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Cultural rights within the fundamental laws of the Romanian modern state

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Abstract

Besides the well-known international organizations, democratic modern states have also been struggling to guarantee their citizens the fundamental rights and freedoms. That is why in the fundamental laws governing their statehood, their constitutions, there were articles included precisely to defend such rights and freedoms, but also stating the responsibilities that citizens have in such cases. In addition, in the legislative subsequent framework, punishments were specified for violating these principles, thus preventing abuses. Education is a lifelong process that constantly improves its methods depending on the educational stages of the individual, but also depending on the cultural and political context. However, we are not only dealing with a cultural process, but also with a key step in the progress of society, often an essential condition for economic, political or social development. This paper follows in a comparative analytical study the constitutional evolution of the right to education such as it was set out since the dawn of the modern Romanian state until nowadays.

Keywords: cultural rights, education, schooling, Romanian Constitution,

Introduction

In addition to international documents, states have implemented in their constitutions articles that talk about human rights and freedoms, but also about the obligations that citizens have, stipulating in addition in the legislative framework punishments for violating these obligations or for the intervention of some individuals in the exercise of the rights of other individuals, thus preventing abuses. As stated by numerous researchers, education takes place throughout the life of the individual as a continuous process that constantly improves its methods depending on the educational stages, but also depending on the cultural context. However, we are not only dealing with a cultural process, but also with an important active factor in the progress of society, being a precursor to economic, political or social development.

Through education, better economic and social integration can be achieved, and any investment in education brings with it developments and progress of human resources, an essential element for any sustained and sustainable social change. For this reason we could look at education as a factor in the emancipation of the human person, as one of the determining conditions of democratic development and the rule of law, but also as a circumstance that can open the way to tolerance, good international cooperation and conflict resolution (Zlătescu 2016:5-6). In this paper we will analyze the supreme laws, the Constitutions, of the Romanian state to observe how the authorities understood, over time, to transpose in within the principles of the right to culture and education, like: *freedom, accessibility, gratuity, mandatory classes, inclusiveness, cultural identity, protection of cultural heritage, quality instruction*.

This research will have a methodological architecture that will combine qualitative with quantitative methods, in order to address all aspects of research questions and to maximize the validity of research. The approach to our research is more in line with the interpretive tradition. For this research methods such as: direct observation, participatory observation and document analysis shall be used. For conceptual clarifications and coherence in argumentation we will always define - in the order of their appearance in the text - the terms we will use and their meaning applicable to our work.

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Cultural rights and the Romanian Constitutions

In Romania, the constitutional history is not very long, however the concerns regarding culture and education have existed from the very beginning. With the elaboration of the Organic Regulations², the idea of a new administrative-territorial organization of the Romanian Principalities also developed. Thus appeared the initiatives for the extension of the network of schools and the reorganization of education. Responsible for the administration of the schools were the *Ephoria of the Schools* in Wallachia and the *Epitropy/Commissioners of Public Teachings* in Moldova where the religious character of education was much more emphasized.

In the Organic Regulation of Wallachia in chapter VIII, section IV, at art. 364-366 stipulates that public education must be the object of the Rulers's care so that the growth of young people is based on the beginnings of the healthiest morality. Schools will be established for both sexes in each county capital city where the basic knowledge will be learned according to Lancaster's methods and the courses will be followed in Romanian, not only for the facilitation of schoolchildren and the completion of the country's language, but also for all Romanian realms. (Negulescu 1944:129)

In Moldova, the Organic Regulation provided in Chapter IX, Section VI, art. 418-424 that Public Education should share with you all the care and vigilance of the government which will grant a special protection to the academic body and the scholastics. Beginner schools will be organized for juni and girls in Roman, Huși, Galați, Focșani, Bârlad and Botoșani. The courses of all the teachings will be in the Moldovan language and in addition a special College and Institute for the sons and daughters of the gentry will be established. (Negulescu 1944:340-341)

The years that followed, however, were not full of reforms as many of the young people now educated abroad demanded. In the face of the revolutionary wave of 1848, which shook the whole of Europe and had a shock wave in the Romanian space, the balance of the great powers became more and more fragile. The following year, 1849, the Tsarist and Ottoman Empire, in the attempt to maintain the balance at the borders and to maintain their influence over the Principalities, intervened again in their autonomy. Although the Organic Regulations remained in force through the Treaty of Balta Liman from April 19 / May 1, 1849, the protective powers established that the Rulers (Hospodarii) were to be appointed sultan with the consent of the Tsar and provided for the abolition of Public Assemblies and their replacement with Divans.

However, these provisions would not last long either, because in 1853 a new Russian-Turkish war broke out, concluded with a new Peace Treaty, in Paris, in 1856. Located at the confluence of the two Empires, the Principalities are not this time either, bypassed by external interference in their own political-administrative organization, although they now pass under the protectorate of the Guarantor Powers (The British Empire, The Second French Empire and The Kingdom of Sardinia). Remaining still under the suzerainty of the High Otoman Sultan and with the Organic Regulations in force, the Romanian Countries are imposed new conditions regarding the election of rulers and the way is prepared for new changes of legislation.

However, the document did not provide for specific issues related to education, religious rights or culture, leaving them to be legislated later by the new Legislative Assemblies to be elected, until then the provisions already stipulated in the Regulations remain in force. Until the revision provided by art. 37. The legislation now in force in the Principality is maintained with regard to provisions which do not comply with the provisions of this Convention.

After the Electoral Assemblies of the two Romanian Principalities ingeniously speculated in 1859 one of the omission of the Paris Convention on the election of the same person as executive, Hospodaru, a period of intense diplomatic efforts followed. Tremendous efforts were made in order to gain international recognition for the double election of Alexandru Ioan Cuza and for the transposition of this union *in personam* into a de facto union. This was finally enshrined at the end of 1861 when, following the Conference in Constantinople, the Sultan issued the signature recognizing Cuza as Prince of the Wallachian and Moldavian United Principalities.

Thus, once the first Single Legislative Assembly was established and the first Single Government was installed, led by Barbu Catargiu, on January 22, 1862, the legislative reforms necessary for the organization of the new state and its transformation into a modern principality began. Under these conditions, the Ministry of Cults and Instruction is organized and functions. The course of change then led by Cuza through the excellent collaboration with the politician Mihail Kogălniceanu, however, takes by surprise the newly formed Romanian political class, still dependent on the conservative Moldovan-Wallachian methods.

In this context, the rejection by the Legislative Assembly of the "Law of Laws", which triggered the agrarian reform, led to the coup d'état of 1864 and the adoption of a new constitutional act, officially called the Developing Statute of the Paris Convention. Despite the name, meant not to attract the disapproval of the Guarantor Powers, the act no longer followed the provisions of the Convention

² Quasi-constitutional organic laws promulgated in 1831 - 1832 by the Russian imperial authorities, "protectors" of Wallachia and Moldavia. With a conservative connotation, however, the documents initiated a period of reforms that laid the foundations for the modernization of society. The regulations gave the two principalities their first common system of government.

but rather radically changed its meaning. It was in fact the **first Constitution of Romania** for the approval of which a plebiscite was organized between 10/22 and 14/26 May **1864**.

The **Development Statute** does not contain in specific provisions regarding the organization of culture and education on the territory of the Principalities but, as provided for in the original Convention, they were to be regulated by subsequent legislation. Thus, after long debates and delays on December 5/17, 1864, the first **Law on the instruction** of the Romanian United Principalities appeared in the Official Gazette. Here we will find the first provisions on primary, secondary, higher and private education. If in Iași we had already established the first University in the country in 1860, in 1864 by royal decree the University of Bucharest was established, a sign that the preoccupations for education, from primary to the highest level, are closely related to the appearance of the Romanian modern state.

At the central level, from an administrative point of view, education is secularized by the new instruction law. The attributions of the clergy in the organization disappear, being taken over entirely by the Minister of Instruction, the Permanent Council of Instruction and the General Council of Instruction. (Art.8). Education becomes compulsory for children between 8 and 12 years old, of both sexes. (Art.31). In order to ensure the implementation of the obligation, fines were provided in cash or working days in favor of the commune for parents or legal representatives who did not send their children to school. (Art. 36). At the same time, craftsmen and tenants are forbidden to hire school-age children who did not have a certificate of graduation from primary school. Otherwise, they were forced to pay a fine, enroll the child in school and supervise his attendance up to 12 years (Art.37).

The payment of compulsory education staff was exclusively the responsibility of the state, as well as the procurement of materials needed by children without means, while the local authorities were responsible for managing buildings, equipping them and procuring material for their heating (Art.42). Also, in this law there are regulations regarding the organization of private education, the establishment of compulsory subjects, the unification of the program for urban and village education and the renewal of the school book fund. Thus, the Law of Public Instruction is undoubtedly the document that outlined the fundamental principles for the organization of Romanian education, laying the foundations of the education system that would later evolve during the kingdom.

The earthly and unifying prince, Colonel Alexandru Ioan Cuza abruptly ends his historical mission by an act of forced abdication, falling prey to a disorganized lifestyle and his far too reformist thinking for a political class still composed mainly of owners of large properties. The installation of a new ruler, this time in the person of a foreign prince, and the elaboration of a new Constitution, under Ottoman suzerainty, preserving the unity of the principalities thus becomes the immediate challenge of the Romanian liberals and conservatives who had generated the new crisis.

The Constitution of 1866 is the first proper constitution of Romania, adopted after the model of the Belgian Constitution of 1831. It transforms Romania into a hereditary constitutional monarchy (in a direct and legitimate descending line of its greatness to Prince Carol I of Hohenzollern - Sigmaringen, from man to man through the order of birth and the perpetual exclusion of women and their descendants - Art. 82) and provided for democratic principles such as: separation of powers in the state, ministerial responsibility, civil rights and freedoms, but also maintained the census vote (people could vote based on a sum of money paid, so those who voted were often the big landowners, mostly conservatives).

Considered one of the most democratic constitutions in Europe, the Constitution of 1866 kept the bicameral structure (Senate and Chamber of Deputies) that had been introduced for the first time in 1864. But for the first time we have articles dedicated to the fundamental law of the right to education. Romanians enjoy the freedom of conscience, the freedom of education, the freedom of the press, the freedom of assembly (Art. 5). Thus, access to education is guaranteed, free of charge in state schools and compulsory at primary level, which generates the obligation to establish primary schools in all communes, specifying that a special law will regulate everything regarding public education.

The process of modernization of the Principalities also implies an increasing requirement of specialization by professions, so that after the approval of the new Constitution several laws are promulgated for the creation of vocational schools and in 1870 a law appears that provides that in each county of the country be established such educational institutions. Following the military campaign of 1877-1878, the independence of the state was gained through sacrifice and Dobrogea was added to the country's body. The military success is recognized by the Great Powers in Berlin in July 1878, so that soon, in 1881, Romania became a kingdom.

The new administrative and territorial realities also require a transformation of the education system at the end of the 19th century. The mathematician and pedagogue of Armenian origin Spiru C. Haret will be the spearhead of the transformation of national education at the dawn of the new century. He imagines a school that respects the knowledge and individuality of students through a holistic approach to the humanities and the realistic sciences, with the encouragement of educational activities outside of teaching hours.

The sovereign's confidence in Professor Haret's reformist vision facilitated the process of transforming institutions dedicated to education. The laws adopted in 1886, 1893, 1896, 1898, 1899, 1901 defined and determined the complex construction of the education system, aiming at preserving and promoting the national cultural framework through education. Compulsory education is extended until the age of 14, secondary education will last for 8 years, in two cycles (lower - middle school, upper high school). For the first time (1909) there are regulations regarding preschool education - early childhood schools, kindergartens - and a special emphasis will be placed on the organization of courses in rural areas, rural or urban communes with a number of responsibilities regarding the statement. transport of teachers and professors. The reorganization of university education also begins in 1900 when new courses, conferences, practical seminar and laboratory papers are introduced and the faculties can also issue doctoral diplomas, in addition to the bachelor's degrees. (Dumitru 2014)

Spiru Haret's reforms create the modern education system in our country, and its structure lasts long after the astral moment of the Romanian people in 1918. This is the year in which, again after a conflagration, this time worldwide, on December 1, Transylvania unites with Romania, being the last and largest province that joins the old kingdom, thus completing the Romanian unitary national state. At that time, there were four education systems (the result of the union of the Principalities with Transylvania, Bukovina and Bessarabia) that needed to be integrated.

The path to the reunification of the country, by encompassing within the same borders all the historical territories inhabited by Romanians, was thus paved by the "education revolution" started in the middle of the 19th century. The increasing degree of literacy of the population and instilling the national feeling of the pupils and students who would later be soldiers, lawyers, diplomats and politicians of Greater Romania, provided the solid foundation on which the interwar national culture manifested its fullness.

All these political, administrative and territorial transformations also required a rethinking of the constitutional construction. A new fundamental law was drafted and entered into force in 1923, being valid until 1938 and then re-enacted after the end of World War II until December 30, 1947, when the republic was proclaimed.

According to **the Constitution of 1923**, Romania was a constitutional monarchy, a national state, unitary, indivisible, with inalienable territory. The Constitution of unification, as it is also called, enshrines the achievement of Greater Romania and is based on the Constitution of 1866, as evidenced by the fact that of the 138 articles, 78 have been preserved from the old one. The king represented the key element of political life, he exercised executive power, appointed and revoked ministers, sanctioned and promulgated laws, was the Chief of the Army, had a veto, could mint coins, confer decorations, had the right to amnesty and pardons, convene and dissolve Parliament, concluded treaties (these becoming valid after they were approved by the Parliament). Parliament was the legislative power within the democratic regime. He was bicameral (Senate and Assembly of Deputies) and had the role of voting on laws, repealing them and having the right to control the activity of the government.

Articles 5 and 24 of the new Constitution, one for all Romanians now, state the freedom of education as long as it will not be contrary to good morals and public order, it remains free and mandatory at the primary level, with the possibility under subsequent laws for the State, counties and communes to come help for needy students at all levels. From the text of the fundamental law, three constitutional principles regarding the Romanian interwar education emerged: the principle of freedom, obligation and gratuity.

An interesting provision can be found in Article 17 which talks about guaranteeing the right to property but also about the possibility of expropriations for public utility causes that will be regulated by a special law, with the approval of a two-thirds majority of Members of Parliament. But among the exceptions to this rule, in addition to the public utility understood for the means of communication, public sanitation, defense of the country and works of military interest, we also find works of cultural interest.

And in the new state of affairs, the state assumes the continuation of the educating role. Education was considered an important means for the de facto unification of Romanian citizens, as such it had become a premise for nation building. The focus is still on the primary level in order to increase the number of literate peasants. Thus in 1924 we have a new law in this regard which established at 7 years the compulsory and free education. This law was supplemented in 1934, but the basic principles were preserved.

The attempt to unify education systems in all provinces and reduce illiteracy throughout the interwar period involves substantial budget allocations for education, the printing of new textbooks, appropriate remuneration for teachers and professors, and the construction of new buildings for the educational process. All this approach is led by successive governments, just like Haret, by Minister Constantin Angelescu, surgeon, diplomat and man of culture.

However, access to education remains difficult, especially in rural areas. High school classes are still the prerogative of the affluent classes, being extremely difficult for most of the population to attend due to the high costs of schooling. Many of those who could afford such costs, however, opted for private education or home schooling. In 1925, the Law on Secondary Education appeared, so that in 1928, together with the Law on Secondary Education, the aptitude and high school entrance exams were introduced for the first time, as well as the baccalaureate exam. Also through this law, the medical service is organized in secondary schools, putting

school doctors on an equal footing with the other members of the teaching staff. The role of the school doctor in the educational community is clearly stated.

The construction of new educational premises is doubled by the construction and establishment of libraries, reading rooms, museums, laboratories, workshops and places of culture. Higher education is not neglected either and the aim is to adapt it to the new realities through the Law for the organization of university education of 1932.

The constant pressures and criticisms coming from the minorities of the new kingdom of Romania do not prevent the process of centralization of education. The Ministry of Education is reorganized successively, in 1929 it is renamed the Ministry of Public Instruction, Cults and Arts to emphasize the holistic approach to education as a cultural right. Later, in 1936, it became the Ministry of National Education, definitively marking the centralized character and the national attribute that education will have in the future in the Romanian space.

20 years after the events that led to the achievement of the Great Union, the lack of a new strong national ideal and the stormy European geopolitical climate pushed Romania on the road to the establishment of dictatorial regimes. Once registered on this route, the society would fully feel the negative effects of the new forms of political-administrative organization, moreover, the country's borders would again be shattered by territorial abductions.

On February 28, **1938**, King Charles II established, de jure and de facto, his personal dictatorship by introducing a **new Constitution**. The King's gesture was also facilitated by the fierce struggles between the many political parties for power, most of which were fought even by the sovereign. Thus, he considered that the mood in the country could not be corrected with the existing constitutional means.

The decrees of the law gained priority, due to the concentration of all power in the hands of the king. Over time, they were the only way to legislate and were no longer subject to any control by another state body. In the Constitution of February 1938, we can distinguish certain fundamental features: the merger of state powers in the person of the king and the primacy of the executive over the legislature and democratic rights and freedoms were either severely limited or completely liquidated, the same fate befell the corresponding institutions of the parliamentary regime. Bureaucratic and authoritarian centralism in the state administration introduced constitutional principles borrowed from the legislation of Italian fascist corporatism.

Education is mentioned in Articles 10 and 21 as being free, under the conditions of special laws, if it does not contravene good morals, public order and state interests, being compulsory at the primary level and free of charge in state institutions. Article 16 retains the cultural interest as a reason for expropriation in the case of public utility, but the legislature becomes in practice only an annex of the government.

Analyzing the new Law for the organization and functioning of primary and normal education of May 27, 1939, we find that regulations are considered regarding nurseries and kindergartens (kindergartens and kindergartens), the compulsory primary school remains at 7 classes, divided into two cycles: elementary 4 years and higher 3 years. The language of instruction is Romanian, but there is the possibility of teaching in the mother tongue in localities with a large number of minorities if there are at least 20 students. The maintenance of the buildings remains at the local level while the central administration is responsible for the remuneration of the staff.

Education is unfortunately becoming a battleground for new extremist ideologies out of a desire to train the minds and energies of young generations in order to apply their own radical views on society. Although the eminent professor and historian Nicolae Iorga is also involved in the composition of the new policies for organizing higher education, nothing would stop the effervescence of young minds, students and university professors alike, affected by the legionary scourge.

However, because he sought to consolidate his personal power but also to remove young people, especially students, from the influences of the legionary movement, Charles II made the reorganization of higher education a point of interest since the eve of the royal dictatorship. As such, although with obvious good intentions and having for the first time a general character that regulated the entire higher education in Romania, the Law for amending and supplementing the laws regarding higher and special education for rationalization, of November 1938, fails to restore order and the good organization in the university environment, moreover, contributes to its total enslavement later in the short time of the existence of the legionary national state. (Sdrobiș 2018:97)

Thus, over the economic crisis is superimposed an acute political crisis to which is added the inability of the sovereign to manage the foreign policy of the Romanian kingdom in the international context dominated by the revisionist policy of the neighbors and the beginning of the Second World War. These were the ingredients that led to the disaster of 1940 when, through the Soviet ultimatum in June and the dictatorship of the Axis powers in August, Romania lost a significant part of its territory. The king abdicates and the civilian government is replaced by a military government exercised in the name of the young sovereign Michael I.

Therefore, the Constitution of 1938 had a short period of existence, until September 5, 1940 when it was suspended, passing to the government of the country through a series of decrees or acts of a constitutional nature. In this context, the next 8 years, marked by the devastating war that ravaged the entire European continent, represented a unique period from the perspective of Romania's constitutional development.

If in the 4 months of government Horia Sima tries to impose on higher education the ideas of his movement by Law no. 745/1942, Law for the adaptation of higher education to the structure of the National-Legionary State, in his turn Marshal Ion Antonescu later puts his visible national accents - on the organization of the education system, obviously dictated by the needs of war and the economic crisis. Thus, in 1941, the Law for the organization of Romanian youth education was introduced, which aimed to draw the major lines for the development of education for young people in order to build a new generation governed by high moral principles and patriotism. (Sdrobiș 2018: 100-104)

Later, in 1942, after intense debates with the entire academic environment and students, after the rotation of ministers general in education and culture, we will have a new Decree Law for the reorganization of higher education, Law 386, which imposed the vision of the head of state on higher education. national intellectual elites through the theoretical training of future professionals and scientists who, on a competent and meritocratic basis, promote science, technology and art.

The dramatic course of the events of the Second World War determines on a national level a major change generated by the act of August 23, 1944, when the king intervenes in the executive and removes, with Soviet help, Marshal Antonescu at the head of the Council of Ministers. After three more attempts to establish a stable government by Generals Constantin Sănătescu and Nicolae Rădescu, under pressure from the Red Army which already occupied key strategic positions on Romanian territory, abandoned by the Allies who had initially encouraged it, on March 6, 1945 the sovereign established the first communist government in Romania led by Dr. Petru Groza.

Theoretically, after August 23, 1944, it returns to the constitutional regime before February 27th, 1938. In order to restore political, social and legal life in legal coordinates, the elaboration of a new Constitution being impossible, it was resorted to the elaboration and adoption of constitutional acts. , materialized in this way because they continued fundamental regulations of some relations regarding the establishment, maintenance and exercise of state power.

Lacking strength, unable to regroup for a new national ideal, crushed by pride and petty interests, the elite of the Romanian political class succumbs to the Soviet military boot with the forced abdication of King Michael I on December 30, 1947. In Romania the republic is proclaimed for the first time ever. The new political conditions, but especially the change on the form of government, made necessary the adoption of another Constitution, a fact made in 1948. The elaboration of the **Constitution of 1948** is made in the conditions in which, following the abolition of the monarchy, the People's Republic was proclaimed. The constitution had 105 articles in 10 titles. The principle of nationalization is enshrined, specifying the main categories of goods that were to become state property.

Under the guise of popular democracy, the new constitutional organization in fact established a unicameral legislature (the Great National Assembly) which also had some executive powers and a form of government de facto subordinated to the political power of the party. The transition to a centralized economy, the establishment of common property of the people and the abolition of all forms of private education.

Access to education is guaranteed to every Romanian citizen for whom the state organizes and develops compulsory and free primary education, with the granting of scholarships for students but also through a special attention paid to vocational and technical education (Art. 22). In preparing the cultural revolution necessary to promote the new ideology among the population, it is already provided in the constitutional text that the state supports the development of science and art (Art. 23). Cohabiting nationalities are guaranteed the organization of education in their mother tongue at all levels (Art. 24).

The new Ministry of Public Education also issued in 1948 the decree no. 175 for the education reform that will be organized exclusively by the state, for the elimination of book ignorance and the education of young people in the spirit of popular democracy. According to the new vision, the foundations of public education must be secular, democratic, popular and realistically scientific, and the organization of education involved preschool (for ages 3-7), elementary (7 years of study, the first four being compulsory), medium (4 years of study and only 4 types: high schools, pedagogical schools, technical schools, vocational schools) and higher. The Russian language becomes compulsory starting with the fourth grade of elementary school. Unique manuals are introduced, which in order to enter the circuit must obtain the approval of the party. Admission to higher education becomes conditioned by the political record, which makes many teachers lose their right to work in the department. The implementation of this Constitution meant in fact that Romania is moving towards the formalization of a totalitarian state, of communist type this time. In reality, because from the lowest level everything was subordinated to politics, the one who led the state was the president of the Romanian Workers' Party, Gheorghe Gheorghiu-Dej.

The second Constitution under the communist regime was a fundamental law in which not only the Marxist ideology was flying, but also the Stalinist concepts that produced the suffocation of the intellectuality and spirituality of the Romanian people. For the first time after 1864, Romania admitted through a fundamental law the role of an external power in guaranteeing its security. The articles on sovereignty and independence are mixed in paragraphs of the preamble that glorified the friendship with the Soviet Union and its fraternal help in organizing the state of the working people in towns and villages. Like the one from 1948, the **Constitution of 1952** has 105 articles grouped in 10 chapters and specifically mentions the way of territorial administrative organization naming the 18 new regions including Stalin (Brașov) and the Hungarian Autonomous Region (Art. 18). The popular democratic state fully assumes the role of organizing education throughout the country (Art. 17, letter h).

The special importance of education and art for the Workers' Party (PMR) and for their propaganda translated in reality as a sustained effort to spread, in all areas and in all environments, the principles of the new social order. This can be seen in Art. 43 which clearly specifies that within the Council of Ministers constituted by the Great The National Assembly, in addition to the relevant Ministers of the RPR (Romanian Peoples Republic), which are also mentioned in Art.50, the Chairman of the Higher Education Committee, the Chairman of the Cinematography Committee and the Chairman of the Art Committee of the party are fully mandatory members.

The constitutional act refers only to Chapter VII on the fundamental rights and duties of citizens. It is interesting to note that these include the right to work, the right to rest and the right to a pension (Art.77-79). Regarding education, the right to education is mentioned in Art. 80 taking place from the general elementary level, compulsory and free; through the system of state scholarships granted to deserving students and pupils in higher, middle and elementary schools, by organizing in addition to industrial enterprises, state farms, car and tractor stations and collective farms free vocational education for those who work.

The same article mentions that the state assumes responsibility for the development of the science of literature and art, so that the next articles will state a series of rights that, apparently, give a democratic character to the constitutional text. This is about ensuring equal rights for working people, in all areas of economic, political and cultural life. Privileges, chauvinism, racial hatred and nationalist manifestations are condemned, and minorities are guaranteed the use of their mother tongue in education, culture and administration. At the same time, the specification regarding the guarantee of equal rights of men and women but also of the special protection of the state for the family, mothers and children is kept (Art. 81-83).

Although in reality there was a policy in society to repress private initiative - through nationalization - to correct non-Moscow aligned thinking and to suppress any manifestations against the regime, Article 84 formally offers guarantees for freedom of conscience and the organization of cults, being very clear specified the fact that the church is separated from the school and that confessional education cannot be organized but only special schools for the training of clergy (Art. 84-85).

In the 13 years that it has been in force, the 1952 Constitution has been amended no less than 11 times. The number of changes was unprecedented in the country's constitutional history and can be justified by the far too specific nature of some articles that had to be later correlated with social, political and economic realities but also by the lightness of the procedure to amend it specified in the last chapter. The Great National Assembly, an extension of the single party, could very easily gather a two-thirds majority of the votes needed to make constitutional changes.

In a similar way, the legislation on education remains based on the lacunar organization contained in the 1948 decree, which will generate numerous changes on the same legislative text. The mimicry and servility of the new power in Bucharest lead to the realization of an educational organizational structure copied even just by translating the models found in the Soviet Union. This entails a number of unfortunate consequences, given that it has gone from a compulsory and free primary education with a duration of seven years, to a compulsory and free primary education of four years, with the possibility of optionally attending courses until the 7th grade. (Rădulescu 2006)

Shortly afterwards, in 1951, by decree number 56, even the middle and high school courses were transformed into a middle school that initially stretched for 4 years, then for only 3 years, identical to what was happening in the Soviet space. These changes very quickly proved their inefficiency, unable to deliver the results that communist leaders needed for the construction of the new workers' society. Thus, gradually in December 1953 - with the weakening of the adulation of Stalinism generated by the death of the "red tsar" in March of the same year - began the actions of returning to a nationally specific organization of the education system. Vocational and technical education is rectified, in 1956 the elementary school returns to 7 years, and the middle school to 11 years, with organization on real and human specializations, in 1959 the evening courses for employees appear, so that in 1961 the duration of the elementary school is restored. at 8 years old, and of high school at 12 years old. (Rădulescu 2006:313)

In 1965, on March 19, the first secretary of the P.M.R. and president of the State Council of the R.P.R., Gheorghe Gheorghiu - Dej. Even before the death of this communist leader, the country's economy had become fully socialist. The forced cooperatisation of agriculture had ended in 1962, private property had been practically liquidated in Romania. Soviet influence, however, had waned in intensity after the disappearance of Stalin and the withdrawal of the last troops of the Red Army from Romanian national territory.

The **Constitution** of the Socialist Republic of Romania in **1965** was the last Constitution of communist origin and is an expression of the cooling of relations between Romania and the Soviet Union correlated with a relative openness in Romania's foreign and economic cooperation policy. The political leaders in Bucharest, headed by Nicolae Ceausescu, feel the need to develop their own model of social organization based on the values of communism, a model that will continue a dictatorial regime whose end we will witness in December 1989.

In the 24 years that this fundamental legislative act has been in force, it has undergone 10 amendments, being republished 6 times (last time in 1986), the final text having 121 articles included in IX chapters. The Republic transforms from Popular to Socialist. The concepts of sovereignty and national independence are reintroduced and strengthened. Any reference to the Soviet Union disappears. The territory is consecrated as inalienable and indivisible. The party transforms from worker to communist, the administrative organization returns from regions and districts to counties, cities (municipalities) and communes (in 1968) and for the first time in our history appears the position of President of the Republic (in 1974).

The Constitution attributes the role of leading political force of the whole society to the Romanian Communist Party (P.C.R.) (Art.3). The separation of powers in the state is still abandoned, there are no more three powers but one power, the state power, the Great National Assembly being its supreme body, the only one still able to amend the Constitution with the vote of two thirds of its members. The supreme executive and administrative body remain the Council of Ministers.

Although we are witnessing a de-Stalinization of the country, the new Constitution remains only seemingly more permissive in terms of rights and freedoms for working people in villages and towns, peasants and now also socialist intellectuals. The elements of social protection of the family and young people are preserved and equality between men and women is still guaranteed (Art.17-20 and Art. 23-24) but restrictions on civil liberties are introduced, as it is mentioned that freedom of speech, the press, rallies, rallies and demonstrations cannot be used for purposes contrary to the socialist order and the interests of those who work. It is also explicitly mentioned that the state and the party support and protect existing organizations, which means, in fact, that any organization is controlled by the party (Art. 27-29).

In Article 21 we find our subject of interest, education. We find that from this moment in Romania, general education becomes compulsory and its free education now extends to all grades. It remains the monopoly of the state and is still severed from any connection with the churches recognized by the regime, which still have only the right to educate their religious staff (Art. 22).

Despite the failed experiments of the reforms in the early days of the communist regime, the compulsory implementation of elementary school almost led to the eradication of illiteracy and a considerable increase in newly built and adequately equipped buildings for the schooling of urban and especially students from rural areas. All these transformations also determined the appearance of a new education law that this time covered all the complex levels of the organization of the system. (Rădulescu 2016)

Law no. 11/1968 on education in the Socialist Republic of Romania establishes the general school for 10 years, with the aim of citizens acquiring general culture and knowledge necessary to exercise professions useful to society. From the very first article there is a return to a professional approach to the educational process that must contribute to the development of the socialist regime being the main source of culture and factor of civilization. The explicit obligation to learn Russian disappears, being subtly replaced, in Article 10, by the possibility of conducting courses, in certain schools, in one of the modern languages of wide circulation.

As an element of novelty, we can observe in Article 11 of the above-mentioned law the explicit commitment of the state, of the Socialist Republic, to provide jobs for both high school and higher education graduates. And in Articles 30 and 33 we find a clarification meant to encourage young people with special talents and skills for which some schools / high schools may organize a special program of operation. For high schools there is also an evening program and non-attendance education with a duration of 5 years (Art. 32).

The same law establishes that within each general school and each high school to operate school libraries to support the teaching activity (Art.43). All students are provided with textbooks free of charge (Art.63). Students who complete the day courses of high schools, but do not attend higher education are automatically introduced into the production process in accordance with the specifics of their specialization, subsequently having the opportunity to become masters Art.60).

Although the 1968 law exhaustively covered all aspects of the organization of socialist education, it would still be changed and replaced in just 10 years. The rapid industrialization of RSR, the forced urbanization generated by it and the growing desire of political bodies to spread socialist ideology and humanism in order to achieve the ideal of a new man and a new society contribute to the adoption by the Grand National Assembly of the Law on Education no. 28 of 1978.

Crowded with propaganda elements and references to P.C.R. for the development of the society on a socialist basis, the new law creates the appearance of an opening at university level, by allowing scientific collaboration with other states with different arrangements than the socialist one. The law provides for the training of students mainly in exact sciences and generalizes work for

the benefit of the community (in production or agricultural units) for both students and teachers. Almost all education focuses on polytechnic, engineering training to cover the production and development needs set out in the five-year plans.

Education remains fully and, in all grades, funded by the state, with free textbooks including high school and vocational schools. Compulsory general education remains at 10 classes (primary, secondary and high school I) with the aim of training citizens to reach a level of professional and cultural training appropriate to the development stage of the country and ensuring a thorough multilateral training of young people in science exact fundamentals (Art.8-11). This time, the obligation to study two foreign languages at the gymnasium and high school level is established (Art.14). The education system is more explicitly described (Art.23) as well as the categories of teaching staff (Art.138).

With a seemingly more democratic constitutional framework and subsequent legislation carefully crafted to comply with the political aspirations of the single party, society is experiencing a relative relaxation of economic and social life until the late 1970s. Externally, Romania during this period continues its policy of independence from Moscow and emphasizes the development of diplomatic and trade relations with states in the Middle East and the African continent. After 1980, however, Nicolae Ceaușescu returned to tougher methods of control over civil society. To this change of attitude of the regime is added an increase of the cult of personality of the communist leader but also a crisis of finished products and foods that would become critical and hasten the end of the regime.

However, the Romanian school managed to maintain its pace of development, maintaining a real coherence in operation, which allowed a series of extremely good results to be recorded in terms of schooling, literacy and accessibility to the educational process. But according to the study Romanian Education 1948–1989 - between drift and functional institutional recovery conducted by Dan Constantin Rădulescu and published in Quality of life review: a social policy magazine No. 3-4.XVII of 2006, the working force in education, culture and art, compared to 1950, increased continuously in 1960, 1970 and 1980, but subsequently recorded significant decreases in employees in the field in 1985 and 1989.

The dramatic events in Bucharest in December 1989 led to the collapse of the communist regime and a new form of political-administrative organization of Romania, after 41 years. Thus, the third republic, this time of a democratic nature, is consecrated almost two years after the revolution of December 1989 by the **new Constitution of Romania** adopted on November 21, 1991. This was the result of revolutionary activities that have characterized the beginning of a new period in the history of Romania in the conditions of the absence of a constitutional order in force. The most important role in this period was played by the National Salvation Front, which was formed in the first moments of the overthrow of the communist regime and which aimed to establish democracy and restore the freedom and dignity of the Romanian people.

The new democratic Constitution, drafted by the Constituent Assembly, was approved by a national referendum. The changes to be enshrined in the new constitution concerned not only the political regime reflected in the 1965 Constitution, but also the political institutions that ensured governance and were to be contained in 152 articles grouped into seven chapters (titles). The new state institutional apparatus was to have a new legitimacy, the rule of law, and political pluralism as international standards of democracy. The rule of law is enshrined in the Romanian Constitution in several articles stating that no one is above the law (art. 16, para. 2) or any group and no person can exercise sovereignty in his own name (art. 2, paragraph 2).

Similar to other European Constitutions, the new fundamental law of Romania is not limited to enunciating the rule of law as the current state of Romania but also lists its guarantees, including: ensuring the right to defense, control of constitutionality of laws, administrative litigation, independence and impartiality of justice, etc. The democratic state, although a relatively recent concept in constitutional doctrine and practice expresses the definitive connection of the Romanian state to the values of universal democracy. The Romanian Constitution enshrines several texts to the democratic state. Thus, art. 2 states that "national sovereignty belongs to the Romanian people, which exercises it through its representative bodies and by referendum", and art. 8 stipulates that "pluralism in Romanian society is a condition and a guarantee of constitutional democracy". The welfare state, even if at the present stage it represents more a desideratum than a reality, emphasizes the role of the state of guarantor of the general good. The concept of the welfare state is also a result of the rapprochement between the power of politics and civil society.

The usual rights and freedoms are specified in a democratic constitution: freedom of person, freedom of assembly and association, freedom of the press, inviolability of domicile, inviolability of property, right to vote. Unlike the democratic constitution of 1923, the one of 1991 also specifies the protection of the Romanian state enjoyed by Romanian citizens abroad, foreign citizens and stateless persons (those who have no citizenship) in Romania, compliance with all treaties on human rights signed by Romania.

The 1991 constitution also provides for the right to life, the prohibition of torture, forced labor and the death penalty, the protection of persons with disabilities, the protection of the family, children and young people. In order to guarantee the defense of citizens' rights, the People's Advocate (Ombudsman) institution is established, which can be appealed by any citizen who considers himself unjust. (Berceanu 2016:4-5) The right to education is mentioned in Article 32, where we find that any ideological references to the educational process disappear and that the existence of the organization of the private and confessional education system is allowed.

General state education remains compulsory (10 classes, according to the new Education Law 1995), free of charge and guarantees the observance of the right to religious education.

A new **education law** was drafted and adopted in **1995** and, although it remains in force for the next 16 years, it will undergo numerous amendments until its repeal. This specifies from the very beginning that education is a national priority in Romania, aiming to achieve the educational ideal with democratic means and by preserving the national identity. The financing is established from the state budget but also from the local budgets, there is also the possibility of support from other stakeholders.

Cults obtain through this law the right to establish and administer their own educational units. And the local authorities and the economic agents also now have the permission to set up and finance the school units, keeping the legal framework. The new national education system would include primary education (grades I-IV), lower secondary education (grades V-VII and grades IX-X of high school or school of arts and crafts), upper secondary education (grades XI-XII / XIII), post-secondary education and higher education. In terms of high school education, this time the vocational sector with an artistic profile is well highlighted. At the same time, the concept of a single textbook disappears. The clarifications regarding the teaching staff will be brought by the legislature from Bucharest, now again bicameral, by law no. 128 of July 16, 1997. And this normative act, although it will undergo a whole series of modifications, will remain for 14 years a landmark in the field.

Although in the process of democratic transition and economic transformation of society in order to move from a centralized economy to a market economy, the political class - strongly fragmented into formations from left to right of the chessboard - manages to unite around an ideal: that of the country's Euro-Atlantic integration. Thus, already experiencing the alternation in power, all the formations in the legislative arc are contributing to the adoption of the legislation necessary for the recovery of the democratic gaps, the establishment of modernizing reforms and economic development.

Territorial administrative reorganization remains a taboo subject, avoided by the entire political class for eminently electoral reasons, but the prospect of admission to the North Atlantic Alliance and obtaining membership of the European Union leads to a revision of the fundamental law. **Romania's current constitution** was approved by referendum in **October 2003**. It brings, among other changes, a number of clarifications regarding the organization of the state based on the principle of separation and balance of powers and the role of the Chamber of Deputies and the Senate in the legislative process. The new fundamental law, in force at this time, covers VII Chapters (Titles) containing 156 articles. However, the political reality of the last 10 years has shown that important constitutional clarifications are still needed, with the Romanian Constitutional Court often called upon to arbitrate constitutional political disputes between the power and the opposition.

The Supreme Law deals with fundamental rights, freedoms and duties in Chapter II. Throughout 38 articles, he talks about what citizens have the right to do, about their obligations, but also about what can harm these rights, or what can lead to their violation. It is one of the largest chapters of the Romanian Constitution, which demonstrates the state's interest in the freedom of the citizen, in his right to a life led so as not to feel harmed in terms of quality of life.

Access to culture is for the first time specifically mentioned and guaranteed in the same Chapter II, at art.33 where it is mentioned that (1) Access to culture is guaranteed, in accordance with the law. and to access the values of national and universal culture can not be restricted. (3) The state must ensure the preservation of the spiritual identity, the support of the national culture, the stimulation of the arts, the protection and preservation of the cultural heritage, the development of contemporary creativity, the promotion of Romania's cultural and artistic values in the world.

At the executive, legislative and institutional level, the Ministry of Culture ensures the regulation and the normative framework specific to the field, as well as the international representation of the Romanian State in matters of art, culture and patrimony. At management level, the Ministry deals with the administration and management of allocated assets, budgets and funds (through grants or grants) and the guidance, support and control of subordinate institutions.

The Ministry is the authority that ensures the protection of cultural heritage, including intangible heritage, by creating the specific legislative framework and through evaluation, restoration, conservation and enhancement programs. With regard to contemporary creation, its mission is to support and stimulate the development of this field, by providing an infrastructure and a legal, economic and financial-fiscal framework that meets at the same time the needs of creators and producers (public or private), and the public. Its responsibilities also include supporting and promoting the culture of national minorities and multiculturalism, as well as creating a specific framework for cultural education and for ensuring access to and participation in culture of the public from disadvantaged categories and areas. The Ministry of Culture has a central role in reforming and decentralizing the institutional system and public and private financing systems in the field, with an emphasis on transparency, equal and non-discriminatory access to public funds, efficiency and specialized evaluation. At the county level, there are 42 County Directorates for Culture, Cults and National Heritage as decentralized institutions. Within the apparatuses of the county councils there are county centers of culture, county libraries and

museums of county interest. Therefore, following the pattern above and at the level of territorial administrative units, similar institutions operate with the role of facilitating citizens' access to culture.

The scientist Nicolae Iorga said "Whoever forgets, does not worth it", that is why we are obliged each of us to preserve and strengthen the pillars that support us and give us uniqueness as a nation between the peoples and states of a world where globalization tends more and more uniformity, I mean here of course: culture, language, traditions and history. History shows us that we are able to play our own role on the world stage and that we belong, geographically and culturally, to Europe. We need to rediscover the true values of our people, we need to respect ourselves as people first and foremost as Romanians, emphasizing the features that give us uniqueness between the cultures of the world.

The right to education is a human right indispensable to the exercise of other rights and freedoms. Constituting the foundation that allows a conscious assumption and a free exercise of all fundamental rights and freedoms, in order to effectively fulfill the personality of each individual, the right to education occupies a central place in the study of human rights. As part of them, the right to education is the subject of numerous international and national instruments, with or without legal force. (Zlătescu et all. 2016:5)

Regarding the guarantee of the right to education, we find in the same Chapter II of the Constitution, in Article 32, the specification that the right to education is ensured by compulsory general education, by high school and vocational education, by higher education, as well as by other forms of education. improvement. National minorities can learn in their mother tongue. State education is free, but in addition to state units, it can take place in all grades and in private or denominational units. University autonomy is guaranteed. The state ensures the freedom of religious education, according to the specific requirements of each cult, guaranteeing its organization in state schools.

The framework law that currently regulates the organization of the educational system and the functioning of pre-university and university education is Law no. 1/2011 with subsequent amendments and completions. According to it, at least 6% of the gross domestic product of that year should be allocated annually from the state budget and from the budgets of local public authorities to finance national education. In addition, educational institutions and institutions can obtain and use their own income autonomously. For the scientific research activity, the annual allocation should be at least 1% of the gross domestic product of the respective year (art. 8).

Since Article 3 of this law, we are explicitly presented, this time, the principles that govern pre-university and higher education in Romania: equity, quality, relevance, efficiency, decentralization, public responsibility, cultural identity, national identity, equal opportunities , university autonomy, academic freedom, transparency, freedom of thought, focus on the beneficiary, social inclusion, inclusion of parents, religious freedom, dialogue, consultation and respect for the right to opinion.

The right to education is the most important cultural right, because without this right the human person cannot assert himself in its fullness. The education system is the main subsystem of the education system, which includes all institutions specializing in the design and implementation of education functions through specific contents and methodologies, formally and non-formally organized. (Zlătescu et all. 2016:9). As reality shows, pre-university schools operate in a social context of immediate proximity, in the smallest communities (villages, neighborhoods, communes, cities), where the students come from. The whole community has expectations for which educational institutions they are called to answer them. In paragraph 2 of art. 10 of the National Education Law no. 1/2011 specifies that in each locality educational units or study formations are organized and operate with the Romanian language of instruction and / or, as the case may be, with the teaching in the languages of national minorities or schooling is ensured. to each student in his or her mother tongue in the nearest locality where possible. At national level, in the 2020-2021 school year, according to the Ministry of Education, there were a total of 18,435 pre-university education units (of which in urban areas: 6,568 and in rural areas: 11,867).

Taking into account the changes in society, the law adopted in 2011 proposed a new vision on education, focused on values, creativity, cognitive abilities, basic knowledge and knowledge, skills and abilities of direct utility, in the profession and in society. And we could say in a similar way to the law of 1968, the normative act of 2011, proposes a whole "ideology" of the principles of modern, democratic education, useful for the development of society in the new democratic path. However, the ever-increasing evolution of new information technologies, the economic situations generated by the various geo-political or health crises and the transformations of the labor market have imposed countless amendments to the law.

Unfortunately, these aspects have required in the text of the law extremely many clarifications regarding the costs of education per student, which, from a personal point of view, puts unjustified pressure on those called to perform the educational act, which is later reflected in the quality exercise of the profession and implicitly in the final result, namely the level of preparation of the students. Moreover, excessive focus on aspects of efficiency, effectiveness and economy and on the cost-benefit ratio in culture and education may even interfere with the constitutional principle of guaranteeing free access to education and ensuring access to culture.

These two areas, together with those concerning the guarantee of the right to health and a clean environment, cannot be approached in a similar way to private management. The state must take care of all its citizens, guaranteeing them all their rights without balancing the material cost necessary to guarantee these rights. Of course, good budget management is necessary to avoid waste and fraudulent use, but any other vision that opposes financial efficiency guaranteeing and respecting rights and freedoms contradicts the very fundamental principle of the Constitution stated in the first article, namely that Romania is a state of law, democracy and society, in which human dignity, the rights and freedoms of citizens, the free development of the human personality are supreme values and are guaranteed.

As mentioned, education takes place throughout the life of the individual as a continuous process in which the methods of education and instruction are constantly improved depending on the educational stages, but also depending on the cultural context. But education is not only a cultural process, but also an important active factor in the development of society, it being a precondition for economic, political, social progress. Education allows for better economic and social integration, and investment in education leads to accumulations of human resources, indispensable for sustained and sustainable social change.(Zlătescu et all. 2016:6-7)

Through article 11 of the National Education Law, the executive is responsible for ensuring education in Romanian for Romanian communities abroad. Compulsory general education was 10 classes until 2019, but it was free in state institutions until the end of the high school cycle. Throughout several articles, this time we find explicitly a series of attributions that are now distributed to the executive and legislative bodies of the territorial administrative units in order to ensure equal access to pre-university education and training.

The 2019 amendments of the law, although keeping the organization of pre-university education as previously specified, brings clarifications regarding early education and vocational education, but most importantly changes the duration of free compulsory general education in Romania. Thus, with gradual application until 2030, the pre-school cycle (small, medium and large kindergarten group), the primary cycle (preparatory class and grades I-IV), the gymnasium cycle (lower secondary grades V-VIII) and the full high school cycle become compulsory. (Upper secondary, grades IX-XII / XII), which makes us have a total of 16 years of compulsory pre-university schooling.

Final considerations

As already mentioned, nowadays there is an acting law on national education with a high degree of complexity, it includes extremely specific provisions related to the pre-university curriculum but also on the status of teachers (in this regard repealing the law no. 128 of 1997). The one who supervises the entire educational process is the Ministry of Education, which aims to ensure the harmonious development of all its beneficiaries, by promoting excellence and ensuring equal access to education. The county school inspectorates and the School Inspectorate of the Municipality of Bucharest are decentralized public services of the Ministry of Education that are organized at county level, and act to achieve the educational objectives provided by the Law on Education in the field of pre-university education.

They carry out the entire activity based on the Education Law, the decisions and ordinances issued by the Romanian Government, all normative acts deriving from the content of the Education Law, as well as the orders and specifications elaborated by the Ministry of Education. The inspectorates also have the task to: apply policies and strategies; to control the application of the legislation and to monitor the quality of the teaching-learning activities and the observance of the national standards / performance indicators; through the school inspection to control, monitor and evaluate the quality of the management of educational units and institutions; to ensure, together with the local public administration authorities, the schooling of students and to monitor their participation in courses during compulsory education as well as to coordinate high school admission, national assessments and school competitions at the level of educational units in the county, in Bucharest.

Over the time it has been observed that regimes that violate the rights and freedoms of the individual, sooner or later are overthrown, their place being taken by democracy, people wanting to regain their freedom with all that entails: dignity, power, choice, will, etc. Freedom cannot be oppressed for long, human nature, programmed from the beginning not to be restricted, always demanding the right to be allowed to express itself.

Regardless of how it is achieved, as formal, non-formal or informal education, education is an essential condition for the development of human personality, always having, in the history of society, the purpose of moral, intellectual and physical improvement of people. At the same time, by providing each individual with the means to exercise his or her own rights, education indirectly serves human rights as a condition for progress. Thus, after establishing the principles of the right to culture and education that emerged from the synthesis of relevant theoretical currents in the field, after analyzing the impact of their transposition in the activity of international bodies with mission in defense of human rights, we observed the transposition into Romanian constitutional law of cultural rights. of the right to education, from the Organic Regulations, to the Constitutions of the Principalities, of the Kingdom and then of the

Republic. At the same time, we briefly presented the main provisions of the subsequent legislation, with reference to education, meant to facilitate, ensure and guarantee access to education and culture.

Even if formally, in writing, all the conditions are met or there is an openness to them, a real test of democracy and freedom is not what is said in a constitution, but how it is implemented. Societies are not naturally destined to survive [...] moreover, they survive only if this code is inoculated into each individual, if a few minimum rules of behavior are imposed on each.

In order to avoid the assimilation and dissolution of one's own values in the face of the increasingly aggressive waves of the world's great cultures, it is necessary to build a coherent and well-applied national strategy for each region. Free people are in reality educated people. That is why we should consider education as a free act, because it supposes the free development of the human person, and also as an act of freedom formation, as it represents the means by which the other fundamental human rights and freedoms are realized.

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EU and the Republic of North Macedonia - relations and influence, after the renaming period

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Abstract

The Republic of North Macedonia has been listening to the explanations for the refusing to join the EU for almost two decades, which, although different, still contain the words similar to; "not ready" for EU membership or "too early". The mutual "fatigue" has brought the EU and North Macedonia, as well as the other aspiring countries from the Western Balkans, to a dead end. In general, "rich" Europe is justifiably concerned about the implications of admitting new members whose economies and policies are underdeveloped and require decades of attention and support. However, inactivity also comes at a price. North Macedonia and the other Western Balkan countries outside the EU are a serious geostrategic challenge and may have as many consequences as the accession of these countries to the Union, regardless of their real readiness. After the French "no" for Albania and North Macedonia, part of the Western Balkans was integrated into "Mini Schengen" or "Open Balkans". This asks the questions: Is the "Open Balkans" a substitute for the EU? Does the EU leave a space for the Western Balkans to be a target of Eurasian geostrategic interests? Is North Macedonia ready to start the process of pre-accession negotiations with the EU or does it expect a political "reward" as a support of the concessions it has made in the name dispute with Greece? This paper aims to show the EU's attitude towards North Macedonia.

Keywords: Western Balkans, EU, Republic of North Macedonia, integration

Introduction

Promises for a European perspective of the Western Balkan countries given at the Thessaloniki summit in 2003 are fading, and the EU enlargement process to the Western Balkans in general has virtually stalled. The Republic of North Macedonia was the first country in the Western Balkans to sign a Stabilization and Association Agreement with the EU, and only a year later became a candidate. So far, however, bilateral disputes with Greece and Bulgaria have generally blocked accession talks, although the political, economic and social crises that North Macedonia has gone through have also affected its progress. After Greece lifted the blockade on Macedonia's Euro-Atlantic integration in 2019, the country became a NATO member the following year, and the Council decided to open accession negotiations in March 2020. But despite the aforementioned bilateral issues, the new EU enlargement methodology approved in February 2020, at the request of France, could also hamper the pace of accession talks between North Macedonia and Albania. After it became clear to everyone in the region that the political will among the powerful in the Union was not in favor of its expansion to the Western Balkans, and especially after the French "no" to Albania and North Macedonia, part of the Western Balkans was integrated with the "Open Balkans" initiative., with ambitious intentions for reconciliation and prosperity and with a clear message to fill the void left by EU membership. This begs the questions: Is the "Open Balkans" a substitute for the EU? With its attitude, does the EU leave room for the Western Balkans to be a target of Eurasian geostrategic interests? Is North Macedonia ready to start the process of pre-accession negotiations with the EU or does it expect a political "reward" in support of the concessions it has made in the name dispute with Greece? This paper aims to show the EU's attitude towards North Macedonia. The first part of this paper will analyze the EU's attitude towards the Western Balkans, with a brief overview of the "Open Balkans" initiative, while the second part will analyze the EU's attitude towards North Macedonia, especially after the large and unprecedented concession with the name change from which appropriate conclusions will be drawn.

1. Integration of the Western Balkans into the EU - two decades of geopolitical "history" with a promise for a European future

The Western Balkans is a two-decade-old geopolitical "history" about the region that from time to time is given a European context and a promise for a European future. Brussels sees those societies as corrupt, despite turning a blind eye to the fact that as many Germans have the same opinion of their politicians on the issue. However, in this context, the most worrying thing is that historical prejudices and humiliation of the countries and peoples of Southern and Eastern Europe by their neighbors from Northern and Western Europe are reviving in Europe. (Dabrowski and Myachenkova, 2018), (Dr. Fraenkel, 2016). Although almost two decades have passed since the Thessaloniki summit and at times it seems that there are small steps forward, the overall EU enlargement process to the Western Balkans has practically stalled, leading to frustration in the region. While Croatia is already part of the EU, North Macedonia and Albania are still waiting in the hallway, others like Serbia-Montenegro find it difficult to move closer to membership despite open chapters and negotiations, while Bosnia and Herzegovina and Kosovo are far behind in those processes. At the last EU-Western Balkans summit in Brdo, Slovenia, the EU confirmed that it was fully occupied with itself and its problems. Not only did the meeting bring nothing concrete to the region when it comes to enlargement, judging by rhetoric and analysts, EU membership is only a dream for the Western Balkans. The meetings on the sidelines of the meeting between the French President and the German Chancellor and the leaders of Kosovo and Serbia regarding the relations between Belgrade and Pristina obviously did not provide any results, given the current state of the administrative border between the two countries and the calls of the EU High Representative for Foreign Policy, Josep Borrell for the resumption of the EU-mediated dialogue. A similar outcome ended with a breakfast between the leaders of North Macedonia and Bulgaria, together with Commissioner Varhelyi and the Prime Minister of Slovenia, where the topic was the unblocking of the negotiations for the accession of North Macedonia to the EU. Analyzing this year's statement, analysts conclude that the EU is emphasizing the fact that the word "enlargement" was included in the text of the Declaration adopted at the summit, shamelessly emphasizing that this is their ambition at the moment. What worries the region the most, which has provoked strong reactions from both analysts and local leaders, is the phrase: "We also recall the importance of the Union maintaining and deepening its development, providing the capacity to integrate new members." . Even the youngest Balkans know the diplomatic translation of this. For those familiar with the situation in the EU, it was not surprising that the proposal of the Slovenian Presidency of the EU to provide some time frame for membership of the Western Balkan countries was immediately rejected. (Tumanovska, 2021). Radio Free Europe / Radio Liberty journalist Richard Jozwijk, in his review of the Summit, asked the decade-long question that plagues the citizens of the region, Are the hopes for integration in vain? If figuratively and truly Chancellor Merkel was the loudest at the EU-Western Balkans Summit in Sofia who told the Prime Ministers of Bulgaria and North Macedonia: "There must be understanding in the region: Reconcile! That is very important! ", Then at the Brdo Summit it was the Albanian Prime Minister Rama. "We have learned, on the difficult road, not to expect anything, because we have seen that Europe is not in a very good position, there are many internal problems and enlargement is not awaited with enthusiasm," Rama said. (360 degrees, 2021). The reasons for the status quo are on both sides. It is a vicious circle where the citizens of the Western Balkans, on the one hand, expect help and support from the EU in the fight against corruption and organized crime, as well as recognition of any progress, and the EU, on the other hand, notes to the Western Balkans that corruption is still high, and thus countries do not meet the conditions for admission, whether technical or substantive. This is what, among other things, demotivates the aspiring countries of the Western Balkans to engage in meaningful and lasting reforms, where progress from Brussels will be recognized, but not only declaratively, but substantially, by starting the negotiation process. (Dr. Fraenkel, 2016). Some European observers have long warned that there is "enlargement fatigue", especially among EU citizens who are concerned (given the current political and economic situation in the Union) about the Union's ability to absorb new countries. Some see "institutional fatigue" as early as 2005 with the Dutch and French rejection of the European constitution, perhaps most importantly "financial fatigue", especially in the wake of the eurozone economic crisis and dissatisfaction with the cost of rescuing failing economies. - further the incoherent policy of covering the costs related to the refugee crisis in 2015, as well as the crisis related to the Covid pandemic. But this calls into question the credibility of the EU, when in relation to a good part of these issues, it is not able to formulate a coherent and timely policy for sharing responsibility and costs, especially since the EU should take into account the principles of protection of common economies and security, strengthening a common sense of identity and promoting common "values" or principles on which it is based. That is why the political elites of the EU have difficulty explaining to their citizens, ie justifying why the union should accept another poor Balkan country, which will cause financial implications directly on the backs of the average citizen of EU member states. (Dr. Fraenkel, 2016) In addition, the long recession in which western Greece has long removed from the scene perhaps the most ardent supporter of Euro-Atlantic integration in the Western Balkans. (Plakoudas, 2020). In addition, with the UK leaving the EU, the countries of the Western Balkans have lost a key supporter of enlargement. Although some member states have become critical of enlargement, the United Kingdom, along with Germany, has promoted reform and enlargement for the region. (Bieber, 2016). On the other hand, the current developments on the German political scene, some analysts have a reasonable suspicion that with the departure of Angela Merkel, the driving force for the Western Balkans will disappear or may die, not only through the Berlin Process, which is one of the largest German foreign policy initiatives and who is associated with Chancellor Merkel, but also through the Chancellor's personal commitment to the European perspective of those countries. (Fileke, 2021). Although greater progress and

regional co-operation were expected from the Berlin Process, it is still barely visible, especially in reconciliation and mutual political recognition. As part of that process, important mutual promises were made to refrain from using bilateral disputes to obstruct the EU integration path. (Huszka, 2020). At a time when the EU itself is paying less attention to the region, the apparently grim results visible through several initiatives such as RICO for young people in the region, the abolition of roaming charges and preparations for a common regional market may be a more realistic prospect than regional integration. EU. (Fileke 2021) Not only through the Berlin Process, the EU in general has not paid enough attention to rule of law issues, especially at a time when democratic standards are deteriorating dramatically. (Fouéré, 2019). With its policies towards the Western Balkans and its justified fears of instability, the EU has allowed the principle of stability at all costs to encourage autocratic tendencies throughout the region. On the other hand, the EU itself is facing its own internal crisis of democracy, which refers to the cases of Poland and Hungary where there were efforts to disrupt the judiciary, media and civil society and tendencies to allegedly leave the EU. In addition, authorities in Romania, the Czech Republic and Croatia have been blamed for corruption at the highest levels. Hence, the EU has a serious problem in terms of credibility, especially since it can not be held as an example that would be considered by countries that are close to the EU, if the stories of successful democratic transformation in Central European countries are questioned or the same are pushed. (Vogel, 2018). On the other hand, the negative perception of the Western Balkans' accession to the EU, among some EU members, is reflected in the slow pace of political and economic changes that have taken place in Bulgaria and Romania since their accession to the EU. The inconsistent EU policy is also reflected in the EU accession criteria, which should be universal for each aspirant country, for example: judicial reform, guaranteeing media freedom, eradicating corruption, strengthening the rule of law. The application of different accession standards for each country is considered on the one hand and allows each country to meet the accession standards according to individual progress, but on the other hand it is unpredictable and even discriminatory in the worst case that has been proven many times so far. especially in the case of the Republic of North Macedonia. It is already tiring for the citizens of the Western Balkans to listen and comment on the same thing and make things look like a spoiled long gameplay that constantly plays the same chorus, especially when the explanations are repeated that their country is not "ready" yet, "it is too early", or the "financial risk" of admitting a new member outweighs the benefits that could result from its accession to the EU. For them, EU accession means and aligning to some extent with the economies and rule of law of "rich" Europe as an example in England (before leaving), Germany or Sweden, which are also the most common destinations for Balkans immigrating to the EU. They are convinced that their countries' membership in the EU will reduce corruption, because the union will be the guarantor of that in one way. Given the situation, the question arises: What could be the consequences, for both Southeast Europe and the EU, if the countries of the Western Balkans remain in the current state of uncertainty for longer? It is more than clear that inactivity will affect the trend of downward economic activity and the decline of the political environment and the rule of law, which will inevitably provide an upward trend in organized crime and as a result unregulated migration abroad. Second, such a trend will undoubtedly arouse irredentist ideas of redrawing the borders of the Balkans, despite the fact that the United States has sent a clear message that it opposes any redrawing of the borders of the Balkans. The public is constantly waving with the ideas of one-nation states, especially after the non-paper of Janes Jansa to redraw the borders in the Western Balkans. No less provocative, according to analysts, are the statements of the former OSCE Ambassador to Pristina and a major Albanian lobbyist, William Walker, who called on all Albanians living outside their countries to unite in the upcoming elections, criticizing local Albanian politicians. that they are corrupt and dependent on international mentors. (Tanevski, 2021) Additionally, the possible escalation of the tense situation in the north of Kosovo could open that Pandora's box and set fire to the "Gunpowder Barrel" and bring new unrest and setbacks in the region. It is undeniable that the EU has been a catalyst in resolving ethnic conflicts and bilateral disputes in the region, yet it is generally difficult to deal with nationalism (to some extent) not only in its own ranks, but it is clearly a greater force than federalism in the Western Balkans. (Huszka, 2020), (Plakoudas, 2020). Third and perhaps most importantly to reduce interest in the EU and reduce the EU's soft power mechanism, it encouraged other players to become more active. (Vogel, 2018). Eurasian interests in the region are a serious challenge for the future of the region and the interests of the EU and the United States on the other hand. China, through its BRI and 17 + 1 initiatives, is financing a number of infrastructure projects across Central and Eastern Europe, including the Western Balkans. What worries the West especially about China's influence on member states in those initiatives and their future seen through the prism of China's diplomatic "debt trap", "mask diplomacy" and "vaccine diplomacy" phenomena, especially since such influence reflected through Hungary and Greece, directly in the Council of Europe. (Popovski, 2019). The EU's persistent policy towards the Western Balkans on the principle of the "carrot stick" was evident during the Corona crisis, especially in terms of accessibility and subsequent distribution of vaccines to those countries. In that context, the EU simply forgot about the Western Balkans, and the vaccines came first from Russia and then from China and Turkey. Brussels has only sought to revive EU enlargement to the Western Balkans with an investment plan to help the region hit hard by the Covid 19 pandemic (Blewett-Mundy, 2020). Russia's engagement in the region is primarily seen through the prism of preventing the Western Balkan countries from joining NATO, and it is not enthusiastic about their EU membership. The finger was also pointed at Moscow for influencing the local media and the production of fake news through them in the Western Balkan countries. In addition, there was evidence of Russian involvement in the failed October 2016 coup plot in Montenegro. Turkey, on the other hand, is active in the economic and cultural spheres, especially in Albania, Kosovo and Bosnia and Herzegovina. (Dabrowski and Myachenkova, 2018). In the absence of the EU, the United States has focused on the region, albeit briefly. According to Piero Fassino, Chairman of the Foreign Affairs Committee of the Italian Chamber of Deputies, the prospects for Euro-Atlantic integration in the Western Balkans are a necessary condition for ensuring stability not only in the Balkans but also

in Europe, while the decision to expand NATO According to him, Southeast Europe is correct and far-sighted. (European Western Balkans 2021). An additional message for the careful conduct of all actors in the Western Balkans was sent by the US administration through the Executive Order of US President Biden. (Dimovski, 2021). But apparently when the EU does not have a clear strategy for the region, and it is a target of Eurasian influences, the United States "returns" to the Western Balkans by delegating serious "heavyweights" in US diplomacy who are well aware of the terrain and its circumstances. Names known to the public have been part of a series of processes and political developments in the region, such as Gabriel Escobar replacing Matthew Palmer as State Department Special Representative for the Western Balkans. in Pristina, Michael Murphy is the new US ambassador to Bosnia and Herzegovina, and James O'Brien, who has been nominated as the State Department's sanctions policy coordinator, will also deal with the Balkans. (In the Center, 2021). It remains to be seen what winds this bulldozer US diplomacy will bring to the Western Balkans.

Open Balkan substitute for the EU?

With this geopolitical situation in the region, and with the clear picture that no one in the region has illusions that the Western Balkan countries are desired in the EU, and confidence in the EU promises is almost completely lost, some Western Balkan countries have launched the Open Balkans initiative. (European Western Balkans 2021). This currently means that there are two initiatives in the region that have the same or similar goal. The Berlin Process on the one hand where the primary goal was (is) to encourage cooperation and the formation of a common regional market which is encouraged by Germany primarily EU partners, and refers to all 6 countries in the Western Balkans and on the other hand the Open Balkans, which also promotes co-operation, but currently consists of only Macedonia, Albania and Serbia. The Open Balkans initiative has generally been criticized for its inclusion, although all but Kosovo were invited. Such new developments for analysts not only promise greater stability and prosperity, but also demonstrate initiatives in the region. (Powell, 2021). According to the initiators, the goal is to facilitate trade, movement of citizens and development of the economy, which was initially verified with three memoranda: for cooperation to facilitate the import, export and movement of goods in the Western Balkans, for free access to the market on the Labor of the Western Balkans and the Agreement on Cooperation for Disaster Protection in the Western Balkans. (DW on Macedonian, 2021). The initiative at the moment has a clear message that it is filling the empty space until the desired entry into the EU and is not a substitute for EU membership. Speaking at the forum and the presentation of the Open Balkans initiative, Vucic said: "We are neither stupid nor naive to believe that someone will work for the benefit of our countries if we do nothing." While in the same context, Zaev added: "We can not wait for all the internal problems of the European Union to be resolved in order to move forward. "Once the European Union is ready, we are here." (Popovski, 2021). All three leaders agree that only with an integrated and connected region can three countries move towards the basic goal - EU membership. "Because we can be nothing but countries from the European Balkans," Zaev said. (DW on Macedonian, 2021). The behavior of Albanian politicians in the region is interesting, which could bring a cooling of relations between Albania and Kosovo, at least according to some experts. (Brezar, 2021),. While Kosovo sharply criticizes the initiative, calling for the revival of Yugoslavia with a clear message that they would integrate more quickly through the Berlin Process than through the Open Balkans, Rama wants to impose himself as a European politician who has abandoned ideas of a Greater Albania. avoid the presence of events organized up to the initiative. Although the EU does not seem to perceive this initiative, reactions from Berlin and outgoing Chancellor Merkel as the main promoter of the Berlin Process, which gave rise to the initial initiative for a common economic market for all Western Balkan countries, through which in the future they would move closer. to the European market and the EU, are skeptical, with a clear message that in order for it to succeed, all the countries of the Western Balkans must join. The EU Special Representative for the Pristina-Belgrade Dialogue, Miroslav Lajcak, described the Open Balkans initiative as "unhealthy competition". On the other hand, the United States clearly supported the Initiative and sent encouraging messages to the other three countries to seize this opportunity and join the Initiative as soon as possible. After the summit in Skopje, European Commission spokeswoman Anna Pisonero backed the leaders' commitment to regional co-operation. (Ilievski, 2021). Regional and world media conclude that the Open Balkans is a response to the "foggy European chimera". The Bulgarian daily Duma reports that "some in Brussels think that 'mini Schengen' is a kind of integration separatism, which instead of a European alliance, creates a Balkan alliance," concluding: "The EU must be satisfied that the three countries are disappointed with "Slow European integration will mitigate the mini-economic alliance." The French newspaper "Liberation" assesses that the Open Balkans initiative "offers integration, which is very far from what is happening and what the European Union is currently offering." (LOCAL, 2021). Some analysts comment that in the future the initiative may generate positive revenues for the three countries and others who are expected to join, especially under pressure from the business community, primarily Bosnia and Herzegovina and Montenegro, but also Kosovo whose the economy is dependent on the economies of the three countries, although they will remain unequal individually and as a region. In addition, many successful Balkan companies are owned by EU corporations that in and day can have a positive impact on the support of the Initiative. (Mikovic, 2021). What is expected in the future is the reaction of European officials and leaders to the "fall" of the borders from January 1, 2023 between the countries of the Open Balkans. It is a major security challenge, according to some experts, ie uncontrolled movement of migrants, drug and human trafficking (Plakoudas, 2020) and Schengen abuses with uncontrolled migration of fake asylum seekers. (CAPITAL, 2021) Part of the public compared this initiative with the Visegrad

Group, especially after the reaction of the Visegrad Group countries that welcomed the initiative, however such comparisons are inadequate, primarily because they are two completely different initiatives.

2. Republic of North Macedonia and the EU - relations and influence

The full membership of the Republic of North Macedonia in the EU has been a key strategic priority since the declaration of independence in September 1991 when the then political leadership expressed a clear and unequivocal interest in Macedonia becoming part of the EU, which was later formalized with the signing of the Stabilization and Association Agreement. 2001. Macedonia has had candidate status for EU membership since 2005 and since then a whole generation of Macedonian citizens has grown up, and from this perspective, although it seems far from EU membership. It looks scary and frustrates Macedonian citizens, especially young people who have been migrating en masse in the last decade, especially to "rich" Europe. EU enlargement policy is a strategic investment in peace, democracy, prosperity, security and stability in Europe. Hence, the opening of the long-awaited accession negotiations not only remains a strategic goal of all political parties in North Macedonia, but also of the whole country and its citizens, because it will finally put the country on the path to the EU. That is what was and still is the main driving force for reforms in the country, which are primarily aimed at creating political stability. (Open Society Foundation - Macedonia, 2019). Not only declaratively, in order to achieve this strategic goal, North Macedonia embarked on a difficult process of reforms, went through a series of political turbulences and severe political crises, the resolution of which was mediated by the United States and the European Union. In fact, the United States and the European Union mediated in all major political processes in North Macedonia. Their engagement was visible not only during the end of the civil interethnic conflict in Macedonia in 2001 and the signing and implementation of the Ohrid Framework Agreement, but their engagement was crucial in resolving the political crisis in 2015-2017 with the signing of the Przino Agreements. guarantor and mediator in resolving the name dispute with Greece and the signing of the Prespa Agreement under the auspices of the UN. All these processes and reforms were positively assessed by the EU, with promises for the European future of Macedonia, but at least so far without any concrete progress. (Dimovski, 2021). The signing of the Prespa Agreement and its implementation caused additional serious political upheavals not only in North Macedonia but also in Greece. Its ratification in the Greek Parliament meant the removal of the only obstacle for the Republic of North Macedonia to join NATO and an open path for pre-accession negotiations with the EU. The long-standing dispute, which seemed unresolved in the eyes of the two nations, brought an agreement that for some experts is clinically dead, an agreement-attached device. (Apasiev, 2018). Three years after „Prespa“, analysts are asking themselves the question, will „Prespa“ be problematized or capitalized? Dr. Malinka Ristevska Jordanova from the Institute for European Policy - Skopje shares the opinion of the public in North Macedonia that the external praise for the difficult compromise with the Prespa Agreement does not stop, but despite the large and unprecedented concession made with the name change, so far led to NATO membership only, and the second major promise of EU membership seemed to be forgotten by European leaders who visited Macedonia shortly before the referendum. The public witnessed intensive visits in the run-up to the referendum, to the current foreign diplomats, ministers and representatives of the international community, not remembered in the history of the country since its independence. Although the restraint of non-interference in the internal affairs of the country was emphasized in the foreground, the calls of the diplomats to the Macedonian citizens to participate in the Referendum on the name change with the promise of a Euro-Atlantic perspective were unanimous. The current US Secretary of Defense, James Norman Mattis, said the upcoming referendum was the most important vote in the country's history, drawing public attention to the fact that Moscow was funding pro-Russian groups to overturn the name change referendum. The current NATO Secretary General, Jens Stoltenberg, also visited the Republic of Macedonia. After the meeting with Prime Minister Zaev, he said that the country has a historic opportunity to become a member of NATO and the European Union, but must agree to the name agreement. Also, the outgoing German Chancellor Angela Merkel paid a visit to Macedonia with a message that the country can be part of the European family, but much work is needed, and that is not possible without a successful referendum. The then High Representative of the EU for Foreign Affairs and Security Policy, Federica Mogherini, met with leaders of the political parties in Macedonia with an appeal that a successful referendum is crucial for EU membership. The visits of the then US Secretary of State for European and Eurasian projects were also noted Wes Mitchell, the former Austrian Chancellor Sebastian Kurz, the then Minister for Europe and America in the British Foreign Office, Alan Duncan, as well as numerous other current and former foreign politicians and diplomats with a clear message for the European future of Macedonia, but through a successful referendum and acceptance of the Prespa Agreement. (Fazlagikj, 2018). Although the pressure on the citizens was great, it was still unsuccessful. The United States and the European Union have been quick to criticize Moscow for sabotaging it with motives to discourage the country from pursuing EU and NATO integration. The conclusions of the supporters of the process, despite the fact that the referendum failed and did not reach the appropriate threshold, were in the direction that a huge number of citizens went to the polls and supported the Prespa Agreement. But from today's distance it is becoming clearer that „Prespa“ did not give the expected results, not only politically, but also formally did not produce any international legal actions and obligations for the EU. It is obvious that there are no guarantees for the start of negotiations in due time as promised and predicted that they will occur immediately after the implementation of the Prespa Agreement and the change of the name of the country. "The delay of the process by France, and then the veto by Bulgaria, seriously jeopardized the credibility, but also increased the distrust in the EU in the region," Ristevska said. (Blazevska, 2021). After the

French "no" for North Macedonia and Albania, the public noticed the discrepancies in the French argument presented by the French representatives in North Macedonia and the one announced in Brussels by Macron. (Blazevska, 2019). Although some authors argue that the French intention is to initiate substantial reforms in the EU accession process with the Western Balkans (Nechev and Nikolovski, 2020), the statements still create additional confusion about the motives of the French veto. It should be noted that all the latest assessments of the European Commission were / are without any additional conditions, although in the past there were periods and reports when this was not the case. (Blazevska, 2019). If France's intentions were to advance the accession process with greater credibility and greater political engagement by EU member states, it has become more complex than ever and has provoked political politicization in some EU member states. And that is exactly what happened to North Macedonia, regarding the veto from Bulgaria. (Nechev and Nikolovski, 2020). On the other hand, a non-binding narrative of the EC Reports summarized only in conclusions and recommendations, which should be realized exclusively in good faith of the candidate countries, in order for the next report to contain moderate praise or remarks on the work done, without specific deadlines for operationalization, without a clear narrative of recognition of the progress that will result from binding steps for member states calls into question their relevance and credibility. Consequently, local leaders, instead of being encouraged even to be forced to approach the essence of EU membership standards, are motivated only to go through those criteria of the accession process mechanically. The latest report of the European Commission also contains praise and criticism, with the well-known narrative "to some extent prepared", "moderately prepared", "to some extent prepared", "largely" and so on. Regarding the political criteria in the Report, which are the most common reason for criticism, it is said that Northern Macedonia has continued its efforts to strengthen democracy and the rule of law. The country has demonstrated its commitment to achieving results in key areas, including through the Europe Home and Anti-Corruption Action Plan 21 agendas. The country has continued to consolidate its experience in investigating, prosecuting and prosecuting several corruption cases, including high-level ones, and has strengthened its institutional framework, in particular the State Commission for the Prevention of Corruption (SCPC) and the Prosecutor for Organized Crime and Corruption (OCCPO). It was noted that cases brought by the former Special Prosecutor's Office continued to move forward, with a number of first-instance verdicts and new cases opened on the basis of investigative material from the former Special Prosecutor's Office, and the State Commission for Prevention of Corruption opened several cases, including senior officials. (European Commission, 2021). In this regard, as a confirmation of the "moderate progress" in the fight against corruption and in almost the same period with the publication of the EC Report, the anti-corruption activists reacted that the institutions do not act on their initiatives for which they have open cases, ie that several of their cases are stuck. and for months they do not receive a response from the competent institutions, they almost came (DW in Macedonian, 2021). In the section on organ control The EC notes that the legal framework is largely in line with European standards and some progress has been made at the operational level, but much more needs to be done to improve the effectiveness of law enforcement in combating certain forms of crime. such as money laundering and financial crime. (European Commission, 2021). In that context, this year's Report on the Progress of North Macedonia at the State Department, had a sharp enough narrative and remarks on the high level of corruption in the country. It provoked strong reactions from the public, experts and political parties. The government was the target of the opposition which accused (a) of corruption at the highest level, while Prime Minister Zaev clumsily defended (s) that corruption is in the administration of the counters. (DW in Macedonian, 2021), (Dimovski, 2021). Despite the dilemmas of the EU enlargement opportunists about the country's real readiness to start negotiations, politicians acknowledge that North Macedonia outside the EU has as many mutual consequences as its accession to the union, especially after the Prespa Agreement. Experts on the processes in the Western Balkans comment that the blockade on Northern Macedonia undermines the bilateral agreements concluded by the countries in the region. The examples are numerous. For example, what would be the motives of Serbia to recognize Kosovo, knowing that it will cause turbulence and an internal political crisis, while no one guarantees a secure entry into the EU? After the last blockade, the Macedonian public follows the developments in Bulgaria as almost domestic events, in anticipation of the normalization of political relations with its close neighbor. (Popovski, 2021). Those familiar with the situation in the region comment that the historical issues in this part of Europe are often overestimated and create disputes that can put an end to even the slightest possibility of EU enlargement, if a compromise on them becomes a precondition for the start of negotiations. (DW in Macedonian, 2020). That is why "Prespa" must not be relativized regardless of the real readiness of the country to start negotiations. On the other hand, some authors warn that this situation will also produce negative security consequences for the management of the EU's external borders (Nechev and Nikolovski, 2020). While the EU's relations with the Western Balkans are hot and cold, other players are on the doorstep. Russia was particularly active during the renaming period and has been linked to undermining the name change process in order to halt Macedonia's NATO integration process. Relations have further strained after the mutual expulsion of diplomats as a sign of solidarity with the Western policy towards Russia, on the Macedonian side, while as a sign of reciprocity on the Russian side. Moscow has also been pointed out for its involvement in the production of fake news through the media under its influence, but above all through social networks, which has contributed to North Macedonia being internationally known as a generator of fake news. Under the guise of fake news are both real and genuine criticisms of government failures. (IDimovski, 2021). Analysts see the influence of China in North Macedonia through the prism not only of the Belt and Road and 17 + 1 initiatives, but also through the Chinese diologic phenomena. After the West, and especially the EU, did not show sufficient interest in the Western Balkans during the pandemic, the Government changed the rhetoric of consistency with the West and the vaccines confirmed by the local health institutions (Stojcheva, 2021) and procured 200,000 Chinese vaccines with which mass immunization began in the country. Some of the media saw this as an intensification of cooperation between China and North

Macedonia, especially after the meeting of Minister Filipce with the Ambassador of China, Zhang Zhuo, where the cooperation between the two countries and China's solidarity during the pandemic was emphasized, although numerous donations were made from other countries. (Announcement Government of RNM, 2021). On the other hand, North Macedonia and Albania have a particularly positive view of cooperation with the United States, which further reduces the political and economic importance of the EU. But despite such spheres of influence, despite the numerous blockades and unfulfilled promises, the Macedonian citizens in a large percentage support the integration of North Macedonia in the EU. Both citizens and politicians and experts are unanimous in their views that EU membership will positively affect the democratic climate in the country, strengthen the economy, and this will inevitably bring better working and living conditions for all citizens. The opening of accession negotiations is an important step towards the acceptance and implementation of European values and principles. Although the aspiring countries will be subject to a long and complex process, it will on the other hand provide direct supervision by the EU member states, and by that position they will have greater authority and influence over the country's progress at each stage of the negotiations. That is enough time for the EU to consolidate and smoothly complete the necessary internal reforms before the real accession of the Western countries. (Open Society Foundation - Macedonia, 2019).

That is why it is necessary to start negotiations quickly.

3. Conclusion

It is obvious that the EU is completely occupied with itself and its problems, but in order to maintain its credibility as a model for the countries of the Western Balkans, it must act as if it is important for the present and the future of the Western Balkans, ie it must motivate aspiring countries to meet accession standards. Especially because the countries of the Western Balkans are surrounded by member states on all sides and the events that take place in any country in the region affect all countries regardless of whether they are members of the EU or not.

If enlargement is indeed an instrument of EU foreign policy, then replace narrative Progress Reports on aspirants with specific tasks to be completed by candidate countries in order to have real measurability of reforms and progress.

Accession negotiations are a long and complex process, but it will allow greater oversight and influence by the European Union and its Member States on progress at every stage, from the opening to the conditional closure of each chapter of the negotiations. But the new EU enlargement methodology, especially in the part where Cluster 1 for the rule of law and democracy, which remains open throughout the negotiation process, will hinder the pace of North Macedonia accession negotiations, given that negotiations can be blocked, suspended or reversed with insufficient progress in some clusters. If more, if a compromise on bilateral disputes becomes a precondition for the start of negotiations. That is why the EU may need to consider changing its decision-making style.

North Macedonia is still plagued by problems with the rule of law, high levels of corruption, media freedom, as noted in the latest EC Progress Report on North Macedonia and the State Department Report. This obliges North Macedonia to achieve more dedicated results in key areas of the basics, including through the Europe Home and Anti-Corruption Action Plan 21, and to enable the smooth running of the State Commission for the Prevention of Corruption, if it sincerely wishes, to establish the rule of law and a better life for its citizens whether they get the deserved date for the start of negotiations or not, especially after "Prespa".

"Prespa" did not give the expected results, not only politically, but also formally did not produce any international legal actions and obligations for the EU. It is obvious that there are no guarantees for the start of negotiations in due time as promised and predicted that they will occur immediately after the implementation of the Prespa Agreement and the change of the name of the country.

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The implementation at the national level of the European legislation regarding the administration and recovery of assets resulting from crimes.

An overview of the Romanian case

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Abstract

In recent years, the European Union has insisted that convicts should be deprived of illegally obtained goods as a result of a crime. The asset confiscation resulted from crimes is one of the most effective tools in the fight against organized crime. In order to ensure a common approach to confiscation within the EU, several EU legislative instruments have been adopted in recent years, among which there are the most common secondary EU legislation as decisions, directives and regulations. Thus, confiscation is a strategic priority in the EU's fight against organized crime and, as such, has been reflected in the EU's Internal Action Strategy. The purpose of this paper is to make an analysis on the EU legislation regarding the administration and recovery of assets resulting from crimes. Also, the qualitative research of this work will be conducted in order to underline how Romania, as an EU member state, adapted and changed its domestic legislation and which authorities and procedures were created in order to fulfill with main EU legislative requirements.

Keywords: confiscation, asset recovery, asset management, forfeiture, regulation, decisions.

1. Introduction

In general, confiscation is a security measure ordered by the court as a result of a criminal act. This can be accompanied by a main punishment, but it can also intervene in the absence of a criminal conviction and consists in the final dispossessing of a certain category of goods related to the crime - goods obtained, used or resulting from the commission of a crime (Transparency International, online available at: https://www.transparency.org.ro/stiri/comunicate_de_presa/2014/27februarie/RaportNationalProceduraConfiscareExtinsa.pdf, p. 8). In EU law, "confiscation" means a punishment or measure ordered by a court following a proceeding in connection with an offense or offenses, resulting in the final deprivation of the property in question (Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property).

Initially, the confiscation of property resulting from criminal activity was given little importance. One of the reasons was that, in essence, criminal proceedings were aimed more at sanctioning the crime than recovering the assets resulting from the wrongful act. Another reason was the lack of means.

At the international level, there are several tools that promote the confiscation of proceeds of crime. The most important step in promoting the confiscation of the proceeds of crime is the Strasbourg Convention of 1990¹. By signing it by the participating states, the aim is to promote international cooperation in identifying, prosecuting, making unavailable and confiscating assets from the commission of a crime. The recommendations of this document show that states should adopt efficient and profitable mechanisms for the administration of seized assets. To this end, States should consider setting up a Seized Goods Fund.

In this regard, recommendations have been made at the international level on the management of seized assets, the 2005 G-8 Summit produced a paper on best practices in the management of seized assets (G8 Best Practices for the Administration of Seized Assets, 2005).

The recommendations of this document show that states should adopt efficient and profitable mechanisms for the administration of seized assets. To this end, States should consider setting up a Seized Goods Fund.

¹ See <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/14>, which was supplemented and updated by the Second Strasbourg Convention, see <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/198>

For the purpose of this study, it should be emphasized that the document considers the designation of a national entity / authority, with jurisdiction over the administration of assets, based on internal regulations, an important element in the administration of seizure assets. States must also establish strict controls on the administration of seized assets.

Assets not made available for confiscation must be managed in a transparent manner and the competent authority must be subject to annual audits carried out by independent auditors or similar experts in accordance with national law.

It should be underlined here, that, regarding the international confiscation practices, there are various recommendations at the international level. These include those of the International Financial Action Task Force Group, which has drafted a document on best practices in confiscation. The purpose of the document is to help countries properly implement the recommendations made by this international organization in the fight against money laundering.

One of the issues addressed in this document is related to the administration of seized or confiscated property. The document makes specific reference to the methods of administration to various recommendations (FATF/OECD, 2012):

- Existence of competent authorities for the administration of assets
- Delegating this task to private entities
- The existence of an administrator appointed by the court or
- The person who owns the goods can keep them in administration, but with restrictions regarding their use and potential sale (practice no. 26).

2. The European legislation regarding the administration and recovery of assets resulting from crimes

2.1 Short analysis on Main EU legislative instruments

In recent years, the European Union has insisted that convicts should be deprived of illegally obtained goods as a result of a crime. The asset confiscation resulted from crimes is one of the most effective tools in the fight against organized crime. In order to ensure a common approach to confiscation within the EU, several EU legislative instruments have been adopted in recent years, among which there are the most common secondary EU legislation as decisions, directives and regulations. Thus, confiscation is a strategic priority in the EU's fight against organized crime and, as such, has been reflected in the EU's Internal Action Strategy See table 1).

Table 1. EU legislative instruments regarding the administration and recovery of assets resulting from crimes

European legal instruments	Objectives
2001/500/JHA: Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, Official Journal L 182 , 05/07/2001 P. 0001 - 0002	the purpose was to ensure a common minimum approach of Member States in terms of those criminal offences for which they should provide for confiscation. The general rule is that if an offence is punishable by imprisonment of a maximum of more than one year, it must be possible under national law to order confiscation of proceeds generated by that offence. The Member States are required to have in place a system of value confiscation. All requests coming from other Member States must be processed with the same priority as is given to such measures in purely domestic proceedings.
Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, Official Journal L 196 , 02/08/2003 P. 0045 - 0055	its purpose was to lay down the rules under which a Member State recognizes and enforces on its territory a freezing order issued by a judicial authority of another Member State in criminal proceedings
Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, Official Journal of the European Union L 68/49	aimed to ensure further harmonization of Member States' legislation on confiscation of criminal assets.
Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (no longer in force, date of end of validity: 18/12/2020)	established the rules according to which the judicial authorities of one Member State will recognize and execute a confiscation order in its territory issued by competent judicial authorities of another Member State.

	he value of confiscated property will be shared equally between the issuing and executing State.
Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, Official Journal of the European Union L 332/103	informal cooperation between Member States' contact points working in the field of identifying, prosecuting and recovering assets from crime has been strengthened. It obliges Member States to set up or designate "assets recovery offices" (AROs), whose function is to facilitate effective cooperation and the exchange of information in the field of asset recovery.
Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, Official Journal of the European Union L 127/39	aims at simplifying the existing rules and to fill important gaps which are being exploited by organised crime groups. It will enhance the ability of EU states to confiscate assets that have been transferred to third parties, it will make it easier to confiscate criminal assets even when the suspect has fled and will ensure that competent authorities can temporarily freeze assets that risk disappearing if no action is taken.
Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders, Official Journal of the European Union L 303/1	address issues related to the implementation of existing legal instruments by establishing a single regulation - covering both lay-off orders and confiscation orders - which are directly applicable in the EU. The general principle of mutual recognition, in the sense that all judicial decisions in criminal matters taken in one EU country will normally be recognized and enforced directly by another EU country. There are only a limited number of reasons for non-recognition and non-execution. Standard certificates and procedures to enable faster and more effective unavailability and confiscation. A period of 45 days for the recognition of the confiscation order and, in urgent cases, a period of 48 hours for the recognition and 48 hours for the execution of the seizure orders. The limits can be postponed under strict conditions. Provisions to ensure that victims' rights to compensation and restitution are respected in cross-border cases. The Regulation shall apply from 19 December 2020.
Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA, Official Journal of the European Union L 186/122	national authorities and asset recovery offices shall be granted direct access to bank account information for the purpose of combating serious crime. Aim to improve cooperation between national authorities and financial intelligence units and to facilitate the exchange of information between financial intelligence units.

Source: author data processing form EU official sites cited in the footnote²

²<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001F0500>,<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32003F0577>, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005F0212>,
<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32006F0783> , <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32007D0845>, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0042> ,
<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32018R1805>,<https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32019L1153>, accessed: 28.10.2021

2.2 The EU framework regarding the administration and recovery of assets resulting from crimes

From the Table 1 it can be observed that confiscation is a strategic priority in the EU's fight against organized crime and, as such, has been reflected in the EU's Internal Action Strategy. The 2017 Commission staff working paper on the comprehensive assessment of EU security policy acknowledged that the legal framework in the area is well developed, but also emphasized the need to improve it. Crucially, substantial efforts have been made at EU level to better track and confiscate revenues from organized crime (European Commission, Press release, 2017).

Regarding the administration and recovery of assets resulting from crimes, at the international, it can be identified two different types of entities can be identified according to their assigned competence (Organización de los Estados Americanos, 2011, pp. 20-23):

- The first type includes all those entities with very broad responsibilities that cover every aspect related to property whatever the crime. These entities investigate the portfolio of assets of individuals accused of crimes in order to identify and locate assets that are the proceeds of criminal activity, and even property of legal origin in the event that an order of forfeiture for equivalent value is issued.
- The second type is of a more restrictive nature and the entity is assigned the exclusive responsibility of administering those assets. The entity is responsible for safeguarding, administering, preserving and disposing of the seized assets according to the provisions of domestic law.

At EU level, through European legislative instruments (analyzed in the Table 1), two types of authorities have been imposed on Member States:

- *Asset Recovery Office (ARO)* authorities established by Decision 2007/845 / JHA;
- *Asset Management Office (AMO)*, created as a result of the transposition of Directive 2014/42 / EU.

3. Overview of the Romanian regulations regarding the administration and recovery of assets resulting from crimes

Provisions on confiscation of goods resulting from crimes can be found in criminal law, specific legislation and the rules for the implementation of EU regulations. Romania, as an EU member states adopted and implemented the EU legislative instruments in the domestic law, by amending the existing laws or by creating new regulations (see Table 2).

Table 2. Transposition of the EU legislative instruments regarding the administration and recovery of assets resulting from crimes

European legal instruments	National transposition
2001/500/JHA: Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, Official Journal L 182 , 05/07/2001 P. 0001 - 0002	<p>Law no. 263/2002 for the ratification of the European Convention on Laundering, Search, Seizure and Confiscation of the goods from Crime, signed at Strasbourg on 8 November 1990, Official Gazette of Romania, No. 353/ 2002-05-28</p> <p>Law no. 286/2009 on the Criminal Code Official Gazette of Romania; No. 510/ 2009-07-24;</p> <p>Law no. 135/2010 on the Code of Criminal Procedure, Official Gazette of Romania; No. 486/ 2010-07-15</p> <p>Law no. 302/2004 on international judicial cooperation in criminal matters, republished, Official Gazette of Romania, No. 377/ 2011-05-31</p> <p>Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for the establishment of measures to prevent and combat the financing of terrorist acts, republished, Official Gazette of Romania, No. 702/ 2012-10-12;</p> <p>Law no. 300/2013 for the amendment and completion of Law no. 302/2004 on international judicial cooperation in criminal matters, Official Gazette of Romania, No. 772/ 2013-12-11</p>

Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, Official Journal L 196 , 02/08/2003 P. 0045 - 0055	<p>Law no. 135/2010 on the Code of Criminal Procedure, Official Gazette of Romania, No: 486/ 2010-07-15</p> <p>Law no. 302/2004 on international judicial cooperation in criminal matters, republished, Official Gazette of Romania, No.: 377/ 2011-05-31</p> <p>Law no. 300/2013 for the amendment and completion of Law no. 302/2004 on international judicial cooperation in criminal matters. Official Gazette of Romania; No: 772/ 2013-12-11</p>
Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, Official Journal of the European Union L 68/49	<p>Law no. 39/2003 on preventing and combating organized crime, Official Gazette of Romania, No. 50/ 2003-01-29</p> <p>Law no. 535/2004 on preventing and combating terrorism, Official Gazette of Romania; No: 1161/2004-12-08</p> <p>Law no. 286/2009 regarding the criminal code, Official Gazette of Romania, No. 510/2009-07-24</p> <p>Law no. 63/2012 for amending and supplementing the Criminal Code of Romania and Law no. 286/2009 on the Criminal Code, Official Gazette of Romania; No. 258/ 2012-04-19</p>
	<p>Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for the establishment of measures to prevent and combat the financing of terrorist acts, republished, Official Gazette of Romania, no. 702/ 2012-10-12</p> <p>Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code, Official Gazette of Romania, No. 757/ 2012-11-12</p> <p>Law no. 255/2013 for the implementation of Law no. 135/2010 on the Code of Criminal Procedure and for amending and supplementing some normative acts that include criminal procedural provisions, Official Gazette of Romania; Number: 515/ 2013-08-14</p>
Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (no longer in force, date of end of validity: 18/12/2020)	<p>Law no. 135/2010 on the Code of Criminal Procedure, Official Gazette of Romania; No. 486/ 2010-07-15</p> <p>Law no. 302/2004 on international judicial cooperation in criminal matters, republished, Official Gazette of Romania, No. 377/ 2011-05-31</p> <p>Law no. 300/2013 for the amendment and completion of Law no. 302/2004 on international judicial cooperation in criminal matters, Official Gazette of Romania; No. 772/2013-12-11</p>
Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field	Government Decision no. 32/2011 on the designation of the Office for Crime Prevention and cooperation with the debt collection offices of the Member States of

<p>of tracing and identification of proceeds from, or other property related to, crime, Official Journal of the European Union L 332/103</p>	<p>the European Union within the Ministry of Justice, as a national office for asset recovery in the field of pursuit and identification of proceeds of crimes or other goods related to crimes, Official Gazette of Romania No.: 51/ 2011-01-20</p> <p>Government Decision no. 508/2012 amending and supplementing Government Decision no. 652/2009 on the organization and functioning of the Ministry of Justice, Official Gazette of Romania, No. 332/ 2012-05-16</p> <p>Government Decision no. 182/2014 amending and supplementing art. 2 of Government Decision no. 32/2011 on the designation of the National Office for Crime Prevention and Cooperation for the Recovery of goods from Crimes within the Ministry of Justice, as a national office for recovery receivables in the field of pursuit and identification of products arising from the commission of crimes or other goods related to crimes, as well as the Methodological Norms for the application of Government Ordinance no. 14/2007 for the regulation of the manner and conditions of capitalization of the goods entered, according to the law, in the private property of the state, approved by the Government Decision no. 731/2007, Official Gazette of Romania; No. 213/ 2014-03-25</p>
<p>Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, Official Journal of the European Union L 127/39</p>	<p>Law no. 535/2004 on preventing and combating terrorism, Official Gazette of Romania; No. 1161/ 2004-12-08</p> <p>Law no. 286/2009 on the Criminal Code Official, Official Gazette of Romania; No. 510/ 2009-07-24</p> <p>Law no. 135/2010 on the Code of Criminal Procedure, Official Gazette of Romania; No. 486/2010-07-15</p> <p>Law no. 287/2009 regarding the Civil Code, Official Gazette of Romania; No: 505/ 2011-07-15</p> <p>Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for the establishment of measures to prevent and combat the financing of terrorist acts, republished, Official Gazette of Romania, no. 702/ 2012-10-12</p> <p>Law no. 255/2013 for the implementation of Law no. 135/2010 on the Code of Criminal Procedure and for amending and supplementing some normative acts that include criminal procedural provisions, Official Gazette of Romania; Number: 515/ 2013-08-14</p> <p>Law no. 253/2013 on the execution of sentences, educational measures and other non-custodial measures ordered by the judicial bodies during the criminal</p>

	<p>proceedings, Official Gazette of Romania; No: 513/2013-08-14</p> <p>Law no. 143/2000 on preventing and combating illicit drug trafficking and consumption, Official Gazette of Romania; No.163/ 2014-03-06</p> <p>Law no. 134 of 1 July 2010 on the Code of Civil Procedure, Official Gazette of Romania;No. 247/ 2015-04-10</p> <p>Law no. 318/2015 for the establishment, organization and functioning of the National Agency for the Management of Seized Assets and for the modification and completion of some normative acts, Official Gazette of Romania; No.: 961/2015-12-24</p> <p>Government Emergency Ordinance no. 18/2016 for amending and supplementing Law no. 286/2009 regarding the Criminal Code, Law no. 135/2010 on the Code of Criminal Procedure, as well as for completing art. 31 para. (1) of Law no. 304/2004 regarding the judicial organization, Official Gazette of Romania; No. 389/2016-05-23</p> <p>Law 142/2018 on drug precursors, Official Gazette of Romania; No. 519/2018-06-25</p> <p>Law no. 58/2019 for the amendment and completion of Law no. 535/2004 on preventing and combating terrorism, Official Gazette of Romania, No. 271/2019-04-10</p> <p>Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing some normative acts, Official Gazette of Romania; No: 589/ 2019-07-18</p> <p>Law no. 228/2020 for the amendment and completion of some normative acts in the criminal field in order to transpose some directives of the European Union, Official Gazette of Romania; No. 1019/ 2020-11-02</p>
Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders, Official Journal of the European Union L 303/1	No transposition measures needed
Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA, Official Journal of the European Union L 186/122	<p>Law no. 535/2004 on preventing and combating terrorism, Official Gazette of Romania; No.1161/2004-12-08</p> <p>Law no. 63/2012 for the amendment and completion of the Criminal Code of Romania and of Law no. 286/2009 regarding the Criminal Code, Official Gazette of Romania; No. 258/2012-04-19</p>

	<p>Law no. 187/2012 for the implementation of Law no. 286/2009 regarding the Criminal Code, Official Gazette of Romania; No. 757/ 2012-11-12</p> <p>Law no. 207/2015 on the Fiscal Procedure Code, Official Gazette of Romania; No. 547/2015-07-23</p> <p>Law no. 318/2015 for the establishment, organization and functioning of the National Agency for the Management of Seized Assets and for the modification and completion of some normative acts, Official Gazette of Romania; No. 961/ 2015-12-24</p> <p>Law no. 56/2018 on the cooperation of the Romanian public authorities with the Europol, Official Gazette of Romania; No. 211/ 2018-03-08</p> <p>Law no. 58/2019 for the amendment and completion of Law no. 535/2004 on preventing and combating terrorism, Official Gazette of Romania; No: 271/2019-04-10</p> <p>Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing some normative acts, Official Gazette of Romania; No. 589/2019-07-18</p> <p>Government Emergency Ordinance no. 68/2019 regarding the establishment of some measures at the level of the central public administration and for the modification and completion of some normative acts, Official Gazette of Romania; No.: 898/2019-11-06</p> <p>Government Emergency Ordinance no. 111/2020 regarding the amendment and completion of Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing some normative acts, for completing art. 218 of the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, for the amendment and completion of Law no. 207/2015 on the Fiscal Procedure Code, as well as for completing art. 12 para. (5) of Law no. 237/2015 on the authorization and supervision of the insurance and reinsurance activity, Official Gazette of Romania; No. 620/ 2020-07-15</p> <p>Government Emergency Ordinance no. 153/2020 for the establishment of fiscal measures to stimulate the maintenance / increase of equity, as well as for the completion of some normative acts, Official Gazette of Romania; No. 817/2020-09-04</p> <p>Law no. 102/2021 regarding the completion of art. 49 of Law no. 129/2019 for preventing and combating</p>
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	<p>money laundering and terrorist financing, as well as for amending and supplementing some normative acts Official Gazette of Romania; No. 446/2021-04-27 Law no. 101/2021 for the approval of the Government Emergency Ordinance no. 111/2020 regarding the amendment and completion of Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing some normative acts, for completing art. 218 of the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, for the amendment and completion of Law no. 207/2015 regarding the Fiscal Procedure Code, as well as for completing art. 12 para. (5) of Law no. 237/2015 on the authorization and supervision of the insurance and reinsurance activity, Official Gazette of Romania; No. 446/ 2021-04-27</p> <p>Government Ordinance no. 9/2021 on the establishment of measures to facilitate the use of financial information and financial analysis in order to prevent, detect, investigate or prosecute certain crimes, Official Gazette of Romania; No: 831/ 2021-08-31</p> <p>Government Ordinance no. 11/2021 for the amendment and completion of Law no. 207/2015 on the Fiscal Procedure Code and the regulation of some fiscal measures, Official Gazette of Romania; No. 832/ 2021-08-31</p>
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Source: author data processing from EU official websites cited supra

At national level, Romania has opted for the creation of a single national authority, as a result of good practice at this level being designated national office for asset recovery (Asset Recovery Office - ARO), as well as national office for management of frozen assets (Asset Management Office - AMO).

The legal basis is Law no. 318/2015 for the establishment, organization and functioning of the National Agency for the Management of Seized Assets (ANABI). According to the law establishing ANABI is a public institution of national interest with legal personality, subordinated to the Ministry of Justice.

Regarding its role in the procedure of seizure of assets resulting from crimes, we will highlight its role depending on the 2 dimensions it has (see Table 3).

Table 3. Role and powers of ANABI regarding the administration and recovery of assets resulting from crimes

AMO powers	ARO powers
<ul style="list-style-type: none"> • manages movable assets/goods • manages the integrated national computer system for recording receivables from crimes; • supports the judicial bodies for the use of the best practices in the matter of identification and administration of the goods that can be the object of the measures of seizure and confiscation within the criminal process 	<ul style="list-style-type: none"> • facilitates the prosecution and identification of assets arising from the commission of criminal offenses and other assets related to the offenses and which could be subject to a disposition of unavailability, seizure or confiscation issued by a competent judicial authority during criminal proceedings • capitalizes, in the cases provided by law, of the movable goods seized within the criminal process; • coordinates, evaluates and monitors at national level the application and observance of legal procedures in the field of recovery of claims from crimes.

Source: Analysis based on Law no. 318/2015

In order to highlight the role of ANABI in the confiscation procedure, we will highlight below, its phases (both in the special confiscation procedure and in the extended confiscation procedure³) (Transparency International study, 2015):

- Phase 1: Identifying the assets resulting from crimes and the measures necessary for their protection and management.
- Phase 2: Taking precautionary measures to repair the damage caused by the crime and to ensure the execution of legal costs.
- Phase 3: Capitalization of the seized goods

1. Capitalization of assets before a final sentence is given.

1.1. Special cases of capitalization of seized movable assets

During the criminal proceedings, before issuing a final decision, the prosecutor or the court that instituted the seizure may immediately order the capitalization of the seized movable assets, at the request of the owner of the asset or when there is his consent.

1.2. Recovery of movable assets seized during the criminal investigation

During the criminal investigation, when there is no consent of the owner, if the prosecutor who instituted the seizure considers that it is necessary to capitalize the seized movable property, he notifies the judge of rights and freedoms with a reasoned proposal for capitalization of the seized property (Article 2522, para. 2, Code of Criminal Procedure).

1.3. Capitalization of movable seized seized during the trial

During the trial, the court, ex officio or at the request of the prosecutor, of one of the parties or of the custodian, may order the capitalization of the seized movable assets. To this end, the court shall set a time limit, which may not be shorter than 10 days, for which the parties, as well as the custodians of the property, are summoned to the council chamber when one has been appointed. The participation of the prosecutor is mandatory (Article 2523, para. 2, Code of Criminal Procedure).

2. Capitalization of assets after a final sentence

With regard to real estate, by special law, their destination is provided, as follows: real estate entered, through confiscation, from criminal proceedings, in the private property of the state may be transferred free of charge in the public domain of the state and in the administration of the authorities central public administration, other public institutions of national interest, as the case may be, referred to as *beneficiary entities*, by Government decision, initiated by the Ministry of Public Finance, at the proposal of the National Agency for the Management of Seized Assets⁴. As previously mentioned, the Law no. 318/2015 for the establishment, organization and functioning of- ANABI, confers on it attributions as national office AMO and ARO.

As stated by the Agency “the final purpose of ANABI is to ensure an increase of the execution rate of the confiscation orders issued in criminal matters, through an efficient management of seized assets that are distributed to the Agency by prosecutors and judges. As a consequence, the incomes brought to the state budget will increase, as well as the ones through which the victim compensation is ensured, including the compensation made to the state, in cases when the state was a civil party in the criminal trial”.⁵

4. Conclusions

The analysis highlights that ANABI, as ARO does not have competences directly oriented on the purpose of precautionary measures and effective recovery of damages and the goods resulted from crimes. The mainly responsibilities are administrative (simple administration of seized assets) and in strictly limited cases possible capitalization of them.

In general, the attributions of ANABI in order to capitalize on the assets are significantly procedural and supportive of other state bodies and authorities. Even where ANABI has a clear competence in early capitalization of frozen movable assets, the law provides the possibility to do so either through its own public auction or through specialized entities or companies, selected in compliance with legal provisions on public procurement; through bailiffs, according to their own procedures; by the fiscal bodies, according to their own capitalization procedures.

³ In Romania, on the Criminal Code and the Code of Criminal Procedure, the confiscation has the 2 forms as categories of safety measures: special and extended confiscation. For the special confiscation the Criminal Code does not explicitly provide a list of crimes, but only provides for those goods that result from crimes. For the special confiscation, the criminal conviction has to be followed not only by the confiscation of the goods associated with a certain crime, but also additional goods, about which the court is convinced that they come from criminal activities.

⁴ Law no. 216/2016 on establishing the destination of confiscated real estate, published in the Official Gazette of Romania, Part I no. 918 of November 15, 2016

⁵ See the official website of the National Agency for the Management of Seized Assets: <https://anabi.just.ro/en/>, accessed: 29.10.2021

Regarding the early capitalization of movable goods, we consider necessary a re-evaluation of the legislation, through which ANABI, can proceed directly to their capitalization in special cases of movable assets on which it was established the seizure, without waiting for the request of the prosecutor, the judge or the agreement of the owner, insofar as such an action would lead to safeguarding the value of the property, and from its early capitalization would lead to obtaining a sum of money as close as possible to the value of that asset.

We also consider it necessary to regulate the possibility of early capitalization of real estate, at the request or with the consent of the owner, and ANABI to acquire legal powers in this regard. Regarding the capitalization of the goods after the pronouncement of a final sentence by a court, we consider that for the movable goods, already in the management of ANABI, they should be capitalized only by ANABI, in order to accelerate in their capitalization.

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- Law no. 216/2016 on establishing the destination of confiscated real estate, published in the Official Gazette of Romania, Part I no. 918 of November 15, 2016

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Development of the gross hourly earnings in EU countries in terms of gender inequality

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Abstract

The gender wage gap exists for many years. Many institutions deal with the issue of gender inequality in EU countries, like European Commission, but also on a global scale, e. g. Unicef, World Health Organization. We used data from Eurostat to investigate the difference between average gross hourly earnings of males and females. Earnings were expressed as a percentage of average gross hourly earnings of males. Average gross hourly earnings of males and females in EU countries were observed for the reference period 2010 – 2019. The results of the analysis showed that wage inequalities between men and women have been declining since 2010 almost in all EU countries, but this development is still very slow.

Keywords: Gender, inequality, wage gap, earnings.

1. Introduction

One of the most important consequences of the hierarchical organization of society today is the lower economic power of women. Despite the global emphasis on equal treatment for all, regardless of gender, age or ethnicity, there are still differences in pay between men and women or a lower representation of women in management positions (European Commission, 2020).

On average, according to European Commission, women still earn 16% less than men, and only 8% of CEOs of large companies in the EU are women. Women often face discrimination not only at the household level but in the labor market, and their employability in political life is also very low in the EU.

Gender inequality means a legal, social and cultural situation where different rights are determined on gender, which is reflected in unequal access to rights, which is often based on stereotypes, social and cultural roles (European Institute for Gender Equality, 2021).

2. Literature Review

Gender inequality is defined as a situation where women and men do not have the same conditions and opportunities to realize their basic human rights and to use the same benefits within the economic, social, cultural, and political environment (UNESCO, 2003). Gender equality should mean that men and women are treated equally in all areas of life (Mikkola, 2007).

Gender inequality is an undesirable phenomenon, not only from the point of view of women. Surveys show that in countries where women are disadvantaged in various areas, social conflicts and lower economic stability are more common, and vice versa (Equality Now, 2018).

Eliminating any form of discrimination against girls and women is not only a fundamental human right but is also a necessity for a sustainable future. Studies show that supporting women improve the level of economic growth and overall development in the country (United Nations, 2020).

Women and men have the same right to equal work or work of equal value. It is important to eliminate any discrimination on the grounds of sex concerning the conditions of remuneration, their agreement, the system of job evaluation, and also the implementation of the employer's wage policy. In Slovakia, the mentioned activities are provided by the National Labor Inspectorate. The National Labor Inspectorate has to ensure regular supervision of equal treatment of employees and to check compliance with the principle of equal pay. The findings are published on an annual basis in the Equal Pay Report for a given year (Národný inšpektorát práce, 2015).

One of the main areas in which discrimination against women and gender inequality can be observed is the labor market (Mitra, 2013). On average, women still earn significantly less than men in the same job (Blau and Kahn, 2007). In general, the pay gap is influenced by several structural and psychological factors. Different evaluation of work also depends on common stereotypes, social norms, preferences, and pattern of behavior. This problem can also be explained by human capital (Kulich and Chipeaux, 2019).

Significant differences are also observable within the EU countries, where they reach less than 8% in Belgium, Poland, or Italy and up to 20 % in the Czech Republic, Germany, or Austria. This is also because men take less unpaid leave and at the same time have more overtime. This is because women tend to spend more time caring for the home and family, which limits their flexibility and availability in the work process (Bertrand et al., 2015; Parker et al., 2015). Differences in pay can also be partly explained by differences in professional orientation, economic sector, job position, work experience, or age. However, employees are mostly remunerated based on gender (Mandel and Shalev, 2009).

3. Data and Methods

More and more institutions and organizations are dealing with the issue of gender inequality. The research object is gender pay gap and this indicator measures the difference between average gross hourly earnings of males and females in EU countries. Values represent the difference between average gross hourly wage of a man and a woman and express what percentage less a woman earns in the same position compared to the hourly wage of a man. The analysis included companies with ten or more employees, without restrictions for age and hours worked. To achieve the main goal in this paper were used data from Eurostat – the statistical office of the European Union. We used analysis, methods of comparison, and observation.

Table 1. Data – average gross hourly earnings of EU countries from the Eurostat

Geo/Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
EU-27	15,8	16,2	16,4	16,0	15,7	15,5	15,1	14,6	14,4	14,1
Belgium	10,2	9,4	8,3	7,5	6,6	6,4	6,0	5,8	5,8	5,8
Bulgaria	13,0	13,2	15,1	14,1	14,2	15,5	14,6	14,3	13,9	14,1
Czechia	21,6	22,6	22,5	22,3	22,5	22,5	21,5	21,1	20,1	18,9
Denmark	17,1	16,4	16,8	16,5	16,0	15,1	15,1	14,8	14,6	14,0
Germany	22,3	22,4	22,7	22,1	22,3	21,8	21,1	20,4	20,1	19,2
Estonia	27,7	27,3	29,9	29,8	28,1	26,7	24,8	24,9	21,8	21,7
Ireland	13,9	12,7	12,2	12,9	13,9	13,9	14,2	14,4	11,3	n
Greece	15,0	n	n	n	12,5	n	n	n	10,4	n
Spain	16,2	17,6	18,7	17,8	14,9	14,1	14,8	13,5	11,9	11,9
France	15,6	15,7	15,6	15,5	15,5	15,6	15,9	16,3	16,7	16,5
Croatia	5,7	n	n	7,7	8,7	n	11,6	12,3	11,4	11,5
Italy	5,3	5,7	6,5	7,0	6,1	5,5	5,3	5	5,5	4,7
Cyprus	16,8	16,1	15,6	14,9	14,2	13,2	12,3	11,2	10,4	10,1
Latvia	15,5	14,1	14,9	16,0	17,3	18,4	19,7	19,8	19,6	21,2
Lithuania	11,9	11,5	11,9	12,2	13,3	14,2	14,4	15,2	14,0	13,3
Luxembourg	8,7	7,9	7,0	6,2	5,4	4,7	3,9	2,6	1,4	1,3
Hungary	17,6	18,0	20,1	18,4	15,1	14,0	14,0	15,9	14,2	18,2
Malta	7,2	7,7	9,5	9,7	10,6	10,7	11,6	13,2	13,0	11,6
Austria	24,0	23,5	22,9	22,3	22,2	21,8	20,8	20,7	20,4	19,9
Poland	4,5	5,5	6,4	7,1	7,7	7,3	7,1	7,0	8,5	8,5
Portugal	12,8	12,9	15,0	13,3	14,9	16,0	13,9	10,8	8,9	10,6
Romania	8,8	9,6	6,9	4,9	4,5	5,6	4,8	2,9	2,2	3,3
Slovenia	0,9	3,3	4,5	6,3	7,0	8,2	8,1	8,4	9,3	7,9
Slovakia	19,6	20,1	20,8	18,8	19,7	19,7	19,2	20,1	19,8	18,4
Finland	20,3	19,1	19,2	18,8	18,4	17,5	17,5	17,1	16,9	16,6
Sweden	15,4	15,6	15,5	14,6	13,8	14,0	13,3	12,5	12,1	11,8

Source: own processing based on Eurostat, 2021

Notes: n – unavailable data

4. Result and Discussion

Values captured in the graph represented the difference between average gross hourly wage of a man and a woman and expressed what percentage less a woman earns in the same position compared to the hourly wage of a man. Figure 1 showed the wage gap between men and women for the year 2019.

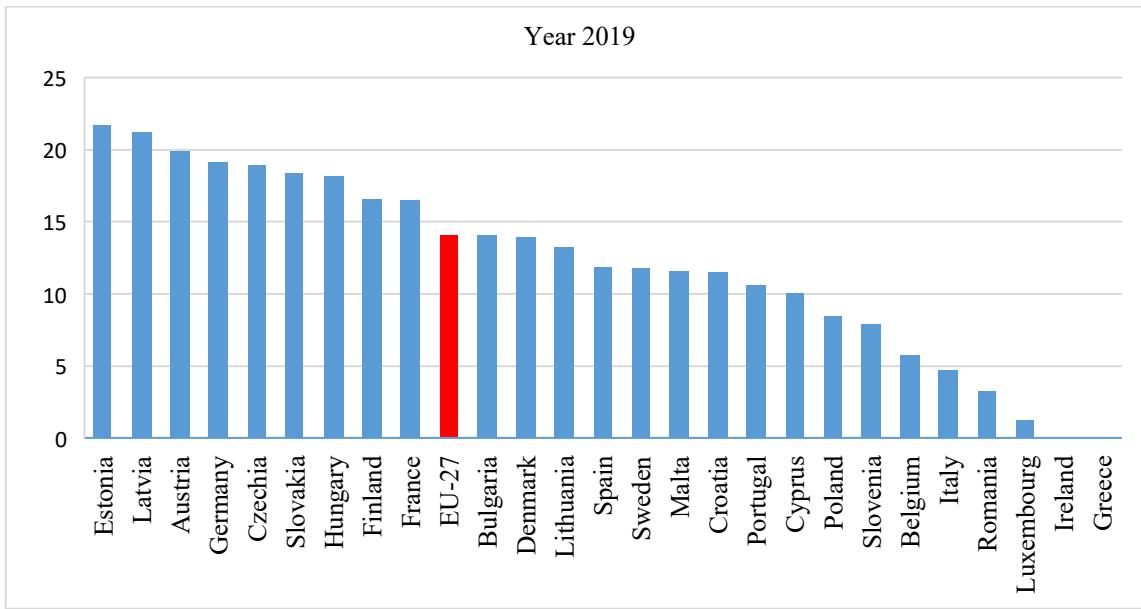


Figure 1. Difference between average gross hourly earnings of males and females in EU countries for the year 2019

Source: own processing based on the Eurostat, 2021

We can see from Figure 1 that significant differences in remuneration are also noticeable between individual EU countries. Their values range was from 1,3% to 21,7%, with the European average at 14,1%. Based on this analysis we can claim, that in 2019 the lowest inequalities were observed in Luxemburg, and on the other side in Estonia were observed the highest inequality in earnings. From V4 countries was above the European average Slovakia (18,4%), Czechia (18,9%), Hungary (18,2%) and only Poland achieved better results (8,5%). Ireland and Greece were excluded from this analysis because of missing data for this year.

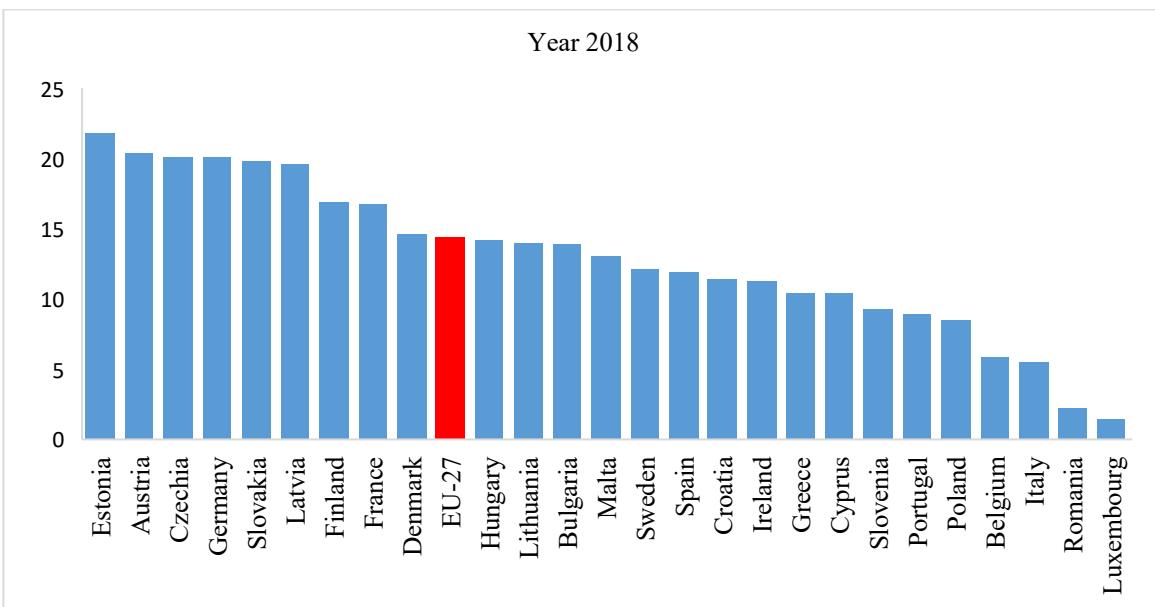


Figure 2. Difference between average gross hourly earnings of males and females in EU countries for the year 2018

Source: own processing based on Eurostat, 2021

Figure 2 showed the wage gap between men and women for the year 2018 in individual countries. We can see from Figure 2 again significant differences in remuneration also between individual EU countries. Their values range from 1,4% to 21,8%, with the European average at 14,4%. From V4 countries is above the European average Slovakia (19,8%), Czechia (20,1%) and better results achieved Hungary (14,2%) and Poland (8,5%).

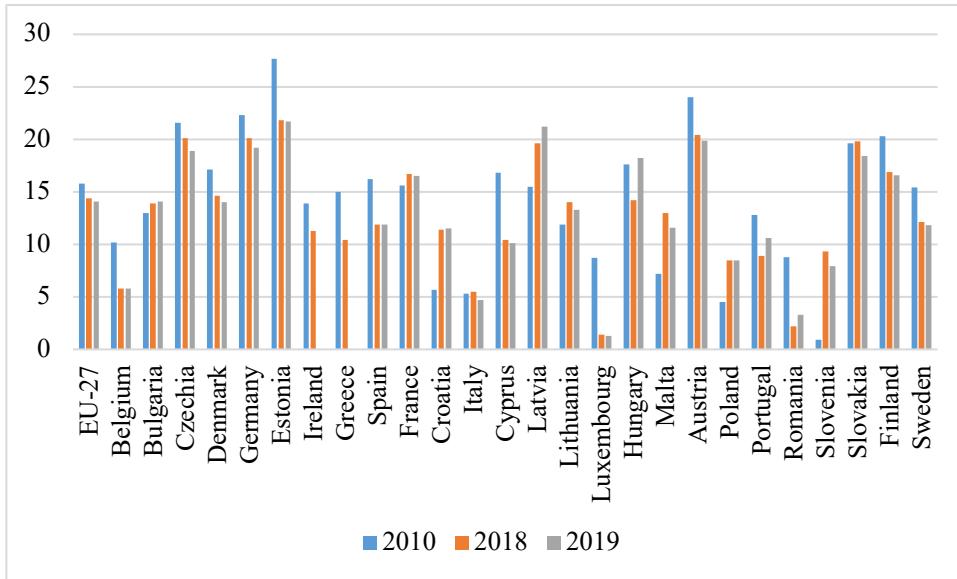


Figure 3. Comparison of the development of the gender wage gap of the year 2018 and 2019 compared to 2010

Source: own processing based on Eurostat, 2021

The analysis in Figure 3 allowed us to compare the development in the field of the gender wage gap since 2010. From the analysis, we could see that since 2010 the situation in the field of wages had improved in almost all EU countries. However, the gap between the average gross hourly wage of men and women decreases very slowly.

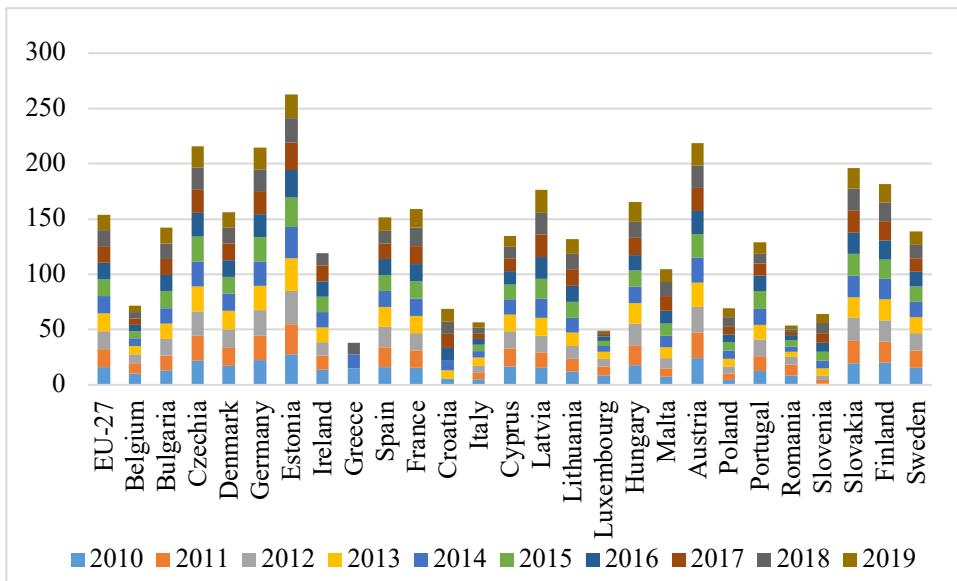


Figure 4. Change in the gender wage gap from the year 2010 till 2019

Source: own processing based on Eurostat, 2021

Based on the analysis in Figure 4 we could claim that differences in the hourly earnings exist in all EU countries and these are also significant differences among the individual countries. There are countries with a low range of inequality in time, like Luxembourg, Romania, or Belgium. But on the other side, there are countries which values have long been above the European average, like

Slovakia, Czechia, or Estonia.

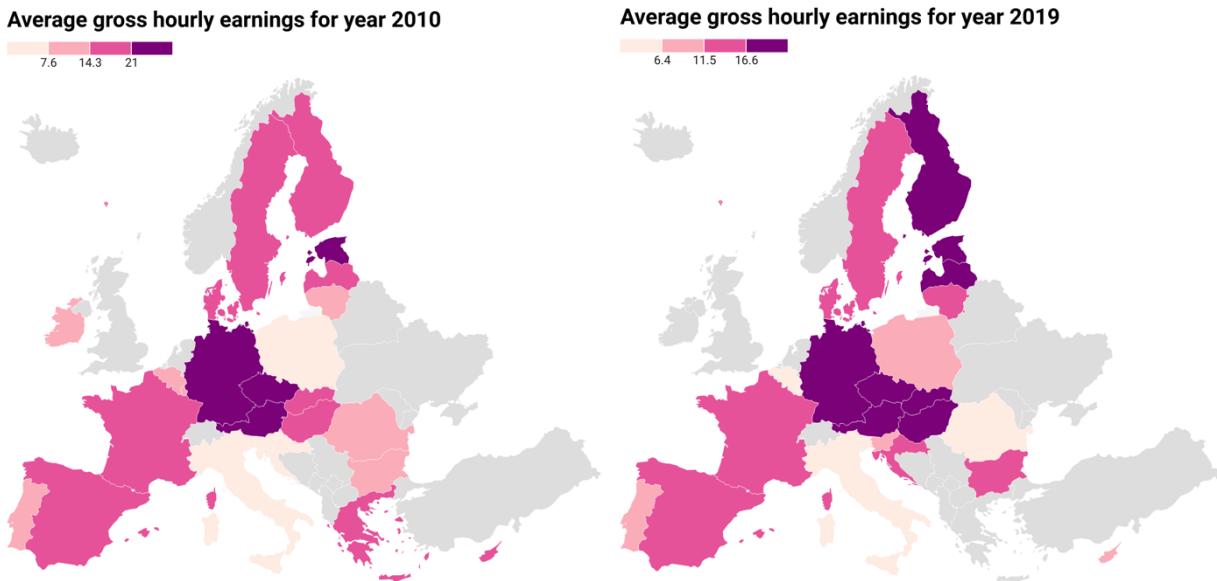


Figure 5. Aggregation of countries according to a similar level of the wage gap
Source: own processing based on Eurostat, 2021

In the light of the results of the analysis carried out, we can claim that wage inequalities between men and women have been declining since 2010 almost in all EU countries, but this development is still very slow. Each EU country should adjust its wage policy according to equalize the wages of men and women. It is also important to eliminate gender stereotypes, which often exacerbate the gender pay gap. Another solution to the wage gender policy is to adjust the wage conditions, especially in the field of education, health care, and public administration, where a larger number of women have been working for a long time.

5. Conclusions

The main objective of this paper was to evaluate the gender wage gap in EU countries. Based on this analysis and comparison of the selected countries, we came to the clear conclusion that since 2010 the gender wage gap is decreasing, but this trend is very slow. EU countries need to reduce the gender wage gap which would have a positive impact on a country's economy.

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Human Rights in COVID-19 era

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Abstract

The world is facing an unprecedented crisis. At its core is a global public health emergency on a scale not seen for a century, requiring a global response with far-reaching consequences for our economic, social and political lives. The priority is to save lives. In view of the exceptional situation and to preserve life, countries have no choice but to adopt extraordinary measures. Extensive lockdowns, adopted to slow transmission of the virus, restrict by necessity freedom of movement and, in the process, freedom to enjoy many other human rights. Such measures can inadvertently affect people's livelihoods and security, their access to health care (not only for COVID-19), to food, water and sanitation, work, education – as well as to leisure. Measures need to be taken to mitigate any such unintended consequences. Guaranteeing human rights for everyone poses a challenge for every country around the world to a differing degree. The public health crisis is fast becoming an economic and social crisis and a protection and human rights crisis rolled into one. In some, ongoing crises, especially armed conflict, put human rights and other international legal protections under extra pressure.

Keywords: human rights, human rights in crisis, covid – 19 crises, guaranteeing human rights

INTRODUCTION

On March 11, 2020, the World Health Organization (WHO) declared that an outbreak of the viral disease COVID-19 – first identified in December 2019 in Wuhan, China – had reached the level of a global pandemic. Citing concerns with “the alarming levels of spread and severity,” the WHO called for governments to take urgent and aggressive action to stop the spread of the virus.

International human rights law guarantees everyone the right to the highest attainable standard of health and obligates governments to take steps to prevent threats to public health and to provide medical care to those who need it. Human rights law also recognizes that in the context of serious public health threats and public emergencies threatening the life of the nation, restrictions on some rights can be justified when they have a legal basis, are strictly necessary, based on scientific evidence and neither arbitrary nor discriminatory in application, of limited duration, respectful of human dignity, subject to review, and proportionate to achieve the objective.

The scale and severity of the COVID-19 pandemic clearly rises to the level of a public health threat that could justify restrictions on certain rights, such as those that result from the imposition of quarantine or isolation limiting freedom of movement. At the same time, careful attention to human rights such as non-discrimination and human rights principles such as transparency and respect for human dignity can foster an effective response amidst the turmoil and disruption that inevitably results in times of crisis and limit the harms that can come from the imposition of overly broad measures that do not meet the above criteria.

This paper provides an overview of human rights concerns posed by the coronavirus outbreak, drawing on examples of government responses to date, and proposes recommendations for ways governments and other actors can respect human rights in their response.

Under the International Covenant on Economic, Social and Cultural Rights, which most countries have adopted, everyone has the right to “the highest attainable standard of physical and mental health.” Governments are obligated to take effective steps for the “prevention, treatment and control of epidemic, endemic, occupational and other diseases.”

The United Nations Committee on Economic, Social and Cultural Rights, which monitors state compliance with the covenant, has stated that:

The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, nondiscrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health. The right to health provides that health facilities, goods, and services should be:

- available in sufficient quantity;
- accessible to everyone without discrimination, and affordable for all, even marginalized groups; - acceptable, meaning respectful of medical ethics and culturally appropriate;
- scientifically and medically appropriate and of good quality.

The Siracusa Principles, adopted by the UN Economic and Social Council in 1984, and UN Human Rights Committee general comments on states of emergency and freedom of movement provide authoritative guidance on government responses that restrict human rights for reasons of public health or national emergency. Any measures taken to protect the population that limit people's rights and freedoms must be lawful, necessary, and proportionate. States of emergency need to be limited in duration and any curtailment of rights needs to take into consideration the disproportionate impact on specific populations or marginalized groups. On March 16, 2020, a group of UN human rights experts said that "emergency declarations based on the COVID-19 outbreak should not be used as a basis to target particular groups, minorities, or individuals. It should not function as a cover for repressive action under the guise of protecting health... and should not be used simply to quash dissent." The

Siracusa Principles specifically state that restrictions should, at a minimum, be:

- provided for and carried out in accordance with the law;
- directed toward a legitimate objective of general interest;
- strictly necessary in a democratic society to achieve the objective;
- the least intrusive and restrictive available to reach the objective;
- based on scientific evidence and neither arbitrary nor discriminatory in application; - of limited duration, respectful of human dignity, and subject to review.

HUMAN RIGHTS CONCERNS

Protect freedom of expression and ensure access to critical information

Under international human rights law, governments have an obligation to protect the right to freedom of expression, including the right to seek, receive, and impart information of all kinds, regardless of frontiers. Permissible restrictions on freedom of expression for reasons of public health, noted above, may not put in jeopardy the right itself.

Governments are responsible for providing information necessary for the protection and promotion of rights, including the right to health. The Committee on Economic, Social and Cultural Rights regards as a "core obligation" providing "education and access to information concerning the main health problems in the community, including methods of preventing and controlling them." A rights-respecting response to COVID-19 needs to ensure that accurate and up-to-date information about the virus, access to services, service disruptions, and other aspects of the response to the outbreak is readily available and accessible to all.

In a number of countries, governments have failed to uphold the right to freedom of expression, taking actions against journalists and healthcare workers. This ultimately limited effective communication about the onset of the disease and undermined trust in government actions:

China's government initially withheld basic information about the coronavirus from the public, underreported cases of infection, downplayed the severity of the infection, and dismissed the likelihood of transmission between humans. Authorities detained people for reporting on the epidemic on social media and internet users for "rumor-mongering," censored online discussions of the epidemic, and curbed media reporting. In early January, Li Wenliang, a doctor at a hospital in Wuhan where infected patients were being treated, was summoned by police for "spreading rumors" after he warned of the new virus in an online chatroom. He died in early February from the virus.

In Iran, the outbreak emerged after authorities had severely damaged public trust by brutally repressing widespread antigovernment protests and lying about shooting down a civilian airliner. As a result, Iranian authorities have struggled to assure the public that government decision-making around the COVID-19 outbreak has been in the public's best interests. The unusually high rate of reported cases of government officials contracting the virus, as well as the inconsistency in figures announced by officials and domestic media sources, have heightened concerns that the data is either being deliberately underreported or poorly collected and analyzed.

In Thailand, whistleblowers in the public health sector and online journalists have faced retaliatory lawsuits and intimidation from authorities after they criticized government responses to the outbreak, raised concerns about a possible cover-up, and reported

alleged corruption related to the hoarding and profiteering of surgical masks and other supplies. Some medical personnel were also threatened with disciplinary action – including termination of employment contracts and revocation of their licenses – for speaking out about the severe shortage of essential supplies in hospitals across the country.

A few countries prioritized open communication and transparent reporting on the number of cases: Taiwan took swift steps to combat the virus, including promptly making credible information widely available to the public. Daily press briefings by health officials and public service announcements aim to counter misinformation and have helped to calm panic, restore public confidence, and encourage people's assistance in the crisis.

Singapore's government published and regularly updated detailed statistics on the number and rate of infections and recoveries. South Korea's government also published health data and health officials gave two daily briefings to establish public confidence and promote citizen vigilance.

In Italy inconsistent messages from public officials, including for domestic political reasons, may initially have diluted the impact of public service announcements about proper hygiene and social distancing. The government has held daily news conferences to share data and implemented an aggressive public campaign about better practices to protect oneself and others from spreading the virus.

Recommendations:

Governments should fully respect the rights to freedom of expression and access to information, and only restrict them as international standards permit.

Governments should ensure that the information they provide to the public regarding COVID-19 is accurate, timely, and consistent with human rights principles. This is important for addressing false and misleading information.

All information about COVID-19 should be accessible and available in multiple languages, including for those with low or no literacy. This should include qualified sign language interpretation for televised announcements, as Taiwan has done; websites that are accessible to people with vision, hearing, learning, and other disabilities; and telephone-based services that have text capabilities for people who are deaf or hard of hearing. Communications should utilize plain language to maximize understanding. Age-appropriate information should be provided to children to help them take steps to protect themselves.

Health data is particularly sensitive, and the publication of information online can pose a significant risk to affected persons and in particular people who are already in positions of vulnerability or marginalization in society. Rights -based legal safeguards should govern the appropriate use and handling of personal health data.

Reliable and unfettered access to the internet should be maintained and steps should be taken to ensure internet access be available to people with low incomes. The US Federal Communications Commission's "Keep Americans Connected" pledge commits participating companies not to terminate service to customers who are unable to pay their bills due to the disruptions caused by the coronavirus pandemic, to waive any late fees, and to open Wi-Fi hotspots to any American who needs them. Further steps could be taken to lift data caps, upgrade speeds, and eliminate eligibility requirements for any low-income targeted plans during the pandemic.

Ensure quarantines, lockdowns, and travel bans comply with rights norms

International human rights law, notably the International Covenant on Civil and Political Rights (ICCPR), requires that restrictions on rights for reasons of public health or national emergency be lawful, necessary, and proportionate. Restrictions such as mandatory quarantine or isolation of symptomatic people must, at a minimum, be carried out in accordance with the law. They must be strictly necessary to achieve a legitimate objective, based on scientific evidence, proportionate to achieve that objective, neither arbitrary nor discriminatory in application, of limited duration, respectful of human dignity, and subject to review.

Broad quarantines and lockdowns of indeterminate length rarely meet these criteria and are often imposed precipitously, without ensuring the protection of those under quarantine – especially at-risk populations. Because such quarantines and lockdowns are difficult to impose and enforce uniformly, they are often arbitrary or discriminatory in application.

Freedom of movement under international human rights law protects, in principle, the right of everyone to leave any country, to enter their own country of nationality, and the right of everyone lawfully in a country to move freely in the whole territory of the country. Restrictions on these rights can only be imposed when lawful, for a legitimate purpose, and when the restrictions are proportionate, including in considering their impact. Travel bans and restrictions on freedom of movement may not be discriminatory nor have the effect of denying people the right to seek asylum or of violating the absolute ban on being returned to where they face persecution or torture.

Governments have broad authority under international law to ban visitors and migrants from other countries. However, domestic and international travel bans historically have often had limited effectiveness in preventing transmission, and may in fact accelerate disease spread if people flee from quarantine zones prior to their imposition.

In China, the government imposed an overly broad quarantine with little respect for rights:

In mid-January, authorities in China quarantined close to 60 million people in two days in an effort to limit transmission from the city of Wuhan in Hubei province, where the virus was first reported, even though by the time the quarantine started, 5 millions of Wuhan's 11 millions residents had left the city. Many residents in cities under quarantine expressed difficulties obtaining medical

care and other life necessities, and chilling stories have emerged of deaths and illness: A boy with cerebral palsy died because no one took care of him after his father was taken to be quarantined. A woman with leukemia died after being turned away by several hospitals because of concerns about cross-infection. A mother desperately pleaded to the police to let her daughter with leukemia through a checkpoint at a bridge to get chemotherapy. A man with kidney disease jumped to death from his apartment balcony after he couldn't get access to health facilities for dialysis. Authorities have also reportedly used various intrusive containment measures: barricading shut the doors of suspected infected families with metal poles, arresting people for refusing to wear masks, and flying drones with loudspeakers to scold people who went outside without masks. The authorities did little to combat discrimination against people from Wuhan or Hubei province who traveled elsewhere in China.

In Italy the government has imposed a lockdown but with greater protections for individual rights. The Italian government adopted progressively restrictive measures since the first major outbreak of COVID-19 cases in the country in late February.

Authorities initially placed ten towns in Lombardy and one in Veneto under strict quarantine, prohibiting residents from leaving the areas. At the same time, they closed schools in affected regions. Citing a surge in cases and an increasingly unsustainable burden on the public healthcare system, the government on March 8 imposed a slew of new measures in much of the country's north that put in place much more severe restrictions on movement and basic freedoms. The next day, the measures were applied across the country. Further measures imposed included restrictions on travel except for essential work or health reasons (upon self-certification), closure of all cultural centers (cinemas, museums), and cancellation of sports events and public gatherings. On March 11 the government closed all bars, restaurants, and stores except food markets and pharmacies (and a few other exceptions) across the country. People who disobey the travel restrictions without a valid reason can be fined up to 206 euros and face a three-month prison term. All schools and universities were closed throughout the country. People have been allowed out to shop for essential items, exercise, work (if unable to perform work from home), and for health reasons (including care for a sick relative).

Other governments, such as those in South Korea, Hong Kong, Taiwan, and Singapore have responded to the outbreak without enacting sweeping restrictions on personal liberty, but have reduced the number of travelers from other countries with significant outbreaks. In South Korea, the government adopted proactive and ramped-up testing for COVID-19. It focused on identifying infection hotspots, conducting a large number of tests on at-risk people without charge, disinfecting streets in areas with high numbers of infections, setting up drive-through testing centers, and promoting social distancing. In Hong Kong, there have been concerted efforts to promote social distancing, handwashing, and mask-wearing. Taiwan proactively identified patients who sought health care for symptoms of respiratory illness and had some tested for COVID-19. It also set up a system that alerts the authorities based on travel history and symptoms during clinical visits to aid in case identification and monitoring. Singapore adopted a contact-tracing program for those confirmed to have the virus, among other measures. However, the government's decision to deport four foreign workers for violating a mandatory 14-day leave of absence from work and ban them from working in the country raises concern of disproportionate penalties.

Recommendations:

Governments should avoid sweeping and overly broad restrictions on movement and personal liberty, and only move towards mandatory restrictions when scientifically warranted and necessary and when mechanisms for support of those affected can be ensured. A letter from more than 800 public health and legal experts in the US stated, "Voluntary self-isolation measures [combined with education, widespread screening, and universal access to treatment] are more likely to induce cooperation and protect public trust than coercive measures and are more likely to prevent attempts to avoid contact with the healthcare system."

When quarantines or lockdowns are imposed, governments are obligated to ensure access to food, water, health care, and caregiving support. Many older people and people with disabilities rely on uninterrupted home and community services and support. Ensuring continuity of these services and operations means that public agencies, community organizations, health care providers, and other essential service providers are able to continue performing essential functions to meet the needs of older people and people with disabilities. Government strategies should minimize disruption in services and develop contingent sources of comparable services. Disruption of community-based services can result in the institutionalization of persons with disabilities and older people, which can lead to negative health outcomes, including death, as discussed below.

PROTECT PEOPLE IN CUSTODY AND IN INSTITUTIONS

COVID-19, like other infectious diseases, poses a higher risk to populations that live in close proximity to each other. And it disproportionately affects older people and individuals with underlying illnesses such as cardiovascular disease, diabetes, chronic respiratory disease, and hypertension. Eighty percent of the people who have died of COVID-19 in China were over the age of 60. This risk is particularly acute in places of detention, such as prisons, jails, and immigration detention centers, as well as residential institutions for people with disabilities and nursing facilities for older people, where the virus can spread rapidly, especially if access to health care is already poor. States have an obligation to ensure medical care for those in their custody at least equivalent to that available to the general population, and must not deny detainees, including asylum seekers or undocumented migrants, equal access to preventive, curative or palliative health care. Asylum seekers, refugees living in camps, and people experiencing homelessness may also be at increased risk because of their lack of access to adequate water and hygiene facilities.

In nursing facilities and other settings with large numbers of older people, visitor policies should balance the protection of older and at-risk residents with their need for family and connection. The US Department of Veterans Affairs announced a “no visitors” policy at its 134 nursing homes around the country in response to the risk of COVID-19. While the risk to older people is serious, blanket policies do not take into account public health guidance or the needs of older people.

People in prisons, jails, and immigration detention centers frequently do not receive adequate health care under normal circumstances, even in economically developed countries. Severely substandard health care has contributed to recent deaths of immigrants in the custody of US Immigration and Customs Enforcement. Populations in custody often include older people and people with serious chronic health conditions, meaning they are at greater risk for illness from COVID-19.

Many people in US jails have not been convicted of a crime but are locked up simply because they cannot afford to pay the bail set in their case. Older men and women are the fastest growing group in US prisons due to lengthy sentences, and prison officials already have difficulty providing them appropriate medical care. As a response, in one county in the US state of Ohio, the courts expedited review of people in jail, releasing some and transferring others to prisons. The American Civil Liberties Union has filed a lawsuit that seeks to challenge ongoing immigrant detention in the context of the virus.

Prisoners in Iran have reportedly tested positive for the coronavirus, including in Evin prison in Tehran and in the cities of Euromieh and Rasht. In an open letter in February, families of 25 prisoners detained for peaceful activism sought their at least temporary release amid the outbreak and lack of sufficient prison medical care. In March, the Iranian judiciary reportedly temporarily released about 85,000 prisoners for the Persian New Year (Nowruz), a substantially greater number than normal for the holiday, apparently because of health concerns surrounding the coronavirus outbreak. However, dozens of human rights defenders and others held on vaguely defined national security crimes remained in prison.

On March 12, Bahrain’s King Hamad bin Isa Al-Khalifa reportedly pardoned 901 detainees “for humanitarian reasons, in the backdrop of the current circumstances,” likely in reference to the coronavirus outbreak. The Ministry of Interior announced that another 585 detainees would be released and granted non-custodial sentences.

In Italy, prisoners in over 40 prisons have protested over fears of contagion in overcrowded facilities and against bans on family visits and supervised release during the coronavirus pandemic. In response, authorities have authorized for the first time the use of email and Skype for contact between prisoners and their families and for educational purposes and announced a plan to release and place under house arrest prisoners with less than 18 months on their sentence. The main prisoner rights organization in Italy, Antigone, estimated this could benefit at most 3,000 prisoners, while the penitentiary system is at around 14,000 over capacity. The organization called for broader measures to ensure the release of a greater number of detainees, including in particular older detainees and those with at-risk health profiles, among other measures. Civil society organizations have also called for alternatives to detention for all people currently detained in immigration detention centers in Italy due to the increased risk of infection and no prospect for deportation.

Recommendations:

Government agencies with authority over people housed in prisons, jails, and immigration detention centers should consider reducing their populations through appropriate supervised or early release of low-risk category of detainees including for example, those whose scheduled release may be soon, those who are in pre-trial detention for non-violent and lesser offenses, or whose continued detention is similarly unnecessary or not justified. Detained individuals at high risk of suffering serious effects from the virus, such as older people and people with underlying health conditions, should also be considered for similar release with regard to whether the detention facility has the capacity to protect their health, including guaranteed access to treatment, and taking into consideration factors such as the gravity of the crime committed and time served.

If safe and legal deportations are suspended due to the virus, the legal justification for detaining people pending deportation may no longer exist. In these cases, authorities should release detainees and institute alternatives to detention.

Authorities that operate prisons, jails, and immigration detention centers should publicly disclose their plans of action to reduce the risk of coronavirus infection in their facilities and the steps they will take to contain the infection and protect prisoners, prison staff, and visitors, if cases of the virus or exposure to it are present. Persons in any form of detention have the same right to health as the non-incarcerated population and are entitled to the same standards of prevention and treatment. The detained population and the general population have a compelling interest to know in advance what plans authorities have put in place for handling COVID-19. Authorities should take steps to ensure they are appropriately coordinating with public health departments and communicating openly with staff and people in custody. They should also screen and test for COVID-19 according to the most recent recommendations of health authorities. They should provide appropriate hygiene training and supplies and ensure that all areas susceptible to harboring the virus and accessible to prisoners, prison staff, and visitors, are disinfected regularly, consistent with accepted best practices. They should develop plans for housing people exposed to or infected with the virus. They should ensure that individuals released or put on supervised leave have access to appropriate accommodations and health care. Any plans for lockdowns or isolation should be limited in scope and duration based on the best science available, and they should not be or seem punitive, as fear of being placed in lockdowns or isolation could delay people notifying medical staff if they experience symptoms of infection. Detention centers should consider alternative strategies such as video conferencing for individuals to be able to connect with family or legal counsel.

Governments seeking to contain the spread of the virus should evaluate and modify as necessary during the time of the outbreak measures used to enforce immigration laws, including court hearings and check-ins with authorities as alternatives to detention. Authorities should provide public notice that there will be no negative repercussions for missed court dates or check-ins during the time of the outbreak. Authorities should stop arbitrary detentions of migrants, seek alternatives to detention for people currently in immigration detention, and opt for release where possible, particularly for those in high-risk categories if infected and for people who are being held with no prospect for imminent, safe, and legal deportation

In the absence of adequate state support, the United Nations and other inter-governmental agencies should urgently press for access to formal and informal detention facilities to provide detainees with life-saving assistance.

Government's housing refugees and asylum seekers should ensure their response to COVID-19 includes prevention and treatment measures, with particular attention to measures to alleviate overcrowding in detention centers and camps, improve sanitation and access to health care, and resort to time-bound quarantines and isolation only as necessary.

ENSURE PROTECTION OF HEALTH WORKERS

As part of the right to health, the **ICESCR** provides that governments should create conditions that "would assure to all medical service and medical attention in the event of sickness."

Governments have an obligation to minimize the risk of occupational accident and diseases including by ensuring workers have health information and adequate protective clothing and equipment. This means providing health workers and others involved in the COVID-19 response with appropriate training in infection control and with appropriate protective gear.

Combating the spread of COVID-19 requires that health facilities have adequate water, sanitation, hygiene, healthcare waste management, and cleaning. A 2019 baseline report by WHO and the UN Children's Fund (UNICEF) found that "[a]n estimated 896 million people use health care facilities with no water service and 1.5 billion use facilities with no sanitation service."

Human Rights Watch research into hospital-acquired infections in Hungary suggests the nation's mismanaged, underfunded, and understaffed public healthcare system is poorly equipped to handle a COVID-19 outbreak. Patients and medical experts described a lack of basic hygiene protocol, lack of isolation rooms, and a shortage of health professionals, doctors and nurses, and medical supplies in general. One doctor said it was nearly impossible to get essential items like disinfectant and respirator masks, which are critical to protect against viruses.

In Venezuela, Human Rights Watch has documented a health system utter collapse. Hospitals have closed or are operating at a fraction of their capacity, many without regular access to electricity or water. Vaccine-preventable diseases such as measles and diphtheria have returned long before the pandemic hit.

Broad sanctions imposed by the US on Iran have drastically constrained the ability of the country to finance humanitarian imports, including medicines. This has caused serious hardships for ordinary Iranians. Concerned governments should support Iran's efforts to combat the COVID-19, including by providing access to medical devices and testing kits.

In Thailand public health capacity has been diminished by corruption. Medical personnel lack surgical masks and local supplies have been diverted and shipped to China and other markets in part due to corruption.

The Health Ministry in Egypt in February sent doctors and medical teams to a quarantine facility without informing them that their transfer was part of the COVID-19 response or of the risks entailed. Medical staff said they were "tricked" into the assignment. In Lebanon the spokesperson for the country's medical supply importers told Human Rights Watch that the country had run out of gloves, masks, gowns, and other supplies necessary to deal with the coronavirus outbreak due to the financial crisis that had prevented them from importing needed goods.

She added that medical supply importers have brought in just US\$10 million of the \$120 million in goods they have sought since October and nearly all transactions have been frozen since February due to the country's ongoing economic crisis. The head of the Syndicate of Private Hospitals said that the government owes private hospitals more than \$1.3 billion, compromising their ability to pay staff and purchase medical equipment. Yet the Lebanese government has not put in place any measures to address the economic crisis threatening access to medical care, medicine, and medical equipment.

Recommendations

Governments should take measures so that health care is available to all, accessible without discrimination, affordable, respectful of medical ethics, culturally appropriate, and of good quality.

Governments should ensure that health workers have access to appropriate protective equipment and that social protection programs are in place for the families of workers who die or become ill as a result of their work, and ensure such programs include informal workers, who represent a large share of the caregiving sector.

In past epidemics, fear of exposure has led to attacks on health workers. Governments should monitor for such attacks to deter them, and ensure that they can quickly, adequately, and appropriately respond if attacks occur.

FULFILL THE RIGHTS TO EDUCATION – EVEN IF SCHOOLS ARE TEMPORARILY CLOSED

Many countries have closed schools since the COVID-19 outbreak, disrupting the learning and education of hundreds of millions of students. In times of crises, schools provide children with a sense of stability and normalcy and ensure children have a routine and are emotionally supported to cope with a changing situation. Schools also provide important spaces for children and their families to learn about hygiene, appropriate handwashing techniques, and coping with situations that will break routines. Without access to schools, this prime responsibility falls on parents, guardians, and caregivers. When schools are closed, government agencies should step in to provide clear and accurate public health information through appropriate media.

To ensure education systems respond adequately, UNESCO has recommended that states “adopt a variety of hi-tech, low-tech and no tech solutions to assure the continuity of learning.” In many countries, teachers already use online learning platforms to complement normal contact hours in classrooms for homework, classroom exercises, and research, and many students have access to technological equipment at home. However, not all countries, communities, families, or social groups have adequate internet access, and many children live in places with frequent government-led internet shutdowns.

RECOMMENDATIONS

Online learning should be used to mitigate the immediate impact of lost normal school time. Schools deploying educational technology for online learning should ensure the tools protect child rights and privacy. Governments should attempt to recover missed in-person class time once schools reopen.

Governments should adopt measures to mitigate the disproportionate effects on children who already experience barriers to education, or who are marginalized for various reasons – including girls, those with disabilities, those affected by their location, their family situation, and other inequalities. Governments should focus on adopting strategies that support all students through closures – for example, monitoring students most at risk and ensuring students receive printed or online materials on time, with particular attention provided to students with disabilities who may require adapted, accessible material.

Governments should adopt mitigation strategies, for example by working with teachers, school officials, and teachers’ unions and associations to factor in plans to recover teaching or contact hours lost, adjusting school calendars and exam schedules, and ensuring fair compensation for teachers and school personnel who are working additional hours.

In countries with high numbers of out-of-school children, school closures may jeopardize efforts to increase school enrollments and retention, particularly at the secondary level. Governments should place additional measures to monitor compliance with compulsory education – and ensure government education officials monitor school returns once schools reopen.

Education officials should focus attention on areas with high incidence of child labor or child marriage and ensure all children return to school. Officials should also ensure that schools with refugee students adopt outreach measures to ensure refugee children return to school, including by working with refugee parent groups and community leaders.

Sudden school closures may also leave low-income families struggling to make ends meet and provide necessities. Governments should guarantee continued meal provision during school closures for children in low-income families who will miss subsidized meals.

ADDRESS DISPROPORTIONATE IMPACTS ON WOMEN AND GIRLS

Outbreaks of disease often have gendered impacts. Human Rights Watch found that the 2014 Ebola virus disease outbreak and the 2015-2016 outbreak of the mosquito-borne Zika virus in Brazil had particularly harmful impacts on women and girls and reinforced longstanding gender inequity. News reports and public health analysis suggest that COVID-19 is disproportionately affecting women in a number of ways.

Though risks specific to pregnant women exposed to COVID-19 are not yet clear, the outbreak could negatively affect sexual and reproductive health and rights. Overloaded health systems, reallocation of resources, shortages of medical supplies, and disruptions of global supply chains could harm women’s access to contraception and pre- and post-natal and birth care. Although the risk of infection through breastfeeding is not known, the UN Population Fund has recommended that breastfeeding mothers who become ill should not be separated from their infants. Past epidemics, such as the Ebola outbreak in Sierra Leone, have impacted the availability of routine prenatal and maternity care, leaving women more at risk to preventable maternal deaths or morbidities.

In China, press reports suggest an increase in domestic violence under quarantine. Crises – and lockdowns – can trigger greater incidence of domestic violence for reasons including increased stress, cramped and difficult living conditions, and breakdowns in community support mechanisms. Crises can often further limit women’s ability to get away from abuse, and place victims in an environment without appropriate access to services, such as safe shelter away from abusers and accountability for abuse.

Women globally do almost 2.5 times as much unpaid care and domestic work as men, and they are more likely than men to face additional care giving responsibilities when schools close, making it harder to maintain paid employment. Japan responded to the potential for a disproportionate impact on families with young children by offering to offset costs to businesses for workers taking paid leave to care for children during school closures, though the amount offered was low. Italy was considering measures to

mitigate the effects of the lockdown on families with children. These could include emergency paid parental leave or vouchers for families with children up to 12 years old (or children with disabilities without any age limit) who need to pay for childcare amid the prolonged school closures.

Up to 95 percent of female workers in some regions work in the informal sector where there is no job security, and no safety net if a crisis like COVID-19 destroys their earnings. Informal work includes many occupations most likely to be harmed by a quarantine, social distancing, and economic slowdown, such as street vendors, goods traders, and seasonal workers. Women are also overrepresented in service industries that have been among the hardest hit by the response to COVID-19.

Worldwide, 70 percent of health and social service providers are women - meaning women are at the front lines of containing the spread of COVID-19 and may be heavily exposed to the virus through work in the health sector. Fear in communities about the exposure that health workers face may lead women in this sector to be shunned or face stigma, adding an extra burden to the challenge of trying to protect their and their families' health. This may manifest itself, for example, in trying to access or secure childcare while they work on the front lines.

Some female care workers are migrant domestic workers. They can be vulnerable to abusive employment conditions in normal times, and are at heightened risk of abuse, losing employment, being frontline caregivers without adequate protections, and of being trapped and unable to reach their homes during a crisis. They may also face barriers to protecting their own health.

Moves toward telecommuting – for school and work – as a means of social distancing can disproportionately harm women and girls. Women are up to 31 percent less likely to have internet access than men in some countries, and worldwide about 327 million fewer women than men have a smartphone. Even when women have access to the internet, gender disparities may make them less able to use it for reasons including cost, socialization, and family pressures. When multiple members of a household need access to limited computing resources within the home, gender inequality may mean women and girls have less access.

Recommendations:

Authorities should take steps to mitigate gendered impacts and ensure that responses do not perpetuate gender inequity.

When education is moved online, governments and education providers should monitor participation and retention of students in online courses for a gendered impact and respond quickly with strategies to retain and reengage women and girls if their participation falls off. They should also address the particular risks of job losses to women who may take on additional caregiving during school closures.

Measures designed to assist workers affected by the pandemic should ensure the assistance of workers in informal work and service industries, who are predominantly women.

Governments should ensure public awareness campaigns address how victims of domestic violence can access services, and should ensure that services are available to all victims of domestic violence, including those living in areas under movement restrictions or under quarantine and those infected with COVID-19

Governments should support frontline health and social service care workers with the recognition that these workers are mostly women. Support should include consideration of their needs as caregivers within their own families and the impact of stigma on them and their families.

Both source and destination countries for migrant domestic workers should adopt special measures to locate and assist migrant domestic workers to prevent abusive labor conditions and provide assistance relating to managing COVID-19.

Governments and international bodies should closely monitor the impact of COVID-19 on pregnant women and act to mitigate the impact of the pandemic on the right of women and girls to access sexual and reproductive health services.

ROOT OUT DISCRIMINATION AND STIGMA, PROTECT PATIENT CONFIDENTIALLY

During previous public health crises, people with infection or disease and their families have often faced discrimination and stigma. For example, Human Rights Watch found that people living with HIV in Kenya, South Africa, the Philippines, and the US faced discrimination and stigma due to their HIV status and have been prevented from accessing health care, getting jobs, and attending school. Public health research has shown that survivors of Ebola in West Africa have faced harmful stigma that, in some cases, has led to eviction, loss of employment, abandonment, violence, and other consequences.

Since the coronavirus outbreak, news reports from a number of countries have documented bias, racism, xenophobia, and discrimination against people of Asian descent. Incidents include physical attacks and beatings, violent bullying in schools, angry threats, discrimination at school or in workplaces, and the use of derogatory language in news reports and on social media platforms, among others. Since January, media have reported alarming incidents of hate crimes in the United Kingdom, the US, Spain, and Italy, among other countries, targeting people of Asian descent, apparently linked to COVID-19. Senior US government officials, including President Donald Trump, have stoked anti-Chinese sentiment by referring to the coronavirus as the "Chinese Virus", and in one incident reported by a White House correspondent, the "Kung Flu". Anti-immigrant leaders like Victor Orban in Hungary and Matteo Salvini in Italy have seized on the pandemic to stoke xenophobic sentiment.

South Korean authorities believe 63 percent of the then more than 7,300 confirmed cases in the country attended services held by the Shincheonji Church of Jesus in the city of Daegu or had contact with attendees. In a statement, the church reported "4,000 cases

of injustice” against congregants since the outbreak, including “termination of employment, workplace bullying, domestic persecution, labeling, and slandering,” and said the church was being blamed as “the main culprit of the COVID-19 outbreak.” Reporting by the BBC in South Korea found that public health alerts around the virus may not have adequately protected the privacy of individuals with the virus.

Governments should take swift action to protect from attack individuals and communities who may be targeted as bearing responsibility for COVID-19, thoroughly investigate all reported incidents, and hold perpetrators accountable.

Governments should ensure that response measures to COVID-19 do not target or discriminate against particular religious or ethnic groups, and that responses are inclusive of and respect the rights of marginalized groups, including people with disabilities and older people. Governments should ensure equal access to emergency services to people with disabilities and older people.

Governments should work to combat stigma and discrimination by training health workers on COVID-19, using mass media and school networks to expand public awareness of human rights, and recognizing that the virus knows no boundaries and recognizes no distinctions of race, ethnicity, religion, or nationality.

Governments should ensure that patient confidentiality is protected even as authorities take steps to identify those who may have been exposed to the virus.

PROTECT COMMUNITY AND CIVIL SOCIETY ORGANIZATIONS

In many countries, civil society organizations are doing critical work to support efforts to stem the spread of the virus and ensure that those with COVID-19 – or those living in isolation or under quarantine – have access to needed protection, care, and social services. Governments should protect and support civil society organizations doing this work, as well as those reporting on the impacts of the outbreak.

During the 2014 Ebola outbreak in West Africa, nongovernmental groups, local newspapers, and community radio played a key role in public health education.

In Hong Kong ordinary people have organized themselves to create and distribute masks and hand sanitizers to the most vulnerable to fill policy gaps. But the Chinese government has long maintained a stranglehold on nongovernmental organizations and some groups are struggling with reduced funding during the outbreak.

In Italy, authorities have subjected nongovernment sea rescue organizations assisting migrants and asylum seekers to quarantines at dock despite crew members and passengers testing negative for the virus. In a context in which civilian rescue missions have been consistently undermined, blocked, and even criminalized, potentially unnecessary quarantines might be used to deter rescue at sea.

Governments should not exploit the coronavirus pandemic to criminalize or obstruct the work of civil society organizations.

PROMOTE THE RIGHTS TO WATER AND SANITATION

The rights to water and to sanitation are part of the right to an adequate standard of living.

The UN Committee on Economic, Social and Cultural Rights has reaffirmed that the rights to water and sanitation are an essential component of the right to an adequate standard of living, and “integrally related, among other Covenant rights, to the right to health.” Billions of people around the world do not have access to safe drinking water. Yet, as the WHO has noted the provision of safe water, sanitation, and hygienic conditions is essential to protecting human health during the COVID-19 outbreak. Prevention of human-to-human transmission of the COVID-19 virus may be supported by promotion of the rights to water and sanitation, and supporting water and wastewater infrastructure and technicians to ensure good and consistently applied water, sanitation, and hygiene (WASH) and waste management practices in communities, homes, schools, marketplaces, and healthcare facilities. More research is needed to understand the risk of contaminated drinking water, environmental transmission, and how to ensure wastewater operators are trained and supported throughout the crisis.

Lack of potable water and sanitation at home, school, or in healthcare settings will make preventative measures difficult. In some cases, without adequate water and sanitation these settings themselves may be a locus for the spread of the disease.

Venezuela’s healthcare infrastructure is so weak that the most basic recommendation –handwashing – is difficult even for healthcare providers, who work under difficult conditions. The Venezuelan doctors and nurses Human Rights Watch interviewed over the past few months said that soap and disinfectants were virtually nonexistent in their clinics and hospitals. As inflation has risen and salaries have been devalued, it has become impossible for them to bring in their own supplies. Public hospitals in Caracas, the capital, are also suffering regular water shortages. In remote hospitals, the shortages have lasted weeks to months.

Patients and personnel have been required to bring their own water for drinking and sometimes for flushing toilets.

Governments should immediately suspend any water shutoffs for failure to pay. Discontinuing water services for failure to pay in any context is incompatible with human rights and can be particularly harmful in the context of public health crises like the COVID-19 pandemic.

ENSURE HUMANITARIAN AID CONTINUES

According to the United Nations, a number of the many countries affected by COVID-19 are already facing crises due to conflicts, natural disasters, or climate change. Many people in those crisis-hit countries rely on humanitarian aid to survive.

Governments should ensure that support for vital humanitarian operations carried out by the UN and other aid agencies does not suffer as a result of COVID-19.

TARGET ECONOMIC RELIEF TO ASSIST LOW-WAGE WORKERS

Governments should take policy measures to buffer the economic impacts of COVID-19, which will affect lower-wage workers first and hardest. Social distancing, quarantine, and the closure of businesses may have enormous economic consequences. The most vulnerable people are low-wage workers in low-income households. Governments should create mechanisms so that workers affected by COVID-19 do not suffer loss of income that might deter them from self-isolating to contain the spread of the virus.

Public health experts recommend that companies encourage employees to work from home to prevent the virus from spreading. But remote work is not an option for millions of workers in fields like retail, restaurants, personal services, the gig economy, and informal sectors. In these fields, employment situations are more precarious, wages tend to be lower, and in some countries, workers have low rates of paid sick leave. Particularly in countries such as the US where low pay may combine with lack of access to sick leave and healthcare coverage, these workers will need assistance.

Many governments guarantee some paid sick leave to all workers. Others – most notably the US among developed economies – do not. Low-wage earners, service workers, informal workers and workers in the gig economy are among those least likely to have paid sick leave. The lack of paid sick and family leave means disease outbreaks like COVID-19 place an undue burden on poor and marginalized workers and exacerbate economic inequality and also contribute to gender inequity. To support families during the outbreak, sick and family leave should cover self-isolation and caregiving responsibilities during school and care facility closures.

Global supply chains have already been disrupted by COVID-19, which has led to reduced manufacturing and factory closures. There is a risk that workers in jobs linked to the global economy will be forced to work part-time for less income or lose their jobs altogether.

One option is direct cash payments to compensate some lost working hours, as was provided by the US government during the 2008 recession. Low-wage workers need protection against the consequences of being let go by employers when they cannot work due to their sickness or the sickness of family members. Without assistance, these workers may face intense economic hardship, fall behind on debt payments, and risk eviction. Simple one-off cash grants to families whose children receive free school meals or who are in receipt of specific family-related social security assistance could also help mitigate impacts on already-struggling families who now in addition to loss of income could face extra burdens, for example, due to school closures. European countries, including Italy, France and Spain, are considering or already adopted special financial measures to support workers, low-income families, and small businesses.

Unconditional tax cuts for employers and employee-side payroll tax cuts are often poorly targeted and may not reach those most in need. For example, expanded social insurance program like unemployment may permit workers to stay on payroll and be paid when they cannot work because of a COVID-19 downturn.

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