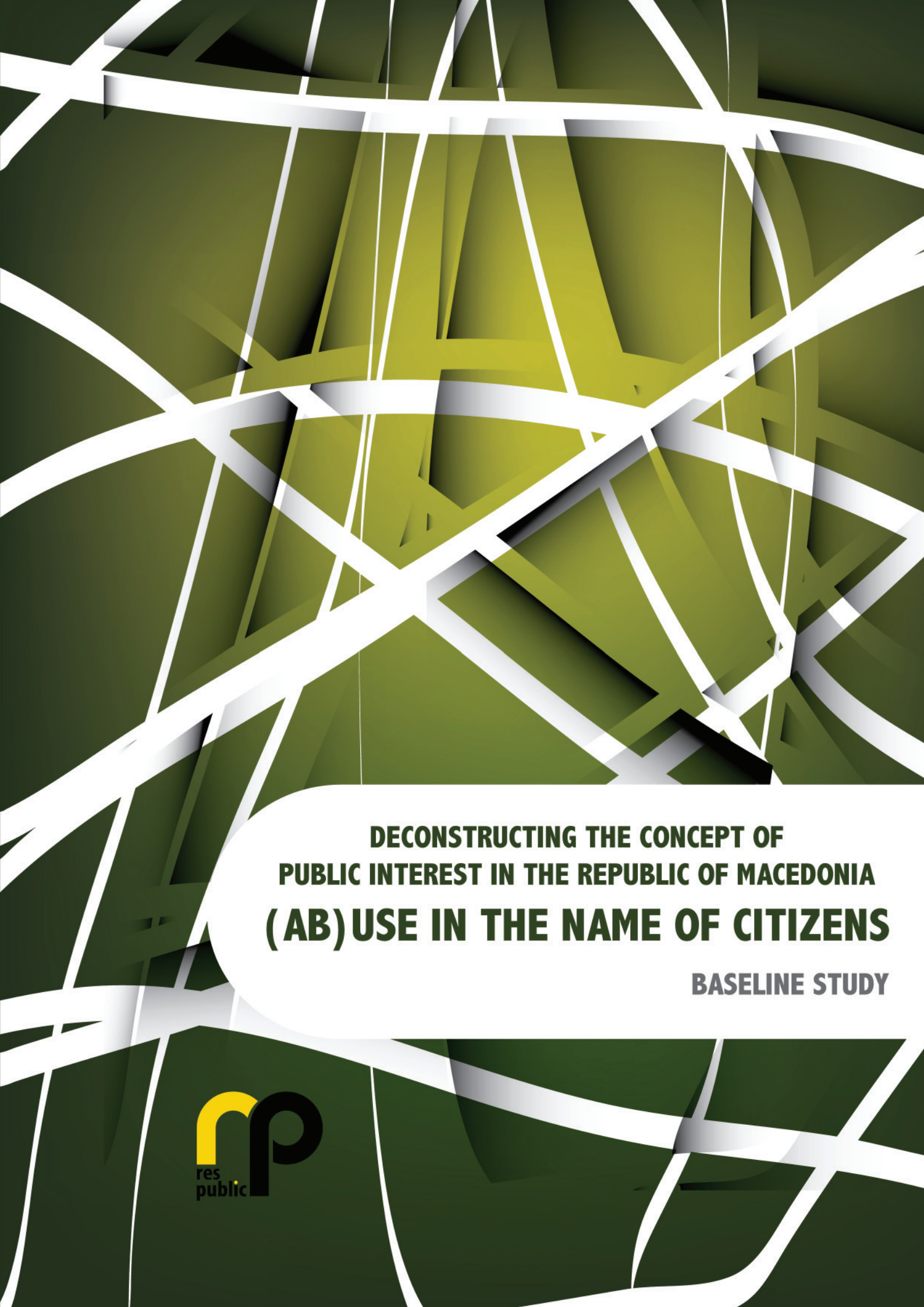


DECONSTRUCTING THE CONCEPT OF PUBLIC INTEREST IN THE REPUBLIC OF MACEDONIA

(AB)USE IN THE NAME OF CITIZENS

BASELINE STUDY

res publica

Deconstructing the concept of public interest in the Republic of Macedonia

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Deconstructing the concept of public interest in the Republic of Macedonia (AB)USE IN THE NAME OF CITIZENS

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Foreword

Macedonia is currently facing its largest political crisis in the past twenty-four years. It has therefore never been more important to discuss the public interest and deconstruct its true meaning. Public interest has various meanings, but in general, it involves matters, or policies that affect the majority of people in a particular society. However, the term *public interest* lacks a firm agreed-upon definition. This opens room for misuse most often by political elites who regularly justify their decisions and policies claiming that they are of public interest without explaining how.

For this reason, the Institute of Communication Studies (ICS) has commenced the project "**Voicing the Public Interest: Empowering Media and Citizens for Safeguarding the Public Policy in Macedonia**". The project's goal is to raise awareness of citizens about the significance of public interest and include media professionals and CSOs in safeguarding it. The project will enhance professional media norms and standards by introducing the concept of public interest journalism in Macedonia. Part of the activities will focus on creating a network of opinion-makers and experts from different areas who will analyze pressing issues of public interest, thus influencing the public policy-making process.

The objective of the baseline study "**Deconstructing the Public Interest in the Republic of Macedonia: (Ab)use in the Name of Citizens**" is to provide a comprehensive overview of what constitutes public interest; to examine how the term has been used and understood in a variety of legal and ethical contexts; define the actors that are supposed to safeguard it and; identify the best practices in the field. Moreover, it also aims to encourage a broad debate among the media, NGO community, public administration, as well as the broader public, on their responsibility in safeguarding the public interest. Finally, it provides a working definition of the term, and offers recommendations for future practices in the field in the Republic of Macedonia.

The project "**Voicing the Public Interest: Empowering Media and Citizens for Safeguarding the Public Policy in Macedonia**" is supported by the British Embassy Skopje.

This study, as well as the other documents prepared during the project will be available on the website www.respublica.edu.mk - digital citizenship initiative Res Publica.



Introduction

The what, the why and for whom

Common rhetoric in virtually any contemporary discourse regarding anything from keeping the environment clean, our children safe at night, human rights and freedom of speech, "we need to protect the public interest". Public interest is a formulation that found its way in every form of public discourse since the end of world war two (classic authors may provide some philosophical approach to promoting and protecting what in ancient times was known and the good of the community i.e. good of the city/state). Academics use it in their classrooms, they call upon it in articles, politicians call upon it to justify their decisions and policies, media call upon it to discredit politicians (and/or support them), in fact 98% of all national legislation contains that formulation yet no one really provides a concise definition of what public interest is or how far-reaching is its scope. So much is said and written about it yet no clear and definitive frame can be found. First serious definitions in literature addressing it are found in the early '60s, somehow agreeing that public interest as a concept is used as a rhetorical device, a statement of public policy and as a normative standard, and following the seventies not much was done to provide a clearer definition. This perhaps is best articulated in the Ph.D. thesis by Geoffrey Edwards: 'After seminal works by Beard (1934), Schubert (1960, 1982), Friedrich (1962), Tlathman (1966) and Held (1970), the literature dissecting the concepts seems to have lost focus and vigor' (2007: 3). Although many authors throughout political theory, legal theory and philosophy provide various definitions, personal classifications and categorizations of public interest in some context, this publication shall focus on ideas and concepts leading to a useful and applicable definition of public interest today.

This publication will attempt to provide a more contemporary overview of relevant definitions of public interest, as well as its scope and range. A further focus will be placed on the application of public interest in the actions and rhetoric of media and the role that media can play in protecting and promoting the public interest. Specific field of interest will be placing the public interest in law, politics and media in the Republic of Macedonia.

Though a literature overview on the subject is provided, certain definitions and arguments provided in this publication will represent attitudes of the authors.



1

Definitions and Scope of Public Interest

What can be summarized with the least amount of dispute regarding public interest in theory and legal literature is that it did evolve over time. However, contemporary authors and most legal systems today find the root of public interest in classical and ancient Greek philosophers' perspective on the wellbeing of the entire community and the safety and prosperity of the polity over the wellbeing and prosperity of individual members of the community. Adoption of the Magna Charta (1215) was a milestone which restrained the monarch in exercising power against the properties of (propertied) individuals which would later evolve to the Habeas Corpus Act (1679) providing freedom from unlawful imprisonment to all individuals.[1] Other Renaissance authors such as Machiavelli contributed to justifying actions which would secure the safety and prosperity of the country (republic, monarchy, city state) (Bickers *et al* 2006, 2012) a concept that Cardinal Richelieu would popularize as *Raison d'Etat* (1622-1642) giving root to doctrines of national interest. Rousseau wrote of the *will of al*l and *general will* (1920) and Beard argued that national interest and public interest were phrases commonly used in England by the End of the 17th century (1934:16 in Edwards 2007: 26). By the 1950s, public interest was found to be too normative and theoretical for skeptical, empirical scholars and many considered it to be nonsense, as it had no empirical referent. King *et.al.* mentions Frank Sorauf's (1957) as one of the first structured categorizations of the term with five basic meaning: rhetorical, elitist, morally pure, balance between individual and social interests and no meaning at all; Sorauf accepting only a methodological meaning of the term, similar to the concept of due process of law (2010: 958). Perhaps one of the more acceptable classifications of theories of public interest came with Held (1970) in the form of preponderance theories, common interest theories, and unitary theories.

What public interest encompasses today is a broad variety of aspects of (the quality of) human life, ranging from: human rights, human security, economic growth, happiness, prosperity, standard of living or quality of living and well-being, constitutional heritage and religious values (King, Chilton, Roberts 2010: 957), though it is difficult to find an exhaustive and conclusive definition on it.

Another aspect of public interest is determining who is entrusted or obligated to define, protect and enforce it? Is it society as a whole (and by itself) or a more structured form of organization? A common question also deserving further explanation is what will be the scope of public interest? Grizo *et al.* (2011) in the academic textbook "Administrative Law" support a commonly accepted attitude towards public interest in legal theory that the term public interest falls under the category of so-called undefined terms

1 A parliamentary act in force today in England, '...force the courts to examine the lawfulness of a prisoner's detention in order to safeguard individual liberty and thus to prevent unlawful or arbitrary imprisonment'

> ...thus in order to avoid a too loose and extensive interpretation of what public interest is, in each particular case, the administrative authority (such as a ministry of any other government agency) applying its legal competencies (in the name of protecting public interest) may determine the meaning and scope of public interest only within the boundaries clearly stipulated by a legal act such as Law and bylaws. (p. 516)

The most acceptable thesis appears to be, that (only) in developed industrialized societies with sophisticated models of governance is this task entrusted on to the State. Thus as the state' role in society evolved over time the scope of what the state has to provide to ensure the well-being of all expanded, at the same time accepting that more actors other than the state need to be entrusted with the right and duty of protecting that idea of well being. Another useful rational for the States' role in protecting public interest is that it is the only subject with sovereign domain over coercive power necessary to prevent people from infringing on each others freedoms, as well as collecting money through taxation which may later be channeled to fund public services (education, health care, welfare, culture, utilities etc.) (Barry 1967 in Edwards 2007: 27). Michael Harmon (1992) defined the public interest as the product of the ongoing political activity of individuals and interest groups within our democratic governance system (in King *et. al.* 2010: 960) and according to the Atlanta Regional Commission a *sine qua non* for public interest in democracies is effective citizen participation i.e. direct involvement of those affected by decisions on planning, funding, advocacy or delivery of services, so the results of their involvement reflect their concerns (Persons 1990: 118; Oberg, Uba 2014) opening a window to active involvement of civil society organizations. This also supports claims that a contemporary discourse on public interest is only possible in developed democratic societies (respectively) that respect human rights and have sophisticated mechanisms of governance.

According to Persons (1990) the notion of the public interest serves as a regulating and evaluative standard that drives procedural processes of governance and in turn grants legitimacy to public policy as the outputs of governance. Thus in a democracy, public participation in policy-making processes is considered vital to serving the public interest. Goldstein (1980) argued that the heart of public interest law is centered not on decisions of individual practitioners as to what they feel may be in the public's best interest but rather on concepts of fairness and equal representation (pp. 2). The Council on Public Interest Law published in a Report that 'Public interest law rests on the conviction that the public interest is likely to emerge and the legal process function more effectively if all sides to a dispute are represented' (*ibid*).

Long noted, "the public interest thus conceived is a standard for appraising the policies and performance of some jurisdiction as it affects the lives of the population of the jurisdiction . . . developing a clearly articulated standard of the public interest and a process for its actualization in policy and public recognition (King, Chilton, Roberts 2010: 956).

This approach clearly links the determination and application of public interest to institutions of the State, such as a national legislator, an executive government and judicial authorities such as courts and public prosecution. Through laws, the State obliges itself to "serve and protect" yet at the same time, to the most reasonable extent limits its scope of actions and mechanisms in achieving these goals.

But not only law, it is through everyday actions of government and public policies that enact a framework or guideline through which public interest is also served.

The quality and nature of the legal system, one may say the spirit of the law in one state, as well as the choice of instruments with which public interest is protected is what may describe a country as liberal, conservative, social-democratic, socialist or other.

Public interest may be viewed upon as a concept encompassing a set rights and duties of individuals and communities towards the State, as well as the obligations of government institutions to protect and promote respective rights contained in legal acts such as Constitutions, Laws, Bylaws, International Treaties etc.

Public interest may also be perceived as the Interest of the entire community as a whole, which has supremacy over special needs and rights of individuals. This is typically seen in legal obligations for every citizen to fulfill a certain duty towards the state such as paying taxes or upholding traffic regulation because this is in everyone's best interest. In the case of the latter, public interest may also be seen as national interest (which will be further elaborated later in this text). Matters of national security, strategic goals and vital interests of the nation/state, public safety, and national economy in its entirety are also areas where public interest may be synonymous with national interests, and national interest is almost always a synonym with the public interest in foreign affairs.

In the following paragraphs, we shall offer a definition of public interest suitable to a contemporary context and present a rationale for it. First of all defining public interest depends on a societies view of what the public space or public area is, thus deriving a relevant context for what the interest or interests of that public is, from where a working distinction between public interest and national interest can be made. Also, tribal and non-industrial societies where, for example, a council of elders makes decisions for what is best for the tribe would not entirely suit definitions presented in the following chapters and some authors would restrict working definitions of public interest even from being applicable to societies in transition (Edwards 2007: 13).

Defining the 'public' is the first vital precondition of finding an acceptable definition and scope of public interest. Geoffrey Edwards suggests a working definition under which 'the public is deemed to include all permanent residents of a country, not including the interests of citizens as individuals or in their private lives, however including facilitation of personal spheres so that individuals can flourish' (2007: 16).

The public sphere is a central and elusive concept of civic life and refers to qualitatively distinct democratic practices understood to be central to vibrant democracies (Biaocchi 2003: 54). Habermas (1996, 1974) argued that the public sphere

> refers to an ideal speech situation in which citizens engage in open-ended conversations that are neither strategic nor self-interested on issues of common interest. Discussants take on each other's roles in a "second-person attitude" and are able to abstract their own position and consider it in relation to the positions of others (in *ibid*).

Eliasoph spoke of the public sphere as 'an instance of open-ended and public-spirited communication, something that comes into being when people speak public-spiritedly' (1998:16) on broad ranges of interest and do not regard any one individual or group interest as more or less worthy (Habermas 1996: 360 in Biaocchi 2003: 55). Defining the public sphere and 'public' (or what isn't public sphere) in Law is imperative because of the implications it has on private property, individual rights and as it defines the right of State to intervene and/or interfere in private lives of citizens. Biaocchi (2003) claims 'the role of the state in fostering the public sphere is ambiguous' (56) as he comments on Habermas (1989) that the state plays a crucial role in supporting the public sphere by assuring the rule of law and buffering the most egregious social inequalities.

This in itself is not a simple black and white divide except maybe in philosophy or pure belletristic. In reality, citizens have multiple roles in society, and some even argue that there are more publics than just one (Benson *et al* 1990: 2,13 in Edwards 2007:15). A person can at the same time be a parent, a brother or sister (constituting what is most commonly considered a private sphere – a family) while at the same time being a member of a parent-teacher committee, a member of a sports club, a member of professional chamber, going to work, being a member of a political party and even be a bearer of a political function thus gradually belonging to a more and more commonly accepted public sphere (Davitkovski, Gocevski 2013 and Davitkovski *et al.* 2013). It is in the subtleties within a particular legal system, by which the reach of the State in regulating relations between individuals in each of these spheres that define the character of State as liberal or other. But even more so, this is a tricky area to define, because even in the most liberal and open societies/legal systems it is up

to individuals to choose how much of their will and interests they will transmit into the public sphere depending on their interests. King *et. al.* (2010) contended that a pluralistic definition of the public interest entails the formulation of the "golden mean" balance between the interests of competing stakeholders, each representing a specific public with divergent agendas, plans, and purposes (pp. 955). It is up to the public administrator to identify divergent and common values and characteristics of each stakeholder (pp. 956).

Interest, on the other hand, is defined in various literature as either personal involvement and stakeholding in certain matters of property or rights which is most adequate for legal definitions of interest, or merely curiosity or 'concern' (Held 1970:13 in Edwards: 2007: 14). This publication shall focus predominantly on the prior meaning of interest. Legal interests of a party in any proceeding in which the party claims rights to property or services are applicable here e.g. requesting a construction permit, applying for pensions, filing for a tax rebate, etc.[2]

In this regard, the State Commission for Prevention of Corruption [of the Republic of Macedonia] provides a definition of conflict of interest as 'the performance of public duties where the public official has a personal interest that is, or appears to be, in conflict with their official duty (i.e. serving the public interest) (Guidelines for Managing Conflict of Interest 2008 in Gocevski 2015: 17).

National interest is a concept that can be viewed in more approaches. First of all in order to have a useful discussion we must agree upon a definition of nation and nation state (Chernilo 2007: 6, 70, 71). In this regard we accept that nations are political concept coined in a more contemporary setting, and the idea of an identity tied to a nationality does not always go hand in hand with identity arising from ethnicity (*ibid*: 122, 141,). National identity does, however, go hand in hand with the concept of a modern state. National interest can be seen as the interest of the nation as a whole when interacting with other nations, as it is usually the well-being of the state and its citizens that every foreign policy strives to improve. On an internal agenda, though we argue that national interests may be viewed as interests of the State as an autonomous organization i.e. a legal entity on its own. Ideally, in a democracy, interests of the State should correspond to the interest of the population as a whole, however sometimes this is not the case. States declare war to other states, and many would argue it is impossible for peoples to declare war or other peoples especially if the two are democracies (TheDailyBeagle 2014) as George W. Bush said 'Democracies don't go to war with each other' (BBC 2004). Though not without controversy we strongly support the claim that states go to war on behalf of themselves or their people but that the people of the warring nations (in a whole) do not truly want war as it brings about uncertainty, destruction and death. This would be a prime example when national interest and the public interest diverge.

Thus differentiating national interest from public interest is a question of context and not so much a question of content. In this publication national interest shall be treated as public interest in foreign affairs (peaceful) and in internal affairs as interests of the state as an autonomous institution (or set of institutions: government, public administration, judiciary) and public interest will be treated as the interest of the entire community as a whole, with supremacy over special needs and rights of individuals encompassing rights and freedoms as well as duties.

One more concept we feel needs to be addressed in this publication that serves public interest, however, is somewhat different is the question of ethics (of public officials and civil service). One may say that acting ethically helps protect and promote the public interest and that an ethical official and/or civil servant is one that will not willfully endanger public interests. At the same time, public interest needs ethical officials and civil servants. Although being ethical is a quality which depends mostly on a persons morality (an individual sense of honor and honesty) in a legal sense ethics is seen as a norm for proper behavior towards a profession or good conduct. Codes or statutes usually regulate ethical conduct and although the obligatory

2 An example of appropriate application of the latter meaning of interest in context would be 'to draw attention to the public' interest' or to perform an action in order to get the general public interested on that matter, which is semantically different from 'adopting policies to protect or on behalf of public [best] interest';

or non-obligatory character of these acts differs from state to state, most codes of ethics address issues such as professional, effective and efficient behavior, being respectful of the law and having a sense of duty towards (in a national sense) the public interest. One example of how ethics are framed by international law is the UN International Code of Conduct for Public Officials (1996) according to which national legislators are obliged to enact legislation (and or codes) which regulate general principles of conduct for public officials, conflict of interest and grounds for disqualification, disclosure of assets, acceptance of gifts or other favors, confidentiality of information and the scope of political activity officials may have out side of their office as long as it doesn't impair public confidence in the impartial performance of their functions and duties. Most countries have open record laws or freedom of information acts which, with some few exceptions, make government records and documents open to the public, while administrative procedures acts govern public access to rule-making activities of state bureaucracies (Persons 1990: 120).

Ethics in Public administration refers to the process through which decisions are made, not their content. One may argue that ethical processes aim to serve citizens' and customers' interests honorably and provide higher value for the salaries that civil servants receive. Imprecise and inadequate procedures, as well as deliberate disregard of procedures lead to bad precedents thus the public interest is generally not well served.

The final prerogative given to the government when public interest is regarded the right to impose on the sanctity of private property – expropriation. In most cases property relations are regulated by civic norms and are founded on the autonomy of parties, unlike property relations regulated by administrative (public) law in which one of the party (State of government) has a higher will (requisition, expropriation, taxes, customs, etc. (Davitkovski, Davitkovska, Gocevski 2013: 197). Private property can be expropriated only if it is in national or public interest (and strictly defined by Law) generally encompassing: broader economic interests, housing, communal services, tourism (in some cases), culture and sport, and construction of facilities for national defense, civil protection and other facilities of (general) public interest (*Ibid*: 200). Al this reinforces the argument that public interest encompasses the (needs) rights of the 'nation' or a broader population over the special needs of one individual however the defining core are fundamental rights and freedoms, improving the overall state of the economy which should benefit everyone, improving the scope and quality of public services and tending to everyone's safety.



*
* *

We see that public interest is *de iure* whatever States define it to be by Law. However, states are prone to referencing public interest and declaring actions 'in' public interest determining a scope of actions (scope or areas or issues of public interest) rather than providing specific definitions of it. An example of this may be seen in the legislation of the State of Nevada which referenced 'public interest' as early as 1905 (Weeks 2010: 261) but has yet to provide a concrete definition of it. We feel it is more practical to accept that public interest is more a 'set of rights to...' rather than a specific 'it or thing'. This means that public interest could embrace the right to own property, the right to education, the right to a clean environment, the right to clean water etc. (respective), and these rights are enacted by Law (and oftentimes subsumed under *considerations of public interest*), guaranteed and protected by state institutions. Any restrictions of such rights in the name of public interest must be exhaustive.

Some examples of statutorily defined *public interest considerations* may be found in (Western States in the US) Water Codes, which though not definitive, include recreation, preservation of fish and wildlife resources, water conservation, water quality, protection of minimum stream flows, and public health (Weeks 2010: 260). Weeks argued that the majority of legislatures, however, give broad discretion to state water agencies to determine the public interest, rather than developing a list of public interest criteria. To prevent 'abuse' of discretionary authority judicial review could provide a check on agency decisions provided that States promote efficacious judicial review of agency decisions by codifying statutory public interest criteria.

Other examples of legislative definitions of public interest or rather frames of public interest may be seen in various principles included in legislation (*ibid*: 262, 263, 264). King *et. al.* (2010) contend that the public interest is the embodiment of principles, normative values, and policies including the balance between political efficacy and administrative efficiency and practice issues such as the demonstration of administrative management and leadership in questions of policy and principles (pp. 966).

2

Public Interest in International Law and International Organizations

International law exists in the form of treaties (charters, conventions or statues) i.e. legal acts that states sign in a bilateral or multilateral arrangement, thus obliging themselves to the norms held within. International law may also exist in the form of customary law. The legal status of particular international treaty depends greatly on whether a state has signed and ratified it, and on how widely it is endorsed internationally.

International law seen through international treaties and conventions is important to the definition of public interest, as Baudot (2001:100 *in* Edwards 2007:4) argues, that without a normative framework (though he means in a national context) private policies tend automatically to conservatism. And as national frameworks in an increasingly globalized world comply with international and supranational (e.g. in EU context) legislation so the role of a normative standard which may serve a purpose of extracting a scope or core for public interest definition found in international treaties, conventions and similar rises in importance.

International Law is binding to the extent of political acceptance by states international law exists and is binding on them (unless forcefully imposed by a centralized-law making body or military force). The idea is that states follow international law out of respect for the law and a rational utilitarian understanding that 'cooperation ranging from the exchange of diplomats to the regulation of international communications' is perceived by the international community as beneficial (Barker 2004). In this regard many would say that international law is itself created by states, thus would aim to serve national interests (in this regard national interest being public interest in a foreign affairs context).

It should be possible to align government policies and actions to achieve objectives consistent with social and public policy arenas though this process is inconsistent with a predominant market-led model of framing public policy. In brief, the public interest can be served by progress towards internationally accepted ideal conditions even if, by definition, a normative standard remains elusive (Edwards 2007: 2) and the principles of public interest could be set by either treaty law or by case law (*Ibid* 48). Regarding US national interest (public interest of the nation, in international affairs) Edwards describes contemporary US administrations' conception of national interest as 'outward and militaristic in security matters, unilateral and disdaining multilateral forums and expecting allies to raly to it's side and neo-liberal in economic matters (2007: 44). Yet, even the USA needs some form of supra-national standard of national interest to avoid idiosyncratic adventures by acting political elites (*Ibid* 49).

Further in this chapter we will comment the sources of fundamental rights and freedoms in international law (most commonly accepted).

The UN (1948) Universal Declaration of Human Rights declared human rights are a matter of international concern requiring international cooperation. A duty rather than choice and charity of the wealthy and developed countries to aid those less developed when

human rights are concerned. Fukyama (2001) commented that all (even human) rights are whatever society declares them to be (rights), thus even human rights may be considered a source of public interest (in reality) only in developed societies with a sophisticated mechanism of governance and a legal system which in some form or another recognizes the existence of natural law and/or is more or less a recognized member of the international community which protects and promotes human rights and freedoms as fundamental (rights).

Arising from the atrocities of World War II one can only halt and praise the reason in world leaders had at the time for accepting such an initiative as the United Nations (with all its faults and inertia considered today). In proclaiming the Universal Declaration of Human Rights on December 10th, 1948 the General Assembly of the UN declared that human rights be protected by rule of law through friendly relations between nations. Once again fundamental human rights were affirmed in the dignity and worth of the human person and in the equal rights of men and women. Determined to promote social progress and better standards of life in larger freedom in which human beings shall enjoy freedom of speech, freedom of belief, freedom from fear and want were proclaimed as the highest aspiration of the common people (*preamble*). The Declaration declares everyone entitled to all rights without distinction of any kind (Art.2, and Art.7). Other fundamental rights include abolishment of slavery (art.4), torture and cruelty, inhuman or degrading treatment of punishment (Art.5) and the right of recognition as a person before law (Art.6). Remaining rights could be summed as follows: judicial (Art.8-11) (legal remedies, freedom from arbitrary arrest, equal treatment before law and an impartial tribunal, presumption of innocence), privacy of the person, and family (Art. 12) right to marry (Art. 16) and own property without fear of arbitrary deprivation (17), freedom of movement and residence, right to (and of) nationality (Art. 15) religion and association (18, 20), thought, free expression including freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (19), right to participate in government through free elections and right of equal access to public services (21) a dignified life with equal pay for equal work, rest, and social security (22, 23, 24, 25).[3] Special provisions were imposed regarding right to education and culture (27,28). Lastly the Declaration states that everyone is entitled to a social and international order in which rights and freedoms can be fully realized (28) only limited by the rights and freedoms of others and the duty towards the community.

Following in the footsteps of the Universal Declaration of Human Rights the Council of Europe (self-proclaimed) that the countries of Europe share a like-minded, common heritage of political history, ideals, freedom and rule of law, thus strive to fully realize the rights proclaimed therein, and on the 4th of November 1950 adopted the Convention for the Protection of Human Rights and Fundamental Freedoms (1950). The Convention was amended through a number of 'Protocols'[4] and to date has been ratified by 47 countries (over a hundred declarations by 25 countries have been adopted regarding this Convention so far) (CoE 2015)[5][6].

The convention contains 3 sections on: I rights and freedoms, II on the European Court of Human Rights and III miscellaneous provisions. A summary of the rights and fundamental freedoms declared by the Convention is as follows: right to life (Art.2), prohibition of torture, slavery and forced labor (3,4), right to liberty and security regulating lawful arrest and detention (5), right to fair trial before an impartial and competent court ('tribunal') including presumption of innocence (6), no punishment without law (7), right (sanctity) to personal privacy and that of the family (8), freedom of thought, conscience, religion, expression (9, 10), freedom of association (11), marriage (12)[7], right to effective legal remedies (13)[8], prohibition of discrimination (14), circumstances which allow derogation of rights

3 A standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control;
4 The version covered in this publication: Protocols 11 and 14 (previous protocols included in earlier versions respectively) stepped into force 1 June 2010;
5 http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=8&DF=14/08/2015&CL=ENG
6 http://www.conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=14/08/2015&CL=ENG&VL=1
7 Though as stipulated is open to controversial claims that it allows for discrimination of LGBTI rights and being in collision to Art. 14; national legislators further regulate this issue by national laws i.e. articulate it in more liberal or conservative fashions;
8 More extensive than the UN Declaration, addressing all procedures before any national authority meaning before public administration and judicial auhtorities;

regulated by the Convention (15), restrictions on political activity of aliens (16), prohibition of abuse of rights (17) and a general clause that limits the use of restrictions on rights (18).

Arts. 6, 8, 9, 10 and 11 contain traces of public interest (as defined above and in Chapter 1) as they permit restrictions on fundamental rights to 'public trial', 'privacy', 'manifesting ones religion', 'expression'[9] and 'association' ... 'in cases of national security, public safety, economic well-being of the country, for prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others' and also hold a presumption or condition that this is only justified in a democratic society, presuming thus that only in countries where the general will is transferred into law through general, and periodic elections are such impositions on fundamental rights justified because they represent the rights 'of all' rather than the rights of a single ruling elite. Furthermore Art. 11 allows for stricter restrictions on the right of association for members of the armed forces, the police, and state administration. One can only presume this is because those considered a 'civil service' are vested with the powers of articulating Law and are provided with necessary force to impose it, thus a democracy must find ways of protecting itself from 'itself' and Art. 15 even allows derogation of any rights (up to a degree regulated by Law and to the extent required by the situation) in situations of 'war or other public emergency threatening the life of the nation'. Art. 16 limits the involvement of foreign citizens in political life of State. The final articles of the first section reinforce the obligation to strictly limit any restrictions on fundamental rights and freedoms to situations which deem it absolutely necessary and such situations may only be in the name of national security, health or morals, protection of (general) rights and freedoms of other i.e. what is considered 'public interest'.

In regard to this Convention, the *Protocol to the Convention* adopted on March 3rd 1952 in Paris provide an explicit reference to public interest, in regard to justification of infringement on property rights 'No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law' (Art.1 Par.1). The Council of Europe goes further in respecting and affirming a States right to protect national interests stipulating in the Protocol not to 'in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest.' (Par.2), including the right to enforce taxes or other contributions or penalties. This article implies two things: 1) that international law does indeed strive to homogenize or uniform, or set certain standards of 'public interest' in regard to it's scope, 2) yet at the same time accepting that States remain sovereign in the articulation and method of enacting public interest (being accepted as national interest in foreign relations). Protocol No. 4[10] to the Convention, adopted September 16th, 1963 in Strasbourg, justifies restrictions on the freedom of movement 'in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others' (Art. 2 Par. 1) and in a separate paragraph declares such restrictions 'justified by the public interest in a democratic society' (Par. 2). This Article on first glance introduces some confusion to the definition of public interest as it treats 'national security and public safety...rights and freedoms of others' in Par. 1 separately from the reference to 'public interest' in Par.2. However, as in no provision are these two set to contradict each other, we assume the Protocol that provides more rights other than those contained in the original text of the Convention leaves open space for States to articulate further other rights and freedoms in national Laws, thus subjecting them to a special legal regime considering them to be of 'public interest' and in turn defining 'public interest'.

Accepting the fundamental rights and freedoms contained in the Convention of Fundamental Rights and Freedoms (1950), the European Commission, European parliament and Council proclaimed the Charter of Fundamental Rights of the EU (2012) in 2000 that became binding on the EU with entry into force of the Treaty of Lisbon, in December 2009. The Char-

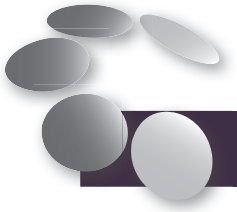
9 Through impossed formalities and penalties;
10 Full title: 'Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto'

ter contains rights and freedoms under six titles: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice. Another motive for the adoption of the Charter may be found on the official Web page of the Commission claiming that individual rights in EU member states were adopted at different times and in different ways, thus the decision to include them all in a single document (2015). This statement reaffirms the thesis that international law influences national legislation through harmonization thus contributes to building a uniformed concept of public interest in different countries. Deliberately wanting to avoid turning this publication into a discussion on international law, at the same time accepting the value of significance of this document, we shall only provide comments on provisions/articles that are not contained within the Convention (1950) or that significantly differ from it (respective) as well as comments on provision of deemed important to the purpose of this publication: providing a more direct reference of and to public interest.

To begin, human dignities are better defined and the value of integrity both physical (biological) and mental (Art.1-3) within the Charter.[11] Further, the title 'Freedoms' declares the right to the protection of personal data and that it must be protected by an independent authority (Art.8). Regarding everyone's right to 'freedom of expression' (Art.11) everyone is entitled to withhold opinions, to receive and impart information and ideas without interference by public authority regardless of frontiers. Perhaps of even greater significance is par. 2 of this article that stipulates that 'freedom and pluralism of the media' be respected. Arts and sciences are to be free of constraints and academic freedom respected (Art.13). Though not defining it explicitly, the Charter implies that right to' own, use, dispose of and bequeath' lawfully acquired possessions (property of any kind, including intellectual) may be restricted i.e. persons may be deprived of property (rights) when it is in the public interest (Art. 17). However, fair compensation must be provided in good time. The Charter provides EU citizens with protection from extradition explicitly claiming that 'no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment' (Art.19). Regarding prohibition of discrimination art. 21 contains a non-discriminatory clause based on 'sexual orientation'. Equal rights of men and women (including promotion of affirmative measures) (23) as well as child (24) and elderly rights (25) are reaffirmed, and affirmative measures for persons of disabilities that will provide their (complete) integration in society (26). The title 'Solidarity' affirms the right to information and participation of workers in decision-making (27) collective bargaining (28), access to a free placement service (29) protection of young people at work (30) social security and social assistance to everyone residing and moving legally within the EU (34)[12], access to health care (according to national law) (35), access to services of general economic interest (36)[13] and consumer protection (37). Under the title 'citizens rights' the charter provides equal rights to all EU citizens to vote and be elected to the EU Parliament (39), to be a candidate at municipal elections in the country of residence regardless of nationality or citizenship (40) and right to a good (EU) administration (41). Every EU citizen in granted consular protection in any diplomatic mission of an EU member state while staying in a country which is not a member state (46). Regarding 'Justice' we would emphasize the importance of *non bis in idem* stipulated in Art.50 protecting EU citizens from being punished twice for the same criminal offense.[14]

The Charter' application remains obligatory for the institutions, bodies, offices and agencies of the Union (with respect to the principle of subsidiarity for member states) when implementing Union law (Art.51) and does not extend the powers of the Union. The Charter also accepts the rights and freedoms contained in the Charter are harmonious (mostly) to the Convention for the Protection of Human Rights and Fundamental Freedoms, accepting the meaning and scope of those rights as laid down by the Convention. This does not prevent Union law providing more extensive protection.

11 Referring to prohibition of harvesting human organs, abolishment of the death penalty;
12 Social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment;
13 Services that promote greater social and territorial cohesion within the Union;
14 Though this principle is common in many developed countries around the world, such cases may still be seen even in European countries;



European Court of Human Rights

Opening a debate on the influence the European Court of Human Rights has on national Law of individual states which ratified the Convention would be fruitless for this publication as it requires a research of its own (respectively), however the presence of certain issues i.e. verdicts and opinions can be an indicator of how often certain (protected) rights and freedoms are violated to the extent that they reach the ECHR and the contents of the rulings may help in the evolution of the protection of these rights. Specifically for this publication we set out to answer the question: does the ECHR have an influence in defining public interest? Well, it certainly has a 'number' of rulings containing public interest as its focal *petitum*. A simple query in the case law on ECHR for 'public interest' in the last ten years returned 149 reports (ECHR *Case practice* 2015). Focusing on media related to public interest the query returned 101 reports, and 35 in last five years. Moving even closer using terminology applied in the Convention a query on freedom of speech related to public interest, returned 19 reports in the last five years. This an indicator that public interest is 'a topic' before the ECHR, however, most cases show that it was owners of property suing the State due to restriction on property rights in the name of public interest. This is understandable (up to a point) as the Convention explicitly references public interest (in Protocol 1 Art. 1).

Focusing on matters more relevant to thus publication we shall comment on (some) of ECHR case law regarding the right of freedom of speech as it most directly affects freedom of media and the right of individuals to be informed on matters (of general or public) Interest through impartial media. The Convention allows restriction of freedoms (speech, expression, thought – Art. 9, 10) in cases of national security, public safety, economic well-being of the country, for prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others, i.e. public interest. However on several occasions the ECHR has emphasized that such restrictions in the name of general or public interest must be subjected to special justification (Mendel 2015: 21). In Dichand and others v. Austria, (2002, § 38) the ECHR expressed 'little room…for restrictions of political speech or debates on issues of public interest' referring that politicians need to be open to broader criticisms regarding public action (especially when promoting or defending policies which affect human rights, dignities, education, social care, prices and access to electricity and clean water, the national debt etc.). Mendel (2015) commented several cases of importance to freedom of speech, including the first case on (public slander charges) defamation Lingens v. Austria (1986, § 42) on which the Court declared 'boundaries of acceptable criticism are and must be broader for politicians than private persons'. As politicians voluntarily expose themselves to the eye of the public (as part of their profession) therefore willfully open to strict scrutiny of there every word and action both by the public and the press. According to the Court Governments (and cabinet members) must be even more tolerant to greater criticism than (other) politicians. 'In a democratic system actions or lack of action by the Government must be subjected to scrutiny by parliament, judicial authorities, journalists and public opinion' (Castells v. Spain, § 1992, 46). The Court expanded the reach of public and media scrutiny on the actions of civil servants in Thoma v. Luxembourg (2001 § 47) and claimed that a (clear) difference cannot be made between political debates and public interest (Thorgeir Thorgeirson v. Iceland, 1992 § 64). In Cihan Öztürk v. Turkey (2009, § 32) the court limits the exercise of Art.10 Par.2 (of the Convention) on restriction of the right to freedom of speech on charges of defamation when there is clear evidence of (e.g.) journalist exposing actions believed to be corruption. The Court supported greater criticism of public enterprises, individuals (journalists) seeking historical truth, sports events, artists, etc.



3

Who Defines, Protects, Promotes and Keeps the Public Interest?

This chapter presents an overview of the actors relevant in defining, enforcing and gatekeeping the public interest. The chapter shall provide both a theoretical approach as well as, whenever possible a national context with examples in the Republic of Macedonia.

In brief, the chapter focuses on 1) the political actors in defining public interest and its scope: the Parliament determines and defines by enacting laws, the Government determines, promotes and implements by enforcing laws, adopting secondary regulations, creating public policies, submitting draft legislation and carrying out administrative supervision; 2) public administration: enforces, protects and articulates public interest through the provision of public services and other activities of public interest 3) media organizations as gatekeepers of public interest providing the fundamental right of freedom of speech and information by an impartial media and 4) the role of civil society as a model for citizen participation and novel forms of public deliberation. One way of providing a constructive (instead of just open-ended) deliberation in the public sphere is through civil society organizations where citizens independent of government (and political organizations respective) can convene and discuss topics of interest, including topics of public interest (Persons 1990; Oberg, Uba 2014; for an overview of available literature relevant to this categorization see Chapter 1).

3.1 Government

We already concluded that in modern/contemporary developed states that declare themselves as democratic and committed to protecting the sanctity of human rights and fundamental freedoms (see chapter 1 and 2), it is the State' that defines public interest and determines its scope as well as the instruments through which it is to be enforced and protected. Thus, as States are complex organizations, governing states often requires sophisticated mechanisms. Thus moving from Montesquieu' (1748) division of powers within a state, it is the legislative body representing the will of the majority that officiates legal norms. However as national legislators are seldom (if ever) capable of doing the necessary research and analytics as well as dealing with day to day needs of the population (personal observation of the authors), parliaments provide the executive branch with needed legitimacy (mandate) to propose (when applicable and not violating the fundamental rights and freedoms) the draft of public interest (drafting legislation) and further

operationalize it through policy creation and implementation of policies. Thus, we derive that it is Government (the executive branch) that takes the leading role in determining the evolution of public interest as well as its properties. Furthermore it is without a doubt that governments, elected governments most certainly decide on national interests (Burgess 2004 in Edwards 2007: 75).

Although definitions of government are fairly clear today in the English language, using the term 'government' encompasses different institutions or a different specter of institutions in country specific context (Gocevski 2009: 9-12 respective). In his master's thesis Gocevski presents a practical overview of the use of the term government when it applies to the political layer of the executive branch addressing a president of state (in presidential political systems), prime minister and his cabinet (in the narrow sense of the word) such the British prime minister' cabinet or as in most parliamentary or mixed parliamentary political systems (Republic of Macedonia included) and a much broader context whereby government the writer addresses both the political structures of the executive branch (formerly mentioned) and the civil service i.e. administration. Slavic languages apply different terminology to the different applications of the term government e.g. when government addresses only the political structure such as prime minister and his ministers a most common translation is "Влада" while the administrative layer is translated to "Управа" for the central administrative authorities such as ministries, inspectorates, various government agencies and even the local self-government; and "јавна администрација" including all public services (the former plus public institutions providing public services and utilities). To make reading this text easier to the reader, at the same time making it more tangible to the local context (in the Republic of Macedonia and region) 'Government' (capital G) shall apply to the political layer of the executive branch, more narrowly the prime minister and his ministers, while government shall be used to address the core administration i.e. ministries, government agencies, regulators and similar. Public administration shall address all government agencies plus civil services (respectively).

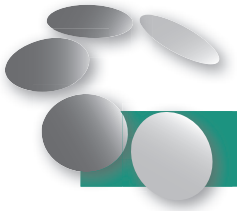
According to the Constitution of the Republic of Macedonia (1991) the Government (prime minister and his ministers respectively) is the forebearer of executive powers (Art. 88) and bares the following competencies (Art. 91): creates policies how to enforce laws and other parliamentary regulations, and is accountable for their implementation; drafts new legislation, the republic budget and other regulations the parliament adopts; proposes a decision on the national reserves and is accountable for the enforcement; adopts Regulations defining in significant detail how Laws are to be enforced; determines principles of internal organizations and operation of ministries and other government authorities, directs and supervises their work; provides opinions on drafting legislation submitted to parliament by other competent proposers; decides on the recognition of states and governments; establishes diplomatic and consular relations with other states and decides on opening diplomatic-consular offices abroad; proposes appointment of ambassadors and members of emissaries of the Republic of Macedonia abroad and appoints chiefs of consular offices etc.

The Governments competencies are (comparatively in almost all cases) further determined by Law (on the Government of the Republic of Macedonia 2000; in local context) broadening its role to: determining development and economic policies, determining programs for actions in defense in security and ensures their implementation; takes measures to ensure a free market and entrepreneurship as well as anti trust and anti-monopolistic measures, stimulates economic growth and equal regional development with stimulation of undeveloped areas; determines a strategy to attract foreign investments; decides how to manage state capital (regulated by other legislation); stimulates and aids scientific and technological development; determines a strategy and takes measures to incorporate (the Republic) in European and Euro-Atlantic integration as well as other international structures monitors and analyses conditions in the protection and improvement of human rights and civil liberties; stimulates growth of civil society institutions; takes measures to create conditions for citizens rights to education, health care, social security and de-

veloping human resources; takes measures to provide social welfare (Art. 8) etc. Art. 9 obliges the Government to take measures to ensure that adopted policies and strategies are being implemented and act accordingly (to Law) when they are not, which includes proposing new measures (amendments to existing legislation or adopting new legislation) to parliament.

It is only during war or other extraordinary state when parliament (in local context – Assembly of the Republic of Macedonia) cannot convene, that the Government can adopt Regulations with force of Law. (Art. 10)

Government competencies (meaning cabinet, i.e. prime minister and his ministers in local context) may be grouped in two categories: 1) normative competencies: drafting laws, providing opinions on draft legislation, and adopting secondary regulations; 2) expert, coordinative and supervisory competence: taking measures and creating policies submitted before parliament on issues within Government competence.



3.2 Public Administration

An impartial and professional (extension) to the executive branch is its bureaucracy, intended to enforce laws such as they are. In a democratic state, where Rule of Law (*Rechtsstat*) is the primary principle upon which all legal order lies, and public administration is designed to be a civil service oriented to serve all, one may say that public administration serves the common good and protects the public interest by providing services and rights to members of the society. Public administration, i.e. civil servants may perhaps not define public interest however through their actions they do articulate it. King *et al.* (2010) contend that 'public administration, as understood through the lenses of normative values, public policy, and administrative leadership, is in fact the pursuit of the public interest' (pp. 966). Perhaps a most illustrative narrative of the significance public administration has on human lives (in a contemporary setting) is the fact that we contact bureaucracy from cradle to grave. From the day we are brought into this world we are registered and monitored, progressing our life through a maze of institutions ranging from healthcare to education to tax and revenue services, our marriage, our children's birth and even our death goes through bureaucracy.

Grizo *et al.* in their textbook on Administrative Law (2nd ed. 2011) provide a very descriptive and encompassing definition of public administration (formal or organizational sense) encompassing: state authorities – ministries, authorities in the same hierarchy or structure of ministries, Government organizations; local self-government – mayor, municipal council; public (civil) services – public institutions in the area of education, health care, science, culture, social care, child care; funds – health, pension, water, roads; public enterprises (public corporations); companies with public competencies; NGOs with public competencies. (pp. 18)

The material or functional aspect of defining public administration addresses what (the former institutions of) public administration does: prepare draft regulations for the executive and legislative power; adopt secondary regulation within its (their respectively) competence; monitor conditions and provide initiatives resolve administrative cases; conduct administrative supervision; direct enforcement of laws, secondary regulation and other general legal acts. (*Ibid*: 19)

The core Government authorities also known as (legal terminology) state administration, according to the Law on Organization and Operation of State Administrative Bodies (2000) are typically considered the authoritative administration because they are vested with prerogatives of power (disposition over coercive force) needed to enforce their competencies. They are all nonetheless

established 'for the purposes of efficient exercising of the rights and duties of citizens and legal entities' (Art. 2, 4 respective) and are obliged to perform their 'competencies defined by law on the basis of principles of legality, liability, efficiency, cost-effectiveness, transparency, equality and predictability' (Art. 3). Thus clearly state administrative bodies (i.e. Government authorities) hold a great deal of obligation towards the protection and promotion of public interest (as defined in Chapter 1). Ministries are established 'for the purpose of carrying out the functions of the state administration grouped according to areas of one or more related administrative areas' (Art. 5 Par. 2) while other state administration bodies according to the type of the organization and the level of independence are established as independent state administration bodies (directorates, archive, agencies and commissions including 'administrative organizations') or as bodies within the ministries (directorate, bureau, service, inspectorate and port authority) (Par. 3). Bodies within the ministries are established for the purpose of performing specific administrative, expert and other tasks within the competence of the ministries (Par. 4). At the time this publication was written there were 15 ministries in the Republic of Macedonia (Art. 11)[15], each with administrative bodies within, three administrative organizations (Art. 12 Par. 2)[16] (in the sense of this Law), four independent bodies of state administration (Art. 12 Par. 1)[17] according to this Law and several more established by special laws, fourteen state inspectorates within competent ministries (Art. 15-28 and more inspection services within other bodies of state administration and local self-government) and dozens of directorates, bureaus, offices and other services.[18]

At the local level there are 84 Municipalities in the Republic of Macedonia and the City of Skopje (Law on Territorial Organization of The Republic of Macedonia 2004), each with an elected municipal council and elected mayor, and each with an administration organized with an identical internal structure as state administrative bodies, obligated to carry out tasks within their competence according to the Law on Local Self-Government (2002). The Local self-government is obliged and competent to provide public services at the local level and tend for the public interest (Art. 2, 20, 24, 36 and 98 respective).

Government authorities are legally obligated to care for the best (according to Law respectively) Interest of all parties in administrative procedures (Law on General Administrative Procedure 2005: Art. 6, Art.117 Para. 6, Art. 244, Art. 273) while at the same being obligated to *ex officio* protect the public interest and take measures when public interest is concerned (Art. 134, Art. 144, Art. 159 Para. 3, Art. 212 Para. 3, Art. 217). The latter includes competencies to the Public Prosecutor to act in corresponding phases of administrative procedures whenever public interest is infringed (Art. 226). Tendencies to provide a more adequate protection of civic rights (and correspondingly the public interest) in a more uniformed fashion can be seen in efforts to codify and standardize administrative procedures in countries of the Western Balkans under supervision by SIGMA (and the EU respectively) (see more in Davitkovski *et al.* 2014 and Pavlovska-Daneva *et al.* 2014), as well as extend the reach of general administrative procedure to all providers of public services with the new Law on General Administrative Procedure adopted 2015[19] (Pavlovska-Daneva, Davitkovska 2014).

Public services represent the broader scope of public administration and (depending on the perspective) may encompass all organizations with public competencies or just the non-authoritative organizations (Grizo, Davitkovski, Pavlovska-Daneva 2011: 1, 20, 27). Regardless of the definition public services are established in order to meet or fulfill certain common needs of society. Most certainly public services originate from the division of labor within society. There does not exist a differentiated society in which one individual can tend to all his needs alone. This may even apply to early human

15 Ministry of Defense, Ministry of Internal Affairs, Ministry of Justice, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Economy, Ministry of Agriculture, Forestry and Water Economy, Ministry of Health, Ministry of Education and Science, Ministry of Labor and Social Policy, Ministry of Local Self-Government, Ministry of Culture, Ministry of Information Society and Administration, Ministry of Transport and Communications and Ministry of Environment and Physical Planning;
16 State Archives of the Republic of Macedonia, State Authority for Geodetic Works and State Statistical Office;
17 Commission for Relations with Religious Communities and Groups, Agency of Youth and Sports, Emigration Agency, Food and Veterinary Agency of the Republic of Macedonia;
18 e.g. Internal Revenue Service (within the Ministry of Finance), Security and Counter-intelligence Directorate and Public Security Bureau (within the Ministry of Interior), Bureau for Development of Education (within the Ministry of Education and Science) etc.;
19 Official Gazette of RM No 124/2015;

societies when people lived in groups that were relatively self-sufficient and created a greater part of their means of sustenance, needed for their survival (Gocevski 2014: 77).

Regarding the definition of "public services" in the Republic of Macedonia both in a theoretical and legal sense, Gocevski (2014) argues that the Republic of Macedonia belongs to the European-continental legal order (pp. 93). A common definition accepted (*by most*) is that public services encompass organizations with public competencies considered non-authoritarian administrative organizations (Grizo, Davitkovski, Pavlovska-Daneva 2011: 27): public institutions in healthcare, education, culture, science, child care, labor, social care; public enterprises (or public corporations), (public or state) funds, companies with public competencies and non-governmental organizations with public competencies. Legally though, due attention is focused on public institutions being organizations which provide crucial (subjective reference) services to citizens whose activities are regulated by a *lex generalis* Law on Public Institutions (2005) and special laws for each profession (respective). The legal framework for other activities providing public services is less precise (we might say more general) and leaves space for argument if all of them should be considered public services (opinion of the authors is that they should and are public services).

On this Gocevski (2014) argues that all future evolution of theory and law on public services needs to build of (client) service-oriented principles of public administration. I.e. every organization that provides a service of equal importance to a larger community or strata of population, regardless if that organization is an authoritarian agency of government or non-authoritarian public service (clinic, kindergarten or utility) should nominally be considered a public service. A state declaring itself to be (*neo*) liberal, social-democratic or (even) Demo-Christian and civic can not support any other reason of the existence of administration organizations (but to provide public services) thus acting in the name of national and public interest:

> Even the most authoritarian organizations must exist only to guarantee human rights and civil liberties. Armies wage war beyond state borders, so it's citizens don't fear war coming to their doorstep. Police forces act to secure public order and peace to ensure citizens don't fear for their personal safety and the safety of their property. The Ministry of foreign affairs (today must) justifies it's existence by providing the same rights and liberties to citizens of it's state in other states and to provide freedom of travel. (pp. 94)

Other models of public services found in post-socialist states are so-called "Public Utilities" i.e. activities regulated by special norms subjected to supervision by regulatory bodies (of government or parliament) which the state (or local self-government) allows to provided partially or fully by (public enterprises or) private subjects: supply of gas, supply of water, managing waste water, distribution of electricity, roads maintenance, waste management, central heating etc. Depending on whether the provider of the service is a public owned legal entity or private owned subject we differentiate: public enterprises, companies with public competencies (concessions and public-private partnerships) and in the last thirty years NGOs which obtain a status of Public Benefit Organizations or Organizations of Public Interest (Davitkovski, Pavlovska-Daneva, Gocevski 2014: 5).

Public institutions are a generic and fluid concept lacking specifics, though an acceptable unifying concept (how they may be organized) is that public institutions may be organized as administrative organizations (classical sense) first seen in French law (Grizo, Davitkovski, Pavlovska-Daneva 2011: 360, 368).

In the Republic of Macedonia public institutions are established as public, private of mixed ownership institutions (Grizo *et al.* 2011: 192 and Davitkovski, Pavlovska-Daneva, Gocevski 2014: 18-24) in the areas of: healthcare: hospitals, clinics, drug store, dentists, gynecologist etc.; education: elementary schools, high schools, universities; science: institutes; social care: social welfare centers, kindergartens, protection of persons with special needs etc.; culture: theaters, operas, balls, museums, archeological sites, cinemas etc. Other organizations may be granted the status of institutions under terms regulated by Law (on Public Institutions 2005).

Concessions of public services are procedures of contracting out i.e. outsourcing certain services to private partners. The state or unit of local self-government called a concedent transfers the right to govern a public service on to a private partner (person of legal entity called concessioner), giving the right to charge clients for services provided thus compensating his costs (Grizo *et al.* 2011: 170, Davitkovski, Davitkovska, Gocevski 2013: 200). This method of outsourcing public services (education, social security, healthcare) brought about a new trend in public administration called privatization (Grizo, Davitkovski, Pavlovska-Daneva 2011: 369-374, 378-392).

Concessioning public services played a vital role in developing certain sectors in the French Economy, such e railways, aqueducts, installations for gas distribution etc. (Gocevski 2014: 79-80) In the era of liberal capitalism states transfer the "workload" of investing in public utilities on to private capital, reserving a double benefit by the obligation that after a period of time exploitation of the service (now well developed) is transferred back into state jurisdiction. A (possible) drawback is that concessions expanded into services where concessioner profitability was limited and often required government bailouts to prevent bankruptcy and obstruction of the public service. (Davitkovski, Pavlovska-Daneva, Gocevski 2014: 6-12, 161 respective).

Public-private partnerships are yet another form of contracting out public services and considered a concept of New Public Management. Though a unified definition of public-private partnerships or PPP is hard to find and many believe a legal definition can not be provided (Stober 2007: 569) , the Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions (2004) published by the European Commission provides the following definition: PPP presents various forms of collaboration between the public sector (central and/or local government) and the private sector in order to provide financing, construction, reconstruction, management and maintenance of infrastructure and/or provision of public services (Belicanec 2008: 7 in Davitkovski, Pavlovska-Daneva, Gocevski 2014: 173-176 respective) thus a most general perception of PPPs is that they encompass any contractual arrangement between the government and the private sector through which traditional public services are provided by private subjects (Savas 2000:9 in Forer 2010: 475) 'the idea behind such arrangements has an ideological and pragmatic background' (*Ibid*). Savas even promoted the idea that the private sector more cheaply (up to 50%) than the public sector in providing an equal amount of service (*Ibid*: 476). Thompson (1982) and Kolderie (1986) argued that privatization is nothing more than contracting out functions by the Government performed by the public sector to the private sector (in Mengistu, Hail-Mariam 2011: 43) and Kolderie (1985) identified two different concepts of privatization: 1) 'provision of public services' i.e. the policy decision to actually provide a good service; 2) 'production' i.e. the administrative action to produce that good or service (in Layne 2000:21).

The concept, however, is useful (provides the desirable efficiency) under certain conditions: there are several potential providers of the same service, the government is capable of supervising the execution of the contracting service, the contract holds adequate provisions and the subject of the contract (concession or PPP) is precise and clear (Grizo, Davitkovski, Pavlovska-Daneva 2011: 388). Still it comes down to the Government officials and their virtue and skill to recognize potential in PPP (when applicable and not under any circumstance at any cost) to utilize the technological innovation, expertise, financial benefits and experience of the private sector and use it to resolve issues in complex public policies e.g. highway construction, mini hydro dams, street lighting, aqueducts, railways, and even if properly executed hospitals, schools, kindergartens etc.

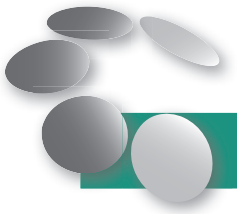
PPPs in Macedonia have so far seen a relatively short list of utilization and are observed more of an Build Operate Transfer and short-term instrument. Forer *et. al.* (2014) see the future of PPP more as a long-term collaboration between the public sector and private sector in providing public services, thus providing the following definition:

> PPPs are an arrangement between the government and organizations from the private sector (NGOs included), in which the private subjects are involved in decision-making and production of public

> goods and services traditionally reserved for the public sector, and the private subject bears the risks of production and provision of such services. (pp. 476)

Public enterprises or public corporations are a form of providing public goods or services in Macedonia, founded on a legal category "activity of public interest" provided in the Law on Public Companies (2006) that substituted a category in socialist terminology "economic professions of public interest".

Belicanec argued that the central category of Public Company Law was a neologism, created to juxtapose the theoretical and normative category "economic public services" or also known in French law "industrial and commercial public services (2010: 563-600 respective). Belicanec pointed out that such formulations as "professions of public interest" are a category introduced by Law and not the Constitution because the Constitution (1991) recognizes the formulation "public services" (Art. 24, 58*)* and "public interest" (Art 30, 76) separately. The former legal solution provided an interesting formulation which emphasized such economic activities of public interest as an irreplaceable condition for the life of citizens, their work, the life of state administrative bodies and without their continuous provision life couldn't go on normally. The Law on Public Enterprises (1996) determined 17 professions through a positive enumeration clause, as which performed a public interest: energy, railway transport and public transport (of passengers), telecommunications, postal services, radio and television, gas pipes and pipelines which carry oil, forest management, water management and pastures (and other natural resources), veterinary services and sport (Art.2). In 2006 the positive enumeration was excluded by amendment to the Law leaving the determination of specific services as activities of public interest to the Government and Parliament by special laws regulating each profession and now states that 'Activities of public interest shall be considered activities or specific actions within these activities, through which the public interest is being achieved' (Art.2 2006).[20]



3.3 Media

Examining the media as an exigent actor in the narrative of public interest is an important step in any sustainable and successful democracy. Fitting the media in the current discourse – i.e. the focus of this publication requires of us to provide several answers: 1) a brief definition of 'media', thus fitting that into the respective context, 2) what is good media or what is good for media and 3) what is it's role regarding public interest as defined in chapters 1 and 2 of this publication.

What is media?

A paper issued by the Department for International Development (2008) examining media and good governance defines media "as (mostly) non-state actors who define themselves apart from the state and from all societal actors (what Edmund Burke described as a "fourth estate", distinct from government, church, and electorate). Trying to list actors that comprise i.e. represent media in a contemporary (21c) setting, we may say that media can consist of everything from national newspapers to student magazines, global broadcasters to local radio, websites and blogs to social networks, podcasts, virtual communities, citizen journalists to public broadcasting services.

Media is an important actor due to the fact that it has a very distinct role in society. It "shapes in large part what people think of the issues and institutions that affect

20 An overview of public services in Macedonia may be found in Gocevski 2014: 84;

them. It is critical to the formation of public opinion. The character of the media tends to determine the character of public debate in a democracy. Free media is fundamental to any definition of good democratic governance." (DFID 2008: p.3)

Why is media governance important?

Effective institutional and political processes are considered a *sine qua non* for state development. This thesis is confirmed in the concept of good governance. According to Resolution 2000/64 of the Commission of Human rights, key attributes that define good governance are: transparency, responsibility, accountability, participation and responsiveness (to citizens needs).

However, a precondition for these attributes and governance itself is a strong and viable relationship between the state and the citizen. In order for the citizens to be engaged so that they can exercise their rights communication is necessary between the citizen and the state.

Puppis defines governance within the scope of media as 'the regulatory structure as a whole, i.e., the entirety of forms of rules that aim to organize media systems.' This definition covers both collective and organizational governance. Likewise, Hamelink and Nordenstreng (2007:232) refer to media governance as a 'framework of practices, rules, and institutions that set limits and give incentives for the performance of the media.' McQuail (2007:17–18) describes media governance as both the numerous forms of management and accountability within the media and the institutionalized relations between media and society.

Governance itself as a concept is broader and opens a possibility for inclusion of stakeholders in the process. As Napoli (2015) says, the notion of media governance can perhaps best be encapsulated as regulatory deliberations, processes, and outcomes that take place both within and beyond the state (for a critical take on the media governance concept, see Karppinen & Moe, 2013).

Thus, the notion of media governance is conceptualized as a multi-stakeholder approach, which is supposed to 'tackle' complex conflicts of interest in media policy. The stakeholder approach takes into account different stakeholders' interests within corporate actions (cf. Freeman, 1984; Post, Preston et al., 2002). Companies tend to accommodate stakeholders that are vital to their success, such as shareholders, employees, suppliers, and customers, but neglect stakeholders with little or no power but which nonetheless have justified claims and expectations (cf. Mitchell, Agle et al., 1997).

As media governance is based on a systematic, comprehensive, and institutionalized multi-stakeholder approach, it is able to integrate (neglected) stakeholder interests on various levels. Civil society, which so far only appeared in the role of the audience, is participating in media governance processes alongside established stakeholders such as media organizations, economic interests, and state authorities. Companies are no longer acting only in corporate interest but also in society's. And corporate performance is judged from various perspectives (cf. Post, Preston et al., 2002: 17).

The inclusion of the state as an internal actor draws upon a question 'who is going to regulate the relationship between the state and the media'? Who is going to safeguard what the media is doing and whether that will be in compliance with the interest of the people?

In this regard, the existence of regulatory reforms is often mentioned for the safekeeping of the 'public interest'. Authors such as McQuail, Feintuck & Varney believe that the problem lies within the state and media. The relationship between these two entities is not clearly defined, therefore, provides a murky basis where regulation is build up, often resulting in confusion. McQuail (1992: 9) traces the conflict between state authority and media freedom through suppression and prohibition, to permission and then prescription, before a recent shift to more libertarian values.

The profession of journalism (regardless of the technology via which news is disseminated) traditionally has been infused with an ethical obligation to serve the public interest (Barkin, 2002; Iggers, 1999).

A key aspect of the public interest principle is that it has traditionally contained both restrictive and affirmative dimensions. That is, the articulation and application of the public interest standard in media governance has generally included restrictions on what media organizations could – or should – do (e.g., in relation to issues such as adult content, violence, etc.), as well as affirmative requirements or responsibilities related to serving the information needs of communities in ways that support a well-functioning democracy (e.g., providing minimum levels of news, informational, and educational content; meeting standards of accuracy and reliability in reporting, adhering to specific journalistic values, etc.) (Napoli, 2005).

Regulatory institutions in communication tend to achieve the public interest. Latzer (2007:1) differentiates between horizontal and vertical extension. *Horizontally*, it includes the role of private actors in regulation, the remix of state and private contributions in communications regulation. (2) *Vertically*, it incorporates the multi-level character of regulation, the interplay of national regulation with international, supranational, regional and local regulation. Both extensions are important in order to assess recent changes in communications regulation triggered by liberalization and globalization, to grasp the changing / diminishing role of nation states in communications, and to advise policy makers on their regulatory choice between different modes of regulation in convergent communications markets.

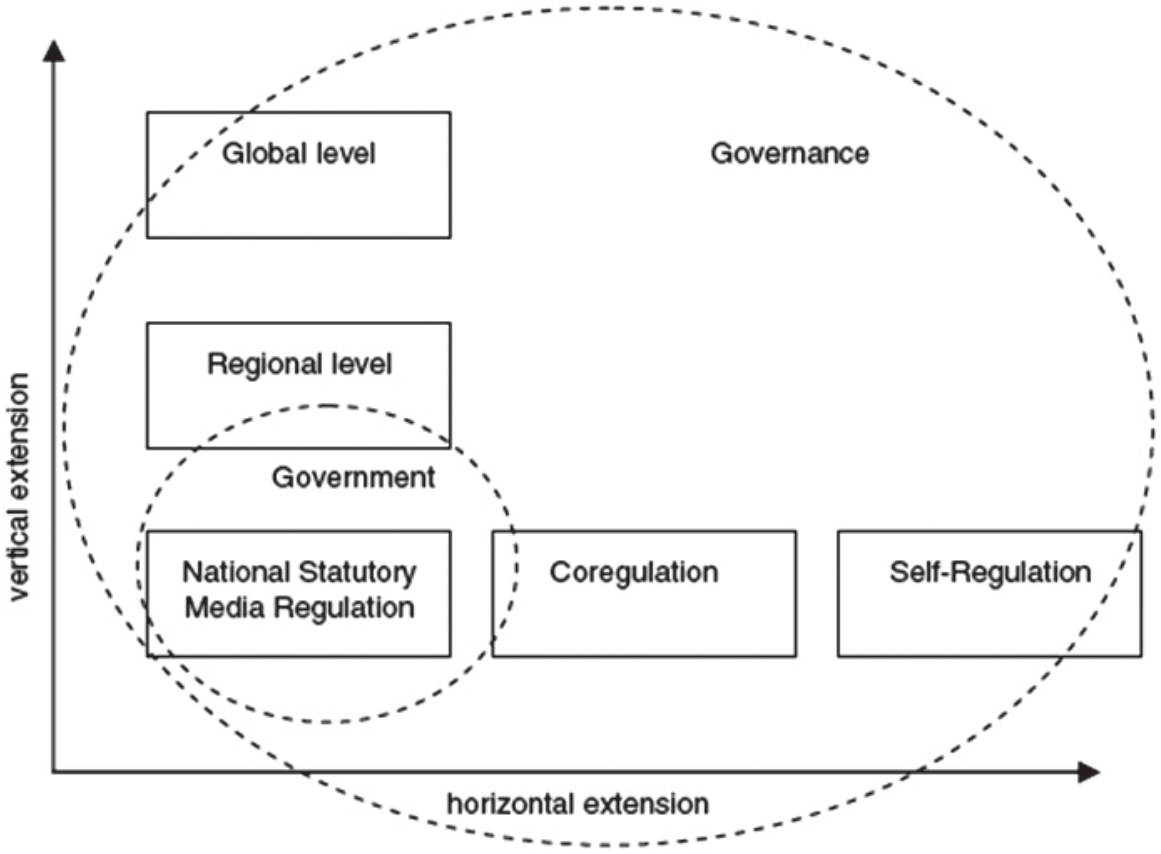


Figure 1 Media governance as horizontal and vertical extension of government
(Source: Puppis, 2007, p.331)

As Mayntz (2004: 66) has pointed out, governance can be understood as the regulatory structure as a whole, combining public and private, hierarchical and network forms of action coordination.

"Regarding the horizontal extension of government, the term 'media governance' covers statutory media regulation as well as self- and co-regulation in the media. While the state is not involved in self-regulatory organizations (apart from supposable pressure on the industry), co-regulation is taking place within a framework provided by the state and refers to a mix of statutory regulation and self-regulation. "Puppis (2007:332).

Why is media important to the public interest?

Attempting to answer why media are important to public interest in a few words is about as complex as trying to answer how reading up on healthy living habits is important to being healthy. Media today, perhaps have more influence on us than our own personal experiences (Feintuck, Varney 2007: 1) and this is easy to see. Through media (television, radio, internet broadcasting services, newspapers in all their forms, news channels through RSS, even social networks up to a point) we receive information of interest to us. This can be information we find interesting such as sports events, cooking shows, fashion, motorsports and recent political events. It can also be information on matters that we have an Interest in such as changes in legislation which affect our taxes, costs of utilities, availability of food and medication, ongoing political events which may lead to a better life or even war! It is this role that media has in our lives of being a channel to 'information' which puts it in a very specific position: media can selectively filter out information regarding important events – thus emphasize what we know and even influence how we know of it! Once we up this analogy to relaying information to the public, regarding their rights and duties, regarding what goes on with public services and what our politicians do to protect our rights and improve our general well-being we can easily deduce that media is a gatekeeper of public interest. It is not only important that we have media, but that we have media in a condition and state that allows the impartial transfer of information regarding events important to all citizens. We argue it is also important that media represents a professional service competent to filter out what is important and what is not.

Let's talk pluralism

Within the media sphere in a country there is always the risk that the influential actors rise and dominate the media space. Concentrated media ownership should be dispersed, and an effort should be made to foster strong independent media players. Pluralism as such fosters diversity in media. It aims to include a variety of media actors, nurture diverse media content all in order to transfer information to a broad audience. The legal foundations for media pluralism in Europe are found in international treaties[21] such as UN Declaration of Human Rights (1948) as the freedom of thought, free expression including freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (Art. 19), Convention for the Protection of Human Rights and Fundamental Freedoms (1950) declaring freedom of expression as a fundamental right. Explicitly freedom of speech includes the 'freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers' (Art. 10 Par. 1) and the Charter for Fundamental rights of the EU (2012) adopted in 2000 declaring 'everyone has the right to freedom of expression... including freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers' (Art.11 Par.1) explicitly stipulating that 'freedom and pluralism of media' must be respected (Par. 2)! It is in the fine balance, providing conditions for freedom of media, pluralism of media (and their sustainability), and regulating who owns them, how they work and what they disseminate, as well as knowing when to exercise government prerogatives of power to justly restrict media from publishing certain information that media will evolve into a true gatekeeper of public interest or a sallied partner of governments and powerful business.

21 And other international treaties, and national legislation of all countries respectively;

However in one form another, all treaties leave it to national legislators to implement these rights according to national law, traditions and values. And in one form or another they permit states to impose certain rules regarding freedom of expression and dissemination of information when it is organized i.e. provided through a broadcasting service. Thus even the Convention (1950) allows states to require licensing of broadcasting, television or cinema enterprises (Art. 10 Par. 1). Furthermore, the Convention recognizes that exercise of these freedoms, carries with it duties and responsibilities thus permits them to subjection to formalities, conditions, restrictions or penalties as are prescribed by law and are declared necessary in a democratic society, when it is in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary (Par. 2).

The Council of Europe contributes towards media pluralism, through the Committee of Experts on Media Concentrations and Pluralism (MM-CM). On one of the meetings of the Ministers, according to their memorandum (1999) media pluralism is defined as a diversity of media supply, reflected, for example, in the existence of a plurality of independent and autonomous media and a diversity of media contents available to the public.

The definition of pluralism embraces both diversity of ownership (i.e. the existence of a variety of separate and autonomous media suppliers) and diversity of output (i.e. varied media content) (Doyle 2002:12). In continuation, Doyle proposes and analyzes four determinants of media pluralism: (a) size/wealth of market; (b) diversity of suppliers (c) consolidation of resources and (d) diversity of output.

Doyle argues that the size of the market is directly connected with the level of resources, which will enable for individuals or groups to establish or purchase media. Subsequently, the sources of funding (no many how different they are) cannot change the close relationship that the size of the market has with the level of resources.

In this regard, the Macedonian market is quite small and oversaturated with various forms of media outlets. According to the Media sustainability index study:

> a large majority of the media, including almost all of the largest privately owned national broadcasters and print media, are actually part of larger entities and cannot be considered the core business for their owners. The owners use them instead to promote their core activities, as a tool to use against competition, and as a bargaining chip in negotiations with authorities when core businesses are under pressure. (Georgievski 2015:81)

The size of the market and the level of resources used for maintaining media are strongly connected. Pluralism depends on the availability of resources due to the fact that one product can be delivered to different audiences in different places. Larger wealthier markets can certainly provide a variety of ways to disperse those products while on the other hand smaller markets are unable to do so.

Diversity of suppliers is a straightforward determinant where in order to have pluralism diverse media ownership must exist. Furthermore, the ownership should entail various platforms and types of media for a pluralistic environment. If certain actors become more powerful, the power will be concentrated among them, which in turn will diminish the chances of pluralism. The majority of Macedonia's traditional media rely on advertising revenue, which, on average, accounts for more than 90 percent of their total revenue with the remaining percentage coming from various sponsorship deals (Ibid).

In addition, support for 'public service' broadcasting (PSB) services (for which diversity of content and political impartiality are standard requirements) will contribute directly to diversity and pluralism in media provision (Doyle, 2002:26). However, the MRT as a public broadcasting service remains to be greatly criticized for its biased position. "Admittedly, there were efforts over the past year to redesign the programming offerings, but those amounted to purely cosmetic

changes that resulted in sleeker visuals and upgrades of the public broadcaster's technical capabilities. MRT's programs, especially news and information, remain strongly biased in favor of the government, and the public broadcaster has not refrained from joining in smear campaigns directed against the opposition or critical media and journalists (IREX, 2014: 72). "

Not all owners wish to exert influence over the content of their media and, for those that do, the primary motivation may simply be commercial rather than political. Nonetheless, the reason why diversity of ownership is important for pluralism is because media ownership can translate into media power (Meier and Trappel, 1998: 39 cited in Doyle 2002).

Media owners' interests are difficult to track, let alone monitor and regulate. In order to minimize the threat of media owners exerting personal interests through media (in their property), society should prevent monopolization of media power. Doyle continues the discussion by stating that the best way to prevent monopolization is to have diverse ownership in media (especially broadcast). Diverse ownership on cross-media will ensure the presence of a number of suppliers and limit the possibility for monopolization. There is a risk that promoting such diverse ownership could create cost efficiencies, however, the risk in this regard is minimal.

MediaPedia, an independent research by four enthusiasts (three journalists and a programmer) mapped the ownership of media outlets in Macedonia in the period 2013-2014. The project notes that a large share of media ownership in the country is secretive, which limits citizen insight into knowing whether a media station, Internet portal or newspaper represents the political views of a group or the interests of the citizens (meaning impartial transfer of information regarding events). As part of the MediaPedia project, in a research on transparent (media) ownership Ida Protugjer Veljkovikj argued that a common characteristic of (all) media largely financed by public money (the budget or money from public enterprises and joint stock companies owned by the state) is that 'they have very similar news content, quote or state the same sources, broadcast programs with almost identical content and have their news presented in identical or similar order, all to the benefit of the financier as opposed to the public interest.'

> The Internet portal boom in Macedonia, a sphere less (if at all) regulated, saw an emergence of a large number of websites declared (or self-declared) as news portals. Many of them showed apparent absence of ownership information or identification (such as an impressum with listed members of the editorial staff). As part of the MediaPedia project which started in 2014, research provided information that the editorial staff and owners in several web portals were close collaborators to the ruling party (in Macedonia at the time, i.e. VMRO-DPMNE and coalition) or had significant relationships with people from that party.

Managing resources in a media can also impact media pluralism. A key aspect of the relationship between media concentrations and pluralism is the extent to which concentrated ownership encourages consolidation of cost functions – especially editorial – between what are ostensibly 'rival' products held in common ownership (Doyle 2002: 23).

An analysis of media governance in Macedonia reveals an alarming state. A progressing deterioration can be seen, as media becomes politicized, usually in favor of the ruling party. Government influence on media output is exercised through inter alia, state-financed advertising. A recent EU Progress Report notes that there is a scarcity of truly independent reporting and lack of accurate and objective information being made available through mainstream media to the public, as well as lack of informed public debate. A positive development has been the establishment of a self- regulatory body, set up in December 2013 by media actors themselves (2014: 2).

Examining the legal and institutional framework of media regulators in Macedonia can provide a detailed insight into the role given to Macedonian media regarding protection and promotion of public interest. The two relevant laws for this study have been adopted in 2013- the Law on Media and the Law on Audiovisual Media Services. Both

were designed (respectively) to address several matters: television and radio broadcasting (traditional broadcasting); Providing audio and audiovisual media services and Retransmission of programming services through public communications networks. Formally, the Law on Audiovisual Media Services aims to promote development of audio and the audiovisual media services; development of the independent productions; development of media literacy, encouragement and protection of cultural identity and encouragement of competition among media.

The Law provided establishment of the Agency for Audio and Audiovisual Media Services as a form of regulatory body, replacing the former Broadcasting Council. The Agency was vested with the following competencies (Art. 6): ensuring public access to the operations of the broadcasters; responsibility to ensure the existence, diversity, and independence as well as protection and development of pluralism in audio and audiovisual media services; takes measures (including misdemeanors) in cases of violation of respective regulation; is responsible to ensure the protection of minors (regarding to content in media); adopts secondary legislation and is responsible for the protection of citizen interest in audio and audiovisual media services. The noted provisions indicate the Agencies role as a keeper of public interest.

The Agency in managed by a Council and Director. The Council's competencies are to award, revoke or change licenses for television or radio broadcasting, annul decisions of changes in ownership, act and inform in case of copyright infringement and adopt bylaws and procedures connected to the work of the Agency and monitor the implementation of its annual program (Art.18).

Adopting the two laws didn't go smoothly as they introduced certain novelties and replaced decade old legislation. The Law on Audio and Audiovisual Media Services underwent a barrage of criticism both by the international and domestic community. After extensive debate the Law was adopted by the Assembly with several amendments: the exemption of online outlets from regulation by that law, the Agency for Audio and Audiovisual Media Services was vested powers of oversight only on printed media, allowing the Journalists' Association of Macedonia (JAM[22]) to nominate one candidate on the regulator's seven council members and lastly insert provisions that would ensure that future restrictions of content from media is done with accordance with the practice of the European Court of Human Rights.

Complementary to the Law on Audio and Audiovisual Media Services, the Law on Media was also adopted and was perceived by the expert community as completely unnecessary. It prescribes the basic principles and requirements required by media publishers, predicts protection to minors, contains provisions defining the editor and editorial. It also encompasses provisions regulating journalist rights to express their opinions and attitudes, refuse to perform a duty or task when protecting the source of information, Imprint, publicity in the work of the media publisher and the right of reply and correction of published information. Definitions of media and journalist provided by Law in Macedonia limit the inclusion of bloggers and journalists working in online media. This is a significant setback as they are unable to enjoy certain rights including the right to protect their sources.

Experts criticized several issues regarding legal definitions. According to the Law, freedom of expression can be restricted when restrictions are in accordance with the Constitution – which goes fine with international treaties (see Chapter 2). However, the Constitution does not have a clear point that refers to media limitation leaving a lot of open ground for discretionary (arbitrary) interpretation of this provision by the executive branch or any other legally competent body which exercises competencies related to broadcasting. The same analogy applies to Art. 4 stipulating that restriction to freedom of speech is justified when national security is concerned, yet no clear definition is given of what constitutes a threat to national security, once again leaving plenty of room for open interpretation of this term and calling upon other legislation that does regulate national security threats, but that may not be well suited to freedom of speech. Not to

22 ЗНМ, Здружение на Новинари на Македонија;

repeat ourselves from Chapter 2 of this publication, there are plenty of cases before the ECHR indicating that restriction of freedom of speech should be exercised very carefully. Mendel (2015) mentions plenty of court verdicts and opinions where the ECHR explicitly declares open political debate a foundation of democracy, thus subjecting the activities of parliament, Government, courts, police and military, regulatory bodies, bodies with right of oversight and even public broadcasters to greater scrutiny (pp.14) and calls on larger tolerance to media criticism when such issues are on topic. As public interest (see Chapter 1 and 2) encompasses a broad set of rights to (human rights, security, sanctity of property, public services and utilities etc. but not in individual cases but when 'rights to' are perceived as general rules applying and affecting all) one may say that (among others) media needs to emphasize and attract the public's attention whenever such issues are decided upon by Government and Parliament, whenever such rights are being restricted or infringed upon (justly or unjustly) and initiate broad public debate. At the same time, media needs to protect the public from certain forms of content (considered indecent by society) portraying profanities and similar, but also work to demystify and tackle taboos.

National practices in Macedonia regarding restriction of freedom of speech are controversial to say the least. Lack of public debate on topics of public interest and lack of objective journalism is one thing, but there are plenty of court proceedings against journalists on grounds of slander as well. Not to take sides, we shall only present a few cases that indicate a level of controversy how journalists are treated in Macedonia when publishing about (or in the name of) public interest. For one, a rather morbid event is a "funeral wreath" delivered to the home of a journalist and editor of "Nova TV" Borjan Jovanovski, holding the message "last regards".[23] The journalist community in Macedonia considers "Nova TVM a medium caring for the public interest. Another more illustrious example of restriction of freedom of speech is the court verdict 'Mijalkov vs Fokus' in which the editorial board of a weekly magazine Fokus paid 9.000 euros to the former director of the Intelligence Office Sasho Mijalkov, on charges of transmitted statement[24]. The author of the text Vlado Apostolov was fined 1.000 euros, the editor in chief Jadranka Kostova 5.000 and 3.300 for expenses were paid to Mijalkov's attorney and judicial taxes. The former Director of the Intelligence Office sued because Fokus published statements given by the former Macedonian Ambassador in Czech Republic Igor Ilievski.

Regretfully the most renowned case of restriction of freedom of speech (in the name of public interest) is the most brutal one in Macedonian modern history, the case of Tomislav Kezharovski. Kezharovski, a journalist in the daily newspaper "Nova Makedonija" was sentenced initially to 4.5 years of imprisonment (the appellative court reduced his sentence to 2 years) for revealing the identity of a "false" protected witness.[25] Kezharovski was accused of revealing the identity of the supposed protected witness "Breza" in two articles published five years ago in a murder investigation in the village Oreshe 2005. During judicial proceedings Kezharovski stated his claim that he did not publish anyone's identity, he only relayed the information regarding a false witness to the public and tried to talk about (what he called) murky police business. Journalist associations in Macedonia and Europe responded loudly to Kezharovski detention. His imprisonment was taken as a sanction against all of journalism and against freedom of speech and protection of public interest. Other controversy regarding Kezharovski incarceration go as far as claims that Kezarovski was imprisoned due to the fact that he investigated the death of Nikola Mladenov, a prominent critic of the government and editor of the independent magazine Fokus. Kezarovski's investigation on the matter revealed gaps in the investigation, which led the public to question whether the death of Mladenov was an accident. Subsequently, Kezarovski was acquitted in 2015 after he served almost 2 years in prison.[26]

23 A Funeral Wreath to Public Thought, Nova TV, available at: http://meta.mk/megunarodnite-organizatsii-go-osudija-atakot-vrz-borjan-jovanovski/
24 9.000 Euro for Protecting the Public Interest, A1on, available at: http://a1on.mk/wordpress/archives/268770
25 Jailed for Protecting the Public Interest, MakDenes, available at: http://www.makdenes.org/content/article/25097656.html
26 After the Appelate Court reduced his sentence to two years of imprisonment, Kezarovski was immediately imprisoned to finish serving his sentence. However, on January 20 when approx. 3000 people staged a protest march demanding his release, the director of the prison decided to release Kezarovski from prison on "health grounds". On January 22, only two days after being released on health grounds, he was acquitted from further imprisonment, upon recommendation of the prison's director who sought parole for Kezarovski for the rest of the sentence;

Another interesting case was publishing a list by the daily newspaper "Vecer" that claimed it contained names of journalists of homosexual orientation.[27] The veracity of the list will not be examined or discussed. However it is interesting to note how this case is related to the protection of public interest. Although this act generated a substantial amount of criticism from experts and human rights organizations, the general framework of the Law for Personal Data Protection stipulates that the publication of someone's sexual orientation is only permitted if the public interest prevails over the private interests of the subject (Art. 4-a). If the paper wanted to publish a list in order to generate a debate regarding LGBT rights, it would not have received so much criticism. The article demonstrates that the goal was a personal vendetta between the journalists in question, something unacceptable under professional media standards. Publishing such articles can not only foster hatred towards individuals and groups but also endanger their personal safety.

In the period from April-June 2015, the Center for Media Development followed (Medarski 2015) 28 judicial cases during 52 hearings before the Primary Court Skopje 2. In this trimester alone four new cases were motioned against journalists or media on grounds of slander. In the last 12 months 56 cases were completed yet no verdicts were delivered to respective parties, and some of them still pursue an appellative procedure before the Appellative Court. Courts inertia leading to untimely verdict delivery contributes to some of the cases lasting longer than two years. This postponement is against the Law on Civil Responsibility for Slander and Defamation according to which such procedures are urgent (Art. 22 Par. 1). This is in part because these cases are juried by three competent judges alone that at the same time are competent to act on different cases.[28] Regarding slander and defamation, journalism is the most sued profession in Macedonia. This state is the direct result of a large number of court proceedings against journalists and media. Charges made according to the Law on Civil Responsibility for Slander and Defamation are an instrument (one of many) to control and repress critical journalists and media in Macedonia.

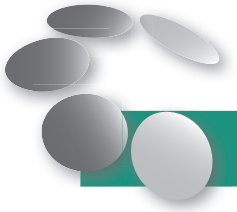
On the bright side, there are cases where the Court made a right ruling and applied the aforementioned Law and international principles justly, such as Igor Serafimovski vs. Ljubisha Arsik. The plaintiff requested the Court to determine liability for defamation because the sued party published an article titled "With Mom and Dad in NATO"[29] in the weekly (no longer published) magazine Globus. The sued journalist published that new employees in the Ministry of Defense receive salaries according to partisan affiliation and relation to managing structures, and not according to merit. He provides an example, 'the driver of Deputy Minister (at the time) Igor Serafimovski receives a salary of 30.000 denars, as much as an Assistant Head of Unit, a post requiring a higher education and at least five years of service'. The Court applied the Law on Civil Responsibility for Slander and Defamation in determining the state of facts, as well as international treaties, and determined that the sued party as a journalist had no intention to harm the honor and reputation of the plaintiff, but wanted to open a debate regarding public interest such as the matter of (nepotism in public administration) high political official employing their sons and daughters in the Ministry of Defense providing them with high (higher than regulated) salaries. The articles' title points to employments under-parented (political officials) patronage. The Center for Media Development considers the Courts ruling appropriate, as the journalist had good intentions and addressed a topic of general interest, respected the duties and responsibility in exercising his freedom of speech and met journalist standards when publicly presenting a document – list of persons temporarily employed in the Ministry of Defense through the agency Prospekt-Prilep. This presents a presentation of information of public interest and was confirmed as such by the Assembly following the publication of the respective article, though parliamentary inquiries.

27 Are there homosexuals among journalists, Vecer, available on: http://vecer.mk/makedonija/ima-li-homoseksualci-megju-novinarite
28 Though unofficial, the Center for Media Development claims the Court is slow in finishing verdicts due to partisan based employments, often times persons not competent to fulfill the appointed tasks in the court;
29 со мама и тато во НАТО (with Mom and Dad in Nato);

It took a controversial campaign by the leader of the opposition (Zoran Zaev) to broadcast audio materials claiming to hold recorded telephone conversations by high-level politicians that indicate severe abuse of powers and corruption. The recordings pointed towards a wire-taping scandal, and Zaev claimed he possessed over 20.000 hours of recorded material. Although the method through which he acquired the materials is controversial ('patriots', concerned citizens gave them to him) no one fully denied their content. Government officials (including the prime minister, vice prime minister of finance, and now-former ministers of interior and transport and communications, as well as the voice of the former director of the intelligence office) responded that even though it is their voice, the conversations were montaged. To keep the story short, we shall only comment how this 'gest' lasting from January – July 2015 touches on public interest. To start with, wire-tapping is only legal if a competent state body under court order conducts it, and even then the court provides a rational how this breach of privacy is in 'public interest'. Obtaining phone conversations in any other way is illegal – thus considered a crime. However, national anti-corruption laws provide so-called whistleblower provisions (see chapter 4), and even justify certain actions normally considered criminal, if they are carried out to prevent or disclose corruption (in turn protecting the legal order i.e. the public interest). So if there is any truth in what Zaev published than perhaps he should be considered a high level 'whistleblower'?! However, as most of the provided audio material contain conversations between high-level government officials in which they use hard language, threatening demeanor and even nationalistic and chauvinist vocabulary they are private conversations and some conversations are even evidently personal (the minister of transport and communications talking to his wife late at night discussing official meetings and even conversations between the minister of interior and minister of finance that clearly show they are two friends discussing what they did at work). Regarding these conversations – the published material is in clear breach of privacy rules. What these materials did change is that public debate on various issues certainly did increase (even ever so slightly) in the Macedonian ether.

Ongoing controversy surrounds the opposition's claim of high-level corruption. The opposition submitted the audio materials and filed a suit before the Prosecution in early summer 2015. On September 1st, the Primary Court in Skopje released a public Statement rejecting the audio materials as viable evidence because they were obtained illegally according to the Criminal Code. Much debate was opened regarding this act as experts believe the Criminal Code needs to be interpreted differently regarding this issue. Gordan Kalajdizev a professor of Criminal law and the Law Faculty in Skopje[30] argues that illegally obtained evidence must be discarded when the method of their obtainment is against or contrary to the values of the legal order i.e. a greater violation to public interest than the information obtained is valuable to the public interest or the interest of respective parties in a legal proceeding.[31] In the case of the recorded audio the opposition claims they did not warrant the wiretapping, but that such materials were delivered to them by third parties – thus in publishing them they are assuming the role of whistleblowers against a greater harm to public interest i.e. abuse of authority by public officials at the highest level of government. Further controversy is added as within two days the Prosecution filed over 21 appeals against the Courts statement.[32]

30 A statement given in a public debate on TV "Telma", in the show "TopTema" with Bobi Hristov on 2.9.2015, aired 20:00-21:00;
31 e.g. obtaining a statement from a witness through torture. As torture is considered a greater crime against human rights and fundamental freedoms than say pleading guilty of robbery;
32 Though the opposition claims the Primary Court made such a Statement because they are attempting to sabotage the competencies of a "Special Public Prosecutor" that is supposed to be established by September 15th 2015 according to an agreement by the leaders of four major parties in Macedonia (VMRO-DPMNE, DUI, DPA and SDSM) with the special task of investigating alleged crimes in the said audio materials



3.4 Civil Society

What is civil society?

In the past- businesses, Governments, and NGOs had clear and interactive relationships. With the evolution of economies, electronic media, and activism, now these lines are heavily intertwined. This does not mean that we have lost track of which actor does what in society. On the contrary their scope and competencies have remained the same, it is the means of achieving their goals that evolved. Civil society has evolved to a point where both formal and informal groups are active, social media has become a substantial instrument for achieving goals, and the roles of the civil society actors has shifted from mediators to creators and guardians.

The term originated from Aristotle as *politike koinonia* meaning political society or community. *Politike koinonia* was defined as a public ethical, political community of free and equal citizens under a legally defined system of rule. Law itself, however, was seen as the expression of an ethos, a common set of norms and values defining not only political procedures but also a substantive form of life based on a developed catalogue of preferred virtues and forms of interaction (Cohen & Arato, 1994:84)

Moving on from the early definitions contemporary explanations of civil society include more complex relationships. According to Kamat (2004:159) civil society can be defined as 'all the voluntarily formed nonprofit collectivities that seek to promote or to protect an interest and that are neither part of the state nor of the family sphere. Thus, civil society includes many different kinds of organized activities.' (2013: 203). NGOs have come to replace other well-established political organizations such as trade unions, welfare associations, religious organizations and trade associations that traditionally represent the interests of various constituencies of society. In relation to these organizations, it is argued that NGOs represent the interests of the broadest swath of people, the poor and the underprivileged of society, who tend to have no structures of representation in public affairs, except perhaps the right to vote during election time.

The World Bank (2010) has adopted a definition of civil society developed by a number of leading research centers which also includes a definition of civil society organizations. Civil society can be understood as a

> wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil Society Organizations (CSOs) therefore refer to a wide of array of organizations: community groups, non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations".[33]

Why is Civil Society important to Public Interest?

In the overview above we have mentioned in several occasions, what we can understand under the term, civil society organizations (CSOs). Aside of the general functioning and definition of CSOs the state in certain instances requires a more structured approach and devotion in the promotion of public good. Thus, the relationship is twofold; the state grants financial and other benefits to the organization while the organization, on the other hand, honors the relationship by implementing activities that are in the name of public good. These CSOs can be also named as public interest organization or charities.

33 Defining civil society, World bank, available at:
http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:20101499~menuPK:244752~pagePK:220503~piPK:220476~theSitePK:228717,00.html

Civil Society in Macedonia related to Public interest

The formal sprouts of civil society in Macedonia can be traced back to 1983 (perhaps prior to that in the form of Literary Clubs) in the Law on Social Organizations and Associations of Citizens, at the time of the Socialist Republic of Macedonia (member of the Socialist Federative Republic of Yugoslavia). That Law underwent certain amendments in 1990 to harmonize with the federal Law on Association of Citizens in Associations, Societal Organizations and Political Organizations Established on the Territory of SFRY (1990) allowing in a way the formation of various organizations. One may even say that political pluralism in Macedonia following its independence was made possible through this Law, as the first political parties (respective), were registered according to it. The biggest restraint this Law made on the development of civil society is that it didn't recognize a lot of organizational forms e.g. Foundations, and the first foundations in Macedonia (Foundation Institute Open Society Macedonia) had to find 'workarounds' in order to operate in the Country. This was corrected with the more modern Law on Citizen Associations and Foundations in 1998, finally substituted by the Law on Associations and Foundations in 2010. The latter piece of legislation was a result of the strenuous public debate. Ognenovska considered the Law solid and progressive; the remaining challenges are the amendments of other laws related to it (tax laws) and regulations and consistent enforcement (2015:11).

A Report from the country monitoring matrix, calling on data from the Central Registry of the Republic of Macedonia there are a total of 13,656 registered civil society organizations (associations and foundations) as of December 2014. This represented 6,6 organizations per 1,000 inhabitants. Of these, according to the Law on Associations and Foundations from 2010 there are 4.156 re-registered organizations (*ibid* p. 18). Furthermore, civil society organizations are unevenly represented in the regions of the country. Most civil society organizations are concentrated in the Skopje region, which is most developed. In 2014, 39% of all associations and foundations in Macedonia were registered in the Skopje region with 8,7 organizations per 1,000 inhabitants" (*Ibid*).

Legally, the basis was set for the civil society sector, however, a remaining challenge was improving relations between the Government and civil society. This was envisioned with a creation of a Council for the promotion of cooperation and dialogue.[34] [35] In addition, the civil society sector needs to be organized with a clear goal for the development and functioning of the council in order to enable it to support actively the process of its establishment.

The Law offers a comprehensive framework for NGOs and allows them to engage in economic activities. Another provision of the Law, which differentiated it from the former legislation, was the option for NGOs to obtain 'public interest status'. In article 73 the Law stipulates that 'Organizations can obtain the status of public interest if they perform activities of public interest, implementation of programs and projects of the central and / or local level, alone or in cooperation with state administration bodies and municipalities in the City of Skopje and the City Skopje, and the use of funds to implement the activities.'

However, the law does not offer a definition of public interest but merely defines the scopes of the NGOs in the area and defines the conditions under which an NGO can obtain a status of public interest. The law from 1998 also did not define "public interest", however, it defined "public authorization". The new law (article 12) stated that association of citizens might be vested with public interest status from the appropriate Ministry in the area in which the NGO operates. This defined the minimum criteria to be met by the association. Those are: the nature and field of activity; professional objectives of the association; the need for activity of the association for the general public and use their services; appropriate organizational capacity and length of experience in the field in which it operates. The same article mentions, that association of citizens may lose its status of public interest in cases of abuse or failure to perform its activities.

34 http://www.nvosorabotka.gov.mk/index.php?option=com_docman&task=doc_view&gid=166&Itemid=37
35 http://idscs.org.mk/images/Pismo_do_GS_Baranje_za_promena_na_predlog_odluka.pdf

The Law on Associations and Foundations (2010) provides a good basis for a progressive legal framework on freedom of association.[36] However, it is not fully functional, primarily due to by-laws not being adopted, which are related to state funding and non-conforming tax laws and dysfunction of the status of public interest. An employee in HERA, an organization providing actual social and medical services in Macedonia provided insight into the lack of motivation for NGOs to seek public interest status. Presently the Law (or any other law for that matter) provide no tax incentives to CSOs; they have the equal status as profit entities in respect of tax laws and tax incentives. The procedure for obtaining public interest donations provided by law for donations and sponsorships in public activities proved dysfunctional or complex.

The Law defines the areas in which a NGO can obtain a status of public interest (Art. 74): development of democracy, civil society and human rights, assistance and protection to people with physical or mental disabilities, persons with disability and persons with disabilities, protection of children and youth, protection of marginalized people and their social inclusion, protection from drug abuse, sexually transmitted diseases, juvenile delinquency, alcoholism, prostitution and trafficking, health, health promotion and medical care, etc. In order to obtain this status NGOs are required to meet several criteria ranging from specifics in registration, public interest activity being the main revenue code in its operations, operations and activities must be directed at the general public and the interests of the community, it needs to have adequate organizational structure and human capacity, it must meet adequate financial resources i.e. total assets or annual income must be a minimum of 1,500 euros ...

The Commission for Organizations with Status of Public Interest is the principle state body competent to grant NGOs with the respective status. It is comprised of a Chairman and 10 members with a mandate of 4 years. It makes proposals for granting and termination of the status of public interest organizations, reviews and issues opinions on business and financial reports of organizations, which are of public interest, proposes initiating infringement proceedings and adopts annual report on its work for the previous year.

According to the website of the Commission, so far only one organization has obtained the status of public interest- The Pexim Foundation.

An overview of the two available reports from the Commission (2012 & 2013) which are available on their website shows that firstly, all necessary acts were adopted in order to enable the efficient functioning of the Commission. Secondly, the issue is that the report from 2014 is missing, even if none of the organizations applied for a status still this should be known in order to analyze why this is the case. Thirdly, in the last report the Commission offers two recommendations. The first one is to organize more promotional activities in order to increase the interest of the organizations for applying for the status of public interest. The second recommendation is for the Government to continue with the changes in the tax and customs regulation so that there is a practical application of the Article 88 of the Law on Associations and Foundations, according to which organizations of public interest should be granted larger tax and customs benefits (though many argue if such exemptions may be detected in present legislation).

A certain influence that should be taken into account is the trust of the citizens in the NGOs. Nuredinoska, Krzalovski & Stojanova (2013) analyzed the trust in civil society in Macedonia. According to their research 'there is a proportionality in increased trust in NGOs and a change in a part of the attitudes for NGOs: organizations are no longer perceived as foreign "spies"'.(pp.14)

For the first time this year, positive attitudes towards NGOs surpass the negative ones. A majority of citizens (50.5%) believe that associations are established by citizens, in order to achieve their national interests. This means overcoming some of the claims that the organizations were "orchestrated" by foreign countries and donors that serve only their interests. (pp.10)

36 The law from 2010 also mentions the public authority article, but for the purpose of this analysis we will focus only on the articles that address the issue of public interest.

On the other hand, although in a reduced rate, still the attitude that organizations are a means of achieving personal interests of individuals dominates over the perception that they are set to achieve general / public interest. Also, for most citizens, organizations do not work sufficiently transparent and public." (2013:11)

As examined in previous chapters (of this publication) the very concept of public interest is broad and entails a wide range of definitions and activities. In the Macedonian context, the linkage between public interest and civil society can be seen through several examples.

In 2012 it was announced that the central part of Skopje, mainly the public square and its surroundings will endure a change in the façade of the old City Mall (GTC) in order to match the baroque style that the Government started to use for buildings. A significant portion of the citizens refused this idea, as they believed that the mall is a historic landmark that defines the city of Skopje. This gave birth to the initiative "I love GTC" which had the task of preserving the exterior of the GTC. As there was no fruitful dialogue between the organizers and the institutions, the initiative gathered the necessary signatures and was able to organize a local referendum. Although the referendum was not successful, it conveyed an important message to citizens. They had limited knowledge that the local referendum can be used as a way to decide what is in their interest.[37]

Citizen's initiatives in the context of buildings and changes in the Detailed Urban Plans show that citizens want to be included in the affairs of their municipalities. Currently, a developing situation has taken place where the citizens of the municipality Karposh have objections with the Draft Urban Plan foreseeing extensive construction of buildings and reduction of parks in their municipality. The informal group of concerned citizens managed to gather the necessary 120 signatures required by law so that they can transform into a citizens initiative. As this is a developing situation it remains to be seen how the municipality and its Council will decide on the matter.[38]

A more notable movement is the Student plenum that started in October 2014 as a result of the student dissatisfaction in Macedonia with higher education policies and lack of interest in student well-being. In an informal setting, students organized themselves through social media and occupied the state universities demanding to have meetings with representatives from the Ministry of Education and Science. After months of pressure, marches and failed meetings the Ministry postponed the state examination reached an agreement for drafting a new law, and it was agreed to have consultative meetings that representatives from the Plenum will attend. The Student plenum also inspired the High school plenum where high school students even camped before the Ministry of Education in revolt against the state-sponsored high-school final exams.[39]

In the latest developments of the campaign of the opposition leader, it was announced that SDSM will leave the Coalition "Citizens for Macedonia", pertaining the return of the party in the Parliament. Opinions remain divided on whether the political party is justly exiting the civil coalition as it returns to the assembly or not.[40]

37 I love GTC: With referendum against baroque, Akademik, available at: http://www.akademik.mk/go-sakam-gtts-so-referendum-protiv-barokot
38 Citizen's are becoming aware that the Government should serve them, Makdenes, available at: http://www.makdenes.org/content/article/27207559.html
39 We did it! #pozdravplenumci, Fakulteti, available at: http://www.fakulteti.mk/news/15-02-24/uspeavme_pozdravplenumci.aspx
40 Coalition Citizens for Macedonia is left without SDSM, Mkd, available at: http://www.mkd.mk/makedonija/partii/koalicijata-gragjani-za-makedonija-ostanuva-bez-sdsm

4

Public Interest in Macedonian Law

This chapter is devoted to specific formulations and context of public interest in Law in the Republic of Macedonia. The chapter follows up on previous chapters thus theoretical discourse will be limited and explanations will be provided only where necessary (subjective perception of the authors). Bearing in mind that Macedonia is constitutionally a republic meaning a government constituted through democracy (general elections for members of the assembly and chief of state, and the assembly grants a mandate to prime minister to form a Government), and being a social welfare state with private property and civil liberties as fundamental rights in its core, we can propose a thesis that all legislation is adopted in the spirit of public interest (according to definition in chapter 1 including protection of human rights) and civil rights. Thus combing through every Law enacted by the Assembly and directly seeking analogies would prove to be an irrational amount of effort for a result which could be obtained by analyzing a carefully selected sample of legislation. In this sense, this chapter will present an overview of constitutional norms and Laws which hold a specific formulation of "public interest" or relevant (tangible) reference to it which might provide an answer how (and if) public interest is defined/determined in Law. The scope of analysis is narrowed down to legislation which regulates the operation of administrative authorities, public services, civil society and media (as the most relevant actors, see chapter 3).

In advance we support the thesis that though public interest (in the sense defined in chapter 1) is found virtually in all legislation of democratic states, Republic of Macedonia included, public interest isn't explicitly defined nor is its scope determined in any one single legal act, but rather through specific references throughout legislation and (Government) public policies.

Regarding the Government, it is important to note that the Law on the Government of the Republic of Macedonia (2000) does not contain an explicit reference *of* public interest, however it does determine a broad range of competencies of the Government in creating public policies, adopting and enforcing strategies which hold a direct reference to the quality of life and wellbeing of citizens, national interest (in domestic and foreign relations), developing the overall economy and the very fact that the Government is without doubt the largest proposer of draft laws in every developed country (Macedonia included) we find the Government role in determining, developing and protecting public interest indisputable (see chapter 3).

An explicit reference of public interest and to public interest can be found above all in the Constitution, and then in several Laws: Law on Organization and Operation of State Administration Bodies, Law on General Administrative Procedure, Law on Local Self-Government, Law on Public Institutions, Law on Public Enterprises, Law on Free Access to Information of Public Character, Law on Prevention of Corruption, Law on Associations and Foundations, Law on the Red Cross of the Republic of Macedonia, Law on Culture, Law on Sport, Law on Social Protection, Law on Donations and Sponsorships in Public Activities, Law on Audio and Audiovisual media, Law on Audiovisual Works and Law on Expropriation.

The Constitution (**1991**) holds two explicit references of public interest. One of them in Art. 30 Par. 3 stating that 'no one can be confiscated or restricted of their property or rights which originate from property, except when this action(s) is performed in public interest so determined by Law' and Art. 76 Par. 2 stating that 'the Assembly can establish inquiry committees in all areas and on all issues of public interest'. Baring in mind that the Constitution determines fundamental rights and freedoms and declares the Republic a welfare state, these norms show that public interest is considered more important than the rights of any 'one' individual i.e. the rights of the many outweigh the right of one (the Interest of the community is more important than the Interest of an individual). The task of caring for the public interest is 'handed down' to the institutions of state i.e. Government, public administration, and other institutions. However the Constitution sets a forwarding norm, leaving the terms and procedure through which government actions may 'trump' individual rights in the name of public interest to be strictly regulated by Laws. The constitution also grants extensive rights to the Assembly to initiate inquiries into the working of Government whenever public interest is concerned.

The **Law on Organization and Operation of State Administration Bodies** (2000 and amendments respective) is considered one of the fundamental sources of Administrative Law, as 'formally' it establishes ministries, independent state administrative bodies, state inspectorates and administrative organizations (etc.) as well as determining their scope of competence (Art. 11-37 respective). Thus this piece of legislation is crucial in determining the 'who' protects public interest and 'what' sectors of public life each state administrative body is tasked to protect, develop and serve (see footnote 3, 4, 5 and 6). State administrative bodies that represent the core of government agencies have their competencies and authority further regulated by special laws and is obligated to operate under the principles of legality, liability, efficiency, cost-effectiveness, transparency, equality and predictability (Art. 3). Within their scope of competence they are obligated to provide (secure) citizens with efficient and lawful realization of their constitutional freedoms and rights (Art. 4 Par. 1) providing this to all participants in administrative procedure (Par. 2) once again pointing to the articulatory role of public administration in making the concept of public interest a reality. Though it does not contain a reference of public interest explicitly it does refer to 'national interest' holding the Ministry of Culture competent for 'organization, financing and development of national institutions network and financing programs and projects of national interest' (Art. 26 Par. 1 Al. 2) even though it doesn't explain what national interest is. We can assume the Law may only refer to two interpretations of national interest: either as interest of the state as an autonomous institution (less likely) or as Interest of the 'nation' in which case it considers culture a national interest (we would suggest this to be synonymous to public interest in this context). Another reference to the spirit of national and/or public interest can be found in the obligation of all state administrative bodies to cooperate with each other and bodies with inspection competencies (Art. 53).

The **Law on General Administrative Procedure** (2005)[41] is the unifying code of conduct for all state administrative bodies, local self-government and providers of public services 'when implementing directly government regulations and deciding upon the rights, obligations or legal interests of natural persons, legal entities or other parties in administrative procedures within administrative matters' (Art. 1). Administrative matters in context to this Law (and other Laws in Macedonia) are all matters in which a citizen or company submits a request (e.g. request for construction permit or request to issue a public document such as an I.D. card) or fulfill a duty (e.g. pay taxes) before the state. This Law is thus crucial to the articulation of public interest and holds a direct reference of public interest in several provisions.

One of the implications of 'public interest' on administrative procedures can be seen in Art. 117 according which each party generally covers the costs that occurred on its side

41 July 2015, a new Law on General Administrative Procedure (Official Gazette of RM No. 124/2015) was enacted with postponing application until July 2016. The new text though mainly affirms the provisions of the previous Law regarding public interest it also expands its application to all providers of public services and on Administrative Contracts explicitely stimulating that such contracts are made in order to serve public interest (Art. 98);

during the procedure, such as: travel expenses, loss of working days, taxi expenses, legal representation, expert assistance and other costs (Par. 1). However when a public authority initiates a procedure ex officio or for the public interest, and the cause for initiating such a procedure is not the behavior of the party, i.e. the other person in the procedure, costs are covered by the body that initiated the procedure (Par. 6). This article shows that even though public interest is paramount for public administration, when applicable state authorities must take measures that no unnecessary harm or expenses are incurred on citizens hens the right to be compensated for costs occurred by administrative process.

Unlike the former, another example that emphasizes the supremacy of public interest in administrative procedures is Art. 134 addressing the right of a citizen to give up on a right he requested at any time during the procedure. If the public authority conducting the procedure determines that 'further conduct of the procedure is necessary due to the public interest' (Par. 2) the responsible body shall continue to conduct the procedure regardless. A competent state administrative body (or other public authority with public authorization) can directly resolve an administrative matter in an abbreviated procedure (a regular administrative procedure has five phases: initiation, inquisitive phase, decision making, right to legal remedy and enforcement) if the matter refers to undertaking urgent matters in the public interest that cannot be delayed, yet the facts which are supposed to be basis for the decision are determined or at least rendered possible (Art. 144).

Another example of primate in procedural matters due to the public interest are hearings in administrative procedures. Generally the official servant conducting a procedure determines which parties (or witnesses, forensics, etc.) is required to be summoned to a hearing which is determined at the opening of the hearing (Art. 159 Par. 1). If a summoned party of importance to the administrative matter at hand fails to appear at the hearing, and it cannot be determined whether that party has been summoned duly, the official person who conducts the procedure may postpone the hearing (Par.2) unless it is made clear that he/she initiated the procedure, had been duly summoned, and the circumstances clearly imply that the party had waived the request and than the body that conducts the procedure suspends the procedure (Par. 3). If the procedure is of public interest and must be continued *ex officio* on the other hand, the official person, depending on the circumstances of the case, shall carry out the hearing without the referred person or shall postpone the hearing but it cannot suspend it. This may incur costs on the party that did not appear.

When deciding on matters of public interest administrative authorities are authorized to omit certain formal aspects of administrative decisions (Art. 212). Normally every decision must contain an introduction, disposition (pronunciation), explanation, instructions on the legal remedies (if so provided by law), the name of the body, with number and date, signature of the official person and the seal of the body (Art. 209 Par. 3). The explanation must contain a brief explanation of the parties' request, the facts of the case, and, if needed, the circumstances that were crucial for the assessment of the evidence, the reasons for not accepting some of the requests of the parties, the legal regulations and the reasons that, considering the facts of the case, lead to the decision as stated in the disposition, it must emphasize if an appeal does not delay the enforcement of the decision (and the regulation that anticipates so). The explanation of the decision must state the conclusions against which no special appeal can be filed (if such are present) (Art. 212 Par. 2). In cases when the competent body is authorized to decide upon matters to its free assessment, it is obliged to state in the explanation such regulation and elaborate the reasons that guided it in the adoption of the decisions *except* in cases when the authorized body is protecting public interest (Par. 3), and hence believes that stating all the reasons may endanger or deteriorate public interest (more) than keeping such information omitted.

Perhaps the strongest example of urgency brought by public interest is formulated in Art. 217 permitting an exception (in fact urging it) from formal procedure 'in cases of very urgent measures that have to be undertaken for the purpose of protecting the public order and security or eliminating direct risk to human life and health or the assets'

(i.e. public interest) the authorized official person of the competent body (Art. 33) can adopt an oral decision (Art .217 Par. 1) even though formally all decisions must be made in written form (Art. 209 Par. 2). Such oral decisions can be enforced immediately by Order (Art. 217 Par. 2) and issued in written form within 8 days (Par. 3).

Tasked to formally act when public interest endangered are state administrative bodies, the Ombudsman and the Public Prosecutor (by Law on General Administrative Procedure and other special laws), thus they can file appeals against decisions that violate (any) law *for* the benefit of individuals or legal entities *yet* to the detriment of the public interest (Art. 226). This clearly shows the active role imposed on the State to actively monitor *itself* i.e. government monitors government to protect freedoms and liberties yet not to grant more rights to individuals than they are legally entitled to – once again reinforcing the argument that public interest in mostly defined as a set of (all) rights and duties (Chapter 1).

The **Law on Local Self-Government** (2002) holds a list of definitions (Art. 2) explaining the meaning of certain terms used in the act, thus clarifying their legal context. In this regard it references public interest by formulating 'municipal competence' as 'a set of activities of public interest at the local level which the municipality is obligated by law to perform' (Par. 1 Al. 6) though it does not provide an explicit definition of public interest. It does provide a range or scope for public interest at the local level formulating it as 'Activities of public interest at the local level' as 'activities of Interest for the whole local community or certain parts (according to law)' (Al. 8). As the legal definition of Interest (Chapter 1) refers to vested interests of parties in administrative procedure (citizens or legal entities requesting rights or fulfilling duties which are regulated by the Constitution and Law) this formulation also reinforcing our argument that public interest is mostly considered/defined as a set of (all) rights and duties.

Municipalities can even delegate or outsource activities of public interest to private partners by a contracting arrangement (Al. 9, Art. 24 Par. 2). The Law even provides a brief definition of public services. However we feel that certain clarification is in order in this regard, because of lingual specifics. Namely the term public service can be translated in several ways in Slavic languages such as the Macedonian language, thus 'Public Service' (capitol P and S) in regard to this law is defined as not for profit *organizations* which provide 'public services' (small p small s) either established as public institutions or public enterprises (Art. 24 Par.1, Art. 36, Art. 98 and Chapter 3) which perform activities of public interest at the local level (Al. 10). While a "Public Service" represents a specific organization or number of organizations i.e. subjects, 'public services' refer to the process of providing or performing the very activity of public interest (at the local level) (Al. 11). Clients of public services are all physical persons and legal entities using such services (Al. 12). The provision of public services at the local level that are declared as source competence of the municipal government and not the competence of a national or central government (thus tending to public interest as defined by this Law) is considered general competence (Art. 20).

The **Law on Public Institutions** (2005) also determines the scope of public interest by providing a list of activities considered public services, referencing public interest yet not defining it. The specific formulation in the Law is 'public services of public interest' (Art. 1). A Public Institution is defined as an Institution established by the State (Government or Assembly), Municipality or City of Skopje (Art. 2 Par 1. Al. 6) providing 'public services' in the areas of: education, science, culture, social care, child protection, protection of persons with disabilities (and other activities determined as public services by another Law) (Al. 7). Once again, we see consistency in the Macedonian Legal order in determining (but not exhausting) the scope of public interest. More important, the Law on Public Institutions reinforces the idea of 'who' must care for public interest i.e. how it is to be provided – the answer clearly being through public services and by the State (Government and local self-government) articulated though public administration (State administrative bodies nd Public Services meaning public institutions). The Law allows public services (in this sense) to be provided by Institutions established by a private investor and/or by a mixed ownership arrangement.

The **Law on Public Enterprises** (1996)[42] extends the list of public services provided by another form of public services formulating them as 'activities or specific actions... through which the public interest is being achieved' (Art. 2 Par. 1), 'being carried out by public enterprises or companies vested with the performance of activities of public interest (Par. 2). The principles upon which activities of public interest are carried out include reliability in service provision, continuity and quality-based service, transparency, availability and universal service, users and consumers protection (Par. 3). Once again we see a case where the Law determines a scope of public interest and actors (see Chapter 3) yet does not provide an explicit and exhaustive definition of what public interest is, even though if the reader pays attention it is easy to conclude (through induction) that if public interest is achieved through public services, and public services are determined as a right to be obtained on the principle of equality (before law) thus public interest is defined as the set of all legally determined rights (and duties). The Law provides an entire chapter on (9) 'Achievement and protection of public interest in public enterprises' (Art 38-39) obligating the founder of a public enterprise (Government, Municipality or City of Skopje) to monitor the operation of the enterprise and take measures to ensure unobstructed provision of public services, including financial aid from budget. The Law allows physical and other legal entities to provide such public services (of public interest for the Republic of Macedonia) by consent by a competent authority (Art. 43: Government, Municipality or City of Skopje). What differentiates public enterprises from public institutions is the legal regime under which they operate, as public enterprises are considered to provide public services (of public interest) of more economic character.

The **Law on Free Access to Information of Public Character** (2006)[43] is essentially a piece of legislation guaranteed access to public records. It defines information of public character and determines the scope of subjects considered "holders" of information of public character. This law encompasses all Government agencies, state administrative bodies, municipalities and the City Skopje, public institutions, public enterprises, all legal entities and physical persons that exercise public competencies and other public interest activities. Although the Law never explicitly defines what public interest is, it forwards that to other Laws and does include the aforementioned actors as a subject that act in public interest. Thus, making any information they produce publicly available is in itself – a 'right to' and considered a public interest.

The **Law on Prevention of Corruption** (2002)[44] has an interesting approach to addressing public interest. Although it doesn't decisively differentiate public authorizations, official duties and politics from activities of public interest it does list them separately and successively. The very purpose of the Law is to prevent corruption in the exercise of power, public authorizations, official duty and politics, when undertaking activities of public interest by all legal entities related to execution of public authorizations (Art. 1). The Law articulates public interest as something that organizations and persons with public authority do, while exercising their power and competencies (however it may also imply that not all activities of public authority are in public interest). This is repeated in Art. 3 'No one must use the exercise of the office, public authorizations, official duties, and position, as well as the activities of public interest for the accomplishment of personal interests' as it constitutes corruption. The Law ties public interest to the principle of equality (Art. 4) providing everyone with 'equal access to performance of activities of public interest and to equal treatment by holders of power, persons exercising public authorizations, official duties and position' and the principle of publicity (Art. 5) declaring 'the exercise of power, public authorizations, official duties and position, as well as works of public interest ... be public and subject to public control'.

Public interest and abuse of public authority is so closely connected that the Law provides an entire chapter on the matter "PREVENTION OF CORRUPTION IN PERFORMANCE OF PUBLIC INTEREST ACTIVITIES AND OTHER ACTIVITIES OF LEGAL ENTITIES" prohibiting a person performing public interest activities must not abuse his/her position in or-

42 And respective amendments;
43 And respective amendments;
44 And respective amendments;

der to obtain personal benefit (Art. 55 Par. 1). If there is grounded suspicion that the property of this person or of a member of his/her family has been increased in disproportion to his/her regular revenues or the revenues of the members of his/her family during the period of performance of the public interest activities, the Public Revenue Office, upon its own initiative and on request of the State Commission for Prevention of Corruption, is obligated to initiate a procedure for examination of such property (Par. 2). In addition what (aforementioned and other) Law defines as public interest activities, the Law on Prevention of Corruption extends its reach to activities of political parties, trade unions and other citizens' associations and foundations deeming them as public interest activities (Par. 3).

The **Law on Associations and Foundations (2010)** does not define public interest, however defines a category of 'organization with status of public interest' (Art. 3 Par. 1 Al. 16, Art. 73) encompassing (not for profit) organizations established as associations (or Foundations) which in collaboration with the State or local self-government provide public services and are granted a special authorization for it. Furthermore, the Law determines the scope of activities considered public services (scope activities of public interest see Chapter 3 'Civil Society') and terms under which an organization may be granted such status. A novelty in this Law is that it introduces (or rather develops on the idea from previous legislation) a new 'actor' in the provision of public services thus extending the number of actor i.e. Public Services to organizations not directly established by the State or local self-government, nor being a profitable company vested with public authority, but a not for profit association of citizens driven by morality and enthusiasm to act locally (or nationally) in providing public services.

The **Law on the Red Cross of the Republic of Macedonia** (1994) is but an example of an organization of public interest, which operates on the same principles of any association of citizens yet is a much older organization (in the Context of the Republic of Macedonia) formally introduced and established in 1994. The Red Cross is (a self-proclaimed according to this Law) voluntary, mass, non-governmental and non - partisan organization which provides a public service (Art. 2) 'humanitarian goals and tasks in the area of health, social protection and education based on the principles of humanism and solidarity' which essentially corresponds with health care and social care being determined as public services of public interest according to other legislation (e.g. Law on Public Institutions, Law on Local Self-Government).

The **Law on Culture** (1998)[45] is quite ambiguous in terms of defining and differentiating public and national interest as it references both of terms yet does not provide a clear distinction of the two. One appears evident, that this law (and the Law on Organization and Operation of State Administrative Bodies) considers matters of culture a national interest yet the Law on Public Institutions (and other laws) considers it a matter of public interest (refer to theoretical distinction in Chapter 1).

One insight into the nominal meaning of the term 'national interest' can be found in Art. 3 according to which 'everyone can practice and cultural activities either as an individual, local or national interest, on a profitable or non-profitable basis'. This tells us that the Law considers 'national interest' a form of public Interest which implicates the entire population of a country (Federal and or National level) and thus being something within the competence of central government to monitor and tend to. For example national festivals or national opera and ballet etc. 'Individual interest in culture' are the activities carried out by physical persons and Public Institutions within their autonomy and financial capabilities (Art. 6), 'Local interests in culture' are cultural activities supported, promoted and financed by the local self-government (Art. 7) and 'National interest in culture' are cultural activities considered a public interest (as culture itself is considered public interest) for all the citizens of the Republic of Macedonia and must be made accessible under equal terms to all (Art. 8 Par. 1). Such activities include creating artists, protecting items of high cultural value, stimulating diversity, providing conditions for mass access to culture, promoting Macedonian (national not ethnic – respectively) culture abroad, conducting research in

45 And respective amendments;

culture etc. A useful representation of all the actors involved in promoting and protecting culture as a public interest on national level is the list of organizations other than Public Institutions, including associations and foundations, the Assembly which adopts the national program for culture and Ministry of Culture which tasks a special Council on Culture with operationalizing the Program.

The **Law on Sport** (2002) determines public interest in sport (as Sport itself is determined as a matter of public interest in other laws, see Law on Public Enterprises and Chapter 3) yet does not devote further attention to defining what it is. It does determine that public interest in sport is an obligation of the State (Assembly and Government of the Republic of Macedonia) and local self-government thus that it is to be tended to on national and local levels. Sports activities are carried out by sports associations or by sole proprietors or trade companies registered for carrying out sports activities (Art. 3). Public interest in the field of sport in the competence of the Republic of Macedonia encompasses: promotion of sports activities of children and youth within the framework of the National Sports Federations, organizing and implementing sports training and competitions to enable athletes to achieve supreme sport results, motivation to implement the programs of the sports federations in the Republic, promotion and assistance in organizing sports events and manifestations, maintenance and functioning of the existing as well as planning and building of sports facilities of public interest for the Republic, medical, pension and disability insurance, insurance against consequences of accidents and risks for the categorized athletes, promotion and assistance in publishing activity related to sport and building and maintenance of sports information network (Art. 22). For these purposes, the Government adopts an annual program proposed by the Agency for Youth and Sport (respective). On top of this the Government adopts a Five Year Sports Development Program (Art. 23). Government programs are financed (or aided financially) by the Budget.

For sports activities on a local level, the local self-government in Macedonia has similar competencies reduced to their respective territories (Art. 22-a) and for the purpose of exercising these competencies, the councils of the municipalities (or the Council of the City of Skopje or the commission of the municipality, the municipality in the City of Skopje and the City of Skopje) competent for sports adopts programs on proposal of the municipal sports associations and the Association of Sports of the City of Skopje. Sports activities at the local level are financed (or aided financially) by municipal budget.

The **Law on Donations and Sponsorships in Public Activities** (2006) provides a framework for various forms of giving and accepting donations and sponsorships by which the giver and the beneficiary may demand tax incentives in public activities. The Law offers a definition (suiting its purposes) of public interest as

> ...support or promotion of activities in the field of human and citizen's right protection, cultural promotion, ethics, education, science, development of information society and transfer of electronic data, sport, environmental protection, social and humanitarian activities, civil society development, promotion of blood donation, promotion of international cooperation and other activities determined by law (Art.3 Par. 4).

Also, providing a definition of public activities as 'an(y) activity' in the field of human and citizen's right protection, education, science, development of information society and transfer of electronic data, culture, sport, health, social protection, protection of people with disabilities, blood donations, children's protection, environmental protection and other activities determined as a public activity by law (Par. 3). What is awkward in this approach is that this Law considers 'public interest' to be *a* promotional process or support of activities which are meant to manifest public interest through activities considered public services by other laws. We would rather propose that 'public interest' is the sum of rights *to* such services as listed in the definition, and that those are achieved through public activities. Although the listed areas of 'public interest' are consistent to those listed in other legislation (former in this chapter).

The **Law on Social Protection** (2009) regulating social care in Macedonia is just one more example of legal consistency (to other legislation) in terms of defining the scope of public interest as the Law explicitly defines the pro-

vision of social services as an activity of public interest (Art. 5), however provides no further definition on what public interest is. The law contains a framework provision of the system of social protection consists of 'Public Institutions, other institutions, measures and activities as well as other forms of action through which citizens achieve their right to social protection' (Art. 7). These actions include professional work, development programs, vocational training of workers (depending on domestic and international standards), monitoring conditions (in the labor market and unemployment) and planning jobs, maintaining registers, conducting supervision and research in the field. The Government determines the network of Public Institutions. Certain activates regarding social protection (disabled persons, children without parents or without parent care, children with problems in development, homeless children and children with social and educational problems, persons exposed to social risk etc.) are within the competence of local self-government (Art. 11). The Government and local self-government may undertake measures ranging from tax reliefs, housing and family planning, health, education, etc. to provide social aid in various forms to 'concerned' citizens.

The **Law on Audio and Audiovisual Media Services** (2013) is a fairly new piece of legislation in the Republic of Macedonia substituting former regulation on the public radio diffusion service. Even though this Law does not define public interest it does reference it on several occasions determining certain media services as 'programs of public interest' and imposing a special legal regime on such programs.

For instance, all radio diffusion subjects are obligated to emit at least 30% of their program in Macedonian language or in one of the languages of non-majority community living in Macedonia starting of 2014. Since 2015, this share rose to 40%, with an obligation to rise further to 50% in 2016 (Art. 92).

All private radio diffusion subjects (e.g. TV stations) are obligated to (record and) broadcast at domestic documentary programs in a general format, on national level, at least 10h daily between the hours of 7 and 23, before the 25th October each year, while the national public service is obligated to broadcast at least 30h in the same time frame. This is because domestic documentary programs and domestic entertainment programs are considered programs of public interest (Par. 13)

This Law also provides a good example how 'content of public interest' is subjected to a special legal regime. For instance, teleshopping or other commercial adds cannot take longer than 12 minutes within a real-time hour, expect for the public service and for public service announcements or announcement for charity (Art. 100). Typically, the public service can show up to 8 minutes of advertising in one real-time hour, except once again, for public service announcements (Art. 103). Other limitations to advertising for the public service are imposed from 17 till 21 on TV and 9 till 14:00 on radio, except during broadcasts of sports events, in-house productions, culture manifestations of significance etc. (Par. 4)

The public radio diffusion service is the Macedonian Radio-Television (Art. 104) established by the Republic of Macedonia (Assembly by Law) and is organized as a public enterprise (thus a Public Service). It is independent (nominally) and explicitly stated that it performs an activity of public interest in the area of radio diffusion (thus determining that radio diffusion is or can be an activity of public interest). Programs and program services of public interest are: at least one TV station on Macedonian language and a television program service in a language spoken by at least 20% of the population (speaking a language different from Macedonian); at least two radio program services in Macedonian and one radio program in a language spoken by at least 20% of the population (speaking a language different from Macedonian); special programs for the population of neighboring countries and Europe; special programs indented to inform Macedonian (citizens) emigrants living abroad; at least one radio and one television program service over satellite and/or internet...; a program services broadcasting committee work in the Assembly etc. (Art. 107). Macedonian Radio and Television is obligated (among other) to promote and nourish culture and public dialogue and provide an arena for broad public discourse on issues concerning public interest and to inform the public on regional and local specifics on events in the Republic, on public interest (110)[46].

46 There was plenty of controversy on the capacity of the national service to openly and impartially fulfill its legal duties as it did not broadcast press conferences of the opposition January – July on wiretappings by the Government; another controversial event in recent history is a sporting event by a local soccer club "Vardar" which was not broadcasted;

The **Law on Audiovisual Works** (2008) is another example of special laws determining specific public interest. The Law regulates 'conditions and manner of operation of the cinematheques...' (Art.1) as Public Institutions as well as the 'organization, coordination, rights and duties of owners of audiovisual works, supervision, professional job titles, and other issues significant for performance of the activity for protection of audiovisual works'. The Law determines that certain audiovisual works are subjected to protection, and the activity of protecting audiovisual works is an activity of public interest (area of culture) (Art.6). This tasks performed by cinema theaters and the individual audiovisual collections (if they are registered for the performance of an activity for the protection of audiovisual works). Another example of the special regime imposed by public interest is an obligatory legal deposit of any audiovisual work to the Cinematheque of Macedonia, which if represents a program of public interest financed by funds of the broadcasting fee must submit one unused copy.

The **Law on Expropriation** (2012) regulates perhaps one of the most extreme competencies that States provide themselves by Law, i.e. in the name of public interest to infringe in the sanctity of private property. Expropriation may by defined as a form of legal institute through which the state (or public authority on behalf of the state) by authoritative action infringes in the property rights of particular subjects, appropriates or limits those rights in it's b interest or in the interest of another (public) subject (in the name of public interest). Only property whose ownership can be determined may be subjected to expropriation (Art. 6). The Law predicts two forms of expropriation: complete expropriation (Art. 9) i incomplete expropriation (Art. 10).

In detail, the Law regulates the right and procedure through which the right of ownership over realty is obtained for the realization of public interest, in order to construct facilities and perform other activities, and provide (appropriate) compensation (Art. 1). This Law provides perhaps the most extensive list of matters that are regarded as public interest thus coming closest to providing an actual definition (though in the context of appropriation of realty). Once realty has been appropriated the Republic of Macedonia or unit of local self-government may than contract it under concession, long-term leasing (or other) only for the realization of public interest (Art. 2).

The definition of public interest provided by this Law is the treats it as the management, rational use and humanization of space, protection and development of environment and nature by constructing facilities of significance (Interest) to the Republic and the units of local self-government according to spatial planning regulation (Art. 4). On fist glance, this approach considers public interest a form of national interest regarding the interest of public authorities as autonomous institutions. Thus for the purpose of expropriation public interest can be determined for construction activities of significance to the Republic and of significance to the Local self-government.

The scope of public interest of significance to the Republic (Art. 6)[47] and of significance for the local self-government (Art.7)[48] is exhaustive and very specific which is important to restrict possible violations or abuse of prerogatives of power by the competent public authorities.

Other forms of legal restriction of property rights to realty are temporary occupation of land due to previous construction, temporary occupation of land due to detailed geological research for mineral ore (according to Law on Mineral Ore) and temporary occupation of adjacent land due to construction and activities in public interest (Art. 14) and may be purposed to store equipment, house workers, park mechanization (etc.) for a period lasting no longer than two years (Art. 15).

47 Construction of nuclear power plants, thermal plants and hydro plants with the capacity of and above 1MW, power lines with a high voltage of and above 35 KV, construction of facilities for production of electrical energy from renewable sources of and above the capacity of 1MW, transformers with voltage levels of and above 10 KV and dams; Building oil lines, product lines, gas lines, and gas measuring stations; Building secondary gas line networks; Installation of optic fibers for the needs of state administrative bodies; Setting railways and train stations, airports, state roads and bridges; Building dumpsites for non-toxic and toxic waste; Building facilities for defense, state administration, agencies, funds established by the Republic, diplomatic and consular missions, international organizations; Constructing technological industrial development zones established by the Government of the Republic of Macedonia; Constructing telecommunications centers for satellite reception; Constructing border crossings; Construction regional water supplies and sewage systems with systems for water purification; Building capacities for production of heating; Building lake and river ports; Building stations and sports halls with capacities above 10.000 viewers; constructing capacities for National Public Services in the area of health, education, sport, science, child care and social protection; Constructing settlements in times of natural catastrophes (earth quakes, floods, fires and landslides) and migration of settlements (floods and other eco disasters) and exploitation of minerals of strategic significance for the Republic;

48 Constructing facilities and other works for the needs of municipal services in the area of health, education, sport, science, culture, health and social protection; construction of power lines up to 35KV and transformers up to 10KV; constructing tramways; building fire stations; building local water supplies and sewage systems with water purification systems; construction of stadiums and sports halls with capacity up to 10.000 viewers; building multilevel parking lots; building capacities for municipal general use: municipal roads, squares, public parks, markets, public parking and cemeteries;



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Conclusions

Though it is difficult to declare definitively that we have a full and exhaustive definition of public interest, we do provide a working one that is applicable to contemporary circumstances in 21century democracies.

Public interest can be perceived as a set of rights to... (and duties) that affect the entire population of the country. The scope of public interest is determined by the State through law. A common denominator of the scope of public interest in Europe encompasses human rights and fundamental freedoms such as the freedom of association, freedom of speech and thought, right to health care, child protection, education, culture, science, drinking water and other utilities, a right to living in a clean and safe environment (etc.) Entrusted with the obligation of providing the necessary conditions for these rights are the institutions of the state and local self-government and most rights are provided through public services. Public services are activities subjected to a special legal regime and must be made equally available (respective to law and capacity) to all citizens.

However it up to Governments to keep public interest alive and keep it growing. Governments in democracies are installed to act on behalf of citizens (voters) thus it their purpose to actively monitor conditions and events and device new instruments and measures how to make everyday lives of citizens better, and to adopt strategies that will ensure prosperity and peace for the nation.

As the citizens are in direct contact to various institutions from cradle to grave, we can safely affirm that public administration articulates what public interest is in a country thus the quality and professionalism of countries civil service directly affects its capacity to provide services of public interest. A professional, impartial, efficient and effective public administration is a *sine qua non* for a democracy devoted to the well-being, health and prosperity of its people.

With regrets to the current events in the Republic of Macedonia at the time this publication was written it is difficult to confirm (or deny) that this is what the Government and public administration does in this country (respectively, subjective remark by the authors). A constant remark on partisan influence on employments in the public sector by the European Commission Progress Reports overshadows even the valuable reforms in public administration. And the recent and ongoing scandal regarding accusations of corruption at the highest level of government, a blockage of the political dialogue in the country makes it difficult to objectively say whether or not Macedonia's politicians have Macedonians' interests in mind at all?!

It was and will be an open question, does a country need skillful politicians of virtuous ones? Perhaps it is best if they are a combination of both, but democracy means that people elect politicians in public office (commonly) on the basis of faith in their intentions and value of their credentials. How do you ensure that politicians are honest and virtuous? If you impose too many restrictions and too harsh sanctions for a mistake then who would be in politics, yet if you give politics too much autonomy how do you control it? Well, one way is by letting voters know what their politicians are doing, how and when they are doing it.

This is where media comes in. It is up to the media in all it's forms, to keep watch on what public figures are doing (politicians, high-level businessmen etc.) and inform the public of their activities. It is up to media to emphasize the activities of Interest to the public and not just activities that the public finds interesting. However a balance needs to set in place in the quality of information passed through media as citizens have the right to know (we won't say they need to know the truth as truth is a concept as fluid and unexplainable as faith and religion) the facts and they have the right to hear about it from more than one source. They should also be provided with enough discussions and debate from all interested parties regarding issues of public interest (their safety, their well-being, the quality of their healthcare, the quality of the food they eat, how their taxes are spent etc.). And public figures should be as open as possible to public criticism. They are entrusted with a lot of authority and with that comes great responsibility. Perhaps their 'tolerance' to public criticism can be 'provided' through a more liberal legal framework?!

The nexus of media and public interest will remain everlastingly complicated with a substantiate amount of do's and dont's. The legislative framework in Macedonia needs to be polished, with the full inclusion of media experts and organizations in the country. The Law on media should be annulled or amended heavily as it has proven to be unnecessary and has limiting definitions of journalist and media.

Additionally, clear and concise provisions should be made on what constitutes media limitation and how it is enforceable in the name of national security. Threats to national security need to be defined clearly so that they are not interpreted differently by other parties.

Learning lessons from the above-mentioned cases, it is imperative that provisions should be enforced for the cases where media is involved even more so when the nature of the case is of public interest. The prosecution should have a clear minded approach and assess every case individually to examine whether the public interest is endangered. Efforts need to made to ensure or safeguard net neutrality in Macedonia as well.

The Macedonian Radio Television needs to become a public service television and abandon the idea of being the Government's television. The program needs to become impartial and operate in service of the citizens.

Journalists must be protected and enjoy the right of 'freedom on speech' in all its legal connotations. Our research shows that often enough they are threatened or pressured to change their articles and editorials are often used as 'government megaphones'. In order for citizens to become acquainted with the matters of public interest, they need free and impartial access to news which will enable them to make decisions on whether they will want to take further action.

It is evident that the procedure for obtaining public interest status is not fruitful or spark interest with the CSOs. In this regard, incentives are needed to stimulate the work of the CSOs and their interest for obtaining this status. Incentives can come in a variety of forms such as taxation policies designed specifically to help the work of the non-profit sector, encouraging and facilitating partnerships with companies which will contribute with their expertise for creating products of public interest, developing clear and comprehensive guides on how citizens can use their rights to decide on matters that are in their local interest. It is hard to expect that an organization will register as a public interest organization if they are obligated to provide an incredible amount of accountability yet are not provided with concrete financial aids or any other sorts of stimulus?! If what they are providing is considered a public service then shouldn't they be provided effective incentives to keep providing them and actually be treated ad organizations of public interest?!

Furthermore, research should be encouraged in this area through annual monitoring of the work of the institutions and CSOs by developing indexes. This can be done with collective contributions from representatives of the institutions, civil society, and media.

6

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COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (99) 1

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

ON MEASURES TO PROMOTE MEDIA PLURALISM

http://www.coe.int/t/dghl/standardsetting/media/Doc/CM/Rec(1999)001&ExpMem_en.asp

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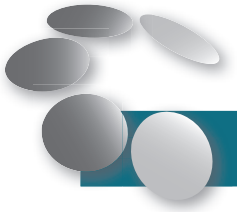
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The Institute of Communication Studies (ICS) is a leading research organization in the field of journalism and media studies; public relations; political and corporate communications. ICS has a twofold focus: First, to advance social sciences and to support journalism and media professionals through its academic and applied research programs; and second, to develop a network of young researchers who would work on straightening the pillars of these academic disciplines in the future. The ICS is founded by the School of Journalism and Public Relations in 2012.

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- Developing academic and applied research to enhance knowledge in the sphere of communications, media, and public relations;
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About the project

The Institute of Communication Studies (ICS) implements the project **"Voicing the Public Interest: Empowering Media and Citizens for Safeguarding the Public Policy in Macedonia"**. Within the Project, ICS will (1) prepare analysis and policy papers and will organize discussions around them, (2) develop newsroom editorial guidelines for safeguarding the public interest, including the public interest test and, (3) impel citizens and experts to actively participate in the public sphere through the *Res Publica* blog.

Through analysis, policy papers, and discussions, ICS will provide a clear overview of the key aspects of public interest, i.e. how can citizens influence the policy-making process; how journalists cover public interest topics; the delicate balance between the public interest and other human rights (e.g. privacy, free speech); the role of the judiciary and the Government in safeguarding the public interest.

In collaboration with newsrooms, ICS will develop a Guideline for Public Interest Journalism (incorporating the public interest test) in order to protect the public from negligent journalism and unlawful media practices, and restore the trust of citizens in media. The Guideline will set out the standards for producing or presenting the newsroom products, and will provide advice for media professionals on how to deal with editorial issues, and on how to produce content on the highest ethical level when covering public affairs. The public interest test will improve the skills of journalists to decide how best to proceed when they are reporting about the welfare and safety of the public. ICS will work with five national and regional media in order to develop the Guideline.

In order to reach a broader audience, ICS will utilize the newly developed web platform *Res Publica* (www.respublica.edu.mk) that will impel citizens, journalists, and experts to write articles and debate issues of public interest. This way, ICS will create a professional network that will continually analyze and introduce the public with current issues of public interest in the Republic of Macedonia.

The Project is supported by the British Embassy Skopje.

VOICING THE PUBLIC INTEREST

Empowering media and citizens for safeguarding the public policy in Macedonia



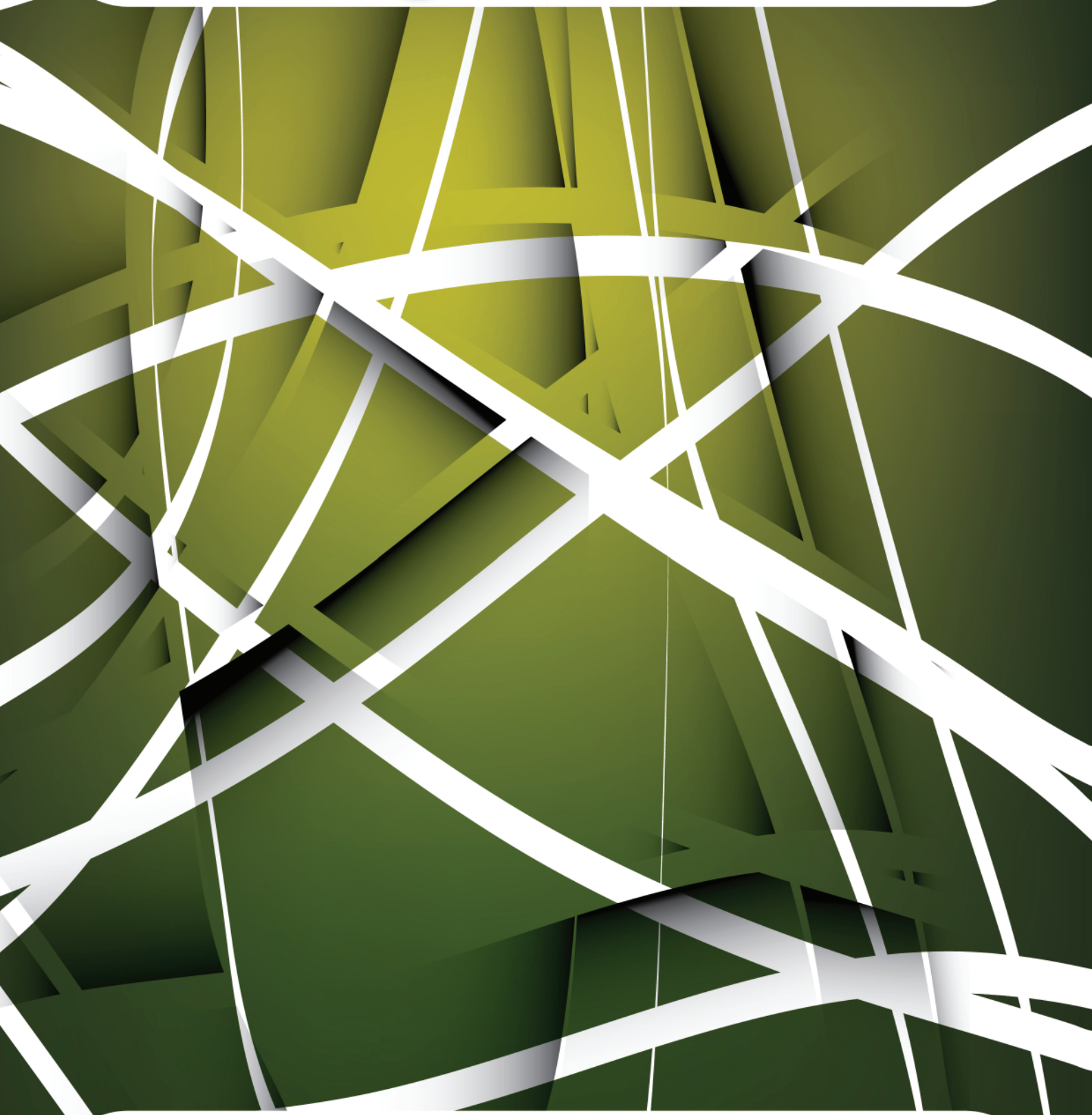
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