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Contents

One-stop-shop reform and electronic governance

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Abstract

Electronic governance is a multidimensional concept including, but not limited only in online coordination of the Council of Ministers functions, offering online services from governmental institutions to the public and business community.
Up to now the reform has improved services like government to government and government to public, but the real winner of this process is the business sector, where reforms have not only enabled to provide electronic service in important business areas but also expanded the scheme of a sole application or one-stop-shop in different sectors.

Keywords: One stop shoreorms , electronic governance, business registration, electronic taces services

Electronic Governance and business subjects

Reforms applied to facilitate establishment and functioning of business sector are very visible, and as consequence have significantly changed some crucial business aspects in Albania.

This paper identifies and illustrates those changes which are considered as most important because of their impact on business operation.

Since September 1, 2007 business registration is done through Albanian National Center of Registration based on one stop shop concept.

This reform facilitates the whole procedure of business registration, which before that required going to different institutions such as court, tax office, labor inspectorate etc, which was a long time consuming process. Today, this procedure can be done just in the one stop shop within 30 minutes. Before this, business registration application was done only in the court of first instance of Tirana, where all data were registered in Trading Register, and now it can be done in 30 administrative centers of National Center of Registration[1]. All businesses and enterprises can also take information, download registration forms, conduct electronic researches for their business registration status online. The one stop shop scheme for business registration procedure is implemented, in compliance with the law No. 9723 dated on 03.05.2007, “On the National Center of Registration” and law No 9901 dated on 14.04.2008 “On enterpreneurs and Commercial Companies”.

[1] 30 National Registration Centers are opened in Tirana - QKR; Tiranë - Municipality; Durrës- Municipality; Elbasan- Municipality; Vlorë – Municipality; Fier – Municipality; Krujë; Rrëshen; Berat; Bulqizë; Gjirokastër- Municipality; Kavajë; Lushnjë; Pogradec- Municipality; Çorovodë; Shkodër- Municipality; Librazhd; Burrel; Bajram Curri; Gramsh; Peshkopi; Tepelenë; Korçë- Municipality; Laç; Lezhë- Municipality; Kukës- Municipality; Ersekë; Përmet; Pukë; Sarandë.

For the period September 2007 – April 2011 were registered about 24,706 new companies; these comprise 42.5% of total business companies registered in Tirana (58112).

Only in 3 and a half years were registered almost the same number of businesses compared with the number of business registered for 17 years. This fact is an evidence of the big advantage that administrative process has compared with previous process through the courts.

National Licensing Center (NLC) is established on June 2009, aiming to replace all lon procedures of licensing application in an one stop shop. Most of the application procedures including information and search for the application status have been replaced with online procedures. Currently, the NLC gives 83 types of licenses, grouped according to predefined areas[2], and the old procedures still continue for about 31 types of licenses[3]. To implement this reform, the following laws have been changed, improved and/or approved:

- Law No 10081, dated on 23.02.2009, "For licenses, authorizations and permits in the Republic of Albania".
- Law No. 10137, dated on 11.05.2009, "For some addendums to the current legislation on licenses, authorizations and permits in the Republic of Albania".
- Decision of Council of Ministers No. 538, dated on 26.05.2009, "For licenses and permits handled by or through the National Registration Center and on some sublegal regulations".
- Decision of Council of Ministers No. 1295 dated 29.12.2009, "For some amendments to decision of the Council of Minister no. 538, dated 26.05.2009, "For licenses and permits handled by or through the National Registration Center and on some sublegal common regulations".

[2] 1. Expertise and/or Professional services; 2. Physical security services 3. Production and/or trading of food 4. Reproduction, breeding and creating of new races and other veterinary services; 5. Natural copulation and artificial insemination; 6. Animal trading; 7. Production and/or seeds and seedling trading; 8. production and / or trading of plant protection products, fertilizers and / or of tobacco products; 9. Manufacturing and trading of plant protection products (dangerous products and high risk) 10. primary medical, hospital, services; 11. Hospital services; 12. drugstores or pharmaceutical agencies; 13. wholesale trading of medicaments; 14. other health services;15. environment impact; 16. expertise and/or professional services related with environmental impact 17. Pre-university education 18. International transport for travelers; 19. International transport for goods for third parties and renting 20. Production, transport, using, and or trading of dangerous products; 21. Social care services; 22. Intermediary labor market services; 23. Professional education; 24.execution service;

[3] 1. Collective administration of authors rights; 2. University education; 3. Minerals and hydrocarbures;4. Gambeling business; 5. Airports services; 6. Railway services; 7. Harbor services; 8. All cases related to concenssions; 9. Regarding favorable tax treatment;10. Production and / or trade of goods (weapons, ammunition, fuel, equipment, technology, etc.), military and / or dual-use; 11. Other cases of using energetic resources; 12.Restaration of cultural heritage munuments; 13 expertise services relating with territory development and /or similar services; 14. Expertise and professional services related with transports (driving license):15. Financial expertise and professional services related with public finances; 16. Other professional and expertise services related with civil or penal rights; 17. Notary services; 18. Using and/or breeding of fauna (terrestrial and sea); 20. Using water and /or in territorial areas and/ or underground and/ or other related materials; 21. Using and/or breeding of wild terrestrial fauna; 22. Sea transport for vehicles and/or travelers; 23. Activities related with ionizing radiation sources; 24. Terrestrial development and/or construction.

In particular Law No. 10137, dated 11.05.2009 had an important impact on several areas, the licensing procedures of which changed through the implementation of one stop shop scheme.

These reforms influenced the positive evaluation Albania received from different international forums regarding business environment. In the World Bank report Doing Business 2009, Albania was ranked as the second country in the world regarding the quality of reforms and improvements of business environment, as well as the 14th country in the world for investors protection which is translated into an improvement of 50 positions compared to last year's ranking.

The entering into force of different licensing procedures in compliance with the concept of one stop shop, required as a precondition the amendment of many laws[4].

Electronic taxes services include declaration and payment of VAT, income tax, profit tax, payment of social contribution, and health insurance. Until 2008 all these services were offered through a very inattractive approach. The change to an electronic tax system is based on the decision of the Council of Ministers No.55 dated 03.02.2010, "On obligatory declaration of taxes and other tax documents, only through electronic forms" and on instruction No 2 dated 28.01.2010 for some changes of previous Instruction No 17 dated on 13.05.2008 "On value added tax". Currently all these services are electronically offered for medium and big enterprises. Small enetrprises pay their obligations based on law No 9632 dated 30.10.2006 "On local tax system". For the small enterprises category, the yearly local tax calculation is done through business declaration of yearly income as well as based on predefined activities categories. After the tax is calculated from General Tax Directory, the respective tax obligation notification is done through the tax inspectors or by post within 7 days. Once this procedure is completed, it arises the obligation of businesses to proceed with tax payment in banks or local authorities. The payment deadlines depend on the tax and fee type i.e. the tax for using public spaces can be paid until the end of each month, local tax of small eneterprises can be paid in four installments, etc. As consequence, informatisation of small enetrprises payment system will be an important development, taking into consideration the substantial weight this business category has in the total number of registered businesses.

Public Procurement. From 2009 Albania became the first country in the world that implemented an obligatory electronic system for public procurement of more than 3.000 Euros. This system, based on electronic application, which guranties secure transactions between public institutions and businesses offers a good and transparent administration of the whole tender documentation, avoiding all unnecessary work on different documents as well as saving all tenders process data[5]. Through electronic procurement system is given all information procedure, downloaded all documentation, participation of economic subjects or operators in electronic procurement tender, and the electronic execution of the tender procedure from respective conctractual authorities. Albania was awarded with the second prize of UN Public Service Award from United Nations Organization for this important development. This is one of most prestigious prizes that United Nations Organization gives for evaluation of public services[6]. Implementation of

[4] See bibliography.

[5] Based on decision of Council of Ministers no. 45 dated 21.1.2009

[6] http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan039144.pdf

electronic procurement was enabled through amendments and approvals of the above laws:

- Law No.9643, dated 20.11.2006 "On Public Procurement" and other respective proceedings, amended
- Law No. 10170, dated 22.10.2009, "On some amendments on Law No.9643";
- Normative Act No.3, dated 08.07.2010, "On some amendments of Law no.9643, "On Public Procurement" amended;
- Decision of Council of Ministers, No.1, dated 10.01.2007, "On regulations of Public Procurement"
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Customs Declaration is completed online. Custom system digitalization facilitated to make 100% of transactions through the online system. Implementation of ASYCUDA World system is supporting electronic processing of all customs declarations. All customs declarations are processed through DTI (Direct Trader Input), the transit regime is monitored online, the controlling inspectors are automatically appointed, there is automatic update of tariffs data as well as generation of statistical data and reports are done online automatically [7].

It is noticed an increase of electronic services in most of the sectors, where businesses are filing their applications, but the future challenge is the increase of interactivity level of such services. This requires that services overcome the situation of offering online information to a new approach of interactive communication with businesses. For exapmle, currently businesses can collect information online on their application for environmental permission, but there is still room for improvements related with inatractivity between the institution and the applicant.

To make a comparison, we will bring a case of construction and implementing procedure for a THERMO POWER PLANT

Construction and total implementation of a THERMO POWER PLANT requires as follows:

1. Establishment of a trading Albanian company. Taking into consideration many legal conditions which are related also with the next steps, the investors should establish a new company based in Albania.
2. Appointing and taking legal ownership rights over the land where the thermo power plant will be constructed. Such important energetic investment can be constructed only in areas approved by government as energetic parks[8].

[7] http://www.dogana.gov.al/

[8] Ownership on land is an issue which should be resolved by investor through private transactions with existing land owners or through partnership with the state. It should be understood that partnership for land issue-which will be a concession if it is not made through sales contract, does not mean automatically that the state has a partnership relation for THERMO POWER PLANT construction except cases when this is clearly stated.

3. Application to receive the construction permit is completed in accordance with the law "On electric energy sector" and regulation for Authorization[9]. This law defines that "the construction of new energy generating resources, when it is not approved according to a concession contract is implemented through approval of Council of Ministers" and the regulation defines into details the authorization approval procedure. Referring to the last mentioned regulation, "Every person who runs a commercial activity in compliance with the Albanian law, can apply to receive authorization for construction of new energy generating resources. Every application according to this regulation is completed through the respective Ministry responsible for Energy". The Responsible Ministry in this case is The Ministry of Economy, Trade and Energy (METE). The regulation foresees that to receive the authorization from the Council of Ministers, a preliminary approval must be taken from METE. This document called as prior authorization is provided by METE within 3 months from acceptance of application, if the documentation submitted is complete.

After receiving prior authorization from METE the company/business should submit to METE all documentations as described in the law and respective regulations within the deadline defined in the authorization, in order to send the authorization to the Council of Ministers.

METE controls the documentation's accuracy within 30 days from their acceptance. If all documentation is correct and complete, METE sends to the Council of Ministers a proposal requesting the approval of authorization along with the whole documentation of applicant and a copy of the prior authorization. Upon receiving the proposal, the Council of Ministers consideres the case and approves the authorization. This decision is announced also in the Official Publication Center.

After this procedure the next steps of the company/applicant are:

1. Application in Transmission System Operator (OST) for connecting to the transmission system;
2. Conduction of environmental research study and application for environmental permission;
3. Application for permission to use water;
4. Application in Energy Regulator Entity (ERE) for energy production license;
5. Urban research study and application for approval regarding construction permission of THERMO POWER PLANT (under the approval of the urban study);
6. Application to obtain the energy trading license;
7. Application for registering and signing the contract for participation in energy market;

The National Center for Energy Applications. The establishment of National Licensing Center through the law no. 10081 dated 23.02.2009 aimed to facilitate all procedures for licence and permission approval. However, some types of licenses were not included in this reform due to their specific conditions, or due to the fact that their approval dependes on the decisionmaking of different authorities, such as local government. One of these categories is also licensing in the energy field. Aiming to expand the one stop

[9] Decision of Council of Ministers No.1701, date 17.12.2008 "For approval of regulation of authorization procedures regarding construction and using of new energy generation resources that are not concession subject"

shop application concept as much as possible, currently through the Decision of the Council of Ministers No. 913, dated 26.08.2009 it is established a special and unique center for licensing called National Center for Energy Applications, which operates under the one stop shop model. One of the functiones of this center is to facilitate the procedures of granting permits, licenses, authorizations and other administrative acts for all types of projects in the field of energy through coordination of procedures of granting licences, permits, authorisations from the respective public institutions or entities. This fact will save a substantial time and bureaucracy that investors are facing today.

Inspectorates Reforms

Various field of economic and social activity in Albania are supervised by inspectorates, who are established and operate under the relevant laws of the respective field. There are around 35 different inspectorates, i.e. Education Inspectorate, State Inspectorate of Labor, High Inspectorate of Property Declaration, National Construction, Urbanity Inspectorate, State Inspectorate for Land Protection, etc.

In frame of increasing government efficiency and elimination of bureaucracy, a new law on inspection has entered into force on 20 July 2011. The new law no. 10433, dated 16.06.2011 “On inspection on the Republic of Albania” aims to decrease the number of inspectorates and place the remaining ones under a unified hierarchy structure, under the Central Inspectorate.

The inspectorates’ reform has a vertical and horizontal dimension. Under the vertical vector, the reform will enable the reduction of general number of inspectorates in 12. In some fields, the role of inspectorates is considered as unnecessary, while in other fields, where is possible to merge inspectorates currently depending on the same institution, such as four inspectorates depended by METE, they will be merged into one. Under this law, the Central Inspectorate is created as a central public institution, based in Tirana, depending on Prime Minister and funded by the State Budget. The rules of organization and functioning of the Central Inspectorate will be approved by the Council of Ministers, while the structure of the Central Inspectorate will be approved by the Prime Minister
The Central Inspectorate has the mission of improving the effectiveness and accountability of
inspection activities in the Republic of Albania which main functions are:

- coordinate and support the activities of state and local inspectorates
- coordinate the training activities and qualification of inspectors
- Establish and maintain an inspection unique portal that serves for programming and
  coordination of inspections, data sharing between different inspectorates and public information etc.

The reform at the horizontal level aims to unify inspection procedures, parties’ right and obligation and aspects that are linked with the new Central Inspectorate Entity.

The entrance into force of this new law will be associated with amendments on various legal acts and by-acts that regulate the existing inspection structure and approval of new acts that will enable the implementation of new structure.

The reform will be followed by implementation of e-inspectorate platform, which aims to electronically pas many services to the user.

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Tourism competitive environment and small business strategies to create competitive advantages. . Case of Albania and Macedonia

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Abstract

First is focus in the concept of distinguishing features and the ways by which the small tourism business in Albania and Macedonia may profit from adapting those theories and to give recommendation in different kind of strategies that in order to create competitive advantages. The concept of the distinguishing feature has been discussed as a strategy that takes in consideration the businesses that compete in high competitive market. The distinguishing feature is the way how we can develop a specific ability in a connection with a product or a service that is easily distinguishing from the customers. The application of this theory we will see in a service industry and will take in consideration restaurant service as one that has had a important growth during those years. The advantage of the economy of scale that have the major restaurant and their professional image has settled the small one in difficult position. The strong competition is meaningful especially in the service industry where the product served the channel distribution are the same although if they are big or small. When the customers are not sure for a service package, those businesses tends to be neglected.

Keywords: tourism small medium business, marketing strategies, competitive advantage,

Introduction

During the last years of market economy the Albanian and Macedonian tourism business among the success have also faced failure which are the result of some factors. One of the most important one is the lack of main concept about the capitalism rules. The opportunities that raised entering in the capitalism system made that lot of the tourism business in the lack of information they concentrated in same main activities. Some of them looked profitable but they were not. There are a lot of tourism enterprises in Albania and Macedonia. In this process some of them could not resist against the competition and so some of them failed , some of them change their activity or another one are going to be created. This inevitable process of the competition made the tourism businesses to know better the distinctive character of their business with their single purpose to achieve higher result and to survive in the tourism market. Their survive in the market was particularly depended from the differentiation in their features and the competitive advantages that their will create in their business. The purpose of this study has a double result:

Methodology of study: Survey

It have been a lot of interviews with 60 owners/ managers of the restaurants in Albania and Macedonia with the aim to build a questionnaire which focus is in the distinguishing

feature. The question were made in those main direction : the future of the small business, the competition perception, the publicity, media, activities projected to have more market share, the standard used for the effectiveness and the strategic management. For studies purpose those questionnaires where spreaded and filled in 120 different small restaurants and hotels in Albania and Macedonia. 50 % of the employers where part of those businesses from 8 to 10 years. This indicator show that the service industry in stable, able to compete in the market. 63 % of them offers specialized restaurants and hotel service and 18% where offering secondary service.

The result of the survey

The first question where concentrated in the management perception about the competitive environment within they operate. The way than a individ has perception about the environment, has influentation in the way he act. A manager that has the perception that the market is competitive for example may behave differently from another manager that see the market in a different way. When they were ask, 'which is the future of small restaurants?' 42 % of the managers see the future of their business not good. However 36% of the managers see the market as a competitive one. It was no different competitive perception between the managers that see the future as not good and them that the future was seen in a positive view.

The other part of the 4 question focused in what a manager can do to be as much competitive as possible. The first two question where made about the publicity and media tools. For them the publicity purpose was to get known the name of their business, enlarge their image, and to get known from the general public. Media resources were newspaper, television and radio. 3/4 of the managers does not use media tools. The purpose of the other question was related to the fact: What management do to raise market share, and which where their activities they used. The managers mentioned activities like mouth to mouth marketing, special promotion for loyal customers. Only 15 businesses sad that they were segmented in a target with high income.

The other question where focused to: How they differently change from the competitor. 32% of the managers sad that they do a professional work and 16 % pretended to have special service. To make a professional work cannot be considerated as a distinguishing feature because all the firm pretend to be professional .Among this is difficult to make known this concept to the customers.
The third group of question was focus in the management of the business to estimated and maintain the result. The main criteria used to distinctive the result, lead the main business activities in market. From the managers are distinctive three main concepts: sales, growth, and their image (the customers opinion sad in the public).
The managers where were asked also for the number and the frequency of the standard used to estimated the result. 61% of the business used only one criteria standards, the most used standard was the value of sales. 40 % of the business estimate the results in monthly basis, and yearly basis.
At the end, the managers were asked about the strategic management. 74% of the business planned yearly objective. Although only 20% of them had written objective, 38% of the firm pretend that they have long term objective(not written)

The discussion of the results

Small restaurants and hotels haven't been positioned in a market which change very rapidly. Even however the management see the restaurant and hotel service industry like very competitive doesn't see the market in this way does not exist any data to show that the management is changing behavior. The management of those businesses are acting like the environment has not change.

However, the marketers know the importance role of publicity, only few of them use it.
Only few of tourism small businesses are involve in activities that make them different from the others businesses. The marketers does not know the meaning of distinctive features. Make ``a professional work`` is a distinguishing feature, evaluated by a great numbers of businesses. Being different from others must bee the goal of each business and for this reason we didn't consider like a distinguishing feature. Only a little % of this organization accomplish a special service to attract customers.

The capability to compete successful in a market is base on business results. As the firm use a limited numbers of criterions to distinguishing her results, this can not give a main frame, realistic of the activity of the business in front of the competition.
Generally a great numbers of firms involved to compose the future's plans. The goals of this strategic management focus on the final product and does not aim the creations of any distinguishing features.

Creation of a distinguishing feature

The small tourism organizations that operate in a competitive market which change very rapidly, does not repose on practices that times before has been successful. Those firms need to develop a quality to differentiate them from the others. But to differentiate a service organization is a complicate duty or obligation. The decision to change has consequences in hole fields of organization activity. There are two important points:

a. accentuation the quality of the service may result with the disparagement of the others services, which causes low results.
b. assessment of the process may come very close if we answer only the information about distinguishing features. In the case that the only criterion of the results is the value of sales during one month, then the way haw are achieve those sales is less important. But whole this can result in a small number of recurrent customers.

A small organization can follow four steps to determine or assign and develop a distinguishing feature.

First step involve the commitment of three sort of analyses:

- The first analyze focus the appearance, financial conditions, technology expertise and human resources.
- The second analyze must study the firm's conditions in the desire market from her. The demand of market for services determine from three elements: the number of potential customers, trendy which reflect from a growth market, stable market or from unsteady market and local markets.
- The third analyze include a very careful study of the competition, notably of the pioneer . The study must regard three elements: the reaction of firms against the demand; the way they create demands for their services and how the customers perceive the market leaders.

Those analyses provide the right information to pass in:

The second period: identify a distinguishing feature that organization is able to develop. The distinguishing feature must be: the new presentation of a new service which is request from a specific group of customers; readjustment of an existent service which is going toward the decline or elimination of the services that does not accomplish our needs.

The third step involve the projection and implementation of a plan for the positioning of the features of the firm. Except the questions : who will realize, what, when and how ought to considerate 3 elements:

a. communication` s strategies of distinguishing features.
b. which is the message that organization desire to transmit.
c. selection the right media to communicate.

The fourth step include the composition of the delivery strategies, which are efficient for different target of customers.

The creation of competitive advantages

The small business to be successful must create something new for their`s customers, different from theirs counterparts or to address others segments, names niche. Fulfillment of specifics needs of those segments is a focusing strategy which has been successful for small businesses.

Strategy of ``cost leadership`` is a general strategy use to produce of low costs. Businesses that apply this strategy are more protected by market fluctuations and more prepare against fluctuations of the market prices.

``Differentiation strategy`` use by businesses that see themselves like unique in some specifics segments of the market. A business like this can use a monopoly price for it's products or services.

The last one is the ``focus strategy``. The businesses that apply this strategy, try to optimize services in a segment in which the large businesses can not serve. In this way the firm has the possibility also to know more deeply the specifics needs of the target segment.

Conclusions and recommendations

This study concludes as following:

1. Small businesses (example restaurants and hotels) *have not positioning* themselves in market which vary rapidly, even, however the management see restaurant and hotels service industry like very competitive, does not exist any data to show that management is change his behavior. The management is acting like the environment is not changing. However the marketers know the importance role of publicity, only few of them use it.

Only few of businesses are involve in activities that make them different from the others businesses. The marketers does not know the meaning of distinctive features. Make ``a professional work`` is a distinguishing feature, evaluated by a great numbers of

businesses. Being different from others must bee the goal of each business and for this reason we didn't consider like a distinguishing feature. Only a little % of this organization accomplish a special service to attract customers.

The capability to compete successful in a market is base on business results. As the firm use a limited numbers of criterions to distinguishing her results, this can not give a main frame, realistic of the activity of the business in front of the competition.

The small services organizations that operate in a competitive market which change very rapidly, does not repose on practice that times before has been successful. Those firms need to develop a quality to differentiate them from the others. But to differentiate a service organization is a complicate duty or obligation. The decision to change has consequences in hole fields of organization activity. There are two important points:

a. accentuation the quality of the service may result with the disparagement of the others services, which causes low results.

b. assessment of the process may come very close if we answer only the information about distinguishing features. In the case that the only criterion of the results is the value of sales during one month, then the way haw are achieve those sales is less important. But whole this can result in a small number of recurrent customers.

5. A small organization must develop a distinguishing feature. The distinguishing feature must be:

- the new presentation of a new service which is request from a specific group of customers;
- readjustment of an existent service which is going toward the decline or elimination of the services that does not accomplish our needs.

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Insurance product development: Managing the changes and marketing adoption. The case of Albania and Macedonia

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Abstract

Both life and general insurers in Albania and Macedonia are today under pressure to strengthen their market offerings. Product innovation is also being stimulated by heightened customer expectations, advances in enabling technology and by new forms of competition. Traditional players now poach each other's customers. Not only this, but they themselves are vulnerable to new styles of competition from entrants like banks. In many insurance markets, old- style combative marketing is being supplemented by new- style competitive marketing in which companies fight for business in radically changed ways. These competitive changes have powerful implications for established insurance companies which now face urgent decisions as far as the management of product development is concerned. Product development being concerned with updating existing products and new product development being concerned with quite new offerings. The marked based approach provides an effective method for assessing product development success. Measuring success in target markets is, of course, quite different from supply-based approach which uses internal measures. Adoption of marketing in Albanian and Macedonian – based insurance companies appears to be following a similar pattern with our banking .

Methodology

For our study we have chose a convenience sample of 8 general insurance and 4 life companies based in Tirana and Skopje. Both large and small companies were included. The main data were obtained through face – to- face interviews conducted at the relevant operating site. All respondents were however directly involved in product development decision taking. Each face- to- face interview lasted, on average, one- and-a- half hours. Data were collected in 2010 and 2011.All companies co-operating in our investigation have now recognized the need to become more market oriented.

An associated external measure of success is the degree to which a company is creating a market for itself on its own terms, rather than just competing on terms laid down by established industry players. This latter type of success can be achieved by destabilizing and reshaping an established market or, perhaps, even by opening up a completely new market, as was done by providing low- cost private motor insurance to customers direct through telesales (Johne, 2002).

While market share success registers that customers are responding positively to new offerings, it nonetheless represents an incomplete measure of success. The market – based measure tells us nothing about whether a supplier is managing to meet customer's

preferences profitably. For this reason both measures must be considered together: the market- based measure to appraise the extent to which market potentials are being exploited; the supply – based measure to appraise whether internally determined targets are being met in the quest to maintain and develop the business.

The two measures of product development success pose marketing specialists with considerable challenges. Marketing specialists should , by virtue of their skills in accessing relevant information, be able to assist in developing offerings which have positive market appeal. Not only this, but marketing specialists have a responsibility to identify markets affording maximum opportunities. Additionally, they have responsibility in working together with other specialists to ensure success in terms of internal profitability. The extent to which marketing specialists can and do get involved in both these operational aspects depends on the extent to which marketing has been accepted in a company.

The adoption of marketing in insurance companies

Table 1 shows different stages which Kotler has suggested are typical in the slow learning of marketing in banking. We shall see, later, that the adoption of marketing in Albanian and Macedonian- based insurance companies appears to be following a similar pattern. Probably all Albanian and Macedonian insurers now embrace marketing in the form of advertising, sales promotion and publicity. In companies at the first stage , marketing managers do just that_ they are responsible for advertisements, sales promotions and publicity. Similarly, most insurance companies, and especially those which deal direct with customers, have now progressed through the second stage in adopting marketing- the smiling and friendly atmosphere stage- typified by message: " We won't make a drama out of a crisis". Now suppliers of insurance to progress to the third stage in adopting marketing, where emphasis falls on developing new products because the competition is forcing more and more. An slogan which typifies this stage is " We must innovative in response to market changes , or we shall be overtaken by competitors". All insurers approached in our study have now reached this stage in adopting marketing.
The next, higher, stage is the use marketing expertise to position product developments in an optimal way. In this fourth stage, emphasis is on developing offerings which are preferred above those offered by competitors.

Table 1: five stages in the adoption of marketing (from Kotler, 1991)

1	Marketing is advertising, sales promotion and publicity
2	Marketing is smiling and friendly atmosphere
3	Marketing is innovation
4	Marketing is positioning
5	Marketing is marketing analysis, planning and control

The fifth and highest stage of marketing is when a company has installed effective systems for marketing analysis, planning, implementation and also control. When this has happened , marketing expertise is used to: 1. Collect relevant marketing data; 2. Analyse it for the purpose of positing offerings appropriately and 3. Implement product change programmes profitably through planning and control. It is, of course, in this highest stage

that marketing experts contribute not only to designing better positioned offerings, but also to their profitable introduction and management.

Sample of insurance companies

Prior analysis of theoretical and practical writings in the area of development led us to focus data collection on fife key issues. This questions asked of respondents related to one more of the following five key issues.

1. What types of development are currently being pursued. Our hypothesis was that there would be a preference for pursuing low- risk, incremental types of product development.

2. What are the key activities in the development process during which important decisions are made? Our hypothesis was that it is difficult to identify key activities because development is pursues in a informal and unsystematic manner.

3. What formal organizational arrangements are in place to handle development activities? Our hypothesis was that insurers do not adopt formal organizational structures to deal with the development of new offerings.

4. What Is the contribution made by marketing specialists? Our hypothesis was that marketing specialists play a minor role in the development of new insurance offerings.

5. What contribution does top management make? Our hypothesis was that top management fails to take on the role of " envisioning, energizing and enabling the innovation programme"

Discussion of findings

The data from suppliers of life insurance were collected in personal interviews. To respect confidences responses are not ascribed to individual company sources.

It must be stated at the outset that a common feature shared by all the sample companies was that each was currently undergoing changes in its business operation and orientation. Not surprisingly, these changes were more pronounced in some companies than in others. All companies co-operating in our investigation have now recognized the need to become more market oriented.

The follow- up interviews with general insurers indicated that there has been increased acceptance of the importance of marketing.

Overall, we found the approaches to and systems for managing product change to be more developed in companies offering general insurance. Three general insurers within the sample of eight have taken very considerable steps in tightening their product development procedures. There was also clear evidence in several general insurers of far more sophisticated approaches to analyzing markets. A few companies are making extensive use of marketing maps in which target markets have been identified through careful segmentation analysis.

These more sophisticated approaches had in some companies been introduced by consultants, while in others they had been developed internally.

In fourth life insurers we again found a situation of flux. While still predominantly led by the underwriting function, product development is increasingly being influenced by marketing inputs. This is happening as a by- product of strenuous attempts within companies to become more marketing oriented. To effect heightened market orientation new staff have been recruited. In most companies in sample these new marketing specialists have not, as yet, been able to assume responsibility for driving product development. Instead, they are expected to work closely with underwriters when asked by them to do so, in order to ensure that developments are promoted appropriately on completion. In several companies actuaries involved in product development work have been given the new title of " marketing actuary", to reflect their widened responsibilities.

Types of developments being pursued

In companies supplying general insurance, as well as those supplying life cover, the predominant types of development currently being undertaken concern the updating of existing products. At its most limited the updating of existing products involves changing aspects of the rating structure or altering the promotional mix.

A number of factors were suggested as contributing to the predominant emphasis on incremental product developments. First, copying is a low- risk, inexpensive, activity. Second, because of the heavy reliance placed on selling through brokers, many companies perceive there to be little room for improving products apart from lowering the price. In not one respondent in general insurance would admit to us that their company had a regular programme of product development involving both updating existing lines and developing new lines.

Three general insurers in the sample have now established classical marketing departments staffed predominantly by outsiders. Such departments are headed by a marketing manager or director supported by marketing specialists, especially including product managers. Product managers then typically assume responsibility for product improvement.

We found that the emphasis was on low- risk, incremental types of product development in all the sample companies. This confirms our hypothesis. More radical product developments require larger and longer – term investments and, typically involve higher risks, which most top managements approach with utmost caution.

Key activities in the development process

All serious research in the product development area has shown that con offering successfully does not happen instantaneously. Typically, a number activities need to be undertaken. For example, first they may be a need to a possible new developments against objectives, thereafter, exploratory re needed prior to projecting profits and comparing alternatives. Often, it is development work starts in earnest, and even thereafter the new product launched before a test market exercise has been completed.

A large number of development models have been advanced in the factured products (Booz, Allen & Hamilton, 1982; Crawford , 1987; Coop and Snelson, 1990). Researchers in

the area of services development j similar models (Donnelly et al, 1985; Johnson et al; 1986; Scheuing and J ofe the services development models in the normative model advanced by John)son (1989), shown in table 2, is the most comprehensive.

Many researchers have agreed that systematic attention to development contributes to success, or at least to the avoidance of failure. They show, for example that faster development can be profitable, especially in markets in which early adopted to pay a premium price)

Table 2. Scheuing and Johnson's (1989) model of service development

1. Formulation of objectives and strategy
1. Idea generation
1. Idea screening
1. Concept development
2. Concept testing
3. Business analysis
4. Project authorization
5. Service design and testing
6. Process and system design and testing
7. Marketing program design and testing
8. Personnel training
9. Service testing and pilot run
10. Test marketing
11. Full-scale launch
12. Post-launch review

As well as deciding how much parallel working to countenance through teamwork, companies need to decide whether one standard way is appropriate for the different types of offering which can be developed. The issue here is whether different organizational arrangements are needed for completely new offering as supposed to making improvements to existing offerings. In this respect, in accordance with the contingency approach to management, some analysts have argued that completely new product development is best managed differently from making ongoing improvements (Johne and Snelson, 1990).

In the begining, in general insurance companies, there had been limited evidence of the use of formal guidelines for progressing individual developments, we found the situation changed in last few years. Three general insurers have new introduced formal monitoring systems, while in others the merits of so doing are under active discussion at the present time. In life, insurers, only very rudimentary systems were in evidence, but several companies are currently actively contemplating changes in this area of their operations.

For the purpose of analyzing the systems currently being used, we focused attention on the following five key activities:

(1) Planning product changes

(2) Idea exploration

(3) Screening and evaluation

(4) Physical development

(5) Launch

Our aim was to ascertain how systematically each separate activity is undertaken. As far as planning product changes are concerned there is evidence of increasing attention being paid to this within the context of overall planning systems. In both life and general insurers we found important changes under active consideration. Most life companies and general insurers now undertake what is commonly referred to as 'fundamental reviews of the product portfolio'. Such ongoing monitoring and analysis against broader market opportunities is most commonly conducted annually, whither by the corporate planning department or by representatives of marketing.

Responses concerning the second key activity – idea exploration- provided further important insights. A common reply was that there are no really new insurance products and that products development is merely a matter of putting together different policies with a few frills to make them attractive to different market segments.

In most of out discussions emphasis was placed predominantly on the merchandise element of the offering, with little or no attention being paid to how this can be supported differently for specific market segments. We found this predominantly in companies selling direct. A number of such companies part is joint market research programs with other suppliers into end-use behaviour. As a result, some respondents claimed that they had made some and surprising discoveries about how existing markets might be reconce server better.

We found that in so as well as in some life companies, it is marketing departments which are many efforts to rectify the situation.

While there is clear evidence of greater involvement by top manage companies, there is still widespread non – involvement in screening decision venture to comment that non – involvement on the part of top management makes a pretty dangerous cocktail with regard to future business prospear *laissez-faire* regime, marketing criteria frequently take second place to finantions and also to the level of technical and systems synergy looked for. The latter factors can lead to the development of low risk, incremental proponents. As far as the fourth key activity is concerned – physical development – while in all traditional insurance companies co-ordination is still undertaken writers, the situations changing in favour of marketing.

In two general insurers we found sophisticated project management software use which enable development tasks to be attended to sequentially. In which adopt a co-ordinated team approach to development, we found that it was responsible for physical development, with extra specialists brought into required.

The fifth key activity – launch – was found to be formally and tightly majority of life and general insurance companies. Companies typically national basis because of a widespread belief that test marketing in economy gives the game away to competitors. The importance of involving others in for gaining commitment was stressed using the following words:

Overall, as far as issue 2 is concerned, we are able to confirm the hypothesis that it is, indeed, difficult to identify key activities. Most developments are still pursued in an informal and unsystematic manner. Yet , there are clear indications that this situation is changing. More systematic development processes and more rigorous methods for monitoring progress are currently being introduced by consultants in a number of companies. In other companies staff with experience of marketing fast-moving consumer goods have been recruited for assisting in this area.

Formal organizational arrangements

Companies have widely differing organizational mechanisms at their disposal for developing offerings. A commonly used method is to ascribe responsibility for product development to product managers. However, as many companies have found to their cost, these managers are usually so busy fighting fires with present products, that they have little time for new products. To overcome this problem, some companies have created permanent new product managers. New product committees may also be used as semi-permanent organizational devices to review and approve proposals. While committees serve an important co-ordinating role, they can seriously slow down decision marketing, especially when departmental representatives seek to preserve sectional interests, rather than focusing on exploiting market opportunities fast. Despite their disadvantages, we found committees to be the predominant organizational mechanism for progressing developments in both life and general insurance companies.

To overcome problems associated with subordinating functional interests to business interests, some companies have established interdisciplinary new venture teams. Their purpose is to force important developments through the bureaucracy. We found evidence of such new venture teams in both life and non-life companies, but frequently their remit was wider than product development. In some companies their purpose included process innovation. We found this to be the case particularly in companies in which top management preferred to delegate responsibility for innovation.

We found no real evidence of new-style organizational arrangements, such a self-managing teams. One life company is currently going through the traumas of introducing matrix-based structures which simultaneously accommodate specialist functional inputs, geographical sales and distribution territories, as well as target markets. Overall, however, the picture remains one of functional structures built on rigid hierarchical lines of control.

When one considers the dominant culture of the companies in the sample, and the types of developments most frequently undertaken (improvements as opposed to completely new offerings), it is not surprising that terms such as ‘product champion’ were but rarely heard. In the majority of companies in the sample, changing the offering was seen as a process requiring a methodical and routine approach. Once the broad parameters had been agreed between underwriting and marketing, individuals were drawn in to contribute on the basis of their position and specialists skills, rather than any distinct personal qualities such as enthusiasm or creativity.

Our findings overlap with of Easing wood (1986) who found that for suppliers adopt radical organizational structures, because it is comparative them to be involved in the development of really new offerings. Overall, as far as concerned, our hypothesis about the lack of formal organizational arrangements supported by the findings. In our sample a

clear preference emerged in managing developments through permanent new product committees comprimat of functional specialists.

Contributions by marketing specialists

The traditional skill base of insurance companies has been underwriting. In it has been excellence in underwriting as well as investment expertise which has key to sustained profitability. As has already been stressed, in almost all the underwriters retain their traditional power as far as initiating product develop concerned. This has serious implications for the types of development being undertaken, or perhaps put more accurately : the types which are undertaken.

In large part, the failure to envisage more radical amendments to the offering result of poor market information usage. In small companies, in particular, information systems and the use of formal market research is still underdevelopment corporate planning.

It would be inaccurate to give the impression that all companies lack for research information. At least one life company in the sample has now as strong department dedicated solely to collecting and disseminating market information internally. In this company extensive use is made of sales force for far as sales force feedback is concerned, it is again dangerous to generalization companies marketing and sales co-operated actively in identifying opportunities products, in others there is enmity between 'newfangled' marketing and old sales.

Overall, as far as issue 4 is concerned, our hypothesis concerning the by marketing specialists is not supported. Marketing specialists were found increasing contributions to product development in many life insurers an insurance companies, even if they did not take the leading role. Unfortunately expertise is not being used to its full effect. Often, marketing's contribution is merchandise amendments and promotional amendments from top management for on aimed at exploiting market potentials more purposefully, it is unlikely that full made of the marketing expertise which is now in place.

Discussion

It has been agreed that the financial loss from failed product development in financial service is low (Davison, *et al,*1989). However, such a suggestion assumes that development costs can be ascertained accurately. Although not specifically commented on in this article, many respondents stressed difficulties in accurately attributing costs to products, let alone to specific product developments. We can, therefore, confidently assume that the true costs of managerial time wasted on less than successful product development is rarely known precisely.

During these last years many insurance companies in Albania and Macedonia enjoyed high returns on capital as a result of buoyant equity and property markets. In many cases, investment gains offset any insurance losses handsomely, meaning that sometimes insufficient attention was paid to operating efficiencies. Today, operating costs do matter, and far greater importance efficient product development.

In order to understand the nature of the changes now under way in con necessary to look behind the trappings for evidence of substantive change factor determining the nature of change in organizations is top management of the data collected it appears that top

insurance management still remain articulate strategies which spell out clearly to organizational members expect as product development is concerned. In the absence of clearly communicative game plans it is questionable whether the grafting on of efficient product practices from other industries will achieve anything but limited success. Overall, indicated that in many companies individuals are now well aware of the type needed. But, what is not at all clear is the order in which changes can best be and the way in which changes can best be managed within environments by technical experts and controlled an a hierarchical basis.

Conclusions

The increasing competitiveness of the insurance marketplace now requires change their offerings more frequently than before. Ideally, companies will both a proactive and an innovative approach to developing new product. A change of emphasis away from exploiting asset strengths to explain opportunities. It will almost certainly require assets to be used differently. This type of change – to higher risk and higher investment activities – emphatic support from top management. Further, the successful innovative strategies will almost certainly require far more formalized system purposes.

In many companies, particularly in the case of new entrants like banks sustainable competitive advantage will centre on developing offerings are readily be copied in their entirety. Quinn (1985) has agreed that innovation anchor their visions of what is possible to the practical realities of the ma-ensure that this is achieved through two main mechanisms.

First, an orientation at the very top of the company.

Second, an organization purposeful interaction between technical and marketing specialists. When system problems are likely to continue to feature strongly in insurance prognement , greatest long term payoff is likely to result from innovative interpretation opportunities (Easing wood and Mahajan , 1989). Achieving these types of require insurers to make increasingly challenging alterations to their operations.

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Custom's Administration role on the protection of intelectual properties in Albania: Challenges for a better role

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Abstract

Intellectual property (industrial and intellectual), whose protection is considered a fundamental element for the development of orderly and fair competition in every aspect of life, social and economic of a country, [10] is addressed from several points of view in different national legislations of the world and international acts approved. Institutional protection of this property is the most important corner stone for the implementation of an effective protection. Among institutions in charge of guaranteeing intellectual property in case of possible infringements one of the most important is the Customs Administration. Establishment of special administrative structures helps in having an added opportunity for intellectual property protection. Such administrative structures are several nowadays, indicating the multiple dimensions of intellectual property and its protection. Such a situation derives from the diversity of use of intellectual property deriving from a free market, intensive cooperation among countries, and such political processes as the creation of free movement zones such as the 'Schengen' in Europe, or European Union, or entrance into force of free trade agreements (FTAs), as well as numerous trade exchange among countries. [11]

Keywords: free movement zones, intellectual property protection, custom administration

Introduction

The Republic of Albania is part of those countries that experienced political and economic changes after 1991.[12] The country adopted a democratic regime with a free economy, as a basic constitutional principle,[13] quite different from the principles of the centralized market economy before 1991, when the country was a popular socialist republic. The opening of the country, like many other countries of Eastern Europe towards

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[10] The Universal Declaration on Human Rights of 1944, the United Nations key document on the protection of fundamental human rights, now considered a customary international law, in its Article 27 specifies that "Everyone has the right to defend the moral and material interests resulting from any scientific, literary and artistic, the author of which he is".

[11] As an illustration, currently Albania has signed a series of economic and commercial agreements, such as SAA, CEFTA FTA 2006, FTA with Turkey and FTAs with EFTA countries.

[12] The Republic of Albania (RA) adopted a democratic regime for the country in 1991. RA is a unitary republican state, where sovereignty belongs to the people and is exercised directly or through representatives, i.e. the parliament. The country is located in the western Balkan and since the democratic changes has aspired to become an integral part of Europe. Already the country has signed a Stabilization and Association Agreement with the EU which requires a range of economic and political developments as conditions for EU membership. The country has not yet acquired the status of candidate country for EU membership.

[13] Art. 11 of the Constitution reads:

1. The economic system of the Republic of Albania is based on private and public property, as well as on a market economy and on freedom of economic activity.
2. Private and public property are equally protected by law.
3. Limitations on the freedom of economic activity may be established only by law and for important public reasons

the 'western camp', therefore towards concepts such as market economy, respect for fundamental civil and political rights, respect for rule of law, or liberalism and privatization of the economy also brought opportunities for more exchange and numerous competitive and creative developments. This situation has imposed on the Republic of Albania the adoption of a set of rules for a more effective protection of intellectual property, among which the involvement of the customs' system in the protection of intellectual property. The model that the country has adopted in this regard is one than be that found in other countries of the Balkan region, generally in line with TRIPS and EU legislation.[14,15]

Considering that the country is on the path towards European Union integration, measures to strengthen intellectual property protection also come as an important reflection of this process. An interim Agreement was signed between Albania[16] and the European Communities and its Member States[17] in 2006 which for the first time foresees the obligation for Albania to protect effectively intellectual property. The same regulation is part of the Stabilization and Association Agreement that was signed between Albania[18] and EU[19] as a cornerstone document regarding the European integration of the country. Specifically Article 73 of the SAA (Article 39 of the Interim Agreement) states that:

> "... The Parties confirm the importance they attach to ensuring adequate and effective protection and enforcement of intellectual property rights, industrial and commercial. Albania shall take the necessary measures to guarantee, within four years after the entry into force of this Agreement. a level of protection of intellectual, industrial and commercial property rights similar to that existing in the Community, including effective means for realizing these rights."[20]

So, the creation of such customs structures protecting intellectual property should also be seen as a reflection of a political-legal obligation of the country due to EU integration.[21] The role of the Albanian customs administration becomes more important significance, especially considering that other administrative bodies established under

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[14] According to a questionnaire completed by the Western Balkan countries and Turkey (except Croatia) in 2010, countries participant in the Venice Cooperation Initiative, all these countries more or less have their own legislation harmonized with that of the EU. See questionnaire in: http://www.veniceinitiative.com/Industrial%20and%20Intelectual%20Property%20Rights%20Library/Forms/AllItems.aspx

[15] See: Report on the benchmarking activities on Intellectual & Industrial Property Rights, (Prot. No. 99/08, date 16.10.2008) TACTA (**T**echnical **A**ssistance to **C**ustoms and **T**ax **A**dministrations) Regional Activities 05-01, 05-02, 05-03, 05-04, 05-05. Internal Prot. No. of General Directorate of Customs is 12780, date 21.10.2008.

[16] See Law no. 9591, dated 27.7.2006, "On the ratification of the interim agreement between the Republic of Albania and the European Communities for trade and commercial cooperation", Official Journal no. 89, dated August 17, 2006, page 3249.

[17] See: http://ec.europa.eu/enlargement/potential-candidate-countries/albania/eu_albania_relations_en.htm

[18] See Law no. 9590, dated 27/07/2006, "On the ratification of the Stabilization - Association Agreement between Albania and the European Communities and their Member States," Official Journal no. 87, dated 14 august 2006, page 2955.

[19] See: http://ec.europa.eu/enlargement/potential-candidate-countries/albania/eu_albania_relations_en.htm

[20] See: http://ec.europa.eu/enlargement/pdf/albania/st08164.06_en.pdf

[21] In this context, Albania has adopted with the Council of Ministers Decision no. 760, dated 01.09.2010, "On the National Intellectual Property Strategy" (2010 - 2015), a special strategy for intellectual property, which defines as part of the mission and vision for the future the improvement of the legal framework (point 3.2.1) as well as institutional improvement of the General Directorate of Customs for a better administration in protection of intellectual property (point 3.2.2.5).

national legislation are not bodies that can take action and implement such action directly itself to protect intellectual property. As special reports have emphasized,[22] the General Directorate of Customs (GDC) is currently the main body for direct enforcement of the law.[23]

Despite the necessity, adjustment to the models of other countries, or political obligation the country might have regarding the adoption of a more efficient system for the protection of intellectual property, the current system still reflects several disadvantages. The following analysis on customs administration role on intellectual property, indicates a limited ability to realize an efficient protection. This paper aims modestly not only to highlight the institutional constraints, but also to address with specific suggestions the need for a greater protection of intellectual property in the customs system. Such an analysis and the following suggestions are presented without doubt from the perspective of a country such as Albania, a country that emerged from a long period of social, political and economic isolation, where creativity was not considered a protected property (including real property that was considered state property[24]), and a country part of the Western Balkan countries aspiring to join the European Union.

Why customs administration?

Perception on the role of the Albanian customs administration is closely related to its fiscal mission - the realization of revenue for the state budget. Fiscal mission of the customs administration in general is the historic mission of customs development from the moment of their creation until today.[25] Often, for the sake of realizing such a mission, many other important elements are disregarded, often perceived or regarded as of secondary importance, and that are mainly related with ethics, performance, respect for legal procedures and tolerance in relation to such phenomena as the case the infringement of intellectual property rights.[26]

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[22] See: *European Commission Opinion on Albania 's application for membership of the European Union, Analytical Repor*t, for 2010 point 3.7. (Chapter 7: Legislation on intellectual property) where it is said that:

> *Regarding enforcement, the legal framework will have to be thoroughly revised and its alignment with the acquis will need to be established. The main institutions active in IPR enforcement are the ACO, the GDPT, the General Directorate for Customs, the Tax Inspectorate, the Prosecutor's Office, the police and the courts. The General Directorate for Customs includes a directorate for the protection of intellectual property and has powers to act ex officio, but not the ACO or the GDPT. The IPR strategy foresees establishing a Market Inspectorate for Industrial Property to identify and monitor infringements of IPR legislation. However, the necessary legislation is still outstanding.*

[23] See INTA European, Middle East and Africa Roundtables sub Committee 2010-2011 – Customs Watch, Tirana 25 February 2011. Matthew A. Lamberti (Intellectual Property Law Enforcement, Coordinator for Eastern Europe, United States Department of Justice) presentation titled "Customs Enforcement in Albania and the Region".

[24] The Constitution of the Popular Socialist Republic of Albania of 1976 expressly provided in its articles 16 - 31 rules on the economic order and that all property is state property, except for the private personal one. *See* http://eudo-citizenship.eu/NationalDB/docs/ALB%20Kushtetuta%20e%20Republikes%20Socialiste%20Popullore%20e%20Shqiperise%201976.pdf

[25] Asakura H., *World History of the Customs and Tariffs*, published in Brussels by Customs Co-operation Council (World Customs Organization), 2003.

[26] The fact that until now there is only one proven case of infringement of intellectual property rights (trademark) confirms this view of the customs authorities. There is no data on reports of these violations. See: http://www.dogana.gov.al/index.php?mid=211

Defense mission

The role of modern nowadays customs is much more complex than the revenue collection. Today (especially after September 11) customs are perceived as national security institutions and thus fulfilling another mission - defensive one.[27] In this context, the activity of customs authorities (including the Albanian one), more with less, generally consists in protecting public morality, public policy or public security, the protection of the health and life of humans, animals or plants, the protection of the environment, the protection of national treasures possessing artistic, historic or archaeological value and the protection of industrial or commercial property, including controls on drug precursors, goods infringing certain intellectual property rights and cash entering the country. The protection of intellectual property rights is closely related to the protection of public health, as well as the protection of consumers.[28] In this context, the cases of infringement of intellectual property rights cannot be justified by the payment of customs duties and so therefore to be imbalanced to the fulfillment of the fiscal mission. This would again mean a focus on the fiscal customs mission. Considering the fiscal mission as the primary one for the customs may be regarded as dangerous for the state and society, as long as the consequences of unaccomplished protection mission (i.e. rights violations) are under-valuated and even worse are justified considering as a "positive" performance of the Albanian customs administration only the current income realized, bypassing other consequences. Proportionality and balancing interference is a fundamental principle to be considered by the customs system: revenue collection is in the public interest, similar to the preservation of social risk that can be present due to for example the introduction through the customs system of counterfeit drugs.[29] Not only the latter risk is an obvious, direct and serious threat to public health, but also the income deriving from such economic activities, often are converted to income that are used to fund the illegal smuggling, organized crime, terrorism, unemployment, or exploitation of the minors' work.[30] From this perspective, negative effects are present both for consumers and for manufacturers. This means that customs system should play its defense role, which would include the protection of intellectual property rights.

The protection guaranteed in the customs system

What protection does private entities enjoy for their intellectual property rights by customs authorities? What does the national legislation provide in this regard? The customs' legislation in this regard is relatively new. The intellectual property protection is relatively new: it was included as part of the customs laws in 2008. Until 2008, existed only one disposition was in the Customs Code specifying that:

> "The customs authorities upon request of the holder of a trademark or patent of production or other neighboring rights specified in the Implementing Provisions of this Code, may prohibit their release in free circulation, the exportation, the re

[27] See link: http://www.dogana.gov.al/index.php?mid=18

[28] *Ibid.*

[29] WTO Agreements and Public Health — A joint study by WHO and the WTO Secretariat http://www.wto.org/english/news_e/pres02_e/pr310_e.htm

[30] See also Opening Remarks by Mr. Ronald K. Noble, Secretary General, INTERPOL at 6th Global Congress on Combating Counterfeiting and Piracy. *Conference theme: Building Respect for IP: Sustainable Solutions to a Global Problem.* Link: http://www.ccapcongress.net/archives/Paris/files/Noble.pdf

exportation and their placing under the suspensive procedure of the goods that are recognized to be counterfeited or pirated goods, according to the procedure provided for in the Implementing Provisions of this Code".[31]

The Implementing Provisions were initially adopted in 1999, while dispositions referring to the intellectual property protection became part of these Implementing Provisions only in 2008.[32]

As shown, the Customs Code had determined since 1999, that the customs authorities can act upon a request of the interested parties concerned (only by request of the right holder and the possibility of intervention by the customs authorities upon their own initiative, i.e. ex officio, was not determined) to take certain measures to protect their intellectual property rights. Although such a disposition was part of the Customs Code, it was not put in use until 2008, also reflecting the mentality of the customs authorities to give priority to revenue collection as mentioned above. Until 2008 no application for action was presented to the customs' authorities and no ex officio action has been taken from the customs' authorities in this regard.[33] This means that the customs' authorities in Albania has applied the principle 'no application, no action". The customs administration operations were practically considered impossible to be fulfilled due to the fact that the procedures provided in the Implementing Provisions of the Customs Code were adopted only in 2008. I think that such an interpretation is an incorrect understanding of law: the interpretation that the Customs Code necessarily needs implementing provisions for its enforcement would mean that law is not directly applicable in the Republic of Albania, which would be in violation of the Albanian legislation.[34] Such an understanding of law, from both the customs authorities and the rights' holders has unfortunately brought infertility in action and results to intellectual property protection.

Following the analysis, it must be said that although the Customs Code mentions in its art. 82/4 the possibility of initiating the procedure for the intellectual property protection upon the request of interested parties, not ex officio, this should not be interpreted that the possibility of using ex officio procedure has not been part of the Albanian legislation. Indeed, Albania has signed an agreement with the World Trade Organization (WTO agreement), with the TRIPS Agreement as an integral part of it.[35] This agreement was ratified by Law No. 8649, dated 28.7.2000, "On ratification of Agreement of the Uruguay round results for multilateral trade negotiations ",[36] thus becoming part of Albanian domestic legislation. The Republic of Albania has adopted the monist model regarding

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[31] Art. 82/4 of the Albanian Custom Code.

[32] Decision of the Council of Ministers no. 547, dated 01.05.2008, "On some amendments and additions to the decision no. 205, dated 13.4.1999 of the Council of Ministers "On the Customs Code Implementing Provisions", as amended, entered into force on 27.05.2008, Official Gazette no. 74, dated 26.05.2008, Page: 3227

[33] From 1999 when the Customs Code entered into force until the year 2010 there has been no application for action by the rights holders. In 2010 5 application for action were admitted and until April 2011 that number has reached to 11. Statistics taken from the GDC.

[34] Article 4 of the Constitution of the republic of Albania guarantees that:

1. *The law constitutes the basis and the boundaries of the activity of the state.*
2. *The Constitution is the highest law in the Republic of Albania.*
3. *The provisions of the Constitution are directly applicable, except when the Constitution provides*
4. *otherwise.*

[35] http://www.wto.org/english/tratop_e/trips_e/t_agm2_e.htm

[36] The date of entry into force is 1 September 2000.

the application of international law: international treaties ratified by the parliament in accordance with Art. 116 of the Constitution are directly part of the domestic legislation and hierarchically have priority against the laws passed by the parliament of the country. Also, art. 122 of the Constitution provides that international acts are directly applicable in cases where they do not require approval of a law to implement them.[37] This adjustment of the Albanian law undoubtedly is a legislative easiness for every subject of law, because a number of adjustments in favor of private entities related to customs protection of intellectual property are stipulated in international agreements already ratified by the Republic of Albania. Thus, the WTO TRIPS Agreement is part of domestic law and applied directly, so its articles are operating in the domestic system of law, for private entities as well as the customs authorities. TRIPS Agreement includes a special section (Section 4)[38] on border measures related to customs authorities activity. Article 58 of this Section provides for the procedure for intervention by the customs authorities upon their own initiative - ex officio action.[39] Considering such a legal situation, due to the ratification of WTO TRIPS Agreement, the absence of a similar provision in the Customs Code of the Republic of Albania that has been practically interpreted as an impossibility to act by the customs authorities in cases application for action by the right holders is missing, is complemented by another part of the Albanian legislation, which is precisely the TRIPS agreement (i.e. its provisions regulating the operation procedures of the customs authorities). It means that customs authorities have had at their disposal the legal basis to guarantee ex officio, as far as TRIPS provides, a protection of intellectual property rights. Such a legal basis have been available to the right holders as well, but as data shows (see above) it is not ever used by them.[40] Considering that the TRIPS agreement has been ratified since 11 years already, the argument that this legal basis has not been used because of a misinterpretation of law, can hardly be accepted. Lack of law enforcement

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[37] Art. 122 of the Albanian Constitution reads:

1. *Any ratified international agreement constitutes part of the internal legal system after it is published in the Official Journal of the Republic of Albania. It is directly applicable, except when it is not self-executing and its application requires the adoption of a law. The amendment and repeal of laws approved by a majority of all members of the Assembly is done by the same majority for the purposes of the ratification of an international agreement.*
2. *An international agreement ratified by law has priority over the laws of the country that are incompatible with it.*
3. *The norms issued by an international organization have priority, in case of conflict, over the law of the country when the direct application of the norms issued by the organization is expressly contemplated in the agreement ratified by the Republic of Albania for participation therein.*

[38] See: http://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm

[39] Article 58 - *Ex Officio Action reads:*

Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:

(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, mutatis mutandis, set out at Article 55;

(c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

[40] A similar situation is also with regard to a valuable procedure in the service of importers or exporters, the release of ITD (Binding Tariff Information) by the customs institutions. Although this procedure has been complete, clear Customs Code and its Implementing Provisions, since 1999 (when the Customs Code took effect) to date only two authorizations have been issued up to date. Importers or exporters, for more than 11 years have benefited only in two cases from this customs procedure which indeed is highly valuable for them. See: http://www.dogana.gov.al/index.php?mid=8&art=239&info=more

derives either from the inability to implement it, or from disability of the respective institutions to enforce the law. In such a case, the obligation falls on the institution to work on the recognition of the legislation awareness raising.

Turning to the argument mentioned at the beginning of this analysis and the statistical data,[41] notably Albania is far from guaranteeing a certain level of intellectual property protection similar to that of EU member states.[42] However, in 2010, the General Directorate of Customs in Albania established a special Directorate for the protection of intellectual property rights. [43] So far this department has conducted training for GDC staff as well as the customs officers in the field, in cooperation with other actors engaged in protection of intellectual property, such as the Albanian Copyright Office (ACO),[44] Albanian Patent and Trademark Office (ALPTO),[45] WIPO, EPO, INTA, etc[46]. Training is an important management element indicating a capacity building by the authorities. Capacity building is a prerequisite for administrative development and for an effective protection of intellectual property by the customs administration.[47]

Not only customs capacity development, but also legislative developments, i.e. the adoption of a favorable legal basis, has been a continuous indication of improvements in the field of intellectual property. In 2008, a special law was adopted on intellectual property,[48] while since 2005 a law on copyright had been in force (currently being under review).[49] Even the customs legislation was amended: in 2008, through amendments to the Customs Code Implementing Provisions, the approximation almost complete with the EC Regulation No. 1383/2003 and EC. 1891/2004.[50] Such amendments included dispositions on the customs administration competence to detain the goods that infringe intellectual property rights, on the basis of both application for action of right holders, as

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[41] For statistics of EU see:
http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm

[42] See: *European Commission Opinion on Albania 's application for membership of the European Union, Analytical Repor*t, for 2010 part 'Conclusions" (Chapter 7: Legislation on intellectual property) where it is said that:

> *Overall, Albania will have to show determination and make considerable and sustained efforts to align with the acquis and to implement it effectively in the medium term. At present it is doubtful that the country will be able to meet the 1 December 2010 deadline to comply with its SAA obligations.*

[43] Council of Ministers Decision no. 274, dated 04.13.2010 "On some amendments to Decision of the Council of Ministers no. 205, dated 13.4.1999 "On implementing provisions of the Customs Code, as amended."

[44] http://www.zshda.gov.al/

[45] http://www.alpto.gov.al/

[46] See: "Gazeta 55", No. 53 (4478), dated 26 February 2011, page 10. See also the GDC website in the link Intellectual Property (photos of activities): http://www.dogana.gov.al/index.php?mid=211&art=336&info=more

[47] See: *European Commission Opinion on Albania 's application for membership of the European Union, Analytical Repor*t, for 2010 part 'Conclusions" (Chapter 7: Legislation on intellectual property) where it is said that:

> *Shortcomings in human, technical and financial resources, particularly at the level of the law enforcement bodies and the judiciary, are hampering effective enforcement of intellectual and industrial property rights.*

[48] Law Nr. 9947 dated 07.07. 2008 "On Industrial Property".

[49] Law no. 9380, dated 28.04.2005 "On Copyright and other rights related to it."

[50] Commission Regulation (EC) No. 1891/2004 of 21 October 2004 laying down provisions for the implementation of Council Regulation (EC) No. 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, published OJ L 328, dated 30.10.2004, pg. 16- 49.

well ex officio actions of customs authorities.[51] Such a legal regulation were even more detailed than the provisions of TRIPS Agreement on the same issue. The amendments also foresaw cases when the customs authorities cannot enforce the legal provisions for the protection of intellectual property rights.[52] Such cases are related to:

- Parallel imports of original goods, without the consent of the right holder;
- Goods which are produced or protected by an intellectual property right, under conditions other than those agreed with the right holder;
- Traveller's personal baggage contains goods of a non-commercial nature within the limits of the duty-free allowance and (if) there are no material indications to suggest the goods are part of commercial traffic

With regard to legislation, an important element to be noted is the fact that the Albanian legislation, similar to that of the EU, has not anticipated any fiscal burden for disposal of applications for customs action. The aim for such regulation is clear: the promotion of right holders to protect their rights through facilities and procedures provided the customs administration. Such a regulation is also in line with other Balkan countries in general. The only country that applies the fees for applications for customs action among the Balkan countries is Kosovo (100 Euros for each application).[53]

Disregarding such legal amendments, it seems that neither approval of these legal provisions brought notable immediate effect. Also, one can say that now, a legal problem exists from a hierarchical of legal norms viewpoint. As said, the mentioned amendments were done to the Implementing Provisions of the Customs Code. The latter are sublegal acts and those cannot extend the scope of the law those detail. Thus, as the Customs Code does not mentioned at all an ex office procedure, the Implementing Provisions could not include it. As mentioned at the beginning of this section, the Customs Code mentions the procedures relating to intellectual property protection only in Art. 82/4 and this article has not undergone any amendment to include the ex officio procedure. Thus, the Implementing Provisions have extended the scope of the law.

In this regard, again emerges the importance of the TRIPS agreement, which provides for the basic principles for the protection of intellectual property rights, and allows states to take measures that guarantee a better protection. Indeed, the European Union has adopted a specific regulation in this regard: EU Regulation 1383 was approved as a separate normative act and not as an integral part of the EU Customs Code Implementing Provisions, and EU Regulation 1383 is further detailed by a Regulation No. 1891/2004.[54] It might probably be a good solution from the legislative technique viewpoint, as well as from the standpoint of adopting clear regulations for the protection of rights that the

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[51] Articles 2.5 and 118 - 120 of Decision of the Council of Ministers no. 205, dated 13.4.1999 "On implementing provisions of the Customs Code, as amended."

[52] Article 118.1 of Decision of the Council of Ministers no. 205, dated 13.4.1999 "On implementing provisions of the Customs Code, as amended."

[53] According to a questionnaire completed by the Western Balkan countries and Turkey (except Croatia) in 2010, countries participant in the Venice Cooperation Initiative, all these countries do not apply tariffs of acceptance of applications for request except Kosova. See the questionnaire in: http://www.veniceinitiative.com/Industrial%20and%20Intelectual%20Property%20Rights%20Library/Forms/AllItems.aspx

[54] See Commission Regulation (EC) No. 1891/2004 of 21 October 2004 laying down provisions for the implementation of Council Regulation (EC) No. 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, published OJ L 328, dated 30.10.2004, pg. 16- 49.

legislator considers of priority. Also, a good solution for the inclusion of procedures for intellectual property protection at customs, would be to include those in the Customs Code to avoid any misinterpretation regarding the (non)implementation. Albanian customs administration is currently drafting the legal draft for the approximation of the Albanian legislation with the European customs' one. A draft has already been finalized approximated with the EU Modernized Customs Code[55] and the Draft Implementing Provisions of the EU Modernized Customs Code.[56] Since the EU Modernized Customs Code only includes a general provision (similar to Art. 82 of the Albanian Customs Code currently in force) on the defense mission of the customs administration, including intellectual property protection (as mentioned above there exists a special regulation for this purpose), the Albanian customs authorities should be careful to adopt a special law on the intellectual property protection in the customs system, when adopting the new harmonized legislation in Albania on the customs system. If a special law is not adopted, the customs administration should be careful to include detailed provisions on the procedures to protect intellectual property as an integral part of the new legislation.

How (not) effective customs system is to protect intellectual property from legal-economic perspective?

According to local customs authorities the legal basis is complete and the Albanian customs legislation is almost approximated with the EU customs legislation, institutional willingness and commitment of state/government of Albania is expressed both in SAA and in the National Intellectual Property Strategy 2010 to 2015.[57] Nevertheless, the actions of customs authorities regarding the protection of intellectual property shows that the level of implementation of these legal norms is still low. Then, what has not worked so far?

First, I think that the knowledge of the law and a correct understanding of it is the first step towards a use of the law itself. Albanian customs administration has not undertaken any awareness campaign on the protection that the Albanian customs administration may provide with regard to intellectual property rights. No poster or brochure is printed, no announcement to the media, or even no electronic tools such as social Facebook, Twitter or You Tube is used in that regard. Until December 2010, there was not even a section of the GDC official website, where people can find information on customs procedures for the protection of intellectual property rights, the respective legal basis, application forms that can be used by interested parties, or any other information available. Considering that transfer of knowledge is a necessary mechanism for a better administrative functioning, it can be said that there has been a lack of proper mechanisms to perform such transfer of knowledge as a tool for better information with regard to customs administration role on the IPR protection.[58]

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[55] Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernized Customs Code), published in OJ L 145, dated 4.6.2008, p. 1-64.

[56] Implementing Provisions of the EU Modernized Custom Code are still being drafted, which means that potential changes might not be excluded. In case of such changes, those need to be reflected in the draft legislation prepared so far in the Republic of Albania.

[57] Decision of the Council of Ministers no. 760, dated 01.09.2010, "National Intellectual Property Strategy" (2010 - 2015).

[58] Malhotra Yedt., Knowledge Management and Business Model Innovation, USA, Idea Group Publishing, 2000.

Second, only in May 2010, the GDC created a special structure called the Directorate for the Protection of Intellectual Property (GPIP) (with a personnel of four persons) under the Enforcement Department, a special structure for the customs' law enforcement. Following the establishment of this structure, the data indicates that by October 2010 only two applications for action by holders of intellectual property rights had been submitted with the GPIP in the DGC, while from January to March 2011 this number has reached to 11 for 36 marks protected trade. The trend is positive, although the figures compared with EU countries as well as Balkan countries (excluding Kosovo and Bosnia - Herzegovina) still remain low.

Third, cooperation between customs authorities and other institutions operating for the IPR protection has been lacking until the end of 2010. Inter-institutional Memorandum of Understandings has been signed only by that period between the General Directorate of Customs and the Albanian Copyright Office and the General Directorate of Patent and Trademarks.[59] Such MoUs have influenced in actions taken for capacity building (training of employees of the customs administration) so far, even though those must be used for information sharing as well. Also, similar tools must be intended as necessary inter-action institutional tools with other institutions of the country, such as State Police, the Ministry of Health, General Directorate of Taxation, prosecution, judiciary, etc.. Also, cooperation with business private entities, mainly chambers of commerce and industry, would be necessary.

Fourth, it is true that due to the geographical positioning along the external border of the Republic of Albania, as well as due to detailed knowledge of international trade routes, the customs administration plays an essential role in the market protection in the Republic of Albania. Nevertheless, this administration cannot achieve significant results in the fight against counterfeiting and piracy without the support and cooperation from the right holders themselves. Such a cooperation is the most effective 'weapon' and as such should be strengthened: this cannot be achieved without a partnership with industrial and commercial chambers and/or similar bodies.

Fifth, the human resources of customs authorities themselves are an important factor that directly affects a better protection of intellectual property by customs authorities. A proper analysis should be done in this direction. Efficiency is one of the key principles of the Albanian administrative legislation and it requires that structures within administrative bodies should be established in such a way that services provided become efficient.[60]

Sixth, another aspect relates to the lack of an electronic database that can be made available to customs personnel on all the information available. This would help in the realization of a more effective protection and to identify as accurately as possible the counterfeited products and pirated products from the original ones. E-governance, one of

[59] See GDC website on intellectual property: http://www.dogana.gov.al/index.php?mid=211&art=335&info=more

[60] Art. 16 - *Principle of Efficiency and Debureaucratisation* - of the Law No. 8485, dated 12 May 1999 "On the Administrative Procedural Code of the Republic of Albania" reads:

1. *Public Administration and the decision-making process shall be structured in a way to ensure private persons access in decision making to the greatest extent possible.*
2. *Public Administration and its employees are obliged to serve the public in every case in the most effective way possible.*

government priorities,[61] and a necessity of the administrative function today, should be applied in this regard.

Ex officio procedure for action versus customs

As mentioned above, the interest of the of IPR right holders, despite the growing trend of applications filed with GDC for custom authorities action (from 2 up to 2010 to 11 for the first 3 months of the year 2011), remains low. Several hypotheses arise that need answers: How should the customs authorities act in such a situation? Basically, despite their role in protecting public health and consumers, the custom authorities must balance between the public interest and the private subject interest: at the end custom authorities must also protect the interests of rights holders. If the right holders do not express an interests will the customs authorities do that? , Does this lack of application for action with the Albanian customs authorities happen because the market is considered as not important due to its size and flow of trade? If this would be the case, how would the fact that in Macedonia, a country smaller in all respects, right holders have a greater interest in using custom authorities to protect their rights?[62]

In any case, I think that the customs authorities cannot sit without acting; this would be dangerous to the public interest. In this perspective, the implementation of the ex officio procedure. It must be noted that this procedure still carries a range of issues, which ultimately relate not only with the effectiveness of its implementation, but also the reliability of the customs administration activity. The following can be mentioned as such:

- Reasonable doubt that goods are counterfeited or pirated must be present:
There is no administrative manual to determine what might be considered reasonable doubt. This may pave the way to subjective assessments, and in such cases abusiveness is unavoidably present. This would cause discomfort to the importing/exporting subjects causing delays in customs procedures.

- The rights may not be protected.
Protected rights may be registered or non-registered and custom authorities must have a system in place to receive data for each category. Indeed, not even for registered rights (in Albania), the customs authorities do not yet have a database available. ALPTO has only recently published on line[63] an incomplete database of trademarks registered in Albania. The MoU between the GDC and ALPTO was only signed at the end of 2010 and data update has not yet been finalized as the result of information being provided from ALPTO to DGC.

- The right holders may be located abroad.
Considering the quality of postal service in Albania, where the rights holders are located outside the Republic of Albania and when use of e-mail as an official means of information is still under unclear legal assessments, thus not often used effectively by the

[61] See the Program of the Government in: http://km.gov.al/?fq=preprog/programien

[62] Date on Macedonia are taken from the questionnaire for the Balkan Countries, in the framework of the Venice Cooperation Initiative. See questionnaire in: http://www.veniceinitiative.com/Industrial%20and%20Intelectual%20Property%20Rights%20Library/Forms/AllItems.aspx

[63] See link: http://www.alpto.gov.al/rubrika.asp?id=128&idv=9

administrative authorities,[64] notification procedures may require more time and no feedback may be received on time from the holders of rights. One other issue relating to notices to the holders of the rights established in the Republic of Albania, is the lack of a precise address system in the country. Often, due to the absence of accurate addresses, notices do not reach the destination because those cannot be detected easily by the postal service. The consequences will again be the same, delays in customs procedures.

- Longer time (at least 3 days) compared with the application for action.
In any case, compared with the application for action, minimally the timeframe is of 3 days more.

- Does not apply to perishable goods.

- The risk of inaction by the right holders.
It may be that for many reasons the rights holders are not interested to react, e.g. quantity is small, the administrative costs (for expertise, laboratory analysis, storage or destruction) are high for them and not economically justified, Albania is not an important market for them, etc.

- Bad figure in front of the public opinion.
This is the worst case: it may happen that the importer, carrier or the declarer accept the goods destruction, while the right holder does not react. Customs authorities in this case are in front of the fact that the goods are declared by the importer, declarer or carrier that are counterfeited or pirated and for this reason be destroyed through the accelerated procedure, while the customs authorities are obliged not to take action if the right holder do not react. In this case the customs authorities are biased in the eyes of public opinion and a wrong impression is created about the efficiency of their activities.

Looking at those risks, some of which apply to EU countries as well - according to EU statistics, in more than 90% of cases customs authorities action is based upon an application for action and only 10% is based on the ex officio procedures[65] - the procedures that provide more guarantees is that based upon an application for action by rights holders (as said, no fee is applied to make use of such a procedure). In this regard, the need to increase applications for customs authorities action emerges and proper mechanisms are necessary to be adopted for this purpose.

Other problems

During the use of customs procedures, the moment of notification of the right holders has a special importance; the same for the notification of the importers, carriers or declarer. It is from this moment that the legal terms begin to run for both parties either to enter into an agreement in-between each-other or to address the court in case of a judicial conflict through filing a lawsuit. The legal terms in the Albanian legislation, similar to those provided in the EU legislation, is based on the concept of "working days". While in the EU

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[64] Even though in 1999 this is foreseen as a means to inform in the Albanian Administrative Procedure Code, the fact that it is not mentioned in the Customs Code has been interpreted as an omission, i.e. that cannot be used by the Customs authorities. Even this interpretation in my opinion is incorrect.

[65] See link:
http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/statistics_2009.pdf (page 8).

legislation, this concept is well defined[66] and includes the week days without Saturdays and Sundays and days of official holidays, the Albanian legislation is not as specific, leaving thus this regulation up to general interpretative rules, which lack clarity as well (indeed the Albanian Administrative Procedure Code where this issue is regulated generally for every administrative procedure is under review). Currently, the Albanian customs system applies such legal terms equally to the EU ones, however would be preferable to have a clear regulator of this issue as well, as it directly related to the right to appeal which for the sake of not being applied within the proper legal terms can be lost.

Another problem, that is not related only with the Albanian customs legislation, but also with the European one, and appears as a contradictory approach, is the definition for the right holders. The latter are considered any person, natural or juridical, native or foreign, which, in accordance with the law, is the holder the holder of a trademark, copyright or related right, design right, patent, supplementary protection certificate, plant variety right, protected designation of origin, protected geographical indication as well as any other person, natural or juridical, native or foreign, who has the right to use each of intellectual property rights, or any representative of the right holder or an authorized user .[67] The definition, which must be said that is similar to the EU legislation one,[68] creates a confusion between the real holder of the right and persons authorized by him, considering those equal to the effect of this law. This situation needs adjustment and proper legal regulation.

Another problem that exists in the Albanian legislation, but not in the EU one, is related to official forms used for customs applications for action and statement of responsibility. These forms, which are well defined and approved in the EU and mandatory for use as approved,[69] are not mandatory in Albania[70]. This affects the quality of data used in these documents, while lack of proper data can be a cause for the rejection of such applications.

Under EU legislation, in cases of changes to some data, such as those relating to the contact person for administrative or technical data and lack of transmutation of these changes to the customs authorities, member states are entitled to apply penalties for rights holders. The Albanian legislation does not provide for such a competence of customs authorities and do not foresee any such specific penalty.

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[66] Within the meaning of the basic Regulation 'working day' (Council Regulation (EEC, Euratom) No 1182/71 (OJ L124, 8.6.1971, p. 1)) is considered every day other than public holidays, Saturdays and Sundays. See Commission Regulation (EC) No. 1891/2004 of 21 October 2004.

[67] Article 2, point 5 of the Decision of the Council of Ministers no. 205, dated 13.4.1999 "On the Customs Code Implementing Provisions" as amended.

[68] Article 2.2 of the Council Regulation (EC) No 1383/2003 of 22 July 2003.

[69] See: Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, published OJ L 196, dated 2.8.2003, p. 7- 14.

[70] Decision of the Council of Ministers no. 547, dated 01.05.2008, "On some amendments and additions to the decision no. 205, dated 13.4.1999 of the Council of Ministers "On the Customs Code Implementing Provisions", as amended, entered into force on 27.05.2008, Official Gazette no. 74, dated 26.05.2008, Page: 3227.

A last issue relates to terminology used in EU legislation and the Albanian legislation related to counterfeited goods.[71] This terminology is not consistent with the terminology used in the intellectual property law, where the term 'infringing goods' is used.[72] Unification of terminology is necessary because it's the same category of goods.

Conclusions and recomendations

Protection of intellectual property rights in Albania is an area that needs a more efficient approach by the Albanian customs administration. Such an approach would mean greater attention to public health, quality of life, human rights, and greater protection for Albanian consumers and not only. Also, it translates into a fair competition for all economic operators and fight against financing of organized crime. From the perspective of the political commitments of the Republic of Albania and international acts implementation, a more efficient protection of intellectual property rights, means the realization of undertakings and responsibilities in the process of EU integration. Suggestions provided in this work are some thoughts on how to address the need for a more efficient protection by the customs administration, although by no means those may be considered as exhaustive. Guarantee and development of a modern system of IPR protection in Albania, in view of the consolidation of a competitive socio-economic system where rights and equal opportunities are provided to all Albanian citizens, and in compliance with all requirements and obligations arising from the integration process of Albania into the European Union, remain even in the dimension of the customs protection of this right one aspect that needs improvement, as defined explicitly in the country's own strategy on intellectual property.[73]

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[71] Article 2, point 5 of the Decision of the Council of Ministers no. 205, dated 13.4.1999 "On the Customs Code Implementing Provisions" as amended

[72] Law no. 9947, dated 7.7.2008 "On industrial property", Art.*s* 61, 168 and 185.

[73] Decision of the Council of Ministers no. 760, dated 01.09.2010, "National Intellectual Property Strategy" (2010 - 2015), point 2.1.

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Marketing strategies of bread factories in Kosovo

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Abstract

Marketing is a fundamental or core function of the business which more than any other business function deals with customers and their satisfaction. Creation and implementation of a successful marketing strategy in business is very crucial, especially when we deal with a business such is bread manufacturing. Thus, the purpose of the research was to analyze the development of marketing as an organizational function of bread manufacturers companies in Kosovo, to analyze their marketing strategies and to provide clear recommendations for companies that do not use marketing strategies.

During the research I have find that bread producers do not even have established a marketing department and/or do not have employed a marketing or sales person. Only few companies, three out of fifteen, intend to establish marketing department in the future, which is a sign that bread producers still do not see marketing as core function in their activities. They do think more on production than on sales and marketing. None of the companies have promotional activities regularly and only two of them exhibits regularly on the trade fairs in Kosovo and only one company exhibited abroad.

There should be continuous insistence of manufacturing companies to advance marketing department, creating a special unit of market research and behavior with consumer.

The data for research were collected through questionnaire in fifteen bread manufacturing companies. Methods used for research have been descriptive, comparative, analysis, and synthesis. The research instrument was a questionnaire, the technique has been direct communication and research was conducted between months June up to September 2009.

Keywords: bread producers, marketing, strategy, consumer, exhibition, promotion

Introduction

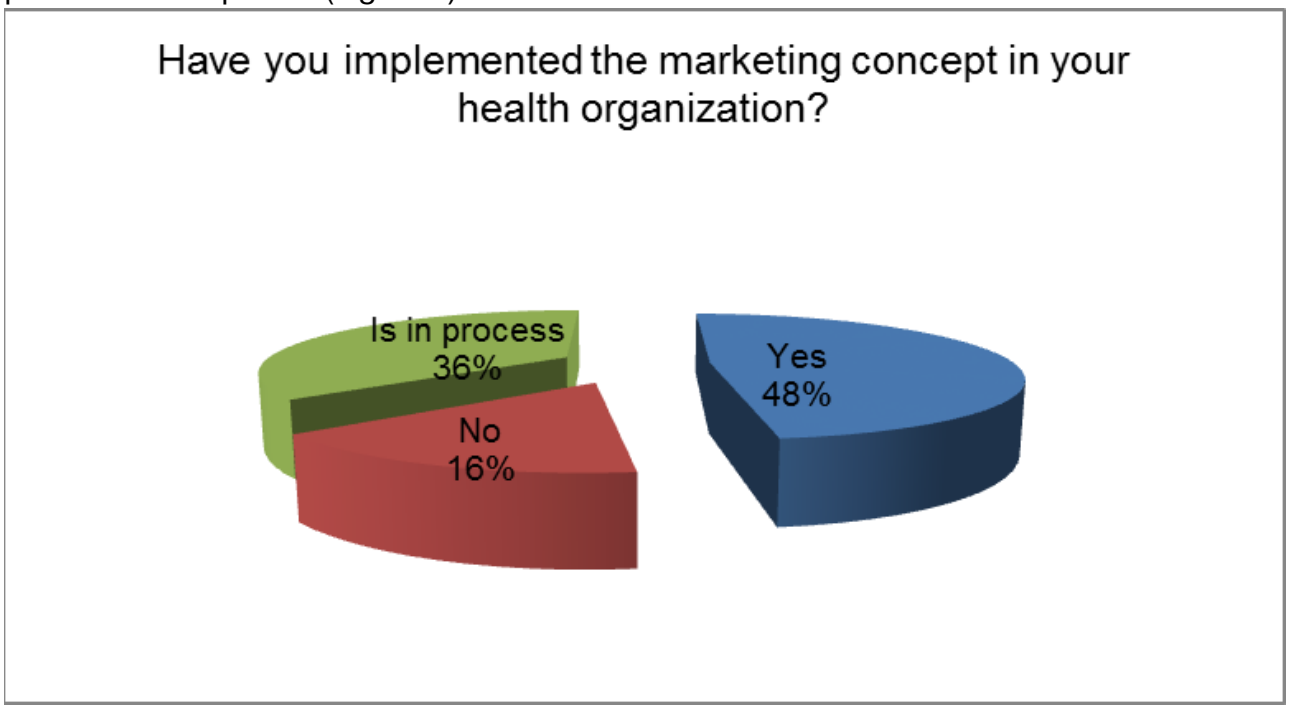
Bread manufacturers in Kosovo, often face the problem of identifying and implementing a sound marketing strategy in the marketing of their products and the business of their companies as a whole. All these are done because of the lack of a marketing department or even an appropriate person who will deal with defining the marketing strategy.

Bread market in Kosovo is one of the most powerful sub-sectors of the food sector in Kosovo. “In modern business, there is a need to establish not only strategic marketing approach, but also access marketing strategy aimed at creating marketing strategies, areas which connect marketing strategy in order to establish marketing oriented strategy under the principles of marketing”[74].

The current organizational structure of all manufacturers of bread, part of this study, is approximately the same and is shown below in the organizational chart which is

[74] Renko ,Nataša, Strategije Marketinga, Naklada Ljevak, Zagreb 2005, page 11

presented on the basis of the conversation made with competent persons of bread producers companies (Figure 1).



From this organizational chart can be seen easily that the bread manufacturing companies have no marketing department. Based on the practices of Western countries that this sector have paid a special significance, which practices should begin to be applied in our country, sector / marketing department plays a crucial role in the companies that produce different types of bread is a determinant of the company's development policies. Such a structure-organizational chart proposed by the authors of this study is shown in Figure 2.

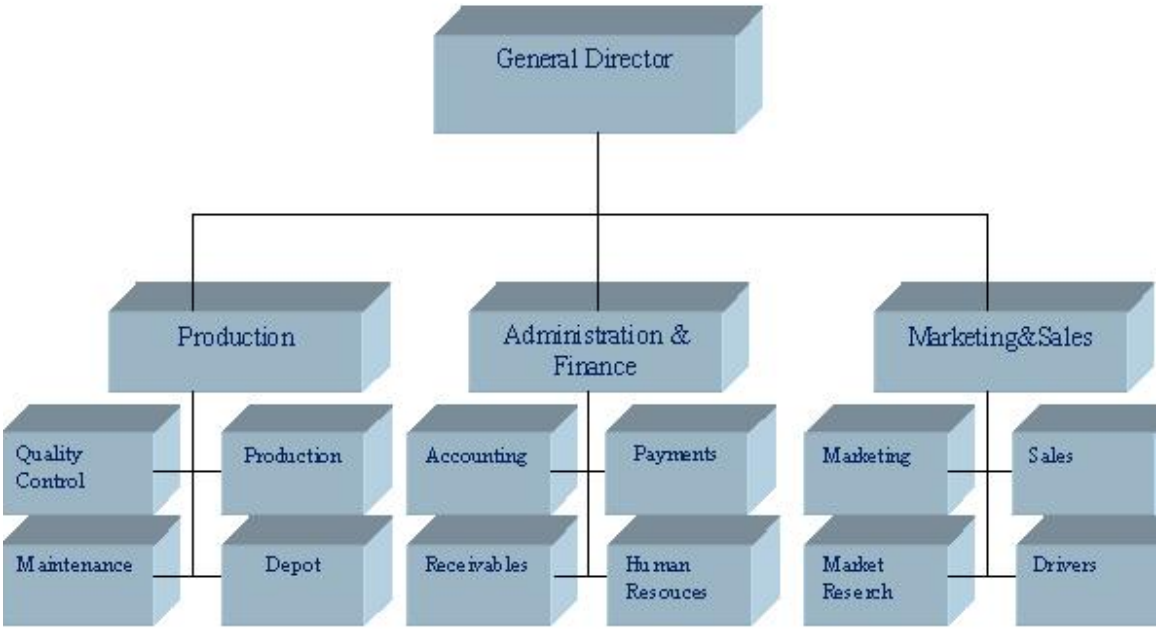


Figure 2. Proposed organisational chart to bread producers

From this organizational chart we could note that the sales and marketing department are common / as a department, which justifies the time limit and development phase of bread manufacturing companies in Kosovo and has been accepted by companies as a good solution for functioning of their activities in future.

Marketing, definition and evolution

The meaning of the word 'marketing' can be found from its Anglo-Saxon etymology. Professor Jakupi[75] says "the word marketing consists of two words: Market + ing. The word 'market' means the market and the suffix 'ing' first word gives the sense of the process, action or meeting to win".

To better understand marketing definition, it is need to present definition by well-known author Philip Kotler, who says:

"Marketing is social and managerial process whereby individuals and groups obtain what they need and want through creating and exchanging products and value with others "[76].

[75] Jakupi, Ali, *Bazat e Marketingut.* Prishtinë, Kosovë, Universiteti i Prishtinës, 2000. page 7

[76] Kotler. Ph. and Amstrong G. Principles of marketing, Ninth Edition, Prentice Hall International, Inc, New Jercey, USA,2001, page 6

Marketing concept

The term "marketing concept" summed business philosophy of the company, institution or individual that characterizes the concentration, or focus on the customer, expressed through constant effort and harmonious whole enterprise in the process of meeting the needs and desires of consumers and its objectives of enterprise[77].

In 1954, Peter Drucker pointed out very clearly the role of marketing for the company's success. Even in today's time on marketing his concept has value and viability of uncontested:

"If we want to know what our job is, then we should start with the mission ... There is only one correct definition of the mission of the enterprise: customer satisfaction. What the company intends to produce is not of primary importance-especially not to the future and its success. Crucial is that the customer intends to buy or what represents value-this defines what is your enterprise, which produce it and whether it will prosper it. "[78]

Marketing activities of bread producers in Kosovo

Some of the marketing elements that apply to manufacturers of bread in Kosovo, stating that the lack of marketing department in these companies is evident, can be explained as follows:

Market research is usually done by the driver and/or owner of the company on the basis of discussions with retailers on what should be produced, which items should be removed from production for the day or certain time, who are the company's competitors, what risks exists to their company products, etc.

Market segmentation is mainly based on geographical variables/areas of selling their products, and also demographic variables.

Positioning- Bread of Sheki Commerce is known in the market as "state bread" referring to the bread quality, accurate weight` and with fewer additives, this bread which was previously produced by state-owned companies, so as such a bread is required in the market and is positioned very well.

Marketing mix development in bread producer companies
When taking place on competitive marketing strategy, company is ready to start detailed planning of the marketing mix, one of the main concepts and the most important modern marketing. Marketing mix is defined as the set of instruments and controlled marketing tactic, which combines all elements in order to meet the needs and satisfaction of its customers. Marketing mix consists of everything what the company can do to influence the growth of demand for its products. Multiple options can be grouped into four variables or instruments known as the "4 Ps": Product, Price, Place and Promotion.

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[77] Lišanin, M.T.: Bankarski marketing, Informator, Zagreb, 1997, page 8.

[78] Drucker, P.: The Practice of Management, Harper & Row, New York, 1954, citate from book of Evans, J.R.& Berman, B,: Marketing, New York, 1987, page 57

Bread producers in Kosovo has offered only specific types of bread to their customers, they do apply similar prices using the price fighting strategy as their wining strategy, promoting their products mainly by putting stickers on their transportation vehicles and distribution channels they use are mainly wholesale channels, meaning they sell bread to retail shops and groceries.

Research Methodology

The object of the research was bread manufacturing companies in Kosovo: Sheki Commerce, Ko-Bake, Mullisi, Kosovarja, bakery in Mitrovica and other six bread producers. Initially a questionnaire based survey was prepared and the results of which are part of this paper. Sheki Commerce bread factory is chosen as the base model, thus, the marketing stretegies are compared between Sheki Commerc and other companies used in this research paper.

Main methods which are used in this paper are: descriptive method, comparison method, analyses method, synthesis method.

Survey questionnaire was used as the main research instrument while direct contact with company management was made at the begining of the research.

The survey was conducted between June and September 2011.

Results

The first question raised in the questionnaire: Do you have sales or marketing department as separated in your company? All surveyed companies responded negatively, i.e. NO and it turns out that the bread manufacturing companies still in Kosovo do not treat marketing as a key function within the company functions, shown on Table 1.

Table 1. Marketing/sales department

Do you have sales or marketing department as separated in your company?

a) Yes																0
b) No	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	15
Total																15

When asked whether you have a person assigned to marketing and / or sale, of the 15 respondents, 12 of them answered NO or percentage 80% and 3 companies have stated that they have persons engaged for sale (20%)within their company, but that these persons are acting within the department of administration and finance, not as separate as shown in Table 2.

Table 2. Person for marketing

Do you have specific person assigned for marketing?

a) Yes	x			x											x	3
b) No		x	x		x	x	x	x	x	x	x	x	x	x		12
Total																15

Neglect of the role of marketing and not implementation of key elements such as promotion, manufacturers of bread is attested to in the question of promotional activities in order to promote products or company. None of these companies do not have regularly promotional activities. Out of the 15 companies, 9 of them (60%) stated that they do not have regularly promotional activities, stating that the quality of their products is the best promoter activity, while 6 companies (40%) stated that they sometimes make promotional activities organize an event which promote their products their company as shown on Table 3.

Table 3. Promotional activities

Do you organize promotional activities to promote your company/product?																
a) Yes, regularly																0
b) No		x	x		x	x	x		x	x			x	x		9
c) Yes, sometimes	x			x				x			x	x			x	6
Total																15

The next question, do you expose in trade fairs, has also shown that responses to this question show a not very busy marketing activities of these companies. Even 6 companies (38%) stated that they were never exposed and do not expose either the international or local fairs. 8 of the companies (43%) state that they sometimes exhibit at local fairs, 2 companies out of 15 respondents, (13%) reported that they exhibit regularly in local fairs, and one company of respondents (Sheki Commerce - Prishtina) stated that sometimes also participated in fairs abroad, mainly in Albania and in Macedonia twice as shown in Table 4.

Table 4. Trade fairs

Do you exhibit on trade fairs?																
a) Yes, in domestic ones	x															1
b) No		x							x	x			x	x	x	6
c) Yes, sometimes			x	x	x	x	x	x			x	x				8
d) Yes, abroad also																
Total																15

Last question from the questionnaire was derived as an idea to get a response from surveyed companies if they think that in the near future will establish marketing or sales department within the company, because the preliminary answers from questions have been as interesting as depressive on the establishment of the department of marketing and/or sales and therefore clearly a positive response came from only 3 companies (20%), No answer came from 11 companies or 73% of them, which continues to be a concern for the future and with this they prove that they will continue to further imitate market leaders to base their actions on the "movements" of the market leaders. Only one company (7%) stated that the department will establish if it competition do it as shown in Table 5.

Table 5. Establishment of marketing department

Will you establish department of marketing in a nearly future?

a) Yes	x			x											x	3
b) No		x	x		x	x	x		x	x	x	x	x	x		11
c) Maybe																0
d) Yes, if cooccompetitico mpetition								x								1
Total																15

Discussion

During these years there hasn't been done any research of this subject for Kosova bread producers which could be compared with this research paper and would be easier for discussion. Different strategies have been proposed from different authors on strategies. Thus, analyzing the essence of strategy would be impossible without mentioning Michael Porter[79] as the main contributor of strategy who said that the essence of strategy is the choice to realize specific group of our activities different from our rivals, by getting unique positions on specific situations. This explains how our bread producers should deal in the future with their marketing strategies. They should position themselves differently and uniquely into the market, through developing new products or adapting existing products toward the market needs, developing new markets and having better idea on the matrix product/ markets. This strategy includes selection of specific markets and obtaining of these markets through the program called marketing mix[80]. Other useful marketing strategy of bread manufacturers would be to get into the niche markets as an opportunity that gives them a comparative advantage and leads them toward making better distribution channels and closer to customers.

I believe strongly, those upcoming years, bread producers in Kosova will follow recommendations derived from this paper which will make them to think on marketing way of doing business and not on production way, because today is very easy to produce but very hard to sell, to get the market for products or services.

Recommendations

Bread manufacturers in Kosovo need to make radical changes in their activities. Some of the recommendations arising from the study made can be summarized in the following points

- To establish the department of marketing and / or sales within their companies,
- To constantly care on promotion of products and/or their company through various forms of promotion and advertising
- To avoid as much as it is possible the fight with prices and base more on product differentiation and the company compared to the competition
- To get the business dare to target markets of the region based on the quality of their products.

[79] Porter, E. Michael: **What is Strategy**, Harvard Business Review, Boston, USA, 2001, 68

[80] Elmazi Liljana, Strategjia Marketing, Botimet Kumi, Tiranë, 2010, 49

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Growth strategies of food industry in Kosovo

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Abstract

Marketing is the main department within an organization and its duty is to identify customer needs and wants and produce or modify products toward the market demand and for the sake of customer satisfaction, giving the value to customers for the benefit of customers and for the profit of their own company. The purpose of the research was to analyze the growth strategies of food producers in Kosovo and to provide clear recommendations for companies how to develop their products and penetrate or develop new markets.

During the research I have find that food producers do not even have established a marketing department and/or do not have employed a marketing or sales person. Only 45% of companies, thirteen out of thirty, part of this study, have established marketing department or has hired someone to work as head of marketing, which is a sign that food producers still do not see marketing as core function in their activities. They do think more on production than on sales and marketing. Still there is a mentality of production oriented companies then marketing orientation. No courage to try entering new markets or investing on adding new demanded product to the market or improving and adding value to existing products. Their growth strategies are still undeveloped. Therefore, there should be continuous insistence of manufacturing companies to advance marketing department, creating a special unit of market research that will help them to develop new markets and new products and make their company profitable.

The data for research were collected through questionnaire in thirty food manufacturing companies. Methods used for research have been descriptive, comparative, analyze and inductive. The research instrument was a questionnaire, the technique has been direct communication and research was conducted between months June up to November 2012.

Keywords: strategy, growth, market penetration, product development, market penetration, diversification.

Introduction

Food industry in Kosovo has become very good part of production capacities of Kosovo production scale, which is established mainly after the Kosovo crises 1999 and 2000. Mostly, products has been imported from abroad and this was “seen” as a good opportunity from the domestic side of producers, to start producing goods that will substitute imports of a very large scale. Today, there are many small and medium size companies that are producing goods and replacing imports, but only few of them are exporting into the markets of regional countries (mainly in Albania and Macedonia) and Western European market. Still there is a lack of consistency in production, lack of knowledge on marketing and especially on marketing strategies. Food industry in Kosovo is concentrated more on producing goods by leaving on the side customers, tempting to produce qualitative goods which will bring new customers and opening the window for

export of goods into the region and furthermore, in the nearly future. There is still a mentality that owner of company knows everything and he/she could manage with operations, accounting, marketing and other staff regarding the company overall duties and responsibilities. There is still a gap between the owners and managers which then reflects to the businesses by losing the opportunity for growth or foreseeing risks from external environment.

"Companies need growth if they are to compete more effectively, satisfy their stakeholders, and attract top talent"[81]. Based on this definition of Kotler about growth strategy, Kosovo food manufacturing companies need to growth through profit as so called profitable growth which means growing through improvement of existing products or new products and trying to enforce their sales on existing or completely new markets.

Kosovo food industry has very good chances for growth since there is a huge demand on buying food products rather than luxury which could be considered as consumer habit for fulfilling first elementary demand and then looking after luxury food. Today's Kosovo customer has a chance to choose between domestic production and imported goods. There is no more the feeling of economic patriotism. Customers are oriented toward the quality and the value they could get from same or similar products, when they decide to buy. There is also a very good chance on diversification, especially concentric diversification since there is a vacuum for new or substitutes products in the market. Therefore marketing should serve as a bridge between products and customers, as an intra force to push products to markets by evaluating customer needs and wants and making efforts to fulfill those needs and wants and be a step forwards the competitors from abroad. Making profitable growth means also to seek after cutting the cost of production or differentiation in the market through package, design or added value to products that will "pull" customers to buy domestic products instead of imported ones. There are very good signs for such a growth, knowing the fact that domestic producers are having high technology and know-how technology from same producers of technology as their competitors have.

Marketing- definition

There are lots of authors that defined marketing in different ways, but the main definitions, that are valuable to give the space and the place that belong to the marketing and marketing department in the enterprise, consist on giving as much as they could, benefits to customers instead of trying to sell features.

Kotler and Armstrong, define the marketing as follows:

"Marketing is social and managerial process whereby individuals and groups obtain what they need and want through creating and exchanging products and value with others "[82]. Based on above definition, Kotler and Armstrong explains again the value of marketing throughout the entire process of creation of the values and exchanging with others the same value as our product or service has.

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[81] Kotler. Ph. and Amstrong G. *Principles of marketing*, Ninth Edition, Prentice Hall International, Inc, New Jercey, USA,2001, page 57

[82] Kotler. Ph & Keller K. *Marketing Management*, 14th E., Prentice Hall, New Jersey, USA, 2012, page.5

American Marketing Association, define marketing as:

”Marketing is a process of planning and implementing concepts of pricing, promotion and distribution of ideas, goods and services with the aim to create the exchange which fulfills the needs of individuals and organization”[83].

Growth strategies

Every company has or should have set goals for company. Some are focused assuring the survival in the market, some on profit and some on extension. Whatever the goal of company is, each company should keep in mind that without a profit there is no meaning of existing in the market or in the business except in the cases that market is tighten up. If there is a profit, then chances for growth and extension are high. Company should formulate proper strategies for their organization that will make them profitable. Strategies are the ways how the company will achieve goals set by managers and stakeholders.

“Strategy is linked with the effective usage of development potentials and results of an organisation that reacts to adopt itself to the environmental changes”[84]. Each company should consider opportunities and threats coming from external environment and using as better as could internal strengths and reducing internal weakneses.

Growth strategies have been proposed by Ansoff (1957)[85], through so called product-market matrix. The product–market matrix proposed by Ansoff provides a useful framework for considering the relationship between strategic direction and marketing strategy. The four cell matrix considers various combinations of product–market options. Each cell in the Ansoff matrix presents distinct opportunities, threats, resource requirements, returns and risks, and will be discussed below[86].

		Current	New
Market	Current	Market Penetration	Product Development
	New	Market Development	Diversification

Source: Ansoff (1957). Adapted and reprinted by permission of Harvard Business Review. Exhibit 1 on p. 114 from ‘Strategies of Diversification’ by Ansoff, H.I. Issue No. 25 (5), Sept/Oct 1957, pp. 113–25, Copyright © 1957 the Harvard Busness School Publishing Corporation; all rights reserved.

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[83] American Marketing Association, *Marketing News*, March 1, 1985

[84] Elmazi L.(Billa), *Strategjia Marketing*, Kumi, Tiranë, 2010, page.14

[85] Brassington F. and Pettitt S., *Essentials of Marketing*, Pearson education Limited, Harlow, England, 2005, page 411

[86] Ibid, page 411

- Market Penetration- is the growth strategy which consists on selling more current products (increasing sales) to current or existing customers.
- Market development- is the growth strategy consisting on increasing sales of current products to new markets or new market segments.
- Product development- is the growth strategy for the company consisting on selling new or improved products to existing or current markets or market segments.
- Diversification- is growth strategy meaning that the company will enter to the new markets with new or modified/improved products.

Research Methodology

The object of the research was thirty food producers in Kosovo, seven bread manufacturing companies, seven water manufacturing companies, seven juice production companies, and nine others such milk manufacturing, French fries production, ketchup production, different spices products, coffee processing company and chocolate and biscuits producers.

Initially a questionnaire based survey, consisted of 15 questions, was prepared and the results of which are part of this paper. As result of paper, there will be shown only questions regarding growth strategies whereas other questions are not part of this paper. Main methods which are used in this paper are: descriptive method, comparison method, analyses method, synthesis method and methodology was beads on inductive method of gathering data, processing them through SPSS package and representing them through this paper.

Survey questionnaire,consited of 15 question to 30 producers,was used as the main research instrument while direct contact with company management was made at the begining of the research.

The survey was conducted between June and November 2012.

Hypothesis 0- food producers in Kosovo do not follow succesfuly growth strategies

Hypothesis 1- food producers in Kosovo do implement and follow very well groth strategies.

Results

Research has shown that food producers in Kosovo still are having problems on dividing ownership from management side. This is shown also on the table 1 below. Answers got from respondent's shows that almost 50% of interviewed companies (fifteen of them) have declared that decision makers person in the company are the owners of company and they are the developers and determinants of business strategy in their organization. The worst side of this is that Finance Managers are also very much engaged on developing strategies. In our case, nine out of thirty companies, finance managers are developers of business strategies in the company whereas only six companies have "determined" this role to Marketing Managers. Results are shown in Table 1, below.

Table1. Business strategy developers

1.Who is responsible for determination of business strategy in your company?	Marketing manager	6
	Finance manager	9
	Owner	15

To identify the market penetration strategy, I have designed next question, Table 2 below, where respondents have been asked to answer in the question regarding the sales of products in new markets or new market segments. Eighteen companies declared that they have succeeded to increase their sales into the existing markets with existing/current products, ten companies declared that they have not succeeded to do that, whereas two companies does not know or are not sure if they succeeded to sell more current products to current markets.

Table2. Market Penetration strategy

2. Have you succeeded to increase your sales, into current markets with current products, last year?	YES	18
	No	10
	I am not sure	2

On the next question, trying to find out how food manufacturing companies have developed market development strategy, we could realize that these companies has developed well this growth strategy, but it is important to notice that even companies that implemented this strategy, and said YES on their answers (fourteen companies), have developed new market segments within Kosovo market and only three of them have developed markets by entering markets in Albania and Macedonia, while sixteen companies did not achieved to develop this strategy at all. This is shown in Table 3, below.

Table3. Market development strategy

3. Did you sold existing products to the new markets, last year?	YES	14
	NO	16

Growth strategy, product development strategy, have been implemented by nine companies whereas fifteen companies did not introduced to market any product or did not modified existing products. But the good side of this is that in a launching process of introducing new products to the market are six companies. These companies will introduce in the market new products through adding/ extending production offer, by changing the size of product, package or by entering completely new products on range of existing products of company. This is shown in the Table 4, below.

Table4. Product development strategy

4.Do you added new products or improved existing ones to your market offer?	YES	9
	No	15
	In a launching process	6

The growth strategy, diversification strategy, was implemented only by four companies interviewed; twenty companies declared that they did not implement such a strategy, whereas six companies intend to do such a strategy in a nearly future. Companies that declared that will implement this strategy, mainly are focused on concentric diversification, meaning to enter into the new markets with products that are similar to their existing products, e.g. water producers declared they will enter in production of juices and entering in the market of Albania, Macedonia, Montenegro and Bosnia and Herzegovina.

Table5. Diversification strategy

5. Did you entered into new businesses out of the main business and into new markes?	YES	4
	NO	20
	I intend to do that	6

Discussion

Food manufacturing companies in Kosovo are still lacking the sense of a proper marketing strategy and based on that, lacking the long term objectives planning. Companies that have marketing department on their organizational structure, and have the sense to produce toward the market needs and wants, are in a very good way to find the best strategy for growth. Most of these companies are in a stage of growth, and finding the best strategy for their growth is more than important. “Marketing strategy is the process by which organization links itself with the market which wants to serve”[87]. This should serve to all companies interested to grow their business by “tiding up” itself with market needs.

Kosovo has signed CEFTA Agreement* and domestic producers, including especially food manufacturing producers, have the opportunity to import raw materials without customs tax from member states and export into this countries final products, again without customs tax.

There are still companies on which the main decision maker is still the owner of company. There is no strict division of ownership and management, which is very important to the normal process of production and targeting the customers.

Food producers are not paying much attention on existing market possibilities and opportunities, but are seeking toward new markets, with the aim to grow their business,

[87] Fifield Paul. *Strategic Marketing, The difference between marketing and markets*, Elsevier, Oxford, UK, 2007, page.16

but firstly should “check” quality of their products, benefits offering to customers and then trying to sell those benefits into the new markets. Seeking new markets trying to sell current products seems to be an obstacle to Kosovo food producers. They are more focused on their domestic market and on the fear that products do not fulfill all requirements for being exported not only in the region but also abroad. Some of the producers have obtained internationally recognized certification such as: ISO and/or HACCP certification that show they are producing by high level standards as their competition from abroad.

Nine companies have entered new products to the market and are very well positioned in the market. This has helped them to increase market share and develop also new markets. Some of the new products derived from these companies are: line extension, brand extension or completely new products that are not related to existing products.
Vertical integration was done in two companies, producers of bread by buying mills which will enable them to cut costs for at least 20%.

Being afraid from entering in the new markets with new products, diversification strategy was developed in a very low level and only in four interviewed companies. These companies have the chance to enter new markets through the concentric diversification mainly, by adding new products that are almost similar to leader products. Such a case was with water producer company which will introduce in the market new product, fruit juice and enter not only the Kosovo market but also the market of Albania, Macedonia, Montenegro, etc.

Recommendations

Food producers in Kosovo still should improve their strategies if aiming to grow their business and solve the problem of survival into the market. Main recommendations for food producers are:

- To divide ownership from management because it will make easier decision making process and will let managers to take decisions for business strategy better and in a long term;
- Consistency in production is another recommendation that is very crucial to producers. If they do not keep consistency on production, customers will lose the faith on their products and will become non loyal;
- Try to enter market segments within Kosovo that are not explored yet enough and then, through improvement on quality, to target foreign markets;
- To modify existing products, if needed and adapt toward the market needs and wants;
- Establish marketing departments within their organizations.
- Establish market research unit within marketing departments and start doing market research to identify customer and consumer needs and give the result to operations so they could produce based on consumer demands and not on what machinery can produce.

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The concept of effective remedies in the jurisprudence of the European Court of Human Rights; a historical perspective

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Abstract

Article 13 is one of the most complex and troublesome provisions of the European Convention on Human Rights. According to two judges of the European Court of Human Rights, it is one of the "most obscure" clauses in the Convention, whose analysis has been avoided by its institutions for approximately two decades, for the most part advancing barely convincing reasons.[88] *As opposed to the other articles of the Convention, it does not contain a substantial human right in the meaning of the rights provided by the other articles. Basically, it requires the states that have ratified the Convention to provide effective remedies for the violations of any of the substantial rights of the Convention. Said in other words, this article provides guarantees for the protection of the individuals' rights as stated in the other articles.*

The implementation of article 13 in practice has shown that it entails a complexity of issues, most of which deriving from the way the article is worded.[89] *Nevertheless, although not along very consistent lines, the case law of the European Court of Human Rights and the European Commission of Human Rights*[90] *has managed to point out the main principles regarding the requirements for a proper application of article 13. These principles could be based upon for the analysis of national features with regard to the application of article 13.*

This article aims to provide an analysis of the guidelines regarding the rules of implementation of article 13. It outlines the key components of the notion of effective remedies, based on the interpretations of the European Court of Human Rights and the European Commission in the relevant cases, as well as the assessment of the elements of effectiveness by some of the most distinguished legal scholars in the field. It also points out issues related to the application of article 13 that need further clarification by the European Court of Human Rights.

Keywords: article 13, local remedies, arguability of a claim.

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[88] Dissenting opinion of judges Matscher and Pinheiro Farinha in the case of *Malone v. United Kingdom*, Judgement of August 1984, Series A, No. 82, EHRR, p.41.

[89] Art. 13 provides:

> Everyone whose rights and freedoms as set forth in this Convention are violated, shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

[90] Although upon the entry into force of Protocol 11 of the Convention, the European Commission of Human Rights has ceased performing its functions at the stage of admissibility of the individuals' complaints, its interpretations regarding different aspects of article 13 will be taken into consideration.

Introduction: The rules of applicability of article 13 from a historical perspective

During the course of their activity, the European Court of Human Rights [hereafter referred as the Court] and the European Commission of Human Rights have been faced with different aspects of article 13 to be interpreted. These perplexities have shown that its provision entails many lacunae, which become more problematic in the phase of implementation. A question that has been very often raised in practice relates to the possibility of fulfilling the requirements of this provision if the Convention is not part of the domestic law of the contracting states. The rule laid down by the Court in this regard is that a proper implementation of article 13 does not require the incorporation of the Convention in the domestic law. According to the Court's interpretation in Swedish Engine's Drivers Union v. Sweden, the application of article 13 in a given case depends upon the manner in which the contracting state concerned has chosen to discharge its obligations under article 1 of the Convention, directly to secure to anyone within its jurisdiction the rights and freedoms set out in section 1.[91]

The same is argued in Silver and Others v. United Kingdom.[92] Therefore, local remedies provided for the claims of violations can still meet the criteria of effectiveness required by article 13, although the Convention may not be part of the domestic laws. However, there are also adverse opinions regarding this matter. Some legal scholars sustain the idea that the way article 13 is worded implies that it is a prerequisite that the Convention be incorporated in the domestic law. Thus, according to Prof. Buergenthal, the real significance of the Convention derives from the fact that by adhering to it, the High Contracting Parties assumed two interrelated obligations: they undertook to implement the Convention within the their respective jurisdictions to make it part of their domestic law, and they pledged that an aggrieved individual shall have "an effective remedy before the a national authority" to enforce the rights guaranteed in the Convention. The same is argued by Golsongs, who sustains the idea that the best way to cope with the requirements of article 13 is to incorporate the Convention in the domestic law.[93]

Despite these opinions, the European Court of Human Rights seems to be firm on the choice of non-incorporation of the Convention. However, this choice does not entitle the states to provide protection for as many human rights as it is convenient for them. It is necessary or, better obligatory under the terms of article 13 that individuals be enabled to receive remedies for human rights that in nature are equivalent to the rights provided in the Convention. As the Court argued in Soering v. UK, although it is not a prerequisite of article 13 that states make the Convention part of their domestic laws, national laws should however provide guarantees that are in substance equal to the rights that are included in the Convention.[94]

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[91] *Swedish Engine's Drivers Union v. Sweden*, Judgment of 6 February 1976, Series A, No. 20, 1 EHRR, p.617.

[92] *Silver and Others v. United Kingdom*, Judgment of 25 March 1983, Series A, No. 61, 5 EHRR, p. 347.

[93] Buergenthal T., The Domestic Status of the European Convention on Human Rights: A Second Look, 7 Journal of ICJ (1966), 55-96, p. 59; Golsongs H., Les Recours des Individus devant les Instances Nationales en cas de Violation du Droit European, Colloquium organized by l' Institut d'Etudes Europeenes, Brussels, 24-5 April 1975, (1978), 59-83, as both quoted in. Z. Drzemczewski A., European Convention on Human Rights in Domestic Law. A Comparative Study, Clarendon Press, Oxford, 1983, p. 46.

[94] *Soering v. UK,* Judgment of 7 July 1989, Series A, No. 161, 11 EHRR, p. 439, para. 121.

Since article 13 refers to the rights provided under the other articles of the Convention, it is considered as having a sort of subordinate status. In other words, the invocation of this article before the Court is conditioned by the claims of violation of any of the rights guaranteed under the other articles of the Convention. However, it is not necessary for article 13 to apply that individuals prove that a violation has already been established by a national authority, since in that case they would have had already an effective remedy before a national authority.[95] The Court has argued that even in those cases where the individuals claim that their rights under the Convention have been violated, article 13 should apply. Thus, in Klass and Others v. Germany, the Court argued:

> This provision read literally seems to say that a person is entitled to a national remedy only if a "violation" has occurred. However a person cannot establish a "violation" before a national authority unless he is first able to lodge with such authority, a complaint to that effect. Consequently, as the minority of the European Commission stated, it can not be a prerequisite for the application of article 13 that the Convention be in fact violated. Article 13 requires that where an individual considers himself to have been prejudiced by a measure allegedly in breach of the Convention, he should have a remedy before a national authority both to have his claim decided and, if appropriate, to obtain redress. Thus, Article 13 must be interpreted as guaranteeing an effective remedy before a national authority to everyone who claims that his rights and freedoms under the Convention have been violated. [96]

This interpretation however is valid only for claims that pass the threshold of the arguability. It is now firmly established that, only the claims that are deemed arguable would qualify for an effective remedy analysis under article 13. The test of arguability has been assessed by the Court in all the cases that have raised the issue of violation of article 13. This test was firstly applied in the case of Silver and Others v. Sweden, where the Court held that an individual is entitled to effective national remedies, both to have his claim decided, and obtain redress, if he has an arguable claim to be the victim of a violation of the rights set forth in the Convention.[97] However, there is not yet too much clarification on the notion of arguability by the Court. It has maintained that it should not give an abstract definition of the concept of arguability of a claim, but this must rather be determined in light of the particular facts of the case and nature of the legal issue raised.[98]

The European Commission has elaborated more than the Court on the issue of the indicators of the arguability of a claim. According to its interpretation, a claim is arguable, if it contains facts raising reasonable doubts about the alleged violation. It has defined the followings as the criteria of the arguability of a claim:

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[95] van Dijk P., van Hoof G., *Theory and Practice of the European Convention on Human Rights*, 2nd edition, Antwerp, Boston, London, Frankfurt, Kluwer Law and Taxation Publishers, 1990, p. 521.

[96] *Klass and Others v. Germany,* Judgment of 6 September 1978, Series A, No. 28; (1979-80) 2 EHRR, p. 214, para. 64.

[97] *Silver* case, *supra* note 5.

[98] *Boyle and Rice v. United Kingdom,* Judgment of 27 April 1988, Series A, No. 131, 10 EHRR 425.

a-it should concern a right or freedom guaranteed by the Convention;
b-the claim should not be wholly unsubstantiated on the facts;
c-the claim should give rise to a prima facie issue under the Convention.[99]

In order to pass the threshold of the arguability, a claim must comply with the three elements. The arguability test is very often analyzed together with the test of the manifestly ill-foundedness of the claim. According to the procedural rule of the former article 27 of the Convention,[100] the test of the manifestly-ill foundedness of a claim involved an examination by the European Commission of the factual and legal basis of the claim, from which it could decide on the admissibility of the claim. According to the Court's interpretation in the case of Boyle and Rice v. UK, although in the ordinary meaning of the words it is difficult to conceive how a claim that is manifestly ill-founded can nevertheless be arguable, a claim can be manifestly ill founded but still an arguable claim. Thus, the rejection of a complaint as manifestly ill-founded amounts to a decision that, there is not even a prima facie case against the respondent state. However, the Court considered itself competent to take cognizance of all questions of fact and of law arising in the context of the complaint under article 13, including the arguability or not of the claims of violation of the substantive provisions. In this regard, the Commission's decision on the admissibility of the underlying claims and the reasoning therein, whilst not being decisive, provides significant pointers as to the arguable character of the claims for the purposes of article. 13.[101]

Another important conclusion, deriving from the case law of the Court, relates to the nature of the national authorities that are formally responsible for dealing with the claims of the citizens and affording remedies. In Klass case, the Court held that the authority referred to in article 13 might not necessarily in all circumstances be a judicial authority in the strict sense. Nevertheless, the powers and procedural guarantees that an authority possesses are relevant in determining whether the remedy before it is effective.[102] This conclusion relates also to the interpretation of the Court with regard to the former article 26's rule under the Convention, providing that local remedies do not relate only to judicial remedies but also to administrative proceedings, if they can influence the situation created.[103] Thus, it is sufficient that the administrative authorities be able to make a decision on the individuals' complaint and repair the harm occurred. Consequently, the lack of judicial remedies in the local level would not amount to a violation of article 13, if administrative recourses may redress the violation committed.

Other limits to the concept of remedies have been established with regard to the "immunity" of the national laws. In Leander v. Sweden, the Court argued that article 13 does not guarantee a remedy allowing a contracting state's law as such to be challenged before a national authority on the grounds of being contrary to the Convention or

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[99] Op. Com., App. Nos. 9659/82 and 9658/82, 7 May 1986, Digest of Strasbourg Case-Law Related to the European Convention on Human Rights, Update to Vol. 4, Article 13-25, Carl Heymanns-Verlag K G K Köln, Berlin, Bonn, München, 1995, p.12

[100] Before the entry into force of Protocol 11.

[101] *Boyle and Rice* case, *supra* note 11, at para. 54. See also *Platform Artze füür das Leben v. Austria,* Judgment of June 1988, Series A, No. 139, p.12, para. 27.

[102] *Klass* case, *supra* note 9, at para. 67.

[103] Application No. 2749/66, Yearbook IX, p.410, Application No. 4451/70, Yearbook XIV, p. 442.

equivalent legal norms.[104] This interpretation is also considered as a limit that is imposed on the concept of "persons acting in an official capacity."[105] Thus, according to the Court these terms do not include the local legal norms. Although it sounds logical to argue that laws may violate the rights of individuals the same way as the actions of state bodies, there are no obligations for the states to provide remedies of this sort under the terms of article 13.

Finally, the Court has been inclined to accept the process of judicial review as meeting the criteria of effectiveness of remedies under the terms of article 13. This issue is of a certain complexity in Great Britain, where courts may take binding decisions on the administrative acts only in specific cases, such as when the irrationality of these decisions is proved. However, in Vilvarajah and Others v. UK, the Court found the judicial review proceedings to be an effective remedy in relation to the applicants' complaint. The Court was satisfied with the fact that English courts could dismiss an administrative decision, on the grounds that the decision is tainted with irrationality, irregularity or illegality.[106] However, in another case, the Court considered the same powers of English courts with regard to judicial review proceedings, as insufficient in terms of effective remedies. In Chahal v. UK, the Court found that the powers of English courts to review the decisions of Home Secretary only on the grounds of illegality, irrationality, or procedural impropriety amounted to a violation of article 13.[107] The decision of the Court in this case was conditioned by the nature of the right involved, namely the right against torture, or inhuman, or degrading treatment, or punishment. As the Court argued, given the irreversible nature of the harm that might occur if the risk of ill-treatment materialized and the importance the Court attaches to article 3, the notion of an effective remedy under article 13 requires independent scrutiny of the claim that there exist substantial grounds for fearing a real risk of treatment contrary to article 3. Consequently, since English courts could not perform such a scrutiny, there was a violation of article 13.

The different assessments of judicial review proceedings in the above two cases are obviously due to the restricted jurisdiction of British courts in these proceedings. However, the arguments of the Court in the Chahal case show that the approach taken with regard to the powers of courts in judicial review proceedings is flexible upon the nature of the right involved. Although, generally the judicial review proceedings are considered sufficient for complying with the requirements of article 13,[108] even in the case of British courts, the interpretation established in the Chahal case may be based upon in cases, where rights of the same nature as the right against torture or inhuman treatment are involved.

As regards the last words of article 13, namely "notwithstanding that the violation has been committed by persons acting in an official capacity," there is still not a clear position of the Court with regard to its intention. Academic interpretations of this provision also vary. Some authors have interpreted its wording as meaning that it should apply to

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[104] *Leander v. Sweden,* Judgment of 26 March 1987, Series A, No. 116, 9 EHRR 433, para. 77. *See* also *James and Others v. UK*, Judgment of 21 February 1986, Series A, No. 98, 8 EHRR, p. 123, para. 87.

[105] P. van Dijk, G. van Hoof, *supra* note 8, at p. 527.

[106] *Vilvarajah and Others v. UK,* Judgment of 30 October 1991, Series A, No. 215, 14 EHRR 248, para. 121.

[107] *Chahal v. UK,* Judgment of 15 November 1996, Series A, Reports 1996-V, paras. 151-153.

[108] *Soering case*, *supra* note 7.

private intrusions as well as to public ones. According to Raymond, article 13 obliges the states to provide remedies in the domestic law against violations committed by private individuals or public authorities.[109] However, there are also opinions that do not support the individual effect of article 13, but interpret it from another point of view. Such opinions sustain the idea that the final words of article 13 intends merely to emphasize that public authorities are not immune from responsibility in the event that they interfere with one of the articles of the Convention.[110] The main thesis in support of this approach is that the Convention contains obligations for non-violation of its provisions only for the states that have ratified it, thus excluding private subjects. If such obligations were to be accepted, the state could be held responsible under the provisions of the Convention for every ordinary crime committed against the life, property etc. of its citizens. However, the Court seems to have recognized the responsibility of the states where they have failed to take positive measures regarding the protection of some of the rights of the Convention from private interference.[111] In Platform Artze füür das Leben v. Austria, the Court argued that in the case of a genuine right such as the freedom of peaceful assembly, the state cannot merely refrain from interference. Failure of the state to take measures to guaranty the enjoyment of this right in practice would amount to a violation of the Convention.[112] Generally, it could be argued that, from this point of view, the responsibility of states applies to the extent that they have not taken the necessary measures to prohibit violations of the rights protected in the Convention from any kind of interference, public or private.

The components of effectiveness

Since article 13 requires explicitly that the national remedies be effective, a right interpretation regarding the requirements of effectiveness is of a significant importance. One of the most elaborated syntheses on the components of effectiveness has been developed by the authors Harris, O'Boyle and Warbrick. Such a synthesis expresses very clearly the criteria that apply to the concept of effectiveness. Obviously, it embodies a summary of the interpretations of the Court in the cases that have alleged a violation of article 13. Taking into account the fact that the Court has outlined rules and limitations to the concept of effectiveness rather than a definition of this term, the above authors have the merit of developing these interpretations into a systematic schema of components of effectiveness, envisaging all aspects of the requirements of article 13. Thus, they have identified four elements of effectiveness:

a) Institutional effectiveness;
b) Substantive effectiveness;
c) Remedial effectiveness;

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[109] Raymond Jay, A Contribution to the Interpretation of Article 13 of the European Convention on Human Rights, *V HR Rev*., 1980, p. 170.

[110] Gomien D., J. Harris D., Zwaak L., Law and practice of the European Convention on Human Rights, Council of Europe Publishing, 1996, p. 336. Jacobs and White, The European Convention on Human Rights, Claredon Press Oxford, 1996, p. 339.

[111] *X and Y v. Netherlands,* Judgment of 26 March 1985, Series A, No. 91, 8 EHRR. 235, *Marcx v. Belgium*, Judgement of 13 June 1979, Series A, No. 31, 2 EHRR. 330, *Young James and Webster v. UK*, Judgement of 18 October 1982, Series A, No. 55, 5 E.HRR 201, *Costello Roberts v. UK,* Judgement of 1993, Series A, No. 247-C, 19 EHRR 112.

[112] *Platform Artze füür das Leben* case, *supra* note 14, at para. 32.

d) Material effectiveness.[113]

The first component, as it could be easily deduced from its name, relates to the position of the decision-making authorities that are in the position to afford remedies for the violations claimed to have been committed. This component requires that these authorities be sufficiently independent of the authority alleged to be responsible for the violation of the Convention. If the authority that receives the complaint is not independent from the one that has allegedly committed the violation, it will not be in the position of making a fair judgment, since it will be under the influence of the authority that took the challenged decision.

The above definition is largely reflected by the case law of the Court. Thus, in the Leander case, the Court argued that the Chancellor of Justice and the Parliamentary to whom the complainants could complain, were both independent from the Government whose decision was challenged, thus would have qualified as effective remedies if they had binding powers.[114] Also in the Silver case, the Court argued that the recourse to the Home Secretary, with regard to the validity of the order or instruction issued by himself, could not be considered to have a sufficiently independent standpoint to satisfy the requirements of article 13, since as the author of the directives in question, he would in reality be a judge in his own cause.[115]

As regard the substantial effectiveness, it refers to the interpretation of the Court with regard to the option of incorporating the provisions of the Convention into the domestic laws. Basically, it presupposes the possibility of the individuals to canvass the substance of the Convention, although the Convention may not be part of the domestic laws. In James and Others v. UK, the Court argued that although the Convention was not part of the domestic law, the respective legislation, including its effects on the applicant's case was compatible with the substantive provisions of the Convention and its Protocols.[116] Thus, if the constitutional or ordinary laws contain the same guarantees as if the Convention was part of the legal system, this would be sufficient for the substantial effectiveness. According to Harris et al. even in case the Convention is incorporated into the domestic laws, there still exist possibilities of violating the requirements of article 13. This may happen for example, in case the Convention is lower than the domestic laws in the hierarchy of legal norms, and consequently the application of its provisions may be easily superseded.[117]

The third component requires that if the applicants' substantive arguments are accepted by the national authority that is responsible to deal with their claims, the latter must be in the position to grant them a remedy. Basically, this means that national authorities should not only be able to deal with the case, but have also the powers to take decisions that can affect the situation created as a consequence of the violation. In Campbell and Fell v. UK, the Court considered the powers of the Parliamentary Commissioner not effective

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[113] J. Harris D., O'Boyle M., and Warbrick C., Law of the European Convention on Human Rights, London, Dublin, Edinburgh, Butterworths, 1995, p. 450.

[114] *Leander* case, *supra* note 17, at para. 84.

[115] *Silver* case, *supra* note 5, at para. 116.

[116] *James and Others* case, *supra* note 17, at para. 86.

[117] J. Harris D., O'Boyle M., dhe Warbrick C., supra note 26, pg. 450.

from the point of view of remedies, since they were limited to submitting reports to the Parliament.[118] On the other hand, in the Leander case, the recourses to the Chancellor of Justice and Parliamentary Ombudsman were not considered effective since their decisions could not have a binding effect.[119]

Finally, the last component of effectiveness requires not only the availability of effective remedies in the national legal system, but also the possibility of taking advantage of these remedies. Basically, this component presupposes the compliance between the theoretical guarantees and the benefits in practice. In other words, a remedy that would remain within the formal stipulations of a law, without the possibility of being acted upon, would not be considered as effective for the purposes of article 13. For example, the lack of recourses for the parents of a minor with limited legal capacities, for bringing legal actions in courts on her behalf was considered by the Court as a lack of effective remedies.[120]

Although it sounds very demanding, in order to be considered effective, a national remedy should comply with the requirements of each of the four components. However, these requirements are submitted to further modifications. Thus, in certain cases the Court has modified the terms "remedies" into "an aggregate of remedies," for the sake of effectiveness. In those legal systems, where one single remedy could not satisfy the requirements of article 13, but the aggregate of the means provided for redress could do so, the Court has been prepared to accept them as satisfying the requirements of article 13.[121] This conclusion relates to the reasoning that those aspects of the complaint that are not covered by one particular procedure of recourse, may by address by following other channels of recourses available at the domestic level.

However, it should be admitted that it appears difficult to imagine in practice components of recourses that in aggregate will satisfy the requirements of effectiveness, as long as there are no rules as to how these components should complement each other. Also, it appears that the notion of the aggregate of remedies very often includes recourses to authorities with non-binding powers, such as the Ombudsman or the Chancellor of Justice.[122] It sounds difficult to accept that recourses to these authorities would increase the effectiveness of the recourses to authorities whose decisions are binding, if applied as an aggregate. In fact, the approach of the Court with regard of the aggregate of remedies has been criticized for virtually nullifying the effects of article 13.[123]

Furthermore, the effectiveness of remedies is not affected by the uncertainty of the favorable outcome.[124] The Court has consistently maintained that in order to comply with article 13, the possibility to address a complaint before different national instances is

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[118] *Campbell and Fell v. UK*, Judgement of 28 June 1984, Series A, No. 80, 7 EHRR, 165.

[119] Leander case, s*upra* note 17.

[120] *X and Y v. Netherlands, supra* note 24.

[121] *Leander* case, *supra* note 17, at para. 84.

[122] *Silver* case, *supra* note 5.

[123] van Dijk, P., van Hoof, G., *supra* note 8, at p. 531.

[124] The *Soering* case*, supra* note 7, or *Observer and Guardian v. UK*, Judgment of 26 November 1991, Series A, No. 216, para. 76.

sufficient and is not affected by the unsuccessful outcome of the complaint.[125] Simply put, this means that although the available local recourses may not resolve the case in favor of the plaintiffs, it does not mean that they are not effective. This argument sounds fair and reasonable.

Finally, it appears that the concept of effectiveness does not depend only on the type of legal recourses available at the national level, but also by the nature of the rights involved in a concrete case. So, in cases, where the restriction of any of the substantial rights of the Convention is made for special interests such as the national security, the concept of effectiveness has been narrower than in other cases. In the Klass case, the applicants complained a lack of effective remedies for not being able to contest secret surveillance measures imposed on them for the sake of national security, since they were informed on these measures only upon their termination. The Court responded that the requirements of effectiveness had to be read in the context of the concrete complaint. An effective remedy in respect of secret surveillance means a remedy that is as effective as it could be having regard to the restricted scope for recourse inherent in any system of secret surveillance. It was argued that the very nature of secret surveillance measures precluded prior notice of the potential violation of the right to privacy, but however, the availability of various legal remedies upon the notification of the termination of these measures was sufficient for complying with article 13.[126]

On the other hand, it seems that the requirement of a remedy that is "as effective as can be" is not appropriate in respect of a complaint that a person's deportation will expose him or her to a real risk of treatment contrary to article 3, where the issues concerning national security are immaterial. This is what the Court concluded in Chahal case.[127] Consequently, it could be argued that the "influence" of the interest of national security on the effectiveness of local remedies is flexible, depending on the nature of the substantial right involved in the concrete case.
In the last decade the European Court has modified its rulings with regard to the requirements of article 13. For instance, in the case Kudla v. Poland[128] the Court delivered the following arguments with regard to the correct application of article 13 especially in relation to article 6 of the Convention:

> "In comparable cases in the past, the Court has nonetheless declined to rule on an accompanying complaint of the absence of an effective remedy as guaranteed by Article 13, considering it unnecessary in view of its prior finding of a breach of the "reasonable time" requirement laid down in Article 6 § 1...In the Court's view, the time has come to review its case-law in the light of the continuing accumulation of applications before it in which the only, or principal, allegation is that of a failure to ensure a hearing within a reasonable time in breach of Article 6 § 1. The growing frequency with which violations in this regard are being found has recently led the Court to draw attention to "the important danger" that exists for the rule of law within national legal orders when "excessive delays in the administration of justice" occur "in respect of which litigants have no domestic remedy"...Against this background, the Court now perceives the need to examine the applicant's

[125] *Boyle and Rice* case, *supra* note 14, at para. 78.

[126] *Klass* case, *supra* note 9, at para. 65.

[127] *Chahal v. UK, supra* note 20, at para. 150.

[128] Kudla v. Poland, (Judgment of 26 October 2000, (Application no. 30210/96)).

complaint under Article 13 taken separately, notwithstanding its earlier finding of a violation of Article 6 § 1 for failure to try him within a reasonable time."

As the Court argues, this departure from its previous arguments is determined by the increasing danger observed within the rule of law of the state parties, although it could be argued that the Court should have sees this danger at the early stages of its jurisprudence..

The change of the position of the European Court of Human Rights with regard to the applicability of article 13 independently of other articles, differently from its position in the past, is observed also in another case, namely Ramadhi and others against Albania.[129] Here, the Court decides to consider the claim of the non execution of final court decisions not within the ambit of article 6 of the Convention as it had generally considered in previous decisions, but within the ambit of article 13 instead.

In this case, the applicants claimed that the Albanian authorities had violated article 6 § 1, article 13 and article 1 of Protocol 1 of the Convention, as they had failed to implement the decisions of the Property Restitution and Compensation Committee. The Court argued that the core of the applicants' complaint under Article 6 concerned the non-existence of any remedy for the failure to enforce the Commission's decisions awarding compensation under the Property Acts. The Court considered such claim more appropriately examined under Article 13.

The Court observed that, irrespective of whether the final decision to be executed takes the form of a court judgment or a decision by an administrative authority, domestic law as well as the Convention provides that it is to be enforced. In the present case, no steps had been taken to enforce the Commission's decisions in the applicants' favour. According to the Court by failing to take the necessary measures to provide for the means to enforce the Commission's decisions, the applicants were deprived of their right to an effective remedy enabling them to secure the enforcement of their civil right to compensation. Accordingly, the Court concluded that there had been a violation of Article 13 in conjunction with Article 6 § 1.[130]

Conclusions and recommendations

Despite certain doubts and inconsistent interpretations, the principal elements of the provision of article 13 have been delineated over the years by the jurisprudence of the Court and the European Commission. However, it could be argued that the guidelines provided by this practice define clearly what article 13's provision does not require from the states in order to comply with it. The same could be noted also with regard to the concept of effective remedies, although the criteria for evaluation of this concept are clearer that the rules governing other aspects of article 13. This is also due to the doctrine and commentaries on the subject. The great flexibility of the identified rules of application of article 13 would inevitably restrict the conclusions regarding the compatibility of the requirements of this article with the local remedies provided.

[129] *Ramadhi and others v. Albania,* application no. 38222/02, judgment of 3 November 2007.

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However, it also true that due to the recognition of broad discretionary powers to the states with regard to the local recourses provided for possible claims of violations of the Convention, the Court has been inclined to compromise with the range of remedies already existing in the local level. Consequently, besides the principal rules established with regard to the requirements of the implementation of article 13, the inherent features of the respective legal system of states seem to be the ultimate criteria for the assessment of the effectiveness of local remedies.

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Equal treatment in employment and occupation in terms of important international legal instruments

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Abstract

Employment constitutes one of the most contemporary challenges of the policy that countries apply today, in accordance with the requirements of social and economic development, and for this reason the spirit and the principle of the international law with regard to the non-discrimination and equal treatment accompanies democracy and the rule of law.

The right to equal treatment is also an important component of all other rights guaranteed in international acts.In international aspect, the right and the principle for fair and equal treatment is sanctioned in many treaties, conventions and recommendations, the purpose of which is to establish standards in the legislations of developed countries, with regard to the employment and the free use of professions.

It is very important to combat discrimination in employment by all possible means and ways, by setting in motion all social partners. This aim takes a great advantage considering the difficulties encountered including the process of proving in a trial, regardless of the cause of discrimination.

National laws in respect to international and community acts define measures in order to prevent discriminatory acts or situations, as well as to facilitate the victim's procedural position along the proving process.

Keywords: law, work, employment, treaty, instrument

Introduction

Prohibition of discrimination and equal treatment is one of the fundamental principles of the right to work. It should be said that the right to equal treatment is also an important component of all other rights guaranteed in international acts. This principle and the right at the same time sanctions in the legislation of many countries are usually included in their constitutional text.

In international terms, the right and the principle for fair treatment is sanctioned in many treaties, conventions and recommendations[131]. The International Labor Organization has enshrined this principle in the preamble of its constitution, which was treated by it in many legal instruments.[132]

With the entry into force of the Amsterdam Treaty in 1999, the promotion of equality became a fundamental task of the European Community, but we can say that gender equality rights are rooted to the treaty that established it, which is older than the Treaty of the European Union (The Treaty of Lisbon).European Union legal acts explicitly prohibit not only direct discrimination but also the indirect discrimination.

The term "discrimination" means "any distinction, exclusion or preference made because of race, color, sex, religion, political opinion, and nationality, social origin, which is intended to infringe or violate the right to equal treatment in employment or occupation»[133].

Other grounds of discrimination that are not expressly defined in the Convention on the Prohibition of Discrimination in Employment such as membership in labor organizations, marital status, pregnancy and family responsibilities, disability and the way of life are sanctioned in other acts of the International Labor Organization and other important international institutions[134] such as the European Union directives.

In terms of these international acts, their provisions for equal treatment and elimination of differential treatment refer to many aspects of employment and labor relations, such as training and employment on the basis of the free choice of each person, employment in line with individual trends such as experience, skills and opportunities, safe and healthy working conditions, remuneration for work of equal value, and equal conditions of work, including working hours, rest periods, annual paid vacation, social security, and all other facilities needed to work.

Prohibition of discrimination includes stopping for both its forms, the direct and indirect discrimination. In terms of the Convention on the Prohibition of discrimination in employment, the indirect discrimination is any legal provision that recognizes the employment of a certain contingent in possession of some degrees from separate institutions, in specific conditions or when the period of pregnancy and motherhood is not calculated as seniority at work when age is a key factor for the continuation of the employment relationship or about the time of notification in the event of dismissal.

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[131] Important international legal acts which sanction the principle for stopping discrimination and for providing equal treatment:
European Convention on Human Rights (1950)
International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights (1966)
Convention on the Elimination of All Forms of Discrimination against Women (The United Nations 1979)
Convention (and Recommendation) Against Discrimination in Education (UNESCO,1960)

[132] See Convention no. 111 (accompanied by Recommendation 111) Discrimination in Employment, 1958
Convention No 100 (and recommendation 90) Equal Remuneration, 1951
Convention No 156 (and recommendation 165) Workers with family responsibilities, 1981
Convention No. 118 Equal treatment of foreign citizens in social security, 1962

[133] See: Jean-Michel Servais, "International Labour Law", Third Revised Edition, Walters Kluwer Law and Business 2011, fq.150, and the:
Shih: Convention 111 Discrimination in employment, 1958

[134] We mention here : Convention no. 98 The right to association and collective bargain, Recommendation 200 year 2010 te of International Labour Organization, Directive 2000/43KE and the Directive 2000/78 KE 27 November 2000

Indirect discrimination is faced even in cases of collective dismissal for economic reasons, giving employers selective opportunities to dismiss from work those employees for the causes for which the Convention provides for the prohibition[135]. Although in these conditions discrimination is difficult to be proved, procedural rules try in some way to facilitate somewhat the procedural position of the victim.

Qualifications required for different works and professions should correspond to the requirements, characteristics and objectively defined for the performance of these works, and also to be in proportion to these special features. One such problem was laid down in one case in Norway, where a religious institution required to employing persons belonging to the Christian faith, as this request also backed the employment of employees to perform works such as cleaner, gardener and cook[136]. This case was considered discriminatory for the criteria established for secondary works.

With the same reasoning it is also applied the principle for the prohibition of discrimination because of political beliefs, for example in the public administration the political beliefs should have effect only to exercise the highest functions, specially recognized as such.

The Committee of Experts of the International Labor Organization has defined conditions in the presence of which such measures shall not be considered discriminatory.

Specific measures undertaken in these circumstances which are aimed at maintaining public order and state security should be defined in order to not be discriminatory because of political beliefs or religious affiliation and thus contrary to the principle for equal treatment .

It is wrong to believe that compensation in monetary amount will totally compensate the damage caused in breach of the principle of equal treatment and non-discrimination in all forms and for all causes. Monetary amounts have often little impact on the results from a previous discriminatory act, while the employer «offender» of this principle considers the payment of monetary amount as a kind of tax to an unjust action he wants to perform. Then, discriminatory mass cancellation turns out to be the most efficient attitude in the majority of cases of discrimination. In this context, the employee who has filed a lawsuit against his employer because of discrimination needs sufficient guarantee and legal protection.

However, it is important to combat discrimination by all possible means and ways, by setting in motion all social partners. This goal takes a great advantage considering the difficulties faced by victims of discrimination, including facing the process of evidence in a trial, regardless of the cause of discrimination.

National laws, in respect to international and community acts define measures in order to prevent discriminatory acts or situations, as well as to facilitate the victim's procedural position along the proving process. Relevant European Union directives[137] foresee that if

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[135] ILC(83rd session1996), Equality in Employment and Occupation, pg.105

[136] J. Jones, "USA", in Roger Blanpain "Equality and prohibition of discrimination in employment »

[137] Directive 2000/43KE, 2000/78 KE, and 2006/54KE provide that the burden proof must be divided between plaintiff employee and accused employers.

the employee / respondent present facts which create doubt that there has been direct or indirect discrimination, then the employer / respondent shall justify the action or situation, and in particular to prove that there is no violation of the principle for equal treatment.

European Court of Justice has tried many issues related to the implementation of the principle of the prohibition of discrimination in employment, from which many of them refer to gender discrimination. This court considered as discriminatory the legal provisions in Austrian law, under which women were explicitly excluded from the profession of divers[138]. While the Austrian government bodies claim that on average women have less powerful and less red blood cells compared to men, they are not able to justify why employment is not allowed in this job for that category of men who have on average a respiratory system comparable or weaker than women.

Prohibition of night work for women came to the attention of the discussion after the presentation of the case of Stoeckel [139] in France[140].

Alfred Stoeckel was the head of a French company which in 1988 due to foreign competition suffered great economic loss and therefore was forced to reorganize its production undertaking. Reorganization of the company provided more staff cuts, so company executives held talks with union representatives and concluded that the best solution to avoid collective dismissals from work would be the reorganization of work schedules including all employees who work in shifts. France, at this time, had ratified the revised International Labor Organization (1948) for night work which prohibits night work for women workers.

French legislation prohibited night work in industry for women, and moreover considered the violation of these provisions even as a criminal offense. Stoeckel claimed that the relevant provisions (Article L 213 of the Labor Code) were contrary to Article 5 of Directive 76/207 EC to implement the principle of equal treatment of men and women in work. In the trial that was held before the European Court of Justice, French and Italian government representatives claimed that night work for women was forbidden in the industry, with the purpose to protect female workers and risks from working at night.

European Court of Justice reiterated the purpose of the implementation of the Directive on equal treatment, including necessary measures concerning the employment of labor conditions, despite the disadvantages of working at night. Exclusion of women workers by night work is allowed only for pregnant employees or in the period of motherhood. Finally, the European Court of Justice ruled that these countries should abolish provisions, which come in contradiction with the spirit of the Directive. For the same reason as mentioned above, many European Union member countries have repealed their legislation provisions which were the implementation of Convention No. 45 for work in mines[141].

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[138] Case C-203/03 Commission of the European Communities vs. Republic of Austria, 1 February 2005

[139] Bronstein, Arturo "International and Comparative Labour Law, Current Changes" ILO 2009

[140] The case was sent to the European Court of Justice for trial, see: ECJ-Case C-345/89 Alfred Stoeckel, 25 July 1991

[141] Shih European Court of Justice- EJC-Case C-203/3 Commission of the European Communities vs. Republic of Austria, 2005

Equal treatment in remuneration

International institutions have paid special attention to two objectives. On one side there is the protection of women at work and the improvement of working conditions and on the other hand the Constitution affirms the principle of equal pay for work of equal value.
In the first group of standards there is included greater protection for all women at work, where, among other things, it is mentioned the prohibition or restriction for certain works, limited working time, as well as all necessary facilities for carrying out the work. Similarly, specific measures should be guaranteed to women in special situations as during the pregnancy, maternity and child breastfeeding.

These standards lead to debates in the specification of priority of relevant principles: the principle of special protection for women at work or the principle of equal treatment between men and women at work. This discussion started in the early 20th century.

Organization of the United Nations Convention 1979 "On the Elimination of All Forms of Discrimination against Women", requires that national legal provisions for the protection of women's labor conditions should be reviewed and modified whenever it is deemed necessary, according to the requirements of scientific and technologic development.

In the second grouping of standards set by international instruments there are included the provisions that aim to promote gender equal treatment in employment and occupation[142].

Legal concept "work of equal value" is broader than the concept of "equal work", despite that after the interpretation these legal terms are applied equally. The spirit of principle that the Convention provides stems from many important international instruments, among which we can mention: the Treaty of Rome and other documents that followed and that established the European Union.

Wage means the ordinary basic or minimum wage or salary and any other remuneration that the employee receives directly or indirectly, in connection with his work by the employer.

Equal salary without discrimination means:

- salary for the same work will be calculated on the basis of the same unit of measurement,
- wages for working with time fees will be the same for the same work

European Court of Justice declared that Article 119 of the EEC Treaty, now Article 141 EC, (the principle of equal pay between men and women for work of equal value) that the economic goal is secondary to the social purpose and that the principle of equal pay is an expression of a fundamental human right. Thus, States should bear in mind the objective of equality between men and women, whenever they treat and implement laws, policies and activities.

[142] These standards are provided in the Convention no. 100 and Recommendation Ni 90 « For equal remuneration », 1951.

European Court of Justice, in the case Murphy[143] stated that the employer would have easier to circumvent the principle of equal pay, through the appointment of more tasks or more hard tasks to the employees of a particular sex who would be paid lower.

With regard to the nature and quality of services which European Court of Justice has often related to the qualifications and professional training of career employees, different authors have criticized this position[144]. They argue that this reasoning is not always true because the quality of work of employees should not be prejudiced and stating that the quality of the service is higher when it is performed by employees with not high professional qualifications and quality, when performed by employees without specific professional qualifications.

Indirect discrimination and objective justification

Indirect discrimination (unlike from indirect discrimination) is "when a neutral measure, criterion or practice can put a person in a disadvantaged position compared to another person, except where this measure, criterion or practice is objectively justified by a legislative purpose, and the means of achieving this aim are appropriate and necessary. Indirect discrimination is already a familiar concept in the practice of the European Court of Justice.

Referring to the above definition, the term "objective justification" has no clear definition. European Court of Justice has often referred to the national courts to assess the circumstances of the case in the interpretation of the notion regarding the implementation of remuneration policies and then to decide whether discrimination is or not indirect.

This makes us accept the fragility that characterizes the concept of "indirect discrimination" considering and evaluating the flexibility of the labor market.

However, given the above, we can say that the concept of "objective justification" in relation to indirect discrimination refers to an entirely legal purpose, necessary and objective, the evidence of which belongs to an employer for the applicable practice or to a state for legal provisions which are contested as such.

During the development of a judicial process where the object of the review is a violation of the principle of equal treatment remuneration indirect form, the national courts appreciate and evaluate whether the evidence and arguments submitted in this process by the employer shall be considered to reach the conclusion that the measures or practices taken from him are objectively justified by the purpose of their enforcement in spite that certain groups of employees who belong to one or to the other sex may remain economically "disappointed".

Indirect discrimination may be encountered also in other different wage systems as a wage systems is the piece wage system / unit which is implemented in various sectors of industry, in certain services or professions.

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[143] European Court of Justice-ECJ-C-157/86 Mary Murphy vs. An Bord Telecom Eireann

[144] E.Ellis, ‘ The recent Jurisprudence of the Court of Justice in the field of Sex Equality’, 2000, 37 CML Rev.1403

In the case Royal Copenhagen[145], the European Court of Justice after taking into consideration the claim that the salary system unit / piece, which was implemented based on individual productivity, found no indirect discrimination against women. The Court judged that the fact that the average salary that benefited women was lower than the average of pages that benefited men did not contravene the principle of equal pay for work of equal value as the measure of their work was the same, and in this context it was not the case of indirect discrimination.

The Court likewise noted that the influential element in individual productivity cannot be taken analyzed because the measuring unit which was the same for men as well as for women determined the final outcome of the work and not the determining element of productivity.

European Supreme Court, depending on the issue under consideration, may analyze certain statistics if deemed reasonable that it serves to the resolution of issues in the determination of the fact of the existence of discrimination[146].

Although social policies are in essential a matter of Member States in accordance with the legal framework of the European Community, in this sense there should be noted that the wide margin of discretion of States cannot be used in such a manner that violates or infringes the fundamental principles of the legislation of community as it is the principle of equal treatment between men and women.

Referring to specific measures to promote employment generalized excuses are not sufficient to show that the purpose of the contested provision is not discriminatory because of sex, if you cannot show that the tools selected are appropriate to achieve this purpose. Excuses with general character, referring to specific measures to promote employment are not sufficient to show that the purpose of the contested provision is not discriminatory because of sex, if it does not show that the tools selected are appropriate to achieve this purpose.

Differential treatment and discrimination in employment because of race, religious belief and age

Discrimination because of race is one of the reasons for which many international instruments impose the ban[147].International acts prohibit discrimination because of race and ethnic origin in all forms and in all aspects of the participation of people belonging to different ethnic and racial origin. In terms of their employment, these important instruments oblige states to take all necessary steps to eliminate this kind of

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[145] European Court of Justice-ECJ -Case C-400/93 Royal Copenhagen

[146]In determination of indirect discrimination from judicial bodies, based on the above cause reasons the following take value:

- Comparative judicial positions
- Statistics
- Salary measuring unit

[147] See Convention 111 Discrimination in employment and occupation (ONP,1958), International Convention for prohibition of all forms of race discrimination (United Nations, 1969) and the Directive of KKE 2000/43 of 29 June 2000 For the implementation of the principle for equal treatment of persons of different race and ethnic origin.

discrimination. In terms of the provisions of the above acts there is the obligation of employers to develop employment procedures in respect of this principle, to protect the people of different ethnic origins and races, along the continuity of the employment relationship, as well as to take all measures to deal with improper work environments aimed at discrimination or humiliation.

Equal Opportunities Commission in Employment in the United States of America (EEOC - U.S. Equal Employment Opportunity Commission) found the presence of racial discrimination against an African-American electrician by one of the greatest military contractors Lockheed after the Commission assessed that the hostile situation in work environments and misconduct against him constituted racial discrimination. The Commission imposed a compensation value for this reason in the value of 2,500,000 dollars[148].

The religious belief is also one of the causes of preventing discrimination in employment and occupation. Diversity of religious beliefs, free exercise of religious beliefs and peaceful cohabitation between them constitutes one of the challenges of our society.

Most important international and national legal acts prohibit discrimination because of religious beliefs in all spheres of activity, including the employment of persons.

Convention on Human Rights provides freedom of thought and religion[149]. The European Court of Human Rights, in two cases that it considered, where the target of judgment was prohibition of wearing special clothes of religious persons, came to the conclusion that these prohibitions were not in violation to Article 9 of the Convention, as in the sense of paragraph 2 of the provision: "exceptions to the exercise of the right of religious faith are allowed when it is in the interest of public safety, for the protection of public order, health and morals, as well as for the protection of the rights of free exercise of religion to other persons".Committee of Experts on the Application of Conventions and Recommendations (CEACR-Committee of Experts on the Application of conventions and Recommendations) notes the application of law and the principle from a different perspective

Although age is not presented as one of the causes for which the ILO Convention No. 111 does not explicitly states the ban, the Recommendation No. 162 is applied to the protection of employees who encounter difficulties in employment and occupation because of their advanced age.

In recent years, many countries have adopted laws regarding the prohibition of discrimination which stipulate, inter alia, in order to express the age as one of the causes of detention.

2000/78/EC Directive on equal treatment in employment and occupation also included age as one of the causes for which discrimination is prohibited in employment.
However, care should be taken in cases of discrimination due to age because the requirements of a job in determining the age are not always discriminatory, as is expressed in the Directive exemption for armed forces.

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[148] See Bronstein, Arturo "International and Comparative Labour Law, Current Changes", page. 152,box 5.5, ILO 2009

[149] See article 9 of the European Convention for Human Rights.

In addition, the Directive allows Member States to provide in their internal legislation that the differential treatment because of age does not constitute discrimination, if, in accordance with the spirit of the legislation, is objective and justified as right for reasons of achieving a goal entirely legal, including employment policies, labor market policies for the training of professional qualifications, where these tools to achieve this aim are appropriate and necessary.

If the job requirements are fully coherent with the necessity of carrying out specific qualifications over a certain period of time, and when the people because of their advanced age cannot perform these qualifications due to reaching the age of person, then the determination of the age for such work would be justified.The employer has the burden of proof to prove that the defined age as a criterion for employment is a job request.

German law for part-time work and contracts with defined duration of 2000, provided that for all employees, without limitation, should be concluded only contracts of part-time work or contract of defined duration when they reach the age of 52 years.German Government stated that the purpose of the law was to promote the employment of persons in this age.

In 2003, Mr. Mangold, 56 years old, who entered into a contract with the employer Mr. H[150], went to the German Labor Court to demand the repeal of the legal provisions. The court referred the matter to the European Court of Justice which recognized broad discretion of internal legislations in terms of constraints, in order to implement employment policies, but also concluded that the above-mentioned German law exceeds what is appropriate and necessary to achieve a legitimate purpose.

The reasoning further refers to the fact that this law also applies to employed persons and that its provisions generally restrict employment only in part time hiring and term contracts, prejudicing in this way the stability of the employment of persons who have reached the age defined by law.

Employment constitutes one of the most contemporary challenges that countries apply today in accordance with the requirements of the country's social and economic development, so the spirit and principle of international law regarding non-discrimination and equal treatment accompanies democracy and the rule of law.

Our country has ratified important international acts in the framework of perfecting our legal framework. Recently, labor legislation in Albania has undergone significant changes in terms of the prohibition of discrimination in employment. Prohibition of discrimination is sanctioned in the Constitution of the Republic of Albania, the Labor Code, as well as other legal acts.

In the framework of the implementation of the very important principle for the prevention of discrimination and the requirements of EU legislation (acquis communautaire),

[150] Bronstein, Arturo "International and Comparative Labour Law,Current Changes",fq. 170, ILO 2009

Parliament has adopted the Law "On prohibition of discrimination" [151] which in Part II it is treated discrimination in employment[152].

In full respect of the provisions of this law, any employee may be addressed to the Commissioner for Protection from Discrimination, which is a new and special established administrative structure, or to the Court if the employee believes that he has suffered discrimination.

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[151] Law Nr 10 221 dated 04.02.2011:“Prohibition of Discrimination,,

[152] For the purposes of this law, discrimination is prohibited in: announcement of new jobs, recruitment and selection of employees, treatment of employees in the workplace, as well as trade union membership

Some issues on anticorruption legal reform in public administration

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Abstract

The European Commission's Albania 2011 Progress Report considers public administration reform as a key priority. The fight against corruption is one of the main challenges the public sector has to face. Therefore, the Albanian government has undertaken effective policies to prevent and control corruption practices, in particular those involving the public administration.

Legal reform, and in particular the amendment of criminal legislation, occupies a major position among the measures applied in the framework of the fight against corruption.
In order to ensure harmonization of legislation with the obligations stemming from conventions, the Criminal Code was subject to amendments and improvements, particularly during 2001, 2004 and 2007.

Currently, formulations on corruption rely on international legal acts; provisions have been improved in terms of their content and detail, and punishment measures have been tightened.

Although the legal framework has improved significantly, there has been no evident success in changing the reality with regards to preventing and countering corruption. Corruptive practices continue to be present in the Albanian society in both economic and social dimension.

The aim of this article is to present some issues regarding anticorruption legal reform focusing on international acts and the criminal code provisions, as well as the laws dealing with anticorruption policies in the field of public administration. This article will focus mainly on analysing:

- *Legal reform, and in particular the amendment of Criminal Code provisions related to criminal activity of passive corruption of public administration officials and high state officials;*
- *Issues related to practical application of the above mentioned legal provisions;*
- *Institutional actions undertaken in order to implement laws and regulations related to anticorruption policies in Albania;*
- *Presenting relevant suggestions to improve anti-corruption measures and mechanisms to control and fight corruption in the field of public administration.*

Keywords: Legal reform, Corruption, Criminal Code. Public administration officials, Provisions

Introduction

Transparency International considers 2011 the year of crisis in governance by emphasizing that protests throughout the world indicated the anger against corruption in

politics and public sector, driven by economic instability and the apparent perceptions of citizens on lack of transparency from leaders of public institutions[153].

Although studies and surveys show some improvement of the situation[154], corruption continues to be a concerning phenomenon for the Albanian society[155]. The need to address the fight against it remains an issue of major public interest. Citizens' perception on the phenomenon of corruption in the public administration remains high.

This form of corruption is not a new phenomenon for our society. Corruption in the public sector was part of social activity since past periods. From a historical perspective, studies relate this phenomenon with the Ottoman occupation. The connection with this period is based on the Turkish origin of the words used in the everyday life to refer corruption, such as "bakshish", "ryshfet" and "qelepir" [156].

During the communist regime, open corruptive acts were obstructed by the severity of the regime. Nevertheless, studies on this period show that corruption was a feature of the communist regime itself. In particular it is claimed that corruption became a widespread phenomenon during the '80s, mostly in employment, recommendations and appointments or assignment to favourite field of studies in universities[157]. More than giving bribes, the shape of corruption in that period consisted in favouritism based on acquaintances or clientelist practices.

After the '90s, and in particular after the fall of the pyramidal schemes, corruption became a widespread phenomenon. Even after 2000, excluding some minor variation, corruption remains high[158]. Surveys conducted in this period show also a high perception of the citizens on corruption[159].

One of the main features of corruption during the democracy period is the advent of new forms of it. More than a tool to ensure favouritism based on social relations, it is

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[153] Transparency International Albania, December 2011, pg. 1. (www.tia.al).

[154] From the surveys conducted by transparency international, Albania ranks 8 positions below the 2010 placement in the ranking. For further detail, refer to Transparency International, Corruption Perception Index 2011, International Secretariat, pg. 3, (www.transparency.org).

[155] The European Commission's 2011 Progress Report on Albania, states that "Corruption is prevalent in many areas and remains a particularly serious problem". For further detail, refer to Albania 2011 Progress Report, Commission staff working paper, Brussels, 12.10.2011, sec (2011) 1205 final, Anticorruption Policy, pg. 14.

[156] Swedish International Development Cooperation Agency (SIDA), Albanian Anticorruption study, Ramboll Management, 2008, pg. 7, (http://www.aidharmonisation.org.al/skedarët/1203101753-SIDA%Albania%Anti-Corruption%Study%20-%Revise.pdf).

[157] Idem, pg. 7.

[158] From these surveys it is confirmed that Albania's corruption data mostly remain unchanged at the level of 2.5 between 2002-2005, registering a minor decrease in 2005 (at 2.4) and signs of improvement in 2006 (2.6) and 2007 (2.9). For further detail, refer to Transparency International Corruption perception Index, 2009 (htttp:// www.transparency.org/policy_research/surve_indices/cp/2009) and SIDA, Albanian Anticorruption study, cited study, pg. 54.

[159] From the surveys of IDRA it emerged that in year 2006, 50% of the interviewed have had an experience of corruption. In 2009, almost half of the interviewed (48.5%) thought that corruption had increased compared with the previous year, while 38% thought that it has remained unchanged. For further detail, refer to, USAID, Corruption in Albania, Perceptions and Experiences. Institute for Development Research and Alternatives, (IDRA)2009, (http://idra-al.org/es2009coruption%20inAlbania%2009%20%20Summary%20Findings.pdf), pg. 3.

considered as a mean of personal gain. Prevalently it takes the form of bribery in return for favours. Besides the economic dimension, which is the dominant one, the social dimension as well continues to be a widespread phenomenon. This becomes important in the Albanian context, where corruption practices such as nepotism, thus the provision of benefits based on family relations or gender relations, or clientelism relations, where benefits are provided against loyalty or political affiliation, have been a present phenomenon[160].

Regarding the meaning of corruption, there are numerous definitions but the most classic is "abuse of state authority to obtain personal gains"[161] which emphasis corruption within the public sector as the most common form. Subject to this definition, scholars believes that corruption entails bribing, extortion, appropriation, nepotism, public assets use for personal benefits and trading in influence[162].

A proper definition of corruption is given by the Civil Law Convention "On corruption", ratified in Albania by law no. 8365, dated 06.07.2000. Pursuant to article 2 of this Convention, the term corruption means "requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof".

Although studies and surveys related to corruption have been largely carried out, the identification of a clear perspective as to its spread dimensions appears difficult. This difficulty is linked to the perception of citizens on corruption which commonly, does not coincide with its legal meaning. Such a difficulty has been evidenced by organisations conducting surveys on the spread of corruption and its scale of perception. These surveys have found that citizens consider a form of corruption even the cases which do not comprise corruption, for example, florists raising the price of flowers on holidays[163]. Additionally, there is a confusion related to the terminology of the corruption definition and between the terms "bribe" and "tip", which terms are usually used under the same context despite their different meaning[164]. Same surveys show that when judging the parties involved in corruption scheme, Albanians tend to tolerate more the payer rather than the payee of bribe[165].

Special considerations was shown after 2007 to prevent corruption practices in sectors such as civil services, public procurements etc. It is believed that due to such measures,

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[160] The conducted surveys show that the Albanian society often reacts on the basis of personal relationships rather than on the basis of professionalism and transparency. For further detail, refer to Daniela Irrera, The balkanisation of politics, crime and corruption in Albania, European University Institute, EUI Working Paper, RSCAS 2006, pg. 10.

[161] Definition adopted by the World Bank, www.worldbank.com

[162] U, Mynit, Corruption, Causes, consequences and cures, Asia Pacific Development Journal, Vol. 7, No.2, December 2000, pg. 35 (http://www.unescap.org/DRPAD/publication/juornal-7-2myint.pdf).

[163] Conclusion evidenced from an IDRA survey, where some 25% of the interviewed considered such a phenomenon as a corruptive act that must be punished. For further detail refer to IDRA survey, cited study, pg. 2, and SIDA, Albanian Anticorruption Study, 2008, cited study, pg. 58.

[164] SIDA, Albanian Anticorruption study, 2008, cited study, pg. 58.

[165] For example, a student who gives a gift to a teacher in the hope of obtaining a higher mark is considered as not corrupted (35.4%), or as justified (34.7%). For further detail refer to IDRA survey 2009, cited study, pg. 4.

the public's experiences linked to corruption have decreased in number[166]. In 2011, Albania was ranked the 95th amongst 183 studied countries, scoring 3.1 which show a small improvement compared to 2010[167]. This situation comes as a consequence of the adopted measures to fight corruption in all its forms, whereby a key role was played by the criminal legislation and the legal reform in general.

The historical background of criminal provisions related to corruption

A proper legal treatment of criminal offences relevant to corruption was found in the Criminal Code of King Zog[168]. This category of offences was provided under Article 192-199, Chapter III and included both concepts of accepting and taking bribes. With regards to the payee, subject to criminal liability is the public official who acquires such benefits not entitled to obtain. Accepting a bribe is additionally punishable both when it includes an action in accordance with regular execution of duties and an action of the public official which consist of violating such duties. These provisions are very detailed and feature a system of rigid sanctions[169]. In each case, severe imprisonment and fines are provided. Since the payee is a public official, the prohibition to exercise public functions was an additional sanction applied to this category. Paying bribes was condemned under Article 196 of the Criminal Code, whereby any action of giving bribe or acting as an intermediary thereto was sanctioned.

After the war, communism was established in Albania. The newly adopted Criminal Code[170] was characterised by severity and ideology, clearly evidenced by the treatment of such few criminal offences related to corruption. This category is provided under Chapter VIII, "Crimes on Performance of Duties". Corruption related crimes are provided under two articles, article 204 and article 205 of the Criminal Code, respectively stating the crime of giving and accepting bribe. The terminology used in such case is the same old language used in corruption acts as the one of the Criminal Code of King Zog.

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[166] Surveys show that the number of interviewed people that have had an experience of corruption during 2009 was about 5% lower than in 2008 and about 9% lower than in 2005. For further detail, refer to IDRA survey 2009, cited study, pg. 19.

[167]Based on the Corruption's Perception Index for 2011, estimated for 183 countries, Albania achieves 3.1 points down from 3.3 points in 2010. In this way, Albania ranks 95-th, compared to the 87-th place the previous year, thus going down by 10 places in the ranking than in 2010. For further detail, refer to Transparency International, Corruption Perception Index 2011, cited study, pg. 3.

[168] This Code entered into force since 1927, with the ordinance no. 83/1, dated 28.05.1927 of the Presidency of the Senate.

[169]In some cases, for bribery it was envisaged a severe punishment of no less than 15 years. For further detail, refer to Article 194/4 of the Criminal Code of the King Zog.

[170] Adopted with Law no. 470, dated 23.05.1952.

The act of accepting bribe was characterised by the fact that it was performed due to the public function; it was even considered a qualifying circumstance if such person served specific duties[171]. Subject of the crime was the public official[172].

The dictatorship had already strengthened its position by the time the new Criminal Code of 1977 was adopted[173]. It did not present any substantial change; rather it emphasized further the political and ideological influence compared to the previous Code. Due to this political trend, a different terminology was introduced regarding economic crimes, such as the term "public and social property" was replaced with the term "socialist property". This shows the ideological nature of and legal treatment to private property - which almost did not exist[174]. Concerning the criminal act of corruption in the public sector, no distinguishable changes occurred, except for the system of punishment that became more severe[175].

After the collapse of the communist regime, the advent of democracy system imposed the task of reviewing the legislation. Before the adoption of the new Criminal Code, few attempts were made to customize criminal offences in the field of corruption with the new reality[176].

The introduction of the new Criminal Code[177] was an important step towards the change of legislation. This code represented a new perspective on treating criminal offences in accordance with democratic principles.

Harmonization of domestic legislation with international standards

Criminal Code's amendments resulted from the requirements to comply with international developments and harmonization of domestic legislation with international standards.

In order to comply with such international developments, the Albanian Government ratified numerous international acts in this field and joined international anticorruption initiatives. Concerning the Council of Europe, Albania ratified during 2000-2001, Civil Law

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[171] According to Article 204 of the Criminal Code of year 1952: " Taking bribes with extortion and for more than one time or from an individual entitled with high authority, is punishable with imprisonment up to 10 years".

[172] In order to avoid any deficiency in the practical implementation of the mentioned dispositions, article 198 of the Criminal Code, gave the definition of public official as "people carrying permanent or temporary functions in the state institutions and enterprises or social organizations entitled by law with particular duties, rights and competences for the realization of the economical, administrative, professional tasks, as well as other social duties".

[173] Adopted with Law no. 5591 dated 15.06.1977.

[174] Chapter Two, "crimes against the socialist property", articles 61-68.

[175] Criminal Code of year 1977, Article 109.

[176] Prior to the approval of the Criminal Code of year 1995, amendments in the field of criminal offences against corruption are made with Law no. 7533, dated 30.01.1992. This law added article 60/a of the Criminal Code of year 1977, which envisaged political corruption. For this criminal offence it was prescribed punishment with imprisonment for no less than 10 years. For further detail, refer to Elezi.I, (1998), "The historic development of criminal legislation in Albania", Tirana, Albin, pg. 119.

[177] Approved with law no.7895 dated 27.01.1995.

Convention "On corruption"[178], Criminal Convention "On corruption"[179] which comprises important aspects in order to reform the criminal legislation[180] and its additional protocol[181], and later on, the United Nations Convention "On corruption"[182].

After the democratic changes, Albania became part of international regional activities in the fight against corruption, such as member of GRECO (Group of States against Corruption of the Council of Europe) and SPAI (the Stability Pact Anti Corruption). Furthermore, it participated in various Anticorruption Plans in South-Eastern Europe (PACO), as well as in other plans implemented by international organizations operating in Albania.

In respect of these undertakings, the criminal offences of corruption provided by the new Criminal Code have been changed in such way so as to comply with international legal acts[183]. With respect to criminal offences in the field of corruption, the Criminal Code has been amended mainly by law no. 9086, dated 19.06.2003, law no. 9275, dated 16.09.2004, and law no. 9686, dated 26.02.2007.

The provisions of these amendments have improved concerning their content, specifications and the sanctions became more severe. Changes have also occurred in respect of the terminology, whereby the old terms of accepting and giving bribes were substituted with the terms "active corruption" and "passive corruption".

Additionally, the Criminal Code is enriched with other clauses in the view of the fight against corruption in the public sector. More specifically, the new Criminal Code contains new provisions concerning active and passive corruption of high state officials or local authority electives, which provisions were not included in the past.

A detailed analysis of this provision will follow below.

With law no.9275, dated 16.09.2004, the content of the existing provisions of the Criminal Code which consist on the active corruption and passive corruption of public officials have been improved[184]. In order to comply with the nature of such a criminal activity aiming at procuring undue personal profits or undue profits for the benefit of third parties, the systems of sanctions is adapted thereby and provide both, imprisonment and fine penalties.

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[178] Law no. 8635 dated. 06.07.2000, "On the ratification of the Civil Convention on Corruption".

[179] Law no. 8778 dated. 26.04.2001, "On the ratification of the Criminal Convention on Corruption", amended;

[180] Hysi.V, (2007), "Albanian Criminal Policy in the field of corruption's acts", "Juridical Studies", no. 1, Pegi, Tirana, pg. 41;

[181] Law no. 9245 dated 31.03.2006, "On the ratification of the additional protocol of the Criminal Convention on Corruption".

[182] Law no. 9492 dated. 13.03.2006, "On the ratification of the UN Convention on Corruption.

[183] The Criminal Convention "On corruption", imposes for member states a set of legislative measures which in their majority have been reflected in the new criminal legislation.

[184] Article 259 of the Criminal Code, amended with Law no. 9275, dated 16.09.2004, envisages the following formulation for passive corruption of persons who exercise public functions: "Soliciting or taking, directly or indirectly, by a person who exercises public functions, of any irregular benefit or of any such promise for himself or for a third person, or accepting an offer or promise deriving from an irregular benefit, in order to act or not act in the exercise of his duty, is punished with a prison term of two to eight years and a with a fine from 500,000 to three million Lekë".

Another aspect of the amendments was the expanding of the category of persons subject to criminal liability to high state officials and local electives. This was achieved by adding new forms of corruption provisions, such as active and passive corruption of high state officials and local electives (Article 245 and 260). Therefore, it is possible to incriminate corruption practices occurring within high levels of public administration and local authority electives, such as the head of municipality, communities etc.

The Criminal Code introduced the liability of persons who illegally influences on the performance of duty and decision-making of public officials. In such way, it is penalized the activity related to "trading in influence", or the so-called in legal terminology "illegal influence". This form of corruption is specifically provided under Article 245/a[185]. This change is in accordance with Article 12 of the Criminal Convention "On corruption" which requires the insertion in the domestic criminal legislation of forms of illegal influence. The formulation of this clause triggers the sophisticated forms and mechanisms, mostly occurring indirectly, of this corruption act. In this respect, it is not unusual for common citizens or public officials to use their skills to illegally influence on the decision-making of public officials.

It is positive that criminal liability arises whether the criminal consequence has occurred or the illegal influence has been exercised or not. Exhausting the act of actually promising, offering or giving an undue profit and requesting, taking or accepting it, is enough to commit a criminal offence.

The occurrence in practice of forms of corruptive acts and the fight against it brought about an increased public awareness regarding suing cases of corruption and collaboration with justice authorities. Therefore, pursuant to rules of Article 28 of Criminal Code, there is an opportunity to be exempted from punishment or awarded a lighter one, in case the person reports such crime of corruption or assist the criminal proceedings related thereto (Article 245/2)[186].

The clause encourages all persons who have participated in corruption practices by giving or promising rewards or other benefits to report and help with the prosecution of such crimes. In order to incentivise citizens to report a crime quickly and before the arrival of criminal consequences, the last paragraph states that the court should consider also the time when the crime was reported and whether the consequences have arrived or

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[185]With law no. 9275, dated 16.09.2004, it is added article 245/a, with the following formulation:
"1. The direct or indirect proposal, offer, or giving an irregular benefit, for himself or a third person, to the person who promises and guarantees that he is able to exercise illegal influence on the accomplishment of the duties and on taking of decisions by the Albanian or foreign public functionaries, no matter whether the influence has been actually exercised or not and no matter whether the desirable consequences have occurred or not, is punished with a prison term from 6 months up to two years and a fine from 300,000 to one million Lekë.
2. The direct or indirect soliciting, receiving, or accepting whatever irregular benefit for oneself or a third person, by promising and confirming the ability to exercise illegal influence on the accomplishment of the duties and on adoption of decisions by the Albanian or foreign public functionaries, no matter whether the influence has been actually exercised or not and no matter whether the desirable consequences have occurred or not, is punished with a prison term of 6 months up to four years and a fine from 500,000 to two million Lekë"

[186] According to Article 245, as added with law no. 9275, dated 16.09.2004, « The person, who has promised or given reward or other benefits, in accordance with Articles 164/1, 244, 245, 312, 319 and 328 of this Code, may benefit from exemption from the sentence or the reduction of it in compliance provision of Article 28 of this Code, if report and give a contribution in the criminal proceeding of these crimes.
In giving this decision the court considers the time when the denunciation is done, the occurrence or not of the consequences of the crime".

not. In light of these factors, the court may apply a punishment below the minimum provided by law or exempt such person from punishment.

As it concern the provision of disposing the products of crime, even though it is not directly related to the crime of corruption, we believe it contributes to the fight against this activity. This clause was previously called "Disposing of assets" and it has been amended by law no.9086, dated 19.06.2003. It is actually provided under Article 287 of the Criminal Code. The content of the new clause is very detailed and it comprises all forms of disposing of cash resulting from criminal activities in order to eliminate the origin, nature, source or location of the product of a crime.

Another way to prevent money laundering, product of a crime is by penalizing the "opening of anonymous accounts" under Article 287/a, of the Criminal Code, These provision of Criminal Code becomes crucial, especially after the adoption of law no. 8610, dated 07.05.200 "On the prevention of money laundering".

The position of the above provisions within the section of crimes against order and security aims at the fight against crimes of high social danger, such as traffic of narcotic substances, weapons, munitions etc. We believe that these can serve as a tool to fight the crime of corruption, particularly to discover the assets or any other benefits resulting thereby. It should be noted that the Convention "On corruption" links the dispose of products of crime directly to corruption acts[187].

Also, some forms of power abuse are related to the corruption practices which are penalised by the Criminal Code, like "abusing with state granted contributions"[188], or "unfair treatment of participants in tenders and public auctions"[189]. Under the framework of the Criminal Code reform, these provisions should have been amended which was necessary to unify the terminology so as to be in harmony with its other provisions, including the amendments to the part of sanctions. Recently, some legal initiatives have been carried out concerning further amendments to the Criminal Code on the inclusion of other forms of corruption acts, like active and passive corruption of foreign public agents and officials of international organization, illegal enrichment etc, with the purpose of achieving full compliance of the Criminal Code with international acts in the field of corruption. As of the moment, these provisions have not been applied to practice yet.

Anticorruption measures in the field of public administration

In addition to amendments of the Criminal Code, the fight against corruption is reflected also in the adoption of specific anticorruption legislation. The purpose of such legislation is to provide obligations, prohibitions and procedures which enable the prevention and scourge some acts related to corruption in public sector. It is worth mentioning hereunder:

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187 Article 13 of the Criminal Convention on Corruption, envisages the obligation for any member state to take the appropriate legal measures for defining in the internal legislations of the criminal offence of "money laundering from corruption acts".

188 Criminal Code, Article 256.

189 Ibid, Article 258.

- Law on public procurements which provides new procedures to increase transparency in the tendering procedures preventing thereby, chances of corruption acts in the procurements process[190];
- Law which guarantees the collaboration of the public to the to fight against corruption[191];
- Law which prohibits conflicts of interests in the public sector[192];
- Law which regulates the responsibility and obligation of public officials to declare their incomes and assets[193].

Due to its particular importance, we will provide a short analysis on the law on declaration and audit of assets. The law has been amended in order to improve its content and range of implementation. The scope of the law is the establishment of rules for public officials on declaration and audit of assets and legitimacy of their source. The law determines a wide range of entities who are obliged to declare their assets, from the high state officials, such as the President, members of Parliament, Prime-minister and deputy prime minister, ministers and their deputies, heads of local authorities etc. to mere employees of public administration. Regarding public administration employees, the obligation to declare lies mainly within such category of employees who supervise and administer public funds and collect state revenues. Simultaneously, this declaration is mandatory also for representatives of justice authorities, prosecutors, judges and bailiffs[194].

In contrast with the previous law, this obligation is extended to family and related persons[195] of public officials who are obliged to declare their assets whenever requested.

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[190] Law no. 9643, dated 20.11.2006, "On Public Procurement", amended. According to Article 26 of this law, one of the cases when participation in a tender may be refused is the one when the tenderer or candidate gives or promises to give, directly or indirectly, to an official or employee a reward in any form, as an incentive for an act, decision or procedure, undertaken by the contracting authority for the procurement procedures.

[191] Law no. 9508 dated 03.04. 2006, "On the public's cooperation in the fight against corruption".

[192] Law no. 9367 dated 07.04.2005, "For the prevention of conflict of interests in the execution of public functions", amended.

[193] The obligation for property declaration initially was sanctioned by Law no. 7903, dated 08.03.1995, "For the declaration of properties belonging to the elected and some directors and employees of the civil service". The deficiencies of this law caused problems in its' implementation, a reason for which was approved Law no. 9049, dated 10.04.2003, "On the declaration and audit of assets, financial obligations of the elected and certain public officials", amended, which continues to be into force.

[194] Idem, article 3.

[195] Based upon article 2/4 of the law: "Person related to an official" is every natural or juridical person who, from administrative research turns out to have or to have had ties of interest with the official bearing the duty do declare, in one of the forms sanctioned by the law.

To avoid any doubt, the law defines the assets, financial obligations and their source of creation, subject to declaration[196].

In order to implement the law in practice, one of main institutional measures in this regard is the establishment of a sustainable and permanent competent mechanism for the management of the declaring process and auditing the assets pursuant to the requirements of the law, that is, the High Inspectorate of the Declaring and Audit of Assets (HIDAA) [197].

Despite the obligations of this law, until 2003, the cases of non-declaration or fraudulent declaration of assets were regarded only as an administrative offense rather than a criminal offense. Therefore, thanks to the amendments of 2003 of the Criminal Code, Article 257/a[198] was added which establishes the criminal liability of local electives or public officials who refuse to declare, do not declare, hide or make fraudulent declaration of their assets. In order to guarantee its practical implementation, the High Inspectorate of Declaring and Audit of Assets has proposed an amendment to Article 257/a of the Criminal Code consisting on extending the group of entities subject to criminal liability to "persons related to the declaring public official"[199]. This proposal is not duly incorporated yet within the Criminal Code. We believe that establishing criminal liability also on related persons will be a positive step for the guarantee of transparency on the assets of public officials and the sources of such assets while avoiding hiding their origins and sources.

Conclusion and Recommendations

After democratic changes, Albania has joined international and regional developments by ratifying a numerous international instruments in the field of corruption. According to such developments, efforts have been made to complete the entire legal framework so as to restrain practices of corruptions. Regarding the specific measures taken against corruption, an important role is played through the harmonisation of legislation with conventions on corruption, especially the amendments of criminal legislation as the most important tool against corruption. Nowadays, the legislative measures imposed by the international conventions are reflected almost entirely within the new criminal legislation.

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[196] According to this law object of declaration shall be:
a) immovable properties and real rights over them;
b) movable properties that can be registered in public registers;
c) things of special value over US$ 5000;
d) the value of shares, securities and parts of capital owned;
e) the value of liquidities, the condition in *cash*, in revolving accounts, in deposits, treasury bonds and loans, in lekë and in foreign currency;
f) financial obligations to natural and juridical persons, expressed in lekë or in foreign currency;
g) personal income for the year, from salary or participation on boards, commissions or any other activity that brings personal income;
h) licenses and patents that bring income.

[197] The High Inspectorate of Declaration and Audit of Assets, started functioning on the basis of law no. 9049, dated 10.4.2003 " On the declaration and audit of assets, financial obligations of the elected and certain public officials ".

[198] Added with law no. 9030 dated 13.03.2003.

[199] Disposition 257/a of the Criminal Code, "Refusal for the declaration, hiding or false declaration of elected persons and public employees", did not solve the refusal consequences of the person related to the declaring subject, because to this form of criminal offence is subject only the declaring official and not the persons related to him/her. For further detail, refer to The High Inspectorate of Declaration and Audit of Assets, Annual Report of the General Inspector", for year 2009, pg. 4. (www.hidaa.gov.al, accessed on 01.12.2010)

Therefore, short-terms priorities of the Albanian government are fulfilled pursuant to the Stabilisation and Association Agreement (SAA)[200].

In accordance with these priorities, the Criminal Code was changed and improved in a large scale, especially in 2001, 2004 and 2007. These amendments have improved the content of the clauses and have added to the Criminal Code new forms of corruption acts in compliance with its occurrence in practice.

Although the legal framework is substantially improved, the fight against corruption remains a major challenge for the public authorities and Albanian society in general. Additionally, it is usual in the everyday practice, corruption acts such as nepotism or clientelism relations.

Reasons to this situation are different. The several legal amendments have caused difficulties in their actual implementation. Legal reform, although oriented towards compliance with international act, has not been completed. Legislative interventions should be carried out, especially related to the improvement of conflict of interests and assets declaration laws. Also, the Criminal Code shall be amended with other forms of corruption such as, corruption of foreign agents or representatives of foreign organisations which are actually missing in the Criminal Code. Additionally, proposals to extend criminal liability to related persons with the public officials in cases of non-declaration or irregular declaration of assets have not been incorporated yet.

Obviously, legal reform is closely related to the management of criminal justice. The active role of justice authorities in the implementation of law remains the most important aspect in the fight against corruption because it is the duty of these authorities to apply and make the criminal law efficient. It is not uncommon in the everyday practice a deficient application of criminal law by justice authorities.

Difficulties increase also due to the low number of criminal reports of corruption cases by citizens and issues related to providing evidence thereon[201]. In consequence, judicial police, prosecutors and judges shall be specifically trained with respect to corruption and its co-relation with other crimes. The School of Magistrates has made steps forwards through organising training activities for judges and prosecutors. Also, several trainings are conducted for police structures under the framework of projects such as PAMECA III, OPDAT, PACA etc[202]. The importance of these trainings also lies on the fact that the investigation of corruption cases requires the use of special investigation techniques for collecting evidence. The establishment of the necessary infrastructure and the increase of collaboration between justice authorities and other state authorities are important aspects in the fight against corruption. Political bias in the appointment process and the lack of guarantee in holding a job position in the public administration remains a threat for further corruption. This gives rise to irresponsibility and corruptive acts. Therefore it is necessary

[200]Council of Ministers, The National Plan for the Implementation of the Stabilisation and Association Agreement, point 1.1.6., "Fight against Corruption, June, Tirana, 2006.

[201] "Increasing the Albanian Citizens' access to the justice institutions for improving law enforcement, as the most important mean to fight against corruption", publication of the Centre for Legal and Civil initiatives, Tirana, June 2007, pg. 18.

[202] These treatments have started since year 2011 and will continue also for the remaining period. For further detail, refer to the Action Plan for 2011-2013 of the Intersectoral Strategy of Prevention, fight against corruption and transparent governance", cited publication, point 4.1.

to promote integrity and honesty of public officials by applying rigorously the law. Additionally, it is necessary to amend law "On civil servants" especially regarding the procedures of recruitment and promotion, in order to increase the integrity and professionalism of public officials[203].

On the other hand, full immunity of high state officials is a obstacle in investigating cases related to corruption. Even though several attempts have been made to lift such immunity, their legal value is disputable. The immunity of high state officials, such as members of the Parliament, ministers and judges pursuant to the Constitution of the Republic of Albania, causes the need for constitutional amendments not consented yet.

In accordance with GRECO[204], recommendations, preventive measures shall not be limited only to laws; rather they shall include a political, social and economic perspective. Taking into consideration Albanian reality, the issue of corruption requires a general commitment through a system of social reforms which should aim not only at the minimisation of corruption acts but also at a general alternation of behaviour and perception concerning corruption, it being a harmful practice which shall be scourged and not a lifestyle.

In this respect, media is the most powerful tool in increasing public awareness. In general, the role played by the media related to this phenomenon has been positive in Albania. Indeed, in some cases the media was the main initiator in the beginning of investigations by the justice authorities on cases related to public officials' corruption. This perception on the role of media in the fight against corruption is also demonstrated by the public[205].

Besides, the role of civic society is important in determining the recognition of the phenomenon and the increase of public awareness against it. Generally, the participation of the civic society is focused in the supervision of anti-corruptive measures and conducting surveys on corruption practices. Nevertheless, the civic society shall be more active with the scope of increasing pressure on state authorities and public credibility.

The fight against corruption is both multidimensional and extended in time. Obviously, the aforementioned reforms will not eliminate corruption, but they will contribute towards its minimisation and control in order to make steps forwards and become a European, developed and democratic country.

Since it consists on a phenomenon which directly or indirectly affects the whole society, the fight against corruption requires the involvement of all of its members and the coordination of activities of all the actors to implement policies aiming at fighting corruption.

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[203] These changes, are envisaged in the Action Plan for years 2011-2013 of the, of the Intersectoral Strategy of Prevention, fight against corruption and transparent governance", and should be accomplished within year 2012. For further detail, refer to Action Plan for years 2011-2013, cited publication, point 3.

[204]Evaluation Report on Albania approved by GRECO, in the second plenary meeting in Strasbourg, 9-13 December 2003.

[205] From a survey conducted by IDRA in 2009, media emerges as the only institution evaluated by the public as helpful in the fight against corruption, evaluated with 63.6 points. This perception has improved with 4.2 points in relation to the survey conducted in 2005. For further detail, refer to IDRA survey 2009, cited study, pg. 13.

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Media law and digitalization. Legal landscape of media and digitalization. Benefits and challenges. The case of Albania.

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Abstract

During 1945-1990, Albania had only a state network for radio and television, a network totally controlled by the communist power. After 90' the situation changed. Today, the Albanian electronic media market has about 56 radios and 90 televisions, 64 cable tv, 5 satellite networks. The Albanian law of 1998 on public and private radio and television aimed to regulate the chaotic electronic media, to set some rules for the licensing process, to determine the competencies of the regulatory authority, etc. This existing law, does not reflect the development of the electronic media in Albania. The other law on digital broadcasting, adopted in 2007, was not applicable for the Albanian media reality. However, the digital broadcasting is a reality in Albania, a reality not provided and regulated by law. The need for a new integrated law is evident and it is expected that the Albanian Parliament will approve this law this year. Also, Albania faces the challenge of digitalization, as an international obligation and also as a need to regulate the media market. What is the situation of Digitalization process in Albania? What the draft strategy on digitalization provides for? What are the specific problems for the digitalization process in Albania? What seems to be the benefits and challenges? What seems to be the best ways to achieve the objectives in this field? These are the questions that aim to answer this paper.

Keywords: digitalization, electronic communications, media, content, network

Introduction

The freedom of expression as a cornerstone in the conception and functioning of democratic societies based on respecting of human rights, among its main elements has the freedom of individuals to receive information, the freedom to give information and the freedom of media to take and provide information.

The last one is always treated as a right in itself, because of the special role that media plays in a democratic society. Freedom of media remains a process of fulfillment of components of a wider nature, dealing directly with the respecting of human rights and the functioning of rule of law in a democratic society.

The "privileged" position of media in a democratic state is guaranteed, as it's exactly the media that makes the government power more tangible for people, more controllable and transparent. Media affects that individuals engaged in the three powers, such as elected or official people, could have some new qualities. They are closer to the media, more

communicative with people, more careful in fulfilling their duties and functions as well as in their private or other public commitments.

Media is also an important bases for controlling and judge how the functionaries in power, exercise their public authority and how they manage their public founds. Guaranteeing the freedom of media among other things reduces the possibility of manipulation of public power as well as encourages the identification of cases of corruption. The powerful weapon of media is the continuous criticism toward negative phenomena that threatens democracy as a form of government.

Article 10 of the European Convention on Human Rights underlines the importance of freedom of expression, but also foresees that the regulation of broadcasting does not constitute a violation of this freedom. The European Court of Human Rights states that the manner of implementation of the licensing requirements in the licensing process should provide sufficient guarantees against arbitrariness, including proper justification by the licensing authority for decisions that refuse broadcasting licenses.[206]

Nowadays, rapid technological developments and the electronic communication convergence, media capabilities and electronic equipment, are creating a dynamic environment in which the spectrum is becoming more and more an important source.

In this context, digitization is likely to provide more opportunities for pluralism and diversity in the broadcasting field, as the specter provides more users than the analogue system. However, especially in the initial stages, digitization includes risks such as monopolization and cementing of the existing problems in the field of broadcasting. Digitization itself will not solve the problems of lack of pluralism or other problems that arise due to lack of media freedom or because of political interference in the media field.

The current audio-visual landscape in Albania

During the communist regime, Albania had only the state network for radio and television. The development of Albanian media signifies a great aspiration for freedom after 45 years of dictatorship. (1945-1990).

Albania has a small territory, but nowadays it presents a very rich and dynamic audiovisual landscape.

According to official data, currently audiovisual environment in Albania is quite rich (numbering about 56 radio and 90 television analogue operators, 64 cable tv, 5 satellite networks).

This has been made possible through legal procedures and relatively not restrictive criteria of licensing, but also because of the liberal politics that the regulatory authority followed. On the other hand, the ownership restrictions on radio and television that are foreseen in the legislation into force are another factor that guarantees this kind of pluralism.

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[206] Among some cases can be mentioned *Nadezhda EOOD dhe Anatoliy Elenkov kundër Bullgarisë*, nr. 14134/02 dhe *Meltex Ltd dhe Mesrop Movsesyan kundër #Armenisë*, nr. 32283/#04.

The Albanian particularity lies in the fact that there are more local televisions than local radios, indicating a bigger interest of Albanian people for television.

The lack of systematic surveys and researches on audience makes it difficult to valuate the place that are occupied in the marked by different Albanian operators. It also remains difficult to valuate the coverage of the territory by them. Efforts to monitor the television audience were made between 2001 and 2003. These surveys do not cover the whole country or all television stations and are limited in time, therefore can be used only partially. On the other hand, there are no audience studies or surveys on the radio industry, which would reflect the relative importance of television in comparison to radio.

Public radio and television [207] , covers most of the territory: Radio Tirana (RT) covers 80.5% of the territory, and the Albanian Television (TVSH), which broadcasts on two channels, covers 73% and is the only national television. There are no data regarding the coverage of the population, so the difference between public and private broadcasters may be less important than it looks.

The Private TV sector[208] has grown rapidly lately, and in the absence of regulation has been characterized by disregard of the law. Even after the rules were established, the regulatory body has not always succeeded to establish his authority over electronic media, although it has achieved some important successes. Although the television market, like any other media market in the country, is almost deformed by a large number of television stations that can't be kept by the small market, again only a few stations have closed their doors.

The importance of private television has increased even due to the poor performance of the public broadcasting, which has failed to reform itself into a true public broadcaster. On the other hand, commercial television which mostly are located in Tirana have benefited from large investments, particularly in relation to equipment, becoming so popular and important in the public eye. However, even these operators have not managed yet to become sustainable, given that advertising income occupy only half of the annual income, making it clear that the television market is still far from being independent and stable.

Currently there are two private national television stations (TV Klan and Top Channel), which cover approximately 65% of the territory of Albania as well as two private national radio stations, which cover about 80% of the territory of Albania.

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[207] The public television currently broadcasts:- 1 national terrestrial analogue television program: TVSh - 1 satellite program - 3 regional terrestrial analogue television programs (Shkodër, Korcë and Gjirokastër) - 3 audiovisual regional programs (Shkodër, Gjirokastër, Korçë)

[208] • Private audiovisual sector, is composed by the below mentined subjects licensed by NCRT:• Radio:• 2 national radios (Top Albania Radio; +2 Radio); • 54 local radio. Television:• 2 national channels (Klan TV; Top Channel);• 88 local channels (that cover one city till 4 localites).• 64 cable operators.• 5 stellite networks(ALSAT, Vizion +, DIGITALB, Supersport dhe TRING)

Digital broadcasting in Albania, originated in July 2004. Although this situation has developed beyond any legal framework, now days digital terrestrial television is a reality in Albania.

The situation of terrestrial digital broadcasting continues to be unregulated, consequently uncontrolled. Operators of terrestrial digital broadcasting operate without the appropriate license that specifies terms and conditions of service, as well as relevant financial obligations, distorting the market and damaging the analogue licensed operators.

However, operators of digital terrestrial broadcasting, including operators with significant expansion in the territory of Albania, are really the determining factors for digital broadcasting in Albania, that's why from the activities and knowledge they occupy a undeniably position in the process of transition into the numerical broadcasting in Albania.

Obligations deriving under the Stabilization and Association Process (SAP)

The field of audio-visual policy has a special importance in the process of our integration into the EU, due to significant liabilities arising from the Stabilization and Association Agreement. Article 102 of the SAA, "Cooperation in the Audio-visual" sets some directions for cooperation in this field[209].

Not only this agreement, but also other documents that monitor the process of Albania's membership in the European Union, such as the European Partnership or the European Commission's annual reports on the situation in Albania, determine that a key priority in the audiovisual field is the harmonization of the audiovisual legislation with the acquis communautaire and European standards.

More specifically, in these reports is highlighted the fact that ".... legal framework is not harmonized with the Directive for Audiovisual Media Services and it fails to provide some of the key standards, such as guaranteeing the independence of the broadcasting regulatory authority and the public service broadcaster .....".

The transition to digital broadcasting should be in accordance with the agreement of cooperation and association, respect the norms of planning and broadcasting as well as respect European Union policies regarding the modalities of transition from analogue to digital broadcasting.

Analysis of the existing legal framework

In the field of audiovisual media, the Assembly of the Republic of Albania is responsible for making the policy and the National Council of Radio and Television (NCRT) is the regulatory authority that monitors the rule of law.

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[209] Article 102 of SAP foresee:1. Cooperation to promote the audiovisual industry and encouragment of cinematographic and audiovisual cooproduction,2. Cooperation for training media profesionals, 3. Harmonisation of the legislation with "acquis communautaire" and with the policies of regulation of content implementet by the European Union, especialy with the rules of intelectual property implementet by the programs and broadcasting in Albania.

The Constitution of the Republic of Albania in its Article 22 guarantees the protection and respect of freedom of expression. In accordance and pursuant to this section of the Constitution, have been adopted a series of laws that regulate the activity of the media field, the most important are: Law No. 8410, dated 30.09.1998, "On public and private Radio and Television in the Republic of Albania ", amended, and law no. 9742, dated 28.05.2007 "On Digital Broadcasting in the Republic of Albania".

Law no. 8410, "On Radio and Television in the Republic of Albania", as amended, is drafted to regulate the activity of Radio and Television in the Republic of Albania in accordance with democratic standards of operation of electronic media. In this law are embodied the basic principles of operation of public and private electronic media sanctioned by the following international acts: the European Convention on Transfrontier Television, Recommendation of the Council of Ministers of the Council of Europe for electronic media, basic documents issued by European Union of Radio televisions (European Broadcasting Union, EBU) Recommendations adopted by Article 19, International Centre against censorship (Article 19 International Centre Against censorship), as well as documents prepared by the International Federation of Journalists (IFJ).

Despite the many changes that have occurred , the law is unable to handle and discipline the rapid technological developments occurring in the field of audiovisual media. A number of very important issues have not found regulation in this law, where one of the most important issues is digital broadcasting.

Until 2007, Albania has not foreseen in any legal act the functioning of digital broadcasting. Meanwhile it was established a broadcaster that operated in the field of digital broadcasting (DIGITALB), which was acting without a legal base and unlicensed from NCRT. In May 2007, it was adopted the law on digital broadcasting, the purpose of which was to regulate licensing in this field.

Law no. 9742, dated 28.05.2007, "On Digital Broadcasting in the Republic of Albania", was drafted with the purpose to regulate the operation of digital broadcasting in the Republic of Albania. This law was approved in the framework of commitments under the Stabilization and Association Agreement in respect of ensuring competition in the communications networks as well as within the framework of approximation of legislation in this field with the acquis communautaire (Articles 70 and 102 of the SAA). Despite the innovation that brings, this law is considered insufficient to regulate the audiovisual media sector and to ensure the success of the digital transition in Albania.

Under the law 8410, cable TV operators must obtain a broadcasting license, this provision has brought criticism from many international organizations. The legislation also has lack of provisions for the regulation of audiovisual services on-demand and on-line. Furthermore one of the main lacks is that the transition from analogue to digital system is impossible to be made without changes in legislation.

The process of digitalization in Albania as well as in the other countries of the region should be achieved, as fulfillment of international obligations and as the need for development of the electronic media. This is one of the main reasons that brought the need for a new law on audiovisual services.

The necessity for changing the legislation relates to the fact that the basic law on electronic communications, the law no.9918 dated 19.5.2008 is in compliance with EU directives that recognizes the general authorization regime and the law dated 8410. 30.9.1998, as amended, "On Television in the Republic of Albania" is considered exceeded and law dated 9742 law. 28.5.2007 "On digital broadcasting in the Republic of Albania", is unenforceable for a number of lacks highlighted by local and foreign and specialists.

Currently, the Albanian Parliament is completing the process of drafting a new law on audiovisual services in the Republic of Albania. This bill is drafted considering the best experiences of European countries and makes a comprehensive approach with a series of directives, especially with AVMSD. Also, in this bill is resolved the problem of cable operators who can already function only with an authorization without the need of license. The draft law aims to achieve a full approximation with Directive AVMSD[210]. At the same time it makes a full approximation with the requirements of the Directives package for electronic communications in connection with radio and television broadcasts, in particular with the requirements of the Framework Directive, 2002/21/EC as amended by Directive 2009/140/EC, Directive Authorization , as amended by Directive 2002/20/EC and 2009/140/EC, Directive 2002/19/EC as amended access to the Directive 2009/140/ EC, and universal service Directive 2002/22/EC as amended by Directive 2009 / 136/EC. The draft makes a full transposition of the conditional access Directive 98/84/EC.

However, a major handicap remains the point when this law will be adopted, as it is not approved yet the Strategy for transition from analogue to digital broadcasting. The lack of this strategy, which has concrete objectives and ways of achieving them, which will determine among other necessary changes in the legal framework, complicates the implementation and sustainability of the new law that will be adopted.

It would be necessary to coordinate the process of adopting the Strategy of transition to digital broadcasting with the process of adopting a new law regulating the audiovisual sector.

The Strategy and the process of digitalization

Albania has been working for a long time to finalize the strategy of transition to digital broadcasting. In 2008 the Prime Minister, created an ad hoc committee "to draft the strategy of transition from analogue to digital broadcasting." This committee is chaired by the Minister of Innovation, Information and Communication Technology, and his goal is to "examine and evaluate the proposals of the technical group for the best strategy of transition into digital broadcasting in Albania".

The Committee has begun the work to review the "draft strategy of transition to digital broadcasting" prepared by the media regulatory authority.

The Albanian Strategy of digitalization makes considerable efforts to predict, analyze and propose solutions to typical problems faced by regulators in member countries of the EU when they began to deal with the issue of digitalization: how to finance the transition from analogue to digital broadcasting, how to ensure an efficient public broadcasting service, how to deal with local broadcasters, as the built tenders / auctions for issuing the

[210] Audio Visual Media Service Directive 2010/13/EC

licenses, what licensing scheme should be adopted, what compression technology should be applied to an optimal use of resources at reasonable prices, how to give to customers the necessary information and how to protect them during the transition from one broadcast to another.

However, there are some issues not addressed by the digitalization strategy, although they are important from the regulatory perspective to ensure a smooth transition from analogue to digital broadcasting, as well as some vague areas that should be discussed and clarified before the Albanian institutions begin to take steps towards digitalization. For this reason, we will mention those issues that are not affected by the proposed strategy. The main problems arising from the digitalization strategy analysis are:

1. lack of a detailed action plan for digitalization;
2. updating the regulatory framework, especially in terms of licensing and authorization procedures
3. draft regulations setting technical standards that will be applied by operators keeping in mind the digitalization: the classification plan, electronic guide (EPG), the technique of the Single Frequency Network, compression standards (MPEG 4 in combination with DVB-T2)
4. allocation of digital frequencies / multiplexes
5. public awareness campaigns

Digitalization has the potential to provide more opportunities for pluralism and diversity in the broadcasting field, since the spectrum allows more users than the analog system. However, digitalization alone can not solve the problems of freedom of media, piracy and political interference in the media. On the contrary, especially in the early stages, the digitalization contains risks such as monopolization or cementing of existing problems in the field of broadcasting.

To avoid these risks and to get all the benefits of digitalization, it is important to have a detailed planning process and to include all the actors. The digital environment and the process of transition from analogue to digital should have a strong legal bases that contains security and guarantee for the public interest, access to information and protection of copyright. Such a legal basis can be provided with a law (which is being considered by the Parliament), but requires the adoption of specific regulations (especially when we talk about technical standards) and a clear action plan.

The draft strategy states that digitalization will be inserted circuit to circuit (or, allotment to allotment), according to the method known as "Digital Islands". It's generally a good idea to start with pilot projects and then continue with a gradual development and in fact all the EU member states have used exactly this method. However, it is understandable that the circuit to circuit method requires much time and if we consider the deadline set by ITU in mid 2015, it is clear that not much time is left to start the process in Albania.

Another important issue that should be considered more carefully in the strategy concerns the issuing of licenses to operators. EU member countries have begun to improve their legal frameworks in terms of frequency management and delivery of content for years now and all these countries have a general system of licensing and authorizing that is able to withstand the challenges that presents the sector of digitalization (and convergent).

The legal framework of the EU provides only a few binding rules regarding the digitalization process, most of which relate to the limited resource management issues of frequencies. For this reason, in Europe have been adopted different methods of digital spectrum allocation and licensing process. The capacity is licensed to a third party, like the independent operators of the network (for example the case of Scandinavia or directly to the existing broadcaster (Italia). What matters is how is regulated the access in this capacity and the compliance of the best regulatory standards.

Division of content (programming) from the licensing of broadcasting is important regardless the details of the licensing process. In some countries, like France, the regulator selects the channels that will appear on multiplex[211]. In other countries (like UK, Italy and most EU countries) the capacity is given to the network operator, who then selects the channels that will be broadcasted in the network, the discretion of the network operator's is limited with the provision called "Must-Carry", through which the government or regulator ensure that access to networks and platforms is financially sustainable (preferably ranging from costs), non-discriminatory and transparent.

Also, some specific rules are drafted up by law or regulation to provide some specific benefits to specific categories of broadcasters, especially public broadcasting, (which should always be present in the platform[212]) and the channels that bring the perspective of minorities. In any case, the rules always are needed to maintain public interest objectives such as promoting diversity and pluralism, efficiency of public broadcasters, universal and affordable financial access in the broadcasting networks and platforms and in other information services for society and objective criteria, transparent and non-discriminatory licensing and fair and transparent processes of licensing managed by an independent regulatory body.

In the draft strategy are addressed many of these issues. It is important to determine the concrete ways of licensing / authorization, which will be reflected more accurately in the new law that is being drafted.

The determination of the manner of licensing/authorization has to do with regulating the operation and interaction between the three elements of the broadcasting process:

Network operators that have the right to install, manage and provide an electronic communications network through which content and service providers offer services and broadcast their content;

Content providers who have their editorial responsibility for the implementation of the broadcasted programs;

Service providers that provide limited access services through a network operator or information society services as defined in Directive 98/34/EC amended by Directive 98/48/EC or electronic program guides (EPG).

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211 The way in which the selection is done is similar with the proces of licensing of analogue broadcasting.

212 The working group for terrestrial Digital Television in EPRA countries. Final report. 2June 2004. See EPRA (European platform of regulatory Authorites: official page: http://www.epra.org/content/english/press/papers/DTTWG_finalreport.doc

EU directives, define that the process of licensing / authorization of services that provides the elements should be as fair, transparent and nondiscriminatory. The only limitation would be the use of limited resources (frequencies). Therefore the authorization of the activity of the audiovisual subjects should be done through a competition only in case of giving the right to use frequencies. Therefore the new law on audiovisual services should foresee that:

Network operators should obtain a license, through competition among candidates;
Content providers and service providers should obtain authorization, based on defined criteria, but without applying the procedures of the competition;

Therefore, is strongly recommended that in the new law should be improved the licensing framework to include some specific provisions which aim the unification of the licensing procedures with the Acquis Communautaire.

Conclusions

The digitalization of broadcasting includes a number of practical, legal, technical and economic issues which should be consider in any digitalization plan. In Albania, even with the lack of law or any digitalization plans, there is actually a large scale of digital broadcasting.

As part of the summary and conclusions should be noted that:

Firstly, digitalization does not solve other problems in the field of broadcasting such as the lack of pluralism, diversity, weak public service broadcasting and weak regulator. These problems should be resolved separately and preferably before the digitalization process, or at least during the early phase of planning of this process.

Secondly, the legal basis of digitalization is very important. The law should be very clear and adjust the existing situation, as well as determine the digitalization procedures. Separation of content provider by technical transmission is essential, while respecting the relations that exist between them, in order to ensure media pluralism, cultural diversity and protection of users / viewers.

The legal basis should regulate the existing situation. In the case of Albania, this means a clear strategy on the treatment of existing numerical operators in the market, taking into account the requirements of consumer protection and other issues related to the fact that digital broadcasting is already an informal reality. If there would be given an end to this reality, it would bring negative consequences for consumers and for pluralism.

Third, the digital switch over should be developed through an extensive public consultation and information. This approach to public consultation, not only is in line with European practice, but is also required by the relevant policy documents of the European Union. European experience shows that a harmonious transition to digital broadcasting, requires a broad consensus among stakeholders, throughout the hole transition process in the numerical system.

Fourth, the process of transition from analogue to digital broadcasting, is a complex and difficult process that requires an inter-institutional cooperation. This passage includes a set of executive and legislative public institutions, as well as interest groups, which will

require continuous measures, analytical and conceptual activities which need to be managed in a governmental level.

Fifth, the increase of support of public television, through the preservation of its special social role. universal access, which is essential for the development of public television in the digital age, as well as defining the concrete mechanisms of financing the public television, in order to make it possible that the public television is present in various digital platforms with quality programs and services with different quality that avoid the risk of fragmentation of the audience .

Sixth, the funding process and the role of government in this regard is essential and must be explained in a transparent and complete way in an early stage. This means defining a clear scheme and mechanism of subvention, through the identification of vulnerable social groups as well as forms, methods and rules of this subvention.

Considering all these above-mentioned elements, will serve as an important precondition to address in a adequate and successful way the present and future challenges that will require the transition to the numerical system.

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Analysing double taxation: the Albanian case

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Abstract

Dealing with double taxation is a relatively new phenomenon for the Albanian taxpayers. Isolated for many years, not used to taxation, the obligation to pay a part of their earnings to the state is not great news to them. Consequently, their first reaction is fiscal evasion, avoiding tax payment, which, in itself leads to negative consequences in the state budget. But, when the taxpayers are obligated to pay the same tax twice due to classes of tax legislations of different countries, the tendency to avoid tax payment becomes even a greater risk.

The main purpose of this article is to answer the question on how to avoid double taxation and what is the legal basis to avoid double taxation. Legal reform in the Republic of Albania has not left double taxation aside, but the question is what outcome has such reform achieved? This article shall focus on a detailed analysis of the double taxation issues, of their legal coverage and shall in particular analyze the management skills of the Albanian state to avoid double taxation to increase budgetary revenues without overburdening the citizens with undue taxation.

Policy points:

- *Eliminating double taxation means establishing a favourable business climate, attracting foreign investments, increasing state incomes and not hampering the free movement of people, goods and capital.*
- *The Albanian state has demonstrated itself as highly efficient in its efforts to eliminate double taxation and to avoid fiscal evasion.*
- *What remains to be done is a proper and correct enforcement of the legal framework.*

Keywords: Albanian tax legislation, tax deductible, tax avoidance, national taxation, Albanian residents.

Introduction

Since the collapse of communism in 1991, Albania has faced aggressive market reforms, government modernization, greater individual freedoms, better living standards, and international integration. Albania's economy is one of the fastest growing economies in the Balkans. However, after a complete nearly fifty-year isolation, Albania's "opening" has urged many Albanians exercise their economic activity abroad, while many foreigners are working in Albania.

Albanians' effort to build a capitalist society and a market economy put to the fore tens of accumulated issues. Employment of hundreds of Albanians abroad of, or foreigners in Albania, has become a permanent annual source of income for Albania and has an impact on the stabilization of the national currency, but it also becomes a source of risk for double taxation.

Paying taxes once is a burden for the taxpayers, but, in case they are required to pay taxes twice, this burden shall not simply be unacceptable, but can cause an economic ruining of taxpayers, businesses, and might as well threaten the entire economic situation of the country. The purpose of this article is to analyze double taxation, focusing on the case of Albania. First, I will give a theoretical coverage of double taxation as well as its consequences to businesses and to the state. Second, I will concentrate on the legal coverage of double taxation in the Republic of Albania. By way of concluding I shall try to provide ways of how to avoid double taxation, focusing on the Albanian tax legislation and on the legal documents existing in the field.

Double taxation is a risk for the individual and harmful for any state, be it developed or in development. Double taxation becomes an obstacle of free movement of people, of goods, of the capital and does, for sure, impose difficulties in attracting new investments, which are a must for the developing countries.

What is double taxation?

A state cannot render something binding if it is not thus regulated in law, but the contrary can, of course, happen. A state can regulate everything by law, even in case it is not capable of imposing its will forcefully. The essence of state sovereignty is its jurisdiction, or the scope within which power of state can be exercised.[213] The international tax law regulates the right of sovereign nations to impose taxes.[214] Such rights depend on states' financial[215] jurisdiction. This term refers to:

a) the right to legislation,
b) the right to coercion.

There are two schools of thought on fiscal jurisdiction based on different perceptions of the state sovereignty[216]. The first school of thought supports the idea that there are no limitations in the state's right to impose taxes. Furthermore, such right is exercised even without taking into account the effects caused on the other states.

The other school of thought claims that the sovereign right to taxation is limited only within the territory in which the legal connection between the state and the taxpayer exists.

Given that the issue is not resolved yet, both theories accept the fact that there is a need of an existing "connection" to be present, in order for the state to impose taxes to taxpayers[217]. Such connection has to exist between the taxpayer and the special tax jurisdiction. The taxpayer is "connected" to the "mother country" through a temporary residence, domicile or the nationality, place of incorporation for a legal entity, or place of

213 Picciotto, Sol (1992), International Bussiness Taxation: A study in the internationalization of business regulation, page 307.

214 Ginsberg, Anthony Sanfield (1993). International Tax Planning: offshore finance centers and the European Community. Kluwer Law and Taxation Publishers, Deventer; Boston.

215 Rutsel Silvestre J. Martha, Extraterritorial Taxation in International Law, in Extraterritorial Jurisdiction In Theory And Practice 23 (Dr. Karl M. Meessen ed., 1996).

216 Nizamiev, Alfred, "The Main Characteristics of State's Jurisdiction to Tax in International Dimension" (2003). LLM Theses and Essays.Paper 36. http://digitalcommons.law.uga.edu/stu_llm/36 (accessed on 18. 02. 2013), page 6-7.

217 David R. Davies, Principles of International Double Taxation Relief 1 (1985).

management/seat for the legal persons. An economic activity is as well related to the "host" country, which exercises its right to taxation due to the territorial connection.
As a consequence, the national law in different states usually applies these tax principles:

- Full or unlimited rights are provided to the country of residence due to "personal connections" with the person. The residence (or nationality) can impose taxes for all kinds of personal incomes all over the world due to the protection provided by the tax subject (rule of residence).
- Limited tax rights are provided to the source country due to the "economic connection" it has with the person. The source (or origin) country reserves the right to tax incomes deriving from the economic activity within its territory (the source rule).

The main objective of the principles of international taxation is to provide safeguards for one, not double taxation on incomes.[218]

In fact, there would be no need for such principle if a person or source of income was to be taxed only in one state. But, due to various internal legislations[219], tax incomes from one and the same activity can be shared, or the same incomes are taxed in many cases by two states. Income separation is different from tax overlaps. The issue of double or multiple taxation emerges when the connecting factors provide competitive tax power to two or more states for same incomes.

Double taxation deals with same tax subject by two different tax jurisdictions.

All states are free to apply tax systems compliant to their development needs. But, despite peculiarities that can be remarked, all tax systems are supported in basic principles, which success is attested from multi-year practice. Two are the major principles most of tax systems all over the world are based onto:

The principle of residence.

The term "resident", which first meaning is "a permanent inhabitant", is used in the tax language to show individuals or companies (legal persons), who, pursuant to the criteria set in the legislation of a state, are considered tax subjects of that given state, having full tax responsibility in that state. Hence, in the fiscal meaning, the taxpayer residence is related to the "permanent domicile due to tax effect"[220]. In general, the definition of the taxpayer tax residence (fiscal residence) in the tax legislation is based on these criteria:

a) for the legal persons (companies):
- The place where the headquarter or the main management office of the company is located – that is the state in which territory the central administration of the company is located, the place where the company steering board business takes business-related decisions;
- The place of incorporation – that is the country pursuant to which legislation the company is incorporated and registered to exercise its activity as a legal person.

218 Van Weeghel Stef (1998), The improper use of tax treaties; Kluwer Law International.

219 David Rosenbloom, (2000) The David R. Tillinghast Lecture International Tax Arbitrage and the "International Tax System", 53 TAX L. REV. 137, 140-1.

220 For this reason, some countries use the term of "fiscal residence" to refer to "tax residence".

b) for the individuals:
- The country where the individual has a permanent house at his/her disposal;
- The country his/her vital interests are connected with (where he/she has his/her family and economic interests);
- The country where he physically resides most of the year (over 183 days), etc.

It is based on these criteria that the state of "fiscal domicile" or "residence" of the company or of the individual is defined, and, as a consequence, the full obligation to pay taxes for that state.

Pursuant to Article 3 of Law no 8438, of 28.12.1998 "On Income Tax" (as amended), an individual is considered an Albanian tax resident in case he/she has a sustainable residence in the territory of the Republic of Albania, or when he/she resides in the Republic of Albania for a period of time which in total covers 183 days in a calendar year, while a legal person is considered a legal person when his place of management and the headquarters is in the Republic of Albania[221].

Pursuant to the "principle of residence", priority to tax treatment is provided to entities, not to the country where incomes are generated. All entities considered tax residents in a state (which fulfil the criteria established for this purpose by the legislation of the relevant country), be them individuals or legal persons (companies), should pay taxes in this state for all the income gained in the territory of such state or abroad – that is in other countries. Such tax is referred to as a world-based tax, or resident tax for the incomes generated at a world level[222].

The principle of source of incomes

According to this principle, the incomes or profits generated in a state should be taxed in this state despite the fact on whether the entity (an individual or a company) is a resident in this state or not. Also, pursuant to the principle of source (of incomes), the property of a state (such as land, buildings, etc.) should be taxed in this state, on matter on whether the owner is a resident of this state or not. In other words, the principle of source of incomes gives priority to the country of "generation" of incomes, or of location of property, although such incomes might be generated (or property owned) by foreign individuals or companies, thus not being "residents" of that country[223].
Most of the world countries and almost all the developed countries have covered these two principles – namely the principle of residence and that of the source of income, in their legislation. Thereof, to express their meaning, we should say:

a) the individuals and legal persons considered residents of a state pursuant to the legislation of that state, pay taxes for the total incomes generated in the world scale in this state – so, only in this state, not to any other state[224]; and
b) the individuals, or legal persons who are not residents of this state pursuant to the legislation of this state (that is the non-residents), pay taxes in this state only for

221 Law no 8438, of 28.12.1998 "On Income Tax" (as amended).

222 In Albania, this principle is provided for in Article 7, paragraph 1 for individuals and in Article 17, paragraph 1 for the legal persons (Ibid)

223 In the Albanian Law "On Personal Income Tax", this principle is enshrined in Article 7, paragraph 2 on individuals and Article 17, paragraph 2 on legal persons.

224 This is called the principle of residence.

the incomes that might be generated in the territory of such given state225.

Same conclusion would be reached by the interpretation of Article 7 and 17 of Law no 8438, of 28.12.1998 "On Income Tax".

Hence, according to Article 7, the resident individuals undergo the obligation of paying the personal income tax for all sources of incomes, while non-residents pay the personal income tax for the incomes generated in the Republic of Albania.226

While according to Article 17 the resident taxpayers have to pay taxes on incomes from all sources, both in the territory of the Republic of Albania and abroad, non-resident taxpayers pay the income tax only for those incomes generated (sourced) in the Republic of Albania."227

In such conditions, the resident individuals or companies of a state, exercising activities and generating incomes in another state, have these incomes taxed in two countries – that is once in the country of residence of taxpayers, and once in the country the incomes are generated.

In the case of the individual, he/she can, for instance, be an expert, an adviser of an X state working part-time in an Albanian company (he/she can be a lawyer, an engineer, doctor, a sportsperson or an artist) who does not meet the criteria to be considered an Albanian tax resident (that is he/she stays in Albania for less than 183 days in a tax year and/or has vital interests in his/her X state for all his/her incomes generated in that state. In other words, such person is not an Albanian resident for tax purposes. Given that such individual is a tax resident for the state X, pursuant to tax legislation of that state he/she is liable to taxation in state X for all his/her incomes generated in that state and for the incomes generated in another state, that might be Albania, for example. On the other hand, for the incomes generated in Albania, pursuant to the Law "On Income Tax", Article 7, paragraph 2, this individual shall be subject to taxation in Albania for the salary or different remunerations received for the work done in Albania. Obviously, the incomes gained in Albania undergo double taxation – that is once in Albania and once in the state X, or once in the country where incomes are generated and once in the state of the taxpayer residence. In addition, individuals who are tax residents in the state X, can make money out of bank deposit interests in the Albanian banks, or incomes from the shares of dividends that might be owned at an Albanian resident company. If so, interests and dividends are taxed twice – once in Albania (source income tax), as Albania is the country the incomes are generated, and the other time in the state X (in the place of residence of the taxpayer).

In the case of a company, it might e a commercial company that might be a resident in the state X, compliant to the criteria set in the legislation of this state. Let us presume that the company is called "ZL ALPHA". The company, incorporated in Albania, decides to open a branch or a representation office (that can as well be a sales point, a construction site, as a sub-contractor in the implementation of the construction, or instalment project) via which it gets profits in Albania. Pursuant to the tax legislation in the state X, the

225 This is called the principle of source.

226 Law no. 8438, of 28.12.1998 "On Income Tax", as amended.

227 Law no. 8438, of 28.12.1998 "On Income Tax", as amended.

company “ZL ALPHA” is taxed in State X for the total of incomes realized in state X and in any other state, including the incomes generated in Albania (the principle of residence). But, for the incomes generated in Albania, pursuant to Article 17, paragraph 2 of Law “On Income Tax” stipulates that the incomes generated in the territory of the Republic of Albania shall be taxable in Albania (the principle of source of incomes). Even in this case, the incomes generated in the territory of the Republic of Albania shall be taxed twice because of application of both principles at the same time on the same incomes. Also, foreign companies might collect incomes from loan interests that might have been granted to the Albanian companies, incomes from the right to use patents or trademarks, incomes from dividends from shares that might be owned by the Albanian companies, which in all cases are taxed once in the place of incorporation (with the income tax to be paid in Albania) and once in the country of residence of the beneficiary company (in State X).

The two examples provided above show that double taxation is present when same person/company pays taxes twice for the same incomes – that is once in the country where incomes are generated and once in the taxpayers residence. Double taxation might also exist when two states claim that an individual or company is considered a resident in both states (dual residence), pursuant to the criteria of national laws, and is entitled, therefore, to the obligation of paying taxes in both states. Under such conditions, only the fact that the activity of the individual or of the company is operational in two states leads to double taxation.

Legal mechanisms for elimination of double taxation

Double taxation becomes an obstacle for the free movement of individuals, companies, capitals and mutual investments from one state to another. It is exactly these bilateral international agreements for elimination of double taxation that eliminate double taxation thorough their provisions for the signatory parties, stipulating that each party is entitled to tax certain incomes of a certain entity, or sharing these rights among two states, always taking into consideration the need for elimination of double taxation.

The conventions or agreements on elimination of double taxation are related to income tax and to the capital tax. Usually they are referred to as tax agreements and establish a complete legal basis for all the individuals and companies that are subject to taxation in the two states negotiating the agreement. But, in addition to eliminating double taxation, tax agreements are also aimed at avoiding fiscal evasion by the individuals and by the companies228.

Under these conditions, tax agreements play an irreversible role in all the group of favouring factors guaranteeing and stimulating the economic and trade relations between states. The need for concluding tax agreement becomes even more essential if we consider the ever growing number of international companies, which exercise their activity in several countries at the same time229.

It is exactly the fact of their international operation rendering them act under the jurisdiction of all these states, rendering collection of taxes difficult in each of these

228 Philip Baker, (1994) Double Taxation Conventions and International Tax Law: A Manual on The OECD Model Tax Convention on Income and Capital of 1992, 12.

229 According to statistics today almost 60% of the world trade is developed by these multi-national companies.

states. This, in its turn, leads not only to double taxation, but also to fiscal evasion.

Pursuant to Law 8560, of 22.12.1999 "On Tax Procedures in the Republic of Albania", Article 10, the competent authority to negotiate international agreements for the elimination of double taxation (Tax Agreements) was the General Tax Directorate. Such agreements have been signed and have entered into force complaint to the provisions of Law no 8371, of 9.7.1998 "On International Agreements and Treaties". But, the abrogation of this law and entry into force of Law no 9920, of 19.05.2008 "On Tax Procedures in the Republic of Albania" transferred this competence to the Ministry of Finance230. The Ministry of Finance is, on a case-by-cases basis, the signatory authority or a state party in negotiations held for all the international agreements having fiscal effects. The signatory and approving authority of such agreements acts complaint to the Law "On Concluding of International Agreements and Treaties".

The Tax General Administration, not the regional tax office, is in charge of implementing the provisions of the bilateral and multi-lateral tax agreements or conventions. The taxpayer requests for implementation of international agreements are addressed to the General Tax Administration. If taxpayers address the regional tax directorates and ask for exclusions, fiscal facilities, residence documents or other documents and instructions related to implementation of international agreements concluded by Albania, such requests should be submitted to the General Tax Administration. This rule is also applicable for the bilateral agreements on elimination of double taxation and prevention of fiscal evasion, as concluded by Albania, and for tax provisions that might be contained in other agreements, such as in the agreements on international transport, aid agreements, loan agreements, concessionaire agreements and the social and health insurance agreements, etc. The regional tax directorates operate directly as per the stipulations of the international agreements only when tax legal provisions and by-laws provide for such a thing and when written replies and instructions are received by the General Tax Administration231.

Tax agreements concluded by Albania are based on a sample project approved by the Government, pursuant to the international models drafted for this aim by the United Nations and the Organization for Economic Cooperation and Development (OECD). It is clear that each bilateral agreement takes into account tax peculiarities and economic and trade relations of both countries while such agreements are concluded. Once the tax agreement is signed by the authorized persons in both countries, the agreements are then approved by the Government and ratified by the Assembly. After relevant official notification by each country, the agreement enters into force and has same effect as tax legislation232. In the last decade Albania has ratified tax conventions with many countries of the world, which have become operational and bring legal consequences.

Provisions of tax agreements are interpreted based on concrete provisions for each agreement and on the instructions of the General Tax Administration. In difficult cases for interpretation, reference is made on the comments of the OECD model (mainly in the 1997 model) and on the 2001 UN model. Special provisions on bilateral agreements due

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230 Article 11 of Law no 9920, of 19.05.2008 "On Tax Procedures in the Republic of Albania".

231 Instruction of the Minister of Finance No 24, of 2.9.2008 "On Tax Procedures".

232 Taking into account the Albanian model of tax agreements concluded so far, we can say that their provisions are very much similar with the 1977 OECD Model and with the 2001 UN Model.

to legal or procedure peculiarities of one or of the other contracting country shall be interpreted complaint to the provisions of the national law, fully respecting the general instructions provided in the comments of the OECD model, or of the US model.

The General Tax Administration is responsible for implementation of the provisions of the tax agreement. This structure sets the procedures for the enforcement of agreements. Part of such procedures are the forms attesting the residence of the Albanian taxpayers, as well as the forms of application of such tax agreements.

a) The certificate of residence is issued to the taxpayers registered with the Albanian tax bodies by the General Tax Administration, upon a written request by the taxpayer and following necessary verifications by the Tax Branch the taxpayer is registered with. A copy of the reply provided to the taxpayer is sent for notification to the Tax Branch the taxpayer is registered with, so as the branch verifies the declaration of incomes the taxpayer has collected in the foreign state. The certificate of residence serves to the taxpayer to certify that he/she pays taxes for global incomes in Albania, so that the tax body of the foreign state where incomes are generated resorts to application of the agreement (applying, on a case-by-case approach, a reduced tax, or no tax at all on such incomes);

b) The Agreement Application Form is issued to the entities having transactions with other persons who are residents in the country the agreement has been concluded with. The purpose of the application is to apply the agreement for incomes generated in Albania (in this case the taxpayer is an Albanian taxpayer) by persons who are residents in the country the tax agreement is concluded with. The application is filled in for every payment (transaction) by the payee, the beneficiary of incomes and by the tax authority of the foreign country where the taxpayer resides. The General Tax Administration is entitled to the right of authorizing application fill-in for a certain period of time, such as for instance for three months, for six months, or for a year, but in such case the application should contain references of all payments, as well as copies of invoices. The application, accompanied by a written request, is sent to the Tax General Department. This Directorate notifies the Tax Branch the income taxpayer is registered with, containing the relevant reference and interpretation for the enforcement of provisions of the agreement.
At any case, the tax branch applies national legislation fully. This branch submits to the General Directorate the applications received by the entities for the application of tax agreements and can apply tax agreements only upon reception of an official note by the General Tax Administration, which should be based on concrete provisions of an agreement that is already in force. When provisions of the agreement run contrary to the national legislation, application of such provisions prevails.

Through the agreement application form, the tax amount paid abroad is calculated as a deducible expense. In order to benefit the deduction of such expense, there is a need for the application to be handed over in the due time and form, as provided for in the law.

At its judgment no 2064, of 12.09.2012, with the following parties: complainant “DONIANNA ADELCHI” ltd company, and plaintiff the Big Taxpayer Regional Directorate of Tirana and the Tax Appeal Directorate at the General Tax Administration, the Appellate Court of Tirana upheld the Judgment no 4061, of 17.05.2011 of the First Instance Court of Tirana with the rational that the claim raised by the claimant that it was entitled to submit the agreement application form within two years was fair from the legal point of view, but is not grounded in facts, as it was not proven that the complainant has made

any submission in the form required by the law. Nor are such application forms accepted by the plaintiff. They do neither result to have been subject of a court proceeding, according to the Appellate Court, thereof the bench considers that the application form was never submitted. As such the applicant's right has fallen in decadence and cannot, as a consequence, be taken into consideration. Under such conditions, the tax authority cannot benefit from the application of the provisions of the tax agreement due to failure to fill out the application form in the manner and time provided for by the Law.

How to avoid double taxation

Tax conventions on avoidance of double taxation contain a special article on methods for avoiding double taxation.

When incomes and the capital, compliant to the OECD[233] Model Convention can be taxed with or with no limitation in the state of origin of incomes, it is the obligation of the state of residence to eliminate double taxation. This can be done through two methods:

- -The method of exclusion: the incomes or capital that are taxed in the country of origin are tax-excluded in the country of residence, but this cannot be taken into account in setting the level of the applicable taxes in the remaining part of the taxpayers' capital;
- -The tax credit method: the incomes or capital already taxed in the country of origin are also taxed in the country of residence, but the tax burden in the state of origin is credited versus the tax burden set in the country of residence to these incomes or capital[234].

The UN Model Convention makes use of same methods for avoidance of double taxation as the OECD Model Convention, which are reproduced in the two alternatives of Article 23: Article 23 A speaks of Methods of Exclusion and Article 23 B speaks of the Methods of Reimbursement.

The method chosen by each country depends mainly on the general tax policies and on its tax structures. But, developing countries see that the methods used in the developed countries are not very suitable to them. One of the major shortcomings of the method of reimbursement of foreign taxation for developing countries is the fact that low taxation for the countries in development, or application of special taxes, in most of cases harm incomes from exports and imports, instead of helping foreign investors. Thus, income goes from the developing country to the capital-exporting countries[235]. Many developed and developing countries are of the opinion that shared tax credit should be applicable only in those cases when the developed country resorts to the method of reimbursement[236].

The principles used for avoiding double taxation from the state where the taxpayer is a resident into are two[237].

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[233] Article 23 of the Model Convention.

234 Sen, P. & Turnovsky, S.J. (1990) Investment tax credit in an open economy, Journal of Public Economics, 42, pp. 277–299.

235 Dixon, John (1997); Double Taxation Agreements - An Overview, Tolley's International Taxation.

236 CFC rules and double tax treaties The OECD and UN model tax conventions Paper within International Tax Law, Author: Sara Andersson.

237 Giovannini, A. (1990) Reforming capital income taxation in open economies: theoretical issues, in: H. Seibert (Ed.) Reforming Capital Income Taxation (Tubingen, Mohr).

The principle of exclusion:

According to this principle, the state of residence does not tax incomes, which complaint to the Convention can be taxed in the country of origin. The principle of exclusion is applied through two methods:

- The incomes subject to taxation in the country of origin are not taken into consideration in the state of residence for taxation purposes. This is referred to as the method of full exclusion.
- The incomes subject to tax in the country of origin are not taxed in the state of residence, but the later is entitled to take these incomes into consideration when setting taxation for the other (remaining) part of incomes. This is referred to as the method of progressive exclusion238.

The principle of tax credit

According to this principle, the state of residence calculates tax for all the taxpayer incomes, including incomes that might be subject to taxation in the country of origin. Afterwards it deduces the tax amount paid in the country of origin. This principle is applied through two methods:
The state of residence allows for deduction of the full tax amount paid in the source of origin. This is referred to as the full tax credit method239.
The deduction by the state of residence of the tax paid in the other state is limited to that part that might be taxed in the other state. This is a normal tax credit procedure.
What is important to be highlighted is that the change between the two methods lays in the fact that the exclusion method pays attention to incomes, while the tax credit method pays attention to tax240.

If we consider the US Model Convention241, we would see that Article 23 does not refer to the method of exclusion. It only provides for the tax credit method for facilitating the agreement, as provided for in the country's national legislation242. Article 23(1) and 23(2) maintain the right of direct tax credit for a national or a resident of a Contracting Party on the income tax paid to the other Contracting Party. Furthermore, a non-direct tax credit is foreseen on the dividends of a joint share-holder in a Contracting Party, in case he posses at least 10% of shares voted in a resident company in the other Contracting Party. Article 23(3) of the Convention contains a special ordering rule when a US citizen is a resident in other Contracting Party. In addition to the full tax obligation in the state of residence, he/she is also subject to tax in the US according to Article 1(4) of the US Model Convention in case the agreement does not exist. Thus, he/she is subject to general income tax in two jurisdictions. This paragraph stipulates for the rules of exclusion from double taxation in the USA under such circumstances243.

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238 Sen, P. & Turnovsky, S.J. (1990) Investment tax credit in an open economy, Journal of Public Economics, 42, pp. 277–299.

239 Sen, P. & Turnovsky, S.J. (1990) Investment tax credit in an open economy, Journal of Public Economics, 42, pp. 277–299.

240 Grant, J. (1997), Double Taxation Agreements – An Overview, Tolley's International Taxation.

241 Robert E. Meldman & Michael S. Schadewald, A practical guide to U.S. taxation of international transactions 2 (3rd ed. 2000).

242 For instance, under U.S. tax system, personal relationships are the basis for taxing U.S. citizens, resident aliens, and domestic corporations, whereas the source of income is the basis for taxing nonresident aliens and foreign corporations. Robert E. Meldman & Michael S. Schadewald, A practical guide to U.S. taxation of international transactions 2 (3rd ed. 2000).

243 Technical explanation of the US model (1996), paragraph 330-341.

As described above, the Albanian legislation avoids double taxation through tax agreements modeled after a mixture of the OECD and the UN Model.

Article 23 of the tax agreement model covers methods for elimination of double taxation – that is the cases when a natural or legal person, resident of one of the contracting parties (the taxpayer residence) generates incomes from sources in the other contracting party (the place of income origin) and these incomes, complaint to the agreement provisions, are taxed in the other state, then the first state (the state of residence) should eliminate double taxation excluding such incomes from tax, or crediting such tax from the other state. Thus, two methods are used for eliminating double taxation:

The method of exclusion: According to the principle of exclusion, the country of residence does not tax incomes which, according to provisions of the agreement, are taxed in the country of origin. The principle of exclusion is composed of two methods: a) "full exclusion" when incomes taxable in the state of origin are not included in the tax basis in the state of residence, and b) "progressive exclusion" when incomes that might be taxed in the country of origin are not taxed in the country of residence, but the later retains the right to take into consideration these incomes when the (progressive) tax tariff is set for the remaining part of incomes.

The method of tax credit: Pursuant to the tax credit principle, the state of residence calculates for the tax based on the global taxpayer incomes, including incomes from the state of origin, which, according to the agreement, might have been subject to taxation in the other country, and does afterwards allow for the tax credit (deduction of tax) paid in the country of origin. The tax credit principle does also contain two methods: a) "full credit" when the state of residence allows for crediting of the total tax amount that might be paid in the other state, and b) "routine credit" when the state of residence allows for the credit of the tax paid in the other country up to the amount of own tax for the incomes generated in the other state[244].

Conclusions

Double taxation is a burden for taxpayers and a cause for a higher fiscal evasion, hence becoming a cause for reduction of budgets. Eliminating double taxation means establishing a favourable business climate, attracting foreign investments, increasing state incomes and not hampering the free movement of people, goods and capital.

Tax agreements serve exactly to the aim of eliminating double taxation and of avoiding fiscal evasion.

Models of Tax Conventions do greatly facilitate the tax burden of taxpayers. This is the most important part in the taxpayer's view. What the governments expect of tax conventions is prevention of fiscal evasion.

The OECD Model Convention, the UN Convention and the US Model Convention are suitable models for each state to resort into, of course taking into account the conditions for the country's economic development. For the developing countries, the UN Model

244 Usually, in the agreements concluded by Albania, the usual crediting method prevails, while, other countries, on a case-by-case basis, refer to the method of exclusion, or method of accreditation, or, in some cases, a combination of the two (for some kinds of incomes exclusion, for some others, crediting).

Convention is more suitable, as the purpose of its drafting is providing possibilities for attraction of investments on these countries in relation to the economically developed countries. It is important to underline that these models are not binding to states, as they simply represent the pylons of negotiation of tax agreements by the states.

Albania is ranked amongst those countries taking good care of its nationals and protecting own incomes in the best way possible. Despite the lack of experience in the tax domain (it should be highlighted that since 1969, time when Albania was proclaimed the only country in the world with no taxation, until 1991, time when first customs elements were re-established, there was a total lack of tax administration), the Albanian state has demonstrated itself as highly efficient in its efforts to eliminate double taxation and to avoid fiscal evasion. In addition, Albanians became subject of such phenomenon only after the '90s, time when Albania opened its doors to the world. First tax laws were drafted and approved at that time. Albania applies the principle of territoriality in payment of taxes. On avoidance of double taxation, the model agreement approved by the Order of the Council of Ministers is a mixture of the Model OECD Convention and of the UN Model Convention. The model of the agreement is taken into consideration in negotiations between parties, and it is these negotiations deciding on the most suitable ways of elimination of double taxation, pursuant to the specific conditions of the contracting parties. In conclusion, it can be said that the analysis provided in this article shows that the legal basis on avoiding double taxation is complete. The few cases ending up in courts are a good evidence for this reality. But, what remains to be done? What remains to be done is a proper and correct enforcement of the legal framework.

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The request for the insolvency of commercial companies in Albania

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Abstract

According to the Albanian law on bankruptcy[245], any entity may be the debtor in the insolvency proceedings, i.e. may bankrupt, apart from the state or any of its organs (of the central and local government), as well as those entities that conduct their activity in a sector regarded as strategic. Any other entity is legitimized as the debtor of the bankruptcy.

As stated in the Albanian legislation[246], in order for a company to bankrupt shall be in an insolvent situation or over indebtedness, and if its assets are deemed as insufficient to cover the expenses of the insolvency proceedings.

The legal mechanisms of bankruptcy are set in motion when a request is filed. The Albanian legislation[247] provides the following with the right to file a request to the judicial bodies:

1. *debtor (natural or legal person or a simple partnership) in crises;*
2. *any creditor of this debtor in crises, which has a legal interest;*
3. *taxation bodies, in the event of legal persons, where there is a balance sheet with losses for a period of 3 years.*

The conditions to be met by each of these categories, in order to request the opening of the insolvency proceedings, shall be elaborated in the following sections.

Keywords: debtor, creditor, taxation bodies, partnership, legal person

Introduction: The request filed by the debtor

The initiative to request the opening of a bankruptcy proceeding is given by our law, firstly, to the debtor in crises, a position taken in general by all contemporary legislations on bankruptcy.

A debtor, according to the definition of the Albanian law "On Bankruptcy" [248] may be any natural or legal person or a simple partnership, against which a request for initiating a

[245] Albanian Bankruptcy Law no. 8901, dt. 23.05.2002 "On Bankruptcy", Article 12, point 1.

[246] Albanian Bankruptcy Law no. 8901, dt. 23.05.2002 "On Bankruptcy", Article 13 and Article 19.

[247] Albanian Bankruptcy Law no. 8901, dt. 23.05.2002 "On Bankruptcy", Article 14, point 1.

[248] Law no. 8901, dt. 23.05.2002 "On Bankruptcy", article 11, point 1.

bankruptcy proceeding has been filed. For the first time, the current law expressly foresees in the capacity of the debtor even a simple partnership (regulated by the Civil Code), which was not foreseen by the previous laws[249]. This is due to the fact that simple partnerships as defined in the Albanian Civil Code[250] are factual companies that do not have the same legal liabilities as the commercial companies. Therefore, our current law has expanded its scope.

With regard to this issue, it is important to discuss when a debtor is entitled or liable to request the opening of the insolvency proceedings against him.

The law[251] determines that, in the case of a legal person, any member of the governing body is entitled to request the opening of the insolvency proceedings; with regard to a simple company, any partner is entitled to do this; and, regarding a company subject to a liquidation process, any of the liquidators is entitled to request the opening of the insolvency proceedings, as long as there is a reason. Thus, if any member of the governing body, any simple partner or liquidator deems that the company (commercial or simple) is in an insolvency or in a state of indebtedness, the law provides them with the right to request on their own the opening of the insolvency proceedings, even though the other members of the governing body of the commercial company or the other partners or liquidators of the simple partnership may not agree to address the court with the request to open the insolvency proceedings. If this is the case, the court has the legal obligation[252] to hear the other members of the governing body, simple partners or liquidators, before taking any decision.

As a result, it is not necessary that either the whole governing body of the commercial company, or all the partners of a simple company, or all the liquidators shall request the opening of the insolvency proceedings. It is sufficient that only one member addresses the court to take his/her request under consideration, to evaluate whether there are any grounds or not. If there are reasons for opening the insolvency proccedings, the request shall not be refused on grounds that only one of the members of the governing body, or only one of the simple partners, or only one of the liquidators, filed the request.

Filing a request for the opening of the insolvency proceedings constitutes both the right and the liability of the debtor in crisis. The law[253] provides that, in the event of a legal person, any member of the governing body shall be bound to request the opening of the insolvency proceedings not later than 21 days from the date the legal person becomes insolvent; these persons shall be personally responsbile for the compensation of creditors, if the latter suffer losses, unless the request is filed within this deadline. Therefore, if the members of the governing body of a legal person do not respect the legal obligation to request the opening of the insolvency proceedings within the deadline of 21 days from the date the company becomes insolvent and due to this delay creditors suffer losses, the law foresees the incurrence of personal responsibility for any member of the

[249] Law no 7631, dt. 1992 “On bankruptcy of state owned enterprises” and law no. 8017, dt.25.10.1995 “On insolvency proceedings”.

[250] The Civil Code of the Republic of Albania, Article1074 and 1075.

[251] Albanian Bankruptcy Law no. 8901, dt. 23.05.2002 “On Bankrutpcy”, Article 16, point 1.

[252] Albanian Bankruptcy Law no. 8901, dt. 23.05.2002 “On Bankrutpcy”, Article 16, point 3.

[253] Albanian Bankruptcy Law no. 8901, dt. 23.05.2002 “On Bankrutpcy”, Article 16, point 2.

governing body for the loss that creditors are suffering. Certainly, personal responsibility for the compensation of creditors shall not start immediately after the legal person becomes insolvent, but after the deadline of 21 days that the law provides to the members of the governing body to request the opening of the insolvency proceedings. Any loss within this deadline is not a liability of the members of the governing body, however, any loss after this deadline is indisputable.

With the amendments and additions made to the existing law in May 2008, the incurrence of personal resposibility is sanctioned by law[254] and the fiscal authorities punish with a fine (of 200 000 – 500 000 Lek) all partners and shareholders of the company, if they had been aware of the company insolvency during their activities and have not requested the opening of the insolvency proceedings within three months from the date they have become aware of this fact. For the first time, the law foresees a responsibility for those persons who are not holders of a legal personality in the company, however, this responsibility is subject to the fact that these persons are aware of the existence of the condition for requesting the opening of the insolvency proceedings.

The Italian[255] legislation foresees a similar regulation, with regard to the obligation of the debtor to request the opening of the insolvency proceedings, stipulating as a punishment, for the debtor that aggravates his/her situation by not duly requesting the opening of the insolvency proceedings, his personal responsibility. Generally, the most contemporary legislations on bankruptcy treat the request for opening the insolvency proceedings as an obligation to be filed by the debtor himself/herself. The Danish legislation is an exception and the filing of the request is not an obligation for the debtor, consequently, the cases of insolvency requested by the debtor are statistically rare in Danmark.

Other legislations usually foresee civil sanctions if this obligation is not fulfilled as well as deadlines to file the request. These deadlines are different depending on the legislations, for example, the french legislation in the so called “Badinter Reform”[256] foresees that the request shall be submitted to the court within 15 days from the date the payments are not paid; the Portugese law provides that the request shall be submitted before payments are not paid or within 10 days from the date they are not paid; the law of Luxemburg lays down that the request shall be submitted within 3 days from the date the payments are not paid etc.

Some legislation do not provide only for civil sanctions but also for penal sanctions, if the debtor does not fulfil his legal obligation to request the opening of the insolvency proceedings. The Italian[257] and the Belgian[258] legislations are among those which provide for penal sanctions. Thus, the Italian bankruptcy law foresees also the possibility that the decision for opening the insolvency may also include an arrest order for the bankrupted individual, and it is a unique case in this legislation, where a civil court is entitled to

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[254] Albanian Bankruptcy Law no. 8901, dt. 23.05.2002 “On Bankruptcy”, Article 16. Point 1, paragraph 2; (Law no. 9919, dt. 19.05. 2008 “On some additions and amendments to Law no. 8901, dt. 23.05.2002 “On Bankruptcy”, Article 7).

[255] Italian Law on Bankruptcy, Article 217/4.

[256] French Law on Bankrutpcy no. 85 – 98, dt. 25.01.1985 “On Bank Restructuring and Judicial Liquidation of Enterprises”.

[257] Italian Law on Bankruptcy and the Italian Criminal Code.

[258] Belgian Commercial Code, Article 440 e 574 and Belgian Criminal Code, Article 489 and so on.

conduct a procedural act of the criminal court. A similar regulation was laid down by the Albanian bankruptcy law of King Zog.

Low Countries display a particularity, when the request is filed by the debtor, if the latter is a joint stock company and the particularity consists in the fact that the court accepts the request, only if the request is submitted with a special authorisation of the shareholders assembly to request insolvency, otherwise, the request is refused by the court even thought this joint stock company is in an insolvency state.

According to the legislation of the Republic of Albania,[259] if the debtor files the request for the opening of the insolvency proceedings, the latter, along with the petition for the initiation of the bankruptcy proceeding, or immediately following the filing of such petition, shall submit a list of available assets and incomes along with a statement of the value of each object of the property and whether this object is used as a means of security or if it is encumbered as such; the debtor shall also submit a list of the creditors, their addresses and the amount owed to them. Thus, the debtor is bound to submit a detailed matrix of its assets and any other asset near him/her, but under his/her ownership specifying the reason why the object is found with the debtor and the right that entitles him to keep this object. Moreover, the debtor shall specify all the rights that he enjoys and the obligations as well as the identity and addresses of the creditors and his/her debtors. This is more than a detailed statement of the debtor and it is crucial for the court so that it can deem whether there are grounds for opening the insolvency proceedings.

The law[260] requires that the above mentioned details shall be submitted as two declarations, which according to the law shall be formal and in writing, which we think, it would be sufficient with regard to the formal aspect of the declarations. Similarly, the law requires another third declaration, its content shall verify that the above two declarations are complete and accurate, i.e. they reflect the real situtation of the debtor, on the basis of which he requests the opening of the insolvency proceedings. The law also requires the last declaration to be in writing.

The German law of bankruptcy also determines that the above mentioned declarations are necessary, if the request for opening the insolvency proceedings is filed by the debtor in crisis. The declarations to be submitted to the German court of bankruptcy are some standard forms and their requirements are similar to those determined by our law as above.

Legislations of other countries have similar requirements concerning the request filed by the debtor. The legislation of Luxembourg is one of those where the debtor shall submit along with the request its balance sheet[261], the latter shall include – the list and the value of all assets, debtor's passive and active activity, its income and losses. Similarly, according to the Portuguese legislation, the stock list, the balance sheet of the activity, accounting books, creditors' list with its respective loans shall be submitted along with the request as well as a report with all the executions that have not been performed yet.

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[259] Albanian Bankrutpcy Law no. 8901, dt. 23.05.2002 "On Bankruptcy", Article 15, point 1.

[260] Albanian Bankruptcy Law no. 8901, dt. 23.05.2002 "On Bankruptcy", Article 15, point 2.

[261] The Commercial Code of Luxemburg, Article 8 and 9.

Denmark displays a particularity in this case. Since the debtor is not bound to file the request for opening the insolvency proceedings, the law does not determine any particular form to submit the request; this could be simply done with a simple letter, as long as it is in two copies.

According to the Albanian law on bankruptcy in force,[262] if the debtor does not submit the above mentioned declarations, the court asks the debtor to meet the requirements laid down in the law by giving him a deadline, which used to be 30 days according the previous law but with the amendments made in May 2008 this deadline is 15 days. The reason for shortening this deadline was the request to have a quicker process.

The court shall refuse the request of the debtor to open the insolvency proceedings if he/she fails to submit the declarations within this deadline. This is reasonable, since the request for the opening of the insolvency proceedings without the declarations required by law, shall not be based on evidence, as a result, the court will not be able to deem whether there are grounds to open the insolvency proceedings or not. Refusal of the debtor's request shall be the same as if the request has not been submitted and shall not bring about any legal consequence. Hence, it shall not interrupt the deadline of 21 days foreseen by the law that the debtor, a legal person, shall request to open the insolvency proceedings. Consequently, the responsibility of the governing body of the debtor, a legal person, for not filing the request for the opening of the insolvency proceedings shall be incurred 21 days after being a debtor in an insolvency state, even though the indictment, which has been refused due to the lack of a complete documentation, has been submitted within this deadline. Thus, a collective personal responsibility shall be incurred for the members of the governing body of the legal person.

Furthermore, the law[263] provides for the withdrawal of the request at any time as long as the court has not given a verdict. Thus, while the request of the debtor for the opening of the insolvency proceedings is being examined and as long as the court has not given a verdict, if the debtor deems that his/her situation has changed and he has come out of the crisis and is capable of meeting his/her obligations, he can withdraw the request for the opening of the insolvency proceedings. There will not be any legal consequence besides the economic one to meet the judicial expenses incurred. The previous bankruptcy laws[264] determined neither the obligation of the debtor to request the opening of the insolvency proceedings nor the incurrence of a responsibility for failure to submit the request on time. Furthermore, they did not require that declarations shall be submitted along with the request to open the insolvency proceedings as evidence.

The debtor is entitled to appeal if the request is refused by the court or if the request filed by the creditor is accepted by the court. Since our law does not provide for a specific deadline, the deadlines laid down in the Code of Civil Proceedings of the Republic of Albania apply. The law also foresees that the debtor shall submit to the court a plan of re-organization along with the request for the opening of the insolvency proceedings. The debtor and the insolvency administrator are entitled to submit this plan. Certainly, the debtor submits the re-organization plan while the request for the opening of the

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[262] Albanian Bankruptcy Law no. 8901, dt. 23.05.2002 "On Bankruptcy", Article 15, point 3.

[263] Albanian Bankruptcy Law no. 8901, dt. 23.05.2002 "On Bankruptcy", Article 14, point 2.

[264] Albanian Bankruptcy Law no. 7631, dt. 1992 "On Bankruptcy of State Owned Enterprises" and law no. 8017, dt. 25.10.1995 "On Insolvency Proceedings".

insolvency proceedings is under examination, whereas the administrator shall submit it after a decision is taken on the opening of the insolvency proceedings. This decision appoints him/her as the insolvency administrator. The re-organization plan deals with the planning how the debtor's business shall be organized and function in the future, in order to fulfill all (or partially) the obligations of the bankrupted debtor within the deadlines of the plan, with the intention to keep the continuity of the person of the debtor after the plan has been successfully terminated. This is one of the new trends reflected on all bankruptcy legislations as well as on the proceedings, which are being attempted to be realized, before the debtor is bankrupt through his/her liquidation.

Request filed by the creditor

The creditor[265] is also entitled to request the opening of the bankruptcy proceedings; certainly, such an initiative shall be recognized for the creditor since the principal final purpose of the insolvency proceedings is the fulfillment of creditors' rights to the maximum possible. Thus, the whole process is conducted in the interest of creditors.

Pursuant to the current Albanian law[266], a creditor is entitled to request the opening of the insolvency proceedings if he has a legal interest to do so. The Albanian law of 2002 did not provide a clear definition for "a legal interest". With the amendments and additions made in May 2008, it is now determined by law[267] when a creditor has "a legal interest" to request the opening of the insolvency proceedings. The creditor who has an asset related interest towards the assets of the debtor as well as the fiscal authorities are considered as having a legal interest for opening the bankruptcy proceeding. Such a definition seems to be broad. In order for the creditor to have a legal interest, his right shall not only have an asset related character but it should also be matured. In the event of an obligation which is not matured yet, the creditor does not know and does not have the possibility to know whether or not the debtor shall be capable of fulfilling this obligation at the moment of the maturing of the obligation, and does not even have the right to request the fulfillment of this obligation until its maturing moment, therefore, the request of the creditor is not based on a legal interest. However, pursuant to our law, the fact, that the obligation of the creditor shall have an asset related character to legitimate him as a requesting party for the opening of the insolvency proceedings, is sufficient. There are other bankruptcy legislations which are similar to ours in relation to our "legal interest" of the creditor. We still hold the opinion that the legitimacy of the creditor, whose obligation is not matured yet and of the creditor whose obligation is matured, when requesting the opening of the insolvency proceedings, is a broad definition. This is supported not only with the above mentioned argument but also with the fact that a creditor can not prove whether its obligation is matured yet, the insolvency of the debtor or where to base his request for the opening of the insolvency proceedings, because the request of the creditor (to be elaborated later) shall be based on arguments.

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[265] Albanian Bankruptcy Law no. 8901, dt. 23.05.2002 "On Bankruptcy", Article 14, point 1.

[266] Albanian Bankruptcy Law no. 8901, dt. 23.05.2002 "On Bankruptcy", Article 17, point 1.

[267] Albanian Bankruptcy Law no. 8901, dt. 23.05.2002 "On Bankruptcy", Article 17, point 1; (Law no. 9919, dt. 19.05. 2008 "On some Additions and Amendments to the law no. 8901, dt. 23.05.2002 "On Bankrutpcy", Article 8).

Various legislations have different provisions in this aspect. The Danish one defines the circle of creditors. According to the Danish[268] law, the insured creditor and the one whose right is not matured yet is not expressly legitimized as the requestor, because they are not considered to have a legal interest in the opening of the insolvency proceedings. The insured creditor may fulfill his right through the insurance, even though the debtor is insolvent or not, therefore, he has no interest in the opening of the insolvency. With regard to the creditor of an obligation, which is not matured, can not be legitimized since his right of request is not matured yet, thus, he might not have claims for the debtor until his right is matured.

As stated in the Albanian law and several foreign legislations, the request of the creditor shall have the arguments why the opening of the insolvency proceedings shall be requested, to the extent the creditor can prove that the debtor is in crisis. This is a logical request as claims without arguments can not be sent to the court, since the court does not have grounds to support its verdict. However, there are legislations such as the Portuguese one, where the debtor is not obliged to be heard before the verdict, only if the court is uncertain for the verdict and thinks that the debtor can bring evidence to refuse the request for insolvency is he called at court. The Danish law as well, requires the creditor's request to be based on arguments and proves because, if the court refuses, he shall compensate the debtor for damages incurred due to the request for insolvency as well as for moral damages. Kosovo[269] legislation is similar in this aspect, if the request of the creditor is submitted due to unreasonable grounds, the legislation provides for the court to oblige the creditor to compensate the damage caused to the debtor.

Our law[270] presumes that there are legal grounds to open the insolvency proceedings and it is considered as sufficient evidence, if the creditor has been asking for his right to be fulfilled from three months and the debtor has not fulfilled his obligation nor has objected it. If this is the case, the court shall decide to open the insolvency proceedings. The debtor bears the burden of evidence to argue that he is not in insolvency or over indebtedness state. The three-month deadline determined by the law is sufficient for the creditor to request the fulfillment of the requested obligation and to wait for its fulfillment by the debtor; on the other hand the debtor shall have the possibility to refuse to fulfill this obligation. If the debtor does not have any objections to the right claimed by the creditor but still does not fulfill it, this means that he accepts this obligation toward the creditor, yet, he is not capable of fulfilling it. This prolongation of the incapability of the debtor to fulfil the obligation within a period of three months, as defined in the law, means that the debtor may be in insolvency or over indebtedness state, consequently the creditor is entitled to address the court with the request to open the insolvency procedure against the debtor.

If the obligation is not matured from three months and it is not fulfilled because the debtor has refused it, then we are not dealing with a presumption because there is a reason to open the insolvency proceedings, as the obligation is not fulfilled since the debtor has objections and not because he is not capable of fulfilling it but he does not want to fulfill it due to reasons he deems as right. Such a case is a civil conflict and it is a separate case

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[268] Danish Bankruptcy Law "Bankruptsy Act" of the year 1997, (amended in 1998).

[269] UMNIK Regulation no.2003/7, dt. 14.04.2003, "On liquidation and re-organization of insolvent legal persons", Article 13/parag 1.

[270] Albanian Bankruptcy Law no. 8901, dt. 23.05.2002 "On Bankruptcy", Article 17, point 1.

that does not have to do with the economic-financial situation of the debtor, thus, it does not constitute a legal reason to open the insolvency proceedings.

Other legislations are similar to the Albanian one. For instance, according to the Spanish law, creditors' request for the opening of insolvency proceedings is legitimized only in certain cases as follows: - when creditors have a sequestering order and can not find sufficient assets to fulfill their rights; - when the debtor has not been able to duly respect his obligations. As stated in the Spanish law[271], the cases when the debtor leaves or he is not found or closes the offices and the absence of a representative are sufficient evidence to open the insolvency.

Our law provides the creditor as well as the debtor with the right to withdraw his request for the opening of the insolvency proceedings. The law of 1995 recognized this right only for the creditor. The previous and the current law foresee that this right may be exercised as long as the court has not given its final decision. The fact that the creditor can not withdraw his request after the court has given its decision, as it is common in the normal civil proceedings can be inferred. If the court takes a decision in favour of opening the insolvency proceedings, the other creditors get also involved, even though they have not requested the opening of the insolvency proceedings for the concerned debtor, however, the law involves them in the insolvency proceedings upon a decision is taken.

The insolvency proceedings can not be interrupted if the creditor withdraws the request because the creditor or creditors who have requested the opening of the insolvency proceedings are not the only ones in the proceedings, once a decision is taken. The only thing a creditor can do is to waive his right, but he cannot stop the opened insolvency proceedings due to the rights of other creditors competing with him.

Moreover, the creditor is entitled to appeal against the decision of the court to refuse the request that he has filed for the opening of the insolvency proceedings against his debtor. In this case, the deadlines foreseen by the Code of Civil Proceedings apply, since our law does not provide for a particular deadline.

The request filed by the taxation authorities

The Albanian law[272] recognizes the initiative of the taxation authorities to open the insolvency proceedings, if the debtor is a legal person and if there is a balance sheet of deficit for a three year period.

While recognizing the initiative to request the opening of the insolvency proceedings by other subjects apart from the creditor, that is the person in whose interest the insolvency proceedings take place, the lawmaker confirms the general development of the phenomenon. As previously underlined, the progress of the insolvency proceedings is characterized by a state of crisis of the debtor and the debtor himself is part of the general economic organization, so the crises he experiences are immediately and externally reflected, regardless of the extent, it affects all the subjects related to it. This explains the legitimacy attributed to the taxation bodies whose initiative to act in the

[271] Spanish Bankruptcy Law 22/2003 "Concurso de acreedores" dt.09.07.2003

[272] Albanian Bankruptcy Law no.8901, dt 23.05.2002 "On Bankruptcy", Article 14. points 1, 1/1, 1/2; (Law no. 9919, dt. 19.05. 2008 "On some Additions and Ammendments to law no. 8901, dt. 23.05.2002 "On Bankruptcy", Article 5).

cases foreseen by law is recognized, i.e. to request the opening of the insolvency proceedings for any subject, which has submitted a balance sheet of deficit for 3 years consecutively to these bodies. The Law of 1995 did not expressly foresee the initiate of these bodies. The idea that this initiative belonged to the concerned persons, where the taxation bodies were mentioned first as potential creditors of the debtor in crisis existed in books.[273]

Prior to the amendments made to the bankruptcy law in May 2008, the taxation bodies regarded[274] the initiative to request the opening of the insolvency proceedings as a right of these organs only. With the amendments to the law in May 2008, this initiative has an obligatory character[275] for the fiscal authorities, who have the debtor under their jurisdiction. These authorities shall file the request for the opening of the insolvency proceedings within 30 days from the date when they identify the insolvency state of the debtor, a legal person. In this aspect, the law has a shortcoming since it does not provide for any penalty for the fiscal authorities, if they do not duly carry out their legal obligation to request the opening of the insolvency proceedings.

Pursuant to our law[276] the request filed by the taxation bodies must be proved. The latter shall submit the request along with the documentation of the company such as its act of foundation, statute and Taxation Identification Number as well as the financial statements of the company for which the opening of the insolvency proceedings is required.

The German law also provides for the taxation bodies to submit the request for the opening of the insolvency proceedings, however, according to the German law (in accordance with a decision of the German Constitutional Court) if the request is submitted by these bodies, the court is bound to take a positive decision for the opening of the insolvency proceedings where it is not necessary to prove and provide arguments for the insolvency or over indebtedness state of the debtor against whom the request is filed. Whereas according to our law, it is sufficient to submit the balance sheet of deficit for a period of 3 years of the person for whom the opening of the insolvency proceedings is requested. We think it would be in favour of the process if the decision on the opening of the insolvency proceedings is taken by the court immediately after the request is submitted by the taxation bodies, as it is the case in Germany, without being necessary to hear the debtor, as it shortens the time and the expenses of the process. This could have been one of the issues that our legislation could have regulated.

The request filed by the legal person

An important point to discuss is whether the request for the opening of the insolvency proceedings is filed by a legal person, in the role of the creditor or debtor, who is entitled to submit this request. The legal character of the company and its type shall be taken into consideration. It is known that commercial companies are classified into two types: personal commercial partnership and joint stock companies, where the holder of the legal

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[273] Genc Çifligu: Paper in the seminar on Bankruptcy, April 1998.

[274] Albanian Bankruptcy Law no.8901, dt 23.05.2002 "On Bankruptcy", Article 14 point 1.

[275] Albanian Bankruptcy Law no.8901, dt 23.05.2002 "On Bankruptcy", Article 14, point 1/1; (Law no. 9919, dt. 19.05. 2008 "On some Additions and Ammendments to law no. 8901, dt. 23.05.2002 "On Bankruptcy", Article 5).

[276] Albanian Bankruptcy Law no.8901, dt 23.05.2002 "On Bankruptcy", Article 14, pika 1/2; (Law no. 9919, dt. 19.05. 2008 "On some Additions and Ammendments to law no. 8901, dt. 23.05.2002 "On Bankruptcy", Article 5).

personality is different in each of them. Thus, for the collective partnership, which is inherently personal, the holder of the legal personality of the partnership is any of the partners and any of its administrators, since the legal personality does not belong only to the partnership but to its partners as well, since in this type of partnership all partners are in the capacity of entrepreneurs and, pursuant to the law[277], partners of this collective partnership are the administrators as well.

Any partner or administrator of the collective partnership may address the court with the request to open the insolvency proceedings both in the role of the debtor and that of the creditor. In the event of failure to respect the legal deadline of 21 days to request the opening of the insolvency proceedings, in the role of the debtor, the responsibility for the damages to the creditors after this deadline lies with both the partners and the administrators of this partnership, as long as the administrators are not partners. In this type of partnership, partners share a personal and collective responsibility since the legal personality of the partnership and that of the partners is not different. The responsibility would lie with the administrator, who is not a partner, unless he requested the opening of the insolvency proceedings within the deadline of 21 days.

With regard to the other type of commercial companies, respectively joint stock ones, holders of the legal personality are the members of the governing body, as partners have neither the legal personality nor are they in the capacity of entrepreneurs. However, the company itself has the legal personality and it is in the capacity of entrepreneurs, moreover, it is represented by its governing bodies. It is known that the joint stock company is a stock company per se. As stated in the law[278], this company can be represented by the administrators. Thus, with regard to the stock company, any of the administrators of this company has the right or the obligation (in the role of the debtor) to request the opening of the insolvency proceedings in the court. Regarding this company, failure to respect the deadline of 21 days to request the opening of the insolvency proceedings, in the role of the debtor, the responsibility for the damages caused to creditors after this deadline, lies with the members of the governing body (its administrators) and not with the partners. The previous law[279] determined the members of the governing body as responsible.

In addition to the above mentioned companies, there are other types of commercial companies which are intermediate with features from the two above mentioned ones. These companies according to our law are commandite companies and limited liability companies. Commandite companies are the first type with prevailing features of the personal partnership. On the basis of our law[280], the holders of the legal personality of this company are the unlimited liability partners and the administrators of this company. As a result, any of the unlimited liability partners (who are also in the capacity of the entrepreneurs) and any of the administrators of this company may address the court to request the opening of the insolvency proceedings both in the position of the debtor (has the right and obligation to be in this position) and that of the creditor. The limited liability

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[277] Albanian Law no. 9901, dt. 14.04.2008 "On Entrepreneurs and Commercial Companies", Article 22 and 31, as well as in the previous Law no. 7638, dt. 19.11.1992, "On Commercial Companies", Article 13 and 15.

[278] Albanian Law no. 9901, dt. 14.04.2008 "On Entrepreneurs and Commercial Companies", Article 158

[279] Albanian Law no. 7638, dt. 19.11.1992, "On Commercial Companies", Article 101.

[280] Albanian Law no. 9901, dt. 14.04.2008 "On Entrepreneurs and Commercial Companies", Article 56, 59 and 60, as well as in the previous Law no. 7638, dt. 19.11.1992, "On Commercial Companies", Article 36.

partners cannot address the court with a similar request since they are not holders of the legal personality of the company; their position is similar to that of the partners in a joint stock company and they have only monetary rights and for the internal administration of the company but they do not have any right on the external administration of the company, respectively, on the relations that the company establishes with third parties even though they might have a proxy and this is due to the fact that these partners are not in the capacity of entrepreneurs. If the deadline of 21 days to request the opening of the insolvency proceedings is not respected, in the position of the debtor, the responsibility for the damages caused to the creditors after this deadline, lies with any of the unlimited partner and with the administrators of this company. The responsibility of unlimited liability partners is personal and collective with the other unlimited liability partners for all the obligations of the company, as a result their position does not change when the deadline of 21 days has passed similar to the collective company, however, the situation of the administrator(s) who is not a partner is more serious.

Limited liability companies is the other intermediate form of commercial companies, which have more features similar to stock companies due to the fact that the partners are responsible in proportion with the contributions to the basic capital, the latter does not include securities (shares). As stated in the law,[281] similar to joint stock companies, the company itself is the holder of the legal personality and it is in the capacity of the entrepreneur, accordingly, the administrator or administrators of this company exercise this right, since they are the only ones who have the right to represent the company and obligate the company in relations with third parties. Therefore, the request to open the insolvency proceedings, either in the position of the debtor or that of the creditor, can be filed by the administrator or any of the administrators of this company. Any partner (who is not an administrator) cannot do this since they are not in the capacity of the entrepreneur. Any of the partners, who are administrators of the company may submit this request to the court, however, they do not have any rights as partners but as administrators of the company. If the deadline of 21 days to request the opening of the insolvency proceedings is not respected, in the position of the debtor, the responsibility for the damages caused to the creditors after this deadline, lies with any of the administrators of the limited liability company and if the administrator is a partner in the company, then the responsibility is equally the same for both the partner administrator and the administrator who is not a partner.

Amendments made to the bankruptcy law in May 2008, have also changed this particular point, where the law determines[282] the responsibility of the partners or shareholders, who are not holders of the legal personality of the company; nevertheless this responsibility is limited depending on the fact whether these partners or shareholders during their activities have become aware of the insolvency state of the company. If it is proved that they were aware and within a period of 3 months from the date they have become aware, they have not submitted the request, they are personally responsible and are punished by the fiscal authorities with a fine from 200 000 to 500 000 Lek. The difficulty here is to prove whether the partners or the shareholders (who are not bearers of the legal personality of the company) had become aware of the insolvency of the company or not.

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[281] Albanian Law no. 9901, dt. 14.04.2008 "On Entrepreneurs and Commercial Companies", Article 68 and 95, and in the previous Law no. 7638, dt. 19.11.1992 "On Commercial Companies", Article 50, point 5.

[282] Albanian Law on Bankruptcy.8901, dt 23.05.2002 "On Bankruptcy", Article 16, point 1, paragraph 2; (Law no. 9919, dt. 19.05. 2008 "On some Additions and Amendments to Law no. 8901, dt. 23.05.2002 "On Bankruptcy", Article 7).

At this point, since the law determines that these partners or shareholders should have become aware "during the activity", we think that by knowing when these persons have received some information in the meetings of the assembly, or from the report by the governing body of the company, or from the authorized experts or chartered accountants, then it is easy to prove whether they knew and since when. Continuing in the same line, the definition "during the activity" is not related in any way or indirectly with a confidential information that the partner or the shareholder would have come to know, moreover that this information would have been difficult to prove or even more difficult, it would have been the moment when they received the information so that the deadline of 3 months, within which the payment should be made, could be calculated.

Nevertheless, it is worth noting that for the first time, the Albanian bankruptcy legislation provides for the responsibility of the partners and shareholders who are not holders of the legal personality of the company, if they have not requested the opening of the insolvency proceedings. This responsibility is restricted to the fact, whether they were aware for the insolvency of their company and they have not requested the opening of the insolvency proceedings within a period of 3 months from the date they have become aware of this fact. Legislations of different countries such as the German[283], the Austrian[284] and even our legislation[285] foresee that any person with a special proxy shall have the intuitive to request the opening of a judicial proceedings, thus, any person with a particular proxy for this purpose shall submit the request for the opening of the insolvency proceedings, both in the position of the debtor and that of the creditor. If this was the case, the same procedural rules and principles shall be followed, as if the request was submitted by the person who is represented.

Conclusions and recommendations

As stated in the Albanian legislation, in order for an entity to bankrupt, it should be in the insolvency or over indebtedness state, and its assets should cover the expenses of the insolvency proceedings.

The request filed by the debtor should be accompanied with three declarations: the first shall have a list of all objects around him, their value and legal status of the object; the second list shall have the list of creditors with their personal data and addresses and the obligations the debtor has for each them; the third should verify that the above two declarations were accurate.

A request filed by the debtor is both the right and the obligation of the debtor in crisis. Failure to file the request by the governing body of the debtor within 21 days from the date the crisis has begun results into a liability of the members of the governing body.

The creditor legitimately files a lawsuit to request insolvency if he has a legal interest, when the law considers that there is a legal interest to open the insolvency proceedings for the creditor, who has an asset related interest in the assets of the debtor and the fiscal authorities. I think that the interest should not only be an asset related one, but the right of the creditor should have been requested to be fulfilled.

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[283] German Code of Civil Proceedings, Article 88/1.

[284] Austrian Code of Civil Proceedings, Article 102/2

[285] Albanian Code of Civil Proceedings, Article 154/a, paragraph 1.

The request filed by the taxation authorities is both a right and an obligation of these bodies, if the commercial entity has a balance sheet of deficit for three consecutive years. In this case, submitting the balance sheet of deficit for three years shall be a sufficient evidence for the court to open the insolvency proceedings.

On behalf of the legal person, the request may be submitted to court by any person who is a holder of the legal personality of this legal person. As a result, on behalf of the collective partnership the request may be submitted by any of the administrators or the partners of this partnership. With regard to the commandite company, any of the administrators of any of the unlimited liability partners may act. Concerning the limited liability company or stock companies, the request may be files only by their administrators.

In the position of the debtor, any of the partners or shareholders of the company are entitled and bound to file the request to open the insolvency proceedings, provided that they have become aware of the insolvency of the company, during the activity of the company. They are obliged to request the opening of the insolvency within three months from the date they have become aware of this fact, failure to do so results into responsibility.

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Penal Code of Italy

Penal Code of Belgium

Managers and employees impact in the implementation of the concept of marketing in the healthcare sector in the Republic of Macedonia

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Abstract

According to World Health Organization, management in healthcare sector means optimal use of resources. This, mainly implies to the work with people, who are the most important resource for achieving best results. Beside this, the management also includes management with finances, materials, as well as successful implementation of the marketing concept in one healthcare organization. There are three types of management in a healthcare organization: management according to the level, to the type and specialization.[286]

The very important thing is the autonomy as well as in what kind of activities the manager spends more energy and time; in finding finances, communication with clients, patients, organizational issues. While in present days, the biggest part of their time, managers spend in implementation of marketing strategy inside healthcare institutions.

Anytime, the manager's priority is issuance of the right decision in the right time. The implementation of the marketing strategy means communication, analyzing information, reallocation of the resources and solution of problems. After this, follows the Evaluation, which in the same time represents a controlling function in the management. It represents measuring results of the undertaken actions for making changes, in order to increase the efficiency. The Evolution means assessment of value and indicate what has been achieved, compared with what was planned before. The healthcare is a complex area, which significantly impact to life quality of the people, and demands a team work by the personnel that offer medical and healthcare services.

Keywords: health care institutions, marketing, service quality, manage perception, patient perception

Introduction

During the past few years, researches made by the World Health Organization testify the fact that implementation of the marketing concept in healthcare sector brings positive results, as in the aspect of increasing the satisfaction of final consumers, respectively the patients, as well as in the aspect of improving the financial situation, respectively realization of higher benefits of healthcare organizations.

In the Republic of Macedonia, no detailed studies have been conducted in this area, and for this reason this study was undertaken.

The study has to do with the examination of the implementation of the marketing strategy in healthcare institutions in the country. For these reasons, I fulfilled a survey through e-

[286] Manual for managament and leadership in health - Project unit for Coordination, Republic of Macedonia, Ministry of Healthcare, Skopje, 2006. pg.36

mail and telephone, in the time period from September 1st, 2011 till December 31th, 2011. I questioned 25 managers employed in healthcare institutions from ten different cities in R.Macedonia, and the achieved results are evaluated as representative data, which realistically reflect the general healthcare situation.

This survey is been realized in order that benefits to be evident by implementation of this marketing concept in healthcare, as a type of manager' s philosophy.

Analysis of Survey/Questionnaires, conducted with managers in Public Healthcare Institutions PHI

The results from the survey have been processed in order to get a clearer picture, and they are submitted in tabular and graphical way

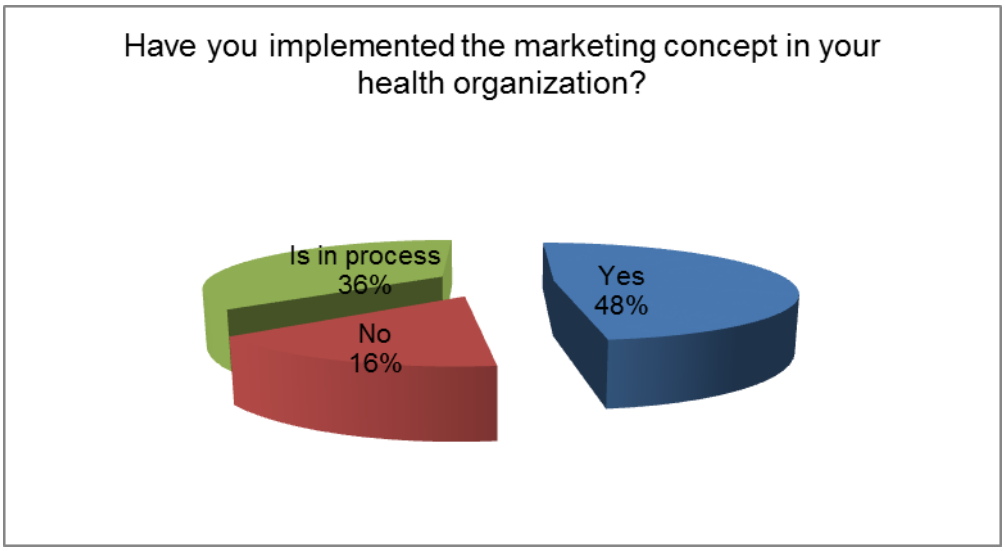
Table no.4 Processing the results, obtained from the survey conducted with the managers of PH

	Question	Answer	Apsolute indicator	Relative indicator
1	Have you implemented the marketing concept in your healthcare organization?	a) yes b) no c) is in progress	a)12 b)4 c)9	a)48% b)16% c)36%
2	Do you make a bid to improve the qyality of your healthcare services on basis of identification of healthcare needs and their fulfillment?	a) yes b) no	a)21 b)4	a)92% b)16%
3	Do you use advertising as a way to comunicate with patients?	a) yes b) no c) rare	a)14 b)5 c)6	a)56% b)20% c)24%
4	Do you think that you inform all patients in time about all changes regarding your healthcare services?	a) yes b) no	a)23 b)2	a)92% b)8%
5	Do patients have easy access to your healthcare services?	a)easy access b) have access c) do not have access	a)18 b)5 c)2	a)72% b)20% c)8%
6	What is the price trend for your healthcare services?	a) with growth trend b) stagnates and remains at the same level c) with trend to discount	a)5 b)11 c)9	a)20% b)44% c)36%

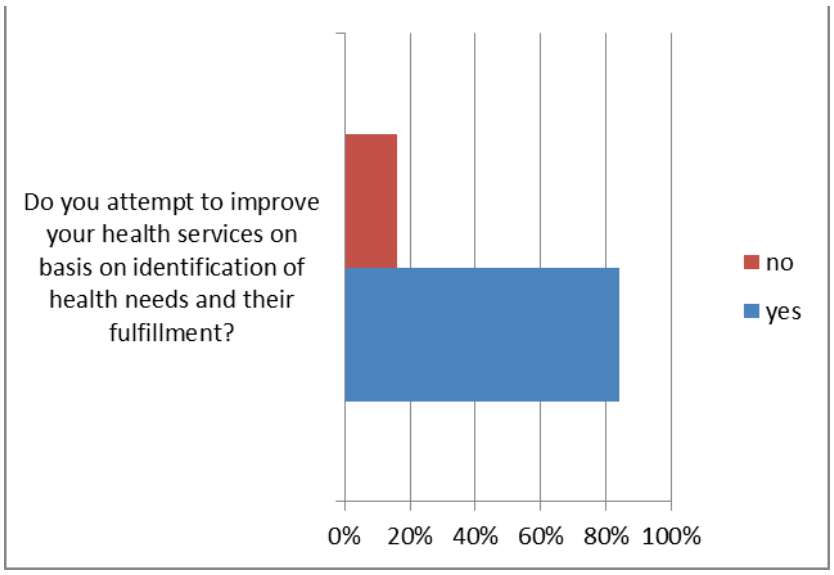
On basis of the conducted survey through telephone and e-mail, where 25 managers from different healthcare clinics in Republic of Macedonia were included, in order to get

more accurate results regarding implementation of the marketing concept in work activities of healthcare institutions, respectively, have managers approved and implemented such ways of work activities, so that after a some time period to make analyses about the benefits of this philosophy of business and new functioning of health institutions.

The results are shown in a graphical way in order to get a clearer picture.

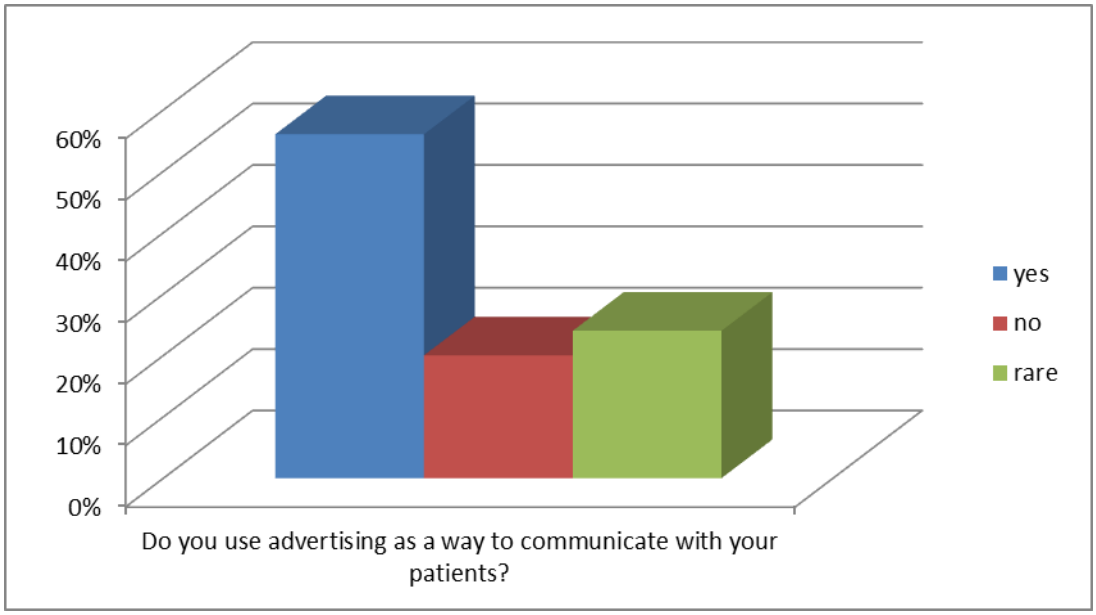


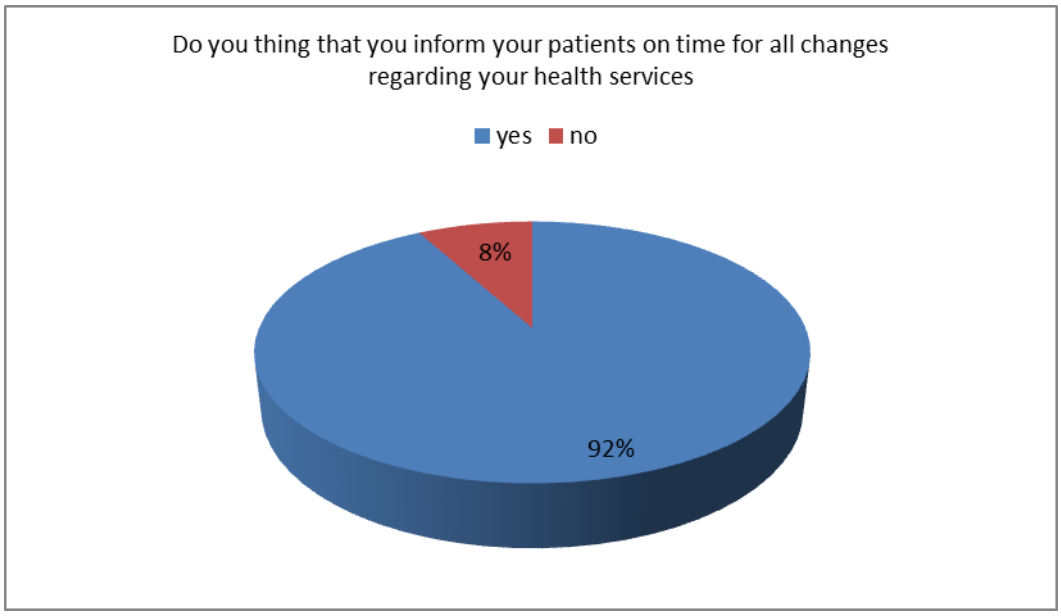
First question that was presented to managers - do you think that your healthcare organization implements the marketing concept during your work?: 48% answered positively, 36% answered that the implementation is in process, while 16% answered negatively. Enjoys the fact that a high percentage from healthcare clinics and institutions notes the benefits from this kind of a business philosophy and they implement it or at least, its implementation is in process.



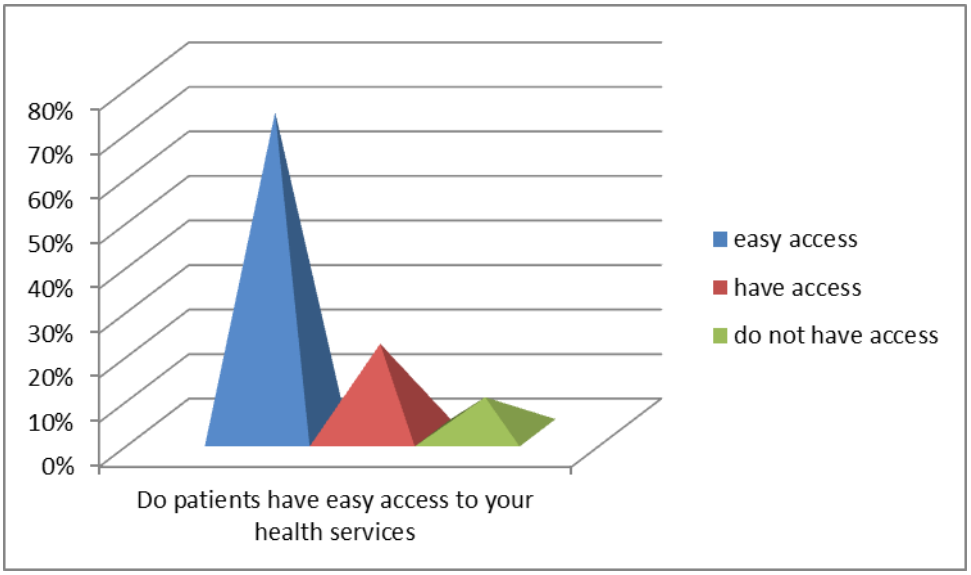
Such a confirmation that indeed the marketing philosophy of business activities is right and fairly understood by managers in healthcare organizations, shows the fact that over 80% from managers have answered that quality improvement of healthcare services is

been made on basis of right identification of healthcare needs and their implementation, that represents a postulate of marketing orientation.

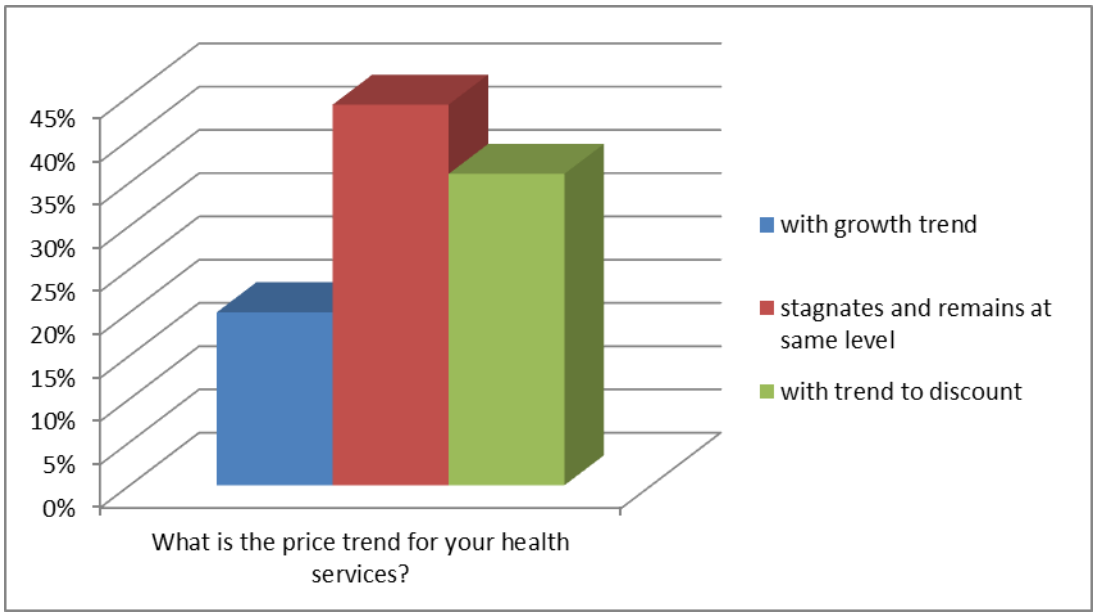




A high proportion of healthcare clinics and institutions, use advertising as a way to communicate with their patients, informing them about all changes in the provided healthcare services.



Over 90% of managers estimate that healthcare services in their healthcare organizations are available, while only 8% estimate that their healthcare services are not available for all citizens.



The issue that has to do with the formulation of the question to get an answer about the fourth element of the marketing mix, respectively the price of the healthcare service, we can conclude that the largest percentage of answers are that it corresponds with the quality of the healthcare service and that its stagnates or remains at one constant level; over 30% have answered that they plan to reduce the prices of healthcare services, while the lowest percentage of the managers surveyed answered that they will undertake an initiative for raising their prices.

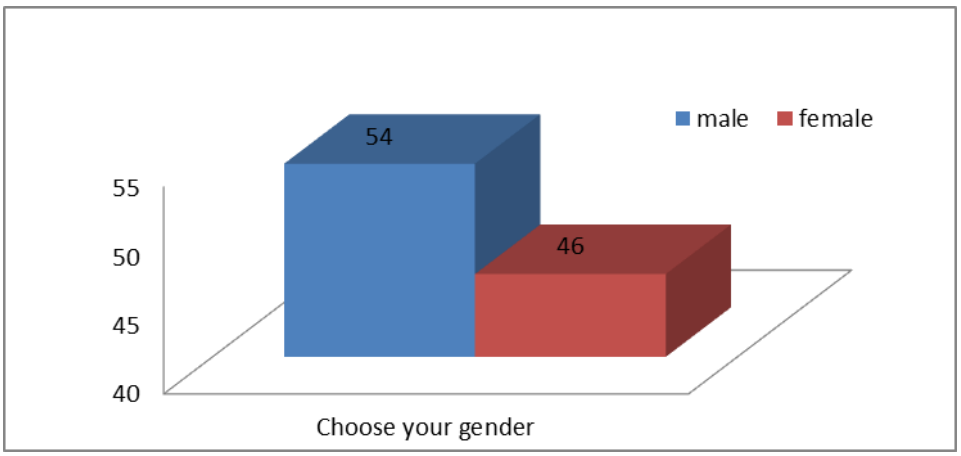
Table no.5 Processing of the results obtained by conducted survey with patients

	Question	Answer	Absolute indicator	Relative indicator
1	Choose your gender:	a) male b) female	a)27 b)23	a)54% b)46%
2	Age of surveyed persons:	a) from 19 till 25 b) from 25 till 30 c) from 30 till 36 d) from 39 till 45 e) from 45 till 52 f) 52 and over	a)2 b)4 c)8 d)6 e)14 f)16	c)4% d)8% e)16% f)12% g)28% h)32%
3	Education level:	a) Primary education b) Secundary education c) Higher education d) Master e) PhD	a)3 b)29 c)21 d)6 e)1	a)6% b)58% c)42% d)12% e)2%
4	Are you satisfied with quality of provided healthcare services?	a) very satisfied b) satisfied c) not satisfied d) not satisfied at all e) no answer	a)37 b)5 c)1 d)4 e)3	a)74% b)10% c)2% d)8% e)6%
5	Do you think that during past three years, the level of provided healthcare services in R.Macedonia are improved?	a) yes b) no c) I don't know	a)42 b)5 c)3	a)84% b)10% c)6%
6	Do you think that you are informed in time for all changes regarding all provided healthcare services?	a) yes b) no c) I don't know	a)29 b)17 c)4	a)58% b)34% c)8%
7	You are often informed by:	a) televizion and radio b) newspapers c) friends	a)26 b)14 c)10	a)52% b)28% c)20%
8	Are you satisfied from the access to healthcare services?	a) very satisfied b) satisfied c) not satisfied d) not satisfied at all	a)6 b)27 c)10 d)7	a)12% b)54% c)20% d)14
9	Do you think that prices of healthcare services corespond with their quality?	a) yes b) no c) I don't know	a)26 b)19 c)5	a)52% b)38% c)10%

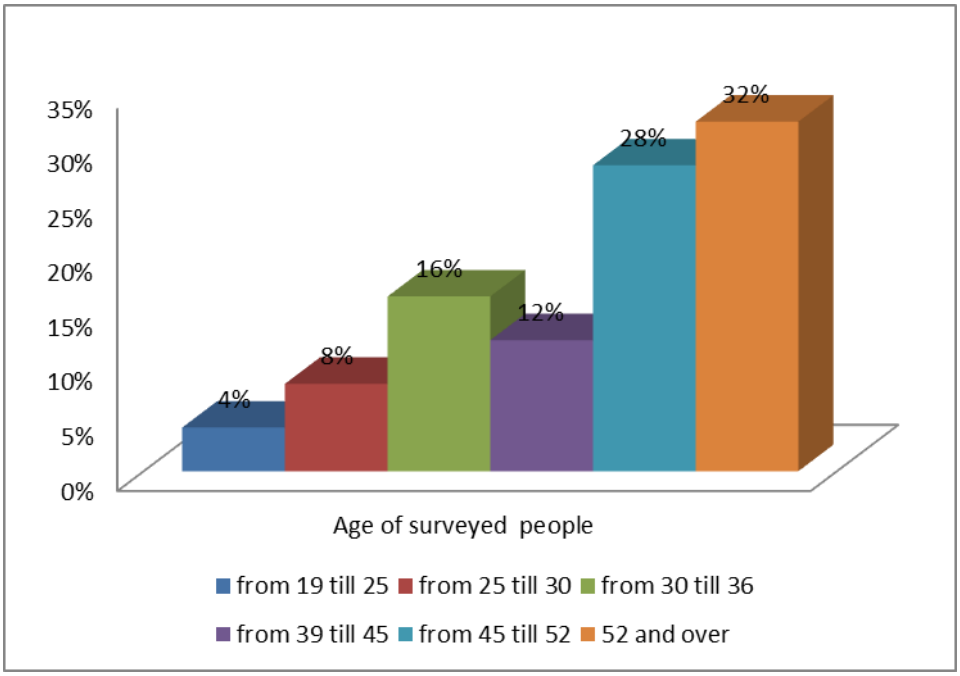
Do you think that health developments in R.Macedonia mark:	a) growth b) stumble c) downfall	a) 35 b) 10 c) 5	a) 70% b) 20% c) 10%

The results of the survey conducted with managers have confirmed that the managers of the healthcare institutions implement and often use marketing philosophy during their work activities. In order to estimate the success from the implementation of this marketing philosophy, I conducted a second survey, in which the surveyed persons answered ten (10) questions, and from their answer, we got a clearer picture about the general impact of the marketing concept in healthcare institutions in Republic of Macedonia; and above all, it was estimated the level or the rate of patient's satisfaction regarding quality and prices of provided healthcare services, as well as the extent of how are the patients informed about all changes in healthcare sector.

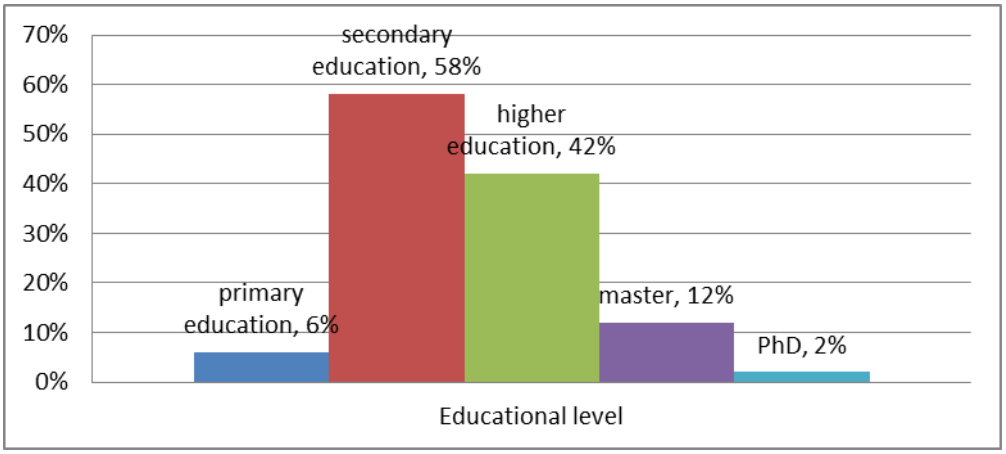
In order to have clearer picture of the results provided, they are processed as absolute and relative indicators and shown in a graphical way.



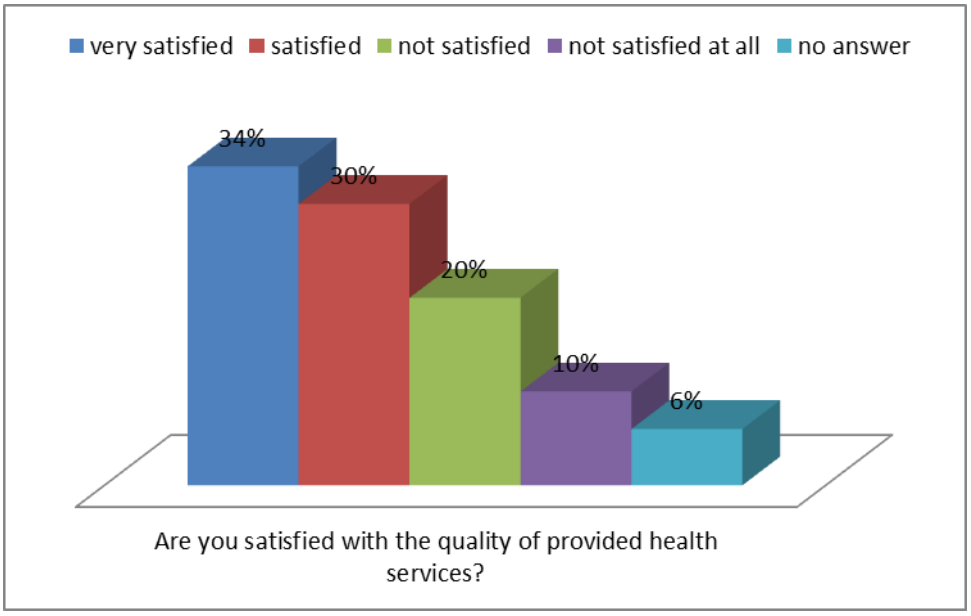
In total 50 persons were surveyed, from whom 54% were male, while 46% were female. In this survey although males dominate, however, their number is not so big compared with the surveyed females. That is why this survey is assessed as relevant for future surveys.



More dominate are surveyed persons of the age over 52 years old, while14% are in age between 45 and 52 years old, whereas the smallest percantage is age between 19 and 25 years old.

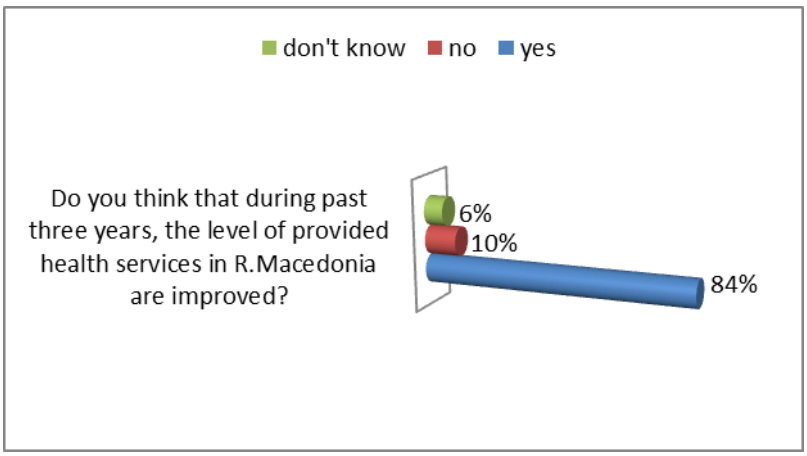


Almost 58% of surveyed persons have secondary education, 42% have higher education, while only 2% or only one surveyed person is a PhD, 6 persons have Master studies or 12%, whereas 3 persons or 6% are qualified workers.

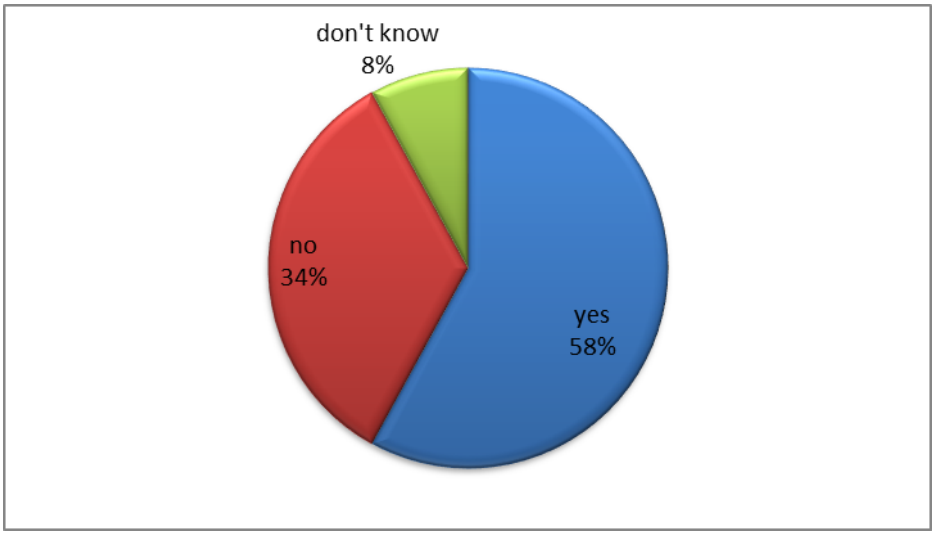


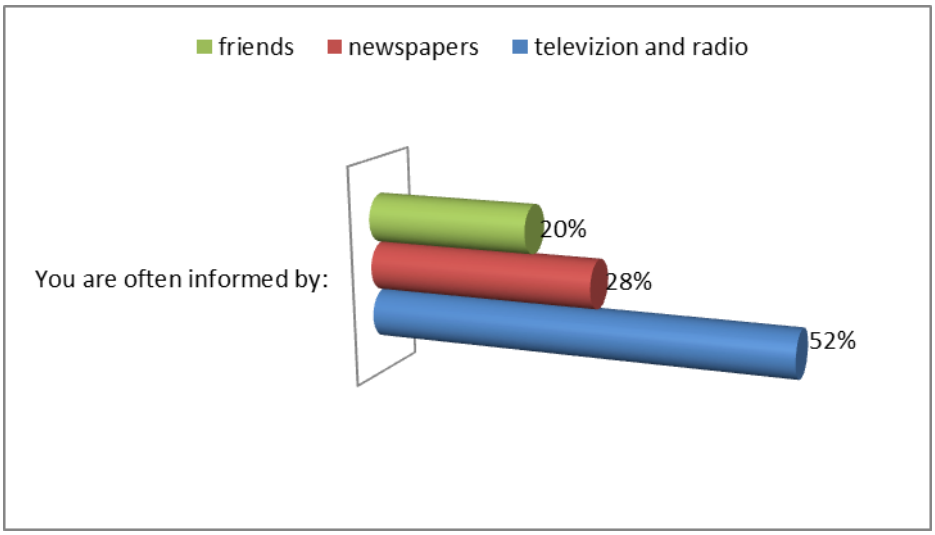
One high percentage, respectively 34% from the surveyed persons have answered that they are very satisfied from the provided healthcare services and 30% are satisfied, or in total 64% or 2/3 of total number of the patients are satisfied from the provided healthcare services; while 30% or 1/3 of the patients are not satisfied from the healthcare services.

Macedonia is a country in development and faces and struggles with many economic problems; that's why such a high percentage of satisfied patients represents a big success.



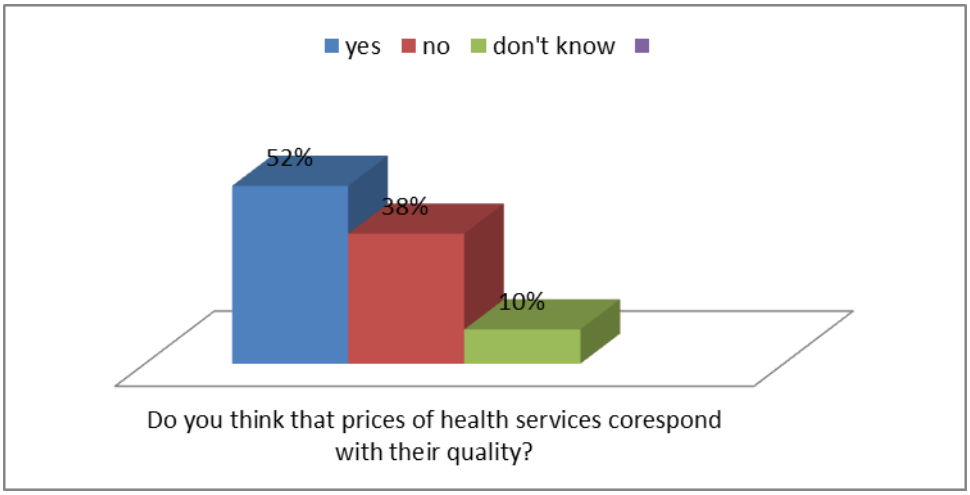
The fact that encourages more, is that 84% of the surveyed persons agree that during the past three years, the level of the healthcare services have improved; while only 10% do not agree with this conclusion. From all this, we can conclude that patients in R.Macedonia are satisfied from the quality of healthcare services as well as are happy with this trend of quality improvement.



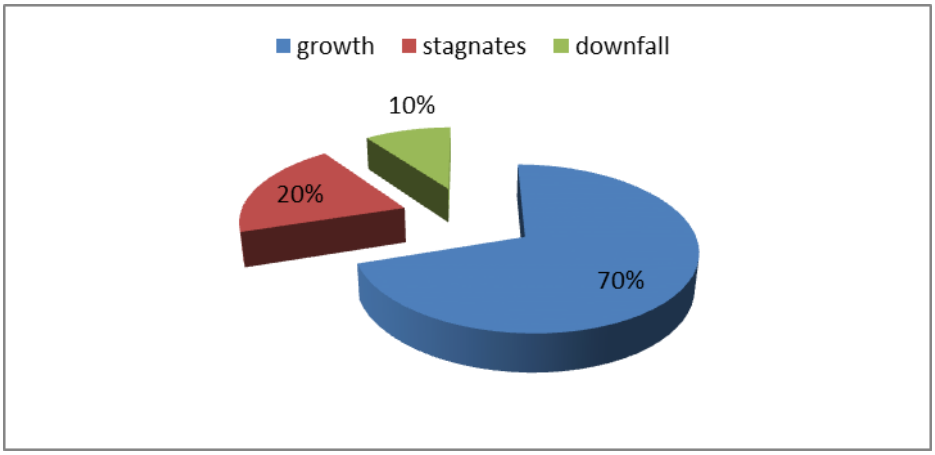


As regards to promotion in healthcare as a part of implementation of marketing strategy, we can emphasize that patients in a big percentage are informed about all changes in respect of healthcare services, and these informations often are provided from electronic and written media.

54% of the surveyed patients are satisfied of the access to healthcare services, 12% are very satisfied, while 1/3 are not satisfied from the access to healthcare services, particularly, a serious problem is the access to healthcare services in rural places; therefore must be compiled a strategy in order to improve the access to healthcare services for all citizens.



As regards to the price of healthcare services, 52% estimate that the price corresponds with the quality of healthcare services, while 38% do not agree with this fact.



Can be concluded that citizens of Republic of Macedonia appreciate and feel positive changes in the healthcare system, because 70% think that healthcare marks increase, 20% think that healthcare is stagnates, while 10% of the surveyed persons think that healthcare marks downfall.

If we compare the questionnaires conducted with managers and patients, we can conclude that these results show positive results from the implementation of the marketing concept in the work of healthcare institutions, respectively in increasing the level of satisfaction of the patients. Despite the fact that managers are more optimistic and expect bigger resulst in the quality of healthcare services, through promotions, distribution and affordable prices which will corespond with desires, needs and level of patient's satisfaction, however we should be satisfied by the obtained results.

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Consumer protection in the European Union and Albania

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Abstract

Consumer protection is described in the context of social policies promoted by each state. Currently, the consumer in the quality of the merchandises solicitor is an market's partner and his position in the context of market is strengthening from society development .The complex relationship between economic factors generate extreme aspects, which are different to the scope of some consumer protection programs. Governments as well as nongovernmental organizations operating in the field of consumer protection impose some structure for consumer protection. The internal market has played a major role to withstand the economical provocations of Europe and also to give a concrete advantage to the UE citizens. Current economical, social, environment, policies and new technologies are becoming increasingly accessible. European policy of consumer protection has an important contribution in changing the policy interest by focusing on citizens. The Commission's vision is to show to all EU citizens, that they can buy with confidence anywhere in the EU and taking protections benefits to sell anywhere based in some some rules. An efficient policy related to consumer protection can improve the lives of citizens. The technological revolution of the Internet is growing even more. Thus theelectronic commerce presents a huge potential consumer welfare meanwhile it expands the offer of available products, stimulates price competition and creates new markets. The globalization of production will continue having a permanent effect on customer growth in the EU.

Keywords: consumer protection, EU, consumer rights, globalization of production, Albanian consumer.

Introduction

Quality of life is and will be a concern of the management of our society which can be seen in its individual or to human society. Quality of life includes material and spiritual side that gives the consumer the pleasure of purchasing quality products. When we refer to the quality of a product we follow not only the costumer but also the process of conception (research-project) and the production of items. Making a historical description of the policy regarding customers, we state that it has been determined for the first time by Adam Smith in Scotland seventeenth century showing the ultimate goal of production and consumption, the manufacturer was subordinate to customer requirements. In a modern formulation, we can say that the goal of economic activities is to allocate resources efficiently, to satisfy customer needs. In the literature of the field, affirmed that the democracy in the political point of view stands at the electoral rights ,in economical point of view the democracy stands and is strongly based on the costumers rights, their

possibility to choose, being informed , compensated and secured. The concept regarding consumer rights has its origins in the "Charter of the Rights of Consumers" set by U.S. President JF Kennedy in March 1962.[287]

Consumer protection in the European Union

Consumer protection was included in the European Community Treaty between the Maastricht Treaty. Its aim was to promote the health, social, economic and legal interests and rights of consumer information. The Treaty predicted the co-decision procedure under the consultation of Economic and Social Committee.

A Member State may retain or introduce more stringent measures for the protection of Community's consumer as long as they are in conformity with the Treaty and the Commission is aware of the issue.

European trade environment has a high degree of competition and constant concerns regarding the consumer protection. This concern is based on the principles of the EU in relation to consumer's protection, determined by a number of directives related to the safety of the product and consumer rights.

Each EU member state must provide to the consumers, respect of their legal rights. The details most specified at national level in relation to these rights and how to exercise them, depend on the approximation of EU directives by each member state in the internal legislation. National legislation offers a greater stage of protection than EU law.

The principles which stand at the basis of consumer protection in the EU are[288]:

a) Buy what you want, where you want
Purchases made in another country of the EU member states have not duty or VAT, even if they are purchased in another state on the internet or by the phone. In general, national authorities cannot prevent entry to the products purchased from a member state of the EU, but there are exceptions in the case of weapons or items that are harmful.

b) Comparison of prices should be simple
This principle leads the standardized mark of prices per unit, to facilitate a better choice.

c) Consumers should not be misled
The EU legislation provides that all the economic agents are going to present more information about the firm, production, price (including shipping and tax) and the sufficient time for delivery of income.

d) Information to resolve disputes concerning the products purchased abroad
One of the basic principles of European policy in the field of the customers is the recognition of the customers and economic agents which are responsible in the domestic market. The consumers should be informed and their interests must be protected and promoted in their activities.

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[287] http://en.wikipedia.org/wiki/Consumer_Bill_of_Rights, clicked on 20.04.2013.

[288] European Commission , *Consumer Protection in the European Union: Ten Basic Principles*, 2005, pg.3.

A good policy of the consumer's protection can improve the lives of citizens. The trusted and informed consumers are the engine of the economic evolution. The internal market has played a major role in Europe's economic provocations and has given the advantages to EU citizens.

But consumer's position in the internal market and in particular in the small markets were underestimated until now.

Current economic social, political, provocations have appealed for a change and for an approach to consumer protection. European policy of consumer's protection can have a contribution into policy points is related with people.

The vision of the commission is to show all EU citizens that they can buy with confidence anywhere in the EU and must be protected.[289]
In this context the European Commission pursues three main objectives:

• offer to consumers more power t between market's transparency and with the confidence that comes from their efficient protection.
• improve the welfare of consumers in the area of pricing and they have the ability to choose with the quality and safety. Consumer welfare is in the center of attention in the developed markets.
• To protect the consumers against the risks and the threats.
Consumer protection policy is still in the middle of the provocations faced by the citizens, the Economy and the society. The complexity of retail markets increases the role of consumers. Consumers have more power when the management is related to their affairs. The liberalized services in particular should be developed, such as liberalization of the electricity, gas and communications-mail.

The technological revolution brought by the Internet can bring more improvements. The key's factor is the development of the Internet, which may give a significant impetus to electronic commerce. Electronic commerce (e-commerce) is a great potential to increase the welfare of consumers, stimulate competition between prices and creates new markets.

The globalization of production will continue, having the effect of a permanent increase in consumption of EU production. The dealers will sell more products coming from all over the world between electronic commerce.

The main objective of the European Commission is to achieve by 2013 a more efficient internal market. The customers will have the benefit equally. The economic agents, the sales technologies and the methods of retail markets in the EU territory will have a high level of security.

The Consumer markets will be more competitive, open and transparent. The products and services will be more secure. The customers will have access to basic services with reasonable prices.

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[289] Communication from the Commission, *A European Consumer Agenda - Boosting confidence and growth*, Brussels 2012.

Regarding the protection of consumers we recognize certain principles[290]:

• Promoting a vision for consumer protection, which is known as a socio-economic phenomenon which is related to consumer's interests in all relevant areas of the EU.
• The combination of self-defense is a more secure, more efficient and less costly way by each Member State.
• The application of the acquis communautaire.

Consumer rights in Albania

The Customer objectively and realistically, has the role and position of a subject "passive". The customer is a victim of abuse, human rights violations and fraud,that actually occur in Albania. The Law no. 9135, 2003 "Consumer Protection" put some producer responsibility retailer and service provider. Consumer protection law and certain provisions of the Civil Code which were an important part of the legislation in Albania. The law adopted in that time presented a significant step in aligning legislation with the Community in the field of consumer protection.

According to the new Law no. 9902 dated 17.4.2008, as amended by Law No. 10 444, dated 14.07.2011 on "Consumer Protection"[291] the rights of albanian customers are:

- the right of protection of health, environment, and safety of life,
- the right of protection of economic interests
- the right to complain
- the right to claim compensation
- the right to education
- the right to acquire information informing
- the right to access public services
- the right of legal defense
- the right of being organized in associations or unions aiming the protection of consumers' interests and of representation in decision-taking bodies.

This law states that the state has the main responsibility in the field of consumer protection and simultaneously guarantees the rights and obligations of consumer organizations [292]

• the right to appeal, under section 56, the consumer, when rights are violated, has the right to submit a complaint to the state administrative structures responsible for consumer protection, consumer's associations; court of arbitration , people's advocate; Law no. 9902 dated 17.4.2008, as amended by Law No. 10 444, dated 14.07.2011 on "Consumer Protection" protects consumer rights, educating the consumers about the realization of the right to appeal and redress. So the consumers know what are the conditions and the methods of their protection, which are the sanctions in case of abuse and the rights and obligations of consumer organizations. The signature by Albania of the

[290] EU Consumer Policy strategy, 2007-2013.

[291] Article no 4 Law no. 9902 dated 17.4.2008, as amended by Law No. 10 444, dated 14.07.2011, " On Consumer Protection".

[292] Article no. 54, Law no. 9902, dated 17.4.2008, as amended by Law No. 10 444, dated 14.07.2011, " On Consumer Protection".

Stabilization and Association Agreement with the EU in 2006 resulted in an intensification of efforts to introduce consumer policy in Albania. One year later, the government adopted a Crosscutting Strategy on Consumer Protection and Market Surveillance 2007-2013 which provided the policy framework for a number of measures aimed at transposing EU legislation and establishing the related enforcement institutions.

The priorities of this common strategy are:

- To empower Albanian consumers (real choices based on accurate information, strong , self-determination, confidence that comes from effective protection).
- Protect economic interests of Albanian consumers in terms of price, choice, quality, diversity, affordability and safety.
- To provide Albanian consumers with comprehensive market surveillance and transparency.
- To protect Albanian consumers effectively from serious risks and threats that they cannot tackle as individuals.

Conclusions

A common policy to protect consumers and users of products and services is essential for the functioning of the single market in the interest of the citizens. The aim of the common consumer policy is to ensure that the European Union's consumers draw maximum benefit from the existence of the internal market and play an active role in it. The single market must serve their maximum wellbeing and give them a free choice of goods and services of the best possible quality and at the best possible price, without consideration for their origin or for the nationality of their supplier. Furthermore, within the single market consumers must enjoy a similar level of protection to that provided within a national market. For these reasons, the goods and services offered in the single market should be safe and the consumers should dispose of the necessary information so as to make the good choices.

The vision of the Strategy on Consumer Protection and Market Surveillance for Albania 2007-2013 is that Albanian consumers become well informed and self determined individuals and have a self-confident manner on the market places. They will have a good command in assessing the market situation that comes from comprehensive market surveillance and transparency. They also will have a strong confidence that comes from effective protection based on a solid legal framework and institutional background supervised by the government. This legal framework will be increasingly harmonized with the EU law, will enforce the Albanian administrative capacities and initiate coordinative lawmaking activities. Albanian consumers will be effectively protected from serious risks and threats that they cannot tackle as individuals.

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