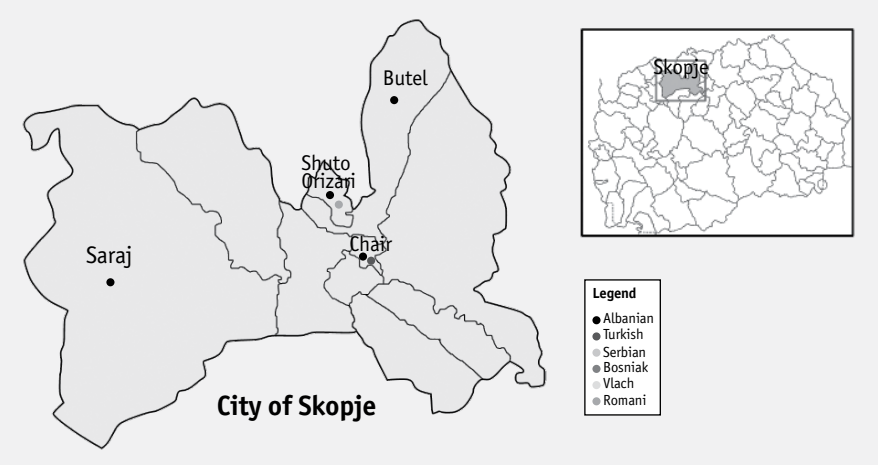
	LSGU	OFFICIAL NON-MAJORITY LANGUAGE(S) – LESS THAN 20%	DATE OF COUNCIL DECISION / ENTRY INTO FORCE / IMPLEMENTATION DATE
1	Chair	Turkish	10.10.2013 / 17.10.2013
2	Dolneni	Turkish and Bosniak	25.11.2005 / 03.12.2005
3	Gostivar	Turkish	15.07.2009 / 23.07.2009 / 01.01.2010
4	Krushevo	Vlach	30.05.2006 / 30.05.2006
5	Kumanovo	Serbian and Romani	04.05.2010 / 06.05.2010
6	Staro Nagorichane	Serbian	17.05.2010 / 25.05.2010
7	Studenichani	Turkish	29.04.2013 / 29.04.2013
8	Vrapchishte	Turkish	28.12.2006 / 05.01.2007

Geographically, the LSGUs which use non-majority languages in official communication are based in the north, north-western and western part of Macedonia. 4 of the municipalities are based in the City of Skopje. Maps 1 and 2 show where the Macedonian multilingual LSGUs are geographically situated.

Map 1 – Official languages of the LSGUs in Macedonia



Map 2 – Official languages of the LSGUs in the City of Skopje



The presented data shows that official multilingualism at the local level is not an extraordinary case in Macedonia. 31 out of 81 LSGUs implement, on one way or another, multilingual local language policies, and in nearly one-third of those LSGUs local language policies are directed at more than one non-majority community. A total of 832.184 people out of 2.022.547 Macedonian citizens as proclaimed with the census from 2002 live in LSGUs which have more than one language in official use (that is 41.14% of all Macedonian citizens).[17] A majority of them are ethnic Albanians, 478.551 or 57.5%, while 236.659 or 28.44% are ethnic Macedonians. The other non-majority communities represent a smaller portion of the population in this projected "multilingual Macedonia" at the local level (Turks 5.94%, Romani 3.53%, Serbian 1.85%, Vlach 1.39% and Bosniak 0.25%).

This data shows the outreach of local language policies and their relevance for a big portion of the Macedonian population. This is derived from the fact that a considerable number of citizens live under a regime of "official multilingualism". Subsequently, effective implementation of language policies in compliance with Constitutional Article 7 and the laws has effect over the "aggregate welfare" of the population, if we use Grin's terminology presented in the definition in the first section. According to the understanding employed here, language policies have significance for all citizens and not just for the citizens – members of non-majority communities. Inefficient implementation of language policies may have consequences towards the work of the local administration and towards the overall quality of the

17 The City of Skopje is excluded from this calculation, however the for "multilingual" municipalities within its borders are included. According to the last census a total of 506.026 citizens live in the City of Skopje.

services provided to the citizens. Moreover, inefficient implementation can also be a burden for the local budgets. Consequently, in this study language policies are approached as important to all, and not just for the citiezens from non-majority ethnic and linguistic background.

TRENDS IN IMPLEMENTATION OF LOCAL LANGUAGE POLICIES

Following the identification of all LSGUs which use more than one language in official use, IDSCS distributed survey questionnaires to all LSGUs, excluding the City of Skopje. The methodology behind the survey was presented in the Introduction to this public policy study. Here, only the conclusions, based on the responses from 17 LSGU officials will be presented.

In general, the survey revealed large discrepancies between LSGUs regarding the implementation of local language policies in the five analyzed spheres of language use. Also, large discrepancies were found within LSGUs regarding the implementation of the right of official use for different languages (i.e. unequal treatment between different languages). The following general conclusions were made based on the surveys' findings:

» The use of non-majority languages at the **plenary sessions of the municipality councils** is already a very common and developed practice. Most of the LSGUs are completely equipped with the needed equipment for simultaneous translation as a result of foreign donations and most of the LSGUs have responsible person(s) for handling translations. If done at all, translation in committee sessions of the Municipality Councils is most commonly done in the method of consecutive translation. Only the plenary sessions are thus translated simultaneously.

» Providing **written translation of the Municipality Council documents** on the official non-majority languages is also a practice which is quite common in the LSGUs. However, not all documents are translated in all official languages, this is the case especially for the less developed, rural LSGUs. The Agenda of the plenary meetings and the Decisions of the Municipality Council are translated in all official languages in most of the surveyed LSGUs and those are the two most commonly translated documents.

» Another quite common use of non-majority languages (beside the use for the work of the Municipality Councils), as recorded with the survey, is in the **writing of the inscriptions on the municipal buildings and property**. Even the LSGUs with very limited budget resources manage to sufficiently implement this part of local language policy.

» Regarding the **publication of LSGU's Official Gazettes**, IDSCS was unable to identify a case in which the Official Gazette is published in more than two languages. Predominantly, Official Gazettes in the

surveyed LSGUs are published in Macedonian and Albanian. Other languages are not used that often. The most usual form of publishing, when bilingual, is in the form of a split-page, rather than the form of consecutive written translation or the form of two separate publications. However, the last two forms for publication are also used in some LSGUs.

» In regard to the issue of **obtaining information of public character**, the record is mixed. Some LSGUs do this effectively on at least two languages, and others allow the request to be written in one language, while the response is given on another. A small number of LSGUs organize this process only in Macedonian.

» Implementation is also mixed in regard to **information shown on the bulletin boards**. Some LSGUs do this in only one language, however most write the information bilingually. A small number of LSGUs do this on more than two languages.

» **Road signs** are predominantly monolingual in the smaller and rural LSGUs. The bigger and more developed LSGUs write road signs on Macedonian and the other official languages, however this is never completely consistent.

» The sphere of **citizen communication with bodies and organs of the LSGU** seems to be less developed than all spheres of language use. When it comes to the "smaller", under 20% of the population communities, by rule communication with citizens from those non-majority communities is not conducted in their mother tongue.

» **Written communication** is usually available in two languages, the Macedonian and the language of the biggest non-majority community in the LSGU, and this is dependent on the linguistic competences of the available staff. In LSGUs where the population predominantly belong to a non-majority community, a greater number of employees is bilingual and thus written communication is conducted in both languages.

» **Oral communication** between LSGUs and with citizens is rarely systematically implemented. If the particular employee speaks the language of the non-majority community, communication will be conducted in that language. If not, communication takes place on the language the employee understands, rather than the citizen. By rule, the LSGUs do not employ specific staff that could engage in oral communication.

» The implementation of **communication between public enterprises and citizens** is also on a very low level, with some exceptions.

» **None of the surveyed LSGUs have a specific budget line for language policy** in their annual budgets. Most of the surveyed officials were not able to give an answer on the financial implications of language policy.

» By rule, the bigger and richer with financial resources LSGUs employ **professional translators/ interpreters**. Also, by rule, the smaller and resource-limited LSGUs use their existent staff for translations and do not hire professionals. Outsourcing of translation is not common, but it has happened in some LSGUs in specific occasions.

» The **number of translation/interpretation staff** varies across LSGUs. Some of the biggest LSGUs stated that they have hired four (4) persons for translation/interpretation and that is the maximum which was provided as an answer. The small LSGUs which are limited with financial resources have hired one (1) or none translators/interpreters. None of the LSGUs have a specific unit which would only engage only in translation/interpretation.

Relating to these conclusions, it is worth to point out that both the success stories and problems will be presented in depth in the next Section IV that provides data from six case studies of LSGUs implementing local language policies towards non-majority communities.

KEY POINTS:

1. There are 31 LSGUs including the City of Skopje which implement multilingual language policies. 8 of them have introduced official use of the languages of the "smaller" communities.

2. 22 of the 31 LSGUs use one non-majority language as official, 7 LSGUs use two, and 2 LSGUs use three.

4. 832.184 citizens of the Republic of Macedonia live under a multilingual language-use regime at the local level. A majority of them are ethnic Albanians and less than one-third are ethnic Macedonians.

5. The use of non-majority languages is most commonly implemented in the Municipality Councils and when writing inscriptions on LSGUs buildings and property.

6. Communication between LSGUs and citizens and public enterprises and citizens on non-majority languages is quite underdeveloped, especially in the cases of the "smaller" (less than 20%) communities.

7. None of the LSGU has a specific budget line for language policy and most of them do not calculate the expenses.

8. The bigger LSGUs hire professional staff for translation and interpretation, while the smaller rarely do that. Translation activities are sometimes handled by the existent staff, if adequate linguistic competences are present.

IV. CASE STUDIES: SIX EXAMPLES OF IMPLEMENTATION OF LOCAL LANGUAGE POLICIES

This section of the study will portray the situation of six LSGUs: the City of Skopje (as the biggest and most developed, LSGU with "special status"), Kumanovo (the biggest municipality, as well as one which implements a specific model of language policy relevant for the "smaller" non-majority communities), Gostivar (an LSGU which uses three languages in official communication and one of the most developed LSGUs in this respect), Chair (an urban LSGU in the City of Skopje which recently introduced third language in official communication), Studenichani (a rural LSGU which recently introduced third language in official communication) and Dolneni (a small rural LSGU which, at least formally, uses four languages in official communication). The criteria for selection of the case studies were given in the Introduction of this study. The six cases show that a particular language policy model can be (and is) employed according to the context of each LSGU. This is made available by the current character of the legal framework, which, as we saw in Section II is not completely defined and leaves room for policy makers to create different policies according to the context. Each case study here is presented in a separate sub-section.

CITY OF SKOPJE

The City of Skopje is an LSGU with a "special status in the Macedonian system of local governance". Within Skopje, which is a separate administrative division, ten municipalities are incorporated: Aerodrom, Butel, Centar, Chair, Gazi Baba, Gjorche Petrov, Karposh, Kisela Voda, Saraj and Shuto Orizari. The municipalities within the City of Skopje perform their competences within their jurisdiction under the principle of subsidiarity with the jurisdiction of the City of Skopje.

The City of Skopje has a legal obligation to provide official use of the Albanian language within its institutions, public enterprises and matters in its jurisdiction. The Albanian community consists approximately 20.49% of the population, and thus is eligible under the Constitution and the laws for official use of its language. The majority of the City of Skopje population is consisted by ethnic Macedonians (66.75%), while the other communities constitute a smaller portion of the population: the

Romani 4.63%, the Serbian 2.82%, the Turkish 1.7% and the Bosniak 1.5.%. The total population of the City of Skopje is 506.026 inhabitants.

The use of the Albanian language in the Council of the City of Skopje is implemented through simultaneous translation on the Council meetings and consecutive translation in the meetings of the Councils' committees. Moreover, the Council decisions, strategies, action plans, the Rules of procedure, the records of the Council and Committee meetings as well as all other related Council and committees documents are bilingual, issued on both Macedonian and Albanian in the form of consecutive written translation.The Official Gazette of the City of Skopje and its Statute are both published on Macedonian and Albanian in the form of consecutive written translation. Public announcements on the City of Skopje bulletin board as well as announcements published in newspapers and in other media are also predominantly done in both languages. The newspaper of the City of Skopje is also published bilingually, as well as brochures, flyers, other promotional and informational material etc. The web-page of the City of Skopje (www.skopje.gov.mk) is available in Macedonian, Albanian and English.

The inscriptions on the offices of the City of Skopje are bilingual, as well as the inscriptions on the public institutions and enterprises, if this is demanded by the institution or enterprise.

Written communication between citizens and the organs and bodies of the City of Skopje is predominantly done in both Macedonian and Albanian, while oral communication is also done in this way, however only on demand by the citizen. Information of public character can be also requested and obtained (if available) on both languages.

All translation and interpretation activities in the City of Skopje fall under the responsibility of the General Affairs Department and its Unit for expert and professional-administrative affairs. At the moment, four (4) persons are responsible for translation and interpretation. They predominantly work on translation of documents, materials for the office of the Mayor, the Council and the committees, the web page, the Official Gazette and newspaper etc., however they can also engage in oral translation/ interpretation in communication with the citizens, if the citizens requests so. IDSCS organized meetings with the head of the General Affairs Department and the employed translators. The overall impression was that the current human resources engaged in translation are enough the cover the needs and that all activities are running without a considerable lag.

Based on a report from February 2011, drafted by the General Affairs Department and adopted by the Council of the City of Skopje, only two out of seven public enterprises have employed a translator

(Komunalna Higiena and Drisla). However, all seven public enterprises which fall under the competences of the City of Skopje implement "bilingualism". This is usually done through outsourcing of translation activities.[18]

MUNICIPALITY OF KUMANOVO

The Municipality of Kumanovo is the biggest municipality in the Republic of Macedonia, according to the number of inhabitants. It is situated in the northern part of the state. With a total of 105.484 inhabitants it incorporates several ethnic groups. The majority of the population is ethnic Macedonian (60.43%), a quarter of the population is ethnic Albanian (25.87%), 8.59% are declared ethnic Serbs and 4.03% belong to the Romani community. Since 2010, the Municipality of Kumanovo, beside the guaranteed use of the Albanian language, introduced the languages of the Serbian and the Romani community in the Municipality Council.

On the 4 May 2010, the Municipality Council adopted the *Decision on use of the Serbian and Romani languages in the work of the Council of the Municipality of Kumanovo*.[19] Prior to the decision, only the Albanian language has been used as official language of the Municipality, in formal equality with Macedonian.

The use of the Albanian, Serbian and Romani in the Municipality Council of Kumanovo is implemented through simultaneous translation on the Council meetings and consecutive translation in the meetings of the Councils' committees. The municipality possesses the necessary equipment for simultaneous interpretation on the three languages (three booths for translators/interpreters and a sufficient number of earphones). All written Council documents such as strategies, action plans, the Rules of procedure, the records of the Council and Committee meetings as well as all other related Council and committees documents are however published only on Macedonian and Albanian in separate documents.

The Official Gazette of the Municipality of Kumanovo is published only on Macedonian and Albanian, in two separate publications. Public announcements on the bulletin board are also predominantly done in

18 Informacija za upotrebata na albanskiot jazik vo gradskata administracija, javnite pretprijatija, obrazovnite i kulturnite ustanovi chij osnovach e Gradot Skopje (Information on the Use of the Albanian Language in the city administration, public enterprizes, educational and cultural institutions whose founder is the City of Skopje). February 2011.

19 Odluka za upotreba na srpskiot i romskiot jazik vo rabotata na Sovetot na opshtina Kumanovo (Decision on use of the Serbian and Romani languages in the work of the Council of the Municipality of Kumanovo). Official Gazzette of the Municipality of Kumanovo, no. 8, 6 May 2010.

both languages. The web-page of the municipality (www.kumanovo.gov.mk) is available in Macedonian and Albanian. However, the web-page contains less information in Albanian than in Macedonian.

The inscriptions on the offices of the Municipality of Kumanovo are bilingual. The inscriptions on the public institutions and enterprises are predominantly written in two language, however some inconsistencies are present.

Written communication between citizens and the municipality organs and bodies is predominantly done on Macedonian, however there are also infrequent demands by arriving citizens to do so in Albanian. In such situation ethnic Albanian employees assist the communication. The interviewed employee at the Unit on Information and Public Relations stated that it is not a practice to receive and respond to Demands for free access of information in Albanian, so the form is only available to the citizens in the Macedonian language.

At the moment, all translation and interpretation activities on Macedonian and Albanian in the Municipality of Kumanovo are done by two (2) persons, full time employees in the Unit for Support of the Council. The interpreters on Serbian and Romani are outsourced and are hired only during Council meetings. The *Rulebook for systematization of job positions in the Municipal administration of the Municipality of Kumanovo* (2010)[20] envisages a total of eight (8) working positions for translation, simultaneous translation and proofreading. As stated in the Rulebook, this persons need to possess "excellent knowledge/fluency in Macedonian and Albanian and the languages of the other communities in the Municipality". Job positions are thus, not distinguished on the basis of a particular language competence of the employee.

MUNICIPALITY OF GOSTIVAR

Gostivar is a municipality in north-western Macedonia where ethnic Macedonians represent a minority (19.59%). The majority of the population in the municipality is consisted of ethnic Albanians (66.68%), while a considerable portion of the population is from ethnic Turkish belonging (9.86%). The total population of the Municipality of Gostivar is 81.042 inhabitants.

In 2009 the Municipality Council of Gostivar decided positively on the introduction of the Turkish language as official language of the Municipality. It was stipulated that Macedonian, Albanian and Turkish would

20 Pravilnik za sistematizacija na rabotnite pozicii vo opshtinskata administracija na opshtina Kumanovo (Rulebook for systematization of job positions in the Municipal administration of the Municipality of Kumanovo), Official Gazzette of the Municipality of Kumanovo, no. 9, 2 april 2010.

enjoy "equal status… and equal rights of use in the organs of the Municiaplity of Gostivar"[21]. Moreover, the decision stipulated equal use beside in the municipality institutions, also in the public enterprises of the LSGU. With this, the Municipality of Gostivar introduced a far-reaching model in regard to the right of use of languages of the "smaller" communities.

However, implementation on the field is not always consistent in regard to the equal use of all three languages. The meetings of the Municipality Council are conducted in all three languages and simultaneous translation is provided. The municipality possesses the necessary equipment. However, written documents are issued only in Macedonian and Albanian, with the exception of the Meeting Agenda which is issued in all three languages.

The Official Gazette of the Municipality is published only in Macedonian and Albanian in a split-page method. Public announcements on the bulletin board of the municipality are written in all three languages – Macedonian, Albanian and Turkish. The web-page of the Municipality of Gostivar (www.gostivari.gov.mk) is also available in Macedonian, Albanian and Turkish. The inscriptions on the offices of the municipality are trilingual, as well as the inscriptions on the public institutions and enterprises.

Written communication between citizens and the organs and bodies is predominantly done on Macedonian and Albanian, however if a request is received in Turkish it is also processed, though the response can only be issued on Macedonian or Albanian.

In the Municipality of Gostivar an interesting development is that the public enterprises use all three languages extensively in communication with citizens. For example, communal bills are issued in all three languages.

All translation and interpretation activities in the bodies and organs of the Municipality of Gostivar are currently handled by a total of three (3) translators/interpretations for all three languages. Two (2) of them are engaged in Macedonian-Albanian translations and one (1) is engaged in Turkish translations. Translation/interpretation activities fall under the responsibilities of Department for IT Support and General Affairs. In the *Rulebook for systematization of job positions in the Municipal administration of the Municipality of Gostivar* (2013)[22] one (1) position is foreseen for a Macedonian-Albanian translator

21 Odluka za upotreba na jazicite vo opshtina Gostivar (Decission on the use of languages in the Municipality of Gostivar). Official Gazzette of the Municipality of Gostivar, no. 7/2009, 15 July 2009.

22 Pravilnik za sistematizacija na rabotnite mesta vo opshtinskata administracija na opshtina Gostivar (Albanian: Rregullore për sistematizim të vendeve të punës në administratën komunale të Komunës së Gostivarit; English: Rulebook for systematization of job positions in the Municipal administration of the Municipality of Gostivar), no. 08/2013. Municiapality of Gostivar, 2013.

and one (1) for Macedonian-Turkish. During the interviews it was concluded that the current workforce responsible for translation/interpretation is sufficient for all translation/interpretation activities to be handled without considerable problems.

MUNICIPALITY OF CHAIR

The Municipality of Chair is one of the ten LSGUs based in the City of Skopje. With 64.733 inhabitants it is one of the biggest LSGUs in the City of Skopje by the number of the population. Several ethnic groups are based in the municipality - ethnic Albanians represent a majority of the population (57%), while ethnic Macedonians compose short than a quarter (24.13%). Ethnic Turks (6.95%), Romani (4.76%) and Bosniaks (4.55%) also form a considerable portion of the population as representatives of the "smaller" non-majority communities. This LSGU was firstly formed in 2005, following the 2004 territorial division of local governance. Because of its composition of population, the Municipality of Chair, has a legal obligation to provide official use of the Albanian language. However, since late 2013 the Municipality Council introduced the Turkish language as a third official language of the municipality.[23] With this Chair became one of the municipalities which use three official languages in official communication and another municipality where Turkish is introduced through a Council decision. The model employed is similar to the one in Gostivar, as official use of Turkish is introduced for all spheres, in equality with Macedonian and Albanian.

At the time of writing of this study, the implementation of the Turkish language as official in the Municipality of Chair has taken a slow start. Until now, only the inscription on the building of the municipality was made trilingual, as well as the seal and stamp of the municipality. The other spheres of language use are so far treated bilingually.

Currently, the municipality possesses equipment for simultaneous translation only for Macedonian and Albanian. Consecutive translation on the meetings of the Council committees is also provided on Macedonian and Albanian. Moreover, all documents related to the work of the Council are also published bilingually, as well as the Official Gazette and the Statute of the Municipality (in the form of a split-page). The web-site (www.cair.gov.mk) is currently available only on Albanian, however a link has been placed for a Macedonian version.

23 Unlike Gostivar and Kumanovo in regard to the introduction of the language of the "smaller" communities as official, the Municipality of Chair amended its Statute to introduce Turkish. This was done in two phases: 1) Initiated by the Mayor, the Council accepted the initiative for introduction of Turkish in a meeting on 26.09.2013; and 2) The Council adopted the *Decision* which also foresees statutory changes in a meeting on 10.10.2013. See: Official Gazette of the Municipality of Chair no. 14/2013, 03 October 2013 and Official Gazette of the Municipality of Chair no. 15/2013, 17 October 2013.

Written and oral communication between citizens and the organs and bodies of the Municipality of Chair is conducted bilingually – on both Macedonian and Albanian. Information of public character can be also requested and obtained on both languages.

Currently, the Municipality of Chair has four (4) employed translators/interpreters which perform the responsibilities of Macedonian-Albanian translation/interpretation. Two (2) of them are engaged only in translation/interpretation related to the work of the Council.

MUNICIPALITY OF STUDENICHANI

Studenichani is a small rural municipality in the northern part of Macedonia, predominantly inhabited by ethnic Albanian population. Out of total of 17.246 inhabitants, 68.38% are ethnic Albanians, while 19.05% are ethnic Turks. The third biggest community in the Municipality of Studenichani is the Bosnian community, composing 9.64% of the population. Because of this composition of the population, the municipality has an obligation to use Albanian as an official language of the LSGU. However, in 2013 the Municipality Council of Studenichani decided to introduce the Turkish language as a third official language.[24] Similarly as in the Municipality of Chair, the implementation of the Turkish language as official in the Municipality of Studenichani has taken a slow start. Currently, the inscriptions on the Municipality building are trilingual, and as the interviewed employee of the Municipality reported, oral communication between citizens and municipality organs is available in Turkish, beside Macedonian and Albanian. The employee also reported that information of public character can also be obtained on all three languages.

All other considered spheres of use of languages in the Municipality of Studenichani are treated bilingually. The Municipality possesses the necessary equipment for simultaneous translation of Council meetings (Macedonian-Albanian). All written Council documents are also available on the two languages.

The Official Gazette of the Municipality of Studenichani is published on Macedonian and Albanian in the form of a split-page. The Statute is also available in both languages. Announcements on the Municipal bulletin board are issued in Macedonian and Albanian. Most of the contents of the web-page of the Municipality of Studenichani (http://studenicani.gov.mk/) is published on Macedonian and Albanian.

24 This decision was adopted on 29 April 2013, See: Odluka, Turskiot jazik sluzhben jazik vo opshtina Studenichani (Decission, the Turkish Language Official in the Municipality of Studenichani), no. 07 – 337/03, 29 April 2013.

Written communication between citizens and the organs and bodies of the Municipality of Studenichani is also done on both Macedonian and Albanian, while oral communication can also be done in Turkish, upon request of the citizen.

As a small rural municipality with limited financial resources, Studenichani was not able until now to hire professional translators/interpreters. This means that all translation and interpretation activities are conducted by the already employed civil servants which are mostly bilingual, fluent in both Macedonian and Albanian. Practically, the civil servants draft the official documents in both languages as a part of their day-to-day responsibilities and obligations. The *Rulebook for systematization of job positions in the Municipal administration of the Municipality of Studenichani* (2012)[25] has envisaged one (1) job position for a Macedonian-Albanian translator, a post which is not yet filled.

MUNICIPALITY OF DOLNENI

Dolneni is also a small rural municipality, located in the western part of Macedonia, characterized by a high level of ethnic and linguistic diversity. In the municipality borders four larger (relative to the total population) ethnic groups reside. Out of total of 13.568 inhabitants, 35.90% are ethnic Macedonian, 26.65% are ethnic Albanian, 19.14% are of Turkish ethnic belonging and 17.54% are of Bosnian ethnicity. With such composition of the population the Albanian language has guaranteed official use, and the languages of the "smaller", Turkish and Bosniak, fall a bit short to fulfill the requirement. However, the Municipality Council of Dolneni in 2005 decided positively on the introduction of Turkish and Bosniak as official and with that become the only LSGU in Macedonia with four official languages (we saw before that Kumanovo uses four languages, but only in the work of the Council). The Municipality changed its Statute to provide official use of Turkish and Bosniak.[26] Based on the questionnaire that IDSCS received from the Municipality, as well as the interview with the official person, we found that the official use of Turkish and Bosniak is limited only to inscriptions on Municipality buildings. All other spheres of language use are predominantly bilingual, with some inconsistencies.

The meetings of the Municipality Council are conducted on Macedonian and Albanian, and the Municipality possesses the necessary equipment for simultaneous translation. Written documents

25 Pravilnik za sistematizacija na rabotnite mesta vo opshtinskata administracija na Opshtina Studenichani (Albanian: Rregullore për sistematizim të vendeve të punës në administratën komunale në Komunën e Studeniçanit; English: Rulebook for systematization of job positions in the Municipal administration of the Municipality of Studenichani), no. 08-649/1, 16 August 2012. Municiapality of Studenichani.

26 Odluka za izmeni I dopolnuvanja na Statutot na opshtina Dolneni (Decission on ammendments and supplements of the Statute of the Municipality of Dolneni), no. 07-713/2, 25 November 2005.

related to the work of the Council are also predominantly issued on both languages. The Official Gazette of the Municipality of Dolneni is published in Macedonian and Albanian in separate documents. Public announcements on the bulletin board are issued only in Macedonian. The web-page of the Municipality (http://www.opstinadolneni.gov.mk/) is available in Macedonian, Albanian and English.

Written communication between citizens and the organs and bodies of the Municipality of Dolneni is predominantly done in Macedonian, while oral communication can be conducted on both Macedonian and Albanian. Information of public character can be also requested and obtained in Macedonian and Albanian.

All translation and interpretation activities (Macedonian-Albanian) are conducted by one employee, who is a part of the Department for legal, social and public affairs (Одделение за правни, општествени и јавни дејности). In the *Rulebook for systematization of job positions in the Municipal administration of the Municipality of Dolneni* (2013) one job-position is envisaged for a Macedonian-Albanian translator[27].

KEY POINTS:

1. The City of Skopje and the Municipality of Gostivar seem to be most advanced in effective implementation of local language policies. The implementation of local language policies is most inconsistent in the resource-limited LSGUs, such are both Studenichani and Dolneni.

2. Kumanovo and Gostivar employ opposite models in regard to the "smaller" communities. Kumanovo's model in minimalistic and limits the use of the "smaller" languages only to the work of the Council. Gostivar's model is maximalist, and stipulates equality of use for the Turkish.

3. In Chair and Studenichani, a third language in official use has been recently introduced (Turkish) and implementation has taken a slow start.

4. Out of all six case studies only Studenichani does not have any employed translators/interpreters.

5. Same spheres of language use are differently implemented by LSGUs. For example, written translation of official documents may be conducted in the form of a split-page, consecutive translation or in separate unilingual publications. In a similar manner, implementation of official use of different languages varies within the same LSGU, even if formal equality is stipulated. Even the most advanced LSGU, Gostivar, has not been able to provide equal treatment for its three official languages.

27 Pravilnik za sistematizacija na rabotnite mesta vo opshtinskata administracija na Opshtina Dolneni (Rulebook for systematization of job positions in the Municipal administration of the Municipality of Dolneni), no. 01-1230/1, 11 September 2013.

V. CONCLUSIONS AND RECOMENDATIONS

The last section of this study summarizes the main conclusions (Cs) from the previous sections, and based on them, offers recommendations (Rs) for various policy stakeholders at national and local level with a goal to support more effective implementation of local language policies. Cs and Rs are given in five separate thematic areas. In general, this study advocates for more inclusive and thoughtful decision making at the local level (this can be somewhat influenced by a more systematical legal framework), more and better information for the users of local language policies (the citizens), certain reorganization of translation/interpretation activities in the more advanced LSGUs and better tracking of implementation, more support and assistance by the central government towards the small and resource-limited LSGUs, as well as better monitoring and strategic planning of the process at the central level.

DECISION-MAKING ON LOCAL LANGUAGE POLICY

C1: The legal framework for official use of non-majority languages and language policy is in place by virtue of constitutional Amendment V to Article 7 and through the so-called "Law on Languages" from 2008. However, the legal framework fails to precisely identify all spheres of use of languages at the local level. This creates a certain uncertainty for policy and decision makers at the local level when designing language policies. At the same time, this uncertainty opens the way for LSGUs to design language policies according to the specific context and needs. The cases of Kumanovo and Gostivar in regard to official use of the language of the "smaller" non-majority communities demonstrate that different models can be indeed employed by LSGUs.

R1: There is a need to define what represents official use of a language of a non-majority community more precisely in the legal framework or through additional documents without creating barriers for the LSGUs to introduce a model suitable for their context and the needs within a particular LSGU.

C2: 8 LSGUs have made alterations to their language policies by introducing the languages of the "smaller" non-majority communities in official use through decision of Municipality Councils. The decisions vaguely contain the main contours of language policy and most often only introduce a particular language without a specific definition of the spheres of use for that language. This effects implementation on the ground.

R2: When deciding, the Councils need to give more precise provisions of the spheres of use of the introduced language in official use. The decision of the Municipality Council of Gostivar represents a positive example in this respect.

R3: When deciding, the Councils need to engage into a broader consultation process, thus including the needs and opinions of all stakeholder communities. The Committees for Inter-community Relations (CICRs) need to be included more decisively in the decision-making process regarding language policy. CICRs could facilitate a wider consultation process at the local level.

MORE INFORMATION ON LOCAL LANGUAGE POLICIES AND THE RIGHTS OF LANGUAGE USE

C3: Local language policies have important consequences. Currently, 832.184 Macedonian citizens live under a multilingual language-use regime, i.e. in LSGUs which have more than one language in official communication (the City of Skopje is excluded from the calculation). 31 of 81 LSGUs (including the City of Skopje) use more than one language in official communication. In regard to this out-reach, citizens living in this LSGUs are not informed on the benefits and constraints of multilingual local language policies.

R4: Citizens living in this LSGUs and especially those citizens from non-majority background need to be informed on the specifics of the language policy of the LSGU. The LSGUs should organize this process by themselves.

TIPS AND ASSISTANCE FOR ADVANCED LSGUS

C4: None of the surveyed LSGUs have a specific budget line in their budgets that covers the implementation of local language policies. This makes it really hard to calculate the expenditure caused by local language policies, and information on the expenditure is very important to design effective policies.

R5: LSGUs need to start to introduce specific budget lines in their budget and to track expenditure caused by local language policies in order to have a precise overview of the resources spent and needed to effectively implement the official use of non-majority languages.

C5: None of the considered LSGUs have a special translation/interpretation unit in their administration. Such a unit could considerably raise the effectiveness in implementation of local language policies.

R6: In LSGUs where the workload of translation/interpretation is bigger, LSGUs should form specific units that would cover all activities related language policies. This will raise the effectiveness of the delivery of services towards end-users from non-majority ethnic background.

C6: In some LSGUs there is a lack of professional staff for translation/interpretation activities.

R7: LSGUs need to precisely project the staff needed for implementation of local language policies and to fulfill their translation/interpretation posts accordingly.

R8: Existing staff working on translation/interpretation in the LSGUs need to be properly trained. Trainings should be organized, either in the framework of SIOFA or ZELS, or at another appropriate body at the national level.

ASSISTANCE FOR SMALLER, RESOURCE-LIMITED LSGUS

C7: Some of the LSGUs, predominantly those that are small and/or rural have quite limited financial resources and are disadvantaged to comprehensively implement local language policies.

R9: These LSGUs need to be financially supported to effectively deliver local language policies. Financial means should be allocated from the state budget. With this the central government will substantially support multilingual language policy and this, will show determination to raise the effectiveness of the process.

R10: Smaller and resource-limited LSGUs could be supported in the implementation of local language policies by centralizing (regionalizing) translation/interpretation activities. Rather than hiring specific translators/interpreters, separate bodies could be formed on a regional basis that could give translation/interpretation services to several geographically close LSGUs at the same time. This type of regional bodies will best function if financed by the state budget. They would hire translators/interpreters which would assist LSGUs in implementation of local language policies.

MONITORING OF THE IMPLEMENTATION OF LOCAL LANGUAGE POLICIES AND STRATEGIC PLANNING AT THE CENTRAL LEVEL

C8: At the moment, the Unit for monitoring of the processes of education, culture and use of languages in the framework of the Secretariat for Implementation of the Ohrid Framework Agreement (SIOFA)

is still not completely equipped with staff and is still not properly functioning, even though it was established in 2012. In such situation, monitoring of the implementation of Constitutional Amendment V is neglected, i.e. there is no specific body which monitors implementation of local language policies.

R11: The central Government must make sure that the Unit for monitoring of the processes of education, culture and use of languages is equipped with staff as soon as possible and that it is made functional. The leading role in monitoring processes of language policies (not just at the local level) should be undertaken by this body.

C9: There is a lack of strategic planning regarding implementation of the state language policy which needs to be filled. Moreover, comprehensive analysis of the main problems and challenges of implementation of local language policies is also needed. An Action Plan drafted in the period 2010-2012 is still not adopted.

R12: A specific Strategy and Action Plan for effective implementation of local language policies should be adopted. Consultations with ZELS and the LSGUs must be conducted regarding the Action Plan. The plan should address all main problems and should be based on a thoughtful research and analysis of the problems and challenges. The Strategy should be further supported through allocation of resources from the state budget in order to achieve the projected ends.

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The Institute for Democracy "Societas Civilis" Skopje (IDSCS) is a Macedonian based think - tank organisation that is non-governmental, non-partisan and non-profit. It was established in 1999 by a group of intellectuals gathered around the idea for democracy, solidarity and civil society. Long term objectives of the Institute are to work on balanced socio economic development, active citizen engagement and participative political culture. In this direction, we focus our activities on rule of law, good governance and multiethnic and multicultural coexistence. IDSCS work is primarily based on sociometric research and project-based activities. We believe that human capital is a key precondition for positive social change, hence we eagerly undertake capacity building projects based on skills and knowledge transfer. Finally, ours society improvement is directly linked to availability of resources for self-reflection. In this sense, we advocate policy recommendations and strive to enrich the public discourse through promotion of evidence based policy, publishing and public events.

RESTRICTED OPPORTUNITIES, CHOICE OR IMPOSITION: INCLUSION OF ROMA CHILDREN IN "SPECIAL" SCHOOLS

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Skopje, September 2014

EXECUTIVE SUMMARY

In this paper we analyse the problem and the reasons for the inclusion of Roma children in schools for children with disabilities in their development a so-called “special schools”. Problem that although three years is been elaborated, yet institutionally not resolved, particularly as procedures for enrolment in special schools and their categorization is made according to an old regulation adopted in 2000, which has certain drawbacks.

Although the adoption of new Rulebook was announced since 2012 by the Ministry of Labour and Social Policy, it has not happened yet. One of the most important things in this process is that healthy Roma children are not classified as children with special needs and hence been enrolled in special schools. This practice leaves lifelong consequences for children, especially that the categorization is done only once, and re-categorization almost does not exist in practice. It is particularly important to prevent abuse of the system for education of children in special primary and secondary schools by both parents and institutions, where the only damage is inflicted on children.

The problem with enrolment of Roma children in special schools is still a “taboo” topic amongst institutions and Roma families. Therefore this analysis is aiming to further assist for better understanding of the issue, to encourage institutions to rethink about adopting a new Rulebook for assessment of the specific needs of people with physical and mental disabilities, improve the practical implementation of the policy, improve inter-ministerial coordination of local cooperation and assistance and work with parents of children labelled as “special” in order to strengthen parental care and improve the social inclusion of children.

Children with difficulties in development have a wide range of rights and benefits that they can enjoy. Mainly the motivation of the parents for enrolling their children in special schools is the monthly fee that is paid to the family by the Centre for Social Work, free daily meal and free transportation from home to school. Such benefits are sufficient to be recognised as a source of subsistence by families from the Roma community who are the most marginalized and live on the edge of poverty.

Solving the problem requires multi-disciplinarian measures and intense inter-ministerial cooperation between state institutions at the local level.

In the past three years in the period between 2010 and 2013 many relevant institutions conducted researches to examine the situation of Roma children in special schools who emerged with comprehensive recommendations. Especially significant are the findings of the Ombudsman (reports of 2010 and 2013) and the European Roma Rights Center (report of 2012) that are comprehensive and their achievement would overcome the negative situation.
For many of the identified recommendations almost no measures were taken, and the situation of children involved in special schools remains the same.

Based on the analysis of current and previously issued documents related to this area can be concluded that in practice, the institutions do not make distinction between educationally neglected children and children with special needs. The language barrier is a huge obstacle for the inclusion of children in mainstream education. Further it is even greater obstacle in the process of categorization because the overall testing is conducted in Macedonian language. Monitoring the situation of children and the preparation of appropriate statistical analysis is difficult because data by ethnicity are not collected. It is necessary for institutions to establish mechanisms to monitor and support these children, and very few activities are implemented to follow their further development. Mostly this is due to lack of staff in the Centres for Social Work. It has been expected that most of the gaps in the process of categorization will be overcome with the adoption of new Rulebook for categorization. However, although announced two years ago, the new rulebook has not been adopted.

For comprehensive overcoming of the situation it is necessary that measures are undertaken for implementation of the recommendations identified by the Ombudsman reports in February 2010 and December 2013 as well as the recommendations made by the European Centre for Roma Rights in its report of 2012.

RECOMMENDATIONS

This analysis complements on the previously identified recommendations and identifies additional improvements that are needed in order to achieve better quality in the categorization of children and to prevent possible abuse, such as:

- **Improving the legal regulations through:** 1) Immediate adoption of a new Rulebook for assessment of the specific needs of children with physical or mental disabilities; 2) The rulebook particularly to emphasise establishment of second instance body that would review the first instance findings; 3) Include appropriate regulations to monitor the development of children after completion of categorization; 4) Given that in the case of Roma children, more often is a case of educationally neglected children (antisocial), this category of children to be taken into account in the process of categorization; and 5) For better statistical monitoring of the issue, the relevant templates and forms in the Centres for social work and the special schools to include field for the ethnicity of the children.

- **Eliminating language barriers through:** 1) Interviews for enrollment in special schools to be conducted in Roma language; 2) In cases where children are referred from regular to special schools, the tests to assess the capacity of children to be conducted in a language understood by children or during the tests a representative of the ethnic community of the children who speaks language understood by the child to be present; 3) The interview and test in the process of categorization of the children to be implemented in a language understood by children (Roma, Turkish, etc.). Herewith to be considered the

possibility of inclusion of Roma health mediators who operate under the Ministry of Health; 4) The standardized questionnaires for categorization of children to be translated into languages understandable to children.

- **Improving the practical implementation of the regulations for school enrolment and categorization of children through:** 1) Active engagement of the Centres for social work in the assessment and work with Roma children before referral is made for categorization; 2) To ensure appropriate application of the mechanism for re-categorization for timely re-categorization of the identified children in need for their possible transfer to regular schools; 3) Ministry of Labour and Social Welfare to take measures to overcome the lack of human capacity in the Centres for social work through employment or hiring additional qualified personnel or through cooperation with civil society organizations specialized in the field.

- **Resolving the dilemma of whether the child is with disability or educationally neglected through:** 1) Centres for Social Work should take appropriate measures to identify children and to assess whether in the certain cases the child is educationally neglected or child with special physical or mental disability; 2) Fot the identified educationally neglected children, the Centres for social work are required to maintain individual records and files; 3) Strengthening the role of psychologists from the Centres for Social Work to conduct initial assessment of the child and to monitor their development;

- **Enhancing cooperation with Roma parents through:** 1) Inclusion of civil society in working with parents; 2) To consider, in cooperation with the civil sector to create community centres that would work with Roma parents, especially mothers to strengthen their capacity to better care for children; 3) Inclusion of Roma health mediators to assist in the cooperation of institutions with the parents;

- **Enhance cooperation at the local level and establishing operational measures through:** 1) the Ministry of Labour and Social Policy, the Ministry of Education and Ministry of Health to sign documents (memoranda or protocols)

for inter-sectorial collaboration at the local level in order to establish a mechanism cooperation between special schools, mainstream schools, centres for social work and health care institutions. 2) To consider adopting of individual approach in the work with children. It is recommended to establish working groups at the local level with representatives from all participating institutions would will review every case identified by the Centre for Social Work or the special school.

In order to determine the actual number of children with special needs and eliminating possible abuse in schools in Stip and Veles where the Ombudsman again concluded high number of Roma, the Ministry of Labour and Social Policy and the Ministry of Education and Science to examine the files maintained in Centres for social work and in the special primary and secondary schools.

ПРЕДГОВОР

Здружението на граѓани за поддршка на маргинализирани групи "Ромски Ресурсен Центар" (РРЦ) ја изготви оваа анализа врз основа на досегашното свое четири годишно искуство во областа на истражување на причините за големиот број на запишани Роми во посебните училишта за деца со посебни потреби т.н. „специјални училишта"како и врз основа на квалитативното истражување спроведено во 2014 година. Истражувањето беше поддржано од страна на Балканската мрежа за развој на граѓанското општество (БМРГО)[1].

РРЦ кон крајот на 2010 година се приклучи во циклусот на градење на капацитетите на организации за застапување, спроведуван од Националниот Демократски Институт во Република Македонија (НДИ)[2]. РРЦ аплицираше за градење на организациските капацитети со цел да се стекнат вештини и знаења за ефективно застапување за прашањето. Со помош на НДИ, РРЦ во соработка со здружението на граѓани Сумнал од Скопје почна да спроведува активности за застапување за прашањето.

На 14 и 15 мај 2012 година РРЦ присуствуваше на јавната расправа на тема "Имплементација на Стратегијата за Ромите во Република Македонија" организирана од страна на Комисијата за труд и социјална политика во Собранието на Република Македонија. Проблемот за застапеноста на децата Роми во специјалните училишта беше презентиран пред сите членови на Комисијата, која што на својата 23та седница одржана на 26 јуни 2012 го усвои заклучокот кој што гласи: *„Комисијата ќе ги испита постоечките прописи кои го регулираат прашањето за застапеноста на децата Роми во образовните установи за деца со посебни потреби, нивната имплементација, како и тоа дали се потребни одредени законски промени."*

Во ноември 2013 година, РРЦ доби грант од страна на БМРГО за спроведување на квалитативно истражување и изготвување на анализа за прашањето. Истражувањето имаше за цел да ги поткрепи или да се спротивстави на досегашните информации и наоди на РРЦ и другите организации и институции во однос на прашањето. Со истражувањето се направи обид да се пробие дебелиот слој

1 За повеќе информации види http://www.balkancsd.net

2 За повеќе информации види https://www.ndi.org/macedonia

на табу околу оваа тема, вклучувајќи ги родителите и институциите надлежни за спроведување/мониторирање на целокупниот процес.

Во почетокот на 2014 година, Народниот правобранител на Република Македонија го објави своето истражување за состојбата на децата Роми во специјалните училишта кон кое се надополнува и оваа анализа.
Овој труд претставува синтеза на досегашните достапни информации објавени од страна на многу владини институции и невладини (домашни и странски) организации како и на информации од терен собрани со помош на квалитативното истражување на РРЦ.

Потребата од ваква анализа се наметна поради исклучителната важност за подобро разбирање на состојбата, причините за запишувањето на децата во посебни училишта, како и промена и подобрување на постоечкиот систем за проценка и категоризација на деца со цел превенција за нивно вклучување во "специјални" училишта.

Иако правната материја на прашањето е регулирана и има одредени недостатоци, анализата покрај останатите области се фокусира на имплементацијата на на законските и под-законските акти во Република Македонија во оваа област. Сметаме дека оваа анализа ќе помогне на институциите и на останатите клучни актери вклучени во прашањето во креирањето на подобри и поквалитетни јавни политики за надминување на овој проблем.

ИЗВРШНО РЕЗИМЕ

Во овој труд се анализира проблемот и причините за вклученоста на децата Роми во посебни училишта за деца со потешкотии во развојот т.н. "специјални училишта". Проблем кој што иако веќе три години се елаборира, сеуште институционално не е решен, особено што сеуште процедурите за запишување на деца во посебни училишта и нивна категоризација се врши според стар правилник усвоен во 2000 година кој има одредени недостатоци.

Иако донесување на нов Правилник беше најавено уште во 2012 година од страна на Министерството за труд и социјална политика, тоа сеуште се нема случено. Една од најважните работи во овој процес е здравите Ромски деца да не се бесправно категоризираат како деца со посебни потреби и со самото тоа да се запишуваат во посебни училишта. Ваквата пракса остава доживотни последици кај децата, особено што категоризација се врши само еднаш, а ре-категоризација скоро и да не постои во практика. Особено е важно да се спречи злоупотребата на системот за образование на деца во посебни основни и средни училишта како од родителите така и од институциите, при што единствената штета се нанесува на децата.

Проблемот со запишување на деца Роми во посебни училишта сеуште е "табу" тема како помеѓу институциите така и помеѓу ромските семејства. Од тие причини понатамошната анализа е со цел да се помогне за подобро разбирање на прашањето, да се поттикнат институциите на размислување за донесување на нов правилник за оцена на специфичните потреби на лицата со пречки во физичкиот или психичкиот развој, подобрување на практичната имплементација на правилникот, подобрување на меѓуресорната соработка на локално ниво како и помагање и работа со родителите на децата одбечежани како посебни деца со цел да се зајакне родителската грижа и подобрување на социјалната вклученост на децата.

Децата со потешкотии во развојот имаат широка лепеза на права и бенефиции кои можат да ги уживаат. Така, најчесто мотивацијата на родителите Роми за запишување на децата во посебните училишта е месечниот надомест што го исплаќа Центарот за социјална работа, бесплатниот дневен оброк како и бесплатниот превоз од дома до училиште. Ваквите бенефиции се доволни за да бидат согледани како извор на егзистенција од страна на семејствата од ромската заедница кои се најмаргинализирани и живеат на работ на сиромаштијата.

Решавањето на проблемот подразбира мултидисциплински мерки и интензивна меѓуресорска соработка помеѓу државните институции на локално ниво.

Во изминатите три години во периодот од 2010 - 2013 година многу релеватнтни институции извршија истражувања за испитување на состојбата со децата Роми во специјалните училишта од кои истражувања произлегоа и сеопфатни препораки. Особено значајни се наодите на Народниот правобранител (извештаи од 2010 и 2013 година) и Европскиот Центар за Правата на Ромите (извештај од 2012 година) кои се сеопфатни и со нивна помош би се надминала негативната состојба.

За многу од идентификуваните препораки речиси и не се превземени активности, при што состојбата со децата вклучени во посебните училишта останува иста.

Врз основа на досегашната анализа како и претходно издадените документи поврзани со оваа област може да се заклучи дека во практиката, институциите не прават дистинкција помеѓу воспитно запуштени деца и деца со посебни потреби. Јазичната бариера претставува огромна пречка за вклучување на децата во редовното образование. Дополнително е уште поголема пречка во процесот на категоризација бидејќи целокупното тестирање се одвива на македонски јазик. Следењето на состојбите на децата и изготвувањето на соодветни статистички анализи е отежнато бидејќи не се собираат податоци за етничка припадност. Неопходно е за институциите да воспостават механизам за следење и поддршка на овие деца при што многу малку активности се имплементираат за следење на нивниот понатамошен развој. Најчесто тоа се должи на недостатокот на кадар во Центрите за социјална работа. Се очекува дека најголемиот број на празнини во процесот на категоризација ќе се надминат со усвојувањето на новиот правилник за категоризација. Сепак, иако најавен уште пред две години, новиот правилник сеуште не е донесен.

За сеопфатно надминување на состојбата неопходно е превземањето на мерки за имплементирање на препораките идентификувани од страна на Народниот Правобранител во извештаите од февруари 2010 и декември 2013 година како и препораките дадени од страна на Европскиот Центар за Правата на Ромите во својот извештај од 2012 година,

Оваа анализа се надополнува на претходно идентификуваните препораки и идентификува дополнителни подобрувања кои се потребни за да се постигне подобар квалитет во категоризацијата на децата и да се спречи можна злоупотреба, како што се:

- **Подобрување на правните прописи кои ја регулираат материјата преку:** 1) Итно донесување на нов правилник за проценка специфичните потреби на децата со пречки во физичкиот или психичкиот развој; 2) Во правилникот особено да се обрати внимание за воспоставување на двостепена комисија која би ги разгледувала издадените првостепени наоди; 3) Да се вклучат соодветни прописи за следење на развојот на децата после извршената категоризација; 4) Со оглед дека во случајот со децата Роми, најчето се работи за воспитно запуштени деца (асоцијални), оваа категорија на деца да се земе во предвид во процесот на категоризација. и 5) За подобро статистичко следење на прашањето, релевантните обрасци во Центрите за социјална работа и во посебните училишта да вклучат етничка припадност на децата.

- **Елиминирање на јазичната бариера преку:** 1) Интервјуата за запишување на деца во посебни училишта да се одвиваат на Ромски јазик; 2) Во случаите каде што децата се препраќаат од редовни во посебни училишта тестовите за проценка на капацитетите на децата да се одвиваат на јазик разбирлив за децата или пак за време на тестовите да присуствува претставник од етничката заедница на детето кој што збори на јазик разбирлив за детето; 3) Интервјуто и тестирањето при процесот на категоризација на децата да се спроведува на јазик разбирлив за децата (Ромски, Турски итн.). Да се разгледа и можноста за вклучување на Ромските Здравствени Медијатори кои оперираат во рамки на Министерството за Здравство; и 4) Стандардизираните прашалници за категоризација на децата да се преведат на јазиците разбирливи за децата.

- **Подобрување на практичната имплементација на прописите за запишување и категоризација на децата преку:** 1) Поактивно вклучување на центрите за социјална работа во проценката и работата со децата Роми, пред упатување на категоризација; 2) Да се обезбеди соодветна примена на механизмот за ре-категоризација за навремено ре-категоризирање на идентификуваните деца кај кои има потреба со цел нивно можно префрлување во редовни училишта; и 3) Министерството за труд и социјална работа да превземе мерки за надминување на недостатокот на човечките капацитети во Центрите за социјална работа преку вработување или ангажирање на дополнителен стручен кадар или преку соработка со граѓански здруженија специјализирани во областа.

- **Разрешување на дилемата дали станува збор за деца со вистински пречки во развој или пак за воспитно запуштени преку:** 1) Центрите за социјална работа треба да превземат соодветни мерки за идентификација на децата и да вршат проценка дали во одредените случаи станува збор за воспитно запуштени деца или за деца со пречки во физичкиот или психичкиот равој; 2) За идентификуваните воспитно запуштени деца, Центрите за социјална работа потребно е да изготвуваат индивидуални досиеа за децата; 3) Зајакнување на улогата на психолозите од Центрите за социјална работа да вршат следење на децата и да направат првична проценка на детето;

- **Подобрување на соработката со родителите роми преку:** 1) Вклучување на граѓанскиот сектор во работата со родителите; 2) Да се разгледа можноста во соработка со граѓанскиот сектор да се отворат центри за подршка во заедницата кои би работеле со родителите Роми, особено со мајките за јакнење на нивните капацитети за подобра грижа за децата; 3) Вклучување на Ромски здравствени медијатори во соработката со родителите;

- **Подобрување на соработката на локално ниво и воспоставување на оперативни мерки преку:** 1) Министерството за труд и социјална политика, Министерството за образование и Министерството за здравство да потпишаат документи (меморандуми или протоколи) за меѓусекторска соработка на локално ниво со цел да се воспостави механизам за соработка помеѓу посебните училишта, редовните училишта, центрите за социјална работа и здравствените институции. 2) Да се разгледа можноста за усвојување на индивидуалниот пристап за работа со децата. Се препорачува воспоставување на работни тела на локално ниво со претставници од сите вклучени институции кои би го разгледувале секој случај идентификуван од страна на Центарот за социјална работа или пак посебното училиште.

За утврдување на вистинскиот број на деца со посебни потреби и елиминирање на евентуална злоупотреба во училиштата во Штип и Велес каде што Народниот правобранител повторно констатирал голем број на Роми, Министерството за труд и социјална политика и Министерството за Образование и наука да направи увид во предметите во Центрите за социјална работа и во посебните основни и средни училишта.

1. ВОВЕД

Во последните осум години (2005-2013) може да се забележи дека има видливи подобрувања во вкупниот опфат на ромските деца и млади во образовниот систем во Република Македонија. Анализата на УНДП сведочи дека бројот на деца опфатени во предшколско образование пораснал од 1,5% на 4%, има пораст од 0,84% на бројот на деца со завршено основно образование (во учебната година 2011/12 во споредба со 2006/07), пораст од 27,5% на бројот на запишани Роми во средно образование и пораст на бројот на ромските ученички од 29,5% (во учебната година 2011/12 во споредба со 2006/07).[3]

Во однос на децата Роми запишани во посебни училишта (специјално образование) се бележи намалување, при што вкупниот број на деца за 2013 година бил 570, што е за 155 деца помалку отколку во 2010 година кога бројот на деца изнеувал 725, односно бројот на деца Роми е намален од 34,06% на 24,56%.[4] Сепак, сеуште бројот на деца Роми вклучени во специјалните училишта е голем. Особено голем е бројот на ромските ученици во ДСУ„Искра“ - Штип 41,17%, ДСУ „Св.Наум Охридски“ - Скопје 35,94%, во ПОУ„ Маца Ѓорѓиева Овчарова“ - Велес 32,81%, во ПОУ „Д-р.Златан Сремец“ 16.67% и во ПОУ„Иднина“ 7,62%. Најмалку Роми има запишано во ПОУ„Св.Климент Охридски“ Ново Село, каде има само еден ученик Ром.[5]

Според регионалното истражување на УНДП, Светска банка и Европска комисија, севкупната стапка на запишување во претшколско образование (деца на возраст од 3 до 6 години) е генерално ниска, но таа е многу пониска меѓу Ромите (16%) за разлика од не-Ромите (25%). Само 73% од девојчињата Ромки во Македонија во 2011 година се запишале во основно образование, споредено со 87% на девојчињата не-Ромки. Според истото истражување, 70% од жените и девојчињата Ромки на возраст од 15 до 64 години се невработени споредено со 35% меѓу девојчињата и жените не-Ромки.[6]

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3 Геровска-Митев, М.*Преглед на оствареният напредок при спроведувањето на Националната стратегија за интеграција на Ромите и на напредокот во социо-економскиот стандард на Ромите*. Програма за развој на Обединетите нации – УНДП, канцеларија во Скопје (цитирано од Министерство за труд и социјална политика, Стратегија за Ромите во Република Македонија 2014 – 2020, стр.65).

4 Народен Правобранител на Република Македонија (2013).

5 Ibid.

6 Регионална анкета за Ромите на УНДП/СБ/ЕК од 2011 Европски Центар за Правата на Ромите (2013). *Македонија: Извештај за состојбите 2011-2012*.

Најголемиот број на Роми во Македонија сеуште се соочуваат со низок степен на образование кој е еден од најважните фактори кои придонесуваат за зголемена сиромаштија. Причини за тоа се лошата економско – социјална состојба на голем дел на ромските семејства, голем процент на незапишани деца во предучилишното образование како значаен момент за социјализација и инклузија во образовниот систем, недоволното познавање на македонскиот јазик што доведува до неможност за нормално следење на наставата, непостоењето на соодветни домашни услови за учење поради несоодветното решение за домување на поголем дел од ромското население како и отсуството на свеста за значењето на образованието во ромските средини, особено на родителите (Министерство за труд и социјална политика, 2011).

Според законот за основно образование и Законот за средно обравоание, децата Роми се вклучени во редовни училишта и паралелки. Не постојат посебни училишта за Роми. Постоечките посебни училишта ги вклучуваат сите деца, Роми и не-Роми со физички или ментални пречки во развојот.

Поради лошата економска состојба, Ромите се принудени на секаков начин да изнајдат извор за егзистенција, при што родителите неретко се одлучуваат и за запишување на своите деца во посебни училишта (специјално образование) со цел да остварат одредени бенефиции.[7]

Проблемот на лицата со пречки во присхичкиот или физичкиот развој е пред се социјален и културолошки проблем, а не медицински. Третманот на овие лица треба да биде насочен кон нивните потенцијали и можности, нивниот однос со околината, а не кон нивната попреченост. Овие лица имаат специфични и комплексни потреби кои можат да се задоволат преку добивање на услуги од многубројни институции, организации и сектори на општественото делување.

Оваа анализа има за цел да се осврне на причините за големата застапеност на децата Роми во посебни училишта како што се: ставови на стручниот кадар за проблемот, капацитетите на децата Роми во однос на нивната вклученост во посебните училипта како и соработката помеѓу клучните засегнати страни (стручен кадар, родители) со цел подобрување на состојбата.

Дополнително, анализата се обидува да даде одговор и насока на надлежните институции со цел поефективно справување со проблемот во насока на идентификување на деца кои се бесправно запишани во посебно училиште, донесување на мерки за соодветна проценка на децата и

7 Интервју на РРЦ во Штип, социјален работник, август 2014.

изготовка на програми и мерки за подобра социјализација и интеграција во социјалната средина и општеството.

1.1. МЕТОДОЛОГИЈА

Анализата вклучува квалитативна методологија на истражување. Собирањето на податоци вклучува анализа на примарни извори (интервјуа со претставници на институции и фокус групи со Роми родители и деца) и секундарни извори како што се извештаи од домашни и странски невладини организации и владини институции како и текстови објавени во медимумите. Во однос на квантитативните податоци се користеа веќе спроведените истражувања од страна на Народниот правобранител на република Македонија (2010 и 2013 година), и истражувањата на Европскиот Центар за правата на Ромите во 2011 година (со Македонскиот Хелсиншки Комитет) и 2012 година (со Националниот Ромски Центар од Македонија). Со цел да се разбере подобро прашањето, направена е и кратка анализа на правната рамка на прописите кои ја регулираат категоризацијата на децата за запишување во посебни училишта како и правата и бенефициите на децата со посебни потреби.

Анализата се фокусира на најважните постоечки информации од терен, вклучувајќи преглед на состојбата, импементацијата на системот за посебно образование во пракса (запишување на деца Роми во училиштата како и нивна категоризација) како и ставовите на директно засегнатите лица, Ромските семејства и нивните деца. Овие информации се собрани преку интервјуа со социјални работници, дефектолози, наставници, вработени во Агенцијата за вработување, родители и деца. Со интервјуата беа опфатени градовите Скопје и Штип.

2. АНАЛИЗА НА СОСТОЈБАТА СО ВКЛУЧЕНОСТА НА ДЕЦАТА РОМИ ВО ПОСЕБНИ УЧИЛИШТА, ПРЕГЛЕД И ФАКТИ

2.1. ИСТОРИСКИ, ОПШТЕСТВЕН И ЕКОНОМСКИ КОНТЕКСТ НА ПРОБЛЕМОТ

Прашањето за сегрегација на децата Роми во специјалните училишта во Македонија потекнува уште пред 2006 година кога неколку меѓународни организации објавија споредбени анализи за состојбата по ова прашање во земјите низ Балканот (РЕФ, 2004).

Ромите во процесот на образование се соочуваат со два типа на пречки и тоа од *областа на сиромаштијата* во која спаѓаат: а) невидливи трошоци за школување не се достапни за ромски семејства; б) недостаток на родителска писменост за поддршка на образованието; в) родителска невработеност, како и *социјални и културни пречки* во кои спаѓаат јазичните бариери; б) стравот од дискриминацијата во училиштата и в) недостаток на претходни вештини.

Ромите кои што посетуваат училиште најчесто страдаат од три различни форми на физичка сегрегација од кои секоја од нив го ограничува квалитето на нивното образование. Прво, Ромите често живеат во групи и посетуваат локални училишта во екстремно рурални средини или во урбани сиромашни квартови. Овие области имаат посиромашни објекти и помал квалитет на наставнички кадар во споредба со другите македонски училишта (ФОО, 2007). Децата Роми вклучени во редовните училишта најчесто се издвојуваат во задниот дел на училницата или пак во други класови само за Роми. Конечно, најекстремната сегрегација се случува кога децата Роми се влеваат во "специјални училишта за ментално хендикепираните (ФОО, 2007). Ромската заедница во Македонија страда од недостаток на запишување и завршување на сите нивоа на образование.

Истражувањето на Европскиот Центар за Правата на Ромите[8] (во понатамошниот текст: ЕЦПР) од 2012 година, открива дека многу родители се подготвени да ги испратат своите деца во специјални училишта, а за таквата одлука се наведени различни причини: од финансиски причини и

8 види http://www.errc.org

придобивки од посетувањето специјални училишта, до дискриминација и насилство во редовните училишта од страна на не-Ромите и поголеми можности за наоѓање работа во индустрискиот сектор, бидејќи работодавците плаќаат помали даноци и добиваат владини субвенции кога вработуваат лица со попреченост.

Процентот на Роми во посебно образование е многу поголем од процентот на Ромите во вкупното население во земјата, ситуација која што укажува на сериозни пречки во постапката за запишување и во дистрибуцијата на социјални бенефиции и помош на семејствата. Учениците во училиштата за деца со посебни потреби добиваат одредени бенефиции, како и бесплатни оброци и училишен прибор за децата и социјалната помош за семејства. Ова делува како поттик за сиромашните Роми да го прифатат упатувањето што нивните деца го добиле кога нивните наставници сакале да избегнат справување со нив во редовната настава (РЕФ, 2007).[9]

Во периодот од 2010 до 2012 година, прашањето повторно се актуелизираше како резултат на реакциите од страна на медиумите, неколку домашни и странски невладини организации како и извештајот на Европската комисија против расизам и нетолеранција од 2010 година. После овие реакции, следуваше извештајот на Народниот правобранител на Република Македонија од февруари 2010 година според кој 34,06% од деца вклучени во училиштата со посебни потреби се ромски деца. Извештајот посочува дека во ПОУ „Д-р Златан Сремац“ од Скопје, како централно училиште заедно со подрачните паралелки што се отворени во повеќе населби, вкупно биле запишани 165 ученици од кои 86 биле од ромската заедница, што претставува повеќе од 50%. Исто така, во ПОУ„Иднина“ - Скопје заедно со подрачните паралелки, запишани се вкупно 253 ученици, од кои 93 се од ромската заедница, што исто така е доста висок процент во однос на другите заедници што живеат во Република Македонија.[10]

На почетокот на 2011 година, ЕЦПР и Македонскиот хелсиншки комитет за човекови права направија истражување на оваа тема во сите специјални училишта и во редовните основни училишта со специјални класови, барајќи информации за вкупниот број деца кои ги посетуваат овие училишта, десегрегирани според етничка припадност, и информации за постапките за распоредување на

9 Ромски Образовен Фонд (2007). *Advancing Education of Roma in Macedonia*.

10 Информација на Народниот правобранител за неговите посети на специјалните основни училишта„Златан Сремац“ и „Иднина“ – Скопје, „Св. Климент Охридски“ – Ново Село и јавното средно училиште за едукација и рехабилитација „Св. Наум Охридски“ – Скопје и „Искра“ – Штип. Достапно на http://ombudsman.mk/upload/documents/Informacija-deca-2010.doc

учениците во овие училишта. Истражувањето ја потврди преголемата застапеност на ромските деца во специјалното образование, при што ромските деца претставувале 42,5% од севкупната ученичка популација во специјалните училишта и 52% од севкупната ученичка популација во класовите за деца со посебни образовни потреби во редовните основни училишта, што претставува многу поголемо учество од нивниот удел во севкупното население.[11]

2.2. СЕГАШНА СОСТОЈБА: ВКЛУЧЕНОСТА НА ДЕЦАТА РОМИ ВО ПОСЕБНИ УЧИЛИШТА И ФУНКЦИОНАЛНОСТ НА СИСТЕМОТ

Во учебната 2013/14 година, во Република Македонија имало 44 посебни основни училишта и 4 специјални средни училишта наменети за деца со пречки во развојот и со други посебни потреби. Во овие училишта настава посетувале 787 деца во основно образование и 285 ученици во средното образование.[12]

На 28 јуни 2012 година, Министерството за труд и социјална политика, Министерството за образование и наука и Министерството за здравство организираа заедничка прес конференција за подобрување на работата на комисиите за категоризација на децата со пречки во развојот. Во таа прилика, Министерот за труд и социјална политика, Спиро Ристовски, изјави дека се откриени десетици случаи на здрави деца кои се испраќаат во специјалните училишта, алудирајќи дека родителите ги советуваат своите деца „да глумат дека се хендикепирани" за да бидат сместени во специјалното образование и да добиваат бенефиции и објави дека министерството ќе ги ревидира сите релевантни случаи. Тој изјави дека овие деца доаѓаат од маргинализирани семејства и најави покренување кривични пријави против сите родители кои ги присилуваат децата да глумат.[13]

По изјавите на тогашниот министер за труд и социјална политика, Спиро Ристовски, веќе на 29 јуни 2012, медиумите алармираа за постоечкиот проблем и прашањето се крена високо на агендата

11 ЕЦПР и Националниот ромски центар (август 2012).Листа на факти: преголема застапеност на ромските деца во специјалното образование во Македонија. Достапно на: http://www.errc.org/cms/upload/file/macedonia-factsheet-education-mk-30-august-2012.pdf

12 Државен Завод за Статистика, 2013 година.

13 Европски Центар за Правата на Ромите (2013). *Македонија: Извештај за состојбите 2011-2012*, стр. 24.

на владините институции. Особено што притоа беше најавено дека интересорна комисија ќе ги преиспитува сите 500 случаи на деца биле запишани во посебни училишта.[14]

На 23 август 2012 година, весникот Дневник објави информација за увидот направен од Државниот пазарен инспекторат во специјалните училишта, при што констатирале дека дури 137 деца Роми посетувале настава во училишта несоодветни за нивната здравствена состојба. Состојбата била најалармантна во посебното основно училиште "Иднина" во Скопје каде што дури 108 деца биле откриени без документи за својата здравствена состојба. [15]
Во декември 2013 година Народниот правобранител го објави својот втор извештај за состојбата со вклученоста на децата со посебни потреби во основните и средните посебни училишта. Во извештајот е наведено дека вкупниот број на деца за 2013 година бил 570, што е за 155 деца помалку отколку во 2010 година. Исто така во извештајот е утврдено и намалување на бројот на деца Роми на 24,56%.[16]

Подолу следи споредбен приказ на објавените информации од страна на Народниот правобранител за состојбата со вклученоста на децата, со посебен фокус на Ромите, во посебните училишта.

14 Динев, А. (29 јуни 2012). Морале да глумат инвалиди за 4.200 денари месечно. *Сител* достапно на: http://sitel.com.mk/morale-da-glumat-invalidi-za-4200-denari-mesechno-0[пристапено на 18.08.2014г.]

15 Тасев, М. (29.06.2012). Над 130 здрави деца учат како да се со посебни потреби. *Дневник* достапно на: http://dnevnik.mk/?ItemID=DFF23B66AAD3334DB5E286A809DC04AD, [пристапено на 20.08.2014г.].

16 Народен Правобранител на Република Македонија (декември, 2013), "ИНФОРМАЦИЈАза состојбата со вклученоста на децата со посебни потреби воосновните и средните посебни училишта".[Интернет] Достапно на: http://ombudsman.mk/upload/documents/2013/Izvestaj-Posebni%20ucilista-2014.pdf [пристапено на 01.07.2014г.].

Табела 1.1 Споредбен приказ на наодите на Народниот правобранител за 2010 и 2013 година

ИМЕ НА УЧИЛИШТЕ	2010 ГОДИНА			2013 ГОДИНА		
	Вкупно ученици	Роми	%	Вкупно ученици	Роми	%
ПОУ „Д-р Златан Сремац“ од Скопје	**165**	**86**	**52,12**	120	20	16,66
ПОУ„Иднина“ – Скопје, заедно со подрачните паралелки	**253**	93	36,75	105	8	7,61
ДСУ за рехабилитација и образование „Св. Наум Охридски“- Скопје	**169**	50	29,58	153	55	35,94
ДСУ за образование и рехабилитација „Искра“ од Штип	**84**	17	20,23	85	35	41,17
ПОУ„Св. Климент Охридски“ во Ново Село	**54**	1	1,85	43	1	2,32
ПОУ „Маца Ѓорѓиева Овчарова“ – Велес	**/**	/	/	64	21	32,8
ВКУПНО	**725**	**247**	**34,06**	**570**	**140**	**24,56**

Според погоренаведеното, може да се заклучи дека најголемиот број на деца запишани без соодветна документација биле најверојатно отпишани после акцијата на Министерството за труд и социјална политика и Државниот Инспекторат во втората половина на 2012 година.

Според постоечкиот Правилник за оцена на специфичните потреби на лицата со пречки во физичкиот или психичкиот развој (2000), Центарот за социјална работа е надлежен за општо водење евиденција и извлекување податоци за статистички цели. Тој отвора ново досие и обезбедува информации за Комисијата за процена да ги изврши своите должности. Комисијата за процена користи стандардизирани обрасци за документирање на сите релевантни наоди и мислења. Ваквите обрасци опфаќаат некои основни информации што ги дава Центарот за социјална работа по упатување. Обрасците не содржат поле за евидентирање на етничката

припадност на детето, што е една од неопходните категории за ефективно следење на состојбата со децата Роми.

Според постоечките прописи заради олеснување на соработката меѓу Центарот за социјална работа и Комисијата за процена, Центарот за социјална работа назначува раководител на случајот којшто е одговорен за целиот процес на идентификација и утврдување подобност. Меѓу членовите на Комисијата за процена, едно лице треба да биде назначено како раководител на проценатa на секој случај за да се обезбеди сите релевантни информации да се вклучат во наодите и мислењата, а родителите и другите засегнати страни соодветно да се консултираат и да се информираат.

Во пракса, оваа процедура не функционира со оглед дека нема никаква соработка помеѓу институциите на локално ниво.[17]

3. АНАЛИЗА НА ПРАВНАТА РАМКА

3.1. ОПШТА НОРМАТИВНА РАМКА

Во поголем број на меѓународни документи и конвенции на кои Република Македонија е потписничка, образованието зазема значително место.

Република Македонија ја ратификува Конвенцијата за правата на детето во 1993 година. Согласно член 23 од Конвенцијата за правата на детето, Македонија е обврзана на дете со психички или физички пречки во развојот да му овозможи уживање на целосен и достоинствен живот, во услови со кои се обезбедува негово достоинство, се поттикнува самостојноста и се олеснува активното учество на детето во заедницата. Притоа, уважувајќи ги посебните потреби на детето со пречки во развојот, државата треба да обезбеди ефикасен пристап и овие деца да добиваат образование, обука, здравствена заштита и рехабилитација, со цел да се подготват за што е можно поцелосна општествена интеграција и да се овозможи личен развој на детето.

Во член 35 во рамките на економските, социјални и културни права, Уставот на Република Македонија пропишува дека Републиката се грижи за социјалната заштита и социјалната сигурност

17 Интервју на РРЦ, август 2014, наставник, Штип.

на граѓаните согласно со начелото на социјална праведност. Републиката им гарантира право на помош на немоќните и на неспособните за работа граѓани. Реубликата им обезбедува посебна заштита на инвалидните лица и услови за нивно вклучување во општествениот живот.

Со Законот за основно образование од 2008 година е уредено задолжителното основно образование како дел од воспитно образовниот систем и трае девет години. Според член 2 од овој закон секое дете има право на образование и при тоа се забранува дискриминација по основа на пол, раса, боја на кожа, национална, социјална, политичка, верска, имотна и општествена припадност во остварувањето на правата од основното воспитување и образование.[18]

Законот за средно образование на секого му гарантира еднакви услови и право на средно образование и при тоа не е дозволена дискриминација врз основа на пол, раса, боја на кожата, национално и социјално потекло, политичко и верско уверување, имотна и општествена положба.

Воспитно-образовната дејност за ученици со лесна интелектуална попреченост се организира и остварува со посебни наставни планови и програми во посебни паралелки во рамките на редовните училишта или во специјални училишта. Децата со лесна интелектуална попреченост можат да го следат воспитно-образовниот процес и во редовните паралелки на основните училишта. Средното образование се остварува преку програми и планови за средно образование за соодветни занимања или за работно оспособување за ученици со посебни образовни потреби.

Во средното образование за ученици со посебни образовни потреби се вклучуваат ученици кои се евидентирани и распоредени според видот и степенот на пречките во развојот.

Системот за специјално образование е спротивен на Конвенцијата за правата на лицата со попречености, која Македонија ја ратификуваше во 2011 година, а диспропорционалниот број на ромски деца во овие училишта упатува на дискриминација врз основа на етничка припадност и претставува прекршување на меѓународните правни обврски што ги преземала Македонија (ЕЦПР, 2013).

18 Закон за основно образование („Службен весник на РМ “ бр. 103/08 од 19.8.2008, 33/10, 116/10, 156/10, 18/11, 51/11, 6/12)

Во случаите каде деца Роми неправедно се сместени/категоризирани во специјални училишта, според член 6, став 1 од Законот за спречување и заштита од дискриминација се прави директна дискриминација, што значи неповолно постапување, разликување, исклучување или ограничување, кое како последица има или би можело да има одземање, нарушување или ограничување на еднаквото признавање или уживање на човековите права и основни слободи.

3.2. ПРАВА И БЕНЕФИЦИИ

Инвалидно лице, е лице со оштетен вид, оштетенслух, со пречки во гласот, говорот и јазикот, телесно инвалидно лице, лице со пречки во интелектуалниот развиток и лице со комбинираниречки кое поради степенот на инвалидност има специфични потреби во работењето.[19]

Според Законот за социјална заштита, ментален хендикеп е состојба на забавен или непотполн психички развој кој особено се карактеризира со нарушување на оние способности кои се појавуваат во текот на развојниот период и кои придонесуваат за општото ниво на интелигенцијата, како што се когнитивните, говорните, моторните и социјалните способности.

Лицата со пречки во интелектуалниот и физичкиот развој се делат на четири категории на лица: со лесен хендикеп, со умерен ментален хендикеп, со тежок ментален хендикеп и со длабока интелектуална попреченост (Правилник, 2000)

Законските права кои можат да ги користат овие лица се регулирани во повеќе области: 1.Права од системот на социјална заштита (Закон за социјална заштита; Закон за семејство; и Закон за детска заштита); 2. Права од областа на здравствената заштита (Закон за здравствена заштита); 3. Право на образование (Закон за предучилишно образование, Закон за основно образование, Закон за средно образование, Закон за високо образование); 4. Право на вработување (Закон за работни односи, Закон за вработување на инвалидни лица) итн.

Ромите најчесто се категогоризираат во првата категорија на лица со лесен хендикеп, односно лесна попреченост во интелектуалниот развој.[20] Припадниците на оваа категорија на лица можат да се стекнат со разни видови на бенефиции и права (види Табела 1).

19 Закон за вработување на инвалидни лица („Службен весник на РМ “ бр. 87/05 од 17.10.2005, Пречистен текст), Член 2, став 1.

20 Интервју на РРЦ, август 2014, дефектолог, Штип

Табела 1.2 Преглед на права предвидени со закон за лица со лесен хендикеп

ЗАКОН	ПРАВА ПРЕДВИДЕНИ СО ЗАКОН
Закон за социјалната заштита[21]	▸ Право на социјална помош, доколку лицето има родители може да се јави како соуживател на правото. ▸ Право на постојана парична помош, доколку лицето има родители може да се јави како соуживател на правото. ▸ Право на домување, ако е лице без родители или безродителска грижа до 18 годишна возраст, односно и по престанување на старателството, а најмногу до 26 годишна возраст. ▸ Парична помош, ако е лице кое до 18 години возраст имало статус на дете без родители и родителска грижа. ▸ Право на еднократна парична помош или помош во натуреа. ▸ Право на сместување во згрижувачко семејство, ако е дете без родители и родителска грижа
Закон за заштита на децата[22]	▸ Детски додаток ; ▸ Помош за опрема на новороденче; ▸ Згрижување и воспитување на деца од предучилишна возраст; ▸ Одмор и рекреација на деца и ▸ Други облици на заштита.
Закон за основно образование[23]	▸ Право на бесплатен превоз. ▸ Доколку не може да се обезбеди превоз, право на бесплатно сместување во ученички дом или семејство.
Закон за вработувањена инвалидни лица[24]	▸ Вработување; ▸ Право на работно оспособување со вработување; ▸ Право на ослободување од персонален данок од доход; ▸ Право на користење на средства од посебниот фонд за подобрување на условите за вработување и работење на инвалидните лица.

21 Закон за социјалната заштита(„Службен весник на РМ “ бр. 148/13 од 29.10.2013, 164/13, 187/13, 38/14, 44/14, 116/14)

22 Закон за заштита на децата(„Службен весник на РМ “ бр. 23/13 од 14.02.2013, 12/14, 44/14)

23 Закон за основното образование („Службен весник на РМ “ бр. 103/08 од 19.08.2008, 33/10, 116/10, 156/10, 6/11, 18/11, 42/11, 51/11, 100/12, 41/14, 116/14)

24 Закон за вработување на инвалидни лица („Службен весник на РМ “ бр. 87/05 од 17.10.2005, 113/05, 29/07, 88/08, 161/08, 99/09, 136/11)

3.3. НЕДОСТАТОЦИ НА ПРАВНАТА РАМКА

Европскиот Центар за Правата на Ромите и Националниот ромски центар во своето истражување од 2012 година утврдија голем број празнини и недостатоци во законодавната рамка што се однесува на специјалното образование во Македонија во однос на специјалното образование, како што се: Отсуство на правна дефиниција за „ученици со посебни образовни потреби"; Непрецизни прописи за оценување на пречки во физичкиот или психичкиот развој и за работата на комисиите за категоризација; Непрецизни прописи за основно образование на ученици со пречки во развојот; Двојна и нејасна примена на правилниците за остварување на основното образование на учениците со пречки во развојот и за оценување на посебните потреби на лицата со пречки во физичкиот и психичкиот развој; Недостиг на јасни насоки за обезбедување соодветни информации на родителите и постапки за давање информирана согласност; Несоодветни алатки за проценка; Неуспех да се донесе регулативата за начинот и условите за запишувањето на учениците со посебни образовни потреби во основните училишта, што е пропишана во член 51(2) од Законот за основно образование; Нејасни процеси и одговорности за следење, ре-категоризација и префрлување во други класови на деца со посебни образовни потреби и пречки во развојот. [25]

Дополнително, Народниот Правобранител во својот извештај од декември 2013 година, препорачува измена на Правилникот за оцена на специфичните потреби на лицата со пречки во физичкиот или психичкиот развој со цел спречување на можноста за издавање наод кој не соодвествува на реалната состојба на детето.

Од направената анализа на терен може да се заклучи дека сите погоре идентификувани пречки и недостатоци сеуште постојат и поради тоа е неопходна ургентна акција на релевантните институции.

Иако нов правилник за категоризација на деца со пречки во развојот беше најавен уште во август 2012 година, Правилникот сеуште не е донесен од страна на Министерството за труд и социјална политика.

25 За повеќе информации и детална листа на препораки види: ЕЦПР и Националниот ромски центар (август 2012). *Листа на факти: Преголема застапеност на ромските деца во специјалното образование во Македонија*. Достапно на: http://www.errc.org/cms/upload/file/macedonia-factsheet-education-mk-30-august-2012.pdf

4. СОСТОЈБАТА НА ТЕРЕН И ПРАКТИЧНА ПРИМЕНА НА ПРОПИСИТЕ

Од истражувањето и интервјуата со претставници на стручните кадри вклучени во прашањето како и родителите Роми, можеше да се забележи дека сеуште темата за вклученоста на децата Роми во посебни училишта е "табу тема". Многу од лицата одбиваа да разговараат на темата, додека и дел од тие кои што учествуваа во интервјуата одговараа со значителна резервација.

4.1. СТАВОВИ НА СТРУЧНИОТ КАДАР ЗА ПРОБЛЕМОТ

Ставовите на стручните кадри вклучувајќи ги стручните служби во посебните основни и средни училишта, членовите на Комисиите за проценка како и вработените во Центрите за социјална работа (социјални работници, психолози) се поделени.
Интервјуираните социјални работници од градот Скопје сметаат дека застапеноста на децата Роми во посебните училишта не е голема и нивниот број изнесува околу 145. Може да се забележи дека овој податок соодвествува со податоците утврдени од страна на Народниот правобранител во извештајот од 2013 година.

Дополнително, социјалните работници сметаат дека децата Роми навистина имаат попреченост и дека не се способни да ја посетуваат редовната настава. Исто така сметаат дека децата имаат добро познавање на македонскиот јазик и дека влијанието на родителите е пресудно во запишувањето на децата во специјални училишта. Според социјалните работници, Центрите за социјална работа редовно контактираат со родителите вклучувајќи и нивно редовно известување.[26]

Од друга страна, стручните служби кои работат со децата на секојдневна основа во посебните основни и средни училишта (после извршената категоризација и нивно запишување во училиште) сметаат дека најголем дел од децата не се со посебни потреби.

26 Интервју на РРЦ, август 2014, социјален работник, Скопје

Стручните служби во училиштата не прават доволно за да се откријат децата кои би можеле да посетуваат настава во редовни училишта. Потребно е да се зголеми присутноста на психолог и социјален работник како и преведувач за во случај детето да не разбира толку добро македонски.[27]

Родителите пак објаснуваат дека најмалку се запознаени со процедурите за префрлување на децата во редовни училишта и негираат дека воопшто се повикани од страна на инстиуциите за соработка.[28]

4.2. ПРОЦЕДУРА ЗА ЗАПИШУВАЊЕ НА ДЕТЕ ВО ПОСЕБНО УЧИЛИШТЕ

Процедурата на запишување на децата во посебни училишта е речиси иста како и за во редовните училипта. Потребно е наод од Завод за ментално здрвје дека детето е категоризирано како дете со посебни потреби, извод од матичната книга на родените како и потврда за вакцинација. Детето прво треба да помине на интервј,да се види дали е способно да посетува редовна настава или треба да се прати во спеијално училиште.[29]

Децата со идентификувани развојни тешкотии често се упатуваат на Комисија за категоризација. Ова испутување се наплаќа, што е уште една пречка за ромските родители. Во пракса, стручниот тим од училиштето ги препраќа ромските деца со идентификувани пречки во развојот на Комисијата за категоризација.

За разлика од претходните години, според фактите утврдени од страна на Народниот Правобраните (2013) во училиштата нема запишано деца без соодветен документ издаден од надлежен орган. Поголемиот дел од ромските деца во посебните училишта се со лесна попреченост во развојот и со едукативна запоставеност.

Ромските деца во Македонија се запишуваат во специјалното образование без јасен и транспарентен процес кој им овозможува на родителите да донесат целосна и информирана одлука. Откако едно дете е запишано во специјалното образование,речиси невозможно е тоа дете да се префрли назад во редовните училишта, со што сериозно се ограничуваат можностите на

27 *Ibid*.

28 Интервју на РРЦ, јуни 2014, фокус групи со родители. Скопје и Штип

29 Интервјуа на РРЦ со социјални работници, август 2014. Скопје

децата понатаму во животот. Дополнително, повеќе од две третини (69,6%) од интервјуираните родители изјавиле дека по иницијалната категоризација нивните деца никогаш не биле повторно тестирани.[30]

Поради лошата социо-економска состојба родителите имаат интерес да ги запишат своите деца во посебни училишта бидејќи е поевтино. Во посебните училишта се учи по скратена програма и учењето е полесно. Децата Роми поради јазичната бариера полесно можат да завршат образование во посебно училиште.[31]

Најголемата предност на децата кои што учат во посебните училишта е тоа што групите на деца се мали и работат со дефектолог. Секое дете работи со посебен индивидуален план и добиваат бесплатен превоз до училиште и до својот дом како и бесплатен ручек. Учениците во средно училиште имаат поволност што учат занаети и стекнуваат вештини за полесно да се вработат.[32]

Институциите треба да обратат внимание на случаите кога родителите инсистираат за запишување на нивните деца во посебни училишта.

4.3. КАТЕГОРИЗАЦИЈА НА ДЕЦА

Целокупната постапка на категоризација на децата за вклучување во посебни училишта се одвива според Правилникот за оцена на специфичните потреби на лицата со пречки во физичкиот или психичкиот развој од 2000 година.[33]

Со Правилникот се уредува степенот на попреченост и специфичните потреби на лицата со пречки во физичкиот или психичкиот развој, стручниот профил на членовите на стручниот орган што дава наод и мислење за оцена на видот и степенот на попреченост и специфичните потреби, на првостепениот и на второстепениот орган, начинот и постапката за оценување на специфичните потреби, водењето на евиденцијата за посебните потреби за овие лица и установите што

30 ЕЦПР и Националниот ромски центар (август 2012). *Листа на факти: Преголема застапеност на ромските деца во специјалното образование во Македонија*. Достапно на: http://www.errc.org/cms/upload/file/macedonia-factsheet-education-mk-30-august-2012.pdf

31 Интервју на РРЦ, социјален работник, август 2014, Штип

32 Интервју на РРЦ, социјални работници, август 2014, Скопје

33 Службен весник на Р.М., бр. 30 од 19 април 2000.

формираат стручни органи кои што даваат наод и мислење, врз основа на кој што Центарот за социјална работа донесува решение за остварување на права од детска и социјална заштита.

Правилникот ги категоризира децата во посебни групи. Една од тие групи се и лицата со пречки во психичкиот развиток кои се распоредуваат на лица со лесен, умерен, тешок и длабок хендикеп. Правилникот за секоја од овие категории на лица одредува дополнителни карактеристики вклучувајќи и очекуван коефициент на интелегенција.

Табела 2. Преглед на категории на лица со пречки во психичкиот развиток и нивни карактеристики

КАТЕГОРИЈА НА ЛИЦА	КАРАКТЕРИСТИКИ	ОЧЕКУВАН КОЕФИЦИЕНТ НА ИНТЕЛЕГЕНЦИЈА
Лица со лесен хендикеп	Благо намалување на нивото на интелектуалните, говорните, јазичните, моторните и социјалните способности.	50-69
Лица со умерен ментален хендикеп	покажуваат забавен развој и ограничени достигнувања во дометот на развојот и употребата на говорот и јазикот, моторните способности и грижата за себе.	35-49
Лица со тежок ментален хендикеп	Постои значително ограничување на достигнувањето во областа на говорот и јазикот, моторните способности и грижата за себе. Поголем број од лицата имаат изразени, моторно или други придружни пречки кои укажуваат на присуство на значајно оштетување или пореметување во развојот на централниот нервен систем.	20-34
Лица со длабока интелектуална попреченост	изразито ограничената способност за разбирање и прифаќање на барањата или упатствата, имаат зачувана способност за многу рудиментарни форми на невербална комункација. Голем дел од нив се полуподвижни или неподвижни, неспособни за волева контрола на офинктерите	< 20

Децата Роми најчесто се категоризираат во лица со лесен хендикеп. Најчесто на тестовите децата покажуваат гранични вредности со коефициент на интелегенција поемеѓу 65-69. Правилникот предвидува правилно стандардизирани тестови за интелегенција според кои се врши категоризациајта. Категоризацијата се заснова на унифицарани тестови на кои Ромите најчесто имаат граничен коефициент (60-69) што е доволно да се категоризираат.[34]

Комисијата нема моќ ништо да направи, бидејќи детето се упатува на категоризација од страна на Центарот за социјална работа. Најголемиот пропуст се прави токму од страна на Центарот за социјална работа, којшто треба да превземе поголема одговорност пред да го упати детето на Комисија.[35]

За децата запишани во училиштата за деца со посебни потреби се врши категоризација и се издава наод од посебен стручен тим, но одреден број деца иако не се категоризирани како деца со посебни потреби се препраќаат од страна на редовните до посебните училишта и се под посебна опсервација. Категоризацијата не се врши во соодветни услови, а во малите населени места се врши во Центрите за социјална работа. Дополнително, за упис на децата во посебните училишта наод и мислење даваат неколку установи (образовни и здравствени). Тоа е можност за манипулација и нереална оцена за психофизичката способност на децата.[36]

Од друга страна пак, социјалните работници сметаат дека децата немаат интелектуален капацитет и не се умствено способни за совладување на образовните содржини кои се изучуваат во редовното образование. Најчесто нивната проценка се заснова на интервју со децата при што најчесто поради јазичните бариери, родителите се поканууваат да преведуваат во текот на интервјуто со цел да се утврди капацитетот на детето.[37]

Ова остава место за манипулација од страна на родителите со цел да се издејствува запишување на нивните деца во посебно училиште. Кон оваа состојба се надоврзува и исказот на дел од

34 Интервју на РРЦ, август 2014, член на Комисија за оценка, Штип.

35 *Ibid*.

36 *Ibid*.

37 Интервју на РРЦ, август 2014, социјален работник, Штип

испитаниците кои наведуваат дека најчесто родителите вршат притисок врз децата за да имаат пониски резултати за време на интервјуто за категоризација[38]

Од разговорите со родителите се забележа дека родителите имаа многу ниска свест за процедурите во училиштата и најчесто се информирани преку методот „уста на уста" од други родители. Родителите се свесни за бенефициите кои може да ги користи семејството доколку има дете запишано во посебно училиште.[39]

Категоризација се врши само еднаш.
Според Правилникот (2000), по потреба на сите лица со пречки во физичкиот или психичкиот развој може да им се овозможи да бидат упатени на повторно дијагностицирање доколку за тоа се достави барање од лицето, родителот, односно старателот, од социјалната односно воспитно образовната установа и од одделни стручни лица вклучени во процесот на третманот на овие деца, заради промена во условите на живеење со што можат да побараат преоценка на специфичните потреби. (член 19)

Од досегашната работа на училиштата, речиси и не се случила ре-категоризација на деца иако стручниот тим при училиштата го известувале надлежниот Центар за социјални работи. Најчесто кај децата се препорачува ре-категоризација во период од две години но тоа воопшто не се почитува и во училиштата има деца кои што се со првични решенија и повеќе од 5 години.[40] Досега речиси и да немало случај на деца префрлени во редовното образование.[41]

Родителите не се запознаени со можностите да бараат повторна категоризација на нивните деца. Дури и да постои таква можност најчесто не се одлучуваат да побараат поради ниското ниво на свест и неможност да препознаат дали кај детето има подобрување или пак сметаат дека за тоа се потребни финансиски средства кои тие не можат да ги одвојат.[42]

38 Интервју на РРЦ, август 2014, член на Комисија за оценка, Штип.

39 Интервју на РРЦ, јуни 2014, фокус група со родители, Скопје

40 Интервју на РРЦ, август 2014, стручна служба, Штип.

41 *Ibid*.

42 Интервју на РРЦ, јуни 2014, фокус група со родители, Скопје

4.4. ДЕЦА СО ПРЕЧКИ ВО РАЗВОЈОТ ИЛИ ВОСПИТНО ЗАПУШТЕНИ ДЕЦА

Деца со воспитно социјални проблеми и нарушено поведение се деца кои манифестираат неприлагодено поведение како што е: скитање, безделничење, бегање од училиште, просење и правење кражби. [43]

Стручната работа со оваа категорија на деца се реализира преку центрите за социјална работа. Во зависност од нивната возраст и видот и степенот на асоцијално однесување или нивото на нарушеното поведение се применуваат соодветни мерки за корекција на нивното однесување. Со примена на некоја од воспитните мерки се прави интервенција во однесувањето на малолетникот во рамки на семејството и средината во која малолетникот живее. Во случаите кога ресоцијализацијата на однесувањето на детето не е можна во рамки на семејството се применуваат мерките упатување во воспитна установа и во Воспитно поправен дом.[44] Во Македонија постојат само две установи за сместување на деца и младинци со воспитно социјални проблеми и со нарушено поведение: ЈУ Завод за згрижување деца со воспитно социјални проблеми – Скопје (за деца на возраст од 7-18 години) и ЈУ Завод за згрижување и воспитување и образование на деца и младинци "Ранка Милановиќ" Скопје за деца и младинци на возраст од 10-18 години.[45]

Воспитно запуштените деца се најпроблематичната категорија на деца од аспект на образование. Децата поради воспитната запуштеност се немирни и имаат асоцијално однесување поради што е речиси невозможно оддржување на редовна настава заедно со 30 други ученици во еден клас и предизвикуваат проблеми во редовните училишта. Откако детето ќе отиде во Центарот за социјална работа и таму имаат проблем поради што не знаат како да го згрижат. Поради тоа, на крај за да се реши институцинално случајот, детето се препраќа на Комисија од каде што највероајтно ќе добие решение за лице со лесна попреченост.[46]

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43 Министерство за труд и социјална политика (декември, 2007). Национална стратегија за деинституционализација во системот на социјалната заштита во Република Македонија (2008-2018). Скопје. Достапна на: http://www.mtsp.gov.mk/wbstorage/files/nacionalna%20strategija%20za%20 deinstitucionalizacija%20_2008-2018_%20_2_.pdf

44 *Ibid*.

45 *Ibid*.

46 Интервју на РРЦ, август 2014, член на Комисија за оценка, Штип.

Децата Роми не се деца со посебни потреби. Најчесто децата се социјално и воспитно запуштени и недоволно згрижени од страна на своите семејства и затоа и посетуваат настава во посебни училипшта. Децата не се соочуваат со примарна попреченост туку со секундарна попреченост, како резултат од средината.[47]

Децата се асоцијални, не ги извршуваат училишните задачи (домашна работа) и немаат хигиенски навики. Има случаи и каде децата биле вклучени во редовна настава, но поради нивното асоцијално однесување и минимално напредување, училишните служби ги препраќаат на Комисија за категоризација при ЈЗУ "Д-р Панче Караѓозов" во Штип при што децата поради нивниот граничен коефициент на интелегенција се категоризираат како деца со посебни потреби.[48]

За да се надмине оваа состојба и децата Роми успешно да се вклопат во редовната настава во основно и средно образование, потребно е исполнување на следните три фактори: 1) посветување на доволно внимание; 2) познавање на македонскиот јазик; и 3) родителска грижа.[49]

Дополнителен проблем се стандардизираните тестови за категоризација и унифицираните прашања кои што не може да се менуваат. Децата кои биле исклучени од школо и имаат асоцијално однесување и со самото тоа што се неписмени на тестовите за интелегенција ќе покажат ниски резултати и ќе бидат проценети како хендикепирани. За надминување на овој проблем е потребно Центрите за социјални работи да вршат соодветно тестирање и набљудување на децата пред да дадат препорака за проценка од страна на Комисијата за категоризација. За Центрите за социјални работи е полесно да се процени дали детето е воспитно запуштено, дали глуми или не глуми и според тоа да не даваат препорака за изготвување на наод и мислење за видот и степенот на попреченост во психичкиот или физичкиот развој и специфичните потреби на детето. Доколку детето се појави пред Комисија, самата воспитна запуштеност ќе придонесе за симнување на коефициентот на интелегенција и на детето ќе му се издаде позитивен наод врз основа на кој Центарот за социјални работи ќе издаде Решение за категоризација.[50]

47 *Ibid*.

48 *Ibid*.

49 *Ibid*.

50 Интервју на РРЦ, август 2014, член на Комисија за оценка, Штип.

ЕЦПР во своето истражување (2012) има утврдено дека воспитната запуштеност (асоцијално однесување) и престапничкото поведение се основни за распоредување во образование за деца со посебни образовни потреби, на деца со пречки во психички развој без оглед на евидентно отсуство на физичка или ментална попреченост.

Констатациите од погоре оставаат широко поле за манипулација доколку родителот сака да го запише своето дете во посебно училиште со цел да се здобие со одредени бенефиции. Со цел да се спречи ваквата рутинска пракса за упатување на децата на Комисија за категоризација.

4.5. ЈАЗИЧНАТА БАРИЕРА КАКО ПРИЧИНА ЗА КАТЕГОРИЗИРАЊЕ НА ДЕЦАТА КАКО ЛИЦА СО ПОСЕБНИ ПОТРЕБИ

Министерството за труд и социјална политика во мај 2010 година, во својата Анализа за состојбата и намалувањето на ромските девојчиња и момчиња во образовниот процес во Република Македонија, го нагласува недоволното познавање на македонскиот јазик како една од причините за слабиот успех и препраќање на учениците во специјалните училишта или прекинувањето на образовниот процес.

> *"Децата речиси и да не го знаат македонскиот јазик. Ние ги учиме македонски."*- изјава на еден од интервјуираните наставници во Штип, август 2014.

Мајчин јазик на децата Роми е ромскиот јазик (за лица од Скопје) или Турски јазик (за лица од Штип) и при нивна категоризација се случува да не можат да ги разберат прашањата од комисијата и тоа е уште една причина едно нормално и здраво дете да се категоризира како дете со посебни потреби. Категоризација се врши само еднаш, од стручен тим во време од 2 до 2,5 часа и ова време не е доволно ниту е показател за правилна категоризација.[51]

Како пример за оваа пракса сведочи една ситуација кога еден од испитаниците (социјален работник) присуствувал случајно на интервју како дел од категоризација на едно дете. Целото интервју се одвивало на македонски јазик и детето не одговорило ништо, поради што присутните добиле впечаток дека тоа не ги разбира прашањата, не е заинтересирано, нема познавања и сл.

51 Интервју на РРЦ, јуни 2014, фокус група со родители и деца, Скопје

Во тој момент се донел заклучок дека детето е подобно да посетува настава во посебно училиште. Социјалниот работник предложил интервјуто да го спроведе на ромски јазик. Исходот бил изненадувачки при што детето одговорило на сите прашања и се заклучило дека детето треба да посетува редовна настава.[52]

Ова е доволен показател дека јазичната бариера може да биде причина за неправилна категоризација и да се загрози иднината на децата. Интервјуто треба да се спроведува и на македонски и на ромски јазик со поголем акцент на ромскиот јазик затоа што тоа пред се, ромскиот им е мајчин јазик на децата и интервјуто би било поефикасно.[53]

Непознавањето на македонскиот јазик го отежнува и следењето на напредокот на децата за време на наставата во посебните училишта.[54] Според извештајот на Народниот Правобранител (2013) иако во повеќе од училиштата застапеноста на ромите е близу 50%, во ниту едно од училиштата за деца со посебни потреби нема вработено лица Роми, иако во некои од училиштата бројот на деца Роми е близу 50%.

4.6. ЦЕНТРИ ЗА СОЦИЈАЛНА РАБОТА

Центрите за социјална работа (ЦСР) ја имаат главната улога во процесот на категоризација на децата. Според информациите од терен, ЦСР имаааат повеќе можност да утврдат дали одредено дете е за категоризација или не поради фактот дека можат по нивно барање да се видат со детето повеќе пати, психологот да спроведе повеќе тестови и сл.[55]

Сепак, посебните училишта кога и да се обратат до ЦСР, добиваат негативен одговор со изговор дека социјалните работници се презафатени со тековната работа на администрирање на социјалните права.[56]

За жал, во социјалната заштита главен проблем е сериозниот недостаток на кадар, особено во центрите за социјална работа (ЦСР). Иако Законот за социјалната заштита - пречистен текст

52 Интервју на РРЦ, август 2014, социјален работник, Скопје

53 *Ibid*.

54 Интервју на РРЦ, јуни 2014, фокус групи со родители и деца, Скопје и Штип.

55 Интервју на РРЦ, наставник, Штип, август 2014

56 *Ibid*.

(2009), нагласува дека ЦСР може да се основа само доколку е вработен најмалку следниот кадар: социјален работник, психолог, педагог или специјален педагог и правник, во Македонија постојат ЦСР што не ги исполнуваат овие минимални обврски во однос на кадарот. Следствено, недостатокот на персонал негативно влијае врз стручната работа и способноста за обезбедување добар квалитет на услугите. [57]

Дополнително, фактот дека во ЦСР не постојат советодавни служби како одделни организациски единици на ЦСР, туку советувањето се врши како една од многуте други функции на ЦСР, ја зголемува веќе преголемата оптовареност на стручниот кадар.[58]

4.7. РОДИТЕЛИТЕ КАКО ФАКТОР

Најчесто децата кои се запишуваат во специјалните училишта доаѓаат од воспитно запуштени семејства. Нивните родители најчесто живеат на работ на сиромаштијата и не посветуваат внимание на своите деца. Нивото на интерес на родителите е на многу ниско ниво.

На дел од родителите, децата да им посетуваат настава во осебните училишта и најмногу им одговара бидејќи се ослободени од било каква обврска и знаат дека нивното дете е згрижено додека тие работно се ангажирани во собирање на старо железо и пластични шишиња. Најчесто тоа е и причината поради слабата мотивираност за соработка со стручните служби во посебните училишта и Центрите за социјална работа.[59]

Училишната програма во посебните училишта предвидува бесплатни учебници, скратена наставна содржина и не се регистрираат изостаноци. Дополнителна мотивација за запишување на децата во посебни училишта се и бенефициите кои се даваат на децата и на семејствата. Децата добиваат бесплатен оброк и организиран превоз до училиштето и назад. Особено важна е мотивацијата за запишување на деца во средните посебни училишта поради можноста за вработување веднаш по завршувањето на школото бидејќи работодавачите користат бенефиции од страна на државата.[60]

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57 Димитриевска В. (август 2011). *Механизми за обезбедување на социјални услуги во Македонија: Какви се и какви треба да бидат*. ГИЗ: Скопје. стр. 26.

58 *Ibid*.

59 Интевју на РРЦ, јуни 2014, фокус група со родители, Скопје,

60 Интервју на РРЦ, август 2014, социјален работник, Штип,

Друг проблем се и несовесните и неупатени родители кои дозволуваат нивните деца да се запишуваат во "специјалните" училишта затоа што од државата добиваат определен паричен надоместок или други бенефиции, или пак сметаат дека нивните деца полесно ќе завршат училиште кое помалку ќе ги чини и подоцна полесно ќе се вработат. Според досегашните правила, родителот е тој кој што со давање изјава одлучува дали неговото дете ќе оди во специјално училиште.

Традицијата е дополнителен фактор кој влијае на запишување на децата во посебни училишта. Во многу ромски семејства, се случува по инерција, ако постарото дете е запишано во училиште за деца со посебни потреби, родителите бараат во истото училиште да биде запишано и помалото дете, само затоа што таму добиваат храна и имаат бесплатен превоз од местото на живеење до училиштето и назад.[61]

4.8. МЕЃУСЕКТОРСКА СОРАБОТКА НА ЛОКАЛНО НИВО

Во однос на меѓусекторската соработка на локално ниво, ЦСР соработуваат со други пренесени тела кои претставуваат релевантни министерства (полициски станици, локални медицински центри, посебни и редовни училишта итн.), како и со релевантни НВО што работат на полето на детската заштита. Оваа соработка е најчесто поврзана со спроведувањето на релевантни закони (т.н. "соработка по службена должност"). Не постојат ниту официјални меморандуми за соработка, ниту протоколи кои ја регулираат оваа соработка на поефикасен и попрецизен начин, во однос на точните улоги и одговорности на засегнатите страни.[62]

Според извештајот на Народниот Правобранител (2013) поголемиот број на посебни училишта и понатаму се соочуваат со родители коишто не соработуваат со училиштето, а не е задоволителна и соработката со здравствените установи кои ги издаваат наодите и мислењата за попреченоста на децата.

Посебните училишта немаат никаков контакт со Центрите за социјална помош. Од страна на посебното училиште во Штип неколку пати и писмено се имаат обратено до Центрите за социјална помош за да се излезе во пресрет при решавањето на одредени случаи, но поради недостиг на човечки ресурси, Центарот за социјална работа не излегува во пресрет.

61 Интервју на РРЦ, август 2014, фокус група со родители, Штип,

62 Димитриевска В. (август 2011). *Механизми за обезбедување на социјални услуги во Македонија: Какви се и какви треба да бидат*. ГИЗ: Скопје. стр. 17.

Со цел да се постигне максимален ефект за подобрување на социјалното однесување на децата потребно е да се зајакне соработката помеѓу центрите за социјална работа, редовните училишта, посебните училишта и Министерството за внатрешни работи со цел да се работи на рано идентификување и превенција на малолетничка деликвенција.[63]

5. КОМЕНТАРИ И ЗАКЛУЧОЦИ

Во изминатите три години во периодот од 2010 - 2013 година многу релеватнтни институции извршија истражувања за испитување на состојбата со децата Роми во специјалните училишта од кои истражувања произлегоа и сеопфатни препораки. Особено значајни се наодите на Народниот правобранител (извештаи од 2010 и 2013 година) и Европскиот Центар за Правата на Ромите (извештај од 2012 година) кои се сеопфатни и со нивна помош би се надминала негативната состојба.

За многу од идентификуваните препораки речиси и не се превземени активности, при што состојбата со децата вклучени во посебните училишта останува иста.

Врз основа на досегашната анализа како и претходно издадените документи поврзани со оваа област може да се заклучи дека:

- Во практиката, институциите не прават динстинкција помеѓу воспитно запуштени деца и деца со посебни потреби.
- Јазичната бариера претставува огромна пречка за вклучување на децата во редовното образование. Дополнително е уште поголема пречка во процесот на категоризација бидејќи целокупното тестирање се одвива на македонски јазик. Најчесто децата не ги разбираат прашањата кои им се поставуваат при што не даваат солиден одговор и се категоризираат како деца со посебни потреби.
- Следењето на состојбите на децата и изготвувањето на соодветни статистички анализи е отежнато бидејќи во образците за евиденција кои се водат од страна на Центрите за

63 Интервју на РРЦ, август 2014, член на Комисија за оценка, Штип.

социјална работа не се вметнати податоци за етничка припадност.64 Таков вид на податоци се прибираат во моментот на аплицирање за остварување на права од социјалната заштита (право на посебен додаток)[65].

- Со цел да се обезбеди соодветна институционална грижа за децата со посебни потреи, неопходно е за институциите да воспостават механизам за следење и поддршка на овие деца. Откако на детето му се издава Решение за категоризација, многу малку активности се имплементираат за следење на неговиот развој. Најчесто тоа се должи на недостатокот на кадар во Центрите за социјална работа. Дополнително, следењето на децата не е регулирано со соодветен акт.
- Се очекува дека најголемиот број на празнини во процесот на категоризација ќе се надминат со усвојувањето на новиот правилник за категоризација. Сепак, иако најавен пред две години, новиот правилник сеуште не е донесен.

6. ПРЕПОРАКИ

Врз основа на заклучоците и анализата, потребно е превземање на одредени мерки и имплементација на препораки кои можат да помогнат во подобрување на состојбата и намалување на бројот на деца Роми запишани во посебни улилишта.

Со цел да се обезбеди подобар квалитет во процесот на категоризација на децата како и да се превенира можна злоупотреба потребно е:

- Превземање на мерки за имплементирање на препораките идентификувани од страна на Народниот Правобранител во извештаите објавени во февруари 2010 и декември 2013 година како и препораките дадени од страна на Европскиот Центар за Правата на Ромите во својот извештај од 2012 година.

64 Министерство за труд и социјална политика (2000). *Правилник за оцена на специфичните потреби на лицата со пречки во физичкиот или психичкиот развој,* Образец 3 и 4.

65 Види: Министерство за труд и социјална работа, Пилог 2 БПД, достапно на http://www.mtsp.gov.mk/WBStorage/Files/obrzvtor.pdf

Дополнително на ова потребно е подобрување во следните области:

- **Подобрување на правните прописи кои ја регулираат материјата преку:** 1) Итно донесување на нов правилник за проценка специфичните потреби на децата со пречки во физичкиот или психичкиот развој; 2) Во правилникот особено да се обрати внимание за воспоставување на двостепена комисија која би ги разгледувала издадените првостепени наоди; 3) Да се вклучат соодветни прописи за следење на развојот на децата после извршената категоризација; 4) Со оглед дека во случајот со децата Роми, најчето се работи за воспитно запуштени деца (асоцијални), оваа категорија на деца да се земе во предвид во процесот на категоризација; и 5) За подобро статистичко следење на прашањето, релевантните обрасци во Центрите за социјална работа и во посебните училишта да вклучат етничка припадност на децата.

- **Елиминирање на јазичната бариера преку:** 1) Интервјуата за запишување на деца во посебни училишта да се одвиваат на Ромски јазик; 2) Во случаите каде што децата се препраќаат од редовни во посебни училишта тестовите за проценка на капацитетите на децата да се одвиваат на јазик разбирлив за децата или пак за време на тестовите да присуствува претставник од етничката заедница на детето кој што збори на јазик разбирлив за детето; 3) Интервјуто и тестирањето при процесот на категоризација на децата да се спроведува на јазик разбирлив за децата (Ромски, Турски итн.). Да се разгледа и можноста за вклучување на Ромските Здравствени Медијатори кои оперираат во рамки на Министерството за Здравство; и 4) Стандардизираните прашалници за категоризација на децата да се преведат на јазиците разбирливи за децата.

- **Подобрување на практичната имплементација на прописите за запишување и категоризација на децата преку:** 1) Поактивно вклучување на центрите за социјална работа во проценката и работата со децата Роми, пред упатување на категоризација; 2) Да се обезбеди соодветна примена на механизмот за ре-категоризација за навремено ре-категоризирање на идентификуваните деца кај кои има потреба со цел нивно можно префрлување во редовни училишта; и 3) Министерството за труд и социјална работа да превземе мерки за надминување на недостатокот на човечките капацитети во Центрите за социјална работа преку вработување или ангажирање на дополнителен стручен кадар или преку соработка со граѓански здруженија специјализирани во областа.

- **Разрешување на дилемата дали станува збор за деца со вистински пречки во развој или пак за воспитно запуштени преку:** 1) Центрите за социјална работа треба да превземат соодветни мерки за идентификација на децата и да вршат проценка дали во одредените случаи станува збор за воспитно запуштени деца или за деца со пречки во физичкиот или психичкиот равој; 2) За идентификуваните воспитно запуштени деца, Центрите за социјална работа потребно е да изготвуваат индивидуални досиеа за децата; 3) Зајакнување на улогата на психолозите од Центрите за социјална работа за правење на првична проценка на детето и нивно следење;

- **Подобрување на соработката со родителите роми преку:** 1) Вклучување на граѓанскиот сектор во работата со родителите; 2) Да се разгледа можноста во соработка со граѓанскиот сектор да се отворат центри за подршка во заедницата кои би работеле со родителите Роми, особено со мајките за јакнење на нивните капацитети за подобра грижа за децата; 3) Вклучување на Ромски здравствени медијатори во соработката со родителите;

- **Подобрување на соработката на локално ниво и воспоставување на оперативни мерки преку:** 1) Министерството за труд и социјална политика, Министерството за образование и Министерството за здравство да потпишаат документи (меморандуми или протоколи) за меѓусекторска соработка на локално ниво со цел да се воспостави механизам за соработка помеѓу посебните училишта, редовните училишта, центрите за социјална работа и здравствените институции. 2) Да се разгледа можноста за усвојување на индивидуалниот пристап за работа со децата. Се препорачува воспоставување на работни тела на локално ниво со претставници од сите вклучени институции кои би го разгледувале секој случај идентификуван од страна на Центарот за социјална работа или пак посебното училиште.

За утврдување на вистинскиот број на деца со посебни потреби и елиминирање на евентуална злоупотреба во училиштата во Штип и Велес каде што Народниот правобранител повторно констатирал голем број на Роми, Министерството за труд и социјална политика и Министерството за Образование и наука да направи увид во предметите во Центрите за социјална работа и во посебните основни и средни училишта.

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BALKAN CIVIL SOCIETY DEVELOPMENT NETWORK

IPA Balkan CS Acquis, Strenthening the Advocacy and the Monitoring Potential and Capacities of CSOs

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