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CONTEMPORARY DEBATES ON POLITICS AND INTERNATIONAL RELATIONS IN THE WESTERN BALKANS

Prof. Dr. Xhezair **ZAGANJORI**/ MSc. Sagita **DAMZI**/ MSc. Kevin **AGOLLI**/
MSc. Alba **ÇERMA**/ MSc. Dritan **NAUMI**/ MSc. Violeta **META**

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jus&justicia@uet.edu.al
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EDITORIAL

Contemporary debates on politics and international relations in the Western Balkans

Prof. Dr. Xhezair ZAGANJORI
Editor-in-Chief

Jus & Justicia No. 15, Issue 2 is dedicated to students' promotion in research activities in compliance with the scientific research's strategic vision of the European University of Tirana. This edition is focused on contemporary debates on politics and international relations in the Western Balkans.

In recent years, the Western Balkans region has witnessed a notable shift in power dynamics, as emergent powers have steadily increased their presence and influence. This development has significant implications for the internal affairs of the countries in the region and their aspirations towards European Union (EU) integration. As these emerging actors flex their muscles, it is crucial for both local leaders and EU policymakers to navigate this evolving landscape wisely and collaboratively.

The rise of emergent powers, such as China, Russia, and Turkey, in the Western Balkans has been marked by increased investments in infrastructure projects, economic cooperation, and diplomatic overtures. On one hand, these engagements have offered some tangible benefits to the region, providing much-needed foreign direct investment and infrastructure development. However, on the other hand, it has raised concerns about potential dependencies, lack of transparency, and possible erosion of democratic values. One of the key impacts of this growing influence is evident in the region's internal affairs. Local political elites have been

presented with new opportunities for patronage, often leading to complex webs of alliances and shifting loyalties.

This influence can also lead to political polarization, as external actors may support factions that align with their interests, further destabilizing the region. Furthermore, the influence of emergent powers may affect the region's overall stability. Traditional geopolitical rivalries between these actors can exacerbate existing tensions within and between the Western Balkan countries. The situation in the North Kosovo prove that. The risk of proxy conflicts and geopolitical maneuvering could hinder progress towards regional reconciliation, which remains a fundamental prerequisite for EU integration.

The Western Balkan countries' aspirations to join the European Union are profoundly impacted by these emergent powers' growing presence. For some nations, the allure of alternative investment and diplomatic support from these actors may undermine their commitment to EU integration.

The EU is engaged in taking proactive steps to strengthen its presence and support in the region, offering a compelling vision of integration that remains the most desirable option for the Western Balkan nations. By prioritizing investments in the Western Balkans, fostering transparent and accountable governance, and demonstrating tangible benefits of EU membership, the bloc can reassert its position as the most attractive partner for the region's progress and development. Thus, the region can move towards a more stable, prosperous, and harmonious future.

Western Balkans as a Laboratory of Dominant Diplomacy. NATO and the Role of Multilateral Diplomacy in the 1990s-2000s

***Sagita DAMZI*[1]**

Abstract

Since the fall of the communist regimes, the Western Balkans have been characterized as an unstable region with an urgent need for intervention by international actors. As a region with distinct characteristics and considering the crossroads of geopolitical interests of major powers, international organizations have played a crucial role. During the period of the 1990s-2000s, traditional security-related issues such as armed conflicts, and non-traditional issues like terrorism, organized crime have emerged. Given this diverse and highly dynamic picture in an even more dynamic region, the possibility of intervention using various methods and strategies by the international factor has been significant and necessary, making international organizations powerful actors in terms of this region's security. This study aims to highlight the application of dominant diplomacy in resolving disagreements in the Western Balkans. To analyze how this approach has affected the course of events and the consequences on the international order based on the theory of international relations (neoliberal theory), as well as the role and effect that International Organizations have in the international system and their impact on the stability and security of this region. To achieve this goal, the study will aim to address the following issues: present the problems that existed in the Western Balkans during the period

[1] Sagita Damzi is graduated in 2021 in MSc.International Relations at the European University of Tirana. Her thesis is supervised by Prof. Dr. Kristaq Xharo, Lecturer at the Applied Social Sciences Department, Faculty of Law, Political Sciences and International Relations, European University of Tirana.

of the 1990s-2000s, related to armed conflicts; highlight the cases of intervention by International Organizations and analyze the impact they have had on improving or not the conflict situations in the Western Balkans; emphasize the importance and increasing impact of International Organizations as implementers of dominant diplomacy; analyze the impact of the strategy of dominant diplomacy on international security and regional stability.

Key words: *security, regional security, Western Balkans, international relations, International Organizations, NATO.*

I. Introduction

The Western Balkans, a region marked by ongoing instability between 1990 and 2000, was a focal point of multiple conflicts and tensions. This volatile atmosphere resulted from the disintegration of the former Yugoslavia, demographic diversity, aspirations of Serbia for hegemony, and strategic interest from Russia to exert influence. Consequently, the region turned into a geopolitical hotbed, witnessing a clash between two starkly different models: the liberal democratic model, led by the U.S., and the autocratic model championed by Russia.

The chessboard for these overarching clashes was primarily multilateral forums and side events, which amplified the presence of international organizations and their crucial role in shaping inter-state relations and political developments in the Western Balkans. Additionally, persistent conflicts and the ensuing tension brought a pervasive lack of order and stability, not only within the region but also internally within the countries, resulting in several waves of emigration towards EU member states. This tumultuous landscape necessitated the intervention of international factors for the restoration of order, stability, and regional security. The tactics employed for intervention varied from soft power strategies, which were predominantly applied in situations marked by intense conflict, to instances where hard power came into play. In the context of this study, the focus is on International Organizations as influential actors in the Western Balkans' regional security, with specific emphasis on NATO and their implementation of Coercive Diplomacy.

Coercive Diplomacy is a strategy that aims to influence an adversary's decision-making process by threatening or using limited force, without escalating to full-blown war. In the context of the Western Balkans, Coercive Diplomacy has proven to be successful for several reasons. First, the countries in the region were emerging from a period of conflict and disintegration, and the threat or limited use of force served as a significant deterrent against any escalations. Second, the international

community, particularly NATO, held considerable influence and could exercise significant pressure.

While other forms of diplomacy include preventive diplomacy, which involves diplomatic actions taken in advance to prevent disputes from escalating into conflicts; shuttle diplomacy, where an intermediary travels between two nations to negotiate peace; and public diplomacy, which involves interactions with foreign public to influence their governments, the focus of this study is Coercive Diplomacy. The diversity of diplomatic strategies reflects the complex and dynamic nature of international relations. However, in the Western Balkans' case, Coercive Diplomacy emerged as an effective strategy due to the specific geopolitical and historical context. Nonetheless, as the region continues to evolve, other forms of diplomacy may gain relevance, underscoring the need for continual reassessment of diplomatic strategies.

Theoretical Approach - Coercive Diplomacy

"It is difficult to argue that there is still a special core of the field...Our field should primarily be interested in relations between states and those between societies and non-state actors to the extent that these relationships jeopardize relations between states and influence them" (Holst, 2002: 621).

Theories are lenses through which we can construct a clearer picture of the analysis of events and not only. In the field of International Relations, they are very important.

The neoliberal approach is a very good way to understand the dynamics of international organizations, international conflict, and of course general cooperation. We are dealing with a theoretical approach to International Relations that is based on two main concepts, that of rationality and agreements. In this theory, the main focus is on the central role of institutions and organizations in international politics. States must agree to establish some common standards and must resist the temptation to violate them (Keohane, 1990). International organizations facilitate the respect of these standards and stabilize meeting points and constant relations between states, on the one hand, providing forums and on the other hand, having a monitoring function. It should be noted that we are dealing with an international economic and political environment that is highly institutionalized, international organizations are the ones that play an important role in the international distribution of wealth and power. Also, the fact that institutions were seen as a way to facilitate problem-solving in terms of coordination, gave a different meaning and value to the operation of international organizations.

International institutions, so important in neoliberal theory, are basically an increased attempt by states to create alliances and cooperation. A fundamental claim of neoliberal theory is that states calculate the costs and benefits of different actions and choose the course of action that will guarantee them higher net gains (Tim Dunne, 2007:154). As Robert Keohane and Joseph Nye show, international organizations and security institutions are platforms with international subjectivity, which produce international norms and occupy an important place in the hierarchy of sources of international law. As such these multilateral forums not only guarantee meeting points but influence negotiation strategies, gather information and convey this to certain actors thereby increasing the level of predictability. Moreover, they determine the agenda, obligations, and guide the interests and approaches of states on certain issues.

Regarding the events of the 1990s, neoliberal theory provides the best explanation. NATO's case demonstrates how international institutions took control of the situation and restored peace and stability in the region, under the leadership of the North Atlantic Alliance. In this context, we must highlight the primary role of the USA. The main tool for achieving this goal was what is called Coercive Diplomacy in the sphere of International Relations.

Coercive Diplomacy

"Coercive diplomacy means resolving crises and armed conflicts without resorting to full-scale war" (Collins, 2006). In other words, coercive diplomacy is a type of responsive strategy aimed at influencing or affecting an opponent based on limited force and threats to prevent preemptive actions. Practically, through coercive diplomacy used as a strategy against the adversary, the latter is given the choice between compliance and non-compliance. An instance of the use of coercive diplomacy was the use of airpower in Kosovo in 1999. This is a prime example of utilizing limited force as part of the coercive diplomacy strategies. In this case, the adversary, against whom this strategy is employed, has to choose to withdraw from the actions it is taking or face the attacks.

The term "limited force" is a demonstrative or symbolic usage, as it actually implies a sufficient force that demonstrates the determination to give credibility to the use of greater force if necessary. The air campaign that NATO undertook in the case of Kosovo is an instance of successful use of coercive diplomacy, though there are many objections to this.The question has always been raised as to whether interventions are legitimate based on international law principles, but this requires examining how the imposer acts and what strategy it pursues with the opponent. It should be examined whether the imposer or implementer of coercive diplomacy makes demands knowingly, which are known in advance not to be met by the

adversary. Obviously, the time given to the latter to comply with the demands also matters. If such a case is encountered, it is very evident that the imposer prefers war over convincing the adversary to withdraw.

There are several major theoretical works regarding coercive diplomacy. One of the most influential in this theory is that of Thomas C. Schelling, "Arms and Influence" (1966). According to author Schelling, the necessary conditions are:

- The threat must be strong enough to convince the adversary that the cost of non-compliance would be unbearable.
- The threat must be credible in the adversary's mind, he must be convinced that the imposer has the will and ability to execute it in case of non-compliance.
- The adversary must be given time to accept the demands.
- The imposer must guarantee the adversary that compliance will not bring more demands in the future.
- The conflict is not perceived as a zero-sum game. There must be a level of common interest to avoid wide-scale war. Each party must be convinced that they can gain more from negotiation than by unilaterally trying to take what they want by force.

Following another line of reasoning, researcher Peter Viggo Jakobsen in "Ideal Politics" (1998) identifies some conditions that the imposer must meet to maximize the chances of success with the implementation of his coercive diplomacy. According to Jakobsen, these are:

- Use of threat to use force to defeat the adversary, or to deny him the easy achievement of objectives at a low cost.
- A time frame for compliance.
- A guarantee for the adversary that there will be no demands in the future (in Collins, 2006: 294).

According to Byman (1999), "The imposer must enjoy dominance in escalating the conflict." Based on this expression of Byman, we can explain the failure of Western powers to impose on Bosnian Serbs in 1992-1995. On the contrary, this non-compliance was accompanied by Serbo-Bosnian reactions aimed at weakening Western resolve. Serbo-Bosnians made empty promises to comply with Western demands. Threats of hostage-taking were also typical and frequent, aiming to halt the execution of threats and escalation actions by Western powers.

It should be emphasized that Serbo-Bosnians not only threatened hostage-taking but also implemented their threat with United Nations personnel. This was done to neutralize NATO air strikes between April 1994 and July 1995. Western

powers took effective and immediate measures to reduce the vulnerability of their troops in Yugoslavia.

The use of coercive diplomacy by the West against Bosnia in the period 1992-1995 is a special case study because it involved seven major exchanges of coercive diplomacy. "Each of them involved: acts of aggression committed by Bosnian Serbs, reaction from Western powers in the form of a request accompanied by a threat of using force, and the reaction to this threat by Bosnian Serbs" (Collins,2006: 297). The case of Kosovo and Serbia is a special case. Most studies emphasize and define the success of coercive diplomacy in binary terms, where it either fails or succeeds, but the conclusion is much more complex when considering the actions taken by the imposer, where the latter may choose partial compliance or may reduce demands during the negotiation process. This is where the uniqueness of the case in question lies, where Serbia met NATO's demands regarding Kosovo in 1999 only after NATO had reduced the number of demands. There are some inevitable difficulties in using coercive diplomacy since it is considered hard and complicated by many factors. "Success ultimately relies on perceptual, psychological, and emotional factors" (Collins, 2006: 299).

The success of coercive diplomacy depends on the opponent's willingness to cooperate or not, hence it exists from the perceptions and miscalculations that can defeat a well-thought-out strategy by preventing its implementation in the targeted country. The imposer must follow a strategy by which to convince, intimidate and at the same time soothe the opponent, and here lies the difficulty of coercive diplomacy, but not only. The opponent may perceive persuasion and submission as humiliating, and this could also be a reason for the opponent's leaders to be labeled as traitors and thus, the risk of their overthrow by democratic or military means may arise.

Naturally, apart from these complications encountered from the use of coercive diplomacy, the very use of it as a response to aggression, terrorism, and weapons of mass destruction presents specific problems (Collins, 2006: 300). There are numerous cases that demonstrate this and are particularly difficult because the actors involved and undertaking strategies belonging to coercive diplomacy are aware that the probability of using force against the opponent is high. Starting from a normative approach, coercive diplomacy will not have a high probability of success. This reasoning comes based on the conditions of success that are difficult to fulfill and therefore what remains to be done is to prevent the creation of circumstances that would necessitate the use of coercive or obligatory diplomacy.

Conflicts in Bosnia & Herzegovina and Kosovo- Failures and successes of coercive diplomacy

The Western Balkan region is, regrettably, known for its security problems and for a pronounced and persistent instability among its members, as well as for a slow process of integration into the European Union. To specify, some cases like Bosnia and Kosovo have been studied. In such a tense situation, with conflicts following one after another, International Organizations have found grounds to act and have sometimes been utilized and sometimes not. Most importantly, NATO, as an organization aiming to preserve security, has had the greatest impact on the situation created in the Western Balkans. Undoubtedly, the United Nations has as well.

Bosnia and Herzegovina

Yugoslavia was composed of six republics which were otherwise known as historical-territorial communities. Members of each of these republics had rights as specific ethnic peoples determined by a common language, religion, and politics. There was ambiguity between the relationship of the individual republics' rights and the competencies of the federal or central government of Yugoslavia. After Tito's death, the federal system was not strong enough to limit the growing power of the republics. It was inevitable that Yugoslavia would disintegrate, and this process would particularly be painful in Bosnia Herzegovina and Kosovo.

In Bosnia and Herzegovina, the situation was very tense. This central Yugoslav republic had a shared government that reflected the mixed ethnic composition with a population made up of about 43 percent Bosniak Muslims, 33 percent Bosniak Serbs, 17 percent Bosniak Croats, and about seven percent other nationalities. The republic's strategic position made it a battleground between Serbia and Croatia, which were trying to dominate large parts of its territory.

In November 1991, Bosniak Serbs voted in a referendum to stay with Serbia in case Bosnia Herzegovina (BiH) sought independence. In March 1992, there was a referendum which was boycotted by Bosniak Serbs, where more than 60 percent of Bosniak citizens voted for independence. Immediately after this referendum, in April 1992, Bosniak Serbs, supported by the Yugoslav People's Army and Serbia, rebelled by declaring territories under their control as a Serb republic in Bosnia and Herzegovina. Through military superiority and a systematic campaign of persecution, they asserted control over more than 60 percent of the country. Also, Bosnian Croats declared their republic with the support of Croatia, undermining

the authority of the Bosniak government. This escalated the situation even further and served as a "casus belli" for a bloody conflict over territories, and for the first time, the policy of "ethnic cleansing" was implemented by Slobodan Milosevic (Zucconi, 1995).

NATO's role in dealing with the Balkan wars only came after three years. The genocide that occurred in Srebrenica and the attack on the Markale marketplace in Sarajevo in the summer of 1995 set the Alliance in motion. Also, in August and September 1995, NATO undertook a bombing campaign against the Serbs, which marked the beginning of a period of negotiations. "It was a classic exercise in force-backed diplomacy" (Meyer, 2009). There was much controversy and political prejudice at the same time, especially for the hesitation of the USA, the only superpower in the world, to get involved.

The Implementation Force (IFOR), a NATO enforcement force, was allowed to operate following the Dayton Peace Accords, but there were some European member states that insisted on not keeping ground troops in Bosnia without the participation of the United States. It can be said without a doubt that NATO's hesitation in directly involving itself in ground combat operations was due to uncertainties regarding American engagement.

As for the role of the United Nations in Bosnia, it was not effective at all and left room for debate. Even though there were 14 resolutions, none of them could prevent the war. The resolution related to the arms embargo was entirely unsuccessful. A failure of the international community that cost many civilian casualties.

Kosovo

The Yugoslavian province of Kosovo had about 90 percent of its population being ethnically Albanian. Kosovo's autonomy was violated by Slobodan Milosevic, the nationalist president of Serbia, in 1991. During Tito's time, Kosovo enjoyed extensive autonomy.

When this status of autonomy was revoked, there was a counter-response from the Albanian leadership of Kosovo, which adopted a policy of passive resistance and created a shadow parallel administration. Kosovo's Albanians declared independence in September 1991, but did not receive international recognition. As a result, frustration increased which led some Kosovars to adopt a militant strategy of violent confrontation with the authorities of the Federal Republic of Yugoslavia (FRY), and there was an increase in support for the Kosovo Liberation Army (KLA). The activity and involvement of the latter has been continuously increasing since 1996, always having harsh attacks from the FRY security forces. As a result, there was a reflection from the international community which responded by imposing sanctions on the FRY and also called for talks between the parties to

restore Kosovo's autonomous status. There were negotiations that began in April 1998, but without much effectiveness.

From some analyses made, it is argued that Western governments refused to condemn the beginning of the counterinsurgency by FRY forces in July 1998 with the intention of forcing the Kosovars to participate in negotiations. The Economist wrote that, initially at least, the FRY offensive was "quietly approved by Western governments", on the assumption that "the Albanian side might be thrown into cooperation with Western mediation efforts if it was exposed to a taste of Serbia's wrath".

As for the role of international organizations, NATO was the one that had the greatest role. The latter took the initiative to deploy forces in neighboring countries in April 1998 in order to prevent the spread of the conflict and the start of air strikes against FRY forces, and did so without special authorization from the UN Security Council. Although China and Russia opposed the air strikes, NATO made it clear that it would act militarily to prevent a humanitarian catastrophe. This was done without a resolution from the UN Security Council. On October 12, the Italian government and the outgoing German cabinet became the last two NATO countries to approve the use of force.

The NATO threat for military action and to exert pressure on the FRY government to meet the demands of the Security Council, was used by negotiators in Kosovo. NATO ministers authorized air strikes to begin in four days. This happened on October 12, 1998 and meanwhile, the US special envoy Richard Holbrooke, announced that he had received a commitment from Milosevic to meet the demands of the UN Security Council and to achieve a political solution.

There were some responses, especially from Western officials, who admitted that the justification for intervention may be necessary in the future and that the humanitarian situation needed to be improved. However, NATO stated that the humanitarian need brought many reasons for military action and also announced that it would maintain the activation order for air strikes indefinitely in order to ensure Belgrade's compliance. A necessary justification came from President Clinton, in March 1999, when peace talks in Rambouillet ended without an agreement. President Clinton stated:

> "We must also understand our actions for peace in the Balkans and Kosovo. This is not only a humanitarian crisis, but it is much more. This is a conflict without natural borders. It threatens our national interests. If it continues, it will spur refugees beyond borders, and attract neighboring countries. It will undermine NATO's credibility, on which stability in Europe and our credibility depend. It is likely to rekindle historical enmities, including those that might embrace Albania, Macedonia, Greece, even Turkey. These divisions still have the potential to make

the next century truly violent for that part of the world that extends to Europe, Asia and the Middle East. I do not believe we should have thousands of people slaughtered and buried in open football fields before we do something."

Prime Minister Tony Blair gave a statement to the House on March 23, 1999 expressing the three main reasons for the possible use of force in this case. Mainly, the use of force was to "avoid what would otherwise be a humanitarian disaster in Kosovo", but also because "instability and civil war in part of the Balkans inevitably spread to all and affect the rest of Europe". Lastly, after "promising" that "we would not tolerate the brutal oppression of the civilian population". He also expressed: "To withdraw now would not only destroy NATO's credibility, more importantly, it would be a breach of trust of thousands of innocent civilians, the only desire of whom is to live in peace."

There were three air strikes which had been determined since the fall of 1998 by NATO's military campaign. The strikes that took place in the first phase of strategic bombing, were against the air defense system and aimed to reduce the ability of Serbian attacks against the civilian population of Albanians in Kosovo. However, there was no great success as these attacks were limited and at a great height. Another reason was that the Serbs had never activated their radars and other defensive means, and this made it difficult for NATO to discover them. The reason for planning such a limited attack was that the belief prevailed that Milosevic would surrender very quickly. The fact that this belief turned out to be wrong and Milosevic did not agree to surrender, as well as the military actions that did not damage the Serbian air forces, were reasons to move to the second phase of strategic bombings.

In the second phase, it was planned to expand the attacks to other Serbian military points, as well as military points in Belgrade, Novi Sad, Kosovo, and the city of Nish. The second phase included military infrastructure, including warehouses and air spaces, as well as ground military forces (Daalder and Michael, 2000). The main goal of this phase was to paralyze the means that aided the paramilitary, military and Ministry of Internal Affairs forces. In this phase, the allies lost an F117 aircraft to Serbian forces. Despite the intensification and expansion of attacks in this phase, it was not possible to damage and even less to convince Milosevic to accept the proposed agreement. Thus, began what was called the "second phase plus".

During this phase, it was decided to also attack the civilian infrastructure which was intertwined with the army, such as radio, television and even Milosevic's residence. This strategy was planned to be implemented in the third phase, but some NATO countries, including Germany, Italy, Greece and France, expressed the desire not to activate the third phase. Pushed by this, America proposed

authorizing the NATO Secretary General, Javier Solana, to decide in the future to attack Serbian military sites. In April and May, several civilian settlements were also attacked. Such a strategy of gradual escalation was supported by Washington and the Clinton administration, which believed that Milosevic would capitulate very quickly.

A gradual limited planning and such a strategy pursued by NATO had its flaws, but in the end it was successful. The success was the cessation of the war and the achievement of the agreement which was a great victory for the USA and NATO, but most of all for the people of Kosovo, who won their freedom and independence.

The Legitimacy of NATO's Intervention in Kosovo: Coercive Diplomacy as a Means of Guaranteeing International Law

Serbia's aim was ethnic cleansing, expelling Albanians from their native territory in Kosovo towards Albania and other neighboring states. President Bush had warned Serbia "that in the event of a conflict in Kosovo, conditioned by Serbian actions, the U.S. would be prepared to use force in Kosovo and within Serbia itself (Bacevich, 2002).

The American administration feared that if Milosevic was not stopped, it would cause a series of problems and conflicts on a large scale. Clinton declared that he "will not allow ethnic cleansing," a call to which European allies, first and foremost Britain, France, and Germany, also joined. In fact, these countries not only aimed to prevent ethnic cleansing, but also to stop a broader conflict in Europe. Another reason was to prevent the creation of a Greater Serbia through violence.

Therefore, among the three main reasons for this intervention, the first was humanitarian, the second aimed to maintain regional security, and the third had a normative character aiming to preserve international rules of peace. In some analyses, the theory is defended that sovereign nation-states, according to UN resolution, cannot be attacked if they have not attacked another state, or in NATO's case, any of its members. However, many others see the humanitarian action in Kosovo as legitimate.

A concrete example is the Dutch Minister of the Interior, who said: "If this action is not in accordance with international law, the problem is not with the action, but with the existing international order" (Raičević, 2008). From the Yugoslav perspective, it is said that "what happened during NATO's intervention in Kosovo was nothing less than an act of aggression, contrary to peace and inconsistent with the traditional international law of the principle of territorial sovereignty (Joyner, 2002).

The Security Council resolutions for Kosovo provide a full legal justification for intervention (Raičević, 2008), "someday they will understand that the UN Charter

is not the only source of international law" (Raičević, 2008). Based on the UN's universal declaration of human rights, humanitarian intervention implies a threat or use of force outside state borders carried out by one or more states to prevent or halt the severe violation of basic human rights of individuals who are not members of that or those states, and without the permission of the state where violence is used.

Then-Secretary of State Madeleine Albright, during a conference in London, expressed: "The reason why the international community is so focused on what is happening in Kosovo is: to a large extent, the humanitarian disaster of tens of thousands of people crying and making noise in the hills and the coming winter" (Alexander, 2000). The US has favored NATO's air strikes as a means to halt violence in Kosovo. It has interpreted resolutions 1199 and 1203 of the Security Council to justify its policy. The Clinton administration believed it had a moral obligation to intervene in Kosovo, even without explicit approval from the Security Council, as this was the only way to save the ethnic Albanian population (Alexander, 2000).

Therefore, it is clear how the "moral imperative" has dominated the principle of national sovereignty through schemes for future intervention for regional agreements to protect human rights when the Security Council fails to take action in crisis situations. We are dealing with the new doctrine of humanitarian intervention. "The rhetorical affirmation of the doctrine of permanent intervention was particularly clear in the triumph of NATO's operation in Kosovo (Kissinger, 2005). The mission in Kosovo was a victory for progressive forces in foreign policy according to Tony Blair. "This war was fought for a fundamental principle necessary for the advancement of humanity: that every human being, regardless of race, religion, or birth, enjoys an inalienable right to live free from persecution (Blair, 1999).

Conclusions

The Western Balkan region, regrettably, is prominently distinguished by its ongoing security challenges and persistent instability among its member states. This situation substantially impedes the progression and integration of the region into the European Union, an objective long sought by its nations. This is exemplified by geopolitically complex scenarios such as Bosnia and Kosovo, which have both been the subjects of extensive studies. Amidst the backdrop of these continuous and successive conflicts, a variety of international organizations have found a fertile landscape for intervention, with varying degrees of success and efficacy. This observation leads to the assertion that these organizations' roles are sometimes exploited, and at other times, their presence is inadequately capitalized.

Prominently, the North Atlantic Treaty Organization (NATO), whose primary mandate revolves around the preservation of international peace and security, has played an influential role in shaping the existing socio-political situation in the Western Balkans. The United Nations, the European Union, and many other international organizations have also made valuable, albeit less extensive, contributions to the complex dynamics of the region.

The security of the Western Balkans is influenced by a plethora of factors that continually shape the region's security agenda and dictate its priorities. Undeniably, the Western Balkans, from a geopolitical perspective, commands as much attention as it demands from various state and non-state actors. However, the region's stability is not confined within the parameters of its geographical boundaries. The issue extends beyond these physical boundaries due to the phenomenon often referred to as the "spillover effect," where threats and phenomena spread on a scale larger than the region. The interconnected nature of these threats necessitates reciprocal cooperation among nations to mitigate destabilizing factors in a region that has historically been burdened by various problems.

The regional conflicts that swept across the Western Balkans during the 1990s wreaked widespread devastation and left an indelible mark on the region. These conflicts confronted shared security and foreign policy objectives with profound existential challenges. In this context, the involvement and proactive engagement of international organizations emerged as critical to not only quelling the raging flames of conflict but also fostering an environment of order, stability, and prospective growth.

The theme explored in this context holds significant value in the field of international relations and could provide a robust foundation for future research. Neoliberalism, predominantly a materialist theory, lays significant emphasis on the influence of the distribution of material power - manifested as military strength and economic capabilities - on the balance of power among states and their consequent behavior (Jackson, Sorensen, 2007: 162). It is evident that despite initial resistance, the strategy of imposing diplomacy in international relations, particularly demonstrated by NATO's role, proved effective in the Western Balkans.

NATO, as one of the most influential international organizations in the Western Balkans, was at the forefront of conflict resolution throughout the tumultuous period of the 1990s to the early 2000s. Although other organizations played significant roles in the process, NATO's distinctive profile and military capabilities positioned it as the principal entity in resolving regional conflicts. Its influence has continued to expand and solidify since this period. Moreover, NATO's efforts have played an instrumental role in fostering the democratic development and stability of the region, demonstrating the long-term impact of its interventions.

Using NATO's intervention in Kosovo as a case study provides interesting insights. This action was largely well-received and considered successful by many Western states. The intervention reflected NATO's adaptability and resilience in the face of complex geopolitical challenges. Each subsequent challenge and crisis arguably reinforced NATO's strength and relevance, further asserting its importance in maintaining regional stability. It shaped the evolution of the Western Balkans as a security complex and consolidated peace within the traditional conceptual framework.

Given the region's historical complexities, weak states lacking institutional capacity and socio-political cohesion can pose myriad threats to national and regional security. In light of this, ongoing collaboration and a united front are essential to prevent and mitigate such security threats.

The prospect of EU membership for Western Balkan countries could serve as a substantial incentive for political stability and security in the region. However, the EU's approach to the region has predominantly been one of benign neglect. The lack of significant EU engagement has tarnished its image and credibility in the Western Balkans. This has inadvertently paved the way for the rise of other international actors such as Turkey, Russia, and China. Consequently, it is crucial for these actors, along with the EU, to respond proactively by enhancing their efforts to promote democratic principles and tackle the wide range of threats confronting the Western Balkan region. As security risks could have far-reaching implications both within the region and in its relationships with the EU and NATO, an informed, swift, and united approach is essential to ensure stability and prosperity.

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The geopolitical influence of Turkey in the Western Balkans

Kevin AGOLLI[1]

Abstract

Turkey's role in the Balkan peninsula can be considered age-old since medieval times. The study of the new line of Turkish foreign policy from 2002 to 2021, as well as the doctrine of neo-Ottomanism, mark a great importance in the ideation of the methodology. This need is influenced by a number of factors. Turkey has a historical past in the Balkans; after the coming to power of the AKP in 2002, its leader Recep Tayyip Erdoğan wanted to reawaken the "unified" relationship of the Balkan states with Turkey at the head. Also, the empowerment that Turkey has received during the last 15 years has strengthened its influence in three different regions. The Balkan region, just like in the period of the Ottoman Empire, is an existential part of the implementation of the doctrine of neo-Ottomanism in Turkish foreign policy, as well as a connecting bridge that Turkey has with Western Europe. This study aims to offer an approach that seeks to discover the cause of Turkey's relations with the Balkan countries and Turkey's geopolitical influence in this region. This paper suggests that the growth of Turkey's influence in the Balkans has come as a result of Turkey's own reconceptualization of its role in the international arena after 2002. The method selected in this study is the interpretative one, which refers to the secondary data produced by well-known authors of international relations, official documents, institutions, etc.

***Keywords*:** *Geopolitics, influence, neo-Ottomanism, Turkey, Western Balkans.*

[1] Kevin Agolli isgraduated in 2021 in MSc. in International Relations at the Faculty of Law, Politics and International Relations. His thesis is supervised by Assoc. Prof. Enri Hide who is a lecturer at the Applied Social Sciences Department, Faculty of Law, Political Sciences and International Relations, EUT.

Introduction and some Historical Factors

Turkey's relationship with the Balkans existed long before the Turkish nation became a republic in 1923 by its founder Mustafa Kemal Ataturk, and took the name Turkey. Today's Turkey is the continuation of what remained from the disintegration of the Ottoman Empire, the empire which ruled the lands of the Balkan Peninsula for almost five centuries.

The settlement of the Ottoman Turks in the Balkans brought about a change in the socio-cultural and political life in the region, where the empire together with its centralized rule brought new culture features to the Balkans, perhaps the most important among which is the spread of Islam in the region. The indoctrination of Ottoman cultural features in the Balkans was actually a well-thought-out process that would provide the Ottoman Empire with continuity in ruling the Balkan territories. However, the Balkans was a heterogeneous territory, with different ethnicities and religions. Precisely for this fact, from what the archives of the time refer us to, the Ottomans played the card of "inclusiveness" of the population, being nominated as "protectors" and "stability maintainers" of these lands.

For the Ottomans, the Balkans, along with Anatolia, was conceived as a single body and the only territories where the empire saw as unthinkable to lose, because it would bring about its disintegration. For the Ottomans, the Balkans were seen as a connecting bridge with Europe and in relation to their ambitions to be dominant in the international arena. "In the Middle Ages, the Ottoman Empire, whose successor is Turkey, had a key role in the world political scene, depending on the territories it possessed" (Tahirovic, 2014: 61). From this statement we can understand that the Balkans, in addition to being a strategic territory for the Ottomans and bringing them significant incomes, was also a tool to elevate the role that the empire had in the international arena thanks to the control of these strategic territories.

With the capitulation of the Ottoman Empire and the establishment of the Turkish Republic; Turkey managed to maintain its existential territories in Anatolia and at the same time it continued to be part of the Balkans and thus of Europe. Turkey was heading towards the West and its internal stability. Thus, Turkish foreign policy and its relationship with the Balkan countries has been dictated by two factors: *the status quo* and the so called *'westernization'*. The tendency of the Turkish foreign policy has been to maintain the established order within the existing borders and balances" and "implement a western-oriented foreign policy" (Evendeci, 2013). The fall of the eastern/communist bloc also helped initiate the process of strengthening Turkey in the international arena. This because, the end

of the Cold War erased the obligations of its positioning alongside the Western powers as a strategic balance in the face of the Soviet threat and made it possible to end the isolation within its borders. " No doubt, the collapse of the Soviet system dissolved pseudo-identities as well as the pseudo-political front of the bipolar system (Davutoğlu, 1994: 110).

This whole process of reorganization of Turkish foreign policy was named by former President Turgut Özal as "active foreign policy". This marks the beginning of the process of changing Turkish foreign policy and what will later take the form of the doctrine of neo-Ottomanism. Precisely in this context, Turkey begins to exercise its influence in the Balkan region. After decades of separating the Balkans from Turkey with an iron curtain, policymakers in Ankara saw the need to develop a new approach to rapprochement in the region, where the meltdown of the communist bloc and the emergence of new states brought about a rapid and radical change in international and regional system, creating new opportunities and challenges for Turkey (Sayarı, 2000: 170).

The Balkans presented itself as a new challenge for Turkey, which would open old scenarios and create new opportunities for the latter in the international system. Opportunities that would increase Turkey's value vis-à-vis other actors and open the way to its factorization as a regional power, capable of maintaining balances and influencing "on the right path" countries that still suffer nowadays the reminiscences of old enmities. The Balkans had a geopolitical vacuum after the Cold War. The place left vacant by the Soviet-communist influence turned into a free space for various actors who wanted to increase their presence in the region in order to influence it. Among them was Turkey, which with its new line of "active foreign policy" sought to restore ties with the Balkans. "Since the breakup of Yugoslavia and the withdrawal of Soviet forces from Europe, the process of Balkanization appeared once again on the scene after seventy years" (Yetkin, 1992:192). This process presented opportunities for Turkey to both increase its presence and become a powerful regional actor.

With the intervention in the Kosovo War, the aid given to the newly created states in the Balkans such as Bosnia and Herzegovina and Macedonia as well as the economic aid and military agreements with Albania, Turkey saw itself advancing in its presence in the Balkan countries by having an acceptance of its role in these countries. It is precisely in these countries that the traces left by the Ottoman Empire continue to be present, albeit with fainter shades. However, the presence of Turkey in these lands, starting from a socio-cultural and geographical proximity, present the latter as a reliable ally also for some common values that they share. "Although Ottoman nostalgia is not what drives this policy, the goal is clearly pragmatic" (Bechev, 2011:175).

Turkey's factorization in the Balkans is a tool in the reconceptualization of its foreign policy. The continuous growth of its presence and influence in a region that is coveted by various international actors turns Turkey into a factor state and above all increases its opportunities to change the role it has in the international arena.

New Turkey under AKP leadership

The change brought by the end of the Cold War in the Republic of Turkey and the use of "active foreign policy" are reinforced and take the form of a genuine doctrine with the coming to power of the AKP, headed by Recep Tayyip Erdoğan.

The non-resolution of internal crises in Turkey, such as the Kurdish issue, by the Kemalists which were against giving concessions to them, created space in the political arena for new political movements that could guarantee a compromise. "At the same time, the iron-handed repression of religious practice was not appreciated by many Muslim Turks and this facilitated the rise to power of Islamic parties, then and now, which favored more freedom in religious expression" (Sambur, 2009: 120). It was precisely such movements that brought together a group of veterans from banned parties with an Islamic background, led by the former mayor of Istanbul Erdoğan, who was known for his tendency to use political Islam and for the charisma he evoked in the "discriminated" parts of society; from which the AKP[2] was created.

Although with a political-religious elite and with the tendency to use political Islam, "AKP does not call itself an Islamic party, but a democratic conservative party which supports traditional perspectives on social and moral issues" (Boland, 2004). However, the trend of using religion in Turkey's domestic politics is felt from the beginning when the AKP came to power. "Many criticisms of AKP argue that the party is Islamizing Turkey and trying to undo the Kemalist reforms" (Kumar, 2014: 210). Thus, (Islam) religion has a significant impact on Turkish politics under the leadership of the AKP. The same line was reflected in the Turkish foreign policy in the geostrategic re-interpretation of Turkey.

> "The architect of AKP's foreign policy, Ahmet Davutoğlu, although appointed as Minister of Foreign Affairs at the end of May 2009, has been the hidden architect of Turkish foreign policy since his appointment as the chief policy advisor of of Prime Minister Erdoğan in 2003" (Aras, 2009:127).

The main principles of Davutoğlu's doctrine were "strategic depth" and "zero problems with neighbors", which made possible the reconceptualization of Turkey's

[2] Party for Justice and Development

foreign policy under the leadership of the AKP. The essence of Davutoğlu's concepts was the use of "strategic depth" in what would enable Turkey to extend its influence in a region like the Middle East "using the soft power and historical legacy of the Ottoman Empire" (Meral & Paris, 2010 :80). Thus, the interaction of Turkey would be the same with the other two regions which it borders: that of the Balkans and the Caucasus. In this context, "strategic depth" went parallel to the concept of "zero problems with neighbors" as it offered "a vision minimizing problems with neighboring regions ... avoiding involvement in international confrontations" (Aras, 2009: 130). For Davutoğlu, Turkey has the possibility of using this line in its foreign policy, transforming it into the *geographical center* through three areas of geopolitical importance that can be used in the future to gradually open up in the international environment:

I. Near land basin: Balkans – Middle East – Caucasus
II. Near sea basin: Black Sea - Adriatic - Eastern Mediterranean - Red Sea - Caspian Sea
III. Near continental basin: Europe – North Africa – Southeast Asia – Central and East Asia (Davutoğlu, 2010: 155).

Through this, it is possible to see the line of interaction of Turkey in its foreign policy by exploiting its geographical and geopolitical importance. In addition to the geographical proximity, the way of increasing the presence of Turkey in the regions that surrounded it, or otherwise 'the nearby land basin'; it became even simpler thanks to the historical and cultural features that, through *strategic depth,* gave Turkey advantages in its area. In this way, the new initiatives that the Turkish state was undertaking are analyzed as a new vision of its foreign policy, would exceed the frameworks of "maintaining balances" and "status quo", which according to Davutoğlu had turned Turkey into a peripheral power, impossible to be a relevant factor in the international arena, in contrast to the historical power that the Ottoman state had before. So this vision was in the frame to re-extend Turkey in the sphere of its natural influence, from an unnatural process of previous dissociation.

With the Balkans, Turkey's new approach in the new millennium, under the leadership of Erdoğan, was among the continuation of Turkish foreign policy after the Cold War, the Davutoğlu's concepts of "strategic depth" and "zero problems with neighbors", up to the "harassment" of the historical identity of the Balkan peoples (mainly the part that belonged to the Islamic religion), to the use of neo-Ottomanism.

> "Turkey has been linked to the Balkans: in its security strategy and diplomacy, geography (the route to Western European markets), demography (thanks to the presence of large Turkish and Muslim communities with direct links to Turkey) and imaginary politics" (Bechev, 2012: 132).

Finding many connecting components in the Balkans, the re-inspired Turkey under the leadership of the AKP projected its new vision in the region with the two basic concepts of its foreign policy. First, by calming relations with Greece by using the thesis of zero problems with neighbors, and secondly through strategic depth, from where with the increase of its presence it would be able to turn into an influencing factor in the Balkans. According to Davutoğlu "the strategic depth of geocultural, geoeconomic and geopolitical aspects should be treated as a single unity and this will identify the characteristics necessary to influence strategic directions" (Davutoğlu, 2001: 21) .

As the Ottoman heritage continues to be present in many parts of the region, albeit with fainter shades, the new line of Turkish foreign policy under the leadership of Erdoğan, highlights the fact of the reawakening of these "values" in that, it will bring the use of Political Islam in Turkey's foreign policy under the leadership of the AKP, which will be labeled as neo-Ottomanism.

In this context, Turkey's interaction with the Balkan countries would go from 'active diplomacy' to the use of soft power, which would enable the extension of the use of cultural, economic, and good neighborly assets. Thus, extending the presence in countries with a Muslim population in the Balkans, such as Bosnia and Herzegovina, Kosovo, Macedonia, and Albania, would find new paths through the geocultural depth that would give Turkey an increased presence and a legitimizing role in social and institutional forms of these countries. The increase in investments and the use of the geo-economic depth would transform Turkey into an even closer ally with the Balkan countries where economic cooperation was extended; and in parallel Turkey would be offered more opportunities to act directly or indirectly with the countries of the region. The essence of Davutoğlu's positions, as argued in "Strategic Depth", is directly related to the aggressive economic role that Turkey should undertake in the Balkan region (Mitrovic, 2014: 30).

Thus, the parallel interaction of economic assets and soft power would enable a repositioning of Turkey in the geopolitics of the Balkans and create opportunities for its transformation into a hegemonic regional power. "While strategic depth is a geopolitical concept rooted in realism, hegemonic depth is a socio-political concept rooted in historical materialism" (Yalvaç, 2012: 171). Using history by materializing it became a vital process in the Turkish state's vision to dominate the Balkans. This is because the Balkans, in addition to Turkey's demand for economic expansion to turn into an economic superpower of the region, in the Erdoğanist mindset remained as a denied identity, from where the historical ties between Anatolia and "Rumelia" had to be recreated and that had to be dominated in the face of a "long-term global agenda with the aim of turning Turkey into a great power in 2023" (Murinson, 2012: 13).

The economic crisis that gripped Greece at the end of 2009 significantly increased Turkey's position in the region, which enabled the deepening of economic relations and the use of soft power even in countries with cultural/religious differences. However, even though Turkey's regional dominance in the Balkans was already existing, the increase of its presence and influence still made the Turkish agenda insufficient for becoming a hegemonic factor in the Balkans in the face of great powers. This is because even though Turkey's relationship with the EU had its ups and downs, Turkey remained in favor of its possible membership in the European Union. In this way, the interaction in the Balkans took place in the framework of a country aspirant for EU membership, where the aspirations of region's countries remained in the majority positioned pro-European.

> "The fact that Turkey's geographic position is one where the interests of several great powers intersect has also given its foreign policymakers a degree of flexibility not open to states likely to be dominated by a single great power... While this means that Turkey can extract a 'strategic rent' from a great power ally, it also means that it cannot usually opt out of great power conflicts, especially if they are centered on Southeast Europe or the Middle East" (Hale, 2000: 7).

In this context, Turkey is exercising a more active role in the Balkans and beyond, where between the confrontation with the European Union and the challenges for dominance in the region, through the application of multidimensional diplomacy, it witnesses progress in its agenda.

> "Turkey has the status of having multiple regional identities and thus has the capacity, as well as the responsibility, to pursue an integrated and multidimensional foreign policy. To actively contribute to conflict resolution and international peace and security in all these areas is a duty of Turkey to rise from the depths of its history" (Davutoğlu, 2010: 11).

In this way, the use of historical depth on the part of Turkey will create for it the conformity of interaction in a region ruled by it in the historical context, to bring it back in the form of an imaginary rule. Thus in a historical reshaping, the balances in the Balkans are displaced through a re-imagining of the artificial domination of Turkey, raised between the nostalgia of the Ottoman Empire and the closely related economic interests between it and the countries of the peninsula. The doctrine of neo-Ottomanism will serve as an opportunity to implement the new vision of Turkish foreign policy in the Balkans.

Neo-Ottomanism

The use of the term "neo-Ottomanism" has become inevitable for many international relations scholars who have written and studied Turkey's foreign policy. The formation and giving of a meaningful identity to this term, now turned into a doctrine, came with the seizure of power by the AKP, although its beginnings could be dated back to the end of the Cold War. "The end of the Cold War was a wake-up call for Turkey to revive its long-held dream of reimagining its neighbors' borders under the banner of neo-Ottomanism" (Moisi, 2013).

It was precisely former President Turgut Özal who, in the early 1990s initiated the idea that later took the name of neo-Ottomanism. Özal's concept was mainly in taking new initiatives in Turkish foreign policy, with the establishment of intensive relations with the Balkans and Middle East countries, as well as with the union of the Turkic countries (out of the former Soviet Union) with Turkey. The coming to power of the AKP and the agenda of using political Islam, was also reflected in foreign policy, given that the elite of this party had long-standing ties to political parties with an Islamic background in Turkey. The charm of the glorious historical past and Islamic religious interaction made the use of neo-Ottomanism by Erdoğan's Turkey preferable.

The discussion on the issue of neo-Ottomanism during the leadership of the AKP can be roughly divided into two. The first discussion stems from claims that neo-Ottomanism is a state identity versus social identity issue and thus emphasizes its internal roots. Adhering to these ideas, neo-Ottomanism is believed to have arisen as a response to the dysfunction of the Kemalist ideology and Turkish identity created by the founders of the Turkish Republic. Therefore, the idea of rediscovering Turkey's ties with the Ottoman past, even though these ties were never severed and similar policies existed long before the term, was embodied in the idea of neo-Ottomanism (Albayrak & Turan, 2016: 135).

The interaction of neo-Ottomanism in Turkish foreign policy turned into efforts to increase the presence and influence of Turkey in those countries where the Ottoman Empire had previously ruled. From this was implemented the use of a historical depth coupled with cultural lessons emanating from Turkey, mainly through the use of soft power. Neo-Ottomanism was conceived as an continuation and revival of Ottoman culture and traditions, where the territories of the empire were and where the Turkish minority is today. "Different versions of neo-Ottomanism, on the other hand, have not targeted the population of the Republic of Turkey, but countries that at one point were part of the Ottoman empire" (Albayrak & Turan, 2016: 141).

In Erdoğan's worldview, pursuing and implementing a foreign policy led by neo-Ottomanism would be the best way of schematizing the growth of Turkey's power to an important geopolitical country and a regional power in the new perspective to change the balance in the international arena. The advantage offered by the religious aspect greatly facilitated the way of interaction of Turkey in the Middle East; for Davutoğlu, the best element to break Russian and Slavic influence in the Balkans and the Caucasus is the power of counter-cultural resistance enabled by Islam (Davutoğlu, 2010).

The use of Islam as an empathic factor transformed its political use into a situation to emotionally influence different societies, and to change the perception of Turkey and those societies into a neo-Ottoman identity. The approach of this "new identity" originated from the government elite in Turkey. "Muslim intellectuals have suddenly turned into bureaucrats and everyone has started to worry about Turkey's regional leadership ... [They] lost their autonomy and civil character and turned into a figure of the Ottoman clergy" (Bulaç, 2010, p. 24, 450).

Thus, the identification of neo-Ottomanism with the historical and religious aspects has led to a partial separation of the Turkish foreign policy line, giving importance to new collaborations that originate from the religious context, especially in the re-awakened historical framework. However, neo-Ottomanism with Erdoğan as its leader, despite its illustrative form as a new conceptual form of foreign policy which will enable the interaction of countries that share the same socio-cultural views, remained primarily a tool in the pragmatic framework for renegotiating Turkey's role in the international arena.

The Geopolitical Implementation of the Doctrine of Neo-ottomanism and the Influence of Turkey in the Western Balkans

The Balkans remained one of the regions with the highest interest in the reconceptualization of Turkey's role in the international arena, from where the implementation of the doctrine of neo-Ottomanism assumed increased importance in achieving the objectives that Turkey aims through the policy of its external priority is the use of soft power in the region.

Thus the historical factor was superimposed on the way neo-Ottomanism would be conducted and conceived in the Balkans, as the policies emanating from Turkey would guide this process– alongside social operation on the peninsula. Davutoğlu himself, who was considered a neo-Ottoman, always referred to the Ottoman Empire in the reconceptualized role that Turkey should have in the Balkans and beyond. In a speech in Sarajevo, he stated that "the time had come to rediscover the true spirit of the Balkans" (Bechev, 2012: 138). As with the "true

spirit of the Balkans", he refers to a process of re-Balkanization of Turkey, where this time, unlike the Ottoman predecessors, the strategy followed will no longer be achieved between campaigns and battles but through a cultural lesson that would reawaken the "Ottoman identity" among the peoples of the Balkans.

The fact that the Balkans contained various ethnicities with different cultural/ religious affiliations would restore Erdoğan's reshaped Turkey to the model followed by the Ottoman Empire, from which its interaction in a ruling form in the region has served as a catalyst to avoid conflicts and where today it would be placed as a "balancing" and "stabilizing" country between the changes that characterize the countries of the region from each other, and at the same time highlighting the similarities between the peoples of the Balkans and Turkey.

The role of religion is attributed a lot of importance in the implementation of neo-Ottomanism in the region. Thus, in Muslim-majority countries such as Bosnia and Herzegovina, Kosovo, and Albania, the increased presence on the part of Turkey against the social sensitivity on the role of Islam and the close cooperation between the Diyanet[3] and the Muslim Communities, transformed it into a legitimate one, in the framework of the "divine" Turkish presence in these countries. On the other hand, in the countries where the Muslim communities were in the minority, the role of the Diyanet and Turkey assumed the symbolism of the protector of the Muslim community in the Balkans and, at the same time, as the former Prime Minister Tansu Çiller would say, in the role of a leader to the correct model of Islam - "in the Islamic world, we have a Turkish model and a radical Islamic model. The Islamic world and the Balkans must adopt the Turkish model" (Korkut, 2010:117).

The Diyanet was founded with the creation of the Republic, as an institution that would replace the Caliphate and keep under control the moderate Islam of a now secularist Republic. But with the coming to power of the AKP and the tendency to concentrate all power in the hands of its leader, the Diyanet changed its approach from an institution overseeing the state in religious matters and ensuring that religion did not challenge the "facade of secularist identity" of Turkey, to a promoter of Turkish Islam abroad and a conservative lifestyle at home (Lepeska, 2015).

If the region was under the rule of the Ottomans, they were the ones who brought Islam to these lands. The Ottomans did not remain in the Balkan countries, but Islam did. From this perspective, today's Turkey of Erdoğan, which has a new approach to the relationship with religion, tries to establish a operation path of Islam in the Balkans guided by itself. Although this attempt gives the impression of a "Caliphate with imaginary borders", this is the most pragmatic way followed to strengthen its positions, in a region remaining in identity transition. This approach

[3] Turkish Presidency for Religious Affairs

is strengthened even more when the Muslim communities do not simply welcome this role of Turkey in the religious guidance of their countries, but demand it even more, as confirmed by the mufti of Sanjak in a statement in 1996.

> "The Ottomans brought us Islam to the Balkans, but then the Muslims in Albania, Kosovo, Bosnia, Macedonia and Sanjak were left as orphans. Their mother left them alone. We are returning to Turkey, not only in emotional prayer, but with the rights of the child for its mother. We want to express that the time has come for Turkey to take care of its children" (Korkut, 2010: 117).

The recognized religious policies, despite the changes in tradition, are a sign of how Turkey and the Diyanet manage to influence the society of these countries. At the same time, in an agreement between the Muslim Community of Albania and the Diyanet, the construction of the "Prayer Mosque" was completed. This will be the largest mosque in the Balkans, the construction of which was financed entirely by the Diyanet and whose value reaches over 30 million dollars.

Parallel to the bureaucratic political leadership, another way of implementing neo-Ottomanism in the Balkans came in also the social framework. The Gülen movement[4] has been the most active and efficient in the Balkans in successfully spreading the new spirit of Turkish Islam that it represents, in the framework of an intercultural interaction. Considered a cult, this movement has invested and operates in the Balkan countries through a good network of education, media, clinics and the financial marke, where it has succeeded to have followers and attract people to its cause. What the movement teaches most, however, is the role of religion and the promotion of interfaith dialogue. "Interreligious dialogue today is a necessity and the first step in its institutionalization is to forget about it the past, ignoring controversial elements and prioritizing common points, which will throw away countless controversies" (Gülen, 2007: 17).

The Gülen movement has been one of the biggest supporters of the coming to power of the AKP, as through its well-organized network in Turkey it has served in the seizure of power by Erdoğan. Despite the angry rhetoric used these days by Erdoğan on Gülen, accusing him of the failed coup of July 2016 and the counter-responses of the controversial cleric, it is hard to deny the impact of this movement on the leadership of Turkey by the AKP. Both sides were guided by the same concept on the Turkish foreign policy agenda in the Balkans: influence through the religious role.

The sector where the Gülen Movement operates better in the region, as well as in other countries around the world, is education. The opening of Turkish

[4] The Gülen movement is an Islamic brotherhood movement led by cleric Fetullah Gülen. This movement has its beginnings since the early 70s in Turkey. The movement is also known as Hizmet or FETÖ

Colleges in the Balkan countries, attached to the direction of Madrasahs and to the opening of universities, transformed the Gülen Movement into an academy where the younger generations would receive a way of thinking, indoctrinated by this movement. The formation of new generations from an early age and until the end of academic studies, would transform them into a contingent indoctrinated by Gülenist and neo-Ottoman concepts and at the same time potential indoctrinators in the societies of the countries of the region. "This policy seeks and succeeds in seducing the majority of people by making this space more and more dependent on Turkey" (Lika, 2015: 65). After the breakdown of Gülen's relations with Erdoğan, the Turkish government has exerted pressure to close these schools, calling them "terrorist", but in the inability to achieve concrete results, Turkey through the "Maarif" foundation has opened parallel schools, where the focus in the Balkan countries one of the most important.

One of the main points, which has increased Turkey's popularity and its influence, are theTurkish soap operas. Despite the fact that today's Turkish soap operas are appreciated and displayed (almost) in all countries of the world, their impact in the Balkans varies. This is because the historical past of the Balkans with the Ottoman Empire is portrayed today in a cinematic form guided by a propaganda method. The fact that Erdoğanist Turkey is conceptually closer to the Ottoman Empire than to the Republic of Turkey itself naturally brings skepticism and a sense of "dangerousness". In the Balkan countries, the entire media market is occupied by Turkish productions. The fact that these countries have welcomed these products means that the Balkan societies, without any exception, are closer to the culture that is exported from Turkey.

The economic aspect also remains important in the implementation of neo-Ottomanism and influence in the Balkan lands. Davutoğlu states in the "Strategic Depth" that economic, cultural, and political issues must operate and function as a single body, in the framework of maximizing the influential result of Turkey. This body in the Turkish agenda for influence in the region through soft power is called TIKA[5]. In the Balkans, especially after the coming to power of the AKP, the interaction of TIKA was in increasing the realization of projects for development with a socio-economic character and an advertisement of Turkish culture. "According to experts, Turkey's presence in each country of the Balkans, as it has restored historical monuments and other objects, shows once again the deep-rooted ties of Turkey and the Balkan geography, as well as a common historical revival (Schwartz, 2010). Thus TIKA's approach to cultural diplomacy was comprehensive and could be conducted not only by the Turkish minorities in the Balkan countries. "Turkish ethnic minorities have long been exposed to their popular culture, but now even the majority follows in their footsteps" (Bechev, 2012: 144).

[5] Turkish Agency for Cooperation and Development

On the other hand, the continuous economic growth of Turkey and its transformation into a more than regional economic power, created enough facilities to increase its presence and create stronger ties with the Balkan countries. The increase of Turkish investments affects every sector in the countries of the region, creating a closer connection, which was not only limited to the cultural context, but also to the economic one. This economic empowerment was also reflected in the growth of large Turkish businesses, which had an extension of their capital in the Balkan countries. In this way, the expansion of Turkish businesses is perceptible as a presence, which turns into an acceptance not only institutional but primarily social, creating the conditions of direct contact with the societies of Balkan countries and conveying and pointing out the characteristic features that relate the form of doing business with the political agenda.

"According to the Ministry of Economy of the Republic of Turkey, the cumulative amount of Turkey's direct investments in the Balkan countries in 2007 was 3.5 billion dollars. Whereas by the end of 2016, the cumulative value of Turkey's foreign direct investments in the countries of the Western Balkans reached 10 billion dollars" (Türbedar, 2017).

In the process of economic recovery of the Balkan countries, Turkey emerges as a supporter of this process by assisting in the further development of them. At the same time, the growth of Turkish businesses and the expansion of their capital in the Balkans has been and remains one of the forms of inclusiveness of Turkey's economic importance in the region. This strategy mostly came from the reconceptualization and cooperation of Turkish state policies with important Turkish firms.

Turkey has signed free trade agreements with all the countries of the Western Balkans and since the first years in power of the AKP has been very aggressive not only in increasing its economic presence in the Balkan countries, but above all by investing in the strategic sectors of every state in the region, from banks, to telecommunications, infrastructure, etc.

All these investments of Turkey in the countries of the region, show the clear ambition of the project of President Erdoğa to have a new approach to the countries of the region and creating a relationship of economic dependence to factor its influence in the region, even in the face of other powers that operate in the Balkans and whose foundations are (still) very strong.

Turkey as an alternative to the EU

Turkey is a country that has opened membership negotiations with the European Union for more than a decade. As such, its interaction in the Balkans has also begun. The fact that Turkey stood as a state with concrete aspirations on the path

to membership in European institutions, created enough ease for its operation and extension in the region, whose countries are (almost) all oriented in this direction.

However, after the coming to power of the AKP, Turkey's distance from the EU has progressively increased. This is due to the centralization of power in Erdoğan's hands, distrust of law-enforcement institutions, the fading of democratic values and human rights issues associated with the Kurdish issue. However, many analysts argue this as a cause-and-effect effect. The prolonged non-acceptance of Turkey by the European institutions was the cause of the "Turkish revolt" in the overlap of new policy-making approaches, which led to the formation of an authoritarian leadership.

> "This form of relations, which follows an ups and downs process between this historical-psychological background, the current geography and the contradictions of the diplomatic position, contains risks as far as Turkey is concerned in the framework of the EU's expansion plans. ... The EU, with an extremely cold-blooded preference since Turkey's request for membership until today, has continued its position to keep Turkey in the waiting process without taking Turkey into its composition, but without completely rejecting it. The EU, extending this process of waiting for the longest time, is oriented towards the formulation of a specific status that keeps relations dependent, as an actor of rational diplomacy, without taking on the risks that will follow full membership. of Turkey, tries to eliminate the dangers that will follow its exclusion" (Davutoğlu, 2010: 646).

On the other hand, after the end of the Cold War, in the new conjuncture of the international system, the Balkan countries were oriented towards the west and the process of Europeanization. This process would eventually end with the integration of these countries into the EU. However, the conflicts of countries with each other, the slow pace of theeir democratization, and delays in the implemantationof the rule of law have served to prolong this progress and to increase skepticism from the EU institutions.

This reluctance from the EU has enabled the advancement of the interaction of other actors in the region, offering concrete parallel opportunities. The growth of Turkey's power in the international arena and the strengthening of its positions in the Balkans has turned Turkey into an overlapping regional actor. The increase of Turkish investments in the region is the projection of how Turkey, together with other actors of the international arena, is managing to operate in the Balkans as a parallel option to the EU. Simultaneously with the economic factor, the "cultural similarity" between the countries of the region and the Turkish state, is valid in the reinforcement of this thesis. In addition to its economic importance, the EU is important above all as a unification of the common identity that European

countries share with each other. Turkey in the Balkans is trying to do the same. Showing that the EU's reluctance to join shows how it itself, but also a part of the Balkan countries, do not belong to that identity.

> "The intensity of Turkish actors' influence, however, has been mediated by the political, legal and social structures of the countries in which they operate: the Western Balkans, with its relatively weak states and large Muslim populations, has become a center for the new politics of engagement of Turkey" (Öktem, 2010: 43).

Despite the fact that for countries in the region, EU membership remains their primary option, the completion of geo-economic and geo-cultural aspects by Turkey and not only, has led to the identification of parallel alternatives possessed by the non-member countries of the region, from the long wait to be integrated in EU. The longer the process of joining the European Union lasts, the greater will be the power of authoritarian leaders while public opinion will turn in other directions - towards Russia, Turkey and the USA, which are the alternatives to the EU (Jovic, 2018). Such leaders, who are easy to find in the Balkans, are likely to be influenced by Erdoğan's autocratic charm and see him as a model for their own country's line of government, further cementing relations with Turkey.

The EU's further reluctance to accept the integration of the Balkan countries in it, could cost it a loss in front of other actors. Just as Prime Minister Rama said in an interview in "France 24" that "if the EU leaves, we will look at other alternatives", they are a clear sign of how the Balkan countries are feeling the fatigue of this stalemate in the membership process and where today, in addition to the Russian alternative, in the Balkans a Turkey ready to benefit and offer itself is seen as a better alternative.

Conclusions

Turkey is in the process of its re-identification. The end of the Cold War brought the end of its balancing role and threw the first concepts of new initiatives in its foreign policy. A combination between "pan-Turkism" and neo-Ottomanism, also drawn up in the government program during the Turgut Özal period, under the name of "active foreign policy". In this way, Turkey's first contact with the Balkan countries began, starting a process of its re-Balkanization. The Balkans, apart from being a region of high strategic importance, remained extremely important for Turkey because of the common historical past, portrayed even today through cultural features, and on the other hand, it provokes the forgotten identity of Turkey in the face of the glorious historical past.

This form of interaction that confronts modern Turkey with the past of the Ottoman Empire, takes a concrete form after the coming to power of the AKP, bringing with it the reconceptualization of Turkey's role in the international arena and the way of its interaction in the Balkans through a neo-Ottomanism based mainly on Davutoğlu's doctrine: the "Strategic Depth". What Davutoğlu offers, to increase Turkey's importance and influence in the Balkans and beyond, is the use of a historical depth in a geopolitical, geoeconomic and geocultural interaction, which, when put into action, offer Turkey concrete opportunities to influence certain policies of countries in the region.

Today, in the 21st century, two main elements enable to influence different countries: the economic factor, which Turkey, through its empowerment, is making the best use of through an application as efficient as possible in the region, by creating a relationship of dependence between it and the Balkan states; and the cultural factor which is directly related to the identity of these countries. Although Turkey is also experiencing a metamorphosis of its identity, the end of this re-identification process will bring something not unknown to itself; the one raised based on a religious affiliation realized the similarity that post-2002 Turkey will attribute to itself with the importance of the Ottoman empire. In the same form, it seeks to convey this identity to the Balkans, whose countries have experienced it for almost 500 years of Ottoman rule, and where also nowadays, traces of that Ottoman rule are still found. This is the way how Turkey "plays" the implementation of neo-Ottomanism, to reawaken from the lethargic sleep of more than a century, those "values" that the Ottomans forgot in the Balkans when they left. One of the main features of this line is the instrumentalization in the use of political Islam. However, the means and the end often do not correspond to each other. This is the most pragmatic way for Turkey's interaction in the region to increase its position not only in the Balkans but also in the international arena.

Such an agenda is what has been often proclaimed by Erdoğan, about turning Turkey into a great power in 2023. Erdoğan's twenty years as leader of the country have greatly influenced what Turkey looks like today and hypothetically could be tomorrow. The distancing from Kemalist politics, often attacking the secularist identity of Turkey, is also reflected in the line of its foreign policy. Erdoğan's increasingly autocratic form of government is becoming an increasingly widespread pattern among the leaders of the Western Balkan countries, thus creating a closeness of the identifying traits of leadership. This whole process, as even though the region is oriented towards a request for membership in the European Union, the prolongation of this process has created concrete opportunities for Turkey to operate as an alternative and increase the degree of its influence widely in the region.

Through its geo-cultural and geo-economic features, Turkey has managed to create a wide presence both on a social scale and in interstate relations. From this cultural teaching and financial support, it is positioned as an actor with a high degree of influence, where the interaction comes differently from other powers that are capable of influencing; and if the status quo will remain the same in the region, then the Turkish influence in the countries of the Western Balkans will be a fact, and Turkey through the Balkans will be closer and closer to the objectives set since 2002 and vitalized by Erdoğan.

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National interests and identity in the face of the challenges of european integration

Alba ÇERMA[1]

Abstract

National identity and values have been one of the most often studied topics among researchers in international relations throughout the years, from a variety of angles, especially in relation to European democratic ideals. The ideals at the heart of European Integration have been hotly debated in recent years as a result of some significant changes in EU governance. It is well known that European Integration is seen in a wide range of elements. In the first decade of the twenty-first century, the best approach to build shared values as a chance to hold European nations and citizens together and to support European public policy was through the expansion of the EU and the established constitution.

The process of Albania's European integration is a significant and ongoing component of the topic of European integration. Since June 1991, Albania has had a relationship with the European Union. In this topic, I've discussed the advancement Albania has made thus far in relation to the requirements it still needs to meet, the Balkan nations that want to join the EU, and Albania's current status aspirations. Considering a country's sovereignty, where sovereignty currently stands in relation to the European Union and its integration, and the relationship between European and National identity, the study of this topic modestly brings the interaction between national identity and values with European identity and European standards.

[1] Alba Çerma is graduated in 2021 in MSc.International Relations at the European University of Tirana. Her thesis is supervised by Prof. Dr. Kristaq Xharo, Lecturer at the Applied Social Sciences Department, Faculty of Law, Political Sciences and International Relations, European University of Tirana.

Key words: *national identity, national interests, sovereignty, Western Balkans, European integration.*

Introduction

When it comes to the Western Balkans, it only takes a brief look at current events to realize that every state in the region has shared and still shares the same outlook on the future: participation in the European Union. Since the European Union first began expanding into Central and Eastern Europe, having good ties with neighbors has been one of its requirements. However, in recent years, the settlement of conflicts in the Western Balkans has emerged as a crucial and heavily stressed prerequisite for the European Union's further growth.

The Western Balkans can be divided into groups based on how much the EU affects how they handle unsolved conflicts with their neighbors. The current national interest has a new hue and perspective now that EU membership appears to be moving away from the stage of a romantic fantasy and toward a livable reality. The nature of the interaction between national and European identities is significantly influenced by culture. The intention is not for national identity to stand in the way of the formation of a European identity. A brief study on this subject connects the key concepts discussed above with the European Union and its function. The case study application indicates a qualitative approach, which is investigated in the gathering of various data. For this study, facts and information are gathered from a variety of documents, publications, and books. The primary data pertinent to the subject of this research were extracted after the finding materials had been processed.

This paper aims to analyze key elements such as national identity, national interests, sovereignty and European integration, interweaving them with European identity and European standards, to highlight where they can stand together and where European identity aims to have dominance. The research question: "Are national interests and identity, and essentially the sovereignty of a country, affected by integration into the European Union?" Research hypothesis: National identity and national interests lie at the core of a sovereign state, but the integration into the European Union and the growing power of the EU raises many questions whether the European identity will replace or dominate the national one.

National Identity

A nation's perception of itself as a coherent whole, characterized by its customs, cultures, and languages, is referred to as its national identity. (2021; Oxford

Languages) Constructivism has largely become a rationalist component of international relations theory, particularly the way it approaches a state's identity. Constructivist thinking holds that while state identities are dynamic during interaction, state interests are determined by those identities. As malleable as the culture that defines it, national identity is. Researchers concur that it is challenging to examine and provide clear definitions for terms like "nation," "nationality," and "nationalism." Although a "scientific definition" of the nation cannot be developed, the phenomena has occurred and continues to exist (Watson, 1977, p. 5).

Nationalism must be emphasized when considering national identity. We can name some theorists who have contributed to the nationalist discussion. According to Hobsbawm (1990), nationalism is the achievement of political rights by the general populace inside a sovereign state and ff nationalism were a modern invention, so would nations: the nation-state was the result, not the origin, of a nationalist discourse". Further, Anderson (1983), presented nationalism as a process of "imagined communities". In his book "Imagined Communities", he asserts that a nation is essentially always an imagined community that gives its citizens a sense of identity. and belonging. Anderson defines the nation as an imagined community since "members of a nation, however small, will never know, meet, or even hear of most of their fellow members never for them, yet in the minds of each lives the image of the common community. National identities are created and form imaginary communities" (p.15)

Language is an essential element of the nation, because it is precisely what makes the difference in relation to other communities. Meanwhile, Hobsbawm (1990) has written that he was quite skeptical about the close interaction that exists between language and nations, and claims that it is no more than a generalization to say that individuals who speak the same language are somehow friends, while those who speak in foreign languages would be hostile.

Smith (1992) argues that identity operates on two levels, individual and collective, which are often confused in discussions of ethnic and national identity. Connor (1993) asserts that "If we look at countries today, many of them seem to build their perceived internal similarity on a premise of common ethnicity. A belief in the unique origin and evolution of the group is an important component of national psychology. This belief in the origin and evolution of the group is the basis of ethnic identity, and ethnic identity seems to constitute the essence of nations" (p.377). Further, Smith (1992) makes the connection of the origins of modern nations and underlines that nations emerge from existing ethnic groups. He proposed that every ethnic group should have, at least, a myth that identifies it with common ancestry, with common historical memories, a collective name and a society with a certain territory. Smith paid attention to symbols, which according to him play a special importance in determining identity. According to

him, national identity is built through specific social dramas and events in which the meaning of the nation is contested but above all potentially transformed.

European Union and European Integration

The European Union is an integration of European states that includes different histories, institutions, political systems and economies. The EU currently consists of 27 member states. Published on the EU website, the objectives of the European Union are to establish European citizenship, ensure freedom, justice and security, promote economic and social progress and affirm Europe's role in the world.

The EU remains focused on making its governing institutions more transparent and democratic. More powers have been given to the directly elected European Parliament, while national parliaments play a greater role, working together with European institutions. The EU is governed by the principle of representative democracy, with citizens directly represented at the EU level in the European Parliament and Member States represented in the European Council and the Council of the EU.

While the above description for the EU comes from the publications of the European Commission, researchers in the field share different opinions about this. Leonard (2005) has argued that the EU has been in a state of crisis since the beginning. One of the main problems facing the EU in the 21st century is the ever-increasing level of unemployment affecting most member states. Barroso (2007) stated that nearly 20 million EU citizens were classified as unemployed. Another important issue facing the European Union is security. Wallstrom (2007) argues that although Europe's passport-free travel policy is beneficial for business and tourism, it allows cross-border terrorists and criminals freedom of access within member states. Terrorism is a major issue because the lives of innocent people are at risk. Schilder & Hauschild (2004) note that EU states are also used as a base to plan and design terrorist attacks.

Another security concern for the EU is technological advances in modern weapons. This calls into question the current EU security measures. The flow of trade and investment within European countries has caused the prosperity of EU residents. However, despite the advantages that free trade has brought, it has also increased the threat of domestic terrorism. Europe is now a playground for organized crime and is rife with drug trafficking, illegal immigrants, and prostitution (Schilder & Hauschild, 2004). Cross-border and neighboring threats also add to the European Union's security concerns. The disputes in Kashmir and the Korean Peninsula as detailed by Schilder & Hauschild (2004) affected EU member states directly and indirectly. European integration is the product of the selective pooling

of national sovereignty, or ultimate jurisdiction over a body politic, by post-war European nation-states. It has given rise to the European Union (EU), the most successful experiment in international cooperation in modern history. European integration poses formidable challenges for political science as a discipline.

Any nation with a democratic government and good economic principles is eligible to join the European Union. Of course, the Western Balkan nations continue to be the main emphasis. offered that the Western Balkan nations were offered the chance to join at the Thessaloniki summit in 2001, the EU has clearly been a driving force in the resolution of ethnic disputes and bilateral difficulties in the region. The nations of the Western Balkans can be categorized based on how much the EU influences how they handle unsolved conflicts with their neighbors. Bosnia and Kosovo are still a long way from membership even if they are not even EU candidates. North Macedonia and Albania are EU applicants who are not yet engaged in membership negotiations. The start of negotiations appeared to be approved in March, but as was indicated earlier when discussing Albania's membership in the EU, the bilateral disagreement with Bulgaria is still proving to be a barrier because of North Macedonia.

Albania and other countries of the Western Balkans on the way to the EU

When it comes to the Western Balkans, a simple observation of current events is enough to understand that all the states of the region have shared and continue to share a common perspective for the future: that of membership in the European Union. The member states of the European Union, the President of the European Commission, and government representatives of Albania, Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia (FYROM), Montenegro and Serbia, in 2003, gathered in Thessaloniki for a Summit of the joint Balkans-EU, as an opportunity and effort to implement the goal of including the Western Balkans in the European Union. (EU Commission, 2003). The EU took many actions to involve itself more in the Western Balkans in the years that followed. It is important to note the Stabilization and Association Process in this context, as well as the Stabilization and Association Agreements that have been struck with several Western Balkan nations. However, just one nation has so far joined the EU, notably Croatia in 2013. Four countries from the Western Balkans now hold the status of candidate countries for the European Union and are engaged in active discussions as they continue their journey to meet the Copenhagen Criteria.

First, the conflict between Serbia and Kosovo continues to be the most difficult to resolve of all the interactions in the Balkans. The answer to these ostensibly

practical concerns depends on the parties' ability to agree on government policies, even though there are many technical issues that both sides must address. On the other hand, as a conflict that has been resolved, we can point to the Prespa Agreement between North Macedonia and Greece, which was signed in June 2018. This agreement is already complete, but it has open discussion points about how to continue to work productively because it became tense again after France blocked the start of membership negotiations with North Macedonia (Huzkza, 2020). But given that Bulgaria's VETO was a significant factor in the commencement of negotiations being delayed, North Macedonia's relations with Bulgaria continue to be the key topic of discussion in recent negotiations. Threats to North Macedonia's EU integration process therefore exist in its relations with Bulgaria, just as they did with Greece. Like the Greeks, the government of Bulgaria and others have questioned the identity of the Macedonians, particularly the existence of a distinct nationality and language.

Albania's current situation towards EU Integration. Conditions that must be met to join the EU

The decision to open negotiations on March 25, 2020, as we mentioned above, marked a key and historic moment for our country, since the current strategic goal of Albania and the Albanian Government is EU membership. But the euphoria lasted a little because, something that was somewhat expected), at the General Affairs Council of the European Union, gathered in Luxembourg on June 22, 2021, it was decided to postpone the first international conference on Albania and North Macedonia, leaving the opening of negotiations is still pending and unclear even for Albania. While all 27 EU ministers in the case of Albania, and 26 in the case of North Macedonia, agreed that both countries have met the criteria for starting talks, the Bulgarian veto blocked this time the progress of both countries on the road to the EU -'s. Since Albania and North Macedonia are together in the European Union accession procedures, Albania is currently blocked due to disputes between North Macedonia and Bulgaria, and why, as mentioned in this meeting, Albania has fulfilled the conditions for the opening of negotiations. (European Council, 2021)

The main bases of these criteria remain three:

- Political Criterion - To provide institutions to guarantee democracy, rule of law, human rights and respect and protection of minorities.
- Economic Criterion - To ensure a functional market economy capable of facing competition in the EU market.

- Legislative Criterion - To have administrative and institutional capacities capable of implementing EU legislation (acquis) and to be able to assume the obligations arising from membership. (Ministry for Europe and Foreign Affairs, 2019

So, based on the Copenhagen Criteria, the candidate country must have:

- stable institutions that guarantee democracy, the rule of law, human rights, respect and protection of minorities.
- a functioning market economy, as well as the ability to withstand the pressure of competition and market forces operating within the European Union.
- the ability to undertake the obligations of membership, the political, economic and monetary union objectives. (EMA, 2021)

Albania must meet 12 conditions to join the EU, which are:

- Initiation of investigations into corrupt judges and prosecutors fired by the vetting process.
- Tangible results for the fight against corruption and organized crime at all levels, including the initiation of investigations and the completion of the first investigations into senior officials and politicians.
- Tangible progress in public administration reform, the implementation of electoral reform and a final decision on the legality of the June 30 elections.
- The fight against illegal asylum seekers and their repatriation.
- Amending the media law according to the recommendations of the Venice Commission. The Commission will report on these two issues, including the progress made during the presentation of the legal framework of the talks."
- Approval of the electoral reform in accordance with the requirements of the OSCE-ODIHR, such as transparency in the financing of parties and the election campaign, the continuation of the implementation of the reform in justice.
- The progress of the justice reform, especially the vetting process and the normal functioning of SPAK.
- The establishment of the Constitutional Court, the Supreme Court, considering the opinion of the Venice Commission, and the establishment of specialized structures for the fight against corruption and organized crime.
- Strengthening the fight against corruption and organized crime with concrete results, implementing the plan drawn up by the Financial Task Force of the EU

- Adoption of the law on the general census of the population in accordance with the recommendations of the Council of Europe and continue with the registration of properties.
- The implementation of the electoral reform as well as the establishment of the Constitutional and Supreme Courts, according to the opinion of the Venice Commission on the Constitutional Court, was postponed until June.
- Implementation of the law on the general census of the population and the law on the rights of minorities under the pressure of member countries such as Greece and Bulgaria.

But, as mentioned by many researchers in the field, Albania is far from fulfilling many of these conditions. It should be underlined that the 2019 earthquake, which was followed by the Covid 19 pandemic, had a powerful shock on many aspects for Albania. Furthermore, in the Progress Report on Albania by the European Commission for 2020, the challenges of Albania to overcome the difficult situation with the earthquake and the pandemic are clearly mentioned, specifically saying that "Despite the challenge of dealing with the emergency situation, the Albanian authorities have maintained a commitment continuous and strong public towards the country's strategic goal of European integration. In general, Albania has increased its efforts and has provided other tangible and sustainable results in the main areas identified in the EC Conclusions of June 2018". (EU Commission Draft for Albania, 2020)

The relationship of the concepts in the binomium between National and European identity

Sovereignty and theoretical debates on it.

For years and even decades, sovereignty as a concept has become the subject of great discussion within the field of international relations. The debate among contemporary scholars has focused on new meanings of sovereignty in different political and historical contexts. Sovereignty refers to "the power of a country to control and direct its own government" (Cambridge Press, 2021). So, it is about the quality of having independent authority in a certain geographical territory. Former European Court of Justice's judge Schiemann simply suggests that "asking questions about the sovereignty of States produces as reasonable instinctive reactions as asking questions about a man's manhood" and he elaborates on that and says that "a challenge to a man's masculinity can result in a bloody nose. A challenge to a country's sovereignty can result in a war with millions of dead" (2008). Therefore,

one of the great defenders of sovereignty, Thomas Hobbes, mentioned at Zagorin (2009) argues that the unconditional or "unlimited" power of the State and the sovereignty of the State are a necessity for reliable politics and for human security. Along the same lines, an analogy has been made between the relations of individuals at the national level, the so-called democracy, and the relations between states at the global level. He emphasized that, "the duty of every Constitution is to see the degree of deprivation of individual liberty which is necessary to secure a broad measure of liberty to each. The same fundamental problem confronts the States in their relations with each other".

The origin of sovereignty takes us back in time to the Peace of Westphalia in 1648. There is a strong argument that the "Westphalian" world surrendered to supranational organizations in favor of the "regime of international rights". Change is inevitable. In this post-Westphalian world, states no longer require absolute decision-making ability when providing for the basic needs of their people. Bartelson (2006) describes this phase as "death from the Westphalian world" and he adds briefly that "we live in a world in which territorial differentiation into separate nation-states is being challenged by a functional differentiation in particular issue areas, but we also live in a world in which the sovereign equality of states no longer forms the basis for further stratification according to wealth and relative power". According to the European Union, "the governance process is no longer carried out exclusively by the state", but by a variety of supranational, state and non-state actors in a "polycentric and non-hierarchical" system of governance (Jachtenfuchs 1995, p. 115).

From this perspective, "political supremacy seems to lie neither in the member states nor in the supra-state bodies of the EU, but between them all in different ways and combinations by policy area" (Bellamy 2003, 187). Who decides and how is not always clear in a policy that brings together 27 member states, a wide range of institutions, bodies, expert committees, national agencies and national institutions in constant interaction with their counterparts at the domestic and international levels. As a relation of authority, sovereignty possesses domestic and foreign purposes. Internal sovereignty, as Krasner (1999) explained, defines the ultimate or highest authority within a state to whom all compliance rests. In this regard, sovereignty implies a hierarchical relationship between the sovereign and the subordinates (Lake, 2003). Internal sovereignty requires effective control over the territory claimed by the sovereign (Lake, 2003). In the absence of such control, there can be no ultimate authority and, thus, no sovereign. External sovereignty means a government which exercises de facto administrative control over a country and is not subject to any other government in that country or a foreign sovereign state.

National interests and identity in relation to European identity and democratic standards

A nation's national interests and identity are of utmost significance since they set one country apart from another. The question of whether the process of forging a European identity necessarily necessitates the 'dilution' of national identity to the point where European identity would supersede it is at the center of the current discussion about identity in the European Union. It is relevant to discuss the idea of European identity since I discussed national identity and interests in the previous chapter. Patterns in the construction of European identity are strikingly comparable to those in the construction of national identities. Naturally, certain components are more developed than others because this process is still in its early stages. However, what we can observe in the European Union is that there are sets of collective legal rights and obligations that take the form of institutionalized structures, as well as from a subjective perspective, the development of political community loyalty using the same elements for symbolic selection, myths, pertinent symbols, etc. Like national initiatives, the driving forces behind the European Union are factors that develop gradually but have a significant impact on the character of the participating states (Risse, 2005).

The types of relationships that exist between various identities depend on the categories to which those identities belong. There is a difference between contrastive and non-contrastive identities; the former allows for identification with groups falling under the same category, whereas the latter relates to groups falling under other categories (Sen, 2006). Such a reevaluation of identities may be caused by elements like migration, economic collapse, and other factors. According to Smith (1992), such circumstances are crucial and national identities cannot be sacrificed in the pursuit of European identity.

Conclusions

There will always be discussions regarding national identity and national interests, particularly considering the expansion and strengthening of the European Union. The EU is described as a distinctive political and economic cooperation between 27 democratic states in Europe with the goal of promoting peace, prosperity, and freedom for their populations in a more secure and just global environment. Terms like national identity and national interest assume a unique significance as our nation moves closer to entering the European Union. European identity is based on "constitutional patriotism" and individual freedoms, as opposed to national

identity, which depends on shared culture to unite people. This paper's study demonstrates that national interests and national identity will always be significant and critical factors in discussions on the European Union and its impact on a state's sovereignty. There will still be discussions about how the conventional idea of sovereignty has changed as a result of the influence of the European Union. However, just because the European Union and its impact on world affairs are expanding does not indicate that a country's national identity would gradually disappear and be replaced by the European one. It also requires a shared "culture" to bring people together on an emotional level because European identity is largely built on the concepts of popular sovereignty and citizens' rights.

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The Albanian Administrative Court System and its importance in resolving administrative disputes

Dritan NAUMI[1]

Abstract

The purpose of this paper is to analyze importance of the Albanian Law 49/2012 on the Administrative Court System, increasing the efficiency of resolving disputes of an administrative nature. The activity carried out by the Administrative Courts constitutes an extremely valuable activity in the judicial system by providing justice in various administrative disputes that require a quick and efficient solution. The methodology that will mainly be used in this paper is the qualitative one, bringing to attention some court decisions and theorical debates on the innovation of the Administrative Court System in Albania. The hypothesis and research question will show us the novelties brought about by the creation of this Courts as well as the actuality of its activity nowadays.

The paper will also focus on the obstacles, difficulties, shortcomings as well as criticism during the beginnings of the activity of the Administrative Courts, by taking into consideration their performance ,efficiency ,pros and cons since its creation.

Key words: *Administrative Courts (AC), Administrative Court of Appeal (AAC), Albanian Law nr. 49/2012, administrative law, administrative procedure code, administrative disputes.*

[1] Dritan Naumi is graduated in 2020 in MSc. in Public and International Law Faculty of Law, at the European University of Tirana. His thesis is supervised by Prof. Dr. Xhezair Zagnanjori, Lecturer at the Law Department, Faculty of Law, Political Sciences and International Relations, European University of Tirana.

Introduction

The Albanian Administrative Court System constitutes a complete innovation and reconfiguration of the traditional Judiciary system. For today's generation in the Republic of Albania, the Administrative Courts were a new concept and perhaps for many people its established would not be a surprise or it would seem excessive or even unnecessary, but the importance that these Courts hold in relation to gives special attention to the handling of disputes of an administrative nature. Nowadays the interaction between public and private actors is very great because of the free market and private initiatives. All this initiative of the individual who creates or opens a private profit-making company, for every day and for all the time is in constant and uninterrupted interaction with the State administration.

The creation and operation of the Administrative Court System in itself would bring an innovation. It would create opportunities for cases to be judged more quickly in time, as well as the judiciary itself would be professionalized over time by developing professional judicial investigations, as well as creating consolidated practices. A more efficient and fast justice would be developed, without hindering the progress of the state's activity but on the contrary by correcting it and giving the most fair and fast solutions.

The purpose of the study is to highlight the concrete innovations brought about by the creation of the Administrative Courts, their importance, their determining role, the administration of justice with a high efficiency, the protection that they carry out for the actors that face the administration, as well as some of the main difficulties that the Administrative Court System faces.

Historical evolution of the Administrative Court System in Albania

The administration constitutes the exercise of the executive power of the government. Administrative law was recognized early in Albania during the government of the national hero Gjergj Kastriot Skënderbeu, where they created administrative structures that performed functions of administrative regulation, then we also see in the time after the declaration of independence, where there was a development in the political direction, economic, educational, the government led by Ismail Qemali in 1913, established the "Appropriate Canon of the Civil Administration of Albania", even at the time of Fan Noli. From the point of view of the protection and respect of administrative law, a special Commission was created to monitor the state administration in 1924 Ministry of Internal Affairs (Çani, E. 2012).

On time Albania was rule by Ahmet Zog, there was a legislative development. In the years 1925-1928, the contemporary model of the division of powers into three was established for the first time: the Legislative Power, the Executive Power and the Judicial Power. In 1928, the law "On Civil Administration" was adopted. In 1929 was the first year when the law related to administrative law regarding the "Organization of Justice" was approved (i*bidem*)".

Administrative law during the communist regime

The period of 1944 - 1990 remains a dark period because basic human rights and freedoms were violated and a dictatorial state was installed. The Republic of Albania apparently had a legal framework that apparently stated that the Courts were independent in the exercise of their functions. In the Constitutional Assembly[2] it is stated that citizens have the right to complain, but another conclusion is drawn by the Constitutional Court decision (04/1994)[3]. During the communist regime the interactivity of individuals with the state administration was not at very high levels because the economic-financial system itself at that time was of a different type.

Administrative law after the 1990s

A new administrative-territorial division was established and the organization of local government was recomposed from the beginning. The Code of Administrative Procedures[4] weas adopted in order to define the activity of the administration bodies as the set of acts and actions through which the will of public administration is formed and manifested.

The adoption of the Code of Civil Procedure[5] defined the rules for judicial review of administrative disputes, there were only 10 provisions (Article 324 to Article 333) that dealt with administrative disputes mainly: *Subject Competences, Territorial Competencies, Term, Suspension of the implementation of the administrative act, Consolidation of lawsuits, Court Decision, Appeal.*

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[2] "Citizens have the right to complain against all illegal or irregular decisions given by state administration bodies, as well as when subordinates act badly (...)".

[3] Decision of the Constitutional Court no. 04/1994 "(…) the result of the injustices committed by the totalitarian communist state for about 50 years in a row against private owners. The latter have been stripped of their legal properties with completely arbitrary actions without any legal basis, and through nationalizations, expropriations, confiscations and other measures, based on laws, by-laws and court decisions, that contradicted the spirit of justice and human dignity, with the inalienable universal rights universally accepted in the western democratic world (…)".

[4] Law no. 8485 dated 12.5.1999 *"Code of Administrative Procedures"*

[5] Civil Procedure Code 1996 (*as amended*)

In May 2012, the *Law for the organization and operation of administrative courts*[6] was approved, for the first time in Albania specialized administrative courts were established, the approval of this law also marks the beginning of guaranteeing the effective protection of the rights of subjects, individuals, natural and legal persons and their legitimate interests through a regular, effective, independent judicial process.

The provisions that determined the handling of administrative disputes could not guarantee an efficient and quick solution. The limited number of provisions (only 10 provisions) did not deal with the issues in a concrete and coherent manner with the times. It was evident that there was a legal vacuum and a real impossibility to increase the efficiency of these types of judgments, while the time had come, after many consultations, a completely new law was needed to include, if possible, the entire field of disputes of an administrative nature.

Novelties brought by Law 49/2012

Law 49/2012 clearly defines its field of activity, subject and territorial competences, avoiding any confusion that may arise during the examination of cases, it also defines disputes for which the Administrative Courts (AC) are not competent, such as disputes related to legal provisions referring to the Constitution are under the jurisdiction of the Constitutional Court; or any other court. Below we will list the innovations brought by this law and the power it gave to the AC to resolve disputes of an administrative nature.

Exhaustion of internal appeal (Article 16)

The legislator, through this provision, has established a criterion for the parties to once again open the internal avenues of appeal, then they can go to the Court, giving an additional opportunity to the administrative body to correct its actions, which may have been the result of mistakes, human, technical or impossibilities of a different nature and which may be objective. Since a higher body (Dobjani, E. 2016: 11) within the same structure is legitimized to correct the error of the subordinate structure, then the case gets a quick solution and it is no longer necessary to become the subject of a trial, thereby reducing an artificial burden on the court. Also, this provision creates an opportunity for the administrative body itself to have the opportunity to reflect and react by correcting the actions of its subordinate body.

[6] Law no. 49/2012 "*On the organization and operation of administrative courts and adjudication of administrative disputes*" published in the Official Journal No. 53 dated 16.05.2012.

Broad powers (Article 7)
The law has given a wide range of powers to AC to widely handle conflicts and disputes that arise from individual administrative acts, normative by-laws and public administrative contracts, issued during the exercise of administrative activity by the public body, disputes that arise due to the intervention of illegal or inaction of the public body; disputes of competences between different administrative bodies in the cases provided for by the Code of Administrative Procedures; disputes in the field of labor relations, when the employer is a public administration body; requests submitted by administrative bodies for the review of administrative offenses, for which the law provides for deprivation of liberty for up to 30 days, as a type of administrative punishment for the offender; requests submitted by offenders to replace the administrative penalty with deprivation of liberty for up to 30 days with the penalty of a fine.

Designation of the Object of the Lawsuit (Article 17)
In the law no. 49/2012, the legislator has given an active role to the Court, but always respecting the essence of the prerogatives that the party enjoys. The law allows the Court of Appeals to "*make an accurate determination of the facts and actions related to the dispute, without being bound by the determination that the parties may propose*" in this way, based also on other provisions. The Court of Appeal is not passive but is involved in discussions between the parties without being limited by their determinations. The AC can carry out an accurate definition of the facts and actions related to the dispute with the sole purpose and aim of defining the facts and actions. In this way, the law has given a more active role to the Court of Justice compared to the Civil Courts, which are more limited in involving disputes between the parties and have a more passive role between the parties.

Communication of the parties (Article 22)
Another facility that this law presents is the means or way in which the Court will communicate with the parties, giving you the opportunity to communicate electronically as a contemporary and legal facility at the same time. All these facilities contribute to the development of a fast judicial process where the parties will be able to be notified immediately of the date and time of the hearings and have the opportunity to receive answers to their claims in full compliance with the law.

The provision in question also brings a judicial economy, saving the state budget because there will be no postal costs, where for the court, due to the high number of cases, this cost occupies a special item in the annual expenses. The duration of receiving notification is shortened by litigants who live in different cities or for suburban areas where there is a difficulty in identifying postal addresses.

Preparatory actions (Article 25)
The law has allowed the Judge to be active even when he *"takes a decision to conduct the expertise when he considers that special knowledge is needed to solve the case*", so it is the Judge, who, on his own initiative, without asking the parties, decides on the conduct of expertise, and it is the Judge who *determines the field of expertise*, the relevant tasks that the expert must follow, and the deadline for conducting the expertise. In this way, the Judge has complete freedom from the appointment of the expert to the determination of his duties, allowing a very professional and impartial judicial investigation.

Non suspension of the Trial in case of parties' absence (Article 25/3; Article 34/2/6)
Another valuable innovation is the continuation of the trial session when the parties have not appeared even though they have been informed "*The parties' absence in preparatory actions does not constitute a reason for suspending the trial of the case, even when they have been summoned and notified regularly. Parties' absence in the session does not cause the postponement or dismissal of the trial*". This legal innovation would have a direct impact on the duration of court cases, where in many cases the procrastination of the trials had become an obstacle for the parties to initiate a lawsuit because the long ordeal of the sessions was too discouraging. In this way, it gave you a legal solution once and for all to avoid delays or postponement of court hearings due to the non-appearance of the parties in the hearing, where quite often the parties themselves became an obstacle to the continuation of the court hearings.

Completing the documents (Article 26/1/2)
By means of this legal provision, the Court places the parties before the responsibility to present the evidence as soon as possible (after notifying them when they have not brought it), in case of non-submission of the evidence, the law has sanctioned the continuation of the Trial stating that "*the examination of the case continues only on the documents presented*", and the failure to present the evidence before the first court session causes their non-acceptance (Article 27/3). The legislator obliges the judge of the session to notify the parties in advance of the consequences they will have if they do not present the evidence.

The other very important innovation that is noticed is that this provision gives the right to the AC to punish the heads of institutions *at the request of the party or even "ex officio",* who do not bring evidence in the judicial process even though the court has informed in advance that they must bring the evidence. By means of this provision, the law requires a responsibility on the part of the head of the institution that is a party to the litigation and has left it to the other party to initiate the request to the Court to impose a fine on the holder, in this way the law has empowered

the subject or the individual who requests a judicial review of the decision taken by the public body. All these mechanisms established by law 49/2012 will force the parties not to drag out the judicial process by not allowing the presentation of evidence/facts to be used or served by them to postpone court hearings - which has happened quite a few times this action by the litigants. Also, the presentation of evidence would help the judge from the beginning to create a preliminary opinion about the object of the dispute.

Burden of Proof (Article 35)
It is another innovation that this law has brought, reflecting the change in the approach of the legislator, who forced the party representing the Administrative Body to prove that its actions are based on legality. Through this provision, the Administrative Body must be responsible and aware of the actions it performs because it will have an obligation that every action it will perform with other parties (private entities, individuals, etc.) must verify the legality of its actions. The legislator accepts that the public body can also abuse the power it has, therefore it has allowed the AC that at its discretion: "*it can decide to transfer the burden of proof to the public body, when there are reasonable doubts, based on evidence in writing, proving that the public body hides or intentionally does not present important facts and evidence for the resolution of the dispute*". Now it is no longer the plaintiff who will have to bear the burden of proof to the AC, but the burden of proof already lies with the Administrative Body. The legislator has given this discretion in order to implement the law (Pakuscher, Ernst K. 1976: 108).

Non-"mechanical" court (Article 40/4)
This provision once again reinforces the active role of the Court of Justice by not allowing it to turn into a "mechanical" court (Sadushi, S. 2014: 170). The establishment of this provision allows the judge to reason with a sound and very dynamic logic if the non-compliance with a simple procedure really affects the essence of the dispute resolution or not. Because in not a few cases, the parties charged the judge of the session who "*misused his discretion, or violated the law*" because for the parties, non-compliance with a simple procedural action constituted a reason for the annulment/cancellation of the administrative act. In this provision, we see that the lawmaker has been clear and accurate by turning it into a law without leaving room for further discussion, that not always non-compliance with the procedure is a reason for annulment/cancellation of the administrative act.

Decision of the Administrative Court (Article 40/ç/dh/e)
Among other things, the decision of the AC in its enacting clause is allowed to express and ask the Administrative Body for "*forcing the public body to perform*

an administrative action, which has been refused, or for which the public body has remained silent, even though there was a request" ; or "*correcting the rights and obligations between the plaintiff and the public body*"; other action that charges the Public Body "*the obligation of the public body to perform or to stop performing another administrative action (...)*". We are familiar with terms which are mainly "*rejection, partial acceptance, leave in force, acceptance*", but we see that the law has tasked the AC to order the Administrative Body to perform the administrative action, so the Court also takes on an "administrative" role . According to doctrine (Pakuscher , Ernst K. 1976: 108), this action of the AC looks at first sight as if it has taken powers from the Executive and violates the general "*check and balance*" principle, in the interpretation we can see that the law aims to correct the action (Dokushi, A. 2021: 209) of the Public Body which has violated the law. It has the obligation to repair this violation of the law by carrying out the administrative action. Thus, the AC in accordance with the law, asks the Administrative Body to correct its actions that were in violation of the law.

Announcement of the Decision (Article 42/1; 55/1; 64/1)
In order to speed up the judicial process, the legislator has determined and forced the AC that on the date of the announcement of the decision, it must declare it justified, thus speeding up the cycle of closing the judicial process of the case. By means of this provision, the legislator has imposed an obligation on the judge of the session, who must declare the decision definitely justified, this action of the law-maker places the judge in a preparatory work position, but in the same way shortens the time to continue with the phase final execution. From the statistical data, there have been dozens of cases where the decisions of the Courts were not clarified for weeks and weeks.

Deadlines for Appeal Judgment (Articles 48/2, 60/2)
This provision obliges AC of Appeal that: "*The Administrative Court of Appeal examines the case within 30 days from the date of receipt of the appeal from the court where the appeal was filed*". As well as compels the Supreme Court to review the issues: "*The Supreme Court reviews the case within 90 days from the date of receipt of the appeal and related acts from the court where the appeal was filed*". This is a very important provision, since it guarantees a very efficient trial and in a very reasonable time giving final and definitive solutions.

Mandatory Execution (Article 66/2)
In this provision, the legislation has facilitated the creditor from the financial side: "*The fee for the execution of the court decision is not prepaid by the creditor...*", this is another innovation where the legislator has shown caution. In many cases the

creditors had to face additional costs in order to regain or re-enjoy their right, and in other cases financial barriers have made it impossible or delayed subcontracting with executors.

Pursuing the Execution of the Decision (Article 67; 68)
Law 49/2012 in its final provisions charges the AC to continue to be active until the end in terms of fulfilling the court decision (whatever type it may be). The legislator has given the right to the AC to order the executor against the Administrative Body, when the latter has not yet fulfilled the Court's Decision. If the Administrative Body hesitates to fulfill the obligation that the Court has assigned, the Judge can even proceed with *criminal prosecution.* This provision, as well as other provisions, places the head of the administrative body in a position to fulfill the tasks left by the AC as soon as possible by correcting his actions, not allowing the work of the administrative body to be delayed or blocked on the one hand and in the meantime to complete the process and the exhaustion of the provision of justice to the party that the AC has given the right to.

Shortcomings of the law 49/2012

It is important to analyze the shortcomings that this law showed since its establishment. In principle we must accept that this law really brought an innovation at the time it was approved and for the future as well, but there are still flaws and gaps that are being listed below.

Supplementing with additional provisions
The legislator in Article 14 of Law 49/2012 has allowed the AC to refer to the Civil Court as a legal basis, as it may be - the request for the dismissal of the judge, the counterclaim, etc. Nevertheless, the legislator at the time of drafting this law could add the relevant provisions by fully codifying the legislation for the AC, the dependence still on the CCP will occasionally create confusion or even misunderstandings regarding the legal basis, etc.

Insufficient number of judges in the Administrative Court of Appeal
The established of Administrative Court of Appeal[7] with 7 judges to adjudicate appeals would result in a super-burden for the Administrative Court of Appeal and a poor result in terms of quick, efficient and effective resolution. The legislator should have taken into consideration the high number of administrative disputes that were also under consideration by the Civil Courts, this would help to calculate

[7] Presidential Decree No. 7818, dated 16.11.2012, point 8 of article 4, published in the Official Journal No. 146 dated 16.11.2012 p. 8089.

the minimum required body that would have to resolve the disputes. The legislator had the possibilities to perform these calculations, but we see that it has not been deeply analyzed and not all the necessary resources have been used to calculate the load that AAC would have.

Review in the Counseling Room

The Law has given the right to the Administrative Court of Appeal to resolve cases in the consultation room without the presence of the parties, creating a similarity with the actions carried out in the Supreme Court (counseling room). Would it make sense for the AAC to judge the dispute as a Court of first instance while the parties are not present? This provision infringes the right to be heard, the right to conduct a transparent public session, where justice is not only heard but also seen[8], where the parties can submit new evidence , or to express their claims, as well as to see and verify the impartiality of the judging panel.

Not appealing certain decisions

The purpose of the legislator has been to speed up and resolve administrative disputes as soon as possible, but this should not mean the denial of an appeal for a Court decision. Not appealing a court decision avoids the verification and control of the legality of the AC either on the procedural side or on the substantive law side. The legal mechanism to verify the legality and validity of the decision in the law is the "*complaint*" mechanism, which if not allowed, then the legality of the decisions of the Supreme Court remains in the dark and completely impossible to verify, as well as the opportunity to repaired. This provision does not allow the Court's own control over the legality of decision-making, which raises questions about the reliability of the judicial system, the accountability of the judicial body, as well as allowing the discretion of the judicial body without any controlling limits, giving it a meaning not of unusual right to the term "*Legal Security*".

Transitional provisions

Failure to accurately predict the transitional provisions would create a gap and impasse for the Court because it would encounter difficulties in finding the legal basis for resolving disputes. That would result in an artificial increase in the number of cases that would be re-judged by the Supreme Court, which would bring incredible delays and in complete contrast to the purpose of creating this law.

[8] Paragraph 16 of the decision of the Constitutional Court no. 3/2015: "(…) it also includes the right to have a reasoned judicial decision. The function of a reasoned decision is to show the parties that they have been heard, and to give them the opportunity to challenge it. In addition, by giving a reasoned decision, public observation of the administration of justice can be realized (…)".

Unifying Decision of the High Court[9]

It is one of the decisions that completely changed the flow of cases after the issuance of the Presidential Decree[10] which announced the functioning of the Administrative Court on 04.11.2013. The High Court in this decision argues in a deep and exhaustive way, deciding that all the cases that were in the process of trial by the Civil Courts, would go for re-trial to the Administrative Courts. Joint Chambers of the Supreme Court (JCSC) based their decision on the jurisprudence of the Constitutional[11] Court, where the concept of a court appointed by law is explained exhaustively, which is considered as an element of the regular legal process and as such an integral part of Article 42/1 of the Constitution and Article 6/1 of the ECHR .

JCSC rightly argues that after 04.11.2013 disputes of an administrative nature, the law has designated only AC, and the same law has forbidden the Civil Court (of Appeal or even the Civil College of the Supreme Court) to examine these types disagreement.

The JCSC explains the meaning of material law and procedural law where law 49/2012 is not only an organic law but also a procedural law. In accordance with the jurisprudence of the Supreme Court of Justice, which has repeatedly expressed itself about the constitutionality of a process, emphasizing that, *in procedural law unlike in material law*, the new law also applies to matters that are under trial, with the exception of those that are regulated differently by providing transitional procedural provisions.

In the same decision, the Joint Chambers highlighted that it was precisely the legislator *who did not express* through the transitional provisions how he would act until the law 49/2012 came into force - "*the new law itself must have clearly defined in relation to what problems and until what time limit the old procedural law will continue to be applied and not the one that is in force*".

The lack of transitional provisions brought for the Albanian citizens a retrial for the claims or complaints they had submitted and which were being tried by the Civil Courts, burdening in this way a fundamental right that the individual has and which is protected by Article 6 of the ECHR where textually states: "*.every person has the right to have his case heard fairly, publicly and within a reasonable time by an independent and impartial court, established on the basis of the law*". This deficiency

[9] The Unifying Decision of the United Colleges of the Supreme Court no. 3/2013.

[10] Presidential Decree No.8349, dated 14.10.2013, published in the Official Journal no. 172 dated 29.10.2013 p. 7553.

[11] Decisions no. 106/2002, no. 23/2009, no. 7/2009, 11/2009 and no. 31/2005 and no. 16/2012 of the Constitutional Court.

of the legislator later brought an enormous burden to the AC, where its domino effect is felt even today.

The law has designated the Supreme Court as a court of law and it is precisely the primary duty of this Court to verify the rigorous implementation of the law by the lower courts, *facing the absence of transitional provisions*. The Supreme Court correctly decided to implement the new law 49/ 2012 that the cases would have to be judged only by the Supreme Court and no longer by the Civil Court.

The role of the legislator and the executive in solving AC obstacles

In this part we will see the active interaction of the other two powers, the spirit of cooperation, the coherence of this cooperation, the Constitutional loyalty between the powers which expresses, in essence, *the mutual respect from each subject* to the competences of the other where the Constitutional[12] Court (02/2005) requires that the institutions constitutionally behave with constitutional loyalty, as well as implying the creation of a cooperation relationship between them.

The role of the legislator (in solving AC obstacles)

It is to be appreciated the role that the legislator had for the approval of the law 49/2012, which brought about the fulfillment of a number of expectations from internal actors but also from the international factor. The initial shortcomings in the law 49/2012, the failure to properly foresee the transitional provisions brought a stalemate in the judicial system by artificially overloading the Administrative Courts. Inaccurate calculations regarding the number of judges in the Administrative Court of Appeal, or even the Administrative Courts of the First Instance, which were geographically located far from the litigants.

The frequent interventions in the new law that has just been approved show once again the poor cooperation of the powers between them as well as the lack of coherence in the cooperation between the country's institutions for the drafting of laws that produce effective and real solutions for the citizens. The Judiciary, through conferences, raised its concern on the obstacles, the shortages that the judicial system faces asking to the two other powers to provide a solution as quickly as possible. The Judicial Conference[13] requested through the Resolution

[12] Decision of the Constitutional Court no. 02/2005 "(…) it places the subjects that are included in it, before the requirement to respect the principle of constitutional loyalty, which expresses, in essence, the mutual respect from each subject to the competences of the other, as well as the creation of a cooperation relationship between them (…)".

[13] Resolution of the National Judicial Conference (10.10.2014) "(…) The judges, evaluating the support so far, request from the relevant state institutions, the taking of further measures aimed at improving

for improving the infrastructure, at another National Judicial Conference[14], the support of the actors was again requested, on the next year of the Judicial Conference[15] of Albania was discussed the reform initiated in the justice system with changes to the Constitution and other restructurings. During the speech that the Presidents[16] of the courts held, they identified problems and recommending, as appropriate, solutions that can be implemented both from the perspective of changing the legislation and improving judicial practice.

The role of the Executive (in solving AC obstacles)

The Executive Power is the most coveted and "*petted*" power because of the role that the law and the Constitution have given it, as the only power that administers the funds of all Albanian taxpayers as well as the State budget as a whole. The way the Executive Power has handled the progress of the AC shows that there has been a weak cooperation to fulfill the purpose of the law itself 49/2012. As we have emphasized above, one of the goals of the creation of the AC is that disputes of an administrative nature where one of the parties would be the state should be resolved as soon as possible. In addition, the judicial bodies that will resolve these disputes should be as more professionalized, as well as the AC would serve as a protection for the subjects and individuals in front of the state by restraining the revenge of the public administration against the subjects and individuals.

In all the reports[17] listed by the AAC, among others, a continuous and permanent call and effort by the AAC to the Ministry of Justice to be equipped with the necessary tools, material basis, especially with human resources, in order to fulfill the tasks that the law had determined for the AC. On the other hand, the Ministry of Justice has carried out assessments[18] of the workload of the Administrative

the infrastructure and guaranteeing suitable working conditions (…)". http://www.gjykataelarte.gov.al/web/Rezoluta_e_Konferences_Gjyqesore_Kombetare_2226_1.php

[14] National Judicial Conference (14.12.2015) "(…)The conference reiterates its position addressed to the actors involved in the reform, international partners and public opinion, and also wants to assure them that the judges will firmly support the legal initiatives which have as their objective the strengthening of the rule of law, the protection of independence" http://www.gjykataelarte.gov.al/web/Konferenca_Gjyqesore_Kombetare_K_GJ_K_zhvilloi_ne_daten_14_Dhjetor_2015_mbledhjen_e_saj_te_radhes_me_natyre_zgjedhore_3253_1.php

[15] National Judicial Conference 21.03.2016 it was re-emphasized that the Courts are overloaded with thousands of processes and do not have the capacity to deal with them https://www.linkedin.com/pulse/konferenca-gjyq%C3%ABsore-komb%C3%ABtare-21032016-florjan-kalaja

[16] The National Conference entitled: "*The efficiency of judicial procedures in the Administrative Courts of Albania and the evaluation of the effects of the Reform in Justice*" dated 15.12.2017 http://www.gjykataelarte.gov.al/web/Kryetari_i_Gjykates_se_Larte_Z_Xhezair_Zaganjori_mori_pjese_Konferencen_Kombetare_me_titull_Efikasiteti_i_procedurave_gjyqesore_ne_Gjykat_4855_1.php

[17] Analysis of the administrative court of appeals (2014) https://www.publeaks.al/wp-content/uploads/2016/12/Analiza-Gj-adm-apelit-tr-2014-9.2.pdf, p. 5.

[18] Ministry of Justice (2015) Evaluation Study on the workload in the Administrative Court of Appeal

Court and has not acted effectively and immediately. The AAC has filed its requests with the Ministry of Justice (as part of the Executive power), but its immediate requests have not been met, which has directly affected the performance of the AAC institution.

A low number of Judges in the Administrative Court of Appeal would seriously raise questions about the quality of decision-making, the depth of the investigation in the judicial fascicle. The deficiencies in the quality or the depth of the judicial investigation, means that unfair decisions may have been made due to of the impossibility of the detailed verification of judicial documents. This contradicts the purpose of the Court in essence, which is "*giving justice*". Not allocating the necessary funds for legal fulfillment is a responsibility mainly of the Executive who is the one who administers public funds and allocates them where it is most needed, as well as verifying the requests that the various institutions submit to him. The creation of a law for AC and then the lacking of technical and financial support is a contradictory action even against the wishes of the legislator who wants AC to be functional as soon as possible. It is unacceptable that the AAC asks for support and the Executive Power does not provide it, which shows a disregard for the requests coming from the Court, as well as a lack of will on the part of the Executive. The Constitutional[19] Court (19/2007) in some of its other decisions[20](11/2010) has

Tirana https://www.drejtesia.gov.al/wp-content/uploads/2017/10/Studimi_mbi_ngarkesen_ne_Gjykaten_Administrative_te_Apelit-1.pdf

[19] Decision of the Constitutional Court no. 19/2007 "(…) financial independence should be understood as such financing of constitutional bodies and institutions, which should enable them to normally exercise their activity to fulfill the functions assigned to them by the Constitution, without the intervention or influence of the government, politics or other external factors with this activity, which could seriously affect the exercise of their powers (…) in terms of reviewing and approving the budget items of the constitutional bodies and institutions, as the case may be and through consultations, it is necessary to take into account the requirements and their needs for the normal exercise of the constitutional functions for which they were created (…)".

[20] Decision of the Constitutional Court no. 11/2010 "(…) In this way, the principle of separation and balance between powers can really be implemented. By providing the bodies that administer justice with adequate guarantees related to financial independence, on the one hand, the risk of bringing the judiciary under the influence of other powers is minimized and, on the other hand, judges are given a necessary sense of dignity and pride in the profession. that exercise. Even in cases where the State is faced with financial crises, or with major budget constraints, the budget should not affect the budgets of the Judicial system. respecting the constitutional standard of self-administration of their own budget, the intervention of the legislator or the executive to reduce the judicial budget, even as an attempt to avoid the budget deficit, would be considered unjustified, without a consultation with the judiciary itself (…). The role of the judicial administration cannot be separated from the function of delivering justice and constitutes an important element of the organizational independence of the judicial power. In the assessment that the Constitutional Court makes of the independence of the judiciary, it is understood as a substantial independence, which means "the freedom of the courts to give decisions, which are not based on the interests of any other branch of government"; structural independence related to the provision in the Constitution or in the law of the existence of the institution, of the way of formation of its composition; organizational independence that includes the internal administrative structuring of the courts; financial independence, which means autonomy in the drafting of the budget by the institution itself and approval by the legislature, as a separate item of the state budget, adequate

extensively explained the concept of independence. Taking into consideration the obligation of state bodies to implement the decisions of the Constitutional[21] Court (80/2017), the international[22] norms for the independence of the institutions that administer justice, the independence of the judiciary, among others, is understood as free independent administration from an organizational and financial point of view[23].

According to the *Progress Reports[24] of the European Union for 2013-2016[25]*, the functioning of the judicial system continues to be affected by insufficient resources, the current budget of the Albanian State is not sufficient at all, the time has come to emphasize the importance of sufficient and necessary expenses for the judicial system, *since there can be no justice at a price free*. These costs are related to retaining good employees, not only for wages, but also for working conditions, qualification and offering programs that serve to maintain the values of independence, transparency and accountability. Many Court premises need to be renovated, some Courts do not have rooms in which to hold sessions and these sessions are held in the judges' rooms. The Audio system does not work in all rooms. The efficiency of the judicial system remained a concern, due to insufficient financial and human resources. The absorption of the necessary funds for the regular and necessary fulfillment of Law 49/2012 has been a right of the Court as a whole and an obligation for the Executive Power to allocate the necessary funds to fulfill the needs of the AC. The non-realization of this task mainly by the Executive Power constitutes a violation of "*check and balance*", even based on the analysis of the decisions of the Constitutional Court, we understand that the Executive

and sufficient funds to realize the purpose and tasks of the institution, and sovereignty in relation to the administration of funds tuned; as well as personal independence, which requires appointment based on objective criteria, immunity, economic guarantees, career guarantees, a transfer system and a disciplinary system (…) Financial independence should be understood as such financing of constitutional bodies and institutions, which should enable them to normally exercise their activity to fulfill the functions assigned to them by the Constitution, without the intervention or influence of the government, politics or other external factors in this activity, which would seriously affect the exercise of their powers (…)".

[21] Decision of the Constitutional Court no. 80/2017: "32 (…) The Court underlines that Articles 124 and 132 of the Constitution clearly state the binding force of the decisions of the Constitutional Court for all constitutional bodies, public authorities, including courts. Implementation of the decisions of the Constitutional Court is a constitutional obligation. They have general binding force and are final (…)".

[22] European charter "*On the status of judges*" (DAJ/DOC (98) 23).

[23] Analytical document of the Ministry of Justice: "(…) organizational independence, which includes the internal administrative structure of the courts; - financial independence, which means autonomy in the drafting of the budget by the institution itself and approval by the legislature, as a separate item of the state budget, adequate and sufficient funds to realize the purpose and tasks of the institution, and sovereignty in relation to the administration of allocated funds (…)" https://www.drejtesia.gov.al/wp-content/uploads/2017/10/Analiza_e_sistemit_te_drejtesise_FINAL-1.pdf page 52

[24] https://integrimi-ne-be.punetejashtme.gov.al/anetaresimi-ne-be/dokumente/dokumente-te-be/

[25] The Progress Reports of the years 2017-2019 are not included, cause in these years the creation of other constitutional institutions began within the renewal of the new justice system.

Power has had a weak cooperation in supporting the fulfillment of the needs of the AC. Allowing the AC to resolve disputes without having the necessary means that the law has defined, constitutes an extremely irresponsible and unprofessional behavior, which is against the purpose of the Executive's activity.

Conclusions

Law 49/2012 brought a much more dignified treatment of the parties in the judicial process of an administrative nature. It expanded much more the meaning of the terms administrative/public body, restated and remodeled the meaning of "*administrative act*" as well as materialized the importance and gave a high priority to the relationship "*administrative body - parties interacting with the administrative body*". The law reduced the confusion of the choice of the legal basis for the resolution of non-agreements of an administrative nature, redirecting the parties to a set of updated provisions with broad and complete competence. The methods and ways of communicating electronically with the AC and with the parties brought ease and avoidance of the obstacles that existed technically. The *Burden of Proof* is a new approach to be welcomed because it eases the plaintiff by creating a favorable and encouraging environment in front of the Public Body that represents the State. Taking disciplinary measures and even criminal prosecution against the leaders of administrative bodies is to be appreciated. It increases the accountability towards the implementation of the law, discourages impunity, reduces the revenge of the leaders. The preliminary submission of evidence is an additional procedure to compel the parties to submit evidence in advance, which encourages the parties to prepare in time, influencing a quick and efficient trial.

The continuation of the court sessions even when the parties were not present is to be welcomed because it excludes once and for all the possibility that the parties will intentionally damage the court process, as well as the seriousness they should have when starting a court process. The judge feels the process of implementing the decision and puts the head of the public body in front of the responsibility, directly encouraging the realization of justice even in the last stage, which is the stage of the bailiff's activity. Law 49/2012 made the Court of Justice a "*smart*" court to judge and resolve disputes by persuasively reasoning and with a very strong legal logic, also with a single reasoning, accepting that if the violation of the procedure is of a level that does not affect the essence of the matters, then this violation does not need to be taken into account. The lack of financial resources has made the efficiency of the Court difficult to operate and has not helped to fulfill the purpose of creating these Courts.

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Problematics of the Albanian legal framework in the division of property

Violeta META[1]

Abstract

By means of this paper, will be highlighted the importance of the special judgment for the division of property, firstly analysing the ownership and co-ownership according to the Civil Code and the Family Code, the procedural side of this judgment according to the Code of Civil Procedure as well as the contradictions encountered in practice, regarding the special judgment. The basic characteristic of the 'de quo' trial, consists in the fact that it takes place in two stages, where each stage carries its own characteristics and importance. The focal point here will be on the jurisprudence of the Supreme Court, in relation to the importance that this court gives to the first and second stage. The purpose of this paper is to highlight the problems encountered in the judicial practice, in the judgment for the division of property, through the analysis of the alternatives that the expert makes available to the court and the evaluation of the court on the property subject to division. Also, part of the analysis will be the way in which are treated in the judgment for the division of the property, the immovable properties which are not registered in the public registers but are in the process of legalization as well as those that are not in the process of legalization.

Key words: *Co-ownership, Property Division Judgment, Division of Assets in the Process of Legalization, First and Second Stage of the Trial, Methodology of Object Evaluation.*

[1] Violeta Meta is graduated in 2021 in MSc. in Private and Business Law, at the European University of Tirana. Her thesis is supervised by Prof. Dr. Ilir Mustafaj, Lecturer at the Law Department, Faculty of Law, Political Sciences and International Relations, European University of Tirana.

Introduction

The right to property as a fundamental human right is protected not only by the national legal order but also by international legislation. Although the right to property is protected at the top of the hierarchy of the legal order, there are not a few cases where it is violated to such an extent that it becomes impossible to enjoy it. For the property to enjoy full legal protection, it must be acquired according to the methods determined by law.In order for legal interests to arise from the property, the legislator has provided that the process of dividing the property is done by the will of the parties and if an agreement is not reached between them, the court is set in motion to decide on the ownership rights of the litigants.

As a special trial, the trial of judicial division refers to special rules that avoid some general procedural principles, the uniqueness of which lies in the fact that it takes place in two stages.

Up to this procedural moment, the legislature has clearly defined the procedure for the division of property, but the situation regarding the assessment of property is problematic, both in cases where the item cannot be divided in kind, as well as in cases where the division is possible but cannot be done in equal parts.

In addition to the discretion that the court has to choose one valuation method from another, the lack of a direct valuation method creates the possibility for litigants to present abusive requests, from which the party that requests the item to be left in kind, uses all legal spaces in a way that the value of the compensation owed to the other party is as reduced as possible.

Also, another problematic consists in the process of dividing constructions or additions that are not registered in the public register but which are in the process of legalization.

Co-ownership according to substantive law

The right to property is one of the basic human rights and one of the most important components of the legal order, on which the economic and social development of society is based (Giddens, 1997).

The right to possess, enjoy and dispose of wealth is historically among the oldest, since ownership was recognized by ancient Roman law as the entirety of *ius possidendi* (the right of possession), *ius utendi fruendi* (the right to receive fruits), *ius dispondendi* (right of disposal), therefore ownership means full power over the the property (Mandro, 1998). The same meaning is given by the Civil Code in Article 149, where it is defined that: "*Ownership is the right to freely enjoy and dispose of things, within the limits provided by law*". The object of the right to

property is very broad, but in this paper, we will focus mainly on things, objects of the material world that can be put under the rule of man.

In this context, the Civil Code in article 142 presents an exhaustive list of immovable objects, which can constitute an object of ownership only if, as an object of the material world, the object can be placed under the rule of one or several persons to the exclusion of others (Nuni & Hasneziri, 2010). Due to the high interest that individuals have towards the right to property, the latter is protected not only by the national legal order but also by international law, which seeks to coordinate national legal frameworks and tend to maximize the *'de quo'* (Maho, 2013; Shehu, 2000) protection of the right. For this reason, the legislator has provided the protection of this right at a Constitutional level, according to Article 11 of the Constitution, which cannot be violated without a proper legal process and without a fair reward. In addition, Article 17 of the Constitution foresees the limitations of fundamental rights and freedoms, which must be proportionate to the situation that dictated them, without affecting the essence of the freedoms and rights and without exceeding the limitations provided for in the European Convention on Human Rights.Thus, the Constitution gives to the right to property, as well as to the rights provided in the ECHR, the status of the minimum standard or the lowest common denominator, as far as the limitations of the rights and freedoms expressed in it are concerned (See Constitutional Court decision No. 30/2010).

"Even though the Constitution was drafted chronologically after the ratification of the Convention, it not only took into account this important international document, but established it as a benchmark for the level of protection of human rights in the Albanian constitutional order" (Sulko, 2016: 29-30).

As a result, the Constitutional Court in its decisions refers to the jurisprudence of the ECHR, accepting the direct connection and the binding force of these decisions in the interpretation of constitutional standards. Among others the ECHR, in Article 1 of Protocol 1, foresees the obligation of the state not only must not violate the right to property, but it must also take effective measures to guarantee the exercise of the right to property.

*"The concept of protection offered by the Convention as a synthesis of the national legislations of the Member States, although it is based on the general principles of the common law of the contracting States, has the advantage of allowing an evolutionary interpretation of the Convention formulations taking into account the changes that national legislations undergo... this elastic nature has allowed the ECHR to design a different protection model than what was crystallized in Article 1 of Protocol 1" (*Marku, 2016: 179).

According to Article 163 of the Civil Code, which stipulates that: *"Property can be acquired through certain methods determined in the Civil Code and other methods*

determined by special law". From the literal interpretation of this provision, it should be understood that only legally acquired property enjoys constitutional and legal protection (See United Colleges of the Supreme Court decision No. 22/2002), or in other words, illegally acquired property cannot derive legal interests, much less enjoy legal protection.

The interpretation given by the Supreme Court to the above-mentioned article should be analyzed in harmony with the consequent jurisprudence of the European Court of Human Rights, which in the case of Öneryildiz v. Turkey has expanded the legal notion of Article 1 of Protocol 1, according to which: "*Property even when benefited in violation of legal norms, if allowed by the competent state authorities, takes the character of an asset that enjoys protection from Article 1 of Protocol 1.*"[2]

In the same line, the ECHR in the decision "*Broniowski v. Poland*", it is stated that: *"...the violation originates in a systemic problem, which is related to the malfunctioning of the internal legislation... and that the state must take measures to appropriate legal and administrative practices to ensure the implementation of the right to property... in accordance with the principles of protection of the right to property, according to Article 1 of Protocol 1*" (See ECHR decision 22/2004 complaint no. 31443/96).

Due to the special circumstances and transitional periods in which our country has passed, the issue of property in Albania has been and remains quite complex, since the right of ownership in general and that on immovable property in particular is dealt with by special laws that have undergone successive changes, up to the limits of the violation of the principle of legal certainty. Considering the current situation in which there are still two or more owners for the same immovable property, we come to the conclusion that "*legal oversaturation*" often creates confusion. The prominent Roman jurist, Publius Cornelius Tacitus, emphasized this in the first century AD in his main work "*Annals*" where he wrote: "*The more corrupt the Republic, the more numerous are the laws*" (Zaganjori, 2021: 160). The right to property, as a subjective right, may belong to several persons, who are all co-owners of this right, according to Article 199 of the Civil Code. This phenomenon, where none of the co-owners has exclusive ownership of the item, is called co-ownership (Torrente & Schlesinger: 2004).

Co-ownership is governed by two legal presumptions: the relative one according to Article 199/2 of the Civil Code *"where the shares of the co-owners in the common thing are presumed to be equal, until the contrary is proven"* and the absolute one according to Article 199/3 of the Civil Code *"where the rights and obligations of the co-owners are proportional to the respective parts"*. Depending

[2] ECHR, request no. 48939/99, ÖNERYILDIZ v. TURKEY. In the case in question, the Turkish citizen, even though had built without a plan, in an waste collection area, the obligation to repair the consequences in human life and property damage, falls to the state authorities who had not taken any preventive measures.

on the cause of co-ownership, the law recognizes co-ownership in part and in whole. "*The fundamental difference between the two types of co-ownership is that in co-ownership in parts, the share of each co-owner is determined from the beginning of the existence of the co-ownership. On the contrary, in the co-ownership as a whole, the share of each co-owner is undetermined, during the existence of the co-ownership and the parts shall be determined only when this co-ownership ends in the cases defined by law*" (Nuni & Hasneziri, 2010). n co-ownership in parts, the *'part'* represents the extent of the right of each co-owner over the item, a right which may arise from: the purchase of a joint item; exercising a common activity; marriage or from the death of a person (legal action *mortis causa).* While co-ownership as a whole, since the share of each co-owner is undefined, it can appear in three forms, such as: compulsory co-ownership, between spouses and between members of the agricultural family. From the content of Article 209 of the Civil Code, it results that *mandatory co-ownership* arises due to ownership relationships that are created between separate owners of floors or units in buildings divided into floors, which due to their character and function, are intended for the common use and enjoyment of all co-owners (Bengu, 2011: 109).Regarding the co-ownership of members of the agricultural family, there is a discrepancy between the provisions of the Law No. 7501/1991 "*On Land*" and the Civil Code, because the code expand the circle of members of the agricultural family.

Regarding co-ownership between spouses, the Civil Code refers to the Family Code, according to Article 231 of the Civil Code. The exact moment of marriage has an impact on the categorization of wealth, but not everything acquired before marriage is personal and everything acquired after marriage is shared (Mandro, 2009). Article 66 of the Family Code gives priority to the will of the parties, defining the marriage contract as the most suitable instrument for regulating the economic aspect of family relations and establishing the subsidiary legal regime in relation to the contractual regime, in the sense that it becomes enforceable in the absence of contractual property regime (Ragazzini, 1987: 7). The legislator has defined three types of voluntary property regimes apart from the legal one and the future spouses can determine, through a prenuptial agreement, which regime they will decide to *'govern'* their assets during the marriage (Mandro, 2009: 218). In addition, during the division process, article 76 of the Family Code should be taken into account, which stipulates that: "*The property of the spouses is presumed to be jointly owned, except in the case when the spouse proves its individual character*".

Features regarding judgment for the division of property

In order to avoid procedures, procedural deadlines as well as court costs, individuals must try to resolve conflicts by agreement, since the initiation of a court process would cost a lot to each of the parties, both in terms of time, intellectual capacities or on the material side. This is the reason why the trial for the division of the property is initiated only after attempts between the parties to voluntarily divide the item and in case that the opposing wills do not match, the interested party addresses the matter to the court.

Like any other trial, the trial for the division of property is subject to the Latin principle "*nemo iudex sine actore*" (literally, no judgment without a plaintiff), which means that the civil process can only be initiated at the request of one party, which assumes the position of the plaintiff who exercises the right to sue, against the other party who assumes the position of the defendant.

The Supreme Court in decision No. 29, dated 01.10.2009, argues that: "*For the lawsuit to be valid, it must meet two basic conditions*:

a. *A legitimate interest to file a lawsuit*
b. *Legitimacy to act.*

If these two conditions exist, we can say that the lawsuit exists and the court will make a decision on its merits to reject or accept it".

This decision deals with the term "*valid lawsuit*" while our procedural law does not recognize valid or invalid lawsuits, but if the elements of the lawsuit provided for in articles 154-156 are missing, the lawsuit is considered flawed and the plaintiff is given time to fix this flaws and in the event that the latter does not act and the deadline set by the court for correcting the defects passes, the lawsuit is considered not to have been filed (Qeleshi, 2011).

"Procedural prerequisites are those elements that must exist before the act will be carried out, from which the process arises, or before the submission of the request" (Simone, 2016; Vani Trans.).

Regarding the prerequisites of the lawsuit the Supreme Court in Unifying Decision No. 3, dated 29.03.2012, assesses that: "*... in accordance with Article 154/a of the Civil Procedure Code, the court has the right to evaluate the lawsuit 'prima facie', evaluating if the prerequisites for the existence of the lawsuit appear to exist (Interest, hypothetical admissibility and legal possibility, as well as apparent legitimacy of the parties)*". So the preliminary conditions for the existence of the lawsuit are those conditions that are evaluated by the judge alone at the time of filing the lawsuit, the absence of which makes the judge to express himself about the process and not about the merits of the lawsuit.

Pursuant to the civil procedural provisions, in the light of the changes applied by law No. 38/2017, the sole judge studies in advance in the consultation room the complete court file and evaluates whether the legal conditions for appointing a preparatory session are met. Initially, the sole judge examines the jurisdiction and competence as procedural prerequisites of the process, if he finds the lack of jurisdiction, he decides that the case is out of his jurisdiction and decides to suspend the trial, according to Article 299/c of the Civil Procedure Code of the Republic of Albania. If the case is about the division of immovable property and there is lack of exclusive territorial competence or the lack of subject matter competence is found, the sole judge decides to send the case for trial to the competent court. Next, the judge checks the procedural legitimacy of the parties and their real legitimacy. Procedural legitimacy and the way of representation must meet all legal criteria, while the real legitimacy at this stage is subject to a *'prima facie*' control, since the very essence of the trial determines that each party has a subjective right (Tafaj & Vokshi, 2018). The lack of procedural legitimacy leads to the suspension of the trial of the lawsuit, while the lack of real legitimacy leads to its dismissal (See Supreme Court decision No. 165/2016).

In the event that the evaluation of the above-mentioned criteria gives a positive result, the sole judge (in the consultation room) depending on the requests of the parties or procedural needs, may perform the actions provided for in point 2 of article 158/a of the C.P.C

According to Article 158/b of the C.P.C, the preparatory session is no longer necessary for any type of issue. The legislator has left the conduct of the preparatory session to the discretion of the court, as it is carried out in any case when it is deemed necessary to call and hear the parties, as well as in other cases provided for in the law, for example the articles 134-136 of the Family Code. The main purpose of the preparatory session consists in the opportunity for the judge to clearly understand the nature and essence of the dispute through the declarations of the parties (See Supreme Court decision, No. 33/2001). The trial for the division of the property turns out to be a type of trial in which the holding of the preparatory session is mandatory for several reasons: *firstly*, we are dealing with a judgment for the correct resolution of which special technical knowledge is required, so starting from the preliminary actions, the sole judge must appoint an expert; *secondly*, the court must make an effort to resolve the case by agreement, according to Article 158/ç of C.P.C; *recently*, in the preparatory session the court verifies the mandatory co-litigation in accordance with Article 162 of the C.P.C "*Unlike optional co-litigation, mandatory co-litigation is determined by the law or by the nature of the legal relationship subject to judicial conflict*" (See Supreme Court decision No. 76/2018).

In order to avoid the violation of the decision due to the non-regular formation of co-litigation according to Article 467 of C.P.C and unreasonable delays in

the process, the court must show special care in the formation of co-litigation in the case of lawsuits for the division of property since the latter have as a characteristic the mandatory co-litigation according to the article 162 of C.P.C. The Constitutional Court in decision no. 43, dated 19.12.2007 analyzes that: "*A delay in the execution of a decision can be justified in special circumstances, but the delay cannot be to such a degree as to damage the essence of the right*". The result of the application of the principle of availability in the civil process is the fact that the creation of co-litigation is within the full competence of the parties and "*the court, as a rule, cannot create different litigants from what the parties create*" (See Supreme Court decision No. 76/2000). Exceptionally, in application of Article 161 C.P.C, the court, when it finds that the mandatory co-litigation on the part of the defendants is incomplete, gives the plaintiff a term of 20 days to fix it, according to letter "c" of this article and Article 154/a of this Code. After the judge performs the necessary preliminary and/or preparatory actions, it is assumed that the case has been procedurally prepared to begin the judicial investigation stage, and therefore the judge alone issues the order for scheduling the court session.

For a more efficient application of the principle of trial within a reasonable time, law 38/2017 has amended the Civil Procedure Code, treating the order for scheduling the court session in such a way that it is considered as a *'obstruction'* for some procedural requests, as long as the issuance of the execution order in principle leads to the loss of the right to submit a series of procedural requests[3], during the judicial investigation stage. "*The court session is one of the most important stages for the resolution of the dispute and the discovery of the objective truth, based on the material law, the procedural law, the evidence administered in the judicial process and the conviction of the judge established on the totality of the facts and evidence*" (Tafaj & Vokshi, 2018: 36). The procedure for the division of the property has a double object, since, on the one hand, at the end of this trial, the right that each participant has in co-ownership is clarified and, on the other hand, this right is practically implemented (Simone, 2016; Vani Trans.). A division trial is a process that aims to change the right from a corresponding part of a share of each co-owner to an exclusive right of ownership over the specified items. As a special trial, the judicial division trial refers to special rules which override some general procedural principles. So the uniqueness of this trial lies in the fact that it takes place in two stages, each of which carries its own characteristics and importance.

The Supreme Court in decision No. 45, dated 01.02.2011 attaches special importance to the first stage of the judicial division of property, since in this part

[3] With the issuance of the execution order, the following cannot be submitted: the request for joining the case; the request for the lack of territorial competence; counter lawsuit; request to change the cause or object of the lawsuit; request for primary and secondary intervention; the summoning of the third person by the party or by the court.

of the process problems arise both of a legal and practical nature, given that they must be evidenced beyond any reasonable doubt: the right of co-ownership of the litigants, their corresponding parts and the things that shall undergo division, according to Article 370 of C.P.C. Since the circle of litigation is derived from the legal relationship itself, the circle of co-owners is determined taking into account the cause of the birth of the co-ownership and the forms of its manifestation. In this context, the litigants have the obligation to prove before the court their right of ownership over the thing that will be divided. After the right of ownership of the items to be divided has been determined, the division of the ideal parts proceeds, where the court must focus on the principle, according to which "*parts between co-owners are presumed to be equal until proven otherwise*".

During the judicial review, the court investigates whether the item can be the subject of division, given that in practice there are not few cases where the division of property on a single property acquired illegally or the division of property which is legally considered personal property is claimed. Referring to immovable's that are not registered in the public register, the jurisprudence of the Supreme Court prohibits their division, as it is considered that legal interests cannot arise from illegal assets (See Supreme Court decision No. 22/2002). "*In the case of judicial division of immovable property, the registration of the latter in the real estate registers is necessary, since the effects resulting from the division of the common property are in a certain way equated with the alienation of immovable property*" (See Supreme Court decision No. 45/2011). At the end of the first stage, the court with an intermediate decision determines: the circle of co-owners who will participate in the division, the circle of co-owned items that will be subject to division and the ideal shares of each co-owner in the common item.

"*The precise and clear non-determination of these three elements makes the first stage of the trial for the division of the property in co-ownership vulnerable and not in accordance with the law*" (See Supreme Court decision No. 45/2011). Against the intermediate decision of the first stage according to Article 370/2 of C.P.C a separate appeal is allowed, the submission of which suspends the continuation of the trial. "*With the suspension of the trial, the process remains frozen and enters a state of calmness, which excludes any kind of procedural activity from its subjects*" (Brati, 2008).

The first stage ends with an intermediate decision "*sui generis*" which must take definitive form or must be expressly accepted by the parties, according to Article 371 of C.P.C, in order to proceed with the second stage of the special judgment for the division of the property. The decisions of the first stage of division, as intermediate decisions of a special *'sui generis'* type of decision, are not decisions of a purely procedural character, i.e. are not given only to ensure the normality of the development of the trial within the requirements of the procedural norms. Based

on the special nature of the judgment of cases with the object of property division, the legislator has deemed it necessary to solve some problems definitively with an intermediate decision at the end of the first stage. Once the interim decision becomes final, during the second stage trial, neither the circle of co-owners, nor the items to be divided, nor the corresponding parts of each co-owner can be further discussed.

It is a practice consolidated by the jurisprudence of the Supreme Court, the fact that: "*In no case and for any reason, the court that examines the validity of the decision of the second stage of the division of the property does not have the right to examine problems related to the judgment of first stage*" (See Supreme Court decision No. 628/2000). At this stage, the division of the common property in nature will be finally decided, a decision which will be decided taking into consideration, the demands of the litigants and the opinion of the expert, since the solution of the case requires special technical and scientific knowledge, which the court does not possess "Experts determine the market value of the property that is required to be divided, the value of each co-owner's share, the determination of the possibility of division in kind of the thing and the variants that may exist, the determination of the values that the parties must compensate each other in case of inequality in parts as a result of the division of things in kind" (Tafaj & Vokshi, 2018).

As a rule, if the division of the thing in nature is possible from a physical and legal point of view, the thing is divided into equal parts between the co-owners. The division of things by lottery is a feature of this judgment which will be applied in all those cases where it is determined that the parts to be divided are equal or almost equal. When the division in kind is possible both physically and judicially, but this division cannot be carried out exactly in equal parts, "*the inequality of the parts, resulting from the division in kind of the thing, is compensated by a monetary reward*", according to Article 207 of the Civil Code.

When the division in kind can be carried out since the economic destination of the item is not damaged and the parts formed are equal or compensated in money, the court is obliged to draw up a project of division and deposit it in the secretary no later than ten days before the holding of the next judicial session. According to Article 373 of C.P.C, the parties had the right to present their remarks on the draft division filed by the court, but this right must be exercised within a decadent period of five days before the next court session. In relation to the preparation of the draft division, the Court has concluded that: "*The lack of a draft division or in case of its non-submission to the secretary by the court constitutes a serious procedural violation, which necessarily leads to the annulment of the decision by the higher courts and the return of the case for retrial in the first instance court* " (See Supreme Court decision No. 628/2000).

In the event that the item cannot be divided in kind as the physical and/or legal criteria are not met, the legislator has made several alternatives available to the litigants. When the item cannot be divided in kind and the co-owners request the division in kind, the court can order that the item be left in the ownership of the co-owners who submitted the request, forcing them to pay in favor of the other co-owners.

In the event that during the trial, none of the co-owners wants to acquire ownership of the item and compensate the other co-owners, the court proceeds with the sale of the item at auction.The auction procedure is developed in accordance with the provisions made in the C.P.C for the mandatory execution of court decisions and the body that organizes the auction is the enforcement office.

Another hypothesis provided for in the law is when the item subject to division is a residential house and cannot be divided in kind. In these circumstances when the item is claimed by several co-owners, the court is guided by the principle of *'positive discrimination'*, leaving it to the co-owner who lives in or is more in need of that residential house, towards the obligation to compensate the other co-owners. "*It is the duty of the court to solve such problems as fairly as possible, taking into account all the factors and leaving the residential house to the person who, not only from the legal side, but also from the social and humanitarian side, needs this thing the most* " (Nuni & Hasneziri, 2010: 195). At the end of the second stage, the court ends the co-ownership relationship with a final decision, transforming the co-owners into owners with exclusive title to the property. Depending on the cause of the birth of co-ownership, the aspects of the special judgment on the division of property also change.

The court, during the division of the marital property (in the case of the legal communion regime), must take into account some special rules related to this form of co-ownership. The division of the property of the spouses is done taking into consideration, in addition to the Civil Code and the Civil Procedure Code, also the legal regulations of the Family Code. The division of property can be done by agreement only in cases where the spouses dissolve the marriage, meanwhile when the spouses on their own free will change the property regime, from the regime of the legal communion to the regime of separate assets according to Article 98 of the Family Code, the division of the marital property is done only by initiating a judicial process (Mandro, 2009). At the beginning of the communion property division procedure, the spouses or their heirs have the right to receive personal movable property that belonged to them before the communion or they acquired during the communion in the form of inheritance or donation. The property that is subject to division between the spouses is what remains, after deducting from the communion the obligations it has towards the spouses or third parties.

Regarding the items that are not subject to division in this type of trial, we consider the personal items listed in Article 77 of the Family Code, as well as the fact that: "*In*

the case of a gift between spouses of personal items or co-owned items, the donated item will pass to the personal property of the beneficiary spouse, and these items do not belong to the communion between the spouses" (See Supreme Court decision No. 3/2006). The peculiarity of this type of judgment, is the fact the court can decide to transfer a part of the common property that belongs to one spouse, in favour of the other spouse depending on the children's necessities and the parent that will have custody of the child, according to Article 103 of The Family Code.

Another important institution in the procedure for the division of marital property is the compensatory contribution, which is made for the benefit of one spouse and consists in the fact that "*the court can oblige one of the ex-spouses to pay a contribution on behalf of the other, to compensate for the inequality that may be caused in the other's life from the division of assets as a part of the dissolution of the marriage process, apart from the alimony obligation*", according to Article 147 of The Family Code. Regarding the division of the assets of the agricultural family, apart from the general rules provided by article 207 of the Civil Code and 369-374 of the Civil Procedure Code, there are also implemented some specific rules related to this special form of co-ownership. With the intention of reserving the continuance of the agricultural family, when a particular member requests his share, it is not given in nature but it is evaluated and given back in cash (distinctive from the general principle). An exception to this principle is the cases when, the allotment is requested by several members of the agricultural family with the purpose to create another agricultural family. Under these conditions, the court can decide that the share can be given in nature, provided that the agricultural land that remains after the division, should not be less than *the minimal unit of cultivation,* according the definition given in the article 228/4 of the Civil Code.

Problematics of the Albanian legal framework in the division of property

The Court of the Judicial District of Tirana in the decision No. 10754, dated 27.11.2014, decided: "*The division of the apartment with a surface area of 52 m^2, benefiting ½ part each*". From the Expert Report was ascertained that the apartment (built about 40 years ago) had been reconstructed) and is located in a developed area and was evaluated in base of table No. 3 of the Instruction of the Council of Ministers, dated 22.08.2016. The Court of Appeal observes that:

"*The apartment should be left in nature to the defendant because he lived there with his family. Regarding the value of the apartment, the court observed that the evaluation should have been calculated using the reference price, and that the expert had not used a concrete sales contract as reference, but instead referred to*

the general value/m² of the potential sale of the apartment. Also, it should be taken in consideration the fact that in this case, in the lawsuit for the division of property, does not occur the process of transferring of the property to third parties, which also presupposes the opportunity to benefit from the highest possible value of the property."

So, the court did not take in consideration the market value of the property, but the factual condition of the property and the table No. 3 of the Instruction of the Council of Ministers, with the reasoning that the apartment is not newly constructed and the evaluation is not in terms of being sold to third parties with the purpose of making profit, but as an object of a division of property court trial between two ex-spouses.

The Court of the Judicial District of Tirana with the decision No. 3815, dated 06.05.2016, has taken a different position in the case with object: the division of the apartment with a surface area of 80 m² and the vehicle. The parties in this case requested that the assets subject to division be left in nature, with the obligation to compensate the other party. From the expert report, it results that the apartment cannot be divided in nature and the value was suggested to be calculated according to the Instruction No. 2, dated 06.08.2014 of the Council of Ministers, while the vehicle was estimated according to the market value.

The court decided that: "*The apartment and the vehicle must be left to the defendant, since the apartment is indivisible in nature, and the defendant has lived there for many years, while the plaintiff lives in her parents apartment*". Unlike the first practice, in this case, the court considered the defendant's claims on the evaluation of the apartment based on the Instruction of the Council of Ministers, to be unfair, on the grounds that the evaluation according to the instruction is calculated according to the average cost of construction, while the evaluation of the apartments in the divisions of the property should be evaluated according to the market value of properties.

The peculiarity of this case consists in the fact that, during the trial none of the parties showed any interest in dividing the apartment in nature, while the only claim of the plaintiff was related to the evaluation of the object according to the The Council of Ministers decision No. 132, dated 07.03.2018, as amended. The court with the interim decision on the first stage of the division, decided: "*The division of the apartment between the co-owners with belonging parts, ¼ part each.*" In these conditions, the expert finds that apart the apartment, there was also an additional area of about 12 m² that was not reflected in the certificate of ownership and is not included in the registered surface area of 78.94 m², which was not taken into consideration. The expert has come to the conclusion that the object cannot be divided in nature and has evaluated the object based on the market value. The court considers the plaintiff's claim for the valuation of the object unfounded, on the grounds that: "*The purpose of the Decision of the Council of Ministers No. 132,*

dated 07.03.2018 is to provide the methodology for determining the taxable base of the immovable property "building " and not to determine the methodology for calculating the value of the object in partition lawsuits, which should be evaluated according to the market value, since it is the real value of the object".

In another practice, the Court of the Judicial District of Tirana, with decision no. 147, dated 18.01.2021, considered the case with the object: the division of the residential apartment, between the plaintiff in the quality of the testamentary heir and the wife of the testator.

From the content of the will, the testator stated that: *"... the ownership of 1/2 undivided part of the apartment that I co-own with my wife, to be transferred to my daughter after my death"*. From the expert report resulted that the apartment could not be divided in nature, so the court decided that the object should be left in nature to the defendant, since she had lived there for 20 years. The same stance was held by The Court of the Judicial District of Tirana in decision No. 2554, dated 29.03.2017, which after analyzing the expert report, assesses that: "The property subject to division will be valued according to the free market value and can be divided in nature, into two parts: Part "A" with a floor apartment of 70 m2 and a land area of 110 m^2 and Part "B" with construction area, a floor apartment of 60 m2 and land area of 108 m^2. Despite the plaintiff's claim that: "The compensation value should have been according to the legal reference price and not according to the market value, since there was no financial possibility to afford this compensation value", the court decided that the compensation should be assessed based on the price of market, because it fulfils the mutual interests of the parties.

In relation to the division of immovable property that are not registered in the public registers, the Court of the Judicial District of Tirana in decision No. 2744, dated 28.04.2021, did not consider the additional area of about 12 m2, referring to the jurisprudence of the Supreme Court, according to which: *"Addition or construction, which has been carried out in violation of the norms in force and has not been registered in the immovable property register, cannot be the subject of judicial division. In this sense, it cannot be claimed that co-ownership rights arise from illegal construction because the right of ownership has not been acquired legally"* (See Supreme Court decision No. 22/2002) *The same position was held by The Court of the Judicial District of Tirana in decision No. 4581, dated 09.04.2014, in the court case with object: Division of the marital property, consisting of a residential apartment, registered in the name of the plaintiff and two apartments (ordered by the plaintiff with an undertaking contract), not registered in the Office of Registration of Immovable Property. At the end of the first stage of the division, the Court decided: "The division of the residential apartment, registered in the Office of Registration of Immovable Property, between the litigants with 1/2 part each ".* Regarding the other two apartments, the court assesses that: "*They cannot be divided between the*

two litigants, because they are owned by the construction company, which is not a part to the trial. Also, these objects are not registered in the Office of Registration of Immovable Property, this fact legally indicates not only the existence of an immovable object, but also its ownership."

Against this decision an appeal was filed on the second part of the provision, for which the Court of Appeal argued that: "*...The subsequent registration of these immovable properties would put the plaintiff in a disadvantageous position to then later request the division, as the court previously decided to dismiss this claim. For this reason, the College assesses that the trial should be suspended for this claim, as a lawsuit that could not be filed at this stage of the trial*". As per the above, the Court decided that: "*The object of judgment must be left in ownership of the plaintiff, with the obligation to compensate in favor of the defendant, the belonging parts in monetary value, becouse this object has been in the possession of the plaintiff for a long time, who has made changes in the destination and has used it as a means to earn income*".

Another issue that has created a lot of controversy, is the way of evaluating immovable property that has not been registered in the public registers, but that are in the process of legalization. The Court of the Judicial District of Tirana with decision no. 7796, dated 06.10.2016, assesses that: "*The object that was built by the defendants and the contractor, is in the process of legalization and as such, it cannot be treated by the court as an illegal construction, as long as the competent state entity has not reached in this conclusion*". In order to determine the current value of this property, the court chose the direct comparison method, with the reasoning that: "*This method is used for the evaluation of all properties that have a sale market or a rental market*".

Conclusions

The judgment for the division of property between the co-owners, is a judgment that requires a considerable time to be finalized in a final decision. Under these conditions, it is imperative that the problems that arise during judicial practice be dealt with quickly and efficiently, so as not to cause artificial delays to a process which is destined to last in time. Among them, the process for the notification of the parties is often an obstacle in the judgment on the division of property, since a considerable number of citizens who have property in common ownership live outside the territory of the Republic of Albania. In order to avoid unnecessary delays, it is necessary to make an attempt to notify these citizens at their places of residence, before proceeding with the notification by announcement. In addition, in the conditions where the Decision of the Council of Ministers No. 132/2018 and

Instruction No. 2/2014 of the Council of Ministers do not aim to determine the methodology for calculating the value of the item in lawsuits division, allowing this evidence to be taken by the expert is not only totally useless for the purpose of the trial, because it causes delays and confusion.

In order to really determine the value of the immovable property and to guarantee the impartiality of the expert in the assessment of the property, it is recommended that the expert obtain information about the market value of the property in some of the real estate offices in the area where the subdivision object is located. On the other hand, in the judgment of the division of the immovable proprieties that are not registered in the public registers (which cannot be subject to judicial division) it is necessary to decide to dissmis the trial and not the dismissal of the lawsuit, since the subsequent registration of these assets will put the plaintiff in a disadvantageous position to request later their division (when the court has previously decided to dismiss the trial). However, should be highlighted that the constructions in the process of legalization cannot be treated by the court as illegal, as long as the competent state entity has not reached in this conclusion.

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