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FREEDOM OF EXPRESSION, ASSOCIATION AND ENTREPRENEURSHIP IN A CAPTURED STATE:

Macedonia in 2015



USAID
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**ФУНДАЦИЈА
ОПЕНОМНОСТНО
СОЦИЈАЛНО ПРАВО
МАКЕДОНИЈА**

STUDY

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The graphic consists of several overlapping circles and arcs. On the left, a dark grey semi-circle is partially visible. To its right, a larger white circle overlaps it. Further right, another white circle overlaps the previous one, and a smaller white circle overlaps that. A solid dark grey dot is positioned between the words 'AND' and 'ENTREPRENEURSHIP'.

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AND ●
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LIST OF ABBREVIATIONS:

AJM – Association of Journalists of Macedonia
BULATS: Business Language Testing Service
DPI - Drzhaven prosveten inspektorat or in English: State Educational Inspectorate
EC – European Commission
ETUC – European Trade Union Confederation
EU – European Union
IELTA – International English Language Testing System
ISSH - S – Institute of Social Sciences and Humanities – Skopje
KET – Key English Test (Cambridge English)
MESO – Multietnički sindikat na obrazovanie or in English: Multiethnic Union of Education of Macedonia
MES – Ministry of Education and Science
MOC – Macedonian Orthodox Church
OSCE - Organization for Security and Co-operation in Europe
PRO – Public Revenue Office
RM – Republic of Macedonia
SONK – Samostoeno sindikat za obrazovanie, nauka i kultura or in English: Independent Trade Union of Education, Science and Culture
TOEFL – Test of English as a Foreign Language
UKIM – Univerzitet “Sv.Kiril I Metodij” or in English: “Ss. Cyril and Methodius” University
UNODC - United Nations Office on Drugs and Crime

INTRODUCTION

§. **The Macedonian Transition Process.** The Republic of Macedonia has been going through perpetual transition process from the Yugoslavian model of democratic centralism and local governance towards democracy and market economy for almost 25 years now. Nevertheless, the end of this transition process is nowhere in sight. It is still difficult to identify Institutions built on good democratic principles nor a well-developed market economy. Hence, we can conclude that the Republic of Macedonia is not currently undergoing transition, but it is in a state of equilibrium, not democracy or dictatorship, but a **hybrid regime**. The regime's hybrid characteristics refer to the authoritarian measures and practices, as well as stifling the freedom of media, freedom of trade union organization and strike, exile of political contrarians who function in parallel with the "normal" democratic procedures and practices. The elections, the existence of a civil society with a limited impact; and marginalized critical media which do not get shut down permanently, are the means to preserve the illusion of democracy.

§. **What is a hybrid regime?** Macedonia, after all, is not the only country which belongs to this category. In the last decades, researchers have pointed out to the growing trend of hybrid regimes, especially in the post-socialist and third-world countries. This phenomenon has been referred to by different names, such as "half-democracy," "virtual democracy," "pseudo-democracy," "illiberal democracy,"

“half-authoritarianism,” “soft authoritarianism,” “electoral authoritarianism”. Freedom House uses the term “partly free,” whereas the Macedonian public has already embraced the term “soft dictatorship.” These terms, just like the term of “transition” point to the fact that we are referring to a temporary state, a standstill on the road to democracy. However, as Levitsky and Way point out, as well as other prominent researchers,² it seems like we are referring to a separate stable phenomena. Countries either remain in this kind of state or they transition to an open authoritarianism, with a few exceptions of democratization. Considering the fact that the Republic of Macedonia has been “transitioning” for the past 25 years, and in the last few years there has been a considerable decline in all of the parameters of democracy and freedom, we can conclude that the hybrid regime has already been clearly established. Therefore, it is necessary to clearly define the characteristics of this type of regimes to identify what makes the Macedonian model unique, and to give recommendations how to leave this vicious circle.

Hybrid regimes are also called “competitive authoritarianism,” according to which “formal democratic institutions are widely considered as the primary means of acquiring and achieving political authority. Officials, nevertheless, break these rules so frequently and to such an extent that the regime does not meet the conventional minimum standard of democracy.”³ Formal democratic policies are implemented in these regimes, and the “rule

of law” according to the “Constitution and the laws” is the mantra repeated by the political representatives. However, all of this is happening when there is: a subtle and open violation of media freedom, violation of freedom of association and Government criticism, as well as misusing the public budget and power to support the goals of the political party by “blurring of party and state”⁴ while the elections and the overall democratic atmosphere is certainly not fair and free. This regime cannot be referred to as a democratic one due to the inappropriate media coverage of the public service, closure and constant fining of critical media, as well as the illegal wire-tapping of the opposition, critical journalists and civil society organizations.

Levitsky and Way differ competitive authoritarianism from “delegative democracies.” According to O’Donell, delegative democracy is a kind of regime which has not fully completed the institutional division of power,⁵ and hence it is characterized by a strong and populist executive government. Even though delegative democracy is less democratic than the representative one, it still meets the minimum democratic requirements to be called a democracy unlike competitive authoritarianism.

On the other hand, competitive authoritarianism cannot be fully considered as complete authoritarianism as even though the democratic principles get violated frequently, there are still democratic models of rule within society,

which the regime does not dare to abandon fully. Namely, this is the regime's weakness, no matter how unfair or unfree the elections may be due to the systematic overwhelming advantage of those in power, there are still opportunities for electoral change. In this regard, civil society has a real opportunity to influence and change policies towards democratization.

§. **Captured state and administrative corruption.** The conceptual framework of the competitive authoritarianism can be used to explain the type of regime; however, in order to explain the level of corruption in the state, additional framework is necessary. Since a hybrid regime is not corrupted by default. For further clarification we will introduce the concepts of *captured state* and *administrative corruption*.

The concept of **captured state** refers to “the actions of individuals, groups, or firms both in the public and private sectors to influence the formation of laws, regulations, decrees, and other government policies to their own advantage as a result of the illicit and non-transparent provision of private benefits to public officials.”⁶In this regard, “the capturing” of the state generally refers to the firms (in this case the “captors”) who “capture” the institutions and manage to impose legal and other regulations that are in the “captors” best interest, and thus harm the economy of other participants and of course, harming the public too.

Hence, there is “extracting rents from the state for a narrow range of individuals, firms, or sectors through distorting of the basic legal and regulatory framework with potentially enormous losses for the society at large.”⁷

The captured state phenomenon is bigger than the regulatory capture phenomenon. In this case it is about “capturing” the Regulatory Body by a state or public contributor (company). Hence, one can influence regulations to be of use to the “captor” to “clear the field,” i.e. to disable any competition.

In transition countries, most often the “captor” is a big company that was seized by the new oligarchs. However, public officials can also be captors if they misuse their power to bypass legal regulations for their own benefit or the benefit of the companies owned by their family, as well as the benefit of their political party. The Macedonian case has a little bit of everything, but its uniqueness is based on the latter, as confirmed by the reports of the European Union and OSCE from the last two years, insisting on the problem of blurring of party and state.

Unlike the captured state, **administrative corruption** refers to “the intentional imposition of distortions in the prescribed implementation of existing laws, rules, and regulations to provide advantages to either state or non-state actors as a result of the illicit and non-transparent provision of private gains to public officials.”⁸ Administrative corruption refers to license bribes made in order to win tenders or other

public services, which enable private companies that some public officials are very familiar with to profit from the public budget.

Both types of corruption are present to a different degree in different cases.

This policy study refers to the freedom of expression and association, as well as opportunities for their support and development. The policy study focuses on: education, media, trade union organization and strike as well as economic freedoms and their effect on small and medium enterprises. Therefore, the laws that regulate these areas have been analyzed; however, we have also analyzed other specific cases as well, which enabled us to conduct thorough analysis on the regulations and their implementation effects.

**1. THE CONCENTRATION OF POWER
IN THE EXECUTIVE BRANCH BY
INTRODUCING OVERREGULATIONS
AND FINES**

One of the primary goals of every authoritarian government is the concentration of power. This is easy to achieve in presidential systems as the power is concentrated in one institution – the president. In parliamentary democracies competitive authoritarianism should focus on building a wider base and networks of client relations, and using the state apparatus to pressurize and control. The fact that there is no open authoritarianism means that the regime is able to utilize only the current institutional mechanisms, which based on their structure belong to the democratic state. In the case of Macedonia, this structure is supplemented by the mannerisms of the technocracy of the EU kind, which is only one more tool in the facade of a seemingly present democracy and legitimacy.

In this regard, for the past ten years, the key mechanisms to subjugate the freedom of expression by utilizing institutional mechanisms are overregulation and high fines. The overregulation problem is a triple one:

- Firstly, the legislature has added detailed regulations which should be part of secondary regulations defined by the affected institutions. Hence, the institutions' autonomy is limited as well as their independence in reaching decisions, and the Government asserts direct control over institutions.
- Secondly, the exorbitant number of regulations that define the institutions' scope of work in

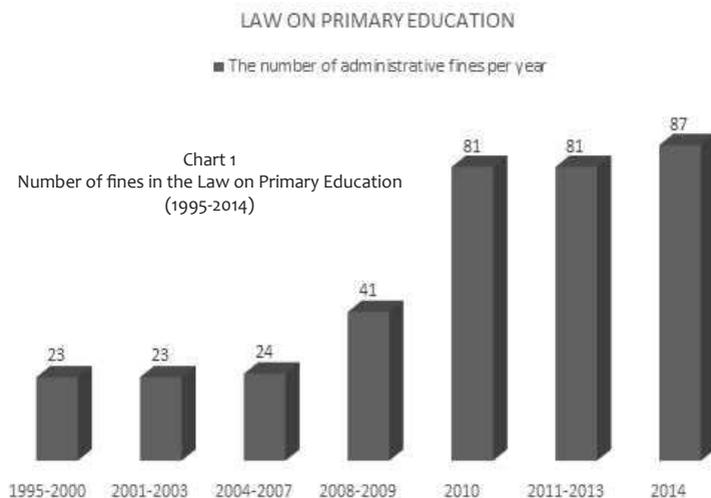
great detail makes it almost impossible to violate these. Hence, there is an opportunity for political influence and issuing fines on the basis of political unsuitability.

- Finally, thirdly, the increased number of administrative fines and their high value allows for the opportunity to completely circumvent the judiciary. In this manner, the Government has established direct control over the institutions' scope of work and the means of punishment for politically unsuitable organizations.

In the first part of the policy study the focus is on education laws, media and trade union organization in regards to the trend of introducing fines for the period of 2006-2015. The fines, which are one of the main characteristics of the current government are presented as the main sanctions, and reveal a more liberal approach towards lighter fines. These were introduced in the Law of Misdemeanors of 2006⁹ and are present in almost every area where fines were issued. The excessive fining creates the following institutional and political reality: direct control and sanctions, as well the Ministries or other bodies which report directly to the Government regulating the minutest details, elevating the executive authorities in self-complacent power and giving no credence to the three branches of government (judicial, legislative and executive).

1.1. FINES IN THE FIELD OF EDUCATION

There is a special section in the Law on Primary education “XV Misdemeanor provisions” article 172, which is dedicated to determining the “fines”. The fines are divided into two sections, the first one covers fines ranging from 2500-3000 Euros in Macedonian currency (in Denar equivalent value) for schools with a corresponding list of misdemeanors and fines, and the second section covers fines ranging from 1500-2000 Euros in Macedonian currency (in Denar equivalent value) for the school’s principal.¹⁰ Furthermore, in Article 8 of the Law Amending the Law on primary education, article 174 is amended and supplemented to include fines of 1000, 600 and 300 Euros in Macedonian currency (in Denar equivalent value) for the legal entity, if the entity does not keep an e-register.¹¹



have an increasing trend. Only 23 fines were issued from 1995-2003. From 2004-2007 this number increased to 24, whereas in 2008-2009, 41 fines were issued. The following period of 2010-2013 the number increased to even 81 fines, and in 2014 due to the most recent changes and amendments the number increased to 87.

The Law on Secondary education,¹² section XIII “Penalty Provisions”, articles 109 and 110 refer to the current penalty provisions for breaking of regulations such as “use of stamp with wrong content to notarize documents.” In the Law Amending the Law on Secondary education these provisions are changed and exorbitant fines are added for minor oversights:

Fine in the amount of Euro 1.000 in Denar equivalent value in a mandatory procedure shall be imposed by the State Educational Inspectorate who will fine the legal entity that does not keep a weekly e-register in the secondary school... A fine in the amount of Euro 600 in Denar equivalent value in a mandatory procedure shall be imposed by the State Educational Inspectorate for a misdemeanor on the responsible person in the legal entity, if a weekly e-register is not kept in the secondary school[...] A fine in the amount of Euro 300 in Denar equivalent value in a mandatory procedure shall be imposed

by the State Educational Inspectorate to the teacher, if the teacher does not keep a weekly e-register in the secondary school [...]¹³

This continues the tendency prevalent in several other laws to determine a fixed pricelist for the fines included in the laws. As a reminder, this is usually regulated by bylaws and rulebooks, and not by law.

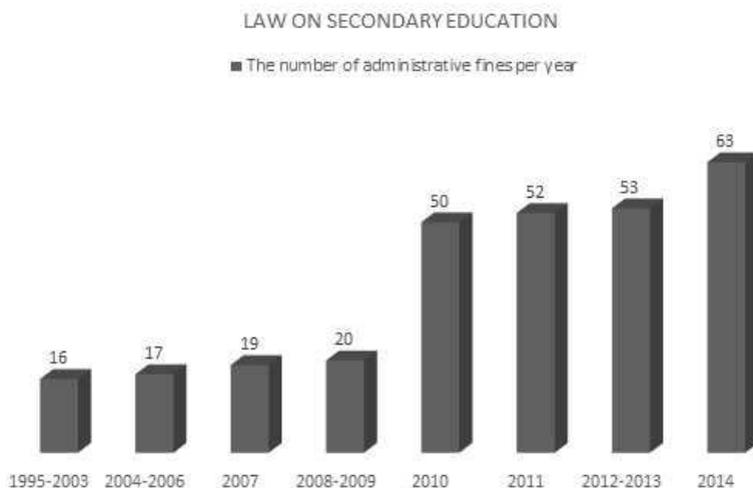


Chart 2
The Number of Fines in the Law on Secondary Education (1995-2014)

Chart 2 illustrates that the number of fines in the Law on Secondary Education has increased over time. By 2009 there were not more than 20 fines in the law. By the following year, their number increased by half. The highest number of fines in the Law on Secondary Education was reached with

the amendments in the law of 2014, and now there are a total of 63 fines.

The Law on Higher Education which was passed in 2008 regulates the fining process in the section “Misdemeanor Provisions”.¹⁴ Article 167 stipulates fines of 1000 to 2500 Euros in Denar equivalent value for the legal entity, and 500 to 1000 Euros for the responsible person, for several misdemeanors, which should otherwise be resolved with bylaws.

The 2008 Law on Higher Education has also been amended regularly with new amendments, which over regulate the field of education with laws that should be part of the bylaws. For example, the amendment of 25.01.2013 clarifies that:

The university or the organizational unit under the university as well as a higher education facility has the obligation to conclude at least two contracts for a double degree and one joint degree with a University listed in one of the 500 highly ranked universities according to the Shanghai ranking (or Academic Ranking of World Universities ARWU), i.e. the top 100 universities according to their MBA program as well as a fully accredited higher education institution at one of the 200 highly ranked universities in the corresponding field of study according to the Shanghai Jiao Tong University, US News and Report and

Times Higher Education Supplement- World University Ranking.¹⁵

Furthermore, Article 40 adds fines in the amount of 5000 to 7000 Euros in Denar equivalent value for the responsible person of the higher education facility if “the data necessary to update the database of the higher education activity for the Ministry in charge of higher education affairs is not delivered or is incomplete.” The same fine applies as an amendment to articles 776, 45, paragraph 10, 133 paragraph 13, 99 paragraph 3, 100 paragraphs 3 and 6, 140 paragraph 4 and 123 paragraph 4. This once again indicates that the Ministry probably had some challenges while implementing the law. As in the other cases, the solutions amount to introducing fines and overregulation.

With the amendments of the Law on Higher Education from 27.02.2014 more fines are added, i.e. 1000-1500 Euros in Denar equivalent value, if “at the beginning of every academic year students are not recommended to read main literature for their exams which does not include the literature that is provided by, printed and delivered to the higher education facilities by the ministry responsible for higher education affairs.” There is a fine of 3000-5000 Euros in Denar equivalent value for the responsible person who “does not publish the main literature on the website and if this literature does not include the literature that is

provided by, printed and delivered to the higher education facilities by the ministry responsible for higher education affairs.”

To put it differently, there are exorbitant fines for minimal administrative oversights. On the other hand, because the translation commissioned by the Government of the Republic of Macedonia which was part of a project requiring translation of a large number of textbooks from highly ranked universities, was criticized by the general public to be of poor quality, this resulted into not using the books in the curriculum. The Government is trying to resolve this issue with additional regulation and high fines. Additional fines of 5000 to 7000 Euros in Denar equivalent value will be issued to a higher education institution that has not “included an eminent expert in the field to teach” and if “students are not required to do internships every academic year for at least 30 days.”

With the laws and amendments of the laws on education in the last 5 years besides overregulation there is also favoritism of certain, and in many cases private companies, that are listed in the laws itself as a selection criteria. For example, a principal of a primary or a secondary school needs to have acquired the following certificates and skills: English language fluency presented by predetermined tests, such as TOEFL IBT – minimum 30 points, IELTS – minimum a band of 3, BULATS minimum 20 points, KET pass, APTIS – minimum A2 level, and to have passed a psychological test

and a test of integrity.” This item is identical in the Law on Primary Education¹⁶ and the Law on Secondary Education.¹⁷

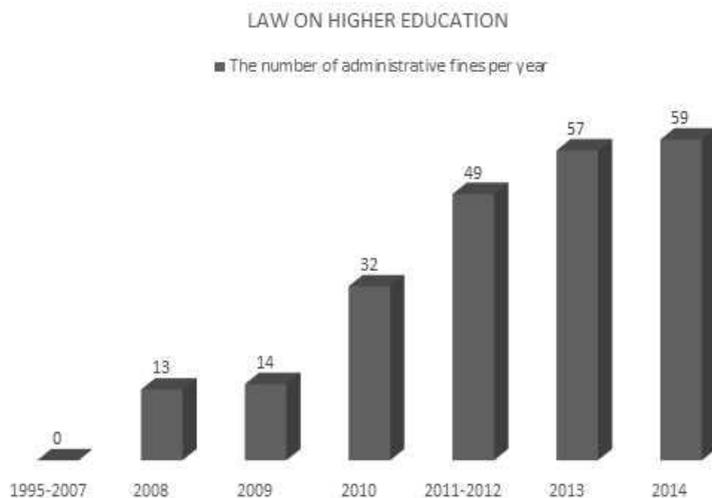


Chart 3
Number of Fines in the Law on Higher Education (1995-2014)

As Chart 3 illustrates the Law on Higher Education did not include a single fine until 2007. The first fines appeared in the amendments of 2008 with a total of 13 fines. The number of fines has continued to grow since then and in the latest version of the law of 2014 the total is 59.

1.2 FINES IN THE MEDIA

One of the main forms of pressure in the media is the overregulation accompanied by a high number of exorbitant fees. The critical media are fined for breaking the regulations, which dictate what the program of every medium in the country should include in minute details. The administration hires its own members of the party to work in the regulatory bodies where they could punish the “politically unsuitable” media and editors. On the other hand, journalists are censored by their editors or they censor themselves so as not to be criticized by the authorities, and not to be sued for defamation of character. The defamation of character was decriminalized towards the end of 2012 by introducing the new Law on Civil Liability for Defamation¹⁸. According to the report of the EC, 580 civil lawsuits were filed in the courts, bringing charges against journalists, and politicians as well. The report expresses concerns that the defamation charges are used as a form of pressure.¹⁹To illustrate, in 2014 the Director at the time of the Security and Counter-Intelligence Directorate, Sasho Mijalkov pressed charges against the journalist and editor of the weekly “Fokus”, Vlado Apostolov and Jadranka Kostova for violating his reputation and honor, and Mijalkov won the case by receiving damages of about 9.000 euros ²⁰

The Law on Media which consists of 35 articles²¹, prescribes 15 fines in the amount of 500 to 5000 Euros. The highest fines

are prescribed in article 30, paragraph 1 and refer to both not having published the medium ownership information, as well as not protecting minors against inappropriate content.²²

The Law on Audio and Audiovisual Media Services prescribes the media content to minute details, thus limiting the editor's autonomy, whereas these regulations should be part of secondary legal documents (statutes, rulebooks). The same law includes even 156 articles prescribing 73 fines of 1.000 to 100.000 Euros. The most exorbitant fee of 100.000 Euros is for violating article 145.²³ Namely, all national television broadcasters of general format shall be obliged to annually produce and broadcast at least 10 hours (radiobroadcasters at least 30 hours) of domestic documentary programme in the period between 7 and 19 hours as well as annually²⁴ produce and broadcast at least 20 hours (the Public Broadcasting Service at least 30 hours) domestic movie program in the period between 7 and 19 hours.²⁵

LAW ON BROADCASTING AND THE LAW ON AUDIO AND AUDIOVISUAL SERVICES

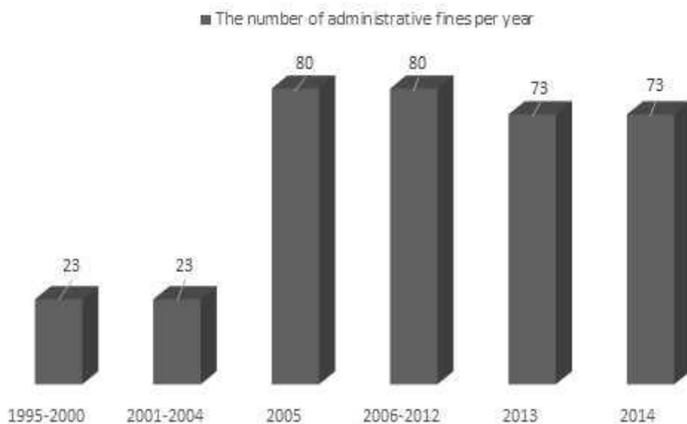


Chart 4 illustrates that compared with the previous years; the penalty provisions in the media had a different trend. Hence, the predecessor of the Law on Audio and Audiovisual Media Services, the Law on Broadcasting Activity in the period of 1995 to 2004 had only 23 fines. Then, from 2005 to 2012 it was 80 fines. With the changes of the Law on Audio and Audiovisual Media Services, there are 73 fines the amounts of which have been previously discussed in this policy study.

1.3 FINES REGARDING TRADE UNION ORGANIZATION AND STRIKE

In the section about strike and trade union organization, the Labor Law²⁶ was analyzed along with its official consolidated texts.

Regarding fines, the Labor Law of 1997 included penalties which were calculated based on certain salary percentage. The 1997 amendments introduced a change in the way penalties were calculated, i.e. instead of considering a certain salary percentage, a fixed amount in Denars²⁷ was considered with the maximum amount of 250.000 Denars. In 2005, the Labor Law had 49 provisions for penalties with the maximum amount of 200,000 Denars.²⁸ In 2008, penalties were renamed into fines, their amount was referred in Euros, and the amount was higher than the previous one, which was referred to in Denars. With the 2013 and 2014 amendments the number of fines in the Labor Law amounts to 47 with the highest amount of 8,000 euros.²⁹

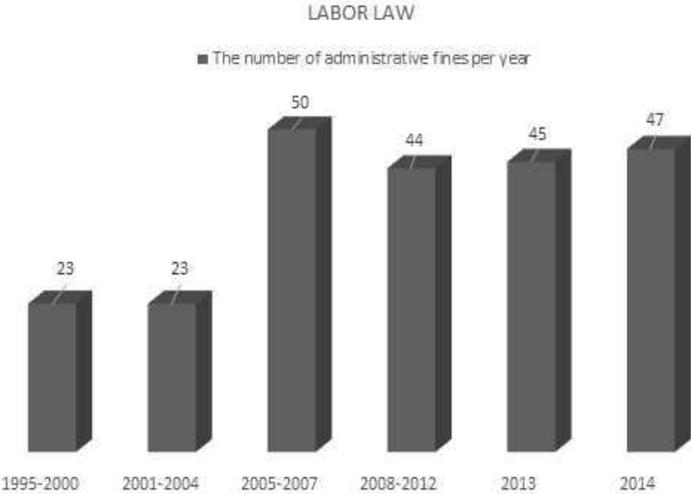


Chart 5
Fines in the Labor Law (1995-2014)

As illustrated in Chart 5, after 2005 the number of fines increased drastically. The number of fines in the Labor Law

was only 23 from 1995- 2004. In 2005 the number increased to 50 fines, whereas in 2008 it decreased to 44 fines, but their amount was higher. For example, the fine prescribed by article 265 which used to be 10,000 denars, is prescribed as a 1,000-euro fine in 2008. In 2013 the number of fines in the law amounted to 45, whereas in the law of 2014 there are 47 fines.

2. CONTROLLING CRITICAL THINKING THROUGH EDUCATION AND MEDIA

The government in competitive authoritarianism does after all depend on the elections, which even though characterized as unfair elections; they still offer an opportunity for reversal. Therefore, populism is key for the survival of such a regime. On the other hand, the efficient stifling of freedom of thought and marginalizing every critical thought is the basis necessary for the propaganda's efficiency. For this purpose, the stifling of freedom is done in a subtle way and by using legal methods. Some of the methods include: "bribery, the selective allocation of state advertising, the manipulation of debts and taxes owed by media outlets, the fomentation of conflicts among stockholders, and restrictive press laws that facilitate the prosecution of independent and opposition journalists."³⁰ Governments of hybrid regimes also make extensive use of libel laws to harass or persecute journalists from the critical media.³¹ All of these methods have consistently been used in the Republic of Macedonia especially in the last ten years. In the following section we will analyze the controlling methods in the field of education and media, which arise from the policies that the Government executed from 2008-2015.

2.1 ASSERTING CONTROL OVER EDUCATION PROGRAMS

The controversial textbook for VIII grade on Civic Education was criticized by the public during 2014 due to the problematic definitions on key civic terms. The problem appeared because part of the definitions implied asserting authoritarian

values on the young people and encouraged them to be obedient and respect authorities. This is contrary to the democratic and civic ideals.

The most challenging is the definition of government as “a form of power which is accepted by those who abide to it, because they consider it as just and fair.”³² Obedience is definitely not a democratic, but a totalitarian value. Namely, according to the Constitution of the Republic of Macedonia “the sovereignty of the Republic of Macedonia is indivisible, inalienable and non-transferable” and “it derives from the citizens and belongs to the citizens.”³³ To put it differently, the Constitution does not recognize a category sovereign (government) whom the citizens should “obey,” but the citizens themselves are bearers of sovereignty and they “exercise their authority through democratically elected Representatives, through referenda and through other forms of direct expression.”³⁴ The citizens are those who exercise *their* authority through democratic mechanisms, not by obeying the authorities.

Furthermore, that same textbook besides praising *obedience*, also praises *loyalty*: “Loyal citizens respect those who govern society. They are always ready to follow society’s rules and regulations, even if they have to give up their own rights and freedoms. It is better for them to live in a safe and protected environment where order is maintained than in a society where people have the feeling that everyone can

do whatever they please.”³⁵ The challenge with this definition is that obedience is not only required to the authorities, but to the rules of society itself, i.e. unconditional obedience (“have to”) to tradition and the authorities in the name of safety, which is contrary to the humanistic and democratic ideals.³⁶

2.1.1. Disrupting Secularism in Educational Institutions

Secularity is one of the key values of the Republic of Macedonia. According to article 19 of the Constitution “The Macedonian Orthodox Church and the other religious communities and groups are separate from the state and are equal before the law.”³⁷ This means that the state and the state institutions cannot prefer one religious community to another. Nevertheless, since 2012 the formal start of the academic year at Ss. Cyril and Methodius University has taken place in a church, and not one of the amphitheatres. The Rector referenced this event as a fairly common one – “As I have visited other universities at the beginning of the academic year in the past, this year I decided to go to the Theological Faculty.”³⁸ Nevertheless, the following year, once again the academic year commenced with the service at the church of St. Jovan Krstitel in Kapishtec, Skopje.³⁹ The Theological Faculty is an equal member of UKIM (University st.Cyril and Methodius) since 2008; however, the first academic class was not held at one of the amphitheatres at the faculty, but in a church with a religious service. Hence, in a way the principle of keeping the state and the religious

communities separate has been violated by preferring one religious community to another, which is contrary to the Constitution and it signifies a direct interference in the freedom of expression of religious beliefs or their lack of.

2.1.2. “External Testing” as a Means of Pressure over Education

In 2008, the Law on Primary Education introduced a new concept on evaluating teachers, better known as “external testing.”⁴⁰ This section discusses the criteria which penalize the teachers. We believe that Article 97 is a controversial one because it forms the basis on exerting pressure and control over teaching staff. Namely, the goal of the external testing is to test students’ success in order to determine the “teacher’s objectivity and professionalism in grading student’s achievements.” The controversial part of this law refers to the section which stipulates that according to the rankings of “20% of teachers with the highest deviations from the received indicators shall have their salary reduced for the following year by 10% of the basic salary they received,” and if this occurs for three years in a row “the employment of a teacher shall terminate.”⁴¹ To put it differently, regardless of the results demonstrated, the law stipulates that 20% of teachers will be punished by having their salary reduced and a great number of teachers will be terminated. This provision generates unnecessary pressure over teachers, which results in self-censorship regarding stating one’s opinion on teachers’ strikes and disagreements due to fearing for one’s own basic existence.

It is indicative that in the Law Amending the Law on Secondary Education from 2014, new fines are added regarding the “external testing”: “Fine in the amount of Euro 600 in Denar counter-value shall be imposed by the State Educational Inspectorate for a misdemeanor on the responsible person in the legal entity, if the responsible person does not abide to article 70-a, paragraphs (14) and (15) of this law.”⁴²

In the following Law Amending the Law on Secondary Education new fines are added. These fines refer to the external testing. This can lead to the conclusion that the newly created problems from implementing this law are resolved by amending regulations and increasing the number of fines. Furthermore:

- (1) Fine in the amount of Euro 2.000 in Denar counter value shall be imposed for a misdemeanor on the responsible person in the legal entity if it allows the examiner and the examiner’s assistant to be one of the teachers who teach the subject students are examined on as part of the external testing (article 45-a paragraph (11)).
- (2) Fine in the amount of Euro 1.000 in Denar counter value shall be imposed for a misdemeanor on teachers if they do not act accordingly with article 45-a paragraph (8).
- (3) Fine in the amount of Euro 1.000 in Denar counter value shall be imposed for a mis-

demeanor on the examiner and the examiner's assistant for providing any kind of information regarding the questions' answers (article 45-a paragraph (10)).”

- (4) Fine in the amount of Euro 1.000 in Denar counter value shall be imposed for a misdemeanor on the examiner and the examiner's assistant if they are one of the teachers who teach the subject students are examined on as part of the external testing (article 45-a paragraph (11)).”⁴³

Establishing this new education policy that utilizes punishment can result in teachers experiencing increased pressure and fear, and it can have a negative impact on the quality of education.

2.2. CONTROL OVER MEDIA

In the past years, the freedom of expression in Macedonia has been declining. This is evident by many editors feeling pressured by the constant threat of criminal charges pressed against the media and the journalists in the form of fines, which results in journalists self-censoring their work as well as several media being shut down.

On the other hand, freedom of the media is continually highlighted as the main precondition for the accession of Macedonia to the European Union. The 2014 European Commission progress report on Macedonia expressed serious concerns about government control over public

institutions and the media. The report highlights the indirect state control of media output through government advertising and government-favored (and favorable) media outlets. The conclusion is that the situation as regards the freedom of expression remains problematic and greater efforts are needed to improve the media culture.⁴⁴ One of the positive examples the report highlights is the established self-regulatory body in the form of the Media Ethics Council of Macedonia.⁴⁵ Its goal is to protect the ethical standards of the media and the work of journalists by strengthening self-regulation of the media.⁴⁶ In other words, the citizens who are affected by the irresponsible media coverage instead of immediately filing a lawsuit for defamation of character or libel against journalists, can now submit a petition to the Council. Even though the Council was formed in 2013, it started to work full time half a year ago and by August 2015 it granted over 40 petitions, most addressing hate speech.⁴⁷

The 2015 European Commission Progress Report states that Macedonia shows “some level of preparation” regarding freedom of expression.⁴⁸ Moreover, the report continues “exercising this freedom, however, is a serious problem in the current media culture and political climate, and the country continued to backslide in this area.”⁴⁹ It references the threats against journalists, the illegal wiretapping and surveillance.⁵⁰ According to the report of 2015, “The political interference in the editorial policies of the media” is also a

serious challenge, and this refers to “the direct control over the content and timing of news reporting.”⁵¹

The world rankings of Reporters without Borders and Freedom House note that since 2011, Macedonia has had serious declines and low ratings regarding freedom of media. Hence, according to the World Press Freedom Index 2015, Macedonia ranks 117th from 180 countries (the worst rating was received in 2014, ranked 123rd).⁵² The nonprofit Freedom House ranked Macedonia as the worst in the region for 2015 regarding freedom of media, which is down 10 points in the last five years, and Macedonia takes the 125th place with 58 points (on a scale of 0 to 100 where the lower score means higher freedom).⁵³

2.2.1. Media in the Macedonian Legislation

The analysis of freedom of expression in the media uses findings acquired from: the Law on Media⁵⁴, Law on Audio and Audiovisual Media Services⁵⁵, and it also makes a comparison with the invalid Law on Broadcasting Services.⁵⁶ Furthermore, the findings from the research of the ISSH-S “Fines in the Macedonian Legislation” are used.⁵⁷ A comparison is made in this study regarding the fines in certain laws from the last 19 years. Namely, concerning the media, the Law on Broadcasting Services and its successor - Law on Audio and Audiovisual Media Services were analyzed. The analysis covers all of the fines that were prescribed by these two laws from 1995-2014 in order to illustrate their influence on the freedom of expression.

The Law on Media was first put into effect towards the end of 2013 along with the Law on Audio and Audiovisual Media Services which replaced the law at the time – Law on Broadcasting Services. The passing of these laws was followed by negotiations among the Government and journalists' associations, boycotting public hearings and public confrontations. The draft law was criticized by the OSCE special representatives for freedom of media.⁵⁸ By the end of 2013 it was announced that an agreement was reached between the President of AJM, Naser Selmani and the Minister of Information Society and Administration at the time, Ivo Ivanovski, which created further disagreement among the journalists.⁵⁹ Both of the laws were passed at the end of December, 2013 while the amendments were passed at the beginning of 2014. The amendments on the Law on Media⁶⁰ excluded the electronic media and publications altogether, which were previously severely criticized due to their great overregulation. The amendments on the Law on Audio and Audiovisual Media Services⁶¹ included a new paragraph which stipulates that every limitation on the content in the media has to be in accordance with the policies of the European Court of Human Rights.

The amendment of the former Law on Broadcasting Services into Law on Audio and Audiovisual Media Services renamed the main regulator body from Broadcasting Council of the Republic of Macedonia into Agency for Audio and Audiovisual Media Services. In line with the new regulations,

the programmatic structure of every audiovisual media is prescribed by law and is defined in more detail by the Agency. The agency also issues fines for the media. Even though it declares itself as an independent regulatory body, the Agency is formed and financed by the State.

2.2.2. Influencing Media through Advertising

Advertisements are another great challenge in the media. Namely, the Government is one of the biggest advertisers on all of the private media. To illustrate: “The market analysis of the broadcasting service for 2013, which was conducted by the Agency for Audio and Audiovisual Media Services, reveals that the Government had commissioned 17,639 videos for a total air time of 1,361,541 seconds.⁶² Therefore, it became the second biggest advertiser on the six television stations analyzed, right after Procter & Gamble, and preceding companies like Coca-Cola. The abovementioned TV stations made a total income of 20.51 million Euros. The Agency has not revealed the biggest advertisers for 2014 in that very same annual analysis of the broadcasting activities. The analysis clarifies that the data input process is still ongoing, which when complete will present the more relevant findings regarding public advertisements, while it also questions the validity of the findings from the previous year.”⁶³ As the findings of ISSH-S from the year prior⁶⁴ are being put into question, so does the fact that the Government is one of the biggest advertisers raise the question whether this trend hinders the free market economy. The fact that the

Government advertises its activities or creates all kinds of campaigns in the form of advertisements is very challenging.

The EU Directive regulates the advertising process in the Law on Audio and Audiovisual Media Services, which prescribes the regulations and advertising conditions for goods and services in the media. The crucial amendment to the Macedonian law which undermines the EU Directive is as follows “popularizing an idea or activity for achieving a different purpose” to expand the definition of the term “advertisement.”⁶⁵ The commercial sale of ideas to the media in the form of campaigns with the purpose of raising awareness, campaigns with an abstract concept such as the beauty of the country or strengthening humanitarian values on behalf of the Government is not directed towards any market practices. This practice is very similar to propaganda since there is no other advertiser who can “sell ideas” commercially guided by its own ideological values.⁶⁶

At the beginning of July 2015, the Government decided to impose a moratorium of all commercial promotions in the media, emphasizing the fact that this decision was only a gesture of their good will.⁶⁷ This “gesture” occurred at the very beginning of the negotiations to endure the political crisis, which is also related to the remaining exceptions made by the Government whose authoritarianism was caused by many civic movements, the opposition and in the end, the international community. The latest developments

in Macedonia, which are related to the implementation of the Przhino agreement (the June-July Agreement to endure the political crisis of 2015) indicate that media regulations is going to be next, i.e. law amendments need to regulate advertising, and more importantly to allow objective media coverage.⁶⁸ The European Commission prepared a list of urgent reform priorities to be fulfilled to endure the crisis, which are presented in the V chapter: freedom of expression, gives recommendations regarding the necessary urgent reforms in the media. Namely, the first recommendation refers to the Public Service Broadcaster, which is criticized for its lack of political independence, and lack of balanced reporting. The second recommendation refers to the government advertising and the request that transparent, objective and non-discriminatory criteria are established. The third recommendation demands that journalists do not meet such obstacles when obtaining public information. The last recommendation refers to the decrease in the number of defamation cases reaching the courts as well as the need to support and promote greater use of self-regulation as alternative to court-action.⁶⁹

The European Commission report of 2015 highlights the problem regarding government advertising of the previous year:⁷⁰

Government advertising provides the largest single source of funding and has a major influence on the media market at both

national and local level. There is no systematic or detailed reporting on government advertising. Moreover, the content of the intercepted communications revealed close links between government and media owners with the highest viewership and circulation, who also receive most of the funding allocated to government advertising campaigns.

This is a very serious remark about the current situation of the media in the Republic of Macedonia. The numerous internal and external forms of pressure were successful. The Agency for Audio and Audiovisual Media Services has reached a decision based on Article 82, paragraph 1 of the Law Amending the Law on the Electoral Code⁷¹ to “prohibit broadcasting of paid political advertising in the programs of the broadcasting media, printed and electronic media (web portals) until December 20, 2015.”⁷²

2.3. CASE STUDIES SUMMARIES:

2.3.1. Tomislav Kezharovski, Journalist – Case Study

One of the most criticized cases regarding freedom of media, not just domestically, but internationally as well is the case of Tomislav Kezharovski. He is mentioned in all of the reports where freedom of media is analyzed.⁷³ Namely, in October 2013, Kezharovski was sentenced to 4,5 years of prison for allegedly revealing the identity of a protected witness.⁷⁴ This case was of one the main political challenges concerning

freedom of media in the country and it was criticized severely by the OSCE and EU missions in Macedonia. To be more precise, the OSCE report on freedom of media for 2013 remarks on the case of Tomislav Kezharovski as the only case in Southeast Europe of a journalist taken into custody.⁷⁵ The case was condemned by eminent international and local organizations and it also instigated civil protests. After having spent five months in prison where his health was treated poorly, Kezharovski was released on house arrest.⁷⁶ On January 15, 2015 the Court of Appeal reduced Kezharovski's sentence from 4,5 years of imprisonment to two. This ruling was issued immediately and in less than 24 hours he was put on remand to serve the remaining three months.⁷⁷ The last incident sparked a massive protest when thousands of people marched from the Court of Appeal to the building of the Government demanding freedom for Tomislav Kezharovski. A few hours before the start of the protest he was released on parole by the Criminal Court due to health issues.⁷⁸ At long last, on February 18, 2015 his parole was confirmed by the Court of Appeal and he did not spend the last three months in prison.⁷⁹

2.3.2. The Case of Telma Television

The case of Telma TV, one of the most critical media in Macedonia illustrates best what are the methods employed by the government to over regulate media in order to: (1) influence editorial policies of the media, (2) punish the

“disobedient” (critical) media and (3) have an opportunity to shut down media due to several small misdemeanors. In 2014, Telma was fined even three times for different misdemeanors such as not adhering to program formats as prescribed by the Agency for Audio and Audiovisual Media Services. The most exorbitant fine of 20,000 Euros was issued in May 2014 for the “5-minute gap of unbalanced broadcasting of folk and pop music” as prescribed by Article 146⁸⁰ of the Law on Audio and Audiovisual Media Services, i.e. Telma was fined for not meeting the requirements stipulated in Article 92.⁸¹ These types of fines contribute to an increased self-censorship among journalists, one of the most concerning phenomena in terms of freedom of expression. If in a short period of time Telma was issued only one to two fines of similar amount, the TV station may have gone bankrupt. The settlement procedure against Telma was nevertheless ended by the Agency for Audio and Audiovisual Media Services. As explained,⁸² this was due to the Law Amending the Law on Audio and Audiovisual Media Services⁸³, which amended Article 92, paragraph 4 that the previous fine was based on. Hence, the ruling was no longer valid. This confirms our reasoning that a hybrid regime is not after all mere authoritarianism, and that the pressure from society as well as international institutions has a positive effect on improving the current state of affairs.

The last event from August 2015 which relates to “Telma” refers to the 21 charges made against high officials in

“Makpetrol”, the biggest oil distributor in Macedonia, and at the same time Telma’s biggest patron. The charges were based on some alleged activities from 2006 and doubts were raised whether this case had any political motives behind it, and whether its purpose was to settle the score with Telma for its critical news coverage. In other words, the question raised is whether the implementation of laws in Macedonia is done in a selective manner.⁸⁴

3. STRIKE AND TRADE UNION ORGANIZATION

Trade union organization and strike as an expression of collective disagreement are the workers' constitutional right guaranteed by Articles 37 and 38 of the Constitution of the Republic of Macedonia.⁸⁵ However, the regulations that define workers' rights regarding trade union organization and strike have been moved to other laws. This study analyses the Labor Law which prescribes the general provisions regarding trade union organization and strike. There are other laws where the specific provisions concerning organizing strike at particular industries have been moved.

The law was analyzed in order to identify possible limitations that impact freedom of association and expression in an indirect or direct way. The publication „Штрајк: искуства и состојби“ or in English: “Strike: Experiences and States” published by the Movement for Social Justice – Lenka was also included in the analysis, as well as the transcript from the presentation of the representative of the Multiethnic Union of Education of R.M at the public debate “The Right to Strike and Trade Union Organization in Improving Freedom of Expression and Association”.⁸⁶

3.1. LIMITATIONS ON THE REGULATIONS FOR TRADE UNION ORGANIZATION

The Labor Law prescribes provisions regarding trade union organization, i.e. Article 6 in the section on anti-discrimination in regards to protection of Trade Union members against discrimination in the work place, Article 68 and 77 in the

section about changing employers and unsound termination practices, which also serve to protect other trade union members.

The eighteenth chapter “Trade Unions and Associations of Employers” (Article 184 to Article 202)⁸⁷ is about trade unions and employers’ associations, and the biggest number of articles concerning trade union organization can be found here. This section has several Articles of limiting character. Article 191 which concerns requests to join the registry of trade union associations of a higher level has preconditions that need to be met in the second paragraph: “To register you need to submit: the decision of the founding assembly, statutory council’s minutes, the statute, the name of the founder and members of the executive body, the full name of the person or persons authorized to represent, and data on the number of trade union members on the basis of paid membership fees.”⁸⁸

According to the authors of the abovementioned strike study, the limiting factor in this article is the condition regarding the number of trade union members based on paid membership. Namely, when a trade union is registered for the first time, the complete number of members who paid the membership fee to the organization that is being registered cannot be submitted because the organization is not a legal entity yet. This condition is one of the legal impediments that affect the registration process of new

trade union organizations, and makes their registration process challenging. In the report for the European Trade Union Confederation, the Multiethnic Union of Education of R.M. warns about two problems that trade unions and workers in Macedonia face: “Even though this process should be quite an easy and quick procedure, in the last few years a lot of unions who are critical to the Government experience serious problems with the registration process of the new trade unions or their local union subunits. At the same time, pro-Government unions don’t have any problems at all during this process. The Multiethnic Union of Education of R.M. in 2013-2014 waited for 10 months in order to register two new local union subunits.”⁸⁹ Article 202 refers to prohibiting the work of trade unions when performing activities contrary to the Constitution, and it is a much more comprehensive prohibition. Nevertheless, this very comprehensive regulation allows for a loose interpretation by the institutions of one hybrid regime, which the institutions can misuse to prevent the right to strike.

3.1.1. Limiting the Right to strike

The main limitation of the right to strike, which is guaranteed by the Constitution, arises from Article 236, paragraph 1 from the Labor Law that prescribes “The trade union and its associations of a higher level have the right to call and lead a strike in order to protect their members’ economic and social rights regarding their employment as pursuant to law”.⁹⁰

Therefore, this provision limits trade union organization not to become a widely accepted method of meeting workers' rights. Namely, a large number of enterprises do not have their own trade unions. There is also certain mistrust towards trade union organizations since the bigger trade unions are being held up by the state institutions, i.e. executive authorities, which has been the permanent state of the last 25 years.

The nineteenth chapter of the Labor Law refers to strike (article 236- article 245). The provision from article 236, paragraph 3 which prescribes the start of a strike, allows for the whole process to be stalled: (3) “ A strike cannot start, unless the mediation process is complete as pursuant to this order and the Act by the Minister of Labor. The mediation requirement cannot limit the right to strike, when the right to strike is prescribed by law, i.e. before any other mediation procedure is enforced that both parties have agreed on.”⁹¹

There is also a limiting provision in article 242 regarding interdicts prohibiting illegal strike and compensation for damages. This provision was used to prevent the physicians' strike of 2012, when the court ruled the participation in the strike at the Clinical Centre illegal because of the interruption of work that ensued. Namely, the Ministry of Health filed a complaint against the strike, and the Primary Court Skopje 1 was quick to respond preventing the strike to start due to bad management and lack of a work plan necessary to continue

the activities at the Clinical Centre during the strike.⁹² This was interpreted by the physicians, the opposition and some of the critical media as a direct prohibition of the right to strike. Regardless of the fact, the strike did take place and it lasted for 40 days (from November 14 – December 26, 2012) and then the Trade Union's demands were negotiated by both sides."⁹³ The Trade Union leader, Doctor Dejan Stavrich was arrested and sentenced to one year of prison in May 2014 for taking bribe from a patient.⁹⁴ His arrest and trial generated disbelief regarding the true motives of the arrest.

Besides the Labor Law there are also limiting provisions concerning the right to strike, which were moved to numerous other laws regulating different industries. Professor Zdravko Saveski, representative of the Multiethnic Union of Education of R.M states: (transcript from the presentation at the debate, which is part of this project):

“In reality, there is no industry which does not limit the right to strike! There are certain policies; the right to strike is regulated by an unbelievable total of 27 laws! Five of these 27 laws refer to the workers in general, whereas the remaining laws prescribe the right to strike of a larger or a more narrow scope of workers. This started by expanding the policies to other laws in 1993 with the strike of REK Bitola. At the time there was a Law on Strike as the main law and then they introduced it to the Law on Energy, and then in very many other laws provisions on

strike were introduced, so introducing strike provisions is always bad for the workers as it almost always has a limiting character. So if there is a law with a provision on strike, this further limits the right to strike.⁹⁵

An example of how the right to strike has been limited even further can be found in the new strike provisions that were introduced in the Laws on Primary and Secondary Education. Namely, after the education workers announced their strike in the summer of 2014, immediately in September new amendments on the Laws on Primary and Secondary Education were passed, prescribing that employees are replaced by stand-in teachers during the strike. Article 38, paragraph (6) was amended with a new paragraph (7), which prescribes:

If the educational activities need to cease due to the strike, the principal of the primary school needs to seek prior approval from the mayor, and for the public state schools from the Minister of Education, and the principal needs to make certain that the teaching will continue by finding stand-in teachers to replace the employees who are on strike throughout the duration of the strike.⁹⁶

In this manner by once again relying on the argument that “there should be no interruption of work” amendments were made and provisions were passed which *de facto* hinder the right to strike. By hiring replacements for the teachers on

strike, the strike loses its original purpose, and the workers are placed in an unfavorable position regarding the possible negotiation process and having their demands met.

After several month delay, the teachers' strike began on January 20th and lasted till February 2nd, 2015. The Trade Union demanded that teachers who were fined because of the external testing have their fines revised, full implementation of the Collective Agreement (including pre-school workers) and salary increases for the teachers. Throughout the strike, the Trade Union reported on the constant pressures the teachers who were striking encountered that their wages would be reduced. At the same time the students' parents whose teachers were on strike were pressured by local government officials, including the Mayor of the City of Skopje to take their children to school regularly, they were threatened that they would be fined, if they did not comply. In the majority of the media there was no clear and complete information regarding the size of the strike and its development. Pro-government media reported on the "isolated and small number of teachers who took part in the strike."⁹⁷ The critical media, on the other hand, reported on the massive numbers of strike supporters, and the pressures imposed by the Government on teachers and parents."⁹⁸ Dissatisfied by the information in the media and by utilizing the social media and crowd sourcing tools, the citizens crated an interactive map of the schools in R.M. where the strike was taking place.⁹⁹

After a massive protest by the education workers was announced as well as the High School Plenum, Students' Plenum and the Professors' Plenum, MES [Ministry of Education and Science], invited Trade Union representatives for reconciliation talks, which resulted in suspending the strike and reaching an agreement by meeting part of the demands, such as suspending the teachers' fines.¹⁰⁰ Some people criticized the union representatives for suspending the strike "overnight" and not reaching an agreement to meet all of the demands.

The strike overregulation and complexity of legal procedures creates legal insecurities for the workers and an additional challenge for them to decide to organize a strike. Professor Saveski, representative of the Multiethnic Union of Education of R.M stated during his presentation at the debate (transcript):¹⁰¹

For example, if you decide to organize a strike in the primary education sector, you have to consider provisions from seven laws! Those are: the Labor Law, Criminal Code, Law for Peaceful Settlement of Labor Disputes, Law on Institutions, Law on Public Employees and Law on Primary Education. You need to be a legal expert to organize a strike. And we are talking about workers! Workers are usually not legal experts, which is what they want them to be in order for them to be able to exercise their constitutional right to strike.

3.2. CASE STUDY:

Experiences from the Education Workers' Strike of 2015

This case study is based on the interviews conducted with two high school teachers in Skopje. The discussion focused on their experiences during the general strike of the education workers in 2015. The goal of the discussion was to have the teachers share their personal experiences about the strike in order to give us a better perspective on exercising the right to strike, as well as all of the threats and limitations they faced in exercising their rights, which the media barely reported about. The teachers who shared their experiences work in two different high schools. The strike was official in one of the schools, whereas in the other only a few individuals decided to participate. Their experiences serve to show how the strike impacted the whole atmosphere in the school as well as the staff relations. In the remainder of the study there is more information on the organization of the strike that was shared in the media, which provides the wider context of the strike, the information shared as well as the public opinion, which resulted from it.

3.2.1. Organizing the Strike

The education workers' strike was organized by SONK [Sindikata za obrazovanie, nauka i kultura or in English: the Independent Trade Union of Education, Science and Culture of the Republic of Macedonia] – through the regional

committees representing trade union organizations in the schools. According to the teacher of the school where the strike was official and who is also a member of the school's trade union organization, teachers were informed about the strike since the summer of 2014 after which their trade union organization decided to support and join the strike. Nevertheless, the strike begun in the winter of 2015 with the start of the second school term. The manner in which the teachers were informed about the strike and its preparations suggests that the information flow from SONK's headquarters to individual trade union organizations was very slow and incomplete. According to the teacher, the current structure and organization does not function properly because the communication with the headquarters of SONK was only done through the regional committees.

That is not the most ideal solution because the trade union organizations are divided and there are separate primary and secondary trade union representatives... for example, you cannot get all of the secondary school representatives at one place. They are not divided by the type of school, but according to municipality, so there is a representative for the primary schools, secondary schools, plus the pre-schools. However, in this particular situation the pre-schools didn't really do much, at least not something we were aware of such as support the strike or take part in it."¹⁰²

The lack of proper communication channels, which is necessary for the information flow in the negotiation process, the network, sharing experiences as well as the community spirit and solidarity in the trade unions, was also evident during the strike. Namely, the teacher who participated in our case study explained that the regional representative visited the school during the strike only once, when there were also no regional meetings for them to get informed about the negotiation process and what was happening in the schools during the strike. As a result of this communication challenge the individual trade unions, and at some places the individual trade union representatives were left to their own devices to face the challenges that appeared during the strike.

There are indicators which show that the organization of the strike was undermined throughout the whole process. For instance, just as the strike was about to get started trade union presidents would take sick leave or resign. Furthermore, there were teachers who were trade union members, but decided to boycott the strike.

A teacher from a different secondary school resigned, there were some who took sick leave or didn't call a meeting... We realized that there was a system in place, that they were doing this on purpose so that the members wouldn't meet and have a meeting. At the very meeting of SONK regarding the strike there were some who voted against it, and those were the regional members.

All of this generated additional confusion and anxiety for the teachers who were left to their own devices to decide whether they wanted to join the strike or not, faced with confusing and contradictory information, fearing their own survival because of the constant threat that they could lose their job or due to many other everyday pressures. As a result, many teachers ended the strike while it was still ongoing. In one of the schools this was used as another form of pressure as teachers were asked one by one to sign a list declaring whether they were going to strike or not.

[...] there was one case where an individual joined the strike and then left the strike the following day. And there was one who didn't join the strike, then did overnight, unwillingly, it was very dramatic. There were individuals pretending to strike who would then go to the principal pleading not to be registered as those who joined the strike. And then we came to the point where the list provided by the Trade Union was used by the principal who went through it name by name to confirm that each individual did join the strike.

These procedures point to the complete dismissal of collective trade union organization, exactly because of the fact that the right to strike was not honored during the strike, even though it is a constitutional right and refers to the protection of trade union members against redundancy or dismissal.

3.2.2. Strike Progress

The strike began with a state of general confusion in the public whether schools were going to join, and if so, which schools. When the Trade Union reported on the official strike starting, the media informed the public that only individual teachers were joining the strike or a very small number of schools were doing so, or the strike was not even mentioned in the media. The same was evident in the schools as well. Not enough information in the media was something that the parents and the people found confusing as well, was the strike ongoing or not, all of this created uncertainty, fear and confusion among individual trade union organizations and their representatives.

It was scary because the first few days the strike was completely ignored, the media didn't cover it at all, and there was no announcement anywhere except for one statement of 25 seconds at some TV channel, and that was terrifying! Because we did not know how many people joined the strike and where. We had no idea about the turn-out. The regional representative would come to share this with us; however, this was just partial information, and we didn't know whether he was telling us the truth. It was a very difficult situation, which wasn't easy to handle at all. We were literally isolated. The only good thing was that we were lots of people, so we supported each other. There were some who would go teach in

other schools, come here to strike, but they couldn't handle it. If they were teaching the second shift, they would come see us during the first shift to take in all of the energy at our school and then they would go teach in the other school.

This excerpt demonstrates how much the confusion regarding the strike caused a lot of anxiety for the teachers. Moreover, the fact that the strike was not officially recognized in some of the schools meant that teachers could teach in one school, and join the strike in another. This situation allowed for teachers to be exposed to the everyday pressures within the schools.

In the schools where small part of the teachers were trade union members, the beginning of the strike created great confusion as to who was part of the strike and who was not. It created tensions, and consequently it disrupted staff relations.

The same thing happened with us, some heard that some are joining the strike, and some are not, so it was half and half. Some were told while they were at home that they have to join... It was terrible... Terrible mind games... There were examples where the teachers who were covering the first shift, regardless of the fact whether they had students to teach or not, they had to register the class as if they had taught one. Even if it was one student only, you had to invite the

single student in the classroom and teach. And the older students took advantage of the situation and they didn't even come to class, so we just sat there in our empty classrooms. We were forced to strike in a way as were sitting in the empty classrooms. This whole time we endured the torture of the State Educational Inspectorate. You were being monitored, watched over, taken pictures of; they would peek in the school register to see who had taught a class and who had not.

3.2.3. Different Forms of Pressure Teachers Endured

The pressures teachers endured were enforced daily in different ways. One of the main institutional forms of pressure was the constant presence of representatives from the State Educational Inspectorate.

There were various forms of pressure. The main forms of pressure were the representatives of the State Educational Inspectorate who stayed at the school from morning to evening. They controlled the school registers, and whether the teachers because the students wouldn't come to class, stayed in the empty classroom during the strike. And those teachers who weren't part of the strike, and who didn't have any students in class, they still had to register the students as if they were there. It was utter chaos! An unbelievable thing! Every Monday morning, during the first class, we had to make the lists ourselves for all of the classes.

The pressures aimed towards the weakest trade union members were one of the methods used as a direct violation of the right to strike.

And don't get me started on the informal forms of pressure where single mothers were threatened by being told that they won't receive their per diems and their wages. Certain people were targeted as what exactly should be told to them.

The stand-in teachers who were hired during the strike were also seen as an additional threat by the teachers who joined the strike.

And these (stand-in) teachers just sit in the teachers' office, open the school register, take their per diem and go to an empty classroom. Those teachers who didn't join the strike started to drink coffee and smoke with the stand-in teachers. So a lot of teachers got really upset and started panicking thinking that the stand-in teachers will take over their classes. Some of the teachers still suffer the consequences even after the strike has ended. Now they don't get to teach the regular classes, only the electives, which are very uncertain. With project activities.

All of these pressures had a serious impact on the overall atmosphere at the schools, staff relations and the employees' health.

There were co-workers of ours who couldn't handle the pressure, so they would take sick days. People got sick; none of this was to be taken lightly. Staff relations got disrupted permanently. To such an extent that some people are not even speaking to one another. At one point, the tables turned. Those who didn't join the strike were fewer than those who did, they started feeling the pressure, so to speak, because they had to teach, and they weren't happy about it. They couldn't handle the pressure either.

The students who were forced to go to school by their parents also had to suffer the consequences because they had to go to school, while their friends didn't.

“There was a case where a student suffered a nervous breakdown.”

What created additional pressure was the labeling of teachers who joined the strike as supporters of the opposition party or as “Soros’ Merchants”¹ due to which teachers did not want to support the strike so as not to harm their co-workers.

[...] This form of pressure did occur, co-workers who were supporters of a party and we knew who they were and what they stood for. We hear from Sitel TV or I don't know which channel, it was that allegedly members of SDSM support the strike, so

¹ In Macedonia, the state propaganda labels every critical opposition that emerges from civil society as a Soros Merchants (in Macedonian: sorosoidi, platenici na Soros etc.)

they were called “sorosoidi”, hence our co-workers decided to step back. They said we won’t come to these events so as not to cause you any harm, which is true.

3.2.4. Identifying Strike Outcomes and the Perspective for Teachers’ Trade Union Organization

People believed that the agreement reached between SONK and MES was a fairly controversial one. Part of the public was disappointed by the fact that the Trade Union demands were not fully met as well as the way that the agreement was reached behind closed doors and “overnight.”

We are extremely disappointed by what had happened because one of the main statements of the President of SONK was that he will not accept any terms without consulting the membership. It turned out that he accepted whatever he accepted overnight without consulting any of us, i.e. he had accepted almost everything. Except for the fines to be stopped, but that wasn’t important anyway. That is just deluding ourselves, it isn’t finding a solution. And we are at a crossroad. We just selected the new President of the Trade Union and we agreed upon a specific time frame, in how long we will try to do something to make a difference. If not, we are all ready to leave the Trade Union.

These kinds of disappointments from the trade union are nothing new, and continue the trend of leaving the trade

union organization, mistrust and/ or younger teachers and employees in education institutions not joining the Trade Union at all. Namely, one of the participants we spoke to share his/ her negative personal experience with the Trade Union and the reasons behind leaving the organization.

In 2004 the Trade Union did not want to support its members. It was 12-13 workers who asked the Trade Union attorney for help to support us and tell us where to turn to about our right to get permanent employment. But the attorney told us that there was nothing he could do and that we were to look for a solution elsewhere. And as a sign of protest, the 12 of us who were faced with this problem left our employer's service records and the Trade Union. Ever since, a great number of members have decided to leave the Trade Union. Why is this so? Because every time a certain policy prevails which should reveal our disappointment, and it turns out that, I don't know, as if the President of the Union is more of a political player. We have been talking about this and there have been lots of examples which prove this point, that the President does not support his membership, but on the contrary, he serves to soften the negotiations. Something big will happen overnight, and all of a sudden the belief that things will start happening will disappear... our demands, a miracle will happen. Not even once since I left the Trade Union has there been a single President to truly defend his kind.

Nevertheless, the teachers would like that a new, more authentic trade union organization appears, which would truly represent the workers' interests and rights, and which they could join. They hope that such an organization will be established soon, because they understand the advantages of collective action and being a part of a community that is based on the principles of solidarity, and which aims to protect its members.

4. CONTROLLING BUSINESSES

One of the least researched areas regarding the influence of state policies is the business sector. The largest part of the research is about corruption. In a dysfunctional state, corruption occurs widely. However, in the context of competitive authoritarianism, the meaning of systematic corruption is more important. Namely, in open authoritarianism, the government has a direct and unrestricted control over resources. When there is a hybrid regime, especially in competitive authoritarianism, where the government is won by the process of elections, a great amount of finances is needed to win these elections. Therefore, it is important that the concept of **captured state** is understood. As mentioned earlier, this is a state where corruption runs deep, it is institutionalized and legalized.

In one of the reports from 2013 of the *United Nations Office on Drugs and Crime* corruption is highlighted as the fifth most important obstacle to doing business, preceded by the particular types of public official or specific administrative procedures related to taxes, frequent changes in laws and regulations, i.e. political instability.¹⁰³



Chart 6
Number of fines in the Law on Trade Companies (1995-2014)

As illustrated in Chart 6, the number of fines in the Law on Trade Companies was the lowest from 1995-1999 with a total of 38 fines. In the following years due to the Law Amending the Law on Trade Companies, their trend continued to rise, and there were even 65 fines in 2014.

Besides the usual mechanisms of corruption, there is occasional information in the media about the government's control over businesses through public official procedures. There is always some reservation regarding this topic, and the sources of information are protected due to the fear that people from the business sector have experienced, and the repercussions they faced. For example, the 2012

article from “Fokus” magazine entitled “When Companies Live in Fear from the Government, the Production of Fear is the Greatest Business” the journalist states: “No one will speak openly that the penalty provisions’ policy serves to discipline disobedient businessmen, issuing fines is a completely arbitrary process, and facilities are closed due to the smallest operating errors...”¹⁰⁴ This state of spreading fear in the business sector also appears in the discourse of the politicians from the opposition.

It is interesting that the same rhetoric that spreads fear among the citizens and businessmen is being used by the pro-government media; however, the accusations made are for the opposing party - it is actually the opposition that creates fear and uncertainty.¹⁰⁵

The fear to talk about the problems people are facing in public, and which result from the state regulations, causes people to address this grave problem only in their immediate surroundings. This makes it possible to intimidate people with inspections and fines for other purposes as well. Due to the fact how delicate the issue and the context are, this type of data can be generated only by utilizing qualitative research methods. For example, the findings from the research conducted by the ISSHS for the project “Civic Organizations for Advocacy and Promotion of the Right to Free Expression and Free Association” point to the fact that inspections were used to accomplish some political goals.

Namely, in a focus group conducted with citizens from the municipality of Strumica an example was mentioned about systematic inspector visits in companies, which are believed to be close to the opposition, just before the upcoming elections were about to take place. The media also reported on several occasions about the visits from the inspectorate and the great number of companies that were closed as a result.”¹⁰⁶

Trade companies affected the most by these regulations are the small and large enterprises where only a few inspections and fines can cause the whole business to shut down.¹⁰⁷ The companies are unable to pay the receivables, and can therefore become insolvent and be forced to close.¹⁰⁸ Small enterprises are most vulnerable to this problem, and are afraid to speak publicly about it. “We no longer complain about this. Three years ago when we shared our challenges publicly on one TV channel, the following day several inspections paid our company a “random” visit. I can’t even explain how hard they tried to find “something” wrong to issue us a fine. In the end, when they could not find anything they chose such a random, irrelevant thing; however, there was a fine prescribed for silly things like those as well. They issued us a fine, which along with the unpaid receivables, further endangered our work,” is what a micro enterprise stated, and which a public enterprise owes money to for services rendered.”¹⁰⁹

The Public Revenue Office used to report the number of inspections and fines on their website as part of their regular public announcements until 2014. Ever since, there are no public announcements regarding inspections, fines issued or notices made. By analyzing the data available from the public announcements provided by PRO, it was concluded that the number of inspections and fines has not changed.

The new changes in the regulation on sliding scale fees determined by the companies' ability to pay, as well as issuing warning notices before issuing a fine are the most recent changes made, which were interpreted in two different ways.¹¹⁰ On the one hand, the changes made were interpreted as the government being responsive to criticism and was dedicated to improving business conditions. On the other hand, this was interpreted as a rushed decision, which had only one goal and that is political marketing before the elections. We would like to state that regardless of the fact that the sliding scale fees do make things easier, the problem still remains that the executive branch functions as the judicial branch, because it has a great penalizing power, it overpowers the other branches, and maintains the systematic levels of corruption.

CONCLUSION

The Republic of Macedonia has become a “hybrid regime” from the “competitive authoritarianism” type for quite some time now. The political crisis of 2014 and the wiretap release of high level officials only confirmed the findings of eminent international organizations and institutions. The supporting base of competitive authoritarianism are the elections. The main focus and energy of the regime is to win the elections. Hence, the pressures and the exhausting of resources by the institutions. The goal of all of this is to win the upcoming elections. Therefore, we can conclude that Macedonia is in a permanent state of an electoral campaign.

Hybrid regimes focus on establishing mechanism for control and power centralization between two electoral cycles. That is why there is concentration of power in the executive branch. While the open authoritarianism does not concern itself with the legality of exercising power, competitive authoritarianism is obsessed with the “Constitution and laws.” The laws themselves are the instrument for concentration of power. According to our research, the over regulation, especially of those areas that are usually defined by laws, as well as exorbitant fines are the main mechanisms of the authoritarian rule and stifling of democracy. Namely, the overregulation process makes it almost impossible for one physical or legal entity to not get fined. Hence, there is selective justice of the “politically incapable.” Our research revealed that there a great increase in the number of fines as well as their amount, which occurred after 2008.

Controlling education and the education process is a precondition to maintaining the hybrid regime in the long run, as well as making young people passive. Our research revealed that the last few years there has been a systematic change of the curriculum towards ideological indoctrination instead of education. The textbook analysis indicated that the government promotes undemocratic values through education, such as: *obedience, relinquishing one's rights and freedoms, and loyalty*. Furthermore, disrupting secularity and dividing students in a multicultural society is very concerning. Introducing the concept of external testing created additional pressure, unnecessary stress and anxiety among the teaching staff, students and parents.

The goal of the regime in competitive authoritarianism is to win the elections, but here lies its weak spot as well. Hence the control of the media, silencing and discrediting criticism is the priority of every regime. According to all of the relevant international reports, the Republic of Macedonia marks a sharp decline in freedom of expression and freedom of media in the last few years. We demonstrated in our research that the constant amendments of the laws and the exorbitant fines have a very negative effect on the freedom of media. One of the most negative tendencies in the last few years was the government advertising, resulting in allocation of public funding to private pro-government media. This was clearly confirmed by parts of the recorded conversations which were released by the opposition as

part of their project “The Truth about Macedonia.” The ban on government advertising from December, 2015 is a step forward.

Silencing the freedom of expression in the last few years went hand in hand with limiting the right to strike. The analysis of the changes in the policies shows that the constant changes make the process of organizing a strike more challenging. Adding provisions which limit the right to strike to a total of 27 laws makes it impossible for workers to express their dissatisfaction to the employer. From the study of the educational workers’ strike of 2015 the tactics employed by the government to limit the right to strike are evident. Controlling business and the economy is one of the main aspects of a captured state. Namely, the most typical examples of captured states or captured regulations as a means of systematic corruption are certain big companies which influence the regulatory bodies and legislation in systematic, not always illegal ways in order to create a competitive advantage environment for these companies. High state officials in the Republic of Macedonia are capturing the state, creating an environment and rules which benefit their personal interests as much as possible, their private businesses or their immediate associates. As follows, the whole market, the whole business climate is “set up”, and fair competition is almost impossible. The whole economic regime can actually be referred to as *crony capitalism* rather than functional market economy.

What can be done? Unlike open authoritarianism, competitive authoritarianism does not depend on the force of government, but on the elections and the public perception of democracy. Even though they do not have the full scope of democracy, in competitive authoritarianism societies, democracy and freedom are widely used values, even if only formally speaking. Hence, this is the weakness of such regimes.

The pro-democratic leaders of society have the opportunity and power to reveal the violation of democratic standards, the authoritarian regime, and violation of freedoms, and thus influence the public. Considering the fact that the regime's legitimacy is determined by public opinion, the more the public confronts the authoritarian and undemocratic nature of the regime, the more its legitimacy is undermined. The shift in public perception should move towards public marginalization of authoritarian practices and values, and affirmation of democratic values. Deep transformation of values and practices is necessary for all public officials, not just the government, but the opposition as well.

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⁸¹ “All national television broadcasters of general format shall be obliged to broadcast at least 8 hours of the week, and the public broadcasting service at least 14 hours, vocal and/ or vocal-instrumental music in Macedonian or the languages of the minorities that are not part of the majority in the Republic of Macedonia, 50% of which should be pop vocal and/ or vocal-instrumental music, and 50% should be folk vocal and/ or vocal-instrumental music”, Law on Audio and Audiovisual Media Services (Official Gazette of the Republic of Macedonia, 184/13), Article 92, Paragraph 4.

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