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Welcome note

Henri Çili
Founder of European University of Tirana

Dear readers,

Welcome to Polis!

For the past ten years the European University of Tirana and Polis journal have grown together. Now, as they enter their second decade of life, both the University and Polis, are ready to cross the borders of Albania to integrate in the European research area. Therefore, we have fully redesigned Polis to transform it into our main vehicle for producing and transmitting knowledge about Albania and the Western Balkans. Our goal is to establish Polis as a prestigious open access academic outlet for up-and-coming researchers in the social sciences and humanities.

Starting from 2017 Polis only publishes articles in English that go through a rigorous double blind peer review process. Both these steps are necessary to ensure that we communicate with international academics and fellow researchers and that we uphold the highest academic standards.

As sources of information and access to data have increased exponentially, sources of 'knowledge' have been crowded out causing dangerous levels of misinformation, misperception and plain untruths to sip into mainstream public discourse. To counter it, scholars need to step up and publishers need to provide them platforms to make their research more accessible to a wider audience. Although small, and with limited resources, we at the European University of Tirana through UET Press take this responsibility seriously. Through the redesigned Polis,

and by devoting more time, resources, and finances to research we aim to publish high-quality articles with impact in both the academic and policy-making world.

We are very proud of what we have achieved with Polis so far and look forward to steadily transforming it into the journal of record for Albanian academics and emerging international scholars studying the Western Balkans.

I hope you enjoy Polis' diverse collection of scholarship and strongly encourage you to contribute your articles and reviews.

Polis – A brief history

The first issue of *Polis* was published by the Department of Political Science and International Relations of the European University of Tirana in 2006. Since then *Polis* has published 152 original articles and sold hundreds of copies across the Albanian-speaking area in the Western Balkans.

The founding team - led by Henri Çili and Blendi Kajsiu - established a new standard for academic publications in Albania by following the example of reputable Anglo-Saxon journals. *Polis's* Western-based model, focus on academic rigour, and openness to differing methodological and theoretical strands transformed it into an attractive academic outlet for the dissemination of knowledge and advancement of academic debate in Albania.

As the articles became ever-more diverse, both in breadth and scope, in 2007 *Polis* became the journal of the Faculty of Social Sciences and Education. In 2010 Odeta Barbullushi became *Polis*' second Editor-in-Chief and furthered the journal's growth and transformation into the journal of record for Albanian social scientists. In 2015, with the arrival of Belina Budini as Editor-in-Chief, *Polis* continued to expand towards the field of humanities to complete its establishment as an academic outlet publishing cutting-edge research in the social sciences and humanities.

In 2017 Elvin Gjevori became *Polis*' fourth Editor-in-Chief furthering its transformation and consolidation. *Polis* merged with two other journals: *Educatio* and *Justicia*, publishing articles in the field of education and law respectively and changed its working language by publishing articles in English only. To further its internationalisation, besides publishing in English and encouraging internationals scholars to submit articles for publication, *Polis* established an international advisory board with some of the most renowned scholars of the Western Balkans. Lastly, thanks to a generous grant by the European University of Tirana, since 2017 *Polis* articles are publicly available online through a free access platform at www.polis.uet.edu.al.

Over the years, *Polis* has gone from a small journal of a small department of a small university, into an established academic outlet that is now crossing the confines of Albania to join the European academic debate and exchange of ideas about the world we live in and the one we would like to live in the future.

Heterotopias of identity in Sex and the City

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Abstract

This article looks at how space and its temporal dimensions interrelate with female identity building within late modernity, in the television series Sex and the City. As elaborated throughout the analysis, which profits from Foucault's work on heterotopias, the spaces of New York -to which the show pays homage- fluid and contradictory, both enable and curtail the possibilities of identity transformation. Time adds to the fluidity of space, as its signification can transform space from utopia/eutopia to heterotopia and vice versa. Late-modern consciousness is largely heterotopic, pointing to or being in relation with other places of consciousness and identity. The main characters of the show are aware of and largely accept their heterotopic condition, with all its fallacies. New York, their preferred heterotopy-bearer, offers this multitude of other spaces, inconsistent, fragmented, even broken, for the four women to choose the pieces to form their selected heterotopias, which, under special circumstances, may become enacted eutopias.

Keywords*: Heterotopias; Foucault; Sex and the City; identity; space; time*

Introduction

Sex and the City, the successful television series that follows the lives of four young, independent women in New York attracted much praise and scorn for the open and often provocative ways of portraying aspects of feminine sexuality. Even though the

show's last season was originally aired in 2004 by the television network HBO in the US, it is still being rebroadcast in many countries around the world.[1] Through the stories of the four friends -Carrie, Charlotte and Miranda, in their thirties, and Samantha in her forties- that focus mostly on their sex experiences, the show displays issues of gender, identity and femininity in a palette of incongruous variety. Therefore, not surprisingly, most academic analyses of the programme attempting to address issues of identity focus on its sexual dimension (Kim, 2001; Henry, 2004; Gerakopoulou, 2012). And while the setting of New York is one of the constitutive components of the series, the role of space in the formation of the characters' identity in metropolitan New York has been scarcely addressed (among the exceptions one can find: Richards, 2003; Handyside, 2009; Doudaki, 2012a). Furthermore, no attention has been paid to the relations of space with time. The present article, addressing this scarcity, will attempt to examine how space and its temporal dimensions interrelate with female identity building within late modernity, in *Sex and the City*.

The analysis profits from Michel Foucault's (1984/1967)[2] treatise on *heterotopias* (from the ancient Greek *ἕτερος* [another] and *τόπος* [place]). Foucault's ideas on those "different spaces" or "other places" that challenge the space we live in, seem appropriate for this analysis, since, as will be elaborated throughout the article, late-modern identity is an identity of heterotopias, of "other spaces" or of the possibility and anxiety of those "other spaces".

Space, time and identity in context

In late modernity the individual forms its identity in conditions of high fluidity, ambivalence, mobility, fragmentation and discontinuity (Giddens, 1991; Bauman, 2000). The social experience is disembedded from time and space (Giddens, 1990). Modernity, for Giddens, "*is* precisely the transmutation of space and time" (Friedland & Boden, 1994, p. xi) changing "the representation of space and time and hence the way we experience and understand them" (Friedland & Boden, 1994, p. 2). "Modernity, Foucault argues, is characterized by the adoption of new disciplinary mechanisms that reorder or form new [societal] spaces […], as well as new disciplines that constitute new discursive spaces within which subjects are classified" (Friedland & Boden, 1994, pp. 24-25). Maybe, this is why, for Foucault (1984/1967), "[t]he present epoch will perhaps be above all the epoch of space. We

[1] *Sex and the City* was originally broadcast from 1998 until 2004, by the television network HBO in the US, comprising six seasons and 94 episodes. This study does not involve the two films bearing the same title, released in 2008 and 2010 respectively.

[2] The publication of this text, written in 1967, was authorized by Foucault in 1984. The text, entitled originally 'Des Espaces Autres', was published by the French journal *Architecture /Mouvement/ Continuité* in October 1984 (vol. 5: 46-49). The present article uses a translated version, by Jay Miskowiek, available online at: http://web.mit.edu/allanmc/www/foucault1.pdf (lastly accessed: 3 October 2017).

are in the epoch of simultaneity; we are in the epoch of juxtaposition, the epoch of the near and the far, of the side-by-side, of the dispersed".

If there is any ground in Foucault's claims, the study of these "simultaneous", "dispersed", "counter-sites", in which "all the other real sites that can be found within the culture, are simultaneously represented, contested, and inverted" (1984/1967), can bring into light significant elements of identity within the late-modern condition. Nevertheless, space can hardly be studied without taking into consideration time. Time and space might be dissociated from place in late modernity (Giddens, 1990, 1991) but the temporal dimension cannot be disregarded in any analysis on space. *Simultaneity*, after all, is as much about time as it is about space. Furthermore, Foucault's "new discursive spaces" of modernity cannot be spatial only; discourse is always in dialogue with time.

This article argues for the need to study identity in contextualised environments, in order to give prominence to the complexity and specificity of identity. Also, it is argued that any research attempt on the space-identity interrelations would profit from the analysis both of the temporal dimensions of space and the spatial dimensions of time, together with their discontinuations -the disruptions of space, which create "other spaces", namely "heterotopias", and the disruptions of time, which produce "heterochronies". Thus, the examination of the spatiotemporal interconnections of identity in the specific setting of *Sex and the City*, given the prominence of New York in the show, allows for the study of identity both contextually and theoretically.

As a *contemporary* programme, a programme of *our time*, *Sex and the City* bears the typical characteristics of late modernity, set however in a specific environment. Temporally and culturally, *Sex and the City* is a millennium series, a product of a pre-austerity, and partly, pre-9/11 milieu, inextricably set within a cultural context of celebratory consumerism. These specifities are important in order to understand its aesthetics and the development of its narration. Also, these specific characteristics play a role in how issues of identity, space and power are treated in the show.

For the purposes of the analysis, all six seasons of the show were studied and analysed. The analysis focussed on elements of space (and time) in the 92 episodes of the series, which were textually analysed, instructed theoretically by Foucault's *heterotopias* and the work of cultural studies theorists on cultural geography, identity, and gender and space (e.g., Soja, 1995; Young, 1986; McRobbie, 2008; Kellner, 1995).

Sex and the City's heterotopic citizenship

As briefly mentioned earlier, in the era of (late) modernity, identity is directly associated with the individuality and the development of a unique self, is self-reflexive and subject to change (Giddens, 1990), in contrast to traditional and

pre-modern societies where it was specific and stable, a function of the group or collective, clearly defined by (social) origin and determined by space. The modern subject is conscious of the constructed nature of identity and of the possibility to change and modify it at will. That is why anxiety becomes a constituent experience of the modern self: one is never certain of the right choice or even whether one can have an identity at all (Kellner, 1995, p. 232). For Hall (1996, p. 16), modern identity is constructed through the dialectic relation of necessity and impossibility, a dilemmatic position in which the characters of the show often find themselves. As Carrie (whose narrations guide us through the four friends' stories and adventures), the main character of *Sex and the City*, wonders:

> Since birth modern women have been told that we can do and be anything we want – be an astronaut, the head of an internet company, a stay-at-home mom. There are no rules anymore and the choices are endless … but is it possible that we've gotten so spoiled by choices that we've become unable to make one? ('All or Nothing', 3:10)[3].

Sex and the City is "situated in the broader postmodern world of contradictions. The storylines of the show are woven around the twofold awareness of the modern urban woman: the freedom to create new identities and at the same time, their flimsy nature" (Doudaki, 2012b, p. 6). Important, in this aspect, for the characters of the show, is the urban space of New York, which interrelates with their private and public identity both in enabling and curtailing ways. The eligibility for motion that urbanity offers is a reminder to the characters of the show both of the freedom to construct their identity and the distress of such an endeavour.

"The recurrent experience of modernity and urbanity was always ambivalent, alternating between the sense of endless possibility and the sense of loss, between exhilaration and despair" (Patton, 1995, p. 119). The city, according to Raban, "is a place where individuals can assume different identities with comparable ease, but where they run the risk of losing themselves in the process" (Patton, 1995, p. 115, for Raban's *Soft City*). In Metropolitan New York, where, as Carrie argues, you *can get anything, anytime* ('The Big Time', 3:8) and where *anything is possible* ('Boy, Interrupted', 6:10), "nothing is fixed, the possibilities of personal change and renewal are endless and open" (Raban, 1974, p. 245). The city offers to the characters of the show infinite options and opportunities for pleasure and meaning, for identity building (*That's what's great about New York: There's always a new neighborhood, a new restaurant, a new man* – 'To Market, to Market', 6.1), enhancing at the same time the expectation and melancholia of this freedom. The affordances of mobility, which the metropolis offers, enhance the sense of fluidity in ways that work against the quest for fixed reference points in the endeavour for

[3] 'Episode title', season: episode number. Accordingly thereafter.

identity construction. In addition, New York's palette of "a whole series of places that are foreign to one another" (Foucault, 1984/1967) is an uneasy reminder to the four friends that the utopia[4] of a unified, stable identity cannot be accomplished.

The public space of New York is lived by the four friends circumstantially, incidentally, as space to be consumed, producing an individualised, fragmented, heterotopic citizenship. The citizen in the show is featured as an isolated unit, not as member of a collectivity. Post-feminist individualism is celebrated in the series[5] (Hammers, 2005; Cramer, 2007); the individual remains solitary in public spaces, is not a public agent or a member of the polis. The characters of *Sex and the City* are self-confined in their micro-universe (myself, my friends, my boyfriend), detached from the problems of the city. Self-centeredness, individuality and apotheosis of the values of the self, attributes of the narcissistic late modernity (Lasch, 1979/1991), are displayed as main functions, desirable and preferable, of the modern citizen. The emphasis is on the rights and values of the individual, not the citizen, where well-being and improvement -when existent- have to do with the self, not the community. Cut-off from society, the four friends experience the city as a space for survival and, if they can afford it, for pleasure and not as a place for collective action.

However, at the same time, it is exactly this indifference found in big cities that fosters tolerance towards difference, towards this "unassimilated otherness" (Young, 1986, p. 22). Cosmopolitanism entails indifference, something that is often featured in *Sex and the City*, through its incongruous coexistence of various fashion styles, sexual relations, family formations. New York, as a metropolis that forms its own identity through heterogeneity and multiculturalism, accommodates and creates the action and the relations of the heterogeneous elements that in turn

[4] Utopia, from the Greek *οὐ* ('not') and *τόπος* ('place'), bears the meaning of 'no place', and can refer to an intended or aspired ideal community or society. Modernity allowed for the imaginary of alternative societies but at the same time contested the utopic ideal of their perfect nature. For Levitas (2003, p. 3), "utopias are blueprints of the good (or even perfect) society, imagined elsewhere and intended as prescriptions for the near future", but regardless of whether they are conceptualized positively or negatively (as ideal places that can be achieved or as non-places), they are not real (yet). Foucault (1984/1967) posits that

> [u]topias are sites with no real place. They are sites that have a general relation of direct or inverted analogy with the real space of Society. They present society itself in a perfected form, or else society turned upside down, but in any case these utopias are fundamentally unreal spaces.

For Foucault, utopia "is a nowhere which exists only within the realms of fantasy" (Whittaker, 2011, p. 127) and only heterotopia, which he calls "a kind of effectively enacted utopia" (Foucault 1984/1967) can be real.

[5] Viewed as an example of postfeminist television, *Sex and the City* has been critiqued for its "depoliticized and fragmented treatment of feminism" (Stillion Southard, 2008, p. 152), based on the assumption that "there is no more need for feminism because equality has been achieved" (Kim, 2001, p. 321). Postfeminist television programs have also been accused of promoting a "lifestyle feminism" (Dow, 2002, p. 260), portraying women trapped in their own achievements: educated and professionally successful, yet personally unhappy (Vavrus, 2000; Hammers, 2005). According to Brasfield (2006, p. 133), "Sex and the City's master narrative is that the women's aim is to gain equal power to white, heterosexual, middle-class men within the existing hegemonic social structure".

receive and produce the characters' private and public identities. New York is the *métapolis*[6] that hosts the disparate micro-universes of citizenship, which are individualised and often incompatible, being thus heterotopic.

The show does celebrate female friendship and solidarity (Henry, 2004; Winch, 2012), however not elevated to the level of social solidarity. The party of the four friends forms their own selected family (Doudaki, 2012b), which is rather introvert and not connected to the polis. Issues not directly affecting the characters in their lives are largely abolished and the encounter with the problems of the modern city is minimal and only in relation to their everyday routine: heavy traffic, difficulty in finding a taxi or making a reservation in the new 'hottest' restaurant of Manhattan. Crime, unemployment, poverty, is jettisoned from the magical world of *Sex and the City* and any references to the social conditions or problems of the city are almost non-existent or exorcized with humour. As Miranda ascertains: *There are no available men in their 30s in New York. Giuliani*[7] *had them removed along with the homeless* ('Valley of the Twenty-Something Guys', 1:4). While *Sex and the City* celebrates the possibility of single women to be masters of their lives, living on their own and inhabiting the city space with confidence, it does not refrain in this case from commenting on Giuliani's crusade to 'clean' the streets from crime and bring safety back to the city. Also, when Carrie loses her way and asks for directions, a man gunpointing at her mugs her, demanding her bag (*baguette,* Carrie corrects him), her ring, her watch, but also her Manolo Blahniks (!) and only then does Carrie protest, as ... this is her favourite pair of shoes ('What Goes Around, Comes Around', 3:17).

As the public space in *Sex and the City* is customized, individualized, the characters of the show largely ignore the broader environment, creating and being attached to micro-spaces, which are not fully compatible with the polis. New York's space, at the same time that fosters the possibility of a selected identity through the potentially limitless choices of consumption, pleasure and fantasy, restrains, fragments and disjoints public identity through its seemingly neutral, depoliticised spaces.

In *Sex and the City*, the effect of entering the public sphere "is not politics, but merely visibility" (Zieger, 2004, p. 99). Politics is experienced as heterotopia, as non-present, dislocated, as an indifferent or even annoying reality taking place 'elsewhere'. Consistently, issues of political ideology are almost absent. In the beginning of the third season Carrie is involved with a politician, and as she informs us: *I thought we made a good match: I was adept at fashion, he was adept at politics. … Really what's the difference? They're both about recycling shop-worn ideas and*

[6] According to Tsoukala (2008, p. 149), François Asher describes with the term *métapolis* the modern city in the era of globalization (*Métapolis ou l'avenir des villes*. Paris: Odile Jacob, 1995).

[7] Rudy Giuliani: Mayor of New York City (1994 – 2001).

making them seem fresh and inspiring ('Politically Erect', 3:2). In the same episode, the four friends' discussion on politics, focusing exclusively on the style and looks of politicians, is transforming the "aesthetic [into] politically anaesthetic" (Soja, 1995, p. 21). Despite the conspicuous sense of humour and irony in the scene, the lightness in their discussion is not fertilized with elements of alternative versions of political practice. It is true that *Sex and the City* refrains from being didactic, which is often the case in television shows, and frequently resorts to humor and irony to address sensitive issues (mostly of sexuality and sexual practice) (Akass & McCabe, 2004; Adriaens & Van Bauwel, 2014, pp. 187-188), however, the undermining of frivolity is not always productive of alternative readings. On the other hand, as Fiske (1987, p. 68) notes, "[i]rony, as a rhetorical device, is always polysemic and is always open to apparently 'perverse' readings because it necessarily works by simultaneously opposing meaning against each other." Thus, an alternative reading, consistent with late-modern bipolarity, could be that (political) ideology, being stubbornly absent from the show, is actually present. Along the same vein, and in line with Foucault's understanding of heterotopia as the contestation of dominant perceptions of space (and practice), the show does not disallow the contestation of the hegemonic politics of space established in New York.

Heterotopic coordinates of identity

The 'other spaces' within New York, in relation to and in juxtaposition with the metropolis, influence in different and often contradictory ways the identity of the show's characters. As it is shown through the analysis, the signification of 'other spaces' and their contrast to New York curtails in practice the opportunities the urban space creates for identity building. At the same time, however, by ambivalently signifying the space, the show is leaving room to its characters to select or construct their *own* spaces.

New York is the place where and in dialogue with, everything is tested and experienced (Richards, 2003, p. 148): sex, relationships, friendship, family, profession. The series highlights the potential for the modern woman of the metropolis to construct and reconstruct her identity through fashion, change of sexual partners, structuring of her own family relationships. However, this possibility exists in a specific environment, which is much more limited than the boundaries of New York: it is Manhattan and in particular the southern part of it; it is not even Bronx of the black community, let alone booming Brooklyn. The emerging reality *outside the walls* is of no relevance to the show.

In the series, "Manhattan is constructed as the site of positive identity politics, and all other spaces are relentlessly marginalized as either fake or foreign. […]

Marginalization occurs not because of one's gender or sexual orientation but due to one's geographical location" (Handyside, 2009, p. 406). The four friends exorcize anything outside the island of pleasures and wonders, and is considered deadly sin to live anywhere else. When Samantha's young boyfriend, Smith, who is an actor, invites her to his new play, Samantha responds: *It's in Brooklyn. I don't do borough* ('To Market, To Market', 6:1). Yet, as the show is faithful to its contradictions[8], Miranda breaks the rule, after making a family and moves to Brooklyn, despite her initial fervent denial (*I am a Manhattan girl. I do not like anything non-Manhattan* – 'Out of the Frying Pan', 6:16).

Billingham (2000) uses the term *geo-ideological* in order to express the interface between the literal and the metaphorical constructs of location. According to the author, our perception of the geographical-as-location entails a prevailing sense of the ideological signing of that location. Together with the spaces' ideological load the show creates, it also constantly designates coordinates of identity through the display of places positively and negatively signified. Identity in the show is very often determined by occupation, economic status and place of residence (of course, in lower Manhattan), presented as tokens of eutopia[9]. We learn, through the narrations of Carrie, about Miranda's new boyfriend: *His name was Ted Baker, he was 32, a sports medicine doctor with an apartment overlooking the Museum of Natural History* ('Secret Sex', 1:6). Also, for one of Samantha's dates: *Harrison was a very successful litigator who took steam baths with Ron Perlman and owned an apartment on the 39th floor of Museum Tower.*[10] *An excellent first-date pedigree (*'The Freak Show', 2:3). Finally, for Charlotte's new boyfriend: *His name was Arthur. He was a nice, sweet, handsome, funny, great investment banker, who lived between Madison and Fifth* ('Where There's Smoke…', 3:1). According to Foucault (1999, p. 140), "space is fundamental in any exercise of power". The spaces of eutopia here are spaces of status, of discipline and control, and being in practice spaces of power, they summon exclusion: reserved for the few, rich and powerful.

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[8] As Fiske (1987, pp. 71-72) notes,
[h]eteroglossia, polysemy and contradictions are […] all ways in which social differences and inequalities are represented textually. As society consists of a structured system of different, unequal, and often conflicting groups, so its popular texts will exhibit as similar structured multiplicity of voices and meaning often in conflict with each other. It is the heteroglossia of television that allows its texts to engage in dialogic relationships with viewers.

[9] Eutopia, deriving from the Greek *εὖ* ('good' or 'well') and *τόπος* ('place') is synonym for 'good place'. Eutopias can be related to utopias, with the difference that, even though they are usually connected to conditions of ideal being, they offer the possibility of a real place. While the focus in eutopias is on the 'good places', in heterotopias is on the 'other places', the ones that are usually outside normal view, contradicting or contesting the 'normal' places. Heterotopia can barely exist on its own, not in comparison, in juxtaposition or in contrast to other spaces. However, it can create the conditions of transformation that will lead to eutopia. For this reason, under certain circumstances, eutopia can be perceived as a kind of auspicious heterotopia.

[10] Building of luxurious apartments, overlooking Central Park.

Another example of power-spaces used in the construction of racial othering, is presented in the third season, when Samantha is having an affair with an Afro-American, named Chivon. His sister, Edina, who apparently has a great impact on Chivon's choices, is objecting to her brother dating a 'white woman'. One of the times they are in a club where exclusively Afro-Americans frequent and 'black' music is played, Edina is making things clear for Samantha*: I'll say it to you plain. I don't care how many Jennifer Lopez looking dresses you have hanging in your closet, you don't belong in here. You can never understand what I'm talking about. This is a black thing* ('No ifs, ands or Butts', 3:5). The 'black' clubs in this case are cultural spaces of race identification, where the other races are excluded. At the same time, however, issues of marginalisation of the black community by the dominant white community and self-exclusion of the white community from the 'black' places, can be raised.

Since New York is presented as the Paradigm of urban living, almost all the *other places* are portrayed as heterotopias or even dystopias[11], connected to the idea that life in New York is actually much better or at least more sophisticated. Carrie might think that *one of the best things about living in a city like New York... is leaving it* ('Bay of Married Pigs', 1:3), when she goes for a weekend at a friend's house in the Hamptons, however she rushes back after seeing her friend's husband naked in the hallway.[12] Also, in the third season, the four friends go to Los Angeles, which is constantly compared to New York aesthetics. The obsession of people living in L.A. with physical appearance is poisonously portrayed in the dialogue Miranda is having with an old friend, Lew, while meeting him for dinner. Lew is a former cynical New Yorker writer who moved to L.A. and espoused the lifestyle of wellbeing ('Sex and Another City', 3:14):

> *- Why aren't you swallowing your food?*
> *- You think I look this good by eating?*
> *Miranda realized Lew hadn't found inner peace, he'd found an eating disorder.*
> *- Are you serious?*
> *- Don't put your toxic shit on me. This is fucking L.A., OK? You have no idea what pressure I'm under here.*
> *- Who cares what you look like? You're a writer.*
> *- For a hit show. Trust me. No one wants to hire a fat story editor.*

[11] A dystopia (from *δυσ-*, 'bad, hard' and *τόπος*, 'place'), often presented as counter-utopia, is a fictional or potentially upsetting or frightening community or society. While dystopias focus on the threatening malfunctioning of social formations, with no room for positive transformation or rebirth, being thus inherently pessimistic, heterotopias, even though usually disturbing, do leave space for metamorphosis.

[12] Even from the beginning of the episode we are warned by Carrie on the superior position subjects assume for themselves when acquiring a house in places of high economic value and status symbol. As she explains, with a dose of irony: *Hampton houseguests are always required to sing for their supper.*

Even Paris, the city of Carrie's dreams, fails to keep up with the utopic ideal she had created for the city of light, when compared to New York. In the last season, Carrie accepts to go to Paris with Aleksandr, a famous Russian artist and her partner at that time. However, life in Paris does not turn out to be perfect. Apart from the problems in her relationship, which she ends, Carrie actually seems uninterested in her until-then utopia. During her stay in Paris we see her bearing all the manners and habits of New York, as if she has never left the latter. Hence, Paris is doomed to be a heterotopia.

New York's spaces, as a palette of infinite possibilities for self-discovery, change and transformation, are theatrical, embodying "a series of stages upon which individuals could work their own distinctive magic while performing a multiplicity of roles" (Harvey, 1990, p. 5). And like in any imaginary world, also in this one, issues of isolation or of compatibility with the *real* world arise. When Carrie announces to her friends that Big (her longest relationship and greatest love) is moving to Napa, California ('A "Vogue" Idea', 4:17), Samantha is wondering: *I am always surprised when someone leaves New York – I mean, where do they go?* And the pragmatist and cynical of the group, Miranda, responds: *The real world?*

Also, when Miranda is dating Luke ('The Freak Show', 2:3) he proudly confesses:

> *- I haven't left Manhattan for 10 years … Everything you want is right here. Culture, food, the Park, cabs at 3 a.m.. Why leave?*
> *- Perhaps to experience a world outside Manhattan? Miranda demurs.*
> *- There is no world outside Manhattan, Luke assures her.*

However in New York, even within (lower) Manhattan, there are various spaces that "mirror, reflect, represent, designate, speak about all other sites but at the same time suspend, neutralize, invert, contest and contradict those sites" (Johnson, 2006, p. 78), alternating between heterotopia and eutopia: privileged places can easily reveal themselves as betrayed utopias, not fulfilling the promise of a better life or of a new identity, while abolished places can work as enacted eutopias. For example, during the time that Carrie and Big are having a secret affair (third season), they choose to meet in hotels located in 'safe areas' unlikely to be seen by people they know. When Carrie comes out of a hotel on 56th and 8th, Charlotte happens to pass by, as she had gone at the tailor's nearby to try on her wedding dress, and is asking with evident astonishment: *Carrie, what are you doing in this neighbourhood?* ('Running with Scissors', 3:11). *This neighbourhood*, negatively signified, is a heterotopia abolished from the geographical identity of the four friends. At the same time, however, this revoked area is hosting the secret love of the couple and becomes for them a "heterotopia of illusion" (Foucault, 1984/1967), "a source of fascination, a forbidden place of secret pleasures" (Johnson, 2006, p. 85), despite

Carries' feelings of guilt. In this respect, New York in the show is a heterotopia in itself as it "is capable of juxtaposing in a single real place several spaces, several sites that are in themselves incompatible" (Foucault, 1984/1967).

Transgressive intersections of space and time

As explained earlier, the ways space and time are experienced are crucial in how identity is being built in late modernity. Thus, the interaction of the show's characters with space cannot be separated from time: time gives meaning to, signifies the space and sets the conditions of its experience in late modernity, Foucault's 'epoch of simultaneity'. The concept of simultaneity, according to Pugliese (2009, p. 671) allows us to understand the temporal juxtaposition of absolutely dichotomous figures within the same geographical space. What this study argues, in addition, is that simultaneity can also describe the coexistence of the temporal and physical dimensions of space, and their synchronicity or disharmony. In this context, simultaneity of good time and place appears as a precondition of eutopia[13]. On the other hand, disharmony between space and time creates 'heterochronies'.

For example, in one of her short affairs, Carrie is having a wonderful night at her younger lover's apartment, but the utopian experience is felt somehow differently in the morning: *I woke up wanting more, or maybe not. In the grey morning light, everything looked completely different: Candles from Urban Outfitter, dirty laundry, a pizza box. Suddenly, reality hit: I'm in a twenty-something apartment* ('Valley of the Twenty Something', 1:4). Also, in the case of Carrie's secret affair with Big, as the burden of remorse and the frustration of meeting secretly become difficult to handle, the hotel on 56th and 8th is transformed, from the haven that hosts their love, to the place where she is mistaken as a prostitute and is accidentally confronted by Charlotte, who strongly disapproves of the affair. In both instances, the ruptured harmony of good space and time turns the places from utopias to heterotopias.

According to Foucault (1984/1967), heterochronies are fully enacted when people's 'traditional' time is radically disturbed. An example of such a disruption in the show appears in 'Cock-A-Doodle-Do' (3:18), where the work place of the transsexuals on the street outside Samantha's apartment comes to disrupt her private space and lifestyle. Her utopia, her new expensive apartment, is contested, even violated, by the transsexual prostitutes working on the street. Here, heterotopia

[13] In his *Heterotopias* Foucault does not refer to eutopias, he only introduces utopias, as the reverse of heterotopias, as those 'unreal spaces' in contrast to the 'other spaces'. However, the notion of eutopia, of the 'good place', can under certain conditions be linked to what he calls "heterotopias of compensation". A heterotopia of compensation creates another real space that is "as perfect, as meticulous, as well arranged as ours is messy, ill constructed, and jumbled" (1984/1967). In the context of time-space interrelations, a heterotopia of compensation can be realised when (good) time and place are met.

is experienced as contestation of space and time, as apart from the juxtaposition of Samantha's space and the space of transsexuals, the latter also invade in and disrupt her private space-time with their noise –she cannot sleep and make love, which infuriates her: *$7,000 a month and I have to put up with a trilogy of fucking trannies down there? I don't fucking think so! I am a taxpaying citizen and member of the Young Women's Business Association. I don't have to put up with this shit!* This is one of the very few instances in the show where civil status and citizen rights are mentioned. However, even in this unique moment of Samantha's citizenship, the latter is selfishly expressed as a personal condition, where her rights are opposed to the transsexuals' rights. She is a taxpaying citizen of high status, they are not. She has a right to be there, they do not. Samantha might be tolerant of other people's sexual lifestyles and activity, however she is intolerant to any severe challenge of her status and power position.

Foucault argues that "there are heterotopias of indefinitely accumulating time, for example museums and libraries" (1984/1967). In these places, "time never stops building up and topping its own summit." Opposite these heterotopias "there are those linked, on the contrary, to time in its most flowing, transitory, precarious aspect, to time in the mode of the festival. These heterotopias are not oriented toward the eternal, they are rather absolutely temporal". Much in *Sex and the City*'s New York is about the temporary, frivolous, or passing. In addition, the narrative is highly linked not only to place but also to time. In the episodes of the series we are often positioned in the plot through the narrations of Carrie with coordinates of place and time (*Friday night at Chaos…. Crème de la crème of New York* - 'Sex and the City', 1.1. Also: *Saturday, 22:30: The hottest new restaurant in Manhattan* - 'Valley of the Twenty Something', 1:4).

Most places in the show are not of accumulating time.[14] Even galleries are principally about the new favourite artist whose artwork is up in the market; similarly, in retrospectives, the art is for selling and consumption that will offer added value to the cultural capital of those affording to buy it. The four friends regularly attend gallery openings, museum and ballet gala events, where the art is consumed as a social event, to gain visibility and not for the pleasure of the artistic experience. Even for Charlotte, who is an art dealer, art is a vehicle for social acceptance, cultural capital to be exchanged for status, and not a liberating field from social norms.

The importance of *being seen*, constitutive of the contemporary cultural capital and ticket for recognition by others, is emphasized, often with excess, in the series, as the characters frequent in fashion shows, or in restaurant, bar and gallery openings, in order to be part of a temporal visibility. Carrie attending a fashion

[14] One of the few exceptions of places *with no expiration date* is the coffee shop on 73rd and Madison, where Carrie frequently goes to write her newspaper column.

party narrates: *A little past ten, I was dressed to the nines at Brasserie Eight And A Half located on the corner of Right Now And Everyone Was There. It was the place to see and be seen* ('The Real Me', 4:2). However, the places *to see and to be seen*, where the four friends are eager to be found, are promised but almost never fulfilled utopias. The heavens of visibility -for example, restaurants and clubs, where is actually difficult to gain entry, as they are reserved for a few privileged ones- "always presuppose a system of opening and closing that both isolates them and makes them penetrable" (Foucault, 1984/1967) and gain their status through exclusion: the higher the number of people excluded, the more successful they are considered. Furthermore, accessing these sites is inexorably tied to time. Next month or even next week another 'hot' place flashing a new trend will replace the current paradise and today's utopia would be tomorrow's heterotopia (*Balzac overnight became the only restaurant that mattered* - 'The freak show', 1:5. Also: *New York City restaurants are always looking for the next new angle to grab that elusive and somewhat jaded Manhattan palate. Last year, it was 'Fusion-Cajun', Last month, it was 'Mussels from Brussels', And tonight, it's 'S & M'* - 'La Douleur Exquise!', 2:12). Interestingly enough, the characters of the show are fully aware of, and actually enjoy the transient fashionability of these places. Their imminent unfashionability is expected and even welcome in New York's high-speed lifestyle.

Heterotopias of the temporary, of the festival, are usually connected to pleasure and summon consumption. The citizen of *Sex and the City* and of metropolitan New York is primarily a consumer. The fetishism of style and the apotheosis of consumerism the show fosters have often been a point of critique among cultural studies scholars (Arthurs, 2003; McRobbie, 2008). Consumption in the show is not only connected to the construction and reconstruction of personal identity, but also becomes a way of exercising citizenship linking the private to the public, personal identity to public identity. Even patriotism passes through consumption. As Carrie urges her friends: *If you want to do your patriotic duty as a New York woman, you will come shopping with me right now and throw some much-needed money downtown* ('Anchors Away', 5:1). It should be acknowledged that this consumerist impulse reflects on a preeminent discourse of post-9/11 New York, where citizens are urged to go out and shop to show solidarity and their love for the city.

Identity, however, is not constructed only through consumption and stylistic choices (McRobbie, 2008), but also through the places of consumption. The last $400 Manolo Blahnik pair of shoes purchased by Carrie has to be exhibited in the currently most popular club of Manhattan, to obtain any value. In this way, personal style becomes an element of public identity when displayed in specific public places. Carrie's Manolo Blahniks may be an object of admiration and the best ticket for the 'hot' spots of Manhattan, yet, just a little further, in a not-so-glamorous neighbourhood of Brooklyn they would not have any symbolic or

exchange value. Moreover, the consumption of fashion for acquiring style and image is of worth at particular moments (for as long as the specific fashion trend lasts) within these locations. The *right* place and time need to coincide to fulfil the moment of simultaneity, in which the constructed image of the individual is recognised and validated by others. In practice, the ever-changing, transgressive quest for the image takes the form of a dual heterotopia, related to subject position and to time. Firstly, what we see in us is never identical to what the others see. Secondly, our image is always elusive; what we/the others see in us will not be the same the next day. Thus, the ideal image is never realised, as bound to be always disharmonic.

Conclusion

The present study examines the spatiotemporal interrelations with female identity building in the television series *Sex and the City*, profiting theoretically and analytically from Foucault's treatise on *Heterotopia*s (1984/1967). The analysis also explores the temporal dimensions of space and the spatial dimensions of time, together with their disruptions, as they illuminate significant elements of the identity-space relation within the late-modern condition. This multidimensional approach of space-time through the study of a specific text of popular culture allows reflecting on identity both contextually and theoretically.

The spaces of New York, bearing the typical characteristics of big cities in late modernity, are contradictory, fluid, experienced ambiguously. The *good* and the *bad* space and time coexist, enabling "mobility and blockage, visibility and invisibility, flexibility and entrapment" (Perera & Stratton, 2009, p. 591), pointing always to the possibility of 'other spaces'. Time adds to the fluidity of space, as its signification can transform space from utopia/eutopia to heterotopia and vice versa. In all occasions, harmonious spaces presume simultaneity of good time and place.

New York is constantly giving coordinates of identity while keeping alive the promise of the possibility of continuous transformation. As mainly limited in Manhattan, the show restrains in practice the theoretically endless opportunities for free motion. The very selection of its main characters -privileged women inhabiting a privileged urban space- does produce a set of limitations on the perceptions of identity, citizenship and space that are introduced in the series. Creating geographical and temporal exclusions, *Sex and the City* proposes its politics of good geography, leaving unquestioned the fact that these seemingly apolitical spaces, are power-spaces of discipline and control for the few and privileged.

The show does introduce limits and restrictions, often only to point to their dubious nature, or even to their impossibility. New York, even though constantly flirting with the possibility of utopias, is always in motion. Its spaces, in continuous dialogue with time, are in movement, towards change, towards what is different than the current state and therefore heterotopic. At the same time, however, its heterogeneity does create a fluid amalgam of cultures and styles with which its inhabitants can connect; always partially, always fragmentarily, but with a sense of freedom in selection. New York hosts a "complex juxtaposition and cosmopolitan simultaneity of differences in space that charges the heterotopia with social and cultural meaning and connectivity. Without such a charge, the space would remain fixed, dead, immobile, undialectical" (Soja, 1995, p. 15).

It may be that "to live in a city is to live in a community of people who are strangers to one another" (Raban, 1974, p. 15), but for Young (1986, p. 21), this "being together of strangers", is exactly what is liberating in the metropolis. "The city allows differences of religious, cultural, or sexual orientation to flourish in ways not possible in smaller and more homogenous communities" (Patton, 1995, p. 119). At its best, it embodies an "openness to unassimilated otherness" (Young, 1986, p. 22) that "can produce indifference as a kind of tolerance" (Tonkiss, 2003, p. 309) and this is actually what Carrie and her friends mostly appreciate about life in New York. Thus, the connection of the four friends with the city is heterotopic: they are never full members of the polis but at the same time free to be part of it.

The anxiety of identity is experienced by the characters of the show largely as heterotopia, which is a post/modern condition. The modern consciousness is heterotopic, always pointing to or being in relation with other places of consciousness and identity. In *Sex and the City,* New York, the exemplar metropolis, is a heterotopy-bearer, creating and hosting these other spaces:

> Neither fully real nor entirely imaginary, but partially both, the unoppressive city is a postmodern object par excellence undecidedly modern and postmodern, visible and invisible, it is both a dimension of the experience of city life and a metaphor of politics. (Patton, 1995, p. 120)

The spaces of New York are heterotopic, generating a "double imaginary" (Whittaker, 2011, p. 126), as they are real and unreal, factual and fantastic. "These different spaces … glitter and clash in their incongruous variety, illuminating" passages for the four women's imagination (Johnson, 2006, p. 87). What is presented initially as utopia in *Sex and the City* is often undermined, working actually as heterotopia. New York offers sites of promise to the heroines of the series, usually disrupted, but at the same time transgressive. The four friends know that the metropolis is heterotopic. They flirt with this reality, they make fun of it,

they clash with it, but New York is still their favourite heterotopy-bearer. With all its fallacies, New York offers this multitude of *other spaces*, contradictory, fragmented, even broken, for the characters of the show to select the pieces to form their *own* heterotopias. Under special circumstances these *other spaces* may even be enacted eutopias.

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Personality traits and perceived stress among Albanian youth

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Abstract

Background Individual characteristics such as personality traits are particularly relevant in understanding stress appraisal. The purpose of the present study was to investigate the associations between Big Five personality traits and perceived stress among Albanian young adults. Methodology Participants were 255 Albanian young adults (33.8% men and 66.2% women) aged between 20 and 35 years old. The measuring instruments were the Brief Big Five Inventory (BFI) and the Perceived Stress Scale (PSS). Findings Results showed that personality traits including neuroticism, extraversion, conscientiousness and agreeableness were significantly correlated to perceived stress. The regression model with stress as the dependent variable, and age, gender and the five personality traits as independent variables, accounted for 33.7% of the variance in perceived stress levels. However only the trait of neuroticism was a significant predictor in the model. These results have important implications in terms of stress management programs among Albanian youth.

Keywords*: perceived stress, personality traits, Albanian youth*

Introduction

Stress represents one of the most researched topics in the field of health psychology. This theoretical concept cuts across multiple disciplines including health care, education, economics etc. (Ogden, 2007). Stress has been defined from the perspective of external environmental stimuli, multiple behavioural responses or as the interaction between environmental and personal/behavioural variables. Within the great variety of definitions, probably the most widely accepted one is that from Lazarus and Folkman (1984), defining stress as the transaction between individuals and their environment. As they put it in their influential work, stress is the "particular relationship between the person and the environment that is appraised by the person as taxing or exceeding his or her resources and endangering his or her well-being" (Lazarus & Folkman, 1984, p. 19).

Studies on stress and stress management from the Albanian context have suggested that this specific topic is an important issue for concern. Indeed considerable stress levels have been reported across several studies (Shkullaku, 2013) and there are even claims from Institute of Public Health suggesting stress as an important causal factor in the increasing incidence of cardiovascular diseases in Albania (Albanian Institute of Public Health, 2015). In this context, stress appraisal, influential factors as well as stress management all represent important issues of investigation.

The theoretical conceptualization of stress but also multiple empirical studies suggest the relevance of individual characteristics such as personality in understanding stress appraisal (Kessler, Price & Worthman, 1985). Indeed studies using the Big Five theory of personality traits have shown associations between specific traits and stress levels. For instance, the trait of Neuroticism is associated with persistent and recurring stress episodes during an individuals' life course (Kendler, Gardner, and Prescott, 2003; Magnus, Diener, Fujita, and Pavot, 1993; Saudino, Pederson, Liechtenstein, McClearn, and Plomin, 1997). Conversely Afshar, Roohafza, Keshteli, Mazaheri, Feizi and Abibi (2015) have reported that extraversion, conscientiousness, agreeableness and openness to experience might all be considered as protective factors in stressful situations.

Despite the fact that the personality structure is similar in different cultures, cultural connotations of 'positive' or 'negative' traits are present (John & Srivastava, 1999).Therefore some traits might be more favoured than others in specific cultures, consequently playing different roles as either protective or risk factors in terms of stress. For instance, in more conservative social contexts, traits such as openness to experience might have a more negative connotation and consequently

be associated to higher rather than lower stress levels. Research studies on personality traits, specific cultural connotations, or associations between traits and stress in the Albanian context are missing. Therefore the aim of the present study was to estimate personality traits and reported stress levels among Albanian youth in order to determine possible associations. More specifically the study tried to determine which personality traits might be classified as risky or protective factors for stress appraisal. Results of this study have implications in the context of informing specific stress management programs among Albanian youth.

Theoretical background

Theories of stress

Theoretical models aiming to define and explain stress are numerous and approach the concept from different perspectives. One of the earliest models was the Cannon's "acute stress response" or as most commonly known the "fight or flight" response (Cannon, 1932). Cannon focused on physiological reactions to stressful events including increased heart rate, breathing, increased blood sugar, etc. He considered stress as an adaptive response as it enables the individual to manage a threatening event; nonetheless Cannon also argued that constant exposure to stressors may cause psychological, emotional and medical problems in the long term.

Along the same lines, Hans Selye (1956, 1976, 1982) provided convincing evidence of strong links between constant stress and physical illness, while also making a conceptual distinction between the term 'stressor' as a stimulus and 'stress' as a response. Later on, in the 1970s, Lazarus shifted the focus towards psychological processes such as perception and interpretation, clearly distinguishing stress response in animals from that in humans (Cohen and Lazarus, 1973, 1977; Lazarus, 1975; Lazarus and Folkman, 1987). According to Lazarus high level cognitive abilities and particularly the ability to think and evaluate future events increase stress vulnerability among human beings. Indeed future stressors such as future plans, deadlines, anticipated threats etc. can prove to be as harmful as present ones (Brannon et al., 2013). Hence in Lazarus's view, the interpretation of stressful events is more important than the events themselves. For example, job promotion may represent an opportunity and challenge for one person, but a big problem for another (Brannon et al, 2013). According to Lazarus (1984, 1993), the effect that stress has on the individual depends on associated perceptions of threat, vulnerability and perceived ability to cope with the stressful event. His emphasis on psychological evaluation of stressful events has received much research support and

remains one of the most influential theoretical models of stress response behaviour (Arnold, 1960, 1984; Chang, 1998; Dewe, 1992; Hemenover and Dienstbier, 1996; Levine, 1996; Peeters, Buunk, and Schaufeli, 1995; Terry, Tonge, and Callan, 1995; Lazarus and Folkman, 1984).

These early theoretical concepts of stress have been further elaborated in *The transactional model of stress* (Lazarus and Folkman, 1984), which specifies three different types of appraisal including *primary appraisal*, *secondary appraisal and reappraisal*. *Primary appraisal* occurs upon the first impact with the stressful event, as the stimulus is appraised in terms of its' effects on physical or psychological well-being, and might be classified as positive (not stressful), neutral (irrelevant) or negative (stressful). Neutral or irrelevant events are those which apparently do not affect individuals' well-being, while positive events are appraised as having a positive impact on well-being. The perception that the individual is in control of the specific event/situation is associated with positive self-regulation and adaptation (Folkman, 1984). However if an event is appraised negatively, it is usually associated with perceptions of damage/harm, loss, threat, or challenge (Lazarus 1993). Threat is considered as the forerunner of the damage while challenge as an individual's self-confidence in his resources to overcome the toughest demands. Research indicates that the perception of threat or challenge makes a difference for performance; indeed perception of challenge leads to better performance as compared to perceptions of threat (Gildea, Schneider, and Shebilske, 2007).

After the primary appraisal of the event, individuals need to evaluate their abilities and resources to control or cope with situations evaluated as harm, threat or challenge, i.e., they engage in *secondary appraisal*. When people believe they can successfully change the situation stress is reduced. On the contrary if the situation is perceived as uncontrollable, and individuals think they lack the ability to cope with it, stress is enhanced. However, Lazarus emphasizes that people constantly change the appraisal based on the access they have over the new information; hence the third process, namely 'reappraisal' enables individuals to shift perspectives in the process of managing stress (Brannon et al, 2013).

Moving on towards a different level of analysis, there is a whole line of research focusing exclusively on physiological, behavioural, emotional or cognitive responses to stress. *Physiological consequences* of stress include a long list of negative outcomes such as decreased immune function, increased cholesterol and adrenaline, increased blood pressure, increased heart rate, respiratory changes, sweating, and stomach disturbances. Indeed studies have found strong relationships between stress and several diseases such as heart disease, ulcers, migraines, allergies etc. (Ogden, 2007). *Behavioural responses* include a great variety of behaviours such as increased use of alcohol, coffee, tobacco,

drugs, aggressive or apathetic actions, decreased sexual interest and impotence, hyperactivity, speech problems, increased/decreased appetite, postponing duties/responsibilities/decisions etc. These behavioural responses are in turn associated with negative health consequences and also the development of several diseases (Cohen and Williamson, 1988; Conway, Vickers, Ward and Rahe, 1981).

Emotional responses to stress are also very diverse, including anxiety, fear, restlessness, loneliness, sadness etc., and might even lead to psychological disorders such as post-traumatic stress disorder, panic attacks, phobia, generalized anxiety disorder, or depression. The negative emotional state in turn influences biological processes and behavioural patterns that increase the risk of developing several diseases (Cohen et al., 1986; Krantz, Glass, Contrada, and Miller, 1981; Cohen, Tyrrell and Smith, 1993). Finally, *cognitive responses* to stress include memory problems, concentration difficulties, disorganized thinking, inflexible/non-creative thinking, poor problem solving skills etc. (Selye, 1956; Cohen and Williamson, 1988 ; Grasha and Kirschenbaum, 1986; Sarafino and Smith, 2011; Ogden, 2004, 2007). Indeed many studies have reported negative associations between stress levels and academic performance among students (Shkullaku, 2013). Emotional and cognitive dimensions are closely related within the stress response; indeed studies show that positive emotions are closely related to academic achievement and better problem solving skills (Fredrickson 2001; Pekrun, Goetz, Perry, Kramer, Hochstadt and Molfenter, 2004).

As regards sources of stress, some of the most basic and common sources according to the American Psychological Association (2011) include economic status (poverty), work (job changes, unemployment, increased responsibility), health status (chronic or acute illness), family responsibilities, (work, school, children, family, society), personal concerns about health, major life changes (loss of a loved one, divorce, diseases in the family, natural disasters); everyday life, etc. According to Lazarus, De Longi, Folkman and Gruen, (1985), a considerable level of stress is provoked by daily hassles such as time pressure, frustrations, conflict, financial problems, communication problems, decision-making etc. Finally positive events such as marriage, achievement, pregnancy, birth, celebrations, holidays, etc. can also cause stress (or eustress as defined by Selye). In all the above cases it must be noted that stress responses are individual (e.g., marriage might provoke different levels of stress in different individuals) and the response is largely influenced by personality characteristics (Lazarus and Folkman, 1984). Hence personality traits do not only determine stress levels but also coping strategies (Connor-Smith and Flachsbart, 2007). The following section discusses the theoretical concept of personality focusing on one of the most influential and well-supported models, the Big Five Personality trait model.

Personality and Big Five personality traits/ Five-factor Model

Personality has been defined as a set of general and consistent patterns of behaviours, thoughts and feelings, which clearly distinguish between individuals (Pervin, Cervoneand John, 2005, p. 6). Different theoretical approaches provide different perspectives on personality. Psychodynamic theories emphasize the role of the unconscious mind and share the view that personality is largely determined by unconscious processes (Morris and Maisto, 2008). Several propositions of the psychodynamic theory on the personality have been supported by research evidence (Western, 1998). For instance experiments in cognitive psychology have found that cognitive activities including thoughts, feelings, and motivations are unconscious and therefore people can behave in ways they do not even understand. Moreover, childhood experiences (many of which might be forgotten) do in fact influence future personality development as well as explain variations in personality traits (Ewen, 2014).

Personality trait theorists such as Gordon Allport (1937) have focused on the identification of specific personality dimensions. Allport and Odbert (1936) identified as many as 18,000 words which might be used to describe personality in English dictionaries. From this list, they reduced the number to about 4,500 descriptive-personality adjectives that they considered as relatively permanent traits. After removing synonyms or related words Allport reduced the number of personality characteristics to around 200 which was still quite a long list. Nonetheless, in terms of trait theories, Allport's contribution is still considered a very important early contribution (McCrae and Costa, 2003). In providing a conceptual definition of traits, Allport (1937) referred to the internal disposition of individuals, which determines his unique style of behaviour. Hence traits are manifested in the individual's response to situations and are characteristics of that unique person. These features are expressed with some frequency and intensity across a wide range of situations; in other words traits are stable and consistent. Allport also believed that while traits might be common to many people, every particular personality has a unique trait combination.

The identification of basic personality traits has been the concern of several researchers including Raymond Cattel, who used factor analysis to identify what he called core traits (Ewen, 2014). Core traits provide stability of behaviour and organize secondary characteristics (Cattel, 1946). Thus Cattel (1950, 1959) grouped the 200 traits onto 16 factors or core traits such as alertness, warmth, emotional stability, sensitivity, perfectionism, tension etc.

The 16 factors proposed by Cattel were further reduced to three 'super' traits by Hans Eynseck (1975) who suggested that all individuals could be classified in the continuum between neuroticism-emotional stability, extraversion-introversion

and psychoticism-impulse control. Individuals with high neuroticism tend to be emotionally unstable. Whereas individuals with a low neuroticism trait are more persistent and emotionally restrained and also less likely to experience major emotional fluctuations/ large swings in emotion or overreact to frustration and disappointment. The extraversion-introversion dimension is similar to Jung's construct, except that Eysenck defines it in terms of various traits and not libido. The extravert dimension includes characteristics such as sociability, warmth and energy; the introvert individual on the other hand is reserved, restrained, silent and contemplative. Finally psychoticism refers to traits such as aggression, hostility, impulsivity and sensation seeking; suggestions have been made of including creativity in this dimension as well.

Eynseck's model has been further elaborated by Costa and McCrae (1992), into the most well-known model of personality traits: the Five-Factor Model of personality or as most commonly known, the Big Five. According to this model, the five core dimensions of personality include Extraversion, Agreeableness, Conscientiousness, Neuroticism and Openness to Experience. Each dimension is composed of several specific traits; for instance the trait of *extraversion* encompasses an energetic approach to the social and material world and includes characteristics such as being confident, sociable, active, outgoing, enthusiastic, energetic, as well as adventurous. Conversely low scores in Extraversion, are indicative of an individual who is reserved, shy, silent, withdrawn, and quiet. The trait of *Agreeableness* refers to a socially-oriented individual who is forgiving, not demanding, warm, not stubborn, not show-off and sympathetic. The individual high in Agreeableness, is helpful, appreciative, affectionate, generous, trusting and good- natured (John, 1990) whereas the opposite characteristics describe an individual low in Agreeableness (e.g., unfriendly, irritable, unkind, cruel, and ungrateful). The trait of *Conscientiousness* is based on the degree of internalization of social control and goal oriented behaviour. Individuals scoring high in conscientiousness are efficient, organized, hard-working, reliable, responsible, and precise (Costaand McCrae, 1992). Conversely low scores in Conscientiousness are characteristic of individuals who are careless, disorganized, frivolous, irresponsible, unreliable and forgetful (John, 1990). The trait of *Neuroticism* is very similar to Eynseck's description and refers to individuals who are tense, anxious, irritable, shy, moody, worrying, and self-punishing; they lack self-confidence and are highly emotional. On the other hand, individuals low in neuroticism are emotionally stable, calm and restrained (John, 1990). Finally, *Openness to Experience* refers to the extent to which individuals are curious, creative, imaginative, artistic, original, sophisticated, and unconventional (Costa and McCrae, 1992, 1997). Conversely low Openness to Experience is characteristic of individuals who have narrow interests, and are neither creative nor curious (John, 1990).

The big five personality traits are rather stable throughout the life course as demonstrated through several longitudinal studies (Costa and McCrae 1992; Block 1971, 1981). Thus patterns of behaviour observed in early childhood are related to personality traits in adulthood (John, Robins and Pelvin, 2008). However the Big Five seems to consolidate at the end of adolescence (around age 18), with few modifications observed thereafter (Deal, Halverson, Havill, and Martin 2005; John et al., 2008).

In terms of gender differences in personality traits, there is research evidence suggesting no important differences between men and women (Terracciano, McCrae, Brant and Costa, 2005; Lazarus and Folkman, 1980). However there have also been some studies suggesting that differences might exist in terms of specific traits; e.g., the traits of Agreeableness and Neuroticism being more pronounced in women as compared to men (Costa, Terracciano and McCrae, 2001).

Studies have also demonstrated that the Big Five is universal, i.e., the five traits have been found across different cultures and historical periods. Hence studies across 50 different cultures have shown that the Big Five model is valid in South Korea, Italy, Germany, USA, Estonia, Turkey, Greece, UK, Spain, Portugal, Polonia, China, Croatia, Russia, Japan etc. (McCrae and Terracciano, 2005; McCrae, Costa, del Pilar, Rolland and Parker, 1998; Costa, McCrae, Herbst and Siegler, 2000; McCrae et al., 1997, De Raad (1995), Somer and Goldberg (1999), Benet-Martínez and John (1997), De Raad , Perugini, Hrebickova and Szarota, 1998; Shmelyov and Pokhil'ko, 1993; Zawadzki, Strelau, Szcz epaniak and S'liwin'ska, 1997).

To summarize the Big Five Personality model represents one of the most useful theoretical approaches to personality, and is probably the most researched model of personality worldwide. The following section reviews studies investigating associations between personality factors and stress.

Personality and Stress

Research studies have shown consistent links between the Big Five personality traits and stress levels. However, out of the five traits, Neuroticism shows probably the clearest and most consistent association with stress. The explanation is quite straightforward considering that individuals high in Neuroticism have the tendency to overestimate 'threat' in everyday life, demonstrating high levels of concern even for daily hassles. The high emotional instability and accompanying anxiety are likely to provoke negative reactions from the environment, which in turn increase even further stress levels (McCrae and Costa, 1987; McCrae & Costa, 1990). Therefore the trait of Neuroticism seems to promote a greater exposure to stress (Bolger & Zuckerman, 1995). Also Hemenover and Deinstbier (1996) have

reported that even when exposed to the same identical stressor, individuals high in Neuroticism report greater distress.

Conversely high levels of Conscientiousness, Agreeableness and Extraversion, seem to serve as protective traits against stress, as they are associated with less concerns about daily hassles (Vollrath, 2001). Indeed several studies have found negative correlations between perceived stress and the Extraversion trait (Ebstrup, Eplov, Pisinger & Jorgensen, 2011; Mohamadi, Besharad, Abolhoseini, Alaei & Niknam, 2013). Individuals high in Extraversion and Conscientiousness not only report a lower exposure to stress but also perceive existing stressors as challenges rather than threats, therefore reducing their negative impact (Grant & Langan-Fox, 2006; Vollrath & Torgersen 2000). Studies have also found that high Agreeableness is associated with low interpersonal conflict and consequently low levels of stress (Asendorpf & Wilpers, 1998). Moreover, individuals high in openness to experience, might be better equipped to welcome changes in their environment, appraising them as interesting challenges, rather than as fearful news. These findings associating the five personality traits with stress levels have been replicated across many different cultural settings (Song et al., 2016; Penley & Tomaka, 2002; Vollrath, 2001). Even though the structure of the coping process is relatively consistent/ the same in all cultures and ethnic groups, exposure to stressors, stress appraise, coping resources, eligibility of coping strategies and the frequency of their use may differ between cultures (Connor-Smith & Calvete, 2004; Falkum, Olff & Aasland, 1997; Hudek-Knezevic, Kardum & Vukmirovic, 1999). For instance, there is some evidence that Openness to experience might be perceived differently based on culture, e.g., Ebstrup et al, (2011), found no correlation between perceived stress and Openness to experience factor. On the other hand other studies have found greater stress resilience among individuals high in Openness to experience, but greater vulnerability to stress among those less open to experience (Williams et al., 2009). Hence the relationships between personality traits and stress seem to depend largely on cultural contexts, consequently suggesting that stress management techniques require contextualization too (e.g., should individuals be prompted to be more open to experiences, or is this factor irrelevant).

Aim of the study

The purpose of the present study was to assess Big Five personality dimensions and perceived stress among young adults in Albania. The study investigated possible associations between perceived stress and the personality dimensions of neuroticism, extraversion, agreeableness, conscientiousness and openness to experience in order to determine which traits might serve as risk or protective factors against stress among Albanian youth.

Methodology

Participants

Participants were 255 Albanian young adulthoods, 86 men (33.8%) and 169 women (66.2%). The age range of participants was from 20 years to 35 years old with a mean age, M_{age} =26.45 years, *SD* = 4.4 years. As regards employment, 63.5% of the sample declared to be employed, while 34.9% were students and 1.6% were unemployed.

Procedure and ethical issues

The study was conducted online. The questionnaire was designed with Google Docs and distributed via email to researchers' contacts (convenience sampling). Additionally a snowball sampling procedure was followed, as participants were asked to distribute the link to their contacts. Participants were briefed on the purpose of the study and issues of anonymity and confidentiality were also explained. The only selection criterion was that the age range of participants, which was required to be between 20 and 35 years old. This age range was determined by considering the specific developmental stage (young adulthood) and also research showing that personality traits are stabilized in the 20's (measurement of traits should be valid and reliable) (Deal, Halverson, Havill, and Martin 2005; John et al., 2008). All questionnaires were completed within 30 days.

Measurements

The measuring instrument used for this study was a self-report questionnaire divided into two sections. The first section included the Big Five Inventory and the second section the Perceived Stress Scale. The questionnaire was translated from English to Albanian by two professional translators; the researchers compared the translated versions with each other and also with the English version. The pre-final Albanian version was then piloted among 10 people to test the comprehensibility of items. Based on feedback and clarification requests, few unclear words were revised before getting the final version of the questionnaire.

The Big Five Inventory (BFI) was developed by John, Donahue, and Kentle (1991) (reprinted in Benet-Martinez and John, 1998) and consists of 44 short phrases, which assess the Big Five domains of personality traits including Neuroticism, Extraversion, Agreeableness, Conscientiousness and Openness to Experience. The short phrases evaluate the most typical characteristics associated with each of the Big

Five dimensions (John, 1990). The trait adjectives (e.g., thorough) that form the core of each of the 44 BFI items (e.g., "does a thorough job") have been shown in previous studies to be specific markers of the Big Five dimensions (John, 1989, 1990). Answers were recorded on a five-point Likert-type scale from 1 to 5 where, 1- strongly disagree, 2- disagree a little, 3- neither agree nor disagree, 4- agree a little and 5- strongly agree. Participants were asked to rate the extent to which each statement corresponded to their perception of themselves. Some examples of the items included: 'I see myself as someone who "is talkative", "...is relaxed, handles stress well" or "…is full of energy "etc. A higher score on each item denotes a more pronounced corresponding trait. The total score of the BFI is obtained by reverse scoring some of the answers as follows: 1 = 5, 2 = 4, 3 = 3, 4 = 2, 5 = 1. For example, the Extraversion trait was measured by eight items, including items 1, 11, 16, 26, 36, while items 6, 21 and 31 were reversely scored. The Neuroticism trait was measured with 8 items, Agreeableness trait with 9 items, and Conscientiousness trait also with 9 items. Finally Openness to Experience was assessed with 10 items. The five subscales showed good internal consistency, as measured by Cronbach's alpha; more specifically, for extraversion subscale $\alpha = .90$, for agreeableness subscale, $\alpha = .87$, for conscientiousness, $\alpha = .89$, for neuroticism $\alpha = .90$, and finally for openness to experience, $\alpha = .86$. These values are very similar to those reported by John and Srivastava (1999) where the average internal consistency for the five personality domains was $\alpha = .92$.

The Perceived Stress Scale (PSS). The PSS was designed by Cohen, Kamarck, and Mermelstein (1983) to measure the extent to which situations are appraised as stressful. The PSS questionnaire consists of 10-items that assess the respondents' perceptions of stressful experiences by asking them to rate the frequency of their feelings and thoughts related to events and situations that have occurred over the last month. Items were designed to assess whether participants feel overloaded by unpredictable and uncontrollable events in their lives. Several studies have shown that PSS is associated with perceived health, health behaviour, negative affect and stressful life events (Cohen et al., 1983; Cohen, Tyrrell, and Smith, 1993). Respondents were asked to rate their responses on a five-point Likert-type scale from 0 to 4 where 0 – never, 1- almost never, 2 – sometimes, 3 - fairly often, and 4 - very often. Some examples of the questions included "In the last month, how often have you felt that you were unable to control the important things in your life?", "In the last month, how often have you been able to control irritations in your life?" or "In the last month, how often have you felt confident about your ability to handle your personal problems?". The total scores of the PSS are obtained by reversing the scores on the four positive items 4, 5, 7 and 8 (e.g., 0=4, 1=3, 2=2, 4=0, 3=1), and then summing across all 10 items (Cohen et al., 1983; Cohen and Williamson, 1988). The total score ranges between 0 and 40 points. Higher scores indicated higher levels of perceived stress. The stress subscale showed good internal consistency (Cronbach's alpha coefficient) $\alpha = .81$.

Results

Descriptive statistics for perceived stress and the five personality traits are shown on Table 1. The highest mean values are reported for the Conscientiousness, *M*= 3.97, *SD*=.57 and Agreeableness traits, *M*=3.80, *SD*=.48. The lowest mean value was found for Neuroticism, *M*=2.67, *SD*=.72. The mean value for perceived stress can be categorized as average, *M*=17.65, *SD*=6.51.

TABLE 1. Descriptive Statistics for the Big Five Personality Traits and Perceived Stress.

	N	Minimum	Maximum	Mean	Std. Deviation
1.Openness to experience	255	2.40	5.00	3.7992	.53197
2. Conscientiousness	255	1.78	5.00	3.9674	.57618
3. Agreeableness	255	2.22	4.89	3.8035	.47611
4. Neuroticism	255	1.13	4.75	2.6740	.72186
5. Extraversion	255	2.00	5.00	3.4113	.55274
6. Perceived stress	255	2.00	35.00	17.6549	6.51516
Valid N (listwise)	255				

Table 2 shows correlations between Perceived Stress, demographic variables (age, gender) and the Big Five personality traits. Age and gender did not show statistically significant correlations with perceived stress (p>.05)**.** However significant positive correlations were found between gender and Neuroticism, (r = .14, p<.05), gender and Conscientiousness (r = .20, p<.01), and gender and Agreeableness (r=.23, p<.01). Hence women had the tendency to be more neurotic, conscientious, and agreeable as compared to men. No significant correlations were found between gender and Extraversion or Openness to Experience (p> .05). As regards age, the only significant correlation was found with Openness to Experience, (r=-.12, p<.05). Hence increasing age was associated with less Openness to Experience.

TABLE 2. Pearson correlations between Perceived Stress, Gender, Age, and the Big Five Personality Traits

		Stress	Gender	Age	Extraversion	Neuroticism	Agreeableness	Conscientiousness	Openness to experience
Stress	Correlation	1	.083	-.045	-.143*	.573**	-.198**	-.292**	-.079
	Sig.		.185	.475	.023	.000	.001	.000	.206
	N	255	255	255	255	255	255	255	255

Gender	Correlation	.083	1	.057	.017	.139*	.229**	.202**	.076
	Sig.	.185		.364	.789	.026	.000	.001	.230
	N	255	255	255	255	255	255	255	255
Age	Correlation	-.045	.057	1	-.088	-.051	.019	.069	-.124*
	Sig.	.475	.364		.163	.418	.764	.272	.049
	N	255	255	255	255	255	255	255	255
*. Correlation is significant at the 0.05 level (2-tailed).									
**. Correlation is significant at the 0.01 level (2-tailed).									

As regards the relationships between perceived stress and the Big Five Personality domains results showed a statistically significant positive correlation with Neuroticism, r=.57, p<.01. Hence higher levels of neuroticism were associated with more perceived stress. A statistically significant, negative correlation was found between Perceived Stress and Extraversion (r = -.14, p<.05). Thus higher levels of extraversion were associated with lower perceived stress. Similarly, a negative correlation was found between Perceived Stress and Conscientiousness (r = -.29, p<.01), i.e., individuals reporting higher levels of Conscientiousness had the tendency to report lower perceived stress. Finally, a negative correlation was found also between perceived stress and agreeableness (r = -.20, p<.01), i.e., more agreeable individuals reported lower stress levels. No significant correlations were found between perceived stress and oppeness to experience. A regression analysis was performed with age, gender, and the Big Five Personality traits as independent variables and Perceived stress as the dependent variable.

TABLE 3A. Regression Model Summary for Perceived Stress

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.097[a]	.009	.002	6.51008
2	.581[b]	.337	.319	5.37777
a. Predictors: (Constant), Age, Gender				
b. Predictors: (Constant), Age, Gender, Extraversion, Agreeableness, Neuroticism, Openness to experience Conscientiousness				

TABLE 3B. ANOVA Results for Perceived Stress

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	101.584	2	50.792	1.198	.303[b]
	Residual	10680.047	252	42.381		
	Total	10781.631	254			

2	Regression	3638.282	7	519.755	17.972	.000[c]
	Residual	7143.349	247	28.920		
	Total	10781.631	254			
a. Dependent Variable: Perceived Stress						
b. Predictors: (Constant), Age, Gender						
b. Predictors: (Constant), Age, Gender, Extraversion, Agreeableness, Neuroticism, Openness to experience Conscientiousness						

As expected, demographic variables did not significantly predict stress levels (Model 1), F (2,252) =.20, p>.05. The Big Five Personality traits though, accounted for 33.7% of the variance in perceived stress levels, R^2=.337 (see Table 3a). Indeed once added the five personality traits, the predictive model became significant, F (7,247)=17.97, p<01 (see Table 3b). However, out of the five personality traits the only significant predictor was Neuroticism, β=.53, p<.001, as the other four traits did not make a significant contribution (Table 3c).

TABLE 3C. Regression Coefficients for Age, Gender, and the Big Five Personality Traits

Model B		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		Std. Error	Beta			
1	(Constant)	18.787	2.484		7.565	.000
	Gender	1.185	.864	.086	1.372	.171
	Age	-.072	.091	-.050	-.794	.428
2	(Constant)	10.726	5.373		1.996	.047
	Gender	.487	.768	.035	.634	.527
	Age	-.019	.077	-.013	-.250	.803
	Neuroticism	4.764	.544	.528	8.750	.000
	Agreeableness	-.960	.792	-.070	-1.211	.227
	Conscientiousness	-.614	.711	-.054	-.864	.389
	Openness to experience	.436	.714	.036	.610	.542
	Extraversion	-.350	.675	-.030	-.519	.604
a. Dependent Variable: Stress						

Discussion

The purpose of the present study was to explore the relationships between perceived stress and the five personality traits including Extraversion, Agreeableness, Conscientiousness, Neuroticism and Openness to Experience among Albanian youth. Results revealed significant relationships between stress and four out of five

personality domains (apart from openness to experience). However neuroticism was the only significant predictor out of the five traits. Conversely no patterns of stress based or age or gender were found. These findings are in line with research suggesting that personality traits and individual appraisal are much more important markers of stress levels than broad category variables such as age or gender (Arnold, 1960, 1984, Chang, 1998, Dewe, 1992, Hemenover and Dienstbier, 1996; Levine, 1996; Peeters et al., 1995; Terry et al., 1995; Lazarus and Folkman, 1984). Also these findings are particularly significant considering that in the present sample women had the tendency to be more neurotic, conscientious and agreeable as compared to men. Nonetheless men and women did not significantly differ in their stress levels; hence although neuroticism might be an important risk factor for women (experience higher stress), their greater agreeableness and conscientiousness might serve as important protective factors (counterbalance higher levels of neuroticism). These findings are in line with studies suggesting that there are important gender differences in traits such as Neuroticism and Conscientiousness with women generally over-scoring men (Costa et al., 2001). Hence characteristics associated with specific gender roles seem to also be present in the Albanian context; indeed women as compared to men report higher levels of anxiety, tension, worry, or vulnerability when confronted with life events. On the other hand, the higher levels of agreeableness make women more flexible, modest, unselfish, forgiving, generous and more grateful than men. Finally higher levels of conscientiousness suggest women as being more organized, responsible, reliable, more practical. This multitude of characteristics associated with the specific gender role though, neither increase nor decrease women's vulnerability to stress (they have a balancing effect), as results show they are just as vulnerable as men are (gender is not significant).

As regards the relationships between Perceived stress and personality traits, significant relationships were found for Neuroticism, Extraversion, Conscientiousness, and Agreeableness but not Openness to Experience. Lack of a significant correlation between stress and Openness to experience was an unexpected finding, especially considering studies which have identified this variable as an important protective factor against stress (Afshar et al. 2015). The present results indeed suggest that openness to experience is in fact irrelevant (neither protective nor risk factor) when it comes to stress levels among Albanian youth. Future research is needed to investigate possible explanations for this finding, but it might be suggested that specific cultural aspects might be involved (e.g., Openness being either/both positively and negatively appraised based on the specific context).

Out of the five personality traits neuroticism revealed the strongest correlation (also the only predictor) with perceived stress. This finding was expected considering

that Neuroticism is characterized by the tendency to experience emotional instability and predominance of negative affect manifested through behaviour (Costa and McCrae, 1987, McCrae and Costa, 1990). Therefore neuroticism not only increases the likelihood of over-reacting to negative events (the person feels constantly threatened) but also provokes negative events from scratch (Costa and McCrae 1987; Eynsenck and Eynsenck, 1975, McCrae and Costa 1990). The findings are in line with studies showing strong relationships between Neuroticism and perceived stress (Ebstrup et al., 2011; Bolger and Zuckerman, 1995; Mohamadi et al. , 2013, Song et al., 2016; Grant and Langan-Fox, 2006; Vollrath and Torgersen, 2000; Afshar et al., 2015). Therefore the domain of Neuroticism might be identified as the most important risk factor for experiencing high stress levels.

Although Extraversion, Agreeableness and Conscientiousness were not significant predictors of stress they were negatively correlated to it, suggesting a protective character for these traits (Song et al., 2016). Obviously features such as being energetic, active, sociable (Extraversion), cooperative, sympathetic, helpful (Agreeableness) or practical, organized, efficient (Conscientiousness) all represent a great advantage in terms of stress appraisal and management.

Therefore these findings are in line with those from other studies claiming that Extraversion, Agreeableness, Conscientiousness are negatively related to perceived stress, are a stress-protecting factor, also predict lower stress exposure (Afshar et al., 2015; Vollrath, 2001; Grant & Langan-Fox, 2006; Vollrath & Torgensen, 2000; Penley & Tomaka 2002).

Finally it must be noted that contrary to what previous studies have reported, and also the researchers' expectations, the present sample reported quite moderate (average) levels of stress. Most important, the two most protective and adaptive traits of Conscientiousness and Agreeableness showed the highest reported mean values. These findings provide a very optimistic image of the specific age group under investigation, although care should be taken in generalizing from such a small sample, and future research is needed.

Conclusion

The present study investigated associations between Big Five personality traits and perceived stress among Albanian young adults in order to determine risky and protective personality characteristics. Results suggested that while extraversion, conscientiousness and agreeableness might serve as protective factors, neuroticism was the most important risk factor as well as the single significant predictor of perceived stress. Therefore stress management programs need to identify neurotic dimensions as well as work through specific behaviours manifested due to this

trait. Moreover stress management techniques need to be further individualized, by considering possible ways in which to strengthen protective factors. Finally, further research into cultural aspects is required (the specific Albanian context), particularly as regards the 'openness to experience' trait, which proved to be irrelevant in the present study.

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Legalising euthanasia in Albania? To Act or Not To Act: That Is the Question

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Abstract

Legalising euthanasia and helping others who are suffering to die is debated throughout the world. Whether to permit assisted suicide and euthanasia today is among the most contentious legal and public policy questions. The right to life is a non -derogable right, Indivisible and inalienable. It is difficult to imagine a more fundamental human right than the Right to Life. But we have to recognize that life and death are two sides of the same coin. There can be no life without death and no death without life. The two are absolutely inseparable. If life is a fundamental human right then death is too?

This article presents a comparative analysis of euthanasia in several states. Few countries have changed their law's traditional prohibition on euthanasia. The best known public policy shift occurred, of course, in the Netherlands with the acceptance of the practice of euthanasia and this has led, most recently, to its formal decriminalisation by the Dutch Parliament. The only other changes have been the short-lived legalisation of euthanasia and assisted suicide in the Northen Territory of Australia and of the latter practice in the State of Oregon in America. Elsewhere in the world, the arguments in favor of, and pleas for,

legal change have fallen on deaf ears despite the knowledge that euthanasia does take place undetected.
We present in this article the debate on legalising euthanasia in Albania, which has been ongoing for a considerable length of time. Albanian law is clear on legal consequences of euthanasia. It is illegal, in the sense that it offends the criminal law. Deliberately taking another person's life amounts to the crime of murder and carries a mandatory life sentences. Perhaps the most important aspect of this debate concerns the meaning of words. It has not proved easy for citizens, jurists, theologians, health professionals and bioethicists to reach agreement in relation to the manner of designating the various possible actions that may take place at the end-of-life: patient refusal of treatment, with holding or withdrawal of futile therapies, palliative sedation, etc. The authors conclude that euthanasia violates the right to life and socio-economic aspects in Albania are obviously not suitable to legalise euthanasia and assisted suicide.

***Key words**: euthanasia, right to life, legalization, dignity, Albania*

Introduction

Interest in euthanasia, also called ''dignified death" or ''death humanization" is relevant from the ethical and moral points of view, especially if it is oriented toward the detection of the motivations and conceptions of life subject to such practices. Originally one could describe euthanasia as a 'gentle and easy death', derived from the old Greek words 'eu' (good) and 'thanatos' (death). Nowadays a better description is ''the action of including a gentle and easy death".

The country that first legalized euthanasia, the Netherlands, defines euthanasia as the ''deliberate ending of life by taking action, usually by injection, to the veins of the patient, in order to kill him or her." Another definition states that euthanasia is ''the deliberate killing committed under the impulse of compassion in order to relieve the physical pains of a person suffering from an incurable disease and whose death is, therefore, inevitable"[1].

Euthanasia is one of many controversial themes all around the world nowadays. Along the years, decisions have been made, events have occurred, and minds have been transformed, in order to get this topic in the clouds of controversy. Ethics, dignity, and morality are three out of a plenty of reasons people peek towards its approval or disapproval[2]. The movement of opinion

[1] See Diaconescu, A.M., *Euthanasia*, Contemporary Readings in Law and Social Justice, 2012, 474.
[2] See Domínguez Grau P.,*Euthanasia Should Not Be Legal Because It Is an Act of Murder, Possible*

in favour of euthanasia, currently active, has characteristic connotations and motivations, aimed at demanding legalization. Whether to permit assisted suicide and euthanasia today is among the most contentious legal and public policy questions[3]. The right to life is a non-derogable right, indivisible and inalienable. It is difficult to imagine a more fundamental human right than the Right to Life. But we have to recognize that life and death are two sides of the same coin. The two are absolutely inseparable[4].

In many cases, medical end-of-life decisions precede dying. Such decisions, ranging from the alleviation of pain and symptoms and non-treatment decisions to the administration of drugs with the explicit intention of hastening death, seem to occur everywhere, although the frequency of the different types of decisions varies considerably between countries. These different types of decisions have been debated extensively in the international medical, legal and ethical literature. Usually, measures to alleviate pain are considered the least controversial[5].

Even if such a measure may have as a side effect that the patient dies sooner, this is generally considered an acceptable consequence, as long as the physician did not aim at hastening the patient's death, the side effect in not excessive and the measures taken are justified by the objective to reduce pain and suffering[6]. In the last five to ten years there has been increasing debate on a medical practice at the end-of-life that is difficult to place between the aforementioned end-of-life decisions. This practice is called terminal sedation, although other concepts are used as well (palliative sedation; deep sedation)[7].

There are several forms of assistance to end a person's life. When the patient is not able to kill himself because of a physical incapability, he will ask people around him (physician, family) for help; this is called ''assisted suicide". However, the most common form is ending of life by a third party with the ''use of processes that can accelerate or cause death to free an incurable patient from extreme suffering", this

Alternatives for Treatments Are Available, and Represents a Loss of Morals. Research Paper, Universidad del Turabo, available in www.academia.edu.

[3] Erimia, C.*, Ethical and Legislative Aspects on The Legalisation Of Euthanasia From The Patient Rights Perspective,* Journal of Law and Administrative Sciences, 5/2016, p. 49.

[4] See Tepshi, A., *E drejta e jetës. Mbrojtja e kësaj të drejte referuar nenit 2 KEDNJ. Çështjet e fetusit, abortit dhe eutanazisë*. Doctoral Thesis, Tirane, 2016, p.16.

[5] R.F. Esposito, *L'eutanasia nella stampa di massa italiana* . in Aa.Vv., *Morire sí, ma quando?,* p. 17.

[6] Gevers S., *Terminal Sedation: A Legal Approach,* European Journal of Health Law 2003, 10, pp. 359-367.

[7] Terminal sedation is the administration of sedative drugs with the aim to reduce the consciousness of a terminal patient in order to relieve distress; it is frequently accompanied by the withdrawal (or withholding) of life sustaining interventions, such as hydration and nutrition. It is typically a measure of the last resort to be considered in situations where all other measures to reduce pain and suffering have failed. See for more details Gevers S., *Terminal Sedation: A Legal Approach,* European Journal of Health Law 2003, 10: 360.

is called euthanasia"[8]. Some authors distinguish active euthanasia-which implies on active gesture or action from a third party, through the use of substances or the interruption of heavy treatments -from passive euthanasia-which occurs when the patient is not cured, or is not resuscitated. In both cases the will to cause death is the same, even if the means employed differ. This is either an active killing, or an omission causing death. According to criminal law the latter may also amount to murder and can therefore be prosecuted in criminal courts[9].

In fact, some people talk about *the right to die*, expression which does not denote man's right to cause its own death or to require death to be caused onto them as desired ,but the 'right to die with total serenity, with human and Christian dignity"[10].

The debate on legalising euthanasia in Albania has been ongoing for a considerable length of time. Albania law is clear on the legal consequences of euthanasia. It is illegal, in the sense that it offends the criminal law. Legalizing euthanasia in Albania will bring about profound changes in social attitudes toward illness, disability, death, old age and the role of the medical profession. Once euthanasia is legalized, it will increasingly become a 'treatment option', alongside regular medical or surgical treatments. If euthanasia become legal the decision to preserve or to shorten the patient's life or to assist the patient with PAS will be a characteristic of the medical profession. Legalizing euthanasia with increase the power doctors have over their patients and will considerably decrease patient autonomy.

A comparative analysis of euthanasia debate in several states.

Legalising euthanasia and helping others who are suffering to die is debated throughout the world. Few countries have changed their law's traditional prohibition on euthanasia. The best known public policy shift occurred, of course, in the Netherlands with the acceptance of the practice of euthanasia and this has led, most recently, to its formal decrimalisation by the Dutch Parliament. The only other changes have been the short-lived legalisation of euthanasia and assisted suicide in the Northern of Albania and of the latter practice in the State of Oregon in America. Elsewhere in the world, the arguments in favor of and pleas for legal change have fallen on 'deaf ears' despite the knowledge that euthanasia does take place undetected[11].

[8] Duguet, A., *Euthanasia and Assistance to End of Life Legislation in France*, European Journal of Health Law 8: 109, 2001.

[9] Duguet, A., *Euthanasia and Assistance to End of Life Legislation in France*, European Journal of Health Law 8: 109-123, 2001.

[10] See L.R. Kass, *Is there a right to die?,* Hastings Center Report, 1993, 23, 1. pp. 34-43.

[11] Grubb A., *Euthanasia in England – A Law Lacking Compassion?* European Journal of Health Law 8: 89-93, 2001.

At the moment we have end of life legislation in US states of Oregon[12], Washington[13], Vermont[14] and California[15] the Netherlands[16], Belgium[17], Grand Duchy of Luxembourg,[18] Colombia[19], Canada[20] and Switzerland[21]. One can clearly see that end of life legislation is more the exception than the rule. The Netherlands become the first country in the world to give legal sanction to same forms of assisting suicide and euthanasia (1984).The Dutch supreme Court declared that although killing a patient remains a criminally punishable offense under the nation's Penal Code, physicians can claim an "emergency defense" under certain circumstances. In the Netherlands, until 2002 euthanasia and physician assisting in suicide were only allowed on the basis of court decisions. The question whether the Criminal Code should be changed to bring existing legislation more in accordance with medical practice has been a matter of extensive debate from 1984 onwards (the year in which the Supreme Court acquitted a doctor who had performed euthanasia).After almost 20 years, the Termination of Life on Request and Assisted Suicide (Review Procedures) Act came into force on April 1, 2002[22].

Most health legislation in the Netherlands is subject to systematical, periodical evaluation studies. At the end of 2004, the Ministries of Health and of Justice ordered an assessment of the new law. This evaluation should not only concern its legal qualities (e.g. consistency with internationally law, relation to other national laws, legal clarity etc.) but also its functioning in practice (knowledge of and attitudes towards the Act; adherence of physicians to the due care requirements and to the duty to report euthanasia or assisted suicide to the municipal forensic pathologist; the performance of the review committees and the public prosecution in carrying out their tasks under the Act; efficacy and side effects of the Act etc.). In

[12] OREGON PUBLIC HEALTH DEVISION, Oregon death with dignity act: 2015 data summary, Oregon, Oregon Health Authority, 4 February 2016, 1.

[13] WASHINGTON STATE , The Washington Death with Dignity Act, Washington, Washington State Legislature, 4 November 2008, http://app.leg.wa.gov/rcw/default.aspx?cite=70.245 (consulted 20 April 2017)

[14] VERMONT GENERAL ASSEMBLY, Patient Choice at End Of Life, Vermont, Vermont Statutes Online, 4 March 2009, http://legislature.vermont.gov/statutes/chapter/18/113 (consulted 20 April 2017)

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[17] BELGIUM, Wet van 28 May 2002 betreffende de euthanasia, Belgisch Staatsblad, 22 juni 2002.

[18] LUXEMBOURG, Loi de 16 March 2009 sur l'euthanasie et l'assistance au suicide, Mémorial A n° 46, 16 March 2009.

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[20] CANADA, "Bill C-14 to Amend the Criminal Code", Statutes of Canada 2016, 17 June 2016.

[21] Article 115 of the Schweizerischen Strafgesetzbuches.

[22] Gevers S., *Selected Legislation and Jurisprudence Evaluation of the Dutch Legislation on Euthanasia and Assisted Suicide*, European Journal of Health Law 14 *(2007) 369-379.*

connection with this evaluation of the Act, extensive research has been carried out so as to provide insight into practical developments in medicinal decision making at the end of life. Large nation-wide studies of this kind had already provided data on the frequency and characteristics of euthanasia, physician suicide and other medical acts that may hasten death in the past.

These large scale studies of medical practices at the end of life were conducted in 1990,1995 and 2001.The evaluation of the 2002 Dutch law offered a good opportunity for a follow-up on these previous studies, also to assess the effects of the law on end-of-life care. The evaluation report was published in May 2007. On the whole, the report gives a positive picture both of the law and of medicinal practice as it has evolved over the years. In general, the law has achieved its objectives well. The frequency of euthanasia and assistance in suicide has decreased and the percentage of cases reported has increased. There does not seem to be any question of a slippery slope with regard to life termination, either with or without the request of the patient. Although these is, therefore, little incentive for substantial changes to the present arrangements, the evaluation study has demonstrated that there are specific points on which both the law and existing practice may be improved. It ends therefor with a number of recommendations pertaining to the law, recommendations to improve law-related procedures, recommendations concerning training and provision of information, recommendations with regard to guidelines and institutional policies, and other recommendations. When a law has been evaluated, the government is expected to give its opinion on the results and to inform parliament to what extent it will implement the recommendations. For the present Dutch government, euthanasia is more than ever a sensitive issue since it rests on a coalition of Christian parties and the Social – Democratic Party. There is little or no room to alter the delicate balance that has been achieved between 'pro life' and 'pro choice' approaches. Until now, the government has not yet responded to the evaluation study in detail, but it has already announced that it will not make any proposals to change the law; no more will any other liberalization be allowed. Let's see at this moment other situations of the end of life in several countries who did not accept euthanasia.

England: English law is clear on the legal consequences of euthanasia. It is illegal, in the sense that it offends the criminal law. Deliberately taking another person's life amounts to the crime of murder and carries a mandatory life sentence. Likewise, helping another to commit suicide is a crime punishable with a maximum term of imprisonment of 14 years. That either of these is done with the consent of the individual is irrelevant, as are the "good motives" of the killer, that the individual is terminally ill and close to death anyway or that they are a doctor because there is no special exemption from the law. In short, English law has always, and continues to see no difference in principle between euthanasia and any other deliberate killing.

In the UK, the euthanasia debate has focused largely on voluntary active euthanasia (VAE) and patient-assisted suicide (PAS) which from the tip of an iceberg of euthanasia instances[23]. There are, however, two circumstances where the law does allow a different, less harsh response to compassionate killing. First, in circumstances where a person kills a suffering, it is often possible for the court to lower the criminal charge from murder to manslaughter on the grounds of diminished responsibility[24]. The defence arises where it can be shown that ''an abnormality of mind'' has ''substantiality impaired his mental responsibility''. Where a relative is driven to kill a suffering relative, this partial statutory defence to murder many be satisfied or, at least, be taken to be satisfied by a benevolent prosecutor and court. As the punishment for manslaughter is a matter for the judge, it is likely that a much more lenient punishment will be imposed, depending, of course, on the circumstances, and this may even result in a non-custodial sentence begin imposed by the court. Because of the nature of the defence, however, it is not in practical terms available to a doctor who 'eases the passing' of his or her suffering patient. A doctor is extremely unlikely to be able to show that the situation has produced the necessary psychiatric effect upon him.

Secondly, the courts have recognised that a doctor may prescribe and administer necessary pain relief to a patient even if this shortens the life of the patient. Sometimes it is said that is an application of the 'principle of double effect' in English law. Providing the doctor's primary motive is to relieve suffering and not to kill the patient, he will not act illegally if he acts in the patient's ''best interests'' when managing their pain. It is also reflected in American and Canadian jurisprudence and in legislation in Australia. The precise legal basis for this in uncertain and it is not unproblematic. Nevertheless, it is clearly accepted by the courts and o doctor need not fear the law if he acts reasonably in administering pain relief whether that is to avoid 'physical' pain or extreme mental or psychological suffering.

Judges are reluctant to be drawn into resolving the policy arguments for and against allowing euthanasia and assisted suicide[25]. The balancing of these arguments

[23] M. Sayers *Non-Voluntary Passive Euthanasia: The Social Consequences of Euphemisms* European Journal of Health Law 14 (2007) 221-222.

[24] See Tepshi, A., *E drejta e jetës. Mbrojtja e kësaj të drejte referuar nenit 2 KEDNJ.* **Çështjet** *e fetusit, abortit dhe eutanazisë*. Doctoral Thesis, Tirane, 2016, p.17.

[25] Non-voluntary passive euthanasia, the commonest form of euthanasia, is seldom mentioned in the UK. The legal reasoning in *Airedale NHS Trust v Bland* contributed towards this conceptual deletion. By upholding the impermissibility of euthanasia, whilst at the same time permitting 'euthanasia' under the guise of 'withdrawing futile treatment', it is argued that the court (logically) allowed (withdrawing futile treatment and euthanasia). The *Bland* reasoning was incorporated into professional guidance, which extended the court's ruling to encompass patients who, unlike Anthony Bland, were sentient. But since the lawfulness of (withdrawing futile treatment and euthanasia) hinges on the futility of treatment, and since the guidance provides advice about withdrawing treatment from patients who differ from those considered in court, the lawfulness of such 'treatment decisions' is unclear. Legislation is proposed in order to redress the ambiguity that arose when moral decisions about 'euthanasia' were translated into medical decisions about 'treatment'. See M. Sayers *Non-Voluntary Passive Euthanasia: The Social Consequences of Euphemisms* European Journal of Health Law 14 (2007) 221-240.

is seen as being within the competence of the democratically elected legislature. English law may have entered a ' rights based' era but this will not affect the law as it pertains to euthanasia. The absolute prohibition seems destined to remain for the foreseeable future[26].

France. In France, euthanasia is discussed more from a philosophical than a legal point of view. While abundant materials on the sociological or ethical approach of death have been published, the legal aspect has been neglected, and deals primarily with comparative law[27]. In France, two opposing factions of opinion exist: (1) those people that condemn euthanasia as a breach to the respect of human life; and (2) those that defend it as a right to die in dignity. Medical professionals dealing with this issue act according to their conscience, gathering with their team to make an appropriate decision, in the respect of deontology. Through the years, various projects of propositions for laws have been prepared. But, no one has passed yet. Accepting euthanasia in exceptional circumstances carries also risks. For instance, the exception of euthanasia might create a duty of ending life, and put a social pressure on elderly or sever handicapped people[28].

Nowadays, 70% of people die in hospitals so, supporting end of life and death, needs the active cooperation of health professionals. All of them are very respectful of their duties. In the proposals for new legislation, physician are involved in the help of ending live. Among the defenders of death with dignity, some physicians would not agree with legislation allowing for active euthanasia, rather, they would prefer a law on the living will with anticipated medical recommendations. However, in their decision to support life until death, other physicians want to develop palliative cares and reconcile the patient's family with death, and society with the terminally ill patients and their families[29].

Spain. The debate on euthanasia in Spain has been ongoing from the beginning of the 20th century and remains extant. Perhaps the most aspect of this debate concerns the meaning of words. It has not proved easy for citizens, jurists, theologians, health professionals and bioethicists to reach agreement in relation to the manner of designating the various possible actions that may take place at the end-of-life: patient refusal of treatment, withholding or withdrawal of futile therapies, palliative sedation, and etc.[30]. Three periods can be identified: prior to

[26] Grubb A., *Euthanasia in England – A Law Lacking Compassion?* European Journal of Health Law 8: p.91, 2001.

[27] Duguet, A., *Euthanasia and Assistance to End of Life Legislation in France*, European Journal of Health Law 8: 109-123, 2001.

[28] See Tepshi, A., *E drejta e jetës. Mbrojtja e kësaj të drejte referuar nenit 2 KEDNJ.* **Çështjet** *e fetusit, abortit dhe eutanazisë*. Doctoral Thesis, Tirane, 2016, p.150.

[29] See Duguet, A., *Euthanasia and Assistance to End of Life Legislation in France*, European Journal of Health Law 8: p. 120.

[30] Simón-Lorda P., Barrio-Cantalejo, *End-of-Life Healthcare Decisions, Ethics and Law: The Debate in Spain,* European Journal of Health Law 19 (2012) 355-365; See Tepshi, A., *E drejta e jetës. Mbrojtja e*

1978, 1978-2002, and after 2002. The debate increased significantly after the *Ramon Sampedro* case (1995-1998)[31], and was fuelled with new, although very different cases, such as those of *Leganés* (2005-2008), *Jorge Leon* (2006)[32] or *Inmaculada Echevarría* (2006- 2007)[33].

As a consequence of these cases in 2008 the Regional Government of Andalusia started a legal process to pass a law regulating end -of-life decisions, excluding

kësaj të drejte referuar nenit 2 KEDNJ. **Çështjet** *e fetusit, abortit dhe eutanazisë*. Doctoral Thesis, Tirane, 2016, p.142.

[31] The *Ramón Sampedro* case, shook Spanish society between 1993 and 1998. Ramón Sampedro had been a quadriplegic patient for 25 years (1968) as a result of an accident that fractured a cervical vertebra. Sampedro began his personal fight to be allowed to die voluntarily in 1993. In 1995, he petitioned the judge to allow his doctor to administer medication that would allow him to die. His request was rejected. His case provoked a great deal of social debate, giving rise to frequent appearances of Ramón in the media. Sampedro, with the aid of the "Association for the Right to a Dignified Death", filed successive appeals before various courts, including the Constitutional Court and the European Court of Human Rights. His requests were always rejected by the courts, even when he had already died.6 In the early hours of the morning of 12 January 1998, Sampedro committed suicide by taking cyanide, assisted by an anonymous party. Criminal proceedings were initiated against the person or persons who aided his death. However, the case was dismissed as the culprit could not be found. Ramón Sampedro made a video recording of his death and took steps to have the tape delivered to television stations. Its airing caused a huge impact at both national and international levels. As a direct result, the Spanish Senate created a "Special Commission for the Study of Euthanasia", which completed its task without reaching agreement or making specific proposals.

[32] The *Jorge León* case, a 53-year-old man who, in 2000, as a result of a domestic accident, became a quadriplegic and dependent on a respirator. Via his blog — he was able to use a computer via an adaptor — he had been requesting a "helping hand" for a year that would aid him to disconnect his respirator and thereby "die with dignity". His doctors and the health administration of the Autonomous Region of Castile and Leon stated that his request constituted "euthanasia", and was therefore illegal. But the "helping hand" appeared on 4 May 2006 and Jorge León's respirator was switched off. This is a very sad case, as Jorge León could have achieved, in a tranquil manner, even publicly, the execution of an action that only proved possible in secrecy.

[33] On 18 October 2006, the patient Inmaculada Echevarría requested the permission of the Board of Directors of the San Rafael Hospital in Granada, in the autonomous region of Andalusia, where she was admitted, to give a press conference and publicly ask to be sedated and have her respirator disconnected, on which she had been dependent for approximately 10 years as a result of a degenerative muscular condition. Undoubtedly the *Echevarría* case, along with the occurrences in Leganés, marked a turning point in the debate on dignified death in Spain. Inmaculada made her request as a conscious, capable and informed adult suffering from a chronic, irreversible and progressive condition, which nevertheless was not terminal. The case was transferred to the Consultative Board of Andalusia, the highest consultative body for legal matters of the Regional Government of Andalusia. The Board finally reached the following conclusions: 1. The request for the limitation of therapeutic effort and the withdrawal of mechanical ventilation issued by Ms I.E.R. is in keeping with the law. 2. The actions of the healthcare professionals who disconnect the mechanical ventilation, (. . .) cannot be considered subject to sanction. Thus, in the opinion of the Board, the actions of the professionals cannot be classified under the criminal infractions outlined in Article 143 of the Penal Code. On 14 March 2007, Inmaculada Echevarría, having bid farewell to her friends and the healthcare team attending her, was sedated and disconnected from the respirator. In the days following her death, the extreme right-wing party *Alternative Española* lodged an official complaint before the State Prosecutor's Office attached to the High Court of Justice of Andalusia, against the doctors attending Inmaculada Echevarría and the Consultative Board. The State Prosecutor decided to close the case on the 26 September 2007.

euthanasia and assisted-suicide, which was finally enacted in 2010. Two other Spanish regions (Navarra and Aragón) passed similar laws[34]. The long road travelled to date has given rise to three important accomplishments. The first involves clarifying the precise meaning in which the word ‘‘euthanasia" is to be employed, accepting the definition afforded by Article 143.4 of the Penal Code.

The second involves accepting that healthcare decisions such as the limitation of futile treatments, patient rejection of treatments and palliative sedation should not be labelled as ‘‘euthanasia". The third involves accepting that such actions are not euthanasia, but rather actions that are completely acceptable on ethical and legal grounds, which are not subject to the aforementioned Article 143 of the Penal Code. As a result, such actions can be regulated by regional laws, as is the case in the autonomous regions of Andalusia, Navarre and Aragon.

In Spain, euthanasia and assisted suicide are the only healthcare practices related to end-of-life healthcare interventions that are prohibited to both citizens and healthcare professionals, whilst the remaining actions are legitimate[35]. Law 41/2002 for the Regulation of Patient Autonomy and Rights and Obligations with Regards to Information and Clinical Documentation represented a milestone in the configuration of the new doctor/patient relations, presenting the concept of informed consent as an act of participation in the decision-making process, as the central axis of this relationship. The law intended to remedy the deficiencies of the Bill of Rights contained in the General Law on Public Health (1986). In terms of the concept of a dignified death, this law made three important contributions: First, the central concept of informed consent, with the repercussions that this entails in terms of the right to the truth and participation in the decision-making process, such as decisions relating to palliative care; secondly, the clarity with which it established the right to refuse treatment or withdraw consent that was previously granted (Articles 2.3,2.4 and 8.5); and thirdly, the regulation of decisions relating to proxies in Advance Directives (Article 11), which had been repeatedly requested, as stated above. However, the application of this law to end-of-life decisions did not prove as clear and direct to many people as we might have assumed. The shadow of the word “euthanasia’, the adjectives ‘‘active" and ‘‘passive" and the endless controversy surrounding ‘‘action" and ‘‘omission" gave rise to constant debate[36].

[34] See Law 2/2010, of 8 April, on Personal Rights and Guarantees to Die in Dignity". The objective of this law is to regulate the various aspects of healthcare at the end-of-life, particularly, decision making in this situation. However, this law does not regulate euthanasia or assisted-suicide. Following the passing of the Andalusian law, other autonomous regions initiated their own legislative projects, taking the Andalusian text as the cornerstone. In March 2011, two autonomous regions, Navarre and Aragon, passed their own laws on “dignified death".

[35] Simón-Lorda P., Barrio-Cantalejo, *End-of-Life Healthcare Decisions, Ethics and Law: The Debate in Spain,* European Journal of Health Law 19 (2012) p. 356.

[36] See Simón-Lorda P., Barrio-Cantalejo, *End-of-Life Healthcare Decisions, Ethics and Law: The Debate in Spain,* European Journal of Health Law 19 (2012) 355-365.

Time to Legalise euthanasia in Albania?

In Albania euthanasia is illegal. It consists of the intentional killing of another person. There are no defences available to doctors who kill in such circumstances. Hence, it amounts to murder-the most serious offence in the Albania legal system. In Albania there is no political, legislative or prosecutorial interest in prosecuting doctors who killed terminally ill patients with only days or weeks to live. Quite simply doctors in Albania are not prosecuted of euthanasia. The next informed doctor who is contemplating euthanizing a patient knows (as he or she did at the time of the survey) that the chances of him or her being prosecuted (let alone convicted) should he or she proceed are about zero.

The debate on the right to die is more relevant than ever. Euthanasia and physician-assisted suicide are at the core of this ethical and legal discussion[37].While it is partly an ethical discussion, the result of this debate will lead to either end of life legislation or to refusal to legalize euthanasia, physician-assisted suicide or both. In other words, when writing about a right to die from a legal point of view- in this paper from a human rights law angle- the ethical debate cannot be ignored, since it is a necessary prerequisite to come to righteous legislation on end of life decisions. One could describe this debate as an intersection where humanities, law, medicine and also religion meet each other. Both opponents as supporters of a right to die with dignity utilize various arguments to support their case. Often these arguments are connected with each other. Sometimes the arguments are rather similar but they are interpreted in a different way.

However, in this paper we argue that euthanasia violates the right to life and, especially, socio-economic aspects in Albania are obviously not suitable to legalise euthanasia and assisted suicide. Some arguments against a right to die are sanctity of life, fear of ab use and the slippery slope legalizing euthanasia or physician-assisted suicide would cause. Proponents claim that a person has the right to choose to die because of his or her personal autonomy, their quality of life and respect and concern for others people autonomy and self-determination[38].

Sanctity of life. The sanctity of life argument is a main argument of opponents to euthanasia and physician-assisted suicide. This argument has religious fundaments. Some claim that it therefore has no place in our pluralistic society of life argument claim that a human life is scared. Life is valuable in itself, regardless of any goals you may or may not be able to pursue. People supporting the sanctity of life argument do not accept the idea that life at a certain point is no longer worth living. The

[37] Diaconescu, A.M., *Euthanasia*, Contemporary Readings in Law and Social Justice, 2012, 475.

[38] Cohen-Almagor, R., "Right to die", Encyclopedia of Global Bioethics, 2014, 5 (http://www.hull.ac.uk/rca/docs/articles/Right%20to%20Die.pdf), consulted 25 October 2017.

sanctity of life argument considers that every life has an intrinsic dignity that must be protected[39].

The illusion of autonomy, fear of abuse and the slippery slope. People who reject a right to die do not accept the main argument that the Kantian perception of autonomy enables the rational individual to make a conscious choice for death. They say that genuine autonomy is ab illusion.

A first reason why they say that there is no real autonomy is because that the choice to die is made in a context of pain and suffering. Can one really make a choice, a life ending one, fully autonomous, when in pain? In this context of sickness psychological impairment will often be the case and this may affect the autonomous thinking of the patient who wants to die[40]. Another argument that must be taken into account is the fact that some people are very susceptible to the influence of others. People might start feeling like a burden on society and on their surroundings. Some people, although they prefer life over death, will choose, some sick persons will feel a moral pressure coming from society and their surrounding family, maybe even subconsciously, to end their lives. This cannot be called a free and autonomous choice.

In the light of the concerns that a genuine autonomous decision on the end of life is not always guaranteed is the fear that end of life legislation can be abused. That a patient can feel a kind of subconscious social pressure is already mentioned. What if this pressure is more directly? Sick persons are often dependent on their family, doctor and nurses. They are in a weak positions, and if a doctor or a family member argues for euthanasia or physician-assisted suicide one can be pushed towards choosing for euthanasia. Opponents of euthanasia and physician-assisted suicide laws claim that society should protect its weakest members. They claim that allowing end of life measures opens a door for abuse that will affect the weaker members of societies. Connected to this fear of abuse argument is the slippery slope argument. This slippery slope argument means that legalizing voluntary euthanasia ,founded on the arguments of autonomy, would lead in the end to euthanasia for people who are nor capable anymore of fully exercising their autonomy. Doctors are professionals and judge on medical intervention.

The slippery slope argument argues that some doctors will use the trust and influence they have on their patients to push them towards an end of life decision. The safeguards and notions of suffering will evolve in a direction where they are interpreted more broadly. This will lead to euthanasia for newborns, people with dementia and etc... It would lead to cases of involuntary euthanasia where autonomy is no longer a decisive factor. Indeed it must be observed that for there are discussions on the fact whether or not they are still lucid or not[41].

[39] Keown, J., "The Legal Revolution: From Sanctity of Life to Quality of Life and Autonomy", Journal of Contemporary Health Law and Policy, 1998, 256-257.

[40] Hartling, O.J., "Euthanasia - The Illusion of Autonomy", Medicine and Law, 2006, 192-193.

[41] See Cohen-Almagor, R., "Right to die", Encyclopaedia of Global Bioethics, 2014, 5 (http://www.hull.ac.uk/rca/docs/articles/Right%20to%20Die.pdf), consulted 25 October 2017.

Dignity. This is probably the most important argument yet also the most difficult one. It is one of the most important ones because both opponents and proponents of end of life legislation use the concept of dignity. In the paragraphs above dignity is mentioned in the light of the sanctity of life argument, since dignity is considered to be an intrinsic part of life. However, dignity is also used in the light of autonomy and more specifically in the light of the notion of quality of life. Here the supporters of euthanasia and physician-assisted suicide say that life at some points loses its dignity because patients experience suffering and pain. It is up to the patient to decide whether or not his life still has dignity, it is not an intrinsic part of life as such. This, it seems like dignity is an overarching principle. Not without reason problems talk about their fight for 'dying with dignity'[42]. Moreover, the concept of dignity plays an important role in human rights law. Exploring the notion of dignity allows us to test the ethical conception of dignity to the meaning of dignity in human rights law. This relation between dignity in ethics and human rights law can be then be related to the idea of a right to die with dignity and whether such a right can be derived from human rights law[43].

In this context it is important to know that dignity is also an important concept in human rights law. Is the concept of dignity in the light of human rights comparable to the notion of dignity in the end of life debate and does, in the name of dignity in human rights law, a right to die exist?

Dignity has been a rather important concept with various meaning in the history of philosophy and ethics. However, only in the 20th century the concept became important in the domestic and international legal sphere. Human dignity is referenced and used in various human rights instrumental since the Second World War. Much like is the case with dignity in the light of ethics and specifically bioethics. The starting points of modern human rights law must be attributed to the creation of the Universal Declaration of Human Rights by the General Assembly of the United Nations[44]. This complexity surrounding dignity continues

[42] Hartling, O.J., "Euthanasia - The Illusion of Autonomy", Medicine and Law, 2006, 192-193.

[43] Cohen-Almagor, R., "Right to die", Encyclopaedia of Global Bioethics, 2014, 5 (http://www.hull.ac.uk/rca/docs/articles/Right%20to%20Die.pdf), consulted 25 October 2017.

[44] The preamble of this declaration, which is in its entirety nothing more than soft law, states in its very first sentence: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". The UDHR presupposes therefore that there is an inherent dignity that every human being possesses solely because of the fact of being a member of the human species. Article 1 declares: "All human beings are born free and equal in dignity and in rights. (...)." This notion of dignity further enhances the idea that dignity is intrinsic and equal for all human beings. There is no level of dignity and the UDHR even seems to see dignity as a foundational element for human rights law. However, in two other articles human dignity is also mentioned, namely article 22 and article 23 (3). Here the context is different though. Article 22 of the UDHR is about social security and economic, social and cultural rights necessary to live with dignity, article 23 (3) is about a fair remuneration to live a dignified life. In this sense, dignity is used more on a personal level in an aesthetical context. It is not exactly the same as dignity in the sense of being the intrinsic worth of every human being. It seems that dignity, from the start, is a concept with different meanings, much like in ethics.

to exist when analyzing the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights[45]. Other international human rights treaties make reference to dignity as well. The Convention against Torture states in its preamble that human rights are derived from the inherent dignity of the human person, but does not mention dignity in any of its binding articles. The same goes for the Convention on the Elimination of All Forms of Discrimination. Only in the preamble reference is made to the dignity that is inherent to humans. Clearly, dignity became an important concept in international human rights treaties.

The Convention on the Rights of Persons with Disabilities mentions dignity multiple times, in its binding articles but also in the preamble. Again, the exact meaning of dignity remains unclear. Sometimes dignity is said to be inherent, while sometimes it is about education to foster the 'sense of dignity'.160 Also the Convention on the Rights of the child mentions dignity in an ambiguous way, both inherent and more in the sense of a personal assessment. Lastly, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their families mentions dignity two times, in article 17 where it is said that the living conditions of migrant workers must respect and in article 70,where it is said that the living conditions of migrant workers must respect the principals of human dignity. Again apart from the mentioning of inherent dignity, there is no genuine definition for the concept of dignity. In the Universal Declaration on Bioethics and Human Rights of UNESCO of 2005 dignity is mentioned multiple times but again never really explained. Earlier there was also the Universal Declaration on the Human Genome and Human Rights of 1997.It is said that this instrument made the first connection between the progress in the field of science and medicine and the concept of human dignity.

While human dignity is not clearly defined in these international human rights treaties and declarations, it seems to be a fundamental aspect of human rights law.

[45] The ICCPR states in its preamble: "(...) Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, (...)" and "Recognizing that these rights derive from the inherent dignity of the human person". Again, the preamble is not a binding element of the treaty, but it does illustrate how dignity seems to be perceived in international human rights law. The language in the preamble of the ICESCR is very similar: "Recognizing that these rights derive from the inherent dignity of the human person". It seems that both preambles give again a foundational interpretation to human dignity. Human dignity is where human rights are derived from, according to the preambles, and every human being possesses this because of the fact they belong to the human species. However, in the binding articles of the ICCPR only in article 10 (1) 'inherent dignity' is mentioned again. This is in line with how the preamble of the ICCPR describes dignity. However, in the ICESCR also only one article, article 13 (1) about education, mentions dignity. It states that education must be directed to developing the human personality and to developing the sense of dignity of every person. In this way, this reminds of dignity as something that is a personal interpretation. Dignity, that is to say, the sense of dignity, is something that can be achieved by education. This puts dignity more on a personal level than defining it as an intrinsic quality that belongs to every human being, regardless of sex, education, race, illness and etc.

It refers to dignity in most instances as being an inherent human trait. While not a treaty and therefore not a binding instrument, there was a World Conference on Human Rights in 1993 in Vienna where 171 states adopted unanimously the Vienna Declaration and Programme of Action regarding human rights, In this declaration it is stated that: ''Recognizing and affirming that all human rights derive from dignity and worth inherent to the human person". On top of that the Vienna Declaration connects human dignity to a wide variety of human rights areas. Opposed to the other instrumental discussed above, where dignity was only sporadically mentioned in binding articles on substantive human rights, the Vienna Declaration sees dignity as an underlying principle in human rights areas, from the rights of indigenous peoples to the abolition of gender-bases violence. The Vienna Declaration also connects dignity to the area of biomedical and scientific developments, stating that these developments could have adverse effects for human's rights and the dignity of the individual. This is again a justification to discuss euthanasia and physician-assisted suicide in the context of human rights, since this bioethical discussion saw the light of day partially because of the progress of science and biomedicine.

Unfortunately, case law on the right to die debate in international and regional human rights law is limited. There are some cases at the ECTHR where end of life measures are the core of the case. Analyzing these cases allows further scrutinizing euthanasia and physician assisted suicide in the light of human rights law[46]. The most important case where the ECtHR rendered a judgment on dying with dignity is the case of *Pretty v.UK*[47]. Other case law on the matter is scarce. Only three cases where euthanasia or physician-assisted suicide was the issue have been declared admissible and a judgment was made. Two cases were against Switzerland, where assisted-suicide is legal. In *Haas v.Switzerland*[48] a man suffering from severe mental problems claimed he could no longer live in dignity. He wanted to die but was refused a prescription for medication to commit suicide, since he did not meet the requirements necessary. A last case where the ECtHR judged in the context of assisted suicide was the case of *Koch v.Germany*[49]. The applicant his wife was paralyzed and wanted to end her 'undignified' life. She wanted permission from the German authorities that, after she legally would obtain a deadly drug in Switzerland under the assisted-suicide law, she could use it in her home in Germany. This was denied by Germany and the wife committed suicide in Switzerland. Germany said allowing her to bring and use that drug in Germany violates the right to life, protected in the Basic Law.

[46] See Tepshi, A., *E drejta e jetës. Mbrojtja e kësaj të drejte referuar nenit 2 KEDNJ.* **Çështjet** *e fetusit, abortit dhe eutanazisë*. Doctoral Thesis, Tirane, 2016, p.112.

[47] ECtHR, Pretty v. UK, 29 April 2002.

[48] ECtHR, Haas v. Switzerland, 20 January 2011.

[49] ECtHR, Koch v. Germany, 19 July 2012.

Conclusions

The debate on dying with dignity is raging in western society. More and more countries are legalizing end of life measures such as euthanasia and physician assisted suicide. Dignity is the main and overarching argument of both opponents and supporters of euthanasia and physician assisted suicide. In the name of dignity, proponents even claim that there is such a thing as a right to die.

The core of the matter is that the argumentation of supporters of a right to die claim that end of life decisions should be legal, in the name dignity based on personal authority and free choice. In Albania as well. Fear of abuse, the fear that a choice may not be entirely free, is countered by the statement that legislation can have built in safeguards that make sure each patient chooses to die, free and autonomously. In the right to die debate, opponents of legalizing physician-assisted suicide or euthanasia refute this interpretation of dignity. Opponents claim the exact opposite. Their main arguments, such as sanctity of life and a fear of abuse, can be seen under the overarching umbrella of dignity.

The main problems opponents of a right to die will invoke in favor of basic dignity are the fear of abuse and the slippery slope arguments. The fear of abuse doubts that a free and autonomous choice can always be guaranteed. Influence by their social environment as well as their physician cannot be excluded. For something as serious as choosing to die this cannot be accepted. A society where choosing to die becomes more accepted, patients, certainly patients that are 'weaker' and more subject to the influence of their surroundings, are subject to judge their quality of life by the standards of said society. This risk cannot be completely remedied, opponents of a right to die say.

However, human rights are said to be universal. Even when only focusing on human rights in Western society there is no agreement on a right to die. Not in human rights law, but also not in ethics. As long as that is not the case, a genuine human right to die dignity cannot be derived from human rights law.

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Privatising dispute resolutions and its limits- alternative dispute resolutions or state courts?[1]

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Abstract

Every government should provide to its citizens means for the adequate protection of their individual rights and freedoms. The means are the courts to which the citizens have the right of access and the state has to pay for the civil justice and manage to reform the court system. Nowadays, consumers and investors around the world try to resolve their disputes in a speedy and effective manner. Consequently, civil justice plays a crucial role in the life and culture of a state and provides the legal structure for the economy to operate effectively and at the same time has the function of providing authoritative and peaceful resolution of justice enabling social justice, economic stability and social order. Currently, consumers and investors are requesting an impartial and independent court to give effective solutions for their internal disputes or cross-border disputes. Therefore, states around the world are involved in periodical reforms, spending a lot of monies that usually are paid from the taxpayers. Despite the continuing request for improvement, consumers still have difficulties in accessing speedy and effective solution to their disputes through a fair trial under the constitutional principles or international law. Therefore, around the world the question arises, whether state authorities would not be more suitable guarantors of the public interest than law firms and other profited-oriented operators in the market.Consequently, alternative dispute resolution (ADR) has been introduced as a mechanism, which

[1] The research upon which this article is based was undertaken during a scientific fellowship at the Max Planck Institute Luxembourg for International Law (1 February-31 July 2018).

gives a solution to these predicaments, helping to complement the shortcomings of state adjudication. If a state doesn't manage to reform the court system then ADR can become an effective remedy. Overall, privatising dispute resolution means to comprise the mechanism for dispute resolution regarding commercial and investment arbitration, consumer ADR, and online dispute resolutions for consumers. As the privatization of ADR has proliferated, the ECtHR has found the ADR as an effective mechanism as long as it guarantees fair trial under the article 6/1 of the Convention (ECHR). In addition, recent EU legislation requires each member state to have a consumer dispute resolution body for all consumer disputes, trying to establish the EU platform on online dispute resolution. Also, the international legal framework provides the possibility that the investors to have an arbitration clause in their contract. Although it might seem that there is a total privatisation of the dispute resolution, there is a limit indeed. ADR mechanism, even concurring the state courts still remained interfaced by the possibilities to apply for the annulment of the arbitral award or its non-recognition. Although Albania has invested a lot of monies in the court reform it has failed to provide effective and speedy trials to investors and consumers. The court system remains corrupt and not effective in guaranteeing a due process. Therefore, ADR is seen increasingly as an effective mechanism for foreign investors in almost all of the international contracts. Also, consumers and internal investors are increasingly using the ADR mechanism to resolve their disputes. Therefore, ADR is an important mechanism towards the resolution of consumer and investors disputes. But still Albanian courts have to control on the end the ADR judgments trying to guarantee the public policy in the country. Therefore, the focus of this article will be to examine how the implementation of ADR in Albania and the continuing judicial reform, affect the ability of consumers and investors to resolve their disputes in an effective and speedy manner.

Key words: *civil justice, court, disputes, privatization, alternative dispute resolution (ADR), ECHR, EU Regulation, consumer, investor, annulment, non-recognition, public order*

The state as guarantor of the fair trial in the dispute resolution

Civil justice and state courts as a public good

The state provides certain goods whose value depends upon their public provision, such as defence, security, education and health. But some of these goods can also be provided or produced by private individuals. An attempt to privatize *'intrinsically*

public goods' is considered from some authors self-defeating, as the value of the goods is conditioned upon the identity of the agent producing it.[2] Nowadays discussion is in the terms of discussing the terms of the two forms fulfilling the functions or services such as public bureaucracy and private entrepreneurship. Through the privatization could be realized the objectives of the government in a proper way, but some authors considers the privatization a liability of the government, rather an asset, due to the loose fidelity on the part of private entities to the promotion of the public good. In this framework, some authors based on the concept of '*inherently governmental functions*' consider that some state functions are well executed and provided from the public agents rather than the private agents. In their broad discussion, they had concluded that some decisions must be made and some actions must be executed by public officials and ought not to be privatized.[3] Adopting laws is the job of the public entities and on the other hand, the execution of a criminal decision is still the job of another public entity. It is true that the private agents in providing certain goods are more capable than the public agents and as consequence more capable in executing the function of the state. Nowadays, is a clever solution that certain goods and services been provided from the private bodies, as long as it helps in the fulfilling of the government's objectives and in the quality of the services to the citizens, but on the other hand some goods must be provided only from the public entities.

The judiciary has to be understood as an essential element of a democratic political order.[4] Owen Fiss has argued that judges has the capacity to make a special contribution to the social life, which derives not from their personal traits or knowledge, but from the definition of the office in which they find themselves and through which they exercise power.[5] It is very important how the judges do justice. Civil justice has a social and economic significance, but the adjudication is a very important process. Judges are considered fundamentally political creatures and democratically accountable. The defence of human rights and the rule of law is a legitimate task for a judge.[6] Courts have the power to make binding decisions relied on the Constitution and law, which are binding for everybody, including all the other branches of government.[7]

The definition of Civil Justice does not include only the substantive law affecting civil rights and duties but the machinery provided by the state and the judiciary for the resolution of civil justice disputes and grievances. The administration of civil justice includes the institutional architecture, the procedures and apparatus for

[2] See, Harel. A, Why Law Matters, 2014, Oxford legal philosophy, p. 65

[3] Ibid, 66

[4] Gearey. A, Morrison. W and Jago. R, 'The politics of the common law- Perspectives, rights, processes, institutions', 2013, Routledge, second edition, p. 208

[5] Fiss (1979):13).

[6] Gearey. A, … , p.218

[7] See, Harel. A,… p.194

processing and adjudicating civil claims and disputes.[8] Civil justice serves a private function, in providing peaceful, authoritative and coercive termination of disputes between citizens, companies and public bodies.[9] The role of the government is to serve the free market economy and it does this by providing personal security, and providing a legal system for the protection of rights, most especially property rights for the enforcement of the contracts, and for the resolution of contractual disputes.[10] Law is a public good and everyone enjoys its fruits merely by living in a society and that an unlimited number of people can benefit from the legal principles at no additional costs.[11] There is a political will of the State to provide the civil remedies that the citizens realize their civil rights and claims when their private rights are infringed. Without an effective civil justice system, substantive civil laws are no more than words and that the rule of law becomes an aspiration rather than a reality.[12]

Einstein has stated that '*Imagination is more important than knowledge. For while knowledge defines all currently know and understand, imagination points to all we might yet consider*'. Images of justice help determine the acceptability and success of the process associated with those images.[13] The judge should be independent, impartial and neutral. But is it possible that the State provide to the citizens an effective judiciary? Is the judiciary a monopoly of the State? According to the doctrine and to the practice, the State has been not always effective in providing the civil justice to the citizens. The reforms in providing the judiciary, appointment of judges should be driven by a notion of 'democratic accountability' that sought to achieve a balance between the need to secure the transparency of the appointments procedure, and the requirement of judicial independence. [14] European Court of Human Rights has found in a lot of cases a breach of article 6/1 of the Convention because of the length of proceedings, missing of the access to the Court and on the end breach of a fair trial. The right to a hearing, access to the court are crucial principles of the civil justice. Courts are designed to investigate individual grievances, and that such an investigation is crucial for protecting the right to a hearing.[15] To provide a fair trial or due process relied on the main principle of the access to the court and right to be heard the domestic rules of the civil procedure should be developed and reflect the standard of the ECHR and of the ECtHR. Procedural law has been considered as an essential feature of the politics of democracy and as consequence object of radically and frequently reforms.[16]

[8] Genn. H, Judging Civil Procedure, Cambridge University Press, 2010, p. 10
[9] Ibid, p.16
[10] Capaldi. N, The ethical foundations of Free Market Societies, 20 J. Private Enterprise 30, 37(2004)
[11] Caplan. B &Stringham. E, Privatising the adjudication disputes, p.11
[12] Genn.H…, p.18
[13] Gearey.A, ...p.275
[14] Ibid, see, …, p. 212
[15] Harel.A,… p.214
[16] Gearey.A. p. 222

Some authors have considered that adjudication is a public good and something more than a public service but the civil system remains a private and a public good as long as the public is able to access the machinery for enforcing their rights and that the procedures for enforcement are fair.[17] The civil courts and judiciary may not be a public service like health or transport systems, but through the performance of this critical, social and economic function, the judicial system services the public in a way that transcends private interests.[18] In a society the citizens benefits from the interpretation of the law by the judges and of the resolutions of the disputes in both cases when the parties in dispute is the State and individuals or both individuals. Professor Dame Hazel Genn has considered that the machinery of civil justice sustains social stability and economic growth by providing public processes for resolving civil disputes, for enforcing legal rights and for protecting private and personal rights and to a certain extent people takes that for granting. But on the other hand he has argued that exist a degradation of the courts, which he has found related to different factors starting from the lack of the financing from the government till the development of the new profession of mediator competing the legal profession.[19]

Over years, the judicial system is considered slow, costly and complicated. The State not all the time is doing the best on the financing and effectiveness of the judiciary. Historically the civil courts were financed jointly by the taxpayer who paid for judges and court buildings, while the rest of the cost of civil justice was met out of court fees. In this way the costs are covered between the taxpayer and the litigants.[20] Nowadays, some of the states have difficult to quantify the costs for the civil justice, as long as the judiciary has been seen as one natural areas of the government activity. In some other jurisdictions has been accepted that judicial system should be provided by the government, as long as it is not possible to exclude the individuals from access to justice and these goods tend not to be produced in private markets because people can consume the good without paying for them.[21] Nowadays, court users are expecting that the fees income be used to improve the civil court service than to be used for the legal aid.[22]

States are less interested to invest in their civil justice system, meanwhile the reforms has an invoice for the budget and not always successful in simplifying the judicial system and speed up the process. On the other hand the private market of the legal professional is offering alternative dispute resolution concurring the state courts which help to resolve in a due time and with professionalism the disputes of the consumers, commercials, and investors. This is called privatization of the civil

[17] Genn.H…, pp 23, 24
[18] Ibid, p.26
[19] Ibid, See pp. 181, 182
[20] Genn. H, … p.45
[21] Ibid, p.47
[22] Ibid.p.50

justice. From dispute resolutions benefits the parties in the dispute and society and this is the reason why is considered as a public good. Nowadays this public good is provided from the court and from the capable private sector. When we speak for privatization we have in mind the privatization of the state enterprises. In economic terms, privatisation is much more than the simple transfer of ownership, the alteration of the rules of the qualifications and modern technology and in reality its implementation revealed on the political situations, changes and continuity in the modes of governing. On the other hand, withdrawal by the state is neither homogenous nor total. The state is disengaged from the direct management, but it is engaged in the management of the social realm, in modernization policies, or in the management of external economic relations.[23] As such, the state is the main actor in supervising and guaranteeing the standard of civil justice provided from the private professionals.

Problem with the state courts

An old German saying goes: *"Before courts and on the high seas we are in the God's hands"*. Civil justice system has the social purpose to provide a modern and efficient system that delivers justice and enjoys public confidence. Judges has the direct responsibility for the decisions on direct impact in the life of the parties in dispute and further citizens.

The Government has the obligation to provide the judiciary system and to guarantee the fair trial, the impartiality, neutrality and the independence of the judiciary. But, the reality is different from what the government proclaimed on the judicial system. In a lot of cases, the courts failed to provide the fair trial, and in some others provide injustice to the citizens. Usually, the public courts are supported by taxes, the court services are under-priced and the courts have little incentive to serve customers or control costs.[24]The trials take too long and there are not so many efforts of the courts to reduce the long process and lead the parties settling the disputes before reaching trial. The trial except being too long, is very expensive taking in consideration not only the fees of the parties' lawyers but also other expenditures that are covered from the taxpayers in the well-functioning of the justice. The problem with the civil process has to be cost, complexity and delay and the blame is laid to the layers than to the parties and to the court. Professor Dame Hazel Genn relied in his research didn't found positive the portrayal of the civil justice system. Nowadays, people like to have more access to justice and less access to the court.[25]

[23] Hibou.B, Privatising the state, 2004, Columbia University Press, p.47.
[24] See, Caplan.B &Stringham.E,… p.7
[25] See, Genn.H, Paths to Justice, Oxford: Hart, 1999, p.1

Governments try to undertake and implement reforms to solve the problems of the judiciary, but not always they realize to be successful. The reforms consists on the legal framework related to the civil process and length of the proceedings, training of the judiciary, increasing the court financing from the state, encouraging alternative dispute resolution. The states are trying to limit appeals in particular cases as much as possible and mostly lead the parties to settle the small claims and particular cases regulated by law. Also, there are some efforts to rule the disciplinary of the lawyers in civil procedures, when they contribute in the length of the proceeding. Mostly in all the countries, there is identified the need for modernization, simplification and harmonization of the legislation on civil procedure, the reduction in the costs of the litigation, promotion of the principle of the fairness, timeliness, proportionality, transparency, efficiency and the accountability in the civil justice system including the responsibility of the parties and lawyers to comply with the ethical obligations relating to truth telling, honesty and efficiency. But, usually it is common that the reforms and the policy are made in dark, as they are concluded in the absence of a quantitative or qualitative research on the functioning of the civil justice.[26] In some countries are spend a lot of money for the assessment of the civil justice, but that assessment has been not based on the true database and evidences and as consequence the reform has been not effective and meet the objectives. The reform to be effective should be relied not on the perception of the citizens and politics but on the caseload of the court and a professional analysis of the civil court decisions in a long period of time faced to the standard provided from the international mechanism such as the ECHR and the jurisprudence of the ECtHR.

Professor Dame Hazel Genn stated that '*In a profession where appointment effectively means appointment for life, are we clear enough about who the supreme exponents of professional judging are? Would we be able to describe in detail, to analyse those characteristic and thus refine our selection process?*'[27] It is true that Professor Genn is speaking for the judges in the common law system, but the problem with the judiciary and the situation of the civil justice seems to be the same in all countries around the world. Maybe, because the states failed to realize deep analyses and to limit costs in this direction, the solution has been to alternative dispute resolution.

The access to the civil courts is restricted by some factors: (i) Parties in the dispute mostly has to hire an advocate; Claimant has to pay the fees and taxes in the court; Parties in the dispute has to spent time and money before the trial and during the proceedings till the final judgment; sometimes people feel wee and find very stressful the proceedings in the court.

[26] See, Genn.H, … pg.63
[27] Ibid, p. 180

Nowadays, there is a clear message that litigation and adjudication are bad and disagreeable, while settlement and, in particular ADR are attractive and in everyone's interest. Some authors has considered that as a decline in trials and degradation of the public court, but some others has considered as sign of a healthier society that resolves its conflicts without the intervention of the judiciary and without judicial determination.[28]

Alternative dispute resolution is partly a creature of the state, under the impulse of the private actors, consumers, traders, investors. Some authors states that if state don't manage the court system, they have to forget about it and provide some other ADR instead.[29] But, regardless of the problems of the judiciary and the international tendency towards ADR, I agree with Professor Genn that we need to re-establish civil justice as a public good, recognizing that it has a significant social purpose which is important to the health of the society.[30]

Privatising Dispute Resolution – Arbitration alternative to state justice

Efficiency of arbitration over State Courts

Courts have a strong contribution to the social and economic well-being and people can take such a public good for granted. In the frame of 40 years it is evident the growth of the alternative methods for dispute resolution, creating the flexibility to the people to resolve their disputes out of the courts and mostly to withdraw the appeal of the final judgment, with the purpose to realize *de facto* their individual rights. On a daily basis and even for mundane purchases people often waive an important right: the right to go to the court.[31] Mostly, the alternative method of dispute resolution tends to be used in commercial cases, insurance cases, family cases, labor cases etc. *'Alternative'* feature of the ADR poses a threat to the monopoly of the justice distribution of modern states. Via the liberal and rational-based theories, ADR has an element of resistance that incentivizes the disputants to continue utilizing it. Parties are free to opt for ADR and choose it because they feel they can 'participate' in the process of shaping justice.[32]

Under a Eurobarometer survey done in 2010 ('Consumer Empowerment'), almost 50% of the all consumers throughout Europe would not go to court for a

[28] Ibid, pg.51

[29] Sturner.M, 'ADR and adjudication by state courts: competitors or complements 'in 'The role of consumer in ADR in the administration of justice", SELP, 2014, p.29.

[30] See, Genn.H…, p. 183

[31] Ghodoosi.F, International dispute resolution and the public policy exception, Routledge, 2017, p.49

[32] Ibid, pp. 52, 59

sum at stake up to 500 Euro.[33] People find a speed, non-costly and efficient solution for their dispute. ADR is a solution found by the governments, seeking to improve the range of options available for dispute resolutions, providing cost control, stripping down of procedure and active case management.[34] Some authors has considered that people has more access to justice, but less justice.[35] Also, Professor Genn is thinking the same, and is concerned with ADR and its main product mediation, stating that: 'The outcome of mediation is not about *just* settlement, it is just *about* settlement'[36] He raises concern about the access to justice for individuals and about the form of the civil justice that the citizens need, which should not measured simply in term of speed and cheapness.[37] Harel concludes that public institutions are more accountable to the public interest than private individuals and, consequently is wrong on instrumental grounds. He found the state courts more protective of democracy or freedom than private adjudication justifying with the judicial review.[38]

Some other authors argument that superiority of ADR over the civil courts, it is because public bodies has not incentive to be efficient, and private entities do; and public bodies usually don't know what is efficient, meanwhile the private bodies know better. This happens because private adjudication in contrast to the public courts would be free and try to experiment all the time what the client thinks and like. As consequence they conclude that the government should respect the will of the parties for a final and binding arbitration.[39]

Public trial has some advantages: (i) on the end there is a binding decision, which sometimes becomes a binding precedent; (ii) the trial provides procedural safeguards designed to ensure a due process;(iii) judges are trained and professional; (iv) the judges are obliged to respect the legal framework and protect people's individual rights. But also has disadvantages: (i) judicial process is costly; (ii) delay till the final judgment; (iii) potential to destroy the relationship between the parties; (iv) parties have no control over the process and the outcome; (v) parties has not the possibility to choose the judge; (vi) rigidity of the process and uncertainty of the outcome.[40]

Many reforms on civil justice in the entire world have been implemented with the purpose to divert the legal disputes away from the courts into mediation,

[33] Eurobarometer No.342, 2010, p.217
[34] See, Genn.H, … pp 68, 103
[35] See, C.M.Hanycz, 'More access to less justice: efficiency, proportionality and costs in Canadian civil justice reform'' Civil Justice Quarterly, 27:1 (2008); H.Genn, … p. 71.
[36] Genn.H, … p.4
[37] Ibid, .p.77
[38] Harel.A, ….p. 227
[39] Caplan.B & Stringham.E, .. pp 15-16
[40] See, Fiadjoe.A, Alternative dispute resolution: A developing world perspective, Routledge, 2004, p.31, 32.

which has been considered as a strategy that will increase the access to justice. The interest in ADR jurisdiction is group up in parallel with the failure of the courts to provide to the citizens fair trial according to the due standard. This is a possibility for the states to reduce the costs and clear the caseload of the court. Except the legal framework, in this process, the court is involved directly inviting the parties to settle the case through negotiation or mediation.

Private adjudication has a lot of benefits to the peoples because they can decide to the rules of the proceedings, have flexibility, pay less money for the adjudication. A modern and efficient civil justice system means a system that delivers justice and enjoys public confidence. ADR allows the parties to choose to settle their dispute, save costs and time, selecting the procedural rules that they consider as the most convenient, and are more amicable than the trial process. But exist also doubts in relation to 'privatization' of the adjudication. ADR are essentially private, differently from the court where it is a public hearing. Privacy is good but the justice is done in open courts. On the other hand privacy of ADR may hamper the justice and the fair trial, which used to be provided in open courts. The proceedings may turn costly, when the dispute is taken to the court *de novo*. Not all the private adjudication held to one standard, differently from the standard requested from the state court, precluding the creation of the precedent.

Apart the challenges of the ADR, nowadays people choose to file there their cases on small claims because they don't want to litigate or have not the proper budget to realize that. Traders and investors seem to feel good with the privacy and the speediness of the ADR. Also, the states are more comfortable to realize their objective on civil justice through ADR and encourage people and the courts to use such alternative forms for the resolutions of the disputes.

Due process in the arbitration under the ECtHR case-law

People have the right to go to the court, but ate the same time they have the right to waive from the right to go to the court. People want to have access to justice, but not access to the court. They express the will to find alternative forms for the dispute resolution. People want to have access to justice, without going to the court, but they pretend to have a due process relied on the main principle of the civil proceedings which are in conformity with the legal order in state in which the decision is going to be enforced. Article 6(1) of the ECHR is apparently applicable to the courts, which are established by law, also is applicable to the international arbitration. There is a relation between the human rights and the international arbitration. The ECtHR has found that article 6/1 is applicable in the international arbitration. In the case of Strain Greek Refineries and Stratis Andreadis v. Greece[41]

[41] Case Stran Greek Refineries and Stratis Andreadis v. Greece, no. 22/1993/417/496, dated 9 December 1994.

the Court has found that '*… Article 6-1 applies irrespective of the status of the parties, of the nature of the legislation which governs the manner in which the dispute is to be determined and of the character of the authority which has jurisdiction in the matter; it is enough that the outcome of the proceedings should be decisive for private rights and obligations…*'[42] and in following concluded that *'..The arbitration court allowed the applicant's claims in part by a decision which was final, irrevocable and enforceable both under the terms of the contract itself and the terms of the Greek law… The applicant's right under the arbitration award was' pecuniary' in nature, as had been their claim for damages allowed by the arbitration court. Their right to recover the sums awarded by the arbitration court was therefore a ' civil right' within the meaning of article 6/1'*[43] In this judgment, the ECtHR established a minimum procedural guarantees to develop the content of article 6/1 of the ECHR in the international arbitration.

The Court in its jurisprudence has accepted that the right to a fair trial referring to the access to justice, reasonable time, independence and impartiality of the tribunal, equality of arms is applicable also to non-judicial procedures. In the case Lithgou and others v. United Kingdom, the Court has concluded that with tribunal it is not to understand the court of classic kind, but also it may comprise a body set up to determine a limited number of specific issues.[44] Arbitration is a creature of the state delegation and is established and organized by law. Arbitrators substitute the judges, and they are obliged to provide the same standard of the access to justice as the courts do. ECtHR has made the difference between forced arbitration, imposed by law and voluntary arbitration under the agreement of the parties. In case that international arbitration is imposed by law then the parties has not the possibility to waive from the international arbitration justifying with the access to the justice. This has been concluded from the Court in the case Bramelid and Malmstrom v. Sweden.[45] In forced arbitration the Court came on the conclusion that under the Convention, '*the State has to provide a judicial mechanism to control and guarantee the fairness and correctness of the arbitration proceedings which they considered to have been carried out in conformity with the fundamental rights*'.[46]

In the cases when there is an agreement between the parties, the parties can't waive from the international arbitration and raise a dispute on the denial of the access to justice under article 6/1 of the ECHR. The Court has accepted the voluntary agreement for arbitration if not concluded under pressure and constraint. However access to court is not absolute. In several cases the Court has found the right of

[42] Ibid, § 40
[43] Ibid
[44] See, Lithgow and others v. United Kingdom, (no. 9006/80; 9262/81, 9262/81, 9265/81, 9266/81, 9313/81, 9405/81), dated 24.06.1986.
[45] See, case Bramelid and Malmstrom v. Sweeden, no.8588/79 and 8589/79.
[46] See, case Jacob Boss Söhne KG v Germany, (no. 18479/91), dated 2.12.1991.

access to court may be subject to legitimate restriction, where the individual's access is limited either by operation of law or in fact, whether it pursued a legitimate aim and whether was a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.[47] In the case Deweer v. Belgium, the Court concluded that it is possible to waive the right to hear the case before a court in civil cases.[48]

In the case Suda v. Czeck Republic, the Court found applicable article 6/1 concerning the access to justice not only in voluntary or forced arbitration but also of the third parties agreement to arbitrate, concluding that '*.. the applicant could not be required to institute arbitration proceedings to which he had never consented and risk that the arbitration tribunal would rule on the merits of his case*'.[49] In this case the Court came to the conclusion that '*no problem arise in the field of article 6 when it comes to voluntary arbitration freely consented…, meanwhile when it is forced the proceedings must offer the guarantees provided by article 6/1 of the Convention*'.[50] The Court concluded that waive by will from access to the court is accompanied by waive of right to a public hearing. The Court has found that the public hearing is not absolute and in special circumstances is allowed.[51] The Court has concluded that if there is a will of the parties, the privacy of the process is accepted and there is not a breach of the article 6/1 of ECHR.[52] In this framework, waive of a public hearing in international arbitration has been regarded as effective for Convention purpose.

Independence and impartiality are two other essential guarantees under article 6 of the ECtHR. Such guarantees have been considered very strong safeguards under the Convention. In the case Fragner v. Austria, the Court concluded that '*Independence is related to the manner of appointment of the member's court and their term of office, the existence of safeguards against outside pressures and whether the tribunal presents an appearance of independence found that there are two requirement to be met regarding impartiality*'.[53] Meanwhile, according to impartiality the Court has concluded that a subjective and objective requirement are to be met, meaning that the tribunal must be free of personal prejudice or bias and that the

[47] See, case Axelsson and others v. Sweden (no. 11960/86), dated 13.07.1990; Momcilovic v. Croatia (no. 11239/11), dated 26.05.2015

[48] See, case Deweer v. Belgium, no.6903/75, dated 27.02.1980.

[49] See, Suda v. Czech Republic, (no.1643/06), dated 28.10.2010, §46; Day S.R.O and other v. Czech Republic (no. 48203/09), dated 16.02.2012, § 33.

[50] Ibid

[51] See, case Hakansson and Sturesson v. Sweden, no.11855/85, dated 21.02.1990; Nordstrom-Lehtinen v. The Netherlands, (no. 28101/95), dated 27.11.1996; Kolgu v. Turkey (no.2935/07), dated 27.08.2013; Day S.R.O and other v. Czech Republic (no. 48203/09), dated 16.02.2012

[52] See, case Alexon & Others v. Sweeden, (no.11960/86), dated 13.07.1990; Day S.R.O and other v. Czech Republic (no. 48203/09), dated 16.02.2012

[53] Fragner v. Austria, (no.18283/06), dated 23.09.2010.

tribunal must offer sufficient guarantees to exclude any legitimate doubt.[54] In this sense, such guarantee seems to be un-waivable, but in the case Suovaniemi and other v. Finland, the Court concluded that *'the applicant's waiver of their right to an impartial judge should be regarded as effective for Convention purposes'* [55]In the arbitration, the parties are aware of the characteristics of the arbitrator and by free will they waive from access to court and choose access to arbitration.

Recently, another guarantee under the article 6/1 '*the right to appeal*' has been judged from the ECtHR. The waiver of a right to appeal against arbitration award is found inadmissible from the Court in the case Tabanne v. Switzerland.[56] In that case the Court found that '*The applicant had, without constraint, expressly and freely waived the possibility of submitting potential disputes to the ordinary courts, which would provide him with all the guarantees of Article 6.*' The Court found the waiver of the wright to challenge an international arbitral award by the free will of the parties in the agreement. The Court has concluded that some restriction by law on the right to challenge the arbitral award did not appear disproportionate to the aim pursued, to provide flexible and rapid procedures, while respecting the applicant's contractual freedom.[57]

The Court considered the non-enforcement of a final arbitral judgment as a breach of the due process, meanwhile the parties agreed to waive from the access to court and the same principle it will be applied as in the case of the final court judgment.[58]

For the moment ECtHR has not referred to other guarantees of Article 6(1) of the ECHR, but they could be treated in the same way as the other rights in the meaning that they can't be waived in advance, although case by case the exception could be made.[59]

Nowadays, high cost of the arbitration and the impossibility to claim, some authors referring to the standard of the ECHR, and the case Banifatemi, Dutco has considered as denial of the access to justice.[60] There is a direct responsibility of the state to guarantee the standard of the ECHR in the national level. It is true that the State has not a direct responsibility for the arbitrator's decisions, but the State has an indirect responsibility for the violation of the rights under Article 6(1) of ECHR and should put the restriction through law using other mechanisms to control the

[54] Ibid

[55] See, Suoavaniemi and other v. Finland, (no. 31737/96), dated 23.02.1999.

[56] See, Tabane v. Switzerland, (no. 41069/12), dated 1.03.2016

[57] Ibid, §§24,25

[58] See, case Regent Company v. Ukraine, (no.773/03), dated 29.09.2008; Kin-Stib and Majkic v. Serbia (no.12312/05), dated 20.04.2010.

[59] See, Ringquist, Do procedural human rights requirements apply to arbitration-a study of Article6(1) of the ECHR and its bearing upon arbitration, 2006, www.lunduniversity.lu.se, p.39.

[60] See, Decision of the French Court of Cassation in the case of Yas Banifatemi, dated 6.11.1998, 20.2.2001; in the case Dutco, dated 7.01.1992.

private adjudication and protect the public order, including the access to justice which prevail over the party autonomy.

Arbitrations as a mechanism of dispute resolution in today's reality

The international and European standard of ADR

ADR is found as a solution to have a speed and non-costly adjudication. The types of ADR are different, starting from negotiations, mediation, hybrid forms and finally arbitration. In the negotiation process parties are going to settle the case without the need of a third person and without spending money. Apart, in the mediation it is a third party who is requested from the both parties by will to give a solution. Arbitration is a process in which a neutral third party or a panel of neutral parties renders a decision based on the merits of the case. The parties in arbitration are able to agree on the arbitrators, procedural rules which could be more convenient for them. The arbitration is much more amiable than the trial process. The arbitrator's award could be final and binding or advisory if the parties agree in that way.[61]

Also, there are some combined processes called *'hybrid process'*, which is nothing more than a combination between the mediation and arbitration. Usually, not all the mediation results in a final resolution. In med/arb the neutral third party starts as a mediator and if no conclusion is reached then he ceases the mediation and becomes an arbitrator who then renders a final and binding decision for the parties. The other hybrid form is arb/med, where the neutral third party under the request of the parties starts the process as an arbitrator and delivers a decision which is not shared with the parties immediately and then becomes a mediator and attempts to facilitate a resolution between the disputants. If the parties reach a solution in the mediation then the arbitral award will be destroyed and if they are not able to reach a solution during the mediation then the decision of the neutral third party will be released to the disputants and that is binding for them.[62]

The parties have agreed by will to include an arbitration clause in their contract as an alternative to court to resolve their disputes. The parties to arbitration can maintain some control over the design of the arbitration process. The rules of arbitration process in some situations are set out by statute or by contract and in other circumstances the parties work together to design an arbitration process, which appropriate to their dispute.[63] The decision of an arbitrator usually is final and binding, but may be advisory when the parties agreed that the arbitral award

[61] See, Fiadjoe.A,…, p. 27
[62] Ibid
[63] Ibid, pp 30, 31

been non-binding and the dispute been court-ordered. In the case that the parties agreed to resolve by arbitration, the award is binding, even the parties change mind and are not happy with the final award. Arbitration clauses are separable from the main contract and the issues of the competence have been resolved in the arbitrator's favour.[64]

International arbitration nowadays is found as the most popular and common mechanism to adjudicate the dispute out of the court. Urged on by powerful private actors, the major trading states ratified the 1958 New York Convention. The extraordinary development of the New York Convention regime has been driven by competition among these same states for arbitral business.[65] The New York Convention during years has served as an international tool in providing the legislative standard for the recognition of the arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards. Under the NY Convention, the central obligation imposed upon States Parties is to recognize all arbitral awards within the scheme as binding and enforce them, if requested to do so, under the *lex fori*.[66] In this frame work, during the Conference on International Commercial Arbitration 20 May-10 June 1958 the state parties has been encouraged to uniform the national law on arbitration which would contribute to the effectiveness of the arbitration in the settlement of the dispute.[67] NY Convention has served as a tool for the harmonization of the legislation on arbitration around of the world and in following the various organizations drafted the Model of UNCITRAL to uniform the rules of the arbitration in commercial disputes for all the states contractor parties in the Convention. Under the Article 2 of the NY Convention, contracting states are obliged to recognize the agreements in writing under which the parties undertake to submit to arbitration the disputes. *'Agreement in righting'* includes an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams. The arbitration tribunal[68] has the competence to resolve the dispute, unless it finds that the agreement to arbitrate is null and void, inoperative or incapable of being performed.

Following New York Convention of 1958, in Geneva on 1961 was signed the European Convention on International Commercial Arbitration with the purpose to remove certain difficulties that may impede the organization and operation

[64] See, Sweet.Stone.A & Grisel.F, "The evolution of international arbitration" (Judicialization, Governanace, Legitimacy), Oxford University Press, 2017..p.26

[65] Stone Sweet.A…, p. 233

[66] New York Convention, 1958, " On the Recognition and Enforcement of Foreign Arbitral Awards"

[67] See, Final Act of the United Nation Conference on International Commercial Arbitration (E/Conf.26/8Rev.1) available at www.uncitral.org

[68] The New York Convention is applicable not only on the arbitral award rendered by the appointed arbitrators for each case, but also those made by permanent arbitral bodies to which the parties have submitted. (Article 1)

of international commercial arbitration in disputes related to physical or legal persons of different European countries. This Convention was another tool which served that many states in Europe elaborates their internal legislation embracing arbitration for the resolution of the cross-border commercial disputes.[69]

The effectiveness of the arbitration depended upon its judicialisation, although the theory of judicialisation was not developed with international arbitration in mind.[70] In the judicial model, which depends upon the construction of hierarchical authority, arbitrators render justice, at a minimum, by ensuring due process and maximizing legal certainty for present and future users of the system.[71] Convention for Settlement of Investment Disputes (ICSID)[72] is a model of the effectiveness of the mandatory procedural rules in the investment arbitration, which provides facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States. Under the Article 25 of the ICSID Convention, the Centre has jurisdiction on the conciliation and arbitration of the any legal dispute arising directly out of an investment between a State and a national of another State, which the parties to the dispute consent in writing to submit to the Centre. The jurisdiction of the Centre covers an unknown number of foreign investments disputes referring to the bilateral treaties between the states, rather than being conferred in a case- by- case basis. This model of investment arbitration is found effective because of the judicialisation, the principles and rules applied from tribunal, more or less as the courts do, when they resolve the contractual disputes and when determine liability for compensation under investment treaties. Nowadays more competences are delegated to the investments arbitrators, who have the authority to apply the mandatory law and the arbitral case law on investments referring to the ICSID and bilateral treaties between states. There is an obligation of the states to review and renegotiate the treaties under the consolidated case law of the Centre.

Under the 1958 NY Convention, an ICC[73] initiative, pro-arbitration states in the major trading zones have explicitly recognized the autonomy of the arbitral order as a legal system.[74] The ICC Rules of 1998 and 2012 are considered as mandatory procedures, centralizing the functioning of the international arbitration increasing the administrative control on the final award of the arbitrators. The recent legal framework of the ICC is competitive to that of ICSID. The intensification of party conflict has pressured dispute resolvers to construct procedures that are

[69] See, Article 1,2 of the Geneva Convention, 1961

[70] See, Stone Sweet. A,… p.21

[71] Ibid, …. p.33

[72] ICSID Convention, dated 18 March 1965, entered into force on October 14, 1966. The provisions of the ICSID Convention are complemented by Regulations and Rules adopted by the Administrative Council of the Center, pursuant to Article 6(1)(a)-(c) of the Convention.

[73] International Chamber of Commerce Paris, (ICC), Institutional Arbitration.

[74] Stone.A..., p.79

harmonized with the principal and rules of the trial and able to maintain the legal system effectiveness.[75]

Also, the European Community has stressed the importance of developing an area of freedom, security and justice, in which the free movement of persons is ensured. In this framework, the Community has adopted measures in the field of judicial cooperation in civil matters for the proper functioning of the internal market where the principle of access to justice is fundamental. The European Council in the Tampere meeting in 1999 called for alternative, extra-judicial procedures to be created by the Member States.[76]In this regard, in April 2002 the Commission presented the Green Paper on alternative dispute resolution in civil and commercial matters referring to the situation in European Union. As consequence, in 2008 has been adopted the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 *"On certain aspects of mediation in civil and commercial matters"*, which is applicable only to mediation in cross-border disputes, without preventing the Member States from applying such provisions also to internal mediation process. The Directive is applicable to cases where parties agreed to use mediation, mediation is ordered by a court, or in which national law prescribes mediation.[77] Mostly, mediation according to that directive has been used in commercial and consumers disputes.

Consumer ADR has existed in parts of Europe for some decades, but only this decade became important at the level of European policy on dispute resolution and the Mediation Directive has served as a tool to resolve the cross-border consumer disputes, transforming the regulatory system and form an effective European approach.[78] In addition to the Mediation Directive, a series of regulatory measures have included references to Consumer Dispute Resolution based on the Article 114 of TFEU, which stressed the need for a high level of protection for consumers Directive 2013/11/EU (On Consumer ADR)[79], followed by the Regulation No.524/2013 (ODR).[80] Under this Directive CDR, by 2015 all the EU member states have full coverage of CDR, building upon that an ODR platform, providing the consumers access to high quality, transparent, effective and fair out-of-court redress mechanism, without preventing the parties from their right for access

[75] Ibid.., p.115

[76] See, Tampere summit of the European Council, 15-16 October 1999

[77] See, Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008, 'On certain aspects of mediation in civil and commercial matters', Art. 1(2), 2.

[78] See, Creutzfeldt.N, 'Alternative Dispute Resolution for Consumers' in 'The role of consumer ADR in the administration of justice', Sturner. M, Inchausti. F, Caponi.R, SELP, 2015, p. 3.

[79] Directive 2013/11/EU of the European Parliament and of the Council "On alternative dispute resolution for consumer disputes and amending Regulation (EC) No.2006/2004 and Directive 2009/22/EC, starting implemented by July 2015.

[80] Regulation (EU) No. 524/2013 of the European Parliament and of the Council of 21 May 2013 "On online dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR), starting implemented by January 2016.

to court.[81] According to the Article 2 of the CADR, the Directive is applicable to procedures for the out-of-court resolution of domestic and cross border disputes concerning contractual obligations stemming from sales contracts or service contracts between a trader established in the Union and a consumer resident in the EU through the intervention of an ADR entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution.[82]

Internet has created the world online trade and e-commerce, faced with the difficulties for the consumers. Consumer protection has been one of the key issues addressed in the Digital Agenda for Europe, launched by the European Commission in 2010 (COM (2010) 245), where one objective has been the improvement of ADR systems for e-commerce and improvement of access to justice on line.[83] According to this new EU legal system, CADR systems have huge potential to deliver not only effective, but also cheap and quick solution to the disputes between consumers and traders arising from the sale of goods and services. States are responsible for the quality of CADR system, although not requested that been organized and financed from the state authorities, but monitors the functioning of the CADR system and certificates the ADR entities. The Directive ensured that the ADR procedure is free of charge for consumers or available at a nominal fee under the control of the state and the consumers have not the obligation to be represented by a lawyer. [84] Some solutions are on the speed of the process, which is provided to be realized in 90 days from the date on which the ADR entity has received the complete complaint file.[85] In this regard, a better functioning of domestic ADR and cooperation between ADR entities, contribute, step by step, to a better performance of the redress mechanisms of consumer's rights in cross-border situations.[86]

The requested standard of the ADR in the European level has no difference with that in the international level such as: independence & impartiality, transparency of the proceedings, effectiveness, legality and fairness. The minimum standard in EU concerning the Consumer ADR level following the Resolution of the European Parliament on 14 November 1996, has been provided through two recommendations, the 98/257/EC[87] and the 2001/310/ EC[88], filling the gap left from

[81] CDR Directive, Art.1

[82] Ibid, Art.2

[83] COM (2010) 245, A digital agenda for Europe

[84] CDR, Art. 8(c), (b)

[85] CDR, Art 8 (e)

[86] See, Inchausti.F, 'Specific problems of cross-border consumer ADR: What solutions?' in 'The role of consumer ADR in the administration of justice', Sturner. M, Inchausti. F, Caponi.R, SELP, 2015, p.57.

[87] Rec 98/257/EC 'On the principles applicable to the bodies responsible for out of court settlement of consumer disputes', dated 17 April 1998.

[88] Rec 2001/310/EC " On the principles applicable to the bodies responsible for out of court settlement of consumer disputes", dated 19 April 2001.

the Recommendation of 1998. The Directive 2013/11 EC sets out four minimum standards to be complied with any case if they want to operate properly in a Member State not limited to the independence and integrity, transparency, accessibility and special protection of personal data. They are not limited because there are further safeguards regarding the rights of consumers, traders and third parties entrusted with ADR to guarantee the procedures of arbitration, which I have elaborated for the safeguards of arbitration in general and are applicable to the consumer arbitration.[89] As consequence, the safeguards provided through the European legal system in Consumer ADR have proved a great success as an alternative to court proceedings, bringing the parties closer to find an agreement trying to reach an win-win solution what is important in the field of consumers and traders, as long their relationship can often survive beyond the conflict. This is a good example for all kind of arbitration and proves the success of the judicialisation of arbitration competing the access to court, that the parties are no more interest in.

The consolidation of minimum standard regarding ADR in Albania

Albanian Constitution provides that '*the law constitutes the basis and the boundaries of the activity of the state*'[90] and *'the Republic of Albania applies international law that is binding upon it*'[91]. Meanwhile, Article 41(2) provides that '*Everyone, for the protection of his constitutional and legal rights, freedoms, and interests, or in the case of an accusation raised against him, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law*'.

It is clear that the legal system in Albania provides that people have the right of the access to the court to realize the execution of his individual rights, but the parties are free by will to choose other mechanism to resolve their dispute. There is not the place to mention the history of negotiation, mediation or arbitration in Albania. Also, there is no need to repeat what is presented in the previous heads. But the domestic law since 1992, when signed the ICSID Convention and Albania was open to the free market, the resolution of the disputes through international arbitration made progress. Also, negotiation, conciliation has been one of the safeguards of the trial in civil proceedings, which guarantee the will of parties to resolve their dispute in their own and to realize an output of win-win for both of them.[92]

The recent Civil Procedure Code in force in Albania provides that *'The judge should make every effort to settle the dispute amicably during the preparatory stage,*

[89] See, Lopez. M, "On minimum standards in consumer ADR", in " The role of consumer ADR in the administration of justice", Sturner.M, Inchaysti.F, Caponi.R, SELP, 2015, pp 138-141.

[90] Article 4 Albanian Constitution

[91] Article 5 Albanian Constitution

[92] Civil Procedural Code of Albania, originating law no.8116, dated 29.03.1996 and amended recently through law 38/2017, dated 30,03.2017.

when the nature of the case allow that.' Mediation was regulated through the law no.9090, dated 26 June 2003 "On Mediation in dispute resolution". Today that law is abrogated, and replaced by Law no.10385, dated 24.02.2011, approximated with the Directive 2008/52/EC "On certain aspects of mediation in civil and commercial matters", recently amended through the Law no.26/2018, dated 17.05.2018.[93] Also, the recent amendments of the Albanian Civil Procedure Code provides that '*At each stage of the trial, the court shall inform the parties about the possibility of settlement of the dispute through mediation and if they give their consent, it* transfers the case to mediation'[94] According to the today in force Law "On mediation in dispute resolution", the mediation applies for the resolution of all the disputes in the civil, commercial, labour and family law, intellectual property, consumer's rights and the disputes between the public administration organs and private subjects.[95] The court approves the reached reconciliation through mediation, only in case that it is not inconsistent with the law. Under the Mediation Law, mediation is based on the principle of equality of parties, confidentiality of information and respect for flexibility and transparency of the procedures and will of the parties in the process.[96] Also, under the civil procedure provisions, the parties have the right to appeal the decision of the mediator, giving to the court the authority to control the legal solution in the mediation process, if one of the parties do not agree and challenges the decision.[97]

Also the rules on the internal arbitration and international arbitration have been provided through the Civil Procedural Code of 1996. After Albania ratified Geneva Convention[98] and New York Convention[99] by the years 2000, the provisions on the international arbitration in the Code of Civil Procedure has been abrogated, because the international agreement under Article 122 of the Constitution are directly applicable. As consequence the international standard provided from the Conventions and the relevant jurisprudence is directly applicable in Republic

[93] Republic of Albania has the obligation of the approximation of the internal legislation with the *aquis* in the EU.

[94] Article 158/ç (2) (3) of the Albanian Civil Procedural Code, amended by Law 38/2017, article 44.

[95] Article 158/ç (1), Albanian Civil Procedural Code, amended by Law 38/2017, article 44. The Law 10 385 "On mediation in dispute resolution", amended through the Law 26/2018, in Article 2 (4) provides the cases, but not limiting to, when the Court, or the respective state body could transfer the case to the Mediation authority: a*) civil and family cases, which involve the interest of minors; b) conciliation cases in case of dissolution of marriage foreseen in article 134 of FC; c) property-related disputes or co-ownership, dividing of the properties, restitution lawsuit, negation lawsuit and lawsuits for cessation of the adverse effect on possession, disputes on the non-execution of the contractual obligations, and those on non-contractual damages.*

[96] Article 3(1), Law 'On mediation of dispute resolution'.

[97] Article 158/ç (6) Albanian Civil Procedural Code, amended by Law 38/2017, article 44.

[98] Law no. 8687, dated 9.11.2000 "On the Accession of Republic of Albania in the European Convention of Arbitration"

[99] Law no. 8688, dated 9.11.2000, "On the Accession of Republic of Albania in the Convention 'On Recognition and Enforcement of the foreign judgments of International Arbitration' "

of Albania. Usually such Conventions have been referred on the commercial international arbitration matters according to the contracts or law. Also, ICSID Convention and its jurisprudence, is directly applicable on investment arbitrations referring the bilateral treaties between the state parties in the Convention. In Albania, referring to the international and European requirements, there is a policy of conciliation, mediation and arbitration, meanwhile the court is not found effective in the resolution of internal or cross-border disputes in commercial or investment matters.

According to the progress report of 2016, *'The judicial system remains seriously affected by politicization, corruption and week inter-institutional cooperation*'.[100] In this framework the justice reform aimed to increase the independence, impartiality and transparency of the country's judicial bodies, including Constitutional Court, Supreme Court, governing bodies of the judiciary and the General Prosecutor's office.[101] The progress reports stated that *'The budget planning capacity needs to be improved and adequate budgetary resources for the justice system ensured, in particular for the implementation of the reform*'.[102] In such conditions, when there is a problem with the court system, the attention of the state has to be paid to the ADR. According to the Cross-cutting strategy of the justice adopted through the DCM no.773, dated 2.11.2016[103], the government is engaged in a radical judicial reform, where one of the main objectives is the consolidation of the independence and efficiency of the judiciary, but not the first but the last another objective is set up of a legal framework for the arbitration which will realized through the strengthening of the role of the mediator according to the law in force.

The government, to reach the objectives as stated in the cross-cutting strategy, is engaged to budget till the year 2020 a total amount of 98,385,653.00 Euro, meanwhile for the alternative dispute resolution only 9000 Euro in the whole period. Speaking on the lack of the judiciary efficiency, there is no descriptions of the measure to be undertaken for the strengthening of the mediation, meanwhile there is nothing stating about the arbitration and international arbitration. Still today, there is not a law on internal arbitration and international arbitration, meanwhile the provision of the Civil Procedural Law remained revealed since September 2013. Referring to the progress report of 2016, there are 467 mediators in Albania against 367 in 2015, and only 63 mediators are working actively on cases and the mediation provided remains very limited, even though it increased from the previous year.[104] The progress report of 2018, speaking on the progress in

[100] Progress Report 2016, dated 9.11.2016, SWD(2016)364 final, p.58.

[101] See, Ibid.

[102] See, Ibid, p. 59

[103] Cross-cutting strategy 2017-2020. The first cross-cutting judicial strategy has been was adopted in 2011 for a period of two years (2011-2013). For three years there was not provided from the government a political document on the judicial reform.

[104] See Progress Report 2016, p. 59

the judicial reform and the budget spent during 2017 for the justice referring to the estimated budget and the government reports, doesn't make an assessment about the progress of ADR in Albania and the further requirements for the future.[105] Under the cross-cutting strategy of justice, there are not provided measures to ameliorate and to encourage as an alternative form for the dispute of resolutions. Meanwhile, in Europe is developed Consumer ADR and On line dispute resolution and found effective, under the Albania political document there is not a vision of government to introduce and develop an authority involved in the arbitration of the consumer disputes in accordance with the Directive 2013/11/EU CADR and Regulation 524/2013 ODR.

There is no clear the policy on the alternative dispute resolution in Albania, meanwhile government speaks only of a law on international arbitration and amelioration of the mediation in civil, commercial, family and labor disputes, without telling how that can be realized. Recently, through the law 26/2016 amending the Law 'On Mediation', has been included some other area of mediation such as intellectual property, consumer's rights and the disputes between the public administration organs and private subjects. Also, some further rules has been provided through the recent amendments on the law "On Mediation", relating to the organization of the National Chamber of Mediators, initial and continuous training of the mediators, organization and functioning of the General Meeting of the Mediators etc. Apart the recent amendments of the law, there is a lack of a clear policy on alternative dispute resolution, because of the lack of a research on the organization, functioning and efficiency of mediation and arbitration in Republic of Albania and at the same time because the government motive to promote the ADR has been only to save money and not of the merits and success of this mechanism.

The limits of the privatizing Dispute Resolution

The international and European standard in the control from the state courts of the ADR

Nowadays, as mentioned previously the success of private dispute resolution depends on the bilateral agreement of the parties, or both parties participate in the same association accepting the private adjudication and finally enforcing the final decision.[106] State is engaged to promote the ADR, because failed to provide an effective judiciary, to fulfil the expectation of the public on the court justice and

[105] See Progress Report 2018, p.19-21
[106] See Caplan.B &Stringham.E, … p.16

finally to save money. As a consequence, the state has another obligation to respect and enforce the final judgment resolved by ADR as provided by law. That depends on the flexibility of the internal legislation and interpretation of the international agreement ratified by the state related to the state control over the ADR mechanism exercised mostly through the courts.

The Conventions in force that are applicable to the member state parties from years has served as procedural safeguards in ADR proceedings. Nowadays all kinds of the ADR have an international role, as long the online dispute resolution has been promoted, although the arbitration seems to be mostly used in the past for cross-border conflicts between parties. Apart the fact, that all the kinds of ADR are promoted around the world, the international law has provided a mechanism through which the private adjudication could be controlled from the internal courts. It is good, if the government respects the will of the parties in executing the contracts and the final ADR judgments, but the states have the obligation to guarantee the standard of the proceedings related to the access to justice. The famous New York Convention considers the arbitral judgments binding and there is an obligation of the state to enforce them. But on the other hand, provides to the parties the possibility of the refusal of the recognition and enforcement. In this framework, states have to apply directly the Convention or provide internal rules on the recognition and enforcement of the final foreign arbitral awards transposing the NY Convention. Article 5 of the NY Conventions provides the grounds for the refusal of the recognition and enforcement of the international arbitral awards relating mainly to the breach of the principles of a fair trial and public order.

The doctrine of the public order in arbitration grants discretion to the courts to set aside private legal arrangements, including arbitral awards, which harm the public and endanger legal order and society.[107] Courts around the world had reacted differently to the principle of the public policy referring to the Article 5/2(b) of New York Convention.[108] Such principle has been used from different courts to limit the recognition of the final awards of the private adjudication. There is a lack of a definition for the domestic and international public policy. Ghodosi cited Lalive, *'the concept of public policy in international private law differs from municipal public policy because of necessity and the different purposes of each legal order'.*[109] In his opinion, international public policy of states should not apply to the cases involving international matters.[110] The grounds on limitation of the private adjudication can't be exaggerated from the domestic courts referring to the principle of the public policy. The system of the privatization of the justice promoted and developed nowadays around world is to allow people to execute

[107] Ghodoosi.F, 'International dispute resolution and the public policy exception', Routledge, 2017, p.62
[108] See, Ibid, p.63
[109] Ibid, p.71
[110] Ibid, pp.72, 97

their agreement to opt the courts if they desire and as consequence the public courts need to step back and simply allow the market to function.[111]

The courts can't surpass the will of the parties, if they agree that the final judgment be binding. Although, the public courts have the authority to decide on the recognition of a final international award concerning the grounds for refusal, but not to review that decision related to the merits. Also, the Geneva Convention provides rules on the setting aside of the final arbitral award from the domestic courts, which constitute a ground for the refusal of recognition or enforcement of that award in another state.[112] On the matters of the investment arbitration, ICSID Convention provides that the final award is binding, is not subject of any appeal and states are obliged to enforce it, considering the arbitrator the judge of its own competence.[113] But on the other hand exists the administrative hierarchy of the Centre, where the review or annulment could be decided from a Committee of arbitrators appointed from the Chairman.[114] International investment arbitration is a public procedure and the governing law, unlike almost all commercial arbitration cases, is international law and usually people are more comfortable with that, because they can apply the international public policy.[115] According to the European standard, in the matters of the consumers ADR, the Directive 2013/11/EU provides that the decisions of the CADR entities are binding if the parties have been informed previously of its nature in advance and specifically accepted this.[116] Consumers are not prevented from judicial proceedings if they didn't agree previously on the binding nature of the final arbitral award.[117]

It is true that governments interfere with all the means despite the will of the parties, which destroy the free market of the private adjudication. Governments try to justify such kind of intervention with the access to justice and the protection of poor people. Indeed, referring to the European policy related to the Customer ADR and international policy of the established institutions dealing with international commercial arbitration, it is clear that the adopted legislation and rules is according to the principle of a fair trial, providing procedural safeguards to guarantee a speed, costless arbitration and mainly respecting the access to justice.

The limits of the privatizing dispute resolution under the Albanian law

ADR has developed in Albania recently, but still there is not a state policy in the promotion of the private adjudication. The Albanian legal framework on ADR is

[111] See Caplan.B &Stringham.E, … p.18
[112] See, Article IX of the Geneva Convention
[113] See, Article 41, 53 of ICSID Convention
[114] See, Article 51, 52 of the ICSID Convention
[115] Ghodoosi.F, .. p.103
[116] Directive 2013/11/EU, article 9/3; 10/2
[117] Ibid, article 12/1

compound of international agreements, which have been ratified from Albania and are directly applicable. The progress report of 2016, speaking for a number of 63 mediators working in practice, found that *'the mediation provided remains very limited, even though it increased from the previous year'*. The progress report of 2018 states nothing about ADR. There is no data about the domestic arbitration or international arbitration. There is no data on the recognition and enforcement of the international arbitration awards.

Also, the government in its Cross-cutting Strategy of Justice 2017-2021, is saying nothing on the domestic arbitration and international arbitration, about the role of the government on the recognition of the international arbitration award and enforcement; is saying nothing about the quality of mediators and arbitrators in Republic of Albania; is saying nothing about any reform on the customer arbitration in domestic or cross-border disputes; is saying nothing about the building of the capacities in ADR and about the reduction of the ADR costs. The government in its ross-cutting strategy has only one objective: Set up the legal framework on arbitration, which started some years ago and was planned to be adopted and approved in the Parliament by September 2013 together with the amendments of the Civil Procedure Code. It is hard to make an assessment of the limits of the ADR in Albania, because there is no official database on the domestic disputes solved through mediation and arbitration; there is no database on the international arbitration commercial or investment. We heard on TV on the international arbitration awards delivered from the tribunal, in which cases state is a party, but we don't know about the disputes between private parties. We have the possibility to find some court decision of the Appeal Court on the recognition of the awards, but there is not enough to understand and make the assessment of the limits in the ADR. The state institutions are not collaborative in giving information, or better saying refuse to spread such kind of information. The fact, that there is nothing in the progress report about the recognition and enforcement of international arbitration award, meanwhile that is an obligation under the international agreements makes evident that there is not transparency from the government and at the same time there is not an assessment from the government in the moment they adopted the cross-cutting strategy of justice, what proves finally the missing of a vision.

Apart from the above, under the Albanian legislation in force on the matters of arbitration there are limits to ADR generally and to international arbitration especially.

Regarding the Law 'On mediation', it provides that '*Where the case is referred for mediation by the court or the prosecutor office, the mediator, by the end of the mediation procedure, or within time limit specified by them, shall notify them of the resolution or non-resolution of the dispute, through the submission of the respective*

acts."[118] According to Article 158/ç (5) of Civil Procedure Code the court shall give its approval decision, but in any case it should be no against the law. The act agreement through mediation is final and binding as the arbitration decisions and constitutes an executive title and the bailiffs are responsible for the enforcement. It is clear that the court has a control on the decision of the mediator on the dispute according to the will of the parties.

In the arbitration procedures, nowadays the provisions on domestic arbitration are abrogated and still today there is not a law on the domestic arbitration. Regarding the international arbitration, under the Civil Procedural Code of 1996, amended by law 38/2017, the rules on the recognition of the foreign court decision are applicable in international arbitration, even since the year 2000 Albania has ratified the New York Convention. [119]According to the article 394 of the Civil Procedure Code there are provided some legal obstacles for the execution of decisions issued by foreign courts, which doesn't seem to be harmonized with the NY Convention or other international and European legislation on the recognition of foreign decision. The amended Civil Procedural Code doesn't provide some rules on the recognition and enforcement of the final awards of the international arbitration neither has transposed the provisions of the NY Convention. Taking in consideration that according to the Article 122 of the Constitution and Article 393/2 of the CPC the international agreements prevails over the CPC, then NY Convention and Geneva Convention are directly applicable. As mentioned in the previous head, the court under the NY Convention has the possibility to non-recognize or decide on the annulment of the final award of the international arbitration. According to the Article 395 of CPC, the competent court to decide on the recognition is the court of Appeal. In Albania, nowadays there is not provided by law the annulment of a final award of an international arbitration, but the draft-law preview the right of appeal against an international arbitration award. [120]

It is clear that the legal framework in Albania on international arbitration has provided the limitation of the privatization of the civil justice, meaning that exist a mechanism to control the decisions issued from the arbitrator that are not judges. This is good, to guarantee people on the access to justice and prevent any possible abuse from the arbitrators. But on the other hand, state has to not allow the court's abuse in the process of recognition of the international arbitration awards referring to the interpretation of the nature of recognition or annulment, and to the interpretation of the public policy under the NY Convention and Geneva Convention. There are a lot of cases, where the Tirana Appeal Court has done its own interpretation on the public policy not relied on the jurisprudence of NY Convention, or has prolong the procedures of the recognition of the final award,

[118] Law no.10385, dated 24.02.2011 "On mediation in dispute resolution", amended, article 23
[119] Article 399 Civil Procedural Code
[120] Draft-Law "On International Arbitration in the Republic of Albania", Art.45

telling that has the competence to control the international arbitration decision and put limits to the privatization of the adjudication.[121] Albanian legislation has no definition of the domestic and international public policy. Also, there is not a developed jurisprudence from the Supreme Court or Constitutional Court that made such kind interpretation and definition referring to several kind of arbitration, such as investment, commercial or consumer arbitration. Judges are lazy to read and find jurisprudence of the NY Convention. Sometimes they have not the will to do it. It is an task for the lawyers to refer to the court the jurisprudence of NY Convention, ICSID and ECJ, which will help to fill the gap in the understanding of the international and European law. Also, it is a task for the state to organize research on international arbitration, and draft the strategies only relying on the database and reflect the true problems, which need the right solution.

Conclusions and Implications

Civil justice has been considered as one of the goods that can be provided not only from the state entities. The most important task of the state adjudication system is the enforcement of individual rights speedily and efficiently, giving to the parties what is due to them under the substantive law. On the other hand, a second goal it is the development of law and legal certainty of the citizens. There are different theories about the failure of the state in providing this public good. The reality of nowadays is that states failed to provide budget for the court and to perform long terms reforms, which guarantee an effective judiciary. People need flexibility, speed and costless process, and for sure the guarantee of a fair trial. They are more interested in access to justice than access to court. States have accepted that, because of the fatigue with reforms and huge invoices for judiciary alternative mechanisms must be developed. Therefore, states have been supportive of ADR mechanisms, which are partly a creature of the state urged from the citizens trying to find a speedy solution with reduced costs for the dispute of subjects.

However, cheaper and faster is not necessarily better and there are many challenges with ADR regarding the safeguards of the system of justice. ECtHR has accepted that the fair trial principle under Article 6/1 of the ECHR is directly applicable to private adjudication, but on the other hand it is the state that has to guarantee the due process provided from the private entities. International and European policy nowadays is towards promotion of the ADR in civil and commercial dispute, and forget about litigation. As a consequence, states are requested to promote the mechanism of ADR on commercial, investment and consumer arbitration. Recently, we are witnessing the spread of ADR for online commercial disputes also.

[121] See , Iliria vs Republic of Albania, Pranvera shpk vs Republic of Albania

Overall, states should stop the old policy of the strong control to the private adjudication, but also should have a real vision on the organisation and functioning of the ADR to guarantee the safeguards of private adjudication as a public service, based on a real assessment of the ADR system. Although, in parallel states have to make efforts to re-establish the civil justice as a public good, that the civil courts not been in the future out of the business in fulfilling their significant social purpose on the execution of the individual rights effectively, that is as important to the health of the society.

Regarding this article's specific case study, the Albanian government's stated policy is to strengthen the judiciary through the deep reform it undertook recently. Mediation as a mechanism of dispute resolution remains very limited, and we lack data to make an informed judgement about it. There is a strategy that has as an only objective the promotion of the mediation and adoption of the new legal framework on arbitration. That strategy seems to be drafted in dark and with a lack of the vision, as far as there is no database and research on ADR in Albania followed by a professional assessment. Now is the time for the state to think seriously on alternative dispute resolution and access to justice, meanwhile Europe and the entire world is finding the mechanism to fully ameliorate and create a high standard of providing justice to citizens.

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Relationship between gender and academic performance of reading, writing and literature, mathematics and science

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Abstract

The aim of the study is to compare academic performance levels of Albanian students with those of OECD members and partners, as well as to investigate the relationship between gender and academic performance in reading, writing and literature, mathematics and science, focused on PISA 2015. To fulfill these objectives this article relies on a quantitative approach.. The format for review of official documentation instrument is used based on the secondary data of the percentage of students at each proficiency level in reading, mathematics, and science by gender according to PISA 2015 results. The main conclusions of the study highlight: (1) Males display better academic performance than females in the lowest and highest level, meanwhile females perform better than males in medium level in reading, mathematics and science, although there are differences between Albania and OECD members and partners. (2) There is positive correlation between gender and reading, mathematics, and science academic performance.

***Key words**: gender, academic performance, reading, mathematics, science, Albania*

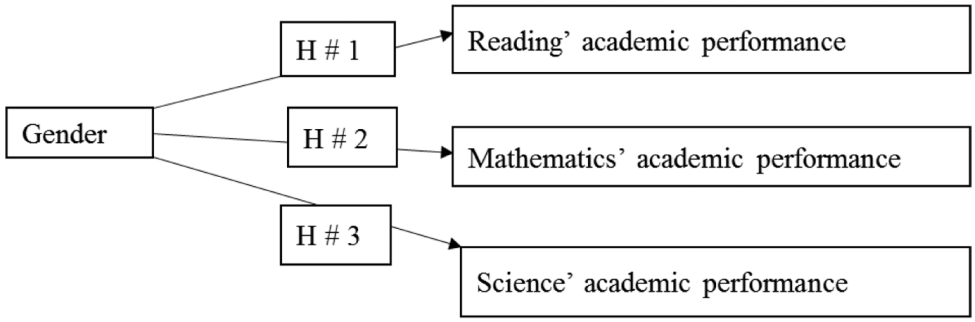
Introduction, theoretical framework and literature review

Academic performance of reading, writing and literature, mathematics and science is one of three main domains of curriculum aim that indicates students' knowledge, skills and competences. Adler (1982) advocated three types of learning that improve intelect: (1) acquisition of organized knowledge, to be taught by didactic instruction, (2) development of basic learning skills thorugh coaching and presentation of ideas, (3) acquisition of values, to be taught by Sokratic method. The ideas of Adler were supported by Dewey and Tyler too. Curriculum design treats nature and organizing of four main parts: (1) objectives, (2) content, (3) methods and organizing, (4) evaluation (Tyler 1949). According to progressivism theory stated by Dewey (1934) skills necesary for democratic living include problem solving and scientific methods. Progressivism emphasized *how to think* not *what to think*. Meanwhile behaviorism according to Thorndike (1932) maintainded that: (1) behavior was influenced by conditions of learning, (2) learner's attitudes, and abilities could improve over time through proper stimuli, (3) instructional experiences could be designed and controlled, (4) it was improtant to select stimuli and learning experiences that were integrated, consistent, and mutually reinforcing. In contrast to cognitivism theory where behavior is in the center of students' activities, progressivism and especially constructivism set knowledeg contruction, and students'learning based on life skills and competences in the center of teaching and learning activities. The ***aim*** of the study is to compare academic performance levels of Albanian students with OECD members and partners, 1st and last ranking country; as well as to investigate the relationship between gender and academic performance of reading, writing and literature, mathematics and science, focused on PISA 2015. The ***research questions*** include: (1) Is there a relationship between gender and reading, writing and literature' academic performance? Does reading, writing and literature' academic performance increase with gender? (2) Is there a relationship between gender and mathematics' academic performance? Does mathematics' academic performance increase with gender (3) Is there a relationship between gender and science' academic performance? Does science' academic performance increase with gender? Independent variable is gender, and dependent variables are (1) reading, writing and literature' academic performance, (2) mathematics' academic performance, (3) science' academic performance. Independent variable is moderator categorical, and dependent variable are considered to be quantitative discrete variables (Fraenkel et. al; 2016).

Conceptual framework

The framework for the study was developed from an extensive review of existing evidence about gender, and reading, writing and literature' academic performance, mathematics' academic performance, science' academic performance. The review began with a search for relevant empirical research through ERIC using the keywords "gender," "reading, writing and literature' academic performance," "mathematics' academic performance", and "science' academic performance". Figure 1, summarizing the framework resulting from our review, proposes a set of relationships among four constructs.

FIGURE 1: Conceptual framework



Relationship between gender and reading performance

Rasmusson and Åberg-Bengtsson in their study (2015) used data from a Swedish PISA-sample (1) to identify a digital reading factor, (2) to investigate gender differences in this factor (if found), and (3) to explore how computer game playing might relate to digital reading performance and gender. In addition to an overall reading factor, the hypothesized digital reading factor was identified. When the overall reading performance was taken into account, a relative difference in favor of the boys for digital reading was indicated. This effect was mediated by a game-playing factor comprising the amount of time spent on playing computer games. Thus, the boys› better performance in digital reading was explained by the computer game-playing factor. Drawing on Eccles and colleagues› expectancy-value theory and Pekrun›s control-value theory and using data from the Childhood and Beyond Study, Lauermann, Eccles, & Pekrun (2017) examined the motivational underpinnings of elementary students› worries about performing

poorly in the domains of mathematics and reading (N = 805, grades 3, 4 and 6). With one exception, the analyses confirmed that children›s expectations of success in and valuing of mathematics and reading interacted in predicting children›s worry about these domains. Children›s worry was strongest when they rated their subjective abilities and expected success in mathematics and reading as relatively low but perceived these subjects as valuable. Brozo et al. (2014), members of the PISA/PIRLS Task Force, provide a summary of major gender differences in performance found overall on PISA 2009, along with relevant trends since 2000. These data are foregrounded from PISA because they add further evidence of a serious global pattern of boys' underachievement in reading and lower reading engagement relative to girls.

The study conducted by Crowe (2005) compared the effects of two oral reading feedback strategies in improving the reading comprehension of eight school-age children with low reading ability. Participants were assigned to one of two intervention groups matched on age, grade, gender, and general reading performance. Intervention 1 (I1) used traditional decoding-based feedback, and Intervention 2 (I2) used communicative reading strategies (CRS), meaning-based feedback. After 10 hours of reading intervention, participants in I2 performed significantly better than the I1 group on a formal measure of reading comprehension and on story-related comprehension questions. No significant differences were found between I1 and I2 in the ability to answer story-related locative, descriptive, or inferential detail questions. Dronkers & Kornder (2015) in their study attempted to explain the differences between reading and math scores of migrants' children (8430 daughters and 8526 sons) in 17 OECD destination countries, coming from 45 origin countries or regions, using PISA 2009 data. They find that migrant daughters from countries with higher gender equality levels obtain higher reading scores than comparable migrant sons do. In addition, the higher the gender equality levels in the destination countries, the lower the reading and math scores of both male and female migrants' children in their destination countries. Further analyses suggest it is the difference between gender equality levels, rather than the levels themselves that explains the educational performance of both female and male migrant pupils. Finally, migrants' daughters seem to perform slightly better educationally, compared with migrants' sons. The study conducted by Stricker, Rock, & Bridgeman (2015) explores stereotype threat on low-stakes tests used in a large-scale assessment, math and reading tests in the Education Longitudinal Study of 2002. Issues identified in laboratory research were assessed: whether inquiring about their race and gender is related to the performance of black and female test takers and, secondarily, whether this association is greater for test takers most identified with math and reading. After high school sophomores completed a questionnaire that included inquiries about their race and gender, only one change

in test performance was consistent with expectations from stereotype-threat theory: black test takers' math scores decreased. Their reading scores and young women's math scores did not decrease, and identification with math and reading did not moderate score decreases for black test takers or women.

The study conducted by Mucherah & Herendeen (2013) examined primary school students' reading motivation and performance on the standardized exam. Participants included 901 seventh and eighth grade students from Kenya. There were 468 females and 433 males. Contrary to previous studies, results showed reading challenge and aesthetics, but not efficacy, predicted reading achievement, indicating reading motivation may not influence achievement similarly across cultures. Gender differences were found in reading achievement but not motivation, an indication of a complex relationship between reading motivation and achievement. The article written by Mateju & Smith (2015) examines gender gaps in academic performance in mathematics and reading between boys and girls of ninth-grade elementary schools in the Czech Republic. Similar to research on other countries, the authors found that girls strongly outperform boys in grades in Czech language, but that this gender gap is not explained by measured ability in reading nor on family background or student attributes. The authors also found gender bias in mathematics grades, after controlling for measured ability and other factors. Girls are also substantially more likely than boys to apply to secondary grammar schools, as well as aspire to a college education, even after controlling for measured ability. The study conducted by Lim, Bong, & Woo (2015) found that gender, books and other types of literacy resources in the home, and parents' attitudes toward reading functioned as consistent predictors of Korean students' positive and negative attitudes toward reading. Parental support for reading and teachers' instruction and assignment strategies in reading directly predicted students' use of learning strategies as well. Positive attitudes toward reading also predicted students' use of memorization, elaboration, and control strategies. Thus, reading attitude was an important mediator between parent-and teacher-related contextual factors and reading/learning engagement of Korean adolescents. Therefore it is hypothesized that:

> **Hypothesis # 1:** There is a linear positive correlation between gender and reading, writing and literature' academic performance.

Relationship between gender and math academic performance

A structural equation model of relationships among testing-related motivation variables (test value, effort, self-efficacy, and test anxiety), test-taking strategies (test tactics and metacognitive strategies), gender, and math test performance were examined in the study conducted by Peng, Hong, & Mason (2014) with a sample

of 10th graders (N = 438; 182 males and 256 females). In general, motivation variables influenced the use of test-taking strategies and demonstrated stronger impacts on math performance than did test-taking strategies. Gender differences were found in self-efficacy and test anxiety. Johnson et al. (2012) in their study examined the differential effects of stereotype threat and lift between genders on math test performance. They asked 3 questions: (a) What is the effect of gender on math test performance?, (b) What is the effect of stereotyping condition (threat, lift, or neither) on math test performance?, and (c) What is the effect of the interaction of gender and stereotyping condition on math test performance? Findings indicated that men performed better on math tests under conditions of stereotype threat than on stereotype lift; women performed better under stereotype lift than on stereotype threat. After reviewing research from the fields of psychology, sociology, economics, and education over the past 30 years, Wang & Degol (2017) summarized six explanations for US women's underrepresentation in math-intensive STEM fields: (a) cognitive ability, (b) relative cognitive strengths, (c) occupational interests or preferences, (d) lifestyle values or work-family balance preferences, (e) field-specific ability beliefs, and (f) gender-related stereotypes and biases.

The research conducted by Ganley & Vasilyeva (2014) examined a potential mechanism underlying gender differences in math performance by testing a mediation model in which women's higher anxiety taxes their working memory resources, leading to underperformance on a mathematics test. Findings showed a significant gender difference in math performance, anxiety, and visuospatial working memory. Further, there was a mediating chain from gender to the worry component of anxiety to visuospatial working memory to math performance. The results suggest that women's heightened worry may have utilized their visuospatial working memory resources, and the resulting gender differences in working memory were associated with gender differences on a math test. The study conducted by Martinez & Guzman (2013) examines the gender and racial/ethnic differences in self-reported levels of challenge, a measure of student engagement, while students are in math and science courses. Results from multivariate regression analyses indicate that boys report similar levels of engagement while in math and science classes, but girls do not. Gender differences in children's emotional experience of math, their math performance, and the relation between these variables were investigated in two studies designed by Erturan & Jansen (2015). Gender differences occurred only in test anxiety (boys had lower test anxiety than girls). Concerning the relationship between emotional experience of math and math performance, math anxiety and math performance were negatively related, but only for girls, even when controlled for test anxiety. However, only the relation between perceived math competence and math performance was significant, for

both boys and girls. The relation between math anxiety and math performance was not significant in this study after controlling for perceived math competence.

In their study Hoppe et al. (2012) combined both approaches and simultaneously assessed the effects of three relatively independent factors on the neurofunctional correlates of mental rotation in same-aged adolescents: math talent (gifted/controls: 17/17), gender (male/female: 16/18) and experimental task performance (median split on accuracy; high/low: 17/17). In conclusion, increased activation of the inferior parietal lobule represents a positive neural correlate of mental rotation performance, irrespective of but consistent with the obtained neurocognitive and behavioral effects of math talent and gender. As experimental performance may strongly affect task-related activations this factor needs to be considered in capability-related group comparison studies on the brain-performance relationship. The study designed by Gherasim, Butnaru & Mairean (2013) investigated how gender shapes the relationships between classroom environment, achievement goals and maths performance. The results indicated gender differences in the perception of teacher and peers support, achievement goals and maths performance. The effects of goal orientations, teacher and peers support on achievement were moderated by gender. Furthermore, the interaction between classroom environment and performance goals on maths grades varied with gender. In the boys' sample, performance-avoidance goals interacted with teacher support, while in the girls' sample, performance-approach goals interacted with peers support. The study conducted by Tomasetto, Alparone & Cadinu (2011) confirmes that stereotype threat impaired girls' performance on math tasks among students from kindergarten through 2nd grade. Moreover, mothers' but not fathers' endorsement of gender stereotypes about math moderated girls' vulnerability to stereotype threat: Performance of girls whose mothers strongly rejected the gender stereotype about math did not decrease under stereotype threat. These findings are important because they point to the role of mothers' beliefs in the development of girls' vulnerability to the negative effects of gender stereotypes about math.

Two studies designed by Smeding et al. (2013) were conducted among French middle-school students (Ns = 1,127 and 498) during a regular class hour. In both studies, whereas girls underperformed on the math test relative to boys in the math-verbal order condition (ST- stereotype threat effect), they performed as well as boys in the verbal-math order condition. Moreover, girls' math performance was higher in the verbal-math order condition than in the math-verbal order condition. Test order affected neither girls' verbal performance nor boys' verbal or math performance. The study conducted by Shera (2014) examined the effects of gender and socio-economic status on reading performance of 15-year-old students. About a third of the total variance in reading performance lies between schools, indicating that school characteristics are important in predicting student achievement.

The results clearly reveal the significant relationships of socio-economic status (SES) and gender with student achievement, even after controlling for family structure (two parent families versus others), learning strategies use, and reading engagement. The longitudinal study results conducted by Ramsey & Sekaquaptewa (2011) showed that, for both male and female students, stereotypes increased during the course. Importantly, there was a significant interaction between gender and changes in implicit stereotyping when predicting course performance. Female students showed a negative relationship between changes in implicit stereotypes and course performance, while male students showed no relationship between changes in implicit stereotyping and course performance. This suggests that only for women, who are stereotyped as poor math performers, did the observed increases in stereotyping over time predict poorer math performance. Therefore it is hypothesized that:

Hypothesis # 2: There is a linear positive correlation between gender and mathematics' academic performance.

Relationship between gender and science academic performance

The purpose of the study conducted by Mutisya (2015) was to determine Primary Teacher Education Trainees' perceptions regarding their preparedness to teach science in primary schools. The study found out that overall more male trainees than female trainees expressed high level of conceptual understanding of science. More male trainee than female trainees further indicated they were ready to teach science during teaching practice and after training. The study recommends that science tutors to ensure trainees have high mastery of science subject content and to provide a gender-appropriate training to demystify gender differences in performance in science and promote gender equity in science education. The results of the research designed by Adigun et al. (2015) showed that even though the male students had slightly better performance compared to the female students, it was not significant. This better performance was found to be pronounced in the private school which was shown to possess the best male brains found in the study area. The research designed by Ganley, Vasilyeva, & Dulaney (2014) integrated the findings by testing the potential role of spatial skills in gender differences in the science performance of eighth-grade students (13-15 years old). In "Study 1" (N = 113), the findings showed that mental rotation ability mediated gender differences in physical science and technology/engineering test scores. In "Study 2" (N = 73,245), science performance was examined in a state population of eighth-grade students. As in "Study 1", the results revealed larger gender differences on items that showed higher correlations with mental rotation. The study designed by Makwinya &

Hofman (2015) was investigating existence of gender differences in such constructs regarding science, and whether development of such constructs is still influenced by how children feel their parents perceive them in relation to sciences. Results showed that, students' self-perceptions and those of parents regarding science are positively related. Further, self-concept and utility-values were higher among boys than girls. Based on the result, it was concluded that, parents' gender-based perceptions regarding science that are still communicated at home might be the reason for the development of children's gender-based self-perceptions regarding sciences. In the article written by Traxler et al. (2016), the authors draw on previous reports from physics, science education, and women's studies to propose a more nuanced treatment of gender in physics education research. A growing body examines gender differences in participation, performance, and attitudes toward physics. They have three critiques: (i) it does not question whether the achievements of men are the most appropriate standard, (ii) individual experiences and student identities are undervalued, and (iii) the binary model of gender is not questioned. Driven by these critiques, they proposed a conception of gender that is more up to date with other fields and discuss gender as performance as an extended example. They also discuss work on the intersection of identities [e.g., gender with race and ethnicity, socioeconomic status, lesbian, gay, bisexual, and transgender (LGBT) status], much of which has been conducted outside of physics.

Curran & Kellogg (2016) present findings from the recently released Early Childhood Longitudinal Study, Kindergarten Class of 2010-2011 that demonstrate significant gaps in science achievement in kindergarten and first grade by race/ethnicity. The authors estimate the black-white science gap in kindergarten at -0.82 SD but find only a small gender gap by first grade. Large disparities between Asian student performance in science as compared to mathematics and reading are documented. Student background characteristics and school fixed effects explain nearly 60% of the black-white and Hispanic-white science achievement gaps in kindergarten. According to Murray (2016) the case study method of teaching uses real-world narratives to teach concepts and content. This method of teaching encourages active learning, which has been shown to have a positive effect on student performance in many disciplines including science. Although more females than males pursue a postsecondary degree, more males than females pursue degrees in the STEM (science, technology, engineering, and mathematics) disciplines, and males also outperform females in the STEM disciplines as well. Because it is well-known that perception affects performance, the goal of this study was to determine the relationship between gender, perception, and performance. The article written by Sinnes & Løken (2014) argues that adjusting science subjects to match perceived typical girls' and boys' interests risks being ineffective, as it contributes to the imposition of stereotyped gender identity formation thereby

also imposing the gender differences that these adjustments were intended to overcome. This article also argues that different ways of addressing gender issues in science education themselves reflects different notions of gender and science. Thus in order to reduce gender inequities in science these implicit notions of gender and science have to be made explicit. The study designed by Bergold et al. (2017) investigated (a) how a latent profile analysis based on representative data of N = 74,868 4th graders from 17 European countries would cluster the students on the basis of their reading, mathematics, and science achievement test scores; (b) whether there would be gender differences at various competency levels, especially among the top performers; (c) and whether societal gender equity might account for possible cross-national variation in the gender ratios among the top performers. The latent profile analysis revealed an international model with 7 profiles. Thus, consistent with expectations, (a) the profiles differed only in their individuals' overall performance level across all academic competencies and not in their individuals' performance profile shape. Inspection of the gender ratios revealed (b) that boys were overrepresented at both ends of the competency spectrum. However, there was (c) some cross-national variation in the gender ratios among the top performers, which could be partly explained by women's access to education and labor market participation.

The main purpose of the study conducted by Huang & Chen (2016) was to examine possible gender differences in how junior high school students integrate printed texts and diagrams while solving science problems. Compared to male students, female students spent more time and displayed more fixations in solving science problems. The female students took more time to read the print texts and compare the information between print-based texts and visual-based diagrams more frequently during the problem-solving process than the male students. However, no gender differences were found in the accuracy of their responses to the science problems or their performances in the spatial working memory task. In the article written by Rolka & Remshagen (2015), the authors assess the impact of context-based learning tools on student grade performance in an introductory computer science course. It is found that the addition of robots did not improve the students' performance in setting. Instead, their findings support the existing literature stating that gender and ethnicity are important predictors of student success. Fortus & Daphna (2017) examined the science-related mastery, performance-approach, and performance-avoid goal orientations, perceptions of the science teachers, parents, schools, and peers' goal emphases in relation to science of the students in these schools. The authors compared between students in religious schools (newly collected data) and secular schools (data reported in prior studies), and found that there is a distinct difference between these two populations that is associated with differing attitudes toward gender and science at these schools. The study designed

by Chang& Kim (2009) examined the effects of computer access and computer use on the science achievement of elementary school students, with focused attention on the effects for racial and linguistic minority students. After controlling for age, gender, prior science performance, and family socioeconomic level, the results revealed that access to home computers and purposeful computer use had positive effects on the science performance of english-speaking students. Using item-response theory (Rasch analysis), Federer, Nehm & Pearl (2016) evaluated differences in performance by gender on a constructed-response (CR) assessment about natural selection. The results identify relationships between item features and performance by gender; however, the effect is small in the majority of cases, suggesting that males and females tend to incorporate similar concepts into their CR explanations. Therefore it is hypothesized that:

Hypothesis # 3: There is not a linear positive correlation between gender and science curriculum' academic performance.

Methodology

The methodology used in the study "Relationship *between gender and academic performance of reading, writing and literature, mathematics and science*" is quantitative approach. The instrument used in the study- format for review of official documentation, is been designed with dimensions and statements that focus on gender and academic performance of reading, writing and literature, mathematics and science data. The secondary data of percentage of students at each proficiency level in reading, mathematics, and science by gender is based on PISA 2015 results (OECD, 2016). The findings of the instrument were summarized in synthetic way to use as the basis for the analysis of the findings. The percentage of students at below level 1b- the lowest level, level 3- the medium level and level 6- the highest level in reading, mathematics, and science by gender were analysed.

The conceptual framework guiding the study (see Figure 1) was tested using Pearson correlation and multivariate regression. The descriptive statistics include comparing and analyzing of frequencies of percentage of students at below level 1b, level 3 and level 6 in reading, mathematics, and science by gender between Albania and OECD members and partners, as well as 1st and last country ranking in PISA 2015. The hypothesis that investigates the relationship between gender and academic performance of reading, writing and literature, mathematics and science were tested using Pearson product-moment correlation coefficient. Preliminary analyses were performed to ensure no violation of the assumptions of normality, linearity and homoscedasticity.

Results and discussion

Descriptive statistics

PISA assessment test measure knowledge and skills of students ranking in six levels: below 1b level, level 1b, level 1a, level 2, level 3, level 4, level 5, and level 6 according to scores achieved by students in increasing order from lowest to highest level. PISA assess students in three main curriculum domains: reading writing and literature (from hereafter reading), mathematics, and science.

Reading' academic performance

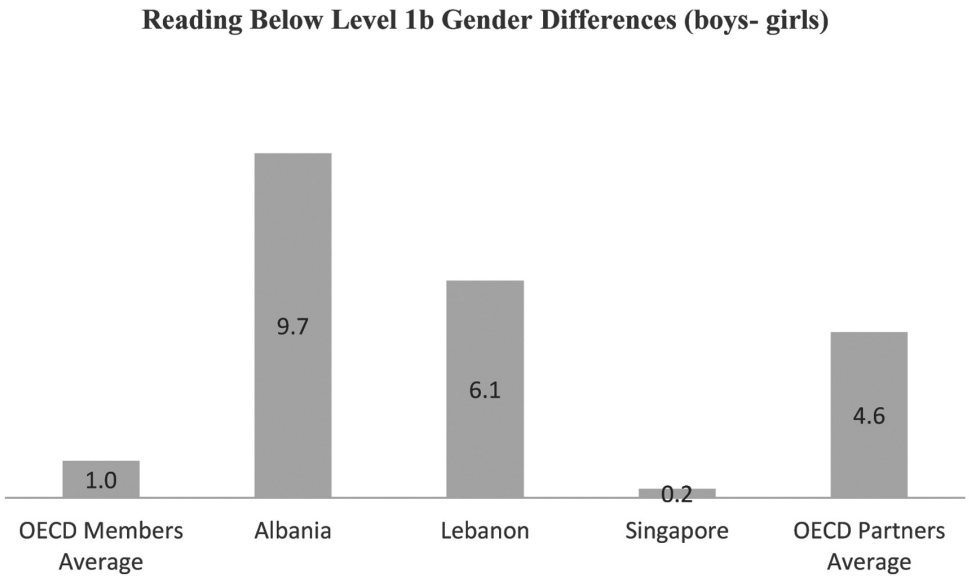
TABLE 1: Percentage of students at each proficiency level in reading, by gender, Albania vs OECD

		Below Level 1b	Level 1b	Level 1a	Level 2	Level 3	Level 4	Level 5	Level 6
		%	%	%	%	%	%	%	%
OECD Members Average	Boys	1.8	6.8	15.9	24.4	26.6	17.9	5.9	0.9
	Girls	0.7	3.7	11.2	22.1	29.3	23.1	8.5	1.4
	Gender Differences (boys- girls)	1.0	3.1	4.7	2.3	-2.7	-5.2	-2.6	-0.5
Albania	Boys	12.2	21.5	29.2	22.6	11.2	2.9	0.4	0.0
	Girls	2.5	10.3	24.9	32.1	21.4	7.4	1.4	0.1
	Gender Differences (boys- girls)	9.7	11.2	4.4	-9.4	-10.2	-4.5	-1.0	-0.1
Lebanon (Last country)	Boys	27.4	23.7	21.0	14.5	9.0	3.6	0.7	0.1
	Girls	21.3	25.2	22.3	17.0	9.7	3.6	0.8	0.1
	Gender Differences (boys- girls)	6.1	-1.5	-1.3	-2.5	-0.7	0.0	-0.1	0.0
Singapore (1st Country)	Boys	0.4	3.3	9.9	17.6	26.3	26.3	13.4	2.7
	Girls	0.2	1.6	6.7	16.2	26.1	28.6	16.1	4.6
	Gender Differences (boys- girls)	0.2	1.7	3.2	1.5	0.2	-2.3	-2.7	-1.9
OECD Partners Average	Boys	8.3	16.4	23.6	23.5	17.3	8.5	2.2	0.3
	Girls	3.6	10.6	21.1	26.6	22.3	11.9	3.4	0.5
	Gender Differences (boys- girls)	4.6	5.8	2.5	-3.1	-5.0	-3.4	-1.2	-0.2

Source: (OECD, 2016)

Below there is a figure illustrated reading below level 1b gender differences' academic performance. Level 3, and level 6 gender differences' academic performance are analysed and discused too.

GRAPH 1: Percentage of students in reading below level 1b gender differences



The data obtained as shown in table 1 or graph 1 indicates that: (1) 8.7% more boys than girls in Albania compared to OECD members average, (2) 5.1% more boys than girls in Albania compared to OECD partners average, (3) 9.5% more boys than girls in Albania compared to Singapore (1st country, (4) 3.6% more boys than girls in Albania compared to Lebanon (last country) are ranked in below level 1b reading. So there are big differences in gender boys and girls ranking in below level 1b reading between Albania and OECD members and partners, as well as 1st and last country, where boys perform better than girls.

The data obtained as shown in table 1 indicates that: (1) 7.5% more girls than boys in Albania compared to OECD members average, (2) 5.2% more girls than boys in Albania compared to OECD partners average, (3) 10% more girls than boys in Albania compared to Singapore (1st country), (4) 9.5% more girls than boys in Albania compared to Lebanon (last country) are ranked in level 3 reading. So there are big differences in gender boys and girls ranking in below level 1b reading between Albania and OECD members and partners, as well as 1st and last country, where girls perform better than boys.

The data obtained as shown in table 1 indicates that: (1) 0.4% more girls than boys in OECD members average compared to Albania, (2) 0.1% more

girls than boys in OECD partners average compared to Albania, (3) 1.8% more girls than boys in Singapore (1st country) compared to Albania, (4) 0.1% more girls than boys in Albania compared to Lebanon (last country) are ranked in level 6 reading. So there are little differences in gender boys and girls ranking in level 6 reading between Albania and OECD members and partners, as well as 1st and last country, where girls perform better than boys. As a conclusion in reading the boys perform better than girls in the lowest level, meanwhile girls perform better than boys in medium and highest levels, although there are differences between Albania and OECD members and partners, as well as 1st and last country.

Mathematics' academic performance

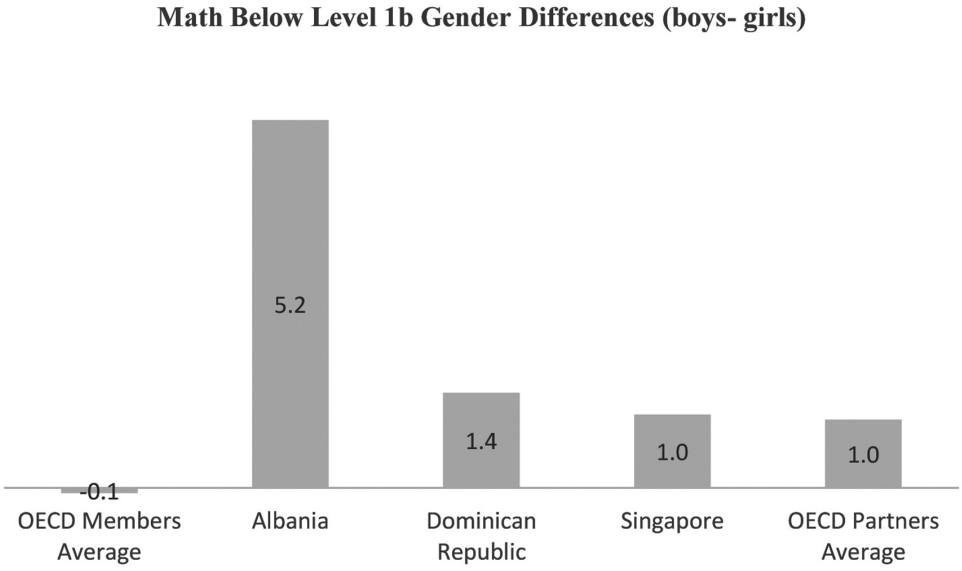
TABLE 2: Percentage of students at each proficiency level in mathematics, by gender, Albania vs OECD

		Below Level 1	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6
		%	%	%	%	%	%	%
OECD Members Average	Boys	8.4	14.6	21.6	24.0	19.0	9.5	2.9
	Girls	8.5	15.2	23.5	25.7	18.2	7.2	1.7
	Gender Differences (boys- girls)	-0.1	-0.7	-1.9	-1.7	0.8	2.2	1.3
Albania	Boys	29.0	26.4	23.9	14.3	5.2	1.1	0.1
	Girls	23.7	27.5	27.0	15.3	5.6	0.9	0.1
	Gender Differences (boys- girls)	5.2	-1.1	-3.1	-1.0	-0.3	0.3	0.0
Dominican Republic (Last country)	Boys	69.0	21.3	7.9	1.6	0.2	0.0	0.0
	Girls	67.6	23.2	7.6	1.4	0.2	0.0	0.0
	Gender Differences (boys- girls)	1.4	-1.9	0.3	0.3	-0.1	0.0	0.0
Singapore (1st Country)	Boys	2.6	6.1	12.7	19.3	23.7	21.1	14.6
	Girls	1.5	4.9	12.2	20.8	26.6	22.5	11.5
	Gender Differences (boys- girls)	1.0	1.2	0.5	-1.5	-2.9	-1.4	3.0
OECD Partners Average	Boys	26.0	21.6	20.4	15.5	9.8	4.8	1.9
	Girls	25.0	22.7	21.5	15.7	9.5	4.3	1.5
	Gender Differences (boys- girls)	1.0	-1.0	-1.1	-0.2	0.3	0.6	0.5

Source: (OECD, 2016)

Below there is a figure illustrated math below level 1b gender differences' academic performance. Level 3, and level 6 gender differences' academic performance are analysed and discused too.

GRAPH 2: Percentage of students in math below level 1b gender differences



The data obtained as shown in table 2 or graph 2 indicates that: (1) 5.1% more boys than girls in Albania compared to OECD members average, (2) 4.2% more boys than girls in Albania compared to OECD partners average, (3) 4.2% more boys than girls in Albania compared to Singapore (1st country, (4) 3.8% more boys than girls in Albania compared to Dominican Republic (last country) are ranked in below level 1b math. So there are big differences in gender boys and girls ranking in below level 1b math between Albania and OECD members and partners, as well as 1st and especially last country, where boys perform better than girls.

The data obtained as shown in table 2 indicates that: (1) 0.7% more girls than boys in OECD members average compared to Albania, (2) 0.8% more girls than boys in Albania compared to OECD partners average, (3) 0.5% more girls than boys in Singapore (1st country) compared to Albania, (4) 1.3% more girls than boys in Albania compared to Dominican Republic (last country) are ranked in level 3 math. So there are little differences in gender boys and girls ranking in level 3 math between Albania and OECD members and partners, as well as 1st and especially last country, where girls perform better than boys, except Dominican Republic.

The data obtained as shown in table 2 indicates that: (1) 1.3% more boys than girls in Albania compared to OECD members average, (2) 0.5% more boys than girls in Albania compared to OECD partners average, (3) 3.0% more boys than girls in Albania compared to Singapore (1st country, (4) 0.0% difference between girls and boys in Albania as well as in Dominican Republic (last country) are ranked in level 6 math. So there are little differences in gender boys and girls ranking in level

6 math between Albania and OECD members and partners, as well as 1st and last country, where boys perform better than girls. As a conclusion in mathematics the boys perform better than girls in the lowest and the highest levels, meanwhile girls perform better than boys in medium level, although there are differences between Albania and OECD members and partners, as well as 1st and last country.

Science' academic performance

TABLE 3: Percentage of students at each proficiency level in science, by gender, Albania vs OECD

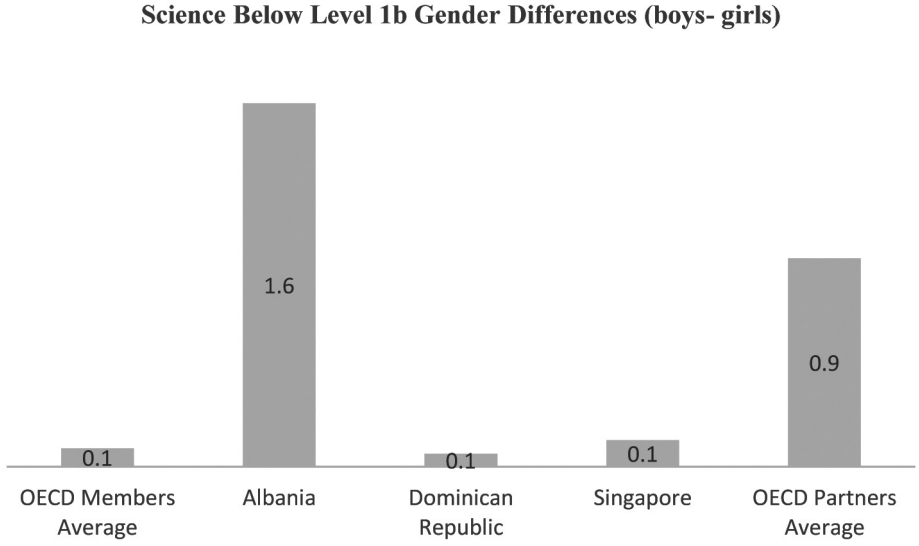
		Below Level 1b	Level 1b	Level 1a	Level 2	Level 3	Level 4	Level 5	Level 6
		%	%	%	%	%	%	%	%
OECD Members Average	Boys	0.6	5.2	15.9	23.9	26.1	19.3	7.5	1.3
	Girls	0.5	4.6	15.5	25.7	28.4	18.7	5.8	0.8
	Gender Differences (boys- girls)	0.1	0.6	0.4	-1.8	-2.4	0.6	1.8	0.6
Albania	Boys	2.4	13.3	33.2	31.3	15.5	4.1	0.3	0.0
	Girls	0.8	7.3	26.5	37.7	22.4	4.9	0.4	0.0
	Gender Differences (boys- girls)	1.6	5.9	6.8	-6.4	-6.9	-0.9	-0.1	0.0
Dominican Republic (Last country)	Boys	15.8	39.7	29.4	11.6	3.0	0.4	0.0	0.0
	Girls	15.7	39.5	31.3	11.0	2.2	0.3	0.0	0.0
	Gender Differences (boys- girls)	0.1	0.2	-1.9	0.6	0.8	0.1	0.0	0.0
Singapore (1st Country)	Boys	0.2	2.3	7.7	14.4	22.3	26.6	19.4	7.1
	Girls	0.1	1.6	7.3	15.8	24.6	28.9	17.7	4.0
	Gender Differences (boys- girls)	0.1	0.7	0.5	-1.4	-2.2	-2.3	1.7	3.1
OECD Partners Average	Boys	3.0	13.9	26.1	25.3	18.2	9.8	3.2	0.5
	Girls	2.1	11.5	25.9	27.9	19.9	9.7	2.6	0.4
	Gender Differences (boys- girls)	0.9	2.3	0.2	-2.6	-1.7	0.2	0.6	0.1

Source: (OECD, 2016)

Below there is a figure illustrated science below level 1b gender differences' academic performance. Level 3, and level 6 gender differences' academic performance are analysed and discused too.

The data obtained as shown in table 3 or graph 3 indicates that: (1) 1.5% more boys than girls in Albania compared to OECD members average, (2) 0.7% more boys than girls in Albania compared to OECD partners average, (3) 1.5% more boys than girls in Albania compared to Singapore (1st country, (4) 1.5% more boys than girls in Albania compared to Dominican Republic (last country) are ranked in below level 1b science. So there are relatively little differences in gender boys

GRAPH 3: Percentage of students in science below level 1b gender differences



and girls ranking in below level 1b science between Albania and OECD members and partners, as well as 1st and last country, where boys perform better than girls.

The data obtained as shown in table 3 indicates that: (1) 4.5% more girls than boys in Albania compared to OECD members average, (2) 5.2% more girls than boys in Albania compared to OECD partners average, (3) 4.7% more girls than boys in Albania compared to Singapore (1st country), (4) 7.7% more girls than boys in Albania compared to Dominican Republic (last country) are ranked in level 3 science. So there are considerably differences in gender boys and girls ranking in level 3 science between Albania and OECD members and partners, as well as 1st and especially last country, where girls perform better than boys, except Dominican Republic.

The data obtained as shown in table 3 indicates that: (1) 0.6% more boys than girls in OECD members average compared to Albania, (2) 0.1% more boys than girls in OECD partners average compared to Albania, (3) 3.1% more boys than girls in Singapore (1st country) compared to Albania, (4) 0.0% the difference between boys than girls in Albania as well as in Dominican Republic (last country) are ranked in level 6 science. So there are little differences in gender boys and girls ranking in level 6 science between Albania and OECD members and partners, as well as 1st and last country, where boys perform better than girls. As a conclusion in science the boys perform better than girls in the lowest and the highest levels, meanwhile girls perform better than boys in medium level, although there are differences between Albania and OECD members and partners, as well as 1st and last country.

Inferential statistics

Test of hypothesis

The relationship between gender and below level 1b, level 3, and level 6 students' academic performance was investigated using Pearson product-moment correlation coefficient. Preliminary analyses were performed to ensure no violation of the assumptions of normality, linearity and homoscedasticity.

Hypothesis # 1: There is positive correlation between gender and reading' academic performance

Below there is a table illustrated correlation coefficients between gender and below level 1b reading' academic performance generated on SPSS 20.0. The other correlation coefficients between gender and level 3 and level 6 reading' academic performance are analysed and discused too.

TABLE 4: Correlation coefficients between gender and below level 1b reading' academic performance variables

Correlations				
			Boys	Reading Below Level 1b
Boys	Pearson Correlation		1	-.146
	Sig. (2-tailed)			.007
	N	350		350
Reading Below Level 1b	Pearson Correlation		-.146	1
	Sig. (2-tailed)	.007		
	N	350		350
Correlations				
		Girls		Reading Below level 1b
Girls	Pearson Correlation	1		-.526
	Sig. (2-tailed)			.002
	N	72		72
Reading Below level 1b	Pearson Correlation	-.526		1
	Sig. (2-tailed)	.002		
	N	72		72

As shown in table 4 there is a low, negative correlation between boys (gender) and below level 1b reading' academic performance, r = -.146, N = 350, p < .005; and medium negative correlation between girls (gender) and below level 1b reading' academic performance: r = -.526, N = 72, p < .005, with high levels of gender associated with lower levels of reading' academic performance. The value of correlation, for

boys and girls indicates that increasing of gender values would result in decreasing of reading' academic performance, although there are differences. Therefore girls perform better than boys, and the gender as an independent variable influences from a little too considerably reading below level 1b.

There is not a significant relationship between boys (gender) and level 3 reading' academic performance, r = .189, N = 321, p > .005; as well as for girls and level 3 reading' academic performance: r = .216, N = 501, p > .005. Therefore girls perform better than boys, but the gender as an independent variable does not influence level 3 reading.

There is a low, positive correlation between boys (gender) and level 6 reading' academic performance, r = .232, N = 0.3, p < .005; and medium positive correlation for girls and level 6 reading' academic performance: r = .435, N = 3, p < .005, with high levels of gender associated with higher levels of reading' academic performance. The value of correlation, for boys and girls indicates that increasing of gender values would result in increasing of reading' academic performance, although there are differences. Therefore girls perform better than boys, and the gender as an independent variable influences from a little to considerably level 6 reading.

Therefore, there is positive relationship between gender and reading' academic performance. These findings are supported by (Rasmusson and Åberg-Bengtsson, 2015, Brozo et al., 2014, Dronkers & Kornder, 2015, Stricker, Rock, & Bridgeman, 2015, Mucherah & Herendeen, 2013, Mateju & Smith, 2015, Lim, Bong, & Woo (2015). As a conclusion Hypothesis 1#: *There is positive correlation between gender and reading' academic performance, is been mostly supported, although there are differences between levels.*

Hypothesis #2: There is positive correlation between gender and mathematics' academic performance

Below there is a table illustrated correlation coefficients between gender and below level 1b math' academic performance generated on SPSS 20.0. The other correlation coefficients between gender and level 3 and level 6 math' academic performance are analysed and discused too.

TABLE 5: Correlation coefficients between gender and math below level 1b' academic performance variables

Correlations			
		Boys	Math Below Level 1b
Boys	Pearson Correlation	1	-.431
	Sig. (2-tailed)		.020

	N	830	830
Math Below Level 1b	Pearson Correlation	-.431	1
	Sig. (2-tailed)	.020	
	N	830	830
Correlations			
		Girls	Math Below level 1b
Girls	Pearson Correlation	1	-.121
	Sig. (2-tailed)		.030
	N	556	556
Math Below level 1b	Pearson Correlation	-.121	1
	Sig. (2-tailed)	.030	
	N	556	556

As shown in table 5 there is a medium negative correlation between boys (gender) and below level 1b math' academic performance, r = -.431, N = 830, p < .005; and low negative correlation between girls (gender) and below level 1b math' academic performance: r = -.121, N = 556, p < .005, with high levels of gender associated with lower levels of math' academic performance. The value of correlation, for boys and girls indicates that increasing of gender values would result in decreasing of math' academic performance, although there are differences. Therefore girls perform better than boys, and the gender as an independent variable influences a little below level 1b math' academic performance.

There is a low, positive correlation between boys (gender) and level 3 math' academic performance, r = .299, N = 410, p < .005; as well as for girls and level 3 math' academic performance: r = .116, N = 360, p < .005, with high levels of gender associated with higher levels of math' academic performance. The value of correlation, for boys and girls indicates that increasing of gender values would result in increasing of math' academic performance, although there are small differences. Therefore boys perform better than girls, and the gender as an independent variable influences a little level 3 math' academic performance.

There is not a significant relationship between boys (gender) and level 3 reading' academic performance, r = .189, N = 321, p < .005; as well as for girls and level 3 reading' academic performance: r = .216, N = 501, p < .005. The value of correlation, for boys and girls indicates that increasing of gender values would result in increasing of math' academic performance, although there are little differences. Therefore boys perform better than girls, and the gender as an independent variable influences a little level 3 math' academic performance.

There is not a significant relationship between boys (gender) and level 6 math' academic performance, r = .453, N = 2, p > .005; as well as for girls and level 6 math' academic performance: r = .117, N = 2, p > .005. Therefore boys and girls perform

equally, but the gender as an independent variable does not influence level 6 math' academic performance.

Therefore, there is positive relationship between gender and mathematics' academic performance. These results are supported by (Peng, Hong, & Mason, 2014, Johnson et al., 2012,Wang & Degol, 2017, Ganley & Vasilyeva, 2014, Martinez & Guzman, 2013, Erturan & Jansen, 2015, Hoppe et al., 2012, Gherasim, Butnaru & Mairean, 2013, Tomasetto, Alparone & Cadinu, 2011, Smeding et al., 2013, Shera, 2014). As a conclusion Hypothesis 2 #: *There is positive correlation between gender and mathematics' academic performance, is been supported.*

Hypothesis # 3: There is positive correlation between gender and science curriculum' academic performance.

Below there is a table illustrated correlation coefficients between gender and below level 1b science' academic performance generated on SPSS 20.0. The other correlation coefficients between gender and level 3 and level 6 science' academic performance are analysed and discused too.

TABLE 6: Correlation coefficients between gender and science below level 1b' academic performance variables

Correlations			
		Boys	Science Below Level 1b
Boys	Pearson Correlation	1	-.146
	Sig. (2-tailed)		.050
	N	68	68
Science Below Level 1b	Pearson Correlation	-.146	1
	Sig. (2-tailed)	.050	
	N	68	68
Correlations			
		Girls	Science Below level 1b
Girls	Pearson Correlation	1	-.526
	Sig. (2-tailed)		.006
	N	18	18
Science Below level 1b	Pearson Correlation	-.526	1
	Sig. (2-tailed)	.006	
	N	18	18

As shown in table 6 there is a relatively low, negative correlation between boys (gender) and below level 1b science' academic performance, r = -.276, N =

68, p < .005; as well as for girls (gender) and below level 1b science' academic performance: r = -.161, N = 18, p < .005, with high levels of gender associated with lower levels of science' academic performance. The value of correlation, for boys and girls indicates that increasing of gender values would result in decreasing of science' academic performance, although there are differences. Therefore girls perform better than boys, and the gender as an independent variable influences a little below level 1b science' academic performance as a dependent variable.

There is a medium, positive correlation between boys (gender) and level 3 science' academic performance, r = .496, N = 444, p < .005; as well as for girls and level 3 science' academic performance: r = .499, N = 525, p < .005, with high levels of gender associated with higher levels of science' academic performance. The value of correlation, for boys and girls indicates that increasing of gender values would result in increasing of science' academic performance, although there are small differences. Therefore girls perform better than boys, and the gender as an independent variable influences a little level 3 science' academic performance.

There is not a significant relationship between boys (gender) level 6 science' academic performance, r = .277, N = 0.3, p > .005; as well as for girls and level 6 science' academic performance: r = .312, N = 0.2, p > .005. Therefore girls perform better than boys, but the gender as an independent variable does not influence level 6 science' academic performance.

Therefore, there is positive relationship between gender and science' academic performance. These findings are supported by (Adigun et al., 2015, Ganley, Vasilyeva, & Dulaney, 2014, Makwinya & Hofman, 2015, Traxler et al., 2016, Murray, 2016, Sinnes & Løken, 2014, Bergold et al., 2017, Huang & Chen, 2016, Federer, Nehm & Pearl, 2016). As a conclusion Hypothesis 3 #: *There is positive correlation between gender and science curriculum' academic performance, is been mostly supported, although there are differences between levels.*

Conclusions and implications

Regarding to reading' academic performance the boys perform better than girls in the lowest level, meanwhile girls perform better than boys in medium and highest levels, although there are differences between Albania and OECD members and partners, as well as 1st and last country. Regarding to mathematics' academic performance the boys perform better than girls in the lowest and the highest levels, meanwhile girls perform better than boys in medium level, although there are differences between Albania and OECD members and partners, as well as 1st and last country. Regarding to science' academic performance the boys perform better than girls in the lowest and the highest levels, meanwhile girls perform better than

boys in medium level, although there are differences between Albania and OECD members and partners, as well as 1st and last country.

Regarding to relationship between gender and reading' academic performance it is found that there is positive correlation between variables. The value of correlation, for boys and girls mostly indicates that increasing of gender values would result in increasing of reading' academic performance, although there are differences between levels as well as between boys and girls. Regarding to relationship between gender and mathematics' academic performance it is found that there is positive correlation between variables. The value of correlation, for boys and girls indicates that increasing of gender values would result in increasing of mathematics' academic performance, although there are differences between boys and girls. Regarding to relationship between gender and science' academic performance it is found that there is positive correlation between variables. The value of correlation, for boys and girls mostly indicates that increasing of gender values would result in increasing of science' academic performance, although there are differences between levels as well as between boys and girls. Therefore education institutions as well as teachers should enhance their work in order to increase the students' academic performance for each level, as well as to narrow the differences in gender achievements of students in reading, mathematics and science.

The results of the study, supported by other researchers about the relationship between gender and reading, mathematics, and science' academic performance have important implications for future research. Such research should investigate the influence of other teaching methods, class management or other variables on academic performance. Results of this study also have important implications for practice. The important programs and other interventions, should designed to develop and to support students and teachers. Overall the findings of this study enhanced theoretical and practical understanding as to gender and reading, mathematics, and science' academic performance are in a positive relationship.

About the author

Dr Nazmi Xhomara is a lecturer at the Department of Education Sciences, Faculty of Social Sciences and Education, European University of Tirana. Dr Xhomara graduated on science teaching in 1988. As he was passionate about scientific research he obtained a Master Degree on "Research on Education" in 2012, and a Doctoral degree on "Education Sciences/Pedagogy" in 2015. He has published 6 books as well as numerous articles on the subjects of curriculum development, teaching and learning. He has participated in a numerous international conferences also. Currently, he is lecturing on Policy Education, Leadership and Management of Education, Curriculum, and Research Methods at the European University of Tirana.

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Albanian Contribution to International Peacekeeping: Identity, Interests and Peacekeeping

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Abstract

This article examines Albanian contribution to international peacekeeping and explores the politics behind peacekeeping engagements. The article argues that the overarching rationale for Albanian contribution to peacekeeping derives from the desire to advance its national interest of Euro-Atlantic integration and regional security, and reconstruct state identity from a post-communist weak state to an exporter of security, vibrant democracy, and responsible state. In this realm of self-centred motivations, the discourse on international responsibility, solidarity, global peace, and security is rather more rhetorical than primary intentions of Albania for contributing to peacekeeping. Through this analysis, the article contributes to understanding 'unintended peacekeepers' as well as the politics of new and emerging troop-contributing countries and their practice of self-interested solidarity in international affairs. In disentangling the mixed motives for contributing to peacekeeping, the article hold that pluralist accounts are more reliable than individual strands of theories on peacekeeping.

Keywords: Albania, security, peacekeeping, interests, NATO

The changing nature of global affairs and the emergence of new transnational security challenges has expanded the engagement of regional actors in international peacekeeping. Although the UN continues to be a preferable platform for peacekeeping, regional organisations have gradually constituted their global agency by arranging their own peace operations. Between 2000 and 2010, there have been 18 UN peacekeeping missions, whilst NATO has conducted six missions and the EU five missions (Daniel 2013: 30). As regional organisations have increasingly asserted their role in international peacekeeping, small states have found more space to become token contributors. This article seeks to examine the role of small states in the new peacekeeping dynamics to understand how they are utilising these shifting grounds to redefine their identity, national interest, and global role. In understanding the role of small states in the new complex architecture of peacekeeping, this article provides the first comprehensive account of Albanian contribution to international peacekeeping and explores the politics and rationales behind contributing to peacekeeping.

Since the fall of the communist regime in the early 1990s, Albania has gradually increased its modest contribution to international peacekeeping. From 1996 to 2013 Albania contributed with around 6,000 troops to different peacekeeping operations. Over the past decade, Albania has leaned more towards NATO-led peacekeeping military operations. The first deployment was as part of SFOR mission in Bosnia and Herzegovina. Its largest contributions to date are as part ISAF in Afghanistan with 211 troops under Turkish and Italian command and the US-led Joint Coalition in Iraq, where Albania provided 215 troops between 2003 and 2008. Between 2008 and 2010, Albania contributed to EUs mission in Chad with 189 troops. Albania has also engaged with EU's ALTHEA operation in Bosnia and Herzegovina with 1,473 soldiers over the years. Of particular importance, Albania has provided a very symbolic number of troops to UN peacekeeping, evident with the participation in UNOMIG in Georgia, UNMISS in South Sudan, and in Chad with MINURCAT. Albania's modest, but consistent, contribution to peacekeeping both in its neighbourhood and beyond, raises a number of questions. What explain Albania's interest to contribute to peacekeeping despite its limited financial means and weak institutional structures? Why has Albania prioritised NATO- and EU-led peace operations over the UN peacekeeping? How have domestic, regional, and global developments shaped Albania's taken on peacekeeping?

In exploring these questions, it is quintessential to invoke a pluralist account to encounter for the multitudinous rationales that shape small states' contribution to peacekeeping. Dominant theoretical accounts on peacekeeping that lean more on realist, liberalist and constructivist debates cannot provide alone sufficient theoretical grounds for reality-adequate analysis of peacekeeping. Hence, pluralist turn to peacekeeping propagated by Alex J Bellamy and Paul D Williams (2013)

provides more adequate pathways for investigating the micro-politics and complex context-driven rationales for contributing to peacekeeping. Accordingly, this article argues that the overarching rationales for Albanian contribution to peacekeeping derive from its desire to advance Euro-Atlantic integration, regional security, and reconstruct state identity and image from a weak post-communist state to an exporter of security, vibrant democracy, and responsible state. In this realm of self-centred motivations, the discourse on international responsibility and solidarity as well as the desire for global peace and security is more rhetorical rather than primary intentions of Albania for contributing to peacekeeping. Specifically, peacekeeping was framed by Albania as a measure of reforming the military and achieving domestic political stability, after several waves of internal turmoil during the 1990s. By identifying Albania's rationales for participating in peacekeeping, this article contributes to understanding the emerging phenomena of 'unintended peacekeepers' as well as the politics of new and emerging troop-contributing countries and their practice of self-interested solidarity in international affairs The case of Albania as an unintended peacekeeper signifies those countries that contribute to international peacekeeping not driven primarily by normative commitments, but rather based on strategic decisions to exploit peacekeeping as a means to fulfil more immediate and vital national interests and address foreign policy objectives.

This article proceeds by first outlining national interest of small states for contributing to peacekeeping. It then examines the contextual circumstances that ignite Albania's interest for peacekeeping. The article then explores three main rationales for contributing to peacekeeping, which include: reforming armed forces in the process of NATO membership, enhancing regional stability, and improving international prestige. The article contends that Albania is a case of unintentional peacekeeping, and considers how this shapes global politics of peacekeeping.

National interest of small states and international peacekeeping

First it is crucial to contextualise Albania's case as an unintended and token peacekeeper within the realm of theoretical debates on the national interest of small states and the politics of international peacekeeping. All types of definitions can consider Albania as a small state (Ingebritsen 2006). It has a population of less than three million, with one of the poorest economies in Europe, and a small territory, alongside with small army and young political institutions (Pettifer and Vickers 2009). Albania, as most small states, has a foreign policy that leans more towards utilising multilateral capabilities, international law and institutional mechanisms to advance its interest and resolve peacefully internal and inter-state conflicts (Hey

2003: 5). In doing so, small states often associate themselves with regional and global powers and build strategic dependency to advance their security interests and strengthen their position (Cooper and Shaw 2009). In such circumstances, small states contribute to international peace by avoiding becoming a source of conflict, by creating capabilities for resolving peacefully conflict abroad, and by deploying preventative diplomacy and sanctions (Freymond 2009: 2).

Small states also provide for peacekeeping to enhance their global image, benefit economically and encourage foreign investment. Small states often put forward altruistic arguments of peacekeeping to frame positively their hidden vital interests. This is the case for example with Singapore, which considers UN peacekeeping as a significant contribution to international peace and security and is primarily motivated to maintain international rule of law. Ireland contributes to UN peacekeeping for normative commitments as well as strategic choice of preserving neutrality, while overcoming the inevitability for contribution to international peace and security (Ishizuka 2004). New Zealand balances the rationales for contributing to peacekeeping between participating in missions that are legally sanctioned under international law, with more self-interested rationales that have to do with defending strategic interests (New Zealand Government 2013). Another valuable example is Bangladesh, whereby as a small state, is one of the largest contributors to UN peacekeeping, outnumbering some of the major powers and more traditional contributors. Its primary motivation for peacekeeping is financial gains, followed by the desire to gain international recognition for its goodwill, increase its role within multilateral forms, and improve its image in service of attracting foreign aid and eventual foreign investments (Krishnasamy 2003: 37-38).

Relevant to the Albanian case is the emerging literature on the distinct characteristics of token troop contribution to UN peacekeeping, which shed light on the politics, rationales, and the particularities of small contribution to UN peace operations. Katherine P. Coleman (2013: 51) argues that 'token troop contributions represent a deliberate strategy to spread a state's military resources over more multilateral operations'. This strategy consists of sending a small number of troops to multiple missions and providing more specialised staff that would take leadership and liaison roles as part of larger contingents. Coleman (2013: 56) argues that token contributions expand the available options for states to commit to peacekeeping despite internal constraints, in order to gain access to information circulated within the mission, and multiply their international prestige and influence gained from the participation in widespread missions. However, Coleman (2013: 47) criticizes this practice arguing that it 'hampers on-going UN efforts to expand the organization's base of (substantial) peacekeeping contributors'.

Albania fulfils the criteria of a token contributor to peacekeeping. It has probably one of the lowest contributions to UN peacekeeping, while it has spread its modest contribution over several missions of UN, NATO, and the EU. Although a member of the UN since 1955, Albania does not have a tradition of providing UN peacekeepers. Even after the fall of communism in 1991, Albania was not an active contributor to UN peacekeeping operations, mainly due to internal difficulties related to institutional reforms, the modernisation of armed forces, and economic underdevelopment. However, during the process of joining NATO and the EU, Albania has given priority to contributing to NATO- and EU-led operations in Kosovo, Iraq, Afghanistan, Bosnia-Herzegovina, and Chad. In relation to UN peacekeeping, Albania has only participated in the mission to Georgia (UNOMIG) and the mission to Chad (MINURCAT). So far, Albania has made available a battalion of Special Forces to peacekeeping operations that have mainly operated in Bosnia-Herzegovina, Afghanistan, Iraq, and Chad. Due to limited capabilities, over the past ten years Albanian peacekeepers have participated within the contingents of larger troop-contributing countries, including Germany, Turkey, US, and Italy.

Despite the increasing number of small states participating in peacekeeping, the majority of studies focus on the contribution of great powers, regional hegemons, former colonial powers, concerned neighbours and pivotal states (e.g. Durch 1996; Guttry 2014; Cunliffe 2013). Hence, case studies of small states that contribute to peacekeeping have been insufficiently incorporated to theory-building exercises. Existing theories on peacekeeping vary from realist-inspired accounts to more liberalist, constructivist, and more rationalist and technocratic accounts. Realists consider peacekeeping as mainly a reflection of power politics, advancement of national interest, and an expression of dominant and raising global powers to expand their regional hegemony and assert influence on the world stage. Peacekeeping is seen as a mechanism to mobilize international support for self-interested motives of dominant powers (Rikhye 1974). The enhancement of international prestige through peacekeeping belongs also to realist-inspired accounts (Krishnasmay 2001: 56-76). Liberalist accounts consider peacekeeping as an instrument for the advancement of a stable international order, normative primacy of human rights, and an example of international cooperation among troop contributors (Snidal 1998: 3-32). They assert affirmative correlations between the level of democracy and the level of contribution to peacekeeping (Andersson 2002: 363-386). Liberalist accounts also hold that peacekeeping provides states with political legitimacy and institutional favours within multilateral organizations (Coleman 2007).

Other rationalist accounts hold that peacekeeping provides individual and collective goods, such as halting conflicts and preventing their spill over in the immediate neighbouring or distant regions (Bobrow 1997). Realist, liberalist and rationalist accounts do not explain why small states contribute to peacekeeping, they

have limitations in explaining how interest is formed, capturing the compatibility of providing for peacekeeping with political regimes, and the existence of cases with mixed and conflicting motives for contributing to peacekeeping. In response to the conceptual and empirical limitations of these theoretical accounts on peacekeeping, Bellamy and Williams (2013: 9) recently have suggested a pluralist account of peacekeeping, which proposes exploring the wide variations and rationales for contributing to peacekeeping. Their pluralist account argues that in order to understand why states provide peacekeepers, it is essential to look at five clusters of motivating rationales, related to political, economic, security, institutional, and normative concerns. In addition, Bellamy and Williams argue that situational circumstances change over time, and individual decisions for contributing to particular peace operations need to be accounted for in order to provide more realist analysis of peacekeeping.

While it is not our intention here to join these debates on the motivations behind peacekeeping, we believe that the main source of disagreement between these strands is the different conceptualisation of interests with realists viewing them as stable, given, and material while liberals viewing them as ideational and ever-changing (e.g. Wendt 1999). Each case of contributing for peacekeeping is unique to a particular country, place and time and is obviously shaped by multiple interacting factors, which might not fit a single theoretical strand. Hence, the pluralist account of peacekeeping holds more explanatory power in the context of small states' contribution to peacekeeping as it captures the presence of multiple motives, their development over time and the events that affect them. Seen from a processual point of view, each of the theoretical strands discussed above could bear relevance to different stages of explaining the contribution of a small country to peacekeeping. It is for this reason that a pluralist account is more adequate to complex social reality. Therefore, this article invokes a pluralist understanding of Albania's rationales for contributing to peacekeeping by looking at the contextual factors that shaped Albania's interests. By tracing Albania's elite interest formation to provide for peacekeeping, the article aims to identify the mixed motives that explain the particularities of Albanian contribution to peacekeeping. Pluralist accounts can also be useful to explain why countries like Albania are more prone to contributing to NATO and EU led military operations rather than follow the traditional practice of contributing to UN peacekeeping.

The revival of Albanian state identity: from consumer to producer of security

To understand why Albania has become a token contributor to peacekeeping requires looking back at the country's political development over the past decades to explore its transformation from a consumer of security to an exporter of

peace and stability in the region and abroad. As with the most of small states, identity politics were crucial for Albania's return to the international community (Browning 2006). Communist legacies and insecurities during the democratic transitions have profoundly shaped Albania's attitude towards perceiving itself and the other (Tismaneanu 2009). Before becoming a net contributor, throughout the 1990s, Albania was a net beneficiary of international peacekeeping. This section looks at the key developments that shaped Albanian state identity and triggered its commitment to peacekeeping as a way to advance national interest and regain international status.

Military Reform to Overcome the Communist Legacy and State Fragility

Albania experienced the most totalitarian communist regime of Eastern Europe. When communism fell, Albania had almost half its population directly or indirectly involved with the military, over 200,000 bunkers spread across the country, a vast arsenal of armaments, over 3000 military installations, and a fully politicised military leadership. Consequently, after the fall of communism military reform was seen as crucial to Albania's democratisation, openness towards the West, for debunking the communists' narrative of armed struggle as Albania's only tool of national interest preservation. From the very beginning, the legacies of the communist regime were important in framing, legitimating and shaping military reform. In this context, NATO integration was seen as the most efficient way to address such legacy. From early on military reform and NATO accession were presented as interconnected elements, which would ensure the consolidation of Albania's democracy. That is why, to justify military reform, which had a high social and economic cost, Albania's first post-communist president, Sali Berisha, insisted that military reform was necessary for a fuller engagement with the West and for overall democratisation (Rilindja Demoratike 1992: 3).

The rationale of military reform, to overcome the communist legacy of isolation and military politicisation through NATO cooperation, reached a new level of public support when Albania began its first involvement in international peacekeeping in Bosnia in 1996. While other participating countries were reluctant and worried about the safety of their soldiers, in Albania there was overall happiness over the country's participation, which was seen as a sign of military reform success and increased engagement with the world from which they were closed off a few years earlier (Arbnori 1996). Some went as far as to argue that military reform could be deemed successful as Albania had been able to 'democratise the military [...] following the American example of civilian control and transparency' (Koha Jone 1996a: 4). Overall, Albania's participation in international peacekeeping was identified as proof of the success of military reform and Albania's transformation

to an exporter of security. To this point, while analysing military reform in parliament, one deputy stated:

> The deployment of our peacekeeping forces in Bosnia and the other activities under the partnership-for-peace framework will increase the international authority of the government and transform Albania from a consumer to a producer of security. These events are crucial for the consolidation of our democracy (Lazimi 1996).

So, during Albania's early transition, military reform was shaped by the desire to overcome the communist legacy of military politicisation and political isolation by democratising the armed forces and cooperating with NATO. Increasingly cooperation with NATO was viewed in light of its new role in peacekeeping in the Balkans. Therefore, in the mid-1990s despite the sharp political disagreements present among Albania's political elite, there was a pan-political agreement that military reform was necessary to overcome the communist legacy, democratise the country, and join NATO (Koha Jone 1996c). To achieve these goals and undertake a successful military reform, participation in international peacekeeping was agreed upon as an appropriate mechanism through which to strengthen the relationship with NATO, overcome the communist legacy of isolation and improve the international image of the country (Koha Jone 1996b: 2).

However, when it seemed that military reform and Albania's nascent participation in peacekeeping operations were on the right track, a major domestic crisis derailed Albania's democratisation and wiped out almost the entire progress of military reform. The situation deteriorated to the point that in March 1997 a state of emergency was declared and the military was called to restore order. The involvement of the military had the opposite effect since the military refused to obey orders, disintegrated, abandoned its weaponry, and the country fell into anarchy. When Albania seemed on the brink of a civil war with a destroyed military and inexistent police force, the government asked for international assistance to re-establish public order. The international community deployed the Operation 'Alba' and decided to send in thousands of troops (Marchio 2000). This was the first time Albania relied on an international peacekeeping force to help in the establishment of public order. The decision to send in troops was greeted enthusiastically by the Albanian government (ATA 1997). Remarkably, while Albania welcomed the approval of a peacekeeping mission there, Albanian troops were serving in Bosnia to assist with the implementation of the Dayton agreement there. So, because of the 1997 crisis, Albania, within a year, was transformed from a nascent security contributor, to a major security consumer where the international community had to send an armed force to assist in the re-establishment of order and distribution of aid. Despite cutting off reform and rolling back Albania's initial successes, the

1997 crisis and the international community's intervention through an armed peacekeeping force, further reinforced the initial framing of military reform as crucial for Albania's stability and essential for democratic consolidation.

Regional instability during 1990s

Not long after 'Alba' operation left Albania, the country was confronted with another wave of crisis, which endangered Albania's sovereignty and could engulf it in a war that it could neither win nor refuse to fight. Three conflicts took part, which involved Albanians living in Kosovo, southern Serbia, and neighbouring Macedonia. These crises threatened to destabilise the region and further deteriorate Albania's precarious security situation. However, they also provided Albania an opportunity to gradually restore confidence in its armed forces and strengthen the institutional cooperation with NATO, which later facilitated Albania's contribution to NATOs military operations. Albania's further alignment with NATO came during the 1999 Kosovo conflict (Godo 1998). At the peak of the Kosovo conflict, the Albanian foreign minister called upon 'NATO member countries to help Albania with military and humanitarian infrastructure to cope with a possible aggression from Serbia' (ATA 1999a). The international community, especially NATO replied positively by stating that, 'the Alliance will very seriously consider any attack by the Federal Republic of Yugoslavia against your country [Albania]. The alliance has repeatedly made clear that the security of each of the NATO members is inseparably linked with that of all the nations of the Partnership', part of which was Albania (ATA 1999d).

After the conflict in Kosovo ended, public opinion in Albania approved intensifying 'military reform to reach NATO standards and join the Alliance,' while considering NATO's humanitarian intervention in Kosovo as a definitive moment which solidified the already excellent cooperation between Albania and NATO (Zeri i Popullit 2000: 3). NATO's Kosovo campaign and Albania's inability to defend itself were clear indications that military reform had to be rethought and that NATO membership had to become, once again, a priority. The understanding that Albania and NATO had 'fought' and won together the Kosovo war in the interest of peace reawakened the Albanian government's aspirations to become a producer of security. For example, in a meeting with NATO's Secretary General PM Majko stated, 'Albania has backed NATO operations in the Balkan region making NATO not only a military but also a political factor […] The Albanian government is determined to continue being a factor of stability in the region ready to pay the cost for safeguarding the stability of other regional countries (ATA 1999b). This same willingness was shown during a meeting with the German chancellor during which the PM stated that Albania was embracing its constructive role in the Balkans (ATA 1999c).

This spirit of cooperation between Albania and NATO continued also during the crisis in Presevo valley in the Albanian-dominated southern Serbia, and later in 2001 conflict in Macedonia. Although in both cases ethnic Albanians were engaged in the immediate neighbours of Albania, the government preserved its constructive policy of promoting NATO's peaceful resolution of these conflicts. In response to these events, Albania proposed the establishment of the Adriatic Charter between itself, Croatia and Macedonia as a regional security initiative to improve regional cooperation and promote democratic reforms and further NATO integration (Kim 2005: 15). These multiple crises and the extensive military intervention of the international community affected the worldview of Albania's political elite and their relationship with NATO. Until 1997 military reform and the desire to join NATO were viewed as tools to democratise the country. After 1999 Albania had witnessed first-hand, both the positive and negative, effects the military could have on its future. In 1997 they saw how the political use of the military almost destroyed the country. In addition the robust intervention of the international community both in 1997 and 1999, demonstrated that a well-structured military was essential to internal stability and could be instrumental in spreading stability and prosperity in the world. Moreover, the events in Presevo Valley and Macedonia increased Albania's confidence on a peacekeeping agenda.

Opportunities for peacekeeping after 9/11

Besides the mostly symbolic participation in SFOR's mission in Bosnia and UNOMIG in Georgia, during the 1990s Albania did not have the capacity and political commitment to participate in international peacekeeping missions. However, in the 2000s, after the domestic conditions improved and the bipartisan agreement on military reform solidified, Albania was more willing to participate in international peacekeeping. Following the 9/11 terrorist attacks in the United States, the opportunity arose for Albania to participate in missions such as Afghanistan and Iraq. These wars provided Albania with an opportunity to both repay the debt it owed the international community for its interventions in 1997 and 1999 and improve its national image. Therefore, Albania's political elite, especially the parliament, used the 9/11 attacks to reiterate their willingness to become security producers and use international peacekeeping missions to crave a new place for Albania in international affairs. Such position, it was hoped, would also advance the country's prospects for Euro-Atlantic integrations (Shehi 2001). In addition, the chairman stated that Albania as a troubled young democracy had to improve its image by pre-emptively discrediting accusations that it was a Muslim non-democratic country.

Hence, Albania's participation in NATOs mission in Afghanistan (ISAF) was presented as both a pragmatic decision and as an ideological positioning to create a new image of the Albanian state. All deputies regardless of political alliances supported

this rationale as they argued that Albania's participation in the Afghan campaign would be a boost for the country's image and its ability to be a factor of stability (Zogaj 2011). Similarly to the Afghan debate, the entire political spectrum was in favour of Albania's participation in the Iraq war based on the need to express gratitude for the help received in the 1990s, the pragmatic awareness that such participation would increase the chances of joining NATO (Mediu 2003). Moreover, Albania's increased participation in international peacekeeping missions in Afghanistan and Iraq was seen as a sign of the success of military reform towards NATO membership and of Albania's renewed push to become a security producer. That is why PM Nano referred to troops going to Afghanistan as, 'the forward flank of Albania's de jure acceptance into NATO' (Zeri i Popullit 2003:4). Similarly, one year later, while analysing the progress of military reform and Albania's increased participation in international peacekeeping, the pro-government newspaper Zeri i Popullit stated:

> We are all aware that in 1997 the military was destroyed. All military depots were looted and the weapons fell prey of destruction. In 1997 our military had no leadership at all and the Minister of Defence got on a boat and asked for political asylum in Italy [...] Today the Albanian military is side by side NATO in a number of training and peacekeeping missions all around the globe (2004: 8).

So, while in the other countries participating in Afghanistan and Iraqi operations caused a fervent debate, in Albania such participation was viewed as a way to demonstrate that the military had reformed, that Albania had overcome the legacies of the past, and that it had become a full and responsible member of the democratic club of nations. This explains why, when Albania was presented the opportunity to take on a role in international peacekeeping, it viewed it as an instrument to pay back its debts to the international community, improve its security situation, and remake its image as a Western-style democracy which supported freedom. The extensive assistance provided to Albania during its democratic transition by the Euro-Atlantic community influenced Albania's political commitment to various peacekeeping operations. Hence, providing for peacekeeping was seen by the Albanian political spectrum as a way to repay the various external actors for their role in promoting stability, democracy, and prosperity in Albania.

The politics and rationales for contributing to international peacekeeping

Albania's transformation from a consumer of security in the 1990s to an exporter of stability in the 2000s is remarkable. Overall, as demonstrated above, Albania's contribution to peacekeeping is related to the national consensus to institutionalise

its armed and security forces, overcome the deleterious legacies of communism and tumultuous democratic transition, the expression of Albania's commitment to uphold NATO's military standards, and the preservation of Albania's stability on its path to EU membership. It is these in-ward looking aspects that affected Albania's strategic stance towards supporting NATO, instead of UN-led peacekeeping operations. Accordingly, there are three prevailing political rationales for Albania's contribution to peacekeeping operations: (1) reforming and modernising the armed forces for integration into NATO and the EU structures; (2) contributing to regional peace and stability; and (3) restoring the international prestige of the country. The diversity of these three factors exemplify the necessity for a pluralist take on understanding the contextual circumstance for contributing to peacekeeping as well as illustrate the fact that within a realm of events and a particular subject of inquiry there is space for realist, liberalist, critical, and constructivist perspectives for explaining more accurately different aspects of providing for peacekeeping practices.

Reforming the armed forces to join NATO

All the events identified above, shaped Albanian military reform and willingness to be a token contributor to international peacekeeping. Since the 1990s were marked by security, and especially military-related crises, one of the main priorities of Albania's democratic transition was reforming the armed forces to become a factor of stability at home and abroad. From Albania's perspective, the relation between reforming the armed forces and providing for peacekeeping was mutually constitutive. While reforming armed forces is a requirement for effective participation in peacekeeping missions, equally contribution to peacekeeping contributes to reforming the armed forces and increasing their capabilities. So it is a two-way process, which is constantly raised in Albanian policy documents and political discourse. Reforming the armed forces is also essential for NATO's new strategy to mobilise its small members to contribute to peacekeeping, stability operations, and war-fighting operations.

These rationales were present in Albania's 2004 National Security Strategy. The strategy stated that defence reform is linked with the adjustment to a new security environment and the response to contribute to new missions, tasks, and roles for armed forces and is congruent with the standards of Euro-Atlantic collective defence structures (National Security Strategy of Albania 2004: 5). During the 63rd UN General Assembly session in 2008, Albania's President stated that: 'Albania is working to enhance the domestic capacities to greater presence aiding global peace and security by deepening the cooperation with the United Nations in the field of peacekeeping operations' (Topi 2008) Similarly, the 2014 Defence Directive

identifies Albania's contribution to peacekeeping operations as an incentive to improve its human resources and recruitment policies to increase the quality of troops sent to peacekeeping operations abroad, thereby improving the overall operational capability for participating in international missions (Ministry of Defence of Albania 2014a). It is indeed that case that Albanian armed forces have benefited from participating in peacekeeping missions by gaining new skills and capacities for battlefield combat and administering military operations (Mbrojtja 2013: 9).

Albania is currently undertaking further reforms to uphold the obligations derived from NATO membership. As part of this process, Albania is finalizing the comprehensive modernization of its armed forces, to make them more effective and capable of contributing to NATO, EU and UN operations abroad. Modernizing Albania's armed forces entails improving the institutional command and control, enhancing the management of information, improving defensive capabilities, and the modernization of the army. This is a response to multiple allegations of corruption, misconduct and unprofessional management within the Albanian defence sector over the past two decades. Although this is not a national issue at the moment, the rate of Albanian women participating in peacekeeping operations is very low.

One of the main reasons for contributing to peacekeeping was Albania's desire to join NATO and the subsequent obligation derived from membership once in NATO. NATO has placed crisis management and peacekeeping as one of the core activities of its renewed security strategy in the last two decades. To respond to this policy, in the past decade, Albania has participated in NATO-led military operations, especially the ISAF in Afghanistan with 211 troops under Turkish and Italian command, as well as the US-led Joint Coalition in Iraq, where Albania provided 215 troops between 2003 and 2008. As of June 2014, Albania has 72 troops as part of ISAF in Afghanistan and provided a modest contribution to NATO's peacekeeping mission in Kosovo. Albania's preference for NATO- and US-led missions is in line with its national interest of full integration into Euro-Atlantic structures, for which there is nation-wide consensus as well as tangible institutional and political benefits.

In accordance with such interests, the Albanian Ministry of Defence relates Albania's engagement in peacekeeping missions to its commitments within the framework of NATO membership and EU integration process (Ministry of Defence of Albania 2014c). In addition, aware of the political weight that the US carries within NATO, Albania strategically aligned its foreign and security policy with the United States' war on terrorism and coalition-based military interventions. Albania showed active commitment and compliance within all US-led missions, as evident with its largest contribution to ISAF in Afghanistan and the US-led

coalition in Iraq. As a result, Albania's contribution to NATO-led peacekeeping remains one of the key factors in the US diplomatic discourse towards Albania. US diplomats constantly have levelled Albania's contribution to peacekeeping with the US support for Albania's further integration in the Euro-Atlantic structures, while highlighting the necessity for further defence reforms (Ushtria 2014). Similar discourse is also from Albanian side. When Albania joined NATO in 2009, it had not reached all the criteria for full integration in the Alliance. It took Albania four years to complete full integration into NATO. A linkage between reaching full capabilities and contributing to peacekeeping missions was evident, showing Albania commitment to international peace and security.

Albania also considers that its modest contribution to NATO, EU, and UN peacekeeping operations serves to advance core values of Euro-Atlantic community, which peace, security, development, human rights, and democracy. This logic has been integrated into Albania's foreign and security policy, serving as an asset to contribute to the Euro-Atlantic community it recently joined. The address given by Albania's President to the 67th UN General Assembly session in 2012 echoes neatly Albania's normative rationales, maintaining that:

> With its foreign policy of peace and good relations with all other countries, its modest but important contribution in international missions of peace and human rights protection through its good neighbourly policy as well as moderate and constructive role in the region, Albania has turned into a producer and direct contributor of stability and security in regional and global scales (Nishani 2014: 4-5).

Since Albania joined NATO in 2009, it has recalibrated its peacekeeping contributions by participating in a number of EU-led missions. Such re-calibration is in line with its strategic goal of EU integration. In 2012, Albania signed an agreement with the EU to participate in European crisis management missions. Albania's participation in EU's crisis management operations seeks to strengthen the institutional ties between the two (EU Council 2012). So far Albania has contributed to EU's mission in Bosnia (ALTHEA) with 12 military personnel and in EUFOR Tchad/RCA with 63 troops between 2008 and 2010, as well as the participation in the EU NAVFOR Atalanta Operation in Somalia (European Commission 2012). EU institutions have recognized Albania's participation in EU crisis management missions. The 2010 Progress Report highlighted that 'Albania is ready to participate actively in different civil and military crisis management missions' (European Commission 2010: 117). The EU also acknowledges the alignment of Albania with the majority of EU statements in the area of foreign policy and security (European Commission 2009: 5). In 2011, the EU considered

the contribution of Albania within EU's crisis management operations as a progress in 'align[ing] itself with the EU *acquis* in the field of common security and defence policy. Overall, preparations in this field are on track' (European Commission 2011: 66). Hence, in general the EU considered Albania's participation to EU crisis management operations as 'a step towards more structured cooperation between the EU and Albania in the field of security' (EU Press Release 2012).

In addition, the extensive assistance provided to Albania during its democratic transition by the Euro-Atlantic community of states and institutions has influenced Albania's political commitment to various peacekeeping operations. Hence, providing for peacekeeping is seen by the Albanian political and military spectrum as a way to repay the various external actors for their indispensable role in promoting stability, democracy, and prosperity in Albania. Beyond this, Albania has enshrined within its defence policy the principle of collective responsibility to peacefully resolve conflicts based on the international rule of law, and joint peacekeeping operations (Document of Defence Policy 2000). However, this normative discourse is framed to balanced the international acceptable standards, and cover the more obvious national interests.

Contributing to regional stability

Besides its domestic rationales, the on-going and inter-related ethnic grievances in the Balkans and especially the 1999 Kosovo conflict, have hardened the view among Albania's military and political leadership that armed forces should serve to support international peace, stability, and prosperity in the region and further afield. Accordingly, the security situation in the Balkans has influenced Albania's defence policy, where it intends to pre-empt potential national and transnational threats by creating a professional armed force, while benefitting from NATO's collective security. In this regard, Albania considers that through its peacekeeping capability it can play a role in resolving regional geopolitical problems, while simultaneously reflecting its peace-loving character (Mbrojtja 2012: 15). Albania considers that joining the Euro-Atlantic structures of collective security and defence has contributed to consolidating internal stability and prosperity as well as promoting regional peace. Hence, as indicated in the 2004 National Security Strategy, contributing to peacekeeping missions is also an indicator of Albania's internal stability and a reassuring message that Albania does not pose a threat to its neighbours (National Security Strategy of Albania 2004).

Albania has used its NATO integration to promote herself both as a responsible state and as a factor of peace and stability in the region. All Albanian governments have stressed this new image to undo the memories of Albania as a source of illegal immigration, crime and contraband in the 1990s. After joining NATO in 2009,

the Ministry of Foreign Affairs maintained that, 'after joining NATO in 2009 and becoming more integrated in regional security initiatives, Albania has gained a new status in international relations' (Albanian MFA 2014d). Albanian president highlighted this new role when he argued that 'by continuing to work for peace and stability in the region, Albania helps NATO and the Balkans' (President of Albania 2013). In its efforts to strengthen regional stability, Albania is part of the Multinational Peace Force Southeastern Europe (SEEBRIG), which was established in 1999 with the purpose of increasing the security cooperation in the region, strengthening trust, and enhancing good neighbourly relations between the countries in Southeast Europe. As a result of this engagement, one of the areas of SEEBRIG is supporting peace operations led by UN, NATO, EU, or OSCE (Ministry of Defence of Albania 2014b). This regional peacekeeping force was deployed for the first time in Afghanistan in 2006 as part of ISAF. So the multitudinous purposes of this mechanism intersects the intention of NATO and the EU to build peace in the region by enhancing joint security operations, by utilizing regional military resources for their peace missions, while exercise conditionality to these countries part of SEEBRIG in the process of Euro-Atlantic integration.

Enhancing international prestige and image

Beyond the key rationales outline above, Albania considers its modest contribution to peacekeeping a matter of national pride, an attempt to enhance its international prestige, and a reflection of its commitment to international freedom, peace, and security. Previous Prime Minister Sali Berisha echoed in 2006 that 'Albania's participation in this very respected club [NATO], in the most successful political and military Alliance in all times, sometimes makes our small countries gain prestige and the right to transmit powerfully through this forum its voice and its vision for a more secure world' (Berisha 2006: 67). Albania takes pride from the fact that as a small state takes part in NATO-led peacekeeping operations together with more powerful allies and partners (Mbrojtja 2014: 9). On the occasion of 5th anniversary of Albania's membership to NATO, Prime Minister Edi Rama stated that:

> Our defence forces have engaged in close cooperation with our allies for security in the peace and integrity of our country, regional security, of our Alliance, even through contributing to global peace and security. I want benefit from this opportunity to salute our soldiers in missions abroad, who are the clearest symbol of our country's membership in the Alliance (Ushtria 2014).

Besides its intention to improve international image, peacekeeping serves Albania domestically as well. As a result of participating to peacekeeping operations and

are active member of NATO, Albanian Armed Forces enjoy wide public support. Specifically, the Albanian contribution to peacekeeping has increased domestic sympathy for the armed forces. A recent poll shows that 51% of Albanian citizens trust the armed forces and NATO (PASOS 2014). Another local survey shows that around 30% of Albanians has a positive opinion on the contribution of Albania to peacekeeping (IDM 2009: 94). Although a symbolic rationale, Albania's framing of its peacekeeping contribution with improving of international image signifies that in practice both realist and constructivist accounts co-exist and provide congruent explanations.

Conclusion and implications

Albania represents a clear case of an unintended peacekeeper, whose contribution to peace operations is a means to achieve other more immediate national interests. As illustrated in this article, Albania's interest in peacekeeping came out of a slow process of identity construction and interest-maximisation. After the fall of communism Albania's new elite viewed military reform as crucial for democratisation and re-joining the European community from which the communist regime had severed ties. From this perspective joining NATO and assisting in its missions was the leitmotif of the early 1990s. Such cooperation ensured the progress of military reform, Albania's entry into an exclusive club of Western democracies and transformed the country into an exporter of security. After the 1997 crisis and 1999 Kosovo war Albania became even more connected to NATO and military reform became even more important. These two crises had shown the importance of military reform for democratic consolidation and national security. In addition, the international community's and especially NATOs intervention helped Albanians solidify the desire to join the Alliance, and also created a desire to pay back a debt of gratitude and by so doing transform the country's image and remake Albania into a 'normal' European state. All these elements shaped Albania's will to spend its limited financial means, use its scarce political capital, and rely on its very finite resources to pursue a difficult and expensive military reform to then engage in complex and dangerous international peacekeeping missions. As far as they were concerned, this altruism was the most effective way in which they could pursue their legitimate interests of democratic consolidation, security maximisation and Euro-Atlantic integration.

Accordingly, this article has shown how Albania has utilised peacekeeping to overcome the vulnerabilities of its communist past, integrate in regional security communities, and enhance its international position. One of the national interests and core foreign policy goals of Albania is integration in Euro-Atlantic structures.

Both NATO and the EU are growing their ambitions and role for peacekeeping, - both in their own terms - to strengthen, renew, and reconstitute their agency in global affairs. As a result, they are increasingly making contribution to their own peacekeeping operations as a condition for membership. This explains why Albania has focused its contribution mainly to NATO- and EU-led peace operations. Contributing to peacekeeping for Albania has been a task of ticking a box in the Euro-Atlantic integration. In addition, parallel to this externally set conditionality, Albania has exploited peacekeeping for reconstructing its identity and national pride, as well as enhancing its role in regional affairs. Thus, peacekeeping has provided Albania a suitable avenue for enhancing national interests, reconstructing state identity, and increasing its regional and international role.

Notwithstanding these rationales, the motives of small states for contributing to international peacekeeping will remain diverse and subject to different interpretations. The implications from Albania's rationales in participating in international peacekeeping are numerous. First, small states like Albania might become increasingly willing to contribute to peacekeeping to enhance their own security and remake their image. This in turn might increase stability and lower the likelihood of states behaving belligerently. Second, while the UN has so far been the go-to place for peacekeeping, the regional integrationist forces might push states to become unintended contributors to peacekeeping as a proxy for entering exclusive clubs of advanced nations. Lastly, Albania's case implies that a state's immediate interest for integration, security maximisation and identity reconstruction might enable it to act in theatres where at first glance it has no identifiable interest. That is why Albania sent troops to Chad and Somalia despite the fact that developments there posed no threat to Albania's political and economic interests.

The final and most important point is that Albania's double-edged contribution to peacekeeping reveals the implications for the prospects of peacekeeping, of the politics of regional alliances, and the ethics of external intervention. Although the UN remains the main global peacekeeper, the rise of regional peacekeepers defuses the potential for governing peacekeeping globally, as each peacekeeping organisation has its own doctrine, strategies, and interests. In this regard, small states are critical in shifting the grounds of peacekeeping dynamics. This is related to the politics of regional alliances. Political and security alliances like NATO and recently the EU and the African Union utilise peacekeeping as a means to strengthen their global agency, reduce dependency on UN's complex multilateralism, redefine the nature of global security, and accumulate political support and legitimacy for their actions. Although Albania has not provided substantial contribution to peacekeeping, its engagement with NATO and EU missions has legitimised their endeavours at the expense of global multilateral peacekeeping. So, small states like Albania serve larger global security regimes not as much as raw material but as a source of increasing legitimacy and enlargement of regional alliances.

Nevertheless, as this article has focused on the domestic utilisation of peacekeeping, we could clearly see how local agents and their political discourse disregards these global dynamics, to which Albania unintentionally contributes. Most importantly, because of Albania's self-interest, the ethics of intervention are not questioned either by the political elite, civil society or the broader society. Certainly, the harm caused in Iraq, Afghanistan and other places where Albania has participated with troops is never problematised. Instead, the discourse of exporting freedom, peace, and security has nurtured the self-interested altruism of Albanians, ignoring the lack of accountability for the potential human rights abuses and collective responsibility for harming civilians in conflict-affected areas where Albanian peacekeepers have participated. The primacy of self-interest has also kept away the fear of bringing instability in the country as a result of potential terrorist retaliation for joining the US, NATO, and the EU in military operations abroad.

The rationales and implications examined in this article show the limits of grand theories of peacekeeping and the necessity to promote pluralist perspectives that account for complexity, contingency, and multiplicity of rationales of small states' conduct in international relations. The prevailing discourses that small states are samaritans of global peace need to be challenged with more contextual accounts - as presented in this article – shedding light on the self-interest of small states in peacekeeping and their absence of reflexive and critical stance towards the ethics of global interventionism.

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Developments in State aid control in Albania

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Abstract

The Stabilisation and Association Agreement is the legal basis of the relations between Albania and European Union. It requires Albania, inter alia, to align with European Union standards State aid measures. In this framework, different governments have worked on introducing State aid legislation in line with European Union substantive and procedural State aid rules. Moreover, a State aid controlling authority has been established. The paper by analysing the legal and institutional framework with regard to State aid control will provide conclusions on the challenges and obstacles faced by Albania in the first phase of establishing an internal monitoring system of State aid as a precondition for its accession to European Union.

Keywords: Albania, State aid reforms, EU conditionality, State Aid Commission

Introduction

Article 107 of the Treaty on the Functioning of the European Union (TFEU) prohibits "any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods".[1] The original rationale for including State aid control as a part of the Treaty of Rome 1957 was to avoid national protectionism and subsidy races between Member States that would

[1] Neni 107 (1) Treaty on the Functioning of the European Union [2012] OJ C326/47.

undermine free competition in the internal market. [2] The European Commission is entrusted with State aid control.[3] However, the Europe Agreements concluded between EU and Central and Eastern European (CEE) countries introduced a ban on State aid and the establishment of national State aid monitoring authorities.[4] The establishment of these authorities in CEE countries during the EU pre-accession phase was an exception to the supranational enforcement of State aid control by the European Commission.[5] Following the example of the Eastern enlargement the European Commission introduced an internal system of State aid control also in the Stabilisation and Association Agreements (SAAs) concluded with the Western Balkan (WB) countries. All SAAs contain a general prohibition on State aid and the establishment of an "operationally independent authority" "entrusted with the powers necessary for the application" of the State aid rules.[6]

The Albanian Law on State aid has been adopted in 2005 and has entered into power in January 2006. [7] The Law was amended in 2009[8] and 2016[9] in order to align it with the ever-changing EU rules on State aid. Furthermore, by-laws necessary for the implementation of the above-mentioned Law have been approved by subsequent Albanian governments. Additionally, related to the establishment of an "operationally independent" controlling State aid authority, the Albanian State aid Commission (SAC) has been established since 2006. The SAC is a decision-making body for State aid control, which evaluates and authorises State aid schemes and individual aid and may recover unlawful aid.[10] In addition, the Law establishes a State Aid Department (SAD), as an administrative body, functioning under the ministry responsible for economy. Some of the competences of the SAD are to collect, prepare and investigate data about State aid, to collect notifications and prepare the decisions of the SAC.

The paper will first analyse the obligations deriving from the Stabilisation and Association Agreement between EU and Albania in introducing a State aid regime in Albania, exploring steps undertaken by subsequent governments in fulfilling these obligations. It will continue with an overview of the legislative and institutional framework on State aid in Albania, describing and analysing the main

[2] Bacon, *European Union Law of State Aid,* (Oxford University Press 2nd edition 2013) pg. 4.

[3] *Ehlerman*, State aid control In EU: Success or Failure? Vol. 18 (4), *Fordham International Law Journal* 1994 pp. 1216.

[4] *Cremona,* State Aid Control: Substance and Procedure in Europe Agreements and the Stabilisation and Association Agreements, Vol. 9, No. 3, *European Law Journal*, 2003, pp. 265-287.

[5] *Botta*, State Aid Control in South-East Europe: The Endless Transition, Vol 1 EStAL 2013, pp. 83-94.

[6] *Schutterle*, State Aid Control in the Western Balkan Countries and Turkey, Vol. 2 *EStAL*, 2005, pp. 255-263.

[7] Law no. 9374, dated 21.4.2005 "On State aid", Official Gazette no. 36, pg. 36.

[8] Law no. 10 183, dated 29.10.2009 "On some changes and amendments in the law no. 9374, dated 21.4.2005 "On State aid", Official Gazette no. 166, pg. 7342.

[9] Law no.21/2016 "On some amendments to the law no. 9374, date 21.4.2005, "On State Aid" amended." Official Gazette no. 47 pg. 3140.

[10] See Article 17 of the law no. 9374, dated 21.4.2005 "On State aid", amended.

obstacles. The analysis will provide that the Albanian legislative framework in the field of State aid shows the willingness of the Albanian governments to align it with the EU State aid *acquis*, although to a certain degree. Further, the paper explores one of the main weaknesses with regard to Albanian State aid control namely, the State Aid Commission. Although the State aid Law provides that the State Aid Commission is independent while performing its duties, the independence of the SAC has shown some limitations. The later is significantly dependent on the Ministry of Finance and other State aid grantors.

Stabilisation and Association Agreement with Albania: State aid obligations and the first implementation steps

State aid control is enriched in Title VI, "Approximation of laws, law enforcement and competition rules" of the Stabilisation and Association Agreement (SAA). Article 71 of the SAA provides that the following shall be incompatible with the proper functioning of this Agreement, insofar as they may affect trade between the Community and Albania: (i) all agreements between undertakings, decisions by Associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition; (ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Albania as a whole or in a substantial part thereof; (iii) any State aid which distorts or threatens to distort competition by favouring certain undertakings or certain products. The SAA further provides that any practices involving State aid or competition issues shall be assessed on the basis of the criteria arising from the application of Articles 81, 82, 86, 87 of the Treaty establishing the European Community[11]and also the interpretative instruments adopted by the Community Institutions.[12] The application of Union derived criteria in the enforcement of State aid, include both present and future hard law and soft law and also judgements of the Union Courts.[13]

Pursuant to the SAA, Albania should establish an operationally independent public body with the powers necessary for the full application of paragraph 1(i) and (ii) of Article 71 mentioned-above, regarding private and public undertakings and undertakings to which special rights have been granted. This obligation has been fulfilled by Albania with the introduction of the Competition Authority in 2004.[14] In addition, the SAA

[11] The Stabilisation and Association Agreement refers to the numbers of Articles according to the EC Treaty, as it was signed before the entrance into power of the Lisbon Treaty.

[12] See Article 71 point 2 of the SAA.

[13] *Cremona,* State Aid Control: Substance and Procedure in Europe Agreements and the Stabilisation and Association Agreements, Vol. 9, No. 3, *European Law Journal*, 2003, pp. 265-287.

[14] See website: http://www.caa.gov.al/about.

requires Albania to establish an operationally independent authority which would apply the provisions on State aid according to the SAA. This authority, pursuant to the SAA shall have, *inter alia,* the powers to authorise State aid schemes and individual grants as well as the powers to order recovery of State aid that has been unlawfully granted. The State Aid Commission was introduced in 2006[15] and will be analysed below.

Albania is requested to create an inventory of aid schemes within a period of no more than four years from the date of entry into force of the SAA. In practice, the fulfilment of this condition is not easy, especially within a short time of period.[16] A report on the inventory of existing State aid schemes in Albania was issued in January 2008 and it includes data on State aid granted since 2000.[17] Further, in order to ensure State aid transparency annual reports following the methodology of the European Union on the total amount and the distribution of the aid granted and by providing upon request information on particular individual cases of public aid, are submitted to the European Commission.[18] Annual reports on State aid have been submitted to the European Commission from the Albanian Government starting from 2008 reporting State aid given during 2007.[19]

Another obligation under the terms of the SAA for Albania is to assess regional aid taking into account that the whole territory will be regarded as eligible under the criteria of Article 87(3)(a) TEC (now Article107(3)(a) TFEU)[20] during the ten first years after the entry into force of the SAA. Within five years from the date of entry into force of the SAA on the basis of the Albanian GDP's per capita figures, harmonised at NUTS II level the Albanian State Aid Commission and EU Commission will jointly

[15] Article 107/3 of the Treaty on the Functioning of the European Union provides: "The following may be considered to be compatible with the internal market: (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation; (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State; (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest; (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest; (e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

[16] *Bieguriski*, Sensitivity of sectors and the need of State aid reforms in economies in transition. Issue 4 *EStAL*. 2008, pg. 671.

[17] Council Minister's Decision no. 45 dated 16.01.2008 "On the approval of the report on inventory of existing state aid schemes in Albania", Official Gazette no. 9, pg. 9. See also Commission Staff Working Document – Albania 2006 Progress Report, COM (2006) 649 final, pg. 27. Commission Staff Working Document – Albania 2008 Progress Report, Accompanying the Communication form the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2008-2009 (COM (2008) 674) pg. 30.

[18] See Article 71 point 5 of the SAA.

[19] Decision of the Council of the Ministers no. 1023 dated 9.7.2008 "On the approval of the annual report "About State aid during 2007" Official Gazette no. 131, dated 31.7.2008 pg. 5277.

[20] Supra note 17.

evaluate the eligibility of the regions as well as the maximum aid intensities in order to prepare the regional aid map.[21] The regional State aid map has been adopted in 2012 by a decision[22] of the Albanian State Aid Commission, based on the NUTS II division of the country and is in line with the *acquis.*[23]

Protocol 1 to the SAA on Iron and Steel Products[24] requires the parties to "address promptly the structural weakness of its iron and steel sector and to ensure the global competitiveness of its industry". Therefore Albania should establish, within three years the necessary restructuring and conversation programme to achieve availability of this sector under normal market conditions.[25] In addition, to State aid rules Article 71 of the SAA provides that any specific EU rules for the iron and steel sector should be applied in order to assess aid. According to this Protocol Albania may during the five years after the entry into force of the SAA "exceptionally grant aid for restructuring purposes provided that: (a) it leads to the viability of the benefiting firms under normal market conditions at the end of the restructuring period, and (b) the amount and the intensity of such aid are strictly limited to what is absolutely necessary in order to restore such viability and are progressively reduced, and (b) the restructuring programme is linked to a global rationalization and compensatory measures to counter the distorting effect of the aid granted in Albania." Protocol 1 requires transparency which will be achieved by exchanging information including details of restructuring plans and its implementation. The Stabilisation and Association Council is the monitoring authority according to the SAA. Albania has confirmed in 2007 its intention not to provide any aid for the restructuring of the iron and steel industry.[26]

The Albanian law on State aid transposition of EU state aid *acquis*

The Albanian Law on State Aid entered into force on 1 January 2006.[27] The Law correctly transposes the rules of the SAA into the national legislation. The objective

[21] See Article 71, point 7 of the SAA.

[22] Decision, No. 43, dated 11.09.2012, of the Albanian State Aid Commission "On the approval of the regional map of State aid", Official Gazette no. 131, pg.131.

[23] Commission Staff Working Document – Albania 2012 Progress Report, accompanying the document from the Commission to the European Parliament and the Council enlargement strategy and main challenges 2012-2013 COM (2012) 600 at pg. 37. http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/al_rapport_2012_en.pdf. Accessed April 2018.

[24] Protocol 1, of the SAA, "On iron and steel products".

[25] Article 5 of the Protocol 1, "On iron and steel products" of the SAA.

[26] Commission Staff Working Document – Albania 2009 Progress Report, accompanying the document from the Commission to the European Parliament and the Council enlargement strategy and main challenges 2009-2010 COM (2009) 533, at pg. 30. http://ec.europa.eu/enlargement/pdf/key_documents/2009/al_rapport_2009_en.pdf. Accessed April 2018.

[27] Law no. 9374, dated 21.4.2005 "On State aid", Official Gazette no. 36, pg. 36.

of the Law is to regulate principles and procedures regarding State aid control in order to support the economic and social development of the country. Further, the Law aims to fulfil obligations of Albania undertaken in the framework of international agreements which contain dispositions on State aid.[28]The Law does not apply to fishery and agriculture sectors.[29] This is in line with the SAA which excludes agricultural and fishery products from the application of State aid rules.

The Law is largely compatible with Article 107 Treaty on the Functioning of the European Union (TFEU). Article 107 of the TFEU (ex Article 87 TEC), does not define State aid.[30] This Article lays down the test for State aid.[31] It covers both aids given to public undertakings and aid given to private firms. The first paragraph of Article 107 TFEU provides the general principle according to which State aid is not compatible with the internal market; the second paragraph provides the exceptions for the situations when State aid may be deemed compatible with the internal market and the third paragraph provides certain types of aid when it may be deemed to be compatible with the internal market.[32] In the same line Article 4 of the Albanian Law on State aid establishes the general ban of State aid, so any State aid given through state sources in any form which directly or indirectly distorts or threatens to distort competition by favouring certain undertakings or production of certain products, will not be allowed save as otherwise provided in the Law. Moreover, Article 7 of the Law provides aid, which is compatible.[33] Finally, Article 13 of the Law provides aid, which may be deemed compatible.[34]

The Albanian legislator has chosen to include in the Law the key elements by Commission block exemptions for SMEs, R&D, employment, training and *de minimis* aid. It also provides the main criteria for regional as well as restructuring and rescue aid. These issues are regulated by EU secondary legislation. There have been many

[28] Article 1 of the law no. 9374, dated 21.4.2005 "On State aid", amended.

[29] Article 1 of the law no. 9374, dated 21.4.2005 "On State aid", amended.

[30] Baudenbacher C. (1997), *A Brief Guide to European State Aid Law*, Netherlands, Kluver Law International, pg. 6.

[31] De Burca P. (2008). *EU law text, cases and materials*. Oxford University Press, pg. 1086.

[32] *Ibid* pg. 1086.

[33] Article 7 of the law no. 9374, dated 21.4.2005 "On State aid", amended provides: "State aid permitted is: (a) aid having social character granted to individual consumers provided that such aid is granted without discrimination related to the origin of the products concerned (b) and aid to make good the damage caused by natural disasters or exceptional occurrences".

[34] Article 13 of the law no. 9374, dated 21.4.2005 "On State aid", amended, provides: "State aid may be permitted if it: (a) promotes economic development of the areas of the Republic of Albania where the standard of living is abnormally low or where there is serious underemployment; (b)promotes the execution of an important project of the Republic of Albania or to remedy a serious disturbance in the economy of the country; (c) it facilitates the development of certain economic activities or of certain economic areas, where such aid is in compliance with the obligations undertaken by the Republic of Albania through international agreements ratified by the Republic of Albania; (ç) it promotes culture and heritage conservation where such aid does not affect trading conditions and competition; (d) it is in compliance with the provisions of the Law and other normative acts".

reforms of EU State aid control, the most important of which have been the State Aid Action Plan (SAAP), the reform of State Aid Rules for Services of General Economic Interest (SGEI) and the State Aid Modernisation (SAM). During these reforms a lot of secondary legislation for State aid control has been adopted by EU. Consequently, the Albanian Law on State aid has been amended in 2009[35] and 2016[36] in order to align it with the developments of EU rules on State aid. The amendments of 2009, introduced rules on State aid for risk capital and for the environmental protection. The amendments of 2016 introduced rules on services of general economic interest, *de minimis* aid and other categories of horizontal aid. However, this time the legislator has authorised the Council of Ministers to provide, through its decisions, the conditions, criteria on intensity of aid as well as authorisation procedures.

The State aid Law contains also detailed procedural provisions approximating it with Articles 108-109 TFEU. According to the Law, the State aid grantor should notify the State Aid Department of any plan to grant new aid, independently of its form and its beneficiaries.[37] State aid grantor as defined by the Law includes organs of central and local government, any other entity acting on behalf of the State which is or might be authorized to give State aid.[38] The Law provides both *ex-ante* and *ex-post* control.

An *ex ante* control is started upon receipt of a complete State aid notification.[39] The Law provides that it is the State Aid Department which receives all the notifications.[40] Pursuant to Article 20/3 of the Law a notification should contain all the necessary information permitting the SAC to evaluate the compatibility of State aid. In case of incomplete information, the State Aid Department can request further information.[41] Unfortunately, the number of the notifications by the Government remains low and there have been no notifications by regional or local authorities.[42]

The SAC can take "a positive decision" declaring that the measure is no aid or that aid is compatible. Further, SAC may attach conditions to a positive decision

[35] Law no. 10 183, dated 29.10.2009 "On some changes and amendments in the law no. 9374, dated 21.4.2005 "On State aid", Official Gazette no. 166, pg. 7342.

[36] Law no.21/2016 "On some amendments to the law no. 9374, date 21.4.2005, "On State Aid" amended." Official Gazette no. 47 pg. 3140.

[37] Article 3 of the Council Ministers' Decision no. 817, dated 28.12.2005 "On the approval of the regulation laying down procedures and notification form"

[38] Article 3 of the law no. 9374, dated 21.4.2005 "On State aid", amended.

[39] Article 69 of the law no. 9374, dated 21.4.2005 "On State aid", amended.

[40] Article 20 of the law no. 9374, dated 21.4.2005 "On State aid", amended.

[41] Article 7 of the Council Ministers' Decision no. 817, dated 28.12.2005 "On the approval of the regulation laying down procedures and notification form"

[42] Commission Staff Working Document – Albania 2014 Progress Report, accompanying the document from the Commission to the European Parliament and the Council enlargement strategy and main challenges 2014-2015 COM (2014) 700 final, at pg. 26. https://ec.europa.eu/neighbourhoodenlargement/sites/near/files/pdf/key_documents/2014/20141008-albania-progress-report_en.pdf. Accessed April 2018.

on compatible aid. Finally, SAC can make a "negative decision" declaring that the measure is incompatible and cannot be implemented. The Albanian legislator provides for a deadline of 60 days from the receipt of a complete notification within which the SAC should take one of the above-mentioned decisions. The Law expressly obliges SAC to publish its decisions in the Official Gazette of the Republic of Albania, contributing to transparency of State aid control regime.[43] The notified aid cannot be implemented before the SAC has reached a decision which approves State aid. This is in line with the standstill obligation provided by Article 108/3 TFEU according to which Members States cannot implement State aid during the period in which the Commission reviews State aid.[44] The SAC has approved almost all notified aid schemes.

The Law also establishes the *ex-post* control. The State aid Commission or the State aid Directory based on information about illegal aid, shall request additional information to the State aid grantor. [45]According to the Law illegal aid is any aid granted and implemented without the approval of the State aid Commission or any aid which has been notified but not approved by the SAC.[46] The SAC can take a decision requiring the aid grantor to suspend the aid until it has reached a decision on its compatibility.

The SAC may order recovery of any illegal aid. In these cases the SAC should order its repayment from the beneficiary together with the interests as provided by the Law. This is in line with the reasoning of the ECJ according to which illegal State aids should be repaid, this being the logical consequence of a finding that the aid was unlawful.[47] However, the SAC has not taken any decisions considering an aid scheme unlawful and thus ordering for its recovery.[48]

The Albanian State Aid Commission – at the core of the gap implementation

The Albanian Law on State Aid establishes the State Aid Commission (SAC) as the decision-making body. [49] The SAC is a collegial body composed of five members.[50]It evaluates and authorises State aid schemes and individual aid and may recover

[43] See Article 31 of the law no. 9374, dated 21.4.2005 "On State aid", amended.
[44] Supra note 32 at pg. 1100.
[45] Article 25 of the law no. 9374, dated 21.4.2005 "On State aid", amended.
[46] See Article 3 of the law no. 9374, dated 21.4.2005 "On State aid", amended.
[47] Supra note 32 at pg. 1105.
[48] Commission Staff Working Document – Albania 2016 Progress Report, COM (2016) 715 final, at pg. 41.https://ec.europa.eu/neighbourhoodenlargement/sites/near/files/pdf/key_documents/2016/20161109_report_albania.pdf Accessed April 2018.
[49] See Article 16, paragraph 1 of the law no. 9374, dated 21.4.2005 "On State aid", amended.
[50] See Article 16, paragraph 1 of the law no. 9374, dated 21.4.2005 "On State aid", amended.

unlawful aid. Article 17 of the Law on State aid provides also for the competence of SAC to monitor the use made of State aid and its economic benefits.[51] In addition, the Law establishes a State Aid Department (SAD), as an administrative body, functioning under the ministry responsible for economy. [52] This structure is entrusted with the competence to carry out investigations and prepare proposals for State aid decisions taken by the SAC.

The first SAC in Albania was established in March 2006.[53] Until March 2016, the SAC was composed of five members proposed by the Government upon proposal of the minister of finance, minister of economy, minister of justice and one member from the civil society. [54] The 2016 amendments to the 2005 Law on State aid provided that one of the members of the SAC will be proposed by the Ministry of European Integration instead of the Ministry of Economy.[55]

The minister responsible for economy is the chairman of the commission. The members of the SAC should be professionals who have experience in the field of economy. Their mandate is of four years.

Although the State aid Law provides that the State Aid Commission is independent while performing its duties, the independence of the SAC has shown weaknesses. The SAC is chaired by the Minister responsible for economy one of the biggest grantors of State, which raises questions about the conflict of interests.[56]Moreover, the State Aid Commission has no separate budget. The remuneration of the members of SAC is financed by the budget of the ministry responsible for the economy. Further, SAC has limited administrative capacities. Its four members, are working only part-time for the SAC as they are usually civil servants working for the ministries who proposes them or for other institutions. On the other hand, the State Aid Department within the ministry responsible for economic issues depends personally, organisationally and financially from it. Moreover, this department has been most of the time understaffed operating even with two civil servants.

The operational independence of the State aid State aid enforcement authority in Albania has been criticised in subsequent progress reports of the European Commission. Thus, the Commission Opinion on Albania's application for

[51] See Article 17 of the law no. 9374, dated 21.4.2005 "On State aid", amended.

[52] Article 18 of the law no. 9374, dated 21.4.2005 "On State aid", amended.

[53] Commission Staff Working Document – Albania 2006 Progress Report, COM (2006) 649 final, at pg 22. http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/al_sec_1383_en.pdf. Accessed April 2016.

[54] Article 16, paragraph 2 of the law no. 9374, dated 21.4.2005 "On State aid", amended.

[55] Law no.21/2016 "On some amendments to the law no. 9374, date 21.4.2005, "On State Aid" amended." Official Gazette no. 47 pg. 3140.

[56] Bieguriski L (2012), Forms of State aid authorities in associated countries of Central and Eastern Europe, EStAL 3 pg. 567-572.

membership of the European Union[57] provided that Albania should guarantee the operational and administrative capacity of the State aid enforcement authority so that it can enforce the legislation effectively. Additionally, the latest Progress Report of the Commission of the European Union of 2018 requires Albania "to ensure the operational independence of the State Aid Commission (SAC) and strengthen the capacity of the State Aid Unit".[58] The Albanian authorities should rethink the link between the Government and State Aid Commission in order to guarantee the independence of the Albanian State aid monitoring authority. The independence of this controlling institution is important for the effectiveness of the State aid system.

Conclusions

In establishing a State aid regime as one of the requirements of the Stabilisation and Association Agreement, Albania has introduced a Law on State aid as well as secondary legislation. Moreover, Albania has confirmed its intention not to provide any aid for the restructuring of the iron and steel industry. A State aid inventory was compiled in January 2008. Followed, by the regional State aid map has, based on the NUTS II division of the country and is in line with the *acquis*. The legal framework correctly transposes the obligations of the SAA and is broadly in line with *acquis*. Moreover, the 2009 and 2016 amendments to the 2005 Law on State aid approximated it with the State aid secondary legislation approved in the framework of reforms of EU State aid control, the most important of which have been the State Aid Action Plan (SAAP), the reform of State Aid Rules for Services of General Economic Interest (SGEI) and the State Aid Modernisation (SAM). Although progress has been made related to the legal framework for the State aid control in Albania, additional efforts are required to bring it into line with the *acquis*.

With regard to the institutional framework about State aid control in Albania, the SAA provides the establishment of an "independent operational body" entrusted with the power to implement State aid rules. Although the State aid Law provides that the State Aid Commission is independent while performing its duties, the independence of the SAC has shown some limitations. The State Aid Commission is significantly dependent on the Ministry of Finance and other State aid grantors.

[57] Commission Staff Working Document – Commission Opinion on Albania's application for membership of the European Union (COM (2010) 680) final at pg. 64. https://www.parlament.al/wp-content/uploads/2015/10/al_analytical_report_2010_en_23390_1.pdf. Accessed April 2016.

[58] Commission Staff Working Document – Albania 2018 Progress Report, SWD (2018) 151 final, at pg 22. https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf. Assessed April 2018.

Moreover, it lacks human and financial resources to apply effectively and efficiently the legal framework on State aid. The reform of institutional aspects of State aid regime in Albania is crucial in fulfilling one of the EU conditions related to State aid control. However, the 2009 and 2016 amendments to the 2005 Law on State Aid are a missed opportunity.

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Ethnic Politics in Western Balkans: The State of Play and Ways Forward

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Abstract

Twenty-five years since the break-up of Yugoslavia, most Western Balkans societies are still recovering from armed conflict and widespread violence. Currently, ethnicity continues to be a salient and polarizing factor in most societies in the Western Balkans and ethnic parties claiming to represent ethnic communities have become the rule rather than the exception in the post-conflict situation. Particularly in Bosnia and Macedonia, political parties using the ethno-nationalist card have entrenched a system of ethnic patronage extending towards the large public administration at central and local levels as well as business and media sectors. To better understand this phenomena and potential paths forward, this article revisits some of the assumptions on the role ethnicity and ethnic parties play in multi-ethnic societies by looking at the empirical record in the Western Balkans focusing primarily. The article's empirical sections analyse the impact of ethnicity in post-conflict societies and how ethnicity affects political party strategies. Specifically, the article focuses on the record of ethnic politics in Western Balkans focusing on Bosnia and Macedonia and concludes with some ideas and contingent generalisations on the potential for de-ethnicizing politics across the region.

Keywords: ethnicity, representation, Bosnia, Macedonia, international intervention

Introduction

Ethnicity is defined as a feeling of belonging shared by members of a certain community based on assumed shared ancestry, history, language, religion, race, territory or descent (Gellner 1983). While ethnicity per se is not a generator of instability and violence, its manifestation in political life within a multi-ethnic society can be used as a ground for group polarization and enmity. Therefore; politicized ethnicity or ethno-nationalism in multi-ethnic societies is seen as a source of political polarization across ethnic and an obstacle to social cohesion and national integration.

With the exception of Albania, in the last 25 years all the six Western Balkan states have experienced violent conflicts where ethnicity has been often invoked as a primary cause. Many accounts of the break-up of Yugoslavia have explained the eruption of ethnic violence with the role of self-seeking politicians like Milosevic, Tudjman and Izetbegovic in exploiting the common insecurities following the demise of the multinational federation and politicizing ethnicity (Gagnon 2004; Bunce 1999; Posen 1993). In fact, the initial root causes of the Yugoslav conflict may have not been ethnic at all but the wide spread violence along ethnic lines reinforced ethnic cleavages within all communities.

The intervention of the EU, US, NATO and UN was crucial to ending the ethnic violence in Bosnia, Macedonia and Kosovo and establishing peace plans and agreements which have been largely successful to preserve the ethnic peace and avoid a relapse in full scale violent conflicts (Visoka 2016). The region has not seen widespread armed conflicts after the Albanian armed insurgency in Macedonia in 2001 but peace consolidation remains a challenging task in Bosnia, Macedonia and Kosovo. Kosovo's riots of March 2004, the frequent skirmishes in the Northern part of Kosovo and volatile inter-ethnic relations in Bosnia and Macedonia are strong reminders that ethno-nationalist issues still have the potential to be important triggers of conflicts with broader security implications for the region and Europe.

Twenty-five years since the break-up of Yugoslavia, most Western Balkans societies are still recovering from armed conflict and widespread violence. Most countries have had to struggle simultaneously with competing processes of state-building and nation-building similar to "building a ship while sailing". Milosevic, Tudjman and Izetbegovic have all gone but the ethnically charged political environment has created conditions for old and new political actors across the Balkans to play the nationalist card to the detriment of democratic accountability and rule of law.

The power sharing solutions implemented have predominantly been guided by the dynamics of ethnic conflict on the ground and consequently the constitutional

frameworks established are conducive to the long term politicization of ethnicity. [1] As a result, ethnicity continues to be a salient and polarizing factor in most societies in the Western Balkans and ethnic parties claiming to represent ethnic communities have become the rule rather than the exception in the post conflict situation. Particularly in Bosnia and Macedonia, political parties using the ethno-nationalist card have entrenched a system of ethnic patronage extending towards the large public administration at central and local levels as well as business and media sectors. Elections have turned into ethnic headcounts with results simply confirming the degree of ethnic polarization at societal level and strength of entrenched political elites which are hardly replaceable with constitutional and democratic means.

So what does this mean for the future of the region? Are ethnic politics turning polarization between ethnic groups into a permanent feature of the political system? Is the "ethnification of politics" indefinitely going to hamper the necessary state-building and consolidation reforms required to join the EU? Are we going to see a shift from ethnic politics into a post-ethnic "normal politics" without external intervention?

This article revisits some of the assumptions on the role ethnicity and ethnic parties play in multi-ethnic societies by looking at the empirical record in the Western Balkans focusing primarily on Bosnia and Macedonia. The next session looks at the impact of ethnicity in post-conflict societies and how ethnicity affects political party strategies. The third section focuses on the record of ethnic politics in Western Balkans focusing on Bosnia and Macedonia. The last section concludes with some ideas on de-ethnicizing politics across the region.

Ethnicity as a Political Resource in Divided Societies

The manifestation of ethnicity as a political resource in post-conflict societies and the strategies for its management have been the focus on two competing research programs in political science and different strategies of ethnic conflict management. Consocionalism, as the best known approach to managing ethnic diversity in divided societies, views ethnicity as a stable feature of social life and takes a realist approach towards ethnic politics. It considers ethnically-based parties as key pillars to maintain the "ethnic peace" by serving as interest aggregators for their ethnic group, participating in elections in a proportional system of representation and sharing power in a governing coalition with their ethnic rivals in order to prevent a relapse into ethnic violence or armed conflict.[2] Positive leadership is crucial as ethnic leaders

[1] Dayton Peace Accords (1996), Ohrid Framework Agreement (2001), Ahtisaari Plan for Kosovo's final status (2007).

[2] Power-sharing arrangements between dominant political streams in oppositional communities include

are expected to avoid unreasonable ethnically motivated demands and pursue their political projects by sharing power in an adversarial framework. This approach claims that elite cooperation will result in overall moderation across communities and as power imbalances are addressed, the role of ethnic parties will gradually diminish leading to a normalization of politics across non-ethnic but ideological cleavages.

In contrast to consociationalism, an alternative approach commonly labelled as "centripetalism" holds that ethnic politic closes opportunities for political compromises and threatens democratic stability. When ethnicity becomes a political resource and a basis for political mobilization, people tend to vote for political parties and politicians form their own ethnic group expecting them to defend their interest against other groups and channel resources, jobs and other benefits to co-ethnics. The two-way relationship between politicians who articulate ethnic demands and voters producing ethnic votes gradually turns elections in "ethnic headcounts", political life becomes organized around ethnic blocs, government becomes an arena of inter-ethnic competition and compromise on ethnically disputes issues becomes more difficult.

An ethnic party is defined as a political party which either declaratively or practically advocates for the rights of a certain ethnic group, by explicitly or implicitly referring the ethnic group in party manifestos and electoral programs and defending and advancing its interest when in power.[3] Ethnic parties are generally expected to represent the interest of minority communities but there are exceptions to this rule depending on the number and demographic size of the politically mobilized ethnic group and the degree to which ethnicity is salient in electoral politics. Thus in certain countries like Bosnia and Herzegovina or Macedonia although Bosnian and Macedonian communities constitute a relative majority in relation to other groups (Serbs and Croats in Bosnia and Albanians in Macedonia) given the size, territorial patterns and organizational capacities of other non-dominant groups, Bosnian and Macedonian parties operate in a framework where political representation is ethnically framed and are generally viewed as ethnic or ethno-nationalist parties.

four key elements to keep the "ethnic peace" namely 1) a grand coalition governments in which all ethnic groups are represented; 2) a system of proportional representation of ethnic groups in order to turn their demographic size with parliamentary seats; 3) segmental autonomy through federalism, regionalization or decentralization of local self-government; and 4) a minority veto on issues of vital interest to minority groups (cultural, religious, linguistic affairs). The approach has undergone significant modifications which have enriched the consociational approach emphasising the importance of non-territorial autonomies, asymmetrical decentralization and recognizing the role for kin states in managing ethnic conflicts in dampening ethnic conflicts which are applied at varying degrees in Bosnia, Macedonia and Kosovo.

[3] Chandra, K (2007), Why Ethnic Parties Succeed: Patronage and Ethnic Head Counts in India, Cambridge University Press. Chandra also adds that ethnic parties are expected to draw a disproportionate amount of members, leader and votes exclusively from a certain ethnic community and frequently in a certain geographical considered as its electoral stronghold.

Once ethnicity becomes a political resource, ethnic parties and politicians can use a number of strategies for mobilizing voters on ethnic grounds, accessing power and consolidating their electoral success. The most widely known strategy is that of "ethnic outbidding" when political parties take more extreme positions on issues involving ethnic and national identity to outcompete other forces within the same ethnic group. Ethnic outbidding efforts translate into aggressive political programs, campaign language and political strategies between and within ethnic blocs (Horowitz 1985). This spiralling process of intra-ethnic competition relegates other important issues that have a cross-ethnic appeal such as employment, corruption, social justice, and environment into the background of political campaigns preventing debate on programmatic issues.

When the ethnic out-bidding pressure recedes and two or more ethnic parties largely cover the field of ethnic politics by emphasizing ethnic issues over other social issues, ethnic parties can also gradually become "ethnic tribune parties" and are largely perceived as the most effective advocates in their respective communities (Mitchell, Geoffrey and O'Leary 2009). Due to the expectation that votes for other parties will be wasted, voters are inclined to keep voting these parties because of their reputation as tribune parties and because they indirectly expect them to channel power and resources to the community. In large part, the long term coalition of the VMRO and DUI in Macedonia illustrates this situation where parties have managed to project themselves as the "guardian" of their respective Macedonia and Albanian communities and have squeezed the middle ground for other less moderate parties. Both parties have shown a tendency to provoke or heighten ethnic tensions either prior to elections or when they want to divert the attention from non-ethnic issues and governing failures into ethnic problems and consolidating their voters against potential rivals. "Controlled incidents" with ethnic background are then used to re-assure their respective ethnic constituencies that VMRO and DUI are the most ardent defenders against the rival ethnic group.

When a framework of intra-ethnic competition is stabilized with two main parties turning into "ethnic tribune parties", rival parties or new comers involved in intra-bloc competition are often forced to pursue a more moderate political campaign in order to discredit the established nationalist parties through strategy of "ethnic underbidding" (Coakley 2008). An under-bidding ethnic party continues to appeal to its own ethnic community but adopts a more moderate stance toward the dominant ethnic group. This strategy is usually provisional and is abandoned once initial success to out-compete traditional parties is achieved. For example, initially SNDS led by Milorad Dodik was able to attract support from international community by projecting a more moderate stance on the future of the Serb community in Bosnia relative to the SDS party founded by Karadzic. As this strategy helped him break ground amongst moderate voters he abandoned the

ethnic underbidding strategy and started making nationalist appeals threatening with complete secession of Republika Srpska from Bosnia and Herzegovina.

A less successful strategy is that of counterbidding employed by parties which seek to move away from ethnic issues in order to appeal to a more moderate middle ground that cares about ethnic issues but is also concerned about other cross-ethnic issues such as economic prosperity, rule of law, openness and transparency in government (Coakley 2008). To a certain extent this strategy has been tried by new parties in Bosnia like Nasa Stranka but they have hardly been able to garner more than 5% of the vote. The middle ground parties can be quite successful in times of sustained ethnic peace when ethnic identity, ethnic discrimination and other issues recede in importance. However, once ethnic tensions are renewed, counter-bidding or cross-ethnic political parties are usually squeezed by traditional ethnic parties which often orchestrate ethnic tensions in order to keep the ethnic polarization high and fend off counterbidding efforts of non-ethnic parties.

The strategies of ethnic parties differ significantly based the status of the party (traditional or new), overall ethnic climate (ethnic tension versus ethnic peace) and party position (governing or opposition) and election cycles (before and after elections) (Zuber 2011). Traditional parties have a tendency to keep their ethnic rhetoric high but in the long run may even moderate their stances unless presented with outbidding pressures from new comers. When ethnic tensions are low, new comers do not always embark upon outbidding pressure but may well be strategic about the electoral terrain available and run on a program that combines ethnic cleavages with broader social issues resonating with large segments of populations. Also parties that have access to power are expected to moderate their position on ethnic issues and continue "business as usual" once election are over. Whereas opposition parties tend to radicalize their position on ethnic issues and portray the incumbents as "too weak" or "sold out" before elections.

Ethnic Parties in the Western Balkans: The State of Play in Bosnia and Macedonia

A large number of political organizations in all the Western Balkan states are ethnic or minority parties and a large part of them compete in elections. The post-Dayton Bosnia is viewed as a typical case of consociationalism where Bosniac, Serb and Croat ethnic group share power at all levels of government. The Ohrid Framework Agreement in Macedonia which does not mandate power sharing in the government between Macedonia and Albanian parties, provides for local autonomy, equitable representation and veto powers on issues of vital interest to the Albanian community. The Ahtisaari Plan which was incorporated into Kosovo's

Constitution provides asymmetrical representation and veto powers on issues of vital interest to the Serb community at central level, a high degree of autonomy at local level and the right of Serbia to provide financial and technical support to Serb municipalities.

A cursory research on the political parties in the region shows that of more than 400 parties registered in the six Western Balkan countries, more than 120 claim to represent a certain ethnic community and a large part of them are actively participating in elections.[4] The legacies of the conflict and the constitutional frameworks have created a framework of ethnic representation where political fragmentation is very rampant across ethnic groups and within the same ethnic group. For example, in Kosovo where non-Albanian communities constitute less than 10% of the population of 2 million there are about 28 minority parties claiming to represent the Serb, Turkish, Bosniac, Gorani, Roma, Ashkali and Egyptian communities thus competing for less than 150 thousand votes. The largest of the Serbian parties Lista Srpska received less than 40 thousand votes in the last elections of June 2014 but due to reserved parliamentary seats and ethnic quotas it currently has 9 MPs, 1 Deputy Prime Minister, 2 ministers, 5 deputy ministers at the central level and at the local level it runs 9 out of the 10 municipalities where the Serb-community is in majority.

Lista Srpska was created in 2014 and is to a large extent controlled by Belgrade but in a very short time managed to render the other well established Serb parties Kosovo politically irrelevant. As the future of the Serb community in Kosovo is still being negotiated in the EU facilitated dialogue between Kosovo and Serbia, in the next section we look at the record of ethnic politics in Bosnia and Macedonia where due to the consociational nature of the Dayton and Ohrid agreements, ethnic politics has taken place for more than 20 years (McEvoy and O'Leary 2013).

The Entrenchment of "Sextet" in Bosnian Politics

The Dayton Accord which ended the war in Bosnia in 1996 created an ethno-federal state of Bosnia and Herzegovina (BiH) between two loosely connected entities Federation of Bosnia and Herzegovina where Muslim and Croat populations are predominant and Republika Srpska with a large Serb majoirty and jointly shared autonomous district of Brcko. The Constitution recognized the BiH as the shared state of the three constituent peoples Bosniacs (48%), Serbs (37%) and Croats (14%) and Other undesignated groups (1%). Consistent with the requirement

[4] For example, in Serbia out of 75 parties about 42 claim to represent Hungarian, Bosnia, Croat, Albanian, Roma and other communities. In Albania, 8 parties claim to represent the Greek, Macedonian and Roma communities. In Kosovo more than 30 ethnic parties representing the Serb, Bosniak, Turk, Roma, Gorani and Croat communities. In Montenegro about 30.

of the consocational approach, this system has incentivized the establishment of ethnic parties which focus their political programs on ethnic issues. Since no Bosniac, Serb or Croat parties can garner the required number of seats to form the government, main parties from the three main communities share power at the federal level in proportion with their vote share and established ethnic quotas. Ethnic parties are then represented in the collective federal presidency, a two chamber parliament and a government where each minister has two deputies from other ethnic communities. The ethnic representation extends in all levels of government and civil service at municipal, cantonal and state level.

Notwithstanding the variations in their political programs, most parties claiming to represent their respective Bosniac, Serb and Croat communities focus on ethnic issues. Broadly speaking, Bosniac parties demand a strong federal state with reduced powers for the two entities, Serb parties are interested to maintain the highest level of self-rule for the Republika Srpska and, if possible, complete independence from the BiH and Croat parties are interested the re-organization of the state in order to get their own Croat entity outside of the Bosniac/Muslim dominance.

The first post-Dayton elections represented the first opportunity to move away from ethnic politics in favour of multi-ethnic parties. In order to prevent ethnic parties from the government, international community invested a lot in the Unified List, a cross-ethnic coalition of Bosniac, Croat and Serb political organization. The results of the first elections were disappointing and ethnic parties took more than 70% of the popular vote.

When European Union and international actors have tried to support multi-ethnic parties, the results have been limited and short lived. Ever since 1996 the political scene has been dominated by 6 or 7 major political parties representing the three communities.[5] The vote share for the nationalist parties has increased to 85% leaving very little ground of about 15% to other smaller parties with cross-ethnic or non-ethnic electoral programs. Despite the international intervention to create a more viable centralized state at the federal level, ethnic issues dominate the agenda of political parties which hardly dedicate time and energy to find solutions for cross-ethnic problems of poverty, corruption, unemployment or economic growth.

The only time that traditional nationalist parties where left out of the government in both federal and state level was in 2000-2002 when the SDP led a large multi-ethnic eleven party collation called the Alliance for Change. The SDP led coalition received substantial support before and after elections from the international community which was also instrumental in forging a post-election coalition that left the traditional ethnic parties (SDA, HDZ and SDS) out of office. Multi-ethnic parties Social Democratic Party of BiH (SDP), Nasa Stranka and United Front

[5] Bosniac parties include SDA, SBiH, SDP, Serb parties are SNSD, SDS and Croat parties HDZ and HDZ-1990.

have managed to a certain degree to have a multi-ethnic membership and political platforms but their electoral success is hampered by the entrenched nature of ethnic politics.

On the Serb political camp, in 1997 the international rallied to support Milorad Dodik as a prime minister of the Republika Srpska (RS) although the DSD had only two seats in the RS parliament. Dodik was seen as a moderate leader with little or no direct connection to the wartime establishment and represented a viable alternative to the SDS which was formerly led by Karadzic. Dodik initially committed to work on reconciliation and an untied Bosnia for all communities but once in power, he gradually shifted his stepped up his nationalist rhetoric, outbidding the SDS and turning himself into a nationalist publicly announced that the RS had the right to declare impendence from BiH. The combination of nationalism and populism have now turned into one of the most powerful politicians in the country.

Although ethno-nationalist parties are unable or unwilling to strike compromise on most policies, a group of six parties and their leaders referred euphemistically as the "Sextet" has been taking turns in government for almost 20 years.[6] These parties describe themselves as strong advocates of their ethnic community while continuously sharing the spoils of power with ethnic rivals. They have built an extensive system of patronage by channelling resources, jobs, privatization deals, concessions, government public work tenders and through informal rules and practices ensure a division of turf and benefits along ethnic lines. Twenty years after Dayton, the Sextet practically presides over a system of ethno-cracy where democracy has been transformed in a hegemony of ethnic parties from each community.[7] Ethnic discrimination entrenched in the constitutional framework has been found to violate key human rights by the European Court of Human Rights but constitutional reforms necessary to de-ethnicize politics have been met with resistance from ethnic parties particularly in the Croat and Serb community.[8]

Party democracy and debate are stifled and main decisions are made by a handful of leaders from each community. Although frustration with government inefficiency, corruption and clientelism is very high across the ethnic groups, civil society remains organized along ethnic lines or and a limited number of multi-ethnic civil society organizations are weak and disorganized. As voters widely regard politics as "dirty business" political frustration is high but political participation and election turnout very low. Occasional outburst of frustration with bad governance, nepotism, patronage and corruption similar to the multi-ethnic youth riots of 2014 in many BiH cities is stifled and isolated through sustained

[6] The parties are SDA, and SDP in the Bosniac community, HDZ and HDZ 1990 in the Croat community and SNSD and SDS, see Bosnia's Future Europe Report N°232 - International Crisis Group, 10 July 2014

[7] Bosnia's Future Europe Report N°232 - International Crisis Group, 10 July 2014

[8] See in particular two ECHR ruling on cases Sejdi and Finci (2009) and Ilijaz *Pilav v. Bosnia and Herzegovina (2016)* finding the Dayton derived constitutional provisions in the breach of ECHR

media campaigns, coercion or co-option of leaders and activists in the existing networks of ethnic patronage.

The EU integration and constitutional and state reforms are hampered as conflicting goals of ethnic powerbrokers have become permanent sources of decision-making deadlocks and crises. The international community and particularly EU who were once seen as necessary but transitional peace guarantors have become constant deadlock-breakers of the ethnic politics and a permanent feature of peace agreements. Ethnic politics shows no signs of abating and ethnic leaders and communities continue to amass resources and power for their own community as if they are preparing for the next ethnic confrontation.

Macedonia: A Bi-national Oligarchy

Macedonia had a less violent and more promising start than other regional neighbours after it declared independence in 1991. In the post-independence period, all ethnic communities are mobilized politically in their own political parties and ethnic tensions between Macedonia and Albanian communities have been a recurring feature of Macedonia's society since 1991. Initial contention of the Albanian community focused on provisions of Constitution of Macedonia of 1991 which defined Macedonia as a state of Macedonians and other communities. Albanian community representatives viewed the constitutional status as setback compared to the 1974 constitution which recognized Albanians and Turks nominally as nationalities.

Twenty-five years later, Albanian parties claim that the Albanian community is discriminated and have continuously demanded changes in the constitutional framework to enhance Albanian community rights whereas Macedonian parties emphasize the fact Macedonia community is the largest national group and generally consider the Albanian demands for more rights with suspicion and distrust.

The Albanian political camp has gone through several changes since 1991 as a result of a series of successful "ethnic outbidding" efforts. Following, the initial boycotts and an unrecognized referendum on territorial autonomy, the Party for Democratic Prosperity (PDP), as the largest Albanian political party in Macedonia participated in post-independent parliaments and governments in Macedonia. After some initial success in advancing the rights of the Albanian community, it PDP soon splintered and was outflanked by the Democratic Party of Albanians, a new party bringing together various political activists presumably dissatisfied with the poor record of the PDP in defending the Albanian community.

DPA initially projected itself as a more aggressive defender of Albanian interest and was advocating consociational solutions for Macedonia. It dominated the

Albanian political scene until 2001 but rapidly lost support once the National Liberation Army launched a short live insurgency against Macedonian security forces. After the signing of the Ohrid Framework Agreement (OFA), the NLA leadership established the Democratic Union for Integration (DUI) which from 2002 has become the dominant Albanian party. DUI runs on a nationalist program demanding full implementation of the OFA and touts its successful war credentials anytime it is criticized. DUI has been the dominant Albanian party in Macedonia winning all central and local elections since 2002. At central level, for almost 15 years, DUI has been a junior coalition member in four governments led the largest Macedonian parties.

On the Macedonian political establishment, the Internal Macedonian Revolutionary Organisation – Democratic Party of Macedonian National Unity (VMRO-DPMNE) and the League of Social Democrats of Macedonia (LSDM) have been taking turns a ruling parties since 2001. Widely viewed as a more nationalist and populist party, the VMRO which led the government at the outbreak of the armed conflict in 2001 lost the power to the LSDM in the first elections held in 2002 after the Ohrid Framework Agreement (OFA). After initial progress with the implementation of the OFA and a controversial decentralization of local self-government, LSDM suffered from criticism of being unable to stand to Albanian pressures and since 2006 VMRO have continuously won all central and local elections.

Since 2008, as the prospects of NATO and EU accession becoming unattainable due to the Greek veto over Macedonia's state name, VMRO led by Gruevski increasingly embarked upon a nationalist and populist program emphasizing the ancient roots of Macedonian nation. Although VMRO shares power with DUI, the implementation of a 600 million Euro Skopje 2014 project to promote an exclusively Macedonian identity as well as allegations of unfair treatment of Albanians have strained the inter-ethnic relations.[9]

The intra-Macedonia political polarization has reached its peak in February 2015 after the LSDM released transcripts of a government led wiretapping scandal that revealed direct involvement of VMRO and DUI senior officials in government corruption, election fraud and undue influence over judiciary, media and civil society. An EU commission expert team confirmed serious symptoms of state capture in all levels of society finding amongst other things:

> Apparent direct involvement of senior government and party officials in illegal activities including electoral fraud, corruption, abuse of power and authority, conflict of interest, blackmail, extortion (pressure on public employees to vote for a certain part with the threat to be fired), criminal damage, severe procurement

[9] See an estimate of cost conducted by BIRN in 2015 available at http://www.balkaninsight.com/en/article/true-cost-of-skopje-2014-revealed and the calculation of Prisma at http://skopje2014.prizma.birn.eu.com/

> procedure infringements aimed at gaining an illicit profit, nepotism and cronyism; … unacceptable political interference in the nomination/appointment of judges as well as interference with other supposedly independent institutions for either personal or party advantage (International Crisis Group 2015).

Both VMRO and DUI have significantly increased their vote shares since they first joined the coalition in 2008 whereas the second largest parties in both communities LSDM and DPA has halved. As the wiretapping scandal has shown both the VMRO and BDI are presiding a system of bi-national oligarchy where they project themselves as the guardians of their respective communities but otherwise pursue very similar non-ethnic and instrumentalist goals of expanding their resources for themselves and their families in clear disregard of the rules of democratic system.[10] They have now created a system of government which is hard to dismantle with constitutional means.

Despite the success in the implementation of the OFA, the Albanian community's discontent with DUI has increased rapidly due to alleged inability of the DUI to defend the Albanian interest against an aggressive nationalist VMRO. Ironically, since the VMRO's position as an "ethnic tribune party" amongst Macedonian voters, is pushing the LSDM to appeal for support in the Albanian community in order to become a dominant party of the Macedonian community. However, as ethnicity is heavily politicized across communities, bridging the ethnic gap and attracting Albanian voters appears to be an uphill battle for LSDM. The opposition and civil society groups are constantly holding demonstrations but so far it has been difficult to create cross-ethnic coalition with the critical mass to reform the system. The links between VMRO run too deep to allow any cross-ethnic coalition to emerge and they will together continue to use nationalist scaremongering and end of the world scenarios like the Kumanovo armed incident in order to keep their political fiefdoms intact.

As in Bosnia, the country's Euro-Atlantic integration and democracy have stagnated and the tension is very high within Macedonian and Albanian communities and between them. The overall post-independence experience of Macedonia shows that political space will continue to be organized along ethnic lines in the years to come. Although Macedonians and Albanian communities may be equally dissatisfied with the chronic crisis, ethnic distrust prevents cross-ethnic political processes. Multi-ethnic initiatives to reform the political system and the state are proving difficult to build and sustain and both VMRO and DUI are leading the polls in their respective camps despite the crisis escalation and revelations of the wiretapping.[11]

[10] Macedonia: Defusing the Bombs - International Crisis Group, 9 July 2015

[11] See nationwide poll conducted by Brima Consulting on behalf of the International Republic Institute in April 2016 with results announced on 8 June 2016 at http://www.iri.org/sites/default/files/wysiwyg/iri_macedonia_survey_april_2016_0.pdf

On the Albanian side, newcomers into the political scene are trying to capitalize into the Albanian discontent with DUI hoping to mount and "ethnic outbidding" effort. However, new Albanian parties appear to be more interested to dethrone DUI than to fix the many problems of Macedonia which are there to stay and will not disappear with DUI's electoral defeat. While it is yet unknown how long will it take to replace DUI, it is clear that the next wave of Albanian political demands will focus on re-configuration of the state along ethnic lines beyond the arrangements offered by OFA.

Ways forward: Is post-ethnic politics desirable or possible in the future?

The brief overview of ethnic politics in the Western Balkans shows that once ethnicity is politicized and ethnic parties are created, state-building may suffer perpetually as "ethnification of politics" and the political system becomes heavily dependent on ethnic loyalty and thus less conducive to political compromises and national cohesion. In the long run, the use of ethnicity as a political resource is leading to a situation of "political immobilism" where reforms and changes are impossible and programmatic debates between parties are almost inexistent.

So far, nationalist parties in Macedonia and Bosnia have been able to provide a certain level of predictability in politics which resonates with expectations of large numbers ethnic voters from the rival communities and serves the international interest of putting stability before democratic accountability. Also the international community by emphasizing stability has become increasingly dependent on ethnic power brokers who can maintain local peace to the detriment of democracy and rule of law. Ironically, the prioritization of stability over democracy is leading to democratic backsliding and state weakness. Ultimately, the blockages of democracy and the disagreements about who runs the state and how should the state be organized may threaten the relative peace between ethnic groups.

To be fair, ethnicity is far from being the source of all evils in the Western Balkans and you only need to look at Albania to understand that consolidating democratic stability and rule of law can be a daunting challenge even when ethnic diversity is not a problem. Bad governance, stalled reforms, rampant corruption, entanglement of politics and organized crime do not take place only multi-ethnic societies. Autocrats who coerce the media, supress the opposition and consolidate their grip to power with seemingly legitimate, free and fair elections can flourish even in ethnically homogenous societies in the Western Balkans and beyond.

The key difference is that while in Albania, extreme polarization and state-building failures remain immense; political change may gradually come from

within and as the political system matures, a new generation of politicians may be able to complete the democratization and rule of law reforms. In contrast, in Bosnia, Macedonia, Kosovo, ethnic groups do not agree on the fundamental nature of the state and its direction so de-ethnicizing the political processes without external intervention seems impossible.

Ethnic politics has displayed lock-in tendencies which are multiply determined by distant and recent memories of the ethnic violence, the constitutional frameworks established, the political enterprises of ethnic leaders and the expectations and immediate concerns of ethnic voters. The framework of intra-ethnic competition is also reinforced by kin-states, external influences of global actors and processes such as the increasing multi-polarity in the world and the stagnation of EU enlargement in the Western Balkans due to the looming financial crises and frequent debates about Grexit and Brexit. Assuming that "constrained change" is a key property of ethnic identity and ethnic communities are not going to disappear in the near future, what can the international community do to help de-ethnicization of politics in the Western Balkans? How can the constitutional frameworks, electoral law and political party regulations be reformed in order to reduce the salience of ethnicity in political processes?

The first approach to reduce the salience of ethnicity in favour of multi-ethnicity is a top down approach where international community forces dramatic changes in the constitutional frameworks, electoral system and political party laws in order to outlaw ethnic parties. This approach which has been tried unsuccessfully in the post-communist Bulgaria to prevent the emergence of ethnic parties is seen as both anti-democratic and probably impossible to achieve in Bosnia and Macedonia due to the powerful role of local leaders in resisting change that affects their grip on power. Short of this drastic and probably counterproductive intervention, it is possible to introduce rules, and procedures that encourage multi-ethnicity for the establishment, registration and participation in elections (Reilly 2001). These rules make it difficult for ethnic parties to compete by requiring cross-ethnic membership, leadership and national presence for competing in elections. The downside of setting cross regional or cross-ethnic composition as a pre-condition for competing in elections is that it may disproportionately affect parties from small ethnic communities such as Serbs in Croatia, Albanians in Serbia and Turks in Kosovo which may fail to attract support and establish their presence outside their region and turn into political outcasts. Restricting ethnic parties may have an adverse effect in the democratic process as it forces such outcast groups to venture into anti-constitutional activities potentially mobilizing supporters for armed struggle against a government.

One alternative to challenge the "business as usual" approach to ethnic politics is to employ a bottom up approach that makes the current system more transparent

by increasing pressure for change from within by building aggressive multi-ethnic civil society groups that monitor the electoral performance based on the state-building and good governance indicators and not judging parties based on ethnic performance. In addition, encouraging underrepresented groups from all ethnic groups to enter politics can increase the pressure points on the entrenched ethnic parties from youth, women and emerging middles classes. While this appears as a "more of the same" prescription, political processes in Bosnia, Macedonia and other divided societies tend to result in accumulation of power in a handful of political bosses whereas other groups are neither heard nor participated in the decision-making processes.

As the recent intra-group polarization between insiders and outsiders of the political establishment in Kosovo, Macedonia, Bosnia and Montenegro show that even within dominant ethnic groups generational and class differences are becoming more expressed and may lead to political projects that pose a threat to ethnic politics in the longer run. However, it is hard for new political initiatives to break ground into the closed political landscape of traditional parties maintained through patronage networks in business and media sectors. Therefore; to enable new voices in the political system, one of the areas to reform the current system with newcomers is to make party recruitment, financing and decision-making processes more open to public scrutiny.

About the author

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Analysis of §§79, 80 Albanian Civil Code according to the german legal doctrine

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Introduction

The institute of the juridical action is one of the major civil law institutes. Few other institutes can be compared to it with regard to the theoretical and practical significance of the juridical act. The juridical action is of primary theoretical importance to civil law, because it is the starting point of any civil legal transaction. Also, the understanding and further development of this law institute is for countries that apply it an indisputable need, because in this way it is given a great help in addressing more accurately legal cases in practice, thus helping the courts to make fairer and more convincing decisions regarding cases related to the juridical action, but also to assist parties involved in civil litigation to have a broader recognition of their rights and obligations in relation to judicial cases that have to do with this institute. The theory of will has its beginnings in the last quarter of the IXX century in the German Reich and was one of the major institutes which, with the entry into force of the Bürgerliches Gesetzbuch BGB[1] on 01.01.1900, formed the main pillars of civil law in Germany. In the german civil law, „die Willenserklärung" or the declaration of will has an irreplaceable role either in the achievement of rights by civil law subjects, as well as in the assumption of civil-law obligations. This is because the existence of any contract or legal relationship, since it consists of at least one declaration of will, depends on the validity of this declaration of will, so for each case it becomes necessary to study the validity of the latter. Also, the primary importance of the juridical action is expressed in the

[1] BGB the german civil code.

decision given by the Joint Colleges of the High Court of the Republic of Albania, which states: „In essence, by means of a lawsuit envisaged in letter „b" of article 32 of the Civil Procedure Code, the aim is to establish the existence or non-existence of a legal transaction or a right where the juridical action is used as a probationary tool in relation to the creation or the change of a legal transaction that is subject to the judicial review."[2] Thus, this decision of the Joint Colleges of the High Court of the Republic of Albania states the very high importance of the juridical action, according to which it is a „Conditio sine qua non" regarding the existence and validity of any civil legal relationship.

Despite the fact that the term „Willenserklärung" is mentioned only in a few articles by BGB and the fact that BGB, in contrast to the Albanian Civil Code, does not contain a specific article describing what is the declaration of will, according to the german legal doctrine the declaration of will is one of the core institutions of BGB. With the entry of the twentieth century, the theory of will took an even greater importance, and today it is one of the characterizing features of german law. Distinguished jurists such as Friedrich Carl von Savigny, Gustav Hugo, Werner Flume and Claus-Wilhelm Canaris are some of the best-known names that have made an inalienable contribution to the understanding and further development of the institute of the declaration of will, denomination which is equivalent to the term juridical action in albanian law. In the albanian law, the institute of the juridical action also occupies an extremely important place. The theory of the will has increasingly found a greater space in the albanian civil legal doctrine, which is billed to the recognition and adaptation of the german law or other systems of law, which have borrowed much from the german law. It can be said that albanian law has adapted the theory of will from the german law, whether directly or indirectly. Regardless of previous attempts to deal with the institute of the declaration of will, only in 1981, with the revision of the Albanian Civil Code, this legal institute would find a special place in the Chapter II „Civil Legal Transactions and Juridical Action". This code was drafted by albanian lawmakers who had studied in russian law schools and thus achieved through their work to indirectly incorporate elements of the german law, which had largely influenced the russian law regarding the theory of will.[3] It should be said that, despite the restrictions imposed on the provisions dealing with legal relations and the juridical action in the civil code of 1981, income as a consequence of the political-economic system of the time, the step reached by Albanian lawyers was the cornerstone of codification and development of further to the institute of the juridical action in Albania. For example, in Article 11 where the description of civil legal transaction is given is stated: „*Civil legal transactions are social relations of a political and*

[2] High Court of the Republic of Albania, decision no.5, act no. 3, dated 30.10.2012, finding the absolute invalidity of the sales contract, "Dinamika SH.PK" company against Hristo Çavo.

[3] Ardian Nuni, e drejta civile – pjesa e pergjithshme, Chapter 15, Section 1, p. 273.

ideological nature, which are determined by socialist relations in production and are governed by civil law. Civil legal transactions, as political and ideological relations, have a class character; they express the will of the working class and of other working measures. Civil legal transactions are co-operation and mutual assistance connections between people, who are free from exploitation, aimed at the full construction of socialist society."[4]

This article clearly indicates the political and ideological influence on the theory of the will and the civil legal transactions in general, which limited to a considerably greater degree the development of the institute of the juridical action. The changes that followed the change of the political system in the early 1990s were also reflected in the law system in Albania, especially in relation to the civil law. Thus in 1994, with the entry into force of the new civil code, despite the extraordinary influence of italian civil law, the juridical action institute was revised for the first time in order to get closer to the german model. The Albanian Civil Code deals with the juridical action in articles §§79-111 ACC[5]. Despite the adoption of this law institute by the german law, in the albanian law there is a need for further development or even correction in some cases of some articles of the Albanian Civil Code that deal with the institute of juridical action. For example, §79 Par.1 ACC states: *„The juridical action is the lawful appearance of the will of a natural or legal person, aiming to create, change or extinguish civil rights or obligations"*.[6] This description of the juridical action fits faithfully to the description that the german legal doctrine gives to the so-called „Willenserklärung" or the declaration of will. In the german law, the declaration of will is the expression of the will of a person, which is intended to fulfill and achieve legal consequences in the field of private law.[7] However, in the second paragraph of §79 ACC there is an absolute discrepancy with the explaining that the german law gives to the declaration of will. According to §79 Par.2 ACC the juridical action may be one-sided or two-sided.[8] From the viewpoint of the german law it is impossible to have a two or multilateral juridical action. This is because the juridical action under german law is an expression of will. The expression of will is always performed by only one person. It is theoretically impossible for the expression of will to be two-sided. If the expression of the will of a person x in the form of a bid is accepted by y person, then we are dealing with two different juridical actions / declarations of will, ie the bid and the acceptance, and not with a two-sided juridical action. It is a legal transaction that can be both two-sided and multilateral, but not the juridical action. Typical example of two-sided legal transaction is the sale contract, on one side the seller and the buyer on the other. In this case the theorists of law in Albania are confused with the

[4] Civil Code of the People Republic of Albania, 1981, Chapter 2, §11, repealed.
[5] ACC Albanian Civil Code.
[6] Civil Code of the Republic of Albania, §79 sentence 1.
[7] Leipold, BGB 1 - Einführung und Allgemeiner Teil, edition 9, §10, Paragraph 9.
[8] Civil Code of the Republic of Albania, §79 sentence 2.

so-called „empfangsbedürftigte Willenserklärung“ or „nicht empfangsbedürftigte Willenerklärung“. „Nicht empfangsbedürftigte Willenserklärungen“ are those juridical actions / declarations of will that are valid even when they are not delivered to other persons, for example in the case of the testament or in the case of acceptance of the inheritance. „Empfangsbedrüftigte Willenserklärungen“ are those juridical actions / declarations of will, which are necessary to be submitted to the other party, ie to the recipient. An overriding example is an offer to purchase or sell an item, which is a juridical action / declaration of will that must be handed over to the other party. This scientific article is intended to treat theoretically from the point of view of german law specifically only the matter of juridical action in relation to Articles §§79, 80 of the Albanian Civil Code, hence the definition and description of the juridical action and the forms of its appearance. For this reason, the meaning of the juridical act „die Willenserklärung / declaration of will“ will be explained according to the German law. This will be achieved by explaining what is the declaration of will in the German law, what are the forms of its appearance, what its components are, what are the differences between it and the legal transaction (das Rechtsgeschäft), and finally these points will be illustrated with a legal case so that the declaration of will can be disclosed even in practice. In the last part of the article, during the conclusion, there will be given an opinion on what should be improved in the Albanian Civil Code so that there is no misinterpretation of Articles 79 and 80 of the ACC. The juridical action is a broad and complex institute, which is impossible to be completely exhausted in this article, and therefore the issue of the cancellation of the juridical action under the §94 ACC, a point which also has need for revision and upgrade, will not be touched in this article. However, the contestation, the german counterpart of the cancellation in albanian law will be mentioned in some cases to clarify and analyze the subjective side of tne declaration of will.

By explaining the juridical action under german law, where the theory of will is born and where there is the greatest development, there will be opened a window for theorists of law in Albania, which will help to further develop this institute in the Albanian law.

The juridical action in the German law:

The description of the declaration of will:

The german civil law is based on the principle of private autonomy.[9] The most important parts of the principle of private autonomy are the freedom of contract, the freedom of establishment and participation in legal corporations, the freedom of testament and the freedom of ownership. The most common part in practice

[9] Bitter / Röder, BGB AT, edition 3, §2, paragraph 16.

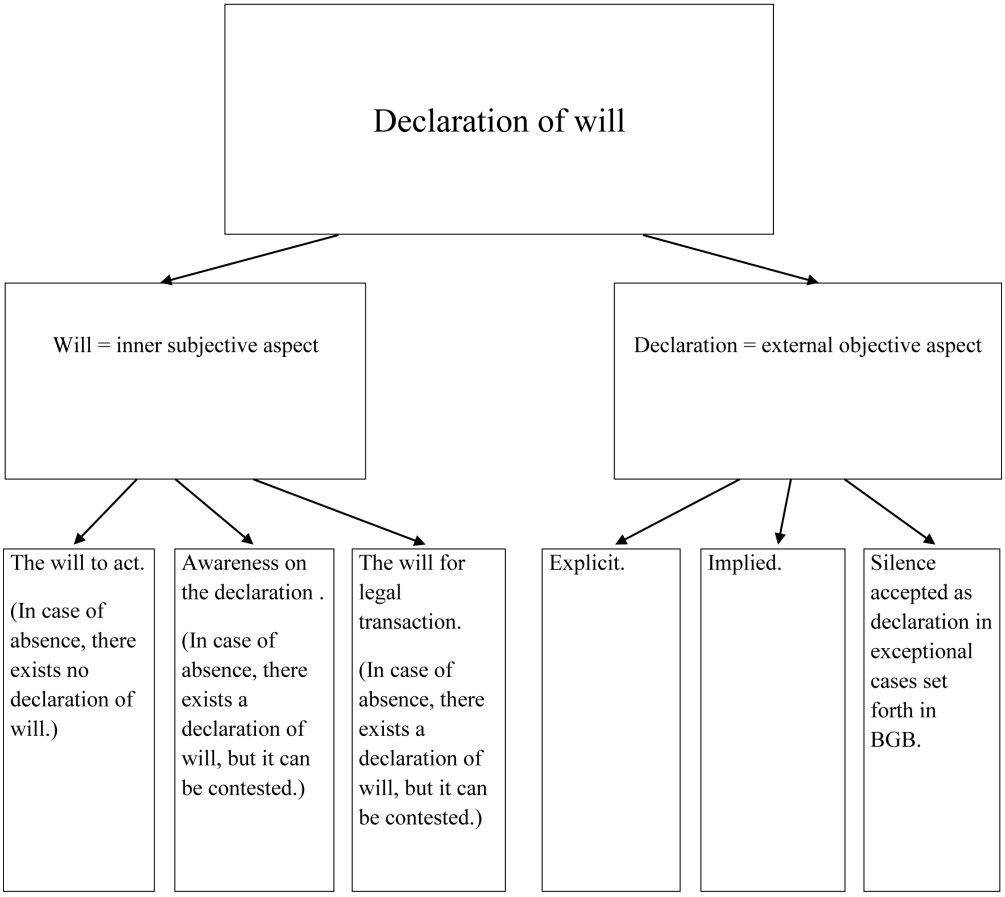
is the freedom of contract. The freedom of contract means that an individual can freely decide whether and with whom to conclude a contract (contract termination freedom), what content will this contract have (freedom of content) and in what form will this contract be (freedom of the form).[10] A detailed description of the meaning of the principle of private autonomy in german civil law can also be found in the decision of the German Constitutional Court „BverfGE 89, 214" of 19 October 1993, which clearly states: „According to the settled jurisprudence of BVerfG[11], the organization of legal relationships by the individual is, according to his will, part of the general freedom of action. Article 2 par.1 GG[12] guarantees private autonomy as an individual's self-determination in the juridical life. Therefore the private autonomy is indispensable limited and requires legal form. The private legal systems consist of a differentiated system of coordinated rules and elements that must be aligned with the constitutional order, but this does not mean that private autonomy is at the discretion of the legislative power and its guarantee under the constitutional law is depleted because of this discretion. The legislative power is obliged to meet the objective-legal requirements of the fundamental human rights and should open an appropriate activity sphere for the rights of the individual in relation to autonomy in legal life".[13] The principle of private autonomy plays an extraordinary role in the realization of free wills among legal entities participating in a legal transaction. On the other hand, this principle relies on one of the main elements of the german law. This irreplaceable element is the declaration of will, without which it is impossible to understand German civil law. Analysis and understanding of the key aspects of the declaration of will is a necessity to understand the other components of BGB.

What is the declaration of will?

In various articles of BGB, such as §§105, 116, 119 BGB is used the term of declaration of will but without defining it. According to the german legal doctrine, the declaration of will is defined as the expression of the will of a person whose purpose is the fulfillment and enforcement of a legal consequence in the field of private law.[14] In the sense of the doctrine of private law, the declaration of will qualifies as such only if it is reflected in the field of private law.[15] There can be no declaration of will in the area of public law. For example, if an authority issues a construction permit, it is not a declaration of will but an administrative act. Examples of declarations of will are the bidding for entering into a contract,

[10] Kohler, BGB AT Compact, Edition 4, §1, paragraph 1.
[11] The Bundesverfassungsgericht is the Federal Constitutional Court of Germany.
[12] Grundgesetz is the German constitution.
[13] BVerfGE 89 214, NJW 1994 36, Bürgschaftsvertäge, 53,54.
[14] Leipold, BGB 1 Einführung und Allgemeiner Teil, edition 9, §10, paragraph 9.
[15] Hirsch, BGB AT, edition 9. §2, paragraph 45.

accepting a contract bidding, contesting a declaration of will etc.[16] It is important to understand that the declaration of will and the legal transaction are two different legal institutes, regardless of their similarity. The legal transaction consists of at least one or more declarations of will. The declaration of will is part of a legal transaction, but not identical with it, though it is often confused because both terms are sometimes mistakenly used as synonyms for each other.[17] In most cases, we are dealing with a legal transaction with more than one declaration of will, for example in the case of a sales contract, which is a legal transaction that is fulfilled as a result of matching declarations of will by the seller and the buyer (the offer and acceptance). The declaration of will itself consists of various parts that are complex and contain a high level of abstraction, which are also presented in the table below.



[16] Schmidt, BGB Allgemeiner Teil, edition 15, chapter 4, paragraph 227.
[17] Brox/Walker, Allgemeiner Teil des BGB, edition 32, §4, paragraph 96.

The objective part and the subjective part of the declaration of will:

To understand what is the declaration of will to pursue and how it applies to our daily activities, we need to understand what its component components are. From the very meaning of the word in German „die Willenserklärung" (declaration or expression of will), we can conclude that the declaration of will consists of two elements related to the declaration of a will of a person.[18]

- The declaration (external expression) as an objective aspect.
- The will (internal expression) as a subjective aspect.

In the opinion of the majority, the main part of a the declaration will is its objective aspect, because the inner will is not visible and to carry out a declaration of will must necessarily have an external declaration of will.[19] This is correct, but the fact that the objective aspect of a declaration of will is decisive for expressing the will of a person who will enter into a civil legal transaction does not necessarily mean that the subjective part of a declaration of will carries a lesser weight in the conclusion of a legal transaction. According to §133 BGB „Interpretation of the declaration of will", during the interpretation of a declaration of will must be explored the real will of the person and should not be limited to the literal meaning of the declaration. This article itself argues the idea that the subjective part of a declaration of will plays an equally important as the objective aspect. The balance between the objective external side and the subjective inner side of the declaration of will has been provided by the federal high court during its decision-making. It states: „According to §133 BGB, the true will of the declarant should be considered during the interpretation of declarations of will. In doing so, it is necessary to begin with the interpretation of the statement formulation and consequently to consider what, in the first place, is objectively declared by the parties involved in the civil legal transaction. However, during the study of the will of the parties, consideration should also be given to those accompanying circumstances which relate to the true purpose of the declaration. The declaration of will that should be delievered to the other party must be interpreted in such a way that the recipient in good faith would understand from the horizon of an objective recipient."[20] On the practical side, as we will see in the next chapters, the subjective part of a declaration of will plays an important role in the right to contest the declaration of will. If someone makes a statement, a statement that does not really correspond to the true will of the declarant, then we have to do with a discrepancy of the internal will with the

[18] Rüthers/Stadler, Allgemeiner Teil des BGB, edition 18, §17, paragraph 1.
[19] Köhler, BGB AT, edition 41, §6, paragraph 2.
[20] BGH, Urteil vom 16. Oktober 2012 - X ZR 37/12.

external statement, so in this case the declaration of will can be contested under §119 BGB „Contestation because of the error".[21] The declaration of will carried out will be valid due to the protection of another person who is in good faith, but the person who has made the declaration of will, which is in discrepancy with his true will, will be entitled under §119 BGB „Contestation because of the error" to challenge this declaration of will. In this way the declaration of will carried out will be declared void with the effect of Ex-Tunc under §142 BGB „Effect of contestability". This leads to the invalidity of the legal transaction, which indicates the overwhelming importance of the subjective part of the declaration of will in a legal transaction. From this it can be concluded that the objective part of a declaration of will is very important at the moment of performing a declaration of will, while the subjective side plays a greater role in terms of its final validity.

The objective part of the declaration of will:
In interpreting a declaration of will, it is necessary not only to investigate the true will of the declarant (§133 BGB), but also to take into account the perspective of the recipient of the declaration of will, according to the so-called „objective horizon of the recipient of the declaration of will".[22] An objective aspect of a declaration of will exists if the conduct of a person who commits a declaration of will for any objective observer in the role of the recipient of the declaration of will would give the impression that the declarant is willing to enter into a civil legal transaction.[23] To make it clearer, when a person behaves in such a manner, whose actions allow others to understand that he will enter into a legal transaction, then we have to do with the objective aspect of a declaration of will.

The declarant of the declaration of will must calculate his statement in the manner that the recipient of the declaration of will would understand through the horizon of the objective observer. The declaration of will carried out remains valid until the moment of its contestation. This is true even if the declarant lacks awareness on the declaration, but has been able to calculate that the recipient of the declaration of will, in good faith, would understand his action as a declaration of will. This explanation is also underlined in a federal court ruling of 7 November 2001[24]: „Despite the lack of awareness on the declaration, the declaration of will remains valid if the declarant during the application of the care sought in the legal circulation could have known and avoided that his declaration of will, under the principle of protection of trust, to be considered by the recipient as a declaration of will".[25]

[21] Otto Palandt/Jürgen Ellenberger, BGB-Kommentar, edition 73, §119, paragraph 7.
[22] Petersen, Examinatorum Allgemeiner Teil des BGB und Handelsrecht, edition 1, §9, paragraph 7.
[23] Grigoleit/Herresthal, BGB Allgemeiner Teil, edition 2, paragraph 24.
[24] BGH The Federal High Court of the German Federal Republic.
[25] BGH, Urteil vom 7. November 2001- VIII ZR 13/01.

Declaration of will according to the objective aspect can be expressed explicitly or implicitly.

The will is explicitly expressed when the latter is expressed in words or written text.[26] To better illustrate this case let's analyze a brief case: B goes to the store and tells the seller S: Please give me a cigarette package! Seller S gives B the cigarette package and says: 6 euro please! B leaves the required amount of money on the table and comes out of the store.

In this case we are dealing with a explicitly expressed declaration of will, as buyer B explicitly expresses his readiness to buy a cigarette package. Another case in which we are dealing with a declaration of will explicitly expressed is the written form. For example: „B writes an email to F, who is a photographer with the words: I want to buy a picture where you have photographed the Brandenburg Gate for 30 euros. F returns B an email with the words: I accept your offer, the photo it is yours." Even in this case we are dealing with an explicitly expressed declaration of will, which is expressed to the recipient with a text in the form of an offer.

As I have written above, a declaration of will may also be carried out in an implied or conclusive manner.[27] A case of implied declaration of will is when a customer buys something in a supermarket, puts it in the paydesk and the cashier scans the item and finally asks for the item's price. In this case we are dealing with a behavior that a third person, in the role of an objective observer, would think that the person who placed the item in the paydesk wants to participate in a legal transaction. The Court of the State of Berlin during its decision is expressed in relation to this matter as follows: „In the case of implied declarations of will, the declarant is aware of the circumstances that make his action a declaration of will."[28]

In special cases silence can also be understood as an expression of a declaration of will.[29] However, these cases are rare, because silence is usually not considered an expression of will.[30] Silence can be understood as an external expression of a declaration of will in those cases where BGB expressly provides that silence is to be taken as an acceptance or a rejection of a bid, as in §416 par.2, §455 par.2, §516 par.2 BGB .

The subjective part of the declaration of will:

It is not enough just to analyze and explain the objective side of a declaration of will. For a better understanding of a declaration of will, it is necessary to analyze its subjective side or otherwise the internal will of the declarant. The subjective side of the declaration of will is divided into three parts, which coincide with the

[26] Schmidt, BGB AT, edition 16, §4, paragraph 232.
[27] Bretzinger/Büchner-Uhder, Bürgerliches Recht und Zivilprozessrecht, edition 2, p. 104.
[28] LG Berlin, Urteil vom 13.11.2007 - 63 S 154/07.
[29] Brox/Walker, BGB AT, edition 32, §4, paragraph 91.
[30] Grunewald, Bürgerliches Recht, edition 9, §1, paragraph 4.

psychological theories during the BGB drafting period. These parts are the will to act, the awareness on the declaration and the will for legal transaction.[31] In contrast to the objective aspect ofthe declaration of will, where it is necessary to fulfill all its elements in order to have a valid declaration of will, for the subjective side it is not necessary to fully fulfill all three of its elements in order to have a valid declaration of will.[32] It is enough to only partially fulfill the elements of the subjective side of the declaration of will in order to have a valid statement of the declaration of will. Only the will to act is indispensable, while awareness on the declaration and the will for legal transaction are not indispensable elements for giving a valid declaration of will. The effect of the lack of awareness on the declaration is contradictory among the law theorist and there is a debate whether the lack of awareness on the declaration results in the absolute invalidity of the declaration of will or the person who has declared the will is given the opportunity to challenge it under §119 par.1 BGB „contestation becauese of the error". During its decision, the Federal High Court states: „Such inaccuracy of content, which is related to a lack of awareness on the declaration or lack of will for legal transactions, implies that the person who has performed the declaration of will has a discrepancy between what has stated and what he really wanted to declare. The declarant in this case has made a declaration that does not correspond to his internal will. The declarant intended to give a voluntary declaration but did err on the meaning of the statement given. For an application of §119 par.1 BGB there is room only if the content of the statement and the awareness on the declaration were incompatible with each other."[33] Given that the Federal High Court BGH, during its decision-making, accepts the second alternative, even in this article it will be taken as well that the lack of awareness on the declaration results in the contestation of legal willpower, but not in its a-priori invalidity.

I. The will to act:

By the term „will to act" we understand the will to do a certain act.[34] If someone makes a declaration of will without the will to act, then this statement will not be counted as a declaration of will. The will to act is an essential element for the validity of a declaration of will. Without it there can not be a valid declaration of will. Cases involving declaration of will without the will to act are rare and rarely encountered in practice. The main case of a declaration withoiut the will to act is that of unconscious actions such as acts under hypnosis, reflexive movements, or sleeping actions.[35] If we are dealing with one of the above cases, this action will not

[31] Rüthers/Stadler, BGB AT, edition 18, §17, paragraph 6.
[32] Schwab/Löhnig, Einführung in das Zivilrecht, edition 18, p. 212, paragraph 468/469.
[33] BGH Urt. v. 28.04.1971, Az.: V ZR 201/68.
[34] Brox/Walker, BGB AT, edition 32, §4, paragraph 84.
[35] Schapp/Schur, Einführung in das Bürgerliche Recht, edition 4, §9, paragraph 352.

be considered a declaration of will but only a mere action as a consequence of a person's unconsciousness, and therefore no legal consequence will be produced.

II. The awareness on the declaration:

Perhaps the most interesting element of the subjective side of the declaration of will is the awareness on the declaration. In order too understand the subjective side of a declaration of will, the concept of awareness on the declaration should be comprehensively understood. The german legal doctrine gives this explanation for the awareness on the declaration: „The declarant has a awareness on the declaration if he knows that his action may constitute a statement of relevant legal relevance. He must be aware that his action causes legal consequences".[36] So the declarant must clearly understand that his action will bring any legal consequence. As mentioned above, the fact that the lack of awareness on the declaration invalidates a legal will is controversial. There are two predominant thoughts on this subject. The first is that due to lack of awareness on the declaration, there doesn't exist a declaration of will. According to this opinion, the lack of awareness on the statement has an effect equal to the lack of the will to act.[37]

The second and generally accepted opinion is that the lack of awareness on the declaration does not make the declaration of will null, but makes it contestable.[38] The reasons why most lawyers admit this opinion is because the recipient of a declaration of will due to good faith has the right to interpret the declaration given by the declarant as a declaration of will, and the declarant should have shown proper care in the course of the legal circulation to avoid the possibility that the recipient understands that statement as a declaration of will.[39] The BGH during the jurisprudence states: „With the necessary care in the legal circulation, the declarant of will must acknowledge and avoid the possibility that his statement, because of the principle of trust, is understood as a declaration of will by the recipient".[40]

III. The will for legal transactions:

The will for legal transaction means the intention of the declarant of a declaration of will is to participate in a specific legal transaction, that is, to achieve a particular legal consequence.[41] In the case of the will for legal transaction, in contrast to awareness on the declaration, it is not about any legal consequence, but for a concrete and well-defined legal consequence.[42] Anyone who makes an offer to buy a designated item also has a will for legal relationship, which is oriented to

[36] Rüthers/Stadler, BGB AT, edition 18, §17, paragraph 8.
[37] *Singer*, JZ 1989, 1030 (1034), Juris.
[38] Leenen, BGB AT: Rechtsgechäftslehre, edition 2, §5, paragraph 33.
[39] Klunziger, Einführung in das Bürgerliche Recht, edition 16, §8, p. 81.
[40] BGH, 07.06.1984 - IX ZR 66/83.
[41] Klunziger, Einführung in das Bürgerliche Recht, edition 16, §8, p. 81.
[42] Boemke/Ulrici, BGB AT, edition 2, §5, paragraph 8.

conclude a sales contract with respect to a particular item. Let's take an example: „A wants to buy the car of B for € 5430. If he makes B an offer for buying this car for € 5430, then this offer corresponds to his will for a legal transaction. But if he during the formulation of the bid has errd and instead of making this offer for the car of B, makes this offer for the motocycle of B, then in this case despite the fact that there is awareness on the statement, because A would like to bring any legal consequence, there is a lacking of the will for legal transaction because A does not want this specific legal consequence (buying the motorcycle of B for 5430 €)".[43]

It is important to say that the will for legal transactions is not a necessary component for the validity of a the declaration of will. If the will for legal transactions does not exists, the declaration of will remains valid but it may be contested in accordance with §119 par.1 BGB and thus declared invalid with Ex-Tunc effect.[44]

Illustrative case for the declaration of will

To sum it up, after a theoretical analysis of the declaration of will and its constituent parts, it is necessary that what was explained above should be presented in a concrete legal case. This case is extracted from the book „Die Fälle"[45] by the author Rumpf Rometsch and addresses the case of a contract between two persons, one of whom lacks awareness on the declaration and the will for legal transaction. Along the treatment of this case all the points explained so far will be affected.

It should be borne in mind that the solution of cases in the German system is handled in a special way. This special way of treatment is called „der Gutachtenstil", which in the english language would translate as the style of analytical expertise of the case. This way of handling the case has as a prerequisite the fact that the answer can never be given without performing first its theoretical treatment and analysis. According to the „Gutachtenstil", initially should be discussed the theoretical possibilities of solving the case and then should be proven whether these solutions suit the case in question. The order of solving the case according to the analytical expertise style is as follows: Initially there shoud be a hypotheses whic is to be proved, then should be given the theoretical definition of the legal terms related to the hypothesis in question, then the theoretical definitions should be aplied in practice, then in the end it is to be proved whether the hypothesis stays or falls. The following legal case clearly presents the style of the analytical expertise of the casus, and with a careful reading of the case the reader will also gain knowledge of the manner of how a case can be solved with this certain style.

[43] Brox/Walker, BGB AT, edition 32, §4, paragraph 86.
[44] Schapp/Schur, Einführung in das Bürgerliche Recht, edition 4, §9, paragraph 355.
[45] Rumpf Rometsch, Die Fälle, edition 5, Willenserklärung, case no. 5.

Also in the following case will not be considered the right of contestation of the declaration of will according to § 118 BGB „contestation ecause of the error".

The case:

S receives two letters in a day, which he reads due to his damaged look with his glasses. One letter includes an invitation for the 40th anniversary of his graduation, the other is a concrete offer of writer A regarding the sale of the first edition of his book „Hog Farm Kommune" at a price of 100 €. Both papers are equipped with a ready-made card. S, who has momentarily removed his glasses, signs the letter of reply to the writer with the thought that he is accepting the invitation of the graduation anniversary. Few days later, S gets the book from A. A asks from S the price of the book. Is there an obligation for S to pay the price of the book under §433 par.2 BGB[46]?

The solution

A can have a claim against S for the payment of the price in accordance with §433 par.2 BGB. This implies that there must be an effective sales contract under §433 BGB. (Hypothesis)

The sales contract consists of two consensual declarations of will, offers and admission. (Definition of contract)

An offer is a declaration of will requiring delivery to the other party by which a request is made in such a way that the other party can enter into a contract simply by the offer approval. (Offer Definition)

A declaration of will is an expression of will in the area of private law, which aims to bring a legal consequence. A declaration of will consists of an objective part and a subjective part. (Definition of the declaration of will) A has given to S a concrete written offer for the sale of a book. For this reason we conclude that the offer exists. (Subsumption)

It is questionable whether S has accepted the offer of A.

Acceptance is a declaration of will requiring delivery, by which the recipient accepts without reservation and without modification the bidder's bid. In the case of a modificated acceptance, we are not dealing with an admission but with a new offer. (Acceptance definition)

An acceptance by S is not ruled out due to the lack of an external part of the declaration of will. Looked from the outside, S signing the letter from the point of view of an objective third party (recipient horizon) suggests accepting the offer

[46] By a sales contract, the seller of a thing is obliged to deliver the thing to the buyer and to procure ownership of the thing for the buyer. The seller must procure the thing for the buyer free from material and legal defects. The buyer is obliged to pay the seller the agreed purchase price and to accept delivery of the thing purchased.

from A. However, it is questionable that S does not know what he is signing. In this case, one of the components of the subjective subjective side of the declaration of will may be missing. In principle, only the so-called the will to act is necessary. (Subsumption) At the moment of the signing of the response card, he was aware that he was doing an action, ie there is a willingness to act. However, there may be a lack of awareness on the declaration. Awareness on the declaration exists when the declarant is aware of declaring something of legal importance. (Definition of the will to act and awareness on the declaration)

S during the signing of the response card without glasses had no awareness of declaring something of legal importance. Rather, he thought he was signing a statement that related only to his private sphere (response to the invitation). However, lack of awareness on the declaration is irrelevant if, on the grounds of proper due diligence in the legal circulation, the declarant may have known and avoided that his statement contained something of legal importance. (Definition of objective recipent horizon.) This assessment is based on the principle of protection of the other party in good faith. At least he had the consciousness that without glasses, he could not read correctely, so he could have avoided giving a declaration of will by signing the offer of A. Therefore he violated the obligation to show the required care in the legal circulation , so the lack of awareness on the declaration is irrelevant with regard to the validity of the declaration of will. (Subsumption) Because of the lack of awareness on the declaration, it also inevitably lacks the so-called will for legal transaction. While S's action was not committed to bring any legal consequence whatever, then this action could not have meant the creation of a specific and legitimate legal consequence. However, there is no necessity for a will for legal transaction, in order to have a valid declaration of will. Also awareness on the declaration in this case was lacking, but also the latter was unnecessary due to the reasons outlined above. Therefore, despite the lack of awareness on the declaration and despite the lack of will for legal transactions, there exists a declaration of will in the form of acceptance. (Subsumption)

Result: There exists a sales contract between A and S for the book in question under §433 BGB because the declarations of will of the parties are valid. S has an obligation to pay the purchase price of the book under §433 par.2 BGB versus A. (Final Result and Hypothesis Response).

Conclusions

In this scientific paper, theoretical description of the juridical action/declaration of will in German law, the so-called „die Willenserklärung". Along with the declaration of will, the objective and subjective aspects of the declaration of will,

the forms of external expression of the declaration of will and the three main components of the subjective side of the declaration of will are treated. These points discussed in this scientific article correspond to articles §§79, 80 of the Albanian Civil Code, which deal with the definition of juridical action and the forms of its expressions.

First, it must be said that, despite the similarity between the German and Albanian system of law in relation to this institute, there are some visible changes that Albanian law has to revise in order to get closer to its counterpart in the German law. For example, if the albanian law wants to stay faithful to the explanation of this institute under German law, one of the main points that would need revision would be §79 par. 2 ACC, which states that juridical action may be one-sided or two-sided. If we take for granted that the juridical action is a legitimate display of a person's will with the purpose of creating, changing or extinguishing civil rights or obligations, as stated in §79 par.1 of the ACC, then paragraph 2 of Article 79 ACC should be removed or changed. This is because it is physically impossible to have a two-sided expression of will. When the person x expresses his declaration of will, then he performs a separate juridical action, the other person y, to whom this declaration of will is addressed, who can accept or oppose this declaration, with this acceptance or opposition expresses another will, which is completely separate from the will of the person x. So in this case we are dealing with two separate juridical actions, and not with a two-sided juridical action. As suggested in the preface of the article, instead of unilateral or two-sided juridical actions, the terms should be changed to juridical actions requiring delivey and juridical actions that do not require dilvery. This uncertainty in §79 par.2 ACC results in the confusion of juridical action with civil legal transactions, institutes which need to be separated from each other. This confusion is reflected in §659 ACC where the contract description is given. According to §659 ACC the contract is a juridical action by which one or several parties create, change or terminate a legal relationship. In my opinion, here is a need for correction because the contract is not a juridical action but a legal transaction, which comes to life as a result of at least two juridical actions that match with each other. The contract consists of two or more juridical actions, ie expressions of the will of the persons participating in this contract, oriented towards the fulfillment of legal consequences in private law. For example, in order to have a sales contract, there should be a juridical action in the form of a bid by the seller and a juridical action in the form of acceptance by the buyer. So we conclude that legal action is part of the contract but can not include the entire contract. The contract itself is a civil legal transaction. In the albanian law, the civil legal transaction is defined as a relationship between the subjects of the law governed by the rules of civil law and

which is intended to create, amend or terminate the civil legal consequences.[47] This explanation also fits the explanation given by German law with the so-called „das Rechtsgeschäft" or the one that provides Anglo-Saxon law to the so-called „legal transaction". On the contrary, if a juridical action is conceived by Albanian law scholars as a mix between the legal transaction and the declaration of will in the sense that it has in the German law, then this means that the scientists of albanian legal doctrine will have a difficult work in the future to further develop and enrich this institute because the declaration of will and the civil legal transaction are very different from eachother, and merging them into one would leave room for many uncertainties. Another point regarding the juridical action where albanian law needs improvement is to explain the subjective side of the juridical action. The work to improve this point is largely dependent on the enrichment of the legal doctrine and on the jurisprudence of the Joint Colleges of the Higher Court of the Republic of Albania. The subjective side of the juridical action is of primary importance with regard to cases of relative invalidity, especially in relation to the case of the error mentioned in §94ç ACC. According to §94ç ACC contestable are called juridical actions that the person has committed by being deceived, threatened, in error or because of the great need. The error is further explained in §97 ACC, which states that the error may cause the juridical action to be declared invalid only if it relates to the quality of the thing, the identity or qualities of the other person, or with such essential circumstances as without them, the party would not have committed the legal action. If we have a mistake about the qualities of the thing then the person who has performed the juridical action has a will to act, also has awareness on the declaration, but there is no will to legal transactions. This is because the declarant wanted to give a statement of will that would bring a legal consequence, but not a statement that would have a completely different effect from that what the declarant wanted to achieve. If a person carries out a juridical action by mistaking on the qualities of an item, then according to the German law, he lacks the will for that particular legal transaction, even though there is an initial compatibility between declaration and will. This juridical action has resulted from misunderstanding about the attributes of the thing and therefore it can be annulled under §94ç KC in conjunction with §97 ACC. This is one of the points that shows the importance of not only in theory, but also in practice, why the institute of the juridical action needs further development and understanding, especially for the subjective side of the juridical action.

In conclusion, it can be said that the juridical action in albanian law has not been fully adopted by German law, and there is also needed a more detailed understanding of the theory of will by the albanian scholars and the law doctrine.

[47] Valentina Kondili, E Drejta Civile 1 – Pjesa e Pergjithshme, Tirane 2008, page 77/78.

About the author

Kristi Vako, after completing his studies for Bachelor of Law at the European University of Tirana with excellent results, continued his master's degree at the Humboldt University in Berlin for „German and European Law and Legal Practice". He completed this master successfully with an average mark of 1.7. The master's thesis written by the author titled „Contestation of the declaration of will in the german and albanian law" was rated with the mark 1.3 (very good) and was therefore published in Germany.

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7- BGH, court decision 07.06.1984 - IX ZR 66/83.

Abbrevations list:
1- ACC – Albanian Civil Code.
2- BGB – German Civil Code.
3- Par. - Paragraph.
4- § - Article.
5- GG – German Constitution.
6- BVerfG - The Federal Constitutional Court of Germany.
7- BGH - The High Court of the Federal Republic of Germany.

REVIEW ARTICLES

Coping Strategies of Cyberbullying

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Abstract

This article is a literature review that aims to explore the best strategies that can help to deal with the effects or consequences of cyber bullying victims. Cyber bullying is a widespread phenomenon nowadays. Most of the studies are focused on factors that affect cyber bullying, gender differences, cyber bullying impacts, but not in concrete strategies that can be successful against cyber bullying. This literature review can serve as an orientation and a way to get more information on cyber bullying strategies.

***Key words**:* cyberbullying, coping strategies, family, school, friends

Introduction

For some time now cyber bulling has become a constant part of life especially for youngsters who are Internet savvy and simultaneously impressionable. Although not as developed, Albania has also become part of this development as according to Internet World Stat, in Albania, by June 2016, 1,823,233 people were Internet users and 1,400,000 were Facebook users. The high rate of internet users increases the risk of experiencing negative experiences such as cyber bullying.

Cyberbullies do not have to be strong; they only need a phone or computer and the desire to do it. Although it has been going on for some time now, we still lack a clear picture of this phenomenon since it is complex and has numerous definitions. What we would like to note in this review article is the definition of Li (2007) of cyber bullying as the "use of information technology and communication such as e-mail, cellular, messages, personal site web site, to support a repetitive,

premeditated and hostile behavior by an individual or group that is meant to harm others" (78).

This review article aims to summarise how these factors affect the young age cohort and identify the mechanisms most suitable to deal with these experiences. Coping strategies are defined as responses (behaviors, but also emotions/cognitions) that are successful (or unsuccessful) against cyber bullying. Most of these papers report findings regarding general prevention strategies (e.g. anti-bullying policies or cyber safety strategies) and the use of coping strategies such as seeking support, reactions towards cyber bullies (retaliation or confronting), technical solutions and avoidant and emotion-focused strategies.

Methodology

This literature review aims to identify cyber bullying coping strategies used by cyber bullying victims, family and schools.

To realize this paper are included and excluded many students, based on some criteria that have been set. The following inclusion criteria were used:

- Empirical studies on cyber bullying
- Who is coping: Parents, Teacher (Schools) or students
- Paper should include some measures of coping strategies

Combating cyberbullying

Technical strategies

Cyber bulling victims can undertake different actions, such as : a) blocking a sender (Price, & Dalgleish 2010;) b) restricting particular screen names from their buddy list (Juvonen & Gross 2008) c) using different identity (online) - the username (Juvonen & Gross 2008), e-mail address (Smith et al. 2008), one´s mobile phone number (Price & Dalgleish, 2010) d) deleting violent messages (Chesney et al., 2009) e) reporting (Chesney et al. 2009) f) tracing an aggressor to identify his/her identity (Stacey 2009) According to the studies, "blocking" was one of the most usual action undertaken by cyberbulling victims (Juvonen & Gross, 2008; Smith et al. 2008). Furthermore, deleting violent message action was considered to be really common among cyber bullying victims (Chesney et al. 2009). On the other hand, tracing an aggressor to identify his/her identity (Stacey 2009) was found to be the least common. Although a large number of technical strategies and variability

in preferences is apparent, their effects have been measured only in a single study which was included in the present literature overview. Specifically, according to Price and Dalgleish (2010), blocking a sender has been found to be the most helpful.

Confronting a bully

There are two main different methods of confronting a cyber-bully: retaliation and non-aggressive confrontation.

According to the articles that are included in the present literature overview retaliation is explored on two distinct levels: offline and online retaliation. Juvonen and Gross (2008) found that cyber victims were more likely to retaliate offline (60%) than online (28%). Furthermore, there were observed gender differences regarding the preferences of the place for retaliation. Specifically, males' responses revealed more active and physical retaliatory behavior (by physical assault), whereas females' responses indicated more passive and verbal retaliatory behavior (by changing her e-mail address or screen name and sending a message back) (Hoff & Mitchell 2009). However, other studies provide evidence that offline or online retaliation was less prevalent than other coping strategies (Price & Dalgeish 2010). To conclude, the findings on the place of retaliation do not unequivocally support the assumption that victimized adolescents take advantage of the anonymity of cyberspace for revenge. Instead, they only show adolescent girls that seem to be more likely to turn to the Internet to retaliate.

Differently from retaliation, it has been found that some cyber victims tried to confront in a non-aggressively way their cyber bullies. Based on the samples, the percentage of teenagers who took this action varied from 16.4% to 25% (Juvonen & Gross 2008). According to the Price and Dalgleish (2010) study, confronting a bully offline was the most often used action against bullying, and yet also the least helpful one. On the other hand, Huang and Chou (2010) have shown that personal confrontation was well accepted among children (10-13 years) in cases where students were harassed by someone they knew.

During the research we also identified papers that are based on the coping strategy referred to as doing nothing/ignoring. This can also be represented by actions such as to stop looking at websites where the events happened or just staying offline (Price & Dalgleish 2010). Apart for some exceptions, doing nothing or ignoring was a relatively often used strategy and was generally proposed by students (Hoff & Mitchell, 2009; Price & Dalgleish, 2010; Smith 2008). However, two studies have shown its ineffectiveness (Hoff & Mitchell, 2009; Price & Dalgleish 2010).Especially, Hoff and Mitchell (2009) came to the conclusion that the victims simply did not know what else to do, since "doing nothing" resulted in an escalation of cyber bullying.

Instrumental and Emotional Support

During the research we took into consideration papers that addressed support from adults, teachers, peers or friends and other types of support or help. Some papers included empirical data regarding these different types of supports but others are more theory-based papers that give suggestions/advice about what different providers of support can do about cyber bullying. Firstly, we distinguished between instrumental and emotional support where instrumental support was defined through "the most concrete direct form of social support, encompassing help in the form of money, time, in-kind assistance, and other explicit interventions on the person's behalf", while emotional support captured support from family and close friends including empathy, concern, caring, love, and trust (House 1981 cited by Cohen & Wills 1985). According to the findings, studies lack this approach and seem not to distinguish between asking for help and asking for support. Therefore, in this report we decided to address them together.

Cyber bullying has a serious emotional impact and it has been found that telling others about it, such as parents, careers and teachers, is helpful (Price & Dalgleish 2010). However, studies point to the fact that most of victims did not seek this support and that the majority of them lack coping strategies to deal with cyber bullying (Li 2006; Price & Dalgleish 2010).

Adults Support and Help from Parents, Teachers and Other Adults

According to some studies telling a parent about cyber bullying is one of the most popular coping strategies (Smith et al. 2008). However, others documents argue that seeking support from adults was not popular although it was deemed effective regarding helpfulness (Price & Dalgleish 2010). In fact only a few of cyber victims and of students that knew about cyber bullying told their parents or adults about it (e.g. Aricak et al. 2008; Li 2006/2007). There are also empirical findings providing evidence that telling a teacher was relatively effective. However, this also was not a popular strategy (Price & Dalgleish 2010). According to some empirical studies the percentage of cyber victims that told their teachers about the abuse was minimal (Aricak et al. 2008). In a focus group study, students admitted that they would discuss cyber bullying with their school counselor (Wright, Burnham, Inman, & Ogorchock 2009). But the truth is different, they usually do not talk with their parents or other adults, including school counselor or teacher, about cyber bullying phenomenon (Hoff & Mitchell 2009; Juvonen & Gross 2008; Li 2006/2007)

Students think that adults are quite unaware of what cyber bullying is (Mishna, Saini, & Solomon, 2009) and only a few tell adults (from school or outside of it) about bullying and ask their help (DiBasilio 2008). Even so, they seem not to be ready to talk with their teacher or counselor and more likely to tell their parents (DiBasilio 2008). In the retrospective study developed by Hoff and Mitchell (2009), only a small percentage of students (16.7%) informed school authorities about cyber bullying incidents. According to these students, 70.7% claimed that the school authorities frequently did not do anything to prevent this phenomenon or help them. They think that schools didn't take seriously these incidents. Most of them perceived that schools wanted distance from this problem. When asked about anti-cyber bullying school policies 36.1% reported that their school had a policy, 15.4% reported that their school did not have one and 48.6% of students reported that if there was such a policy in their school they were not aware of it (Hoff & Mitchell, 2009). On the other hand, Li (2006) notes that only 64.1% of students believed that adults from their schools would try to help them after becoming aware of it.

They admit that there are different reasons not tell about cyber bulling phenomenon. Some of the reasons are the fact that students believed that they need to learn how to deal with cyber bullying themselves, the fear that this would complicate their problems even further since adults mostly don't understand their online world, the fear of being advised to ignore the situation, the perception that school actors do not do anything against cyber bullying, the wish to be independent, the necessity to avoid worrying or angering parents, and the desire to avoid the loss of their computer or cell phone privileges or to hide embarrassing/non comfortable behavior (Hoff & Mitchell 2009; Juvonen & Gross 2008; Mishna et al. 2009).

Students think that bullying is ignored or not noticed by school staff for almost half of the time. Some also perceive negatively the prevention strategies carried out by the school and believe that's the reason why cyber bullying occurs outside school. According to some students, teachers cannot do anything (Mishna et al., 2009). But some others believe that, even if it occurred outside school, school authorities should and would deal with cyber bullying (Mishna et al. 2009). Students aged between 13 and 15 admitted that they would like to choose they problem themselves and the older ones (16-17yrs) believed even more on themselves (Stacey 2009). They used various strategies to be safe on the cyberspace and considered that it was only necessary to involve adults in exceptional circumstances (Stacey 2009).

Although teachers and counselors can take several actions or measures (e.g. dealing with bullying or the bully-victim; ignoring it; calling the parent; bringing bullying to the attention of the school principal and actors; addressing this issue during the lesson; using one specific method for reducing bullying; teachers bringing bullying to the attention of counselors and teachers helping students

work it out themselves), none of the cyber bullying victims would tell their teacher about the victimization as they did not agree that it was right to punish the bull.

Friends Support

Generally, help from parents and teachers is perceived positively by children (10-13yrs) but many of the students admitted that they are more likely to get help from their peers (Stacey 2009). In fact, empirical research demonstrated that cyber victims actually ask for help after a cyber-bullying experience mostly from friends and less so from parents and teachers (Topçu, Erdur-Baker & Capa-Aydin 2008). Students admitted that they would tell would tell a peer about cyber bullying and previous research suggests that peers can help dealing with and preventing this phenomenon (DiBasilio 2008). In fact, 43.6% of students from private schools and 28.6% from public schools asked help from their friends (Topçu et al. 2008). Another study reports that 15% of cyber bullied students told their friends (Aricak et al. 2008). Clearly then, being closed to a friend is the most helpful strategy to deal with victimization and it is also the second most frequent reaction to it after confronting the bully (Price & Dalgleish 2010). When asked about their possible reaction to cyber bullying participants reported that they most probably seek help from friends (Wright, Burnham, Inman & Ogorchock 2009).

Although children (10-13yrs) believed that help from adults was a good manner to deal with cyber bullying, they still believe more the idea that peer mediation is effective to combat cyber bullying compared to an adult intervention (Stacey 2009). Early teenager students (13-15yrs) also expressed their preference for the peer group, particularly the possibility of discussing cyber bullying with older peers. The older students considered that they had a responsibility to younger peers, in advising them, discussing their cyber bullying experiences and helping them with strategies to deal with it (Stacey 2009).

Peer-intervention (i.e. peer support) can reduce cyberbullying in school by: creating bullying awareness in the school, developing leadership skills among students, developing intervention practices and team-building initiatives in the student community (DiBasilio 2008). After this type of intervention, the counselors needed to challenge the bully more often as a consequence of teachers reporting bullying more than before and because the number of teachers that advised students to work it out themselves decreased. More witnesses of bullying were committed to get someone to stop bullying or tell a teacher. The number of victims who reported joking about it also increased as did the number of those who said they retaliated (DiBasilio 2008).

Emotional coping

According to research (Campbell, Slee, Spears, Butler & Kift, 2012), the differences between the perceptions of harm caused by cyber bullying and actual reports of depression and emotional difficulties is real as there was a discrepancy in participant's reports of the two. Especially, those who had been bullied by traditional means reported that they believed their victimization caused more harm and negative impacts, while statistical analyses show that cyber victims showed higher levels of depression and anxiety and greater problems with social relationships. The reason that caused that is not fully understood, but it suggests that there may be at least some proportion of young people who are being cyber bullied who may not see their experiences as being of a serious enough nature to look for help in dealing with them.

Cyber bullied mental health is likely to be mediated by other factors that contribute towards the negative effects. For example, some studies showed that any type of bullying increases the risk of depression, but did not increase risk of suicide (e.g. Turner, Exum, Brame & Holt, 2013). Other studies have found that the relation between victimization and self-harm and suicide is mediated by existing levels of depression, so that those who already display mental health problems and are cyber bullied are at most risk of self-harm and suicide (Hinduja & Patchin, 2010). Furthermore, victimization may impact on self-esteem in young people and this in turn is likely to be linked to depressive symptoms in those who are victimized.

Cyber bullying victims dealt with an array of academic difficulties as a consequence of their cyber bullying experiences. Many of them think that school is an unsafe institution (Skryzpiec, Slee, Murray-Harvey & Pereira, 2011), which can result in reluctance to attend school, higher levels of truancy, and no concentration due to the anxiety caused by being cyber bullied, which may then lead to disciplinary actions from teachers.

Conclusion

In conclusion, there is a lot of work to do to deal with cyber bullying both by practitioners and researchers alike. All the actors identified in this review need to cooperate with each other and pay close attention to the signs or complaints that children present. "Preventing, is better than curing", is the expression that is always used. Even in the case of cyber bulling, it is very important to undertake

awareness campaigns with respect to cyber bullying. Lastly, it is very important to create a warm climate from both parents and school to create trust so that people affected by cyber bullying can seek help. Above all, it is very important to undertake concrete steps.

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