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Albanian judicial practice with respect to *rights in rem* over foreign items

Arjan Hoxha, Brunilda Saliko

Introduction

Regarding judicial practice in Albania, about the problems encountered in everyday life about the rights *in rem* over foreign items, there is a poor practice; there is no even a unifying decision of the High Court unifying the practice to address directly these issues. The main reason for such situation might be the lack of knowledge of lawyers on the subject; but it does not comply with the actual current situation on the ground, in Albanian society, because the very reason on the basis of which these rights arose intended major economic element closely related to movable and immovable property of individuals. Specifically below we analyze some judicial decisions, as well as the degree of proof and reasoning that courts have done, mainly dealing with easement passage, as these are more sensitive to the issue.

Decision no. No.11114-00155-00-2008 the Register Charter, No 00-2011- the Decision (20) dated 19.01.2011, of the Civil Panel of the High Court.

In the case on[1] Vlora District Court, by decision no.722, dated 18.04.2006, has decided: Acceptance of the plaintiff and creating the servitude of building, on the property of the defendants in favour of the plaintiff disrupting the existing stairway that leads to the second floor of the apartment and rebuilt at the expense of the plaintiff in a break ground scales based on the northern side of his house[2].

The high court argues: The judicial investigation showed that when the apartment owned by the defendants was possession of state (former Apartments Vlora Municipal Enterprise) many restructuring are made by state for the functional side of the building adapting in residential apartments. One of these restructuring is a stairway that serves to go to apartment where the secondary intervener lives. This stairway has the form

[1] *"required (burden on property of the defendants) arising from the irregular construction, forcing the defendant to make necessary correction to the property, in order not to cause as so far damage to my property".*

[2] Vlora District Court, Decision no.722, dated 18.04.2006. Vlora Court of Appeal, by decision no.231, dated 24.04.2007, on appeal made by the secondary intervener against the decision of the District Court of Vlora, has decided: Change the decision of the District Court of Vlora no.722, dated 18.04.2006, by judging the case in fact and decided to reject the lawsuit. The plaintiff appealed to the High Court has against the decision no.231, dated 24.04.2007, of the District Court of Vlora.

of "U" and supported by the wall of the apartment by the plaintiff with a break ground scales, which comes up to the window of the room of the plaintiff. The plaintiff claims that this degree of built-in favour of the plaintiff, not respecting technical and urban regulations create moisture, preventing natural light and privacy of his life, making his home uninhabitable.

The Civil Panel of the High Court with the decision no. 623, dated 08.04.2004 has refuse the appeal and the matter be sent for review to the same court with another panel. The Civil Panel of the High Court found that, during the trial conducted by the Court of Appeal in Vlora, has not been investigated in full and comprehensive in terms of ownership of stairway, object of this conflict between the parties. The court also does not investigated regarding the ownership of the land upon which these rates. In the court file is not administered any title of ownership over ownership of the stairway and land where they stand.

During the trial conducted by Vlora Appeal Court, it is not administered the decision No. 47, dated 02.07.1994 of the Commission on Restitution of Property[3], on the basis of which the ownership right of the stairway and the land on which they stand would be determined.

This Civil Passage, starting from the meaning of provisions 261, 265 and 272 of the Civil Code, considers that determination of these above mentioned facts, are important to allow the court to reach a fair conclusion and objective solution this civil case[4].

In the retrial, the court must inquire about the legal position of the secondary intervener. In the court file, as well as the court decision has not resulted (clear with written evidence) rental relationship with the defendant secondary intervener, is not clear that this relationship existed at the time of the trial; it is not clear and proved the existence of this relationship and its duration. In view of the complete and comprehensive judicial investigation, the appellate court for review may also carry out other actions that considers necessary to be performed, or other issues that may eventually foreseen by the parties, as may be necessary to invoke the employees of the Municipality, the respective office, who is knowledgeable about the conflict that about this property, to clarify the legal relationship of the state with that plot of land, to which the parties are in conflict.

Decision No 11114-01899-00-2010 of Register Charter, No 00-2014-1769 Decision (363) dated 11.06.2014, of the Civil Panel of the Supreme Court

In this case with the object: "The *obligation of the respondent to allow us*

[3] Decision No. 47, dated 02.07.1994 of the Commission on Restitution of Property.

[4] Article 261, 265 and 272 of the Civil Code of Albania.

passage way for the public way (servitude passage)", the reasoning of the Civil Panel of the Supreme Court is; that cannot be supported and do not consider valuable the defendant claim that "the plaintiff has all the conditions for the enjoyment of her property. The passage for the defendant's property is a second way of passage", because it results from the evidences administered in the two judgements, that the variant admitted by the court is the one causing the less damage to the serving property, and through to which the transport vehicles can pass[5].

This conclusion of the Civil Panel derived from the implementation of the article 277 of the Civil Code "servitude passage"[6]. District Court Fier rightly argued that on the basis of evidence administered at a hearing and from act of expertise conducted by the surveyor and assessor expert, has been chosen as the final version of the version of the act expertise, which selects the shortest path to public property and with less damage to the plaintiff.

The Civil Panel of the High Court considers that the decision of the Court of First Instance Fier and, consequently, the Court of Appeal in Vlora which has left him in power, is based on this provision in those following regulating servitude of passage and the evidence administered during the trial and there is no place for denying it. The appellant claims in recourse related to obtaining and evaluating evidence, the receipt and evaluation of which (the evidence) is attributable to the fact the courts and not the Supreme Court. The Supreme Court did not take the evidence or make a new assessment of the evidence. Civil Panel of the High Civil Court finds resolving to uphold the decision of the City Court of Appeal.

Decision no. 3393/605 Act no. 467, Decision Dated 06.03.2012 Court of Appeal Tirana

An interesting case is the Decision no. 3393/605 Act no. 467, Decision Dated 06.03.2012 Court of Appeal Tirana[7]. The Court argues that despite that, as rightly claimed by the respondent complaining classic concept of servitude defined in the Civil Code; it means recognition of a lien on the property of a landlord, in the service of

[5] Decision (363) dated 11.06.2014, of the Civil Panel of the Supreme Court.

[6] which foresee that: "the owner that has no accesses on the public road and cannot reach it only due to great expenses, has the right to have a passage way through the neighbouring land in with the purpose to convenient use of his property. The transition should constitute the shortest path to the public way and with less damage to servant property. This provision applies even when the owner, who was given the right of way to the property of another, requires expanding reasonable thoroughfare for vehicles, including the passage of mechanical means". Article 277 of the Civile Code of Albania.

[7] Decision no. 3393/605 Act no. 467, Decision Dated 06.03.2012 , Court of Appeal Tirana. *on "Defining the conditions for exercising the legal mandatory servitude over at the" Gallery 44, the area D" The obligation of the respondent "ACR" Ltd, to comply allowing passage of society "Kevger" Ltd, according dt.22.07.2010 mining exploitation permit"*

a property to another owner. In these conditions, the fact that as the claimant neither the respondent are not the owners of the properties they are using, asking for creating the servitude in the classic sense of the above, could not be claimed against them. On the other hand, despite the Law no.10304 / 2010," For the mining sector", said the mining servitude refers to concepts of the Civil Code, for sake of the specific nature of the rules in this sector, it specifically provides mining servitudes. Thus, as quoted in the above provisions, the law legitimizes to request the right of the mining servitude, not only the owner but also the holder of a mining permit. On the other, this request of the holder of the mining permit for a servitude passage, addresses as the owner as well as one who owns the neighbouring terrain on another mining permit[8]. The Court of Appeal, finding the complaining defendant's claim unjust; evaluates just litigants created in this process. On the other hand, the complaining defendant, recognizing the right of plaintiffs to seek the exercise of mining servitude claims in the appeal that this right must be exercised without causing him considerable damage. Regarding this claim, the Court of Appeal considers that it remains an unproven allegation. The Court of First Instance, in its commandments, has disposed towards forcing the defendants to allow plaintiff to exercise the mining servitude and the obligation of the latter to pay in favour of defendants the value for the use of the servitude.Does not result in the judgment at first instance, or to appeal against the decision of that court, the defendant has claimed a greater amount of damage that would be caused to him, much less proven have the this damage[9].

Decision No. 116 dated 15.10.2012 of the Panel of the Constitutional Court of the Republic of Albania.

The Decision No. 116 dated 15.10.2012 of the Panel of the Constitutional Court of the Republic of Albania, with the issue of subject[10] which is actually a Decision for not judging of the case, arguing: the Panel considers that claims are not within the competence of the Constitutional Court. Panel empathises that

[8] On this analysis, and while the defendant in this process are as Ministry of the Economy, in its capacity as owner of two respective mining exploiting party in the process, as the "ACR" Ltd, the entity that owns the mining permit in neighbours terrain in which the plaintiff alleges that has the right to legal mining servitude. Law no.10304 / 2010," For the mining sector".

[9] The Court of Appeal considers that referred to Article 279 of the Civil Code, the damage caused to the servant tenement is included in that law No.10304 / 2010, determines; the annual value of the servitude use, value, which is determined by the court of first instance and it does not appear to be challenged.

[10] "*The repeal as incompatible with the Constitution, the decision no. 5811, dated 30.10.2006 of the District Court of Tirana; Decision no 355, dated 18.02.2008 of the Court of Appeal and the Decision no 00-2012 (104), dated 28.02.2012 of the High Court to the effect that upholds the decision no. 355, dated 18.02.2008 of the Court of Appeal of Tirana with respect to the claim regarding the release and delivery of the property and servitude of passage* "

under Article 131, letter "f" of the Constitution, "the Constitutional Court decides on the final adjudication of complaints by individuals for violation of their constitutional rights to a fair legal process". The Panel assesses that claims are not constitutional nature of the process of law, but belong to the judicial merits.

Conclusion

Regarding judicial practice in Albania, about the problems encountered in everyday life about the rights over foreign items, there is a poor practice, even a unifying decision to address directly these issues is missing; as the main reason of such situation can be the lack of knowledge on topic by jurists, but can never be due to the current factual situation that lies on the ground, in Albanian society, as even reason on the basis of which these rights are established had economic element, the major goal closely connected with movable and immovable property of individuals.

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3. The Decision No.722, dated 18.04.2006, the District Court of Vlora.
4. The Decision No.231, dated 24.04.2007, the District Court of Vlora.
5. Decision No. 11114-00517-00-2008 of charter register, No. 00-2012 - 2613 Decision (516) dated 15.11.2012 of the Civil Panel of the High Court.
6. Decision No.11114-01899-00-2010 of charter register, No.00-2014-1769 Decision (363) dated 11.06.2014.
7. Decision No. 3393/605 Act, No. 467, Decision, dated 06.03.2012 of the Appellate Court of Tirana.
8. Decision No. 116 dated 15.10.2012 dated 15.10.2012 of the Panel of Constitutional Court of the Republic of Albania.

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Rights in rem over foreign items and their implementation according to the current Albanian legislation

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Introduction

Regarding the current legislation to the *rights in rem* over foreign things, we propose that lawmakers should handle more in detail and concrete details of numerous cases that arise in practice by the application, even if unknowingly, the, linked also because informality that exists today on the right of ownership. Today is the fact that, despite the intention to boost the economy of Albania would improve consequently the life of every citizen, the right of ownership is much more expensive than any short-term lucrative dream lucrative, it is, therefore related to various contracts or agreements with strong international companies and national, must take into account respect to the constitutional doctrine and always give priority to the national legislation, as seen in subsequent interpretations of invalidity of these acts.

This paper aims to analyze the current legislation on "*rights in rem"* over foreign things in, in order to give answers to some important issues related to the need to improve the legislation in this field.

Law No. 33/2012 dated 21.3.2012 "On Registration of the Immovable Property"

According to the article 32[1] this procedure starts with the request of the beneficiary of the rights in rem, to who is not issued any certificate of ownership, usage, usufruct, emphyteusis, mortgages, servitudes on the immovable property. The registrar releases the certificate of the ownership for the owner and the beneficiary of the *rights in rem* are provided case by case with the certificate of usage, usufruct, emphyteusis, mortgages, servitudes, in hard copy or digital one reflecting all the information that is displayed on this property effecting the immovable property or *rights in rem* of it[2].

The owner of a real estate registers servitude, presenting registrars the act

[1] Article 32 of it foresees the procedures and rules to be followed in order to register the certificates of usage, usufruct, emphyteusis, mortgages, servitudes and other *rigths in rem*.

[2]For every immovable property registered in the corresponding file i order to prove the ownership rights or other *rights in rem* based on different legal acts, only a certificate is released. This certificate is released to the only owner of the property or one of the owners in cases of the co ownership authorised according to the rules in force. The date of the release of the certificate of the ownership usage, usufruct, emphyteusis, mortgages, and servitudes is written in the files accompanying the certificate.
Atricle 32 of Law No. 33/2012 dated 21.3.2012 "*On Registration of the Immovable Property*".

creating servitude, in the form required by law, which shall include: the nature of servitude, the period for which has effect such servitude, as well as any condition or limitation that affects it; and immovable property or part thereof that is affected by this servitude. The document, by which applies to easements being placed on file. It contains a survey plan; which is needed to determine the location and extent of servitude. The easement is recorded in Section D of the Immovable Property File. With the submission of the application and documents required by the person in whose favour it has been servitude the relevant registration is made in section of the of real property file.

Law No 107/2014 dated 31.07.2014 "On planning and deployment of territory" and it's implementing acts.

In reference to the article 19 is stipulated among others that the sectoral plans at regional level which determine the strategic development of the different sectors; they also aim to regulate the place and the programs for the public infrastructure and public servitude according to the legislation in force. Among the objectives of the General Local Plan is also regulating the location and the programs for the public infrastructure and public servitude according to this law[3]. When a public servitude is based on a planning document in force, it is implemented as asking for construction.[4]

By the **Decision of Council of Ministers No 481, dated 22.06.2011, "On approving the uniform regulation of the planning instruments"** in Section "Local planning" of this regulation is stipulated the fact that the draft of the local plans which contains among others the plan proposed for land usage and the structures on it, includes also the proposals for the zones of preference, zones of the suspension of the development, zones of the public reservations, and the zones for the certain categories of the public servitude, and the relevant conditions for their implementation accordingly (Article 20)[5].

According to the **Decision of Council of Ministers No 502, dated 13.07.2011, "On approving the uniform**

[3] In the Section II "Instruments of ruling development", Article 34, is widely stipulated the concept of the public servitude, considering as the lien set on a property in favour of another property for the public interest. It does not exclude the usage of the immovable property or a part of it that does not prevents the realisation of the public servitude. This servitude can determined from the local document or national document of planning, or can be imposed from a request for contracting.

[4] Every public servitude set up in certain parcels is transferred in the new parcels created in the same physical place, due to A process of dividing or/and merger for the sake of development. Public servitude is for unlimited period of time if the act creating it does not foresee the period of the termination. The rights and obligations on public servitude are the same stipulated by the Civil Code and legislation in force on servitudeArticle 19 and 34 of Law No 107/2014 dated 31.07.2014 "*On planning and deployment of territory*" and it's implementing acts.

[5] Article 20 of Decision of Council of Ministers No 481, dated 22.06.2011, "*On approving the uniform regulation of the planning instruments*".

regulation of the control of the territorial development" among others gives the definition of the term " Setting the building plan", is the parcel or the parcels, which set on map shows that is set the structure in relation to the border of the property, or properties with surrounding structures, with the roads network and other infrastructures in zone, and with other servitudes if they exists already in zone or in parcel. As for the cases when it is not compulsory to a detailed local plan, is for the local government unit to determine if one structural subunit it is not subject for the design of the detailed local plan[6].

The uniform procedure for the drafting, the approval and the implementation of the special instruments of control and development, is determined according to the disposal of the article 70 of the law no 10119, dated 23.04.2009, "On territory planning". The study prepared according to the stipulations of the letter "a" of the article 70 of the law no 10119, dated 30.04.2009[7], "On territory planning", and contains:

-the purpose of the study and the definition of the administrative territory effected from this study and its purpose;

-special definitions from the planning instruments in force a proved previously which are connected with the purpose of the study, the list of the criteria's and rules;

-the analysis of needs for investments in public interest;

-the determination of the zones for public servitude, reservation or preference and determination of the implementing conditions in any case, based on stipulation of letters "a" to "ç " of this article, accordingly. **Law no 10304 dated 15.07.2010, "On mining sector on the Republic of Albania"[8].** According to the article 34, "The mining servitude and the change for the public interest of the ownership of the surface of the zone allowed of a mining permit", the beneficiary of the mining permit has the right of the legal mining servitude (compulsory) on property over the allowed mining zone as determined by mining permit.[9] The term of

[6] Decision of Council of Ministers No 502, dated 13.07.2011, "*On approving the uniform regulation of the control of the territorial development*"; as one of the cases is: -*when the local unit plan to implement the public servitude, to build or to commit operation in order to maintain parts of the network of the public infrastructure, and on each of these cases do not change the parameters of the planning and development, functions, activities or usage of land and of the structures in the selected zone.*

[7] Article 70 of the Law no 10119, dated 23.04.2009, "*On territory planning*".

[8] The Law no 10304 dated 15.07.2010, " On mining sector on the Republic of Albania", stipulates another important servitude: mining servitude, which is defined according to the concept of the Civil Code, but is connected only with the usage of the property, in respect of fulfilling the obligations deriving from the mining permit.

[9] The mining servitude gives the holder of the mining permit the right to use the servant property and to commit over it all the operations or supporting works according to the type of the mining permit. And also oblige the owner of the servant property to allow the holder of the mining permit to use the property and to commit these works and operations. The exercise of the rights of the servitude, as foreseen by point 1, of

the servitude is the same as the term of the mining permit and rules of exercising the servitude are determined according to the principle of less damage to the servant property and according to the type of the mining permit[10]. The holder of a mining permit has the right of legal binding servitude[11] way of passing on the surface, surface of the neighbouring property to the permitted area mining, in order to take the necessary measures to build the entrance and the gallery for realization of the mining activity[12]. Court determines the annual payment and the rules of the exercise of servitude of passage on the surface of the neighbouring property. In the case of mining permits, provided by the law on concessions, the case is handled in the District Court of Tirana. The term of the servitude of passage on the surface of the neighbouring property, is the validity of the mining permit and passageway to the neighbouring property is determined according to the principle of lesser damage to the servant property. Servitude in horizontal underground mining works, belonging to another existing allow mining area, can be created only by agreement between the parties. When the right of servitude groundwater is determined by the holder of the mining permit and has been approved by the responsible authority of the annual program of the mining activity, conditions and fees for its establishment are determined by instruction of the Minister[13]. Accuracy of the concept of legal servitude, particularly on underground work, the creation of legal conditions for increased security in mining, clarification of the mining areas and terminology used in the

this article is done based on the terms of the contract connected between parties, where is defined the way of exercising the servitude, and for the compensation of the damage. In case the parties does not conclude a contract within the term of 30 days for the day of the written request by the holder of the mining permit, submitted to the holder of the title of ownership, the holder of the mining permit can ask for a court decision. The court determines the payment of damage and the rules of exercising the servitude. In the mining permit case, which is issued in accordance with law on concessions, the issue is to be endorsed by the District Court of Tirana.

[10] Article 34 of Law no 10304 dated 15.07.2010, " *On mining sector on the Republic of Albania*".

[11] In cases where mining activity permit for a mining area is of particular interest to the public and create problems in the relationship with the landowner, the surface area of the mining permit allowing can be expropriated. Expropriation criteria and procedures are established in accordance with the requirements of the legislation on expropriation in the public interest. Article 35 of the Law no 10304 dated 15.07.2010, " *On mining sector on the Republic of Albania*".

[12] The exercise of the right of servitude as provided by point 1 of this Article shall be based on the contract between the parties, then the holder of a mining permit and the owner of the neighbouring property, which defines the manner of exercise of servitude, and against the annual payment for the owner of the neighbouring property. If the parties set out in point 2 of this article, do not reach an agreement within a period of 30 days from the date of submission of a written request by the holder of the mining permit, to the neighbouring property owner, the holder of the permit may request for the court decision.

[13] In other cases, conditions and tariffs are set by the parties. Responsibility for the maintenance and observance of technical safety regulations in areas under ground passage should be defined in the agreement signed between the parties. The creation of voluntary or mandatory servitude, on the surface and underground mining works, horizontal or vertical, in dangerous mining areas is forbidden.

law, are also important differences. Mandatory legal servitude in underground mining works horizontal or vertical, belonging to another existing allowed mining area to be exercised only by agreement between the parties[14].

Law no 8518 dated 30.07.1999, Law no 8709 dated 06.12.2000, Law no 9231 dated 13.5.2004 and Decision of Council of Ministers (DCM) no 314 dated 21.5.2014[15]

The Law no 8518 dated 30.07.1999 "On irrigation and drainage"**,** establishes the obligation of registration of servitudes from associations, federations and board drainage when they benefit the servitude in accordance with the Civil Code. The surface on which is set the irrigation and drainage system, together with the relevant structures, is registered in the office of registration of immovable property, where the registration of the created servitudes is done pursuant to this article. Changes are carried out in cases of transfer of infrastructure based on the order of the Minister of Agriculture and Food. (Article 52)[16].

Law no 8709 dated 06.12.2000 "On approval of the contract for sale of assets of the Company's cement production, Fushe Kruje". [17]

Rights in rem over foreign objects, because of their nature, are found widely applied in legislation granting concession of different nature. The first Albanian law that paved the way for concessions, which include and rights in rem over foreign objects on them, was **Law No 9231 dated 13.5.2004 "On the ratification of "The concession agreement to form" BOO "for the construction and exploitation of coastal terminal for storage of oil and its by-products in Vlora Bay", as well as the ratification of "the concession agreement to form" BOT "for construction and operation of port infrastructure, in the service of coastal terminal in the Gulf of Vlora"[18].**

[14] The holder of a mining permit that benefits from the servitude on the basis of the agreement is bound together with legal and technical documentation by approving the annual program of the mining activity, and submits to the relevant structure also the agreement to allow the right of way.

[15] Law no. 9231 dated 13.5.2004 On the ratification of "*The concession agreement to form"* BOO "for the construction and exploitation of coastal terminal for storage of oil and its derivatives in Vlora Bay".

[16] Article 52 of the Law no 8518 dated 30.07.1999 "*On irrigation and drainage*".

[17] The Law no 8709 dated 06.12.2000. On approval of the contract for sale of assets of the Company's cement production, Fushe Kruje", is just a contract for the sale of the assets of the Company's cement production in the field -Krujë concluded between the Council of Ministers and "Fushe Kruje Cement Factory" ltd., in which selling the land, buildings and all equipment mobile and fixed as well as any other means located in and all rights, title and interest of retailers of all easements, servitudes of passage, privilege and any other rights on the property.

[18] The basis of this law to which the parties of the contract were Albanian government and society "La Petrolifera Italo Rumena" SpA, which took

Conclusions

Accuracy of the concept of legal servitude, particularly underground work, the creation of legal conditions for increased security in mining, mining areas and clarification of the terminology used in the law, are also important differences. Mandatory legal servitude in underground mining works horizontal or vertical, belonging to an existing rest area to allow mining exercised only by agreement between the parties. The holder of a mining permit that benefits from the servitude on the basis of the agreement is bound together with legal and technical documentation by approving the annual program of the mining activity; submit to the relevant structure the agreement to allow the right of way. If no agreement is reached between the parties, the compulsory servitude is established by the minister. A very important problem is the development of training in the field of *rights in rem* over foreign things. Judges, attorneys, lawyers and law students, as only in this way achieve awareness and clarification of concepts, enabling development Albanian further legal doctrine in this regard, and consequently the Albanian citizens see as solvable the issues that may cause major conflicts with serious consequences and resolved quite easily, accurately and mutual understanding between the parties.

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over the building and used by terminal offshore oil, oil products and other products in the Bay of Vlora in an area of 183,000 square meters and where the Albanian government sell the property above mentioned for the construction of the terminal.

Some concepts related to the responsibility of juvenile offenders according to Albanian penal and procedural penal legislation

Bledar Mustafaraj, Aldo Shkëmbi

Introduction

The juridical issue of penal liability in criminal law becomes important nowadays particularly in the cases of penal offenses committed by minors. Juveniles may commit any of the offenses provided by Albanian Penal Code, excepting cases when the subject requires particular features to consume it because of the nature of the offence. The adult defendants' juridical state differs from that of minor defendants, because of the importance that has been given to the educative aspect and rehabilitation of the latter ones. This difference has to do with the fact that the minor subject is in the phase of growth.

Numerous studies have revealed that "Teenage is the long way during which the minor builds his identity and the commitment of offenses by adolescents during this period of life, represents the manifestation of a psychic problem evolved during the life process of moving from teenage to adulthood[1]. This problem emerges in the teenage phase, during which the antisocial attitude often has traumatic origin, related to affective events that have not been understood properly by minors and which is manifested in the outer world by committing a penal offense, such deed implying a call to the world for help for someone to take care of him[2]". Despite the inexistence of a mere penal system for minors in Albania, the provisions related to minors' criminal charges, aim at rehabilitating and re-educating the juveniles, so that they overcome the difficulties met and move calmly towards adulthood[3]. This goal of the lawmaker finds expression first of all in the article 54/1 of the Constitution of the Republic of Albania[4].

Even at international level, with the Convention on The Child Rights of UNO, part of the legislation of the Albanian state provides a particular protection for the minors so as to avoid its premature encounter with the penal system and the consequences it would bring about in his normal development. In compliance with all said above, the Albanian lawmaker has introduced specific provisions regarding penal processes charging minor defendants in the Penal Code and Code of Penal Procedures, which, even though limited, provide guarantee and envisage substantial procedures. Differences in treating minor offenders lay firstly on defining a limit of age

[1] Neri C, *Campo e fantasie transgenerazionali*, in Riv. Psicoanalisi, vol. XXXIX – N. 1, P. 43-82; R. Losso, Psicoanalisi della famiglia, Persorsi teorico-clinici, Franco Angeli, 2000

[2] Winnicott, *Alcuni aspetti psicologici della delinquenza minorile*, in Il Bambino deprivato:le origini della tendenza antisociale, Cortina, 1986.

[3] Islami H, Hoxha A, Panda I, *Procedura Penale*, Tiranë, 2003, pg. 594.

[4] It is defined in this article that the children have the right of a special protection from the state.

for criminal chargeability. Nevertheless, besides determining the criminal chargeability age, the Albanian penal law has not yet defined any criteria regarding maturity which would be related to the capability of understanding the importance of law-offensive activities or inactivity's as well as the consequences deriving from them, consequently, with the subjective attitude of the authors of the offence, for whom the Albanian criminal law pays no attention to the fact whether they are adults or minors.

Concept of maturity

From the ancient times, the Roman law, with the Law of 12 Tables, admitted legal irresponsibility of the *impuberes*. This was a *comunesentire* principle that continues to exist even nowadays entailing that those to be held penal responsible for their deeds, should have the capacity to understand the importance of the offenses committed and control them[5]. This capacity for the minors of 14-18 years of age is usually called *maturity* in literature and is included in the quite important concept of criminal chargeability or legal responsibility[6].

Whereas the capacity to understand has to do even with the manipulation of consciousness as regards the attitudes revealed and connect behaviour with all the other relations and interests protected by law. Conclusively, it's not enough for the minor to know in an abstract way, the unlawful and antisocial character of his deeds, but should make his the moral and social rules. *The concept of maturity*[7] should be distinguished from that of mental issues (vices): the minors might be immature, but mentally healthy. To evaluate the capacity of minors to understand and control their actions and inactions and the responsibility in general, the medical criteria is mainly used. In this case, the intellectual capacity is separated from the volutive one, and both of them are examined to see whether there exists any disease of physiological or intellectual nature, so as the clinical framework of the subject is shaped. This is a rather narrow orientation, as the evaluation of immaturity is based simply on biological and organic criteria like the retarded intellectual development, the incomplete psycho-motor development, etc. Thus, from a psychic expertise, the child might result myth maniac, epileptic,

[5] Pepino L. *Imputato minorenne* in *Digesto delle discipline penalistiche*, UTET, 1992, page 287.

[6] In theory, legal responsibility has been defined as the capacity of the person to understand the importance of the ofencescommitted and the consequences caused by them, as well as to control his own activities and inactivitivities.

[7] *The concept of maturity* would be defined as: the harmonious development of personality, intellectual development in conformity with age, the capacity to properly evaluate the incentive motifs of committing a crime, understanding of moral values of own behaviour, capacity to understand the harmful outcome of their own deeds caused to the others, the power of character, understanding the importance of certain ethic values, capability for self-control, capacity to tell between the good and evil, the lawful from unlawful, normal development of psychic skills, being responsible for the behaviour revealed, capacity to appropriate in his conscience the concept of crime, accepting the moral and social rules based on beliefs shaped in an independent way, and so on. Anyway, to reach maturity, a sufficient level of intelligence is not sufficient. Intelligence is the capacity to understand the mechanic consequences of own deeds, hence the relations cause-consequence, in the material point of view.

schizophrenic, etc, concentrating only on the mental condition, without taking into consideration the environment where he is developed. Therefore, it is important to also address the psychology of developing age and the dynamics of teenage. The psychological criteria take into consideration undefined situations of developing individual – like emotional immaturity, affective conflicts – which bring about the subject deviation because of the particular age[8].

There are cases when the minor, even though not suffering of any organic damage of personality or disorder, has not reached the level of maturity so as to be called responsible. It's the case when the child grows in a difficult environment, for instance in a destroyed family. Therefore, sociological criteria should also be used to evaluate the causes of deviation in the socio-environmental structures where the minor grows and develops his personality. A child living in abnormal conditions, who has not had the right models, and has only had negative incentives, has not finished school, has a weaker personality and does not know how to resist strong impulses. Anyhow, every case is treated individually and a number of parameters should be taking into consideration. But all those parameters, like education, family and school, psychological categories, should be considered as stable, one sense, but should be thoroughly studied and be related to the necessary cultural parameters. Article 40, paragraph 3, letter (a) of the Convention on Children Rights[9] requires the definition of a certain age under which the minors will be considered irresponsible in case of breaking the penal law. According to the Albanian Penal Code, penal offenses are divided into penal crimes and violations. Concerning the crimes, the intellectual capacity and required will to be responsible is reached in the minors of 14 years of age (article 12/1 of Penal Code of the Republic of Albania). This means that the minor has reached the mental maturity so as to know the illegal character and socially dangerous of his acting and non-acting. Defining this limit of age has been done with the reasoning that in the concrete conditions

[8] It would be the case here to make the difference between the objects of the two sciences of psychiatry and psychology:

- Psychiatry studies the psychic disorders, nature of disease, stage of psychic disorders and their influence on the daily activity of the sick. In this sense, legal psychiatry refers to the juridical norms working on the psychiatric criteria on the basis of which conclusions are reached on responsiveness, incapacity to perform actions and selection of measures for the psychic sick committing deeds socially dangerous.
- Psychology is defined as the science of behavior and knowledge. Psychologists emphasize the study of behavior because it might be observed and recorded. Knowledge involves mental processes like thinking, dreaming, memory, etc. Knowing processes usually cannot be observed directly and they are often studied through self-reporting of subjects under observation. When talking about the concept of behavior, psychologists take into consideration the processes of knowledge, behavior and the physiological ones. Of importance are the psychologists of education who help to make teaching in class most effective. Social psychologists are involved in activities to reduce prejudice and aggression.

[9] Convention on the Children Rights is ratified from the Albanian Parliament on 27.02.1992. The number of Official Paper where the ratification law was published is not known.

of development of our society, a minor of this age is in possessing of the knowledge needed to understand what a crime is and what is not. A minimum limit of 16 years of age is defined for penal violations (article 12/2 of Penal Code of the Republic of Albania), with the reasoning that the content of violation is somehow more abstract and difficult to be understood from the minor, therefore he should have a higher level of knowledge and life experience so that to be responsible[10]. Thus, on this limit, the criminological treatment of penal deeds and the persons committing them, show that for the study of criminality of minors it is not sufficient only knowing the penal deeds committed, the means used and consequences outcome, but also the peculiarities of the people committing this activity, their skills and personality should be defined[11]. This is why legislation provides a limited penal responsibility for minor. While evaluations for an adult are directly for him, the evaluation of an infant should take into consideration the socio-family environment where he/she grew up[12]. For instance, when children are part of a group, this influences their maturity as they learn styles of life, habits that put them in certain levels and don't allow them to improve. The social context greatly influences the maturity of teenagers, as maturity depends on stimulation, positive or negative, from the people surrounding him. We are talking here about minors having no mental problems, therefore not suffering of any psychiatric disease. These data are taken exactly in the place where the minor is born, grown up and educated. Maturity is reached by learning things, processing and absorbing them and by acting according to what has been learned. Sufficient attention should be paid to the process of maturity so that to properly evaluate whether this process has stopped at some point or continues. Freud used to say: often teenagers need some time and place to develop; but sometimes they don't make it and then the *breakdown* of teenage (failure, disorder) takes place. Here, evaluation should be made by specialists of dynamics of teenage, in order to see whether the behaviour is based on a process of evolution or on a process of failure.

According to the conclusions drawn by various studies, there exist 4 levels of

[10] The people who have not reached the age of 14 cannot be criminally charged, but educative measures can be taken against them (article 46 of Penal Code of the Republic of Albania). Acquisition of mental maturity by minors, to understand the importance of offense and to define their behaviour in society at the age of 14 is not a static condition. From the age of 14 which is the lower limit of minority, the mental skills of minors are vigorously developed, and when reaching the age of 18, the intellectual development to understand the importance of offenses is considered complete. Muçi Sh., *E drejta penale, Pjesa e Përgjithshme*, BotimetDudaj, Tirana, 2007, pg. 128.

[11] Assante G., Giannino P., Mazziotti F., *Manuale di diritto minorile*, Editori Laterza, Milan, 2003, fq. 274-275.

[12] Article 42 of the Code of Penal Procedure of the Republic of Albania provides that: "The proceeding organ receives details on the personal, family and social living conditions of the minor accused, so as to clarify the responsiveness and the scale of responsibility". The organ of Prosecution Office and the Courts are implied with the definition Proceeding Instance in the Albanian Procedural System.

maturity: biological, intellectual, affective and social[13]. The first has to do with the harmonious development of the body. Intellectual maturity is related to mental maturity as a coefficient of intelligence. Affective maturity (that of feelings) is related to the child's capacity to control impulses and emotions and express them in harmony with the relations created with others. Lastly, social maturity can be measured through the capability to adapt to reality. Therefore a biological or intellectual prematurity does not correspond to a complete affective maturity. Nowadays, teenagers undoubtfully have more intellectual maturity, but their affective maturity is reluctant, as they prove always less and less emotions and often experience the wrong feelings. At this point, TV gives a very negative contribution. Likewise, previously the family was more careful and paid more attention and more time to the children. Nowadays, because of many factors, this care is no longer in those levels.

Right level of maturity

What would be the right level of maturity so that the minor of 14-18 years of age is called responsible? There are two potential choices here: he should have reached the average level of minor of 14 years of age or that of the teenager of 18 years of age. The responsiveness of those minors, who at the moment of committing a penal offense has a smaller level of maturity than that of a normal minor of age 14, should be excluded. On the basis of this thought stands the fact that often minors of 16 or17 years of age have the same psycho-physical development as that of 13 years of age. Anyhow, even for an adult, even though he is presumed to have the capacity to understand and control his actions, the court takes into consideration the subjective features of the author of deed. In case the circumstances of article 17/1 of Penal Code[14] are applicable, he will be capable. For minors of 14-18 years of age, the court should prove that this maturity exists, hence the minor has acquired that level of maturity required to be taken under penal responsibility.

Then, why has the law maker provided halving the sentence for minors up to 18 years of age, who are declared as responsible? Is it because the capacity of minors is smaller than the one presumed for an adult? The fact that article 51 of Penal Code[15] provides for minors who have not reached the age of 18 are given half of the sentence provided by law for the penal offense committed, does not mean that the

[13] Basilio L, *Imputabilità, minore età e pena: aspetti giuridici e sociologici*, 2001, pg. 47.

[14] This article is about the irresponsiveness of the author of penal deed because of mental condition. The Albanian Penal Code regulates it, according to which there is no penal responsibility for the person who at the time of commitment of penal deed is suffering of a psychic and neuro-psychic disorder that has thoroughly destroyed his mental equilibrium and consequently he has not been able to control his actions or non-actions and neither understand that he is committing a penal deed. The scale and level of psychic and neuro-psychic disorder is defined by the psychic expert.

[15] It is expressively provided in this provision that: "*For minor children, who at the time of committing a penal deed have not reached the age of 18, the sentence with imprisonment cannot be more than half of the sentence provided by the law for the penal deed.*"

minor is half capable, but simply that he deserves a more tender treatment because of young age (he is a child). Furthermore, article 52 of Penal Code[16] specifies that when a penal offense presents little danger, there are favourable circumstances for the minor and when this latter one has shown good behaviour, the court may exclude him from sentence and decide on sending him to a re-education institution. It is a choice of criminal policy based on the reasoning that prison is harder for a minor than for an adult and that for the former there are more hopes for change and rehabilitation. When an evaluation on maturity needs to be made, the environment he is grown up has to be considered.

Verification of maturity

Article 42 of Code of Penal Procedures of the Republic of Albania provides that it is the duty of the procedure authority, prosecutor and specifically the court, to make clear the legal responsibility of the minor defendant, which is also mainly made despite of the requests of the parties. This is reached by taking details on his personal, family and social living conditions or by collecting information from people who have had a relationship with the minor. The law provides that, to make those clarifications, the prosecutor and the court have the possibility to hear experts' opinion. At any phase of the process, it should be kept in mind the personality and its judgment in relationship with the activities where the minor will be involved[17]. As regards the psychological assistance, it can be provided from people specialized in human sciences, psychologists or sociologists who know well the teenage problems and the skills to talk to them. This is where more should be done in our country, so as the provision is not left inapplicable, as regards the psychological assistance. The assistance of psychologists should be felt even during the interrogation of minors in the position of defendant or witness.[18] Interrogation of minors changes from that of the adult for many factors. First of all, they should be interrogated for circumstances understood and conceived by them[19]. The specialist plays an important role here. The

[16] It is expressively provided in this provision that: "*Given the little danger of the penal deed, the concrete circumstances of its commitment, previous behavior of the minor, the Court may exclude him from sentence. In these cases the court may decide to send the minor to an educational institution*."

[17] The judgment of personality should be made so as to define the ways and required interventions to provide the minor with the right for juridical and psychological assistance, at any stage and phase of the procedure sanctioned by article 35/1 of Procedural Penal Code of Albania. Juridical assistance is obligatory and this is provided by article 49 of Procedural Penal Code, implying that the procedural organ must provide the minor defendant even in case he does not ask for it.

[18] This is required from articles 35 and 361 of Procedural Penal Code.

[19] The organ of procedure should be informed on his personality and social relations. Later on, specialized people are brought in for their treatment. They are interrogated in suitable places and for events they have seen themselves. It is advised that the minor witness be not warned from the beginning of interrogation as to the penal responsibility for false statement. Interrogation should begin with a free talk and then directed towards specific questions. Psychological contact should be placed before interrogation. This is done only based on the peculiarities of minor's personality, which changes as per case, taking into consideration what he is interested in.

proceeding organ should use a normal tone and not influence the minor, also not extremely tiring him out[20]. Meanwhile, the international normative puts the stress not on the legal and penal treatment of the case, but mainly on the creation of a cooperating group between the judge, prosecutor, defence, social services and those of administration of justice, who should have knowledge on psychology, anthropology and sociology. Those actors entering in contact with the penal justice for minors may bypass that knowledge necessary to understand the juridical and human reality of minors' world.[21]. In this line of thought, article 255 of Procedural Penal Code is very important, forcing the prosecutor and the judiciary police to make the obligatory notification of the parent or the custodian of the minor arrested or stopped on site. Likewise, when the arrested or stopped person is minor, the prosecutor may order that he be kept under protection at his living place or another protected place that may be relatives or education institutions for minors[22].

Psychological expertise has been widespread in many developed countries. As it known, expertise is permitted when it is necessary requesting or receiving of data or judgments that require specific technical, scientific or cultural knowledge (article 178/1 of Procedural Penal Code).Nevertheless, psychological expertise is not allowed in the normal penal process. Article 178/2 affirms that expertise is not allowed to define professionalism in the penal deed, criminal tendencies, defendant's character and personality and in general the psychic qualities that are not dependent on pathological causes. Anyhow, even though not expressively mentioned, the law provides another category of rules for minors. Drawing attention one more time to article 42 of Procedural Penal Code, we notice that the prosecutor or the court may take the experts' opinion to clarify the responsiveness and scale of responsibility of the minor defendant. Can we talk about a psychological expertise here? Capability to understand and control own actions as a condition for responsiveness, from what treated above, does not necessarily psychopathological and

[20] It results that in Albania does not exist a mere network of specialized actors in the social and psychological field for the treatment of delinquent minors. The prosecution and the court are satisfied with calling the psychologist who assists during the interrogation of minor and no care is paid to him during the continuation of this process.

[21] Assante G, Giannino P, Mazziotti F, *Manuale di diritto minorile*, Editori Laterza, Milano, 2003, pg. 212.

[22] Apart from this, article 230/4 specified that the minor cannot be arrested when accused of penal impingement. This is a special criterion in deciding the measure of arrest in prison and its disrespect brings about the invalidity of measure. Article 229/3 instructs the court to take into consideration the requirement of not interrupting the education process for the minor with a security measure charged on him. Judgment is made on the basis of defendant's age so as he can continue school or professional qualification. With goal of protection of minors, article 290/1, comma b, of the Procedural Penal Code prohibits the start of penal procedure or is expressed on cease of the case when the person has not reached the age for penal responsibility. The same provision is expressed on also on irresponsiveness that implies performing required expertise to define whether the person (including children of age 14-18) has the required maturity. Psycho-legal expertise is the most used means to define maturity in Albania.

psychiatric character , but it is related to the concept of maturity and as such depends on the development of subject. Even before, it has been accepted in the Albanian theory of criminal law, that the procedure instances should collect information from the family, teachers, etc[23]. The fact that the law required investigations to be made on the conditions of personal, family and social life of the defendant, means that the minor will be treated in a special way even when he is normal, from people specialized in the dynamics of teenage such as psychologists and sociologists.

Verification of age

Age is an indispensable element so that the subject is taken under penal responsibility for his unlawful deed. Article 41 of Procedural Penal Code provides that at any stage of procedure, the proceeding authority makes the required verifications when there are reasons to believe that the defendant is minor. This is later related to the competence when those cases are judged by the division for minors (article 81 of Procedural Penal Code)[24]. Expertise is made when age cannot be verified in other ways (documents, official sources, etc.). Age if verified through specialized means like ex-ray of development of skeleton, calcification of bones, etc. The decision for making the expertise may be taken from the Judiciary Police, prosecution office or the court at any stage of situation of the procedure. The defendant will be considered minor until the opposite is proved. The provision is a clear expression of the principle *favorrei*[25], so that in case of doubt it is better to apply the material and procedural norms for the minor and the one that might be adult, than risk the application of the usual norms for a minor child.

Conclusions

Juvenile's delinquency is a phenomenon present in every society so that a special attention should be paid to this phenomenon. Judges, prosecutors and all other people dealing with minors should know the age peculiarities for minors and through proper measures for age and individual characteristics of the person make a treatment most interesting for the minor. Proceeding organs should be capable to

[23] Editted in the Magazine *Drejtësia popullore*, nr.1, page 88-90. This was accepted even in an instruction of the plenum of the Higher Court of the Republic of Albania, no. 1, and date 03.06.1980 "On the judgment of Minor Children", where its point 1 stated that in any penal cases with minor children, the courts should investigate on the family circumstances, relations in society, etc. Further on it was accepted that those cases were judged by particular judges, while judge assistants were teachers, doctors as well as people dealing with education issues for minors.

[24] When it is not clear, the proceeding organ orders expertise to be made and when there are still doubts even after that, it is presumed that he is minor. The provision will be applicable not only to clarify whether we have to do with a minor child, but also when it's necessary to clarify whether he is younger than 14 years of age; always when there are reasons to believe that. Therefore, the lawmaker has accepted the principle *favorrei* when deciding that in case of doubts, it will be presumed the age related to better benefits.

[25] Assante G, Giannino P, Mazziotti F, *Manuale di diritto minorile*, Editori Laterza, Milano, 2003, pg. 273.

understand right the social and psychological factors that influence reaching maturity for a minor child that push him to that crime. As regards, the psychological assistance and verification of maturity, it is quite important the presence of psychologist experts at the courts, who know well teenage problems and possess the skill to talk to them. Treatment of responsiveness of delinquent minors, as a condition for the subject to be taken penalty responsible, is a delicate issued that in the case of minors requires more knowledge and carefulness as they have not reached the proper level of development yet. Apart from the juridical and medical criteria, sociological criteria should be used to judge the reasons of deviation in the socio-environment structures where the minor grows and develops his personality. Professionalism should grow and the specialization of police officers should be made, in the field of minors, as well as that of judges, prosecutors and lawyers. An ongoing network should be created even with other structures operating in the social field and the justice administration for minor children.

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Legal Acts:

11. Constitution of the Republic of Albania of 1998;
12. Penal Code of the Republic of Albania of 1995;
13. Code of Penal Procedure of the Republic of Albania of 1995;
14. Convention on the Rights of Children of 1989.

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The company as a separate legal person analized in light of the new Albanian company law

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Introduction

Albanian Company law has changed profoundly in recent time. These changes have not merely been limited to technical issues, but amount to a revolution in core areas of the Albanian company law framework. To a large extent, these changes were driven by the Stabilisation and Association Agreement between Albanian and The European Union, aiming *inter alia* at the approximation of Albania's existing legislation to the Community *acquis.*[1]

Given the objective to bring Albanian law in line with European Union requirements on company law, it is not a big surprise that the legislator assisted by international experts essentially decided to design a new company law "from scratch" rather than modifying the existing Albanian legal framework. After all, the peviously on companies followed a very different approach than most of the Member States'systems which served as the basis for the Community legislation in this area.

Rewriting a whole company law system undoubtedly is a very ambitious task, as each country's legal and economic environment has its very own specifics; additionally, company law always interects intensively with different areas of legislation (e.g. accounting, tax and securities laws). This paper will focus in two main points: 1. The Company as a Separate Legal Person – General Consideration 2. Representation of a Company.

The Company as a separate Legal Person

One important feature of company law is the acknowledgement of the company as separate legal person distinct from its members or shareholders. Conferring legal personality onto dhe company enables the company to have rights and duties in relation to third parties and in relation to its members. Moreover, court proceedings may be brought by the company (as plaintiff) or against the company (as defandant). In particular, the company's status as a legal person allows the company to own property and be entered in a register of ownership (e.g. land register; commercial register if the company owns shares in another company of the LLC (limited liability company) type; share registry pursuant to Art 119 ACL if the company owns shares in another company of the JSC (joint stock company) type[2]. Assets belonging to the company are in law owned by company only, not by its

[1] Secondary Legislation – refers to the total legislation applicable to EC Member States including the legal framework that shall adopt a country to become part of the European Union.

[2] Art 119 ACL provide: "A joint-stock company shall keep a shares registry in which the ownwership of all shares is recorded.

shareholders. This is true even if the company is a single-member company (Art 3 (1) ACL)[3]. Correspondingly, owning a share in the company does not mean owning a share in the company's assets.

Legal persons are artificial creatures of the law. If we ask why dhe law creates them, perhaps the primary answer is the simplification of legal relations. While the concept of legal person is much older (it was first developed in mediaval times in relation to religious institutions), the idea of assigning the status of a legal person to (commercial) companies is mainly a consequence of economic developments in the 19th century, when more and more companies raised large amounts of capital to invest in infrastructure projects (e.g.railway lines). The only alternative to separate legal personality for the company would have been to treat each member of the company as the legal subject of the rights and duties arising from the bussines, which is clearly impractical if the company has a large number of shareholders. Moreover, separate legal personality allows for change in the company's membership (e.g. by the transfer of shares i a JSC) without a direct effect on the company's legal relationships with third parties. Declaring commercial companies to be legal persons greatly simplifies the legal handling of a more and more complex business environment.But the existence of companies as separate legal persons soon developed its own dinamics and created at least two new problems. Initially, many company laws did not permit companies to own shares in another company; only natural persons could be members or shareholders.

Secondly, entrepreneurs with small businesses soon discovered seperate legal personality as a way to run their business with the benefit of limited liability. Legal rules requiring a minimum member of founders[4] could be circumvented with the help of straw men, who would transfer their shares to the entrepreneur immediately after registration. Some company laws reacted by taking away limited liability if a company had only one member or shareholder. However, the Twelfth Company Law Directive[5]

Given the artificial nature of a legal person, it does not have a human will. The company is a tool in the hands of the people who control it, either by acting as organs of the company or by exercising a decisive influence on those who act as organs (and,

[3] Art 3 (1) ACL provide: A company shall be founded by two or more natural and /or legal persons, who agree on achieving joint economic objectives through contributions to the company as defined by its statute. A limited liability company and joint stock company mat also be formed by a single person (single member or shareholder companies).

[4] Such rules aimed at restricting the benefits of separate legal personality and limited liability to circumstances as described above.

[5] Now requires all Member States to permit single-member companies of the LLC type. Under Albanian law, a LLC as well as a JSC may be formed by one person only (Art 3 (1) ACL).Twelfth Council Company Law Directive 89/667/EEC of 21 December 1989 on single-member private limited-liability companies, OJ L 395, 30.12.1989, p.40-42.

therefore, on behalf of the company). This tool may be utilised for legitimate purposes, but it may also be abused for illegimated purposes. Art 16 ACL is one attempt to counteract such abuse. The provision renders members or shareholders of the company as well as administrators personally liable for the obligations of the company.

Representation of a Company

The Need for Company Law Rules on Representation

Unlike a natural person, a legal person (being an artificial creature of the law) is not capable of acting on its own. To conclude, a contract, for instance, the company must rely on the actions of one or more natural person (s) that can be attributed to the legal person. Therefore, an important issue in company law is to define whose actions (including unlawful actions) are to be treated as those of the company itself This is equally important for the company and for third parties who are willing to enter into legal relationships with the company and need to know who can tak legally binding actions for the company.

The rules of agency and athority in Albanian Civil Code alone cannot provide the solution, as their application presupposes at least one legal act that may be attributed to the company, namely the entering into a contract of agency or authority. At this point, company law steps in and defines a class of persons authorised by law to act on behalf of the company without a contractal mandate: these are dhe organs of the company.`Already Art 31 of the Albanian Civil Code provides as a general principle that "the legal person acts through its organs provided by law, in the document of the establishment or in the Statute" and that "the legal transactions performed by the organs of juridical personality, within their competence, are considered as performed by the legal person itself".

Company Organs Entitled to Representation

Depeding on the type of the company the law defines different organs to represent the company.

- In a general partnership, each partner is also an organ of the partnership within the meaning of Art 31 of the Albanian Civil Code, because each partner is entitled to represent the partnership, unless the partner is exluded from the representation of the partnership by virtue of the Statute or a decisions of the competent court[6].

[6] Art 38 (1) ACL (Albanian Company Law) provide : "Each partner shall be entitled to represent a partnership in its relationships with third parties, unless the statute provides otherwise".
Art 39(2) ACL provide: "A partners representation power may be revoked by decision of a competent court upon a request of the other partners, especially in the event of a gross violation of representaton duties or inability to perform them in a regular manner".

- The same applies utatis mutandis for the general partners in a limited partnership, Art 38 (1), 39 (2) read in conjunction with Art 56 (2) ACL that provide: "Unless provided otherwise, provisions on a general partnership shal also apply to limited partnership" According to Art 61 ACL, **"Prohibition of legal Representation"**, a limited partner mat not act as a legal represenative of a limited partnership.
- In a **limited liability company** the general power to represent the company lies with the administrators[7]. According to Art 95 (1) only natural persons can be administrators of a LLC (limited liability company)[8].
- In a **joint-stock company** (JSC) the general power to represent the company equally lies.

With the administrators, whether the company is organised in accordance with the one tier system or in accordance with the two-tier system, Art 158 (3) (b) ACL provide : "The administrators shall have the power and duty to :

a. Manage the company's business;
b. Represent the company..."

According to Art 158 (1) ACL, only natual persons can be administrators of a JSC[9].

Conclusion

Albanian Company law has changed profoundly in recent time. Given the objective to bring Albanian law in line with European Union requirements on company law, it is not a big surprise that the legislator assisted by international experts essentially decided to design a new company law "from scratch" rather than modifying the existing Albanian legal framework. After all, the previously on companies followed a very different approach than most of the Member States'systems which served as the basis for the Community legislation in this area. The Albanian Company Law was drafted so as to implement (with limited exceptions) the Europian company law standards (the so called "acquis") and thereby to fulfil Art 70 of the Stabilisation and Association Agreement between Albania and the Europian Union, which aims at full approximation to the acquis communautaire. As it has been the aim of legislator to implement European law, provisions of the Companies Law which are derived from a Europian source should be interpreted according to the "word and spirit" of the relevant European harmonisation measure. For matters not regulated by Europian Law,

[7] Art (95) (b) ACL provide:" An administrator shall represent the company"

[8] Art 95 (1) provide : "The General Meeting shall appoint one or more natural persons as administrators. The term as established by the statute may not exceed 5 years, with a possibility to renewal. The appointment of the administrators shall have legal effect once its registered with the National Registration Centre. The statute may impose special requirements for the appointment of administrators".

[9] Art 158 (1) ACL provide : "The Board of Administration shall appoint one or more natural persons as administrators for a term established by the statute not exceeding 3 years. An administrator of a company may be re-elected…"

the new Albanian Companies Law relies heavily on inspiration from the company laws of Germany and England. Accordingly, guidance on the interpretation of the law may also come from the courts of a Member State if the provision in question was taken from the corresponding Member State Law. This new departure brings in its wake a profound need for information among lawyers, judges and other members of the legal professions. Most importantly, a sizeable number of Member States continued to apply a rule of private international law which is known as the "real seat theory". According to this rule, a company's legal capacity is determined by ence to the law applicable in the place where its actal centre of administration, or head office, is established, as opposed to the "incorporation theory", by virtue of which legal capacity is determined in accordance wth the law of the State in which dhe company has been icorporated. The effect of the "real seat theory" is to exludea choice of law for entrepreneurs wishing to set up a company. If the centre of administration is a given factor in view of the business operations, the company must be formed in accordance with the company law that applies in the place of the company's centre of administration, or else it will not acquire the status of a legal person there. In contrast, the "incorporation theory" does not require any real connection of the company's business operations with the`State of incorporation, permiting what is called "letter-box companies" on account that the only presence of the company in the State of incorporation is a purely formal one, such as the ofice address of an attorney or a company formation agent. In these circumstances, the European Court of Justice (ECJ) seized the initiative.

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The conceptual and technical aspects of psychological report's drafting in the juridical field

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Introduction

In the field of clinical psychologist's work can be part the psychological evaluation of individuals in juridical area too. This work involves psychological evaluation that can be done to juveniles, adolescents or adults when they commit a crime or have been victims of a crime. It is also obligatory to draft a report of psychological evaluation in cases of divorces, where the family has minor children and the psychologist is part of the decision-making about which parent will the child live in the future.

In our country there are no examples of reports evaluation standards. It exists as a result of psychologist without legal standard's work in Albania and because there are no many standardized psychological tests. The fact that there isn't a legislated profession, freely gives way to manygood and proper non-professional persons or alternative degree in Social Sciences to do the work of a clinician. People who are not good and proper, turn the psychologist's professional scientific work in literary work, where findings and diagnosis are not based on measurements extracted through psychological tests and diagnostic manuals, but through unstructured interviews without a logical sense. Also the absence of psychological tests should lead to erroneous conclusions, because without tests cannot measure the aspects of personality, intelligence or the individual emotions. Consequently client directs the clinician toward clinician conclusions. It should be noted that the drafting of a psychological report is also a personal creation of clinician too.

This study aims to provide a general format of the steps to formulate a report by a clinical psychologist who works in juridical area. For clinicians in the initial stages can constitute an alternative example to be followed and for other clinicians, an example to compare. In this study they are given some of the necessary steps to collect information in a structured way and returns this information in a report with professional values.

The psychological report

Medical diagnostics begins with the particular (the symptom) and moves toward the general (the syndrome), based on a semiotic system that is entirely focused on the individual's complaints. In formulation elaboration of a case, the purpose of him who leads the session is to increase the probability that the treatment will be effective. There are other reasons why a case is formulated, for treatment or sending

to another specialist. In the clinical field, however, less emphasis is placed on quantification. Indeed, there the question is whether quantification is even possible. To measure something, one needs an objective unit of measurement: cm, kilos, grades, an so on. Any diagnosis that uses psychological testing, even with today's computerized renditions, always yields relative results. The relativity has as much to do with the fact that the results need to be evaluated against a representative group to which the tested person belongs, as with the fact that the parameters for measurement themselves can never be exact.

The six core principles of an optimal report are:

1. Strong connection between the referral question and answer in the summary/ recommendations,
2. Readable content and format,
3. Consumer rather than test orientation,
4. Interpretations organized according to domains,
5. Integrated/readable expansion of interpretations that are connected to the client's world,
6. Recommendations that are comprehensive along with a treatment plan that is integrated with interpretations.

Each of these six principles will be accompanied by clear, specific strategies on how they can be achieved along with case and report examples. The first purpose of psychological reports is to communicate information about a client to an interested reader. The information should be communicated to the reader in a way that will change the reader's beliefs about or behaviors toward the client. Reports can be analyzed according to their structure and content. The word structure is used broadly here to include the way in which paragraphs, sections and entire report are put together. Content here refers only to general categories of material included in reports, such as test data, behavioral observation or other information about client's cognitive or emotional functioning. In clinical psychodiagnostics, however, the focus is on listening. Indeed, psychodiagnostic tools can be regarded as an attempt to develop standardized methods of listening. The result of this process, therefore, can never have the same objective status as in medical science, and the focus is not so much on the measurements themselves, but on the interpretation of the results.

Measurements, tests, clinical interpretation and the orientation toward DSM-5.

The first step is the initial contact with the person. Once the initial contact with the person has been made, the process of collecting data begins. Usually face –to-face interviews are better than interviews over the telephone. Several styles of interviews are appropriate for gathering background information; what works best for one examiner may not work well for

another. Several steps can be taken by the mental health professional prior to the meeting to assure that it is productive:

- Consider preparing an outline of exactly how you would explain your findings to a lay person. Your report may not be sufficient, as information is often presented differently in oral form.
- Make a list of the questions you consider the most critical for the trier of fact to understand.
- Flag those aspects of your findings/opinions that may be the most difficult for the layperson to understand or the most open to misinterpretation.
- Select examples that most definitively illustrate your major points. Prepare to discuss the courtroom setting and any physical props you are planning to bring to the stand. Any visual aids, charts, graphs, or pictures should be planned carefully to be effective. It is often best to keep notes taken to the witness stand to a minimum (or avoid them altogether,) as they can be distracting and reduce the expert's credibility. Some attorneys prefer to hand the expert an officially marked copy of the report or other necessary documents after the person reaches the stand.
- Come prepared with any questions you may have about the conduct of the proceedings. For example, what is the opposing attorney's style of cross examination? Is the judge likely to ask questions from the bench? What issues are likely to be raised most prominently? Are there specific things a witness may not say during testimony. To collect the background information is necessary a detailed outline. There are some rapid examples to collect detailed information.[11] Thus, the **practice** of forensic psychology, and perhaps the most frequent duty of forensic psychologists, is the **psychological assessment** of individuals who are involved, in one way or another, with the legal system. Therefore, although it is necessary to have training in law and forensic psychology, the most important skills a forensic psychologist must possess are solid clinical skills. That is, skills like clinical assessment, interviewing, report writing, strong verbal communication skills (especially if an expert witness in court) and case presentation are all very important in setting the foundation of the practice of forensic psychology. With these skills forensic psychologists perform such tasks as threat assessment for schools, child custody evaluations, competency evaluations of criminal defendants and of the elderly, counseling services to victims of crime, death notification procedures, screening and selection of law enforcement applicants, the assessment of post-traumatic stress disorder and the delivery and evaluation of intervention and treatment programs for juvenile and adult offenders. The practice of forensic psychology involves investigations, research studies, assessments, consultation, the design and implementation of treatment programs and expert witness courtroom testimony. Two

important points in clinical evaluation for the report formulation are the detailed information taken for the behavioral observation. Possible topics to include in behavioral observations section of report: Physical appearance, Ease of establishing and maintaining rapport with examinee, Language style, Response to failures, Response to successes ,Response to encouragement ,Attention span, Distractibility, Activity level ,Anxiety level, Mood, Impulsivity/reflectivity ,Problem-solving strategy, Attitude toward the testing process, Attitude toward examiner, Attitude toward self, Unusual mannerisms or habits, Validity of test results in view of behaviors.

Adult DSM-5 Self-Rated Level 1 Cross-Cutting Symptom Measure: domains, thresholds for further inquiry, and associated Level 2 measures for adults ages 18 and over

Domain	**Domain name**	**Threshold to guide further inquiry**	**DSM-5 Level 2 Cross-Cutting Symptom Measure**
I	Depression	Mild or greater	LEVEL 2—Depression—Adult (PROMIS Emotional Distress—Depression—Short Form
II	Anger	Mild or greater	LEVEL 2—Anger- Adult (PROMIS Emotional Distress—Anger—Short Form)
III	Mania	Mild or greater	LEVEL 2—Mania- Adult (Altman Self-Rating mania Scale [ASRM])
IV	Anxiety	Mild or greater	LEVEL 2—Anxiety- Adult (PROMIS Emotional Distress – Anxiety- Short Form)
V	Somatic symptoms	Mild or greater	LEVEL 2—Somatic symptoms- Adult (Patient Health Questionnaire 15 Somatic Symptom Severity [PHQ-15])
VI	Suicidal ideation	Slight or greater	None
VII	Psychosis	Slight or greater	None
VIII	Sleep problems	Mild or greater	LEVEL 2— Sleep Disturbance - Adult (PROMIS—Sleep Disturbance—Short Form)
IX	Memory	Mild or greater	None
X	Repetitive thoughts and behaviors	Mild or greater	LEVEL 2—Repetitive thoughts and behaviors-Adult (Florida Obsessive Compulsive Inventory[FOCI] Severity Scale)
XI	Dissociation	Mild or greater	None
XII	Personality functioning	Mild or great er	None
XIII	Substance use	Slight or great er	LEVEL 2—Substance use- Adult(adapted from the NIDA-Modified ASSIST)

The DSM-5 level 1 Cross-Cutting Symptom Measure is a patient – or informant-rated measure that assesses mental health domains that are important across psychiatric diagnoses (DSM-5,2013). For a clinical formulation of the report in scientific context should be taken into consideration and the evaluation by standard manuals. One

of these manuals is DSM – 5 (Diagnostic and Statistical Manual of mental Disorders). In the third section this manual is present the assessment measures. This section contains tools and techniques to enhance the clinical decision-making process, understand the cultural context of mental disorders and recognize emerging diagnoses for further study (DSM-5, 2013).

Another important step is the assessment of personality of the person who is under evaluation for the formulation of the report. The diagnostic section of a personality report, instead, interprets the underlying dynamic that organizes and motivates manifest behaviors, whether this be an unresolvable conflict between one's self-concept and ideal self, an inability to read another's cues, or an unrelentingly pessimistic view of the world that results in distortions of perception and reasoning.

Illustrative case report, steps:

The problem is, however, a promise of total confidentiality by the psychologist is unrealistic, particularly in forensic settings. Authors such as Ahia and Martin, and Herlihy and Corey have identified circumstances when it is permissible (or required) to breach confidentiality:

- When a client poses a danger to self or others
- When a client discloses an intention to commit a crime
- When the psychologist suspects abuse or neglect of a child, an elderly person, a resident of an institution, or a disabled adult
- When a court orders a psychologist to make records available.

The steps of one report are shown from the combination of all important parts bring together: Reason for referral, Background information, Prior evaluation, Behavioral observation, Test administered, Test results, Personality functioning, Summary and diagnostic impression, Recommendations.

Conclusions

The most important part about the design of a psychological report in general is professionalism and scientific basis of the way how data are collected. Then the professionalism will be shown how the information collected will be process. Working within forensic settings raises many ethical issues for those engagedin counseling or clinical services. The philosophy and management of the organization are likely to be inconsistent with the professional models that we bring with us to the workplace. We see ethical codes as important and worthwhile in providing general guidance about what is reasonable and acceptable practice (Godwin,2000).The profiler has an individual obligation to professional integrity, as well as a more general responsibility to promote integrity in the science and practice of profiling. The key element of integrity is truth-telling. One should deal honestly with clients, colleagues, and others. When describing or reporting services ,fees

,findings, opinions, research, or teaching, the profiler should make no statements that are false, misleading, or deceptive. The profiler's qualifications should be presented accurately and precisely, without misrepresentation of education, training, experience or area of expertise.

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Some aspects of rights to property in the constitution of the Republic of Albania

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Introduction

Since anciently, human has been closely related to objects, properties and values. Above all of his perceived powers and responsibilities it has created. So, in short the person knew to position themselves in relation to the nature of their actions or the other. With the establishment of social relations, the person is no longer seen dangling, but as part of a community where personal power detach a part of themselves to create social power; in order to prevent the super - and the guaranteed power relations person - (object, property, value, etc.) and person. Necessity of time and social relations was the institutionalization of powers and the proclamation of basic rights, universal individual. The proclamation failed to ensure implementation of fundamental rights and the necessity was the institutionalization of basic rights and freedoms at the national and international acts. Thus the rights and fundamental freedoms were not already just a set of rules written and published, but guaranteed by the state and enforced by international instruments[1].

Analysis about the concept of ownership in constitutional terms

The Constitution of the Republic of Albania does not define this right but it guarantees. It Article 41/1 of the Constitution of the Republic of Albania said "*The right of private property is guaranteed*. Since the Constitution refers to private property is the way to clarify this concept.

If we could back into the genesis of justice, to the Roman Law would encounter different categories of ownership rights and we can not say that there is an a priori notion of "ownership". However that in Roman law were identified different types of property scheme, one of which is private property, as a right that guarantees people through non-interference of any third party, complete disposition of things (limited it only to existing things for the time).

Regarding the private ownership of power this right it is called *Dominium*. According to Roman law on the thing its owner was Lord and was entitled (had the right to a Vindicatio)- its property as a legal

[1] The Constitution of the Republic of Albania proclaimed and guaranteed fundamental rights and freedoms, in the catalog of fundamental rights and freedoms (articles 15-58). Yet at the same level with the Albanian Constitution it is the ECHR which is called DPD by the Albanian Constitution as maximum limitation of fundamental rights. One of the freedoms and fundamental human rights guaranteed in the Albanian Constitution is the right of private property.

standard interventions that ensure the rights of the owner.

The definitions[2] identify exclusivity of the right of ownership (to exclude anyone from the joy and moods over the property), but also said the establishment of a point of balance between opposing interests (individual and social).

There are two views about the object of ownership:

1. The facility should have a designated character and material economic benefit

2. The facility can also be non-pecuniary nature but the economic benefit (copyright etc.)

Albanian Constitution guarantees the protection of two objects, though positions in different articles (articles 41 and 58)

We should also emphasize that the right of private property listed in the catalog of constitutional rights and freedoms in the grouping of individual rights, however, it can not be only as individual completely right after its social character; because its influence on the general well-being.

There is an important question (referring the guarantees that the Constitution gives the private property). What stands defense and guarantee of public property?

What we are discussed about is that we are dealing with a two-prismatic right, the guarantee of private property and its limitation identify the public interest. Consequently we have the creation, also guarantee other categories of property in Constitution referring community terms. Albanian Constitution provides in its Article 11 that, public and private properties are the basis of the economic system of the Republic of Albania and equally protected by law. The Constitution of the Republic of Albania on the manner of establishing private property refers to specific laws. (Property acquired by gift, inheritance, purchase, or any other classical means provided by the Civil Code[3]. In constitutional terms this is a reinforced guarantee about private property rights, leaving no opportunity recreating absolute powers and transforming collective private property under the guise of public interests, as has happened in other former communist countries, part of which it has been even Albania.

If we would refer to paragraph 3 of Article 41 of the Constitution[4]. Particularly

[2] If we refer to the Civil Code, Article 149 gives the definition of the right of ownership: "*Ownership is the right to enjoy and possess objects freely, No one shall be deprive of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law*

[3] Article 41/2).of the Constitution of the Republic of Albania

[4] provides that: "*The law may provide for expropriations or limitations in the exercise of a property right only for public interests.*". We can say that it is in accordance with Article 17 of the Constitution about the limitation of fundamental rights. This article can also be called directly calls the article that international act ECHR, to

in recent years, there have been many cases in which the European Court ofHuman Rights has found that the State has exceededits margin of appreciation and has violated the right to property guaranteed byArticle 1 of Protocol No. Here there are some of the conditions for rights in the Constitution.:

1. Setting limits by law, the existence of the Public Interest

2. For the protection of stated interest to another / s,

3. Proof of proportionality

4. Non-infringement essentially of redress,

5. no excess of limits provided in the ECHR

If we refer to Article 41/3 we will identified two challenges on the right to essential property: a) expropriation, b) Restrictions on the exercise of the right of ownership. If make a comment view on notion of "*expropriation*", we would explain that in relation to the right of private property that stands in opposition, because he is one of the ways of eliminating the property right to the head. When one or some owners became expropriated means that the right of property is been disappeared so there is a question to be asked: Is there an appreciate of private property rights and how can it also legitimized by the constitution ?!

become its integral part of it at the same level as the Constitution.

If we will refer to international acts or supplement Protocol of the European Convention of Human Rights nr. 1 (Section 1), then we would encounter that provides the possibility of removing the property an exceptional case, when the public interest and under the conditions provided in the law of states parties to the Convention or in accordance with general principles of international law. As has been mentioned above, any interference with property can only be justified if it is in the **public, or general, interest**. The requirement that a taking (or deprivation) of property should be in the "public" interest is expressly set out in the second sentence of Article 1 of Protocol No. 1. The third rule refers expressly to the "general" interest. But any interference with property, which ever rule it falls under, must satisfy the requirement of serving a legitimate public (or general) interest objective.

Expropriation provided an exceptional case in the constitution, it is one of the situations where disappear the right of private property and should clarify the conditions to be met in order for intervention to be within the concept of legal certainty, the rule of law, non-discrimination, prevention of abuse and of state power[5].

[5] Expropriation realized that there should be public interest, to ensure a fair compensation for the owner and the reward should be preliminary.

The discussion is about the case of the Law no. 9482 dt. 03.04.2006[6]

Despite this law does not use the term *expropriation*, really a group of people became expropriated and another group became beneficiaries. With the decision of the Constitutional Court of the Republic of Albania there is a clear concept of **expropriation**[7]. In order for an interference with property to be permissible, it must not only serve a legitimate aim in the public interest, but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realized. A fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a balance being inherent in the whole of the Convention.[8]State must not act arbitrarily – both under the principle of legality, and under the heading of proportionality.

Besides the existence of public interest, the ECHR, Protocol 1 (Article 1) thereof and the practice of the European Court of Human Rights requires the observance of the principle of proportionality, in the case of state interference when two or more intertwined interests. So in the case of expropriation for the purpose of legalization should find more appropriate means so that the damage to be as low as possible for the owners. But in the case of taking (or deprivation) of property, compensation is generally implicitly required[9]. If we refer to international and constitutional protection of property rights can not leave without mentioning the return and compensation of property[10].

On the other hand and the ECHR and national and international case law can not accept the equivalence of the right to property with the possibility in potency of the former owners, demanding the reinstatement of their rights violated. States have agreed in unison with the signing of the Protocol 1 to guarantee existing property rather than expectations.[11]

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[6] *"On the legalization, urbanization and integration of illegal constructions"*

[7] Albanian Constitutional Court specifically says *"Nowadays, constitutional theory offers us such a definition of the concept of" expropriation ", according to which a subject can be deprived of the right to property that is in favor of an entity other than the public generally, but not necessarily*. So it recognizes the expropriation in favor of private persons made on the basis of a policy calculated to achieve social justice within the community. Vendim nr. 35, dt.10.10.2007 i Gjykatës Kushtetuese të R.Sh.

[8] *Sporrong and Lönnroth v. Sweden*, A52 (1982),the Court made the following important statement of principle concerning the justification of an interference

[9] See, for example, *James v. the United Kingdom*,

[10] Article 1 of Protocol No. 1 does not expressly require the payment of compensation for a taking of, or other interference with, property. But in the case of attacking (or deprivation) of property, compensation is generally implicitly required. Regardless process basically remains the property restitution and compensation than these phenomena should be seen relating to the principle of justice, equality than the full restoration of property rights.
See *James v. the United Kingdom*,

[11] Marcus vs. Belgium "The right to property, a guide to the implementation of Article 1 of Protocol no 1. To the European Convention of

The jurisprudence of the European Court of Human Rights on the issues of contained maintain that wealth is not convinced of the existence of the right of ownership, which for a long time is not used effectively[12]. So, this article of the European Convention guarantees the right of everyone to the enjoyment of his estate, which is subsequently used only for existing assets of the person. Therefore, in terms of this provision of the European Convention on Human Rights, she considered what wealth is returned as administratively, judicially as well as in the final[13].

Concluding Remarks

Property rights issues are still considered today a major concern regarding the general development of the Albanian economy. Real estate market is constantly facing various challenges that in a considerable number originate from the lack of a clear functioning administration system of immovable property rights. On the other side, many unresolved cases of land property ownership are waiting to be processed from the Albanian judicial authorities, while the number of cases addressed to the European Court of Human Rights is increasing. In order to achieve an efficient and effective immovable property administration system it is quite evident that alternative solutions should be part of the ongoing reforms. From an administrative point of view, the creation of a single agency dealing with all kinds of property issues under unified databases could be the beginning. A different approach to monitoring reform implementation, based on a wider inclusion of stakeholders and civil society could also raise the effectiveness of the institutional initiatives taken. An important part of this process could also be the formation of joint committees of government officials, international experts on immovable property reforms and civil society professionals, which can monitor the implementation of reforms on an ongoing basis. Another idea could be the creation of a public discussion platform on property

Human Rights. Monica Carss –Frisk Human Rights Handbooks No 5 fq.18

[12] Albanian Constitutional Court in its reasoning says: "*Based on this view of the problem, the Constitutional Court considers that the right of property in the sense that it gives the article 41 of the Constitution of the Republic of Albania and Article 1 of Protocol to the Annex to the European Convention on Human rights can not be equated with the meaning it has in itself the right to return and compensation. The right of property does not identify with the right to return to her. This is the meaning of Article 1 of the Additional Protocol to the European Convention on Human Rights, which protects a person only existing possessions and does not guarantee the right to acquire possessions."*

[13] The decision nr. 30, dt. 01.12.2005 of Constitucional Court of Albania : After that, any intervention that affects unfairly the wealth gives rise to demand for the implementation of Article 1 of Protocol 1 of the European Convention on Human Rights. " However are within the property right at the moment that a person is the holder of legal title even compensatory about the right of ownership, should be guaranteed profitability of this compensation. This guarantees social justice to reduce losses of the former owners in proportion to the impossibility of full recovery of their property rights.

rights issues, in order to increase transparency in the exchange of information, to share experiences and create stable networks between institutional actors, academics and civil society. A final idea would be to design an organized use of the national land resources. A property system of taxation should be put in place, clearly defining Albania's development objectives and providing a stable, predictable source of revenue that is transparent in the way that it is calculated and collected.

In case the person is not never used the title of property reserved as natural compensation for their former property and so were denied the exercise of the right of property without justifiable cause from the state. The latter with its institutions have a duty, before you create Asset according to the concept of interpreting the practice of ECHR should virtually guarantee their effectiveness in relation to the beneficiaries, in order not to be in prospect as indemnification for violations the right to property and legal security that the basic elements of the rule of law. Albanian Constitution there are expectations and guarantees for private property rights, but the problem lies in the practical effectiveness of these arrangements, within the law-making, policy-making for determining the proportionality of competing rights, the effectiveness of enforcement of executive titles of ownership of state instruments and preliminary reparations in the case of the abolition of property rights. The rule of law should be a living voice in its functionality, its basic act.Regulation of private property is a fundamental condition for a market economy, for a secure society and for a country that aspires to European integration.

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The right to property in the ECHR case laws: cases against Albania

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Introduction

Issues to be addressed in this paper refer to some aspects of the right to property in relation to Article 1 of Protocol 1 of the European Convention on Human Rights analyzed by the ECHR in the cases against Albania. More specifically, this paper refers to issues related to the right of ownership such as the deprivation of property rights through expropriation, interventions that lead to restriction of the right of ownership, the concept of ownership etc. For the purpose of this paper will be to analyze a series of cases decided by the ECHR, such as Beshiri and others vs. Albania; Gjonboçari and others vs. Albania; Nikolaus and Jurgen Treska vs. Albania; Marini vs. Albania; Ramadhi vs. Albania etc.

The right to property

One of the most controversial and complex human rights is the right to property. The right is controversial because the very right which is seen by some as central to the human rights concept is considered by others to be an instrument for abuse[1]. Moreover, the right to property has major implications for several important social and economic rights such as the right to work, the right to enjoy the benefits of scientific progress, the right to education and the right to housing. Property has been defined in the case-law of the European Courts of Human Rights as 'any vested right' or 'any object capable of having value'. As such the concept of property has an autonomous meaning, often substantially different from national legislation. It may also include rights which result from rent or lease agreements and – under certain conditions – benefits from public relationships, such as public pension schemes. Extensive case-law has been established to protect individuals against abuse of property. The right to property as found in European Convention on Human Rights, however, does not include the right to acquire property. Issues to be addressed in this paper refer to some aspects of the right to property in relation to Article 1 of Protocol 1 of the European Convention on Human Rights analyzed by the ECHR in the cases against Albania. More specifically, this

[1] One might say that it is a right that protects the 'haves' against the 'have-nots'. It is complex, because no other human right is subject to more qualifications and limitations and, consequently, no other right has resulted in more complex case-law of, for instance, the supervisory bodies of the ECHR. It is complex also because it is generally regarded as a civil right, even an integrity right; a right which obliges the state to abstain from interfering. At the same time, it clearly displays characteristics of a social right with significant implications for the distribution of social goods and wealth.

paper refers to issues related to the right of ownership such as the deprivation of property rights through expropriation, interventions that lead to restriction of the right of ownership, the concept of ownership etc. For the purpose of this paper will be analyzed a series of cases decided by the ECHR, such as Beshiri and others vs. Albania; Gjonbocari and others vs. Albania; Nikolaus and Jurgen Treska vs. Albania; Marini vs. Albania; Ramadhi vs. Albania etc.

Various Aspects Related to the Interpretation of Property Rights under Article 1 Protocol No. 1 of the European Convention[2]

From the very beginning, a broad interpretation has been given to the meaning of property by the ECHR[3]. This broad interpretation has evolved gradually. In the most of the cases against Albania, the Europian Court reiterated its position on the right to property (under Article 1 of Protocol No. 1) stating that the Court has consistently interpreted the right to property as comprising three distinct rules. This interpretation is useful in gaining a general understanding of the various elements of property. The first rule is of a general nature and lays down the principle of peaceful enjoyment of property. The second rule covers deprivation of possessions and subjects it to certain conditions. The third recognizes that the states are entitled under the European Convention, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, should be interpreted in light of the general principle laid down in the first rule. This interpretation given by the European Court is useful to have a general understanding of the various elements of the right to property.

Relevant Principles of the Right to property Established by the Case-Law of ECHR.

In some of the cases against Albania the Court has reiterated the following principles established in its case-law under Article 1 of Protocol No. 1:

(a)Deprivation of ownership or of another right *in rem*is in principle an instantaneous

[2] Article 1 Protocol No. 1 of the European Convention provides that: *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties*".

[3] Prof.As.Dr. Ardian Nuni, LL.M Nada Dollani (2006). The right to property under the Europian Convention on Human Rights. Legal Studies Journal No 1. Tirana

act and does not produce a continuing situation of "deprivation of a right"[4]

b) Article 1 of Protocol No. 1 does not guarantee the right to acquire property[5]

c)An applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his "possessions" within the meaning of this provision. "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfillment of the condition[6]

d)Where the proprietary interest is in the nature of a claim it may be regarded as an "asset" only where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it or whether it takes the form of a final enforceable judgment in an applicant's favor[7]

e) Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to return property which was transferred to them before they ratified the Convention. Nor does Article 1 of Protocol No. 1 impose any restrictions on the Contracting States' freedom to determine the scope of property restitution and to choose the conditions under which they agree to restore property rights of former owners[8]

Meaning of Possessions: "Existing Possessions" and "Legitimate Expectation"

In all the cases against Albania (in which is involved an alleged violation of article 1 of protocol no. 1 to the convention) the Court reiterated its position that the "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfillment of the condition. In a general sense the Court has set forth that "property" shall mean "existing assets" or any

[4] Judgment of ECHR, November 13, 2007. Aplication No. 38222/02, Ramadhi and Others vs. Albania

[5] Judgment of ECHR, August 22, 2006. Aplication No. 7352/03, Beshiri and Others vs. Albania.

[6] Judgment of ECHR, March 24, 2009. Aplication No. 2141/03, Vrioni and Others vs. Albania

[7] Judgment of ECHR, December 18, 2007. Aplication No. 3738/02, Marini vs. Albania

[8] Judgment of ECHR, November 13, 2007. Aplication No. 33771/02, Driza vs. Albania

"legitimate expectation" to win the right to property.

Existing possessions

In its case-law the Court has reiterated that the concept of "possessions" in Article 1 of Protocol No. 1 has an autonomous meaning and certain rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision[9]. It includes not only the traditional right to property over the items, but also other real rights (including the benefits from a contract or annual lease), intellectual property, personal rights, monetary claims against public authorities (claims for compensation), claims for pensions and social assistance benefits, claims for licenses to bring property rights etc[10]. In the case Marini vs. Albania the Court has found that the shares held in a company constituted "possessions" within the meaning of Article 1 of Protocol No. 1.[11] It observes in that connection that a "company share" is a complex thing. It certifies that the holder possesses a share in the company together with corresponding rights. That is not only an indirect claim on company assets, but other rights, especially voting rights and the right to influence the company, may stem from the share[12].

Legitimate expectation

As mendtioned above, the Court has held that "property" shall be considered even any assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. In Driza vs. Albania the Court reiterated its position that in order for a claim to be capable of being considered an "asset" falling within the scope of Article 1 of Protocol No. 1, the claimant must establish that it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it or where there is a final court judgment in the claimant's favor. Where that has been done, the concept of "legitimate expectation" can come into play.[13] Further, in Ramadhi and Others vs. Albania[14] and Gjonboçari and Others vs. Albania[15].

[9] Prof.As.Dr. Ardian Nuni, LL.M Nada Dollani (2006). The right to property under the Europian Convention on Human Rights. Legal Studies Journal No 1. Tirana

[10] Judgment of ECHR, December 18, 2007. Application No. 3738/02, Marini v. Albania

[11] More specifically, the Court has held that since the applicant (Marini) claimed that after the prolonged failure of its partner, the State, to meet its obligations arising with the creation of the joint venture "Marin-Albplastik", and changes in activity factory production as a result of the contracts between the state and other parties, part of his stock in the company is reduced in value and therefore he had lost control over the activities and assets of the company. The Court found that the shares held by the applicant undoubtedly had an economic value and constituted "possessions" within the meaning of Article 1 of Protocol No. 1.

[12] Judgment of ECHR, November 13, 2007. Application No. 33771/02, Driza v. Albania

[13] Judgment of ECHR, November 13, 2007. Application No. 33771/02, Driza vs. Albania

[14], the Court has held that: *"Since the Court has declared inadmissible the last three applicants'*

Moreover, stated the Court, the belief that the latter administrative body's new decision, issued in compliance with formal requirements, would be in the applicants' favor cannot be regarded as a form of legitimate expectation for the purposes of Article 1 of Protocol No. 1. The Court recalls that there is a difference between a mere hope of restitution, however understandable that hope may be, and a legitimate expectation, which must be of a nature more concrete than a mere hope and be based on a legal provision or a legal act such as a judicial decision.

The Past Violation and the responsability of Albanian State

One of the major difficulties in human rights law is the issue of how to deal with past violations. Can human rights law solve all such problems of the past? The answer is clearly no; in most cases because such massive or systematic violations often took place before accession of the state concerned to the human rights treaties. Problems of the past receive special attention in the case of the right to property. No issue can occupy minds so much as the loss of land in the distant past. One cannot overlook, when discussing injustice, the injustices of the past. In Europe the past has enormous relevance due to the many wars and their aftermath. World War II is an example of the magnitude of the problems of land and other properties. Before and during the war land and properties of tens of millions of people were destroyed or arbitrarily seized or confiscated Given that most of the cases against Albania related to expropriation, nationalization or confi-scation of the Albanian state during the communist period, another issue that deserves attention is the one that has to do with the violations committed by the Albanian state in the past (before the ratification of the ECHR) and its

complaint as regards the non-enforcement of the judgment of 4 February 2000, these applicants have had no "legitimate expectation", based either on the provisions of the Land Act or on the decisions given in relation to their claim for restitution of the plot of land measuring 30,500 sq. m. since the applicants' relevant property had been nationalized, pursuant to the Property Acts and the Land Act in conjunction with the decisions given in their favor, they had a claim to compensation *in value and kind which was clearly established in domestic law [...[In these circumstances, theCourt considers the applicants' claim sufficiently established to qualify as an "asset" for the purposes of Article 1 of Protocol No. 1."*

[15] the Court has held that:*"In the light of its case-law, the Court does not contemplate the existence of a "genuine dispute" or an "arguable claim" as a criterion for determining whether there is a "legitimate expectation" protected by Article 1 of Protocol No. 1. The Court takes the view that, where the proprietary interest is in the nature of a claim, it may be regarded as an "asset" only where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it. In particular, the Court notes that the domestic courts which decided the case in the final instance found that the applicants' claim for restitution of their parents' property depended on the issuance of a new document which complied with formal requirements. The judgment delivered by the Supreme Court did not invest the applicants with an enforceable right to have the land restored. That judgment was therefore not sufficient to generate a proprietary interest amounting to an "asset"*

responsibility for these violations[16]. Where categories of owners are excluded in this way, their claims for restitution cannot provide the basis for a "legitimate expectation" attracting the protection of Article 1 of Protocol No. 1[17]. The same may apply in respect of arrangements for restitution or compensation established under pre-ratification legislation, if such legislation remained in force after the Contracting State's ratification of Protocol No.1. In *Nikolaus and Jurgen Treska vs. Albania and Italy*,as to the applicants' argument that the transfer to the Italian authorities of the property belonging to their father had been unlawful, the Court noted that the transaction between the Albanian Government and the Italian Government, which the applicants considered to have been null and void, took place in 1991, in other words before 2 October 1996, the date on which Albania ratified the Convention and Protocol No. 1. It follows that this part of the complaint is incompatible.

Concluding Remarks

As analyzed above in this paper, the complexity in the nomination and therefore in the handling of property rights as from the perspective of domestic law but also from the principles of the Europian Convention and the ECHR leaves us to understand the difficulty of existence of property, to the state's unwillingness to implement constitutional and legal guarantees (domestic and international) in property protection , the creation of state bureaucracies with many links and many times in vain, to be exhausted to ensure minimum rights to property and as a result for the instability that creates the birth, change and termination of the legal relationship of property. This situation, so complex and phenomenal in our society, creates greater legal uncertainty in having and especially defending private property being considered as the most vulnerable in comparison to public property. Ownership therefore remains one of the most difficult relationships to be experienced by society for reasons mentioned above, to be considered as one of the most vulnerable relations from the state. With all the problems that carries the property relationship, especially in Albanian society,

[16] In Beshiri vs Albania the Court affirmed one of the above mentioned general principles that Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to return property which was transferred to them before they ratified the Convention. Nor does Article 1 of Protocol No.1 impose any restrictions on the Contracting States' freedom to determine the scope of property restitution and to choose the conditions under which they agree to restore property rights of former owners. In particular, the Contracting States enjoy a wide margin of appreciation with regard to the exclusion of certain categories of former owners from such entitlement.

[17] On the other hand, once a Contracting State, having ratified the Convention including Protocol No. 1, enacts legislation providing for the full or partial restoration of property confiscatedunder a previous s regime, such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1 for persons satisfying the requirements for entitlement.

we can say that the property is the foundation of a free economic order without which we can not stand and understand a legal and social order. The only legal solution that remains to be suggested or recommended to persons which are subject of property relations as concerning the protection of their property rights if they do not find solutions through exhaustion of domestic remedies is the direction to the legal path guaranteed by the Europian Convention and recognized by the Albanian state, not because it gives guarantees for the acquisition of the right of ownership (if denied by the internal state court decision) but beacause a subject is treated differently in the conception of his rights or in its enjoyment. The relevance of protection of property rights for a life in dignity has amply been demonstrated by the cases discussed in this chapter. The protection of property is essential for individuals to live in security. The protection raises, however, numerous issues related to terminology and concepts. It also raises questions related to different forms of security such as social security. It is expected that the large stream of property cases before the European Court will continue[18].

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5. Judgment of ECHR, December 18, 2007. Aplication No. 3738/02, Marini v. Albania.
6. Judgment of ECHR, November 13, 2007. Aplication No. 33771/02, Driza v. Albania
7. Judgment of ECHR, October 23, 2007. Application No. 10508/02, Gjonbocari and Others vs. Albania
8. Europian Convention on Human Rights (1999). Council of Europe in Tirana.

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[18] Major issues that are likely to be raised are the following:
•the meaning of property, notably in relation to social security issues;
•the discussion as to what constitutes an expropriation or deprivation;
•the concept of limitations or control or encroachment;
•the definition of compensation and the question how to deal with violations in the distant past;
•the protection of common property or property held by a number of persons collectively.

Mediator in the mediation process

Loren Liço, Çlirim Duro

Introduction

Mediation is defined as a process where two or more parties agree to the appointment of a third party to assist the parties to settle their dispute by agreement, without being subjected to a judicial process, regardless of how it can be addressed or referred to that process for mediation. The mediator aims to reach a solution acceptable to the parties, which does not conflict with the law. Mediation procedures include rules and standards to be followed for mediation in court, from the initial stages of the referral of the case to mediation, to the final outcome of the mediation process. These stages are respectively, the procedure of reference for the mediation, the mediation process, documentation, finalization of the procedure and assessment of process by the parties.[1]

The main legal basis for the functioning of mediation at the court

Law no. 10385, dated February 24th, 2011, "On mediation in the settlement of disputes".

The new law "On mediation in the settlement of disputes", adopted in February 2011, constitutes the main reference for the implementation of mediation services. It describes the basic provisions that must be followed by the mediator, and the basis for the complete process of mediation, starting with referral of the case, then with the mediation procedure, appointment of mediator and reporting to the court/other referring institution regarding the result of the mediated case.

Regarding the court proceedings related to Article 2/4 of the "Law on Mediation", it defines as follows: *2/4. When put into motion for the resolution of a dispute in the field of civil, commercial, labor or family Law, the court or the relevant state authority, within the powers provided in law, necessarily invites the parties to resolve the case through mediation, in particular, but without limiting to, of the disputes:*

a) in civil and family issues, when are combined interests of minors;

b) in the issues of reconciliation in cases of divorce, provided by article 134 of the Family Code;

c) of property character with the object of the lawsuit up to ALL 500 thousand, as well as for claims for searching

[1] Law 9090 on June 26th, 2003 "*On Mediation in Dispute Resolution*", Law 8465 on March 11th, 1999 "*On the Mediation for Settlement through Conciliation the Disputes*", Law 10385 on February 24th, 2011 "On Mediation in the Settlement of Disputes"

the item, for denying claims and for claims for termination of possession intrusion[2].

Mediation focuses more on solving the civil, family and commercial issues. The law clearly defines the scope of mediation, namely in Article 2/2, which provides as follows:

Mediation should be used for all disputes in the field of civil, commercial, labor and family[3] Law.

- Code of Civil Procedure, Articles 4, 25, 158/a, 158/b, and 297.[4]

Mediation Law refers to these articles, when determining the procedure of mediation in civil law issues: Article 13 of the law on mediation provides that:

> *1. The court, in accordance with Articles 4, 25, 158/a, 158/b and 297 of the Code of Civil Procedure, invites the parties to resolve the dispute through mediation with object of trial as provided for in Article 2, paragraph 2 of this law and when the parties agree, it suspends the trial, by determining to the parties a deadline in accordance with the nature of the dispute.*
>
> *2. Each party has the right to request at any time the resumption of the trial.*[5]

Code of Civil Procedure (CCP), in his part of the first down Title I, "General Principles of Law Process" in Article 25 *"Consent of Parties"* provides that: *"it is the duty of the court to attempt to reconcile Parties to the dispute"*.

Articles 154/a, 158/a and 158/b of the CCP describe how the court must determine whether the case can be resolved amicably. In this case, the court calls the parties to a preliminary hearing to explain them the advantages of reconciliation through mediation and invites them to resolve the issue at the mediation office. Also, the court explains to the parties the procedure that should be followed, if the mediation process fails.

- Family Code, 2003: Article 125, Sections 134-136.

Article 125 of the Family Code provides that:

Dissolution of marriage by consent: When spouses agree to dissolve the marriage, they submit to the court for approval together with the application, even one agreement project that stipulates the dissolution of the marriage. The request may be submitted by spouses or by their respective representatives.[6]

Articles 134-136 in Chapter V of the Family Code, predict reconciliation efforts undertaken by the court. This legal reference can be used by the judges to direct the parties to mediation in court.

[2] Law 10385 on February 24th, 2011 "*On Mediation in the Settlement of Disputes*"
[3] Law 10385 on February 24th, 2011 "*On Mediation in the Settlement of Disputes*"
[4] Code of Civil Procedure
[5] Law 10385 on February 24th, 2011 "*On Mediation in the Settlement of Disputes*"
[6] Family Code.

Mediation at Court

- **Description**

Court mediation is one of the models of Alternative Dispute Resolution used in court, where the role of judges is to identify those issues that may be suitable for mediation and refer them to the mediation office. Mediation service provided by mediators to the Court is independent, and it is offered in accordance with the law on mediation.

- **Mediators**

Mediators are trained, certified and licensed persons to offer to stakeholders mediation services. The mediator may conduct the mediation session in its office, or in another convenient place, for which is agreed by the parties. The mediator coordinates the provision of mediation services, the mediator should follow the principles provided in law on mediation, DCMs issued in its implementation and the general rules of ethics and rules of communication in the court. During the mediation procedure, the mediator applies techniques that should not be manipulative or that present a partiality.

Starting the mediation of the case. For cases referred to by the court, the judge invites the parties to mediate their case and refers to the latter in Mediation. The Judge draws up an intermediate decision accompanying the case file referred to the mediation office. In this decision the judge determines the deadline within which the process of mediation should be completed. Copies of court decisions are filed by the mediator. In this process, it should be taken into consideration that the judge can not appoint a specific mediator in the mediation decision he makes. The order given by the court is one that does not limit the right of parties to select a mediator accepted by them.

In cases where the reference came from other sources, as for example by lawyers, NGOs, business companies, educational institutions, etc., the parties are invited to mediate their dispute to the Office of Mediation. Referring institutions submit to the office a notification stating that the case has been referred. Copies of the accompanying notifications are later filed by the mediator.[7]

By making the decision that mediation is appropriate for the case, mediator who accepts the case, records it in the database of Cases Management and opens a case file. After collecting data on the parties by the court/another referral institution, the mediator prepares the notifications for the parties and forwards them to the parties, or communicates with them with the most appropriate means of communication.

In cases when issues are not suitable to be resolved through mediation, the mediator shall notify the parties and the

[7] Mediation of conflicts in the school age group (UNICEF 2006) P 8-15

referring institutions. When possible, the mediator can advise the parties to pursue other avenues for resolving their dispute.

Selection of Mediator. From the list of Licensed Mediators, each subject to a conflict may select one of them and discuss with him the terms of availability and suitability of mediator to the respective case. List of mediators is public.

After the selection of mediator, it establishes contacts between him and the parties. The mediator meets with the parties and explains to them the principles of mediation, as well as the procedure and the legal effect of the Mediation Agreement. Unless the cases when parties agree otherwise, the mediator may meet or communicate with the parties together or with each of them individually. In this process the mediator must be very careful not to create at any moment the impression of a possible partiality and create an appropriate scheme for the parties in the mediation process.[8].

While planning the mediation sessions with the parties, mediators are careful to time constraints, so the deadlines set by the judge in its referring decision and shall notify it of any situation which might be a reason for the delay or could see a possibility of solution. The mediator informs the parties on schedule a mediation session is scheduled and the place where it will be carried out.[9].

Before the process, the parties sign an agreement through which they admit to resolve their case through mediation[10]. If the parties agree by consensus, the agreement should be made in writing and signed in as many copies as the parties are. If the case is referred by the court or any other institution, then one copy should be handed to the court (in case that the dispute in question was referred by the court, it should be submitted specifically to the Chancellor of the Court) and a copy should be kept in the office of mediation. If efforts to reach an agreement result unsuccessful, then one of the parties, or both could sign a statement determining they consider complete the mediation process and that they have not reached an agreement.

Mediator, referring to the decision to refer the case/supporting documentation, prepares a notifying letter through which he informs the court/referring institution on the positive or negative result of mediation, and attaches a copy of the mediation agreement if the result was positive, or other accompanying documents, if necessary.

[8] European Code of Ethics for Mediators

[9] Mediation of conflicts in the school age group (UNICEF 2006)

[10] However, even if such an agreement is not signed, the mediator, in accordance with Article 17/3 can carry out the mediation process in the most appropriate way for the parties, based on the circumstances of the case, and in accordance with any request the parties may present or need to resolve the dispute quickly.

This notice must be prepared and sent to the referring institution in maximum within 5 business days after the office has reached the outcome of the mediation.

Conclusions

The goal for the parties to reach a mutually acceptable solution through mediation should not be contrary to the law. The rules and standards that mediation procedures should include, are followed since the initial stages of the referral of the case to mediation, to the final outcome of the mediation process. These stages are respectively, the procedure of reference for the mediation, the mediation process, documentation, finalization of the procedure and assessment of process by the parties. Just following these rules, we can say that the parties have agreed to the appointment of a third party to help them resolve the conflict through mediation and by free will they resolved the conflict between them without undergoing a trial process.

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7. Law no. 8465 on March 11th, 1999 "*On the Mediation for Dispute Settlement with Conciliation*"
8. Statute of the National Chamber of Mediators.

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The guiding principles of mediation

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Introduction

The definition of mediation as a process, in which it is agreed to the appointment of a third party to assist two or more parties to solve the dispute through an agreement, without undergoing any judicial process is based on several key ethical principles that the profession of a mediator should consider. Despite how to refer a dispute to a mediation process, the mediator must maintain fanatically the competency limits allowed by law to the resolution of a dispute, to respect the free choice of the parties to the mediator who will assist them, to notify them the advantages and disadvantages of this process, to practice independent and impartial profession, to make clear all the conditions and obligations of the parties, as well as exercise all the competencies recognized by the law with integrity and in strict confidentiality.[1]

Competence of the Mediator

The Mediator should be competent and knowledgeable in the process of mediation. Some of the important factors in this respect are training and continuously updating of their knowledge and benefit of mediation skills during practice, paying attention to every known standard or accreditation scheme in their area. The mediator must inform the parties to the conflict to its areas of expertise, it should be clear to the conflicts that can be the object of his activity, and should not be driven by his best interest but by the interest of parties. The subject competence of the mediator is limited only to those actions that are expressly prohibited by law, and its territorial competence is defined by the agreement. Mediation agreements have full effect within the territory of the Republic of Albania.

Appointment of Mediator

The mediator will consult with the parties regarding suitable dates when may be held mediation process. Initially, the mediator should be self-assured if he has the proper formation and experience to carry out a mediation before accepting his/her assignment to the case, and to inform the parties on this training and experience, after being demanded by them. Parties who choose mediation as an alternative for their dispute resolution, are free to appoint a mediator by the list of active mediators, they think is suitable for them. It can not be appointed a mediator for

[1] Law no. 9090 dated June 26th, 2003 "*On Mediation in Dispute Resolution"*
Law no. 8465 dated March 11th, 1999 "*On the Conciliation Mediation for Dispute Settlement*"
Law no. 10385 dated February 24th, 2011 "*On Mediation in the Settlement of Disputes*"

them that will assist in resolving the conflict between them.

Promoting the services of Mediator

Mediators may promote their practice in a professional, reliable and dignified way. The mediator should not use such ways of promotion, which affect free and fair competition. It should be correct and true on any information published on the services provided by him/her and to adhere to them as promises that serve to promote the confidence of the parties to the services of mediators in general. Promotion should contain elements that do not constitute a violation of the dignity of any other profession.

The independence and neutrality

The mediator must not act, or if it has begun to act, not to continue to operate, if revealed in advance any circumstance that could affect, or could appear to affect its independence, or that constitutes a conflict of interest. These circumstances include:

- Any personal or business connection with one of the parties,
- Any financial or other interest, directly or indirectly, related to the outcome of the mediation, or
- When the mediator, or a member of his/her company, worked for one of the parties in any other profession, except as mediators.[2]

In such cases the mediator may accept or continue the mediation provided that he/she is sure that he/she is able to conduct mediation in independence and strict neutrality, to guarantee complete impartiality, and provided that parties give their full consent.

Impartiality

Throughout the process, the mediator must act and demonstrate openly that he is acting with impartiality towards the parties and should be committed to serve all parties equally, in terms of the mediation process. He shows all of this setting fair and equitable rules for all parties participating in the process, paying to them the same time to give their explanations, leaving them free to determine how to divide their costs etc.[3]

Proceeding

The mediator should be ensured that the parties to the mediation understand the characteristics of the mediation process and the role of the mediator and the parties in it.[4]

The parties, having accepted the principles of mediation and having agreed for the appointed Mediator, agree to

[2] Law no. 10385 dated February 24th, 2011 "*On Mediation in Dispute Resolution*"
[3] European Code of Ethics for Mediators
[4] Code of Conduct for Mediators in the Republic of Kosovo

participate in the mediation process to resolve the dispute between them *"In the absence of an agreement to use the mediation process, the mediator can conduct the Mediation in the most appropriate way for the parties".*[5]

In particular, before starting the mediation process, the mediator should ensure that the parties have understood and agreed to the terms and conditions of the mediation agreement, including any applicable provision related to the obligations of mediator and of the parties to maintain the confidentiality of data in this process. If requested by the parties, the mediation agreement must be in writing. Also, at the request of the parties, the mediator should guide the debate in an appropriate manner, taking into account the circumstances of the case, and any potential imbalance of authority of the parties, any desire that the parties may express and the need for quick dispute resolution. Parties should be free to agree with the mediator, referring to a regulation, or otherwise, on the manner in which the mediation process will be conducted. If it sees reasonable, the mediator may hear the parties separately.

Integrity of the process

The mediator must ensure that all parties have equal opportunities to be involved in the process. If it is necessary, mediator must inform the parties and end the mediation, if:

- It is reached in an agreement that for the mediator appears unenforceable or illegal, given the circumstances of the case and the competence of mediators to make such an assessment, or

- The mediator believes that continuing the mediation is unlikely to result in an agreement between the parties. In this way the mediator ensures also that subject and territorial competence appointed to him/her by the law should not be violated.

Closing the Process

The mediator must take all appropriate measures to ensure that consensus is reached by all parties, through informed and unexpressed consent, and that all parties understand and accept the terms of the agreement.

In accordance with Article 17, *"Development of Mediation"* of the Law on Mediation.[6]

In accordance with paragraph 2 of this article, the agreement of the parties to participate in mediation must contain:

- Personal data on the parties to this agreement, and their representatives;
- A description of the reason for the dispute;
- Acceptance of the principles of mediation, in accordance with this law,

[5] Article 17/3 of the Law no. 10385 on Mediation, "*In the absence of an agreement to use the mediation process, the mediator may conduct the mediation in the most appropriate way for the parties*".

[6] Article 17/2 of the Law on Mediation no. 10385

and the name of Mediator assigned to the case;
- Place of the mediation;
- The costs of mediation and mediators payment value.

The agreement to participate in mediation must be made in writing.[7] However, not in all cases is necessary to sign a model of agreement as provided by law.

Parties may withdraw from mediation at any time, without giving any justification. At the request of the parties and within its field of competence, the mediator may inform the parties how to formalize their agreement, as well as on opportunities to make it enforceable. If efforts to reach an agreement result unsuccessful, then one of the parties, or both of them can sign a statement where they determine that the consider complete the mediation process and they have not reached an agreement.

Fees and confidentiality of information

In cases when the parties have not yet received information, the mediator must always provide full information to the parties on fees (if applicable). He/she will not accept mediation, before being accepted by all stakeholders the principles of remuneration of the mediator.

The mediator must keep confidential all information collected during the mediation process, or relating to the mediation, including the fact that the mediation will be or has been made, excluding only the cases when obliged by law or public policy. Any information that is shown to the mediator in trust by one of the parties, it must not be shown to other parties without permission, unless compelled to do so by law.[8]

Conclusions

The main ethical principles that the profession of mediator should be aware, regardless of how it may refer a dispute to a mediation process, they must be such as to preserve fanatically the competency limits that the law allows in the resolution of a dispute, respecting free choice of the parties to the mediator who will assist them, to inform them about the advantages and disadvantages of this process, to practice independent and impartial profession, to make clear all the conditions and obligations of the parties, and to exercise all powers recognized by law with integrity and in strict confidentiality.

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Evolution of European Company Law

Valbona Shukarasi, Indrit Shtupi

Introduction

One of the basic freedoms of Community law is the freedom of Establishment. It was already part of the original Treaty of Rome, which created the European Economic Community in 1957 and has since become Article 43 of the Ec - Treaty as it is currently in force[1]. The freedom of establishment prohibits restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State (primary freedom of establishment). Moreover, it prohibits restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State (secondary freedom of establishment). Article 48 of the EC-Treaty,[2] provide the companies or firm formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community are to be treated in the same way as natural persons who are nationals of Member State. In this context, "Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit making. In 1986 the Single European Act amended the Treaty of Rome and introduced the new aim of progressively establishing the internal market, which comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured[3].

This paper will focus in two main points: *1. Power of the Community to Adopt Secondary Legislation with Direct Relevance for Company Law 2. Evolution of European Company Law*

Power of the Community to Adopt Secondary Legislation with Direct Relevance for Company Law

The Treaty of Rome already included a provision, which has since become Article 44 of the EC-Treaty[4]. It enables the Community to adapt Directives with a view to achieving freedom of establishment. In particular, Article 44 (2) (g)[5] requires the Community to act.[6] In addition, on Single European Act gave a further power to the

[1] Originally Article 52 of the EC-Treaty
[2] Originally Article 58 of the EC-Treaty
[3] Originally Article 14 of the EC-Treaty
[4] Originally Article 54 of the EC-Treaty
[5] Originally Article 54 (3) (g) of the EC-Treaty
[6] *"by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and other, are required by Member Sates of companies of firms within the meaning of the second paragraph of Article 48 with a wie to making such safeguards equivalent throughout the Community".*

Community.[7] Both prosions have been relies on to enact secondary European legislation in the field of company law.

Evolution of European Company Law

Not long after its creation the European Economic Community set out to realize an ambitious programme of harmonization of company law on the basis of Article 54 (3) (g) – now Article 44 (2) (g) - of the EC-Treaty, which was seen as a prerequisite for allowing companies the full benefits of freedom of establishment.

This large – scale effort resulted in a series of Directives with numbers – starting with the First Directive adopted in 1968 and leading up to the Twelfth Directive adopted 1989. From the beginning, the programme concentrated on companies with limited liability, which the EU terminology divides into "private limited-liability companies" and "public limited-liability companies". Looking a the company law Directives adopted until 1989, it becomes obvious that the programme of secondary legislation based on Article 54 (3) (g) of the EC-Treaty was preoccupies with the approximation of national company laws in the sense of creating uniform legal rules even in purely domestic situations[8]. After decades of harmonization efforts, cross-border commercial activities continued to be faced with significant divergences in national company laws[9]. The effect of the "real seat theory" is to exclude choice of law for entrepreneurs wishing to set up a company. If the centre of administration is a given factor in view of the business operations, the company must be formed in accordance with the company law that applies in the place of the company's centre of administration, or else it will not acquire the status of a legal person there.

In contrast, the "incorporation theory" does not require any real connection of the company's business operations with the `State of incorporation, permitting what is called "letter-box companies" on account that the only presence of the company in the State of incorporation is a purely formal one, such as the office address of an attorney or a company formation agent. In these circumstances, the European Court of Justice (ECJ) seized the initiative.

[7] to *"adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market".*

[8] The only measure directed specifically at cross-border situations was the Eleventh Directive 89/666/EEC concerning disclosure requirements in respects of branches opened in a Member State by certain types of company governed by the law of another State.

[9] Most importantly, a sizeable number of Member States continued to apply a rule of private international law which is known as the "real seat theory". According to this rule, a company's legal capacity is determined by once to the law applicable in the place where its actual centre of administration, or head office, is established, as opposed to the "incorporation theory", by virtue of which legal capacity is determined in accordance with the law of the State in which the company has been incorporated.

ECJ Case Law on Freedom of Establishment – Cross-border Mobility

Case # 1: Centros

In 1999 the Court decided a case which is commonly known by the name of the company involved as the "Centros" case.[10]

In these case, two persons wanted to establish a business in Denmark in the legal form of a company incorporated under the law of the United Kingdom (Great Britain). Their declared purpose was to evade the Danish company law, which required a minimum subscribed capital for the formation of a private limited- liability company whereas English law permits the formation of such a company with only a notional subscribed capital, which can be as low as 1 pound. After registration in the United Kingdom, the company applied for the registration of a branch in Denmark. The Danish authorities refused to register the branch on the grounds, inter alia, that Centros did not trade in the United Kingdom and was in fact seeking to establish not a branch, but a principal establishment in Denmark, by circumventing the national Danish rules concerning the minimum capital. The EJC rejected that argument: the key passage of the decision reads: "The facts that a national of a Member State who wishes to set up a company chooses to form it in the Member State whose rules of company law seem to him the least restrictive and to set up branches in other member States cannot, in itself, constitute an abuse of the right of establishment. The right to form a company in accordance with the law of a Member State and to set up branches in other Member States is inherent in the exercise, in a single market, of the freedom of establishment guaranteed by the Treaty."

Case # 2: Überseering

Not long after the "Centros" decision, a German court referred a case to the ECJ, known as "Überseering" (often found as "Überseering")[11], The case featured a company, Überseering, which had been validly incorporate under dhe law of the Netherlend.

In 1990 the company acquired a piece of land in Germany, and 1992 it hired another company (NCC) to refurbish a garage and a motel on the site. In 1994 all shares in Überseering were acquired by two German nationals, which resulted in the transfer of the company 'center of administration to Germany. Subsequently, Überseering sued NCC for breach of contract, in German court, and the foundamental question arose whether, according to Germany law, which applied

[10] Full reference : EC 9.3.1999, C-212/97, Cetros Ltd vs Erhverus-og elskabsstyrelsen, European Court Reports 1999

[11] ECJ 5.11.2002, C-208/00 Überseering BV vs NCC Nordic Construction Company Baumanagement GmbH, European Court Reports 2002.

the real seat theory, Überseering was recognized as a legal person. Given that Überseering had originally been incorporate and continued to be registered in the Natherlands, German law would only recognize the company as a legal person as long as its centre of administration was in the Natherland, whereas the company lost its status as a legal person from the point of view of German law as soon as it transferred its centre of administration to Germany. The ECJ, however, found this result to be incompatible with the freedom of establishment guaranteed by the EC-Treaty. Moreover, the ECJ held that Überseering, being validly incorporated in Natherlands was entitled to exercice its freedom of establishment in Germany.[12]

Case # 3: Cartesio

In December 2008 the EJC Decided a further case on the relationship between company laws and the freedom of establishment, and this decision may signal a retreat from the very liberal position of the EJC in the previous cases. The company was incorporated in Hungary and wanted to move its "seat" to Italy, but the Hungarian court refused to register this change. The EJC held that a Member State has the power to define both the connecting factor required of a company it is to be regarded as incorporated under the law of that Member State and that required if the company is to be able subsequently to maintain that status.

That power includes the possibility for that Member State not to permit a company governed by its law to retain that status if the company intends to reorganize itself in another Member State by moving its seat to the territory of the latter, thereby breaking the connecting factor required under the national law of the Member State of incorporation.

Conclusions

The consequence of this ruling is that a Member State may apply the real seat theory to companies incorporated under its law. However, in an *obiter dictum*, the EJC qualifies this result by saying that a Member State who applies the real seat theory cannot thereby prevent a company incorporated under its law to move to another Member State with an attendant change as regards the applicable national law if in the letter situation the company is converted into a form of company which is governed by the law of the Member State to which it has moved.

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[12] *"as a company incorporated under Natherlands law"* even after the acquisition of all its shares by German nationals residing in Germany, *"since that has not caused Überseering, to cease to be a legal person under Natherlands law."*

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Rights of defendant in the phase of the adjudication of the case law

Elena Xhina, Aldo Shkëmbi

Introduction

The Constitution of the Republic of Albania - source of the primary and fundamental law in Albania and the highest law in force in the hierarchy of the normative acts in our country (article 116), in its second part sanctions the "fundamental human rights and freedoms". These constitutional provisions and the successive others provided by the Constitution, establish the catalogue of the fundamental human rights and freedoms, affirmed in the constitution, and aiming to guarantee observation and protection of the human rights, because of the supremacy the constitution enjoys in the hierarchy of the laws. In these terms and as the fundamental law of the state, the Constitution provides for "the integrity of the individual" entailing that individuals not only enjoy their rights but the state also assumes its obligations to provide them genuinely. Therefore, the Constitution stipulates the cessions or limitations of these rights solely by means of a "due process of law".

By means of the previously mentioned provisions, the Constitution of the Republic of Albania has affirmed observation of the fundamental human rights and freedoms to the international standards[1]. In these terms, the due process of law provides all penal and procedural guarantees for the defendant, from the phase of investigation of the case law to the end of the trial phase with the Court decision taking the form of the *decree absolute*. The defendant's rights derive from "the right to a due process of law" which will be treated in the framework of the Constitution of the Republic of Albania, the European Convention on Human Rights and the Criminal Process Code, (CPC). By bringing the case law to the Court, the defendant takes the attribute of the fundamental participant – as "the party" of trial process. By since this moment, every action of the proceedings as well as any other procedure actions accomplished by the Court, the prosecutor and the defendant as a party in this process have their specific legal obligation deriving from the Convention, the Constitution and the CPC to render a due process of law as maintained by article 6 of the Convention and article 42 of the Constitution . Article 6/1 of the

[1] Especially in compliance with the "European Convention on Human Rights" (ECHR) which has become an integral part of the country's judicial system. (Article 17/2). The "due process of law" requires from the proceeding authorities to respect defendant's rights by since the moment he/she has been qualified as "defendant", namely, when he/she has been notified for being taken as a suspect person down to the end of the trial, (including appeals) when the decision for innocence, suspension or the *decree absolute* sentencing has been delivered.

European convention on Human rights defines the fundamental requirements building a due process of law, mostly connected with the authority rendering justice, "the Court" as well as the legal proceedings to consider the case law by the Court. According to article 6/1 of the Convention; "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"[2]. According to article 42/2 of the Constitution: "Everyone, to protect his constitutional and legal rights, freedoms, and interests, or in the case of charges against him, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law".[3]

Both the provisions sanction elements a due process of law should contain and which, in fact, constitute guarantees and rights for the defendant in the proceedings phase of adjudication, guaranteeing both the adjudication and the solution of the case law conform the up mentioned requirements as well the realization of his right for a due process of law. The aforementioned guarantees consist of: The right of the defendant to address to the Court for a penal accusation, Equality of parties in the judicial process, Presumption of innocence, The right to defense.

The right of the defendant to address to the Court for a penal accusation.

This right is under the interpretation of article 6/1 of the European Convention on the Human Rights and entails the right to have access to the Court, as every other individual against who have been filed penal charges, with the intention that the Court be the only authority deciding for the lawful or unlawful character of this accusation[4]. Apart from this, the European Court on Human Rights has defined the term "Court". According to the judicial practices in the European Court of Human Rights, a Court is characterized in the material point of view, from its judicial function, namely, the case laws it considers within its competences entitled by the state, based on the law and according to the process defined in advance.It should complete the following requirements:

1) Independence from the other state powers, especially from the executive power.
2) Impartiality of the parties in trial.
3) The time of the Court members on their duty.

[2] QPZ - Summary of International Justice Acts , Tirana 2006
[3] QPZ - The Constitution of the Republic of Albania, Tirana 2010
[4] In addition, regarding this right, the European Court maintains that the right to have access to a Court should not only exist but should also be effective. So, if the state fails to provide a free counsel for the defendant who requires one but has no possibility to pay, this is considered as violation of article 6/1 of the Convention.

4) Guaranties offered from its procedures.

Besides being sanctioned "an independent and impartial Court" in article 42/2 of our Constitution, conform definitions of article 6/1 of the Convention, the Constitution also defines, in article 135, the instances constituting the judicial power in the country, (Courts of First Instance, the Courts of Appeal and High Court), which are established by law. In addition, it defines the process of the judges' nomination, dismissal, and the time of being on duty, which cannot be limited.[5]

From the other side, in full compliance with the Convention and the Constitution, the CPC in article 11 defines "The Court" as the only authority rendering justice, by enforcing this determination further: "No one may be declared guilty and convicted for committing a criminal offence without a court decision" [6]. The CPC has defined detailed rules to ensure impartiality of the Courts in resolving concrete case laws[7]. Article 6/1 of the European Convention of Human Rights maintains: "Everyone is entitled to a fair and public hearing within a reasonable time…[8]"

All the aforementioned criteria should lead the judicial process and are necessary premises to have e due process of law in the Court, as the Convention requires it to be.

Equality of parties in the judicial process

This one of the main principles featuring a fair judicial procedure and in its essence it means that both parties in trial have equal judicial means to present their case, so that none of the parties is in disadvantage in rapport with the other party. European Court has underlined the great importance this principle takes in its decisions, in which is it holds that; "Equality of parties requires for both of them to be in parity conditions, to be offered the same opportunity to be explicated at the face of the Court and for the admission of their available evidence by the Court, to be given

[5] By so avoiding the interference of the executive power .Observing the judges' financial treatment (article 38) their irrevocability, the incompatibility of their assignments with any other state activity and immunity from penal charges –all these provisions provided from the Constitution for the Judicial System, ensure its independence from other state powers and the impartiality in ruling case laws, in compliance with the terms of article 6 of the European Convention of Human Rights for the Courts. According to article 145/1 of the Constitution: "Judges are independent and subject only to the Constitution and the laws", whereas article 144 foresees that: "Courts have a separate budget, which they administer themselves"
QPZ - The Constitution of the Republic of Albania, Tirana 2010

[6] Ligji nr.7905 datë 21.03.1995, " Kodi Procedurë Penale të Republikës së Shqipërisë", neni 11

[7] Therefore, articles 15, 16, 17 of the CPC foresee the main causes ousting the judge from adjudicating the case law such as; interest in the process, giving advice on the object of proceedings, displaying their impartiality etc. All the aforementioned provisions, including even the defendant's right to require the ousting of the judge, (article 18) realize and guarantee the defendant's main right for having his case considered by an independent and impartial Court, within the meaning of article 6 of the European Convention of Human Rights.

[8] QPZ - Summary of International Justice Acts , Tirana 2006

the same opportunity to get acquainted with each-others evidence and that the Court adjudicates this evidence in their entirety, devoid of any prejudices to any of them". In all its provisions, especially those related to the trial process, the Albanian CPC provides for the defendant the right to the equality of arms. Specifically, for any procedural action accomplished by the Court and the law, it envisages the presence of both parties, the Court is obliged to inform both the defendant and the prosecutor, (article 33/2), and give them the same opportunities to get informed about the trial dossier, (article 335), to present them the preliminary requests, (article 354), to require the admission of the evidence, (article 356), and present the final adjudication conclusions to both of them, (article 378). Regarding the latter, because of the specific status of the defendant in the penal process and being that the CPC has foresees the prosecutor as the subject, which initiates judicial proceeding based on the accusation against the defendant, in order to balance their rights in the trial proceedings, the defendant has been entitled the right of the final speech, (article 378/4). The principle of the parties' equality takes more importance when the parties or the state is directly interested in concluding the case. This is because the state can use mechanisms that can be solely under its possession[9]. At any case, fixed sanctions eliminate defense regarding the determination of the riskiness scale of the penal offense committed by its author and remove the Courts opportunity to individualize sentencing, so truncating its function into making justice. As a consequence, fixed sentencing cedes fundamental human rights, provided for by the constitutional principles for a due process of law and for a fair trial and as such should be nullified".

Presumption of innocence

Article 6/2 of the Convention maintains that; "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".[10]

This article is applicable for all the individuals "charged with a criminal offense" and is valuable for all the penal process, commencing with the moment an individual obtains the attribution "accused" or "defendant". The principle of the presumption of innocence is very important

[9] Specifically, the laws passed by the Parliament may cede this principle. To this regard, Law 8175, dated 23.12.1996, "About some supplements to the Penal Code of the Republic of Albania" which, for the penal offences defined in articles 5, 7 – 10, 12 – 14/2, 15-23/1, 24, 28-34, 37-40, determined fixed penal sentencing. With its decision no 13, dated 29.05.1997, the Constitutional Court decided to proclaim the aforesaid articles as inconsistent to the Constitution on the reasoning that; "Foreseeing fixed sanctions for the norms of the Law no 8175 is inconsistent to a series of principles maintained in the General Section of the Penal Code, especially regarding the ways the sentencing is determined, with its easing and aggravating circumstances which, when compete, are exceptionally valuable to any penal offence.

[10] QPZ - Summary of International Justice Acts , Tirana 2006

principle for the penal process and incarnates a fundamental principle for a state based on the rule of law. In its decisions, the European Court has highlighted that this principle is binding to be applied not only by the Courts but also even by the other public authorities[11]. The interpretation of the principle of presumption of innocence made by the European Court includes even the intentions of this principle that are;

1) Not to instigate the public opinion and not to inject the certain convictions to the public opinion, this in a latter moment might turn into a pressure for the Court and influence it.

2) Not to prejudice the personality of the individual who can be proclaimed innocent and this might damage his interests in the future. On the other side not to cede the prestige and authority of the Court itself which might proclaim this person legally innocent in the future. In addition, the European Court had its own say regarding the decision of the Mirelli case, stating that the principle of the presumption of justice is violated even in cases when the Court decision reflects the accused as guilty without priorly providing evidence about his guilt according to the law and especially without allocating him to exercise his right to defense.[12]

The principle of the presumption of innocence is a fundamental principle of the penal proceedings, closely linked with the defendant's right to defense and his procedural position. All the CPC provisions have been based on this principle, determining the rules for the admission and the evaluation of the evidence both by the prosecution authorities and by the Court. Observance of this principle is required by since the first phase of penal proceedings – in the preliminary investigation phase during which the proceeding authority decides to take the individual as defendant, basing on data that are sufficient to support his guilt and not to definitely proclaim him guilty. It is the competence of the Court, in the law case adjudication phase, to decide

[11] The Court has come to this conclusion while ruling for the case law 'Allenet de Ribemont versus France', (dated .10.02.1995 pp.16-17).[11] The Court notices that, for the case in word, some high officers of the French police mention Mr. Allenet de Ribemont, without any reservation, as the inciter of a murder and accomplice in the murder. This utterly consisted an announcement of guilt of the complaint which; first, made public believe that he was guilty and, second, prejudiced the evaluation of the facts by the competent authority. At the end, there has been a violation of article 6/2 of the Convention". Allenet de Ribemont against France, dt.10.02.1995, pg.16-17

[12] To this regard, the Constitution of the Republic of Albania has gone further than the Convention by replacing its questionable clause "to be proved legally" with the clause proven by "final judicial decision" (article 30 of the Constitution). This clause contains the interpretation by the European Convention since both the Constitution and the CPC attribute the Court the Legal competence to finally decide by its judicial decision, over the guilt or innocence of the person accused of a penal offense. This important principle is sanctioned even in article 4 of the CPC in reference to the article 30 of the Constitution, with the following content:"Any doubt on the charge is judged in favor of the defendant". Ligji nr.7905 datë 21.03.1995, " Kodi Procedurë Penale të Republikës së Shqipërisë", neni 4.

about the defendant's innocence or guilt, always bearing in consideration that the presumption of innocence requires that, a sentencing decision needs to be supported by assertive evidence of guilt[13]. When evidence is dubious or if after the all-round judicial investigation, the version of accusation is not the only version excluding other versions; the defendant cannot be declared guilty. The Court makes sentencing decisions only when there is evidence certifying the accusation completely and makes the defendant's presumption of innocence null and void, and not when evidence to prove him guilty lacks.

The right to defense

As a fundamental requirement for a due process of law, the defendant has been entitled this right (as worked out above); by since the moment he is qualified as such, until the completion of all the legal process, including appealing[14]. Although the essence of the right is guaranteed to the defendant who is judged *in absentia*, and is complemented with the obliged presence of his defender in the Court hearing, is he selected by the assumed or appointed by the Court. Specifically, in cases when the defendant is not present in the Court hearing, even without any lawful cases to appear, (article 351), has consented that the judicial examination to continue in his absence, leaves the Court hearing hall or evades trial and in all these cases the defendant has not selected a defender, the Court is obliged to appoint a defender for him, mainly to guarantee defense to him and observe his procedural rights.[15]

Conclussions

The rights of people under investigation are considered and developed as an important branch of right in general; the basis of principles of this branch related to the respect of rights of this category of people, are based on many international acts widely treating these principles of right. To make a contribution in the real respect of those rights in Albania, the treatment of problematics in the procedural plan and the juridical-penal one, present importance and leave space for detailing. In treating this subject and to this function of this goal, it is

[13] This means that the burden of proving guilt lies with the proceeding authority even if the defendant is not able to challenge the accusation this does not prove his being guilty. The defendant's innocence in committing a penal offense cannot be based in conjecture or supposition.

[14] The right to defense was treated in detail in the section of the theme that dealt with the defendant's rights in the preliminary phase, but what should be highlighted, regarding the adjudication phase is that the CPC has foreseen a series of provisions consisting into an exclusion from the general rule of "proceeding with the hearing in the presence of the defendant in the Court hearing". (Articles 350 – 352). These provisions determine cases of trial in the absence of the defendant. This trial consists into a limitation of the defendant's right to defense for legal causes determined in this Code.

[15] The Constitution as well, in article 33/1 sanctions that: "Everyone has the right to be heard before being sentenced" although there is also an exception from this constitutional right which refers to individuals who evade justice, (article 32/2). QPZ - The Constitution of the Republic of Albania, Tirana 2010

necessary to treat the efficacy of defending instruments in favor of the defendant, respect of their rights in practice, establishment of an authority to monitor their implementation. As soons as this treatment is realized in the direction of respect of rights, the rights of people under investigation should be seen in the framework of internal right of Albanian state, that in these years has ratified and made part of its right the international acts determining those rights. I think that the legal framework guaranteeing the defendans' rights is complete. The problematic related to this legal framework are faced in their application in practice. For this reason I think that it should be closely studies the way how those legal guarantees for the defendant are realized in practice.

As per above, it is concluded that the existence of a specific legal authority to monitor the respect of rights of people under investigation in Albania will guarantee the hight protection of defendant's interest. The authority conducting such monitoring should be capable to apply the respective laws and standards for human rights

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Mediation: The European Code of Conduct for mediators

Klodiana Rafti, Ismail Tafani

Introduction

Mediation is a process in which a neutral mediator helps parties in dispute to try to work out their own principles for the resolution of the issues between them. It is an informal process whose objective is helping the disputing parties reach a mutually acceptable agreement. Dissatisfaction with the legal system's ability to deal effectively with all kinds of conflict led to a search for alternatives. Therefore, mediation began to be recognized as a unique area of practice that required specialized education and training. Considering the fact that mediation represents a generally superior form of dispute resolution, and is governed by rules of procedures and conduct, it is necessary to provide a framework of the European Code of Conduct for Mediators in relation to ethical practice of mediation. Therefore, the purpose of this article is to inform the reader about the importance of the European Code of Conduct for mediators in relation to dispute resolution, and mainly to provide a framework of the principles of mediation, which ensures quality in treatment of members of the profession and those the profession of mediation serves.

The importance of European Code of Conduct for Mediators

As European Code of Conduct for mediators states, "it sets out a series of principles to which mediators can voluntarily operate spontaneously under their own responsibility. This code can be applied to all kinds of mediation regarding civil, family and commercial matters. Also, organizations providing mediation services can make such a commitment by asking mediators acting under the auspices of their organization to respect the code of conduct or to act in accordance with this code. Adherence to the code of conduct is without prejudice to national legislation or rules regulating individual professions. Organizations providing mediation services may develop more specific codes, adapted to their specific context or the types of mediation services they offer, as well as to specific areas, such as family mediation or customer mediation"[1].

Competence, appointment, and promotion of the mediator's services

Since the mediators' competence is crucial during the course of mediation, mediators must have the appropriate knowledge in the process of mediation. Therefore, a mediator should maintain professional competence in mediation skills

[1] Parkinson L., *La mediazione familiare: modelli e strategie operative, Erikson, Londra*, 1997.pg.24.

by regularly engaging in educational activities and practice in mediation skills. Furthermore, mediators should decide with the disputants regarding suitable dates on which the mediation may take place. Also mediators should verify that they have the appropriate competence of the specific case before accepting the appointment. In relation to fee issues, mediators must always provide the parties with complete information as to the mode of remuneration which they intend to apply. In addition, mediators may promote their service of mediation in a professional way by respecting the principles of the Ethical Code of Conduct for Mediators[2].

Integrity, impartiality, confi-dentiality and professionnal competence

With regard to the European Code of Conduct for Mediators, the principles of mediation are used to establish its identity, and above all to protect those who ask it. Accordingly, these principles define the "structure" of family mediation and it is very important that a mediator respects these principles[3]. Furthermore, a mediator should not accept any involvement or undertake any act that would compromise the mediator's integrity. In addition, a mediator should maintain professional competence in mediation skills by regularly engaging in educational activities and practice in mediation skills. In addition, if the mediator decides that a case is beyond the mediator's competence should withdraw and address the specific case to another expert of mediation. Moreover, a mediator shall be impartial and advice all parties of any kind of situation that may result in possible prejudice or impartiality on the part of the mediator. Therefore, the principle of impartiality is established to help all parties as opposed to one or more specific parties in moving toward an agreement. The mediator should withdraw from mediation in case the mediator believes that can no longer remain neutral. With regard to the principle of confidentiality, the mediator shall maintain the confidentiality of all the mediation process and will not voluntarily disclose information obtained through the mediation process except where required by law, and to the extent those matters are with the consent of the parties. Therefore, an exception is made only in cases where the life or

[2] Cosi G., Foddai M. A., *Lo spazio della mediazione*, Giuffrè, Milano, 2003, pg.22-25

[3] Integrity, impartiality, confidentiality, and professional competence are the essential qualifications of any mediator which the European Code of Conduct for mediators has paid special attention.

safety of any person is or may be at serious risk[4].

Basic principles of family mediation

The various principles of family mediation are very important since they establish its distinct identity and safeguard for the professionals practicing mediation. Accordingly, these principles define the "structure" of family mediation and it is very important that a mediator respects these principles. [5]Therefore, participants may withdraw at any stage of the mediation.

a. **Neutrality and impartiality of the mediator-** The neutrality and impartiality of mediators is very important during the mediation process. According to Lisa Parkinson (1997), with "impartiality we understand the concept of “equidistance", which means that the mediator, equally, pays attention to all the parties and manages the process in a balanced and impartial way. By this we mean that the mediator must conduct the process of mediation without favoring one side or the other.

b. **Declaration of any conflict of interest on the part of the mediator-** In case that a mediator has current or past of any kind of consulting relationship with any party, the mediator should address them to another expert in mediation in order to avoid conflicts of interest. However, it is expected, that mediators terminate the mediation when they become aware of a conflict of interest during the course of the mediation[6].

c. **Empowerment of the parties to reach agreement-** Empowerment is one of the most important principles of mediation, and has a number of different meanings. This term refers to the sharing of knowledge between the mediator and the parties. However, individual mediators assist litigants in reaching their own decisions. For instance, mediators encourage the parties to give a full explanation in relation to economic issues through the mediation process, and encourage disputes to provide the necessary information, so that their decisions are based on the fact that

[4] Giannella E., Palumbo M., Vigliar G., *Mediazione familiare e affido condiviso*, Sovera, Roma, 2007.pg. 5-29.

[5] Regarding family mediation, even if in Norway the mediation is mandatory for all parents who separate and divorce, the recommendation of the Council of Europe number (98) 1 states that mediation should be a voluntary process. For example, during the first meetings of the mediation process, the mediator explains to the disputants that family mediation is a voluntary process.

[6] Di Lauro D., *La comunicazione strategica: il modello sistemico relazionale,* Xenia Edizioni e Servizi, Milano, 2010.pg.34.

both parties have evaluated all the important information. Another significant aspect of empowerment is the avoidance from exerting pressure on each other.

d. **Respect for the individual and cultural diversity-** In addition, the mediator must ensure to the disputants equal opportunities to be part of the mediation process regardless of their cultural background. From this point of view, the mediation should be available to all couples, married or not and at all stages of separation or divorce.

e. **Personal safety and protection from risks-** Disputants must be protected from any concerns, insults or threatens of violence. So, the mediators must ensure that each dispute takes part in mediation on a voluntary basis. Therefore, the mediation process should take place in an appropriate and comfortable environment. Also, there should be available separate waiting rooms and, where appropriate, additional separate meetings with each of the parties. Mediators should also have the ability to recognize situations that involve imbalances of power of one of the disputants which may affect the mediation process, and to set the basic rules for dealing with these matters. If in case there is evidence of inappropriate behavior due to high conflict situations, the mediator should explain to the parties that mediation should be terminated.

f. **Confidentiality-** With regard to the principle of confidentiality, the mediator must conduct the mediation on a confidential basis, and will not voluntarily disclose information obtained through the mediation process except to the extent that these matters are with the consent of the parties. Therefore, an exception is made only in cases where the life or safety of any person is or may be at serious risk.

g. **Emphasis on common interests rather than on individual rights -** Because mediation is based on communication and cooperation between the parties, they are helped by the mediator to focus on common interests rather than on individual ones. That is, the mediator helps them to make decisions that include common interests. In the mediation process, the parties are helped to achieve a result of *win-to-win* rather than *win-to-loose*.

h. **Consideration of the needs of all parties, including children-** Family Law Act (1996) states that all mediators should help parents to

consider "the welfare, wishes and feelings of each child; and whether and to what extent should be given the opportunity to each child to express his or her wishes and feelings in mediation". From this point of view, the mediator cannot decide or advice parents on what could be the best in the interests of the children, but the mediator may help them to take into account the needs, wishes and feelings of their children[7].

Agreement, process and settlement

Since the whole course of the process of mediation is very important for the mediator as well as all parties to reach an agreement, the mediator must ensure that prior to conductance of the mediation the disputants have understood and also agreed the terms and conditions of the mediation process in relation to obligations of confidentiality on the mediator and on the parties. Moreover, the mediator must take into consideration the specificity of each case including possible imbalances of power and any wishes the disputants may have, by reaching an agreement with the mediator on the way in which the mediation is to be performed. In addition, the mediator may hear the disputants separately in case of high conflict. Moreover, the mediator must inform the parties and therefore may terminate the mediation if the mediator considers that continuing is unlikely to result in a settlement. In the end of the process, the mediator, under his own responsibility must ensure that any agreement is reached by all parties. On the other hand, the disputants may terminate the mediation at any time if they do not see as appropriate to reach an agreement. In case that they reach an agreement, the mediator must inform the parties as to how they may formalize the agreement.

Conclusions

Mediation is a process in which a neutral mediator helps parties in dispute to try to work out their own principles for the resolution of the conflicts between them. Furthermore, mediation began to be recognized as a unique area of practice that required specialized education and training, and it continues to improve due to the formation of more and new schools of thought. The Ethical Code for Mediation is very important because it serves as a guideline for professionalism and quality of service. With regard to the European Code of Conduct for Mediators, the principles of mediation are used to establish its identity, and above all to protect those who ask it. Accordingly, these principles define the "structure" of family mediation and it is very

[7] Parkinson L., *L'esperienza inglese dei servizi di Mediazione Familiare*, in SCABINI E., ROSSI G., (a cura di), *Rigenerare i legami: la mediazione nelle relazioni familiari e comunitarie,* Vita e Pensiero Editore, Milano, 2003. pg.13-26.

important that a mediator respects these principles. More importantly, experts such as lawyers, judges, psychologists, and social workers who practice mediation should maintain professional competence in mediation skills by regularly engaging in educational activities and practice in mediation skills. Considering the fact that mediation represents a generally superior form of dispute resolution, we should take into account the importance of the Ethical Code of Conduct for Mediators and the main principles of mediation which contribute in regulating the profession of mediation, with the objective of helping the disputing parties reach a mutually acceptable agreement.

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Mediation: Origins of mediation and development of family mediation

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Introduction

Family mediation is proposed as an alternative approach to conflict management in couples seeking the divorce, where a third, impartial person, named mediator operates to facilitate the dispute resolution processes. According to Lisa Parkinson (1997), family mediation is a process that allows the parties to handle their own problems, unlike the approach offered by the procedural system. In other words, family mediation is an alternative system created to regulate interpersonal disputes. The purpose of the mediation process is to assist the parties in reducing the destructive aspects of the conflict, and reinforce good communication skills berween couples in order to reach an agreement. Moreover, its purported goals seek to help parents cooperate, communicate and help them to maintain boundaries that protect their children from ongoing conflict.

This study explores the origins, and history of family mediation, and also it examines the importance of the development of family mediation process in relation to individual and couple dynamics of conflict divorce. Origins of mediation and development of family mediation in many countries of the world show that this approach is an effective form of dispute resolution for the couples, based on the creation of an agreement that works for their future.

While mediation has been in existence for thousands of years[1], family mediation began to take shape in the United States in the late 60s and then in Europe with the increase of separations and divorces constantly growing by emphasizing the importance of the families in the process of separation, especially when child custody issues were in dispute.

This great development of family mediation in the United States and Europe has come due to excessive increase of civil cases in the courts. For this reason, it was necessary to identify alternatives to the process in order to have a more effective service to individuals in resolving disputes. Furthermore, many organizations and family mediation centers were formed in the U.S, Canada, and Europe by developing several models of family mediation, such as therapeutic model, structural model, global model, transformative model of family

[1] In ancient times, the history of mediation was the history of diplomacy. Confucians have a long history of respecting the natural harmony of life. Several other ancient cultures had similar traditions. In many African countries, villages had at least one council who was skilled at helping people solve problems. Another evidence of mediation is due to the culture of ancient Rome, in which the representatives of the *plebe* established a group of high skilled people at helping others solve problems, and settle rules with the specific purpose of regulating the most crucial aspects of social life.

mediation. Therefore, family mediation began to be recognized as a unique area of practice that required specialized education and training, and it continues to improve thanks to the emergence of more and new schools of thought.

Mediation: History and Origins

Although mediation is often seen as a recent phenomenon, data show that it has quite a long history in different civilizations and cultures. Moreover, in ancient times, the history of mediation[2] was the history of diplomacy. The first traces of conciliations between parties in dispute dates back to ancient China in the fifth century BC, where the Eastern Civilizations were known for peaceful persuasion rather than coercive conflict. Confucians have a long history of respecting the natural harmony of life.[3] Accordingly, the conciliation solutions of disputes were considered more effective than formal solutions reached in court.

Many anthropologists state that in many African countries, the purpose of continuing tradition was to bring together a council which asked elders and wise men of the tribe to help resolve disputes between individuals, families and villages.

In England, in the sixties of the nineteenth century were established early conciliation committees (Boards of conciliation) to help resolve disputes in some industries. Furthermore, in all areas, mediation has been used in several ways to facilitate communication and help the disputants in reaching consensus decisions. The mediation became more formalized in many fields of application, in the sphere of industry commerce, and health. The use of mediation became more formalized even in the criminal justice system. Interestingly, the mediators may be involved to help resolving disputes between different countries and communities. For example, Nelson Mandela, the former president of South Africa is probably recognized as the most authoritative international mediator regarding the sensitive issue of AIDS, in 2000, by using his mediation ability to encouraging scientists and politicians to work together to fight a disease that is ravaging Africa.[4]

In some countries such as China and Japan, mediators are recognized of considerable authority. For example, the

[2] Another evidence of mediation is due to the culture of ancient Rome. Around 451 BC, the representatives of the *plebe* established a group of high skilled people at helping others solve problems. Thus, the representatives entrusted and asked them to settle rules with the specific purpose of regulating the most crucial aspects of social life, which, according to the representatives, the last one was corrupted because of inequality. Moreover, there are many examples of mediation used by traditional communities in Europe or North America.

[3] What Confucius advised the parties in the dispute was to meet with a neutral peacemaker who would have assisted them in reaching an agreement, rather than go to a court. According to Confucius, the outcomes of the process were likely to leave the parties unable to cooperate to resolve such conflict and controversy.
L. PARKINSON, *La mediazione familiare: modelli e strategie operative,* Erikson, Londra, 1997, p. 27.

[4] Ibidem.

Chinese and Japanese mediators **are exhorted from the parties t**hat maintain moral values: that is, criticizing the attitude of a right hand, and encourage each other to have acted properly. As this paternalistic approach states, the parties do it to resolve their disputes in a peaceful and responsible way for the good of the society and especially for the good of the family.

Instead, in many other countries, mediation is seen as a way to make the parties able to develop their own decisions and agreements. However, these countries have applied legislation and procedures to enable courts to address the causes to the mediation. For example, Australia has been one of the first states to extend a legislation that would promote the use of mediation in family disputes (Family Law Act of Australia, 1975). In England and Wales too, the Family Law Act of 1996 scheduled two decades of efforts to provide family mediation for couples helping them to resolve conflicts regarding their children, finances and other problems in the most delicate phase of their lives, that is, that of separation and divorce.

Birth and development of family mediation

While on one hand, several authors argue that family mediation was born in the United States in the late 70s, and then spread into Europe, on the other hand, Lisa Parkinson states that "the first mediation projects in England have developed independently by American prototypes".[5] According to the author, by the end of the nineteenth century English judges in the courts applied a procedure known as "reconciliation." This procedure was used to resolve marital conflicts and disputes. Therefore, to the couple was offered a service of couple therapy or individual therapy in order to achieve reconciliation, and one of the couples, especially the wife, was urged to accept reconciliation. However, the first family mediation service in the UK was established in 1978 in Bristol. Couples with children could ask this service with their spontaneous will, before starting to the proceedings of the court, in order to reach an agreement concerning the custody of the children. As a result, independent services for family mediation were spread in England since 1979, and after, in the eighties, there was a big increase of family mediation centers in Europe and other countries. However, an interdisciplinary approach was encouraged from the beginning and most of the centers had the support of local lawyers. For example, the first country to train lawyers of family law as mediators was Scotland, with the support and help of the Law Society of Scotland. However, the United States played a crucial role in the development of family mediation. California instituted the

[5]L. PARKINSON, *L'esperienza inglese dei servizi di Mediazione Familiare*, in E. SCABINI, G. ROSSI (a cura di), *Rigenerare i legami: la mediazione nelle relazioni familiari e comunitarie,* Vita e Pensiero Editore, Milano, 2003, p. 261. cit.

conciliation service connected to the court in 1939 (Family Conciliation Court). The functions of this Court included important issues regarding the separation and custody of children. The Court was also responsible to "*provide amicable agreements to family dispute".*[6]

Because there was an increase in divorces in a global context, the focus of reconciliation in court in England and the United States moved from consulting for reconciliation to the mediation for divorce. Afterwards, it was the creation of the Finer report (survey requested by the British government), in 1974, one-single-parent families (Finer Committee, 1974). The Finer report recommended that the reconciliation should be considered as a priority in order to help couples to reach an agreement without going to trial. The Finer committee (1974) defined the conciliation as "t*he process which consists in generating common sense, reasonableness and agreement in dealing with the consequences of alienation*". In addition, in cases of matrimonial failure and divorce, another definition of conciliation suggested *"helping the parties to reach reflected decisions of all kinds, including decisions on reconciliation, in an atmosphere of calm consideration rather than tension and hostility".*[7]

At the same time that the Finer report was published in England, James Coogler, a lawyer, established the center of family mediation (Family Mediation Center) of Atlanta in Georgia. Starting from his own personal experience of a painful marital separation, Coogler developed a process called *structured mediation in divorce* (Coogler, 1978). The mediator would assist couples in helping them reach an agreement related to every aspect involved in the dissolution of a family nucleus, like that of custody of the children, separation of their assets, and any child support. Subsequently, Coogler established the Family Mediation Association, one of the first organizations of separated parents, in which they had the opportunity to share their own family experiences. Hundreds of similar organizations were formed in ten years by developing several models of family mediation, such as therapeutic model, structural model, global model, transformative model of family mediation. Among the most important models of family mediation were those of Howard Irving and John Haynes.[8] Furthermore, Irving, in collaboration with Benjamin, established in 1978, the Toronto Conciliation Project, which was the first family mediation service in Canada. Moreover, this project provided support to families in order to foster communication and define marital disputes.

[6] A. MOTRONI, *Consultori familiari e mediazione,* in G. COSI, M. A. FODDAI (a cura di), *Lo spazio della mediazione*, Giuffrè, Milano, 2003, p. 231.

[7] L. PARKINSON, *La mediazione familiare: modelli e strategie operative,* Erikson, Londra, 1997, p. 36.

[8] M. CORSI, C. SIRIGNANO, *La mediazione familiare. Problemi, prospettive, esperienze,* Vita e Pensiero Editore, Milano, 1999, p. 29.

This type of model used by Irving was called the Therapeutic Family Mediation, based on the resolution of the emotional and relational aspects of the couple.[9] In the eighties, family mediation began to spread in France, which currently has more than eighty specialized public centers[10].

In 1991, the Commission on Education of the Family Mediator created la *Charte Européenne de la formation des médiateurs familiaux et dans les situations de divorce et séparation*. The European Charter, where adhere many countries such as Germany, Belgium, France, Great Britain, Italy, Switzerland, aims to ensure order, coherence, consistency and professionnalism[11].

Conclusions

Family mediation is proposed as an alternative approach to the management of marital conflict in view of a separation or a divorce in which an impartial third person, called a mediator, acts to facilitate the resolution dispute processes . Although mediation is often seen as a recent phenomenon it has quite a long history in different civilizations and cultures. Moreover, in ancient times, the history of mediation was the history of diplomacy. Evidence based on the history and development of mediation show that this approach is an effective form of dispute resolution for the couples and other forms of disputes based on the creation of an agreement that works for their future. Dissatisfaction with the legal system's ability to deal effectively with interpersonal as well as social conflict led to a search for

[9]A few years later, John Haynes, mediator and social worker**,** founded the Academy of Family Mediators. Furthermore, this mediation center included social workers, matrimonial and family counselors. Many family mediation volunteers went to the US to get their training from institutions such as the Academy of Family Mediators. Therefore, the Academy provided training supervised by a group of experts, such as lawyers and psychologists. In addition, the academy recognized the need for mediators to have a good mix of capacities and backgrounds including an understanding of law, family dynamics, emotional state, and the psychological effect of divorce on children and parents. Moreover, fifty services were established in the United States.
M. CORSI, C. SIRIGNANO, p. 30: "Nel 1978 Howard Irving attivo il *Toronto Conciliation Project…"*

[10]In 1988, it was formed in Paris, the first association, the Association pour la Promotion de la Médiation Familiale (APMF). This association included experts from a wide variety of backgrounds such as lawyers, judges, psychologists, social workers, and parents' associations, in order to undertake various activities of mediation. In 1990, the APMF adopted the code of ethics: This code disciplines the French mediation, and it is recognized even today for its completeness and avant-garde
M. CORSI, C. SIRIGNANO, *La mediazione familiare. Problemi, prospettive, esperienze,* Vita e Pensiero Editore, Milano, 1999, p. 32.

[11] In addition, in Italy, in 1987 it was formed the l'Associazione Genitori Ancora (GeA). The promoters, F. Scapparo and I. Bernardini, both psychologists, realized that the new culture regarding separation, promoted by the family mediation, could be a win to win (winning solution) for all those parents who could not make "healthy" arrangements at the time of legalizing their separation. Furthermore, in 1989, the first center of family mediation in Italy; il Centro Genitori Ancora (GeA). Another important event was the foundation of the Italian Society of Family Mediation (SIMe.F.) on 25 May 1995 with the aim of promoting the professional activity of the family mediator in Italy, in compliance with the ethic profiles that are part of the European standards.

alternatives. Therefore, family mediation began to be recognized as a unique area of practice that required specialized education and training, and it continues to improve due to the formation of more and new schools of thought. These factors have influenced the creation and development of some major models of family mediation. Then, the mediation has thus become a method adaptable with regard to the family crisis, which still represents families with high-conflict parents. With regard to cultural differences, it is hoped that recent legislative and other changes will strengthen the field and create accessible options for couples to resolve their disputes. Despite these differences, many of which still exist, the development of mediation continued and expanded in many countries of the world.

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A theoretical overview on hypnosis

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Introduction

The word ‘hypnosis’ comes from Greek and means 'sleep'. This concept taken from the ancient Greek mythology, personified the god of sleep, "Hypnos". In the vocabulary of today's Albanian language, hypnotism is accepted as scientific branch and is defined as: "a state close to sleep, in which humans and high animals can be broughtthrough suggestion for the purpose of treating any disease or to make them conform to one's will." To put it simple, we can say that is a condition or circumstance in which the person, under appropriate suggestions, is capable to change his perception, memory or mood. The definition of hypnosis is relatively difficult because "there are as many definitions of hypnosis aspeople who have tried to define it". According to the American Psychological Association, hypnosis is considered as "a state of consciousness that includes rapt attention and consciousness characterized by anability expanded in response to suggestions". Hypnotic induction is also regarded as a procedure designed to stimulate hypnosis and hypnotherapy is the use of hypnosis in the treatment of a disorder or psychological distress. While the British Medical Association defines this condition as "A state of temporary perception in a subject, induced by another person in which a variety of phenomena may occur spontaneously or in response to verbal stimuli etc.. ".

A decade later after APA’s definition, the Society of Psychological Hypnosis revised this definition including the clinical technique of self - hypnosis described as "the action of the management ofthe hypnotic procedure on oneself " .

However, the debate on whether or not hypnosis is a discrete state of altered consciousness is still ongoing. To summarize, we can say that the definition of "hypnosis is a process that may be useful in psychotherapy report, but it is neither psychotherapy *per se*nor an independent medical art or psychological art.... its application does not require adherence to a specific psychotherapeutalorientation".

Books on hypnosis teach us that it is not something supernatural, mysterious or a gift which special individualsmay have,but a process that we canlearn from professionals and requires the knowledgeof a hypnotherapist as well as the free will and focus of the patient. Indeed, hypnosis has nothing mystical or magical;it is simply a state of concentration and focused attention.It is important to understand that thoughts, imagination, and the internal dialogue influenceboth the success and

failure in achieving the goals and the liberation of the human potential. During hypnosis we change our inner reality using imagination and in a specific waywest-imulate feelings and change our attitude and behaviors. When we change our way of thinking, visualization, imagination, and feelings, our behavior also begins to change.

A brief history of hypnosis

Hypnosis has been used in healing since the time of Ancient Egypt and Greece, but only in the last 50-60 years it has been applied in therapeutic and clinicalmedicine. Hypnotic phenomena were reported in all cultures and in all periods of human history. Manifestations of hypnotic behavior occurred in a religious or healing context and its roots can be retrieved in the temples of Asclepius .

Modern hypnosis starts with Mesmer in 1766, an Austrian doctor who suggested that all objects are affected by the magnetic field and directly influence health and several diseases (Pintar ,& Lynn , 2008). But there are authors who see the Catholic priest Johann Joseph Gassner (1729-1779) who performed exorcism in Europe as a precursor of Mesmer. In 1843, John Elliatson, a well-known doctor in the British circles of that time published the book "Numerous cases of surgicalo-perations without painin a mesmeric state". It was James Braid who presented for the first time the word hypnosis borrowed from Greek (which means sleep). Braid himself believed in the strength of the mind to control the body and was surprised by the fact that therapists do not induce any magnetic forces. His explanation is similar to today's definition of hypnosis today.

In 1880, the famous French neurologist Jean - Martin Charcot of the Salpetriere Hospital in Paris considered the hypnotic state as a neurophysiological phenomenon and as a sign of mental illness . Hypnosis was brought to the scientific and therapeutic level by Milton Erickson. Erickson was a teenager paralyzed in bed when for a moment, while listening to children playing outside, thought of how muchhe wanted to walk. At that moment, he began moving the index finger and realized the power of mind. He then studied medicine, specialized in psychiatry and started using hypnosis for treating his patients. Afterward, the British Medical Society and the American Medical Association andAmerican Psychiatric Association recognized hypnosis, respe-ctively in 1955 and 1958,as an effective and safe.

In Albania, hypnotism has a poor history in medical treatment. The renowned doctor and psychiatrist, Dr. Ylvi Vehbi, trained in France in the '70s, was the only one who has used hypnosis in the treatment of patients in psychiatry.

Brief summary of theories on hypnosis

Psychologists, psychiatrists doctors and other scientists have never stopped trying to explain through their theories hypnotic phenomena. The following paragraphs present the historical and current theories of hypnosis. The theory of suggestibility described by Hyppolyte-Bernheim, a French physician and neurologist finds that hypnosis is a condition caused by one person to another; it is a condition in which suggestions can be given and can be accepted by the mind more easily than in the awake state. The modified sleep theory was developed by Pavlov who believed that hypnosis was "part of sleep". He thought about hypnosis as a conditioned response in a form of sleep. The order "go to sleep/fall asleep/sleep" is still used by many therapists even nowadays.The theory of conditional responses, is also based on and explained by the work of Pavlov. Accordingly, hypnosis is considered to be a physiological condition caused by a life-long conditioning in which certain words play the role of Pavlov's "bell" (Lynn &Kirsch , 2006).

There was a moment when hypnosis was considered to be a symptom of hysteria; only individuals who suffered from hysteria were believed to be hypnotized. This is known as the pathological theory of Charcot. For many years it was believed that hypnosis is a state of dissociation/disconnection. This belief was originated by Pierre Janet, who similar to Charcot, believed in the connection between hysteria and hypnosis. He concluded that hypnosis is a crack of the mind in two parts artificially caused by an entity outside the individual has presented its model of neodissociation who asserted that "some cognitive systems, though not represented by the conscious, continue to record and process information and when such a system is released, it uses this information as if it had been aware all the time " (Lynn & Kirsch , 2006). He claimed in his theory that consciousness can be divided into several streams of thought that are partly independent of each - other. He proposes that the phenomenon of hypnosis occurs through a break in high-level control systems. Freud's psychoanalytic theory considers the subject's sensitivity to hypnosis as a cause for the unconscious desire to fulfill his libido and emphasized the similarity of hypnosis with the condition of falling in love (Hartland, 1971).

Sociocognitive theories are another important development; these theories reject dissociation theories and many of the widely accepted beliefs on hypnosis. Thus the theory of roleplay is known in the social sciences as a way to draw attention of theindividuals by including them in the role. The simple explanation is that we clarify to the individual what we expect him to do and how to behave so that he tries to fulfill the role assigned (Lynn & Kirsch, 2006).

TX Barber found that the incidence of hypnosis depends on the attitudes, motivations and expectations of the individual in keeping out the role of the hypnotizedperson, who thinks and imagines under suggestions. Spanos (1986) in his theory, known as cognitive-behavioral believed that attitudes, beliefs, imagination, attributes and expectations were all in the form of hypnosis. He proposed that hypnotic behavior can be explained by the same social - psychological normal processes that explain the non-hypnotic behaviors (Woody & Sadler, 1998). Gruzelier presented a neurophysiological model of hypnosis characterized by changes in brain function. This theory proposes that persons who can be quickly hypnotized have better executive function. According to the theory of response expectations (Kirsch, 1985), expectations can directly change our subjective experience of the internal situation. Cold control theory suggests that we are aware of our mental state by having opinions on them. This theory states that a successful response to hypnotic suggestions can be achieved by forming an intent to make any act or necessary cognitive activity.

The brain during hypnosis

Hypnosis includes a reinforcement of the attention devoted to an external or internal event (Hilgard, 1986) and those that react to hypnosis report adeep physical relaxation (Bányai&Hilgard, 1976) and change in perception after hypnosis induction. Contrary to notions common in literature, recent clinical and experimental studies (e.g. on the activity brain, metabolism etc.) support the fact that hypnosis can require cognitive efforts involving further distribution of attention and inattention (Lynn &Kirsch , 2006). While the idea of the 1970s that hypnotism is a task of the right hemisphere has been rejected, there is growing evidence (Crawford&Gruzelier, 1992) that hypnotic phenomena selectively involve cortical and subcortical processes of the brain, depending on the nature of the task and the change in the processes of attention and "inattention" (Burrows, Stanley, & Bloom, 2001). Even new imaging methods such as PET (Positron Emission Tomography), although more sophisticated than EEG, have not revealed much about the hypnotized brain (Brann, Oëens, & Williamson, 2012). Hypnosis seems to involve activation of the brain without awakening, and may be mediated through dopaminergic pathways by changing attention and perception and perhaps by inducingdisossiaction in the anterior cingulate gyrus centers as well as on parts of the frontal lobes (Nash &Barnier, 2008). Here obviously we have to advance the recommendation of Spiegel (2005) that "multi-levelexplanations are an absolute necessity in the understanding of thehuman phenomena of mind/brain/body because we are beings with a neural and

social basis that experience the world in mind–phenomenal terms"(p. 32).

The use of hypnosis for treatment purposes

There are over 400 types of psychotherapyrecognized in the US. Nevertheless, hypnotherapy offers considerable potential for use in health care services and has beenincreasingly-recognized as a tool toaid many health conditions. Today, hypnotherapy is included in standard psychological, medical or dentaltreatments. There is also empirical evidence for the use of hypnosis in other forms of psychotherapy such as cognitive and behavioral therapy, where it can enhance clinical efficacy in the treatment of diseases such as obesity (Kirsch, Montgomery &Sapirstein, 1995); likewise there is evidence for the incorporation of hypnosis in psychodynamic therapy (Jonas & Levin, 1999). Potential applications of hypnosis with empirical evidence today are: pain management, temperature control, phobias, healing burns, reduction of blood pressure high blood pressure, stopping smoking, bronchial asthma, healing of wounds, irritable bowelsyndrome, insomnia, anxiety and forms of anxiety associated with dentists, symptomatological treatment of cancer patients.

Conlusions

Hypnosis has a history of over 220 years of scientific approach and clinical practice. Even though interest in hypnosis has increased or decreased, it remains strong in the first decade of the XXI century (Nash &Barnier, 2008). Hypnosis is seen as a difficult study, but also as unscientific (Nash &Barnier, 2008), despite the fact that 14 of the 100 eminent psychologists in the history of psychology have written about hypnosis, have investigated or have influenced research on hypnosis (Haggbloom etc., 2002). Hypnosis has many challenges to face (Nash &Barnier, 2008). Kirsch and Lynn (1995), in a very interesting article, said that "there are many meeting points between all serious researchers and theoristson hypnosis that the popular myths on hypnosis are dissipated by observations and clinical research" (p. 856). Theories of cool control and discrepancy attribution on hypnosis offer new perspectives because they reflect cooperation between cognitive scientists, learning and awareness, and developmental psychologists. Research on hypnosis continues to expand and include new technological developments as well as theoretical implications of other areas outside the hypnotic (Oakley, 2006). But despite major developments in recent years, we have witnessed a noticeable decrease in hypnotic research in major scientific journals (Nash &Barnier, 2008).

The status of hypnosis as an investigable technique will enable more studies that use neuroimaging to explore the nature of hypnosis and how it effects suggestive mechanisms inside and outside hypnosis. Such studies will have clear implications for the use of hypnotic suggestions in clinical practice.

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Social responsibility of private organizations versus public organizations (State)

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Introduction

Social responsibility stands for the obligation of the organizations, bodies and individuals to act in the benefit of the society in its wide sense. Despite its definition the way how social responsibility is understood, percept and realized has been different during different time periods and places. Such has also been reflected not only in theories and academic research but also in the activity of the organizations themselves. To this front, and for the purpose of this article, the notion of organization includes the state as an organization of political power and dominance as well as the government bodies of public sector and the private organization despite their form (commercial /profitable and nonprofit one).

Considering the role and the functions of the state as a core mechanism in the interest of the society, the social responsibility of the public organizations is taken for granted (and even more such it has been misused by considering the state as a welfare creator *per se)*. The establishment, the development and the strengthening of the companies and private initiatives shed light on the "Social responsibility" of the business thought the meaning of such social responsibility is seen under totally different viewpoints. Mainly, the studies on the social responsibility are focused on the commercial companies and business though there are many examples as of today worldwide of the activity of the public sectors that enable or stimulate the social responsibility of the corporate.

This article shall make a comparison between the social responsibilities of the private organizations versus the state and vice versa, which comparison shall be placed in a historical perspective with special attention being paid to the role of the public organizations in enhancing and developing the business social responsibility.

Social Responsibility of Public Organizations (State)

The state as an organization of political dominance is an organized power, whose will is imposed on the society and who possesses the mechanism for the enforcement of this will (Omari, 2007). Though the theories on the state, its origins and its relation to the society are many and various, in principle the state is the expression of the need of the society for the existence of an organized power who is able to manage the society and to impose solutions that are deemed reasonable by

means of the legal norms[1]. Therefore, one of the basic functions of the state as so defined by W. Wilson[2]. Beside these primary functions of the state, other functions such as education, health, transport etc. are vested on it, which are related to (and to the same extend serve to) the interests of the society. So, the social responsibility of the state for its own citizens stands at its core. This responsibility is realized in different forms depending on the type and organization of the state: the mass nationalization of the welfare state, Adam Smith's *Laissez faire,* the imposed collectivity of the former communist regimein Easter Europe and so on.

Social Responsibility of private organizations

Besides the *per se* social responsibility of the state as an organi-zation, the question on the social responsibility of the private organizations arises as well. Here in fact, it is needed to distinct the profitable private organizations as commercial companies and the nonprofit private organizations(like NGO-s). As the latter due to their form and purpose do not pursue a business purpose, nor is profit their driving force, then it is worth asking whether the commercial companies have a social responsibility and if affirmative, what or which is that?

As a matter of fact, until the 19th century, in the US and in many western countries, the right to make business under a company, was a matter of royal power or state power and not of private economic interests. Monarchs issued charters to public-stock corporations that promised public benefits, such as exploration and colonization of the New World(Hood, 1998). Individuals could own shares of the corporation, and sell them (with some limitations), but the purpose was not merely to serve the interests of stockholders. In the American colonies, the earliest business corporations established during the eighteenth century were founded to perform such services as building transportation infrastructure, supplying water, fighting fires, and providing insurance(Hood, 1998). By these means the state would (indirectly) realize its functions in regard to the social responsibility.

These functions later in the Welfare State were realized by nationalizing the major part of the service provision. The first self-established companies were mainly for religious purposes, charity or community

[1] Reasearchers share the same opinion that any organized society, however primitive has had certain rules that stood at the core of the life in common as no living together in any collective organization may be imagined without rules, as rules accepted from the members of this group or imposed on them (see further shih Omari Luan, "Parimedheinstitucionetësëdrejtëspublike", Elena Gjika editions, 2007, Tirana, pg. 12).

[2] is *"[…], the preservation of life, freedom and property, together with other functions that are necessary for the civil organization of the society –which are not optional even from the strictest laissez faire point of view –and stand at the core of the society".*

functions and only afterwards the companies would start to operate with the pure purpose of pursuing a business interest.

In the beginning of the XX century, it was claimed that the company existed to make money for its shareholders[3], a stance that was put at doubt with the publishing of the work of A. Berle and G. Means and the decisions of the courts that supported the idea that now the interest of the company has changed and under this point of view it should be taken into consideration other aims besides the profit maximization.

The corporate is defined as an artificial (fictional), invisible and untouchable creature that exists only in accordance with the law[4]. As creation of law, the life of the corporate, its organization and functioning is subject of legal regulations which regulations cannot be limited only within the frame of a commercial law or commercial code in the strict sense but also rely on a broad range of laws and other legal acts due to the dynamics of the commercial activity[5].

The concept of the social responsibility has drawn a lot the attention of the management and organization literature (Tuzzolino, Armadi 1981). As of today (according to Garriga&Melè, 2004), the theories in regard to the social responsibility of business are categorized as below:

- Instrumental theories (or the Shareholder Theory of Friedman whereas the corporate is a welfare creator);
- The integrative theories (or the Stakeholders theory of Freeman whereas the businesss is part of the society);
- The political theories (which put an emphasize on the power of the corporate);

[3] The first important legal test of the responsibilities of corporate directors came in the influential 1919 case of *Dodge v. Ford*. Despite its name, the case had nothing to do with competition between automakers. Instead, it had to do with the intended largess of Henry Ford, president and controlling shareholder of the Ford Motor Company. In August 1916 Ford owned 58 percent of company stock. John and Horace Dodge owned 10 percent. Rather than pay regular and special dividends, as the company had done in previous years, Ford announced that only regular dividends would be paid. The remaining profits would be used to expand production capacity, increase wages, and offset losses expected from his cutting the price of cars. Ford proclaimed broader social goals: "to employ still more men, to spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes." The Dodge brothers sued, claiming that Ford was using shareholder equity to pursue his own personal philanthropic goals. The Michigan Supreme Court, while professing to respect Ford's business judgment, agreed with the Dodges. It stated that a corporation exists to benefit its stockholders and that corporate directors have discretion only in the means to achieve that goal. It may not use profits for "other purposes."(taken from Hood John, Do Corporations Have Social Responsibilities?, 1998,

[4] This definition of the corporation is introduced from Judge John Marshall, US Supreme Court, in the Dartmouth College v. Woodward case. Through it the corporates became legally possible in the XIX century.

[5]For instance in Albania, this frame includes the legislation on the competition, the Civil Code, Law 9723/2007 "On the National Commercial Centre", Law 9879/2009 "On Bonds", Law 10236/2010 "On controlling public companies", Law 8901/2002 "On bankruptcy" etc.

- The business ethics theory (the social responsability as a mean to include ethics in the corporate's value).

The theories that are faced and challenged most are the first and the second. The Shareholders theory was introduced from Milton Friedman in a five pages article in the NY times emphasizing that the main duty of the managers is to maximize the interests of the shareholders as so permitted by law and legal values. According to Friedman: "There is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud". From Friedman's point of view, that was labelled as a "minimalist", the basic principle is profit maximization for the shareholders while social issues are not business issues and such problems should be dealt with from the free market system itself[6].

The Stakeholder theory was set forth from R. Edward Freeman in 1988 with his piece "Stakeholder theory of the modern corporation"[7]. Although the social activist groups of the '60 strongly advocated for a broader notion of the social responsibility, it was required the intervention at legislative level in the early '70 that marked the creation of different state agencies such as the agency for the environment protection, of equal chances in employment, of health and safety at work, consumer's protection etc. These new bodies at government level defined that now the national public policy officially recognized the environment, the employees and the consumers as important and legitimate stakeholders of business ,that asked for legal and ethical rights. These groups were clearly addressed as well from Freeman in his theory. So, the social responsibility is "translated" and vested upon different meanings in different time and places and new issues of everyday reality are added to it considering the role of business in a changing society and its dynamics. The basic principles of the social responsibility are developed within the corporate and often are encouraged from the nonprofit organizations. Furthermore, it is worth mentioning the "institutionalizing" of the social responsibility at different levels making it a case within various

[6] It is worth recalling Adam Smith saying few centuries ago that if the aim of profit does not work as an invisible hand that manages the human actions toward social wining effort, then for sure, abandoning this aim, is to lose the social benefits that would exist otherwise.

[7] with the aim to: "to revive the managerial capitalism notion by replacing the notion that the managers bear a responsibility (obligation) to the shareholders with the notion that the managers bear a fiduciary relation to the stakeholders". The Stakeholders includes the individuals or groups that altogether with their rights, support, benefit or may be harmed from the corporate and its actions. To put it in different words, it is to find the balance between the interests of the shareholders and the interests of the other stakeholders rather than focusing only to the profit of the shareholders.

organizations such as the World Bank, IFC[8], and even EU and the governments. The government may create different frame references, to encourage the activities and to enhance dialogue not only in the public enterprises and the public companies but for those private as well (that are not listed in any stock exchange market). The business social responsibility included the economic, legal and ethical expectations that the society has from the organizations at a given moment in time (Carroll, 1979)[9]. According to the World Bank, today the corporate social responsibility is the commitment of the business to contribute in the sustainable economic development – to work with the employees, their families, the community and the society to improve their life quality by means that are good for the business and the development[10]. The studies suggests that the social responsibility in itself is composed of 4 types of social responsibility that are: economic, legal, ethical and philanthropic.

Economic responsibility – the business organizations are established as economic entities with the aim to provide goods and services to the members of the society whereas the profit is the main initial incentive for the entrepreneurship;

Legal responsibility – the expectancy from the business is not only the profit but in the same time it is expected to act in accordance with the laws and regulations imposed from the state, at local and central level, national or federal as the case may be.

Ethical responsibility – despite the economic and legal responsibility include ethical norms in regard to the justice, fair play etc. the ethic responsibility is related to those practices and activities that are expected or forbidden from the society even though they are not written down in laws or codes. In fact, these responsibilities are often misused or not clear or often subject of public debates regarding their legality and as such become difficult for the business[11]. Though the above mentioned responsibilities were explained separately, they are not excluding and they cannot replace or substitute each other, yet they are faced and put against each other in a dynamic situation. From the conservative point of view this situation is considered as

[8] It is worth mentioning here the OECD guidelines for the Multinational Corporates for standards or UN Global Impact for initiatives.

[9] The social responsibility in itself is the process of cost and benefit management, to the inner and outer stakeholders, from the employees to the shareholders, the investors, consumers, suppliers, civil society and the community. It is fact which cannot be denied that business is part of the society and as such it holds the necessary potential to affect the society, both positively and negatively. And actually, the question raised from Bowen in 1953 how the interests of the business in the long run are merged with the interest of the society still remains.

[10] See Ward H., Public Sector roles in Strengthening the Corporate Social Responsibility: Taking Stock, The World Bank, IFC, 2004

[11] The philanthropic responsibility includes the activity of the companies that are the answer to the expectations the society has from the business, it being perceived as a "good citizen", in promoting welfare and good will. This responsibility differs from the ethical one as it does create expectancy from a moral or ethical point of view.

a conflict between "the concern of the company for profit" and the "concern of the company for the society", and how the companies should commit themselves with their actions, decisions, and programs to fulfil and duly bear these responsibilities. According to a study performed from Grant Thorton, there were[12] evidenced 7 factors[13] that serve as main contributors to the enforcement of the social responsibility. The business with its policies and standards aims to be as more as attractive for the potential investors. Lastly, the government pressure to whom the social responsibility is the management of certain complex relations in order to create the conditions for "a win to win" benefit for the business and the social organization of the society. On the other hand the role of the public sector itself in supporting social responsibility may be divided in 4 categories: Mandating, Facilitating, Partnering and Endorsing, that as a whole affect social responsibility[14]. By means of these roles, the public sector enters into the social responsibility agenda whereas an important part belongs to the legal and regulation frame. From a pragmatic perspective, the business social responsibility is to pay the best efforts to secure profits (economic responsibility), to be law abiding (legal responsibility), to act and be ethical (ethical responsibility) and lastly to be a "good citizen" (philanthropic responsibility).

Conclusions

In the last years, the government of the states have joined the other group of the stakeholders by taking a significant role as promoters of the corporate social responsibility and working together with intergovernmental organizations and

[12] The studies also suggest that in the course of time the situation seem to be changed, by deviating from the conservative stance and emphasizing the fact meeting social responsibility is an important element of the success of the company in doing business.

[13] *Employment* – the first and especially important in the developed countries;

Environment protection and cost control for the effective use of the available resources affecting thus the protection of the environment and encouraging policies in its favor.

Public behavior – public is very sensitive to the ethic and philanthropic issues. The bigger the company, the more it attracts public attention as far as this is concerned.

Creating tax opportunities that encourage business to use standard and transparent practices.

The transparency of business -practices shall mean that the social responsibility is not a luxury but a requirement.

Investors 'encouragement is mainly seen in the developing countries.

[14] *The mandating role* of the public sector consists in laws, regulations, sanctions and the institutions of the public sections that are related to the control of certain aspects of the investments and operations.

Facilitating: defining a clear and general frame of the policies and positions to manage the business toward investment in the social responsibility, ensuring access to information, tax incentives, easing the dialogue with the stakeholders.

Partnership: combining public and private resources and with other actors as well so that the complementary abilities and sources become part of the social responsibility agenda as participants and promoters and negotiators;

Supportive: public and political support for different business practices related to social responsibility of companies in the market; supporting different evaluation schema for the performance etc.

acknowledging the importance of the public policies in promoting the corporate social responsibility. The states approach (even inside the EU) is different in regard to this vision, the strategy and the goals as far as the business social responsibility is concerned[15]. The Governments have a chance and an obligation to take a leading role in creating a steady environment, encouraging steady conditions in which the sustainable business may be exercised. It is more than clear that the public sector plays a pivotal role in the social responsibility and in the role of the stakeholders. Despite the good will and practices of social responsibility of the companies, that are certainly supported and assessed, the companies cannot fully or wholly replace the state and the public sector. In turn the state should make his major contribution with a well - defined legal and regulatory frame in this regard which should be encouraging in the same time.

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