JAHR | Vol. 12/2 | No. 24 | 2021

Preliminary communication / Prethodno priopćenje
Zaprimljen/Received: 7. 10. 2021.

https://doi.org/10.21860/j.12.2.2

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Bioethics institutionalisation in the Republics of Kosovo and Albania: legal, public-administrative, and social challenges

SUMMARY

The paper tries to briefly present the thorny way of development of bioethics and bioethics institutionalisation in the two countries of South-East Europe – the Republics of Kosovo and Albania – with respect to legal, public-administrative, and societal parameters. Departing from a "European institutionalisation" primer, the article analyses the history and current situations in Kosovo and Albania, taking into account the most prominent individuals and ideas in the domain of bioethics institutionalisation. While Kosovo is missing the ratification of some basic documents (the Oviedo Declaration), Albania has a longer and richer experience in this field, but still lacks the diversity of approach so present and promising in the majority of European countries. Finally, recommendations for bioethical institutionalisation are provided, and the particular role of ethics in the development of public administration in the case of Kosovo is exposed in more detail.

Keywords: bioethics, institutionalisation, Kosovo, Albania, public administration.

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Introduction – What does it mean to "Become a part of Europe"?

Struggling with Europeanisation is always hard. At a theoretical level, researchers often face a problem when trying to get to grips with the concept of Europeanisation itself. At a practical level, the point is focused on the issue of explanation, measurement of effects, and the control of alternative rival hypotheses (Radaelli, 2002).

Even if understanding Europeanisation is problematic in the member states, it is even more challenging in the candidate (or candidate-to-be) countries. This is especially true in a broader context of the Balkans, listing successors of ex-Yugoslavia and adjacent countries (Albania, Bulgaria, Romania). Although some of them reached EU membership several years ago (Slovenia, Bulgaria and Romania in 2004; Croatia in 2013), the majority of them are still candidates (Serbia, Montenegro) or potential candidates (Bosnia and Herzegovina, Kosovo).

Beyond and parallel to Europeanisation, as a prerequisite and consequence of political integration, EU membership implies a wide range of other social criteria and civil adjustments to be achieved and implemented. The most important ones include economic freedom, improvement of public administration, internal affairs, and the necessary formal legal requirements (especially in the context of human rights, social security, access to healthcare, education, etc.). Or, as Green Cowles et al. (2001) suggest in a definition emphasising the logic of Euro-related political change: "We define Europeanisation as the emergence and development at the European level of distinct structures of governance, that is, of political, legal, and social institutions associated with political problem-solving that formalise interactions among the actors, and of policy networks specialising in the creation of authoritative European rules" (Green Cowles, Caporaso & Risse, 2001).

Bioethics is a discipline covering a broad and socially complex set of requirements and performances (political, legal, public administrative, institutional, educational, etc.). Often struggling with the definition of the concept and a full recognition at the European level, however, in the last few decades, it has gained great importance all across European countries. The crucial reasons for this were the progressive institutionalisation of bioethics, "going hand in hand with the politicisation of bioethical issues on the public agenda, and the need to determine official rules in this field. Bioethics then becomes a political standard, influential in, and inextricable from, public action in biomedicine" (Tournay, 2006).

Having this in mind, we have selected bioethics as a model, a peculiar "case discipline," to be analysed and anatomised in the context of Europeanisation and institutionalisation in Albania and Kosovo.

On the institutionalisation of Bioethics in Europe

Over the last few decades, and with a lot of resistance (often concealed and hard to defend in terms of European values), post-Potterian and post-Hellegerian bioethics in Europe has undoubtedly succeeded in finding certain paths of development and niches of survival. These have primarily been individual scientific institutions and centres, which are to a great extent the result of individual efforts rather than the systematic institutional and state support that bioethics has enjoyed in the USA. However, even in these cases, European examples were predominantly initiatives driven by American influences, often with the support of the Catholic Church, which from the very beginning showed a strong interest in bioethical issues.[1]

Besides the activity of religious communities, the work of scientific institutions and the improvement of academic curricula, bioethics in European countries gradually developed institutionally through the establishment of (bio)ethical national commissions. Almost a decade after the first American national body (in 1974, the American Government established the *National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research*), the first such body in Europe was founded in France in 1983 – a committee on life sciences and health (*Comité consultatif national d'éthique pour les sciences de la vie et de la santé*). The French model was soon followed by other countries (Italy and Portugal),[2] while Anglo-Saxon and Scandinavian countries opted for ad-hoc commissions on individual issues.

Parallel with the establishment of national bodies, the question of establishing a 'European ethical commission' started to arise in public but was slowed down due to differences between European countries. The 1980s in Europe were marked by the strengthening of Euro-integration processes, the creation of new political institutions and the invigorating of existing ones, and the parallel expansion of areas of common transnational interest. Although the first such advisory body of the European Commission at the level of the then European Community was established as early as 1991 (the *European Group of Advisers on the Ethical Implications of Biotechnology*; renamed in 1998 as the *European Group on Ethics in Science and New Technologies*, EGE),[3] the authorities in Brussels have still not taken a significantly different stand

1 The founder of the first centre for bioethics in Europe in 1976, the Spanish *Borja de Bioètica*, gynaecologist and obstetrician Francesc Abel, worked in 1972 at the Kennedy Institute of Ethics closely with Hellegers and American bioethicists of the time (Schotsmans, 2005). This pioneering example of establishing a centre based on Anglo-American experiences was soon followed by certain other European cities (Lyon, Paris, London, Leuven, Maastricht: for more details, see: Rinčić, 2011).

2 The French committee initially had 41 members, but today has 39: 5 of them belong to the mainstream philosophical and spiritual groups, 19 were elected because of their qualifications and interest in ethical issues, and the remaining 15 come from the scientific-research community.

3 For more details, see: Rinčić (2011).

with regard to approaches and standardisation of bioethical issues. Bearing in mind the fact that bioethical discussions almost as a rule open up complex questions of a philosophical, religious, and culture-bound nature, the European authorities have retained a somewhat advisory role with regard to bioethical issues, leaving it to individual countries to adopt concrete positions and solutions.[4] While it has taken an active part in dealing with questions concerning the free movement of people, goods and services, the protection of intellectual rights, and consumer protection, Europe has always left its member states to act independently with regard to bioethics in accordance with their specific value systems,[5] tacitly confirming its reservations and limitations in complex issues, such as life, death, individuals, autonomy, or dignity. The member states generally shared a similar attitude: 'The governments of member states still consider public health policy too delicate and too influential within national choices, and also too culturally specific to leave the responsibility for it to supranational authorities' (Redwood, 2003; Steffen et al., 2005).

However, the EU, as a 'community with limited powers', nevertheless successfully compensates for its legal weakness in the field of bioethics, at least to a certain extent, by working closely and being legally complementary with the Council of Europe. Although the first recommendations of the Parliamentary Assembly of the Council of Europe date back to the late 1970s[6], more significant activities started in the 1980s with the establishment of the *Ad-hoc Committee on Genetic Experts* of the Council of Europe (since 1985: the *Ad-hoc Committee on Experts on Bioethics*). Apart from networking the existing activities of member countries in the field of bioethics, the main goal of this body was to create a common bioethical document, which was finally accomplished in 1997 with the *Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine* (abbreviated: *Convention on Human Rights and Biomedicine*), CETS No.: 164.[7] As a legal-political act of the community of European countries gathered in the Council

4 The situation is perhaps best reflected in the title of the 1993 book, *Around the World in 80 Laboratories* (*Le tour du monde en 80 laboratories*), in which the author Bertrand Jordan, by echoing Verne's journey around the world, sums up the diversity of attitudes towards science and research in individual European countries. While medical research in France has a solid basis and public support, in Germany, it causes doubts.

5 Among other things, this European 'inability' to accept the text of the Charter of Fundamental Human Rights as a constituent part of the Constitutional Treaty, harmonised with the EU *acquis communautaire*, ended up rather ingloriously with the rejection of the mentioned treaty in 2006. For more details, see Rinčić, 2011.

6 *Recommendation 818* (1977) *on the situation of the mentally ill*; *Recommendation 779* (1976) *on the rights of the sick and dying*; *Resolution 613* (1976) *on the rights of the sick and dying*.

7 'Pursuant to Article 88 of the Constitution of the Republic of Croatia, the Croatian Parliament on 16 July 2003 passed the Decision on the Proclamation of the Act on ratification of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, and its Additional Protocols on the Prohibition of Cloning Human Beings and on Transplantation of Human Organs and Tissues of Human Origin (Narodne Novine, 13/03; Rinčić, 2011).

of Europe, the Convention (ETS No 164, opened for signature on 4 April 1997 in Oviedo, Spain, and thus known also as the "Oviedo Convention") is one of the greatest successes of European countries, and an example for lobbying in similar efforts to create common platforms for action in the field of bioethics. Acting as a framework instrument, comprehensive in its approach, but only with minimal binding standards prescribed, and with the legal protection of national courts, the Convention at the same time does not cease to remind us of the presence of a still strong resistance from individual countries, which challenges its current strength and the certainty of creating a common European bioethical future.[8]

Situation in Kosovo and Albania

While Albania has been independent since 1912, Kosovo declared its independence only in 2008. The judicial system of Kosovo is a civil law system divided between courts with regular civil, criminal and administrative jurisdiction with jurisdiction over litigation between individuals and the public administration.

Albania joined the Council of Europe in 1995, while Kosovo has planned to fill the application since 2015 (*de facto*, Kosovo is under the jurisdiction of the European Court of Human Rights). Like several other Eastern-European countries, bioethics "arrived" in Kosovo and Albania only in the early 1990s, a few years after the collapse of the Communist regimes. Interestingly but not uniquely, bioethics started to develop among and by forensic medicine experts first (similarly to many centres in Romania, Croatia, Slovenia, etc.): the reason for it is to be searched in the fact that forensic medicine specialists often taught deontology as well or maybe because, as it is the opinion of Bardhyl Çipi from the University of Tirana, "bioethics in Albania was born in medical scandals" (corruption, physicians' misdeeds, etc.).[9] Quite regularly participating in Lošinj Days of Bioethics and Southeast European Bioethics Forums, the physician and lawyer, university professor Bardhyl Çipi (b. 1947), a pioneer of bioethics in Albania, studied bioethics in the New York Hastings Center, published a textbook of "bioethics from forensic point of view" (Çipi, 2001) and still remained faithful to classical topics of biomedical ethics like confidentiality, abortion, AIDS, experiments on humans and animals, torture, euthanasia, autopsy, organ transplantation, etc. (Çipi, 2016; cf. Muzur and Rinčić, 2018, pp. 118). Çipi also writes in daily newspapers, explaining the importance of bioethics for the recent COVID pandemics. According to Çipi's own recollection, he first heard of bioethics at a series of conferences in Eastern Europe he attended in 1996, while he learned on

8 Up to this point, cf. Rinčić and Muzur, 2012, pp. 88-91, and Rinčić and Muzur, 2019, pp. 53-56.

9 See examples in: Çipi, 2005, pp. 268-275.

Fritz Jahr's work from Croatian colleagues. After 2010, bioethics took more ground in Albania: Altin Stafa (b. 1976), working at the Department of Neuroradiology in Bologna, Italy (he graduated from the same university), became in 2012 the Head of the Albanian unit of the UNESCO Chair in Bioethics (located in Haifa, Israel). With his colleagues, Stafa participates in international congresses and promotes bioethics (exclusively) as biomedical ethics.

Thanks to his relations with colleagues in Kosovo, Bardhyl Çipi was probably very important for the "import" of bioethics into this country. More recent publications from Kosovo demonstrate a broader range of topics, including medical ethics, ethics of artificial intelligence etc. A unit of the Haifa UNESCO Chair in Bioethics was established in Shtime (ca. 20 km SW from Prishtina), at the Centre for Integration and Rehabilitation of Mental Health, led by the psychiatrist Miftar Zenelaj. Albanian National Bioethics Committee is chaired by Professor Orion Gliozheni, a gynaecologist, while in Kosovo, there has been no bioethics committee formed as yet. In 2011, Albania signed and ratified The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine as the only international legally binding instrument on the protection of human rights in the biomedical field. Albania has not signed, however, any of the Convention's additional protocols (regarding the prohibition of cloning human beings, transplantation of organs and tissues of human origin, biomedical research, and genetic testing for health purposes). Kosovo has not signed the Oviedo Convention.

Due to their stated interest in entering European Union, both Kosovo and Albania will need to fulfil requirements for full membership. In the field of bioethical institutionalisation, these countries undoubtedly have numerous differences, sharing, however, several similarities (following in the list of recommendations).

Recommendation for bioethical institutionalisation:

- Political structures – introduction of bioethical bodies (national assemblies), strengthening legal system support (ratification of important documents, translations, etc.); building intergovernmental networks related to the discipline, accompanied by public-administrative support (translation, forms, officers, etc.).
- Academical structure – research-supporting system (national and European), (obligatory) education in bioethics in medicine, philosophy, agriculture, legal studies…, translation, scholar exchange, conferences, etc.

- Public structures – defining social condition, actors, resources, problems, and solutions; popularisation of the discipline (e. g., bioethical café), media campaign, etc.

The particular role of ethics in the development of public administration: The Kosovo case

In addition to the importance of ethics (bioethics) in the field of health administration, and consequently, in that of administration in general, bioethics is of great importance, especially in the field of public administration. Thus, the development or stagnation in the development of public administration in Kosovo are derivatives of the level of ethics installed in institutions. The higher the level of ethics in public administration, the appearance and impact of negative phenomena, such as conflict of interest, corruption, nepotism, the politicisation of public administration, etc., will be smaller and vice versa, the lower the level of ethics in public administration, the greater the occurrence and impact of these negative phenomena.

Administration represents a phenomenon without which today's society cannot be thought of. We meet with the administration almost every step of the way and every day (Stavileci, 1997). The administration has a dual historical role in society, where at the same time, it is an instrument of power and the bearer of useful works that satisfy the needs of citizens (Gjelmo, 2008, p. 2). André Siegfried, a well-known French economist and historian, has rightly referred to today as "the time of administration" (l'age Administratif).

The provision of public services through a public administration built on the basis of the most advanced international standards is considered not only as an internal matter but also as a necessity in terms of achieving the goals of EU integration.

It is clear that a public administration which functions and is organised on the basis of international standards, with special emphasis on those of the EU, primarily serves the interests of the entities that receive services from this administration (internal aspect), but by providing public services through a functional administration and organised according to EU standards, consequently aims to meet the criteria of EU integration (external aspect).

Although the lack of ethics in public administration is a multidimensional negative phenomenon because it extends to many areas of public life, politics, economy and beyond, nevertheless, the extent and negative impact of the lack of ethics in the field of public administration has a direct impact first of all on hindering the advancement

of the administration, and consequently, negatively affects the realisation of the rights of the subjects that encounter every day and receive services from the administration.

The process of advancing public administration in Kosovo and capacity building, respectively the establishment and development of legal and institutional mechanisms for advancing the administration, has been accompanied by these two factors with opposite action. First, the necessity of providing public services through a public administration built on the basis of the most advanced international standards, as well as through a public administration that functions and is organised according to international standards, has led the public administration in Kosovo to be continuously reformed, developed, and advanced to the current level. Second, in the processes through which the development of public administration in Kosovo has passed, in addition to the marked progress and development, various forms of negative phenomena have appeared that have hindered the advancement of public administration. One of these negative phenomena that has greatly hindered the progress in public administration is the lack of ethics in public administration, and consequently, in the lack of ethics, other negative phenomena have appeared (conflict of interest, corruption, nepotism, the politicisation of administration, etc.).

Based on the state's obligation to provide public services to its citizens in the most advanced forms, as well as based on the state's intentions to exercise state executive power through an advanced public administration, and in this case, to meet one of the criteria key to EU integration, Kosovo has not stood idly by in the face of these negative phenomena. Rather, it has created the relevant legal and institutional infrastructure and established appropriate mechanisms in order to raise the level of ethics in public administration, prevent and combat these negative phenomena. However, in practice, the implementation of these laws and the functioning of these mechanisms is still at a low level.

In conclusion

Even if signing declarations and formalising institutions and bodies have never been the only criterion for dynamic and successful development of a discipline, it is usually considered one of the measures in the estimation of its progress. The appearance of the UNESCO Chair units both in Kosovo and in Albania, as well as the slow but traceable growth of publications, demonstrate a certain degree of advancement of bioethics in both countries. In order to meet the overall societal needs, legal challenges, and public-administration demands, nevertheless, bioethics in both countries will have to wait for the launching of its own scientific journals, university departments, and, last but not least, a detachment from the prevailing narrowed-

down medical-ethical approach. It is an immediate need of time to extend and study the role of ethics outside the field of health administration, with special emphasis on the field of public administration in Kosovo and Albania. This is because, as it has been emphasised, raising the ethics in the public administration is a necessary factor for preventing and combating negative phenomena which hinder the advancement of the administration towards the fulfilment of the European Union criteria for public administration.[10]

References

Çipi, B. (2005). Bioethics in Albania in a legal medicine view. In A. Čović and T. S. Hoffmann (Eds.), *Bioethik und kulturelle Pluralität – die südeuropäische Perspektive/Bioethics and Cultural Plurality – the Southeast European Perspective* (pp. 268-275). Sankt Augustin: Academia Verlag.

Çipi, B. (2016). *Bioethics in Albania Nowadays: For the Further Development of Medical Ethics, Forensic Medicine and the Medical Rights*, 2nd edition. Tirana: Ada.

Çipi, B. S. (2001). *Bioetika: në një këndvështrim mjekoligjor*. Tirana: Naim Frashëri.

Decision on the Proclamation of the Act on ratification of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, and its Additional Protocols on the Prohibition of Cloning Human Beings and on Transplantation of Human Organs and Tissues of Human Origin. *Narodne Novine*, 13/03.

Gjelmo, Z. (2008). *Theory of Public Administration*. Pristina: AAB.

Green Cowles, M., Caporaso, J. A., and Risse, Th (Eds.). (2001). *Transforming Europe: Europeanisation and Domestic Change*. Ithaca/London: Cornell University Press.

Muzur, A., and Rinčić, I. (2018). *Bioetička Europa našeg doba: struje, kormilari, sidrišta* [Bioethical Europe of our time: streams, steerers, anchorages]. Zagreb: Pergamena/ZCI za integrativnu bioetiku.

Radaelli, C. M. (2002). The domestic impact of European Union public policy: notes on concepts, methods, and the challenge of empirical research. *Politique européenne*, *1*(5), 105-136.

Redwood, H. (2003). Toward a Mid-Atlantic model of health-care: a European perspective. In N. Klusen (Ed.), *Europäischer Binnenmark und Wettbewerb: Zukunftsszenarien für die GKV* (pp. 52-69). Baden-Baden: Nomos.

Rinčić, I. (2011). *Europska bioetika: ideje i institucije* [*European Bioethics: Ideas and Institutions*]. Zagreb: Pergamena.

Rinčić, I. & Muzur, A. (2019). *Fritz Jahr and the Emergence of European Bioethics*. Zürich: Lit.

Rinčić, I. & Muzur, A. 2012). *Fritz Jahr i rađanje europske bioetike*. Zagreb: Pergamena.

Schotsmans, P. (2005). Integration of bio-ethical principles and requirements into European Union statutes, regulations and policies. *Acta Bioethica*, *11*(1), 37-46.

10 This paper was produced as part of projects *Bioetički standardi urbaniteta. Grad kao okvir etike života (s posebnim osvrtom na Rijeku)* [*Bioethical standards of urbanity. The city as a framework for the ethics of life (with special reference to Rijeka)*], project leader Iva Rinčić (uniri-human-18-49), and *Novi trendovi u bioetici srednje i jugoistočne Europe: istraživanje i umrežavanje resursa* [*New trends in the bioethics of Central and Southeast Europe: Research and networking of resources*], project leader Amir Muzur (uniri-human-18-4-1130), financed by the University of Rijeka and in part supported by Croatian Science Foundation under the project IP-2020-02-7450.

Stavileci, E. (1997). *Introduction to Administrative Sciences*. Prishtina: Office of textbooks and teaching aids Kosovo.

Steffen, M., et al. (2005). Introduction: the Europeanization of health policies. In M. Steffen (Ed.), *Health Governance in Europe: Issues, Challenges and Theories* (pp. 8-17). Routledge: Taylor & Francis Group.

Tournay, V. (2006). De la bioéthique à l'action publique en matière de biotechnologies: la production des thérapies cellulaires. *Cahiers internationaux de sociologie*, *121*, 265-286.

Bioetička institucionalizacija u Republici Kosovo i Republici Albaniji: pravni, javnoupravni i društveni izazovi

SAŽETAK

U radu se ukratko pokušava prikazati trnovit put razvoja bioetike i institucionalizacije bioetike u dvjema državama jugoistočne Europe - Republici Kosovo i Republici Albaniji - s obzirom na pravne, javnoupravne i društvene parametre. Polazeći od primjera "europske institucionalizacije", u članku se analiziraju povijest i aktualna situacija na Kosovu i u Albaniji, uzimajući u obzir najistaknutije pojedince i ideje u domeni institucionalizacije bioetike. Dok Kosovu nedostaje ratifikacija nekih temeljnih dokumenata (Deklaracija iz Ovieda), Albanija ima duže i bogatije iskustvo u ovom području, ali još uvijek nema raznolikost pristupa koja je tako prisutna i obećavajuća u većini europskih zemalja. Konačno, daju se preporuke za bioetičku institucionalizaciju te je detaljnije izložena posebna uloga etike u razvoju javne uprave u slučaju Kosova.

Ključne riječi: bioetika, institucionalizacija, Kosovo, Albanija, javna uprava.