

# EUROPEAN REGIONAL MASTER'S DEGREE IN DEMOCRACY AND HUMAN RIGHTS IN SOUTH-EAST EUROPE

Sarajevo



Bologna



## DEMOCRACY AND HUMAN RIGHTS IN SOUTH EAST EUROPE: SELECTED MASTER THESES

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**A.Y. 2013- 2014**

MASTER THESES SUBMITTED IN PARTIAL FULFILLMENT OF  
THE REGIONAL MASTER'S DEGREE IN DEMOCRACY AND  
HUMAN RIGHTS IN SOUTH-EAST EUROPE IN OCTOBER 2014

SARAJEVO BOSNIA AND HERZEGOVINA  
2014



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## PREFACE

The European Regional Master's Program in Democracy and Human Rights in South-East Europe is established through the joint efforts of eleven participating universities and research centres and is coordinated by the University of Sarajevo, Centre for Interdisciplinary Studies of the and the Institute for the Central-Eastern and Balkan Europe of the University of Bologna.

The Program is an unique educational activity that promotes the development and realisation of a generation of young people from the region of South-East Europe and the European Union. Its structure is defined in a way emphasising among its participants, both students and Faculty, a shared consciousness that the development of democracy and human rights in the region depends on a plural interdependence of factors. All of the relevant issues in South-East Europe, stability, democracy, and development are mutually correlated and influence each other which give this common regional effort in addressing them more chance of success in a context of inclusive policies and in the framework of a wider European integration process.

Much of the foundation for the establishment of the European Regional Master's Programme had been laid down in the mid-1990s when a team of prominent Academic Faculty gathered around the idea of organizing region specific educational activities. Its first practical embodiment was the Cervia International Summer School, which started in 1995, and was supported by the European Commission. For the first five years of its existence, it provided the necessary background of specific teaching and research experience that subsequently moved to the region of South-East Europe once conditions allowed.

The Master program is currently co-financed by the European Union (via EIUC through the Global Campus Network) and the Italian Ministry of Foreign Affairs through its DGCS/UTL Offices. Its structure and academic content reflect on topical issues common for the region of South-East Europe and account for the wider conceptual framework of the process of European integration. Each year the Programme produces around 30 young graduates organized in an active Alumni Association (ACIPS) who find employment in national governments, national and international governmental and non-governmental organizations, think tanks, research institutes and universities within Europe and beyond.

What follows are the Awarded six Master Theses of the academic year 2013/2014. The selection criteria adopted by the Academic Faculty of

the Program include originality and relevance of the topic and the author's argumentation, structure and clarity of the exposition, innovative approach and skillful academic engagement. They are an accessible material, which is a useful read for students of human rights and for all who are interested in the issues emerging from the processes of their protection and violation in the region of South-East Europe.

We would like to use this opportunity to congratulate our graduates on successfully completing this Program and wholeheartedly thank the staff for their immeasurable support and enthusiasm for the past 13 years.

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MASTER THESIS SUBMITTED IN PARTIAL FULFILMENT OF  
THE EUROPEAN REGIONAL MASTER'S DEGREE IN DEMOCRACY  
AND HUMAN RIGHTS IN SOUTH-EAST EUROPE

**BY  
SILVIA CITTADINI**

**SUPERVISOR: PROFESSOR ZDENEK KAVAN**

SARAJEVO, BOSNIA AND HERZEGOVINA

11 OCTOBER 2014



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## **List of Abbreviations**

ECHR - European Convention of Human Rights

ECOSOC - United Nations Economic Social Council

ECtHR - European Court of Human Rights

ERRC - European Roma Right Center

ICESCR - International Covenant for Economic Social and Cultural Rights

IDPs - Internally Displaced Persons

IUCN - International Union for Conservation of Nature

MHRR - Ministry for Human Rights and Refugees

NGOs - Non-governmental organisations

OSCE - Organisation for Security and Cooperation in Europe

SIDA - Swedish Development Agency

UDHR - Universal Declaration of Human Rights

UN - United Nations

UNECE - United Nations Commission for Europe

UNEP - United Nations Environment Programme

WWF - World Wide Fund for Nature

UN Habitat - United Nations Human Settlement Programme

UK - United Kingdom



## Introduction

In 2009 the Municipality of Ilidža, located at the outskirts of Sarajevo, decided to tackle the poor living conditions of the local Romani settlement of Butmir with the cooperation of the Government of Sarajevo Canton and the funding of the Swedish Development Agency (SIDA). Butmir, as the majority of the Roma settlements in the country, was not legalised and not considered adequate for living. With the mobilized funds the authorities constructed a new housing complex composed of eight housing units where 33 families of the Butmir settlement were relocated immediately after the conclusion of the works. Nonetheless, after a short period of time the Municipality referred to the Canton that a certain number of housing units were severely damaged and 6 out of 8 were vacated by the tenants, who went back to live in the previous shanties.<sup>1</sup> The Bosnian policy makers still have not found a convincing answer to the question of why these families destroyed and left the modern housing units.<sup>2</sup> This case is not isolated and similar examples can be found in different contexts.<sup>3</sup> Understanding and acknowledging the inner reasons of these incidents is crucial for ensuring the effective and sustainable implementation of the Right to Housing. In order to reach this objective, it is necessary to consider the possibility that what is considered adequate by European society may not be by other communities and that the needs connected to the dwelling can vary from culture to culture. This is still not the dominant approach since most of the time the alternatives proposed to Roma are either to give up their traditional way of living and to accept our housing solutions or to keep living in their shanties, marginalised

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<sup>1</sup> *Special Report on the Status of Roma in Bosnia and Herzegovina*, Istitucija ombudsmena za ljudska prava Bosne i Hercegovine, available at: <https://www.osce.org/bih/110495?download=true>. Pag. 27

<sup>2</sup> Amela Tandara, OSCE, Sarajevo, personal interview, 07/08/2014

<sup>3</sup> Another good example is reported by Macura who reports how in Barcelona (Spain) the relocated Romani families from the local settlement to newly built apartments destroyed the building, because they wanted to tear down the walls between the houses in order to join with their relatives.

Macura Vladimir, Petrovic Milos, *Housing, urban planning and poverty: problems faced by Roma/Gypsy communities with particular reference to central and eastern Europe*, Council of Europe, Belgrade, 1999. [http://www.coe.int/t/dg3/romatravellers/archive/documentation/housing/Housingreport\(99\)1Macura\\_en.asp](http://www.coe.int/t/dg3/romatravellers/archive/documentation/housing/Housingreport(99)1Macura_en.asp)

and with no access to public services.<sup>4</sup>

In a multicultural society based on equality and human rights, approaches that do not keep into account and do not respect the cultural differences can be a source of conflicts and antagonisms. Given the respect of the common rules aimed at regulating a functional society, diversity has to be accepted and accommodated to the larger extent possible. The integration of Romani minority on this base represents an important test. Within the old European society dominated by the concept of “respectability”<sup>5</sup>, where the standards were fixed and moral values universal, those who did not conform were considered as deviant. The Roma, who lived according to a different norm, could only conform and be assimilated or be exterminated. Together with other sections of society that did not adapt to the European idea of “normality”, they were left at the margins, when not persecuted.<sup>6</sup> Only in the last century, with the feminists and LGBTIQ movements, our society started questioning the traditional values and social roles and accepting diversity. This new openness, together with the raise of the human rights ideology, has the potential of improving the position in society of the minority among the most despised, the Roma. Nevertheless, despite the improvements, the intolerance towards this community is still high and its way of living still not fully accepted.

Talking about Right to Housing and Romani culture is relevant for a series of reasons. First of all, the Right to Housing has crucial

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<sup>4</sup> The most striking case was in France, where the authorities denied housing benefits to Roma living in caravans replying that if they wanted they could find proper accommodations.

ERRC v. France, European Committee for Social Rights, Complaint No. 51/2008, 19 October 2009, [http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC51Merits\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC51Merits_en.pdf)

<sup>5</sup> Concept analysed and developed by Mosse George I., *Nationalism and Sexuality: Respectability and Abnormal Sexuality in Modern Europe*, New York: Howard Fertig, 1985.

<sup>6</sup> A good overview of the history of mistreatments and persecution of the Romani minority in Europe can be found in:

Hancock, Ian, *We Are the Romani People*, Hatfield: University of Hertfordshire Press, 2002

Stauber Roni and Raphael Vago (eds.), *The Roma, A Minority in Europe: Historical, Political and Social Perspectives*, Budapest/New York: CeubPress, 2007.

impact also on other rights, like the Right to Privacy, Right to Health, Right to Education and to Employment.<sup>7</sup> It is, therefore, relevant for the overall well-being of the individual. Furthermore, the poor housing conditions of the Romani community are considered one of the main problems affecting this minority and for this reason housing policies are at the centre of the social strategies aimed at improving the position of this group.<sup>8</sup> Connected to this topic, there is also their spatial segregation and its potential effects on the integration into main society. Secondly, the policies carried out by the majority aimed at the extermination or assimilation of the Romani community carried out for centuries have placed this minority into a subordinated position and have contributed to the creation of a climate of reciprocal mistrust and diffidence. The current marginalisation and segregation of this group and its reluctance to cooperate and adapt to non-Romani norms is also due to this lack of mutual collaboration during history. It is therefore necessary to further reflect on possible ways for meeting the Romani needs and requests and improving the relation with the dominant society. Finally, the new wave of intolerance that rose against this

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<sup>7</sup> The location and the general condition of the house affect considerably the health and the socio-economic opportunities of the family. See: Bratt, Stone, Hartman, "Why a Right to Housing is Needed and Makes Sense" in Bratt, R. G., M. E. Stone, C. Hartman (Ed.), *A Right to Housing: Foundation for a New Social Agenda*, Philadelphia: Temple University Press, 2006  
Bratt, Rachel G., "Housing and Family Well-Being" in *Housing Studies*, Vol. 17, No. 1, (2002): 13-26. [www.ebsco.com](http://www.ebsco.com) (accessed on the 9 December 2013)  
Mulder Clara H., Nathanael T. Lauster, "Housing and Family: An Introduction", in *Housing Studies*, Vol. 25, No. 4, (2010): 433-440. [www.ebsco.com](http://www.ebsco.com) (accessed 9 December 2013)

<sup>8</sup> See: OSCE/ODIHR, *Implementation of the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area*, Status Report 2013, Warsaw, available at: <http://www.osce.org/odihr/107406?download=true>  
Perić Tatjana, *The Housing Situation of Romani communities: Regional Roma Survey 2011*, UNDP, 2011. [http://issuu.com/undp\\_in\\_europe\\_cis/docs/housing\\_2\\_web](http://issuu.com/undp_in_europe_cis/docs/housing_2_web)

minority both in Central and East Europe, with the fall of Communism<sup>9</sup>, and in Western Europe, with the arrival of new Romani groups from East<sup>10</sup>, highlights the necessity of tackling the issue of social inclusion. With this aim, a correct implementation of the housing policies has a crucial role in improving the position of the Roma and in decreasing the level of conflict and intolerance between the minority group and the dominant society. Indeed, cases like the one in Butmir seriously increase the level of resentment towards the Roma, since the rest of

<sup>9</sup> A statistical survey conducted in Romania in 1991 found out that 41 percent of those surveyed thinks that “Gypsies should be poorly treated”. Crowe David, *A History of the Gypsies of Eastern Europe and Russia*, New York: Vintage, 1995. 148

Some significant examples of intolerance in Central and Eastern Europe countries : at the beginning of the ‘90s, during a press conference, Romanian Prime Minister Petre Roman denounced Roma as “leaders of prostitutes and the world of underground”. Pavel Dan, “Wanderers: Romania’s Hidden Victims (1991)” in Tong Diane (ed.) *Gypsies: an Interdisciplinary Reader*, New York: Garland, 1998.

In 1999, always in Romania, the head of the Bucharest Police Department, General Mircea Bot, commenting on the Gypsy crimes, stated: “there are Gypsies who are born criminals, [...] and do not know anything else other than to commit criminal acts.” ERRC, Radio Free Europe/Radio Liberty, Romani CRISS, România Liberă, Ziuă, *Anti-Romani hate speech in Romania*, 12 April 2000. <http://www.errc.org/article/anti-romani-hate-speech-in-romania/643>

In Hungary, in 2013, a local newspaper published an article written by Zsolt Bayer, a journalist and co-founder of the ruling Fidesz party, wishing the extermination of the Romani minority and stating: “These people are animals and behave like animals... If he finds resistance, he kills... He wants what he sees. If he doesn’t get it, he takes it and he kills...” Sinan Gökçen, *NGOs call for advertising boycott over anti-Roma statements in Hungarian media*, European Roma Right Center, 23 January 2013. <http://www.errc.org/article/ngos-call-for-advertising-boycott-over-anti-roma-statements-in-hungarian-media/4085>

<sup>10</sup> In France in 2010 a study shows that 79% of interviewed were in favour of dismantling Gypsy camps and between 70 and 80% are in favour of “taking citizenship away from foreign-born criminals”. Viscusi Gregory, *Expulsions of Illegal Roma Win Approval From Public in Sarkozy’s France*, Bloomberg, 13 August 2010, <http://www.bloomberg.com/news/2010-08-12/expulsions-of-illegal-roma-win-approval-from-public-in-sarkozy-s-france.html>

See also: Tewksbury-Volpe Emmi, *Roma and the “Roma Emergency”: Roma in Italian Political Discourse, Media and Public Opinion*, European Romani rights Center, 22 August 2013, <http://www.errc.org/roma-rights-journal/roma-rights-2012-challenges-of-representation-voice-on-roma-politics-power-and-participation/4174/5>

the population sees public funds wasted in disastrous housing projects directed to this group.<sup>11</sup>

Departing from the assumption that the protection of human rights means also to recognise and respect the cultural differences of each group, this thesis aims to contribute to a better understanding of the role the Romani culture and identity for the implementation of the Right to Housing. The goal is to ensure a correct and culturally sensitive implementation of this Right. In the research I aim to give an answer to three principle research questions: What is the link between housing and Romani collective identity? Why it is necessary to take into account this link in the implementation of the Right to Housing? Do Bosnian authorities acknowledge the Romani cultural specificities in dealing with housing policies? The main argument is that housing has important implications for the preservation and manifestation of the collective identity, and culture has a striking role in defining the concept of shelter. Therefore, this aspect has to be borne in mind in the planning of the housing policies directed to Roma, who in many case conduct a way of life different from the majority population. This necessity is reinforced by the risk that urban policies directed to Roma could result ineffective and even conduct to a process of assimilation.

In order to provide evidences to this argument, the first chapter presents the interplay between housing and culture, highlighting the reasons why these two elements influence each other and which repercussions they have in practical terms. The topic is also tackled analysing this relationship in the particular case of the Romani community, stressing the Romani housing features determined by traditions and the relation with the dominant society. The second chapter presents the main arguments in favour of the necessity of preserving the cultural specificities and maintaining cultural sensitivity in implementing human rights. Furthermore, this section introduces the reasons why an integrationist approach should be preferred rather than an assimilationist one and what role housing can play in this strategy. The third chapter presents the findings of my research on the housing plans directed to Romani minority in Bosnia and Herzegovina. The aim of the last chapter is to assess whether in the cases analysed the Bosnian authorities have kept in due consideration the cultural specificities of

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<sup>11</sup> Stewart, Micheal, *The Time of the Gypsies*, Boulder; Westview Press, 1997

the Romani people and to which results the projects have led.

For the analysis of the interplay between housing and culture in general, I mainly use academic sources focused on the role of housing and its implications. The principle authors that I refer to are Cooper Marcus, Chokor and Hohmann. The relation between shelter and culture for the Romani minority is tackled using anthropological and historical works, as the studies conducted by Stewart, Liègeois, Mirga and Ringold. Furthermore, in order to bring evidences on the role of the dwelling in preserving the Romani collective identity I present the analysis of the housing policies implemented with assimilationist purposes by the East European socialist countries, fully studied by Barany and Glassheim. Regarding the debate over the relevance of the collective identity for the well-being of the individual, I mainly refer to the works of Kymlicka, Parekh, Donnelly and Young, but I also quote other authors as Taylor and Walzer. Furthermore, the connection between this debate and the Romani identity is reinforced using the works of O’Nions and Pogány, who have analysed the relevance of the collective dimension for the Romani people and its implications in the protections of the human rights. The last section of the second chapter, reserved to the connection between housing policies and integration strategy, reports the studies on the relation between integration and segregation of Bolt and Musterd and some policy papers issued by UN HABITAT and UNECE on new potential strategies for better managing the two aspects, promoting a approach more centred on people’s needs.

The third chapter is reserved to the empirical research conducted in Bosnia and Herzegovina. The 6 cases reported have been analysed in the framework of the Housing Action Plan and assessed through the use of reports mentioning them and holding interviews with the local authorities in charge of the realisation of the strategy, officers of organisations involved in the projects and local Romani representatives. The cases analysed have been chosen because mentioned by the interviewees as relevant. Furthermore, special attention has been paid to cover different contexts and situations, in geographical and social terms. The interviews focused on the opinions of the persons involved regarding the implementation of the projects considered, the reasons why the problems rose and the potential solutions for overcoming the obstacles encountered. Furthermore, I paid visit to some of the

municipalities and settlements analysed and interviewed some Roma families involved in the projects following a questionnaire, in order to assess the perception of the community regarding the implemented projects and their level of integration into main society.

Finally, a clarification on the language: referring to Romani people I chose to use the most recent terminology adopted by authors dealing with Romani studies. Indeed, while in the past the term “Roma” was used both as noun and adjective, recently it has been replaced in the adjective form by the term Romani. The word Roma can be still used as noun plural (The Roma = Romani people) but not anymore as adjective or noun singular.<sup>12</sup> Furthermore I use the word Gypsy/Gypsies only in case the term refers to the negative perception of the dominant society towards this minority. Similarly, I use the Romani term *Gadje* to refer to the dominant society from the Romani point of view.

## **1. The interplay between Right to Housing and Romani collective identity**

The aim of the chapter is to show the connection between housing and collective identity. In the following sub-chapters I argue that housing has a role in the manifestation and preservation of collective identity and, vice versa, collective identity influences the role and the physical shape that people give to housing. This interdependence leads to the necessity of keeping into account the cultural aspects connected to dwelling in the protection of the Right to Housing. Before discussing this relation, I present what this right means today, how is protected by international legal documents and which problems its implementation pose. I then develop the argumentation by introducing some academic studies in the field of housing that explain how and why collective identity and culture have a salient role in the definition of shelter. I finally conclude with a focus on the deep connection between housing and culture for the Romani minority.

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<sup>12</sup> Guidelines on how to use terminology referring to Romani people are reported in: Hancock, Ian, *We Are the Romani People*, Hatfield: University of Hertfordshire Press, 2002. P. xxi-xxii

## 1.1. The Human Right to Housing

The Right to Housing is part of the so-called welfare rights, which are mainly considered a product of the XX century's welfare state. In the liberal and neo-liberal ideology these rights are considered as second-class rights compared to the civil and political ones and for this reason the mechanisms of protection of welfare rights are not as developed as the mechanisms of protection of the civil and political ones. The justifications provided for this hierarchy are several but mainly moved by political interests and ideology.<sup>13</sup> Nevertheless, in the last decades this hierarchy has been questioned and the relevance of the socio-economic rights also for the implementation of the civil and political ones has been fully recognised<sup>14</sup>. This does not mean that the problems raised by the implementation of welfare rights have been fully solved, especially at the level of their claimability. In the following sub-chapter I present how the Right to Housing is currently protected, which problems are raised by its implementation and how the question of the claimability<sup>15</sup> is tackled.

### 1.1.1. Right to Housing in the international legal texts

The Right to Housing is by now fully recognised in the international texts protecting human rights. Within the Universal Declaration of Human Rights (UDHR) the Right to Housing is included

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<sup>13</sup> See: Baderin M and McCorquodale R, "The International Covenant on Economic, Social and Cultural Rights: Forty Years of Development", in Baderin M and McCorquodale R (ed.) *Economic, Social and Cultural Rights in Action*, Ostord, 2007. 3-24

<sup>14</sup> The World Conference held in Vienna in 1993 confirmed the indivisibility of the Rights, that therefore have to be considered equal in importance. Eide A., Krause C. and Rosas A., *Economic, Social and Cultural Rights: a Textbook*, Maritus Nijhoff Publishers, Boston, 1995.

<sup>15</sup> With the term "claimability" I refer to the possibility of bringing the violation of a right in front of a court.

in the wider Right to Adequate Standard of Living, Art. 25<sup>16</sup>. The same is done within the International Covenant for Economic Social and Cultural Rights (ICESCR), art. 11, which leaves this right without a specific definition and only mentions the vague requirement of “adequacy”. The lack of a clear definition of the Right and of what “being adequate” means can endanger the enforceability of the latter and even its credibility<sup>17</sup>. This issue finds a solution in the General Comment to ICESCR n. 4, which is dedicated to the Right to Housing and specifies what this right implies and how the requirement of “adequacy” has to be defined. Although not binding, the General Comments are generally considered as the most authoritative source for interpreting the rights included in the international bill of rights.<sup>18</sup> The text provides a list of criteria that housing has to meet in order to be considered “adequate”: security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.<sup>19</sup> Although it may seem a narrow definition of adequate, the General Comment n. 4 also specifies that the definition does not have to be interpreted narrowly, but has to be seen as “the right to live somewhere in security, peace and dignity”.<sup>20</sup>

The definition of adequacy for the Right to Housing still leaves

<sup>16</sup> “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control” Universal Declaration of Human Rights (UDHR), UN General Assembly, Res 217 A (III), 1948, rt. 25 <http://www.un.org/en/documents/udhr/>

<sup>17</sup> It will be argued later how the lack of precise definition of the welfare rights gives arguments to those who think that these rights are not properly claimable and therefore they cannot be considered proper rights. Adam Etinson, “Human Rights, Claimability, and the Uses of Abstraction”, *Utilitas* 25 (4), pp 463-485, 2013 <http://www.adametinson.com/Human%20Rights,%20Claimability,%20and%20the%20Uses%20of%20Abstraction%20-%20DRAFT.pdf>

<sup>18</sup> Hohmann, Jessie, *Right to Housing: Law, concepts, possibilities*, Oregon: Hart Publishing, 2013, 20

<sup>19</sup> International Committee on Economic, Social and Cultural Rights, *The Right to Adequate Housing (Art. 11(1)), General Comment No4*, 1991, E/1992/23 <http://www.unhcr.ch/tbs/doc.nsf/MasterFrameView/469f4d91a9378221c12563ed0053547e?Opendocument>

<sup>20</sup> Ibid.

a lot of space for interpretation. Indeed, while the requirements are apparently quite narrow (among the others, it has to provide: adequate sanitation, energy for cooking, heating, lighting, food storage, adequate space and protection against cold, damp, heat, rain, wind, etc. ), the text specifies not to interpret them too literally. This aspect, although it allows to interpret and implement the right accordingly to the specific cases, it may also create confusion and gives too much space for interpretations. As I show hereinafter, the Right to Housing may also be used to justify housing plans that respect some technical requirements but do not keep into account the cultural adequacy.

### **1.1.2. Rights-based approach vs. obligations-based approach: a debate over welfare rights**

Before proceeding with the analysis of the Right to Housing and its implications for the cultural identity, it is necessary to analyse the debate over this right as part of the so-called welfare rights, which have been often criticized for several reasons, the first of those being the implication for the duty-bearers to take positive actions in order to implement this right. Indeed each right implies the presence of a right-holder and a duty-bearer, and a right cannot be considered nothing more than a rhetorical goal without the latter. A serious reflection over this debate is essential because leaving the welfare-rights without a clear definition risks to let down the human right's goal of ensuring justice. The issue is particularly critical for the importance that the welfare rights have for those in need and vulnerable, also for the full protection of the civil and political rights, as it has also been recognised by the World Conference of Human Rights held in Vienna in 1993.<sup>21</sup> As Etinson efficaciously explains, without a clear obligation-bearer, the welfare rights risk becoming a “form of mockery to the poor and needy because it encourages them to believe that they have a realizable and enjoyable claim to relief from their predicament, when in fact it isn't so”.<sup>22</sup> The authors that I will further analyse do not question the rights itself and their importance, but the way in which they are formulated.

Among the most influential authors on this topic, O'Neill has specifically focused on the relation between rights and obligations. In

<sup>21</sup> Eide A., Krause C. and Rosas A., *Economic, Social and Cultural Rights*

<sup>22</sup> Etinson Adam, “Human Rights, Claimability, and the Uses of Abstraction”, 467

her opinion, the prevalent human rights-approach is too much based on the right-holder, whose claimability of the rights depends on the duty-bearer. In case this duty-bearer is not clearly defined, those rights cannot be claimed and remain indeterminate. For this reason, O'Neill propose to turn the reasoning around and give priority to the other side of the right, the obligation, because where there is an obligation of someone towards someone else, automatically there is a right and the interdependency is respected.<sup>23</sup> This is particularly true for the so-called welfare rights, or, as O'Neill calls them, rights to goods and services, because they imply the fact that those goods and services have to be provided by someone specific, the duty-bearer, who is not always clearly specified.<sup>24</sup> Negative rights represent a less notable problem, since the "who" (duty-bearer) is clearly everyone and "what" (the duty involves) is the "non-interference".<sup>25</sup> For the welfare rights, O'Neill continues, since there is no a-priori duty-holder, "we cannot tell who violates a right to goods and services unless obligations have been allocated".<sup>26</sup> From this reasoning, O'Neill concludes that such rights, instead of being universal, must be special and institutional human rights. This means that they have to be linked to the institutions that apply these rights and to the available resources. Welfare rights as universal rights with no clear duty-bearers cannot be claimable rights.<sup>27</sup>

Following this premise, O'Neill proceeds with the analysis of welfare rights as they are defined in international documents, specifically in the ICESCR. Concerning the duty-bearer, the Covenant clearly allocates the obligations on the state parties. Nonetheless, the legal text does not assign to states straight-forward obligations to meet rights to goods and services, "but rather second-order obligations to

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<sup>23</sup> O'Neill Onora, "Rights, Obligations, Priorities", in *Studies in Christian Ethics*, 23, (2010): 163-171.

<sup>24</sup> O'Neill Onora, "The Dark Side of Human Rights", in *International Affairs*, Vol. 81, No. 2, (2005): 427-439.

<sup>25</sup> Etinson Adam, "Human Rights, Claimability, and the Uses of Abstraction", 467

<sup>26</sup> O'Neill Onora, "The Dark Side of Human Rights", 428-430

<sup>27</sup> Ibid. 432

nsure that they are met”.<sup>28</sup> This implies that the direct counterpart of the concerned rights, the first-order obligations, have to be assigned to some other agent by the state, which may not have the resources or simply the good will of doing so. Furthermore, in order to reach a system in which the state is able to ensure the realisation of the rights to goods and services, it has to impose a social control such to grant the full provision of those goods and services by the concrete providers, i.g. the farmer and the physician, who become duty-bearer other than being right-holder.<sup>29</sup> Briefly, there cannot be any human rights to services and good without an extended system of responsibility that goes from the state to the individual.

The conclusions that O’Neill comes to, although open to criticisms<sup>30</sup>, led us to reflect upon the necessity to seek for the duties derived from the Right to Housing as such and for the holder of such duties. Indeed, without a duty-holder the Right to Housing would not be claimable and therefore the right would end up being a simple “aspirational goal”. In order to assess the claimability of the Right to Housing and its extent, in the following sub-chapter I analyse how the Right to Housing is protected by the Council of Europe’s instruments, up to now the most advanced mechanisms of protection for both civil and political, and economic and social rights<sup>31</sup>. Furthermore, it is worthy to pay more attention on these instruments also because they directly

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<sup>28</sup> O’Neill refers to the fact that the Covenants does not require the immediate realisation of the rights, but engages the states to “take steps (...) with a view to achieving progressively the full realization of the rights recognized in the present Covenant”. O’Neill Onora, “The Dark Side of Human Rights”. 433

<sup>29</sup> Ibid. 435-436

<sup>30</sup> See Etinson Adam, “Human Rights, Claimability, and the Uses of Abstraction”

<sup>31</sup> Although the European Social Charter does not foresees and juridical mechanism of protection to the rights as the ECHR, it accept collective complains, similarly to the ICESCR. Furthermore, the engagement of the Contracting States of the Social Charter towards the full implementation of the Economic and Social rights seems stronger compared to the “take steps (...) with a view to achieving progressively the full realization of the rights” of the ICESCR. Indeed, in the Social Charter “the Contracting Parties accept as the aim of their policy, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised”. European Social Charter, Council of Europe, Turin, 1961. Art. 1. Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm>

deal with rights of the Romani minority in Europe.<sup>32</sup>

### 1.1.3. The duty to ensure housing for all

The Commissioner for Human Rights of the Council of Europe seems to have taken seriously O'Neill's objection and has entitled his paper on the protection of the Right to Housing "Housing Rights: The Duty to Ensure Housing for All", with the explicit aim to stress on the necessity to improve the enforcement (and therefore the claimability) of this right.<sup>33</sup> The paper presents the legal documents and mechanisms, both international and European, protecting the housing rights. Of particular interest is the protection envisaged by the European Social Charter and derived by the jurisprudence of the European Court of Human Rights. In the European Social Charter, Art. 31 on the right to housing includes the obligation to "take measures designed: to promote access to housing of an adequate standard; to prevent and reduce homelessness with a view to its gradual elimination; to make the price of housing accessible to those without adequate resources."<sup>34</sup> Within the framework of the Collective Complaints Protocol, the European Committee on Social Rights has received several complaints regarding Roma and most of the violations that have been found are based on the poor living conditions of this group; the lack of stopping places for nomads; the carrying out of evictions without offering alternative accommodations; the lack of remedies for redressing the evictions and the lack of supply of affordable housing for those with limited resources.<sup>35</sup> From these violations founded

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<sup>32</sup> For an overview over the cases concerning Romani applicants presented to the ECtHR: Roma and Travellers, European Court of Human Rights Factsheet, Strasbourg, 2013. Available at: [http://www.echr.coe.int/Documents/FS\\_Roma\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Roma_ENG.pdf)

For an overview over the European Social Charter and Romani rights: "The European Social Charter and Romani rights", Council of Europe Factsheets, Strasbourg, 2012. Available at: [http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Theme%20factsheets/RomaRightsFactsheet\\_en.pdf](http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Theme%20factsheets/RomaRightsFactsheet_en.pdf)

<sup>33</sup> Commissioner for Human Rights, "Housing Rights: The Duty to Ensure Housing for All", Issue Paper, Strasbourg, 2008. Available at: <https://wcd.coe.int/ViewDoc.jsp?id=1292391>

<sup>34</sup> European Social Charter, Council of Europe,

<sup>35</sup> "The European Social Charter and Romani rights", Council of Europe Factsheets

by the European Committee on Social Rights, it is possible to deduce that the states have the obligation to provide alternative accommodation in case of evictions, adequate stopping places for those who maintain a nomad way of life and ensure supply of affordable housing for those who lack the resources. O'Neill may reply that this kind of obligations remain second-order one, since the State has to allocate the duty of finding remedies on someone else. Nevertheless, it is also not correct to state that the Right to Housing is completely unclaimable.

In addition, despite the fact that the Right to Housing is not included in the European Convention of Human Rights (ECHR), the Art. 8 on the right to respect for a private life, a family life, a home<sup>36</sup> has several implications also for the right to housing<sup>37</sup>. These implications have been pointed out by the jurisprudence of the European Court of Human Rights (ECtHR), which has stated several times that cases such as the unmotivated evictions without providing remedies or alternative accommodation<sup>38</sup> have to be considered violations of the above-mentioned Art. 8. In other cases the Court went further, specifying that the Art. 8 implies not only negative rights but also positive obligations that the state has to undertake. This is the case of *Marzari v. Italy*<sup>39</sup>, where the Court sentenced that: “although Article 8 does not guarantee the right to have one’s housing problem solved by the authorities, a refusal of the authorities to provide assistance in this respect to an individual suffering from a severe disease might in certain circumstances raise an issue under Article 8”<sup>40</sup>. Furthermore, the Commissioner for Human Rights notices that “positive obligations on the State to protect people’s home have been found under Article 8 in relation to protection from the

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<sup>36</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, Rome, 1950. Art. 8.1. Available at: [http://www.echr.coe.int/documents/convention\\_eng.pdf](http://www.echr.coe.int/documents/convention_eng.pdf)

<sup>37</sup> Commissioner for Human Rights, “Housing Rights: The Duty to Ensure Housing for All”, 6

<sup>38</sup> See *Connors v. UK*, European Court of Human Rights, 2004. Available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61795#{"itemid":\["001-61795"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61795#{)

<sup>39</sup> *Marzari v. Italy*, European Court of Human Rights, 1999. Available at: [http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-22827#{"itemid":\["001-22827"\]}](http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-22827#{)

<sup>40</sup> Commissioner for Human Rights, “Housing Rights: The Duty to Ensure Housing for All”, 6

smells and nuisance from a waste treatment plant, (...), environmental pollution, (...), noise from bars and nightclubs (...)<sup>41</sup>.

In conclusion, it is possible to state that, although the objective of a house for everyone is still more a political goal than a state's duty, the Council of Europe and its instruments for the protection of human rights moved forward in the enforcement of those obligations of the states derived by the protection of the Right to Housing, at least for those cases where the concerned individuals are particularly vulnerable, physically or economically, like the Romani minority.

## **1.2. The importance of the house as identity space**

In the following chapter I present the major studies on the links that housing has with the collective identity in order to highlight the importance of considering the cultural aspects of the shelter in the protection of the Right to Housing. In the second sub-chapter I also introduce the recognition by some international organisations of this role and the importance of the house beyond being a physical shelter.

### **1.2.1. Housing and collective identity**

“Throughout our lives, whether we are conscious of it or not, our home and its contents are very potent statements about who we are. In particular, they represent symbols of our ego-selves”.<sup>42</sup> This description by Cooper Marcus presents efficaciously the role of the house/home in the settlement of the identity, which may be considered as a “definition, an interpretation of the self” and includes all the aspects of the self-knowledge and of the relationship between the individual and the society.<sup>43</sup> Hohmann, in her investigation on the Right to Housing, shows that home is “a spatial, psychological centre in which at least a portion of our individual's or group's identity resides”.<sup>44</sup> When we refer to identity we can consider two levels: personal and collective. Home has a striking role in both. In defining the individual's identity we can use the Hegelian

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<sup>41</sup> Ibid.

<sup>42</sup> Cooper Marcus, C. *House as a Mirror of Self*, Berkeley, CA: Conari Press, 1995, 12

<sup>43</sup> Hohmann J., *Right to Housing*, 171

<sup>44</sup> Ibid.

concept of personhood, which is based on the constitution of the person through her relationship to things.<sup>45</sup> Based on this conception, it is clear how home is essential in the self-acknowledgement and becomes “affirmatively part of oneself”.<sup>46</sup> The role of housing is even more evident in the manifestation of the community’s identity. As Hohmann points out, “if community is a comprehensive framework for social life, housing can be seen as its physical manifestation”, it has a striking role in the way how this community is constructed and in the development of the identities within it.<sup>47</sup>

If we consider the issue with a broader view, referring to the community of values, beliefs, social forms that we define as “culture”<sup>48</sup>, we may conclude that housing plays an important part in the definition of the culture and vice versa. This interconnection is also confirmed by the role that housing had in the implementation of assimilation policies in different contexts. Considering just the contemporary era, housing policies have been used for this aim especially between the ‘60s and the ‘70s of XX century.<sup>49</sup> During the ‘50 and ‘60 the Australian state provided “transitional housing” to Aboriginal population with the aim of training them to live like the sub-urban colonial population.<sup>50</sup> Similarly, the Canadian government has encouraged or even forced the

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<sup>45</sup> Radin Margaret Jane, “Property and Personhood” in *Stanford Law Review*, Vol.34 No. 5, (1982): 957-1015. <http://www.jstor.org/stable/1228541> 957

<sup>46</sup> Ibid. 992

<sup>47</sup> Hohmann, *Right to Housing*, 178

<sup>48</sup> International Network for Economic, Social & Cultural Rights, “Module 17 Cultural Rights”, in *Understanding Specific ESC Rights*, Circle of rights Modules. Link: [http://www.escr-net.org/usr\\_doc/CircleofRightsmodule17.html](http://www.escr-net.org/usr_doc/CircleofRightsmodule17.html)

<sup>49</sup> See:

Hohmann, “Identity” chapt. 7 in *Right to Housing*

Jelena Čvorović, *Gypsy Narratives: From Poverty to Culture*, Belgrade: Serbian Academy of Science and Arts, 2004.

Hohmann, Jessie, “The True Radicalism of the Right to Housing” , in *British Academic*

*Review*, issue 21, 2013. [www.ebsco.com](http://www.ebsco.com) (accessed on the 1 December 2013)

<sup>50</sup> Sanders William, “Aboriginal Housing”, in C. Paris (ed.), *Housing Australia*, Melbourn: MacLilan, 1993, 223

Inuit to settle down in the Arctic region with assimilation purposes.<sup>51</sup> In Europe, as I show in the following chapters, housing policies had a crucial role for the assimilationist purposes of the Communists regimes. Top-down housing policies that did not keep into account the cultural aspects of dwelling have been pursued not only with assimilation ends but also to improve the development and well-being of the populations. In Africa, the socialist Government of Tanzania between the 1968 and 1975 promoted a huge project called villagisation, which displaced thousands of people from rural context to planned villages, with the idea that closer proximity would have improved the agricultural production and the provision of services, such as schools, safe water and health facilities.<sup>52</sup> The project finally failed in improving the well-being of the affected families and in some cases led to violent protests and repressions.<sup>53</sup> Today, always in Africa, as Bojona Chokor notices, many “modern professional town planners fail in proposing new schemes of neighbourhood revitalisation and “slum” redevelopment because they do not keep into consideration the concept of home for the local community, which is deeply associated with personal roots, existence and group lineage identity”.<sup>54</sup>

The importance of the house in the construction and preservation of the cultural identity is not only evident when this identity is erased by policies but also when housing planners and authorities start to keep into consideration the cultural peculiarities in analysing the housing problems and in providing solutions. This is the case of the housing studies conducted in Appalachia, a region in the United States that hosts a community that dates back to the immediate post-Civil war and is known as the “mountain culture”. As Milstead notices, the dwelling has a particular role in the formation/preservation of this culture and in

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<sup>51</sup> AR Marcus, *Relocating Eden: the Image and politics of Inuit Exile in the Canadian Arctic*, Hanover: Dartmouth College University Press of New England, 1995, 2

<sup>52</sup> Leander Schneider, “High on Modernity? Explaining the Failing of Tanzanian Villagisation”, in *African Studies*, 66, 1, (2007): 09-38 [www.ebsco.com](http://www.ebsco.com) (accessed 12 December 2013)

<sup>53</sup> Ibid. 11-12

<sup>54</sup> Boyowa Chokor, “The meaning and Use of Housing: The Traditional Family”, in E. Arias (Ed.), *The Meaning and Use of Housing: International Perspectives, Approaches and their Applications*, Avebury: Aldershot, 1993, 293.

the local policy documents it is quoted as one criteria considered when planning the housing policies.<sup>55</sup> Another example of how cultural needs start to be taken into account in the housing studies and planning are the several publications on the housing needs of the ethnic minorities in UK, such as the “Asian” immigrant minority or the “Black/Caribbean”.<sup>56</sup> As Gindley and Harrison highlight, it is not any more just a concern of the housing scholars but it is becoming an issue of interest also for the local authorities.<sup>57</sup>

### 1.2.2. Beyond a roof over the head

The role that housing plays in the individual and community life and its connection with the collective identity starts to be recognised by the principal international organisations and bodies promoting and protecting the Right to Housing. Apart from the ICESCR that includes the “cultural adequacy” within the requirements for considering the house as adequate, further steps in this direction have been made by

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<sup>55</sup> Terence Milstead, “Housing and Heritage: Perceptions of “Culture” and its Influence among Policy-Makers and Housing Professionals in Southern and Central Appalachia” in *Housing, Theory and Society* Vol. 29, No. 1, (2012): 92–113 [www.ebsco.com](http://www.ebsco.com) (accessed 21 November 2013)

<sup>56</sup> An example is the study commissioned by An Viet Housing Association in London in order to assess the housing needs of the Vietnamese minority in London and secure them an house that can generate “emotional and cultural security other than providing a shelter”. The study concluded: Housing need for Vietnamese households is not simply about bricks and mortar but nonetheless, as with other minorities, there are specific design issues. Physical requirements might include good kitchen ventilation and a powerful extractor fan, as well as specifications related to religious and cultural observances difficult to cater for via standard concepts of need. There may be a wish for a sacred space to use as an altar and for avoiding placing a toilet near the front door. Strong demand for a garden connects with uses such as entertaining and exercise, and with the opportunity to grow herbs and exotic vegetables. Beyond physical provision, there is interest in supplementary housing-related services, and connections with health, mobility, vulnerability to isolation, harassment, physical and cultural security and self-sufficiency.” Somerville and Steele (ed.), *‘Race’, Housing and Social Exclusion*, London: Jessica Kingsley Publishers, 2002. See also: Malcolm Harrison, Cathy Davis, *Housing, Social Policies and Difference*, Bristol: The Policy Paper, 2001

<sup>57</sup> Gindley, Harrison “The Housing Needs of Black and Minority Ethnic Groups”, in Somerville and Steele (ed.), *‘Race’, Housing and Social Exclusion*, London: Jessica Kingsley Publishers, 2002

the United Nations Human Settlement Programme (UN Habitat) and the Council of Europe, promoting the civic participation in the housing policies' planning.<sup>58</sup> UN Habitat in 1996 promoted a Global Conference on Human Settlements which released several political documents containing recommendations aimed at improving housing policies. Among these documents, the Habitat Agenda gives a definition of adequate housing that stresses the complexity of factors contributing to it:

Adequate shelter means more than a roof over one's head. It also means adequate privacy; adequate space; physical accessibility; adequate security; security of tenure; structural stability and durability; adequate lighting, heating and ventilation; adequate basic infrastructure such as water supply, sanitation and waste management facilities; suitable environmental quality and health-related factors; and an adequate accessible location with regard to work and basic facilities; all of which should be available at an affordable cost. Adequacy should be determined together with the people concerned, bearing in mind the prospect for gradual development. Adequacy often varies from country to country, since it depends on specific cultural, social, environmental and economic factors. Gender-specific and age-specific factors, such as the exposure of children and women to toxic substances, should be considered in this context.<sup>59</sup>

Particularly relevant for the topic of cultural adequacy is the recognition of the importance of bearing in mind the different conceptions of adequacy influenced by culture and varying from context to context and the need of including the community involved in the planning of these policies. Consequently, UN Habitat does not consider adequate housing strategies that adopt an exclusive top-down approach and do not contextualise the project within the specific cultural, social and economic environment.

The importance of the civic participation in the housing planning

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<sup>58</sup> The United Nations Human Settlements Programme, UN-HABITAT, is the United Nations agency for human settlements. It is mandated by the UN General Assembly to promote socially and environmentally sustainable towns and cities with the goal of providing adequate shelter for all. <http://unhabitat.org/>

<sup>59</sup> UN HABITAT, *The Habitat Agenda*, Habitat II, 1996. [http://ww2.unhabitat.org/declarations/documents/The\\_Habitat\\_Agenda.pdf](http://ww2.unhabitat.org/declarations/documents/The_Habitat_Agenda.pdf) Para 60

and the role of the adequate shelter for the well-being of the whole community is also highlighted in another part of the Habitat Agenda: “Sustainable human settlements are those that, inter alia, generate a sense of citizenship and identity, cooperation and dialogue for the common good, and the spirit of voluntarism and civic engagement, where all the people are encouraged and have equal opportunity to participate in decision making and development.”<sup>60</sup> Even further goes the 1991’s study commissioned by the International Union for Conservation of Nature (IUCN), the United Nations Environment Programme (UNEP) and the World Wide Fund for Nature (WWF), “Caring for the Hearth, Strategy for Sustainable Living”, which suggests to deal with the housing issue and especially the illegal settlements by accepting the inhabitants’ way of building, providing the necessary infrastructure and community facilities and promoting the civic participation in the planning, implementation and maintenance of the housing policies. This strategy would not only improve the physical housing conditions departing from the existing infrastructure, but would also motivates the community to improve their houses and in taking responsibilities in their maintenance.<sup>61</sup>

The link between housing and collective identity recognised by the Council of Europe is confirmed by the fact that the Art. 8 of the ECHR on the right “for a private life, a family life and home” is interpreted protecting both the right to housing, for its implications for the private life and family well-being<sup>62</sup> and, as I further explain in chapter 2, the right to maintain traditional ways of life, considered part of the private life.<sup>63</sup> Also the European Social Committee defended the role culture for the shelter in the case *European Roma Right Center*

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<sup>60</sup> Ibid.

<sup>61</sup> IUCN, UNEP and WWF, *Caring for the Hearth, Strategy for Sustainable Living*, 1991, Gland, Switzerland. <https://portals.iucn.org/library/efiles/documents/CFE-003.pdf>

<sup>62</sup> Commissioner for Human Rights, “Housing Rights: The Duty to Ensure Housing for All”, 6

<sup>63</sup> Henrard Kristin, “The European Convention on Human Rights and the Protection of the Roma as a Controversial Case of Cultural Diversity”, in *European Diversity and Autonomy Papers*, EDAP 5/2004, EURAC, Bolzano. Available at: [http://www.eurac.edu/en/research/institutes/imr/activities/Bookseries/edap/Documents/2004\\_edap05.pdf](http://www.eurac.edu/en/research/institutes/imr/activities/Bookseries/edap/Documents/2004_edap05.pdf)

*(ERRC) v. France*<sup>64</sup> brought under the Revised European Social Charter. The case concerned the France law which denied housing benefits to those living in settled caravans. The French reply to protests argued that who wanted to enjoy housing benefits should simply give up living in caravans and finding a proper accommodation. The European Social Committee found the justification provided by France unsatisfactory since it found it highly discriminatory. With this decision the Committee implicitly recognised the relevance of traditional way of life and culture for housing and family well-being.<sup>65</sup>

### **1.3. The Right to Housing and Romani identity**

This chapter aims to provide an overview of the link between dwelling and the Romani culture and way of life. The first chapter is devoted to the presentation of the main features of the Romani housing and the main issues connected to it. The argumentation is then developed by presenting some examples that show how the Romani collective identity and culture can influence housing, in its shape and meaning. This presentation does not intend to provide a general overview over the main features of the Romani collective identity but only some evidences on the importance of considering culture in dealing with Romani housing, since, as I explain in the second sub chapter, the Romani community cannot be considered unified, but is composed by hundreds of different groups. I stress the relevance of this variety of the Romani groups not only to prevent the reader of falling in mistaken and dangerous generalisations, but also to argue the necessity of carefully keeping in mind the different ways of life between groups in the implementation of the housing policies, since these cultural differences lead also to different approaches to housing.

#### **1.3.1. Main features of Romani housing patterns**

All over Europe Romani minority is suffering from very poor housing conditions, discrimination in the access to housing benefits and

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<sup>64</sup> *ERRC v. France*, European Committee for Social Rights, Complaint No. 51/2008, 19 October 2009, [http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC51Merits\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC51Merits_en.pdf)

<sup>65</sup> Hohmann J., *Right to Housing*, 193

facilities, segregation from the dominant population and lack of security of tenure.<sup>66</sup> The issue of the poor housing condition is particularly serious also because it affects the protection of other important social and economic rights, like the right to employment, to education and to health.<sup>67</sup> In Central and Eastern Europe the post-communist transition has further worsened the living conditions of this minority. Other than losing their jobs and benefits derived from the state social policies, many Roma found themselves living in the periphery of the cities, in infrastructures inadequately equipped and segregated from the majority population.<sup>68</sup> Another serious problem affecting the protection of the Right to Housing connected to the transition to market economy is the legal status of housing. Since property rights were not well defined under Communism, with the transition many Roma (already deprived of the state job) remained without the security of tenure, were evicted from state-owned apartments and had no other possibility than squatting or occupying illegally the houses where they were living before.<sup>69</sup>

Macura, in his study on the housing conditions of Roma in Central and Eastern Europe, drafts a division of the different residential

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<sup>66</sup> For an overview of the problems of Roma connected to housing in Europe, see: Commissioner for Human Rights, "Access to Adequate Housing", in *Human Rights of Roma and Travellers in Europe*, Council of Europe, Strasbourg, 2012: 137-157 [http://www.coe.int/t/commissioner/source/prems/prems79611\\_GBR\\_CouvHumanRightsOfRoma\\_WEB.pdf](http://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf)

<sup>67</sup> The implication of the right to housing for the protection of other human rights and in general for the well-being of the individual, has been stressed particularly by Bratt, Stone and Hartman, who highlight that living in a "bad neighbourhood" reduces the chances of finding a decent job, deprive the family of good public services and in general decrease the individual's possibilities of improving the quality of his life and in consequence his self-esteem. Bratt, Stone, Hartman, "Why a Right to Housing is Needed and Makes Sense" in *A Right to Housing: Foundation for a New Social Agenda*, Philadelphia: Temple University Press, 2006

<sup>68</sup> Macura Vladimir, Petrovic Milos, *Housing, urban planning and poverty: problems faced by Roma/Gypsy communities with particular reference to central and eastern Europe*, Council of Europe, Belgrade, 1999. [http://www.coe.int/t/dg3/romatravellers/archive/documentation/housing/Housingreport\(99\)1Macura\\_en.asp](http://www.coe.int/t/dg3/romatravellers/archive/documentation/housing/Housingreport(99)1Macura_en.asp)

<sup>69</sup> Ringold, Dena, *Roma and the Transition in Central and Eastern Europe: Trends and Challenges*, Washington: The World Bank, 2000.

urban habits of poor Roma<sup>70</sup> in this area, although he specifies that it cannot be exhaustive and completely accurate. The first group is the old urban population, which has been living in cities since the last century or earlier. Part of this group has been assimilated, while another part lives in separate settlements – mahalla - in a stable way. This kind of settlement has its origin in the old Turkish division of the cities and for this reason is quite common in South East Europe. Although the living conditions within the mahalla are worse than the living conditions of the majority population and these settlements constitute a sort of ghetto, they are usually quite centralised and integrated in the urban tissue<sup>71</sup>. The second group is the newly urbanised, meaning that has moved to cities in the last decades in order to find better conditions or for seasonal works. This group is mainly living in temporary and/or peripheral slums, second category settlements where housing conditions are very poor and intended to last until the local authorities decide to evict them. The level of segregation of these slums is usually very high, especially for those located at the periphery of the cities, and the living conditions are so poor that negatively affect the health, social and psychological state of the people living there.<sup>72</sup> Other kinds of accommodations used by poor Roma in cities are: the scattered poor housing, which are apartments and houses not concentrated but usually in a state of decline and abandoned by the previous owner; the lodging for necessity, that includes different types of buildings, like barrack used by seasonal workers and abandoned; and the devastated apartment blocks, common in those post-communist countries where the assimilation policies towards the Roma led to the resettlements of thousands of families. These housing blocks were already not particularly apt for Roma during the Communist period, as I further explain later, and nowadays are in a state of total decline.<sup>73</sup>

To the division of the most common accommodations used by poor Roma in urban environment provided by Macura, it is useful to add the division or the types of Romani settlements provided by Bašić,

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<sup>70</sup> Macura focuses on the Roma living in urban area and whose living conditions are inferior to those of the majority population. Therefore he does not deal with Roma who fully integrated and have a good position in society.

<sup>71</sup> Macura Vladimir, Petrovic Milos, *Housing, urban planning and poverty*

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

who includes the rural communities, quite common in South East Europe. In the villages the Roma can be found living mixed with the majority population or in separated settlements. Some of these rural settlements take the form of villages and can be segregated in space and away from basic services or quite well integrated and close to the non-Romani community. Other rural settlements are located in villages where the majority population is non-Romani and therefore they mostly take the form of section of villages. Also in this case the conditions of these settlements vary from context to context and can be very good and integrated in the village's tissue or very poor and in the form of a village slum.<sup>74</sup>

### **1.3.2. The relation between Romani identity/way of life and housing**

As it has been noted in the previous sub-chapter, most of the Roma in Central and Eastern Europe and especially in South East Europe keep living in mahalla or settlements separated from the majority population. Jakšić, in his study on the living conditions of Roma in Serbia, highlights how this kind of residential unit has fostered the ethnic marginality of this minority but, at the same time, strengthened the ethnic compactness and the cultivation of the Romani cultural identity.<sup>75</sup> In this sub-chapter I present some studies conducted on the relation between the Romani housing habits and their identity, in order to show how the two factors are interconnected. Furthermore, I introduce some examples that show the importance of assessing the specific housing needs of the Roma because those may be affected by the Romani traditions or way of life.

Regarding the general Romani tendency to live segregated in settlements instead of looking for an accommodation in an ethnic mixed neighbourhood, Stewart gives us an interesting possible explanation, deduced from his observations in a Romani settlement in Hungary.<sup>76</sup> The Romani minority, during its history of persecutions and attempted

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<sup>74</sup> Bašić Goran, "Settlements and population Density of the Romani in Serbia", in Jakšić, Božidar, and Bašić Goran, *Romany Settlements, Living Conditions and Possibilities of Integration of the Roma in Serbia*, Belgrade: Institut za Filozofiju i društvenu teriju, 2005. Pp195-196

<sup>75</sup> Jakšić Božidar, "Living Conditions of the Roma Family in Serbia", in Jakšić Božidar and Bašić Goran, *Romany Settlements*, 221-222

<sup>76</sup> Stewart, Micheal, *The Time of the Gypsies*, Boulder; Westview Press, 1997.

exterminations or assimilations by the surrounding population, has developed a feeling of living in a “state of siege”. This term indicates the feeling of continuous danger proved daily by the members of this minority in their relation with the *Gadje*. Indeed, they are well aware of the stigma of being Gypsy: they live in a world where the majority of the people is afraid of entering their home, where their children are discriminated in schools and where they are generally mistreated. Every Romani grows well aware that the *Gadje* outside the settlement consider them as inferior or deviant. For this reason the Romani individual looks for protection and respect within its own community and finds shelter from the outside world within the settlement. Only inside this “ghetto” he can express his own identity, speak his language and find the esteem and respect he deserves. Regarding this aspect, another scholar, Skupnik, conducted an interesting research about the marginalisation of the Roma settlements in Slovakia, showing how “the constant human need for attention and recognition from others” creates a “counter world” or “counter society” with an alternative value system, where this attention and recognition can be found, and that, in the case of the Romani communities, is represented by the settlement.<sup>77</sup>

Another aspect strictly connected to living in a settlement and to the unfriendly relationship with the non-Romani community is, always according to Stewart, the maintenance of a communal life. Indeed, most of the Roma, especially those living in settlements, place much importance to the mutual support and the share of the goods. Moreover the space where the Romani spend most of their time is the outdoor, where they can meet and talk with the other families for hours and hours. Therefore the community acquires a special relevance in the daily life of the Romani individual, who seldom lives isolated but instead spend most of its time surrounded by the family, the relatives and the neighbourhood.<sup>78</sup> This behaviour is an aspect of that safe space that the Roma have created in order to feel “at home” and to escape from the harsh reality of everyday. Being strangers in an unfriendly

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<sup>77</sup> Skupnik Jaroslav, “Reflected Worlds: Marginalisation and Integration from the Perspective of the Socio-psychological Dynamics of Society”, in *Czech Sociological Review*, Vol. 43, No. 1.  
<http://www.jstor.org/stable/41132480> (accessed 18/09/2014)

<sup>78</sup> Stewart Michael, “Romanes as the Gypsy Way, or Life in Common” in *The Time of the Gypsies*, 46-49

world make essential the mutual support<sup>79</sup>. The settlement offers a safe and functional space for conducting this kind of communal life. Furthermore, the reciprocal help and the general feeling of closeness among members is a reason of pride and distinctiveness from the individualistic world of the *Gadje*. Stewart, from his direct experience reports:

One Rom spoke to me as follows: “Rom help each other out [...]. If a Rom has a lot of money and somebody else needs some, then he’ll give it to him. If one Gypsy woman sees another who hasn’t got anything to eat or cook, she says to the other one, ‘Come to the shop with me, and we’ll buy some food to eat’. They help each other out... unlike the Gažos. That’s not the custom with them”. This was a romanticized account of daily life, but there genuinely was an expectation that the Rom should help one another.<sup>80</sup>

Stewart in his research concludes that the Romani identity itself is based in this feeling of closeness among the members of the Romani community and distinction from the outsider world that does not belong to them. This characteristic of the Romani minority has been observed by the other also in other contexts and therefore it is considered a common feature of the different Romani groups.<sup>81</sup> This aspect is reflected also in their relation with the territory. With regard to this, Mirga and Gheorghe point out that, unless motivated to keep the acquired social position in a specific territory, the Roma continuously feel rootless, since the territory they live in belongs to *Gadje*. The consequence is that they usually do not express much attachment to the territory they live in and, although no more nomad, they are always mentally ready to move somewhere else in case of necessity.<sup>82</sup> This weak attachment to territory is also observed by Stewart, who explains that for the Roma is much more important with whom they live than where.<sup>83</sup>

The importance of the house and in general of the residential habits for the preservation of the Romani identity can be demonstrated

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<sup>79</sup> Ibid. “A Place on their Own” 28

<sup>80</sup> Ibid “Romanes as the Gypsy Way, or Life in Common” , 47

<sup>81</sup> Ibid. “A Place on their Own” 28

<sup>82</sup> Mirga, Andrzej, and Nicolae Gheorghe, *The Roma in the twenty-first century: a policy paper*, Project on Ethnic Relations, 1997.23

<sup>83</sup> Stewart Michael, *The Time of the Gypsies*, 72

by the relevance that the Communist regimes posed on the housing policies for implementing the assimilation strategy directed to Roma<sup>84</sup>. Indeed, the settlement or resettlement of the Roma was considered an important aspect. Apart fighting against nomadism by prohibiting it and confiscating wagons and horses, most of the assimilation strategies foresaw the resettlement of the Roma living in segregated settlements in ethnically mixed urban buildings.<sup>85</sup> This result was achieved by offering housing and jobs for the price of assimilation or by forcibly moving families destroying the shanties where they were living before<sup>86</sup>. Education and urbanisation of Roma were seen as the solution to change the system of values, work habits and, in general, the lifestyle of the “backward” minority, since studies of that time were showing that “living environment determines lifestyle”<sup>87</sup>. Therefore, since the housing policies implemented had the goal of assimilation, they did not keep into account the different Romani housing needs. The apartments provided to Roma were the same of those provided to non Roma, without keeping into account, for instance that Romani families are usually more numerous than non-Romanies and therefore need more space.<sup>88</sup> Furthermore, the culture of some Romani groups affects also the physical outlook of the house. For instance, some have taboos against having the kitchen beside the toilet. Not keeping into account these aspects, as the Communist regimes did, might lead the inhabitants to have small interest in maintaining the building.<sup>89</sup>

The result of this lack of recognition and adaptation to the Romani housing needs led to the failure of the housing policies implemented.

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<sup>84</sup> The ideology behind the Communist assimilationist strategy directed to Roma is further explained in chapter 2.

<sup>85</sup> Barany, Zoltan, *The East European Gypsies: Regime Change, Marginality, and Ethnopolitics*, Cambridge: Cambridge University Press, 2002, 129-130

<sup>86</sup> Ibid.

<sup>87</sup> Glasheim efficaciously explains the point of view of the Communist planners who sought “to liquidate once and for all the Gypsy problem by moving Roma into modern housing that would cure them of their backward habits” Glasheim Eagle, “Most, the Town that Moved: Coal, Communists and the “Gypsy Question” in Post-War Czechoslovakia”, in *Environment and History*, Vol. 13, No. 4, (2007): 447-476.

<http://www.jstor.org/stable/20723640> (Accessed 18/09/2014)

<sup>88</sup> Macura, Petrović, “Housing, Urban Planning and Poverty”.

<sup>89</sup> Ringold Dena, *Roma and the Transition in Central and Eastern Europe*, 14

Indeed, apart from an initial drop of the spatial segregation, the tendency soon reversed and the separation of the Romani minority from the majority population increased again. The negative result was mainly due to the fact that, for the reasons stated above, the Romani families found the new accommodations unsuitable for their standards and, when possible, they sold the apartments and went back to the previous shanties, whereas the non-Romani population soon started moving to other Roma-free neighbourhoods because they displeased with this ethnic-mixed arrangement.<sup>90</sup> These housing policies encountered difficulties also when the moving of the Romani families to the new housing units was gradual and the families involved were well-disposed to change way of life. Stewart gives us another good example regarding this issue.<sup>91</sup>

A young couple living in Hungary, in the settlement where the author was conducting his studies, decided to enter in the State resettlement program in order to go to live in a proper apartment among the Magyars. The couple was already well integrated: the husband was working in a local factory and the wife in the kitchen of a restaurant. Furthermore, it was their clear intention to give up the Romani way of life and become Magyar. For this reason their request of resettlement was accepted. Before being moved to a Magyar modern housing estate they had to go through a transition period in a second settlement where they lived in barrack houses. The aim of the transition period was to accustom them to “modern life” in order to avoid future accidents due to their “backward” lifestyle. After sometime they were allowed to receive an apartment in the Magyar neighbourhood with all the modern comforts and they were sure that they would have never gone back to the old life.<sup>92</sup> This is not what happened. After one year they gave up the modern apartment and went back to the old ghetto, although it was hard for them to renounce to the comforts they enjoyed in the modern building. The reasons of this return were several: although the Magyar neighbours learned quite early that they were not like “the other Gypsies” they never really felt included and respected by Magyars; the young wife suffered from staying alone all day closed in the apartment

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<sup>90</sup> Barany Zoltan, *The East European Gypsies*, 130-131

<sup>91</sup> Stewart Michael, *The Time of the Gypsies*.

<sup>92</sup> Ibid. “Čoro and Luludji’s Story: Upwardly Mobile Gypsies”, 82-91

and also the kids did not love to live “enclose in four walls” and were often mistreated by the other kids. Briefly, the comfort of living in a modern apartment did not compensate the price of giving up the Gypsy communal life in exchange of a partial acceptance by the *Gadje* world. The story of this young Romani couple features an happy ending, since after sometime, with the money they got by selling back their rights in the council house to the state, they could buy and renovate a house in the settlement, where they could enjoy the basic comforts needed while not renouncing their Gypsy way of life.<sup>93</sup>

### 1.3.3. Group differentiation among Roma: a plurality of cultures

In dealing with Roma in general and with the housing policies directed to them in particular, it is important to specify an important and at the same time often omitted aspect of this ethnic group: it is not an ethnic group in the strict sense of the term, but it is rather a combination of several subgroups that have little to do with each other. With the exception of a likely same origin and some similarities in the languages they speak, Roma are a “people” only in the eyes of the majority population.<sup>94</sup> Indeed, the Gypsy identity is constructed more in opposition to the *Gadje*, and many Romani communities find a common ground only on the base of their differentiation with the *Gadje* society.<sup>95</sup> Keeping into consideration these differences is mandatory, because otherwise contingent policies may result ineffective or even counter-productive, since they also affect the socio-economic position (i.e. kind of occupation, settled/nomads, etc.) and the level of integration-marginalisation.<sup>96</sup> Nevertheless, it is also useful to talk of Romani people as a nationality in general in order to better promote their rights as a minority and to create an internal cohesion capable of fostering the

<sup>93</sup> Ibid. “My Heart Was Cut in Two” 134-137

<sup>94</sup> Pogány István, *The Roma Café, Human Rights in the Plight of the Romani People*, Pluto Books, London, 2004. 10

<sup>95</sup> Csepe Gyögy, Simon Dávid, “Construction of Roma Identity in Eastern and Central Europe: Perception and Self-Identification, in *Journal of Ethnic and Migration Studies*, Vol. 30, No.1, (2004): 129-150

<sup>96</sup> Ringold Dena, *Roma and the Transition in Central and Eastern Europe*  
Mitrović Alexandra et al., *The Roma in Serbia*, Belgrade: Centre for Anti-War Action, Institute for Criminological and Sociological Research, 1998. 28

Romani movements<sup>97</sup>.

The different ethnic groups composing the Romani population are probably hundreds.<sup>98</sup> Only in the territory of former Yugoslavia there are at least twenty main Romani groups.<sup>99</sup> An assessment and division of these groups in this area has been made by Đorđević in 1932 and is still accepted. He identifies four main groups that in turn are divided into further sub-groups. The differences are mainly in time of arrival in the region, language, customs, religion and even traditional occupations<sup>100</sup>. Other than these four main groups, he also mentions other 14 small groups.<sup>101</sup> The classification of Đorđević is interesting not only because it gives an idea of the variety of Romani groups, but also because, since has been done in the '30s, it shows how the Romani habits have changed in the last century. Apart the traditional occupations (pigs/horses trade, blacksmiths etc.) that have been lost, the author refers to many of these groups as nomads, like the Turkish Roma, living especially in Southern Serbia and Bosnia.<sup>102</sup>

Nowadays the nomad Roma in the area are few and, according to recent studies, most of the nomad groups have settled down mainly during the Yugoslav era<sup>103</sup>, which has for sure contributed to the

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<sup>97</sup> Tavani, Claudia, *Collective Rights and the Cultural Identity of the Roma: a Case Study of Italy*, Leiden: Martinus Nijhoff Publishers, 2012. P 24

<sup>98</sup> Ringold Dena, *Roma and the Transition in Central and Eastern Europe*

<sup>99</sup> Barany Zoltan, "Living on the Edge: The East European Roma in Postcommunist Politics and Societies", in *Slavic Review*, Vol. 53, No. 2, (1994): 321-344. [www.jstor.org/stable/2501296](http://www.jstor.org/stable/2501296) (accessed on 16/09/2014)

<sup>100</sup> The groups identified are: the *Turkish Roma*, arrived in Serbia after the arrival of the Turks and mostly engaged in crafts, trade of pigs and music, these are divided in Gadžikano and Korakane and differ among them for the language they speak. The so-called *White Roma* are Muslim by religion, they have almost completely assimilated in the majority society and speak only Serbian. The *Wallachian* is a group arrived in Serbia from Romania and is divided, according to Đorđević, in at least other 5 sub-groups, differing for history, occupation, residential habits etc. Finally the *Hungarian Roma* arrived in Serbia from Austria during the assimilation policies of the Habsburg and engaged mostly in horses trade.

Mitrović Alexandra et al. "Social Position of the Roma in Serbia" 10-12

<sup>101</sup> Mitrović Alexandra et al. "Social Position of the Roma in Serbia" 10-12

<sup>102</sup> Ibid.

<sup>103</sup> Bašić Goran "Settlements and Population Density of the Romanies in Serbia" in Jakšić, Božidar, and Bašić Goran, *Romany Settlements*

homogenisation of the different groups. Nonetheless, the differences remain. As Barany notices, the group differentiation influences and is influenced also by the degree of socio-economic integration of the same groups. For instance, there are groups which are well integrated and others completely living on the margins. There are groups that allow inter-ethnic marriages and groups that do not<sup>104</sup>. For this reason it is important to keep in mind this group differentiation in social policies in general and in housing policies in particular, since a different culture and a different level of integration may also affect the reception and acceptance of these strategies.

## **2. Collective identity: threat or value for human rights?**

In the previous chapter I showed the link between collective identity and housing and the importance of taking into account the cultural aspect in the protection of the Right to Housing. I also presented some examples showing how housing policies can be functional to assimilationist strategies, because of the role of housing in the preservation of the collective identity. In this chapter I bring argumentations against the implementation of these assimilation strategies and in favour of the protection of the collective identity, in order to point out the relevance of bearing in mind the link between housing and culture not only for a better implementation of the Right but also for the cultivation of a society where cultural pluralism is maintained and considered an enrichment.

### **2.1. Romani rights between individual and collective rights protection**

This first sub-chapter deals with the importance of the collective identity for the protection of human rights in general and of Roma's rights in particular. The relevance of collective identity for the implementation of individual rights is a debate engaging several authors and that still cannot be considered close. Its relevance is due not only to the role that culture plays in people's life, but also to the fact

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<sup>104</sup> Barany Zoltan, "Living on the Edge: The East European Roma in Postcommunist Politics and Societies",

that collective rights may protect those features of traditional cultures that go against individual rights. It is therefore discussed how these two opposite aspects can be reconciled in order to reach the highest standards of justice and well-being. The following chapter summarizes this debate, explaining why collective identity is important for the individual's well-being and introducing the still unsolved issue of the conflict between collective and individual rights. The issue of the role of collective identity for the well-being of the Romani individual is also tackled, paying particular attention to the connection between the Romani identity and the relationship with the non-Romani world.

### **2.1.1. Individual rights vs collective rights: main arguments**

The protection of the human rights of the members of the Romani community poses some problems that can be included within the broader debate that sees those supporting the mere protection of the individual's rights opposed to those who advocate for a major recognition of the collective dimension of rights. The first group promotes the idea that the rights of the person can be properly protected by considering the individual as independent from its cultural background<sup>105</sup>, while the second group of scholars points to the importance of the collective identity in individual's life and therefore argues for the recognition and protection of those collective rights connected to the belonging of the individual to a cultural community.<sup>106</sup> Nowadays both the two approaches recognise the relevance of the cultural membership in the individual

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<sup>105</sup> See Donnelly Jack, "Cultural Relativism and Universal Human Rights", in *Human Rights Quarterly*, Vol. 6, No. 4, (1984): 400-419.  
Walzer Michael, *The Politics of Ethnicity*, Harvard University Press, Cambridge, 1982.

<sup>106</sup> See Kymlicka Will, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Clarendon Press, Oxford, 1995.  
Young Iris Marion, *Justice and the Politics of Difference*, Princeton University Press, 1990.  
Bhikhu Parekh, *Rethinking multiculturalism : cultural diversity and political theory*, MacMillan Press, London, 2000.  
Taylor Charles, "The Politics of Recognition", in Gutmann (ed.) *Multiculturalism*, Princeton University Press, 1994.

life<sup>107</sup>, but because of several factors, such as the potential clashes between the protection of the individual rights and the recognition of the group rights, the debate over how much the human rights approach has to keep into consideration the cultural aspect is still fully open.

The recognition of the importance of culture for the well-being of a person is confirmed by the ICESCR that protects the “Right to take part in cultural life” in article 15<sup>108</sup>. Nevertheless, the issue of the meaning of this right and its weight over the other individual rights remains.<sup>109</sup> Indeed, some authors argue that culture and collective identity are functional to the proper implementation of the individual rights and therefore these aspects have to be considered beyond the mere protection of the cultural life itself.<sup>110</sup> At this point it is necessary, nonetheless, to specify what the term “culture” refers to. According to the Article 15 of the ICESCR, the term Culture may refer to the “traditional canon of literature, music, theatre, architecture and so on”<sup>111</sup>, all the manifestations of creativity that include as well mass phenomena as television, radio etc., and finally the anthropological perspective that studies the culture as way of life and manifestation of values.<sup>112</sup> This last aspect of the term “culture” is the most debated and therefore is the one that has to be considered in the analysis. Indeed, while according to Kymlicka, culture, intended as way of life and set of values, is what provides the individual with a meaningful life and a “context of choice” within which it has the freedom to decide which life

<sup>107</sup> O’Nions reports as also anti-liberalist and strongly individualist theorist as Nietzsche and Hiedegger recognised the importance of collective membership for the individual. O’Nions Helen, *Minority Rights Protection in International Law, The Roma of Europe*, Research in Migration and Ethnic Relations Series, Ashgate, Aldershot, 2007. 31

<sup>108</sup> International Covenant on Economic, Social and Cultural Rights, adopted by UN General Assembly Resolution 2200 (XXI), 16 December 1966, entered into force in 1976. Art. 15. Available at: <http://www.un-documents.net/icescr.htm>

<sup>109</sup> For a review on the Art 15 of the ICESCR and on the issues that its elaboration poses see O’Keefe Roger, “The Right to Take Part in Cultural Life under Article 15 of the ICESCR”, in *International and Comparative Law Quarterly*, Vol. 47, October 1998, 904-923.

<sup>110</sup> O’Nions Helen, *Minority Rights Protection in International Law*, 32

<sup>111</sup> O’Keefe Roger, “The Right to Take Part in Cultural Life under Article 15 of the ICESCR”, 905

<sup>112</sup> Ibid.

to conduct<sup>113</sup>, according to Donnelly, culture is an aspect of individual's life that has its relevance, but that can be changed by the free will of the person and therefore it does not have to be overstated<sup>114</sup>.

The defence of the relevance of culture in the individual's life, and consequently in the implementation of individual human rights, is based on the idea that the identity and the well-being of the person are deeply intertwined with his belonging to a group. As Margalit and Raz write:

It may be no more a brute fact that our world is organised in large measure around groups with pervasive cultures. But it is a fact with far-reaching consequences. It means, in the first place, that membership of such groups is of great importance to individual well-being, for it greatly affects one's opportunities, one's ability to engage in the relationships and pursuits marked by the culture. Secondly, it means that prosperity of the culture is important to the well-being of its members. If the culture is decaying, or it is persecuted or discriminated against, the options and opportunities open to its members will shrink, become less attractive, and their pursuit less likely to be successful.<sup>115</sup>

This idea is also supported by Parekh, who in his critique to the monist ideologies and theories<sup>116</sup> argues that "since human identity is composed of both universally common and culturally specific features, the good life cannot be defined in terms of the former alone".<sup>117</sup> Similarly, the so-called "Communitarian" theorists criticize individualist ideology for its underestimation of the role of the community in individual's life.<sup>118</sup> Skurbaty stresses the fact that the community is not opposed to the individual but "represents one of the vital ingredients [...]"

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<sup>113</sup> Kymlicka Will, *Multicultural Citizenship*.  
Kymlicka Will, *Liberalism, Community and Culture*, Oxford: Oxford University Press, 1989.

<sup>114</sup> Donnelly Jack, "Cultural Relativism and Universal Human Rights"

<sup>115</sup> O'Nions Helen, *Minority Rights Protection in International Law*, 28

<sup>116</sup> With monist ideologies Parekh refers to those doctrines that promote moral values as universal and consider ignorant or backward those who do not conform to them. The most known example is the liberal ideology of the colonial period.

Parekh Bhikhu, "Moral Monism", in *Rethinking multiculturalism*. chapt. 1

<sup>117</sup> Parekh Bhikhu, *Rethinking multiculturalism* . p. 125

<sup>118</sup> O'Nions Helen, *Minority Rights Protection in International Law*, 36

of the self, the psyche and the important vehicle through which it experiences, actualizes and objectivates itself".<sup>119</sup> Consequently, culture and collective identity have a crucial role in defining the well-being of an individual and therefore have to be considered discussing about protection of human rights in general.

Most of the criticisms to the protection of the collective rights and cultural specificities argue that Western authors defending these positions risk to fall into paternalism and stereotypes, to consider culture as something fixed and unchangeable and, most of all, defend cultures that represent severe threats to fundamental individual rights. Donnelly ironically notices how most of the scholars that strenuously defend traditional cultures have since long time abandoned their own, while they keep continue to cry out in favour of aboriginal cultures that are almost extinguished<sup>120</sup>. Waldron goes further and uses the experience of the immigrant community and the specific example of *The Satanic Verses* of Salman Rushdie in order to show how globalisation is producing a world where the individual has the possibility to choose among different elements from different cultures and the minorities are replaced by a cosmopolitan society. In such a world the protection of minority cultures is not only anachronistic, but also dangerous, as the death threats to Rushdie for apostasy have shown.<sup>121</sup> Likewise, a harsh criticism to protection of traditional cultures comes from the feminist perspective that points out how defending such cultures may mean defending traditional practices that place the woman in a subjugated position or even seriously threat her fundamental rights.<sup>122</sup> The practices of female genital mutilation and forced early marriage are very well known examples of how culture can endanger the autonomy and even the physical integrity of the individual.

All these criticisms are very well funded and yet solutions have not been found for all the issues raised. Nonetheless, in opposition to

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<sup>119</sup> Skurbaty Zelim, *As if People Mattered*, Nijhoff Publisher, The Hague/Boston/London, 2000. 278

<sup>120</sup> Donnelly Jack, "Cultural Relativism and Universal Human Rights"

<sup>121</sup> Waldron Jeremy, "Minority Cultures and the Cosmopolitan Alternative", in Kymlicka Will (ed.), *The Rights of Minority Cultures*, Oxford University Press, 1995. 93-119

<sup>122</sup> Moller Okin Susan et al., *Is Multiculturalism Bad for Women?*, Princeton University Press, 1999.

Waldron's cosmopolitan theory several arguments have been advanced. O'Nions shows how it is difficult to enjoy a variety of cultural perspectives when most of them are endangered by hegemonic forces. In support of her argumentation she brings the example of the Criminal Justice and Public Order Act released in 1994 in United Kingdom, which strongly limits the practice of nomadism. The decision does not only ignore the travelling needs of many Gypsy but affects also all those "new age travellers" who freely decided to adopt a nomadic lifestyle.<sup>123</sup> Another argumentation that can be brought against the cosmopolitan perspective is the fact that today's world is not necessarily going toward the establishment of a unique cosmopolitan and secular culture, but rather toward a reaffirmation of a traditional one opposed to the Westernisation of the values. Evidences to this argument are brought from the process of desecularisation. New upsurges of religious affiliation are witnessed not only in the Islamic world but also, for instance, in South America, where the Evangelical churches are rapidly increasing their members.<sup>124</sup> Berger gives two explanations to this phenomenon, that may also be considered the reasons of why it is very unlikely to replace the traditional cultures with a new cosmopolitan and secular one:

One: Modernity tends to undermine the taken-for-granted certainties by which people lived through most of history. This is an uncomfortable state of affairs, for many an intolerable one, and religious movements that claim to give certainty have great appeal. Two: A purely secular view of reality has its principal social location in an elite culture that, not surprisingly, is resented by large numbers of people who are not part of it but who feel its influence.<sup>125</sup>

Finally, although it is true that cultures are not fixed but can be changed, it is also true that this mutation process is quite slow and it is better if moved by internal forces<sup>126</sup>. The forced change of a culture through, for instance, assimilation, may lead to the negative

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<sup>123</sup> O'Nions Helen, *Minority Rights Protection in International Law*, 35

<sup>124</sup> Berger Peter L., "The Desecularisation of the World: A Global Overview", in Berger Peter at al. (eds.) *Resurgent Religion and World Politics*, Erdemans Publisher, Washington, 1999.

<sup>125</sup> Ibid.

<sup>126</sup> Kymlicka Will, *Multicultural Citizenship*, p. 75.

consequences that I show more extensively in the following chapter.

More critical problems are posed by the potential clash between the protection of cultural specificities and fundamental rights, as raised by feminist theorists. Also Kymlicka tackles the issue and acknowledges the risks that the protection of minorities may be used to defend illiberal practices. Nonetheless, he apparently quite easily solves the issue by placing the liberal principle of individual autonomy as undeniable requirement for protecting minority rights: “Liberals can only endorse minority rights in so far as they are consistent with respect for the freedom or autonomy of individuals.”<sup>127</sup> This approach is questioned by another defender of multiculturalism, Parekh, who criticises the fact that placing liberal approach as a minimal requirement can be seen as a new form of moral imperialism. Some cultures may not be based on the principle of individual autonomy but on its opposition and therefore looking at them through the lens of liberalism can result in inequality.<sup>128</sup> Moreover, Kymlicka in his liberal analysis of meeting cultures and multiculturalism does not keep too much into account the possibility that not all cultures may be open to cooperate and respect the others. This aspect is better analysed by Parekh who, nonetheless, does not propose many practical solutions to the issue, but simply talks of the necessity to promote the cross- cultural dialogue.<sup>129</sup>

The issue of the protection of fundamental rights together with the respect of the values and costumes of traditional cultures is surely one of the critical points that the rise of multicultural society is posing and whose solution is crucial for the full respect of the rights of everyone. Nevertheless, sometimes culture is used to cover the real reasons of certain practices and too often stereotypes are still used to judge costumes of a non-Western community. This tendency other than creating dangerous prejudices, prevent us from the possibility to assess the reality in an objective way. An example is the costume of early marriage, still practiced in many area of the world and often associated solely with tradition and religion, especially Islam. Although these two factors have a role in promoting this practice that has negative

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<sup>127</sup> Ibid.

<sup>128</sup> Parekh Bhikhu, *Rethinking multiculturalism*, p 107-108

<sup>129</sup> Ibid. 128

consequences on many levels<sup>130</sup>, they cannot be considered as the main driving forces that bring this costume to persist. Indeed several studies show that economic factors, as poverty, and conditions of insecurity, like armed conflict, have a primary role in fostering early marriage.<sup>131</sup> This example does not want to minimize the problems that culture poses to human rights and equality, especially gender equality, but intends to stress the necessity of analysing the single cases with rationality and objectivity, avoiding to find in the vague terms of “culture” and “tradition” the explanation of each illiberal practice.

### 2.1.2. The relevance of the collective identity for the Romani groups and its relational dimension

The issue of the protection of minority cultures and the respect of human rights is particularly relevant for the Romani communities in Europe and their case is interesting for several aspects. First of all, the Roma represent the main minority in Europe, they are present since the beginning of Middle Age, they have passed through slavery<sup>132</sup>, persecutions, attempted assimilations<sup>133</sup> and even genocide<sup>134</sup> and

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<sup>130</sup> For an overview on the social, health and economic consequences of early marriage, UNFPA, *Marrying too Young: End Child Marriage*, New York, 2012. Available at: <http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/MarryingTooYoung.pdf>

<sup>131</sup> Nawal M. Nour, “Child Marriage: A Silent Health and Human Right Issue” in *Reviews in Obstetrics and Gynecology*, Vol. 2, No. 1, 2009. Available at: [http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2672998/pdf/RIOG002001\\_0051.pdf](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2672998/pdf/RIOG002001_0051.pdf)

UNFPA, *Ending Child Marriage: a Guide for global Policy Action*, London, 2006. Available at: <http://www.unfpa.org/webdav/site/global/shared/documents/publications/2006/endchildmarriage.pdf>

World Vision, *Before She's Ready, 15 Places Girls Marry by 15*, 2008. Available at: <http://corestg.worldvision.org/sites/default/files/pdf/early-marriage.pdf>

<sup>132</sup> See the long period from Middle Age to Contemporary era, when in many area of Eastern Europe all the Roma were considered slaves. Hancock, Ian, *We Are the Romani People*, Hatfield: University of Hertfordshire Press, 2002.

<sup>133</sup> A good account of the persecutions and assimilation policies during history may be found in Liégeois, Jean Pierre, Gheorghe Nicolae, *Roma/Gypsies: a European Minority*, Minority Rights Group International, 95/4, 1995.

<sup>134</sup> See Bársony János, Agnes Daróczi, *Pharrajimos: the Fate of the Roma during the Holocaust*, New York: The International Debate Education Association, 2008

nonetheless they kept existing, living excluded from the majority population. Still today this minority represents the poorest section of the population and it is subject to several violations of human rights and acts of discrimination. In this thesis I aim to demonstrate how the protection of the individual rights of Roma community members cannot ignore the protection and respect of the Roma as a group. It is true that the culture of many Romani groups represents itself a threat to individual rights. The case of early marriages can be brought again as example, since it is still practiced by some Romani communities. Nonetheless, as I show later, many traditional practices adopted by Roma are a product of the relationship with the majority population (the gadjé), characterised by diffidence, prejudice and even conflict. In addition, most of the human rights violations suffered by members of Romani groups are a consequence of the discriminatory policies imposed by the majoritarian society and of the lack of a proper protection of their minority rights. In this chapter I stress the importance of the collective identity for the Roma and its connection with the majority population.

O’Nions in her overview of the main arguments pro and against the protection of collective identity, argues that the Romani minority can be brought as one of the most apparent examples of the importance of the collective dimension for the individual identity. According to one of the main scholars of Roma history and culture, Liégeois, the individual identity of the members of the Romani communities is highly intertwined with the collective one:

The individual is that which his belonging to a given group makes him. He is neither known nor recognised as an individual, but by the situation within the group, which determines his identity both for himself – his self-designation – and for others: the ways in which he will be seen by them, and see them in turn. Hence the significance, when people meet, of employing linguistic and cultural elements and designations, enabling the individuals in question to define themselves and each other, to differentiate themselves and yet feel a common bond.<sup>135</sup>

The relevance of the collective identity for the Romani person is also stressed by Jakšić, who argues that many Roma, although for

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<sup>135</sup> Liégeois Jean-Pierre, *Roma, Gypsies, Travellers*, Council of Europe Press, Strasbourg, 1994. 63

socio-economic purposes may eventually adopt strategy of “ethnic mimicry”, pretending to accept integration or assimilation, even so they seek to maintain their ethnic integrity and identity.<sup>136</sup> Furthermore, being confronted with discrimination and prejudice on a daily base reinforces the need for this minority to find support inside its proper community, strengthening the links with it and increasing the distance with the rest, as I showed in the chapter on the link between Romani collective identity and residential habits. The importance of the community for the Romani individual is also stressed by Stewart who, writing about his experience living with Roma in Hungary, tells how the families living in the settlement that was hosting him would have been ready to leave that place without much resistance in case the municipality would have evicted them:

These Gypsies were in no sense “nomads”, but a “place of their own” was not at the end a place at all; rather, it was the always fragile realisation of an intangible quality of life together.<sup>137</sup>

The experience of discrimination that Romani communities constantly live is also responsible for the feeling of closeness among different groups that otherwise would not share many cultural traits. It may also be concluded, as many authors argue, that the Gypsy identity itself is a product of the reaction against the discrimination of the *Gadje*.<sup>138</sup> It is not a case that the recent feeling of nationhood, promoted by the Romani leaders and developed as a consequence of the Romani holocaust, and is often defined as a product of the history of victimisation.<sup>139</sup> Indeed, it is almost impossible to identify unified traits that may define the Roma as an ethnic group: the language, although some similarities can be found, is not the same for all the groups, religion as well is not at all unified, and the same can be said for the way of life. Regarding their history and their place of origin, as

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<sup>136</sup> Jakšić Božidar, “Living Conditions of the Roma Family in Serbia”, in Jakšić Božidar and Bašić Goran, *Romany Settlements*

<sup>137</sup> Micheal Stewart, *The Time of the Gypsies*

<sup>138</sup> Tavani Claudia, *Collective Rights and the Cultural Identity of the Roma, A Case Study in Italy*, 24

<sup>139</sup> *Ibid.* 27

Stewart<sup>140</sup> and Tavani<sup>141</sup> notice, it looks like this is more an interest for the non-Romani historian than for the Roma itself: they come from an oral tradition, base their “history” on the oral legends transmitted from generation to generation and are not at all interested in their place of origin. Nonetheless, Tavani stresses that it is important to recognise this unified ethnic identity – the Romani identity, since it is the only way for them to ask the respect of their rights as minority and to prevent to be considered simple parasites or troublesome outsiders.<sup>142</sup>

Romani collective identity is therefore deeply intertwined with the relation of this ethnic minority with the other (the *Gadje*). Indeed, while the cultural specificities and way of life create prejudice and discrimination, the stigmatisation that derives from it creates itself the reinforcement of those cultural features that differentiate the minority group from the majority. The residential habits of Roma are a good example for this purpose. As I showed in the first chapter, the settlement provides a refuge for the Romani minority from the daily discrimination and even verbal and physical attacks (derived from the not-acceptance of the diversity) that they live in the outside world, but at the same time represents the most visible manifestation of this different way of life. Another good example of this phenomenon is the relationship that Roma have with the work. According to the majority population’s stereotypes, the Roma do not want to work, are lazy, beggars and in the worst case scenario, thieves. This image creates prejudice, discrimination and racial hate and all those feelings that bring the Roma to be excluded and discriminated. The Roma, on the other side, reinforce this stereotype as a mental defence. Stewart well explains this process, writing how the Roma that he interviewed during his period of research were telling him how they (the Gypsy) are good in stealing and cheating the “stupid” *Gadje*, despite the fact that all of them were working every day in the socialist factories and few of them ever got prosecuted for such a kind of crime.<sup>143</sup> Similarly many Romani tails praise how the Roma are superior to *Gadje*, because these are working

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<sup>140</sup> Stewart Michael, *The Time of the Gypsies*, 12

<sup>141</sup> Tavani Claudia, *Collective Rights and the Cultural Identity of the Roma*, 27

<sup>142</sup> Ibid 5

<sup>143</sup> Micheal Stewart, *The Time of the Gypsies*, 18-23

all day while they are enjoying what the environment gives them.<sup>144</sup> In conclusion, the recognition and protection of the Romani collective identity is important because the misrecognition and mistreatment of this minority brings to a further differentiation and marginalisation of this group from the majority population.

### **2.1.3. The protection of the identity of Romani minority by international legal documents**

The protection of the group's rights of minorities has improved considerably after the fall of the Communists regimes and especially after the bloody wars in the Balkans in the '90s.<sup>145</sup> The legal documents that have been issued on this topic are several and go from the international to the European level. Other than protecting the minorities from potential violence and discriminations, the international legislation requires equal treatment and the possibility for the ethnic groups to express and develop their culture and to learn and use their mother tongue. At the international level, the Covenant on Civil and Political Rights (art. 27) protected the right of the ethnic, religious and linguistic minorities to express their own culture, profess their own religion and speak their own language, while the Art. 15 of the Covenant of Economic, Social and Cultural Rights protects the right of everyone "to take part to the cultural life"<sup>146</sup>. Those binding legal documents, while ensuring the respect of the freedom of the individual to express its own cultural specificity, do not foresee any active role of the State in promoting the minority cultures and ensuring their survival. With the new wave of legal documents protecting minority rights in the '90s the situation changed. At the United Nations (UN) level, in 1993, the General Assembly approved a Declaration on the Rights

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<sup>144</sup> Pogány István, *The Roma Café, Human Rights in the Plight of the Romani People*,. 23

<sup>145</sup> Žagar Mitja, "Some newer trends in the protection and special rights of ethnic minorities: European context" in Miroslav Polzer, Liana Kalèina, Mitja Žagar (ed.) *Slovenia and European Standards for the Protection of National Minorities*, Informacijsko dokumentacijski centar Sveta Evrope pre NUK: Inštitut za narodnostna vprašanja: Avstrijski inštitut za vzhodno in jugovzhodno Evropo, Ljubljana, (2002): 77-104

<sup>146</sup> International Covenant on Economic, Social and Cultural Rights

of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, that, although not binding, represents, like all General Assembly Declarations, an important starting point for the development of new legal binding mechanisms. This Declaration, furthermore, is important because, other than calling for the respect of the equal treatment of persons belonging to minorities and the prevention against discrimination, invites the member states to:

Take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, traditions and customs, except where specific practices are in violation of national law and contrary to international standards<sup>147</sup>

The most advanced system of protection of minority rights and cultures lies at the European level. The Council of Europe, in particular, has a crucial role in this field. The Framework Convention for the Protection of National Minorities, adopted by the Council of Europe's Parliamentary Assembly in 1995 and entered into force in 1998, is the first binding legal document that is specifically directed to the protection of minorities. Furthermore, other than the negative rights already protected by previous conventions like the anti-discrimination and the freedom of expressing its own culture, the Framework engages the states to "take measures in the field of education and research in order to foster the knowledge of the culture, history, language and religion of their national minorities and of the majority"<sup>148</sup>. Furthermore, it foresees the use of "traditional local names, street names and other topographical indication intended for the public also in the minority language" in the area inhabited by a substantial number of persons belonging to a national minority"<sup>149</sup>. Finally, it recognizes the right of the members of a national minority to be taught in the minority language, where it is possible and

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<sup>147</sup> Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, UN General Assembly, Res. 47/135, 1992. Available at: <http://www.un-documents.net/a47r135.htm>

<sup>148</sup> Framework Convention for the Protection of Minority Rights, Council of Europe, Strasbourg, 1995. Art 12.1 [http://www.coe.int/t/dghl/monitoring/minorities/1\\_AtGlance/PDF\\_H\(95\)10\\_FCNM\\_ExplanReport\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_H(95)10_FCNM_ExplanReport_en.pdf)

<sup>149</sup> Ibid. Art. 11.3

requested.<sup>150</sup> The aim of the Framework, stated in the preamble, is to promote the creation of a “pluralist and genuinely democratic society”, that, always according to the Framework: “should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity”, with the idea that cultural diversity should not be a source of division “but of enrichment for each society”<sup>151</sup>

Another important legal source of recognition of the importance of protecting the cultural diversity is the jurisprudence of the European Court of Human Rights. Despite the fact that the Convention (ECHR)<sup>152</sup> does not contain any specific article protecting cultural diversity and traditional ways of life, the Article 8 of the mentioned Convention, which includes the right “to respect for his private and family life, his home and his correspondence”<sup>153</sup>, has been often interpreted as containing the protection of traditional cultures, considered as part of the private life.<sup>154</sup> This interpretation of Article 8 of the ECHR is particularly significant for the Romani minority in Europe, because has led the Court to keep into consideration the traditional way of life of the Romani minority in several cases.<sup>155</sup> Nonetheless, it is important to notice that from the beginning the right was not considered absolute but “subordinate to more important public interests”. This last clause led the Court to judge in favour of the counterparts, which justified the interference into the private life of the families involved with the need of respecting the national laws

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<sup>150</sup> Ibid. Art. 14.2

<sup>151</sup> Ibid. Preamble

<sup>152</sup> It refers to the European Convention on Human Rights

<sup>153</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms

<sup>154</sup> Henrard Kristin, “The European Convention on Human Rights and the Protection of the Roma as a Controversial Case of Cultural Diversity”

<sup>155</sup> Examples of cases where the Gypgy way of life has been kept into account in the sentences of the Court: Buckley v. UK, European Court of Human Rights, Chamber, 1996. Available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58076#{"itemid":\["001-58076"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58076#{)

Chapman v. UK, European Court of Human Rights, 2001. Available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59154#{"itemid":\["001-59154"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59154#{)

and the public interest. Nevertheless, in 2001 in the case *Chapman v. United Kingdom (UK)*, the Court has taken important steps in the development of the minority protection. Indeed, in its sentence it has stated that:

[T]he vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in arriving at decisions in particular cases. To this extent there is thus a positive obligation imposed on the Contracting states by virtue of Article 8 to facilitate the gypsy way of life<sup>156</sup>

Furthermore, the Court in his decision has taken into account the “emerging international consensus amongst the Contracting states of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community”<sup>157</sup>. As Henrard notices, although the Court finally sentenced against the Romani counterpart, the verdict was quite controversial and there was a significant dissent among the judges.<sup>158</sup> This raises the hopes of a further development of the Court jurisprudence towards a greater protection of minority rights and full recognition of the value of the cultural diversity.

## **2.2. Collective identity in practice: Assimilation v. integration debate**

The debate over the importance of the collective identity for the well-being of the individual and therefore over the necessity or not to protect this collective dimension in order to ensure the full respect of the human rights can be translated on the practical level on the debate assimilation vs. integration policies. The two terms cannot be defined precisely. On one hand, the term “assimilation policies” may refer to the violent policies promoted by the “enlightened” Maria Theresa in

<sup>156</sup> Chapman v. UK quoted by Henrard Kristin, “The European Convention on Human Rights and the Protection of the Roma as a Controversial Case of Cultural Diversity”. 18

<sup>157</sup> Ibid. 19

<sup>158</sup> Ibid.

the Habsburg Empire with the aim to “elevate the Roma into the ranks of “civilized” and “useful” citizens”.<sup>159</sup> On the other hand, assimilation may also refer to a more liberal ideal of ensuring equal treatment to everyone “according to the same principle, rules and standards”<sup>160</sup>. The term integration usually refers to policies that aim to the unity and cohesion of the entire society without threatening the cultural specificities. Nonetheless, some scholars have raised the question how to achieve such a unity without endangering the minority cultures. To this question some have responded proposing a third model: the politics of recognition or pluralism.<sup>161</sup> Further below I argue that a politics of recognition, that does not lead to segregation and promotes the dialogue with the other cultures, is not only perfectly compatible with integration policies but also complementary.

### **2.2.1. Theoretical arguments against assimilation policies**

In the matter of assimilation policies, as I stated above, with this term is possible to refer to different aims and strategies. Nevertheless, whether the aim is to impose a certain behaviour or a mainstream culture over the minorities or to ensure equality by ignoring the differences, the result is always a society where those belonging to a minority culture are in an unfavourable position since they have to adapt to the mainstream culture over which the institutions of the State are based. Indeed, as Kymlicka well explains, the ideal of a neutral

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<sup>159</sup> Barany Zoltan, *The East European Gypsies*. 93 This kind of assimilation can be reported also in other contexts and historical periods and it is generally called “forced assimilation”, which refers to the coercive measures that implies. The aim is always that of creating a homogenous society, more than to ensure the equal treatment.

<sup>160</sup> Young, I. M. “Social Movements and the Politics of Difference”, in *Justice and the Politics of Difference*, Princeton University Press, Princeton, (1990): 156-173. 158

<sup>161</sup> O’Nions Helen, *Minority Rights Protection in International Law*, 41

State in front of the cultural differences is utopian.<sup>162</sup> Culture does not only concern the private sphere of the individual but also the public one. Education is a very good example at this regard. By imposing a language of teaching, the State is already giving preference to a certain cultural community and the others will be expected to adapt and study in a language that does not belong to their own culture.<sup>163</sup> Nevertheless, in the XX century many scholars have argued in favour of the assimilationist ideal of equality<sup>164</sup>, which has also inspired many movements against segregation and oppression, like the Civil Rights Movements in the USA. The approach changed in the 70's when the movements for equality realised that this ideal principle could not be achieved in a society where the minorities, in order to enjoy the same rights, had to accept a world based on rules and values set by the mainstreaming society "white, male and heterosexual".<sup>165</sup>

As Young efficaciously notices, the assimilationist approach does not ensure equality but places those belonging to a minority culture in a subordinate position compared to the majority society. Indeed, in order to be included into the mainstream, the members of the minority have to prove themselves in a game "whose rules and standards have already been set" by the majority. Furthermore, always according to Young, the assimilationist idea presumes that the values set by the mainstream are universal and neutral. This idea may lead to imperialist policies, which consider those not conforming to these values as deviant. Finally, the supposed neutrality of the mainstream rules and standards lead to an internal devaluation of the minority culture by the members themselves, who suffer from not being completely accepted as members of the mainstream and refuse to fit within the circle of the minority.<sup>166</sup> Kymlicka criticizes the assimilationist rhetoric arguing

<sup>162</sup> The idea of the neutrality of the State implies the fact that, since culture is considered, as religion, something concerning exclusively the private sphere, the State does not need to interfere with it. Kymlicka Will, "Western Political Theory and Ethnic Relations in Eastern Europe", in Kymlicka W. and Opalski M., *Can Liberal Pluralism Be Exported?*, Oxford University Press, New York, 2001. 16

<sup>163</sup> Ibid. 16-17

<sup>164</sup> Wasserstrom Richard, "On Racism and Sexism", in *Today's Moral Problems*, 2<sup>nd</sup> ed., (1980): 75-105

<sup>165</sup> Young, I. M. "Social Movements and the Politics of Difference", 160-161

<sup>166</sup> Young, I. M. "Social Movements and the Politics of Difference", 164-165

that the non-recognition of a distinct cultural community has the same effect of the denial of the same rights to individuals because part of a minority (segregation), i.e. to place the concerned community to a level of inferiority.<sup>167</sup>

Contrasting the assimilationist approach, the politics of recognition not only stresses the importance of recognising the differences within the society, but also points out its empowering and liberating potential. The feminists no more have to compete and to seek for acceptance in a male-dominated world, but can assert their femininity and organise in safe spaces where they can freely express themselves. In a world where difference is a value, everyone is free to affirm “I am just what they say I am – a Jewboy, a coloured girl, a fag, a dyke, or a hag – and I am proud of it”<sup>168</sup>. Among the main supporter of the politics of recognition, Taylor affirms:

[...] misrecognition shows not just a lack of due respect. It can inflict a grievous wound, saddling its victims with a crippling self-hatred. Due recognition is not just a courtesy we owe people. It is a vital human need.<sup>169</sup>

A part from the rhetoric power of these assertions, the ideal of a society where in order to be equal is not necessary to conform to a standard, appears much more desirable and just. Of course on the practical level it poses several challenges that have to be tackled and that I deal with in the third sub-chapter. Nonetheless, in view of these argumentations, it is possible to conclude that the assimilationist approach is not acceptable in the contemporary world and the ideal of equality has to be achieved through the recognition of differences.

### **2.2.2. Assimilation policies towards Romani communities during the Socialist period**

The Romani minority in Europe demonstrates that not only assimilation policies are morally unacceptable but also counterproductive. In this sub-chapter I take the example of the assimilation policies

<sup>167</sup> Kymlicka Will, *Multicultural citizenship*. 60

<sup>168</sup> Young, I. M. “Social Movements and the Politics of Difference” 166

<sup>169</sup> Taylor Charles, “The Politics of Recognition”, in Gutmann (ed.) *Multiculturalism*, Princeton University Press, 1994. 26

directed to Roma and implemented by the socialist regimes to show how this approach, other than resulting in the deprivation of the freedom to express its own culture and to conduct its own way of life, may enforce that marginalisation produced by the will of maintaining the cultural features. An interesting ethnographical study that reports the negative effects of these policies is the one conducted by Stewart during the 80's in Hungary. His research is useful to understand how the Romani identity and culture developed in opposition to the majority one and why assimilationist policies are ineffective and in some cases even counterproductive.<sup>170</sup> Other authors that extensively wrote about the consequences of this period on the socio-economic conditions of the Roma are Barany and Gheorghe.

All over the socialist countries in Central and Eastern Europe assimilation policies towards the Romani community have been implemented. Although the methods and the outcomes differ from country to country, the aim was always the same: “to transform them (the Roma) into productive, cooperative and supportive socialist citizens”<sup>171</sup>. Their lifestyle was indeed considered “deviant” and a potential obstacle for the realisation of the socialist society<sup>172</sup>. Furthermore, despite the socialist support for the self-determination of the nations, the smaller nationalities were considered as backward and stagnant, therefore their only possible destiny was to assimilate into the bigger nations.<sup>173</sup> Nevertheless, the reasons that moved the socialist elites to invest money on the assimilation of this minority were not solely ideological. There was also an acknowledgement of the conditions of extreme poverty and marginalisation in which the members of this minority were living and therefore the aim was also to improve their position by providing them with a house, a job and an education.<sup>174</sup> Despite the efforts and the investments, the policies resulted ineffective not only because the Romani group remained culturally distinct but also because, despite some improvements, the overall condition of this minority, especially

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<sup>170</sup> See Micheal Stewart, *The Time of the Gypsies*

<sup>171</sup> Barany Zoltan, *The East European Gypsies*, 114

<sup>172</sup> Ibid.

<sup>173</sup> Kymlicka, W., *Multicultural Citizenship: A Liberal Theory of Minority Rights*, 69.

<sup>174</sup> Barany Zoltan, *The East European Gypsies*. 97-98

in relation with the majority population, worsened.<sup>175</sup>

The first socialist state to try to assimilate the Roma by offering housing and employment was Poland in the early 50's. This policy was then reinforced later with more coercive measures such as the restriction of nomadism and the control of Romani cultural organisations.<sup>176</sup> Czechoslovakia and Bulgaria followed the Polish example but in an even more coercive and violent way. In 1958 the Czech Communist Party decided to implement a rapid and comprehensive campaign against nomadism and towards the full assimilation of the minority, which was not even more considered as an ethnic community but instead as a social group. The norms that followed deprived the Roma of the right to travel and forced them to find an employment. The peak of the Czech coercive measures was reached with the sterilisation policies that were promoted from the 80's until the end of the Communist regime.<sup>177</sup> Similarly, in Bulgaria from 1958 the so-called Gypsy-travel was prohibited and from the 60's segregated schools were created for Roma in order to achieve the planned goal of full literacy enough quickly. These policies became more coercive during the 80's when Roma were prevented by law of speaking their own language and express their culture.<sup>178</sup> Less coercive and with integrationist aims are the policies implemented in Hungary, where the Communist Party in 1961 recognised the atrocious poverty and the marginalisation of the Romani community and launched a series of programs whose methods and outcomes are still debated.<sup>179</sup> Yugoslavia represented the State where the Romani minority enjoyed more recognition. They could retain the status of national minority and from 1981 they received the status of nationality.<sup>180</sup> Also at the socio-economic level the Roma could benefit from some socialist policies directed to them, while being allowed to establish and run cultural organisations aimed to promote their culture.<sup>181</sup>

Regarding the outcomes of these policies, the consequences of the coercive assimilation became evident during the period of transition

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<sup>175</sup> Mirga Andrzej, Gheorghe Nicolae, *The Roma in the Twenty-First Century*, 10

<sup>176</sup> Barany Zoltan, *The East European Gypsies*. 114

<sup>177</sup> Ibid. 117

<sup>178</sup> Ibid. 118

<sup>179</sup> Ibid 121

<sup>180</sup> Dena Ringold, *Roma and the Transition in Central and Eastern Europe*. 5

<sup>181</sup> Barany Zoltan, *The East European Gypsies*. 122-123

to post-communism. The main consequence of the socialist period was the loss on the part of the Roma of the traditional occupations and social position connected to their specific way of life and the increased dependency on social welfare.<sup>182</sup> Indeed, other than banning nomadism, limitation or total prohibition to practice some traditional profession as the coppersmith or tinsmith were imposed with the aim of bringing more Roma towards employment in the socialist heavy industry.<sup>183</sup> All these unskilled workers employed in the socialist system were the first to lose their job once the system was dismantled.<sup>184</sup> Concerning education, although some results have been achieved in eliminating illiteracy and increasing the overall level of education of the Romani population, at the end of the period the minority was still at the bottom of the educational scale and their preparation was totally inadequate for the challenge that the post-socialist period was posing. These shortcomings may be the result of the assimilation policies that succeeded in bringing the children to school but failed in promoting education as an added value. Indeed, the humiliation of being inferior compared to the level of your class, of being older than your classmates or even of being included in a “special school” certainly did not help to promote education among the Roma.<sup>185</sup>

Particularly interesting are the policies implemented in Hungary where, as I already mentioned above, the declared aim was to “integrate” the Romani population and not to forcibly assimilate. Nonetheless, although the overall condition of the Roma in Hungary was better than in other socialist countries<sup>186</sup>, the general outcomes were far away from the goal of integration<sup>187</sup>. The example is particularly relevant because it shows how the line between assimilation and integration is very thin and commendable policies aimed to improve the socio economic conditions of an ethnic minority may easily produce unexpected outcomes while

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<sup>182</sup> Andrzej Mirga, Nicolae Gheorghe, *The Roma in the Twenty-First Century*, 9-10

<sup>183</sup> Barany Zoltan, *The East European Gypsies*. 138

<sup>184</sup> Ibid.

<sup>185</sup> Ibid. 132-133

<sup>186</sup> Barany assesses the policies implemented in Hungary as the relatively more successful one after Yugoslavia within Eastern Europe. Barany Zoltan, *The East European Gypsies*. 122

<sup>187</sup> Stewart Micheal, *The Time of the Gypsies*, 97-111

irreversibly transforming the way of life of the concerned group<sup>188</sup>. Although in Hungary the apparent integrationist intentions of the strategy for improving conditions of the Romani people were not clear and contradictory<sup>189</sup>, the policies implemented were never coercive and the government promoted the formation of Romani cultural organisations, funded several fine sociological studies and in some cases even allowed the bilingual education<sup>190</sup>. Nevertheless, the authors<sup>191</sup> agree that the apparent integrationist stance actually hid an assimilationist approach and the consequences were quite similar to the other countries. Indeed, as Stewart points out, most of the Roma were unskilled and employed in State factories, the education programs did not lead to the expected results, marginalisation of Romani settlement did not decrease and, furthermore, all the money spent to implement these policies raised the anger of the majority population, which has been told that the program would have led to the extinction of the Gypsy social problem.<sup>192</sup>

Comparable to Hungary is Yugoslavia, where Roma were even more accepted and protected, but where the socialist policies failed to improve in a sustainable way the socio-economic condition of this minority and, according to Čvorović, even worsened it by driving them to abandon their traditional occupations and to rely on social welfare as in the other countries.<sup>193</sup> These poor outcomes can be explained by the fact that in a totalitarian system where the policies are centralised and the social organisation is imposed from above, differences can be hardly accommodated. As Stewart clearly explains, in a society where the social work is a value and the individual entrepreneurship is a threat, the Roma, who with difficulties can adapt to be employees and are more apt to self-employment, can hardly be fully integrated.<sup>194</sup> The result is that maybe at the statistical level the overall situation of the minority

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<sup>188</sup> Also Mirga and Gheorghe warn about the risk the integrations policies may precipitate into assimilation. Andrzej Mirga, Nicolae Gheorghe, *The Roma in the Twenty-First Century: a Policy Paper*.

<sup>189</sup> On this point Pogány notices that the diplomatic word “integration” was only included in replacement of the term assimilation at the end of the process of policy planning. Pogány István, *The Roma Café*, 55

<sup>190</sup> Barany Zoltan, *The East European Gypsies*. 122

<sup>191</sup> It refers to Barany, Pogány and Stewart.

<sup>192</sup> Micheal Stewart, *The Time of the Gypsies*, 7

<sup>193</sup> Čvorović Jelena, *Gypsy Narratives: From Poverty to Culture*, 49

<sup>194</sup> Micheal Stewart, *The Time of the Gypsies*, 97-111

improved, but in reality the disparities with respect to the majority population and the status of marginalisation raised. As Barany writes:

In spite of the regimes efforts, few Gypsies became assimilated in the communist period. Within the thin stratum of educated Roma, many had lost their identity, adopted *Gadje* traditions and culture, and married non-Gypsies. A Far larger group, however, did not succeed in gaining genuine acceptance from non-Roma society. They became the “strangers” not fitting in either social group.<sup>195</sup>

### **2.2.3. Integration and recognition of the Romani minority**

With the rejection of the assimilation policies, it is necessary, nonetheless, to find a solution for the management of a multicultural society. As I stated above, integration is considered a possible way to create a cohesive society while respecting cultural differences. Nonetheless, before proceeding to the assessment of the characteristics of a society based on integration, it is necessary to define what integration is. The definition provided by the United Nations Economic Social Council (ECOSOC) considers integration as:

Gradual process by which new residents become active participants in the economic, social, civic, cultural and spiritual affairs of the new homeland. It is a dynamic process in which values are enriched through mutual acquaintance, accommodation and understanding. It is a process in which both the migrants and their compatriots find an opportunity to make their distinctive contribution.<sup>196</sup>

According to Žagar, integration is the process “of voluntary, equal and full inclusion of all the individuals(...)” and should follow the principles of human rights and minority protection.<sup>197</sup> Nevertheless, this approach does not deal with the problem of the potential clash of values that may lead to a division of society instead of fostering its unity. According to Capotorti, the integration strategy has to “eliminate all purely

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<sup>195</sup> Barany Zoltan, *The East European Gypsies*. 142

<sup>196</sup> Quoted by Žagar Mitja, “Diversity Management and Integration: from Ideas to Concepts” in *European Yearbook of Minority Issues*, Vol. 6, 2006/7, Leiden, Bristol: Brill, (2008): 307-327. 317

<sup>197</sup> Ibid.

ethnic lines of cleavage” in order to avoid internal conflicts and injustice and to guarantee the same rights, opportunities and responsibilities to all citizens, whatever their group membership.”<sup>198</sup> As O’Nions notices, many authors wonder how the cultural specificities can be properly preserved in a society that aims to unity and cohesion with this approach and propose another solution: the pluralist society, which would promote cultural diversity as a value “within a framework of cooperation and unity”.<sup>199</sup> In my opinion, integration and pluralism are not incompatible, but even complementary. Indeed, as always O’Nions observes, an extremist interpretation of the pluralist idea may lead to separation or segregation (i.g. separate schools), while if coupled with an integrationist approach can favour the active participation in society of the citizens belonging to minorities and can allow the identity to develop freely.<sup>200</sup> Vice versa, an integration strategy that does not recognise properly the differences in its politics of inclusion may lead to a new enforcement of the ethnic boundaries, due to a reaction against a society that demands the renunciation of particularity in exchange of formal equality.<sup>201</sup>

In order to realise a society based on an integration strategy having among its objectives the preservation and promotion of cultural diversity, it is necessary to deal with a complex range of challenges and difficulties that threaten the socio-economic cohesion of such society and the legal principle of equality. The integration of Romani minority results particularly challenging in this context, because of its long-lasting condition of marginality and its socio-economic vulnerability. Bašić attempts to give some guidelines for drafting an integration strategy directed to the Romani minority in Serbia. He rightly stresses that a sustainable solution has to be firstly based on two aspects: a set of policies exclusively directed to the improvement of the socio-economic condition of the minority and the implementation of measures aimed at

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<sup>198</sup> Capotorti, Francesco, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities* UN Study Series 5, (1991) 373–377.

<sup>199</sup> O’Nions Helen, *Minority Rights Protection in International Law*, 41

<sup>200</sup> O’Nions Helen, *Minority Rights Protection in International Law, The Roma of Europe*, Research in Migration and Ethnic Relations Series, Ashgate, Aldershot, 2007. 18

<sup>201</sup> Cohen Jean L., “Democracy, Difference and the Right to Privacy”, in Seyla Benhabib (ed), *Democracy and Difference, Contesting the Boundaries of the Political*, Princeton: Princeton University Press, 1996. 187

preserving and promoting the Romani cultural identity.<sup>202</sup> Besides these two necessary aspects, the integration has to be based on other principles, necessary for its functioning: the mutual acceptance and respect of the different communities, the fair participation in the political and social life, the sharing of the responsibilities for the implementation of the program, the full transparency of the process, anti-discrimination, and the voluntary character of taking or not part to the process of integration.

Regarding this last point, i.e. the voluntary will of taking part in the integration process, another author, Jakšić, has pointed out the likely possibility that the Romani communities may not be interested in being included. This aspect can therefore seriously endanger the process of integration, which is necessarily a two-way process.<sup>203</sup> Nevertheless, in my opinion this problem does not have to slow down the process and the debate that aims at improving the socio-economic conditions of the Roma, while respecting its cultural particularity. Indeed, since it has been object of discrimination and persecutions for centuries and still today suffers for the majority population's prejudices, before demanding full participation and acceptance of the mutual responsibilities, it is necessary to create those mandatory conditions that enable the Romani minority to find in the majority society, outside the settlement, an environment where they are respected and recognised for what they are. These conditions require full acceptance of different values and substantial equality. With this base is then possible to work for the construction of a society where common rules regulates the pacific coexistence, the different cultural groups have the space where to express their culture and the cultural diversity becomes the ground and the fundamental value of the new society.

### **2.3. Integration policies and Right to Housing**

Housing policies aimed at ensuring the full implementation of the Right to Housing can represent an important aspect of the integration

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<sup>202</sup> Bašić Goran "Towards the Integration of the Roma in Serbia" in Jakšić, Božidar, and Bašić Goran, *Romany Settlements, Living Conditions and Possibilities of Integration of the Roma in Serbia*, Belgrade: Institut za Filozofiju I društvenu teriju, 2005. 275-276

<sup>203</sup> Jakšić, Božidar, "Living conditions of the Roma Family in Serbia", in Jakšić, Božidar, and Bašić Goran, *Romany Settlements*, 223

strategy. Firstly, a human rights-approach with its emancipatory and egalitarian vision is functional to the creation of a society where “new residents become active participants in the economic, social, civic, cultural and spiritual affairs of the new homeland”.<sup>204</sup> Secondly, the housing conditions influence other socio-economic aspects like the access to social services, education and employment<sup>205</sup>. Finally, housing is considered a valuation parameter of the integration level, since the spatial segregation of the ethnic neighbourhood is generally considered, as I explain in the following chapter, a sign of failure of the integration policies. In the case of Roma, who generally live in segregated settlement, this is particularly relevant and it may lead to the conclusion that the Romani settlements are one of the main causes of the poor integration of this minority in the dominant society. It is surely true that the settlement is an important factor that increase the general marginalisation of this group, as I explain in the first chapter, but it is also true that it contributes to the well-being of many Roma and that policies aimed at moving Romani families in mixed neighbourhood often failed. It is therefore necessary to further analyse whether the spatial segregation is really the main factor hampering the integration of this ethnic minority or whether the integrationist goal can be achieved by maintaining the spatial segregation, while promoting policies aimed at including the settlement in the socio-economic life of the urban environment.

In the following chapters I analyse the academic discussion regarding the effects of the spatial segregation on the integration strategies and I present some proposals for new urban strategies aimed at ensuring the implementation of the Right to Housing by promoting a major empowerment of the people involved and the respect of the

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<sup>204</sup> Definition of integration by ECOSOC, quoted by Žagar Mitja, “Diversity Management and Integration: from Ideas to Concepts” 317

<sup>205</sup> See the relation between the housing and other socio-economic rights in Bratt, Rachel G., “Housing and Family Well-Being” in *Housing Studies*, Vol. 17, No. 1, (2002): 13-26. [www.ebsco.com](http://www.ebsco.com) (accessed on the 9 December 2013)  
Clara H. Mulder, Nathanael T. Lauster, “Housing and Family: An Introduction”, in *Housing Studies*, Vol. 25, No. 4, (2010): 433-440. [www.ebsco.com](http://www.ebsco.com) (accessed 9 December 2013)

King, Peter, “Using Theory or making Theory: Can there be Theories of Housing?” in *Housing, Theory and Society*, Vol. 26, No. 1, (2009): 41-52. [www.ebsco.com](http://www.ebsco.com) (accessed on the 9 December 2013)

individual and of its cultural choices. Some of the solutions proposed tackle the issue of the spatial segregation by fostering the inclusion of the settlement in the urban planning of the whole town and without questioning the existence of the settlement itself.

### 2.3.1. The debated relationship between integration and segregation

Policy-makers usually consider residential segregation as a serious threat to integration strategies, since it is believed to contribute to social inequality and to be related to negative phenomena like criminality, early school drop-out and unemployment.<sup>206</sup> Nevertheless, at the academic level the debate over the precise link between segregation and integration is still open. According to some authors as Wilson, Massey and Denton residential segregation is a factor that creates poverty and prevents integration. Massey and Denton argue that the concentration of poverty reinforces those attitudes and behaviours that prevent the inhabitants to emancipate from their current socio-economic disadvantaged conditions<sup>207</sup>. Wilson states that the tendency of black people to live in segregated ghetto can be considered as the main cause of their social problems.<sup>208</sup> In other contexts the spatial segregation is seen as the expression of ethnic group's refusal to integrate into dominant society.<sup>209</sup> Briefly many authors disagree on the kind of relation between integration and segregation (whether the first is the cause of the second or vice versa), but have the same opinion on the negative correlation between the two social phenomena and lead to

<sup>206</sup> Bolt Gideon, A. Sule Özüekren and Deborah Phillips, "Linking Integration and Residential Segregation", in *Ethnic and Migration Studies*, 36:2, (2009): 169-186. Available at: <http://dx.doi.org/10.1080/13691830903387238> (accessed 03/10/2014)

<sup>207</sup> Massey D.S. and Denton N.A., *American Apartheid*, Cambridge: Harvard University Press, 1993.

<sup>208</sup> Wilson, W.J., *When Work Disappears: The World of the New Urban Poor*, New York: Alfred A. Knopf, 1993.

<sup>209</sup> This hypothesis is supported by Ehrkamp who studied the Turkish residential segregation in Germany, Ehrkamp P. "Placing Identities: Transnational Practices and Local Attachments of Turkish Immigrants in Germany", in *Journal of Ethnic and Migration Studies*, 31(2): 345-64. Available at: [http://www.tandfonline.com/doi/full/10.1080/1369183042000339963#.VC\\_Otfl\\_uSo](http://www.tandfonline.com/doi/full/10.1080/1369183042000339963#.VC_Otfl_uSo)

the conclusion that integration can be achieved by altering the spatial distribution of the ethnic and social groups.<sup>210</sup>

Nevertheless, some other authors suggest that the relationship between the above mentioned factors is actually much weaker than believed.<sup>211</sup> What is particularly contested is the apparent causal relationship between housing, segregation and integration. On this purpose Whitehead writes:

It is clear that problems... of social exclusion are concentrated in particular neighbourhoods and more specifically in social housing (the author focus on the residential segregation produced by social housing). Housing thus helps to locate problems. What is less clear is whether housing itself directly affects outcomes rather than simply concentrating households in particular areas. In other words, it is unclear whether the risk of poor health, limited educational attainment, victimisation or criminality is the same for people with exactly similar personal and economic attributes wherever they live or whether living in particular locations [...] increases these risks.<sup>212</sup>

On this weak correlation and on the consequent lack of positive effects of the policies aimed at the redistribution of the ethnic/social groups, Briggs reports the poor results of a scattered-site programme implemented in New York, realised with the aim of improving the relations and the contacts between white and Afro-Americans. The relocation did not succeed to create new social ties between the two groups<sup>213</sup>. Miyares has even showed that actually the residential concentration of ethnic groups can reduce the feeling of loneliness and social alienation and even promote the cooperation between members

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<sup>210</sup> Bolt Gideon, A. Sule Özüekren and Deborah Phillips, "Linking integration and residential segregation", p 173

<sup>211</sup> Musterd Sako, "Segregation and integration: A contested relationship", in *Ethnic and Migration Studies*, 29:4, 2010: 623-641 <http://dx.doi.org/10.1080/1369183032000123422> (Accessed on the 03/10/2014)

<sup>212</sup> Whitehead Christine M. E., "Response: Housing, tenure and opportunity", in *Housing Studies*, 17:1, (2002): 63-68. Available at: <http://www.tandfonline.com/doi/abs/10.1080/02673030120105893?journalCode=chos20> p.66

<sup>213</sup> Briggs Xavier de Souza et al. "In the wake of desegregation: Early impacts of scattered-site public housing on neighbourhood in York", in *Journal of American Planning Association*, 65:1, 1999: 27-49. Available at: <http://www.huduser.org/publications/pdf/wake.pdf>

of the same minority group for the creation of ethnic enterprises that can improve their socio-economic position.<sup>214</sup>

This debate on the relationship between spatial distribution and integration is particularly relevant for the Romani minority that, as I show in chapter 1, often tends to concentrate in single settlements. I do not question the fact that most of the time these settlements are marginalised and for this reason the possibilities for a Romani individual to increase its status are lower than the average, but the fact that this conditions is strictly due to the residential segregation has to be further analysed. The lack of sharply positive results in the redistribution policies directed to mix Roma with majority population and implemented during the Communist period<sup>215</sup> suggests that it is unlikely to achieve integration with such kind of policies. It is therefore necessary to study whether living in a settlement completely hamper the possibility of integrating and/or is a clear expression of the group's refusal to undertake a process of integration. The findings of my research, exposed in third chapter, although they do not allow me to come to a clear conclusion on this point, suggest that actually living in a settlement does not mean to be marginalised by the rest of the society and that much depends on the history, location and physical conditions of the settlement. In the next chapter I present some proposed solutions for improving the socio-economic conditions and therefore the integration of the Romani minority without questioning the existence of the settlement.

### **2.3.2. Proposals for a new inclusive approach to Right to Housing**

As I mentioned above, starting from the 90's, international organisations dealing with urban development and environment have started proposing new housing solutions, giving up the old top-down approach and promoting more inclusive and people-oriented strategies, which allow the community to take part in the planning of the housing

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<sup>214</sup> Miyares Ines M., "Changing Perceptions of Space and place as measures of Hmong acculturation", in *Professional Geographer*, 49:2, (1997): 214-214. Available at: <http://onlinelibrary.wiley.com/doi/10.1111/0033-0124.00071/abstract>

<sup>215</sup> See chapter 1.3.2

solutions and meet the socio-economic needs of the inhabitants.<sup>216</sup> This approach has been further developed by organisations and authors dealing with the issue of the informal settlements and Romani housing, proposing a range of potential alternative solutions. I briefly present these solutions especially to confront them with the current housing policies implemented in Bosnia and Herzegovina and see if the theoretical approach is applied in practice and with which results. An interesting study conducted on the broader problem of the illegal settlements, which particularly, but not only, concerns the Romani minority, is the United Nations Commission for Europe (UNECE) research “Self-Made Cities”, which presents some recommendations aimed at achieving the goal of ensuring the Right to Housing for all.<sup>217</sup> According to the UNECE report, the main objective that has to be achieved tackling the informal settlements is their regularisation. In order to achieve this goal is important to keep in mind that a one-size-fits-all solution is not possible and that a wide range of answers have to be considered and applied according to the socio-cultural context. The approach to the regularisation has to be integrated and comprehensive. This means that the socio-economic conditions of the inhabitants must be taken into account and it is necessary to sustain the housing policies with a strategy that aims at the overall improvement of their position. In practical terms, one of the first priorities of the regularisation process is to grant the security of the tenure. This first step has to be followed with an overall regeneration of the neighbourhood without leading to a gentrification of the area. Furthermore, in order to cope with the lack of resources, alternatives can be found with the involvement of the community, the promotion of self-help construction and the use of micro-credit system. The overall urban upgrade has to be part of a broader well-designed system of land management that ensures the provision of services.<sup>218</sup>

The issue of the legalisation of the settlements has been discussed also by Macura on his report on the Romani housing in Central and Eastern Europe. He agrees on the recommendation that the legalisation

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<sup>216</sup> UN HABITAT, *The Habitat Agenda*  
IUCN, UNEP and WWF, *Caring for the Hearth, Strategy for Sustainable Living*

<sup>217</sup> UNECE, *Self-Made Cities*,

<sup>218</sup> Ibid.

of the informal settlements has to be a priority. Furthermore, he also suggests an integrated approach by combining housing policies with education, employment and health. Finally, he stresses the importance of the preservation of the Romani identity in housing “to the extent they wish” and the necessity of involving in the process all the concerned parties: the community, the local authorities, local and international organisations.<sup>219</sup> Another interesting report on the legalisation of Romani settlement, specifically in South East Europe, has been issued by the OSCE, which, other than promoting the regularisation, present some suggestions on how this can be done. First of all, the regularisation is advisable but whenever not possible other solutions can be found, always in cooperation with the local community.<sup>220</sup> Secondly, the Municipality has to adopt a people-oriented approach and lead the negotiations between the Roma and the land owner, ensuring that the Roma are granted the right to use the land where they are living, that the housing conditions meet the required standards and that a fair agreement is signed between the two parts.<sup>221</sup> Finally, the report proposes some new approaches like the “new urbanism”, which foresees the preservation of the settlement, but maintaining a strong relation with the rest of the city through the creation of connections and the development of a urban planning that includes also the settlement, avoiding the risk of creating ghettos.<sup>222</sup>

It is important to stress that policies that support the legalisation of settlements do not promote the maintenance of the housing sub-standard conditions or most of the current settlements. All the reports above mentioned point out the priority of ensuring equal standards and the provision of the basic needs and services for all. The requirements of structural adequacy have to be met and the marginalisation of the community has to be decreased by implementing integrated strategies aimed at including the settlement in the urban planning of the whole town. Living in a settlement does not necessarily means to live in sub-

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<sup>219</sup> Macura Vladimir, Petrovic Milos, *Housing, urban planning and poverty*

<sup>220</sup> Alternative solutions to regularisation may be: Reimbursement for voluntary evacuation, temporary accommodation, provision of new apartment, construction of new settlement, housing for seasonal workers. OSCE/ODIHR, *Roma Housing and Settlements in South East Europe*, 4-5

<sup>221</sup> OSCE/ODIHR, *Roma Housing and Settlements in South East Europe*, 6-7

<sup>222</sup> Ibid. 9-10

standard housing and to be marginalised. Furthermore, these strategies and recommendations may be seen as a more aspirational goal than practicable policies, since the lack of resources and of political will often does not allow urban planners to implement such integrated and comprehensive strategies. This is partly true, as I show in the third chapter but, nonetheless, these recommendations represent a good starting point to develop sustainable housing solutions in practice. The inclusion of the local community in planning and implementing the strategy, the employment of different construction methods and financial resources, the preventive assessment of the housing need and of the context may at the end result to be even less expensive than the traditional top-down housing policies and surely more sustainable.

Finally, another interesting strategy to cope with the housing issue of the Romani community developed and implemented in UK, but that can be, in my opinion, adopted also in other contexts, is the “Gypsy Accommodation Needs Assessment”. This approach has been developed from the principle that the housing policies have to meet the inhabitants housing needs, which therefore have to be assessed. Furthermore, since the different way of life of the Romani community affects as well the housing needs, these have to be assessed keeping into account these differences. Although this specific accommodation needs assessment has been developed taking into consideration the Gypsy community living in UK, which is mainly nomad and is very different from the Central and Eastern European Roma, the approach can be used also in other contexts. The strategy developed can provide good hints on how to promote an approach suitable for the specific context in which the housing policies are implemented.

In conclusion, I wish to add an important aspect that has also to be tackled to solve the spatial marginalisation of the Romani community: the prejudices and the discrimination. The link between the discrimination and the Romani housing segregation is evident from the examples I presented above. As I explained, the Romani collective identity is mostly shaped in opposition to the dominant population’s values and as a form of protection from the unfriendly environment that surround them. If the young Romani couple who moved to a Magyar estate thanks to the Communist policies had found a more welcoming environment in the new neighbourhood, making them feel part of

the community, probably they would have not moved back to the old settlement. Similarly, if the Romani settlement loses its function of fortress against the outside world, maybe it would not disappear, but it would for sure become a more open space. As long as the Roma do not feel safe and respected in the world outside the settlement, every housing policy aimed at decreasing the segregation by creating ethnic mixed neighbourhood is destined to fail, unless the premise is the will to tackle the issue of the mistrust coming from the rest of the society.

### **3. Culture and Right to Housing of the Romani community in Bosnia and Herzegovina**

The chapter presents some significant examples of housing projects implemented in Bosnia and Herzegovina aimed at tackling the housing problems of the Roma minority in the country. The aim is to understand how the Bosnian authorities have decided to tackle the issue and which approach they have embraced. Furthermore, at the end of the analysis I highlight some common main problems emerged in all the considered contexts, the responses given by the authorities and the issues for which a solution is yet to be found. Finally, I assess the overall implementation of the Housing plan according to the information that I collected and in light of what has been said in the previous chapter and suggest some considerations for a further improvement of the housing plans.

#### **3.1. Housing for Roma in Bosnia and Herzegovina: problems and proposed solutions**

The main problem in dealing with the Romani minority in Bosnia and Herzegovina is the lack of precise statistical data about the presence and distribution of this minority on the territory. Although it is *de facto* recognised as the largest minority in the country, this cannot be confirmed *de iure*, since at the last census conducted in 1991 only 8864 persons declared themselves as belonging to Romani community.<sup>223</sup> An

<sup>223</sup> Decade of Roma Inclusion 2005-2015, *Action Plan of Bosnia and Herzegovina for Addressing Roma Issues in the Field of: Employment, Housing, Health Care*. [http://www.romadecade.org/cms/upload/file/9296\\_file2\\_action-plan-on-employment-housing-and-health-care--introduction.pdf](http://www.romadecade.org/cms/upload/file/9296_file2_action-plan-on-employment-housing-and-health-care--introduction.pdf)

attempt to collect official data regarding the presence of this minority and its needs has been done in 2011 by the Bosnian Ministry for Human Rights and Refugees (MHRR) with a program of registration implemented through the local Social Welfare Centres.<sup>224</sup> Nonetheless, the data collected cannot be considered satisfactory since according to this research there are only 16.771 Romani people in Bosnia<sup>225</sup>, while according to Romani association the number of Roma is approximately 50.000<sup>226</sup> and a research conducted by World Vision in 2007 even indicates the number of 76.000 Roma in the territory of the country.<sup>227</sup> A Report issued by the MHRR in 2012 specifies that, according to the data collected through the Romani associations, the largest number of Roma in Bosnia and Herzegovina lives in Tuzla Canton, followed by Zenica-Doboj and Sarajevo Cantons.

In the following chapter I briefly present the situation of the minority in the country, with a particular focus on the housing conditions. I then continue introducing the most recent housing plan implemented to specifically tackle the poor living conditions of Roma.

### 3.1.1. Socio-economic and housing situation of the Roma in Bosnia and Herzegovina

The socio-economic conditions of the Roma minority in the country are generally very poor. Only 2-3% of Roma are employed in the public sector and the enterprises or craft shops owned by Roma are very few. Most of the Romani population earn a living in the sector of secondary raw materials collection and waste management.<sup>228</sup> The lack of proper employment brings many Romani families to lack the

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<sup>224</sup> Ministry for Human Rights and Refugees, *Analysis, Registration of Roma Population and Roma Households*, Sarajevo, 2011.

<sup>225</sup> Ibid. 35

<sup>226</sup> Ministry for Human Rights and Refugees in Bosnia and Herzegovina, *Special Report on the Status of Roma in Bosnia and Herzegovina*, 2012. <https://www.osce.org/bih/110495?download=true>

<sup>227</sup> Sterland Bill, *Final Evaluation Project "Advance Human Rights for Romani minority in Bosnia and Herzegovina*, World Vision, 2009. <http://www.sterland.biz/linked/wv3.pdf> p. 4

<sup>228</sup> Decade of Roma Inclusion 2005-2015, *Action Plan of Bosnia and Herzegovina for Addressing Roma Issues in the Field of: Employment, Housing, Health Care*, 2

health insurance and the access to health care services is therefore seriously hampered.<sup>229</sup> Also the access to education is very limited and, although the situation is improving, most of the Romani kids do not attend at all or do not even complete the primary education. The reasons of these low rates of school attendance are mainly due to the socio-economic conditions that do not allow families to buy clothes and books for children.<sup>230</sup> The issue of discrimination is still a serious problem, especially at the political level. The *Sejdić-Finci v Bosnia and Herzegovina*<sup>231</sup> at the ECtHR raised the question of the denied political right to run for the presidency of the country for those not belonging to the Constituent peoples. A serious and still unsolved discrimination, despite the ECtHR sentenced the violation in 2009.<sup>232</sup>

The housing conditions are generally inadequate as well. According to recent assessments, around 50-70% of the Romani population is living in unsafe buildings.<sup>233</sup> Furthermore, the gap between the Romani population and the non-Romani about the access to public utilities like running water, electricity and heating is quite wide and documented broadly in different reports.<sup>234</sup> The poor living conditions, other than being caused by the general socio-economic position of this minority in the country, are also due to the lack of security of tenure of the Roma living in informal settlements. This situation originates

<sup>229</sup> Ibid. 3

<sup>230</sup> Human Rights Watch, *Second-Class Citizens: Discrimination Against Roma, Jews and other National Minorities in Bosnia and Herzegovina*, 2012. [http://www.hrw.org/sites/default/files/reports/bosnia0412ForUpload\\_0\\_0.pdf](http://www.hrw.org/sites/default/files/reports/bosnia0412ForUpload_0_0.pdf) 5-6

<sup>231</sup> *Sejdić and Finci v. Bosnia and Herzegovina*, European Court of Human Rights, 2009. [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96491#{"itemid":\["001-96491"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96491#{)

<sup>232</sup> Human Rights Watch, *Second-Class Citizens*, 2

<sup>233</sup> Ministry for Human Rights and Refugees, *Analysis, Registration of Roma Population and Roma Households*, 46

<sup>234</sup> OSCE/ODIHR, *Regional Report on Housing Legalization, Settlement Upgrading and Social Housing for Roma in the Western Balkans*, Warsaw: 2014. <http://www.osce.org/odihr/115737>

Ad Hoc Committee of Experts on Roma Issues (CAHROM), *Thematic Report on Social Housing for Roma and Legalisation of Roma Settlement and Houses*, Council of Europe, 2013. <http://hub.coe.int/cahrom1>

Tatjana Perić, *The Housing Situation of Roma Communities: Regional Roma Survey 2011*, UNDP, 2011. [http://issuu.com/undp\\_in\\_europe\\_cis/docs/housing\\_2\\_web](http://issuu.com/undp_in_europe_cis/docs/housing_2_web)

from the pre-war period when, already then, around 50% to 70% of the Romani population was living on a land on which they had no rights, but the practice was tolerated since they were occupying socially-owned lands.<sup>235</sup> The problems started soon after the war, since the returnees' policies allowed the repossession of the houses only to those who could demonstrate through documents the property; the same to have access to reconstruction funds. Therefore, the housing conditions of the Romani population, already poor before the war, further worsened after the conflict, since they remained without legal property titles in a state that was entering the market economy and without funds to rebuild the damaged houses.<sup>236</sup> The results of this situation became evident when the first evictions of informal settlements started to be carried out by the local authorities, who were selling the property rights of the socially-owned lands to private enterprises.<sup>237</sup>

### 3.1.2. General presentation of the housing plans in Bosnia

The main housing program implemented in Bosnia Herzegovina since 2009 and directed specifically to Roma minority is the Housing Action Plan developed and executed within the international framework of the Decade of Roma Inclusion 2005-2015<sup>238</sup>. Bosnia Herzegovina

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<sup>235</sup> UN-HABITAT, "Housing and Property Rights of the Roma", in *Housing and Property Rights in Bosnia Herzegovina, Croatia, Serbia and Montenegro*, Nairobi, 2005. <https://www.scribd.com/doc/236030091/Housing-and-Property-Rights-Bosnia-and-Herzegovina-Croatia-and-Serbia-and-Montenegro> p 54

<sup>236</sup> Ibid.

<sup>237</sup> Several examples of evictions after the war are presented in ERRC, *The Non-Constituents, Right Deprivation of Roma in Post-Genocide Bosnia and Herzegovina*, Country Report Series, No. 13, Budapest, 2004.

<sup>238</sup> The Decade of Roma Inclusion 2005-2015 is a political initiative that brings together governments, NGOs and Romani CSOs with the commitment of tackling the exclusion of the Roma minority in their countries by investing part of the public funds to implement projects in the fields of employment, health, education and housing and cooperating with all the stakeholders involved to achieve the Decade's goals. The twelve countries currently taking part in the Decade are Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Montenegro, Romania, Serbia, Slovakia and Spain. Slovenia and the United States have observer status. <http://www.romadecade.org/about-the-decade-decade-in-brief>

entered the Decade only in mid-2008 and started financing projects in the field of employment, housing and healthcare in 2009.<sup>239</sup> The main implementing body and donor for Bosnia Herzegovina is the MHRR, but all the projects have to be implemented and co-financed by the local authorities and the participating NGOs.<sup>240</sup> In the field of Housing during the period 2009-2012 MHRR invested 5.9 million BAM, while the Ministry of Spatial Planning invested an additional 1 million BAM. Other than the Bosnian State, the Housing Action Plan sees the participation of the Swedish SIDA with 1.9 million BAM and other organisations and local authorities with the investment of 3.7 million BAM.<sup>241</sup>

Each year MHRR announces a Public Call for submitting Roma housing projects. All the municipalities, cantons, entities, international organisations or NGOs have the right to apply for funds. In 2009, out of 34 received project proposals, 9 were funded by domestic public funds and other 8 by SIDA. As mentioned above, each project has to be co-financed by the implementing body (local authority or organisation).<sup>242</sup> Once the project is approved for funding the local authorities announce a Public call, advertised in local media, directed to potential beneficiaries, vulnerable Roma families in need of support for housing. The beneficiaries will then be selected by a Commission formed by representatives belonging to the municipality, the social and welfare centres, the implementing partners plus two representatives of the local Roma community.<sup>243</sup> Interestingly enough, all the standards (m<sup>2</sup>, organisation of the space, etc.) to implement the housing projects both in case of renovation or construction of single housing units, or construction of social housings, are set by the Regulations on unified housing standards and conditions for reconstruction<sup>244</sup> that leaves little

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<sup>239</sup> Ministry for Human Rights and Refugees of Bosnia and Herzegovina, *Revised Action Plan of Bosnia and Herzegovina for Addressing Roma Issues in the Field of Employment, Housing and HealthCare 2013-2016*.

<sup>240</sup> Lilijana Šantić, Responsible for the implementation of the Roma Decade Housing Plan in BiH, Ministry of Human Rights and Refugees in BiH, personal interview, 17/07/14.

<sup>241</sup> Revised Action Plan of Bosnia and Herzegovina. p. 35

<sup>242</sup> Ministry of Human Rights and Refugees in Bosnia and Herzegovina, *Roma Housing*, PPT Presentation.

<sup>243</sup> Ibid.

<sup>244</sup> Ibid.

space open to the implementing body for accommodating possible specific families' requests.<sup>245</sup> The participation of the Roma minority in the establishment of those standards is granted, according to the Responsible for Roma Housing at MHRR, by the fact that each document concerning the Roma community has to be approved by the Roma Board<sup>246</sup>, a body established under the Council of Ministers and formed by 11 Roma representatives from all the country.<sup>247</sup>

Usually each project proposal submitted to the MHRR is presented by a municipality in cooperation with one of the main international NGOs working in this sector, Caritas Switzerland and Hilfswerk Austria, and in consultation with the local Roma representatives<sup>248</sup>.<sup>249</sup> There are three different modalities in tackling the housing issue of the Roma concerned families: reconstructing/renovating the existing edifice owned by the beneficiary, the construction of a new housing unit, and the establishment of a social housing specifically directed to Roma. The first modality is the preferred one, the other two are chosen when the families are homeless or living in illegal settlements that cannot be legalized.<sup>250</sup> The problem of the legalization of the existing settlements is a particularly thorny issue, since most of the houses, also those of non-Roma, are not legalized, meaning that the family living

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<sup>245</sup> Bakir Omukić, Caritas Switzerland, personal interview, 10/07/2014.

<sup>246</sup> "Roma Board to the BiH Council of Ministers was set up in 2002 as a permanent advisory body to this highest executive authority in BiH, responsible amongst other things for establishing partnership with Roma NGOs and cooperation, assistance and support for Roma communities in the entire BiH, as well as for submitting proposals, suggestions and opinions, relative to Roma issues, to the BiH Council of Ministers. The Board comprises 18 members, half of which are Roma, and the other half are representatives of the relevant Ministries at the entity and state levels in BiH. The Board is run by the President, who is assisted in his work by the Deputy President" Roma Decade, *Action Plan of Bosnia and Herzegovina*

<sup>247</sup> Lilijana Šantić, personal interview, 17/07/14

<sup>248</sup> The Roma representatives are usually local Roma personalities, running local CSOs or active in the political fields. Some legitimacy issues may be raised since these representatives are not elected and, due to the deep divisions among the Roma community, are often criticised of taking the side of its own group. Lilijana Šantić, personal interview, 17/07/14

Amela Tandara, OSCE, personal interview, 07/08/2014

<sup>249</sup> Bakir Omukić, Caritas Switzerland, personal interview, 10/07/2014

<sup>250</sup> Bakir Omukić, personal interview, 10/07/2014

there does not have the legal possession of the building. Implementing organisations are not allowed to renovate illegal houses with public funds.<sup>251</sup> A solution that all the interviewed agreed upon is to proceed with the legalization of the existing constructions, where is possible, as also OSCE has recommended in its Policy Paper “Roma Housing and Settlement in South-Eastern Europe”<sup>252</sup>. Concerning the reasons why Bosnian authorities do not proceed with a planned legalization of the existing buildings, I received different answers: because the process is very long and expensive<sup>253</sup>, because it is not possible to legalise all the settlements (mainly due to the location).<sup>254</sup>

### **3.2. Conflicting outcomes: 6 housing projects in Bosnia and Herzegovina**

In this chapter I analyse 6 cases in which the local authorities in cooperation with international organisations have implemented housing projects directed to Roma. The aim of this section is to seek which approach the implementation body embraced<sup>255</sup>, why it has opted for a solution instead of another<sup>256</sup>, what are the project’s outcomes and what justifications are given in case of failure from both the implementation bodies and the local authorities. The research has been conducted by interviewing different persons working with Roma, local and international authorities, Roma organisations and NGOs in charge of implementing the projects. In the research process I also

<sup>251</sup> Lilijana Šantić, personal interview, 17/07/14

<sup>252</sup> OSCE/ODIHR, *Roma Housing and Settlements in South Eastern Europe*

<sup>253</sup> Sanela Besić, Roma Information Center, personal interview, 24/06/2014.

<sup>254</sup> The issue of the legalisation is quite complex: although all the persons interviewees, both Roma representatives and authorities, agreed upon the necessity of legalising the informal settlements, apparently the procedure is very long and expensive and in some cases cannot be carried out because of evident security reasons, like the location on land at risk from flooding or over a mine field.

Lilijana Šantić, personal interview, 17/07/14

<sup>255</sup> This means: whether a need assessment has been done previously, whether the Roma representatives have been involved, whether the families have directly been involved in the planning and implementation of the projects or a top-down approach has been preferred.

<sup>256</sup> For instance why it has opted for the construction of flats of single housing units.

visited 4 different Roma settlements involved in housing projects in the country, where I conducted formal and informal interviews<sup>257</sup> with Roma families.

### 3.2.1. Butmir settlement in Ilidža

The first case that I decided to analyse is Butmir, a Roma settlement located in the surroundings of the municipality of Ilidža, periphery of Sarajevo. I chose this case not only because it is the oldest, since it dates back to 2008, but also because it is always presented as example of failure among the housing projects. The settlement in question was built within a housing project<sup>258</sup> that foresaw the construction of housing units directed to some homeless Roma families living in Ilidža. After few months most of the housing units were severely damaged, the beneficiaries have left and went back to live in provisional shelters within the municipality. Interestingly, the Report on the Status of Roma in Bosnia says that, before the discovery after few months of the damaged buildings, “the moving of the Roma families into newly constructed units was successful and to everybody’s satisfaction”.<sup>259</sup> The first person to mention this case to me was Sanela Besić from the Roma Information Centre, who presented me this failure in tackling the Roma housing problem as an example of the necessity of keeping into account the specific housing needs of the community and to consult the community before implementing such kind of project. Indeed, according to her, the project was implemented for the will of the Ilidža municipality to move the Roma who were living in a historical settlement<sup>260</sup> within its territory without properly consulting the concerned families.<sup>261</sup>

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<sup>257</sup> Where possible I conducted a formal interview, following a questionnaire that is attached below.

<sup>258</sup> The concerned housing project was part of a broader housing plan funded by Swedish SIDA and implemented in cooperation with Sarajevo canton.

<sup>259</sup> Ministry of Human Rights and Refugees in Bosnia and Herzegovina, *Special Report on the Status of Roma in Bosnia and Herzegovina*, p. 27

<sup>260</sup> “Historical settlement” is a term used by Sanela Besić to indicate a settlement where the Roma have been living for a long time, usually decades or even more.

<sup>261</sup> Sanela Besić, President of the Roma Information Center, Sarajevo, personal interview, 24/06/2014

According to Mr. Omukić, the main problem that led the families to abandon the houses was a scarce consideration by the implementing body of the poor conditions in which those families were living before entering the new houses. Those families indeed were not used to live in brick houses and this created the problems that brought them to vacate the buildings after few months. Always according to Omukić, this problem is now tackled by better following the families involved in this kind of social housing projects and providing them with trainings that enable them to live in this kind of housing units. Another problem observed by Omukić was the distance of the new settlement from the urban area where the families concerned were usually living.<sup>262</sup> Similarly, Lijlijana Šantić from the MHRR points as the reason of the failure the lack of a proper prior analysis of the situation. The families were not chosen adequately and were fighting among each other. Šantić stresses that this case led the institutions and organisations working in this sector to better consider the specific housing needs and to pay more attention in the selection of the beneficiaries during the implementation of the housing projects.<sup>263</sup>

### 3.2.2. Varda settlement in Kakanj

The second case that I present shows how the problems raised in the implementation of the project in Butmir are still not fully resolved. This is the case of the Varda settlement in Kakanj, a municipality in the Zenica-Doboj Canton. The Roma community started to build the Varda settlement in 1984; the provisional shelters built on this public land without permission soon became solid construction housing units<sup>264</sup>. Today the settlement counts 170 families<sup>265</sup>, it is close to the city centre

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<sup>262</sup> Bakir Omukić, personal interview, 10/07/2014

<sup>263</sup> Lijlijana Šantić, personal interview, 17/07/14

<sup>264</sup> OSCE Mission to Bosnia and Herzegovina, *Report on Roma Informal Settlements in Bosnia and Herzegovina*, 2005. <http://www.osce.org/node/14860>

<sup>265</sup> OSCE Mission in Bosnia and Herzegovina, *Legalization of Roma Settlements and Housing Units in Bosnia and Herzegovina*, 2013. [http://www.oscebih.org/documents/osce\\_bih\\_doc\\_2014040717211228eng.pdf](http://www.oscebih.org/documents/osce_bih_doc_2014040717211228eng.pdf) p. 29

and, apparently, it is well integrated in the municipality.<sup>266</sup> Nevertheless, the legalisation issue of the existing housing units remains unsolved and, recently, the ground where the houses are built on is highly unsafe, due to a nearby minefield.<sup>267</sup> The overall situation in Varda is quite complicated and all the sources that I have consulted, both interviews and reports, provide a conflicting image of the issues.

According to the Report of Roma Informal Settlements in BiH realised by the OSCE in the country in 2005, a process of regularisation of the settlement had to be started, but problems were raised by the municipality, that preferred to move the entire settlement to another location. Mistrust and lack of collaboration between the local authorities and the Roma community has been reported, as well as the alert by the municipality regarding the unsafety of the site, at the time as not evident as today.<sup>268</sup> Another report realised in 2013 by the MHRR states that “none of the housing units are legal or eligible for legalisation” and that the municipality was planning the resettlement of the families living in Varda in other localities within the municipality. Currently, the plan of moving all the families in other locations has been set aside and, according to Ms. Vehabović, a Roma representative living in Varda, this has been due to the protests of the non-Roma families living in the new selected areas against the moving of Roma in their neighbourhood. Nonetheless, from the words of Ms. Vehabović it is clear that other than the resistance of the non-Roma, the plan of moving has also been

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<sup>266</sup> According to Maja Gruić, World Vision, and Azemina Vehabovic, Udruženje Romkinja Centar za majke “Nada” Kakanj, the families are well integrated in the municipalities. Nonetheless, Ms. Vehabović admitted that not all the children of the settlement are going to school and most of the people are unemployed. Furthermore, as a Report from OSCE reports, the relations with the local authorities are not very good. OSCE Mission to Bosnia and Herzegovina, *Report on Roma Informal Settlements in Bosnia and Herzegovina*

<sup>267</sup> The issue of the mine field has been presented to me the first time by Sanela Besić and confirmed by the other interviewees. Furthermore, during my visit to Varda settlement I could witness the deep damages to the houses caused by the movements of the land and the emission of gases, due to the exploitation of the nearby mine field.

<sup>268</sup> Report on Roma Informal Settlements in Bosnia and Herzegovina, OSCE Mission to Bosnia and Herzegovina, 2005. <http://www.osce.org/node/14860> p 9

abandoned because of their firm will to stay in Varda.<sup>269</sup>

Currently, in order to solve the issue, a project for the construction of two buildings apt to host around 30 families in social housing has been implemented and another one is on the way of being launched, both located in the same settlement. According to Ms. Besić, the two buildings create problems because do not respect the Roma housing needs<sup>270</sup> and the families, before the conclusion of the works, already stated that they do not want to move in the new buildings.<sup>271</sup> On the other hand, Ms. Šantić complains that many families who went to live there already knew that it was illegal to settle in this location and that sooner or later they had to move. Despite that, these families are now refusing to move in the newly constructed buildings, asking for accommodations that are considered luxurious with standards that cannot be funded with public funds.<sup>272</sup> Finally, Ms. Tandara, from OSCE, admitted that some mistakes have been made in the planning of the housing units, like not considering the need for the Roma families for a space where to store the scrap metals and other materials for waste management, but she also stated that these lacks will be soon solved. Furthermore, always according to Tandara most of the information regarding this settlement are not true (i.e. the fact that the Roma families refused to move in the new housing units).<sup>273</sup>

The conflicting versions given to me by the interviewees moved me to visit the concerned settlement in Kakanj, accompanied by Ms. Vehabović. There I had the possibility to see with my eyes the condition of unsafety of the settlement and to talk with and interview, other than Ms. Vehabović, some families concerned by the project and others still waiting for an alternative accommodation. The issue of the unsafety of the land is particularly serious, many houses have already fallen down because of the movements of the ground and many others are severely damaged. Moreover, the air is visibly polluted and smells of gas that emanate from the ground. Because of this situation, all the families

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<sup>269</sup> Azemina Vehabović, Udruženje Romkinja Centar za majke “Nada” Kakanj, personal interview, 14/08/2014

<sup>270</sup> Ms. Besić does not specify what this housing needs are.

<sup>271</sup> Sanela Besić, President of the Roma Information Center, Sarajevo, personal interview, 24/06/2014

<sup>272</sup> Lilijana Šantić, personal interview, 17/07/14

<sup>273</sup> Amela Tandara, OSCE, Sarajevo, personal interview, 07/08/2014

interviewed, who declared they have been living there for many years and still did not received an alternative accommodation (according to these families the problem of the gas rose just few years ago), expressed the necessity to move to a safer site as soon as possible, whichever the solution is.<sup>274</sup> Some expressed the will to wait for new housing unit to be constructed, because the apartment would be bigger and more adequate than the one already completed.<sup>275</sup> Beyond the fact that they now would accept any solution in order to move to a safer place, in the case they would have been given the possibility to choose, they declared they would prefer to have a land on their own where they can build their own house<sup>276</sup>.

Concerning the two social housing newly constructed in the same settlement, the main problem raised is the need for more space, because all the apartments are 50 m<sup>2</sup> and some of these families host more than 10 members.<sup>277</sup> Another problem that has been raised is the lack of space where to store wood and scrap metals and the lack of a proper heating system; moreover some doubts over the safety of the buildings have been raised since they have been built very close to the area where the gas exhalations are located.<sup>278</sup> Finally, regarding the overall situation of the Varda settlement, the problem of the gas exhalations concerns only part of the latter, where the most vulnerable families live. The other part, which is the largest one, is quite well maintained, with proper houses, facilities and paved streets. The feeling I had during my visit is that the current situation may also be caused by internal division of the settlement. Those living in the richest part opposed the moving of the entire settlement to other locations, as the municipality wanted, because of the good position Varda has<sup>279</sup>, and therefore instead of looking for new locations only for those who are affected by the ground movements and are more vulnerable, the authority opted for building units in social housing in the same site with public funds.

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<sup>274</sup> Interviewees 6,7 and 8, Kakanj, recorded interviews, 14/08/2014

<sup>275</sup> Interviewee 6 and 7

<sup>276</sup> Interviewee 6, 7, 8.

<sup>277</sup> Azemina Vehabović, personal interview, 14/08/2014

<sup>278</sup> Ibid.

<sup>279</sup> Azemina Vehabović stated that they do not want to move because of the central position of the settlement that allows them to be close to all the public services and shops.

### 3.2.3. Gorica

Another case that I dealt with during my research and that, unlike the previous, has a positive conclusion is the Gorica settlement in Sarajevo.<sup>280</sup> This site is located close to the city centre of the Bosnian capital and has been inhabited by the Romani community for more than 50 years.<sup>281</sup> The concerned land was owned partly by a state-owned enterprise and partly by the municipality. The first problems arose as back as the 80's, since the Sarajevo Institute for Urban Construction (IUC) successfully requested the permission to the Municipality to expropriate the houses in Gorica in order to build a park. Only sometime later the Municipality ordered the compensation for those already expropriated (about 20 households among the 60 living in Gorica at the time), since they had the right to usage and the houses were constructed before 1968. Nonetheless, the project of building the park was later abandoned and most of the families returned to live in Gorica after the war. From then on, the Romani community living in Gorica, with the help of NGOs and International Organisations, started a process of reconstruction that foresaw the mediation of the Municipality for the full legalisation of the building and the provision of the basic utilities. The compromise was reached in 2001 with the agreement that the local authority would have regularised the position of the families living in Gorica provided that the houses located within the settlement would respect the requirement of adequacy.<sup>282</sup> World Vision has then launched several projects of renovation and construction of new housing units that lasted until 2010. Maja Gruić from World Vision considers this case as an example of how the housing problems of the Romani minority can

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<sup>280</sup> This case is reported as positive example of cooperation between authorities and community for solving the housing issue in the UNECE report "Self-Made Cities".

UNECE, *Self-Made Cities*, p. 72

<sup>281</sup> Report on Roma Informal Settlements in Bosnia and Herzegovina, 7-9

<sup>282</sup> The parameter of adequacy has been mentioned by Report on Roma Informal Settlements in Bosnia and Herzegovina, but it is not clear what this adequacy parameter means, since it is not specified. Likely it refers to physical adequacy for reasons of security, because the buildings after the legalisation process are on public land.

Report on Roma Informal Settlements in Bosnia and Herzegovina, 7-9

be solved through the active participation of the community.<sup>283</sup> Gorica is nowadays well known and integrated in Sarajevo society<sup>284</sup> and the people living in this settlement are satisfied with this arrangement<sup>285</sup>. The key of this success, also stressed by the OSCE Report, is the active participation of the Romani community in the regularisation process and its involvement in the planning and construction of the housing units<sup>286</sup>.

#### 3.2.4. Zenica

A different approach has been used in tackling the housing issue of the Romani population living in Zenica with debatable results. Here the solution of social housing in the form of flats has been preferred due to the conditions in which the families involved were living, i.e. it was not possible to work on existing constructions (most of the families were homeless, other were living in settlements used by Internally Displaced Persons (IDPs) during the war, therefore reconstruction of existent building was not possible)<sup>287</sup>. In addition, according to Lijlijana Šantić, the urban environment in which the families were living before helped their integration in the flats.<sup>288</sup> Between 2008 and 2010 four buildings have been built in the same neighbourhood within the framework of the Romani housing Action Plan, hosting a total of 28 households.<sup>289</sup> According to both Ms. Šantić and Ms. Mehinagić, President of a local organisation involved in the implementation and follow-up of the project, the implementation of projects that led to the construction of these four social housing units has been a success, since no particular

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<sup>283</sup> Maja Gruić, Roma Lead, World Vision Bosnia and Herzegovina, personal interview, 01/07/2014

<sup>284</sup> Ibid

<sup>285</sup> Findings from personal visit to Gorica settlement

<sup>286</sup> Report on Roma Informal Settlements in Bosnia and Herzegovina, 9, and findings from personal visit to Gorica settlement

<sup>287</sup> Adela Mehinagić, Leda Asocijacija Zenica, personal interview, 09/09/2014

<sup>288</sup> Lijlijana Šantić, personal interview, 17/07/14

<sup>289</sup> Adela Mehinagić, personal interview, 09/09/2014

problems rose, the level of integration is quite good<sup>290</sup>, and the housing conditions of the families generally improved.<sup>291</sup>

Nevertheless, some severe critics have been rose regarding the concentration of the four building in the same area. According to Sasha Denić, young representative of the Romani association Mladi Romi, building four housing units where only Roma are living created a sort of ghetto.<sup>292</sup> Also Adela Mehinagić admitted that a better solution would have been to avoid such a concentration of only Romani families in the same area.<sup>293</sup> Nevertheless, at the moment there are not enough data to conclude whether or not the project increased the marginalisation of the Roma in Zenica. A recent report issued by Decade of Roma Inclusion has also criticized the housing project in Zenica reporting some complains of people living there: apparently bad construction material has been used, causing serious problems of humidity and rain leakage.<sup>294</sup> Furthermore, another issue that came up during the interview with Ms. Mehinagić is the question of those families that, because of social or traditions related issues<sup>295</sup>, would have problem in living in this kind of residential unit. Indeed, Ms. Mehinagić acknowledges the presence of families which are not used to live in those conditions and states that in order to avoid problems, the selection process of the beneficiaries focused in finding those who, other than being in need of an accommodation, would better integrate in a flat. Regarding all the others, those who are not used to live in flats, other solutions have to be

<sup>290</sup> According to Adela Mehinagić, all the children now living in the new housing units are going to school and, although some problem remain, like the lack of employment that unease the payment of the bills, the overall situation of the Roma is considered improved compare to the previous one. Adela Mehinagić, personal interview, 09/09/2014

<sup>291</sup> Lilijana Šantić, personal interview, 17/07/14

Adela Mehinagić, personal interview, 09/09/2014

<sup>292</sup> Sascha Denic, Mladi Romi, personal interview, 22/07/2014

<sup>293</sup> Adela Mehinagić, personal interview, 09/09/2014

<sup>294</sup> Euro Rom and BOSPO Association, *Civil Society Monitoring on the Implementation of the National Roma Integration Strategy and Decade Action Plan in Bosnia and Herzegovina in 2012-2013*, Decade of Roma Inclusion 2005-2015, 2014. Available at: <http://www.romadecade.org/civilsocietymonitoring> p.78

<sup>295</sup> Ms Mehinagić does not specify what particular traditional customs would hamper the inclusion of some Roma families in apartments, but state that this is the reason why some refuse to move to this kind of dwelling.

found, but the issue is still unsolved.<sup>296</sup>

### 3.2.5. Vitez and Zavidovići

The last cases that I deal with are two small communities where the housing issues of the Romani minority have been tackled by renovating and enlarging the existing constructions or by building new singular housing units in the municipality of Vitez (Central Bosnian Canton) and in Zavidovići (Zenica-Doboj Canton). In the municipality of Vitez I visited the settlement of Sofa, which is a historical settlement. Here the general conditions of the houses and of the utilities can be considered quite good, in some cases very good. Also the integration within the municipality is considered satisfactory and the Romani community is quite active in the social and cultural life of the community. The problem of the unemployment, nonetheless, remains and most of the families earns a living with the waste management.<sup>297</sup> Caritas Switzerland, within the Housing Action Plan, has reconstructed or enlarged 17 houses. It is interesting to note that within the project of reconstruction the families have engaged in a process of regularisation of their property, which is a necessary step for the work of amelioration to start<sup>298</sup>. The judgement about the project is very positive and the families involved seem to be satisfied with the houses they are living in now, although they complain about the lack of space for the high number of members of the families<sup>299</sup>. However, Ms. Fafulović reported me that at the moment Caritas Switzerland implemented the project some problems arose because newly built houses have been quickly

<sup>296</sup> ibid

<sup>297</sup> According to the Roma interviewed during my visit and to the representatives of the organisation Mladi Romi, Aldina Fafulović and Sascha Denić, most of the kids in the settlement go to school and the general relationship with the non-Roma community and local authorities is good. Also the level of discrimination is low. This result has been achieved also with the active participation of the young Roma in the organisation and realisation of some projects aimed at promoting the Roma culture and at putting in contact the two community, whose value has been also awarded by the Municipality. Aldina Fafulović and Sascha Denić, Mladi Romi, personal interviews, 22/07/2014

<sup>298</sup> Interviewee 5, Romani living in Sofa settlement and beneficiary of a housing project, Vitez, 22/07/2014

<sup>299</sup> Interviewee 5 and Aldina Fafulović, personal interview, 22/07/2014

damaged by the beneficiaries, particularly poor Roma.<sup>300</sup> Nonetheless, when I have asked whether it was possible to interview them, the other Roma of the settlement replied that it is impossible also for them to approach this other part of the Romani community of Sofa.

The case of Zavidovići is different because the Roma I visited are not living in a settlement, but they are spread around the small town among non-Roma. I paid visit to the municipality with representatives of Caritas Switzerland, who were going there in order to sign the construction's contracts with the local authorities and the Romani beneficiaries of the new project. Most of the families needed a structural amelioration of their housing units, while for others the construction of a new house was planned.<sup>301</sup> Similarly to Vitez, the Romani community seems to be quite integrated, although also here some problems remain and some families are living in very bad conditions.<sup>302</sup> Furthermore, despite some issues raised again about the need for more space, the families involved were generally very glad of being part of this project since it could allow them to ameliorate and enlarge their existing houses or to finally have a house on their own with a piece of land.<sup>303</sup>

### **3.3. General findings, problems raised, specific housing needs and authorities responses**

Although the situations and the contexts analysed in my research differ significantly and, as most of the interviewees agreed upon, each case has to be dealt with a different approach, some common problems and issues emerged in all the cases taken into account. First of all, all the

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<sup>300</sup> Aldina Fafulović and Sascha Denić, Mladi Romi, personal interview, 22/07/2014

<sup>301</sup> The families in need of a new house normally were previously living with their parent or other relatives.

<sup>302</sup> Findings from the visit to Zavidovići, the participation to the meeting between authorities and beneficiaries and visit to the houses of the Romani families involved.

<sup>303</sup> Interviewees 1, 2, 3, beneficiaries of the housing project to be implemented, Zavidovići, 15/07/2014

Roma interviewed raised the question of the need of more space<sup>304</sup>. The issue of overcrowding in the Romani housing has been mentioned also by several reports and academic studies<sup>305</sup>. This situation is mainly due to the Romani tendency of having more children<sup>306</sup> than the majority population, but also to the fact that often they tend to live in enlarged families in order to help themselves, or simply because those without the possibility to have a house live with grandparents or other relatives. Although in theory the housing projects should keep into account the number of members of the beneficiary family, this is not always true<sup>307</sup>, and also when the housing unit is built considering the current number of family members, it is often requested by the families to have the possibility of further enlarging the building in a second moment.<sup>308</sup>

A second and often mentioned need related to housing and that may create problems if not kept into due account in the implementation of the projects is the necessity of space where to store scrap metals and material from waste management. This is an important aspect, since, as I already mentioned above, the waste management sector is the main

<sup>304</sup> The issue of the space has been raised by almost all the Roma interviewed. In particular, in the case of Varda in Kakanj the issue has been mentioned because the apartments built are all 50 m<sup>2</sup> and some families have around 10 members. Azemina Vehabović, Udruženje Romkinja Centar za majke “Nada” Kakanj. In the cases of Vitez and Zavidovići the issue of the space has been identified as the main problem regarding housing. Most of the interviewed whose housing has been rebuilt or enlarged were previously living with the whole family, usually numerous, in a space inadequate for hosting all the members. Interviewees 1, 2, 3, beneficiaries of the housing project to be implemented, Zavidovići, 15/07/2014

<sup>305</sup> See: Csepli Gyögy, Simon Dávid, “Construction of Roma Identity in Eastern and Central Europe: Perception and Self-Identification”

<sup>306</sup> Božidar Jakšić, “Living Conditions of the Roma families in Serbia”, in Jakšić, Božidar, and Bašić Goran, *Romany Settlements*.

<sup>307</sup> Like in the case of social housing in Kakanj, where the apartment are all the same and quite small.

<sup>308</sup> This particular request emerged during my visit in Zavidovići, where a family was explicitly asking the possibility of enlarging the house. Interviewee 3, Zavidovići, 15/07/2014. But also in Kakanj, the families interviewed expressed the wish of having a land where to build their house instead of an apartment because this allows them to enlarge the unit in a second moment. Interviewee 6, Kakanj, 14/08/2014

source of income for the Romani minority in the country.<sup>309</sup> The issue has been raised in Kakanj where the apartments built did not foresee the presence of a space considered adequate for this purpose, raising many complains.<sup>310</sup> The situation there has been recognised also by the authorities who declared that they will find a solution.<sup>311</sup> Furthermore, another important aspect of the residential habit of the Roma, already described above and observed also during my research, is the general preference of having an open space attached to the house, where the family spend most of the daily time. This open space can take the form of a terrace or a small garden, but it is generally indicative of the Romani custom of living more outside the house, where it is possible to meet acquaintances, relatives and neighbours, rather than privately inside. Consequently, most of the Roma unwillingly accept accommodation in apartments.<sup>312</sup> This aspect cannot be generalised to all Roma but it is surely a characteristic of Romani way of living that has to be considered.

In most of the cases these necessities are met especially when the housing project regard the reconstruction or amelioration of an existing building. In other cases, nonetheless, they are not kept into full consideration, provoking complains. This is often the case when social housing is proposed as a solution or when the house is built by scratch. The local authorities respond to complains highlighting that it

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<sup>309</sup> Decade of Roma Inclusion 2005-2015, *Action Plan of Bosnia and Herzegovina for Addressing Roma Issues in the Field of: Employment, Housing, Health Care*, 2

<sup>310</sup> Azemina Vehabović, Kakanj, 14/08/2014

<sup>311</sup> Amela Tandara, OSCE, personal interview, 07/08/2014

This issue has been mentioned also by Bakir Omukić presenting the housing project implemented in Mostar (not analysed in this thesis) where singular housing units for Roma have been built foreseeing the presence of a space where store scrap materials. Bakir Omukić, Caritas Switzerland, personal interview, 10/07/2014

<sup>312</sup> This aspect has been observed in all my visits. In Gorica all the houses have a terrace and open space where you can always find someone sitting. Similarly, all the other settlements visited are characterized by houses that, independently from the physical state, have a furnished space outside. Furthermore, all the Romani persons interviewed, although some may accept also to live in an apartment, expressed the preference of a house in an open space.

is not possible to build houses with standard considered luxurious.<sup>313</sup> The justification provided is reasonable, but since the problem remains and in order to avoid cases like Butmir, where the families vacated the buildings after a short time, a compromise has to be found. Some of the interviewees from the international organisations taking part in the projects propose to organise trainings aimed at teaching the beneficiaries how to live in the residential solutions provided.<sup>314</sup> Although, it is true that also the Romani families have to go towards a compromise and should adapt more to the alternatives provided, the proposal of organising training in order to teach them how to behave in a non-Romani house sounds too similar to the assimilation strategies implemented during the Communist period.<sup>315</sup> Given the respect of the rules of the good neighbourhood, the housing policies should enable the beneficiaries to take part in the decision process and its needs should be kept into account, following a people-based approach.<sup>316</sup>

In order to avoid imposed solutions that may result inadequate for the beneficiaries, the evidences of this study show that when is possible is more advisable to work on the existing buildings which are already felt like home by the beneficiaries.<sup>317</sup> For this reason the legalisation of the Romani settlements and houses is strongly supported by big part of the international organisations<sup>318</sup> and it has also been mentioned by all the interviewees, both persons working in the sector and Romani representatives. As Gorica taught, the complete legalisation of the settlement is a long process that needs the participation of several actors,

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<sup>313</sup> Lilijana Šantić, Responsible for the implementation of the Roma Decade Housing Plan in BiH, Ministry of Human Rights and Refugees in BiH, personal interview, 17/07/2014

Amela Tandara, OSCE, personal interview, 07/08/2014

<sup>314</sup> Bakir Omukić, Caritas Switzerland, personal interview, 10/07/2014

Amela Tandara, OSCE, personal interview, 07/08/2014

<sup>315</sup> See chapters 1.3.2 and 2.2.2.

<sup>316</sup> As it has been suggested in UNECE, *Self-Made Cities* and OSCE/ODIHR, *Roma Housing and Settlements in South East Europe*, 6-7

<sup>317</sup> As it is apparent from the cases presented above, generally main problems are raised when the beneficiaries are moved to new housing units.

<sup>318</sup> OSCE Mission in Bosnia and Herzegovina, *Legalization of Roma Settlements and Housing Units in Bosnia and Herzegovina*

UNECE, *Self-Made Cities*

Macura Vladimir, Petrovic Milos, *Housing, urban planning and poverty*

i.e. the Romani community, the international organisations, the donors and the local authorities. Nevertheless, Gorica is a good example of how it is possible to accommodate the Romani housing needs together with the local rules and laws and it is therefore worthy to follow this track and use the same approach also with the other cases.<sup>319</sup>

This solution, nonetheless, leaves open the issue of those who do not have a house at all or live in shanties made of scrap material. In this case the construction of new housing units is inevitable and for this reason is even more important to include the community in the planning and implementation of the project and try to accommodate as much as possible their specific housing needs.<sup>320</sup> As Macura highlights, is also essential to combine these housing policies with education, health and employment programs aiming at improving the overall socio-economic conditions of the families involved.<sup>321</sup> At this moment, the issue of the homeless Romani is still not properly tackled, as reported by Ms. Mehinagić and Tandara: most of the families involved in the projects have already been living in brick houses before<sup>322</sup>. Few projects have involved homeless Romani persons, although they represent a consistent portion of the Romani population in the country.<sup>323</sup> This may be due to the fear that involving homeless Romani in housing projects may lead to negative outcomes like in the case of Butmir.<sup>324</sup>

The last issue tackled in the interviews I conducted is the relation between integration and spatial segregation. The aim was to assess whether the tendency of living in a settlement hamper the integration

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<sup>319</sup> UNECE, *Self-Made Cities*, p.72

<sup>320</sup> Macura Vladimir, Petrovic Milos, *Housing, urban planning and poverty*

<sup>321</sup> Ibid.

<sup>322</sup> Also those involved in social housing projects: most of them were living in brick houses not legalized or in other accommodation with parents or relatives, like in the cases of Zenica and Kakanj.

<sup>323</sup> Adela Mehinagić, personal interview, 09/09/2014

Amela Tandara, OSCE, personal interview, 07/08/2014

<sup>324</sup> This aspect emerged in the interview with Mehinagić, who explained that in order to avoid problems like the one seen in Butimir, the selection of the beneficiaries pays attention to choose those Romani that already lived in similar kind of accommodation or can easily get used to them. Ms. Mehinagić admitted that the problems of those completely homelessness remain unsolved and that different solutions have to be found. Adela Mehinagić, personal interview, 09/09/2014

process. I report the findings although they cannot be considered exhaustive and further studies on this topic are needed. From the cases I analyzed the settlement seems not to appear an obstacle to integration, since most of the Romani persons I encountered in my research who have a higher education, participate in the political and social life of the municipality and are very well integrated, live in Romani settlements.<sup>325</sup> It is true that the majority of the Romani population living in the settlements earns a living in the informal sector and thanks to the black market, but the situation is not better where the Romani are living spread throughout the municipality like in Zavidovići. Furthermore, also the level of education and school attendance seems to depend more on the socio-economic conditions of the family than on the level of segregation.<sup>326</sup> Nevertheless, the settlement is still considered an unsurmountable Romani fortress, especially from the population living outside.<sup>327</sup> Probably also for this reason, Ms Besić, from the Roma Information Center, stated that housing policies should avoid to create new concentration of Romani in the same place.<sup>328</sup> In conclusion, the issue of the relation between integration and segregation is very complex and not as obvious as was considered before.<sup>329</sup> Further studies on the topic are surely advisable.

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<sup>325</sup> This is the case of Aldina Falufović and Sascha Denić, who are living in Sofa, Vitez. But also Ms Vehabović, who manages an organisation to help Romani women and lives in Varda, Kakanj. Other cases have been reported to me also by persons working in the sector, like Maja Gruić.

<sup>326</sup> The findings of the interviews indicate that there are not particular differences between those who live in settlements and those who do not.

<sup>327</sup> I observed this situation from the fact that non Romani people were advising me not to go alone to visit Gorica, although there is no evidence that it is a danger for security. Similarly, the Romani I contacted expressed a veiled surprise in hearing that I wanted to visit their settlements.

<sup>328</sup> Sanela Besić, President of the Roma Information Center, Sarajevo, personal interview, 24/06/2014

<sup>329</sup> The issue on the theoretical level has been tackled in chapter 2.3.1.

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## Conclusions

The concept of housing, in its physical shape and function, is deeply influenced by culture. This is due to the role that housing plays in individual's life: it is not only a physical shelter where to find refuge but also the main space where the private and family life is conducted, where the moral and social values are manifested and where in general the individual finds the expression of the self. And since culture is the main framework where this individuality is formed and displayed, housing becomes also the expression of the collective dimension of the individual and culture turns into a driver in defining shelter. The implementation and protection of the Right to Housing, therefore, has to acknowledge this interplay and ensure that housing policies are directed not only to ensure a roof over everyone's head, but also to preserve the cultural and identity's aspects connected to the shelter. This necessity is due in order to avoid the forced assimilation of a minority culture through the imposition of housing solutions culturally inadequate or the destabilization of social mechanisms established and maintained around the residential habits.

In the case of the Romani minority in Europe, this interaction is particularly relevant because of the role that the residential habits of this group played in preserving its cultural specificity. Although it is not possible to analyse at the level of whole Romani community the way housing and culture interact, given the differences between sub-groups, some features, like the habit to live in a separate settlement or the lack of links with a particular territory, can be traced in the behaviour and traditions of many groups. Indeed, many groups share a relation based on reciprocal mistrust with the dominant society, which is the main base upon which the Romani collective identity is constructed. The settlement represents the safe space where the Romani persons can freely manifest their culture without fearing the discrimination of the *Gadje*, and the house is the expression of a life conducted within the community more than in private. Ignoring these particularities means to impose policies aimed at the elimination of the Romani culture, which other than being morally unacceptable, can be counterproductive in improving the living conditions of this groups, as the policies implemented by the socialist regimes have showed.

The rejection of assimilation policies is enforced by the evidences

on the role of the community for the well-being of the individual. Scholars did not fully agree yet upon the extent of the influence that the collective identity has on the definition of the self and of providing a meaning to the individual's life. Nevertheless, the existence of this bond between person and community cannot anymore be ignored. With this purpose, the Romani community provides a good example. Despite the stigmatisation of being Gypsy and the general environment of mistrust towards the members of this community, the Romani people hardly give up their identity, but even reinforce it. This because only within the community the Romani individual can find the right recognition of its person, which it is not only defined by the individuality but also by the belonging to the Romani minority. Furthermore, the forced assimilation of one minority group into a culturally dominant society goes against the principle of equality, because it obliges persons belonging to the first to adapt to rules and behaviours set by the latter, placing the minority in a subordinate position. For these reasons, the integrationist approach that recognises and respects the different collective identities in a context of equality is preferred to the assimilationist one. This does not mean that conflicting cultural specificities have to be maintained by any means. In a society where different communities live side by side, the cultural differences have to be adjusted in order to ensure the social cohesion necessary to run a functional society. The recognition, however, of the different cultural specificities and of their value has to be the first step towards the creation of this new society.

Given the interplay between housing and collective identity, it is clear how housing policies assume a striking role in the integrationist strategy. New approaches to housing and urban planning have been proposed in order to take into account the cultural aspects together with the respect of the common rules aimed at maintaining the overall social cohesion of the society. First of all, the old top-down housing policies can be replaced by strategies able to meet the people housing needs and include the community at the larger extent possible. Secondly, a range of different solutions can be considered because different cultural and environment contexts require different alternatives. Finally, the different segments of the cityscape can be integrated through a strategy that allows all the sections to be connected and have equal access to services and economic resources. The ideal approach translated to the reality of

the housing issue of the Romani minority in Bosnia and Herzegovina suggests the necessity of carefully considering the cultural specificity of this group as a whole and as a set of culturally different sub-groups. Furthermore, it is necessary and feasible to include the community in the planning and implementation of the policies at the greater extent possible rather than proposing solutions planned at the upper level.

In Bosnia and Herzegovina, the failure of policies that do not involve the Romani community and do not acknowledge the cultural specificities became evident with the case of Butmin. From that moment on, the planning of the housing policies has started to keep into major account the different contexts and to propose solutions adjusted to the communities' needs. The case of Gorica confirms that it is possible to find a compromise between the request of the community and the necessity to respect the common laws, through the involvement of all the actors concerned and a bottom-up approach. Currently the Bosnian authorities have done important steps in recognising the necessity to tackle the Romani housing issue, trying to meet the needs of the beneficiaries. Nonetheless, the housing policies implemented can be improved by further involving the community in its planning. Furthermore, it would be advisable to conduct additional studies on the differentiation of the Romani groups in the country, since the acknowledgment of the differences between groups and its relevance in the reception of the social policies is still not fully satisfactory among the Bosnian policy makers and people working in the sector.

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Interviewee 4, Romani living in Sofa settlement, Vitez, 22/07/2014

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Zavidovići municipality, 15/07/2014

Sofa settlement, Vitez, 22/07/2014

Varda settlement, Kakanj, 14/08/2014

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## **Annex 1 – Questionnaire used during interviews to Romani families**

**NAME AND SURNAME:**

**SETTLEMENT:**

**DATE:**

### **ASSESSMENT OF THE CURRENT HOUSING SITUATION**

1. Where are you living now?
2. Did you build or buy your house or it has been given to you by an organization? If **built** go to 3. If **given** go to 5.
3. Is your house legalized? If **YES** go to 4. If **not** go to 5.
4. How was your house legalized? By organization project or by yourself?

### **HOUSING HISTORY**

5. Did you live somewhere else before coming here? If **yes** go to 6. **Otherwise** go to 8
6. Where did you live? What kind of accommodation was: informal settlement, social housing ecc..?
7. Why did you leave this kind of accommodation and moved?
8. Did you ever been proposed to go living in a social housing? If yes go to 9 if not go to 13
9. Did you accept the offer?
10. NO: Why?
11. YES: Were you satisfied with the accommodation?
12. Why did it was satisfactory or not for you?

## HOUSING NEEDS

13. Are you satisfied with your current house or would you prefer another accommodation? If **not satisfied** go to 14 if **yes** go to 15
14. Why aren't you satisfied with your house? What would you improve?
15. Why are you satisfied with your current house? What does it make it better than other houses?
16. How many people live in your house?
17. How many rooms do you have?
18. Do you consider your house too crowded?
19. Do you live year the whole year?
20. Would you live in an apartment?
21. Why?
22. Can you describe me the ideal house for you? Main Elements?
23. Do you prefer to leave close to your relatives or not?

## INTEGRATION INTO MAIN SOCIETY

24. Are the kids living in your house going to school? Which grade?
25. Are you working in a public or private company? And the people living with you?
26. If not, which is your activity? How do you earn a living?
27. How do you consider your relations with the non Roma neighborhood?
28. Do you have non Roma friends that you regularly visit?
29. How did you meet them?





EUROPEAN REGIONAL MASTER'S DEGREE IN  
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**TOWARDS SUSTAINABLE GENDER EQUALITY?  
THE IMPORTANCE OF CEDAW AND UNSCR 1325  
FOR THE INCREASED PARTICIPATION OF WOMEN  
IN THE SECURITY SECTOR. The Case Study of the  
Slovenian Police.**

MASTER THESIS SUBMITTED IN PARTIAL FULFILMENT OF  
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**BY  
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## List of Abbreviations

<b>CA</b>	Comprehensive EU Approach
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CSW</b>	Commission on the Status of Women
<b>DPKO</b>	Department of Peace Keeping Operations
<b>EU</b>	European Union
<b>ICCPR</b> Rights	International Covenant on Civil and Political
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IOM</b>	International Operations and Missions
<b>IPOD</b>	International Police Operation Division
<b>IOD</b>	International Operation Division
<b>NAP</b>	National Action Plan
<b>RSSC</b>	Research and Social Skills Center
<b>NGO</b>	Non-Governmental Organizations
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>SC</b>	Security Council
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Program
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNSCR</b>	United Nations Security Council Resolution



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## Introduction

In order to be effective and inclusive, security sector must respond to different needs, priorities and capacities of women, girls, men and boys. Basic principles of democratic governance and human rights require women to be equal participants in the design, implementation, and oversight of security policies. Even though equality and non-discrimination principles to which most countries in the world have adhered should apply as much to the employment in the security sector as in any other sector, security sectors of countries worldwide were immune to the need for participation and inclusion of women until 2000. They neither participated in the facilitation of the recruitment process, retention nor in promotion of women among their ranks, because of the deeply rooted stereotypes regarding women serving in the armed forces and police being characterized as ineffective when compared to the males holding the same positions. National reports submitted to the UN bodies and regional mechanisms depict women as users of security rather than security providers, which evidently cause the lack of data concerning women's participation in security sector.<sup>1</sup> Thus, lack of women in national security sector caused an insufficiency of women as keepers of international peace and security, because of the fact that quotas proposed by the Convention on the Elimination of All Forms of Discrimination against Women were not extended to the police or other security sector institutions.

In order to fill this gap, the United Nations' Security Council Resolution 1325 (hereafter UNSCR 1325) was unanimously adopted in 2000. As legally binding for all the member states, this resolution recognizes women and gender aspects as relevant to both national and international peace and security. Furthermore, it additionally

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<sup>1</sup> See: UN Women. United Nations Entity for Gender Equality and the Empowerment of Women. *Convention on the Elimination of All Forms of Discrimination against Women. Country Reports*. <http://www.un.org/womenwatch/daw/cedaw/reports.htm> (Accessed on 2 October 2014)

accelerates gender mainstreaming<sup>2</sup> in law enforcement institutions which became an official policy of the UN only after the mid-1990s and the Fourth World Conference on Women, in Beijing 1995. Gender mainstreaming carries crucial importance within the security sector due to the fact that the security sector, and law enforcement in particular, has direct effects on a variety of levels in social life, starting from personal security of each individual to global international peace and security. Moreover, once gender equality perspective is included in all policies and programs within the United Nations Member States police it directly affects gender balance within international peace and security activities through deployment of the member states' police officers in peacekeeping missions. Along with the adoption of UNSCR 1325 the international community began considering women, not only as the victims, but as the active and very important partners in conflict – resolution processes, peacekeeping and peace building in post-conflict societies.

The Convention on the Elimination of All Forms of Discrimination against Women (hereafter CEDAW) clearly defines discrimination against women and simultaneously proposes the framework for sustainable gender equality. Nevertheless, women and girls in 1990s suffered as victims of massive sexual violence, which triggered the adoption of the UNSCR 1325 and undertaking of global initiatives for addressing the real needs of women in armed conflicts, but also for the first time shedding light upon women's needs during the recovery process and peace building. For the sake of better protection of women, gender mainstreaming, proper representation of women in international security contingents with special regards to their leading positions are the main objectives of the UNSCR1325. Simultaneously, such objectives signify human rights mainstreaming within the security sector of a certain country by addressing both sexes, requiring

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<sup>2</sup> According to the ECOSOC “gender mainstreaming is considered as the process of assessing the implications on men and women of any planned action, including legislation, policies or programs, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve the gender equality.”

commitment and participation of both men and women. However, since the implementation of the UNSCR 1325 in 2000, abundant research has been conducted in order to evaluate the scope of the Resolution 1325 in peacekeeping missions and gender balancing in international peace and security contingents, while the impact on women's inclusion in national security sectors have not been investigated

Despite resolution's focus on the importance of equality regarding the women's participation and their full involvement in all efforts for the peace maintenance and promotion, security institutions worldwide are still male dominated.<sup>3</sup> Inevitably, such situation significantly contributes to the increase of imbalance regarding gender representation in peacekeeping and peacebuilding around the world. With regard to these issues, this thesis will provide answers to the following research questions: What was the impact of the UNSCR 1325 on the increased participation of female police officers in the State Police Service in the Republic of Slovenia? Is there any impact and, if yes, why? In which areas this influence is the highest? What are the main obstacles for such an impact to be higher? Has the implementation of CEDAW enforced a removal of barriers to women's involvement in the State Police Service of Slovenia?

This study proves that the implementation of the UNSCR 1325 indeed had a tremendous impact on the increase of number of trained and deployed female police officers in the Slovenian State Police Service, while the CEDAW influenced the increase in employment of female police officers in the Slovenian State Police. Research also indicates that lack of strategy, highly rooted stereotypes about appropriate roles of both women and men as well as the difficulties in reconciliation of private and professional lives of female police officers within the Slovenian State Police Service are the main barriers for deployment of higher number of trained female police officers in peacekeeping missions.

Concerning methodology, this thesis is predominantly based on the analysis of primary sources, such as international instruments

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<sup>3</sup> Welch, Anthony. "Security Sector Reform and Gender Equality". Center for Security Governance. 15 July 2014. <http://www.ssrresourcecentre.org/2014/07/15/security-sector-reform-and-gender-equality/> (Accessed on 2 October 2014)

CEDAW and UNSCR 1325, national legislation, internal acts, as well as interviews conducted with experts who have been included in gender mainstreaming activities within the Slovenian State Police, since 2008. Moreover, the analysis of statistical data and results of questionnaire was conducted in order to assess the impact of the international Resolution 1325 and adoption of the National Action Plan (hereafter NAP) for its implementation on the inclusion of women in Slovenian State Police and promotion of gender equality. Thus, the combination of quantitative and qualitative methods is utilized for this research. Qualitative method and comparison of data, provided by the International Police Operations Division staff was used in order to determine whether the adoption of National Action Plan for the implementation of the UNSCR 1325 had an impact on increased deployment of female police officers in peacekeeping missions. Based on the data, graphs and tables are presented, distinguishing two periods. Firstly, the period from 1997, when the Slovenian police for the first time sent peacekeepers in the United Nations peacekeeping operations until 2009, and then the period from 2010 when the NAP for the implementation of the UNSCR 1325 was adopted, until 2014.

Moreover, nine semi-structured interviews were conducted in order to determine the impetus for gender mainstreaming activities within the Slovenian police, also reflecting upon the obstacles that experts encounter during these activities. Interviews were conducted with experts<sup>4</sup> included in these activities from 2002 onward, as well as with those who still work in this field. Internet-based questionnaire in this thesis was used to determine what types of impediments are present when it comes to gender mainstreaming in the field of peacekeeping. The results of the questionnaire also serve to determine whether gender equality perspective is included in all policies and programs within the United Nations Member States' police. Such inclusion directly affects gender balance within the international peace and security

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<sup>4</sup> Mrs. Tatjana Bobnar, Deputy of the Director General of the Police, former coordinator for equal opportunities for men and women in the General Police Directorate, Ministry of Interior Slovenia, Dr. Robert Šumi, Head of the Research and Social Skills Centre, Police Academy, General Police Directorate, Mr. Janez Ogulin, Director of the Police Administration Novo Mesto, a member of the Working Group for strengthening of integrity and ethics, established in 2008.

activities through deployment of the member state's police officers in peacekeeping missions.

Two hundred and three officials responded to the questionnaire, which is consisted of twelve survey items. The first three items depicted the demographic nature of police officials: gender, workplace and employment, while other eight items were based on a hypothesis and participants indicated with "yes" or "no" whether they agree or not with a particular statement. The remaining item consisted of multiple choice answers for participants through which we attempted to determine the reasons for the lower participation of female police officials in peacekeeping missions, according to opinion and possible experience of police officials. The questionnaire was prepared in English and then translated into Slovenian in order to be answered by as many both male and female police officers as possible, and to avoid unnecessary obstacles such as limited knowledge of English. The questionnaire was posted on the internal page of the Slovenian Police from 15 July 2014 till 15 September 2014 and was available for all Slovenian police officers to give their answers.

The importance of the UNSCR 1325 lies in the recognition of women as decision makers, which is "a pre-condition for productive and secure societies" according to Louise Olsson and Ahlin Mastlin. Moreover, Amnesty International highlights the UNSCR 1325 as the first resolution that recognizes women as peace and security builders whose role to prevent conflicts and secure peace have been critical and unrecognized. The importance of the Resolution 1325 for increasing of women in security institutions is also illuminated in the Secretary General's last *Report on Women, Peace and Security* from September 2013 who states, based on demands of the Resolution, that the Department of Peace Keeping Operations (hereafter DPKO) has set a target of 20 percent of female police participation in peace keeping operations till 2014.

The CEDAW and the UNSCR 1325 are considered as the most important the UN instruments which chart a course to enhance women's equal role in public service and political participation. According to Shely Inglis and Maha Muna these two documents can be used together to broaden, strengthen and operationalize gender equality, not only during the armed conflicts, but also during a peace. However,

the research of the UN Women illuminates not only a progress in the area of women, peace and security, but also the major gaps which are found in accountability for implementation and the implementation process itself. The Security Council (hereafter SC) has not yet instituted a mechanism of accountability to improve the implementation of the resolution, despite more than a decade of calls from Civil Society. The numerous studies of the Women for Peace-Peace for Women organization reveal deeply rooted stereotypes as the main impediments for women inclusion at decision-making levels in national, regional and international security institutions. Studies also show that women are still underrepresented in numbers and status in law enforcement agencies worldwide.<sup>5</sup>

In order to answer to the research questions, the first chapter presents the key international instruments for empowerment of women, which encompass CEDAW and the UNSCR 1325, which is in fact more oriented on gender mainstreaming in security sector. Interconnection of these United Nations documents is presented, as well as EU policy and instruments for gender mainstreaming and their influence on national documents in the Republic of Slovenia. The second chapter presents the national documents which regulate gender mainstreaming issues and their connection with the presented international resolutions and EU policies. Domestic acts analyzed are the Constitution of the Republic of Slovenia, the Act on Equal Opportunities for Men and Women, as well as the Resolution on National Program for Equal Opportunities for Men and Women 2005-2013. Finally, the elaboration of the National Action Plan for the implementation of the UNSCR 1325 is presented with the main objectives set up by Slovenian Government for inclusion and improvement a number of women in different areas of Slovenian society.

The third chapter shows an increase of the number of women in the Slovenian State Police. Consequently, the first sub-chapter explains the increase of employed female police officers since 2002. The second subchapter further shows an increase in number of trained

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<sup>5</sup> Shoemaker, Yolynn and Jennifer Park. *Progress Report on Women in Peace and Security Careers. U.S. Executive Branch*. WIIS-Women in International Security. 2014. [http://wiisglobal.org/wordpress1/wp-content/uploads/2014/01/WIIS\\_ProgressReport\\_ExecBranch.pdf](http://wiisglobal.org/wordpress1/wp-content/uploads/2014/01/WIIS_ProgressReport_ExecBranch.pdf) (Accessed on 2 October 2014)

and deployed female police officers in peacekeeping missions, while the newly established the Research and Social Skills Center is also presented in the third subchapter together with its activities on gender mainstreaming, as well as the main obstacles for the UNSCR 1325 implementation. The last, fourth, subchapter presents the analysis of the questionnaire (Annex 3) which was used to measure the reasons behind the small number of deployed female police officers (in comparison with those trained for deployment) in peacekeeping missions, even though this number increased upon the adoption of NAP. In reference to the issue of gender mainstreaming within the peacekeeping field, the results obtained through the questionnaires give us a profound insight into the complex nature of gender mainstreaming particularly within a security setting.

## 1. Key International Women's Human Rights Instruments

As one of the most important postulates of the United Nations system of human rights protection is the equality between men and women. As Article 1 of the Charter of the United Nations indicates the main purpose of the UN is to achieve international cooperation in promoting and keeping of the international peace and security, and in “encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”<sup>6</sup> The striving for equality between man and women at the UN level has been continued and improved in the texts of other subsequent documents such as the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights which proclaim that states should ensure that all human beings enjoy all rights established in these documents,<sup>7</sup> while in practice the pure fact that women are human beings did not play a role in translating of these texts into practice nor guaranteed them enjoyment of the universally accepted human rights, but on contrary locked them in their so called natural women's environments, families and private sphere or, even worse, exposed them to violence and the most visible victimization during armed conflicts, which is “a continuation—and a significant worsening—of the various discriminatory and violent ways that women are treated in times of peace.”<sup>8</sup>

Starting from the fact that women, who make up more than half of world population, were discriminated against and thus needed an improved promotion and protection of their rights, new international conventions and resolutions were adopted. Particularly important in this regard are the CEDAW and the UNSCR 1325 (Women, Peace and

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<sup>6</sup> United Nations. *Charter of the United Nations*. 24 October 1945, 1 UNTS XVI. <http://www.refworld.org/docid/3ae6b3930.html> (Accessed on 9 September 2014)

<sup>7</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html> (Accessed on 19 September 2014)

<sup>8</sup> Jefferson, R. LaShawn. *In War as In Peace: Sexual Violence and Women's Status*. Human Rights Watch (HRW). <http://www.hrw.org/legacy/wr2k4/download/15.pdf> (Accessed on 19 September 2014)

Security) which are closely connected in achieving of gender equality in every society. According to the UN Women the implementation of the UNSCR 1325 is not an isolated process, but rather “closely connected with the implementation of the CEDAW in order to save resources, maximize efforts and achieve better and more consistent results.”<sup>9</sup> The elaboration of these resolutions, their complementarity and programs of EU on their implementation are presented below.

### **1.1 The United Nation Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

The CEDAW was adopted in 1979 by the UN General Assembly. It „calls upon States Parties to take all appropriate measures to ensure the elimination of discrimination against women”<sup>10</sup>, defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. In the three decades since this Convention was adopted, countries have decided to incorporate CEDAW principles in their national constitutions, legislation and administrative policies. Moreover, countless civil society organizations and individual women have relied on the principles of the Convention to improve the lives of women and girls.<sup>11</sup>

The United Nations’ human rights system has been urged

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<sup>9</sup> UN Women. United Nations Entity for Gender Equality and Women Empowerment. *Women and Peace and Security: Guidelines for National Implementation*. Page 20. <http://www.unwomen.org/~media/Headquarters/Media/Publications/en/02BPlanonWomenandPeaceandSecurity.pdf> (Accessed on 11 September 2014)

<sup>10</sup> United Nations Children’s Fund (UNICEF) and United Nations Population Fund (UNFPA). *CRC and CEDAW-Making a Connection between Children’s and Women’s Rights. Facilitators Guide*. New York, 2000. Page 71. [http://www.unicef.org/gender/files/CRC\\_and\\_CEDAW\\_Facilitators\\_Guide-small.pdf](http://www.unicef.org/gender/files/CRC_and_CEDAW_Facilitators_Guide-small.pdf) (Accessed on 20 September 2014)

<sup>11</sup> International Center for Reserach on Women (ICRW). *Recognizing Rights Promoting Progress. The Global Impact of the Convention on the Elimination of All Forms of Discrimination Against Women*. 2010. Page 3.

by the Commission on the Status of Women (CSW)<sup>12</sup> to show a growing awareness for the protection and promotion women's human rights since 1946. Its elaboration of the general guarantees of non-discrimination in international human rights documents from gender perspective has resulted in adoption of number important documents, such as the Convention on Political Rights of Women in 1952. Two other women's human rights instruments followed and were considered as predecessors of the Convention on the Elimination of all Forms of Discrimination against Women, which are the Convention on the Consent to Marriage in 1957 and the Declaration on the Elimination of Discrimination against Women in 1967.<sup>13</sup> CEDAW is the second most ratified HR Convention after the Convention on the Rights of the Child (CRC), with 186 ratification out of 193 UN member states.<sup>14</sup> This means that, at least in theory, there seems to be a general consensus on women's rights.

Framework articles of the Convention<sup>15</sup> provide a ground for "realizing equality of men and women through ensuring women's equal access to and equal opportunities in political and public life."<sup>16</sup> The Convention establishes an international bill of rights for women and spells out what is meant by discrimination, by defining discrimination as "any distinction, exclusion or restriction made on the basis of sex which

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<sup>12</sup> CSW was originally established in 1946 as a sub-commission of the Commission of Human Rights, but as a result of a pressure by women activists granted status of full commission with the main task to prepare recommendations for women's rights to be recognized, with the object of implementing of the principle that women and men should have equal rights.

<sup>13</sup> Vogel, J. Koiren and Bridget, T. McInnes. *Understanding the Regional and Constitutional Impact of CEDAW using automated content analysis of Nation-State constitutions*. Paper prepared for the Midwest Political Science Association Conference, Chicago 11-15 April, 2012. Pages 3-22.

<sup>14</sup> Countries which have not ratified CEDAW are: United States, Sudan, South Sudan, Somalia, Iran and two small Pacific Island nations Palau and Tonga.

<sup>15</sup> Framework articles from 1 to 5 and article 24 present ground for implementation of all other articles, since they propose undertaking activities by state parties, such as new legislations, policies and programs adoption in order to empower women and engender cultural changes.

<sup>16</sup> UN Women. United Nations Entity for Gender Equality and the Empowerment of Women. *Convention on the Elimination of All Forms of Discrimination against Women*. <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm> (Accessed on 20 September 2014)

has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”<sup>17</sup>

Moreover, an agenda for action by countries to guarantee the enjoyment of those rights, the application and interpretation which should be done in the most appropriate ways to the social and cultural structure of each state<sup>18</sup> is also provided by this Convention. It means that it is up of each country to determine how best to bring their policies and laws in line with ending discrimination against women. Its Article 2 generally requires States parties “to ensure” compliance by their Governments’ organs with the Convention and “to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise” and “to modify or abolish existing laws, regulations, customs and practices”.<sup>19</sup> It refers to national constitutional changes as well as modification of all subsequent laws where principle of gender equality is not embodied, with the aim of eliminating direct and indirect discrimination first in texts of legislation and providing a ground for translation of these texts in practice toward implementation of both formal equality and substantive de facto equality.<sup>20</sup>

Besides that, Article 17 establishes the Committee on the

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<sup>17</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women* (Article 1) 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <http://www.refworld.org/docid/3ae6b3970.html> (Accessed on 8 September 2014)

<sup>18</sup> United Nations. Committee on the Elimination of Discrimination against Women. Implementation of Article 21 of the Convention on the Elimination of all Forms of Discrimination against Women. Report of the Secretariat. New York. 1994. <http://www.un.org/documents/ga/cedaw/14/cedawc1995-4.htm> (Accessed on 20 September 2014)

<sup>19</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendations Nos. 19 and 20, adopted at the Eleventh Session, 1992 (contained in Document A/47/38)*, 1992, A/47/38, available at: <http://www.refworld.org/docid/453882a422.html> (accessed on 20 September 2014)

<sup>20</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women (Article 2)*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <http://www.refworld.org/docid/3ae6b3970.html> (Accessed on 8 September 2014)

Elimination of All Forms of Discrimination against Women (the Committee) with the task to consider the progress made by the states in the implementation of the Convention, make suggestions and general recommendations based on the examination of reports and information received from the state parties.<sup>21</sup> Initially the monitoring of the Convention's implementation was limited to an evaluation of States Parties' periodic reports on the legislative, judicial, administrative, or other measures which they have adopted to give effect to the provisions of the Convention and on the progress made in this respect. However, since the adoption of the Optional Protocol in 2000, two new procedures were introduced. In fact, Article 7 outlines the communications procedure which allows individuals or group of individuals to submit complaints to the Committee for violations of rights protected under the Convention, while Article 8 establishes an inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of women's rights.<sup>22</sup>

Even though the above mentioned characteristics led to the modifying of many constitutions and State parties legislation, a substantive equality demands the real actions in practice and translation international and national documents on gender equality in practice. In order to provide substantive equality Article 3 of CEDAW proposes that the exercise and enjoyment by women of the fundamental freedoms and rights guaranteed with Article 2 rests on and requires the full development and advancement of women within society. This means that State Parties agree to ensure, through all appropriate measures, including legislation, the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on basis of equality with men

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<sup>21</sup> Pauw, Marijke. "Women's Rights. From Bad to Worse? Assessing the evolution of incompatible reservations to the CEDAW Convention." *MERKOURIOUS-Gender in European and International Law*. Volume 29/77. 2013. (pages 51-65)

<sup>22</sup> UN General Assembly, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, 6 October 1999, United Nations, Treaty Series, vol. 2131, p. 83, available at: <http://www.refworld.org/docid/3ae6b3a7c.html> (Accessed on 9 September 2014)

in the political, social, economic and cultural fields in particular.<sup>23</sup> It means that State parties are obliged to, based on their social and cultural structure, establish specific endeavors to promote actions to integrate women and an awareness of gender issues into the mainstream activities and policies of the State and into society at large. This is considered as a ground for different ministries to include gender mainstreaming in their policies and programs.

The Article 4 of CEDAW highlights the fact that formally equal laws do not mean establishing of equal outcomes for women “since women do not start on an equal footing to men.”<sup>24</sup> Because of an unequal start of women, the Convention proposes temporary special measures, such as outreach and support programs; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with timeframes; and quota systems. These special measures are seen as ‘temporary’ and should not be confused with general policies nor should be applied forever, but at the same time they should be determined by functional results in response to a concrete problem and not by the passage of time.<sup>25</sup>

The adoption of CEDAW as the “human rights framework for the application of quotas to attain and maintain gender balance in public and political life”<sup>26</sup> by particular country signals the commitment of that country to fulfilling the human rights of women and girls and breaking down the barriers to achieving gender equality and justice. According

<sup>23</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women (Article 3)*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <http://www.refworld.org/docid/3ae6b3970.html> (Accessed on 8 September 2014)

<sup>24</sup> UN Women. United Nations Entity for Gender Equality and the Empowerment of Women. *In Pursuit of Justice 2011-2012. Progress of the World's Women*. New York. 2011. Page 9.

<sup>25</sup> Schopp-Schilling, Hanna Beate. *The Role of the Convention on the Elimination of All Forms of Discrimination against Women and its Monitoring Procedures for Achieving Gender Equality in Political Representation*. Budapest: International Institute for Democracy and Electoral Assistance (IDEA)/CEE Network for Gender Issues Conference. October 2004. Page 4.

<sup>26</sup> Schopp-Schilling, Hanna Beate. *The Role of the Convention on the Elimination of All Forms of Discrimination against Women and its Monitoring Procedures for Achieving Gender Equality in Political Representation*. Budapest: International Institute for Democracy and Electoral Assistance (IDEA)/CEE Network for Gender Issues Conference. October 2004. Page 5.

to the Hanna Beate Schopp-Schiling who conducted a research on the role of CEDAW and its monitoring procedures for achieving gender equality in public life “substantive equality does not mean positive discrimination but allows for non-identical treatment of women (as compared to men) both for reasons of protection (maternity functions) and correction (acceleration of the achievement of de facto equality).”<sup>27</sup> Slovenia ratified the CEDAW in 1992 without reservation. This shows that Slovenia commit itself to undertake a series of measures to end discrimination against women in all forms starting from the incorporation of the principle of equality of men and women in their legal system to abolishing and elimination of all discriminatory laws and acts by persons, organizations and enterprises,<sup>28</sup> which is elaborated in the second chapter.

## **1.2. The United Nations Security Council Resolution 1325 (Women, Peace and Security)**

The UNSCR 1325 is the first resolution from Women, Peace and Security Agenda<sup>29</sup> unanimously adopted in 2000. It is binding upon all member states and its adoption means recognition that women and gender are relevant for international peace and security.<sup>30</sup> The UNSCR

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<sup>27</sup> Ibid.

<sup>28</sup> UN Women. United Nations Entity for Gender Equality and the Empowerment of Women. *Convention on the Elimination of All Forms of Discrimination against Women*. <http://www.un.org/womenwatch/daw/cedaw/> (Accessed on 9 September 2014)

<sup>29</sup> Subsequent resolutions from Women, Peace and Security agenda are: SCR 1820 (2008) on the issues of sexual violence in conflicts; SCR 1888 (2009) on strengthening international action in addressing conflict related sexual violence; SCR 1889 (2009) aimed at strengthening the implementation and monitoring of SCR 1325; SCR 1960 (2010) expressing the readiness of the Security Council to take appropriate steps to address widespread or systematic sexual violence in situations of armed conflicts; SCR 2106 (2013) on accountability for perpetrators of sexual violence in conflict and stressing women’s political and economic empowerment; and SCR 2122 (2013) addresses the persistent gaps in the implementation of the Women, Peace and Security agenda.

<sup>30</sup> The Peace Women. Women for Peace. Peace for Women. *1325 Annotated Text-What It Means*. <http://www.peacewomen.org/pages/about-1325/scr-1325-what-it-means> (Accessed on 25 July 2014)

1325 demands for the increase of women in each and particular area of a society and positively affects first women, detaching them from the private sphere. This is the first resolution which demands that women should be included at the highest decision-making levels in each area of one society, which also target the stereotypes of appropriate roles of men and women. Moreover, this is the first international instrument which seriously tackles security sector institutions, as well, which were previously gender-blinded, despite the CEDAW's proposals on sustainable equality.

In order to accelerate gender balancing and gender mainstreaming the Resolution 1325 targets four different areas which are called by the NGO Peace Women<sup>31</sup> four pillars of the United Nations' Security Council Resolution: participation, protection, prevention, and peace and recovery.<sup>32</sup> Thus, the Resolution 1325 firstly, "urges member states to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for prevention, management and resolution of conflict."<sup>33</sup> This provides a further evidence that claims against the Resolution 1325 as concerned with international peace rather than women is not true, since it is the first and only international document which highlights the importance of gender balancing at the decision-making levels, not only in international contingents, but also in the security sector institutions of the UN member states. An increased participation of the women in all international peacekeeping missions among "military, civilian police, human rights and humanitarian personnel"<sup>34</sup> is proposed in order to ensure that women's human rights are respected and their security

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<sup>31</sup> The original mandate of the NGO Working Group on Women, Peace and Security was to advocate for the UN Security Council Resolution on Women, Peace and Security, while nowadays they advocate for implementation and monitor the participation of women, the prevention of conflicts, as well as a rapid implementation of the Resolution 1325 and subsequent resolutions from Women, Peace and Security Agenda.

<sup>32</sup> The Peace Women. Women for Peace. Peace for Women. *Implementation of SRC 1325: Indicators on Women, Peace and Security*. [http://www.peacewomen.org/security\\_council\\_monitor/indicators](http://www.peacewomen.org/security_council_monitor/indicators) (Accessed on 11 September 2014)

<sup>33</sup> UN Security Council, *Security Council Resolution 1325 (2000) (on Women and Peace and Security)*, 31 October 2000, S/RES/1325 (2000), available at: <http://www.refworld.org/docid/3b00f4672e.html> (Accessed on 11 September 2014)

<sup>34</sup> Ibid.

assured. At the same time this demand also urges the UN member states military and police services to include more women and undertake measures toward gender balancing, but also to fight stereotypes about proper gender roles and appropriate jobs for men and women, which is also demanding and a decades-consuming task.

The third area of the Resolution 1325 seeks for better protection of women during armed conflicts, where the Resolution “calls upon all parties to the armed conflict to take special measures to protect women and girls from gender-based violence, particularly rapes and other forms of sexual abuse...”<sup>35</sup> with intention to reduce all form of violence against women. The fourth area seeks for training of the UN personnel and also member states’ personnel, with the aim to raise awareness on the need for protection of women and their rights and also to raise awareness about their special needs during armed conflicts and in post-conflict situations. All four pillars of the Resolution 1325 are interconnected with the main aim to support gender mainstreaming and human rights mainstreaming in member states’ institutions and internationally.

Very important characteristic of the UNSCR 1325 is emphasized by Megan Bastick who says that the Resolution shows that the roles which men and women perform as security providers in security forces and institutions or as perpetrators of violence, reflect social processes and can be subject to change and shed a new light on understanding of gender roles in a society.<sup>36</sup> The Resolution also demands that each government commits itself to concrete actions that will support women voices not only as the victims of violence, but also as decision makers, who are, according to Louise Olsson and Ahlin Mastlin, cornerstones for productive and secure societies.<sup>37</sup>

For the first time, women are treated not any more as subordinate parties of Carol Pateman’s „sexual contract“<sup>38</sup>, but as equal parties of

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<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Olsson, Louise and Ahlin, Mastlin. Strengthening ESDP Missions and Operations through Training on UNSCR 1325 and 1820-Inventory of Ongoing Training. Count of Wisborg: Folk Bernadotte Academy, 2009.

<sup>38</sup> Pateman, Carole. The Sexual Contract. Stanford, Stanford University Press, 1998.

Thomas Hobbes's „social contract“.<sup>39</sup> As active partners in a national and international public sphere and security institutions, women are conceived as main actors on the prevention of victimization of women during peace and their massive victimization during armed conflicts. Even though the CEDAW was adopted a decade before, in 1990's bloody contemporary armed conflicts in Rwanda, Bosnia and DR Congo they were victims of massive raping and sexual abuses. The adoption of the Resolution 1325 was triggered by these massive abuses of women. It was a response of the SC which showed that women's destinies as destinies of the half world of population were subject of concern of the United Nations Security Council, which gave opportunity and showed its confidence that inclusion of women as decision makers and peace keepers could also contribute to the international peace and security.

Moreover, according to Amnesty International the UNSCR 1325 presents women as forces for peace, as peace and security builders whose role to prevent conflicts and secure peace has been critical, yet largely unrecognized and not integrated into formal peace processes. The boosting opportunities and participation for women and young people is seen by the United Nations Secretary-General, Mr. Ban Ki-Moon as the imperative and generational opportunity to shape the world of tomorrow by decisions that we make today, imperative which influences also other four imperatives for sustainable developments, such as preventing and mitigating conflicts, human rights abuses and the impacts of natural disasters, building a safer, more secure world and supporting the countries in transition.<sup>40</sup>

Considering the implementation of the UNSCR 1325, the key addressed actors are the SC member states, parties in conflict, UN entities and the Secretary General.<sup>41</sup> One of the ways for the implementation of the UNSCR 1325 is the adoption of national action

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<sup>39</sup> Hobbes, Thomas. 1651. *Leviathan*, C.B. Macpherson (editor). London. Penguin Books, 1985.

<sup>40</sup> United Nations Secretary General. *Introducing Report in General Assembly. Outlines: Generational Opportunities to Shape Tomorrow's World by Today's Decisions*. SG/SM/13823 GA/11148. September 2011. <http://www.un.org/News/Press/docs/2011/sgsm13823.doc.htm> (Accessed on 1 February 2014)

<sup>41</sup> Peace Women. Women for Peace-Peace for Women. Security Council Resolution 1325. [http://www.peacewomen.org/themes\\_theme.php?id=15&subtheme=true](http://www.peacewomen.org/themes_theme.php?id=15&subtheme=true) (Accessed on 19 September 2014)

plans, with clear objectives, actors included in implementation and time framework. The implementation through national action plans of the member states means on the one hand recognition of gender importance by national political actors, while on the other, it means recognition of the importance of gender and women for security sectors of the member states, as a precondition for their inclusion internationally. As elaborated in the *Benefits of the National Action Plan (NAP) to implement UNSCR 1325 for the U.S.* “involvement of women at all levels of every aspect of national security and foreign policy is conceived as influential to peace processes.”<sup>42</sup> However, as emphasized by the International Civil Society Action Network „the existence of bad NAPs and policies can be counterproductive, as governments claim credit for them but are rarely questioned or assessed on their implementation and impact.”<sup>43</sup> It means that the implementation of the UNSCR 1325 cannot be seen as adoption of national action plans, but rather as translation of the plans’ texts and objectives into practice. The adoption of the Slovenian NAP and activities towards its translation within the security sector are presented in the second chapter.

### **1.3. Interconnection and complementarity of CEDAW and UNSCR 1325**

As crucial UN documents for protection of women’s human rights, CEDAW and the UNSCR 1325 chart a course to enhance women’s equal role in public service and political participation. These two documents can be used together to broaden, strengthen and operationalize gender equality, not only during the armed conflicts, but

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<sup>42</sup> Larsen, Zan. “Benefits of the National Action Plan (NAP) to Implement UNSCR 1325 for the U.S.” *Women’s Policy Journal of Harvard*. Spring 2012. (pages 32-41) [http://isites.harvard.edu/fs/docs/icb.topic1156742.files/WPJ%202012%20Benefits%20of%20a%20National%20Action%20Plan507190%20Harvard%20\\_1%20TXT\\_pdf-Proof\\_3.pdf](http://isites.harvard.edu/fs/docs/icb.topic1156742.files/WPJ%202012%20Benefits%20of%20a%20National%20Action%20Plan507190%20Harvard%20_1%20TXT_pdf-Proof_3.pdf) (Accessed on 11 September 2014)

<sup>43</sup> International Civil Society Action Network (ICSAN). Center for International Studies. *What the Women Say. Participaion and UNSCR 1325*. A Case Study Assessment. October 2010. Page 4. [http://web.mit.edu/cis/pdf/WomenReport\\_10\\_2010.pdf](http://web.mit.edu/cis/pdf/WomenReport_10_2010.pdf) (Accessed on 2 october 2010)

also during a peace, and peace making and peace building process.<sup>44</sup> In fact, even in consolidated democracies, the implementation of the CEDAW accelerated gender equality by implementation of its provisions through national laws, such as constitutions, and gender equality laws, as well as by introducing special programs by governments, in order to translate these laws into practice and fully realize women's rights, such as the Resolution on National Program on Equal Opportunities for Men and Women 2005-2013 in the Republic of Slovenia, as elaborated more in the second chapter. In the same time the UNSCR 1325 strengthens CEDAW, introducing national action plans for the implementation of the UNSCR 1325 and indicators which will show how successful is the process of gender mainstreaming in the particular country and its security sector.

Moreover, based on national legislation and special programs for women inclusion, ministries introduce special measures in order to achieve gender equality, which means that CEDAW paves the way for sustainable gender equality. As such, CEDAW also paves the way for implementation of other instruments which considers different areas of one society, such as the UNSCR 1325 which emphasizes the women inclusion in security sectors. Even though there are opinions that these documents and their implementation very often present additional burden for member states, because of the obligations to report, these documents are complementary international instruments, which reinforces each other and are much more effective if used together in leveraging women's human rights.<sup>45</sup> For example, "while SC Resolution 1325 demands women's increased participation, it is CEDAW that has set out concrete measures that should be taken regarding women's role in the formulation of policy, and their representation at national and

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<sup>44</sup> Inglis, Shely. et al (editors). *CEDAW and Security Council Resolution 1325: A Quick Guide. Women, Peace and Security*. New York: United Nations Development Fund for Women-UNIFEM. UN Women Headquarter. 2006. Page 8

<sup>45</sup> Global Network of Women Peace Builders. International Civil Society Action Network. *Ensuring Accountability to UNSCR 1325 and 1820 using CEDAW reporting mechanisms*. [www.gnwp.org/wp-content/uploads/2010/11/Cedaw-1325-1820-synergy2.pdf](http://www.gnwp.org/wp-content/uploads/2010/11/Cedaw-1325-1820-synergy2.pdf). (Accessed on 8 August, 2014).

Inglis, Shely. et al (editors). *CEDAW and Security Council Resolution 1325: A Quick Guide. Women, Peace and Security*. New York: United Nations Development Fund for Women-UNIFEM. UN Women Headquarter.2006. Page 10.

international levels of decision-making, voting, eligibility for election, quotas and other temporary special measures.”<sup>46</sup>

The introduction of NAPs as one of possible ways for implementation of the UNSCR 1325 enhances and supports CEDAW as well, since for the first time goals, actions and results can be measured in order to evaluate progress of gender balance and gender mainstreaming in every of four areas of the UNSCR 1325, which are, as said earlier, participation, protection, prevention and peace and recovery. The NAPs also show whether the national documents which regulate women’s inclusion and which are grounded on the CEDAW are translated in practice, since they should identify women’s needs and priorities as the initial step of NAPs.<sup>47</sup> On the other hand, the importance and uniqueness of NAPs for the implementation of the UNSCR 1325 is in inclusion of the civil societies and women’s groups, which can have a role to play in the monitoring and evaluation process by conducting their own external evaluation of the implementation process.<sup>48</sup>

Moreover, this structure of NAPs makes possible comparing of different countries’ and regions’ achievements in gender balancing and gender mainstreaming, since according to the Peace Women Organization “NAPs serve as a **guiding national policy document** that is able to capture the diverse set of government bodies and stakeholders tasked with security, foreign policy, development and gender equality.”<sup>49</sup> This also shows what those bodies and stakeholders do to provide sustainable gender equality. Even more important it provides stakeholders with opportunity to exchange experiences and information about overcoming of obstacles that they faced with during the implementation of the Resolution or even better shed a new light on

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<sup>47</sup> Lukatela. Ana. “Policy Brief No. 3: Drafting and Adopting National Action Plans for the Implementation of the Resolution 1325 in the Countries of Southeast Europe” *Regional Women’s Lobby for Peace, Security and Justice in Southeast Europe*. (pages 1-10) Page 5. [http://www.peacewomen.org/assets/file/Resources/NGO/nat\\_1325insoutheurope\\_regionalwomenslobbyforpeacesecurityjusticesoutheurope.pdf](http://www.peacewomen.org/assets/file/Resources/NGO/nat_1325insoutheurope_regionalwomenslobbyforpeacesecurityjusticesoutheurope.pdf) (Accessed on 11 September 2014)

<sup>48</sup> Ibid. Page 7.

<sup>49</sup> The Peace Women. Women for Peace. Peace for Women. *About National Action Plans*. <http://peacewomen.org/naps/about-naps> (Accessed on 11 September 2014)

importance of regional action plans adopting and cooperation towards the UNSCR 1325 implementation.

In order to be better understand the importance of national action plans for measuring of the progress in gender balancing and gender mainstreaming, it is necessary to present the main components of national action plans, which are: introduction (bodies that participated in drafting of the plan, etc.); background (other national gender equality mechanisms and security and peace issues and country context); statement of actions relating to the points of the Resolution 1325; implementation responsibilities; budget allocation; monitoring and evaluation framework (indicators for each activity, output, outcome, responsible agency and budget).<sup>50</sup> As explained by Aisling Swaine in the article *National Implementation of the UN Security Council's Women, Peace and Security resolutions* "NAPs can reinforce national commitments on gender equality, since the majority of NAPs make links to existing national commitments, such as implementation of CEDAW and adoption of national laws on gender equality and violence against women."<sup>51</sup>

This connection is also highlighted in the *CEDAW Committee's General Recommendations on Women in Conflict Prevention, Conflict and Post-Conflict Situations* which calls on States parties to ensure that national action plans and strategies to implement the UNSCR 1325 (2000) and subsequent resolutions are compliant with the Convention, and that implementation of SC commitments reflects a model of

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<sup>50</sup> European Peacebuilding Liaison Officer. *Comparing National Action Plan for UNSCR 1325 in Europe*. 2012. [http://www.eplo.org/assets/files/2.%20Activities/Working%20Groups/GPS/GPS\\_Table\\_Comparing\\_NAP\\_Country\\_March%202012%20%282%29.pdf](http://www.eplo.org/assets/files/2.%20Activities/Working%20Groups/GPS/GPS_Table_Comparing_NAP_Country_March%202012%20%282%29.pdf) (Accessed on 11 September 2014)

<sup>51</sup> Swaine, Aisling. "National Implementation of the UN Security Council's Women, Peace and Security resolutions." Norwegian Peacebuilding Resource Center (NOREF). Policy Brief. March 2013. (pages 1-5) Page2. [http://www.peacebuilding.no/var/ezflow\\_site/storage/original/application/716bc7bf67b47437fa98b1a5c63f0496.pdf](http://www.peacebuilding.no/var/ezflow_site/storage/original/application/716bc7bf67b47437fa98b1a5c63f0496.pdf) (Accessed on 20 September 2014)

substantive equality.<sup>52</sup> All CEDAW's Committee recommendations provide instructions to governments, including national machineries, on where to focus their efforts, and what are the actions needed to advance women's equality. It means that if taken together, these international instruments provide a ground for gender equality in legislative acts and gender mainstreaming in practice, which paves the way for sustainable gender equality and the removal barriers for women's equal participation, as well as their full involvement in public sphere of society.

#### **1.4. EU policy and instruments for gender mainstreaming**

What is the key to the implementation of international women's human rights instruments is the dynamic interplay of global, regional, national, and local forces, including the reform of formal, legal domestic structures such as the language of constitutions, as well as the on-going critical work of non-governmental organizations and grassroots organizations supporting and advocating for women's rights.<sup>53</sup> The European Union strongly supports the implementation of international instruments for protection of women's human rights, such as the CEDAW, the United Nation Security Council Resolution 1325 and subsequent resolutions of the Women, Peace and Security agenda, and encourages all member states to implement this important resolution and adopt national action plans for their respective states. A very influential program of the EU on gender mainstreaming and achieving of sustainable equality is Program relating to the Community framework strategy on gender equality 2001-2005, which involves

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<sup>52</sup> Development Alternatives with Women for a New Era (DAWN). *CEDAW General Recommendation 30 (GR 30) on Women in Conflict Prevention, Conflict and Post-Conflict Situations*. 2013. <http://www.dawnet.org/feminist-resources/content/cedaw-gr-30-women-conflict-prevention-conflict-and-post-conflict-situations> (Accessed on 20 September 2014)

<sup>53</sup> Zwingel, Susanne. From Intergovernmental Negotiations to Subnational Change: A Transnational Perspective on the Impact of CEDAW. *International Feminist Journal of Politics*. September, 2005. (pages 400-424) <http://www.lawlib.utoronto.ca/diana/whrr/cfsearch.cfm?sister=utl&type=all&searchstring=INTERNATIONAL%20FEMINIST%20JOURNAL%20OF%20POLITICS> (Accessed on 15 August 2014)

areas, such as “economic life, equal participation and representation on decision-making, social and civil rights and changing of gender roles and stereotypes.”<sup>54</sup> This Program was one of the key EU documents. Its provisions on improving of understandings of issues of gender equality, fighting against direct and indirect discrimination, evaluation and monitoring of policies and practices, as well as developing of the capacity of players to promote gender equality effectively are incorporated in the Resolution on the National Program for Equal Opportunities for Men and Women 2005-2013 of the Republic of Slovenia, and also has an impact on gender mainstreaming within the State Police.

In order to encourage states to implement the UNSCR 1325 and subsequent resolutions of Women, Peace and Security agenda, two documents were adopted by the EU in December 2008: the EU Comprehensive Approach to Implement UNSCR 1325 and 1820 on Women, Peace and Security and the Document on implementing UN Security Council Resolutions 1325 and 1820 within the European Security and Defense Policy. These two, complementary Women, Peace and Security-specific documents are the Comprehensive EU Approach (hereafter CA) to the implementation of UNSCR 1325 and 1820 in the context of European Security and Defense Policy (post-Lisbon known as Common Security and Defense Policy).<sup>55</sup> This approach presents a common EU approach to the implementation of these resolutions and lists a series of specific measures aimed at furthering implementation.

Concrete measures or activities are sub-divided into a number of categories, which lead to awareness rising about gender mainstreaming and about the necessity of the adoption of national action plans, through dialogues, trainings, sharing of information and integration of Women, Peace and Security agenda in all activities including the security sector activities. Some of these activities are also presented by the European Peacebuilding Liaison Office in its *Implementation of UNSCR 1325 in Europe-EU WPS Strategy*, such as political support for implementation

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<sup>54</sup> Resolution on National Program for Equal Opportunities for Men and Women 2005-2013, number: 700-01/05-88/01, Ljubljana: October 2005, EPA 290-IV. Official Gazette of Republic of Slovenia, No. 100/05, November 2005. Page 3.

<sup>55</sup> European Peacebuilding Liaison Office (editor). *UNSCR 1325 in Europe: 21 Case Studies of Implementation*, edited by EPLO.2010. Page 10. [http://www.peacewomen.org/assets/file/Resources/NGO/nat\\_1325implementation21cases\\_eplo\\_jun2010.pdf](http://www.peacewomen.org/assets/file/Resources/NGO/nat_1325implementation21cases_eplo_jun2010.pdf) (Accessed on 10 August 2014)

of UNSCR 1325 and 1820 through dialogues with partner countries, trainings and exchanging of information and best practices, through annual exchange of Member States on the state of implementation of UNSCR 1325. Moreover, this support lies also in the promotion of Women, Peace and Security agenda in security sectors activities, which includes cooperation with the UN and other international actors, as well as by including development of indicators for progress and providing of EU financial instruments for incorporation of gender dimension in all conflict prevention, crisis management and post-conflict activities<sup>56</sup>

Taking Slovenia into consideration these activities and measures had an influence on gender balance and gender mainstreaming in this EU country, not only through programs but also through financial support. As explained in *the Report of the Government of the Republic of Slovenia on the Implementation of the Beijing Declaration and the Platform for Action (1995) from May 2014* “financial resources for implementing gender equality policy are ensured within the budget, as well as through successful applications to tenders issued by the European Commission and within the financial mechanisms of the EU and other financial mechanisms, such as the Norwegian Financial Mechanism.”<sup>57</sup>

When it comes to the State police, in 2008 the General Police Directorate organized at its headquarters the first working consultation on gender equality, with 24 members of the Police staff (i.e. from police directorates and the General Police Directorate) and the Ministry of Interior, where two coordinators for equal opportunities also take a part.<sup>58</sup> It shows that the highest level leaders in the police were for the

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<sup>56</sup> European Peacebuilding Liaison Officer. *Implementation of UNSCR 1325 in Europe*. <http://www.eplo.org/implementation-of-uns-cr-1325-in-europe.html> (Accessed on 11 September 2014)

<sup>57</sup> Government of the Republic of Slovenia. *Report on the Implementation of the Beijing Declaration and Platform for Action (1995) and the Conclusion of the 23rd Special Session of the General Assembly (2000) on the Occasion of the 2nd Anniversary of the Fourth World Conference on Women and Adoption of the Beijing Declaration and Platform for Action in 2005*. May 2014. Page 8. [http://www.unece.org/fileadmin/DAM/Gender/publication/Slovenia\\_National\\_Report.pdf](http://www.unece.org/fileadmin/DAM/Gender/publication/Slovenia_National_Report.pdf) (Accessed on 13 September 2014)

<sup>58</sup> Action Plan of the Republic of Slovenia for the implementation of the United Nations Security Council Resolutions 1325 and 1820 on Women, Peace and Security for the period 2010-2015. Page 40. [http://www.peacewomen.org/assets/image/slovenia\\_nap2011.pdf](http://www.peacewomen.org/assets/image/slovenia_nap2011.pdf)

first time concerned about gender balancing and gender mainstreaming, after the 2008 and CA Strategy for the implementation of the WPS issues, even though the coordinators for equal opportunities were appointed after the adoption of the Act on Equal Opportunities for Men and Women in 2002. This first consultative meeting was also and the first real activity which set out grounds for fighting against stereotypes about proper women's role in the police.

The CA Strategy had also an impact on the increasing of female police officers trained for peacekeeping missions, since till 2009 number of trained female police officers were 2%, while from 2009 till October 2010 this number increased in 1,6 %. The number of trained female police officers in October 2010 was 3, 6%.<sup>59</sup> Beside the fact that the National Action Plan was adopted in 2010, the representatives of the Ministry of Interior took part in the international conference Women in Security System-Resolution 1325 held 2008 in Montenegro (Podgorica), which organization was supported by OSCE and UNDP. This support of the European Union in enhancing and strengthening of the United Nations resolutions on Women, Peace and Security was inevitable and had a positive influence on their implementation in the Republic of Slovenia, and especially on gender balancing and mainstreaming in the State Police, "which high level management started to be interested in inclusion of women not only as secretaries, but also as police officers and investigators and even started their discourse about increasing of women at the highest level positions"<sup>60</sup> says one of the interviewees employed in the State Police Service.

The UNSCR1325 and CEDAW share the agenda on women's human rights and gender equality and demand women's participation in decision-making at all levels, rejection of violence against women, equality of women and men under the law, protection of women and girls through the rule of law, demand security forces and systems to protect women and girls from gender-based violence and ensure

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<sup>59</sup> Action Plan of the Republic of Slovenia for the implementation of the United Nations Security Council Resolutions 1325 and 1820 on Women, Peace and Security for the period 2010-2015. Page 40. [http://www.peacewomen.org/assets/image/slovenia\\_nap2011.pdf](http://www.peacewomen.org/assets/image/slovenia_nap2011.pdf)

<sup>60</sup> Interview with police official. Personal Interview. Written form of interview. Ministry of Interior of Slovenia, General Police Directorate, Police Academy. Ljubljana, 24 June 2014.

that women's experiences, needs and perspectives are incorporated into the political, legal and social decisions that determine the achievement of just and lasting peace.<sup>61</sup> Since dynamic interplay of global and regional actors such as the UN system of the protection of women's human rights as well as activities and measures of the EU were presented above, the following chapter will show the dynamic of the activities of the Slovenian national forces toward gender balancing, presenting the constitutional protection of women's human rights, as well as subsequent acts for regulating gender issues.

## 2. Key national documents toward gender equality

The necessity of ensuring gender equality and gender balance within particular state could not be achieved only by adopting of different international and regional women's human rights documents. On the contrary, this balance and such equality must be called to the attention of the domestic legislation, starting from the constitution. That is why the following sub-chapters present which national documents, besides the constitution where the principle of general equality and the bans on discrimination are so routinely included, as it is a case in the constitutions of the European Union's member states and the candidate countries approved for European Union membership so as to be characterized as a mutual provision,<sup>62</sup> consider gender equality and tend to achieve gender balance in the Slovene society. As presented below, even before 2010 and the adoption of the National Action Plan for the implementation of the UNSCR 1325 and 1820, the Republic of Slovenia undertook important steps towards gender balancing and gender mainstreaming within the state police, based on the Common Foreign and Security Policy of the EU in the fields of security policy,

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<sup>61</sup> Global Network of Women Peace Builders. International Civil Society Action Network. *Ensuring Accountability to UNSCR 1325 and 1820 using CEDAW reporting mechanisms*. [www.gnwp.org/wp-content/uploads/2010/11/Cedaw-1325-1820-synergy2.pdf](http://www.gnwp.org/wp-content/uploads/2010/11/Cedaw-1325-1820-synergy2.pdf). (Accessed on 8 August, 2014).

<sup>62</sup> Kuzeci, Elif. "Gender Equality in the Constitution of the Republic of Turkey". *Ankara Bar Review*, 2008/2. (pages 18-26) <http://www.ankarabaru.org.tr/siteiler/AnkaraBarReview/tekmakale/2008-2/3.pdf> (Accessed on 8 August 2014)

human rights and development cooperation.<sup>63</sup>

## 2.1. The Constitution of the Republic of Slovenia

The Constitution of the Republic of Slovenia, like constitutions of all other the European Union countries include the principle of absolute gender equality and entitles women to the same rights as men. The constitution as the bill of rights has tremendous impact on women and obliges Slovenia to ensure attainment of gender equality, by adopting new laws and even special provisions toward gender balancing in all areas of its consolidated democracy. From women's organizations point of view, constitutions are well-recognized markers for countries and their citizens, which provide a framework for the rights and responsibilities of people and present a mirror to the way people are governed.<sup>64</sup>

The Constitution was amended 2004 based on the recommendations of the Committee on the Elimination of All Forms of Discrimination against Women. Accordingly, in June 2004 the National Assembly adopted the Constitutional Act amending the Article 43 of the Constitution of the Republic of Slovenia by which it added to the provision on the universal and equal right to vote a new paragraph conferring the power of the legislator to determine the law measures for encouraging the equal opportunities of women and men standing

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<sup>63</sup> Action Plan of the Republic of Slovenia for the implementation of the United Nations Security Council Resolutions 1325 and 1820 on Women, Peace and Security for the period 2010-2015. Page 33. [http://www.peacewomen.org/assets/image/slovenia\\_nap2011.pdf](http://www.peacewomen.org/assets/image/slovenia_nap2011.pdf)

<sup>64</sup> UN Women. United Nations Entity for Gender Equality and the Empowerment of Women. *UN Women launches first-ever database mapping gender provisions in constitutions worldwide*. New York. 2013. <http://www.unwomen.org/en/news/stories/2013/12/un-women-launches-first-ever-database-mapping-gender-provisions-in-constitutions-worldwide> (Accessed on 8 September 2014)

for the election to state authorities and local community authorities.<sup>65</sup> This is one of the examples of the positive influence of the international documents for striving toward equal opportunities for men and women. Moreover, Article 8 regulates “that laws and regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia.”<sup>66</sup> With international documents and in this case the CEDAW, which regulate women’s human rights and demand for progress reports by the United Nations’ member states, women’s human rights protection is not left and closed within the state boundaries, but rather supervised and worldwide spread.

Thus, according to the research conducted by the UN Women which launched the first ever database for mapping gender provisions in constitutions worldwide and their compatibility with the CEDAW provisions, taking into account several areas, such as employment, equality and equality before the law, limitations and/or derogations, marriage and family life, non-discrimination, reproductive rights, general human rights guarantees, each of these areas are also incorporated in the Constitution of the Republic of Slovenia. General human rights guarantees are prescribed in the Preamble of the Constitution which is adopted “proceeding from [.....] fundamental human rights and freedoms.”<sup>67</sup> while non-discrimination in employment is guaranteed by the Article 49 of the Constitution which prescribes that freedom of work shall be guaranteed and that everyone shall choose his/her deployment freely and have access under equal conditions to any position of

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<sup>65</sup> United Nations Convention on the Elimination of All Forms of Discrimination against Women. Consideration of reports submitted by the states parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. Fourth Periodic report on states parties. Slovenia. CEDAW/C/SVN/4. May 2007.

<http://daccess-ddsny.un.org/doc/UNDOC/GEN/N07/351/29/PDF/N0735129.pdf?OpenElement> (Accessed on 9 September 2014)

<sup>66</sup> Constitution of the Republic of Slovenia. Official Gazzete of the Republic of Slovenia, No. 68/06, Ljubljana, 30 June 2006. <http://www.us-rs.si/media/ustava.pdf.pdf> (Accessed on 12 September 2014)

<sup>67</sup> Information Commissioner of the Republic of Slovenia. *The Constitution of the Republic of Slovenia*. <https://www.ip-rs.si/index.php?id=333> (Accessed on 12 September 2014)

employment.<sup>68</sup>

Equality and Equality before the Law is prescribed by the Articles 14 and 22 which say that everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability or any other personal circumstance. All are equal before the law and everyone shall be guaranteed equal protection of rights in any proceeding.<sup>69</sup> The Article 63 prohibits discrimination, prescribing that any incitement to national, racial, religious or other discrimination, and the inflaming of national, racial, religious or other hatred and intolerance are unconstitutional, as well as incitement of violence and war.<sup>70</sup> Non-discrimination is also prescribed in areas of Marriage and Family Life (Articles 53 and 54), Reproductive Rights (Article 55) as well as in the part of Limitation and Derogations, which are prescribed by Articles 153 and 16.

Constitutional entrenching of women's rights does not mean at the same time and immediate actions toward gender balance. Taking the Slovene society in general persistent gender differences require continuous elimination of barriers to the full participation of women in the labor market and in political, public and economic/financial decision-making. That is why it is important to combat deeply rooted and newly emerging gender stereotypes that determine women's and men's roles in society.<sup>71</sup> According to the Tamara Lah and *The Slovenian National Report of Helsinki Group on Women and Science* there is no legal and/or direct gender discrimination in Slovenia, but because of

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<sup>68</sup> Constitution of the Republic of Slovenia. Official Gazzete of the Republic of Slovenia, No. 68/06, Ljubljana, 30 June 2006. <http://www.us-rs.si/media/ustava.pdf.pdf> (Accessed on 12 September 2014)

<sup>69</sup> Ibid.

<sup>70</sup> Information Commissioner of the Republic of Slovenia. *The Constitution of the Republic of Slovenia*. <https://www.ip-rs.si/index.php?id=333> (Accessed on 12 September 2014)

<sup>71</sup> Government of the Republic of Slovenia. *Report on the Implementation of the Beijing Declaration and Platform for Action (1995) and the Conclusion of the 23rd Special Session of the General Assembly (2000) on the Occasion of the 2nd Anniversary of the Fourth World Conference on Women and Adoption of the Beijing Declaration and Platform for Action in 2005*. May 2014. Page 21. [http://www.unece.org/fileadmin/DAM/Gender/publication/Slovenia\\_National\\_Report.pdf](http://www.unece.org/fileadmin/DAM/Gender/publication/Slovenia_National_Report.pdf) (Accessed on 13 September 2014)

an outmoded attitudes toward women in society and family women are under-represented in higher decision-making positions.<sup>72</sup>

Nevertheless, this “legalization of gender equality” was the very first and basic step of the independent Republic of Slovenia toward ensuring elimination of gender-based discrimination and advancing women’s rights. Laws, regulations, as well as acts of state authorities and general legal acts must be in accordance with the principles of the international law, ratified treaties and constitution.<sup>73</sup> The recognition of these rights in Slovenia are presented below through the elaboration of the key national acts for women empowerment, which are The Act on Equal Opportunities for Men and Women, The Resolution on National Program on Equal Opportunities for Women and Men 2005-2013, as well as the Slovenian National Action Plan for the implementation of the United Nations Security Council Resolution 1325.

## **2.2. The Act on Equal Opportunities for Men and Women**

In 2002 Slovenian Government adopted the Act on Equal Opportunities for Men and Women, which proposes general as well as special measures in order to provide balanced representation of women and men and promotion of gender equality in specific fields of social life, which placed Slovenia among the countries that regulate the gender equality principle with special acts.<sup>74</sup> The Act defines gender equality and equal treatment of women and men as a government policy and introduces gender mainstreaming as a strategy for achieving gender equality.<sup>75</sup> Gender mainstreaming brought about a discontinuance of the traditional way of work and gender equality policy became an integral part of any sectorial policy or sphere of activity of individual ministries

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<sup>72</sup> Lah, Turnšek. *Slovenian National Report*. Helsinki Group on Women and Science.2000. [http://ec.europa.eu/research/scienc society/pdf/women\\_national\\_report\\_slovenia.pdf](http://ec.europa.eu/research/scienc society/pdf/women_national_report_slovenia.pdf). (Accessed on 12 September 2014)

<sup>73</sup> Constitution of the Republic of Slovenia. Official Gazette of the Republic of Slovenia, No. 68/06, Ljubljana, 30 June 2006. <http://www.us-rs.si/media/ustava.pdf.pdf> (Accessed on 12 September 2014)

<sup>74</sup> The Advocates for Human Rights. *Violence against Women in Slovenia*.2010. <http://www.stopvaw.org/slovenia> (Accessed on 12 September 2014)

<sup>75</sup> Act on Equal Opportunities for Men and Women. No. 700-01/02-70/1. Government of the Republic of Slovenia. Ljubljana, 21 June 2002.

and government agencies. This strategy involves a multidisciplinary process in which separate bodies responsible for the formulation of their respective policies consistently integrate the principle of gender equality in their planning, formulation, implementation, follow-up and evaluation of policies.<sup>76</sup>

The Act is consisted of six parts, namely General Provisions, Definition of Terms, Adoption of Special Measures, and that Responsible for Tasks, their Competences and Obligations, Penalty Provisions and Transitional and Final Provisions. This is the first Act in Slovenia which regulates in its Article 7 that non-balanced representation of one gender means the representation of one gender in a specific field of social life or in a part of such a field lower than 40%.<sup>77</sup> The Act prescribes gender equality as equal participation of women and men in all fields of public and private life. Moreover, equal status, equal opportunities for the exercise of all rights and for the development of women's and men's personal potentials by which they contribute to social development, as well as equal benefit from the results arising from development are also stipulated by this Act.<sup>78</sup>

While Articles 6 and 7 define general and special measures in order to achieve gender balancing, Articles 8 and 9 regulate adoption of positive as well as encouraging and program measures. Positive measures are special measures that give priority, in the case of an equal degree of fulfilment of the prescribed standards and conditions, to persons of the gender which is underrepresented or which is experiencing unequal status, until balanced or equal representation is achieved.<sup>79</sup> According to the Article 8 of the Act on Equal Opportunities for Men and Women positive measures may be adopted in the fields of education, employment, professional life, public or political activity and elsewhere within the framework of specific fields of social life, as well as by state authorities in accordance with their structure and procedures,

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<sup>76</sup> Resolution on National Program for Equal Opportunities for Men and Women 2005-2013, number: 700-01/05-88/01, Ljubljana: October 2005, EPA 290-IV. Official Gazette of Republic of Slovenia, No. 100/05, November 2005. Page 2.

<sup>77</sup> Act on Equal Opportunities for Men and Women. No. 700-01/02-70/1. Government of the Republic of Slovenia. Ljubljana, 21 June 2002.

<sup>78</sup> Act on Equal Opportunities for Men and Women, number: 700-01/02-70/1. Government of Republic of Slovenia. Ljubljana, 21 June 2002.

<sup>79</sup> Ibid.

other bodies in the public sector, economic operators, political parties and civil society organizations. These bodies shall provide positive measures within the framework of action plans for the promotion and establishment of equal opportunities, based on an analysis of the status of women and men within their field of work. An action plan shall specify the reasons for the adoption of positive measures and aims to be achieved by means of these measures.<sup>80</sup>

Even though introducing of quotas and special and positive measures in order to achieve gender balance and sustainable equality is proposed by the CEDAW, what is my concern according to the research conducted within the State Police Service is the fact that it took ten years for introducing of these important elements in the text of the national act of the Republic of Slovenia, as consolidated democratic country. The question how many years will be needed for translating of these provisions into practice is even more concerning and uncertain, especially when it comes to quotas and special measures in the State Police, where there is a huge resistance visible when male police officers are asked about quotas and special measures naming them positive discrimination and putting of male police officers in unfavorable position in comparison with female police officers. As one of high-positioned male police official said during the interview: „I have nothing against that women being deployed in peacekeeping missions, and I personally think that there are even more important for peacekeeping missions and our police activities there, since it is more about protection of human rights, protection of women and children from violence, recognizing special women’s and girls’ needs in post-conflict situation, where we are included as police officers, and I support their inclusion, but this exaggerating with quotas, it is not fair and I do not support that! No discrimination is acceptable, but introducing of quotas means positive discrimination from my point of view”<sup>81</sup>

Beside the establishment of the official Advocate for Equal Opportunities for Women and Men who will investigate reports of gender discrimination, the Act on Equal Opportunities for Men and Women introduces coordinators for equal opportunities for men and

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<sup>80</sup> Ibid.

<sup>81</sup> Interview with police official. Tape recording. Ljubljana, 3 July 2014.

women, based on the article 13 of the Act.<sup>82</sup> Even though they are appointed in 2002, the first meeting with the highest level management of the Slovenian Ministry of Interior and its coordinators was held in 2008, after the issuing of the EU CA to the implementation of UNSCR 1325 and 1820, which accelerated activities of gender mainstreaming and started the process of the challenging of stereotypes within the State Police of Slovenia. The role of the coordinators for equal opportunities within the Slovenian Ministry of Interior has been changing since 2002, as presented in the third chapter of this thesis.

For the experts who work on gender mainstreaming and human rights mainstreaming issues in the State Police, this meeting marked the new era of the Slovenian Police. As they explained during the interview:

activities on gender mainstreaming are not possible in any world's police without the support of the highest level management. This meeting showed that we had support of the highest level management to accelerate those processes and finally start to fight against stereotypes which are our severe enemy. Nowadays it is very important for us that our deputy of the director is a woman. And for you in Bosnia, as soon as you appoint woman at some position that she can decide about these issues, I am sure from our Slovenian experience that this process will be accelerated and have more visible results. But you must be prepared to fight with ghosts, stereotypes about our (women and men) appropriate roles.<sup>83</sup>

Articles 15, 16 and 17 of the Act, are considered as the ground articles for activities toward the implementation of the Resolution on the National Program on Equal Opportunities for Women and Men 2005-2013. These articles prescribe that government should prepare national program for equal opportunities for men and women, which must contain proposals of ministries, the Office for Equal Opportunities, local communities, civil society organizations, and individual experts, and shall define basic equal opportunities policies, which implementation

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<sup>82</sup> Bobnar, Tatjana. Interview by Nermina Jerković. Ministry of Interior of Slovenia, General Police Directorate, Service of the Director General of the Police. Ljubljana, 26 June 2014.

<sup>83</sup> Interview with police official. Personal Interview. Written form of interview. Ministry of Interior of Slovenia, General Police Directorate, Police Academy. Ljubljana, 24 June 2014.

will be evaluated by the National Assembly, since government should report every two years to the National Assembly about measures and activities that have been carried out in the past biennial period.<sup>84</sup> The Resolution was prepared by the Government and adopted by the National Assembly in 2005 for the period from 2005 till 2013 in pursuant to above mentioned articles. In the next subchapter this Resolution, its main aims, and proposed activities toward sustainable gender equality in Slovenia are presented in more details.

### **2.3. The Resolution on National Program on Equal Opportunities for women and men 2005-2013**

In addition to legislation, the Resolution on the National Program for Equal Opportunities for Men and Women 2005-2013 was adopted, in pursuant to Article 15 of the Act on Equal Opportunities for Women and Men. The Resolution is a strategic document for achieving sustainable equality in Slovenia and it boosted gender equality policy as the duty of the entire society in which all branches of power and all government structures must take responsibility for implementing gender equality policy.<sup>85</sup> It defines objectives and measures as well as key policy makers for the promotion of gender equality in different areas of life of women and men in the Republic of Slovenia for the period 2005 – 2013, with “the main aim to improve the status of women and/or ensure sustainable development in the realization of gender equality.<sup>86</sup> The six priority areas are developed by the Resolution which sets out

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<sup>84</sup> Act on Equal Opportunities for Men and Women, number: 700-01/02-70/1. Government of Republic of Slovenia. Ljubljana, 21 June 2002.

<sup>85</sup> Government of the Republic of Slovenia. *Report on the Implementation of the Beijing Declaration and Platform for Action (1995) and the Conclusion of the 23rd Special Session of the General Assembly (2000) on the Occasion of the 2nd Anniversary of the Fourth World Conference on Women and Adoption of the Beijing Declaration and Platform for Action in 2005*. May 2014. Page 2. [http://www.unece.org/fileadmin/DAM/Gender/publication/Slovenia\\_National\\_Report.pdf](http://www.unece.org/fileadmin/DAM/Gender/publication/Slovenia_National_Report.pdf) (Accessed on 13 September 2014)

<sup>86</sup> Resolution on National Program for Equal Opportunities for Men and Women 2005-2013, number: 700-01/05-88/01, Ljubljana: October 2005, EPA 290-IV. Official Gazette of Republic of Slovenia, No. 100/05, November 2005. Page 1.

gender mainstreaming as a priority,<sup>87</sup> based on the EU Directives which are required to be adopted by member states in order to undertake measures and promote equal opportunities and equal treatment of men and women in various areas.<sup>88</sup> This Resolution shows that support of the European Union and obligation of the member states to harmonize their legislation with legislation of the European Union was influential for these priority areas, which are “gender mainstreaming, employment, knowledge-based society, social welfare, gender relations and decision making positions.”<sup>89</sup>

The objectives and measures are also set out as “guidelines for ministries and other governmental bodies that are obliged to integrate those measures into their planning and implementation for their respective policies and programs and are to be further elaborated and

<sup>87</sup> European Institute for Gender Equality. *Study on gender training in the European Union: mapping, research and stakeholders engagement* (2012-2013). Slovenia. <http://eige.europa.eu/sites/default/files/documents/MH3012954ENN.pdf> (Accessed on 12 September 2014)

<sup>88</sup> Directive 75/117/EEC on the approximation of the laws of member states relating to the application of the principle of equal pay for men and women; Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions; Directive 2002/73/EC amending Directive 76/207/EEC; Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security; Directive 86/378/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security; Directive 86/613/EEC on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood; Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding; Directive 96/34/EC on the framework agreement on the parental leave concluding by UNICE, CEEP and the ETUC; Directive 97/80/EC on the burden of proof in cases of discrimination based on sex.

<sup>89</sup> Resolution on National Program for Equal Opportunities for Men and Women 2005-2013, number: 700-01/05-88/01, Ljubljana: October 2005, EPA 290-IV. Official Gazette of Republic of Slovenia, No. 100/05, November 2005. Page 5.

given concrete form in periodic plans.” The Resolution strengthens the Act on Equal Opportunities for Men and Women, and obliges all bodies to report about their implementation activities through periodic plans, encouraging also the implementation of special measures aiming at gender equality, defined in the Act. The role and activities of coordinators for equal opportunities, introduced by the Act, are also elaborated by the Resolution. Coordinators monitor preparations of programs and measures and their compliance with the principle of gender equality, make proposals for policies and measures in order to promote gender equality and they participate in preparing of national programs and periodic plans. The appointment of the coordinators for equal opportunities in the State Police Service will be presented in the Chapter 3.

Implementation of the National Program and in the same time elaboration of the Act on Equal Opportunities for Men and Women is provided by next steps: introduction of periodic plans, to be submitted as reports by each ministry presenting two-year activities on gender equality; data and indicators which measure progress and monitor status of women and men in above mentioned areas, which should be harmonized and comparable on the European Union level; monitoring, reporting and publicity and recourses which must be allocated for gender mainstreaming activities by each individual ministry within their respective budgets.<sup>90</sup> Lastly, the Resolution defines the amount of recourses allocated for introduction of special measures and also shows advantage of the being a member of the European Union, since the European Union allocated more than half of overall resources for the special measures in the period 2005-2013. While all above-mentioned legislation affects the Slovenian Society as a whole, the Slovenian National Action Plan for the implementation of the Resolution 1325 affects security sector of the Republic of Slovenia. The National Action Plan of the Republic of Slovenia is elaborated in the following subchapter.

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<sup>90</sup> Ibid. Page 11, 12.

## **2.4. National framework for the implementation of the UNSCR 1325: Slovenian National Action Plan**

Even though Slovenia adopted the above mentioned legislative acts on gender mainstreaming, as well as the Resolution on the National program for Equal Opportunities for Men and Women 2005-2013, government did not undertake any steps toward implementation of the UNSCR 1325 on Women, Peace and Security till 2010. Civil society or precisely CEE Network for Gender Issues had a key role for the awareness rising of the Slovenian Government about the importance of the implementation of the UNSCR 1325 and related resolution from Women, Peace and Security agenda. Even more, CEE influenced the Slovenian Government's basic steps toward establishment of the special inter-ministerial group which was formed in late 2009 to produce a NAP to implement UNSCR 1325 in Slovenia, which "did not include civil society in the process of drafting of the NAP."<sup>91</sup>

It is worthy to mention that strong consolidated democratic European Union countries, such as Germany, also showed reluctance toward the adoption of the National Action Plan, explaining that Germany has incorporated gender mainstreaming and fighting violence against women in some previous plans what also means implementation of the UNSCR 1325.<sup>92</sup> Nevertheless, Germany adopted the National Action Plan for the Implementation of the UNSCR 1325 in 2013. The same reason was provided by Slovenia for non-adoption of the National Plan for the implementation of the UNSCR 1325. According to the report of CEE Network for Gender Issues till June 2008 the document had not even been translated into Slovenian and the Ministry of Defense was not aware of the adoption of the Resolution, while Ministry of Foreign Affairs did not have the documents relating to either UNSCR 1325 or

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<sup>91</sup> European Peacebuilding Liaison Office (editor). *UNSCR 1325 in Europe: 21 Case Studies of Implementation*. 2010. Page 58. [http://www.peacewomen.org/assets/file/Resources/NGO/nat\\_1325implementation21cases\\_eplo\\_jun2010.pdf](http://www.peacewomen.org/assets/file/Resources/NGO/nat_1325implementation21cases_eplo_jun2010.pdf) (Accessed on 10 August 2014)

<sup>92</sup> European Peacebuilding Liaison Office. *Implementation of UNSCR 1325 in Europe*. <http://www.eplo.org/implementation-of-unscr-1325-in-europe.html> (Accessed on 2 October 2014)

UNSCR 1820.<sup>93</sup>

The main objectives of the NAP of the Republic of Slovenia for the implementation of the UN Security Council Resolution 1325 and 1820 are: gender mainstreaming into policies for conflict prevention and resolution and into decision-making and implementation processes, strengthening of the role of local women in conflict prevention and post-conflict reconstruction; increased participation of women in international peace operations and missions and in peace-building; and prevention of sexual violence against girls and women and their protection during and after armed conflicts.<sup>94</sup> From the aims set up by the Slovenian government it can be concluded that the main emphasis of the NAP of the Slovenia is strengthening of the role of women in preventing and resolving of armed conflicts in order to ensure and maintain international peace and security, while gender mainstreaming of other areas of the society are considered as included and elaborated by the Resolution on the National Program for Equal Opportunities for Men and Women.

However, when it comes to the responsibility of the Ministry of Interior, based on the National Action Plan, there are mostly emphasized in the second objective of the Plan which is Increased Participation of the Women in International Peace Operations and Missions and Peace-building.<sup>95</sup> According to this objective, activities that are to be undertaken by security institutions and also Ministry of Interior are as following: increasing of number of women in international operations and missions (hereafter IOM) and encouraging of women to participate in IOMs; encourage political and public dialogue at national level for increased participation of women as decision- makers in national security institutions, as well as of women as decision-makers in IOMs and encouraging of women to take on more responsible positions and

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<sup>93</sup> European Peacebuilding Liaison Office (editor). *UNSCR 1325 in Europe: 21 Case Studies of Implementation*. 2010. Page 58. [http://www.peacewomen.org/assets/file/Resources/NGO/nat\\_1325implementation21cases\\_eplo\\_jun2010.pdf](http://www.peacewomen.org/assets/file/Resources/NGO/nat_1325implementation21cases_eplo_jun2010.pdf) (Accessed on 10 August 2014)

<sup>94</sup> Action Plan of the Republic of Slovenia for the Implementation of the United Nations Security Council Resolutions 1325 and 1820 on Women, Peace and Security for the period 2010-2015. Page 3. [http://www.peacewomen.org/assets/image/slovenia\\_nap2011.pdf](http://www.peacewomen.org/assets/image/slovenia_nap2011.pdf) (Accessed on 15 July, 2014)

<sup>95</sup> Ibid. Page 3.

duties and assuring increased number of women in decision making processes.<sup>96</sup>

If we compare NAP with the Resolution on the National Program for Equal Opportunities for Men and Women few conclusions can be drawn. Firstly, the Resolution is more comprehensive and encompasses entire society in which all branches of power and all government structures must take responsibility for implementing a gender equality policy, which also include and the security sector institutions, while the National Action Plan is more oriented on the security institutions of the country, as it is explained in the UN Women publication *Women and Peace and Security: Guidelines for National Implementation*,<sup>97</sup> and includes key institutions for the implementation of the UNSCR 1325, which are Ministry of Defense, Ministry of Interior, Ministry of Justice, the Ministry for Public Administration, as well as Ministry of Foreign Affairs of the Republic of Slovenia, as a key institution for political commitments.<sup>98</sup> Secondly, the Resolution puts the biggest emphasis on the fight against domestic violence, and mostly, in this context, evaluates the work of the security sector institutions, especially police, while the NAP triggers increased participation of women deployed in international operations and presents the first document which for the first time also demands increased participation of women at the decision-making positions.

Thirdly, the Resolution and the NAP have time framework, but there are no strict deadlines, which is considered an advantage, since it means that each country has a lot of room for finding specific solutions depending on specific conditions and developed legislation in

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<sup>96</sup> Action Plan of the Republic of Slovenia for the Implementation of UN Security Council Resolutions 1325 and 1820 on Women, Peace and Security for the period 2010-2015. Page 26. [http://www.mzz.gov.si/fileadmin/pageuploads/Zunanja\\_politika/CP/NAP\\_1325\\_Slovenia\\_eng.pdf](http://www.mzz.gov.si/fileadmin/pageuploads/Zunanja_politika/CP/NAP_1325_Slovenia_eng.pdf) (Accessed on 14 September 2014)

<sup>97</sup> UN Women. United Nations Entity for Gender Equality and Women Empowerment. *Women and Peace and Security: Guidelines for National Implementation*. <http://www.unwomen.org/~media/Headquarters/Media/Publications/en/02BPlanonWomenandPeaceandSecurity.pdf> (Accessed on 11 September 2014)

<sup>98</sup> Action Plan of the Republic of Slovenia for the Implementation of UN Security Council Resolutions 1325 and 1820 on Women, Peace and Security for the period 2010-2015. Page 11. [http://www.mzz.gov.si/fileadmin/pageuploads/Zunanja\\_politika/CP/NAP\\_1325\\_Slovenia\\_eng.pdf](http://www.mzz.gov.si/fileadmin/pageuploads/Zunanja_politika/CP/NAP_1325_Slovenia_eng.pdf) (Accessed on 14 September 2014)

particular country.<sup>99</sup> However, it must not be forgotten that no specific timeframe also means enough space for maneuvering for countries who are not willing to accept and change gender gap situation in practice, but so willingly accept to adopt the National Action Plan for the implementation of the UNSCR 1325, which is the case, for example, in Bosnia and Herzegovina. Fourthly, for the adoption of both documents the European Union proposals and instruments played a crucial role, as for the adoption of the Resolution there were the Program relating to the Community framework strategy on gender equality 2001-2005 and above mentioned EU Directives, while for the NAP it was the EU Comprehensive Approach to Implement UNSCR 1325 and 1820 on Women, Peace and Security and the Document on Implementing UNSCR 1325 and 1820 within the European Security and Defense Policy, “which encouraged member states to draw up national action plans.”<sup>100</sup>

Moreover, when it comes to monitoring, reporting and publicity, the Resolution is more state-oriented, while on the other hand NAP is more monitored and evaluated internationally. Thus, according to the Resolution two-year activity reports are prepared and submitted to the National Assembly, while reporting on the activities based in the NAP are “coordinated by the Ministry of Foreign Affairs, within the framework of the international obligations”<sup>101</sup> according which every UN member state must prepare four-year reports to the Secretary General, who has been also tasked by the Security Council to prepare annual reports on the “worldwide progress and challenges for the implementation of the

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<sup>99</sup> Helsinki Committee for Human Rights in Serbia. *Report on the Status of Implementation of UNSC Resolution 1325 in the Western Balkans*. Helsinki Files No. 31. Belgrade: Helsinki Committee for Human Rights in Serbia. 2012. Page 82.

<sup>100</sup> Action Plan of the Republic of Slovenia for the Implementation of UN Security Council Resolutions 1325 and 1820 on Women, Peace and Security for the period 2010-2015. Page 2. [http://www.mzz.gov.si/fileadmin/pageuploads/Zunanja\\_politika/CP/NAP\\_1325\\_Slovenia\\_eng.pdf](http://www.mzz.gov.si/fileadmin/pageuploads/Zunanja_politika/CP/NAP_1325_Slovenia_eng.pdf) (Accessed on 14 September 2014)

<sup>101</sup> Action Plan of the Republic of Slovenia for the Implementation of UN Security Council Resolutions 1325 and 1820 on Women, Peace and Security for the period 2010-2015. Page 13. [http://www.mzz.gov.si/fileadmin/pageuploads/Zunanja\\_politika/CP/NAP\\_1325\\_Slovenia\\_eng.pdf](http://www.mzz.gov.si/fileadmin/pageuploads/Zunanja_politika/CP/NAP_1325_Slovenia_eng.pdf) (Accessed on 14 September 2014)

Women, Peace and Security framework”<sup>102</sup> and who continuously calls upon all member states to adopt special measures in order to increase women’s participation in their respective security organizations.<sup>103</sup>

Even though the first and the second chapters show that the past century has seen a transformation by expanding the scope of women’s legal entitlements, for most of the world’s women those entitlements are not translated from papers into practical equality and justice. In many contexts, in rich and poor countries alike, the infrastructure of justice – the police, the courts and the judiciary – is failing women, which manifests itself in poor services and hostile attitudes from the very people whose duty is to fulfil women’s rights.<sup>104</sup> It means that all international and national documents, programs and plans on gender mainstreaming have the potential of being an effective tool for the gender equality achievements only if a comprehensive process is undertaken and as long as there are recognized as a means to an end rather than an end in and of themselves. All the above mentioned documents as a legal basis for increased participation of women in the State Police Service played a very important role, from more comprehensive Constitution, the Act for Equal Opportunities for Man and Women, as well as The Resolution on the National Program for Equal Opportunities for Men and Women 2005-2013 to more security sector concentrated the National Action Plan on the implementation of the UNSCR 1325 which influence is presented below.

Even though Oudroot argues that “gender balancing as proposed by the Resolution 1325 has to do with equal rights and the rebalancing of the number of women and men engaged in international peace and

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<sup>102</sup> Women, Peace and Security-Building bridges. *A Guide to the Basic and Intricacies of the Women, Peace and Security Framework*. [http://www.resdal.org/wps/tools\\_03.html](http://www.resdal.org/wps/tools_03.html) (Accessed on 14 September 2014)

<sup>103</sup> United Nations Security Council. *Report of the Secretary General on Women, Peace and Security, number S/2013/525*. September 2013. (pages 1-30). Page 17. [http://www.resdal.org/wps/assets/wps\\_sept2013\\_sgreport.pdf](http://www.resdal.org/wps/assets/wps_sept2013_sgreport.pdf) (Accessed on 14 September 2014)

<sup>104</sup> UN Women. United Nations Entity for Gender Equality and the Empowerment of Women. *In Pursuit of Justice 2011-2012. Progress of the World’s Women*. New York. 2011. Page 7.

security policies”<sup>105</sup> this paper shows that the Resolution firstly demands gender balancing and gender mainstreaming within the member states security areas. Thus, forgotten and still not well researched is the impact of the Resolution on the national peace and security. What this thesis shows is a huge impact of the Resolution 1325 on increasing of trained female police officials in law enforcement organizations, in order to be included and deployed in international peace keeping missions. It must be always underlined that the United Nations do not have its own police, army or any repressive apparatus, even though the main purpose of the UN is to maintain the international peace and security.<sup>106</sup> This means that the UN system relies totally on the police and army of the member states to compose each and every peace keeping mission. Consequently, if women are not included in security institutions of the member states, gender balancing and gender mainstreaming will not be achieved internationally, what is recognized by the Resolution 1325 as an obstacle for sustainable peace and security.

Thus, the next chapter is based on the research that I conducted in the State Police of the Republic of Slovenia and shows what activities on gender mainstreaming have been undertaken since 2002 by the Police in order to incorporate the above mentioned legislative instruments into practice. Two specific investigated areas are employment of women within the police and increased participation of women deployed in peacekeeping missions. The complementarity of the CEDAW and the Resolution 1325 is also presented. This research shows that CEDAW indirectly influenced increased employment of female police officers, through provisions in the Constitution, in the Act on Equal Opportunities for Man and Women and in the Resolution on National Program on Equal Opportunities for Women and Men 2005-2013. The Resolution 1325 triggered increasing the number of trained and deployed female police officers in peace keeping missions. Difficulties in increasing the

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<sup>105</sup> De Jonge Oudraat, Chantal. “International Interactions: UNSCR 1325-Conundums and Opportunities”. 39. Routledge, Taylor and Francis Group. 2003 (pages 614-621) Page 615. <http://wiisglobal.org/wordpress1/wp-content/uploads/2014/02/UNSCR-1325%E2%80%94Conundrums-and-Opportunities.pdf> (Accessed on 10 September 2014)

<sup>106</sup> United Nations. *Charter of the United Nations*. 24 October 1945, 1 UNTS XVI. <http://www.refworld.org/docid/3ae6b3930.html> (Accessed on 9 September 2014)

number of women at decision-making levels within the Republic of Slovenia's Police is still very much linked with the absence of public discourse and fighting stereotypes about which positions should men and women hold in a society.

### **3. From theory to practice. Gender mainstreaming within the State Police Service of the Republic of Slovenia**

For the Republic of Slovenia as the European Union's democratic country it is very important to implement the CEDAW and the UNSCR 1325 what will further contribute not only to empower women, but also to provide human rights mainstreaming, in accordance with international human rights obligations and in line with the EU human rights guidelines. The gender equality principle and any activity in this direction is supported by the highest level of the Slovenian police management, since it is clear that even though many international resolutions are implemented women are still discriminated against in the Slovenian society. As the Deputy of the Director General of the Slovenian Police, Mrs. Tatjana Bobnar emphasizes discrimination of women is still present in the Slovenian society and the elimination of all forms of gender discrimination and the implementation of the gender equality principle is an important area for each and every society. Accordingly, police services of these societies must implement various international declarations and resolutions which regulate gender issues which are very important for international peace and security.<sup>107</sup>

Even though sex-role stereotypes relating to the nature of women and men and the "appropriate" work for each sex were and still is pervasive in Slovene society<sup>108</sup>, the State Police Service undertook concrete steps not only to include women, but also to challenge the

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<sup>107</sup> Bobnar, Tatjana. Interview by Nermina Jerković. Ministry of Interior of Slovenia, General Police Directorate, Service of the Director General of the Police. Ljubljana, 26 June 2014.

<sup>108</sup> United Nations Committee on the Elimination of Discrimination Against Women. *Concluding Observations: Slovenia*. 1997. U.N. Doc. A/52/38/Rev.1. <http://www1.umn.edu/humanrts/cedaw/cedaw-slovenia.htm> (Accessed on 8 September 2014)

stereotypes of appropriate work, due to the fact that the Republic of Slovenia has experienced the advantage of female inclusion in police since 1936. As states in the European Network of Policewomen Newsletter the first women police officer in Slovenia who joined the Slovenian police as early as in 1936 was Danica Lovrečić Melihar who even headed the Ljubljana Police Directorate, in times when women in police were mostly secretaries. She was the only police officer not only in Slovenia, but also on the territory of the former Yugoslavia.<sup>109</sup> With the adoption of the CEDAW and other related resolutions and directives of the European Union which regulates gender issues, the process of women inclusion in security sector was accelerated, where support of the highest level of management of the Slovenian Police has been inevitable and strong since Slovenian independence and even more precisely from 2002 onward. This year is understood as the beginning of the new era of the Slovenian Police with strategic inclusion of female police officers in the service.

The Slovenian State Police has been ahead the Slovenian government when it comes to the activities toward the implementation of the UNSCR 1325 and took part in the international conference *Women in Security System – Resolution 1325 UNSC*, held in October 2008 in Montenegro (Podgorica). The conference was organised by the Government of Montenegro and supported by OSCE and UNDP. The hosts and representatives from Slovenia, Serbia, Croatia, Bosnia and Herzegovina, and Albania, and from the Geneva Centre for Democratic Control of Armed Forces and non-governmental organisations took part in the conference. A representative of the Slovenian Police presented information on the representation of women in various services and international civil and military missions, legislative activities and activities relating to domestic violence.<sup>110</sup> It shows that even before the adoption of the National Action Plan for the implementation of the UNSCR 1325 and 1820 by the Slovenian Government, the Ministry

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<sup>109</sup> “Slovenian Police celebrate 40 years of systematic employment of women. “ Newsletter Edition. Spring 2013. European Network of Policewomen Head Office, Amersfoort. 2013. (pages 1-12) Page 2.

<sup>110</sup> Action Plan of the Republic of Slovenia for the implementation of the United Nations Security Council Resolutions 1325 and 1820 on Women, Peace and Security for the period 2010-2015. [http://www.peacewomen.org/assets/image/slovenia\\_nap2011.pdf](http://www.peacewomen.org/assets/image/slovenia_nap2011.pdf) (Accessed on 2 July, 2014).

of Interior of Slovenia started to show interest in those resolutions, considering them as very important guidance for gender mainstreaming within the security sector and improvement of the security of the country.

As proposed by the Secretary General in his last *Report on Women, Peace and Security* from September 2013 “troop-contributing countries should send at least the same proportion of female peacekeepers as in their national forces”<sup>111</sup>, while in the same time “the Department of Peace Keeping Operations has set a target of 20 percent of female police participation in peace keeping operations till 2014.”<sup>112</sup> This proposal also means that member states should undertake measures in order to reach this percentage of female participation in their respective countries. That is why the first subchapter elaborates whether Slovenia started to increase participation of female police officers in general, and what legislative act was taken as a ground for such an increase.

### **3.1. Increased participation of female police officers in the Slovenian State Police**

According to the Act on Equal Opportunities for Man and Women (2002), the Ministry of Interior as well as other competent ministries and the Government of the Republic of Slovenia are obliged to promote and establish equal opportunities and to adopt general and special measures in order to achieve sustainable gender equality. Moreover, according to the Article 11 of the Act ministers shall take into consideration the gender equality perspective when they prepare regulations and other measures in the fields relevant for the establishment of equal opportunities.<sup>113</sup> In addition to legislation, the Resolution on the National Program for Equal Opportunities for Men and Women 2005-2013 as a strategic document

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<sup>111</sup> United Nations Security Council. *Report of the Secretary General on Women, Peace and Security, number S/2013/525*. September 2013. [http://www.resdal.org/wps/assets/wps\\_sept2013\\_sgreport.pdf](http://www.resdal.org/wps/assets/wps_sept2013_sgreport.pdf) (Accessed on 14 September 2014)

<sup>112</sup> United Nations Security Council. *Report of the Secretary General on Women, Peace and Security, number S/2013/525*. September 2013. (pages 1-30) Page 17. [http://www.resdal.org/wps/assets/wps\\_sept2013\\_sgreport.pdf](http://www.resdal.org/wps/assets/wps_sept2013_sgreport.pdf) (Accessed on 15 September 2014)

<sup>113</sup> Act on Equal Opportunities for Men and Women, number: 700-01/02-70/1. Government of the Republic of Slovenia. Ljubljana, 21 June 2002.

for achieving of sustainable equality in Slovenia was adopted. The Resolution boosted gender equality policy as the duty of the entire society in which all branches of power and all government structures among which and the Ministry of Interior must take responsibility for implementing gender equality policy,<sup>114</sup> and introduced indicators with the main aim that their implementation enables monitoring of measures aimed at achieving the objectives set in the gender equality policy.

Some of indicators for monitoring the labor market and employment are „employment rate by sex and age groups and total employment growth by sex.“<sup>115</sup> This is also very important indicator for gender mainstreaming in security sector where women are traditionally underrepresented. Below presented table shows increasing of a number of women employed in the State Police Service of Slovenia since 2002, when Slovenian government adopted the Act on Equal Opportunities for Men and Women, while this increasing was the highest after 2005 and the adoption of the Resolution on National Program on Equal Opportunities for women and men 2005-2013. When it comes to the NAP for the implementation of the Resolution 1325 its impact to the employment of female police officers is not evaluated by this research, since the Plan was adopted in 2010.

The table and data show general trend in employment of police officers. Data are divided by year, gender, average age and job position of uniformed police officers, plain clothes officers and civilian officers, as well as total employment growth by gender, from 2002 till 2013, as demanded by indicators set up in the Resolution on National Program for Equal Opportunities for Men and Women.

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<sup>114</sup> Government of the Republic of Slovenia. *Report on the Implementation of the Beijing Declaration and Platform for Action (1995) and the Conclusion of the 23rd Special Session of the General Assembly (2000) on the Occasion of the 2nd Anniversary of the Fourth World Conference on Women and Adoption of the Beijing Declaration and Platform for Action in 2005*. May 2014. Page 2. [http://www.unecce.org/fileadmin/DAM/Gender/publication/Slovenia\\_National\\_Report.pdf](http://www.unecce.org/fileadmin/DAM/Gender/publication/Slovenia_National_Report.pdf) (Accessed on 13 September 2014)

<sup>115</sup> Resolution on National Program for Equal Opportunities for Men and Women 2005-2013, number: 700-01/05-88/01, Ljubljana: October 2005, EPA 290-IV. Official Gazette of Republic of Slovenia, number: 100/05, November 2005. Page 49.

Year	Column	Uniformed police officers	Plain clothes officers	Civilian officers	Total
2002	Average age	27	36	38	33
2002	male	5.457	1.317	358	7.132
2002	female	398	220	1.181	1.799
<b>2002</b>	<b>Total</b>	<b>5.855</b>	<b>1.537</b>	<b>1.539</b>	<b>8.931</b>
2003	Average age	26	35	38	33
2003	male	5.457	1.357	370	7.184
2003	female	489	223	1.178	1.890
<b>2003</b>	<b>Total</b>	<b>5.946</b>	<b>1.580</b>	<b>1.548</b>	<b>9.074</b>
2004	Average age	33	38	36	35
2004	male	5.861	1.362	314	7.537
2004	female	610	232	1.251	2.093
<b>2004</b>	<b>Total</b>	<b>6.471</b>	<b>1.594</b>	<b>1.565</b>	<b>9.630</b>
2005	Average age	31	36	38	33
2005	male	5.647	1.363	364	7.374
2005	female	634	237	1.183	2.054
<b>2005</b>	<b>Total</b>	<b>6.281</b>	<b>1.600</b>	<b>1.547</b>	<b>9.428</b>
2006	Average age	34	39,1	41,5	36,1
2006	male	5.594	1.329	356	7.279
2006	female	690	244	1.177	2.111
<b>2006</b>	<b>Total</b>	<b>6.284</b>	<b>1.573</b>	<b>1.533</b>	<b>9.390</b>
2007	Average age	34,3	39,4	41,8	36,3
2007	male	5.596	1.347	337	7.280
2007	female	781	247	1.182	2.210
<b>2007</b>	<b>Total</b>	<b>6.377</b>	<b>1.594</b>	<b>1.519</b>	<b>9.490</b>

2008	Average age	28,45	33,27	35,86	30,5
2008	male	5.377	1.348	322	7.047
2008	female	782	272	1.199	2.253
<b>2008</b>	<b>Total</b>	<b>6.159</b>	<b>1.620</b>	<b>1.521</b>	<b>9.300</b>
2009	Average age	35	39,7	42,4	37
2009	male	5.308	1.393	302	7.003
2009	female	846	295	1.205	2.346
<b>2009</b>	<b>Total</b>	<b>6.154</b>	<b>1.688</b>	<b>1.507</b>	<b>9.349</b>
2010	Average age	35,4	39,9	42,8	37,3
2010	male	5.202	1.417	213	6.832
2010	female	873	284	1.000	2.157
<b>2010</b>	<b>Total</b>	<b>6.075</b>	<b>1.701</b>	<b>1.213</b>	<b>8.989</b>
2011	Average age	36,3	40,7	43,5	38,1
2011	male	5.053	1.429	210	6.692
2011	female	858	291	967	2.116
<b>2011</b>	<b>Total</b>	<b>5.911</b>	<b>1.720</b>	<b>1.177</b>	<b>8.808</b>
2012	Average age	36,3	40,7	43,5	38,1
2012	male	4.864	1.379	193	6.436
2012	female	840	288	924	2.052
<b>2012</b>	<b>Total</b>	<b>5.704</b>	<b>1.667</b>	<b>1.117</b>	<b>8.488</b>
2013	Average age	38	41,8	45,1	39,7
2013	male	4.742	1.363	185	6.290
2013	female	821	286	903	2.010
<b>2013</b>	<b>Total</b>	<b>5.563</b>	<b>1.649</b>	<b>1.088</b>	<b>8.300</b>

Table 1. Employees by gender and age from 2002 till 2013<sup>116</sup>

<sup>116</sup> Pečjak, Tomaž. Interview by Nermina Jerković. Tape recording. General Police Directorate. Service of the Director General of the Police. Ljubljana, 2 July 2014

As the Table 1 shows, since 2002 systematic inclusion of women has started and increased employment of women in the Slovenian Police became evident. It marked “the new era in the Slovenian Police regarding women in police and security sector, when we started to systematically invite women in police,”<sup>117</sup> says Mr. Šumi, Head of the Research and Social Skills Centre. Moreover, in his work *Gender Equality in Peacekeeping Operations*, Matjaž elaborates that in 2002 the 32<sup>nd</sup> generation completed the Secondary Police School in Ljubljana, where out of one hundred twenty six students twenty six of them were females.<sup>118</sup> While systematic inclusion of women in the State police in Slovenia is conceived as a precondition for increasing of women in leadership positions, that is also the first objective set up by the UNSCR 1325, by the Slovenian national legislation, the Act on Equal Opportunities for Men and Women and by the Resolution on the National Program for Equal Opportunities of Men and Women.

In 2002, the number of female police officers with police powers was 8, 36%, and has been constantly increasing till 2011. Thus, in 2011 the number of female police officers with police powers in different positions was 15, 06 %, with a slight increase in 2012 and 2013. In 2013, specifically, the number of female police officers was 15, 35%, with an increase of only 0, 29% after the adoption of the National Action Plan for the implementation of the UNSCR 1325 onward. As explained by Mr. Pečjak, Head of the Director General of the Police “2010 was the year when we stopped employing new generations of police officers because of the recession in the European Union which caused a decrease of personnel in public service in general. People were retired but the new ones were not employed.”<sup>119</sup>

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<sup>117</sup> Šumi, Robert. Interview by Nermina Jerković. Tape recording. Ministry of Interior of Slovenia, General Police Directorate, Police Academy. Ljubljana, 24 June 2014.

<sup>118</sup> Matjaž, Mravlja. *Gender Equality in Peacekeeping Operations*. University in Maribor. The Security Studies Faculty. Maribor 2013. Page 21.

<sup>119</sup> Pečjak, Tomaž. Interview by Nermina Jerković. Tape recording. General Police Directorate. Service of the Director General of the Police. Ljubljana, 2 July 2014

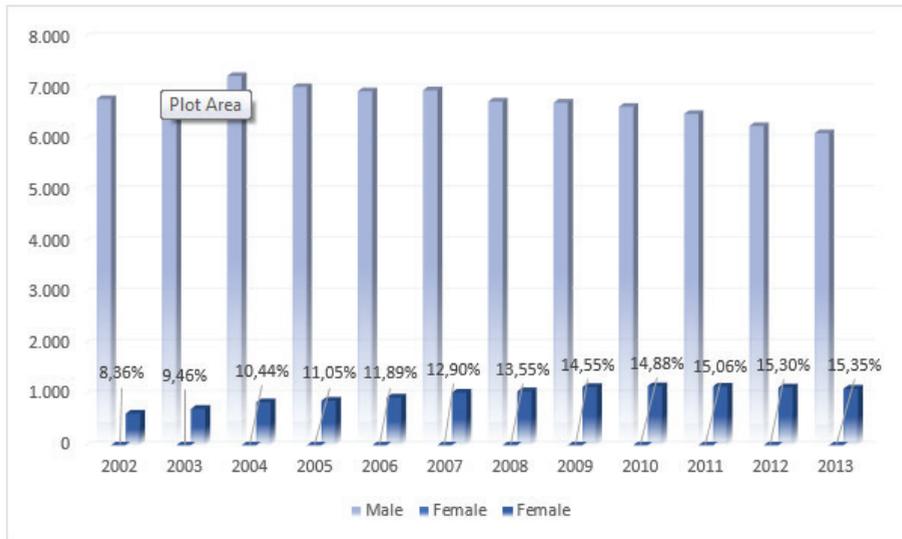


Chart 1. Increased participation of female police officers from 2002 till 2013.

Moreover, Mr. Pečjak expects that number of female police officers will be growing, since:

secondary school grades are one of the conditions for employment of police officers. What happened during our last employment announcement was a fact that women had better results than men and that half of overall candidates employed were female police officers. We put the same conditions for man and women and it seems sometimes that when it comes to women, in police apply only the best women who really want to be police officers. On the other hand, when it comes to men, it seems that in police apply only those who do not have anywhere to go and then they choose police.<sup>120</sup>

This progress in employment of women is generally very well accepted by the highest level management, and they think that on this way standard of the State Police will be improved in general and in the eyes of the citizens. During my conversation with male police officers

<sup>120</sup> Pečjak, Tomaž. Interview by Nermina Jerković. Tape recording. General Police Directorate. Service of the Director General of the Police. Ljubljana, 2 July 2014

many of them think that grades should not be included as a condition for employment in police, since according to them,” it is well known that women have better grades than men, and if our system continues with this condition very soon a number of male and female police officers will be the same, what is not good for security of our country. Women cannot fight with criminals nor go in the first row fighting with hooligans during some football games. Police is repressive apparatus of one country, it is good that we have women for some jobs, but not that number of women is the same as the number of men.”<sup>121</sup>

To conclude, increasing of female police officers cannot be directly connected with the implementation of the UNSCR 1325 and the adoption of the NAP of the Slovenia but rather with the provisions of the CEDAW. Based on the CEDAW sustainable equality, the Government of the Republic of Slovenia adopted the Act on Equal Opportunities for Men and Women and the Resolution on National Program on Equal Opportunities for Men and Women 2005-2013, which set out obligations to all ministries to undertake activities towards gender gap overcoming. Accordingly, the activities and concrete steps are undertaken by the Slovenian State Police. However, these activities are paving the way for the implementation of the UNSCR 1325, since it is necessary firstly increase proportion of women with police powers in the Slovenian State Police Service and then include them in peacekeeping operations at international level, as well as increase their number in the leading positions of national and international security institutions. The main precondition for engagement of police officers (women and men) in peace keeping missions is five years of police working experience<sup>122</sup>. As included in the new era of the Slovenian State Police since 2002, women police officers fulfill the key precondition for being international peacekeepers. Whether this precondition in the same time means and increased participation of women in peacekeeping missions

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<sup>121</sup> Interview with police official. Tape recording. Ljubljana, 3 July 2014.

<sup>122</sup> Ministrstvo za Notranje Zadeve Republike Slovenije. Policija. Pravilnik o napotitvi javnih uslužbencev Ministrstva za notranje zadeve in organov v sestavi v mednarodne civilne misije in mednarodne organizacije, številka: 007-152/2008/1. Ljubljana. May 2008. (Ministry of Interior of the Republic of Slovenia. Police. Regulations on Engagements of Public Officers of the Ministry of Interior in International Operations and Missions and International Organizations)

is elaborated in the next subchapter?

### **3.2. Slovenian Participation in International Operations and Missions and United Nations Security Council Resolution 1325**

The Slovenian Police has been participating in International Operations and Missions (hereafter IOMs) since 1997. From that period onward, the number of female police officers deployed in peace keeping missions was very low. Even though Slovenian police officers were trained for establishing adequate relations in a multicultural and diverse society, they have been gender blind when it comes to the inclusion of women in its contingent. In fact, one hundred thirty six police officers have been sent to foreign countries and three of them were female police officers.<sup>123</sup> It means that before the adoption of the National Action Plan for the implementation of the UNSCR 1325 and 1820 only 2% of the Slovenian female police officers participated in different IOMs. Even though “they strive to include female police officers in IOMs in line with the Security Council Resolution 1325 (October 2000) on gender equality”<sup>124</sup> without the adoption of the National Action Plan and the implementation of the Resolution 1325 by Slovenian government, the Ministry of Interior has not had the real impetus for increasing of women in peacekeeping missions.

Moreover, before the adoption of the NAP, in the Slovenian governmental report there was not one word about gender balance of

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<sup>123</sup> Ministry of Interior of the Republic of Slovenia-General Police Directorate. *Brochure on the Slovenian Police in International Civilian Missions 1997-2007*. Ministry of Interior of Republic of Slovenia-General Police Directorate. Ljubljana, 2007. Page 2.

<sup>124</sup> Ministry of Interior of the Republic of Slovenia-General Police Directorate. *Brochure on the Slovenian Police in International Civilian Missions 1997-2007*. Ministry of Interior of Republic of Slovenia-General Police Directorate. Ljubljana, 2007. Page 2.

police officers deployed in international missions and operations,<sup>125</sup> even though acts proposing gender mainstreaming, gender balance and obligation for ministries that in each their fields undertake activities toward sustainable gender equality were adopted. Obligations like appointment of the coordinators for equal opportunities were fulfilled, but this appointment had no any influence on the International Police Operations Division nor their activities toward gender balancing where the number of 2% of deployed female police officers depicted a huge gender gap.

The increasing of Slovenian female police officers in international civilian missions is directly connected with the adoption of the Slovenian NAP for the implementation of the UNSCR 1325 and 1820. The selection criteria for candidates and all selection procedure show not only that women are important as active partners in peace building, but also that they are equal with men. In order to increase number of staff in peacekeeping missions, the Rules on Secondment of Civil Servants of the Ministry of Interior of the Republic of the Slovenia was adopted in 2008 with the main difference in comparison with the former law in age of working experience necessary for application in peacekeeping missions. Eight years of working experience as a precondition for application is decreased to five years of working experience.<sup>126</sup>

In a recent research done by the Ljubljana University, two important conclusions have been presented related to increasing of the number of women in IOMs. First, that the Rules on Secondment

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<sup>125</sup> International Women's Rights Action Watch (IWRAP). *Shadow Report to the Fourth Periodic Report of the Republic of Slovenia on the Implementation of the Provisions of the Convention on the Elimination of All Forms of Discrimination Against Women*. NGO's and Independent Experts' Shadow Report. Ljubljana, August 2008. (Pages 1-57) Page 30.  
[http://www.iwraw-ap.org/resources/pdf/42\\_shadow\\_reports/Slovenia\\_SR\\_combined.pdf](http://www.iwraw-ap.org/resources/pdf/42_shadow_reports/Slovenia_SR_combined.pdf) (Accessed on 19 September 2014)

<sup>126</sup> Ministrstvo za Notranje Zadeve Republike Slovenije. Policija. *Pravilnik o napolitvi javnih uslužbencev Ministrstva za notranje zadeve in organov v sestavi v mednarodne civilne misije in mednarodne organizacije*, številka: 007-152/2008/1. Ljubljana. May 2008. (Ministry of Interior of the Republic of Slovenia. Police. Regulations on Engagements of Public Officers of the Ministry of Interior in International Operations and Missions and International Organizations)

of Civil Servants of the Ministry of Interior of the Republic of the Slovenia adopted in 2008 means in one hand a positive measure for women inclusion in IOMs. The results of its research depicts this measure as the very important step for enabling a wider range of staff, mainly concerning female police officers who started to join the police around 1998 and until recently had not complied with all formal requirements. Consequently, it was resulted in poor representation of women in international peace operations.<sup>127</sup> Second conclusion is that coordinators for equal opportunities are to be accountable for ensuring gender equality, explaining that “coordinator for equal opportunities for men and women is responsible for ensuring equality between men and women, not only at home, but also in posts abroad”<sup>128</sup>

My research opposes both of the conclusions of the University of Ljubljana. According to the results of this research the decreasing of the years of working experience from eight to five had for the aim “to harmonize the Rules on Secondment of Civil Servants of the Ministry of Interior of the Republic of the Slovenia with the international provisions which demands at least five years of working experience of the deployed police officers in the police services of their respective countries. We did not introduce any special measures to increase number of female police officers deployed in peacekeeping missions”<sup>129</sup>, says Mr. Aleš Grudnik, Senior Police Inspector in International Police Operations Division of the Slovenian Police. Moreover, this research also shows that without special measures in this field and activities of the highest level management, the coordinator cannot be found responsible for ensuring equality between men and women, since he or she does not make decisions nor adopt measures in order to improve the gender balanced representation. More about activities of the coordinators for equal opportunities will be presented in subchapter 3.3.

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<sup>127</sup> Prebilič, Vladimir.Uroš and Vuga, Janja. Initiative for Peacebuilding. Capacity-Building and Training University of Ljubljana. Ljubljana: September 2008. Page 19.

<sup>128</sup> Prebilič, Vladimir.Uroš and Vuga, Janja. Initiative for Peacebuilding. Capacity-Building and Training University of Ljubljana. Ljubljana: September 2008. Page 19.

<sup>129</sup> Grudnik, Aleš. Interview by Nermina Jerković. Tape recording. Ministry of Interior of Slovenia, General Police Directorate, International Police Operations Division. Ljubljana, 30 June 2014.

This research shows that after the adoption of the NAP for the implementation of the UNSCR 1325 and 1820, the Slovenian Police undertook concrete activities in accordance with the second main objective of the plan which is increased participation of women in international peace operations and missions and in peace-building.<sup>130</sup> Concrete steps of the Police are explained by the Section on European Affairs and International Contribution of the Director General Office saying that based on the second objective of the NAP, in 2011/12 police established active cooperation with National Bureau of Investigation-Peace Support Operations from Sweden in order to increase number of trained female police officers for participation in international civilian missions.

The Act of the Section on European Affairs and International Contribution of the Director General Office, number 871-92/2012/2 from October 2012 states that police service has sent six police officers on the training course in Sweden from August 2011 till March 2012<sup>131</sup>, which means that they followed recommendations of the National Action Plan for the implementation of the UNSCR 1325 and 1820 on Women, Peace and Security for the period 2010-2015, “to increase number of female police officers deployed in IOMs.”<sup>132</sup> The act states: “it shows that we do not see women as locked in private sphere, but as equal partners in all social spheres. We must not stay traditional and old fashioned. In order to have good results active participation of women in any international civilian mission is more than welcome.”<sup>133</sup>

As a result of the activities of the Police based on the NAP from November 2010 till October 2012, five female police officers were sent in international civilian missions, which mean that number of deployed

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<sup>130</sup> Action Plan of the Republic of Slovenia for the implementation of the United Nations Security Council Resolutions 1325 and 1820 on Women, Peace and Security for the period 2010-2015. [http://www.peacewomen.org/assets/image/slovenia\\_nap2011.pdf](http://www.peacewomen.org/assets/image/slovenia_nap2011.pdf) (Accessed on 14 July 2014)

<sup>131</sup> Ministry of Interior of Slovenia. Cabinet of the Director General Act, number: 871-92/2012/2 (204-04), Ljubljana. October 2012.

<sup>132</sup> Action Plan of the Republic of Slovenia for the implementation of the United Nations Security Council Resolutions 1325 and 1820 on Women, Peace and Security for the period 2010-2015. [http://www.peacewomen.org/assets/image/slovenia\\_nap2011.pdf](http://www.peacewomen.org/assets/image/slovenia_nap2011.pdf) (Accessed on 14 July 2014)

<sup>133</sup> Ministry of Interior of Slovenia. Cabinet of the Director General Act, number: 871-92/2012/2 (204-04), Ljubljana. October 2012.

Slovenian female police officers was increased almost for 100% in a few months.<sup>134</sup>

PER YEAR	MALE	DE- PLOYED	NOT DE- PLOYED	TRAINED
1997 - 2009	133	133	21	154
2010 - 2014	21	21	18	39
<b>TOTAL</b>	<b>154</b>	<b>154</b>	<b>39</b>	<b>193</b>

Table 2: Total number of male police officers trained for peacekeeping missions<sup>135</sup>

PER YEAR	FEMALE	DE- PLOYED	NOT DE- PLOYED	TRAINED
1997 - 2009	3	3	/	3
2010 - 2014	5	5	6	11
<b>TOTAL</b>	<b>8</b>	<b>8</b>	<b>6</b>	<b>14</b>

Table 3: Total number of female police officers trained for peacekeeping missions<sup>136</sup>

Results of the interviews conducted with male police officers in the International Police Operation Division (hereafter IPOD) of the General Police Directorate show that according to their experience inclusion of female police officers is crucial in peace keeping operations since it is more about humanitarian work and human rights protection, where women are very efficient and needed.<sup>137</sup> Gender balance in the UN peacekeeping contingents is seen as a force which provides meaningful security for civilians, protection of civilians and assisting in the promotion and protection of human rights with particular attention on women, children and vulnerable persons.<sup>138</sup> Moreover, female police officers are even more important in peacekeeping missions,

<sup>134</sup> Grudnik, Aleš. Interview by Nermina Jerković. Tape recording. Ministry of Interior of Slovenia, General Police Directorate, International Police Operations Division. Ljubljana, 30 June 2014.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> Interview with police official. Tape recording. Ljubljana, 3 July 2014.

<sup>138</sup> Amnesty International. Report on North Kivu. *No end to war on women and children. Democratic Republic of Congo*. 2008. Page 5. [http://www.amnestyusa.org/sites/default/files/pdfs/women\\_kivucongo.pdf](http://www.amnestyusa.org/sites/default/files/pdfs/women_kivucongo.pdf) (Accessed on 4 July 2014)

than in the police of democratic countries, since one of the activities of peacekeepers is also Security Sector Reform (hereafter SSR) and activities in promotion of gender sensitivity in SSR. It includes support to the national security institutions to increase the number of female staff, to promote gender sensitive policies in institutional reform and to train personnel on human rights, gender sensitivity and sexual and gender-based violence.<sup>139</sup> In all of these fields of work gender balance is desirable and very important for the above-mentioned goal achievements.

As presented in the Chart 1 in the period of twelve years, from 1997 when Slovenia started to send their police officers in peace keeping missions till 2009 (a period before the adoption of the NAP) only 2% of female police officers were deployed in peacekeeping missions, out of 154 male police officers. It was a period before the adoption of the NAP for the implementation of the UNSCR 1325.

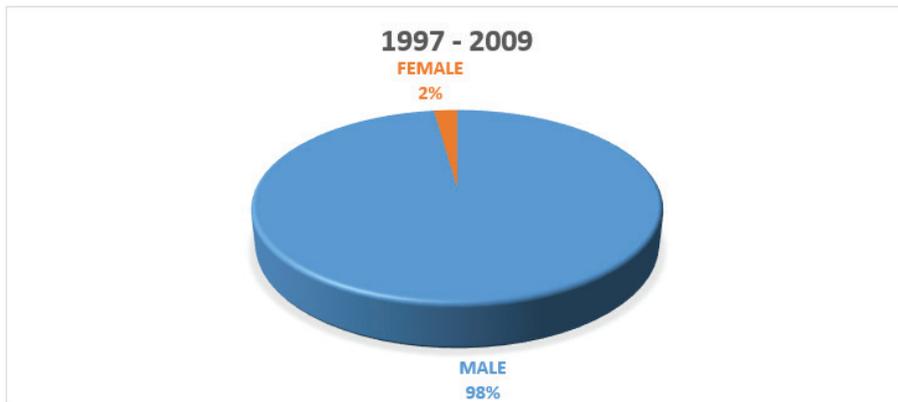


Chart 1. Percentage of female police officers deployed in peace keeping missions from 1997 to 2009.

<sup>139</sup> United Nations. Secretariat of the United Nations. *Ten year Impact Study on Implementation of UN Security Council Resolution 1325 on Women, Peace and Security in Peacekeeping-Final Report to the United Nations Department of Peacekeeping Operations, Department of Field Support*. New York, 2010. Page 24.

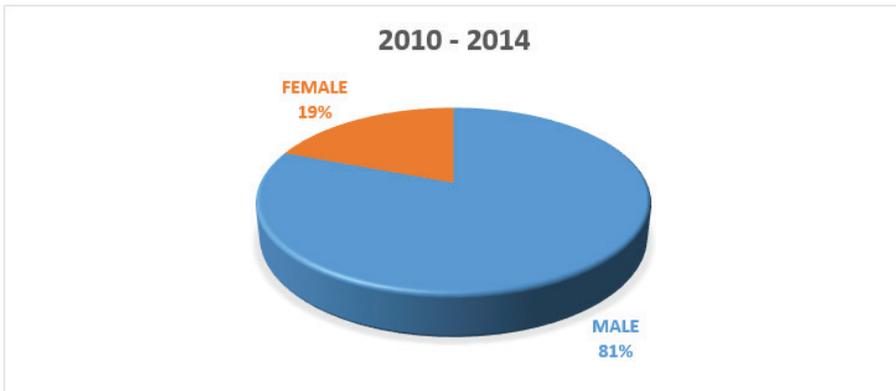


Chart 2. Percentage of female police officers deployed in peace keeping missions from 2010-2014.

After the adoption of the NAP, the Slovenian State Police established cooperation with the National Bureau of Investigation-Peace Support Operations from Sweden, as one of the European Union countries. The EU countries willingness to help Slovenia contributed to an increased number of trained female police officers as candidates for deployment in peacekeeping missions in 300 percent in eight months after the implementation of the Resolution. In the period of four years a number of deployed female police officers was increased for 17 percent in comparison to the period of twelve years before the adoption of the NAP. According to the Secretary General, the set target for female police officers deployment is 20 percent for 2014. This means that with 19 percent Slovenia is near to reach the UN target. This shows that the UNSCR 1325 has the biggest influence in the field of peacekeeping and increasing of trained and deployed female police officers in peace keeping missions, while this influence is not so strong in the field of increased employment of female police officers in the State Police of Slovenia.

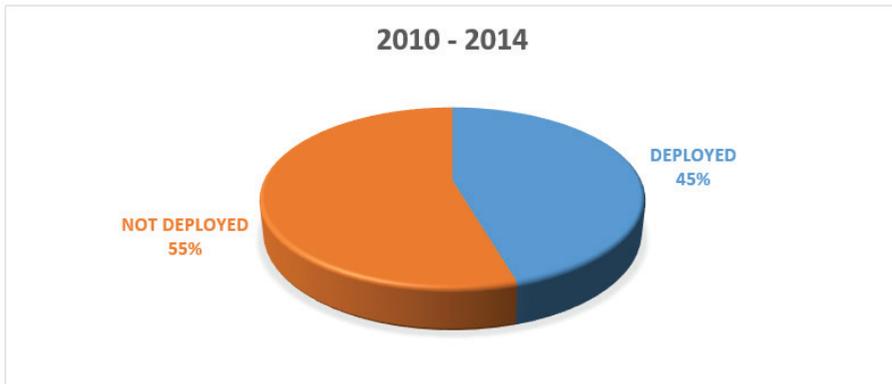


Chart 3. Percentage of deployed/not deployed trained female police officers from 2010 to 2014.-

As data from the Table 3 and the Chart 3 presents, even though a number of trained female police officers has increased in a period of last four years, it is necessary to emphasize that only 45% of trained female police officers were deployed in different peacekeeping missions from the period 2010-2014, while 55% of them were not deployed. It also shows that neither implementation of the UNSCR 1325 by state institutions, nor changes of domestic rules can contribute to challenging of stereotypes with regard to women and men roles in one democratic society. As the interviewed experts of the IPOD of the General Police Directorate note the female officers are trained but not deployed “because of their personal reasons,”<sup>140</sup> what according to them presents a burden for the Slovenian Police to accomplish gender balance in deploying of female police officers.

The importance of the NAP for the implementation of UNSCR 1325 is even higher, since according to the Act on Equal Opportunities for Men and Women and the Resolution on National Program on Equal Opportunities for Men and Women 2005-2013, the Ministry of Interior and the State Police were obliged to undertake activities and include special measures in order to achieve sustainable gender equality in all their fields, especially in the fields where is gender gap the most evident. Those obligations were not translated into practice till 2010 and implementation of the NAP. What is also worthy of concern is the fact that Slovenian police officers are deployed nowadays only in the

<sup>140</sup> Interview with police official. Tape recording. Ljubljana, 3 July 2014.

EU missions and operations as advisors with high ranks.

According to Mr. Aleš Grudnik “it means that only female and male police officers with rank senior inspector and higher could be invited for training and deployment.”<sup>141</sup> Simultaneously, women remain underrepresented, since there are also underrepresented at the higher ranks positions and without introduction of any special measures for evident gender gap overcoming. Thus, for the sake of founding out the reasons for underrepresentation of female police officers in peacekeeping missions, the questionnaire was prepared and distributed to the police officers, since, knowing what the main obstacles are for women to apply in IOMs is a good indicator for future planning of deployment of police officers and overcoming the obstacles for such deployment. The analysis of the questionnaire and result are presented in the subchapter 3.4.

### **3.3. The Research and Social Skills Center**

The full implementation of the Women, Peace and Security Agenda cannot be achieved without national and international security sector reform. It means that security institutions should advocate the full and equal participation of women and men through trainings, programs and policies on gender balance in national security institutions, which are a part of the international peace and security contingent. As one of very important aspects of the CEDAW’s provisions is that countries should confront the underlying social inequalities that perpetuate asymmetrical power relations based on gender. Concerning security sector institutions, the UNSCR 1325 highlights precisely the need for training on human rights and gender equality for military, police, judges and other personnel that may be a part of UN peace operations and members of international peace and security contingents.<sup>142</sup> Thus, in order to challenge stereotypes and foster women’s promotion at

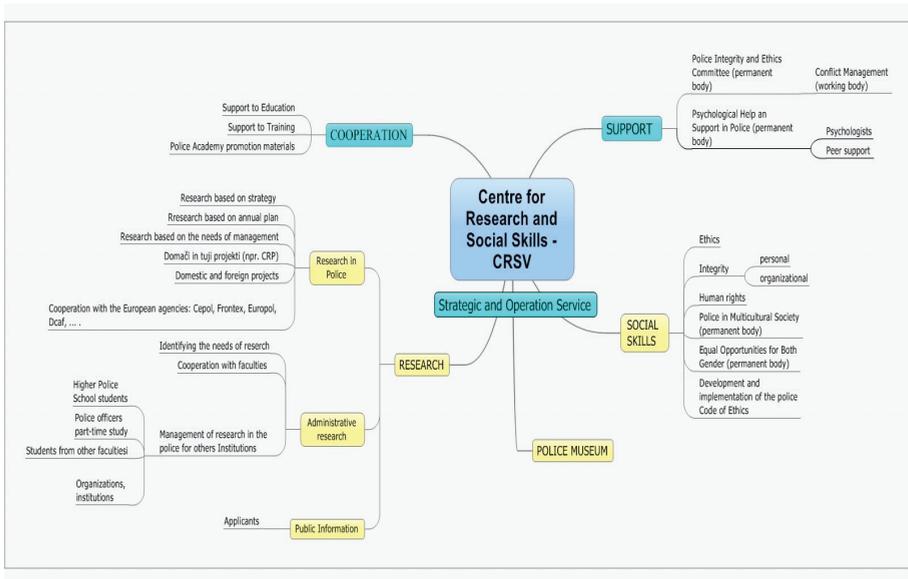
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<sup>141</sup> Grudnik, Aleš. Interview by Nermina Jerković. Tape recording. Ministry of Interior of Slovenia, General Police Directorate, International Police Operations Division. Ljubljana, 30 June 2014.

<sup>142</sup> United Nations Development Fund for Women (UNDF). *CEDAW and Security Council Resolution 1325: A Quick Guide. Women, Peace and Security*. Page 32. [http://www.unrol.org/files/CEDAWandUNSCR1325\\_eng.pdf](http://www.unrol.org/files/CEDAWandUNSCR1325_eng.pdf) (Accessed on 20 September 2014)

the higher level of management and decision-making positions, the Research and Social Skills Center (hereafter RSSC) was established in January 2014, within the General Police Directorate in Ljubljana.

The establishing of the RSSC within the Ministry of Interior and the State Police Service is boosted by the Slovenian NAP for the implementation of the UNSCR 1325 and 1820 which stipulates that all competent ministries “foster cooperation with national and international research institutions and non-governmental organisations with a view to encouraging the mainstreaming of a gender perspective into their studies and projects on the conflict prevention and resolution and on maintaining peace and peace-building.”<sup>143</sup>



Scheme 1. The structure of the Research and Social Skills Center.

A detailed explanation of the activities and the main role of the Center is provided by its Director, Mr. Robert Šumi who claims the Center was built up to make formal synergy between different activities in the social skill’s field and to start with methodical research and science activities in Police for the sake of the factual problems

<sup>143</sup> Action Plan of the Republic of Slovenia for the implementation of the United Nations Security Council Resolutions 1325 and 1820 on Women, Peace and Security for the period 2010-2015. [http://www.peacewomen.org/assets/image/slovenia\\_nap2011.pdf](http://www.peacewomen.org/assets/image/slovenia_nap2011.pdf) (Accessed on 14 July 2014)

defining, reflecting upon their systematical and long-term solving.<sup>144</sup> Being aware that national and international research institutions cannot easily conduct research within the law enforcement agency, because of the specific nature of the police jobs, the highest level management established its own Research Center, based on proposals and provisions of the UNSCR 1325 and the NAP for its implementation. In order to make working environment better, the experts of this Center initiate and organize numerous trainings as for the leaders of the Agency, as well as for other employees. Trainings of the police personnel include human rights mainstreaming, gender socialization, myths and stereotypes, gender roles, gender mainstreaming and equity. Consequently, these trainings lay a ground for awareness rising and fighting stereotypes in “masculine”<sup>145</sup> law enforcement agency, by providing staff with expertise and analytical skills to identify gender inequality and to create a more equitable police agency in which both women and men can prosper.

Even though all sections (see Scheme 1.) work together to tackle the main problems, the Integrity and Ethics Committee (placed in the Support Section) and the Coordinator for Equal Opportunities (within the Social Skills Section) cooperate jointly in providing trainings on gender issues in the State Police. The Decision of the Director General of the Police depicts the Integrity and Ethics Committee as “a consulting body of the Director General of the Police consists of experts employed with the Police. It is intended for systematic examination and issuing of strategic proposals, innovations, questions and dilemmas in the field of integrity and ethics, Code of Police Ethics, equal opportunities for sexes, conflict management, interpersonal relations and organizational climate in the Police.”<sup>146</sup>

Moreover, upon the establishment of the RSSC, the gender

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<sup>144</sup> Šumi, Robert. Interview by Nermina Jerković. Tape recording. Ministry of Interior of Slovenia, General Police Directorate, Police Academy. Ljubljana, 24 June 2014.

<sup>145</sup> Šumi, Robert. Interview by Nermina Jerković. Tape recording. Ministry of Interior of Slovenia, General Police Directorate, Police Academy. Ljubljana, 24 June 2014.

<sup>146</sup> Ministry of Interior of the Republic of Slovenia. Police. Decision of the Director General of the Police, number: 024-10/2013/44 (207-02), Ljubljana. December 2013.

equality coordinator at the General Police Directorate level is also placed there. Activities on gender mainstreaming and gender equality issues are defined as description of coordinator's job within the RSSC, and not as some additional activity. It reveals that the State Police Service is stepping ahead other ministries in the Republic of Slovenia. The Act on Equal Opportunities for Men and Women (2002) clearly defines appointment of coordinators for equal opportunities, and simultaneously proposes performing of his/her duties as additional duties to his/her daily jobs.<sup>147</sup> In local communities and in ministries these are usually officials of low rank, they have other responsibilities in addition to their role as local gender equality coordinator, they are not specially paid for the gender equality coordination work and this work is not their priority.<sup>148</sup>

According to Mrs. Bobnar, the roles of the coordinators are even more important in police than in other services, because of the increasing number of women in Police. In fact, coordinators have a lot of work in order to encourage the better inclusion of women, especially in the area of schooling to work in the police, employment and decision-making, to increase possibilities for their promotion, and prevent indirect and direct gender discrimination and sexual harassment in the workplace by means of constructive co-operation among all services and units within the Police through adequate measures.<sup>149</sup>

As one of the planned future activities of the Center is opening of public discussion about the need for increasing the number of women at decision-making positions. According to the results presented by the Director of the Center, Mr. Robert Šumi, only 2 percent out of 1108 women with police powers occupy some of the decision-making

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<sup>147</sup> Act on Equal Opportunities for men and women. No. 700-01/02-70/1. Government of the Republic of Slovenia. Ljubljana, 21 June 2002.

<sup>148</sup> International Women's Rights Action Watch (IWRAP). *Shadow Report to the Fourth Periodic Report of the Republic of Slovenia on the Implementation of the Provisions of the Convention on the Elimination of All Forms of Discrimination against Women*. NGO's and Independent Experts' Shadow Report. Ljubljana, August 2008. Page 17.

[http://www.iwrawap.org/resources/pdf/42\\_shadow\\_reports/Slovenia\\_SR\\_combined.pdf](http://www.iwrawap.org/resources/pdf/42_shadow_reports/Slovenia_SR_combined.pdf) (Accessed on 19 September 2014)

<sup>149</sup> Bobnar, Tatjana. Interview by Nermina Jerković. Ministry of Interior of Slovenia, General Police Directorate, Service of the Director General of the Police. Ljubljana, 26 June 2014.

position. “The subject of women at decision-making positions”, continues Mr. Šumi, “is a hot topic nowadays, not only in our law enforcement agency, but also at the international security scene. That is why this topic must be a part of public discourse what encourages us to organize the Conference on the leadership within the Slovenian Police. This conference will be a part of the realization of the “2030 strategy on gender equality at decision making positions.”<sup>150</sup>

The RSSC’s work appears to be on the level of awareness raising in order to provide better practical applications of the different Resolutions with regard to human rights and gender mainstreaming. Moreover, this Center is seen as an eye-opener and presents ground for changes within the Slovenian Police, since researches and trainings they provide clearly define the problematic areas and simultaneously propose activities towards improvements in these areas. In coordination with other departments within the Ministry of Interior, the RSSC has the aim to contribute to the accomplishment of the very important aim of the NAP which is enhancing of training of police at the national level on the implementation of UNSCR 1325 and 1820, international humanitarian law and international human-rights law, in particular women’s rights and gender equality.<sup>151</sup> These trainings are becoming crucial for gender mainstreaming and overcoming of the main impediments for gender equality within the security sector where, as shown in the next subchapter, stereotypes about appropriate women’s roles are deeply rooted not only in men’s, but also in women’s behaviours.

### **3.4. What do police officials say: Results of the questionnaire and analysis of interviews**

The analysis presented in this subchapter is based on the results of the questionnaire that was prepared by the author of the present research. The questionnaire has been uploaded on the intranet page of the

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<sup>150</sup> Šumi, Robert. Interview by Nermina Jerković. Tape recording. Ministry of Interior of Slovenia, General Police Directorate, Police Academy. Ljubljana, 24 June 2014.

<sup>151</sup> Action Plan of the Republic of Slovenia for the implementation of the United Nations Security Council Resolutions 1325 and 1820 on Women, Peace and Security for the period 2010-2015. [http://www.peacewomen.org/assets/image/slovenia\\_nap2011.pdf](http://www.peacewomen.org/assets/image/slovenia_nap2011.pdf) (Accessed on 14 July 2014)

Slovenian State Police Service and was available for all police officials from 15 July 2014 till 15 September 2014. A written invitation for police officials was also published in the news section of the intranet page of the State Police Service. Two hundred and three officials participated in this survey and they present this research sample. The sample is divided by gender, by the working position and by the hierarchy. Out of two hundred and three participants one hundred seventy five or 86, 2 per cent are male, while twenty eight of them, or 13, 8 per cent are female. (Table 4)

Gathered data were statistically analyzed, using Statistical package for social sciences – SPSS.

	Frequency	Percent	Cumulative Percent
male	175	86,2	86,2
female	28	13,8	100,0
Total	203	100,0	

Table 4. Frequency of distribution of the sample by gender

The sample is also divided by working position namely by eight categories. (Table5) The majority of participants (80) are policeman/policewoman, followed by 41 police inspectors. In addition 25 senior police inspectors, 23 senior policeman / senior policewoman participated in a survey. Six of participants indicate that they are assistant commanders, nine that they are police councilors and seven, that they are commanders. Table 6 presents combination of gender and workplace of those who participated in the survey, while Table 7 presents combination of place of employment and gender in order to find out what ranks and from which hierarchical level of employment are interested the most in peace keeping missions. These results show that the biggest interest in peacekeeping missions, or 39, 4 per cent of participants show those with rank policemen/policewomen, than those with the rank of police inspector 20, 2 per cent and senior police inspector 12, 3 per cent. More than half participants of the survey (110) are employed in police stations.

	Frequency	Percent	Cumulative Percent
policeman, policewoman	80	39,4	39,4
senior policeman, senior policewoman	23	11,3	50,7
assistant commander	16	7,9	58,6
police inspector	41	20,2	78,8
commander	7	3,4	82,3
senior police inspector	25	12,3	94,6
police councilor	9	4,4	99,0
Other	2	1,0	100,0
Total	203	100,0	

Table 5. Frequency of distribution of the sample by working place

workplace		Gender		Total
		male	female	
	policeman, policewoman	66	14	80
	senior policeman, senior policewoman	21	2	23
	assistant commander	14	2	16
	police inspector	36	5	41
	commander	7	0	7
	senior police inspector	22	3	25
	police councilor	8	1	9
	other	1	1	2
Total		175	28	203

Table 6. Frequency of distribution of the sample-combination of gender and working place

Gender		Employment			Total
		General police directorate	Police directorate	Police station	
	male	34	46	95	175
	female	7	6	15	28
Total		41	52	110	203

Table 7. Frequency of distribution of the sample-combination of employment and gender

## Materials

Data were gathered using the internet-based questionnaire consisting of twelve survey items, as follows:

First three items are of demographic nature of clients: gender, workplace and employment.

**Q1** - Gender – the participants indicate their gender, male or female.

**Q2** – Working place – the participants indicate their working place and they could choose between several offered workplaces: policeman, policewoman, senior policeman, senior policewoman, assistant commander, police inspector, commander, senior police inspector, police councilor. For workplaces, that do not match any of these categories the section “other” is included.

**Q3** – Hierarchy- the participants indicate the hierarchical level of employment, which are General police directorate, Police directorate or Police station.

Then, eight items were based on a hypothesis. Participants indicated with “yes” or “no” whether they agree or not agree with a particular statement.

Statements are as follows:

**Q4** - Working in peacekeeping missions is more appropriate for policemen than for policewomen.

**Q5** - Policewomen less apply for work in peacekeeping missions since

the work in the missions is more dangerous than at home.

**Q6-** Policewomen less apply for work in peacekeeping missions because they reconcile with more difficulties their private and professional life.

**Q7 -** Single policewomen apply more often for peacekeeping missions than those female police officers who have families.

**Q8 –** The Selection Commission on peacekeeping missions favors men.

**Q9 -** Policewomen are not sufficiently informed about the activities of peacekeeping missions.

**Q10 -** Policemen are more informed about activities of peacekeeping missions than policewomen.

**Q11 -** Due to the traditional roles in the family policewomen less apply for peacekeeping missions.

The questionnaire contains an item **Q12** with multiple choice answers for participants by which we wanted to determine reasons for the lower participation of female police officers in peacekeeping missions, according to opinion and possible experience of police officials, who can chose several responses, such as:

Family

Poor foreign language skills

Various threats

Personal belief

Political belief

Salary and other bonuses

Marital status

Escape from the problems at workplace

The same item (**Q12**) also has the option of record “for other reasons”.

## Results

Below presented Table 8 shows frequency distribution of

responses of the participants divided by gender and employment. Table in row Q4 for example shows that the majority of policewomen employed in the police stations ( $f = 12$ ) and the majority of all participating policewomen ( $f = 22$ ) consider working in peacekeeping missions as more appropriate for policemen than for policewomen. The frequencies of policemen responses are bigger and more than half of them responded that working in peacekeeping missions is more appropriate for policemen than for policewomen ( $f = 94$ ).

		male			female		
		General police directorate	Police directorate	Police station	General police directorate	Police directorate	Police station
Q4	yes	14	14	53	2	1	3
	no	20	32	42	5	5	12
	Total	34	46	95	7	6	15
Q5	yes	13	13	50	4	2	6
	no	21	33	45	3	4	9
	Total	34	46	95	7	6	15
Q6	yes	27	32	65	7	4	12
	no	7	14	30	0	2	3
	Total	34	46	95	7	6	15
Q7	yes	24	30	74	7	4	9
	no	10	16	21	0	2	6
	Total	34	46	95	7	6	15
Q8	yes	5	13	37	5	5	12
	no	29	33	58	2	1	3
	Total	34	46	95	7	6	15
Q9	yes	6	6	15	4	5	7
	no	28	40	80	3	1	8
	Total	34	46	95	7	6	15
Q10	yes	3	5	11	3	4	5
	no	30	41	84	4	2	10
	Total	33	46	95	7	6	15

Q11	yes	23	31	75	7	6	14
	no	11	15	20	0	0	1
	Total	34	46	95	7	6	15

Table 8: Frequency distribution of answers - combination of gender and employment

At the end, Table 9 shows the reasons for lower participation of female police officers in peacekeeping operations, which are according to the highest number of male and female of participants: family and marital status, then various threats, personal beliefs and poor knowledge of foreign languages.

Pre-offered responses		Gender		Total
		male	female	
	family	151	25	176
	poor foreign language skills	17	2	19
	various threats	65	4	69
	personal belief	34	4	38
	political belief	3	2	5
	salary and other bonuses	4	1	5
	marital status	98	15	113
	escape from the problems at workplace	12	1	13
Total		384	54	438

Table 9. The reasons for lower participation of policewomen in peacekeeping operations.

Moreover, according to the policewomen, the other reasons for lower participation of women in peacekeeping missions are as follows: policemen or senior officers are always mostly selected for mission; there are no tenders (calls) for basic training for peacekeeping missions; lack of information about the opportunities and benefits; head of the departments does not give a consent for participation; discrimination of women in the selection process; participation is not an option for policewomen, the peacekeeping operations are always looking for

highly qualified staff; absence from the workplace is associated with non-promotion.

On the other hand, according to the opinions of policemen, the reasons for lower participation of policewomen in peacekeeping operations are: there are less policewomen than policemen in the service; staff problems at police stations; proportion of policewomen among employees is smaller than that of the policemen, so it can be expected that policewomen are fewer in the missions; consideration should be given to proportionality in relation to the percentage of women employed in the police; policewomen do not feel able to participate; the reason is most likely motherhood; homesickness; inability to live independently over time; maternity; too demanding conditions - police inspector title; the traditional prejudices of society - the role of women in society.

According to the results of the questionnaire the first reason for non-deployment of women in peacekeeping missions, is their non-application because of their traditional roles in family and difficulties to reconcile private and professional life. Simultaneously, single policewomen apply more for peacekeeping missions than those who are married. These are responses of 70 per cent as male police officers as well as female police officers. It is worthy to mention that 27 out of 28 female police officers answered that traditional role of women is a reason for non-application, even though they complete training for peacekeeping. During an interview with a female police officer who completed training for peacekeeping, I found out that initially she was interested in peacekeeping and completed the training, but when she got married and had children she was not ready any more to leave them.<sup>152</sup> As Mr. Aleš Grudnik who is directly included in deployment of peacekeepers as the Senior Police Inspector in the IPOD explained during the interview, he had a situation when women refused deployment because they had children and because of their traditional

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<sup>152</sup> Grobin, Apolonija. Interview by Nermina Jerković. Tape recording. Ministry of Interior of Slovenia, General Police Directorate, Uniformed Police Directorate. Ljubljana, 30 June 2014.

role in society.<sup>153</sup> "You know, a mother is a mother," says Mr. Grudnik.<sup>154</sup>

However, this traditional role of women in society presents the next huge obstacle not only for deployment of women in peacekeeping missions, as goal two of the UNSCR 1325 proposes, but also for promotion of women in police and their increased participation at decision-making positions, what presents the first aim of the UNSCR 1325. Most male respondents believe that traditional women's roles in society, women's inability to live independently, women's personal feeling of inability and motherhood are reasons why women do not apply. Even when it comes to female participants, the majority responded that work in peacekeeping missions is more appropriate for men than for women. In Gortnar's *Mission (In) Possible? Elimination of Gender Stereotypes* the lack of strategy, as well as stereotypes, which overcoming constitutes one of the key challenges on the road to achieving an innovative society able to fully exploit the human capital and potential of both women and men are the main obstacles for gender mainstreaming in the State Police of Slovenia.<sup>155</sup> As Mr. Janez Ogulin, Director of the Police Service Novo Mesto and Head of the Project for Roma Issues explains:

You can have very good laws and provisions about some issue, but incorporation of these provisions into practice within the security sector is something different. Very often you feel like fighting with windmills with no chance to win deeply rooted stereotypes of our society. For example, I forbid that my police officers named Roma population Cigani.<sup>156</sup> Everything is fine while there are at their working place; they do not name them like that. But as soon as they go home, they start to call them Cigani, since their parents named Roma population Cigani and have stereotypes about this population. It is the same with gender

<sup>153</sup> Grudnik, Aleš. Interview by Nermina Jerković. Tape recording. Ministry of Interior of Slovenia, General Police Directorate, International Police Operations Division. Ljubljana, 30 June 2014.

<sup>154</sup> Grudnik, Aleš. Interview by Nermina Jerković. Tape recording. Ministry of Interior of Slovenia, General Police Directorate, International Police Operations Division. Ljubljana, 30 June 2014.

<sup>155</sup> Gortnar, Maruša (editor). *Mission (In) Possible? Elimination of Gender Stereotypes*, Government of the Republic of Slovenia. Office for Equal Opportunities. Ljubljana 2008.

<sup>156</sup> The term „Cigani“ is a pejorative term in Slovenia used when speaking about Roma persons.

issues and women roles. You can hardly fight against that, but we must change that and it must be a way to do so.<sup>157</sup>

The same opinion and experience has Mr. Robert Šumi, Head of the newly established the Research and Social Skills Center who explains that the biggest obstacle on the path of gender mainstreaming presents police subculture, “a specific subculture, which is masculine, and because of that subculture, we who work on that issues have to raise awareness and accept a risk of provocation. I am a male, and my colleagues are mostly males. If I want to discuss gender issues and women position in the organization it is seen as a provocation for males, and they ask: “What is wrong with you, why are you fighting for women rights in the police?””<sup>158</sup> The interviewed female police officer says: „I know that there is a prejudice about women in police. In ten years there are maybe five... that is very sad... five men that... that I can say that they supported me as a female police officer out of two hundred of them. Actually not supported, but they do not mind that I am a woman, when we have to fulfil our task.”<sup>159</sup>

The next obstacle for increasing of women in peace keeping missions, as analysis of the questionnaire results shows, is too “demanding rank of senior police inspector”. Since 1997 Slovenian peacekeepers have tended to occupy posts with as high level of required education as possible<sup>160</sup>, and nowadays they contribute as advisers in peacekeeping missions. It means, in the same time, that there are fewer opportunities for women to apply. While internationally they tend to occupy, as higher positions as possible, those positions seem reserved for male Slovenian police officers, since nationally they did not even open public discourse to increase number of women at decision-making positions. According to information collected during the interviews

<sup>157</sup> Ogulin. Janez. Interview by Nermina Jerković. Tape recording. Ministry of Interior of Slovenia, General Police Directorate, Police Academy. Ljubljana, 9 July 2014.

<sup>158</sup> Šumi, Robert. Interview by Nermina Jerković. Tape recording. Ministry of Interior of Slovenia, General Police Directorate, Police Academy. Ljubljana, 24 June 2014.

<sup>159</sup> Interview with police official. Tape recording. Kranj, 9 July 2014.

<sup>160</sup> Prebilič, Vladimir. Uroš and Vuga, Janja. Initiative for Peacebuilding. Capacity-Building and Training University of Ljubljana. Ljubljana: September 2008. Page 20.

with the experts from the IPOD it was concluded that they seek for higher positioned police officers, concretely senior police officers, who are invited to apply for training as well as deployment for peacekeeping missions, since Slovenian police officers have positions of advisers in last missions.<sup>161</sup>

This problem of too demanding rank is also interconnected with other recognized problems, such as a need for fighting for a position or even non-possibility to be promoted. As some of interviewed female police officers say, those women who are lucky enough to seat in the office and get position of senior police officer, they are not interested for peacekeeping missions anymore.<sup>162</sup> Grudnik also says that “when she gets, at the end, some position in the police mission, it is a difficult to return at her previous position at home. The true is that her rank always stays with her, but position can be posted by some other employee if the duty demands so.”<sup>163</sup>

All of these problems are interrelated and crosscutting with stereotypes. Asked about the possibilities for women to be promoted in the Slovenian police, one of the interviewed female police officials said:

When I was pregnant for the first time, I was 99 per cent sure that I would be promoted that I would not go to maternal leave. I worked as a senior police officer many times, although I did not have the rank. I had a lot of education, trainings which were available, and I wanted to. My chief told me during the interview that he knew that I worked hard, but since I am a woman, I had to do a lot and even more than males, in order to prove myself in this Agency. Actually I did not take that as the offense, because I was happy. I know that sounds strange, but I am happy that someone tells me the true. Sometimes they do not include you in work, and I think it is much worse than openly say that I am a

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<sup>161</sup> Grudnik, Aleš. Interview by Nermina Jerković. Tape recording. Ministry of Interior of Slovenia, General Police Directorate, International Police Operations Division. Ljubljana, 30 June 2014.

<sup>162</sup> Grobin, Apolonija. Interview by Nermina Jerković. Tape recording. Ministry of Interior of Slovenia, General Police Directorate, Uniformed Police Directorate. Ljubljana, 30 June 2014.

<sup>163</sup> Grudnik, Aleš. Interview by Nermina Jerković. Tape recording. Ministry of Interior of Slovenia, General Police Directorate, International Police Operations Division. Ljubljana, 30 June 2014.

woman and I must work harder in order to be recognized.<sup>164</sup>

Besides the above mentioned problems, problems such as a poor knowledge of foreign languages, staff problems within police stations and non-permission by chiefs and discrimination of female applicants by the selection commission, are also indicated as the problems which cause gender non-balance in deployment of the peacekeepers from the Slovenian State Police.

This research and presented results show that the gap between the ideals espoused by the UNSCR 1325 and the reality in the Slovenian State Police can be attributed to several factors, such as the lack of strategy and non-introducing of special measures for increasing of number of female police officers, then deeply rooted stereotypes about law enforcement service as service reserved for men, as well as problems which female police officials encounter in reconciliation of private and professional life. Nevertheless, upon the adoption of the NAP for the implementation of the Resolution 1325 gender mainstreaming has been accelerated in the field of peacekeeping and international police operations. Based on the data presented in the Table 3, it can be concluded that since the adoption of the NAP in 2010, the number of trained female police officers for deployment in peacekeeping missions has been increased for 300 per cent. Moreover, the number of female police officers deployed in peacekeeping mission has been increased for 17 per cent in the last four years (see Chart 2). These results prove that the implementation of the UNSCR1325 indeed had a tremendous impact on the increasing of number of trained and deployed female police officers in the Slovenian State Police Service. Nowadays, 19 per cent of the Slovenian female police officials is deployed in peacekeeping missions (see Chart 2.) what is close to the target of 20 per cent, set by the UN International Operation Division (hereafter IOD) for 2014.

However, the questionnaire results reveal gaps between the aspiration of the Resolution and the reality on the ground, since more than half of trained female police officials remain non-deployed in various peacekeeping missions (see Table 3.) The interviews and answers of those participating in the questionnaire enable us to get an insight into problems and impediments for better implementation of the UNSCR 1325 within the Slovenian State Police. The first and crucial obstacle

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<sup>164</sup> Interview with police official. Tape recording. Kranj, 9 July 2014.

is a lack of strategy and introducing of special measures for increasing of number of deployed female officials in peacekeeping missions. Even though the CEDAW and subsequent national instruments of the Republic of Slovenia, such as the Act on Equal Opportunities for Men and Women (2002) and the Resolution on the National Program for Equal Opportunities 2005-2013 clearly define special measures and simultaneously propose introducing of such measures for every area of ministries where is a gender gap evident, the State Police Service did not introduce such measures. Those measures are conceived as positive discrimination by interviewed male police officials, who say that because of the gender equality it is not acceptable to allow any special measures for women.

Considering the quota system introducing proposed by the CEDAW, the Slovenian State Police Service still remains immune. The interviewed officials do not support introducing of quotas and conceive those introducing impossible in the security sector, where according to them should be more male police officials, because of the “repressive nature of law enforcement agencies.”<sup>165</sup> This leads to the fact that women present only 2 per cent of the decision-making officials and that female police officials encounter the low status problems, which disable them to apply for peacekeeping missions. Thus, the CEDAW’s proposals towards sustainable gender equality are not introduced in the field of peacekeeping, while there have been crucial for systematical increasing of employed female police officers since 2002 and removing of barriers for women participation and involvement in the law enforcement agency, but only in number and not in status. This research also illuminates that the gender gap within the law enforcement agencies cannot be overcome by the implementation of the UNSCR 1325 in a vacuum, but rather by simultaneous implementation of the CEDAW and the UNSCR 1325.

Along with above mentioned impediments which prevent women to participate equally and fully in peacekeeping missions, this research also shows that deeply rooted stereotypes about appropriate roles of men and women and problems in reconciliation of private and professional life decelerate the implementation of the UNSCR 1325. It is worthy to mention that 27 out of 28 female police officials answered

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<sup>165</sup> Interview with police official. Tape recording. Ljubljana, 3 July 2014.

that traditional role of women is a reason why female police officials do not apply for peacekeeping missions. Indeed, experts who are directly included in deployment explain that the most of trained female police officials refused deployment after they had children. The answers of the male respondents indicate the patriarchal ideology as deeply embedded in the State Police Service. They claim that female law enforcement officials do not feel able to participate, because of their inability to live independently over time or because of the homesickness, also reflecting upon motherhood and the traditional prejudices of society - the role of women in society.

In order to challenge stereotypes and assist in moving the UNSCR 1325 forward the management of the State Police Service decided to established the RSSC, in January 2014. The main purpose of the Center is to create programs and creative modalities for removing barriers for gender mainstreaming and human rights mainstreaming. Research conducted by the experts of the Center clearly shows that deeply rooted stereotypes about appropriate roles of men and women in police present the main impediment for gender mainstreaming and implementation of the UNSCR 1325, as well as the implementation of the CEDAW. Accordingly, the need for education and raising awareness of the resolutions importance, are emphasized by the experts of the Center, reflecting upon the UNSCR 1325 as an instrument that has to be translated into actions with support of the highest level management.

Nevertheless, the promotion of the UNSCR 1325 in police cannot be seen in a vacuum, but rather as an integrated process along with the CEDAW implementation, what reveals a need for developing of the new strategies and introducing of special measures for women equal participation and full involvement within the Slovenian State Police Service. The highest level management in the police should stop perceiving the CEDAW and the UNSCR 1325 merely as a normative framework but to conceive them as instruments that have to be translated into actions. The clearly defined strategies on gender balancing in number and status of police officials, crafted by the highest level management of the police could have pivotal role in advancing of gender and human rights mainstreaming. Accordingly, these strategies would serve as a tool for galvanizing the participation of women in peace processes, enhancing the protection of women and girls from

sexual violence in conflict, and promoting the leadership role of women in the national and international security institutions.

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## Conclusion

In order to answer my main research question “*What was the impact of the UNSCR 1325 on the increased participation of female police officers in the State Police Service in the Republic of Slovenia?*” the first chapter elaborates the CEDAW and the UNSCR 1325 and their importance for empowerment of women. The study shows that the UNSCR 1325 cannot be implemented in a vacuum but rather simultaneously with the CEDAW provisions in order to accelerate the process of gender mainstreaming within the Slovenian State Police.

The first chapter proves that there is no doubt regarding improvements in the international legal framework on women rights, gender balancing and gender mainstreaming. Upon the adoption of the CEDAW in 1979 the concept of substantive gender equality, as ground for developing of special and positive measures for women empowerment, was introduced. This research also shows that while the CEDAW set grounds, the UNSCR 1325 accelerated gender balancing and gender mainstreaming in law enforcement institutions, defining four pillars known as participation, protection, prevention and peace and recovery. Additionally, implementation of these crucial international documents for women’s empowerment is boosted by the programs and policies of the European Union. Numerous measures have been undertaken by the EU with aim to raise awareness about gender mainstreaming and about the necessity of the adoption of NAPs, through dialogues, trainings, sharing of information and integration of World, Peace and Security agenda in all activities practiced by the state’s security bodies.

The second chapter shows that Slovenia implemented these international instruments through adoption of the national documents which tackle gender equality related issues. The Constitution of the Republic of Slovenia is shaped and adjusted upon provisions of the CEDAW and proposes gender equality in all areas of public life. Two subsequent documents the Act on Equal Opportunities (2002) and The Resolution on National Program for Equal Opportunities for Men and Women 2005-2013 were adopted based on the constitution as well as on the EU Community Framework Strategy on Gender Equality 2001-2005. These documents emphasize the need for inclusion of positive and special measures, and programs reviewing the approach to sustainable equality. The evaluation of the Slovenia’s NAP for the implementation

of the UNSCR 1325 in 2010 led to a considerable change regarding the increase of number of women in the field of peacekeeping in the Slovenian law enforcement agency.

After the legislative background, I gave a detailed description of the influence of the CEDAW and the UNSCR 1325 on gender mainstreaming within the Slovenian State Police. Particular attention of the third chapter was dedicated to employment of female police officers, training and their deployment in peacekeeping missions. Moreover, this study presents the newly established Research and Social Skills Center, as an eye-opener and ground for changes within the Slovenian Police. With its researches and trainings on gender mainstreaming, the Center clearly defines the problematic areas and simultaneously proposes activities towards improvements in these areas.

Thus, regarding to questions *if there are or not an impact of the CEDAW and the UNSCR 1325 on the Slovenian State Police* answers are given in the third chapter, which presents the elaboration of data of the research conducted within the police. The research relies on nine semi-structured interviews with experts on gender mainstreaming issues, who equipped me, as a researcher, with an ability to address the problematic segments of gender mainstreaming from an institutional lenses. Additionally, I have used an internet-based questionnaire in order to overcome the existing limits and receive a response from police officials at all levels: local, regional and national. Commendable response from state police officials all over Slovenia enriches this study for 203 voices on the subject of gender equality. Note that great cooperation and efforts invested by the RSSC were crucial for a successful completion of this particular work.

When it comes to the CEDAW, statistical part of the research implies that CEDAW was inclined to the removal of barriers for women in terms of their participation and involvement, only in terms of number, but not in terms of status. The CEDAW's proposals for development of sustainable equality were neither introduced in the field of peacekeeping, nor any other field even though they seem to carry crucial importance for the systematic increase of employed female officers with regard to the Act on Equal Opportunities for Men and Women (also based on the CEDAW's provisions) adopted in 2002. Moreover, results indicate that the UNSCR 1325 played a crucial role when it comes to gender

mainstreaming in peacekeeping missions, particularly in encouraging the increase of trained female officers. In that manner, the statistical data demonstrate a significant increase of female officers involved in peacekeeping missions since the adoption of the NAP in 2010; since then until today, the number of trained female officers is 300 per cent higher. Moreover, an increase from 2 to 19 per cent of deployed women peacekeepers directly shows commitment of the state towards the goal set by the UN International Operation Division, which is reaching 20 per cent for 2014.

However, the statistical data simultaneously implicate the gaps between the ideology of the resolutions and the reality on the ground, since it states that more than half of trained female police officials remain non-deployed. This leads to the answer on the sub-question of this thesis *“What are the main obstacles for impact of the UNSCR 1325 to be higher?”* As answers obtained through questionnaires reveal, the first and nevertheless crucial barrier for a better implementation of the UNSCR 1325 is undoubtedly the lack of strategy and introduction of special measures. Research discovers the immunity of the Slovenian State Police department to the CEDAW’s system of quotas, revealing that only 2 per cent of women police officers hold decision-making positions.

In reference to the UNSCR 1325, there is a significant lack of efficient methods to influence the increase of such numbers although it was stated as the very first objective of the Resolution 1325. Secondly, this study also found deeply rooted stereotypes regarding appropriateness of male and female roles and problems in reconciliation of private and professional life, as further impediments for the implementation of the UNSCR 1325. It is worthy to mention that 27 out of 28 female police officials declared that a trivial perception of traditional role of the women is the main preventive drive when it comes to the application to peacekeeping missions, regardless of successfully completed training.

All in all, the Slovenian State Police started to make huge steps towards gender balance and translation of the national and international texts into practice of the security sector in Slovenia. However, one must acknowledge that even in the security sectors of consolidated democratic countries, women are still heavily underrepresented both numerically and in status. Full implementation of the CEDAW and the

UNSCR 1325 unfortunately, remains elusive and gender inequality still exists even in the sphere of peacekeeping which is proven to be the most progressive in regard to the implementation of the UNSCR 1325. Worryingly, one interviewee commented that the least progressive area of gender equality remained decision-making, whose progress should be a part of a new research model avoiding high expectations for the following two decades.

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## **Annex 1: Zaposilo za raziskavo**

Generalna policijska uprava  
Policijska akademija

Zadeva: Zaposilo za raziskavo.-  
Spoštovani,

v okviru študija na Univerzi v Sarajevu in Univerzi v Bologni izvajam raziskavo o človekovih pravicah in demokraciji.

Z anketo želim ugotoviti interes slovenskih policistov in policistk za delo v mirovnih misijah.

Za sodelovanje v raziskavi je potrebno izpolniti kratek vprašalnik. Izpolnjevanje traja do 5 minut. Sodelovanje je prostovoljno in anonimno.

Vljudno vas prosim, da mi pomagate pri zbiranju podatkov in podate soglasje za raziskovanje v policiji.

Za vaše sodelovanje se zahvaljujem.

Ljubljana-Tacen, 23 June 2014.

Nermina Jerković

**Annex 2: Request for the research approval**

General Police Directorate

Police Academy

Subject: The Request for the Research.-

As required by the University of Sarajevo and the University of Bologna I am writing this to express enthusiasm for conducting a survey on human rights and democracy.

Consequently, the aim of the survey is to find out more about the interest of the Slovenian police officers for actual participation in peacekeeping missions.

Participation in the survey means that a short questionnaire should be filled out. Fulfilling of the questionnaire takes up to 5 minutes. Participation is voluntary and anonymous.

I kindly ask you to help me with the process of gathering of information, and provide approval for research within the Slovenian police.

Thank you for your support and cooperation.

With kindest regards,

Ljubljana-Tacen, 23 June 2014.

Nermina Jerković

---

## **Annex 3: The Survey Questionnaire**

### **The Survey Questionnaire: Increasing of women in peace keeping missions**

Dear Sir, Madame

In the context of the study at the University of Sarajevo and University of Bologna I am conducting a survey on human rights and democracy, particularly inclined towards research of the increase of the female police officers within the Slovenian Police.

By this survey conducting, I would like to determine your interest to apply for peacekeeping missions.

You participate in this survey by filling out the questionnaire below. Fulfillment takes up to 5 minutes. Participation is voluntary and anonymous.

Please fill in the questionnaire and help me to gather the relevant data.

I am sincerely grateful for your cooperation.

Nermina Jerković

---

#### Top of Form

#### 1. Gender

Please select your gender.

- female
- male

#### 2. Employment

Please mark the hierarchical level of your employment.

- General police directorate
- Police directorate
- Police station

#### 3. Workplace:

Please mark the workplace you are working at.

- policeman, policewoman

- senior policeman, senior policewoman
- assistant commander
- police inspector
- commander
- senior police inspector
- police councilor
- other

4. Working in peacekeeping missions is more appropriate for policemen than for policewomen.

Please, indicate the best suited answer.

- yes
- no

5. Policewomen less apply for work in peacekeeping missions since the work in the missions is more dangerous than at home.

Please, indicate the best suited answer.

- yes
- no

6. Policewomen less apply for work in peacekeeping missions because they reconcile with more difficulties their private and professional life.

Please, indicate the best suited answer.

- yes
- no

7. Single policewomen apply more often for peace keeping missions than those police officers who have families

Please, indicate the best suited answer.

- yes
- no

8. Selection Commission on peacekeeping missions favors men.

Please, indicate the best suited answer.

- yes
- no

9. Policewomen are not sufficiently informed about the activities of peacekeeping missions.

Please, indicate the best suited answer.

- yes
- no

10. Policemen are more informed about activities of peacekeeping missions than policewomen.

Please, indicate the best suited answer.

- yes
- no

11. Due to the traditional roles in the family policewomen less apply for peacekeeping missions.

Please, indicate the best suited answer.

- yes
- no

12. Reasons for lower participation of policewomen in peacekeeping operations:

Please mark only those reasons that you think are important for lower participation. You can chose multiple reasons. In the section “other” you can write your own reasons.

- family
- poor foreign language skills
- various threats
- personal belief
- political belief

- salary and other bonuses
- marital status
- escape from the problems at workplace
- other

Thank you for your cooperation and willingness to participate in this research.

Your responses will be recorded.

---

## Annex 4: An Approval for the survey conducting

MINISTRY OF HOME AFFAIRS  
P O L I C E  
General Police Directorate  
POLICE ACADEMY  
Rocenska ulica 56, 1211 Ljubljana Šmartno  
T: 01 514 70 00  
F: 01 514 71 00  
E: [pa@policija.si](mailto:pa@policija.si)

Signature: Martin JAZBEC  
Date: 08/14/2014 12:44  
Number: [510-94 / 2014/8](#) (262-04)  
Code subject: N20140814-14323-PA\_DIR\_1

Addressee: Mrs. Nermina Jerković  
e-mail: [nermina.jerkovic@gmail.com](mailto:nermina.jerkovic@gmail.com)

Subject: Nermina Jerković, a request to participate in the survey – An approval

We inform you that we have examined the content of your request to conduct the survey research within the Slovenian State Police by which you will determine the interest of the Slovenian police officers to participate in peacekeeping missions.

We are interested in this specific research project and agree that you carry out the survey within our police service. As your request is approved, we posted an electronic version of the questionnaire attached to your request on the Intranet page of the Slovenian Police. We have published a questionnaire in the Slovenian language, together with attached invitation for policemen and policewomen for participation in the survey.

The questionnaire will be posted on the Intranet site of the Slovenian Police and as such available until 30 September 2014.

We wish you a successful conclusion of the study. For additional information, please contact us.

Yours sincerely,  
Prepared:  
Dr. Alexander Koporec Oberčkal  
Senior Police Inspector  
Signatory:  
Mag. Martin Badger  
Assistant Director  
Police councilor

## Annex 5: Research on peacekeeping

1 priloga



mailN20140722-14268-PA\_DIR\_1.txt



REPUBLIKA SLOVENIJA  
**MINISTRSTVO ZA NOTRANJE ZADEVE**  
**P O L I C I J A**  
GENERALNA POLICIJSKA UPRAVA  
**POLICIJSKA AKADEMIJA**  
Rocenska ulica 56, 1211 Ljubljana Šmartno  
T: 01 514 70 00  
F: 01 514 71 00  
E: pa@policija.si

Številka: 510-94/2014/7 (262-04)

Datum: 22.07.2014 13:23

Podpis: Danijel ŽIBRET

Naslovnik: SGDP - SOJ

**Zadeva: Raziskava o interesu slovenskih policistov in policistk za delo v mirovnih misijah - zaprosilo za objavo ankete**

V okviru mednarodnega sodelovanja je Center za raziskovanje in socialne veščine gostil mednarodno študentko, ki raziskuje različne vidike sodelovanja policistov in policistk v mednarodnih mirovnih misijah.

Raziskovalni načrt predvideva različne načine pridobivanja podatkov, med drugim tudi s pomočjo krajšega anketnega vprašalnika, ki je dostopen na naslednjem naslovu:

[https://docs.google.com/forms/d/1bMAjQLaXAY6lsUo73lor-EG-Zf1Vbn-Dh0GqI2s8PUs/viewform?usp=send\\_form](https://docs.google.com/forms/d/1bMAjQLaXAY6lsUo73lor-EG-Zf1Vbn-Dh0GqI2s8PUs/viewform?usp=send_form)

Ker bodo rezultati raziskave pomembni tudi za razvoj predmetnega področja v slovenski policiji prosimo, da se anonimni anketni vprašalnik od 23. 7. 2014 dalje, za obdobje dveh mesecev, objavi na intranetu policije.

Prosimo, da se objava izvede na vidnem mestu, pod rubriko aktualno.

Besedilo povabila k sodelovanju naj bo spodbudno.

Za pomoč, razumevanje in sodelovanje se zahvaljujemo.

Kontaktna oseba: dr. Aleksander Koporec Oberčkal.

S spoštovanjem,

Danijel Žibret  
direktor  
višji policijski svetnik

Stran 1

## **Annex 6: Invitation for participation in the survey**

Anketa o delu v mirovnih misijah - vabilo

Kategorija: Obvestila | 23. julij 2014

Vabljeni k sodelovanju v anketi o interesu slovenskih policistov in policistk za delo v mirovnih misijah, ki jo lahko izpolnite **do 30. septembra 2014.**

Anketo je pripravila **Nermina Jerković** iz Bosne in Hercegovine, sicer uslužbenka policije in hkrati študentka, ki jo je v okviru mednarodnega sodelovanja gostil Center za raziskovanje in socialne veščine v Policijski akademiji.

Raziskuje različne vidike sodelovanja policistov in policistk v mednarodnih mirovnih misijah, raziskovalni načrt pa predvideva različne načine pridobivanja podatkov, med drugim tudi s pridobivanjem mnenj. Rezultate bo uporabila v mednarodni raziskavi, vključila pa jih bo še v magistrsko nalogo. Rezultati bodo pomembni tudi za razvoj predmetnega področja v slovenski policiji.

Anketo lahko izpolnite na spodnji povezavi:

[https://docs.google.com/forms/d/1bMAjQLaXAY6IsUo73Ior-EG-Zf1Vbn-Dh0GqI2s8PUs/viewform?usp=send\\_form](https://docs.google.com/forms/d/1bMAjQLaXAY6IsUo73Ior-EG-Zf1Vbn-Dh0GqI2s8PUs/viewform?usp=send_form)

Anketa je popolnoma anonimna.

<http://intra.policija.si/index.php/obvestila-blog/3792-anketa-o-delu-v-mirovnih-misijah-...14.8.2014>



EUROPEAN REGIONAL MASTER'S DEGREE IN  
DEMOCRACY  
AND HUMAN RIGHTS IN SOUTH EAST EUROPE

University of Sarajevo – University of Bologna

**WHO IS RESPONSIBLE FOR SUPPRESSION ON  
FREEDOM OF MEDIA IN MACEDONIA?  
Analysis on controlling mechanisms in a democratic  
country**

MASTER THESIS SUBMITTED IN PARTIAL FULFILMENT OF  
THE EUROPEAN REGIONAL MASTER'S DEGREE IN DEMOCRACY  
AND HUMAN RIGHTS IN SOUTH-EAST EUROPE

**BY  
JELENA PETROVIĆ**

**SUPERVISOR: PROFESSOR VIKTOR BOJKOV**

SARAJEVO, BOSNIA AND HERZEGOVINA

11 OCTOBER 2014



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I would never be able to complete my thesis without unconditional support and love from my mother, father and brother. Your support was most valuable in giving me the strength and self-confidence I needed to complete this endeavour.

This thesis is dedicated to my twin brother Dusan.



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## List of Abbreviations

AJM	Association of Journalists of Macedonia
BTI	Bertelsmann Transformation Index
CEE	Central and Eastern Europe
CoE	Council of Europe
DPA	Democratic Party for Albanians
DUI	Democratic Union for Macedonia
ECHR	European Court of Human Rights
EU	European Union
MAJ	Macedonian Association of Journalists
MDC	Media Development Center
MRT	Macedonian Radio and Television
NATO	North Atlantic Treaty Organization
NLA	National Liberation Army
OFA	Ohrid Framework Agreement
OSCE	Organization for Security and Cooperation in Europe
OSF	Open Society Foundation
PDP	Party for Democratic Prosperity
PEO	Party for Economic Transformation
SDSM	Social Democratic Union of Macedonia
SKM	League of Communists of Macedonia
UN	United Nations
USA	United States of America
VMRO-DPMNE	Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity



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## Introduction

Almost two centuries ago the term ‘fourth estate’ was used for the first time.<sup>1</sup> Imported from ‘developed West,’ the notion refers to media as a cornerstone of a democracy. It means that free, independent and pluralistic media are essential for a free and open society, and government that is accountable for its actions. On the other hand, whoever controls information holds power. Hence, the media are also a powerful tool. The question that arises is: who controls flow and distribution of information in a democratic society? Before democratization process took place, some countries had undergone authoritarianism characterized by absolute and blind obedience to authority. In those countries all forms of communication were under the control of the governing elite and the media were used as the main instrument for enhancing the ruler’s power. In modern democratic societies, free media is defined as a prerequisite for the system of checks and balances. It is a freedom from government control and the core value of democracy. However, this postulate from liberal theory of democracy is challenged when media are used for controlling people, citizens, and voters’ rights, and it is vividly discussed in the countries that have not yet been declared consolidated democracies.

This thesis focuses on the freedom of media in Macedonia<sup>2</sup> from 2006 onward because from this year it has been in a constant decline. According to many international reports<sup>3</sup>, experts’

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<sup>1</sup> Schultz, Julianne. *Reviving the fourth estate*. Cambridge, England: Cambridge University Press, 1998. p.49.

<sup>2</sup> Instead of using provisional appellation “Former Yugoslav Republic of Macedonia” in this case study the country will be addressed by its Constitutional name – Republic of Macedonia

<sup>3</sup> Bertelsmann Transformation Index 2014 – *Report on Macedonia*, available at: <http://www.btiproject.org/fileadmin/Inhalte/reports/2014/pdf/BTI%202014%20Macedonia.pdf>, accessed June 2014.

Freedom House. *Freedom of the press 2006 – Macedonia*, available at: <http://freedomhouse.org/report/freedom-press/2006/macedonia>, accessed May 2014.

European Commission *Progress Report on The Former Yugoslav Republic of Macedonia*, available at: [http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index\\_en.htm](http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm), accessed June 2014.

analyses<sup>4</sup> and various articles<sup>5</sup> freedom of media in Macedonia reached its peak in 2005<sup>6</sup> and thereafter it considerably decreases. Macedonian performance, according to available data, was already the lowest in the region, and in 2013 country dropped from 94<sup>th</sup> to 116<sup>th</sup> position among 179 countries.<sup>7</sup> Seven years ago it was at 36<sup>th</sup> place, which is, comparing to current results, a remarkable difference.<sup>8</sup> The study is focused on the Macedonian government's media policies and practices, due to the fact that deterioration in freedom of media coincides with the period when the right-wing political party Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity (VMRO-DPMNE) came to power. From 2006 VMRO-DPMNE has been in a coalition with ethnic Albanian parties and often criticized for silencing the critical voices.

Since the above stated reports show that the media in Macedonia are not free, the main research question in the thesis investigates what are the mechanisms of maintaining non-free media landscape in Macedonia, and moreover, what type of political climate does this state of play breed. The aim of the thesis is to examine media and politics relation in Macedonia with the emphasis on the role of the state, and more narrowly the role of the government. Furthermore, the research is designed to test the working hypothesis which states that there is a close relation between the decline of freedom of media in Macedonia and the ruling right-wing VMRO-DPMNE political party. In order to

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<sup>4</sup> Southeast Europe Media Observatory. *Flash Report 2: Macedonia*, available at: <http://mediaobservatory.net/radar/flash-report-2-macedonia>, accessed May 2014.

<sup>5</sup> Thomson, Emily. *Big Censorship Fears in Little Macedonia*. Radio Free Europe, September 2<sup>nd</sup> 2014. <http://www.rferl.org/content/big-fears-of-censorship-in-little-macedonia/26562554.html>, accessed September 2014,  
Radoja, Zarka. *Kriticka misao kao drzavni neprijatelj broj jedan*, May 6<sup>th</sup> 2014, available at: <http://www.kontrapress.com/clanak.php?rub=Razgovori&url=Kriticka-misao-kao-drzavni-neprijatelj-broj-jedan>, accessed May 2014

<sup>6</sup> International Research and Exchanges Board (IREX). *Media Sustainability Index 2005 – Macedonia*, available at: <http://www.irex.org/resource/macedonia-media-sustainability-index-msi> accessed July 2014

<sup>7</sup> Reporters without Borders for freedom of information. *World Press Freedom Index 2014. European Union and the Balkans* <http://rsf.org/index2014/en-eu.php> accessed September 2014

<sup>8</sup> Ibid.

better understand the main political actors, the study includes historical background and the uneasy process of Macedonian transition from authoritarian regime to democracy. Before it declared independence in 1991, Macedonia was part of the Yugoslav media system characterized by a significant level of censorship and propaganda—because during that period, media were the instruments in the hands of the communist party. Ever since then, the media role has presumably changed, and in democracy it has to hold government and political elites accountable. Although many factors influence Macedonian media performance on its bumpy road toward western role models, the main claim in this research is that ruling right-wing political party bears the most of responsibility for the decline of the freedom of media.

Due to the fact that Macedonia is the first non-EU country which in 2001 signed Stabilization and Association Agreement, and in 2005 became candidate for accession to the European Union, it is reasonable to expect progress in freedom of media as a pillar of democratization. Democracy requires a well-informed, inclusive and pluralistic public sphere; the media are, to a large extent, the creators as well as the “editors” of this public sphere.<sup>9</sup> The main consideration in this research is the extent to which Macedonia satisfies the standards set from the EU for the pluralistic media environment and media freedom level and whether media in Macedonia serve the basic democratic role: public interest and citizens.

The topic is relevant because without free media, it is impossible to discuss democratic development in Macedonia which, in the last decade, aims to enter the European Union. In the European Charter on Freedom of the Press, it states, “Freedom of the press is essential to a democratic society. To uphold and protect it, and to respect its diversity and its political, social and cultural missions, is the mandate of all governments.”<sup>10</sup> The question is how the current Macedonian

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<sup>9</sup> European Commission. Digital Agenda for Europe. *The Report of the High Level Group on Media Freedom and Pluralism*. January 2013 <http://ec.europa.eu/digital-agenda/en/news/public-consultation-independent-report-hlg-media-freedom-and-pluralism-%E2%80%93-read-contributions>, accessed May 2014.

<sup>10</sup> European Charter on Freedom of the Press. Hamburg, 25<sup>th</sup> May 2009 . see also European Commission. *Commissioner Reading welcomes new European charter on Freedom of the Press*. Brussels, June 9<sup>th</sup> 2009. [http://europa.eu/rapid/press-release\\_IP-09-891\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-09-891_en.htm?locale=en) accessed May 2014.

government ruled by the VMRO-DPMNE party fit the proposed framework.

The first chapter of the thesis deals with the conceptual framework for assessing Macedonian media system established by scholars Hallin and Mancini<sup>11</sup> and developed by other authors such as Boguslawa Dubek Ostrowska<sup>12</sup>, Karol Jakubowitz<sup>13</sup>, and Katrin Voltmer<sup>14</sup>. These scholars criticized Hallin and Mancini approach as not being fully applicable beyond the Western world. However, Hallin and Mancini's seminal work in the area of comparative media and politics is important due to the fact that encompasses various dimensions for political and media system analysis. Mechanisms for media control are going to be discussed through dimensions such as 'political parallelism', or the nature of political parties' tendencies to occupy media systems,<sup>15</sup> and particularly the role of the state with proposed variables such as censorship and other types of political pressure, endowment of the media with economic subsidies, ownership of media and telecommunication networks, provisions for the regulations of media and the state as 'primary definer' of the news.<sup>16</sup> The importance of free media in democracy and the democratization process discussed by John Stuart Mill<sup>17</sup>, McQuail<sup>18</sup> and Gurevitch and Blumler<sup>19</sup> and features of the Macedonian democratization process through recent history are also discussed in the first chapter. In order to better illustrate

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<sup>11</sup> Hallin, Daniel C. and Paolo Mancini. *Comparing Media Systems: Three Models of Media and Politics*. Cambridge University Press, New York, 2004.

<sup>12</sup> Dobek-Ostrowska, Boguslawa et al. eds., *Comparative Media Systems: European and Global Perspectives*. Budapest, Central University Press, 2010.

<sup>13</sup> Jakubowitz, Karol and Miklos Sukosd. *Finding the Right Place on the Map*. Central and Eastern European Media Change in Global Perspective. Intellect Books UK/Chicago USA, 2008.

<sup>14</sup> Voltmer, Katrin. *Building Media Systems in the Western Balkans: Lost Between Models and Realities*. Working Paper, Analitika - Center for Social Research. Sarajevo, October 2010.

<sup>15</sup> Hallin, Daniel C. and Paolo Mancini. *Comparing Media Systems: Three Models of Media and Politics*. Cambridge University Press, New York, 2004

<sup>16</sup> Ibid.

<sup>17</sup> Stuart Mill, John. *On Liberty*. Longman, Roberts & Green, London, 1869.

<sup>18</sup> McQuail, Denis. *Mass Communication Theory*. the 5<sup>th</sup> ed. SAGE Publications, 2005

<sup>19</sup> Gurevitch, Michael and Jay G. Blumler. *The Crisis of Public Communication*. Routledge, London, 1995.

changes on Macedonian media scene, the study includes reports on the media freedom level from different international organizations, which are of great importance for monitoring the situation during the period encompassed in the study.

For answering the research questions and testing the main claim, analysis includes collected available qualitative and quantitative data and fifteen semi-structured interviews conducted with Macedonian media experts, journalists, editors, and former president as well as actual member of the main Macedonian media regulatory body.<sup>20</sup> Research conducted in the field indicates the existence of at least four mechanisms in which government control over media persists: institutional control through regulatory body and public broadcasting service, resource allotment and managing human resources, transparency in media ownership and legal provisions which regulate areas particularly important for freedom of media, such as Law on Free Access to Information and Law on Defamation. These controlling mechanisms are in focus of the second chapter.

The third part of the thesis is an analysis on the current Macedonian media landscape placed in a wider political context. Since the media system operates in a complex political environment and reflects main challenges on the political scene several examples which clearly show set-backs in Macedonian political course are used as a starting point for elaboration on the shortcomings in media system. It is presumed that the year 2008, when Greece blocked Macedonian membership in NATO and EU accession negotiation, is the important year for government shift toward more authoritarian practices. In addition, Hallin and Mancini variables, proposed in the first chapter, are employed for assessing particular characteristics of Macedonian media system and for elaboration on the consequences for the effectiveness of media freedom in Macedonian democracy. Although the European and International communities are concerned with Macedonian reputation in relation to media freedom, consensus on media self-regulation as the glimmer of hope has been finally reached. Furthermore, at the very end

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<sup>20</sup> Although Ministry of Information Society, which was in charge for drafting the new set of media laws adopted at the end of 2013, was contacted and representative asked for the interview, the answer was that there is “no need to meet and talk about the topic”.

of the thesis, perspectives for the future are outlined moving from the idea that self-regulation may improve journalism professionalization and mitigate the consequences of the ruling VMRO-DPMNE party tendency to colonize Macedonian media.

The research is primarily situated in the field of political science and contemporary media and cultural studies. In order to support the main argument various relevant international reports on freedom of media will be taken into consideration. As a limitation of my thesis, I acknowledge that content analysis of the mainstream media could provide much better insight of the role of the state as the prime definer of the news. A more comprehensive analysis might provide an answer to the question of how the selection principle functions and what is published or aired. Also, it might explain the way news is presented and what are the topics that have not found their place in the news media. It can possibly give broader picture of the intentions of the ruling elite and it can help in answering the question why the suppression of critical voices in Macedonia exists. Nevertheless, the research proposed here is a good starting point for the future analysis since it encompasses practices relevant for the process of media democratization, also identified in other countries from the South East Europe.

## 1 Theoretical background: Hallin and Mancini conceptual framework

Theoretical framework for analysing key characteristics of Macedonian media system relies on a very comprehensive comparative study on western media system models conducted by Hallin and Mancini.<sup>21</sup> It is considered a seminal work on media systems, although it has been criticized for not being fully applicable to the countries beyond the West.<sup>22</sup> Authors included this criticism in their following book *Comparing Media Systems beyond the Western World*, published in 2012.<sup>23</sup> However, the indicators they proposed for assessing media systems are useful as a conceptual framework, which has to be adapted for every single country under research.<sup>24</sup>

Authors proposed a framework consisting of four principal dimensions: media system market, political parallelism, role of the state and professionalization of journalism. All of these indicators are further divided into sub-indicators. The structure of media markets is analyzed through development of mass circulation press, visible distinction between high quality press and sensationalistic newspapers, and the balance of local, regional and national press in the media market.<sup>25</sup> In order to assess the extent of political parallelism or the extent to which a media system reflects the major political divisions in society, authors used indicators such as organizational connections between media and political parties, the tendency of the career path of journalists and media personnel to be shaped by their political affiliation, journalistic orientations and practices, internal or external pluralism and regulation of public service broadcasting.<sup>26</sup> Professionalization of journalism encompasses a degree of autonomy, development of distinct professional

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<sup>21</sup> Hallin, Daniel C. and Paolo Mancini. *Comparing Media Systems: Three Models of Media and Politics*. Cambridge University Press, New York, 2004.

<sup>22</sup> Dobek-Ostrowska, Boguslawa et al. *Comparative Media Systems: European and Global Perspectives*. Central European University Press, Budapest, 2010.

<sup>23</sup> Hallin, Daniel C. and Paolo Mancini. *Comparing Media Systems beyond the Western World*. Cambridge University Press. Cambridge, 2012.

<sup>24</sup> Richani, Sarah El. *Comparing Media Systems in the West and Beyond*, published in *Global Media Journal*. German Edition, Volume 2, No2, 2012, page 5

<sup>25</sup> Hallin, Daniel C. and Paolo Mancini. *Comparing Media Systems Three Models of Media and Politics*, Cambridge University Press, New York. 2004, p. 22-26

<sup>26</sup> Ibid., p. 26-33

norms and journalists' orientation, which means how much they are oriented to public service rather than towards interests of individual persons. Role of the state as final dimension defines degree and nature of state intervention in the media system.

In order to analyse and create the ideal types of media system models, authors have also taken some principal characteristics of political systems that can influence media system from comparative politics and political sociology. They claimed that political history, culture and structure are of great relevance when it comes to understanding the way media functions.<sup>27</sup> The state is the most important actor according to their study. "The differing roles that state can play as owner, founder or regulator of the media are clearly rooted in the role of the state in society."<sup>28</sup> Distinction should be made between liberal democracies and relatively restricted role of the state in countries such as the United States, and welfare state democracies which predominate in Europe, characterized by active state intervention. The role of the state is reflected in media system which is, in European tradition, explained as more authoritarian and paternalistic.<sup>29</sup>

A dimension of a political system crucial for this research is presented through the dichotomy rational-legal authority vs. clientelism, which refers to the form of governance through formal and universalistic rules of procedure.<sup>30</sup> In short, according to Weber's definition, which Hallin and Mancini use, in the countries with strongly developed rational-legal authority, the administrative system is autonomous of political parties, social groups, individuals, or any political and economic interest and acts in accordance with established procedures.<sup>31</sup> It is, in addition, conceived as service of a society as a whole. On the contrary, political clientelism refers to a pattern of social organization in which access to social resources is controlled by patrons and delivered to clients in exchange for various forms of support.<sup>32</sup>

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<sup>27</sup> Hallin, Daniel C. and Paolo Mancini. *Comparing Media Systems Three Models of Media and Politics*. Cambridge University Press, New York, 2004, p.46

<sup>28</sup> Ibid. p 49.

<sup>29</sup> Ibid.

<sup>30</sup> Hallin, Daniel C. and Paolo Mancini. *Comparing Media Systems Three Models of Media and Politics*. p. 55-59

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

Finally, the dimension, which I also consider important for this study is presented through the dichotomy of moderate vs. polarized pluralism. In polarized pluralism, ideological distance and cleavages among parties are deep, legitimacy of a political system is often questioned, and consensus usually very low. In moderate pluralism ideological differences are less great and less distinct, and with stronger tendencies towards the center.<sup>33</sup>

By using this complex framework, authors identified and described three main models: ‘liberal model’, ‘democratic corporatist model’ and ‘polarized pluralist model’.<sup>34</sup> Liberal model is predominant in Anglo-Saxon countries, democratic corporatist model prevails in the welfare states in Northern Europe and polarized pluralist model is predominant in Mediterranean countries.<sup>35</sup> Features of each ‘ideal media model’ are defined by using four dimensions and they are presented in the Table 1 below.

Table 1. The Three Models: Media System Characteristics<sup>36</sup>

<b>Dimension</b>	<b>Polarized Pluralist Media Model or Mediterranean Model</b>	<b>Northern European or Democratic Corporatist Model</b>	<b>North Atlantic or Liberal Model</b>
<b>Media market</b>	Low newspaper circulation; elite politically oriented press	High newspaper circulation; early development of mass circulation press	Medium newspaper circulation; early development of mass circulation commercial press

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Hallin, Daniel C. and Paolo Mancini. *Comparing Media Systems Three Models of Media and Politics*, Cambridge University Press, New York, 2004 p. 87 -89

<sup>36</sup> Ibid. p. 67

<b>Political parallelism</b>	High political parallelism; external pluralism, commentary-oriented journalism; parliamentary or government model of broadcast governance – politics-over-broadcasting systems	External pluralism especially in national press; historically strong party press; shift toward neutral commercial press; politics-in-broadcasting system with substantial autonomy	Neutral commercial press; information-oriented journalism; internal pluralism (but external pluralism in Britain); professional model of broadcast governance-formally autonomous system
<b>Professionalization of Journalism</b>	Weaker professionalization; Instrumentalization	Strong professionalization; institutionalized self-regulation	Strong professionalization; Non institutionalized self-regulation
<b>Role of the State</b>	Strong state intervention; press subsidies, periods of censorship; “savage deregulation”	Strong state intervention but with protection for press freedom; press subsidies, particularly strong in Scandinavia; strong public-service broadcasting	Market dominated (except strong public broadcasting in Britain, Ireland)

Polarized pluralist media model is identified in Greece, Portugal and Spain - the countries that threw off authoritarian regimes and began transitioning to democracy in the mid-1970. Italy is also an example of polarized pluralized media model, although it started the transitional process to democracy earlier. The mass media in these countries were closely involved in the political conflicts, and tradition of using media for political mobilization is very strong. Development of traditional media markets was weak, so media outlets were left dependant on the state, Church, wealthy individuals or political parties. Mass circulation newspapers never developed in Southern Europe, because economic and political conditions for that kind of venture were not present until

the mid-twentieth century. The only true mass media in Southern Europe are electronic media, and they are of great importance, especially during the electoral period. Since media outlets suffered financial independence, consequences such as weak professionalization and law autonomy of journalists remain. The delayed development of liberalism in these states is connected with a strong role of the state in society and particularly strong role of political parties once the transition to democracy is achieved.

In North and Central European countries the prevailing model is Democratic Corporatist with some particular characteristics, such as early development of press freedom and the newspaper industry. High newspaper circulation remains even nowadays in the countries such as Norway, Sweden and Germany. The extent of the links between media outlets and political parties is strong however, journalism professionalization is very high. The difference between Polarized Pluralist and Democratic Corporatist model is reflected in the role of the state. In the Polarized Pluralist model, the state can have a negative role representing corruption and nepotism or strongly supporting biased information flow, while in the Democratic Corporatist model, the role of the state is presumed to be positive, which means that it supports pluralism in media and ensures freedom of expression. In Norway for example, the media are seen as social institutions for which the state has responsibility, and press freedom coexists with a strong state support for media and regulation of media. Parties and organized social groups are involved in broadcast governance however, professional autonomy in broadcasting is high. It is worth emphasizing that some characteristics assumed as incompatible, such as strong commercial media industries and politically linked media, or high political parallelism and high degree of journalism professionalization, regularly coexist in this model. A possible reason for this, though it seems paradoxical case, might be in liberal institutions that generally developed early in the North and Central European countries.<sup>37</sup>

The North Atlantic, or Liberal model, such as in the United States is characterized by early development of press freedom and mass circulation press. Links between the political system and media system

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<sup>37</sup> Hallin, Daniel C. and Paolo Mancini. *Comparing Media Systems beyond the Western World*. New York: Cambridge University Press, 2012.

are low due to domination of commercial newspapers. Journalistic autonomy is limited because of commercial pressures rather than by political instrumentalization. Liberal institutions are developed relatively early with a traditionally strong role in the market. State role is limited because of the basic belief that truth can emerge only in a healthy competition of ideas in a free and transparent public discourse. According to this model, the government should keep out of the free market, or any kind of regulation which can suppress freedom of expression. Hallin and Mancini very generally concluded that in the Liberal model, the media are closer to the world of business and further from the world of politics. In Polarized Pluralist model, the media are relatively strongly integrated into the political world. Finally, in the Democratic Corporatist model, the media have had strong connections to both the political and economic world, with a significant shift away from political connections, particularly in recent years.

When it comes to the empirical data on the freedom of media in countries which fall under this categorization, the Freedom House report on freedom of the press in the world gives us a chance to compare the results. For example Sweden, Finland and Norway in the Northern Europe nowadays have the best scores, and they are given grade 10 on the scale from 0 to 100, with 100 meaning not free country, and 0 referring to a completely free country. The United States and Canada have scores 21 and 19 respectively, while Mediterranean countries are described as 'partly free' or 'free' with scores varying from 46 for Greece to 18 for Portugal.<sup>38</sup> The question that arises is what can this tell us? Presumably, democratic corporatist model may be the best-developed environment for the free flow of information and ideas. On the other hand, some characteristics of the polarized pluralist model might seem as disadvantageous for freedom of media.

According to the last Freedom House report, Macedonia is described as partly free country with score 57 on the freedom of media.<sup>39</sup>

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<sup>38</sup> Freedom House. *Freedom of the Press 2014 – Macedonia*, September 12<sup>th</sup> available at: <http://freedomhouse.org/report/freedom-press/2014/macedonia#.VDOyXxYgvjU> accessed September 2014.

<sup>39</sup> Freedom House. *Freedom of the Press 2014 – Macedonia*, September 12<sup>th</sup> available at: <http://freedomhouse.org/report/freedom-press/2014/macedonia#.VDOyXxYgvjU> accessed September 2014

Therefore, it may be the most similar to Mediterranean countries with specific characteristics of Polarized Pluralist Media Model. However, I firstly check how this theoretical framework, with proposed variables, fits countries beyond the West.

### 1.1 How does the rest of Europe fit in the theory?

Recent studies that have applied Hallin and Mancini's research concept to non-Western countries and particularly 'new democracies of the third wave'<sup>40</sup> have come to the conclusion that polarized pluralist model, which is inadvertently conceived as least desirable and deficient, best characterises cases outside the Western world.<sup>41</sup> The argument for such a claim may be derived from more-than-a-decade-old, discussion by Diamond and Plattner. They argue that new democracies were not so successful in developing the liberal model, although they managed to adopt some elements of democratic governance from their role models.<sup>42</sup> Many aspects appeared to be rather resistant to change, thus bringing about "a hybrid blend of new and old institutional forms, orientations and practices".<sup>43</sup> Scholar Katrin Voltmer claims that similar observations can be made with regard to the media systems in new democracies. Media systems incorporate structural elements and behavioural patterns of the regimes from which they emerged alongside forms of journalism that are associated with democratic public communication.<sup>44</sup> Discussing on the possibility to just 'import democracy' and to apply the same rules from the 'developed' West in post-authoritarian countries, Voltmer further emphasises that "it is often overlooked that for new institutions and norms to become legitimate they have to be 'domesticated' through a process of adaptation and integration into local value system and

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<sup>40</sup> Huntington, Samuel. *The Third Wave: Democratization in the Late Twentieth Century*. University of Oklahoma Press, 2012

<sup>41</sup> Dobek-Ostrowska, Boguslawa et al. eds. *Comparative Media Systems: European and Global Perspectives* Central University Press, Budapest, 2010.

<sup>42</sup> Diamond, Larry and Marc F. Plattner, et al. eds. *The Global Divergence of Democracy*. Johns Hopkins University Press, Baltimore, 2001

<sup>43</sup> Voltmer, Katrin. *Building Media Systems in the Western Balkans: Lost Between Models and Realities*. Working Paper, Analitika - Center for Social Research. Sarajevo, October 2010, p. 11

<sup>44</sup> Ibid.

customs.”<sup>45</sup> The most challenging issues in new democracies are inherited norms and values from the previous authoritarian period and a challenging task of defining the proper way to cope with them.

Scholars Paolo Mancini and Jan Zeilonka in introduction to the final report of the recent (2009-2013) project *Media and Democracy in Central and Eastern Europe* also emphasized that the Western media model cannot be so easily imported to Central and Eastern Europe (CEE) countries. Their main argument for such claim is that the Western media model is based on the presumption that “democratic institutions pre-date the rise of media and that core qualities of democratic governance exist including the rule of law, political pluralism, freedom of speech and information”.<sup>46</sup> Research findings showed that democratic institutions and media institutions in CEE “emerged simultaneously, and interdependently, in a period of rapid and often chaotic reform.”<sup>47</sup> Consequently, the performance of the democratic institutions in CEE countries is accompanied with many shortcomings in the political system, and this is reflected in media institutions as well.

Hallin and Mancini expected the decline of traditional mass political parties, the American model of professional journalism and the commercialisation of the media market to push young, European democracies toward liberal political and media model. Their presumption was that in West European countries, the media systems have become increasingly differentiated from the political systems, so consequently the new democracies will resemble the liberal model leading to a triumph of the same.<sup>48</sup> The question that arises is how does Macedonia fit these expectations?

Analysis on development of media in Macedonia shows that in socialist Yugoslavia, Macedonian media were state owned and

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<sup>45</sup> Voltmer, Katrin. *Building Media Systems in the Western Balkans: Lost Between Models and Realities*. Working Paper, Analitika - Center for Social Research. Sarajevo, October 2010, p. 13

<sup>46</sup> Mancini, Paolo and Jan Zeilonka. Introduction to the Final Project Reports. *Media and Democracy in Central and Eastern Europe*. University of Oxford and London School of Economics and Political Science, September 2013 available at <http://mde.politics.ox.ac.uk/index.php/country-reports> accessed July 2014.

<sup>47</sup> Ibid.

<sup>48</sup> Hallin, Daniel C. and Paolo Mancini. *Comparing Media Systems Three Models of Media and Politics*. Cambridge University Press, New York, p. 251

subject to a strong state control.<sup>49</sup> Subsequently, democratization and liberalization processes took place during the first decade of the political development of Macedonian society, when media system was fully built on the foundations of the western liberal model.<sup>50</sup> However, the direction of the development of the political system in Macedonia in the last decade confirms that this model could not easily take roots in the media system of a “transitional democracy” due to structural anomalies in the political system.<sup>51</sup> These anomalies are reflected in the features of the political system “that has been moving toward a stronger role of the government in almost all political processes and domains of society.”<sup>52</sup> As Table 1 shows, all of the stated characteristics are covered by polarized pluralist media model.

It is presumed that Macedonia is closer to the Polarized Pluralist (Mediterranean model) than to the other two, as it happened that countries which are geographically close by often resemble one another. In addition, it has been the model which may “apply to most nations beyond the west”<sup>53</sup>. The purpose of this study is not to classify Macedonia under an ideal type, since that is possible only with a more comprehensive research or might be impossible at all.

The media scene in Macedonia has its own specific hallmark, and it should be analysed as a unique case. Therefore, I follow the idea of some scholars who argue that the most useful exercise is the one that uses the actual indicators suggested by Hallin and Mancini as a starting point rather than the one which applies the framework uncritically.<sup>54</sup> The aim of this thesis is to focus on the relationship between media

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<sup>49</sup> Nikodonska, Vesna et. al. *Development of the media in Macedonia according to UNESCO indicators*. Macedonian Media Institute, Skopje, 2012.

<sup>50</sup> Ibid.

<sup>51</sup> Trpevska, Snezana and Igor Micevski. ‘Macedonia’ in *Media Integrity Matters: Reclaiming Public Service Values in Media and Journalism*, published within project South East Europe Media Observatory, Peace Institute, Ljubljana, 2014, p. 260

<sup>52</sup> Trpevska, Snezana and Igor Micevski. ‘Macedonia’ in *Media Integrity Matters: Reclaiming Public Service Values in Media and Journalism*, published within project South East Europe Media Observatory, Peace Institute, Ljubljana, 2014. p. 308

<sup>53</sup> Richani, Sarah El. *Comparing Media Systems in the West and Beyond*, published in *Global Media Journal*, German Edition, Volume 2, No2, 2012, p. 4-5

<sup>54</sup> Ibid. p. 4

and politics in Macedonia with an emphasis on role of the state, and specifically the role of the government. It is presumed in the thesis that the government, with the ruling right-wing political party VMRO-DPMNE, takes the most of responsibility for the decline in the freedom of media since it has been in power. Due to the fact that almost all reports show that after reaching its peak, freedom of media level in Macedonia has deteriorated from 2006 onwards, I search for mechanisms used for the maintaining of a non-free media landscape. From the comparison mentioned above, it is evident that in the polarized pluralist media model the results on the level of media freedom place the countries mostly in the domain of the partly free zone. If the role of the state and particularly the role of the government plays an important role in a negative sense, how does it affect the media system? Moreover, what consequences does this have for the political climate in Macedonia? In order to answer these research questions, I firstly examine the polarized-pluralist model in general and then apply it to Macedonia.

### **1.1.1 Polarized pluralist media model**

As stated before, this model is recognized in Greece, Spain, Portugal, Italy, and partially in France. Liberal institutions were consolidated in Italy after World War II, and in Greece, Portugal and Spain from about 1975-1985. The important fact is that the countries under this categorization witnessed political instability and repression in their history. As a result, the role of the state in these countries is very complex, and it reflects a combination of authoritarian and democratic tradition. In Greece for example “the remnants of authoritarianism are strongest today”<sup>55</sup> and it is visible through prosecution of journalists for defamation of public officials. Additionally, law gives the state rights to seize or shut down media outlets in the cases of offenses against religion or against the President of the Republic. Consequently, that serves as a hint to track judiciary as a possible mechanism for controlling media personnel in Macedonia.

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<sup>55</sup> Papathanassopoulos, Stylianos. *The Mediterranean/Polarized Pluralist Media Model Countries in European Media Governance: National and Regional Dimensions*, edited by Gerogios Terzis. Bristol: Intellect Book, pp. 191-200. [https://www.academia.edu/5372543/The\\_Mediterranean\\_or\\_Polarized\\_Pluralist\\_Model\\_Countries](https://www.academia.edu/5372543/The_Mediterranean_or_Polarized_Pluralist_Model_Countries), accessed September 2014.

Moreover, the state in this model has an important role as an owner of media enterprises. It may also be defined as an inherited pattern, since authoritarian regimes, such as Franco's in Spain, often had state-owned newspapers. In addition, state subsidies in these countries are still important for the funding of small media outlets, and government campaigns are significant in the area of media subsidising. Italy and France are among the countries with the highest level of state subsidies to the press.<sup>56</sup> This kind of interventionist state role prevents the media to play a 'watchdog role', which is highly valued in liberal theory. Therefore, financial subsidising is the second mechanism which can 'successfully' be used in the Polarized Pluralist media model for the purpose of limiting the basic role of media.

Regulation on media ownership concentration has been weak in the Mediterranean countries and Hallin and Mancini claimed that a close relationship between media owners and politicians is the central reason for that.<sup>57</sup> Silvio Berlusconi, one of the most dominant figures in Italian media and politics, is maybe the best example of being both – a politician and a media mogul. He served as a prime minister three times (although he was sworn in four times because of the cabinet reshuffle in 2005) however, he has assets in commercial broadcaster Mediaset, Mediolanum Bank and football club Milan which keeps him in billionaire ranks.<sup>58</sup> Although controversial and accused of tax fraud, corruption, and sex affairs, Berlusconi managed to influence main broadcasters such as Italian national public broadcaster RAI, which attract 85% of national audience. This is a blatant example, because Silvio Berlusconi damaged political pluralism and democracy by using his TV stations to promote himself and to reach more than forty per cent of Italian population.<sup>59</sup> Italy is not an isolated case, and it is presumed that links between media owners and politicians are of great importance in the (non-)functionality of Macedonian media system. For this reason Macedonian media owners are under the spotlight in one of the following

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<sup>56</sup> Ibid.

<sup>57</sup> Hallin, Daniel C. and Paolo Mancini. *Comparing Media Systems Three Models of Media and Politics*. Cambridge University Press, New York, p. 122

<sup>58</sup> Forbes List of The World's Billionaires. #181 Silvio Berlusconi & family, available at: <http://www.forbes.com/profile/silvio-berlusconi/> accessed September, 2014.

<sup>59</sup> Doyle, Gillian. *Media Ownership*. Sage Publications, London, 2002.

chapters. While in the current Polarized Pluralist models political criticism and debate are not usually absent, investigative journalism on corruptive practices, incompetence and conflict of interest has often been a missing part. Political scandals in Italy have, to some extent, changed that practice.

Portuguese media policy during the 1980s and 1990s is defined as ‘savage deregulation’<sup>60</sup> because Portugal introduced commercial broadcasting in an uncontrolled way without imposing obligations on broadcasters and without any framework of public broadcasting basic service, such as providing reliable information on public affairs to citizens, or providing access to different political views. Similarly, pirate radio and television stations proliferated in Greece in the late 1980s, as a direct consequence of a ‘savage deregulation’. At the same time, public broadcasting service in Greece dropped to the lowest audience share in Europe. Consequently, it is safe to say that public service broadcasting in the full sense of the word never existed in Spain, Greece and Portugal.<sup>61</sup> In order to establish the presence of a ‘savage deregulation’ in Macedonia, at the very beginning of the second chapter, I focus on the process of media market liberalisation when the country gained independence.

According to the authors, the media in a Polarized Pluralist model are characterized by the prevalence of instrumentalization of privately owned outlets, politicization of public broadcasting and broadcast regulation, limited development of journalism as an autonomous profession and the lasting tradition of advocacy reporting.<sup>62</sup> Nonetheless, high political parallelism is one of the model’s key characteristics. It reflects strong links between media and political parties or, more broadly, the media systems totally reflect the major political divisions in society.<sup>63</sup> The notion draws on the concept of ‘press-party parallelism’ introduced by Colin Seymour-Ure<sup>64</sup> to describe the pattern and the

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<sup>60</sup> Hallin, Daniel C. and Paolo Mancini. *Comparing Media Systems: Three Models of Media and Politics*. Cambridge University Press, New York, p.124

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Hallin, C. Daniel and Paolo Mancini, *Comparing Media Systems Three Models of Media and Politics*, Cambridge University Press, New York, 2004. 21

<sup>64</sup> Colin, Seymour-Ure. *The Political Impact of Mass Media*. Constable, London, 1974.

degree to which the press system mirrors the party system in European history since the 19th century.

Political parties and party leaders in every country have interest to maximize their power in order to gain, stabilize, and improve their positions.<sup>65</sup> In post authoritarian countries with weak and undeveloped electoral system, newly formed parties may show even more tendency for power maximization than parties in Western democracies. Some of them seem to have colonised, in addition to state institutions, the media as well. In regards to these considerations, I claim that the ruling VMRO-DPMNE party shows a growing tendency to colonize Macedonian media system.

The party colonisation of the media is defined as a “strategy aimed at stabilising the party’s position in society by extracting resources from the media, including airtime, frequencies, positions, and funding dedicated to programme production and advertising”.<sup>66</sup> This kind of colonization is useful for mobilization of inactive supporters, for addressing undecided voters, and for deploying new resources for party funding. It also happens that ruling parties use all media resources at their disposal to make the opponents less visible.<sup>67</sup> Party colonization may target all the media – both public and private. However, Public Broadcasters and Regulatory authorities are usually the first targets, so why would Macedonia be an exception? For this reason institutional control of the media is the mechanism to start with in the case of Macedonia.

Moreover, it is possible to connect the consequences of particular relations between media and politics on the freedom of media, as well as proposed mechanisms of control within the polarised pluralist media model and the decline in media freedom level in Macedonia. Someone has to bear responsibility for such a decline, and for this reason I now elaborate on the main actors on political and media scene in Macedonia

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<sup>65</sup> Lijphart, Arendt. *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*. New Haven & London, Yale University Press, 1999.

<sup>66</sup> Bajomi-Lazar, Peter. Media and Democracy in Central and Eastern Europe Project report. *Parties, Organized Interest Groups and the Media*. University of Oxford and London School of Economics and Political Science, May 2012, available at <http://mde.politics.ox.ac.uk/index.php/country-reports> accessed July 2014.

<sup>67</sup> Ibid.

during the process of transition.

## **1.2 Historical background: Democratization of political and media systems**

Since it is not possible to discuss democracy, democratic values and freedom of media as pillars of democracy without the concept of the state<sup>68</sup>, in this chapter I will briefly go through Macedonian state building process and political and media system democratization. Historical background may help us understand the context in which Macedonia entered the state building process. Modern Macedonia emerged in 1945 as one of the six constituent republics of Socialist Federal Republic of Yugoslavia. It gained independence in 1991, and entered the road toward democracy. The state and its role are in the focus of this research, so it might be important to recall the evolution of the main parties, as well as the ‘political roots’ of people who have been ruling the country.

### **1.2.1 Macedonian state building process and the main actors**

As a part of the growing democratic challenge to the Communist monopoly of power, the discourse on the future of Macedonia and its people began in the Yugoslav republic, before disintegration.<sup>69</sup> The League of Communists of Macedonia (SKM), which was the only political party during the period 1943 – 1990, had promised a multi-party system in 1989, and opened the door for the first democratic elections and pluralism. On 17 June 1990, the new ‘radical and well organized nationalist party held its founding congress in Skopje’.<sup>70</sup> The party gave itself a new name Internal Macedonian Revolutionary Organization – Democratic Party of Macedonian National Unity (VMRO-DPMNE) referring to the original VMRO, a 19<sup>th</sup> century national liberation

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<sup>68</sup> Linz, Juan J. and Alfred Stepan. *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*. Johns Hopkins University Press, London, 1996. p. 16-37

<sup>69</sup> Rossos, Andrew. *Macedonia and the Macedonians*. Stanford University, Hoover Institution Press, 2008.

<sup>70</sup> Ibid.

movement in the Ottoman Empire.<sup>71</sup> After the formation, VMRO-DPMNE became a part of the Nationalist front of Macedonian Nationalist Unity together with respected Macedonian intellectuals organized around the Movement for all – Macedonian Action. The main idea was to defend Macedonian interests in the Yugoslav federation and to plead for an independent republic. Ethnic parties were also formed in Macedonia for the first time. The main Albanian group was Party for Democratic Prosperity (PDP) formed in April 1990.<sup>72</sup> Before the first multi-party democratic elections in Macedonia, SKM transformed itself into the League of Communists of Macedonia - Party for Democratic Renewal (SKM-PDP). At its congress in April 1991, the party adopted a name that is still in use – Social Democratic Union of Macedonia (SDSM). VMRO-DPMNE and SDSM were, and still are, the two biggest political parties in Macedonia.<sup>73</sup>

The first multi-party democratic elections in Macedonia were held in November 1990. More than 20 parties took part in parliamentary elections and 80 percent of eligible voters cast ballots. VMRO-DPMNE won 38 out of 120 parliamentary seats, while reformed Communists gained 31 seats. VMRO-DPMNE then led by Ljubco Georgievski failed to form a government, after refusing to form a coalition with one of the ethnic Albanian parties.<sup>74</sup> Nikola Kljusev, a professor of economics and non-partisan prime minister, formed the first democratic cabinet. This “government of experts” survived for more than a year and, under the first president Kiro Gligorov’s leadership, supervised the tense transition to independence and the difficult start of political democracy

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<sup>71</sup> Balkan Insight. *VMRO-DPMNE-Organization Profile, Macedonian General Elections*. March 2014., available at: <http://www.balkaninsight.com/en/article/vmro-democratic-party-for-macedonian-national-unity-vmro-dpmne> accessed August 2014.

<sup>72</sup> Ibid.

<sup>73</sup> Jakov Marusic, Sinisa. *Macedonia Elections Profile*, Balkan Insight, March 18<sup>th</sup> 2014, available at <http://www.balkaninsight.com/en/article/macedonia-elections-profile> accessed August 2014.

<sup>74</sup> Balkan Insight. *VMRO-DPMNE-Organization Profile, Macedonian General Elections*. March 2014., available at: <http://www.balkaninsight.com/en/article/vmro-democratic-party-for-macedonian-national-unity-vmro-dpmne> accessed August 2014.

and market economy.<sup>75</sup>

Following in the footsteps of Croatia and Slovenia, the national assembly declared sovereignty on 25 January 1991.<sup>76</sup> Five months later, the Yugoslav Army attacked Slovenia, and the Macedonian assembly opened discussion about full independence the following day. It led to the first polarization in the parliament and among the people. Due to a disagreement “between moderate or cautious nationalists led by Gligorov and radical, impatient nationalists under the VMRO-DPMNE who wanted independence immediately”<sup>77</sup>, political leaders gave the people a final say in the referendum on 8 September 1991. Albanians boycotted the referendum to protest their constitutional status. Around 72 percent of almost 1.5 million of registered voters cast ballots; 95 percent of voters, supported independence and only 3.63 percent opposed it.<sup>78</sup> On 17 September 1991, the national assembly passed the declaration of independence, and on 17 November it adopted a new constitution. The official proclamation of independence took place on 20 November.

As it was presumed by Macedonian leaders, Yugoslavia soon disintegrated. After the proclamation of independence and the judgement of the Badenter commission about fulfilling the conditions for diplomatic recognition, the country entered an uneasy period of state building. Scholars claim that the following factors negatively influenced Macedonian democratization process in the following years: difficulties with international state recognition by, among others, the European

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<sup>75</sup> Rossos, Andrew. *Macedonia and the Macedonians*. Stanford University, Hoover Institution Press, 2008.

<sup>76</sup> Ramet, Sabrina P. *The Macedonian Enigma*, in Sabrina P. Ramet and Ljubisa S. Adamovich, eds., *Beyond Yugoslavia: Politics, Economics, and Culture in a Shattered Community*. Westview Press, Colorado 1995. p. 214

<sup>77</sup> Rossos, Andrew. *Macedonia and the Macedonians*. Stanford University, Hoover Institution Press, 2008. p.265

<sup>78</sup> Ibid.

Community and the United States, the name dispute with Greece<sup>79</sup>, the disruption of the economy due to UN sanctions to Macedonian main trade partner Serbia, financial impediments due to NATO bombing of Yugoslavia because of the Kosovo crisis and internal armed conflict between ethnic Albanians and Macedonians in 2001 which resulted with the Ohrid Framework Agreement (OFA).<sup>80</sup>

In the Bertelsmann Transformation Index (BTI), a series of reports that measure transformation toward democracy and market economy in 129 countries, it is emphasized that in the 1990s, Macedonian political elites “clashed with Albanian counterparts over the basic idea of the state”.<sup>81</sup> Ethnic Macedonians have always insisted on a unitary state, while the biggest concern for ethnic Albanians was to be considered as an ethnic minority. They advocated for an official bi-ethnic state system.<sup>82</sup> Various elements of the Constitution were contested by Albanians during that period. They opposed census taking, and they were not satisfied with laws on education, local self-government, public display of national-minority symbols, public administration, etc. All these issues led to the armed conflict between Albanian rebels and government forces in 2001. However, conflict was ended through the EU- USA-mediated agreement six months after the turmoil broke out.<sup>83</sup>

Demands raised by ethnic Albanians were fulfilled with political and constitutional reforms. Some features of power-sharing were introduced, such as a system of double-majorities requiring consent

<sup>79</sup> Greece claims that the name is exclusively part of its cultural and historical heritage. Athens insists that Macedonia must add a “qualifier” to its name in order to differentiate the country from the northern province of Greece bearing the same name. Greece also argues that the name implies territorial irredentism. Macedonia has renounced any claims on Greek territory, but it regards its name as a core part of its national identity. The view from Skopje is that Macedonians have a right to self-determination.

<sup>80</sup> Dimitrijevska-Markoski, Tamara and Zhidas Daskalovski. *Assisting Media Democratization after Low-Intensity Conflict: The Case of Macedonia*. Sarajevo: Analitika – Center for Social Research / Skopje: CRPM - Center for Research and Policy Making, May 2013.

<sup>81</sup> Bertelsmann Transformation Index. *Macedonia Country Report 2010* available at: <http://www.bti2010.bertelsmann-transformation-index.de/en/bti/country-reports/laendergutachten/eastern-central-and-southeastern-europe/macedonia/> accessed August 2014.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

from minorities represented in the parliament on key decisions of parliament, a substantial degree of municipal decentralization, and an equitable representation in the public administration of the non-majority communities.<sup>84</sup> According to the agreement, principle of equitable and just representation in public administration at the national and local level is the key reform in the public sector.

Macedonia was the first country from the Balkan region to sign the Stabilization and Association Agreement with the EU in 2001, and since December 2005 it has been an official candidate for the EU membership. The Ohrid Agreement is used by the European Union as a key condition for further integration of Macedonia.<sup>85</sup> Macedonia is a member of the United Nations, however due to the problem with Greece over the name<sup>86</sup> it is referred to as “the Former Yugoslav Republic of Macedonia”. This name dispute was used by Greece to block the Macedonian admission to the North Atlantic Treaty Organization (NATO) in 2008 and to impede the beginning of negotiations for EU membership. According to the judgement of the International Court of Justice, Greece violated 1995 Interim Record as a key legal framework for stabilization of bilateral relations by objecting Macedonia’s accession to NATO.<sup>87</sup> In the third chapter I elaborate more on the consequences of the NATO Summit in Bucharest and Greece objection for the Macedonian political and media system.

However, the main priorities of Macedonia’s political leadership, accession to the EU and NATO, have been maintained until

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<sup>84</sup> Daskalovski, Zhidas. *Walking on the Edge: Consolidating Multi-ethnic Macedonia 1989-2004*.

Globic Press, Chapel Hill, 2006.

<sup>85</sup> Bertelsmann Transformation Index. *Macedonia Country Report 2010*. available at: <http://www.bti2010.bertelsmann-transformation-index.de/en/bti/country-reports/laendergutachten/eastern-central-and-southeastern-europe/macedonia/> accessed August 2014.

<sup>86</sup> The name ‘Macedonia’ is perceived by Greece as implication of territorial irredentism and Greece also claims the name to be exclusively part of its cultural and historical heritage. On the other hand Macedonia has renounced territorial ambitions over Greek territory but refuses to change the name of the country, claiming that it is part of its identity.

<sup>87</sup> International Court of Justice. Press Release. Available at: [www.icj-cij.org/docket/files/142/16841.pdf](http://www.icj-cij.org/docket/files/142/16841.pdf) accessed September 2014.

nowadays<sup>88</sup> and country reaffirms its commitment to the reform process. Nevertheless, the Bertelsmann Transformation Index (BTI) reports indicate that the government sometimes postpones these priorities in favour of short-term political benefit.<sup>89</sup> In the EU progress report, the chapter on the level of difficulty of the transformation management pays attention to structural difficulties of Macedonian governance which are the result of inherited structural problems from the previous regime and the poor management of the transition process.<sup>90</sup> Consequently, shortcomings in the political system are reflected in the media system, which has undergone changes as well.

### 1.2.2 Media system “transition”

Discussion on Macedonia’s media system and its transition leads us to interrelatedness between media and democracy, and media and democratization process. Democratization in the ideal case leads to a consolidated democracy<sup>91</sup> which means that “transition is complete, agreement about political procedures has been reached, government on power is the result of free and popular vote and de facto has authority to generate new policies ...”<sup>92</sup> Having all of this in mind, why is media important for the democratization process and democracy in general, and what is the role of the media?

According to liberal theories of the democratic state, democracy is unthinkable without freedom of speech, freedom of press and freedom of association.<sup>93</sup> Media, as the ‘fourth estate’ or ‘watchdogs’, are core democratic institutions, vital in improving the quality of the electoral system, political parties, parliament, judiciary and other branches of the state, and safeguarding their democratic performance. The media

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<sup>88</sup> Bertelsmann Transformation Index. *Macedonia Country Report 2010*. available at: <http://www.bti2010.bertelsmann-transformation-index.de/en/bti/country-reports/laendergutachten/eastern-central-and-southeastern-europe/macedonia/> accessed August 2014.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Linz, Juan J. and Alfred C. Stepan. “Theoretical Overview.” In *Problems of democratic transition and consolidation: southern Europe, South America, and post-communist Europe*. Johns Hopkins University Press, Baltimore, 1996.

<sup>92</sup> Ibid.

<sup>93</sup> Stuart Mill, John. *On Liberty*. Longman, Roberts & Green, London, 1869.

should hold government and political elites accountable. Political accountability has two main dimensions: vertical, which considers citizens' ability to oversee actions of the power holders and horizontal, which means having a system of checks and balances between state institutions, public agencies, and branches of government.<sup>94</sup> Institutional checks and balances in democracy should prevent political actors' to concentrate power.<sup>95</sup>

The functions of media in democracy remain unchanged. Almost 30 years ago, Gurevitch and Blumler defined something known as democratic expectations of 'Media Performance'.<sup>96</sup> It means that the media perform and provide a number of functions and services for the political system. The most important functions they defined are listed below:

- Surveillance of the sociopolitical environment, reporting developments likely to impinge, negatively or positively, on the welfare of citizens
- Meaningful agenda-setting, identifying the key issues of the day, including the forces that formed or may resolve them
- Platforms for an intelligible and illuminating advocacy by politicians and spokespersons of other causes and interest groups
- Dialogue across diverse range of views, as well as power holders and mass public
- Mechanisms for holding officials to account for how they have exercised power
- Incentives for citizens to learn, choose, or become involved, rather than merely to follow or kibitz over the political process
- A principled resistance to the efforts of forces outside the media to subvert their independence, integrity, and ability to serve the audience

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<sup>94</sup> Whitehead, Laurence. *Democratization: Theory and Practice*. Oxford University Press, 2002.

<sup>95</sup> Diamond, Larry and Leonardo Morlino. *Assessing the Quality of Democracy*. The John Hopkins University Press, Baltimore 2005.

<sup>96</sup> Gurevitch, Michael and Jay G. Blumler. *The Crisis of Public Communication*. Routledge, London, 1995. p. 97

- A sense of respect for the audience member as potentially concerned and able to make sense of his or her political environment.<sup>97</sup>

In addition, Denis McQuail describes the media system as the actual set of mass media in a given national society, characterized by such main dimensions as scale and centralization, degree of politicization, diversity profile, sources of finance and degree of public regulation and control.<sup>98</sup> Normative goals are the constituent part of the media system, and they are reflected in media policy, which is an important part of this study.

It is worth mentioning that at the beginning of the post-communist transition ‘mass public did not have much or any experience with democracy’.<sup>99</sup> The Yugoslav media system, as in many other communist regimes, was characterized by a significant level of censorship and propaganda.<sup>100</sup> Since media institutions evolve over time and “at each step of their evolution past events and institutional patterns inherited from earlier periods influence the direction they take”,<sup>101</sup> the transition has been a challenging task. However, some common obstacles are identified in almost all transitional countries:

- 1) ambivalent relationship between government and the media,
- 2) reformed media institutions still retain elements of the logic and constraints of their predecessors, and
- 3) journalists in the newly transformed media organisations still hold values rooted in their professional life under the old regime.<sup>102</sup>

According to Karol Jakubowitz and Miklos Sukosd<sup>103</sup>, some of

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<sup>97</sup> Ibid.

<sup>98</sup> McQuail, Denis. *Mass Communication Theory*. the 5<sup>th</sup> ed. SAGE Publications, 2005.

<sup>99</sup> Ibid.

<sup>100</sup> Nikodonska, Vesna et. al. *Development of the media in Macedonia according to UNESCO indicators*. Macedonian Media Institute, Skopje, 2012.

<sup>101</sup> Hallin, Daniel C. and Paolo Mancini. *Comparing Media Systems: Three Models of Media and Politics*. Cambridge University Press, New York, 2004. p. 12

<sup>102</sup> Voltmer, Katrin and Gary Rowsley. *The Media*, in Christian W. Haerpfer et al. *Democratization*. Oxford University Press, 2009.

<sup>103</sup> Jakubowitz, Karol and Miklos Sukosd. *Finding the Right Place on the Map: Central and Eastern European Media Change in Global Perspective*. Intellect Books UK/Chicago USA, 2008.

the most prominent scholars focused on post-communist media system transition, it is very hard to define a clear trajectory of the transition process. Many factors may influence modifications of political and media systems, so it is safe to say that every country has its own pathway. However, media tasks in democratisation remain unchanged, and they may foster or slow down transitional goals. The freedom of media is constitutionally guaranteed in virtually all transition countries, although implementation in practice may differ a lot from the word on the paper.

In the Macedonian case, I claim, and international reports indicate the same<sup>104</sup>, the transitional process of changing media in order to serve the basic democratic role has not been finished. In the first stage of democratization, demonopolization and liberalization, the media system was left unregulated and I elaborate more on this in the second chapter. According to the available data, the level of media freedom during that period was progressing and it reached its peak in 2005<sup>105</sup>. Since then it has been in constant decline. The first question arising is what are the reasons for such decline? It is presumed that the state, particularly the executive branch, still has an important role in trying to control the dissemination of information. The normative framework developed through the years starting from 1997 is evaluated as good and in compliance with the European laws. However, the results show the opposite.

It is symptomatic that the media freedom level decline started when the VMRO-DPMNE political party came to power. Since 2006 it has been in coalition with ethnic Albanian parties and often criticized for trying to silence critical voices. It turns out that by using different mechanisms, the ruling elite successfully control the media in

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<sup>104</sup> European Commission. Commission Staff Working Document. *The Former Yugoslav Republic of Macedonia Progress Report*. Available at: [http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index\\_en.htm](http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm); Freedom House. *Freedom of the Press 2006 – Macedonia*, available at: <http://freedomhouse.org/report/freedom-press/2006/macedonia>; Reporters without Borders for freedom of information. *World Press Freedom Index 2014. European Union and the Balkans*. available at: <http://rsf.org/index2014/en-eu.php>, accessed August 2014.

<sup>105</sup> International Research and Exchanges Board (IREX). *Media Sustainability Index 2005*. Available at: <http://www.irex.org/resource/macedonia-media-sustainability-index-msi>, accessed July 2014.

Macedonia. Ruling VMRO-DPMNE political party has used all possible ways to oversee the media: through institutions, providing subsidies to favourable media outlets, through judiciary and establishing close connections with media owners. After close elaboration on the each of mechanisms which are used for suppression of critical voices, I will focus on consequences of all these practices.

## 2 Mechanisms of Government Control

Scholars of power relations such as Lasswell and Caplan claim that control over information is one of the resources of power.<sup>106</sup> It is a basic mechanism in struggle for power either among different political elites or between the ruling elite and citizens. When freedom of expression and information is allowed, citizens acquire a portion of power over the ruling elite, and therefore push for democracy.<sup>107</sup> Otherwise without reliable information citizens cannot make informed and effective choices or effectively use other political rights.

In a one-party system, all media in Macedonia were state-owned and therefore directly controlled by the ruling party.<sup>108</sup> After the proclamation of independence, it was assumed that there was no need for media regulation.<sup>109</sup> The general belief among politicians and journalists was that process of liberalization and democratization must go freely without any law which may restrict the media, and thereafter interfere with the freedom of expression, guaranteed by the 1991 Constitution of the Republic of Macedonia. The freedom of personal conviction, conscience, thought and public expression of thought, the freedom of speech, public address, public information and the establishment of institutions for public information are guaranteed by Article 16

<sup>106</sup> Kaplan, Harold D. and Abraham Lasswell. *Power and Society: A Framework for political inquiry*. Yale University press, 1<sup>st</sup> ed. 1968.

<sup>107</sup> Marceta, Irena. "Building Democracy with External Help: Macedonia and Serbia." PhD diss., University of Bologna, 2008.

<sup>108</sup> Nikodonoska, Vesna et. al. *Development of the media in Macedonia according to UNESCO indicators*. Macedonian Media Institute, Skopje, 2012.

<sup>109</sup> Ibid.

of the Constitution.<sup>110</sup> Consequently, free access to information and the freedom of reception and transmission of information are also guaranteed by the Constitution.<sup>111</sup>

## 2.1 Media regulation - a good ground for misuse?

The first period of democratization and liberalization of the Macedonian media sector (from 1991 until 1997) was seen as an opening for critical media and the rise of pluralism. First private radio station started a broadcasting programme in 1991, while two years later, the first private TV station, “A1” was opened. Competition in the printing press had been established from 1996 with the emergence of the first private newspaper “Dnevnik”. Without Law on Broadcasting Activity, a high number of privately owned broadcast media were working irregularly, without concession.<sup>112</sup> Technical, structural and professional standards did not exist. The media sector was “highly vibrant, but fragmented and very chaotic”<sup>113</sup> with more than 300 radio and TV stations<sup>114</sup>. This phenomenon of ‘savage deregulation’ is typical for the countries with polarized pluralist model.

However, societies in the process of democratization need constitutional and legal guarantees in order to make the freedom of media enforceable. The first steps in creating normative media framework were made in 1997/1998 with the set of laws adopted due to obligations deriving from Macedonian membership in the Council of

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<sup>110</sup> The Constitution of Republic of Macedonia, adopted on 17<sup>th</sup> November 1991 in Skopje, Macedonia, entered into force 20<sup>th</sup> November 1991. Official Gazette of the Republic of Macedonia No 52/91

<sup>111</sup> The Constitution of Republic of Macedonia, adopted on 17<sup>th</sup> November 1991 in Skopje, Macedonia, entered into force 20<sup>th</sup> November 1991. Official Gazette of the Republic of Macedonia No 52/91

<sup>112</sup> Nikodonoska, Vesna et. al. *Development of the media in Macedonia according to UNESCO indicators*. Macedonian Media Institute, Skopje, 2012.

<sup>113</sup> Dimitrievska-Markoski, Tamara and Zhidas Daskalovski. *Assisting Media Democratization after Low-Intensity Conflict: The Case of Macedonia*. Center for Research and Policy Making, Skopje and Center for Research Analitika, Sarajevo, 2013.

<sup>114</sup> Valic Nedeljko and Jelena Kleut. *Europe, here and there: Analysis of the Europeanization Discourse in the Western Balkans Media*. Novi Sad, 2013.

Europe.<sup>115</sup> The most significant provisions from that period are related to establishment of independent regulatory body and the public service broadcaster. However, the first regulator—the Broadcasting Council—did not fully have the key competences for regulatory intervention in the broadcast field.<sup>116</sup> Deficiencies in regulation led to the second wave of normative changes in 2005. A new law on broadcasting activity was written to be in compliance with the EU law and with the Agreement for Stabilization and Association. The whole process was influenced by the civil sector and international organizations, such as Council of Europe (CoE) and Organization for Security and Co-operation in Europe (OSCE). Although the created legal framework was appraised as satisfactory, independency of regulatory bodies from government influence was one of the main problems since its establishment.

In accordance to the European and international standards Broadcasting Council should have competencies, decision-making capacities and responsibilities in terms of:

- allocation, revocation, and renewal of the frequencies,
- following the situation in the audio-visual sector in accordance with its role as mediator between the audience/public authority and the broadcasters,
- fulfilment of the legal obligations by the broadcasters and sanctioning those that do not work in compliance with the law,
- appointing or giving agreement for nomination of members of managing bodies of the public broadcast enterprises,
- authorization to conduct economic control in the market, monitoring ownership and changes in the capital or ownership structure and distribution of the funds from the broadcasting fee.<sup>117</sup>

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<sup>115</sup> Macedonia ratified The European Convention for Protection of Human Rights and Fundamental Freedoms in 1997.

<sup>116</sup> Nikodonoska, Vesna et. al. *Development of the media in Macedonia according to UNESCO indicators*. Macedonian Media Institute, Skopje, 2012. p. 21

<sup>117</sup> Council of Europe. Committee of Ministers. Recommendation No. R (2000) 23 of the Committee of Ministers to Member States on the Independence and Functions of regulatory authorities for the broadcasting sector, adopted on December 20<sup>th</sup> 2000 available at: [http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%282000%29023&expmem\\_EN.asp#P13\\_207](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%282000%29023&expmem_EN.asp#P13_207) accessed September 2014.

Only with these competences and independence from political interference can a regulatory body ensure the existence of diverse, independent and autonomous media and further development of broadcasting activity.

Criminalization of defamation, slander and libel was seen as a problematic issue in legal media framework from 1991 onwards. In 2006, partial abolition of imprisonment as a punishment for defamation strengthened journalistic freedoms<sup>118</sup>, and the problem was “solved” in 2012 when defamation was completely decriminalized. Moreover, the Law on the Free Access to Public Information was finally adopted after several unsuccessful attempts in 2006. Such delay was interpreted as an attempt of the government to limit the access to information and to maintain discretionary power over which information should be made public.<sup>119</sup>

With media legislation in the 1990s it was very difficult to assure the strengthening of media freedom and full democratization of media sector. Reforms in 2005 and 2006 improved the normative framework, however issues of independency and transparency in the work of public broadcast service and the main regulatory body remained. Process of full harmonization with the European Law and adoption of the Law on Media and the Law on Audio and Audio-Visual Media Services (2013) received approval from the OSCE and the European Commission. However, scratching under the surface, we discover that recently adopted laws leave space for misuse. Both laws are highly contested and criticized with the main argument that they are used for further strengthening of the position of the ruling party, and for re-establishing the political control over publicly and privately owned media.<sup>120</sup> Instead of strengthening regulators’ independence from political interference, the new laws are perceived as a good starting

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<sup>118</sup> Freedom House. *Freedom of the Press 2008 – Macedonia*, available at: [http://freedomhouse.org/report/freedom-press/2008/macedonia#\\_VCKyghYgvjU](http://freedomhouse.org/report/freedom-press/2008/macedonia#_VCKyghYgvjU), accessed September 2014

<sup>119</sup> Sopar, Vesna. *Law on Public (Non-)Information*. South-East European Media Journal, 2001. <http://www.mediaonline.ba/en/?ID=47>, accessed September 2014.

<sup>120</sup> Trpevska Snezana and Igor Micevski. ‘Macedonia’ in *Media Integrity Matters: Reclaiming Public Service Values in Media and Journalism*, published within project South East Europe Media Observatory, Peace Institute, Ljubljana, 2014.

point for further politicization of the media, and I elaborate more on this issue throughout the following chapter. Since after more than 20 years of independence, the main issues in the Macedonian media sector remain, this shows that there is no political will to fully democratize the media scene. Consequently, controlling mechanisms inherited from the previous regime, persist.

The following quote of the owner of Macedonian national broadcaster explicitly states main concern regarding media freedom in Macedonia nowadays: “The period when VMRO-DPMNE came to power is characterized by a total abuse of the regulation... due to their political ideology in which the media are key in achieving the political goals... they are a means of mobilisation and not a means of information.”<sup>121</sup> President of the Independent Union of Journalists and Media workers, Tamara Causidis, when asked about this claim in a personal interview, defined the reasons as follows: “The ruling party simply wants to suppress critical voices and to replace them with propaganda in order to approve all government policies and everything that has been done in Macedonia.” She further emphasizes that critical is conceived as hostile and unpatriotic, and the government, as far as the ruling party and the Prime Minister explicitly and publicly state that all people who disagree with them aim to destroy the country. It is part of the public discourse and there is no possibility to break that stereotype.<sup>122</sup>

Therefore, my research conducted in the field shows that it is possible to define at least four mechanisms in which government control of the media persists: institutional, financial and human resource control, indirect control through the hidden patterns of media ownership, and judicial mechanisms for suppressing critical voices. Firstly, the institutional control is discussed through the analysis of the public broadcast Service – Macedonian Radio Television (MRT) and the main regulatory body – Agency for Audio and Audio-Visual Media Services which succeeded the functions of the previous Broadcasting Council. It is perceived that institutional control is most visible through

<sup>121</sup> Trpevska Snezana and Igor Micevski. *‘Macedonia’ in Media Integrity Matters: Reclaiming Public Service Values in Media and Journalism*, published within project South East Europe Media Observatory, Peace Institute, Ljubljana, 2014. p. 265

<sup>122</sup> Causidis, Tamara. Personal Interview, Skopje, July 2014.

these media institutions. Secondly, as stated in some domestic expert analysis<sup>123</sup> managing financial and human resources is one of the most salient ways of control, and it is also discussed in this chapter. Furthermore, media ownership and relationship between the ruling political party and the most influential media outlets will be in focus of discussion, as well as other mechanisms which are mostly discernible from the analysis of defamation actions litigations.

## 2.2 Institutional control

Broadcast Law was first drafted in 1996 and adopted in 1997. It incorporated elements characteristic of pluralistic media systems, and was followed with the Law on Telecommunications (1998), The Law on Concessions (1998), and the Law on the Establishment of the Public Enterprise Macedonian Radio Television (1998). However, in compliance with the legislation, the Government of Macedonia had the exclusive right to grant concessions to public and private broadcasters. Precise division of power under the first Broadcast Law between the government and the council was unclear<sup>124</sup> and available reports show that party biases dominated in most media outlets.<sup>125</sup> The reason for drafting the new Broadcasting Law (2005) was to overcome these deficiencies and to bring it in compliance with the EU Television without Frontiers Directive. Directives for change<sup>126</sup> addressed issues left incompletely regulated or not regulated at all, such as insufficient obligations of the public service broadcaster in terms of the programming it should offer, competencies of the Broadcasting Council which do not correspond

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<sup>123</sup> Independent Union of Journalists and Media Workers. *White Book: Professional and Labor Rights of Journalists*. Skopje, 2014.

<sup>124</sup> To illustrate: Article 89 of the Broadcast Law is concerned with the government final decision regarding the allotment of concessions within a month of receiving the proposal of the Council. This implied the role of the government as the final decision maker which is contrary to the existence of the Broadcasting Council as an independent regulatory body.

<sup>125</sup> Freedom House. *Freedom of the Press 2002 - Macedonia*. Available at: <http://freedomhouse.org/report/freedom-press/2002/macedonia#.VCK4gBYgvjU>, accessed September 2014

<sup>126</sup> Council of the European Union. Television broadcasting activities: “*Television without Frontiers (TVWF) directive*”. Directive [89/552/EEC](#) entered into force July 30<sup>th</sup> 1997.

to the European and international standards for the regulatory bodies, insufficient supervision and control provision, and provisions that are not harmonized, or collude with the other solutions contained in legislation related to broadcasting.<sup>127</sup>

With the new Law on Broadcasting activity (2005) the nomination of the members of the Broadcasting Council was “carefully designed” in order to prevent influences of the political parties and political elites. Members were proposed by different independent bodies and parts of civil society. However, professional experience and competence of the potential candidates was not the condition for nomination, although required by law.<sup>128</sup> Political parties have always found the way to influence this regulatory body in Macedonia.<sup>129</sup> The former president of the broadcast council (2006-2008) described the most visible attempt of the ruling VMRO-DPMNE party to control the regulator as follows: “Amendments of the Law on Broadcasting Activity were enacted by the new Parliament, and under the technical government in shortened procedure in July 2011. VMRO-DPMNE had supremacy in the assembly, however it needed votes from its coalition partner, the Albanian Democratic Union for Integration (DUI). The idea was to pass them together with The Law on Amnesty for Albanian rebels from 2001 armed conflict and to assure enough votes from the DUI.” With these amendments, the number of members of the Broadcasting Council increased from 9 to 15, with six new members nominated by the President and state institutions controlled by the governing coalition<sup>130</sup>, for the purpose of “more efficient and transparent work of the regulator”<sup>131</sup>. However, the main reason behind it was to assure political majority in the body and to outvote those members perceived as close

<sup>127</sup> Ibid.

<sup>128</sup> Trpevska, Snezana and Igor Micevski. ‘Macedonia’ in *Media Integrity Matters: Reclaiming Public Service Values in Media and Journalism*, published within project South East Europe Media Observatory, Peace Institute, Ljubljana, 2014.

<sup>129</sup> Adamcevski, Mirce. Personal Interview. Skopje, July 2014.

<sup>130</sup> UN General Assembly. Twenty-sixth session. Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Frank La Rue*. 1 April 2014.

<sup>131</sup> Mitevska M. Aleksandra. “Vlasta go osvojuva Sovetot za Radiodifuzija”. *Utrinski vesnik*, 13 July 2011. <http://www.utrinski.mk/?ItemID=B9AAB1734420554697D12C318ED2C402> accessed September 2014.

to opposition.<sup>132</sup> Consequently, the licence of the “A2” television (“A1” sister company) was revoked,<sup>133</sup> while the oldest private broadcaster TV “A1” bankrupted. Prime Minister Nikola Gruevski said that it was due to unpaid taxes, while the European Commission, OSCE, Vienna based South East Media Organisation, Freedom House, and the UN Special Rapporteur expressed concern.<sup>134</sup> This example clearly shows an attempt of the government to control a private broadcaster, which was at that time perceived to be critical toward the governing elite. Since its owner was a politically active media tycoon in Macedonia, and a person previously very close to the ruling VMRO-DPMNE, I examine this case in detail in the chapter on media ownership.

With the Law on Audio and Audio-Visual Media Services (2013), the Broadcasting Council was replaced by the Agency on Audio and Audio-Visual Media Services (hereinafter the Agency). Some interviewees expressed concerns regarding the composition and the nomination of the Agency’s Council members, its president and the Director. The first reason is the reduction of number of members to seven from previous fifteen. According to Article 14 of the Law, nominators are from two majority Associations of journalists’, one Council member is delegated from the Inter-University Conference, one from the Bar Association, and one from the Trade Union Associations. The Association of the Local Self-government Units nominates two members and also two are delegated from the Macedonian Assembly.<sup>135</sup>

Former President of the Broadcast Council explained: “The president of the Bar Association is the attorney of the Prime Minister, and it is hard to expect that he will propose independent expert for the member of the Council. Furthermore, the Association of the Local Self-government Units is also in the hands of the ruling majority.”<sup>136</sup> The

<sup>132</sup> Adamchevski, Mirce. Personal interview. Skopje, July 2014.

<sup>133</sup> The licence was revoked because A2 TV failed to air a minimal amount of news and educational programming

<sup>134</sup> Jakov Marusic, Sinisa and Sase Dimovski ”Macedonia’s A1 TV Bankrupt, Facing closure”, *Balkan insight*. 27 July 2011. Available at: <http://www.balkaninsight.com/en/article/bankruptcy-for-macedonia-s-most-prominent-tv> accessed August 2013.

<sup>135</sup> Law on Changes and Amendments to the Law on Audio and Audio-Visual Media Services. Article 3, paragraph 1. Official Gazette of the Republic of Macedonia, No.13/2014

<sup>136</sup> Adamchevski, Mirce. Personal interview. Skopje, July 2014.

current president of the Agency's Council works in the City of Skopje Administration, and as before while he worked as the President of the Party Committee for Transport and Communications, he is still very close to the VMRO-DPMNE.<sup>137</sup> All interviewees agreed it is very strange that the "Macedonian Association of Journalists (MAJ), perceived as a pro-government association, nominated an attorney for the member, while the Bar Association nominated an engineer who works in the Macedonian Customs Administration, instead of an attorney."<sup>138</sup>

Additionally, within the previous regulation, members were professionally employed, which means that they had permanent jobs, monthly salaries and they were obliged to work in the Council every day. The new Law regulates that only the Director of the Agency has a permanent job. According to the former president of the Broadcasting council, it gives him competences to have "incredible power in his hands,"<sup>139</sup> while the members of the Council do not perform their office in a professional capacity.<sup>140</sup> It leaves space for concern: "Dedication and efficiency is questionable if the members of the Council have duty to show up once in a month and only for voting."<sup>141</sup> Therefore, the composition of the Council does not guarantee the independence of the Agency, since the Council is not free of political influence on its work, and the power is in the hands of one person – the Director.<sup>142</sup>

The law also regulates the total functioning and operations of the public broadcasting service - Macedonian Radio and Television (hereinafter MRT). It prescribes that MRT should have the status of a public enterprise, independent of any state body or institutions, performing a primary activity of public interest.<sup>143</sup> MRT was already

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<sup>137</sup> Agency on Audio and Audio-Visual Media Services Council's member. Personal Interview. Skopje, July 2014.

<sup>138</sup> Ibid.

<sup>139</sup> Adamchevski, Mirce. Personal interview. Skopje, July 2014.

<sup>140</sup> Media Development Center. *Monitoring of the Implementation of the new Media legislation, The Agency for Audio and Audio-Visual Media Services and the Macedonian Radio and Television*, Skopje, March 2014.

<sup>141</sup> Adamchevski, Mirce. Personal interview. Skopje, July 2014.

<sup>142</sup> Media Development Center. *Monitoring of the Implementation of the new Media legislation, The Agency for Audio and Audio-Visual Media Services and the Macedonian Radio and Television*, Skopje, March 2014

<sup>143</sup> Law on Audio and Audio-Visual Media Services, Article 104, Official Gazette of the Republic of Macedonia No. 184, 26 December 2013.

defined as public service with the 1998 law, while in 2005 legislation became harmonized with the Council of Europe recommendations, and the functional, financial and structural provisions were clearly stated. However, MRT governing bodies - MRT Council, Managerial Board and the Executive Director did not perform independently from political influence.<sup>144</sup>

The key role of the MRT Council is to take care of the realization of the public interest in terms of MRT programming<sup>145</sup>, and the work of the MRT Council should be public.<sup>146</sup> However, Article 3 of the Rules of Procedure provides “public sessions, unless the Council decides otherwise.”<sup>147</sup> It is clear that this decision is against the law, however it is widely used, and leaves space for concern about its transparency. The MRT Council is charged with delegation of the members of the Managerial Board<sup>148</sup>, what should be another apolitical body by law. The Managerial Board is further entitled to elect the executive body. However, independent decision making of the Board rarely exists and the members are under the influence of the ruling elites.<sup>149</sup> Accordingly, the appointment of the executives cannot be based on an unbiased decision. To illustrate, in 2011 seven members of the Board were terminated, and that decision of the MRT Council is appraised as political pressure: “The mandate of a member of the Managerial Board is 5 years and that member can be dismissed only in the event of conflict of interest.<sup>150</sup> In July 2011 all the members of the Board were collectively dismissed by the Council and some of them issued a statement for the media claiming that their dismissal was illegal.”<sup>151</sup>

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<sup>144</sup> Trpevska Snezana and Igor Micevski. ‘*Macedonia*’ p. 297.

<sup>145</sup> Broadcasting Law, Article 127, Official Gazette of the Republic of Macedonia, No.100/2005, 2005

<sup>146</sup> Ibid. Article 130

<sup>147</sup> Book of Procedures of the Council of Public Enterprise Macedonian Radio and Television, Article 33, 2006.

<sup>148</sup> Broadcasting Law, Article 133, Official Gazette of the Republic of Macedonia, No.100/2005, 2005

<sup>149</sup> Trpevska, Snezana and Igor Micevski. ‘*Macedonia*’ in *Media Integrity Matters: Reclaiming Public Service Values in Media and Journalism*, published within project South East Europe Media Observatory, Peace Institute, Ljubljana, 2014

<sup>150</sup> Broadcasting Law, Article 137, Official Gazette of the Republic of Macedonia, No.100/2005, 2005

<sup>151</sup> Trpevska, Snezana and Igor Micevski. ‘*Macedonia*’, p. 293

Regarding the editorial policy, the interviewee from the MRT said that “from the beginning perception of political elites was that this (MRT) is their television, and that they can do whatever they want with it.”<sup>152</sup> Studies on the MRT in recent years recognized the main obstacles in its functioning: “susceptibility to political will of contemporary power holders, the absence of financial and decision making transparency, unaccountability, disrespect for legislative procedures, a widespread disrespect of ethical and professional principles of journalism and auto-censorship.”<sup>153</sup> In addition, an MRT interviewee said that the situation has been slowly improving in serving the public interest, but political bias remains. However, he admitted that government representatives from the VMRO-DPMNE still have a habit to call or send SMS in order to directly influence editorial policy on a daily basis. “Although, it was unbearable before 2012 when we were receiving final texts, only to be read”, the MRT’s editor admits.<sup>154</sup> Regarding the editorial policy, it also happens that the Ministers from the VMRO-DPMNE are sometimes angry if they do not show up in the news, because they are used to it, he emphasized. “We reduced the appearance of the Prime Minister only once per day. It was inconceivable before,”<sup>155</sup> he added. Since MRT has never managed to serve its main purpose, it is impossible to avoid bias in the program content.

Political influence from the ruling VMRO-DPMNE increased in the last seven years. It was possible due to MRT financial instability and a dysfunctional broadcast tax collection system.<sup>156</sup> Direct funding from the State budget is about one quarter of the MRT’s total income<sup>157</sup> and it creates space for the close ties between the government and public broadcaster. Executive director of the Association of Journalists of Macedonia comments on the issue:

MRT’s budget is annually around 12 million euros. To assure its

<sup>152</sup> Editor from the public service broadcaster - Macedonian Radio Television. Personal interview. Skopje, July 2014.

<sup>153</sup> Trpevska, Snezana and Igor Micevski, ‘Macedonia’ p. 297

<sup>154</sup> Editor from Macedonian Radio Television. Anonymous personal interview. Skopje, July 2014

<sup>155</sup> Ibid.

<sup>156</sup> NGO Infocentar. *Analysis of Operations and Programmes of Macedonian Radio Television: MRT-Public service for the citizens?* Skopje, 2013.

<sup>157</sup> Ibid.

independence, we need more than 20 million. At the same time Government has recently brought the decision regarding public service payment fee which will exempt from the payment 39.000 socially disadvantaged families. It is a very populist measure, we essentially are not against it, but how it will be compensated? In the situation when we are struggling to provide additional financial resources, this measure only worsens the situation.<sup>158</sup>

Finally, broadcast service has an important role during the elections. According to the OSCE/OIDHR reports on monitoring elections<sup>159</sup>, the Macedonian broadcast service constantly fails to provide balanced and equal coverage. MRT's Channel 1 which broadcast in Macedonian language is usually in favor of VMRO-DPMNE political party, and it is critically oriented to the SDSM which generally receive negative coverage.<sup>160</sup> MRT's Channel 2, mainly dedicated to Albanian population, is more balanced, however it is still oriented toward the DUI – VMRO-DPMNE coalition partner voters.

To sum up, considering the fact that public broadcasting service has to be independent from political influence, financially sustainable, and has to serve the public interest by satisfying various communication needs of citizens, it can be concluded that MRT fails to comply with these rules. Moreover, a regulatory body with clearly defined goals and purposes is also a highly politicized body, since members who are close to the VMRO-DPMNE have managed to influence the decision-making process in favor of special interests of the governing elite. Consequently, institutional mechanism of media control is 'successfully' applied in Macedonia, and that is partially the answer to the question on reasons for the decline of the freedom of media in the country.

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<sup>158</sup> Sekulovski, Dragan. Personal Interview. Skopje, July 2014.

<sup>159</sup> Office for Democratic Institutions and Human Rights. The Former Yugoslav Republic of Macedonia, *Final Reports on Parliamentary Elections* in 2006, 2008, 2011 and 2014, available at: <http://www.osce.org/odihr/elections/fyrom?page=1>, accessed September 2014.

<sup>160</sup> Ibid.

### 2.3 Financial and Human Resources control

State advertising, mainly in the broadcast media, became an issue when VMRO-DPMNE came to power in 2006.<sup>161</sup> It was, for the first time, publicly recognized as an obstacle to independent editorial policy with the 2009 European Commission Progress Report<sup>162</sup> due to intensifying of this state activity in 2008.<sup>163</sup> Government campaigns are funded by public money and they are not always strictly related to electoral campaigns.<sup>164</sup> The reason for concern lies in the fact that in the last five years, the state has been among the top five advertisers in the broadcast sector. “The Government is a bigger advertiser than the Telecommunication Company or Coca Cola”, said the interviewees, and it is the official data from the Broadcasting Council Report in 2012.<sup>165</sup> The amount spent from the state budget for public campaigns in 2013 is estimated at 20 million Euro<sup>166</sup>, which is, according to the government representatives, the sum spent for the duration of five years on various info-awareness topics.<sup>167</sup> On the other hand the total annual advertising media market is estimated at between 30 and 40 million euro,<sup>168</sup> and it means that the government approximately spent half of that sum, which is enough to distort the market.

The analysis conducted by international organizations mentions amounts between 0.4 percent and 1.5 percent of the state budget. However, it is impossible to get the exact information from

<sup>161</sup> Trpevska, Snezana and Igor Micevski. ‘Macedonia’, p. 285

<sup>162</sup> European Commission. Commission Staff Working Document. *The Former Yugoslav Republic of Macedonia 2009 Progress Report*. p. 42

<sup>163</sup> In the third chapter I elaborate on this particular year, and possible reasons for the government need to further colonize media.

<sup>164</sup> Trpevska, Snezana and Igor Micevski. ‘Macedonia’, p. 285

<sup>165</sup> Sovet za Radiodifuzija na Republika Makedonija. *Analiza na pazarot za radiodifuzna dejnost za 2012 godina*. p. 29

<sup>166</sup> Statement given by the President of the Association of Journalists of Macedonia Naser Selmani. In Trpevska, Snezana and Igor Micevski. p. 285

<sup>167</sup> Stojancevska, Valentina. “Macedonian Costly Media Campaigns Raise Suspicion”, *Balkan Insight*, January 16<sup>th</sup> 2013, available at: <http://www.balkaninsight.com/en/article/macedonia-s-costly-media-campaigns-raise-suspicion>, accessed September 2014.

<sup>168</sup> International Research and Exchanges Board (IREX). *Media Sustainability Index 2014 – Macedonia* available at: <http://www.irex.org/resource/macedonia-media-sustainability-index-msi>, accessed September 2014.

the government, and interviewed journalists who brought this topic up said that using the Law of Free Access to Public Information<sup>169</sup> was unsuccessful. The information about public money spent for campaigns is labeled as ‘classified’.<sup>170</sup> A Journalist who initiated an investigative story on the issue claims: “Since we could not get the information for which we are allowed to ask by law, we decided to submit several complaints to The Committee on Free Access to Public Information. The man from the Committee who is in charge to determine whether the information is classified or not is a close friend of the director of the VMRO-DPMNE Center for Communication, and of course we did not get the information we asked for.”<sup>171</sup> This example raises two issues: firstly, how can spending public money for advertising be labeled as classified information, and secondly what is the purpose of the Law on Free Access to Public Information? The right to free access to public information was limited in this particular case. It was obviously done by purpose, although the rule of law, society peace and safety of individuals were not in danger. The journalists are not surprised, and they also claim that due to the inefficiency of public institutions they rarely get information they seek.<sup>172</sup>

In addition, it seems necessary to focus on the nature of the advertisements which, by definition, have to raise public awareness on the topics of great importance. The president of the Independent Union of Journalists, Tamara Causidis, comments on the issue: “Public messages such as: “Read the books”, “Open your heart” and other Campaigns for Optimism and Respect for Good Values are totally meaningless. This is a way to directly bribe the media.” Dragan Sekulovski from the Journalists’ Association adds: “Last year we had campaign parallel to the process of enacting the amendments on law which regulates abortion. It is legal to have abortion in Macedonia, and at the same time

<sup>169</sup> Law on Free Access to Public Information. Official Gazette of the Republic of Macedonia no.13/2006; 86/2008 and 6/2010

<sup>170</sup> Cvetkovska, Saska. Personal Interview. Skopje, July 2014.; see also Jordanovska, Meri and Saska Cvetkovska. “Парите за рекламирање кои Владата ги плаќа од наш џеб се државна тајна?” *Fokus*, March 10<sup>th</sup> 2014, available at: <http://fokus.mk/parite-za-reklamiran-e-koi-vladata-gi-plak-a-od-nash-dheb-se-drzhavna-tajna/>, accessed September 2014.

<sup>171</sup> Cvetkovska, Saska. Personal Interview. Skopje, July 2014.

<sup>172</sup> Ibid.

we had campaigns saying that abortion is bad. It is pure propaganda, paid by the money of all citizens, and it has been used as an instrument to control the media.”<sup>173</sup>

In addition, interviewees are convinced that it is possible to establish a relation between raising-awareness campaigns and political advertisements during the electoral period, which is sometimes hard to prove. One media representative claims that two processes represent the whole circle of clientelism: “Influential commercial broadcasters are giving huge discounts to political parties, and air their political advertisements almost for free. Later, they appear on the parties’ electoral accounts lists as donors. Thus, after the elections, these outlets become suitable media for further raising-awareness campaigns, they receive huge amounts of money and the circle is closed.”<sup>174</sup> Consequently, media experts from the Macedonian Institute for Media consider that the media should not be on the lists of donors during the electoral process, because that practice has completely deteriorated media market which has always been dysfunctional.<sup>175</sup>

However, national broadcasters with the largest share of the total advertising revenue are the TV stations most suitable for government campaigns. For example, in 2012, when the government was the advertiser number one in the country, TV Sitel and Kanal 5 got the biggest portions of the money<sup>176</sup>, since their owners are closely affiliated with the ruling party.<sup>177</sup> The interviewee from TV Sitel confirmed that two years ago they had a lot of TV videos promoting ethnic tolerance, family values and patriotism, but since it was declared as issue from the ‘oppositional media’ they “unfortunately do not have them anymore”.<sup>178</sup> In order to establish a connection between national broadcasters suitable for government campaigns and donors during the electoral period, I focus on the state’s official data. According to the State Audit Office, the VMRO-DPMNE coalition had the list of 33 TV stations as donors during the last electoral campaign in 2014. Moreover,

<sup>173</sup> Sekulovski, Dragan. Personal Interview. Skopje, July 2014.

<sup>174</sup> Media expert. Anonymous Personal Interview, Skopje, July 2014.

<sup>175</sup> Petkovska, Biljana. Personal Interview. Skopje, July 2014.

<sup>176</sup> Sovet za Radiodifuzija na Republika Makedonija. Analiza na pazarot za radiodifuzna dejnost za 2012 godina. p.32

<sup>177</sup> Snezana Trpevska and Igor Micevski, p. 286

<sup>178</sup> Nikolovski, Marjan. Personal Interview. Skopje, July 2014.

3 radio stations and all the newspapers published from the company Media Print Macedonia were also on the donors list. However, the biggest donors were TV Sitel, TV Kanal 5 and TV Alfa,<sup>179</sup> which means that the same broadcasters are used for both purposes: as donors during the electoral period and media suitable for government campaigns.

In addition, the new Law on Audio and Audio-Visual Media Services provides the government with a possibility to subsidize commercial media by financing up to 50% of domestic film production costs.<sup>180</sup> It is perceived by the media community as another way to corrupt the media suitable for the ruling elite. This situation creates unfair conditions in the small Macedonian media market and puts critical media outlets in an unpleasant position. It also proves that the mechanism of financial control serves the purpose of favoring those media outlets inclined to VMRO-DPMNE.

As stated at the beginning of this chapter, direct and indirect control of journalists' and editors' work is assumed to be a part of the ruling VMRO-DPMNE mechanism to silence critical voices from the long time professionals with integrity. The story of a prominent Macedonian journalist can help us understand how this mechanism works: "I was the author of debate political show aired on TV for ten years. After raising only one question on responsibility of some state officials in the case 'Monstrum'<sup>181</sup> which still has been actual I was immediately suspended. Doing my job as always and asking, provoking, and criticizing I soon became ineligible. The show was removed from the program. Step by step, I completely lost the job, without reasonable

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<sup>179</sup> State Audit Office. Financial Report on revenues and expenditures for VMRO-DPMNE led coalition during the electoral campaign for the period from April 5<sup>th</sup> 2014 to April 16<sup>th</sup> 2014. Available at: <http://www.dzr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=1073>, accessed September 2014.

<sup>180</sup> Law on Audio and Audio-Visual Media Services. Official Gazette of the Republic of Macedonia, No.184, 26 December, 2013. Article 92(10)

<sup>181</sup> Case *Monstrum* refers to police operation commenced on May 1 2012 after Smilkovci Lake killings, carried out in 12 April 2012. Five-ethnic Macedonian civilians (between 18 and 20 years old) were shot and killed by ethnic Albanians near the lake outside of Macedonian capital Skopje. On 30 June 2014 five suspected Albanians were sentenced for life imprisonment and the Criminal Court decision provoked protests of ethnic Albanians in July 2014.

explanations.”<sup>182</sup> The Independent Union of Journalists and Media Workers raise the question of unlawful decisions and journalists’ work conditions:

When bribing proves to be unsuccessful, the ‘solution’ is to sell media outlet to companies without transparent ownership. Sometimes if we know who is the new owner it turns out that it is a person close to the ruling party. When ownership structure of the media is changed, next step is to get rid of the journalists perceived as unsuitable or ‘dangerous’, and it is done in an unlawful way.<sup>183</sup>

The recent case of selling TV Alfa is the best example of intentional rotation of the personnel. Management of the television station first hired twelve new journalists from TV Sitel and MRT.<sup>184</sup> Soon after they declared overemployment, and the same number of the journalists who were hired then got fired. However, these were not the same people. Tamara Causidis considered that new, young and unexperienced journalists remained, while all those who could raise a voice against any unlawful, unethical or suspicious activity were removed, and left without possibility to find another job.<sup>185</sup> One of the many consequences of such practice is the fear to lose one’s job. The most worrying fact is that every structural change is dictated from the Center for Communications of the ruling VMRO-DPMNE party.<sup>186</sup>

People from the public service also confirmed this claim. The mechanism of rotations is visible in MRT as well. Once the political elite changes, the MRT leading figures are replaced. Thus, the team of journalists who cover the most important political stories is soon replaced with some other journalists. At the beginning, they did not cover any important stories, and later they got fired with the explanation

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<sup>182</sup> ‘Former’ journalist who wanted to remain anonymous. Personal Interview. Skopje, July 2014.

<sup>183</sup> Causidis, Tamara. Personal Interview. Skopje, July 2014.

<sup>184</sup> Ibid.

<sup>185</sup> Causidis, Tamara. Personal Interview. Skopje, July 2014

<sup>186</sup> Independent Union of Journalists and Media Workers. *White Book: Professional and Labor Rights of Journalists*. Skopje, 2014.

that they were not productive.<sup>187</sup> This process consequently leads to the marginalization of supposedly ineligible reporters, and they get replaced by others that are conceived to be politically eligible.

The state has used this hegemonic strategy since the inauguration of pluralism in Macedonia, however these mechanisms seriously hinder the freedom of expression and freedom of the media in the country.<sup>188</sup> Eligibility was a way of selecting journalists in a one party system, however today it remains, although in a different form. Before Macedonia gained independence, journalists and editors were “directly selected by the ruling party on the counts of their eligibility, i.e. compliance with the will of the party. A Media Observatory study defined two different mechanisms for applying the eligibility criteria: “Rotation of the entire groups of staff from one newsroom to another, and marginalization of ineligible reporters”<sup>189</sup>, which are both discussed above. Once again, the mechanism inherited from the previous authoritarian period proves to be successful, since governing coalition has managed to control organizational structures in the mainstream media, and to eliminate journalists with integrity that may disturb public opinion.

## 2.4 Transparency in media ownership

In order to properly discuss the Media ownership in Macedonia, I first provide a short overview of the Macedonian media scene. According to the data available on the website of the Agency of Audio and Audio-Visual Media Services, there are five public service broadcasters, and 65 commercial broadcasters: five national TV stations and four radio stations with national coverage that operate in Macedonia. Five TV stations provide national satellite coverage, 17 TV stations and 16 radio stations provide regional coverage, and 25 TV stations and 56 radio stations provide local coverage. Active print outlets are 7 dailies, 4 weeklies, 30 periodicals, while Macedonia has

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<sup>187</sup> Trpevska, Snezana and Igor Micevski. ‘Macedonia’ in *Media Integrity Matters: Reclaiming Public Service Values in Media and Journalism*, published within project South East Europe Media Observatory, Peace Institute, Ljubljana, 2014, p.322 endnote No 129.; Additionally, personal interview with a journalist who wanted to remain anonymous.

<sup>188</sup> Ibid. p. 300

<sup>189</sup> Ibid.

more than 120 registered internet news portals. There are three news agencies: state-owned Macedonian Information Agency, and two privately owned – Makfax and NetPress. We can conclude that, at least formally, Macedonia enjoys plurality in number of media outlets for a small market of 2 million people.<sup>190</sup>

Ever since the 2005 Law on broadcasting activity, broadcast media (radio and television) have had the obligation to publish information about their ownership structure, and changes in the ownership structure, as well as their sources of financing.<sup>191</sup> The same obligations are contended in the 2013 law. The former Broadcasting Council and new Agency are in charge of monitoring these provisions, and they can also request additional data when necessary. Most of the broadcasters comply with the legal provisions and this data can be found on the website of the regulator.<sup>192</sup> With the new Media Law, print media are also obliged to provide information on ownership structure, and the Agency should monitor media transparency and undertake measures against print outlets that do not comply with legal provisions. Although the first draft of the law included provisions regarding online media, due to resistance of the civil sector and media community, online media were excluded from law regulation. However, the least transparent media are online media.

Before analyzing the current situation, I provide some examples of the context and political background in which the most influential media operate. The media sector in Macedonia, since liberalization and pluralism took place, has been dominated by local media moguls.<sup>193</sup> It was most discernible from the broadcast media with national coverage.<sup>194</sup> A couple of businessmen played an important role in the decade after independency, such as Velija Ramkovski who was the

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<sup>190</sup> Agency for Audio and Audio-Visual Media Services. Register of broadcast and print media. <http://www.avmu.mk/> accessed September 2014.

<sup>191</sup> The Law on Broadcasting Activity. Official Gazette of the Republic of Macedonia No.100/2005, 2005. Article 12

<sup>192</sup> Agency for Audio and Audio-Visual Media Services [http://www.avmu.mk/index.php?option=com\\_content&view=article&id=1146&Itemid=342&lang=mk](http://www.avmu.mk/index.php?option=com_content&view=article&id=1146&Itemid=342&lang=mk) accessed September 2014.

<sup>193</sup> Trpevska, Snezana and Igor Micevski. *'Macedonia' in Media Integrity Matters: Reclaiming Public Service Values in Media and Journalism*, published within project South East Europe Media Observatory, Peace Institute, Ljubljana, 2014.

<sup>194</sup> Ibid. p. 268

owner of the first commercial TV station A1, and three newspapers: Vreme, Spic and Koha e Re. However, Velija's main income comes from his trade in consumer goods and the media industry was not his first business. Since it had been established, A1 was one of the most influential TV stations. The prominent Macedonian journalist who writes for Balkan Investigative Reporting Network claims that "even when it was obvious that Velija interfered with the TV editorial policy in order to help nowadays Prime Minister Gruevski to come to power, people still had trust in A1. This television station built credibility in the years before 2005 due to the fact that Macedonian Radio Television has always been under the huge influence of political elites. People were fed up with biased news and propaganda. A1 employed high number of journalists that were critically oriented and most of them were real professionals."<sup>195</sup> Therefore, A1 enjoyed great popularity among citizens because it brought up stories about corruption, political affairs and unlawful decisions.

In 2005 Ramkovski formed the Party for Economic Transformation (PEO) which he led informally because the Law on broadcasting activity strictly forbade politicians to own or run media outlets. His party was in coalition with VMRO-DPMNE from 2007 until the end of 2009. It suddenly happened that at the end of 2009, the PEO split with the ruling coalition. The argument was a business share that Ramkovski was to obtain from the Government's Agricultural deals.<sup>196</sup> When they split, Velija decided to take a completely different side, and he started criticizing government policies on a daily basis.<sup>197</sup> In his book *Trapped Democracy* Saso Ordanoski explained: "The political decision of the Prime Minister Nikola Gruevski to destruct Ramkovski media "empire" was definitely taken in mid-2010, and its execution began with the raid of numerous police forces and inspection bodies in the companies and media owned by Velija Ramkovski."<sup>198</sup> The

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<sup>195</sup> Jakov, Marusic Sinisa. Personal Interview. Skopje, July 2014

<sup>196</sup> Ordanoski, Saso. *Zarobena Demokratija: Razvojot na sopstvenicka struktura na medijumite vo Republika Makedonija*. Transparency Macedonia, Skopje, October 2012. p. 90

<sup>197</sup> Ibid.

<sup>198</sup> Ordanoski, Saso. *Zarobena Demokratija: Razvojot na sopstvenicka struktura na medijumite vo Republika Makedonija*, Transparency Macedonia, Skopje, October 2012.

consequence of the broken coalition was the closure of TV A1 and three newspapers: Spic, Vreme and Koha e Re. The license of A1's sister company A2 was also withdrawn since "it failed to air enough news content"<sup>199</sup>. Velija Ramkovski was the owner of all above mentioned media outlets, although by law which prohibits media concentration he was not allowed to be.

However, the main reason that Government used to close A1 is tax evasion, while Ramkovski claimed that: "the ruling VMRO-DPMNE party of the Prime Minister Nikola Gruevski had come looking for excuses to shut A1 down because it criticized government policies."<sup>200</sup> A former president of the Broadcast Council comments on this: "The television bankrupted, but still it was not liquidated. I think they did not want A1 to exist anymore. With political will, they could save A1, journalists and all other employed people by giving some credit or selling the television. They did not want to save it."<sup>201</sup> With the closure of TV A1, the Macedonian media market has completely changed. Comparing available data from the Broadcasting Market Analysis,<sup>202</sup> it is possible to conclude that a huge part of advertising revenue was left to other national TV stations, mainly TV Sitel and TV Kanal 5. They soon became dominant in broadcasting area. For the purpose of further analysis of the government control mechanism through media ownership I refer to these, even nowadays, most influential national broadcasters.

Sitel TV was owned by Ljubisav Ivanov Dzingo who has never

<sup>199</sup> Stankovic, Ljubisa, "Ukinjuvaneto na A2 losa vest za Brisel", *Utrinski vesnik*, June 14<sup>th</sup> 2012. Available at: <http://www.utrinski.mk/?ItemID=E4DBF6559D4C7E4D8242C3A36AA620F4> accessed September 2014. Additionally: *Freedom House. Freedom of the press 2013 – Macedonia*, available at: [http://www.freedomhouse.org/report/freedom-press/2013/macedonia#\\_VBSdNBYgvjU](http://www.freedomhouse.org/report/freedom-press/2013/macedonia#_VBSdNBYgvjU), accessed September 2014.

<sup>200</sup> Dimovski, Sase. "Velija Ramkovski – Shady Tycoon or Media Hero", *Balkan Insight*, December 2<sup>nd</sup> 2010. Available at: <http://www.balkaninsight.com/en/article/velija-ramkovski-shady-tycoon-or-media-hero> accessed September 2014.

<sup>201</sup> Adamcevski, Mirce. Personal Interview. Skopje, July 2014.

<sup>202</sup> Agency on Audio and Audio-Visual Media Services. Market Analysis on broadcasting activity for 2008, 2009, 2010, 2011. Available at: <http://www.avmu.mk/> accessed September 2014.

formally appeared as the owner.<sup>203</sup> Ivanov runs several businesses including coal mines, mineral water companies, and trading companies and he is the leader of the Socialist Party, which, in 2009, was in the government coalition.<sup>204</sup> Since law does not allow political leaders to run or own media, Ljubisav Ivanov Dzingo formally quit his presidential position in the party. However, by opening the web site of the Socialist Party<sup>205</sup> it can be seen that his function was not removed, said the interviewee. Ljubisav Ivanov's son—Goran Ivanov—is the manager of TV Sitel and he was editor in chief for many years. Goran Ivanov is also a member of the Board of the Macedonian Telecom, appointed in 2006 by the Government which still owns 49 percent of the shares. Further, TV Kanal 5, which according to data is the third most influential national broadcaster was owned by Boris Stojmenov, the former minister in the VMRO-DPMNE Government. His main business is in the field of financial consultancy. The ownership of Kanal 5 has changed several times over the years.<sup>206</sup> The formal owner of Kanal 5 is Vanja Gavrilovski who owns an off-shore company Sunlight Trading S.A. in Panama, together with Marjan Stojmenov, son of Boris Stojmenov and brother of Emil Stojmenov, previous owner of Kanal 5.<sup>207</sup> This TV station is considered to be very close to the ruling VMRO-DPMNE party.

The following case of the TV Alfa ownership change is also an interesting venture. TV Alfa was founded in 2008 as independent satellite TV station, with editorial policy considered as closer to the opposition and critical towards the government led by the Prime Minister Nikola Gruevski. The ownership changed in 2012/2013, and with the new owner - Serbian businessman Veselin Jevrosimovic, TV Alfa gained a

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<sup>203</sup> Trpevska, Snezana and Igor Micevski, *Macedonia*, in Brankica Petkovic, *Media integrity matters: reclaiming public service values in media and journalism*, Peace Institute, Ljubljana, 2014. p. 269.

<sup>204</sup> Ibid.

<sup>205</sup> Socialist Party of Macedonia website <http://www.spm.org.mk/> accessed September 2014

<sup>206</sup> Trpevska, Snezana and Igor Micevski, *Macedonia*, in Brankica Petkovic, *Media integrity matters: reclaiming public service values in media and journalism*, Peace Institute, Ljubljana, 2014.

<sup>207</sup> Ordanoski, Saso. *Zarobena Demokatija: Razvojot na sopstvenicka struktura na medijumite vo Republika Makedonija*, Transparency Macedonia, Skopje, October 2012.

higher status and became a national terrestrial TV concessioner. Veselin Jevrosimovic is also the founder of the IT trading company ComTrade which played an important role in Macedonian government project<sup>208</sup> by providing computers for the elementary and high schools during the period 2008-2010. The TV Alfa status change was accompanied with a shift in editorial policy which nowadays supports the values, ideology and policies of the Prime Minister.<sup>209</sup> Moreover, all these changes were followed by TV Alfa's sudden success in the media market. In 2013 it ended with 85% bigger financial revenue compared to the previous year, although without change in the general annual viewership rating. Finally, in the period from January to September 2014, the government advertised 2-3 times more on this TV station compared to other national commercial TV broadcasters.<sup>210</sup> This particular case proves the way clientelism in Macedonian media functions.

All above mentioned ownership structures show that a number of active or former politicians and their closest family members or relatives own or stand behind some very influential media outlets, although this is prohibited by law due to the conflict of interest. In reality, it is very difficult or maybe even impossible to enforce provisions which should prevent conflict of interest, because "the same media owners use different techniques and methods, i.e. from establishment of subsidiary companies, to registering the companies to their friends and relatives."<sup>211</sup> According to Denis McQuail, owners of private media outlets usually have financial and strategic interests to impact decision-making process, and clear ideological positions or political ambitions.<sup>212</sup> As a result, media freedom is deteriorating since the space for objectivity, neutrality, questioning and criticizing is narrowed. As stated in the BTI

<sup>208</sup> Government of Republic of Macedonia. Press Release. *A computer for every child*. available at: <http://vlada.mk/node/310?language=en-gb> accessed October 2<sup>nd</sup> 2014.

<sup>209</sup> Ordanoski, Saso. *Flash Report 5: Macedonia*. South East European Media Observatory. September 29<sup>th</sup> 2014. Available at: <http://mediaobservatory.net/radar/flash-report-5-macedonia> accessed October 2<sup>nd</sup> 2014.

<sup>210</sup> Ibid.

<sup>211</sup> Valic Nedeljkovic Dubravka and Jelena Kleut, *Europe, here and there: Analysis of the Europeanization Discourse in the Western Balkans Media*, Novi Sad, 2013 p. 48

<sup>212</sup> McQuail, Danis, *Mass Communication Theory*. London: SAGE Publications, 2005. P.241

report on the country in 2012, the European Enlargement Commissioner Stefan Fule mentioned resolving problematic media ownership issues as a precondition for country progress towards the EU membership.<sup>213</sup>

Pluralism in domain of print media occurred relatively late, which means that until 1996, when first private newspaper Dnevnik appeared, the only print media were published by the state-owned print media company NIP. Dnevnik was founded by a group of professional journalists and it was a concept of ownership unknown before. In the 1990s the same model of professional owners was applied by other newspapers such as Fakti, Makedonija Denes, Utrinski Vesnik, Vesti, Roma Times, Vreme, etc.<sup>214</sup> However, the 2000s brought changes in print media ownership. The newspapers that had been owned and developed by professional journalists were sold to international media organizations or individual businessmen. In 2003, German Media Corporation WAZ bought the majority stakes in three leading newspapers in the country: Dnevnik, Vest and Utrinski vesnik.<sup>215</sup> The question of monopoly has been raised for the first time since these newspapers had the leading position in the market. However, the Competition Protection Commission decided to approve the merger of these companies in 2004. With early 2010s selling of three newspapers to company Media Print Macedonia led by a Macedonian businessman Jordan Orce Kamcev, the question of media independency became more salient, since “it is believed that he is very close to the ruling VMRO-DPMNE political party.”<sup>216</sup> This serves only to illustrate that the print media are not an exception of the ‘businessman-owner’ trend, and that is possible to establish a link between the politicians and media owners.

Internet news portals appeared in the early 2000s, but the real pluralism in the virtual space occurred after 2005 when the prices of

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<sup>213</sup> Bertelsmann Transformation Index. *Macedonia country report 2012*. Available at: <http://www.bti-project.org/reports/country-reports/ecse/mkd/>, accessed September 2014.

<sup>214</sup> Trpevska, Snezana and Igor Micevski p. 274

<sup>215</sup> Freedom House. *Freedom of the Press 2004 - Macedonia*. Available at: <http://freedomhouse.org/report/freedom-press/2004/macedonia#.VCLWahYgvjU>, accessed September 2014.

<sup>216</sup> Freedom House. *Freedom of the Press 2013 - Macedonia*. Available at: <http://freedomhouse.org/report/freedom-press/2013/macedonia#.VCLZhRYgvjU>, accessed September 2014.

internet access decreased. The last research of the Agency for Audio and Audio-Visual Media Services shows that 44% of Macedonian citizens use internet on a daily basis to get information they need.<sup>217</sup> For comparison, 79% of respondents consider television as the main source of information.<sup>218</sup> Representatives of the media community in Macedonia claim that since the previously mentioned influential media were closed in 2011, around 800 journalists lost their jobs. A former reporter from TV A1 said: “Media market is very small, and a huge number of my colleagues could not find a job anymore. Moreover, under the growing pressure from the biggest ruling party and the businessmen, a lot of us migrated from traditional to online media, and we became owners of some news portals. This has been the only space for us.”<sup>219</sup> With the rise of critical online media, as a parallel process, proliferation of pro-governmental online outlets occurred. She further explains: “The government has begun to create its own media, in order to grab the virtual space from others which are critical toward them. The ruling party is not able to accept criticism, even if only three people read news from these portals.”<sup>220</sup> Recent research findings show that the only space for critical journalism concerning Macedonian government is on the internet.<sup>221</sup>

On February, 2014, Macedonian investigative journalists published several stories and an online media ownership database<sup>222</sup> as a result of the research on online media ownership. One of the project founders and journalists in a personal interview explained the reasons for doing it: “We have never seen the journalists, or editors of these portals. It was hard or impossible to find out where are they registered, or who finance them. We finally decide to start to investigate. This is how MediaPedia Project started.”<sup>223</sup> They joined in the effort to discover

<sup>217</sup> Agency on Audio and Audio-Visual Media Services. Market Analysis on broadcasting, 2013. p. 62 <http://www.avmu.mk/> accessed September 2014.

<sup>218</sup> Ibid.

<sup>219</sup> Cvetkovska, Saska. Personal Interview. Skopje, July 2014.

<sup>220</sup> Ibid.

<sup>221</sup> Trpevska, Snezana and Igor Micevski. ‘Macedonia’ in *Media Integrity Matters: Reclaiming Public Service Values in Media and Journalism*, published within project South East Europe Media Observatory, Peace Institute, Ljubljana, 2014.

<sup>222</sup> MediaPedia project. Available at the official website <http://mediapedia.mk/istrazuvanja/> accessed August 2014

<sup>223</sup> Cvetkovska, Saska. Personal Interview. Skopje, July 2014

hidden ownership patterns of news web sites in Macedonia. Referring to the results she explained that some of them were expected. These portals are linked to interest groups close to the ruling party. Although, she highlighted something they did not expect:

Behind these online outlets are off-shore companies. These off-shore companies we have easily connected with construction companies which are very successful in the government tenders in Macedonia. It is not naive when these online media exist solely for the purpose of propaganda! The thesis that we have not proven yet is that these media are used for money laundering and much more serious offenses, so I believe that criminal law will treat them once.<sup>224</sup>

Online media with hidden ownership encompassed with the MediaPedia project are considered as negatively oriented towards the opposition. “Sometimes they are interconnected, so it is enough that one news-portal publishes the story, and all others just take it over without changing the content. The same story is later in the newspapers or it is aired on TV stations such as Sitel or Kanal 5. If you pay attention, you will see exactly the same stories, with same commas and grammar mistakes,” she added.<sup>225</sup> The thing that disturbed the politicians is that published stories are now used for suing these online media outlets and some state officials behind them. “Since some offensive stories were published online, it was not clear before who is responsible, and against whom lawsuits can be filed. These were, so to say, phantom web sites. Now, when everything is clear, our colleagues can seek justice.”<sup>226</sup> However, it remains to be seen in the future if revealing of the ownership information does change the practice.

In order to better illustrate the conditions in which investigative journalists work, I introduce another quote by the founder of MediaPedia project:

We collaborated with the colleagues from the United States and The South East Europe, but definitely the hardest part was to reach Macedonian Central Business Register. Law on Free Access of Public Information did not work, and the register is the most expensive

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<sup>224</sup> Ibid.

<sup>225</sup> Ibid.

<sup>226</sup> Cvetkovska, Saska. Personal Interview. Skopje, July 2014.

among all other registers we used. Working on investigative stories is far from cheap, and for that reason journalists usually do not dare to investigate.<sup>227</sup>

When tackling the issue of investigative journalism and writing about corrupted political elites, it is important to elaborate more on the cases when journalists are sued for libel and defamation, since it may be the most successful way to control and silence them.

## 2.5 Judicial mechanisms

Macedonia had the obligation to decriminalize libel and defamation and to move both from criminal to civil courts, as promised during the high-level talks in Brussels in March, 2012. At the beginning, the adoption of the Law on Civil Liability for Defamation in November 2012 was praised by many media organizations, journalists, and media experts in Macedonia. OSCE Representative on Freedom of Media Dunja Mijatovic<sup>228</sup>, Delegation of the United States and European Commissioner for Enlargement Stefan Fule<sup>229</sup> also welcomed the adoption of the law, which was perceived as important for the improvement of freedom of expression and freedom of media in Macedonia. At the moment of adoption, it was believed that the “law puts an end to over 700 [ongoing] court cases for defamation and libel before criminal courts, half of which were waged against journalists.”<sup>230</sup> Dragan Sekulovski from the Journalists’ Association of Macedonia emphasized that before the law was enacted, every third journalist was sued. The number now decreased ten times, according

<sup>227</sup> Ibid.

<sup>228</sup> Organization for Security and Cooperation in Europe. *Media freedom representative welcomes Skopje authorities’ decriminalization of libel*. November 14<sup>th</sup> 2012. Available at: <http://www.osce.org/fom/97244> accessed September 2014.

<sup>229</sup> *Kurir*. “Fule welcomes Law Decriminalizing Defamation in Macedonia” November 16<sup>th</sup> 2012. Available at: <http://kurir.mk/en/?p=5027>, accessed September 2014.

<sup>230</sup> The Statement of the representatives from the Association of Journalists in Macedonia, the source: Jakov Marusic, Sinisa. “Libel Law changes criticized in Macedonia.” *Balkan Insight*. November 12<sup>th</sup> 2012 available at: <http://www.balkaninsight.com/en/article/macedonia-decriminalizes-libel-tightens-rules-on-foreign-media> accessed September 2014.

to a rough estimation, since the Court and The Ministry of Justice are not transparent enough to give the exact number of the cases.<sup>231</sup> However, recent monitoring projects of defamation actions litigations prove that Macedonian 'Media Development Center's (MDC) Analysis of the Draft Law predicted possible negative effects and weak points of the law.<sup>232</sup> More importantly, MDC results from the monitoring of court defamation actions, which involve journalists, editors and media outlets show that in cases when state and public officials are involved, procedure is accelerated and trials concluded in a more expedient manner.<sup>233</sup> Since 1<sup>st</sup> February, 2013, when MDC started the monitoring process, only two cases have been completed and concluded with a valid sentence, and one of them is the case of the current Prime Minister Nikola Gruevski vs. Tito Petkovski. The two final sentences do not provide enough material for the comprehensive analysis of the law implementation however, MDC made some conclusion on the process related to Gruevski vs. Petkovski case.

In MDC's report concerning this particular case it is stated that "in the deliberation of the intent of defendant, the Court did not implement consistently the case law of the European Court of Human Rights (ECHR) in Strasbourg."<sup>234</sup> The explanation is as follows:

The Court did not take into consideration the wider context in which the statement by the defendant was given, in spite of the fact that it referred to an extremely important subject for the society that requires the widest possible public debate which is the dispute over the name of the country and Macedonia's membership in NATO and EU. The case law of the Strasbourg Court indicates that, when such important social issues are discussed and the intent is to provoke a public debate on issues of vital social interest, overdoing it and provocations are to

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<sup>231</sup> Sekulovski, Dragan. Personal Interview.

<sup>232</sup> Media Development Centar, *The Analysis on the Draft Law on Civil Liability for Defamation*, November 12<sup>th</sup> 2012. <http://mdc.org.mk/mk/analiza-na-predlog-zakonot-za-gragjanska-odgovornost-za-navreda-i-kleveta-2>

<sup>233</sup> Media Development Center, *Monitoring of Defamation Actions Litigations*, p.10 available at: <http://mdc.org.mk/mk/monitoring-na-sudskite-sluciai-na-navreda-i-kleveta> accessed September 2014.

<sup>234</sup> Center for Media Development, *Monitoring of defamation actions litigations*, Skopje, July 2014, p. 4

be tolerated.<sup>235</sup>

On the other hand, ECHR Case Law prescribes that holders of public offices should have higher threshold for defamation cases.<sup>236</sup> Contrary to that principle, the plaintiff, in this particular case the Prime Minister of Macedonia, was given a greater level of protection by the actions and the verdict of the Court. This is evident both in the urgency with which the Court acted and in the high amount of the awarded compensation.<sup>237</sup> This particular procedure was completed with a definitive judgment in less than eight months, which was not the case with any other trial.

The average procedure in all other cases took more than a year and a half to be completed, and the 10,000 euro compensation awarded is the highest compensation awarded by a civil court after the decriminalisation of defamation.<sup>238</sup> In addition, since the MDC monitoring started, lawyers from the Center were allowed to be present during the Court sessions. After the first report was published in December 2013, they were not invited again, and in one protest letter Basic Court Skopje 2 in Skopje accused them “of causing irreparably damage for the republic of Macedonia”.<sup>239</sup> The experts started following court sessions again in March 2014.

The president of the Independent Union of Journalists and Media workers is worried about another case: “According to my colleague, who is sued by the state official, this is what the trial looks like: attorney of the prime minister appears at the trial, judges get up from the chairs, he (attorney) runs the record, he is a judge. What can we expect from such court case?” In addition, the expert from MDC in a personal interview adds: “Court has dual standards, and it is politically biased. When the case is concerned with common people we see perfect interpretation from the Strasbourg Court case law, but if the plaintiff is director of the Secret Police, or any other high-government official,

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<sup>235</sup> Ibid. p. 4-5.

<sup>236</sup> Ibid.

<sup>237</sup> Ibid.

<sup>238</sup> Center for Media Development, *Monitoring of defamation actions litigations*, Skopje, July 2014.

<sup>239</sup> MDC’s expert. Personal Interview. Skopje, July 2014.

there is no need even to go to court. You know that you will lose.”<sup>240</sup> In addition, European Commission 2013 Progress report also emphasized the remaining issue of selective justice and political pressure on judiciary in Macedonia.<sup>241</sup>

The next argument used for the claim that current journalists are not better off is that they are left without criminal charges, but rather with cumulative fines for the journalist (maximum to 2000 euro), editor (maximum to 10,000 euros) and media outlet (maximum to 15,000 euros), up to 27,000 euros.<sup>242</sup> The cumulative fines prescribed by law force journalists directly to self-censorship. Interviewee who is engaged in helping defendants in front of the Court said that with corrupted judiciary they rarely get lawsuits. It is another mechanism to silence the critical opinion.<sup>243</sup> Considering the fact that average journalist salary or honorary in Macedonia is between 250 and 300 euro<sup>244</sup>, it is clear that sentences are disproportionate.<sup>245</sup> Furthermore, judicial costs overall are very high, and court fee for the appellate process proportionally goes up and depends on the amount of compensation required. An MDC media law expert said that according to that: “People are literally prevented from the right to appeal, which is one of their guaranteed rights.”<sup>246</sup>

MDC also finds awarded compensations for non-pecuniary damages to be high, although they fall well within the legally prescribed amounts. In January 2014, the first convicting lawsuit was brought by the civil court in Skopje about the case of weekly “Fokus” on a lawsuit submitted by the Director of the Office for Security and Counter Intelligence, with VMRO-DPMNE party affiliation. The non-pecuniary fine for the editor was 5,000 euros and for the journalist 1,000 Euro. In total, the fines and administrative obligations for the

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<sup>240</sup> Ibid.

<sup>241</sup> European Commission. Commission Staff Working Document. The Former Yugoslav Republic of Macedonia 2013 Progress Report. p. 11

<sup>242</sup> Law on Civil Liability for Defamation. Article 18. Adopted on November 14<sup>th</sup> 2012, entered into force on December 22<sup>nd</sup> 2012. Official Gazette of Republic of Macedonia No. 143/2012.

<sup>243</sup> MDC’s expert. Personal Interview. Skopje, July 2014.

<sup>244</sup> Independent Union of Journalists and Media Workers. *White Book: Professional and Labor Rights of Journalists*. Skopje, 2014..

<sup>245</sup> MDC’s expert. Personal Interview. Skopje, July 2014.

<sup>246</sup> MDC’s expert. Personal Interview. Skopje, July 2014.

weekly “Fokus” are more than 9,000 Euros.<sup>247</sup> The maximum limits are set high, compared to the media industry income<sup>248</sup> and do not take into account the specific characteristics of individual types of media existing in the market. Since some TV stations can afford to pay the compensations without serious disturbance, small local or regional radio broadcasters, or smaller newspapers will hardly be able to survive after the compensation is paid. Therefore, such high limits could have a “chilling effect” and promote self-censorship<sup>249</sup>, and be considered as a punishment rather than a compensation for suffered damages. While government representatives claim that the main purpose of the law is to guarantee freedom of speech and information, oppositional bloc claims that “law has been used to silence the few remaining free media”.<sup>250</sup>

In October, 2013, Macedonia became the second country in the Southeast Europe with an imprisoned journalist.<sup>251</sup> Tomislav Kezarovski was sentenced to four and a half years of prison for “allegedly revealing the identity of a protected witness in a murder trial published in a text back in 2008.”<sup>252</sup> Prior the sentence Kezarovski was detained for six months as of May 2013. He submitted an appeal to the higher court and he is now at home custody. For Macedonian journalists, it is disturbing that at the time of his arrest he was investigating on the car crash death of a prominent journalist, press freedom advocate and government critic

<sup>247</sup> Ibid.

<sup>248</sup> International Research and Exchanges Board (IREX). *Media Sustainability Index- Macedonia 2014*, available at: <http://www.irex.org/resource/macedonia-media-sustainability-index-msi>, accessed September 2014

<sup>249</sup> Media Development Center. *Analysis of the Draft Law on Civil Liability for Defamation*. Skopje, 2012. Available at: <http://mdc.org.mk/mk/analiza-na-predlog-zakonot-za-gragjanska-odgovornost-za-navreda-i-kleveta-2> accessed September 2014.

<sup>250</sup> Jakov Marusic, Sinisa. “Libel Law Changes Criticized in Macedonia”, *Balkan Insight*, 13 November 2012. <http://www.balkaninsight.com/en/article/macedonia-decriminalizes-libel-tightens-rules-on-foreign-media> accessed September 2014.

<sup>251</sup> Committee to Protect Journalists. *2013 Prison census: 211 journalists jailed worldwide*. 1<sup>st</sup> December 2013 <http://cpj.org/imprisoned/2013.php> accessed September 2014

<sup>252</sup> Freedom House. *Freedom of the Press 2014 - Macedonia*. Available at: <http://freedomhouse.org/report/freedom-press/2014/macedonia> accessed September 2014.

Nikola Mladenov, owner of the weekly “Fokus”.<sup>253</sup> While the police treated the car crash as an accident and failed to address questions about Mladenov’s missing telephone and highway camera footage, Kezarovski claimed that he had found evidence at the crash site.<sup>254</sup> He was shortly after imprisoned. There is a general suspicion among journalists about the fairness of this decision.

As previously stated, in the countries with a polarized pluralist media model, such as Greece, prosecution of journalists is labelled as a remnant of authoritarianism. The examples from Macedonia I elaborated above prove that this authoritarian practice has still been in use. Law on defamation should not prevent journalists from professionally do their job, however in Macedonia it has been the opposite. The Law on Civil liability for defamation, although celebrated by the domestic and international community, has emerged as another instrument of government pressure that pushes journalists toward self-censorship.<sup>255</sup> One more aggravating factor for journalists involved in arbitrary judicial proceedings is the non-existence of a clear division of executive and judicial branch of power. Therefore it is hard to expect a fair trial and unselective justice in the cases where public officials appear as the plaintiffs.

In short, the mechanisms of media control I examined in this chapter are in favour of the main argument that the current government with the ruling right-wing VMRO-DPMNE has established close links with the main actors on media scene. The following chapter deals with the consequences of controlling mechanisms for the level of freedom of media in the country. It also brings up to the surface some events that have completely changed the way Macedonian media function, and have altered the political climate in the country.

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<sup>253</sup> Freedom House. *Freedom of the Press 2014 - Macedonia*. Available at: <http://freedomhouse.org/report/freedom-press/2014/macedonia> accessed September 2014.

<sup>254</sup> Ibid.

<sup>255</sup> IREX Media sustainability index on Macedonia, available at: <http://www.irex.org/resource/macedonia-media-sustainability-index-msi>, accessed September 2014, p.74

### **3 The current media landscape in Macedonian political context**

In order to analyze the current situation in the Macedonian media, which is the starting point for elaboration on media freedom level in Macedonia, I firstly refer to the political context in which the media system operates. As I argued in the first chapter of the thesis, every media system functions in a certain political environment, and there is an inevitable relationship between the two, with reflection of the main political challenges in the media. Throughout the following chapter I refer to the several cases which clearly show the level of polarization in the Macedonian society that possibly led to the deterioration of the freedom of media.

#### **3.1 Political divisions in Macedonia**

When I use the term ‘political division’, I refer to two different, but not separate aspects of the Macedonian political system. Firstly, it considers the division among ethnic Albanians and ethnic Macedonians, and secondly it refers to the division between the government and the opposition ‘forces’. Ethnic tensions in Macedonia escalated in 2001, when the armed conflict between Albanian National Liberation Army (NLA) and state security forces took place. Since the end of the conflict, the Ohrid Framework Agreement entered into force, and the government has undergone a set of constitutional reforms in order to adapt the political system to the demands raised by ethnic Albanians. According to the European Commission Progress Reports, the implementation of this set of demands is improving however, inter-ethnic divisions remain noticeable.<sup>256</sup> Ethnic Albanians are nowadays more included in various aspects of social and political life.<sup>257</sup> Although a good framework that encourages and promotes inter-ethnic dialogue has been created,

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<sup>256</sup> European Commission, Commission Staff Working Document, The Former Yugoslav Republic of Macedonia 2006 Progress Report; European Commission, Commission Staff Working Document, The Former Yugoslav Republic of Macedonia 2010 Progress Report; European Commission, Commission Staff Working Document, The Former Yugoslav Republic of Macedonia 2013 Progress Report. Available at: [http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index\\_en.htm](http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm) accessed September 2014.

<sup>257</sup> Ibid.

government support remains weak, and the general perception is that political elites further polarize and strengthen alienation for political purposes.<sup>258</sup> An exception to that is provided by the goal of membership to NATO and the EU, which has relatively united ethnic Macedonians and ethnic Albanians.<sup>259</sup>

From 2006 onwards, Macedonia has always had government coalitions between Macedonian and Albanian ethnic parties with VMRO-DPMNE as the biggest ruling party in every coalition. From 2006 until 2008, the main coalition partner to VMRO-DPMNE was Albanian Democratic Party for Albanians (DPA), and after parliamentary elections in June 2008 it was replaced by ethnic Albanian party Democratic Union for Integration (DUI). The collapse in the first inter-ethnic coalition government was seen as the result of the conflict between VMRO-DPMNE and DPA over the question of Kosovo status; the introduction of the Albanian language as the second official language; employment in the public sector and the status of NLA veterans.<sup>260</sup> The fact that government collapsed proves that differences regarding particular issues between ethnic Albanians and Macedonians can destabilize the country.

With the early parliamentary elections in June, 2011, requested by opposition led by SDSM who boycotted the parliament, VMRO-DPMNE and DUI renewed the coalition, while its majority in the parliament was weakened. In April, 2014, the next round of presidential and parliamentary elections was held, since the parties in government coalition could not agree upon the combined presidential candidate. However, both parties VMRO-DPMNE and DUI remained in the coalition, and they have been supported by a number of smaller parties since. Macedonian experts claim that the government coalition

<sup>258</sup> International Crisis Group. *Macedonia: Ten Years after the Conflict*. Europe report No. 122, August 11<sup>th</sup> 2011. Available at: <http://www.crisisgroup.org/en/regions/europe/balkans/macedonia/212-macedonia-ten-years-after-the-conflict.aspx> accessed September 2014.

<sup>259</sup> International Crisis Group. *Macedonia's Name: Breaking the Deadlock*. Europe Briefing No. 52, January 12<sup>th</sup> 2009. Available at: <http://www.crisisgroup.org/en/regions/europe/balkans/macedonia/b052-macedonias-name-breaking-the-deadlock.aspx>, accessed September 2014.

<sup>260</sup> Bertelsmann Transformation Index 2010 – *Report on Macedonia*, available at: <http://www.bti-project.org/fileadmin/Inhalte/reports/2014/pdf/BTI%202014%20Macedonia.pdf>, accessed September 2014.

functions until “every party keeps its Ministry and department” and the only condition for its smooth functioning is “non-interference from the others”.<sup>261</sup> Consequently it shows a strong polarization.

An more salient problem, which is crucial for the analysis, is the relation between government and opposition. As stated in all European Commission Progress Reports from 2006 onwards,<sup>262</sup> the boycott of different oppositional parties presents a big obstacle for the proper functioning of the parliament, proving that political system is highly polarized. To illustrate the issue, I refer to the following example: after the elections in 2006, Albanian DUI-PDP coalition in opposition boycotted the parliament from its first meeting, “in protest for not having been invited to be part of the new government, as the main ethnic Albanian parliamentary group having won 60% of the ethnic Albanian community votes.”<sup>263</sup> The year after, normal functioning of the parliament was again disrupted by a dispute between the government and the main ethnic Albanian opposition party, DUI, over the application of a double majority mechanism and the proper functioning of the committee on relations among communities. The dispute triggered a four-month boycott of parliament by DUI. In 2008, SDSM led the boycott, since their vice-president was arrested and an emergency procedure in the parliament was being used to enact the laws. The practice of enacting the laws without opposition continued in 2011 when VMRO-DPMNE and DUI coalition had a two-third majority in the parliament.

On 24 December, 2012, the conflict between the ruling VMRO-DPMNE and oppositional SDSM escalated when the government decided to adopt the 2013 state budget in an emergency procedure. Oppositional and ruling parties’ members and supporters were separated by a police cordon outside the parliament, while inside of the building opposition deputies tried to block the door of the parliamentary hall and

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<sup>261</sup> Personal Interview. Skopje, July 2014.

<sup>262</sup> European Commission. Commission Staff Working Document. *The Former Yugoslav Republic of Macedonia 2006 Progress Report*, p. 5-6; European Commission, Commission Staff Working Document, *The Former Yugoslav Republic of Macedonia 2010 Progress Report*, p. 7; European Commission, Commission Staff Working Document. *The Former Yugoslav Republic of Macedonia 2013 Progress Report*, p.7

<sup>263</sup> European Commission. Commission Staff Working Document. *The Former Yugoslav Republic of Macedonia 2006 Progress Report*

to prevent members of the ruling coalition to enter.<sup>264</sup> When VMRO-DPMNE parliament members entered the plenary hall, the president of the parliament with the same party affiliation ordered the eviction of opposition deputies and journalists. Security forcibly removed them.<sup>265</sup> As stated in a BTI report, “legitimacy of the country’s democratic institutions has been contested by the SDSM and the oppositional parties that joined the so-called resistance against the dictatorial regime.”<sup>266</sup> However, the budget was approved without the presence of the opposition, so SDSM continued boycotting parliamentary sessions.

Opposition was also absent when the new set of media laws was adopted in December 2013. After the last presidential and parliamentary elections in April 2014, the opposition led by SDSM did not return to the parliament since it considered the elections rigged, accompanied with a huge number of irregularities. Due to the facts stated above, it can be concluded that the two different blocs led by the ruling VMRO-DPMNE and oppositional SDSM are highly polarized, as well as the main Albanian parties DPA and DUI which are divided on the same line. Since the work of the parliament proceeded on the basis of dialogue between the governing coalition and the opposition, it is a key priority of the Accession partnership, enacting the laws without democratic debate and without the presence of opposition is one of the main concerns stated in the last EU progress report.<sup>267</sup> Alienation, division, boycott and huge disparities are clearly reflected in the media.

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<sup>264</sup> Jakov Marusic, Sinisa. “Tensions Rise as Macedonians Clash over Budget.” *Balkan Insight*. December 24<sup>th</sup> 2012. Available at: <http://www.balkaninsight.com/en/article/tensions-rise-as-macedonian-parties-confront-over-budget>, accessed August 2014.

<sup>265</sup> Ibid.

<sup>266</sup> Bertelsmann Transformation Index 2014 – *Report on Macedonia*, available at: <http://www.bti-project.org/fileadmin/Inhalte/reports/2014/pdf/BTI%202014%20Macedonia.pdf>

<sup>267</sup> European Commission. Commission Staff Working Document. *The Former Yugoslav Republic of Macedonia 2013 Progress Report*, p.7, available at: [http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index\\_en.htm](http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm) accessed September 2014.

### 3.1.1 Political divisions reflection on Macedonian media

Media outlets in Macedonia are mostly divided into pro-governmental and oppositional, leaving little space for professionalism and neutral, objective reporting. It is surprisingly accepted and pointed out from the vast majority journalists themselves. Interviewees who work in the media inclined to the VMRO-DPMNE politics do not hide the fact that they are close to the ruling elite. 'Pro-government' journalists further claim that their colleagues who write for so-called 'oppositional media' tend to declare themselves as neutral, objective and professional journalists.<sup>268</sup> The main argument for such statement is that "all media outlets in Macedonia which criticize governing elite are founded by the Open Society Foundation (OSF) that also has political agenda."<sup>269</sup> Pro-government journalists also argue that executive director of the OSF Vladimir Milcin is close to oppositional SDSM, and for the same reason OSF is giving grants to different media outlets and finance various projects perceived as contrary to the government policies.

Award winning investigative journalist Saska Cvetkovska is disappointed by the fact that she and her colleagues who are doing their best to professionally cover every story, are perceived as traitors and '*sorosoids*' - which means funded by George Soros and the Open Society Foundation. She rejects a close connection to opposition as a spin. In addition, a very small number of media outlets in Macedonia are ready to include both sides when reporting about the main challenges on the Macedonian political scene. Reporting often includes verbal insults from the politicians of both sides, it is rarely critical, and most of the time biased and politically motivated.<sup>270</sup> A prominent Macedonian scholar Zhidas Daskalovski pointed out that the public sphere in Macedonia is manipulated: "With systematic propaganda in the media,

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<sup>268</sup> Personal interview with the member of the Macedonian Association of Journalists who wanted to remain anonymous.

<sup>269</sup> The founder of the OSF is George Soros, international promoter of democratic values. OSF is not very welcomed in Macedonia, since interviewees close to the ruling elite claim that they have political agenda which is bad for the country.

<sup>270</sup> IREX Media sustainability index 2014 – *Report on Macedonia*. Available at: <http://www.irex.org/resource/macedonia-media-sustainability-index-msi>, accessed September 2014

independent public figures lose in the eye of the public. The public sphere in Macedonia has a very limited number of individuals who can speak truly without being manipulated by both parties on power and in opposition, or media which are close to elites on power or in opposition.<sup>271</sup>

On the other hand, Albanian media are mostly oriented toward Albanian citizens and topics important for their community, though they face almost the same problems. The Editor-in Chief of one Albanian media organization sees the situation as even worse for Albanian citizens than for ethnic Macedonians. From her perspective, the government campaign against Albanians started in 2008 and continues today. Moreover, the division between governmental and oppositional media outlets makes the situation worse, so they have to fight ‘enemies’ from both sides.<sup>272</sup> Inter-ethnic collaboration between colleagues is rare and almost absent<sup>273</sup>, and my primary research proved the same. Although the majority of Macedonians do not know the Albanian language and do not follow their media, on the other side Albanians are bilingual and more likely to read and follow media in Macedonian language.<sup>274</sup> A study on the reporting of the main electronic and print media outlets in Macedonia revealed that despite of a good legal standing of the minorities and the opportunities for media, misrepresentation of the Albanian ethnic group in Macedonian language mainstream media exist.<sup>275</sup> When asked about Albanian media, all Macedonian interviewees said that they are not familiar with them and do not know much about the minority they live together with, since there is a very little interaction.

Polarization in media community is clearly visible between journalists organized in two associations. Association of Journalists in Macedonia (AJM) is the oldest professional organization founded

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<sup>271</sup> Daskalovski, Zhidas. Personal Interview. Skopje, July 2014.

<sup>272</sup> Elida Zylbieri. Personal Interview. Skopje, July 2014.

<sup>273</sup> Ibid.

<sup>274</sup> Vesna Šopar, “Macedonia,” in *Divided they Fall: Public Service Broadcasting in Multiethnic States*, ed. Sandra Bašić-Hrvatini, Mark Thompson and Tarik Jusić. Sarajevo: Mediacentar, 2008.

<sup>275</sup> Zhidas Daskalovski, “Mostovi koji dijele: mediji i manjine u Makedoniji” [The Bridges that Divide: Media and Minorities in Macedonia], in *Na marginama: manjine i mediji u jugoistočnoj Evropi [On the Margins: Minorities and Media in SEE]*, ed. Edin Hodžić and Tarik Jusić. Sarajevo, Mediacentar. 2010.

in 1946.<sup>276</sup> On the other hand Macedonian Association of Journalists (MAJ) was founded in 2002 but has not been active until recently. MAJ does not have an official web site, and it was not possible to find the statute or the address of the organization, therefore it was difficult to track the goals they stand for. Since the lack of transparency in the MAJ organizational structure and its mission was the issue for established journalists' association AJM, they accused MAJ for being active only when it is necessary to give the counter-statement to AJM. On the other hand MAJ brought the counter argument: AJM has monopoly and they do not represent interests of all Macedonian journalists, therefore someone has to challenge their existence. Due to the strong cleavages between the two associations, both reject a possibility to sit together and discuss the issues, such as appointment of the members for the regulatory body and MRT Managerial Board, influence in the process of drafting media laws, representing journalists outside of the Macedonian capital Skopje, etc. Independent Union of Journalists and its president Tamara Causidis consider that talking about two associations is the same as talking about doctors and quacks: "Media community is not divided since the people from MAJ are pure propagandists, and they are not a part of the journalistic profession. It is the fundamental difference between us and them."<sup>277</sup> However, both associations are recognized as parts of the media community, and both have their own members and supporters which are either in favour, or against the ruling party in the government.

Media experts in Macedonia agree upon one crucial fact which has also found its place in the Freedom house report:<sup>278</sup> Since 2008, with the failures to secure NATO membership and to begin negotiations over EU membership, the political and media scene in the country has been dramatically changed. Government failure was questioned by the journalists, and it consequently caused silencing of all those who were criticizing the ruling party and the Prime Minister for unfulfilled expectations. Journalist Saska Cvetkovska who at that time was working

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<sup>276</sup> The Association of Journalists of Macedonia. Official Web site, available at: <http://www.znm.org.mk/drupal-7.7/mk/node/7> accessed May 2014.

<sup>277</sup> Causidis, Tamara. Personal Interview. Skopje, July 2014.

<sup>278</sup> Freedom House. *Freedom of the Press 2009 – Macedonia*. available at: [http://www.freedomhouse.org/report/freedom-press/2009/macedonia#\\_VBx4VRYgvjU](http://www.freedomhouse.org/report/freedom-press/2009/macedonia#_VBx4VRYgvjU), accessed September 2009

with TV A1 says that Prime Minister accused journalists covering the European Union in Brussels for failing to shape their reporting to suit the country interests.<sup>279</sup> In order to explain the consequences of Macedonia's unsuccessful attempt to obtain NATO membership, the International Crisis Group published that this failure helped the Prime Minister Gruevski to secure support for his "national renaissance" policy line, and to strengthen nationalism.<sup>280</sup> Ever since then the clear line between the 'patriots' and 'traitors' was drawn, initiated by the same high official.<sup>281</sup> It has become dominant public rhetoric useful for justification of government policies which are sometimes against the commitment to European values. One of the best examples of Macedonian set-backs since the country has dropped down on the freedom of media rankings is discussed below.

Going back to the event on December 24, 2012, when journalists were expelled from the gallery of the national parliament during voting on the 2013 budget,<sup>282</sup> the Association of Journalists in Macedonia initiated a procedure in front of the Constitutional Court claiming for freedom of expression protection. However, in April 2014 the Court decided that freedom of expression was not infringed upon. The journalists' association is now preparing the appeal in front of The European Court of Human Rights. The decision of the Constitutional Court proves that none of the public officials has been held liable for breach of Article 16 of the Constitution, which guarantees citizens right to objective information and bans censorship. Association representatives consider that this decision seizes the Institutional Dialogue for improving the situation in the media, and even more it shows that clear division of power does not exist. This particular event, as well as other examples stated above, attracted the attention of the European and International Community, due to the fact that a country

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<sup>279</sup> Cvetskova, Saska. Personal interview. Skopje, July 2014.

<sup>280</sup> International Crisis Group. *Macedonia: Ten years after the conflict*. Europe report No.122. August 11<sup>th</sup> 2011. Available at: <http://www.crisisgroup.org/en/regions/europe/balkans/macedonia/212-macedonia-ten-years-after-the-conflict.aspx> accessed September 2014.

<sup>281</sup> Cvetskova, Saska. Personal interview. Skopje, July 2014.

<sup>282</sup> UN General Assembly. Twenty-sixth session. Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Frank La Rue. 1 April 2014.

which entered the road toward democracy more than twenty years ago should exhibit better performance in the area of rule of law and respect for democratic values.

### **3.2 Consequences for the freedom of media**

One of the most important democratic expectations from media performance is principled resistance to the efforts of forces outside the media to subvert their independence, integrity, and ability to serve the audience. In the previous chapter I discussed the level of polarization in Macedonian media landscape, as a direct reflection of established political alienation. Moreover, since one of the basic media functions for the political system is to encourage citizens to learn, choose, and finally become involved in socio-political process rather than merely follow what is going on, the question that arises is whether the Macedonian media system offers these incentives to its citizens? The tradition of serving the public interest was not a part of the previous communist media system, and it started developing when the transition to democracy occurred. Mechanisms for holding officials accountable on that bumpy road have not been strengthened, and power holders remain unprepared to accept challenges. Moreover, they use and abuse the media for the same purposes as their predecessors did. Therefore, the freedom of media and media performance in Macedonia in general cannot improve without political will and true commitment to democratic values. In order to analyze the Macedonian media system's characteristics in detail, I follow dimensions proposed at the very beginning by Hallin and Mancini.

#### **3.2.1 Macedonian media system through Hallin and Mancini dimensions**

As previously mentioned, the purpose of this study is not to classify the Macedonian media system under the 'ideal models' proposed by the authors. It is rather the assessment of the media system's characteristics by using variables the authors introduced. The consequences of the particular media system characteristics for freedom of media in Macedonia are also discussed within the same framework, so I firstly focus on the analysis of Macedonian media market.

Although Macedonia technically enjoys plurality in news and media outlets, the vast majority of broadcast and print media is leaning towards the pro-government editorial policies. It is a result of a direct government pressures in an attempt to establish control over the leading media outlets. As discussed in the second chapter, government campaigns and budget spending for that purpose deteriorate a media market which has never been completely functional. It is an established bribing mechanism which consequently silences possible criticism by using developed pattern of clientelism. The result of such practice is closing the circle—proliferation of pro-government oriented media that dominate media market.

On the other hand, the internet is used as the only space left for critique on government policies. However pro-government online news portals mushroomed in the recent years. As elaborated in the chapter on media ownership, there is a tight link between the owners of pro-government online media or precisely businessmen and off-shore companies and on the other hand VMRO-DPMNE government officials, their family members and close friends. Online media is used to create hyper-production of events and to breed the atmosphere of hyper-reality where the clear border between the truth and non-truth does not exist<sup>283</sup>. As Macedonian journalist Sinisa Jakov Marusic from the Balkan Investigative Reporting Network emphasized in a personal interview, this practice of only formal plurality, which also exists beyond the virtual sphere, is used to confuse the audience. Information published from one source is immediately followed with counter-information. The same pattern exists in all domains of society. Every association has an opponent group. Every protest is accompanied with a counter-protest. As a result, the public is not able to distinguish news from quasi-news, and people are not able to make an informed and effective choice.<sup>284</sup> Moreover, talking about pluralism and the marketplace of ideas, it is clear that in Macedonia it does not exist. If the truth can emerge only in a fair and transparent competition of ideas and information in a public discourse, in Macedonian case, the competition is not present, and the market conditions are far from fair. Therefore, media as a pillar

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<sup>283</sup> Baudrillard, Jean. *Simulacra and simulation*, University of Michigan Press, Ann Arbor, 1994.

<sup>284</sup> Jakov Marusic, Sinisa. Personal Interview. Skopje, July 2014.

of democracy is prevented from serving the function of keeping those on power accountable for their actions, since the only media that can survive in the market are those close to the government elite.

When focusing on political parallelism, the organizational connections between media and political parties are strong. The Macedonian media system is shaped by main political events and actors, and therefore indicates high political parallelism. Journalists and their associations are mostly divided on the basis of political affiliation, or in other words, they either support or oppose the ruling political party. Consequently, close links between journalists and political actors prevent journalists from doing their job professionally and to serving the public interest. According to the liberal theory on democracy and role of the media, only a well-informed citizen is able to effectively practice guaranteed political rights. When biased information is served to the citizenry, their possibility to make an informed choice is considerably reduced. Media are inhibited from performance of the 'fourth-estate' and they cannot improve the quality of the electoral process, political parties, judiciary, and parliament.

Balance of power during the electoral process is in favor of the ruling VMRO-DPMNE since it successfully uses all the mechanisms at its disposal in order to make opponents less visible. The consequence of such practice is VMRO-DPMNE convincing victory, and it gains more and more votes with every next round of elections.<sup>285</sup> Governing political elites embraced the pattern of using media to remain on power, widely used in the authoritarian period. Practice of, at first place, public service broadcasting colonization remains even nowadays. Normative framework allows de jure independency of the MRT and regulatory authority. However, they are de facto highly influenced by the governing coalition and particularly VMRO-DPMNE. In addition, television is still the most influential traditional media, therefore it is a powerful instrument in the hands of those who create public opinion and set the daily news agenda. Considering the difference between internal and external pluralism which is one of the indicators

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<sup>285</sup> Macedonian parliamentary elections held from 2006 onwards: on July 5<sup>th</sup> 2006 (VMRO won 44 out of 120 seats in the parliament); on April 12<sup>th</sup> 2008 (VMRO won 63 seats); on June 5<sup>th</sup> 2011 (VMRO won 56 in the parliament); second round of the last general elections was held on April 27<sup>th</sup> 2014 (VMRO won 61 seats in the parliament)

of political parallelism, my claim is that Macedonia only formally satisfies the model of external pluralism. The vast number of media outlets for a small Macedonian media market should provide diversity of information and opinion. However politics of circulation of the same news, with “the same headlines, same unidentified sources and same wording”<sup>286</sup> through different outlets, unsurprisingly leads toward mindedness. Consequently, there is no much space left for the critical thinking, which becomes marginalized.

The main assumption is that Hallin and Mancini’s third dimension ‘role of the state’ is crucial for assessing the problem of the decline of freedom of media in Macedonia. The state and particularly government intervention in media system in Macedonia is discussed through mechanisms of institutional, financial, ownership and judicial control. Firstly, normative framework for media functioning is described as good, it has been developed throughout the years since Macedonia gained independence, and as a part of EU conditionality. The goal of establishing media regulation in compliance with European values was finally achieved under the eye of international community: EU, OSCE and CoE. However, implementation remains weak. The government is closely tied to regulatory authorities and public broadcast service, and it finds the way to influence editorial policy and the news of the day, even in the case of breaking news, such was the last protests of ethnic Albanians in July 2014 in Skopje.<sup>287</sup>

The story was one of the leading news in the neighboring countries.<sup>288</sup> Some people were injured, the protest blocked the functioning of the city of Skopje, and the police cordons were present everywhere. The OSCE, EU delegation, US Embassy and NATO mission in Skopje had a joint statement calling for non-violence the

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<sup>286</sup> Causidis, Tamara. *Flash Raport 4: Macedonia*. South East Media Observatory. May 13<sup>th</sup> 2014. Available at: <http://mediaobservatory.net/radar/flash-report-4-macedonia> accessed September 2014.

<sup>287</sup> Radio Free Europe/Radio Liberty, *Macedonian police clash with ethnic Albanian protesters*, July 4<sup>th</sup> 2014, available at: <http://www.refworld.org/docid/53ce307ca.html> accessed October 2014

<sup>288</sup> *Tanjung*. “MKD: Haos na protestu, 20 povredjeno.” *B92 News*, July 4<sup>th</sup> 2014. [http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=07&dd=04&nav\\_category=167&nav\\_id=872493](http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=07&dd=04&nav_category=167&nav_id=872493), accessed October 2014.

same night, 4<sup>th</sup> July 2014.<sup>289</sup> On the other hand, national MRT Channel 1 did not even mention the riot that day, although it was happening in front of their building.<sup>290</sup> When an MRT editor was asked about such editorial decision he replied that it was better to keep silent in order to prevent conflict escalation between the two ethnic groups.<sup>291</sup>

As an isolated case, the previous event may not raise a concern. However, it happened that during the previous protests in Gjorce Petrov Skopje municipality in May 2014. Police officers intimidated journalists, confiscated their cameras and made them forcibly erase footage.<sup>292</sup> Journalists working with Radio Free Europe, Fokus web portal and NOVA TV web portal were the only reporters covering the protests, and no one from the leading traditional media was there. Although police behavior was interpreted as a clear violation of the right to freedom of the media<sup>293</sup>, and direct censorship<sup>294</sup>, the Internal Sector Control of the Macedonian Ministry of Interior, in less than 24 hours for an investigation, determined that incident never happened.<sup>295</sup> Moreover, AJM recently expressed concern about frequent incidents when the

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<sup>289</sup> Macedonian State Agency. *EU, OSCE, US, NATO: Everybody is entitled to protest, but not to involvement in acts of violence*, Friday, July 4<sup>th</sup> 2014. <http://www.mia.mk/en/Inside/RenderSingleNews/289/119397728> accessed September 2014.

<sup>290</sup> The story appeared in the MRT news the second day of the protests when all other media already covered it. See: Dimitrijevska, Anita. *Protests against the "Monster" judgment: 7 criminal charges, 27 injured policemen*, published on MRT website, July 5<sup>th</sup> 2014. <http://mrt.com.mk/node/11321> accessed September 2014

<sup>291</sup> Editor from the public service broadcaster - Macedonian Radio Television. Personal Interview. Skopje, July 2014

<sup>292</sup> OSCE Press Release. *OSCE Representative deeply worried about police intimidating journalists at demonstrations in Skopje*. Vienna, 21<sup>st</sup> May 2014. <http://www.osce.org/fom/118840> accessed September 2014.

<sup>293</sup> Ibid.

<sup>294</sup> Comovski, Gorazd. Interview with Naser Selmani. "Како тргнало нема да бидем зачуден ако уапсат некој новинар!" *Faktor*. July 14<sup>th</sup> 2014 available at: <http://faktor.mk/archives/115658>, accessed September 2014.

<sup>295</sup> Radio Free Europe/Radio Liberty. "МВР: Немало попречување на нонарите во Ѓорче Петров" May 22<sup>nd</sup> 2014, available at: <http://www.makdenes.org/archive/news/20140522/428/428.html?id=25394627>, accessed October 2014.

police obstruct journalists in the exercise of their profession.<sup>296</sup>

Therefore, if the government wants something to be covered, it will be in the news, otherwise everything which is perceived as a bad image is undesirable and obstructed. Can we then really talk about free media when journalists are prevented from doing their job, when they are intimidated and feared? The answer is clear— no. Although very important for the Macedonian media landscape, government control is not the only issue, but it is surely the one that limits journalism professionalization. In an attempt to explain interrelatedness between these two dimensions, I now briefly focus on Hallin and Mancini's last dimension 'professionalization of journalism'.

Since professionalism of journalism encompasses three variables (i.e. degree of autonomy, journalists' orientation and development of distinct professional norms) each of them should be elaborated separately. Journalists in Macedonia work in poor conditions and they face a lot of challenges and pressures, especially when they want to investigate affairs and corruptive practices in the country. Even when they cover topics of the great public interest, considered as the strategic goals of the country such as the EU and NATO accession, they have to pay attention to the most suitable way to do the stories. Otherwise, they can face charges for defamation, as explained in the chapter on judicial mechanisms of government control.

Journalists do not enjoy any substantial degree of autonomy under great political pressure. They usually practice self-censorship in order to avoid negative consequences: losing a job, lawsuits for libel and defamation, or even facing criminal charges such as was in the case of Tomislav Kezarovski. The White Book on professional and labor rights of journalists in Macedonia<sup>297</sup> is a rich collection of negative practices and bad examples of conditions in which journalists in Macedonia work. When asked about signing the text which they did not write or just being a witness of such practice, 36% of journalists in Macedonia said that they were either witnesses or victims in this situation. More than a half or precisely 53% of journalists practice self-

<sup>296</sup> The Association of Journalists in Macedonia. *Reaction to the behavior of police to journalists*. September 2<sup>nd</sup> 2014, <http://www.znm.org.mk/drupal-7.7/en/node/785> accessed October 1<sup>st</sup> 2014.

<sup>297</sup> *White Book: Professional and Labor Rights of Journalists*. Independent Union of Journalists and Media Workers, Skopje, 2014.

editorial censorship.<sup>298</sup> When talking about pressuring mechanisms that editors and media owners use, 49% of journalists put a threat of losing a job at first place, while 24% said that direct censorship is the second most used way of intimidation.<sup>299</sup> In addition, 65% of journalists said that they have experienced censorship during their career, which automatically raises a concern on a real number of journalists who practice self-censorship, since they are usually embarrassed to admit it.<sup>300</sup>

A high degree of journalistic autonomy is an ideal to which Macedonian journalists are not even close, nor at the moment able to reach, due to all above discussed obstacles and poor socio-economic conditions. Their salaries are below the average income. Their labor rights are almost nonexistent, as discussed in the second chapter of the thesis. Censorship, as a widely used controlling mechanism in the authoritarian period, keeps its roots in a democratic country, and enhances the use of self-censorship among the journalists. Whom do the journalists serve? In most of the cases they either serve the interest of the ruling party or the interest of the wealthy businessman-media owner who is again tied to the governing elite. Macedonian journalists consequently have become the sources of manipulation and propaganda. Although being the creators of the public discourse, journalists' ability to serve wider interests is very limited. On the other hand, this is exactly what those in power need— marionettes and obedient pawns.

Finally, the Macedonian media system is the most similar to the polarized pluralist media model which predominates in the Mediterranean countries. Contrary to democratic corporatist model, characterized by a strong and positive role of the state, in the Macedonian polarized pluralist model, the role of the state is mostly negative and shows tendency of set backs leading more to the authoritarianism. Reports I refer to throughout the study clearly show that the authoritarian tendency and more interventionist role of the state developed from the mid-2000s. Going back to the main political actors and parties that dominate Macedonian political scene, I compare the right-wing VMRO-DPMNE party perceived as more nationalist and conservative, and SDSM which was transformed from the previous

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<sup>298</sup> Ibid. p. 84-85

<sup>299</sup> Ibid

<sup>300</sup> Ibid.

League of Communists, and which defines itself as social democratic party supporting pro-Western orientation.

SDSM remain the biggest party in opposition from 2006 onwards. When it was in power from 1992 to 1998, media system was developing in accordance to the liberal role model due to belief that there is no need to impose restrictive laws since freedom of expression is guaranteed by Constitution. The media market developed freely, although it was vibrant and very chaotic. On the other hand, in the last eight years while VMRO-DPMNE has been in power, the freedom of media deteriorated. Laws that regulate the field were necessity and a part of democratization process because in societies on the road to democracy constitutional and legal guarantees are essential to make the media freedom enforceable. However, laws remain words on paper, and due to the lack of political will, good regulatory framework which is in compliance with the European laws is often misused.

Professor Zhidas Daskalovski emphasized that the current situation is a part of growing up, or precisely becoming a mature country in the sense that Macedonia is still getting to the point where many (Western) countries have been many years ago. Therefore the whole system of media and propaganda has not yet been finalized in a way that it is perceived from the rest as 'normal'.<sup>301</sup> He also stated that nothing has changed meanwhile, that the situation was always the same, although what happened is amplifying the circumstances and having more numerous reports which have been very much talked about and politicized.<sup>302</sup> Although international organization such as OSCE put some efforts to help improving the situation, they usually have a short term agenda, and it does not help the country which is reluctant to changes.<sup>303</sup> However, we cannot diminish the relevance of the issues elaborated by many national and international media experts, since the practice proves that there is a negative trend in both the political and media system in Macedonia.

Going back to empirical data, the year 2008 is seen as the beginning of a course change due to Macedonian failure to gain membership in NATO. Although it is a candidate country for the EU

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<sup>301</sup> Daskalovski, Zhidas. Personal Interview. Skopje, July 2014.

<sup>302</sup> Ibid.

<sup>303</sup> Ibid.

membership, it has never entered into accession negotiations. In the absence of the European Union perspective due to Greece veto and the name dispute, the ruling VMRO-DPMNE has resorted to populism, strengthened division and marginalized opposition by using media as the main instrument.<sup>304</sup> Consequently, Macedonia nowadays struggles with many more issues than in the mid-2000s when it gained the candidate status. Free media is one of them, and it is a prerequisite for a democratic development. Nevertheless, it has been shown that reformed political and media institutions still retain elements of the logic and constraints of their predecessors.

As someone who has researched on the main Macedonian political challenges, Zhidas Daskalovski explains:

The political elites have not consolidated, and the whole discourse and behaviour of the political parties is such that they are very reluctant to lose elections, and to transfer power to opposition. The point being is that once in power the party maximizes the use of all public resources for the own benefit. If it loses the power than it loses all the privileges and all the possibilities to win public resources, it had in the time ruling the country.<sup>305</sup>

Moreover, he defines it as simple as following: “It is do or die, and therefore the parties in power do everything to keep the power and parties in opposition do everything to topple the government. And to round up the story, they use and misuse the media to this extent.” This argument explains why Macedonian society functions by following the principles of clientelistic relations. In addition, journalists still hold values rooted in their professional life under the old regime, which means that they often make their political affiliations visible. It is also one of the factors that contributed to the fall of media freedom into disrepair.

When thinking about possible solutions for improving journalism professionalization, at the very end of the study analysis, one good trend

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<sup>304</sup> Ordanoski, Saso. *Flash Report 5: Macedonia*. South East European Media Observatory. September 29<sup>th</sup> 2014 <http://mediaobservatory.net/radar/flash-report-5-macedonia> accessed October 2nd 2014.

<sup>305</sup> Daskalovski, Zhidas. Personal Interview. Skopje, July 2014.

in the Macedonian media landscape deserves a little attention. During my research in the field, when asked on perspectives for the future almost all interviewees, without difference on their political affiliation, expressed concern that the freedom of media would deteriorate more if the trend of government and businessmen pressure over media continues. When they were asked about their own responsibility and possible improvement in journalism professionalization, the answer was that the only hope has been self-regulation. By definition, media self-regulation preserves editorial freedom, it helps minimize state interference, it promotes media quality, and as evidence of media accountability, it helps audiences access the media.<sup>306</sup> Self-regulation protects the right of journalist to be independent and to be judged on professional mistakes by colleagues, not by those in power.

Although Macedonian journalists adopted the Journalists' Code of Ethics in 2001,<sup>307</sup> they have not, until now, managed to use it for the improvement of their own profession. The purpose of Journalists' Code of Ethics is to safeguard the autonomy of the profession and to serve the public interest, so it is the first step toward media self-regulation. After several failures in attempts to establish a sustainable, visible and effective self-regulatory body, in the very moment of finalizing the thesis, the Complaint Commission of the first Council of Ethics of the media was formed in Macedonia. It started working on September 30<sup>th</sup> 2014.<sup>308</sup> The newly established Council of Ethics should be independent of political power with the main task to deal with complaints about the work of the media through collective decision-making process. In the Macedonian climate of open verbal assaults, unprofessional behavior, propaganda, and overt calls for lynching of journalists with a critical eye, self-regulation may be used as a good ground for strengthening the role of profession. As a mechanism widely used for improving journalistic

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<sup>306</sup> Haraszti, Miklos. *The Media Self-regulation Guidebook*. The Organization for Security and Co-operation in Europe, Representative on Freedom of media. Vienna 2008

<sup>307</sup> Code of journalists of Macedonia. Available at: <http://www.znm.org.mk/drupal-7.7/en/node/441>, accessed October 2014.

<sup>308</sup> *Fokus*. "Граѓаните можат да се жалат за непрофесионално информирање во медиумите." September 30<sup>th</sup> 2014. Available at: <http://fokus.mk/graganite-mozhat-da-se-zhalat-za-neprofesionalno-informiran-e-vo-mediumite/>, accessed October 1<sup>st</sup> 2014.

principles and standards, it can strengthen their professionalism, foster solidarity and it can also be a good ground for cooperation among the two highly polarized Macedonian media ‘blocs’. Moreover, if it proves to be a functional solution, Macedonian journalists will demonstrate that they are responsible and accountable in serving the public interest, rather than being megaphones for particular interests of media owners, businessmen or political actors.

## Conclusion

Due to the fact that the decline of freedom of media in Macedonia has occurred since the right-wing VMRO-DPMNE party came to power, I argued in this study that VMRO-DPMNE and its allies in the government bear the most of responsibility for the media freedom deterioration in the country. The main presumption was that the ruling elite had managed to use all the mechanisms at its disposal in order to marginalize critical voices which can challenge government policies during uneasy transitional periods. The possible reason for strengthening the tendency of the ruling elite to encroach towards authoritarian practices is due to the fear of losing elections and transferring the power to the main opponent—left-oriented SDSM. Considering the fact that role of the free media in democracy is to hold government accountable for its actions it may seem understandable why the ruling Macedonian party does not have interest in pluralistic, independent and free media.

However, freedom of media is a complex issue and various factors can influence smooth media functioning. Although deterioration started in 2006, Macedonia has drastically dropped down in recent years on all of the ranking lists which provide information on the level of the freedom of media in the countries all over the world. The year 2008 is particularly important, since Macedonia was blocked by Greece on the way toward NATO membership and EU accession negotiations. With this failure, and due to critics on the betrayed expectations, the government started tightening the media outlets in the country. In the absence of the EU perspectives, the ruling VMRO-DPMNE has resorted to populism, strengthened division in the country and marginalized opposition by using media as the main instrument.

In the first chapter I introduced Hallin's and Mancini's conceptual framework for assessing particular media system characteristics. The authors' study on Western countries and their media systems was useful framework for positioning Macedonian media system and comparing its certain characteristics with other countries' media systems features. It was particularly important to establish a link between the media performance (i.e. the level of freedom of media) in various countries and the three main media models and to compare the results. Additionally, it facilitated locating Macedonian media system which appeared to mostly resemble the Polarized Pluralist media model. Since the media

functions in the certain political environment the elaboration on the main political actors during the country's transition from authoritarian regime to democracy also proved to be important for the wider analysis.

The second chapter of the thesis was focused on the mechanisms used by the government to interfere in the Macedonian media system. Interviews with relevant Macedonian media experts, scholars, journalists and authorities were of great importance for finding the right way to assess the problem, while also providing useful qualitative data. Various examples on the ruling VMRO-DPMNE party involvement in all domains of media system functioning proved the party's genuine tendency to oversee media and marginalize illegible and unsuitable journalists' reporting that goes against their government policies. This was shown through the ruling party's influence through regulatory bodies and public service broadcasters, media owners with close ties to government officials, government advertising as a dominant way of bribing the media, and as well prosecution of journalists, editors and media outlets for defamation. These practices have clearly demonstrated remnants of the authoritarian period that the actual democratically elected government has been using although it should presumably left them far behind. Starting from the liberal concept of media as the fourth estate and cornerstone of democracy that was used throughout the study, it was established that, although at the beginning Macedonia adopted liberal concept, nowadays it fails to implement the main liberal postulates.

On its way to the European Union, and as a first non-EU country that gained candidate status, Macedonia committed itself to respect European and democratic values. However, the analysis of the freedom of media in Macedonia has shown that the actual government's practices do not nurture favourable conditions for full development of free media and pluralism as expected in democracy. The consequences of such a state of affairs are discussed in the last chapter. By following the dimensions proposed by Hallin and Mancini, I elaborated on the Macedonian media system characteristics, such as the media market, political parallelism, role of the state and journalism professionalization, and answered the questions posed at the beginning. It was proven that government advertising distorts already small and dysfunctional Macedonian media market; strengthening of polarization among media

professionals by political elites; close clientelistic relations between wealthy media owners and government officials; and enhanced self-censorship by judicial mechanisms among the journalists. Moreover, security forces did not hesitate to resort to censorship during the recent protests that had destabilized the country. The level of Macedonian political and media polarization was discussed and supported with the examples of the crucial events in the recent years that concerned not only domestic, but international community as well.

The research hypothesis that the ruling party and its government allies' hold the main responsibility for the media freedom deterioration in Macedonia was proven to be true. Although the government's role has been of great importance, journalists also take responsibility for the current state of affairs. According to the previously quoted report, the first self-regulatory body was established in Macedonia at the moment of finalizing this study, and it is expected this practice will improve professional standards among journalists in the country.

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EUROPEAN REGIONAL MASTER'S DEGREE IN  
DEMOCRACY  
AND HUMAN RIGHTS IN SOUTH EAST EUROPE

University of Sarajevo – University of Bologna

**CLASH OF RIGHTS.  
HEALTH OR WORK, A VIOLENT CHOICE**

MASTER THESIS SUBMITTED IN PARTIAL FULFILMENT OF  
THE EUROPEAN REGIONAL MASTER'S DEGREE IN DEMOCRACY  
AND HUMAN RIGHTS IN SOUTH-EAST EUROPE

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**LIST OF ABBREVIATIONS**

GDP	Gross Domestic Product
ECHR	European Convention on Human Rights
ECS	European Social Charter
ECtHR	European Court of Human Rights
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ILO	International Labour Organization
IMF	International Monetary Fund
OAS	Organization of American States
OSCE	Organization for Security and Cooperation in Europe
NGO	Non-governmental Organization
UN	United Nations
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UPR	Universal Periodic Review
TNC	Transnational Corporation
WHO	World Health Organization
WTO	World Trade Organization

## INTRODUCTION

The International Covenant of Economic, Social and Cultural Rights (ICESCR), adopted in 1966, is a well-balanced, comprehensive and harmonious set of norms that theoretically, if taken in due consideration, would help a signatory State in providing the best legal environment for the self-realization of its citizens. The theory – and rhetoric – of Human Rights' discipline has traditionally stressed the importance of interconnection and interdependence of rights, taking for granted their “cumulability”. But what happens if the enjoyment of two of these rights, in determined contexts, enter in contrast – even more: become mutually *exclusive*? We use to refer to fundamental rights as those without which the enjoyment of other rights is impossible: so the clash between two of them results in a short circuit within the system.

In the present study, the two rights concerned are the Right to Work and the Right to Health: in a determined situation of highly pollutant working environment, workers and local communities have to face the unbearable choice between which right to enjoy; thus, the claims of work and health may be in opposition. This is a rather common aspect of heavy industries' sites, and a clear example can be found in Zenica, Bosnia and Herzegovina, economically and environmentally dependent on its steel factory; in a different socio-economic context, under EU-framework, Taranto, in Southern Italy, is facing a striking similar fate.

How to tackle this clash? First of all, studying the nature of human rights, departing from a precise point in the past: the French Revolution. In the differences *in nuce* between liberal and egalitarian approaches during the revolution, in the struggle to enforce those rights that Maximilien de Robespierre declared “written in the heart of all men”, our argument will start its journey. The dream of *social justice* will take shape in the formulation of economic and social human rights. Fundamental feature of them, a positive effort by the State is required, with its resources and policies. On the debate over the obligations that every State (duty-bearer) has toward its citizens (right-holder), is the critique: are those rights tool of emancipation, or tool of oppression? Are judiciable norms, or mere aspirations? The unavoidable vagueness by which economic and social human rights

had to be formulated gave space to several questions, while current globalization may threaten their very existence.

This study situates itself in this space, in the analyses of the implementation of economic and social rights, shaped by the nature, purpose, practicability and consequences of such clash of rights. The first question that has to be faced is thus why two fundamental human rights may be in opposition. The hypothesis is that the *weakness* of economic and social rights, that may undermine their universality, is in the lost commitment over their related obligations; is, moreover, in the neo-liberal shape of their understanding, that lead to a deterioration of their normative concreteness. This is shown by a diachronic analyses over the same language of their formulation, subsequently, over the change in their teleological interpretations. This is the ground where the choice between two fundamental rights appear.

How to define this choice? *Violent*, is the adjective that this study found out to be the most appropriate one, using the theoretical framework of three authors that approached what violence means: Hannah Arendt, Johan Galtung, Slavoj Žižek. Defined the static of the study, the dynamics is posed as it follows: which consequences this clash of rights may have? *Intergenerational un-justice*, the hypothesis. There is a direct connection (historical and theoretical) from Work and Health to the problematic implementation of Right of Development and Environmental Rights (and relative collision). An overlapping of structural hierarchies that the contemporary State has to face, finding a proper balance between its political choices. Bringing evidences to this cascade of related questions, the two photographs of reality: Zenica and Taranto. The reality-check proves the test over the research questions, an historical connection from the poetry of utopian revolutionaries to the denial of welfare rights as *real* rights.

In the concrete, contemporary and apparently inevitable violence of such choice over these two cities, the relevance of this study. In the striding contradiction that can be observed in particular – but nonetheless decisive – cases in the implementation of social and economic human rights. The blackmailing over workers is sharp: jobs are provided in environmental-polluting conditions, which affect the health of the workers themselves and often of entire communities; on the other hand, the loss of jobs would deprive the local population

from needful incomes. The outcome is often a dangerous, conflictual situation in which a zero sum game makes impossible the enjoyment of all the rights a community is already – allegedly – entitled to. The aim is thus to show the pattern that lead to such situations, the threat posed by the neo-liberal shift in Western politics that is not providing fertile ground for economic and social rights to be implemented; to show the relation between the so called Second Generation and Third Generation rights. This applies to Bosnia as well as Italy – outside as well as inside the European Union.

The thesis' approach is mainly theoretical. The work is divided equally in three chapters of the same length, each parts in three sub-chapters. It moves from the historical development to the critique of economic and social rights; then, the critique is focused on the accountability and the consequences, as well as the concept of *politicization/de-politicization* of these rights: that means that the field touched is that of history and philosophy of human rights, political philosophy and political theory. All the theoretical construction will be the roof under which we will examine the case of Zenica and Taranto. The study will find its space, then, in the literature that criticizes human rights legislation for allowing too much scope for interpretation and implementation; on the side, it has to be underlined, of the critique that asks for the empowerment of such rights.

The journey through the history takes place through the analyses on one hand of sources of law and revolutionary declarations, on the other of works by historians and philosophers that followed the events. The nature of rights is tackled through critiques of neo-Marxist as well as liberal perspectives, trying to find a way through positive contradictions. The clash of human rights has not found notable space in literature, nor in the theoretical framework nor in the concrete case of work/health in the target towns – this complicated the study, but extended its relevance and need. Being a problem of social justice, it has been useful to overlook the economic threat binding States on bad practices, the race to the bottom that many researchers of the globalization have underlined. A chapter on the field of Right to Development/Environment will be used as a continuum in the theoretical field, with a good starting point in the works of Edith Brown Weiss. However, the awareness on environmental issues

is not appropriately linked with human rights theory, while often development rights are used in contrast by the States (emphasis: first we need to develop, than to implement rights).

## 1. LOSS OF AN IDEA OF SOCIAL JUSTICE: WORK AND HEALTH

*What is the goal toward which we  
are heading?*

*The peaceful enjoyment of liberty  
and equality; the reign of that eter-  
nal justice whose laws have been in-  
scribed, not in marble and stone, but  
in the hearts of all men, even in that  
of the slave who forgets them and in  
that of the tyrant who denies them.*

Maximilien de Robespierre,  
“Virtue and Terror” speech, February 5, 1794

The problem was: a well-lived life is vulnerable in front of the unpredictability of Fortune. The reasoning around it worried a great amount of what we know as the Ancient Greek thinkers. The Fortune is here intended to describe all that *happens* to a person, in opposition from what this person *does*. The aspiration to free the goodness of a virtuous life from the influence of Fortune was a pillar of Ancient Greek ethics; thus, philosophers, poets, historians and of course tragedians dedicated their works to tackle the issue through the “power of reason”. For the following work, this is indeed a starting point which is too far away, and I redirect the reader to the works of Martha Craven Nussbaum on the “fragility” of such a goodness<sup>1</sup>. Indeed is a starting point not to forget on the note: to win Fortune with reason; that allows us to reach, with a forced jump dictated by space and time of a thesis, to the XVIII century.

The second half of the XVIII century saw, as concrete outcome of the *âge des lumières*, the establishment of a new understanding of society in which the “power of reason” could create certain conditions

<sup>1</sup> I used an Italian translation, the following: Nussbaum, Martha C., *La fragilità del bene*, Bologna: Il Mulino, 1996. For the original version, see Nussbaum, Martha C., *The Fragility of Goodness. Luck and Ethics in Greek Tragedy and Philosophy*, Cambridge: Cambridge University Press, 1986.

for the well-being of every man<sup>2</sup>. Following the words of the most notorious (and terrible) of the revolutionist, Maximilien de Robespierre, the goal was that of the “peaceful enjoyment of liberty and equality” by means of observing those laws inscribed in “the hearts of all men”<sup>3</sup>. The declamation of such words must not appear as a sudden, alien event in the darkness of *ancien régimes*. As Neil Stammers points out, such revolutions were the “culmination”, and not the birth, of 150 years of social struggles, with an important passage in the English Civil War and more broadly in the period between 1640 and 1689, year of the English Bill of Rights. Stammers refuses the idea of “the unexpected invention of revolutionary politics”, while movement activism persisted way before the invention of political parties<sup>4</sup>. We may remind Adam Robert’s words: as all the revolutions, they had gone on for some time before coming to the surface<sup>5</sup>.

For the contemporary understanding of Human Rights, an essential starting point comes from two documents written and approved in the same period, under the same influences and in certain aspects, even by the same authors<sup>6</sup>: the American Declaration of Independence of July 1776 (heavily influenced by the Virginia Declaration of Rights

<sup>2</sup> I do attain myself here, for the sake of simplicity, to the gender-biased use of the word as it was used at that time; it is anyway important to underline that already during the French Revolution the uneasiness for the use of the male substantive was present. As reply to the Declaration of the Rights of Man and of the Citizen of 1789, the French activist and playwright Olympe de Gouges wrote in 1791 the *Déclaration des droits de la femme et de la citoyenne* (Declaration of the rights of Woman and of the Female Citizen).

<sup>3</sup> From the famous speech of the 5th February 1793, while the Jacobins were in power; a collection of his speeches is in Žižek, Slavoj, *Vertue and Terror*, London: Verso, 2007.

<sup>4</sup> Stammers, Neil, *Human Rights and Social Movements*, New York: Pluto Press, 2009.

<sup>5</sup> The quotation is from the introduction to one of the finest interpretation of the nonviolent character of the Prague Spring: Adams, Robert and Windsor, Philip, *Czechoslovakia 1968*, London: Chatto and Windus (for the Institute of Strategic Studies), 1969.

<sup>6</sup> Gilbert du Motier, known as the Marquise of Lafayette, drafted the French Declaration of 1789 in contact with Thomas Jefferson, one of the main figure behind the American Declaration of July 1776 - together with George Madison, who previously wrote the Virginia Declaration of Rights in May of the same year.

adopted few weeks before) and the French Declaration of the Rights of Man and of the Citizen, symbol of the Revolution of 1789. Those two famous documents were based on the doctrine of Natural Rights (synthesis of the more poetic words of Robespierre) and are simply the direct roots of the Human Rights we know today.

It is in the American Declaration that is stated that “these truths” are “self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness”<sup>7</sup>. The French Declaration is more articulated, composed by 17 articles, a list of “natural, unalienable and sacred”<sup>8</sup> rights. The first two articles stated the equality in rights and freedom of every men (art. 1) and the aim of the political activity as “the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression” (art. 2). The Declaration stated also the people’s sovereignty (art. 6), presumption of innocence in trials (art. 9), freedom of thought and speech (art. 10-11), separation of powers in the State (art. 16). All rights now firmly inscribed in the so-called rhetoric of Human Rights. Ideas, we may safely state, that became familiar in last decades.

On the other hand, in the same time these rights were translated from “the hearts of all men” into legal documents, a problem occurred, a conflict between the duty-holder and the right-bearer. The problem is to be formulate in this question: had the rights enlisted in the two documents the status of legal rights? The same question will come back in the future doctrine of Human Rights, and we will see how the answer is not as certain as we may think. A clear objection on the status of the French Declaration is that of one of its contemporary, even if living on the other side of the Channel: Jeremy Bentham, who marked the work

<sup>7</sup> From the Preamble of the Declaration. The less famous but previous Virginia Declaration stated in similar way, in its Section 1, “*That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety*”. It is however ironic that the “self-evidence” by which the Declaration show off its rights was delimiting the general understanding of “men” to the quite smaller group of “white, free, property-owner Americans”.

<sup>8</sup> As stated in the Preamble of the Declaration of the Rights of Man and of the Citizen of 1789.

of the French revolutionists as pure *nonsense*: “nonsense upon stilts”<sup>9</sup>. He wrote an essay in 1796, remained unpublished until 1816<sup>10</sup>, in which he took every article of the Declaration demolishing it between satire and strict legal perspective.

The points of Bentham are essentially that of *natural rights* cannot be *legal rights* because of the lack of obligations behind them and the absurd of the disparity between their rhetoric and reality<sup>11</sup>. In fact, the majority of French population in the end of XVIII century could not embody the rights that Paris revolutionists were giving them: starting from the very first idea of all “men are born free and equal in rights”. *Where are those men?* asks himself Bentham<sup>12</sup>. Moreover, he thinks that the Declaration, with its statements that give rights to rebellion to the oppression, is far from building an ordered environment; *au contraire*, it sows the seeds of anarchy broad-cast. The reasoning is: being the list of rights not possible in reality, the allowance for a rebellion is the natural outcome. In Bentham’s provocative words, the Declaration is translated in: “People, behold your rights! If a single article of them be violated, insurrection is not your right only, but the most sacred of your duties!”<sup>13</sup>. For him, an invitation to a continuous rebellion, violence, anarchy<sup>14</sup>.

I add to the discussion a second Declaration of the Rights of Man, the one proposed by the Jacobins in 1793<sup>15</sup>. Even if never formally adopted, the second Declaration had an important echoes in

<sup>9</sup> Bentham, Jeremy “Anarchical Fallacies; being an examination of the Declaration of Rights issued during the French Revolution” in Bowring, John (edited by), *The works of Jeremy Bentham*, Edinburgh: William Tait, 1843, available online at <http://oll.libertyfund.org/titles/1921>.

<sup>10</sup> Bedau, Hugo Adam, ““Anarchical Fallacies”: Bentham’s Attack on Human Rights” in *Human Rights Quarterly*, volume 22, n. 1, 2000

<sup>11</sup> For the only possible rights are legal rights, that means emanation of a government, no such things as natural rights - that means, previous to any government - is understandable in Bentham’s discourse.

<sup>12</sup> Bentham, Jeremy “Anarchical Fallacies; being an examination of the Declaration of Rights issued during the French Revolution” in Bowring, John (edited by), *The works of Jeremy Bentham*

<sup>13</sup> *Ibidem*.

<sup>14</sup> Bedau, Hugo Adam, ““Anarchical Fallacies”: Bentham’s Attack on Human Rights” in *Human Rights Quarterly*, volume 22, n. 1, 2000

<sup>15</sup> Reported in Annex I of this work.

the following years, especially in the French revolutionary movements of 1830 and 1848. The Jacobins included a more egalitarian approach, engraining the notion of common welfare (art. 1), right to work and assistance for the unfortunates (art. 21), right to education (art. 22). Importantly, it stated the abolition of slavery (art. 18: *The law knows of no such thing as the status of servant; there can exist only a contract for services and compensation between the man who works and the one who employs him*). We may say, it was the beginning of the understanding of social and economic rights as part of Natural/Human Rights, where the first Declaration was more referring to the individual political liberties. Adapting it to the contemporary vocabulary, we may call the 1793 Declaration the *second generation* of the Rights of Man.

In the document, the right to resistance to the oppression was re-stated as consequence of all the other rights, exactly the fear of Bentham. The last article, 35, clearly states that *When the government violates the rights of the people, insurrection is for the people and for each portion of the people the most sacred of rights and the most indispensable of duties*. It exists also another version of the 1793 Declaration, the one proposed on 21st April by Maximilien de Robespierre; it is extremely similar to the final version, but with three articles in more; articles 36 and 37 as a form of international solidarity (who oppresses a single nation is declared enemy of everyone), while the last one is a call for Republicanism as the only way to embody the social justice: *Les rois, les aristocrates, les tyrans, quels qu'ils soient, sont des esclaves révoltés contre le souverain de la terre qui est le genre humain, et contre le législateur de l'univers qui est la nature*.

The Jacobins' approach to social justice as duty of a State is fundamental in this work, being based on the doctrine of social and economic rights. Still, the paradigm natural/legal rights of the time is unsolved. Robespierre's virtuous Terror would suggest us that the (Revolutionary) violence that Bentham would have feared was for the leader of the revolution exactly the solution to overcome the problem:

the “divine violence” that would put everything in its place<sup>16</sup>; far from the moderate understanding of changing the law from its traditional source, the Jacobin answer is just radical: “Stop shaking the tyrant’s bloody robe in my face, or I will believe that you wish to put Rome in chains”<sup>17</sup>. We know how the Revolutionary violence, far from creating the sought social justice<sup>18</sup>, revolted then against its creators: ten years after Robespierre lost his head, Napoleon was electing himself Emperor of the French<sup>19</sup>.

But if on one hand we cannot accept the Terror as mean of reaching legitimacy for the peaceful enjoyment of liberty and equality, on the other the answers of Bentham lack in providing the Natural/ Human Rights the universality they need. As an essay of Hugo Bedau underlines, the utilitarian approach of the British philosopher fails in understanding the meaning of these rights as tool against oppression. Bentham’s logic says that rights are determined by the lawmaker’s judgment as to whether it is more or less advantageous for the society as a whole: being created (even in a democratic way) “only if it is to the advantage of some majority to do so, than it appears that rights could not exercise the anti-majoritarian function that is so crucial”<sup>20</sup>.

The debate over the status of Natural/Human Rights as “real” rights is as old as the French Revolution. We could adapt the debate

<sup>16</sup> I refer here to the introduction by Slavoj Žižek “Robespierre or the “Divine Violence” of Terror” and its understanding of Walter Benjamin’s concept of “divine violence” in Žižek, Slavoj, *Vertue and Terror*, London: Verso, 2007. The philosopher comes back, and more extensively, on the role of violence in a work published the following year: Žižek, Slavoj, *Violence*, New York: Picador, 2008.

<sup>17</sup> Žižek, Slavoj, *Vertue and Terror*, London: Verso, 2007, p. 47.

<sup>18</sup> I would add hereby, however, that the *divine violence* of Jacobins had its followers in recent times: it may resemble the call for uprising against the oppression by Franz Fanon’s *Wretched of the Earth*, backed by Jean-Paul Sartre: who’s not in the new humanity (acceptance of the end of oppression), will face the violence of the new era of justice. See Fanon, Frantz, *The Wretched of the Earth*, New York: Grove Press, 1963 (first edition, *Les Damnés de la Terre*, Éditions Maspéro, Paris, 1961).

<sup>19</sup> A brief but interesting reference to the political emptiness caused by the revolutionary violence is in Hannah Arendt’s *On Violence*, New York: Harcourt Brace Jovanovich, 1970.

<sup>20</sup> Bedau, Hugo Adam, ““Anarchical Fallacies”: Bentham’s Attack on Human Rights” in *Human Rights Quarterly*, volume 22, n. 1, 2000, p. 278

between French revolutionists and Jeremy Bentham to the contemporary debate arising from the United Nation Universal Declaration of Human Rights of 1948. And the debate arises when focusing, as in the case of this paper, to the economic, social (and cultural) rights. Human Rights doctrine has, still today, to face substantial problems, both in a static (the understanding) and dynamic (the use) view; the former we could identify with the universality of Rights; the latter with the justiciability (or effectiveness) of the same.

A known critique to the effective universality of Human Rights is on the individual/liberal (western-culture related) bias of the human rights doctrine. So that if Costas Douzinas paradoxically asks “Are human rights an effective defensive tool against domination and oppression or are they the ideological gloss of an emerging empire?”<sup>21</sup>, Slavoj Žižek goes further stretching the Marxist approach that gives the notion “its specific bourgeois ideological spin: universal human rights are effectively the right of white, male, property-owners to exchange freely on the market, exploit workers and women, and exert political domination”<sup>22</sup>. The provocation of these critiques anyway is not in the norm *per se*, but in revealing the big gap between the intent and the actual implementation: that means, in the concrete policies of Human Rights.

In fact, the Universal Declaration – human rights’ *magna carta* – includes certain principles that are definitely outside a mere individual/liberal perspective: the right to social security and to the enjoyment of enjoying economic, social and cultural rights (art. 22), the right to work (art. 23), the right to reasonable limitation of working hours (art. 24), the right to health (art. 25), the right to education (art. 26) and the right to a free cultural life (art. 27)<sup>23</sup>. This group of articles is the core of the Covenant on Economic, Social and Cultural rights that will take place nearly twenty years ahead, in 1966<sup>24</sup>. Rights that indeed are designed to shape the liberal social life toward peace (in terms of lower social conflict), equality (in terms of possibilities), justice (in terms

<sup>21</sup> Douzinas, Costas, *Human Rights and Empire. The political philosophy of cosmopolitanism*, New York: Routledge-Cavendish, 2007, cit. p. 7

<sup>22</sup> Žižek, Slavoj, “Against Human Rights”, in *New Left Review*, n. 34, July-August 2005, cit. p. 128

<sup>23</sup> Universal Declaration of Human Rights, United Nations, 1948.

<sup>24</sup> The covenant is here reported in Annex II.

of fairness): to use the Charter of United Nation, “to promote social progress and better standards of life in larger freedom”<sup>25</sup>. This study will focus on a part of this “promotion” for a better life, a grey area in which the (implementation of) Right to Health and the Right to Work seem to collide.

### 1.1 A brief history of the Right to Work

Undoubtedly, the establishing of United Nations, with the promotion of human rights as one of its declared purposes<sup>26</sup>, let them become one of the most important concerns of the international order<sup>27</sup>. However, the idea of “economic and social” rights (“welfare rights”<sup>28</sup>), regarding appropriate conditions of work and health for everyone, originated longtime before. Going back to the first half of the XIX century, the first laws concerning rights in the social sphere of work were set out managing the revolutionary changes of the massive European industrialization. Between the thoughts of the first utopian socialists<sup>29</sup> – from Robert Owen in Great Britain to Charles Fourier in France – and the more concrete needs of the emerging bourgeoisie to avoid physical deprivation of productive masses, a certain extent of social protection to workers started to appear. Quoting Jean-Michel Servais, in the early days of the Industrial Revolution “The state of health of a

<sup>25</sup> From the preamble of the UN Charter, signed in San Francisco on the 26<sup>th</sup> of June 1945.

<sup>26</sup> Article 1 of the UN Charter, paragraph 3, “To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”.

<sup>27</sup> Boisson de Chazournes, Laurence, “The Bretton Woods Institutions and Human Rights: Converging Tendencies”, in Benedek, Wolfgang, De Feyter, Koen and Marrella, Fabrizio (edited by), *Economic Globalisation and Human Rights*, Cambridge: Cambridge University Press, 2007, pp. 210-211.

<sup>28</sup> On the ground of this collective name, see: Beddard, Ralph, and Hill, Dilys M., *Economic, Social and Cultural Rights – Progress and Achievement*, London: MacMillan, 1992.

<sup>29</sup> The term “utopian socialism” was actually given by Karl Marx to early (modern) socialist ideas developed – mainly by the above mentioned authors – between the end of XVIII and the beginning of XIX century. The “utopian” character stands as differentiation from the “scientific socialism” as positive science.

proportion of the working masses had deteriorated to such an extent that the productive and strategic capacities of countries concerned were in jeopardy<sup>30</sup>. First bills were concerning child labour and working hours, first in British Parliament (in 1802 they forbade to let children work more than 12 hours per day, in 1813 reduced to 10 hours per day in the mines), then in Prussia (1839 first regulation on child labor) and France (1841)<sup>31</sup>.

The development of socialist ideas pushed several European governments to put working conditions on international agenda. After three conferences in Berlin (1890 and 1897) and Paris (1900), an International Association for Legal Protection of Workers was established in Basel in September 1901<sup>32</sup>. Few years ahead, ending the Great War, the International Labour Organization was created (part XIII of Versailles Treaty), with a first set of comprehensive norms that member States<sup>33</sup> should take into consideration: limits in working hours, right to rest, abolition of child labour, equal pay for equal job for men and women<sup>34</sup>.

On this historical preamble, it is worth to notice the relation between the philosophical/ethic development in the administration of States and the interests for quality (healthy) conditions of the working masses went along together, in a moment in which the class division was way sharper than today: proletariat and *lumpenproletariat* were the umbrellas for the vast majority of population. The top-down concessions of the XIX century<sup>35</sup> were followed by a first idea of

<sup>30</sup> In Servais, Jean-Michel, *International Labour Organization (ILO)*, Alphen aan den Rijn: Wolters Kluwer, 2011, p. 11

<sup>31</sup> *Ibidem*.

<sup>32</sup> Between the participants: Austria-Hungary, Belgium, France, Germany, Italy, Netherlands and Switzerland. First international agreements (following the Bern Conference in 1906) are evidently connected with what we refer nowadays as work and health rights: prohibition of night work for women and use regulation of toxic substances, like white phosphorous and lead. See: *ibidem*, pp. 12-14

<sup>33</sup> First members of the ILO were the States who joined the League of Nations.

<sup>34</sup> Moreover, the limitation of work for young individual was going together with the suggested support of their education and proper physical development. As we know, these rights will appear again under the premise of the United Nations.

<sup>35</sup> We can underline that the above mentioned International Association for Legal Protection had no representatives a part from the Governments.

concertation, a political equilibrium between social requests and reason of State. A brilliant description of this moment can be seen in the end of Fritz Lang's masterpiece *Metropolis*, year 1927: in a future of extreme classist division, a sensitive hero will find the way to overcome the conflict and find the social peace<sup>36</sup>. On a similar wave the myth of the famous attention to social progress by Tomáš Baťa, the Czechoslovak king of the shoes, in same years<sup>37</sup>. The beginning of the Cold War in the first steps of the United Nations cemented this idea of a universal political pact behind the formulation of the future legal framework<sup>38</sup>: the conflict behind it became evident in 1951, while drafting the Bill of Human Rights the General Assembly made the "controversial and contested" choice of preparing two separate covenants, one on civil and political rights and another on economic, social and cultural rights<sup>39</sup>.

One year before the famous Conference on International Organization of San Francisco in Spring 1945 (that established the UN), the ILO made a step ahead toward the new era of workers' rights protection. At the 26<sup>th</sup> Session meeting, in May 1944, was presented the "Declaration concerning the aims and purposes of the ILO"<sup>40</sup> – known as Declaration of Philadelphia: a set of "principles

<sup>36</sup> Remaining in the field of arts, it is striking the different view nine years later of Charlie Chaplin's *Modern Times* (1936), in which the exploitation of the man found no solution but a future the workers will make "somehow".

<sup>37</sup> The projects of Tomáš Baťa on comprehensive town-factories could remind Owen's ideas: from planned urban architecture to provide all households perfect possibilities in term of reaching the factory as well as other primary services, to the first sharing of corporate profit rates to workers. The success of these projects could be seen still today in the toponymy of Baťa's Empire worldwide and its founded town-factories: Batatuba, Bataypora, Bataguassu in Brazil, Batanagar and Bataganj in India, Batawa in Canada, Batapur in Pakistan; not considering other towns that afterwards changed their name, like Hellcourt (former Bataville) in France or Best (former Batadorp) in the Netherlands.

<sup>38</sup> In a certain extent similar to the process that formulate the new Italian Republican Constitution, in which for two years socialist and democratic forces debated for the creation of an accepted set of constitutional norms.

<sup>39</sup> Eide, Asbjørn, "Economic, Social and Cultural Rights as Human Rights", in Eide, Asbjørn, Krause, Catarina and Rosas, Allan (edited by), *Economic, Social and Cultural Rights: A Textbook*, Boston: Martinus Nijhoff Publishers, 2001, p. 10

<sup>40</sup> Consultable on ILO's website, [http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO#declaration](http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#declaration)

which should inspire the policy of its members”<sup>41</sup>. The declaration formulated the social justice idea as basement for international peace; once again going beyond the sole labour area: “poverty anywhere constitute a danger to prosperity everywhere”<sup>42</sup>, “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”<sup>43</sup>, and stressing our topic, “adequate protection for the life and health of workers in all occupations”<sup>44</sup>.

This is a clear example of interrelations: as Asbjørn Eide pointed out, human rights mostly cover “different aspects of the same three basic concerns: integrity, freedom, and equality of all human beings”<sup>45</sup>. ILO in 1944 affirmed general principles that are part of what we refer with “welfare rights”: minimum wages, equal opportunities, maternal protection, child welfare, social protection and medical care, training for the working forces<sup>46</sup>. These notions were not new, as after World War I a series of international agreements (all under the ILO’s umbrella) took place<sup>47</sup>. But the international conjuncture of the 1940s gave space to a prominent idea: that the *rights of workers* should be more than provisions of comfortable conditions for workers, but that *the work* itself should be provided to everyone. As Philip Harvey pointed out, “Believed it was possible to provide decent work for all job-seekers, 1940s progressives envisioned a society that not only guaranteed its members the traditional freedoms of classical liberalism, but also the positive

<sup>41</sup> As stated in the brief preamble of the Declaration.

<sup>42</sup> Declaration concerning the aims and purposes of the ILO, Article I, paragraph (c)

<sup>43</sup> *Ibidem*, article II paragraph (a)

<sup>44</sup> *Ibidem*, article III paragraph (g)

<sup>45</sup> Eide, Asbjørn, “Economic, Social and Cultural Rights as Human Rights”, in Eide, Asbjørn, Krause, Catarina and Rosas, Allan (edited by), *Economic, Social and Cultural Rights: A Textbook*, p. 10

<sup>46</sup> See article III of the cited Declaration concerning the aims and purposes of the ILO.

<sup>47</sup> For instance the Maternity Protection Convention in 1919, the Weekly Rest Convention in 1921 or the Forced Labour Convention in 1930. See: International Labour Office, *Summaries of international labour standards – second edition*, Geneva: ILO, 1991.

rights necessary to turn formal freedom into real freedom, formal equality into real equality, formal democracy into real democracy”<sup>48</sup>.

At the moment was not only a socialist idea to provide jobs to everyone, but part of liberal democracies. The quote “necessitous men are not free men” is from a Franklin Delano Roosevelt’s speech of 1944<sup>49</sup>. This understanding towards the right to employment will be hereinafter intended as the Right to Work *sensu stricto*, at the base of the debate around the codification of it as *human right*: intended to provide anyone the possibility to contribute to society producing individual/collective benefits. This “contributory function” is underlined by Harvey stressing its dual effect of reducing unmet needs (providing richness to the individuals) and simultaneously increasing societal resources: therefore, “a society that is successful in providing the right to work is likely to have relatively easy time in securing other economic and social rights”<sup>50</sup>. It is through this perspective, that we can read Roosevelt’s words as a formulation of the *emancipatory* character embedded in the human rights: a core concept that sees democratization as universalization of freedom, equality and independence<sup>51</sup>. As we will see further on in this work, Harvey’s *contributory function* enters in crisis when the right *sensu stricto* is not harmonized in a broader context: i.e., not all contributions have positive outcomes<sup>52</sup>.

This favorable atmosphere at the end of the war, together with the Universal Declaration, set the way to several international agreements

<sup>48</sup> Harvey, Philip, “Benchmarking the Right to Work”, in Hertel, Shareen and Minkler, Lanse (edited by), *Economic Rights. Conceptual, Measurement, and Policy Issues*, Cambridge: Cambridge University Press, 2007, p. 115

<sup>49</sup> 1944 State of Union Message of the President of United States; quoted in Harvey, Philip, “Benchmarking the Right to Work”, p. 116

<sup>50</sup> *Ibidem*, p. 118

<sup>51</sup> Goodhart, Micheal, “None So Poor That He Is Compelled to Sell Himself”, in Hertel, Shareen and Minkler, Lanse (edited by), *Economic Rights. Conceptual, Measurement, and Policy Issues*.

<sup>52</sup> I refer here to the crucial problem of this study: when the necessary work is producing as outcome the deterioration of the environment, affecting other fundamental rights.

shaping the work agenda in the following years<sup>53</sup>, above all the 1961 European Social Charter (promoted by the Council of Europe) and the 1966 International Covenant on Economic, Social and Cultural Rights. In both Charter and Covenant the right to work is intended as right to have the opportunity of earning a living in a freely chosen occupation: article 1 of the ESC (*Everyone shall have the opportunity to earn his living in an occupation freely entered upon*) and article 6 paragraph 1 of the ICESCR (*The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right*). Both also stated – together with a series of rights connected with the conditions of work: decent remunerations, non-discrimination, freedom of association, safe and healthy conditions, maternal protection<sup>54</sup> – that the signatory States should take all the steps necessary to reach the *full* employment<sup>55</sup>.

However, the vocabulary needs still to be improved. In fact, clarifying that the original idea was that of providing jobs for everyone, it did not mean that everyone has to work equally in order to fulfill his/her societal duties; the purpose is that of eradicate not-voluntary unemployment providing enough opportunities: once again, the *egalitarianism* of HR doctrine has to be intended as *fairness*. Therefore

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<sup>53</sup> Main agreements were taken – always within ILO: on freedom of association (Freedom of Association and Protection of the Right to Organize Convention, 1948), on equality in opportunities and treatment (Equal Remuneration Convention in 1951, Discrimination (Employment and Occupation) Convention in 1958), on organization of work (Protection of Wages Convention in 1949, Weekly Rest Convention in 1957, Paid Educational Leave Convention in 1974), on occupational safety and health (Occupational Safety and Health Convention of 1981), on employment of women (Night Work (Women) Convention of 1948), employment of young persons (Minimum Age Convention of 1973), on migrant workers (Migration of Employment Convention of 1949 and its Supplementary Provisions of 1975). For a more detailed analysis of the agreements, see International Labour Office, *Summaries of international labour standards – second edition*, Geneva: ILO, 1991.

<sup>54</sup> See articles 1-10 of ESC and 6-9 of ICESCR.

<sup>55</sup> The ESC formulated the duty of “the achievement and maintenance of high and stable level of employment possible, with a view to the attainment of full employment” (art. 1 par. 1), and for the ICESCR steps toward “full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual” (art. 6 par. 2).

the idea of right to work is based on a two-legged strategy ensuring that everyone enjoys an adequate standard of living: one leg is on the full employment (intended as everyone who wants, can contribute), the other on the right to income support for people who are not able to be self-supporting<sup>56</sup>. The idea goes back once again to the Jacobin Declaration of 1793, that formulated in it its article 21: “Public relief is a sacred debt. Society owes maintenance to unfortunate citizens, either procuring work for them or in providing the means of existence for those who are unable to labor”.

The Right to Work, intended as above, entered in crisis with the worsening of Western economies in the 1970s. The so-called *stagflation crises* of those years forced a re-thinking of the Keynesian welfare-state mechanisms, that were the protagonists of the post-war economic growth. The re-shape of economic thinking in a neo-liberal way, led by the known examples of Margaret Thatcher’s United Kingdom (1979-1990) and Ronald Reagan US Presidency (1981-1989), affected the idea of full employment as a possible goal in market societies: the new dominant doctrine heavily stated that the system could not bear an unemployment rate lower than 4-6% without an unacceptable increase of the inflation, while progressive economists in the past were setting the same limit around 2%<sup>57</sup>. Fading away the myth of “full” employment, even though the Covenant of Economic, Social and Cultural right is a binding treaty for its 162 State parties, the rhetoric of human rights tended to shift toward more modest ambitions: securing the quality of the working conditions<sup>58</sup>.

An example of this moderate attitude is in the idea of “core standards”. Both the Committee of the Economic, Social and Cultural Rights (in 1990<sup>59</sup>) and ILO (in 1998<sup>60</sup>) established a “minimum core content” of the welfare rights that the State party is obligated to respect as first priority, focusing on freedom of association, prohibition of

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<sup>56</sup> See: Harvey, Philip, “Benchmarking the Right to Work”.

<sup>57</sup> *Ibidem*, p. 117.

<sup>58</sup> *Ibidem*, pp. 117-123.

<sup>59</sup> General comment 3, “The nature of State parties obligations”, adopted by CESCR on December 1990.

<sup>60</sup> Declaration of Fundamental principles and Rights at Work. As follow-up, in 1999 the Decent Work Agenda by ILO set as main points employment quality, respect of rights, social protection, social partnership.

forced labour, non-discrimination in employment<sup>61</sup>. The international organization in this way set a certain hierarchy of fundamental rights, trying to force the States in accomplishing their duty even in the grey area of “progressive realization”<sup>62</sup>. This can be seen also in the Charter of Fundamental Rights of the European Union, adopted in 2000<sup>63</sup>, where in Title II (Freedoms), article 15, the Right to Work became the “right to engage in work and pursue a freely chosen or accepted occupation”<sup>64</sup>.

## 1.2 A brief history of the Right to Health

It is known, at least in the narrow field of Egyptology, that one physician, moreover a woman, was usually appointed as overseer during the construction of pyramids<sup>65</sup>. The notion that pharaohs’ Egypt was quite keen on the organization of a medical structure is a good catchphrase, while at the same time give us an idea that humanity understood since its beginning the importance of organize itself to protect that fragile environment around the word “health”. If this kindness was there to help workers to not suffer from illnesses, or to simply avoid slaves to die before the working schedule, is cynically declassified for another study. In any case, we can date the *public health* back to the pyramids; that means the top-down efforts of a society in providing its members of sanitary measures.

In the extent we are interested in this history, that is in the understanding of this efforts as a natural/human right for every individual, we may follow the path above mentioned for the Right to Work, and jump again to modern times, again to the American and French revolution. The idea of democracy was seen by the thinker of these revolutions also in a metaphorical way of healthy system against

<sup>61</sup> Chapman, Audrey R., “The Status of Efforts to Monitor Economic, Social and Cultural Rights”, in Hertel, Shareen and Minkler, Lanse (edited by), *Economic Rights. Conceptual, Measurement, and Policy Issues*, Cambridge: Cambridge University Press, 2007

<sup>62</sup> I will come back on the factual critique of economic and social rights in subchapter 1.3.

<sup>63</sup> It became binding law to the member States only in 2009, with the Treaty of Lisbon.

<sup>64</sup> The Charter established then a set of just and fair conditions of work, in Title IV (solidarity), articles 27-34.

<sup>65</sup> Porter, Dorothy, *Health, Civilization and the State*, London: Routledge, 1999.

the “illness” of tyranny; according to Thomas Jefferson, despotism produced disease while democracy liberated health<sup>66</sup>. Once more, the first codification of a natural/human right in this direction was embedded in the French revolution. Even if not enlisted in the Declaration of 1789, two years later the Committee of Public Safety stated “the protection of health” as a State’s obligation towards the citizens<sup>67</sup>. The debate around the philosophical concept as well as the legal aspect of this right found fertile ground in the framework of industrialization and urbanization.

We have seen the historical development that led to a certain extent of norms to safeguard the condition of productive forces. On the same utilitarian note, the importance of health guarantees was taken into consideration in Europe, from the half of XIX century, in the countries that embraced the progress of the industrial era. Around 1830s and 1840s, in Great Britain as well as in France, the massive exploitation of the lower classes was so intense to undermine the traditional drain of forces to fill the battlefield. The concern of the modern Nation-States was grounded since, quoting Jean-Michel Servais, “a high proportion of young workers were declared unfit for military service because of the poor state of their health resulting from adverse condition of work and life”<sup>68</sup>.

The history of standardizing a legal framework related to health is thus similar, in its beginning, to that of working standards: first notions were in fact dealing on the health of workers. Along this process, developments in sciences led to the promotions of international conferences, mainly focused in preventing epidemic diseases; the most notable, the International Sanitary Conference of 1851 in Paris (promoted by the French Academy of Medicine, with twelve States as participants; it was focused on the dangerous spread of cholera due the

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<sup>66</sup> *Ibidem*.

<sup>67</sup> This protection was to be reached through a network of medical officers trained by the State, with the double duty of working as physician and reporting back to the Government the status of health throughout the nation. See: *ibidem*.

<sup>68</sup> Servais, Jean-Michel, *International Labour Organization (ILO)*, p. 11.

improvement in transports)<sup>69</sup>. This first conference started a series in the following decades: between 1851 and 1938 fourteen international sanitary conferences took place; they were organized in Europe – only in one case the meeting was held Washington (1881) – and from the initial thirteen members reached in the end more than 50 participants<sup>70</sup>. In 1907, again in Paris, was held the inaugural meeting of the *Office Internationale d'Hygiene Publique*, the first international organization aimed to spreading of knowledge and good practice about combating contagious diseases and promoting public health<sup>71</sup>.

The great development of the human rights movement of the 1940s gave the subject an autonomous space: as simple as Jonathan Montgomery stated, “It is a necessary condition for the pursuit of virtually any human project that the subject has at least a minimal level of good health”<sup>72</sup>; the importance of a right to health was not to be questioned. The United Nations underlined already in its founding Charter that “health” was one of the topic the organization had to face<sup>73</sup>. The Universal Declaration formulated then the principle, in its Article 25, as “the right to a standard of living adequate for the health and the well-being of himself and his family, including food, clothing, housing and medical care and necessary social services”<sup>74</sup>.

The United Nations created also a special agency, the World Health Organization (with specular functions of what the ILO is for the labour framework: directing and coordinating authorities, to establish

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<sup>69</sup> Every State was represented by two physician and a diplomat, while the main topic was the creation of a standard of sanitary norms. The mentioned states were Austria, Great Britain, Greece, Portugal, Russia, Spain, France, Turkey, and from Italy the Papal State, Sardinia, Tuscany, and the Two Sicilies. Howard-Jones, Norman, *The scientific background of the International Sanitary Conferences 1851-1938*, Geneva: World Health Organization, 1975.

<sup>70</sup> *Ibidem*.

<sup>71</sup> Oestreich, Joel E., *Power and Principle – Human Rights Programming in International Organizations*, Washington D.C.: Georgetown University Press, 2007, p. 119.

<sup>72</sup> Montgomery, Jonathan, “Recognising a Right to Health”, in Beddard, Ralph, and Hill, Dilys M. (edited by), *Economic, Social and Cultural Rights – Progress and Achievement*, London: MacMillian, 1992, p. 184.

<sup>73</sup> Article 55, “the United Nations shall promote: [...] solutions of international economic, social, health, and related problems”.

<sup>74</sup> Again, it is possible to note the interrelation of various topics usually considered separated rights (i.e. housing, welfare).

and maintain cooperation, to furnish appropriate technical assistance and promotion of good practices)<sup>75</sup>. In its constitution, signed in July 1946 by all the 61 member States (making it the first agency supported by every member), it stated that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”<sup>76</sup>. The idea of “highest attainable standard” became the pillar of the Right to Health, as literally stated also in article 12 of the ICESCR<sup>77</sup>.

From the 1960s the international perspective on the Right to Health grew quickly, with a consistent attention on public health issues that took the form of several meetings, agreements and declarations under the auspices of UN<sup>78</sup>. In the European framework, both the Social Charter and the more recent Charter of Fundamental Rights of the EU recognized the right: the former with the usual formula suggesting measures toward the “highest possible standard of health attainable”<sup>79</sup>, the latter with a more modest “everyone has the right *to access* to preventive health care and the right to benefit from medical treatment

<sup>75</sup> Oestreich, Joel E., *Power and Principle – Human Rights Programming in International Organizations*.

<sup>76</sup> Constitution of World Health Organization, preamble.

<sup>77</sup> “The States parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”, ICESCR art. 12, par. 1.

<sup>78</sup> Remaining in the field of general policies, we could cite the Declaration on Social Progress and Development (UN, 1969), the International Health Regulations (WHO, 1969), the Universal Declaration on the Eradication of Hunger and Malnutrition (UN, 1974), the International Declaration on Primary Health Care (WHO, 1978), the Ottawa Charter for Health Promotion (WHO, 1985). Many regional agreements were also concerning aspect of health, like the American Declaration of the Rights and Duties of Man (1948) by the Organization of American States, the African Charter on Human and Peoples’ Rights (1981) by the Organization of African Unity, or the Cairo Declaration on Human Rights in Islam (1990) by the Organization for the Islamic Cooperation. See: Alfredsson, Gudmundur and Tomasevski, Katarina (edited by), *A Thematic Guide to Documents on Health and Human Rights*, The Hague: Martinus Nijhoff Publishers, 1998.

<sup>79</sup> “Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable”, see Part I, point 11 and Part II, article 11.

under the conditions established by national laws and practices”<sup>80</sup>.

As we can see from these frequent repetitions, also in literally terms, the idea of the protection of health is nowadays taken for granted in the human rights rhetoric. What is not clearly understandable is instead the vagueness of the same concept of “health”. Quoting again Montgomery, “the meaning of ‘health’ is a political issue”, divided in two views: the traditional model, concerned with the use of medical improvements in cures, and the social model, than embraces a more holistic approach. The first one sees the right as provision of health care to the ones in need; the second is in managing and controlling the causes that lead to illnesses<sup>81</sup>. In support of the second “social” thesis, the definition of health given by the WHO: “A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”<sup>82</sup>.

In 2000, the Committee on Economic, Social and Cultural Rights stated the General Comment 14<sup>83</sup>, which explicitly states that the right to health is not the right to be healthy (not only about health care). Contrariwise, the right has to be considered as a set of freedoms and entitlements: freedoms to control one’s own body, entitlements to “a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health”<sup>84</sup>. This “social” definition is connected with a spatial extension: from the individual sphere it expands to incorporate the environment in which he/she lives. Stretching this vector, it is possible to underline the path: safety of an individual (restricted to his body), safety of working environment, safety of living environment.

In her contribution to Eide’s textbook to the Economic, Social and Cultural Rights, Brigit Toebes defines the elements that constitutes

<sup>80</sup> Art. 35. The italic is mine, to underline the difference in provided right/accessible right.

<sup>81</sup> Montgomery, Jonathan, “Recognising a Right to Health”, in Beddard, Ralph, and Hill, Dilys M. (edited by), *Economic, Social and Cultural Rights – Progress and Achievement*, p. 186-187

<sup>82</sup> As stated in the preamble of the Constitution of WHO.

<sup>83</sup> “*Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights – General Comment No. 14 (2000): “The right to the highest attainable standard of health”*”.

<sup>84</sup> See Part I – Normative Content of Article 12, point 8.

the Right to Health as divided in two categories: on one side the elements strictly related to “health care” (curative and preventing care), on the other elements connected with “fundamental preconditions for health”, including safe access to drinking water, adequate sanitation and nutrition, access to information and healthy environment on the working place<sup>85</sup>. It is clear how from this second category – that is nonetheless fundamental – emerges the need of a combination of other rights in whose space the Right to Health overlaps its normative. This “overlapping” (and relative interdependence) covers a wide range of rights, from civil to social ones: without a proper education, for example, the right would lack in its effectiveness; as well as without proper job condition, without social security, and so on. In other words, the Right to Health illustrates the importance of a structured, complete, working, framework of rights to let possible its full enjoyment for the individuals.

Likewise the Right to Work and all the set of economic, social and cultural rights, also the Right to Health is subject to the doctrine of “progressive realization”: acknowledging the right, States accept as part of their duties to take actions towards the enforcement of it. The concept of “progressive realization” takes into account that some aspects of the right, being based on resources, may be gradually implemented; the link to budget possibilities, if on one hand is necessary to embrace in the acceptance of the right different countries with different economies, on the other is often used by States to avoid such implementation lamenting its incapability to take actions.

From the end of the Seventies, the World Health Organization chose to focus the attention to “core contents”; in the 1981 was published a *Global Strategy for Health for All by the Year 2000*, in which it was stated that “there is a health baseline below which no individuals in any country should find themselves”<sup>86</sup>. Toebes identifies these core contents in the two pillars on which the right is based. Concerning *health care*: maternal and child health care (including family planning), immunization against major diseases, appropriate treatment of common

<sup>85</sup> Toebes, Brigit, “The Right to Health”, in Eide, Asbjørn, Krause, Catarina and Rosas, Allan (edited by), *Economic, Social and Cultural Rights: A Textbook*, Boston: Martinus Nijhoff Publishers, 2001.

<sup>86</sup> World Health Organization, *Global Strategy for Health for All by the Year 2000*, 1981.

diseases and injuries, provision of essential drugs. Concerning the *underlying preconditions for health*, education on health and method of prevention and control, promotion of food supply and proper nutrition, adequate supply of safe water and basic sanitation<sup>87</sup>.

The same author underlines, through the General Comment 14 of the Committee of Economic, Social and Cultural Rights issued the year 2000, the four guiding principles for the Right to Health: 1. Availability of health services (that shall be sufficient for the whole population); 2. Financial, geographic and cultural accessibility of services, that can be translated as affordable, reachable and respectful of everyone's needs; 3. Quality of services, here reminding to the "highest attainable" formulation that is proper of the right; and 4. Equality of the access to services, to protect the position of vulnerable groups<sup>88</sup>. As we can see, the Committee stressed the importance of the egalitarian (once again as fairness) approach, which is clearly not only in the last principle – that could be seen as the negative part of this right (equality as non-discrimination) – but only in the three more "positive" efforts to bypass social inequalities.

### 1.3 Interpretations and critique

In his introduction to a recently published collection of Robespierre's speeches in defense of the revolution, Slavoj Žižek tells a little story that may sound like a joke: "When in 1953, Chou En Lai, the Chinese Prime Minister, was in Geneva for the peace negotiations to end the Korean war, a French journalist asked him what does he think about the French Revolution; Chou replied: "It is still too early to tell""<sup>89</sup>. Indeed, two centuries were not enough to produce a shared understanding of the revolution: in what extent the Jacobin legacy, for instance, has been rejected by the advocates of human rights? The controversial memory of the 1789 (and following years) is evidently reflected in the Cold War dispute on which system will provide the *real* democracy; well known outcome of the ideological battle, the political division of the International Bill of Human Rights in two covenants. Indeed, the events on 1989 signed the end of the statist-

<sup>87</sup> Toebes, Brigit, "The Right to Health", pp. 176-177

<sup>88</sup> *Ibidem*.

<sup>89</sup> Žižek, Slavoj, *Vertue and Terror*, London: Verso, 2007, p. vii.

revolutionary model that was the direct descendant of the 1793 (Jacobin Declaration); but did they mean the end of its principles? If we imagine the International Bill of Human Rights as a body standing on two legs, what happens if the balance relies on one side?

In the field of Right to Work and Right to Health, these are evidently more than rhetoric questions. Historically, we can see patterns in their development. Both of them had to face a “reduction to the essential” for their ambitious goals, limited by decades of little improvements, with the doctrine of “core standards” – good examples in the activities of the two international organization that better than others can be seen as guardian over the rights: ILO and WHO<sup>90</sup>. For these rights the doctrine of core standards involved the risks, analyzed by several authors<sup>91</sup>, that States (as duty-bearers) concentrate on minimum efforts leaving in shadows the most general concept of the right itself, undermining in this way the effective enjoyment of the same. It is peculiar of the Right to Work then a “deterioration” of its interpretation: we have seen how 1. the understanding of a society in which everyone (who can) should contribute to the overall well-being by having the possibility to work became 2. the understanding of a society in which everyone (who can) should find favorable opportunities to pursue an occupation<sup>92</sup>.

However, the teleological interpretation of these rights is not the only field of criticism; on the other hand, economic and social rights have to face, since their creation, a critique directed at the root of their formulation, that oppose them to the civil and political rights in the well-known distinction of negative versus positive rights. In the same way that Jeremy Bentham questioned the Declaration of the Right of Man and Citizen, economic and social rights’ defenders have

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<sup>90</sup> As it is shown by the mentioned “Health for All and Primary Health Care” strategies of the WHO or the “Global Employment Agenda” of ILO and the strategy towards “decent work”.

<sup>91</sup> See for example the cited Philip Harvey’s “Benchmarking the Right to Work” in Hertel, Shareen and Minkler, Lanse (edited by), *Economic Rights. Conceptual, Measurement, and Policy Issues*, Cambridge: Cambridge University Press, 2007

<sup>92</sup> This shift can be seen in other words from the creation of “jobs for all” to the creation of “a safe job market”, whose proper functioning it is not based on the job provision: which is a considerable re-thinking of the principle.

to answer the question: are these rights *real* rights? The revolution in the international law given by the 1948 UN Declaration of Human Rights has been decisive in sharing the understanding of liberty rights as possible universal legal tools, but this success was not extended to the economic and social ones. The division of the International Bill of Human Rights has not been overcome, while on the other hand many voices remain in support of the division.

“Putting economic and social rights on the same plane as civil and political rights implicitly takes an area where compromise is essential and brings that into the process of rights adjudication”, wrote Aryeh Neier in 2006 in a short article with a symptomatic title “Social and Economic Rights: A Critique”<sup>93</sup>, in which he clearly takes side on the liberal critique that wants these two groups of rights not only separate but hierarchically different: the only universal, real, legal rights are liberty rights, since they “mean exactly the same thing every place in the world”<sup>94</sup>. Social and economic ones, being connected to States capabilities and resource allocation are instead differently implemented in different situation, lacking in this way the needed universality. Supporting his thesis, Neier hypothetically take into consideration the same idea of “progressive realization” for liberty rights, showing the paradox of under-developed countries that could claim to not give the same civil and political rights in the same way richer States do for a lack of resources<sup>95</sup>.

This theory goes exactly in the opposite way of the mentioned interconnection and interdependence of rights we mentioned before: it is, we could argue, deaf to the words of President Roosevelt: if *a*

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<sup>93</sup> Neier, Aryeh, “Social and Economic Rights: A Critique”, in *Human Rights Brief*, n. 1-3 (2006).

<sup>94</sup> *Ibidem*.

<sup>95</sup> It seems to me, however, that this provocation fails in the desired outcome: the two Covenants, even if they enjoy an equal status as parts of the International Bill of Human Rights, are formulated in different ways. The ICCPR addresses its message to *everyone* while ICESCR is directed to *the State parties*: the basic understanding of the different actions towards their implementation is inherited in the same formulation of the two documents, making the paradoxical turn - even if it may look fashionable - lack in its substance. A more adapted critique, in my point of view, arrives on the lack in the ICESCR of a proper set of obligations (in the work of Onora O’Neill, for instance, that I will analyze below in this same paragraph), more than the criticized progressive realization.

*necessitous man is not a free man*, how can he enjoy his entitled liberty rights without a decent living standard? It is thus undermining, we could stress, the democratic empowerment – which is a clear desired outcome of the Human Rights doctrine<sup>96</sup> – since it is based both on freedom from oppression as on freedom from needs, in other words: personal as well as economic independence. The idea behind economic and social rights is indeed “that *all* humans have an inherent right to the resources necessary for a minimally decent life”, quoting Shareen Hertel and Lanse Minkler; “Economic rights may mean more than that, but they surely mean at least that”<sup>97</sup>. This claim carries, undoubtedly, huge problems for a society to give access to such rights: but the existence of the International Bill of Human Rights forces the States to work in its direction. If the understanding of these rights would remain solely on direct and immediate implementation, that would be no room for economic and social rights at all: the “progressive realization” theory is therefore a necessary feature.

However, even bypassing the resource-based problems, the understanding of economic and social rights as universal human rights is still questionable: another substantial critique on the legal aspects arrives from Baroness Onora O’Neill. The British philosopher did not focus on the progressive realization and allocation of resources as main problems (acknowledging that even the so call liberty rights needs efforts from the State to be implemented: “There is no effective rule of law without law enforcement”<sup>98</sup>), but on the same nature of rights, and particularly in relation with their connected obligations. In her view, the main obstacle is in the vagueness of the obligations within the ICESCR: “we can know who violates a liberty right without any allocation of

<sup>96</sup> See on the issue Micheal Goodhart’s contribution “None so Poor That He Is Compelled to Sell Himself” in Hertel, Shareen and Minkler, Lanse (edited by), *Economic Rights. Conceptual, Measurement, and Policy Issues*, Cambridge: Cambridge University Press, 2007, pp. 94-114 or David Beetham “Condition for Democratic Consolidations” in Beetham, David, *Democracy and Human Rights*, Cambridge: Polity Press, 1999, pp. 67-86

<sup>97</sup> Quote from Hertel and Minkler’s introduction “Economic Rights” in the above mentioned Hertel, Shareen and Minkler, Lanse (edited by), *Economic Rights. Conceptual, Measurement, and Policy Issues*; the emphasis is in the original text, pp. 1-2

<sup>98</sup> O’Neill, Onora, “The Dark Side of Human Rights”, *International Affairs (Royal Institute of International Affairs, 1944- )*, vol. 81, n. 2, 2005, p. 428

obligations, but we cannot tell who violates a right to goods or services unless obligations have been allocated”<sup>99</sup>.

Unsurprisingly, O’Neill comes back to the critique of the French Revolution by Edmund Burke, in words precious for the sake of this study since – even if cynically – they refer to the Right to Health:

What is the use of discussing a man’s abstract right to food or medicine? The question is upon the method of procuring and administering them. In that deliberation I shall always advise to call in the aid of the farmer and the physician rather than the professor of metaphysics.<sup>100</sup>

O’Neill translates Burke’s prickly attack as the question: what is the point in having an abstract right if there is no way of ensuring its delivery? In her view, the vagueness of the language and subsequent absence of clear mean of application of rights, causes the loss of force of the same (and thus their accountability). To have normative force they should be sustained by clear obligations: if they do not match with such obligations, they cannot be enforced as legal tools but remains mere *aspirations*<sup>101</sup>.

If we consider Right to Work and Right to Health *seriously*, this cannot be taken into consideration as proper outcome, otherwise the whole logic of universal human rights would remain unmet. If there is no right and related obligation, there is no one to be accountable for the breach of such right, nobody to be held to account, nobody to blame. “We would in effect have to accept that human rights claims are not real [legal] claims”. Yet O’Neill does not look at this possibility as totally negative, suggesting it as a possible outcome, that would imply, in my interpretation of her work<sup>102</sup>, a legal separation of liberty (effectively judiciable) rights from welfare (vague and abstract) rights but backed with a political pressure from agreed aspirations to implement welfare policies.

<sup>99</sup> *Ibidem*.

<sup>100</sup> Burke, Edmund, *Reflection on the revolution in France*, edited by Conor Cruise O’Brien, London: Penguin Books, 1984.

<sup>101</sup> O’Neill, Onora, “The Dark Side of Human Rights”, p. 434.

<sup>102</sup> I am referring hereby especially to two articles, the mentioned “The Dark Side of Human Rights” and “Rights, Obligations, Priorities”, in *Studies in Christian Ethics*, n. 23, 2010.

Another solution she suggests, is in the possibility to extend the obligation of economic and social rights' implementation to non-State actors, that would be included in a more autonomous way of understanding society within a politics of human rights.

It is true, as she points out, that there is not an easy distinction between the two figure of right-holder and duty(obligation)-bearer, and that, even if not always, who holds a right has also the burden of duties, his own responsibilities<sup>103</sup>. So that several agents embody their rights and apply their obligation in the overall working structure of a society – citizens, workers, students, teachers, policemen, and so on. But, I would add, that the chain of responsibilities has a vertical logic (always taking the acceptance of the Rule of Law in a State-form) that makes the State as the last accountable actor for the deprivation of rights even if this deprivation comes through intermediate agents: if my Right to Health is hindered by X's actions and the State does not prevent X from his actions, will the State take on its shoulder X's crime? We may answer going back to the precious works of Hannah Arendt and the crucial importance of *citizenship*<sup>104</sup>. The crucial "right to have rights" is the link between its inhabitants and the State<sup>105</sup>. In this way we may embrace O'Neill's approach without losing the (necessary) status of legal rights for the economic and social ones.

As a reply to the critiques on the apparent lack of *justiciability* for economic and social rights, Martin Scheinin underlines the "Existing institutionalized practices capable of clarifying the

<sup>103</sup> This is obviously not applicable to everyone, thinking for instance to an infant child that having his rights cannot yet be called to a set of duties.

<sup>104</sup> I would suggest on the theme, but not limiting the reader to, Arendt, Hannah, *The origin of Totalitarianism*, New York: Harcourt inc., 1968.

<sup>105</sup> Once again, the Jacobin legacy could be of interest: the authority of the State is not absolute. Providing rights and holding duties, this authority is limited: citizens shall be entitled to overthrow the unjust State – and replace it with a just one – if it fails in providing these rights (see Article 35 of the Jacobin Declaration of 1793). Even with the Right to Health we may find a suitable historical example of an overthrown Government for its negation: in Bolivia, where the riots of Cochabamba (1999-2000) started from the incapability of its inhabitants to have access to water, a basic feature of the right in question. The leader of Cochabamba riots was in fact Evo Morales, that led the regime-change in the South-American country few months after (January 2006).

interpretation of treaty provisions”;<sup>106</sup> he is hereby focusing on the extensive work made by United Nations’ institutions in lead the general understanding of these rights as legal rights. Indeed, authors against this legal perspective seems to avoid the work made by the World Health Organization and the International Labour Organization in this “clarifying” perspective, as we have shown in the previous two sub-chapters. Furthermore, the body most strictly connected with the Covenant, its Committee on Economic, Social and Cultural Rights, has stated the justiciability of the same; I refer hereby to the General Comment 14 (2000) and the General Comment 18 (2006), respectively for the Right to Health and the Right to Work, remembering to the State parties the presence of immediate obligations for the State is enlightened as fundamental passage together with progressive obligations<sup>107</sup>.

Scheinin, however, does not underestimate the presence of legitimate critiques and the weakness in the existing system of protection and implementation of such rights; once again, the vagueness of the legislation is seen as the major shortcoming. The author tackle this problem with an opposite example: the newer Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 is formulated in a more precise language, based on individuals rather than States (as for liberty rights) and meeting all the requirements of “justiciability”. But as result to this concreteness, the treaty found great difficulties in becoming a shared legal tool: it entered into forces only in 2003, when the threshold of twenty signatory States was finally reached. At the present date, in 2014, the Covention counts only 47 ratifications, mainly from North-West Africa and Latinamerica, with a striking absence of the “northern” countries.

For Scheinin (taking apart the political implications of such a

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<sup>106</sup> Scheinin, Martin, “Eonomic and Social Rights as Legal Rights”, in Eide, Asbjørn, Krause, Catarina and Rosas, Allan (edited by), *Economic, Social and Cultural Rights: A Textbook*, Boston: Martinus Nijhoff Publishers, 2001.

<sup>107</sup> I will come back on the monitoring of these rights and on the work of the Committee in Chapter 2.2.

document<sup>108</sup>), one reason of the “failure” of the Convention on Migrant Workers is exactly in its precision; the vagueness of the ICESCR (which has been ratified instead by 162 States) is thus seen for once in a positive perspective: even if allows the State to a slower or more elusive implementation, it remains a better method towards the strengthening of economic and social rights. In other words, the actual international framework concerning the Right to Health and the Right to Work is highly problematic and debatable, vague and weak: but it must be seen not as final point but as norms in evolution, backed by more than two hundred years of ongoing debate.

## 2. CLASH AND CONSEQUENCES: NOW AND TOMORROW

*“Bohuš! Have you ever lived in an  
age  
that was not of transition?”*

Péter Esterházy,  
[*The Book of Hrabal*, 1990]

The brief journey in the narration of Right to Work and Right to Health showed us the crucial, teleological dilemma of economic and social rights: trying to shape concrete meanings to bind concrete actions. Rejoining our *Greek* starting point of the first chapter: to protect humans from the vulnerability of Fortune. But the critique to this *second generation* of human rights is in its (supposed) lack to be enforceable and subsequently judiciable: eventually, being “rights without rights”, that could make them a proper oxymoron<sup>109</sup>. Two main problems have been

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<sup>108</sup> The signatory States are in fact mainly countries of departure, more than arrival, of migrants; as we have unfortunately witnessed in the recent European Union Parliamentary elections, xenophobic and anti-migrants tones have been used as major propaganda by several parties, not only right-wingers, in several countries of the Union.

<sup>109</sup> Spagnoli, Filip, *Making Human Rights Real*, New York: Algora Publishing, 2007.

underlined: 1. their nature of rights and 2. their factual interpretation. However, to continue in this work we have to consider the first chapter as a standing point on the acceptance of “progressive implementation” as the more suitable policy to deal with such rights, embracing the broader (in term of States) audience possible: yet, the concrete lack of exactness in understanding where and when a right is violated, or just partially implemented, has to be taken in due consideration.

The controversies enlightened by these critics are grounded in the political feature of economic, social and cultural rights; it is to be noted that a political perspective (egalitarianism/fairness/redistribution) is present in them since the notion of human rights has risen to international concern, as I tried to underline in the previous chapter. Undoubtedly, the ideological equilibrium that shaped the core of international legislation started to disappear in the 1980s, with a consequent re-shaping and re-interpretation of some principles. The market-oriented economic and political developments, from the 1990s on, are in opposition to State-planned intervention in favor of programmatic positive rights; the phenomenon of globalization, with its consequent reduction of the Sovereignty of the States, is a critical example<sup>110</sup>.

On the other hand, the status of these rights, even if controversial, is still binding the States to the fulfillment of legal sources requests: the international arena is (formally) still demanding the described commitment to the signatories. Definitely, we are dealing with the complexity of this legal framework – vagueness of norms, mitigating circumstances in implementation, changing in the global and local role of States. Nearly sixty years after the signatures of the International Covenant on Economic, Social and Cultural Rights, many of these norms merely remained on paper. In this chapter we will shift to the core of this study, focusing on a concrete, problematic, overlapping of the two subjects taken into consideration: Right to Work and Right to Health.

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<sup>110</sup> On the critical impact of Globalization in Human Rights there is already a wide literature; see for instance Marks, Susan and Clapham, Andrew (edited by), *International Human Rights Lexicon*, Oxford: Oxford University Press, 2005. I found interesting also a Master Thesis selected for publishing in the 2008-2009 ERMA academic year: Smailovic, Elmina, “Environmental Discrimination and Public Inclusion: the Case of Bosnia and Herzegovina”.

Firstly, we must notice how these two rights are strictly connected: they share in some aspects similar history, similar patterns. We can easily understand these connection with an overlook on the norms, using both rights as starting perspective and crossing over the other normative field. Starting from the Right to Work, interdependence of them is evident in the sharing principles about healthy working conditions<sup>111</sup>. Starting from the Right to Health, Toebes enlightened how the preconditions for the enjoyment of the Right to Health are based in the enjoyment of the other rights – in which we include a decent work and economic sustainability<sup>112</sup>. It is clear that these rights, as part of a broader set of universal human rights, are built in an harmonious way, completing and empowering one each other: in an ideal society (an ideal signatory State, we may say) its citizen would enjoy these rights in a cumulative way. This study is based instead on the possible (concrete, existent, contemporary) fallacy of this cumulability, substituted by an exclusive enjoyment of the same: one or another.

The question to analyze is the following: what happens if the implementation of the Right to Work – in the meaning of having the possibility to work / provision of the maximum employment possible – has as counter-effect the impossibility to enjoy the Right to Health – undermining the healthy environment of a community (which includes workers and non-workers)? This short circuit of *work against health* is a quite common feature in heavy industrial environments, where the environment is damaged as consequence of productive processes: the circle is closed under the main points Work/Production/Pollution/Diseases (the word *diseases* is taken hereby as concrete opposite of *health*). The contrast poses the need of a choice between the enjoyment of the two rights; using the ICESCR words, between the “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts” (Art. 6, par. 1) and the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (Art. 12, par.1).

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<sup>111</sup> See article 7 ICESCR, article 3 of ESC.

<sup>112</sup> Toebes, Brigit, “The Right to Health”, in Eide, Asbjørn, Krause, Catarina and Rosas, Allan (edited by), *Economic, Social and Cultural Rights: A Textbook*, Boston: Martinus Nijhoff Publishers, 2001.

To tackle the question, I suggest two perspectives. Firstly, on the nature of the choice: is this dichotomous treatment – either one or the other – absolute? Or climbing the theory backwards to the creation of the norms, are human rights absolute? This is indeed highly debatable. We can easily see, within negative rights, how liberty is about non-interference of different actors: the notorious formula of freedoms limited by others' freedoms. So that dealing with liberty rights the main question arises in understanding such boundaries and where/when the interference – produced/legitimated by rights – is justifiable. Dealing with positive rights, the setting of boundaries loses its importance in a safely functioning framework (everyone enjoys his Right to Work and his Right to Health simultaneously) but arises dramatically in a non (or non completely) working one (it is not possible to enjoy the rights simultaneously): again, the negative impact on the others demand a limit.

Obviously, we have to take into account that main features on positive rights are related to their feasibility/practicability, availability of resources, demand for resources: to this we add the extent of negative impacts arising from the policies apt to the provision of the same right. In this perspective we acknowledge that a certain “clash” between rights is possible and not necessarily destructive; it may be in particular, contextual, situations, where the rigidity of these boundaries (limitations both practical and theoretical) is taken to the extreme so that we need to engage in a debate to resolve the ethical problem. Taking as example – on which I will come back extensively on the last chapter – a context in which an un-healthy work (un-healthy for both the workers and the non-workers) is the only choice of work, which right should be supported first?

In this perspective, economic and social human rights are not “fundamental commandments” to be rigidly implemented, but more concretely, to be adapted to contexts. I will follow here the theory that sees them as not-absolute rights. Gregory Vlastos put down the question: if I have a natural right<sup>113</sup> to a given benefit does it follow that I ought to be granted that benefit in all possible circumstances no matter

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<sup>113</sup> The author here refers to the expressions natural rights and human rights in an interchangeable way.

how my other rights or those of others may be affected?<sup>114</sup> Vlastos answers clearly “No” to such a question, calling back Lock’s theories – often seen as a supporter of such absolute character of natural rights – with the example of the punishment for a crime: the society allows the restriction of freedom of movement to their “guilty” members: this will lead to “justified” exceptions. In other words: rights are such only in an agreed context of boundaries. They are “prima facie” rights, that means there are case in which they may be overruled by specific circumstances: what we need is to define these circumstances to safely limit these justifications. If *anything* may count as exception, what would be the point in having the right?<sup>115</sup>

We are thus dealing on a *moral* ground: one acceptable answer, even if may seem a language game, is that the only justifications are in the ground of justice for all, i.e. egalitarianism, i.e. fairness. But, Vlastos warns us, this is not enough: “For if we are to have two sets of “just-making” reasons, one set requiring us to uphold these rights, the other permitting us to overrule them, we shall be in a state of moral uncertainty and anxiety about our natural rights”; we shall consequently find “*reasons for our natural rights which will be the only moral reasons for just exceptions*”<sup>116</sup>. Which is not at all an easy task. Taking into account our *work vs health* example, how to measure the morality of two fundamental features for the well-being of individuals between the economic and social factors? We found ourselves, apparently, in a standstill.

The second perspective is not directly on the rights, but on the actors dealing with them: who has to make the choice in question? Calling back the mentioned O’Neill, in one article on “Rights, Obligations, Priorities”, she clearly excludes the possibility of holding obligations through the will of a “Divine Command”<sup>117</sup>, name for a moral authority that could have the supreme judgment over humans’ matters – in the same way that (abstracting from a pure theological

<sup>114</sup> Vlastos, Gregory, “Justice and Equality”, in Waldron, Jeremy (edited by), *Theories of Rights*, Oxford: Oxford University Press, 1984.

<sup>115</sup> *Ibidem*.

<sup>116</sup> Emphasis in the original text. *Ibidem*, p. 48.

<sup>117</sup> O’Neill, Onora, “Rights, Obligations, Priorities”, in *Studies in Christian Ethics*, n. 23, 2010.

reading) it may re-call the *divine violence* of Jacobin Terror<sup>118</sup> or the *new era of justice* in the couple Sartre-Fanon<sup>119</sup>. O'Neill refers here to the work of Nicholas Wolterstoff "Justice: Right and Wrongs" in which he divides the generation of obligations/rights within human societies as divided between the social contract theorists and moral authority theorists<sup>120</sup>. For both the authors, however, refusing the moral authority does not imply accepting the construction of obligations/rights on mere agreements.

Here, if Wolterstoff takes direction towards a re-reading of the Kantian rationality as mean of enlightening human dignity, that means in a rather liberal/individualist approach (free and reasoning beings are ends in themselves and morally worthy, where the most rational is the most worthy), O'Neill has a more "social" approach, starting on the other hand from the rights of who has not capacities, or they are limited or impaired, so to need others' protection. She moves towards the idea of a decentralized system of rights in which is not a treaty, nor a moral guide, but a kaleidoscopic action from multiple agents shall direct choices on what to deceive or to coerce<sup>121</sup>. These liberal interpretations however, seem to be more fitting liberty rights than economic and social ones, especially in strongly vertical structures, in which the fate of individuals could not be linked on their rational action (nor their merit!), since they have not equal possibilities to express it<sup>122</sup>. It is in fact the case in question, of a clash between the enjoyment of rights, where the power of a *free* choice over such agents is highly debatable.

Moreover, the division between moral authority (what God/Nature dictates) and social contracts (what we agreed upon), is less marked than that. On which side of the balance should we inscribe the Declaration of the Rights of Man? The revolutionary claims are

<sup>118</sup> As I referred to in the first Chapter of this work. See: Žižek, Slavoj, *Vertue and Terror*, London: Verso, 2007.

<sup>119</sup> Fanon, Frantz, *The Wretched of the Earth*, New York: Grove Press, 1963 (first edition, *Les Damnés de la Terre*, Éditions Maspero, Paris, 1961).

<sup>120</sup> Wolterstoff, Nicholas, *Justice: Rights and Wrongs*, Princeton: Princeton University Press, 2008.

<sup>121</sup> O'Neill, Onora, "Rights, Obligations, Priorities", in *Studies in Christian Ethics*, n. 23, 2010.

<sup>122</sup> On the role of "merit" in the understanding of economic and social rights, I remind to H.L.A. Hart contribution "Are there Natural Rights?" in Waldron, Jeremy (edited by), *Theories of Rights*, Oxford: Oxford University Press, 1984.

fruits of an historical emancipatory process, but grounded in the natural rights theory (“in the hearts of all men”). In this direction points Žižek reminding how Robespierre’s words tried to demolish the institution of “habit”. Every legal order in fact “Has to rely on a complex “reflexive” network of informal rules which tells us how are we to relate to the explicit norms, how are we to apply them: to what extent are we to take them literally, how and when are we allowed, solicited even, to disregard them, etc. – and this is the domain of habit”. The Jacobin exponent wants to break this tradition because natural rights are given to the slave *who forgets them* and in the tyrant *who denies them*: they are, in this way, forced out of the habit<sup>123</sup>.

This “natural rights revolution” may be seen, as a try to hold social agreements to a moral ground of ideals: following this perspective, we cannot deprive human rights from their inherited ideology. On the other hand, relying on the sole rational interaction of agents in society may lead to a distortion due to unequal powers of such agents. This is, indeed, the big risk that the human rights rhetoric is facing in the globalization era. Human rights cannot be but products of an historical process and they are now “suffering” an historical transition from the welfare ideology in which economic, social and cultural rights were accepted as such, to the supremacy of neo-liberalism that harshly questions them: and as the critique shows, these rights are born “weak”, without defense if not within their political message.

## 2.1 Violence of a choice

The crucial point: a community relies as major occupational resource on a polluting factory. The more the factory works, the more the environment is polluted. The less the factory works, the less the community is economically sufficient. It is the clash in the enjoying of Right to Works and Right to Health: the community should enjoy both rights, but cannot. The choice is thus on the relation of power of the actors interested: the State, the ownership of the factory, the workers, the rest of the community. How much are these actors ready to accept the non-provision of a human right due to context? And in what extent the consequences of such actions are taken into consideration?

<sup>123</sup> Žižek, Slavoj, *Vertue and Terror*, London: Verso, 2007, p. xix.

Kaushik Basu, in his contribution in the mentioned volume on Economic Rights edited by Shareen Hertel and Lanse Minkler, brilliantly enters in the topic of labor standards with an example that we may apply not only to the same labor rights, but to health rights and to the clash between the two. Considering that the idea of social protection is largely shared – workers should not be exposed to health hazards, they should work a reasonable amount of hours per day, children should not work, as examples – converting these slogans into action can have many pitfalls: firstly, what he calls the “fallacy of binariness”<sup>124</sup>. To introduce the concept, Basu reminds a Woody Allen short story where Mr. Needleman, discussing on the kind of funeral he would prefer, says: “I much prefer cremation to burial in the earth, and both to a weekend with Mrs. Needleman”<sup>125</sup>.

The line, a part from its comic implication for the reader<sup>126</sup>, introduces clearly the importance of the “third option”. As for the mentioned work, the author deal with an extreme case: to know that child schooling is better than child labor does not imply that abolishing child labor in a poor country would lead automatically to have children at school: the outcome of many of them could be in malnutrition or starvation. Between the choice A or B, non-A is not equivalent to B: this, the “fallacy of binariness”<sup>127</sup>. I apply the same logic to the Health vs Work clash. Choosing one right for the other does not mean the full enjoyment of one of those: A without B does not imply an automatic enjoyment of A. Working in a non-healthy environment is not enjoying the Right to Work as well as living in a poor environment would not permit a community to enjoy the Right to Health.

There is not a clear cut between the two, so that the choice cannot be absolute. A community which has on its shoulders the burden

<sup>124</sup> Basu, Kaushik, “Human Rights as Instruments of Emancipation and Economic Development”, in Hertel, Shareen and Minkler, Lanse (edited by), *Economic Rights. Conceptual, Measurement, and Policy Issues*, Cambridge: Cambridge University Press, 2007, p. 348.

<sup>125</sup> The quote, as cited in Basu’s work at p. 348, is from page 3 of “Remembering Needleman” in Woody Allen’s *Side Effects*, in the edition published in New York by Random House in 1975.

<sup>126</sup> With the honorable exception of Mrs Needleman.

<sup>127</sup> Basu, Kaushik, “Human Rights as Instruments of Emancipation and Economic Development”.

of such a choice, is prevented *in any case* from the right on which it is entitled; so that the choice cannot lead to a positive solution, only to a negative one. Что делать?, *What has to be done?* It is the case to quote Černyševskij through Lenin<sup>128</sup>: I will move the attention, now, not on the choice *per se*, but on the structure imposing the choice. Taking into account that this situation is not only possible, but common<sup>129</sup>, why certain communities have to face it? Is it really a given (static) condition (has the community a third *positive* option?), and how to define it? Let us start with the definition of this condition: with the help of the works of three important authors, I will define this choice as a *violent* one.

Crucial in this perspective, Hannah Arendt's work "On violence", published in 1970<sup>130</sup>; as starting point, I will take from her work three fundamental concepts: violence, power, authority. *Power*, as the ability of people to "act in concert"; in Arendt's philosophy it is a property of a multitude, never individual. Power belongs to a group and need a group to exist. *Authority* is a relation property, the acknowledgement of the structure in which power operates<sup>131</sup>: an easy example is the relation father-son, in which the former is vested by authority; in political terms, we see it in the State. *Violence* is shaped by its instrumental character: it needs tools to multiply the natural strength, as a single man as well as a society. It's for this that "the highest form of power is All against One and the highest form of violence is One against All"<sup>132</sup>.

Arendt not only cares to separate the two ideas (that often happened to be used as synonyms), but stresses that they are "opposites".

<sup>128</sup> I do refer here to the notorious political pamphlet written by the Russian revolutionary "*What Is to Be Done? Burning Questions of Our Movement*" published in 1902 with the evident reference to Nikolaj Černyševskij's novel "*What Is to Be Done?*" published in 1863.

<sup>129</sup> As already mentioned, on the concrete examples I will dedicate the third chapter; for the sake of the discourse, however, I underline that situations as such are not to be understood only in economically problematic / poor / developing countries; the examples given in fact are within European continent, outside the European Union (Zenica, Bosnia and Herzegovina) as well as inside (Taranto, Italy).

<sup>130</sup> Arendt, Hannah, *On Violence*, New York: Harcourt Brace Jovanovich, 1970

<sup>131</sup> To better visualize the concept, a quote from the book, brilliant for its simplicity and directness: "The greatest enemy of authority, therefore, is contempt, and the surest way to undermine it is laughter". *Ibidem*, p. 45.

<sup>132</sup> *Ibidem*, p. 42.

Violence is used when rulers are losing power<sup>133</sup>. If the opposite of “violence” thus is not “non-violence”<sup>134</sup>, but the capacity of citizens to exert power in Arendt’s term, such a violent imposition (this or that) that vertically fell on a community is indeed in opposition to what we may refer to as *democracy*. The need for the defense of one right from the negative impact derived from the (partial) enjoyment of another is the defense against a violent imposition. This is a consequence of a lack of power/democracy in the community: it has *not enough power/democracy* to avoid the dilemma. In this we may welcome once again President Roosevelt’s State of the Union Message of 1944: “people who are hungry and out of a job are the stuff of which dictatorships are made”<sup>135</sup>.

After Arendt’s political conceptualization of violence, more than forty years ago, other scholars tried to give a broader and multi-faced definition of it. In particular I found an interesting explication of what violence is in Johan Galtung<sup>136</sup> works: for him, violence has a triangular figure, three different aspects in a strict relation. The three related adjectives are: direct, cultural, and structural. The direct violence is the visible one, the physical use of force: the war, the riots, the use of weapon and so on. The structural violence is instead a mayor system that implies a sort of violence: oppression, inequality, exploitation. Finally,

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<sup>133</sup> This leads to another point in her theory, that may take us away from the perspective of this work, but I consider it worthy to be briefly mentioned: the power’s need for legitimation and the violence’s need for justification. The latter can never be legitimate, but in some circumstances can be used for reasonable purposes: the preservation of the legitimate State, and the self-defense. Since the legitimation builds the power, the relation between the two concepts is fundamental.

<sup>134</sup> The apparent linguistic fallacy is avoided intending violence in Arendt’s term, that means out of the boundaries of actions by violent means (the shot of a rifle that could be, in fact, the opposite of non-violent means) but as a broader philosophical concept on human interactions.

<sup>135</sup> As quoted in Harvey, Philip, “Benchmarking the Right to Work”, in Hertel, Shareen and Minkler, Lanse (edited by), *Economic Rights. Conceptual, Measurement, and Policy Issues*, Cambdridge: Cambridge University Press, 2007, p. 116

<sup>136</sup> The Norwegian sociologist and mathematician is considered the father of “Peace studies”, being the first to put “peace” as a central subject in academic works. Here I do refer to Galtung, Johan, *Peace by peaceful means*, Oslo: PRIO, 1996.

cultural violence is what leads and justifies other forms of violence: like racism, fascism, discrimination<sup>137</sup>.

Cultural violence, however, is also based on less shaped or radical concept, like acceptance and ignorance: I do refer to *forgetfulness and denial* of slaves and tyrants in Robespierre's speech, but also the famous quote attributed to Rosa Luxembour: "Those who do not move do not notice their chains". In this perspective, the egalitarianism embedded in the economic and social human rights is the non-violent response to the structural violence of inequalities. Such a structure (where the sole presence of these rights do not imply automatically a new shape of it), when posing a serious threat over a community, cannot be but violent – as well its legitimation as "given" in a certain socio-economic context under neo-liberal rules, as we will see in next chapter, is the cultural counterpart of such a violence.

More recently, the Slovenian philosopher Slavoj Žižek introduced concepts as subjective/objective violence, which follows abstractly the Galtung's difference in direct/structural plus cultural, or, more in Žižek terms, on the pattern visible/invisible<sup>138</sup>. Leaving the subjective character as unite figure (a violence clearly visible, a defined action of an actor), the objective violence behind the veil of "invisibility" (it needs, in other words, a certain abstraction to be identified) is divided in symbolic – language and forms of violence – and in systemic – the consequences of economic and political organization of societies<sup>139</sup>. We can see how Galtung's pattern is grounded in Žižek definition, but nonetheless the approach of the Slovenian philosopher shapes the concept in a more subjective way, moving the observation point from a scientific perspective (Galtung's look over society) to more subjective (Žižek's look through society) that I found appropriate in dealing with subjective (even if of a group of individuals) choices such as that one

<sup>137</sup> This is obviously a short summary, since Galtung is an highly prolific writer; for a more complete view of his theories I redirect to the mentioned *Peace by peaceful means*.

<sup>138</sup> Žižek, Slavoj, *Violence*, New York: Picador, 2008.

<sup>139</sup> *Ibidem*, p. 8.

of a community facing our dilemma<sup>140</sup>.

These three perspective, applied to the clash in question, give us the following understanding: the choice above a community to prefer the enjoyment of a right above another is violent in its anti-democratic (anti-empowerment), structural and invisible character. The problem is naturally: *why* there is such a violent condition. In what extent the answer lies in the grey zone of lack of possibilities for the State (the ultimate duty-holder of these rights)? It is commonly understood that the lack of resources is a major problem a State has to face. Even in a democratic environment, they may not be enough to guarantee everyone's basic needs: it is the first pillar on which the idea of progressive realization is based. But relying only on the lack of resource is giving a partial answer, that may result in a dangerous *cul-de-sac* if we accept it as the only justification.

Asbjørn Eide, in his economic, social and cultural rights textbook written in 2001, wrote of "formidable obstacles" that remain to the implementation of such rights<sup>141</sup>. He enlightened three main issues, all in "somewhat indeterminate ways related to the present direction of the process of globalization": increasing inequality in incomes, ascending of transnational corporations' power in comparison to that of States, proliferation of armed conflicts. The roots of this "current globalization threat", for the author, are in the dominant hardcore-market ideology:

The neoliberalist ideology harnesses a set of assertions and assumptions deployed to justify the priority of market principles over human rights, in particular favouring unrestrained market operations over economic and social human rights. This ideology includes some vague and unverifiable claims that it will ultimately, over a period of time, also benefit those who are presently poor. There is no empirical support for that proposition<sup>142</sup>.

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<sup>140</sup> These interesting new descriptions of violence, even if more complete than Arendt's terms, are not in contrast with her framework. In certain way they complete it, make it colorful. The crucial point of Arendt's theories is in the relation with power: it is in this dialogue between opposites that we should judge human rights struggles.

<sup>141</sup> Eide, Asbjørn, "Economic, Social and Cultural Rights as Human Rights", in Eide, Asbjørn, Krause, Catarina and Rosas, Allan (edited by), *Economic, Social and Cultural Rights: A Textbook*, Boston: Martinus Nijhoff Publishers, 2001, pp. 554-555.

<sup>142</sup> Eide, Asbjørn, "Economic, Social and Cultural Rights as Human Rights", p. 558

Even if the critique is harsh, Eide it has not to be understood as an anti-global author; his liberalism is instead in the empowerment society, as he explains later in the same text, where he suggests to challenge neo-liberalism in favor of a socially responsible liberalism, “by which a combination of redistribution and self-reliance can be obtained while also ensuring respect for civil and political rights”<sup>143</sup>. In Eide’s accuse is underlined the danger of an economic and political transition that tries to overcome the path of economic and social rights as human rights: it is, in fact, in its opposition.

The hardcore-neoliberal (in Eide’s words) opposition reminds us of the dialectical nature of human rights: emancipatory as well as potentially repressive. Repressive in this case also because economic, social and cultural (especially in the form of protection and emancipation of minority cultures) rights imply forms of this *feared* redistribution<sup>144</sup>. One of the most notably wish of the tradition from the Jacobin Declaration (art. 21 of the Déclaration de Droits de l’Homme et du Citoyen of 1793<sup>145</sup>) to the International Bill of Rights (obviously here referring to the Covenant of ESCR) is in understanding redistributive policies not as political debate but as a State obligation: this is, however, nowadays highly debatable.

In this way the *structural, invisible and anti-democratic* violence that strikes the community of our example is formed by two aspects: the first is in factual resources used within the societal structure, the second in the structure itself. It is the result given by the dynamic (how it evolves) and the static (how it is built). If we may find the opposition on the substantive availability of resource (we cannot do otherwise) the structural obstacles in the current leading ideology are against the development of economic and social rights regardless the possible allocation of resources. It is on the *causes* of the violence more than on the *consequences* of it, that the negligence of rights find its

<sup>143</sup> *Ibidem*, p. 558

<sup>144</sup> On the neoliberal aversion to redistributive policies, a suitable reading is in Robert Nozick’s *Anarchy, State and Utopia* (New York: Basic Books, 1974), written as answer to the notorious John Rawl’s work *A theory of Justice* (Cambridge: Belknap, 1971).

<sup>145</sup> Which states that “Public relief is a sacred debt. Society owes maintenance to unfortunate citizens, either procuring work for them or in providing the means of existence for those who are unable to labor”.

place; there, is the accountability of the State. But as the history of last decades has shown, the understanding of economic and social human rights violation is yet far from having the proper attention.

## 2.2 Accountability, control and protection

The shocking reality... is that states and the international community as a whole continue to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate remedial action. In effect, despite the rhetoric, violations of civil and political rights continue to be treated as though they were far more serious, and more patently intolerable, than massive and direct denials of economic, social and cultural rights.<sup>146</sup>

The statement above was submitted by the UN Committee on Economic, Social and Cultural Rights to the Vienna World Conference of 1993. David Beetham starts from this quotation to tackle the repeated assertions that want all kind of human rights to be “indivisible”: it is a fact that disparity persists. Beetham advances two main reasons; the first one is intellectual, and it follows the critique we discussed above (Chapter 1.3). This critique, applied to the framework of protection and control, translates its dilemma in the question: at what level can the deprivation of work/health be sufficient to trigger legal redress? Subsequently, in what extent can the requirements of the Covenant (ICESCR) be reasonably expected/impooverished due to States factual capabilities<sup>147</sup>?

There is indeed a lack in certainty of duties: this may lead to equivocation. Quoting O’Neill, “Equivocation is a desperate justificatory strategy. Yet this equivocation is disconcertingly common in discussions of human rights claim”<sup>148</sup>. This, is undoubtedly connected with political reasons behind the belittlement of these rights. The

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<sup>146</sup> As reported in Beetham, David, *Democracy and Human Rights*, Cambridge: Polity Press, 1999, pp. 115-116

<sup>147</sup> *Ibidem*, pp. 116-117.

<sup>148</sup> O’Neill, Onora, “The Dark Side of Human Rights”, *International Affairs (Royal Institute of International Affairs, 1944- )*, vol. 81, n. 2, 2005, p. 432.

redistribution of resources is linked with a redistribution of powers that is a main concern for Governments, which use to resort to the alibi of “circumstances beyond their control” and “lack of available resources”. As I have mentioned, the development from the 1980s on, as it have been shown by the cutting of welfare provision and the deregulation of the international market, have made the position of these rights even more precarious. For Beetham, the only redistribution that took place in last decades has the opposite direction of the planned one in the Covenant: from the poor to the well-off, within and between countries: “an upwards flood rather than a ‘trickle down’”<sup>149</sup>. Therefore, the capacity of governments to control their own economic destinies has been eroded, while collective choices were made by international market forces: the interference of the globalization over States policies so brilliantly addressed by Antonio Negri and Micheal Hardt in their work over the *Empire*<sup>150</sup>.

Accountability of States for breaches of economic and social rights is though under risks for the lack of what we may generally call *consideration* of these rights. If a right enlisted in an international treaty is lacking support in the international arena, it is likeable that the current knowledge of the right may be weak. Let us take as example the Right to Work: in the explained shift from the creation of “jobs for all” to the creation of “a safe job market”, neo-liberal economy has abandoned the Keynesian dreams of full employment towards a more modest “acceptable rates of unemployment” for the market’s sake. What version would be accountable for a State? How should it be sponsored by human rights’ defenders in the international context?

Firstly, we may have a look on the historical evolution of the protection mechanism under the United Nations. As we know, the arguments on the flexibility of interpretation/implementation have been taken into account both at the formulation of the Covenants (more flexibility for the economic, social and cultural ones against the rigidity of liberty rights) and in the creation of the monitoring procedures,

<sup>149</sup> *Ibidem*, p. 117.

<sup>150</sup> For an insight over the role of Globalization on Democracy, I redirect, between other works, to this contribution: Hardt, Michael and Antonio Negri. “Globalization and Democracy”, in Aronowitz, Stanley and Hether Gautny (eds.) *Implicating Empire*. New York: The Center for the Study of Culture, Technology and Work, 2003.

under the Committee on Economic, Social and Cultural rights<sup>151</sup>. The Committee – that was created only in 1985, with a significant delay confronted to the Human Rights Committee<sup>152</sup> – saw in the endorsement of such complexity the difficulties of its job. Mashood Baderin and Robert McCorquodale remembered that one of the reason of such delay may have been the negative outcome of a 1966 ruling by the International Court of Justice in the *South-West Africa cases*; at the time the ICJ proved itself unable to overcome the South African apartheid policies on Namibian inhabitants<sup>153</sup>. The failure of the court was seen as the lack of power of UN framework in addressing social and minority rights<sup>154</sup>; the fear of producing a fable mechanism maintained the situation over a stuck for two decades.

However, once the Committee was created in 1985, the first task to fulfill was exactly to strengthen the idea that economic, social and cultural rights must be taken into account as strongly as liberty rights. In January 1987, the Committee gave room to a meeting of authoritative experts to express such wish: the outcome was the issue of *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*<sup>155</sup>. The document, known simply as *Limburg Principles*, set out the justiciability of ICESCR; it clearly envisaged the possibility of at least some of the provisions of the Covenant being applicable by courts. Moreover, it stated that legislative measures alone are not sufficient: administrative, judicial,

<sup>151</sup> The Committee is a body of 18 members that meets three times per year.

<sup>152</sup> The treaty body related to the Covenant on Civil and Political Rights, that was already working since 1976.

<sup>153</sup> I do refer to their introductory chapter “International Covenant on Economic, Social and Cultural Rights” in Baderin, Mashood A. and McCorquodale, Robert (edited by), *Economic, Social and Cultural Rights in Action*, Oxford: Oxford University Press, 2007, pp. 3-24

<sup>154</sup> On the case, I suggest the reading of an article appeared on Foreign Affairs’ website by Ernest A. Gross, “The South West Africa case: what happened”, online at <http://www.foreignaffairs.com/articles/23830/ernest-a-gross/the-south-west-africa-case-what-happened>

<sup>155</sup> United Nations, *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, U.N. Doc. E/CN.4/1987/17. The document is included in the already mentioned Eide, Asbjørn, Krause, Catarina and Rosas, Allan (edited by), *Economic, Social and Cultural Rights: A Textbook*, Boston: Martinus Nijhoff Publishers, 2001, pp. 717-726

policy, economic, social and educational measures will be required by governments to ensure them<sup>156</sup>.

A State party will be in violation of the Covenant, inter alia, if:

- *it fails to take a step which it is required to take by the Covenant;*
- *it fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfillment of a right;*
- *it fails to implement without delay a right [...];*
- *it wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;*
- *it applies a limitation to a right [...];*
- *it deliberately retards or halts the progressive realization of a right, unless [...] it does so due to a lack of available resources or force majeure;*
- *it fails to submit reports as required under the Covenant*<sup>157</sup>.

In the occasion of the tenth anniversary of the Limburg Principles, a new meeting under the same premises of the Committee gave birth to the Maastricht Guidelines<sup>158</sup>, that add to the Limburg list the conceptualization of *violations through acts of commission* and *violation through act of omission*<sup>159</sup>; a State is accountable both for what *it does* and for what *it does not*, in other hands, if it fails to work in the direction indicated by the treaty. The document addresses the States as ultimate duty-bearer; in the text the Right to Work is taken as example: “The failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work”<sup>160</sup>. It is also included a part on responses to violation: the guidelines state the access to remedies and adequate reparations for victims of violations, “at both national and

<sup>156</sup> *Ibidem.*

<sup>157</sup> United Nations, *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, section D. Violation of Economic, Social and Cultural Rights, point 72.

<sup>158</sup> The official name of the document is The Maastricht Guidelines on Violation of Economic, Social and Cultural Rights; see Annex 4 in Eide, Asbjørn, Krause, Catarina and Rosas, Allan (edited by), *Economic, Social and Cultural Rights: A Textbook*, pp. 727-734.

<sup>159</sup> See points 14 and 15 of the Maastricht Guidelines; *Ibidem*, p. 731.

<sup>160</sup> Maastricht Guidelines, point 6; *Ibidem*, p. 729.

international levels”<sup>161</sup>. It is clear how this ambitious will to *apply* the legal tool may face the same fate of *acknowledging* the tool we discussed before. However, an important step in the wished direction of stricter accountability was taken recently, with the adoption on December 2008 of the Optional Protocol to the ICESCR, that established a mechanism for individual complaints<sup>162</sup>. It entered into force on 5 May 2013, but at the present date can count on only 45 signatories and 16 State parties; between this, the absence of main powers is striking<sup>163</sup>.

Another signal of the unequal understanding of economic and social rights may be seen in the division under bodies of the Council of Europe; the European Convention of Human Rights, adopted in 1950 and dealing mainly with liberty rights, has in the European Court of Human Rights, in Strasbourg, its judicial counterpart. On the other hand, the European Social Charter of 1961, dealing with economic and social rights, is related only to a complaints mechanism of a committee, in a similar way of the UN mechanism. Also the improvement within the European Union framework in the period 2000-2009<sup>164</sup>, namely the “all rights under the same root” strategy that includes civil, political, economic, social and cultural rights in the same document – the Charter of Fundamental Rights of the EU, has a limited effect; the adoption of such rights is strongly grounded on the State level: both for the EU’s logic of subsidiarity and for the working system of the European Court of Justice, that is based on member States applications.

This quick overview on the monitor and protection tool over economic and social rights underlined all the difficulties on the objective use of these rights as tools. We may add that the rhetoric of Human Rights has as main objective, in this “Second Generation” field, that of maintaining its *elasticity of possibilities* but grounded on its *objectivity*

<sup>161</sup> Maastricht Guidelines, section V, points 22-32; *Ibidem*, p. 733.

<sup>162</sup> The First Optional Protocol to the ICCPR with similar mechanism was on the other hand working already in 1976, and has been since then one of the clearest example in the disparity of these rights.

<sup>163</sup> Only five countries from the European Union, for instance, have ratified the Optional Protocol: Belgium, Finland, Portugal, Slovakia and Spain. The list is available online on the United Nations’ treaties website: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3-a&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en).

<sup>164</sup> The time-lapse from the creation to the formal adoption of the document.

*of obligations*. In this struggle against the belittlement of economic and social rights, I stress the evident truth of the words of David Beetham, while referring to the work of the UN Committee on ESCR: its strategy is indeed “to occupy the moral high ground and expose beneath the evidence of inability a deficiency of will”<sup>165</sup>. Yet, we analyzed the matter until now in a top-down direction, intending rights as obligations. But in the present work, dealing with the imposed choice between Right to Work and Right to Health, we should add a consideration on *rights as claims*, which works in the opposite direction, bottom-up.

The understanding of rights as prevention of danger has an important relevance in the subjectivity of the actors involved. Here we have to take into account that such subjectivity is intended on what we expect a casual individual to ask for: in this *expectation* the call for moral legitimation from the Jacobins to Eleanor Roosevelt cannot be but part of a Western cultural dominance; not only in liberty rights. Indeed, the Right to Work and the Right to Health, if intended as liberty of claim from the agents involved (I call for my right in the moment I feel its absence) is correlated to a certain personal perception: that is, the agent’s understanding of the right<sup>166</sup>. This may lead to controversial episodes: dealing with the Right to Health, for instance, the “*underlying preconditions for health*”<sup>167</sup> part of the right may face not only economic but cultural counter-powers. It is the case tackled by Mitchell P. Smith in his work over different trajectories in the protection and monitoring of Health and Environment Rights in Europe and United States<sup>168</sup>.

As the author explains, the first decade of the XXI century has seen an increasing divergence in the regulatory posture taken in the field of public health and environment by US and EU; the former

<sup>165</sup> Beetham, David, *Democracy and Human Rights*, Cambridge: Polity Press, 1999, p. 133.

<sup>166</sup> This understanding is based on the “unit of measurement” of which French philosopher Gilles Deleuze referred to addressing is meaning of *Gauche* (Left) in his famous interview “Abécédaire” in 1988; such unit of measurement of Western government cannot be but the *man (male)-white-adult-urban citizen*.

<sup>167</sup> I recall here to the distinction of Brigit Toebes analyzed in Chapter 1.2. See: Toebes, Brigit, “The Right to Health”, in Eide, Asbjørn, Krause, Catarina and Rosas, Allan (edited by), *Economic, Social and Cultural Rights: A Textbook*, Boston: Martinus Nijhoff Publishers, 2001.

<sup>168</sup> Smith, Mitchell P., *Environmental and Health Regulation in the United States and the European Union*, New York: Palgrave Macmillan, 2012.

more relaxed, the latter more restrictive. One reason is undoubtedly in the structural differences of two capitalist cultures, notably the more business-centered American liberalism versus the European dirigisme: this approach leads the US political economy to produce regulatory strategies that privilege the free exchange, while in contrast, European coordinated capitalism usually tries to orient market toward production of public goods<sup>169</sup>. Smith, however, underlines how many authors chose instead to point at a cultural divergence: the systematic difference in societal willingness to tolerate risk, or, in other words, “cultural perception of types of risks considered tolerable”<sup>170</sup>.

I will not take this approach as explanatory for the policy making in the regulation field (as well as the same Smith refuses to do), but it becomes a proper example for the analyses of the clash in question. In fact, if, as I tried to show above, we are dealing with a moral problem that has been violently imposed on a local community, on which side the *right as a claim* will fall? Or better: how much the community will tolerate the risk of undermining its health against the possibility to work, and *vice versa*? To the topic of this chapter such a question would be: where Justice will set its moral hierarchy?

### 2.3 Development and Environment: intra- and inter-generational consequences

When forced to face a dilemma around the example of a heavy pollutant factory, a community, intended as single body, has to deal with its subjectivity: in what extent it can accept un-fair conditions? The perception is then based on the utility coming from job places (economic security) against the utility of an healthy environment (health security). Crucial point in this clash of securities is in the short-term/long-term differences: the threaten to the Right to Work in this case is perceived as immediate risk (employment versus unemployment), while the Right to Health may be less evident (health versus *possible* disease). I will approach two concrete examples in the last chapter.

<sup>169</sup> The same author, however, warns us to take such statement as definitive, following the evolution of the European approach getting closer to business-centered neoliberalism.

<sup>170</sup> Smith, Mitchell P., *Environmental and Health Regulation in the United States and the European Union*, pp. 1-21.

A more plausible (politically) focus on short-term more than long-term does not take into account the evolving phase of the dilemma. Schematizing the *static* of it as the single choice in a frame of time (work creating unhealthy conditions / do not work), we don't see the *dynamic* of consequences: a factory creating pollution may accumulate it in the future. We will deal with two cases of metallurgic industries in which this accumulation problem is dramatically true. In other words, short-term irresponsible policies focused on the *static consideration* of the problem may have future consequences. The violent choice is not only about today: it affects communities' rights of tomorrow.

The connection of the Right to Health with environmental rights (and to the fundamental Right to Life), becomes obvious. But if the idea of "healthy working environment", as we have seen, is historically related to the Right to Work, accepting environmental issues within the scheme of human rights is a relatively new concept. Milestone, the United Nations Conference on Environment and Development<sup>171</sup> in January 1992 and its related "Rio Declaration on Environment and Development" (follow up of this event, the UN action plan "Agenda 21")<sup>172</sup>. The Declaration stated 27 principles in favor of a sustainable development: human beings are "entitled to a healthy and productive life in harmony with nature" (Principle 1). The Declaration connects the environmental demands (between those: a call for changes in the pollutant way of production) to the right of "higher quality of life for everyone" (Principle 3) and higher democratic participation in

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<sup>171</sup> Simply known as the "Conference of Rio de Janeiro".

<sup>172</sup> Other important gathering were the Second Universal Conference on Human Rights (Vienna 1993), the International Conference on Population and Development (Cairo 1994) and the United Nations Conference on Human Settlements (Istanbul 1996). See: Picolotti, Romina and Taillant, Jorge Daniel (edited by), *Linking Human Rights and the Environment*, Tucson: University of Arizona Press, 2003, p. 48

development policies<sup>173</sup>.

The birth of such environmental awareness has definitely entered the political debate of last decades, but its *legal promotion* as human rights is even weaker than for the contested economic, social and cultural ones. The environmental *moral promotion*, however, is becoming stronger. A parallelism with the French revolutionaries is possible also in this field; Žižek recalls the four moments of a revolution listed by the French philosopher Alain Badiou in his *Logic des Mondes*: 1. voluntarism (there are no enough obstacles to stop it), 2. terror (the truth will crash the enemy), 3. egalitarian justice (and its immediate imposition), and 4. trust in the people (Badiou for instance underlines Mao's critique to Stalinism that had not enough trust in peasants)<sup>174</sup>. These theoretical framework finds a response in nowadays environmental struggles from a Marxist perspective, in Žižek's words "the only appropriate way to counter the threat of ecological catastrophe that looms at our horizon"<sup>175</sup>.

1. voluntarism: the only way to confront the tremendous threat is by means of large-scale collective decisions;

2. terror: punishment of all who violate the imposed protective measures (here strengthening of the repressive part of human rights: constraining polluters' freedoms);

3. strict egalitarian justice: all people should pay the same price in eventual renunciations, on the other hand, no room for special measures or flexibility (poorer countries may have less restrictions than richer ones);

4. trust in the people: "the wager" that the large majority of the people support these measures (it may recall the recent, worldwide

<sup>173</sup> Quoting Romina Picolotti, "*The declaration explicitly refers to the right to participate (Principle 10), highlighting the role of women (Principle 20), youth (Principle 21), indigenous people and local communities (Principle 22). The exercise of the right to participated presented in Agenda 21 is worthy a more detailed studies [...] [it] emphasizes the fact that the commitment and genuine involvement of "all social groups" for the achievement of a "real social partnership" in support of a common effort for sustainable development will have decisive importance*" in Picolotti, Romina and Taillant, Jorge Daniel (edited by), *Linking Human Rights and the Environment*, p. 50.

<sup>174</sup> Badiou, Alain, *Logic of Worlds*, London: Continuum, 2009, Preface: pp. 1-42.

<sup>175</sup> Žižek, Slavoj, *Vertue and Terror*, London: Verso, 2007, p. xxvi.

used, slogan of the 99% versus 1%)<sup>176</sup>.

Such revolutionary movement (à la Badiou/Žižek) is facing the same struggle to be written/read *in the hearts of all men* of its predecessors: “nature” becoming “natural rights”, in a peculiar *jeu de mots*. At the present moment, however, *terror* and *strict egalitarian justice* are taken apart: its international legal interpretation as human rights is lacking specific treaties, so that is bounded to other legal tools, and more concretely to the reliability of such environmental-friendly interpretation under liberty freedoms. Various interesting examples may be found in the extensive work edited by Cairo A. R. Robb on the third volume of *International Environmental Law Reports*, which deals on the connection between human rights and environment<sup>177</sup>.

The great collection of cases listed by Robb includes in fact complains under the Optional Protocol 1 to the Human Rights Committee, that monitor and control the Covenant of Civil and Political Rights, and decision taken by the European Court of Human Rights, that refers to the European Convention on Human Rights of 1950. Both groups of decisions are, thus, referring to liberty rights. Several examples deal with Right to Self-determination and Right to Life, respectively rights enounced in articles 1 and 6 of ICCPR, undermined by environmental threats<sup>178</sup>; or, in the European framework, the Right to Fair Hearing (and friendly settlement), article 6 of the ECHR, once

<sup>176</sup> “One should not be afraid to assert,” he adds “as a combination of terror and trust in the people, the reactivation of one of the figures of all egalitarian-revolutionary terror, the “informer” who denounces the culprits to the authorities (already in the case of the Enron scandal, the Time magazine was right to celebrate the insiders who tipped-off the financial authorities as true public heroes).” See: *Ibidem*, pp. xxvi-xxvii; even if more connected to liberty rights, I would add the most recent Wikileaks cases as suitable example of such egalitarian-revolutionary terror accepted strategy (or even better the Whistleblower Prize created by the Association of German Scientists in 1999).

<sup>177</sup> Robb, Cairo A. R. (edited by), *International Environmental Law Reports vol. 3 – Human Rights and Environment*, Cambridge: Cambridge University Press, 2001.

<sup>178</sup> On self-determination, the cases *Ominayak and Lubicon Lake Band v. Canada* (*Ibidem*, p. 26) or *Kitok v. Sweden* (p.13), dealing with rights of indigenous people (respectively Cree Indians and Sami minority) after restrictions from the States on the traditional use of determined territories; on *EHP v. Canada* (p. 3) or the *EW et al. v. Netherlands* (p. 62), both on the threat of pollutant waste deposits.

exhausted national legal addresses<sup>179</sup>.

It has to be noticed, however, that the strictest connection between the Right to Health as collective and environmental issue can be found not under UN nor European premises, but in the jurisprudence of the Inter-American Court of Human Rights. The Court, based in Costa Rica and created by the Organization of American States, refers not only to the American Convention of Human Rights of 1969 (that established the Court), but also to the set of rights enlisted in the American Declaration of Rights and Duties of Man of 1948<sup>180</sup>. These documents, signed and ratified by the majority of the American states (but notable exception in the United States, that signed but did not ratify the Convention), preview a set of rights including, even if in a rather general formula, norms on economic and social fields.

Thus, article XI of the American Declaration states that “Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources”. On such a base, the Inter-American Court is the only one, in Robb’s report, to rely on an environmental decision on the Right to Health, precisely in the case 7615 (*Brazil*) on the exploitation of natural resources of the Amazon region; the State was then indicated as responsible towards the indigenous Yanomami people for the impoverishment of their health environment and related failure to provide essential medical care: Brazil failed to take timely and effective measures on their behalf<sup>181</sup>. This kind of jurisprudence may find new possibilities with the recent

<sup>179</sup> Robb reports several cases, I will quote only few as examples: *Arrondelle v. United Kingdom* (p. 712), *L, M and R v. Switzerland* (p.801), *Denev v. Sweden* (p. 743), *Ortenberg v. Austria* (p. 603). For a more detailed analyses, see Robb, Cairo A. R. (edited by), *International Environmental Law Reports vol. 3 – Human Rights and Environment*, chapters II.A, II.B, II.C.

<sup>180</sup> The American Convention on Human Rights, who entered into force in 1978 (the document is available online at: <http://www.cidh.org/Basicos/English/Basic3.American%20Convention.htm>), has a smaller range of action of the Declaration, notably for the absence of the US ratification. See: American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), online at <http://www1.umn.edu/humanrts/oasinstr/zoas2dec.htm>.

<sup>181</sup> Robb, Cairo A. R. (edited by), *International Environmental Law Reports vol. 3 – Human Rights and Environment*, pp. 841-854.

adoption of the mentioned first protocol on the ICESCR, so that this “legal dialogue” between economic, social and cultural rights with environment may improve also at UN level.

However, in the same time of the evolution of the Environmental right as human right, another collective (third generation) right was emerging in the international arena: the Right to Development. Such right is based on broadening the concept of justice as *fairness between nations*. The moral priority is once again over the allocation of resources, and the redistribution in North/South wealth, in the moment in which this disparity became evident: the moment right after the decolonization movements, when new agents start questioning the world economic order. A clear view on inequality the economic gap between the richest and poorest 20% of global population, that grew from the ratio 30:1 in 1960 (the decade-symbol of decolonization movements) to 61:1 in 1991<sup>182</sup>. In this climate, the UN General Assembly announced, with the resolution 41/128 in 1986, the “Declaration on the Right to Development”<sup>183</sup>.

The declaration is addressing individuals as well as collectivities (the UN will re-state in 1993 during the Vienna Conference the character of individual and group right<sup>184</sup>), but nonetheless States, and particularly developing countries, emerged as first target of the document. As stated in article 2 par. 3, “*States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals*”; art. 4 par. 2., “*Sustained action is required to promote*

<sup>182</sup> Baylis, John, Smith, Steve and Owens, Patricia (edited by), *The Globalization of World Politics (Fourth Edition)*, Oxford: Oxford University Press 2008, p. 450.

<sup>183</sup> Available online in the UN website: <http://www.un.org/documents/ga/res/41/a41r128.htm>.

<sup>184</sup> See the Vienna Declaration and Programme Action (art. 10) adopted on June 25th 1993 during the UN World Conference on Human Rights: “*As stated in the Declaration on the Right to Development, the human person is the central subject of development. [...] States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development*”. The complete document is available online at <http://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>.

*more rapid development of developing countries. As a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development*<sup>185</sup>.

Such a priority has been often intended, pushed by major economic institutions, as a need for a *growth before everything else*<sup>186</sup>; the mentioned Declaration of Rio tried to re-conduct the Development right in an harmonious way of *sustainable* development. Nonetheless, the overlapping of economic and social interests that are peculiar of the work *vs* health case are enlarged in the broader arena of development *vs* environment. Obviously, the path is similar also on the perceived contrast between the two: as it happens for the first clash, the second is characterized by the not-absolution of its choice: the answer is evidently in a green model of development. But the comparison work/health and development/environment is helpful in this analyses to explain the systemic drama of the dilemma in our consideration. In fact the static and dynamic processes affecting of our model of development have consequences on future generation.

The concept of *intergenerational justice* was taken as pillar of Edith Brown Weiss in her work *In Fairness to Future Generations*: sustainable development is intra- as well as inter-generational question: it relies with the *commitment for equity* with future generations<sup>187</sup>. The focus of her work is not only on the understanding of present externalities as future danger, but on presenting future generations as present right-holder. The concept, that found a formulation in the Rio Declaration (in Principle 3, where the purpose of human activities is required “to meet developmental and environmental needs of present and future generations”), has been taken into legal ground, but found only once a positive outcome in a Court: is the *Oposa vs Factoran* case, judged by

<sup>185</sup> *Ibidem.*

<sup>186</sup> Baylis, John, Smith, Steve and Owens, Patricia (edited by), *The Globalization of World Politics (Fourth Edition)*, Oxford: Oxford University Press 2008, pp. 449-468.

<sup>187</sup> Brown Weiss, Edith, “In fairness to future generations and sustainable development”, in *American University International Law Review*, vol. 8 issue 1, 1992, p. 19 (emphasis added).

the Philippines Supreme Court, 1993<sup>188</sup>. Lawyer Antonio Oposa chose to sue the Government of Philippines for the amount of logging licenses released by the Ministry of Environment, that would have completed the deforestation of the archipelago, clearly undermining the environment of its present and future inhabitants<sup>189</sup>.

The Court ruled in favor of Oposa, while the Government put a ban on logging licenses; however, even if the decision became worldwide an (isolated) example of environmental law, the merit of it was in the national legal framework, that bound the development and utilization of natural resources to be “*equitably accessible to the different segments of the present as well as future generations*”<sup>190</sup>; without a special, concrete, international legislation, the conflict between development and environment, follows the same *violent* pattern of work against health; the human rights arena is thus far from providing certainty of obligations<sup>191</sup>.

<sup>188</sup> The complete title of the case is: Juan Antonio Oposa et al., v. The Honorable Fulgencio S. Factoran, Jr., in his capacity as the Secretary of the Department of Environment and Natural Resources, and the Honorable Eriberto U. Rosario, Presiding Judge of the RTC, Makati, Branch 66, respondents. [G.R. No. 101083. July 30, 1993]. The sentence is available online: [http://www.lawphil.net/judjuris/juri1993/jul1993/gr\\_101083\\_1993.html](http://www.lawphil.net/judjuris/juri1993/jul1993/gr_101083_1993.html)

<sup>189</sup> Oposa, Antonio Jr, „Intergenerational Responsibility in the Philippine context as a judicial argument for public action on deforestation“, in the acts of the *Forth International Conference on Environmental Compliance and Enforcement, April 22-26, 1996, Chiang Mai, Thailand. Conference Proceedings vol. 2*, INECE, pp. 521-526. Available at <http://www.inece.org/4thvol1/4toc.htm>.

<sup>190</sup> The quote is from the Title XIV, Book IV, Sec. 1 of the Philippine Administrative Code of 1987, available online at <http://www.gov.ph/1987/07/25/executive-order-no-292>.

<sup>191</sup> Interestingly, the environmental battle of Mr Oposa continued after the 1993 case: in 2006, during a campaign for the protection on Philippines’ marine environment, his colleague Elpidio De La Victoria was assassinate. They were volunteering against the illegal practice of dynamite fishing in an area where fishing is the primary means of subsistence of its inhabitants. An example of concrete harshness: Work vs Health (Development vs Environment) may extend the violence of its dilemma to extreme consequences.

### 3. BLACKMAILED COMMUNITIES: ZENICA AND TARANTO

*It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair; we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way – in short, the period was so far like the present period, that some of its noisiest authorities insisted on its being received, for good or for evil, in the superlative degree of comparison only.*

Charles Dickens  
[*A tale of two cities*, 1859]

In his *Abécédaire*, a total of eight hours of interview for the French television in 1988, Gilles Deleuze sustains *that all revolutions fail*. The American independence struggle wanted to create the New Man (the emigrant community above the nations) as well as the Marxist doctrine (from the universal proletarianization), and both failed; the French revolution failed the same, *tout le monde le sait*, says Deleuze with his raspy voice. As matter of fact, however, the failure of revolutions never stopped people to become revolutionaries: even more, there are situation in which the only escape is to embrace the revolution. The act of becoming is the focus of the philosopher (*un devenir révolutionnaire sans avenir révolutionnaire*), more than the absolute-event of the revolution. The same philosopher, when asked about human rights, dismissed the question as a weak philosophy, an empty reasoning disconnected by the judiciary system: a set of desires.

Justice does not exist, human rights do not exist. What matters is the invention of Jurisprudence<sup>192</sup>.

I take his words as an echo of Bentham's (or Burke's) laughter to the French Revolution, but from another perspective. For Deleuze the goal is not to make descend a morality of rights from the general utility, but to create a legal framework that would not make possible any breach of injustice; that is, even so, the same ultimate goal of human rights' defenders. It is again the understanding of rights as "enforcement of special contexts" or "structuring a general will". To overcome the emptiness of the human rights doctrine as described by Deleuze, as well as the inherent failure of its revolution, I take his insight as stressing the *becoming* of human rights jurisprudence. A good help comes from the conceptual scheme of scientific progress described by the American philosopher Thomas Kuhn. Kuhn's evolution of science is based on the adoption of a scientific paradigm until an anomaly is found; the discussion over the anomaly will necessarily lead to a crisis of the old paradigm that may be solved only by a revolution in the field. Thus a revolution becomes *normality* when its paradigm is accepted (in a *gestalt gesture*: what was hidden is now clear)<sup>193</sup>. This is the key aspect of the human rights doctrine: to make its *juridical revolution* an accepted paradigm – at least until a new revolution comes<sup>194</sup>.

To reach this special jurisprudence moved by general morality, there is a need for an efficient structure, from the general to the special. Indeed, as we have seen, international and regional (as well as national) legal frameworks do have provisions on work and health, but there is

<sup>192</sup> The mentioned interview is available on internet; the section used in this work, point "G" for "Gauche" is at <http://vimeo.com/29137215>.

<sup>193</sup> Kuhn, Thomas, *The structure of scientific revolutions*, Chicago: The University of Chicago Press, 1970.

<sup>194</sup> We do tend to avoid questioning human rights as ideology; but this may not be the last word on the matter. In the words of Onora O'Neill: "*We find it unsurprising that the ruling ideas of the past eras have been superseded and modified, and we can hardly doubt that human rights are a central ruling idea of our age. Yet we do not find much current discussion of the likelihood that the idea of human rights may suffer the same fate. Public discourse is for the most part admiring, and often represents human rights as unquestionable truth and progress; we may question anything – except human rights*". O'Neill, Onora, "The Dark Side of Human Rights", *International Affairs (Royal Institute of International Affairs, 1944- )*, vol. 81, n. 2, 2005, p. 439.

a reluctance in the use of them due the subjectivity of the cases: the special cannot work always in function of the general. Quoting again Baroness O'Neill, the least that we can say is that there is *an awkward gap between reality and rhetoric*<sup>195</sup>. On a general perspective, this is dramatically true in a moment in which the limits inherited in the neo-liberal globalization have been further narrowed by the economic crisis started in 2008.

The role of human rights under the umbrella of globalization is a huge topic, that overflows this work; however, a few remarks may be needed. First of all it is clear that the universality of the human rights doctrine is based on "globalization", intended as provision of common norms, shared and accessible all over the globe; thus, there is not a *given* opposition between the phenomena. It is a certain kind of globalization, lead by the apparent dominance of neo-liberal market rules, that is often in contrast with part of this doctrine, namely with the field of economic and social rights. One of the main concern over the threat that such globalization has posed over the human rights agenda is on regard to transnational corporations (TNCs), which increasing role in world economy is connected with their accountability over human rights abuses or neglect.

Such corporations may boast of a great lobbying power, especially over developing/poor States; States, that are still the holders of the primary responsibilities concerning human rights violation. As Eide pointed out, "Problems arise when the authorities of the host state are unwilling to implement all aspects of the internationally recognized human rights and to adopt the necessary regulations concerning the activities of TNCs. When they are unwilling, it means they prefer to make political choices which deviate from human rights requirements"<sup>196</sup>. Such choices are often directed to please such corporations, inviting them in investments providing favorable conditions such as tax-free heavens, prohibition of trade union activities, low controls<sup>197</sup>. But also in the transparency of international agreements under UN premises,

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<sup>195</sup> *Ibidem*, p. 434.

<sup>196</sup> Eide, Asbjørn, "Obstacles and Goals to be Pursued", in Eide, Asbjørn, Krause, Catarina and Rosas, Allan (edited by), *Economic, Social and Cultural Rights: A Textbook*, Boston: Martinus Nijhoff Publishers, 2001 p. 559.

<sup>197</sup> Furthermore, "Corruption and complicity are all too frequent", adds the author. *Ibidem*, p. 559.

economic and social rights may be threatened: the role of International Monetary Fund and World Bank, for instance, have been criticized by many fronts over the belittlement of economic and social rights when dealing with developing economies<sup>198</sup>.

In such uneasy mainstream for the rights in question, the last economic crisis have deepened the troubles: in what extent the crisis have underpinned the Right to Work in Europe is examined in a book edited by Duncan Gallie recently published by the Oxford University Press (2013). Between the addressed themes, the growing insecurity (related to growing unemployment rates); the separation of rights' security between a core of traditional work places and a growing peripheral workforce with lesser guarantees, that lead to a *race to the bottom* for working rights; the growth of work intensity, that it had increased sharply in period of crisis compared to period of growth; the dramatic undermining of social cohesion and the loss of trust towards democratic institutions<sup>199</sup>. Also, Gallie is keen in maintaining the common guidelines through the crisis as well as country variations. Especially dealing with the former socialist Europe, we may see a contrasted pattern between the high quality of work rights of the past and the dismantle of the welfare-state in transition to liberalism<sup>200</sup>.

I would turn now from the general to a specific perspective, taking the previous pages as a roof under which such specificity finds its narration. The dangerous reality of the *Work vs Health* clash is present in many contexts. In next pages I will present two of these cases, living examples of our clash of rights in different European context; two similar cases in the steel industry: the town of Zenica, in Bosnia and

<sup>198</sup> It is the attack moved in the same Eide's textbook by Sia Spiliopoulou Åkermark in the chapter "International Development Finance Institutions", in Eide, Asbjørn, Krause, Catarina and Rosas, Allan (edited by), *Economic, Social and Cultural Rights: A Textbook*, Boston: Martinus Nijhoff Publishers, 2001 pp. 515-530.

<sup>199</sup> I do refer here especially to the chapters "Insecurity and the Peripheral Workforce" by Vanessa Gash and Hande Inanc (pp. 142-168), "Economic Crisis, Political Legitimacy and Social Cohesion" by Javier Polavieja (pp. 256-278), "Economic Crisis, Country Variations, and Institutional Structure" by Duncan Gallie (pp. 279-306) in Gallie, Duncan (edited by), *Economic Crisis, Quality of Work and Social Integration*, Oxford: Oxford University Press, 2013.

<sup>200</sup> *Ibidem*, pp. 279-306.

Herzegovina, and the town of Taranto, in Italy. For the purpose, few remarks on the aspects of such industry are needed; I will partially shift from the abstract discourse towards more physical data. Firstly, on the health/environmental threat.

Likewise other branch of metallurgy, steelmaking sector is characterized by strategic importance for the development of States/communities, by the considerable dimensions of its plants (intended as physical space as well as number of workers), and finally by a strong environmental impact. The pollution considered here reaches unfortunately a wide range of dimensions: air pollution, water contaminants and solid wastes. As stated in the ILO's *Encyclopedia of Occupational Health and Safety*, "Air pollutants from iron- and steel-making have historically been an environmental concern"<sup>201</sup>; the emissions come from coke ovens and from by-product plants: gaseous substances such as sulphur oxides, nitrogen dioxide and carbon monoxide. In addition, "particulates" such as soot and dust, which may contain iron oxides, contaminate the air<sup>202</sup>.

Not to be undermined is also the water pollution coming from such activities: it is needed a big amount of water to cool coke and steel. This water, subsequently, re-entering into the normal cycle (e.g., water taken from a basin to cool the brand new products and then re-sent to the basin) may contaminate table water and local streams; moreover, this contamination is mainly due to heavy metals<sup>203</sup> or oils and greases. Local streams can be contaminated also by leaching of rainwater, from piles of raw materials or accumulated waste<sup>204</sup>. Finally, there is the solid waste: which is a minimum part due to the high recyclability of steel, but can still be a problem of special treatment considering big industrial plants. There have been reports of small amount of radioactive materials inadvertently included in scrap steel<sup>205</sup>.

As we can deduce, air and water pollution makes the extension of the endangered environment way broader than a single factory. In other words, as we can easily expect from this activity, the threat for

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<sup>201</sup> Spiegel, Jerry "Iron and Steel", in *Encyclopedia of Occupational Health and Safety*, Geneva: International Labour Organization, 2011

<sup>202</sup> *Ibidem*.

<sup>203</sup> Especially zinc, cadmium, copper, aluminum, chromium.

<sup>204</sup> *Ibidem*.

<sup>205</sup> *Ibidem*.

the Right to Health is not referring only to workers' environment, but on the whole local community around the industrial site. It is thus decisive to underline that the situation is outside the mere "healthy working environment": the production of such undesirable externalities makes two different rights become exclusive. In other words, the local community (which – for the sake of the argument – includes factory workers) finds itself between the advantage of economic working income and the disadvantage of risks for common health: indeed, the example of this work. All these features apply perfectly to the case of Taranto, Italy, and Zenica, Bosnia and Herzegovina. In both examples<sup>206</sup> we have the presence of a dominant (in terms of dimension and influence on the local economy) steel factory in the immediate suburbs of the town<sup>207</sup>: it is the first source of income and it is heavily affecting the safety of local environment.

This lead us to the further consideration: the need for jobs. Even if coming from two different countries, there are some similarities. First of all, the pressure of unemployment is a peculiar aspect. Bosnia and Herzegovina has – since the dramatic post-war period – one of the highest unemployment rate in Europe, now at 27,5%; considering youth unemployment (in the range 15-24 years old) the dramatic figure stood at 59% in 2013<sup>208</sup>. Zenica, is unfortunately one of the Bosnian towns with worse statistics: 44% its rate<sup>209</sup>. On a different path, the European Union member, Italy, has seen its unemployment rate growing fast over last years of crisis, reaching 12.2% in 2013 (it is noticeable the dramatic rise in the young unemployment that reached 44,2% in last measurement of 2014); Taranto is above the country average, with 16.2% (2013)<sup>210</sup>.

Finally, a remark over the character of factories: steelmaking is

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<sup>206</sup> The examples have to be seen as part of a theoretical argument rather than effective case studies, due to the limited space and purpose of the present essay.

<sup>207</sup> Both sites are effectively adjacent – separated by less than five hundred meters – to the towns' households.

<sup>208</sup> Sources: UNECE (United Nations Economic Committee for Europe), online at <http://www.unece.org>.

<sup>209</sup> That amounted to 25 thousands unemployed persons in town, as reported by the Federation's office of statistics in 2012; the report is online, <http://fzs.ba/Podaci/04.pdf>. Al Jazeera, in February 2014, declared Zenica the Bosnian town with higher unemployment rate: <http://balkans.aljazeera.net/vijesti/zenica-grad-s-najvise-nezaposlenih>.

<sup>210</sup> Sources: ISTAT (Italian Institute of Statistics), online at: <http://dati.istat.it>.

a strategic sector for the State, but it is unlikely to produce local growth nor development of enterprises networks: its benefits are directly in boasting consumptions from wages. It does produce richness but is hard to stimulate a connected small or medium manufactory since is devoted to the so called *heavy industry*. Moreover, the pollution may forbid the presence of other activities – is this the case of Taranto, as we will see – making steelmaking, or the big industry in general, isolating itself in the local environment. Thus, is not surprising that other important activities that are present in the two areas in exam are in the energetic field; again a strategic field, as oil refineries (Taranto) or coal mines (Zenica).

What to do? The existence of an advanced international legal framework for providing opportunities to individuals – opportunities to collaborate (*work*) and be safe (*health*) in the (*sustainable*) development of the State – shows a precise will to shape the future of societies (the ones who accepted such framework, and Bosnia and Herzegovina and Italy have both signed and ratified all major international treaties on economic and social rights) on freedom *and* social justice as fundamentals for international peace and security. As we have seen from the historical development and from the philosophical critiques, all this *international human rights fatigue* risks to lose the original commitment of the actors – the States. These, anyway, seems to be stuck in the *allocation of resources* escape. On the other hand, the subjective commitment of its inhabitants is not to be ignored: the problem, given the factual, real, economic and environmental dynamic situation, is thus is on what kind of justice the community wants to claim. It is a matter of balance. At first sight, we may underline that the presence of this choice is already a failure for the State; this choice was not supposed to be.

### 3.1 Zenica, Bosnia and ArcelorMittal

The webpage of the World Bank presents Bosnia and Herzegovina as “an upper middle-income country which has accomplished a great deal since experiencing a war in the 1990s. Today, BH is a European Union (EU) potential candidate country moving toward alignment with the EU’s *acquis* requirements”<sup>211</sup>. This hasty description leaves out, for

<sup>211</sup> World Bank website, country overview: <http://www.worldbank.org/en/country/bosniaandherzegovina>.

the sake of simplicity, the long, difficult way that this country had to go through in recent times. In Yugoslavia, the region was always under the country average of income<sup>212</sup>. Yet, planned economy led to a sensible growth for standards of living for its inhabitants, especially in the first two decades after the war<sup>213</sup>. Such growing economy went through hard times in the 1980s, when the positive tendency was quickly inverted by the economic crisis that dominated the decade: the loss of purchasing power had a 80% decline for the average Yugoslav in the period 1979-1984<sup>214</sup>. A crisis<sup>215</sup>, that started the end of the union. In 1988 economic regional differences were already severe: the average Bosnian income was nearly 80% of the country's standard<sup>216</sup>. The regional imbalance went deeply and tragically growing during war times, that saw Bosnia and Herzegovina as major scenario of battles in 1992-1995<sup>217</sup>.

In the time of transition to market democracy, the new State chose to dismantle its national property in favor of privatizations. This applied also to strategic plants in the heavy industry: was this the fate of the major factory in Zenica, where they were producing steel since the immediate end of the Second World War. The town is the fourth-largest city of the country, with slightly more than 115 thousands inhabitants (for the census 2013), 70 km North of Sarajevo and capital of the Zenica-Doboj canton (that counts 385 thousands inhabitants<sup>218</sup>). Zenica lays in a narrow valley on the Bosna river, closed between mountains and large

<sup>212</sup> Together with actual Montenegro, Kosovo and (Former Yugoslav Republic of) Macedonia,

<sup>213</sup> Kolaja, Jiri, *Workers' Councils: the Yugoslav experience*, London: Tavistock Publications, 1965.

<sup>214</sup> Lain, Antonio Moneo, "La disintegración del régimen Titista (1986-1989)", in *Balkania. Revista de estudios balcanicos*, n.2/2011, pp. 85-111.

<sup>215</sup> The crisis was due to several reasons, out of the explanatory possibility of this work. I address the reader on the mentioned article (in Spanish) Lain, Antonio Moneo, "La disintegración del régimen Titista (1986-1989)", in *Balkania. Revista de estudios balcanicos*, n.2/2011.

<sup>216</sup> While Kosovo's was 66%; on the other side of the balance, Slovenian average income was around 150%, Croatian 110%. Lain, Antonio Moneo, "La disintegración del régimen Titista (1986-1989)", p. 99.

<sup>217</sup> For an economic perspective, Woodward, Susan, *Balkan Tragedy. Chaos and Dissolution after the Cold War*, Washington: The Brookings Institution, 1995.

<sup>218</sup> Sources: 2013 Census of Population, Households and Dwellings in Bosnia and Herzegovina. Preliminary results published in November 2013: [http://www.bhas.ba/obavjestenja/Preliminarni\\_rezultati\\_bos.pdf](http://www.bhas.ba/obavjestenja/Preliminarni_rezultati_bos.pdf).

never more than two kilometers. A 2012 report by the Italian think-tank *Osservatorio Balcani e Caucaso*, laconically describes the view of the town: “as usual from November to February, a toxic cloud forms over the city which traps all the substances rising from the chimneys of steel plants, other factories, and houses”<sup>219</sup>.

The steel factory, the biggest employer of the area, was created in 1948, co-existing with the town in the little space between the slopes, a rather dangerous closeness. It was providing salary to nearly 20.000 workers before the dissolution of Yugoslavia and the breaking up of the conflict<sup>220</sup>. After a first privatization to Kuwait Investment Agency in 1999 the number of workers fell drastically to 5000<sup>221</sup>; since 2004 the majority stake is taken by the Indo-British ArcelorMittal Steel Company, a transnational corporation leader in the sector<sup>222</sup>. As proudly reported on the company’s website, it has steelmaking operations in more than 20 countries on four continents; “In 2013, we had revenues of US\$79.4 billion and crude steel production of 91.2 million tonnes, which represents around 6% of world steel output”<sup>223</sup>.

With the new ownership, the amount of dependents kept falling, reaching quota 2800 and then remaining stable on that figure<sup>224</sup>; the loss of jobs over two decades in the same plant is thus impressive. Besides, the unemployment rate in the canton of Zenica-Doboj is extremely

<sup>219</sup> Hećimović, Esad, “Dying of Pollution in Zenica”, *Osservatorio Balcani e Caucaso*, 5 November 2012, online: <http://www.balcanicaucaso.org/eng/Regions-and-countries/Bosnia-Herzegovina/Dying-of-pollution-in-Zenica-125737>

<sup>220</sup> Elia, Christian, “Zenica, cuore d’acciaio della Bosnia”, in *E – il mensile*, aprile 2012.

<sup>221</sup> *Ibidem*.

<sup>222</sup> About the ArcelorMittal steel production and environmental tragedy, I redirect to the British ITV documentary “The Factory”, produced in 2011, that follows environmental and social problems (similar to the mentioned Taranto and Zenica) related to the ArcelorMittal plants in the Czech industrial town of Ostrava. For the role of ArcelorMittal as leader TNC, I suggest a documentary by Jérôme Fritel with the self-explanatory name “ArcelorMittal, la face cachée de l’Empire”, that was broadcasted in September 2014 by the French-German channel Arte.

<sup>223</sup> ArcelorMittal website, <http://corporate.arcelormittal.com/who-we-are/at-a-glance>.

<sup>224</sup> ArcelorMittal website, <http://www.arcelormittalna.com/facilities/Europe/Zenica>.

high, reaching the 44% of the working-age population<sup>225</sup>. Regarding the factory's pollution, a Cantonal Institute for Public Health report revealed alarming statistics on the state of health in the canton: as between 2002 and 2011, 20% of the causes of death was tumor; number of cancers patients grew from 892 in 2002 to 1888 in 2010. The big increase of illnesses is in the period after 2007, which coincides with the reactivation of factory's power plants that were closed during the 1992-1995 war (making possible, from 2008 on, a complete integrated cycle of steel production)<sup>226</sup>. In the same report, it is stressed how, clearly, the long exposure of the town over 60 years of pollution cannot be blamed only on the last arrived ownership. Yet, two points remain in the photography of the city: 1. ArcelorMittal took over the plant and increased its production/pollution; this has to be considered within the following: 2. the improvement of the health system that actually show today more than ever the consequences of pollution for the environment, so that it became *matter of fact*. In 2011, Cantonal Minister of Health Senka Balorda underlined the evidence that the first malignant disease in Zenica's hospitals is lung cancers<sup>227</sup>.

Without entering in a strict analysis of Bosnian public law, it has to be stressed that the country, apart from the international human rights treaties<sup>228</sup>, has a developed legislation on welfare, even if under the responsibilities of the regional entities<sup>229</sup>. In the connection of the two points stated before, *presence and production* of the TNC and *evidence of the pollution*, with the existing international and national legal framework, lays the deterioration of rights: the possibility, even in a raised awareness, of the inertial situation. From a social perspective, an example of how a TNC can "pollute the environment and at the

<sup>225</sup> Elia, Christian, "Zenica, cuore d'acciaio della Bosnia".

<sup>226</sup> Hećimović, Esad, "Dying of Pollution in Zenica", *Osservatorio Balcani e Caucaso*, 5 November 2012.

<sup>227</sup> *Ibidem*.

<sup>228</sup> Bosnia and Herzegovina is signatory, between others, of the Council of Europe's European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the European Social Charter of 1961.

<sup>229</sup> The State of Bosnia and Herzegovina is formed by the Federation of Bosnia and Herzegovina – nearly 51% of the territory, Republika Srpska, nearly 49%, and the little Brčko District.

same time do not face appropriate punishment from the host state”<sup>230</sup>. Obviously, the crucial question is on the *fallacy of binariness*: we know this situation is against the Right to Health (and the right of an healthy condition of work); but we do not want to deprive the community of the Right to Work, without knowing the future of a further economic break down.

The violent choice, apart from the scientific data related to the relation production-pollutant-illness, lays in the dangerous sense of *inevitability* of the situation. In 2012, the president of the cantonal assembly of Zenica-Doboj, the social-democrat Sretko Radišić, questioned about the influence of steel pollution on public health, gave a clear definition of the problem: “We need to enforce rules and ensure employers’ compliance, but also to keep the 3000 jobs at the steel”<sup>231</sup>. The example confirms that the blackmailing of one right on another has no easy *balanced* solution. Moreover, the local understanding of pollution and environmental risks (*subjectivity* of the clash) could differ: as stated by Castán Broto in a study on environmental problems in Bosnia and Herzegovina, locals can be reluctant in identifying the problem, or better find themselves in “an expression of neighborhood or personal invulnerability in which the individual agrees to the presence of the danger but denies that it will happen to them”<sup>232</sup>; this is likely to happen in the relation between workers and non-workers of the polluting factory, gaining from it direct/indirect economic security.

The “need to enforce rules and ensure employers’ compliance” refers directly to the structural problem of *implementation*: entitlements are lost in the grey area of political intents. In this process, the role of globalization and the neo-liberal shift of economic theories undermines the concept of the State in the so called “race to the bottom”, where governments are likely to reduce social protection in favor of more

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<sup>230</sup> Smailović, Elmina, “Environmental Discrimination and Public Inclusion: the Case of Bosnia and Herzegovina”, in the published in the collection of European Regional Master’s Degree in Democracy and Human Rights in South-East Europe, *Master Theses Selected for Publishing - Academic Year 2008-2009*, Sarajevo: Center for Interdisciplinary Postgraduate Studies of the University of Sarajevo, 2010, p. 256.

<sup>231</sup> *Ibidem*.

<sup>232</sup> Castán Broto, Vanesa, “Employment, environmental pollution and working class life” in *Journal of Political Ecology*, vol. 20, 2013.

positive conditions for international investments<sup>233</sup>. Exactly the fear against which the newly born ILO was alerting the world, nearly a century ago: “Whereas the failure of any nation to adopt humane conditions of labour is an obstacle in the way other nations which desire to improve the conditions in their own countries”<sup>234</sup>. In what extent the international arena is then using legal tools at its disposal to overlook the path of economic and social rights? The Human Rights Council<sup>235</sup>, established by its very birth in 2006 the Universal Periodic Review: “a unique process which involves a review of the human rights records of all UN Member States” every four years and half<sup>236</sup>.

Started in 2008, all members (193) passed the first cycle on such analysis; supposedly, a fundamental connection between the theoretical rights on which the UN system is based and real practices on the ground<sup>237</sup>. The outcome of the review is in comments and recommendations directed to States (as well as the possible responses of the latter, trying in this way to start a dialogue between the parts); the “periodicity” of the mechanism has to be underlined, as expression of the will to add the static of the rights photography over a country, the dynamic of its evolution (i.e., long-term developments). For its website, “The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur”<sup>238</sup>. We can see for instance how this ambitious tool was applied to Bosnia and Herzegovina, that passed its first cycle of review

<sup>233</sup> Marks, Susan and Clapham, Andrew (edited by), *International Human Rights Lexicon*, Oxford: Oxford University Press, 2005, p. 70.

<sup>234</sup> Versailles Treaty - part XIII, Preamble of ILO Constitution, 1919.

<sup>235</sup> Created in 2006 within the United Nations system thanks to the General Assembly resolution 60/251.

<sup>236</sup> Source: UN Office of the High Commissioner for Human Rights website, <http://www.ohchr.org>.

<sup>237</sup> Even if State-driven process, it allows civil societies to enter into the mechanism, trying to involve non-governmental organization in the data collection process. NGOs are allowed to submit reports over the promotion, control or violation of human rights in their country.

<sup>238</sup> Source: UN Office of the High Commissioner for Human Rights website, <http://www.ohchr.org>.

in February 2010<sup>239</sup>.

The UPR mechanism is based, for each State, on the UN human rights treaties that it has signed and ratified. Bosnia has ratified the great majority of such documents: the two covenants forming the International Bill of Human Rights (ICCPR and ICESCR), and all the other “core” Conventions of the UN system<sup>240</sup>. The country signed also the two optional protocols to ICCPR, but yet has not accepted the optional protocol for the economic, social and cultural rights, that may be interesting in respect to our topic. But reading the comments and recommendations of the “international arena” we notice that the attention over the economic and social rights is extremely low: on 126 recommendations, only three may refer to the Right to Health, and all of them in a rather general perspective<sup>241</sup>. There is no consideration related to working health, nor to environmental threats. There are no recommendations regarding labour rights<sup>242</sup>.

Absence of attention on a violation does not mean absence of the violation itself: this is indeed a strong minus of UPR. Also reports submitted by different actors, NGOs (11 reports) and other institutions (between them, reports from the Council of Europe and from the Organization for the Cooperation and Security in Europe), tend to avoid economic and social rights (while, probably due to the recent history, cultural rights are still on focus); all these reports do not touch the Right to Health nor Right to Work. The perception of human rights

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<sup>239</sup> The Working Group on the Universal Periodic Review held its seventh session from 8 to 19 February 2010: the review of Bosnia and Herzegovina was held at its 16th meeting, on 17 February 2010. Source: <http://www.upr-info.org>.

<sup>240</sup> I do refer here to the nine core treaties: apart from ICCPR and ICESCR, Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of Child, Convention Against Torture, Convention on the Rights of Persons with Disabilities, Convention for the Protection of All Persons from Enforced Disappearance and also the Convention on the Rights of Migrant Workers and Their Families, that majority of European States has still not signed. See: Mehmedić, Amra, Midhat, Izmirlija and Madacki, Saša (edited by), *Human Rights in Bosnia and Herzegovina - 2011*, Sarajevo: Human Rights Center University of Sarajevo, 2012.

<sup>241</sup> Austria recommends to improve the accessibility of war victims to social services, while Brazil and Kazakhstan push for a better inclusion of women in the health care system.

<sup>242</sup> See: <http://www.upr-info.org>.

is evidently enclosed around the dominant image of liberty rights. Yet, clashes like the case of Zenica are not isolated: the industrial district of Tuzla, for instance, faced lately a dramatic crisis due to the closure of several factories. The drama was recently told in the documentary “Bosnia Rising”, whose focus was on the workers’ fight to save a detergent factory<sup>243</sup>.

The forthcoming second cycle of UPR for Bosnia and Herzegovina (October 2014) will tell us if the deepening of the economic crisis raised an international awareness over the rights in question. Yet, it looks rather unpredictable that international human rights law may affect the direction taken by ArcelorMittal and the Bosnian State in dealing with the “inevitable” situation: especially for the same crisis that, if on one hands may reveal more than other times the pressure of a social justice in Europe, on the other is legitimating the practical limits by reducing the economic capabilities of the States.

### 3.2 Taranto, Italy and Ilva

The second example of this work moves the attention few hundred kilometers more to the South, in Italian town of Taranto. The third-largest city of Southern part of the peninsula, with 200.154 inhabitants at 2011 census<sup>244</sup>, lays on a large gulf, facing the Ionian Sea. It is called the “town of the two seas” because of a big, 20 square kilometers lagoon (Little Sea) divided by the bay (Great Sea) only from the little island on which the old town is built<sup>245</sup>. Taranto and its province, that reach the figure of 580 thousand inhabitants<sup>246</sup>, have seen

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<sup>243</sup> The events of Tuzla, once hub of chemical and metallurgic factories, now dealing with unemployment at 30%, led to several demonstrations around the country in last February 2014, that in some case had violent outcomes, like the fire of the Cantonal Presidency’s building in Sarajevo on February 7th; it marked the largest public demonstration in the Country since the end of the war. The documentary “Bosnia Rising”, by Carlo Nero, was premiered at Sarajevo last 3 October 2014.

<sup>244</sup> Source: ISTAT (Italian Institute of Statistics), available online at: <http://dati.istat.it/>

<sup>245</sup> This peculiar geography allowed the Little Sea to be a secure, protected harbor for centuries.

<sup>246</sup> Source: ISTAT (Italian Institute of Statistics), available online at: <http://dati.istat.it/>

their development after the Second World War directly connected to the policy of strong industrialization of the 1950s and 1960s, by which the Italian State tried to overcome the marked inequality in richness between North and South.

In 1961 started the works to built the major steel factory in Italy, part of the Italsider group, a State-owned company. The creation of the site was possible with special investments from the *Cassa del Mezzogiorno*, the specific national fund created in 1950 to develop Southern Italy; Italsider started its production in Taranto in 1965<sup>247</sup>. In the 1970s, with the support of the European funds for regional development, a first tool from the European Economic Community to invest in peripheral areas, the factory enlarged further, becoming the biggest site of its kind in Europe (and it is still today)<sup>248</sup>. To have an idea of its dimensions (about the physical space occupied by the plant, it amounts to the impressive 15.450.000 square meters), in 2012, under its current owner, Ilva s.p.a. produced the 57% of the overall Italian steel hot rolled coils, 9% of the European ones<sup>249</sup>.

In the beginning of the 1980s, still under State control, the factory gave jobs, directly and indirectly, to around 43.000 workers<sup>250</sup>. After the crisis of the Italian sector (in ten years the number of workers fell in Taranto to 27.000 in 1991), subsequent privatization of the factory in 1995 to the actual ownership and drastic re-shaping of the production, nowadays direct/indirect jobs amounts to nearly 12.000 workers<sup>251</sup>. It is a significant loss of more than 30.000 jobs in 30 years; the figure of inhabitants is descriptive of the bell-shaped curve of the town's economic development: from 158 thousands in 1951 to 244 thousands in 1981. To this huge increase, followed in last thirty years a strong decline to the actual figure. A sign of the presence of a long-lasting crisis. This led to the actual 16,2% of unemployment (15.5% as its province, and 19.8% as its region, Puglia) and 29% of under-

<sup>247</sup> Fiorelli, Franco, *Programmazione regionale in Italia: metodi ed esperienze*, Milano: Giuffr , 1979.

<sup>248</sup> As striking example, within the factory there are over 120 km of railroads for the transport of raw and worked materials.

<sup>249</sup> Source: Ilva s.p.a. website, [www.gruppoilva.com](http://www.gruppoilva.com).

<sup>250</sup> Cerrito, Elio, "La politica dei poli di sviluppo nel Mezzogiorno. Elementi per una prospettiva storica", in *Quaderni di Storia Economica*, n. 3, Giugno 2010.

<sup>251</sup> *Ibidem*.

employment<sup>252</sup>.

Such gargantuan productive site has always had strong consequences on the surrounding environment. Moreover Ilva, owned by Gruppo Riva – a corporation working in several European countries<sup>253</sup>, improved in Taranto, from 2005 on, the production of the so called “hot blast” section, due to the closure of one of its plant in Genoa; the hot blast production was under accuse as a primary cause of pollution. It has to be noted in fact, that Genoa’s factory had to face strong environmental movement asking for its dismantling; it is not a case, then, that if Taranto was producing in 2002 the 30,2% of the industrial dioxins in the Country, this figure raised to 90,2% in the analyses of 2005<sup>254</sup>.

The attention on the environmental threat grew rapidly after the analyses conducted in 2008 by a local NGO, Peacelink, over pollutants in cheese from ewe’s milk. The presence of dioxins and other pollutants (mainly *polychlorinated biphenyls*, PCBs, highly toxic chemical compounds) gave room to a scandal in the press, also for the 72 similar analyses in previous years (2002-2007) by the local authorities that never showed signs of danger. Several demonstrations in the city started then a raising awareness campaign<sup>255</sup>. The district tribunal ordered the killing of polluted livestock (1300 sheep within 8 farms)<sup>256</sup>; two years later the Regional Government ordered the ban on breeding and grazing in a range of 20km from the factory (while farmers subject to a ban, unable to work, got a reimbursement from the State)<sup>257</sup>. We can see how

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<sup>252</sup> Source: ISTAT (Italian Institute of Statistics), available online at: <http://dati.istat.it>.

<sup>253</sup> The Riva group control productive plants, usually producing steel or derivatives, in Italy (other four apart from Taranto), Spain, Belgium, France and Germany. The property claims the third position in Europe (and eighteenth in the World) as steel producer. Source: <http://www.rivafe.com>.

<sup>254</sup> Sources: the European Pollutant Emission Register, through the website of the Italian register (INES) at: [http://www.eper.sinanet.apat.it/site/it-IT/Registro\\_INES/Ricerca\\_per\\_complesso\\_industriale/RicercaINES.html](http://www.eper.sinanet.apat.it/site/it-IT/Registro_INES/Ricerca_per_complesso_industriale/RicercaINES.html).

<sup>255</sup> For more info on the environmental struggles, <http://www.peacelink.it>.

<sup>256</sup> *Ibidem*.

<sup>257</sup> Regional order number 176, issued on 23 February 2010, about the prohibition of farming and grazing; available online (in Italian language) on the institutional website of the Puglia Region: <http://www.regione.puglia.it/index.php?page=burp&opz=getfile&file=13.htm&anno=xli&num=42>

the health/environmental threat the factory added directly the economic menace.

In following years the same NGO conducted new analyses; an alarming finding was the presence of dioxins in breast-milk and lead in human urines in 2012<sup>258</sup>. The environmental impact of the factory has led to the trial (ongoing since 2012) against the ownership, Gruppo Riva. The trial is based on the scientific expertise order by the Italian procurator, which has shown evidences, between others, for the relations of 174 deaths and 4536 hospital treatments due to the exceeding air pollution from steel production in the years 2004-2010<sup>259</sup>; the accusation (against 50 single individuals at different level of responsibilities and three societies: Ilva s.p.a., Riva Fire and Riva Forni Elettrici s.p.a.) is of environmental disaster, conspiracy and fraud against the State<sup>260</sup>. The fear of losing jobs connected with the trial on the ownership led even to a strike against the judiciary system in August 2012; the strike was organized by two main syndicates with the compliance of the same Ilva. On the other hand a grassroots movement under the name of “free and thinking citizens and workers” (*Comitato Cittadini e Lavoratori Liberi e Pensanti*), is working on the territory raising awareness over the need of a sustainable development, born in 2012 with the purpose to claim “both the health and the work!”<sup>261</sup>.

The town is facing all the contradictions of the clash of rights. Italian governments (four different ones between 2010, the rise of protests, and 2014<sup>262</sup>) tried to mediate between the judiciary and the popular unrest, giving priority to the production. An highly contested decree in December 2012, known as “Save-Ilva”, allowed the plant

<sup>258</sup> Source: <http://www.peacelink.it/ecologia/a/40487.html>.

<sup>259</sup> Conclusions of the epidemiological expertise, (in Italian) at [http://download.repubblica.it/pdf/repubblica-bari/2012/ilva\\_Relazione\\_conclusioni.pdf](http://download.repubblica.it/pdf/repubblica-bari/2012/ilva_Relazione_conclusioni.pdf).

<sup>260</sup> From the complete text presented by the public procurement of Italy in the Taranto tribunal on 28 October 2013, Proc. pen. n. 938/2010 R.G. notizie di reato/Mod. 21. The first names are of the Riva family, firstly Emilio Riva, born in 1926, the historical founder of the company; however, he died in last February 2014, before the end of the trial.

<sup>261</sup> Quote from the manifesto of the movement, in their website: <http://www.liberiepensanti.altervista.org>.

<sup>262</sup> The four governments were lead by Silvio Berlusconi (2008-2011), Mario Monti (November 2011 - April 2013), Enrico Letta (April 2013 - February 2014), and Matteo Renzi (February 2014 - ongoing).

to persist in the production, with a commissioner nominated by the State controlling the environmental obligations *within three years*<sup>263</sup>: the State in this way put a halt on the environmental request waiting a notable amount of time for an amelioration of the standards of production. Interesting enough for this work, the name of such law: “Urgent measures to *protect health, the environment and employment levels*, in the event of a crisis of industrial sites of *national strategic interest*”<sup>264</sup>. The executive power in this way prevented the judiciary, choosing directly and arbitrarily the balance of rights.

This dilemma take us again in the core of this study: shown that it is possible to have the enjoyment of two fundamental human rights in opposition, what is the reaction? Is there a hierarchy of rights (is one more fundamental than the other)? The answer depends from the actors involved. Taking for instance four actors: the State, the Corporation, the Worker, the Citizen (non-worker), we could have different reactions; as the market-oriented system push States and Corporation in the globalized deregulations, workers and citizens can only apply their demands to the effectiveness of democracy: a good example for Taranto is in the Italian Constitution of the Republic<sup>265</sup>, article 41: “*Private economic initiative is free. It cannot be conducted in conflict with public weal or in such manner that could damage safety, liberty, and human dignity. The law determines appropriate planning and controls so that public and private economic activity is given direction and coordinated to social objectives*”.

This could be a case in which the national jurisprudence grasps directly from the revolutions of the past: it may become the first two articles of the Jacobins’ 1793 Declaration part of a normative equation. Article 1. *The aim of society is the common welfare. Government is instituted in order to guarantee to man the enjoyment of his natural and imprescriptible rights*, “plus” Article 2. *These rights are equality, liberty, security, and property*. Such analyses of the Italian framework,

<sup>263</sup> Decreto legge n. 207, 3 December 2012, “*Disposizioni urgenti a tutela della salute, dell’ambiente e dei livelli d’occupazione, in caso di crisi di stabilimenti industriali di interesse strategico nazionale*”.

<sup>264</sup> Emphasis added.

<sup>265</sup> Approved in December 1947 and legal from 1 January 1948, it was built in a political equilibrium similar to the one establishing the Universal Declaration of Human Rights.

however, may be misleading: seven decades are passed from the editing of the Constitution, and the neo-liberal shift of the Western political mainstream has heavily touched the Country.

In recent times, although the specificity of Taranto would need a stronger approach for the implementation of the complete aspect of the Right to Work (that is thus including the *healthy conditions of work* and by consequence the obligation of *limiting the negative externalities* over the Right to Health), the general direction taken from Italy, contrariwise, is toward a deterioration of the labour normative framework. While the unemployment is growing fast, nearly doubling itself in six years – from 6,5% in 2008 to 12,5% in 2014 (Taranto in the same years passed from 9,6% to the actual 16,2%), and an even more dramatic situation in the field of young unemployment (15-24 years) with the rate passing from 20,7% to 44,2%, Italian governments are cutting not only welfare budget, but welfare legislation itself. An example of the “flexibility”, aim of recent policies, is in a 2014 decree allowing contracts up to three years in which the employers has not to formulate any justification for ending the same<sup>266</sup>.

Enlightening, the words of the Italian Labour Minister (November 2011 to April 2013), Elsa Fornero, in an interview published by the Wall Street Journal on June 2012: “People’s attitudes have to change. *Work isn’t a right*; it has to be earned, including through sacrifice”<sup>267</sup>. This strong antagonism facing the Right to Work (in grimace of the human rights doctrine) has found weak resistance in the national political arena, in which the neo-liberal shift seems to be definitely embraced even in the progressive side of the Parliament; as a peculiar example, the main social-democratic Party<sup>268</sup> in 2002 organized one of the most successful manifestation of political dissent, with a march of three million people in Rome, against the abrogation of a law preventing the arbitrary dismissal of dependents (the law remained in force); the same

<sup>266</sup> It is the case, for instance, of the law and the law n.78 of 16 May 2014 in which are allowed contracts “with non-justificative ends” up to three years.

<sup>267</sup> Article online at: <http://online.wsj.com/news/articles/SB10001424052702304870304577490803874875894>. The emphasis is mine.

<sup>268</sup> At the time called “Democratici di Sinistra”, from 2007 “Partito Democratico”; PD is the heir of the Italian Communist Party (1921-1991).

Party is now the proponent of the suppression of such law<sup>269</sup>.

Taranto and Italy became so a peculiar example of mentioned Duncan Gallie's themes: growing insecurity, growing peripheral workforce with lesser guarantees, a *race to the bottom* for working rights<sup>270</sup>. This, minding the position of the Country within the various international legal frameworks. But the democratic intervention in favor of "safety, liberty and human dignity", that Italy preliminary accepted and divulgate (Italy is one of the six founders of the European Economic Community, EU's ancestor) had poor effect in the practical protections of the Taranto community, in a crisis that started longtime before the contemporary critical contingency. The will of use the advanced Italian-European-International legal tools has always been an exercise of political power: the weakness of the social and economic rights' implementations narrows strongly the difference in the prevention of such clash of rights relating it to the pattern EU member / extra-EU. Interesting note: Italy signed the optional protocol to ESCR, but never ratified it.

Analyzing the UPR procedure for Italy, we find again a lack of attention on economic and social rights between the received 157 recommendations, but the only one dealing with Right to Health is exactly about Taranto: the recommendation number 89 from Israel, that asks the country to *Assess the situation and take measures to reduce pollution emissions from the Cerano coal power plant in Puglia and the Taranto metallurgical plant to ensure an adequate standard of*

<sup>269</sup> The debate over the suppression of the Article 18 of the Italian Statute of the Workers, the name with which is called the law n.300, 20 May 1970 "*Norme sulla tutela della libertà e dignità dei lavoratori, della libertà sindacale e dell'attività sindacale nei luoghi di lavoro e norme sul collocamento*" ("Regulations on the Protection of the freedom and dignity of workers, freedom of association and trade union activities in the workplace and regulations on employment"), is embedded in the promulgation of the "Jobs Act", draft in September 2014. The suppression of Article 18 was also the aim of an abrogative referendum called by right-wing parties in 2000: the referendum failed both on reaching the 50% quorum and in reaching the approval of the voters (30%). The debate was followed by the Italian press along Summer and Fall 2014. See the archive of Repubblica under tag "Articolo 18", [http://www.repubblica.it/argomenti/articolo\\_18?ref=HRHMT-2](http://www.repubblica.it/argomenti/articolo_18?ref=HRHMT-2).

<sup>270</sup> Gallie, Duncan (edited by), *Economic Crisis, Quality of Work and Social Integration*, Oxford: Oxford University Press, 2013.

*living and health in those areas*<sup>271</sup>. The call for action, diplomatically accepted, remained “not implemented” in the December 2012 mid-term assessment by the Working Council<sup>272</sup>. Yet, the case of Taranto shows, differently from Zenica, a more advanced stage of the environmental awareness: the call for accountability of the ownership in the national judiciary system. On the other hand the *fallacy of binariness* is menacing the economic security, both local and national (taking into account the strategic important of “the biggest steel factory in Europe”). Emphasis from a human rights perspective: the fact that Italy is a European Union member, thus subject to a more extensive human rights set of obligations, did not change the possibility for a community to face the violent choice.

### 3.3 Politics of forgetfulness

If we apply the legacy of the deterioration of the *quality of work* analyzed by Gallie, doubling its effects on social cohesion with the deterioration of the *quality of life* for the environmental threat, we have the contemporary *violent choice scenario*. Such a clash, however, is not to be considered a novelty: every context face the need of a balance of right in the range of given possibility. A reduction of the proper condition of jobs and an increase of the environmental risk may be a better option than deprive a community from the economic income; it is the reason behind the arbitrariness over the limits in pollutions in the industrial production that a law may provide. The proper balance to permit individuals as well as communities to enjoy *at least* “the right to the resources necessary for a minimally decent life”, in the mentioned quotation by Shareen Hertel and Lanse Minkler<sup>273</sup>.

Right to Work and Right to Health are both *universal* but that their interpretation and implementation is *special*: it is always contextual and thus allows significant variance. In this necessary

<sup>271</sup> Source: <http://www.upr-info.org/database/>.

<sup>272</sup> The complete report is online at [http://www.upr-info.org/sites/default/files/document/italy/session\\_07\\_-\\_february\\_2010/mia-italy.pdf](http://www.upr-info.org/sites/default/files/document/italy/session_07_-_february_2010/mia-italy.pdf).

<sup>273</sup> Quote from Hertel and Minkler’s introduction “Economic Rights” in the above mentioned Hertel, Shareen and Minkler, Lanse (edited by), *Economic Rights. Conceptual, Measurement, and Policy Issues*, Cambridge: Cambridge University Press, 2007, p. 1-2.

flexibility of obligations are hiding both a quality of the implementation as well as a possible expression of violence; the latter, in the lack of the Arendtian (popular) power in claiming the highest attainable standards of rights. However, this thesis wants to abstract from the paralysis of the “inevitability”, the governmental password over the conditions of (not only) Zenica and Taranto. Contrariwise, I try in these words to enlightening the common theoretical pattern behind the described situations. To dismantle such “inevitability” looking behind the causes of it. First of all the weakness of the economic and social rights lays in the weak perception of it; more than that, in the weaker (as a devolution of such rights’ perception) understanding of them.

If we analyze the language of economic and social human rights in a diachronic consideration, we find out that the late evolution of Western society stretched the meaning or, in some case, the same plausibility of it. The development of global capitalism put an “halt” to the Social Justice dream – that gave birth to the codification of these rights from the French Revolution to the United Nations Declaration. Full employment is, for instance, out of the possibilities of nowadays capitalism: the right was accepted while full employment seemed to be reachable; now is conversely accepted to be utopian: in a way that the teleological interpretation of the norm is changed. Utopian, as the right according healthy condition of life for every individual. The disengagement of States from the *meaning* of these words, but not from the treaties declaring them, may recall the risk O’Neill put on the table: that economic and social human rights norms may considered nothing but moral aspirations<sup>274</sup>.

The apparently lost battle between the *social justice laws* against the *market laws* would make unavoidable to hear echoes of the laughter of Jeremy Bentham: where are these men, born free and equal in rights?<sup>275</sup> It appears, so, that, in 2014 likewise 1953, “It is still too early to

<sup>274</sup> O’Neill, Onora, “The Dark Side of Human Rights”, *International Affairs (Royal Institute of International Affairs, 1944- )*, vol. 81, n. 2, 2005.

<sup>275</sup> Bentham, Jeremy “Anarchical Fallacies; being an examination of the Declaration of Rights issued during the French Revolution” in Bowring, John (edited by), *The works of Jeremy Bentham*, Edinburgh: William Tait, 1843, available online at <http://oll.libertyfund.org/titles/1921>.

tell” a proper judgment over the French Revolution legacy<sup>276</sup>. Yet, the ambiguity of these norms “written in the hearts of all man”, is not on their purpose, that has been clarified by the institutions (ILO, WHO) but nonetheless ignored by the signatory states, but because of the actual system that is not providing the fertile ground for their development. The violent choice of our clash, frozen by the subjugation to market laws, cannot thus permit the “minimally decent” life to the target communities.

Calling back into the discussion Slavoj Žižek, the effects of the French Revolution and the subsequent development of an idea of social justice, both in the radical version of the communist experiments and the moderate understanding of welfare-state policies (two “defeated ideologies”), were based on the notion that “humanity as a collective subject has the capacity to somehow limit impersonal and anonymous socio-historic development, to steer it in a desired direction”<sup>277</sup>. We may say, connecting this last chapter with the starting point of this thesis, to keep the well-being against the Fortune. As we captiously paraphrase the Greek introduction adapting the research for Good into the development of a society based on morally-based universal norm, the regression of economic and social rights may be seen as the dismissal of human protections against the unpredictability of Fortune.

So then the understanding of human rights, seen in an historical perspective of a symbol of modernity going back to the French revolutionary jurisprudence, is a contradictory memory, a blurred image: it is remembering the 1789 but forgetting the 1793, as Žižek described the liberal approach to the subject; the wish for a “decaffeinated revolution, a revolution which doesn’t smell of a revolution”<sup>278</sup>. It is curious how many similar patterns were already present within the decade started with the *Prise de la Bastille*: the first reaction (this word works finely here also in its acceptance as authoritarian response to the revolution) to the Jacobins’ egalitarianism arrived with the change of powers subsequent the decapitation of Robespierre; namely, with the

<sup>276</sup> I do refer here to the interview in Geneva of the Chinese Prime Minister Chou En Lai, that I mentioned in the Chapter 1.1.

<sup>277</sup> Žižek, Slavoj, *Vertue and Terror*, London: Verso, 2007, p. xxxviii.

<sup>278</sup> *Ibidem*, p. vii.

new Constitution of 1795<sup>279</sup>, Year III of the Republic, expression of the so called *Thermidorian Reaction*<sup>280</sup>.

Stammers underlines how this Constitution may be seen from the perspective of a rising bourgeoisie in order to dismantle the call for a continuous mobilization by the radical Jacobins and Sanculottes<sup>281</sup>. It is, in other words, a return to the less-power inclusive negative liberty rights, a ban on the revolutionary efforts to insert social justice as purpose of the normative framework. If the parallelism between 1789 and 1793 as clash *in nuce* of the separation of the International Bill of Human Rights works out, this politics of forgetfulness that pervades the mainstream neo-liberal approach onto the international law may be seen as the subsequent *Thermidorian Reaction* to the human rights doctrine<sup>282</sup>. The lack of consideration over economic and social rights is there the concrete antagonism to its declared indivisibility from civil and political ones.

In other words, the clash over the understanding itself of the human rights doctrine – or the lost memory of their meaning – is seen here as first responsible over the more concrete clash on the enjoyment of rights that communities as Zenica and Taranto have to face. Such theoretical clash may recall Alain Badiou's insight over the critiques that Chairman Mao addressed to Stalin and his *veritable de-politicization of will*: “Stalin ‘wants only technology and cadres’ and only deals with the ‘knowledge of the laws’. He neither indicates ‘how to become the masters of these laws’, [...]. Stalin speaks only of the economy; he does not deal with politics. As Mao never tires to repeat, “without a communist movement, it is impossible to advance into communism”<sup>283</sup>. There is no need to be a fervent communist to apply such strategic thought to other philosophies: indeed, without a capillary and extended

<sup>279</sup> Complete text in English available online at <https://chnm.gmu.edu/revolution/d/450/>.

<sup>280</sup> The term refers to the parliamentary revolt that started on 9 Thermidore, Year II (name of the Revolutionary calendar for the 27 July 1794 of the Gregorian one), which resulted in the fall of Maximilien Robespierre and the end of the Terror regime.

<sup>281</sup> Stammers, Neil, *Human Rights and Social Movements*, New York: Pluto Press, 2009.

<sup>282</sup> However, the sole Terror this reaction may end, is the Nozick's fear of wealth redistribution policies.

<sup>283</sup> Badiou, Alain, *Logic of Worlds*, London: Continuum, 2009, p. 22.

sharing of the human rights ideology, the emancipatory feature of such rights may be lost.

One possibility, as introduced by Onora O’Neill, is in sharing human rights obligations over different agents than the States<sup>284</sup>; what of the possible obligations of communities and firms or even of the international society? It is indeed a way to extend the domain of duties over the implementation of rights. Still, we may find out the same power-balance problems of the State-institutional implementation in non-State actors. The struggle for responsabilization of powerful agents as transnational corporations may be a boomerang for the rights’ defenders, especially when such economic giants may threaten States over development investments: in a scenario as the one described by Gallie, over a race to the bottom to attract TNCs, a compulsory move to involve them in major welfare obligations seems more debatable than concrete; however, this argument exceed the range of action of this thesis.

Another interesting point, will be in tackling more the subjectivity of the claims, over the already mentioned balance between the abstraction of the rights and their factual demand from local populations. This may be interesting to discover national variations in the claims leading to local variation in the hierarchy of what comes first; we may find that certain communities hold a relatively little demand for environmental rights and health protecting policies in determined contexts; this, would lead to further questioning the general-moral approach on a new: what to do? Such path was very briefly started in this work with the mention of Castán Broto’s study on environmental problems in Bosnia and Herzegovina<sup>285</sup>; but that would take another research for empirical evidences on the two communities here under exam.

Clearly then, in Zenica as well as Taranto, the violent choice that turns around Right to Health and Right to Work cannot be solved only from a theoretical perspective. Yet, it is a problem of “institutionalization” of human rights, as pointed out by Neil Stammers;

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<sup>284</sup> O’Neill, Onora, “Rights, Obligations, Priorities”, in *Studies in Christian Ethics*, n. 23, 2010.

<sup>285</sup> Castán Broto, Vanesa, “Employment, environmental pollution and working class life” in *Journal of Political Ecology*, vol. 20, 2013.

they necessarily become “embedded in relations and structures of power”<sup>286</sup>. The author sustains that human rights doctrine – in a sort of answer to Costas Douzinas – has been often used by powerful actors to sustain exclusivity: in pursuit of their own interests. This, especially on liberty rights, becoming a matter of diplomacy “in the setting and ethos of traditional internal relations”<sup>287</sup>. Stammers arguments on a Jack Donnelly’s quote, “We must overcome the dangerous illusion [...] that the state can be a neutral instrument of technocratic management and an impartial arbiter of politically neutral rules of social order”<sup>288</sup>: how much should we critique the domain of law?

Our described clash or rights is a concrete example of such arguments: on one hand we cannot wish for an absolute, mathematical application of norms; on the other, we have to expect that, as for other societal interactions, the outcome is related to logic of powers. To restrain such logic to impress a structural violence over a system, is part of the human rights (broadening) duties. In this perspective we may see how the dismantle of the political aspect, as a further reading of the Badiou/Mao insight, over the economic one is indeed a deterioration of the counter-power essence of welfare rights – or better, its truthful empowerment using here Arendt’s terminology.

In this way the further institutionalization of human rights doctrine is reproducing traditional, vertical structures instead of changing them: the human rights doctrine is losing the memory of its starting point. So that, quoting again Stammers, “The term paradox also points to specific dimension of social processes imbricated in this subject”<sup>289</sup>: non-institutional activism demands for institutionalization of such rights; then, this process is metabolized by instituted powers. “No political ideology or political programme, perhaps with the exception of

<sup>286</sup> I redirect here to chapter 4, “The Paradox of Institutionalisation”, in Stammers, Neil, *Human Rights and Social Movements*, New York: Pluto Press, 2009, pp. 102-130.

<sup>287</sup> The quote is from Philip Allott, as reported by Stammers in the above mentioned text, at p. 105.

<sup>288</sup> Donnelly, Jack, *Universal Human Rights in Theory and Practice*, 2nd Edition, Ithaca: Cornell University Press, 2003, p. 33.

<sup>289</sup> I redirect here to chapter 4, “The Paradox of Institutionalisation”, in Stammers, Neil, *Human Rights and Social Movements*, New York: Pluto Press, 2009, p. 106.

the most utopian strands of anarchism, has ever proposed that humans can or should attempt to live without formally organized structures of social relations; [...] it looks as if we must learn to understand and live with the paradox of institutionalization<sup>290</sup>.

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<sup>290</sup> *Ibidem*, p. 109.

## CONCLUSIONS

The slogan of social justice that was screamed in the rampant years of the French Revolution, reached the XXI century in muffled echoes. Nowadays even more than in the 1950s, the reply of the Chinese Prime Minister, Chou En Lai, about a judgment over the time of Robespierre – “It is still too early to tell”<sup>291</sup> – finds a proper space. With a risk, indeed, of a second line: “We are trying to forget it”. This may be a proper, hermetic note, over this thesis. A touch of bitterness in the contrasted and difficult development of a dream for a just (a fair) society.

The first historical section showed how the Right to Work and the Right to Health share similar pattern in their evolution; they are precious products of a continuous dialogue of History with Philosophy: the French Revolution is a lighthouse to refer to, as a starting point of modernity. The common path in those two rights set from the beginning the *a-normality* of the clash: these rights are not supposed to be in opposition. On the other hand, they are part of a complete set of norms, and they cannot be fully enjoyed in an exclusive way. The weakness is thus in their nature, in the necessary vagueness of their formulation, in the lack of concrete obligations: on this note the fierce contemporary critique by Baroness O’Neill, as a paraphrase of Edmund Burke’s dismissal of the 1789. Contrariwise, the defenders of economic and social rights pointed out that a different, strong and precise formulation of obligations may have opposite results: as Scheinin underlines, the example of the disregarded Convention on the Rights of Migrant Workers, that has not been ratified by the majority of Western countries, is nearly a failure. The balance of obligations, rights and practicability has to be inclusive to maintain its universal purpose. Economic and social human rights are not “fundamental commandments” to be rigidly implemented, but more concretely, to be adapted to contexts.

The historical section, a part from the due critique over the nature of welfare rights, showed the evolution of the understanding of such rights. Particularly clear for the Right to Work, the concept has been lightened in the shift towards neo-liberal economy: the same norm that at the time of President Roosevelt (“necessitous men are not free

<sup>291</sup> Žižek, Slavoj, *Vertue and Terror*, London: Verso, 2007, p. vii.

men”) would mean the commitment toward a *job for everyone*, now is translated into the management of “acceptable” (a variable concept) quote of unemployment. The International Labour Organization and the World Health Organization have struggled to impose a coherent, shared interpretation of these rights, but the results are weak: namely, the definitions of “core” standards, a set of minimum requests to have the norms at least partially implemented.

To apply this controversial dream of social justice to the understanding of our clash of rights, was the subsequent purpose. If the first chapter served as a narration of the context, the second and third ones imply the definition of the problem, in theory and in practice. On a theoretical perspective, such a definition gave us the possibility to call the clash of right a *violent choice* over the community. Violent, as opposite to Hannah Arendt’s democratic power of the community; as inevitable and given, in the structural understanding of Johan Galtung; as invisible and systemic for Slavoj Žižek. Violent, this thesis stated, also for the consequences over the unarmed future generations. The connection between the Work/Health clash finds its counterpart in the Development/Environment one. The static of a present choice has consequences over the dynamic of the process.

The problem is *why* there is such a violent condition, and in what extent the answer lies in the grey zone of lack of possibilities for the State (the ultimate duty-holder of these rights)? As the thesis has shown, we cannot rely only on the lack of resources: it is a partial answer. Asbjørn Eide pointed out firstly at the current process of globalization; indeed, many authors agree on the “formidable obstacles” to the implementation of such rights, as the increasing inequality in incomes and the ascending of transnational corporations’ power in comparison to that of States. The roots of this “current globalization threat”, are in the dominant hardcore-market ideology. This work add to his answer the clear *deterioration* of rights in the very meaning of them: a diachronic analyses of the human rights language, for which they do not mean anymore what they meant.

We entered so in the reality-check of our thesis. What would be a bigger affront to the economic and social human rights’ doctrine, than the quoted words of the Italian Minister of Labour in 2012, “People’s attitude has to change. Work is not a right”? The strong, contemporary

antagonism to the ambitious norms is evident. In the case of Zenica, the drama of the war was followed by the drama of privatization, and the fall of more than 20 thousand jobs in the same plant; the big pressure of unemployment is threatening the environmental requests, that are becoming obvious in the passing of time. The range of awareness is higher in Taranto, where the biggest steel factory in Europe is under trial for environmental disaster: yet, while the surrounding territory is becoming sterile because of the pollution, the government is pushing on the necessity to produce, to not lose the economic income. Both communities are facing the contradiction of the clash of rights, both aiming to a double claim that the perceived *inevitability* make difficult to reach. Both have to face a future that is uncertain on the economic ground, but concrete in the long-term effects of present pollution.

From the point of view of the international human rights law, few difference may be seen over the tale of these two cities. If the UPR mechanism would have been a new ambitious instrument of the United Nations for monitoring and implementation of human rights, the weakness over the economic and social dimension is striking. A more interesting approach would be given by the adoption of the Optional Protocol to the ICESCR: but both countries have not ratified it yet. More guarantees may thus arrive from national, rather than international tool: but here comes another problem, the one of institutionalization, and its subsequent balance of powers.

It is in the field of making this special jurisprudence (a word so dear to Gilles Deleuze) part of the accepted working system of a State, that the weak memory about the emancipatory feature of human rights enters in action. Such situations recall the *forgetfulness and denial* of (respectively) slaves and tyrants in Robespierre's words. Indeed, in the very last part of this work, the title "politics of forgetfulness" marked the contemporary politics that avoids not the human rights doctrine, used on the other hand as well-known tool of Western diplomacy, but its economic and social field: it is recognizing the 1789 without the 1793. "Politicize the rights" is, in this way, the needed return to their origin. It is the *re-politicization of will*, paraphrasing Mao's critiques to Stalin's blindness. It is the struggle against the *Thermidorian Reaction* of the neo-liberal globalization. A social-based view – not accepting, for instance, the moderate "stepping back" (for the sake of *structural inevitability*)

on the conceptualization of economic and social rights. Furthermore, stressing the importance of the interdependence of the of human rights with the holistic perspective of sustainable and environmental rights. The provocative title, “Right to Work or Right to Health” is exactly pointing out the loss of this concept of interdependence that, as we showed, was present at the same birth of universal human rights ideals.

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## ANNEX I

### **Declaration of the Rights of Man and Citizen from the Constitution of Year I (1793)**

*The French people, convinced that forgetfulness and contempts of the natural rights of man are the sole causes of the miseries of the world, have resolved to set forth in a solemn declaration these sacred and inalienable rights, in order that all the citizens, being able to compare unceasingly the acts of the government with the aim of every social institution, may never allow themselves to be oppressed and debased by tyranny; and in order that the people may always have before their eyes the foundations of their liberty and their welfare, the magistrate the rule of his duties, the legislator the purpose of his commission.*

*In consequence, it proclaims in the presence of the supreme being the following declaration of the rights of man and citizen.*

1. The aim of society is the common welfare. Government is instituted in order to guarantee to man the enjoyment of his natural and imprescriptible rights.
2. These rights are equality, liberty, security, and property.
3. All men are equal by nature and before the law.
4. Law is the free and solemn expression of the general will; it is the same for all, whether it protects or punishes; it can command only what is just and useful to society; it can forbid only what is injurious to it.
5. All citizens are equally eligible to public employments. Free peoples know no other grounds for preference in their elections than virtue and talent.
6. Liberty is the power that belongs to man to do whatever is not injurious to the rights of others; it has nature for its principle, justice for its

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rule, law for its defense; its moral limit is in this maxim: Do not do to another that which you do not wish should be done to you.

7. The right to express one's thoughts and opinions by means of the press or in any other manner, the right to assemble peaceably, the free pursuit of religion, cannot be forbidden.

The necessity of enunciating these rights supposes either the presence or the fresh recollection of despotism.

8. Security consists in the protection afforded by society to each of its members for the preservation of his person, his rights, and his property.

9. The law ought to protect public and personal liberty against the oppression of those who govern.

10. No one ought to be accused, arrested, or detained except in the cases determined by law and according to the forms that it has prescribed. Any citizen summoned or seized by the authority of the law, ought to obey immediately; he makes himself guilty by resistance.

11. Any act done against man outside of the cases and without the forms that the law determines is arbitrary and tyrannical; the one against whom it may be intended to be executed by violence has the right to repel it by force.

12. Those who may incite, expedite, subscribe to, execute or cause to be executed arbitrary legal instruments are guilty and ought to be punished.

13. Every man being presumed innocent until he has been pronounced guilty, if it is thought indispensable to arrest him, all severity that may not be necessary to secure his person ought to be strictly repressed by law.

14. No one ought to be tried and punished except after having been heard or legally summoned, and except in virtue of a law promulgated prior to the offense. The law which would punish offenses committed

before it existed would be a tyranny: the retroactive effect given to the law would be a crime.

15. The law ought to impose only penalties that are strictly and obviously necessary: the punishments ought to be proportionate to the offense and useful to society.

16. The right of property is that which belongs to every citizen to enjoy, and to dispose at his pleasure of his goods, income, and of the fruits of his labor and his skill.

17. No kind of labor, tillage, or commerce can be forbidden to the skill of the citizens.

18. Every man can contract his services and his time, but he cannot sell himself nor be sold: his person is not an alienable property. The law knows of no such thing as the status of servant; there can exist only a contract for services and compensation between the man who works and the one who employs him.

19. No one can be deprived of the least portion of his property without his consent, unless a legally established public necessity requires it, and upon condition of a just and prior compensation.

20. No tax can be imposed except for the general advantage. All citizens have the right to participate in the establishment of taxes, to watch over the employment of them, and to cause an account of them to be rendered.

21. Public relief is a sacred debt. Society owes maintenance to unfortunate citizens, either procuring work for them or in providing the means of existence for those who are unable to labor.

22. Education is needed by all. Society ought to favor with all its power the advancement of the public reason and to put education at the door of every citizen.

23. The social guarantee consists in the action of all to secure to each the enjoyment and the maintenance of his rights: this guarantee rests upon the national sovereignty.

24. It cannot exist if the limits of public functions are not clearly determined by law and if the responsibility of all the functionaries is not secured.

25. The sovereignty resides in the people; it is one and indivisible, imprescriptible, and inalienable.

26. No portion of the people can exercise the power of the entire people, but each section of the sovereign, in assembly, ought to enjoy the right to express its will with entire freedom.

27. Let any person who may usurp the sovereignty be instantly put to death by free men.

28. A people has always the right to review, to reform, and to alter its constitution. One generation cannot subject to its law the future generations.

29. Each citizen has an equal right to participate in the formation of the law and in the selection of his mandatories or his agents.

30. Public functions are necessarily temporary; they cannot be considered as distinctions or rewards, but as duties.

31. The offenses of the representatives of the people and of its agents ought never to go unpunished. No one has the right to claim for himself more inviolability than other citizens.

32. The right to present petitions to the depositories of the public authority cannot in any case be forbidden, suspended, nor limited.

33. Resistance to oppression is the consequence of the other rights of man.

34. There is oppression against the social body when a single one of its members is oppressed: there is oppression against each member when the social body is oppressed.

35. When the government violates the rights of the people, insurrection is for the people and for each portion of the people the most sacred of rights and the most indispensable of duties.

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**ANNEX II****International Covenant on Economic, Social and Cultural Rights**

*Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966  
entry into force 3 January 1976, in accordance with article 27*

**PREAMBLE**

The States Parties to the present Covenant,  
Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,  
Recognizing that these rights derive from the inherent dignity of the human person,  
Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,  
Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,  
Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,  
Agree upon the following articles:

## **PART I**

### ***Article 1***

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## **PART II**

### ***Article 2***

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

***Article 3***

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

***Article 4***

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

***Article 5***

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

**PART III*****Article 6***

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and

productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

### ***Article 7***

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

### ***Article 8***

1. The States Parties to the present Covenant undertake to ensure:

- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
- (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

### ***Article 9***

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

### ***Article 10***

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

### ***Article 11***

1. The States Parties to the present Covenant recognize the right of ev-

everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

### ***Article 12***

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

### ***Article 13***

1. The States Parties to the present Covenant recognize the right of ev-

everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

***Article 14***

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

***Article 15***

1. The States Parties to the present Covenant recognize the right of everyone:

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

**PART IV*****Article 16***

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the

United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

### ***Article 17***

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

### ***Article 18***

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

### ***Article 19***

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted

by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

***Article 20***

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

***Article 21***

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

***Article 22***

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

***Article 23***

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

***Article 24***

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

***Article 25***

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

**PART V*****Article 26***

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

***Article 27***

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

### ***Article 28***

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

### ***Article 29***

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

### ***Article 30***

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 26;
- (b) The date of the entry into force of the present Covenant under article

27 and the date of the entry into force of any amendments under article 29.

***Article 31***

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.





EUROPEAN REGIONAL MASTER'S DEGREE IN  
DEMOCRACY  
AND HUMAN RIGHTS IN SOUTH EAST EUROPE

University of Sarajevo – University of Bologna

**CAN THE PAST BE PASSED? THE ROLE OF  
THEATER IN DEALING WITH THE PAST IN THE  
WESTERN BALKANS**

MASTER THESIS SUBMITTED IN PARTIAL FULFILMENT OF  
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## Introduction

Art has an interesting and important role in the processes of dealing with the past in a number of the post-conflict areas. In the region of the South East Europe, more specifically in the countries which emerged after the dissolution of Yugoslavia, the process of the post-conflict reconstruction and the so called democratization implied a lack of a structured, systematic approach to dealing with the past, and urged a number of non –state actors to “deal with the past” on their own. Some of them are artists. Art has a power to speak up in the public, through the different mediums, from painting to performance art, which gives it political implications. Theater has a very specific role in this regard, and the number of theater plays, in the region, documentary in their approach and socially engaged as they “deal with the past”, has a continuous increased in the last decade.

My interest in the relation between transitional justice process and performing arts, concretely theater, is provoked by the fact that in the last 5 years, in the region ( Bosnia and Herzegovina, Serbia, Croatia) there is a noticeable increase, as I already mentioned, in the number of theater performances that are documentary oriented and which have regional experiences from the past (90s) as the topic. What else is interesting is that these specific performances are very often made in collaboration between different actors from the region. Actors, directors, producers are working together on the subject of past experiences. On one side that seems to be a possibly revolutionary approach since the history about 1990s in each of the countries has very different, often, opposing interpretations and it is not very common to think about the ‘90s and to act towards re-questioning and elaborating the past through regional collaboration. One of the important features of these performances is that they insist on giving (back) subjectivity- a name, a face, a body, (body that trembles, sweats, speaks, etc.) to the victims hidden behind the “competing” numbers they are usually represented with.

Precisely because of this phenomenon of regional cooperation, research and focus of my thesis will go in this direction. Regional cooperation is observed in the terms of theater productions in Bosnia and Herzegovina and Serbia but actors involved in the productions are also from Croatia and Kosovo. What does this cooperation mean in the

terms of transitional justice and possibility of a debate on the scale of the region on the issues that are commonly discussed in the “every side did bad things”, “we are victims” or “let’s stop with the past and turn to the future” terms? It is possible to open the space for a multitude memories and creation of “shared memory space”<sup>1</sup> where past is acknowledged, understood and situated in the history, as according to Nicolas Moll, coordinator of the trans-European platform “Memory Lab”: “On the level of the society, the challenge concerning the traumatic war memories is not to suppress them, but to find them a place where they can find a certain appeasement which would allow to focus not only on the past but also on the future.”<sup>2</sup>

But why would it be important now, after 20 years, to talk about the past? What is left to discuss? There was a significant number of art works that had 1990s war atrocities in the focus, why this increase in the number of theater performances now? I also became interested in the topic of confronting the past atrocities and war crimes observing how victims are being instrumentalized in the deepening of the crisis and promotions of political ideas and aspirations of political oligarchies, on one side, and how experience of the ‘90s in the former Yugoslavia can be linked to atrocities that happened in the past in different areas of the world (Germany, Afghanistan, Argentina, Rwanda, etc.). This idea that past atrocities could be used in the future for the creation/justification of more atrocities and this vicious circle of seemingly never ending violence, made me take a stand and try to address this subjects through my own practice. Since my field of activity as well of great interest is arts, performing but as well visual arts, I found it natural to use this practical experience and try to understand what kind of role performing arts could have in the process of transitional justice.

My position in this thesis is strongly influenced by my personal experience as a performing artist. Through my artistic engagement I have experienced the effect that theater performances can have on opening of the space for public debate as well as the need of talking about and acknowledging the experiences of the 1990s in Bosnia and

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<sup>1</sup> Interview with Nicolas Moll, [http://www.sarajevotimes.com/self-criticism-one-crucial-factors-creating-constructive-dialogue-past/?fb\\_action\\_ids=10152275553968344&fb\\_action\\_types=og.likes](http://www.sarajevotimes.com/self-criticism-one-crucial-factors-creating-constructive-dialogue-past/?fb_action_ids=10152275553968344&fb_action_types=og.likes), accessed 3rd September 2014.

<sup>2</sup> Ibid.

Herzegovina (thereinafter BiH) and Serbia. Besides my experience in the field of theater and use of art in dealing with the past, I have worked within different fields that are using arts for the positive change in the society, contemporary dance and theater with persons with disabilities, war veterans and different marginalized groups.

There are two main topics which need to be introduced in order to understand later exploration of the regional cooperation in the field of theater in the region. First topic is related to what transitional justice process is, it's theoretical and conceptual framework while second topic that needs attention is political potentiality of theater, and it's possible relevance to the transitional justice process in the region. First chapter is addressing the concepts of transitional justice and it's relation to dealing with the past concept, main actors, responsibility and time-frame of the process as well as political potentiality of theater through the notions of public sphere and action (labor, work and action). Second chapter is elaborating the notions of public sphere in relation to temporal complexity, responsibility and legacy of the past in the region and how those notions are addressed in dealing with the past process within theater. The third chapter is situating theater plays from the region within the theory presented in the first two chapters, and analysis the role theater plays in the process of dealing with the past. Third chapter also distinguishes different approaches that theater uses, one mainly directed toward opening the debate on the responsibility and judgment, responsibility in terms of legal responsibility but also personal, ethical responsibilities for the past atrocities and wrongdoings. Second approach is oriented toward victims and witnesses, where theater is opening space for rising empathy and solidarity, performing personal stories from the point of a subject and not using victims and witnesses in objectified manner. Third approach is radically political, participatory approach where theater is used for political imagining and construction of new moral, political and social categories. Third chapter ends with main findings from interview analysis and explanation of concepts such as regional causal relations, shared memory space and theater as political action.

## Methodology

While conducting my research, I primarily relied on the interviews made with theater directors from Bosnia-Herzegovina, Serbia and Croatia who had worked in the region on the topics of the past (1990s). The interviews used in this thesis are conducted by me, or are, alongside the critic and articles, found in the media. Since the work of theater directors is strongly connected to the public, their statements about their plays or topics of the plays can be seen as political participation in the public sphere. Entry point for my research was facilitated by Heartefact Fund<sup>3</sup>, regional organization where I did my internship during the summer 2014. Heartefact Fund produced several theater plays that I analyze or was collaborating with directors who I interviewed. My primary sources are the interviews with theater directors where I tried to understand their position regarding the role of theater in dealing with the past and transitional justice process in BIH and Serbia. Interviews also gave me enough of space to explore in which way directors approach the subject of the 1990s in the region, the position of theater in the region and how much and if, present political discourses are influencing the creation processes. Another aspect of the interviews was oriented toward the regional cooperation and how do these directors see, define and operate within it, from artistic and political point of view. The concept of regional cooperation in theater opens the space for the exploration of the causal relations in the region as well as the relation past-present-future in the social and political terms.

My second entry point, are theater performances themselves and I propose analysis from a point of a creation process of the performances, in terms of actors involved, topics, place and time of creation. I believe it is important to give a certain descriptive frame on how are those theater performances/plays dealing with the topic of the past. In continuation with the previous I also provide some critiques and articles on theater

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<sup>3</sup> Heartefact Fund is committed to building an open and free societies through creative exchange on important social issues such as freedom of expression, sustainable regional cooperation and strengthening of critical consciousness and responsibility. It works as a platform for new practices of dealing with the past and is oriented toward articulating new and creative practices of responsible (artistic) engagement in the society. <http://heartefact.org/>

performances found in the public media in different parts of the region where those performances were shown. These articles might provide information on how the performances were accepted in the social and political context of the specific area. This is by no means provided for the comparison of different social and political contexts but as a frame in which possible role of theater in transitional justice process and regional cooperation is observed.

In total, I interviewed four theater directors from BiH, Croatia and Serbia, all with experience in working with the topics that are related to the 1990s war history of the region. As a framework of this thesis I used theater performances created in BiH and Serbia in the last five years that involve documentary approach about the transitional process, war period of '90s or topics related to the war period and political context. In the context of choosing to examine BiH and Serbia, my aim was neither to separate those two countries from the rest of the region, nor I think this topic cannot be explored in a wider context, but I examine BiH and Serbia taking into consideration historical legacy of the 1990s and successful examples of regional cooperation in the field of theater as well as dealing with the past.

## Literature review

In the first part of the thesis I examine the position of arts, in the wider social and political context, and its epistemological connection to politics based on, among other authors, Hannah Arendt, who is making a clear distinction between culture and art and position which art takes in relation to culture. She continues Aristotel's argument on two important elements that both art and politics have, *activity/action* and *public sphere* which are essential for my analysis. The reasons for creation and exploration of this parallel is better understanding what potential art, in relation to politics, has in the public. Following this discourse of performing arts and its potentiality in the public I am introducing the transitional justice theory, with which I am examining the role theater can have in the process of dealing with the past. In order to provide the frame in which this thesis will be positioned, a *language*

*game*<sup>4</sup>, Wittgenstein's notion, seems like "a good *game* to play", elucidating the concepts I am operating with. This chapter does so by working on the concepts of performing arts and transitional justice, determining the direction the argumentation will go and providing the operationalization for the arguments to follow.

To understand the role theater has in the transitional justice process and in which way it can be relevant to the society and causal relations in the region I rely on the literature that deals with different topics, in my opinion, of importance for understanding the thesis and direction I am taking. The literature used in the text can be roughly divided into political philosophy, mainly represented by Hannah Arendt, Jürgen Habermas, Immanuel Kant, Max Horkheimer, aesthetics, represented by Giorgio Agamben, Theodor Adorno, and the literature on the relation between the two mentioned fields, however, most of the credited authors were writing both about the political philosophy as well as about aesthetics, here I will add Jacques Rancière, Paolo Virno, Alan Badiou, Maurizio Passerin d'Entreves ,etc. Combination of the theory, philosophy, and practice developed a specific branch called

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<sup>4</sup> Language games is the notion which is, broadly said, a form of life, where words represent changing, dynamic notions that can not be generalized since it (language) is dependent on the understanding and particular use of the words. On the other side Wittgenstein is locating rule-governed character of language, where the question of what are rules and how are we following them arises in the form of: This was our paradox: no course of action could be determined by a rule, because every course of action can be made out to accord with the rule. The answer was: if everything can be made out to accord with the rule, then it can also be made out to conflict with it. And so there would be neither accord nor conflict here." Wittgenstein, Ludwig, *Philosophical Investigations*, 4th edition, edited and translated by Hacker and Joachim Schulte, Wiley-Blackwell, Oxford, 2009.

critical theory<sup>5</sup>. Transitional justice can be seen as an example of the combination of the theory in the practice, and as such will rely on the literature based on the critical theory, represented by mentioned authors, alongside with Ruti Teitel, Iavor Rangelov, Olivera Simic, et al. .

Transitional justice theory is situated in the field of liberal political philosophy<sup>6</sup>, following the individual capacity of a quest for her/his own understanding of a good life. However, in this thesis I am addressing individual activity and responsibility where an individual is a part of a collective, not in a capitalistic understanding where we are all alone in a pursue for a good life. Hannah Arendt, addressing the subject of politics, explains that the conception of politics is based on the idea of an active citizenship, that is, on the value and importance of political engagement and collective deliberation about

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<sup>5</sup> Critical theory seeks to combine theory or philosophical investigations with the practice found in the society, providing the practical use of the philosophy in order to free the society of the domination, and demand the emancipation of the human beings, as pointed out by Horkheimer: “to liberate human beings from the circumstances that enslave them.” This might seem as a utopian start to the definition and explanation of the theory but critical theory was articulated in the years after the WWII, in the period in which all moral and political categories needed to be re-established due to the crimes that shook and destroyed all traditional political, moral and ethical norms. Horkheimer, M., 1982. *Critical Theory*, Seabury Press, New York, p. 244.

<sup>6</sup> Liberalism accommodates differences by protecting each person’s capacity to pursue his own good in his own way to the extent that is compatible with the similar pursuits of others. Liberalism sees human beings as individuals in a pursue for their own happiness living in the communities which are presented as parallelisms of numerous individual pursuits, whose human rights and respect of those rights is a leading principle of coexistence. Even though Hannah Arendt, in her writings, supports the respect of human rights, she sees human beings as active and in common examination of issues important for the political communities they (human beings) create together. According to Maurizio Passerin d’Entrevès: Arendt did not conceive of politics as a means for the satisfaction of individual preferences, nor as a way to integrate individuals around a shared conception of the good. Bellamy, Richard, *Liberalism and Pluralism*, Routledge, London and New York, 1999; d’Entrevès, Maurizio Passerin, “Hannah Arendt”, *The Stanford Encyclopedia of Philosophy* (Summer 2014 Edition), Edward N. Zalta (ed.), <http://plato.stanford.edu/archives/sum2014/entries/arendt/>, accessed 25th of August 2014; Arendt, Hannah, *The Human Condition*, University of Chicago Press, Chicago, 1958.

all matters affecting the political community.<sup>7</sup> Political community is created through individual action in the public sphere, action in which individuals reveal themselves and imprint remembrance about their life stories, actions, in the joint creation of the history. The history serves as a root made of the remembrance of good, heroic deeds and actions as well as remembrance of the evil doings which serve as a reminder and a guide in the present and future. In order to become the base or a guide for a present and future actions, the history has to be understood and contemplated, a past evil doings need to be confronted and debated in the multitude of a public sphere, where they can be given a meaning, through revealing what has happened, whose responsibility it was/is and how a society will deal with it, with that meaning there is a possibility of remembrance, and consequently, a good life.

#### According to Hannah Arendt:

For my generation and people of my origin, the lesson began in 1933 and it ended not when just German Jews but the whole world had been given notice of monstrosities no one believed possible at the beginning. [...] At the time the horror itself, in its naked monstrosity, seemed not only to me but to many others to transcend all moral categories and to explode all standards of jurisdiction; it was something men could neither punish adequately nor forgive.<sup>8</sup>

In this historical point, when the Nuremberg trials<sup>9</sup> are taking place and the basis of transitional justice emerges, the need to re-elaborate the norms was the initial impulse of philosophers articulating the critical theory, to use the theory in the practice, to combine the philosophy and social science, according to James Bohman, to: provide the descriptive and normative bases for social inquiry aimed at the

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<sup>7</sup> d'Entreves, Maurizio Passerin, "Hannah Arendt", *The Stanford Encyclopedia of Philosophy* (Summer 2014 Edition), Edward N. Zalta (ed.), <http://plato.stanford.edu/archives/sum2014/entries/arendt/>, accessed 25th of August 2014.

<sup>8</sup> Arendt, Hannah, *Responsibility and Judgment*, edited and with an introduction by Jerome Kohn, Schocken books, New York, edition 2003, p. 23.

<sup>9</sup> For more on the Nuremberg trials and connection to transitional justice see: Bass, G., *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*, Princeton University Press, Princeton, 2002.

decreasing domination and increasing freedom in all their forms.”<sup>10</sup> A theory or philosophy is, according to Hannah Arendt, contemplation, and in order to examine certain theory, it needs to be transformed into action in the public sphere, where it can find its true merit.<sup>11</sup> In other words, past events, especially those that limited or abolished human freedom, physical and psychological integrity and dignity, such as war(s), torture, rape, murder, etc., need to be understood through the thought, contemplation, speech, that is proposed, through the action, in the public sphere.

Through the action of speech men are re-questioning and debating on the past events, assuring the possibility of remembrance to become a part of history and a guide to the future actions. According to Bohman :”In light of the practical goal of identifying and overcoming all the circumstances that limit human freedom, the explanatory goal could be furthered only through interdisciplinary research that includes psychological, cultural, and social dimensions, as well as institutional forms of domination.”<sup>12</sup> Here it must be added that that the research mentioned in his argument can be conducted only in the public sphere, created by multitude of individuals who through their individual life stories are imprinted in the universality of the history. Kant’s aesthetic judgment follows similar line. Particularity is observed and addressed, with the possibility to apply it, or articulate on the universal level, as possibility that the addressing and exploring the particular context can have universal implications. This is addressed in a *common sense* through *imagining* by the multitude in the public sphere.<sup>13</sup>

Multitude, people coming together for a particular cause, is explored by Hannah Arendt both in her theory of action as well as her theory of judgment, these theories assume the action done by the people

<sup>10</sup> Bohman, James, “Critical Theory”, *The Stanford Encyclopedia of Philosophy* (Spring 2013 Edition), Edward N. Zalta(ed.), <http://plato.stanford.edu/archives/spr2013/entries/critical-theory/>, accessed on 15th of September 2014.

<sup>11</sup> Arendt, Hannah, *The Human Condition*, University of Chicago Press, Chicago, 1958.

<sup>12</sup> Bohman, James, “Critical Theory”, *The Stanford Encyclopedia of Philosophy* (Spring 2013 Edition), Edward N. Zalta(ed.), <http://plato.stanford.edu/archives/spr2013/entries/critical-theory/>, accessed on 15th of September 2014.

<sup>13</sup> Kant, Immanuel, *The Critique of Judgment*, MacMillan &co, St.Martin’s Street, London, 1914.

in the public sphere, activity and public sphere are also connecting elements found in examination of politics as well as arts, performing arts in particular.

The mentioned theories are placed in the connection to transitional justice and theater and are elaborated throughout the text, providing the analysis of the role theater has in the transitional justice process but also tackling liberal and capitalistic practices.

## 1. Arts and transitional justice

Transitional justice is a broad concept which includes numerous approaches, mechanisms, actors, as well as, past experiences, critiques, etc., however, in this thesis it is not possible and certainly not necessary to elaborate all of them. This chapter offers the insight of what transitional justice assumes, how the process changes and opens to numerous of different actors and approaches which are relevant for the initiatives found in theater. In the first sub-chapter operationalization of transitional justice process is conducted, where concepts of time-frame, actors involved and accountability are elaborated in order to make ground for the argumentation to follow. Second sub-chapter is giving the answer on why and how arts, in this particular case, theater, is assumed to have a possible role in the discourse of the politics, including the transitional justice.

### 1.1 “Opening” transitional justice processes

Transitional justice, from the historical and philosophical aspect, is presented in this sub-chapter in order to establish what transitional justice process is and in which way I am using the concept in this thesis. From its formation in 1991 by Ruti Teitel<sup>14</sup>, the transitional justice term<sup>15</sup> has been used extensively in a wide range of possible meanings, from legal to social, and, often, in association or equalized with other terms and concepts, such as *dealing with the past*, *confronting the past*, *peacebuilding*, *reconciliation*, etc. The point of departure for the term was, according to Iavor Rangelov and Rudi Teitel: “...to account for the self-conscious construction of a distinctive conception of justice associated with periods of radical political change on the heels of past

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<sup>14</sup> Rangelov, Iavor and Teitel, Ruti.2011 “Global Civil Society and Transitional Justice”. In: Martin Albrow and Hakan Seckinelgin, eds. *Global Civil Society 2011: Globality and the Absence of Justice* (Basingstoke: Palgrave Macmillan), p.162.

<sup>15</sup> Though the term *transitional justice* was formulated in the 1990s the process and initiatives of addressing the past atrocities have been existent for far longer period of time, for further historical understanding of the transitional justice see: Elster, Jon, *Closing the books: transitional justice in historical perspective*, Cambridge University Press, Cambridge, 2004.

oppressive rule.”<sup>16</sup> Starting idea of transitional justice was to address the question of justice in the periods of transition, mainly through the state apparatus, as pointed out by Teitel: “...the foundational debates associated with transitional justice’s modern beginnings almost exclusively referred to state actors, institutions and purposes.”<sup>17</sup> The concept emerged, as mentioned by Peter D. Rush, as an answer to “...a set of practical dilemmas that beset the social and political transformations underway in South Africa, the countries of the Southern Cone, as well as in the Central and Eastern European states with the collapse of communism.”<sup>18</sup>

Transitional justice is one example of previously mentioned *language game*, where many authors define and understand the concept in numerous different variations.<sup>19</sup> Some variations I have already mentioned, here I will mention one more, found in UN Security Council report: “the full range of processes and mechanisms associated with a society’s attempts to come to terms with the legacy of large-scale abuses in order to ensure accountability, serve justice and achieve reconciliation.”<sup>20</sup> These measures include criminal prosecutions, truth commissions, public apologies, reparations programs, and various kinds of institutional reforms.<sup>21</sup> After the beginning of the conceptualization of the term the idea emerged that the concept is not inclusive enough and that it is possible to talk about the transitional justice in more global terms, including the periods not just of transition to democracy but also the periods of conflict, as explained by Rangelov and Teitel:

<sup>16</sup> Rangelov, Iavor and Teitel, Ruti.2011 “Global Civil Society and Transitional Justice”. In: Martin Albrow and Hakan Seckinelgin, eds. *Global Civil Society 2011: Globality and the Absence of Justice* (Basingstoke: Palgrave Macmillan), p.162-177.

<sup>17</sup> Teitel, Ruti G., *Transitional Justice*, New York: Oxford University Press, 2000.

<sup>18</sup> Rush D. Peter, *The arts of transitional justice, After Atrocity: Foreword to transition*, series editor: Olivera Simic, Springer series in transitional justice, Springer, New York, 2014, preface, v.

<sup>19</sup> For further elaboration of transitional justice see: Teitel, Ruti G., *Transitional Justice*, New York: Oxford University Press, 2000.,

<sup>20</sup> United Nation Security Council, 2004, *The rule of law and transitional justice in conflict and post-conflict societies*, report of a secretary general, <http://www.un.org/en/ruleoflaw/index/shtml> , accessed 15th of August 2014.

<sup>21</sup> ICTJ, <http://ictj.org/about/transitional-justice> , accessed on 10th of August 2014.

Since these early debates, the field has developed to include a broader array of actors, institutions, and purposes-beyond the state and its exercise of punitive power. As other actors began to recognize their aims and advanced alternative understandings of legitimacy, this inevitably shifted the terms of evolving debates about justice and broadened the potential bases for legitimacy. [...] the global phase of transitional justice is the move from exceptional transitional responses to what might be characterized as a normalized or entrenched justice seeking, now increasingly disassociated from the politics of transition and linked to periods of conflict, whether past or ongoing.<sup>22</sup>

Relation between the periods of (post)conflict and transitional justice imply widening of transitional justice to notion of peacebuilding<sup>23</sup>, where transitional justice is seen as a long-term process of establishing positive peace.<sup>24</sup> The process of inclusiveness continued through

<sup>22</sup> Rangelov, Iavor and Teitel, Ruti.2011 “Global Civil Society and Transitional Justice”. In: Martin Albrow and Hakan Seckinelgin, eds. *Global Civil Society 2011: Globality and the Absence of Justice* (Basingstoke: Palgrave Macmillan), p.162.

<sup>23</sup> Post- conflict peacebuilding was first defined by UN in 1992 as “action to identify and support structures which will tend to strengthen and solidify peace in order to avoid relapse into conflict.” U.N. Secretary-General, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping*: Rep. of the Secretary-General, ¶ 21, U.N. Doc.A/47/277-S/24111 (June 17, 1992), available at <http://daccessny.un.org/doc/UNDOC/GEN/N92/259/61/PDF/N9225961.pdf?OpenElement>, accessed on 25th of Septebmer 2014; for additional definitions of the concept see also: Michael Barnett et al., *Peacebuilding: What is in a Name?*, 13 *global governance* 35, 52, 2007; Paris, Roland, *At war’s end: building peace after nationalist conflict*, 2004.;Alan Bryden et al., *Shaping a Security-Governance Agenda in Post-Conflict Peacebuilding*, Geneva Ctr. for the Democratic Control of Armed Forces, Policy Paper No. 11, November 2005.

<sup>24</sup> Positive peace includes the absence of both direct violence, notion of negative peace, as well as indirect violence, including various manifestations of “structural violence” such as poverty, hunger, and other forms of social injustice. For further elaboration see: Galtung, Johan, *Violence, Peace, and Peace Research*, 6 *J. PEACE RES.* 167,1969.

the involvement of more actors, from civil society<sup>25</sup> to individual initiatives<sup>26</sup>, where transitional justice process became a concern of the whole society, whether oriented toward the addressing the past atrocities and establishment of positive peace or the way this process of addressing the atrocities, the transitional justice process, is being implemented.<sup>27</sup> Result of this “opening” of transitional justice is the merging of transitional justice concept to *dealing with the past*<sup>28</sup> concept where past atrocities are addressed alongside the present political and social implications of the process itself.

In the following text transitional justice term and dealing with the past term are used simultaneously, alluding the process of addressing the past atrocities and their political and social inheritance by all levels and structures of the society. Transitional justice is examined through *the actors and mechanisms of transitional justice, time-frame and dynamics* and *justice and responsibility*.

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<sup>25</sup> For more on the role of the civil society in the transitional justice process see: Zala Volčić and Olivera Simić, *Transitional justice and civil society in the Balkans, Localizing transitional justice: Civil society practices and initiatives in the Balkans*, series editor: Olivera Simic, Springer series in transitional justice, Springer, New York, 2013, p. 4-10.

<sup>26</sup> For examples of individual initiatives, particularly in the field of arts, see: *The arts of transitional justice, Artistic activism, public debate and temporal complexities: fighting for transitional justice in Serbia*, series editor: Olivera Simic, Springer series in transitional justice, Springer, New York, 2014

<sup>27</sup> Surfacing and becoming well represented and criticized topic in the public, as well as opening to wide variety of actors, mechanisms and approaches symbolize the fourth phase of transitional justice, for further elaboration on the fourth phase as well as the historical development of the transitional justice phases see: Sharp, Dustin N., *Interrogating the Peripheries: The Preoccupations of Fourth Generation Transitional Justice*, *Harvard Human Rights Journal*; Vol. 26 Issue 1, 2013, p. 149.

<sup>28</sup> *Dealing with the Past (DwP)* is used as a technical term throughout this paper to connote a wide range of activities to address past human rights abuses of a serious nature and, in some cases, also root causes of conflict, as explained below. It is used in preference to the term “transitional justice”, because transitional justice is often too narrowly identified with juridical mechanisms and because DwP is a long-term process and not only limited to a transitional period. *Dealing with the past* is based on the principles against impunity: The Right to know, The Right to justice, The Right to reparation and The Guarantee of non-recurrence, for further elaboration see: Sisson, Jonathan, *Dealing with the past*, *Politorbis*, n°50, 3/2010, p. 11-16.

## Actors and mechanisms of transitional justice

In order to address the past atrocities, different mechanisms of transitional justice had been set, those mechanisms can be divided based on their connection to the judicial system, according to Zala Volčić and Olivera Simić: They (mechanisms) fall within two broad categories- judicial and non-judicial. The former focuses on the civil or criminal trials either at local, national or international level, while the latter encompasses activities such as truth and reconciliation commissions, vetting, amnesty, lustration processes, reparation, institutional reform, reconciliation, memorialization, security sector reforms, as well as demobilization, disarmament, and reintegration.<sup>29</sup>

Judicial approach implies trials on the international or national level, where individuals (ICC, ICTY, ICTR), or states (ICJ), are undergoing a judicial process to address gross human rights violations.<sup>30</sup> This approach is oriented toward the perpetrators and it is slow and painful process that needs to be enhanced with other approaches in order to achieve positive peace, as pointed out by Olivera Simić and Kathleen Daly: “a sustainable peace will often require more than trials, prosecution and punishment of a few high-placed officials; it will require more than state-sponsored or administrated forms of truth-telling and reparations.”<sup>31</sup> That is not to say that the judicial and state-sponsored

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<sup>29</sup> Zala Volčić and Olivera Simić, *Transitional justice and civil society in the Balkans, Localizing transitional justice: Civil society practices and initiatives in the Balkans*, series editor: Olivera Simic, Springer series in transitional justice, Springer, New York, 2013, p. 10-11.

<sup>30</sup> For further elaboration of ICC, ICTY, ICTR and judicial approach to transitional justice see: Clarke, Kamari Maxine, *Paths to international justice: Social and legal perspectives, Global justice, local controversies: The ICC and the sovereignty of victims*, edited by: Marie-Bénédicte Dembour and Tobias Kelly, Cambridge University Press, Cambridge, 2007; Teitel, Ruti, *Transitional Justice*, Oxford University Press, New York, 2000.; as for the Balkan region see: Rangelov, Iavor and Theros, Marika, *Building a future on peace and justice: Studies on transitional justice, conflict resolution and development, Transitional Justice in Bosnia and Herzegovina: coherence and complementarity of EU institutions and civil society*, edited by Kai Ambos, Judith Large and Marieke Wierda, Springer, Berlin, 2009.

<sup>31</sup> Simić, Olivera and Daly, Kathleen, *One pair of shoes, one life: Steps towards accountability for genocide in Srebrenica*, *International Journal of Transitional Justice* 5(3), 2011, p. 479.

mechanisms should not exist, but rather to expand the understandings of dealing with the past to more social, cultural and political discourse, which is often, as Eric Gordy argues, “uncertain and of which the outcome is difficult to predict.”<sup>32</sup>

Non-judicial approach involves different actors, from institutionalizes activities to individuals, addressing and demanding the accountability/responsibility of the perpetrators in the public sphere.<sup>33</sup> Nevertheless, non-judicial approach includes recognizing, acknowledging and memorializing personal experiences of victims and witnesses to the war period(s), as pointed out by Tamara Banjeglav: “transitional justice seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy.”<sup>34</sup> Since both the actors and mechanisms are in some way interdependent, and especially because *peace, reconciliation and democracy* affect the wider notion of a society, where by addressing some segments of the society, the whole society, and consequently democracy, is affected, as theory of intersubjectivism is proposing, and it is argued by James Bohman:

Democracy is now grounded in the intersubjective structure of communication exhibited in the special form of reflective and reciprocal communication and public testing of claims to validity. As communication about communication, discourse emerges in problematic situations in which new solutions must be sought in order

<sup>32</sup> Gordy, Eric, *Transitional Justice in the post-Yugoslav countries: political will and the support of a public to process of REKOM, Justice outside the courtroom; Engaging the society in the process of a acknowledgment of the past*, Forum for transitional justice, edited by Denisa Kostovicove, Humanitarian Law Center, Belgrade, 2012, p. 19.

<sup>33</sup> Transitional justice requires an existence of a public sphere, where different projects and initiatives-the ones, which converge around questions of judicial responses to human rights abuses, repressive regimes, and war, and the ones that focus on memorialization, public apology, and the work of forgiveness-connect the work of the state to a broader context of transforming social, economic, and political context. Zala Volčič and Olivera Simić, *Transitional justice and civil society in the Balkans, Localizing transitional justice: Civil society practices and initiatives in the Balkans*, series editor: Olivera Simic, Springer series in transitional justice, Springer, New York, 2013, p. 4-5.

<sup>34</sup> Banjeglav, Tamara, *Transitional justice and civil society in the Balkans, Dealing with the past in post-war Croatia: perceptions, problems, and perspectives*, series editor: Olivera Simic, Springer series in transitional justice, Springer, New York, 2013, p. 35.

to continue social cooperation.<sup>35</sup>

Transitional justice process proposes interdependence of a wide range of actors, from state-sponsored, to civil society and individuals who use existing mechanisms as well as new initiatives to address the past atrocities in order to secure democracy and achieve reconciliation.<sup>36</sup> Some of the mechanisms relevant for this thesis will be elaborated in the following chapters.

### **Time-frame and dynamics of transitional justice**

The need for the past atrocities to be addressed seems self-explanatory, paraphrasing Idith Zertal, it is never about the past itself but about the past events that are still hunting us as a society and are used and miss-used for political purposes. It is always about the present

<sup>35</sup> Bohman, James, "Critical Theory", *The Stanford Encyclopedia of Philosophy* (Spring 2013 Edition), Edward N. Zalta(ed.), <http://plato.stanford.edu/archives/spr2013/entries/critical-theory/>, accessed on 15th of September 2014., see also: Habermas, Jurgen, *The Structural Transformation of the Public Sphere, An Inquiry into a Category of Bourgeois Society*, The MIT Press, Cambridge, Massachusetts, 1991; Kant, Immanuel, *Kant's Critique of Judgement*, translated with Introduction and Notes by J.H. Bernard (2nd ed. revised) (London: Macmillan, 1914). 09/28/2014. <<http://oll.libertyfund.org/titles/1217>>, accessed on 15th of September 2014.

<sup>36</sup> Reconciliation has also been defined as a process "through which a society moves from a divided past to a shared future"; looking at the past in a way that allows people to see it in terms of "shared suffering and collective responsibility" may help to restore confidence. Bloomfield, David, Teresa Barnes and Luc Huyse, *Reconciliation after Violent Conflict. A Handbook*, International IDEA, Stockholm, 2003, p. 12-21. ). The need for reconciliation is emphasised in particular for societies that have gone through a process of ethno-political conflict, as these are marked by a loss of trust, inter-generational transmission of trauma and grievances, negative interdependence (as the assertion of each group's identity is seen as requiring the negation of the other group's identity) and polarisation. Given that antagonists live in close proximity, not addressing these legacies means risking that they will form the causes of new spirals of violence. Fisher, Martina, *Transitional Justice and Reconciliation: Theory and Practice*, Berghof Handbook for Conflict Transformation, 2011, <http://www.berghof-handbook.net/articles/section-v-recovering-from-war-post-conflict-regeneration-and-reconciliation/>, accessed on 5<sup>th</sup> of September 2014, p. 410-416.

and how legacy and past events are represented in the present.<sup>37</sup> One of the difficulties connected to the transitional justice process, if we talk about the concept as of a process, which I will elaborate further in the text, is the question whether it came to confrontation with the past or not, as explained by Eric Gordy: It can be argued that confronting the past is one diffuse concept that lacks clear definition and that is as much difficult to say whether confronting the past has occurred or not.<sup>38</sup>

As already mentioned and used throughout the text, transitional justice is a *process* which combines different measures, such as truth-telling, memorialization, criminal prosecutions, reparations programs, different measures of institutional reforms, directed toward the past atrocities in order to achieve reconciliation and democracy. The question about the possibility to confront or deal with the atrocities such as genocide, and if dealing with the past prevents the past from being (miss)used in the present, seems to be reformulated in the question if it is, and here I am not addressing judicial aspect of transitional justice, possible to confront large scale atrocities in frame of temporal definiteness. Dealing with the past is complex, long-term process of interdependent actors and actions. This view can be further supported by Arendt's explanation of what *action* is: "though it may proceed from nowhere, so to speak, acts into a medium where every action becomes a chain reaction and where every process is the cause of new processes ... the smallest act in the most limited circumstances bears the seed of the same boundlessness, because one deed, and sometimes one word, suffices to change every constellation"<sup>39</sup>. Transitional justice is a process which is neither linearly determined, nor it has a determined beginning or the end of the process. Many cases of past human rights abuses are addressed decades later, as explained by Rangelov and Teitel:

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<sup>37</sup> Zertal, Idith, *From Catastrophe to Power : Holocaust Survivors and the Emergence of Israel*, University of California Press, 1998.

<sup>38</sup> Gordy, Eric, *Transitional Justice in the post-Yugoslavy countries: political will and the support of a public to process of REKOM, Justice outside the courtroom; Engaging the society in the process of a acknowledgment of the past*, Forum for transitional justice, edited by Denisa Kostovicove, Humanitarian Law Center, Belgrade, 2012, p. 23.

<sup>39</sup> Arendt, Hannah, *The Human Condition*, University of Chicago Press, Chicago, 1958, p. 190.

Almost two decades after the first round of modern transitions following communist collapse and junta rule, recent years have seen an apparent revival and expansion of transitional justice throughout the world addressing earlier situations, such as the trial of former President Alberto Fujimori in Peru, and a revival of postponed justice-seeking efforts in a large number of countries, for example, Argentina's reopening of three-decades old crimes against humanity trials (Corte Suprema de Justicia 2005) and related debates underway in Brasil.<sup>40</sup>

Another example is from the former Yugoslav countries, where legacy of the WWII was used for the creation of ethnic cleavages and beginning of another period of war atrocities, as explained by Tamara Banjeglav: In former Yugoslavia, it has been often argued that failure to deal with the past after WWII left the people with a legacy of mistrust and with different and conflicting *truths* about past events, which were passed from one generation onto another. This legacy enabled political elites from different ethnic groups to use the power they had to change and influence the meaning of historical facts and to create different myths, producing, in this way, their own *truths* at the beginning of the war of 1990s.<sup>41</sup> This is further supported by David Bruce MacDonald's argument: "...these stories proved to be absolutely essential in creating and supporting war."<sup>42</sup> Thus, the finalization of the transitional justice process is, in the temporal and success terms, difficult to determine because it is not linear but multidimensional, interdependent process, involving different actors, mechanisms and periods of past that are being addressed.

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<sup>40</sup> Rangelov, Iavor and Teitel, Ruti.2011 "Global Civil Society and Transitional Justice". In: Martin Albrow and Hakan Seckinelgin, eds. Global Civil Society 2011: Globality and the Absence of Justice (Basingstoke: Palgrave Macmillan), p.163.

<sup>41</sup> Banjeglav, Tamara, Transitional justice and civil society in the Balkans, Dealing with the past in post-war Croatia: perceptions, problems, and perspectives, series editor: Olivera Simic, Springer series in transitional justice, Springer, New York, 2013, p. 34.

<sup>42</sup> Macdonald, D.B., Balkan Holocaust? Serbian and Croatian victim-centered propaganda and the war in Yugoslavia, Manchester, Manchester University Press, 2002, p. 214.

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## **Justice and responsibility in transitional justice**

As already mentioned in the UN Security Council report transitional justice is “a society’s attempt” to confront the abuses and atrocities connected to, either transition to democracy or conflicts that the society has undergone. One of the first things that are important to notice is that the society itself is not defined, as in the example of former Yugoslavia, previously mentioned, the inclusiveness of “the society” is possible to politically manipulate from the idea of the Yugoslav society to the society based on the ethnic identities within the Yugoslav society. Taking the same example, given by Tamara Banjevlav<sup>43</sup>, it is visible how the concept of society in transitional justice and the responsibility of that society, including political representatives, can be manipulated from different aspects, shifting the responsibility from wider social context to more narrow. When the past becomes the argument, of political oligarchies, for the creation of cleavages within the society it is a question of who is accountable/responsible? Are political elites responsible for the misuse of the past, or is a society responsible for not addressing those past atrocities or even further, is it an individual responsibility for the partaking in the creation of the ethnic cleavages which lead to new war crimes and wrongdoings?

Similar concerns arose from the debate on the role and responsibility of the international in comparison to local actors, according to Dustin N. Sharp: “Worries are expressed that transitional justice initiatives are “externally driven,” planned and implemented in a

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<sup>43</sup> Banjevlav, Tamara, *Transitional justice and civil society in the Balkans, Dealing with the past in post-war Croatia: perceptions, problems, and perspectives*, series editor: Olivera Simic, Springer series in transitional justice, Springer, New York, 2013, p. 34.

“top-down” manner with little consultation or input from “the locals.”<sup>44</sup> In the field of many actors, responsibility can be easily shifted from one side to another, especially due to the fact that the institutions and bureaucracy work on the base of substitutability of its officials.<sup>45</sup> Justice is usually closely linked to the notion of legal responsibility, individual legal responsibility<sup>46</sup>, where everybody is personal responsible for

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<sup>44</sup> One of the key international players in the field of transitional justice is the United Nations, which has a deep repository of transitional justice experience ranging from the ad hoc tribunals for the former Yugoslavia and Rwanda to hybrid tribunals in Sierra Leone, East Timor, and Cambodia. Today, the U.N. agency with the primary responsibility for transitional justice issues is the Office of the High Commissioner for Human Rights (OHCHR), which has supported transitional justice programs in some twenty countries. In a smaller way, the Bureau of Crisis Prevention and Recovery (BCPR) at the United Nations Development Programme also works to support transitional justice efforts by national actors by facilitating dialogue and developing capacities. Outside of the United Nations system, the International Criminal Court has quickly become perhaps the key actor, and has thus far served as a lightning rod for international-local tensions and controversies. Beyond these institutions, international NGOs, ranging from the International Center for Transitional Justice to Human Rights Watch, have been an important and influential voice on transitional justice policies and interventions. Sharp, Dustin N., *Interrogating the Peripheries: The Preoccupations of Fourth Generation Transitional Justice*, *Harvard Human Rights Journal*; Vol. 26 Issue 1, 2013, p. 161., see also: See Navanethem Pillay, United Nations High Comm’r for Human Rights, Message at the Special Summit of the African Union (Oct. 22, 2009), available at <http://www.unhchr.ch/>, accessed on 20th of September 2014.

<sup>45</sup> Each cog, that is, each person, must be expendable without changing the system, an assumption underlying all bureaucracies, all civil services, and all functions properly speaking. Arendt, Hannah, *Responsibility and Judgment*, edited and with an introduction by Jerome Kohn, Schocken Books, New York, 2003, p. 29.

<sup>46</sup> In a perfect society victims are entitled to full justice, namely trial of the perpetrator and, if found guilty, adequate punishment. That ideal is not possible in the aftermath of massive violence. There are simply too many victims and too many perpetrators. Even the most sophisticated criminal justice system would be completely overwhelmed. Richard J. Goldstone, Foreword to Martha Minow, *Between Vengeance and Forgiveness: Facing history after genocide and mass violence*, 1998), p. ix-xx.

wrongdoings as well as for telling the truth<sup>47</sup> of what had happened. Notions of collective responsibility, individual responsibility, responsibility of the system, as well as notions of moral, legal, political and ethical responsibility are addressed in the chapter to follow. Beside the legal responsibility, members of the post-conflict society have an ethical responsibility of creating/imagining new political, moral and social norms that the atrocities and wrongdoings had dissolved. This question has been addressed by Hannah Arendt, pointing out that the events of the Holocaust and the Gulag diminished the traditional social, moral as well as ethical values and categories and the task now is to reappropriate the past by imagining in the multitude of the public sphere the new values and categories that can shed some light on the present and future.<sup>48</sup>

Imagining of the new political, social and moral norms requires the public sphere and it relies on the experiences from the past and

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<sup>47</sup> Truth is the centerpiece of successful conflict transformation and of a lasting peace. Truth is important with respect to three dimensions: “What happened?”, “What made it possible?” and “Who did it?”. Many voices express many truths, but there is only one truth about human suffering: the facts about what people endured, an answer to what has happened. And this truth has priority in being acknowledged, no matter which identity group those who suffered belong to. This dimension of truth must not be an object of disputes. Of course there is a variety of interpretations about causes and roots of violence due to competing narratives and myths. This is the hardest task, as it raises questions about responsibility, and all parties, of course, see themselves as righteous ones. Instead of asking why, one should ask what made it possible? Mapping the ideology that lies behind the conflict is a crucial task (at least in the region of former Yugoslavia). Only when we become absolutely aware of what led us to large-scale violence, then we can know what we have to change. And building peace is about making change. The third dimension of truth is about who committed a crime. The main reason why this is important is to give a name to a perpetrator, so that the perpetrator is not ‘them’, the other group, but a number of individuals. Franović, Ivana, *Dealing with the Past in the Context of Ethnonationalism, The Case of Bosnia-Herzegovina, Croatia and Serbia*, Berghof Occasional Paper Nr. 29, Berlin, 2008. See also: Ignatieff, Michael, *Articles of Faith*, in *Index on Censorship* 5, 1996.

<sup>48</sup> Arendt, Hannah, *Men in Dark Times*, Harcourt Brace Jovanovich, New York, 1968, p.201. See also: *Hannah Arendt, The Recovery of the Public World*, Edited by Melvyn A. Hill, St. Martin’s Press, New York, 1979, p. 336.

hopes for the future.<sup>49</sup> Dealing with the past assumes confronting the past wrongdoings, and its manifestations in the present, through the actions of addressing the responsibilities on different levels of the society, as well as imagining the new political, social, moral and ethical categories in the public sphere.

## 1.2 Arts as politics

I have previously mentioned the political potentiality of the art, in particular, theater, and the role theater can play in the process of dealing with the past, explained in the previous sub-chapter, consequently, this sub-chapter will provide argumentation supporting the given statement. Arts and politics, their epistemological connection, division or overlapping nature has been a part of ongoing debate in which many philosophers, social scientists and artist had given their contribution. One of the reasons why this debate is very present and interesting is the fact that arts and politics share the same framework (public sphere), affecting (potentially) the ways public is formed and reformed. The debate is often trying to identify what role each of them (arts and politics) have in the society and how they are related to each other in order to discover how, and if, activity in one (arts or politics) can consequently contribute to the activity/result in the other. Arts and politics in modern world are usually seen as quite divided concepts, especially taking into consideration division of arts to arts as entertainment, a part of modern culture (mass culture)<sup>50</sup> where arts serve to fulfill leisure time and on the other side arts as critic to culture, political affiliations and/or social arrangements through mirroring and pointing out the situation in which society is/was at the certain time. Paraphrasing Hannah Arendt, culture is a product of society, or all expanding mass society, which shapes the culture into entertaining industry where main goal is to feed society's

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<sup>49</sup> Paraphrasing Kant, imagining is bringing together two faculties of thought, memory or the faculty of bringing to present the past and the faculty of divination, which is to bring future to the present. Since both of these faculties are based on association, imagining is building/creating present on merging past experiences and hopes for the future. Kant, *Anthropology from a Pragmatic Point of View*, translated by Mary J. Gregor, Nijhoff, The Hague, 1974.

<sup>50</sup> Arendt, Hannah, *Between Past and Future, The Crisis in Culture*, Penguin Books, Enlarged Edition, 1977, reprinted 1987, 198.

growing appetite for consumption, on the other hand we have artists who are: “the last individual left in a mass society”<sup>51</sup> whose role is extensively shaping to be critic of the culture and society.<sup>52</sup>

### **Arts as Action, Arts as Work, Homo Faber and Zoon Politikon<sup>53</sup>**

In a philosophical search of what constitutes human being, differentiating it from any other beings, Aristotle constructs a term *Zoon Politikon*, (political animal), ability to act in the presence of others. The fact that to act politically is dependent upon the presence of others explains the (miss)translation of Thomas Aquinas of *zoon politikon* as social animal, the translation which made understanding of political activity in the terms of social, whereas for the Greeks social beings is a term for the men’s need of a life within the company of other men, characteristics which Greeks were aware of but did not consider it to be exclusive characteristic of human beings but rather widespread, also, in the animal world.<sup>54</sup>

Politics is inseparable from individual activity and public itself (Greek *praxis*). Truly political activities, on the other hand, acting and speaking, cannot be performed at all without the presence of others, without the public, without the space constituted by the many.<sup>55</sup> What is important to note here is that politics assume activity (*praxis*) or how is later formulated - Action<sup>56</sup>, and that the only way this activity can be considered politics is if it is manifested in public, creating a public sphere. According to Paolo Virno:

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<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Aristotle, *Politics I-II, The Clarendon Aristotle Series*, translated and edited by Saunders, Trevor J., Oxford University Press, 1995.

<sup>54</sup> Arendt, Hannah, *The Human Condition*, Doubleday Anchor Book, New York, 1959, p. 24-25.

<sup>55</sup> Arendt, Hannah, *Between Past and Future, The Crisis in Culture*, Penguin Books, Enlarged Edition, 1977, reprinted 1987, 217.

<sup>56</sup> Virno, Paolo, *Radical Thought in Italy, Virtuosity and Revolution: The Political Theory of Exodus*, edited by Virno, Paolo and Hardt, Michael, Minnesota University Press, 1996, 1.

The realm of political action can be defined fairly precisely by two boundaries. The first relates to labor, to its taciturn and instrumental character, to that automatism that makes of it a repetitive and predictable process. The second relates to pure thought, to the solitary and nonappearing quality of its activity. Political activity is unlike labor in that its sphere of intervention is social relations, not natural materials. It modifies the context within which is inscribed, rather than creates new objects to fill it. Unlike intellectual reflection, action is public, geared to exteriorization, to contingency, to the hustle and bustle of the multitude.<sup>57</sup>

However, Virno sees labor and work as the same activities which are oriented toward the sustainability of the life. Here, a question of relation between labor and art arises since the production of the art works is, on one side the creation of artificial objects that serve the human beings separating them from the natural environment- *homo faber*, and on the other, oriented to the sustainability of the life itself through the professionalization of the art.<sup>58</sup> Nevertheless, theater assumes acting and speaking and it is considered Action because of its “unfinished” nature by which performances, according to Paolo Virno are “Activities that find their fulfillment in themselves, without being objectivized in a finished work existing outside and beyond them. Related immediately to the search for the *good life* activity that manifests itself as a *conduct*, and that does not have to pursue an extrinsic aim, coincides precisely with political praxis.”<sup>59</sup>

Since performing arts, theater and politics are based on the action, it is important to elaborate what action is and in which relation action and the process of dealing with the past stand. Action is elaborated in more details due to both the politics which it assumes and to the fact that action is an initiative of differentiation between human beings. This initiative is not driven by necessities (labor) nor utilities (work) but by expression of human distinctness, according to Hannah Arendt: If action

<sup>57</sup> Ibid, 2.

<sup>58</sup> For further elaboration of the relation between art and labor, work and action see: Arendt, Hannah, *Between Past and Future, The Crisis in Culture*, Penguin Books, Enlarged Edition, 1977, reprinted 198; Arendt, Hannah, *The Human Condition*, Doubleday Anchor Book, New York, 1959; Virno, Paolo, *Radical Thought in Italy, Virtuosity and Revolution: The Political Theory of Exodus*, edited by Virno, Paolo and Hardt, Michael, Minnesota University Press, 1996.

<sup>59</sup> Paolo Virno, *Radical Thought in Italy, Virtuosity and Revolution: The Political Theory of Exodus*, edited by Virno, Paolo and Hardt, Michael, Minnesota University Press, 1996, 191.3

as beginning corresponds to the fact of birth, if it is the actualization of the human condition of natality, then speech corresponds to the fact of distinctness and is the actualization of human condition of plurality, that is, of living as distinct and unique being among equals.<sup>60</sup>

Even though art, particularly performing art, is an expression of uniqueness of human being, it is still not, exclusively, conditioned by the artist's personality but rather, applying Kant's theory of aesthetic judgment, where the particular is possible to reflect the universal or in other words, possibility to take everybody else's point of view, by ability to communicate from particularity of single point of view to universality of multitude.<sup>61</sup> Action and speech are activities in which human beings reveal themselves, these activities are directed from one human being toward another (or many), concerned with the worldly things which surround them, worldly interests. These interests constitute, in the world's most literal significance, something which inter-est, which lies between people and therefore can relate and bind them together.

Activities of action and speech about the common interest reveals bond between human beings, and even though it seems that communication goes between and toward the other human being(s), it also contains revelation of a subject involved in the communication, according to the same author:

Since this disclosure of the subject is an integral part of all, even the most *objective* intercourse, the physical, worldly in-between along with its interests is overlaid and, as it were, overgrown with an altogether different in-between which consists of deeds and words and owes its origin exclusively to men's acting and speaking directly *to* one another. This second, subjective in-between is not tangible, since there are no tangible objects into which it could solidify; the process of acting and speaking can leave behind no such results and end products. But for all its intangibility, this in-between is no less real than the world of things we visibly have in common.<sup>62</sup>

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<sup>60</sup> Arendt, Hannah, *The Human Condition*, Doubleday Anchor Book, New York, 1959, p.

<sup>61</sup> Kant, Immanuel, *The Critique of Judgment*, MacMillan &co, St.Martin's Street, London, 1914.

<sup>62</sup> Arendt, Hannah, *The Human Condition*, Doubleday Anchor Book, New York, 1959.

Revelation of the subject and its relation, bond, to other human beings creates life stories, in which human beings are a part of “the web of human relationship”<sup>63</sup> whose agent is not the author of the story, as pointed out by Hannah Arendt:

Although everybody started his life by inserting himself into the human world through action and speech, nobody is the author or producer of his own life story. In other words, the stories, the results of action and speech, reveal an agent, but this agent is not an author or producer. Somebody began it and is its subject in the twofold sense of the word, namely, its actor and sufferer, but nobody is its author. That every individual life between birth and death can eventually be told as a story with beginning and end is the prepolitical and prehistorical condition of history, the great story without beginning and end. But the reason why each human life tells its story and why history ultimately becomes the storybook of mankind, with many actors and speakers and yet without any tangible authors, is that both are the outcome of action.<sup>64</sup>

This revelation through the action and speech of a human life stories is linked to theater, exposing at the same time ability to tell a story that is a constituting part of a history, “great story without beginning and end”, as well as to act politically, with initiative, in creation of causal relations that influence both the (hi)story of mankind, and bond between the human beings. According to Hannah Arendt:

However, the specific revelatory quality of action and speech, the implicit manifestation of the agent and speaker, is so indissolubly tied to the living flux of acting and speaking that it can be represented and *reified* only through a kind of repetition, the imitation or *mimēsis*, which according to Aristotle prevails in all arts but is actually appropriate only to the drama, whose very name (from the Greek verb *dran*, to act) indicates that play-acting actually is an imitation of acting. But the imitative element lies not only in the art of the actor, but, as Aristotle rightly claims, in the making or writing of the play, at least to the extent that the drama comes fully to life only when it is enacted in theater.

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<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

Only the actors and speakers who re-enact the story's plot can convey the full meaning, not so much of the story itself, but of the *heroes* who reveal themselves in it. In terms of Greek tragedy, this would mean that the story's direct — as well as its universal meaning is revealed by the chorus, which does not imitate and whose comments are pure poetry, whereas the intangible identities of the agents in the story, since they escape all generalization and therefore all reification, can be conveyed only through an imitation of their acting. This is also why theater is the political art par excellence; only there is the political sphere of human life transposed into art. By the same token, it is the only art whose sole subject is man in his relationship to others.<sup>65</sup>

Following this argumentation, action is assuming creation of the public sphere through the revelation of the subject in common addressing of the interest of a society. By creating the multitude of the subject's life stories, which is possible to in the space of theater, action assumes the remembrance.<sup>66</sup> Theater can provide the space/sphere needed for the remembrance through the methods that theater uses such as storytelling, documentary theater, and other methods that will be explained later in the text, Maurizio Passerin d'Entreves points out:

It was the poet's and the historian's political function to preserve the memory of past actions and to make them a source of instruction for the future. Homer was known as the "educator of Hellas," since he immortalized for all those who came after him the events of the Trojan War; Thucydides, in his *History of the Peloponnesian War*, told a story of human ambition and folly, of courage and unchecked greed, of ruthless struggle and inevitable defeat. In their work the past became a repository of instruction, of actions to be emulated as well as deeds to be shunned. Through their narratives the fragility and perishability of human action was overcome and made to outlast the lives of their doers and the limited life-span of their contemporaries.<sup>67</sup>

Arts and politics share two common elements: first is that they are both *public sphere* phenomena and secondly, both are, if we are

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<sup>65</sup> Ibid.

<sup>66</sup> Action, in so far as it engages in founding and preserving political bodies, creates the condition for remembrance, that is, for history. Arendt, Hannah, *The Human Condition*, Doubleday Anchor Book, New York, 1959, p. 10.

<sup>67</sup> d'Entreves, Maurizio Passerin, "Hannah Arendt", *The Stanford Encyclopedia of Philosophy* (Summer 2014 Edition), Edward N. Zalta (ed.), <http://plato.stanford.edu/archives/sum2014/entries/arendt/>, accessed 25th of August 2014.

observing arts on the level of artworks or performances, assuming *action*.

## 2. Role of theater in transitional justice process

Following the conceptualization from the previous chapter, of theater and transitional justice process, this chapter will provide argumentation on the kinds of roles that theater can have in dealing with the past. Most of the notions were already mentioned, in the frame of transitional justice, theater, or both, while in this chapter the notions will be closely examined and their casual relation determined. As noted above, notions that the argumentation is based on are temporal complexity<sup>68</sup>, aesthetics and ethics and public sphere, elaborating the questions of *when*, *where* and *what* kind of activities/actions theater and transitional justice assume.

### 2.1 Temporal complexity

Time in ancient Greece was defined as a circular motion, the present is a point in the time where something reaches its end, while something else faces its beginning, those that came before us and those that came after us are in the continuation of a circle.<sup>69</sup> In other words, the present is a point “which both joins and divides past and future.”<sup>70</sup> Applying this argumentation to transitional justice, present moment is a point in time where we deal with the past and begin our future. Christianity influenced the notion of circular time assuming the beginning and the end in a linear manner, where “everything always occurs only once.”<sup>71</sup> Combination of these two understandings of time creates certain merging where time becomes a circle which has a specific direction, it retained circularity and the idea that events can

<sup>68</sup> MecLeod, Laura, Dimitrijevic, Jovana and Rakocevic, Biliana, The arts of transitional justice, Artistic activism, public debate and temporal complexities: fighting for transitional justice in Serbia, series editor: Olivera Simic, Springer series in transitional justice, Springer, New York, 2014, p. 25.

<sup>69</sup> See Agamben, G., *Infancy and history, The destruction of experience*, Verso, London and New York, 1993, p. 92.

<sup>70</sup> Agamben, Giorgio, *Infancy and history, The destruction of experience*, Verso, London and New York, 1993, p. 93.

<sup>71</sup> Ibid.

reoccur in a different point of time and space<sup>72</sup>, with the addition of the historicity, and its linearity, understood as *Historia magistra vitae est* (*History is the teacher of the life*). Here is a point where transitional justice can be placed, assuming a joint point of a past and a future, time which reoccurs in its circularity and history that teaches the lessons on the “mistakes” of the passed events. According to Agamben: “Before and after, notions which were vague and empty for Antiquity-and which, for Christianity, had meaning only in the terms of the end of time-now become meaning in themselves and for themselves, and this is presented as truly historical.”<sup>73</sup>

Transitional justice is determined as a process, as argued in the previous chapter, a process which is not only about the past or the way society constructs a memory, but also about the present and manifestations of the past in the present, as well as it is about the future that specific society creates. This future is based on the present, and the way some question, such as past atrocities and war crimes, are addressed. Dependence between past, present and future is formulated in the concept of temporal complexity.<sup>74</sup> Following the argumentation of Laura MacLeod, Jovana Dimitrijevic and Biliana Rakocevic, public debate about transitional justice, in this case, in Serbia, is not possible to understand if a sense of temporal complexity is not involved. According to mentioned authors: “Arguably, debates about Serbia’s relationship to the past are not just about the past, or social memory of the past, but also the present and the future, how the past is recalled in the future and the future description of Serbia. That is, public debate about the transitional justice involves a sense of temporal complexity.”<sup>75</sup>

Temporal complexity introduced in this chapter unfolds in a form

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<sup>72</sup> See also Agamben, Giorgio, *Infancy and history, The destruction of experience, Critique of the instant and the continuum*, Verso, London and New York, 1993.

<sup>73</sup> Agamben, Giorgio, *Infancy and history, The destruction of experience*, Verso, London and New York, 1993, p. 96.

<sup>74</sup> MacLeod, Laura, Dimitrijevic, Jovana and Rakocevic, Biliana, *The arts of transitional justice, Artistic activism, public debate and temporal complexities: fighting for transitional justice in Serbia*, series editor: Olivera Simic, Springer series in transitional justice, Springer, New York, 2014, p. 30., see also: Agamben, Giorgio, *Infancy and history, The destruction of experience*, Verso, London and New York, 1993.

<sup>75</sup> Agamben, Giorgio, *Infancy and history, The destruction of experience*, Verso, London and New York, 1993, p. 96.

of critic toward existing transitional justice process in the countries of the former Yugoslavia, where the process continues to be linear, ignoring the present manifestations of the past in the shape of denial of the past doings alongside the denial of responsibility and involvement in the past atrocities. According to Iavor Rangelov: Domestically [societies of former Yugoslavia], transitional justice has been characterized by a lack of genuine reckoning with the past and the widespread denial of atrocities committed on “our” side of the conflict, as well as persistent ethnic bias in the administration of justice.<sup>76</sup>

The regional context with its historical and political background will be closely presented in the text to follow.

The process of transitional justice in the mentioned cases can not be linear since the past is, in the different form, still present, in other words, denial in the present becomes an important issue that needs to be addressed. While transitional justice is mainly seen as a legal process where cooperation with the ICTY (International Criminal Tribunal for former Yugoslavia) is seen as a part of a linear process of transitional justice, domestic politics of denial as an important, present element of dealing with the past, have been mainly and systematically ignored. As explained by Jelena Subotic, by taking Serbia as an example: Serbia has managed to get away with domestic politics as usual, limiting or blocking serious consideration of crimes of the past and individual and societal complicity in them.<sup>77</sup> Selective remembrance of the past alongside the denial of the past becomes an issues that legal, judicial aspect of transitional justice can hardly address, as pointed out by Elisabeth Porter: Choices about what is remembered and forgotten, and stories told truthfully and those covered over or suppressed have massive moral implications for individuals, groups, communities and politicians and influence the direction in which a country moves.<sup>78</sup>

As mentioned before, temporal complexity within the connection between theater and transitional justice has two, quite

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<sup>76</sup> Iavor Rangelov, *Eu conditionality and transitional justice in former Yugoslavia*, Croatian Yearbook on law and policy, Vol 2 (2006), accessed 13 May 2014, <http://www.cyelp.com/index.php/cyelp/article/view/24>, p. 368.

<sup>77</sup> Subotic, Jelena, *Hijacked justice: Dealing with the past in the Balkans*, Cornell University Press, Ithaca, 2009, p.39.

<sup>78</sup> Porter, Elisabeth, *Peacebuilding: Women in International Perspective*, Routledge, London, 2007, p.126.

similar, manifestations. One is use of theater to address the process of transitional justice, itself, by questioning the process and rupturing the linearity and one-dimensionality of the process, where concerns about the selectivity, of the remembrance and it's use to produce deeper cleavages in the society, become publicly addressed. According to Laura MacLeod, Jovana Dimitrijevic and Biliana Rakocevic: That is, the process of facing the past involves remembering the truth as a means of dealing with contemporary social problems.<sup>79</sup> Questioning the process of transitional justice in the public sphere, through the means of theater, which can assure visibility in the public sphere, is mainly a moral and ethical concern of addressing the collective and individual responsibility, which will be further elaborated in the following sub-chapter. One of the uses of theater is to rupture the linearity of transitional justice by questioning the process itself in the public sphere.

Theater can address the temporal complexity in yet another way. It performs the events from the past (or their present implications) on the stage, it embodies themes and stories in wide range of temporal complexity, from the ancient theater plays to the plays that imagine a future directions of persons, society or universe. Theater can simultaneously engage in the past, present and future directions of the time, according to Olivera Simic and Dijana Milosevic:

The time and space that an audience shares in theater is radically different from the time and space of the courts: in courts, people tend to assume predetermined adversarial positions with no possibility for meaningful interaction or communication. Time in the judicial context is linear; it is viewed as flowing sequentially and chronologically. In contrast, time is frequently not linear in theater, but multidirectional. Theater can look simultaneously to the past, the present and the future; it can travel through temporal frames vertically or horizontally. Theater can also predict certain future scenarios by drawing on intuition and the prophetic language of symbols and dreams; such tools and mechanisms are

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<sup>79</sup> MacLeod, Laura, Dimitrijevic, Jovana and Rakocevic, Biliana, *The arts of transitional justice, Artistic activism, public debate and temporal complexities: fighting for transitional justice in Serbia*, series editor: Olivera Simic, Springer series in transitional justice, Springer, New York, 2014, p. 30.

not recognized as legitimate in the courtroom.<sup>80</sup>

Following the already mentioned argumentation of Idith Zertal that it is never about the past itself but about the manifestations of the past in the present, in other words, it is the present that needs to be analyzed and addressed, with all the legacy of past events, war crimes, crimes against humanity and manifestations of that legacy in the political and social discourse. Analyzing the present, the contemporary time, time when past manifests itself in the most significant mode for the society, turns out to be challenging since we are living it at the same time when we are trying to analyze it, and every attempt to understand it changes it by the very fact that is being analyzed. The present seems to slip our grip, according to Giorgio Agamben: Our time, the present, is in fact not only most distant: it cannot in any way reach us. It is important to realize that the appointment that is in question in contemporariness does not simply take place in chronological time: it is something that, working within chronological time, urges, presses and transforms it.<sup>81</sup>

The past manifests itself in different ways since not all memories about the past, war circumstances or experiences connected to the past atrocities, are the same, which is self evident, creating different variations of the present. Art, according to Olivera Simic, has the role of uniting and opening the space to ensure remembering: "...it's (theater's) ability to inscribe the present with tangible marks and traces of the past and to ensure that remembering, both public and private, is understood as an ongoing and indispensable cultural process."<sup>82</sup> Theater plays the role of both critic of the transitional justice process disrupting it's linearity as well as the role of a collector of the multitude of memories through it's traces and embodiments in the present. Artists, through the artistic engagement, are not merely offering a critique of

<sup>80</sup> Olivera Simic and Dijana Milosevic, *Enacting Justice: The Role of Dah Theatre Company in Transitional Justice Processes in Serbia and Beyond*, The arts of transitional justice, Culture, Activism and Memory after Atrocities, editors Peter D. Rush and Olivera Simić, Springer, 2014, p.103.

<sup>81</sup> Agamben, Giorgio, *Nudities*, Stanford University Press, Stanford, 2011, p. 15.

<sup>82</sup> Olivera Simic and Dijana Milosevic, *Enacting Justice: The Role of Dah Theatre Company in Transitional Justice Processes in Serbia and Beyond*, The arts of transitional justice, Culture, Activism and Memory after Atrocities, editors Peter D. Rush and Olivera Simić, Springer, 2014, p.111.

the past or present but- critically-highlight how the past is remembered, emphasizing the connection of these memories and perceptions of the past to our hopes for the future. The implication here is that linear narratives of transitional justice limit the possibility of radical social change. Disrupting the linear temporality of the narrative, by revealing the politicized nature of transitional justice processes or by emphasizing hopes and dreams for the future, opens the possibility of escaping the (temporal) limitations of transitional justice.<sup>83</sup>

## 2.2 Public sphere

The role of public sphere is important for understanding arts, in this particular case, theater, as it is for understanding how time and history relate themselves to the notion of public sphere. The concept of public sphere was first introduced and elaborated in ancient Greece, where public sphere was the sphere of free involvement of men in the matters of mutual interest, while private sphere was oriented toward household economy and sustainability of the human species, it had its regulated hierarchy, and it was, in simple terms, the maintenance of the life.<sup>84</sup>

The real of public was characterized by the activity of equals among equals, with the aim of creating a Good Life, mentioned previously in the text, and enjoyment of the freedom that equality, and well as public, provides. Freedom, introduced here, is not the freedom in the sense that we understand it today nor it is the equality in the meaning it is promoted and defended by the liberal approach based on

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<sup>83</sup> MecLeod, Laura, Dimitrijevic, Jovana and Rakocevic, Biliana, *The arts of transitional justice, Artistic activism, public debate and temporal complexities: fighting for transitional justice in Serbia*, series editor: Olivera Simic, Springer series in transitional justice, Springer, New York, 2014, p. 38-39.

<sup>84</sup> For the notion of public sphere as understood in ancient Greece see: Arendt, Hannah, *The Human Condition*, Doubleday Anchor Book, New York, 1959, p. 23-72.; Habermas, Jurgen, *The Structural Transformation of the Public Sphere, An Inquiry into a Category of Bourgeois Society*, The MIT Press, Cambridge, Massachusetts, 1991, p. 89-102.

the protection of human rights.<sup>85</sup>

Private sphere was usually understood in the terms of household, which was oriented toward common need for the maintenance of life (labor and work). This orientation toward common needs created the notion of social, where people were gathering, aligning toward each other for the fulfillment of their life's needs. Social sphere was created as a sphere where men gather around the needs of the economy of the household, which is, according to Greek tradition, an element of the private sphere, however, the social sphere was accommodated in the sphere of the public/political sphere: "The emergence of society-the rise of housekeeping, its activities, problems, and organizational devices-from the shadowy interior of the household into the light of the public sphere, has not only blurred the old border line between private and political, it has also changed almost beyond recognition the meaning of the two terms and their significance for the life of the individual and the citizen."<sup>86</sup> Expanded social sphere assumes that the society functions as a household, with its own hierarchy and the head of a household, which in the modern times presents the government, situated in the public sphere. Social sphere is, same as household, oriented toward the economy, and, in the consumption era, is expressed with ever growing need for consumption and, following theory of capitalism, privatization of the public sphere.<sup>87</sup> One of the issues in this blurriness of private, social and public is the responsibility of the members of the society, in the hierarchical organization where the head of the social household becomes bureaucracy, or the rule of nobody, human beings are losing (or it is already lost) the ability to actively engage in the public realm as a free individuals. According to Hannah Arendt:

It is true that one-man, monarchical rule, which the ancients started to be the organizational device of the household, is transformed in society-as we know it today, when the peak of the social order is no longer

<sup>85</sup> Arendt, Hannah, *The Human Condition*, Doubleday Anchor Book, New York, 1959, p. 29. For the notion of freedom and equality in ancient Greece see: Bodéüs, R., 1993, *The Political Dimensions of Aristotle's Ethics*, trans. J.E. Garrett, Albany: State University of New York Press.

<sup>86</sup> Arendt, Hannah, *The Human Condition*, Doubleday Anchor Book, New York, 1959, p. 35.

<sup>87</sup> Ibid.

formed by the royal household of an absolute ruler-into a kind of no-man rule. But this nobody, the assumed one interest of society as a whole in economics as well as the assumed one opinion of polite society in the salon, does not cease to rule for having lost its personality. As we know from the most social form of government, that is from bureaucracy (the last stage of government in the nation-state just as one-man rule in benevolent despotism and absolutism was its first), the rule by nobody is not necessarily no-rule; it may indeed, under certain circumstances, even turn out to be one of its cruelest and most tyrannical versions. It is decisive that society, on all its levels, excludes the possibility of action, which formerly was excluded from the household.<sup>88</sup>

Expanding social sphere is reforming the public/political sphere into the economic pursuit for the evergrowing appetite of the society, where consumption, misrepresented as the form of expressing individuality and freedom, and the need to be seen, is expanding. Parallel, creation of a notion, which Habermas calls *public opinion*<sup>89</sup> happened: “There (Greek polis) the people were assembled in the square without interruption, the *place publique* became the foundation of the constitution. *Opinion publique* derived its attribute from it, that is, from the citizens assembled for acclamation and not from the rational-critical public debate of *public éclairé*.”<sup>90</sup> Following Habermas’ argument, people gather in the public, not as free individuals but as followers of certain trends or ideologies, where they express uniformed, common statement.<sup>91</sup> Public/political sphere, understood in ancient Greeks terms, is disappearing, politics and arts are seen as professions and the ways to ensure *life maintenance* or *a social status*, with limited political participation of free individuals.

Theater, with the same epistemological base-action and public

<sup>88</sup> Ibid.

<sup>89</sup> For the notion of public opinion and its influence to the transformation of the public sphere see: Haberman, Jürgen, *The structural transformation of the public sphere*, translated by Thomas Burger, The MIT Press, Cambridge, Massachusetts, 1991.

<sup>90</sup> Habermas, Jürgen, *The structural transformation of the public sphere*, translated by Thomas Burger, The MIT Press, Cambridge, Massachusetts, 1991, p. 99.

<sup>91</sup> For further elaboration see: Habermas, Jürgen, *The structural transformation of the public sphere*, translated by Thomas Burger, The MIT Press, Cambridge, Massachusetts, 1991; Arendt, Hannah, *The Human Condition*, Doubleday Anchor Book, New York, 1959;

sphere, has less and less space to maneuver and to act against the social and consumption sense of public sphere. In the space which still exists within the public, decreasing, sphere, artists are, as mentioned by Hannah Arendt: “the last individual left in a mass society.”<sup>92</sup> Transitional justice as a topic and the process, in Serbia, but similar if not the same can be said about Bosnia and Herzegovina, can be encouraged in the public sphere, in theater, by directly dealing with the past through the topics and issues present in social and political environment; or questioned and interrupted as a tool of the political game, ticket to Europe. According to Laura McLeod, Jovana Dimitrijevic and Biljana Rakocevic: “Transitional justice is our ticket to the EU, meaning that the concept is treated like merchandise, the danger of liberal visions of transitional justice is that the process becomes instrumental, and that does not deal with the deeper problems present in Serbian society. Art provides space for personal and public deliberation upon what transitional justice means, opening alternative ways of thinking about how to deal with past human rights abuses.”<sup>93</sup>

Instrumentalization of the action where action cease to be recognizable as such and shifts to the field of fabricated objects, tools, is strongly connected to the rise of liberalism and its economized nature, as James Bohman points out: “it is a reconstruction of the history of Western reason or of liberalism in which calculative, instrumental reason drives out the utopian content of universal solidarity.”<sup>94</sup> The fact that the public sphere is decreasing in its political sense, the history and what we have in common with other people “not only with those who live with us, but also with those who were here before and with those who will come after us”<sup>95</sup>, cannot survive, as pointed out by Hannah Arendt: “Through many ages before us, men entered the public

<sup>92</sup> Arendt, Hannah, *Between Past and Future, The Crisis in Culture*, Penguin Books, Enlarged Edition, 1977, reprinted 1987, p. 200.

<sup>93</sup> McLeod, Laura, Dimitrijevic, Jovana and Rakocevic, Biljana, *The arts of transitional justice, Artistic activism, public debate and temporal complexities: fighting for transitional justice in Serbia*, series editor: Olivera Simic, Springer series in transitional justice, Springer, New York, 2014, p. 30.

<sup>94</sup> Bohman, James, “Critical Theory”, *The Stanford Encyclopedia of Philosophy* (Spring 2013 Edition), Edward N. Zalta (ed.), <http://plato.stanford.edu/archives/spr2013/entries/critical-theory/>, accessed on 15th of September 2014.

<sup>95</sup> *Ibid*, p.50.

realm because they wanted something of their own or something they had in common with others to be more permanent than their earthly lives.”<sup>96</sup> This lack of understanding the interdependence of generations, with the loss of public sphere seems to be the formula where we are oriented toward the future, presumably economic progress, same as transitional justice is oriented toward the past, but without the public sphere where to assume the remembrance, the line between the past, present and future is broken. This is not to say that transitional justice, in its conceptualization, is impossible and that it is all together lost but the basis of the transitional justice has to be politically addressed in the remaining public sphere, not as a tool for political (political oligarchies, in this case of the former Yugoslav countries) ideologies but exactly against them.

However, for the remembrance to be transmitted and preserved, there is a need of an audience who would be a receptor and preserver of those narratives, according to Sheldon Wolin: “audience is a metaphor for the political community whose nature is to be a community of remembrance.”<sup>97</sup> In other words, theater is creating, through the audience, public sphere where dialog and exchange is encouraged. Olivera Simic and Dijana Milosevic offer an example found in *Dah Theater*<sup>98</sup> in Serbia: In this space [theater], audience members are free to express and share their feelings and thoughts about the performance and about the traumatic past. In such a physical space, there is no hierarchy, contradiction can coexist and different views can be heard and respected. It is space for open dialog, not for preaching to the converted.<sup>99</sup>

Public sphere, paraphrasing Hannah Arendt, is, only potentially, appearing whenever people gather together, but disappearing with

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<sup>96</sup> Ibid.

<sup>97</sup> Wolin, Sheldon, “Hannah Arendt and the Ordinance of Time,” *Social Research*, 1977, p. 97.

<sup>98</sup> Dah Theater was founded in 1991, beginning of the war and fall of former Yugoslavia, in Belgrade, Serbia. More info <http://www.dahteatarcentar.com/aboutus.html>, accessed on 10th of September 2014.

<sup>99</sup> Olivera Simic and Dijana Milosevic, *Enacting Justice: The Role of Dah Theatre Company in Transitional Justice Processes in Serbia and Beyond*, The arts of transitional justice, Culture, Activism and Memory after Atrocities, editors Peter D. Rush and Olivera Simić, Springer, 2014, p.103.

the disappearance of the body politic.<sup>100</sup> This sphere is created when people gather to discuss about the issues related to the public concern and disappear when the actions cease. Theater is a space where people gather, which is a first condition of creation of the public sphere, and where issues of the public interest can be/are addressed. The creation of the public sphere in theater is the precondition of theater itself, without the audience theater can not exist, and although the engagement of the members of the audience may differ, it always implies exchange between actors and spectators.

### 2.3 Aesthetics and Ethics, responsibility and critic in transitional justice and theater

As mentioned in the previous sub-chapter, the (reducing) *public sphere* is one of the elements determined in the first chapter that links performing arts and politics, in the sense of Zoon Politikon, while the other mentioned element is the *activity* in that public sphere. The conceptualization of the public sphere was needed in order to understand connection between the public sphere and the activity in it. When it comes to connection between politics, in this particular case, transitional justice, and theater, one concept, crucial for explanation of transitional justice process as well as its causal relation to theater, is elaborated in the text to follow. This sub-chapter, following the previous sub-chapters which were elaborating the questions of *when* and *where* transitional justice and theater interconnect, is elaborating *what* kind of concepts and *actions* link transitional justice and theater.

Transitional justice process seeks through its judicial aspect to determine the legal responsibility of the individuals involved in the atrocities and war crimes, example of which is ICTY, assuming that the conviction of those individuals and determining their responsibility in the crimes, would bring justice and reconciliation. Beside the fact that the judicial aspect is just one of the aspects of the transitional justice process, the concept of responsibility needs to be elaborated in order to understand the activity that the concept itself can set in motion. The term responsibility has different manifestations- legal responsibility,

<sup>100</sup> Arendt, Hannah, *The Human Condition*, Doubleday Anchor Book, New York, 1959, p. 199.

personal responsibility, collective, responsibility of the system (which is rarely questioned), which will be distinguished throughout the following text in order to determine what role theater can take/play in the transitional justice process.

One of the misinterpretations, when it comes to understanding the concept of responsibility and judgment, is that the ethical, theological and juridical aspects of the responsibility and judgment are not having their divided area of implications. According to Giorgio Agamben:

One of the most common mistakes - which is not only made in discussions of the camp - is the tacit confusion of ethical categories and juridical categories (or, worse, of juridical categories and theological categories, which gives rise to a new theodicy). Almost all the categories that we use in moral and religious judgments are in some way contaminated by law: guilt, responsibility, innocence, judgment, pardon. This makes it difficult to invoke them without particular caution. As jurists well know, law is not directed toward the establishment of justice. Nor is it directed toward the verification of truth. Law is solely directed toward judgment, independent of truth and justice.<sup>101</sup>

Following this argumentation, trials are directed toward the establishment of the verdict, that is not to say that the responsibility determined by the court is in its self false or that it has nothing to do with justice or truth, but that the trial is oriented toward the verdict itself not toward the justice or truth, since these concepts, can only be constantly questioned and re-formulated in the open debate within the public sphere (action), whereas the sole orientation toward the verdict assumes formulated goal, associated with the fabrication (work) which is not guided by the principle of the common interest of the multitude. As explained by Agamben:

It is possible that the trials (the twelve trials at Nuremberg, and the others that took place in and outside German borders, including those in Jerusalem in 1961 that ended with the hanging of Eichmann) are responsible for the conceptual confusion that, for decades, has made

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<sup>101</sup> Agamben, Giorgio, *Remnants of Auschwitz, The witness and the archive, Homo Sacer III*, translated by Daniel Heller-Roazen, Zone Book, New York, 2002, p. 8.

it impossible to think through Auschwitz. Despite the necessity of the trials and despite their evident insufficiency (they involved only a few hundred people), they helped to spread the idea that the problem of Auschwitz had been overcome. The judgments had been passed, the proofs of guilt definitively established. With the exception of occasional moments of lucidity, it has taken almost half a century to understand that law did not exhaust the problem, but rather that the very problem was so enormous as to call into question law itself, dragging it to its own ruin.<sup>102</sup>

Trials oriented toward the verdict as such, did not contribute to the understanding and dealing with what had happened in the WWII and how it affected the society on the large scale. One of the reasons why this is so is the interference of judicial categories with the theological ones, theodicy, where god is put on trial and not the responsibility of the men, who is, presumably, powerless and without the possibility to influence the sequence of events, following already presented course of argumentation provided by Agamben:

Creating the world, God gave it His own fate and became powerless. Thus, having emptied himself entirely in the world, he no longer has anything to offer us; it is now man's turn to give. [...] Not only does this theodicy tell us nothing about Auschwitz, either about its victims or executioners; it does not even manage to avoid a happy ending. Behind the powerlessness of God peeps the powerlessness of men, who continue to cry "May that never happen again!" when it is clear that "that" is, by now, everywhere.<sup>103</sup>

God is not responsible for the Auschwitz and nor are the men, there is not an individual or collective responsibility of those who are powerless.

An other reason can be found in the defense of Eichmann, where the responsibility is not seen as a responsibility of the individuals, since they are merely clerks, or cogs, as explained by Hannah Arendt, and their personal actions and responsibilities would be conducted just

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<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

as easy by anybody else, the responsibility lies in the system not in personal responsibility:

Recently, during the discussion of the Eichmann trial, these comparatively simple matters have been complicated through what I'll call the cog-theory. When we describe a political system- how it works, the relations between the various branches of government, how the huge bureaucratic machineries function of which the channels of command are part, and how the civilian and the military and the police forces are interconnected, to mention only outstanding characteristics- it is inevitable that we speak of all persons used by the system in terms of cogs and wheels that keep the administration running. Each cog, that is, each person, must be expendable without changing the system, an assumption underlying all bureaucracies, all civil services, and all functions properly speaking. [...] the question of the personal responsibility of those who run the whole affair is a marginal issue. Here it is indeed true what all the defendants in the postwar trials said to excuse themselves: if I had not done it, somebody else could and would have.<sup>104</sup>

Governments as well as society itself is composed of multitude of individuals, and their actions are to be seen as a individual judgment and responsibility. According to Max Weber: Subjectively understandable action exists *only* as the behavior of one or more individual human beings. States, for instance, are results of particular acts of individual persons. There is no such things as a collective personality that acts. These concepts of collective entities *do have* meanings in the minds of individual persons, and so actors orient their actions to them as if they existed or should exist.<sup>105</sup>

Following Weber's argument, individuals are responsible only for their own activities, without the difference if these activities were conducted in alignment with personal values and opinion or supported by the imagined or real collective opinion. In other words, individuals are responsible for their own actions without the difference if this actions were inspired by the (imagining of) other members of a society

<sup>104</sup> Arendt, Hannah, Responsibility and judgment, edited and with an introduction by Jerome Kohn, Schocken Books, New York, 2003, p. 29.

<sup>105</sup> Weber, Max, Economy and society, translated by Guenther Roth and Claus Wittich, California University Press, Oakland, 1978, p. 13.

that would support or join the same action.<sup>106</sup> During the post-war period in Germany, great number of people declared themselves guilty for the atrocities of the war, people who had done nothing wrong, some of which had not even been born at the time of the war, taking and declaring collective responsibility made possible that those who were responsible melt in the mass of *we are all responsible*, consequently nobody is, as explained by Hannah Arendt:

I have always regarded it as the quintessence of moral confusion that during the postwar period in Germany those who personally were completely innocent assured each other and the world at large how guilty they felt, while very few of the criminals were prepared to admit even the slightest remorse. The result of this spontaneous admission

<sup>106</sup> When talking about the nation, which can easily be translated to the nationalism, Benedict Anderson defines it as “imagined communities”, where individuals act from this belief that the others members of the community will act the same. Anderson, Benedict R., *Imagined communities: reflections on the origin and spread of nationalism*, revised and extended edition, Verso, London, 1991, p.224. This notion of imagined communities brings on the surface the notion of collective responsibility where individuals act accordingly to, what she or he imagines, that of the rest of community. Need for the sense of belonging, which is based on the notions of *us* and *others*, on one side and the imagining of the community where personal responsibility is decreased, on the other side, can give rise and support nationalism, racism, xenophobia, etc. that can result in frightening consequences. This argument is further supported by argument provided by Hannah Arendt: The greatest evildoers are those who don't remember because they have never given thought to the matter, and, without remembrance, nothing can hold them back. For human beings thinking of past matters means moving in the dimension of depth, striking roots and thus stabilizing themselves, so as not to be swept away by whatever may occur- the Zeitgeist or History or simple temptation. The greatest evil is not radical, it has no roots, and because it has no roots it has no limitations, it can go to unthinkable extremes and sweep over the whole world. Arendt, Hannah, *Responsibility and judgment*, edited and with an introduction by Jerome Kohn, Schocken Books, New York, 2003, p. 95. For further elaboration see also: Anderson, Benedict R., *Imagined communities: reflections on the origin and spread of nationalism*, revised and extended edition, Verso, London, 1991; Weber, Max, *Economy and society*, translated by Guenther Roth and Claus Wittich, California University Press, Oakland, 1978; Arendt, Hannah, *Responsibility and judgment*, edited and with an introduction by Jerome Kohn, Schocken Books, New York, 2003; Habermas, Jürgen, *The structural transformation of the public sphere*, translated by Thomas Burger, The MIT Press, Cambridge, Massachusetts, 1991.

of collective guilt was of course a very effective, though unintended, white-wash of those who had done something: as we have already seen, where all are guilty, no one is.<sup>107</sup>

Collective responsibility was addressed by Primo Levi, survivor of Auschwitz, and elaborated as: “[...] for their own guilt and mistakes everyone must be accountable individually because otherwise every trace of civilization would disappear from the face of the earth.” In one other occasion Levi addresses the collective responsibility of the Germans living in Germany during the WWII, as a responsibility expressed in the lack of courage to talk and witness what they could not see. Collective responsibility cannot exist since the collectives are made of individuals who can be held responsible for their actions, individually, as pointed out by Weber:

For still other cognitive purposes—for instance, juristic ones—or for practical ends, it may on the other hand be convenient or even indispensable to treat social collectivities, such as states, associations, business corporations, foundations, as if they were individual persons. Thus they may be treated as the subjects of rights and duties or as the performers of legally significant actions. But for the subjective interpretation of action in sociological work these collectivities must be treated as *solely* the resultants and modes of organization of the particular acts of individual persons, since these alone can be treated as agents in a course of subjectively understandable action.<sup>108</sup>

Personal responsibility can be elaborated through the concept of judgment<sup>109</sup> These two models of judgment are, as pointed out by Maurizio Passerin d’Entreves: “...the theme of judgment can be seen to fall into two more or less distinct phases, an early one in which

<sup>107</sup> Ibid, p. 28.

<sup>108</sup> Weber, Max, *Economy and society*, translated by Guenther Roth and Claus Wittich, California University Press, Oakland, 1978, p. 13.

<sup>109</sup> Judgment usually has a negative connotation, and the fear of passing the judgment and “naming names”, or calling for responsibility in the public sphere was present in the period after the WWII as well as it is in the present days. For further elaboration see: Arendt, Hannah, *Responsibility and judgment*, edited and with an introduction by Jerome Kohn, Schocken Books, New York, 2003, p. 191-277.

judgment is the faculty of political actors acting in the public realm, and a later one in which it is the privilege of non-participating spectators, primarily poets and historians, who seek to understand the meaning of the past and to reconcile us to what has happened.<sup>110</sup> First model is oriented toward the position of the actor, Zoon Politikon, who makes judgments about the world around him/her, in order to act in it, in the environment of a public sphere. This model has universality as a point of departure, where trying to understand judgment under the, in this case, Nazi rule, and ability to make a judgment about something particular in the cases when the universality has fallen apart in its moral and political reasoning. According to d'Entreves: "Once these rules have lost their validity we are no longer able to understand and to judge the particulars, that is, we are no longer able to subsume them under our accepted categories of moral and political thought."<sup>111</sup> This is not to say that the men lost their ability to judge but that the whole universality needs to be created through *imagining*, as pointed out by the same author following argumentation provided by Hannah Arendt: "the imagination enables us to create the distance which is necessary for an impartial judgment, while at the same time allowing for the closeness that makes understanding possible. In this way it makes possible our reconciliation with reality, even with the tragic reality of the twentieth century."<sup>112</sup> Theater can play significant role in this process, providing and creating the public sphere where this imagination can happen and where people can create new universality together. As argued by Jill Dolan: "Theater has very specific, material consequences, which, combined, produce a political intervention in an effort toward creating cultural change."<sup>113</sup> Continuation of this argument can be found in Olivera Simic and Dijana Milosevic writing: "This cultural change, in turn, comes from people taking responsibility and holding themselves accountable for the events

<sup>110</sup> d'Entreves, Maurizio Passerin, "Hannah Arendt", *The Stanford Encyclopedia of Philosophy* (Summer 2014 Edition), Edward N. Zalta (ed.), <http://plato.stanford.edu/archives/sum2014/entries/arendt/>, accessed 25th of August 2014.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Dolan, Jill, *The feminist spectator as critic*, University of Michigan Press, Michigan, 1991, p. 2.

around them.”<sup>114</sup>

Second model of judgment is the one from the position of spectator, not (directly) temporally connected with the periods of crisis, where judging is, “in order to cull meaning from the past.”<sup>115</sup>, ability to think from a particularity toward the universality, in other words, judging is ability to think representatively, from the particularity to anticipate everybody else’s point of view.<sup>116</sup>

What is crucial in Arendt’s reflection on Kant’s Critique of judgment is the fact that she understands the conceptualization of aesthetic judgment wider than Kant, taking into consideration not only aesthetic objects or particular values that can serve as an example for the creation of universality but to the past events as well, which could serve as an particular example that can have universal and future implications. According to d’Entreves:

To extend this notion to events in the past that carry a meaning beyond their sheer enactment, that is, to events that could be seen as exemplary for those who came after. It is here that aesthetic judgment joins with the retrospective judgment of the historian. The American and French Revolutions, the Paris Commune, the Russian soviets, the German revolutionary councils of 1918–19, the Hungarian uprising of 1956, all these events possess the kind of exemplary validity that makes them of universal significance, while still retaining their own specificity and uniqueness. Thus, by attending to these events in their particularity the historian or judging spectator is able to illuminate their universal import and thereby preserve them as “examples” for posterity.<sup>117</sup>

Theater can reconcile this seemingly different models of judgment, providing and creating the public sphere, theater can address the past events, using the same logic of particularity, presenting particular, singular experiences of the past events allowing the spectators to use

<sup>114</sup> Olivera Simic and Dijana Milosevic, *Enacting Justice: The Role of Dah Theatre Company in Transitional Justice Processes in Serbia and Beyond*, The arts of transitional justice, Culture, Activism and Memory after Atrocities, editors Peter D. Rush and Olivera Simić, Springer, 2014, p.102.

<sup>115</sup> d’Entreves, Maurizio Passerin, “Hannah Arendt”, *The Stanford Encyclopedia of Philosophy* (Summer 2014 Edition), Edward N. Zalta (ed.), <http://plato.stanford.edu/archives/sum2014/entries/arendt/>, accessed 25th of August 2014.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

this particularity in order to create wider, more universal elaboration of theater plays themselves. Following this argumentation, theater is used as a place, public sphere, where past is performed in order to be used for the future examples, to be learned from, but also as a place where actors and spectators/witnesses are both creating sense of empathy for others as well as providing the space for joint *imagining* of the (political, moral and ethical) values, as explained by Olivera Simic:

Dah (theater) creates a shared space and a specific way of communicating with its audience, where people with different ways of thinking can meet and explore the same issue from different perspectives. Dah does not use the language of political propaganda; it seeks to problematize issues and to explore contradictions within them. One of the most important functions theater can perform in the context of transitional justice is to inspire and encourage empathy and solidarity.<sup>118</sup>

One role theater has in dealing with the past is encouraging solidarity and empathy and imagining of the new political, moral and ethical categories, which had vanished due to war atrocities alongside the rise of totality introduced by liberalism.<sup>119</sup> However, theater also has another aspect/role, which is possible that arises from the sensation of solidarity and empathy, and that is preparation for the action, as pointed out by Susan Sontag: “ [...] compassion is an unstable emotion. It needs to be translated into action, or it withers.”<sup>120</sup> Arts, and in this case theater, becomes the merging point of aesthetic and critic (ethics), by which it was artificially separated, in order to address the legacy of past atrocities, according to Agamben: “ A critical or philosophical work that does not possess some sort of as essential relationship with creation is condemned to pointless idling, just as a work of art or poetry, that

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<sup>118</sup> Olivera Simic and Dijana Milosevic, *Enacting Justice: The Role of Dah Theatre Company in Transitional Justice Processes in Serbia and Beyond*, The arts of transitional justice, Culture, Activism and Memory after Atrocities, editors Peter D. Rush and Olivera Simić, Springer, 2014, p.102.

<sup>119</sup> Bohman, James, “Critical Theory”, *The Stanford Encyclopedia of Philosophy* (Spring 2013 Edition), Edward N. Zalta (ed.), <http://plato.stanford.edu/archives/spr2013/entries/critical-theory/>, accessed on 15th of September 2014.

<sup>120</sup> Sontag, Susan, *Regarding the pain of others*, Farrar, Straus and Giroux, New York, 2003, p.101.

does not contain within it a critical exigency is destined for oblivion.”<sup>121</sup> Past needs to be used for the transformation of the present political and social discourses, in order to disable the atrocities from the past to occur in the present or future.

## 2.4 Historical and political legacy of the Western Balkans

As I already mentioned few examples from the region and since this thesis is dealing with the area of Western Balkans, I am once more using the Wittgenstein’s notion in order to situate the topic in a specific space and time, as well as to provide the base for the empirical data found in the next chapter. The Western Balkans, or the region, how I address the geographical context throughout this thesis, is the area of former Yugoslav countries, more specifically Serbia, Croatia and Bosnia and Herzegovina. Reason why the rest of the countries that were a part of Yugoslavia are left out is mainly due to the scope and thematic focus of this thesis- theater plays produced in the cooperation between Serbia, BiH and Croatia.

Yugoslavia disintegrated during the first few years of 1990s through the violent war(s)/civil war/ aggression/ ethnic war/ conflict(s) which resulted in killings of more than 150 000<sup>122</sup> people and forced more than 4 million to flee their homes.<sup>123</sup> Rangelov explains: The war in BiH was marked by high level of violence, most of which was directed against civilians and took the form of “ethnic cleansing” through large-scale killings, torture, rape, expulsions, and extensive

<sup>121</sup> Agamben, Giorgio, *Nudities*, Stanford University Press, Stanford, 2011, p. 6.

<sup>122</sup> We still, 13 years after the ceasefire, do not know the exact number of casualties, as all “the sides” manipulate the figures. Most frequently cited estimates say that between 200 000 and 250 00 persons were killed, and a similar number held in detention camps, that 2.5 to 3 milion had to leave their homes. UNHCR figures from December 1995: 1 493 000 refugees, 1 300 000 internally displaced persons. Franovic, Ivana, *Dealing with the past in the context of ethnonationalism, The case of Bosnia-Herzegovina, Croatia and Serbia*, Berghof Occasional Paper, N° 29, Berghof Research Center, Berlin, 2008, p. 9.

<sup>123</sup> See Smith, Dan, *Atlas of war and peace*, Penguin, Earthscan, London and New York, 2003, p. 52.

property destruction.<sup>124</sup> As the war was mainly directed toward the civilians, it left large scale traumatic experiences that are still felt twenty years after the Dayton Peace Agreement.<sup>125</sup> According to Ivana Franovic, “The countries of former Yugoslavia still suffer from the legacy of the 1990s war(s). This legacy seriously affects the present and endangers the future of societies in Bosnia and Herzegovina, Serbia and Croatia.”<sup>126</sup>

It is *clear* why the war/ conflict/ aggression started, according to Ramet, *we all know* what had happened:

It was all because of Milosevic/ Tudjman/ “the Slovenes”/ communists/ organized crime/ Western states/ the Vatican-Comintern conspiracy, who planned it all by himself/ themselves in order to advance his own personal/ Serbian/ Slovenian/ American/ Vatican interests- your choice. Or again- it all happened because of local bad traditions/ economic problems/ structural issues/ system illegitimacy/ legitimate grievances/ illegitimate grievances/ the long shadow of the past. Or again- it really started in 1389/ 1463/ 1878/ 1918/ 1941/ 1986/ 1987/ 1989/ 1990/ 1991- your pick. Of course, we all know that both the break-up and the war were completely avoidable/ inevitable, don’t we? And best of all, we all know that the real villain(s) in this drama can only be Milosevic/ Tudjman/ “the Serbs”/ “the Slovenes”/ “the Croats”/ “the Muslims”/ Germany/ Balkan peoples generally/ the Great Powers, who must held (exclusively/ jointly) responsible for most of the killings, though some of us also know that all parties were equally guilty. Well, maybe we

<sup>124</sup> Rangelov, Iavor and Theros, Marika, *Maintaining the process in Bosnia and Herzegovina*, Working Group on Development and Peace (FriEnt)Bonn, 2007, p. 4.

<sup>125</sup> The Dayton Peace Agreement successfully ended the war but at the same time, established constitutional structures that further entrenched ethnic divides. Rather than seeking to confront and deal with conflict-related issues in the transition, the Dayton framework and the engagement of the international community have ignored the potential of transitional justice to contribute to peace-building and stabilisation. Rangelov, Iavor and Theros, Marika, *Maintaining the process in Bosnia and Herzegovina*, Working Group on Development and Peace (FriEnt)Bonn, 2007, p. 2-5.

<sup>126</sup> Franovic, Ivana, *Dealing with the past in the context of ethnonationalism, The case of Bosnia-Herzegovina, Croatia and Serbia*, Berghof Occasional Paper, N° 29, Berghof Research Center, Berlin, 2008, p. 6.

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all know what caused the Yugoslav troubles, but it seems that we “know” different things.<sup>127</sup>

These are the consequences of the lack of the public debate, where the past can be addressed and where the process of reckoning, situating and preserving the memory, as a reminder of the past wrongdoings and as a guide for the future, can occur. The multitude of the personal experiences need to be acknowledged in the presence of others who both help the healing process as well as create the public sphere where it is possible “to debate them openly, to face and integrate them.”<sup>128</sup> The past in the region is addressed, or to state it correctly-misused, on the national-istic(ethnic) level, continuing the line of denial and unwillingness to deal with the past.<sup>129</sup> This denial is used to secure the nationalistic tendencies and to deepen the ethnic cleavages, accordingly, there are two main questions that were not addressed throughout the legal system<sup>130</sup> of dealing with the past; first being the responsibility of the political elites, which were at the top of the political context before, during and after the war, for the obstruction of a process of dealing with the past. Secondly, the victims and witnesses of war wrongdoings are used as objects in a political game of the ruling elites, where their rights and rights to tell their own stories is manipulated through the nationalistic prism of *us* and *them* sides.

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<sup>127</sup> Ramet, Sabrina P., Explaining the Yugoslav meltdown, theories about the roots of the Yugoslav troubles, Nationalities Papers 32, 2004, p. 731.

<sup>128</sup> Hodzic, Edin, Truth and reconciliation Commission: The forum against the Myths, Puls Demokratije, 1st of September 2006, [www.pulsdemokratije.net](http://www.pulsdemokratije.net), accessed on 24th of September 2014.

<sup>129</sup> Iavor Rangelov, Eu conditionality and transitional justice in former Yugoslavia, Croatian Yearbook on law and policy, Vol 2 (2006), accessed 13 May 2014, <http://www.cyelp.com/index.php/cyelp/article/view/24>, p. 368.

<sup>130</sup> Often, only the indictment effectively ended the political career and their acceptability in the international sphere (Radovan Karadžić and Slobodan Milošević, respectively). Accordingly, it could be argued that legal proceeding against the political leadership responsible for the war do not necessarily have to be brought to justice in order to allow for reconciliation, as long as they cease to play any role in public life of the respective country and if there is a broad political consensus in the country to break with the previous policies. As this is not (yet) the case in the countries in question. Bieber, Florian, Reconciliation in former Yugoslavia: France and Germany as a model?

Historical and political legacy, as well as transitional justice process in the region, is used for the political manipulation of entrenched nationalistic rhetoric, where victims are objectified and used as a numbers for supporting and deepening the cleavages within the society, on one side, and on the other, transitional justice is used as a tool for EU integrations. One example of *a good practice* which I will mention, is the civil society, regional truth-telling, initiative which gathers different actors from the whole region called Coalition for RECOM.<sup>131</sup> This coalition recognizes the need for a regional cooperation in order to unblock manipulations, mentioned previously, from any national(istic) political ideologies and to create a base for dealing with the past on the regional level with acceptance of responsibilities and guilt in the public sphere. Recently the coalition is facing some problems due to the lack of political will of ruling parties and well as a lack of broader public support.<sup>132</sup>

The absence of public debate disables the process of dealing

<sup>131</sup> The Coalition for RECOM (ZaREKOM or “for” RECOM) originated from a partnership between three leading human rights organizations in the Balkans: the Information and Documentation Center (IDC) in BiH, the Humanitarian Law Center (HLC) in Serbia, and Dokumenta in Croatia. During internal discussions, the founders became interested in a new initiative to address ongoing concerns that the international and domestic courts were not contributing to an authoritative account of the war. These organizations began holding regional forums around the region, seeking input from survivors, scholars, youth, and others interested in new strategies to investigate, document, and publicize facts about the violence. Rowen, Jamie, *Transitional justice and civil society in the Balkans, Truth in the shadow of justice*, series editor: Olivera Simic, Springer series in transitional justice, Springer, New York, 2013, p. 126.

<sup>132</sup> However, even with a deadline extension from June 6 to June 26, the Coalition was unable to meet its target of gathering one million signatures on a petition asking the governments to create RECOM. At the end of the campaign, 122,473 signatures were collected in BiH and 542,660 in the whole region.<sup>9</sup> Several prominent BiH politicians expressed support for RECOM in theory, but it remains to be seen whether their statements will lead to any action. Rowen, Jamie, *Transitional justice and civil society in the Balkans, Truth in the shadow of justice*, series editor: Olivera Simic, Springer series in transitional justice, Springer, New York, 2013, p. 126-129. For more information on the coalition see: *International trials and reconciliation, Assessing the impact of international criminal tribunal for the former Yugoslavia*, Routledge, New York, 2014; Official web-site of the initiative, <http://www.zarekom.org/In-The-News.en.html>, accessed on 2nd of October 2014.

with the past, it creates the space for the reconstruction and misuse of the past, and manipulation of the society. Without the space where the multitude of memories can meet, exchange and debate there is little hope that the region will experience reconciliation and that the preservation of the remembrance will serve the future in its guidance potentiality.

### **3. Regional cooperation in the field of a (documentary) theater**

This chapter is based on the empirical data gained from the interviews with theater directors who worked, in the region, on the topics of the 1990s in the countries of former Yugoslavia. The findings are presented with the description of theater plays as a guide to the topics and issues addressed in them, and situated in the theoretical framework provided in the previous chapters. In the documentary theater, which, as mentioned, has a potential to create a public sphere, the role of the actors and spectators is shifting in a circular and progressive manner, due to the causal relationship between them. According to Hannah Arendt, “because the actor always moves among and in relation to other acting beings, he is never merely a “doer” but always and at the same time a sufferer. To do and to suffer are like opposite sides of the same coin, and the story that an act starts is composed of its consequent deeds and sufferings.”<sup>133</sup> This causal relationship between actor and spectator constitute a process where actions become initiatives of reactions, and furthermore, “where every reaction becomes a chain reaction and where every process is the cause of a new process.”<sup>134</sup> In this perpetual, boundless chain of actions, reactions and processes in the multitude of a public sphere, men are acting and giving meaning to the past wrongdoings, preserving the remembrance in order to serve as an guide to the present and future actions. In the following sub-chapters these actions are explored through theater plays created in the last five years in Serbia and Bosnia and Herzegovina.

In his *Aesthetic Theory*, Theodor Adorno identifies two significant elements of the work of art, one emphasizing the content (import) of the artwork and its inherent meaning (hermeneutical approach) while the

<sup>133</sup> Arendt, Hannah, *The Human Condition*, Doubleday Anchor Book, New York, 1959, p. 169.

<sup>134</sup> *Ibid.*

second is related to the social significance (empirical approach) and connection of the artwork and various social factors.<sup>135</sup> The inherent meaning of theater play is in fact its political action while the social significance can be seen as an effect of the political action. This chapter explores the content and the meaning of theater plays, with their potential significance for the society. The chapter argues that politics, even though emerging from the society, or rather, individual members of a society, is oriented toward the benefit of the society, good life of its members and not the other way around, a society serving to benefit of the political affiliations of the political oligarchies.

The first line analyzes theater plays that are dealing with the past in the manner of addressing (calling for) the personal responsibility of the political oligarchies in the region. The second line is about theater plays which witness the life stories of ordinary people during the 90s as well as the victims and survivors of the past atrocities. The third sub-chapter is analyzes a participatory theater play by Sanja Krsmanovic-Tasic *About the conscience- essay in movement about Dada Vujasinovic*, with the examples of Theater of Oppressed and Playback Theater.

### 3.1 Theater plays as a critic

As theater has a political potentiality, argued throughout the first two chapters, it is often used as a place/sphere where it is possible to act, to speak in the presence of others, about the issues (of inter-est) from the past that need to be debated and addressed in order to give the meaning and to preserve their “lessons” for the present and future. From this potential theater plays, that deal with topics about the past, are drawing their power, this ability to act (politically), to initiate the process, to pass a judgment and to refer to the topics in the public sphere.

After WWII, Rolf Horkhoch in his play *The Deputy*<sup>136</sup> questions the responsibility of the Pope Pius XII in WWII, during the Nazi

<sup>135</sup> For further elaboration of Adorno’s distinction between import and social significance see: *Aesthetic Theory* (1970), translated by R. Hullot-Kentor, University of Minnesota Press, Minneapolis, 1997; Rancière, Jacques, *The Politics of Aesthetics, The Distribution of the Sensible*, translated and edited by Gabriel Rockhill, Continuum, 2004.

<sup>136</sup> For further elaboration of Horkhoch’s *The Deputy* see: Arendt, Hannah, *Responsibility and judgment*, edited and with an introduction by Jerome Kohn, Schocken Books, New York, 2003, p. 214-227.

persecution, his personal responsibility as well as the responsibility for not sanctioning the members of the hierarchical chain of the church, who supported the persecution.<sup>137</sup> The play has a documentary character and it is mainly based on true facts and well known information.<sup>138</sup> It was first performed in 1963 in Berlin and it caused a furious reaction<sup>139</sup> which tried to make a shift from the personal responsibility of the Pope Pius XII to the collective responsibility of Christianity as a whole.<sup>140</sup> (If all are guilty, consequently no one is) The play opened space for debate about the topic in several European cities<sup>141</sup>, creating the possibility of exploring the judgment presented in the play as well as opening the space for the unaddressed issues of the past for the public debate.<sup>142</sup> This historical example of the role of theater in post conflict periods, or periods of transition, in addressing and calling for responsibility in

<sup>137</sup> See Horkhoch, Rolf, *The deputy*, John Hopkins University Press, first published 1963.

<sup>138</sup> The facts themselves are not in dispute. No one has denied that the Pope was in possession of all pertinent information regarding the Nazi deportation and “resettlement” of Jews. No one has denied that the Pope did not even raise his voice in protest when, during the German occupation of Rome, the Jews, including Catholic Jews (that is, Jews converted to Catholicism), were rounded up, right under the windows of the Vatican, to be included in the Final Solution. Thus, Hochhuth’s play might as well be called the most factual literary work of this generation as “the most controversial.” The play is almost a report, closely documented on all sides, using actual events and real people, reinforced by 6 pages of “historical sidelights” written by Hochhuth and anticipating nearly all arguments that have been raised against

*The Deputy: Guilt by Silence?* The author himself seems at least as interested in literal, factual truth as he is in literary quality, for he says almost apologetically in his “sidelights” that for artistic reasons he had “to advance a better opinion of Pius XII than may be historically justified, and a better one than I privately hold.” With this sentence, however, he touches upon one of the really controversial—that is, debatable—points at issue: is it true, as Hochhuth clearly thinks, that the Vatican would not have been silent “had there been a better Pope”? For further elaboration see: Arendt, Hannah, *Responsibility and judgment*, edited and with an introduction by Jerome Kohn, Schocken Books, New York, 2003, p. 214-227.

<sup>139</sup> See Arendt, Hannah, *Responsibility and judgment*, edited and with an introduction by Jerome Kohn, Schocken Books, New York, 2003, p. 20.

<sup>140</sup> *Ibid.*

<sup>141</sup> *Vietnam in Basel*. In: *Der Spiegel*, No. 40, October 2, 1963, p. 84-88.

<sup>142</sup> John Willett: *Theater of Erwin Piscator: Half a century of politics in theater* London: Taylor & Francis, 1978, p. 177.

the public sphere, in order to assure the remembrance, is seen as an example of a political action and relation between dealing with the past and theater itself. The following text is analyzing examples of theater plays from the region that have similar critical approach, concretely, *This grave is too small for me*, directed by Dino Mustafić and *The Letter from 1920*, directed by Oliver Frljić.

### **This grave is too small for me (2014)**

The play<sup>143</sup> was written by Biljana Srbljanović and directed by Dino Mustafić, the topic of the play is the assassination of Franz Ferdinand by Gavrilo Princip, as a motive for the beginning of WWI, but the play goes beyond the topic of WWI, exploring the role Gavrilo played in the Serbian nationalists secret society, the Black Hand<sup>144</sup> and the role in the society's political manipulation. Consequently, it deals with how the history is (mis)used for political ideologies following the line past-present-future. Creation of the past-present-future line incorporates documentary material from the trial of Gavrilo Princip while it creating the associations/parallels with the assassination of

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<sup>143</sup> Actors in the play are from Serbia and Bosnia and Herzegovina, following the regional character, it was produced by Heartefact Fund from Belgrade in cooperation with Chamber Theater 55 from Sarajevo (Bosnia and Herzegovina), Bitef Teater (Belgrade, Serbia) and theater Ulysses (Brijuni, Croatia).

<sup>144</sup> Serbian nationalistic, military secret society called The black hand was founded in 1901, and its main purposes were: liberation of Austro-Hungarian South Slavs and unification of ethnic Serb territory- the idea of Great Serbia. For further elaboration see: Lutz, Hermann, The Serbian Black Hand, *The Freeman*, Vol. 7, N°. 164, May 2, 1923, p. 179-181. According to Biljana Srbljanovic: The Black Hand still exists. It is a part of our lives and we did not even know it. It pulls my hair and does not allow me to tell the truth to the end. It governs us, whenever we thought we were free. The Black Hand is here, more than a century, it entangles itself with all that is noble, revolutionary and progressive. It liquidates, it mobilizes, it indoctrinates, it governs. This piece speaks about the suffering of the revolutionaries and the kidnapping of their noble ideas to the darkest Black Hands purposes. Srbljanovic, Biljana, The booklet of *This grave is too small for me* play, [www.heartefact.org](http://www.heartefact.org), accessed on 28th of September, 2014.

Serbian prime minister Zoran Djindjić in 2003.<sup>145</sup>

The play raises several questions, or rather open the space for a consideration of several topics, all wrapped around the question of political action. It is (the play) a political action of passing a judgment, of speaking and calling for the personal responsibility of the political oligarchies who are disabling the debate about the past in order to use it in its un-debated form, a form which meaning is not addresses in the multitude of a public sphere, and as such can be easily re-shaped for political purposes.<sup>146</sup> Past is regarded as a place for the construction of the environment needed for political ideas of the ruling individuals or parties, as a tools for achievement of political ideologies which seem to

<sup>145</sup> When in 2003 Serbia's transitional prime minister, Zoran Djindjic, was assassinated by criminal elements that used the ICTY as a pretext for the attack[...] Susequent research and evidence uncovered in the trial of Milorad Ulemek Legija and his accomplices from the Zemun Clan, however, suggest that the decisive factors in the assassination were the initial tolerance of war-time networks and the prevailing culture of impunity in the early years of Serbia's transition. Rangelov, Iavor, *Democracy or stability? European approaches to justice in peace and transitional processes*, University of Durham and John Wiley and Sons, London, 2013, p. 7.

<sup>146</sup> We stand behind it (the play), and we believe that this is one perspective from which to view historical events that are not essential as the reconstruction, but as an metatext in which we find ourselves at present. Basically, the bullet that was then fired at Archduke is still wandering around the Balkans and "always hits the wrong target", and that does not bring serious overthrow. It is difficult to find a space for dialogue at the time of a retouched history that is now officialized, so that Gavriilo Princip is still used for propaganda purposes by the same people's sinister goals that took advantage of naivety of Young Bosnia member. [...]the space (for the debate) is located in theater. Dino Mustafic, article by Jelena Paligorić, [http://www.b92.net/kultura/vesti.phpnav\\_category=321&yyyy=2013&mm=11&dd=07&nav\\_id=774769](http://www.b92.net/kultura/vesti.phpnav_category=321&yyyy=2013&mm=11&dd=07&nav_id=774769), accessed on 14 September 2014.

have a circular and repetitive qualities.<sup>147</sup>

In order for remembrance to become a part of a history and a guide to future, it needs to be given the meaning, not by the ruling political oligarchies, but by the multitude of individuals in the public sphere. This debate in the region has been obstructed in numerous of ways, all circling around the lack of political will, and this obstruction of the debate and misuse of the past events is a part of a nationalistic strategies and as such is judged in the play. The play opens the space for the question about the political ideology and responsibility of the members who are supporting those ideologies, it opens space for the Hegel's notion of *Determinate negation* (*bestimmte Negation*), which indicates that the immanent criticism is the way to wrest truth from ideology.<sup>148</sup>

*This grave is too small for me* calls for the personal responsibility/judgment of the spectators who, in the chain of the actions-reactions principle, become actors, calls the spectators/actors to critically-highlight the role of the politicians in the public sphere and/or to emancipate, through a personal judgment, from a mentioned ideologies. In dealing with the past, this play has an important role in questioning not just the past wrongdoings and the responsibilities of the members of nationalistic ideologies whose politics are still present in the region, but also the responsibility for the obstruction of the open debate about the past which could interrupt the vicious circle of a violence. The play

<sup>147</sup> "...we falsify history, already the close past of the nineties disappeared from the social awareness, let alone the assassination of the early 20th century. We filtered the history through the dominant political discourse, we draw it out of context and dress it in the epoch which we need for daily political bickering points. In the private lives people overcome the past, in the family gatherings or emotional memory albums. This is why many children or grandchildren will not even hear stories about wrongdoings of their fathers, because it will always be orchestrated by those of others. Unfortunately, remembrance of the victims has no place in the formal political memory, because they did not get their space through public recognition, presentation and communication." Dino Mustafic, article by Jelena Paligorić, [http://www.b92.net/kultura/vesti.php?nav\\_category=321&yyyy=2013&mm=11&dd=07&nav\\_id=774769](http://www.b92.net/kultura/vesti.php?nav_category=321&yyyy=2013&mm=11&dd=07&nav_id=774769), accessed on 14 September 2014.

<sup>148</sup> Horkheimer, M. and Adorno, T. W., *Dialectic of Enlightenment: Philosophical Fragments*, edited by G. S. Noerr, translated by E. Jephcott, Stanford: Stanford University Press, 2002.

does not take sides nor it follows one national/ethnic/religious/political discourse but it opens the space in the public sphere, created with the members of the audience, to re-question and debate the remembrance of the past in the region, and how politicians obstruct and misuse the lack of public debate about the history for their own purposes. According to Mustafić:

History repeats to us as the chorus, comes periodically, always with the same sounds and rhythms that deafens dissonant tones of reason and freedom. Where is that invisible boundary that people in the Balkans loose, disrupted cleverness, plunging deeper into the darkness of false ideologies, “ideological pollution”, fanaticism and primitivism?! Suddenly you begin to notice the way people around you are changing, becoming nationalists, chauvinists, because they fall between the gears of historical machinery when it is important to be part of the crowd, the mob. Few are those who resist *to sing* such a chorus, because they do not like the melody, which preserve acuity and distance, objectivity and critical thinking. This *our space* has not yet succeeded to politically emancipate, because until an avowed conservative intellectuals are transformed into right-wing fanatics, much like the “progressive humanists” are transformed into vulgar and primitive social democrats, there will not be joy in the Balkans.<sup>149</sup>

Another play that has a critical approach and which questions the present political tendencies, perhaps in a more radical way, is the play directed by Oliver Frlić, which is elaborated in the following chapter. .

### **The letter from 1920 (2011)**

They (actors) write the word with the soil on the scene - Bosnia. Audiences is still under the lights and sees it on the screens. Then that word becomes a war trench, they are crawling through it, fleeing, shooting ... It is the beginning of the “Letter from 1920”, author project of Oliver Frlić, who worked for the Bosnian National Theatre in Zenica, in cooperation with the MESS festival in Sarajevo. This is another project which Oliver Frlić, currently the strongest author name

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<sup>149</sup> Mustafić, Dino, interview by Jelena Paligoric, [http://www.b92.net/kultura/vesti.php?nav\\_category=321&yyyy=2013&mm=11&dd=07&nav\\_id=774769](http://www.b92.net/kultura/vesti.php?nav_category=321&yyyy=2013&mm=11&dd=07&nav_id=774769), accessed on 1st of October 2014.

in theater circles in the wider region, literally slaps theater audience, but also a much wider public. Here he will *kill* his actors - Sasa Handžić, Adis Mehanović Enes Salković and Slavs Vidak, countless times, it is a tough war story that speaks not only about the war in Bosnia. He'll make them rape the animals and each other, to speak the truth, to condemn him (Oliver Frljić) as well as a traitor of Bosnia (because he moved out of BIH in 1992), to get them all in the end, together with Bosnia, behind the barbed wire. Most painful scenes are when actors have their heads in a nylon bags. For the first bag viewer hopes that this is a part of acting and that bag has holes for air. But when it cleaves to the actor's face, it is clear that there is no acting. Kick on the ground is a sign of other actors to tear the bag off. By the second bag, the audience begins to look at the floor, by the third you are only left to count the beats of your own heart till the life-saving kick. The fourth is to hold the chair to avoid running out of theater hall. And in between all that questions: one about the sense and senselessness of the war, about the butchers, rapists, murderers of Aleksandra Zec, destroyers of the bridge in Mostar.<sup>150</sup>

Directed by Oliver Frljić, the play *The Letter from 1920* was written by Ivo Andrić but as Frljić explains, "the play was *enriched* by everything BIH involved into over the course of the last war- framework for enforced coexistence of three peoples." Throughout this play but also his other plays Frljić is calling for responsibility in a direct, almost provocative way, for personal responsibility of ruling elites, and, general, personal responsibility in addressing the past and present.<sup>151</sup> In

<sup>150</sup> Radovic, Bojana, Frljićevo Pismo iz 1920. – kako živjeti teatar i misliti stvarnost (Frljić's *The Letter from 1920*-how to live theater and to think a reality), online newspaper (Vecernji List) article, published 14 of June 2012, <http://www.vecernji.hr/kazaliste/frljicevo-pismo-iz-1920-kako-zivjeti-teatar-i-misliti-stvarnost-420265>, accessed 2nd of October 2014.

<sup>151</sup> It seems to me that it is relying on the best theatrical tradition, as he did, and Aristophanes, who did not hesitate to appoint the specific people in the audience and the specific problems of the society in which he lived. This is something that interests me, because I think that theater can be, but should not be primarily the entertainment arts but have primarily educational and emancipatory tasks. Frljić, Oliver, interview by Gvozdenic, Natasa, <http://kulturniheroj.com/?p=2530>, accessed on 2nd of October 2014.

The letter from 1920, Frlić is *naming names*<sup>152</sup>, using the examples of real people who, in this concret example, are still a part of a public and political life of BIH.<sup>153</sup> According to Frlić: “The Letter” on one level is just talking about it (remaking of the history), especially about remaking of a personal history. Reaction of actor Emir Hadžihafizbegović to use his monodrama “The years of fraud,” which is an obvious example of hate speech, shows how most people and politics in this area are inconsistent. Hadžihafizbegović with his attempts to force forgetting who he was, what he said and did is not an isolated example. He is a symptom of what is happening in the broadest social level.<sup>154</sup>

With taking the personal responsibility it is possible to avoid becoming an object in the political ideologies, which can often result in terrifying events. As Dijana Milosević pointed out, In our name the most unspeakable atrocities have been committed.<sup>155</sup> According to Frlić, the past is misused and abused in a various of ways, mostly as a tool for the political purposes of the ruling political oligarchies. Dealing with the past, as implied by Frlić, has to incorporate causes as well as the consequences of the war. Questioning the process of dealing with the past in a public sphere, in theater, Frlić is disrupting the temporal complexity of the transitional process, by creating the line of past-present-future.

The human soul is that which occurs indirectly, it is very important to create a minimum so that we could live with ourselves, with what we

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<sup>152</sup> How deep-seated the fear of passing judgment, of naming names, and of fixing blame-especially, alas, upon people in power and high position, dead or alive. Arendt, Hannah, *Responsibility and Judgment*, edited and with an introduction by Jerome Kohn, Schocken books, New York, edition 2003, p. 21.

<sup>153</sup> In The letter from 1920 Frlić is calling for responsibility of a actor and politician from BIH, Emir Hafizbegovic, for his, according to Frlić, “hate speech” in monodrama *Godine Prevare* (The years of fraud) during the war, which resulted in furious reactions from Emir Hadžihafizbegovic in the public, see also:

<sup>154</sup> Frlić, Oliver, interview by Paric, Jasmina, <http://slobodnadalmacija.hr/Kultura/tabid/81/articleType/ArticleView/articleId/217069/Default.aspx>, accessed on 2nd of October 2014.

<sup>155</sup> Olivera Simić and Dijana Milosević, *Enacting Justice: The Role of Dah Theatre Company in Transitional Justice Processes in Serbia and Beyond*, The arts of transitional justice, Culture, Activism and Memory after Atrocities, editors Peter D. Rush and Olivera Simić, Springer, 2014, p.102.

did yesterday so we could go to meet what is coming tomorrow ... The problem is that here things are not cleared up- the negative legacy of the Balkan wars is strongly determining our social reality, it becomes a kind of currency for day to day political settling. Okay, now if you are looking at what is happening in Serbia, there is no political agenda, the coalition that is now in power is the trade of the worst kind, of course that such a coalition which does nothing else, has to, every now and then, address the issue of Kosovo in the context of EU accession, these are the politics in this area, not only in Serbia, but in general in the region, which in general do not have the power to deal with what happened ... There is a constant mythologization of the past, refusing to take responsibility for the past and that is what lives in the whole region, all the states that were actively involved in wars.<sup>156</sup>

Following the argument of Kant's aesthetic judgment, previously explained, The letter from 1920 is addressing the political reality in BIH but it has the universal potential that arises from the particular, BIH, situation. As pointed out by Oliver Frljić:

To hatred, which this play suggests, unfortunately, no environment is immune. In Bosnia, it has metastasized into a twisted form of government that guarantees all but normal coexistence of the constituent peoples. Hatred is a good political fuel. If it is combined with a fascistic element, which is latent in all societies, very quickly we get into a situation that mainly deals with producing an ever new enemies and ways of their extermination. In order for not being doomed forever by that hate, it is necessary to remind of its roots, reminding of the individuals and political options that are still among us, and who are most responsible for the culture of hatred in which we largely live today.<sup>157</sup>

Frljić sees his art as a means of confronting the present, "which both joins and divides past and future"<sup>158</sup>, he opens the topics of the past and its manifestations in the present, and possibly in the future, in a direct, uncensored way. Combines, joins together, ethics and aesthetics in art by problematizing the current issues in the particular society. The letter from 1920 is creating the public sphere where those issues can

<sup>156</sup> Frljić, Oliver, interview by Gvozdenic, Natasa, <http://kulturniheroj.com/?p=2530>, accessed on 2nd of October 2014.

<sup>157</sup> Ibid.

<sup>158</sup> Agamben, Giorgio, *Infancy and history, The destruction of experience*, Verso, London and New York, 1993, p. 93.

be address, the role of theater becomes a role of a critic, not the role of entertainer.<sup>159</sup>

Unfortunately, it is difficult for me to understand the authors of theater plays that have no contact with the reality in which we live, parallel comes my need to do author's projects because it seems that this way I can directly deal with the reality, and I am interested in speak as directly about it as possible, I do not want to hide behind metaphors, I want to address the situation. When the situation or phenomena that exist are appointed in a theatrical context, they then become something else. Trying to disqualify my work goes just from the fact that I cannot see the difference between ethics and aesthetics, I think it cannot exist without each other. In a situation in which we live a certain ethical attitude becomes an aesthetic category, that a lot of people do not understand.<sup>160</sup>

The plays presented in this sub-chapter are examples of political actions directed toward the question of a personal responsibility for misuse of the past and obstruction of dealing with the past wrongdoings in the open debate. It is a political action of passing a judgment for obstruction of giving past events meaning, placing them and preserving as a part of a history which is guiding as away from the future wrongdoings and circles of violence. However, social significance of the plays arises from the interactivity and exchange between the members of the society on the subjects of their common interest. These plays serve as examples how theater is used in the process of dealing with the past in raising the question of responsibility, while another role, the one of the subjective approach to victims and witnesses of past atrocities is elaborated in the next sub-chapter.

### **3.2 Subjective approach to dealing with the past in theater**

Theater is used in addressing the victims and witnesses from a position of a subject not an object of political affiliations. Due to the, above mentioned, obstruction of the open debate about the past, the

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<sup>159</sup> Theatre is not there to indulge the audience in its complacency, but to confront it with its responsibility. Frlić, Oliver, interview by Gvozdenic, Natasa, <http://kulturiheroj.com/?p=2530>, accessed on 2nd of October 2014.

<sup>160</sup> Ibid.

victims and witnesses of the past atrocities have been stripped of their individuality, their subject (self) becomes bodiless, faceless, nameless objects (with a number), available to the misuse of the political oligarchies. It is possible to act politically only from the position of the subject, this position allows, seeks and assumes an individual responsibility and individual judgment that can be a part of a public sphere in a debate about the past events and imprint personal life story in the remembrance and the history. In other words, to act one must do so from the position of the subject, position which “always presupposes at least a minimum of political power.”<sup>161</sup>

The position of a subject can be re-gained through testifying and revealing the true life stories through story-telling. Storytelling, as argued in the previous chapters, reveals the subject in the presence of spectators, and due to their interdependent relation, creates the multitude of the memories, without slipping into the generalization. According to Hannah Arendt: It is true that storytelling reveals meaning without committing the error of defining it, that it brings about consent and reconciliation with things as they really are, and that we may even trust it to contain eventually by implication that last word which we expect from the Day of Judgment.<sup>162</sup> Theater plays- *Crossing the line*, directed by Dijana Milosević and *Hipermnezija*, directed by Selma Spahić as an examples of the multitude of life-stories, are presented in this sub-chapter.

### **Crossing the line**

The play was created based on the stories, testimonies that are “speaking out words of mothers from Srebrenica whose children were killed before their own eyes, words of raped women and witnesses of other horrible atrocities.”<sup>163</sup> The testimonies are collected in a book

<sup>161</sup> Hannah, Responsibility and judgment, edited and with an introduction by Jerome Kohn, Schocken Books, New York, 2003, p. 45.

<sup>162</sup> Arendt, Hannah, Men in Dark Times, Harcourt Brace Jovanovich, New York, 1968, p. 106.

<sup>163</sup> Paković, Zlatko, Daily newspaper Danas, October 2011.

*Women side of war*<sup>164</sup>, published by Women in Black<sup>165</sup>. Documentary character of the play stages real stories of the victims from the region, survivors of the past atrocities and their struggle in the indifferent present surrounding.<sup>166</sup> The play can be elaborated, and it's role in dealing with the past process determined, from different points of departure. First aspect of the play, and it's role in the process of dealing with the past, is the aspect of the victims. The play is having a significant role in addressing the traumatic past of the victims and survivors of the past atrocities, as pointed out by Olivera Simić: For victims and survivors, the play offers the direct possibility of healing: seeing and hearing the stories becomes a public acknowledgment of the often unacknowledged and therefore dangerously invisible, crimes.<sup>167</sup>

By telling these personal stories in the public sphere, the survivors are rupturing their own objectivization, which has manifested

<sup>164</sup> In 2007, WiB published a book titled *Women's Side of War*. It is an anthology with one hundred and twenty testimonies, notes and reminiscences written by women about the wars that were raging in former Yugoslavia between 1991 and 1999. The book encourages reflections on specific forms of women's suffering and their courage to overcome trauma and to reclaim normal life, as well as on the value of solidarity with women beyond the ethnic and religious boundaries and divisions. Olivera Simic and Dijana Milosevic, *Enacting Justice: The Role of Dah Theatre Company in Transitional Justice Processes in Serbia and Beyond, The arts of transitional justice, Culture, Activism and Memory after Atrocities*, editors Peter D. Rush and Olivera Simić, Springer, 2014, p.104-105.

<sup>165</sup> Women in Black is antimilitarist peace organization which was highly engaged in the public sphere during the war in 1990s, protesting through different means against the war and for recognition of the responsibility Serbia (through political, ruling, parties and individuals) has in war atrocities in the region. For further information about the Women in Black see: Official site [http://zeneucnom.org/index.php?option=com\\_content&task=blogcategory&id=2&Itemid=4](http://zeneucnom.org/index.php?option=com_content&task=blogcategory&id=2&Itemid=4).

<sup>166</sup> The directress Milosevic skillfully makes fragments of the most stunning, life misfortunes (motherly love without the presence of a father, the loss of a dear person, rape, discarding of a lived through identity) that are painful for these women, and with which they live with in everyday life ,and in this way pushing the audience into the same field of questioning of our joint responsibility and indifference. [http://www.dahteatarcentar.com/press\\_eng.html](http://www.dahteatarcentar.com/press_eng.html), accessed on 3rd of October 2014.

<sup>167</sup> Olivera Simic and Dijana Milosevic, *Enacting Justice: The Role of Dah Theatre Company in Transitional Justice Processes in Serbia and Beyond, The arts of transitional justice, Culture, Activism and Memory after Atrocities*, editors Peter D. Rush and Olivera Simić, Springer, 2014, p.107.

itself through the position of an object to the crime in the past as well as by the position of the object in the transitional justice process (as a witness, but still an object in the trial), or in the political manipulations of the ruling political ideologies, explained previously in the text. This objectivization has important implications, it de-subjectivizes the victims, who as such are unable to political act. Political action is, as argued throughout the first two chapters, only possible from the position of a subject. Theater plays an important role in the regaining the position of the subject, position which has political potential. According to Susan Brison:

In order to regain subjectivity in the wake of trauma, survivors need ‘an audience able and willing to hear [...] Fortunately, just as one can be reduced to an object through torture, one can become a human subject again through telling one’s narrative to caring others. It is not sufficient for mastering the trauma to construct a narrative of it. One must (physically, publicly) say or write (or paint or film) the narrative, and others must see or hear it, in order for one’s survival as an autonomous self to be complete.’<sup>168</sup>

In this process of dealing with the past, through theater, victims and survivors are both dealing with the trauma<sup>169</sup> from a regained position of a subject as well as opening the space for empathy and solidarity to arise within the society. According to Dijana Milosević:

I think that the majority of people in Serbia do not accept the historical facts with respect to the wars of the 1990s in the way they have been documented in countless books, articles and

<sup>168</sup> Brison, Susan, *Outliving oneself: Trauma, memory and personal identity; Feminist rethinking the self*, edited by Diana Mayers, Alison Jaggar and Virginia Held, Westview Press, Boulder, 1997, p. 23-29.

<sup>169</sup> While the trauma uncannily returns in actual life, its reality continues to elude the subject. A process of constructing a narrative, of reconstructing a history and essentially, of re-externalizing the event has to be set in motion. This can occur and take effect only when one can articulate and transmit the story, literally transfer it to another outside oneself and then take it back again. Laub, Dori, *Bearing witness or the vicissitudes of listening*. In *Testimony: Crises of witnessing in literature, psychoanalysis and history*, edited by Shoshana Felman and Dori Laub, Routledge, New York, 1992, p. 57–74.

media coverage. Yet these same people were deeply affected when they saw our performance. They understood that the stories we told on stage were true stories and that it did not matter who the victim was and where it came from, because the victim is a victim and the biggest victims in all wars are women. The fact that we are a political theatre, but not a member of any political party, and that we represent human stories, places our audience and the people who do not want to face the past in a defenseless position.<sup>170</sup>

Crossing the line, and theater in general, has an ability to address and evoke people's emotions, engaging emotionally and personally in acknowledgment of the stories performed, opening the space for the dialog and understanding.<sup>171</sup> Crossing the line has, as mentioned, different roles in the process of dealing with the past, roles that are interdependent, the healing for the victims and survivors, creation of the empathy within the society (regardless of *the sides* the victims come from), but also healing of the society through "restoring collective memory and repairing social fabric in which individuals are embedded."<sup>172</sup>

The play is an example of a role that theater has in dealing with the past process from a victim/survivor point of view. Next play that will elaborated takes the position of the survivor to the wider context, where

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<sup>170</sup> Olivera Simic and Dijana Milosevic, *Enacting Justice: The Role of Dah Theatre Company in Transitional Justice Processes in Serbia and Beyond*, *The arts of transitional justice, Culture, Activism and Memory after Atrocities*, editors Peter D. Rush and Olivera Simić, Springer, 2014, p.103.

<sup>171</sup> There are 2 kinds of understanding: 1) direct observational understanding of subjective mean of a given act (eg, if i start to shout at you, you could directly observe my irrational emotional reaction by virtue of my shouting). 2) explanatory understanding: we understand motive, or, what makes an individual do a particular thing in a particular circumstance. Since we are interested in the subjective meaning of action, we must place an action in the complex of meaning in which it took place. Weber, Max, *Economy and society*, translated by Guenther Roth and Claus Wittich, California University Press, Oakland, 1978.

<sup>172</sup> Stepakoff, Shanee, *Telling an Showing: Witness Represent Sierra Leone's War Atrocities in Court and Onstage*, *TDR: The Drama Review* 52, no. 1, 2008, p. 26.

survivors of the war are more in the position of the witnesses, either due to their age, children, elderly, or due to the geographical dynamics of the war, where survivors/witnesses were not directly present in the war. Here I am referring to the persons who were affected by the war, not in their concrete physical integrity, but as a refugees, persons who lost their loved ones, lost their homes, etc. This distinction is trying to open the space of dealing with the past to a level of trans-generational and transnational implications of the war. The war affects all the levels of the society in it's physical, psychological, social, political and economical integrity.

### **Hipermnezia (2011)**

Hipermnezia is a documentary theater play directed by Selma Spahić, which portrays the stories of young people from the region, and their role of a witness in a 1990s conflicts. This play is specific in it's directness and openness, the actors on the stage are telling their own experiences during the conflicts in the region and the stories are telling intimate, personal positions in those periods. Through the personal stories the political and social context inevitably arose but the focus of the play stayed on the personal, intimate life stories of the actors. According to Selma Spahić:

An intimate history. I was just interested in that. It is for the eight people on the stage necessarily marked by extreme social and political circumstances. But still I was interested in the intimate history. Well, the historical facts are there (although conflicting parties are treating them differently), but what happened to you? And you? How are you then you see / saw, being five, ten and thirteen years old? I knew that I will, by connecting people from Sarajevo, Belgrade and Pristina and addressing their biographies, necessarily get political context. I wanted it to be present throughout the show just as much as it marked the lives of eight children or adolescents at the time. From their perspective, at that particular past moment, without the comments from today. Those two decades, are the majority of life or whole life for those authors. They left the irreversible consequences and countless scars. But it is also our life, the only reality that we knew growing up. And these individual experiences, look at the world of children who grow up in extreme circumstances, this is what I am interested in. Intimate history.<sup>173</sup>

<sup>173</sup> Spahic, Selma, Press release, <http://heartefact.org/2011/09/06/hipermnezija/>, accessed on 5th of October 2014.

Even though it represents the life stories of the survivors and witnesses of the war, the play is more directed toward self-questioning and confronting the personal experiences and attitudes, as the young people gather for the creation of the play, play that portrays themselves, the actors were faced with the recognition of their own fears and prejudices. As pointed out by the directress: To me the most exciting thing about theater is just that, a willingness to face our own darkness, fears, prejudices, our own hatred and our own grains of evil. Because we all have those, whether conscious or not. And there for me lies the social responsibility in theater. In a sense of dealing with the past- first single and one's own, and then we could talk about the collective.<sup>174</sup>

In a certain sense this play is calling for and encouraging the personal responsibility by presenting the example of the same on the stage. It stages open debate, an individual political action in direction of addressing the multitude of personal life stories and creation of a collective memory. Dealing with the past is based on the personal responsibility, as argued in this and previous chapters, and this play is calling for, and acting, exactly that but in a more personal, intimate manner. As Selma Spahić argues: The play is intended to be very direct, but with more confessional than offensive character. The emphasis is not on those who should be referred, what has been silenced, but the people who speak out. Precisely because it is not easy to speak up it can change your whole life.<sup>175</sup>

Another, already mentioned, aspect of the play has an important role in dealing with the past process, the life stories presented in the play are creating a multitude of the memories, the memories that are standing together in the same space, creating with the members of the audience a public sphere where those memories can be addressed and placed in the region's collective memory. Consequently, memories about the same events are heard from different (presumably conflicted sides) and the political manipulation and the possibility for the past to be misused

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<sup>174</sup> Ibid.

<sup>175</sup> Spahic, Selma, Press release, <http://heartefact.org/2011/09/06/hipermnezija/>, accessed on 5th of October 2014.

in the present and future is decreasing.<sup>176</sup> As argued by Trebješanin: Although they do not share the same life experiences they have shown understanding for the problems that have marked the generations born in one country and now living in a different ones.

The plays presented in this sub-chapter are the examples of theater plays that are addressing the legacy of the war through (re-subjectivized) personal life-stories that both create the sense of empathy and solidarity as well as call for a personal responsibility, from a position of an individual, but the call is directed toward the wider political and social context. Dealing with the past process is situated in theater, and it is calling for the personal responsibility, our own and of those who represent us in a government, as well as creation of shared memory space within the region, through multitude of personal experiences and stories acknowledged in the public sphere.

### **3.3 Participatory theater and imagining of a new politics**

In the previous sub-chapters theater was elaborated as a gathering place where people address and confront the issues of the past, through calling for a personal responsibility of members of the society and especially those who represent the people in the governing instances. An other role that was elaborated is the creation of the multitude of memories and invocation of the sense of empathy among society's members. In this sub-chapter participatory theater will be elaborated where members of the audience contribute to the theatre play, creating and dealing with the past together. This sort of theater can be easily called radical politics, since it assumes public sphere, created by the gathering of the members of the audience as well as the members of theater play, and it assumes action of all the members of that public sphere. In this public sphere members of the audience are invited to join and equally participate in the imagining of the new social and political context. According to Nadia Siddiqui, Hadi Marifat and Sari Kouvo:

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<sup>176</sup> Empirical studies reveal that survivors want to share their stories and learn from others about what actually happened during the violence. Crosby, A., and M.B. Lykes, *Mayan women survivors speak: The gendered relations of truth telling in postwar Guatemala*. *International Journal of Transitional Justice* 5(3). 2011, p. 456–476.

Theatre then can be thought to work at the “interface between the creative and the political, calling together audiences of citizens to contemplate their society or its ways. The idea here being to create a disequilibrium inside the spectator not only to empathize with the protagonist on stage, but also to prepare the way for concrete actions to address injustices and bring about transformation. It offers participants an aesthetic instrument to analyze their past in the context of the present and to invent and shape their futures according to their needs.<sup>177</sup>

This kind of participatory theater, Theater of the Oppressed<sup>178</sup>, is based on the active enrolment of the members of the audience where they can actively and freely engage in the course of the play, stopping it, elaborating in a discussion what was presented and changing the play in accordance with the joint decision. As explained by the same authors: The Theatre of the Oppressed process whereby audience members, so-called spect-actors, can stop a performance and assume a protagonist role onstage to change the dramatic action, propose various solutions, discuss plans for change, and train themselves for social action. The theatrical act itself becomes a conscious intervention and a rehearsal for social action, based on collective analysis.<sup>179</sup>

Another form of the participatory theater is Playback Theater<sup>180</sup>, where members of the audience are actively participating in the

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<sup>177</sup> Siddiqui, Nadia, Marifat, Hadi and Kouvo Sari, *Culture, Theatre and Justice: Examples from Afghanistan, The arts of transitional justice, Culture, Activism and Memory after Atrocities*, editors Peter D. Rush and Olivera Simić, Springer, 2014, p.116.

<sup>178</sup> Theater of the oppressed was created by Brazilian theater director Augusto Boal, in order to create the space for the people’s engagement in the democratic bottom-up process on the topics of the interest of the particular society. For more information see: Singhal, Arvind, *Empowering the Oppressed through Participatory Theatre*, *Investigación y Desarrollo* 12, no. 1, 2004, p. 138–163.; *Ibid.*

<sup>179</sup> *Ibid.*

<sup>180</sup> Playback theater was developed by Jonathon Fox and Jo Salas in the United States in 1975. It is developed on the basis of the participation of the audience members where they are invited to share their personal stories which are staged and then discussed with the rest of the members. For more information see: Hosking, Bev and Penny, Christian, *Playback Theatre as a Methodology for Social Change*, paper presented at the DevNet Conference, Wellington, New Zealand, December 2000.

elaboration of the meaning of the content, a life story that one, or more, of the members of the audience presents. According to Hannah Arendt:

And whatever men do or know or experience can make sense only to the extent that it can be spoken about. There may be truths beyond speech, and they may be of great relevance to man in the singular, that is, to man in so far as he is not a political being, whatever else he may be. Men in the plural, that is, men in so far as they live and move and act in this world, can experience meaningfulness only because they can talk with and make sense to each other and to themselves.<sup>181</sup>

Presented argument is further supported by Nadia Siddiqui, Hadi Marifat and Sari Kouvo:

Unlike Theatre of the Oppressed, Playback Theatre was not originally devised with an explicit political agenda in mind, but both methodologies have in recent years been utilized to raise social justice concerns in post-conflict and transitional contexts, including Burundi, the Democratic Republic of Congo, Kosovo and, recently, Afghanistan. The use of these theatre forms within these contexts is not entirely surprising as the connection between cultural expression and transitional justice is inherent given that a central tenet of transitional justice is to give voice to the victims of trauma and human rights violations.<sup>182</sup>

These forms of theater are creating active audience and are, in the same time, questioning the role of the audience in theater, according to Eugene MacNamee:

<sup>181</sup> Arendt, Hannah, *The Human Condition*, Doubleday Anchor Book, New York, 1959, p. 5.

<sup>182</sup> Siddiqui, Nadia, Marifat, Hadi and Kouvo Sari, *Culture, Theatre and Justice: Examples from Afghanistan, The arts of transitional justice, Culture, Activism and Memory after Atrocities*, editors Peter D. Rush and Olivera Simić, Springer, 2014, p.118. See also: Search for Common Ground, “Burundi Update”, June 2008 [http://www.sfcg.org/programmes/burundi/burundi\\_update.html](http://www.sfcg.org/programmes/burundi/burundi_update.html); Search for Common Ground, “Centre Lokole/Search for Common Ground’s Participatory Theatre for Conflict Transformation”, [http://www.cerisciencespo.com/themes/reimaginingpeace/va/base/Congo\\_1173192498.pdf](http://www.cerisciencespo.com/themes/reimaginingpeace/va/base/Congo_1173192498.pdf) ; and Search for Common Ground, *Participatory Theatre for Conflict Transformation: Training Manual* (Kinshasa: Search for Common Ground, n.d.); Jonathan Chadwick, “Working in Kosovo on a Participatory Theatre Project on Missing Persons”, AZ Theatre, <http://www.aztheatre.org.uk/index.php?page=war-stories-kosovo>.

The idea of creating work that would demand audience engagement and in so doing reinvent the standard notion of audience both within and beyond the theatre walls: the idea was to create a theatre to create a people, to engender democracy through art. Such democracy-as-process ideas complement avant la lettre Habermasian deliberative democratic ideas with the idea that certain cultural forms at certain times bear a greater power than standard political discourse to make politics emotionally real and vital.<sup>183</sup>

Theater serves as a space where people can actively engage in different forms, exploring, debating and developing a meaning for a certain past experience in a joint effort, debating about the manifestations of the past in the present and imagining new political, and as previously mentioned, a rehearsal for the action. In the following text one example from the region of theater play that actively includes members of the audience is presented.

### **About the conscience- essay in movement about Dada Vujasinovic**

The play is an author project of Sanja Krsmanovic-Tasic, who was a friend of the journalist Radislava Dada Vujasinovic<sup>184</sup>, killed under unclear circumstances, officially treated as a suicide. The play is

<sup>183</sup> MacNamee, Eugene, *Fields of Opportunity: Cultural Invention and 'The New Northern Ireland'*, *The arts of transitional justice, Culture, Activism and Memory after Atrocities*, editors Peter D. Rush and Olivera Simić, Springer, 2014, p.118. See also: Search for Common Ground, "Burundi Update", June 2008, p. 9.

<sup>184</sup> Writing about the horrors of war, the atrocities in Croatia and Bosnia that were committed by a Serbian military and paramilitary forces, at the same time, and the criminalization of politics in Serbia, and most respected political protection of criminals, Dada, putting his own life on the line/dice, and throws the dice of truth unstoppable to the future. And, behold, after twenty years of her murder (and still today in court annals deluded under a form of suicide), while still spinning, we may take the dice into our own hands. Dada Vujasinović, great personality of Serbian recent history. The thirty-old women gathered in her journalistic work all the courage that had, at that time, disappeared from the most influential institutions and media of this nation. Pakovic, Zlatko, Twenty years later, online newspaper article, [http://www.danas.rs/danasrs/kolumnisti/posle\\_dvadeset\\_godina.1079.html?news\\_id=281534](http://www.danas.rs/danasrs/kolumnisti/posle_dvadeset_godina.1079.html?news_id=281534) , accessed on 5th of October, 2014.

imagined as an essay where the footnotes are displayed at the beginning of the play and the audience chooses the chronology in which the footnotes will be opened and performed. The audience members are constructing the play, and since the author believes that the life and especially the death of the young journalist were politically and socially constructed, manipulated and used for the purposes of the political ideologies, the audience is engaged in creating, constructing the story about Dada Vujasinovic, based on the facts from her life. According to the author of the play:

*About the conscience- essay in movement about Dada Vujasinovic* is a play about Dadi Vujasinović, journalist of the newspapers Duga (Rainbow), who in the first year of the wars of the nineties was reporting from the battlefield, and then openly, clearly and truthfully wrote about the events in political and social life of our country. The play is a narration in the movement, where through the artistic actions true events are told beside the critical reflection of their occurrence and consequences. The essay is always performed through the prism of personal history placed in the context of social events that are directly influencing it.<sup>185</sup>

Addressing the social and political life in Serbia, and consequently, in the region, the play influences the process of dealing with the past by interrupting the linearity of the process through re-questioning the past (unresolved) events and its implications in the present and the future. According to the author of the play:

Unresolved traces of the past stifle this present. Unexplained death of a brave young woman contributes to general paralysis and hopelessness of the country that has yet to prove that it has the strength to cope with the ghosts of the past. Is there enough awareness and conscience to evolve to a state justice and security in which our children may want to stay?<sup>186</sup>

<sup>185</sup> Kršmanovic-Tasic, Sanja, online article, [http://www.b92.net/kultura/vesti.phpnav\\_category=321&yyyy=2014&mm=04&dd=04&nav\\_id=832468](http://www.b92.net/kultura/vesti.phpnav_category=321&yyyy=2014&mm=04&dd=04&nav_id=832468), accessed on 5th of October 2014.

<sup>186</sup> Kršmanovic-Tasic, Sanja, online article available on <http://www.seecult.org/vest/o-savesti-o-dadi-vujasinovic>, accessed on 5th of October 2014.

However, the play addresses and questions the process of dealing with the past itself, the process of transition and our right to know the truth, which, in the case of Dada Vujasinovic, stays hidden as a result of the lack of will of the responsible institutions to the present day. As pointed out by the author:

Position the journalism profession today is as difficult as before the start of democratization, freedom of the media on a daily basis leads to the question, and the murders of journalists remain unsolved even after 20 years. Burdened with many problems of everyday life, as if we have forgotten that those who threaten the freedom of the media, consequently, threatening all of us and threatening our right to know the truth.<sup>187</sup>

Presented argument rises the question of the responsibility, personal responsibility for the investigation of the death of Dada Vujasinovic, alongside, the political manipulations and constructions of her life and especially death. The author of the play sees this manipulation and creation as a political means of elimination of those who openly and publicly speak against the ruling elites. Those that can be hold responsible for this manipulation and elimination are still present in the public life of Serbia.<sup>188</sup> Throughout the interactive approach to the facts of the life and death of Dada Vujasinovic, audience is creating new, every time chronologically different, but always true stories about the life of the young journalist. By untangling her life and circumstances of her death, the members of the audience are directly involved, both in the de-victimization of Dada Vujasinovic as well as in the imagining of the new, better future, in which young journalist can serve as an example of responsibility and freedom of expression and judgment in the public sphere, as explained by the author: The intention is to rise Dada Vujasinović from the position of victims of a system to the place of the symbol of freedom of speech, as a role model to young people, who, disappointed with socio-economic and political system, are leaving the country in search for a more just and prosperous living

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<sup>187</sup> Krsmanovic-Tasic, Sanja, online article available on <http://www.seecult.org/vest/o-savesti-o-dadi-vujasinovic>, accessed on 5<sup>th</sup> of October 2014.

<sup>188</sup> Interview with Sanja Krsmanovic-Tasic, Belgrade, 5<sup>th</sup> of July 2014.

conditions.<sup>189</sup>

Presented chapter displays the examples of the role that theater plays in the process of dealing with the past. It assures a gathering and creating the public sphere where the questions about the past can be addressed through calling for the responsibility of those who are disabling the public debate to take place and the past to become a remembrance which serves the role of a guide for the future. It also enables an open debate where victims and witnesses are revealing themselves as subjects and as such regaining the potentiality of political act, accompanied with the joint elaboration and assurance that the past events will become entrenched in the history as a reminder of the wrongdoings of the past.

### **3.4 Theater as political action and reaction**

This sub-chapter provides findings which are the conclusions based on the my research. The findings are presented in the form of causal relations, that elaborates the findings on the level of the process of staging theater plays, shared memory space, presenting political action and it's social significance and theater as political action in terms of theater play and it's actors and spectators.

#### **Causal relations**

The region has a long historical interdependence, through it's geographical, political and social causal relationships. These relations had, throughout the history, created strong bonds due to it's linguistically and consequently, social and political similarities. During the 1990, as explained throughout this thesis, Yugoslavia disintegrated, creating smaller, sovereign states, which continue to be politically, economically and socially interdependent. Regional interdependence, primarily political, creates causal relationships in the region, where, as Andrej Nosov points out: Our nationalisms are causally related. When the mosques in Sarajevo were burned, there was a reaction in Pristine, while the reaction in Pristine caused Belgrade to reacted.<sup>190</sup> However,

<sup>189</sup> Krsmanovic-Tasic, Sanja, online article available on <http://www.seecult.org/vest/o-savesti-o-dadi-vujasinovic>, accessed on 5<sup>th</sup> of October 2014.

<sup>190</sup> Interview with Andrej Nosov, Belgrade 23<sup>rd</sup> of July 2014.

luckily, not just nationalistic actions and reactions are in the causal relationship. Every action has its reaction and consequently, every step toward the opening the space for the debate in the public sphere sets in motion other actions which cumulatively develop.

The experiences related to the period(s) of war, often, find their reactions in the body, thought, speech, etc. which need to be addressed in the public sphere in order to give them meaning and to preserve them in a history. Theater plays have a political power to address these experiences, to acknowledge, incorporate them in the multitude of a public sphere which it has the power to create. This was already said, but another argument and the political potential arises in the framework of theater, the multitude of theater is progressive. Due to the mentioned interdependence and especially language similarities, theater plays are touring in the region, performing the play numerous times in a different geographical and political contexts. Following this argument it can be stated that theater play has a progressive potential of acting in different public spheres.

There are several, logically connected, implications that arise from this change of the context. First was already mentioned, change of context is progressively expanding the number of the spectators and, consequently, the actors, implying that theater play is creating more potential ground for the reactions to follow, and in that way starting numerous of chain reactions. The expanding numbers of actors and spectators in different geographical and political contexts imply decreasing possibility for the nationalistic ideologies as well as for the (self)victimization. Regional cooperation plays a crucial role here, by performing the plays which politically act toward the opening of the space for a debate, the past can be addressed in a multitude of memories. This exchange of the memories and debate on the past issues has the potential to create the space where multitude of memories can exist, where the (conflicting) histories have to be reconciled and where nationalistic ideologies are threatened. Through the creation of shared memory space, and the multitude (public sphere) that goes beyond the state borders, theater plays question and challenge the one sided approach to dealing with the past.

## Shared memory space

Following the previous argumentation of political potentiality and implications a touring of theater play has in the process of dealing with the past, another argument arises. Theater plays are creating shared memory space in which they (plays) become ephemeral monuments. A monuments which are repetitively built in the presence of the multitude of actors/spectators and which by the creation and exchange of actions and reactions keep the topics of the past present. By the very fact that this ephemeral monuments need a presence of the audience which is engaged in the creation, as action-reaction argument states, theater play cannot become a work, furthermore, it always stays in the field of action. Theater plays are changing contexts, touring, and every time they are staged, they build a monument that will physically disappear but it might have its visible implications.

Memorialization in the context of theater is significantly different that the one in the architecture, or other media that produce a finished work (of art). It is different by the fact that the memorialization is never finished, it is always exposed to the perpetual exchange of actions and reactions, actors and spectators, in a narrow sense of the members of the audience present at the particular staging of theater play, or in a broader sense of continuation of actions and reactions outside the space of theater. In other words, theater does not create a static monument to the specific event, person(s) or instance of time, it rather creates the space where the topics can be addressed, and remembrance preserved, in a dynamic, interactive and interdependent manner. This argument is further supported by Young:

The surest engagement with Holocaust memory in Germany may actually lie in it's perpetual irresolution, that only an unfinished memorial process can guarantee the life of memory. For it may be the finished monument that completes memory itself, puts a cap on memory-work, and draws a bottom line underneath an era that must always haunt Germany. Better a thousand years of Holocaust memorial competitions in Germany than any single "final solution" to Germany's memorial problem.<sup>191</sup>

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<sup>191</sup> Young, James E., *At memory's edge: After images of the Holocaust in contemporary art and architecture*, Yale University Press, 2000, p. 92.

Combining the multitude of memories and reminding of the past wrongdoings that need to be addresses in order to preserve the memory, theater creates an environment where the history can, potentially, regain its position of a teacher and reminder for the present and future. In the region the history still needs to be openly debated, theater plays are acting toward opening a space for the for this to happen.

### **Theater plays as political action**

Throughout the text it was mentioned in a several occasions that theater plays are political actions, and there is a need for further explanation which will reveal another finding of my research. Theater plays are interdependent individual actions which serve as an collective act, an act that is being publicly revealed as an initiation for the process of the open debate through the action-reaction continuity. This collective act is, according to Andrej Nosov: “a collective act of a mistake”<sup>192</sup>, a collective act where the political action is placed (again) in the body, the body that is not stylized. A body that suffers, sweats in “the public sphere where social relations are questioned instead of being represented”<sup>193</sup> gives theater political potentiality and significance, mentioned previously in the text. Theater becomes the public sphere where it is possible to see the reality and to address it in the presence of others and which is “probably the only instance left for the reality to be seen.”<sup>194</sup>

Political action of this real body, an individual, is seen as an alternative in the society, as it questions and pushes the borders in order to create the space for a dialog, debate. As Nosov explains: When we (Heartefact Fund) wanted to perform a play in Pristine, it was considered unthinkable, but nowadays it is perfectly acceptable that theater play from Belgrade performs in Pristine.”<sup>195</sup> And even further than that, “it became mainstream, even fashionable” to do so. There are several implications in the given example, one, that every political action is potentially consumed in the society. In other words, political action which is followed by reaction and which should be transformed

<sup>192</sup> Interview with Andrej Nosov, Belgrade 23<sup>rd</sup> of July 2014.

<sup>193</sup> Ibid.

<sup>194</sup> Ibid.

<sup>195</sup> Ibid.

into another political action, is endangered of being stopped at the reaction which becomes multiplied as a product of socially acceptable reaction, conformity. Another is that the role of an artist is to touch upon the issues which are preventing the freedom of an individual's, issues found in the political, social or artistic norms. The norms are social construction, while arts, performing arts especially, have the potentiality to act, and through the political action, to question and influence those social constructs.

## Conclusion

The arts has a political potentiality due to the fact that both, arts and politics, share the same sphere, they are both phenomena which needs the presence of others. In the gathering, this presence of others, men are engaging in the action through which they are revealing themselves to others, influencing them through the action (of speech) and causing a reactions, which again cause the action. In this perpetual change/growth of political actions and reaction, men are debating about the issues of importance, of their common inter-est. There are two implications that arise from this exchange in the public sphere, one is that by revealing themselves, people create bonds, they become interdependent and their life stories fibers of a history of the human beings, another one is that through the action individuals set in motion the chain of reactions and consequently, a chain of a processes of the common interest.

One of the common interests is addressing the past and the legacy of the past atrocities. After the periods of conflict(s) where the members of a society were physically, psychologically and materially humiliated, disintegrated and affected, there is a need of addressing those events and periods in order to help the society heal by giving the meaning to the past and preserving it as a guide for the present and future. Transitional justice evolved in a process of dealing with the past, opening the previously contextualized concept to a numerous of actors and mechanisms in order to set in motion the activities of addressing the past. These numerous approaches range from judicial to non-judicial, from institutionalized to non-institutionalizes. One of the approaches is through the documentary theater.

Theater has the potential to provide the space where people gather and where in that multitude the public sphere is created. Public sphere is the sphere of politics, of debate and exchange of opinion. The multitude of the public sphere serves as a protector from the uniformity of the ideological approach, and is significantly different from the public opinion which is a social construction of generalization, and as such is not political action. In the process of dealing with the past this sphere is facilitating and enabling a individual life stories to be shared and incorporated in the debate about the past where the past can be given a meaning and as such, as a remembrance, play a guide for the future.

The past of the Western Balkans has different interpretations and different “truths” which are usually conflicting and closed for the discussion. The meaning of the past is uniformed in a nationalistic ideology which reshapes it according to the needs of a political agenda(s), where there is hardly any space for the open debate. Addressing the past commonly follows similar narration, where the victims and survivors are used as an objects and fuel to the preservation of the rule of the political oligarchies. Following this argumentation the process of dealing with the past needs to be free of the influence of the political oligarchies in order for the debate about the past to start and the memory of the past preserved.

The role of theater in the process of dealing with the past unfolds in two directions. It addresses the responsibility of the political elites for the past wrongdoings through passing a judgment in a public sphere. The political oligarchies in the region are active and influential in promoting a nationalistic ideologies and creation of deeper cleavages in the society, most of the politicians were politically engaged before, during and after the war(s) in the 1990s. One of the roles theater does in the presence of the multitude is passing the judgment about the responsibility of those political oligarchies and opening the space for the debate about the presented judgment. This role is important as it lays the ground for the past to be addressed and the memory to be preserved.

Due to the fact that the mentioned debate is obstructed by the ruling elites because of the political fuel gain from the absence of the open debate, theater plays a role of addressing and opening that issue. It calls for the responsibility for the obstruction of the open debate and manipulation of the past for the political agendas. By disabling the debate in the presence of multitude gathered in the public sphere, the meaning and understanding cannot be reached, which consequently leads to victimization and objectivization of the members of a society resulting in the lack of a possibility for the memory to serve as a guide and not as a fuel for political manipulations.

Objectivization of the victims, representation of the victims stripped their subjectivity, has a, at least, two implications- one is that, as objects and numbers, the victims can be easily manipulated and misused for the already mentioned political agendas, while the second is that by the objectivization the victims are deprived of the possibility to act

politically, since the political action assumes the individual action and responsibility. Theater plays can contribute to the re-subjectivization of the victims, survivors and witnesses through the space provided for the life stories to be told, shared and in the public sphere given the meaning and the space for their preservation in the history. It contributes to the healing process of the victims, survivors and the witnesses, on one side, while it helps them regaining the position of a subject and as such possible of acting politically, on the other. In this process empathy and solidarity arises, solidarity which is not a product of a generalization or uniformity of a nationalistic ideologies but rather acceptance of the personal life experiences which all together tell a story of a past events shedding their light to the future.

Previous statements seem overly optimistic and romanticized, and it might as well be so, observed through the lance of consumers society, where everything needs to have express results. But, if it is observed through the lance of actions and reactions, where “every reaction becomes a chain reaction and where every process is the cause of new processes.”<sup>196</sup>, then the potential of theater is exposed. Furthermore, due to the causal relationships in the region created through the historical, political, social, cultural (and linguistic) legacy, theater plays are staged in a different geographical and political contexts through touring. This enables the expansion of the numbers of theater audience, on one side, and overcoming the nationalistic rhetoric, on the other. Theater plays are creating perpetual exchange of actors and spectators, actions and reactions, regardless of the state borders, regardless of the political ideologies, nationalities and ethnicity, setting the ground and initiating the process(es) of dealing with the past. Furthermore, plays create the ephemeral monuments as reminders of the issues that need to be addressed and serve to preserve the memory in the public.

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<sup>196</sup> Arendt, Hannah, *The Human Condition*, Doubleday Anchor Book, New York, 1959, p. 169.

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EUROPEAN REGIONAL MASTER'S DEGREE IN  
DEMOCRACY  
AND HUMAN RIGHTS IN SOUTH EAST EUROPE

University of Sarajevo – University of Bologna

**RECOGNIZED AND NON-RECOGNIZED ETHNIC  
MINORITIES IN ALBANIA: THE CASE STUDY OF  
BOSNIAKS**

MASTER THESIS SUBMITTED IN PARTIAL FULFILMENT OF  
THE EUROPEAN REGIONAL MASTER'S DEGREE IN DEMOCRACY  
AND HUMAN RIGHTS IN SOUTH-EAST EUROPE

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I love you all and THANK YOU.

## List of abbreviations

B&H	Bosnia and Herzegovina
Advisory Committee on the FCNM	Advisory Committee on the Framework Convention for the Protection of National Minorities
Charter	European Charter for Regional or Minority Languages
CoE	Council of Europe
CPD	Commissioner for the Protection from Discrimination
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECRI	European Commission against Racism and Intolerance
EU	European Union
FCNM	Framework Convention for the Protection on National Minorities
HRUP	Human Rights Union Party
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
INSTAT	National Institute of Statistics of Albania
LPD	Law on the Protection from Discrimination
MFA	Ministry of Foreign Affairs of the Republic of Albania
NATO	North Atlantic Treaty Organization
OSCE	Organization for Security and Co-operation in Europe
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
WWI	First World War
WWII	Second World War

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## Introduction

*“My only wish is for our people to be recognized as a minority, for our children to be able to learn Bosnian language, so that they never forget where ancestors came from”<sup>1</sup>*

The Republic of Albania is a modern state which emerged from socialism almost twenty five years ago. The period of socialism was accompanied by ‘bunker’ mentality of the Albanian communist leadership that resulted in complete withdrawal of this country from the membership of international organizations with the exceptions of United Nations.<sup>2</sup> Following the collapse of socialism, the period of minority’s awakening started after almost half of the century long isolation. Assimilation policies that were accompanied by anti-religion and re-naming policies including the closure of the borders significantly influenced the reduction in number of minority groups as well as the level of their identity self-consciousness. As a result of democratic changes that were introduced at the beginning of 1990’s, the minority groups started to seek their recognition and protection in order to successfully promote and safeguard their identity. Even though Albania has been largely perceived as an ethnically homogenous state<sup>3</sup>, the awakening of minority groups uncovered the existence of multi-ethnicity which needs to be addressed properly by the Albanian authorities.

Apropos, the Republic of Albania expressed its willingness to integrate into international community by becoming a member of the Council of Europe (1995), Organization for Security and Co-operation in Europe (1991) and North Atlantic Treaty Organization (2009). One of the main goals of this country is to join the family of European

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<sup>1</sup> Interview with Fiqiri Kllari, President of Bosniak association “Zambak”, held on 15 August 2014 in Borake

<sup>2</sup> Krasniqi, Gezim. *Country Report: Albania*. EUDO Citizenship Observatory. 2012.21.

<sup>3</sup> Pettifer, James. “The Greek Minority in Albania in the Aftermath of Communism”. Conflict Studies Research Centre. July, 2001.1

Union countries.<sup>4</sup> The protection of minority rights has been one of the crucial pillars of the European Union<sup>5</sup> and a precondition for accession of the candidate states. As a result, Albania recently started to engage more intensively in the protection of minority rights. The topic of this research is the treatment of minorities in Albania, both recognized and non-recognized, while the focus of the case study is placed on the Bosniak community.

In order to address the relevance of this topic, the question which arises is: Why this topic? Two years ago, I had the opportunity to watch the documentary on the local TV station in my home country, Bosnia and Herzegovina (hereinafter: B&H), which presented the situation of this particular minority in Albania.<sup>6</sup> Their appeal to the B&H government to help them in order to preserve their identity, in particular the language, triggered my decision to choose this topic for my research at the ERMA programme. Despite being abandoned by their kin-state they still nurture an inexplicable kind of love towards the land of their ancestors, Bosnia and Herzegovina. While doing a preliminary research on this topic, I could see that there is a limited amount of materials addressing the existence of Bosniaks in Albania.<sup>7</sup> This influenced me even more to find out why this community is ignored by their kin-state and the authorities of the state in which they reside.

Essentially, the following case study represents the first written work on analysis of this community and their origin at least to my knowledge, analyzing the methods members of this group use for preserving their identity and responses of the relevant authorities to their claims for recognition. The aim of this research is to contribute to general knowledge of the status of minorities in Albania, but focusing

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<sup>4</sup> Ministry of European Integration of the Republic of Albania. *Road map on five key priorities*. April 2014

<sup>5</sup> European Union, *Consolidated version of the Treaty on European Union*, 13 December 2007, 2008/C 115/01, available at: <http://www.refworld.org/docid/4b179f222.html> (Accessed 20 September 2014)

<sup>6</sup> Televizija Alfa. *Bošnjaci Albanije-130 godina sanjaju svoju Bosnu I Herzegovinu*. 2010 Available at: <https://www.youtube.com/watch?v=8a8SXvyetts> (Accessed June 15 2014)

<sup>7</sup> In the personal interview, Prof. Dr. Omer Ibrahimagić who dealt extensively with the existence and the origins of Bosniaks during his career, emphasized that there is no document indicating the existence of Bosniaks in Albania, but that the public is familiar with their existence.

in particular, on the Bosniak minority.

The Constitution of the Republic of Albania does not stipulate which minority groups exist in the territory of that state. Nonetheless, the membership to the State Committee on National Minorities, an institution which was founded in 2003<sup>8</sup> serves as a *de facto* recognition of minority groups that could enjoy the protections deriving from the Framework Convention on National Minorities. The members of the above-mentioned Committee are the ‘national minorities’ including Greeks, Macedonians, Serbian-Montenegrins and ‘ethno-linguistic’ minorities including Vlach /Aromanian and Roma minority. On the other hand, Egyptian and Bosniak minorities do not participate in the work of the above-mentioned Committee and they are not recognized as minorities.

In that regard the main hypothesis of this thesis is that non-recognition of Egyptians and Bosniaks aggravates the possibility of these communities to enjoy protections deriving from the obligations specified in the FCNM which other minorities have to a certain extent. This standpoint stems from the argument that the minorities in Albania do not enjoy the sufficient amount of protection of their rights by the State of Albania due to lack of full implementation of the existing legal instruments, in particular the Framework Convention for the Protection on National minorities.

In order to find answers to the previously stated hypothesis, the research questions are posed as follows: What does the legal protection of the minorities in Albania consist of and what are the obstacles which recognized minorities face with regard to preservation of their identity? Due to complexity of these questions, the following sub-question on recognized minorities is posed: Is there a differentiation in the treatment of national and ethno-linguistic minorities by the Albanian authorities? The third question posed is: What obstacles do non-recognized minorities face in the Republic of Albania with regard to preservation of their identity and why? The answer to this question narrows its focus on two minority groups, Bosniaks and Egyptians. The fourth question is related to and will be answered through the case study

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<sup>8</sup> The State Committee is established by the decision delivered by the Council of Ministers in 2003 with the aim of promoting the participation of persons belonging to minorities in the country’s public life

of Bosniaks, particularly concerning their origin, methods of preserving their identity, relationship with the kin-state and the State of Albania.

The thesis is comprised of three chapters covering three distinctive, but intertwined aspects: the international legal instruments that Albanian government signed and ratified as well as the laws that the state of Albania proclaimed in order to ensure legal basis for safeguarding the rights of minority groups, the implementation of the legal instruments and general overview of the treatment of recognized minorities, and the concluding chapter is completely devoted to the analysis of the status and position of the Bosniak community, touching also upon the issues of Egyptian minority to a certain extent.

With the aim of answering the above-stated questions, both the primary and secondary sources are used. Preliminary research was conducted by using various academic articles, books, reports issued by international organizations, press releases, online publications etc, but it is important to emphasize that the field work accompanied with 28 conducted interviews was crucial element in reaching the results and conclusions.

The interviews that I have conducted for the purpose of collecting data address four perspectives: the perspective of governmental sector, non-governmental sector, international organizations and members of minority groups. The perspective of the government is obtained through the interviews conducted with the representative of Ministry of Foreign Affairs of the Republic of Albania. Furthermore, the representative of People's Advocate of Albania was also interviewed as well as the representative of Serbian-Montenegrin minority in the State Committee on National Minorities. The interview conducted with the legal expert from the office of the Commissioner for the Protection from Discrimination was valuable for the process of collecting the data.

In order to obtain the perspective of non-governmental sector, I have conducted interviews with the employees of Albanian Helsinki Committee and Albanian Center for Human Rights. By being an intern on the project related to the promotion of human rights and minority protection in South East Europe in the Council of Europe's office in Tirana, I had the opportunity to be engaged in collecting relevant materials and be directly involved in the

implementation of the project. Other interviews were conducted with the representative of the Organization for Security and Co-operation in Europe and member of Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities. In order to have a clear picture of the treatment of minority groups by the state of Albania, the interviews were also conducted with individuals who are actively engaged in the field of human rights such as Remzi Lani, the executive director of the Albanian Media Institute and Endri Xhaferaj, the PhD candidate in "Diversity Management and Governance", Karl-Franzens University, Graz.

Primary sources used in the first chapter are the relevant laws and international documents that Albania signed and ratified. Furthermore, I have consulted relevant authors who extensively dealt with providing detailed overview of international documents on the minority protection, such as: Gaetano Pentassuglia, Francesco Capotorti, Patrick Thornberry etc.

The information gathered for second chapter is mostly based on the secondary sources comprised of reports issued by the Advisory Committee on the Framework Convention for the Protection of National Minorities and Ministry of Foreign Affairs of the Republic of Albania submitted to the previously mentioned Committee. In order to provide a wider picture of the treatment of minority groups, I have consulted academic articles, press sources, on-line scholarly publications, TV documentaries and reports issued by European Commission, OSCE, Albanian Helsinki Committee etc. Although chapter two is dominantly based on secondary research, several primary sources have been used. For the purpose of evidencing the status of Serbian-Montenegrin minority in Albania, the interview was conducted with the representative of the previously mentioned minority in the State Committee on National Minorities. Furthermore, in order to obtain information derived from different opinions, I have conducted an interview with Remzi Lani, the executive director of the Albanian Media Institute. The member of the Advisory Committee on the Framework Convention for the Protection of National Minorities has been also interviewed for the purpose of this research.

With the respect to the methodological approach to chapter three, it differs in the respect to Bosniak and Egyptian community. The theoretical part of the first chapter is based on the arguments provided by authors who addressed the issue of non-recognition in their works such as: Francesco Capotorti, Seyla Benhabib and Dimitras Elias Panayote. The sources used for collecting data on the issues related to Egyptian community are based on the Council of Europe's reports and different authors that addressed this particular issue. However, for the Bosniak community, being the central point of this research a detailed primary research has been conducted using interviews with the members of Bosniak community. The interviewees were chosen based on their ability to speak Bosnian language and their knowledge regarding the relevant subject matter. Each of the interviewees was asked a set of questions which are reflected in the sub-chapters of the chapter three: historical background, information about the Bosniak association, methods for the preservation of identity and their relation with the kin-state.

It is relevant to mention that the academic discussions and research on the minority groups in Albania are still scarce. Nevertheless, the situation of minorities has been addressed to a certain extent by James Petiffer and Miranda Vrackers. However, the academic articles and books published by these authors are mostly related to the current and previous situation of Greek minority, while addressing the issues of other minorities to a small extent, only in relation to the socialist period. On the other hand, the legal framework for the protection of minorities has been addressed by different authors who were used for the purpose of this research as authorities assessing the analysis of the existing legal instruments, including Gaetano Pentassuglia, Francesco Capotorti, Patrick Thornberry, María Amor Estebanez and others.<sup>9</sup> Several authors dealt extensively with Roma and Egyptian minority, including Maria Koinova, Hermine de Soto, Sabine Beddies and Ilir Gëdeshi. The detailed picture concerning the Vlach/Aromanian minority is provided by Stephanie Schwandner-Sievers. The critical assessment on the Census conducted in 2011 and its impact on minorities in

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<sup>9</sup> Including also: Gudmundur Alfredsson, Ferrer Erika, Jean-Marie Woegelin, Geof Gilbert and Florence Benoit-Rohmer

Albania, has been provided by Gezim Krasniqi. Furthermore, the relationship between minority, its kin-state as well as host-state has been addressed by Rogers Brubaker and Snezana Trifunovska. Hence, Dejan Stjepanović dealt extensively on the elaboration of the link between diaspora and kin-state's political elites.

## 1. Albania - Legal and International Obligations

The willingness of a state to adequately protect members of minority groups is reflected in the level of its compliance with the ratified international conventions addressing that aspect. Furthermore, the existence of concise laws stipulating anti-discrimination and equality provisions is crucial for ensuring effective protection of persons belonging to minorities. Moreover, the absence of a universally accepted definition of the term 'national minority' and vague language of international documents aggravates the possibility of minority groups to practice their rights. As Gaetano Pentassuglia argued the absence of internationally adopted definition of the term "minority" could be attributed to the difficulty to identify common elements of pluralistic society that has been comprised of diverse groups.<sup>10</sup>

The definition of minority that is widely used is the one provided by Francesco Capotorti, the Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, specifying that a minority is:

"A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language"<sup>11</sup>

In addition, Mitja Žagar developed the working definitions that

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<sup>10</sup> Pentassuglia, Gaetano. *Minorities in International law*. Council of Europe.2002.55

<sup>11</sup> Capotorti, Francesco *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*.New York:United Nations1979.96

distinguish among different types of ethnic minorities.<sup>12</sup>

The following subchapter will firstly introduce the treatment of minorities by the state of Albania after First World War (hereinafter: WWI) until the collapse of socialism in Albania, at the beginning of the 1990's. The second subchapter enlists core international instruments that Albanian authorities signed. The third subchapter elaborates, firstly, the importance of Albania's adherence to the European Union accession requirements regarding the protection of minorities, and secondly, improvement, as well as stagnation, in that regard. Lastly, the fourth subchapter provides an overview of the Albanian legal instrument.

### 1.1 Historical aspects of the protection of ethnic minorities by Albania

After the State of Albania became a member of the League of Nations in December 1920, it committed itself to protect minority rights in conformity with the provisions of Minority Treaties.<sup>13</sup> Shortly after its admission to this organization, Albania adopted Declaration concerning the protection of minorities on October 2, 1921. The Declaration is in

<sup>12</sup> According to the author, the term ethnic minority is defined as:

- (a) "A specific and formed- distinct-group of persons
- (b) That is (usually) numerically smaller than the rest of the population of a state and
- (c) Lives as a distinct community in a non-dominant position within a certain society
- (d) Person belonging to this distinct community are citizens of the state on which territory they reside
- (e) They possess ethnic, religious, cultural and/or linguistic characteristics differing from those of the rest of the population of the state.
- (f) They developed a distinct (ethnic) identity and are motivated to preserve together their common identity, religion, culture, traditions and language
- (g) Such a community became an ethnic minority as a consequence of a specific historic(political and administrative) development in the territory/region of their traditional settlement" For further elaboration on this aspect see: Žagar, Mitja. "Are Slovenes in Croatia a National Minority? General terminology and legal protection." In *Slovenes in Croatia*, ed. by Vera Kržnišnik-Bukić, Ljubljana: Institute for Ethnic Studies, 1995. 334

<sup>13</sup> Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1 ,of the Council of Europe's Framework Convention for the Protection of National Minorities. 2001.* ACFC/SR(2001)005

conformity with the clauses of the Minorities Treaties stipulating in Article 5 the following:

“Albanian nationals who belong to racial, religious or linguistic minorities will enjoy the same treatment and security in law and in fact as other Albanian nationals. In particular they shall have an equal right to maintain, manage and control at their own expense or to establish in the future, charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.”<sup>14</sup>

Nevertheless, the Albanian constitution has been modified by the Albanian National Assembly in 1933, since the previous constitution did not contain any provisions safeguarding minority rights. The primary version of the constitution allowed for the establishment of public and private educational facilities as has been stipulated also in the Declaration mentioned above. The modification abolished such rights which produced disagreements among minority representatives, especially among the members of Greek minority. On April 6<sup>th</sup> 1935, The Permanent Court of International Justice on its thirty-fourth session issued an advisory opinion regarding the issue of minority schools in Albania. The Court recalled the Article 5 of the above-mentioned Declaration arguing that the abolishment of the provisions related to the minority language education is not in conformity with the provisions of the Declaration. The Albanian Government, according to the Court, was obliged to re-open Greek schools and to re-establish the right to private education.<sup>15</sup>

After the Second World War, there were some improvements in the national legislation. The Constitution of 1946 guaranteed equality to all citizens regardless of their nationality, race and religion and the free use of national minority languages.<sup>16</sup> However, the implementation of those provisions lacked the positive results on the ground. On the

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<sup>14</sup> Declaration Concerning the Protection of Minorities in Albania ( Geneva, 2 October 1921)L.N.T.S. Vol.9, 1922. Available at: <http://ungarisches-institut.de/dokumente/pdf/19211002-1.pdf> ( Accessed 10 September 2014)

<sup>15</sup> See more at: Advisory Opinion of the Permanent Court of Justice, April, 6<sup>th</sup>, 1935, series A/B, 64.

<sup>16</sup> Constitution of Albania. 1946, revised in July 4, 1950, and amended in 1953, 1954 and 1958.Art.15 in: Jenkins Peaselee, Amos. *Constitutions of Nations:Europe*. Martinus Njihoff, 1970.59

other hand, this Constitution was amended in 1976 and it stipulated the right to minorities to practice their native language and to learn it in schools even though clear violations were committed during the socialist regime.<sup>17</sup>

The establishment of socialism in Albania impacted the creation of the set of laws that strictly forbid practice of religion and changed the names of citizens and places. These laws included even the eviction of those persons who were considered as an enemy of the system.<sup>18</sup> The period of severe socialism is characteristic for destruction of religious objects and prohibition of any aspect that celebrated religion including the literature. For almost half of the century, Albania has been cut off from any kind of cultural, economic and political links with the rest of the world; therefore the freedom of movement of people and information was strictly forbidden.<sup>19</sup>

In essence, due to democratic transformations that the State of Albania was facing at the beginning of the 1990's, the protection of minorities gained a completely new dimension. The membership to the various international organizations stimulated this country to actively engage into ratification and adherence to the legal instruments for the protection of minorities.<sup>20</sup> Furthermore, recently gained European Union candidate status stimulates the Albanian government even more to address the issues arising from the protection of minority rights with greater effectiveness.

Nevertheless, it could be argued that almost half of the century-long isolation influenced the slow ratification process of the international human rights documents that serve as a guarantee for the protection of minority rights. The following subchapter enlists core international human rights instruments aimed at protection of

<sup>17</sup> Constitution of People's Socialist Republic of Albania. 28 Dec. 1976. Available at: <http://bjoerna.dk/dokumentation/Albanian-Constitution-1976.htm> (Accessed 09 September 2014)

<sup>18</sup> Ortakvski, Vladimir. *Minorities in the Balkans*. Transnational Publishers. 2000. 194-195.

<sup>19</sup> Bogdani, Mirela and John Loughlin. *Albania and the European Union*. I.B. Tauris & Co Ltd, 2007. 26.

<sup>20</sup> Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities*. 2001. ACFC/SR(2001)005

minorities, proclaimed by United Nations and Council of Europe of which Albania is a member.

## 1.2 Albania and the International legal documents protecting the rights of minorities

Following the collapse of the socialist regime, the State of Albania directed its actions towards joining the European Union.<sup>21</sup> In that regard, its willingness to join both European and international community is reflected in signing and ratification of international agreements. Albania became a member of United Nations in 1955; therefore it ratified almost every international convention issued by this institution.<sup>22</sup> Furthermore, in June 1991, Albania became a member of the Organization for Security and Co-operation in Europe (hereinafter: OSCE) and signed all documents issued by this organization.<sup>23</sup> Since June 13 of 1995 Albania is a member of the Council of Europe which means that it has obliged itself to abide by their respective documents,

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<sup>21</sup> Ibid.

<sup>22</sup> Among the instruments ratified are : The Universal Declaration on Human Rights, 1948 (adhered to in 1955); The International Convention on the Elimination of all Forms of Racial Discrimination, 1969, (adhered to in 1994); The International Pact on Civil and Political Rights, 1966 (adhered to in 1991); The International Pact on Economic, Social and Cultural Rights, 1976, (adhered to in 1991); The Convention on Elimination of all Forms of Women's Discrimination, 1980 (adhered to in 1996); The Convention on Children's Rights, 1989, (adhered to in 1992); The Convention Against Discrimination in Education, 1960, (adhered to in 1963), etc. Please see: Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1 ,of the Council of Europe's Framework Convention for the Protection of National Minorities.2001.ACFC/SR(2001)005*

<sup>23</sup> Those instruments are: The Final Act of the Helsinki Conference, 1975; The Declaration of Copenhagen, 1990; The Charter of Paris for a new Europe, 1990; The Document of the Conference of Moscow, 1991, etc. Please see: Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1 ,of the Council of Europe's Framework Convention for the Protection of National Minorities.2001.ACFC/SR(2001)005*

as well.<sup>24</sup> According to the first report issued by the Albanian Ministry of Foreign Affairs (hereinafter: MFA), any international agreement that has been ratified by the Albanian authorities constitutes a *de facto* part of internal law. As a result, in cases when domestic laws are not compatible with the international documents, it is the international level which is given priority over the domestic laws.<sup>25</sup> The following paragraphs introduce the core international documents for the protection of minorities, setting the standard to Albania as a signatory state.

The European Convention on Human Rights and Fundamental Freedoms (hereinafter: ECHR) entered into force in 1953, representing the first regional human rights system.<sup>26</sup> The Parliament of the Republic of Albania ratified this Convention on 31 of July in 1996 by promulgating the Law no.8137. Hence, it also ratified the protocols of this Convention No. 1, 2,4,6,7, and 11.<sup>27</sup> Even though the ECHR does not contain any specific provisions related to minority rights, the Article 14 of this

<sup>24</sup> The instruments ratified are: The Convention for the Protection of Fundamental Human Rights and Freedoms, 1951, (ratified with Law 8137, dated 31.07.1996) and the Protocols 1, 2, 4, 6, 7, 11 of this Convention, The Framework Convention for the Protection of National Minorities, 1995, (ratified with Law 8496, dated 03.06.1999, without any reserve) etc. The European Convention on Cross-Border Television 1999 (ratified with Law 8525, dated 09.09.1999) “Partial Extended Agreement of the European Center of Modern Languages” in Gratz of Austria (ratified with Law 8706, dated 01.12.2000), etc. Please see: Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities.2001.ACFC/SR(2001)005*

<sup>25</sup> Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities.2001.ACFC/SR(2001)005*

<sup>26</sup> United Nations Guide on Minorities. *Minority Rights under the European Convention on Human Rights.2001.*

<sup>27</sup> Instrument for Pre-Accession Assistance National Programme 2011 for Albania. *Supporting Social Inclusion of Roma and Egyptian communities.2011.* [http://ec.europa.eu/enlargement/pdf/albania/ipa/2011/pf\\_6\\_roma.pdf](http://ec.europa.eu/enlargement/pdf/albania/ipa/2011/pf_6_roma.pdf) (Accessed 01 September 2014)

Convention explicitly prohibits discrimination on any ground.<sup>28</sup>

The United Nations Educational, Scientific and Cultural Organization (hereinafter UNESCO) Convention against Discrimination in Education is the first major legal instrument implementing the rights to education and equal educational opportunities for all.<sup>29</sup> It was adopted on 14 December 1960 and entered into force on 22 May 1962. The Republic of Albania ratified this Convention on November 1 in 1963. Article 5 of the previously mentioned Convention obliges State parties to recognize the right of members of national minorities to carry out their own educational activities.<sup>30</sup>

On the other hand, the International Covenant on Economic, Social and Cultural Rights (hereinafter: ICESCR) was adopted in 1966 and entered into force in 1976. This Covenant was ratified by the state of Albania in 1991. The principles of non-discrimination and equality are enshrined in the Articles 6 (right to work), Article 7 (right to equality in the work place) and Article 2 (guarantee that the rights enunciated in the Convention will be exercised without discrimination). Furthermore, Article 13 stipulates the right to education in the native language.<sup>31</sup>

The International Covenant on Civil and Political Rights (hereinafter: ICCPR) was adopted in 1966 and entered into force in

<sup>28</sup> The Article 17 of the ECHR states that: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status” European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 Nov. 1950), 312 E.T.S. 5, as amended by Protocol No. 3, E.T.S. 45; Protocol No. 5, E.T.S. 55; Protocol No. 8, E.T.S. 118; and Protocol No. 11, E.T.S. 155; entered into force 3 Sept. 1953 (Protocol No. 3 on 21 Sept. 1970, Protocol No. 5 on 20 Dec. 1971, Protocol No. 8 on 1 Jan 1990, Protocol 11 on 11 Jan 1998)

<sup>29</sup> Abdulqawi, A.Yusuf. *Standard Setting in UNESCO: Normative Action in Education, Science and Culture*. UNESCO and Martinus Nijhoff Publishers. Vol 1, 2007.296.

<sup>30</sup> United Nations Educational, Scientific and Cultural Organisation, *Convention Against Discrimination in Education*, 14 December 1960, Art.5 Available at: <http://www.refworld.org/docid/3ae6b3880.html> (Accessed 20 September 2014)

<sup>31</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights (New York, 16 Dec. 1966) 993 U.N.T.S. 3, entered into force 3 Jan. 1976*

1976. The Republic of Albania became the state signatory of the ICCPR on October 4, 1991, which entered into force on January 4 in 1992. The specificity of this Covenant lies in the Article 27 which is specifically safeguarding the rights of minority members; therefore it has been argued that this Article constitutes “the first internationally accepted rule for the protection of minorities”<sup>32</sup> Furthermore, the Article 27 indicated that the persons who are protected under this provision are the ones who belong to a group and who share a common culture, religion and/or a language. Apropos, the provisions of the above mentioned Article do not restrict the applicability of this right only to the citizens of a State party to a Covenant.<sup>33</sup> It has been explicitly stated in the General Comment no. 23 by the UN Human Rights Committee that the Article 27 imposes specific obligations to the State parties and that this right serves for ensuring the survival and continued development of the cultural, religious and social identity of the minorities which enriches the fabric of society as a whole.<sup>34</sup>

The International Convention on the Elimination of All Forms of Racial Discrimination was adopted in 1965 and entered into force in 1969. The Republic of Albania adhered to this Convention on May 11 1994, which entered into force on Jun. 10, 1994.<sup>35</sup> Article 1 of this Convention defines racial discrimination, while Article 2 (2) and Article 5 oblige states to undertake special measures for the protection of the members of national minorities.<sup>36</sup>

The Convention on the Rights of a Child has been adopted by the General Assembly in 1989 and entered into force on 2 September 1990. The Republic of Albania ratified this Convention in 1992. The

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<sup>32</sup> See: Capotorti, Francesco *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*. U.N.Doc.E/CN.4?Sub.2/34?Rev.1.1979.

<sup>33</sup> United Nations Human Rights Committee (HRC), *CCPR General Comment No. 23: Article 27 (Rights of Minorities)*, 8 April 1994, CCPR/C/21/Rev.1/Add.5, available at: <http://www.refworld.org/docid/453883fc0.html> (Accessed 30 August 2014)

<sup>34</sup> Ibid.

<sup>35</sup> United Nations Treaty Collection. [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en) (Accessed 25 September 2014)

<sup>36</sup> International Convention on the Elimination of All Forms of Racial Discrimination (New York, 7 Mar. 1966) 660 U.N.T.S. 195, 5 I.L.M. 352 (1966), entered into force 4 Jan. 1969.

Article 30 of the previously mentioned Convention is identical to the Article 27 of the ICCPR, stipulating the right of a child who belongs to minority group, to enjoy its culture, practice its religion and to use its own language.<sup>37</sup>In addition, Article 17 encourages mass media to have a particular regard to the linguistic needs of a children who belong to minority group.<sup>38</sup> The principle of non-discrimination by the States parties to Convention is enshrined in the Article 2.

By contrast, the European Charter for Regional or Minority Languages (hereinafter: the Charter) was adopted by the Committee of Ministers of the Council of Europe on 25 June 1992, at its 478th meeting. This instrument is devoted specifically to the protection and promotion of the less widely spoken languages.<sup>39</sup> Furthermore, the primary aim of the drafters was to protect languages rather than individuals. However, since no right has been explicitly mentioned in the Charter, the obligations to the State parties are clearly defined.<sup>40</sup>

The existence of this instrument serves as an example of positive value being given to linguistic diversity which, to a certain extent,

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<sup>37</sup> Convention on the Rights of the Child (New York, 20 Nov. 1989) 1577 U.N.T.S. 3, 28 I.L.M. 1448 (1989), entered into force 2 Sept. 1990, Art 30

<sup>38</sup> Convention on the Rights of the Child (New York, 20 Nov. 1989) 1577 U.N.T.S. 3, 28 I.L.M. 1448 (1989), entered into force 2 Sept. 1990, Art. 17

<sup>39</sup> Woegelin, Jean-Marie. *The European Charter for Regional or minority languages: A critical Commentary*. Council of Europe Publishing.2005.1

<sup>40</sup> The Charter recommends States to base their policies, legislation and practice in terms of recognizing regional or minority languages as an expression of cultural wealth, promoting studies and research on those languages at universities or equivalent institutions, providing the appropriate forms and means for teaching and studying of those languages at all appropriate states etc Apropos, among other provision related to the establishment of adequate facilities related to the education on regional or minority languages, the Charter states that the Parties undertake to make available pre-school education in those languages or to make available a substantial part of pre-school education in those languages that are relevant. As Woegelin argued, there are very few clauses in the Charter that apply directly to the domestic legislation; therefore the States must transpose the provisions of this instrument into domestic law by means of implementation measures. The complicated procedure of implementation of the Charter could be the reason why several signatory countries do not achieve any progress in practice when it comes to realization of the provisions. For further elaboration on this issue, please see: Woegelin, Jean-Marie. "The European Charter for Regional or minority languages: A critical Commentary." Council of Europe Publishing.2005.30

provides the society with the clear picture of differences that exist and which have to be accepted and respected.<sup>41</sup> It has been argued that the protection of regional and minority languages is not aimed at choosing between an official language and a regional or minority language, but on the basis of a friendly and reasonable coexistence between the two. Moreover, as Jean-Marie Woegelin emphasized: “languages are perceived as reinforcing one another, rather than being in opposition or competition.”<sup>42</sup> Therefore, the existence of linguistic pluralism and its preservation and promotion is certainly a benefit to the society as a whole.

Albania is one of the fourteen members of the Council of Europe which did not sign and ratified the Charter.<sup>43</sup> The European Commission against Racism and Intolerance in its third report on Albania provided recommendations to this country criticizing not signing and non-ratification of the Charter.<sup>44</sup> Furthermore, the Advisory Committee of the Framework Convention on National Minorities (hereinafter: FCNM) argued that the ratification of this instrument was: “one of the commitments entered into by Albania on its accession to the Council of Europe in 1995.”<sup>45</sup> Moreover, the issue of non-ratification and not signing the Charter was one of the recommendations mentioned in the Universal Periodic Review.<sup>46</sup> The main argument of the state officials for not signing and ratifying this instrument concerns the lack of adequate legal framework that could encompass the rights of all minority groups and therefore provide solid ground for successful

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<sup>41</sup> Woegelin, Jean-Marie. “The European Charter for Regional or minority languages: A critical Commentary.” Council of Europe Publishing. 2005. 1

<sup>42</sup> Ibid.

<sup>43</sup> Council of Europe Treaty Office. *Status of number of signatory states of the European Charter for Regional or Minority Languages* <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=148&CM=8&DF=&CL=ENG> (Accessed 25 September 2014)

<sup>44</sup> Please see: European Commission against Racism and Intolerance. *ECRI Report on Albania (fourth monitoring cycle)*. Council of Europe, 2010.

<sup>45</sup> Advisory Committee of the Framework Convention for the Protection of National Minorities. *Third Opinion on Albania*. 2011. ACFC/OP/III(2011)009

<sup>46</sup> Universal Periodic Review. *Responses to Recommendations & Voluntary Pledges*. 2014 [http://www.upr-info.org/sites/default/files/document/albania/session\\_19\\_april\\_2014/recommendations\\_and\\_pledges\\_albania\\_2014.pdf](http://www.upr-info.org/sites/default/files/document/albania/session_19_april_2014/recommendations_and_pledges_albania_2014.pdf) (Accessed 27 September 2014)

implementation of the Charter.<sup>47</sup> However, there are some indications of future improvements in this regard in Albania. On 24th April 2014 the secretariat of the Council of Europe's project for the promotion of human rights and minority protection, organized the workshop together with the Ministry of Foreign Affairs of Albania concerning the process of signing and ratification of the Charter.<sup>48</sup>

The Council of Europe, at its very beginning of existence, encountered various problems related to the issue of minorities. However, the Parliamentary Assembly in its report stressed out the importance of solving "the problem of wider protection of the rights of national minorities".<sup>49</sup> The Framework Convention for the Protection of National Minorities (hereinafter: FCNM) has been often described as the most comprehensive instrument concerning minority rights protection. It was adopted by the Committee of Ministers on 10 November 1994,

<sup>47</sup> This was stressed out in the interview conducted with Alket Jaupi, representative of the Albanian Ombudsman institution, held on 25 June 2014 in Tirana and in a interview conducted with the representative of the Ministry of Foreign Affairs of the Republic of Albania, Held on 24 June 2014 in Tirana.

<sup>48</sup> The main objective of the workshop was the establishment of the inter-ministerial working group founded under the jurisdiction of the Ministry of Foreign Affairs. The working group is liable for drafting the new law on national minorities and preparing all necessary documents for the ratification of the Charter. Since 35 provisions is a minimum number of provisions that has to be recognized through the ratification process, the Albanian legislation provides a basis for 38 provisions; therefore for the purpose of ratification the authorities do not have to provide too many amendments to the Charter. Hence, the working groups should finish its drafting process until November 2014; therefore the ratification of the Charter is expected in a very near future. Read more at: Promoting Human Rights and Minority Protection in South East Europe. "European Charter for Regional or Minority Languages in Albania, Current State of Affairs." Council of Europe. April 2014. [http://pjp-eu.coe.int/web/minority-rights/news/-/asset\\_publisher/8Ky6XGvAglke/content/european-charter-for-regional-or-minority-languages-in-albania-current-state-of-affairs?redirect=http%3A%2F%2Fpjp-eu.coe.int%2Fweb%2Fminority-rights%2Fnews%3Fp\\_p\\_id%3D101\\_INSTANCE\\_8Ky6XGvAglke%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-1%26p\\_p\\_col\\_count%3D1#8Ky6XGvAglke](http://pjp-eu.coe.int/web/minority-rights/news/-/asset_publisher/8Ky6XGvAglke/content/european-charter-for-regional-or-minority-languages-in-albania-current-state-of-affairs?redirect=http%3A%2F%2Fpjp-eu.coe.int%2Fweb%2Fminority-rights%2Fnews%3Fp_p_id%3D101_INSTANCE_8Ky6XGvAglke%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1#8Ky6XGvAglke) (Accessed 20 September 2014)

<sup>49</sup> Council of Europe. *Explanatory Report of the Framework Convention for the Protection of National Minorities*. Para 1. <http://conventions.coe.int/Treaty/EN/Reports/Html/157.htm> (Accessed 25 September 2014)

and opened for signature on 1 February in 1995.<sup>50</sup> The Advisory Committee (hereinafter: Advisory Committee on the FCNM) is the key body responsible for monitoring the implementation of the treaty. Furthermore, the Committee of Ministers of the Council of Europe receives opinions of the Advisory Committee on the FCNM, state comments on opinions and adopts resolutions based on the Advisory Committee's concluding remarks.<sup>51</sup>

The Convention was ratified by the Assembly of the Republic of Albania by the Law No. 8496 which was proclaimed on June 3 in 1999, after the instruments of ratification were deposited on September 28<sup>th</sup> in 2000. This legal instrument came into effect on January 1 in 2000.<sup>52</sup> After its ratification this Convention has become a part of domestic law and has the force of law; therefore it serves as a guarantee for the protection of minority rights in Albania.<sup>53</sup> According to Geof Gilbert, one of the critical parts of this convention concerns the incorporation of the term "framework" into the title of this legally binding instrument. It could be argued that the soft language of the convention provides freedom to the state parties to put vague and imprecise descriptions of rights into effects, for which reason the convention is deemed to be "almost worthless."<sup>54</sup> The explanatory report on the FCNM observes that the Convention "contains mostly programme-type provisions setting out objectives which the parties undertake to pursue" and that these provisions "will not be directly applicable".<sup>55</sup> The critical part of this

<sup>50</sup> Thornberry, Patrick and María Amor Estebanez. *Minority Rights in Europe*. Council of Europe. 2004. 89

<sup>51</sup> Philips, Alan. *The Framework Convention for the Protection of National Minorities : A Policy Analysis*. Minority Rights Group International. 2002.4. Available at: [http://www.minelres.lv/publicat/FCNM\\_MRGPolicyPaper2002.htm](http://www.minelres.lv/publicat/FCNM_MRGPolicyPaper2002.htm) (Accessed on 10 September 2014)

<sup>52</sup> Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1 ,of the Council of Europe's Framework Convention for the Protection of National Minorities*. 2001. ACFC/SR(2001)005

<sup>53</sup> Commissioner for Protection from Discrimination. *Overview of the situation of discrimination in Albania*. 2012. 1.

<sup>54</sup> Gilbert, Geof " The Council of Europe and Minority Rights." *Human Rights Quarterly*, Vol.18 (1996)160-89

<sup>55</sup> Council of Europe. *Explanatory Report of the Framework Convention for the Protection of National Minorities*. Para 11. <http://conventions.coe.int/Treaty/EN/Reports/Html/157.htm> ( Accessed 25 September 2014)

legal instrument is that it does not provide the definition of ‘national minority’; therefore there is the possibility that some states may try to restrict the scope of application of the Convention.<sup>56</sup>

Even though the vague language of the FCNM provides the states with the certain dose of liberty concerning the extent of implementation of this Convention, it undoubtedly remains the most comprehensive instrument addressing the protection of the individuals belonging to minority group. Furthermore, the language and the provisions stipulated within this instrument cannot be taken as meaningless since the States parties are obliged to “undertake to respect and implement the principles enshrined in the Convention.”<sup>57</sup>

After gaining the membership to the North Atlantic Treaty Organization, the Albanian authorities fully concentrated its efforts towards joining the family of countries consisting European Union. Given that the 1993 Copenhagen criteria for EU accession is: “the establishment of institutions that guarantee democracy, rule of law, human rights and respect for and protection of minorities”<sup>58</sup> the compliance with this criteria is crucial for the progress of the state of Albania with regard to EU accession.

The following sub-chapter provides an overview of Albania’s adherence to the European Union accession requirement with regard to the protection of minorities. The latest progress report on Albania issued in 2013 by the European Commission has been taken as an indicator of progress of this country enlisting achievements fulfilled over the last year but also obstacles which need to be successfully overcome.

### **1.3 Albania and the European Union Accession Requirements with regard to the protection of minorities**

In June 2014, Albania has been granted a European Union candidate status after it achieved necessary progress with regard to

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<sup>56</sup> [http://www.minelres.lv/publicat/FCNM\\_MRGPolyPaper2002.htm](http://www.minelres.lv/publicat/FCNM_MRGPolyPaper2002.htm)

<sup>57</sup> Council of Europe. Framework Convention for the Protection of National Minorities, 1 February 1995, ETS 157 , Art 19. Available at: <http://www.refworld.org/docid/3ae6b36210.html> (Accessed on 10 September 2014)

<sup>58</sup> Nicolai Wammen, Štefan Füle. “The Copenhagen Criteria and the Enlargement.” Copenhagen: Ministry of Foreign Affairs of Denmark, 2013. 1.

judicial and public administration reform and fight against organized crime. In 2013 the Council of the European Union issued the conclusions on Enlargement and Stabilization and Association process, enlisting the key priorities for the opening of the accession negotiations. Moreover, based on the progress report delivered by the European Commission (hereinafter: the Commission), the Council of the European Union stressed out that the Albanian authorities: "need to intensify efforts in the rule of law area, particularly reform of the judiciary, fight against organized crime and corruption and protection of human rights and anti-discrimination policies, including in the area of minorities, and their equal treatment, and implementation of property rights."<sup>59</sup>

In the latest progress report submitted by the European Commission for the period of 2012-2013, it has been argued that Albania has taken several concrete steps with regard to protection of human rights and minorities, particularly addressing the positive implementation of anti-discrimination policies. The Commission emphasized that the freedom of thought, conscience, religion, assembly and association has been generally respected. In essence, there is a progress in the field of freedom of expression since the Law on Audiovisual Media was adopted in March 2013. Albanian authorities were criticized by the European Commission for not adequately implementing the national action plan on Roma Decade and for no improvement of the living conditions of the Roma population. Furthermore, there is a need for more effective coordination between central and local government in order to adequately assess the needs of the members of minority groups. The EU Commission further emphasized that an immediate action must be taken with regard to education and inclusion of Roma children in educational system. Moreover, Albanian authorities must enhance the implementation of the Law on the Protection from Discrimination and to adequately raise public awareness among the population.<sup>60</sup>

The Commission proposed the establishment of short-term

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<sup>59</sup> Council of the European Union. *Council Conclusions on Enlargement and Stabilisation and Association Process*. Brussels, 2013. [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/genaff/140142.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/140142.pdf) (Accessed 23 September 2014)

<sup>60</sup> European Commission. *Albania: 2013 Progress Report*. Brussels, 2013. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/brochures/albania\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/albania_2013.pdf) (Accessed 28 September 2014)

measures which would ensure equal access to rights for persons belonging to all minorities throughout the territory. Additionally, in order to achieve effective results it is essential to abolish any ground for differentiated treatment between the categories of national and ethno-linguistic minorities. Hence, stimulating the role of State Committee on Minorities<sup>61</sup> would promote representativeness and consultations with minority members. The Commission criticized the results of the census conducted in 2011 arguing that several minority group associations contested the numbers mentioned therein.<sup>62</sup> For the development of legal and policy framework, the Albanian authorities are strongly encouraged not to use data collected through the Census as an exclusive source of information, but to take other information into account. The report also supports the need for enhancement of the use of minority languages and the right of all members of minority groups to be able to learn their native language. However, the authorities were criticized for not signing and ratifying the European Charter for Regional and Minority Languages arguing that the lack of an adequate legal framework constitutes an obstacle for the members of minority groups to achieve certain rights.<sup>63</sup> On the other hand, the Ministry of the Foreign Affairs, representing the Republic of Albania in its second commentary on the second opinion of the Advisory Committee on the FCNM, emphasized that the State of Albania is willing to sign and ratify this instrument.<sup>64</sup> However, due to non-existence of complete legal framework encompassing all the rights of minority groups, the adequate implementation of the Charter would not be possible. After issuing this commentary, no other report issued by the MFA, addressed the issue of not signing and non-ratification of this instrument.

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<sup>61</sup> The role and establishment of the State Committee on National Minorities will be elaborated more in details in the second chapter

<sup>62</sup> The issues regarding the Census conducted in 2011 will be elaborated more in details in the following chapter

<sup>63</sup> European Commission. *Albania: 2013 Progress Report*. Brussels, 2013 [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/brochures/albania\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/albania_2013.pdf) (Accessed 28 September 2014)

<sup>64</sup> Ministry of Foreign Affairs of the Republic of Albania. *Comments of the Government of Albania on the Second Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities by the Albania*. 2008.GVT/COM/II(2008)005

Following five key priorities that are mentioned earlier and progress report delivered by the European Commission, the Ministry of European Integration issued a Road Map in April 2014, concerning the framework of implementation of the reforms for the key priorities.<sup>65</sup> One of the key priorities is the reinforcement of the protection of human rights, including Roma, anti-discrimination policies as well as implementation of property rights. The measures related to these priorities are mostly aimed at the protection and promotion of Roma and Egyptian minorities. Moreover, the drafter of the Road Map elaborated concrete steps that need to be conducted including: effective implementation of the Law on Protection from Discrimination, improvement of implementation of the Roma Decade commitments as well as the Plan of Measures of the EU–Albania Policy Dialogue Seminar on Inclusion of Roma and Egyptian Communities and providing effective implementation of the rights protecting members of minorities.<sup>66</sup>

Another sign of improvement of Albania's adherence to the key priorities enlisted in the Council of European Union's Enlargement strategy is the establishment of the working group for the evaluation of the legal framework and policies for minorities. On 10<sup>th</sup> of March 2014, the Prime minister issued an order No. 117 by which the above-mentioned working group has been established.<sup>67</sup> This working group comprises of the representatives of the Ministry of Foreign Affairs and also the representatives from other 17 Ministries including the representatives of the People's Advocate office, Commissioner for the Protection from Discrimination (hereinafter: CPD), representatives of public media, National Institute of Statistics of Albania (hereinafter: INSTAT), members of State Committee on Minorities, members of the Parliament, office of Prime Minister and Commissioner for Data Protection.

One of the main tasks of this working group is to address the issues and recommendations referred in the progress report of the Advisory Committee on the Framework Convention for the Protection

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<sup>65</sup> Ministry of European Integration of the Republic of Albania. *Road map on five key priorities*. April 2014

<sup>66</sup> Ibid.

<sup>67</sup> Order of the Prime Minister no. 117 for the establishment of a working group for the evaluation the legal framework and policies for minorities. 10 March 2014.

of National Minorities. Furthermore, the group will identify the issues related to the respect of the rights of minorities and negotiate the legal framework and policies regarding this concern. In addition, the members of the group would provide recommendations and proposals aimed at improvement of the situation of the minority groups. Essentially, in the period from November until December 2014, periodic meetings would be organized where the members would have the opportunity to present their proposals.<sup>68</sup>

In order to achieve approximation of legislation with the *acquis communautaire*<sup>69</sup> and harmonization of domestic legislation, the CPD proposed the addition to the article in Title V, Chapter 4 regulating the burden of proof in discrimination cases. Furthermore, the Albanian authorities proclaimed the amendments to the legislation including the Penal Code, Code of Civil Procedures of the Republic of Albania, Law on the Pre-University Educational system etc.<sup>70</sup> The following subchapter would elaborate briefly the existing Albanian legal instruments aimed at the protection of minority rights.

#### **1.4 Albanian legal instruments for the protection of minority rights**

Principles of equality and non-discrimination are crucial elements that need to be enshrined into national legislation in order to provide effective protection of the rights belonging to the members of minority groups. The constitution of the Republic of Albania contains the above-mentioned principles; therefore the highest authority of the state provides a stable legal basis for ‘national minorities’ to seek the protection based on the rights stipulated in this instrument.

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<sup>68</sup> Ibid.

<sup>69</sup> The term: *acquis communautaire* refers to the European Union rules that are divided into 35 different policy fields (chapters) which need to be accepted by the applicant country. The *acquis* needs to be transposed into national legislation and implemented properly. For further elaboration in this regard, please see: James Hughes, Gwendolyn Sasse. “Monitoring the Monitors: EU Enlargement Conditionality and Monitoring Protection in the CEECs.” *Journal of Ethnopolitics and Minority Issues in Europe*, No. 1, 2003: 1-36.

<sup>70</sup> Commissioner for Protection from Discrimination. *Information on measures undertaken by Commissioner for Protection from Discrimination, regarding the topics laid down on the document of 5th round monitoring of ECRI.5*

The Constitution of the Republic of Albania has been approved by referendum on 22 November 1998, promulgated on 28 November 1998 and amended in January 2007.<sup>71</sup> In this legal instrument, several legal provisions can be found stipulating equality and protection from discrimination on any ground.

The Article 3 of the Constitution indicates the duty of the state to respect and protect the rights of every person including the members of minorities. Furthermore, the previously mentioned Article emphasizes the importance of coexistence between different religious and ethnic groups. In addition, it describes these rights as fundamental rights which are the basis of the Albanian state.<sup>72</sup> On the other hand, the Article 18 in the second provision stipulates that: “No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or parentage.”<sup>73</sup> Interestingly, the Constitution of the Republic of Albania does not refer to the prohibition of discrimination based on sexual orientation in the provision mentioned above.

The right to freedom of assembly is guaranteed in the articles 46 and 47 of the constitution. Article 20 of the constitution protects specifically the rights of national minorities:

“1. Persons who belong to national minorities exercise the human rights and freedoms in full equality before the law.

2. They have the right freely to express, without prohibition or compulsion, their ethnic, cultural, religious and linguistic belonging. They have the right to preserve and develop them, to study and to be taught in their mother tongue, and to unite in organizations and associations for the protection of their interests and identity.”<sup>74</sup>

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<sup>71</sup> Government of the Republic of Albania. *Constitution of the Republic of Albania*. 1998. Available at: <http://www.osce.org/albania/41888?download=true> (Accessed 20 September 2014)

<sup>72</sup> Government of the Republic of Albania. *Constitution of the Republic of Albania*. 1998. Art 3. Available at: <http://www.osce.org/albania/41888?download=true> (Accessed 20 September 2014)

<sup>73</sup> Ibid.

<sup>74</sup> Government of the Republic of Albania. *Constitution of the Republic of Albania*. 1998. Art 20. Available at: <http://www.osce.org/albania/41888?download=true> (Accessed 20 September 2014)

The second paragraph of this Article sets forth provisions essential for the protection of minority rights. Furthermore, it provides the freedom of minority members to exercise their right to education on mother tongue and to establish their own associations which would eventually promote the interest of their group. However, the sole implication of the term ‘national minorities’ brings to the surface the problem of non-existence of its definition; therefore, those groups who are not recognized as such are facing difficulties with regard of achieving the same rights as officially recognized minority groups.<sup>75</sup>

In addition to the constitutional provisions, there are other legal instruments which contain the principles of equality and non-discrimination. Those legal instruments are: the Code of Administrative Procedures, Labour Code and Law on Pre-University Education System etc.

The Article 11 of the Code of Administrative Procedures of the Republic of Albania contains principles of equality and proportionality since it explicitly forbids discrimination on any ground.<sup>76</sup> Furthermore, the Labour Code contains Article 11 which is based on the principle of equality and proportionality stipulating that no one should be discriminated or privileged based on his/her family origin, sex, race, language, birthplace etc.<sup>77</sup> In addition, the Law on Social Insurance emphasizes that all citizens of Republic of Albania are treated equally when it comes to distribution of pensions and health insurance.<sup>78</sup> Furthermore, the Law on Pre-University Education System contains

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<sup>75</sup> The treatment of national, ethno-linguistic and non-recognized minorities by the Republic of Albania, will be addressed in the next two chapters.

<sup>76</sup> “1. In the relations with the individuals, the Public Administration Offices are guided by the principle of equity. This means that no one should be privileged or discriminated because of family origin, sex, race, language, birthplace, political, religious or cultural pertaining, social and economic conditions.” The Assembly of the Republic of Albania. Law No. 8485 of the Code of Administrative Procedures of the Republic of Albania. 1999. Art 11.

<sup>77</sup> The People’s Assembly of the Republic of Albania. Law No. 7961 on the Code of Labor of the Republic of Albania. 1995. Art 11. Available at: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=239245](http://www.wipo.int/wipolex/en/text.jsp?file_id=239245) (Accessed 25 September 2014)

<sup>78</sup> The People’s Assembly of the Republic of Albania. Law No. 7703 on the Social Insurance in Albania Republic. 1993. Art 6. Available at: <http://www.legislationline.org/documents/action/popup/id/16420> (Accessed 25 September 2014)

Article 3 which indicates that: “The citizens of the Republic of Albania enjoy equal rights to study at all levels of education defined by this law, apart from the social state, nationality, language, sex, religion, race, political beliefs, health’s condition and economic level.”<sup>79</sup> What is more, the Article 10 of the above mentioned law stipulates the rights of national minorities to obtain education on their native language about their culture and history.<sup>80</sup>

In addition, The Article 1/b of the Criminal Code elaborates that the main task of criminal legislation is to:

*“protect the state’s dependence and its territorial integrity, human’s dignity, human rights and freedoms, constitutional order, property, environment, Albanians’ cohabitation and well understanding of Albanians with national minorities, and religious co-habitation; also, the criminal code should prevent the criminal acts.”*<sup>81</sup>

<sup>79</sup> The People’s Assembly of the Republic of Albania. Law No. 7952 on the Pre-University Education System.1995. Art 3. Available at: [http://www.see-educoop.net/education\\_in/pdf/law\\_on\\_pre\\_univ\\_educ\\_syst-alb-enl-t04.pdf](http://www.see-educoop.net/education_in/pdf/law_on_pre_univ_educ_syst-alb-enl-t04.pdf) ( Accessed 26 September 2014)

<sup>80</sup> The Article 10 of the Law on Pre-University Education System contains the following provisions: “ 10.1. The persons who belong to national minorities are granted the possibility to study and to be taught in their native language, to learn their culture, history within the framework of teaching programs and plans. 10.2. In order to ensure an active and equal participation in the social, economic, cultural and political life of the Republic of Albania, the state creates conditions to persons of national minorities to learn Albanian language, history and culture.10.3. The teaching programs and plans, and the ratio of making use of the native language and the official language within the teaching process is defined through and by special acts of the Ministry of Education and Science. 10.4. The education for people of minorities is realized in appointed schooling units and educational institutions, the opening and operation of which is made according to the procedures defined by the Council of Ministers.”

The People’s Assembly of the Republic of Albania.Law No. 7952 on the Pre-University Education System.1995. Art 3. Available at: [http://www.see-educoop.net/education\\_in/pdf/law\\_on\\_pre\\_univ\\_educ\\_syst-alb-enl-t04.pdf](http://www.see-educoop.net/education_in/pdf/law_on_pre_univ_educ_syst-alb-enl-t04.pdf) (Accessed 26 September 2014)

<sup>81</sup> The People’s Assembly of the Republic of Albania. Criminal Code of the Republic of Albania. 1995.Art 1/b.Available at: <http://www.legislationline.org/documents/section/criminal-codes> ( Accessed 28 September 2014)

On the other hand, the Article 253 of the Criminal Code implies the punishment up to five years of imprisonment or imposition of the fine to any person working in a public institution if he/she discriminates against another person based on his/her sex, religion, ethnicity, health condition, nationality etc.<sup>82</sup> Moreover, Article 266 of the same Code ensures punishment for every individuals that calls for national hatred. For the acts of inciting hate or disputes on the grounds of ethnicity, race, religion or sexual orientation, the Article 265 proposes a punishment from two to ten years of imprisonment. Hence, Articles 73 and 74 refer to the crimes against humanity including genocide committed against members of national, ethnic, racial or religious groups and any other act related to enforced disappearance, extermination, enslaving, internment, evictions etc.<sup>83</sup>

One of the biggest improvements in the Albanian legislation concerning the protection of the members of minority groups has been the adoption of the Law on Protection from Discrimination (hereinafter: LPD) in 2010. Furthermore, the previously mentioned law in its provisions has provided the ground for the establishment of the Office of the Commissioner for Protection from Discrimination (hereinafter: CPD). This law introduced in the Albanian legal system the principle of shifting the burden of proof and contained a provision allowing third parties to intervene as *amicus curiae* in cases of discrimination.<sup>84</sup>

The Assembly of Republic of Albania, on 22 of April 2010, appointed the CPD and delivered the decision approving the organizational structure and the classification of work positions in the office of the CPD. Furthermore, the main task of the CPD is to raise the awareness of the public opinion related to protection against discrimination and to deliver the decision based on investigation of

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<sup>82</sup> The People's Assembly of the Republic of Albania. Criminal Code of the Republic of Albania. 1995. Art 253. Available at: <http://www.legislationline.org/documents/section/criminal-codes> ( Accessed 28 September 2014)

<sup>83</sup> The People's Assembly of the Republic of Albania. Criminal Code of the Republic of Albania. 1995. Art 73 and Art. 74. Available at: <http://www.legislationline.org/documents/section/criminal-codes> ( Accessed 28 September 2014)

<sup>84</sup> Committee of Ministers. *Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Albania*. 12 Feb 2014. CM/ResCMN(2014)

cases regarding discrimination.<sup>85</sup>

The CPD's duty is to provide assistance to the victims who suffered from discrimination by issuing the complaints and providing support during litigation process. Furthermore, he/she conducts surveys, publishes reports and provides recommendations relevant for the cases of discrimination.<sup>86</sup> The general standing of the Commissioner is that there is a lack of information indicating the existence of discrimination obtained from the citizens. Even though the CPD presumes that there is a high level of discrimination, the awareness regarding the existence of the complaint procedure remains low among the population. From the beginning of its existence, the CPD sent 31 recommendations aimed at improving the situation of discrimination. Furthermore, it has the power to impose administrative sanctions and to receive complaints against individuals including public and private sector. In essence, one of the priorities of the CPD's Strategic Plan 2012-2015 is to increase the number of complaints by the Roma community in the field of goods, services and employment.<sup>87</sup>

In essence, the proclamation of the LPD was necessary in order to provide an adequate legal standing for those persons who were and still are facing discrimination on any ground. Furthermore, it demonstrated the strong engagement of the Albanian authorities to work effectively on the promotion of human rights. However, as a recently established institution of the CPD, the low number of complaints is not surprising. Essentially, the institution of the CPD should promote awareness-raising campaigns more effectively and bring the whole notion of its role and actions closer to the members of vulnerable groups in order to achieve higher number of complaints and better results.

The following chapter provides an overview of the status

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<sup>85</sup> Strategic Plan 2012-2015 and Action plan for 2012 of the Commissioner for Protection from Discrimination. Tirana, 2012.7

<sup>86</sup> This was emphasized in the interview conducted with Kaliro Martiko, the Expert of the Directorate of Legal Procedures and Foreign Relations in the Commissioner for the Protection from Discrimination Office, held on 11 July in Tirana. , also see: Commissioner for Protection from Discrimination. *Strategic Plan 2012-2015 and action plan for 2012 of the Commissioner for Protection from Discrimination*. Tirana.2012

<sup>87</sup> Commissioner for Protection from Discrimination. *Information on measures undertaken by Commissioner for Protection from Discrimination, regarding the topics laid down on the document of 5th round monitoring of ECRI*. 1-4

of recognized minorities. It enlists the main obstacles with which these groups are facing with regard to preservation of their identity. Furthermore it provides a reflection from the field of the level of implementation of the legal instruments mentioned earlier.

## 2. Recognized Minorities in Albania

The Constitution of the Republic of Albania in the Article 20 protects the rights of national minorities but it does not specify which minority groups exist in the territory of Albania.<sup>88</sup> Nevertheless, in its first report submitted to the Advisory Committee of the FCNM, the state authorities elaborated that providing the status of national minority to certain ethnic groups depends on: “following the way of recognizing as national minorities those minorities which have their own motherlands with which they have common characteristics such: the spiritual constitution, the language, culture, customs and traditions, religious belief, etc.”<sup>89</sup>

The minorities which possess previously mentioned characteristics are Greeks, Macedonians and Montenegrins.<sup>90</sup> Moreover, in the report it has been emphasized that Roma and Aromanians are recognized and respected as ‘ethno-linguistic’ minorities. However, this classification was extensively criticized by the Advisory Committee, arguing that this form of categorization of minorities leads to: “de facto differentiated treatment of the persons belonging to this group since they are not able to access certain rights such as minority language education, in the same conditions as those persons recognized as national minorities.”<sup>91</sup> Furthermore, the Advisory Committee noted that the data on ethnicity contained in the civil registers has been used by the Albanian authorities to grant certain rights to members of minority groups i.e. to decide on opening of classes in minority language. Due

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<sup>88</sup> Government of the Republic of Albania. *Constitution of the Republic of Albania*. 1998. Art 20. Available at: <http://www.osce.org/albania/41888?download=true> (Accessed 20 September 2014)

<sup>89</sup> Advisory Committee of the Framework Convention for the Protection of National Minorities. *First Opinion on Albania*. 2003, ACFC/INF/OP/I (2003) 004

<sup>90</sup> The report was issued in 2001 i.e. prior to Montenegro gained independence.

<sup>91</sup> Advisory Committee of the Framework Convention for the Protection of National Minorities. *Second Opinion on Albania*. 2008. ACFC/OP/II(2008)003

to absence of *ex-officio* data on ethnicity, the Advisory Committee on the FCNM stressed out that the authorities must systematically review request submitted by both ‘national’ and ‘ethno-linguistic’ minorities based on: “voluntary and free declaration of ethnicity and the principle of self-identification.”<sup>92</sup> The ethnicity of ‘ethno-linguistic’ minorities was never recorded, while the ethnicity of those members of ‘national’ minorities who resided outside so-called ‘minority zones’ was also not recorded in the civil registers.<sup>93</sup>

In addition, the representatives of Vlach/Aromanian minority emphasized that: “the difference in designation engenders within this minority a strong sentiment of being reduced to linguistic identity alone.”<sup>94</sup> As European Commission against Racism and Intolerance (hereinafter:ECRI) noted, the manner in which a group is designated can have a significant impact on members’ sense of identity.<sup>95</sup>

There is no mechanism that could serve for specifying which minority groups can be recognized as national minorities and therefore enjoy protections under the FCNM.<sup>96</sup> In essence, the membership to the State Committee on National Minorities serves as a *de facto* recognition of minority groups which are present in that Committee. The State Committee is established by the decision delivered by the Council of Ministers in 2003 with the aim of promoting the participation of persons belonging to minorities in the country’s public life.<sup>97</sup> The members of the above-mentioned Committee are representatives of: Greek, Macedonian, Serbian/Montenegrin, Roma and Vlach/Aromanian minorities. Nevertheless, the State Committee so far has made numerous recommendations concerning the legislation with regard to protection of minorities. Furthermore, it has attracted government’s attention to the requests of Bosniak and Egyptian communities to recognize them

<sup>92</sup> Advisory Committee of the Framework Convention for the Protection of National Minorities. *Third Opinion on Albania*. 2011.ACFC/OP/III(2011)009

<sup>93</sup> Ibid.

<sup>94</sup> European Commission against Racism and Intolerance. *ECRI Report on Albania (fourth monitoring cycle)*. Council of Europe, 2010.

<sup>95</sup> Ibid.

<sup>96</sup> This issue would be elaborated in the third chapter more in details

<sup>97</sup> Ministry of Foreign Affairs of the Republic of Albania. *Second Report submitted by the Republic of Albania under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities*. 2007.ACFC/ SR / II (2007) 004

as national minorities and include them in the membership of the State Committee.<sup>98</sup> On the other hand, the Advisory Committee of the FCNM in its third opinion on Albania emphasized that the State Committee is a governmental body answering directly to the Prime Minister; therefore this makes it a quasi-representative body appearing to speak on behalf of some national minorities. Considering the fact that the members of this Committee are elected without prior consultation with the members of minority groups signifies that those groups do not truly benefit from this non-independent body.<sup>99</sup>

The text which follows would elaborate briefly the treatment and situation of five minority groups that are recognized in Albania. However, the analysis at the end of the chapter would indicate whether the ethno-linguistic minorities are treated differently as opposed to national minorities. Also I would emphasize the main problems with which these five groups are facing as well as controversies regarding the census conducted in 2011.

## 2.1 Census 2011 and current issues

For the first time after the fall of socialism, the population census that was conducted in October 2011 contained the question on ethnicity and religion. The most problematic issue of the Census concerned the amendments of the Law on Census by the Albanian Parliament in 2011. In the Article 8, paragraph 3 of the previously stated law it has been stipulated that the data collected from the census would not be used for any voter's register or for updating any civil status register or any administrative register.<sup>100</sup> In essence, the information gathered according to the law would be treated as confidential data

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<sup>98</sup> Advisory Committee of the Framework Convention for the Protection of National Minorities. *Second Opinion on Albania*. 2008. ACFC/OP/II(2008)003

<sup>99</sup> Advisory Committee of the Framework Convention for the Protection of National Minorities. *Third Opinion on Albania*. 2011. ACFC/OP/III(2011)009

<sup>100</sup> Law on Census No. 10.442 dated 07 July 2011 [http://www.instat.gov.al/media/151356/aw\\_nr\\_10\\_442\\_date\\_7.7.2011pdf.pdf](http://www.instat.gov.al/media/151356/aw_nr_10_442_date_7.7.2011pdf.pdf) ( Accessed 19 September 2014)

used only for the purposes of the Census.<sup>101</sup> Apropos, the Article 20 of the same law stipulated that: “the refusal to make declaration or false declaration is punishable to a fine of 100 000 (hundred thousand) leks (700 euros).”<sup>102</sup> This has raised the fear among the members of minority groups in Albania that they would need to show the proof of their ethnic and religious affiliation.<sup>103</sup> As a result, the Greek organisation OMONIA<sup>104</sup> and political party (officially representing every minority but in practice only Greek minority) known as Human Rights Union Party (hereinafter: HRUP)<sup>105</sup>, called the members of Greek minority to boycott the census.<sup>106</sup>

In essence, the Census was criticized not only on the part of minority groups, but also by the right-wing critics in Albania who argued that the voluntary declaration on nationality would artificially

<sup>101</sup> As a response, the presidents of associations of Macedonians, Greeks, Serbian/Montenegrins, Vlach/Aromanians, Roma, Egyptians and Bosniaks signed a declaration indicating that the amendments of the Law on Census No. 10,442 dated 07.07 2011 were enacted without any prior consultations with these minority groups. Apropos, in the declaration it has been argued that the amendment of the abovementioned Law is contrary to the recommendations of the international organizations, anti-discrimination law, the Law on the Protection of Personal Data and Articles 3 and 20 of the Constitution of the Republic of Albania. In essence, the signatories of the abovementioned declaration requested from the Albanian authorities to exclude the amendments of the Law on Census while conducting the census and to enable representatives of the minority groups to participate in the improvement of the Law on Census as well as in all bodies in charge for implementation of the census process. One of the primary requests of these groups was to delay the Census for the period of 6 months in order to effectively conduct meetings with regards to changes of the Law on Census. In essence, minority groups requested from the authorities that during the Census it issues a copy of declaration regarding their ethnic affiliation in order to realize benefits that derive from rights and freedom which they possess as a national minority.

<sup>102</sup> Law on Census No. 10.442 dated 07 July 2011 [http://www.instat.gov.al/media/151356/aw\\_nr\\_10\\_442\\_date\\_7.7.2011pdf.pdf](http://www.instat.gov.al/media/151356/aw_nr_10_442_date_7.7.2011pdf.pdf) ( Accessed 19 September 2014)

<sup>103</sup> Krasniqi, Gezim. *Country Report: Albania*. EUDO Citizenship Observatory. 2012. 19

<sup>104</sup> The information regarding the activities of this organisation will be provided in the following subchapter

<sup>105</sup> The establishment and activities of this political party will be elaborated in the following subchapter

<sup>106</sup> Ibid.

increase the size of the ethnic Greek minority. This allegation could be supported by the fact that Greece has been offering pensions and travel benefits to Albanians who declare themselves as Greeks “in order to augment the size of the Greek minority in the southern Albania and extend territorial claim to the southern region.”<sup>107</sup> Furthermore, the leader of the Red and Black Alliance who is also a deputy head of the High Council of Justice, Kreshnik Speahiu has called the Albanians to: “to rip off the pages of the census forms where they are invited to describe their ethnic background and religious orientation.”<sup>108</sup>

On the other hand, the representatives of the Greek minority’s association “OMONIA” and HRUP, have called its members to boycott the Census. They argued that it would minimize the real size of ethnic minorities in the country since majority of the members of ethnic minorities were born during the era of socialism when they were deprived of the right to declare as such; therefore those individuals are not recorded in civil registers as members of minority groups but rather as Albanians. Moreover, the leader of OMONIA, Vasil Bollano emphasized that he and his association do not recognize the Census or its results.<sup>109</sup> In November 2011, the representatives of all minority groups met in Korca for the purpose of signing declaration by which they rejected the results of the Census. The declaration stipulated that the Census does not reflect the real number of minorities but rather that its statistics will be used for manipulations by political system that continuous to discriminate ethnic groups living in the territory of Albania.<sup>110</sup> In addition, the Advisory Committee of the FCNM also reflected on the issue of the Census arguing that it has to be considered as an unreliable source of information; therefore the law amendments proclaimed three months prior to the Census are considered: “not compatible with the principles of free self-identification of persons

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<sup>107</sup> Likmeta,Besar.“Rightists and Greeks Denounce Albania Census”.*Balkan Insight*,05 Oct 2011 <http://www.balkaninsight.com/en/article/albania-population-census-stirs-calls-for-boycott> (Accessed 15 September 2014)

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Lutovska,Klaudija. “Minorities say Albania discriminates against the right to nationality.” *SET Times*. 30 Dec 2011.[http://www.setimes.com/cocoon/setimes/xhtml/sr\\_Latn/features/setimes/features/2011/12/30/feature-03](http://www.setimes.com/cocoon/setimes/xhtml/sr_Latn/features/setimes/features/2011/12/30/feature-03) (Accessed on 15 Sept 2014)

belonging to national minorities, as provided by the Article 3 of the FCNM.”<sup>111</sup>

On the other hand, around 4,000 Albanians filed an application for the purpose of changing their nationality in order to obtain the citizenship of Greece which would eventually provide them better socio-economic possibilities.<sup>112</sup> According to the Albanian Law on Civil Status, the person can change its nationality by seeking a court decision<sup>113</sup> if: “it was determined temporally or in case of material mistake”.<sup>114</sup> The increase of the number of applications filed caused anger of the Albanian authorities and nationalistic parties who argued that the nationality should be banned in the birth and civil registers.

In March 2011 a number of District Courts in Albania decided to suspend all requests delivered for the purpose of changing the nationality. Furthermore, the heads of three District Courts in Albania (Shkodër, Sarandë and Përmet) requested from the Constitutional Court to declare null and void Articles related to the changing of nationality. On 26 April 2014, the Constitutional Court accepted the claims of the applicants and ruled that: “the inclusion of ‘nationality’ in the civil registers and birth certificate, as well as change of ‘nationality’ by court’s decision violates articles 16/1, 17, 19, 20 and 35 of the Albanian Constitution which stipulate that Albanian citizens cannot be forced to declare their nationality.”<sup>115</sup> Furthermore, the Court ruled that the presence of the category ‘nationality’ in civil registers and other legal documents violates Article 20, paragraph 1 of the Constitution stipulating that national minorities: “...have the right freely to express, without prohibition or compulsion, their ethnic, cultural, religious and

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<sup>111</sup> Advisory Committee of the Framework Convention for the Protection of National Minorities. *Third Opinion on Albania*. 2011.ACFC/OP/III(2011)009

<sup>112</sup> Krasniqi, Gezim. *Country Report: Albania*. EUDO Citizenship Observatory. 2012.19

<sup>113</sup> This procedure was very time and money consuming for those people who wanted to change their nationality. Interview with Bledar Bašanović, the representative of Serb/Montenegrin minority in the State Committee for National Minorities, held on 27 June in Tirana;

<sup>114</sup> Law on Civil Status No. 10129 dated 11.5.2009. <http://80.78.70.231/pls/kuv/f?p=201:Ligi:10129:11.05.2009> (Accessed 18 Sept 2014)

<sup>115</sup> Decision of the Constitutional Court of Albania (*V-52/11*), Available at: [http://eudocitizenship.eu/caselawDB/docs/ALB%20Case%20\\_V-52-11.pdf](http://eudocitizenship.eu/caselawDB/docs/ALB%20Case%20_V-52-11.pdf) (Accessed on 19 September 2014)

linguistic belonging.”<sup>116</sup>

Consequently, the representatives of minority groups including Macedonians, Greeks, Serbian/Montenegrins, Vlach/Aromanians, Roma and Egyptians declared that by erasing the nationality from the birth registers, the state of Albania practices open discrimination towards minority groups.<sup>117</sup> Furthermore, the representatives of the above-mentioned minority groups informed the public that they will initiate a case to the European Court of Human Rights with regard to Albania’s violation of the Article 20 of the Constitution. The representative of Macedonian minority in Albania, Edmond Temelko emphasized that this judgment not only prevents artificially recognized minorities to declare their nationality but also serves as an obstacle for recognition of those minority groups who are not recognized as such.<sup>118</sup>

Essentially by banning the provision of ‘nationality’ in the civil registers, it remains no other way for a member of minority group to declare as such. The sole fact that the questions on ethnic and religious affiliation were not compulsory while the question on mother language was compulsory indicates that there were irregularities.<sup>119</sup> In essence, declaring the number of minority group members on the basis of mother language does not constitute a valid source of information.<sup>120</sup> The paradoxical situation is that in the documents obtained from the website of the National Institute for Statistics of Albania, there is no indication of the existence of Serbian minority but only Montenegrin.<sup>121</sup> Furthermore, there is no category of Bosniak minority or Bosnian

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<sup>116</sup> Ibid.

<sup>117</sup> Lutovska, Klaudija. “Minorities say Albania discriminates against the right to nationality.” *SET Times*. 30 Dec 2011. [http://www.setimes.com/cocoon/setimes/xhtml/sr\\_Latn/features/setimes/features/2011/12/30/feature-03](http://www.setimes.com/cocoon/setimes/xhtml/sr_Latn/features/setimes/features/2011/12/30/feature-03) (Accessed on 15 Sept 2014)

<sup>118</sup> Ibid.

<sup>119</sup> In addition, as the member of Advisory Committee Gjergj Sinani argued, there is a significant amount of the members of ethnic minority groups who lost their language through time or they are not raised in the family which spoken the language of that minority. Interview with Gjergj Sinani, the Advisory Committee member in respect of Albania, held on 25 June 2014 in Tirana

<sup>120</sup> Organization for Security and Co-operation in Europe Presence in Albania. *Minorities in Albania*. OSCE. 2012

<sup>121</sup> The elaboration on this issue is provided in the sub-chapter concerning Serbian/Montenegrin minority

language.<sup>122</sup>

The following sub-chapters would provide the general overview of the situation of ‘national’ minority groups as well as ‘ethno-linguistic’ minorities. Furthermore, the text enlists the current problems that each minority faces. The last chapter would provide the analysis of the situation of minorities concerned. Concerning the fact that the data obtained from the Census conducted in 2011 cannot be used as a reliable source of information, the statistical data used in the following sub-chapters are based on the research conducted by Albanian Helsinki Committee<sup>123</sup> and World Bank<sup>124</sup>, information from the first<sup>125</sup> and second report<sup>126</sup> submitted by the Ministry of Foreign Affairs of Albania to the Advisory Committee of the FCNM, report issued by the Albanian Human Rights Group<sup>127</sup>, OSCE<sup>128</sup> and two surveys conducted by INSTAT and World Bank in 2002.<sup>129</sup>

## 2.2. Greek Minority

Under the definition of ‘minority’ that has been established during the socialist regime, minority status was limited only to 99 villages in the southeastern border with Greece. Furthermore, majority of ethnically mixed villages that were inhabited by a large amount

<sup>122</sup> This issue will be elaborated more extensively in the third chapter

<sup>123</sup> Albanian Helsinki Committee. *Minorities in Albania*. Council of Europe. 2003.

<sup>124</sup> De Soto Hermine, Sabine Beddies, Ilir Gëdeshi. *Roma and Egyptians in Albania: From Social exclusion to Social Inclusion*. World Bank. 2005.

<sup>125</sup> Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1 ,of the Council of Europe’s Framework Convention for the Protection of National Minorities*. 2001. ACFC/SR(2001)005

<sup>126</sup> Ministry of Foreign Affairs of the Republic of Albania. *Second Report submitted by the Republic of Albania under Article 25, paragraph 1 ,of the Council of Europe’s Framework Convention for the Protection of National Minorities*. 2007. ACFC/ SR / II (2007) 004

<sup>127</sup> Albanian Human Rights Group. *Minorities: The present and the future*. 2003

<sup>128</sup> Organization for Security and Co-operation in Europe Presence in Albania. *Minorities in Albania*. OSCE. 2012.

<sup>129</sup> National Institute of Statistics of Albania .*Socioeconomic household questionnaires with Roma and Egyptians for the Needs Assessment, 2002/03: Popullsia e Shqiperise 2001*. Tirane 2002; and National Institute of Statistics of Albania .*Socioeconomic household questionnaires with Roma and Egyptians for the Needs Assessment, 2002/03: Popullsia e Shqiperise 2001*. Tirane 2002

of Greek population were denied of the privileges of minority status; therefore, they could not enjoy the benefits granted by that status such as the establishment of Greek language schools and practice of cultural manifestation. Even though several Greek-language schools existed in that period only in so-called ‘minority zones’, the lessons were provided mostly on Albanian language and about Albanian culture.<sup>130</sup> In addition, many Greeks were forcibly removed from minority zones to other parts of the country in order to prevent any possibility of ethnicity having an impact on politics.<sup>131</sup>

However, relations of Albania with its neighbor Greece worsened in the early 1990’s for two reasons: hundreds Albanians entering illegally to Greece due to lack of employment, and inadequate

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<sup>130</sup> For further elaboration on this regard please see: Pettifer, James. “The Greek Minority in Albania in the Aftermath of Communism“. Conflict Studies Research Centre. July, 2001.6 and Vickers, Miranda and James Pettifer. *Albania: From Anarchy to a Balkan Identity*. C.Hurst & Co Ltd. 199.186-198.

<sup>131</sup> Ibid.

treatment of ethnic Greeks in Albania.<sup>132</sup> The situation escalated when the Greek minority party, OMONIA was denied of proposing candidates for elections held in 1992. Furthermore, continuous territorial claims by Greece over the Greek populated area of ‘Northern Epirus’<sup>133</sup> in the southern Albania constitutes an obstacle for reaching long standing

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<sup>132</sup> The closure of several Greek-language classes in 1993 nourished this concern. As a result, the Greek consulate in the southern town of Gjirokaster, began to distribute the materials and proclamations of Greek minority party (OMONIA) and propagating the interests of Greek minority in Albania. This activity caused concerns for Albanian officials characterizing it as interference in their internal affairs. Additionally, Albanians who identified as members of Greek minority enjoyed certain preferences in receiving Greek visas, which caused jealousy among ethnic Albanians. The relationship between these two countries worsened in June 1993, when the Orthodox priest with Greek citizenship has been expelled from Albania since he allegedly fomented separatism among Greek community. Greece responded by expelling around 30,000 Albanians working in Greece whereas many of them were faced with abuses by the Greek police. In April 1994, two Albanians were killed and three wounded by a commando attack on Albanian army outpost near the village of Peshkopie located in the south of Albania, five kilometers from the Greek border. The extremist group from Greece, the Northern Epirus Liberation Front, has been blamed by the Albanian authorities for the attack committed. The Greek government denied having any relation with this act. Ten days after, five leaders of OMONIA were arrested by the Albanian police and accused for committing criminal acts of conspiracy and treason. Despite several protests conducted in Greece and appeals delivered by the international human rights organizations arguing that the trial against these individuals constitutes severe breaches of Albanian law including international law, the arrested OMONIA members were convicted. As a retaliation measure, the Greek government systematically expelled around 70,000 Albanians who had been working in Greece, mostly without possessing necessary legal documentation.

For further elaboration on this aspect, please see: Human Rights Watch. *Albania the Greek Minority*. Vol.7, No.4. February 1995. Available at <http://www.hrw.org/reports/pdfs/a/albania/albania952.pdf> ( Accessed 08 July 2014)

<sup>133</sup> According to James Pettifer there are two theories arguing the origin of Greek minority in Albania. The first one considers that Greek claimed ancient Epirot tribes were Illyrian origin and that the existence of this minority is a result of labor movements during the Ottoman Empire. On the other hand, Greeks claim that the south of Shkumbi River in Albania (Northern Epirus) belongs to Greece from the ancient times. See: Pettifer, James. "The Greek Minority in Albania in the Aftermath of Communism." Conflict Studies Research Centre. July, 2001.4.

good relations with this minority in general.<sup>134</sup> The controversial mayor of Greek populated town of Himara, Vasil Bollano in more than one occasion emphasized that he would like to see “an autonomous area of Northern Epirus”.<sup>135</sup> In 2007, Bollano declared that the area of Northern Epirus should gain independence as it was the case with Kosovo. The Albanian public criticized Bollano’s statements and Greece’s rejection of supporting the independence of Kosovo, arguing that Greece and Albania are at the beginning of the “new cold war.”<sup>136</sup> The tensions in this region were accompanied by destruction of Greek language road signs as well as the Orthodox prayer site. Furthermore, in the spring 2008 the group of Albanian students from Saranda organized demonstrations during which they have burned the Greek flag and shouted “Himara is Albanian.”<sup>137</sup>

The members of Greek minority traditionally inhabit area in the south of Albania, near the Albanian-Greek border. It has been considered as numerically largest minority group in Albania. According to the data from the 1989 Population and Housing Census, the number of this population was nearly 58.758 inhabitants.<sup>138</sup> From the survey that has been conducted during 2002 by the Albanian Institute of Statistics and World Bank, it has been noted that comparing the results of the census in 1989, the number of Greek minority decreased indicating 35.829

<sup>134</sup> Federal Research Division. *Albania: A case study*. Washington D.C: Library of Congress, 1994,xxxviii

<sup>135</sup> Vickers, Miranda.*The Greek Minority in Albania-Current Tensions*.Defence Academy of the United Kingdom.2010.6

<sup>136</sup> Ibid.

<sup>137</sup> For more details regarding the territorial claims of Greek minority in Albania, please see: Vickers, Miranda.*The Greek Minority in Albania-Current Tensions*. Defence Academy of the United Kingdom.2010

<sup>138</sup> Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1 ,of the Council of Europe’s Framework Convention for the Protection of National Minorities*.2001. ACFC/SR(2001)005

members of this minority.<sup>139</sup> This disparity in numbers could be attributed to the large in number emigrations to Greece in order to seek benefits as members of Greek ethnicity.<sup>140</sup> According to Miranda Vickers, the generally accepted view is that the Greek minority comprises roughly 2% (between 45,000 to 50,000 ) of the total population.<sup>141</sup>

The majority of the Greek minority in Albania lives in the southern districts of Saranda, Delvina and Gjirokastra.<sup>142</sup> However, this minority inhabits 18 out of 37 villages in Delvina district, whereas in 4 villages of the same district, population is mixed and comprised of both Albanians and Greeks. In the region of Dropulli approximately 34 villages are populated by members of Greek minority. Moreover, in the district of Permet there are two other villages that are mostly populated by this minority.<sup>143</sup>

In January 1991, the Democratic Union of the Greek Ethnic Minority (OMONIA) was established as an organization for the purpose of representing political, social and cultural demands of the Greek minority in Albania. Moreover, OMONIA participated in the elections in 1991 when it gained five members in the parliament. After the parliament promulgated the law which banned the existence of political parties established based on religious, ethnic or regional grounds, OMONIA was forced to withdraw from political scene whereas it supported the creation of Human Rights Union Party which predominantly consisted of Greek minority members and few members

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<sup>139</sup> During 2002, the Institute of Statistics with the help of World Bank, conducted a survey on minorities in Albania, based on the data gathered during the population census and registration of homes during 2001. The results were also based on the outcomes of Living Standard Measurement Survey. The survey was conducted only in the districts of Korca, Saranda and Mirdite; therefore it does not reflect the exact number of this population which also lives in other districts. Please see: Annex III

<sup>140</sup> Albanian Helsinki Committee. *Minorities in Albania*. 2003.13

<sup>141</sup> Vickers, Miranda. *The Greek Minority in Albania-Current Tensions*. Defence Academy of the United Kingdom. 2010

<sup>142</sup> Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1 ,of the Council of Europe's Framework Convention for the Protection of National Minorities*. 2001. ACFC/SR(2001)005

<sup>143</sup> Ibid.

of other minority groups.<sup>144</sup>

Several groups and associations were created in the areas where this minority lives such as the one of the minority's teachers association: "Affirming our identity", students' association, journalists' association, etc.<sup>145</sup> Nevertheless, the HRUP gained seats in the local council elections and in the National Parliament. It also participated in the Government coalition after the 2001 parliamentary elections.<sup>146</sup> Although the HRUP is not the only political party representing Greek minority, it possesses the strongest influence to the Albanian politics. There is also the Greek Ethnic Minority Party (M.E.G.A) with its leader Kristo Kico and OMONIA with its leader Vasil Bollano.<sup>147</sup> Currently, the Deputy Speaker of the Albanian Parliament is Vangjel Dule who is also the president of the HRUP. However, Vangjel Dule has been criticized by the representatives of other minority groups for not representing the interests of other minorities but rather emphasizing only the need for protection of Greek minority even though theoretically HRUP represents the interests of every minority in Albania.<sup>148</sup>

Due to emigrations large in number to Greece, the amount of investments to the places where this minority resides rapidly increased; therefore there are a number of private firms, hotels, restaurants and

<sup>144</sup> Human Rights Watch. *Albania the Greek Minority*. Vol.7, No.4. February 1995. Available at <http://www.hrw.org/reports/pdfs/a/albania/albania952.pdf> (Accessed 08 July 2014) 10-13

<sup>145</sup> Ministry of Foreign Affairs of the Republic of Albania. *Second Report submitted by the Republic of Albania under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities*. 2007.ACFC/ SR / II (2007) 004

<sup>146</sup> Independent Balkan News Agency. "IBNA Special/2013 elections, Greek minority in Albania divided between SP and DP." *BalkanEU*. 05. June 2013. <http://www.balkaneu.com/ibna-special2013-elections-greek-minority-albania-divided-sp-dp/> (Accessed 30 June 2014)

<sup>147</sup> Ibid.

<sup>148</sup> Interview with Bledar Bašanović, the representative of Serb/Montenegrin minority in the State Committee for National Minorities, held on 27 June in Tirana; Interview with Fiqiri Kllari, President of Bosniak association "Zambak", held on 15 August 2014 in Borake

other facilities which are operated by the members of this minority.<sup>149</sup> However, the research of the Albanian Helsinki Committee indicated that there is a low number of unemployed residents in the places inhabited by Greek minority since majority of them work in a companies owned by ethnic Greeks. Generally, economical and social situation of this population is highly satisfactory.<sup>150</sup>

In 1994, the first church run nursery school was established for the members of this minority. However, today there are fifteen such schools that operate in the areas where this minority resides. It is important to emphasize that in 1996 three Greek language schools were opened and several more in 2002. An operating license has been granted to two schools that were located in Korca and Himara, outside so called "Greek minority zone".<sup>151</sup> Progress has been achieved in the field of higher education since several professional Greek-language training institutes, offering instructions in business and computer studies and icon restoration, have also been opened in towns where Greek minority population lives. Furthermore, new departments of Greek studies opened in the University of Tirana and Gjirokaster. The Albanian government expressed its will to promote Greek language since it agreed to cooperate in the building of a Greek university in Gjirokaster, which will be funded by the Greek government.<sup>152</sup>

According to the Albanian Helsinki Committee, in the elementary schools established in minority area, the ratio of subjects taught in Greek and Albanian language, has generally being preserved i.e. 90% of the subjects are taught on Greek, while 10 % of the subjects

<sup>149</sup> According to Remzi Lani, due to geographically near presence of Greece and its accession to the European Union, a vast majority of members of this group went to Greece in order to seek economical benefits. However, they left behind their lands and houses in Albania in order to ensure any form of their presence in that country. Even though the tension influenced by territorial claims remains, the relationship of Albania and Greece remains on a solid level. Considering the fact that there is over 400,000 Albanians currently living and working in Greece, the mutual respect between those two states generally has to remain positive. Interview with Remzi Lani, the Executive Director of the Albanian Media Institute, held on 9 July 2014 in Tirana.

<sup>150</sup> Albanian Helsinki Committee. *Minorities in Albania*. Council of Europe. 2003. 14

<sup>151</sup> Vickers, Miranda. *The Greek Minority in Albania-Current Tensions*. Defence Academy of the United Kingdom. 2010. 8

<sup>152</sup> Ibid.

are taught on Albanian. In high schools, Albanian language has been taught during the lessons but there are two hours of Greek language provided for pupils every week.<sup>153</sup> The agreement between Albanian and Greek government established the Greek Library and Cultural Center in Tirana which has been an important contribution for the promotion of the Greek language. These centers contain a very rich number of literatures for all people who are interested into different aspects related to Greece.<sup>154</sup>

On the other hand, the license has been provided for the radio and TV station “Armonia” which broadcasts the program on Greek language. However, the most popular printed media published on Greek language in Gjirokaster is “Laiko Vima”, whereas several other still exist such as: “Zëri i Omonias“, “Tahidhromos tis Ipiru“, “Romiosini”, “Bularati” and “Poliçani”.<sup>155</sup>

In addition, prior to the Census conducted in 2011, the representatives of Greek organization OMONIA and HRUP, have called for Greeks in Albania to boycott the Census due to the controversial issues regarding the law on census which was enacted three months prior to the event.<sup>156</sup> However, not every Greek representative supported this action. This issue caused debate among Greek officials. The Greek consul in Korça made a statement during a reception celebrating 20<sup>th</sup> anniversary of OMONIA, calling Albanians and Vlach/Aromanians to register as Greeks.<sup>157</sup> Nevertheless, this action has been perceived by the Albanian authorities as illegitimate access to internal affairs of their

<sup>153</sup> Albanian Helsinki Committee. *Minorities in Albania*. Council of Europe. 2003. 20

<sup>154</sup> Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1 ,of the Council of Europe’s Framework Convention for the Protection of National Minorities*. 2001. ACFC/SR(2001)005

<sup>155</sup> Ministry of Foreign Affairs of the Republic of Albania. *Second Report submitted by the Republic of Albania under Article 25, paragraph 1 ,of the Council of Europe’s Framework Convention for the Protection of National Minorities*. 2007. ACFC/ SR / II (2007) 004

<sup>156</sup> Krasniqi, Gëzim. “The politics of number and identity in Albania.” *EUDO Citizenship*. <http://eudo-citizenship.eu/news/citizenship-news/582-the-politics-of-numbers-and-identity-in-albania>. (accessed on 15 June 2014)

<sup>157</sup> Likmeta, Besar. “Greek Consul Statement Angers Albanian MPs.” *Balkan Insight*. February 2011. <http://www.balkaninsight.com/en/article/greek-consul-statement-angers-albanian-mps> ( Accessed June 2014)

country. As a result, the member of the Democratic party in Albania has called the Ministry for Foreign Affairs to declare the Greek consul as ‘persona non grata’ in Albania.<sup>158</sup>

In July 2014, Albanian Parliament approved the new territorial reform aimed for reduction of the number of administrative units from 360 to 61. One of the criteria adopted at the special meeting of Ad-Hoc Parliamentary Commission on Administrative-Territorial Reform, was that the communes populated by minorities will not be attached to other communes in order for that population not to lose their identity.<sup>159</sup> In addition, the Minister of the local governments emphasized that the municipalities where minorities reside will not be segregated into different units in order not to create obstacles for the preservation of their identity. The reform was strongly objected by the president of the HRUP and vice-speaker of the Parliament, who argued that: “Ethnic Greek minority in Delvina and Saranda were detached from villages and neighborhoods to satisfy political appetites.”<sup>160</sup>

### 2.3 Macedonian Minority

The Macedonian minority is mostly concentrated in the area of Prespa and in the northeast of the country in the area of Peshkopi. From the administrative viewpoint, the nine villages in which Macedonian national minority lives comprise a commune called the ‘Commune of Prespa’. The center of this Commune is the village Pustec.<sup>161</sup> However, the Macedonian minority argues that there is a significant amount of

<sup>158</sup> Ibid.

<sup>159</sup> Gjylmi Elona. “Albania’s new territorial division won’t affect minorities: Minister Cuci.” *Albanian Screen*. April 2014. Available at: [http://news.albanianscreen.tv/pages/news\\_detail/78355/ENG](http://news.albanianscreen.tv/pages/news_detail/78355/ENG) (Accessed on 20 September 2014)

<sup>160</sup> Top Channel. “Parliament approved territorial reform.” *Top Channel*. July 2014. Available at: <http://www.top-channel.tv/english/artikull.php?id=12418> (Accessed 20 September 2014)

<sup>161</sup> Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities. 2001*. ACFC/SR(2001)005

their members in Tirana, Podgradec, Korce, Kavaje and Ebasan.<sup>162</sup>

The census results obtained in 1960 have evidenced that there were 4.325 inhabitants of Macedonian ethnicity, while the results of the census conducted in 1989 revealed the existence of 4.697 members of this minority.<sup>163</sup> On the other hand, from the survey conducted by INSTAT and World Bank<sup>164</sup> on the statistical data concerning the number of minorities in 2002, it has been indicated that 4.148 Macedonians are living in Albania.<sup>165</sup> The representatives of this minority contested the numbers used by Albanian authorities that 5,000 Macedonians lives in Albania, arguing that there are approximately 120,000 members of this minority.<sup>166</sup>

In essence the Macedonian minority is very well organized. However, there are four Macedonian non-profit organizations, three of which operate since 1991. As a result of very successful cooperation

<sup>162</sup> Makedonija.info. "The Macedonian Minority in Albania." <http://www.makedonija.info/prespa.html> (Accessed 05 September 2014); See also: Macedonia online."Macedonians and Greeks Join Forces against Albanian Census." 19August 2011.<http://macedoniaonline.eu/content/view/18930/2/> (Accessed on 20 September 2014)

<sup>163</sup> Albanian Human Rights Group. *Minorities: The present and the future*. 2003.29

<sup>164</sup> According to the second state report issued by the Ministry of Foreign Affairs of Albania to the Advisory Committee on the FCNM: "These evaluations were based on data from the Living Standard Measurement Survey [LSMS] carried out during 2002 by INSTAT, (as part of the Government program on the National Strategy for Economic and Social Development assisted by the World Bank and on data obtained from the registration of the population in the series of years 1945, 1950, 1960, 1969, 1979, 1989 and 2001. During the process of elaboration of the data on minorities, INSTAT has also consulted other sources of information of a different nature such as observations, studies, administrative data and retrospective evaluations on minorities in Albania. Based on such an evaluation, the percentage of national minorities in the population of Albania (approximately 3,069,275) is estimated at 1.4 percent." Please see: Ministry of Foreign Affairs of the Republic of Albania. *Second Report submitted by the Republic of Albania under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities*.2007.ACFC/SR / II (2007) 004

<sup>165</sup> Please see Annex III

<sup>166</sup> Macedonian Human Rights Movement of Canada. *OSCE Human Dimension Implementation Meeting: The Macedonian Minority in Albania*.2003. Available at: [http://www.florina.org/news/2003/2003\\_osce\\_albania.asp](http://www.florina.org/news/2003/2003_osce_albania.asp) (Accessed on 20 September 2014)

between these organizations, the Union of Macedonians has been created.<sup>167</sup> The most active is association “Družba Prespa” in the Commune of Liqenas which directs and organizes the activities related to promotion of Macedonian culture including performances of the Macedonian folk groups of the villages which this minority traditionally inhabits. This association organized the Festival of Liqenas and a series of tours around Albania and FYR of Macedonia during which their traditional songs, dances and costumes were presented to the wider public.<sup>168</sup>

According to the Albanian Ministry of Foreign Affairs, for the Macedonian pupils enrolled in 9-years educational program, 90% of schools subjects are taught in their native language and 10 % in Albanian language, while in V-IX classes 60% of subjects are taught in Albanian language and 40% in native languages.<sup>169</sup> In the Resolution adopted in 2014 by the Committee of Ministers of the Council of Europe, it has been stated that certain difficulties have been encountered in the process of ensuring the Greek and Macedonian language classes outside of areas where this minority traditionally resides.<sup>170</sup>

Outside the Prespa area, there are no schools in Albania teaching Macedonian curricula due to the fact that there is not a sufficient concentration of Macedonians elsewhere.<sup>171</sup> However, these allegations were contested by the representatives of Macedonian minority arguing that there is a significant number of this minority in other villages outside the Prespa region. In that regard, the Secretary General of the

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<sup>167</sup> Organization for Security and Co-operation in Europe Presence in Albania. *Minorities in Albania*. OSCE.2012

<sup>168</sup> Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1 ,of the Council of Europe’s Framework Convention for the Protection of National Minorities*.2001. ACFC/SR(2001)005

<sup>169</sup> Ministry of Foreign Affairs of the Republic of Albania. *Third Report submitted by the Republic of Albania under Article 25, paragraph 1 ,of the Council of Europe’s Framework Convention for the Protection of National Minorities*.2011. ACFC/SR/III(2011)001

<sup>170</sup> Committee of Ministers. *Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Albania*.12 Feb 2014. CM/ResCMN(2014)

<sup>171</sup> Organization for Security and Co-operation in Europe Presence in Albania. *Minorities in Albania*. OSCE.2012

Macedonian Alliance for European Integration<sup>172</sup> (hereinafter: MAEI), Vasil Sterjovski, sought support from Fejzo Numanaj, the representative of the OSCE Ambassador's Office in Albania, for the purpose of informing the public with the closure of the Macedonian language school in the village of Vrbnik and the impossibility for Macedonian children to learn in their mother tongue outside Mala Prespa.<sup>173</sup> Moreover, Sterjovski pointed out the issue of the lack of textbooks on the Macedonian language in Pustec municipality and expressed his disagreement with the recent territorial reform.

In the town of Liqenas, Macedonian language has been used in one kindergarten, two primary schools and one secondary school. However, these schools reported difficulties due to a lack of teaching materials in the Macedonian language. Furthermore, Albanian authorities argued that producing the textbooks on Macedonian language for a small amount of Macedonian pupils would constitute a significant economical burden to the state of Albania. The argument which the Ministry of Education and Science used in order to justify the low number of textbooks concerns the lack of financial resources. Furthermore, the publishing of a textbook for minority members is 11 more expensive than the textbooks for the rest of the pupils.<sup>174</sup> On the contrary, the third report issued by the Ministry of Foreign Affairs to the Advisory Committee on the FCNM in 2011 indicated that the price

<sup>172</sup> After several meetings of Macedonian NGOs registered in Albania, in 2005 the political party for representing the interest of Macedonian minority has been named Macedonian Alliance for European Integration. However, this party has been perceived as mono-ethnic party. Moreover, unlike HRUP which is present at the state level, the Macedonian party only gained power in the area where its ethnic group resides. See: Common Values Foundations and King Baudouin. *A guide to minorities and political participation in South-East Europe*.2009. Available at: [http://www.kbs-frb.be/uploadedFiles/KBS-FRB/05\\_Pictures\\_documents\\_and\\_external\\_sites/09\\_Publications/PUB\\_1854\\_MinoritiesPoliticalParticipationSEE.pdf](http://www.kbs-frb.be/uploadedFiles/KBS-FRB/05_Pictures_documents_and_external_sites/09_Publications/PUB_1854_MinoritiesPoliticalParticipationSEE.pdf) (Accessed 25. July 2014).

<sup>173</sup> Independent.mk. "Macedonians living in Albania Seek Rights Guarantee by OSCE." *12 Feb 2014* <http://www.independent.mk/articles/1580/Macedonians+Living+in+Albania+Seek+Rights+Guarantee+by+OSCE> (Accessed 07 August 2014)

<sup>174</sup> Ministry of Foreign Affairs of the Republic of Albania. *Second Report submitted by the Republic of Albania under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities*.2007.ACFC/ SR / II (2007) 004

of publishing textbooks on minority languages is 18 more expensive than the usual publishing.<sup>175</sup> At the same time, there is reluctance for the usage of textbooks produced in Macedonia since it does not comply with the recognized Albanian state curriculum.<sup>176</sup> However, the Macedonian Human Rights Movement International (hereinafter: MHRMI) and the Australian Macedonian Human Rights Committee (hereinafter: AMHRC) announced founding for the school operated by the Korca Regional Committee of the MAEI.<sup>177</sup>

The license has been provided to the radio operator “Prespa” which broadcasts the program on Macedonian language. Furthermore, the state owned TV station of Radio-Television Centre in Korca, broadcasts daily 60 minutes of program on Macedonian language.<sup>178</sup>

In 30<sup>th</sup> of July in 2011, the Macedonians in Golo Brdo protested against new reform on territorial division. During the protests it has been emphasized that this minority is against administrative segregation of the villages where Macedonians reside.<sup>179</sup> In essence, the Secretary General of the MAEI argued that the Albanian government by promulgating this territorial reform openly breaches Article 20 of the Albanian constitution, the FCNM and the European Charter on Local Self-Government. The requests of this minority concern the establishment of Golo Brdo municipality which would consist of current municipalities of Stebleve, Trebiste and Ostreni. Furthermore, it has been requested that the region of Kukes consisting of municipalities

<sup>175</sup> Ministry of Foreign Affairs of the Republic of Albania. *Third Report submitted by the Republic of Albania under Article 25, paragraph 1 ,of the Council of Europe’s Framework Convention for the Protection of National Minorities.*2011. ACFC/SR/III(2011)001

<sup>176</sup> Organization for Security and Co-operation in Europe Presence in Albania. *Minorities in Albania.* OSCE.2012

<sup>177</sup> Macedonian Alliance. “MHRMI and AMHRC Announce Funding for Macedonian Language Classes.” 14 Feb 2014 [http://macedoniansinalbania.org/news/macedonian\\_language\\_classes.asp](http://macedoniansinalbania.org/news/macedonian_language_classes.asp) (Accessed 15 Sept 2014)

<sup>178</sup> Ministry of Foreign Affairs of the Republic of Albania. *Second Report submitted by the Republic of Albania under Article 25, paragraph 1 ,of the Council of Europe’s Framework Convention for the Protection of National Minorities.*2007.ACFC/ SR / II (2007) 004

<sup>179</sup> Macedonian Alliance. “Macedonian Minority protest against new territorial reform.” *Macedonians in Albania.* 30 July 2014 <http://macedoniansinalbania.org/news/protest.asp> (Accessed on 20 September 2014)

of Shishtavec, Topojan and Zapot, by the new territorial reform create one unified municipality.<sup>180</sup>

## 2.4 Serbian-Montenegrin minority

The Serbian-Montenegrin minority lives mostly in small villages of Gril, Omaraj, Borici and Vogel in the north of the city of Shkodra which is located in the northwestern part of Albania.<sup>181</sup> The members of this minority speak Serbian-Montenegrin language and they generally preserved their identity. The term "Serbian-Montenegrin" minority was started to be used following the separation of Serbia and Montenegro in 2006.<sup>182</sup> In essence, from the official documents provided by the INSTAT, the tables concerning the number of population by mother

<sup>180</sup> Macedonian Alliance. "Macedonians in Albania are against the new territorial reform." *Macedonians in Albania*, 21 July 2014. [http://macedoniansinalbania.org/news/teritorijalna\\_podelba.asp](http://macedoniansinalbania.org/news/teritorijalna_podelba.asp) (Accessed on 20 September 2014)

<sup>181</sup> Ibid.

<sup>182</sup> Prior to Montenegro gained independence, the term used in the official state reports addressed to the Advisory Committee on the FCNM in order to refer to this minority group was "Montenegrin" minority. The distinguished Albanian journalist Mr. Remzi Lani emphasized that there is confusion among the society regarding the term 'Serb-Montenegrin' since today these terms represent completely two separate identities. In the first report submitted by the Ministry of Foreign Affairs of the Republic of Albania to the Advisory Committee on the FCNM in 2001, the term used for identification of this minority was 'Montenegrin' national minority. However, this was prior proclaiming Montenegro as an independent state in 2006. Furthermore, in the Second State Report issued in 2007 for the Advisory Committee on the FCNM, the term used for this minority is: "Serbian-Montenegrin". However, in the previously mentioned report it has been argued that: "As to the issue of the naming of Serbo-Montenegrin minority, the researchers expressed themselves that scientifically speaking, there can be no Serbo- Montenegrin minority, since there exists no Serbo - Montenegrin ethnic group and consequently, these groups constitute two different nationalities. Nonetheless, under the Constitution of the Republic of Albania, everyone has the right to freely express, without being deprived of or forced on his ethnic, cultural, religious and linguistic belonging; in this case, they pointed out that the subjective criteria should be applied. We do emphasize that the changing the name Serbo - Montenegrin minority was a conventional solution following the demand of the Montenegrin minority, in the conditions of the existence of the Union Serbia-Montenegro; this matter will be definitively resolved with the population census and the voluntary declaration on the part of the persons belonging to this minority."

See: Ministry of Foreign Affairs of the Republic of Albania. *Second Report submitted by the Republic of Albania under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities*. 2007.ACFC/ SR / II (2007) 004

tongue stipulates among others, the Serbo-Croatian language.<sup>183</sup> This was criticized by the representative of this minority, arguing that the members of Serbian-Montenegrin minority speak Serbian language.<sup>184</sup>

According to the survey conducted by Albanian Helsinki Committee in 2000 the number of this minority was around 1750.<sup>185</sup> On the other hand, the survey conducted by INSTAT and World Bank in 2002, indicate the existence of 678 members of this minority.<sup>186</sup> However, the representatives of this minority claimed a greater number of this minority estimating that around 10,000 members of this minority lives in Albania.<sup>187</sup>

Even though there are no incidents reported indicating discrimination towards this group with regard to its ethnicity, the representative of this minority in the State Committee for National Minorities emphasized that there is a certain dose of fear of the members of this group to declare as a member of Serb minority, after Kosovo gained its independence. Furthermore, Bašanović stressed out that any rapid changes in the treatment of this minority by Albania would increase the tensions rather than abolish them. The establishment of the appropriate methodology and strategies for better inclusion of this minority in the society would serve as an asset for the promotion of minority rights by the Republic of Albania.<sup>188</sup>

In the video documentary, the Montenegrin local television station stressed out that the members of Montenegrin minority traditionally inhabit the area of Vraka village. However, during the 1990's when the Albanian population was faced with many economical difficulties, the majority of members of this minority immigrated to Montenegro. Nowadays, in Vraka village, there is only five or six Montenegrin families that did not had the possibility to sell their

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<sup>183</sup> See Annex II

<sup>184</sup> Interview with Bledar Bašanović, the representative of Serb/Montenegrin minority in the State Committee for National Minorities, held on 27 June in Tirana

<sup>185</sup> Albanian Helsinki Committee. *Minorities in Albania*. Council of Europe. 2003. 59

<sup>186</sup> Please See Annex III

<sup>187</sup> Interview with Bledar Bašanović, the representative of Serb/Montenegrin minority in the State Committee for National Minorities, held on 27 June in Tirana

<sup>188</sup> Ibid.

property as others did. Most of them are living from agriculture but their incomes still remain low.<sup>189</sup>

There are three associations active in the field of protection and promotion of Serbo-Montenegrin minority. The association named “Moraça-Rozafa” represents Serbo-Montenegrin minority whereas the association of Serbian minority from Fier is called “Jedinstvo” and it represents the interests of the Serbian minority.<sup>190</sup> On the other hand, the Serbian orthodox association named “Saint Jovan Vladimir” has been established in Shkodra. The cultural association “Moraça Rozafa” of the Serbo-Montenegrin minority carries out its activities in the Commune of Vraka, in the prefecture of Shkodra. So far, it organized several cultural and artistic activities in order to keep alive its traditional songs, dances, rituals and costumes characteristic for Montenegrin folk tradition.<sup>191</sup>

There is an active engagement by the authorities of Republic of Serbia to the promotion of Serbian minority in Albania. However, the Ministry of Culture of Republic of Serbia financially supported for the second time the implementation of the project which would enable the broadcasting of information on Serbian language. The program would be broadcasted by the local television station, TV Kopliku which can be also followed live on the internet. The coverage of the signal is throughout the country; therefore every member of this minority would

<sup>189</sup> TV Crne Gore, Emisija Peçat. *Crnogorci iz sela Vraka, Albanija*. February 2011. <https://www.youtube.com/watch?v=zJMtpwYYg00> (Accessed 07 July 2014)

<sup>190</sup> It has been stated that the: “The association of Serbian minority in Albania “Jedinstvo” is created by decision no. 3302, date. 16.04.2012 of the Tirana District Court to protect ethnic, cultural and religious identity of the Serb minority in Albania. Among the activities of the Association included in section 1 of this decision is to “preserve through language education in the Serbian language and the use of this language in Albania”. Also in paragraph 5 of the Statute of the Association, which foresees activities of the Association is noted that organization organizes courses in the native language of the Serb minority in Albania”

Please see: Duleviç, Eqerem “Letter of the Serbian Association “Jedinstvo” to the Ministry of Education.” *Identitet*. 27 March 2014 <http://www.identitet.al/en/shkrese-e-shoqates-jedinstvo-drejtuar-ministrise-se-arsimit/> (Accessed 15 July 2014)

<sup>191</sup> Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities*. 2001. ACFC/SR(2001)005

have the opportunity to be informed on their native language. This action was the primary initiative of the “Morača-Rozafa” association whose members emphasized that this action represents a bridge connecting the culture of two nations.<sup>192</sup>

Currently, there is no state funded school in Albania which could provide the lessons on Serbian language.<sup>193</sup> However, in 2010 the members of this minority organized Serbian language courses for the members of this minority in Shkodra. Educational facility and financial assistance is mostly funded by the Serbian authorities, more precisely through the funds delivered by the Serbian Ministry for Diaspora. This institution invested in teachers, library and other relevant equipment. The Serbian Minister for Diaspora, Srđan Srećković emphasized that this is a good chance to raise the awareness about Serb identity in a country that does not have a legacy of tolerance and multi-ethnicity.<sup>194</sup>

In November 2013, the second facility offering Serbian language courses has been established in the village of Hamil near Fier, 150

<sup>192</sup> Identitet.”Start of the second edition of the television program in Serbian language”*Identitet.al* 16 June 2014 <http://www.identitet.al/en/nis-edicioni-i-dyte-i-emisionit-televiziv-ne-gjuhen-serbe/#more-551> (Accessed 16 July 2014)

<sup>193</sup> In the resolution of the Committee of Ministers of the CoE CM / Res (2014) 1 dated from 12. February. 2014 it has been noted among other issues that: “the opportunities for minority language teaching and education in these languages remain insufficient. A number of request for the organizations for teaching in minority languages are not recieved positively by the authorities. There are no open classes offering learning of Serbian, Montenegrin, Vlach / Aromanian and Roma languages ...). On the other hand, the Committee recommends: “developing a constructive dialogue with representatives of persons belonging to national minorities on the teaching conditions of minority languages and education in these languages throughout the country, at the early school age, and take appropriate steps to address deficiencies, in accordance with Article 14 of the Framework Convention and identify measures that will enable the undertaking of initiatives aimed at the protection, preservation and development of cultural and linguistic identity of minorities ” For further elaboration please SEE: Committee of Ministers. *Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Albania*. 12 Feb 2014. CM/ResCMN(2014)

<sup>194</sup> Đaković T.N. “Srbi u Albaniji ponovo uče maternji jezik.” *Blic.rs*. 13 Sept 2010 <http://www.blic.rs/Vesti/Drustvo/206865/Srbi-u-Albaniji-ponovo-uce-maternji-jezik> (Accessed 15 Sept 2014)

kilometers southwest of Tirana.<sup>195</sup> However, the courses are provided for 78 children who express their desire to learn Serbian language. The facility, literature and other necessary educational supplies are financially supported by the Serbian Ministry for Diaspora of the Republic of Serbia and the Serbian Embassy in Tirana. Nevertheless, the president of Serbian minority association “Jedinstvo” expressed his regrets for the fact that neither the representatives of the People’s Advocate nor local governance attended this event.<sup>196</sup> In February 2014, the Albanian Ministry of Education and Sports issued the decision for banning the Serbian language courses in Fier due to absence of adequate license permission. As a result, the members of this minority strongly criticized this decision arguing that such actions are inconsistent with existing ambitions of Albania with regard to European Union integration.<sup>197</sup>

According to Bašanović, the members of this minority are generally dissatisfied with the amount of attention that they receive from the Albanian government since no state funded school has been established for the purpose of providing the lessons on Serbian language; therefore the only help which they receive for the courses conducted on Serbian language is provided by the Republic of Serbia.

<sup>195</sup> Prior to the establishment of this facility, the president of „Jedinstvo“ association, Mr. Ekrem Dulević in 2010 gave a part of his private house in the village of Reth Libosha, for the establishment of the primary school where Serbian language courses were taking place. From the beginning of the existence of this school, Mr. Dulević was facing with physical threats imposed by the members of the extremist party in Albania, the Red and Black Alliance. The Serbian flag and other state symbols were forcibly taken of the facility whereas the children who attended the lessons were also seen as targets of abuse. The facility was funded by the Republic of Serbia whereas other associations from Serbia donated laptops and other necessary equipment. Please see: Blanuša, R. ”Albanija: u selu se uči Srpski.”*Novosti.rs*. 31 Dec 2012 <http://www.novosti.rs/vesti/naslovna/aktuelno.293.html:412934-Albanija-U-selu-svi-uce-srpski> (Accessed 17 Sept 2014)

<sup>196</sup> Identitet.”Second Course on Serbian Language opened in Fier.”*Identitet.al* 02 Dec 2013 <http://www.identitet.al/en/hapet-kursi-i-dyte-i-gjuhes-serbe-ne-fier-2/> ( Accessed 12 September 2014)

<sup>197</sup> .Identitet “Letter of the Serbian Association “Jedinstvo” to the Ministry of Education.”*Identitet.al* 27 March 2014 <http://www.identitet.al/en/shkrese-e-shoqates-jedinstvo-drejtuar-ministrise-se-arsimit/> ( Accessed 12 September 2014)

## 2.5 Roma Minority

The members of Roma minority are mostly settled in Central and Southern Albania. However, this minority consists of four major tribes including Kallbuxhinj, Meçkare, Kurtofet and Cergaret. This minority generally preserved their specific identity including the language and culture. According to the first report issued in 2001 by the Ministry of Foreign Affairs of the Republic of Albania to the Advisory Committee on the FCNM, there is no discrimination of Roma community based on their ethnicity in Albania; rather they are facing with very low living standards which are the common characteristic of this minority in the region.<sup>198</sup> This group rarely faces open discrimination by Albanian politicians or society. In essence, Roma face more covert, institutional discrimination and social exclusion.<sup>199</sup> The members of this minority believe that the Albanians “act” as if Roma were inferior, viewing Roma as “poor” and “dirty.”<sup>200</sup>

There are no sources that could stipulate the exact number of this minority<sup>201</sup> prior to the controversial census conducted in 2011 which indicated that 8.301 members of this minority are living in Albania.<sup>202</sup> Estimates of the members of Roma minority are that there are between 50,000 and 120,000 members of Roma minority in Albania.<sup>203</sup> For the purpose of indicating the approximate number of the members of this minority, the World Bank used the argument provided by Poulton in 1991 that there are approximately 10,000 members of this minority. This number is significantly lower than the one used by Roma associations indicating that there are between 120,000 and 200,000 members of this

<sup>198</sup> Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities*. 2001. ACFC/SR(2001)005

<sup>199</sup> Koinova, Maria “Minorities in Southeast Europe: Roma of Albania.” Center for Documentation and Information on Minorities in Southeast Europe (CEDIME). 2000

<sup>200</sup> De Soto Hermine, Sabine Beddies, Ilir Gëdeshi. *Roma and Egyptians in Albania: From Social exclusion to Social Inclusion*. World Bank. 2005. 14

<sup>201</sup> Organization for Security and Co-operation in Europe Presence in Albania. *Minorities in Albania*. OSCE. 2012

<sup>202</sup> See: Annex I

<sup>203</sup> Security and Co-operation in Europe Presence in Albania. *Minorities in Albania*. OSCE. 2012

minority.<sup>204</sup>

The transition period that occurred during the 1990's, brought significant decline in the standards of living of this minority; therefore, the majority of this population is engaged into poverty-coping strategies. The constant migrations of this population are causing difficulties to Roma to approach public and social services which are mostly linked to the place of residence. According to results of survey conducted by Albanian National Institute of Statistics in 2002/3 around 67,2%<sup>205</sup> of the Roma population is unemployed whereas others are working as second-hand sellers in the informal sector.<sup>206</sup> The low number of educated Roma children<sup>207</sup> is a problem causing very poor integration of this minority in the society. Furthermore, in 2003 the illiteracy rate of Roma community was 60 % for male respondents; while 63% Roma women were illiterate.<sup>208</sup> The high illiteracy rate is associated to the fact that the members of Roma community are living in the extremely difficult financial situation and their homes are usually far away from the school facilities.

The way of living of this minority strongly influences their life choices since the lack of education limits them to adapt to labour market requirements. However, one of the key obstacles for increasing the level of education of this community is the problem of the lack of birth certificates whose possession is a pre-condition for school

<sup>204</sup> De Soto Hermine, Sabine Beddies, Ilir Gëdeshi. *Roma and Egyptians in Albania: From Social exclusion to Social Inclusion*. World Bank.2005.xxiv

<sup>205</sup> National Institute of Statistics of Albania .*Socioeconomic household questionnaires with Roma and Egyptians for the Needs Assessment, 2002/03: Popullsia e Shqiperise 2001*. Tirane 2002

<sup>206</sup> People's Advocate of the Republic of Albania.*Special Report on Problems and situation of the Roma Minority in Albania*. October 2013.

<sup>207</sup> According to a survey conducted by a Roma association in Levan, only 62 out of 256 (24 percent) children ages 6–15 years are enrolled in school in Levan, and only 36 (14 percent) of those enrolled actually attend school. In Fushë Kruja, only 11 Roma children are enrolled in school, out of a community of approximately 150 households. As a result, illiteracy rates for Roma are extremely high in Shkodra and Fushë Kruja. Please see: De Soto Hermine, Sabine Beddies, Ilir Gëdeshi. *Roma and Egyptians in Albania: From Social exclusion to Social Inclusion*. World Bank.2005. 54.

<sup>208</sup> National Institute of Statistics of Albania .*Socioeconomic household questionnaires with Roma and Egyptians for the Needs Assessment, 2002/03: Popullsia e Shqiperise 2001*. Tirane 2002

enrollment. In that regard, the non-existence of birth certificates could justify the lack of specific data which could determine the exact number of illiterate Roma and therefore help in the construction of specific strategies.<sup>209</sup>

In September 2003, the Albanian government approved the National Strategy “For improvement of living conditions of the Roma community”. In addition, this strategy provided a plan for social integration of this community and improvements of their living standards. Furthermore, the National Action Plan 2010-2015 has been approved as a part of “Roma decade 2005-2015” in order to introduce reforms and political programs aimed at reducing disparity in human and economic treatment of this community. The Action Plan was constructed to cope with several areas where Roma are facing discrimination such as: health, employment, education, housing and social protection. However, the implementation of these policies still faces many obstacles since the living conditions and general overall treatment of the members of this group by the society does not reflect positive results.<sup>210</sup>

Generally, only few local organizations in Korca and Tirana organize very rarely actions intended for preservation and promotion of Roma culture. However, Roma people are characteristic for their very distinct cultural features such as language, music, celebrations, family ceremonies, handcraft and women’s clothing.<sup>211</sup> As it has been stressed out in the National Action Plan 2010-2015, the culture represents the most important element of this community which could be emancipated through better education and participation in the public life.<sup>212</sup>

## 2.6 Vlach/Aromanian minority

The Aromanian minority (also known as ‘Vlachs’) has been living in the Balkans for two thousand years and its origin is still

<sup>209</sup> Advisory Committee of the Framework Convention for the Protection of National Minorities. *Second Opinion on Albania*. 2008. ACFC/OP/II(2008)003

<sup>210</sup> Ibid.

<sup>211</sup> De Soto Hermine, Sabine Beddies, Ilir Gëdeshi. *Roma and Egyptians in Albania: From Social exclusion to Social Inclusion*. World Bank. 2005. xxvi

<sup>212</sup> Government of the Republic of Albania. *Decade of Roma Inclusion, National Action Plan 2010-2015*, 2011.

being subject of dispute.<sup>213</sup> This population settled in the rural areas of Myzeqe of Fier and Vlora, in Frasher of Permet, in Moker of Podgradec, Kolonja, as well as in cities such as Korca, Berat, Tirana, Elbasan and Durres.<sup>214</sup> Nevertheless, this minority never had its independent state and it has mostly been treated as a minority in the countries of residence. Furthermore, this minority possesses indeed unique historical, cultural and linguistic characteristics.<sup>215</sup> In essence, the members of this ethnic group define themselves as: “a people, basing ideas of ethnic or cultural cohesion on criteria of language, religion, descent, common history, and former socio-economic specialization.”<sup>216</sup>

The Census conducted in 1950 in Albania, counted 2381 members of this minority whereas in 1955 the number of this population raised up to 4249.<sup>217</sup> The representative of this minority in the State Committee on National Minorities of the Republic of Albania provided an estimated figure of 10,000 members of this minority. However, he emphasized that the large number of members of Aromanian minority are living and working in Greece.<sup>218</sup>

According to Schwandner-Sievers, the Aromanian ethnicity

<sup>213</sup> On the further elaboration on this issue, please see: Parliamentary Assembly of the Council of Europe. *Document 7728*. 17 Jan 1997. Available at: <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=7661&Language=en> (Accessed 17 Sept 2014); and Schwandner-Sievers, Stephanie. “*The Albanian Aromanians’ Awakening: Identity Politics and Conflicts in Post-Communist Albania*.” *European Centre for Minority Issues*. 1999.

<sup>214</sup> Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities*. 2001. ACFC/SR(2001)005

<sup>215</sup> Parliamentary Assembly. *Document 7728*. 17 Jan 1997 <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=7661&Language=en> (Accessed 17 Sept 2014)

<sup>216</sup> Schwandner-Sievers, Stephanie. “*The Albanian Aromanians’ Awakening: Identity Politics and Conflicts in Post-Communist Albania*.” *European Centre for Minority Issues*. 1999.2

<sup>217</sup> Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities*. 2001. ACFC/SR(2001)005

<sup>218</sup> Organization for Security and Co-operation in Europe Presence in Albania. *Minorities in Albania*. OSCE. 2012

emerged with the political transition of Albania, since during the period of socialism they were assimilated due to the more or less forced homogenization process. The newly emerged renaissance of identity caused the conflict between pro-Greek and pro-Romanian followers.<sup>219</sup> In essence, pro-Greek followers have a tendency to participate in the activities of the Human Rights Union Party, which is a successor of allegedly fundamentalist Greek organization known as OMONIA.<sup>220</sup> The clear attempt of the Greek Consul in Albania to call this minority group to identify as Greeks in the Census conducted in 2011, serves as an evidence of assimilation policies targeted at this population by the Greek authorities.<sup>221</sup>

Moreover, after the 1990 several associations aimed for promoting Armenian culture and identity were formed including “Armeni-Alban”, “The Aromanians’ Association Voskopoja” and “Aefallofisi.”<sup>222</sup> These associations with the support by the several sponsors initiated the creation of monthly newspapers “Frateria” and “Fërshërotu”. Those newspapers publish texts on both Albanian and Aromanian language. Furthermore, with the assistance of a Danish association, the Aromanian Association produced and broadcasted on Radio Tirana four thematic sessions on Aromanian language regarding

<sup>219</sup> Ibid.

<sup>220</sup> For further elaboration on the origin and specificity of this group, please see: Schwandner-Sievers, Stephanie. “The Albanian Aromanians’ Awakening: Identity Politics and Conflicts in Post-Communist Albania.” *European Centre for Minority Issues*. 1999.

<sup>221</sup> Likmeta, Besar. “Greek Consul Statement Angers Albanian MPs.” *Balkan Insight*. February 2011. <http://www.balkaninsight.com/en/article/greek-consul-statement-angers-albanian-mps> (Accessed June 2014)

<sup>222</sup> Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities*. 2001. ACFC/SR(2001)005

Apropos In 1995 and 1996, the Aromanian associations were differentiated between a so-called „pro-Greek“ wing (or „Albanian Vlachs“) with political as well as cultural aims, and a „pro-Romanian“ (or „Albanian Aromanian“) wing with explicitly non-political, cultural objectives. For the further elaboration on this issue please see: Schwandner-Sievers, Stephanie. “The Albanian Aromanians’ Awakening: Identity Politics and Conflicts in Post-Communist Albania” *European Centre for Minority Issues*. 1999.

their tradition and culture.<sup>223</sup> However, scholarships for Aromanian children are provided for some pupils by the Albanian Ministry of Education and Science and ministries from Romania and Greece.<sup>224</sup>

There is no public school established by the Albanian authorities for the purposes of providing the lessons on Aromanian language. However, there is only the possibility of the members of this group to optionally choose whether their children would have courses of Aromanian language in Divjaka school.<sup>225</sup> In addition, in February 2012 the “Alliance for European Equality and Justice“ has been created, which *inter alia* in its statute serves for the protection of the values of Aromanian/Vlach minority in Albania.<sup>226</sup>

On the other hand, in the first and second opinion submitted by the Advisory Committee on the FCNM regarding the situation of minorities in Albania, it has been elaborated that there are certain notions indicating that this minority is on the path which is leading to total assimilation of this community. Furthermore, it emphasized the urgent need for Albanian authorities to provide financial help for this community in order to organize cultural events and language courses which would stimulate the preservation of their identity. The Advisory Committee expressed its concerns for the fact that few projects related to cultural actives and language teachings were fully sponsored by foreign donors rather than the state of Albania.

In the report of the Albanian Helsinki Committee issued in

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<sup>223</sup> Ministry of Foreign Affairs of the Republic of Albania. *Second Report submitted by the Republic of Albania under Article 25, paragraph 1 ,of the Council of Europe’s Framework Convention for the Protection of National Minorities.*2007.ACFC/ SR / II (2007) 004

<sup>224</sup> Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1 ,of the Council of Europe’s Framework Convention for the Protection of National Minorities.*2001. ACFC/SR(2001)005

<sup>225</sup> Ministry of Foreign Affairs of the Republic of Albania. *Comments of the Government of Albania on the Second Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities by the Albania.* 2008.GVT/COM/II(2008)005

<sup>226</sup> Ministry of Foreign Affairs of the Republic of Albania. *Comments of the Government of Albania on the Third Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities by Albania.* 2012 GVT/COM/III(2012)003

2003, it has been emphasized that the members of this community who inhabit the rural areas of Albania, generally preserved their identity by speaking their language and by practicing their customs and tradition. In the same report it has been stated that Aromanians living in urban areas are much more affected by the process of assimilation.<sup>227</sup> Nevertheless, Albanian authorities denied the truthfulness of the allegations that this community is in the process of assimilation. In the third report issued to the Advisory Committee on the FCNM the Ministry of Foreign Affairs of the Republic of Albania stressed out that numerous activities have been carried out by Aromanian associations which is a proof that this minority: “not only is not going towards assimilation, but on the contrary, during reporting period, it has made very important steps towards its organization and identification.”<sup>228</sup> Apropos, the same institution stressed out that this minority is completely integrated into the Albanian society and that its members contribute to all spheres of the political, economical, social and cultural life in Albania.<sup>229</sup>

## 2.7 Analysis

From the research conducted, it can be noted that there are several problems concerning recognized minorities in Albania. Primarily, the disparity in treatment of each group is easily noticeable from the status which they are given by the Albanian authorities. The sole distinction between ‘national minorities’ and ‘ethno-linguistic’ minority provides a negative connotation for these minority groups especially in the field of education on their mother language. Considering the fact that

<sup>227</sup> Albanian Helsinki Committee. *Minorities in Albania*. Council of Europe. 2003. 104

<sup>228</sup> Ministry of Foreign Affairs of the Republic of Albania. *Third Report submitted by the Republic of Albania under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities*. 2011. ACFC/SR/III(2011)001

<sup>229</sup> See : Ministry of Foreign Affairs of the Republic of Albania. *First Report submitted by the Republic of Albania under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities*. 2001. ACFC/SR(2001)005; Ministry of Foreign Affairs of the Republic of Albania. *Second Report submitted by the Republic of Albania under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities*. 2007. ACFC/ SR / II (2007) 004

the government was using the data on ethnicity contained in the civil registers in order to decide on opening classes on minority language, the members of Roma and Vlach/Aromanian minority have not been able to establish the courses on their mother language due to absence of information on ethnicity contained in civil registers. Even though the Advisory Committee emphasized in several occasions in its report the need for development of better approach for resolving the issue of classification of minorities, nothing has been done in that regard by the Albanian authorities.

The Census conducted in 2011 cannot be used as a reliable source for determining the number of ethnic minorities present in Albania; therefore the exact number of the members of minority groups remains unknown. Concerning the fact that the Law on Census was amended only three months before the Census, imposing financial fines for those who declare differently from the provisions stipulated in their birth registry, serves as a severe breach of self-identification principle enshrined in the Article 3 of the FCNM. The lack of exact information indicating the number of members of minority groups members would lead to potentially inadequate implementation of certain strategies aimed for promotion of minority's culture and mother language education.

Nevertheless, it could be argued that the Greek minority in Albania enjoys the most beneficial position among other minorities in the Albanian society including the politics. The positions which the members of Greek minority obtain in the governmental structure indicate that they are well represented in the governmental institutions. On the other hand, the infringement of the internal affairs of the Republic of Albania by calling other ethnic groups to declare as Greeks severely impaired the diplomatic relations between two countries. Apropos, from the information obtained during the field work that I have conducted, it could be argued that there is certain amount of animosity towards Greek minority among the society in general. This is particularly the case with those Albanians who declared as Greeks in order to acquire Greek citizenship which enabled them to receive high pensions provided by Greek authorities.

Furthermore, the territorial claims made by Greek representatives over the southern part of Albania known as Northern Epirus, surely influences the raise of tensions between Albanians and Greeks.

Moreover, it prevents reaching the long-term good relations between two countries. The recently adopted territorial reform which segregates Greek villages into different municipalities aggravates the relationship between Greek minority and the state of Albania. The recent tensions between Albanian and Greek population in the southern part of Albania were influenced by the Greek government's non-recognition of Kosovo's independence. In addition, the statements provided by Greeks who obtain public functions in the state of Albania, concerning the territorial claims over the south-eastern part of Albania, decreases the possibility towards reaching long-lasting good relations between Greek minority and Albanians. On the other hand, the negative experience in the past concerning the ban of several Greek language schools and exclusion of the Greek minority party from the elections in 1992, also can be seen as one of the reasons why there is the presence of tensions between these two ethnic groups.

Nonetheless, the existence of more than 15 schools on Greek language in Albania serves as a proof of positive improvements in the Albanian policies towards minorities. However, most of the educational facilities, TV stations and newspapers are financially supported by the Greek minority's organizations and Greek authorities. In essence, the Greek government provides an extensive effort for the protection of its minority in Albania by funding educational facilities and organizations of this minority.

In general, the Macedonian minority is very well organized. The representatives of this minority are very persistent in their claims. This could be observed from the decision of the Albanian parliament to restore Macedonian names of the places in the region of Mala Prespa, where this minority resides.<sup>230</sup> Apropos, the representatives of Albanian authorities and Macedonian minority emphasized that this act represents a step forward in improving inter-ethnic relations with this minority and a positive act of integration.<sup>231</sup> The situation of this minority could be even better if the Albanian authorities could provide Macedonian language courses in the regions apart from those where only part of

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<sup>230</sup> Trajkovski, Miko. "Albania restores Macedonian names in Mala Prespa." *SETimes*, April 2013 [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2013/04/04/feature-01](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2013/04/04/feature-01) ( Accessed 16 Sept 2014)

<sup>231</sup> Ibid.

this minority resides. Apropos, the recently adopted administrative-territorial reform which did not take into consideration the requests of minorities including Macedonians, serves as a step backwards to the positive treatment of minorities groups by the Albanian government.

It could be argued that the Serbian-Montenegrin minority does not receive the same amount of attention from the Albanian authorities in comparison to Greeks and Macedonians. Hence, there is no state-funded school for providing the lessons on Serbian-Montenegrin language. This could be also attributed to the fact that there is relatively low number of the members of this community, making it financially more expensive for Albanian authorities to print the textbooks. Moreover, the complexity of the dual naming of this minority certainly influences this attitude by the state of Albania. However, the sole fact that there is no category of Serbian, but rather only "Montenegrin" minority, in the results of the Census conducted in 2011, proves the fact that the state of Albania is reluctant towards embracing the existence of solely 'Serbian' minority. The fact that the representative of this minority in the Albanian State Committee on National Minorities identifies himself as a Serb, while the president of 'Jedinstvo' association in Fier also declared as a member of Serb minority, indicates that the Serbian minority exists in Albania. However, further research is required in order to identify the issues arising from the question of the naming of this group as well as its exact number.

Nevertheless, the Republic of Serbia is financially the largest contributor to three associations representing this minority group. It provides help for operating two language course facilities and other necessary equipment. In essence, the representatives of the authorities from the Republic of Serbia, expressed their will to provide extensive efforts for support of this minority since it is a vital interest for the Republic of Serbia to support political, economical and cultural emancipation of its co-ethnics in the states which do not have any legacy of tolerance and multi-ethnicity.<sup>232</sup> Nevertheless, this attitude could be very negatively characterized by the Albanian society.

Despite of the approval of National Strategy for the improvement

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<sup>232</sup> Đaković T.N. "Srbi u Albaniji ponovo uče maternji jezik." *Blic.rs*.13 Sept 2010 <http://www.blic.rs/Vesti/Drustvo/206865/Srbi-u-Albaniji-ponovo-uce-maternji-jezik> (Accessed 15 Sept 2014)

of living conditions of Roma community and National Action Plan 2010-2015 by the Albanian authorities, the implementation of these instruments does not reflect positive results. According to the report issued by the People's Advocate, the situation of this community remained unchanged.<sup>233</sup> Discrimination practices accompanied by the low number of Roma children attending school, unsafe living conditions and 67,2% unemployed members of this community, represent the reason for concern. The high illiteracy rate is associated to the problem of the lack of birth certificates obtained by Roma since it is the precondition for enrollment into school. Nevertheless, even though this community has been recognized as 'ethno-linguistic' minority by being the member of State Committee of National Minorities, there no or very low number of organizations serving for the purpose of preserving their identity. The absence of the appropriate implementation of the tailor made strategies significantly increases the negative position of this ethnic group.

On the other hand, the Vlach/Aromanian minority is at least visible minority among the ones mentioned previously. Considering the fact that the Advisory Committee stressed out the existence of possibility of assimilation of this community, the better protection of its identity and cultural characteristics has to be provided by the Albanian authorities. However, the existence of two separate wings of Aromanian associations specifically pro-Greek and pro-Romanian, aggravates the overall treatment of this community. In essence, the non-existence of the unity within the associations itself, serves as an obstacle for finding the adequate approach for the improvement of the overall treatment of this minority. Nevertheless, the recently established political party for the purpose of promoting the values of Aromanian minority could be seen as an expression of the will of this community to engage more progressively in the promotion of its identity. As it was elaborated earlier, there is no state funded facility that could provide courses on Aromanian language.

Conclusively, it could be argued that the voices of Greek and Macedonian minorities are the most present in the public. Furthermore, the significant amount of Albanians living in Greece and Macedonia

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<sup>233</sup> Please see: People's Advocate of the Republic of Albania. *Special Report on Problems and situation of the Roma Minority in Albania*. October 2013.

certainly influences Albania being cautious when addressing the requests of these two ethnic groups. In essence, Greek, Macedonian and Serbian-Montenegrin minorities are facing difficulties with regard to obtaining the license for conducting the courses on their mother tongue on the territories where there is a low number of the members of these minorities. In addition, no language courses are provided for members of Roma and Vlach/Aromanian minority. However, the fact that the representatives of ethnic minority groups in Albania called for boycott of the Census in 2011 due to enactment of the Law provisions that stipulated that every person will be fined if he/she declares differently from the information stated in their birth certificate, indicates that the information stated in this Census cannot be seen as a reliable source of data<sup>234</sup>. The absence of relevant statistical data of the number of each group, significantly influenced the successfulness of implementation of strategies targeted at the above-mentioned minority groups.

### 3. Non-recognized Minorities in Albania

The issue of non-recognition of minority groups, recently gained attention within academic circles. As Panayote argued the identities can be better enjoyed with other who shares the same identity; therefore the recognition of groups' existence is essential for preservation of distinct groups' identity.<sup>235</sup> Furthermore, the minorities' recognition by states and international community should be in form of: "acknowledging their existence, while refraining from imposing any arbitrary or discriminatory recognition criteria."<sup>236</sup>

Recognizing the minority groups as such is essential in order to secure the rights of minority groups within the State. Apropos, the lack of recognition of minorities can lead to instability and conflict; therefore the recognition of minorities can contribute to the peaceful coexistence. The absence of recognition prevents members of minority groups to enjoy protection deriving from the obligations stipulated

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<sup>234</sup> As it was stated by the: Advisory Committee of the Framework Convention for the Protection of National Minorities. *Third Opinion on Albania*. 2011.ACFC/OP/III(2011)009

<sup>235</sup> Dimitras Elias Panayote. "Recognition of Minorities in Europe: Protecting Rights and Dignity". *Minority Rights Group International*. 2004. 1

<sup>236</sup> Ibid.

in international legal instruments. Furthermore, it could also lead to violation of economic, social and cultural rights of minorities and eventually produce marginalization of these groups. In addition, the absence of recognition can lead to a person or group of people suffer “real damage, real distortion if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves.”<sup>237</sup> As Pentassuglia argued, the existence of minority groups are context dependant, namely factual matters.<sup>238</sup> The first step towards ensuring the effective protection of minority rights is for a state to provide recognition based on self-identification.<sup>239</sup> In that regard, the Permanent Court of Justice in 1930 ruled that the existence of minority is “a matter of a fact, not matter of a law”.<sup>240</sup> Moreover, the first OSCE Commissioner on National Minorities, Max von der Stoel emphasized: “I know a minority when I see one.”<sup>241</sup>

On the other hand, the issue of non-recognition of minority group has been addressed in the study conducted by Francesco Capotorti, the Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities. According to Capotorti, the issue of non-recognition of minority groups within States differs considerably according to the country concerned. Four types of recognition that this author suggest are as follows:

(1) the constitutional recognition of the existence of distinct groups and of their right to special regime in regard to protection of their culture and use of languages (2) recognition of minority group on the basis of *ad hoc* international juridical instruments (3) implicit recognition through law or administrative measures that would serve for development of linguistic groups’ culture, and (4) non-recognition of minorities in the municipal legal order, accompanied by either

<sup>237</sup> Taylor, Charles. “Politics of Recognition“ In *Multiculturalism: Examining the Politics of Recognition* by Taylor Charles, Gutman Amy et al, *Ethics: An International Journal of Social, Political, and Legal Philosophy*. Chicago: The University of Chicago Press, 1994.25.

<sup>238</sup> Pentassuglia, Gaetano. *Minorities in International law*. Council of Europe.2002.55

<sup>239</sup> Ibid.

<sup>240</sup> Ibid.

<sup>241</sup> Max Van der Stoel. “Acceptance Speech“ 15 December 1993. Available at: <http://www.osce.org/nl/hcnm/36551?download=true> ( Accessed on 29 September 2014)

a political attitude of utter denial of the existence of such groups or an official attitude of neutrality which allows cultural or linguistic measures to be taken privately.<sup>242</sup>

As it was further elaborated by Capotorti, the most desirable solution in all the above-mentioned cases is the existence of constitutional provisions and ad-hoc laws safeguarding the rights of minorities to preserve and develop their culture and use their own language. In that regard, Capotorti argued that if the existence of a minority group within a state is objectively demonstrated<sup>243</sup>, the non-recognition of certain minority does not dispense the State from the duty to comply with the principles in Article 27 of the ICCPR. Furthermore, the implementation of the rights deriving from the previously mentioned Article, are entirely feasible if the appropriate laws or administrative measures are adopted, regardless of the existence of constitutional recognition.<sup>244</sup>

Francesco Capotorti argued that the desire of minority group to preserve its own characteristics and their own traditions is generally implied by the mere fact that the distinct group continued to exist. Furthermore, the facts that should be taken into account by States when formulating their policy towards protection of the minority groups are the following:

When the members of minority group display in their everyday life a strong sense of identity, unity and solidarity and when they strive to maintain their traditions and culture and persist to, sometimes against heavy odds, in the usage of their language, when they regard themselves and are regarded by other as belonging to distinct group, it is logical to conclude that their general attitude should be viewed as a clear affirmation of their will to preserve and develop their own characteristics.<sup>245</sup>

<sup>242</sup> Capotorti, Francesco *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*. New York: United Nations. 1979.96

<sup>243</sup> Objective criteria for determining the existence of minority group, according to Capotorti are the possession of stable ethnic, religious or linguistic characteristics that differ sharply from those of the rest of the population. As for the subjective criteria, it has been generally defined as a will of the members of minority group in question to preserve their own characteristics. See: Capotorti, Francesco *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*. New York: United Nations. 1979.96

<sup>244</sup> Ibid.

<sup>245</sup> Ibid.

In that regard, Capotorti emphasized that the states have the duty to take all appropriate steps, including constitutional and legislative measures in order to ensure that the members of minority groups enjoy the protections of their fundamental human rights on a basis of equality, in the atmosphere that is free from discrimination.<sup>246</sup>

On the other hand, the problem of non-recognition of minority group can be also regarded as a political issue associated to redistribution of the economical goods for the preservation of minority's culture. Seyla Benhabib emphasized that interdependence of recognition and redistribution claims in one of the essential issues encompassed in political sociology and political philosophy of a welfare state. According to Benhabib: "in order to distribute X (goods, services, entitlements) to Y (individuals) always implies recognizing Y to be a group member in virtue of which Y is entitled to X."<sup>247</sup> In that regard, when an ethnic group gains the status of minority, then the claims of those groups related to housing, education, employment and other forms of social support are granted. As a result of the status granted, minority groups acquire rights to establish cultural, religious and educational organizations, and to carry out lessons of their mother language.<sup>248</sup> Apropos, the states and its institutions should grant public recognition by allocating public resources to the groups which provide differences of language, gender, culture, ethnicity or religion, since those differences are essential for successful functioning of the multicultural society.<sup>249</sup> As Kymlicka argued, the idealistic structure of a multicultural state comprised of several cultural groups can be defined as the one accepting of all legal norms and principles willing to accord history, language and culture of non-dominant groups so as to achieve equal treatment provided to the groups in dominant position.<sup>250</sup>

The following text focuses on two minority groups, Egyptians

<sup>246</sup> Capotorti, Francesco *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*. U.N.Doc.E/CN.4/Sub.2/34/Rev.1.1979.97

<sup>247</sup> *Ibid.*

<sup>248</sup> *Ibid.*

<sup>249</sup> Benhabib, Seyla. *The claims of culture, equality and diversity in the global era*. Princeton University Press, 2002. 72

<sup>250</sup> Kymlicka, Will. "Multicultural States and Intercultural Citizens." In *Theory and Research in Education* 147-169, Vol 1(2), London, Thousand Oaks and New Delhi: Sage Publications, 2003.150

and Bosniaks and problems which they face due to non-recognition. Whereas the central aspect of this research is Bosniak community. The text which follows primarily reveals the situation of Egyptian minority.

### 3.1. Egyptian minority

As it was elaborated in the previous two chapters, there is no procedure or mechanism that would serve as an instrument for recognition of minorities who are willing to obtain such status and therefore enjoy all the protection deriving from the FCNM. However, the Egyptian<sup>251</sup> and Bosniak<sup>252</sup> communities have clearly expressed their will to be recognized as a national minority arguing that they both fulfill objective and subjective criteria.

According to the World Bank's survey on Roma and Egyptian communities in Albania, the number of this minority differs from the district in which its members are located. Therefore, in Shkodra there is around 4,500 Egyptians while in Elbasan the number is much higher indicating 8319 members of this community. In Gjirokastra there is 5,000 Egyptians while in Vlora there are 3,000 and in Delvina 2,500, comprising overall 23,319 members of this community. According to the World Bank researchers, these statistics must be taken with a grain of salt.<sup>253</sup>

The Advisory Committee of the FCNM in its third opinion on Albania issued in 2011 criticized the government for not taking necessary steps in order to provide recognition to these communities

<sup>251</sup> Prior to the issuance of the First Opinion Advisory Committee of the Framework Convention for the Protection of National Minorities in 2002, the members of Egyptian community made it clear to the Advisory Committee that they would like to receive recognition as a national minority. Please see: Advisory Committee of the Framework Convention for the Protection of National Minorities. *First Opinion on Albania*. 2003, ACFC/INF/OP/I (2003) 004.

<sup>252</sup> Prior to the issuance of the Second Opinion of the Advisory Committee of the Framework Convention for the Protection of National Minorities, the representatives of Bosniak community had a meeting with the members of Advisory Committee on the FCNM when they asked that the Albanian authorities consider them as a national minority. Please see: *Second Opinion on Albania*. 2008, ACFC/OP/II (2008) 003

<sup>253</sup> De Soto Hermine, Sabine Beddies, Ilir Gëdeshi. *Roma and Egyptians in Albania*. World Bank. 2005. xxiv

arguing that:”their existence as distinct groups with ‘specific identities’ has not been acknowledged.”<sup>254</sup> However, while the question of the origin of Egyptian community has been addressed by the Albanian government in reports submitted to the Advisory Committee<sup>255</sup>, the question of the origin of Bosniak community has not been raised.

In its first opinion on Albania submitted by the Advisory Committee of the FCNM in 2002, it has been noted that despite the historical presence of Egyptians in Albania, they appear to have been: “*a priori* excluded from the protection of the Framework Convention.”<sup>256</sup> Furthermore, the Advisory Committee elaborated that this community see itself as being distinct group from Roma community in terms of having different ethnical background, historical roots as descendents of persons from Egypt, tradition and cultural heritage. Having in mind all previously stated aspects, the Egyptian community expressed its desire to be recognized as national minority.<sup>257</sup>

According to European Commission against Racism and Intolerance, the Albanian authorities need to ensure that the members of this community are not subjected to discrimination concerning: “the participation in and access to public institutions dealing with the needs and concerns of country’s minorities.”<sup>258</sup> Moreover, ECRI emphasized that the Albanian authorities need to strengthen dialogue with the members of this community in order enable them to participate in the decision-making process concerning them and to foster an improved

<sup>254</sup> Advisory Committee of the the Framework Convention for the Protection of National Minorities. *Third Opinion on Albania*. 2011.ACFC/OP/III(2011)009 ;

<sup>255</sup> Please see: Ministry of Foreign Affairs of the Republic of Albania. *Comments of the Government of Albania on the Third Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities by Albania*. 2012 GVT/COM/III(2012)003; Ministry of Foreign Affairs of the Republic of Albania. *Comments of the Government of Albania on the Second Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities by the Albania*. 2008.GVT/COM/II(2008)005

<sup>256</sup> Advisory Committee of the Framework Convention for the Protection of National Minorities. *First Opinion on Albania*. 2003, ACFC/INF/OP/I (2003) 004

<sup>257</sup> Ibid.

<sup>258</sup> European Commission against Racism and Intolerance. *ECRI Report on Albania (fourth monitoring cycle)*. Council of Europe, 2010.31.

knowledge of their culture and identity.<sup>259</sup>

On the other hand, Albanian government acknowledged the proposals delivered by the Advisory Committee to recognize Egyptian community. However, the government argued that the recognition of the group solely on the basis of subjective criteria represents a form of deviation to the Framework Convention. Additionally, it has been noted that the Egyptian community do not practice any ‘special’ culture or religion and they do not have their own language.<sup>260</sup> Furthermore, as the main argument provided by Albanian authorities for not recognizing Egyptians as being a minority concerns the complexity of determining its origin.<sup>261</sup> The refusal of the Egyptian embassy in Tirana to recognize this community as being descendent of the persons from Egypt influenced the negative attitude of Albanian officials regarding

<sup>259</sup> Ibid.

<sup>260</sup> Ministry of Foreign Affairs of the Republic of Albania. *Comments of the Government of Albania on the Second Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities by the Albania*. 2008.GVT/COM/II(2008)005

<sup>261</sup> According to the European Roma Rights Council: “Roma and Egyptians consider themselves to be two different ethnic groups. However, they collectively occupy the name ‘Gypsy minority’ typical of other Balkan and East European societies.” As Hasluck argued: “Nomads regard sedentary groups (Egyptians) as their inferiors, while these sedentary groups “despised” the Roma. Moreover, Egyptians were considered as “nearer to Albanians“. (See: Hasluck, Margaret. “The Gypsies of Albania.” 1938.49.) The research published by the World Bank regarding Roma and Egyptian communities in Albania, emphasized the existence of several theories indicating origin of this community in the Balkans. Nevertheless, its members claim that they are originally from Egypt whereas some assert that they came to the Balkans in the third century B.C.E or in fourth century C.E as Coptic migrants. On the other hand, second theory describes the Albanian Egyptians as being descendants from the Egyptian slaves in the Ottoman army. Furthermore, third theory indicates that Albanian Egyptians are semi-integrated Roma who ended their nomadic traditions and lost their Roma language much earlier than any other Roma tribe. Nevertheless, neither one of these theories is based on substantial evidence; therefore, the exact origin of this group of people is very difficult to authenticate. Essentially, these two groups form distinctive and separate communities which have their own culture and speak two different languages. Please see: De Soto, Hermine, Sabine Beddies, and Ilir Gedeshi. *Roma and Egyptians in Albania: From Social exclusion to Social Inclusion*. Washington D.C: The World Bank, 2005.7-9

the recognition of this group. In addition, the general standing of the competent authorities is that the sole recognition of this community would not resolve their socio-economic difficulties.<sup>262</sup> Furthermore, the Albanian government stressed that the above-mentioned argument does not reflect the attitude that opposes the existence of other minorities, but rather: “an attitude that leaves open this possibility towards individuals or groups who fulfill the subjective and objective criteria to be an ethnic minority and that are confirmed as such through the registration of the population.”<sup>263</sup>

The Egyptian community emphasized that they represent an ethnic group which is distinct from Roma, with whom they have been often confused by the public but also by the Albanian authorities.<sup>264</sup> Furthermore, they also emphasized that even though they have lost their language through time and nowadays speak only Albanian language, there is need for the inclusion of their culture in school textbooks and providing the space for representation of this community in the public administration and elected bodies.<sup>265</sup>

Nevertheless, together with Roma, this group of people represents the most marginalized minority in Albania. Social exclusion is deeply embedded in their everyday lives concerning the fact that they are mostly living in extreme poverty. The transitional period from socialism to democratic ruling and existence of the high rates of unemployment, stimulated the creation of informal labor market accompanied with prostitution, drug trafficking, begging, theft etc. According to the statistical data obtained in 2001 by the National

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<sup>262</sup> Advisory Committee of the Framework Convention for the Protection of National Minorities. *Second Opinion on Albania*. 2008.ACFC/OP/II(2008)003

<sup>263</sup> Ministry of Foreign Affairs of the Republic of Albania. *Comments of the Government of Albania on the Third Opinion of the Advisory Committee on the Implementation of the FCPNM by Albania*. 2012 GVT/COM/III(2012)003

<sup>264</sup> Advisory Committee of the Framework Convention for the Protection of National Minorities. *Second Opinion on Albania*. 2008.ACFC/OP/II(2008)003

<sup>265</sup> Ibid.

Institute of Statistics of Albania and the World Bank<sup>266</sup>, there is 64,3 % of unemployed members of Egyptian minority<sup>267</sup>; therefore the above-mentioned criminal categories represented the only way of survival.

Among social exclusion and poverty, the social aspects which are mostly associated with this minority are: decline of living conditions for housing, health care, social services, lack of education and problems of illiteracy, socioeconomic disintegration, insecurity, stress etc.<sup>268</sup> Essentially, when it comes to cultural characteristics, this community has been known for producing decorative handicrafts including metalwork such as railings, balconies and window bars. There is a decline of Egyptian folk dancing with only 28% Egyptians knowing the folk dances that accompany their traditional music. The transmission of oral history of the community through folktales has been in decline with only 11% of Egyptians knowing their traditional folktales.<sup>269</sup>

<sup>266</sup> As it was elaborated earlier, during 2002, the Institute of Statistics with the help of World Bank, conducted a survey on minorities in Albania, based on the data gathered during the population census and registration of homes during 2001. The results of the survey were also based on the Living Standard Measurement Survey. The survey was conducted only in the districts of Korca, Saranda and Mirdite. The exact number of the members of Greek minority is not specified; therefore this problem remained until the Census conducted in 2011. Since the results of the Census were contested by the members of this minority, the precise number of the Greek minority members remains unknown. Please see: Center for Economic and Social Studies. *Integrated Questionnaire for the Measurement of Social Capital: Albania-field test*. Available at: <http://siteresources.worldbank.org/INTSOCIALCAPITAL/Resources/Social-Capital-Integrated-Questionnaire/AlbaniaFinalRptAug2802.pdf> ( Accessed 28 September 2014)

<sup>267</sup> National Institute of Statistics of Albania. *Socioeconomic household questionnaires with Roma and Egyptians for the Needs Assessment, 2002/03: Popullsia e Shqiperise 2001*. Tirane 2002

<sup>268</sup> De Soto, Hermine, Sabine Beddies, and Ilir Gedeshi. *Roma and Egyptians in Albania: From Social exclusion to Social Inclusion*. Washington D.C: The World Bank, 2005.192

<sup>269</sup> De Soto, Hermine, Sabine Beddies, and Ilir Gedeshi. *Roma and Egyptians in Albania: From Social exclusion to Social Inclusion*. Washington D.C: The World Bank, 2005.18

### 3.2. Bosniak minority

The Albanian authorities devoted minimum amount of space in the reports submitted to the Advisory Committee to the issues concerning Bosniak minority.<sup>270</sup> As it was elaborated in the previous chapter, the Census conducted in 2011 contained many controversies with regard to the question of ethnicity. However, the information on the official statistical data does not indicate the presence of the category of this minority.<sup>271</sup> There is no source indicating the number of this minority, even though the president of the Bosniak association, Fiqiri Kllari emphasized that there is around 10,000 members of this community living across the territory of Albania.<sup>272</sup> He emphasized that in two villages of Borak and Koxhas there are 600 to 700 households, comprising mostly of Bosniak members. That means that approximately in those two villages there are around 3000 members of this community.

Among Greek, Macedonian, Montenegrin, Aromanian, Roma and Egyptian ethnic groups that have been listed as categories in the tables on ethnic data, there is the category of ‘Other’ that probably indicates other ethnic groups that declared differently than the ones mentioned above.<sup>273</sup> From the field work that I have conducted by

<sup>270</sup> In the Commentary issued in 2012, Albanian government for the first time mentioned Bosniak community in terms of reflecting to the paragraph 32 of the third opinion of the AC where it has been indicated that persons who belong to Egyptian and Bosniak minority expressed their wish to be acknowledged as members of national minority and enjoy certain benefits under the FCNM. Furthermore, in the same Commentary, the incorrect term has been used to describe this community (“Bosnians”). The potential confusions regarding the naming of this ethnic group will be elaborated more extensively in the following sub-chapter. See: Ministry of Foreign Affairs of the Republic of Albania. *Comments of the government of Albania on the “Third Opinion” of the Advisory Committee of the Framework Convention for the Protection of National Minorities*. 2012.

<sup>271</sup> Please see: National Institute of Statistics of Albania. *Population and Housing Census*. 2011. [http://www.instat.gov.al/media/178070/rezultatet\\_kryesore\\_t\\_censusit\\_t\\_popullsis\\_dhe\\_banesave\\_2011\\_n\\_shqip\\_ri.pdf](http://www.instat.gov.al/media/178070/rezultatet_kryesore_t_censusit_t_popullsis_dhe_banesave_2011_n_shqip_ri.pdf) ( Accessed 20 June 2014)

<sup>272</sup> Interview with Fiqiri Kllari, President of Bosniak association “Zambak”, held on 15 August 2014 in Borake

<sup>273</sup> Please see: Annex I

having interviews with the members of this minority, the interviewees unanimously agreed that they do not accept the results of this Census as valid since they took it as an offence the fact that there is no category of Bosniak minority in the official documents of the census results.<sup>274</sup>

Furthermore, the sole fact that during the Census conducted in 2011 it was not obligatory to declare on ethnicity while it was obligatory to declare on mother language, triggers many unclear controversies.<sup>275</sup> In addition, there is no category of Bosnian language in the Census material available on-line, even though the interviewees agreed that significant amount of them declared Bosnian language as their mother tongue.<sup>276</sup>

In the second opinion on Albania issued in 2008, the Advisory Committee of the FCNM emphasized that by affording the status of national minority to the Bosniak community would allow their specific needs to be met.<sup>277</sup> However, the Advisory Committee of the FCNM does not address the existence of any form of discrimination targeted at this group. Furthermore, the representatives of this community stressed out that their main objective is to be granted the status of ‘national minority’ which would eventually stimulate Albanian authorities to organize lessons in Bosnian language in primary schools.<sup>278</sup> In essence, the general standing of the State Committee on National Minorities is that there is a possibility to recognize Egyptian and Bosniak

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<sup>274</sup> Interview with Esad Kapetani, the member of Bosniak community in Albania, held on 17 August 2014 in Borake; Interview with Fiqiri Kllari, President of Bosniak association “Zambak”, held on 15 August 2014 in Borake; Interview with Ćik Buka, member of Bosniak community in Albania, held on 19 August 2014 in Borake

<sup>275</sup> As it has been stated by the employee of Human Rights Department of OSCE in Albania in the interview held in Tirana on 16 July, also in the interview conducted with Bledar Bašanović, the representative of Serb/Montenegrin minority in the State Committee for National Minorities, held on 27 June in Tirana

<sup>276</sup> Please see: Annex II

<sup>277</sup> Advisory Committee of the Framework Convention for the Protection of National Minorities. *Second Opinion on Albania*. 2008.ACFC/OP/II(2008)003

<sup>278</sup> Interview with Fiqiri Kllari, President of Bosniak association “Zambak”, held on 15 August 2014 in Borake

community as national minority groups by the Albanian government.<sup>279</sup> The membership to the State Committee would allow these groups to participate in actions related to the protection of minorities and to deliver their claims to the wider public including directly governmental officials.<sup>280</sup>

During the field work based on interviews, the representative of the People's Advocate of the Republic of Albania stressed out that the issue of non-recognition of Egyptian and Bosniak community as national minorities is the consequence of the lack of the law on national minorities which would eventually provide exact criteria and definition of above-mentioned term.<sup>281</sup> Furthermore, the interviewee employed in the Ministry of Foreign Affairs, who is directly responsible for development and implementation of the strategies related to minority protection, emphasized that there is no reluctance by the State of Albania to recognize Bosniaks as national minority.<sup>282</sup>

In order to provide the clear picture regarding the existence of Bosniak minority in Albania, their culture, tradition and language, the text which follows is based completely on the research that I have conducted in the period from June until August 2014. Methods which have been used by the members of this community in order to preserve their identity will be elaborated in the following sub-chapters. In the end, the analysis of the overall situation of non-recognized minorities is laid out in the concluding sub-chapter.

### 3.2.1. Origins of Bosniak Identity

The territory of Bosnia and Herzegovina is known as the place where confrontation of different political and religious ideas had

<sup>279</sup> Ministry of Foreign Affairs of the Republic of Albania. *Comments of the government of Albania on the "Third Opinion" of the Advisory Committee of the Framework Convention for the Protection of National Minorities*. 2012.

<sup>280</sup> Advisory Committee of the Framework Convention for the Protection of National Minorities. *Comments of the Government of Albania on the Second Opinion of the Advisory Committee on the Implementation of the FCNMP by the Albania*. 2008.GVT/COM/II(2008)005

<sup>281</sup> Interview with Alket Jaupi, representative of the Albanian Ombudsman institution, held on 25 June 2014 in Tirana

<sup>282</sup> Interview conducted with the representative of the Ministry of Foreign Affairs of the Republic of Albania, Held on 24 June 2014 in Tirana.

occurred. However, population was mostly Orthodox and Christian until XV century when the Ottoman Empire began to rule this area. That is the period when this population starts to assimilate and convert to Islam by creating Bosnian-Muslim or Bosniak ethnos.<sup>283</sup> As the power of the Ottoman Empire started to decrease, Bosniaks were often seen as targets of Christianization, brutal killings and forced migrations; therefore in a present time it is difficult to find members of this community on the territories that they historically inhabited. Nevertheless, this community has been denoted as: “the people of South Slavic ethnic origin and language who differ from other South Slavs in religion, cultural and political experience.”<sup>284</sup>

The naming of this group constantly was changed throughout the history. In the local newspapers, books and letters that have been exchanged between governmental officials, different terms were used to indicate this population. Essentially, the first instance of usage of the term ‘Bosniaks’ was in the letters written by prominent Muslim officers and intellectuals, addressed to the rulers of that day’s occupier, the Austro-Hungarian empire. Moreover, in everyday conversation they were often designated as Turks, which to vast majority of the members of this community was considered as unacceptable. During that particular period of time the cultural identification with either Serbs or Croats was very common and often determined by political opportunism, even though a separate Muslim identity became “too advanced to be easily renounced”.<sup>285</sup> After the Austro- Hungarian occupation in 1878, the official term used for people of Muslim religion who inhabited the B&H soil was ‘Muhamedovci’ or ‘Muhamedanci’. However, the population expressed its disagreement with this term by continuing to use terms such as ‘Bosniak’ or ‘Turk’. During the existence of the Kingdom of Serbs, Croats and Slovenes (later renamed Kingdom of Yugoslavia) the only option that existed for the population was to identify either as a Serb or Croat.

The existence of Bosnian language can be traced back in 1436 when in one of the notary records of that time it was written that: “one

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<sup>283</sup> The translation on Bosnian/Serbo/Croatian language is: Bošnjak

<sup>284</sup> Imamović, Mustafa. *Historija Bošnjaka*. Sarajevo: Bošnjačka zajednica kulture Preporod.1998.9

<sup>285</sup> Malcom, Noel. *Bosnia: A Short History*. London: Macmillan, 1994.149

prince bought a five year old girl who has Bosnian descent with the Bosnian name called Djevena”.<sup>286</sup> The first Turkish-Bosnian dictionary was written in 1631 and numerous scholars were describing Bosnian language as the one used by Bosniaks.<sup>287</sup> In 1900, the prominent Bosniak newspapers named ‘Bošnjak’ and ‘Behar’ called for the usage of the term ‘Muslims’ for the purpose of denotation of the members of Muslim community inhabiting the territory of B&H. After years of struggle for searching the appropriate name for the members of this community, in 1944 on its second session, ZAVNOBIH<sup>288</sup> issued a Declaration safeguarding equality of Muslims, Serbs and Croats and de facto recognizing the term ‘Muslims’ as national-political name for people who identify with this population. In the period from 1945-1960, the idea of Yugoslav political elites was that Muslim population of Yugoslavia would gradually remain undeclared or declare as either Serb, Croat, Montenegrin etc. The curriculum taught by the teachers of the public schools opposed any notion of the existence of separate national identity of the Muslim population and existence of literature, tradition and history of this population. Basically, Bosniaks were living in an empty space of national identification since their existence was denied in cultural, political and historical aspect.<sup>289</sup>

Soon after the collapse of communist regime (1989/1990) and before the start of war in B&H (1992), the term ‘Bosniaks’ has been reintroduced among intellectual and political circles. The existence of Bosniaks as a distinctive ethno/national group of people was affirmed in Dayton Peace Accords (1995) which serves as a contemporary Constitution of B&H.<sup>290</sup> The war in B&H affected every ethnic group of the countries which were engaged in the conflict. However, migrations which emerged as a result of war, increased the number of diaspora

<sup>286</sup> Imamović, Mustafa. *Historija Bošnjaka*. Sarajevo: Bošnjačka zajednica kulture Preporod.1998.15

<sup>287</sup> Imamovic emphasizes that bishops and priests also spoken bosnian language, as mentioned in the writings of the Duvanjski bishop fra Pavle Dragičević in 1735 . See: Imamović, Mustafa. *Historija Bošnjaka*. Sarajevo: Bošnjačka zajednica kulture Preporod.1998. 15

<sup>288</sup> Antifascist Council of National Liberation of Bosnia and Herzegovina

<sup>289</sup> Imamović, Mustafa. *Historija Bošnjaka*. Sarajevo: Bošnjačka zajednica kulture Preporod.1998. 562-565

<sup>290</sup> Imamović, Mustafa. *Historija Bošnjaka*. Sarajevo: Bošnjačka zajednica kulture Preporod.1998.9-17.

across the world; therefore, the significant number of Bosniaks can be found in United States, Montenegro, FYR of Macedonia, Kosovo, Australia etc.

As a result of turbulent historical events which have caused migrations and imposition of assimilation policies towards the members of this community, the question of national consciousness still remains as one of the severe threats for the maintenance of Bosniak identity. This issue is particularly relevant for those Bosniaks who live outside of their kin state. The complex political situation in B&H certainly influences the existence of constant questioning of national identity by the members of this ethnic group.

The overlapping of opposing interpretations of their past, origin, culture, language and traditions of Bosniaks has caused the confusion among the members of this ethnic group. This could be the reason why in most of the countries where they live as a minority, the demographic statistics do not reflect the real situation on the ground.

According to the information collected during the field work conducted, the members of the Bosniak community in Albania do not express any confusion regarding their identity. Hence, they proudly emphasize their origin in any occasion. However, as it was stated earlier the state officials raised no question regarding the origin of Bosniak identity. Furthermore, the representative of the Ministry of Foreign Affairs of the Republic of Albania emphasized that this institution and society in general possesses very limited knowledge regarding this community. The lack of knowledge of the community itself represents an obstacle for conducting potential strategies aimed at improving the status of this group. The following text reveals information which gets the public acquainted with historical background of this community as well as its way of living and other characteristics.

### **3.2.2. Historical Context**

The exact date of the arrival of Bosniak community in Albania is not known. However, there were some allegations that this group came after Austro- Hungarian Empire began to rule Bosnia and Herzegovina as declared by Congress of Berlin in 1878. In order to clarify the issue regarding the time of the arrival of this group to the Albanian territory, I have conducted the research based on the interviews with the members

of Bosniak community in Albania who obtain memories of the stories that they acquired from their ancestors.

The president of the Bosniak association “Zambak” in Albania, Mr. Fiqiri Kllari remembers very well that his grandfather told him that they arrived from Herzegovina<sup>291</sup> in the period between 1860 and 1865. However, Mr. Kllari was not fully satisfied with his grandfather’s claims; therefore he began to search for the accurate information regarding their arrival on the Albanian soil. In the local graveyard, he found a tomb indicating 1867 as the year of death and a Bosnian name and surname of the deceased; therefore, this confirmed the allegations of his great grandfather and grandfather that they came prior to Berlin Congress (1878). However, since the arrivals of other groups of Bosniaks continued in different time phases, it is difficult to indicate the exact date of the arrival of each family.<sup>292</sup>

In addition, the clear motive for starting the journey of this group also remains unfamiliar.<sup>293</sup> However, all of the interviewees agreed on the fact that their ancestors left their homes in Herzegovina in order to seek for ‘better life’ in Turkey.<sup>294</sup> They sold their property and embarked

<sup>291</sup> According to Mustafa Imamović, the official binominal name of Bosnia and Hercegovina was introduced during Austro-Hungarian occupation (1878-1918)

<sup>292</sup> The exact number of families who arrived is unknown. However, according to the interviewees around 250 families with different surnames came to live in Albania between 1860 till 1880. Some of them included families such as: Klarić, Kapetanović, Sablić, Svinjar, Guzina, Tabaković, Gašović, Jamaković, Rahić, Mičević, Muktarić, Basić, Kadić, Zaklan, Buškajil, Šarić, Bačić, Bukovac, Šikac, Gašić, Lizde, Ibrulj, Mulahodžić, Golović, Suljagic, Tikvina, Balavac, Sukmić etc. Originally, they came from places in the south of Herzegovina such as: Nevesinje, Mostar, Blagaj, Počitelj, Čapljina, Domanovići etc.

<sup>293</sup> In that regard, according to Malcom Noel in the first thirty years of 19 century, the Ottoman Empire was faced with the reforms imposed by the Emperor. Even though the reforms were initially very good organized, it had a weak effect on isolated places such as Bosnia where the population mostly ignored it. Some of the places in Bosnia were largely effected by the consequences of riots and rebellion while in the middle of 19 century people were facing with many difficulties when it comes to living standards. The problems were mostly economical rather than religious by its nature.

<sup>294</sup> Interview with Fiqiri Kllari, President of Bosniak association “Zambak”, held on 15 August 2014 in Borake; Interview with Esad Kapetani, member of Bosniak community in Albania, held on 17 August 2014 in Borake

on the boat in Dubrovnik in order to sail to Turkey. Since weather conditions didn't serve them well, they were forced to stop in the harbor of Durres. One of the passengers asked the residents whether they have arrived to Turkey, whereas he received a positive response. Since this population was used to live in the abundant area of Herzegovina, near Neretva river, they were searching for the similar place in their new home state. Firstly, they settled around Durres but after they were faced with a significant number of deaths caused by malaria, they were forced to move. Shortly after, they settled near the river Elzen which reminded them on Neretva; therefore they have established dwellings in the villages of Borak and Koxhas which are today a part of municipality of Shijak.<sup>295</sup>

The memories regarding the period after they came to Albania could not be easily recalled by the interviewees. However, Mr. Killari emphasized that his father told him that during the ruling of Ahmed Bey Zogu<sup>296</sup> they had an opportunity to travel across the Europe. This period was particularly beneficial to the male Bosniaks who frequently went to Herzegovina in order to find a future wife and take her to Albania.<sup>297</sup> The father of Esad Kapetani went from Borake in the middle of 1930's to the village of Počitelj in Herzegovina where he met his wife, Esad's mother and took her to Borake village. Until her death, she had spoken only Bosnian language without knowing any word of Albanian.

However, after the establishment of socialist regime, this community was faced with many obstacles which produced consequences for the preservation of their identity. The isolation and closure of the borders prevented the members of this community to

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<sup>295</sup> According to Municipality of Shijak Community Development Plan 2008-2015 the town called Shijak was founded in the year 1880 by Sali Bej Deliallisi, initially as a rural settlement (village) but with a perspective to become a town. After 1880, Bosnian settlers arrived in Shijak, and settled in the two villages offered by Sali Bej. These villages were named later as Koxhas and Borake, and they exist until the present days. In conjunction to its villages included in the sub-prefecture of Shijak (72 villages), it counted 3476 houses with 16954 inhabitants. Today Shijak counts around 12678 inhabitants. Municipality of Shijak situated in a highly favorable geographical location, 11 km away from the city of Durrës and 38 km from the city of Tirana.

<sup>296</sup> Ahmet Bey Zogu was the ruler of Albania from 1925 to 1939

<sup>297</sup> This aspect will be elaborated more extensively in the sub-chapter 3.2.5.1 Preserving the identity through marriage.

go to Herzegovina and marry Bosniak women; thus they were forced to marry Albanian women which were not capable of transmitting the knowledge of Bosniak history as Bosniak women did. This has reflected to the reduction in number of this community. Furthermore, until 1967 the members of this community were declaring as Yugoslavs. However, in 1967 as a part of ideology that Enver Hoxha was propagating, their surnames were forcibly changed; therefore the members of the family Klarić became Kllari while Bukovica became Buka etc.<sup>298</sup> The names of the children who were born in that period could have been chosen only based on the list that was provided by the government.<sup>299</sup> Nevertheless, as it has been emphasized by the interviewees the socialist period was equally difficult to every citizen of Albania. Despite the difficulties, the members of this community recalled their memories about their life during that period.

Abdulah Kapetani is the former university professor whose family is originally from Počitelj, a village in the south of Herzegovina. Speaking in archaic Bosnian language, Kapetani described the life of Albanian citizens during Enver Hoxha's ruling as the one which was equally difficult for every Albanian citizen including the members of minority groups. However, he stressed out that during the period of socialism, each citizens of Albania struggled to ensure enough food for their family members. For instance, the president of Bosniak association "Zambak", Fiqiri Kllari after military engagement during socialist's regime, was a head of a cooperative and owned agricultural production facilities.<sup>300</sup> One might assume that those people who held high-ranking positions were well paid, but the truth is rather opposite since they could barely feed their families. In addition, some Bosniaks were high-ranking members of the socialist party<sup>301</sup> such as Mr. Abdulah Mušić whose grandfather came to Albania together with the first group of Bosniak families. He argued that as a member of Party's decision-making council and a director of a state enterprise, he did not have any

<sup>298</sup> Every last name that ended with 'ić' which was typical for families who originated from former Yugoslavia, was changed. ( Kapetnović to Kapetani, Bačić to Baci, Sablić to Sabli etc)

<sup>299</sup> Interview with Fiqiri Kllari, President of Bosniak association "Zambak", held on 15 August 2014 in Borake

<sup>300</sup> Translation on B&H/ Serbo/ Croatian is: zadruga

<sup>301</sup>

problems with authorities, even though it was not preferable to be smart and educated at the same time.

This regime was particularly difficult to Adem Sabli and his family. In the period of Enver Hoxha's ruling he was a famous Albanian athlete, known for its extraordinary results on the sports field. As a former distinguished Albanian athlete, Mr. Sabli is most likely the first person that the wider public associated with Bosniak community. During the period of socialism, every state-owned facility, including national sports team, was controlled by the Party. Due to the extreme poverty that affected almost every family in Albania, Adem had no other choice than to join national athlete team in order to be able to feed his family. The only condition for being the member of a team was to acquire the membership of the Party. However, the board observed his application more than the standard procedure proscribes.

Since the majority of the Party's members were familiarized with his origin<sup>302</sup> and language that he secretly used, the members of the board were asking him questions related to his origin, ways that he learned Yugoslavian language and songs.<sup>303</sup> After Adem was admitted to the national sports team, he was faced with unbearable conditions imposed by the Party officials. The first championship that he attended was the Balkan Championship in Bucharest in September of 1964. Since the Albanian delegation was dissatisfied with the victory of Yugoslav athlete, it imposed severe threats to Adem and members of his family. Hence, continuous punishments that were mostly accompanied by providing the athletes with tasteless food, usually given in a small amounts and limitations with regards to freedom of speech, influenced Adem's decision to escape from that regime to his homeland Yugoslavia. At his return from the championship in China, the airplane stopped in Belgrade where Adem sought the perfect opportunity for escape. Soon after, he continued his journey from Belgrade to Sarajevo and then afterwards left to Germany where he lives today. As a result of the escape, his family was sentenced to five-year imprisonment in the Southern Albanian town of Saranda.<sup>304</sup>

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<sup>302</sup> During the existence of Yugoslavia, the common name for the people who inhabited that territory was 'the Yugoslavs'.

<sup>303</sup> Interview with Adem Sabli, member of Bosniak community, held on 13 August 2014 in Borake

<sup>304</sup> Ibid.

Nevertheless, the socialist regime was unfavorable towards the majority of Albanian citizens including the members of minority groups. However, as it could be observed from different stories recalled by the interviewees, the members of Bosniak minority, as every other minority group, were not allowed to practice their minority language nor religion. Furthermore, any notion of distinctiveness from the majority was strictly forbidden and punished by prison and other irrational repressive instruments. During the period of Hoxha's ruling, many members of this community were actively engaged in the politics of the ruling party whereas several of them occupied high ranking positions in the fields of education, politics and agriculture.

### **3.2.3. Bosniaks in Post-communist Albania**

After close to 50 years of socialist-imposed isolation following five centuries of Ottoman domination, the population of Albania had little awareness of the situation in the outside world. Furthermore, it possessed Europe's least developed trade network. However, the population was faced with challenging task of reviving destructed factories and workshops and learning the reality of modern capitalism and building market economy from scratch.<sup>305</sup> Nonetheless, the transition to democracy also influenced minority groups, including Bosniaks. The majority of them for the first time in their lives had the opportunity to see their relatives who escaped from the previous regime and to meet their relatives in B&H.

In order to enter into B&H, Albanian citizens needed to obtain visa permission in B&H Embassy in Montenegro. Due to difficult economical situation across Albania and very expensive cost of visa permission, only few Bosniaks could afford to pay for the costs of travel to B&H. After 1995, the economical situation of this community improved since majority of them invested their money in tourism and other industries. The level of unemployment is very low since majority of Bosniaks are employed in firms owned by few Bosniak families. Apropos, the minimum level of education of the members of this group is high-school level, whereas significant number of them obtains a

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<sup>305</sup> Federal Research Division. *Albania: A case study*. Washington D.C: Library of Congress, 1994.166

university degree.

The period of 1990's was beneficial for majority of Bosniaks who travelled to B&H to meet and visit their relatives. During that period of time most of them for the first time left their homes in Albania in order to get familiar with their origin and place from which their ancestors came. Considering the fact that the war in B&H was taking place from 1992 until 1995, the members of this community were forced to freeze their recently-established relations with their relatives. In order to help their kin-state's citizens and to re-establish relations with their families, this community has created the association "Zambak" whose primary aim was to help in re-building the land of their ancestors.

### **3.2.4. Association**

In October 1995, several members of this community met for the purpose of establishment of an association which would affiliate all persons who had a desire to establish relationship with B&H. Unanimously, the members agreed that the naming of association should be "Zambak".<sup>306</sup> All initiators had a unique goal – to establish relationship with their relatives in B&H who were affected by war and to donate financial help for re-building the war-affected areas. Furthermore, the first initiative organized by the members of this association was conducted in order to provide help for post-war reconstruction of their kin state.

The members of Bosniak community in Albania have a strong desire to stimulate education of young people who identify as Bosniaks. The association "Zambak" financially supports every student from this community who express their desire to go abroad and educate. Their aim is to educate those students who have an intention to come back to Albania and represent this community in different spheres of society. Furthermore, the primary objective of this action was to establish the relationship with the representatives of University Džemal Bijedić in Mostar so that the students from B&H could meet Bosniaks from Albania and eventually come to Albania as exchange students. However, there are several cases of the members of this minority that got married to a

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<sup>306</sup> On Albanian language the word 'zambak' signifies the flower lily. Lily has been perceived as a symbol of Bosnia and Herzegovina

person from B&H. Three female Bosniaks that were funded to study in Mostar, got married in B&H and remained on that territory. However, this has caused disappointment among the members of “Zambak” association since they believed that by educating female Bosniaks they will better promote their community in society. Furthermore, they expected to eventually provide courses on Bosnian language in schools where this minority resides. On other hand, there is no student from B&H that remained in Albania. Nevertheless, the initiative for organizing the exchange of students between two countries reached positive results only for Bosniak community since the representatives of the universities in B&H were not providing any effort for strengthening this cooperation.<sup>307</sup>

Apart from funding the students for studying in their kin-state and abroad, this community regularly organizes events in order to raise the money for charity purposes. In May 2014 when Bosnia and Herzegovina was faced with historically unseen floods, the members of “Zambak” association gathered in order to organize an event where all members of Bosniak minority could donate their money in order to provide help to B&H citizens. Few days after they received information regarding the complexity of situation in areas affected by floods, this association raised the money and delivered help in the amount of \$70,000 or 80 tones of water and other essential supplies. This help was distributed among the citizens of Banja Luka, Doboj and Lukavac.<sup>308</sup>

### 3.2.5. Methods of Preserving the Identity

Almost one century and a half, this community managed to preserve its identity. In that regard, the following text provides an overview of the methods that the members of this community used in order to preserve their identity. The role of women was significant in this process, since they were perceived as guardians of the Bosniak tradition and language. Furthermore, literature that has been used during almost 50 years of isolation during the period of socialism considerably influenced the ‘survival’ of this community. Interestingly, the methods

<sup>307</sup> Interview with Fiqiri Kllari, President of Bosniak association ”Zambak”, held on 15 August 2014 in Borake

<sup>308</sup> Donation of the ‘Zambak’ Association to the floods affected area in Bosnia and Herzegovina. Personal Video Collection. 2014.

that have been used in the past are still practiced by Bosniaks, including preserving the identity through marriage. Moreover, various sports and cultural events have been organized by the Bosniak association “Zambak” in order to stimulate its kin-state to establish relationship with this community.

### 3.2.5.1. Preserving identity through marriage

The role of women in the preservation of Bosniak identity in the villages where they settled was of a great relevance for this community. Basically, mothers were responsible for transmitting their knowledge of language and tradition to their children. Due to non-existence of schools that would provide Bosnian language lessons and almost fifty years of isolation, mothers were often perceived as “the custodian of tradition, who kept nostalgia alive in the active world of men.”<sup>309</sup> However, this practice remained even in the post-socialist period. The transmission of culture and language by female members of the family can be observed from their relation with the brides who enter their house after marrying men of Bosniak origin.

After the closure of boarders in the period of socialism, the members of this community started to marry each other within the community itself.<sup>310</sup> Prior to the closure, customary practice of the male Bosniaks was to bring Herzegovinian bride into their village. However, in the past and also today, it has been a well known fact that every bride that marries to a Bosniak men is obliged to learn Bosnian language. The process of learning the language is very simple and traditional in some aspects. Usually, after the wedding ceremony, the bride comes to live in her husband’s house in which the rest of his family lives, including his mother, father, brothers and sisters.<sup>311</sup> In order to retain harmony in their house, the bride is obliged to comply with commands that have been imposed by her mother-in-law. The interviewees agree that the brides

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<sup>309</sup> Mosse, George L. *Nationalism & Sexuality*. New York: Howard Fertig, 1985.97

<sup>310</sup> Basically, this could be one of the reasons why this community ‘survived’ the period of isolation imposed by socialism. The common history of their arrival, culture and tradition remained among the residents of the villages that this population almost 100% inhabits.

<sup>311</sup> The majority of the houses built by Bosniaks in villages of Koxhas and Borake contain minimum 2 stores, and usually in one house there is two or more families living together.

usually learn the language within the period of three months since they have to cook and collaborate with the rest of the family members. The moment she enters into Bosniak house, she has to stop speaking Albanian and start to assimilate with the family and neighborhood. Moreover, in this community it has been considered as an embarrassment for a family if the bride refuses to speak Bosnian language. In order to satisfy the rest of the family, immediately after she arrives to her new house, she has to start learning how to cook traditional Bosnian food and sing old folk songs (*sevdalinka*). Therefore, the first ‘linguistic’ contact that the children have after their birth is with Bosnian language while learning Albanian simultaneously in school. This supports the claims given by the members of this community that they have perceived the language as the main tool for the preservation of their identity. For that reason, emphasis was on the transmission of their mother language by the Bosniak minority members.<sup>312</sup>

On the other hand, there are examples of the opposite situation with regard to marriage i.e. when a Bosniak woman marries a person of Albanian origin. In that regard, the bride naturally adopts the Albanian customs but the strong family ties remain between the bride and her family. The grandchildren would during the visit to their Bosniak grandfather and grandmother, learn about their mothers origin and eventually visit the place in B&H where their relatives live. Nevertheless, even though the female Bosniak who marries an Albanian man continues to visit her family together with her children, the customs which are practiced the most in that families are usually the ones imposed by the male family member. For that reason, the children who speak Bosnian language more

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<sup>312</sup> Abdulah Kapetani recalled his memories from the time when the former president of B&H visited this community in the middle of 90’s. However, Mr. Alija Izetbegović was pleasantly surprised with the ability of the members of this minority to speak archaic Bosnian language which is not used in that form for over one century. Furthermore, Mr. Izetbegović was amazed with the history of survival of this community and deeply embedded values of generosity and hospitality. Nevertheless, Mr. Kapetani explained this by elaborating the way that his mother taught him and his brothers Bosnian language. She has strictly forbidden the usage of Albanian language in their house at the moment when they came back from work or schools. Their neighbors constantly doubted whether his mother knew Albanian language at all.

fluently than the others are the ones whose father is of Bosniak origin.<sup>313</sup> There are very rare cases of children who speak Bosnian language and whose mother is Bosniak and father of Albanian origin. Moreover, the majority of the interviewees argued that the significant amount of female Bosniaks that got married to Albanian husbands influenced the reduction of number of this community.<sup>314</sup> It is a widely-known fact in this community that if the female child gets born, that family would lose its heir which is perceived as a transfer of Bosniak language and customs, unless she marries to a Bosniak male.

Nevertheless, the closure of the borders during Enver Hoxha's ruling significantly reduced the number of this community since there was no possibility for its members to go to their kin-state and marry a Bosniak who spoke fluently Bosnian and who practiced Bosniak customs. Furthermore, this influenced the members of Bosniak community to marry Albanian women who learned the Bosnian language from scratch; therefore this could be one of the reasons why younger generations do not speak Bosnian language fluently. In addition, children whose mother is of Bosniak origin and father who is Albanian, have a basic or no knowledge of this language. Nevertheless, the orally transmitted memories regarding the land of their ancestors during the period of socialism was supported by only few books that were available in Bosnian language.

### 3.2.5.2. Literature

Literature was one of the main sources of Bosnian language that the members of this community used in order to preserve their identity. However, they believed that by reading books written in their mother language they would feel closer to their home state. The eldest member

<sup>313</sup> Members of this community stressed very proudly that some Bosniaks speak Bosnian language even though their mother and grandmother are Albanians. See more at: Televizija Jedan. *Bošnjaci iz Albanije čuvaju svoj identitet*. October 10, 2013. <https://www.youtube.com/watch?v=d-rp4cg74ec> ( Accessed on June 13 2014)

<sup>314</sup> Interview with Esad Kapetani, the member of Bosniak community in Albania, held on 17 August 2014 in Borake; Interview with Fiqiri Kllari, President of Bosniak association "Zambak", held on 15 August 2014 in Borake; Interview with Čik Buka, member of Bosniak community in Albania, held on 19 August 2014 in Borake

of Kapetani family owned a book of Bosnian songs titled: “Heroic songs”. This book is now owned by Esad Kapetani, one of the sons who were listening to his father singing the songs about bravery of Bosnian soldiers and beauty of Bosnian women.<sup>315</sup> The book has been written in archaic Bosnian language which is in the present day very hard to understand. As a part of the tradition, Bosniaks used to help each in building their houses or conducting regular tasks on the agricultural field. While youngest Bosniaks were working, older ones were singing heroic songs from the book mentioned earlier.

One part of the book is devoted to stories about the tradition and life of Muslims in Bosnia. The “Song Nr.1” is about the ruling and origin of Gazi Husrev beg, the Ottoman governor of Bosnia. Furthermore, it illustrates his wealth in terms of the weight of his jewelry and number of estates. Hence, other songs from the book are about legendary Bosnian senior officials<sup>316</sup>, Mustafa paša Ćuprilić, Fazil Ahmed Paša, Ćurpilić Mehmed Paša and Husein paša. Even though the stories are mostly legends related to historical facts, readers could acquire a clear picture of the traditions that have been practiced in the past. The essence of the content is to indicate bravery, kindness and hostility of Bosniaks. Furthermore, it describes in details Bosniak weddings and other traditional customs specifying that: “After Muslim proposes desired girl and gives her amanet<sup>317</sup> in terms of ring or ducats, he sends his relatives and friends to take the bride.”<sup>318</sup> The book emphasizes the significance and ways of celebration of the holy Muslim holidays. In addition, the author of the book encourages Bosniaks to preserve their identity through practicing their traditions of wedding ceremonies and other cultural manifestation. Esad Kapetani has found three books of his father in addition to the one mentioned above. One is the Arabic

<sup>315</sup> Due to the fact that the book is of great antiquity it is impossible to find the exact date and place of publication

<sup>316</sup> Turkish word is: Vezir

<sup>317</sup> (Arab. emane - fidelity) a gift from fiancé or fiancée for betrothal or wedding

<sup>318</sup> Unknown Author. *Heroic Songs*. page 600

alphabet speller and other two are manuals for practicing Islam.<sup>319</sup>

The interviewees elaborated that the books were the only source indicating the existence of their Bosniak identity. Furthermore, during socialism it was very difficult to acquire books from other countries; therefore only few books remained including the ones mentioned previously, among this community. The archaic Bosnian language used in those books is identical to the one spoken by this community.

### 3.2.5.3. Sports and cultural events

In order to strengthen ties with its kin-state, the “Zambak” association established a local football club called “Elzani” which is comprised of amateur football players from Borake and Durres. Since the nearest sports facilities are kilometers away from the Borake village, the president of the association Mr. Fiqiri Killari with his own financial means has build a sports hall which has been painted in the colors of B&H’s flag. The primary aim for the establishment of “Elzani” was to create an opportunity for Bosniak youth in Albania to meet young footballers from their native country. The success of this initiative can be seen in the participation at the soccer tournament in the honor of the first Bosnia and Herzegovina’s president Alija Izetbegovic, organized by Sport Federation of Mostar and representatives of Hercegovinačko-neretvanski Canton’s Assembly.<sup>320</sup> The idea was to gather all football clubs representing Bosniak minorities in the countries such as: Albania, Croatia, Serbia, Austria and Germany. Moreover, the local teams from B&H were also invited to participate. This event proved to be a good opportunity to promote collaboration between associations of different countries representing Bosniak minority. Nevertheless, the organizers

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<sup>319</sup> The first manual that has been found is published in 1930 in Mostar by First Muslim Library Muhamed-Bekir Kalajdžić without specifying the name of author. On the leather covers of the book there are translations of prayers written down by fountain pen on Bosnian language using latinic alphabet. Second manual is published in 1932 by Šehić printing office in Sarajevo. On the back of that book it is hand-written.” Bought by Alija on 1932 in Mostar, costed 4.50 dinars”

<sup>320</sup> Bljesak Info. *Mostar domaćin međunarodnog memorijalnog malonogometnog turnira ‘Alija izetbegović’*. October 2, 2013. <http://bljesak.info/rubrika/sport/clanak/mostar-domacin-medunarodnog-memorijalnog-malonogometnog-turnira-alija-izetbegovic/1504> ( Accessed June 17 2014)

together with representatives of football clubs agreed to continue with this practice in the future and to stimulate Bosniak diaspora to engage more in sports events such as this one.

The village Borake is very well known for organizing various cultural manifestations intended for promoting Bosniak culture. However, association “Zambak” annually organizes two or three concerts of popular singers coming from the region and of course Bosnia and Herzegovina. Mostly those who are performing concerts are artists known for interpretation of traditional Bosnian songs, called *sevdalinka*. The locals believe that by listening to *sevdalinka* they become closer to their native country.<sup>321</sup> No other organization apart from “Zambak” association organizes and finances cultural manifestations.

#### **3.2.5.4. Bosnian language courses**

The first school in Borake was so called ‘Klarića Kula’ which was established in 1941. However, even though the majority of pupils were those of Bosniak origin, no Bosnian language courses were provided. Since there were not enough pupils needed for regular functioning of this facility, the school was closed and the pupils were obliged to go to Shijak in order to attend lectures.<sup>322</sup> However, after the establishment of democratic ruling in Albania, the residents of Borake village were provided with the elementary school but without language lessons of Bosnian language. After several meetings held with the representatives of “Zambak” association, the previous Bosniak member of B&H Presidency, Mr. Haris Silajdžić has shown an effort to find the teacher of Bosnian language for the residents of this community. Unfortunately, due to complex political situation in B&H the support from this country stopped; therefore the residents of Borake village were forced to pay the teacher’s salaries and accommodation by their own financial means.<sup>323</sup> Currently, there are no lessons of Bosnian language provided in the

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<sup>321</sup> Interview with Esad Kapetani, the member of Bosniak community in Albania, held on 17 August 2014 in Borake; Interview with Čik Buka, member of Bosniak community in Albania, held on 19 August 2014 in Borake

<sup>322</sup> Interview with Abdulah Kapetani, the member of Bosniak community in Albania, held on 17 August 2014 in Borake

<sup>323</sup> Interview with Esad Kapetani, the member of Bosniak community in Albania, held on 17 August 2014 in Borake

primary schools where this minority resides.

According to the ECRI's report, the Albanian officials need to reinforce their dialogue with the representatives of Vlach/Aromanian minority and with the Bosniaks living in Albania in order to identify solutions enabling their specific demands to be taken into account more efficiently. Furthermore, it has been advised to pursue its efforts to promote education in minority languages; therefore it is strongly encouraged to strengthen its dialogue with representatives of minorities in order to find the best approach to this issue.<sup>324</sup> However, the members of this minority emphasized that there is no interest by the state of Albania neither by B&H to provide a teacher of Bosnian language to the pupils.

The interviewees unanimously agreed that the existence of the courses that could be provided in Bosnian language would significantly contribute to the preservation of language spoken by this community. According to the statements of the persons interviewed, the help from their kin state is a crucial element for successfully conducting the courses in their mother language in particular in finding the adequate teacher of Bosnian language. However, due to a lack of attention received from the B&H and Republic of Albania, this community still does not have any courses that could provide lessons on Bosnian language. The importance of role of the kin-state in the preservation of identity of its co-ethnics would be elaborated in the following subchapter.

### **3.2.6. Relations with the kin state**

The relationship between the kin-state and its co-ethnics could be reflected in two ways. The first one concerns more progressive approach of achieving the desirable results in terms of supporting its co-ethnics for protesting against potential nationalistic policies of their host state. Secondly, the establishment of the good diplomatic relations between two states is relevant for protection of minority groups. Apropos, signing the bilateral agreements between the countries which express their desire to protect the minority groups, has proven to be a good and desirable practice as it is elaborated in the following text.

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<sup>324</sup> European Commission against Racism and Intolerance. *ECRI Report on Albania (fourth monitoring cycle)*. Council of Europe, 2010.33

The protection of minorities in the large extent depends on the elites of their external national kin-state. However, those elites closely monitor the situation of their co-ethnics by vigorously protesting alleged violations of their rights and by asserting the right and even the obligation to defend the interests of their co-ethnics.<sup>325</sup> In principle, when the elites of minority's kin-state perceive signs of project of 'nationalization' or 'national integration' by the state authorities where their co-ethnics reside, it can provide material or moral support for the initiatives aimed for expressing the protest against nationalistic policies. Furthermore, the policies of the kin-states may arise in different forms such as: "providing immigration and citizenship privileges for "returning" members of the ethnic diaspora, influencing other states' policies towards its co-ethnics or expressing irredentist claims on the territory of other states."<sup>326</sup> However, the caution must be taken while practicing these actions since it could lead to even greater intensification of nationalistic projects. Furthermore, there is the possibility that the members of minority would be accused of disloyalty and the homeland for illegitimate interference in the internal affairs of nationalizing state.<sup>327</sup>

The majority of the interviewees believe that the unwillingness of their kin-state's officials to address the issues with which this community faces and assist in acquiring the status of recognized minority, is a product of inability of B&H authorities to issue citizenship documents for this minority which would *de facto* become a part of the electorate machinery.<sup>328</sup> In that regard, members of this minority stressed out that they have been offered citizenship by the Croatian authorities if they identify as Croats.<sup>329</sup> In the personal interviews conducted with the representatives of the Bosniak political elite, it has been emphasized

<sup>325</sup> Brubaker, Rogers. *Nationalism Reframed: Nationhood and the National Question in the New Europe*. New York: Press Syndicate of the University of Cambridge, 1996. 58

<sup>326</sup> Brubaker, Rogers. *Nationalism Reframed: Nationhood and the National Question in the New Europe*. New York: Press Syndicate of the University of Cambridge, 1996. 58

<sup>327</sup> Ibid.

<sup>328</sup> Interview with Esad Kapetani, the member of Bosniak community in Albania, held on 17 August 2014

<sup>329</sup> Interview with Fiqiri Kllari, President of Bosniak association "Zambak", held on 15 August 2014 in Borake

that the core reason why they are not interested into providing help for this community is because the members of this community are not eligible to obtain B&H's citizenship which would eventually legitimize their voting in this country. In essence, the phenomenon concerning the manipulation of the members of diaspora has been elaborated more extensively by Dejan Stjepanović who emphasized that: "just like nations, diasporas and co-ethnics are not naturally occurring groups but primarily political projects."<sup>330</sup> However, the citizenship procedure of B&H does not allow the issuance of the external quasi-citizenship that Stjepanović talks about.<sup>331</sup> Furthermore, the process of acquiring the citizenship is very complicated taking into account very complex system of power sharing in two entities of this state.<sup>332</sup> The complexities deriving from the Law on Citizenship concerning dual citizenship and constitution itself<sup>333</sup> decreases the possibility of the members of this minority to obtain the citizenship of B&H and de facto making this community being an undesirable burden for Bosniak political elite.

In essence, the interviewees representing the community stressed out that they are extremely dissatisfied with the poor relationship which they have with the government of their kin-state. However, the members of "Zambak" association are often invited to various meetings organized by the councils representing Bosniak diaspora, Bosniak institute and other organizations in B&H and abroad aimed at promoting Bosniak culture and identity. The only help which this community received was from the previous Bosniak member of B&H Presidency, Mr. Haris Silajdžić who helped with finding the teacher of Bosnian language to the residents of Borake village who remained very shortly on that position. In principle, no other B&H government's official expressed its concern about this community in terms of providing help for teaching facilities. According to Fiqiri Kllari who is an Honorary Consul of B&H in Albania, the association "Zambak" on its request hosted each B&H delegation that has visited Albania. However, during those visits every politician would promise help for providing the teacher of Bosnian

<sup>330</sup> Stjepanović, Dejan. "Perceived Co-Ethnics' and Kin-State Citizenship in Southeastern Europe." *CITSEE Working Paper Series*, 2013.2.

<sup>331</sup> Ibid.

<sup>332</sup> Sarajlić, Eldar. "Country Report: Bosnia and Herzegovina." *EUDO Citizenship Observatory*, 2013.8-13

<sup>333</sup> Ibid.

language but the actual situation on the ground does not reflect positive results.

On the other hand, the non-resident ambassador of B&H for the Republic of Albania has very limited commitments with regard to strengthening diplomatic relations between these two countries. Furthermore, there is no direct flight from Tirana to Sarajevo and vice versa which would potentially alleviate the traveling between two cities. In addition, the B&H authorities never addressed the issue of recognition of Bosniak minority to the Albanian government. The representatives of Bosniak elite in B&H government did not publicly expressed their concern for this community or preservation of their identity. After numerous efforts provided by the representatives of this community, the president of “Zambak” association has been declared as an honorary consul of B&H in Albania whose office is fully financed by his own means.

In contrast to the unsatisfied relations between B&H and Albania with the respect to treatment of minority, there are many positive examples proving that good bilateral relations result in positive treatment of certain minority. The bilateral agreements undoubtedly offer a number of advantages for the solution of potential minority issues, both for the signatory states and to minorities themselves.<sup>334</sup> The success of such bilateral agreements has been proven by the Federal Republic of Germany and Denmark in 1995. These two countries signed the agreement for the purpose of protecting minorities along their frontier. Germany promoted ‘good neighborliness’ by signing bilateral agreements with Poland (1991), Bulgaria in (1991), Hungary in (1992), Czechoslovakia in (1992) and Romania in (1992).<sup>335</sup> Furthermore, the European Union also promoted the policies based on good neighborliness in the Pact on Stability encouraging potential members of the European Union to sign bilateral treaties with its neighbors and other EU members.<sup>336</sup>

Furthermore, stable political, economical and cultural cooperation between two states positively affects the protection of

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<sup>334</sup> Benoit-Rohmer, Florence. *The minority question in Europe*. Council of Europe, 1996.54

<sup>335</sup> Ibid.

<sup>336</sup> Ibid.

national minority as well. In that regard, on 5 September 1946 in Paris, the agreement was signed by Austrian Foreign Minister Karl Gruber and Italian Prime Minister Alcide De Gasperi in order to protect cultural identity of the indigenous German population in the region of South Tyrol.<sup>337</sup> In addition, the “broad autonomy” in administrative matters was conferred on the province of Bolzano where majority of German-speaking minority lives.<sup>338</sup> The Italian Prime Minister has committed himself to carefully consider any proposal delivered by the Austrian government that is related to the agreement. Among the provisions related to minority issues, other provision concerned the potential economical benefits to both countries. As a result, the Italian government pledged itself to draw up a convention for the free passengers’ goods transit between Northern and Eastern Tyrol and to reach an agreement together with Austrian government to facilitate enlarged frontier traffic and local exchange of certain products and goods. Finally, the Austrian government has been authorized to intervene at any time when autonomy negotiations are taking place as well as to lodge the protests when there are cases of inadequate implementation.<sup>339</sup> The representatives of the Italian government stressed out that: “it is an agreement that was concluded in the good faith ... and hopefully will be implemented in good faith as well.”<sup>340</sup>

Nevertheless, in order to successfully reflect the positive outcome in reality, the bilateral agreements must be signed and implemented in good faith. In essence, bilateral treaties aimed at protection and promotion of minority rights have proven to be a good solution for resolving the issues arising from ethnic diversity. The promotion of ‘good

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<sup>337</sup> The Agreement specified that the German language speakers of South Tyrol will be granted: a) in elementary and secondary teaching in the mother language b) alignment of the public offices, official documents and topographic naming with Italian and German language c) the right to reestablish German family names which were ‘Italianized’ in recent years d) equality of rights as regards the entering upon public offices, with a view to reaching a more appropriate proportion of employment between two ethnic groups

<sup>338</sup> Benoit-Rohmer, Florence. *The minority question in Europe*. Council of Europe, 1996.54

<sup>339</sup> Steininger, Rolf. *South Tyrol: A Minority Conflict of the Twentieth Century*. New Jersey: Transaction Publishers. 2003.99-104

<sup>340</sup> Steininger, Rolf. *South Tyrol: A Minority Conflict of the Twentieth Century*. New Jersey: Transaction Publishers. 2003.103

neighborliness' has proven to be the efficient policy for the promotion of bilateral agreements between the countries especially when it comes to issues related to the protection of minorities. The given examples offer potential solutions to the problems of the Bosniak community as well. Not only can bilateral agreements improve diplomatic relations between two countries but also the treatment of minorities. From the text that has been provided it could be derived that there are three factors determining the position of minorities, forming a triangle between three intertwined aspects: the kin-state, host state as well as minority itself.<sup>341</sup>

### 3.3. Analysis

From the reports issued by Advisory Committee on the FCNM, it can be observed that despite emphasizing several times the problems of Egyptian community, the Albanian authorities did not address properly their needs. There are no actions provided by the state of Albania targeted for the purpose of preserving the identity of this community. This population still lives in extreme poverty accompanied with high rates of unemployment, lack of social security and poor living conditions. Essentially, national strategies delivered by the state institutions were mostly targeted at Roma population indirectly including Egyptians; therefore equalizing these two groups as being one single group of people.

Nevertheless, the significant progress has been achieved by international organizations including UNDP and European Union which funded the project for supporting social inclusion of Roma and Egyptian communities. As a result, community counseling forums have been established in Korca, Vlora and Berat regions for the purpose of advocating and prioritizing the needs of these two communities.<sup>342</sup> The continuous rejection by the Albanian authorities of the existence of

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<sup>341</sup> Trifunovska, Snezana. "Political and Security aspects of minorities in Croatia." In *Minorities in Europe, Croatia, Estonia and Slovakia*, by Trifunovska Snezana, Vukas Budislav, Domini Mirjana et.al. T.M.C. Asser Press. 1999..

<sup>342</sup> United Nations Development Programme in Albania. *Supporting Social Inclusion of Roma and Egyptian Communities*. [http://www.al.undp.org/content/albania/en/home/operations/projects/poverty\\_reduction/supporting-social-inclusion-of-roma-and-egyptian-communities.html](http://www.al.undp.org/content/albania/en/home/operations/projects/poverty_reduction/supporting-social-inclusion-of-roma-and-egyptian-communities.html) ( Accessed on 02 September 2014)

Egyptian community, meaning their origin and clear distinctiveness with regard to culture and way of living, including absence of tailor-made solutions to the existential problems of this community, significantly effects the overall treatment of this group in the society.

Unlike the case of Egyptian community, the State of Albania did not express denial of the origins of Bosniak identity. Albanian authorities never addressed the question of origin of this community in its reports delivered to the Advisory Committee on the FCNM. General reaction of the interviewees which are the part of State institutions working on the protection of minorities is that there is no reason why the Republic of Albania would not recognize Bosniaks as national minority. The non-existence of the accurate information of the number of Bosniaks in Albania also serves as a form of neglect by state institutions to address properly the needs of this community. Furthermore, the lack of data that could indicate the number of this minority to a certain extent influences the implementation of potential strategies that could be eventually approved by the government in order to accommodate the needs of this community.

However, no attention has been attached to introducing the wider public with the existence of this community neither the issues with which they are facing. Furthermore, no financial help has been provided for promotion of this group's culture or for providing the teacher on their mother language. The recent territorial reform enhanced even more disagreement between minority representatives and the Albanian government.<sup>343</sup> According to the decision of the Albanian Parliament issued on 30<sup>th</sup> of July, territory inhabited by Bosniak minority will be divided on two communes, which would produce a significant barrier in preserving their identity. This is contrary to the opinion of the Ad-Hoc Parliamentary Commission on Administrative and Territorial Reform which stipulated prior the promulgation of the reform that minorities will not be 'attached' to other communes since otherwise their identity would be endangered.

However, the lack of comprehensive legal framework that could indicate the existence of minority groups in Albania and right

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<sup>343</sup> Top Channel. "Parliament approved territorial reform" *Top Channel*. June 31, 2014. <http://www.topchannel.tv/english/artikull.php?id=12418> (Accessed 02 August 2014)

which they are eligible to enjoy, serves as the aggravating circumstance to the unresolved question of non-recognition of Bosniak minority. Nevertheless, even though the issue of recognition of minority group is a matter of fact and not a matter of law<sup>344</sup>, the absence of law provisions should not be used as an excuse for different treatment of groups living in the territory of Albania. Furthermore, this ‘veil of ignorance’ used by the Albanian authorities in terms of not addressing the issue of non-recognition of Bosniaks, stimulates this community to engage even more in the preservation of their identity by financing its youth to study in B&H and therefore transmit their language and knowledge to younger generations. Moreover, they use every opportunity to express their identity by hosting Albanian and B&H media for the purpose of promoting their existence and positive impact which they have on Albanian society in the form of cultural and linguistic diversity. Apropos, media serves as the only source for finding their long lost relatives in B&H. In essence, the role of the Honorary Consul of B&H in the Republic of Albania who also is a president of Bosniak association in Albania called “Zambak”, is crucial for promotion of the existence of this community among diplomatic circles of both states.

The non-existence of the cooperation between Albanian and B&H authorities with the regard to protection of minorities certainly is the product of B&H’s unwillingness to help the members of this minority. Having conducted personal interviews with the unanimous representatives of Bosniak political elites, I have come to the conclusion that helping their co-ethnics who do not possess the citizenship of B&H would not benefit the Bosniak elite in B&H. Hence, the interviewees confirmed what Dejan Stjepanović elaborated in his article more extensively arguing that “just like nations, diasporas and co-ethnics are not naturally occurring groups but primarily political projects.”<sup>345</sup>

In essence, the recently established working group for the evaluation of the legal framework and policies for minorities, serves as a positive starting point towards resolving the issue of non-recognition of minorities since the representatives of all minority groups have

<sup>344</sup> Alfredsson, Gudmundur and Ferrer Erika. Alfredsson, Gudmundur and Ferrer Erika. *Minority Rights: A guide to United Nations Procedures and Institutions*. Minority Rights Group International, 1998.9

<sup>345</sup> Stjepanović, Dejan. *Perceived Co-Ethnics’ and Kin-State Citizenship in Southeastern Europe*. CITSEE Working Paper Series, 2013

been invited to participate in the meetings of above-mentioned group including the Bosniaks. Moreover, the representatives of the Albanian Ministry of Foreign Affairs, which is the authority competent for developing strategies for protection of minorities and establishment of the working group mentioned above, emphasized that there are no obstacles for the recognition of Bosniak community; therefore they would certainly be taken into consideration while drafting the law on national minorities.

### **Conclusion**

The aim of the research on the status of minorities in Albania was to identify the problems which non-recognized as well as recognized minorities are facing with. The overall research showed that the minorities in Albania do not enjoy the adequate protection of their rights by the State of Albania due to lack of full implementation of the existing legal instruments, in particular the Framework Convention for the Protection on National minorities. The central research of this thesis concerned the case study of Bosniak minority, in particular their status and obstacles they face due to the absence of recognition. This study was based on the hypothesis that non-recognition of Egyptians and Bosniaks aggravates the possibility of these communities to enjoy protection deriving from the obligations specified in the Framework Convention for the Protection on National minorities which other minorities have fulfilled at least to a certain extent.

The first question that has been posed concerned the legal nature of the legal protection of the minorities in Albania and the obstacles which recognized minorities face with regard to preservation of their identity? From the analysis of the legal framework encompassed in the first chapter of this thesis, it was established that almost half of the century-long isolation significantly influenced the slow ratification process of the international human rights documents which serve as a guarantee for the protection of minority rights. In addition to that, it was established that there is a lack of specific legal framework that states which minority groups are present in the Republic of Albania.

On the other hand, Albania did not sign and ratify the European Charter for Regional or Minority Languages even though the request for signing and ratification of this instrument was addressed by several

international bodies including the European Commission against Racism and Intolerance and Advisory Committee of the Framework Convention on National Minorities. From the field work that was conducted for the purpose of this research, it could be derived that Albania prolonged the ratification of this instrument due to absence of concrete actions aimed for finding the adequate solution to the problem of minorities. The representatives of the institution of People's Advocate and Ministry of Foreign Affairs jointly agreed that the main obstacle for not signing and ratifying that instrument is the absence of comprehensive legal framework that could encompass the protection of the rights of all ethnic minorities living in Albania and eventually provide solid basis for adequate implementation of the Charter. The positive improvement in this regard concern the establishment of the inter-ministerial working group founded under the jurisdiction of the Ministry of Foreign Affairs. The main objective of the working group is to draft the new law that would include the rights of all minorities which declare as such. The representatives of all minorities which are the members of the State Committee on National Minorities, including the Egyptian and Bosniak minority are invited to participate in the meetings of this working group. The results of these meetings will be presented by the end of 2014.

When it comes to the obstacles recognized minorities face with regard to preservation of their identity and a question of a differentiation in the treatment of national and ethno-linguistic minorities by the Albanian authorities the research proved as follows.

The Advisory Committee on the FCNM strongly criticized the categorization based on 'national' and 'ethno-linguistic' minority arguing that it de facto leads to differentiation in the treatment of these two groups. The sole distinction between 'national minorities' and 'ethno-linguistic' minority provides a negative implication for Roma and Vlach/Aromanian minorities especially in the field of education on their mother language. In addition to that, there are no schools that could provide language courses to the members of the above-mentioned minorities.

The obstacles of recognized minorities face towards preserving their identity concern primarily the lack of financial support by the State of Albania with regard to providing the lessons on their mother

tongue. The existing educational facilities which offer lessons on minority languages operate only in those places where minority groups traditionally reside. This was strongly criticized by the representatives of Greek, Macedonian and Serbian-Montenegrin minority groups who argued that minorities exist in other parts of Albania and not only in traditional places inhabited by these groups; therefore the minority's language courses should not be restricted only to traditional territories inhabited by minorities. Furthermore, the closure of facility conducting the courses of Serbian language in Fier due to absence of relevant license issued by the Albanian Ministry of Education and Science, indicates that the Albanian authorities need to develop proper procedure in order to alleviate the members of minorities to conduct the courses on their mother tongue rather than to serve for their disadvantage. On the other hand, the financial support for operating educational facilities is mostly provided by the minorities' kin-state.

The fact that the representatives of ethnic minority groups in Albania called for boycott of the Census in 2011 due to enactment of the Law provisions that stipulated that every person will be fined if he/she declares differently from the information stated in their birth certificate, indicates that the information stated in this Census cannot be seen as a reliable source of data. The negative attitude practiced by the Albanian authorities including the amendments of the Law on Census three months prior to the process and the decision of the Constitutional Court delivered two months after the Census, influenced the pessimistic attitude of the minority groups when it comes to protection of their rights by the Republic of Albania. Apropos, the lack of exact number of minority groups and their members would lead to inadequate implementation of the strategies aimed at protection and promotion of minority rights.

As it was estimated by Miranda Vickers the Greek minority comprises approximately 2% ( between 45,000 to 50,000 members) of the total population.<sup>346</sup> Such an estimate points to the conclusion that the Greek minority is the largest minority in Albania. From the research that has been conducted it could be argued that there exists a certain dose of animosity towards Greek minority. This is particularly the case with

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<sup>346</sup> Vickers, Miranda. *The Greek Minority in Albania-Current Tensions*. Defence Academy of the United Kingdom. 2010

those Albanian who acquired Greek citizenship and therefore declared as members of Greek minority for the purpose of receiving economical benefits from the Greek authorities. The long-lasting territorial claims over the southern Albania, known as “Northern Epirus” prevents reaching good relations with these two countries and stable situation with regard to Albanians and Greek minority. In general, the extensive number of newspapers and TV stations broadcasting the program on Greek language serves as a positive improvement in the protection of this minority. However, the state should be more engaged in the promotion of this groups’ identity, in particular regarding establishing education facilities for the purpose of providing the language courses on minority language.

Evaluating the results of the survey conducted by INSTAT and World Bank in 2002 an average estimate is that there is around 4,148 members of Macedonian minority. In essence, Macedonian minority faces difficulties in conducting the lessons on its mother tongue. Considering the fact that the lessons on Macedonian language are provided only in the territory where this minority traditionally resides, it is crucial to alleviate the issuance of licenses for this minority in order to be able to conduct Macedonian language courses outside so called “minority zones.” The existence of ‘illegal’ courses on the Macedonian language is a result of Albanian unwillingness to timely issue licenses for obtaining the lessons on minority languages.

According to the survey conducted by Albanian Helsinki Committee in 2000 the number of Serbian-Montenegrin minority was around 1750 members.<sup>347</sup> The Serbian-Montenegrin minority, even though recognized as ‘national minority’ does not enjoy the same amount of attention as Greeks and Macedonians. One of the several causes of this phenomenon is attributed to a very low number of this minority in comparison to Greek and Macedonian minority. In addition to that, the question of dual naming of this group represents an obstacle for adequately implementing strategies aimed at promotion of this group’s language since Albanian authorities are not sure whether this group represents Serbian or Montenegrin minority considering the fact that today those are two different states. However, further research is required in order to identify the issues arising from the question of

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<sup>347</sup> Albanian Helsinki Committee. *Minorities in Albania*. Council of Europe. 2003. 59

the naming of this group as well as its exact number. In addition, the Republic of Serbia expressed its interest to help this group by financially supporting three associations established by this group and facilities operated for the purpose of providing Serbian language courses. After Kosovo gained independence, the members of this minority are usually reluctant towards expressing their ethnicity in the public life; therefore there is an urgent need for developing the strategies which would stimulate peaceful coexistence between majority population and this minority group. In order to prevent the potential raise of ethnic tensions, stable diplomatic relations must be established accompanied by bilateral agreements aimed for protection of minorities.

According to the information of the World Bank using the results of the survey provided by Poulton, there are around 10,000 members of this group even though its members strongly criticize this estimate arguing that there are more than 100,000 members.<sup>348</sup> The Roma community together with Egyptians is the most vulnerable group considering high level of unemployment and illiteracy. Even though numerous strategies were enacted for the purpose of addressing the needs of this community, the situation of this minority group remained the same. As a result, illiteracy decreases the possibility of Roma people to compete on the labour market, which creates an extremely fertile ground for stereotypes and discrimination. Furthermore, the absence of registered birth-certificates of the members of this minority is a problem which needs to be effectively addressed by the Albanian authorities. Considering the characteristic culture of Roma community, it is essential to stimulate the Roma associations to better promote their distinctive culture since it enriches the society as a whole. There is the necessity for development of adequate tailor-made strategies for better protection of the rights of Roma people.

From the research conducted, it could be observed that the Vlach/Aromanian minority is at least visible minority among others examined. According to the OSCE report and this minority's representatives, the number of this minority is approximately 10,000 members.<sup>349</sup> Hence,

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<sup>348</sup> De Soto Hermine, Sabine Beddies, Ilir Gëdeshi. *Roma and Egyptians in Albania: From Social exclusion to Social Inclusion*. World Bank.2005.xxiv

<sup>349</sup> Organization for Security and Co-operation in Europe Presence in Albania. *Minorities in Albania*.OSCE.2012

better protection of the identity of this minority has to be provided by the Albanian authorities since there are indications that there is the existence of possibility of assimilation of this group. The primary objective of the Albanian authorities should be aimed at establishing language courses and facilities aimed for promotion of Aromanian identity. However, the lack of the unity within this group serves as an obstacle for adequately implementing future strategies aimed at promotion and preservation of the identity of this distinct group. The existence of pro-Greek and pro-Romanian wings in the associations of this minority serves as an obstacle for finding the adequate approach for the improvement of the overall treatment of this minority.

In essence, the Greek and Macedonian minorities are the most active minority groups in Albania in terms of claiming the protection for their rights. Given the fact that their members obtain the high-ranking positions in the government and as well as the existence of political parties aimed for representation of these two groups, it could be argued that Greek and Macedonian minorities enjoy the most beneficial status in comparison to other minorities. The territorial reform enacted in July 2014 which deploy villages inhabited by minority groups in different administrative units, significantly undermined the relationship between minority groups, in particular Greek, Macedonian and Bosniak.

The third research question encompassed in this study is related to the obstacles that non-recognized minorities face in the Republic of Albania with regard to preservation of their identity and why? The answer to this question narrows the focus of this research on two minority groups, Bosniaks and Egyptians.

The complexity of determining the origin of Egyptian community and the refusal of their recognition by the Egyptian Embassy, have been the two main arguments of the Albanian authorities for not recognizing this community. However, the decline of traditional dances, and other cultural characteristics of this community, is a result of clear unwillingness of the Albanian state authorities to promote the Egyptian culture and protect their identity. Even though the need for recognition of this minority has been addressed in several reports issued by the Advisory Committee on the FCNM, nothing has been done in that regard by the Albanian authorities. From the interviews that were conducted with the representatives of the institution of People's

Advocate, the requests of this community will be addressed in the upcoming meetings of the working group established for the purpose of drafting the new law on national minorities.

The case study of this research concerned the status of Bosniak minority. From the research that was conducted for the purpose of this thesis, it could be argued that this group preserved its identity regardless of the obstacles that were posed during the socialists system. The members of this minority preserved their identity trough marriage, for the sake of language transmission from one generation to the other.

Nevertheless, the appeals of this minority group to help in maintaining Bosnian language courses has been ignored by the Albanian as well as B&H authorities. While no justification has been provided by the Albanian authorities, the representatives of Bosniak political elite emphasized that helping their co-ethnics who do not possess the citizenship of B&H would not benefit the Bosniak elite in B&H. Hence, by this statement the interviewees confirmed that they perceive Bosniak diaspora as primarily political project. This research has identified that Greek, Macedonian and Serbian-Montenegrin minority have relevant financial support from their kin-states which has resulted in facilitated preservation of their identity. On the other hand, it has been concluded that one of the crucial obstacles of the Bosniak community lies in their support of their kin-state that is the lack of that support from Bosnia and Herzegovina. The members of this community emphasized that the crucial obstacle for preservation of their language is the absence of a teacher of Bosnian language. This obstacle cannot be successfully overcome without the help provided by B&H authorities. This argument has been proved on the basis of interviews with Bosniak minority members, as presented in chapter three.

Even though the Advisory Committee on the FCNM emphasized in several occasion the need for recognition of this minority and addressing their needs, nothing has been done in that regard by the Albanian authorities. During the meeting that I took part in, both the representatives of the Ministry of Foreign Affairs and People's Advocate stressed out that there is no reason for not granting the recognition to Bosniak minority. Upon the interview conducted with the representatives of the Ministry of Foreign Affairs, which is one of the institutions responsible for coordination of the previously mentioned

working group, I was asked to submit the request for the attendance of representative of Bosniak minority at the meeting. In September 2014 the president of the association “Zambak”, Mr. Fiqiri Kllari received an invitation to participate in the meeting conducted by the working group that will be held by the end of October 2014.

Conclusively, the absence of recognition of these two groups is the product of the lack of comprehensive legal framework that would encompass all ethnic minorities who declare as such and who wish to benefit from the protections derived therein. Not only is non-recognition an imminent outcome of a poor legal basis, abdication of full recognition of these two groups derives from Albania’s unwillingness to provide these minority groups with the financial resources for the purpose of identity preservation. Considering the fact that there is no reliable source indicating the exact number of Bosniaks and Egyptians, it deteriorates their access to rights even more. It could also be argued that the eventually low number<sup>350</sup> of members of these two communities is one of the reasons why the Albanian government is reluctant to recognize them in order not to spend their financial resources on such a low number of members of these two groups.

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<sup>350</sup> According to the survey conducted by the World Bank in 2005 using the data provided by local governments, the number of Egyptian minority is approximately 23,319 of the total population. However, the researchers of the World Bank emphasized that these results must be taken with the grain of salt. Prior to the census conducted in 2011, there are no official statistical data indicating the number of this community. See: De Soto Hermine, Sabine Beddies, Ilir Gëdeshi. *Roma and Egyptians in Albania: From Social exclusion to Social Inclusion*. World Bank.2005.xxiv

On the other hand, the number of Bosniak minority is not mentioned in any survey conducted for the purpose of providing the data on the number of minorities. However, according to the members of the Bosniak association Zambak, there is approximately 10,000 Bosniaks in Albania. The predominantly Bosniak-populated villages of Borake and Koxhas comprise of 600-700 households indicating that there are around 3000 members of this community in these two villages.

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Interview with Adigrena Baši, the member of Bosniak community , held on 13 August 2014 in Borake

Interview with Alket Jaupi, representative of the Albanian Ombudsman institution, held on 25 June 2014 in Tirana

Interview with Arsen Kllar, the member of Bosniak community in Albania, held on 18 August 2014 in Borake

Interview with Bahro Baçi, the member of Bosniak community in Albania, held on 19 August 2014 in Borake

Interview with Bledar Bašanović, the representative of Serb/Montenegrin minority in the State Committee for National Minorities, held on 27 June in Tirana

Interview with Čik Buka, the member of Bosniak community in Albania, held on 19 August 2014 in Borake

Interview with Edlira Papavangjeli, project manager in the Albanian Helsinki Committee, held on 10 July 2014 in Tirana

Interview with Egla Gollaj, project officer for the joint project of the European Union and Council of Europe on Promoting human rights and protection of minorities for Albania and Kosovo, held on 25 June 2014 in Tirana

Interview with Endri Xhaferaj, the PhD candidate in “Diversity Management and Governance”, Karl-Franzens University held on 21 June 2014 in Tirana.

Interview with Emina Kllari, the member of Bosniak community in Albania, held on 19 August 2014 in Borake

Interview with Gjergj Sinani, the member of the Council of Europe’s Advisory Committee on the Framework Convention for the Protection of National Minorities in respect of Albania , held on 25 June 2014 in Tirana

Interview with the employee of Human Rights Department of OSCE in Albania, held in Tirana on 16 July

Interview with Mentor Kllari, the member of Bosniak community in Albania, held on 20 August 2014 in Borake

Interview with Esad Kapetani, the member of Bosniak community in Albania, held on 17 August 2014 in Borake

Interview with Fiqiri Kllari, President of Bosniak association "Zambak", held on 15 August 2014 in Borake

Interview with Gano Korjeni, the member of Bosniak community, held on 15 August 2014 in Borake

Interview with Kaliro Martiko, the Expert of the Directorate of Legal Procedures and Foreign Relations in the Commissioner for the Protection from Discrimination Office, held on 11 July in Tirana

Interview with Kozara Kati, the executive director of the Albanian Centre for Human Rights, held on 10 July 2014 in Tirana

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Interview with Mentor Jamaku, the member of Bosniak community in Albania, held on 20 August 2014 in Borake

Interview with the representative of the Ministry of Foreign Affairs of the Republic of Albania, Held on 24 June 2014 in Tirana.

Interview with Professor Omer Ibrahimagić held on 10 March 2014 in Sarajevo

Interview with Remzi Lani, the Executive Director of the Albanian Media Institute, held on 9 July 2014 in Tirana.

Interview with Smail Dizdari, the member of Bosniak community in Albania, held on 25 August 2014 in Borake

Interview with Sonila Guzina, the member of Bosniak community in Albania, held on 19 August 2014 in Borake

## ANNEX I

1. Resident population by ethnic  
and cultural affiliation

Përkatësia etnike dhe kulturore Ethnic and cultural affiliation	Popullsia banuese Resident population	Përqindja e popullsisë banuese Percentage of resident population
<b>Gjithsej</b>		
<b>Total</b>	<b>2.800.138</b>	<b>100</b>
Shqiptare		
Albanian	2.312.356	82,58
Greke		
Greek	24.243	0,87
Maqedonase		
Macedonian	5.512	0,20
Malazeze		
Montenegrin	366	0,01
Arumune		
Aromanian	8.266	0,30
Rome		
Roma	8.301	0,30
Egjiptiane		
Egyptian	3.368	0,12
Tjeter		
Other	2.644	0,09
Preferoj të mos përgjigjem		
Prefer not to answer	390.938	13,96
E pavlefshme/e papërcaktuar		
Not relevant/not stated	44.144	1,58

Source: National Institute of Statistics of Albania. *Population and Housing Census*. 2011. [http://www.instat.gov.al/media/178070/rezultatet\\_kryesore\\_t\\_censusit\\_t\\_popullsis\\_dhe\\_banesave\\_2011\\_n\\_shqip\\_ri.pdf](http://www.instat.gov.al/media/178070/rezultatet_kryesore_t_censusit_t_popullsis_dhe_banesave_2011_n_shqip_ri.pdf) ( Accessed on 20 June 2014)

## ANNEX II

### 2. Resident population by mother tongue

Gjuha amtare Mother tongue	Popullsia banuese Resident population	Përqindja e popullsisë banuese Percentage of resident population
<b>Gjithsej Total</b>	<b>2.800.138</b>	<b>100</b>
Shqip Albanian	2.765.610	98.767
Greqisht Greek	15.196	0,543
Maqedonisht Macedonian	4.443	0,159
Rome Roma	4.025	0,144
Arumanisht Aromanian	3.848	0,137
Turqisht Turkish	714	0,025
Italisht Italian	523	0,019
Serbokroatisht Serbo-Croatian	66	0,002
Tjetër Others	1.87	0,067
E pavlefshme/e papërcaktuar Not relevant/not stated	3.843	0,137

Source: National Institute of Statistics of Albania. *Population and Housing Census*. 2011. [http://www.instat.gov.al/media/178070/rezultatet\\_kryesore\\_t\\_censusit\\_t\\_popullsis\\_dhe\\_banesave\\_2011\\_n\\_shqip\\_ri.pdf](http://www.instat.gov.al/media/178070/rezultatet_kryesore_t_censusit_t_popullsis_dhe_banesave_2011_n_shqip_ri.pdf) ( Accessed on 20 June 2014)

**ANNEX III**

<b>Estimation of ethnic minorities' population living in Albania.</b>	<b>Number</b>	<b>Percentage</b>
Total population	3.069.275	100
Total Ethnic Minorities	42.892	1.4
Greek	35.829	1.17
Macedonian	4.148	0.14
Serbo-Montenegrin	678	0.02
Aromanian	992	0.03
Others	1.245	0.04

Source: National Institute of Statistics of the Republic of Albania and World Bank. *Living Standard Measurement Survey*.2002.

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## ANNEX IV

Interview questions for the members of the Bosniak community :

1. Name and Surname
2. Year of birth
3. Place of living
4. Occupation
5. What is your opinion on the situation of Bosniak community in Albania?
6. What do you think are the biggest obstacles for the preservation of Bosniak identity ?
7. What do you think what improvements are necessary and how would these improvement effect the situation of Bosniak community?
8. How do you see the attitude of Bosnia and Herzegovina towards this community?
9. Do you possess any memories regarding the arrival of your ancestors in Albania?
10. Which memories do you recall regarding socialist period ?
11. Do you speak Bosnian language ?
12. How did you learn the language ?
13. Are you married to another member of Bosniak community ?
14. What aspects of Bosnian and Herzegovinian tradition and culture are you familiar with?
15. What are your feelings towards Bosnia and Herzegovina ?
16. Have you personally be discriminated against based on your ethnicity ? If yes how?