Slovak Balkan Public Policy Fund

Collection of Selected Policy Papers

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BALKAN CIVIL SOCIETY DEVELOPMENT NETWORK

slovak balkan public policy fund

Bratislava 2012

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BALKAN CIVIL SOCIETY DEVELOPMENT NETWORK

Balkan Civil Society Development Network is a network of civil society organizations from countries and territories in South East Europe aiming to empower civil society and influence European and national policies towards more enabling environment for civil society development in order to ensure sustainable and functioning democracies in the Balkans.



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Foreword

Slovakia is an avid advocate of the enlargement of the European Union towards the Western Balkans. It is our natural interest to have the like-minded countries of the Western Balkans on board as fully fledged members of the European Union. There is no better alternative to the EU integration for stability, security and prosperity of the region.

Slovakia´s strong political commitment to the enlargement agenda is complemented by the active support to the integration of the Western Balkan countries through sharing of Slovakia´s own experience from transformation and accession processes, be it in the form of bilateral projects or through the joint use of pre-accession funds. Slovakia´s experience is fresh and applicable.

The transition into a modern state which is a respected member of all major international organisations, an active player on the international economic and political scene, provides all essential services to its citizens and applies all democratic principles and those of good governance was not an easy road. The longer the society is taking this path, the more it seems that the transition is like a journey that curls ahead and discovers new opportunities for bringing the state and its citizens in a closer relationship. It is the quality of a relationship between the state and civil society that shows how developed and mature the country is.

I welcome the idea of the Slovak Balkan Public Policy Fund which connects the Slovak transitional experience and zeal of the young and engaged members of the civil society in Albania, Macedonia and Montenegro to help move their countries closer to the EU. The added value, next to the grant scheme, is above all, sharing the Slovak experience through cooperation with Slovak mentors, experts and authorities in a given topic. At the same time as our friends in the countries of the Western Balkans learn from us, Slovakia gains a huge deal of experience and a new angle of how to look at topics discussed in the policy papers contained in this collection. Membership in the EU maybe the ultimate goal for these countries, yet taking some years to achieve. However zeal to solve the burning issues in economy, environment, governance and other sectors, and enthusiasm to engage in a multi-stakeholder policy dialogue is what will turn this road into a meaningful and enlightening experience. Over my years of active involvement in Macedonia I have met many Slovak experts ready to share their experience and knowledge. The areas where Slovakia and Macedonia can cooperate are numerous. The range of the policy papers contained in this collection only proves that there is a good basis which I believe will be explored even more in the future.

Have a good and inspirational reading,

Róbert Kirnág

Chargé d'Affaires of the Slovak Republic to Macedonia

Slovak Balkan Public Policy Fund

European integration has become an essential and integrated agenda of the countries in the Western Balkans and their citizens. The individual countries are taking their own path to either start or advance in the negotiations with the EU. At the same time, the European Union acknowledged the uneven reform progress and approaches relations with the countries of the Western Balkans on individual bases, respecting their specifics and level of advancement in the negotiation.

The support to the integration processes is based on the general consensus amongst wide public. All major political and social entities, significant parliamentary political parties and civic society fully support joining the EU. The verbal unison is yet to be reflected in a partner dialogue between the Western Balkans countries' governments and civil society striving to get involved in the EU-influenced policy making.

In order to contribute to the public and expert discussion about the countries' functioning in the EU ambience, the Pontis Foundation established the **Slovak Balkan Public Policy Fund.** This reflects a need, visible in the whole region, to bolster the capacities and expertise of civil society to become a natural partner to the government when discussing the European integration and increasing public awareness about advantages and disadvantages of the EU membership.

The Pontis Foundation established the Slovak Balkan Public Policy Fund after a successful pilot project of Slovak-Serbian EU Enlargement Fund in Serbia that has now been extended to other countries of the Western Balkans. The aim of the Slovak-Serbian EU Enlargement Fund, established in December 2009, was to strengthen the public discussion about Serbia´s EU integration. The Fund reflected the need, visible in the whole region, to bolster the capacities and expertise of think tanks and researchers to become a natural partner to the government when discussing the European integration and increasing public awareness about advantages and disadvantages of the EU membership.

The Slovak Balkan Public Policy Fund operates through a grant mechanism opened for young activists, analysts and journalists. Through an open calls for proposal, the Fund supported 11 projects of Albanian, Macedonian and Montenegrin domestic experts, researchers and journalists of the younger generation (up to 35 years old) with the aim of rejuvenating and reviving the sector in its goal of disseminating arguments examining the benefits of EU membership for their countries. A model of practical transfer of the Slovak EU accession know-how, making use of study trips to Slovakia in the form of grants and mentorship of Slovak experts which, was established as working methods of the Fund. In the first year the Fund re-granted approximately 44 000 Euro.

Civil society organisations and individuals from Albania, Macedonia and Montenegro got engaged in the policy making and proposed concrete policy recommendations for stakeholders in their countries in the areas regarding mechanisms and practice of consultation, coordination and cooperation between state and non-state actors in the design and implementation of EU driven reforms in judiciary, fight against corruption; necessary reforms in such sectors as social policy, protection of environment, and envisaging legislation and administrative structures in order to prepare for pre-accession phase and be able to apply Community rules and procedures.

From Theoretical to Real-Life Integrated Prevention and Control of Industrial Pollution

Aleksandra Bujaroska

Bojan Bogevski

Note: This document summarizes the conclusions and suggestions of the research on the implementation of the provisions for integrated industrial pollution prevention and control of the "Law on Environment", conducted by Front 21/42 as part of the project "From Theoretical to Real-life Integrated Prevention and Control of Industrial Pollution."

The research involved employment of information retrieved from the website of the Ministry of Environment and Physical Planning; insight into the relevant documentation of the IPPC Department; several meetings held with the Macedonian Information Center and the State Environmental Inspectorate; several encounters with the local residents of the 3 places where installations subject to our detailed analysis are located as well as with representatives from the concerned municipalities and selected installations.

Apart from Jugohrom Ferroalloys whose representatives declined to meet with the research team, the remaining target groups set forth demonstrated goodwill and openness to collaboration.

1 A long way to go

The 2005 Framework "Law on Environment" introduced the European model of regulation of industrial pollution in Macedonia. Under this model, based on the Directive 96/61/EC on Integrated Pollution Prevention and Control *(IPPC)*, operators of industrial activities are obliged to obtain an environment permit as a legal requirement for coming into (or continuing) operation.

The environmental permit is a regulatory "instrument" aimed at protecting the environment as a whole, through prevention, and wherever possible reduction of water, air and soil emissions, as well as measures for waste management and energy efficiency.

In practice, operators of industrial activities achieve this goal by introducing the Best Available Techniques *(BAT)* before coming into operation. The existing installations, however, have a set "grace" period for harmonization with the BAT.

In Macedonia, the provisions for integrated pollution prevention and control of the "Law on Environment" cover 117 installations.

Under the Law, all existing installations (operating before July 1th, 2007) are obliged to adjust their operation to the Best Available Technique by April 2014.

By exception, the Government can extend the deadline for an individual existing installation no later than April 1th, 2019. The new installations (starting work as of December 1th, 2009) must also obtain an A-*Integrated* Environmental Permit by 2014 as a condition for *coming into* operation.[1]

Out of 117 installations, for the period between December 2006 and April 2012, the Ministry of Environment and Physical Planning issued only 23 environmental permits, meaning that only 19 % of the necessary permits have been issued over a period of 6 years. There are two more years remaining for 94 permits and for the adjustment of the operation of all 117 installations to the Best Available Techniques.

2 Conclusions from the research and our recommendations

2.1. Procedure for issuing A-Environmental permits – conclusions

It is certain that the provisions concerning integrated pollution prevention and control of the "Law on Environment" won't be implemented by April 2014 at the latest.

The amendments to the A-adjustment permit to adjustment plan of Jugohrom Ferroalloys allow implementation of certain activities in 2015. There are two years remaining for the issuing of 94 permits and for full harmonization of the Macedonian industry with the European standards.

We identified several reasons for the inefficiency of the process:

- Inadequate planning of the transposition and uncoordinated implementation of the provision concerning integrated pollution prevention and control;
- The Department for industrial pollution and risk management (Ministry of Environment and Physical Planning) had/has insufficient capacity to effectively process all permit applications (in 2007, the department had 5 employees);
- The Ministry of Environment and Physical Planning has "breached" the legally established deadlines in 14 IPPC procedures;
- Nearly each operator has submitted incomplete Application for A-adjustment permit to adjustment plan. The long period needed for completing the application delays the entire process which according to the permits issued thus far exceeds 2 years.
- The legal mechanisms for performance of duties related to the permitting process are not being employed (summoning of the governmental Adjustment Plan Commission when the adjustment plan cannot be agreed on within 1 year, punitive penalties for officials, etc).

The public and the concerned municipalities take no part in the IPPC procedures.

With the exception of 3 municipalities, the concerned municipalities failed to exercise their right to submit comments, demand a public hearing etc. The concerned citizens did not participate in any IPPC procedure for the analyzed permits either.

2.2. Our recommendations for overcoming the problems in the procedure for issuing A-Environmenal permits

1. **External experts should be included in the IPPC process, following the example of many other countries.**
2. **The "Law on Environment" should be amended in order to determine a 3-month time-frame for the operators to submit complete Application for A-environmental permit.**
3. **The law should be obeyed and the envisaged Adjustment Plan Commission should be established in all IPPC procedures when the deadline for agreeing on the adjustment plan has been missed.**
4. **The "Law on Environment" should be amended to enhance the public participation in the IPPC procedure:**
   - The Ministry of Environment and Physical Planning and the municipalities should determine the public concerned in the earliest stage of the procedure and continuously and directly inform it on the activities in the process, including information on the performance of the obligations under the permit;
   - The conduct of at least two public hearings should be a must;
   - The Ministry of Environment and Physical Planning should prepare a public participation report which will be published on the Internet.
5. **The local population should be educated and cooperation between the Ministry of Environment and Physical Planning and the civil society should be established.**
6. **A separate IPPC e-portal should be set up.**

   Currently, the information regarding the IPPC procedures is not easily accessible on the website of the Ministry of Environment and Physical Planning and much of the data is not even publicly available. Therefore, extensive utilization of the full Internet potential is essential to inform the public efficiently and to increase the transparency of the IPPC procedures. Following the example of the Strategic environmental assessment (SEA) internet portal, a separate IPPC portal sending automatic e-mails informing its registered users on the particular activities of certain installations should be set up as well. The IPPC portal should be used for transparent electronic consultation with the public, in which the Ministry of Environment and Physical Planning will publicly expound the comments of the citizens and citizens' associations and will publish information on the monitoring and

enforcement of the obligations of the environmental permits. The portal should be easy to navigate (categorized by operators or elements of the permit - monitoring, reporting, limit values, adjustment plan, supervision) and continuously updated. The portal itself should identify the citizens' associations concerned for particular installations (e.g. active citizens' associations and residents in the vicinity of FENI Industries).

7. **The capacity of the citizens' associations for participation in the IPPC procedure should be strengthened.**
8. **The role of the municipalities should be strengthened as well.**

   Following the example of the municipality of "Gazi Baba", it is highly recommended to form a mixed body composed of representatives of the local population, the municipality, the environmental organizations and the operators, which would meet at least twice a year and/or should the need arise.

   People with adequate education in the field of the environment should be employed in all concerned municipalities.
9. **The public should be provided with effective and available model for access to justice in all cases when some of their rights have been violated in IPPC procedures.**

We suggest the Government to form a working group to analyze the right of access to justice in the area of the environment which will include one representative from the civil society. The Working Group should then draft recommendations for legislative amendments that will guarantee full exercise of the right of access to justice.

3.1. Adjustment plans/enhacement programmes – conclussions

- The majority of the analyzed adjustment plans i.e. enhancement programmes (22 in total) are drafted in accordance with the "Law on Environment".
- Environmental permits have complete adjustment plans/enhancement programmes; 7 environmental permits contain certain deficiencies (the enhancement programmes contain neither time frames nor financial evaluation of activities; there are no adequate measures for harmonization with the adjustment plan); and 1 environmental permit contain no activities in the enhancement programme (CHP).
- We learnt from the conversation with the State Environmental Inspectorate (Ministry of Environment and Physical Planning) that most operators which have obtained environmental permit implement the adjustment plan in line with the set time frames.
- The most worrying case is Silmak Jegunovce (now Ferroalloys). In the period between 2008 and 2010, Silmak implemented none of the activities of the adjustment plan and in return, not only that it received no punishment, but the new owner (Ferroalloys), contrary to the law, obtained

a new permit with extended deadlines. The fact that new deadlines are also disregarded is of particular concern.

- The amount of the financial guarantee or the amount of the penalties for non-performance of the activities prescribed by the adjustment plan have not been determined in any A-permit for adjustment to the adjustment plan.
- The detailed analysis of three A-adjustment permits to adjustment plan showed that the activities which would have greatest positive impact on the environment have the farthest deadlines, just before the expiration of the legally established "end point" – April 2014.
- The economic interest of the operators has a great impact on the establishment (and implementation) of the adjustment plans.

3.2. Our recommendations for overcoming the problems with the adjustment plans/enhancement programmes:

1. **The announced review should include full harmonization of the adjustment plans/enhancement programmes with the "Law on Environment" for all A-environmental permits issued.**
2. **The review should determine the financial guarantee or the penalties for all A-environmental permits issued.**
3. **The "Law on Environment" should be amended thereby ensuring compulsory activation of the financial guarantee/penalties provided the operator fails to perform the obligations.**
4. **The order of performance of activities should be prioritized to the benefit of the environment wherever technically possible.**
5. **A suitable financial model must be found as soon as possible for the operators to overcome the economic difficulties arising from the adjustment of their operation to the Best Available Techniques (BAT).**

4.1. Monitoring, reporting and supervision – conclusions

- The information on the monitoring and/or supervision of the installations and the results thereof are not easily accessible to the public, including the local population.

  Despite being obliged to since 2006, in 2012, the Ministry of Environment and Physical Planning neither keeps electronic registers of the A-environmental permits, nor publishes the results of the monitoring of the installations which have obtained permits. Only "Titan Cementarnica Usje" publishes online reports of the average monthly and daily concentrations of air emissions. As to the remaining operators, the public can learn whether the operators are implementing the measures from the permit and the results thereof by demanding insight into the documentation in the

premises of the Ministry of Environment and Physical Planning and a written notification of the Macedonian Information Center or the State Environmental Inspectorate (Ministry of Environment and Physical Planning). However, this is just theoretical, since the insight (the requests for information) does not provide sufficient information either – the following paragraph (2) contains further elaboration on this matter.

- In terms of reporting of the monitoring and implementation of the measures, most operators fail to duly perform their obligations of the permits with impunity.[2]

  Only 3 permits (FENI, Vardar Dolomite and USJE) out of the analyzed 22 regularly submit (relatively) complete individual and annual reports to the Macedonian Information Center. At least, there are timely Annual Environmental Reports for 3 more permits (Vesna SAP, Makpetrol and Jugohrom Ferroalloys), which, however, contain no conclusive data that the operators abide by the emission limit values prescribed in the permit. The operators of 9 A-permits hadn't submitted any report to the competent authorities. None of the operators submit reports on the implemented measures of the adjustment plan/enhancement programme.
- None of the A-environmental permits contain reporting in accordance with the national BAT Monitoring Guidelines.
- The irregular reporting on the monitoring of the emissions raises questions about the amount of the annual compensation for holding an environmental permit and for the regular supervision. The emission levels and the exceeding percentage of the limit values are important elements in the formula for calculating the annual compensation for a permit. We do not understand how the Ministry of Environment and Physical Planning calculates the amount of these compensations without data on the emissions. The same applies to the annual compensation operators pay for the regularly conducted supervision - the emission levels play an important role in this calculation.
- A full monitoring of the emissions in the environment was established in the majority of A-environmental permits issued. We have discerned deficiencies only in the environmental permits of Jugohrom Ferroalloys and Vesna-SAP: in both cases neither the monitoring nor the soil emission limit values have been established. The dates as of which the monitoring obligations are applicable have not been determined in the case of Jugohrom.
- The State Environmental Inspectorate supervises the operation of IPPC installation at least once a year. For some of the installations, the Inspectorate conducted additional supervision throughout the year. The outcome of these supervisions is simple measures for 4 operators and a misdemeanor sanction for Jugohrom Ferroalloys for not implementing the measures of the adjustment plan. The information on the supervision and the passed sanctions has been communicated neither to the municipalities nor to the Department for industrial pollution and risk management. They haven't been published anywhere either. Not even the Inspectorate itself has an electronic database with records of the activities of all inspectors.

4.2. Our recommendations for overcoming the problems in the adjustment plans/enhancement programmes:

1. **The reporting obligations in accordance with the best available techniques for monitoring should be established in all A-environmental permits.**
2. **The performance of the reporting obligations should be strengthened with all available mechanisms (especially penalties in cases of repeated disregard of obligations).**
3. **The manner in which amount of the annual compensations for operators with an A-environmental permit was calculated should be examined. The IPPC documentation must contain documents pertaining to the compensations.**
4. **The announced review should establish limit values and adequate monitoring of soil emissions for the respective operators.**
5. **The review should adjust the air emission limit values to the new Rulebook in all A-environmental permits.**
6. **The State Environmental Inspectorate should set up an electronic database wherein each inspector will submit the reports and the results of the supervision.**

Work permit prior to IPPC permit?

We would also like to point out one case not subject to the analysis: the "Law on the Environment" prohibits the issuance of a work permits to any IPPC installation prior to the obtaining of an A-environmental permit. Johnson Matthey has been working since April 2010, regardless of the fact that its permitting procedure is still pending.

5 Conclusion

Our impression is that the authorities have great understanding for the problems of the pollutants especially for the financial burden involved in the necessary investments. On the other hand, the treatment of the local population is not nearly as caring and understanding.

Integrated pollution prevention and control is a great "tool" which, if effectively implemented, will result in visible pollution reductions and healthier environment for us all.

However, given the serious deficiencies we were able to discern in our research, we wonder whether the implementation of the IPPC provisions in Macedonia depends largely on the goodwill and responsibility of the operators and perhaps on the occasional pressure from the public.



Our assumption is that this directive will be one of those that will slow the negations for Chapter 37 thereby hindering Macedonian's integration into the EU.

We consider the announced review of the issued environmental permits a significant opportunity to enhance the implementation of the IPPC provisions, or a chance to correct the deficiencies in the already issued permits, and to provide specific guidelines as to avoid the same mistakes and deficiencies in the new permits.

This document is our modest contribution to the reviewing process, especially to the protection of the nature and health of the Macedonian citizens.

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1 Depending on whether it is an existing or a new installation, the "Law on Environment" provides for two types of A-environmental permits:

A-adjustment permit to adjustment plan and A-integrated environmental permit.

2 Three basic reports must be submitted by the operators:

- Monitoring reports containing results of emissions monitoring conducted by operators in accordance with the obligations of the permit;
- Reports on the implementation of the activities of the adjustment plan/enhancement program, which the operator must submit 14 days after the implementation of an activity; and
- Annual environmental reports containing data from the monitoring reports, a summary of the reports on energy efficiency and efficient utilization of raw materials, a summary of reported incidents, etc.

Meeting EU Cohesion Policy and IPA Requirements in Albania: A Multi-level Governance Approach

Dorian Jano

Acknowledgement: This paper is the product of desk research and fieldwork. Fieldwork research has entailed extensive interviews, meetings, consultations and visit in Bratislava during May 2012, with local, national and international experts from the public and non-governmental sector. Research assistance was provided by Baisa Sefa. Special thanks to Colm McClements and Daniel Pitonak for their helpful guidance, suggestions and comments. The report is, however, the responsibility of the author and European Movement in Albania.

Clarification: Regional policy is the synonym term used for structural or cohesion policy in EU's terminology. This policy area focus on the redistribution of resources to lagging areas to boost economic growth and sustainable development, In the case of the EU candidate country, regional policy, is financially covered by the so-called IPA (Instrument of Pre-accession) component III – Regional development, with three subcomponents Transport-IIIa, Environment-IIIb and Regional competitiveness-IIIc, a mimicry of structural funds aiming to prepare candidate countries for cohesion policy and more effective and proper use of post-accession funds.

Executive summary

Albania's regional disparities have been persistently evidenced by official data and other reports.[1] There is no proper cohesion policy in Albania and its preparation in the context of EU accession is at a very early stage. The regional development framework is under preparation and continuous consultations and reviewing are yet to be finalized. Administrative capacities for implementing IPA (Instrument of Pre-Accession) component III are at an early stage, and mechanisms to monitor and evaluate programs' impact are missing. So far, issues of regional development have been handled at a national level through the traditional practice of a hierarchical mode of governance. In the case of Albania, policy analysis and recommendations have also been framed within the hierarchical governance approach and do not consider the experience and the abundant literature on Cohesion Policy of Central European countries. The case of the Central European new member-states has shown that the success of structural and cohesion policy, to a large extent, depends on the functioning of a multi-level and multi-actor type of governance. Thus, utilizing the concept of multi-level governance to draw lessons for Albania is a good practice of facing challenges in alignment with EU cohesion policy, and in complying with IPA component III requirements.

The Albanian government must therefore show clear political support for converging its regional development policy with EU cohesion policy and its financial instruments, as well as for enhancing the implementation of the partnership principle in order to avoid delays in preparation and to secure absorption and efficient/effective use of EU financial recourses under IPA. Regardless of whether they gain the status of candidate country or not, if the new proposed IPA 2014-2020 regulation is approved it will make access to all types of assistance no longer subject to candidacy status, but dependent on the readiness to plan, manage, implement and monitor suitable programs, the available human resources and capacities at all levels and the appropriate involvement of all stakeholders.

This policy paper draws on the multi-level governance literature of the EU cohesion policy. It analyzes regional development policy in Albania with regards to the (possible) formalization and diffusion of the partnership principle through providing recommendations of lessons learnt and best practices from previous candidate countries. Although there are many models of partnership process, the appropriate model to be chosen still depends on the countries specificities and needs. In the case of Albania, creating conditions for formal involvement of partners is vital and a good assumption for the introduction of the partnership principle, however it is not a guarantee for the accomplishment of the task. What is needed is regular interaction among public, non-governmental and private stakeholders that will generate trust and foster real partnership.

1 Introduction

Albania not only records the lowest levels of GDP per inhabitant among EU Member States and candidate countries,[2] but its regional disparities[3] have been sharpened due to the inherited socio-economic structures and infrastructure, the recent developments' dynamics and massive migration flows as well as the lack of proper effective and efficient development policies to address regional cohesion. When reviewing the official data and other reports, the indicators reveal substantial social and economic disparities *among* and *within* the Albanian territorial units[4]. At NUTS II level, the central region account for 46.4 % of Albania's overall GDP, the southern region 29.2 % and the northern region only 24.3 %; at NUTS III level, the capital Tirana accounts for the highest share (37.9 %) of GDP while Kukes is the prefecture with the lowest share of only 2.3 %.[5] Similar results can be drawn from a more composite Regional Development Index (including not only GDP per capita data, but also other basic indicators, efficiency enhancers and innovation factors weighted for the efficiency-driven stage of Albania's development stage),[6] where Kukes is one of the least developed regions (together with Berat and Diber) and Tirana is the most developed one. It can be acknowledged here that this trend of sharp regional disparities has been persistent when referring to the Human Development Index (HDI), a composite index measuring social and economic achievements, which reported in 2002 the highest HDI level in the prefecture of Tirana and the lowest HDI in the prefecture of Kukes.[7]

However, the preparation of regional development framework in Albania is at a very early stage, and is still being prepared and frequently being reviewed because of its incompatibility with EU cohesion policy and funding. The Crosscutting Strategy for Regional Development (CSRD), Decision Nr. 773 dt. 14.11.2007 Council of Minister, is the first official draft framework aiming to address internal disparities among the regions ('qarks') of Albania and to introduce main principles of EU cohesion policy. Although, CSRD and IPA III requirements do not conceptually meet in the kind of actions best pursued through regional development plans and supported out of IPA III component of regional development and in the kind of structures that are necessarily needed.[8] An initial phase (2007-2009) of the Action Plan has been developed. What is still missing is further elaboration of its second phase and clear indicators of what actions have been implemented from the initial phase.[9] Since 2007, little progress had been noticed towards achieving the goals, as the CSRD is not yet put into practice. In the course of 2008 a new draft Law on Regional Development has been prepared, building on the CSRD with some innovations, yet the draft is still being reviewed and has not been submitted to the Council of Minister. In 2010, the government started consulting with interests groups and other international strategic partners the 'Strategic Coherence Framework'. This document aims to set out the strategy that will underpin the Operational Programmes for regional and human resources development components, thus meeting EU requirements for programs that will be co-financed by the new IPA 2014-2020.[10] Yet, experts have assessed that the draft of Strategic Coherence Framework had been seen more importantly than the Operational Programs.[11]

As Albania is drafting and reviewing its regional development framework and given the aim of the country to join EU, it is rational to think in advance of converging domestic regional development framework with EU cohesion policy principles and requirements of instruments for structural funds. The first step to meeting with IPA III component requirements should be a priority. This is not because of the possibility of gaining the candidacy status, but more importantly because the new proposed IPA 2014-2020 will make access to various types of assistance no longer subject to status candidate/potential-candidate country but dependent on readiness to plan, manage, implement and monitor suitable programs.[12] To this end, Albania is not ready to profit from EU assistance. This is because:

i) the drafted regional development documents do not fulfil IPA EU financial requirements;

ii) there are no clear descriptions of the composition of the managing structure, despite the 2010 decision to set up institutional structures for managing IPA component III (Regional Development);

iii) administrative capacities for implementing IPA component III are insufficient;

iv) monitoring and evaluation mechanisms to measure the impact of the development programmes are missing.

Source: EU Commission (2011) "Albania 2011 Progress Report", Commission Staff Working Paper SEC (2011) 1205 final, Brussels, 12.10.2011, pp. 50-51

Thus, acknowledging the persistence of disparities among the most prosperous and the lagging areas in Albania, the unsettled debate on regional development framework as well as the future perspective of EU integration, and the opportunities of gaining from IPA 2014-2022, causes the regional policy issues to become one of the most important priorities of the Albania's public policy and EU integration target. The aim of this policy paper is to contribute to the debate of the Albanian regional development in the context of the EU integration process, through identifying the challenges that Albania needs to address with regards to the governance of the regional policy to conform with the EU principle of partnership, and through proposing recommendations resulting from best practices of previous candidate countries from the Central Europe.

2 Methodological approach

So far, the Albanian government has considered and addressed issues of regional development through the traditional practice of hierarchical mode of governance. Policy analysis and recommendations in the case of Albania are also within the traditional framework. There has been some research in the field of regional development policy in Albania focusing on aspects of decentralization or local government management, and some recent tentative attempts to address the issue of regional development in the context of EU accession.[13] Yet the limited research on cohesion policy in Albania tackles the issue at different and separate levels and does not take into account the literature on Cohesion Policy of Central East European countries.

Today, there is an abundance of literature on Cohesion Policy, focusing on policy multi-level governance and especially on the implementation of the partnership principle. The experience of the new member-states from Central Europe has shown that the success of the structural and cohesion policy will depend on the functional multi-level and multi-actor type of governance. Thus, it remains crucial that these *new modes* of *governance* are to be particularly suitable for the study of any substantial analysis and appropriate policy recommendation in the area of regional development and structural funds.

Our study is closely associated with the concept of multi-level and multi-actor governance understood as a new approach to the 'old' governance mode characterized by hierarchy and management from the centre. In its narrow sense, the most typical element of the new multi-level and multi-actor mode of governance is represented by the **partnership principle,** pushing the (potential) member-states' public administrations to *regularly* engage in an interactive dialogue and cooperate with both the regional and local level represented by civil/private sphere, the non-governmental organizations (NGOs) and other stakeholders. The partnership principle, although initially focused on enhancing consultation among competent authorities at national, regional, local or other

level, has evolved with time and has gone through major revisions.[14] The latest framework regulations not only confirm the importance of the partnership principle but strengthen it further in accordance with the multi-level governance approach, which conceptualises partnership as *'close cooperation'* among *a) competent regional, local, urban and other public authorities; (b) economic and social partners; and (c) bodies representing civil society, including environmental partners, nongovernmental organisations, and bodies responsible for promoting equality and non-discrimination… in the preparation, implementation, monitoring and evaluation of programmes.*[15] Today, partnership means not simply consultation but also close cooperation of all the key stakeholders of regional development (the national government along with regional, local self-government, social partners, civil society and special interest groups) in all of the stages of the policy cycle (programming, management, implementation, monitoring, control and evaluation).

To ensure a comprehensive and evidence-based analysis of the Albanian regional development framework in the context of EU accession, we combine desk and field research. Desk research is necessary to evaluate the national, legal and institutional framework and to have a comprehensive literature review of cohesion policies in the case of previous candidate countries from Central Europe. Field research, through interviews and consultations with public authorities, independent experts and other stakeholders in Albania and other countries from Europe, provided us with empirical data for analysis and good practices for recommendations. The comparative approach with other similar countries' experiences (e.g. the case of Slovakia) provides contextual and concrete lessons to be learned during and after pre-accession.

3 Literature review

The idea behind partnership principle, expressed in EU regulations, is that of close cooperation among public authorities, private and not-for-profit stakeholders, with each party acting as partner in the preparation, implementation, monitoring and evaluation of the operational programmes. It reflects the notion of multi-level governance, referring to the complex vertical and horizontal relations between actors organized at various territorial levels from public, private and voluntary spheres. In the contexts of the candidate countries,[16] partnership requires a) all parties affected in one way or another by the EU policy to be actively involved, and b) EU funds to be administered by actors from different organizations working together aiming at better and effective allocation and implementation of IPA EU funds.

Thus, the partnership principle is a prerequisite and should be applied at all stages of the development policy cycle. For many, the partnership principle connects several different actors and creates networks among different public and private entities in all the stages of public policy cycle.[17] Partnership is expected to penetrate all stages of the funds' implementation cycle: planning and programming, operational management and evaluation, and monitoring

(Demidov 2011: 6). For other scholars, partnership is not equally applied throughout all policy stages depending on domestic conditions. In the member-state countries, partnership will depend on the phase of the cohesion policy and if actors share responsibility for policy-making. For example in Sweden, local actors are actively involved in drafting development programs whereas in Germany and Belgium, Länders/Regions have a direct role in the national policy-making process and in the territorial planning, compared to the French traditional centralized system (Marks 1996: 417). In the candidate countries, there are no clear criteria or indication for obligatory involvement and active participation. There is confusion about the role of the stakeholders with regards to involvement in all stages of policy cycle. With regards to the programming and implementation of the Structural Funds, a number of Regional Development Councils or Agencies at sub-regional level (i.e. below NUTS level II) have been set-up without establishing the capacity to effectively manage programmes at regional level[18].

So the debate in the literature has emphasized that more than the degree of institutionalization of partnership principle in EU regulations, what is more important is its implementation by the member states or candidate countries.

The cases from the previous potential member-state countries have shown that most of the Central and Eastern European (CEE) countries did not really comply with the partnership principle. The ineffectiveness of candidate countries' internal conditions made the Commission relax their requirement/position on the partnership principle so as to ensure that funds were absorbed on time even if they were to be managed centrally by the national ministries, giving just an observing role to non state actors.[19]

In spite of the historically-related problems such as centralization heritage and lack of traditions in regionalism, or lack of time and experience in multi-level governance, the application of the partnership principle faced difficulties because of the weakness on both the state's side as well as the partners' side. The state failed to act as an entrepreneur, whereas non-state partners were unable to fulfil their roles and articulate their interests, provide expected input such as expertise, knowledge, advice etc. Furthermore, the central (and regional or local) public administrations were unwilling to engage in consultations with stakeholder partners when elaborating, implementing, monitoring and evaluating regional development programmes; while on the other side, the potential partners lack the necessary information, and therefore the capacity to play the role of a competent partner in the whole process of national/regional development.[20]

Over time, especially after accession, gradual progress has been made. Public administration of the new member-states from CEE countries open up and involve the different partners into all phases of EU cohesion policy implementation. Yet, even though partners started to participate in partnerships, their role was limited in terms of influencing the policy process because the national governments acted as 'gatekeepers' and were firmly in control of sub-national actors.[21]

Countries like Latvia, Poland or Slovenia are often portrayed as successful in the use of the partnership instrument. One of the best examples for a genuine implementation of the partnership principle could be found in Slovenia where the central public administration gave appropriate attention to coordination and establishment of a very transparent structure for regular consultation with socio-economic and regional partners. However, in other countries like Slovakia and Hungary, the central government was unwilling to give strong responsibility or decision-making power to new and inexperienced regional institutions.[22] Yet, accounts of partnership principle across the CEE countries at best was rather formalistic, and it was not effectively practised to conform either to EU's or Partners' expectations (Batory and Cartwright 2011).

Thus, the implementation of partnership needs to look at who is involved and how partners are involved, reflecting on the legal and institutional framework, their capacities and coordination as well as their role in the policy-making process.

4 Legal and institutional framework related to partnership principle

The partnership principle is mentioned in several Albanian official documents.[23] Clearly, there has been little progress with regard to approximation of the regional policy and legal framework with EU standards and funding requirements., More importantly, the partnership principle of cooperation among participating public, private and NGO actors to achieve common objectives is described very briefly, vaguely and is not being implemented.

The principle of partnership is generally stated in the CSRD referring simply as cooperation between stakeholders *(public, private and NGO actors)* to work together to achieve shared objectives.[24] Without clearly stating in what level, - horizontal level of cooperation between line ministries or/and vertical level of cooperation among national, regional and local entities and actors; and in what phases, - preparation, implementation, monitoring and/or evaluation of operational programmes, - this cooperation is expected.

The infrastructure of this policy framework although had also been elaborated, including a *National Partnership Council for Regional Development* and a *National Agency for Regional Development at national level* and *Qark Development Councils* and *Qark Development Agencies at regional level*, bears its own concerns. First of all, although the above mention structures are stated in the CSRD, they are not justified as necessary.[25] The current partnership institutional structures are: i) very repetitive[26] or much more a hierarchical 'control' to sub-actors thus discouraging partners affected by the policy; ii) a heavy load requiring a number of implementing or coordinating bodies as well as committee-based which are neither necessary for regional policy nor a pre-requisite for receiving and better implementing of EU IPA funding;[27] iii) only a consultative body thus not in line with CSRD conceptualization of partnership as cooperation.

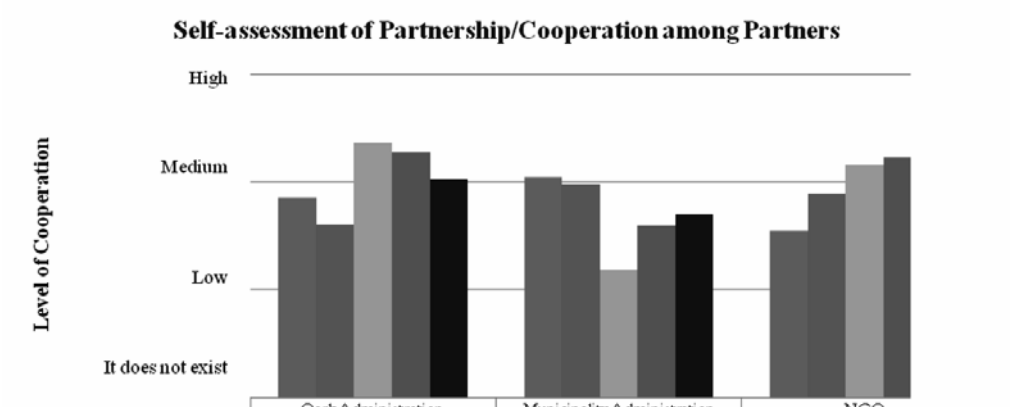
The CSRD strategy recognizes that an effective development partnership between the central and regional levels was never established.[28] The SCF (Strategic Coherence Framework) evaluates key elements of the implementation of coordination and partnership arrangements points more on coordination across the public administration whereas cooperation between the public administration and wider society is simply a dialogue to make authorities inform and understand current local realities[29] Regions (qarks) lack clear political mandate and legal/financial instruments in regional development. Thus, partners' involvement and their role depend on the degree of decentralization by enabling national, regional and local actors to make collaborative well defined tasks and responsibilities in order to maximize partnership. No reference is made to the Strategy for Decentralization (July 2008)[30] which remains an important document on the administrative subdivision and system of local and regional governance.

In general, a number of initiatives (consultations with social partners, several analyses, policy papers) have been taken by international (UNDP), government and NGOs on the policy options for revising the regional development policy framework in Albania. The consensus among all international, national and local stakeholders call for a revised policy, legal and institutional framework that will approximate the domestic regional development framework to EU cohesion policy requirements and practices, allowing gradual convergence of the domestic regional policy (CSRD and Draft Law RD) and instruments (Regional Development Fund) with EU cohesion policy and instrument for pre-accession assistance - IPA Component III, instead of developing parallel institutions and programs for regional development, yet allowing co-financing regional projects by the government or other international donors.[31] The convergence of domestic regional policy with EU cohesion policy does not exclude or replace national development priorities. Given that EU cohesion policy is based also on the "additionality principle" saying that the EU funds do not replace, but are an addition to, national regional policy funds (co-financing). Furthermore, convergence with EU cohesion policy and financial requirements does not requires additional separate structures in terms of ministerial units and competencies but rather call line ministries to direct their activities towards efficient use of EU funds.[32]

However, having legal and structural partnership is only an asset, not a guarantee for partnership principle to be applied. Drawing from the qualitative date of a recent study, partners' perception on cooperation among one another is still very low. As per our qualitative calculations (see appendix), based on the qualitative date of ISP-UNDP (2011), partnership on average is assessed at best at medium level of cooperation.

The literature on CEE countries had argued that implementation of the partnership principle *only partially* depends on structural and institutional macro-factors such as institutional arrangements around interest intermediation and cohesion policy implementation. Other important insights regard the policy content of the structural funds allocation and the missing properties of non-state partners (Demidov 2011: 8).

Table 1: Self-assessment of Partnership-Cooperation among Partners



	Qark Administration	Municipality Administration	NGO
Central Administration	0,611666667	0,6737	0,510666667
Qarks Administration	0,528333333	0,6538	0,623333333
Municipality Administration	0,779166667	0,38950495	0,712
NGO	0,751666667	0,5268	0,735333333
Average	0,667708333	0,560951238	0,645333333

Source: own calculation. Data from UNDP-ISD Project Institutional Assessment, 2011. See table 3 appendix

5 Actors' Capacity and their coordination related to partnership principle

The regional development framework, in general, addresses only the institutional and policy issues, yet other more substantial issues are important. The main expression of partnership to date has been manifested in the capacity of the partners involved and their coordination. At the state level, administrative capacities and inter-ministerial coordination is a pre-requisite. In addition to capacities and coordination at central state level, partners capacities and their coordination is also needed. Here, partners leading the process are country-contextual, as municipalities tend to dominate partnership in cases with strong municipal government (e.g. Scandinavia, Netherlands, France, Germany, Italy) whereas in cases of weaker municipal government (e.g. UK, Ireland, rural municipalities in many countries), other NGOs and private associations play a very important role.

It is important to achieve efficient coordination among and within different bodies at the central, regional and local level (horizontal coordination) as well as the coordination between different levels of authority (vertical coordination).

5.1. Public administrative capacities

The CSRD acknowledges that although plans for regional development had been prepared, an efficient partnership is missing among regional and central

level, thus strengthening the capacities of the regions remains a priority.[33] In Albania, multi-level development coordination between the national, regional and local levels is *mostly absent* with limited qarks' participation in national planning processes and strategic planning (Girejko 2011: 69).

A prerequisite for the absorption of EU pre-accession funds is the administrative and human capacity in regional and local public administration of the accession countries. The main challenges, with regard to administrative capacity, are the availability of personnel in the most important institutions responsible for managing and implementing IPA component III and the adequacy of their knowledge, experience and background. Public administrative capacity was a problem observed in all the candidate CEE countries reflected to candidate countries' absorption capacities. Slovakia, for example, faced a serious lack of human resources dealing with Cohesion Policy. The Slovak government reacted by launching intensive recruitment programmes in all relevant ministries and setting aside additional financial resources to increase salaries of employees working with the EU agenda in order to prevent staff levels fluctuating, even though it was difficult to recruit staff with adequate knowledge, experience and background or to train them in a short period of time.[34]

With regards to 'qark' public administration, the main challenges are: i) limited management competences resulting mainly from vague defined functional split of competences between central and local level; ii) limitation on financial resources to enhance qarks' role as project promoter or implementer; iii) absence of experience in strategic planning; iv) limited project management capacity; v) perception as coordinator and facilitator at ad-hoc projects rather than owners of the development agenda (Girejko 2011: 68-69).

Among other factors for achieving successful and functional partnership, the major factor regards i) time and support that Councils of Regional Partnership should be able to set common working norms and values; ii) further capacity building of the partners through trainings and technical assistance.[35]

5.2. Partners' Capacity

In order for the implementation of the regional policy to be effective, civil society subjects need to take part, as well as representatives of various interest groups in the area. This is particularly important in cases where capacities at the local level are weak.

With regards to civic capacity building, the NGO sector is better prepared, in comparison with public administrative capacity development. Besides the better position of the NGOs capacities, there are still limited numbers of NGOs that are capable of participating in the process of strategy development, making consultations and cooperation between qarks and regional NGOs rather sporadic (Girejko 2011: 64). Ideas of wider participation, partnerships and coordination are mostly unexploited. This is not only due to limited ability of public administration to engage with third sector and build effective and wide partnerships, but also due to a low level of collaboration in the civic sector with public entities in joint programs.

Including the non-governmental actors is important for the regional development process because regional actors are more familiar with local issues, possess greater expertise in the field and directly monitor the actions implemented. Furthermore, including NGOs as partners ensures transparency of decision making and prevents corruption and misuse of EU funds. The case in Slovakia is a best practice where, in order to ensure transparent administration of the EU funds, the Slovak NGO sector established an independent team for monitoring EU funds.[36]

The limited ability of public entities to involve NGOs and other non state actors, coupled with low NGO involvement in joint programs, constitutes an important missed opportunity of effective partnership. Thus what is needed is to further develop NGO as well as private sector capacities related to regional issues, and facilitate their effective partnerships with public entities.

5.3. Well-coordination

In addition to actors' capacities, what is essentially needed is the coordination of all aspects of the process among all stakeholders involved, starting from the simple exchange of information to the sharing of responsibilities and tasks. Lack of coordination and shared strategy among stakeholders makes partnership principle and synergies impossible resulting in a different and unwanted policy outcome. For example, lack of coordination and isolated vertical and horizontal communications lead to many missed opportunities with respect to strategic planning and waste of resources both in financial and capacity use terms.[37] Factors influencing coordination are the lack of reciprocal confidence and interest, political competition among regions, and national tendencies of control over regional administrative units. UNDP-ISD survey show that the rate of cooperation of qarks with the main group of stakeholders was moderate, where the highest rates of cooperation is with donors and international partners because this type of partnership is seen as a relief to some qarks' administrative burden through assistance to outsource necessary capacities in writing projects and prepare strategies (Girejko 2011: 60-61). It is important to notice, that the usefulness and functioning of such forums depends on the active investment that each of the actors makes in seeking to understand each other, work together and learn from and with each other.[39]

Regional policy and the EU financial cohesion component are not adequately connected, which had led to, or is a result of, institutional fragmentation and weak administrative coordination between central administrative bodies formally in charge of these policy areas. In order to enhance coordination, the strategic coordinator should be placed at a high level of the central government (state secretary, ministry or directorate); with political power to effectively coordinate at least four key line ministries and administrative capacity of coordinating sectored strategies and budgetary resources but with no direct involvement in implementation of IPA.[40] In practical terms, this could be the ministry of finance (not Ministry of Economy, Trade and Energy as it is actually

in the strategy), as in the case of small CEE states where the overall responsibility for the Structural Funds/co-ordination of programming and implementation has been under the Ministry of Finance (Estonia, Lithuania) or Ministry of Economy (Slovenia), whereas the overall responsibility for the Pre-accession Instruments/co-ordination has been again Ministry of Finance (Czech Republic, Estonia) or rather Government office (Slovenia, Slovakia).[41] During the programming period, line ministries must improve inter-sector cooperation with each other while retaining close cooperation with relevant stakeholders at regional and local level.

6 Programming and Implementation related to partnership principle

Partnership can be either strongly centralized (limited partnership) within government (line ministries and governments agencies) or diffused within all stakeholders depending on their resources and capacities.[42] "The partnership principle is linked to the principle of *subsidiarity* which implies that decisions should be made at the level most competent to carry them out, within the context of a broader cooperative network which pools resources and experiences".[43] An accurate assessment of the partnership principle needs to look carefully at the stages of the policy-making process and identify where partners are or is best to be involved. Although the partnership practice among and within vertical-administrative and/or horizontal-societal is inter-related at each policy stage (programming, decision, implementation and evaluation) and difficult to be disentangle[44], we still need to clearly identify the main strengths and responsibilities each partner has to have in the overall process. With regards to Regional Development approach experts suggests that all major development efforts on a regional territory should be planned on national or NUTS II basis, or at least be coordinated by the central level of state public authorities while working actively with actors and institutions from the region to undertake and implement them at regional level.[45] Such division of responsibilities distinguishes entities that develop, manage and monitor the programs (at national level), with consultation and ideas from regional and local actors from those that actually implement and benefit from specific development programs (regional and local level).

Planning and programming of large projects at local level as experienced by previous candidate countries showed to be incomplete and very technical, not suitable for EU IPA and structural funds. Thus it is best to keep them coordinated at national level with active involvement of regional, local and NGO actors. This will relieve Albania's overloaded administrative staff required for tackling all stages of the development policy process, provide alternative experience and qualified partners to effectively implement programs, and on the other hand makes local actors actively involved into the policy making process and implementation of programs tailored to their local needs. Thus, facilitating and strengthening national government role on negotiation process

with EU commission, proposing programs (setting goals, selecting target areas, and allocating funds to different areas) that are well designed and conform EU requirements.

The public administration is increasingly inviting NGO's representatives to express their opinions upon programming and planning although this has remained only a formality without much influence on shaping policy outcomes. The most preferred type of NGO's involvement into regional development is participation in the course of project implementation,[45] e.g. partnership initiatives with citizens and NGOs, especially in the implementation of the Elbasan social development plan, were important.

The EU financial aid regulations allow for several options, ranging from a highly centralised to a very much decentralised model, thus the choice should be to adopt the most country appropriate model that would substantially shorten the programming period and secure coherence as well as efficient and effective implementation.[46]

7 Recommendations

Regional policy is a very complex issue and could not be pinned down to a few simple suggestions. However, at the stage where Albania is, both in terms of setting the regional framework and in preparation for EU accession, it is clear that two particular dimensions of the 'partnership principle' are to be taken into account: the institutionalization of participation as well as the enhancement of the partners' capacities and coordination.

1. When reviewing the policy and institutional framework we notice that despite continuous efforts of drafting a regional policy framework, a common consensus on the conception and direction of the regional policy is yet to come. Still, the regional development framework requires substantial policy reformulation as well as institutional modifications to gradually converge domestic regional policy/institutions with EU cohesion policy and IPA requirements at least over the medium term. Policy and institutional reforms should lead to approximation of existing financial instruments (RDF) and future ones (IPA3). The proposed IPA 2014-2020 resembles the already implemented Instrument for Pre-accession Assistance (2007-2013), but there are still substantial changes that are to be seen if they will be fundamental or secondary.[47] Preparing some kind of regional development concept requires the establishment of the necessary legislative basis and complete institutional infrastructure for designing and implementing regional policy measures. Moreover, EU's structural financial aid carried out through IPA components are themselves quite a complex and complicated mechanism, which requires an extensive knowledge of their structure and functioning which usually has been misunderstood.



2. Practical implementation of the institutionalized partnership principle will require partners' capacities and well-coordination. Weak administrative capacities and lack of inter-stakeholders coordination will result in non-suitable projects and less absorption of EU funds. Thus, further capacity building of the partners through training and technical assistance is needed for setting up a good basis for successful and functional partnership in the future. The Slovak example of intensive recruitment programmes in all relevant ministries and the increasing salaries of employees working with EU agenda is a good practice to recruit and maintain qualified and adequate staff. Yet, in Albania there is still a potential risk of staff fluctuation turnover mainly for political reasons. Therefore it is crucial to empower the nongovernmental actors. The best model, where civil society can contribute most, is to be involved in the entire process from planning, through monitoring, up to evaluation of assistance, thus ensuring a transparent administration of EU funds. Limited organization skill or expertise of the actors involved will be overcome only if partnership principles will start to be put in practice, creating an occasion and practical example of learning by doing, where actors and partners involved in the process learn from each other.

3. Regional development is a very complex and multi-level policy, therefore its success will depend not only on enhancing partnership between governmental and non-governmental partners, but also on clear division of responsibilities. The central government should be responsible for making concrete actions related to design and negotiation of operational programmes and securing financing from EU, while municipalities, NGOs and other regional and local partners should be consulted during the planning phase and actively involved in the implementation of planned actions. The clear division of duties and responsibilities should be stated in the legal and policy framework, and also enhanced through practical partnership practices. The legal framework is necessary, in particular in CEE countries, to secure partnership, but will not derive sufficient active involvement in partnership. Some pre-involvement through enhanced dialogue and consultations are needed, in order to reinforce the culture of partnership through 'learning by doing'. Although the capacities of regional authorities and NGOs are better compared to state authorities, the conditions for participation are rather unfavourable. There are no clear criteria or indication for involvement and active participation of regional and non-governmental actors, although the need for clear division of responsibilities and authority among levels has been mentioned in the draft strategy of decentralization.[48]

8 Conclusion

The models of partnership process, with reference to the *degree of formalization,* can vary from the *rule-based* form of maximum formality (partnership principle is strongly and clearly ruled decision-making process) to the *trust-based* form of maximum informality (partnership principle means consultation and informal agreements based on sharing values, aims and understandings).[49] The model to be adopted will depend on the countries' specificities and needs. It is rational for public actors, given the limited capacity of Albania, to seek and encourage cooperation with non-governmental actors and to share or shift the burden by pooling resources and delegating implementation tasks. In turn, NGOs and other private actors could exchange their resources and expertise for influence on policies and projects which would significantly affect them as well as make the process more transparent, efficient, participatory and legitimate. Yet, having formalized partnership is only an asset, not a guarantee for the partnership principle to be applied. For example, with regard to partnership principle, although qarks have made considerable progress in making use of consultation mechanisms in preparation of strategies and projects, they still remain more formal than participatory consultations (Girejko 2011: 62). What is needed is regular interaction among public, non-governmental and private stakeholder that will generate trust and foster real partnership.

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Annexes

1 Policy and Institutional Framework related to Partnership Principle

Partnership Principle: Cooperation between stakeholders (public, private and NGO actors) to work together to achieve shared objectives.

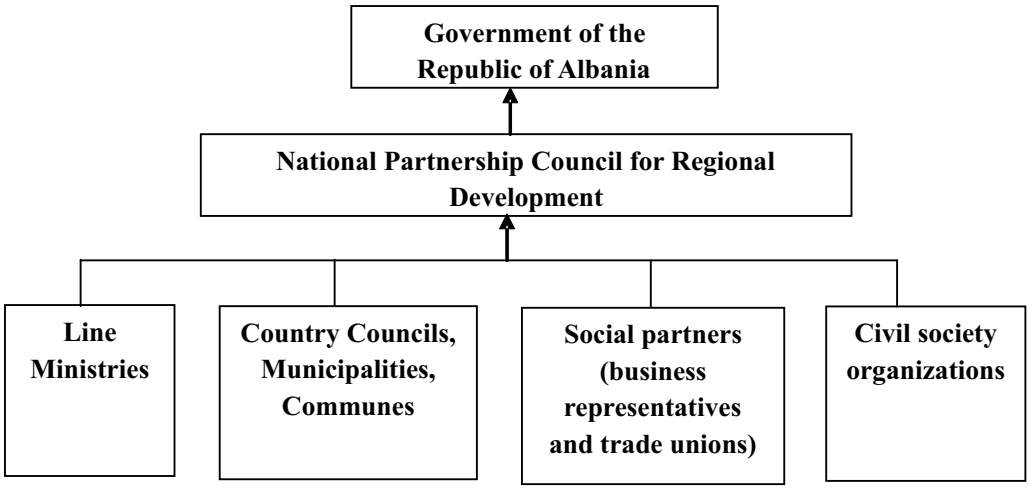
Partnership Structures, consultative functions:

- At National level: **National Partnership Council for Regional Development:** a national level advisory body composed of the representatives of the public (central state administration, counties, municipalities and communes), private and civil sectors and will be established in accordance with the Law on Regional Development. It is established for the purpose of providing advice related to the preparation, implementation and monitoring of the Regional Development Cross-Cutting Strategy, coordinating various subjects and participating in regional development planning. The secretariat function for the NPCRD is provided by the METE.

  The NPCRD is a national-level advisory body composed of the representatives of the public (central state administration, county councils, municipalities and communes), private and civil sectors and will be established in accordance with the Law on Regional Development.

- At Regional/sub-national level: **County Partnership Council:** An advisory and consultative committee at county level whose membership will be drawn from: All relevant state bodies working at county level: County, municipality and commune government; Social partners and business and trade unions at county level; Civil society organisations (i.e. NGOs); representatives of central government. The County Partnership Council (CPC) is a county level advisory body composed of the representatives of the public (county councils, municipalities and communes from the territory of the county, and central state administration bodies dealing with development-related issues in the territory of the county), private and civil sectors and established for the purpose of providing advice with respect to the preparation and implementation of regional development policy at the county level (including documents prepared at county-level for the programming of Albania's use of EU support programmes for regional development), achieving consensus amongst the various interested parties and participating in the development planning of the county.

Figure 1: Partners Relations



Source: Regional Development Crosscutting Strategy, Final Draft, September 2007, METE Ministry of Economy, Trade and Energy, p.4-6.

The Albanian partnership structures and institutional set-up for imple¬menting development projects are consultative in both the national and regional level. The institutional framework for regional development include i) the National Council of partnership for Regional Development (Keshilli Kombetar i Partneritetit per Zhvillimin Rajonal), who include central, regional and local government as well as a social partners and civil society with the aim to provide advice related to the preparation, implementation and monitoring of the Crosscutting strategy of regional development through coordination of different actors and planning; ii) Council of Regional Partnership (Keshillat e Partneritetit te Qarqeve) including a number of partners from public, civil and private sector but only at regional level.[49] The aim of the council of regional partnership is to provide advice[50] and consensus among different interesting actors in regional development planning.

2 Evaluation of Implementation of Partnership Principle

Table 2: Partners Self-Perception on Interactions and Partnerships

... Cooperation with...	Level of cooperation Responders nr or %	High/ Good	Medium/ Satisfied	Low/ Poor	It does not exist/ Without interaction
Qark	Ministries	2	6	4	0
	Other qarks	1	6	4	1
	Municipalities	5	6	1	0
	NGOs	4	7	1	0
Municipalities/communes	Ministries	36	35	24	5
	Qarks	32	38	24	6
	Other Municipalities	8	32	30	31
	NGOs	22	32	28	18
NGOs	Ministries	4	3	5	3
	Qarks	4	7	2	2
	Municipalities	6	6	2	1
	Other NGOs	4	10	1	0

Source: UNDP-ISD Project Institutional Assessment, 2011, Figure 25, p.61; Figure 40, p.96; Figure 59, p. 130

Table 3: Qualitative evaluation of Partnership

Responders from-towards	Good	%	Satisfied	%	Poor	%	Without interaction	%	Average
NGO-CentralAdministration	1	26.67	0.67	20	0.33	33.33	0	20	0.51
NGO-Qark Administration	1	26.67	0.67	46.67	0.33	13.33	0	13.33	0.62
NGO-Municipality Administration	1	40	0.67	40	0.33	13.33	0	6.67	0.71
NGO -other NGO	1	26.67	0.67	66.67	0.33	6.67	0	0	0.74
Qark-CentralAdministration	1	15.38	0.67	46.15	0.33	30.77	0	0	0.61
Qark-other qark	1	7.69	0.67	46.15	0.33	30.77	0	7.69	0.53
Qark-municipalities	1	38.46	0.67	46.15	0.33	7.69	0	0	0.78
Qark-NGOS	1	30.77	0.67	53.85	0.33	7.69	0	0	0.75
Municipality-Central Administration	1	36	0.67	35	0.33	24	0	5	0.67
Municipality-Qark	1	32	0.67	38	0.33	24	0	6	0.65
Municipality-other Municipality	1	8	0.67	32	0.33	30	0	31	0.39
Municipality-NGOs	1	22	0.67	32	0.33	28	0	18	0.53

Source: Own Calculation. Based on table 2 we calculate the average of the evaluation as the average of the % of responder per qualitative scale (1-good; 0.67-satisfied; 0.33-poor; 0-without interaction)

1 For a recent evidence-based review of social, economic and spatial regional disparities in Albania see Girejko, R. (ed.) (2010) "Regional Disparities in Albania", Integrated Support for Decentralization Project "Working for Regional Development", United Nations Development Program, Tirana.

2 Reference: Gasic, M. (2011) "Statistics in focus: Economy and finance", Eurostat 64/2011, Figure 1: Volume indices of GDP per capita 2010, EU27=100.

3 Reference: Girejko, R. (ed.) (2010), Table 48. Regional Development Index for Albania, p.129.

4 For statistical purposes according to the criteria of the EU's Nomenclature of Territorial Units for Statistics (la Nomenclature des Unités Territoriales Statistiques - NUTS), the Albanian government has adopted the division of Albania into three non-administrative territorial units at NUTS II level and twelve NUTS III regions corresponding to prefectures in Albania.

5 Reference: from the Albanian Institute of Statistics (INSTAT 2009).

6 For the detailed methodology of this Regional Development Index for Albania, methodologically similar to the Global Competitiveness Index (GCI), and its shortcomings see: Girejko, R. (ed.) (2010): 126.

7 See Çabin, Y. et al. (2002) Human Development Report Albania: Challenges of Local Governance and Regional Development, Human Development Promotion Center (HDPC), UNDP Tirana, p. 9

8 See McClements, C. (2010) "Cross-cutting strategy for regional development Albania", Review. Unpublished

9 Action Plan for the Regional Development Cross-cutting Strategy. Phase 1: piloting the strategy (2008-2009)

10 Strategic Coherence Framework, Third Draft, Ministry of European Integration, Tirana 2011, p.54.

11 McClements, C. (2012) "Meeting in European Commission", Memo, 14/06/2012

12 See: COM 838 final (2011) "Proposal for a Regulation of the European Parliament and of the Council on the Instrument for Pre-accession Assistance (IPA II)", 2011/0404 (COD), Brussels, 7.12.2011, p.5

13 E.g. In 2011, the Institute for Democracy and Mediation, the Association of County Councils in Albania and Co-Plan University have organized a national conference and published research papers addressing the issue of regional governance/county as the second level of local government. Only recently, the United Nations Development Program, has been engaged in a more comprehensive approach through its Integrated Support for Decentralization Project see: http://isd.undp.org.al/index.php

14 For a review of the partnership principle evolvement see: Bauer, M.W. (2001) "The EU 'Partnership Principle' Revisited: A Critical Appraisal of its Integrationist Potential as a Governance Device Interconnecting Multiple Administrative Arenas, in Preprints aus der Max-Planck-Projektgruppe Rechter der Gemeinschaftsgüter, Bonn, 2001/13. Also: Polverari, L. & Michie, R. (2009) "New Partnership Dynamics in a Changing Cohesion Policy Context", IQ-Net Thematic Paper 25(2), Glasgow, p.1-2

15 See Article 5, Partnership and multi-level governance. COM 615 final/2, 2011: 33-34.

16 For an application of the multi-level governance notion into the cohesion policy of the countries of Southeast Europe See: Bache, I (2010) "Europeanization and multi–level governance: EU cohesion policy and pre–accession aid in Southeast Europe, Southeast European and Black Sea Studies, 10(1): 1-12.

17 Đulabić, V. & Manojlović, R. (2011) "Administrative Aspects of Regional and Cohesion Policy in Croatia: In Search of a Better Coordination of Parallel Processes", Croatian and Comparative Public Administration 11(4): 1060.

18 Preparations for the Structural Funds in the Candidate Countries, Twinners Seminar, Brussels 15 and 16 March 2001, Synthesis Paper

19 See Marcou, G., ed. 2002. Regionalization for development and accession to the European Union: A comparative perspective, local government and public service reform initiative, Open Society Institute, Budapest

20 Dezséri, K & Vida, K (2004) "New Modes of Governance in the EU Structural and Cohesion Policy and the Case of the New Member States", NEVTGOV - New Modes of Governance, WP 01/D48, p.16-18.

21 Bailey, D. & De Propris, L. (2002) "EU structural funds, regional capabilities and enlargement: Towards multi-level governance?" Journal of European Integration 24: 303–24.

22 Dezseri, K. (2005) "New modes of governance and the EU structural and cohesion pol¬icy in Slovenia" Mimeo. And, Bassa. Z. (2005) "New modes of governance and the EU structural and cohesion policy in the Czech Republic and Slovakia". Mimeo.

23 For the legal and policy framework see Introduction Paragraph 2.

24 Crosscutting Strategy Regional Development, Final Draft. Ministry of Economy, Trade and Energy. September 2007, p.6

25 McClements, C. (2010) "Cross-cutting strategy for regional development Albania", Review. Unpublished, p.11.

26 There are two partnership councils (the National Partnership Council for Regional Development and the County Partnership Councils) aiming at bringing together the same range of actors, - government ministries, county and local government, the social partners and civil society. For more see appendix

27 McClements, C. (2010) "Cross-cutting strategy for regional development Albania", Review. Unpublished, p.26.

28 Regional Development Crosscutting Strategy, Final Draft. Ministry of Economy, Trade and Energy. September 2007, p.20.

29 Strategic Coherence Framework, Third Draft,

Ministry of European Integration, Tirana 2011. p.58.

30 The first regional development strategy adopted in November 2007 was part of the government longer-term decentralization reform. Thus, decentralization and regional development are both cross-cutting issues and need to go hand-in-hand.

31 See ISD-UNDP (2010) "Working for Regional Development", Newsletter 2, December, p.7; Strategic Coherence Framework, Third Draft, Ministry of European Integration, Tirana 2011. p.48.

32 On a detailed analysis of both convergence or parallel broad policy options see Gjipali 2010. On the specific phases and detailed measures to be taken for (full) convergence of domestic regional development framework with EU cohesion policy and IPA and structural funds (2010-2020) see Girejko & Boeckhout 2010.

33 Preparations for the Structural Funds in the Candidate Countries Twinners Seminar Brussels 15 and 16 March 2001, Synthesis Paper, p. 3

34 Crosscutting Strategy Regional Development, Final Draft. Ministry of Economy, Trade and Energy. September 2007, Draft – Final, p. 20

35 Benc, V. (2003) "Readiness of the Slovak Republic for EU regional policy", Conference Almanac-Readiness of Candidate Countries for EU Regional Policy, Slovak Foreign Policy Association SFPA, p. 191

36 See: Crosscutting Strategy Regional Development, Final Draft. Ministry of Economy, Trade and Energy. September 2007, Draft – Final, p.26

37 Reference to Knezevic, I. (2011) "Absorption Capacity of Serbia for Use of EU Funds: Practical Lessons from Slovakia", in Cox, A. & Holt, E. (eds.) Slovak - Serbian EU Enlargement Fund. Pontis Foundation, p. 13

38 Girejko, R. (ed.) (2011) "Albania – Regional Development Capacities on The Ground: An institutional assessment study", Integrated Support for Decentralization Project, United Nations Development Program (UNDP), December, Tirana, p.14

39 McClements, C. (nodate) "Understanding Regional Development", p.3.

40 McClements, C., Boeckhout, S. & Girejko, R. (2010) "Policy Assessment Report on IPA 3 Structures for Albania", 28 January 2010 (draft).

41 For more see "Preparations for the Structural Funds in the Candidate Countries" Twinners Seminar Brussels 15 and 16 March 2001 Synthesis Paper, p.11.

42 Brunazzo, M. (2007) "The partnership principle in European Cohesion Policy: Toward a new research agenda?", CINEFOGO-Conference Partnership – Keystone of New Governance, January 29/30, Münster, Academy Franz-Hitze-Haus, p.10.

43 European Commission (no date) Partnership in Cohesion Policy: European Social Fund support to social partners in the 2007-2013 period, p.6.

44 Bauer, M. W. (2001) "The EU 'Partnership Principle' Revisited: A Critical Appraisal of its Integrationist Potential as a Governance Device Interconnecting Multiple Administrative Arenas", Preprints aus der Max-Planck-Projektgruppe Recht der Gemeinschaftsgüter, Bonn, 2001/13, p. 4

45 McClements, C. (nodate) "Understanding Regional Development", p. 1

46 In the questioners ask to NGOs, the ISD-UNDP 2011 assessment besides the findings that participation through project implementation is the NGOs' preferred type of involvement, they find also that the majority of organizations consider it very important to directly participate in programs monitoring and evaluation (see Girejko 2011: 116). In our judgments, their wish to participate in the monitoring and evaluation process may be due to the luck of trust to government institutions and agencies of evaluation/monitoring.

47 See Preparations for the Structural Funds in the Candidate Countries, Twinners Seminar, Brussels 15 and 16 March 2001, Synthesis Paper

48 See ISD-UNDP (2012) "IPA 2014-2020: A view in the future", Newsletter 7, March, p. 1

49 See Decentralization Strategy, July 2008, p. 45.

50 Brunazzo, M. (2007) "The partnership principle in European Cohesion Policy: Toward a new research agenda?", CINEFOGO-Conference Partnership – Keystone of New Governance, January 29/30, Münster, Academy Franz-Hitze-Haus, p. 10

51 For more see: Crosscutting Strategy Regional Development, Final Draft. Ministry of Economy, Trade and Energy. September 2007, Draft – Final, p.39

52 Especially advice with regards to EU supported programs for regional development.

“Consumer Friendly” Energy Bills

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1 Introduction

This research is conducted in order to improve the consumer’s protection in the area of public services (especially in the domain of power and heat supply). This research takes into consideration economic, legal and social aspects while viewing the tariff systems, the existence and content of contracts, bills for supplied energy as well as the challenges and problems of consumers in this domain.

For the purposes of this analysis the consumer is an individual user of public services for own personal or family needs.

The methodology used is based on the indicators of economic well-being, energy availability, legislation analysis, analysis of data in the bills for delivered energy, analysis of data from complaints of consumers in the Consumer Organization of Macedonia (COM) and the Ombudsman office, including the attitudes and opinions of interested parties.

The results from this research should help us see the current condition in the domain of this research, the necessary measures that need to be initiated so they can help policy creators to upgrade the legislative and its implementation, especially keeping in mind the interests of consumers and vulnerable groups of the society. At the same time this research should give directions toward improvement of the relationship with consumers and deeper understanding of their problems from the relevant institutions and regulatory bodies as well as from the companies by using the best practice experiences.

Consumers expect to be protected with an appropriate legislation and standards that provide quality and safety of services in power and heat supply, a transparent and understandable system of bills issuing and payment, education for energy efficiency, procedures for resolving consumers’ claims and transparent, interactive web-sites.



2 Situation overview in the given area

2.1 Economic situation

The Republic of Macedonia is a small economy with a GDP of 9,8 billion $ (2011) which accounts for 0,01% of the world GDP.

The services sector in Macedonia is becoming more meaningful, constituting more than 45% of the GDP. The industrial sector which was dominant in the transition period is now secondary although it remains a main export sector. Agriculture is gradually losing its importance in terms of contribution to GDP.

The economic problems and risk remain, mainly connected with the country's efforts to finish the structural reforms and finish the transition into market economy. The modernization of the outdated infrastructure is going slowly and the small amount of foreign investments are not keeping pace with neighboring economies. Education and skills of the work force are competitive in some technical areas and industries, but they fall behind in other areas. Without adequate job opportunities in Macedonia, many of the best and most competent professionals decide to work abroad.

The relatively standard of living, high unemployment rate and a modest rate of economic growth are the central economic issues. The economic growth in Macedonia can be easily expressed through the GDP, inflation, percentage of unemployment and the number of welfare users. After the internal ethnic conflict in 2001 the economic growth in 2003rd has been 2.8% which has continued in 2004 with 4.6%, in 2005 with 4.4%, in 2006 with 5.0%, in 2007 with 6.1% and in 2008 with 5.0%.

Macedonia felt the effects of the world economic crisis in 2009 with a GDP drop of 0.9%, which was a modest recession compared to the EU economies. At the same time the financial sector remained healthy mainly because of conservative bank and finance regulation as well as weak exposition to global financial markets and a dependence on domestic deposits not foreign credit lines. The economy started gradually recovering in 2010 with GDP growth of 1.8% and this trend continued in 2011. The inflation measured with the consumer price index (CPI) is generally under control regardless of oil and food price rises on the world markets which reflect on Macedonia. The standard of living still falls behind compared with the life standard before the independence. Due to the increase in price of energy, fuel and food on international markets the inflation increased in the first half of 2011, but later reduced to the annual rate of 3,4% by the end of September. The official unemployment rate reduced in the second quarter of 2011 to 31.3% but remains one of the highest in Europe.

2.2 Public services with review on the power and heat supply provided by EVN Macedonia (power supply), Toplifikacija AD and AD ELEM (heat production and supply)

The term "Public Services" covers a wide spectrum of different commercial and non-commercial services that, generally, every state should provide for its citizens. Depending on their nature, the distribution of these services is organized on a national or local level. The object of this research are only two commercial services of public interest, one of which is supply on a national level (power supply), while the second (heat supply) is provided on a local level[1].

One of the basic characteristics of this type of services is that it is common the providers of these services to be in a monopoly position in their operation sector, which makes them especially sensitive for the consumers. While products and services that are not distributed in terms of monopoly, the free market and competition provide the consumer with a position to be a relatively active participant in the market reproduction, in this type of services the consumer is forced to accept the terms given by the provider, since there is no opportunity to use his right for choice.

Commercial activities of public interest in the period after WWII until 1996 were exclusively in the hands of companies owned by the state[2]. After this period began the process of privatization/commercialization of these activities, so today as providers of this type of services, besides the public enterprises, we can have domestic or foreign individuals or legal entities. In our specific case, the role of providers of the services that are subject to this research, there are two joint-stock companies that are predominantly privately owned and one joint-stock company completely owned by the state.

The subject of this analysis is the services provided by the three companies:

a) **EVN Macedonia** (www.evn.mk)

EVN Macedonia is part of the EVN AG concern from Austria. With the purchase agreement of 2006, EVN AG became an owner of 90% of the company then called AD ESM, and 10% remained in ownership of the Republic of Macedonia.

The main activity of the company is power supply to about 800.000 consumers in the territory of the state. The total length of mains is about 25.000 km.

In 2006, directly after the privatization of EVN Macedonia from EVN AG of Austria, the complete reorganization and transformation of the company began. The company points out that it is making particular efforts for overcoming the problems in the bills payments, the power losses, the substandard distribution networks and substations, bad financial results and other negative indications that they aim to radically and systematically change.

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EVN owns 11 hydropower plants that annually generate about 150 GWh power.

Consumers' Organization of Macedonia (COM) held two meetings with a part of the managerial structure of EVN, in order to inform them about the work on this research, as well as the need to get more information regarding the consumer related work of EVN and the problems perceived by the company. The company showed that they were ready to cooperate at these meetings by delivering data on all required information relevant for this research.

b) **Toplifikacija AD Skopje** (www.toplif.com.mk)

Toplifikacija AD Skopje is a company with basic heat production and supply, with installed capacity of 560 MW. The company is a grouping constituted of three subsidiary companies: Snabduvanje ZAPAD DOOEL Skopje, Snabduvanje CENTAR DOOEL Skopje and Snabduvanje ISTOK DOOEL Skopje, the company Snabduvanje SEVER AD, as well as the company SIG DOOEL Skopje which are also a part of the group.

Starting in 2010 the bills for supplied heat to individuals are delivered by the three subsidiaries of Toplifikacija AD Skopje and by the company Snabduvanje SEVER AD. If they do not have other permanent maintainers citizens can report the problems they have with the internal installation to SIG DOOEL Skopje.

Today's regional system of central heating is a modern system with a high degree of automation of all technological processes and complete computer monitoring of thermal production. In the last 15 years 50% of heat supplied to consumers is measured, and from the year 2000 the overall delivered quantity of thermal energy is being measured.

c) **AD "Elektrani na Makedonija (ELEM)** (www.elem.com.mk)

AD ELEM – Branch Energetics – Skopje has a facility that performs heat production, distribution and supply in the settlements: Zelezara, Madzari, Hipodrom, Triangla, Avtokomanda. The total installed capacity is about 70 MWth and 40 MW is currently used for district and industrial heating. The remaining capacity is not used since the distribution network is not completed yet.

The company provides 24 hours of heat supply to all its customers, but the Energy Regulatory Commission (RKE) in accordance with the Tariff system for heat energy sale from December 2009 and the Decision for establishing the regulated maximum revenue and regulated average price of production, distribution and supply with thermal energy for heating for 2012 of AD ELEM – Branch Energetics – Skopje, accepts only 16 hours of work, so under these regulations they will not be in a position to proceed with non-stop operation.

3 Analysis of the legislation regarding contracts with the consumers in the area of power supply and district heating

The legal framework which refers to contractual relations includes several relevant regulations:

- **Consumer Protection Law** (Official Gazette of the RM, no. 38/04, 77/07, 103/08 and 24/11) **(CPL)**;
- **Law of Obligations** (Official Gazette of the RM, no. 18/01, 78/01, 04/02, 59/02, 05/03, 84/08, 81/09 and 161/09) **(LO)**;
- **Energy Law** (Official Gazette of the RM, no.16/2011 and 136/11) **(EL)**;
- **Rules for Supply of Electricity to Tariff Consumers** (Official Gazette of the RM, no. 88/11) **(RSETC)**; and
- **Rulebook on the Conditions for Heat Supply** (Official Gazette of the RM, no. 151/09) **(RCSTE)**.

With this structure of the legal framework, the CPL should have the primary application. This Law is applied as a special law in relations between consumers and traders. The consumer is defined as an individual which purchases goods or services for immediate consumption for purposes which are beyond his commercial activity, business or profession (Article 4(1) CPL), while the trader is defined as a physical or legal entity which in the market behavior, in accordance with this law, is acting for purposes related to his occupation, activity, craft or profession and any person acting on behalf of the merchant (Article 4(1) CPL). According to Article 2(2) CPL, unless otherwise specified in CPL, the LO will be applied when dealing with contractual and other obligations for supply of goods and services.

As for the terms of the contracts for supplying power and heat, taking into account the specific matter of analysis, the most important would be to consider the alignment of these contract terms with the provisions of the CPL, mostly concerning unfair terms in consumer contracts (Articles 53-83). Thus, a term in a consumer contract shall be deemed as unfair, if it was not individually negotiated and is contrary to the principle of good faith and fair dealing and it creates an apparent misbalance between the rights and obligations of contracting parties to the detriment of the consumer (Article 53(1) CPL). As seen, the Law in principle applies to the contractual terms that are not individually negotiated, and then states that a particular contractual term will be deemed not to be individually negotiated if that term had been drafted in advance by the trader and the consumer had no influence on its content, especially in the case of terms previously formulated in a standard contract of the trader (Art. 53(2) CPL). The terms of specific contracts for supply of electricity and thermal energy generally fall under this notion.

Some characteristic terms which are considered to be unfair are stated in further provisions of the Law (Articles 54-77). The application of the general provision of Art.53 remains, even if the specific term is not covered by Articles 54-77 CPL, and the court will evaluate, in each specific situation, if the specific term is unfair or not. As a rule, the unfair contractual term is null and void

(Art. 82(1) CPL). Anyone that has a justified interest in protecting consumers, and also the associations for consumer protection, may require the court to declare the contractual term null and void if it is determined that that the contractual term is unfair under the provisions of this chapter (Art.82(1) CPL).

The question remains, however, how many of the stated provisions in the CPL (and also the provisions in the LO) have their application in the specific legal situation, especially because the Law contains special provisions that are applicable to public services supplied to consumers. As a public service, in terms of the CPL, among others, the sale of electricity from the distribution network and of thermal energy is considered (Art. 118(1) CPL). Since the public services that are provided to consumers are regulated with a separate chapter of the Law (Articles 118-120), the question arises whether other statutory provisions, particularly those relating to unfair terms in consumer contracts, can have an application to public services that are provided to consumers. Especially because, despite the fact that CPL contains no explicit provision that the provisions of the CPL will not be applied to public services, the public services are under the regime of special laws.

In this specific situation, the supply of electricity and thermal energy is regulated with a specific law - the EL, and more specifically with the RSETC and the RCSTE, enacted by the Energy Regulatory Commission of the Republic of Macedonia. The first act is based on the EL, while the second rule is based on the previous EL (Official Gazette of the RM, no. 63/06, 36/07, 106/08 and 119/10).[3] These bylaws regulate, among other things, the rights and obligations of the parties: the supplier of the appropriate type of energy and the user of the appropriate type of energy. For the purposes of this analysis the users are to be considered as consumers in terms of the CPL. The RSETC and RCSTE, from a legal viewpoint, present general terms of contracts, in terms of Art. 130(1) LO, which provides that the general terms of contracts are contractual provisions made for a substantial number of contracts which one party, before or at the moment of signing the contract, proposes to the other, whether contained in a formulary (type) contract, or the contract refers to them.

A question arises whether the provisions of the RSETC and the RCSTE are subject to control of the courts, in case they contain unfair contract terms, considered as such under the CPL. The same applies, of course, to individual contracts for supply of the appropriate type of energy in which the provisions of RSETC and RCSTE are incorporated. According to Article 53(4) CPL, the provisions of CPL that regulate unfair contract provisions do not apply if the contract includes provisions of compulsory nature, especially those that incorporate provisions and principles of conventions and international treaties binding for the Republic of Macedonia.

This creates a dilemma in terms of the relation between RSETC and RCSTE, on one side, and CPL and LO on the other side. This is relevant for the LO because its Art.131 regulates situations where certain provision of the general terms of the contract are null and void.

3.1. Scope of the analysis

3.1.1 Analysis of the standard contract for power supply from AD EVN

We state that EVN does not have contracts with consumers and physical entities/individuals, and their preparation has yet to follow, although these contracts were foreseen with "Terms for power supply" from 2001[4] of the Government of Macedonia where it is said that: "Energy should be provided in accordance with the Decision on energy agreement and the signed contract for power supply" (provision applies both to physical and legal entities). The obligation for concluding contracts with tariff consumers is also foreseen in RSETC in 2011, but has yet to be accomplished.

Further in the text we will analyze the contract terms contained in the standard contract for power supply of AD EVN which refers only to legal entities and as such is not a consumer contract. Such provisions are analyzed only under the assumption that AD EVN would use this contract as a basis for preparing a contract for consumers. From the analysis of the terms of the above-stated standard contract of AD EVN we can make the following conclusions:

- There is a general disagreement with Art. 80 CPL which provides that the contract terms must be clearly written and easy to understand;
- There is a general disagreement in the sense that the contract is not sufficiently detailed and referring to detailed rules from the RSETC, which does not make the contract easily understandable for the consumer;
- There is inconsistency between the formulation of Art. 3(2) of the contract which presumes that the supplier has the right to invoice losses of energy in the transformer and circuit while Art. 19 RSETC states that in cases of tariff consumers, whose power is not measured at the point of delivery, but at a lower voltage level than the voltage level at the place of delivery, the technical losses in the lines and transformers are added to the measured amounts of electricity, and these relations are to be regulated by the contract for supply of electricity;
- There is inconsistency between Art. 3(4) of the contract, because the accounting period is not defined and, in accordance with Art. 6 (2) RSETC as a rule, the accounting period is monthly;
- There is inconsistency between Art. 4(1) of the contract, which provides limitations of delivery for other circumstances that do not depend on the will of the supplier, with the CPL and LO since the provision in not well defined;
- The scope of application of the provision of Art. 4(2) of the contract, which provides that the supplier does not incur any liability if the consumer is connected to the energy facility not owned by EVN, is not clear;
- The right to rescind the contract consensually formulated in Art. 5 (2) of the contract is vague;



- The term from Art. 6(2) of the contract and the provision of Art. 31 of RSETC, which stipulates that the bills or invoices for supplied power are an obligation of the previous user until the moment of contract termination or the moment of concluding a contract with the new user as a tariff consumer, regardless of whether the consumer gave late notice or any notice at all, is vague.

3.1.2 Analysis of the standard contract for heat supply to individuals from Snabduvanje ZAPAD DOOEL, Snabduvanje Istok DOOEL, Snabduvanje Centar DOOEL (subsidiaries of Toplifikacija AD Skopje) and Snabduvanje Sever AD as a separate entity, as well as the standard agreement for heat supply to households of AD ELEM

These two contracts are basically consumer contracts in terms of the CPL. We should also mention that despite the previous dilemmas whether these contract terms and the provisions of RSETC and RCSTE are subject to court control in terms of the CPL and LO, the terms will be analyzed as if they are subject to control, with clear reserve that there is a legal dilemma whether this is possible or not according to the existing laws and regulations.

a) Analysis of the standard contract for heat supply to individuals from Snabduvanje ZAPAD DOOEL, Snabduvanje Istok DOOEL, Snabduvanje Centar DOOEL (which are subsidiaries of Toplifikacija AD Skopje) and Snabduvanje Sever AD as a separate entity (each of them is using the same contract)

From the analysis of the terms of the standard contract of Snabduvanje Zapad DOOEL we can make the following conclusions:

- There is a general disagreement with Art. 80 CPL which provides that the contract terms must be clearly written and easy to understand;
- The term from Art. 5 is unclear, as it states that if there is a disturbed energy balance there is no breach of supply in terms of the quality defined in the contract;
- The provision in Art. 12(2) of the contract is unclear, as it states that if property is sold or leased and this action is not reported, the consumer is invoiced and is liable to pay the invoices even after the sale or lease of the property, regardless of whether the consumer has given a late notice or no notice at all;
- The term of Art. 15(1) of the contract is unclear in sense that the cessation in supply is justified even when there are other circumstances that do not depend on the will of the supplier;
- The deadline for payment, according to the Art. 19(1) of the contract and Art. 52(1) of RCSTE is vague and unclear.

b) Analysis of the standard contract for heat supply to households by AD ELEM

From the analysis of the provisions of the stated standard contract we can make the following conclusions:

- There is a general disagreement with Art. 80 CPL which provides that the contract terms must be clearly written and easy to understand;
- The term in Art.8(2) of the contract is disputable as it regulates that in case of malfunction of the measuring device an analogous calculation is performed according to the consumption in the same month in the previous year;
- The deadline for payment, according to the Art. 9(2) of the contract and Art. 52(1) of RCSTE is vague and unclear.

4 Analysis of the energy bills for supplied power and heat

4.1. Analysis of the energy bills for supplied power from AD EVN

The bill for supplied power seems clear and specific, but we can notice several deficiencies stated in the text below.

- **The Abbreviations:** high tariff VT, active high tariff AVT, low tariff NT, active low tariff ANT – are not explained to the consumers, so the ones without energy background could hardly understand their meaning.
- **Communal fee for public lighting** – the calculation of this fee is not explained. It is necessary at least once a year each consumer to get a balance of power consumed for public lighting and its billing according to the municipality and city.
- The Republic of Macedonia has **preferential tariffs** for power generated from renewable energy sources such as small and micro hydroelectric powerplants, photovoltaic power, wind power, biomass power plants. Considering that these preferential tariffs are ultimately paid by each consumer of electricity, this expense should be separated from the basic power price so each consumer would be informed how much he/she contributes for promotion and financing renewable energy sources. Also the bill should include what percentage of the power spent comes from renewable energy sources.
- At least once a year the consumer should get an **annual report for total consumed power,** total amount charged; total amount charged for public lighting and percentage share in the collected funds for public lighting in the district, municipality and city, percentage share in renewable energy sources, amount allocated for preferential/feed-in tariffs for power production from RES.



4.2. Analysis of the energy bills for supplied heat

a) Analysis of specific elements, stated in the bills for consumed heat for physical entities – households by Snabduvanje Zapad DOOEL, Snabduvanje Istok DOOEL, Snabduvanje Centar DOOEL (which are subsidiaries of Toplifikacija AD Skopje) and Snabduvanje Sever AD as a separate legal entity.

- **The bill is incomprehensible** for consumers, mostly because of the initial impression that it contains overmuch information, it is hard to read and lack of insight in the measured data.
- **Square surface** of space heated which is taken as a basis for recovery of advance bills does not match the title deeds held by consumers for their apartments or houses.
- The structure of the bill suggests, and most citizens complain, that it is impossible to affect the amount of the bill. The complaint is that heat is not available when it is needed, and that there is no way to turn off the supply when it is not needed, such as when consumers are away. When investing in EE measures it has no impact on the amount of the bill. In other words there is no motivation to save energy or protect the environment through proper management of heat consumption, etc.
- Once a year the consumer should get an **annual report** for total consumed heat; type of used energy source, total charged amount and percentage share of RES.

b) Analysis of specific elements stated in the bills for consumed heat from physical entities – households by AD ELEM

A flat charge is made per square meter residential area, consequently the bill contains very few information, i.e. it contains: for which month it applies, residential area, price per square meter residential area, amount, VAT and total amount. Apart from that the bill is understandable it has the same remarks as under a).

5 Problem formulation (where it occurs SIGNIFICANCE OF THE PROBLEM)

As mentioned before in the introduction, the need for this part of the analysis comes form the consumer problems that occur in the process of using the energy and refer to the contracts, safety and quality of supply, consumption control, clarity of bills and also the functionality of the system for complaints and appeals.

5.1. Consumers' problems viewed through the analysis of claims addressed to COM and the Public Defenders office

To verify the aforementioned problems we provide a statistical overview with commentary which follows further in the text

a) Information for claims to COM

STATISTICS OF CONSULTATIONS for 2010

Skopje	Bitola	Shtip	Tetovo	Ohrid	Kocani
gc. 2198	gc. 467	gc. 290	gc. 487	gc. 195	gc. 358
sc. 461	sc. /	sc. /	sc. /	sc. 124	sc. 193
Total. 2659	Total. 467	Total. 290	Total. 487	Total. 319	Total. 551

STATISTICS OF CONSULTATIONS for 2011

Skopje	Bitola	Shtip	Tetovo	Ohrid	Kocani
gc. 1393	gc. 336	gc. 332	gc. 402	gc. 313	gc. 185
sc. 112	sc. 54	sc. 53	sc. 15	sc. 16	sc. 119
Total. 1505	Total. 390	Total. 385	Total. 417	Total. 329	Total. 304

STATISTICS OF CONSULTATIONS or 2012

Skopje	Bitola	Shtip	Tetovo	Ohrid	Kocani
gc. 341	gc. 91	gc. 107	gc. 79	gc. 120	gc. 51
sc. 35	sc. 11	sc. 37	sc. 10	sc. 26	sc. 36
Total. 376	Total. 102	Total. 144	Total. 89	Total. 146	Total. 87

In the tables above the number of consultations completed in all advisory bureaus in the last two and a half years can be observed. The domain of public services (heat and power) is also a part of the counseling in terms of general legal matters.

- In 2010 COM has made 213 consultations in the domain of power supply and 153 consultations in the domain of heat supply.
- In 2011 COM has made 110 consultations in the domain of power supply and 175 consultations in the domain of heat supply.
- In 2012 (January, February, March and April) COM has made 53 consultations in the domain of power supply and 38 consultations in the domain of heat supply.

Complaints from the field of power supply are related to: the exclusion from power distribution network due to unauthorized usage of electricity, doubts on the correctness of the new electric meters, delivery of two bills at the same

time, reimbursement of outdated debts into new bills without attached grounds and the documentation upon which the claim is based, poor quality in some areas, and no contracts for power supply. Complaints from the domain of heat supply mostly refer to: poor delivery in separate areas of the city, reimbursement of outdated debts, inefficient and slow procedure when reporting for malfunctions, not enabling citizens to influence their own consumption (80% of tenants need to agree on individual meters for heating) lack of insight into the measured date and readings of the energy supplied, lack of mechanisms for control of the data and the measuring devices used as a basis for payment, lack of control over users illegally connected, vague and unclear bills, difficulties when trying to contact the services for complaints.

b) Complaints to the Ombudsman office

In accordance with the data in the annual reports of the Ombudsman's office, the problems in the domain of consumers' rights are increasing each year. This is evident if the last two report periods of 2010 and 2011 are taken into consideration. The overview of the 2010 Report, shows that out of 4.827 - the total number of claims, 553 refer to consumer rights or 13.68%. Out of 533 complaints 60.76% refer to power and 7.41% to heat supply (information referring to Skopje).

From the insight of the 2011 Report the total number of complaints is 5074 giving 5% increase compared to the 2010' number of complaints. Of the total 673 complaints refer to consumer rights, or 15,81% of the total number of received complaints. From these 50,2% refer to electricity and 8,02% on heating (information referring to Skopje).

The largest number of complaints that are delivered to the Ombudsman and which demanded protection of the citizens rights as consumers, refer to the power consumption, but also the big number of complaints for heat supply and phone services can not be ignored, as well as public utilities, particularly water supply and urban waste disposal.

When it comes to the problems that refer to the power consumption the most common complaints from citizens submitted to the Ombudsmans office relate to the exclusions from the power distribution network and high indebtedness amounts, alleging unauthorized use of electricity or unauthorized connection. Despite submitted suggestions and information for improper conduct while determining unauthorized usage of electricity, based on complaints and also on replies from EVN we can conclude that the practice of the EVN teams continues to unilaterally determine unauthorized use of electricity, often without the presence of the owners ie users, and citizens cannot prove that there isn't a theft, although according to the regulation for usage of electric energy when a user is discovered to be connected to the network without authorization the distributor is obliged to initiate proceedings to the competent authority. It was concluded that these proceedings are often not raised.

Regarding the work of the companies that deliver thermal energy, complaints were submitted that were mainly about inadequate heating, but also because

of the bills that are to be paid in advance, for which the relevant company gave and explanation that citizens that use heating for only six months, pay their bills in 12 monthly installments for which they are delivered with a monthly bill that should be paid in advance, and the paid amount is leveled after the reading of the meter at the end of the year.

5.2. Problem diagnostics

Consumers need power, heat and energy for transport. The energy is a indispensable segment of the basic life functions and contemporary socio-economic existence. Each consumer (citizen) has the right for:

a) Energy access with affordable and transparent prices

b) Choice of energy sources and suppliers

c) Contract with an energy supplier which clearly states the rights and obligations of both sides

d) Clear, transparent and comparable bills

e) Change of energy supplier without painful procedures and extra expenses

The current situation in the Republic of Macedonia does not allow support of the rights listed in paragraphs b) and e) because the energy market is not yet open to other sources and service providers. As for other specified rights, much has to be done to improve the situation, such as to ensuring access to energy for vulnerable groups, to introduce contracts between energy suppliers and consumers that will enable increased and improved consumer protection, to improve energy bills in terms of readability, understandability and clarity to provide ways for active participation of consumers in preserving the environment and energy resources.

5.3. Taken initiatives for problem solving

a) Action of COM – addressing companies and institutions in the past year

COM receives complaints from consumers that have previously addressed the companies and unsatisfied with the response, ask for COM to intervene further to the relevant institutions, and also from consumers that ask COM to address the companies on their behalf, and if further needed, to the relevant institutions.

COM acts in both cases, especially when a large group of consumers complain to have the same or similar problems (eg. tenants of buildings, settlements) in order to protect their collective interest.

When COM addresses the complaints from consumers to the relevant companies in order to resolve the problem, usually there is a vague response and the companies rarely accept that the consumers are right, so the same complaint is followed throughout the Energy regulatory comission and the Ombudsman.

For the largest number of cases COM addresses the Ombudsman, ERC, and rarely the Government consumers' council and the Energy Agency.

Due to the interventions made by COM to ERC, and because of growing media appearances where citizens began to publicly speak about their problems with supply and the high bills for heating energy, ERC held a session to discuss these problems. The conclusions were not presented publicly but some of them reached the public. In the period since the ERC took the initiative on these problems, the Consumer Council had held a government session on these issues. In all media appearances representatives of OPM represent problems of citizens as they were placed by consumers to help their resolution by the competent institutions.

In the area of power supply in the past period OPM was, in most cases, unsatisfied with the response from the company and had interventions by the Ombudsman and ERC to initiate proceedings and take appropriate measures to eliminate the problems.

b) Action by the Ombudsman

The ombudsman, after the submitted complaints from the COM for protection of the rights of consumers from the new method of calculation of heating energy spent, intervened with Information with a proposal for measures to the Government of the Republic of Macedonia, the Energy Regulatory Comission, Ministry of Economy as competent institutions to take action that would solve these problems. The Ombudsman indicated to take into account the complaints from citizens, particularly regarding the method of calculating the thermal energy and the reality of the amounts charged for consumed heat energy, and to examine whether all objects are properly provided with heating considering the fact that consumers have complained that heating is not satisfactory, and bills have still drastically increased each heating season.

In the domain of power supply in the past OPM had interventions with the Ombudsman to initiate proceedings and take appropriate measures to eliminate the problems regarding findings of "unauthorized use" of electricity. The Ombudsman in these cases inspects the provider of power and in accordance with law requires a report whether the specific cases indisputably established unauthorized use of electricity because of the deliberate manipulation of the metering device by the user or was the metering device malfunctioning, was there a control of the metering and what is the de facto condition established.

Simultaneously examine whether findings regarding unauthorized use of electricity by the service provider are followed by initiating appropriate proceedings - primarily because of the existence of uneven procedure in these cases (in some cases there is a court procedure and in others which are identical there is no procedure).

5.4. Who are the stakeholders to be involved in the process?

a) *Energy regulatory commission - ERC*

ERC as an independent regulatory body is founded with the Law amending the law on energy (Official Gazette of RM no. 94/2002). The ERC Regulatory Commission undertakes action that protects consumers or users of the energy system and energy. Protecting consumers as a complementary activity Regulatory Commission shall include:

- ensuring the security of energy supply;
- providing universal service in the energy supply;
- introduction of an obligation of enterprises that perform energy activities to provide public services to consumers;
- protection of final consumers, especially the protection of vulnerable customers from disconnection;
- control energy prices and energy through regulated tariffs;
- prescribing rules for the energy quality;
- monitoring the quality of the delivered energy;
- ensuring the possibility of energy users and energy system the right to change supplier at any time;
- informing consumers about the rules for getting the energy line and connection of the energy system;
- ensuring transparency of accounts for energy consumed and
- introduction of an obligation of enterprises that perform energy supply to establish an internal system for resolving complaints from consumers.

In accordance with Art. 11 – e, line 11 of the Energy Law, Regulatory Commission is authorized to participate in the resolution of disputes arising between energy companies and to propose measures to address them. Thus, the role of Regulatory Commission is a mediator and it aims at reconciliation of disputed parties and in finding a solution to the dispute. In addition Regulatory Commission does not adopt a decision on the dispute, but proposes a solution by peaceful means. The proposal of the Regulatory Commission to resolve the dispute has no binding character of the disputed parties. They may or may not have to accept the proposal of the Energy Regulatory Commission to resolve the dispute.

b) *Ombudsman of RM*

The Ombudsman is a specific, separate, specialized and independent body with powers to protect the rights of citizens which means no legislature, executive or judicial power, much less a state prosecutor or the authority of inspection and supervision. Its significance and specificity of function is exactly in the way of his actions and behavior. The method and manner of operation of the Ombudsman consists in giving suggestions, advice, suggestions, cooperation,

education, skill to listen to the people and timely action in order to realize therights of citizens. For more efficiency and higher quality of the rights of citizens as consumers, the Ombudsman despite written communication with public companies and organizations implement and realize immediate and direct contacts with officials for the proper determination of the actual situation and finding a solution for realizing the rights of consumers.

c) *Ministry of Economy - Department of Energy - State Market Inspectorate*

State Market Inspectorate (http://www.dpi.gov.mk) inspect and supervise the application of laws, regulations and other acts by the Company, other legal entities and citizens conducting business in the Republic of Macedonia , which are mostly related to product safety, consumer protection, activities in the field of trade, catering, tourism, craftsmanship, protection of industrial property and other statutory duties.

d) *Energy agency of the Republic of Macedonia*

Energy Agency (http://www.ea.gov.mk) began active operation in September 2007, pursuant to the same establishment. Energy Agency focuses towards preparation of proposals for legislation and regulations, technical regulations and standards in cooperation with the competent ministries, educational institutions, commercial entities, NGOs and others, to achieve faster compliance with European Union regulations, and its mission is to support the implementation of energy policy of the Government, through the preparation of energy strategies, development plans and programs, with particular emphasis on energy efficiency (EE) and the use of renewable energy sources (RES).

e) ***Consumers' Organization of Macedonia - COM***

Consumers' Organization of Macedonia is a nongovernmental organization representing consumer interests in Macedonia. Their aims are to raise public awareness by informing and educating citizens, and promoting and implementing appropriate legislation and consistent consumer policy. OPM is constantly working on improving consumer protection in order to realize their basic rights, such as:

- **availability of most essential goods and services;**
- **safe and quality products and services on the market;**
- **accurate and timely information and education of consumers, for making the correct choice of products and services;**
- **compensation when consumer rights are violated;**
- **healthy environment and sustainable consumption.**

6 Conclusions and recommendations

Based on the findings of the survey, he following conclusions may be drawn:

- The scope of application of each of the regulations is unclear, especially in terms of susceptibility of the contractual terms and the provisions of the Rules for Power Supply to Tariff Consumers and the Rulebook on the Conditions for Heat Supply to judicial control in terms of the Consumer Protection Law and the Law of Obligations;
- The scope of application of the the Consumer Protection Law in the domain of public services is unclear which leaves the possibility of inadequate protection of consumers in a large and very sensitive sector;
- The analyzed contracts are insufficiently clear and imprecise, while the mere reference to the Rules for Power Supply to Tariff Consumers and the Rulebook on the Conditions for Heat Supply does not create an appropriate representation of the consumer's rights and obligations;
- The contracts, generally speaking, regulate in more detail the responsibilities of consumers than predicting their rights, rather than regulating the obligations of the supplier;
- The Rules for Power Supply to Tariff Consumers and the Rulebook on the Conditions for Heat Supply are not easily available to consumers, and also their alignment with the Consumer Protection Law and the Law of Obligations is insufficient;
- Although the provisions of the Rules for Power Supply to Tariff Consumers and the Rulebook on the Conditions for Heat Supply are adopted by the Energy Regulatory Commission of the Republic of Macedonia, the question is how its provisions are appropriate in terms of the Consumer Protection Law and the Law of Obligations;
- In general the bills for consumed energy are not clear enough, with no possibility for comparison and no possibility to check if they are exact.
- The official web sites of the service providers in this area are not made so they are acceptable for the average consumer; they are not interactive and do not support adequate communication and information.
- It is not been made possible for consumers to affect their own consumption of thermal energy, and by doing so gain greater control over the family budget;
- Consumers do not trust the data and the measurements of consumption, because any insight by them or by a third party on their request has not been made possible;
- The consumers are not provided with annual reports that provide an overview of energy consumed per month, total collected funds, participation of energy sources in the energy supplied, opportunities for saving energy, etc.
- Consumers are not enabled to actively participate in the formation of energy consumption i.e. affect the amount of energy through energy

efficient measures, application of renewable energy resources and simple insight to meters for delivered energy.

6.1. Recommendations

- Active involvement is required from organizations for consumer protection not only as observers of the work of the Energy Regulatory Commission of the Republic of Macedonia but also in terms of proposing a member of the Energy Regulatory Commission of the Republic Macedonia. In order for this to be done adequate amendments of the Energy Law are needed. These amendments would render the involvement of consumer organizations continuous, more active and effective, as all acts and bylaws of the Energy Regulatory Commission of the Republic of Macedonia but also in terms of proposing a member of the Energy Regulatory Commission of the Republic Macedonia concern consumer welfare. The achievement of such amendment is dependent of a proposal for amendments of the Energy Law form the Ministry of Economy;
- The consumer should be aware of his rights and obligations, so the provisions of the Rules for Power Supply to Tariff Consumers and the Rulebook on the Conditions for Heat Supply should be clearly formulated, as well as the terms of the supply contracts. Therefore, the primary aim should be to redraft the Rules for Power Supply to Tariff Consumers and the Rulebook on the Conditions for Heat Supply. This activity should be undertaken by the Energy Regulatory Commission of the Republic of Macedonia, particularly bearing in mind that the Rulebook on the Conditions for Heat Supply is currently under review. The consumer organizations will have an active role in this process only if their involvement is institutionalized, as we mentioned above;
- Redefining the provisions in part VI of the Consumer Protection Law which refers to the services of public interest to further define the responsibilities of providers of such public services, done so that these provisions will cover the rights of vulnerable groups. This should be achieved by redrafting the Consumer Protection Law, particularly now after the Consumer Rights Directive has been adopted. This is an obligation of the Ministry of Economy and the Ministry should enable active involvement of the consumer organizations while drafting the new Law;
- To prescribe the obligation of making a contract template with the participation of COM and the same to be approved by the regulator. This should be achieved by the means of redrafting the Rules for Power Supply to Tariff Consumers and the Rulebook on the Conditions for Heat Supply, as mentioned above;
- To prescribe the template of bill / invoice for supplied energy;
- To introduce an obligation to issue an annual report on the energy consumed with monthly averages;
- To introduce the possibility for transparent and simple insight into the measured data and / or measuring device;

- Establish mechanisms to control the output parameters of a provider of services and control of measurement devices in order to gain consumer confidence.

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1 This service is offered to consumers only in Skopje, by two providers

2 So-called "Public Proprietorship", whose founders are the Republic of Macedonia or branches of the local government.

3 The EL came into force on 18.02.2011, which meant that the previous Energy Law ceased to apply. In accordance with article 193(3)(14) EL The Energy Regulatory Commission shall adopt rules for supply with thermal energy within 9 months of entry into force of this Law. According to available data this has not been done, as opposed to the electricity sector which has the RSETC since 2011. According to article 194 EL, until the adoption of rules and approval of acts of Article 193(1) to (11) EL the rules and acts adopted in accordance with the previous EL will be used.

4 No longer valid.

Transparency of Municipalities in Macedonia: Case Study Analysis and a View towards Examples from Slovakia

Misha Popovikj

Executive summary

The aim of this policy paper is to provide a basis for a debate on increasing transparency in municipalities in Macedonia. Given that local elections are scheduled for the spring of 2013, and this is already bringing issues like accountability at the forefront of political communication, by introducing this analysis we are aiming to modestly contribute to this debate.

Transparent practices are not unknown in local governance in Macedonia. Transparency varies across municipalities and some local governments set out examples while others lack behind. The most usual way in which municipalities communicate or inform citizens about their work seems to be their websites. Municipalities have found websites as a convenient place to publish information, news and documents. The quality of this information varies across municipalities and information in some sections is outdated. In many cases, such inconsistency can be a problem.

This is a result of both policy and human capacity. In the first case, practice is arbitrary and more dependent on political will than procedures. Mayors attempt to control the work of the local government as much as they can which results in lack of transparency. On the other hand, our interviews confirm previous research that there is still a need to train public servants in adopting professional consciousness about transparency and think of their work as something that inevitably has to be public.

We have outlined several good practice examples coming from Macedonia and Slovakia in local governmental practice and procedures as well as civic participation in the process. The aim is to show how issues of transparency and accountability can or should be resolved in the areas of: complaints and issue management, drafting reports of the work of departments that increase accountability, dealing with recruitment policy and organising civil society to oversee or participate in the municipal work.

Based on these examples, the paper ends with a list of recommendations that should be implemented as a possible direction towards developing more transparent and accountable local governments.

1 Introduction

1.1. Problem statement

The aim of this policy paper is to provide a basis for a debate on increasing transparency in municipalities in Macedonia. Given that local elections are scheduled for the spring of 2013, and this is already bringing issues like accountability at the forefront of political communication, by introducing this analysis we are aiming to modestly contribute to this debate.

Transparent practices are not unknown in local governance in Macedonia. There is a track record of good practices which should not be neglected. However, as always in the field of governance, things cannot remain static and there is room for improvement. Furthermore, transparent governance varies across municipalities and some local governments set out examples while others lack behind.

Therefore we felt important to analyse the ways in which practices of transparent governance have developed and are working in Macedonia. However, it was equally important to outline problematic areas. Yet, the goal of the analysis was that by analysing practices that work, and explaining those examples, we provide recommendations on how municipalities can improve or develop their own transparent practices and procedures as well as how civil society can extend its impact on this topic.

1.2. Definition

This policy paper takes transparency in a broader sense combining various meanings people interpret from the term. We have started from a narrower understanding of transparency as a principle of 'shedding light on rules, plans, processes and actions.'[1] However, it is important to take in account a broader definition also adopted by Transparency International where the term is understood as a 'duty [of officials] to act visibly, predictably and understandably to promote participation and accountability.'[2]

2 Approach

Taking this broader understanding of transparency as a starting point, the research explores several dimensions. The first dimension of the research is the ways in which municipalities have developed procedures and practice of transparent governance. Our main interest was the mode in which local self governments (hereafter referred to as LSGs) inform the public about their work, and make it open to them.

The second dimension of this research is the initiatives coming from civil society. The analysis explored civic oversight projects dealing with municipal governance with a goal to provide monitoring and evaluation of transparency or accountability. On the other hand, our research also included initiatives

aimed at increasing or developing civic participation where transparency and accountability are extended with a process of including citizens in the process of governance. In this sense, we were also interested in analysing the relationship between municipal governments and the civil society.

The approach of this research combines several research methods. Firstly, we have focused on three municipalities: Veles, Gostivar and Ohrid. We have used these LSGs as case studies where we have conducted our fieldwork consisted of in-depth semi-structured interviews with municipal officials and members of local civil society organisations. We were interested in their experience and opinion on how transparency was or should be established and practiced as well as what have been and what are the remaining challenges.

Secondly, the research includes a desk-research of the projects, reports and analyses done by various CSOs. We were interested to draw a more generalised picture about transparency in Macedonia based on their conclusions and research results. However, we analysed the applied methodologies in order to get an overview of what methods have so far been employed and how transparency was measured.

This research was initially inspired by TI Slovakia's 'Open Local Government' project and its index of transparency.[3] The idea was to share the Slovak experience in both difficulty and success stories as a sort of a backdrop in the analysis of municipalities in Macedonia. The differences between Macedonian and Slovakian decentralisation models limit the ability to generate a comprehensive comparative study. However, the intention of this research is to provide an insight into examples of cases from Slovakia that might provide and interesting path in the development of transparent municipalities in Macedonia.

3 Transparent practices

The legal framework providing the basis for accountable and transparent local governance can be found in several laws. The Law on Local Self-Government in several articles ensures that the public can have access or have the right to be informed about the work of their municipality as well as participate in its work.[4] Furthermore, laws regulating freedom of information, corruption prevention or public procurement additionally ensure transparency in their respective contexts.

3.1. Reporting and publishing

The most usual way in which municipalities communicate or inform the citizens about their work seems to be their websites. Municipalities have found websites as a convenient place to publish information, news and documents. These sites vary in their usability, content or frequency of publishing information.

A typical municipal website in Macedonia consists of several sections:

1. General information about the municipality and the local government;
2. Information about the Mayor and the Council;
3. Newsletter;
4. Basic legal acts of the LSG such as the Statute;
5. List of services provided by the Local Self-Government;
6. Information about the Budget and the Balance Sheet;
7. Contact sections.

The quality of this information varies across municipalities and information in some sections is outdated. In many cases, such inconsistency can be a problem. No matter if the source for such practice is suspicious behaviour, negligence or a technical issue, it signals a lack of enforcement or existence of clear internal procedures ensuring transparent practice. This is a result of both policy and human capacity.

In the first case, as other studies have revealed, practice is arbitrary or more dependent on political will instead of procedures. The study on transparency conducted by Forum CSRD concludes that mayors tend to attempt to control the work of the local government as much as they can, thus becoming a nexus for all the information flow towards the public.[5] Other research has revealed there are cases where officials have denied access to information requests claiming that such information can only be revealed by the mayor.[6]

On the other hand, our interviews confirm previous research that there is still a need to train public servants in adopting professional consciousness about transparency and think of their work as something that inevitably has to be public. In this sense, a representative of the municipality of Veles admitted that not all of the employees fully utilise their ICT solutions for document and project management systems, which is the technical basis for their web publishing system. This, one might suggest, makes publishing information more difficult as the responsibility falls on a smaller number of people to gather and organise such information. At the same time, the representative assured us that other practice reveals that it takes years to fully adopt such systems. Similarly, in Ohrid, the municipality representative admitted that there is still a lot to be done in the area of education and capacity building.

One important missing element in the communication process between the local government and the citizens is publishing minutes of meetings and transcripts of Council sessions. The latter has been addressed by the second phase of 'My Councillor' projects implemented by the NGO 'MOST' which dealt with the standards of transparency, responsibility and cooperativeness of the local self-governments. Their analytical focus was on the standards of taking and publishing the transcripts of council sessions. Their conclusions show that there are big differences between how sessions have been logged in comparison to the standards set out in their books of procedures. In cooperation with ZELS they have published a manual in an effort to unify the

practice.[7] The issue has also been addressed in the conclusions of another research where recommendations were given and common rulebooks were adhered to more strictly, ensuring publicity and standards of setting employees meetings and sessions.[8]

Transcripts of council sessions are a very important tool in getting members of the council accountable to voters. As one of the two elected bodies of local government, it is important for the public to have information about what their representatives do and decide. Council sessions are open to the public. Nevertheless, logged documentation about the activities of elected members is lacking.

Some of the more advanced municipalities include E-services which typically consist of lists of downloadable forms and templates about requests or complaints and a document repository where part of decisions, regulation and procedures are published.

The three pilot municipalities (Gostivar, Ohrid and Veles) have adopted all these sections. However, not all of them have published everything they have set up to publish. Important information such as Balance Sheets of some fiscal years is missing or is difficult to find. These e-services are usually document or form repositories for downloading and are not tools that offer real online service.

These websites, however, act as important tool of transparency in these municipalities. In all three cases they offer information about services provided by the municipality with necessary forms needed by the citizens and explanation of deadlines for completing the service. This means that citizens can understand the services and know in advance how long and in what way a particular service should be delivered. This can help them assess the performance of the municipality in their own case.

One should note that according to research, citizens predominantly use the media to inform themselves of the work of the municipality.[9] This brings into question the emphasis of municipalities to devote all of their resources to their websites. This is not to say that developing websites and services is a pointless practice. However, municipalities need to adopt a comprehensive information strategy that does not exclude technical illiterates or those without and access to ICT technology. Offices acting as a one-stop shop or as information centres, as implemented throughout some of the municipalities, are a good examples of inclusive practice. They usually offer help to such groups in particular and should be implemented in all of the municipalities.

3.2. Sending complaints – An example in Veles

Out of these three municipalities, the municipality of Veles has implemented a service for reporting complaints by the citizens as part of their e-government system.[10] This enables the citizens to have structured and formalised access to the local government on the communal issues. These complaints and local government response can be openly accessed and seen by others to ensure

transparency of communication between the local governments and the citizens.

The problem with this service is that most of these complaints receive a formal response that the issue was forwarded to the responsible department. A more detailed feedback is missing, as well as, perhaps more importantly, the status of resolution. In this sense, there is a lack of information on whether the issue has been resolved or not, as the initial acknowledgement about receiving the complaint is not an indicator of genuine activity. This prevents a complete insight of municipal efficiency in this department and shows relatively one-sided communication with the citizens. For a comparison between two similar independent services for reporting communal issues to municipalities see below, where examples from Macedonia and Slovakia are presented.

3.3. Department accountability reports – An example from Ohrid

An interesting example of good practice can be found in publishing the reports of the department of local economic and tourist growth of the municipality of Ohrid.[11] These reports offer information about activities for bolstering economic growth in the municipality; however, they are also concerned with explaining how the municipality spent resources (working hours and money) to address programmatic aims that have previously been set out. These reports hold information about specific activities that have been undertaken, some sort of measurable impact (eg. media campaign indicators) and the amount of public funds spent on each activity.

This is a good example of the local government office making an effort to proactively inform the citizens about the work of a specific department. However, it is noticeable that the latest yearly report about the work of the department (year 2011) is missing. This shows a lack of clear internal procedure and deadlines on when information are to be published for the wider public. Furthermore, one may assume that outside of the necessary documents that must be published, there is no additional internal mandatory list of information that the local government has set out to publish. Or, if there is, then the frequency of publishing information online is significantly reduced outside of the minimum requirements.

In addition, as much as it is a good practice to publish reports that set out new boundaries of accountability, it is also important that those documents are understandable for a wider public. Detailed reports will always be a good example, however, there is a need for summary reports (or summaries within a report) that would make it easier for a layperson to understand.

A representative of the municipality of Ohrid, for instance, admitted that municipal budgets or financial balance sheets prove to be too complicated. He pointed out that the municipality should (or would) in the future provide narrative versions of these documents in order to increase the outreach for these documents.

One interesting new project that tries to simplify the fiscal documentation of municipalities is 'Fiscal Monitor'.[12] It is a web service aiming to provide 'easy access to data on the budgets of the biggest municipalities in Macedonia'[13] and provides a platform for comparison between municipalities. Its analytic tool allows visual presentation of municipal revenues and expenditures contextualised by the main items of income and expenses.

3.4. Employee systematisation – An example from Gostivar

The municipality of Gostivar has published a systematisation of the local government employees.[14] This systematisation outlines all work places in the government with specification of the competences and description of activities as well as the educational and experience requirements to hold the position. This kind of systematisation is not particular to the municipality of Gostivar, however, what is important is that it is made accessible to the public. There needs to be a greater time frame for a better assessment of the effects of this rulebook (or policy). This will test to what extent this framework can assure compliancy. Furthermore, it is important to see whether these rulebooks, policies and procedures can survive a change of the local government.

A research on transparency of municipalities done by ADI concludes that citizens remain unsatisfied because of nepotism and partisan nomenclature in the local government recruitment process.[15] Existence of rulebooks about recruitment of municipal officials is thus an important step into regaining public trust in this process. The public can then assess new employments according to the rulebook. However, this is not enough. There needs to be a comprehensive set of procedures and structural setups in order to set a proper path in regaining public trust and amend the process towards good practice in general. An interesting example of reimagining the recruitment process in a Slovak municipality is outlined later in this text.

4 Civic participation

The legal framework in Macedonia provides a basis of civic involvement in the work of the local self-governments. The modes of participation include: petitions, referendum, citizen's gathering and public debate.[16] However, citizens are not participating enough in the work of the local governments. A study done on a sample of municipalities in Eastern Macedonia, reveals significantly low levels of civic participation.[17] This is confirmed in a nation level study by IDSCS concluding there is a lack of civic participative political culture.[18]

However, there are successful examples where municipalities have managed to include citizens or NGOs in the decision making process. One of the most notable examples is the municipality of Veles which has a several year tradition of cooperation with CSOs which act as proxies between citizens and the local self-government. NGOs actively participate in developing action programs or allocating budget funds in a process of participatory budgeting. Additionally,

part of the CSOs monitor the implementation of the municipal budget according to the items that were planned with the aid of participation.

Similarly, programs run by several CSOs[19] from Macedonia called 'Community Forums'[20] have developed modes of civic participation mainly in the areas of development of project ideas and budgeting. The goal is to engage citizens in a series of meetings to participate in developing the agenda which in later stages would be implemented in parts of the municipal budget. During the course of implementation, such forums were held in a number of municipalities. According to a member of the implementation team, the understanding by mayors that such activities are helpful is increasing. These forums, according to our interview, seem to have helped some municipalities to include the citizens in part of the decision making process. Additionally,, they apparently helped build capacities for some employees in budgeting and procurement (as part of the stages of implementation of a forum). An indicator of progress is that these forums have become an official part of the ZELS program in 2010 and are to be implemented in all of the municipalities in the near future.

Civic inclusion is a long term process and cannot be done overnight. Certainly, there are some good practices that can be imported. One such practice is allowing the citizens to directly address the Council at its meetings. Such meetings are open to the public and it is not uncommon to see interested parties (usually NGOs) present. However, citizens do not have a guaranteed right to speak. They can address the councillors in other sessions within their rural or urban community meetings. However, the agenda on such meetings usually involves issues of the narrow neighbourhood and not a larger level municipal agenda.

Contrary to this, some municipalities in Slovakia[21] have developed modes of work where citizens can ask for a right to speak and address the Council directly. This direct involvement of citizens in sessions where decisions are formally made is very important, as it enables an inclusive process in the official debate in the Council and the buffer zone between the citizens and the decision is narrower.

5 Slovak experience

5.1. Recruitment policy: An example from Slovakia

Employment in public office remains an issue in Macedonia that slowly progress from obscure towards transparent practice. As a social issue it is usually perceived as a corrupt procedure with elements of partisan nomenclature. In a situation where there is a high rate of unemployment, a job in the public sector is a sought after position.

Hiring municipal officials should be a trustworthy and open process. According to a survey done by Transparency International Slovakia (TIS) in 2007, recruitment was recorded as the issue most affected by corruption.[22] An

example of developing recruitment policy in cooperation with civic organisation can be seen in the case of the city of Martin in Slovakia.

At the request of the mayor of Martin in 2008, TIS drafted recommendations for improving anti-corruption policies based on an audit of the work of municipal government. These recommendations included improvements in enforcing the code of ethics for employees of the municipality as well as directives towards publishing open contests for employment, decisions of selecting committees and all surrounding documentation of the selection process. Furthermore, the recommendations covered drafting and publishing professional guidelines for municipal representatives in enterprise boards as well as conflict of interest policies.

The city of Martin adopted most of the recommendations into a variety of policies and procedures. One visible improvement was selection of ethical officer which, according to TIS, should act as a first base in resolution of issues of conflict of interest or similar complaints during the recruitment process. It also adopted, among others, clearer procedures about open contests.

5.2. Direct civic involvement: A comparison of two projects

Two projects of civic involvement, which in essence are very similar, seem to have different outcomes in Slovakia and Macedonia. The one in Slovakia is called 'Message to the Mayor'[23] while the project in Macedonia is called 'Repair'. Popravi.mk[24] Basically, both of those projects are offering web based service where citizens can submit complaints and map communal problems in their municipality using their computers or smartphones. These complaints are visible on an interactive map or in several interactive lists based on location (municipality) or category. Complaints are automatically communicated to the municipal office so that local governments can see what their citizens have reported as potentially immediate communal problems in their area.

However, there is a difference in the impact these projects have in their countries. The Macedonian implementation has relied on an assumption that the good idea of the project would be welcomed by the municipalities. Or, basically, it assumed that once municipalities receive the reports in their email inbox they would use them in planning their actions. The citizens can report problems in all eighty four municipalities in Macedonia.

There is no evidence that municipal authorities took action based on these reports. The authors of the web service did not have any hard data on how municipalities or communal inspectors have used the service. The service statistics shows no resolution to the problems. The starting point of the project was the web service itself, as the creators of the service are a successful computer programmer and a designer, rather than a project around which a service is created.

The 'Message to the Mayor' project has been implemented by the Slovak Governance Institute. This organisation has chosen to implement the service in phases ensuring that they have local human capacity that can review the

complaints prior to sending them to the municipal authorities. Therefore, the project is implemented in nine cities in Slovakia which is a fraction of the entire number of municipalities in the country. At the same time, the organisation conducts regular communication activities with the local governments ensuring feedback (positive, negative or ambiguous) on the complaints. Municipalities are given ten days to respond otherwise, after the period the report is labelled as 'unsettled' or in cases where the response was unclear, citizens vote in order to determine the status of the 'resolution'.

This ensures public oversight into the performance of municipalities and can be a base for positive or negative PR based on the level of efficiency. The Slovak Governance Institute claims they regularly communicate with municipalities and - in cases of non-responsiveness – with the media. The organisation is trying to bring more users to the service ensuring long term activity of the project. This seems to be one of the biggest challenges they face.

Much of the tools in the 'Message to the Mayor' service in Slovakia are available in the 'Repair' service in Macedonia. However, as there is no organisation dedicated to issues of local governance that has taken over the service, subsequent stages in ensuring response from the municipality are missing.

5.3. Antikor – An informal network of activists

The 'Antikor' network is an interesting example of civic organising in the area of increasing transparency and combating corruption. It represents an informal group established in 2004 of dedicated activists, journalists, councillors and other actors involved in advocacy, investigation or engagement in issues of transparency. Its role is consultative sharing of knowledge between its members about new cases, problems, issues and developments in their fields of interest. This sharing of knowledge and expertise is conducted over training sessions about two times a year where members meet in person. Antikor has so far been involved in successfully advocating legislation change, particularly in the areas of municipal laws and access to information.

What is interesting about this network is that it includes local government councillors who have previously proven their dedication in promoting transparency or had been civic activists prior to their engagement in the local government council. During local elections, these candidates for local office lose their voting power in Antikor in order to enable the network to maintain objectivity. However, this inclusion of decision makers is very important as it puts forward cooperation with members of local governments and may act as a support to those officials that are pushing boundaries of transparent governance further.

In addition, being a network of different activists, it creates a climate of cooperation and information sharing between members of various organisations. This provides the opportunity to open issues of corruption and transparency in a cooperative manner instead of programs and projects of different organisations acting as 'islands' isolated from each other.

6 Conclusions and recommendations

- Transparency varies across municipalities and it is dependent on factors such as policy, political will, and clear and enforceable procedures. Additionally, investment in developing such procedures as well as staff training favours the development of transparent practice. Municipalities should seriously invest in developing policies and practice of transparent work. The minimum which ensures transparent work is definition and standardisation of clear procedures as well as their publication. The example of Veles shows that standardisation provides a good basis for transparent workflow.
- Municipalities still lack the practice of proactive publishing as well as documents and reports providing additional insight into the local governments' accountability. Local governments should work on increasing the availability of information and implementing pro-active publishing. Municipalities should draft and publish clear guidelines about which information is actively published so the public can assess its implementation.
- Once information is passed to a member of the public upon a request for free access, this information should be made available to others as well - providing there are no limiting factors - on the municipal website. The idea is that since the office must spend resources to provide such information on request, there are no significant additional costs to publish the information while there are clear benefits to transparency.
- Much of the public documents follow technical templates which in some cases might be too complicated for a wider public. Local budgets and balance sheets especially suffer from this, compared to how important they are. Local governments should strive to provide the information in a way which ensures greater availability and understanding. Projects such as 'Fiscal Monitor' strive to simplify important information, but this must also be done by local governments themselves. Municipalities must therefore provide, as much as they can, user friendly variants of technical documentation.
- There are examples where platforms facilitating public participation in the decision making process have a degree of success. It remains to be seen how successful, overall, the 'Community Forums' project will be. Adopting 'Community Forums' as part of the municipal statutes (or any other project initiating such participation) is a good practice for inclusion of citizens. This has been done in a number of municipalities so far, at the recommendation of the Community of Local Self-government Units. Furthermore, as there is already a local know-how about conducting these forums, it becomes relatively easier to implement these projects.
- The social context of Macedonia is that employment in public service is viewed as a result of some form of clientelism or nomenclature. Clear guidelines for employment as well as selecting officer in charge of ethics are a good way forward.

- Based on the Law For The Prevention Of Conflict Of Interests, municipalities should draft guides which would further explain situations where conflict of interest occurs as well as detail the procedures for prevention. Municipal officials should be made aware about the provisions of the Law, cases and procedures of prevention in an easily accessible style. These guides should also be published for the citizens or third parties such as companies to take them into account while doing business with the local self-governments. Code of conducts should be tailored along these guides.
- Current e-municipality services act as document and form repositories, as well as some types of communication or discussion tools. What needs to be done is to follow good examples where e-municipality contains tools enabling public (or individual client) insight about the status of current projects, see the progress of their requests and so on.
- Small municipalities lack the resources (financial and human) to provide comprehensive e-services. Municipalities should cooperate in developing e-municipality that can be shared, similarly to the centralised e-procurement web service. In addition, back ends to e-services such as document, project and client management software which ensure the technical basis for clear and transparent work can also be shared. Municipalities should advocate that e-government solutions for the central state be shared with the local governments.
- Oversight of the municipal work should be a long term process. This is usually hindered by frequent donor practice to fund short term projects. Monitoring activities in these cases, though well done, usually lack a distribution of results of a single indicator over time. This means that an audit or a survey of services is usually done once which does not account for results that can occur accidentally (e.g. clerk was sick so did not deliver on time). Conducting the fieldwork of a comprehensive study more than once, at different times of the year, is costly but produces better results.
- As in the case of the city of Martin, CSOs should offer program and recommendations for transformation towards transparent procedures that municipalities can get and adopt as their own rules and procedures. This does not ensure transparency automatically, but it helps those municipalities that lack human or financial capacity to develop such procedures on their own.

List of acronyms

ADI – Association for Democratic Initiatives

CSO – Civil Society Organisation

Forum CSRD – Forum Center for Strategic Research and Documentation

IDSCS – Institute for Democracy 'Societas Civilis' Skopje

LSG – Local Self-Government

NGO – Non-Governmental Organisation

TI – Transparency International

TIS – Transparency International Slovakia

ZELS -- Community of Municipalities of the Units of Local Self-governments

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Waste Management Situation in Albania – Ways to Improve

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Abstract

The urban waste management in Albania is the gravest environmental problem, yet remains unsolved, affecting the life of inhabitants, the environmental pollution and economic development of the country.

The policy planning and legislation drafting has progressed, but implementation and enforcement of legislation remains weak. Insufficient financing and staffing characterizes the sector, while competencies on waste are spread into several institutions and institutional cooperation require further efforts. The management of landfills and closure of uncontrolled dumpsites remains one of the main problems to be solved, while waste management at a local level is beyond being insufficient.

In this context, further efforts should be made to complete legislation approximation, to undertake an institutional reform, and to enhance missing capacities. Also, the establishment of the Environmental Fund would support investments in the sector and provide adequate financing. Schemes on local waste management need to be piloted, based on regional and European best practices, and adapted to the local situation. Education and awareness should be the focus of future government programs and civil society involvement.

1 Waste Management in Albania

1.1. Policy Framework and Legislation

The policy framework and the legislation regarding waste have made some progress. Main strategic documents covering this sector are the National Strategy for Development and Integration 2007-2013 and the National Crosscutting Strategy on Environment that define the medium and long term policy priorities of the Government with respect to environment in general, also including waste.

Main priorities on waste policy for the period 2007-2010, included in those documents, are: (i) the construction of 5 regional landfills and (ii) the finalization of the project files (design and feasibility study) concerning all hot spots. Main priorities for 2010-2013 are: (i) the construction of the sanitary landfills for the disposal of municipal waste; (ii) the closure of existing dumpsites of urban solid waste, and (iii) rehabilitation of the contaminated places in all hot spots that are identified.

The achievement of these objectives remains a challenge for the government, hence not all objectives having been achieved. One of the most important objectives, the creation of the environmental fund foreseen in 2008, which would also provide funds for financing the waste sector, has not been achieved so far. The interruption of throwing waste in unauthorized sites was not achieved, and provisions were also not met in order to prepare management plans from central and local authorities, not to mention for building regional landfills.

There are 2 sanitary landfills constructed according to the EU standards: the landfill of Bushat (Shkodra region) and the landfill of Sharra (Tirana city). Concerning the hot spots, some environmental impact assessments have been prepared, as well as remediation action plans and cost estimate for the nine environmental hot spots identified . Cleaning up as already been confucted at Bajza railway station and Balez chemicals depot, by UNDP and the Albanian Government, while there have been initiated interventions to reduce the risk associated to the tailing dams at Reps and Rreshen mines. However, the objective to rehabilitate all identified hot spots hasn't been met.

The strategic documents do not set targets on the number of illegal dumpsites to be closed, although nowadays the illegal dumpsites, especially those concerning municipal solid waste, remain a considerable challenge.

An Interministerial Working Group on Environment (IWG) was established in 2007. This group is responsible for the preparation of the Environment Strategy and the follow up of its implementation. They have been very active during the drafting phase of the strategy, and have coordinated central institutions, but the implementation of the strategy hasn't been monitored and no coordination or meeting of IWG has occurred.

In 2011 "The National Strategy and National Plan on Waste Management " was approved. The Strategy covers the period 2010-2025 and is based in **four main pillars of the national policy** on wastes: **planning, education, resources** and **legislation.** It is managed on a national, regional and local level. The strategy foresees the establishment of the Inter Ministries Committee on Waste and National Waste Advisory Group, but no progress has been marked so far on this issue.

The National Strategy and Plan also establishes these main targets: (I) to increase the amount of waste collected by local authorities that is recycled or composted to 25% by 2015; (II) to 55% by 2020; (III) to provide widespread segregated waste collections for paper, cardboard, metal, glass and plastics across Albania; (IV) to stop growth in the amount of municipal waste produced by 2020. The strategy predicts that policy indicators will be defined in the near future, but so far no set of indicators has been prepared and published.

The waste sector is mainly regulated by the Law nr. 10431, "On the environmental protection" , date 9.06.2011; the Law nr. 10463, "On the integrated waste management", date 22.9.2011; the Organic Law Nr.8652 "On the Organization and functioning of the Local Government", date 31.7.2000. The law on the integrated waste management transposes the Directive

2008/98 KE of the European Parliament and European Council "On the Waste". The approximation of the Albanian legislation with that of EU has been done often with decisions of the Council of Ministers (not laws), which makes this legal basis easy to amend by the government, out of the parliamentarian monitoring. To be mentioned are the decisions "On the packages and their wastes", "On Waste Inceneration", the National Strategy and National Plan on waste management, etc.

As per the Progress Report of European Commission on Albania published in October 2011 states, some progress is made in the area of horizontal legislation with the adoption of new laws on Environmental Protection, Environmental Impact Assessment and Environmental Permitting, as well as National Waste Strategy and new Law on Waste Management. However, the report includes evidence that there was no progress in transposition of the legislation on strategic environmental assessment or in the areas of access to justice and facilitation of public participation. It also states that the management and control of landfills and uncontrolled dumpsites remains one of the main problems to be solved. The Report also emphasises that overall, implementation and enforcement of legislation remain weak, while strengthening administrative capacity and inter-institutional cooperation require further efforts.

1.2. Financial sources for waste management

The national strategy on waste defines that expenses for compliance and implementation of the EU Directive on Waste are calculated to approximately 150-200 million Euro, and an additional budget of about €52 Million in annual operating costs is required. Though the national strategy is ambitious, the implementation does not fit with the necessary budget. The annual allocation level is far from this provision. Also, the planned investments for the period 2012-2014 are not sufficient to meet objectives of the current national strategy and action plan.

Investments concerning construction of regional landfills, closing of dumpsites and preparation of necessary project designs, are managed by the Ministry of Public Works and Transport (MoPWT) through the budget program[1] "Waste Management". The budget investments for 2007-2011 consist of the construction of Bushati landfill (in Shkodra region) in the amount of 4.2 million Euro, and two local landfills in Bajram Curri and Rrëshen, as well as rehabilitation of the Sharra dumpsite (Tirana region). The funds planned for investments in the period 2011-2013 from the MoPWT are presented (Table and Graphic 1, Annex 2)

The total income generated by the environmental tax for 2009-2011 is at about 110 million Euro and is totally transferred in the state budget, and managed by the Ministry of Finance. If the waste sector were to take only 30% of the environmental tax, the management standards would have totally changed in the main areas.

For the period 2000-2008, investments in waste infrastructure projects were mainly funded by foreign sources and donations. EC, World Bank, the Netherlands,



Italy and Sweden are the five biggest donors[2]. Solid waste covers 26% of all donor assistance to the sector for this period. For the years 2009-2010, solid waste includes € 2.3 million. The support for the second phase of "Establishment of a cross-municipal urban solid waste management system in the Korça region" has been planned to start in 2013, with € 9.8 million in form of loans building financed by Germany/KFW.

1.3. Waste management at local level

National policy at central level needs to be implemented and harmonized at regional and local level (the latter having the responsibility to manage wastes), as there is lack of policy harmonization and low level of implementation. The cooperation between central government and regional and local government units (LGUs) is very weak. The waste management at regional and local level is at the lowest level. LGUs are considered as implementation parties, without being involved in the policy discussion and decision-making processes. They are provided with decisions already taken from higher structures, which are not enforceable and often not feasible.

The central policies are not in the same line with the local ones when it comes to planning and supporting strategic objectives with investments, infrastructure improvement and management capacities at a national, regional and local level. Laws and strategies are implemented poorly at the regional and local level. Central policies do not comply with the local ones in planning and supporting strategic objectives with investments, infrastructure improvement and management capacities in regional and local level. Many functions of the central government were transferred to the local government, without ensuring financial sources to establish a proper management system in place. Local government units continue to provide service in inappropriate levels and services standards are not defined by the central government.

There are 65 main dumpsites in the whole country, functioning from a period of 10-40 years in open fields. These dump sites do not fulfill any environmental standard of sanitary landfills, with the exception of two landfills built recently in Tirana and Shkodra (Photo 1,2,3). Most of those are without environmental permit and all kind of wastes are disposed, without being separated. There are informal groups of people in the dumpsites who collect recyclable wastes for sale. There is no safe system to manage dangerous and hospital wastes which, in many cases, are mixed with urban wastes. Often the waste at the dumpsite is burned, while in many local government units (LGUs) there are also illegal waste disposals where urban and solid waste is deposited illegally (Table and Graphic 2, Annex 2).

The national planning is not based on financial and institutional capacities of local government. A poor collection service is provided by LGUs. The collection service only runs in main cities, while in rural areas waste collection is almost nonexistent. There are only few economical instruments on waste management and service cost is not covered. The service charges vary from 3.5-10

Euro/year per family and service fees from businesses and households cover only 50-60% of the cost of service provided.

One of the problems is that costs are only partially covered by local units. LGUs still apply traditional schemes, without standards, while financial sources for waste collection and disposal are low and insufficient. Collection systems are operable only in big cities, while they are missing in small cities and rural areas (with some exceptions).In rural areas wastes are dispersed in lands and rivers, creating often illegal disposal places and having a severe impact on the environment. Management standards are way behind EU requests, while economic instruments to manage wastes are limited and in low levels.

The Albanian legislation predicts the wastes hierarchy (prevention, recuperation, recycling, disposal), but in practice, the separation of waste categories and monitoring is not being implemented. There is not yet any program to separate and prevent generating wastes in national level, while the potential to recycle wastes is 40-50% of the quantity.

Only 10-15 % of waste is actually collected for recycling, mainly by informal groups of people who collect wastes in dumpsites and bins, and separate it and then sell it to the recycling industry. This is not legal and sometimes it becomes a health and social problem. According to data from the Public Health Institute, the incidence of hepatitis in individuals exposed towards wastes is 20 times higher.

At present, the division of wastes is an unorganized and undeveloped process, due to the lack of infrastructure and public awareness, and the difficulties faced by recycling businesses. Division in the source is almost nonexistent. According to a study of the waste streams (merceological composition) at a national level (made by INAPEL in 2009), the potential of recycling urban wastes is around 50%, organic wastes 46.36%. Since 2008, the municipality of Lezha has started a pilot project of division of wastes in 20% of the territory and is being implemented successfully.

According to estimated data from the Ministry of Public Works, the quantity of generated wastes for 2011 is 1,128,728 tons (an average of 331 kg/person/year). However, this data does not fit with data from municipalities and communes (Table and Graphic 3, Annex 2).

The waste generated by first category municipalities (with more than 50.000 inhabitants) presents a concern, especially with respect to cities at seaside areas. In the Durres municipality (coastal area) with 200.000 inhabitants, during 4 months (June-September) 50% of the annual waste production is generated. Also, the fact that municipalities generate 78% of the annual waste quantity dictates the need for a differentiated management of wastes in coastal areas (Table and Graphic 4, Annex 2).

The waste management plans should support with concrete solutions the flux of production of seasonal wastes, especially for these areas that are considered a main base for tourism development.



1.4. Financing of the waste management service at local level

Municipalities organize the service in their territories either through municipal enterprises, or by subcontracting private companies and setting service fees according to service categories. In 16 municipalities, 7 were providing the service through their enterprises and 9 by contracting private companies. The municipals' councils and communes' councils set the service fees.

The service fees are low, are being collected partially and do cover the service cost in order to guarantee high standard of service. The fee in the most part of 19 municipalities is at 3-10 euro/year/family (only in 3 municipalities the fee is 27-36 euro/year) (Graphic No.1, Annex 3) and are collected up to 60% of the provision (Graphic No.2, Annex 3)

The analysis of 15 municipalities (graphic 3, Annex 2) comes to the conclusion that the family fee covers 10-15% of the service, business fee 30% and other municipal resources 55-60% (Graphic 4,5,6 Annex 3). In communes (Graphic 6, 7, Annex3), the service fee is 7 – 11 euro/year per family, and the level of collection is 40-60%. The family fee makes up 10-14% of the collected tariffs, while the business contribution provides the main part of the funds generated from waste fee The law no. 10117, date 23. 04. 2009 "On the system of local taxes" foreseeing that applicable taxes and tariffs should not be more than 10% of the level of the small business tax. This law limits the collection of the tax according to the waste management cost and this has been raised as a concern by all LGUs involved in the project.

Since there is way to set the service cost, the tariff is seen as an economic instrument of removing wastes from the commune or municipality in another place and it covers only operational costs. The budget is insufficient to manage according to standards, to close dump sites and further maintain them. The disposal stage is financed at the level of 3-5% of annual service expenditures. The capital expenditures to improve the management infrastructure from the LGUs are at almost zero level.

The financial capacities of LGUs are limited and the level of fee collection is low. The financing is not based on the service cost, but allocations for waste are made according to the available budget. Also, the level of the tariff set is not based on the service cost. The level of tariff is not connected to the quantity of wastes produced and the level of service. There are no studies on the management cost of wastes with differentiated standards. Unregistered businesses and families do not pay the service fee.

Since 2009, in many municipalities and communes (Durrës, Fier, Elbasan etc), proposals to raise tariffs are not even approved in municipal councils.

1.5. The regional dump sites

Considering the conditions of our country, with limited incomes and a cost of incinerators two times higher than the average, landfills are the main alternative of disposal. Although the Albanian government has supported the

alternative of building landfills, the implementation level is far from the planned objective and is still the weakest management part. In all meetings with LGU representatives and staff it has been the first quest for solution. Investments regarding construction of new landfills are not realized according the objectives of the national strategy, while the objectives for closing up existing dumpsites are also not met.

Defining the site to build landfills is a competence of central institutions and of the region. The management of landfills is a regional matter, while the regional bodies have to coordinate and LGUs have to cooperate among them for maintaining the landfill. However, the construction of landfills is becoming a critical problem, while the actual dumpsites do not meet any environmental standard. Also, there are no technical standards on how the landfills should be built, no technical criteria and guidelines on possible projects for the landfills.

The Decision of the Council of Ministers No. 333, date 26.01.2011, foresees that the MoEFWA and the MoPWT, in collaboration with the regional bodies, should define and approve the sites to build landfills within 2011, but is still not done. This process is neither bottom up, nor top down. In one case (Vlore regional landfill) the actual site that was foreseen by the central government for possible landfill construction was eventually not feasible, hence the community didn't agree on this option.

The landfill of Bushat was built according to EU standard and was planned to serve the region of Shkodra, but is functioning at 10% of its total capacities. There are 15-50 tons being deposited every day, from 150 tons, which is the daily capacity. LGUs consider the tariff of depositing their waste as very high and are not ready to pay the cost of depositing their waste in the landfill.

The national strategy provides 12 regional waste areas for building the landfills. The concept of a regional landfill that collects and processes all wastes from local units within the region’s administrative borders however is treated as a strict concept, with no preliminary economic and cost-benefit analysis for weighting possible options.

Also, there is no systematic monitoring of the waste streams and composition at the actual dumpsites, while official statistics on waste are either lacking or are contradictory with data provided by the LGUs. This makes the process of policy planning at a local and central level, investment planning, reduction and prevention of waste production very difficult. Before 2002 this process was a competence of the Institute of Public Health. Since then, there are no exact statistics for waste generation, while the actual level of collected and disposed wastes is not measured. It is simply estimated (no weight equipment in the dumpsites), while the waste generated and the waste streams are not monitored.

1.6. Waste education and public awareness

One of the pillars of the National Waste Strategy is education, including raising public awareness, but no dedicated program has been undertaken with focus on public awareness about waste. However, there are awareness actions and

stand-alone initiatives that are not part of an awareness strategy (annexing national awareness strategy), and special program with more than 5 year lifespan, which are needed in order to address challenges of the actual situation. Also, the media does not have as permanent focus waste situation in the country and is not continually involved in raising awareness.

The programs and education on waste are insufficient to respond to actual situation and challenges. The knowledge provided through curricula at pre-university education only extends to 5-6 lectures. There is neither a degree focusing on waste management, nor a master program in this field. So far, only three departments in public universities have developed waste lectures (Department of Environment in the Faculty of Civil Engineering, Department of Agriculture-Environment in the University of Agriculture and the Department of Industrial Chemistry in the Faculty of Nature Sciences). The need for providing deeper knowledge and expertise concerning waste management has been articulated also by the students themselves. The results of the questionnaire with 65 students of the Tourism European University and Agriculture University within the frame of the project, 60% of the students answered positively to the question: "should you receive waste knowledge through the programme" (Graphic 1,2 Annex 4)

There is a need for ongoing awareness campaigns. The results of the questionnaire with 350 citizens within the frame of the project indicates that 65% of citizens consider the waste management situation to be in a bad state, while 45% consider it at a good and medium level. Approximately 70% of the citizens interviewed support the option of dividing wastes at the source by improving the infrastructure and opening collection points for handing in recyclable wastes by payment. Around 30% of them suggest to elaborate on service standards in different levels and to inform the public on the level of the service provided, and the respective fee for cost coverage. However, the level of tariff collection remains low and the level of waste division at source is nonexistent.

The public is rarely involved in consultations and its opinion in drafting the legal and policy framework is not taken into consideration, which has hindered the implementation of policies and legislation. In 2012, about 60.000 citizens signed for the organization of a referendum to oppose the law allowing the waste import. The media and some civil society representatives played a crucial role in raising awareness about the negative sides of the waste import. However, the Central Election Committee decided, against the people's wishes, to organize the referendum. The private companies continue to import waste, while waste produced in the country is not yet processed and separated in the source. Until 2011 73 recycling operators have been registered, with limited activity, based mainly in imported waste. Furthermore, there is no guarantee that imported waste is controlled and supervised, because of lack of labs and qualified specialists.

2 Policy recommendations

The policy recommendations have been structured in accordance to the main pillars of the National Waste Strategy for the period 2010-2015, in order to better contribute to the policy making process for the sector.

2.1. Planning

The Integrated waste management should be ranked in the **top of the list of national policies' priorities,** allocating the necessary budget to carry out capital investments. The National Waste Strategy need to be revised because of evident weaknesses in the implementation. Also, the strategy needs to be approved in the Parliament, not only by the Council of Ministers, in order to have broader consensus and to be monitored.

The strategy need to set realistic targets to be achieved, as well as realistic allocation of financial and human resources. A set of performance based indicators must be prepared, in order to monitor progress of policy implementation. The strategy should foresee real budget implications for setting EU standards on waste, by further approaching EU integration of the country. The national strategy should be monitored periodically and coordination should be improved at central level through establishing and activating the Interministerial Working Group on environment, as a high level policy coordination and decision making body. Monitoring reports on waste must be drafted, published and presented periodically to the public.

Aiming that policies in central levels be implemented in local levels (the latter having the responsibility to manage wastes). Conceptual changes are needed, with regards to the cooperation and planning of local government units, with objectives that are acceptable for all actors. Considering local units only as enforcing parties of central policies on wastes, being out of the discussion and decision-making process, they are provided with decisions already taken from higher structures which are not enforceable.

The planning process should be improved, in order to meet strategic objectives and targets. Environmental policy should be drafted and implemented by fewer institutions, in comparison to the actual fragmentation. It is recommended that the MoEFWA carry out policy making and investments implementation.

There should be harmonized policies at central and local level. Regional plans should be developed for integrated waste management in all the 12 regions, as stated in the actual strategy, by central and local actors. Also, the preparation of local waste management plans by all local government units should be a legal obligation. The LGUs should adopt integrated policy implementation and waste management chain approach, instead of the traditional schemes that exist actually.

The landfill sites for the regions should be approved by the central government, in collaboration with regional authorities, by applying both top down and bottom up approach. The construction of 12 landfills, as stated in the National Waste Strategy, should not be a strict concept. For regions with a low

population and a small amount of waste produced, the landfill costs would be quite unaffordable. The MoPWT should conduct a preliminary economic and cost-benefit analysis for each regional landfill expected to be built aiming at defining costs, benefits and efficiency, thus choosing the best option. Besides the high cost, the scenario of building incinerators through public private partnerships should be taken into account. Also, studies should be conducted for hazardous waste treatment, and an incinerator plant should be considered for treatment of such waste.

A reliable system of waste statistics should be established, in order to regularly monitor waste streams produced and processed, and to better policymaking. This should be done by adopting a bylaw for establishing a standardized mechanism in place to (i) record and report existing waste streams (daily log and annual report); (ii) record and report (daily and annually) the quantity and type of produced and imported products that become special waste after usage; (iii) calculate the fees for the production and import of special waste; (iv) calculated the subsidies for the collecting and recycling industry.

A regulation on the requirements for waste statistics should be adopted, with roles and responsibilities of institutions clearly determined, that will produce reliable statistics on waste. Also, the Law nr.10463, "On the integrated waste management", date 22.9.2011, should be amended, especially Article 60, paragraph2, which states that the ministry prepares and publishes a report on waste statistics in Albania every 3 years. It is more effective that this report to be drafted and presented more regularly, such as once a year.

2.2. Legislation

There has been progress in completing the legislation framework and transposing EU legislation on waste as well as transposing EU directives. However, in the legislation field there is a need to adopt a set of important legal acts, mainly bylaws, in order to:

- to fully transpose EU legislation and amend following legal acts: the Law Nr.8094, date 21.03.1996 "On public disposal of waste"; Law Nr.9663, date 18.12.2006 "On concessions", with respect to construction of objects that treats waste; Law Nr.8652, date 31.07.2000 "On the organization and functioning of the local government", with respect to enhance competences of regional councils in order to coordinate regional waste management policy and roles/responsibilities of local government units (municipalities and communes).
- to adopt a group of bylaws, which must regulate management of different waste streams, which actually are missing (administration of used oils (transposing Directive 75/439/EEC); batteries and accumulators and their waste (transposing Directive 2006/66/EC); waste from electrical and electronic equipment (transposing Directive 2002/96/EC); packaging and packaging Waste (transposing Directive 94/62/EC). management of vehicles out of use, etc).

- to repare, consult and approve legal acts: on landfill of waste (transposing Directive 1999/31/EC) for the standardization of landfills; on waste incineration (transposing Directive 2000/76/EC)
- to draft a series of bylaws on the separation and recycling of waste, in order to establish the responsibilities of the recycling companies and to force institutions and businesses to implement agreements with recycling companies.
- to complete the Law nr. 10463, "On the integrated management of waste", date 22.9.2011, by drafting necessary bylaws (the law foresees to be completed with necessary bylaws in 2 years time of its approval, after entering into force).
- to revise the bylaw on imported waste, after consulting the wide public opinion and taking into consideration the citizens' proposal for a referendum. The amount of imported waste for recycling purposes need to be reduced, especially wastes that are out of the focus of the recycling industry and with high environmental pollution potential.

The low enforcement and implementation of legislation, which is actually very weak, should be enhanced by:

- strengthening capacities of the National Environmental Agency and the regional branches, as well the Environment Inspectorate, by allocating necessary financial resources, logistics (tools, equipment, IT) and qualified staff.
- periodical analysis in every institution and with all actors. Especially, the Environment Inspectorate and REAs must prepare environmental inspection plans at the national and regional levels that must be approved by MoEFWA management. These inspection plans, that are also designed to support common agreements with inspectorates from other sectors, must be visibly promulgated in the buildings of the regional inspectorates or MoEFWA regularly, as well as published on the website of the MoEFWA.
- strengthening control at all levels of the recycling chain, especially customs controlling. Therefore responsible institutions should be provided with adequate equipment, laboratories and trained experts.

Also, the establishing of the Environmental Court should be taken into consideration as a policy option that would further contribute to the law enforcement with respect to waste and to address environmental crime. The experience of these last 20 years has shown that judicial cases don't exist with respect to infringement of environmental legislation or environmental crime, although damages and environmental impact has occurred in critical cases. Also, courts are overloaded with judicial cases and the judges do not possess necessary knowledge to address environmental related issues. However, this proposed policy option needs to be further elaborated with regards to cost-benefit, efficiency, impact in the justice system, etc.

2.3. Resources

The investments from the state budget and donations should be increased in order to close the open waste disposal sites and the establishment of regional landfills. The *Environmental Fund* should be established with the aim to finance environmental investments, especially in the waste sector. In this context, the Environmental Fund could be run entirely as part of the State budget and would contribute in increasing investments from the state budget for the construction of landfills and closure of existing dumpsites. Its sources of funding should incorporate an increased share of revenue from environmental economic instruments (environmental tax on imported goods, environmental fines, green tax), grants from donors and other sources. The Environmental Fund should be established by law and should be administered by a board with representatives of different line ministries and institutions.

So far, 30-40% of the incomes from the environmental tax should be used for investments in waste infrastructure. The concessions should be taken into consideration and ways of involving the private capitals in landfills' investments.

There is a need to enhance institutional capacities on waste at central and regional level, as well as to improve coordination. Several measures should be undertaken in order to reform institutions, as follows:

- The Ministry of Environment should be relieved from some competencies that it is covering, like forest and water management, or the fishing sector. This would focus MoEWFA to play the main role foreseen in the law, drafting environmental policies. Also, MoEWFA need to enhance capacities with respect to waste by establishing the *Waste Management Directory,* for designing and monitoring the implementation of sector policies and coordination with other institutions. Also, line ministries dealing with waste policy should include a dedicated specialist on waste, with a clear job description and responsibilities.
- The *National Inspectorate for the Control of Wastes*[3] should be established in order to eliminate the fragmentation of inspection competencies in too many ministries. This body should be out of the ministries and should have competencies with respect to controlling of all sectors generating waste, and should be supported by logistics and with able environmental specialists.
- Concerning financial aspects of management service costs, the MoEFWA, in cooperation with other institutions should prepare waste management standards, service standards and categories and landfill standards to be applied. The Ministries of Environment, Public Works and Finances shall make a study of the cost of entry in the landfill to set tariffs and evaluate scenarios on the ways any local unit will deposit their wastes. Also, MoEFWA should draft the methodology of calculating the management operational cost, upon which local units shall calculate the full service cost, according to standards defined at the central level. On that basis, tariffs will be set for categories benefiting from the service.

- Also, the *Waste Regulatory Body* should be established (or included as part of the Water Regulatory Body). It would function as a central regulatory authority that would set standards on the waste management tariffs, regulating also relationships among local units depositing wastes in the landfills.
- Capacities at regional and local level should be strengthened, by establishing a waste coordinator in regional councils in order to coordinate programs and harmonize central policies with local ones. Also, it is necessary to establish waste management sectors/directories in big LGUs, such as Durrës, Fier, Elbasan, Korçë, Vlorë, Shkodër. Also, environmental specialists should be employed in the public services directories in municipalities and communes, with a proper job description and qualification.

There is a need to evaluate financial mechanisms for improving the waste management service. Legal restrictions, which hinder the collection of waste tax for small businesses, should be removed, and the law "On the system of local taxes" should be amended. This would release more funding at a local level for improvement of the collection service and waste processing.

The LGUs should develop the full cost of service according to defined standards and approve waste taxes with respect to categories that benefit from the service. There should be a plan to decrease the service costs by the LGU, through the prevention of waste generation and separation at source for recycling. At the national level, based on average annual incomes of population, family tariffs could increase up to 2-3 times from the present figures. Differentiated tariffs could be applied with the purpose to promote division of waste in the households.

The inter-municipal cooperation should be enhanced in order to guarantee better service for the citizens, and to adapt to local needs. Lezha municipality is a good example, where almost 20% of the municipal population is in the territory of communes, and the municipality provides the waste collection and removal service, while taxes are paid in the surrounding communes.

The definition of the waste management areas to be served should allow the deployment of technological solutions that ensure financially sustainable economies of scale. Transit sites of collection should be established in an area equally far from local units and the sanitary landfill, where the division of recyclable wastes could be appied. The transport of wastes to the landfill could be done with big vehicles, thus lowering costs. For remote rural areas, more than 50 km from regional landfills and with limited financial resources, we suggest the deposit of wastes in their territories, according to a technical project accepted and approved at the regional council.

The recycling potential at national scale is at about 50% of waste, however no hierarchy on waste has been implemented and division is inexistent, while recycling is only in its first steps. The Ministry of Environment should foresee the quantity of recyclable wastes according to categories that will be allowed to be imported by recycling companies, compared to the quantity of the

domestic waste, and in accordance with the objectives of national strategy and waste plan.

In order to improve the division and recycling of wastes we recommend the adaptation of recycling policies and improvement of public awareness. Also, there should be fiscal facilitation for a period of 3-5 years for recycling companies that cooperate with local units and contribute in the waste collection.

The division at the source should be a priority and there should be established collection sites on payment for recyclable wastes from the municipalities, communes and recycling businesses. Divided waste should be disposed of in transit sites before disposal in landfill (division squares). The cost covering the transport up to the deposit transit point will be paid by local units, while from the transit point to the landfill, for an initial period, should be paid for by funds of the national environmental tax (this tax need to be administered by the Ministry of Environment).

In urban areas, pilot schemes should be applied on municipal waste collection and removal, with a participatory approach. Several schemes and best practices from the region countries might be taken into consideration, which could be adapted to local conditions. One of the possible schemes might be to provide families with 2 bins to divide and collect recyclable wastes. This should follow an agreement to collect these wastes once in two weeks at a fixed date. For neighborhoods or groups of inhabitants that divide recyclable wastes at the source and deliver them according to the agreement, incentives should be applied by decreasing the waste tariff or other investments guaranteeing a higher level of service. The family waste of a certain volume (equipment, furniture, mattresses etc) could be handed over in places defined by local units once in 3 months on a graph basis. However, possible schemes should be explored and piloted by future projects financed by donors, budget (environmental fund) or LGUs.

2.4. Education

A long-term strategy on public awareness should be developed, as part of the Waste National Strategy and Action Plan. A national program should be prepared by the Ministry of Environment in order to finance awareness initiatives, training programs and national awareness campaigns. The interest groups, NGOs, social partners and the wide public should be involved in consultations of draft policies, strategies and legal acts, which should be approved after considering their comments and opinions. In this respect, the popular referendum should also be supported as an instrument of citizens' decision-making foreseen by the constitution.

Although, cooperation between environmental NGOs has marked positive changes in coordinating and creating also NGO groups such as Ecolevizja, Milieukontakt etc, NGOs should come out with a unique voice and action. The role of civil society should be strengthened with regards to the analysis of policy

development tendencies, public involvement in decision-making and implementation monitoring, cooperation between public and environmental NGOs, local units and businesses. The media should be more focused on informing, raising awareness and communicating with the public on waste management issues. Consistent information should be provided to journalists and national or local TVs by the respective institutions dealing with waste issues, especially the MoEFWA.

In accordance with the sector needs, we recommend the establishment of a faculty or a department for urban wastes in the public education sector, in order to prepare specialists with the title "Waste Management Engineer" or "Expert". This program could also be gradually extended in the private education institutions in order to fit to the needs of the country. We recommend that all high school faculties start developing modules for urban wastes for at least 15-20 hours. The scientific research will need to be strengthened since this problem is not in the focus of any research institute. Both ministries - MoEFWA and MoPWT - should foresee the needs for experts on wastes at national scale.

The Ministry of Environment needs to prepare a training program for producers, management operators, custom officers, fiscal sector, school teachers, waste specialists in local level, recycling companies, landfill authorities and hospitals, etc. Training should also be provided for the local administration that works on waste, and the judicial system on special issues.

Volunteering on waste issues, especially among young people, should be promoted by formalizing it as prerequisite in applications for study or employment purposes. It is recommended to increases classes on knowledge about waste and their management as part of the curriculum of the 9-year schools.

Annex 1.

1. Institutional roles and responsibilities

The national strategy of waste management involves several central, regional and local institutions acting alone, having separated responsibilities and coordinated poorly. Three are the main institutions at central level in the field: The Ministry of Environment, the Ministry of Public works and the Ministry of Health. The ministries dealing with waste management are the following:

- **The Ministry of Environment, Forest and Water Administration (MoEFWA):** it is the main institution responsible for defining the government policy with respect to environment, including waste management, and drafting legislation on waste. It leads the policy making process with respect to waste, and it has regulatory functions consisting in issuing environmental permissions with respect to activities impacting environment. It cooperates with central and local bodies to elaborate strategies and policies, and to monitor the processing and disposal of waste.



- It includes the Sector of **"Waste and Accidents"**, with 3 staff, as part of the General Directorate of Environmental Protection. This sector is responsible for drafting the government policy and legislation with respect to waste, but with insufficient capacities to develop the role and responsibilities of the institution and cooperation with other central and local institutions. **The Environmental Inspectorate** at the MoEFWA is responsible for issuing environmental permits and monitoring economic activities with environmental impact. This structure has low human capacities and logistics. Also, the chance for conflict of interest is reduced because it is the same insititution that issues the environmental permit and organizes the monitoring.
- **The Ministry of Public Works and Transport (MoPWT):** is responsible for infrastructure investments in the waste sector. It is responsible for the project cycle with respect to the construction of regional landfills (project planning, designing, implementation). It also coordinates and monitors the activity of waste dumpsites, use of regional landfills, and incineration plants, as well as defines the technical criteria to study and implement the closing of urban dump sites.
- It includes the Directorate for Waste within its structure, composed by 5 employees, but with no implementing agency to monitor and follow up capital investments. Though the Ministry of Environment is responsible for drafting environmental policies, the planning of investments in the field of wastes, is done by the Ministry of Public Works. However, the coordination is weak, creating noncompliance between policies and implementation.
- **The Ministry of Health (MoH)** is responsible for drafting regulations on health waste and dangerous waste management. Hospitals and health waste generators are responsible for drafting waste management plans according to the national management plan. The waste policy is followed by the "Directorate of Public Health" that does not include experts on waste. Hospitals, as well, have no experts for wastes in their structure, except for some technicians maintaining equipment of incenerators. In the MoH, the Public Health Director is also chief-inspector of control and has in its job description tasks related to monitoring activities.
- **The Ministry of Agriculture, Food and Consumer Protection (MoAFCP)** has responsibility over the drafting of regulations on agricultural and animal wastes (so far not yet drafted). In the Ministry of Agriculture there is no structure or experts on waste that would have the capacities to fulfill responsibilities assigned.
- **The Ministry of Economy, Trade and Energy (MoETE)** drafts regulations on the management of specific residues (regulations still not approved).
- **The Ministry of Finances,** in collaboration with the Ministry of Environment, drafts the legislation on environmental taxes (partially drafted) and collects incomes from these taxes through customs and fiscal bodies.

At regional and local level there are several institutions that are involved in the waste management:

The 12 regional councils (12 regions in Albania) are responsible[4] for approving regional management plans, regional landfills and "the management of dump sites of urban wastes in regional level". However, the regional councils have no structure or experts on environmental and waste problems. **The project concluded** that a regional coordinator should be assigned in the county council to attend to problems, coordinate programs and harmonize policies in local units and with other responsible institutions of the field.

The local government units (65 municipalities and 308 communes) are responsible for managing urban wastes in their territories, according to the Law "On local governance". With regard to waste management, they are required to:

- Designate sites for the collection and processing of production wastes in accordance with environmental criteria and a developmental plan
- Organize the dumping of wastes and hazardous substances, and the protection of green areas in urban zones and their surroundings
- Administer management of urban wastes, including water treatment plants and solid wastes.

In first category municipalities, wastes are dealt by the Directorate of Service which often lack capacities. There are not staffed with environmental qualified specialists or waste experts. A study from Dures Municipality proposed to establish a special directory for the waste management. The project concluded that in the municipalities of Durrës, Fier, Elbasan, Korçë, Vlorë, Shkodër, it should be effective to establish special directorates or waste sectors and, in small municipalities and communes, to have specialists for wastes.

Annex 2

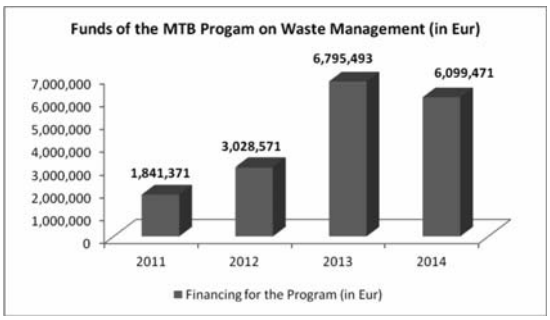
Albania has a general surface of 28748 km2 and a population of 3.6 million people. The country is organized in 12 counties, with 65 municipalities and 308 communes.

During the project implementation, several meetings and discussions were organized in:

- The Ministry of Environment, Forest and Water Administration (MoEFWA),
- The Ministry of Public Works and Transport (MoPWT)
- The Ministry of Health (MoH)
- The Ministry of Agriculture, Food and Consumer Protection (MoAFCP)
- Ministry of Economy, Trade and Energy (MoETE)
- The Ministry of Finances
- Ministry of European Integration (MoEI)
- Meetings and discussions were held in the municipalities of Durres, Elbasan, Fier, Lushnje, Lezhe, Vlore, Divjake, Orikum;
- The communes of Velipoje, Dajç, Dajt, Dushk and Golem;

- The prefectures, counties councils and Regional Environmental Agencies in Shkoder, Lezhe, Durrës and Elbasan;
- Universities,
- Recycling companies, schools and civil society network (Annex1, Narrative Rapport).

Graphic No.1 Funds of MTB Program on Waste Management



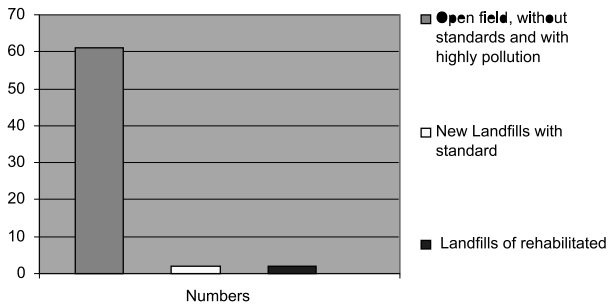
Source: Ministry of Finance, MTBP 2012-2014

Table no. 2, Situation on the existing dumpsites on the municipalities of the country

No	The dumpsites	Numbers
1	Total	**65**
2	Open field ,without standards and with highly pollution	**61**
3	New Landfills with standard	**2**
4	Landfills of rehabilitated	**2**

Source: Data from LGUs, elaborated by the project

Graphic No. 2, Situation Table No.3,Waste produced by Region ,2011on the existing dumpsites on the municipalities

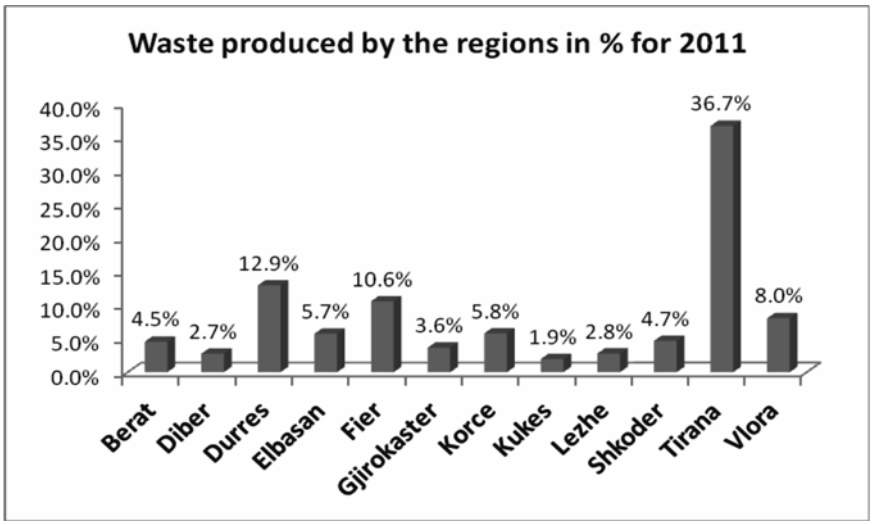


Source: Data from LGUs, elaborated by the project

Table No. 3, Waste produced by Region, 2011

No.	Region	Waste production Ton/year
1	Berat	51157
2	Diber	30918
3	Durres	146061
4	Elbasan	64586
5	Fier	119104
6	Gjirokaster	41072
7	Korce	65177
8	Kukes	21898
9	Lezhe	31195
10	Shkoder	52597
11	Tirana	414377
12	Vlora	90586
	Total	**1128726**

Graphic No. 3 Waste produced by Region, 2011



Source: Data from LGUs, elaborated by the project

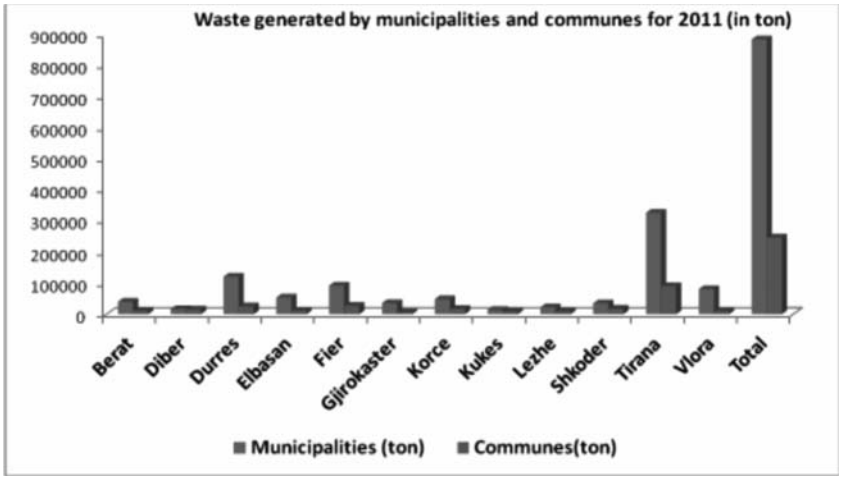


Table no. 4, The waste production in 2011 on 12 Regions (municipalities and communes)

No.	Regions	Waste production Ton/year (Total)	Waste production of municipalities Ton/year (Total)	Waste production of communes Ton/year (Total)
1	Berat	51157	40070	11087
2	Diber	30918	16289	14629
3	Durres	146061	120821	25240
4	Elbasan	64586	53621	10965
5	Fier	119104	92187	26917
6	Gjirokaster	41072	35626	5446
7	Korce	65177	48505	16672
8	Kukes	21898	13750	8148
9	Lezhe	31195	22274	8921
10	Shkoder	52597	35046	17551
11	Tirana	414377	324613	89764
12	Vlora	90586	80954	9632
	Total	1128728	883756	244972

Source: Data from LGUs, elaborated by the project

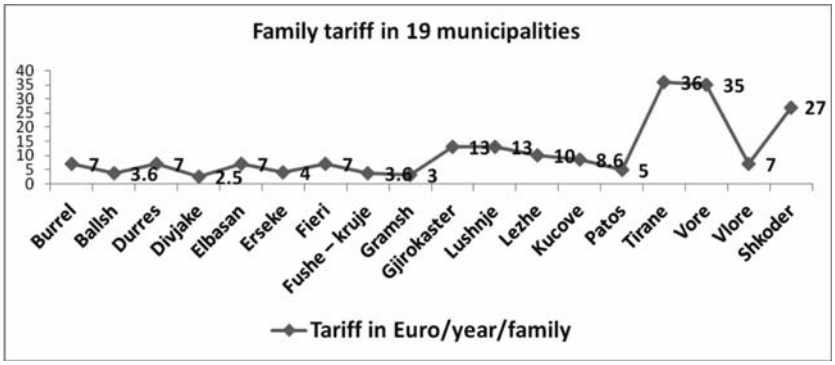
Graphic No. 4, The waste production in 2011 on 12 Regions (municipalities and communes)



Source: Data from LGUs, elaborated by the project

Annex 3

Graphic No.1 ,Family tariff in municipalities



Source: data from Municipalities, elaborated from project

Table 1. Service tariff for waste management per year /family on 19 municipalities

No.	Municipalities	Service tariff Euro per family/year
1	Burrel	7
2	Ballsh	3.6
3	Durres	7
4	Divjake	2.5
5	Elbasan	7
6	Erseke	4
7	Fieri	7
8	Fushe – kruje	3.6
9	Gramsh	3
10	Gjirokaster	13
11	Lushnje	13
12	Lezhe	10
13	Kucove	8.6
14	Patos	5
15	Tirane	36
16	Vore	35
17	Vlore	7
18	Shkoder	27

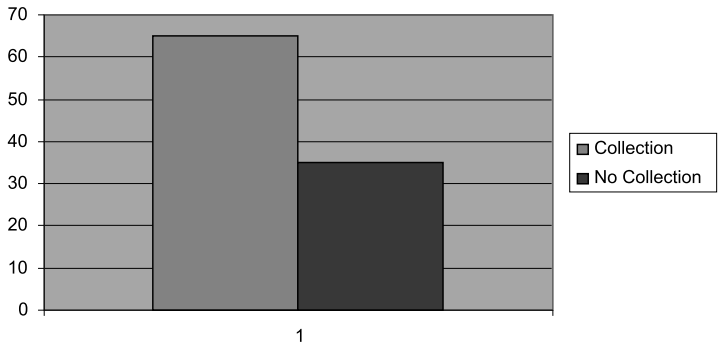
Source: data from Municipalities, elaborated from project

Table 2. The level of service tariff collection on 12 municipalities

No	Th tariff collection	%
1	Collection	65
2	No Collection	35

Source: data from Municipalities, elaborated from project

Graphic 2. The level of service tariff collection on 12 municipalities



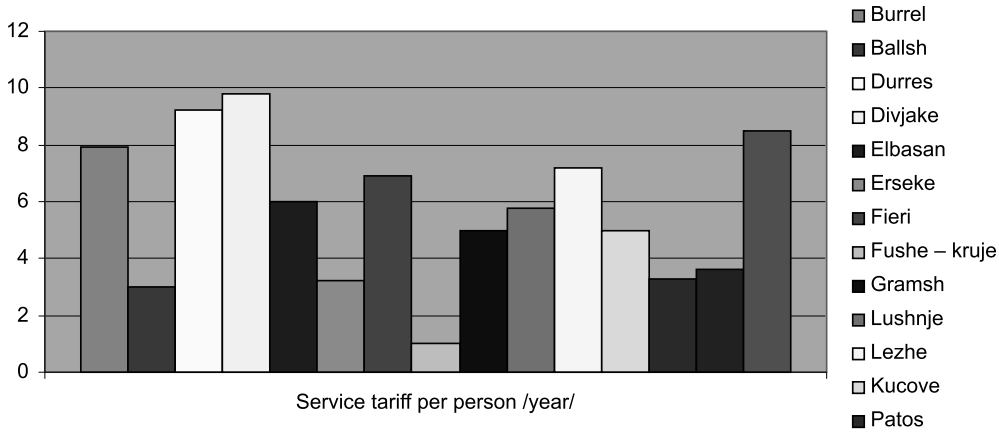
Source: data from Municipalities, elaborated from project

Table 3. Planning budget for service on 15 municipalities person /year/ Euro (Families, business, another)

No.	Municipalities	Service tariff per person /year/Euro
1	Burrel	7.9
2	Ballsh	3
3	Durres	9.2
4	Divjake	9.8
5	Elbasan	6
6	Erseke	3.2
7	Fieri	6.9
8	Fushe – kruje	1
9	Gramsh	5
10	Lushnje	5.8
11	Lezhe	7.2
12	Kucove	5
13	Patos	3.3
14	Gjirokaster	3.6
15	Vore	8.5

Source: data from Municipalities, elaborated from project

Graphic 3. Planning budget for service on 15 municipalities person /year/ Euro (Families, business, another)



Source: data from Municipalities, elaborated from project

Table 4. Contribution of service tariff in 15 municipalities, 2012

No.	Contribution	In %
1	Family tariff	10
2	Business tariff	30
3	Another from municipalities	60

Graphic 4. Contribution of service tariff in 15 municipalities, 2012

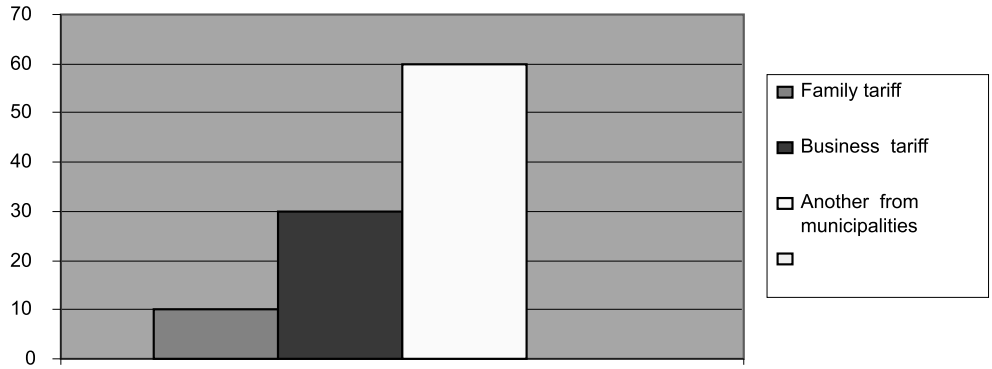
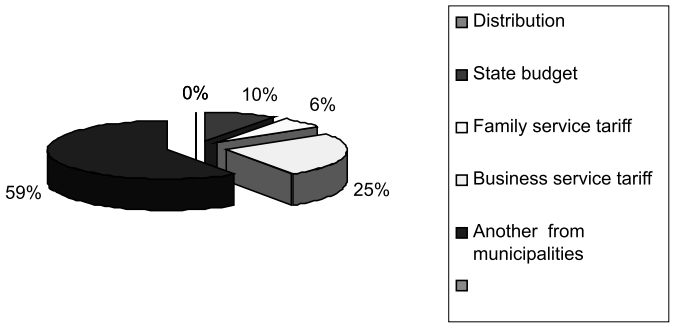


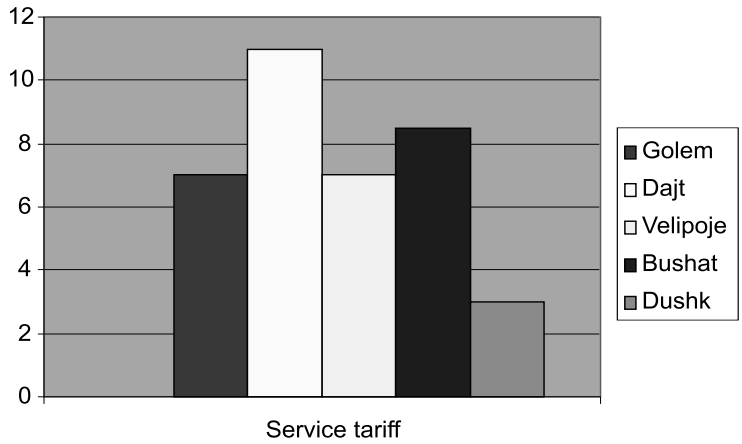
Table 5. Collection of budget for waste service in 15 municipalities

No	Distribution	Euro
1	Total	4375697
2	State budget	423155
3	Family service tariff	252873
4	Business service tariff	1108186
5	Another from municipalities	2591482

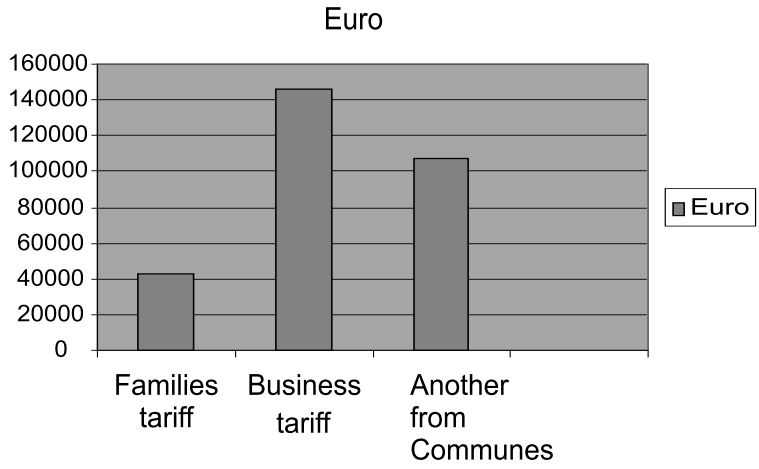
Graphic 5. Collection of budget for waste service in 15municipalities



Graphic 6. Service tariff for waste management per year/family on 5 communes



Graphic 7. Contribution of service tariff in 5 Communes, 2012



ANEX 4

Table 1. Questionary in University 40 students (Without knowledge in the study programme)

Question	Answer %
Need knowledge about waste in the study program	
yes	28
No	12

Graphic 1. Questionnaire in University 40 students

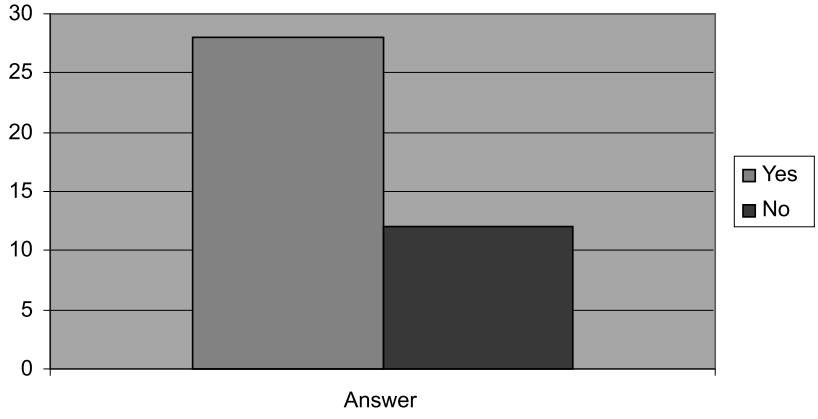
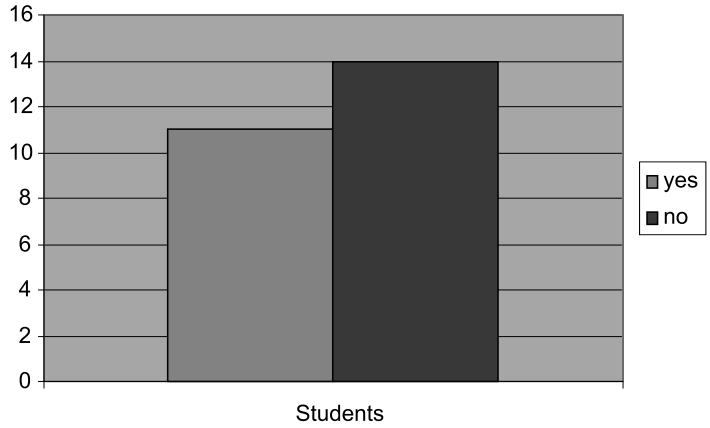


Table 2. Questionnaire in Environment Department 25 students

Nr	Question	Students
1	Need knowledge about waste in the study program	25
2	yes	11
3	no	14

Graphic 2. Questionnaire in Environment Department 25 students



1 The public investments in Albania are planned through a 3-year rolling budget plan that is called: Medium Term Budget Program (also in other countries as Medium Term Economic Framework).

2 Refer to "External Assistance Progress Report 2009" published at www.dsdc.gov.al. "Most funding for 2000-2008 comes in the form of grants (72% or 69 million euro) and much less as loans (28% or 27 million euro)".

3 This idea was supported by experts in several communes and municipalities.

4 The Decision of the Council of Ministers No. 333 date 26. 01. 2011

Europeanization of Administration through Implementing the Common Assessment Framework

Biljana Stojanoska
Kristina Cuculoska

1 Introduction

The Common Assessment Framework (hereafter referred to as the CAF) is a European quality management tool for public administration. It derives from the model of European Foundation for Quality Management and Speyer Institute from Germany. The CAF is an easy to use, free tool for self-assessment of the public sector that can help public administrations in the EU to understand and apply modern management techniques. In 2011, the CAF celebrated the 10th anniversary from the introduction of this model, when it registered the 2000th user.

Despite the acknowledged benefits, the CAF can have for improving the functioning and efficiency of the European public sector, and the fact that Macedonia has declared that it will use the CAF as a model for assessment, the CAF has not been widely used in Macedonia.

In order to raise awareness among key stakeholders of the Europeanization potential of CAF as a European quality management tool, and encourage its wider use within the Macedonian public administration, the European Policy Institute – Skopje conducted a research using the experience from the Slovak Republic. The project named "Europeanization of administration through implementing the Common Assessment Framework – The relevance of the Slovak experience", supported by the Slovak Agency for International Development and Pontis Foundation, and realized through the Slovak Balkan Public Policy Fund and the Balkan Civil Society Development Network, was implemented in the period March – June 2012 and included a desk and filed research and a study trip to Slovakia.

The research, which resulted in a policy paper, proved that the application of the CAF in Macedonia is limited. Three cycles are conducted in the State Statistical Office and the implementation of the CAF in the Ministry of information society and administration is ongoing. It further showed that Slovakia's experience in implementing the CAF is very relevant for Macedonia, because of the similarity of key factors (culture, public awareness of public and state administration as well as their approach to customers, politicization in this sector) and the practical recommendations are applicable. The main findings are presented in this document with description of the Macedonian and the Slovak experience and the benefits from implementation of the CAF for the public administration. The research also compares CAF to the other models for quality management. Lastly, concrete recommendations for implementing the CAF in Macedonia are also provided.



2 The common assessment framework

The CAF is a tool for Total Quality Management, based on the premise that "excellent results in organizational performance, citizens/customers, people and society are achieved through leadership driving strategy and planning, people, partnerships, resources and processes. It looks at the organization from different angles at the same time; a holistic approach to organization performance analysis."[1]

The CAF is the result of cooperation between the EU ministers responsible for public administration which, under the auspices of the Working Group, composed of national experts - an Innovative Public Services Group (IPSG) - created a platform for closer cooperation and exchange of experiences. The main objective of this platform is finding innovative ways of modernizing government and providing public services in EU member states.

The pilot version of the CAF was presented in May 2000 and first revised version was launched in 2002. With a decision of the DG for Public Services, CAF Resource Center was created within the European Institute of Public Administration (EIPA), which guided the implementation and evaluated the use of the model together with the network of national CAF correspondents (assisted by the European Foundation for Quality Management (EFQM) and the University of Speyer). In the period from 2000 to 2005, the CAF has been introduced in about 900 institutions aimed to improve organizations, and there is interest for implementing the CAF even outside EU. In the past 12 years from its introduction until today, the CAF and its implementation was further developed and improved.

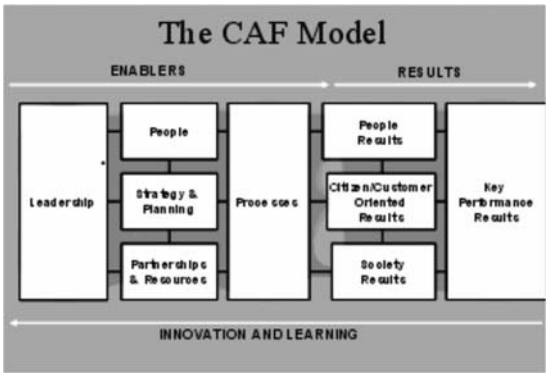
According to the CAF guide by the European Institute for Public Administration (EIPA)[2], the CAF has **four main purposes:**

1. *To **introduce** public administrations to the principles of TQM and gradually guide them, through the use and understanding of self-assessment, from the current "Plan-Do" sequence of activities to a full fledged "Plan-Do-Check-Act (PCDA)" cycle;*
2. *To facilitate the **self-assessment** of a public organisation in order to arrive at a diagnosis and **improvement actions;***
3. *To act as a **bridge** across the various models used in quality management;*
4. *To facilitate **bench learning** between public-sector organizations.*

The CAF model is composed of 9 criteria, 28 sub-criteria with examples, panels for assessment of enablers and results, guidelines for self-assessment, improvement actions, bench learning projects and a glossary.

Since the CAF is a general tool, it can be adjusted on the specificities of the organization, as long as the basic framework elements are respected. Here is an illustrative representation of CAF as provided by EIPA.

3 Results of the assessment of the application of CAF



The analysis, which was done five years after the CAF implementation in 2006 by the CAF resource centre, shows that it is possible to increase the CAF implementation in all sectors, especially in the ones that already have the most CAF users. The biggest number of CAF users is from organizations of the local administration, the social services, police and security services, schools and customs administration, tax administration and financial administration. Other potential sectors are health services, higher education and research institutions, culture and cultural heritage and cultural policy and general supervision. According to the analysis the impact of the CAF on public sector in a country depends on the number of CAF users in the country. In some countries, the CAF is not yet widely applied, because of which the potential of the CAF to cause profound changes in the public sector as a whole is limited. However, the model does have a great impact on those organizations that do adopt it, because the outcomes from the CAF self-assessment identify gaps that help define improvement opportunities. This was one of the main conclusions derived from the practical experience of the institutions that use the CAF, both in Slovakia and in Macedonia.

3.1. CAF in comparison to the other TQM tools

One of the objectives of the CAF is to act as a bridge between the different models used for Total Quality Management (TQM), and to facilitate learning from previously set standards among public sector organizations. In the European public sector so far, many different models of TQM have been used (for ex. ISO, Balanced Scorecard, EFQM, PSEM). All of the exciting models are based on the first concept of Total Quality Management originally developed in the U.S, which was afterwards widely established in the Japanese manufacturing industry, and later re-exported to the West.

The quality systems that are broadly implemented are based on ISO 9000. The ISO standards and the management systems built on the basis of these standards are included under the term "quality assurance". This approach has incorporated the ideas of TQM, including process improvement, and is described as “say what you do” (have quality procedures) and “do what you say” (follow the procedures).

Another accepted instrument is the Balanced Scorecard. This tool suggests that the organization must be seen from four perspectives: customer, finance, processes and innovation and learning, which should be analyzed from several angles through developed parameters, data collection and analysis.

The third most commonly used is EFQM Excellence Model of the European Foundation for Quality Management, which is a European version of the Balanced Scorecard. This model is based on nine criteria, which are also incorporated in the CAF.

The Public Service Excellence Model (PSEM) is another framework for self-assessment that focuses on the public sector, but is not as widely used as the CAF, and is limited to some public services in the UK.

The existence of multiple models and systems of quality management created the need for a common unified European framework for quality that will be used in the public sector, which will be a tool for self-evaluation of an organization.

The CAF differs from ISO standards because, unlike the ISO, which aims to create an environment of formal rules and provides external costly evaluation, the CAF leaves greater freedom to the organization to establish rules, processes and objectives. Through the specific directions and steps based on self-assessment, it provides a framework for monitoring the achievements, making it a tool for continuous improvement.[3] On the other hand, the CAF also differs from the EFQM model because, besides the different sub-criteria, it takes into account the particularities of the public sector. This feature of the CAF is constantly improved and upgraded by improving the CAF models (2002, 2006).

From the experience of experts from the Slovak Society for Quality was noted that ISO is a good start for establishing rules and organizational order, and would be a good basis for a broader framework that gives the CAF. Rather, the EFQM model would be appropriate for an institution that has conducted CAF.

4 The Slovak experience

In order to raise the interest for the CAF in Macedonia and to develop specific recommendations which will be useful for the implementation of this TQM tool in the Macedonian public administration, research of the Slovak experience and best practices was conducted. The Slovak experience proves to be relevant for this purpose due to the existence of number of similar conditions, and cultural similarities. Firstly, in Slovakia, like in Macedonia, the problem of significant politicization of the state and public administration was persistent when the concept of the CAF was introduced. There are significant cultural similarities between the two societies, in terms of the approach towards quality management, the public awareness and perception for the public and state administration, and the attitude towards customers. Lastly, Macedonia can still relate to the Slovak experience, since the implementation of the CAF in Slovakia is not yet that advanced (in terms of number of institutions which have implemented CAF, in comparison to other EU member states). For this

purpose, a study visit in Slovakia was carried out, during which interviews were conducted withrelevant experts and representatives of institutions who were directly involved in implementing the CAF model in the Slovak public administration. Additionally, a visit to the Ministry of Education helped participants gain a better insight into how the CAF works in practice.

4.1. The CAF Implementation in Slovakia

The implementation of the CAF in Slovakia began in 2002. The then newly established Civil Service Office (CSO) was one of the main initiators and advocates of the idea, with the intention to use CAF as a tool for achieving the Office's mission, which was to create stable, professional and de-politicized public service in Slovakia. Other than the Civil Service Office, the implementation of the CAF in Slovakia is conducted with a joint cooperation and coordinated action of two other institutions: The Office for Standardization, Metrology and Testing (OSMT) and Slovak Society for Quality (SSQ).

The Office for Standardization, Metrology and Testing is the institution responsible for quality in Slovakia and, in close collaboration with the Civil Service Office, was the main coordinator of the institution for the implementation of CAF. After the dissolution of the Civil Service Office in 2006, The Office for Standardization, Metrology and Testing is the only body responsible for implementation of the CAF and is the representative body for Slovakia in the EIPA. The Slovak Society for Quality is a professional association of quality managers who in the process of CAF implementation are involved as experts. They conduct professional training and have a consulting role in the introduction of the CAF in the individual institutions.

The start of the CAF implementation in Slovakia is the project for implementation of the CAF in the Civil Service Office, as a first institution, and then dispersed on others. The Office for Civil Service became the coordinator of activities for implementation of the CAF within the ministries and central bodies of public administration, and in their respective bodies for budget and finance. After the introduction of CAF in several institutions, in September 2003 the Government adopted a Decision based on the National Quality Program 2004-2008, which obliges all ministries to continue activities for implementation of the CAF or EFQM total quality management model. Following the decision, each ministry started to prepare action plans and a yearly strategic plan, which is one of the criteria in the evaluation of the CAF self-assessment mechanism.

According to all of the interviewed experts, compulsory adoption of the CAF, even though it seemed a good decision at the time, resulted only in formal implementation of the CAF in many institutions, with very limited impact or potential for improvement of the organization's performance. The main reason for this was the resistance and lack of commitment of the key office holders in some institutions, due to their insufficient and inadequate understanding of the CAF. In some cases, the resistance of the top management was due to their

perception of CAF as a mechanism for establishing control over them and/or threat to their position. Therefore, ensuring support from the top management in the institution is one of the basic preconditions for successful CAF implementation. The support of the top is necessary also due to the fact that the assessment within the CAF is a process of "seeing yourself in the mirror" and the good results produce critical findings and reveal the weaknesses in the functioning of the institution. In order for those weaknesses to be improved, the findings have to be accepted and endorsed by the management, and there has to be willingness, ability, and political support for making institutional changes. In Slovakia this was a fact that the key individuals involved in the introduction and implementation of CAF were well aware of, because of which they organized the top managers of the selected institutions first. This helped to ensure better understanding and support for the CAF implementation. The trainings were organized by The Office for Standardization, Metrology and Testing in close cooperation with the experts from the Slovak Society for Quality. The Office for Standardization, Metrology and Testing was then directly involved in providing further trainings and consultations for the CAF methodology, as well as in the creation of the CAF teams within the institutions.

According to the Slovak experience, careful selection of the members of the CAF teams within the institutions is very important. The experts who were interviewed pointed to the need of the CAF team to be comprised of employees who are in higher positions (head of units or sectors), are well informed and knowledgeable about the functioning of the institution but also about the process of CAF implementation and its main benefits. The criteria for selection of the CAF team members should be clear and followed by the management, and the Slovak experience suggests that in many cases it was useful if there was a public call for selection of the CAF team within the institutions. The involvement of the higher ranking public servants responsible for human resources is highly recommended, as is substantial effort and commitment from all the team members. As the team meets regularly and additional time and efforts are required from the team members, the Slovak experts stressed that the top leadership within the institutions have to be aware that the adoption of CAF is time consuming process. In many institutions in Slovakia, the implementation of CAF failed because the team members were too busy with other duties and responsibilities to commit to the activities for the CAF implementation. The success with the CAF implementation is additionally determined by the size of the teams. The optimal size of the team is between 8 and 20 team members, who work closely together. Team building exercises are especially beneficial. Maintaining smaller CAF teams is a good practice for the large institutions as. In order to ensure better inclusiveness and involvement of more people, they can create sub-teams, and by doing that increase the awareness and commitment of the CAF, which is very important for the ownership of the process, and more successful implementation.

The cooperation with the Danish Public Service was very beneficial to the process of implementation of the CAF in Slovakia, especially for consultations, training programmes, sharing of the best practices and practical experience, and creation of the CAF guidebook. Such cooperation with other countries is

also highly recommended for the CAF implementation in Macedonia. In this case, Slovakia can be a good partner since their experience is relevant and can be utilized. Furthermore, it is highly recommended that Macedonia joins the CAF working group within the European Institute for Public Administration (EIPA) and to the European Public Administration Network (EUPAN) in order to gain access to all relevant documents, guidebooks, latest findings, and updated information on CAF.

4.2. Main benefits from the CAF

Since 2003, CAF in Slovakia has been introduced in 60 state and public service institutions (ministries, autonomous bodies, universities, bodies of local government), on the basis of whose experience numerous benefits can be identified.

4.3. Creating and promoting culture of quality among the public

CAF contributes to raising the awareness and the culture for quality and for introduction of system of efficiency and quality in the management, among the employees and among the wider public.

If the institutions show efforts and commitment to self-improvement and willingness to change, CAF indirectly contributes to raising the public awareness for the responsibilities and competencies of the various institutions and bodies of the public administration.

In Slovakia the CAF model is included in the National Program for Quality. Due to this, and thanks to the successful implementation of CAF, some institutions were able to compete for the National Quality Award Slovakia (Ministry of Education was awarded in 2009). Receiving such important recognition increases the motivation and successful implementation of the CAF among the institutions, over which the CAF has direct influence for improving the quality of the functioning of the institutions as well as their public reputation.

4.4. Benefits for the institutions

Significant benefits of the CAF can be noticed on an institutional level, especially in terms of improvement of the functioning and performance of the organization. It is very important that the CAF contributes to raising the quality of the services provided by the institutions, and the approach to their customers. Furthermore, CAF is beneficial for developing better understanding and improvement of the institutional and administrative processes, and for setting priorities and strategic objectives. The introduction of CAF has resulted in many institutions being able to to better determine their goals, and being able to focus on achieving long-term strategic priorities. The CAF tool, as a way of preparing action plans and mapping processes, helps the institutions to identify major shortcomings, inconsistencies and overlaps in their work and activities, and thus encourages them to make changes, adjustments or

restructuring. The regular self-assessment of the work of the institution contributes to regular and timely improvement. Additionally, the introduction of CAF is often said to have added value and greatly contributed towards improving the communication among employees, greater involvement and motivation. This comes from the fact that the employees are directly involved in the process of deciding on key priorities and goals.

4.5. The benefits for the public administration overall

The CAF is good for balancing the quality of the different institutions, given that the level of quality varies among different organizations of the public administration. An added value of CAF is also that it enhances the collaboration among the institutions, since in the process of CAF implementation it is very useful if they exchange experiences and consult among each other.

5 CAF in the EU candidate states: the potential to prevent politicization of the public administration.

The CAF is of particular importance for the candidate countries as a concrete tool that helps in improving the quality of public administration. Given the fact that there is no formal acquis for public administration, but a set of informal administrative and legislative constitutional principles, the EU member or candidate states are not required to implement any formal legislation. However the existence of a general consensus on the key components of governance in the democratic countries has led to the formation of a European administrative space - a set of common standards of governance and public administration for all EU member states. These principles are:

- Reliability and predictability
- Openness and transparency
- Responsibility
- Efficiency and effectiveness.

Due to a lack of reliable and efficient public administration standards formulated for applicants and Member States, the main open question remains: whether the spread and introduction of principles of quality management as a principle of good management can create bottom-up rules in Member States for assuring stable and efficient public administration. The question is how to create a sustainable political support for public administration that is stable and apolitical as in EU member states and in candidate countries?

The CAF is a fairly simple tool, free and easy to use, which is appropriate for self-evaluation of the public sector institutions in Europe. It is designed by member states and is widely used in public administrations across Europe aimed at improving structural processes through self-evaluation. If the CAF model is properly implemented, it does lay down some rules and activities that

contribute to quality improvement of the public service and de-politicization. The Slovak public administration is still, to a considerable degree,politicized. However, the CAF impact in this segment cannot be clearly determined. According to the Head of Department for Quality, assessing the role of the CAF for the depoliticization of the public and civil service can be done only when the CAF model will be implemented in more than half the public service institutions in Slovakia, which is currently not the case. Ľubomír Plai, the former director of the now abolished Civil Service Office in Slovakia emphasizes: "The key question that must be asked is whether the current process performance levels are so poor or so far from citizens' expectations that a breakthrough is required. If the answer to the question is yes, then the route forward has to involve business process re-engineering (i.e. comeback to core values of European public administration). If the answer is no, then improvement using CAF will be appropriate. Last but not least, any public administration improvement strategy must involve people, their education, training and development in stabile and apolitical environment".

6 The Macedonian experience

6.1. Implementation of CAF in Macedonia

In the Republic of Macedonia there is very low degree of implementation of the CAF. So far only one institution (the State Statistical Office) has conducted three cycles of self-assessment, and there is ongoing application of the CAF in the Ministry for Information Society and Administration.

After signing the Stabilization and Association Agreement in 2001, the Government has intensified efforts to introduce tools for quality management, largely in the context of approximation with the acquis on the internal market. During this period the National Programme for Quality was adopted. The interest for quality management tools was significantly increased by the growing importance of public administration reform in the context of the process of the European integration of Macedonia. The Agency for Civil Servants (now the Agency for Administration) and the Secretariat for European affairs were the main advocates for the implementation of the CAF. The Agency for Civil Servants, similar to the Slovak pattern, was terminated at the end of 2010 when its responsibilities were transferred to the newly formed Ministry for Information Society and Administration. In doing that the core values, mission and objectives of the Agency for creating stable and de-politicized state administration were lost. The Ministry of Information Society and Administration (MIOA) of 2011 takes the lead in implementation of the CAF.

The first and so far the only successful example of application of the CAF remains the State Statistical Office, which conducted three cycles of CAF, starting in 2006. (Examples of the CAF are described in detail below.)

The new strategy for reform of public administration (2010-2015), adopted during 2010, proclaims the CAF as a basic model for estimating the reform of public administration. However, the Strategy and its Action Plan do not

specify any targets or specific measures for wider use of the CAF. In practice different tools for quality management are used, but there is a lack of coherent direction or vision for the suitability of a system of quality management for different organizations. In May 2011 the Government adopted the information that recommends the application of the CAF. Simultaneously, there is ongoing implementation of the CAF within the MIOA with support of the GOFRE project funded by the British Embassy. It was reported that the first cycle of evaluation was finished and a round of training for trainers was completed.

Within the ministries responsible for implementation of the CAF is the state secretary at the top managerial level of civil service. However, there is no adequate network established on a central level for implementimplementing the CAF. According to some observations, an appropriate model for coordination could be the network for human resources.

The Government has come to the decision that all ministries, by March 2012, should have introduced or initiated action to introduce ISO standards.

6.2. Professionalism – precondition or result of CAF?

One of the key issues in the process of EU accession is the existence of adequate administrative capacity and structures. The lack of administrative capacity is being constantly pointed out as a problem in the Republic of Macedonia, multiplied by the lack of professionalism in the civil service, noted the EU Progress Reports for Macedonia. Lack of administrative capacity is one of the main reasons for gaps in the implementation of legislation enacted for harmonization with the acquis. The CAF is a tool for quality management that is used to a considerable degree in the administrations of Member States contributing significantly to strengthen the institutional capacity for implementation of the acquis.

In the Progress Report for the Republic of Macedonia in 2011, the EC notes progress in the framework of public administration as a key priority of the Accession Partnership. Regarding the legislative framework for civil servants, the report highlights major shortcomings especially regarding the rules for hiring, evaluation and promotion, appointment of senior management and government officials, concluding that "further improvements to the key laws are necessary in order to ensure that the principles of transparent, apolitical, merit-based recruitments and promotions are embedded in the legal framework."

The Report of the OECD-SIGMA in 2011 concluded that the basic reason why there is still no merit-based civil service is that after ten years of the Law on Civil Servants, the law is still not respected, and "recruitment and other decisions regarding the career of a civil servant are increasingly based on political or private motives rather than on merit." Furthermore, this very critical report concluded that "these notorious illegal practices not only entail a lack of professionalism of public sector staff, in particular of highly ranking posts, but they also increase public skepticism regarding the rule of law and the low level

of credibility of the democratic system in general". Other relevant considerations of this Report regarding the object of our research findings regarding centralization of decision making in public administration ("almost all decisions are made on top administrative level (minister)" and the failure to delegate. Furthermore, the observed application of private sector human resources management practices as solutions for the public sector, especially in terms of firing employees, concludes that it "is taking the government down the wrong track" because it "misjudges the genuine difference between private sector employees and civil servants with respect to their respective roles."

According to representatives of relevant institutions in the Republic, the application of the CAF has no direct impact on preventing the politicization of public service but its implementation is useful as an initial stage of the process of achieving a better quality of service in the public sector. However, the conditions identified in the public administration, are very relevant in terms of application of the CAF in Macedonia, because it is undisputable that there should be some level of professionalism and awareness of managing the level of public administration in order to successfully implement the CAF.

BEST PRACTICES TO BE FOLLOWED

The project included a visit in two institutions, one in Macedonia and one in Slovakia, who have successfully implemented CAF for the purpose of understanding how CAF works in practices, and obtain some recommendations that can be useful for implementation of CAF and its promotion in other institutions.

The institutions chosen were the State Statistical Office in Macedonia, as it is the only institution in Macedonia which has fully implemented the CAF and has conducted three cycles of self evaluation, and the Ministry for Education in Slovakia which, due to the successful implementation of CAF, has received the Slovak National Award for Quality.

It is interesting to note that both institutions highlighted the similar benefits from the use of CAF, as well as giving the same recommendation for CAF implementation. Additionally the experience of the ongoing implementation of the CAF in MIOA, which was shared at the conference organized for presentation of the findings of this project, is also very similar.

According to all three institutions, the CAF is an easily understandable and applicable tool. As a broader set of tools for measuring quality (such as ISO, total quality management, etc.), it is as good as the initial stage of the process of achieving a better performance of the organization and increase in the quality of the services in the public sector. Given that most state institutions have no experience with more complex tools for quality management, the CAF is a good starting point for them.

One of the main benefits of the CAF is the relative simplicity of the model and the possibility of its free use. The CAF is seen as a primary alternative for quality systems like ISO, due to cost, flexibility (range, adaptability) and value regardless of certification.

Carefully chosen CAF teams and establishment of working groups are very important for its proper implementation. It is important that working groups should coordinate

among themselves and to achieve agreed position between them, that the consensus estimates for the situation. Such an approach allows objectivity of assessments as a basis for properly setting priorities.

Another important question is whether it will cover all elements of the CAF, or if the institution will focus on what is relevant for them because some questions may not apply to the institution. According to the experience of SSO, it is important to make a selection, and to have the right to set priorities so that the results of CAF can be a relevant basis of determining the priorities of the strategic plan for the institution.

The implications of the first application of the CAF in SSO, which started in 2006, initiated a series of new processes in the institution. Especially significant was the preparation of a catalog of functions of the organization. Furthermore, application of CAF helped in creating a system for calculating the cost, which is prepared special software. According to this system the cost per unit of measure for a feature is determined and a catalog of activities for each task is created. Within the CAF, a survey of employee satisfaction was introduced, which has made significant indicators for conducting a policy of human resources, establishing a system of mentoring of new employees, as well as in-house training. This was supplemented with customer satisfaction pools. Furthermore, the experience with the CAF implementation was the basis for the application of complex models for quality management and important system for statistics (Generic Business Process Model).

The implementation of the CAF in Slovakia started in 2003. According to the evaluation of the ministry, the most significant contribution of the CAF is that it helps for developing indicators that are regularly monitored and evaluated, which results in better formation of measurable strategic goals of the institution. The process maps, that from the self-evaluation appeared to be necessary, largely contributed to improving the processes and function of the institution, initiating changes that improved the institution's performance. As a direct product of the CAF in the Ministry was the development of information management system of all project results from the World Bank, particularly in the area of processes. The data are presented graphically in terms of trends, which provides significant insight into the monitoring work and progress, and additionally contributes to better planning.

Overall the CAF is a model that provides many opportunities for upgrading. The recommendations from all the institutions were that the CAF is a great starting framework for the evaluation of public sector organizations. In addition, it is up to the leadership in the organization that conducts the CAF to recognize the benefits of CAF ("leader to recognize it gets"). Both the Macedonian State Statistical Office, and the Slovak Ministry for Education in Slovakia expressed readiness to share their experience with other institutions.

7 Conclusions and Recommendations

In the Republic of Macedonia the CAF is not yet used sufficiently as an opportunity for the Europeanization of public administration. There is insufficient knowledge about CAF among the leading representatives of the institutions, and about the potential benefit this quality management tool has for the institutions and also for citizens who are customers and users of their services.

- The Slovak experience is very relevant for Macedonia because of the similarity of key factors (culture, public awareness of public and state administration as well as their access to customers, politicization in this sector), and the applicability of the recommendations.
- The introduction of the CAF does not exclude other models for quality management and is complementary to them. However in applying the models, it is necessary to take into account the readiness of the organization: if the organization is already an ISO user, the CAF can be a successful upgrade since it provides a broader framework and greater freedom for the establishment of rules, processes and goals of the organization, room for further improvement and increased efficiency of the institution. On the other hand, CAF is a sound base for the application of complex systems for quality management.
- It is particularly important that the senior management is well informed about the key benefits of the introduction of the CAF for the institution:
  - More efficient functioning of the institution;
  - Measurement of fulfilled goals;
  - Increased motivation and a sense of "ownership" by the employees;
  - Raising the quality of service and appropriate and satisfaction among citizens.
- While it is necessary that political support and leadership are assured, "massive" "from the top" introduction of CAF is not recommended. The initiative should come from the institution itself and the implementation should be combined with a bottom-up approach. Yet many organizations are advised to bring CAF simultaneously, because of the possibility for comparability and exchange of experiences. (In the Macedonian case - eight to ten organizations customers' oriented).
- The application of the CAF requires a focus on "outside" - the customers and citizens - because the primary purpose is for the organization to better accomplish its mission.
- The experience and best practices with quality management within the public administration in Macedonia should be utilized and shared with the other institutions, and the inter-institutional cooperation in this filed should be promoted (eg. the State Statistical Office or MIOA, in future).
- For successful implementation of the CAF, associations for quality with consulting role should be included. The Ministry of Information Society and Administration should pursue and strengthen its leading role for the introduction of CAF in the other institutions and their resources (trained trainers, experience) should be utilized. Cooperation with Member States and exchange of experience may be of particular help. Macedonia should join the expert CAF group in European Public Administration Network and EIPA in order to gain access to all recent studies, information on development, latest findings and recommendations, as well as utilize the opportunities for learning from the experiences of others.

- On the basis of the findings of the research, it cannot be concluded that the CAF can solve one of the key problems of the public administration, which is the high level of politicization. However, if the CAF is continuously implemented and its basic principles are respected, by improving the quality of an organization it can indirectly contribute towards de-politicization of the public administration.

1 CAF Resource Center - European Institute for Public Administration, http://www.eipa.eu/en/topic/show/&tid=191

2 http://www.eipa.eu/en/topic/show/&tid=191

3 These advantages of CAF over ISO were emphasized at the conference organized for presenting the findings of the project by the representatives of GOFRE project, who are currently providing support for the CAF implementation in MIOA, but were also involved with the implementation of the ISO standards in the SEP.

Independent and Important Judiciary in Montenegro: – Challenges and Obstacles

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Executive summary

Establishing judicial independence and impartiality during the accession process is of the highest importance for Montenegro to effectively protect the rule of law and human rights as well as to apply Community rules and procedures. This important task is not to be exhausted in establishing formal-legal mechanisms, but in constant efforts of the state to prevent and eliminate any illegal influence on the holders of judicial functions. However, like in the majority of post-transitional countries, judiciary in Montenegro faces numerous challenges on this path, like the ones of organized crime and corruption, backlog of court cases, inappropriate material-technical equipment and the inheritance of strong influence exerted by the executive power. On the other hand, it seems that these days, judiciary has been criticized by the general public openly more than ever before, especially in regards to sensitive cases where both courts and the media are obliged to protect the guarantees of judicial proceedings from any inappropriate external influences. However, having in mind that the reform of judiciary represents one of the key priorities in terms of European integration, Montenegro will need to show sincere political will to establish functional and political independence of judges and prosecutors and to secure the appropriate economic status of judiciary in whole. Academic community, non-governmental sector and independent media will need to become more involved in judicial reform, considering that they represent key partners of the state on this path. Once these conditions are met, Montenegro should be prepared not only to successfully negotiate EU membership, but most importantly to ensure the efficiency and quality of justice to its citizens.

1 Introduction

The reform of judiciary in Montenegro was initiated with Judicial System Reform Project 2000-2005, which was adopted by the Government in 2000. The Project included detailed analysis of the situation in judiciary and determined the main directions of reform. Within the framework of this project, more than twenty substantial and procedural laws were adopted, as well as many by-laws, among which the most important are the Code of Conduct of the Courts and the Regulation on internal organization of state prosecutors. Although implemented activities created a foundation for the functioning of judiciary, the project produced limited results, mainly due to the constraints imposed by the

Constitutional Charter of the State Union of Serbia and Montenegro. After renewal of the state independence in 2006, overall legal reform has been intensified. The Constitution in 2007 strengthened the independent position of judiciary. The Strategy for the Reform of Judiciary 2007-2012 accompanied with the Action Plan for its implementation, proclaimed strengthening of the independence of judiciary as one of its principal objectives. Following the adoption of the Strategy, numerous legislative changes regulating the organization and the functioning of judiciary, but also societal relationships judiciary deals with in substantive sense, were enacted. The institutional framework was improved, primarily through the establishment of Judicial and Prosecutorial Council. However, the conditions for a complete independence of judges and prosecutors have not yet been met, as stated in the European Commission Progress Reports for 2008 and 2009 and the Opinion on the Montenegrin Request for the EU Membership. The main argument in favour of this statement is that judiciary is still not fully independent from political and other illegal influences. Negative perception of general public towards the independency of judiciary, especially in relation to politically sensitive cases, should also be taken into account. According to CEDEM public opinion survey from 2011, citizens have less confidence in judiciary (44,8%) than in the executive branch of power. Citizens' perception of corruption within judiciary is among the highest (6.33) in addition to police and customs. Such a perception of citizens derives partially from the behavior of individuals who represents these institutions and partially from the wider social context. Namely, these attitudes are a consequence of cultural factors, in particular general stereotypes relating to certain professions, but also of the lay approach of the public towards judicial actors as well as of the lack of strict respect of the rules of ethics. Finally, particularly disconcerting is the fact that although successful judicial reform nominally represents a priority for all political parties, there is no political consensus on how to achieve this aim. Moreover, the issue of judicial reform is being often misused by the parties in order to achieve different political goals. Failure to reach the consensus on the current constitutional amendments aimed at strengthening the independent position of judiciary illustrates this situation in most.

Therefore, the aim of this policy brief is to review legislative and institutional fundaments of independence and impartiality of Montenegrin judiciary in the context of international and European human rights standards; to identify key challenges in the implementation of the judicial reform in the area concerned and to define the recommendations for its improvement. This policy brief deals with the independence as the autonomy given to a judge or a court to make a judgment by applying the law to the facts of a specific case, while impartiality is observed through the relationship of a judge towards a specific case and towards the parties in the proceeding. Besides the analysis of the normative framework, the text is also based on the results of the survey which covered the examination of attitudes of judges, lawyers and representatives of media and civil society organizations, on the results reached so far in the reform of judiciary.

2 Key elements of independent and impartial court under the national legislation and international standards

Fair trial before a court which is independent, impartial and established by the law represents the key standard of all international human rights instruments. *The European Convention on Human Rights* in its Article 6 prescribes that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an *independent and impartial tribunal* established by law". Following this standard, the *Constitution of Montenegro* guarantees to everyone the right to a fair and public trial within a reasonable time before the court which is independent, impartial and established by the law. The Constitution prescribes the division of powers which means that judiciary is independent from other branches of power, but also that these other branches are obliged to respect and enforce judicial decisions. The Constitution also determines the permanence of tenure in accordance with the *UN Fundamental Principles on the Independence of Judiciary*[1], except in case a judge has been convicted for an act which makes him/her unworthy of performance of judicial duty or if the judge performs its duty in an unprofessional or unconscientious manner. The Constitution further determines the functional immunity of judges; the incompatibility of judicial function with the membership in the Parliament or some other public function; the position of the Supreme Court of Montenegro as well as the composition and the competence of the Judicial Council. The Judicial Council acts as an independent body tasked with the appointment and dismissal of judges; termination of their function; deciding on the immunity of judges; overseeing the work of courts as well as for proposing the amount of funds for the courts to the Government. It has got its Chair and nine members, four of whom are elected from among judges who are appointed and dismissed by the Conference of Judges; two members among the MPs who are appointed and dismissed by the Parliament from the Parliamentary majority and opposition; two reputable jurists who are appointed and dismissed by the President of Montenegro and the Minister of Justice. The President of the Supreme Court is ex officio chair of the Judicial Council. The *Law on Judicial Council*[2] regulates the way how the Constitutional competences of the Judicial Council are exercised, while the Law on Courts[3] regulates the organization, competencies and financing of courts as well as appointment, dismissal and disciplinary responsibility of judges and the termination of judicial function.

As it comes to the impartiality of courts, according to international standards set by the *Universal Declaration on Human Rights, International Covenant on Political* and *Civil Rights and UN Fundamental Principles on Independence of Judiciary*, the impartiality of a court or of a judge, constitutes one of the fundamental procedural assumptions without which no judicial proceedings can have the necessary quality and it has to be perceived by the parties to a proceeding. One of the key objectives of the *European Charter on the Law for Judges* is to ensure professionalism, independence and impartiality, which everyone justifiably expects from every judge who is entrusted with the protection of one's rights. The *Recommendation R (94) 12 of the Council of Europe* emphasizes that in the procedure of adjudication, judge should be independent and capable of acting

without restrictions, inappropriate influences, threats or interferences, from any side and for any reason whatsoever. The jurisprudence of the *European Court of Human Rights* which constitutes the important substantive source for Montenegrin legal framework, offers the content of the element of the right to fair trial in relation to the impartiality of the court[4]. In Montenegro, the principle of impartiality is guaranteed by the Constitution and further regulated by the *Law on Courts* as well as by the procedural laws and the *Code of Judicial Ethics* adopted by the *Conference of Judges* in July 2008. According to this normative framework, a judge is obliged to perform his/her duty impartially, objectively and without prejudices or discrimination in relation to race, skin, religion, nation or any other difference. Despite proclaimed principle of transparency of courts towards public, judges are obliged to refrain from giving any statements or comments, especially those which may contribute to the impression of partiality in the proceeding. Inappropriate relationship of a judge with the representatives and the parties to the proceedings, as well as the dissemination of information he/she has taken cognizance of while acting in the cases, involves disciplinary responsibility of judges. Therefore, a judge may also not adjudicate in case he/she considers that there are any circumstances that would challenge his/her impartiality. If a judge considers that there are such circumstances he/she must notify the court president accordingly. In addition to a judge, the request for exclusion may also be submitted by the parties to a proceeding, by the defence counsel and by the victims, as soon as they find out of the existence of a reason for exclusion. All the reasons for exclusion of a judge, as well as the exclusion procedure must be prescribed by the law and must not be under the influence of any interest of the government or any other body of the executive branch.

Random case allocation represents another mechanism which gives the initial impetus to the impartiality of the proceedings. It is based upon the fact that it is hard to envisage beforehand the identity of a judge who is going to be presiding in certain case and depends solely on the case number. According to the national legislation, everyone is entitled for a randomly selected judge to adjudicate in his/her legal matter, independently from the parties and the nature of the legal matter. The cases arriving on a daily basis are classified alphabetically, without delay and according to the annual work schedule, by taking the initial letters of the names and surnames of the parties and allocated to judges according to the alphabetic order of their names and surnames. Failure to comply with the principle of random case allocation is considered as unconscientious and unprofessional performance of the duty of the court president and constitutes the basis for determination of his/her disciplinary responsibility.

3 Main challenges in establishing the independent and impartial judiciary

One of the main challenges here concerns the composition of the Judicial Council and the manner of the appointment of its members. Namely, despite being constitutionally proclaimed, the institutional independence of the Judicial

Council has been contested exactly because the composition of the Council does not offer sufficient guarantees for the elimination of the political influence on the appointment of judges. The fact that out of ten Council members, only four members are elected by judges, is problematic given that the remaining five members are the persons with evident political engagement or persons who can have political influence within the Council. The majority of judges who have participated in the survey within this project stated *"that the politicians should not be the members of the Council".* Part of their critique is directed also towards insufficient transparency of the candidacy procedure for the Council members from among reputable legal experts appointed by the President of Montenegro, just like towards the fact that these persons are not subjected to the ban on political party membership. In addition, the Law on Judicial Council does not contain the clause on the prohibition of the conflict of interest which would be aimed at preventing the appointment of politicians and the persons associated with them, for Council members. Also, despite competencies of the Judicial Council to propose the draft annual budget for the work of the Council to the Government and despite the right of the Council to participate in the Parliamentary session when budget proposal is discussed, financial independence of judicial power in relation to the other two branches of power is still not in place. Finally, the discretionary right of the Judicial Council to assess the influence of social connections to eventual partiality of judges in certain situations represents a challenge per se in the context of highly articulated personal and family relations and the relatively small territory of Montenegro.

The competence of the Parliament to appoint and dismiss the President of the Supreme Court, upon a joint proposal of the President of Montenegro, the Speaker of the Parliament and the Prime Minister, can also be challenged for the reasons of possible political influence, especially taking into account the fact that the appointment and the dismissal is done by the simple majority of votes of all the MPs. Such a solution fully excludes judicial power, in particular when having in mind the provision which envisages for the President of the Supreme Court to be appointed upon the proposal of the Parliamentary working body should the three presidents fail to come to an agreement. Besides, positive legislation enables high concentration of authorities to be vested in the person of the President of the Supreme Court who enjoys functional immunity; chairs the Council and the Three-Member Commission for the Appointment of Judges and has the authority to manage the Conference of Judges and organize its work.

Another principal objection relates to the position of judges and their appointment by the Judicial Council. Although this legal solution represents a step forward in comparison with the previous appointment by the Parliament, the fact is that the majority of are selected by other branches of power. In addition, majority of Council members from the rank of judges who decide on the election of new judges, has been elected during '90 in a less democratic procedure since Montenegro had no re-election of judges due to proclaimed permanence of tenure. Besides, although progress has been made in relation to objectiveness of the criteria and their elaboration by sub- criteria, the

parameters for their evaluation have not been prescribed, what hinders the objective evaluation of the same. The survey also indicated that majority of interviewees from judiciary stated that the *"appointment of judges must be based on objective criteria, starting primarily from the merits, i.e. testing results, and personal integrity of future judges".* When the protection of subjective rights of the candidates for judges is concerned, since the decision of the Judicial Council on the appointment is final and may be challenged in administrative dispute, the question is raised to what extent the Administrative Court, as a judicial body, may objectively decide upon the merits of these cases. Besides, the legislation does not specify that the decision on the appointment with the legal remedy is to be serviced to the unsuccessful candidates, but only that the Council is to inform the candidates about its decision, as well as that a candidate is entitled to inspect his/her documentation and the final assessment of other candidates. The survey also showed that judges do not perceive the national association of judges as either visible or vocal enough when it comes to advocating the interest of judicial branch.

Finally, when it comes to case allocation and the implementation of judicial information system-JIS, interviewed judges indicated that despite the fact that JIS facilitates the monitoring of trials, it has not been developed sufficiently and that due to the time needed for the inputting of the data may slow down the work of court administration. Given the number of unanswered question on how to improve JIS in order to raise transparency of the work of courts, one of the conclusions that may be brought is that certain judges are still not fully familiar with the way JIS functions or should function. On the other hand, attitudes of media and CSO representatives, point to the need to further improve transparency of judiciary primarily through *"institutionalized levels of communication between courts and the public"* since it is evident that citizens often do not know what are their legitimate expectations from the courts. Interviewers from the civil society also pointed to the lack of coordination between policy makers in judiciary and academic community, stating generally that the judicial institutions still do not perceive civil society as a reliable and constructive partner in judicial reform.

4 Conclusions and recommendations

Despite significant progress that has been made in strengthening the independence and impartiality of judiciary during the past decade, certain steps in the implementation of judicial reform have not given the expected results. Namely, it is questionable to what extent the Judicial Council has managed to profile itself as an independent and depoliticized body, capable of protecting judges from all illegal influences. Besides, the general public is still not convinced that judiciary cannot fall under illegal influences whether they are coming from dominant political actors, criminal groups or other social actors. The awareness of key stakeholders that the independence of judiciary exists for the purpose of social function it performs and that it must always encompass the dimension of accountability and responsibility is yet to be fully developed.

It is also clear that in addition to the legislative framework which would guarantee the independence, some other assumptions, which concern the appropriate organization of courts, i.e. sufficient number of judges, professional and technical staff as well as financial independence of judiciary, need to be met. However, opening of negotiations with the chapters 23 and 24, which comprise judiciary and fundamental rights, along with the continuation of initiated reforms, constitutes the opportunity for Montenegro to establish accountable and transparent judiciary, capable of ensuring the rule of law in all the segments. For this to happen, as shown by the examples of other accession countries, all political parties will need to take a clear position towards key issues of judicial reform, since the existence of a strong political will represents the key precondition for creating an independent and impartial justice system.

Starting from the abovementioned, this policy brief contains following recommendations for policy makers:

a) *Composition and method of the appointment of the Judicial Council members*

- The majority of the Judicial Council members should be appointed by the judges who represent all the levels of judicial power as stipulated by the European Charter. The Council Chair should be elected among the Council members;
- It is necessary to ensure full transparency and the opening of the Council members' appointment procedure towards general and professional public;
- The Parliament of Montenegro should appoint Council members who do not come from among the ranks of judges;
- The Constitution should guarantee the immunity for the opinion expressed while performing the duty of the Judicial Council member, to all members of the Council;

b) *Staffing policy in judiciary*

- The President of the Supreme Court, as the "the first among the equal" should be elected by the qualified majority of the Judicial Council;
- The criterion of non-conviction for a crime, which would make a judge be unworthy of judicial office, should be prescribed by the Law on Courts as one of the appointment criteria, while the parameters for the evaluation of individual appointment criteria should be specified;
- In all the cases where a candidate for judge has not been appointed, it is necessary for the decision to contain detailed explanation, especially in the cases when the Council decided to appoint a candidate with lower overall mark than the others or when the appointment was made among the candidates with the same average mark;
- The obligation to timely submittal decision to the candidate for a judge, in a transparent way and together with the legal remedy, should be stipulated by the Law on Judicial Council;
- Continuous efforts in securing conditions for tailored professional development and career promotion of judges should take place - especially

with regards to jurisprudence of the European Court of Human Rights - along with the insisting on the strict respect of judicial ethics, which can partly be addressed through the training on judicial ethics.

c) *Material-technical equipment*

- Securing material and financial positions of judiciary;
- Ensuring the necessary number of courtrooms which can accommodate the interested public, in order to prevent the holding of trials in the offices and ex parte communication which is still present in smaller courts and which harms the perception of the independence of judiciary;
- Continue with the development of judicial information system- JIS, in such a way which will not endanger the efficiency of the work of courts. Establishing a regular practice of collecting reports from the courts on JIS implementation and conducting capacity assessment of court officials for the implementation of JIS may be of use for further development of this system;

d) *Relationship towards stakeholders and general public*

- Improve the relationship towards the general public by appointing courts spokespersons in all courts in order to strengthen the trust in judiciary, to inform the public timely and in a transparent manner and to prevent possible abuses by the media;
- Ensure continuous training of journalists on fair trial standards;
- Initiate and strive for closer cooperation with academic community and civil society organizations in order to achieve the full effect of the reform;
- The National Association of Judges should become more involved in judicial reform and should perform stronger advocacy in order to mainstream certain aspects of the reform.

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1 According to these principles, judges, either the appointed or elected, should have the permanence of tenure safeguarded until they meet the retirement requirements or until the termination of their terms of office.

2 (OG of MNE nos. 13/08 and 39/11)

3 ("OG of the Republic of Montenegro" no.5/02; "OG of MNE" nos. 22/08 and 39/11)

4 In the case Pirsak v. Belgium, the European Court concluded that:

"… as a rule, impartiality designates lack of prejudices or favouritism, its existence in the sense of the Article 6, paragraph 1 of the Convention can be tested in various ways. In that context, it is possible to differentiate between a subjective approach, by means of which personal conviction of a given judge is established in a given case, and an objective approach, by means of which it is established whether that judge has offered guarantees that are sufficient for the exclusion of any legitimate doubt in that respect."



About the authors

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