POLITICAL THOUGHT

YEAR 18, NUMBER 60, NOVEMBER, SKOPJE 2020

60

IS EASTERN EUROPE THE FUTURE OF AMERICA?

THE MACEDONIAN CULTURAL SPACE WITHIN THE EUROPEAN ONE

THE PRESIDENTIAL PARDONS AT THE MERCY OF LAW

FROM THE ONE-PARTY SYSTEM TO PARTY PLURALISM

THE EFFECTS OF PRIVATIZATION ON ECONOMIC SYSTEMS IN POST-SOCIALIST STATES

POLITICAL THOUGHT

YEAR 18, No 60, NOVEMBER, SKOPJE 2020

KONRAD ADENAUER STIFTUNG

IDSCS | Institute for Democracy Societas Civilis - Skopje

Publisher:

Konrad Adenauer Foundation, Republic of North Macedonia
Institute for Democracy "Societas Civilis", Skopje

Founders:

Dr. Gjorge Ivanov, Andreas Klein M.A.

Address:

KONRAD-ADENAUER-STIFTUNG
ul. Risto Ravanovski 8 MK - 1000 Skopje
Phone: 02 3217 075; Fax: 02 3217 076;
E-mail: Skopje@kas.de; Internet: www.kas.de

INSTITUTE FOR DEMOCRACY "SOCIETAS CIVILIS" SKOPJE
Miroslav Krleza 52-1-2 MK - 1000 Skopje;
Phone/ Fax: 02 30 94 760; E-mail: contact@idscs.org.mk;
Internet: www.idscs.org.mk
E-mail: map@yahoogroups.com

Printing: Vincent grafika - Skopje
Design & Technical preparation: Pepi Damjanovski
Translation: Tiina Fahrni, Perica Sardzoski
Macedonian Language Editor: Elena Sazdovska

Year 18, No 60, November
Skopje 2020
ISSN 1409-9853

Contents

SHORT BIOGRAPHY

Robert Hislope

is an Associate Professor of Political Science at Union College, Schenectady, NY. His research and teaching interests cover issues such as comparative ethnic politics, comparative Left politics, Balkan & European politics, and music & politics in the USA.

Изворна научна статија
УДК: 321.7:323.1]:342.8(73)
316.334.3:324]:321.7(73)

Robert Hislope

IS EASTERN EUROPE THE FUTURE OF AMERICA?[1] DIAGNOSING DEMOCRATIC DECLINE FROM A LINZIAN PERSPECTIVE

POLITICAL THOUGHT
60

Ethnic divisions, incendiary nationalist rhetoric, corruption at the commanding heights, a downward economic spiral, left-wing opposition movements on the streets, right-wing paramilitary proliferation on the margins, politicians and parties posturing with maximalist demands and hardball tactics, the public's loss of faith in institutions, foreign electoral meddling from rival powers, widespread distrust of the media, a culture awash in conspiracy theories, political tribes living in insular epistemic worlds committed to alternative, incommensurable facts – this syndrome of political polarization is virtually, plus or minus a few points, a perennial description by both scholar and pundit alike of Eastern Europe in general, and the Balkans more specifically. Is it possible that the "exceptional country" that once served as the very model of democratic achievement is now on a trajectory of substantial democratic decline, such that its future is Eastern Europe's present? Under Donald Trump's presidency, political divisions in America have intensified with stunning velocity and acceleration; an authoritarian, dystopian future appears neither unimaginable nor impossible. While the USA was certainly never a perfect democracy, its institutional shortcomings now loom large, its vices look like habits, and its authoritarian, racist, and nativist streams and tributaries have swelled into raging rivers. In a word, America's Eastern European future is now.

Currently, the USA is a flawed democracy. This is the assessment made by the Intelligence Unit of the *Economist* in its annual ranking of democracies around the globe. The USA crossed into this category in 2016 and, consequently, enjoys the company of the complete set of East European states, among which are no full democracies, only flawed democracies (n=12), hybrid regimes (n=9), and authoritarian regime types (n=7). At a global rank of #25 (with #1 being the best), the USA outperforms the entire region but with Estonia (#27) and the Czech Republic (#32) close behind (The Economist 2020). Freedom House, in its annual ranking, continues to classify the USA as "free" (its categories are "free, partly free, and unfree"), but in this year's count where a score of 100 is perfect, its freedom score is 86, which means that Greece (#88), Slovakia (#88), Latvia (#89), Lithuania (#91), Czech Republic (#91), Cyprus (#94), Slovenia (#94), and Estonia (#94) are measurably freer countries than America. East European countries at about the same level of freedom as the USA are Croatia (#85), Poland (#84), and Romania (#83) (Freedom House 2020). Despite the fairly substantial differences in these two data sets, in neither one is there much to applaud regarding America's democratic standing.

There are many factors that account for the democratic decay of the USA. A comprehensive explanation would require surveying fundamental and massive changes in the American economy, the class structure, the demography, the culture, the national news media, and social media technology, for starters. In contrast, I propose to focus not on broad social changes but rather on a single static and constant causal factor – the US

1 The first part of this title is inspired by the first part of Federico Varese's title to his 1994 essay, "Is Sicily the Future of Russia?"

presidential system -- and whether a direct link from it to America's declining democratic fortunes can be convincingly drawn. The renowned scholar Juan Linz long-advocated for the idea that presidential systems are deleterious for democratic endurance. In his classic works on the subject (Linz 1990 & 1994), he essentially drew the causal map by which presidential democracies descend into populist authoritarianism. I thus first take up Linz's position on presidentialism and consider its goodness-of-fit to current American politics. I then turn to a second celebrated work by the same author that details the process of democratic collapse in interwar Europe and 1960s-1970s Latin America (Linz 1978). In this earlier work Linz offers thoughts on the politics of semiloyal and disloyal parties that illuminate well the precarious and dangerous turn America's national politics have taken. While there are several shortcomings in Linz's arguments he does, I contend, provide a useful framework to diagnose the current malaise. I end the essay on this theme.

It should be noted, as a final introductory point, that I write these words with some trepidation a mere 7 days before America goes to the voting booth. While the opinion polls indicate a strong and persistent Biden lead, Trump's populist style of politics introduces an unparalleled level of anxiety in the body politic not seen in the living memory of Americans. This hard fact alone speaks to Linz's chilling warnings about the political consequences of presidentialism. Still, the very near future is very uncertain. America might be on the cusp of authoritarian regime change or democratic renewal. In this single case, Linz could be right about the weak democratic resilience of presidentialism, or he could be wrong. What is important, however, is that the current political crisis is unfolding within a presidential system, and thus what Linz says about the patterns of politics produced by this government type are potentially instructive. In short, Linz deserves another reading.

I. "The Shutdown Prophet"[2]

The Linzian thesis against presidentialism is well-known. It gained particular recognition in the American context during President Barack Obama's second term, when Jonathan Chait, writing for *New York Magazine* in 2013, noted how Washington's gridlock was explained by Linz's notion of "dual democratic legitimacy." Similarly, Matthew Yglesias argued in *Vox.com* in 2015 that "American democracy was doomed" and cited the arguments of Juan Linz for support. The ascendance of Donald Trump to the presidency has only added fuel to the Linzian fire that presidentialism itself is to blame for America's turn away from its once-cherished and respected democratic norms and practices. What is the basis for this indictment?

Linz makes five basic points against the presidential model of government. They are:

2 This section title is borrowed from Jonathan Chait's 2013 essay title.

- Dual democratic legitimacy – this means that the two essential institutions that must cooperate to produce policy, the executive and the legislature, have competing claims to legitimacy because they are elected by different constituencies; even if both branches are occupied by members of the same party there is no overriding political logic that requires cooperation for officeholders must answer ultimately to the voters in their respective districts and not to the party
- Rigidity – presidential systems have fixed terms of office and are without midterm, corrective mechanisms like the motion of no confidence in parliamentary systems; consequently, the institutional inflexibility of fixed terms means that crises of government can possibly mushroom into crises of regime
- Winner-take-all/zero-sum game – presidential systems typically have one seat per office to win which means that the losers are shut out of power, even when elections are extremely close
- Leadership style – presidentialism is bound up with plebiscitarian tendencies whereby the elected leader becomes intoxicated by popular acclaim and is emboldened to pursue power aggrandizement
- Attracts outsiders – candidates outside the party system can win the popular vote and thereafter rule in a disruptive, anti-institutionalist manner

How does this set of characteristics stack up against nearly four years of politics from the Trump administration?

If we look at the last two points first, Donald Trump is certainly the perfect model of an "outsider" who got "in" and once in, set about brazenly dismantling or ignoring central norms of the office that accumulated over time and that had worked, with Madisonian intentionality, to constrain the worst impulses of the chief executive. Trump himself is of course a former television personality and flamboyant New York City real estate dealer who had previously voted Democratic and gave large campaign donations in the past to Democratic politicians, like former president Bill Clinton. As the quintessential outsider, Trump has trampled underfoot norm after norm, and in some cases, laws as well. His refusal to disclose his tax records to the American public, his reluctance to divest from his private businesses, his public flirting with white racists and terrorists, his deference to Putin over the assessments of his own intelligence agencies, his baseless claims over electoral fraud, and his unwillingness to promise a peaceful transition if he loses the 2020 election are enough to demonstrate the Linzian point that presidential systems can elect leaders who are willing and able to break the very system that put them into office. At the same time, presidents cannot act alone in a check-and-balance system. What enables a president are enablers, and this is the role of the Republican-controlled Senate. More will be discussed on this point in a moment.

The US presidential system is certainly characterized by winner take all outcomes, so this is another correct viewpoint from Linz. The district magnitude (i.e., how many seats

per district) for the presidency, for the House, and for the Senate is one. Yes, the Senate has two seats per state, and the House has X number of seats per state depending on the population size. The key here is that every electoral district holds a single seat which only one person can occupy at a time; this is very much unlike the parliamentary model that typically offers multiple seats for each district that composes the national assembly. Because there is only a single seat up for grabs and the plurality method determines who gets it, this electoral system does indeed produce a winner-take-all outcome whereby the leading vote-getter wins the seat even in cases where the vote is extremely close, and even in cases where a majority of votes are cast for all other candidates but the winner attains the most votes. It is well documented how single-member district plurality systems produce distorted electoral results, significantly over-rewarding the party with the most votes and under-rewarding all others (with the exception of regionally-concentrated ethnic minority parties). The US model of course combines presidentialism and the plurality electoral model (not to mention the vote-distorting Electoral College and the practice of gerrymandering), and thereby is potentially, given the right combination of electoral results, a perfect example of exclusionary majoritarianism. A president and a Senate controlled by a single party can act like a juggernaut, shutting down House-bills from the other party, stymieing investigations into the executive branch, and approving political Court-packing that places the judiciary at the service of the president. And all of this has happened in the US, despite the fact that, in the 2016 election, Hillary Clinton won the popular vote by 2.87 million votes, and in the 2018 midterm elections Democrats won 12 million more votes in the Senate than the Republicans who nonetheless maintained a majority of seats in that crucial Congressional body. There are thus serious shortcomings regarding representation in the US presidential system that run contrary to democratic values and consequently contributes to de facto disenfranchisement and disempowerment of the people (Stepan and Linz 2011). The result: a minority party ruling in a majoritarian fashion.

Rigidity marks the fourth correct point Linz makes about presidentialism. Presidential systems have fixed terms of office and the one safety mechanism to "throw out the bums," so to speak, is the impeachment conviction, which requires a supermajority of 2/3rds of the Senate, and that outcome is difficult to attain, particularly given the current constellation of power in Washington. Trump's presidency of course survived the first stage impeachment vote in the Democratic-run House as well as the 2017-2019 Special Counsel Investigation led by former FBI director Robert Mueller into Russia's interference in the 2016 election and its connections with the Trump campaign. It remains to be seen whether even an electoral loss will remove him from office.

Given that presidential systems have built-in check & balance mechanisms, presidents are only able to break things and violate the norms of the office if they are enabled. The Republican Party holds a majority of seats (53) in the US Senate and this is the source of Trump's enablement. Over nearly four years Senate Republicans have nearly

taken a vow of silence in the face of Trump's misogyny, his racism, his tax evasion, his connections to Russia, his bully pulpit-Twitter bullying, his child separation policy on the southern border, his use of military force to disperse peaceful DC protesters, and even his tragically bungled response to COVID-19. Rather than operate as an equal and independent branch of government, Republican senators have acted more like a disciplined parliamentary party that supports the Prime Minister come hell or high water. Linz is wrong, in this instance, about the gridlock-like effects that are supposed to emanate from the problem of dual democratic legitimacy. The political crisis of the moment in America is not that officeholders place local electoral district interests over national interests and thus overload the policy-making process with too many checks and not enough balances, but rather the crisis is encapsulated by a party that has become a disciplined machine supporting its leader. Thus, dual democratic legitimacy is the one feature of presidentialism singled out by Linz that has no diagnostic bearing at all on the current crisis. The Trumpian takeover of the modern Republican Party has resulted in its makeover from a programmatic, ideologically-oriented party to something akin to a personalistic party blindly devoted to its leader.[3] Such transformation of a major party would be a problem in any democracy in the world, and it certainly is in the USA. It just so happens that earlier work by Linz can help us understand this development.

II. A Semiloyal Party, a Disloyal President

Linz has no shortage of classics in his catalogue of writings. The multivolume work he edited with Alfred Stepan in 1978 and published under the title *The Breakdown of Democratic Regimes*, was led-off with his extended introduction to the collection as a whole, and carried the subtitle *Crisis, Breakdown, and Reequilibration,* Volume 1 (Linz 1978). This was a seminal work that set the standard for diagnosing the collapse of democracies on the basis of the experiences of interwar Europe and 1960s-1970s Latin America. A major contribution Linz makes is identifying the core features of disloyal and semiloyal political parties and the ramifications they have for the democratic system itself.

A semiloyal party is defined as a party that plays a dual game, participating in electoral politics but elevating party interests above national interests and shielding its politicians from accountability. A disloyal party is an anti-system party. It employs a rhetoric of violence, it defames leading figures in other parties, it obstructs the legal and normal processes of government whenever possible, and it threatens to curtail the civil liberties of others. The predicament America faces as its begins its 58th presidential election on the

3 See Gunther & Diamond (2003) for a typology of political parties; see Edsall (2020a, 2020b, 2019) for useful collections of US academic thought on the changing party system. I note here too a quite telling development about the GOP under Trump is the jettisoning of any attempt to write a party manifesto or programmatic party statement at its 2020 convention. The party appears to have dropped all of its past classical liberal values and morally conservative principles and now advances nothing but Trumpism.

statutorily-mandated date of "the Tuesday next after the first Monday in the month of November," is that the Republican Party exhibits a rhetoric and practice that matches the definition of the semiloyal party, and President Trump has adopted the language of the disloyal party.

Allow me a few quotes from Linz himself to clarify the terms of discourse:

- a loyal party is indicated by an "unambiguous public commitment to achievement of power only by electoral means and a readiness to surrender it unconditionally to other participants with the same commitment." (p.36; Linz goes on to enumerate a total of ten indicators of loyalty)
- "an indicator of semiloyal behavior, and a source of perceptions leading to questions about the loyalty of a party to the system, is a willingness to encourage, tolerate, cover up, treat leniently, excuse, or justify the actions of other participants that go beyond the limits of peaceful, legitimate patterns of politics in a democracy." (p.32)
- "typical actions" of disloyal parties include "blanket attacks on the political system rather than on particular parties or actors, systematic defamation of politicians in the system parties, constant obstruction of the parliamentary process, support for proposals made by other presumably disloyal parties with disruptive purposes …" (pp.30-1)

In our Trumpian age of alternative facts and fake news, I can only wonder if the readers of this essay have any trouble connecting the Republican Party to a semiloyal stance towards democracy, a party whose chief action for nearly four years has been to protect the president from his own outrages against norms, laws, and common human decency? By the same token, is it not empirically obvious how Trump has consistently adopted the rhetoric of a disloyal party, whether that involves his framing of the independent media as "enemies of the people," or his embrace of armed white racist and terrorist groups, or his open misogyny and racism, or his constant belittling of opposition party leaders in *ad hominem* terms, or his insistence on jailing his opposition, or his calling for the "liberation" of COVID-19 stricken areas from duly elected Democratic authority? If there remain questions about the wholesale transformation in an authoritarian direction of one of America's two major parties, let us then listen to some current experts who have plotted the changes both historically and quantitatively.

First of all, the celebrated study *How Democracies Die* (2018), by Steven Levitsky and Daniel Ziblatt, narrates how the Republican party evolved into an extremist, maximalist, norm-breaking force, an adaptation that began with Newt Gingrich's ascendancy to minority party leader in 1989 and only escalated during the subsequent Clinton, Bush, and Obama administrations. Politics-as-warfare, constitutional hardball, and intolerant, inflammatory rhetoric were developed into the party's main playbook and repertoire of action. Levitsky and Ziblatt conclude their brief history with the following assessment: "with tactics like

these, the Republicans had begun to behave like an antisystem political party" (Levitsky and Ziblatt, p.167).[4]

In quantitative terms, the results of a recent survey (January 2020) conducted by political scientist Larry Bartels notes that a majority of Republican respondents (50.7%) agreed with the statement "the traditional American way of life is disappearing so fast we may have to use force to save it." Furthermore, 41.3% agreed that "the time will come when patriotic Americans have to take the law into their own hands," and 47.3% agreed "strong leaders sometimes have to bend the rules in order to get things done." Bartels argues that Republican rank-and-file antagonism towards immigrants, African-Americans, and Latinos drives this strong anti-democratic sentiment (Bartels 2020).

Finally, another piece of evidence comes from Global Party Survey Data, which is directed by the Harvard scholar Pippa Norris. In a 2019 survey of 2,000 experts on political parties, it was found that the Republican Party has very little in common anymore with traditional conservative parties (like Germany's Christian Democratic Union or Canada's Conservative Party) and is instead ideologically positioned close to anti-immigrant, anti-minority, authoritarian parties like Poland's Law and Justice Party and Turkey's Justice & Development Party. Even more, the GOP registers significantly more hostile to minority rights than Hungary's ruling Hungarian Civic Alliance, which is widely regarded as an authoritarian party pure and simple (Beauchamp 2020). It is quite common now among left-liberal American commentators to frame the GOP as a type of authoritarian party with dangerous cult of personality traits, a debasement brought about by Trump's apparent psychological need for fealty and adoration (see again Edsall 2020a, 2020b, 2019).

All in all, current conditions in the USA represent a perfect storm of majoritarian politics led by a demagogic, populist president supported by a minority party that has itself adopted a semiloyal stance towards democratic rules. Linz's presidential model and analysis of democratic breakdown doesn't explain the genesis of the current crisis, but it does help us understand the patterns of politics in the Trump administration, and it alerts us to the difficulties of finding a resolution to the crisis.

III. Conclusion

Presidentialism is not the cause of America's current political woes. Any intellectually satisfying answer to that question will invariably involve multiple, interacting types of causal forces. Studies of presidentialism themselves have evolved since Linz's time, moving from an "empirical institutionalism" in which one-to-one correspondence is

4 See also their recent *New York Times* op-ed, "End Minority Rule," published on 23 October 2020.

established between a single cause (the presidential model) and a single outcome (democratic instability), to a second wave of studies in the early 1990s that emphasized the background conditions that steer and determine the different outcomes that different types of presidentialism can produce. A subsequent third wave has moved the study into the field of rational choice theory (Elgie 2005).

The scholars Mainwaring and Shugart (1997) provide a convincing, critical appraisal of Linz's arguments, and conclude he "overstate[s] the extent to which presidentialism is inherently flawed" (p.469). I argue in this paper that Linz is relevant not because presidentialism has caused the crisis in the US, but because it is the institutional framework in which it is unfolding. It is imperative, if we are to understand the present and its possibilities, that we understand how presidentialism works. Linz has much to say on the subject and much of it should be worrisome for supporters of democracy. His inescapable conclusion is that presidential systems are bad at conflict management. This does not mean that the American republic is inexorably doomed. But it does mean that those who wish to save the system from a demagogic president have their work cut out for them. A clear electoral outcome for Biden will help but even that is no antidote to a president who has already cast doubt on the integrity of the ballot system itself (i.e., mail-in voting), who has floated the idea of replacing Electoral College electors with his own loyalists, and who refuses to promise a peaceful transition in the event he loses. In the end, institutions cannot save themselves, for they are nothing but collections of rules and norms and regularized, recurring social relations. If the rule of law is to be respected and upheld, neither the rule nor the law can accomplish this end. Rather, rules and laws require animation[5] by human agency in the form of elected officeholders, judges, civil servants, military personnel, police forces and ultimately, the people themselves, who must demand the verbal and behavioral respect of all for the rule of law and the norms of constitutional democracy. This emphasis on agency is in keeping with Linz's "main focus" on "incumbents and their actions" and whether they are tempted to "turn to ademocratic political mechanisms" (Linz 1978, p.40). Until and unless that temptation is overcome, a democracy, whether it exists in Eastern Europe or in North America, will always be in peril.

Bibliography

1. Bartels, Larry M. 2020. "Ethnic Antagonism Erodes Republicans' Commitment to
2. Democracy." *PNAS Latest Articles* (July) < www.pnas.org/cgi/doi/10.1073/pnas.2007747117 >.

5 The writer Mark Danner makes this point: norms have "life only to the degree that those in power are willing to enliven them. ... Ours is famously said to be a government of laws, and yet we find in the Age of Trump that the laws depend on men and women willing to step forward and press them ..." (Danner 2017).

3. Beauchamp, Zack. 2020. "The Republican Party is an Authoritarian Outlier." *Vox.com* (22 September).
4. Chait, Jonathan. 2013. "The Shutdown Prophet." *New York Magazine* (13 October).
5. Danner, Mark. 2017. "What He Could Do." *The New York Review of Books* (23 March).
6. Economist Intelligence Unit. 2020. *Democracy Index 2019: A Year of Democratic Setbacks and Popular Protest*. (London), < www.eiu.com >.
7. Edsall, Thomas. 2020a. " 'I Fear That We are Witnessing the End of American Democracy'." *The New York Times* (26 August).
8. _____ . 2020b. " 'The Whole of Liberal Democracy is in Grave Danger at
9. This Moment'." *The New York Times* (22 July).
10. _____ . 2019. "The Political Magic of Us vs. Them." *The New York Times* (13 February).
11. Elgie, Robert. 2005. "From Linz to Tsebelis: Three Waves of Presidential/Parliamentary Studies?"*Democratization*. v.12, n.1: 106-122.
12. Freedom House. 2020. *Freedom in the World 2020: A Leaderless Struggle for*
13. *Democracy*. < www. freedomhouse.org >.
14. Gunther, Richard and Larry Diamond. 2003. "Species of Political Parties: A New
15. Typology." *Party Politics*. v.9, n.2: 167-199.
16.
17. Levitsky, Steven and Daniel Ziblatt. 2020. "End Minority Rule." *The New York*
18. *Times* (23 October).
19. _____ . 2018. *How Democracies Die*. Crown: New York.
20. Linz, Juan and Arturo Valenzeula, eds. 1994. *The Failure of Presidential*
21. *Democracy*. Baltimore, MD: The Johns Hopkins University Press.
22. Linz, Juan. 1990. "The Perils of Presidentialism."*Journal of Democracy*. v.1, n.1: 51-69.
23. Linz, Juan. 1978. *The Breakdown of Democratic Regimes: Crisis, Breakdown & Reequilibration*. Volume 1. Baltimore and London: The Johns Hopkins University Press.
24. Mainwaring, Scott and Matthew S. Shugart. 1997. "Juan Linz, Presidentialism and Democracy: A Critical Appraisal." *Comparative Politics*, v.29, n.4: 449-471.
25. Stepan, Alfred and Juan Linz. 2011. "Comparative Perspectives on Inequality
26. and the Quality of Democracy in the United States." *Perspectives on Politics*, v.9, n.4 (December): 841-856.
27. Varese, Federico. 1994. "Is Sicily the Future of Russia? Private Protection and the Rise of the Russian Mafia." *Archives Européenes de Sociologie*, v.35: 224-258.
28. Yglesias, Matthew. 2015. "American Democracy is Doomed." *Vox.com* (2 March).

Acknowledgements

The writer wishes to thank Prof. Dave Siegel (Union College) and undergraduate political science student Tawreak Gamble-Eddington (Union College '21) for comments.

SHORT BIOGRAPHY

Denis Preshova

is an assistant professor of Constitutional Law and Political System at the Faculty of Law "Iustinianus Primus". After successfully completing his undergraduate studies in Skopje I 2006, he completed his interdisciplinary postgraduate studies at the Center for European Integration Studies at the University of Bonn as a fellow of the Konrad Adenauer Foundation and earned a Master of European Studies (MES) degree in 2007. In 2010 he earned a Master of Laws (LL.M. – *magna cum laude*) from the University of Pittsburgh School of Law as a Fulbright scholarship holder. In 2019, he received his Ph.D. in Comparative Constitutional Law and EU Law from the Faculty of Law at the University of Cologne and obtained the title Doctor of Law (*Doctor iuris – magna cum laude*).

Изворна научна статија
УДК: 343.292:341.645.2(497.7:4)
341:[343.292:342.511(497.7)

Denis Preshova

THE PRESIDENTIAL PARDONS AT THE MERCY OF LAW

POLITICAL THOUGHT
60

Pardon as a privilege of those in power dates back to the Code of Hammurabi in ancient Babylon. Even though they have experienced certain transformations and adaptations over time, today, pardons are still often preceded by controversies and contestations.[1] The latter should not be surprising, since we know that pardons represent a certain manifestation of power precisely in the area of adjudication, where the law should be the guiding principle. In fact, today, under the conditions and circumstances of constitutionalism as one of the crucial cornerstones of democratic political systems, pardon is often caught between the privileges and prerogatives of the executive power, on the one hand, and the rule of law, on the other. In other words, the issue is whether the nature and character of pardon is to be defined as an act of mercy, or rather as an act adopted by means of a legally regulated, but also bureaucratic, procedure.[2] The definition of pardon as an act of mercy represents it as completely determined by the will of the subject who grants it, without any limitations. In the second case, however, pardon is an act, i.e. a decision made in the framework of conditions defined by law, as well as a procedure that can be subject to constitutional or judicial control over its compliance with the constitution or the law. During the last few decades, there has been a notable tendency in many legal systems to strike a compromise and to reconcile both understandings of pardon, while always insisting on determination according to law, regardless of the allowed discretion.

The utilitarians' approach at pardon, such as Cesare Beccaria's, clearly reflects how it is related to law, stating that "If a pardon is just, the law must be wrong; if the law is just, a pardon must be wrong".[3] But how to establish the link between pardons and the law in states where the circumstances are such that pardons are brutally exploited or misused as an instrument of political struggle, while the law and the institutions are entirely subordinate to the political needs and interests of the moment? And how to proceed in a situation when a pardon is not just, while the law, although basically well-designed, is incorrectly implemented, knowingly or unknowingly?

It is exactly this kind of situation that North Macedonia is confronted with. The state is facing the challenge to deal with a situation that was brought about by the alleged legal invalidity of the pardons granted by former State President Gjorgje Ivanov on 12.04.2016. His pardons have given rise to a serious legal dilemma which has even been taken before the European Court of Human Rights (ECtHR) in Strasbourg, so that it might lead to extensive legal and political consequences within the state. Namely, the question whether the pardons were in compliance with the Constitution and the law, as well as their

1 For further information on the history of pardon, see: Kathleen Dean Moore, *Pardons: Justice, Mercy, and the Public Interest* (Oxford University Press 1997), p. 15-22; Jody C. Baumgartner, Mark H. Morris, "Presidential Power Unbound: A Comparative Look at Presidential Pardon Power", p. 212-214, and Renata Deskoska "Ustavni paradoksi i pomiluvanjata vo Republika Makedonija od 12.4.2016", *Godišnik na Pravniot fakultet "Justinijan Prvi" vo Skopje vo čest na prof. d-r Jane Miljovski* (Praven fakultet, Skopje 2016), p. 198-199.

2 Andrew Novak, *Comparative Executive Clemency: The Constitutional Pardon Power and the Prerogative of Mercy in Global Perspective* (Routledge, 2016), p. 2-3.

3 Ibid., p. 3.

revocation in the context of the rights of the defendants in criminal procedures before domestic courts, was taken before the ECHR. The Court opened nine cases, and they have been communicated to the Government of the Republic of North Macedonia.[4]

The aim of the present paper is to examine precisely the main legal dilemmas that have arisen from the controversial pardons, as well as to analyse possible strategies that North Macedonia could adhere to before the ECHR in the light of its previous practice. A presentation of the main arguments will clearly reveal the major deficits and negative consequences of the prevailing political and legal culture. The latter is characterised by a deeply rooted understanding and practice of dealing with the Constitution as a predominantly political document, as well as a complete lack of direct application of constitutional norms by general courts, while constitutional and legal issues are addressed in the framework of non-formal institutions, mainly leaders' meetings. In this vein, the context will first be presented by means of a critical account of the main events and decisions linked to the controversial pardons. Then, the questions that the ECHR handed over to the Government of the Republic of North Macedonia will be analysed, especially against the background of the case *Lexa v. Slovakia,* followed by a survey of possible strategies and arguments that the state could adhere to in the proceedings before the ECHR. At the end, we will summarise the main points and draw conclusions.

Genesis of the legal issues arising from the presidential pardons

The events around the pardons granted by President Ivanov have been the subject of academic papers,[5] analyses,[6] blogs[7] and public events[8] for four years now, and many facts are well-known. Nevertheless, having in mind that they were hardly discussed at all during the last year until the information appeared that the ECHR had communicated the cases to the Government, we will sum up the main events and latest facts related to the controversial pardons.

4 The cases are available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-205137%22]} and https://hudoc.echr.coe.int/

5 Renata Deskoska, see footnote No. 1.

6 Gordan Kalajdžiev, *Pomiluvanjata na pretsedatelot Ivanov vo senka na ustavnosta na Zakonot za pomiluvanje*, 9.05.2019, Justice Observers, available at: https://justiceobservers.org/article/68867/63646/187?fbclid=IwAR1yaY67UV3rv5VZx1ubCPZuwrxoMhQ__Pr0Jvkg-7XF3N-FB-P0aPihR1zo

7 Svetomir Škarikj, Pomiluvanjata na pretsedatelot Ivanov se ništovni, 21.06.2018, Respublica, available at: https://respublica.edu.mk/mk/blog/2018-06-21-08-59-19

8 Interview with Svetomir Škarikj, Top tema, TV channel "Telma", 28.03.2016, available at: https://www.youtube.com/watch?v=-JiYp-W8OH90&list=PLNBxkWRA9K5_bGqJxINlBi5c7rCRUHZiQ&index=48;
Interview with Gordana Siljanovska-Davkova, Top tema, TV channel "Telma", 18.05.2016, available at: https://www.youtube.com/watch?v=E4YR3LhBLmo&index=2&list=PLDEJsbX4Is7dnj-HlRr6isnvvr4xXszHV;
"Can Ivanov's pardons prevail? What are the legal arguments?", feature in the TV programme "360 degrees", 5.06.2018, available at: https://www.youtube.com/watch?v=XPcnYID6z74

The state president's competence to grant pardons is stipulated in the Constitution of the Republic of North Macedonia, Article 84, paragraph 84, items 9 or 10. That competence was further regulated and made applicable with the adoption of the Law on Pardon in 1993.[9] According to the provisions of that law, there are two ways of initiating the procedure for pardon: upon application by the sentenced person or based on official duty. The president can relieve a person of criminal prosecution by granting pardon only by means of the procedure based on official duty, which is initiated in exceptional cases.[10] Namely, according to Article 11 of the Law on Pardon, the state president can, by way of exception, grant pardon without conducting proceedings if it serves the interest of the Republic, or if special circumstances that apply to the person and the crime indicate that such an action is justified. Twice, the provision in Article 11 was the legal grounds on which a controversial pardon was granted, namely in 2003 by President Trajkovski,[11] and in 2008 by President Crvenkovski.[12] In 2009, the then parliamentary majority adopted the Law on Amending and Supplementing the Law on Pardon in order to prevent pardons based on official duty without conducting proceedings, and to regulate the procedure for granting pardon upon application by the sentenced person.[13] With Article 10 of this law, Article 11 of the Law on Pardon as of 1993 was deleted. Furthermore, certain types of crimes were exempt of the possibility to grant pardon, and the establishment of a Pardon Commission by the state president was stipulated. The thus amended and supplemented Law on Pardon was in force and applied until 16.3.2016, when the Constitutional Court adopted the decision to abolish the Law on Amending and Supplementing as of 2009. In proceeding that were initiated and concluded uncommonly fast, the Constitutional Court adopted its decision with the votes of only five judged, while the remaining four jointly set down their dissenting opinion.[14]

The explanation on the decision to abolish the law did not contain a single argument that would have stated why Article 10, which had cancelled Article 11, was not in compliance with the Constitution, or why the entire law was abolished, instead of only abolishing certain parts. Meanwhile, the explanation contained an abundance of legally nebulous arguments that refer to an entirely false understanding of the separation of powers and the equality of citizens in the context of the competence of the state president to grant

9 Law on Pardon, Official Gazette of the Republic of Macedonia 20/1993.

10 The mere possibility to relieve a person of criminal prosecution by means of pardon is rather controversial and not very common in other states. For a criticism of this kind of broad definition of pardon, see Dušica Miladinović, "An Overview of the Concept of Pardon in the Serbian Criminal Legislation", *5 FACTA UNIVERSITATIS*. (2007), p. 47-60.

11 Decision on pardon and relief of criminal prosecution without conducting proceedings No. 07-396, 7 April 2003, Official Gazette of the Republic of Macedonia, 25/2003. With this decision, then Minister of Interior Dosta Dimovska and Aleksandar Cvetkov, then Director of the Office for Operational Technology within the Ministry of Interior, were granted pardon.

12 Decision on pardon and relief of criminal prosecution without conducting proceedings No. 07-674, 2 August 2008, Official Gazette of the Republic of Macedonia 98/2008. With this decision, Zoran Zaev, then Mayor of Strumica, and five of his staff from Strumica were granted pardon.

13 Law on Amending and Supplementing the Law on Pardon, Official Gazette of the Republic of Macedonia 12/2009.

14 The decree on initiating proceedings to assess the compliance with the Constitution was issued on 24.02.2016, U.No. 19/2016, while the Decision of the Constitutional Court U.No. 19/2016-1 was adopted on 16.03.2016.

pardon, as well as the Assembly's constitutional duty to regulate the issues in practice, in its role as legislative power.

More specifically, the Constitutional Court considered the legal provision to exempt certain crimes from the possibility to be granted pardon as opposed to the Constitution, because a pardon cannot fulfil a preventive function and goal, due to the fact that, within criminal law, it is reserved only for sanctions, i.e. penalties, and therefore the competence of the president to grant pardon had been interfered in in a legally impermissible way. Furthermore, the Constitutional Court considered that in exempting certain crimes from the possibility to be granted pardon, the legislator had exceeded its competences, since the Constitution does not foresee that this can be done by law, only that pardons are granted in compliance with the law. Apart from that, according to the decision to abolish the law, the legislator had violated the principle of separation of powers with the provision that the president establish a Pardon Commission, since it does not lie within the constitutional competence of the legislative power to regulate issues that concern the internal organisation of the activities of the President of the Republic. It is interesting to note that the Constitutional Court, in almost exactly the same composition, had previously confirmed that it was in compliance with the Constitution for the Law on the Assembly, which had been adopted by a relative double majority, to determine that the state president had to declare within seven days whether he would sign a decree on the promulgation of a law.[15]

Anyway, the most important thing, besides the fact that Article 10 of the Law on Amending and Supplementing was not mentioned with a single word, is that there was no explanation on the legal effect of the decision on the abolishment of that law. Furthermore, and no less important, the Constitutional Court decidedly and unambiguously stated that pardon is a final and irrevocable act of mercy by the President of the Republic.

The main weaknesses of the arguments from the explanation of the decision on abolishing the law were elaborated by the four judges of the Constitutional Court in their joint dissenting opinion, deconstructing the unsubstantial legal arguments and the debatable understanding of the separation of powers, the equality of the citizens and the role and constitutional duty of the legislative branch much more systematically than the explanation itself had been written.[16] It was noted that the explanation contained no clear fundamental argumentation, and that it was focused solely on a few provisions, even though the law was abolished as a whole, including the provisions that contained merely technical information. However, the negative point of the dissenting opinion was the false

15 Decision of the Constitutional Court, U.No. 175/2012. For more details on this decision, see Denis Preshova: "The Naked, the Blind and the Ignorant: The suspensive veto power of the President and the institutional balance in the political system of the Republic of Macedonia", Political Thought No. 45(2014), p. 9-17.

16 Separate opinion on the subject U.No.19/2016.

predetermination, i.e. the reference to the legal effect of the decision on abolishment. Namely, it was referred to twice that the decision actually reinstalls the legal effect of the preceding legal provisions from the Law on Pardon as of 1993, which had been deleted by the Law on Amending and Supplementing adopted in 2009. It is in fact this aspect of the dissenting opinion that the following confusion and legal dilemma concerning the legal effect of the Constitutional Court's decision on abolishment would be focused on, and it would be for the benefit of what was to follow.

Less than one month after the Constitutional Court's decision, on 12.4. 2016, President Ivanov adopted the decision to grant pardon to 56 persons, some of which would be granted pardon several times. The former President explained that his decision was based on the wish to end the political crisis and criminal charges of the political opponents, as well as on the need for political and national reconciliation.[17] In fact, he considered that granting pardon to the key political actors and their staff and relieving them of criminal prosecution by the Special State Prosecution as well as the regular state prosecution would represent a crucial step towards ending the political crisis. However, Ivanov's step evoked the exact opposite, leading to an increase of protests against the political party in power, with new protests flaring up and becoming larger, which were, among other things, caused by the public doubt that there was no legal basis for the President's decisions on granting pardon.[18]

Under serious pressure, not only from the public, but also from the international community, the then parliamentary majority had to find a way to cancel, i.e. revoke President Ivanov's decisions to grant pardon. Therefore, a new Law on Supplementing the Law on Pardon as of 1993 was adopted on 19.5.2016.[19] The Law introduced a new provision, Article 11-a, which allowed the President to revoke his own pardons within 30 days after the adoption of the law.

President Ivanov revoked all decisions on granting pardon that he had announced on 12.4.2016 based on the new Article 11-a at two occasions, on 27.5.2016[20] and 7.06.2016.[21] Even with regard to the revocation, the question whether the procedure stipulated in Article 11-a had been observed remained unanswered. Criminal prosecution against some of the pardoned persons against whom charges had been pressed could now be continued, while in other cases, valid judgements were rendered, sentencing some of the previously pardoned to prison.

17 President Ivanov's statement of 12.04.2016 is available at: https://www.youtube.com/watch?v=5A_8x1oMQVw&feature=emb_title

18 See e.g.: Interview with Svetomir Škarikj, see footnote No. 8; and Ljubomir Kostovski, Professor Škarikj repeats that the President's abolition is a dead solution, Globus, 05.04.2016, available at: http://globusmagazin.com.mk/?ItemID=91F6921EA76CB-7498C86749401E8EB1D

19 Law on Supplementing the Law on Pardon, Official Gazette of the Republic of Macedonia, 99/2016.

20 Official Gazette of the Republic of Macedonia, 102/2016.

21 Official Gazette of the Republic of Macedonia, 108/2016.

However, continuing prosecution and finalising criminal proceedings against the persons who had previously been pardoned was only the beginning of the events linked to the controversial pardons. Namely, during the trials, objections were raised continuously, stating that the defendants had actually been pardoned, so that accusations against them should not be accepted and a judgement of acquittal should be passed.[22] It is due to such objections by defendants and convicts, in various appeals, that the cases finally ended up before the ECHR.

In an effort to remedy the legal confusion and to emphasise the true legal effect of the Constitutional Court's decision to abolish, the new parliamentary majority tried to adopt an authentic interpretation of Article 11 of the Law on Pardon as of 1993. Two majority Member of the Assembly filed a request for authentic interpretation of the provision to the Assembly.[23] In the end, however, no authentic interpretation was adopted, since the Legal Committee concluded that this was not possible in the case of the provision in question, which was not part of the legal system and could not be applied. Therefore, it was decided that the request for authentic interpretation was not justified.[24]

The pardons in the context of the European Convention on Human Rights

An international dimension was added to the legal dilemmas initiated by former President Ivanov's pardons when nine cases (to date) were opened before the ECHR, involving ten persons who had previously been subject to the controversial pardons.[25] The broader public became familiar with the status of the cases when they were communicated to the Government of the Republic of North Macedonia, reinitiating the discussion on the issue.

In fact, the first warning from abroad with regard to the graveness of the situation caused by the pardons came from the Supreme Court of Greece on 18.05.2018.[26] The decisions of this Court regarding the request on extradition of Nikola Boškovski and Goran

22 More specifically, Article 402, paragraph 1, item 6, in relation to Article 416, paragraph 1, item 3 and Article 447, paragraph 1, item 4 of the Law on Criminal Prosecution, Official Gazette of the Republic of Macedonia, 150/2010 and 100/2012.

23 The request was recorded under No. 08-6363/1 on 29.11.2019. The complete materials are available at: https://www.sobranie.mk/materialdetails.nspx?materialId=df0f88b8-38da-4f79-8c3d-c777c6b19858

24 Protocol of the two hundred and fourth session of the Legal Committee of the Assembly of the Republic of North Macedonia on 4 December 2019, available at: https://www.sobranie.mk/sessiondetailsrabotni.nspx?sessionDetailsId=a5661df6-76d5-4294-b450-f6c-64689824c&date=04.12.2019

25 Application No. 77796/17, Taleski v. North Macedonia, 3.11.2017; Application No.80003/17, Temelko v. North Macedonia, 21.11.2017; Application No.81848/17, Gruevski and others v. North Macedonia; Application No.81862/17, Jakimovski and Jankuloska v. North Macedonia, Application No.11583/18, Jankuloska v. North Macedonia, 20.02.2018; Application No.30884/18, Mijalkov v. North Macedonia, 27.06.2018; Application No.26233/18, Todorovski v. North Macedonia, 30.05.2018; Application No.59762/18, Janakieski v. North Macedonia; and Application 1005/19 Božinovski v. North Macedonia, 20.12.2018.

26 Supreme Court of Greece, Judgement No. 839/2018 as of 18.05.2018; and Judgement No. 840/2018 as of 18.05.2018. These judgements are available in Macedonian translation at: https://360stepeni.mk/prevod-na-presudite-na-grchkiot-sud-so-k/

Grujevski clearly indicated that once granted pardons could not be retracted or revoked, since no legal grounds to do so existed at the time they were granted. The Supreme Court's opinion is actually not surprising, taking into consideration the comparative practice of both states regarding the pardons, and especially the fact that the extradition requests did not contain any indication of the pardons being illegal, but rather pointed to the Constitutional Court of the Republic of North Macedonia's opinion in which it is clearly stated that the pardons represent a final and irrevocable act of mercy by the State President. In addition, no reference to the ECHR's practice can be found in the Supreme Court of Greece's explanation of its verdicts, thus leaving no room for prejudging the outcome of the cases before the ECHR.

On 18.9.2020 and 21.9.2020, within its communication on the cases, the ECHR addressed the Government with a few questions about the validity of the pardons and their revocation.[27] The questions mainly focus on the issue whether there were legal grounds that allowed for the revocation of the pardons and whether the legal provision that allowed it was in compliance with the principles of rule of law and legal certainty, especially with regard to the fact that it can only be applied to a concrete group of people. Another question was if the right to a fair trial according to Article 6 of the European Convention on Human Rights was violated by continuing criminal prosecution against the persons in question, and if Article 5 of the Convention was violated by the order remanding custody, against the background of the case *Lexa v. Slovakia*.[28] It was to be expected that the ECHR would focus on these issues, having in mind the indications from the applications in question and that the defence had regularly referred to this ECHR ruling before the domestic courts, given that it is the leading case with regard to pardon and amnesty.

There are three main reasons why the *Lexa* case is so "popular" among the defence lawyers of the accused and the Strasbourg applicants. First, some facts and circumstances of the case are quite similar to the events linked to the pardons in North Macedonia. Namely, Ivan Lexa, former head of the Slovak Information Service, was affected by the decisions on amnesty as of 3.3.1998 and 7.7. 1998 by then Prime Minister Vladimír Mečiar, related to the statements about the abduction of the son of then President Michal Kováč, who was a fierce political opponent of the Prime Minister. The parliamentary elections in 1998 led to a new political majority, and Mečiar's party went into opposition. During the time he was temporarily carrying out the duties of the vacant president's office, on 8.12.1998, new Slovak Prime Minister Mikuláš Dzurinda decided to revoke Mečiar's decisions on amnesty of 3.3.1998 and 7.7. 1998 with the aim to allow for criminal prosecution against Ivan Lexa, among others. Following this decision, charges were pressed against Lexa in 1999, and on 15.4.199, he was remanded in custody by

27 The questions are available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-205137%22]} and https://hudoc.echr.coe.int/

28 Lexa v. Slovakia, App. No. 54334/00, 23.09.2008 (Final 21.12.2008).

decision of the District Court in Bratislava. On 19.7.1999, that decision was revoked, and Lexa was released. On 29.6.2001, the District Court adopted the decision to discontinue proceedings and drop charges due to the amnesty that had been previously granted to the defendants in the present case. The District Court in Bratislava, and, later, the Supreme Court of Slovakia, confirmed that decision, referring to the decisions of the Constitutional Court in which the constitutional provisions related to the authorisation to grant amnesty are interpreted, even though not exactly related to the decision to grant amnesty or to revoke it.[29] On 28.9.1999, Ivan Lexa had filed an application with the ECHR, requiring that a violation of Article 5 of the European Convention be confirmed.

The second major issue in the case before the ECHR was whether the arrest of Lexa represented a violation of Article 5, paragraph 1 of the Convention against the background of the granted amnesty and its later revocation. In its ruling on the case Lexa v. Slovakia, the ECHR stated that Article 5, paragraph 1 had been violated, since Lexa had been arrested even though he had previously been granted amnesty, given that an amnesty, or a pardon, once given, cannot be revoked or annulled. In its explication of the ruling, the ECHR clearly stated that non-compliance with the national legal order and violation of legal regulations represent a violation of Article 5 of the Human Rights Convention, which is why it fell within the competence of the ECHR to determine whether national law had been violated.[30] Hence, against the background of the EHCR's previous practice, it would be illogical to interpret legal regulations that allow granting amnesty in a way that they also allow to arrest a person against whom criminal prosecution has been discontinued because he has been granted amnesty.[31]

As for the third reason, the ECHR included in its ruling a broad comparative survey of the law in the member states of the Council of Europe and international law in order to support its findings.[32] Therein, the ECHR clearly established a close relation between amnesty and pardon, examining them together. This approach is not regarded as common practice, which is why it represents an additional argument for pointing out the significance of the case for the context of the pardons granted on 12.4.2016.

Having in mind the above-mentioned, and taking into account the parallels between the case *Lexa v. Slovakia* and the events around the pardons granted on 12.4.2016, North Macedonia is facing a serious challenge. Therefore, the state has to establish an exceedingly serious approach at defending its positions in the cases brought before the Court in Strasbourg. Precisely the question which strategies and arguments the state should refer to in defence of its position is the subject of the following chapter.

29 Ibid. Article 8-33.

30 Ibid., paragraph 120: „ Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should review whether this law has been complied with...".

31 Ibid., paragraph 121.

32 Ibid., paragraph 88-99.

Possible strategy and arguments for North Macedonia before the ECHR

In North Macedonia, it is a die-hard practice to solve constitutional law issues within non-formal institutions,[33] or to completely instrumentalise formal institutions to this end. Non-formal institutions are most often so-called leaders' meetings, at which constitutional-legal issues are provided with political answers on which the leaders of the most relevant political parties reach an agreement. Those answers are then, if necessary, in some way transformed into "legal" documents. A consequence of this practice is the direct degradation of the authority and capacities of the formal institutions, as well as diminishing confidence in them and the legal system as such. The instrumentalisation of the formal institutions, on the other hand, entails the subordination of all formal institutions in order to embed political will in a concrete formal decision which is controversial exactly because it is not within the legal framework. However, it is due to this kind of instrumentalisation that there is no adequate way to correct and deal with such illegality.

The described approach at solving constitutional-legal issues in fact reflects the predominant political and legal culture in North Macedonia, which, instead of "constitutionalising" the legal system and the judiciary, deals with the Constitution as if it were a political document that is basically denied the possibility of broad and direct implementation. During the last few decades, constitutionalisation has been a predominant trend within developed legal systems, where the doctrines and principles of constitutional law are being introduced into all branches of law and the legal system, with even general courts referring to them when making their judgements.[34] In North Macedonia, meanwhile, constitutional norms are perceived in a restrictive way and considered to be mostly about political institutions. The application of the Constitution is regarded to depend on the will of political institutions and politicians, rather than on the responsibility of the so-called legal institutions.

The nine cases taken before the ECHR have the potential to put the described approach and practice to a serious test. If the state does not pass it, far-reaching consequences will follow. A possible negative outcome for the state will not only result in acquittal in the cases of the persons formerly granted pardon, but also shake the already fragile confidence in the judiciary, the legal system, and the political system as a whole. The

33 For further details on this practice in North Macedonia, see: Nenad Markovikj and Ivan Damjanovski, 'The EU's Democracy Promotion Meets Informal Politics: The Case of Leaders' Meetings in the Republic of Macedonia' 7 *REGION: Regional Studies of Russia, Eastern Europe, and Central Asia* 2018, p. 71-96.

34 Alec Stone, 'The Birth and Development of Abstract Review: Constitutional Courts and Policymaking in Western Europe', *19 Policy Studies Journal* 1990, p. 93; Donald P. Kommers and Russel A. Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany* (3rd edition Duke University Press 2012), p. 39; Dieter Grimm, *Constitutionalism: Past, Present, and Future* (Oxford University Press 2016), p. 214.

situation requires high commitment by the Government, which should mobilise its full capacity in order to provide an adequate strategy and strong argumentation before the ECHR.

To date, the academic and expert discussion has resulted in two possible strategies for North Macedonia with regard to the ECHR cases. Those strategies do not exclude each other and could hence be combined. The arguments of the first strategy are based on the legal effect of the decisions of the Constitutional Court and the non-existence of valid legal grounds for adopting the decisions on pardon. The second strategy is focused on the character of the pardons and the statement that they were, in fact, amnesties, and actually could not have been granted, being related to cases of serious and massive human rights violations by the former government.[35]

However, regardless of which of the two strategies the state will resort to in Strasbourg, its starting position must be to accentuate the differences with regard to the case of *Lexa v. Slovakia*. The crucial difference with regard to the Lexa case is the fact that President Ivanov's pardons were controversial and against the law from the very moment they were granted, i.e. *ab initio*. In the Lexa case, meanwhile, Prime Minister Mečiar's amnesties were never doubted with regard to their legal validity, it was solely the fact of their revocation which was controversial. Based on this approach, the ECHR's focus will move away from the revocation of the pardons, which was the main issue in the Lexa case,[36] towards the very act of granting the pardons on 12.04.2016. Thus, the Lexa case will loose some of its relevance with regard to the cases against North Macedonia. The choice of arguments for demonstrating that the pardons were legally invalid from the very beginning will depend on the chosen strategy or combination of strategies.

The first strategy focuses on the legal effect of the decisions of the Constitutional Court in its role as a "negative legislator",[37] according to which it can abolish or annul legal norms, while it cannot enact them. Namely, the effect of the Constitutional Court's decisions to abolish the Law on Amending and Supplementing the Law on Pardon in its entirety as of 16.3.2016 was *ex nunc* and *pro futuro*, signifying that its legal effect referred to the future, starting from the moment it was published. This means that the decision to abolish the respective law did not deny the legal effect and the legal consequences of the amendments and supplements since the year 2009, when the law was adopted, until the moment when the decision to abolish it was published. Against the background that the deletion of Article 11 from the Law on Pardon as of 1993 was a consequence of Article 10 of the Law on Amending and Supplementing as of 2009, the decision to abolish the Law

35 E.g., see: Debate between Gordan Kalajdžiev and Renata Deskoska, Win-Win, TV channel "Telma", 8.10.2020, available at: https://www.youtube.com/watch?v=EY3rab2uojU .

36 Lexa v. Slovakia, s. footnote No. 28, paragraph 121.

37 For the meaning of this sentence, see: Hans Kelsen, *General Theory of Law and State* (Transaction 2006), p. 268-269.

on Amending and Supplementing does not, however, deny this effect or "bring back to life" the deleted provision.

In fact, the dilemma arising from the question whether the Constitutional Court's decision to bring back to life, i.e. return to force legal provisions that had been deleted by a law that is claimed not to comply with the Constitution, was solved in a very clear and unambiguous way as early as the time of the first constitutional courts. Namely, it was already Hans Kelsen who stated that, in principle, a constitutional court's decision to abolish a law cannot in any case, by any sort of automatism, restore a previously abrogated provision to legal effect.[38] In order for a constitutional court's decision to have this kind of effect, there has to be a precise constitutional provision that provides some type of authorisation.[39] Even if the constitutional court itself stipulated in its explication of the decision to abolish a law that it would have the effect to restore to force some legal provision, that would be extremely controversial from the point of view of clear rules concerning the legal effect of the constitutional courts' decisions.[40]

In North Macedonia, there is no reason to claim that the decision to abolish a law could restore the legal effect of a provision, i.e. Article 11, which would provide the President of the Republic with the legal grounds for granting pardon based on official duty and thus relieving someone of criminal prosecution without conducting proceeding. By the way, the Constitutional Court itself stated this in its Decision as of 29.2.2012,[41] and the statement is also published on the Constitutional Court's website under the heading "Legal principles and status".[42] As a consequence of the legal effect of the Constitutional Court's decision to abolish, former President Ivanov did not have any legal grounds for granting the controversial pardons, which is why they were unlawful and legally invalid from the very moment they were granted. More specifically, the decision to grant the pardons was contradictory to Article 84, paragraph 1, item 10 of the Constitution, according to which pardons are granted in accordance with the law, which was not the case, for the legal basis in Article 11 of the Law on Pardon, which President Ivanov directly referred to regarding his decision, did not exist. This standpoint is virtually undisputed within the academic discourse and was never subject to serious controversies. Nevertheless, as the ECHR clearly stated in the Lexa case, they consider the academic

38 Hans Kelsen, „Judicial review of legislation: A comparative study of the Austrian and American Constitution", 4 *The Journal of Politics* 1942, p. 198; Allan R. Brewer-Carias, *Constitutional Courts as Positive Legislators*, (Cambridge University Press 2011), p. 114.

39 Ibid. p 199. See e.g.: Article 282, paragraph 1 and 4 of the Constitution of Portugal, and Article 140, paragraph 6 of the Constitution of Austria. For further information, see: Allan R. Brewer-Carias, *Constitutional Courts as Positive Legislators*, (Cambridge University Press 2011), p. 114-115.

40 Marek Safjan, Poland: The Constitutional Court as a Positive Legislator, in: Allan R. Brewer-Carias, *Constitutional Courts as Positive Legislators*, (Cambridge University Press 2011), p. 706.

41 Decision of the Constitutional Court, U.No. 97/2011. "Having in mind that, in accordance with Article 110 of the Constitution, the Constitutional Court is not responsible for carrying out legislative power and to standardise provisions by restoring the legal effect of provisions that are no longer within the legal order,...".

42 „The Constitutional Court does not create law nor define what law is, but it determines what is not. It does not prescribe original norms, but examines them, assesses them and, at the end, decides whether the prescribed norms and defined relations are in compliance with the Constitutions and the laws." http://ustavensud.mk/?page_id=4599

consensus secondary to how the institutions actually proceeded and to the question if that consensus was reflected in the decisions of the judges in the cases involving the formerly pardoned persons.[43]

The confusion following the decision to abolish the law that was created by the fact that there was not a single word on its legal effect in the majority's explanation, while the minority's dissenting opinion falsely prejudged the legal effect, gave way for the general courts not to resolve the issue. Instead, when deciding on the objections raised during the assessment of the indictments, the general courts either ignored it or explained in their decisions that the pardons had been revoked and were not within the legal order anymore and therefore could not have any effect on the criminal prosecution against the persons in questions. Not taking into account and clearly indicating the legal effect of the Constitutional Court's decisions and the legal invalidity of the pardons, the proceedings of the general courts actually weaken the position of the state in the cases before the ECHR. It is evident that the judges were not interested in the Lexa case, from which they actually could have seen how the Slovak judges proceeded in a similar situation,[44] and, at the same time, that the ECHR clearly points to the fact that decisions on granting amnesty or pardon can be subject to the assessment of their legal validity before the courts.[45]

There is supposedly only one more possibility for the Constitutional Court of the Republic of North Macedonia to correct the dilemmas and the confusion that it caused in 2016 with regard to the fate of Article 11 of the Law on Pardon. Very soon, it is expected that deciding on an initiative to contest the compliance of Article 11 of the Law on Amending as of 2016 – the article that enabled the revocation of the pardons – will be put on the agenda. In the decision of 27.11.2019 to initiate the procedure to assess the constitutionality of Article 11, it is clearly indicated that the provision does not comply with the Constitution, as follows from a comparative analysis of the *Lexa v. Slovakia* case.[46] The most worrying aspect is, however, that in the Decision, there is no direct or implicit indication that Article 11 of the Law on Pardon was not within the legal system since the moment the abolishing decision was published on 16.3.2016. If the Constitutional judges decide to abolish Article 11, it will be very important for their explanation of the effect of the decision on abolishment to point out the fact that Article 11 does not actually exist and that it was not reinstalled as part of the legal order by the abolishment decision of 2016. Hence, there will be no possibility left to claim that the criminal prosecution against the formerly pardoned persons had to be discontinued. On the contrary, we will know who was actually responsible for the confusion related to the pardons, as well as for

43 Lexa v. Slovakia, footnote No. 28, paragraph 141.
44 Lexa v. Slovakia, footnote No. 28, paragraph 27-33.
45 Lexa v. Slovakia, footnote No. 28, paragraph 136.
46 Decision on initiating the procedure to assess compliance with the Constitution, U.No. 163/2016.

the possibly negative outcome of the cases before the ECHR for the Republic of North Macedonia.

The second strategy is based on two arguments about the pardons and their validity according to national and international law. According to the first argument, which addresses the character and the number of persons whom the controversial pardons were granted to, those pardons were actually not pardons, but amnesties. Having in mind that amnesties, which are granted by adopting a respective law, lie within the exclusive responsibility of the Assembly, the President actually interfered in the competences of the legislative power.[47] There is one serious problem about this argument, though. In practice, to date, pardons according to Article 11, i.e. based on official duty, for relief of criminal prosecution without initiating proceedings, were granted on two occasions, namely by President Trajkovski in 2003 and by President Crvenkovski in 2008. The adopted decisions to grant pardon were formally identical with President Ivanov's decision in 2016.[48] On the other hand, it has been regular practice to adopt decisions to grant pardon to even more than 30 persons at a time in case of completed criminal prosecution.[49] Therefore, this argument cannot be considered relevant for defending the state's position before the ECHR.

The second argument is based on the standpoint that pardons and amnesties cannot be granted in cases of serious and massive human rights violations, which is clearly stated in international law and confirmed by the practice of international courts.[50] The fact that certain violations of human rights and freedoms during the former government are indicated, as stated in international reports (such as the European Commission's 2016 status report on North Macedonia, in which it was described as a "captured state")[51] is reason enough to argue that those criminal prosecutions and crimes cannot be pardoned or amnestied. Based on this argument, President Ivanov's decisions on pardon should not have been adopted in the first place, since the pardons were granted to persons who had been involved in such serious and massive violations.

Even though that argument is quite legitimate, there are some reasons why it is not sufficiently persuasive in the given case. First, throughout its practice, the ECHR has

47 Gordan Kalajdžiev, *Pravnite predizvici pred Specijalnoto javno obvinitelstvo* (FOOM, December 2018), p. 19; and Mirjana Lazarova-Trajkovska, Kakvi se posledicite od presudata na grčkiot Vrhoven sud za neekstradiranje na Grujevski i Boškovski?, 360 stepeni, 29.05.2018, available at: https://360stepeni.mk/kakvi-se-posleditsite-od-presudata-na-g/

48 See footnotes No. 11 and 12.

49 E.g., see: Odluka za pomiluvanje na osudeni lica po povod 2-ri Avgust 2016 godina - Nacionalniot praznik na Republika Makedonija, No. 08-1116/1 of 27.07.2016, Official Gazette of the Republic of Macedonia, 139/2016

50 See footnote No. 46 and Lexa v. Slovakia, footnote No. 28, paragraph 96-99.

51 European Commission, The Former Yugoslav Republic of Macedonia 2016 Report, p. 6,8. The report is available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf
In fact, the European Commission's report was based on the observations in the so-called Priebe Report of 2015, The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015, Brussels 8.6.2015, p. 9. The report is available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf

mainly considered "serious" violations of the human rights and freedoms to be violations of the European Convention of Human Rights' Article 2, the right to life, and article 3, the prohibition of torture.[52] Having in mind that none of the controversial pardons was granted in a case of violation of those rights, it will be hard to argue that the pardons are legally invalid on those grounds. Actually, in its communication on the cases addressed to the Government of the Republic of North Macedonia, the ECHR indicated the crimes which the applicants had been accused of or convicted for, and they do not refer to Articles 2 and 3 of the Convention.

Second, between 1993 and 1998, the Slovak Government led by Prime Minister Mečiar was often assessed as having autocratic features. That is why, in 1997, the European Commission gave a negative opinion on the start of membership negotiations.[53] Additionally, we should not forget that Mečiar's amnesties in 1998 include the case of alleged abduction of the then state president's son, who had first been intoxicated and then transferred to Austria, by the Slovak Information Service.[54]

Third, in the Lexa case, the ECHR certainly gave a detailed summary of international law and the practice of the Inter-American Court of Human Rights, which unambiguously indicate that certain heavy violations of human rights and freedoms cannot be subject to pardon or amnesty. But, as stated by the ECHR itself, they did not influence its decision with regard t the main issue, namely, that a once granted amnesty cannot be revoked.[55]

Based on the above-mentioned, it becomes clear that the state's best strategy and strongest argument in the cases before the ECHR is to insist on differentiating between former President Ivanov's controversial pardons and the *Lexa v. Slovakia* case, whereas the main focus has to be on the legal invalidity of the decision to grant the pardons in the moment it was adopted, resulting from the legal effect of the Constitutional Court's abolishment decision of 16.3.2016. To base the argument on the legal effect of the decisions of the Constitutional Court may seem to be heavy theoreticism, too abstract to be fruitful, however, in the Lexa case, the ECHR got involved in exactly this kind of

52 E.g., see: El-Masri v. The Former Yugoslav Republic of Macedonia, Application No. 39690/09 (13 December 2012) paragraph 269; Eremiášová and Pechová v. The Czech Republic, Application No. 23944/04 (16 May 2012) paragraph 132 and 168; Ghimp and Others v. The Republic of Moldova, Application No. 32520/09 (3 January 2013) paragraph 68; Timus and Tarus v. The Republic of Moldova, Application No. 70077/11 (15 January 2014) paragraph 68; Husayn (Abu Zubaydah) v. Poland, Application No. 7511/13 (16 February 2015) paragraph 566; Al Nashiri v. Poland, Application No. 28761/11 (16 February 2015) paragraph 592-595. For further information, see: Northern Ireland Human Rights Commission, Advice of the Northern Ireland Human Rights Commission on the House of Commons' Defence Committee report on 'Investigations in fatalities in Northern Ireland involving British military personnel', June 2017, p. 12, available at: https://www.nihrc.org/uploads/publications/NIHRC_Advice_to_NIO_June_2017_Final.pdf .

53 In 1997, with regard to the membership application of Slovakia, the European Commission pointed out in its opinion that: "Slovakia does not fulfil in a satisfying manner the political conditions set out by the European Council in Copenhagen, because of the instability of Slovakia's institutions, their lack of rootedness in political life and the shortcomings in the functioning of its democracy". See: European Commission, Regular Report from the Commission on Slovakia's Progress towards Accession (1998), p. 7. See also: Tim Haughton, "Exit, choice and legacy: explaining the patterns of party politics in postcommunist Slovakia", *30 East European Politics* 2014, 221.

54 Lexa v. Slovakia, see footnote No. 28, paragraph 96-97.

55 Lexa v. Slovakia, see footnote No. 28, paragraph 141: „By its very nature, however, this information is not capable of affecting the position as regards the sole issue which the Court is called upon to determine (see paragraph 102 above)."

dispute.[56] Additionally, the ECHR points out that disregard of national law represents a violation of the European Convention on Human Rights, especially with regard to Article 5, which is why the Court in Strasbourg will take this aspect into account.[57] That is exactly why the state will have to clarify for which reasons the decisions to grant pardon were contradictory to national legal regulations from the very moment they were adopted, and that they reflect utter disregard of the basic principles that apply to the legal effect of constitutional courts' decisions, not only in North Macedonia, but in comparative constitutional law in general.

Conclusion

Political bargaining on serious issues of constitutional law inevitably leads to negative consequences, especially if its outcome is unlawful. North Macedonia is facing a huge challenge, probably of dimensions unseen during its existence as an independent state, resulting from its incorrect approach of leaving legal dilemmas unresolved, which, however, made their way to Strasbourg. A possible negative outcome of the nine cases before the European Court of Human Rights that refer to former President Ivanov's controversial pardons has a considerable potential to determine the development of the upcoming legal and political events in the country, which will surely not be favourable. What is at stake now is not someone's political career, or petty party interests – it is the very trust in the institutions and the legal system, hence the state's fundamental interests. Contrary to some professors' self-assured opinion that "the pardons cannot be brought back to life, not even by the European Court of Human Rights…"[58], this option is more than realistic, especially if the strategy and arguments to be brought forward in the cases against North Macedonia will not be prepared with a maximum of professionalism. The paper at hand is a first modest attempt at analytically and systematically exposing the various legal aspect of the controversial pardons in the context of the cases before the ECHR, in the mirror of national and international law, as well as to outline possible strategies and arguments. We are left to see what approach the state will choose and if the lessons have finally been learned, so that harmful practices will not be repeated, and destructive aspects of North Macedonia's political and legal culture that have been pulling us down for years will finally be eradicated.

56 Lexa v. Slovakia, footnote No. 28, paragraph 136, related to paragraph 55.

57 Lexa v. Slovakia, footnote No.28, paragraph 120.

58 Svetomir Škarikj, footnote No. 7.

SHORT BIOGRAPHIES

Tanja Karakamisheva-Jovanovska
is a full professor at the Faculty of Law "Iustinianus Primus" in Skopje at the Department of Constitutional Law and Political System. She obtained her doctorate at the Faculty of Law in Ljubljana, Republic of Slovenia, in 2002, and she obtained her master's degree in 1997 at the Faculty of Law in Skopje. Until now, she has worked as an expert on a number of projects run by the GTZ, the OSCE, the UNDP, the EU, the Council of Europe, and others. In the period between 2008 and 2012 she was nominated as a deputy member, and from 2016 until 2020 as a member of the Venice Commission of the Council of Europe. In 2014 she was nominated for a member of the Program Committee for the configuration "Europe in a Changing World – Inclusive, Innovative, and Reflective Society" working within the European Commission for the Horizon 2020 program, as well as a national contact point for this configuration. In February 2014, she was selected as the best scientist at the University of Ss. Cyril and Methodius for 2013. **She is the author of more than 250 papers published in domestic and foreign journals, yearbooks, collections and the like.** She has participated in more than 20 relevant international scientific projects, and in more than 50 seminars and international conferences organized around the world with her papers or studies. **She is the author of ten university textbooks, three popular science books and five monographs.**

Aleksandar Spasenovski, PhD,
is an associate professor at the Department of Constitutional Law and Political System at the Faculty of Law "Iustinianus Primus" at the University of Ss. Cyril and Methodius. His special interest is the political parties and interest groups, as well as modern political systems. Spasenovski's theses was related to the constitutional and legal status of religions and the freedom of confession. Aleksandar was elected a member of the Macedonian Parliament in 2006, 2008, and 2011, and from 1999 to 2006 he was a scholarship holder of the Konrad Adenauer Foundation. Email: a.spasenovski@pf.ukim.edu.mk

Изворна научна статија
УДК: 329.1/.6(497.7)(091)
316.334.3:329(497.7)"1990"

Tanja Karakamisheva-Jovanovska
Aleksandar Spasenovski

FROM THE ONE-PARTY SYSTEM TO PARTY PLURALISM: THE TRANSFORMATION OF THE MACEDONIAN PARTY SYSTEM IN THE MIRROR OF THE IDEOLOGICAL PROFILES AND PROGRAMMES OF THE FIRST REGISTERED PARTIES

POLITICAL THOUGHT
60

Introduction

The aim of this paper is to shed some light on the ideological profile and programme of some of the parties that were the first to be registered, based on a defined set of criteria.

The objective of the present analysis is to determine the main features of the Macedonian party system, starting from the time of the one-party system, against the background of the political circumstances in the Socialist Republic of Macedonia (SRM) on the eve of the collapse of the Socialist Federal Republic of Yugoslavia (SFRY), until the introduction of political and party pluralism with the adoption of the Constitution of the independent Republic of Macedonia in November 1991.

In the SRM of the late 1980s, just before the processes of political pluralisation began, the sole political entity to hold the monopoly over politics and the institutions was the League of Communists of Yugoslavia (LCY), i.e. its units in the Federal Republics of the SFRY. In the SRM, political power was in the hands of the League of Communists of Macedonia (LCM), which was part of the LCY. The events in the most liberal Republic of the SFRY had a special impact on the processes of pluralisation: in Slovenia, alternative political movements and organisations had been forming already in the early 1980s, inspired by the wave of liberalisation and democratisation that had seized the Eastern European countries, especially Hungary and Poland. What was happening in Slovenia at that time and would spill over to the other Republics of the SFRY is referred to as the "Slovenian syndrome". The impact of this "syndrome" on further accelerating the democratisation processes in the SRM was huge.

In the late 1980ies and early 1990ies, when no procedure for registering parties as legal entities existed, various initiatives that pursued political goals were established. Most of them called themselves "movements", such as the Movement for All-Macedonian Action, or "leagues", such as the League for Democracy. Those political associations are likely to have deliberately chosen to avoid the use of the word "party", fearing negative reactions from the socialist institutions, since the sole legitimate political entity was still the League of Communists of Macedonia. In the other Republics of the SFRY, the processes towards political pluralism and democratic openness developed similarly.

The process of political pluralisation and the transformation of the party system in the SRM were initiated by the adoption of the following legislative decrees:

- the Law on Changes and Amendments to the Law on Citizen Organisations and Associations on 13 April 1990;[1]

1 *Law on Changes and Amendments to the Law on Citizen Organisations and Associations*, Official Gazette of the Socialist Republic of Macedonia, XLVI, No. 12, Skopje, 13.4.1990, p. 237-239.

- the Amendments to the Constitution of the SRM of 1974 on 21 September 1990,[2] and
- the Law on Elections and the Dismissal of Members of Parliament and Committee Members on 21 September 1990.[3]

By means of legal transformation of the political conditions, the necessary institutional foundation for establishing party pluralism was created. Now that the legal[4] and political conditions were provided, 23 political parties were founded during the year 1990, with their positions representing the entire ideological and political array, from the left to the right.

Apart from ideological diversity, from the very beginning of Macedonia's process of becoming independent, the main feature of the party system was explicit ethnic differentiation, leading to the formation of purely mono-ethnic political parties.

Table No 1: LIST OF POLITICAL PARTIES FOUNDED IN 1990[5]

№	Party	Founding date
1	Movement for All-Macedonian Action	4.2.1990
2	League for Democracy	11.2.1990
3	Party of Macedonian Workers' Unity	4.3.1990
4	Social Democratic Party of Macedonia	18.3.1990
5	Peoples' Party of Macedonia	12.4.1990
6	Party for Democratic Prosperity	15.4.1990
7	Democratic Union – Peasants' Party	15.4.1990
8	National Democratic Party	23.4.1990
9	Christian Democratic Party of Macedonia	9.6.1990
10	Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity (VMRO-DPMNE)	17.6.1990
11	Labour Party	24.6.1990
12	League of Communists of Macedonia – Party for Democratic Change	3.7.1990
13	Young Democratic Progressive Party	12.7.1990
14	Socialist Party of Macedonia	13.7.1990
15	Human Rights Party	20.7.1990
16	Party of Yugoslavs in Macedonia	26.5.1990

2 *Decree to promulgate Amendments LVII - LXXXI to the Constitution of the Socialist Republic of Macedonia, Amendments to the Constitution of the Socialist Republic of Macedonia,* Official Gazette of the Socialist Republic of Macedonia, XLVI, No. 28, Skopje, 21.9.1990, p. 506-511.

3 *Law on Elections and the Dismissal of Members of Parliament and Committee Members,* Official Gazette of the Socialist Republic of Macedonia, XLVI, No. 28, Skopje, 21.9.1990, p. 513-519.

4 The chronological order shows that introducing political pluralism into the SRM did not start from amendments to the Constitution, but from a change in legislation. The basic principle of subordination of lower to higher legal provisions was not respected, i.e. instead of the law being brought into compliance with the constitution, the constitution was amended to comply with the previously adopted legal amendments, with which the monopoly of the ruling LCM was abolished and founding additional parties was allowed. However, during that time, Macedonia was haunted by an atmosphere of uncertainty and fear, whereas conflicts in the other parts of the SFRY were getting more dramatic while the state was falling apart. In the Eastern Bloc, meanwhile, the process of democratic changes and velvet revolutions was in full swing. The order of legislative changes in Macedonia might well have been influenced by those events.

5 Cane Mojanoski, *Letopis na makedonskata demokratija*, Pakung, Skopje, 2000, p. 16-17.

17	Party for the Full Emancipation of the Roma	12.8.1990
18	Political Party of the Unemployed	12.9.1990
19	Agrarian Labour Party	15.9.1990
20	Democratic Union of Turks	22.9.1990
21	Union of Reform Forces of Macedonia	5.9.1990
22	Democratic Union of Education Workers	15.11.1990
23	Balkan Federation – Balkans Without Borders	15.12.1990

THE IDEOLOGICAL PROFILE AND PROGRAMME OF THE FIRST REGISTERED POLITICAL PARTIES

In the following, I would like to analyse the ideological postulates and programmes of the following six out of the 23 registered parties:

- the Movement for All-Macedonian Action (MAAK)
- the League for Democracy (LD);
- the Party for Democratic Prosperity (PDP);
- the Party of Yugoslavs in Macedonia (SJM);
- the League of Communists of Macedonia – Party for Democratic Change (SKM-PDP); and
- the Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity (VMRO-DPMNE).

The choice of these six political entities derives from the goal to define their programmatic and ideological postulates based on the following aspects:

- MAAK and LD were the first two parties to register;
- PDP is an example of the parties of the ethnic communities;
- SJM is an example of the parties that advocated a continuation of the status quo;
- today, SDSM (successor party of the SKM-PDP) and VMRO-DPMNE are the two largest parties in the Republic of North Macedonia.

These characteristics will allow us to paint a comprehensive picture of the Macedonian party system in the early 1990s.

The ideological and programmatic postulates of the parties to be analysed are best defined by their attitude with regard to the following five key issues:

- the status of the SRM;
- the setup of the state;
- inter-ethnic relations;
- the economic system in the state; and
- international relations.

The programmes of the six parties contain a wide range of topics, while not all of them are equally elaborated. The five issue listed above are, however, the most important under the viewpoint that the parties' approaches at them allow us to quite accurately determine their positions towards the processes of democratic transformation – the goal projected against the background of the socialist one-party system that was the status quo inherited from the SFRY.

1.1. The Movement for All-Macedonian Action (MAAK)

The founding assembly of the Movement for All-Macedonian Action (MAAK) was held on 4.2.1990 in Skopje, going down in recent Macedonian history as the first political party founded under the circumstances of political pluralism.

The party was officially registered on 12.6.1990.

In its statute, the party defines itself as "**a movement and a patriotic party of all Macedonians and all citizens of Macedonia, regardless of their social, national and religious affiliation**."[6]

Concerning the status of the SRM, MAAK was committed to "**a free, independent and sovereign state of Macedonia**" with "**all features of a legitimate and independent state**". They argued that their position was legitimate because it was based on **"every people's inalienable right to self-determination**", according to which "**the Macedonian people may not be hurled into a game with the purpose to create a new Yugoslavia"**. Therefore, the only possible solution, according to MAAK, was **"for the sovereign and independent states that the peoples of Yugoslavia will establish to be in some way mutually associated"**.

With regard to Macedonia's setup, MAAK **was not content with only the "part of Vardar Macedonia" becoming a state of its own**. Namely, they claimed that the **Treaty of Bucharest, which sanctioned the split-up of Macedonia, "bringing national catastrophe and division upon Macedonia", was illegitimate, because it was signed by Macedonia's occupants. Therefore, MAAK was committed to taking this issue before the "competent UN institutions". The party also pledged to defend the rights of the Macedonians "from Aegean and Pirin Macedonia".**

MAAK advocated for the SRM to be set up as a **"parliamentary republic"** in which **"political pluralism"** would be implemented, and the principle of **"separation of**

6 Vlado Timovski, Sveto Stefanovski, *Političkite partii vo Makedonija, Politička programa na Dviženjeto za semakedonska akcija - MAAK*, 1990, Skopje, p. 79 – 101.

powers" would be inaugurated. Those principles should be laid at the core of the **"new Constitution"** of the new independent Macedonian state.

With regard to inter-ethnic relations, MAAK saw the SRM mainly as a **"state that expresses the sovereignty of the Macedonian people"**. However, the ethnic minorities within the state of the Macedonian people should enjoy **"all rights according to the international conventions"**. Therefore, in MAAK's view, the SRM, which was a multi-religions state, would have to commit to religious tolerance, i.e., be **"equally attentive towards Christianity and Islam"**. However, in opposition to that attitude, **MAAK expressed concern with regard to "demographic occupation" and a "mechanical influx" of non-Macedonians and committed itself to stopping those processes.**

According to MAAK, the economic system would be based on the **"equality of all forms of property"** in order to establish **"market economy"** (as opposed to the system of planned economy in place at the time) and a **"free market of goods, labour and capital**", as well as **"legal protection of private property"**. MAAK wanted to see those commitments included in Macedonia's new Constitution.

In their first programme, MAAK envisioned the **SRM's foreign policy to be independent.** Their commitment was due to the fact that they considered **"Macedonia's interests to fall on deaf ears" with Yugoslavia's foreign policy institutions,** which could also be regarded as one more reason for Macedonia to become an independent state. Apart from their commitment to an independent foreign policy, MAAK also advocated fostering the SRM's regional cooperation with neighbouring countries.

Based on the commitments included in their programme, MAAK can be defined as a **national party of the Macedonian people, with a conservative ideological orientation, committed to establishing an independent and sovereign Macedonian state, political pluralism, stable inter-ethnic relations, and market economy.**

The League for Democracy (LD)

The founding assembly of LD was held on 11.2.1990 in Skopje, seven days after MAAK was founded. However, LD was included in the official party index on 8.6.1990, or four days before MAAK was registered. **Hence, according to the date of its founding assembly, LD was the second political party to be founded, but the first political party to be entered in the party index.**

LD defined itself as a **pro-democratic political party**, as opposed to the socialist/communist system in place at the time.[7]

7 Vlado Timovski, Sveto Stefanovski, *Političkite partii vo Makedonija, Politička programa na Ligata za demokratija*, 1990, Skopje, p. 49-56.

On the issue of the status of the SRM, LD declared that it would **"direct all its efforts at maintaining Yugoslavia's territorial integrity and its unity as a state"**. Should the SFRY fall apart as a state, however, according to LD, **"Macedonia should proclaim neutrality"** and request the **"United Europe to guarantee its borders".**

With regard to the state's setup, LD's basic position was that **"the communists have done a lot of harm"**, which was why the party advocated for the introduction of a **"representative democracy"** and **political pluralism"**. In compliance with its commitment, the LD declared it would **"rid the name of the Macedonian state of the attribute "Socialist", so that it would be called Republic of Macedonia"**.

As for the issue of inter-ethnic relations, LD started from the fact that the SRM would have to be organised as a state for all citizens, regardless of their ethnic background. Nevertheless, the party promised that it would advocate for **"recognising all rights of the minorities according to the international conventions that are in force, but no more than that"**. The words **"no more than that"** in LD's political programme point at the conclusion that some of the requests of the ethnic minorities at the time, concerning certain rights and freedoms, were not acceptable, i.e., to the detriment of the Macedonian people.

Regarding inter-ethnic relations, **LD, as well as MAAK, were concerned with the issue of a "demographic explosion" of the minority communities, and both parties considered that they could lead to inter-ethnic tensions. Those tensions, in turn, must be prevented by a "reasonable population policy" that should primarily include privileges for "every working woman who wants to have more children".**

With regard to the economic system, LD advocated the position that it should be based on **"private property"**, i.e. on establishing market economy instead of planned economy. According to the party, this process should be initiated by privatising public property at the market price. In the same vein, LD also wanted to initiate **"denationalisation"**, i.e. return citizens their property that had been nationalised by the SRM.

LD did not have any special position on international relations, which was probably due to the fact that this party was in favour of preserving the SFRY and its institutions, including the ones responsible for international relations, which were common to all Republics.

Hence, LD can be defined as a citizens' party whose ideological position was in the political centre, committed to preserving the SFRY with Macedonia as its part, but organised as a parliamentary democracy instead of the one-party system, and to establishing market economy instead of planned economy.

The Party for Democratic Prosperity (PDP)

The founding assembly of PDP took place on 15.4.1990.

This party went down in Macedonian political history as the first registered political party that a majority of the Albanians in the country tended to favour.

In its programme, the **PDP described itself as "a modern political party which addresses the citizens and peoples of Macedonia, being committed to the development and fortification of democracy, which are basic values of European civilisation".**[8]

A direct statement on the status of the SRM cannot be found in PDP's programme, but the party indirectly tended towards an independent state, under the condition that **"all communities that live in this territory decide on the future of Macedonia and Yugoslavia", while "any other solution is unacceptable".**

The setup of the state was described in PDP's initial programme as Macedonia being "a common state of all peoples, i.e. Macedonians, Albanians, Turks, Muslims, Vlachs, Roma, and others". According to this definition, PDP saw the Macedonian state organised as a **parliamentary democracy**, in which the citizens would vote for their representatives in general direct elections. In their opinion, **the highest power should be concentrated in the institution "state presidency" to be headed by five representatives, elected by the citizens.**

Inter-ethnic relations played a significant role in PDP'S first election programme: they **advocated for "national equality of al peoples in Macedonia", which would be entirely free to express their ethnic identity, to maintain and foster their language and culture, to receive education on all levels in their native language, as well as to use and to receive information in their native language when communicating with all levels of the state administration. According to PDP, all peoples should also be free to use their national symbols and toponyms, i.e. refer to places in their own language.**

In the area of economy, according to PDP, **public property should be abolished and private property and market economy introduced**.

8 Vlado Timovski, Sveto Stefanovski, *Političkite partii vo Makedonija, Politička programa na Partijata za demokratski prosperitet,* 1990, Skopje, p. 166-176.

With regard to international relations, PDP was in favour of the idea of **"European integration of Macedonia and the Balkans, as well as the abolition of the required visa for entering European countries"**.

Based on the above-mentioned, **PDP can be described as a party of Macedonian Albanians, positioned in the political centre, favouring the idea of an independent state. They envisioned Macedonia as a parliamentary democracy in which all ethnic communities have equal rights, with a market economy and a strategic orientation towards integration in the Euro-Atlantic structures.**

The Party of Yugoslavs in Macedonia (SJM)

SJM was founded on 26.6.1990 in Skopje.

SJM will be remembered as the party that wanted to keep up the constitutional and political system of Yugoslavia, considering all other proposals (confederation or independence) as inappropriate and **wrong.**[9]

As for its status, the Socialist Republic of Macedonia should continue to be a part of Yugoslavia, a federal state of six Republics. SJM considered **"every other solution anachronistic"** and **"extremely harmful and dangerous"**, basing its commitment to Yugoslavia on the fact that **"the idea of Yugoslavia is the cornerstone for the actions of every citizen, as well as of every federal entity within it"**.

With regard to the setup of the future state, SJM advocated for introducing political pluralism in Yugoslavia, without, however, further elaborating on the issue. **Equality of all forms of property** should be introduced in the area of economy.

In SJM's view, the SFRY was the best possible guarantee for further progress in the sphere of inter-ethnic relations.

The party considered Macedonia's international relations and interests to be identical with Yugoslavia's interests. Therefore, they did not develop any special foreign policy priorities. However, **the party did express a positive attitude towards the concept of European integration of Yugoslavia.**

Based on the above-mentioned, we can conclude that **SJM, a party with a leftist ideology and orientation, was in favour of preserving the status quo, i.e. for**

9 Vlado Timovski, Sveto Stefanovski, *Političkite partii vo Makedonija, Politička programa na Strankata na Jugoslovenite na Makedonija,* 1990, Skopje, p. 39-48.

Macedonia to remain within the SFRY. However, the party was also in favour of a moderate democratisation of the state's setup and the economic system.

The League of Communists of Macedonia – Party for Democratic Change (SKM-PDP)

SKM-PDP was registered on 3.7.1990, when it, according to formal and legal aspects, seized to be the entity with the monopoly over political power and the institutions, and reconstituted itself as a political party which wasa part of the party system in a pluralistic and democratic Socialist Republic of Macedonia.

According to its programme and ideology, **SKM-PDP was determined to accept and endorse the principles of "democratic socialism", "radically renouncing the communist-Bolshevist party model, the doctrine of impenetrability and the monopoly position within society"**.[10]

With regard to defining the status of the SRM, SKM-PDP declared itself **"in favour of Yugoslavia as a democratic community of peoples with equal rights"**, which they described as **"reasonable"**. However, should this not be possible, the party offered two further options:

for Macedonia to be part of a confederation in the framework of the community of the Yugoslav peoples, or **for Macedonia to be organised as an independent sate",** under the condition that **"the other Yugoslav peoples are also in favour of this option".**

As for the setup of the state, SKM-PDP advocated for the SRM to be organised as a **parliamentary democracy**, in which the government would be constituted as a result of general, free and democratic elections, and in which the principle of **separation of powers** into a legislative, executive and judicial branch would be inaugurated. The government and the president of the republic would be in charge of the executive power. The president should be elected by the parliament. This new state setup should be incorporated in the new Constitution.

Considering the issue of inter-ethnic relations, SKM-PDP was **the only political party at the time to include a separate Declaration on Inter-ethnic Relations** in their programme. The declaration represented an **appeal to all Macedonians, Albanians, Turks, Vlachs, Roma and other ethnic communities to unite in order to take the overall democratic and inter-ethnic relations within the state a step further.**

10 Vlado Timovski, Sveto Stefanovski, *Političkite partii vo Makedonija, Politička programa na SKM-Partija za demokratska preobrazba,* 1990, Skopje, p. 6-38.

In their Declaration, SKM-PDP drafted their views with regard to inter-ethnic relations, defining the SRM as a **"state of equal citizens"**, in which **"inter-ethnic and inter-religious relations would thrive, based on the principle of tolerance."** For SKM-PDP, **"every citizen has the right to free ethnic determination and expression", as well as "equality before the law, regardless of their ethnic affiliation"**.

Apart from that, SKM-PDP advocated for the members of minority ethnic communities to have the right to endorse their identity, to use their native language, to develop their culture, to establish cultural institutions, to be educated in their native language, etc. The state, in turn, should guarantee the realisation of those rights.

The economic system, according to SKM-PDP, should be a **market economy**, as opposed to the current planned economy, with private property being equal among all types of property.

In the sphere of international relations, SKM-PDP was in favour of the concept of **European integration, under the slogan "Europe, our home"**. In their view, the process of integration was **"of national, political and economic interest for Macedonia"**. Hence, the party promised to draft a separate **"development strategy for including the state in European integration processes"**.

Hence, we can summarise that **SKM-PDP was a centre-left social democratic party. Its main commitment was to a democratic Macedonian state in the framework of a democratic Yugoslavia. At the same time, the party endorsed political pluralism, actively promoted progress in the sphere of inter-ethnic relations, was committed to the principles of market economy, as well as explicitly supported European integration processes.**

VMRO – Democratic Party for Macedonian National Unity (VMRO-DPMNE)

The founding assembly of VMRO-DPMNE was held on 17.6.1990 in Skopje, and the party was included in the party index on 3.8.1990.

According to its programme and ideology, the party determined itself as a **"national party of the Macedonian people"**[11] with an anti-communists conservative orientation.

11 Vlado Timovski, Sveto Stefanovski, *Političkite partii vo Makedonija, Politička programa na VMRO-Demokratska partija za makedonsko nacionalno edinstvo,* 1990, Skopje, p. 134-147.

The status of the SR Macedonia was a key issue within the programme of VMRNO-DPMNE, with their position being that **"Macedonia should be established as an independent state"**. Similar to MAAK, VMRO-DPMNE also went one step further, stating that **"the Macedonian people must not content itself with the Treaty of Bucharest that divided Macedonia in 1913"**. Therefore, **"the processes of European integration should be greeted and supported, since borders will thereby disappear, which could lead to the opportunity of not only spiritual, but also national and territorial unification."**

VMRO-DPMNE's position on the future of Yugoslavia was that it could only continue to exist as a confederation of sovereign, independent states.

The party's answer to the question about how the state should be organised was that the SRM should be a **"parliamentary democracy, following the example of Western states"**, a system that should be stipulated in the Constitution. VMRO-DPMNE did not further elaborate on this issue in their programme.

With regard to inter-ethnic relations, they considered Macedonia to be a **"state for all, and, accordingly, ethnic minorities should enjoy all the rights prescribed by international conventions."**

According to VMRNO-DPMNE, the economic system should be organised as a **market economy**, with private property sharing equal status with all other forms of property.

In the party's view, the medium term goal of international relations should be **European integration**. VMRO-DPMNE advocated for the state to **independently start adapting its constitutional and political system to European standards**. However, achieving this goal would largely depend on the **"democratisation of Macedonia, which can only happen by means of a change of government"**. With regard to this issue, the party also advocated for the SRM to lead its own foreign policy which would not depend on Yugoslavia, and which would culminate in the development of a network of Macedonian diplomatic and consular services throughout the world.

From the above-mentioned, we can conclude that **VMRO-DPMNE defined itself as a centre-right national party of the Macedonian people with a conservative ideology. The main aim of the party was to establish an independent Macedonian state, set up as a parliamentary democracy with a market economy, which would join the process of European integration and foster inter-ethnic relations.**

CONCLUSIONS

The analysis of the programmes and idealogical standpoints of the selected political parties holds information that contributes to uncovering the main features of the party system during the last days of socialism in the Socialist Republic of Macedonia.

With regard to the issue of the status of the SRM, the political parties can be split into four groups:

1. The parties that considered that the best way to end the crisis of Yugoslavia would be to establish an independent state. Later, given favourable circumstances, some form of loose association among all independent states originating form Yugoslavia could be created. The parties in this group are MAAK and VMRO-DPMNE.
2. The parties that opposed the current situation in Yugoslavia and suggested three options for ending the crisis: (1) to carry out a reform of the SFRY, with the Republics strongly united in cooperation; (2) to create a confederation, in which a weaker form of cooperation among the Republics would be realised, in case the first option would be impossible, or (3) to establish an independent state, in case the leaderships of the six Yugoslav Republics would fail to reach any agreement. LD and SKM-PDP constitute this group.
3. The party that had no explicit suggestions on the issue of the SRM'S status with regard to Yugoslavia, i.e. PDP.
4. The political party that was committed to sustaining the Yugoslav state in its current form and considered that any other solution would weaken the union of the Republics, which would be dangerous and detrimental to the SRM's future, i.e. SJM.

On the issue of the state's setup, all parties were committed to discontinuing the socialist rule in the SRM, which should be organised as a parliamentary democracy instead, except for SJM, which did not further elaborate on that issue, since it was in favour of keeping up the existing order. With regard to the issue of the state's setup, the parties can be divided into two groups:

The parties that further elaborated on the issue, including SKM-PDP and PDP. SKP-PDP had a defined concept of the separation of powers into a legislative, executive and judicial branch. It advocated for a unicameral parliament to be in charge of the legislative branch, as well as a bicameral executive branch, with the power in the hands of the government and the state president. The latter should, in turn, be elected by the parliament. The PDP further developed the concept of separation of powers. In their view, a unicameral parliament should hold the legislative power, while the executive power should be concentrated in the hands of a "state presidency", consisting of five representatives to be elected by the citizens.

The parties that did not further elaborate on the issue, including MAAK, LD and VMRO-DPMNE. Their position was that the state should be organised in the same way as the European democracies, but they did not describe how to realise that aim.

With regard to inter-ethnic relations, all parties declared that they were in favour of developing and fostering minority rights. However, with regard to the importance they attached to this issue, the parties can be split into three groups:

The parties that described the issue in detail: PDP and SKM-PDP. For PDP, inter-ethnic relations were a central issue which took up a key position in their programme. Their main commitment was to organising the state as a community of equal peoples. SKM-PDP, meanwhile, presented a special Declaration on Inter-ethnic Relations, included in their party programme. Thereby, the party demonstrated its commitment to progress in the area, not only on a symbolic, but also on an actual level. The Macedonian people and all other ethnic communities should foster inter-ethnic relations by building a democratic Macedonian state together.

The parties that did not go into detail in their description of the issue, i.e. VMRO-DPMNE and SJM. They declared a general commitment to fostering the overall inter-ethnic relations.

The parties that marginalised the importance of inter-ethnic relations, represented by MAAK and LD. The significance of the issue was depreciated by the use of the phrase "all rights of the minorities according the international conventions that are in force, but no more than that". In addition, the programmes of these parties also included paragraphs on preventing a mechanical influx of non-Macedonian population as a potential threat to the ethnic balance in the country.

As it was the case with the state's setup, out of the six parties analysed, only SJM was in favour of a moderate transformation of the current system of planned economy in Yugoslavia and in the Socialist Republic of Macedonia. Meanwhile, all other parties (MAAK, LD, PDP, SKM-PDP and VMRO-DPMNE) advocated for the introduction of market economy, the equality of private property among all types of property, as well as for opening the state to the free flow of persons, ideas, and capital.

With regard to international relations, the parties can, again, be divided into two groups:

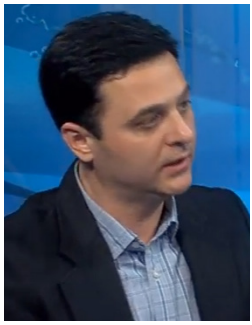
1. **The parties that did not deal with the issue**, i.e. LD and SJM. They probably did not tackle the topic because international relations lay within the responsibility of the institutions of Yugoslavia which these two parties wanted to maintain.
2. **The parties that commented on the question**, i.e. MAAK, PDP, SKM-PDP and VMRO-DPMNE. These parties mainly endorsed the idea of European integration as being in the strategic interest of the country.

As for their ideologies, **the selected parties represent the entire range of the political spectrum. Nevertheless, most of them positioned themselves near the political centre. From left to right, SJM took up a position to the left, followed by SKM-PDP, which defined itself as a centre-left social-democratic party. LD and PDP can be determined as centre parties, while MAAK and VMRO-DPMNE were conservative parties to the right of the centre. However, this categorisation is fairly general, since there was some oscillation within the parties with regard to the analysed issues.** LD, for example, had a rather nationalist position with regard to the issue of inter-ethnic relations, although it would be generally defined as a centre party. The other parties analysed in this paper also show similar exceptions to their general positions with regard to certain issues.

REFERENCE LIST

1. *Law on Changes and Amendments to the Law on Citizen Organisations and Associations*, Official Gazette of the Socialist Republic of Macedonia, XLVI, No. 12, Skopje, 13.4.1990, p. 237-239.
2. *Decree to promulgate Amendments LVII - LXXXI to the Constitution of the Socialist Republic of Macedonia*, Official Gazette of the Socialist Republic of Macedonia, XLVI, No. 28, Skopje, 21.9.1990, p. 506-511.
3. *Law on Elections and the Dismissal of Members of Parliament and Committee Members*, Official Gazette of the Socialist Republic of Macedonia, XLVI, No. 28, Skopje, 21.9.1990, p. 513-519.
4. Cane Mojanoski, *Letopis na makedonskata demokratija*, Pakung, Skopje, 2000, p. 16-17.
5. Vlado Timovski, Sveto Stefanovski, *Političkite partii vo Makedonija, Politička programa na Dviženjeto za semakedonska akcija - MAAK*, 1990, Skopje, p. 79 - 101.
6. Vlado Timovski, Sveto Stefanovski, *Političkite partii vo Makedonija, Politička programa na Ligata za demokratija*, 1990, Skopje, p. 49-56.
7. Vlado Timovski, Sveto Stefanovski, *Političkite partii vo Makedonija, Politička programa na Partijata za demokratski prosperitet,* 1990, Skopje, p. 166-176.
8. Vlado Timovski, Sveto Stefanovski, *Političkite partii vo Makedonija, Politička programa na Strankata na Jugoslovenite na Makedonija,* 1990, Skopje, p. 166-176.
9. Vlado Timovski, Sveto Stefanovski, *Političkite partii vo Makedonija, Politička programa na SKM-Partija za demokratska preobrazba,* 1990, Skopje, p. 6-38.
10. Vlado Timovski, Sveto Stefanovski, *Političkite partii vo Makedonija, Politička programa na VMRO-Demokratska partija za makedonsko nacionalno edinstvo,* 1990, Skopje, p. 134-147.
11. Slavko Milosavleski, *Istočna Evropa pomegju egalitarizmot i demokratijata*, 1993, Ljuboten, Skopje

SHORT BIOGRAPHY



Aleksandar Klimovski, PhD,

is a Full-Time Professor at the Faculty of Law Iustinianus Primus, University of Ss. Cyril and Methodius. He is Head of the LL.M. Program in Corporate Law at the same Faculty. Aleksandar has co-authored three university textbooks, as well as over 50 peer-reviewed papers.

Timčo Mucunski,
PhD, is an Assistant Professor at the Faculty of Law Iustinianus Primus, University of Ss. Cyril and Methodius. He has co-authored two university textbooks, as well as over 20 peer-reviewed papers. Timco is currently a Member of Parliament. Timčo is a former Scholar of the Konrad Adenauer Foundation.

Изворна научна статија
УДК: 658.1:338.246.025.88(4-191.2)
658.1:338.246.025.88(4-11)
658.1:338.246.025.88(497.7)

Aleksandar Klimovski
Timčo Mucunski

THE EFFECTS OF PRIVATIZATION ON ECONOMIC SYSTEMS IN POST-SOCIALIST STATES

POLITICAL THOUGHT
60

Introduction

While the post-global economic and financial crisis period has once again brought the concept of state capitalism to the forefront, with state intervention in financial and economic systems becoming a prerogative and necessity for the solution to the problems that arise within our economic systems, some nations in Central and Eastern Europe are still struggling with the economic difficulties caused by the abrupt departure from socialism towards a "pure" form of capitalism. Namely, while most states in the Western hemisphere conducted minor privatizations in mixed economies which were already typically private, in Central and Eastern Europe, the process of transforming the state-dominated economy into a private market economy was, in most cases, carried out by means of a large-scale swift and immediate privatisation.

Mencinger[1] argues that:

> Privatization has been considered the cornerstone of transition; it has also proved to be its major stumbling block. In a broader sense privatization includes provisions which protect private property, provisions which enable its creation, and an orderly and legally sanctioned transfer of the property from "the people" - the state or other public bodies, to private entities – persons, partnerships, and corporations. The introduction of rules which protect private property was thus the first step in the formation of a "normal" capitalist market system in former socialist countries; it was achieved by constitutional changes in the early phase of transition. Equally important was creation of a legal framework for activities which enable accumulation of wealth in the hands of those who are able and willing to save. Such a framework facilitates "the invisible hand" to function properly and includes the rules to guide economic behavior of independent economic units, to regulate business transactions, to enforce the rules, and to resolve the disputes which might arise between private parties and government.

While there were various approaches as to how these privatization procedures were carried out, in most cases, regardless of the legal framework within which they were conducted, the processes themselves remain highly controversial and tainted by allegations of massive wide-range corruption and economic inclusion. Of course, as we will see in this paper, this corruption was, as ironic as it may sound, in most cases, legal. in this paper, the processes of privatization in Central and Eastern Europe will be analysed, with a specific emphasis on the Macedonian model, because of the unique nature of the economic system that those stats were departing from. Furthermore, we will analyse the economic and social effects of privatization, see how its positive and negative repercussions are creating and shaping financial, economic, social, and labour policies

1 Mencinger, J. *Privatization in Slovenia.* Faculty of Law, University of Ljubljana, 2010.

to this day, and examine how the methods of privatization created various models of ownership structures within these states.

Privatization and its Repercussions: Between Theory and Practice in Central and Eastern Europe

Privatization on a large-scale basis, such as the one conducted in most nations in Central and Eastern Europe, leads to specific repercussions and has had continuous effects on the national economies. As noted by *Mallin,* "there is clearly a link between the method of privatization used, the resultant ownership structure, and the degree or level of corporate governance that is adopted".[2] These immediate repercussions, especially the issue of ownership structure, as we will later see, is not only key for how privatization is perceived by citizens, but also for how it affects economic indicators such as employment.

Boeri and *Passo*[3] who conducted a detailed analysis of the privatization processes in Hungary, the Czech Republic, Russia and Poland, underscore that the methods by which privatization process are carried out have a vital effect on the outcomes. Namely, they argue that:

> The speed of privatization, that is, the proportion of former state enterprises which has changed ownership within the first four years of the privatization process, the relevance of outside ownership (percentage of privatized enterprises with dominant outside ownership) in the resulting ownership structure of firms, and finally, the degree of control exerted over managerial decisions by the owners of the firm. The latter indicator is proxied by the involvement in privatization of foreign and domestic companies.

Their study of Hungary, the Czech Republic, Russia, and Poland lead them to the following conclusions:

- The process of privatization in **Hungary** was not swift, but led to the creation of a stronger control structure and more external ownership;
- In the **Czech Republic**, the process of privatization was exceptionally swift, and created a very weak control structure by attracting considerable external ownership;

The process in **Poland** was considerably slower than in the other states privy to analysis, yet it still managed to achieve a sensible level of external ownership;

2 Mallin, C. *Corporate Governance*. Oxford University Press, 2011, p. 246.

3 See more on this issue: Boeri, T., Perasso, G. "Privatization and Corporate Governance: Some Lessons from the Experience of Transitional Economies", *Corporate Governance, Financial Markets and Global Convergence*. Kluwer Academic Publishers, 1998.

- In **Russia**, the process of privatization was the swiftest of all the states analysed, and it brought in much less external control, and a weak control structure as a result of the concentration of ownership in the hands of insiders.

Mallin points out[4] that there are three commonly used privatization methods in Central and Eastern Europe, with specific modifications from state to state:

1. mass privatization via voucher;
2. the purchase of company assets by management and employees;
3. selling majority stock control to outside investors who are often foreign.

The Czech Republic used the voucher privatization method that, in the process of implementation, led to each adult being allowed to purchase a booklet of 1000 voucher points for a cost equating to about 25 percent of the average monthly wage at the end of 1991. A second privatization wave was conducted in 1993 and 1994, when the price was raised, however by that point, it had only accounted for 18 percent of the average monthly wage.[5] According to *Coffee,*[6] "over 80 percent of the adult Czech citizens had become shareholders of the 1849 companies that were privatized" by the end of this second wave. Today, in the Czech Republic, the ownership structure of privatized companies is a mix between the state and various institutional investors.

Poland, which officially launched its privatization process in 1995, a bit later then other states in Central and Eastern Europe, used the second method highlighted by *Mallin*: the purchase of company assets by management and employees. In Poland's case, "the joint-stock company's ownership did not change, but the control structure changed to include a board of directors, and the Workers' Councils, which were previously quite powerful, were disbanded, so reducing workers' power"[7]. A specific characteristic of the Polish privatization model was the existence of fifteen National Investment Funds, which were established with the fundamental task of managing shares that were purchased in privatized companies, within the context of the privatization programme. It should be noted that the Polish government did not allow for private or legal entities to buy vouchers directly for shares, but rather vouchers were exchanged for shares in the National Investment Funds. The model implemented by Poland brought forward a diverse base of investors (domestic and foreign) as well as a set of institutional investors, which, in the long, run was beneficial. Today, Poland's ownership structure is a mix between the state, institutional investors and individuals. To some degree, there is a quasi-oligarchy that was formed during the privatization process.

4 See more on this issue: Mallin, C. *Corporate Governance*. Oxford University Press, 2011, p. 245-275.

5 Coffee, J.C. "Inventing a Corporate Monitor for Transitional Economies", *Comparative Corporate Governance, the State of the Art and Emerging Research*. Oxford University Press, 1998.

6 Ibid. p. 117

7 Mallin, C. *Corporate Governance*. Oxford University Press, 2011, p. 255.

Possibly the most successful model of "all-in" privatization was the one used in Hungary, where majority control over companies was, in most cases, sold to external (foreign) investors. As described by *Pistor and Turkewitz:* [8]

> A change in Hungarian law led, in the late 1980's, to a wave of manager-initiated organizational restructuring of enterprise assets and the right to form a limited liability company or join-stock company. Whilst the state retained ownership of a large portion of these assets, state officials were unable to keep up with the pace of change and so were unable to keep up with the changes in the ownership structures. In 1989, the majority of state-owned companies were transferred to the State Property Agency, and over the next five years, many were privatized. However, some of the assets were transferred to the State Holding Company (Av.Rt.). The state still retains significant holdings and influence, one way being through 'golden shares', which were issued to the state during the privatization process enabling the state to have control over key issues.

Today, Hungary's ownership structure is extremely dispersed, and it is predominantly characterized by foreign institutional investors, with some stocks still being, of course, state owned.

As a result of the fact that Russia is in the sphere of interest of the general public, more so than the nations of Central and Eastern Europe, there is a wider perception by the broad, global public, related to the creation of private wealth in this state. The concept of *Russian oligarchs* should, in most cases, be known as the concept of *Russian privatization oligarchs*, considering that most of their wealth was gained by means of the insider model conducted in their state. The privatization process in Russia, initiated after the fall of communism, was based on a voucher system, with certain benefits provided to managers of the enterprises, including government subsidized equity stakes, and the possibility to buy further shares in what was then known as voucher auctions. The Russian programme also gave birth to the idea of privatization investment funds, which often used intermediaries to buy larger chunks of shares. The end game in Russia was to an extent similar to what we will later analyse in the Macedonian case, in that, after the privatization process was conducted, most managers bought out shares of the companies from the workers, who had acquired them by means of vouchers. As a result, the circumstances led to the conclusion that, as a result of the high level of insider ownership, whether by mangers or workers, the issue of entrenchment by managerial elites became a real threat. Foreign investors had no interest in Russia as such, unlike, as mentioned, in Hungary, and the Russian privatization oligarchy elite was born, with the insiders creating a concentrated ownership structure.

8 See more: Pistor, K., Turkewitz, J. "Coping With Hydra-State Ownership After Privatization: A Comparative Study of the Czech Republic, Hungary and Russia", *Corporate Governance in Central Europe and Russia: Volume 2 Insiders and the State*. CEU Press, 1996.

The rationale of political decision makers behind the different privatization methods employed in Central and Eastern Europe is sometimes difficult to identify. As we can see, there was no unified concept, and we can even argue that almost all the concepts included a certain degree of controversy. Yet, it is also fair to argue that, depending on the method used, the ownership structure of previously state owned companies varied to a large degree, and in turn, the effects on national economies and social structures were also enormous. Still, in most cases, directly or indirectly, the state preserved a substantial amount of control in many companies.

The Macedonian privatization model

The process of privatization in the former Yugoslav states differed from other post-socialist states, considering that property in Yugoslavia was not state-owned, but rather social ownership. This means that all the citizens of Yugoslavia, conceptually at least, owned all the property that could be considered "state-owned" in nations such as Czechoslovakia or Hungary. Before the breakup of the Federation, the management of companies was part of a complex model of social self-management, which was operationalized by means of the Law on Social Self-Management, which lawyers considered as a "small constitution" during that period.

After gaining independence, embarking on a definite road towards democracy and free markets, Macedonia justifiably initiated the process of privatization of social capital, based on one of the most controversial pieces of legislation to date: the Law on the Transformation of Enterprises with Social Capital.[9] This legislative act created a legal framework and procedures for transforming all enterprises with social capital into either joint-stock companies or limited liability companies. As we have seen above, they key issue that we must now analyse in order to observe the effects of the privatization process is: which method of privatization was used?

As laid down in the Law on the Transformation of Enterprises with Social Capital, its main goal was to transform the socially owned enterprises into companies with fully defined ownership rights, and it was targeted at increasing the efficiency of the economy, attracting foreign capital, developing a capital market, and also providing new possibilities for servicing the internal and external debt of the country.

The following enterprises were exempt from privatization: enterprises and organisations that conduct activities of special national interest; public utilities and enterprises

9 Official Gazette of the Republic of Macedonian 38/1993.

that conserve water, forests, land and other public goods; enterprises designated as monopolies that were to be privatized under separate laws.

The Law on Transformation of Enterprises with Social Capital provided the possibility of using several methods of privatization, depending on the size of the enterprise (depending on whether it was, at that time, considered a small, medium or large enterprise). The following table reflects the possible methods stipulated by the Law:

Size of enterprise	Methods for privatization
Small enterprise	1. Buy-out by employees of the company; 2. Sale of part of the enterprise through forms of stocks or shares.
Medium enterprise	1. Sale of the entire enterprise, or just a part of it; 2. Buy-out of the enterprise by employees and management; 3. Buy-out of the enterprise by management; 4. Issuing shares for additional investment; 5. Debt/equity swap.
Large enterprise	1. Sale of the entire enterprise, or just a part of it; 2. Buy-out of the enterprise; 3. Buy-out of the enterprise by management; 4. Issuing shares for additional investment; 5. Debt/equity swap.

In practice, according to statistics, the different methods were used as follows:[10]

1. 394 enterprises, or approximately 24% of the total number of enterprises, were privatized via buy-out by the employees. These enterprises employed 17.193 people and accounted for 7.7% of the total number of enterprises, while their equity accounted for only 3.5% of the total equity of all socially owned enterprises. Even though buy-out by employees was the most frequent method used, only a small share of the equity was privatized by this method, as it was used forsmall enterprises only.
2. 239 enterprises, or 15% of the total number of all socially owned enterprises, were privatized via buy-out by the management. In comparison to buy-out by employees, the management buy-out shares were the highest with respect to the employment

10 See more: Jovanoska, M., Belogaska, E., ŠŠajnoski, K. "Privatization and Restructuring of the Socially or State Owned Enterprises in the Republic of Macedonian and Its Implications on Corporate Governance". OECD, Corporate Governance Principles, 2001.

and the equity value, employing 71.667 or around 32% of the total number of employees, and with a total equity of 34%, respectively.

3. 172 enterprises, or 11% of the total number of privatized enterprises, were privatized via buy-out by employees and management. This method was implemented in 172 enterprises (11% of the total number of privatized enterprises) employing 50.134 people, which was 23% of the total number of employees, and an equity share of 23% of the privatized enterprises.

As of 2001, when the privatization process was almost concluded, the following statistics should be noted:

1. 1,759 enterprises had been completely privatized;
2. The completely privatized enterprises employed around 230,000 employees;
3. According to the financial reports, it was assessed that the privatized enterprises have equity worth at almost 2.1 billion US Dollars.[11]

As we can see, management buy-out was the most frequent method of privatization with regard to employee numbers and total equity of all privatized companies (purchase of company assets by their management). Ranking second was the method of employee and management buy-out (purchase of company assets by employees and management), which later brought forward the Russian scenario, according to which the management bought out the controlling stock package from the employees, using methods of entrenchment. Hence, following the privatization process, ownership of companies was solely in the hands of a small group of managers who had professionally been in the right place at the right time. The techniques used in this process were very controversial. Even though it was not just the Law which led to the described circumstances, it was a prevailing force in allowing them to transpire.

The leading effects that led to crucial economic repercussions which can be felt to this day were created in the course of the inadequate appraisal of social capital. This argument is substantiated by the fact that many factors were not taken into consideration during the appraisal process. The most significant factors/variables not considered were:

1. **cash flow**: the vital issue of rapid turnover of the enterprise was not appraised at the time;
2. **market positioning** was not considered as a value of the enterprise, and chances were not considered as an input when taking into account that value of social capital;

11 Ibid.

3. **intellectual and industrial property rights** were also not considered when appraising the value of the enterprise. Here, we are referring to patents, trademarks, inventions, etc. Their value could well have been many times higher than the value of the social capital appraised. Typical examples of companies where these factors were not considered in the appraisal include *Alkaloid*, *Evropa*, *Godel*, *Makpetrol*, *Feršped*, and *Metalski Zavod Tito*. Today, many of these companies, still in the hands of the management structures that privatized them or their families, are considered to be among the most successful companies in terms of profit, but of course, after the privatization process, they cut employee numbers by half in many cases.

Apart from the appraisal process, which had a substantial effect on the value of the social capital, the absence of fundamental and critical institutions was another factor that had a huge impact on the privatization process. Had such institutions existed at the time, they could have guaranteed some kind of legal protection, or a properly implemented privatization process. At least, they could have provided minimal fairness. When the Law on the Transformation of Enterprises with Social Capital was adopted (and years into its implementation), the following institutions did not yet exist:

1. a stock exchange;
2. the Central Register;
3. the Central Securities Depositary;
4. the Securities and Exchange Commission.

The non-existence of these institutions created a black hole in the institutional system and allowed for the occurrence of an unusual and unfair accumulation of capital in the hands of newly founded corporations owned by a small group of individuals and their families. As a result of the fact that many control institutions did not exist, modalities of privatization, such as the sale of stocks to foreign investors, like in Hungary, or the creation of specific investment funds that would have been oriented at privatization, was also not possible. Taking into account these aspects, it is obvious that Macedonia's privatization process was conducted within a legal framework, yet that framework was purposefully tainted to serve the interests of specific individuals (presumably, also political elites), rather than the citizens of the state as a whole.

This phase of privatization, often referred to as "transition", had serious impacts on the labour market and led to the restructuring of ownership (by means of privatization). The power of certain individuals to control the privatization process and to allow it to work in their favour created a wave of unemployment. Namely, unemployment was measured at 27% in 1993, while in 1997, the number rose to 34%, and reached the high measure

of 38% in 2005.[12] A few years into Macedonia's independence, foreign direct investments (FDI) were at a low, and the market was not attractive to foreign investors. As there were no policies for restructuring employment within the public sector, statistics reveal the conclusion that the privatization process had a deeply negative effect on employment numbers.

During this period, the national economic system was not fully established in terms of legislation that would correspond with the actual circumstances. Specifically, labour legislation was very weak, and allowed for the exploitation of employees, which was decisive in allowing managers to manipulate them into selling their company stocks. The state did not intervene in these processes when manipulations were obvious, not only related to the methodology of appraisal of the value of the enterprises, but also in the process of employee protection. The newly formed companies that resulted from privatization became the subject of internal restructuring, and management elites were not interested in the fate of their employees, firing them on the basis of purely numerical values without considering their training, results or other variables related to employee value.

Only in 2015 did the unemployment rate once again fall under the threshold of 30%, and it is now below 18%. Yet, this was a result of proactive government policies related to the establishment of small and medium enterprises by means of government subsidies, as well as a large number of foreign direct investments in Technological and Industrial Development Zones, which have produced around 16,000 new jobs since 2006. It is only owing to these policies that unemployment has decreased, leading to the conclusion that the capital accumulated through privatization was not successful in stimulating the economy, but only led to a massive decrease of employment instead.

Today, corporate governance in the country is also suffering a deep crisis, rooted in the departure from the concept of workers' self-governance and the beginning of the process of privatization of social capital. Most of the largest corporations were formed by means of privatization, which is in fact an atypical manner to establish a corporation. As mentioned above, the current ownership structure of the richest corporations results from the insider-favouring method of privatization. It was a result of the buy-out of the majority of stocks by the companies' managements that later took over full control of the newly established corporations.

The failures of the privatization process resulting from the de-valuation of social capital, the deceptive appraisal of its value, the gaining of majority stock packages by managements, often due to pressure on the employees, and the buy-out of their stocks in sums usually much lower than their nominal value, as well as the large-scale use of sales

12 See more on these statistics at: Macedonian Bureau for Statistics. Employment Statistics. <http://www.stat.gov.mk/OblastOpsto.aspx?id=14>

in the process of acquiring these stocks, were the main characteristics of this transitional-entrepreneurial process. It is especially easy to identify that the working class (the employees) lacked the knowledge related to their rights, not only as employees, but also as stockholders, which was a result of the non-existent shareholder culture, shareholder activism, and shareholder democracy. This, in turn, was a result of the variables discussed above, especially considering the institutional insufficiency in the field of shareholder protection (stock market, Securities and Exchange Commission, etc.). Meanwhile, the first Macedonian Company Law was adopted in 1996, three years after the privatization had begun, which means that the process of transformation of the socially owned enterprises was initially conducted based on an outdated law on enterprises.

The legality of the nation's privatization cannot be doubted, but its legitimacy surely must be, since legal and political logic lead to the assumption that legal vacuums and deficiencies, both from an institutional as well as procedural perspective, were left in the open so that the interests of specific groups could be achieved, at the cost of the citizens of the state.

Conclusion: privatization and its consequences

A serious mistake made in most post-socialist states was that privatization was conducted on a wide-scale basis and was extremely swift. Still, considering the lack of experience of political elites related to the functioning of a free-market economy in most of these states, it is fair to conclude that some states were more successful, not producing long term repercussions for their citizens. Generally, by means of the different methods presented in this paper, it can be concluded that, from a social perspective, there were two forms of privatization, with the first one being wide-ranging citizen inclusion in the process, while the other extreme was privatization for certain elites. Attempting to depart from the socialist model, it would be fair to argue that the endeavour of privatization was to relinquish the concept of social wealth. However, as political leaders of some of the states in question misinterpreted, knowingly or unknowingly, social wealth is also definitely a key characteristic of the free-market economy.

The states that opened their privatization processes to all citizens as well as foreign investments usually fared the best. Inclusive models of privatization that allowed small groups of oligarchs to gain all of the social wealth are the most controversial to date, having led to most negative repercussions within the economic, political and social systems. Of course, the Central and Eastern European countries are some of the most effective magnets for foreign direct investments, yet practice has shown that the states with closed privatization methods which served the interests of the few are left to attract

primarily greenfield investments, as their stock markets remain "purposefully" barren and inhospitable for institutional investors from abroad.

References

1. Boeri, T., Perasso, G. "Privatization and Corporate Governance: Some Lessons from the Experience of Transitional Economies", *Corporate Governance, Financial Markets and Global Convergence*. Kluwer Academic Publishers, 1998.
2. Jovanoska, M., Belogaska, E., Šajnoski, K. "Privatization and Restructuring of the Socially or State Owned Enterprises in the Republic of Macedonian and Its Implications on Corporate Governance". OECD, Corporate Governance Principles, 2001.
3. Mallin, C. *Corporate Governance*. Oxford University Press, 2011.
4. Mencinger, J. *Privatization in Slovenia*. Faculty of Law, University of Ljubljana, 2010.
5. Coffee, J.C. "Inventing a Corporate Monitor for Transitional Economies", *Comparative Corporate Governance, the State of the Art and Emerging Research*. Oxford University Press, 1998.
6. Pistor, K., Turkewitz, J. "Coping With Hydra-State Ownership After Privatization: A Comparative Study of the Czech Republic, Hungary and Russia", *Corporate Governance in Central Europe and Russia: Volume 2 Insiders and the State*. CEU Press, 1996.
7. Official Gazette of the Republic of Macedonian 38/1993.
8. Macedonian Bureau for Statistics. Employment Statistics. <http://www.stat.gov.mk/OblastOpsto.aspx?id=14>

SHORT BIOGRAPHY

Elizabeta Kančeska Milevska

holds a PhD in European Studies for Integration at the Faculty of Philosophy at the University of Ss. Cyril and Methodius in Skopje.

Elizabeta Kančeska Milevska was Minister of Culture in the Government from 2008 to 2016 and Member of Parliament from 2016 to 2019.

She actively participates in a number of international conferences organized by the UN, the Council of Europe, the European Union, UNESCO, and she has implemented a number of international projects that have a huge contribution to cultural development and international promotion of culture worldwide. She has also prepared a number of strategic documents in the field of cultural integration and cultural policy, cultural management, cultural tourism, and cultural industries, as well as a number of capital projects in the field of culture that have made a significant contribution towards improving the situation with culture and art, in general.

Прегледна научна статија
УДК: 304.4(497:4)
304.442(497.7:4)
316.43.063.3(497.7:4)

Elizabeta Kančeska Milevska

THE MACEDONIAN CULTURAL SPACE WITHIN THE EUROPEAN ONE

POLITICAL THOUGHT
60

Introduction

"There is hardly any border between Europe's nation states that has remained the same during the last 250 years. This shows us that, from a political point of view, Europe is a continent of continuous change, rather than a static conglomerate of immutable barriers and bureaucracies as well as state, regional and national entities.

Empires, modern states, nationalisms, cultures, as well as ideological and emancipatory movements for change also have provided Europe with a huge intellectual energy, as well as cultural and creative potential. Culture, in its essential meaning, encompassing everything that defines our own expression and perception, but also in its appearance as an art repository, intensifies, but also reflects the tensions leading to political and social change.

"The Republic Macedonia is a rather complex and characteristic example of the states in transition, which are often compelled to protect and develop their cultural identity and integrity in the context of the co-existence of different cultures and, at the same time, to create mechanisms for the selection and absorption of external influence. The situation of the country is exacerbated by the fact that, during one century only, it was not only ruled by different societal systems, but also exposed to clashes in the area of cultural values."[1]

The situation of the society is reflected in its culture in all its complexity. Therefore, culture must develop, following and coinciding with the current socioeconomic and political transformation of the Republic of North Macedonia as an independent and sovereign state, but it must also focus on and indicate changes.

Studies have gathered many facts, data, attitudes and opinions on the significance of culture for the development of a society, first and foremost in terms of the economic and social development of a state, as well as the significance of the development of a society for culture and the society's perspectives.

In the present paper, I will attempt to describe to what extent the Macedonian cultural model is compatible with the European one, based on a comparative analysis of the cultural development in Europe and beyond, as well as an analysis of the common roots of European culture and cultural diversity. To this end, I will assess national cultural policies, taking into account traditions and expected future changes, as well as in which direction culture should develop in order to benefit the economic and social development of North Macedonia.

1 Petkovska, A. *Esei od sociologijata na kulturata*. Skopje, 2009.

Applying an open and strategic approach to culture, I will also try to provide an answer to the question what could be done for culture to take up a significant position in the overall development of society. I will also examine culture's economic dimension and the impact of politics on the process of improving cultural and societal development, not only in the framework of cultural policies, but also of the Republic of North Macedonia's process of EU integration.

By means of a scientific analysis, I will try to confirm the thesis that cultural policy can be a significant factor in the state's EU integration process if it is an integral and compatible part of the overall integration strategy for the economic, democratic and social potential of the Republic of North Macedonia. Therefore, I will define the parameters of the state's cultural policy and the main elements that it has to include in order to comply with the current practice in Europe and its predominant tendencies.

EUROPEAN MODERNITY – CULTURE AND SOCIETY

Europe is not only a continent of nations in the process of a possible socioeconomic and cultural unification or convergence. Not always does the population in a state's territory represent cultural unity. The continent must not be regarded as a given cultural entity that has been given different meanings over the course of time. In fact, we should regard Europe as a sphere in which different layers of cultural history have spread throughout space, having formed one upon the other, in contradiction and convergence, in clash and combination,[2] hence the complexity of European history and its impact on modern ideas.

Europe's cultural space can be considered as a set of cultural systems that generate and reproduce identities, knowledge, norms, and values. We can identify a small number of cultural system that have shaped today's European culture and its specific territorial unity and division, its centres and peripheries. Not denying the significance of the other ones, I would say that those systems provide us with the basic elements of Europe's geography of cultural history. No culture exists without a society, but neither can a society exist without culture. Without culture, we would not even be "human" in the most common sense. We would not have language, we would lack a sense of self-awareness, and our ability to think and to judge would be limited to the coarsest.[3]

In its broadest sense, culture is the entirety of inherited and new material and spiritual creation, with the aim to facilitate the maintenance, continuity and progress of human kind as a whole. This means that culture includes two important components: cultural

2 Therborn, G. *European Modernity and Beyond: The Trajectory of European Societies.* London, Thousand Oaks, California and New Delhi: SAGE Publications 1995, p. 207.

3 Giddens, A. *The Consequences of Modernity.* Cambridge: Polity Press, 1993, p. 32.

heritage and new cultural creation, i.e. tradition, conservation and inheritance of already created cultural values, on the one hand, and creation of new values, or progress, on the other. Obviously, culture is the basic sense and condition for a society to get on, or in other words, the attempt of human kind to improve, to enhance and even to overcome its biological limitation. Therefore, there is no society without culture, while culture can only result from the complex mechanism of interaction that we call society.

From the processes described above, we can clearly see that the concepts of culture and society play the key role in defining and maintaining the limitations of the European idea. Neither culture nor society is static: they are in permanent transition, changing, adapting, and reacting to internal and external challenges.

It may seem paradox, but culture is also defined by its degree of resistance to immediate and short term changes if they represent a threat to society itself. The sum of all forces (stagnation, change, heritage, globalisation) defines contemporary sociocultural ideas about Europe, and thus its social borders. Most importantly, those are the borders of inclusion and exclusion with regard to Europe.[4] In the developed countries of the West, economic development is closely related to cultural changes, i.e., they are actually mutually dependent. In other words, cultural changes follow or enable economic development and vice versa, while in non-developed countries, and especially countries in transition, the primary role of culture is often to escape the disproportional development in the economic and political spheres. This phenomenon has been described by many contemporary scholars, mainly sociologists, in their scientific search for signs of the European political, cultural and spiritual identity, such as Guerrina, Therborn, de Rougemont, and Fouché.[5]

The development of culture, civilisation, and the world as a whole is, in fact, a process which integrates material and spiritual creation, in which every generation participates, leaning on the cultural achievements of their predecessors and enriching the material and spiritual values of their society. Therefore, we have to consider culture as the source of the productive potential of the nation and the matrix for an infinite number of situations, with all its complexity. Therefore, its development must follow and coincide with the current socio-economic and political transformation of every state, but also focus on and indicate those changes.

4 Vilijams, R. *Kulturata*. Skopje: Kultura, 1996.

5 Ružmon, D. *Dvaeset i osum vekovi na Evropa*. Skopje: Kultura, 1997.

THE REPUBLIC OF NORTH MACEDONIA IN THE EUROPEAN CULTURAL SPACE

The path towards Europe's unification was paved during several centuries. Europe's most honest feature is its complexity. It is hardly possible to combine so many mentalities and memories, greatness and individuality, prosperity and identity, diversity and antagonisms in one single entity. Europe is diverse in terms of geography, as well as in terms of economy. It is a synthesis of political, moral, cultural and spiritual parameters.

The originality of European culture lies precisely in the fact that it remains a system of heterogeneous subsystems of dialogues which contradict one another with regard to religion, disbeliefs, mythical thinking, problematisation, humanism, science, transition, the individual, the collective, existence... Maybe Jean Monnet, the creator of the idea to unite Europe, was right when, towards the end of his life, he asked himself whether "Europe should have started from the unification of the sphere of culture instead of the sphere of politics".

Nevertheless, Europe has created a solid cultural history, which has to be understood in its complexity, richness and luxury, as well as in its poverty, limitedness and monotony. The peculiarity of European culture is its continuity, in terms of time as well as space. Is it surprising that the Lamentation of Christ, with the first elements of Renaissance, can not only be found in its fatherland, Italy, but also in the Church of St. Pantelejmon in Macedonia, in the Balkans? Actually, European culture does not support continuous hegemonism, even though the antagonisms it lives with have constantly been present since the 15th century. Not only the dominant ideas are significant for European culture, but also the ones that oppose them. The situation is similar with regard to cultures. In Europe, the term "culture" does not mean uniformity and homogeneity. European culture thrives on opposites, clashes and crises. They are born from it, but they also reflect it.[6]

A "Europe of cultures" means that all peoples can present their cultural creations without any feeling of inferiority. Well, isn't Europe the most creative and interesting cultural space in the world?

In the study of the European cultural space, it is of utmost importance to stress the importance of European culture, European civilisation and European values for the development of society and its perspectives.

6 Ružin, N. *Evropskata ideja od utopija do realnost.* Skopje 1996.

In his well-known "Clash of Civilisations",[7] Samuel Huntington lists European civilisation, as the seed and now part of Western civilisation, among those civilisations that will dominate the world in the new century. According to him, it is European civilisation that has brought universal values to mankind. Looking at European identity and European values, we can really state that the European value system has had and impact on the general global development.

A comparative analysis of the cultural development in Europe and around the world, as well as of the common roots of European culture and the culture of diversity which accounts for our intellectual potential, including traditions and expected future changes, is crucial for our future.

Among many other values, the Republic of Macedonia is characterised by deep cultural and spiritual creations, which are the cultural heritage of generations that reach back several millennia. North Macedonia is situated on a crossroads where civilisation from the East and from the West have met. It is situated in a region where new values have been created from the combination of European and Asian civilisation, but also where great and powerful global empires have clashed. The multi-layered cultural heritage of North Macedonia and the creative works it offers Europe and humankind have been shaped into countless artefacts, made of various materials and in various forms characteristic of certain historical ages and civilisations.

The European Union's experience has shown that so-called small countries can play an important role, especially in embracing the basic directions of the European space's cultural development. The Republic of North Macedonia's determination to consider its development perspective in the framework of Euro-Atlantic integration is not a result of day-to-day politics, nor a coincidental choice. On the contrary, it is a consequence of the Macedonian society's historical belonging to European civilisation and the orientation towards European standards and values in all spheres of society.

In a historical, cultural and political sense, North Macedonia is aspiring towards those fundamental goals, but first and foremost, it is part of the European social, economic, political and cultural space. For us, however, it is essential that, by joining the European Union, North Macedonia will have the possibility to take part in the development of the European and global economy, politics and culture, and especially to contribute to the development of the European cultural space.

The process of EU integration is a process in which the society is transformed with regard to its basic values and goals, as well as to the political, economic, legal and cultural framework for achieving them.

7 Huntington, S.P. `The Clash of Civilizations?`, Foreign Affairs 72(3), 1-19) S.P. 1993.

The last ten years have been very critical in terms of culture in general, but especially for the countries in transition. System change frequently leads to complex adverse situations for a society in the sphere of economy, culture, security, the social sphere, and others. The economic stratification of the population, resulting in wealth for the few and poverty for the many, unemployment, the state institutions' diminishing power and influence, clashes on religious and ethnic grounds, a crisis of values and disorientation, moral erosion, organised crime, different forms of violence and other socio-pathologic phenomena in a society's reality cause a situation of constant chaos.

Under such conditions, culture becomes increasingly marginal, being exposed to various kinds of threats, which is why it is essential to introduce synchronised reforms that contribute to the state's swift cultural and socio-economic development and its fast integration into the EU.

The number of attachments that the Republic of North Macedonia has to include during its procedure of cultural and social integration into the EU is continuously growing. Numerous institutions, including cultural, art and other organisations and initiatives, participate in the process. The state has adopted many governance and political measures, strategies and documents. For more than twenty years, Macedonia has been brave and sovereign in its approach at the complex and controversial task to show its affiliation to Europe and the continuity of its belonging to it in all spheres: geography, culture, history, economy, and politics. That process is also aimed at the idea of sharing European community, experiencing the spirit of a Europe of cultures, but in a critical dialogue. The corpus of values which North Macedonia is a part of, sovereign and with its own identity, but also with the desire of continuous communication, is always directed at fulfilling the task to be at the avant-garde of humanity.

We cannot imagine Europe's traditions without the processes that have taken place and are still continuing in the Macedonian cultural space: the heritage of Mediterranean civilisations, Christianity, and the influence of Byzantium are only some of the key points of contact between Europe and the Republic of North Macedonia. The European mosaic of cultures would be significantly poorer without some crucial elements of the cultural character of North Macedonia, and it would lack the transfer of some important civilisations that have "passed" through the country, leaving a deep mark on its identity. Whether Europe will be successful in its mission will depend on its consistency in respecting cultural identities. Another crucial question is to what extent it can resist the political and economic pragmatism that could provoke a hierarchisation of European socio-cultural communities.

CULTURAL POLICY: INVESTMENTS, STRUCTURE, DIRECTION AND PERSPECTIVES

The state's positive or negative relation towards its own culture is manifested in various instruments and on various levels. The dimensions and proportions of these instruments depend on the awareness of culture's importance in a certain sphere, on the development level of the culture itself, on the material possibilities, the available potential, and the goals to be achieved – in other words, it depends on what we usually call cultural policy.

In practice, the cornerstone of how we deal with cultural policy today is the recognition of the "right to culture" in the United Nations' Universal Declaration of Human Rights of 1948. Proclaiming that "everyone has the right to participate freely in the cultural life of the community" means that the authorities that are responsible for those communities must provide the individual with means and ways to participate in the cultural life. Therefore, cultural policy is a system of adopting provisions that create legal assumptions, i.e. the legal grounds for a dynamic and high standard development of culture.

Cultural policy cannot be realised by the state and professional institutions only. It is necessary to establish a model of an integrated cultural entirety which will allow for all cultural actors within society to participate in creating that policy. Educational institutions, media, publishing houses, the audio-visual sector, etc. play a very important role in this context, being of invaluable importance for creating cultural policy. In other words, besides legal regulations, provisions and measures, and the participation of state cultural institutions, there is a broad range of activities that result from a certain culture, tradition and awareness, which is very important for the cultural development of a state.

The European countries' cultural policy of the past forty years can be characterised by four main principles, more or less explicitly:

- development of cultural identity;
- having in mind Europe's cultural diversity;
- stimulating all kinds of creative activity;
- everyone's participation in cultural life.

Cultural policy has to be consistent and open at the same time. All the arts have to achieve one result, which is to affirm the common character of the European values, but at the same time, preserve the cultural diversity which characterises Europe as much as every nation and state separately.

An essential dimension of North Macedonia's cultural tradition as a multi-ethnic, multi-cultural and multi-confessional state is its openness towards other cultures and cultural

values and differences, while its international cooperation is dedicated to presenting and promoting the highest values of its heritage and creativity.

"The legal basis for the Republic Macedonia's cultural policy is provided by the Constitution, general laws, and international agreements."[8] During the last years, a complex system of legal norms to regulate the sphere of culture has been established, as well as laws on cultural activities, which are subject to changes according to the social, political and economic situation in the country, on a national as well as international level.

In this context, it seems indispensable to establish a creative cultural policy which includes integrational approaches or models for supporting our cultural production, especially artists, who should be offered adequate conditions and social security, as a true contribution to a broad understanding of creativity, especially the combination and relation between culture and economic development, and between culture, democracy and human relations.

The task of today's governments is to provide incentives for public and private creative works and cultural studies in all their forms and variations, without relating to them as a political tool or commodity. Culture cannot do everything that governments would like it to, and hardly with the pace that they expect, however only cultural tools can contribute to improving the quality of life and North Macedonia's faster EU integration. Apart from that, culture can provide every country with important contributions to its economic and social well-being, i.e. it can be a very useful industry.

Every country should perceive cultural diversity, multiculturalism and the dialogue with other cultures as its basic context and resource for development. Within a state, this means to recognise and promote different cultural and societal groups, and at the international level, to develop cultural models for preserving cultural diversity, which is our key to the future.[9]

We have to admit that cultural industries are the industries of the future, being part of the creative industries, whose importance within the knowledge-based modern post-industrial economies is increasing. Cultural industries are not only considered to contribute to more than average growth and the creation of new jobs, but also to promote cultural identity and play an important role for fostering cultural diversity. In EU policies, creative industries take up a crucial position, representing an excellent medium for intercultural communication (exchange of values), for promoting knowledge and skills (which are top values in the globalised society and the main source of political, cultural and economic power), for creating conditions for exchanging and trading intellectual property, which will allow science, culture and art to become productive instead of

8 Dikovska, M. *Normativno reguliranje na kulturata – zbirka propisi*. Skopje: 1998.

9 Mandi, S. *Kulturna politika*. Fondacija Institut otvoreno opštestvo, Skopje: 2000.

consumerist, and for universalising certain cultural values, with the aim to recognise cultural differences.

Therefore, cultural policy has to be defined within a political framework which is democratic, i.e. based on a society in which taxes are redistributed for the common good, in which people retain enough of their income to secure more than their mere existence, and in which governments join the international conventions on human rights, the freedom of expression, the conservation of heritage, and sincerity of the administration.

In numerous European states, this situation has been lasting for years (at least in theory), while for others, its actual experience is relatively new. Meanwhile, there are also states for which establishing such a framework is a work in progress, due to the unrest they are still experiencing.

With the Maastricht Treaty, the European Union included culture as a separate domain in the framework of its responsibilities. However, it is still impossible to assess the practical effects of Article 128, paragraph 4, which stipulates that the Commission take into consideration the cultural dimension of its duties.[10]

During the last few years, on the agendas of the Presidencies of the European Union, we have seen a growing number of topics related to culture and employment, cultural industries, new technologies, the development of the music market, or the publishing sector. Together, they contribute to a broader understanding of creativity, such as the relation between culture and economic development.

Today, culture is defined as the "most personal care for a nation, and one of the most pressing international issues".[11]

A good cultural policy will not establish connectedness and prosperity among people, but without a good cultural policy, it will be hard, or sometimes even impossible, for a government to achieve many of the other political goals.[12]

Today, the opinion prevails that sustainable development must take into account culture as "the life of people in their entirety" and its values or, in a narrower sense, creative activity in its diversity. Europe, too, is experiencing a wide range of cultural transformations, which contribute to social, economic and political changes.

Globalisation makes national identities fragile and puts them to a test. At the same time, we are witnessing a renaissance of national, local and regional awareness, encouraged by cultural policies. New technologies are not only revolutionising trade and industries,

10 Mandi, S. *Kulturna politika*. Fondacija Institut otvoreno opštestvo, Skopje: 2000, p. 67

11 Vajdenfeld,V, Vesels,V. *Evropa od A do Š*. Europa Union Verlag GmbH, Bonn; van Ham, Peter (2001) Europe's Postmodern Identity: A Critical Appraisal, *International Politics 38* 2002.

12 White, Leslie, A. *Kulturologija*, 1970.

but also flooding everyday life with a huge number of novelties. Individualism and moral relativism are replacing traditional beliefs. Many societies and many citizens in Europe are affected by social insecurity and unemployment.

The consequences of the unstoppable continuation of economic growth on the environment, the social sphere and culture have led governments to engage in the idea of sustainable development, which means to invest in an economic development that will not challenge durability, the quality of life, or the possibility for future generations to make their own choices.

The cultural policy of every democratic state has to include the freedom for every person to identify with the cultural and linguistic communities of their own choice, while respecting the diversity of other cultures. By granting access to culture and the freedom to enjoy cultural rights, differences within societies will not be overcome, but they will sure be diminished, and the institutional system of civil society will be supported and fostered.

From the analysis of the situation of cultural policy in many European states, including North Macedonia, we can see that there is a broad range of approaches at cultural policy and its tasks.

Cultural policy is often created within a certain framework, but not according to one single model for all states. Every state has its own vision of cultural policy and approaches it in a different way, through its centralised or decentralised model. Nevertheless, we have to point out that every cultural policy bases its development strategy on a few essential goals which are common to all countries, such as creating normative regulations in the interest of culture and art, conserving, developing and promoting cultural heritage and creative activities, promoting cultural institutions, encouraging artists, authors and creativity by implementing a stimulating tax policy, as well as developing and strengthening the cultural industry.

Culture is a basic and essential feature which distinguishes man from the rest of the living world, while cultural policy is regarded as a policy which includes legal provisions, as well as direct and indirect measures for economic and social development, which focus on the role of culture for the development of society.

CONCLUSION

Europe must be assessed according to its failure as well as according to its high ideals. History is important for analysing the European idea, not only because it is important for understanding the foundations of European culture and society, but also for explaining the processes that have become an integral part of the ideal.

The European idea cannot be considered without the forces that created it, and of course the forces that are permanently working at establishing the social, political and economic structures to provide for its survival. It is important to understand that history is never objective, but always subject to scrutiny and assessment. It is exactly the process of scrutiny and assessment that attributes values to the periods and tendencies within European history. It is those values, which sum up to the European idea, that we have inherited today.[13]

Change, development, progress and modernisation are the terms that virtually mark and define the current age of human society.

The time we live in is a time of fast and dramatic changes in all spheres of our existence. On the one hand, economic development, followed by a fascinating scientific as well as technological progress, which has led to some kind of information society, has created a special kind of culture, the so-called cyberculture, or culture of digital communication, in the name of the most valuable product on the market: information. This cyberculture is not only an element of new economic processes, but also the most effective way to overcome individual and collective cultural differences, a means of realising the principles of globalisation, which prescribes a unified cultural model.

On the other hand, due to the collapse of the former communist system, a large region of the world found itself caught in the process of radical changes to its societal, political and cultural values: the process of transition. Among other things, this process is characterised by a strong individual, political, and ethnic value and cultural differentiation.

Even though the Republic of North Macedonia is a transition state, its societal system is based on human rights, parliamentary democracy, and market economy, and it is working hard on the process of approximating its judiciary to the one of the European Union. Within the society of North Macedonia, there is a broad consensus on EU integration being a strategic priority.

The specific conditions in which the state developed has in many ways also brought about a specific development of culture and cultural policy.

Cultural policy has to be consistent and open at the same time. To prefer some values over others would transform culture into a source of division and evoke conflicts instead of creating a harmonic society and mutual tolerance.

Respecting the rights of the individual in terms of sex, race, and ethnic group as an indicator of richness of features has become a historical necessity. General as well

13 Laeng, Mauro (1995) *Identita 'e Contraddizioni d'Europa*. Roma: Edizioni Studium,1995, p. 24.

as cultural pluralism have prevailed, not only as ideas, but also as a true factor of sociocultural integration.

Today, cultural diversity, an interdisciplinary approach at realising culture, as well as studies that increasingly confirm culture's economic importance, are slowly but surely moving culture into the centre of the society. In today's world, there is no state that does not pay due attention to culture; it is their most personal concern. Investing in culture means to pay respect to a people's past, to care for the future, to invest in the idea of creativity, and it is also a possibility to compare, to overcome and to converge the cultural differences among the countries of the European family.

Culture has to be the "main bridge" for creative energy to move across, as one of the creators of the European community, Jean Monnet, said: "if I were to build Europe again from scratch, I would start with culture".

The challenges of the new era, globalisation, new technologies and orientations towards values, as well as today's way of life, push culture into the role of a unique sphere of development. Therefore, the state's role in providing the institutional framework is to stimulate, support and develop cultural relations within society. In order to entirely integrate culture, the main priority must be to consider it as a part of all development plans of a society.

In the future, it will be inevitable for the state to carefully observe culture and the processes related to it, and to invest a lot of energy into fostering and developing it. If we want culture to take up a more significant place in the politics of the country, we have to place it at the very heart of the entire development of our society.

REFERENCE LIST

1. Petkovska, Antoanela (2009) *Esei od sociologijata na kulturata.* Skopje: AZBUKI
2. Therborn, Göran (1995) *European Modernity and Beyond: The Trajectory of European Societies1945-2000.* London, Thousand Oaks, California and New Delhi: SAGE Publications
3. Giddens, Anthony (1990) *The Consequences of Modernity*. Cambridge: Polity Press
4. Vilijams, Rejmond (*Williams, Raymond*) (1996) Kulturata: Skopje: Kultura.
5. Ružmon, Deni De *(Rougemeont, Denis de*) (1997) Dvaeset i osum vekovi na Evropa. Skopje: Kultura
6. Ružin, Nano (1996) *Evropskata ideja od utopija do realnost.* Skopje: Studentski zbor
7. Huntington, Samuel (1993) `The Clash of Civilizations?`, *Foreign Affairs* 72(3)
8. Dikovska, Magdalena (1997) *Normativno reguliranje na kulturata – zbirka propisi*. Skopje: Direkcija za kultura i umetnost
9. Mandi, Sajmon (*Mundy, Simon*) (2000) *Kulturna politika*. Skopje: Fondacija Institut otvoreno opstestvo-Skopje
10. Vajdenfeld,Verner, Vesels,Volfgang (*Weidenfeld, Werner; Wessels, Woflgang) Evropa od A do Sh*. Europa Union Verlag GmbH, Bonn van Ham, Peter (2001) Europe's Postmodern Identity: A Critical Appraisal, *International Politics 38* 2002
11. White, Leslie A (1970) Kulturologija
12. Laeng, Mauro (1995) *Identita 'e Contraddizioni d'Europa*. Roma: Edizioni Studium