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Exploring Cross-Generational Traits and Management Across Generations in the Workforce: A Theoretical Literature Review

Christopher Ardueser[1], MBA, Diana Garza[2], Ph.D.

[1]*University of the Incarnate Word, United States, coardueser@gmail.com*
[2]*University of the Incarnate Word, United States, dgarzaor@uiwtx.edu*

ABSTRACT: Understanding and identifying the traits of different generations and their effects on management is essential for creating a strategic business operational management structure. This literature review aims to identify traits associated with each generation and determine if any cross-generational traits exist to capitalize on each group's characteristics and find solutions in managing multiple generations. This research will examine the literature on each generation consisting of the Traditionalist, Baby Boomers, Generation X, Millennials, and Generation Z; and attempt to identify traits that affect each generation's ability to be managed in the workforce and work with other employees of different generations. The goal is to test the assumption that some, if not all of these traits, are unique to or are shared across generations. This review will explore each generation's set of traits and management characteristics to develop the groundwork to form successful teams and further explore the best way to collaborate across different generations by exploiting and acknowledging work values displayed by each generation. This review will also provide a platform for further studies and can be used as a standard to build stronger, more cohesive, and productive teams made of multi-generations.

KEYWORDS: Generations, Traditionalist, Baby Boomers, Generation X, Millennials, Generation Z, Management, Generational Traits, Cross-Generational Traits

Introduction

Members of each generation share and display unique traits where critical experiences have developed and become part of their lives. These experiences have given way to how each generation thinks, acts, and makes choices. Glass (2007) states that each generation possesses a generational persona recognized and determined by common age, location, shared beliefs, behavior, and perceived membership in a generation. There are currently five different generations alive in the United States, and all five of them are participating in the workforce. The Traditionalist Generation and Baby Boomers are the oldest of the active generations. According to the Bureau of Labor Statistics, of all workers in these two generations, 42% are in management, professional, or related fields (Toossi and Torpey 2017).

Furthermore, according to the U.S. Bureau of Labor Statistics (2019), almost 90% of all Traditionalist generational workers are in some director, executive, or advisory role but only hold 5% of all positions at that level of an organization. The remaining workforce is composed of Generation X, Millennials, and Generation Z. The combination of the five generations makes up the current workforce that is either working side by side, as coworkers, as a person who manages or is being managed. This phenomenon has been perpetuated by increased life expectancy and a delay in retirement (DelCamp, Knippel and Haney 2010). With longer life spans, long years in the workforce, and differences in generational thinking, it has created a workplace consisting of both different and similar management styles. This paper aims to examine how generational traits influence management to accomplish operations through better collaboration amongst teams and utilize specific generations' traits to identify the similarities and differences amongst different ages.

This study addresses the theory that there are problems associated with cross-generational management and that different generations respond differently to different management styles. Additionally, shared traits can be utilized across the different generations to create more efficient, effective, and collaborative teams. The purpose of this literature review is multi-fold. First, we aim to identify traits that are specific to each generation. Then we will identify issues in management from the literature that is related to generational trait differences. Lastly, we will aim to identify any cross-displayed traits that can be determined and, in the future, used to create effective cross-generational management. The literature review approach will help identify characteristics associated with each generation, if any existing models or theories already exist, explore and evaluate these characteristics, and potentially help develop the groundwork for the field.

Generations

Each generation comprises a group of people who have experienced different events, typically before entering the workforce. These events have influenced them into whom they are as a collective group today. Glass (2007) states that each generation possesses a generational persona recognized and determined by common age, location, shared beliefs, behavior, and perceived membership in a typical generation. Members of a generation are shaped by the same "defining events," which they collectively experience during their crucial developmental years from age five to eighteen. The experiences they share bind the generation together and give them a sense of common ground (Glass 2007). These experiences have been narrowed down to six causes. From these causes, values and beliefs are created that stick with them over time and influence their personalities. (1) A traumatic or formative event such as an assassination of a political leader or wartime. (2) A dramatic shift in demography, which influences the distribution of resources in a society. (3) A privileged interval that connects a generation into a cycle of success and, or failure. (4) Creating a sacred space wherein sacred places sustain a collective memory. (5) Mentors give impetus and voice by their work. (6) Generations are formed through the work of people who know and support each other (Wyatt 1993). As we have displayed through the six causes, each group will be different and affected differently with different outcomes. However, some groups may experience not the same but similar events that may result in similar trait development. Further, the general agreement among many experts is that the U.S. workplace is changing and becoming divided into cohorts (Crampton and Hodge 2007). How leaders view generational differences and how each generation views their leaders can also cause workplace problems (Zemke, Raines, and Filipczak 2000).

Traditionalist Generation

The Traditionalist Generation also referred to as the Veteran Generation, and G.I. Generation were born between 1922 and 1943. Even though retirement is viewed as an earned privilege for years of hard work, many members of this generation work beyond retirement age (Underwood 2007). This generation has been through a cumulation of wars, survived the great depression, and had many socioeconomic influences on what formed their characteristics associated with their generation. Macon and Artley (2009) identified that the Traditionalist Generation had an intense loyalty to their employers. Their performance has been consistent over the years. They value a strong work ethic and strive to better their organizations before worrying about their successes or failures. The focus on their organization's success before their own can be attributed to the characteristic that the Traditionalist Generations values safety and job security. This trait was a direct cause of surviving the great depression. Tollbize (2008) determined that the high percentage of this generation who served in the military ended up adopting "top-down" decision-making. The top-down decision-making is a consistent trait throughout literature as a critical trait to this group and an influencer in management styles. It is associated with authoritative leadership and management styles.

Additionally, from military service, teamwork was found to be a trait that many members of the Traditionalist Generation valued (Kooij, Lange, Jansen and Dikkers. 2014). Patota, Schwartz, and Schwartz (2007) also found this accurate and stated that the Traditionalist

Generation displayed strength in working collaboratively with others. Authority was highly respected as an avenue to seek a short-term increase in selected social relationships triggered by the Socio-Emotional Selectivity theory towards a simple and clear directive style (Kooij, Lange, Jansen and Dikkers 2014). The rationale for this style is that the Veterans were men who were loyal to the organization. Through a comprehensive literature review, Lancaster and Stillman (2002) stated that this generation found themselves merely happy to be employed.

Traditionalists are known for their accountability, clear communication, management of resources, organization, service orientation, and ability to work collaboratively with others. In terms of weaknesses, Traditionalists tend to struggle with adaptability, initiative, technology, valuing diversity, delaying rewards, and valuing training (Patota, Schwartz and Schwartz 2007).

Baby Boomer

The Baby Boomer Generation was born between 1946 and 1964 and is the byproduct of the Traditionalist Generation. They are defined as loyal, possess an attachment to authority, traditions, and culture (Arslan and Staub 2015). This generation of employees are defined as workaholics, self-motivated, and resistant to change. Baby Boomers are hardworking and motivated by their position, income, and reputation in the workplace (Harber 2011). They are currently holding upper and senior-level management positions (CTE Statistics Table Archive 2019). They have been defined as being idealistic, willing to sacrifice personally and professionally to achieve success (Glass 2007). According to Crumpacker and Crumpacker (2007) Baby Boomers are competitive and against perceived laziness. Research by Kramer and Solomon (2011) found that Baby Boomers live to work and tend to respect authority and hierarchy in the workplace, perhaps because they were brought up in a work environment where authority and hierarchies were respected. However, contradicting research by Zemke, Raines, and Filipczak (2000) states that Baby Boomers despise the traditional hierarchy and make every effort to turn the hierarchy upside-down. Zemke, Raines, and Filipczak's (2000) research found that Boomers prefer a collegial and consensual style. They are passionate and concerned about participation and spirit in the workplace. They espouse communication, sharing of responsibility, and respect for each other's autonomy.

Generation X

Generation X, born between 1965-1980, is a generation raised with more technology than their predecessors. They have been defined as being more diverse, self-defined cynical, and having a lack of loyalty to employers than previous generations (Tolbize 2008). They are happy to conform to societal norms and uphold traditional values, such as respecting authority figures and hierarchical order (Cox, Hannif and Chris 2014). This segment of the population is beginning to make up a large portion of the workforce, reaching about 35% (Pew Research Center 2017). Generation X is motivated by opportunities to collaborate, diversify, and make a successful change. This generation is sometimes called the Echo Boomer generation as the behaviors and attitudes of the generation are very similar to the Baby Boomer generation, except for competitiveness, which has been replaced by an expectation of collaboration (Lancaster and Stillman 2002). Literature by Delcampo (2010) finds that they tend to be fair, competent, and straightforward. Generation X does not respect authority as did past generations, as they prefer egalitarian relationships; they like to be challenged and thrive on change. Brutal honesty is a trademark of this generation.

Millennials

Millennials, also referred to as Generation Y born between 1981 and 2000, prefer a polite relationship with authority, prefer leaders who pull people together. This generation believes in collective action and a will to get things changed (Zemke, Raines and Filipczak 2000). The Millennial generation consists of close to 90 million individuals in the United States. Approximately 1 million millennials enter the workforce each year, and by 2020, they will form almost 40 percent of employed Americans (Lykins and Pace 2013). Research on millennial employees indicates that this generation is significantly different from previous generations,

particularly in higher self-esteem, assertiveness, and narcissism than earlier generations at the same age (Deal, Altman and Rogelburg 2010). Millennials are also more accepting of diversity, team-oriented, capable with advanced technology, and adept multitaskers (Farrell and Hurt 2014). Martin and Otterman (2016) also found some firmly held values of this generation, including being more ambitious to make a difference and secure a comfortable life. They displayed a greater interest in learning new skills and desired security over stability, were creative, adaptable, and multitaskers. Among the firmly held values found by Martin and Otterman (2016), having unrealistic entitlement expectations, expecting prompt recognition and reward, and expecting instant gratification can influence management styles' effectiveness.

Gen Z

Generation Z, born between 2000-2020, the youngest of the workforce with the eldest of the group just starting to enter the workforce, has their own set of distinctive traits. They have been identified as being and having reliance, freedom, individualism, addiction to technology, and speed (Burkup 2014). Characteristics consist of multitasking, efficient technology utilization, individualism, lack of desire to work with or be part of teams in the work environment, creativity, global point of view, and preference for non-standard and personalized work (Burkup 2014). They have also been characterized as being achievement-oriented, have greater economic well-being, are more highly educated, and are more ethnically and racially diverse than any other generation. However, they are also the least likely to have worked when they were young (Schroth 2019). According to Burg and Burg (2019), Gen Z denies diversity more broadly; they are expected to stay at a company less time than millennials and have higher expectations for employers' ethical behavior.

Management

We have defined management as working with and through other people to accomplish organizational goals and manage its human capital (Montana and Charnov 2000). In the case of management styles, they are defined as a recurring set of styles associated with organizations' decision-making process (Albaum, Yu, Wiese and Herche 2010). Characteristics of these styles have been identified in a 4-system management style by Likert (1967) to be (1) Exploitative Authoritative - managers of this style tend to motivate individuals by threats and punishment, and decisions are imposed on employees. (2) Benevolent Authoritative - lower-level employees make decisions within the given limited framework; however, significant decisions originate from the top. Top managers feel more responsibility. (3) Consultative System - this type of management style is related to the Human Relations Theory. Managers of this style tend to motivate subordinates through rewards; moreover, lower-level employees are free to make decisions related to their work. Top managers still have control over decisions; however, they count their subordinates in action plans before setting goals. (4) Participative System - this is the most effective management style; it is related to Human Resources Theory. The participative system includes a high level of participation, responsibility, motivation, communication, and satisfaction (Likert 1967). In attempting to identify organizational management decision-making and how different styles execute decision-making, managers begin to recognize that through the use of different management styles, a firm will find and use specific characteristics of those styles to address the presence of other generational characteristics. As has been shown above, each generation has its own set of attributes and values that drive and influence their actions, which will result in the ability to effectively manage teams, departments, and individuals in the process of reaching the firm's goals.

Effects on Management

Prior literature has indicated two key points: (1) There are traits that are recognized as what makes up an effective manager. (2) Identification of generations shows that each generation has different traits that are unique to them. With the above-identified points, organizations must recognize that

there will be issues management issues among teams and employees if the problem is not addressed. Conflict will arise, resulting in the consequences of greater organizational issues.

The Society for Human Resource Management (Burke 2005) identified that work values are the most significant difference among generations and a significant source of conflict in the workplace. Conflict is defined in different ways, then broken into subtypes, then followed up with different theories. The research identified by Shonk (2020) included three conflict types: (1) Task conflict, (2) Relationship conflict, (3) Value conflict. Task conflict often involves concrete issues related to employees' work assignments. It can include disputes about dividing up resources, differences of opinion on procedures and policies, managing expectations at work, and judgments and interpretation of facts. Relationship conflict arises from differences in personality, style, matters of taste, and even conflict styles. In organizations, people who would not ordinarily meet in real life are often thrown together and must try to get along. Value conflict can arise from fundamental differences in identities and values, including differences in politics, religion, ethics, norms, and other deeply held beliefs. Andre (2018) addressed that generational conflict must be discussed, understood, and resolved effectively so that a culture of openness and appreciation prospers in the workplace environment. They suggested that conditions, such as incompatible goals and differences in values and beliefs, can drive a situation toward conflict. Furthermore, Andre's (2018) review suggested that the successful resolution of conflict requires mutual respect among all team members, active listening, good communication skills, adherence to the issue, recognition of differences, and acknowledgment of the conflict's emotional aspects. Collaboration, a "win-win" strategy, focuses on consensus between the parties on achieving their goals for a positive resolution.

By identifying generational differences in the workplace that create conflict and correlating it with a specified list of conflict types, these types of conflict can influence differences and create management problems. Analysis by Knight (2014) has been able to identify common questions that organizations have seen managers and leaders wrestling with: (1) How should I relate to employees of different age groups? (2) How do I motivate someone much older or much younger than I am? (3) What can you do to encourage employees of different generations to share their knowledge? Additionally, Knight (2014) suggested the use of Reverse Mentorship and was able to offer positive effects, especially in the older generations.

Beutell and Wittig-Berman (2008) reported that managers and human resource professionals need to consider generational differences and monitor program usage patterns for each group. Additionally, when it comes to management and management traits across multiple generations, an empirical study by Murphy, Greenwood, Ruiz-Gutierrez, Manyak, Mujtaba, and Uy (2006) found significant instrumental and terminal value differences across generational groups. It emphasized the importance of adopting appropriate management practices. Thompson and Gregory (2012) noted the differences between generations in preferred leadership styles. Murphy (2004) stated that 'if managers do not understand these value similarities and differences, they could be setting themselves up for failure or loss of valuable employees by not knowing how to motivate employees'. A study addressing generational differences in work values concluded that significant generational differences existed in terms of work values when considering generations (Cogin, 2012). Sullivan and Decker (2009) report that the conflict between generational cohorts can cause instability within the group functioning. An example of this can be shown in Weingarted (2009) research, where older generations expect to be respected and looked up to by the younger generation while the younger generations expect to be treated as equals.

Literature and past research have been able to provide and support consequences to the problem. As identified, each generation is composed of different traits, and management is composed of different styles. More notable, when these differences are working together, issues arise if there are no workplace guidelines or policies.

Discussion

By addressing the differences among generational traits that are associated with management characteristics, we have been able to identify components to have cross-generational cohesiveness.

Additionally, literature reviews were able to identify the following solutional approaches that will incorporate the differences of the generations and the value that each generation brings: (1) Training (2) Communication (3) Involvement (4) Motivation.

The value of proper training should positively impact the performance of individuals and teams. Training activities can also be beneficial regarding other outcomes at both the individual and team level (Herman 2009). By incorporating this into management operations, a strong connection can be formed to capitalize on the different traits found among the various generations. When looking at generational gaps, an approach to training employees is to focus on all generations' shared values. Training refers to a systematic approach to learning and development to improve individual, team, and organizational effectiveness (Goldstien and Ford 2002). Using an identified systemic approach, such as focusing on shared values, will result in a more cohesive and effective team synergy while capitalizing on generational differences.

Open communication is key to success (Wallace and Mathews 2002). A key trait of management is maximizing each person's potential to meet a common goal. As we can see, each generation is composed of defining characteristics. One way to succeed is to have communication with each generation. Communication builds adherence to valued traits such as loyalty, giving direction to success, and collaboration. Communication will continue to be the catalyst for sharing information among teams and provides the foundation for more effective organizational performance.

Organizational structures must allow for teams to become more involved. There needs to be collaboration from each generation in tasks that will build unity and not separation. If the new generations are not involved and accepted as changemakers, they will become withdrawn (Brown 2003). A study about cross-generational communication determined that Boomers need someone to teach them how to use technology effectively. Younger generations are technology savvy and can reverse-mentor Boomers. In turn, Boomers can mentor younger generations on the value of teamwork and strategic decision-making (Glass 2007). This type of involvement gives value to each generation; it will satisfy a younger generation's perceived traits while allowing the older generation to have the time to express what they value.

Motivation brings all the generations together, sets standards, goals, and a sense of community. Lancaster (2002) noted that motivation is critical, and that each generation has different goals as a defining trait. Research by Brown (2003 identified ways to maximize different generations through motivation. (1) Recognize and utilize individuals who can connect to other generations. (2) Present information in ways to please all generations. (3) Be open to innovative ideas or exploit the skills that the generations bring to the table. (4) Respect the viewpoint of other generations. Remember that just because they are young does not mean that they do not have valid input or because they are older, they do not have validity to current situations. Using motivational techniques will help attract individuals of all generations to the team and the overall company goals.

Generations are unique to themselves; their traits make them who they are, dictate how they will act, and what they will value. Management is a process that continues to perform consistently; its tasks include decision-making and using assets and resources efficiently. Generational differences add an important variable to managerial decision-making in diverse organizations. To complete the process, those management characteristics must be able to incorporate actions such as training, communication, involvement, and motivation while providing direction. This is not an ending process as it will continue to happen as one generation leaves the workforce and their associated traits, a new generation enters the workforce with a new set of defining traits.

Conclusion

Literature has provided insight into various traits that past research has found to be present in each generation. All the given generations provide some overlapping defining characteristics. However, for the majority, each generation was unique to itself and thus upholding generational differences.

As we can see, events that a generation experiences help define them and create a set of traits or characteristics unique to that generation. Generational factors will affect management styles and strategic decision-making as well as organizational performance. The Traditionalist generation that consisted of a large amount of military and war experience was much more loyal and willing to accept top-down management (Tolbize 2008). But when looking at the latter generations that had not experienced military or wartime, they are much more independent and eager to be part of the decision-making processes.

The literature included in this study provided insight into management, management styles, and management traits. Literature indicated that each generation was different, and that management has a structure, but that the system can have differences based on who is executing it and who is receiving it. When looking at the generational differences, we can observe that some generations are more adaptable for cross-management training. However, as literature has shown, management itself is a constant. Thus, it will have a baseline of execution-style, and there will have to be some overlap in management styles across generations. By continuing to execute studies into generational traits and cross-generational management, theories and practices can be developed to increase productivity, performance, synergy, and overall organizational and cultural fit. These practices will give value to each generation's uniqueness.

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Pathologies of Separation: Family Chopping, Parental Mobbing, Parental Alienation Syndrome

Rossella Marzullo

Senior Researcher qualified as Associate Professor, Mediterranea University, Department of Law, Economy, and Humanistic Studies, Italy
rmarzullo73@gmail.com

ABSTRACT: Separation, even in the hypothesis where it unfolds on a non-conflictual basis, creates a serious *vulnus* in the life of an individual and in his family history, because it generates an empty space in the sphere of the identity of each partner, built over time within of the relationship. In union dissolution, as well as in adolescence, people are passed through by feelings of loss and disorientation that are overcome only when they are able to process them and reintegrate them into the new identity. The separative experience is therefore an experience of crisis that, if is managed in the persistence of the conflict, can have a very negative impact on the psycho-physical well-being of the children. Some authors have highlighted that post-separation conflict has worse effects on children than that which precedes separation, since the former presents itself as a destructive conflict, characterized by hostility, aggression and negative feelings and is resolved less frequently, putting more the adaptive capacity of minors to their new condition as children of separated parents is at risk.

KEYWORDS: separation, conflict, pathological relationship, children prejudice

Introduction

Separation, even in the hypothesis in which it unfolds on a non-conflictual basis, still creates a serious *vulnus* in the life of an individual and in his family history, because it generates an empty space in the sphere of the identity of each partner, built over time at the internal relationship.

Separation does not only mean having to distance oneself from the person with whom one has shared part of one's life, but it is also "an opportunity for separation-dismemberment of oneself with respect to one's own history and family belonging" (Cigoli 1997).

This is a source of frustration, of anguish for the loss of important ties, as a result of which a redefinition of one's self is required, undermined by the disavowal of roles and identities connected to married and family life.

It is a process of redefinition similar to that experienced in adolescence, where, as Erickson points out, the question is "who am I now?". In union dissolution, as well as in adolescence, people are passed through by feelings of loss and disorientation that are overcome only when they are able to process them and reintegrate them into the new identity.

The separative experience is therefore an experience of crisis, also in the etymological sense that the word expresses. Deriving from the Greek κρίσις (separation, sorting and in the broad sense judgment), the crisis refers to a moment of choice, of strong decision that inevitably triggers a process of disorganization and a sense of loss.

“There is a great, misunderstood sense of death in the experience of separation. Death of an essential part of oneself that each one, with sometimes unsuspected seriousness, had projected not so much or only into the partner and children but into the overall life plan that they embody. Starting a family, no matter what people say, is still a terribly serious thing" (Bernardini 1996).

According to the cyclical theory of mourning (Emery 1998), the process of elaboration of loss, rather than being crossed by phases that follow one another in an orderly way one after the other, manifests itself through emotional oscillations, which occur repeatedly and are renewed at constant time intervals.

According to this approach, the main feelings that appear cyclically are: love, understood as the hope of getting back together, concerns for each other and nostalgia; anger, manifested through resentment, frustration and anger towards the other; and finally, the sense of loneliness and sadness, which is expressed through depression and the sense of despair.

The scientific literature (Bohannan 1970) observes that, in the period of time necessary to rework the separation from the other (but above all from oneself), a series of reworking processes unfold that can take very different times for their completion.

Studies carried out on separation have shown that in the early years the conflict between former spouses is on average quite high, so much so that more than two thirds of couples who separate need the support of experts to mitigate the conflict and find an organization of adequate life (Johnston, Campbell, and Tall 1985; Furstenberg and Cherlin 1991; Davies 1994; Cummings and Davies 2002).

After the first two years, however, there is a lowering of the percentage of conflicts, in fact the data show that only 10-25% of couples persist in the opposition linked to separation (Maccoby and Mnookin 1992).

The persistence and extent of conflict after separation are related to the characteristics that conflict had during marriage: couples who experienced the highest levels of conflict during marriage are those who most frequently continue to implement the same dynamics conflictual even after separation and even many years after the separative choice, making the behavioral sequences highly predictable (Fincham 2003), since they are dominated by a series of attitudes, now rooted and introjected, which at the same time make it difficult to interruption and simple prediction in their way of manifesting themselves.

A typical pattern of behavior is that whereby one partner exerts pressure on the other by constantly criticizing him, while the other partner takes a defensive and passive attitude, according to a paradigm that pre-existed the separation and that flows into it.

Therefore, the pre-existing conflict continues even after the separation of the two partners, although there may be differences with respect to content, intensity and frequency (Buchanan and Heiges 2001).

The data relating to the content profile of the discussions show that after the separation, the most frequent reasons for confrontation concern economic issues (maintenance allowance, division of extraordinary expenses) and property (assignment of the marital home and any other assets, division of inheritances, etc.), issues relating to the custody and visitation regime of minors and the emotional and relational life of the ex-partner (Hetherington, Cox, and Cox 1976).

As for the differences recorded in relation to the intensity, although the empirical research on the subject is still limited, it can be hypothesized on the basis of the first data that the conflict between the ex-spouses presents a greater intensity and an emotional-aggressive charge after separation, probably because the never-extinguished reasons of the conflict that arose during the marriage found in the separation an amplification factor that acts by increasing the intensity of the opposition.

Conflict after separation

After separation, the way in which the conflict is expressed changes. It often happens that separated parents use more provocative forms of communication that are channelled into an escalation of symmetrical and reciprocal accusations. In these cases, it is more difficult to reach shareable compromise solutions, as the ex-spouses use destructive and ineffective techniques to resolve the conflict.

It can be deduced that, immediately after the separation, the children could be exposed to very high levels of conflict between their parents, with very significant repercussions on their psycho-physical well-being.

Some authors have highlighted that the post-separation conflict has worse effects on children than the one that precedes separation (Papp, Cummings, and Goeke-Morey 2002), since the former presents itself as a destructive conflict, characterized by hostility, aggression and negative feelings and is resolved less frequently, putting the adaptive capacity of minors at greater risk to their new condition as children of separated parents.

It should also be noted that the marital conflict after separation lasts longer, is more intense, the topics of discussion are mainly related to children and is strongly rooted in the former partners. These characteristics inevitably represent a higher risk factor for the adaptation of children, who can become more sensitive to conflict as a system of relationship with the other, having experienced a conflict that has never or almost never resulted in peaceful solutions.

When the spouses are unable to process the separation, it happens that these continue to maintain, through the conflict, a "desperate bond" (Cigoli, Galimberti, and Mombelli 1988), which dramatically compromises the parental functions, making the parenting is one of the areas in which couple conflict occurs most often, with a consequent increase in stress for children (Lubrano Lavadera 2011).

The persistence of conflict and dysfunctional relationships between parents influence the quality of life and adaptation of minors, because they are involved in painful dynamics where they are forced to take part active in parental conflict (Cavedon and Magro 2010).

The separation of the couple must not and cannot compromise the parental function which remains unaltered if the boundaries between the marital roles and the parental roles are well defined. Some scholars (Malagoli Togliatti, Lubrano Lavadera, and Modesti 2000), have highlighted that when these boundaries are confused and lost, pathological alliances can develop, terribly harmful for minors, already tried by separation as a traumatic event in itself.

Among the pathological alliances, for example, the so-called triangulation, which occurs when a child is forced to choose between the two contending parents. Or there is a deviation, which sees the child busy drawing the attention of parents to himself through symptomatic manifestations. That is, coalition can also occur, which is implemented through the alliance of the child with one parent against the other.

In highly conflictual separations it is possible to find another dysfunctional relational dynamic capable of undermining the healthy adaptation of minors, i.e. parenting (Johnston, Gonzalez, and Campbell 1987), consisting in the role reversal with one or the other parent (Cavedon and Magro 2010). This implies a subjective distortion of the relationship, whereby the person who acts it relates to his child as if he/she were, on a phantasmatic level, his own parent.

The role reversal thus becomes instrumental for the parent who intends to satisfy desires for possession, suppress the feeling of loss of the partner and mitigate the resulting loneliness linked to separation.

No less important in this dynamic are the relative feelings of guilt and failure given by the unrealistic ideality of the initial premises: premises and promises not kept by the other, often accused of having made the initial love die with his behavior inappropriate and malicious (Malagoli Togliatti, and Lubrano Lavadera 2005). When parenting persists over time, it risks becoming a form of emotional 'exploitation' of the child, who is placed in a "double bind" condition.

Naturally, in the hypothesis in which children are exposed to such risks (and the phenomenon is unfortunately on a worrying increase), the intervention of the competent bodies must be invoked without a doubt, otherwise the possibility that the child may even irreversibly alter his psychic balance is very high.

Minor involved in coalitions or triangulations, on the other hand, experiences strong conflicts of loyalty due to the feeling of being contested and, according to many researchers, it is precisely this condition that mediates the effect of the conflict on the adaptation of the minor himself (Buchanan, Maccoby, and Dornbusch 1996).

It often happens that the child agrees to ally with a parent because he sees him as more powerful, or because he feels rejected by the other, or because he fears of being abandoned.

The impact of such conduct on the psychic level is devastating. We witness the appearance of feelings of guilt or anguish of abandonment due to the loss of the "rejected" parent, processes of early adultization, depressive experiences and difficulties in disengagement during adolescence are triggered.

Ultimately, the persistence of the conflict between the ex-spouses exposes the minor to a high risk of maladjustment on an emotional and behavioral level, as he is more likely to be involved or involved (more or less consciously), in dysfunctional relational processes for his psychic development.

Family chopping

The conflicting nature of the separation triggers a mechanism of mutual accusations between the ex-partners, which in most cases results in the initiation of a judicial process in which it is customary to exhibit evidence of responsibility and parental inadequacy of the former spouse towards the other.

Thus, the emotional relationship loses its character of intimacy and is made public, conversations are often recorded, the real root of the physical and psychological malaise of the children is ignored or denied who, against every principle of child protection and in a sort of perverse heterogenesis of ends, it becomes a pretext to contact the local services, the police, the emergency room of the hospitals, to ask for not care or treatment, but reports to be brought to trial as proof (Monaco, Viola, and Marinucci 2000).

Conflicting couples can remain entangled in an implacable hatred for an indefinite time, even for a lifetime, to the point of completely nullifying the original liberating intent on the other that the separation should have achieved.

The former partners trapped in this toxic bond remain pathologically close in a "deadly embrace" (Main 1966), which—as Salluzzo (2020) argues—"prevents them from finding the psychological opening to mentalize the past and the present, ending up losing confidence and the enthusiasm to fully envision a future life."

The expression Family chopping describes the alarming and growing phenomenon of judicial revenges carried out by former spouses. The use of legal conflict as a solution to family conflict is affirming itself in a worrying way, and—paradoxically—not only does it prove unsuitable for the purpose of resolving conflicts, but on the contrary, it generates a recurrence of family conflict to the point of worsening the already existing compromised situation.

Italian judicial system of conflict management, in fact, is not structured for taking charge of the nucleus in dissolution, nor supported by a network of territorial services for the support of parenting and minors tried by inadequate and prejudicial parental behavior, ending by nourishing the opposition rather than sedating it.

It follows that the problems of the couple in separation feed and feed themselves within the system which, on the other hand, would be entrusted with the institutional task of managing conflicts. The data relating to the persistence of the conflict even after starting and concluding the judicial process demonstrate the serious inadequacy of the system called upon to take charge of the dissolving family. The courtrooms often become the theater in which the hatred of the parties is staged taking over everything, rather than being the seat of election to settle disputes.

In this regard, some authors (Salluzzo 2004) speak of judicial acting out, recovering a concept deriving from Freud's theory of dynamic psychotherapies, which includes all impulsive behaviors or those characterized by repression or poor mentalization, aimed at improperly resolving a discomfort of a psychological nature.

"The subject genuinely believes he is adopting the most appropriate strategies to deal with the discomfort while, in reality, he is only endlessly perpetuating destructive and chronicizing behaviors of his own and others' discomfort. In this case, acting becomes an impediment to understanding the psychological nature of the problem. By doing so, the ex-spouses can unthinkingly initiate—psychoanalysts would define it an "acting"—the separation and continue to conflict for years (sometimes lifelong) using the judicial system in a perverse way, as a stage where to represent their discomfort, in the illusory hope of a reparation for their sufferings" (Salluzzo 2004).

The violence of the relationship, after separation, can take on subtle and malign forms and is transferred to the often undiagnosed discomforts of the children, which can explode both in the short term and over time.

The system of separations and the management of dysfunctional and pathological family relationships entrusted to non-specialized lawyers and the civil sections of the ordinary courts ends up dehumanizing justice, lent to the blind hatred of the parties and the implacable desire for revenge.

The data show, in fact, that some distorted behaviors have found breeding ground precisely in the courtrooms, have gradually emerged in the flow of interaction on a legal level, therefore they are the result of it, they belong to that precise space of interaction.

It is necessary to become aware of these data and to understand that the current system not only does not work, but also increases the rate of conflict and, with it, its degenerative followers. Family conflict would have a completely different expression if it were manifested in state bodies appointed to take charge of the entire dysfunctional family unit from a systemic perspective.

Minors and the family cannot be treated like any file, nor can they represent a source of profit for lawyers who need to feed the litigation and not settle it in order to survive.

A possible solution would be to bring together all matters relating to the family and minors in a single separate judicial body, with internal mediation structures and experts and a supportive and effective network of services externally.

Parental Mobbing

The term mobbing, borrowed from ethology (Konrad 1963) and used in this branch of science to indicate the behavior of some animal species consisting in threateningly surrounding a member of the group in order to remove him, was borrowed from the German-Swedish researcher Leymann (1990), who was the first to theorize the existence of the same phenomenon in the workplace.

The term derives from the English verb to mob, which means “to assault, to storm”; in fact, for Leyman, bullying corresponds to an unethical and hostile communication addressed by one or more individuals, in a systematic manner, to a single victim, who, because of such behaviors, is pushed into a desperate and defenseless position.

This condition of subordination crystallizes over time due to the continuous mobbing actions that persist and are carried out over a prolonged period of time, causing very important psychological damage to the victim.

Based on the model of bullying investigated in the workplace, recent studies (Giordano 2005) have begun to export this paradigm also in the analysis of dysfunctional family relationships, thus introducing the concept of parental bullying.

According to Giordano's (2005) definition this phenomenon "consists of the adoption by a parent, separated or in the process of separation, of preordained aggressive behaviors or, in any case, aimed at preventing the other parent, through psychological terror, family, social and legal humiliation and discredit, the exercise of one's parenthood, debasing and destroying his relationship with his child, preventing him from expressing it socially and legally and interfering in his private life."

Parental bullying therefore emerges from the interaction between the profound conflict of the couple who separates and the system of the State institutions responsible for managing it. On the basis of indications contained in the Parental Mobbing Inventory (Giordano, Patrocchi, and Dimitri 2006), an empirical tool for evaluating the presence of a separative context with mobbing transaction, it is possible to divide mobbing behaviors into three macro-categories:

1) mobbing behaviors that affect the parent-child relationship;

2) mobbing behaviors that affect the social and legal expression of parenthood;

3) personal mobbing.

The conducts falling within the first macro-area aim to destroy the relationship between the mobbed parent and the child through conduct that experts define as "sabotage of acquaintances", or through a campaign of denigration.

The sabotage of dating is rooted in the stubborn action of the custodial parent who—systematically and deliberately—prevents the acquaintances between the child and the other parent, regardless of both the needs of the child and the rulings on the meetings coming from the judicial authorities.

In cases of medium or serious conflict, the minor, especially if at an early age, is not handed over to the non-custodial parent with trivial excuses or simply without explanation; or, in cases of more heated conflict, the refusal to leave the child with the other parent is manifested with screams and even serious accusations that demolish within the child's conscience the figure of the parent with whom he does not live.

In other cases, the parent must meet the children in degrading or humiliating situations: in the presence of relatives of the other parent or persons unlawfully in charge of supervising him, or in ways that strip him of any parental role.

Another form of sabotage of attendance that is frequently encountered in practice is that of the unilateral management of extracurricular activities by the custodial parent, who deliberately chooses—and without the knowledge of the former partner—to schedule such activities precisely on the days in which the other parent has the right of access.

A particularly serious type of obstacle to parent-child associations is relocation, that is to say the transfer of the minor with the custodial parent to a city or country whose distance from the other parent's home tends to seriously compromise or completely prevent the acquaintances.

The campaign of denigration, which is the other way in which parental bullying negatively affects the relationship between the child and the bullied parent, is often accompanied by threats and involves the use of a wide range of accusations presented across the board: son, to the entire friends and family network of the ex-couple, to the school and extracurricular environments frequented by the child and in court (typical reports of sexual abuse or ill-treatment against the minor, which almost automatically involve the suspension of attendance, which can only resume in a so-called "protected" environment, leading to a humiliating devaluation of the parental figure).

The main purpose pursued by the bullying parent is to destroy the figure of the other parent in the eyes of the child: he/she is spoken of badly to the child, his inadequacy and misconduct are pointed out to him; every aspect of the behavior and daily life of the bullied parent and of his relationship with the child is negatively characterized by verbal and non-verbal allusions and comments; gifts purchased by the mobbed parent are hidden, lost, despised; the child is convinced that he is ill if he meets the other parent; the figure of the new partner is exalted and the child is invited to call him "dad" or "mom".

The second macro-area, which includes mobbing behaviors that affect the social and legal expression of parenthood, refers to those conducts that aim to prevent the mobbed parent from exercising their parenting at a social and legal level.

This can take place either through marginalization from decision-making processes, or through a campaign of aggression and social and legal delegitimization.

In the first case, the non-custodial parent is prevented from participating in fundamental choices for the child's life (education, health, travel, etc.). For example, he knows only once the decisions have been made and the consequential obligations have been carried out, which school the child has been enrolled in, he is not informed who the teachers are, nor what the school hours are, nor does he know anything about school results of the child. Custodial parent even goes so far as to order the school staff not to let the other parent near the child and contacts with teachers are preceded by denigration campaigns against the other parent. In case of illness, the parent victim of bullying by the other is not warned and becomes aware of it only once the morbid event has already occurred and—sometimes—after it has already been resolved, with all this which entails on a psychological level for the child who does not feel the other parent at his side in a moment of difficulty.

In these cases, the non-custodial parent's exhaustion is explained by an alleged "defect", which would damage the psychic and physical balance of the minor: he is a "careless" parent or, on the contrary, "morbidly" attentive to his conditions of health.

In the case of the social and legal aggression and de-legitimization campaign, the bullying behaviors are aimed at destroying the social credibility of the mobbed parent and legally preventing him from exercising parenthood. The latter is unjustly accused of being an unreliable parent and of not contributing to the maintenance of the minor; becomes the subject of legal complaints and assaults (child abuse, parental inadequacy, violence and mistreatment in the family) without any real foundation; evidence against him/her is prefabricated; he is put in a bad light in the eyes of public operators in charge of following his case.

Finally, the third macro-area of parental bullying is what is called “personal bullying”. These are mobbing methods based on the destructive intrusion into the private life of the mobbed parent and carried out with the specific intent of heavily damaging his relationships and his social and professional credibility.

This creates a climate of continuous tension (Giordano 2005), defined by experts as a state of "psychological terror" (Ege 1996), which constitutes the core of the mobbing experience: one is terrified of the idea that, without any warning, they are made impossible all contacts (including telephone) with their children; every ring of telephone or doorbell inspires the fear of a new fax, a new registered letter, a phone call from the lawyer or a visit who announce new attacks, new problems, new impediments, with the consequence of suffering a condition of permanent stress, such as to negatively affect the quality of life and the normal performance of daily activities.

Ultimately, the aim of the mobber parent is the expropriation of the parenthood of the other parent and in the extreme situations there are two possible outcomes: the contraction of what is called Parental Alienation Syndrome or the almost spontaneous exhaustion of the non-custodial parent from every aspect of the life of the child, who, overcome by the bullying of the mobber, commits the biggest mistake a parent can commit: he gives up and abandons his offspring.

In line with Giordano's thought (Giordano 2004), it is believed that it is “impossible to acknowledge that parental bullying in conflict of separation is a very serious social problem, capable of causing high human and social costs, and that it is absolutely necessary to equip oneself with prevention tools and adequate protection, modifying all those legislative and judicial devices that legitimize its expansion to any couple unable to manage their own conflict.”

Parental Alienation Syndrome

The involvement of the minor that continues in the conflict between the two most significant adults in his life can result in the so-called P.A.S. (Parental Alienation Syndrome), resulting from

a very severe traumatic stress that manifests itself in the refusal of the relationship and meetings with the non-custodial parent.

The PAS, Parental Alienation Syndrome, widely described and analyzed by Gardner (1985) since the early 1980s has only recently become the subject of scientific investigation for psychology and pedagogy. It seems to manifest itself, in most cases, precisely in the context of conflicts arising from separations and consists in the refusal by the child towards the alienated parent.

Gardner (1985) defined the Syndrome as "a disorder that arises almost primarily in the context of custody disputes. Its main manifestation is the campaign of denigration directed against a parent, a campaign that has no justification: it is the result of the programming carried out by the indoctrinating parent and the personal contribution offered by the child to the denigration of the target parent."

As is known, the issue of the Parental Alienation Syndrome is much debated, so much so that in the scientific literature, two opposing fronts have formed, one that proclaims its existence and one that denies it.

The deniers start from the assumption that in the DSM-5 (i.e., the Diagnostic and Statistical Manual of Mental Disorders) the term "parental alienation" with reference to the PAS (Parental Alienation Syndrome) or the PAD (Parental Alienation Disorder) is not explicitly reported, so that the phenomenon would be neither a syndrome nor a defined psychic disorder.

Bernet, Gregory, Reay, and Rohner (2017) and Guglielmo Gulotta, have clarified, after the publication of the new version of the Manual, that in fact the authors of the DSM-5 have however included the problem of the rejected parent in relational dysfunctions, while avoiding the use of the expression "parental alienation".

In its original formulation (Gardner 2002), the PAS would concern a child involved in parental conflict, generally in a context of separation and/or custody dispute, who manifests an aversion towards the so-called parent. "Alienated" or "excluded", induced by the other parent, is defined as "alienating" or "programmer".

There is no doubt that this distorted model of relationship constitutes a pathological bond, which consequently creates a dysfunctional relational circuit.

Therefore, beyond the inclusion or exclusion of this phenomenon in the most accredited classifications, there is a relational problem capable of affecting the psychic structure of all the members involved in the network of affective correspondences that can be qualified as a "family", which also remains after its disintegration.

Conclusions

The question of the serious compromise of the relationship between the alienated parent and the child also opens up the further question of the infringement of the right to dual parenthood, which is a right of children, not of adults.

The importance of the right to dual parenthood proclaimed by art. 24 of the Nice Charter and by art. 9 of the New York Convention on the rights of the child—is also confirmed by the ECHR (ECHR ruling no. 25704 of 9 January 2013—Law against the Italian Republic) that, in a ruling relating part of a father, has ascribed to the Italian State the responsibility of having violated art.8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as the prosecuting judicial authority, in the face of obstacles posed by foster mother and by the minor daughter herself to the father to effectively and continuously exercise the right of visit, had not undertaken to implement all the measures necessary to maintain the family bond between father and minor daughter, through a concrete and effective exercise access rights in the context of a legal separation between parents.

In particular—according to the European judges—the Italian authorities had limited themselves repeatedly and with stereotyped formulas to confirming their measures, as well as prescribing the intervention of the social services, which were requested from time to time information and delegated a generic control function, thus resulting in the consolidation of a factual situation which is prejudicial for the father, while they should have quickly adopted specific measures to restore the collaboration between the parents and the relations between the father and the daughter, also making use of the mediation of social services.

In the event of conflictual personal separation between spouses—the ECHR warns—the custody of the minor child implies an effective and concrete right of visit of the non-resident parent. The absence of collaboration between the conflicting parents and, sometimes, the hostile attitude that the collocating parent opposes to the other parent, which translates into a real obstacle to attendance between them and the child, involves a serious violation of the law of the latter to respect for family life and does not release the national authorities from the obligation to seek every effective means in order to guarantee the right of the minor to attend both parents adequately and promptly.

It must be said, then, that in the event of high conflict between former partners, it also happens that the jurisprudence anchors the possible subsistence of the minor of the so-called PAS, that is, the parental alienation syndrome, because the data that matters for the jurisprudence of legitimacy and for part of the merit is the concrete examination of parental behaviors suitable for depriving a child of his rights, including that of dual parenthood.

Therefore, regardless of the abstract judgment on the scientific validity or invalidity of the PAS, in the matter of custody of minor children, if a parent denounces the behavior of the other parent, custodian or tenant, of moral and material separation of the child from himself, for the purposes of modification of the methods of assignment, the trial judge is required to ascertain the truthfulness of the aforementioned behaviors, using the common means of proof, taking into account that the ability to preserve the continuity of parental relationships with the other parent, to protect the child's right to dual parenthood and balanced and serene growth.

Evidence of conduct aimed at hindering or not favoring the cultivation of the emotional relationship with the other parent is therefore sufficient to consider the right to two-parenthood violated, which fully falls under the category of so-called damage-event, from which the consequent compensation pronounced in favor of the subjects who have suffered the negative effects of the aforementioned unlawful behavior can well follow.

The jurisprudence of merit is full of decisions in favor of compensating the damage to the person caused by the family member guilty of having engaged in oppressive conduct to the detriment of the other spouse or child.

In these cases, the good protected by the legal system is not only the person as such, but his formation within the family, because family obligations are not only socio-moral constraints, but specific juridical commitments, whose violation cannot fail to produce consequences.

On the other hand, there is no reason not to compensate such prejudices, if not at the cost of an unjustified and illegitimate compression of fundamental rights, relating to the development of the individual both as an individual and in the social formations in which he lives, including family.

Values such as health, family solidarity, freedom (obviously also that of cultivating emotional relationships) determine the emergence in the family of penetrating obligations of protection for certain subjects (for example for parents with respect to children), violation of which is a potential source of non-pecuniary damage, qualifying as unfair, and therefore—for this reason—compensable.

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The Offenses Against Religious Freedom According to the Romanian Criminal Code of 2014

Teodor Manea

Faculty of Law, Titu Maiorescu University, Romania, teodor.manea@prof.utm.ro

ABSTRACT: The latest Romanian Criminal Code came into force on the 1st of February 2014. Given that the previous Criminal Code entered in effect on the 1st of January 1969, it was designed according to the ideology of the Communist regime and it was becoming increasingly difficult to adapt it to the changes which occurred in the Romanian society after the Revolution of December 1989. Therefore, the need for a new, unified and updated criminal legislation was keenly felt in 2014. This paper will address one of the innovations proposed by this normative act, the crimes against religious freedom and respect owed to the deceased. The analysis will begin with a few remarks concerning the theoretical structure of an offense (*infracțiune*) in the Romanian Criminal Law, as the international public might not be aware of the subtle differences between the terminology used by this legal system and some of the concepts used in other English-speaking countries. Having succinctly clarified these differences, the paper then proceeds to a study of the four offenses included in this category: preventing the freedom to practice religion (art. 381), desecration of places or objects of worship (art. 382), desecration of corpses or graves (art. 383), illegal harvesting of tissues or organs (art. 384). The conclusions are meant to highlight a few of the key concepts which have to be taken into account if one attempts to realize a comparative study between this segment of the Romanian criminal law and other domestic legal systems.

KEYWORDS: offense, religious freedom, Romanian, criminal code, law

Introduction

History has proven again and again that religious violence should not be accepted in a civilised society. That each human being should be allowed to have a faith, to practice their traditions and to be part of a larger organisation dedicated to that specific faith. From a legal point of view, these ideas imply that the laws of a State should be used to protect the freedom of religion, not to enforce a specific religious doctrine (Even though the notion of justice is yet to be defined by the European Constitutions. See Constantinescu-Mărunțel 2020).

The attitude of the Romanian legislator towards the religious faiths and/or organisations has changed dramatically during the 20th century. The latest Romanian Criminal Code came into force on the 1st of February 2014. Given that the previous Criminal Code entered in effect on the 1st of January 1969, it was designed according to the ideology of the Communist regime and it was becoming increasingly difficult to adapt it to the changes which occurred in the Romanian society after the Revolution of December 1989: a new democratic regime, the adherence to the European Convention of Human Rights (1994), becoming a member of the North Atlantic Treaty Organisation (2004) and of the European Union (2007) etc. One should remember that one of the common threads of these transformations was the reaffirmation of the freedom of religion and the consolidation of the legal means of protecting it.

Therefore, the need for a new, unified and updated criminal legislation was keenly felt in 2014. This paper will address one of the innovations proposed by this normative act, the crimes against religious freedom and respect owed to the deceased. The analysis will begin with a few remarks concerning the theoretical structure of an offense (*infracțiune*) in the Romanian Criminal law, as the international public might not be aware of the subtle differences between the terminology used by this legal system and some of the concepts used in other English-speaking countries. Having succinctly clarified these differences, the paper then proceeds to a study of the four offenses included in this category: preventing the freedom

to practice religion (art. 381), desecration of places or objects of worship (art. 382), desecration of corpses or graves (art. 383), illegal harvesting of tissues or organs (art. 384).

Regarding the methodology we are utilizing for this paper, there are a few remarks we should make. Firstly, one should remember that this is a legal paper, which means that we are going to use legal sources. Thus, our primary sources are the sources of the Romanian law: the legal texts, jurisprudence (when and if it is acknowledged as a source of the law) and the legal principles. Our secondary sources are the legal doctrine, jurisprudence (when it is not a legal source of the law) and a few other materials from other fields of study. Secondly, we would like to underline the fact that our purpose is to conduct an analysis of the dispositions of articles 381 to 384 from the Romanian Criminal Code. In our opinion, such a paper should be objective and unbiased, at least as much as humanly possible. Therefore, we do not want to enter a religious debate about the merits of these norms and we will avoid any argument which tends to favour the beliefs of one particular religious cult.

Thirdly, given that this is a paper which is meant to present the particularities of a segment of the Romanian criminal law to an international public, we are of the opinion that certain explanations regarding specific domestic notions should be given. Consequently, we will insert from time to time some explanatory notes. We are hoping that this strategy will provide the reader who is not familiar with the topic, but is interested in it, with the necessary information to deepen their knowledge.

All this being said, we may now proceed to the analysis of the first offense out of the four which are included in our study, namely preventing the freedom to practice religion, pursuant to art. 381 of the Romanian Criminal Code. Given that we have to observe certain limits of spatial nature for this paper, we will try to avoid repeating ourselves when a conclusion regarding a specific element of one the examined offenses is also valid for some of the others. Therefore, when such a case occurs, we will point it out.

The offense of preventing the freedom to practice religion (art. 381)

Historically, Romania has been and still is a very diverse society, a fact which is easily discovered when considering the diverse religious faiths which exist on its territory. According to the provisions of art. 29 of the Romanian Constitution of 1991, revised in 2003, „a*ll religions shall be free and organized in accordance with their own statutes, under the terms laid down by law*", remaining at the same time autonomous in relation to the State. As a consequence, one could only guess the exact number of religious faiths embraced by the population.

All these being said, there are a number of religious organizations (*asociații religioase*) which are officially recognised by the Romanian State following a specific procedure. It should be mentioned that religious groups and/or associations are free to choose if they want to become a cult or not, given that the latter status implies that the cults are gaining both rights and obligations. Consequently, not all of these communities opt to become cults in the legal meaning of the word. In fact, according to the provisions of the Law no. 489 of 28th of December 2006 on the religious freedom and the general regime of cults, there are 18 legally recognised cults[1].

However, if a religious organization chooses to become an officially recognised cult, it becomes easier for the authorities to support its activities. For example, the State is able to better protect the members of the cult from any unlawful interference, including through the incrimination of certain unjustifiable acts.

The offense of preventing the freedom to practice religion is defined by the dispositions laid down by art. 381 of the Romanian Criminal Code, however one should not believe that this article criminalizes only one type of action. Each paragraph criminalizes specific categories of deeds, thus covering an entire spectrum of practical possibilities.

The first paragraph provides the basic version (*varianta tip* in Romanian) of the offense, stating that "*the act of preventing or disturbing the freedom to practice any ritual specific to a religion, which was organized and operates according to the law, shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine*." The second paragraph of art. 381 provides the first aggravated version (*varianta agravată* in Romanian) of the offense, stating that "*the act of compelling a person, by coercion, to take part in the service of any religion or to perform a religious act related to the practice of a religion shall be punishable by no less than 1 and no more than 3 years of imprisonment or by a fine.*" Lastly, the third paragraph of art. 381 provides the second aggravated version of the offense, stating that "*the same penalty shall apply to compelling an individual, by violence or threats, to perform a religious act forbidden by the religion, organized according to the law, to which they belong.*"

The legal object of the offense is formed by the social relationships whose existence depends on the freedom of conscience and religion. (According to the Romanian criminal law, the legislator criminalizes a specific conduct in order to protect a group of social relationships, which means that each criminal law norm has a specific legal object). As some authors argue (Dobrinoiu 2016a), if those two basic freedoms are not observed in a society, religious cults cannot exist, which in turn means that the individual may not be able to freely practice religion.

The offense of preventing the freedom to practice religion may or may not have a material object, depending upon how it is committed. (According to the Romanian legal doctrine, when criminalizing an act, the legislator may attempt to protect not only a set of social relationships, but also a material entity which is intrinsically linked to those relationships). If the perpetrator seeks to prevent a congregation from attending the Sunday mass by creating a lot of noise near the church, there is no material object which may be retained in the case.

However, some authors (Grofu 2016, 97) have shown that a material object may exist when the perpetrator uses acts of violence or when they resort to physical coercion. As an example, the perpetrator may destroy some religious artifacts (a cross, a holy book etc.) in order to prevent the members of the cult from conducting a religious ritual. In such a case, one might consider that the perpetrator has to be prosecuted for concurrent infringements, on one hand the offense provided for by art. 381 and on the other hand the offense of destruction, provided for by art. 253 of the Romanian Criminal Code of 2014. The same could be said when the perpetrators elect to steal an object in the absence of which a religious ritual cannot take place. One could analyse a concurrent infringement both by relation to the dispositions of art. 381 and to art. 228 (theft) of the Romanian Criminal Code.

On a related note, if the perpetrator steals a corpse or the accessories of a funeral monument, thus infringing upon the freedom to practice any ritual specific to a religion, one should analyse the criminal conduct not only in light of the provisions of art. 381, but also of those of art. 383 of the Criminal Code. As the human remains of the ancestors play an important role in the rituals of many religious faiths, there is a distinct possibility that such a scenario might occur more often than not.

Any person may be the active subject of the offense of preventing the freedom to practice religion, as the applicable norms do not impose specific conditions which have to be met by a potential perpetrator (In the Romanian legal doctrine, the perpetrator is called „active subject", while the victim is called passive subject). Most authors (Toader 2014a) consider that the passive subject of the crime is the Romanian State, as it is the sole representative of the society which is directly interested in preserving and protecting the freedom of its members to practice religion. These conclusions are also valid for the rest of the offenses.

Given that the State is the primary victim of the offense (Grofu 2016, 97), one could legitimately ask what is the role of the person who is directly or indirectly harmed by the

actual deed. That is to say that the act may also hurt a secondary victim (*subiectul pasiv secundar*), which may be a natural or a legal person who is harmed as a result of the commission of the offense. As an example, if the perpetrator tries to prevent a religious ritual by destroying a holy relic, the primary victim would be the Romanian State, while the secondary victim is the natural and/or legal persons who owned the relic.

Another notion which should be considered when analyzing an offense according to the Romanian law is the prerequisite situation (*situația premisă*). According to Nedelcu (2014, 807), the offense of preventing the freedom to practice religion, in its basic version, provided for in art. 381 par. (1), or in its second aggravated version, provided for in the second paragraph of the same article, cannot be committed in the absence of a cult which is organized and operates according to the law. In its first aggravated version, according to art. 381 par. (2), one can commit the offense no matter if it is perpetrated in relation to such a cult or not.

Regarding the *actus reus* of the offense, one should remember that it differs depending on which version is reviewed. In its basic versions, the offense consists in an action of preventing or disturbing which is committed by the perpetrator against the member of a religious cult, which is organized and operates according to the law. These actions are varied and can take many forms: making a lot of noise, stealing an important artifact, illegally detaining the person who is supposed to conduct the ritual, destroying the establishment where the ritual is supposed to take place etc. Therefore, one should expect concurrent infringements on multiple in-effect norms.

In its first aggravated version, according to the provisions provided for by the second paragraph of art. 381, the perpetrator has to compel another person, by coercion, either to take part in the service of any religion or to perform a religious act related to the practice of a religion. As an example, the active subject may choose to force a person who does not share their religious beliefs to assist to a religious ritual or to play a part in the ritual by singing, praying or executing specific symbolic gestures.

In its second aggravated version, according to the provisions of art. 381 par. (3), the *actus reus* is another action, this time the perpetrator compelling an individual, by violence or threats, to perform a religious act forbidden by its religious beliefs. This time, the passive subject has to be a member of a cult which is organized and operates according to the law (one of the 18 cults previously presented). To compel by violence means to compel by one of the acts criminalized by art. 193 of the Criminal Code, while to compel by threats means to compel by one of the acts criminalized by art. 206 of the law.

Regarding the *mens rea*, it is highlighted in the legal doctrine (Dobrinoiu 2014a) that the perpetrator has to act with the purpose of infringing upon the freedom of religion or at least with the knowledge that they are harming the social relations protected by the norms provided for in art. 381.

All these being said, we can now proceed to a brief analysis of the next offense.

The offense of desecration of places or objects of worship (art. 382)

The offense of desecration of places or objects of worship is defined by the dispositions laid down by art. 382 of the Romanian Criminal Code and it has only one basic version: "*the desecration of a place or object of worship belonging to a religious denomination which is organized and operates according to the law, shall be punishable by no less than 6 months and no more than 2 years of imprisonment or by a fine.*"

In the view of the Romanian legislator, this legal text is necessary as it provides a superior legal protection to the social relationships which would not exist in the absence of a collective sentiment of piety and respect towards places or objects of worship (Dobrinoiu 2016b). In turn, this means that the legal object of the offense also includes the inviolability and intangibility of the places and objects of worship.

The material object of the offense, the movable or immovable property against which the action of desecration is aimed, has to be a place or an object of worship (Toader 2014b). The former is an immovable property which plays a specific part in the rituals and beliefs held sacred by the members of a religious cult and it can take many forms: churches, houses of prayer, synagogues, mosques, etc. The latter is also sacred according to the faith of the cult, but it is usually a movable good. There are many examples, including the holy books, personal belongings of the women and men considered to be saints or of a similar status, statues, icons, etc.

Any person, natural or legal, may be an active subject of the offense, while the State is primary passive subject, as it is the one who represents the society which is interested in preserving these values (Grofu 2016, 103). The information provided for the notions of active and passive subject for the offense provided for by art. 381 of the Criminal Code should be applied accordingly, as there are no major differences on this subject.

The offense of desecration of places or objects of worship cannot be committed in the absence of a religious cult which is organized and operates according to the law (Dobrinoiu 2016b). This means that the act has to be committed in reference to one of the 18 religious cults mentioned by the annex of Law no. 489/2006.

The *actus reus* of the offense is always an action of desecration directed against a place or an object of worship. According to the legal doctrine, to desecrate could be defined as to defile, to manifest a serious lack of respect towards something (Dobrinoiu 2016b). Consequently, the deed may be committed in a variety of manners. The perpetrator could choose to draw obscene scenes on a place of worship or they could elect to have sexual intercourse in a place of worship. It is also possible to desecrate a place of worship by destroying some of its component goods: burning the benches, smashing the windows, tearing the canvases, making holes in the wall and thus destroying the paintings etc. In our opinion, especially given the growing culture of intolerance, the judicial authorities should be prepared for concurrent infringements on multiple legal texts. For example, if one chooses to destroy a holy relic in an attempt to desecrate it, they may very well commit at the same time and through the same action (*concurs formal de infracțiuni*) both the offenses of desecration of an object of worship, provided for by art. 382, and the offense of destruction, provided for by art. 253 of the Criminal Code.

Turning to the analysis of the required *mens rea*, one should remember that most of the authors agree that it does not matter if the perpetrator acts with intent or with knowledge. At the first glance, it would seem that the dispositions provided for by art. 382 require the commission of the act with a *dolus specialis*, as they mention the action of desecration.

Considering the information provided above, we can now turn to the next offense.

The offense of desecration of corpses or graves (art. 383)

The offense of desecration of corpses or graves is defined by the dispositions laid down by art. 383 of the Romanian Criminal Code and it has two versions. Its basic version, according to the first paragraph, states that „*the theft, removal, destruction or desecration of a corpse or of the ashes resulting from its cremation shall be punishable by no less than 6 months and no more than 3 years of imprisonment.*" The second paragraph introduces what is called in the Romanian legal literature a mitigated version, which reads as follows: „*the desecration, by any means, of a grave, of a funeral urn or of a funereal monument shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine.*"

The legal object of this offense is composed of the social relationships which could not exist in the absence of a sentiment of piety and respect towards the memory of the dead, their human remains and the places of burial (Dobrinoiu 2016c). We are of the same opinion, but we would also suggest that the preservation of this sentiments is also important for the

protection of social peace. The phenomenon of death and the corresponding need to deal with the human remains of the deceased are universal, regardless of politics, religious beliefs, social or economic status etc. Thus, it is justified to use the instruments provided by the criminal law in order to protect a civilized manner of dealing with these fundamental social components.

The material object of the offense of desecration of corpses or graves should not be limited to the obvious two material entities which could be affected as a result of the act. In fact, one should take into account the great diversity of funeral rituals and how these hundreds of particularities are reflected on how a society deals with the human remains of the deceased. Therefore, in its basic version, the material object may be:

a) the corpse of the deceased person;

b) the ashes which resulted from the incineration of a corpse;

c) the various goods which may be used to decorate or cloth the body, or the goods which play a symbolical part in the funeral ritual and are placed near/or/in the corpse/ashes.

As we previously said, the offense has a mitigated version which is provided for in the second paragraph of art. 381 of the Criminal Code. According to these dispositions, one should remember that the material object of the crime could be:

a) the grave of a deceased person;

b) a funerary urn;

c) a funerary monument (statues, crosses, paintings, even a pile of stones if it is considered a funerary monument according to the beliefs of a religious cult);

d) the accessories and decorations of a grave, urn or funerary monument.

Any legal or natural person could commit the offense of desecration of corpses or graves, as the legal texts do not state that the active subject should meet certain specific requirements. As in the previous cases, the primary passive subject is the State, as it is the representative of the society which is harmed by the violation of these basic rules of conduct (Toader 2014c).

The offense cannot be committed in the absence of a prerequisite situation, as the desecration has to occur in relation to a corpse, the ashes resulted from the incineration of a corpse, a grave, a funerary urn or a funerary monument (Grofu 2016, 109). Consequently, one could argue that the prerequisite situation to the commission of these acts is the previous decease of a person. This death may occur in ordinary circumstances or in extraordinary ones. The latter are also relevant, especially when funerary monuments are in question. For example, the family who wants to celebrate the memory of someone who disappeared during a flooding and has been declared dead may want to erect a statue in the memory of the lost one.

The *actus reus* of the offense is always an action of desecration (of defilement). We have already explained the notion of desecration in the previous section and those ideas are also applicable in this scenario. The only thing that changes the dynamic of the specific acts is the fact that the perpetrator targets not a place or object of worship, but a corpse, a grave, a funerary urn or a funerary monument.

Similarly, regarding the *mens rea*, multiple authors (Toader 2014c) agree that the perpetrator has to act with intent or with knowledge. Therefore, *dolus specialis* is not required, but, if it is present, the judicial organs may take it into account when analysing the seriousness of the criminal conduct.

While the subject is indeed extremely interesting, we must observe the spatial limits of this paper, so we will begin the review of the last offense.

The offense of illegal harvesting of tissues or organs (art. 384)

The offense of illegal harvesting of tissues or organs is defined by the dispositions provided for by art. 384 of the Romanian Criminal Code, which state that the „*unlawful harvesting of*

tissues or organs from a corpse shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine." Therefore, the Romanian legislator of 2014 elected to include in the Criminal Code only one basic version for this offense.

However, one should take into account that these norms were not created in 2014. In fact, the text of the art. 384 was retrieved from the already existing content of *Law no. 95/2006 on the reformation of the health field,* published in Monitorul Oficial no. nr. 652 of 28th of August 2015*,* more precisely from art. 155 of the said law (Toader 2014d).

In order to understand these norms, one should start by defining the notions of corpse, tissue and organ. The notion of corpse is defined by art. 1 par. (1) of the *Law no. 104/2003 on the manipulation of corpses and on the collection of tissues and organs from corpses for transplantation*, published in Monitorul Oficial no. 213 of 25th of March 2014, where it is stated that a cadaver is a person who no longer presents any sign of brain, heart or respiratory activity and who is declared dead from a medical point of view, according to the law.

The legal object of the offense is composed of the social relationships which could not exist in the absence of the collective and/or individual sentiments of piety and respect towards the memory and the human remains of the deceased, sentiments which should characterise any medical tissue and/or organ sampling process (Dobrinoiu 2016d). Given the fact that the legislator chose to include this norm in a chapter of the Criminal Code which is dedicated to the protection of the sentiment of respect toward the deceased, we are of the same opinion. The material object of the offense is the corpse of a human being, human remains which are used by the perpetrator as a source of biological material for medical purposes.

Like in the cases of the previous offenses, any legal or natural person may be the active subject, as there are no special requirements which are to be me (Dobrinoiu 2016d). However, some authors have highlighted the fact that it is much more probable for the crime to be committed by someone who has medical training, like a surgeon, a nurse or even a medical student. The primary passive subject of the crime is the Romanian State, as it is the representative of the society which has the interest to protect the basic human values necessary for a civilized and humane process of collecting the organs.

Regarding the prerequisite situation, one should easily notice that the offense of illegal harvesting of tissues or organs, provided for by art. 384 of the Criminal Code, cannot be committed in the absence of the decease of a human being, death which occurs in circumstances which favour the harvesting of tissues and/or organs.

The *actus reus* of the offense is represented by an action of harvesting of tissues or organs. As this is a medical, highly sensitive operation, one should expect it to be conducted in a specific manner, thus giving the perpetrator a reasonable chance to achieve a successful removal and preservation of the desired tissue and/or organ. One should also note that there are also two conditions which have to be met by the *actus reus.* Firstly, the harvesting has to be conducted in an unlawful manner, i.e., by infringing upon the disposition of Law no. 95/2006 or of Law no. 104/2003. One should take note of the fact that it is not necessary for the breach of the law to amount to an offense or to a crime (both known in Romanian under the term *infracțiune*), as it is sometimes sufficient to commit a mere disciplinary misconduct by ignoring the medical procedure imposed by the law. Secondly, the harvesting of tissues or organs has to occur in relation to a corpse. If the perpetrator removes tissues or organs from a living human being, one should analyse the act as an offense or a crime against the health or the physical integrity of an individual (for example, bodily harm according to art. 194 of the Criminal Code).

The perpetrator has to act with the intent to unlawfully harvest an organ or a tissue, but there are also some discussions in the legal doctrine regarding the possibility of the perpetrator to act simply with knowledge (Toader 2014d).

We have now presented the most important elements of the offenses against freedom of religion and respect towards the dead. Therefore, we are now ready to draw a conclusion to our examination, thus highlighting once more the most important ideas included in our paper.

Conclusions

Criminal Code In 2014, the Romanian legislator tried to amend the criminal legislation in order to offer a superior legal protection to some of the most important values traditionally known to human societies. A task which was long overdue, especially given the recent history of the country. The freedom of religion, the freedom of conscience and the respect owed to the memory of the deceased are values which have to be observed by each and every member of a community, as they are intrinsically linked to the realities of the end of our biological life. Therefore, the offenses included in the 3rd Chapter (o*ffenses against freedom of religion and respect owed to the deceased*) of the 8th Title (o*ffenses that harm social relationships)* of the Romanian Criminal Code are not only necessary, but also from a cultural, social and historical point of view.

However, it would have been certainly useful if the legislator had chosen to better define the legal notions used to formulate the norms provided for in art. 381-384. As it is, the texts are unnecessarily difficult to read by someone who is not familiar with the legal sciences. Our *de lege ferenda* proposal would be to complement the existing dispositions with the definitions of the concepts now explained in other normative texts. Of course, one could also use norms of reference, thus signalling to the legal subject that they should also consult other legal sources.

Both manners of regulating an already very sensitive issue would provide clarity and ease of access to the law. The former has the advantage of efficacy, as it compiles all the necessary information for the understanding of the norm in one single legal document. Nevertheless, it has the disadvantage of doubling the legal texts already provided for in other special laws. The latter option has the advantage of avoiding the problem of doubling the texts, but it has the disadvantage of creating the need for an extensive research effort on the part of the citizen. If the history of legal practice teaches one lesson, this is that the citizens are rarely inclined to conduct a study of the in-effect norms before acting. Therefore, we would suggest that it would be better if the legislator would consider the first option during its future deliberations.

In the end, one could simply reiterate the fact that these criminal norms are extremely important as they are put in place to prevent the violation of some of the most sacred beliefs of any society at any given time. In world where a culture of intolerance is resurfacing, the State has to intervene in order to protect the core values of its citizens, especially when such ideas are directly linked to the most profound individual and/or collective faiths.

Endnotes

[1] The cults are: the Romanian Orthodox Church, the Serbian Orthodox Diocese of Timișoara, the Roman-Catholic Church, the Romanian Church United with Rome (Greek Catholic), the Diocese of the Armenian Church, the Russian Christian Church of Old Rite of Romania, the Reformed Church of Romania, the Evangelical C.A. Church of Romania, the Lutheran Evangelical Church of Romania, the Unitarian Church of Transylvania, the Union of the Baptist Christian Churches of Romania, the Christian according to the Gospel Church of Romania – the Union of the Christian according to the Gospel Churches of Romania, the Romanian Evangelical Church, the Pentecostal Union – the Apostolic Church of God from Romania, the Seventh-day Adventist Christian Church of Romania, the Romanian Federation of Jewish Communities, the Muslim Cult, the Religious Organization Jehovah's Witnesses. The list may be changed in time, if more cults apply for legal recognition, so one might to consult it in the annex of Law no. 489/2006, which may be accessed on http://legislatie.just.ro/Public/DetaliiDocument/ 78355 (last visited on the 12th of February 2021).

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Impact of Deadweight Effect on the Performance of Supported Firms

Simona Bratkova[1], Miroslav Sipikal [2], Valeria Nemethova[3]

[1,2,3]University of Economics in Bratislava, Faculty of National Economy, Department of Public Administration and Regional Development, Bratislava, Slovakia
valeria.nemethova@euba.sk

ABSTRACT: Public support can flow to different areas of the economy and can have several dimensions. Frequent recipients of subsidies are firms, whose support can have specific effects. Such an undesirable effect occurs if these projects are supported that would be carried out without this subsidy. In this case, we are talking about the so-called deadweight effect, which has been discussed and investigated in several studies in the scientific literature. The present article tries to shift knowledge about this effect through a study of supported companies in Slovakia. The aim of the research is to find out whether deadweight effect had an impact on the short-term or long-term results of investigated companies by analysing economic results of the supported firms. Changes in several firm indicators were monitored as profit, sales and value added for individual years (2010, 2013, 2018). Results present changes in size categories of firms according to the number of employees. Firm groups were distinguished based on the extent of deadweight effect. The results showed that in cases when deadweight effect occurred, the profitability of supported firms increased, which ultimately means inessentiality of subsidy that spilled over into the profits of surveyed companies.

KEYWORDS: Entrepreneurship, structural funds, deadweight effect, firm support evaluation

Introduction

Deadweight effect is one of the negative externalities in private sector support. Deadweight effect indicates that the support is directed to firm activities, which would have been implemented without this support. Funds can be drawn by all companies that meet the conditions set out in the calls, but not all companies need these funds. At first, we present the empirical evidence of deadweight from the existing literature. In the next part we will explain our methodology and introduce the database of companies and the method of their selection for further analysis. The aim of the article is to examine the economic results of investigated firms to determine whether the deadweight effect had an impact on short-term or long-term results of companies. We compared the period before the support 2010-2013 and after the support 2013-2018. The last section draws conclusions.

Literature review

Deadweight effect is considered to be one of the most discussed and measured effects of subsidy (Tokila 2008). This is one form of ineffective use of development aid. Deadweight effect represents the support provided for various activities, while these activities could be implemented without the provided support. According to Picard (2001), it is necessary to realize that deadweight cannot be completely eliminated within the framework of the usual practice. The reason for this is the asymmetric nature of information sold by the aid provider and the firm receiving the aid.

According to Baslé (2006, 225-236) it is necessary to determine its size and extent. There is a scale of deadweight that range from 0%, where it is clearly defined that the deadweight effect did not occur, and thus without the support provided, the project could not be implemented. In order to accurately determine the deadweight effect, this area needs to be considered from several levels. Within the first level, the financial aspect is essential, where it is necessary to know how much money would have to be invested within the project, even without any support. The

second level is the output of the project, where it is a question of how much it would be possible to reduce the outputs also without applying any support.

Tokila (2008) uses a method based purely on the financial expression of the amount of invested funds. A significant advantage of this method is that it makes it possible to determine more precisely the amount of the investigated unfavourable effect. Lehinan and Hart (2006) used the direct self-assessment method in their study. By applying this measurement method, the lower limit of deadweight effect is rather obtained. The method defined by Šipikal (2014, p.71) was applied in a case study conducted in the region of Central Slovakia. This method makes it possible to eliminate the hypothetical question and examines in more detail the so-called project bank. It contains projects that have already been approved, but due to insufficient resources under the call, it was not possible to implement them. Therefore, they can be examined on a hypothetical and real level. However, the downside of this method is that there is a slight bias because the projects were not primarily selected.

Several authors have pointed to the so-called direct methods for measuring deadweight effect, but there are also cases where the indirect measurement method has been used. In this case, it is the use of control groups, in which the comparison of results obtained from supported and non-supported companies is performed. Wren (2005) used this method in his study. Bartle and Morris (2010) point out that a common problem is that good companies that are able to prepare quality applications can apply for support, and thus show better results even after the grant than the compared sample of applicants. Studies seek to prevent this by using Difference in difference techniques. Bronzini and De Blasio (2006) pointed out that the support has so-called crowding out effect compared to the control sample. This means that the method does not take into account the direct threat to competition in the market and also the fact that it is difficult to count in the co-financing rate of projects remains a problem.

Methodology

The analysis is based on previous research of deadweight in business support (Šipikal et al. 2013), where in a questionnaire survey of selected calls for business support (KaHR-111DM-0901, KaHR-111DM-0801, SIA 2009 121 01), it was found deadweight of support. The questionnaire survey contains 123 responses. The aim of the analysis was to find out whether deadweight effect could also be reflected in short-term and long-term economic results of investigated companies.

We examine the effectiveness of EU support for companies by comparing a group of supported entities with a control group of non-supported ones. As data are available before and after the support measures, we can use the Double difference technique for the analysis. The first step is to define suitable indicators for the possibility of performing an analysis, which will be profit, sales and added value of companies. The second step is to define the time dimension, which is the years before support (2010-2013) and after support (2013-2018). The quantification of the differences is based on the calculation of the cumulative values of the set indicator separately for individual time periods and separately for the supported as well as the control group and their deduction. Calculated numbers are given in % and percentage points (EVALSED, 2013).

An analysis of Slovak companies using support from the budget of the EU structural funds was performed. These are 66 companies throughout Slovakia located in all regions of Slovakia. However, it should be mentioned that the examined enterprises, their submitted projects, calls and other data are from the programming period 2007-2013. The submitted calls of the solved enterprises fall into two operational programs, which are the Operational Program Competitiveness and Economic Growth and the second program is the Operational Program Employment and social inclusion. (1.5 Calls for OP KaHR and OP ZaSI; 1.6 Calls of OP KaHR; Call KaHR-111-DM-0801; Call KaHR-111-DM-0901; Call DOP 2008-SIP 001; Call DOP-SIA-2009 / 1.2.1. / 01 and Call DOP-SIA-2009 / 1.2.1. / 02). From the

obtained data was evaluate the extent to which the deadweight effect has reached within individual companies. The value ranges across the full scale (from 0% - no deadweight effect to the final 100% - there was a total deadweight effect).

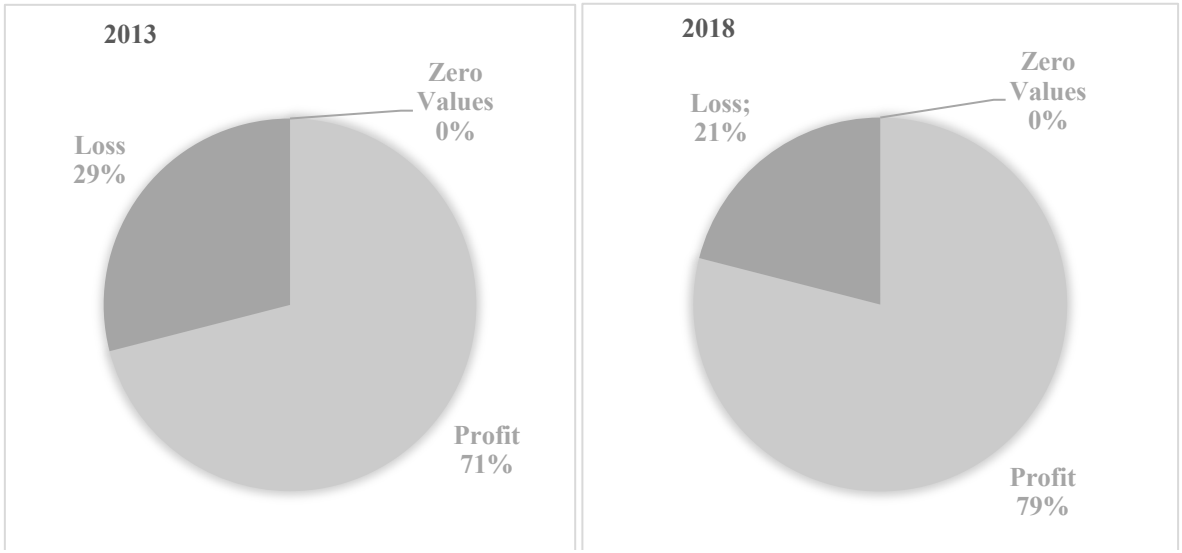
We supplemented the basic data on companies (name, location, ID number, company size, deadweight, contribution) with other data obtained from the finstat.sk database. We supplemented the data on the amount of sales, profit and value added for the years 2010, 2013 and 2018. The finstat.sk database has only data from 2011 available, and therefore for 2010 we obtained data from the extended database. Our first task was to select only those companies that are still operating after 2018. From 123 companies, we had to remove 11 companies from our database, which were cancelled during the period under review, 1 company was in bankruptcy, 9 companies were sole traders and 36 companies were removed due to lack of data. We focused on the research of a selected sample of 66 companies. In the next step, we found out the development of profit, sales and value added for individual years (2010, 2013, 2018). We monitored changes in size categories of firms according to the number of employees and made firms group based on the extent of deadweight effect.
In the deadweight category, we narrowed the range of individual assigned values. We divided the answers into 5 levels. Companies with zero weight, companies with weight 25 (here we included companies with weight 10-40), companies with weight 50, with weight 75 (here we included companies with dead weight 60-90) and companies with deadweight of 100. Based on of this division, we also compiled the development of individual indicators. When comparing data on companies monitored by us, we also used data on companies in Slovakia, which we processed on the basis of data available on finstat.sk.

Results - Analysis of Firms Supported by EU Structural Funds

The first step in the analysis was to determine changes in sales, profits and value added for the years 2010, 2013 and 2018. We compared the development / changes in sales, profits and value added from period of years 2010-2013 and 2010-2018. We monitored the development of companies before and after EU support. Firms were divided into categories according to regions. First, we examined the development of profits of our selected companies. In 2013, we see that companies made a loss of -7,574,330 euros, which is a decrease of -179% compared to 2010. These companies recorded an increase in 2018, where the profit increased by 158% compared to 2013. For the total period under review, the profit decreased by -54%. When comparing the firms we monitor and the total sample of companies from Finstat database, we see that profits have increased since 2013. Generally, the profit of companies in Slovakia has increased by 74% since 2013-2018. Although the selected sample of 66 firms went into a loss in 2013, in 2018 these companies reported a profit.

Subsequently, we examined the development of sales of the companies we monitored. Sales of companies in Slovakia have increased by 38% since 2013. Unlike the sales of companies in Slovakia, we see that the sales of selected 66 companies decreased. From 2010-2013 they decreased by -3%, from 2013-2018 they decreased by -2% and in the total monitored period sales decreased by -5%. In contrast to profit where we have seen a similar growing trend, we see the complete opposite in terms of sales. In total, up to 52% of the examined sample was in profit in 2013, a total number of firm sample 218,936. There were 42% in loss and only 6% of companies with a zero value. In 2018, the number of companies in profit increased to 56.6% and the number of companies in loss decreased to 35.7%. The number of companies with zero values in 2018 increased to 7.7%. When examining the number of companies in profit and loss in the sample of companies we monitored, we see that most of the companies were also in profit (Chart 1). In 2013, it was 71% in profit and 29% in loss. The increase in the number of companies in profit (2018) can be seen in chart no. 1. In 2018, it was 79% in profit and 21% in loss. Zero values in 2013 and 2018 were at the level of 0%.

Chart 1 Number of companies at a loss or profit in 2013 and 2018 - sample of 66 companies



Source: Own elaboration according to nsrr.sk.

If we look at the development of sales in terms of size categories of firms, we see that in the years 2010-2013 sales decreased for companies in category 1 (0-9 employees) by 17%, in category 2 (10-49 employees) by 15%, in category 3 (50-249 employees) by 10% and in the last category 4 (over 250 employees) as in only we see an increase in sales by 1%. For the observed period 2013-2018, we see a larger drop in sales of companies in category 1 (0-9 employees) by 74%, in category 2 (10-49 employees) an increase of 7%, in category 3 (50-249 employees) we see an increase in sales by 35% and in category 4 (over 250 employees) a decrease of 13% (Table 1).

Table 1 Change in sales of companies by size of enterprise (2010-2013), (2013-2018) in%

SALES	2010-2013	2013-2018
1	-17%	-74%
2	-15%	7%
3	-10%	35%
4	1%	-13%
SUM	**-3%**	**-2%**

Source: Own elaboration according to nsrr.sk.

The development of profit according to the size of the company in the years 2010-2013 is shown in tab. No.2. Only companies in category 4 (over 250 employees) achieved an increase in profits. Firms in other categories' profits fell. In category 1 (0-9 employees) a decrease of 27%, in category 2 (10-49 employees) by 12% and in category 3 (50-249 employees) a decrease of 86% (Table 2). For the period 2013-2018, the profit of companies by size increased by 158%. There was obtained an increase in category 1 (0-9 employees) of 19%, in category 2 (10-49 employees) a decrease of 68%, in category 3 (50-249 employees) an increase of 294% and in the last category 4 (over 250 employees) a decrease of 57%.

Table 2 Change in profit of companies by size of enterprise (2010-2013), (2013-2018) in%

PROFIT	2010-2013	2013-2018
1	-27%	19%
2	-12%	-68%
3	-86%	294%
4	59%	-57%
SUM	**-179%**	**158%**

Source: Own elaboration according to nsrr.sk.

In the following table no.3. we see the development of added value according to the size of the company. In the period 2010-2013, value added decreased in all categories. In category 1 (0-9 employees) decrease by 20%, in category 2 (10-49 employees) by 16%, in category 3 (50-249 employees) by 23% and in the last category 4 (over 250 employees) decrease by 12%. For the period 2013-2018, we see an increase in value added in category 2 (10-49 employees) and in category 3 (50-249 employees). We see a decrease in companies in size category 1 (0-9 employees) by 75% and in category 4 (over 250 employees) by 6%.

Table 3 Change in value added of companies by size of enterprise (2010-2013), (2013-2018) in%

ADDED VALUE	2010-2013	2013-2018
1	-20%	-75%
2	-16%	22%
3	-23%	37%
4	-12%	-6%
SUM	**-14%**	**31%**

Source: Own elaboration according to nsrr.sk.

In Table 5 we see the development of sales according to individual values of deadweight. When examining the development of indicators of sales, profit and value added, we also add the deadweight indicators. We divided the deadweight into 5 degrees as stated in methodology.

The development of sales in the years 2010-2013 at zero deadweight (the project is not implemented) had a positive development (an increase of 3%). At a deadweight of 25 sales to companies decreased by 6%, at 50 sales decreased by 39%, at a deadweight of 75 (the project will be implemented but later) decreased by 2%. With a total, deadweight of 100 (the project is being implemented), sales increased by 19%.

Table 4 Change in revenues of companies by deadweight cathegories (2010-2013), (2013-2018) in%

SALES	2010-2013	2013-2018
0	3%	-16%
25 (10-40)	-6%	8%
50	-39%	9%
75 (60-90)	-2%	-10%
100	19%	35%
SUM	**-3%**	**-5%**

Source: Own elaboration according to nsrr.sk.

Compared to the period 2013-2018, we see a similar development of sales in companies with an overall deadweight effect (Table 4). For companies with a deadweight of 100, sales increased by 35%, in contrast to companies with a zero deadweight, where sales decreased by 16%. At a deadweight of 25 we also see an increase in sales by 8%, at a deadweight of 25% and at a deadweight of 75 sales decreased by 10%. When observing changes in profit (Table 5) in the category of deadweight, we see larger changes. For companies with zero deadweight, the profit decreased by 300% in the years 2010-2013, for companies with deadweight 50 the profit decreased by 81%, with dead weight 75 the profit decreased by 65% and with total dead weight (100) the profit decreased by 31%. We see an increase in profit for companies with a deadweight of 25, an increase of 130%.

Table 5 Change in profit of companies by deadweight categories (2010-2013), (2013-2018) in%

PROFIT	2010-2013	2013-2018
0	-300%	-151%
25 (10-40)	130%	-342%
50	-81%	73%
75 (60-90)	-65%	-170%
100	-31%	164%
SUM	**-179%**	**158%**

Source: Own elaboration according to nsrr.sk.

When monitoring the deadweight effect, value added (Table 6) was negative or zero for all companies, it did not achieve a positive result in the period 2010-2013. Value added for companies with zero dead weight in the period 2013-2018 increased by 23%, for companies with dead weight 25 it was equal to 0, for 50 it increased by 28%, for 75 it decreased by 15% and with total dead weight the added value of companies increased by 9%.

Based on the obtained data on companies, we can state that, overall, the economic indicators of companies have improved after obtaining support from the EU structural funds. After support, for the period 2013-2018, companies recorded an increase in profit but a decrease in sales, which could be caused by an increase in costs associated with the sale of goods and services. When comparing the development of sales in the periods 2010-2013 and 2013-2018, we see negative values, an increase by 1% between periods. According to the analyses, the EU support has helped mitigate declining sales. In total, up to 8% of the companies we monitored recovered from the loss in 2018.

Table 6 Change in value added of firms by deadweight categories (2010-2013), (2013-2018) in %

ADDED VALUE	2010-2013	2013-2018
0	-42%	23%
25 (10-40)	-9%	0%
50	-49%	28%
75 (60-90)	4%	-15%
100	-8%	9%
SUM	**-14%**	**0.31%**

Source: Own elaboration according to nsrr.sk.

Conclusions

In the present article economic results of individual companies were analysed. When examining firms´ development, based on the size of the company (according to the number of employees), we found that it is the support of SMEs is more effective as the support of large companies. Support from the EU structural funds should be directed primarily to SMEs, and our analysis has also confirmed this direction of support. Once supported, the performance of small and medium-sized enterprises improves. On the basis of this simple comparison, we came to the conclusion that the support has to go to less developed regions and especially for small and medium-sized enterprises. In the last comparison, we also took into account the deadweight effect. Our results showed that in cases when deadweight effect occurred, the profitability of supported firms increased, which ultimately means disutility of subsidy that spilled over into the profits of surveyed companies.

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Labor and Education in the Penitentiary System - Basic Components of Rehabilitation

Dorian Chiriță

Nicolae Titulescu University of Bucharest, Romania, dorian.chirita@yahoo.com

ABSTRACT: The main objective that future criminal policies, in terms of the execution of sentences, must pursue more and more is the rehabilitation of detainees. Given the complex nature of the rehabilitation process, it is necessary for penitentiary administrations to use as many elements as possible, acting simultaneously or in a well-established order. This process should thus include several factors, such as: the assessment of their socio-educational needs; attending educational courses, vocational training; mastering the rules of behavior in society; cultural-educational actions of physical education and sports; encouraging and supporting family and community connections; moral education and religious assistance; permanent or temporary actions for recreation. In our opinion, of all these, a very important place is occupied by work and education. These fundamental elements will not only correct the personality of the detainee, but, moreover, will give him a better physical and mental condition, these representing, for the penitentiary administration but also for society, the indicators of a changed man, in which society must have full confidence. This paper provides an overview of these two processes, work and education, of persons deprived of their liberty, and emphasizes their importance, both for the detainee and for society as a whole.

KEYWORDS: rehabilitation of persons deprived of liberty, work, education, educational programs in the penitentiary, dual purpose of rehabilitation of persons deprived of liberty

The education of the society members as a whole, as well as the re-education of those society members who have committed crimes, must be a very special priority for the authorities of each state. It is no coincidence that the most economically developed states also have the most educated citizens, which shows that, along with a financial education, certain well-established economic rules, there is also a need for a social education, respectively by forming a correct attitude towards work. The whole activity in the penitentiary must revolve around this complex notion, which involves several aspects, such as the interaction and communication of staff with detainees, the programs in which they participate, the activities in the penitentiary, but also the sanctions to be applied to detainees that violates internal regulations.

The concept in question was provided by both the European Prison Rules (2006) 2 in Articles 65 and 66, and in Article 10 (3) of the International Covenant on Civil and Political Rights, according to which the penitentiary system must be designed to ensure that the treatment of detainees will achieve its essential goal of reforming and socially rehabilitating them. In order to achieve such a goal, it is obvious that in any penitentiary there should be places where a wide range of programs can be carried out to improve the situation of detainees, and, in our opinion, within these programs, work and education are the elements that have the greatest potential to change the lives of detainees for the better and to facilitate their rehabilitation.

It must be kept in mind, however, that the majority of the prison population comes from social backgrounds characterized by a state of high or very high poverty, from divided or dysfunctional families. It is possible that many of the detainees never had any occupation in the period before the conviction, not being excluded from living on the streets, without shelter and without the support of the family.

All these factors make the chances of change for the better of these detainees unfavorable, and the process of seeking their change difficult. Despite all these disadvantages, prison authorities and staff should not be discouraged, but should constantly pursue the objectives of reforming and rehabilitating the detainees.

Acquiring, during the execution of the sentence, the knowledge and skills necessary to earn a living in the post-detention period is the element that gives the greatest chances of success to the reintegration of the detainee in society at the future release from prison. This, especially if we consider that, for many detainees, their presence in detention centers is the first opportunity they have to develop their professional skills and to perform lucrative activities. Thus, we note that, for this reason, the main purpose of involving detainees in gainful activities in the penitentiary is to prepare them for a normal life, characterized by honest work at their release, and not for the benefit of the prison administration.

Prison work and participation in educational programs not only lead to the acquisition of knowledge and skills necessary to carry out a certain activity, but also give detainees a sense of confidence in themselves and a purpose, making them feel useful.

We believe that, in modern penitentiaries, the vocational training of detainees must be focused on acquiring those work skills that will allow them to work on release not only in traditional jobs, such as construction or agriculture, but also on training in areas such as computer work, catering, which could prove to be especially important for young detainees. Therefore, in designing the work programs offered in the future to prison inmates, it is particularly important to identify the detainee's skills and employment opportunities available in the local community where he will return after serving his sentence.

The staff of a modern penitentiary must be creative in finding suitable activities for all categories of detainees, and the job offers must be varied, from the maintenance and repair of buildings or the interior of the penitentiary, to work in the kitchen and laundry, to the development of trades that, on release, will facilitate their work in small associative forms or the creation of an individual enterprise.

Particularly important for transforming the lives of prisoners and their social reform is their involvement in those activities that give them the opportunity to help certain governmental and non-governmental institutions or organizations in working with disadvantaged people, such as making furniture for the home of homeless people or toys for orphanages. Such activities create a feeling of empathy for detainees and, therefore, we believe that, in modern prisons, there should be as many such job offers as possible.

In order for work experience not to be seen by detainees as an obligation or forced labor, but exclusively as a form of preparation for the post-release period, it is important that they receive fair remuneration for the work they perform during the execution of the custodial sentence. This can be done in a variety of ways that modern prisons can adopt. The most commonly used method is to pay a salary equivalent to that which would have been paid to a civil society worker, with the possibility for detainees to transfer some of their money to their families or to save it for use at the time of release.

However, the concept of "restorative justice" is increasingly being used, which means that detainees are encouraged to donate a proportion of the income earned during detention as a form of reparation for the crime committed, a concept which, in turn, we consider is much more beneficial for the evolution and rehabilitation of detainees. Along with work, the positive aspects of which I have mentioned, education and school play an important role in rehabilitation, so that, in penitentiaries, emphasis must be placed on creating diversified educational and cultural programs, as a high proportion of private of freedom individuals have no basic knowledge of writing and reading. This low level of education is one of the factors that influenced them in committing crimes and in entering the penitentiary, respectively, the development of educational programs in prisons must take into account that for many of them the time spent in prison is the only real opportunity to participate to educational courses.

However, in addition to these educational activities, cultural activities must also be offered, as they are likely to help detainees develop self-confidence.

In the penitentiaries of the future, education should be seen as a tool for change that is not limited to acquiring basic literacy skills for illiterate detainees, but goes far beyond

teaching these basic skills. Education must also be carried out in a regime of deprivation of liberty at the highest level, aiming at the personal development of detainees, in the perspective of their social reintegration in a certain economic and cultural environment. Therefore, prison education should include access to books, classes and cultural activities, such as music, theater and art, without regarding such activities as merely recreational, but rather as methods of encouraging detainees to develop as a person. This of course requires that future penitentiaries be equipped with libraries, but also with special rooms for carrying out cultural activities, similar to cinemas, theaters or shows.

In conclusion, the programs prepared for prisoners in the penitentiary must be designed in a balanced way, in which the time devoted to work and the provision of education or cultural and sporting activities must be well dosed.

In the future, all these elements should be included in the programs prepared for detainees and should be found at a certain level in all penitentiaries, although their proportion during the day may vary from one detention center to another, depending on age, the abilities and needs of detainees. For example, for some detainees, especially the youngest, it is possible for the time spent on education to occupy most of the day, similar to attending school, while for others education may be provided in the evening after one day of work. In other situations, detainees may spend half the day working and the other half may engage in educational and cultural activities, especially in those penitentiaries where job offers are not enough to keep detainees busy for a full day.

It should also be ignored that penitentiaries are often places where there is a lot of untapped potential among detainees, which should be "taken advantage of" in the sense that those detainees with a high level of education (some of them may even be teachers before to get into prison) should be encouraged to help educate other less able detainees, of course under appropriate supervision.

Particular attention must also be paid to maintaining detainees' contact with civil society. In this respect, the authorities should focus on the use of community facilities to the detriment of the creation of parallel structures. An eloquent example is the use of teaching staff who normally work in local schools and colleges and who could be hired to work in prisons as well, an idea found in practice in the Irish prison system where the prison administration has a collaboration contract with local schools.

The collaboration of the penitentiary system with the local education authorities would give a degree of normality to the penitentiary education. Whereas by adopting this policy of collaboration, detainees would enjoy the same educational content and the same methods used in civil society. At the same time, the capitalization of such a method facilitates the possibility to continue the studies of the prisoners after their release in the community.

Given that many jurisdictions, including our national jurisdiction, face severe overcrowding, a shortage of professional staff and few opportunities to interact with civil society, in addition to the hostile reception of society after the release of former detainees, none of the above they will be easy to achieve. It is the ungrateful task of penitentiary administrations to find solutions within the available budgets and that is why they should focus on developing partnerships with civil society and local educational institutions to increase the opportunities available to detainees.

An important factor to be taken into account in achieving the objectives of social reintegration of detainees is to ensure an educational program focused on the individual and their needs, thus based on a holistic approach and the professionalism of the teaching staff in the penitentiary. European and national jurisdictional practice has shown us that detainees must be seen individually as individuals with distinct needs because in the penitentiary we meet a multitude of individuals with such different characteristics, from illiterate individuals to individuals with a solid educational background, from individuals from the streets to individuals with a strong family font. Therefore, in order for educational policies to be

effective in achieving the goal of social reintegration, these aspects must be taken into account in the distribution of funds for the development of various educational and vocational training programs for prisoners, but also for continuing vocational training of prison staff.

As almost all detainees will be released, sooner or later, back into civil society, it is important that prison authorities consider the preparation for release from the beginning of the execution of the sentence. This is beneficial to both detainees and civil society, as an individual who has a place to live as well as an opportunity to earn a living will be motivated to live to his full potential in society.

For short-term detainees, we believe that the prison authority should develop policies and programs that involve the community as much as possible and develop links, where the prison regime allows, directly with civil society, to eliminate the risk of recidivism of the detainee, who tends to return to the criminal habit.

For detainees serving longer sentences, we consider that it is appropriate for prison authorities in vocational training and social reintegration policies to take into account the fact that the long duration of the sentence may have broken the detainee's ties with civil society and therefore, from the execution of the sentence, it is necessary to pursue the development of partnerships with private enterprises / governmental and non-governmental organizations to provide them with bridges to civil society at the time of release.

It is necessary for all prisoners to receive help, because ultimately a punishment must always mean correction. For some detainees, this could mean support in improving their self-confidence and faith. For others, this could involve assisting in finding a job, accommodation on release from prison, or securing a sum of money to allow them to travel to their home area. The more time a person spends in detention, the more obvious these needs become and therefore the penitentiary authorities should also take into account this aspect of the duration of the sentence in the development of projects with unemployment agencies, with the probation system, with services, social groups, religious groups and other non-governmental organizations. For people who are addicted to alcohol, gambling, drugs and who are often associated with criminal acts, we believe that special programs should be used and, moreover, we believe that it is necessary for prison authorities to develop partnerships for their implementation to detainees.

In our opinion, a very important stage for the detainee reintegration in the society is the preparation for release, i.e. the period immediately following the release.

This should give detainees the opportunity to get out of prison on a strict schedule, in the last part of the execution of the sentence, in order to gradually make contact, a few hours a day, with the company, during which time they attend a training course, carried outside the detention unit, or to obtain new work skills preferably in a workplace where to work after release. If this goal is not possible, we consider it necessary to give detainees the opportunity to return home regularly at the end of the detention period for a few days for a readjustment of both the inmate and their family members with the new situation.

Conclusions

In order to have a successful penitentiary system, it must ensure that detainees maintain ties to the civil society, isolation being necessary just to feel as a restriction of freedom and not as a separation from civil society, and it is essential to provide adequate training to be able to have a normal life when returning to society, work and education being the two pillars on which the success of the rehabilitation of detainees is based on.

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The Liability of the Employees who Commit Acts or Deeds of Moral Harassment at Work

Nicoleta-Elena Hegheș

"Dimitrie Cantemir" Christian University of Bucharest, Faculty of Juridical and Administrative Sciences, Bucharest, Romania, nicoleta.heghes@ucdc.ro

ABSTRACT: After numerous studies and debates at European and national level, the Romanian Parliament has adopted a series of legislative amendments aimed at complementing existing legislation on discrimination in the workplace and strengthening the levers needed to prevent and combat moral harassment in the workplace. Considered by specialists to be the most harmful source of stress at work, since 2000, moral harassment at work or "mobbing" has become a phenomenon that has caught the attention of both European Union institutions and the Romanian state.

KEYWORDS: harassment, mobbing, contraventional liability, disciplinary liability, criminal liability

Introduction

In Romania, the notion of harassment was previously regulated both by Government Ordinance no. 137 of August 31, 2000, on the prevention and sanctioning of all forms of discrimination, published in the Official Gazette. no. 431 of September 2, 2000, republished in the Official Gazette of Romania, Part I, no. 166 of March 7, 2014, with subsequent amendments and completions, as well as by Law no. 202 of April 19, 2002, published in Official Gazette no. 301 of May 8, 2002, republished in the Official Gazette of Romania, Part I, no. 326 of June 5, 2013, with subsequent amendments and completions, being treated as a specific form of discrimination which "leads to the creation of an intimidating, hostile, degrading or offensive". An essential legislative change in this matter was made in 2015, when "psychological harassment" was regulated as a form of gender discrimination. Thus, Law no. 229/2015 completed the Law no. 202/2002, defining "psychological harassment" as any inappropriate behavior that occurs over a period of time, is repetitive or systematic and involves physical behavior, oral or written language, gestures or other intentional acts that could affect personality, dignity or the physical or psychological integrity of a person.

On August 10, 2020, entered into force Law no. 167 of August 7, 2020, for the amendment and completion of the Government Ordinance no. 137/2000 regarding the prevention and sanctioning of all forms of discrimination, as well as for the completion of art. 6 of Law no. 202/2002 on equal opportunities and treatment between women and men.

Until the entry into force of this law, "moral harassment at work" was not regulated as such in Romanian law. Even if it is a common phenomenon on the Romanian labor market, an aspect highlighted especially by the practice of national courts in this matter, there is no normative act that defines the content of such an act, as well as the legal consequences of its commission. This new law introduces and defines the notion of moral harassment at work. Although in the legislation there was previously the notion of psychological harassment, the legislator made it even more particular and moral harassment at work has acquired an independent character. Therefore, the law defines the concept of "moral harassment at work", expressly indicates the ways in which this phenomenon can manifest itself, as well as the establishment of the appropriate probative and sanctioning framework.

Defining the concept of "moral harassment at work"

Defining the concept of "moral harassment at work" has a special significance, as it defines a series of key aspects that characterize the phenomenon and in relation to which it can be

identified. Thus, Law no. 167/2020 defines moral harassment in the workplace as any conduct exercised in relation to an employee by another employee who is his hierarchical superior, by a subordinate and/or by a hierarchically comparable employee, concerning employment relationships, which have as purpose or effect a deterioration of working conditions by harming the rights or dignity of the employee, by affecting his physical or mental health or by compromising his professional future, behavior manifested in any of the following forms: hostile conduct or unwanted; verbal comments; actions or gestures.

It is also moral harassment at work any behavior that, by its systematic nature, may harm the dignity, physical or mental integrity of an employee or group of employees, endangering their work or degrading the work environment.

An essential aspect to remember is that stress and physical exhaustion (burnout syndrome) are subject to moral harassment at work.

It is irrelevant the hierarchical position of the one who commits acts or deeds of moral harassment at work, being proven by studies and in practice that this phenomenon can occur both vertically - top-down - from top to bottom or bottom-up - by from subordinate to superior, as well as horizontally - between hierarchically comparable persons.

Moral harassment in the workplace can take various forms, such as (Tutulan 2020):

- Public humiliation of an employee present with other colleagues - an example would be reading the papers together with all members of the department, describing it as inappropriate;
- Constantly insulting and improperly expressing negative feedback - for example, “you are good for nothing”, “you are incompetent”, “we hold you for alms” etc.;
- Systematic allocation of tasks impossible to accomplish within the time horizon provided;
- Contacting the employee constantly outside of working hours or during leave;
- The employee’s lack of key information necessary to perform the tasks, followed by his sanction;
- Constant refusal to grant rest leave etc.

In practice, the most common cases of moral harassment: are disregarding the employee in front of colleagues, creating pressure and tension through excessive supervision, discrediting the employee’s professional skills, isolating the employee from his colleagues, burdening the employee with too many tasks (leading to his/her exhaustion), compromising the employee’s health (entrusting dangerous and harmful tasks to health, threatening physical violence etc.) (Voinea 2020).

Law no. 167 of August 7, 2020, establishes that morally harassed employees at work (a notion that includes stress and physical exhaustion) can obtain compensation in court from the employer or even money to go to therapy sessions. In practice, however, moral harassment is quite difficult to prove and the procedure is lengthy anyway.

The Liability of the Employees who Commit Acts or Deeds of Moral Harassment at Work

In a democratic society, public order includes respect for fundamental rights, which otherwise can lead to disorder (Popescu 2013, 127).

According to the amendments brought by Law no. 167 of August 7, 2020, alin. 5^1 of G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, “It constitutes moral harassment at work and is sanctioned disciplinary, contraventional or criminal, as the case may be, his subordinate, by a subordinate and/or by a hierarchically comparable employee, in relation to employment relationships, which has as its purpose or effect a deterioration of working conditions by infringing the rights or dignity of the employee, by affecting his physical or mental health or by compromising his professional future, behavior manifested in any of the following forms: a) hostile or unwanted conduct; b) verbal comments; c) actions or gestures ”.

From the cited text of the law, it is observed that the most important amendments concern the obligation of the employer to adopt measures to prevent and combat moral harassment at work and to disciplinary sanction the guilty employees, as well as the establishment of substantial contravention sanctions, both for the employer and for the guilty employees.

Alin. 5^4 of G.O. no. 137/2000 provides that employees who commit acts or deeds of moral harassment at work are subject to disciplinary action, in accordance with the law and the internal regulations of the employer. Disciplinary liability does not remove the employee's misdemeanor or criminal liability for those acts.

Disciplinary liability occurs in situations where an employee is guilty of a disciplinary offense. Disciplinary liability is of a contractual nature and is a form of liability independent of other forms of legal liability (Popescu 2019, 457).

The essential elements of disciplinary liability that presuppose their cumulative existence are:

- The quality of employee - resulting from the existence of an individual employment contract;
- The existence of an illicit deed - violation of the work duties assumed by individual employment contracts, internal regulations, statutes etc.;
- Committing the act with guilt;
- A harmful result;
- The causal link between the deed and the result.

The subject of the disciplinary violation can only be an employee, a quality that results from the existence of an individual employment contract. In the absence of such a contract, there is no disciplinary liability.

Disciplinary sanctions are means of coercion specific to labor law, provided by law, with a pronounced educational character, aimed at defending the disciplinary order, developing the spirit of responsibility for the conscientious fulfillment of duties and compliance with the rules of conduct, as well as the prevention of acts of indiscipline (Ghimpu and Ţiclea 2001, 472-273).

The employer has the disciplinary prerogative, having the right to apply, according to the law, disciplinary sanctions to his employees whenever he finds that they have committed a disciplinary violation, according to art. 247 of the Labor Code.

Alin. 5^5 of G.O. no. 137/2000 stipulates that the employer has the obligation to take any necessary measures in order to prevent and combat acts of moral harassment at work, including by providing in the internal regulations of the disciplinary sanctions unit for employees who commit acts or deeds of moral harassment at work.

Sanctions are expressly and limiting provided by law (Ştefănescu 1997, 106) and, gradually, from the mildest to the most severe.

The disciplinary sanctions that the employer may apply if the employee commits a disciplinary offense are:

a) The written warning;
b) The demotion from the position with the granting of the salary corresponding to the position in which the demotion was ordered for a duration that cannot exceed 60 days;
c) Reduction of the basic salary for a period of 1-3 months by 5-10%;
d) Reduction of the basic salary and/or, as the case may be, of the management allowance for a period of 1-3 months, by 5-10%;
e) Disciplinary termination of the employment contract (See Ţiclea 2014, 24-66).

The employer may not apply any sanction other than one expressly set out in the text above. Also, it cannot include in the internal regulation other sanctions than the above. It would be illegal and therefore struck by absolute nullity, the application of a sanction with demotion from office for a period longer than 60 days, reduction of salary by more than 10% or for a period longer than three months.

The disciplinary action ends with a sanctioning act - decision, order, disposition, disciplinary decision, etc. The effect of these acts, shown above, is that of the execution of the sanction by the guilty party "to apply, according to the law, disciplinary sanctions to its employees whenever it finds that they have committed a disciplinary violation" (Art. 247 para. (1) of the Labor Code).

However, the fact that the guilty employee will be held liable does not prevent the attainment of contraventional or criminal liability, if applicable, for those acts.

In the literature (Ţiclea, 2015, 944; Ursuţa 2008, 52), the *contravention liability* was defined as that form of legal liability which consists in sanctioning the persons (natural or legal) guilty of violating the legal provisions that provide and sanction the contraventions.

According to the same authors, the contravention liability is individual and personal, as well as the disciplinary or criminal liability, in the sense that the person guilty of committing a labor law offense is liable in his own name, which is not transferable (Popescu 2019, 498).

Judicial practice (Topliţa Court, civil sentence no. 560/2014) defined the contravention as follows: "Like a crime, the contravention is the typical and illegal deed, committed with guilt and which is provided by law. The contravention has a legal object, a material object, an active subject, a passive subject, an objective side and a subjective side. As for the objective side, it consists in the action or inaction described in the rule establishing and sanctioning the contravention, in the consequence that the illegal behavior produces and in the causal relationship that must exist between the two elements, the legal text designating exactly the deed which constitutes a contravention".

According to art. 26 alin. 1^1 and 1^2 of G.O. no. 137/2000, as amended by Law no. 167/2020 is a contravention of moral harassment at work committed by an employee, by violating the rights or dignity of another employee, and is punishable by a fine from 10.000 lei to 15.000 lei. It constitutes a contravention and is sanctioned with a fine: a) from 30.000 lei to 50.000 lei the non-fulfillment by the employer of the obligations provided in art. 2 alin. 5^5; b) from 50.000 lei to 200.000 lei non-compliance by the employer with the provisions of art. 2 alin. 5^6.

Also, as an element of novelty are the provisions introduced in art. 26 alin. 2^1-2^3 which have the following content: 2^1 Whenever it finds the commission of an act of moral harassment at work, the court may, under the law: a) order the employer to take all the measures necessary to stop any acts or deeds of moral harassment at work in respect of the employee concerned; b) order the reinstatement of the employee concerned at work; c) order the employer to pay the employee compensation in an amount equal to the equivalent of the salary rights he was deprived of; d) to order the employer to pay the employee compensatory and moral damages; e) to order the employer to pay the employee the amount necessary for the psychological counseling that the employee has need, for a reasonable period established by the occupational physician, f) to order the employer to change the disciplinary records of the employee.

According to alin. 2^2 of the same article, it provides that whenever it finds the commission of an act of moral harassment at work, the Council applies, under the law, any of the measures provided in alin. 2^1 lit. a) and e), and according to 2^3. It constitutes a contravention and it is sanctioned with a fine from 100.000 lei to 200.000 lei the failure of the employer to fulfill the measures ordered by the Council. The payment of the fine does not exonerate the employer from fulfilling the obligations provided in alin. 2^1.

In the matter of moral harassment, the competence to apply sanctions for contravention will belong to the National Council for Combating Discrimination, while the courts will be competent to resolve any claims arising from facts or acts of moral harassment or possible appeals. National Council for Combating Discrimination will be able to oblige the employer to grant some compensations (for example the amounts necessary for psychological counseling) to the employee when he finds the violation of the law.

Criminal liability in the field of labor presents some specific aspects regarding the illicit deed, the subjects, the content and the object of the legal relationship of criminal liability (Popescu 2019, 511).

The Labor Code and other specific normative acts regulate the criminal liability of the employer, who, as a rule, is a legal person. The current Criminal Code expressly criminalizes the criminal liability of the legal person.

Thus, according to art. 135 alin. (1) "The legal person, except for the state and the public authorities, is criminally liable for the crimes committed in the accomplishment of the object of activity or in the interest or in the name of the legal person", and in art. 135 alin. (3) it is provided that "The criminal liability of the legal person does not exclude the criminal liability of the natural person who contributed to the commission of the same act".

For the natural person the punishments are:

- *Main punishments* - life imprisonment, imprisonment, fine - art. 53, art. 56-64;
- *Accessory punishment,* which consists in the prohibition of the exercise of certain rights, including the occupation of a position involving the exercise of state authority - art. 54 and art. 65;
- *Complementary punishments,* which refer to the prohibition of the right to occupy, to exercise the profession or trade or to carry out the activity that the person in question used to commit the crime - art. 55 lit. a) and art. 66 lit. g).

Disciplinary misconduct is the sole basis of disciplinary liability, as the offense is the basis of criminal liability, and the misdemeanor is the basis of misdemeanor liability.

Article 2, alin. 5^3 of G.O. no. 137/2000 stipulates that every employee has the right to a job without acts of moral harassment. No employee shall be sanctioned, dismissed or discriminated against, directly or indirectly, including in respect of pay, vocational training, promotion or extension of employment, because he has been subjected or refused to be subjected to moral harassment at work.

Moreover, in alin. 5^6 of the same article stipulates that it is forbidden for the employer to establish, in any form, internal rules or measures that oblige, determine or urge employees to commit acts or acts of moral harassment at work.

In alin. 5^7 stipulates that the employee, victim of moral harassment at work, must prove the factual elements of moral harassment, the burden of proof falling on the employer, in accordance with the law. The intention to harm through acts or deeds of moral harassment in the workplace must not be proved.

Conclusions

Moral harassment has grown in all its forms. An employee or an employer can destroy a colleague or a subordinate or even a boss only through words, looks, insinuations, but also through criticism and devaluation. This is the moral harassment. We should no longer consider that this is something trivial, the process of destroying a person can be encountered not only in the couple, in the family but also at work, the victims being involved in a depressive spiral, sometimes even suicidal. We should not remain indifferent to this issue with extreme consequences at the societal level.

The purpose pursued by Law no. 167 of August 7, 2020, for the amendment and completion of the Government Ordinance no. 137/2000 regarding the prevention and sanctioning of all forms of discrimination, as well as for the completion of art. 6 of Law no. 202/2002 on equal opportunities and treatment between women and men is to ensure the necessary and adequate legal protection of employees at work, by combating moral harassment at work.

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The Second Round of Information Security Challenges at TJX Companies

Courtney Gatlin-Keener, MBA[1], Ryan Lunsford, PhD[2]

[1]DBA Student, University of the Incarnate Word, USA, cgatlin@student.uiwtx.edu
[2]Professor and DBA Chairman, University of the Incarnate Word, USA, lunsford@uiwtx.edu

ABSTRACT: This descriptive case study summarizes TJX Companies (TJX), highlighting the considerable success its off-price retailing business has experienced in the United States and abroad. TJX traces its roots to small-town Massachusetts as far back as the early 20th century through its precursor company, Zayre Corporation. With over 4,500 stores globally, TJX is renowned as a dominant off-price retail business giant, positioned in the top 300 in the Fortune Global 500 annual rankings of the world's largest companies with over $40B in sales and a market value of over $62B. TJX's resilience and sustainability result from its sophisticated value proposition comprised of its business model flexibility and opportunistic purchasing. Despite their financial performance, business niche dominance, and growth and expansion prospects, an unexpected ethical dilemma was recently uncovered. Based on UpGuard's third-party report, it was discovered that despite the purported recovery from a 2007 TJX data breach debacle and supposed enhancements in its digital infrastructure, there are still significant issues related to TJX's network security. It appears as though TJX, despite having a previous opportunity to reconcile, is still, even today, unable to provide adequate customer data protection. Thus, it is recommended that TJX configures its Domain Name System Security Extensions (DNSSEC) and bolster the security of its digital transactions by implementing point-to-point encryption (P2PE) and tokenization, payment card industry (PCI) validated P2PE solutions from its store chains to the banks and PCI-compliant firewalls. Additionally, they should revise their current business model to integrate consumer information protection into its key activities and include a reliable and secure digital infrastructure as a critical resource for the business. This case study will identify best-practices that organizational leaders in a number of industries might adopt and apply within their companies to benefit from the many lessons learned after studying TJX's many challenges and successes.

KEYWORDS: TJX Companies, data breach, information security, TJ Maxx, Marshalls, HomeGoods

Introduction

A carefully-deliberated, strategic business model is a crucial success factor for any organization; however, an especially innovatively-designed model may lead to additional business sustainability (Wirtz 2011; Bocken, Short, Rana & Evans 2014). The TJX Companies (TJX) have uniquely captured the essence of the model, enabling it to make its way into the top 300 of Fortune Magazine's Global 500 companies of 2020. The TJX corporate profile at Fortune (2020) Global 500 pictures the group of companies as consistently dominant over the years as an off-price discount retailer of fashion and home goods, with 2019 sales reaching $41.7 billion. Fortune (2020) Global 500 deems the previous year's performance of TJX to be bigger than comparable retail brands, Macy's and J. C. Penney, combined. As 2020 came to a close, there were practically no remaining ghosts of the past that haunted TJX in the notorious 2007 consumer security data breach, which led to a class-action suit on behalf of its American consumers and a settlement costing TJX over $200M in 2008, among others (Berger-Montague 2018). It was not, however, an easy recovery for TJX. Nevertheless, equipped with an innovative business model, a well-planned business trajectory, and able leadership, the TJX group of companies coasted along a bumpy market ride in the aftermath of the information security breach to increase its sales by 7% in 2019 (Fortune 2020). Surprisingly, even with what was regarded as one of the three most prominent data breaches on record in the US, which resulted in the exposure of 94 million consumer credit card details, the TJX stock prices did not plummet for more than a day (Khrisna 2019; Hovav & Gray n.d.; Yahoo Finance 2021a). This

case study examines the salient details leading to the current success of TJX, despite its infamous credit card data debacle in 2007, and concludes with an analysis of how the company can continue its incredible off-price deals and the planned trajectory for growth and expansion while ensuring the privacy and security of consumer data.

Background of TJX Companies

TJX officially began as TJ Maxx in 1977; however, its roots may be traced back further to two Feldberg brothers, Max and Morris, when they established Zayre Corporation in Framingham, Massachusetts, as an apparel wholesale firm in 1919 (Laulajainen 2012; TJX 2021a). After a decade of operations, the wholesaling business was steadily declining so, in 1929, the brothers ventured into a chain of retail stores specializing in women's apparel (Laulajainen 2012). They capitalized on several innovative decisions through the post-World War II era when the population migrated to the suburbs in large numbers. The brothers identified early on that the traditional department store that catered to suburban America's needs was quickly sifting away from geographically downtown locations and resolved to shift their strategic business model to one of discounting (Laulajainen 2012).

The discount strategy proved successful, and Zayre Corporation earned fame for its discount operations throughout the eastern United States. By the early 1960s, apparel stores flourished north of the Buffalo-New Haven Connecticut line, as discount stores began to spatially disperse as far as Boston, Chicago, Miami, and Washington, DC (Laulajainen 2012). In 1976, Zayre Corporation, in another innovative decision, recruited the Marshalls' general merchandising manager, Bernard Cammarata, to launch a new chain of stores, with the off-price retailing format for family apparel and home goods. Thus, TJ Maxx was born, and the initial chain of stores opened in 1977 (TJX 2021a).

By the late 1980s, the Zayre Corporation was restructured into the TJX Companies with its initial three brands, TJ Maxx, Hit or Miss, and Chadwick's of Boston (TJX 2021a). In 1990, TJX acquired Winners Apparel of Canada, followed by the introduction of HomeGoods two years later. In 1994, TJX introduced off-price retailing to the UK and Ireland via TK Maxx as Europe's lone major off-price apparel and home fashions retailer. In 1995, TJX acquired Marshalls and sold Hit or Miss. In 1996, Brylane purchased Chadwick's of Boston (TJX 2021a; Wall Street Journal 1996). In the new millennium, TJX introduced off-price home fashions in Canada via HomeSense (TJX 2021a).

Leadership has undoubtedly been a key factor for the longstanding success of TJX and its dominance in the off-price retailing sector. As off-price discounters, TJX struck a mine of opportunities to dominate their niche of major brands at significantly lower prices with the able guidance of the most competent leaders of their own time: Bernard Cammarata, Carol Meyrowitz, and Ernest Herrmann (Davidson 2009; Parker 2020; Sarkar 2017). Founders Max and Morris Feldberg possessed an eye for promising talent, having invited then Marshall's general merchandising manager, Ben Cammarata, to lead Zayre's restructuring as off-price discount retailers, TJX Companies (Sarkar 2017).

Carol Meyrowitz was CEO of TJX during its most challenging time in 2007 when the globally dominant off-price discount chain was rocked by a humongous credit card security breach crisis (Davidson 2009). Her promotion as CEO was providential because her leadership steered the company back to its value-driven business trajectory after surviving the data breach debacle and the global economic downturn combined, which was TJX's most tempestuous disturbance in its over 40-years of history (Davidson 2009). She turned in higher sales records, higher share prices, and expanded the TJX chains' presence in areas where consumers manifested heightened interest in low-priced options.

The current CEO, Ernest Herrmann, rose from the ranks as a former purchaser of merchandise and took over from Meyrowitz in 2016 with a keen focus on enhancing the chain's

physical market presence (Parker 2020). Herrmann applies a positivist approach when examining the business environment by visualizing threats as new opportunities. He acquired considerable experience in sourcing/purchasing TJX inventory and is not a reckless and impulsive buyer. Instead, Herrmann's inventory replenishment approach calls for moderation not to purchase considerable volumes in shorter periods (Parker 2020).

TJX suffered a credit card security data breach perpetrated by unscrupulous hackers who cracked Marshalls' web equivalent privacy (WEP) security code in 2006 (Xu et al. 2008). Despite the credit card security fiasco, depleted financial resources due to costs associated with the data breach, and significant decline in sales, TJX weathered the storm of the 2007 security mess. Currently, TJX has 3,290 stores in the US, 513 stores in Canada, 672 stores in Europe, and 54 stores in Australia (TJX Companies 2019).

TJX Companies' Best Practices

Business model flexibility. TJX's flexible business model is perhaps, its chief sustainable competitive differentiator (Lewis & Dart 2014). As TJX has grown to over 4,500 stores globally, they have successfully leveraged more than 1,100 associates in their product buying offices that have developed a vendor network of more than 21,000 suppliers (TJX Companies 2019). The benefit to TJX is that they can reliably replenish their stores with fresh and exciting brand-recognized merchandise of high quality. TJX buyers operate year-round to secure market opportunities as they nimbly adjust to ever-changing consumer preferences. TJX buyers consider a variety of non-traditional purchasing opportunities, including less-than-full assortments of items, styles, and sizes in varying quantities (TJX Companies 2019).

When Zayre restructured to become TJX, its goal was to retain its discount retail business model with a twist by concentrating on the off-price retail model. As explained in Baird et al. (2020), off-price stores are one of the variations of discount stores with moderate width and shallow depth of merchandize assortment, appropriately called specialty stores, selling merchandise of average or good quality at low prices and lower continuity (Baird, Meyer & Green, 2020; Michmann & Mazze 2001). TJX, as an off-price discount retailer, purchases its products from major brand manufacturers' canceled orders, closeouts, irregulars, overruns, return orders, and seconds. It also makes purchases from other retailers' closeout merchandise and end-of-season sales. While some off-price retailers develop a reputation of selling damaged items and previous years' styles, TJX offers top-quality and in-season product offerings up to 60% less than traditional department store retailers (Donellan 2014).

Opportunistic purchasing. TJX uses the term opportunistic buying to describe its purchasing strategy and tactics, which sustainably differentiates them from traditional retailers (TJX Companies 2019). Their overall buying strategy supports their efforts in the delivery of their value proposition. The key features of TJX's opportunistic buying strategy include: 1) a frequently refreshed mix of branded, designer, and other quality products at prices generally lower than traditional retail stores, 2) year-round merchandise procurement from 100 countries facilitated by 1,100 buying associates located in 12 countries across four continents, and 3) the purchase of substantially discounted merchandise through closeouts from brand manufacturers and other retailers, manufacturer overruns, order cancellations, and unique products from brands and factories. To ensure that benefit from these features is maximized, buying associates continuously look for exciting goods throughout the year to stock inventory for either the current or an upcoming season. When opportunities present, some merchandise may also be purchased as future stocks, referred to as packaway, for goods perceived to possess TJX's ideal combination of brand, fashion, price, and quality. TJX also seeks to acquire private labels or TJX-licensed brands developed by the corporation when viable (TJX Companies 2019).

Pricing. TJX offers excellent value to consumers through "quality, fashionable, brand name, and designer merchandise" at retail prices ranging from 20% to 60% below retail price of

department stores, specialty shops, and major online retailers, courtesy of its excellent opportunistic buying strategy (TJX Companies 2019). Being an everyday sale day at TJX store chains, there is practically no need to designate a sale/super sale day or engage in promotional coupons to increase sales. TJX can also flexibly adjust its prices in response to economic cycle fluctuations to strategically maintain its pricing difference relative to traditional retailers (TJX Companies 2019).

Inventory management and distribution. To permit the creation of a treasure hunt experience among consumers in TJX stores, the company frequently refreshes their merchandise to motivate consumer interest in frequent visits for the best off-price deals of designer apparel and other popular brands. Using state-of-the-art information technology (IT) system for inventory management and distribution, TJX regularly offers new and fresh off-price selections of apparel and home fashion items. TJX applies creative IT solutions in planning, purchasing, monitoring, pricing markdown, distribution center storage, processing, handling, and shipping of specialized inventory items custom-tailored to the local preferences and demographics. Inventory turnover in TJX store chains is rapid and usually sells on computer-estimated time to generate automatic replenishment schedules in organized and timely schedules. To achieve this synergy of operations, TJX invests in its supply chain with the triune purpose of continuous operations at low inventory levels, automated deliveries, and merchandise allocation to thousands of TJX stores precisely and efficiently (TJX Companies, 2019).

Dilemma

TJX's five-year cumulative stock performance compares favorably to the S&P 500 and Dow Jones apparel retailer indices (TJX Companies 2019, "TJX Stock Performance"), and its potential for growth and expansion appears promising. However, TJX has identified potential challenges in its statements of significant risks (TJX Companies, 2019). While most of the risks acknowledged in the 10-K SEC filing are relatively normal operational issues that most corporations face, there is one specific risk that poses an ethical dilemma to the business. The risk is stated as "compromises of our data security, disruptions in our information technology systems, or failure to satisfy the information technology needs of our business could result in material loss or liability, materially impact our operating results or materially harm our reputation" (TJX Companies 2019).

TJX is wise to account for possible attempts by unscrupulous entities to access personal or sensitive information fraudulently or steal money by breaching the company's data security system through one or more of a range of manipulative actions that can compromise the privacy and confidentiality of consumer data, including account takeovers, digital and physical skimmers, denial-of-service attacks, employee malfeasance, exploitation of system vulnerabilities, malware, phishing, ransomware, or social engineering (TJX Companies 2019). However, the 117-page global corporate responsibility report did not address how the corporation secures and protects consumer data privacy (TJX Companies 2020b). To be clear, this case study does not say that TJX is negligent in securing and safeguarding its clientele base's data privacy. Rather, if any consumer data security and protection measures are in place, such measures were not included in the report.

TJX's website expressly states in its Privacy Notice how it protects consumer information. Nevertheless, two paragraphs of basic data security information and a disclaimer of corporate liability for alteration, destruction, disclosure, loss, misuse, or unauthorized access of consumer information is not "data security" and "protection measures."

Discussion and Analysis of the Data Protection Issue

2007 Credit Card Data Breach. For two days in 2005, hackers outside Marshalls in St. Paul, Minnesota aimed what was described in Xu et al. (2008) and confirmed in Schneider (2009) as

a "telescope-shaped antenna" to the direction of Marshalls to fraudulently intercept the store's wireless transactions broadcasted via the wireless network. By listening to the transactions through the networks, the hackers cracked Marshalls' wired equivalent privacy (WEP) network security code. They illegally accessed consumers' credit card and bank account information, and in the process, stole 45.7 million transactions recorded in the centralized corporate database. The hackers compromised sensitive corporate information and the privacy and security of about half a million consumers. TJX did not immediately publicly disclose the data breach but did report the violation to authorities. The corporation's public relations executive announced the data security breach in January of 2007 (Xu et al. 2008; Schneider 2009).

TJX had some foreknowledge of their potentially insufficient network security technology by various IT security firms (Xu et al., 2008). At least one IT security firm, Newbury Networks, made efforts to discuss IT security-related issues, but TJX declined their offer. At the time of the hacker intrusion into the TJX network system, the WEP security standard was in-place throughout the stores' chain. The release of the first Payment Card Industry Data Security Standard (PCI DSS 2017) occurred in 2004 to motivate credit card companies to practice due diligence in processing credit card payments. The standard was also issued to facilitate retailers' and consumers' protection against the risk of cracking, credit card fraud, and other threats and vulnerabilities (Xu et al. 2008).

Despite the possibility of fines for non-compliance, merchants, in general, did not readily adopt PCI DSS. Nevertheless, although Visa permitted TJX to operate provided that it would continue to enhance its data security and protection, TJX decided to delay compliance (Xu et al., 2008). Duvall (2007) is adamant that the data breach could have been avoided if TJX had collected less information from consumers and stored the information securely. The investigation into the TJX data breach found that 1) there was a failure on the part of TJX to manage the intrusion risk vis-a-vis the amount of unnecessary data it collected and stored longer than necessary, 2) TJX was too slow in securing their weak encryption standard in use into a more substantial encryption standard (the time-lapse was required for the hackers to feast on TJX's extensive collection of unnecessary information, such as driver license numbers, 3) TJX failed to adopt an adequate intrusion monitoring system, and 4) TJX did not comply with the PCI DSS requirement (Xu et al. 2008; Duvall 2007).

How TJX Protects Consumer Data Security 2021: A Third-Party Report. According to the third-party security report on risk and attack surface management platform by UpGuard on January 11, 2021, TJX received a "B" rating, which indicates a 2.6 times more likely probability of data security breach than an A-rated company (Gurman, 2020). Strengths of TJX's website security provided by UpGuard (2021) are its secure sockets layer (SSL), traffic via the hypertext transfer protocol secure (HTTPS), and its non-vulnerability to FREAK, Logjam, Heartbleed, Poodle, and CVE-2015-1635 or IIS HTTP.sys Remote Code Execution. There is support for SSL, a strong SSL algorithm, a valid SSL certificate that does expire within 20 days, matching hostname and SSL certificate and the SSL certificate is not in the revoked certificates list. However, several weaknesses were observed in the website, such as insecure SSL/transport layer security (TLS); exposure of its X-Powered-By, ASP.NET, and ASP.NET version headers.

UpGuard (2021) also provided strengths of TJX's email security, which are: its enabled Sender Policy Framework (SFP) with correct syntax, strict filtering, and non-use of ptr mechanism; use of the email authentication policy and reporting protocol, Domain-based Message Authentication, Reporting & Conformance (DMARC). However, its DMARC policy is set to p=none, where the domain owner requests no specific action to be made on emails that fail the authentication protocol, a weakness in email security. In terms of network security, two observations were made: first, there were no open ports, which is a security strength, but the Domain Name System Security Extensions (DNSSEC) is not enabled, which is a weakness (UpGuard 2021).

Implications of TJX's Data Security Stance

With the information available, it may be concluded that there was a little improvement in the data security approach of TJX between 2007 and 2021. For a company that had already experienced a data breach first hand and paid a considerable settlement amount on the damages inflicted by their lapse in security, it appears that TJX may not realize the ethical ramifications. Technically, DNSSEC is a set of specifications that extends the DNS protocol by adding cryptographic encryption for responses emanating from authoritative DNS servers. Functionally, DNSSEC protects the network from unscrupulous hackers' manipulation to control target computers to fraudulent websites (Constantin 2020). Sadly, for TJX, their network is still NOT adequately protected against hackers and intrusion because their DNSSEC is NOT enabled. This means that "an attacker can redirect a user to a potentially malicious site without the user realizing it" (Internet Corporation for Assigned Names and Numbers 2019).

It appears as though TJX did not learn its lesson on the importance of network security to protect consumer data, or perhaps, that it does not take consumer data protection seriously since the 2007 data breach.

Conclusions and Recommendations

The prospects for TJX's continued success appear to be optimistic from several perspectives. Their business model flexibility and opportunistic purchasing have them well-positioned to demonstrate reliable financial performance and strong prospects for continued expansion. Its best practices in opportunistic buying, pricing, and inventory management and distribution coupled with experienced and dedicated personnel, many of whom were home-grown talents trained and groomed for future leadership, are critical for sustained performance.

However, of continued concern is how TJX leadership positioned the company to be vulnerable to data compromises. Unscrupulous cyberworld entities are often as knowledgeable or more than honest technology experts. With appropriate and updated standards and preventive policies to deter data breaches now in place by authoritative bodies, Culnan and Williams (2009) suggest that "organizations have a moral responsibility to these individuals [i.e., consumers] to avoid causing harm and to take reasonable precautions toward that end." Therefore, it is a moral imperative for businesses to enhance consumer data security and protection beyond mandatory compliance to standards, policies, and regulations. Instead, companies need to create "a culture of integrity that combines a concern for the law with an emphasis on managerial responsibility for the firm's organizational privacy behaviors" (Culnan & Williams 2009).

The TJX breach was possible because TJX failed to exercise reasonable procedures to protect consumer information. Specifically, the storage and transmission of sensitive data without encryption (i.e., as clear text) and the inability to deter wireless and unauthorized access to its networks due to a failure to detect access and follow up on security warnings. As revealed in the UpGuard (2021) third-party report of TJX network security, another data breach is likely because its DNSSEC is not enabled. It is recommended that TJX bolster its network security by enabling DNSSEC. As much as DNSSEC records deter unauthorized parties from forging documents that guarantee the domain identity, it is highly recommended that DNSSEC be configured in the TJX domain. To reinforce the level of protection of a well-configured DNSSEC of the TJX domain, the following actions might also be considered by TJX and other business organizations using post of sale (POS) systems, based on input from the payments platform, CardConnect (n.d.) of the Financial Services Technology. 1) Combine point-to-point encryption (P2PE) and tokenization to better protect consumer information and considerably narrow the scope and associated costs of PCI compliance, 2) implement a PCI-validated P2PE

solution from its storefronts to financial institutions, and 3) install PCI-compliant firewalls to protect sensitive data for consumers and organizations.

TJX and its stakeholders' shared interest is to improve their current business model to comprehensively protect consumer information protection (Key Activities) and add a secure digital network (Key Resources). Incorporating this imperative to protect consumer information in the TJX business model is vital for the TJX leaders and personnel to create a culture of integrity that emphasizes responsibility for information and privacy protection.

The resolution of TJX cybersecurity vulnerabilities identified in the UpGuard (2021) report is crucial. For the TJX website's security, it is recommended that the TJX main server disable versions of SSL/TLS older than 1.2 as these outdated protocols are not secure. The TJX server configuration should remove the X-Powered-By header to ensure hackers are not given easy access to TJX server's technology. Likewise, the TJX server should also be configured to support HTTP Strict Transport Security (HSTS) to protect consumers who visit the website from man-in-the-middle attacks, where hackers covertly intercept or alter digital communication between two parties (Swinhoe, 2019). Additionally, the website header which exposes ASP.NET should be reconfigured, and the header should be removed. For TJX email security, it is recommended that the DMARC policy be migrated to p=quarantine and later to p=reject, so that email messages received which fail authentication can be appropriately addressed.

TJX Companies has realized remarkable achievements since its founding in 1977, as evidenced by its 4,500 stores globally that sell more than $40B annual in the off-price retailing sector. TJX's continued success will continue to depend on its business model flexibility and opportunistic purchasing. TJX survived a 2007 data breach debacle and, after suffering an additional compromise, needs to commit to systematically safeguarding customer data. They should revise their current business model to integrate consumer information protection into its key activities and include a reliable and secure digital infrastructure as a critical resource for the business.

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The Making of Fraudulent Economic Operations and Identity Theft as Cybercrimes in Romania

Dan Cristian

"Dimitrie Cantemir" Christian University of Bucharest, Faculty of Juridical and Administrative Sciences – Law, Bucharest, Romania, danrcristian@gmail.com

ABSTRACT: In the 21st century, information has gained a huge value, mainly because the human activities have transitioned from the physical world to the digital one. Among these activities, we can find the innovated economic one, represented by the accumulation of capital in virtual accounts handled and insured by the banks. Another transitioned element consists of the social processes, this being done nowadays on different networks and mobile applications. Due to the fact that humans have created the systems by which our personal data is protected and which assure ones right of property over a digital monetary transaction alongside the right to a private life when it comes to a conversation on platforms with one or more people, these programs are susceptible to fraudulent activities done by individuals with high informatics skills. The current paperwork will analyze from a legal approach the crimes which can be committed in regards to the above-mentioned aspects. The branch of criminal law will serve as the main building block for reaching valid conclusions.

KEYWORDS: cybercrimes, criminal law, psychology, identity theft, victims, social networks, criminal resolution, data protection systems, the subjective criminal side

Cybercrimes: notion and elements

The concept of cybercrime can be defined as that criminal act done in an informatics environment, by which all the necessary resources are consumed in order to achieve the illegal objective that it is brought into reality by the will of the author or the desire of some else, serving as means of completion for the main criminal. For both situations (author and accomplice) the individual fully knows the damage that he/she is about to inflict on the victim. In the end, he/she will be held responsible, thanks to the judicial process (Mitrache C. and Mitrache Cr. 2019, 248).

From the perspective of the Criminal Law, the cybercrimes can be committed only with direct intention, due to the fact that for the completion of such an act a well-prepared way of operation is necessary, this including the most favorable moment and the complexity of constructing the means of execution. In this manner, the illegal act has a well-drawn reason and a final objective, a clear vision (Ristea 2020, 116).

When it comes to the cause which can remove ones criminal liability, on a general level, they cannot be raised in this case, because there is no real justification in completing this action: no immediate danger which needs to be stopped, cannot be removed by any other method and with the manifestation in the virtual space. In other words, the psychical presence of the danger and the temporal extent of the executed act makes the justification of being a legal behavior almost impossible (Coman 2020, 87).

The guilty cannot state that he was in a state of complete intoxication (drunk or drugged) when doing the criminal act, due to the fact that these types of crimes require the author to be conscious about the final result and to possess high intellectual resources in order to complete the resolution, attributes which are shut down by the usage of such substances (Acsinte 2012, 131).

On the other hand, there are scenarios where the responsible person needed to act this way as a result of a moral of physical constraint, him being the only one capable at that time to commit the cybercrime. The constraint can be done by creating a threat towards the family members or towards the friend circle of the hacker. Also, the imminent danger can be imposed on the cybercriminal himself. In this case, the author can raise the fact that he had to

complete the criminal action due to the danger posed by the threat, and thus we are in the presence of a cause that can remove the possible punishment (Udroiu M. and Trancă A. and Trancă C. 2014, 217).

There are times when, even if an individual commits a cybercrime with a clear intention an a well desired goal, the person doing it can suffer from a factual error towards the correct reality, especially in regards of his target and if the error has an essential role, this can lead to the removal of the criminal liability (Boroi 2019, 253).

Completing fraudulent economic operations as cybercrimes

By completing fraudulent economic operations in the virtual world we can understand the stealing, falsification or misrepresentation of any data with a fiscal attribute, in an online environment, the information being connected with any financial element belonging to a person or any legal entity, with the purpose of the criminal to take this capital into his own possession (Ioniță 2018, 126).

These cybercrimes are recognized in the specialized doctrine as qualified versions of theft and embezzlement, thanks to the common elements present in the criminal resolution and the methods used for the achievement of the goal, the main distinction being that certain skills, experience and instruments are necessary for the completion (Pașca, Ciopec and Roibu 2013, 203).

By referring to the subjective part of the financial cybercrimes, the motive shows the psychical state of the author that lead to the desire to accumulate capital, the end scope being the criminal resolution of completing the operation (Butoi 2019, 425).

When it comes to the unity of the crime, the fraudulent bank operations done in an informatics sphere can be separated by the number of execution acts into simple crimes and continuity crimes. A special case is represented by the crimes done in a continued form (Stănilă 2020, 355).

In normal cases, the person which commits to cybercrimes chooses to transfer the bank data in stages, usually more subjects of the law suffering from a loss of small amounts in their accounts. The victims generally do not realize that they have become a target or simply choose not to inform the proper authorities, based on the consideration that the damage dealt is too insignificant to worry about. Since the response of the injured party is usually absent, the criminal continues his/her behavior, thus we can see a cybercrime done in a continuous form (Duțu 2013, 312).

There are scenarios in which the active subject of the crime commits the act in a simple form by extracting a large amount of money from the victims account. This is done either due to the lack of experience of the author, either because of an unrealistic sense of safety generated by the false confidence in his/her abilities or even because that individual has a general lack of attention and manifests negligence when planning (Butoi T., Butoi I., Butoi A. and Put 2019, 217).

In order for someone to successfully complete a cybercrime, he/she needs to have proper knowledge in the domain of Information Technology, and modern equipment which can repel the devices used for prevention and protection. Devices used to counteract the defense mechanisms are instruments that hide the informatics protocol and programs which permit the hiding and relocation of the signal. Using such elements qualifies the crime to its aggravated form (Udroiu M., Trancă A. and Trancă C. 2014, 318).

Due to the complexity of the operation, the methods used, the necessary intellectual capacity and the required equipment, cybercrimes done for economic reason can only be completed with a direct intention (Sergiu and Șerban 2020, 178).

Generally, this type of criminal behavior does not have any cause for justification so that one should be released from the criminal liability, the exception being an external

constraint towards the hacker or his/her kin or friends. This constraint can be in the form of a threat or a direct physical action (Hotca 2020, 318).

Identity theft as a cybercrime

The identity theft in the context of cybercrimes represents the taking without consent of the personal data belonging to another subject of the law with the intention to complete actions or activities in their name, the end goal being the obtaining of material benefits and/or the defame of the victim (Acsinte 2012, 149).

The criminal resolution, in this case, is completed with intention and it is specifically destined to a certain person or a group of people, based on economic, political or social reasons and consists in assuming the identity of the respective individual or legal entity (Udroiu M., Trancă A. and Trancă C. 2014, 277).

In the last period, identity theft as a cybercrime has become a common practice in the virtual world, especially on social platforms, where, even if no harm is intended, some users pretend to be someone else, creating fake accounts known as "avatars", or they choose to pose as their friends based on a personal reason, not necessary a criminal one.

Also, from the sphere of identity theft we can observe the completion of economic illegal operations. In order to steal the financial data from the users' bank account the first element to be gathered is their personal data, these can be extracted from the device which the victim uses to store their information (Gheorghe and Ivan 2019, 395).

A special case and of high importance for the current analysis is represented by the stealing of personal data from a person in order to force the victim into providing the criminal with sexual favors. Generally, this type of activity targets women, which think that on the other side of the computer, is a different individual. Due to this false impression, they are convinced to complete several improper acts in front of their webcams. After the display has been recorded, the information will be used by the real hacker in order to make the victim perform sexual activities or to give them other kinds of benefits (material or monetary) (Leș 2018, 342).

The motive for this type of crime can consist in the creation on a social platform of a fake account which poses as a political party with the purpose to distort the public image of that entity. A false identity can also be created for the spreading of anti-Semite, extremist or violent ideas.

Identity theft can be utilized for monetary reasons. Such is the case if an individual chooses to pose as a public figure and then organizes campaigns to grow his own capital (Acsinte 2012, 168).

For these types of cybercrimes, the only way that the criminal liability can be removed is for the victim to agree with the actions taken by the author (Neagu 2020, 297).

Conclusions

In our century the majority of the activities performed by humans has transitioned from a physical environment to the virtual one, especially when it comes to the economic, social, political, religious and educational ones.

For the above mentioned to function properly several protection systems regarding personal data had to be implemented.

These systems, being made by man, are not perfect and can be hacked. The most common targets are the network protecting the economic and political domains.

The action of fraud against the systems which protect the data is present in the category of cybercrimes regulated by the criminal law, and the individuals which perform such an activity are held responsible.

Cybercrimes can be committed only with direct intention, due to the fact that for the completion of such an act a well-prepared way of operation is necessary, this including the most favorable moment and the complexity of constructing the means of execution.

From the sphere of these criminal conducts, the most relevant ones are the completion of economical fraudulent operations and the identity theft.

The action with a purpose represented by the high jacking of an economic operation in the virtual environment is also part of the identity theft cybercrime category.

When it comes to the theft of computer data with an economic nature, there is no cause which can be raised in court in order for the criminal liability to be removed, the only case by which the author can be exempted from the responsibility of his/her action being a scenario in which he was constraint to act this way for the benefit of another.

In the case of an identity theft with the focus on stealing the personal data of a certain subject of the law, a cause for the removal of the criminal liability is the existence of the consent towards these actions, given by the victim.

The illegal activities done in the informatics area are categorized in their aggravated form, due to the fact that a high qualification and intellectual capacity are necessary for completion.

Nowadays, a large concern is placed on data security with the objective of prevention and fight against cybercrimes, on a national and international level. However, there will always be persons able to hack in the protection systems no matter their quality of creation. In this manner, every citizen has to inform himself correctly in regards to the navigation on the internet and to properly follow the instructions provided by the specialists in order to assure a good defense against cybernetic attacks.

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Legal Consciousness in the Works of Thoughts of Ancient and Medieval Ages

Bogdan David

"Dimitrie Cantemir" Christian University of Bucharest - Faculty of Juridical and Administrative Sciences, Bucharest, Romania, asr.bogdan@yahoo.ro

ABSTRACT: Legal consciousness has been and remains an integral part of the historical evolution of human society, and even more, it, in the context of the historical process of development of human society is identified as a phenomenon that drives, complements and defines social relations and reflects them in the norms of law, or consciousness is a superior form of reflection of the objective reality, proper only to human.

KEYWORDS: Legal conscience, ancient times, legal work, legal norms

Introduction

The emergence and formation of legal consciousness involves a rather complex and difficult process to analyze, especially given that the very beginnings of human society are quite uncertain. And yet, let us try to study as much as possible this socio-legal phenomenon, to highlight the tangent between the emergence and development of legal consciousness and law.

Thus, we can list a number of external factors that, during the historical evolution of society, have contributed in the most essential way to the emergence and development of legal consciousness. Thus, among the factors with the most essential contribution to the formation of law and legal consciousness are the geographical area in which a certain state was established and developed national particularities, economic conditions, religious beliefs present in a certain state.

The legal consciousness of the ancient period is closely interspersed with the religious consciousness, resulting from mythology and the forces of nature, with the unwritten norms of morality, deduced from the experience of human coexistence and is proof that society has realized the need to live in a society by following certain rules (which at first had a more moral and religious connotation) absolutely necessary for survival and development.

Based on the fact that different parts of the world, on the whole historical scale, have evolved and developed differently, it would be correct to analyze the emergence and development of legal consciousness on historical-geographical segments, in the context of law development, or legal consciousness and law they are two inseparable phenomena. What Professor Baltag (2010, 67) mentions: *"Law acquires prestige and authority through its historical dimension, it has an absolutely respectable age, evolving naturally in the conjuncture of humanity's aspirations. Law was born in the Ancient Orient"* it is also fully valid for the legal conscience, through which the right is formed and realized.

Legal consciousness in ancient times, as reflected by the thinkers of those times

Thus, the ancient period in Mesopotamia is dominated by the strong belief of individuals in deities, in customs and traditions, in sacred rituals. Law was considered to have a divine character (Craiovan 2001, 7). At the same time, Babylonian law was the custom and the law, and *"Among the most important laws is the code of Hammurabi, which provoked a rich jurisprudence in later times. This legislation has been applied for almost 1000 years in the Mesopotamian region"* (Smochină 2006, 35).

A work of undeniable importance from that period, Hammurabi's Code highlights as well as possible the legal norms of that period, with the provision of sanctions that followed in case of non-compliance with legal norms, with the codification of unwritten rules, existing until then in customs and traditions, with the provision of the right of persons to file complaints and the procedure for examining them, a situation after which, if we make an analogy with legal conscience, we can say that the legal conscience of individuals in that socio-political and historical area was determined and dominated by the multitude of unwritten customs and rules, developed by this people, which were based on myths and divinity.

Hammurabi's code presented relatively systematically, in the form of articles - which do not always agree with each other, as they reflect different phases of the evolution of Sumerian-Babylonian society, provisions and sanctions of criminal law and criminal procedure, property law, labor law, commercial law, etc. Emerging from the specifics of that period, it is clear that the law of that period expressed and defended the interests of persons who were part of the category of rich people, a fact characteristic of the legal conscience (which is the reflection of law) of that historical period (Bitoleanu 2006, 320).

The law of retaliation, with the principles applied to the trial of cases before the trial (commencement of trial on the basis of complaint, probation, witness statements, oath) specific to that historical period, characterizes the ancient legal consciousness as rudimentary, fragmentarily developed, based on religious factors habits and customs, one limited in perceptions and aspirations regarding future social relations.

Ancient Egypt does not know codifications of the customs and traditions that individuals strictly observed, right here justice was a distinct function. It is also known from history that the Egyptians in ancient times practiced the examination of crimes in courts, had established procedures for judging complaints. The appearance of the germ of the juridical is obvious, and therefore also that of the juridical conscience.

In ancient India, various traditions, beliefs in myths, divinity and holy things were well rooted. In ancient India, the notion of law and worship were confused. A religious norm also became a norm that legally regulated social relations. History has taught us that in ancient India there were several generally binding collections of norms that combined religion, morality and law (sanctions were provided for some impermissible deeds). The most common: The Code or "Laws of Manu", - The collection is written in verse and contains 12 books that bring together rules of public and private law, civil and criminal law, customs, religious prescriptions, various duties, the regime of castes etc. Laws of Manu, but also all attempts to legislate in the ancient period, are attempts to give a legal connotation to the religious and moral norms, which were in power in that historical period.

Ancient China is also characterized by the strong influence of well-rooted traditions and customs in the consciousness of individuals, and in addition to these, written laws apply that sometimes included amalgamated issues of law and religious matters. Among the most important codes we mention: The Criminal Code from sec. VI BC (). Also, in this context, Mr. Baltag mentions: *"The first codes of laws were drafted in the 5th-4th century BC, but customary law was superior to written law".* The King, in his capacity as "Son of Heaven", was the only one entitled to officiate in the sacrifices to heaven. He is, therefore, invested with supernatural powers. The social order is the reflection of the cosmic order. But based on the conditions of social, economic and political life, in ancient China there is another approach to the regulation of relations in society, promoted by the so-called "legalists" - statesmen, who demanded "that laws be published and enforced equal and absolutely to all, without distinction".

Ancient Greece is the most "successful case" of the ancient world, or here it was best realized the need to build a society based on legal norms, voluntarily respected by citizens, and which would regulate relations between citizens and between citizens and the state, which

also invokes the development of legal consciousness. The main purpose of the laws (nomoi) was to remove the relations between citizens from the incidence of violence and arbitrariness. To achieve this goal, the laws had to impose the domination of Understanding (Homonoia) and Justice (Dike), and citizens were to respect and consciously and voluntarily submit to the requirements of legal norms (Grama 2003, 66). This is proof of high legal conscience. The philosophy of law was that the enactment of laws in the interests of all was a condition of stability and harmony in society, and the essence of democracy was the right of the citizen to go to court for any decision of an authority (Bitoleanu 2006, 19).

Ancient Rome is another geographical and historical dimension where law has known a special development, and the well-known Latin maxim *"Dura lex, sed lex"* ("The law is hard, but it is law") whose meaning is plausible even today, perfectly characterizes the situation the law of ancient Roman society. The most eloquent development - in the slave order - was known to Roman law, which became the classic form of law based on private property, its regulations being found in all subsequent laws, without any substantial changes in this area. Roman law - systematized especially by the emperor Justinian in the Corpus Juris Civilis in the VI AC. - facilitated the development of commodity-money relations, playing a decisive role in consolidating property relations (Mazilu 1999, 31). Thus, it is obvious that the legal norms of the ancient period reflected and served the social relations characteristic of the ancient economic society. The right to Rome emanates directly from morality, having like it the ambition to ensure the stability of the city (Craiovan 2001, 17). Eloquently, in ancient times the legal conscience of Roman society had a pronounced moral tinge, legal norms were conceived as a factor of fairness and goodness, as a factor meant to establish and protect the truth, to ensure the stability of Roman cities.

Through the prism of the ancient legal conscience, the members of the society perceived the need to adopt some social norms, of general character, able to regulate the new social relations, appeared in the society and through which to ensure the order in the society. The practice of jurisconsults played an important role in promoting and developing legal ideas, in the assimilation by members of society of legal norms and therefore directly influenced the process of evolution of ancient legal consciousness. The edicts of the magistrates, the senate consultations, the imperial constitutions - consecrated by history as sources of Roman law, also contributed to the completion and improvement of legal norms, reflecting through its content the legal consciousness of that era and the social and legal reality.

A significant progress for the ancient Roman society was the immense work "Digests", the most important collection of Roman law that includes excerpts from 2,000 works belonging to classical jurists, systematized in 50 books and adopted in such a way that they can be used in order to solve the various cases that have arisen in practice. Under such conditions, the ancient legal conscience knew new legal values and aspirations, got rich and contributed to the adoption of new rules, legal norms, able to regulate the new social relations.

Relative to the geographical territory of our state, in ancient times, it was populated by the Geto-Dacian tribes, which later unified into a single state under the rule of Burebista. The society on the territory of our country presents, since the 4th century BC some original features in the period from the transition from the primitive commune to the division into classes. Of particular importance was the Thracian-Dacian state organization, which reached its climax during the reign of Burebista and Decebalus (Cernea and Molcuţ 2004, 7). As in an ancient society, customs served as rules of conduct and had a strong religious content.

Like all ancient peoples, the Geto-Dacians knew the 2 sources: custom (habit) and law. Some information left by Dio Chrisostom, a contemporary of events, and reproduced by Jordanes, shows us the religious character of legal norms and the close connection between political and religious power. Iordanes mentions that Deceneu gave the Geto-Dacians written laws, which they keep to this day (6th century AD) and are called bellagines. The intertwining

of political and religious power continued even after Burebista's death. The process of legislation has always been under the direct influence of the religious factor (Aramă 1995, 8).

With the transformation of Dacia into a Roman province, in addition to local law, Roman law began to be applied, a fact also mentioned by Dimitrie Cantemir: "*But when Dacia was changed to a Roman province and divided, Ulpiu Traian placed Romans here ... Dacia took the Roman laws from its new inhabitants"* (Cantemir 1992, 101). And here we cannot fail to mention the study carried out by the researcher Grama D., according to which: *"Romanian law was formed and evolved under the influence of the law of Ancient Rome. The problem of the formation and evolution of our national law represents one of the aspects of the process of formation of the Romanian people themselves, in the conditions of the fusion that took place on an ethnic and institutional level, after the occupation of Dacia by the Romans".*

Here are 3 main moments: the first is the epoch of the birth of the Romanian people and the formation of customary law, on a legal background of Romanian law (for example the triptychs in Transylvania, then the "Law of the Country"). The second era includes written feudal law in Wallachia and Moldavia, when the influence of Roman law was exercised through Byzantine influence (and especially through the Basilicas, which contain rules of Roman law, adapted to the feudal realities of Byzantine society). The third epoch is that of the elaboration of the legislative work from the time of Alexandru Ioan Cuza (Grama 2005, 69).

From the studied, we conclude that during the stay of the Romanians on the territory of the Dacian state, the local law borrowed many legal regulations from the Roman law, finally forming a new legal system - the Daco-Roman system. Daco-Roman laws had a predominantly unwritten character, based on the faith and conscience of legal subjects, and crimes against the person were the most severely punished, which could be described as a special quality of Daco-Romans to consider man as a superior of society.

These characteristics are derived from the "Law of the Country" - elementary normative system, which regulates the relations between community members and between communities regarding leadership, defense, work, property, family, ensuring public peace by defending the faith and dignity of community members. And here, we specify, the "Law of the Country" appeared in the 4th century, as a result of the fusion of the Roman law with the Dacian one. This Romanian legal creation was also applied in the feudal period, regulating the social relations regarding the will, private property, marriage, divorce, civil contracts, it included legal norms of criminal law.

Reflection of legal thought in the medieval era

In Europe, in medieval times, the basis of law was still made up of customs and habits, which were very diverse and differed from people to people. In the middle Ages the divine "nature" was in the course of considerations of law (Djuvara 1999, 388).

Canon law regulated the organization and functioning of the Catholic Church, but also contained a set of regulations that had a great influence on the evolution of civil law, especially on family law. Also, in this order of ideas, it was found that canon law occupied a distinct place in the system of law, comprising important rules both on movable and immovable property and on persons, rules which during the Inquisition were very extensive (Mazilu 1999, 35).

It is the period in which the church consolidates its positions. The legal and moral procedural motivations will be exposed and regulated by the papal decrees, which, in 1582, will be reunited in a *Corpus juris canonici,* remained for more than three centuries the only legal guide for Catholics, until 1917, when the Catholic Church drafted a new code.

In Germany, with the processing of Roman law, the elaboration of its own general law took place (Smochină 2006, 165). In Western Europe, in scholastic thought, the problem of

consciousness is influenced by aristocratic thinking. Toma d'Aquino derives consciousness from the act, that is, from the way a person reacts to a concrete situation. The influence of intention, affection, motivation, remain in the background in the dramatic leap of the abstract universal and the concrete individual. Therefore, Toma defines consciousness as a rational application of the law to a particular case (Popa 2009, 283). It is obvious that even in the medieval era consciousness was treated in direct connection with law and represented the reaction to the application of law.

Thus, the laws of that period reflected the legal conscience of the rulers and the concrete living conditions of the members of society, represented the emanation of the nature of social relations, bore the imprint of time and the particularities of the place and people on which they extended. The rulers drew up legal norms in accordance with the new social relations that appeared, and justice was done based on the generally human values approved in the respective society. About the need to respect the law, but also the norms of coexistence in society, in an elegant and subtle way, John Locke said: "However, we must appreciate ourselves enough to carry out without disturbance and disorder the actions we owe to ourselves and which are required of us, in front of everyone, taking into account the distance and respect due to the rank and qualities of each" (Locke 1971, 99).

For the Romanian state, the medieval period is characterized by the borrowing of the collections of Roman-Byzantine imperial laws and canons of the church synods and by the creation of the institutions of the feudal state: the Reign, the Royal Council, the Army and the Church. On the entire territory of Wallachia, during the feudal period, the "Law of the Country" is fully applied, the grammars regarding the granting of privileges, facilities to the boyars, some types of letters, court documents, international treaties, which elucidated the foreign policy of the state and neighborhood relations of it, legal norms borrowed from Roman-Byzantine law: Armenopol's Hexabibl, Matei Vlastares's Syntagma, Manuil Malaxox's Nomocanon etc.

Among the most remarkable personalities from the Romanian Principalities, who contributed, through their work, to the promotion of ideas, legal principles, European legal culture, to the elaboration of local legal norms, and therefore to the development of the legal consciousness of the natives Gr. Ureche (1590-1647), the jurist E. Logofătul (? -1646), M. Costin (1633-1691), I. Neculce (1672-1745), D. Cantemir (1673-1723) etc.

The first attempt to codify the legal norms is represented by the "Romanian Textbook" (1646), a vast work, inspired by Byzantine and Italian legislation, which was developed at the urging of Prince Vasile Lupu. Following the subjugation by the Ottoman Empire of the Romanian Principalities, it was inevitable to imprint in the conscience and legislation of the natives the way of regulating and perceiving the social relations of the invaders.

By establishing and promoting social and legal values, the attitude of the members of the society towards the legal norms and their execution is cultivated, which conditions the development of the legal consciousness. The elaboration of legal norms, therefore, and the formation of legal consciousness directly contributed to the consolidation of the stability of the medieval society, to the determination of the foreign policies between the states and to the regulation of the behavior of the subjects of law.

Under these conditions, the general picture of the medieval legal consciousness is uneven, with the predominance of moral and religious values, but also with successful attempts to organize the judiciary, consolidate nation states and legislative power.

However, medieval legal consciousness remains poorly developed, some social categories of the population of medieval states continue to be guided by the unwritten rules of customs and habits, and others, in the struggle for power and assertion, actively participate in the formation of medieval law, legal norms, when creating state power bodies. Medieval legal norms still retain the differentiated character of sanctions related to the status of the individual in society.

Conclusions

Legal consciousness as an integral phenomenon, complex and inherent in positive law (as a normative phenomenon) has known the same historical stages of development as the state and law. It has evolved from a rudimentary, ambiguous one, concretized with mythology, custom, religious dogmas to a contemporary one, appreciated as an element of legal reality and the legal sphere, examined as a social phenomenon, which is constantly developing and containing ideas, knowledge, representations about law, legal norms, and which play the role of premise in identifying and carrying out the socio-legal reforms necessary for society.

By virtue of the characteristic means of systematic knowledge of social life, and the expression that makes up all knowledge in law, experiences, representations on legal reality, legal awareness identifies the development needs of society, stimulates the implementation of society. Thus, throughout its evolution, the legal consciousness of individuals has impelled, triggered, marked (but also marked by) multiple reforms that have occurred in civil society.

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Drugs: History, Law, Consequences

Robert Șerbănescu

Member, Romanian Forensic Association, Bucharest, Romania
serbanescu.robert.2013@gmail.com

ABSTRACT: The drug phenomenon represents a various and important subject in society nowadays, due to the fact that it is the cause for many studies, criminal activities, legal regulations, international co-operations and lives affected. In this manner, a good understanding of the relationship between humans and narcotics can be formed by researching its evolution throughout history. Since ancient times, people have manifested interest in these substances, either from a philosophical approach or simply by the curiosity of experimenting their effects. The perspective towards drugs suffered many variations, from a positive one, thanks to their medical properties, to a negative one, mainly caused by the severe consequences of overdose and the continuous growth of the underground network belonging to the producers, carriers and dealers. By becoming a threat to the social order, the states had to create and apply laws to counter this rapidly evolving trend. The legal norms brought into existence by the legislative powers covered different topics such as: rules in regards to the production, selling and acquiring, alongside consumption. Domains such as Psychology and Medicine joined forces, especially in the last century, to research and present the effects of long or short term consumption of narcotics.

KEYWORDS: history, narcotics, psychology, law, consequences

The oldest known drugs

The means of production for drugs had gone under constant development proportionally with the technological evolution. If in ancient times, the consumption was done mainly in their natural state (as a raw substance), today we are witnessing various types of finished products such as pills, powders, injectable liquids, patches and processed plants.

Some of the oldest drugs are represented by the cocaine, cannabis and opium. In regards to the first one, the insertion was done by simply chewing leaves of the plant. Proof of this practice has been discovered in the tribes belonging to the Aymara Indians, in South America. They were present in the area of the Andes Mountains long before the Incas arrived (Appelboom and Verth 1991, 487-496).

Around the year 1800, Western science became more interested in the effects of cocaine on ordinary human. In this way, Sigmund Freud published in the year 1884 a study with the main focus regarding the benefits provided by the usage of this drug (Appelboom and Verth, 1991).

Paolo Mantegazza, a medic, practiced his profession in Peru, a place where he could be provided with cocaine leaves, in order to conduct his experiments. The explanation he provided was that this drug consists in a very strong tonic for the central nervous system (Buzatu 2012, 37). The ancient Egyptians had large cultures of poppy which was used for the production of opium.

In the year 400 AD, the substance known as opium entered the Chinese territories via the Arabic merchants. In the following centuries, the practice of consuming this stupefacient expanded in India as well. At the end of the Medieval Ages, the Chinese authorities were struggling with restraining this phenomenon.

The USA imposed, during the 1890s, taxes on morphine and opium, a prime step towards the regularization of the narcotic market.

When referring to cannabis, in Ancient China it was used for purposes such as medicine, preparation of the soldiers before a battle, and even as normal food (Salmandgee 2003, 98).

During Medieval times, the plant of cannabis made its way to the Western World because of the invasions from the migratory populations. Therefore, due to the intercultural clashes, this behavior was soon to become something usual in Europe.

There were several attempts in the XIX century in order to implement the use of cannabis as a medical treatment, thus transforming it into an element for the pharmaceutical industry, as an extract.

Based on the above data, we can distinguish three stages in the relationship between humans and drugs, the first one being the notion that an individual can enhance their physical and mental capacities with the usage of drugs.

The second one consists in the research done by the incipient science with the main focus of figuring out the balance between advantages and disadvantages.

The third one in represented by the banning of narcotics by the modern states through special legal rules, limiting the access to them only for justified reasons, as a result of the negative impact suffered by society from them since their discovery.

The impact of technological progress on the production and consumption of drugs

As mentioned previously, a significant factor in regards of the spreading of drug consumption is the evolution path taken by Humanity in the area of science.

Even the simplest moment when fire was discovered, served as a building block to the future spreading of the analyzed subject. As proof we can take into account the servants of various divine entities who used narcotic substances in order to establish a communication path with their gods. Because the substance was burned, the smoke provided hallucinations to the audience, thus strengthening the trust of the religious leaders. This can be categorized as a means of mass manipulation (Marr 2012, 35).

The emergence and development of chemistry made it possible for certain drugs to obtain a much easier and compact form, more practical for transportation and administration, thus the launching on the black market was possible. The substances now had the form of pills in which the active material benefited with the same consistency as a raw dose (Blume 2011, 69).

At the current date, consumers have at their disposal different forms of administrating stupefacients with the end goal of obtaining prolonged effects, as an example we can observe the psychedelic injectable substances and the patches applied directly on the skin (Macovei and Gălețescu, 2006 43).

The human brain and its role in our development

The human brain, in its current form, is the result of millions of years of constant evolution, during this time the human`s rank being changed from a simple prey to the most advanced form of life on the planet.

Today, our species has explored almost the entire Earth`s surface, an important amount of the oceans and has learned how to survive in the harshest environments. Also, it was able to overcome natural disasters, fatal diseases (the Bubonic Plague, the Spanish Flu) and plenty of other shortcomings.

However, the brain remains one of the most mysterious aspects of the human body, even with the research methods present in our times. From what we know up until now, in a generic manner, we can state that our minds are composed of a conscious part (the rational brain), and a subconscious part (the irrational brain).

The unconscious is that segment of the mind in which the memories, feelings and experiences of the individual are stored, remaining inactive until a cause makes them resurface. The limbic brain also serves as a place where automatic functions of the organism

are handled (heartbeat, breathing, blinking), as well as the home for the conditional reflexes formed through practice (Zlate 78, 2009).

The conscious represents a rational filter by which a person understands a certain perception, for example, the way we perceive the behavior of others. In addition, the rational compartment of the brain is the space where logical operation takes place, such as inductions, deductions, analysis and synthesis (Zlate 2009).

Our rational brain develops during our growth as an individual, thus children are more susceptible to unhealthy conditionings up until the age of 18th. In other words, our active brain, when fully developed can be comparted to a guardian that helps us decide how we are going to approach a situation. The paths we take during the forming of our central operation system will determine our personalities when reaching adulthood. Following this line of thinking, by the term "personality" we understand one's temper and character.

Consequences of drug consumption

From the available data, we can deduce that the narcotic substances have similar effects as the one used for the treatment of depression, this being the diminishing of the response to external factors, the creation of a euphoric state and the reduction of anxiety. It is mentioned that, even if there are no immediate severe repercussions, this is the main reason why someone, in order to benefit from the artificial states of wellbeing, will end up in the role of an addict (Zlate 2009, 292).

Psychedelic drugs or any other which causes hallucinations bring significant changes to the proper function of the mind, the user suffering from disoriented perceptions regarding reality (example: one can think he is having a meeting with a deceased person, or a contact with divine or evil entities, or the hearing of strange voices). To be more precise, LSDs activate in a chaotic manner the dormant feeling and emotions present in the subconscious mind (Zlate 2009, 292).

There are types of drugs which can have influence on the human body itself, an example is the substance known as "marijuana".

Depending on the dosage, the previous mentioned drug can lead from a simple state of happiness to distortions at the level of the reproductive functions (lower testosterone levels), changes in the central nervous system (personality crisis, temper changes) and permanent damage to one's rational capacities (memory loss, inability to assimilate information) (Zlate 2009, 293). It can be observed that the analyzed substances have a wide area of manifestation, from simple memory loss to chronic disturbances.

Ethnobotanicals – the drug of the 21st century

About a decade ago, on the drug market, a new type a product had appeared, with a new composition and unknown effects, this was represented by ethnobotanicals.

As an example, in Romania, these psycho-active mixtures were not framed from a law point of view, thus they spread amongst the young citizens at a fast rate.

Ethnobotanicals are a new subject for debate and study for the legal sciences (criminal law, forensic), as well as for other social sciences (psychology and sociology).

With the goal of providing a general definition, based on the current information, we can say that ethnobotanicals consist in a mixture made from herbs with various properties (medical or toxic), present in the form of powder or extracts, and small amounts of cocaine, heroin, amphetamine and so on (Buzatu 2015, 7).

For the effect of this new type of drug, they combine the psychotropic outcome of the herbs with the various followings present in the drug used for the mixture, depending on the nature of it.

The order of the law

From the information presented, it can be easily observed that the drug phenomenon represents an important problem for every country. The institutions of a state are required to work in such a manner that prevents its citizens to suffer from the consequences brought by the narcotics trend.

From a democratic and legal point of view, the legislative, executive and judicial powers must cooperate and coordinate so that this threat is reduced and eventually stopped.

As a point of view, the current paper work will present shortly the main laws by which the Romanian administrative and legal systems operate when dealing with the drug issue.

For an initial approach, we can take into consideration the fundamental law of this country, which states that the right to possess a healthy mind and body are guaranteed and the state is obliged to take all the necessary measures in order to assure a proper public health (Romanian Constitution, Article 34). Regulations which handle the drug trafficking are present in the Criminal Code and other special laws.

Dispositions of the Code incriminate the trafficking of toxic products and substances, any operations of production, the simple possession, any action done in order to set these products into circulation, the activity of cropping the plants related to these final narcotics and the experimentation done with them, without the right given by the law. The person found guilty for such actions can be sentenced to prison from 2 to 7 years and can also suffer from the interdiction to exercise certain rights (Romanian Criminal Code, The Special Part, Article 359).

Incriminations can be also found in the Law established for the prevention and fight against drug trafficking and consumption. In this manner, we can find in its composition regulations which prohibits international drug trafficking, having drugs for personal use, encouraging the illegal consumption of drugs, the non-legal administration of high-risk drugs and so on (Law no. 143/2000, Articles 1-10).

Alongside these rules and regulations there are campaigns done by the Government or particular entities which have the end goal to inform the population about the danger of such an abusive behavior.

Conclusions

Drugs have been present in society since we can recall our first moments in history they came into existence in several parts of the world and spread on other territories, thanks to the interaction between difference populations, social manifestations such as wars, invasions, diplomatic events or exploration.

The perspective about narcotics varied throughout time, depending on the level of knowledge or the danger brought upon the fundamental social values.

Even if technological progress served as a means to increase production, preparation and administration of these substances, it also permitted us to study them more efficiently and understand their outcome.

Our mind develops during the entire lifetime, but it is most susceptible to acquiring negative habits in our youngest years. The brain is composed of a rational and irrational part both of them can be damaged by the consumption of psycho-active substances.

Due to the advancements in different research domains, new types of drugs found their way into the black market, such is the case with ethnobotanicals. The law must always be adapted and innovated to better deal with this planetary threat.

Democratic states are obliged to protect the fundamental rights and liberties of their citizens, the same being available for the right to have a healthy existence.

In the end, it depends on each and every single one of us to understand and know how and why to rejects this phenomenon.

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The Parliamentary Assembly of the Council of Europe Monitoring on the Implementation of the European Court of Human Rights Judgments

Titus Corlățean

Associate Professor PhD, Christian University "Dimitrie Cantemir", Bucharest, Romania,
Visiting scholar Harvard University-Center for the Study of World Religions 2018/2019
tcorlatean@gmail.com

ABSTRACT: The European Convention on Human Rights (ECHR) is the most important international treaty to protect fundamental Human Rights and Freedoms at European level. The Convention was adopted on November 4, 1950 in Rome by the governments of the member states at that time of the Council of Europe. Currently all 47 members of the Council of Europe, international European organization founded in 1949 in Strasbourg, France, are party to the Convention. The implementation of the European Court of Human Rights (ECtHR) judgments is supervised by the Council of Europe Committee of Ministers (CM), according to article 46 para 2 of the ECHR. Beyond the primary responsibility of the CM in this field, the Parliamentary Assembly of the Council of Europe (PACE) increased significantly its contribution to this process during the past 10-15 years. Its 10th report on the implementation of ECtHR judgments focuses on a number of member states and cases pending before the CM still to be implemented, that reveals structural problems, complex and difficult issues related for instance to inter-State cases or individual cases displaying inter-State features reflecting particular difficulties for the execution process, sometimes for already more than 10 years after the Court's judgments. The PACE report addresses therefore a number of specific requests and recommendations to the member states and the CM for supporting an accelerated process for the full implementation of these judgments.

KEYWORDS: Parliamentary Assembly, Council of Europe, European Convention on Human Rights, Court, judgments, execution, structural problems

1. Introduction

The protection of Human Rights and Freedoms became increasingly significant in the aftermath of World War II. It was under these auspices that the United Nations General Assembly adopted, on December 10, 1948, The Universal Declaration of Human Rights (UDHR). It is worth noting that this is a political Declaration, hence not legally binding. The contents of the UDHR, however, have been elaborated and incorporated into subsequent international treaties, such as The European Convention on Human Rights (ECHR) (Corlățean 2015, 27-28).

ECHR is the most important international treaty to protect fundamental Human Rights and Freedoms at European level (Alston and Goodman 2013, 891). The Convention was adopted on November 4, 1950 in Rome by the governments of the member states at that time of the Council of Europe. Currently all 47 members of the Council of Europe, European organization established in 1949 in Strasbourg (France) are party to the Convention.

The ECHR lays down a mechanism for *"reviewing compliance to the provisions of the Convention and its protocols"* (Schmahl and Breuer 2017, 501). Thus, it is not enough that State Parties observe and uphold the Convention, a judicial body has been designed and empowered to find violation of it in final judgments, according to art.46 para 1 (Ibidem, pp. 501-502). Moreover, according to art.46 para 2 of the ECHR, the implementation of the European Court of Human Rights (ECtHR) judgments is supervised by the Council of Europe Committee of Ministers (CM), which is *"a political body, the executive organ of the Council of Europe, and consists of the Foreign Ministers, or their deputies, of all the member states"*

(Shaw 2008, 359; Radu 2018, 14). The supervision of execution of judgments mechanism enforced by the CM refers to the control on the individual or general measures taken by the condemned stated in fulfilling its obligations for the execution of the ECtHR decision (de Schutter 2014, p. 990).

Beyond the primary responsibility of the CM in this field, the Parliamentary Assembly of the Council of Europe (PACE) has been significantly increasing its contribution to this process during the past 10-15 years (White and Ovey 2014, 62-63). Its 10th report on the implementation of ECtHR judgments focuses on a number of member states and cases pending before the CM, still to be implemented, revealing structural problems, complex and difficult issues related - *inter alia* - to inter-State cases or individual cases displaying inter-State features reflecting particular delays in enforcement, at times for over 10 years after the Court's judgments have been issued.

2. The implementation of judgments of the European Court of Human Rights

Its 10th report on the implementation of ECtHR judgments was adopted by the plenary of PACE on 26 January 2021 (Doc. 15123/ 15 July 2020; pace.coe.int). The report highlighted the fact that there is a constant progress on the implementation of the Court judgments, especially a constant reduction in the number of judgments pending before the Committee of Ministers (Idem p. 3, see also Resolution 2358, 2021, p.1). This was made possible by the implementation of Protocol No. 14, which entered into force on June 1, 2010 and made it possible *"for a single judge, assisted by the rapporteurs who are members of the Court`s registry, to declare cases inadmissible if the applicant has not suffered a significant disadvantage, unless respect for human rights (...)"* (de Shutter 2014, 989). Before Protocol No.14 has been implemented, there were over 10.000 judgments pending the Committee of Ministers; at the end of 2019 only 5231 cases were recorded (Report no. 15123, p. 3).

Although the number of judgements pending before CM has decreased, the report mentioned that this is not the case for the judgments revealing structural problems pending before the Committee of Ministers for more than five years. Russian Federation, Turkey, Ukraine, Romania, Hungary, Italy, Greece, the Republic of Moldova, Azerbaijan and Bulgaria have the highest number of non-implemented Court judgments and still face serious structural or complex problems, some of which have not been resolved for over ten years (Ibidem). On February 29, 2020 over two thirds of the applications pending before the Court came from four member states: Russian Federation *(25,2%)*, Turkey *(15,7%)*, Ukraine *(15,1%)* and Romania *(13%)* (Ibidem, p. 9).

3. Specific challenges for the execution of Court judgments

It is worth noting that the inter-State cases are *par excellence* the most difficult ones, given the political and national interests at stake, these are cases regarding unresolved conflicts, post-conflict situations or displaying other inter-State features. The PACE report makes reference also to other problematic cases, the so called "pockets of resistance" affairs. Of seven such cases or groups of cases, mentioned in the previous PACE report from 2017, only the Hirst (No 2) v. United Kingdom case, concerning the blanket ban on voting by prisoners, was closed by the CM on December 4-6, 2018 (Ibidem). Several cases have been selected to illustrate the specific problems facing the implementation of Court judgements.

3.1 Ilgar Mammadov v. Azerbaijan and similar cases concerning politically-motivated persecutions

Azerbaijan seems to deal with a systemic problem concerning certain politically motivated cases and political prisoners, as stressed by the Assembly on its Resolution 2322 (2020). For that

matter, the case of Ilgar Mammadov is emblematic for the inadequate execution of the ECtHR by Azerbaijani authorities.

The case of Ilgar Mammadov was first examined by the CM on December 4, 2014 when the Committee asked the Azerbaijani authorities to release the applicant as soon as possible, as ECtHR held that the applicant's detention was politically motivated. Mr. Mammadov was conditionally released on August 13, 2018. The Grand Chamber of the Court, in its judgment of May 29, 2019, following an appeal launched by the CM, that made use for the first time the infringement procedure established by Protocol No. 14 to the ECHR (Corlățean 2015, 113), held that Azeri State had not acted in a way that would make practical and effective the protection of the Convention rights which the Court found to have been violated in that judgment (Report no. 15123, p. 10).

Thus, the CM is now examining this case along with a group of other cases concerning civil society activists and human rights defenders who have been subjected to criminal proceedings which the Court found to constitute a misuse of criminal law, intended to punish and silence such activists. The Court found that Azerbaijani authorities have used arbitrary arrest and detention of government critics, civil society activists and human rights defenders. The CM highlighted that the negative consequences of the criminal charges brought against each of the applicants were not quashed and they were unable to resume their former professional and political activities; in particular MM. Mammadov, Jafarov and Aliyev could not present themselves as candidates in the parliamentary elections. Moreover, the CM is awaiting confirmation of payments of just satisfaction in cases other than Ilgar Mammadov (Ibidem, pp.10-11).

The Supreme Court of Azerbaijan acquitted MM. Ilgar Mammadov and Rasul Jafarov on April 23, 2020. The CM welcomed the decision and decided to close the supervision of the cases in respect of these two applicants, adopting the Final Resolution CM/ResDH(2020)178 (Addendum to the Report no. 1512*,* Doc. 15123, 26 Nov. 2020, p. 3, pace.coe.int).

There are six more applicants for whom the Council of Europe Secretary General has asked the authorities to restore their rights.

3.2 Catan and Others v. Moldova and Russia and Bobeico and Others v. the Republic of Moldova and Russia

In the view of CM, the right to education, as fundamental human right (Protocol to the Convention for the protection of Human Rights and Fundamental Freedoms 2020, echr.coe.int), was violated in the Transnistrian part of the Republic of Moldova for 170 children from Latin-script schools located in that region. It is important to stress that even though the Court found no evidence of direct participation of Russian agents in the measures taken against the applicants, nor of Russian involvement in the language-related policies in general, the Russian Federation incurred responsibility under the Convention for the violation in question (Report no. 15123, p. 16).

The Court found that the right of children to learn in their native language (Romanian language) and with Latin-script texts was again violated in Transnistria, according to another judgment issued in 2018 - Bobeico and Others v. the Republic of Moldova and Russia.

The Russian authorities stated that they have no responsibility for violations occurring in the territory of another State. In fact, because of the Russian authorities' position, the execution of the Court judgment is blocked and the payment of the non-pecuniary damages and the legal costs and expenses have not been not paid (Ibidem, p. 17).

In its most recent examination of this case the CM disputed the arguments of Russian authorities and asked its Secretariat to prepare a draft *interim* resolution *(which would be the fourth in this case)*, eventually adopted by the CM during the September 2020 meeting (Addendum to the Report, p. 4).

Such a case is relevant for its inter-State features, as the Republic of Moldova has little to no authority in the Transnistrian region following the 1992 Transnistrian War. In the aftermath of the conflict, the Russian 14th Army moved to the Transnistrian region as *"peacekeeping force"*, and have been controlling the region ever since. It is under these circumstances that the Court found the responsibility of the Russian authorities to enforce its decision.

3.3 OAO Neftyanaya Kompaniya YUKOS v. Russia: the increasing legal and political difficulties surrounding the implementation of the judgment on just satisfaction

Over a quarter of the applications pending before the Court originate in the Russian Federation. The report indicated multiple legal and political difficulties surrounding the implementation of the judgments against the Russian Federation.

The execution of the judgements became more difficult following the amendments to the Constitution of the Russian Federation, particularly the amendment adding to Article 79: *"Decisions of interstate bodies adopted on the basis of the provisions of international treaties are not enforceable in the Russian Federation if they contradict the Constitution."*(Ibidem, p. 2).

Regarding the amendments to the Constitution, the Venice Commission concluded that *"There is no choice whether or not to execute a judgment of the European Court of Human Rights: under Article 46 of the Convention, judgments of the Court are binding and the legal obligation to implement them can even require changes in a State's constitution."* (Ibidem, p. 3).

In the case of OAO Neftyanaya Kompaniya YUKOS, the Court allocated a total amount of nearly 1.9 billion euros to the shareholders of the applicant company, but on January 19, 2017, the Russian Constitutional Court delivered a judgment concluding that it was impossible to implement the Court's judgment on just satisfaction without contravening the Russian Constitution. The Russian authorities paid 300.000 euros to the Yukos International Foundation as costs and legal expenses on December 2017, yet omitting the interest owed (Report no. 15123, p. 15).

The Committee of Ministers adopted Interim Resolution CM/ResDH(2020)204, in which it *"strongly regretted"* that the comprehensive plan for the distribution of the just satisfaction award in respect of pecuniary damage required by the Court was still awaited and that the payment of just satisfaction in this respect was still pending (Addendum to the Report, p. 4).

3.4 The implementation of judgments against Romania

One of the outstanding problems regarding the implementation of judgments against Romania is the overcrowding and poor conditions in detention centers.

Before that, it is important to be mentioned that the previous systemic or structural problem sanctioned repeatedly after 1998 by the ECtHR in the case of Romania, that means the need for an appropriate national legislation and mechanism for just compensation following the procedures related to nationalized properties during the communist period, was solved in the end through a new legislation, the Law 165/ 2013 (Corlățean 2015, 234).

The 10th PACE report on the implementation of ECtHR judgments highlighted that even though the conditions of detentions in Romania are a longstanding structural problem, a *"significant progress"* has already been achieved, in particular in reducing overcrowding.

The Committee of Ministers called into question some of the measures adopted by the Parliament: *"Concerning the issue of effective remedy, in December 2019 and March 2020, the Committee of Ministers regretted the abolition of the compensatory mechanism in the form of reduction of sentences without providing alternative Convention-compliant remedies, which had resulted from a decision of the parliament of 4 December 2019; it stressed that this measure would imply a risk of a new massive influx of repetitive applications before the*

Court, which would pose threat to the effectiveness of the Convention system" (Report no. 15123, p. 22).

Despite having been stressed by the CM that the Romanian authorities have to put forward a plan to mitigate such situations and create effective domestic remedies with compensatory effect pending the adoption of the necessary reforms, an institutional feedback on behalf of the Romanian authorities is yet to be delivered.

3.5 Inter-State cases: Cyprus v. Turkey and Georgia v. Russia

Although the inter-State cases reflect particular difficulties in the enforcement process, it is worth noting that some progress has been achieved, especially in the case of Cyprus v. Turkey. In its 2001 judgment, the Court found multiple violations of the Convention in connection with the situation in the northern part of Cyprus, that is under effective control of Turkey since the 1974 military intervention in Cyprus (Ibidem, p. 17).

The Turkish authorities have remedied a number of violations, but two issues remain unsolved: Greek-Cypriot missing persons and the property rights of displaced Greek Cypriots and of those enclaved in the northern part of Cyprus.

Regarding the first problem, the Turkish authorities granted access to 30 additional sites in military areas in the northern part of Cyprus and assisted the Committee on Missing Persons in Cyprus in its activities by facilitating its exhumation activities, contributing financially to its work and submitting information on possible burial sites. The CM welcomed the assistance provided by the Turkish authorities but stressed that further work needs to be done (Ibidem, p. 18).

Regarding the second problem, the Committee of Ministers decided to close the examination of the issue of the property rights of Greek Cypriots living in the northern part of Cyprus and their heirs (Addendum to the Report, p. 4).

The problem of just satisfaction awarded by the Court in its judgment of May 12, 2014 is still pending. According to the judgment, Turkey has to pay to Cyprus €30 000 000 for non-pecuniary damage suffered by the relatives of the missing persons and €60 000 000 for non-pecuniary damage suffered by the enclaved Greek-Cypriot residents of the Karpas peninsula (Report no. 15123, p. 18). To this day, the Turkish authorities have not yet paid the just satisfaction awarded to the applicants by the Court.

In the case of Georgia v Russia, little progress, if any, was made. This case is about 1500 Georgian nationals who were arrested, detained and expelled from the Russian Federation from the end of September 2006 until the end of January 2007, amidst political tension between the two countries. The Court held that the Russian Federation was to pay the Government of Georgia 10 000 000 euros in respect of non-pecuniary damage suffered by the Georgian nationals involved (Ibidem, p. 19).

The CM stressed that the deadline for the payment expired on 30 April 2019 and urged the Russian authorities to pay the just satisfaction directly to the Georgian government or to commit to using the Council of Europe as an intermediary for that payment (Addendum to the Report no.15123, 2020, p. 5).

4. Conclusions and recommendations

The 10th report on the implementation of ECtHR judgments noted that there was a real progress in the reduction of the cases pending before the Committee of Ministers after the high-level Conference in Interlaken on the future of ECtHR (2010) and commended the impact of Protocol No.14 to the Convention, specifically by reducing the number of cases from over 10.000 to 5 231 at the end of 2019.

The report also stressed that, regarding to the execution of the judgments, there are still structural problems, complex and difficult issues related for instance to inter-State cases or

individual cases displaying inter-State features. With regard to the enforcement of the Court judgments delays of over 10 years have been registered. For that matter, the Assembly issued a series of recommendations to the Committee of Ministers, including the use of interim resolution or the use of procedures provided for in Article 46, paragraphs 3 to 5, of the Convention, in the event of implementation of a judgment encountering strong resistance from the respondent State (Recommendation 2193, 2021).

It also recommended to the Committee of Ministers to prioritize leading cases pending for over five years and regularly inform the Assembly about judgments of the Court whose implementation reveals complex or structural problems and requires legislative action (Ibidem).

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Between Eclipse and Sunrise: Abolition and Re-establishment of the Function of General Secretary of the Prefect's Institution in Romania

Teodor Narcis Godeanu

Assoc. Prof. PhD, Spiru Haret University, Faculty of Law, Bucharest, Romania, narcisgodeanu@yahoo.com

ABSTRACT: The study aims to analyze the institution of the Secretary General of the prefecture, which is the highest civil servant in the prefect's institution, found in most states under this name or others that evoke his role as a representative of the central government in the territory, to monitor and to ensure that the law is respected and the government policy transposed in practice at the level of the administrative-territorial unit. In each public authority, central or local, there is a function which has the most important role, which brings stability and which is called the Secretary General. Its role is to ensure compliance with the law in the activity of the public authority in which it is located, but also the continuity of its activity, in case of changes that occur during the election cycles or, as the case may be, appointment of new central and local authorities. It also existed, naturally, within the prefect's institution, but it was abolished in 2005, with the functions of prefect and sub-prefect transformation, from public dignities to public functions, in 2005. By returning, in January 2021, to the status of dignitaries, the function of prefecture's general secretary was re-established.

KEYWORDS: prefect, sub-prefect, civil servant, senior civil servant, governing civil servant, general secretary, function stability, career entitlement

General considerations regarding the institution of the prefect. History, role, status

The prefect is a traditional institution, planted on the "soil" of the Romanian public administration since the middle of the 19th century, more precisely with the adoption of Alexandru Ioan Cuza administrative reforms. It is French-inspired, where it was created by Napoleon Bonaparte by the Law of 28 Pluviose, year VII, February 17, 1800, as an institution that reflects the principle of decentralization in departments, this generating the need for *central* structures to have a public authority implanted in the territory, to exercise an attribution traditionally called *administrative guardianship* (Săraru 2016, 761). This phrase can be defined as **the institution of public law that evokes the specific activity of the prefect, through which he supervises the observance of the law by the local autonomous authorities, and may, in case of finding illegalities, to annul the illegal act itself.**

In the Romanian system, the prefect did not have the prerogative to annul the illegal acts of the autonomous authorities himself, but there are states, such as Germany, where the prefect can cancel such acts himself. In this context, we mention the fact that during a public administration meeting with colleagues in Germany, we could find that in some Länders, although there is such a prerogative of the prefect, he never used it, it was not, practically, put in the situation of appealing to it, because it did not encounter, in the activity of checking the legality of the administrative acts of the authorities elected by the local authorities, violations of the law that would justify the recourse to this prerogative. The information is interesting, especially from the perspective of its comparison with the situation of other states, including Romania, where the violations of the law by the local administration are not exactly non-existent.

The prefect is found in most states, where, in addition to the title of *prefect*, he also has other titles such as the *king's commissioner*, *high representative of the government*, etc., but the role is similar, namely to oversee the application of the law to local public administration authorities, organized on the basis of administrative autonomy (Bălan 1977, 49).

In Romania, it existed uninterruptedly, until the establishment of the totalitarian regime, when it was abolished by it, being considered, along with other institutions, incompatible with the political and legal specifics of this system. After 1990, it was re-established, but its legal situation has changed over time, as we will show below.

The Romanian Constitution (1991/2003) regulates the prefect in art. 123, from the content of which three great qualities of the prefect emerge, respectively: **Government representative in each county and in Bucharest; head of the decentralized public services of the ministries and other bodies of the specialized central administration and body supervising the observance of the law by the local public administration authorities,** being able, in case he finds some violations of the **law to notify the administrative contentious court**, and the action of the prefect attracts **the legal suspension of the contested act**.

As we have shown, **the status of the prefect**, and, implicitly, of his sub-prefect, oscillated between the **political prefect** and the **administrative prefect**, the first of the qualities being dominant. The prefect had the status of civil servant for a short time in the interwar period and then after 1990 until 2005 he was a political dignitary, because, through the amendments made, Law no. 188/1999 on the Statute of civil servants (republished in the Official Gazette no. 365/May 29, 2007), currently repealed by the Administrative Code, approved by Government Emergency Ordinance no. 57/2019 (published in Official Gazette no. 555/July 5, 2019) to be transformed into a senior civil servant.

The adoption of this Administrative Code was a remarkable legislative event for Romania, being among the few states in the world that managed to codify the administration, being, as a rule, the codification of the administrative procedure and the only state that codified the substantial administrative law (Vedinaș 2020, 21). In 2003, it was provided, through the amendments brought to the former law on the status of civil servants, that **starting with 2005**, the prefect and the sub-prefect become civil servants, and through **GEO no. 179/2005** (published in Official Gazette no. 1142/December 16, 2005), article II of this normative act provided that the *prefects and sub-prefects in function on the date of entry into force of the respective normative act* ***will become senior civil servants,*** *following* ***the promotion of a function attestation exam.*** Given that the specific political neutrality of absolute civil servants is **absolute political neutrality**, as they cannot be part of a political party under the sanction of dismissal, as well as **the function stability**, the governmental practice contradicted the normative framework, so that a situation was perpetuated over 15 years, stating that prefects and sub-prefects were targeted by frequent political changes, which led to a return to the situation of the **political prefect**, a fact achieved by the recent Emergency Ordinance no. 4 /2021 (published in Official Gazette no. 117/February 3, 2021).

Secretary General of the Prefecture. History and current legal situation

We considered it necessary to provide these aspects regarding the institution of the prefect, as a whole, in order to understand where the function of **general secretary of the prefecture** is positioned. Such a function is found in all central and local public authorities at central level, it is part of the category of **senior civil servants** (in the Romanian system, according to the level of responsibilities, civil servants are divided into three categories, executive civil servants, leading civil servants and senior civil servants), a category which, according to art. 394 of the Administrative Code, *performs senior management in public authorities and institutions*, and **at the local level**, there is the function of **secretary general of the administrative-territorial unit**, which is part of the category of **leading civil servants**.

At the level of the prefect's institution, there has traditionally been the function of **secretary general of the prefecture**, but it was abolished by the GEO no. 179/2005, which provided by art. IV that *"Starting January 1, 2006, the duties of the secretary general of the*

prefecture becomes that of sub-prefect.(2) The Secretaries-General of the prefecture in function on December 31, 2005, following the implementation of the competition organized for the respective public function shall be appointed as sub-prefects, from January 1, 2006. (3) From the date of entry into force of this emergency ordinance, the powers established by the normative acts in force in the competence of the general secretary of the prefecture shall be exercised by one of the sub-prefects, appointed by order of the prefect."

In other words, **the function of secretary general of the prefecture was abolished**, the holders of that function were theoretically not expelled, their position was transformed into a sub-prefect function and appointed to this function. It was considered that **the prefect and the sub-prefect, becoming themselves senior civil servants, it would be excessive to have three holders of such functions in such an institution**, namely prefects, sub-prefects and secretary general. The solution was to have a prefect and a sub-prefect with this status.

The adoption of the Emergency Ordinance no. 4/2021 by which the prefect and the sub-prefect became political dignitaries again attracted **a paradigm shift in the edifice of this institution of constitutional rank.** We are considering, in the context to which we refer**, the re-establishment of the function of general secretary of the prefecture.** Thus, through art. 1 point 4 of this normative act that amends art. 265 of the Administrative Code, in the sense that four new paragraphs are introduced, which become paragraphs 11-14 and which have the following content: *„(11) At the level of the prefect's institution, the function of general secretary of the prefect's institution is established. The general secretary of the prefect's institution is a senior civil servant and is directly subordinated to the prefect. (12) The general secretary of the prefect's institution is a graduate of higher legal, administrative or political sciences. (13) The general secretary of the prefect's institution ensures the stability of the functioning of the prefect's institution, the continuity of the management and the realization of the functional connections between the compartments of the institution. The general secretary of the prefect's institution supports the activity of the prefect in exercising the attributions provided in art. 255 and coordinates the specialized structure/structures through which these attributions are performed. The general secretary of the prefect's institution supports the activity of the prefect in exercising the attributions provided in art. 255 and coordinates the specialized structure / structures through which these attributions are performed. (14) The attributions of the general secretary of the prefect's institution are established by a decision of the Government at the proposal of the ministry that coordinates the prefect's institution, with the approval of the ministry with attributions in the field of public administration."*

The analysis of these new provisions shows the following dimensions of the legal status of the Secretary General of the Prefecture:

a) the holder of the function of general secretary is part of the category of **senior civil servants and is directly subordinated to the prefect.**

We thus understand that **the prefect is the hierarchical head of the general secretary**, with all the prerogatives that derive from this quality;

b) **the person who has completed higher legal, administrative or political education may perform this function.**

In our opinion, **it is not justified to add political studies** to legal and administrative ones, which have traditionally been imposed as a condition of access to this function.

We say this because **the responsibilities of the secretary general of the prefect's institution directly concern the observance of the law, in general, and the exercise of legal control, in particular;**

c) the secretary-general plays a triple role:

- ensures stability and continuity in the functioning of the prefect's institution, especially during periods when there are changes in the functions of prefect and sub-prefect, during changes in government. The prefect, being a representative of the Government in the

territory, it is clear that the change of the political structure of the Government attracts changes in the body of prefects and sub-prefects;

- realizes the functional connections between the compartments of the institution;
- supports the prefect in exercising the attribution of controlling the legality of the acts of the public administration authorities at county and local level.

In our opinion, it is one of the most important attributions of the general secretary of the prefect's institution, reason for which we previously appreciated that this function should be held only by persons who have legal or administrative studies, not political studies.

The attributions of the secretary general of the prefect are not provided in the Administrative Code, but in a decision of the Government, which is approved at the proposal of the Minister with attributions in the field of public administration.

We notice a difference of conception and vision compared to the function of general secretary of the administrative-territorial unit, for which the Administrative Code itself provides, in art. 243, the exercising attributions.

Conclusions

We appreciate that the re-establishment of the function of general secretary of the prefect's institution represents a legal-institutional solution that will improve the activity of this fundamental institution of the rule of law and of the public administration in Romania. As far as we are concerned, together with other authors, we have never shared the abolition of this function, which we considered essential for the proper functioning not only of the prefect's institution, but of the entire public, central and local administration. We say this because the prefect is the one who "makes the connection" between the central and the local power, and its proper functioning is beneficial for both types of administration. Therefore, we hope that the temporary abolition of the function of general secretary of the prefect's institution is the first and last "eclipse" in the existence of this function.

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Forest Rights Struggles after FRA 2006: The Case of *Dalhi* Land in Raigad District, Maharashtra

Paul Sylvester Fernandes[1], R Rekha Mammen[2], Geetanjoy Sahu[3]

[1]*Research Scholar, School of Social Work, Tata Institute of Social Sciences, India, paulsfernandes@gmail.com*
[2] *Assistant Professor, School of Social Work, Tata Institute of Social Sciences, India, r_mammen@tiss.edu*
[3]*Associate Professor, Centre for Science, Technology & Society, School of Habitat Studies, India geetanjoy@tiss.edu*

ABSTRACT: Maharashtra is considered one of the leading states in India with regard to the implementation of the landmark Forest Rights Act (FRA), 2006. Yet the struggles in the Raigad district of the *Katkari* tribe, formally categorized by the government as a 'Particularly Vulnerable Tribal Group', depicts the continuing difficulties in addressing structural marginalization. The FRA, 2006 legislated recognition of community and individual forest rights as an effective tool to undo the historical injustice inflicted by the colonial and post-colonial state. This study looks at the characterization of rights by the tribal community and forest governance institutions and the nature of contestations regarding indigenous forest rights. The discussion focuses on the land used by the *Katkari* tribe for *dalhi* cropping. Using both primary and secondary data sources, forest rights claims are analysed with respect to the history of the *Katkari* community in the region, their relationship with the forest, and the larger development practice context. The study also attempts to understand the implications of positions taken at multiple levels for indigenous people's resource rights and the sustainability of livelihoods based on these resources.

KEYWORDS: Forest rights, Forest Rights Act, *Dalhi* land, *Katkari* community, indigenous community

Introduction: Forest Communities, Tenure and Customary Law in India

Efforts for legal recognition of indigenous communities' forest rights have led to a paradigm shift in several countries, particularly since the 1980s, in understanding their rights and revisiting forest ownership policies. This was supported by growing evidence that official forest tenure systems in many countries discriminate against the rights and claims of communities, and government institutions demonstrate visible failure in the management of public forests. Recognition of rights has been a matter of social justice within which one sees a complex convergence of agendas for economic development, environmental protection (White and Martin 2002, 2), and the more recent addition of climate change mitigation.

In India, an estimated 104 million indigenous peoples, officially referred to as 'Scheduled Tribes', comprising 8.6 percent of its population and other communities (the total number estimated to be around 147 million) live in and around the forest. An additional 275 million people are dependent on the forest for their livelihood (Lahiri 2018). The total forest cover of India is 7,12,249 sq km which is 21.67 percent of the country's geographical area (Forest Survey of India 2019). Historically speaking, the indigenous communities in India controlled the collection, consumption, and management of forest resources till the advent of colonial rule that legislated a shift in control over the forest to the state. This accelerated the extraction of forest resources and generated conflicts regarding the traditional rights of peoples and communities over it (Guha 1983; Satpathy 2015).

India has one of the most diverse cultural landscapes in the world in terms of communities and regional ecological features. The relationships between them lead to localised sets of practices that are typically governed by traditional uncodified customary laws. Though there is no universal definition of customary law, the definition of the latter as *'an established system of immemorial rules which had evolved from the way of life and natural wants of the people, the general context of which was a matter of common knowledge'* is useful to describe the

customary regimes under study here (Bekker 1989, 6). In India, customary laws had continued to operate despite constitutional and formal legal systems that do not recognize them except in certain areas with a large tribal population (Roy 2005, 5; Manish 2017). The latter areas are officially recognized as the fifth and sixth schedule areas under article 244 of the Indian constitution where customary law-based governance systems have legitimacy.

Many tribes however were deprived of this recognition of their customary practice regimes as they reside outside these areas. This paper deals with one such practice regime known locally as *dalhi* cultivation, a practice of cultivating millets on sloping land. This is a form of slash-and-burn cultivation practiced by several tribal and other communities found in the forested hills of the Konkan region of Maharashtra (Dalvi and Bokil 2000, 2843). Although there are debates for and against the practice of shifting cultivation, this paper does not enter this debate but rather focuses on the contestations for tenurial rights over these lands and the related plight of a severely impoverished community living on the fringes of forest and society.

In the last three decades of the 20th century, the forest policies in the country were influenced by a global context where there was the widespread impetus for community participation, political devolution, and decentralisation. Programmes such as Social Forestry and Joint Forest Management attempted to bring in an element of the partnership between communities and state institutions whose relationships had become increasingly hostile. Failures of the first, the mixed results of the second programme, and the overall failure to address perceived historical injustice, particularly for the most marginalised communities led to the demand for more serious reforms (Kumar, Singh and Kerr 2015, 3-4).

There was much hope among many forest communities and organisations working with them, that the failures of previous policies would be countered after the passing of the federal law called the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act in 2006. This law was finally applicable to the entire country and laid out a legal framework for recognition of the individual and community forest rights (IFR and CFR) as per the traditional claims of not only the Scheduled Tribes but also other traditional forest dwellers (OTFD). However, the recent all-India report paints an alarming picture at the end of one decade of FRA implementation with only three percent of potential CFR rights having been recognised. Factors identified for this dismal performance include the absence of a political will, lack of efforts towards capacity building in the Ministry of Tribal Affairs (MoTA), and opposition by the Ministry of Environment, Forest, and Climate Change (MoEFCC) as well as the forest bureaucracy (CFR-LA 2016).

Maharashtra is one of four states where both IFR and CFR implementation has been significantly better compared to other states in the country. The state-level study of Maharashtra found that out of the estimated CFR potential of 61274 sq. km of forest about twelve percent has been achieved. The latter is largely accounted for in one district, Gadchiroli that is known for a high level of collective mobilisation. Other high potential districts like Chandrapur, Gondia, Kolhapur, and Raigad have near-zero actual implementation (CFR-LA 2017). This paper is based on evidence gathered in the Raigad district located in the north Konkan sub-region of Maharashtra.

The north Konkan region has a mix of tribal and non-tribal populations. There are three predominant tribes in Raigad namely *Katkari, Thakar/Ka Thakar*, *Mahadeo-Koli/Dongar Koli* who are still dependent on the forest for their livelihood needs (Waghmore and Jojo 2014, 5). Of these, with a population of about 1.2 lakhs, the *Katkari* is the largest tribal population in the district and has been actively associated with local land rights movements for over four decades. The Katkaris are also one of three tribes in Maharashtra recognized as a Particularly Vulnerable Tribal Group (PVTG) (Jagtap 2019). The name *katkari* is derived from a forest-based activity of making catechu (*Kath*) from the *Khair* tree (*Acacia catechu*). Historically besides making *Katha* they have mastered the art of making brick and charcoal. They have a knack for cultivating difficult patches of land in the forest. Land alienation and government failure to

efficiently implement land reforms have been the major factor for *katkari* being landless (Buckles, et al. 2013, 17-18)

The evidence presented here of the FRA implementation experience in Raigad district, Maharashtra is based on in-depth interviews conducted by the first author in 2018 with various actors involved in the struggle for rights over *the dalhi* land. These include leaders of three grassroots level collectives (‘*sangathanas’*) and two NGOs that have been actively involved with the struggle for land and forest rights, with a concerted focus on the *dalhi* land issue. In-depth interviews were also conducted with two *dalhi* land claimants and two community leaders. These interviews were supplemented by focus group discussions in two hamlets of tribal communities that were actively engaged in the struggle for *dalhi* land rights. Interviews were also conducted with government officials to get a sense of their perspective on the issue. Secondary data was collected from the Ministry of Tribal Affairs website, the District FRA Cell in Alibag, and the office of the Tribal Research and Training Institute, Pune.

Contestations over *dalhi* lands: From revenue collections to legal arrangements in the pre-Independence eras

Before British rule, interventions in the north Konkan region by various rulers including the Buddhist, Brahmin, Muslim, Maratha, Peshwa, and Portuguese, over more than 1000 years have been reconstructed by historians to trace the formation of the region's social, political, and economic landscapes (Charpentier 1927; Naravane 2001; Thapar 2002; GOM 2009). Evidence points to the expansion of cultivated areas that involved the clearance of forests and settlement of erstwhile nomadic forest communities, marked by considerable resistance from the latter (Thapar 2002). Despite increasing integration into coastal trade over the years and the associated exploitation of the region’s resources, at the time of British colonization the region was characterized by dense forests and several communities including those engaged in *dalhi* cultivation who were yet to be governed by any regular revenue systems (Saldanha, Tribal Women in the Warli Revolt: 1945-47: 'Class' and 'Gender' in the Left Perspective 1986, WS-42).

Documentation of cases filed and decisions were taken during the colonial period indicate the nature of *dalhi* cultivation practices, the types of revenue collections before colonial rule, and the contestations during colonial rule (BFC 1887). The Bombay Forest Commission identified twelve tenure systems in the region in which *dalhi* cultivation did not feature. The terms *dalhi* and *kumri* were understood as synonymous terms referring to a ‘mode of preparing *varkas* (literally ‘upland’) land for cultivation by burning *in situ* the vegetation on such land, ploughing or hand-digging and sowing in the area burnt’ (BFC 1887, 243-4). The plots cultivated in one year were typically left fallow for at least seven years. The produce was a small but important part of the needs of these communities who supplemented this with wild fruits, roots, and small game from the forest indicating relatively free access. Survival strategies also included the sale or barter of seasonal collections of forest produce and the occasional looting of more prosperous villagers settled in the plains (Saldanha 1990, 434).

At the outset, one is confronted by the conflict in paradigms concerning the forest that continues to date. Communities in the region evolved relationships with each other and their surroundings in ways that integrated field and forest, hills and plains. The communities that engaged in *dalhi* cultivation had no notion of private property as they collectively arranged for shifting plots to members more in keeping with common property arrangements. The forest was at the centre of the material and spiritual realms of these communities. For the colonial rulers however the guiding Lockean philosophy gave primacy to private property and separation of field and forest as separate entities that had the potential for different types of revenues. The classification of lands into productive and unproductive waste (*varkas*) arising from this conceptual disjuncture between field and forest, caste, and tribe destroyed existing community structures and relations (Whitehead 2010, 85-6).

A key British policy was to substitute private property for the complex and overlapping patterns of landholding in the hinterland through their settlement surveys and appointing local elite as tax collection agents. Land settlements included individual annual leases called *eksali* and community leases in the case of *dalhi* cultivation. Stoppage and restrictions imposed on *dalhi* cultivation under the Indian Forest Act of 1878 gave rise to a lot of unrest among the hill tribes (Dalvi and Bokil 2000). The Forest Settlement Officer's view that "*dalhi* is not only a possible means but almost the only possible means of improving the forests" (BFC 1887, 290) supported subsequent land allotment presented as a means of rehabilitating the '*wild tribes'* that practiced this form of cultivation. Such attempts at sedentarization to organize society for purposes of taxation, conscription, and prevention of revolt were typical of states in Southeast Asia too. These were accompanied by the organization of the natural world through designs for scientific forestry to make it more manipulable from above (Scott 1998, 1-2).

Mobilisation of *dalhi* land holders

The colonial system of administration continued unchanged into the post-independence period. A conference organised on 17th April 1955 under the chairmanship of the veteran Congress leader Yashwantrao Chavan, then Chief Minister-cum-Forest Minister, saw the first concerted demand for conferring permanent rights to the holders of *dalhi* plots. The demand was publicly accepted but failed to materialise. The *Kolaba Zilla Adivasi Sangh* (Kolaba District Tribal Association) took up the issue and organized several conventions, but their efforts did not translate into an effective movement (Dalvi and Bokil 2000, 2846). With the passing of the 'land to the tiller' law in 1956, the land-owning class sensing the possible loss of their land evicted their tenants or asked them to 'voluntarily' give up the land. Only 11.4 lakh of the 24 lakh registered tenants were given ownership rights. This was a severe blow to the remaining 12.6 lakh who were left high and dry (Bhuskute 1989, 2355).

Significant land reforms were rolled out after formation of the state of Maharashtra in 1960 with tenancy laws, acquisition of surplus lands via Ceilings on Holdings Act 1961, redistribution of government lands, and regularization of encroachments on public lands. Tribal cultivators that included *eksali* and *dalhi* leaseholders also started to file claims for regularization and the right to cultivate on lands classified by the government as wasteland and forest lands (Dalvi and Bokil 2000, 2845). On January 14, 1970 vide circular FLD/4268/27023-W the Forest Department was directed to disforest the *dalhi* land and transfer ownership to the plot holders. While *dalhi* lands did get disforested, only a small portion was transferred (Dalvi & Bokil 2000, 2846 & Bhuskute 1989, 2357). In 1976 this directive was contradicted as forest matters were transferred from the state to the concurrent list and a national legislation – the Forest Conservation Act (FCA) 1980 – was passed that prevented the transfer of forest land for non-forest purposes without the permission of the central government (Dalvi & Bokil 2000, 2846).

The movement however gained fresh impetus after a High Court judgment passed in 1987 in favour of a cultivator of *eksali* land in another district, directing the government to transfer the land to him regardless of FCA 1980 (ADS 2004, 45). Within three years 5000 tribal cultivators had mobilized for a long march from Pen to Alibag, supported by B. D. Sharma, then Commissioner of Scheduled Castes and Scheduled Tribes. They undertook a *satyagraha*, a non-violent form of protest based on Gandhian principles, and courted arrest. B.D. Sharma (1990, ix - xiii) further took up the matter with the union government and in 1990 itself a circular was issued stating that the provisions of FCA 1980 are not binding on the decision taken by state governments before its enactment, thereby allowing again for implementation of the 1970 directive to transfer ownership.

With no follow-up from the government, another agitation was taken in 1992 to the office of the divisional commissioner of the Konkan region. This time the agitation was joined by well-known activist Medha Patkar. Additionally, a writ petition was filed in the Supreme Court of India by the *Shoshit Jan Andolan* (movement of the exploited masses), a coalition of people's organizations in Maharashtra. The 1995 Supreme Court verdict supported the cultivators' demands, reprimanded the state and directed that the matter be resolved immediately. This process received a setback due to a change in government at the state level that necessitated a fresh round of negotiations with the new ministers. On July, 26th 1996 the children of the *dalhi* landholders held a *dharna* (sit in protest) and celebrated the silver 'jubilee' of the government's apathy and insensitivity. The Forest Department responded with a survey of *dalhi* lands in 1996 in a manner that raised serious objections. The following fresh survey initiated in 1998 constituted the sixth round of surveys since 1970 with no concrete outcomes for the impoverished tribal cultivators (Dalvi and Bokil 2000, 2847).

A series of brutal evictions across the country of forest dwellers, reclassified as 'encroachers' by the Ministry of Environment and Forest (MoEF) in 2002 led to the Campaign for Survival and Dignity (CSD). State and national level strategies were adopted to build pressure to stop further evictions. Yet again a notification was issued to implement the 1990 guidelines. Thousands of claims were filed across the country as the mass movement grew. In July 2003 a national *Jan Sunwai* (public audit), brought out a detailed report on regularisation and evictions, which was followed by advocacy and lobbying in the corridors of power. The members of the movement played a key role in drafting the forest rights bill that was finally passed as a law on 18th December 2006 (Asher and Agarwal 2007, 14-18,23).

Post-FRA Narratives and Contestations

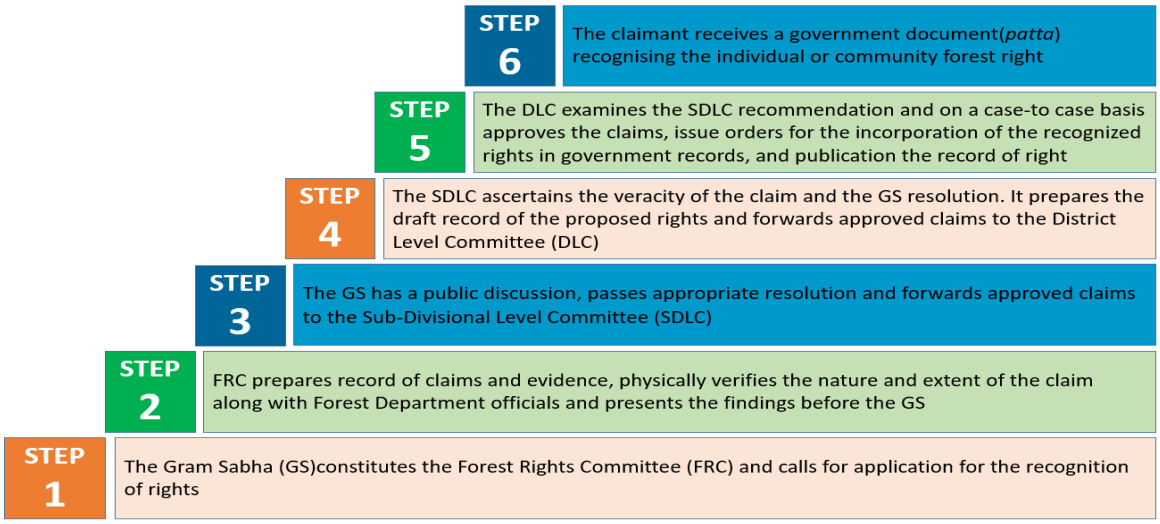

Figure 1: FRA Claims Process

Figure 1 has been created by the authors based on information available in the ready reckoner provided by MoTA (MoTA 2012, 16-18). In FRA 2006 the *Gram Sabha* (village assembly) has been given the authority to initiate and determine the nature and extent of the individual and community forest rights within the local limits of its jurisdiction. The process is initiated with the formation of a village level Forest Rights Committee (FRC) having a maximum of fifteen members wherein two-third shall be ST and one-third shall be women. The scrutiny and processing of claims goes through five steps (Figure 1) before the claims can be legally regularized. A State Level Monitoring Committee is expected to monitor and evaluate the entire

process. The claim application and verification process are found to hit obstacles at every step. Some of these experiences with respect to dalhi lands is presented in the next sections.

a) Recognition of forest rights claims

"We are the fourth generation of the *mulkul*." "This is hereditary land."

These claims were made during discussions in the tribal hamlets. All families in the region trace their rights to the *mulkul*, i.e., original family listed in the *dalhi* records (FGD-Ambeghar 2018). Cultivation rights are also recognized in the orders of the Maharashtra government regarding the regularization and transfer of the *dalhi* land to heirs of the original holders. The British government had leased *dalhi* lands to the community and the lease title was made in the name of a headman called *'naik'* with an annual renewal fee. A written agreement was also signed between the community and Forest Department and a license given to cultivate the land. The colonial government noted the importance of *varkas* lands for meeting subsistence, housing and livelihood needs. In the community lease agreements, people's involvement in the protection, conservation of forest, and commitment to safeguarding members' rights were included under *dalhi* settlements (Dalvi and Bokil 2000, 2844,2849).

The government list was found to include ineligible people according to the villagers and activists. They claimed that the official list was arbitrary, based on their whims and fancies in collaboration with some villagers. It was reported that recognition had even been granted to those who were dead or had not even applied. The *sangathnas* on the other hand described a beneficiary list preparation process of their own based on public meetings in which people could object to the inclusion or exclusion of any name (Pawar 2018).

Recent reports provide evidence of data discrepancies at multiple levels. Even discounting the alleged discrepancies, the official data (Table 1) for the district that was available on FRA portals painted a fairly dismal picture.

Table 1. Official Status of Implementation in Raigad as of December 2018

Level of implementation	Gram Sabha (GS)			Sub-Divisional Level Committee (SDLC)			District Level Committee (DLC)		
Category of applicant	ST	OTFD	Total	ST	OTFD	Total	ST	OTFD	Total
Received claims	11745	6958	18703	10212	5621	15833	6755	195	6950
Rejected claims	1505	1330	2835	3457	5426	8883	505	157	662
Approved claims	10212	5621	15833	6755	195	6950	6230	38	6268
Pending claims	28	7	35	0	0	0	20	0	20
Area recognised (acres)							3303	1.28	3304
Average area recognised (acres)							0.53	0.03	0.53
Claims approved by DLC to the application made at GS (%)							53.0	0.55	33.5
Claims rejected by SDLC to received claims (%)							33.9	96.5	56.1

Source: (TRTI 2019, 1)

Though the maximum area recognised has a ceiling of 10 acres, yet a closer look at the average area recognised for ST and OTFD reveals that the recognised plots are extremely small and would make cultivation or investment unviable. The data presented shows that only one third of the claims received by the *gram sabha* have been approved by the DLC. The numbers of the SDLC indicate a large number of rejections for OTFD claims. This undermines the power vested upon the community to judge the veracity of the claims and only goes to show how the

state continues to wield power even in processes that aim at devolution. High rejection rates and state domination of FRA processes have recently been reported in other studies and news reports too (S. Kumar 2020; Kukreti 2020).

b) Conflicting perspectives on the question of evidence

FRA 2006 embodies an understanding of customary practices that have evolved out of informal arrangements in its treatment of evidence required for recognition of forest rights. For example, the oral evidence of village elders is accepted as admissible evidence for claims. This runs contrary to the standard operation of the related departments who typically insist on written records. In the case of *dalhi* plots however such conflicts should not exist.

> "*Dalhi* is the simplest pattern to be settled under FRA as the government has the record, boundaries are known; only internal boundaries need to be done. There is no need to ascertain the truth as everything is recorded." (Mahajan 2018)

The *dalhi pustak* or passbook was an important document maintained by the *naik* that had all details of the cultivators, maps, details of the type of land, rules of the lease, and the record of the rent paid. The people cultivated the land through mutually agreed boundaries and the *naik* collected the land tax proportionate to the land occupied or cultivated and regularly paid it to the Forest Department. The *dalhi* book and related receipts constitute documentary proof of traditional rights of claimants, along with the other Forest Department rent receipts for these lands. Two major components were payment of rent, '*dhara vasuli'* (the recovery of the lease rent), and *'vaaras nond'*-the record of inheritance. The former was much easier as people came forward and paid the lease rent regularly. The latter records were improperly maintained due to bureaucratic inertia and people's immediate priorities.

The chance discovery by one of the activists of the *dalhi pustak* piled up at the Divisional Forest Office in Alibag (soon to be destroyed by burning) was a turning point as it gave a much-needed impetus to the movement (Gaikwad and Sonawane 2018). People alleged that forest officials fraudulently snatched on the pretext of doing some survey and other official work and assured us that they would return the same after the work is done. They never saw their books or receipts again (Waghmore and Jojo 2014). Hence getting back the *dalhi* books became a priority. One encounter between the tribals and officials was recounted by one of the activists.

> "In the very first morcha on 12th July 1990, our demand was for the dalhi pustak. The morcha reached the RFO office at Mangaon. While some officials flatly refused that they had the books other expressed their ignorance about *dalhi* land. The officials tried to play down the demand by questioning the katkari's capacity to take care of records amidst leaking homes, migration, or forest fires. They alleged that people had lost the books over the years.
>
> At this point, one old man stood up amidst the crowd and calmly took out an old dirty looking package tied at his waist. Wrapped in a piece of cloth were receipts of the *dalhi* revenue paid right from 1932. 'Sir', he said to the officer 'if we can take care of these bits of paper for so many years, can we also not take care of the book? Are you saying that the book must have got burnt but these pieces of paper escaped that fate?' The officer was dumbstruck. The old man who spoke was a *dalhi-naik* from *Vilhe* village – Kamlu Mahadu Valekar. His courage in front of the 'big sahib', stirred enthusiasm amongst all of us. The Sahib gave us a written assurance that he would find and give us the *Dalhi* books within a month." (Mahajan nd)

The Forest Department officials often insisted on attaching forest fine receipts as proof along with the claim. The reason for this became clearer when people alleged that receipts were not always issued, and the fine was collected "in kind" (chicken, rice, alcohol) instead. Claims were sometimes rejected solely based on the adverse report of the Forest Department that completely overlooked the given proofs and oral evidence of village elders (Pawar 2018).

c) Local land use patterns and problematic categorisations of rights

The Act classifies forest rights into IFR and CFR. Each category is associated with different kinds of usufructuary rights and restrictions. The people wanted IFR because they always cultivated their plots individually and filed their claims accordingly for the *dalhi* lands (Mahajan 2018). However, CFR was given when IFR was applied for. Holding a CFR title meant that they could no longer cultivate there. This is the greatest fear as the produce of the *dalhi* land comprises a significant component of their food security needs. With the nature of restrictions relating to CFR, it is evident that the Act does not recognize the myriad possibilities within community forest regimes. The demarcation of *dalhi* plots as encroached land imposes a limit of 10 acres. This has been objected to by the activists and the people as these are leased lands that have no upper limit for recognition (Pawar 2018). There is a new level of complexity that has plagued the *dalhi* plot owners due to the delay in implementation of the 1970-71 order. Forest officials stopped accepting the *dhara* (rent) for the land, the enumeration of the heirs especially the sons-in-law who came to stay with the wife's family, encroachment by non-tribals and Forest Officials treating *dalhi* as encroachment for the FRA 2006 claims (S. Dalvi 2018).

> Now they cannot change… they have to regularize it. *Dalhi* land comes under 3(1) g i.e., lease lands. They have to give the entire plot. They have (however) shown *dalhi* as encroachment in some places." (Gaikwad and Sonawane 2018)

Activists recounted the people's outrage when they were handed CFR titles by the Governor at a public function organized at Karjat, Maharashtra. People of the village who had not even applied had their names in the CFR certificates. Activists of the *Shoshit Jan Andolan* took strong objection to this and refused to accept the offered title papers.

> This would also mean that no activity can be carried out on the said lands without the written permission of all the people whose names appear in the CFR. People have developed their plots into orchards and can't risk it to the mercy of the group. (FGD-Ambeghar, 2018)

d) Village-level dynamics

The claimants spoken to alleged that the whole conversion of the IFR applications into CFR is a complete forgery.

> Underhand dealings have taken place between officials and villagers. Otherwise, how does one explain the Gram Sabha resolution which is a mandatory document and can be obtained only after a public meeting of the village? (In our village) the Gram Sabha Resolution was given for individual forest rights, not CFR. (FGD-Ambeghar 2018)

The *Katkari* tribe has over the years faced structural injustice not only at the hand of the state but also from the other dominant caste and classes, depriving them of their rightful ancestral lands through forgery and force. Thus, the original *Katkari* lessee has in several instances been replaced by non-tribals or tribals from another hamlet (Chellam, Jha and Kothari 2010).

Although the population of the Katkari community is fairly substantial in this region, they account for only 13 percent of the population. In the villages whose data is presented here, the *Katkaris* represented a little less than 13% with 55 households residing in two hamlets of the revenue village (FGD-Ambeghar 2018).

Raigad district constitutes one of the 15 Tribal Sub-Plan districts of Maharashtra. However, unlike the regions with a tribal majority, the tribals here have limited powers to influence decisions in the larger village assembly as they are outnumbered by the dominant caste groups (S. Dalvi 2018). Grassroots groups have worked to find ways in which the tribals can collectively articulate their concerns and needs so that they will be taken into account at the larger level. Issues reported in the very initial months of the implementation process by various grass-root organisations at a state level consultation in Pune on 12th June 2010, continue to be reported even after eight years pointing to the sheer neglect of these marginalised forest communities and the apathy of the system towards them.

Conclusion: Forest rights and the regional development context/social justice

Evidence gained from the region indicates the need for capacity building of the Gram Sabhas and vulnerable sub-groups within the village in ways that help local communities to take legal charge of their traditional rights. Civil society organisations have been the driving force for successful implementation of the Act in limited locations. Horizontal linkages across groups and between the state implementing agencies with non-state actors also need strengthening.

To facilitate implementation of various policies and programmes the Forest Department has the *van rakshak* (forest guard), the Revenue Department has the *talathi* (revenue official), and the Rural Development Department has the *gram sevak* who is also the secretary of the gram panchayat. Unlike these, there is absolutely no village level presence of the Tribal Department that is mandated to protect the rights and conditions of tribal populations in the state. Their involvement in the actual implementation process, at least with respect to scrutiny of applications, might offset the bias of other departments such as the Forest Department whose priority appears to be that of retaining control of the forest.

In order to facilitate timely justice to communities whose rights have been long denied, the process has to be time-bound and more accountable to the claimants and their rights. Standard strategies of offsetting people-oriented policies with contradictory laws or clauses need to be called out and confronted. Raigad district is one of the rapidly urbanising spaces within Maharashtra. The displacement and dispossession of tribal communities and others on the fringes of development is dangerously imminent. Concerted efforts are need to save the people and the forests of the region.

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Forced Execution of the Surviving Spouse

Adriana Tuluş

Jurist, student at Titu Maiorescu University, Bucharest, Romania, adrianatulus@yahoo.com

ABSTRACT: In Romania, the situation of the surviving spouse has undergone several changes starting from the principle that reserved heirs follow the bloodline consequently his inheritance rights were limited, until the New Civil Code when his reservation is just and clearly defined. This change led to new problems, namely the forced execution of the surviving spouse. The most common problems in practice are those related to the division of the inheritance and the exit from the indivision in the situation where *de cujus* is the debtor.

KEYWORDS: Inheritance, debtor, forced execution, surviving spouse

Introduction

Inheritance or succession means the transmission of the patrimony - namely the rights and obligations of a deceased person - to one or more natural persons who are alive - or to legal persons (state, protection institutions, etc.). Article 1155 of the Civil Code stipulates that (1) "Universal and universal heirs contribute to the payment of debts and tasks of inheritance in proportion to the succession share due to each". Judicial practice has revealed several issues regarding how forced execution is applicable.

The new Civil Code dedicates a distinct section to the succession rights of the surviving spouse (Section I, art. 970-974, Chapter III), reproducing the provisions of Law no. 319/1944, but with some specific elements. The new Code regulates the succession rights of the surviving spouse before the rights of other legal heirs, this order being justified both by his right to inherit in competition with any of the classes of heirs, and by the priority determination of his share of the inheritance, before the other heirs of the deceased. Regarding the extension of the succession rights of the living spouse, the new regulation takes over the provisions of Law no. 319/1944, bringing only certain changes related to the amount of the surviving spouse's reserve, the right to housing, the seat, etc.

Forced execution of the surviving spouse

Forced execution is one of the fundamental institutions of civil procedural law and an important component of justice in a rule of law. Like any other important institution of civil procedural law, forced execution is characterized by certain principles, namely by certain general rules based on which the structure and conduct of forced execution are regulated. These rules, which are complemented by the fundamental principles of the civil process and the principles of organizing the profession of bailiff, have not only a theoretical importance, but also a practical one (Garbuleț 2010, 13-15).

Forced execution may be instituted against any natural or legal person, under public or private law, except those who enjoy, under the law, immunity from forced execution.

Articles 1155 of the Civil Code provide: (1) "The universal and universal heirs contribute to the payment of the debts and tasks of the inheritance in proportion to the succession quota that belongs to each one.

(2) Prior to the division of the estate, creditors whose claims come from the preservation or administration of the assets of the inheritance or were born before the opening of the inheritance may request to be paid from the assets in the division. They may also request forced execution of such property".

The claim rights of the deceased, as well as the succession liability are divided by right between the universal heirs and those with universal title, proportional to the succession share of each (art. 1060 Civil Code) - *nomina hereditaria ipso jure inter heredes divisa sunt*. Consequently, this also applies to the surviving spouse.

Article 687 para. (1) of the Code of Civil Procedure provides that: "if the debtor dies before the notification of the bailiff, no forced execution can be initiated (...)".

For the surviving spouse, because he evades the forced execution, there is the possibility of not accepting the succession.

In the case of the execution of the surviving spouse, the courts encountered several situations. For example Hunedoara - Civil Section I, as follows: Decision no. 338/A of March 29, 2016, in File no. 3.953/243/2015, by which the incidence of the provisions of art. 687 of the Code of Civil Procedure, which stipulates that if the debtor dies before the notification of the bailiff, no forced execution can be initiated. Most cases refer to the time when forced execution can begin. Thus, most of the rulings of the Bucharest Court of Appeal, including the Bucharest Tribunal, were in the sense that there is a possibility to start the forced execution of inheritance property against the accepting heirs of the deceased debtor, as long as the succession quotas and their heir status were not established succession. Such a situation has reached the High Court of Cassation and Justice.

Forced execution in relation to the establishment of succession quotas

One of the problems with the forced execution of the surviving spouse is that of the forced approval of the surviving spouse before the succession has been debated and the quotations of all the heirs have been established. In this situation the provisions of art. 688 para. (2) of the Civil Procedure Code reported to art. 1.155 alin. (2) of the Civil Code.

Regarding the legal division of the succession liability between the universal and universal heirs, in proportion to the succession quotas, there are regulations since the Civil Code of 1864, art. 774, art. 775, art. 777, art. 893, art. 896, art. 902 and art. 1.060, until the current Civil Code, art. 1.114 alin. (2) and art. 1.155 para. (1).

There is derogation from the rule of legal division of payment obligations by art. 1.155 alin. (2) of the Civil Code, which provides that "Prior to the division of the estate, creditors whose claims come from the preservation or administration of the assets of the inheritance or were born before the opening of the inheritance may require to be paid from the assets in the division. Also, they can request the forced execution on these goods" (Baias, Chelaru, Constantinovici, and Macovei 2012, 1202-1203; Deak and Popescu 2014, 127). By this exception, the creditors identified by art. 1.155 alin. (2) of the Civil Code, "may pursue the assets of the estate that are in indivisibility, without worrying about the legal division of liabilities and the fact that the payment of debts and tasks of inheritance is borne in proportion to the share of inheritance vocation". Moreover, this solution was applied before the entry into force of the New Civil Code, representing a common judicial practice, due to the fact that the application in all cases of the rule of legal division of liabilities, brought shortcomings in the case of unsecured creditors.

The rule established by the Civil Code of 1864 had four exceptions by which the succession liability is not divided proportionally with the hereditary parts in the New Civil Code with the hereditary parts, under the rule of the Civil Code of 1864, were regulated by art. 1.061 points 1, 2, 3 and art. 893, art. 896. In addition, there is the exception based on the general right of pledge of creditors, which remains indivisible as long as the indivisibility between the heirs lasts and which gives the creditors of the inheritance the possibility to pursue the succession assets for the entire debt, without bearing the risk insolvency between heirs (Eliescu 1966, 231; Zinveliu 1973, 121; Toader, Popescu, Stănciulescu, Stoica, Deak 1996, 157; Chirică 2003, 443).

In March 2019, the High Court of Cassation and Justice ruled on whether there is a possibility to start the forced execution of inheritance assets against the accepting heirs of the deceased debtor, as long as the inheritance quotas and their heir status have not been established in the succession debate. In this case it was about 2 reserved heirs, the surviving wife and the son of the deceased.

The legal issue that came before the High Court of Cassation and Justice was in the following situation, the bailiff, based on the creditor's request, a commercial bank, requested that, based on a promissory note issued in December 2013 and due in 2014, the Bucharest District 1 Court, to approve the forced execution against the assets of the inheritance of the debtor who died after the due date of the respective note, and of the two accepting heirs.

In this case, the Court "rejected, as unfounded, the request for approval of the forced execution, considering that, at this moment, the persons indicated as accepting heirs do not have the quality of heirs and, implicitly, of debtors, within the meaning of art. 645 para. (1) of the Code of Civil Procedure, and, according to the provisions of art. 688 para. (2) of the Code of Civil Procedure. The court reasoned that an execution cannot be initiated on the assets of the inheritance, because, as long as the succession was accepted, the forced execution should have been directed at the heirs" (Decision no. 12 of 11 March 2019 of the High Court of Cassation and Justice).

In its reasoning, this court also specified that the execution can be started only in the case of those who have made acts of acceptance, because otherwise "one could reach the situation in which, in the procedure of forced execution, persons regarding to which it would later be proved that they do not have the quality of heir." (*Ibidem*).

In law, the District 1 Court motivated the fact that it rejected the action of the commercial bank through the provisions of art. 688 para. (2) of the Civil Procedure Code, which provides that forced execution will be initiated against all major heirs, in conjunction with art. 1.155 of the Civil Code, which stipulates that: "universal and universal heirs contribute to the payment of debts and tasks of inheritance in proportion to the succession quota that belongs to each one".

The commercial bank appealed to the Bucharest Tribunal, motivating that the right specified by art. 688 para. (2) of the Civil Procedure Code, respectively art. 1.155 alin. (2) of the Civil Code, by which any creditor can enforce a claim born before the opening of the inheritance of his deceased debtor, even before the completion of the division of succession. He also considered that his ability to recover his claim was unjustifiably limited.

The theoretical opinions expressed by the majority of judges concluded that the beginning of the forced execution is possible in the stated hypothesis. The explanation is based on the reason of art. 1.155 alin. (2) of the Civil Code, namely, the creditors of the deceased are considered "creditors of the succession", consequently they do not have to wait for the succession debate and the division. Also, in the event of a long period of time from the date of opening the succession, the creditors are protected from the risk of insolvency of some of the heirs.

A minority of the judiciary argued that there was no possibility of enforcing the assets against the deceased debtor's accepting heirs, as long as the inheritance quotas and their heir status had not been established in the succession debate.

In this case, the High Court of Cassation and Justice considered that "the provisions of art. 688 para. (1) of the Civil Procedure Code transpose in procedural plan this right of preference of the creditors of the succession in the matter of forced execution, ruling, on the one hand, that forced execution in order to realize their claims may begin after the death of the debtor and that, on the other part, in its place will stand, in the execution procedure, pursuant to par. (2) of the same article, after the acceptance of the succession, all the accepting heirs, if they are only major heirs" (*Ibidem*).

Conclusions

Forced execution is the second stage of the civil process which refers to the procedure by which the creditor, who is the holder of the right recognized by a court decision or other enforceable act, constrains his debtor who does not perform his obligations with the help of the competent state bodies, in order to fulfill them in a forced way (Zilberstein and Ciobanu 2001, 23; Deleanu 2003, 538; Gârbuleţ and Stoica 2010, 3).

In the case of successions, as we have seen, the law does not provide for all situations. The courts do not have a unitary practice, with only a majority one. The forced execution of the surviving spouse has the same problems as all the reserved heirs. The problem that remains is that the courts must weigh between the creditor's rights to recover his debt from the deceased debtor, or that the payment of the debt must be proportionate to how much each heir has received. For the future, it is preferable that this situation be expressly stated in a regulation.

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Impact of COVID-19 on the Online Learning Experiences of High School Students in Pakistan

Bushra Mariam Umair[1] & Shazia Nasir[2]

[1]Greenwich University, Bushra.umair12@gmail.com
[2]Head, School of Linguistics at Greenwich University, Shazianasir.222@gmail.com

ABSTRACT: The spread of COVID-19 forced educational institutions around the globe to go online. In March 2020, Pakistan also went under strict lockdown, forcing schools to go online. Though the students, teachers and the parents, as well, braved this situation but there has always been a state of uncertainty in their minds. The students had an unknown fear for their learnings as they were not sure what the future holds for them. This research paper will be focusing problems; high school students faced during the online education process. Pakistan being a developing country, with limited technological resources, online learning was a challenge not only for the students and teachers but also for the parents as well. The ambiguity had left the students in continuous fear. In this phenomenological study, semi-structured interviews with open ended questions were conducted with five students from three different schools to share their experience of online learning. The findings of the research revealed that going online is inevitable under the given circumstances but it cannot replace face-to-face learning.

KEYWORDS*:* COVID-19, Face to Face learning, High School Student, Online learning

1. Introduction

By the end of 2019, we were introduced to a deadly virus COVID-19, an invisible enemy whom we were not acquainted with. COVID-19, caused by SARS-CoV2, which was first identified in Wuhan, China, is a respiratory viral infection. It is transmitted through a respiratory droplet of the infected person (CDC 2020). Policymakers all over the world were left with the option of practicing social distancing and self-quarantine policy. Subsequently, educational institutes were forced to shut down, diverting to teach online. To keep the wheel of education rolling, high schools in Pakistan also opted to teach online. Hence, conventional face-to-face learning was substituted by the online learning experience. Both the students and teachers of colleges were left clueless and uncertain about the scenario they were in. Nevertheless, humans are programmed in such a way that we adapt to the environment we face. This led us, therefore, to a distinctive form of teaching technique that was previously unconventional for us. Urban areas in Pakistan were less affected compared to rural ones. This is because of adverse financial conditions.

1.1. Research Question

The study focuses on the following research question
Q 1. How was the overall learning experience during COVID-19?

1.2. Education in Pakistan

Pakistan, like every other developing country, the conditions in the field of education are not quite favourable. Poor infrastructure and untrained teachers leave an irrevocable impact on the education sector of Pakistan. Hence, leaving most of the population in rural areas as being the most affected. Education in the field of science and technology has been hit the most because of the shortage of trained teaching staff, ill-equipped laboratory and the curriculum which is being taught has a little relevance with the need of the present time. The root cause behind this grave problem is the non-serious attitude of the government in the allocation of an adequate budget.

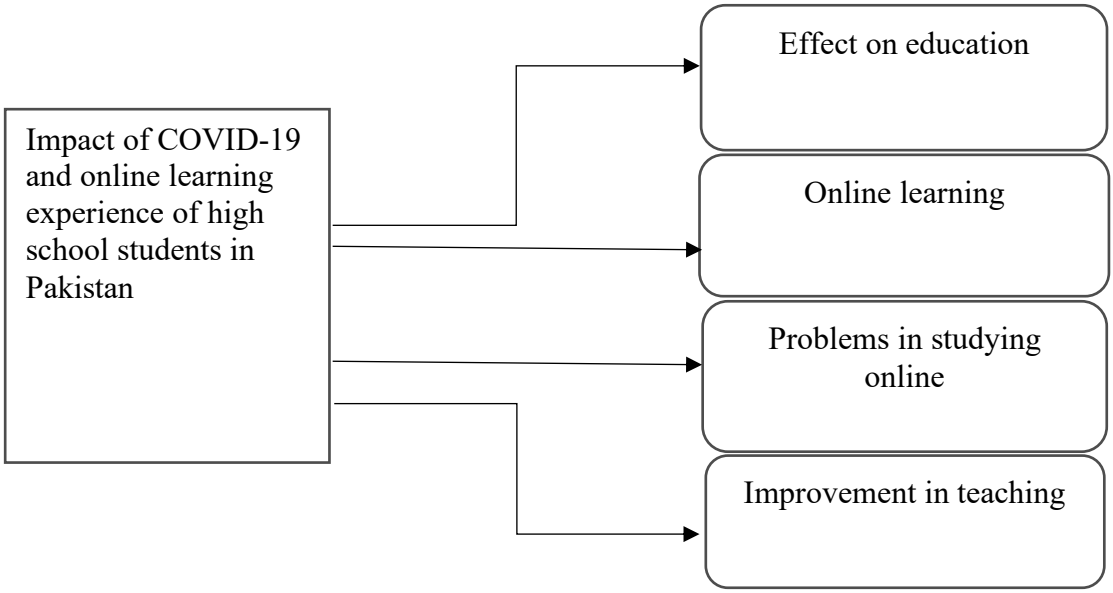
1.3. Online Education

Online education has been originated back in the 1980s, and undoubtedly it can be a debatable form of learning. Its definition can vary upon a person's understanding, and most people define it in the context of its materialistic view. It is usually defined as access via technological tools such as web-based, web distributed, or web cable (Nichols 2003). While Ellis (Interview with e-learning guru Dr. Michael W. Allen, 2004) contradicts him, and states that e-learning does not only cover content and industrial methods via CDROM, but also interactive audio and videotapes. Common Wealth of Learning presented the most updated definition of e-learning as a process of educating based on the separation of the instructor and learner in time and place under the meditation of technology delivery with the possibility of face-to-face interaction (Learning 2020).

Although in Pakistan distance learning is not an innovative concept, but it was reasonably new for most of the institutions. Institutions like Allama Iqbal Open University and Virtual University are among those that are successfully practicing this for a long time. However, students tend to be unsatisfied with the outcome of it. One thing which should be concerned that these means are meant for older students. Despite the willingness of most of the institutions to have a smooth transition, it seems to be difficult to embrace it in the longer run. Due to the chaotic situation, none of the sectors were regulated and therefore leaving people in despair. This happened in the field of education where teachers and students were perplexed by the quick shift of pedagogy. Pakistan is a country where most of the teachers available are untrained. According to the statistics, the total number of teachers working in high schools are 51,350 in 2016. This records an increase from the previous number of 46,431 teachers for 2015 (Statistics 2016) out of which mostly belong to the urban side of the country. Pakistan is far behind in the field of science and technology, hence leaving a huge population of educators blind to online teaching and learning.

1.4. The problem Statement

The problem statement could be explained with the help of graphical presentation below



2. Literature Review

In Pakistan, not much literature is available on the online learning during COVID-19 except a few articles in the newspapers. With the literature available, it can be extracted that with the efforts of educators the learning process kept going. This investigation gives an analysis of online education during COVID-19.

The human race is not witnessing a pandemic for the first time. In 1918 a similar situation was faced (Taubenberger and Morens 2006). The economy faced a great blow and the same kind of uncertainty could be sensed now. The major barrier which hinders us is an inaccurate or incomplete record (Beach, 2020). Almost 50 million died during the pandemic of 1918, but survival does not just mean to be alive. The deployment of millions of young men, as well as the widespread deaths and dismantling of both civilians and service-members, has its effects on the economy. These issues, at times, prevent making convincing interpretations of the data given (Beach 2020).

In the current circumstances, in a country like Pakistan, where 22 million students are already out of school, there is a major hike of students being dropped out of school. The spill-over economic effect of total lockdown flared up the difficulties for the remaining students. Pakistan is a country where investment in public sector education is merely enough, COVID-19 had shrunk it even more. This will widen the gap between the public and private sector school (Mujtaba 2021).

Despite the promotion of e-learning, the realistic side was not been able to cater to a large audience. However, the government has taken steps like teaching through low-cost tools like television and radio, but through surveys, it has been observed that only thirty percent of them are aware of it (Geven and Hasan 2020, 3). Even with the most optimistic scenario, it is observed that an average child will lose 0.8 years or 0.5 years of education. It further detects the learning poverty which was already 75% may rise exponentially (Geven and Hasan 2020).

3. Methodology

This qualitative study employs Phenomenological method in acquiring data. It aims to describe the meaning of individual life experiences. The researcher tends to unfold the essences of individual experience, and deeply lived moments one may experience (Marshall & Rossman 2006). To get the essence of the phenomenological experience the researcher took semi-structured interviews of participants as the primary method to get substantial data. The participants who were selected belonged to a school where the management has just been changed. The students have a direct experience of the phenomenon (Merriam 2009). In this research, all five participants were taken into confidence and signed an informal non-disclosure agreement. In the form, it was mentioned that they are free to quit whenever they choose to. Furthermore, their identity would not be revealed and would be named as Participant A, B, C, M and S. All five are girls between the ages of 15-17, doing their O-Levels. All the participants were given the choice of not answering the question they were not comfortable with. They were specifically selected for the interview because they have been attending online classes regularly in school through zoom. The interviews were conducted online on zoom on January 6, 2021. All the participants were asked to keep their videos on, to cover all the signals which could be physical or verbal. The consent to record the video was taken before commencing the interview.

4. Findings &Analysis

4.1. Pandemic

COVID-19 has left the world in a state of unseen fears, always approaching toward anyone. People were in the state of shock trying to make use of the meaningless life they were living. The participant while describing COVID-19 were seen uneasy and trying not to talk about the situation more. Although most of the participants have mentioned not to believe the threat of the virus in the beginning of lockdown; later they were left with no option to accept it when their own family members contracted the same virus.

4.2. Frightening Time

Karachi being the city of lights has never witnessed anything of this sort ever. The young participants have faced frightful time being at home, or whenever they were getting a chance to see the city in dark. The depressive state of the surrounding developed a feeling of distress among them. This was observed during the interview as the participants mentioned the horridness of the time.

4.3. Unpredictability

The uncertain life during this time created a feeling of despair among the student. Not being able to forecast any goals created unwillingness to make any. Therefore, failure in the accomplishment of results led life towards many insecurities. Teenagers were not able to predict about reopening of schools and uncertain exams have left the life in emotional distress and puzzle about their future termination of exams by the board fuelled more anxiety to the purpose.

4.4. Homeschooling

Home-schooling was the option most of the students were left with. This option only works on a condition when there is someone who has a sound knowledge of the content. Additional support from siblings or parents has helped students with their studies. Students have more relatable examples and have hands on experience of their parents and guardians. This also helps families to have a better understanding of their children's academic growth. If there was inadequate support from home this might have lead towards wrong concepts. This is more favourable for students of younger grades.

4.5. Lack of Technological Awareness

Being a developing country Pakistan still faces problems in the field of technology. Before COVID-19, only a handful of schools were providing technological-based learning. Though none of them have ever tried online learning which might be the reason people are facing problems with getting used to it. Students were facing problems in operating new software because of a lack of awareness and training. Educational institutes were sometimes managing several software devices which increased the challenges for students.

4.6. Improvement in Teaching

The complaint of not understanding whatever was taught during the lesson was the primary problem which has led to many others. In Pakistan, the school's main goal for students is just to give the bookish knowledge. If the school is unable to deliver the main goal, then for parents there is no point left sending their children to school. However, participants have witnessed the gradual betterment of teaching methodology during the course of time. Usually in Pakistan teachers are not trained, they face problems in teaching techniques during normal classroom session and technology was an additional problem for them. Lack of teacher training may be the root cause behind it.

4.7. Educational Loss

There was uniformity among the participants that there was an educational loss during pandemic. While the teachers were connecting through the screen, the students were lacking the understanding they required. Students who lack additional support from home may face the consequences of it in the upcoming examination.

4.8. Promoting Self-Study

Some students preferred this lockdown for the reason of self-study. Participants were at the age where they are given guidelines mostly, rather than telling bits of information. Learning through additional text was embraced during lockdown where there was no help from home.

This may be the ideal outcome from this lockdown, however conceptual incorrectness fear, would always be there.

4.9. Non-Serious Attitude

The lack of physical presence created an environment of non-seriousness. While using the mobile phone to connect to classes, students usually drift off to messages and toward social media accounts that prevented students to understand the concepts properly. This may be because of boredom or maybe lack of seriousness during classes. This non-serious attitude is the result of constant despair and uncertainty.

4.10. Depreciating Social Growth

Isolation has driven people to a state of loneliness. It has been observed that being away from school, the students missed out the social interaction with their peers. At this age, teenagers seek more independence, while being locked up in the house for months their soft skills are highly affected. During the interview, it has been observed the students were finding difficulty in expressing themselves. Perhaps the reason behind this is the lack of interaction with peers.

4.11. Psychological Effect of Pandemic

The uncertainty and frightful days have left the students in shock. They were not forecasting the effect of COVID-19 in the beginning but later still managing to live life along with corona. For them initially, it was fun to get a break from school. However, they were not able to see the domino block which had just fallen to affect the total setup of their life.

5. Conclusion & Recommendations

Pakistan is one of the few nations that has gone for the closure of schools within the first week of pandemic (Geven & Hasan 2020). Even then the widespread of the virus was not controlled, however, it was restrained for a while. Pakistan being a third world nation had witnessed problems in all the sectors of life. Education has not been the focal point for the authorities ever. The deteriorating situation of the educational sector had taken the impulsive hit by COVID-19. This resulted in chaos, where most of the students in the beginning were thinking the lockdown to be a holiday. This constant state of denial led students to not taking online classes regularly. It is pertinent to mention lack of trained teachers had made the student baffled and add more to their problem. Students had also lost interest in online classes due to continuous electricity breakdown and lack of technological facilities in Pakistan. The results in this study have revealed that nearly all, but specifically high school students faced more challenges. One of the main challenges is the slow learning process which they encountered during their online classes. Also, their fear of not connecting on time due to power breakout of poor connectivity. The study also resulted in some implications for educators and institutes. They must get themselves fully equipped with the modern technology to facilitate their students. The educators can include some motivating instructional methods like virtual field trips to inspire their students.

Due to lockdown, most of the people were left jobless or not being paid by employees. In a family where there is a turmoil of economic crises, there is no option of buying multiple mobile gadgets and invest in studies. Hence, leaving a huge chunk of the population not given a chance of education. Therefore, it could be derived that due to COVID-19 online learning was the option left for the students to keep up with their academics. However, online education could not simply replace the physical school experience.

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Some Considerations Regarding the Forensic Research of Human Blood Traces

Cosmin Butură

"Dimitrie Cantemir" Christian University of Bucharest - Faculty of Law and Administrative Sciences, Bucharest, Romania, cosminbutura@yahoo.com

ABSTRACT: We can say that as long as the crime is committed by a single participant, namely the perpetrator, directed against social values, for example: aggravated theft, destruction of objects that are not in his patrimony, fraud, blackmail, etc., and the victim does not have direct contact with the perpetrator, we cannot raise the issue of the appearance of the probative substance, namely human blood. From the point of view of specialists, on the spot, human blood can be found in various physical properties. For the beginning, the rule of time is applied, so that if the committed deed did not exceed a maximum of 24 hours, then the blood can be found in liquid state being easy to take. On the other hand, if the 24-hour deadline has been exceeded, forensic scientists can find traces of solid blood, of course, this will not prevent the specialist from taking the evidence found.

KEYWORDS: evidences, blood, forensic, technology, laser method, biological, DNA, chemical

Introduction

Worldwide, over time, many forensic specialists have faced thousands of cases, among the most common being: murder, rape, kidnapping, suicide, etc. and all this could be solved by the evidence left behind, which sooner or later led to the solution of the mystery.

Any act committed by a human being entails a series of evidences, traces, no matter how small, which, with the help of the equipment and the team of criminals, reveal hidden secrets of the cases, such as: *how was killed? Is it the victim's handwriting on the "goodbye" note? Has the victim used an object at the crime scene in the last hours?* etc. However, forensic scientists find in the places where the crimes took place, various objects or substances that are used as evidence in the investigators' files.

As a result, in this paper, I have chosen to talk about the most influential evidence, which has led to the resolution over time of thousands of cases, namely: human blood. So we understand that this evidence has today become as simple to say as it is difficult to analyze and identify. Human blood is rich in chemical, physical and biological properties and the main organic molecule is human DNA. This substance is a complex element among criminals, because we are not talking about a simple red stain found at the crime scene, but much more. The notion of complexity of this substance starts from the theory counterclockwise, from the simple biological analysis that represents the final phase in the probationary stage to the identification of the blood stain made as such by a forensic specialist, which represents the beginning of the sampling technique. The importance of this notion is given by the probative substance itself, because due to its physical properties it is easily or not noticed at the crime scene, namely: first of all, time must be taken into account, because with its passage, the blood acquires different colors, which makes it difficult to identify, for example: in the case of an alcohol addict, the blood will have a darker color, close to the narcotic substance consumed, or on the contrary a much darker color; in addition to color, another important aspect, which time reflects on the blood, would be its liquid or solid state.

Finally, the technique of taking human blood is a simple one, namely, with the help of a stick of different sizes, having at one end a sanitary ware coating, the forensic scientist

touches by light rubbing the surface of sanitary ware with the surface on which it is located. The substance in such a way that the blood is absorbed by it, if it is found in a liquid state or an attempt is made to moisten the cotton wool so that it subsequently takes on the color of the blood taken, in the case of dry blood. Finally, the stick is kept in a test tube, sealed according to the procedure in force and transported to the laboratory for analysis, the place where the gender of the perpetrator or victim will be determined, in the absence of the corpse, chronic diseases if they are suffering from them, its gene, an important aspect in the case of investigators and implicitly of criminologists. The human substance found at the crime scene is used as a key element in the prosecutors' files, a fact with which they can easily accuse in court and at the same time win the case.

Forensic considerations on the properties of human blood

For a start, we can say that as long as the crime is committed by a single participant, namely the perpetrator, directed against social values, for example: aggravated theft, destruction of objects that are not in this patrimony, fraud, blackmail, etc., and the victim does not have exactly direct contact with the perpetrator, we cannot raise the issue of substantial evidentiary occurrence, namely human blood.

Definitely that each crime has different complexities, so we can deal with a qualified theft, for example: the perpetrator enters the victim's house at midnight by burglary and can start the theft operation, later being uncovered by mistake of the owner who turned on the light in the living room, which led the perpetrator to kill him with a knife or gun, as appropriate. In such cases, we therefore have the probative substance. And substance can materialize on the objects that surround the crime scene, being belonging to both the perpetrator and the victim. However, human blood can materialize either excessively, and here we are talking for example: in the case of a murder, the victim suffers a severe hemorrhage and in the meantime he is late as a murderer, leaving visible traces with the naked eye next to criminals to carry out actions of forensic evidence. The second aspect refers to the moment when the probative substance is not visible to the naked eye, as for example, in the case of a division, the author has made clean "visible" in such a way that I might not know that in that a murder was committed in the room, and as such, the criminals use the UV lamp, the human blood finally showing itself in places that are difficult to notice.

A criminal activity produces changes in the environment, visible or in a latent state, which are called traces. the discovery and interpretation of traces are essential and undoubted activities for the identification and unmasking of criminals (Cârjan and Chiper 2009, 103).

From the point of view of specialists, on the spot, human blood can be found in various physical properties. More precisely, for the beginning, the rule of time is applied, so that if the committed deed did not exceed a maximum of 24 hours, then the blood can be found in liquid state being easy to take. On the other hand, if the 24-hour deadline has been exceeded, forensic scientists can find traces of solid blood, of course, and this will not prevent the specialist from taking the evidence found. To be appreciated in this context is the materialization of human blood, namely that it, regardless of the states of aggregation encountered, it appears in the light of the UV lamp. From the point of view of the color palette of the blood, appreciated that here too the rule of time applies, as follows: in the first case, it can be found bright red, and in the second case it can be found under cherry color, or cherry black, in cases of crimes committed and discovered after a long time.

Another aspect to consider regarding the aggregation states of the blood is its bio-chemical properties. This raises the issue of the risks to which forensic scientists and biochemists are exposed in police laboratories, in substantial evidentiary cases infected with incurable viruses, we mention here: HIV, hepatitis B and C; but nevertheless, specialists use the responsibility of protective equipment.

Over time, many analysts have raised the particularly substantial problem of evidence in the case of its materialization, for example: a crime committed in a home where the owner and pet, respectively, the dog, and following the attack by the perpetrator, the owner is killed in the room on the floor, and this dog is stabbed on the stairs, dying in a pool of blood at the entrance to the house, the threshold slightly. Subsequently, the author hides the body of the owner and the dog, making himself invisible, no longer having time to clean up the blood left.

And here the problem arises that the first step that forensic scientists will take is to take blood samples in front of the house, then from the rest of the house, and so the dilemma arises when it is not known exactly whose blood it is, *a blood animal or is it a human blood?* In this case, many specialists answered that the difference between human and animal blood is made by substantial conditions found at the crime scene and implicitly measuring the trajectory of the drops but also the spot patterns (Smith and Liesegang 1996).

The clarification of certain problems depends on the way in which the judicial body discovers and removes biological traces from the crime scene, in this case blood traces, depends on the clarification of some essential problems related to the criminal act, especially to the persons involved in its commission (Buzatu 2013, 66).

Technology applied in data collection of human blood by the method of sol-gel transition and drying

We are in the 21st century, so technology is constantly evolving, not only in large companies but also in forensic institutions around the world. In other words, if in the first part of the paper we discussed the properties of human blood, in this part I decided to present the method of its analysis, through sol-gel transition and drying in order to collect data.

From a chemical point of view, the blood is in a solid state (dry) its analysis is done with the help of a phase-like system such as a gel that has both liquid and solid properties. In order for the properties of the gel to take effect, approximately half of the probative substance is removed by evaporation so that the particles present vary according to their volume fraction. The literature on aggregation states, respectively the solid states of blood, presented at a time, before the mentioned method, the fact that this drying of the substance was reduced from the point of view of aggregation, so the new method was appreciated.

The method of transition through sol-gel and drying is manifested by going through different stages as follows: for the beginning the body volume of the substance decreases losing volume and size due to the evaporation effect. At a critical point, the substance becomes rigid, and the reduction process ends, but the evaporation process does not lose its properties. This process of evaporation, which is emphasized, has its place of action inside the system, a small liquid part being isolated in the pores, subsequent to this process being attributed the process of diffusion of vapors to the outside. Therefore, the process of drying the gels is completed but also divided into several stages. A study conducted in 1986 by Dwivedi showed that the process of drying gels of different thicknesses, alumina, focuses on the loss of its mass compared to the passage of time. Thus, in the case of the probative substance under discussion, namely human blood, it has been shown by the specialist that 23% of the initial mass is slightly dry, this process going through the following stages:

First, this method focused on a constant rate period (CRP) where it was shown that the loss of gel volume is directly proportional to the volume of liquid evaporated, and at the end of the stage a critical point is reached that can cause the gel to crack due to contraction stop. Following the reaction of the critical point, the gel may initially suffer a slight rate of decrease (FRP1) in which the liquid reaches the partial pores empty, followed by a second decrease in rate (FRP2) corresponding to the drying stage. Finally, the evaporation takes place inside the probative substance, the blood, the liquid diffusing to the surface in the form of vapors, a new

state of its emergence. In conclusion we can say that this method is interesting regarding the analysis of solid (dry) blood (Smith, Nicloux and Brutin 2020).

Laser method in data collection of human blood - RAMAN spectroscopy

In this part of the paper, I decided to analyze the applied technical method of the chemist Igor Lednev, which is based on Raman spectroscopy. Specifically, the laser was designed for the dry blood sample taken by criminals sent to the crime scene. If we ask ourselves how this laser works, well, the solid blood sample is placed under the brightness of the laser thus measuring its interactions with the substance.

In this case, we cannot speak of a sample that resembles the analysis of a fingerprint for example. The results of this method are instantaneous, the sample not being damaged, and can be reused for future tests. In the study conducted by the specialist, it was shown that spectroscopy in combination with Fourier-infrared by total attenuated reflection (ATR FT-IR) was tested on a sample of human blood and animal blood. We thus return to the first part of the paper, the same problem is highlighted, the fact that with the naked eye, the two substances, although distinct from a bio-chemical point of view, seem to be identical, but due to this new technological method we succeeded in a 100% to determine exactly what human blood is and what animal blood is (Lednev, Sdvizhenskii, Asyutin and Tretyakov 2019).

Conclusions

In my opinion, human blood remains the most important substance of evidence, being among the only evidence that can present a high percentage in identifying the offender. In terms of blood collection and analysis technology, technology is constantly evolving, not only in large companies but also in forensic institutions around the world, it has been 100% possible to determine exactly what type of blood is.

A study conducted in 1986 by Dwivedi showed that the process of drying gels of different thicknesses, alumina, focuses on the loss of its mass compared to the passage of time. Thus, in the case of the probative substance under discussion, it was shown by the specialist that a percentage of 23%, and all this thanks to modern forensic technology.

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Does the European Certificate of Succession Ensure the Direct Exercise of Successor Rights in Member States of the European Union?

Diana Geanina Ionaș

University Assistant Ph.D. Diana Geanina Ionaș, Transylvania University of Brasov, Romania
diana.ionas@unitbv.ro

ABSTRACT: The European Certificate of Succession (ECS) represents the tool which allows successors, legatees, will executors or administrators of the successor goods to prove their statute and exercise their rights in another member state of the European Union. Its main objective is the direct exercise of successor rights in member states. However, in Romania, the issue of an ECS by the public notary requires the previous or simultaneous issue of a national inheritance certificate. Also, in Romania, even if the heir presents an ECS issued in another member state, his rights over immobile goods will only be acquired by registration in the cadastral register, an operation which does not register in the ECS database, as this is not an authenticated document. The current paper aims to analyze the utility and possibility to implement the ECS, in relation to national legal provisions.

KEYWORDS: Regulation, cross border succession, European Certificate of Succession, national certificate of succession, publicity registers

Introduction

The freedom to circulate and reside in member states of the European Union represents one of the four fundamental freedoms, regulated by the Universal Declaration of Human Rights, the European Charter of Fundamental Rights of the European Union as well as in the Justice Court Decision of September 17th, 2002, in case C-413/99, Baumbast. The freedom of circulation and residence entails the fact that all citizens of the European Union can freely circulate on the territory of all member states, they can reside, study, work and so on. When they are established in another state, European citizens marry, acquire goods and eventually die. This has caused for over 450.000 annual inheritance cases with foreign elements to be registered within the European Union.

Even if civil law is Roman in its essence, the law regarding inheritance in European states is significantly different. The most serious problems occur when citizens who belong to a certain member state have established their residence on the territory of another member state and acquired good on the territory of several countries (Dinu 2014). This instance caused the need to pass some measures meant to align European laws and avoid discrimination within the European Union and also solve uncertainties and difficulties regarding the exercise of citizens' rights within a succession procedure with foreign elements.

Given this context, after numerous attempts, on July 4th, 2021, the European Parliament and the Council of the European Union passed the EU Regulation no. 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (the Regulation).

This regulates "all aspects of civil law regarding the patrimony of a deceased person, namely all forms of transfer of goods, rights and obligations with death cause, whether the transfer of goods is voluntary, based on a death cause or a transfer in the form of an *ab intestat* succession". The Regulation represents the first clear manifestation of institutional harmonization of successor law in the European Union. Its main purpose is that of eliminating legal barriers which prevent the free movement of persons who currently face difficulties in asserting their

rights in the context of a succession having cross-border implications (Point 7 of the Regulation preamble).

In order to facilitate the assertion of successor rights in all member states, the Regulation creates a new tool, namely the European Certificate of Succession (ECS). In fact, the suggestion of creating a unique European tool was phrased since 2005, within the French Notary Congress, when the idea of creating such a certificate was first suggested.

General aspects regarding the European Certificate of Succession

The ECS is a new, unique and unified international proving tool (Bunea 2021) which is issued upon request by European competent authorities, which allows legal or testamentary successors, executors or administrators of a successor patrimony to assert their successor rights in other member states. The ECS is acknowledged only by the jurisdictions which signed the Regulation. The role of the ECS is that of facilitating the speedy resolve of succession procedures with foreign elements by creating a unique and unified model of regulation of the aspects of a cross border succession, thus avoiding the formalities of different national jurisdiction.

According to article 64 of the Regulation, the Certificate shall be issued in the member state whose courts have jurisdiction under Article 4, Article 7, Article 10 or Article 11 of the Regulation. Article 4 regulates the general competence: the courts of the member states in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole. "This principle is, without a doubt, the spine of the succession system established by the Regulation..." (Załucki 2016), is an expression of the relation between a certain deceased, a state and the laws of that state (Załucki 2018). Article 7 determines the competence in case of *professio juris*, whereas article 10 establishes the subsidiary competence and article 11 determines the competence based on *forum necessitatis.* We must also state that these rules pertain to international competence, not internal one.

The authority which issues the ECS can be, according to article 64 of the Regulation, the court or another authority which, under national law, has competence to deal with matters of succession.

According to article 3 of Law no. 206/2016 for the modification of Government's Emergency Ordinance no. 119/2006 for some measures required to enforce community regulations at the time Romania became a member of the European Union, as well as for the modification of law no. 36/1995 on public notaries and notary activity, the ECS is issued upon request of any of the people stated in article 63 first alignment of the Regulation (namely legatees having direct rights in the succession and executors of wills or administrators of the successor mass), the public notary who issued the succession certificate with respect of the competence rules stated in the Regulation.

In case the archive of the public notary who issued the succession certificate in accordance with Romanian law is kept by the Public Notaries Organization, the European Certificate of Succession will be issued by the public notary named by the president of the Directing College of the Organization.

In case the quality of successor, the extent of the successor mass and/or the extent of successor rights and obligations of the heirs were established by court order, the European Certificate of Succession is issued by the court who ruled on the matter.

Thus, by corroborating the provisions of the Regulation with internal provisions which enforce the Regulation, we can state that, in Romania, the authorities which can issue an ECS are the courts of law and the public notaries which are competent in the matter of succession. For this reason, the rules of international competence stated in articles 4, 7, 10 and 11 of the Regulation will be applied to both authorities but only when they issue an ECS.

Practice raised the question of whether a public notary who drafts, upon request from all interested parties, a national succession certificate based on national regulations is seen as "a court

of law" as meant by the Regulation, thus subject to the competence rules stated by the Regulation. On May 23rd, 2019, the Court of Justice of the European Union ruled on this matter, in case C-658/17 asserting that, in order to state that an authority exercises a certain judicial function, given the specific nature of the activity it provides, it must be provided with the competence to solve any potential litigation which might occur between successors. The notary succession procedure is exclusively non contentious and it can be finalized only upon express agreement from all parties. Furthermore, the public notaries perform a liberal profession which entails the rendering of services in exchange for a fee. Finally, the Court of Justice concluded that the competence rules stated in Regulation no. 650/2021 apply to courts and public notaries in member states in which they exercise judicial duties in the matter of succession (for example Austria, Hungary, Germany, the Czech Republic), but they do not apply to notaries who do not perform judicial duties, as is the case of Romanian public notaries. Thus, in Romania, even if the Regulation is in force, establishing the competence in issuing an internal succession certificate by the public notaries will pertain to Romanian internal law.

The judicial characteristics of the European Certificate of succession and the way in which it influences the direct exercise of successor rights

The legal characteristics of the ECS are stated in the Regulation; however, they are determined by the internal laws of each member state.

The ECS has a uniform character. It causes the same effects in all member states of the European Union. It is drafted in only one original document; the issuing authority keeps the original and issues one or more certified copies to all interested parties and any party who can prove legitimate interest. The certified copies are valid for a limited time of six months, with the possibility to extend the period of validity, in exceptional cases, which are justified accordingly.

The ECS is of facultative character. According to article 62 second alignment of the Regulation, the use of ECS is not mandatory. This means that the parties which request such a certificate are not obliged to do so. However, the ECS was created to allow the speedy, simple and efficient resolve of succession procedures with foreign elements. This is why, upon request by interested parties (heirs, legatees with direct rights on the succession mass, will executors or administrators of the succession mass) the competent authorities are required to issue such a certificate.

In lack of an ECS, the citizens would be required to perform the succession procedures in all member states where the successor goods are located, thus exposing them to the possibility of dealing with contradictory internal provisions.

The use of ECS allows the citizens of member states to avoid the formalities of the same succession procedure in all member states where the goods of the successor mass are located and eliminates the possibility of issuing national certificates of succession with contradictory provisions. For example, in case of a German citizen with last known residence in Germany, who owns goods in Romania, the issue of an ECS by the competent authorities in Germany removes the obligation of the heirs to prove their quality of successors in front of the Romanian public notary, thus simplifying the succession procedures.

The ECS is of an accessory character. The ECS cannot exist as a self-serving tool, as it is co-dependent on the internal certificate of succession. It can be issued only simultaneously or subsequently to the issuing of a Romanian certificate of succession, but never independent from the national certificate of succession, as stated in article 3 of Law no. 206/2016, above mentioned. This ensures the respect of the principle of subsidiarity. Doctrine (Pătrăuș and Ofrim 2019, 82) claimed that this provision is contradictory for the following reasons: the national certificate of succession is issued upon request and with agreement of all successors, in contradiction with the provisions of the Regulation which state that the ECS is issued upon request of any successor with the previous notice of all other successors. We believe this statement is not entirely correct as the

provisions of article 66 of the Regulation require all competent authorities to undertake all necessary measures stated in internal law, in order to verify the information and documents presented by the person who made the request; the measures stated by internal law entail the consent of all other successors. As a consequence, we believe there are no contradictions between national and European provisions, as the Regulation states, in point 34 of preliminary considerations that the Regulation "should provide for general procedural rules similar to those of other Union instruments in the area of judicial cooperation in civil matters".

However, we cannot ignore the inconsistency between the provisions of article 69 first alignment of the Regulation, according to which the ECS shall produce its effects in all member states, without any special procedure being required and the provisions of article 3 of law no. 206/2016 above mentioned, which states a previous internal procedure, namely the previous or simultaneous issue of a national succession certificate.

The ECS is a proving tool. The ECS is not an authentic act and is not enforceable; its only purpose is to prove a certain fact. According to article 62 second alignment of the Regulation, the certificate can be used especially in order to prove one or more of the following:

- The statute and/or rights of each successor or each legatee mentioned in the certificate and the specific parts of successor mass of each heir;
- The assigning of a certain good or certain goods of the successor mass to the successor/successors and the legatee or legatees mentioned in the certificate;
- The duties of the person mentioned in the certificate as a will executor or administrator of the successor mass.

According to article 69 second alignment of the Regulation, the certificate shall be presumed to accurately demonstrate elements which have been established under the law applicable to the succession or under any other law applicable to specific elements. The person mentioned in the Certificate as the heir, legatee, executor of the will or administrator of the estate shall be presumed to have the status mentioned in the Certificate and/or to hold the rights or the powers stated in the Certificate, with no conditions and/or restrictions being attached to those rights or powers other than those stated in the Certificate.

This provision entails the fact that the Romanian public notary will not be able and will not be required to request evidence in regard to the quality of successor, thus presuming that all mentions of the ECS are accurate. Of course, this is a relative presumption which can be overturned by contrary evidence, which can result in the rectification, change or withdraw of the ECS.

The Regulation states that the ECS is a valid title for the registration of successor goods in the corresponding register of the member state. However, the Regulation does not provide specific regulations for the nature of real rights and any registration in a property rights register regarding mobile goods or immobile goods, including legal requests for such a registration, as well as the effects of registration or lack of registration of such rights in a specific register.

In regard to real rights, especially those regarding immobile goods, they are excluded from the enforcement of the Regulation as "they would have the same legal regime as the territory itself, being linked ("absorbed") by the territory, thus representing an object of power and discretion of that specific state. This means that legal aspects regarding the means by which one can acquire real rights over immobile goods, the content of these rights, the limitations and restrictions, including their means of exercise, but especially the conditions needed for their formation, transmission and demise are subject to *rei sitae* law" (Popescu 2014, 24).

In regard to the registration of real rights in publicity registers, doctrine stated that the European lawmaker's option to exclude it from the Regulation is justified by the public function of these registers (Jacoby 2013).

The need to register goods, especially immobile ones, in publicity registers is not new in European systems of law, but the registration rules are different in member states.

Thus, the Romanian Civil Code states in article 885 the fact that, provided that there are not contrary legal provisions, the real rights over immobile goods are acquired between parties and in regard to third parties, only by registration in the cadastral register, based on the act or fact which justifies the registration.

This provision has a legitimate purpose, namely to ensure increased safety of civil legal relations. At the same time, it has an adequate character, able to reach the legitimate purpose, needed to ensure the certainty and accurate character of legal relations and respects a just balance between the general interest in regard to knowing the legal situation of immobile goods, the existence of a unified situation, the reality and accurate information contained in public registers on one hand and the individual interest of the party, on the other hand, namely that of having a speedy registration of his property right.

Registration in the cadastral register operates in agreement with the provision of article 888 of the Civil Code, based on an authentic notary act, a definitive court decision, a certificate of succession or an administrative act (under the conditions stated by law).

Special Law no. 7/1996 of cadaster and immobile publicity states, in article 24 third alignment that the property right and any other real rights over an immobile good will be registered in the cadastral register based on the authentic notary document or a certificate of succession, issued by a Romanian functioning public notary, a definitive and irrevocable court decision or an act issued by administrative authorities, in case the law allows it.

By searching the legal texts, we notice that acquiring real rights over immobile goods located on Romanian territory is achieved based on the following acts: authentic act issued by a public notary who legally functions in Romania, a certificate of succession issued by a public notary who legally functions in Romania, a definitive and irrevocable court decision of a Romanian court or an act issued by competent administrative authorities. Thus, the ECS, as it only represents a proving tool and not an authentic act, can never determine the registration of successor goods in the Romanian publicity registers, as it does not meet any of the conditions stated by law.

In regard to these legal provisions, we notice that, despite the provisions of the Regulation, the registration of successor goods in the publicity registers is not possible if the Romanian public notary did not issue a national certificate of succession. Thus, it can be considered that the relationship between ECS and *lex rei sitae* is determined by the scope of Regulation (EU) No. 650/2012 (Stoica and Dumitrache 2017, 103).

Conclusions

The ECS is a valuable European tool, designed to facilitate the solving of cross border issues in regard to succession. It provides certain advantages as opposed to national documents, as it is of a unique format, valid throughout all member states, as well as by the reduction of translation fees. Also, it is an extremely important proving tool in regard to the quality of successor, the extent of successor rights and the duties of the people appointed in it, as administering subsequent evidence is no longer possible or necessary.

However, the ECS does not solve one of the most important issues: registration of the transfer of property rights in the publicity registers. Although, according to article 63 of the Regulation, the certificate is designed for the use of successors, legatees with direct rights over the succession, will executors or administrators of the successor mass who must prove their statute in a member state or exercise their successor rights in another member state, we can assert that, as opposed to internal legal provisions, its use is reduced to the proving of the quality of successor, as it is not a valid title which enables the exercise of successor rights.

For these reasons, in order to provide its efficiency, a European institutional cooperation is required in regard to the registration of real rights and the enforcement of measures needed to unify the laws in the matter of publicity registers.

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The Right to Health Care for People with Oncological Diseases as well as for People Suspected of Cancer in the Context of COVID-19

Cătălina Georgeta Dinu

Faculty of Law, Transilvania University of Brasov, Romania, catalina13.dinu@gmail.com

ABSTRACT: In the context of Covid-19 it was emphasized that patients with oncological diseases who need to be diagnosed following hospital medical investigations, as well as those who are already registered with this serious condition and need specialized treatment, should be allowed the right to health care, given that, although strictly speaking, it is not an emergency, medical investigations or treatments cannot be rescheduled and may necessarily require hospital treatment. Chronic hospitalizations have been discontinued, with the exception of neoplastic patients, whose curative or rebalancing treatment cannot be delayed. However, in Romania, the Ministry of Health has not regulated at the *normative* level the selection criteria of persons representing an emergency, being taken only general measures of a *recommendatory* nature, which may lead to dysfunctions within the health units regarding the protection of persons suspected of oncological conditions or who must continue these treatments.

KEYWORDS: health, human rights, COVID-19, hospital treatment

Legal framework regarding the protection of people with oncological diseases

In accordance with art. 19 of the Government Decision no. 252/2020 on establishing measures in the field of health during the establishment of the state of emergency on the territory of Romania, the providers of medical services in contractual relationship with the health insurance houses have the obligation to take all measures, during the establishment of the state of emergency on the Romanian territory, to ensure a correct evaluation, monitoring and treatment of all categories of persons regardless of diagnosis, and during treatment to be monitored from the perspective of COVID-19, in view of limiting the spread of the pandemic (Șchiopu 2020).

This is the only legal framework that allows people suspected of having oncological conditions to go to the doctor for the necessary investigations in order to detect oncological diseases. Also, on the website of the Ministry of Health, are published the recommendations of the National Society of Medical Oncology in Romania regarding the protection measures of cancer patients who must go to the doctor. Therefore, regarding the reduction of congestion in oncology services, it is recommended that patients who require only palliative care be referred to other medical units. If there is only one county oncology service, with the support of the county public health directorates, the hospitals or support departments in the territory will be identified where patients who need exclusive palliative care can be directed.

In the counties where there are several oncology services, depending on the local specifics and with the coordination of the county public health directorates, it will be established where the patients with exclusive palliative care will be hospitalized; units that already have beds or compartments or palliative care units or have the possibility to create a separate circuit for these patients will be selected for this service.

Regarding the priority hierarchy of oncological medical care, the French model was taken over and it was foreseen that the specific care will be granted considering the following prioritization: patients treated with curative intent; patients treated with curative intent, in the first therapeutic line; patients treated with palliative intent under the age of 70 years; other patients treated with palliative intent.

Regarding the avoidance of the virus and the shortening of time in waiting rooms (consultation), the recommendations say that all cancer patients in waiting rooms must wear masks, provided by health facilities; keep a minimum distance of 2 meters between patients; the patients are scheduled at intervals of 20-30 minutes (where possible) and the analysis of the medical tests should be done in stages, per hour, so that there are not several patients simultaneously in the waiting room or in the day hospital area; avoiding contact with medical staff when it is not absolutely necessary: asymptomatic patient, follow-up visit, prescription of hormone therapy, trastuzumab, etc.; all non-urgent consultations (for example, regular inspections) will be scheduled.

Regarding the shortening of the length of stay for hospitalized patients (continuous and day hospitalization), measures will be taken to replace prolonged treatment regimens (for example, day 1-3 or 1-5 regimens with shorter alternatives 1-2 days, when possible), administration of immunotherapy at 4 weeks or bisphosphonates at 3 months or weekly schemes with those at 21 days; the collection of samples and the transmission of the results should be made a priority and in the shortest possible time for oncological patients; at any time it is possible to perform blood tests or other medical tests at home. Also, it is recommended to reduce excessive bureaucratic procedures, associated with medical activity, which are time consuming and prevent operational hospitalization and discharge (simplification of observation sheets, medical letters, certificates, forms, etc.).

It is noted that the Ministry of Health does not communicate a specific legal framework applicable at national level, only general recommendations are taken that may lead to malfunctions in health facilities for the protection of persons suspected of cancer or who must continue these treatments, especially given the risk of wrong application of the Order of the ministry of health that establishes measures to contain the spread of infection with SARS-CoV-2, at the level of public and private health.

According to the Order of the Minister of Health no. 555/2020 on the approval of the Plan of measures for the preparation of hospitals in the context of the coronavirus epidemic COVID-19, of the List of hospitals providing medical care to patients tested positive for SARS-CoV-2 in phase I and phase II and the List with support hospitals for patients tested positive or suspected of having the SARS-CoV-2 virus, scheduled hospitalizations, such as scheduled surgeries for chronic patients in healthcare facilities with beds in university centers, were reduced the ambulatory medical activity by up to 50% and up to 50% compared to February 2020, except for chronic patients or pregnant women who require diagnostic or therapeutic interventions, the timing of which may reduce the chances of survival. In this regard, health facilities will take measures in accordance with the regulations in force to prevent the spread of COVID-19 infection (Ionas 2012, 109).

According to art. 4 of Order no. 555/2020, all health units in the public and private system have the obligation to ensure the provision of medical care to all patients. The refusal to ensure the provision of medical care according to the specific attributions is sanctioned according to the legal provisions.

By the Orders of the commander of the action no. 74527/2020 and 74553/2020, during the whole state of emergency the hospitalizations for surgeries, other treatments and medical investigations that did not represent an emergency and could be rescheduled, from all the sanitary public or private units with beds, were suspended, as well as consultations and treatments that could be rescheduled, in all outpatient structures, also both public and private. According to them, the prohibitions were not absolutely and automatically applicable, *but based on the analysis of the specialist doctor*.

The selection of urgencies based exclusively on the decision of the doctor

Considering the standardization of the types of treatment in oncological pathology whose timing can lead to a reserved prognosis, the decision to continue or interrupt the ongoing chemotherapy

and radiotherapy treatments is at the discretion of the attending physicians, who made the decision based on the risk of infection with the SARS-CoV-2 virus and the benefits to the patient of continuing oncological therapy. Given that the prohibitions were not applicable to patients with chronic oncological conditions, the specialist doctor was the one who decided the need to hospitalize patients or the need for consultations or outpatient treatments so that the evolution of the disease does not lead to aggravation. Therefore, the prior interest is the acquisition, maintenance or improvement of the health of patients with this pathology.

Indeed, by the entry into force of the amendments to the Order of the Minister of Health no. 623 of 14 April 2020, brought to the Order no. 555/2020, from the rule according to which "scheduled hospitalizations, such as scheduled surgeries for chronic patients beds with beds in university centers, and up to 50% compared to February (2020) outpatient activity", an exception was inserted: "the chronic patients or pregnant women who require diagnostic or therapeutic interventions, the timing of which may reduce the chances of survival, are excluded". In this regard, the health units will take measures in accordance with the regulations in force to prevent the spread of COVID-19 infection.

These provisions *have remained unchanged so far*, however, through the additions brought by the Order of the Minister of Health no. 961 of May 29, 2020, in the Order no. 555/2020 were inserted the provisions according to which local epidemiological, the hospitalizations and the scheduled surgical interventions can be resumed, as well as the activity in the outpatient clinics, not being necessary to respect the percentages mentioned in sub-point 1; depending on the local epidemiological evolution, hospitals that provide medical care to patients tested positive or suspected with the SARS-CoV-2 virus may provide, with the approval of the county health departments and the municipality of Bucharest, medical care also to non-COVID-19 patients, in conditions of completely separate functional circuits, without the need to discharge/transfer all hospitalized patients to other hospitals.

According to the Recommended Measures to reduce the impact of the COVID-19 pandemic on cancer patients and oncology services issued by the Romanian National Society of Medical Oncology, "cancer patients have a much higher risk (4 to 5 times) of developing very severe respiratory complications, including death, especially if they have undergone surgery or received chemotherapy in the previous weeks. It can be estimated that cancer patients are currently at vital risk due to both the underlying condition and the threat of COVID-19 infection (double hazard)". Also, according to official information provided by the European Center for Disease Prevention and Control, some European Union countries (for example, Spain, Italy, France, UK) have developed regulations for the management of cancer patients during the pandemic.

Currently, in Romania, we appreciate that the treatment of cancer patients is difficult due to both the fact that some hospitals have remained closed and on alert (being either COVID-19 hospitals or COVID-19 support units, without the possibility of creating complete circuits) as well as the fact that the entire responsibility for the need to hospitalize patients or for outpatient consultations or treatments belongs entirely to the attending physician, who may have to assess the urgency or the necessity in advance regarding the diagnostic intervention, without regulations guidelines issued by the Ministry of Health (Șaramet 2020, 29). Also, the suspected patient of an oncological condition is not among the exceptions regulated by Order no. 555/2020, in order to carry out the necessary investigations (Adam and Adam 2016, 617).

Therefore, it is necessary to take urgent measures to facilitate the access of patients with oncological diseases, as well as those suspected, to diagnosis and treatment, by creating separate circuits in county emergency hospitals that are designated to be COVID-19 hospital or COVID-19 support unit and by developing protocols governing, on the one hand, the protection measures applicable to this category of patients and, on the other hand, diagnostic services with general accessibility, as well as treatment procedures and surgeries, by

establishing general criteria for the prioritization of cancer patients for surgery, respectively for specific treatment (radiotherapy, chemotherapy, etc.).

Recent measures for the protection of health of patients with oncological diseases

According to Order no.961/2020 amending and supplementing Order no. 555/2020, after the cessation of the state of emergency, depending on the local epidemiological evolution, the hospitalizations and scheduled surgeries were resumed, as well as the outpatient activity.

Hospitals that provide medical care to patients tested positive or suspected of having the SARS-CoV-2 virus can provide, with the approval of the county and Bucharest health directorates, medical care and non-COVID-19 patients under the existence of completely separate functional circuits, without the necessity to discharge or transfer all hospitalized patients to other hospitals. Considering the standardization of the types of treatment in oncological pathology whose timing may lead to a reserved prognosis on the evolution of the disease, specific provisions were issued for prioritizing these patients, as well as the introduction in the Recommendations regarding testing, issued by the National Institute of Public Health, the exemption of this category of chronic patients from the measures ordered regarding the limitation of hospitalizations, appointments and interventions provided in Annex no. 1 to Order no. 555/2020, with subsequent amendments and completions.

To support the needs of patients and ensure safe access to medical services for doctors and patients, by limiting travel and interaction with others, family physicians and outpatient clinics can provide long-distance consultations, which can be carried out by any means of communication, with a maximum of 8 consultations/hour. The family doctor may issue a medical prescription, for patients with chronic diseases with a stable therapeutic scheme, based on the medical documents that were issued to the patient - medical letter and/or confirmation of registration of the specific prescription form.

In conclusion, we appreciate that, in the situation given by the COVID-19 pandemic and its evolution, an attempt was made by the Ministry of Health to identify the optimal solutions, so that patients with oncological / chronic pathologies can have access to health services. However, we find that, despite the diligence of the Ministry of Health, some issues remain difficult, such as, for example, the fact that not all hospital units can create separate circuits to resume hospitalizations of both COVID-19 patients, as well as non-COVID-19 patients with oncological conditions (Hegheș 2020).

Also, indeed, according to the Recommendations of the National Society of Medical Oncology of Romania on the measures for the protection of cancer patients who must go to the doctor, several measures were specified, including those on reducing congestion in oncology services, as well as those of prioritization of oncological medical care, but there are no specific measures to facilitate the access of patients with suspected oncological diseases to diagnosis, as well as the fact that the entire responsibility for assessing the urgency or need for diagnostic intervention belongs to the attending physician (Adam 2017, 277).

In order to improve this last-mentioned aspect, an example of good practices we find in the Guide issued by the American College of Surgeons and entitled COVID-19: Elective Case Triage Guidelines for Surgical Care, a guide containing the criteria for sorting selected cases for surgical care, mainly those of an oncological nature.

Conclusions

At this time, the public authorities are facing a difficult situation of implementing epidemiological criteria with a primary and essential role in the crisis caused by the epidemic determined by the new coronavirus, as well as the ease of access of non-COVID patients to specific healthcare services. Thus, the current epidemiological situation is characterized by two main attributes: on

the one hand, the prudent attitude of health decision-makers that does not jeopardize previous efforts to control the spread of the new Coronavirus, and on the other hand, there is a need to ensure non-COVID health services.

Unfortunately, this is not a time to reduce the number of hospitals designated as COVID support hospitals, the steps being limited to the principles of compliance with public health rules.

Patients who require exclusively palliative care will be referred to other medical units, if there is only one county oncology service, with the support of local sanitary public authority and hospitals or support departments in the territory shall be identified where patients in need exclusive palliative care can be directed.

In the counties where there are several oncology services, depending on the local specifics and with the coordination of the local sanitary public authority, it will be established where the patients with exclusive palliative care are hospitalized.

However, there are still aspects that need to be improved, starting from the Recommendations of the National Society of Medical Oncology in Romania: identifying specific measures to facilitate access for patients with suspected oncological diseases to diagnosis, solving the problem of the doctor assuming full responsibility for assessment of the urgency or necessity of the diagnostic intervention in the absence of guiding prioritization criteria, the deficiency of the palliative care services.

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Good Governance, Bad Governance: The Politics of Coronavirus Pandemic in Nigeria

Muyiwa Samuel Adedayo

The Polytechnic, Ibadan, Oyo State, Nigeria
muyiwa.adedayo@polyibadan.edu.ng

ABSTRACT: This paper examines the influence of good governance on coronavirus pandemic in Nigeria. The kernel of this article is the intrinsic nexus between good governance, bad governance and coronavirus pandemic in a democratic state. It reviews articles on how democracy has influenced good governance and/or promotes bad governance. It examines the individual perspective and understanding of the virus, state of lockdown and the welfare of the populace by the political leaders; to what extent is the palliative being distributed among other welfare packages useful to the populace. The paper clearly explained the notion of good governance in the context of the Nigerian milieu and links it with how welfare of the citizens could assist in building their confidence. The paper provided evidence from around the world of the nexus between the three variables under examination and it shows that there is a yawning gap in trust and accountability between citizens and the government because the need of the populace has overtime been ignored and neglected by government. This is evident in that Nigeria is yet to comply with the inextricable indices of good governance due to lack of trust and committed leadership. The paper recommended amongst others that government and political leaders, as well as the institutions in the country, must strive to promote participatory, consensus-oriented, accountability, transparency, responsiveness, effectiveness and efficiency; equitable, inclusive and follows the rule of law to deliver good governance in Nigeria, and Africa in general. The paper is segmented to include introduction, problem statement, contextual discourse and conclusion.

KEYWORDS: democracy, good governance, bad governance, Coronavirus pandemic, populace, Nigeria

Introduction

Governance is the strategic task of setting the organization's goals, direction, limitations and accountability framework. Good governance has elements which are considered essential for community to achieve its objectives and drive improvement, as well as maintain legal and ethical standing in the eyes of populace, organizations, and the wider community. It increases public engagement in managing risks and promoting neighborhood security, increases likelihood of all income groups surviving disasters; reduces crime rate, reduces environmental and health impacts of disasters caused by human actions; increases environmental security. This is evident that government has an important role to play in the management of health issue of the populace. Governance is assigned with the role of providing and assuring an adequate health infrastructure, promotion of healthy communities and healthy behaviors, prevention of the spread of communicable diseases, protection against environmental health hazards, preparation for and responding to emergencies, and assuring health services which include the current pandemic around the world.

In December 2019, a novel strain of coronavirus—SARS-CoV-2—was first detected in Wuhan, a city in China's Hubei province with a population of 11 million, after an outbreak of pneumonia without an obvious cause. The virus has now spread to over 200 countries and territories across the globe, and it is been characterized as a pandemic by the World Health Organization (WHO) on 11 March 2020 due to the rapid increase in the number of cases outside China which has affected a growing number of countries around the world. This pandemic has cast a new light on the role that government plays in keeping citizenry healthy which implies that stable and effective government must be crucial to managing the coronavirus pandemic.

Coronavirus pandemic calls for government investment in promoting healthy communities and healthy behaviors means activities that improve health in a population, such as engagement of communities on changing of policies, provision of information and education on healthy communities or population health status; systems or environments to promote positive health or prevent adverse health; and addressing issues of health equity and disparities, and the social determinants of health as early prevention is essential in preventing and managing the disease. Audacious policy action to maintain functioning healthcare systems, guarantee the continuity of education, preserve businesses and jobs, and maintain the stability of financial market is required in the management of such crises and addressing their socio-economic consequences. It is therefore evident that to sustain the complex political, social and economic balance of adopting containment measures to reduce the impact of the pandemic while ensuring the provision of essential services, political leadership at the centre is essential. In order to maintain citizens' trust in government, such leader is essential.

Ozili (2020) submitted that some Nigerians have misconceptions about COVID-19, they believe it is a biological weapon of the Chinese government, many considered the pandemic as a hoax, some describes it as political gimmick by politicians to loot the treasury while others see it as a 'rich man's disease'. These misconceptions prevented them from taking maximum preventive measures not even when the government is at the centre of making policies about it. Hence, there is a need for evidence-based campaign which should be intensified to remove misconceptions and promote precautionary measures by government. Nigerian populace believes that their government has ignored and abandoned them, now the government needs the populace whose needs have largely been ignored for decades.

The neglect and abandonment also reflected in the palliative measures being rolled out during the lockdown when citizens were asked to stay in their homes while businesses and offices, national and international borders were been shut down. Eranga (2020) submitted that to alleviate the effects of the lockdown, the Federal Government of Nigeria rolled out palliative measures for targeted groups and lamentations have trailed the distribution of government palliatives by the masses. Citizens alleged that the process of distribution of palliatives is been politicized, although the Federal Government claimed that the palliative is for vulnerable. The salient question is what parameters are been adopted in determining the vulnerable or who are these vulnerable people?

Based on this, to what extent will the populace trust their government who failed to meet the needs of society while making use of their resources, government that lack transparency, integrity, lawfulness, sound policy, participation, accountability, responsiveness, and the absence of corruption and wrongdoing in the management and prevention of this pandemic? It is on this basis that this study examines the influence of good and bad governance on the management and prevention of the coronavirus pandemic in Nigeria.

Good Governance

The state is been defined by the need to protect and ensure life and survivability and this can only be achieved by good governance. Different meaning of good governance exists; the term is generally associated with political, economic and social goals that are deemed necessary for achieving development. Hence, the act of public institutions to conduct public affairs and manage public resources in a manner that will promote the rule of law and the realization of human rights is known as good governance. Elements of good governance must be taken into cognizance not only to achieve sustainable development but human well-being.

System of governance that is committed to protecting human rights and civil liberties whereby the populace has a voice in decision-making which directly or indirectly represent their interests is known as Good Governance. In essence, there is a great nexus between good governance and democracy that is presently been a practice in Nigeria. But researches (Ujomu

2004) have shown that lack of element of good governance even in democracy being about massive deterioration of government institutions, pervasive poverty and alarming unemployment rate, corruption, as well as near total collapse of moral and ethical standards engendered by nearly three decades of military rule in the country, which saw governance capacity weakened at all levels.

In 1996, the International Monetary Fund (IMF) declared that "promoting good governance in all its aspects, including by ensuring the rule of law, improving the efficiency and accountability of the public sector and tackling corruption, [are] essential elements of a framework within which economies can prosper." Today, the term good governance has become popular and commonly used by national and international development organizations around the world. However, its meaning and scope are vague and not always clear while this flexibility enables a contextual application of the term, the lack of conceptual clarity can be a source of difficulty at the operational level. Nigeria is lacking in good governance and leadership; without mincing words, good governance will breed good leadership and it will solve the problems of governance in Nigeria. Johnston (2002) corroborate this submission that good governance in some cases has become a "one-size-fits-all buzzword" lacking specific meaning and content.

Good governance is linked with rule of law, transparency and accountability whereby legal frameworks should be fair and enforced impartially and enough information is provided in embodying partnership between state and society, and among citizens. Johnston (2002) submitted that good governance is legitimate, accountable, and effective ways of obtaining and using public power and resources in the pursuit of widely accepted social goals. On a similar note, Rose-Ackerman (2016) suggests that good governance refers to all kinds of institutional structures that promote both good substantive outcomes and public legitimacy. Good government is also associated with impartiality (Rothstein and Varraich 2017), ethical universalism (Mungiu-Pippidi 2015) and open-access orders (North, Wallis and Weingast 2009). This, therefore, shows implies openness and accessibility are essential among leaders in governance in order to promote good governance.

State of Governance

Governance is defined by the World Bank as “the manner in which power is exercised in the management of a country’s economic and social resources for development”. The essence of modern governance has transcended the desire for security against physical or military aggression to defense against basic social and economic insecurity. The right to choose who leads in any society is a principal ingredient in what is today referred to as democracy (Mato 2005).

The role of government in every society is the creation of necessary enabling environment for the facilitation of good life and universal acceptance of democracy, as the best system of governance is incontestable (Leke 2010). It is sad that despite Nigeria being a sovereign state for over 60 years, with an abundance of natural resources at the country’s disposal, the lives of the Nigerian populace has not been transformed as a result of bad and inept leadership that has always been at the helm of her affairs.

The government of a democratic country is accountable to the people. It has the responsibility to fulfill its end of the social contract, while public officials (political office holders and civil servants) are social servants; they serve society and the population. It is the responsibility of government to ensure equality and promote fundamental human rights. Heyman (2014) refers to the logic behind the historical Bill of Rights and insists that those who drafted the Bill of Rights were not insistent that government might do too little but that it might actually engage in so much responsibility. Therefore, governance is involved in the process of achieving all these lofty goals of liberty and societal good. It is evident that governance in Nigeria lacks the core elements identified in literature in defining good governance.

Without mincing words, the Nigerian State has witnessed an increasing buildup of authoritarian structure and institutions as well as human right abuses despite her democratic nature. The resultant unstable political atmosphere has continued with poor social infrastructure to frighten off local and foreign investors (Leke 2010). To promote good governance in Nigeria, the Nigerian government should give voice to the populace irrespective of class whether majority or minority. Because, the core elements of good governance according to (Rothstein and Teorell 2008) are participatory; consistent with the rule of law; transparent; responsive; consensus-oriented; equitable and inclusive; effective and efficient; and accountable. The literatures has shown that when political systems do not adhere to these eight principles, their institutions might be incapable of delivering public services and fulfil people's needs.

Efforts to improve governance in Nigeria due to the state of governance have been conceptualized as quest for good governance. The underline elements of the concept of good governance are the idea that accountability, transparent, and inclusive governance is both the best promoter and the best producer development. Good governance embodied three domains of governance: the government, the private sector, and civil society. These three strives to ensure collaboration among them. To Sawyer (2004), good governance initiatives are designed to improve governance competence and measure should be taken to strengthen all aspects of governance. This is suffice to say that, good governance cannot be achieved in isolation, there must be cooperation between all the arms of governance in order to achieve their goals.

This is the reason why good governance has been described as participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It also ensures that corruption is minimized, the views of the minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present future needs of society. Nigeria performs below expectation on of welfare of citizens. Fadakinte (2013) submitted that if commitment to public good by efficient delivery of services to the people for the enhancement of the citizen's welfare is what defines good governance, then the last eighteen years in Nigeria has witnessed nothing but bad governance which breeds social vices in the society. This therefore shows that governance in Nigeria has been defined by lack of accountability - checks and balances and has not given voice to the populace but promotes corruption.

State of Coronavirus Pandemic in Nigeria

The novel coronavirus disease (COVID-19) has become an important health threat wreak havoc on the entire world with numerous health and economic implications. Nigeria is also one of the vulnerable African nations, given the weak state of the healthcare system (Marbot 2020). The pandemic shocked the world, overwhelming the health systems without excluding high-income countries. Predictably, the situation has elicited social and medical responses from the public and government, respectively. Nigeria recorded an imported case from Italy on February 27, 2020.

The virus, SARS Cov2 is the main causative organism of COVID-19, with shortness of breath, dry cough and fever as its most common symptoms. The disease is basically transmitted from person to person through contact with droplet of an infected person. Recovering from coronavirus pandemic is easy for most people without specialized treatment except people who are older and those with pre-existing and underlining medical conditions such as cancer, chronic respiratory infections, diabetes and cardiovascular diseases are more likely to experience severe illness and death.

Numerous preventive and control measures have been applied globally to contain the disease since its outbreak, but it is ordinarily difficult to prevent and control. The best way of thwarting it is by adopting measures that will reduce exposure to the virus that causes the disease (CDC, 2020). This therefore makes the government and political leaders at the centre of management and control of this disease put some directives and preventive measures to battle

the virus. Research according to (Amzat, Aminu, Kolo, Akinyele, Ogundairo, and Danjibo 2020) submitted that the pre-COVID-19 preparedness was grossly inadequate.

This, therefore, correspond with the submission that many health experts projected that Africa would face a hard time and struggle to keep the coronavirus outbreak under control once it is confirmed on the continent. The concerns were based on pervasive poverty, weak healthcare system, and the diseases ravaging most parts of Africa, Nigeria inclusive. Although, the Nigerian Centre for Disease Control (NCDC) submitted that the training of the rapid response teams across the 36 states including the FCT in Nigeria was concluded on December 2019. On January 28, the NCDC further revealed that a Coronavirus Prevention Group had been set up to activate its incident system to respond to any emergency. Additionally, the NCDC worked with 22 states in Nigeria to activate their emergency operations centers to manage and link up with the national incidence coordination centers (Ihekweazu 2020). Although it was reported that the government had strengthened the surveillance at the airport since January 2020, Nigeria recorded its COVID-19 index case that was imported from Italy, on February 27. This raised concerns about the effectiveness of airport surveillance and, by extension, the country's general preparedness. The index case (an Italian) had visited some other states of the federation before testing positive for COVID-19.

Among other measures taken to manage the pandemic is testing and isolation of confirmed positive cases, sensitization of the masses on COVID-19 as well as various ways of preventing the disease, using all sources of information, dissemination including the radio, television, print and social media. People were also encouraged to regularly wash their hands, use hand sanitizers, use face mask in public and inhibit good reparatory hygiene. In order to ensure complete compliance to the directives on lockdown, which are; social distancing, use of face masks and sanitizers, different state governments constituted taskforces to ensure that people in their respective states do not default. Despite all these measures being put in place, there is still steady increase in the number of cases as well as number of affected states most especially with this second phase. This therefore support of the submission of Amzat et al. (2020) that these plans are grossly inadequate which may result from non-compliant. This is the reason why the Federal Government of Nigeria signed the bill on the use of facemask into law. Although, the studies of (Ibekwe 2020, Mac-Leva et al. 2020) also submitted that the existing health facilities and equipment (including ventilators and PPE) in Nigeria are grossly inadequate to handle the medical emergency of COVID-19 due to the number of reported cases overwhelming the health system.

Good or bad governance and Management of Coronavirus Pandemic in Nigeria

The importance of good governance as a critical condition for human development can no longer be under estimated. Since the late 1980s governance has been reported to be a subject of considerable debates and different interpretations by governments, international organizations and scholars. Managing and mitigating the effect of coronavirus pandemic depend on the state building trust with its citizens through effective communication and actions which can only be achieved by good governance and not bad governance. Good Governance is an approach to government committed to creating a system that protects human rights and civil liberties while bad governance is the negative consequence of this been defined by corruption in Nigerian society.

The concepts of corruption and good governance have a two-way causal relationship with each other and feed off each other in a vicious circle. If good governance principles and structures are not in place, this provides greater opportunity for corruption. Corruption, in turn, can prevent good governance principles and structures from being put in place, or enforced. Violations of the principles of transparency, accountability and rule of law appear to be most closely associated with corruption. Evidence from literature emphasized the importance of

principles of transparency and accountability on dissemination of information on coronavirus pandemic by government. Olagoke, Olagoke, and Hughes (2020) submitted that the public's trust in the government's, risk communication and social persuasion strategies may affect their perception of the pandemic's severity, their vulnerability to the virus and their perceived self-efficacy in practicing preventive behavior or taking care of their health. This therefore shows that corruption and poor governance are not only security challenges which undermine democracy, the rule of law and economic development but also health challenges.

Hetherington (2005) argues that low level of trust undermines the capacity of government to pursue redistributive policies. Marien and Hooghe (2011) also opined that trust increases law compliance. Ineffective institutions undermine the provision of public services such as health care, education and law enforcement. Looting of Covid-19 aids is an example of distrust on governance in Nigeria where the State governors have said the items looted were kept for vulnerable members of society and in preparation for a possible second wave of coronavirus infections. The salient question needed to be raised is this, how many Nigerians benefitted from the initial distribution of the first palliative distribution? What measure are been considered in distributing the palliative for the so-called vulnerable by the government? Who are the vulnerable? When people under restriction of movement have exposed Nigerians to the problem of hunger? This shows that there is an injustice in the distribution of the palliative and this compound the level of distrust of the government by the populace. Ghosh and Siddique (2015) and Rose-Ackerman (2016) submitted that good governance, in contrast to democratization, has strong positive effects on measures of social trust, life satisfaction, peace and political legitimacy.

Figure 1. Nigerians looting Covid-19 Aids

Ott (2010, 362) submitted that good governance improves life evaluations either directly, because people are happier living in a context of good government, or indirectly because good governance enables people to achieve higher levels of something else that is directly important to their well-being. Related to Coronavirus pandemic, Van Bavel et al. (2020) also observed that greater trust in government leads to more compliance with health policies – such as measures relating to quarantining, testing and restrictions on mass gatherings. The absence of corruption will increase the trust of the populace in government and this increases efficiency and thus create favourable conditions for the management of the pandemic. There is also evidence that the higher levels of general and specific trust increase the happiness of people even beyond higher incomes (Mungiu-Pippidi 2015). For instance, Helliwell et al.

(2018) found that changes in government services delivery quality contribute positively to citizens' life evaluation.

Elimination of governance politics is essential and crucial in determining the allocation of resources, especially public goods within a country. Good governance exists where there is responsiveness, equity and consistency in the way resources are allocated to the needs especially that of the poor people. It also affects the quality of decision-making generally, for instance, those determining economic and social policy. Without doubt, weakness of governance as well as poor democratic accountability could results in appropriation of resources by specific interest groups as it may have happened in the distribution of the palliative which may exclude the poor, hence, policies would be unlikely to reflect the national interest or pro-poor imperatives.

A democratic government should be more responsive to the needs of the populace such as in providing opportunities in education, health and social welfare, better housing, equitable distribution of development projects including roads and other infrastructural development but democracy in Nigeria is witnessing opposite. Such physical projects taken to local communities and different regions usually provide some employment opportunities and business opportunities which enhance people's quality of live, even though some may be temporary. Good governance is one of the essential preconditions for development and promote healthy live for the populace. Such policy measures tend to generally improve people's capabilities as with better education and health they are often able to experience progression in the social structure better than was possible in the older generation's time.

Conclusion and Recommendation

The effect of COVID-19 pandemic is being felt in spread in almost all countries and it has affected millions of people around the world and it also resulted in the death of millions of people as well. This shows that COVID-19 does not recognize borders hence, governments around the world most especially in developing countries should respond to its management immediately. Although, not all countries, especially the developing countries have the right specialists and experts in pandemics, manufacturers should produce the necessary equipment or laboratories that can help develop a vaccine but good governance must be able to guide and formulate policies to protect its citizenry. Governance in Nigeria has mostly impacted negatively on the Nigerian populace and this is affecting them in the management of the pandemic. This is as a result of the dreaded disease that seems to always inflict its leadership. This disease is called corruption, combined with primitive accumulation of wealth.

This study therefore concludes that governance as well as Political Leaders in Nigeria needs to win trust in order to manage and mitigate the effect of COVID-19 in the country. They should promote the core elements of good governance which are; participatory, consistent with the rule of law, transparency, responsiveness, consensus-oriented, equitability and inclusiveness, effectiveness and efficiency, and accountability to the citizenry. This will therefore, make them to be agile enough to disregard old norms and move quickly to do everything they can to save lives and support infrastructures that help hold the fabric of its society.

On the basis of the findings of the paper, the following policy recommendations are suggested for managing and mitigating coronavirus pandemic in Nigeria.

i. That good governance brings about trust and communication is the key to managing coronavirus—it is not enough to just decide on a strategy. Being able to communicate it clearly to the public and to the people without fear of distrust from government to police and the border patrol and finally to the citizenry.

ii. Governments must be prepared to think outside the box and rescue packages must be put in place through participatory approach. Regulations that are prudent in normal circumstances must be appropriately relaxed to help the national effort.
iii. Through consensus-orientation, our governments must realize that we live in a globalized world and a crisis like this needs a global response. Cooperation is germane. Past tensions must be set aside and countries must work together to help each other meet short fallings in medicine and equipment.
iv. Through transparency and responsiveness, stakeholders should be relied on to help with distribution and supporting the populace. Many charities will struggle during this time and need some level of support to help them stay afloat and provide vital support where governments cannot.
v. Government should always be fair in their dealing with the populace to gain more trust and be able to provide policies that will be generally accepted by the populace.
vi. Finally, there is also the need for government to communicate the populace through traditional and religious leaders in Nigeria.

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The Facets of Distinctive Forms as Regards Social Communication

Oana Tătaru

Lecturer Ph.D., Faculty of History and Political Sciences, "Ovidius" University of Constanta, Romania
tataru_oana@yahoo.com

ABSTRACT: The reality of nowadays society belonged to a generalized intercultural dialogue in respect of which the right to an opinion did not represent the prerogative of an educated minority but a constantly expanding forum of social communication. The communication achieved significant amplitudes and mass character while the communicators learned to express differences and affinities, doubts and certainties, anxieties and expectations, idiosyncrasies and preferences. The pattern of communication was considered to be influenced by the social context of the interaction and thus, as regards the understanding of it the use of concepts, images, symbols, arguments and grounds had to be taken into consideration. The theory of communication was perceived as a rather new science with a duration of about half of century, whereas the apparent clarity of this discipline designation encompassed a series of ambiguities and connotations that were acquired along the time. The act of communication involved a different interpretation as it represented an essential component of life that ought to be adequately perceived so as to achieve the goal by explaining social realities and being an useful tool for the individual to understand the surrounding environment.

KEYWORDS: communication, code, message, interaction, society, culture, intercomprehension, language

"From the boisterous and abundant muddle of the outer world a human being elects
what the corresponding culture has already defined and strive to perceive
what one chooses in an imprinted stereotyped form by the culture itself."
Walter Lippmann, *The public opinion*

The present material is intended as a perspective in respect of the act of communication that encompasses part of the research analysis of the doctoral thesis along with a melange of approaches as regards the issue under discussion.

The act of communication constitutes a central part of most of our lives; through it we carry out activities, negotiate relations, attempt to construct understandings about the world around us and develop our own sense of identity. Anthropologists have demonstrated that, in order to use and interpret language, one draws on a considerable amount of cultural as well as linguistic knowledge whereas an ongoing connexion entails sense to our existence. The initial use with regard to the means of mass communication might be identified as being instruments of progress in point of a smooth flow of information within the framework of a society has been altered along the time. Prior to the development of education and mass communication means there has not been a significant access to information and, consequently, there were limitations and barriers in the expression. The political changes, technical advent along with economic turmoil have considerably modified the context. In this line of thought, the French philosopher Daniel Bougnoux emphasizes the idea according to which „communication offers itself whilst the information has to be deserved, snatched or sold". The communication does not represent an aim as such, its purpose is to take action and this represents the core reason for it. Over recent years, particularly the past two decades, the research in point of socio-human environment takes topics that are centered on the relation between ITC (information and communication technology), CMC (computer mediated communication) and various aspects of the societal reality, at micro or macro-social level.

Freedom and independence are highly appreciated values in the society we live in. Our world is one within the framework of which the individualism appears to gain ground, a fact that is quite easy to be noticed in the face of the experiences that we have with others. This aspect might be demonstrated by means of scientific evidence of the socio-human environment, in this regard the essay of the American political scientist Robert D. Putnam *Bowling Alone: America's Declining Social Capital* (1995) is representative. In a natural way, the Community realities are supported by communicative relations, that is the human Communities are constituted at the same time with the expression of social communication processes. The defining of the communication concepts and Community integrates common elements, namely: cooperation, conflict, understanding and assimilation. The Community and the society encompass more than what is represented by competitive cooperation/liason, the Community involves features that are meant to sustain the identity through solidarity and collective vision. The classic view of the members of the Chicago school asserts that the notion/concept of Community to be identified with the „place" in which the scholar might be present so as to observe conducts, individual, group or the overall Community interactions (group dynamics, processes of acculturation, assimilation, participation, conflict).

The actual social reality comprises new areas for socialization and even we can take into account further types of Communities. The cyberspace/virtual or Communities space(s) cannot be assimilated with those areas in which one encounters the other *face to face*; the significant aspects for a scholar are the item of information, knowledge or the process of the transfer of information, all of them defining the newly forms of expression of the virtual Communities. The social reality that better illustrates the manner in which the communication sets or configures the Community areas is represented by the public opinion, as the soft component of the Community thus expressing the main value and attitudinal coordinates in a specific moment and Community. The public opinion is just one of the numerous examples that support the existent relations between communication and Community considering the present context in which new forms of communication create new patterns of community.

In the relation Community-communication there are determinations as regards the Community areas over communicative processes. The most iconic example in point of the above mentioned idea is the well-known *spiral of silence* that has been an intrinsic part of the socio-communicative theories in 1984, the author bing Elisabeth Noelle-Neuman. The pattern has presented the mechanisms of influence at the level of Community. In the cases in which the individuals succeed to detect among the persons around them attitudinal and opinion/viewpoints coordinates different from the ones pertained, then they express significantly nuanced and to a certain degree reluctant the positions/opinions by reference to the rest of the Community members. Still, there are circumstances/instances when the views and beliefs of the individuals appear to be broadly similar to the ones that are expressed by the rest of the Community and as an outcome the attitude towards the standpoint changes towards more firm support. Reserved comportment than the people holding dissimilar opinions might signify the avoidance of the risk to be ridiculed or socially isolated. To uphold a view in accordance with the people around involves either the integration or the acceptance as a member part of the Community.

The newly emerging communicative means - CMC (computer mediated communication)/ITC (information and communication technology) constitute elements of changing the realities of the Community as both allow the relationships among individuals and groups of the corresponding collectivity, thus permitting a significant increased mobility of various items of knowledge. The innovation or the development are not the result of an increased amount of information, but, rather stems from the rapid flow and easy access to the actual/current information. A series of essential changes might occur due the relation between society and technology, the upgrade/modernization of communication technologies as follows: the creation of new opportunities in point of learning and awareness; the

establishment of further possibilities as regards the democratic participation; the development in respect of ensuring the proper conditions for the appearance of countercultures; difficulties that are related to the intellectual property rights and ethical issues; the reconsidering of the relation human being – machine. There is, therefore, a wide range of common features corresponding to the virtual and present realities, among which is important to enumerate the need for a sense of belonging, the existence of a shared identity, of a set of written or unspoken regulations that are assumed by the members of a community, customs or specific forms of expression. The cyberspace is expected to continue, in the near term, its contribution towards the collapse, restructuring or even the emergence of new patterns of social interaction, reconfiguration of information and communication and the evolution along with the transformation of human Communities. Not only the computer but the internet might be viewed as purveyors of hope and trust rather than creators of the next social forms; the individuals or the society intend or think about changes that to support the social reality they live in. The considerable diversification of the dissemination sources is possible to lead to a manipulative practice, being based on exact codes, yet identifiable only by individuals with expertise in the field and totally unattainable to laymans or persons that do not possess specialized information.

Communication as a ”social function” has been the approach of Collin Cherry in respect of the concept of conveying meanings that involves a process which is grounded on the basis of a relation between an emitter and an addressee. The emitter, namely the individual who intends to submit an item of information, is to adequate the message within the framework of an accessible and compatible language with the means of communication that are used. This technique is known as ”encryption”, that once it has been elaborated, the message is expressed and sent out by means of a concrete communication channel. The exchange of information and meanings along with the communication processes are to be referred to as social phenomena that have as basis interactions or being determined by these. Any communication is, therefore, an interaction and is subject to a process of mutual influence among several social actors. An act of communication is perceived as a settlement between speakers, as follows, the emission and reception are simultaneous, the emitter being, at the same time, emitter and addressee and not emitter and then addressee. Moreover, communication represents a deliberate or involuntary, mindful or unconscious social act that represents the basis of social liason. The Austrian psychologist Paul Watzlawick, a specialist as regards the theory of communication, sustains the idea according to which in an interaction any type of behavior has the value of a message, thus representing, a form of communication or disclosure.

Jürgens Habermas considers the public space as an extension of economic exchanges but still attached to the public exercise of reason whilist the french linguist Patrick Charaudeau defines the public space by means of the notion of ”discourse in use” or ”functional discourse”, the latter signifing a sum of empirical utterances that are produced in the aim of identifying actions along with events and corresponding features of judgments. These statements are to be identified in discursive contexts such as textual extraits, namely proverbs, adages or sayings and any other expressions that might vary, thus constituting sociolects.

The theoreticians of communication have devised a relatively escalated concept that encompasses all forms of communication. The analysis of a part of the theorists approaches the act of submission as a fringe science, while others compile the definitions of the communication act. In this context, the opinion of Douglas Kellner is essential to be considered as relevant, stating that: ”we live in a period of dramatic changes and upheavals. The 60´s initiated spectacular social and cultural transformations all over the world. The sixth decade meant an era of intense social upheavals that questioned the existent social order

inflicting new forms of counterculture along with alternative forms of the daily life." (Kellner 2001, 27).

The communication to be adequately understood needs to be analyzed along with concepts, images, symbols, arguments and reasons, being a privileged source as regards the access to reality and a less or more discrete form of manipulation the masses. Moreover, the communication entails an user attitude as each individual updates the language as a means of expression „that must be performed in a convenient manner" (Ducrot, Oswald, Schaeffer, Jean-Marie 1996, 20-21).

An assessed and well known theory belongs to Bernard Voyenne that identifies a number of four means of information remittance, as follows: *one-to-one, one-to-many and many-to-many*. In this regard, the French theoretician has ascertained that "the act of living in a society entails to communicate" (Voyenne 1998, 27-28) namely the need of transmitting or learning new ideas, items of information or even feelings which represents a fundamental and vital necessity of the individual. Within the framework of this context, Bernard Voyenne sustained the idea according to which the exchange of information, ideas, the intercomprehension are that essential for a society as it is the breath for the organism, taking into consideration that the act of communication represents the basis of social organization that controls the cress-sectoral relations among people still involving the vertical aspirations of them in an ascendant movement towards the upper levels of reality.

The relation between culture and communication might be successfully analyzed if one takes into account commune features, meaning that both function/exist by means of individual experiences are subject to constant changes of component elements. In this respect, an idea has to be emphasized, that is a cultural analysis will highlight "both the manner in which the dominant ideology is structured in point of the text and the receptor subject along with the specific features that allow a brokered lecture. The cultural assessment carries the conclusion in respect of the ethnographic studies of the historical and social semnifications are in direct relation with the semiotic analysis of the text." (Kellner 2001, 50). Nevertheless, between culture and communication cannot be established either elements of complete identity or definite priority rapports in point of the history of mankind or the formation of individual consciousness.

An essential component of the communication is represented by the language, one of the characteristics of the "human culture", meaning the part that the individual "adds to the culture" and not what one might inherit from ancestors. The language does not function only as a component of culture bat also as a vehicle of all cultural practices, namely the word mimics the world to the same extent in which it signifies the surrounding milieu. In the work *Les mots et les choses*, Michel Foucault had demonstrated that the individual and the language were not able to coexist unless both articulated one another.

From the cultural perspective, the specificity of an epoch and ethno-linguistic area is referred to by means of the rapport between tradition and innovation. The stableness and mobility are opposable features, in particular cases conflictual but at the same time complemental, defining a culture in each phase of its evolution. If any text or discourse, regardless the profile either compositional or fictional represents the direct expression of an intention and of an act of communication, the basic principle is to properly identify the context in which the discourse/speech is launched along with the expectations of the target audience in relation to the respective context. The communication issues are to be related to the field of semantics, whereas the strain in respect of communication is important to focus on the closeness of the two poles codes. That is to express the idea according to which the words should have the same meaning for both the emitter and the recipient as the gratification of communicate means a conditioned response to certain stimuli and consequently it should be considered along with other patterns of experience and demeanor.

The English analyst Robert Blood as regards the issue of strategic communication has asserted that by means of communication the icons alter the values and beliefs of individuals. A different opinion belongs to Gille Ferréol and Nöel Flageul and states that efficient communication is clear in expression, thus establishing the limits of a particular topic. The messages that constitute the object of communication are to be correctly coded or decoded in the situation in which both communicators/interlocutors know the system of symbols that is being used whereas the social communication appears as an act of symbolic disclosure that stresses the predictable changes:

"The contemporary communication process might be labeled as a complex and flexible one as regards both human and technical intercession (of the computer). The mediation from the perspective of the individual is a form of refusal in point of the passive role within the framework of communication, of reconstruction from the side of the perceptive subject, thus maintaining the self identity in the process and expressing personal exigencies in the informational act, therefore, a form of subjectivity, more precisely a manifestation of intentionality (to surpass oneself as regards the intention in the process of reflection) as a fundamental possession of the human consciousness" (Rădulescu 2005, 103). The communication might be considered as an essential element in the analysis of cognitive phenomena and the molding of collective mind. Social representation is conditioned by the discoursive context, while the conditions of elaborating a discourse are the basis in the formulation or identification of a representation. To the extent that any communicational exchange involves various goals and is directed towards the reconstruction of reality, it implies an alienation tentative of the one onto the other – or an attempt to impose a possible world that might ensure the control over the interests that are at stake.

The language as a modality and expression of thought represents the most important means of cultural production in any system while the discourse irrespective of type (political, social, economic) offers the speaker the possibility to present ideas and to endorse them in order to facilitate the understanding and comprehension of the message or to persuade the target audience. Genuinely, the aim of communication is directed towards the transmission of a meaning or message, an act that cannot function with either influence or targeting. To communicate and to influence form one and the same action, according to Alex Mucchielli, whereas the science of communication assumes a different perspective as regards the relation between influence and persuasion on one side and the act of communication on the other. The communication among individuals ought to be regarded as a particular expression of social interaction, taking into account that the entire human activity is held within the framework of a social climate.

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Methods and Means Used for the Religious Education of Neo-Protestant Children and Youngsters in Communist Romania

Ciprian Corneliu Ciurea

Ps. PhD Candidate „Aurel Vlaicu" University, Arad, Romania
cipriancorneliuciurea@gmail.com

ABSTRACT: Through the laicisation of education in communist Romania, the education and training of the young generation has become the exclusive competence of the socialist state. Through school, the communists had, as their main objective, the education of children and young people in the spirit of material-scientific conception of the world and life. The monopolization of the media, the introduction of materials that favor atheism in the analytical curriculum, and the carrying out of performances in which the main Christian celebrations were caricatured, were just some of the methods of actively implementing the creation of the "new man".

KEYWORDS: church, neo-Protestants, religious education, communism, Sabbath/Sunday school, catechization class, musical/youngsters' programs

Introduction

This article represents a revised and added subchapter from the Graduate Thesis titled The Religi*ous Education of Children and Youngsters in the Communist Period,* unpublished, presented in front of the Evaluation Committee at the University of Bucharest, Baptist Theology Faculty, in June 2007, in Bucharest.

In this Article we want to offer a perspective on the paradigm changes that have taken place in Romania, with the Communist Party being in power, as well as to bring to the attention of the reader the various methods and means used by the neo-Protestant churches for the religious education of their children and young people. Research is an unprecedented one in that the information provided derives, in particular, from the unpublished documents in the Archives of the State Secretariat for Cults (A. S. S. C.), as well as from the Archives of the National Council for the Study of the Securitate Archives (A. C. N. S. A. S.).

1. Paradigm shift

Once the communists took over power, the Romanian state started to undergo transformations with direct and major implications on all areas of life. Because at the religious level the atheism of the nation was meant, the whole attention of the Communist regime focused on the removal of "mythical-religious" ideas from the weak minds of young people, the education and training of the young generation become the exclusive competence of the socialist state (*Scânteia tineretului,* no. 1068/1952). Everything was concerted to evade children and young people from religious influence (Modoran 2013, 176). In school, the role of the natural sciences was no longer to show the children that God created the world and man, but the reverse. Religion has started to be considered "opium for the people", and Marxist-Leninism has become a compulsory subject of study in all schools, teaching religion in schools being prohibited (Deletant 2001, 76) and students were obliged to read anti-religious texts. There were theater performances that were meant to caricature Christmas and other holydays. And even more so, in order to annihilate the idea of a day

of celebration, Christmas day was proclaimed as an industrialization day (Manman 2005, 153). The "Christmas holiday", as it was known, has changed its name to "Winter Vacation" (*Scânteia tineretului*, No 1134/1952; Bucur 2002, 107. 153) and it was to last from the evening of 30th December until the evening of 11th January of the following year. Christmas was virtually officially suppressed as a holiday for children, and "Santa Claus" was replaced by "Moș Gerila" (Old Frosty) (Bucur 2002, 153).

The most outrageous was probably the fact that the pupils began to be used as propagandists among others and, in particular, in their own families, imposing the idea of the militant child, who was to be actively involved in the re-education of his parents. Children who had the courage to denounce their "retrograde" parents were considered heroes (Manman 2005, 154). In an interview with "Revista 22" in 2013 on the post-1965 communist repression, the Director of investigation of the National Council for the Study of the Securitate Archives said that "in the 1980s minors were recruited in schools and high schools" (Nagat 2013), tricked into signing a commitment to snitch their families, friends and spy on their closest friends and assume they would never talk about it. Also, one of the aims of the Department of Cults was to recruit students from different institutes of religious training, so that later, when they were to be pastors and possibly to advance in the hierarchy of their cult, to become instruments of political propaganda inside those cults (Petcu 2005, 372 – 373). To illustrate this, we remind that in the plan of measures on the Adventist cult, dated February 11th 1983, it was specified that special attention was to be paid to attracting the students at the Adventist Theological Seminar in Bucharest (A.C.N.S.A.S., no. 141, volume 1, 167).

Against this background, keeping children and young people in the religious sphere was more than a necessity, a move that the neo-Protestant cults in Romania fully assumed.

2. The most efficient catechization methods

The Securitate authorities found that among the most varied and intense forms of catechism among the younger generations was practiced in the neo-Protestant churches. All neo-Protestant churches organized special religious services for children and young people, training them in various church activities (Modoran 2013, 177).

2.1. Sabbath and Sunday School

This "school" system was seen by the Communist authorities as a very effective means of strengthening and developing neo-Protestant cults. The data revealed that, at least in the Adventist cult, this system of education and training was compulsory. In the first part of the communist regime, parents were guided by pastors not to send their children to school on Saturday, when the Sabbath school and the divine service were held in church (A.S.S.C., no. 3413/21 February 1961, 1).

Both Sabbath and Sunday schools included three degrees of education: Pre-school, elementary and medium (A.S.S.C., no. 103/1960, 1). This ensured that the religious education was differentiated according to the understanding and knowledge of each child. The Cathehetic activities within the Sabbath and Sunday schools took place both in churches and in unauthorized private houses (Popescu 1986, 19), on Saturdays or Sundays, but also in other days of the week (Baptist Church no. 2 Oradea – Monday and Penticostal Church no. 1 – Tuesday) (A.S.S.C., no. - /1989, 2). In general, religious themes, specific to each cult, were taught, biblical texts to be memorized were distributed (those from the daily wall calendar of religious cults), which were then presented by the children either within the Sabbath or Sunday schools or in musical and youth hours in churches (A.S.S.C., no. 1/1974, 2). In the Adventist cult they also studied the comments drawn by the cults Union of Conferences on biblical texts, in the form of the biblical Lessons, which were, in fact, the textbooks for this

school. Some questions were also used in the cult's magazine, the "Curierul Adventist" (Adventist Review) (A.S.S.C., no. 12/6/1975, volume 1, Inv. 3, 1). The Pentecostal cult used instead the "Panorama biblica", a translation from English with 12 colorful drawings, with explanations (A.S.S.C., no. - /1989, 3). It is also worth noting that those who led these activities were thoroughly prepared, consulting in addition to the manual, as it was in the Adventist cult, other materials, such as the books "Patriarchs and Prophets", "Prophets and Kings", "The Desire of Ages" and "The Acts of the Apostles". The children who could do so, also took notes.

There were, in some churches, in the annexes designed specifically for such meetings, sand crates, figures, molds, dolls and biblical scenes, instruments by which the instructors illustrated the Bible truth in front of the children. However, many times, for fear of the inspectors of religious cults, the instructors gave up such methods (A.S.S.C., no. 93/1960, vol. 8, Inv. 95, 1).

Also, at the Adventist Cult, in parallel to the regular activities of the Sabbath school, children were taught songs, poems, various stories so that on the 13th Saturday of the quarter, a festive program would take place, in front of the entire church, a program drawn up by the Community committee and approved by the district pastor (A.S.S.C., No. 57/2 June 1989, 2). At these programs, children presented in front of the audience poems, religious stories and singing (A.S.S.C., no. 57/2 June 1989, 1), after which they were given small gifts (A.S.S.C., no. 103/1958, vol. 1, inv. 122, 3).

2.2. The indoctrination hour

In the case of the neo-Protestant cults, the catehisation was performed for church members, adults, children, and young people, as well as for sympathizers (relatives). Also called catehisation hours with friends (A.S.S.C., no. 15/6/1/1976, vol. 1, inv. 4, 2) or biblical study hours, these were the essential framework for preparing the sympathizers for baptism. There were also invited to attend the classes the young people over 14 years of age (A.S.S.C., no. 100/29 June 1989, 1; A.S.S.C., no. 273/26 June 1989, 2) for the purpose of their moral-religious training and for the purposes of baptism. Such biblical study hours were met at all four non-Protestant cults, which shows the interest in the in-depth and organized study of the Bible of both sympathizers and children and young people. Within them, at the Adventist cult, the pastors or the elders presented, from the "Book of Doctrines" (A.S.S.C., no. 100/29 June 1989, 2), certain specific doctrinal principles, using the interrogative method – questions and answers. After the end of the religious service in the morning, a number of 10 to 15 biblical verses were indicated, offering only the chapter and the verse on the tickets, and within the indoctrination hour, those who ran the religious service, they asked questions, and the young people gave the answer according to the texts they read during the break between religious services. At the Baptist cult, the training during these indoctrination hours took place on the basis of a theme elaborated by the cult leadership in 1951.

At the Adventist cult, such hours of religious education and training for baptism generally took place on Saturday outside the religious services program (A.S.S.C., no. 100/29 June 1989, 1) an hour before the beginning of the afternoon worship services (A.S.S.C., no. 170/30 June 1989, 3; A.S.S.C., no. 100/29 June 1989, 1) and were organized by an elder, assisted by two or three believers (A.S.S.C., no. 25/30 June 1989, 2). Often exceeding 60 minutes and being organized, especially for children and young people under the age of 18 (also attending adult members) (Popescu 1986, 19), the Bible study hours were times when the cult dogmas were presented. Emphasis was placed, as I mentioned before, on the Bible study, so that, until the age of baptism, the main books of the Holy Scriptures were read (A.S.S.C., no. 25/30 June 1989, 2). These sessions often started with a summary of the previous lesson prepared and presented by young people (A.S.S.C., no. 12/6/1975, vol. 1, inv. 3, 1), then followed by the study itself. In order to stimulate participants, those who carried

out the study asked for answers to questions exclusively from children and young people, and these were rare cases where they did not know the answer. Also, to stimulate youth, competitions such as "Bible book by book" or "Questions from Adventist History" were organized, offering prizes and incentives (A.S.S.C., no. 93/1959, vol. 8, inv. 99, 1).

When it comes to the Baptist cult, the hours of indoctrination took place on Sundays, the exact date for such moments being set by the wall calendar of the cult. With a fixed theme established by the pastor, the biblical hours included teaching, focusing on the biblical text, in the first part, and in the second part discussions were held, in which children and young people were mainly trained (A.S.S.C., no. 100/29 June 1989, 2). There was also a special role for prayer books, prepared annually, with believers of all ages being urged to learn prayers every day and to say it several times (Popescu 1986, 20).

At the Christian Evangelical Church cult, where the Bible was studied, instruction was practiced through texts to be learned, through questions and answers (A.S.S.C., no. 412/4 June 1973, 6). Being isolated cases, they were quickly destroyed by the measures imposed by the leadership of the religious cult (A.S.S.C., no. 281/30 May 1971, 7).

Apart from Saturday and Sundays, there were also such meetings on Wednesdays at the Pentecostal cult, meetings lasting for two to four months, focusing on the study of the Scriptures (A.S.S.C., no. 100/29 June 1989, 2). The Bible study was in accordance with the calendar themes, like the Baptist cult, but within this cult there were no special themes fixed by the pastors (A.S.S.C., no. 74/26 June 1989, 2). Knowing from the calendar the topics to be addressed during study hours, each participant was expected to study the indicated biblical chapter beforehand, the role of the meetings being to clarify possible misunderstandings of biblical texts (A.S.S.C., no. 25/30 June 1989, 4).

2.3. Youth hour or musical program

The youth hour or musical program was considered by the inspectors of the cult to be "extremely harmful", because of its mandatory, methodical and permanent character, because of the fact that lessons are taught in an active manner and because of the practical applications made by the organizers (A.S.S.C., no. 224/3 July 1989, 5). Musical hours were held, at the Adventist Cult, every second and fourth Saturday of the month, in the afternoon, (A.S.S.C., no. 78/19 February 1974, 6; A.S.S.C., no. 147/27 June 1989, 1; A.S.S.C., no. 88/ 28 June 1989, 1), and every Sunday morning or afternoon, at the Pentecostal and Baptist cults (A.S.S.C., no. 281/30 May 1971, 7). In many cases, special programs were being prepared and religious services were turned into true religious celebrations. Children and young people would prepare, during the week before, and learn poems and songs.

According to the assessment of the Securitate, the religious education of children and young people took the most systematic form within the Adventist Church (Modoran 2013, 177). For this purpose, in the Union of Conferences, which was the central leadership of the cult, the "Youth Department" was organized as early as 1924, later known as both the "Department of Missionaries" and "Music and Pastoral Care", after 23rd August 1944. The slogan under which this department operated is also worthy of record, especially after 1944, namely, the "preservation of youth in the church" (A.S.S.C., no. 93/1959, vol. 8, inv. 99, 1). Very early on, Vasile Florescu, together with Indricau Gheorghe, who was the director of the Adventist Seminar, and with the help of the Union of Conferences, versified certain biblical topics and drew up material for the youth organized in the "Music Department" (A.S.S.C., no. 93/1956, vol. 8, inv. 99, 1).

During these musical classes were recited, either the religious poems, published in the cult's magazine, "Curierul Adventist", or compositions of some of the believers (A.S.S.C., no. 1/1974, 2). The musical classes were intended to guide children and young people in preserving the principles of the cult and encouraging them to attend churches. Parents were

also guided to raise their children in faith (A.S.S.C., no. 78/19 February 1974, 5; A.S.S.C., no. 124/14 April 1980, 1). Sometimes, the poems had a missionary character and moral pressure, in the sense that the young people leaving the cult were blamed, as well as the parents who let their children lose their faith (A.S.S.C., no. - /1971, 3). There were also played and sung religious songs, in solo, vocal groups or with the band or instrumental orchestra performance (A.S.S.C., no. 124/14 April 1980, 1). But to be able to interpret the religious songs correctly, they had to participate in the rehearsals organized by the conductors. This way, the young people were provided weekly with training and musical education, either together with all believers, within the services of the cult, or in coral or orchestral formations (A.S.S.C., no. 57/2 June 1989, 1).

Sometimes the musical hours were evangelistic in nature, in the sense that they were invited to take part young people from the Orthodox cult, but their attendance of the church was irregular (A.S.S.C., no. 147/27 June 1989, 1). The cult inspectors also noticed that, when youth hours were taking place, the number of children and young people missing from Saturday's courses was higher than on other Saturdays (A.S.S.C., no. 78/19 February 1974, 6).

At the Baptist cult, Sunday afternoon's religious service was turned into religious celebrations, suitable for and led by young people. There were many religious orchestra singing, solo singing and vocal groups with children and young people. Religious poems were also recited. In this way, in the Baptist cult, musical classes were a powerful attraction for both children and young people and for adult believers (A.S.S.C., no. 12/8 January 1980, 1).

It was not obvious that such musical classes for children and young people were organized in the Christian Evangelical Church. But there was such a religious service in the Pentecostal cult in many counties every Sunday morning. In the musical classes, children and young Pentecostals recited poems, played vocal and instrumental songs (A.S.S.C., no. 281/30 May 1971, 7).

3. Other Ways of Catechization

Another method of religious indoctrination of children and young people was that of **preachings** delivered by pastors and committee members, teaching young people and children and guiding them to listen to their parents, to attend churches, to keep the dogmas of the cult, to study and not adopt the “worldly” way of life (A.S.S.C., no. 78/19 February 1974, 6). Because religious services were compulsory, both for adult and young believers, they were offered chairs and benches specially designed for them in church. Also, in church, within the religious services, children and young people had to follow the example of adults in their attitude during prayer, and the songs, learning, through the example of others, how to pray and sing a large number of religious songs (A.S.S.C., no. 3683/1974, inv. 891, 3). They were also stimulated by questions from biblical texts, addressed directly from the pulpit (A.S.S.C., no 12/8 January 1980, 1). At the same time, the pulpit was the place from which parents were also presented the need to train and maintain children and young people in the religious sphere. For example, in a sermon at the Grand Adventist Church, Popa Dumitru told how the teacher first put the pen in his hand, which was not easy, the same should do the parents and present the Gospel to children and young people. At the Christian Evangelical Church, on Carol Davila Street, Bobora Simion, a member of the church’s “brothers’ council”, speaking of the fact that he was brought up and educated by an old man, launched the idea that every elder should take under his religious protection a child so that the latter be redeemed by Jesus. At the Pentecostal Church, in Popa Nan Street, engineer Marinescu Constantin, a member of the church committee, in a presentation in which he referred to the faithfuls and the intellectual and religious training of the youth, implied that a good intellectual can only be a good believer (A.S.S.C., no. - /1982, 5).

The **evangelistic actions** were also opportunities for children and young people to participate (A.S.S.C., no. 100/29 June 1989, 2; A.C.S.S., no. 58/C/14 March 1986, 2). There were also cases, within the Baptist cult, when it was tried to have a monthly scheduling of some cycles of sermons specially designed for young people (A.S.S.C., no. 55/22 July 1989, 3).

Often accused by religious inspectors, in their reports to the Securitate, of cultural backwardness, of not knowing how to behave in society, the four non-Protestant churches, especially the Adventist and Baptist ones, often organized **lessons of ethics and social education**, on the behavior of children and young people in society. In this way, and not only for that reason, they were trying to annihilate the inspectors' unjust accusations. To illustrate, we recall the following churches: adventist – Țigănești, Brâncieni, Peretu, Dulceanca, Branițte, Oinacu, Pistrala; baptiste – Alexandria, Țigănești, Nenciulești. (A.S.S.C., no. 181/3 July 1989, 2; A.S.SC., no. 170/30 June 1989, 7; A.S.S.C., no. 147/27 June 1989, 1).

Although they had not an educational character in themselves, but rather a recreational one, the four neo-Protestant churches frequently organized **trips** to attract and keep children and young people around churches. As expected, organized trips had a profound religious content (A.S.S.C., no. 178/3 July 1989, 2). Excursions were often organized and sponsored to reward children and young people the effort with which they gained the religious knowledge they were taught in church (A.S.S.C., no. - /1973 – 1974, 20).

Between 1980 and 1985, within the Adventist cult, they organized with children and youngsters **missionary trips**, this being the main means of attracting young people to church during this period, as this trips were used to train and invite to participate in such trips young people from other confessions (especially from the Orthodox cult) (A.S.S.C., no. 170/30 June 1989, 6). Adventist pastor Moldovan Wilhelm organized trips which lasted for nearly two weeks each summer in the Apuseni Mountains, with a large group of young adventists. Most of the Adventist churches in Transylvania organized such excursions in the mountains (A.C.N.S.A.S., no. 141, vol. 14, 5). It was also a habit in the Baptist cult to organize such camps or trips during the holidays for the Baptist children. Under the supervision of the organizers, children were taught lessons from the Bible, having a varied and pleasant daily program (Grossu 2006, 173). In the summer of 1982, Negruțiu Paul organized a camp for children and young people from the families of Baptist believers, in Tărcăița village, Tărcaia commune, Bihor County (A.S.S.C., no. - /12 October 1983, 1 – 2). Also, some neo-Protestant cults even organized balls (we do not have enough information to indicate the cult) (Otovescu 1989, 87).

In order to intensify the religious life of children and young people and to diversify the teaching methods of instructors, the Adventist and Baptist cults also tried some rather "bold" methods for that period. In Galați, the Adventist Church organized **a kindergarten for the children of the Adventists**, as manager it was appointed the wife of the first elder, assisted by three more believers. The program was designed so that children were familiarized with the principles of the cult through stories, poems and songs. As expected, at the energetic intervention of the religious Department, the kindergarten was soon dissolved (A.S.S.C., *Documentary Material on the Activity of the Cults*, no. - , 3).

In Caraș-Severin county, the Baptists organized special religious services with children every Sunday in the parish house, which they had declared to be a church, different from the legal one, in which they met without authorization. The children were taught religious songs, religious poems, and learned by heart biblical texts, which they then commented on under the direction of an adult. The artistic programs were also prepared here (A.S.S.C., no. 122/5 March 1980, 2).

Citing both the lack of pastors and the desire of young people to have a religious training, it has emerged the need to organize **biblical classes** for future preachers, sometimes led by people from the country, and sometimes by tourists coming from abroad. Such examples were reported at the Baptist Church "Speranța" in Arad, where about 80 young

people participated, Church no. 2, in Oradea, and the Pentecostal Church in Botoșani. In order to accommodate young people with the pulpit and the principles of preaching, in the Baptist churches of Beiuș and Tinăud, Pastor Vereș Teodor organized **homilethical courses** with young people (A.S.S.C., no. - /1989, 1). **Theological courses** for young adventists were organized at the Adventist cult. Starting with 1985, in the basement of the Adventist Church building in Cluj, Cuza Vodă street, no. 12, theological training courses were held for the clergy of the churches in the area, the teaching staff being made up of pastors Wilhelm Moldovan, Timiș Alexandru and Gyeresi Ernö. Three years later, the courses were interrupted following the intervention of the religious Department, which had learned about the courses (Orban 1997). Classes were also organized with selected young people who were trained for two years to be "helpers in ministry". The courses were organized as a school, with teachers, on different specializations. Such a case was found at Baptist Church no. 2, in Oradea, the principal of the course being Paul Negruț, and among the teachers was Badea Pavel II and Bodor Alexandru (Orban 1997).

The pastors of the Christian Evangelical Church were not trained in a special educational establishment. Against this background, among young people who were more active in the church and wanted to become pastors, there was a desire to study more closely and organize certain theological issues. These young people asked the cult leadership to periodically organize meetings with such character at the headquarters in Bucharest, where they should be presented and debate certain theological issues. As expected, the cult failed to lay the foundations for such courses. Seeing this, young people took the initiative of organizing meetings every three months. To this end, about 60 young people, belonging to communities in Moldavia, Bucharest and Brașov, gathered for a long time in prayer houses without the consent of the cult leadership (A.S.S.C., no. 26/s/10 February 1982, 4).

A special feature of the four neo-Protestant churches was also the organization of actions with young people, particularly during public holidays: 1st May, 23rd August. There were also organized **celebrations in honor of the young people who went to the army**, always initiated, and organized by mature people, people with responsibilities within the church committee. On such occasions, advice on behavior was given to young people, and at the same time all believers were called upon to pray for their prompt return (A.S.S.C., no. - /1971 – 1972, 11). Celebrating **the age of consent** of young people was another pleasant practice, which was celebrated in a special way, and the moment was used very skillfully to prove to young people that the church adults are with them (A.S.S.C., no. - /1971 – 1972, 12). Although they were very rare, there were also situations when the birthdays of the children attending the catechism classes were celebrated, offering them candies and various gifts (A.S.S.C., no. 2573/21 July 1989, 3). Such a case was registered at the Baptist Church in Dămuc, Neamț County, at the initiative of the church deacon Dandu Ion. Other times, in the desire to show students that the church wants to keep in touch with school, at the beginning and end of the school year, in the church, were held **celebrations in honor of the children who went to school or who completed their studies** (A.S.S.C., no. 249/18 June 1971, 2). On 3rd June 1974, between 19:30 – 23:45, in the Baptist Church, on no. 10 Ospătăriei Street, Cluj-Napoca, a feast was organized, followed by a potluck, in the presence of 80 – 90 persons, on the occasion of the end of the school year, to which participated young people from Baptist families. On this occasion, the graduates handed over the baton to the youngsters following them and held a toast for success and the living preservation of the Baptist faith (A.S.S.C., no. 9371/2119/12 May 1975, 8). Measures have often been taken to annihilate such activities.

Another method, specific to the Pentecostal cult, was **fasting and prayer**, in which many young people were involved, who, even though not baptized, by persisting in prayer, considered to receive the baptism with the Holy Spirit, thus being received by God (A.S.S.C., no. 3683/1974, inv. 891, 4). In these "hours of persistence", every believer prayed on his own, louder and louder, getting closer to yelling. Such acts created, within the church, a climate

that was hard to withstand psychologically. The inspectors for the cults, recording such acts, noted: "A general moaning, a general sobbing, and an oppressive, desperate atmosphere that certainly had a significant influence on the psychic of all those present". However, the most affected were children and young people (A.S.S.C., no. 85/D/5 March 1973, 2; A.S.S.C., no. 109/1962, vol. 1/A). The children, who were kept in long „perseverance" and forced to fast, according to reports of the cult inspectors, were dizzy at school, could not answer the teachers' questions and sometimes even slept in their benches (A.S.S.C., no 85/5 March 1973, 6). In many cases, teachers filed a lawsuit against children's parents because of this (Nicoară 1960, 43; A.S.S.C., no. 103/1957, vol. 13, inv. 143, 52).

The neo-Protestant parents also prohibited children and young people from watching films, with many of them having no TV at home. As for the use of radio, we must add that, when allowed to listen to programs, there was a rigorous selection, with the emphasis on **religious broadcasts** from abroad, thus these becoming important means of religious education for children and young people (A.S.S.C., no. - /1971, 3).

4. Consequences Of Catechisation

The intense and continuous indoctrination of the children and young people in the church resulted in the fact that most of the descendants of the families of believers, once becoming of age, were baptized and became active members of the respective cults (A.S.S.C., no. 170/30 June 1989, 8; A.S.S.C., no. - /1971, 5).

Another consequence of the catechism classes was that after taking part in such activities and taking notes on special notebooks, children and young people were trying to share their notes with their school colleagues. There were cases when some Adventist students from different schools, such as Deleni, Albești, Rebricea, Bacani and even in Bârlad, had in their bags, along with textbooks and various books, religious materials, some of them trying to give them to their colleagues (A.S.S.C., no. - /1 March 1974, 4). Many students were also interested in inviting their colleagues to their churches (A.S.S.C., no. 412/4 June 1973, 3), "the neo-Protestant cult's excellence in the christening of young members of the Communist Youth Union" (A.S.S.C., no. 2509/2 February 1973, 3).

Despite all the above mentioned cathetic methods, however, children and young people were also reluctant to the idea of religious education. Although there were isolated cases, however, sometimes the parents' attitude towards their children went too far, with some children being beaten to follow the parents' faith. In a report to the Securitate, the representative of Dobrogea region reported on a case in Tichilești village, Tulcea county, where a Baptist believer was beating his daughter so that she would follow his faith. Contact was made with the pastor Eremia Pavel, who was asked to investigate the case and take appropriate measures against the believer (A.S.S.C., no. 109/1961, vol. 1, inv. 103, 38). In other cases, parents were aggressive in proselytizing amongst their children. In Telești village, Târgu Jiu district, the believers brought the school children to Iordănescu's home during their religious practices. Terrified by the way the religious service was carried out, the students did not go to school the next day (A.S.S.C., no. 103/1958, vol. 1, inv. 122, 20). Last but not least, it should be remembered that sometimes families with children who were reluctant to the idea of religious education intervened through young people from other families of believers, seeking to bring them to the path the parents had chosen. For example, when Ioniță Dumitru's two children, a pentecostal believer from Reșița, were indecent in following the path of "faith", he allowed some meetings to be held with young people in his house, where they prayed and sang, and managed, according to his statement, to bring them back "from the world". Being found by the state authorities, in a meeting in a private house, in the evening, they were penalized with a fine (A.S.S.C., no. 3683/1974, inv. 891, 4).

Conclusions

In communist Romania, religious education was perceived as a necessity to keep children and young people in the religious sphere. Either through the Sabbath or Sunday School, indoctrination time, youth time or coral and orchestral groups, through lectures, fasting and prayer, hours of social education or lessons of ethics, trips, biblical courses and even through the setting up of kindergartens, the neo-Protestant cults have largely succeeded to keep their children and their young people in churches. Even more so, the religious education they were given, grew in them the missionary spirit, through them many other young people came to know God.

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The Protestant Ethic and Capitalism

Mihai Stoicescu

Ps. PhD Candidate, Aurel Vlaicu University, Arad, Romania, mihai.stoicescu2017@gmail.com

ABSTRACT: The Reformation arose from society's reaction to the luxury, immorality and indifference of the clergy of the Catholic Church and returning to the original purity of New Testament Christianity. The Protestant culture supports the principle of equality and individualism. These were the basis for the development of capitalism. Various studies conclude that there is a strong link between Protestantism's behavioral patterns, concepts of secular ethics and religious doctrines of Protestantism.

KEYWORDS: ethic, morality, values, protestantism, capitalism, Max Weber

Introduction

The Protestant Reformation was a 16th century religious movement that sought to reform the Catholic Church in Western Europe, with the goal of returning to the original purity of New Testament Christianity (Cairns 1997, 270).

The Reformation arose from society's reaction to the luxury, immorality and indifference of the clergy of the Catholic Church (religious causes); from incompatibility between the modern state and the universalism of the Catholic Church (political causes); from society's need to transform the church, which was an obstacle to the changes made by new capitalism (economic causes).

The European Protestantism

Although through the action of Jan Hus, the Czech people ushered in a new period in the history of Europe – the period of religious liberation movements (Hussite principles being typical of anti-Catholic Protestantism), the Reformation was initiated by Martin Luther in Germany, when he nailed the 95 theses on the door of Wittenberg Castle Church, theses which he taught against indulgences. What gives special importance to the Hussite teaching (in general to the Protestant teaching) is the patriotic and democratic character of its principles (Gruber 1963, 324).

The Protestant Reformation led to the emergence of four major churches: Lutheran, Reformed (Calvinist or Presbyterian), Anabaptist and Anglican. Later Protestant churches (Adventist, Baptist, Pentecostal etc.) usually have their roots in these four early schools of the Reformation (Mojzes 1999, 7).

For the most part, the Reformation was limited to Western Europe and the Teutonic peoples. The Eastern Church and the Latin peoples of the Old Roman Empire did not accept the Reformation, because here the medieval ideals of unity and uniformity still prevailed (Cairns 1997, 270-271).

The Protestantism nurtures the noble aspiration to return to the primary form of Christianity. Its fundamental principles distinguish it from both Catholicism and the Orthodox Church. Protestants of all categories, Lutherans, Zwinglinist Or Calvinists, differ from the two Churches in their teaching about grace, salvation, church, holiness, the number and value of the Mysteries.

Thus, Sharpe (1997, 329) noted that although England and France are, in many respects, similar societies (approximately the same population profile, comparable socio-economic levels and technological developments), their educational systems are different. These differences come from contrasting cultural traditions: Protestant fundamental values in England, respectively Catholic in France.

The fundamental distinctions between Catholic and Protestant traditions appear regarding the role of the church in the salvation of the believer, the structure of authority and the nature of responsibility. In Catholicism, the church is the vehicle of salvation, there is no salvation without the church. In Protestantism, the believer receives only guidance, help and support, in order to help him find his individual salvation by faith. The Catholic Church has a single, universal and monolithic structure of authority. The levels of superiority and inferiority are clearly defined in bureaucratic terms of responsibility by a distinct hierarchical line. In contrast, in Protestantism, the nature of authority has more democratic, particular features. Regarding responsibility, in Catholicism these are the following: believers must agree with the doctrine of the universal Catholic Church and fulfill the obligations to the church imposed on all who want to be saved. In Protestantism, responsibility is a personal matter between the believer and God (Sharpe 1997, 331).

The American Protestantism

By the end of the 18th century, the vast majority of Americans who had gained independence were white, British and Protestant. By the end of the 20th century, 63% of Americans were Protestants, 23% Catholics, 8% other religions and 6% without a declared religion. In other words, we can speak of an American Protestant culture, this being the one that supported the principle of equality and individualism, central to the American Creed (Huntington 2004, 15).

Samuel Huntington notes that America was founded as a Protestant society, and for about two hundred years, almost all Americans were Protestants. However, with the increase of Catholic immigration, this overwhelming proportion began to decline, reaching about 60% in 2000. However, Protestant beliefs, values, and dogmas continued to impact American life, society, and thinking. Protestant values are the core of American culture and have profoundly influenced both Catholicism and other American religions. Protestant values have also shaped American's attitudes toward public and private morality, economic activity, government activity, and public policy.

Returning to the Protestant origins of the Americans, Samuel Huntington said: "Protestant origins give America a unique character in the family of nations and explain why even in the 20th century religion is vital to American identity, as it is not with other Protestant peoples. For most of the 19th century, Americans viewed their homeland as a Protestant country, foreigners viewed it as a Protestant country, and books, cartographic documents and literature described it as a Protestant country" (Huntington 2004, 49). In other words, America was born Protestant and did not have to become so.

The American creed emphasizes individualism, equality, and the rights to freedom of religion and opinion. Protestantism, the source of the American Creed, has valued and continues to value the work ethic and the responsibility of each individual for their own success or failure in life.

Protestant culture emphasizes the role of the individual in gaining knowledge of God directly from the Bible, without the mediation of the clerical hierarchy. It also emphasizes that the individual obtains salvation by the grace of God, without church mediation. That is why this Protestant culture has made Americans the most individualistic people in the world, in the sense of individual responsibility for success or failure. An American believes that if you work hard and follow the rules, you have a chance to get as far as your God-given ability allows you to.

Another central feature of Protestant culture is work ethic. If in other societies, heredity, class, social position, ethnicity, and family are the main sources of status and legitimacy, in America it is work. American society glorifies work, to the point that almost no American dares to say he is doing nothing. In the 19th century prayer and work were closely linked and inactivity was a sin (Huntington 2004, 53-55).

American politics has been and remains a politics of morality and moral passion. American political values are embodied by the Creed. The individual has the responsibility to follow the American dream and to achieve everything in his power through his skills, character and work. At the collective level, Americans have the responsibility to do everything they can to make their society a realm of promise. The emphasis is on the reform of the individual, on the regeneration of the soul of the individual, rather than on social and political reforms, because Protestantism emphasizes the individual. Thus, the Great Religious Awakenings in American History, which aimed at reforming the individual, were closely linked to periods of political reforms: changing religious feelings about duties and obligations, improving social and political situation (promoting temperance, fighting tobacco use, stopping prostitution, supporting education, etc.), bridging the gap between institutions and ideals for creating a just and equitable society, antitrust measures, women's suffrage, private initiative, referendum, the need to reduce government authority, social assistance and tax programs, government restrictions on abortion, etc. (Huntington 2004, 58-60).

Protestant Ethic and Capitalism

At the end of the 19th century, Martin Offenbacher examined the denominational composition of secondary schools in Baden, Germany. This study shows that Protestants outclass Catholics in various secondary schools, on various subjects like science, mathematics or other practical subjects (Becker 2000, 311-312). Offenbacher's study was the basis for other studies that confirmed the existence of a link between Protestant ethics and the development of capitalism and science (Parsons 1968; Knapp & Goodrich 1952; McClelland 1967; Weber 2003, 25-35).

Various studies have concluded that Protestantism, compared to Catholicism, has been inclined towards modernity, the development of capitalism and science (Lehman & Witty 1931; Knapp & Goodrich 1952; Knapp & Greenbaum 1953; Lenski 1963; Ben-David 1965; Feldhay & Elkana 1989).

Max Weber and Robert K. Merton reproduced Offenbacher's statistics from Baden (1885-1895) and demonstrated the superiority of Protestants in terms of capitalist entrepreneurship (Weber 2003, 28) and in terms of scientific efforts (Merton 1968, 628-660). Later, a number of authors have confirmed the link between Protestant ethics and the emergence and development of industrialized capitalism in 19th century's Europe (Barclay 1969; Buck 1993).

However, not all researchers agreed with Weber's theory. Becker has denied the theory, saying that there is not a significant difference between Protestants and Catholics (Becker 2000). Delacroix and Nielsen (2001, 510-511) concluded that the link between Protestant ethic and the emergence of industrial capitalism in 19th century Europe is an illusion (Delacroix and Nielsen World Values Survey conducted in 1990 found that, in the cultural terms of defining the role of Protestantism, Weber's theory does not work in Latin America (Gill 2004).

Murove (2005, 390) conducted a study in post-colonial Africa found the failure of Western capitalism in this region. The failure is explained by the lack of Protestant ethics, the Western economic system being based on individualism, which is in conflict with community-oriented African economic relations. Therefore, Protestant ethics is indispensable for the development of capitalism.

The study by Baker & Forbes (2006, 23-26) concluded that Protestants, compared to non-Protestants, tend to take more responsibility (pro-market attitude, which suggests that the market is embedded in the moral system, just as it is incorporated into social relations networks). Moral values also influence pro-market attitudes.

Protestant Ethic, Capitalism and Max Weber

Max Weber, one of the great contemporary thinkers, remains famous for his study *The Protestant Ethic and the Spirit of Capitalism* (Weber, 2003). In this section we will briefly present some of the ideas expressed by the famous author in this study.

He makes a comparative analysis of the dominant theological doctrines during early capitalism, which leads him to conclude that there is a strong link between Protestantism's behavioral patterns, concepts of secular ethics and religious doctrines of Protestantism (Protestant doctrines contain encouragements of the new type of economic behavior especially in the doctrine of predestination). Thus, Weber explains why capitalism appeared in a certain part of the world, why it succeeded only in certain societies and not in others.

The doctrine of predestination and other Protestant theological doctrines encourage an active life and work. Work, done according to divine precepts, is the only way to gain certainty regarding God's grace. Also, theological doctrines encourage one to plan and to permanent pursue the economic gain.

An element of Weber's analysis is the German term Beruf, which suggests a religious conception, that of a mission set by God. Through the undeniable influence of Luther's thinking, Protestants regarded the fulfillment of duty in secular professions as the supreme content that ethical self-determination would have otherwise adopted. This conclusion resulted in the idea that everyday secular work had a religious significance and produced for the first time this sense of the concept of profession.

Protestants did not seek to awaken the capitalist spirit. None of the reformers, ever focus of ethical programs. They have not founded ethical culture societies, nor were they representatives of aspirations for social or humanitarian reforms or cultural ideals. The salvation of the soul was the central point of their life and activity. Their ethical objectives and the practical effects of their doctrine were all anchored here, being consequences of purely religious motives.

The cultural effects of the Reformation were unforeseen and downright unintended consequences of the work of the reformers, often very distant or even opposed to all of the ideas they had. The Reformation should not be inferred from economic change as a necessity for the "evolution's history".

Conclusions

Protestantism is not just a religious movement, a branch of Western Christianity, but it is one of the great cultural currents of modernity, which emphasizes ethical and political values. God created man and placed him in this world, and man's task is to inhabit and transform it.

For Protestants, religious faith, ethics, politics and technology form an indivisible whole. This thinking led to Protestantism being said to have contributed decisively to the birth of modernity.

Protestantism was characterized, first of all, by its democratic character, fighting for the freedom of the individual; secondly, through the patriotism it has shown, fighting for the development of culture in the national language of that country; lastly, through its ethics, contributing to the emergence and development of capitalism.

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Control of the Administration of Insolvency Proceedings

Anca Roxana Bularca

Faculty of Law, Transilvania University of Brasov, Romania, bularcaroxana@yahoo.com

ABSTRACT: This material presents an analysis of the control exercised by the courts over insolvency practitioners for the conduct of insolvency proceedings. Depending on the legal systems and the choice of the legislator, the Member States of the European Union have chosen differently on the way of how the court intervenes in the conduct of insolvency proceedings. Thus, there are opinions according to which the insolvency procedure must be carried out entirely outside the court, but also opinions according to which the court must have a significant control within the insolvency procedure. The Romanian legislator combined the two opinions, totally opposite, establishing that the court, through judges specialized in insolvency, should have legal control over the conduct of insolvency proceedings, and only in cases expressly provided by law, to exercise control over opportunity.

KEYWORDS: insolvency, principle, court, control, judicial administrator, judicial liquidator, syndic judge

The principle of the administration of insolvency proceedings by insolvency practitioners under the control of the court

Modern insolvency law regulates the principle of administration of this procedure by insolvency practitioners, under the control of the court where the syndic judge operates. This principle was adopted to avoid those situations in which insolvency proceedings were at a standstill, due to lack or insufficiency of regulation, due to the passivity of creditors or due to the failure of insolvency practitioners to perform their duties under the law (Adam 2016, 117).

The regulations on the organization of the work of insolvency practitioners for insolvency proceedings provide that voluntary winding-up proceedings, as well as insolvency prevention proceedings, including financial supervision or special administration measures, are conducted by insolvency practitioners.

Consequently, the decisive role in insolvency proceedings belongs to the insolvency practitioners. Although they represent a liberal profession, the insolvency practitioners administer such procedures and perform a public function (Dinu 2015, 182), being subject to a control of the activity carried out by the syndic judge.

From this perspective, we find that the regulations on insolvency establish for insolvency practitioners a series of attributions, in the sense of legal obligations, being entitled to remuneration for the activity carried out.

A controversial issue and approached differently in state law is the designation of the insolvency practitioner. The legal possibilities verified in the legislative and judicial practice in insolvency are three, namely: the appointment to be made by the creditors, by the debtor or by the syndic judge. The legislator of the Insolvency Code opted for a mixed option, in the sense that the creditors have the priority of appointing the insolvency practitioner, and if they omit the appointment, the debtor will do it, and if he omits the appointment, the syndic judge will do it (Sărăcuț 2013, 20).

The judicial administrator

The judicial administrator is the compatible insolvency practitioner, authorized under the law, appointed to exercise the duties provided by law or established by the court, in the insolvency proceedings, during the observation period and during the reorganization proceedings.

The main attributions of the judicial administrator, within the insolvency procedure, are regulated by art. 58 of Law no. 85/2014 on insolvency prevention and insolvency procedures, and these are the following: examination of the debtor's economic situation and preparation of a report by proposing either entry into the simplified procedure or the continuation of the observation period in the general procedure; examining the debtor's activity and drawing up a detailed report on the causes and circumstances that led to the state of insolvency, mentioning any indications or preliminary elements regarding the persons to whom it would be imputable and on the existence of the premises for engaging their liability, as well as on the possibility real reorganization of the debtor's activity or of the reasons that do not allow the reorganization; drawing up the debtor's documents, in case the debtor has not fulfilled his obligation to submit them within the legal deadlines, as well as verifying, correcting and completing the information contained in the respective documents, when they were presented by the debtor; elaboration of the reorganization plan of the debtor's activity; supervision of the debtor's patrimony management operations; the full management, respectively in part, of the debtor's activity, in the latter case with the observance of the express specifications of the syndic judge regarding his attributions and the conditions for making payments from the debtor's property account; convening, chairing and ensuring the secretariat of the meetings of the creditors' meeting or of the shareholders, associates or members of the debtor legal entity; the introduction of actions for the annulment of fraudulent acts or operations of the debtor, concluded to the detriment of the creditors 'rights, as well as of some patrimonial transfers, of some commercial operations concluded by the debtor and of the establishment of some guarantees granted by him, likely to prejudice the creditors' rights; the emergency notification of the syndic judge in case he finds that there are no goods in the debtor's property or that they are insufficient to cover the procedural expenses; termination of contracts concluded by the debtor; verification of receivables and, where appropriate, objections to them, notification of creditors in case of non-registration or partial registration of receivables, as well as preparation of tables of receivables; the collection of receivables, the pursuit of the collection of receivables related to the debtor's assets or the amounts of money transferred by the debtor before opening the procedure, the formulation and support of actions in claims for the collection of the debtor's receivables, for which he may hire lawyers; concluding transactions, discharging debts, discharging guarantors, waiving real guarantees, provided that the confirmation of these operations by the syndic judge; notifying the syndic judge in connection with any issue that would require a solution by him; inventory of the debtor's assets; ordering the valuation of the debtor's assets, so that it is carried out by the date set for the submission of the final table of claims; submission for publication in the Insolvency Proceedings Bulletin of an announcement regarding the submission of the evaluation report to the file, within two days from the submission. The syndic judge may establish in charge of the judicial administrator, by conclusion, any other attributions besides those mentioned previously except those provided by law in his exclusive competence.

The Romanian insolvency code brought as an element of novelty, compared to the old regulation (Law no. 85/2006 on insolvency procedure), the detailing of the attribution regarding the supervision of the debtor's activity, this being defined distinctly from art. 5 paragraph 1 point 66 of the Law no. 85/2014 (Clopotari 2016).

Thus, the supervision exercised by the judicial administrator, in the conditions in which the debtor's right of administration has not been lifted, consists in the permanent analysis of his activity and the prior approval of both the measures involving the debtor's patrimony and those meant to lead to restructuring/reorganization; the endorsement shall be made on the basis of a report prepared by the special administrator, which shall also state that the conditions regarding the reality and timeliness of the legal operations subject to the endorsement have been verified and met.

The supervision of the debtor's assets management operations is performed by the prior notice granted at least regarding the following operations: the payments made by the debtor; concluding contracts during the observation period and during the reorganization period; legal transactions in disputes involving the debtor, endorsement of proposed measures for the recovery of claims; operations involving the diminution of assets, such as scrapping, revaluations, etc.; the transactions proposed by the debtor; the financial statements and the activity report attached to them; restructuring measures or amendments to the collective labor agreement; the mandates for the meetings and committees of the creditors of the insolvent companies in which the debtor company holds the status of creditor, as well as in the general meetings of shareholders in the companies in which the debtor holds shares; the alienation of fixed assets from the patrimony of the company in which the debtor holds shares or the encumbrance of their tasks.

It is found that this legal provision is likely to increase the liability of the judicial administrator (Oancea 2013, 61).

As far as we are concerned, we appreciate that this legal provision is welcome, even if it is contested by some insolvency practitioners, given the previously verified non-unitary judicial practice and the fact that in the Romanian private law system the judicial precedent is not a source of law.

Insolvency good practice manuals and initial or continuing professional training for insolvency practitioners have failed to provide a uniform interpretation and application of the concept of supervising the debtor's business during the insolvency proceedings insolvency and can continue its activity.

The legislator of the Insolvency Code understood to offer a protection for the insolvency practitioner establishing in art. 57 par.11 that he, as a body that applies the insolvency procedure, will not be able to be sanctioned or obliged to pay any court costs, fines, damages or any other amounts, by the court or other authority, for facts or omissions attributable to the debtor.

Prior to the adoption of the Insolvency Code, there were situations in jurisprudence in which insolvency practitioners were sanctioned for non-compliance with obligations by insolvent debtors, such as the imposition of fines for failure to submit mandatory financial statements to the competent tax authority of the debtor, for not fulfilling some obligations imposed by law on the debtor for environmental protection, for not fulfilling the legal obligation of the debtor regarding the protection of the objectives etc.

Also, in the jurisprudence prior to the Insolvency Code, the question arose whether the judicial administrator, respectively the judicial liquidator, can be ordered to pay the court costs, according to the provisions of the Code of Civil Procedure, when promoting legal proceedings in his own name or as legal representative of the debtor.

We consider that the insolvency practitioner does not bear responsibility for the debtor's omissions or actions this is because the civil liability is subjective and personal, in which case there is no liability for the deed of another.

As regards the payment of costs, when the insolvency plaintiff falls into claims, we must distinguish between the situation in which the judicial administrator/liquidator promotes a legal action in his own name, such as an action for annulment of fraudulent acts of the debtor or the action in engaging the personal patrimonial responsibility of the debtor's management bodies or the situation in which the judicial administrator/judicial liquidator promotes an action as a representative of the debtor, such as the action for recovering the debtor's claims from his own debtors.

In the first case, we consider that even under the insolvency Code the insolvency practitioner who has fallen into claims will have to bear the costs, because the provision of art. 57 para.11 does not exempt him from paying the costs only if we are in the presence "facts or omissions attributable to the debtor".

In the second case compared to the mentioned legal provision, if the debtor represented by the judicial administrator / liquidator falls in the claims, the court costs will be borne by the debtor's property, being unfair for the defendant who won the lawsuit to bear these costs.

In the literature (Bufan 2014, 85) it has been emphasized on this issue that a distinction must be made between the legal will of the debtor and that of the insolvency practitioner, between the debtor's patrimony and the insolvency practitioner's patrimony, between the debtor's liability and the insolvency practitioner's liability. Thus, it has been shown that the actions and measures of the judicial administrator or the judicial liquidator are exercised in the name and on behalf of the debtor, being that *legitimatio ad causam* which gives the insolvency practitioner the right to act in the interest of the procedure.

The judicial liquidator

The liquidator is the compatible insolvency practitioner, authorized by law, appointed to lead the debtor's activity in the bankruptcy procedure, both in the general procedure and in the simplified procedure, and to exercise the duties provided by law or those established by the court.

The main attributions of the liquidator are regulated by art. 64 paragraph 1 of Law no. 85/ 2014 and consist in the following: examination of the debtor's activity on which the simplified procedure is initiated in relation to the factual situation and preparation of a detailed report on the causes and circumstances led to insolvency, mentioning the persons to whom it would be imputable and the existence of the premises for engaging their liability, if a report with this object had not been previously drawn up by the judicial administrator; management of the debtor's activity; the introduction of actions for the annulment of fraudulent acts and operations concluded by the debtor to the detriment of the creditors 'rights, as well as of some patrimonial transfers, of some commercial operations concluded by the debtor and of the establishment of some preferential causes, susceptible to prejudice the creditors' rights; the application of seals, the inventory of goods and the taking of appropriate measures for their preservation; termination of contracts concluded by the debtor; verification of receivables and, where appropriate, objections to them, notification of creditors in case of non-registration or partial registration of receivables, as well as preparation of tables of receivables; following the collection of receivables from the debtor's assets, resulting from the transfer of goods or sums of money made by him before the opening of the procedure, collection of receivables, formulation and support of actions in claims for collection of receivables of the debtor, for which he may hire lawyers; receiving payments on behalf of the debtor and recording them in the debtor's property account; the sale of the debtor's assets, according to the provisions of the present law; under the condition of confirmation by the syndic judge, conclusion of transactions, discharge of debts, discharge of guarantors, waiver of collateral; notifying the syndic judge with any problem that would require a solution by him.

The control of the Court

The legislator regulated separately the institution of the bodies that apply the insolvency procedure.

Thus, according to art. 40 paragraph 1 of Law no. 85/2014, the bodies that apply the insolvency procedure are the courts, the syndic judge, the judicial administrator and the judicial liquidator.

The insolvency code provided for the first time, expressly, that the activity of the insolvency practitioner is carried out under the control of the court.

Regarding the notion of court in insolvency proceedings, we must consider on the one hand the jurisdiction of the first instance which belongs to the syndic judge, who is considered a body that applies this procedure.

However, the syndic judge is a judge, a magistrate, who is appointed to the tribunal or specialized tribunal to perform this task. The appeal can be declared against the decisions of the syndic judge, and it is resolved by the court hierarchically superior to the court, respectively the court of appeal. The syndic judge and the court of judicial control are the judicial bodies that apply the insolvency procedure.

The insolvency code did not provide the right of the court of judicial control, respectively the court of appeal, to establish attributions in charge of the judicial administrator or the judicial liquidator, this being provided only in favor of the syndic judge. It was also not provided that the duties of the syndic judge could be exercised by the court of judicial review.

It follows that the powers of the judicial bodies applying the insolvency proceedings are distinct. By way of example, art. 43 para. 7 of Law no. 85/2014 establishes that the court of appeal invested with resolving the appeal declared against the decision of the syndic judge rejecting the request to open insolvency proceedings, admitting the appeal, will annul the decision and will send the case to the syndic judge, for the opening of the insolvency procedure. It follows that the attribution of opening the insolvency procedure, established by art. 45 paragraph 1 letter a) of Law no.85/2014 belongs exclusively to the syndic judge, and the court of judicial control does not have the right to exercise this attribution.

The control of the court over the activity of the insolvency practitioner is exercised only by the syndic judge who works in the court or the specialized court, and the court of judicial control, which is the court of appeal, exercises control over the judgments pronounced by the syndic judge. In this sense, the decisions of the court of judicial control are binding on the syndic judge.

The Insolvency Code contains a series of legal provisions that give effectiveness to the principle of ensuring the control of the syndic judge over the insolvency practitioner, among which we mention: art. 45 paragraph 2 which establishes that the duties of the syndic judge are limited to judicial control or the judicial liquidator; art. 48 paragraph 7 which establishes that the decision of the creditors' meeting may be annulled by the syndic judge for illegality; art. 59 par. 5-7 the measures of the judicial administrator / judicial liquidator may be abolished by the syndic judge for reasons of illegality etc.

The syndic judge

The syndic judge has the obligation to verify his competence, according to art. 131 of the Code of Civil Procedure, the exception of incompetence can be invoked ex officio by the syndic judge, not only by the interested party (Cărpenaru 2014, 117).

Also, under the rule of Law no. 85/2006 in judicial practice (Sărăcuț 2015, 36) it was established that in order to determine the competence of the court to investigate an insolvency procedure, the debtor's registered office will be taken into account from the date of notifying the court the territorial district of another court.

Within the courts, specialized tribunals, or specialized insolvency sections of the specialized courts or tribunals, there are syndic judges, who make up the specialized insolvency panels and who are appointed by the management of the courts to carry out this activity.

According to art. 45 paragraph 1 of Law no. 85/2014, the main attributions of the syndic judge are the following: the motivated pronouncement of the decision to open the insolvency procedure and, as the case may be, to go bankrupt, both by the general procedure and by the procedure simplified; judging the debtor's appeal against the creditors' introductory request for initiating the procedure; judging the creditors' opposition to the opening of the procedure;

the motivated designation, after verifying the possible incompatibilities, by the sentence of opening the procedure, as the case may be, of the provisional judicial administrator/provisional judicial liquidator, requested by the creditor who submitted the request to open the procedure or by the debtor, if the request belongs to him; the confirmation, by conclusion, of the judicial administrator or of the judicial liquidator appointed by the creditors' meeting or by the creditor who holds more than 50% of the value of the receivables; the replacement, for good reasons, by conclusion, of the judicial administrator or of the judicial liquidator, according to the provisions of art. 57 par. (4); judging the requests to lift the debtor's right to continue his activity; judging the requests for attracting the liability of the members of the management bodies who contributed to the debtor's insolvency, according to art. 169, or the notification of the criminal investigation bodies when there are data regarding the commission of a crime; judging the actions introduced by the judicial administrator or by the judicial liquidator for the annulment of some fraudulent acts or operations, according to the provisions of art. 117-122 and of the actions in nullity of the payments or operations performed by the debtor, without right, after the opening of the procedure; judging the appeals of the debtor, of the creditors' committee or of any interested person against the measures taken by the judicial administrator or by the judicial liquidator; solving the request of the judicial administrator or of the creditors to interrupt the judicial reorganization procedure and to go bankrupt; resolving the appeals formulated to the reports of the judicial administrator or of the judicial liquidator; judging the action in annulment of the decision of the creditors' meeting; judging the requests of the judicial administrator/liquidator in situations where a decision cannot be taken in the meetings of the creditors 'committee or in the meetings of the creditors' meeting due to lack of quorum, caused by the absence of legally summoned creditors, at least two of their meetings; ordering the convening of the creditors' meeting, with a certain agenda; pronouncing the decision to close the procedure; any other duties provided by law.

Analyzing the attributions of the syndic judge, we can conclude that the legislator gave a very important role to him, in carrying out the insolvency procedure, increasing his attributions compared to those regulated by the former insolvency law.

According to art. 45 paragraph 2 of Law no. 85/2014, the attributions of the syndic judge are limited to the judicial control of the activity of the judicial administrator and/or of the judicial liquidator and to the judicial processes and requests related to the insolvency procedure (Dinu 2014, 734).

The managerial attributions belong to the judicial administrator or to the judicial liquidator or, exceptionally, to the debtor, if he has not been deprived of the right to manage his property.

The managerial decisions of the judicial administrator, the judicial liquidator or of the debtor who has retained his right of administration can be controlled in terms of opportunity by the creditors, through their bodies. In terms of legality, the acts and operations undertaken by the judicial administrator/judicial liquidator are subject to verification by the syndic judge, through the legal means (appeals) expressly provided by law.

However, there are situations in which the legislator has expressly provided attributions for the syndic judge in the sense of taking measures of opportunity, or the control of legality implies an interference with the control of legality, and in these situations the syndic judge, according to his specialization, will have to make a judgment in equity.

According to art. 342 paragraph 1 of the Insolvency Code, its provisions are completed with the provisions of the Code of Civil Procedure and of the Civil Code, insofar as they do not contradict.

In principle, the court implements an application of the law to the case brought before the court, from which it results that the Romanian judge does justice by achieving the conformity of the factual state with the rule of law.

Regarding the regulation of the civil process by the Romanian Code of Civil Procedure, we do not criticize the extension of the role of the syndic judge, given that the legislative solutions chosen took into account practical considerations, the insolvency law is a special law, and the legislator of the new Romanian Civil Code, but also that of the new Romanian Code of Civil Procedure, sometimes attributed to the judge the right to judge in fairness and to establish reasonable situations.

In this context, we appreciate that the attributions of the bodies that apply the insolvency procedure, including here the syndic judge, are limited to those expressly regulated by law, their legal enumeration being limiting and not enunciative (Turcu 2015, 145).

Conclusions

Another important principle for the insolvency procedure is its timely and reasonable conduct. From this perspective, the harmonization of the powers of the bodies applying the insolvency procedure is extremely important.

The specialization, professionalism and honesty of those called upon to apply the insolvency procedure are the key to success in ensuring another principle of this procedure, namely ensuring an efficient procedure.

In our opinion, the control of the courts should not be excessive, as it has the role of guidance, coordination and correction in order to apply the mandatory legal rules.

The specialization of courts and judges is an increasingly important requirement in the field of insolvency.

The achievement of the purpose of insolvency proceedings is also reflected in the manner in which the participants in this proceeding perform their duties.

I believe that the formation of a fair mindset for the successful administration of insolvency proceedings requires ongoing legal and economic training and ongoing cooperation between the bodies applying the insolvency proceedings, through joint training, the drafting of good practice manuals and the follow-up of uniform application the rules applicable to identical or similar factual situations.

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The History of the Prosecutor

Bogdan Buneci

Ecological University of Bucharest, Faculty of Law, Bucharest, Romania, bogdanbuneci@yahoo.ro

ABSTRACT: Today, the prosecutor is a magistrate who has the role of public prosecutor in a trial being the delegate of the prosecutor's office in court and having the role of overseeing the proper application of the law. At the same time, it must be ensured that the interests of the state are not harmed. The appearance of this institution takes place at the end of the medieval era in France and later imported into other countries in Europe and North America. At the end of the modern era, it can be found in almost every state, but, as we will see, in some places, it has different attributions. This study of synthetic origin aims to show broadly how the institution of the Prosecutor's Office was born as well as the characteristics that have shaped it over time in the various states that have adopted it. Exposure chronological information is based on information that we find in American and European historiography.

KEYWORDS: public prosecutor, lawyer, prosecutor, prosecutor's office, Ministry of Justice, Ministry of Interior, Public Ministry

The beginnings of the institution of the Prosecutor

The *idea of a prosecutor* appears in history at the end of the *medieval era*, in the 14th century (after 1300) in France, when the attributions of a new time as a public magistrate began to be delimited from the attributions of the lawyer. This was done at the request of French parliamentarians. His name and role are inspired by the procedure developed within the Inquisition court. The famous French prosecutor Jean-Louis Nadal best explains the appearance and role of this institution: *"historically, the specificity of criminal prosecution, both as a criminal prosecution body and as a defender of individual liberties, comes from the wisdom of the sea ordinances of Philip the Fair of March 23, 1303, laying down the king's oath formula in defense of the people stating that the accuser must also be responsible for the search for truth and the correct application of the law"* (Nadal 2006, 3).

Trying to explain in modern terms the delimitation of the duties of this new magistrate from those of a lawyer, we can say that the prosecutor of the *French Middle Ages* was a kind of lawyer who had the mandate to represent a certain party and had the right to plead. The separation between the two professions (prosecutor and lawyer) even if it was started in the time of *Philip the Fair* will take place definitively at the end of the fifteenth century (For a more complete overview of the entire course of shaping the institution of the prosecutor can be consultation: Perrot, 2008). Practically from now on, lawyers and prosecutors each have their own field of practice: lawyers specialize in counseling and written defense, and prosecutors will be responsible for accompanying litigants through the "mazes" of procedures (Leuwers 2010, 69-76).

In *Catholic Canon Law*, the difference between lawyer and prosecutor is very well reflected in the 1983 *Code of Canon Law* (The *1983 Code of Canon Law* or the *Codex Iuris Canonici* is the code that currently governs the *Catholic Church*. It was promulgated by *Pope John Paul II* on 25 January 1983 and entered into force on 27 November of that year, replacing the *Code of Canon Law* of 1917 and taking into account the amendments made by the Second Vatican Council, see: Metz 1983, 10-168).

Even if the "attributes" are essentially the same, only the prosecutor is mentioned as having a mandate from the parties (*Code of Canon Law).* The code also states that each party may have only one prosecutor, while the number of lawyers is not limited. This distinction between

lawyer and prosecutor was later adopted in Spain and the United Kingdom, which clearly defines the difference between the one represented and the one who applies and the one who pleads. We must add, however, that in the island for the one who has the attributions of a prosecutor the usual term used is also that of a lawyer (*Ibidem*).

In Eastern (Orthodox) Church Law, at first, the church adopted the norms of Roman or secular law and later elaborated its own legal norms. Before the church tribunals, a certain person could raise an accusation or the role of accuser could have the President of the Church Tribunal when, ex officio, he was notified. He used all the means at his disposal to prove the accusation (for example, an inquiry by a commission into the matter) after which, depending on the outcome of the investigation, a sentence could or could not be applied. These courts had the role of judging cases concerning only the church, as well as lay people for certain accusations, and the canons also mention lawyers who appeared at the beginning of the 5th century in matters concerning the church or persons under the protection of the church (Milaș 1915, 394). We can show that currently, church courts are organized in the same way as secular courts, so that a person from the church has the role of accuser - prosecutor.

In Canadian law, the prosecutor is defined as *"a person who has been given the power to represent and act in his or her place"* (Hubert 2015, 38) being the equivalent of the term English lawyer someone from the contradictory judicial system who writes pleadings on behalf of his client. There is no formal separation between lawyers and prosecutors the difference is rather between lawyers (specialists in litigation) and notaries (specialists in non-litigation). Semantically, this definition of the word "lawyer" in Canadian law is much closer to the meaning of the term when Canada (part of it) was under French administration than to the current meaning of the word in French law (*Ibidem*).

Beginning with King Philip, the French royalty in order to defend their interests appealed to this institution, which forced them to specialize and work in the service of the king, and in the fourteenth century prosecutors were even forbidden to work for people physical. It follows that the Advocates General of the French kings are the initiators of the prosecution and therefore the first prosecutors were recruited from among them. Also during this period, in order to limit the power and possibility of representation of the parties to the prosecutors, "case prosecutors" were appointed (Sueur 1994, 83-184).

Mercurials

Closely related to the fact that the prosecutor was subordinate to the king is the appearance of the term *Mercurials*. For the first time at the general assembly of the *Chambers of the French Parliament* which was convened every two weeks on *Wednesday*, the *First Prosecutor General* and the *Prosecutor General* took turns talking about reforms, Parliament's discipline and denounced the mistakes made by magistrates. Thus, the term came to refer to these discourses. The Mercurials then took place at the *French Grand Council*, as well as in other sovereign courts. This practice was prescribed by Charles VIII in 1493, then by Louis XII in 1498. Starting with 1539, the Mercurials resumed, taking place only once a month. In the sixteenth century, Mercury was reduced to one per quarter, and finally, in 1579, to one per semester (Gaudemet 2021, 482). In *Mercurials,* the *Prosecutor General's* speeches were always related to the duties of magistrates; the meeting was held behind closed doors, the speeches were sometimes very harsh to the magistrates, and in other cases they were mere reprimands. Because they took place behind closed doors, the phrase mercurial is also attributed to the phrase of small and private meetings. The most famous known Mercurials (19 in number) are those spoken by Henri François Agueseau as a lawyer and then by the Attorney General in the Parliament of Paris between 1698-1715. Agueseau's speeches were made in the purest grandiose style and referred to the duties and qualities of magistrates to the science (ignorance) of magistrates as well as to their human sense and character. His Mercurials became unofficially the code of the good magistrate (Agueseau 1865, 3, 21, *passim*).

The evolution of the prosecutor's institution in Europe and America

In *late sixteenth-century France*, we know that anyone who wanted to become a prosecutor had to be at least 25 years old, at least 10 years of study (10 classes in modern terms), to buy or inherit an office and last but not least, needed a university degree. This institution would evolve so rapidly that on the eve of the *French Revolution*, there were over six hundred prosecutors in Paris (Barbiche 1999, 339). During the French Revolution, by the laws of January 29 and March 20, 1791, the institution of "Prosecutors of Cases" was abolished, and from then on the prosecutor became a representative of power in the service of the people (Perrot 2008, 402).

On January 12, 1722, in accordance with the High Decree issued by *Peter I* (1682-1725), the *Russian Prosecutor's Office* (Senate Prosecutor's Office) will be established, the *Tsar* wanting to destroy the evil generated by unrest, injustice, bribery and iniquity. The emperor appointed *Count Pavel Jaguzhinsky* as the first attorney general of the Senate. Presenting him to the senators, Peter the Great stated: *"here is my eye, with which I will see everyone"* (*Ryazan Prosecutor's Office*, 2012). The main competence of the *Prosecutor General* was that of supervising the Senate and coordinating the subordinate prosecutors. In 1802, the institution will become an integral part of the new *Ministry of Justice*, and the *Minister of Justice* will also become *Attorney General*. In November 1917, after the *Bolsheviks* took power, the highest authority in the country, the *Council of People's Commissars*, adopted a decree by which the prosecutor's office would take over the newly established people's courts, as well as the revolutionary courts. In May 1955, by decree of the *Presidency of the Supreme Council* of the USSR, a legislative act was approved which in Article 1 gives *the Prosecutor General* of the USSR the prerogative to exercise the highest supervision over the precise application of laws by all ministries and institutions under its jurisdiction, as well as by all citizens of the USSR. After the collapse of the Soviet Union in January 1992, a new federal law on the *Prosecutor's Office of the Russian Federation* was adopted. Subsequently, in 1993, Article 129 enshrined the principle of unity and centralization of the prosecution system in the Constitution of the Russian Federation. As a result of legislative changes, the *Prosecutor's Office of the Russian Federation* was eventually formed structurally and functionally into an independent state body, which is not part of any branch of government (*Ibidem*).

By 1790, a new nation had formed in *North America*. After a revolution, a peace treaty and the election of the first American president will give birth to the *American Prosecutor's Office* which was different from similar institutions in the world at that time because it did not come from any other institution but was founded from scratch. Although much information remains unclear and undocumented about that period, some facts are known: such as the first prosecutors' offices in *Jamestown* and *Plymouth,* and until the *American Civil War* (1861-1865) the office of prosecutor was given to an officer whom changed after that (Jacoby 1997). According to a study published in the *Missouri Crime Survey* in 1926, the *American prosecutor* was defined as a senior public prosecution officer similar to the one in England whose duties were to prosecute for crimes and misdemeanors. However, the information is inaccurate or partially correct because in England, until 1879, no system of public prosecution of crimes was adopted (*Ibidem*).

In the history of Great Britain until 1829 there were no "instruments" of prosecution, and the only way was for the victim, at his own expense and in his own name, to organize such a demonstration or delegate a lawyer. After this year, with the emergence of new police forces, this institution began to take on tasks and criminal prosecutions against alleged criminals. However, the prosecutor's office was established in 1880 and Sir John Maule was appointed the first director of the Public Prosecutor's Office for England and Wales, which operated within the Ministry of the Interior (*The Crown Prosecution Service*, 2007).

In Spain, the foundation of this institution was laid only in the nineteenth century in 1835 during the reign of *Queen Maria Cristina* by the promulgation of a provisional Regulation for the administration of justice. In the beginning, the prosecutor was called *"the king's man"* and his activity was distinguished by the fact that the investigation had to be done impartially and not as before. In the modern era of Spain, the most important additions to this institution took place in 1870 when the recruitment of members had become much more transparent (Catena 2008, 66).

In Italy, institutions of the prosecutor existed in the united duchies and proclaimed the Kingdom of Italy (1861). With the reform of the Italian Penal Code in 1889, the role of the investigating judge was abolished, the process acquired distinct characteristics, and the obligation to prosecute was entrusted to prosecutors (Amato 2009).

In the historical Romanian province of *Bessarabia*, after its taking by force by the *Tsarist Empire*, the regional institution of the prosecutor's office was created by the Regulation of July 23, 1812, through the functioning of the provisional institutions. In May 1818, Russia appointed a general prosecutor in this Romanian province and in the counties a county prosecutor (*Istoria organelor Procuraturii* 2008, 2).

The appearance of the Romanian prosecutor's institution will see the world in the modern era of history, more precisely with the establishment of the *Organic Regulations* when, in 1831, the *Public Ministry* will be established in *Wallachia* (Cochinescu 1997, 161-163). The next step in the evolution of the institution will take place after the *"Little Union"* when the institution of the prosecutor will be organized according to the French model, this happening in 1865. From this moment, the Public Ministry will be organized in prosecutor's offices to be led by prosecutor's magistrates. Starting with 1866, they will be appointed by Carol I, being hierarchically subordinated under the general prosecutors of the courts of appeal (Șerban and Barbu 2009, 89).

This institution will change in the interwar period when it will receive new responsibilities such as the detention of defendants for investigations for a period of 48 hours and the possibility of extending the detention for another three days (Poenaru 2003, 3-4). Starting with 1945, when the Public Ministry will change in the Prosecutor's Office, the prosecutor's attributions regarding the person's freedoms will be extended, including by the appearance of the preventive arrest measure (Muraru and Tănăsescu 2003, 180) transferred to the judge (Șerban and Barbu, 2009, 90) *("Representative changes in this regard were made in 2003, by Law no 281/2003 amending and supplementing the code of criminal procedure, as well as by Law no 429/2003 revising the Romanian Constitution, when the power to order pre-trial detention was passed exclusively to the judge")*.

Although the institution of the prosecutor will be regulated in the Constitution of 1952, no improvement will be brought to him regarding the freedom of the person (Constitution of Romanian People's Republic of 1952). The 1965 constitution comes with significant provisions for prosecutors such as the right to supervise the activities of criminal prosecutors and those serving sentences, ensure compliance with the law as such the role of a prosecutor was much more complex (Șerban and Barbu, 2009, 90). Currently, the institution of the prosecutor is regulated within the judicial authority section II, art. 131-132 of the Romanian Constitution and in Law no. 304/2004 regarding the judicial organization, with the last modification by G.E.O. no. 215/2020 (Republished in "Of. G." 2005).

Conclusions

The prosecutor appears in history in the fourteenth century when the duties of a new time as a public magistrate began to be delimited from the duties of a lawyer.

At the beginning, those who led, in order to defend their interests, turned to the institution of the Prosecutor, whom they forced to specialize and work in their own service.

Mercurials were speeches by the Prosecutor General and were always related to the duties of magistrates.

The first country where the prosecutor appeared was France, a few centuries later it spread to Russia, and with the beginning of the nineteenth century this institution spread throughout Europe.

On the American continent, in the USA, the institution of the Prosecutor was a new one that was not based on any other old foundation and the one who served as a prosecutor was a military officer.

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Legislative and Jurisprudential Analysis Regarding the Satisfaction of Romanian Patients Regarding the Performance of the National Health System

Cristina-Luiza Erimia

Ovidius University of Constanta, Faculty of Pharmacy, Constanta, Romania
cristinaerimia@gmail.com

ABSTRACT: Health spending in Romania is the lowest in the EU, both per capita and as a percentage of GDP, and lack of financial resources and demographic challenges endanger the sustainability of the health system. Because a key factor of patient satisfaction is the responsiveness of the national healthcare system and the strategic changes' implementation, this article aims to analyse how the standard of protection created at the level of the European Union by means of the Directive on cross-border healthcare is implemented and complied with in national legislation. A modern healthcare system must be centred on patient needs, to have dynamic and integrated structures, adaptable to the various and changing healthcare needs of society in general and of individuals in particular. For these reasons, by presenting the Petru case, the article examines the degree of harmonization of national policies in view of reforming the national health system, contributing to social cohesion and social justice, as well as to eliminate any restrictions to the fundamental freedoms of European citizens.

KEYWORDS: patient satisfaction, European law, national legislation, health system, patient mobility, cross-border healthcare, fundamental rights

Introduction

In 2019, health spending across EU countries stood on average at 8.3% of GDP, ranging from over 11% in Germany and France to less than 6% in Luxembourg and Romania. On a per capita basis, there is a threefold difference between the EU countries in Western and Northern Europe that spend the most on health (Germany, Austria, Sweden and the Netherlands) and those in Central and Eastern Europe that spend the least (Romania, Bulgaria, Latvia and Croatia).

As health expenditures in Romania are the lowest in the EU, both per capita (1.029 EUR, the EU average being 2.884 EUR) and as a percentage of GDP (5.7% compared to 8.3% in the EU), underfunding of the system and demographic challenges threaten the sustainability of the health system.

In 2017, 4.7 % of Romanians reported unmet needs for medical care because of cost, distance or waiting time, compared to an average of 1.7 % in the EU (OECD, 2019). The availability of services is unequal across the country. The skewed distribution of health care facilities means that access to both primary and specialist services is poorer in rural areas. Access imbalances disproportionately affect certain disadvantaged socioeconomic groups - people without income who are not registered for social benefits, pensioners, agricultural workers, and the Roma population (Council of the European Union 2019).

Regarding the health system capacity to adapt effectively to changing environments, sudden shocks or crises, lack of financial resources and demographic challenges jeopardize health system sustainability.

Patient satisfaction is an important indicator of the evaluation of a health system. The literature (Xesfingi and Vozikis 2016) shows that a key factor of patient satisfaction is the receptivity of national healthcare system for the implementation of strategic changes.

To ensure access to high-quality healthcare and the more efficient use of public resources (strategic objectives of the European Union), the European Commission [COM

(2012)] has recommended reforming health systems to ensure their cost-effectiveness and sustainability, as well as evaluating their performance.

The Court of Justice of the European Union has developed over time a rich jurisprudence that has been refined with each reference for a preliminary ruling to the Court by the courts of the Member States.

The Court had the role to pave the way for the realization of the right granted to any person (Marin 2014, 122-126) under Article 35 of the Charter of Fundamental Rights of the European Union to have access to preventive healthcare and to receive medical care.

Theory

Due to the very rich jurisprudence in this field, the right of Union citizens to use cross-border healthcare as unconstrained as possible, which is generally known by the notion of "patient mobility", have been clearly outlined.

As healthcare had been excluded from Directive on services in the internal market (2006/123/EC), in the European legal context it was imperative that these issues be addressed on the basis of a legal instrument, by means of which the principles established by the Court of Justice, in each case, to be applied generally and effectively.

In the absence of the legal force of a European regulation, the free movement of patients would have created a competition between the health systems of Member States to attract more patients, thus raising the likelihood that, by the free access to cross-border services, a drop in the price of medical services throughout the European Union take place, to the detriment of the quality of healthcare services.

Directive on cross-border healthcare (2011/24/EU) codifies and clarifies the jurisprudence of the Court of Justice of the European Union with regard to the rights of patients to be reimbursed for healthcare received in another Member State. The Directive does not deal solely with the rights to reimbursement, but also introduces a number of significant flanking measures to support patients in using these rights in practice. As a result, there is now a minimum set of requirements which applies to all healthcare provided to patients in the EU, requirements that relate to both transparency and information for patients, as well as the safety and quality of care.

Results and Discussions

In the field of the provision of cross-border healthcare services a certain overlap of EU law with national law is reached, so that in many cases European law (Botină, Dobre, Munteanu 2015, 57-61) is essentially limited to indicating a compulsory aim, namely achieving the free movement of citizens patients and their equal treatment, irrespective of nationality, in relation to national authorities, while maintaining the powers of Member States.

The main principles proclaimed by Directive 2011/24/EU have their legal source, as shown above, in a long series of cases in which the Court has identified the limits-imposed Member States by Union law on restricting patients' right to use medical services in the European internal market.

The Petru case was a first in the case law of the Court because it was the first time when was addressed a question regarding cross-border healthcare based on the poor medical conditions affecting the State of residence, in this case Romania.

In order to rule in the case of Mrs Petru, the Court had to consider on the one hand, if a deficiency or shortcoming of the material conditions within a healthcare institution, in certain circumstances, can amount to a situation where you cannot timely perform a certain medical benefit, which is still included among the benefits covered by the social security system.

Secondly it had to be examined whether the mentioned shortcomings and deficiencies in the hospital facilities in Romania, which correspond to a systemic situation due to different circumstances (natural, technological, economic, political or social) can be the equivalent to a situation where the medical benefit cannot be provided in a timely manner.

The Court of Justice of the European Union is the one that assesses the scope of the EU legal framework established by Article 49 EC for the exercise of the competences of the Member States. It is also incumbent on the Court, assigned by the founding treaties, that by the interpretation given to a provision of European law, to clarify and specify its meaning and scope, such as to be understood and applied from the time of its entry into force.

Starting from the main applicable legal and legislative aspects in the case of Mrs Petru, the Court has given an interpretation based on the freedom to provide services (Brașoveanu 2011, 86-102), but which takes into account the very different and heterogeneous circumstances characterizing the healthcare sector in Europe.

In fact, Mrs. Elena Petru, who was suffering from serious vascular diseases, needed in 2009 an urgent surgery that was to be performed at the Institute of Cardiovascular Diseases in Timisoara.

Given the seriousness of the necessary surgery, as well as poor material conditions provided at the hospital in her State of residence, Mrs. Petru requested an authorization to perform the surgery in Germany. Because not received the prior authorization (form E112), Mrs Petru addressed a clinic in Germany, where the surgery was performed. Immediately after the treatment carried out in another EU member state, Mrs. Petru filed a civil suit at the Sibiu Court, through which she requested the reimbursement of the expenses incurred in Germany. By the preliminary address to the Court (Case C-268/13), the Tribunal of Sibiu asked whether if a generalized deficiency of basic sanitary conditions in the country of residence should be considered a situation where it is necessary to provide the treatment in another Member State.

In its judgment of October 9, 2014 ([ECLI:EU:2014:2271]), the Court stated that in order to assess whether a treatment that presents the same degree of effectiveness can be obtained in a timely manner in the Member State of residence, the competent institution is obliged to consider all circumstances which characterize each specific case. Among the circumstances which the competent institution is required to take into consideration may be included, in a particular case, the lack of medicines and medical supplies of primary necessity because, as in the absence of specific equipment or specialized competences, their absence may, obviously, make it impossible to grant identical treatment or having the same degree of efficacy in a timely manner in the Member State of residence.

Conclusions

The Petru case was a first in the case law of the Court because it was the first time when was addressed a question regarding cross-border healthcare based on the poor medical conditions affecting the State of residence.

In our view, the Petru case is symptomatic and relevant for the illustration of the realities of the Romanian health system.

It may be noted that at present, citizens, especially those from vulnerable groups, do not have basic information on their rights and obligations as patients. The lack of this information is due, on the one hand, to the lack of activity in the healthcare system in terms of communicating the minimum information on these rights and obligations, but also to a certain social inertia which has not hitherto led the interest of the Romanian patient in this matter. Basically, citizens find out his rights and obligations in relation to the health system only when they have a problem in this area and get to use one or several services of the health system.

Transparency is an essential feature of an effective healthcare system, access to information also empowering citizens to participate effectively in political decisions taken at European, national and international levels.

The quality of the health services provided to patients it is often diminished by the lack of the financial and material resources needed, with the consequence of the failure to involve the full potential of the medical body. The question is to what extent the State fulfils its obligations to ensure the health and therefore quality of life of the population.

According to the latest Euro Health Consumer Index (EHCI 2018) report, Romania cannot reach the average performance parameters of the other European Union countries unless sufficient funds are allocated for public health.

Romania does have severe problems with the management of its entire public sector. In healthcare, discrimination of minority groups such as Roma population (3½ - 4% of the population) affects the poor Outcomes, which in the EHCI 2018 is unfortunately punished harder than in previous editions. Also, Romania together with Albania and Bulgaria are suffering from an antiquated healthcare structure, with a high and costly ratio of in-patient care over out-patient care.

For civil society it is necessary to monitor whether the state develops appropriate policies to promote access to health, so that individuals have access to information about the development and implementation of public health policies, without their fundamental rights being violated (Rotaru 2014, 262-263).

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The Basis of Punishment. The State's Right to Punish

Mariana Mitra-Niță

Assoc. Prof. Ph.D., Faculty of Law and Administrative Sciences, "Ovidius" University of Constanța
mariana_mitra@yahoo.com

ABSTRACT: One of the three fundamental institutions of the criminal law is the sanction. It represents the right, and also the obligation of the state to intervene when a legal norm with a criminal character is violated. However, what is this right of the state to sanction? What is the origin of this right and what is its usefulness? These make up only a small part of the many questions that jurists and philosophers have raised throughout history, trying to objectively justify the basis of punishment. The reason for repression must consist not in the state's desire for revenge, but in preventing in the future the commission of dangerous acts related to the most important social values, since, as Cesare Beccaria said, "it is more effective to prevent than to treat!" The need for punishment stems from the innate human instinct of conservation in order to preserve one's own species.

KEYWORDS: punishment, rule of law, prevention, preservation, crime

1. Introductory notions. What is punishment? Punishment from the perspective of the philosophy of law

Any human society of a secular or religious nature imposes a certain state of social order, and this determines a certain type of behavior on the part of the society's members. Normally, usually, this state of order and discipline has a social, material, moral (Rotaru 2016, 29-43) and legal support, materialized in the rules of conduct established within the respective society.

In the absence of rules, norms of conduct with a moral or legal character, the state of order necessary for the life of any society cannot be ensured. For these reasons, in the event of the violation of these rules, various sanctions, meant to enforce general respect and to defend and preserve the state of order necessary for the existence of the human community, have been imposed by the leaders of the society.

Over time, sanction has known various states, types and forms, so that at the beginning of the human society it had the form of unlimited revenge, then it had the form of lex talionis - limited to the evil done "*eye for an eye*", the noxal surrender, according to which the culprit was handed over to the family of the one guilty of collective responsibility, the composition, which consisted of a compensatory indemnity that excluded the right to revenge, known to the Romans in the time of the Twelve Tables.

Private revenge has long existed, along with public punishment (Basarab 1997, 222). Later, with the development of the society and the support of the church, which suspended the practice of revenge, Greek law and the Law of the Twelve Tables considered that the only party entitled to judge the illicit acts was the state.

The criminal law sanction appears as a measure of repressive and preventive coercion. It is a means of re-education, provided by the law, being applied by the court, to natural and / or legal persons who have committed prohibited acts, incriminated by the criminal law, in order to preclude, prevent the commission of new offenses, but also to restore the affected rule of law.

Criminal sanctions are fundamental elements of criminal judicial regulations. They are necessary in order to express the abstract gravity of the deed provided by the criminal law and the warning addressed to all the members of the society regarding the consequences of violating criminal law. As a component of the criminal judicial conflict relationship, the sanction appears as

a normal, even natural consequence of criminal law, proportional to the gravity of the deed, the consequences generated, and the concrete threat presented by the perpetrator.

The actual enforcement of sanctions is extremely complex and rigorous, and it represents an important step in the fight against crime, because when the convicted person is made to serve the sentence imposed upon him/her, he/she must understand that his/her deed is disapproved by the society and that his/her punishment is not just a formal provision of the law. Only in this way will the enforcement of the sanction have the desired effect, i.e., to prevent in the future the commission of other offenses by the person already sanctioned or by other persons.

According to the explanatory dictionary of the Romanian language, punishment is a measure of repression, a sanction applied to the one who committed a mistake; a coercive measure provided by the law and applied to someone by a court as a sanction for a crime: conviction, sentence. The term punishment is a regressive derivative of the verb *a pedepsi*, derived from the neo-Greek word "epedepsa" (aorist of "*pedevo*"). According to other opinions, the notion of punishment comes from the Latin word *poena*, which means punishment.

Historically, the concept of punishment includes a diverse variety of forms of exteriorization, as well as a variety of its content. It has evolved from the sacro-magical idea of the perpetrator's sacrifice to the barbarity and cruelty of corporal punishment and the capital punishment in the Middle Ages and later, to the contemporary custodial sentence of the Modern Age (Barac 1997, 244), at present.

For these reasons, an accurate analysis of the punishment is an extremely difficult operation, as punishment is a historical phenomenon which has accompanied the evolution of the society step by step, with huge differences in terms of the punishment method depending on the historical period we refer to.

With the emergence of Christianity, the idea of the ethical responsibility of the perpetrator appeared and developed. Thus, in the Middle Ages, punishment was a response to the moral guilt of the delinquent, due to the influence exerted by the ecclesiastical theory of penance.

In Romanian law, the word *punishment* was not used in the past, until being introduced by the Phanariots (Barac 1997, 242). This word has a Greek origin and was a derivative of the verb "*to learn*", since Greek teachers did not conceive of teaching without punishment (Rotaru 2006, 16; Tanoviceanu 1924-1927,15).

A more precise definition was given by Carrara, namely: "*punishment is the evil that, according to the laws of the state, the magistrate imposes on those who are properly recognized as guilty of a crime*" (Rotaru 2006, 17).

2. The notion and characterization of the punishment in criminal law

Punishment, in criminal law, is defined as a criminal law sanction, consisting of a measure of coercion and re-education, provided by the law and applied to the perpetrator, by the court, in order to prevent the commission of new offenses (Pascu, Drăghici 2004, 342; Oancea 1995, 202; Ungureanu 1995, 270).

In the current Criminal Code, the legislator no longer expressly provides its definition, as it did in the previous Criminal Code, the one from 1969, which in art. 52 stipulated that punishment was "*a measure of coercion and a means of re-educating the convict. The purpose of the punishment is to prevent the commission of new offenses. The enforcement of the punishment aims at forming a correct attitude towards work, the rule of law and the rules of social coexistence*".

Thus, from the previous and current provisions, it follows that punishment is a measure of coercion and re-education. Hence, its most important features. Punishments are characterized by several specific features, which give them a "*specific, common physiognomy*" (Oancea 1995, 198), which distinguishes them from the other types of legal sanctions:

- ***punishment has a legal character***. This feature results from the analysis of art. 1 and 2 of the Criminal Code, which establishes the following: *the law stipulates which deeds constitute crimes, the punishments that apply to the perpetrators and the measures that can be taken in case of committing these deeds*. In the incrimination norm, punishment is provided both in terms of nature and of duration, and the court has the obligation to apply the punishments provided by the law only within the limits established by it, and the eventual exceeding of its limits can only take place as a result of retaining mitigating or aggravating circumstances and only in accordance with the law. Giving rise to a series of personal and social consequences, criminal law sanctions are expressly stipulated in the criminal law (Barac 1997, 223), thus having a legal and binding character.

- ***punishment has a determinative character***. This particularity of the punishment derives from its adaptable character (Basarab 1997, 226), as it can be proportionate, according to the principle of the individualization of punishments, depending on the concrete threat posed by the crime, the perpetrator, the mitigating or aggravating circumstances in which the deed was committed, or depending on the consequence which was produced or could have been produced. The punishment established by the court as a result of committing a crime is always absolutely determined (Drăghici 2006, 379).

- ***punishment is a public sanction***, being a means of state coercion (Ungureanu 1995, 270), since, being a social reaction, punishment can only be applied by the state, through its organs, on behalf of the entire society. The punishment is applied only by the court, within the criminal process, no other state body having this right.

- ***punishment is inevitable***, a feature which derives from its public nature. Thus, the prosecution and the enforcement of the punishment is usually done ex officio by the public authorities. Those who have committed a crime must know that they will not escape the unpleasant consequences of applying the sanction corresponding to the act committed.

- ***punishment has an afflictive character***, since it consists in a coercion which determines deprivations or restrictions of rights, depending on their nature, duration, and conditions in which it is executed. Punishment is the harshest of all the criminal law sanctions. The person to whom it applies is forced to suffer a restriction or deprivation (Vabres 1947, 197). Thus, the convict is made to suffer a penitentiary detention, to pay a sum of money, or, if released, certain restrictions are imposed on him/her. The application and enforcement of the punishment implicitly produces a certain moral (Ivan 2001, 490), physical or material suffering of the convicted person, meant to contribute to his/her correction and re-education. If the punishment did not produce such a suffering, one could not speak of the idea of sanction, of social reproach and one could not achieve its purpose, i.e., of preventing the commission of new offenses. Everything that is imposed on someone, for him/her it seems as oppression, as an obstacle in the way of his/her will, that is why any person with or without consciousness suffers when his/her will is forbidden (Drăghici 2006, 375). Suppressing the afflictive character of the punishments is an unachievable desideratum (Dongoroz 2000, 460).

- ***punishment has an educational character***, since, once applied to the perpetrator, it helps him/her to correct himself/herself, it makes him/her understand that the rules of collective coexistence and social values must be respected. At the same time, the punishment applied to perpetrators can serve as an example for other people, who can learn from the coercion applied to the perpetrator, thus having an important educational effect also on them.

- ***punishment has a personal character***, i.e., it must be applied only to the person who actually committed the crime or who directly or indirectly contributed to its commission.

3. Punishment's traits. The main characteristics of the punishment are:

- punishment is a *treatment* which involves certain suffering; (Rotaru 2006, 20)
- punishment must be applied only to the author of the illicit act;

- punishment is the natural consequence of a crime;
- punishment must be applied only by the state authorities;
- punishment is applied in order to prevent the commission of new offenses.

All the doctrinaires in the matter and not only them agree that punishment is par excellence an evil, i.e., a type of suffering imposed on a person. This particularity of punishment raises the least fears on the part of those who have formulated different definitions of the punishment.

Thus, punishment is an evil, but which responds to the evil produced by committing the dangerous illicit act. The suffering caused by the application and enforcement of the punishment derives from the long series of deprivations which the convict will endure.

J.D. Mabbot emphasized the fact that "*punishment is not a physical suffering, but rather a moral one. To associate punishment with an evil means to assign to it moral connotations, thus being a negation of the desired good, it would be more appropriate to associate it with the term displeasure (disliked)*" (Betegon 1992, 136-142).

The above-mentioned author does not agree with the terms "pain", "suffering", "evil" used quite often in the analysis of the basis of punishment. The author considers that the punishment, by its application, presupposes only a deprivation of certain pleasures and needs of its recipient. For example, the fine involves neither suffering nor pain, and even the most severe punishment - the death penalty - tries to produce, in civilized countries, as little physical suffering as possible.

Del Vechio is convinced that punishment is a good and not a bad thing, but we believe that this meaning is the result of using a metaphorical type of expression.

In relation to its nature, punishment represents and of course consists in an imposed behavior. We do not understand, thus, that punishment must necessarily be a negative experience, it is enough that it represents only a limitation or restriction of the exercise of rights. In order to achieve its purpose and fulfill its role, punishment must be applied only to the perpetrator of the illicit act. Applying the punishment to another person, who is innocent, not guilty and sending him/her to prison, can no longer be called *punishment*.

Punishment must be the consequence of committing a crime. Thus, punishment appears as the result of an offense, being applied only post delictum. For these reasons, punishments are presented as legal consequences of the non-compliance with certain rules of conduct.

Punishment is applied and enforced in order to prevent the commission of new offenses. This essential feature of the punishment reflects the feeling of confidence in the punishment's ability to change the behavior and mentality of the convict, so that, in the future, he/she does not relapse into a new criminal behavior.

4. The purpose of the punishment

The existence, application and enforcement of the punishment represent the main means of accomplishing the purpose of the criminal law. It consists in defending society's fundamental values against those who violate the legal order. Naturally, it coincides with that of criminal law and policy.

This defense, protection, conservation cannot be achieved other than by trying not to commit dangerous acts in the future, i.e., preventing the commission of new offenses ante-factum. "*If it is considered that a legitimate function of the state is to achieve certain ideals of justice, criminal law will be understood as an instrument in the service of the values of justice. Criminal law could be justified as a socially useful tool*" (Bacigalupo 1994, 17).

In the specialized doctrine, different purposes are assigned to the punishment, such as: general prevention, special prevention, retribution.

According to absolute theories, punishment is an end in itself. As for relative and mixed theories, they assign to punishment a utilitarian or social purpose. Therefore, Maurach said that

absolute theories are theories of punishment, not theories regarding the purpose of punishment (Maurach, Zipf 1994).

In relation to the theories based on retribution, where the crime is seen as the evil to be fought, the purpose of the punishment is to answer for this evil through suffering.

Professor Vintilă Dongoroz (Dongoroz apud Tanoviceanu 1924-1927, 202) indicated that there is sometimes a confusion between the purpose of the punishment and its character. Society correlates the punishment with the committed deed, therefore, for the society, as well as for the perpetrator, the punishment will always have a retributive character, regardless of its foundation or purpose.

In preventive-integrative theories, where punishment is justified by its intrinsic value of preserving and reaffirming the feeling of fidelity to the norm, the punitive environment is identified with the purpose, in the sense that it is conceived as a good which becomes purpose in itself (Ferrajoli 1997, 239).

The theories promoting special prevention endorse the correctional purpose of the punishment, assigning to it, a priori, functions which are claimed to be satisfied, although they are not actually achieved or may not even be achievable (Ferrajoli 1997, 330).

The theory of negative general prevention assigns to punishment the purpose of preventing the commission of offenses. It has the merit of dissociating the means used in criminal law, conceived as evils to be suffered by the perpetrator, from the extra-criminal purposes. Being essentially an evil, punishment can be justified only if the harm it entails is less serious than the social reactions that could be triggered by the commission of the offense and only if the victim obtains the same satisfaction as from uncontrolled, unpredictable punishments (Ferrajoli 1997, 330).

5. The functions of punishment

The function represents the means or the activity, method or path through which the proposed goal can be fulfilled and achieved (Ungureanu 1995, 271). Thus, punishment has several functions, with the role of influencing the future conduct of the convict, as well as sounding the alarm also for other people, regarding the possible consequences that they would bear in case of committing an offense.

Axiologically, we cannot discuss the functions of punishment, since punishment does not have an objective manifestation, likely to give rise to such consequences, effects. However, in the sphere of criminal policy, punishment must fulfill certain functions, so that the punishment provided and applied could lead to the achievement of the proposed goal and must thus fulfill certain requirements, rigors. Therefore, the functions of punishment lead to the fulfillment of its purpose and have the particularity of alerting potential perpetrators to the consequences of committing an illegal act. In the Romanian criminal law, the following are stipulated as functions of punishment: the coercion function, the re-education function and the exemplary function (Bulai 1997, 286-288).

The French legal system, from which our criminal law has drawn inspiration, enshrines as functions of punishment the function of: intimidation, retribution and rehabilitation (Stefani, Lavasseur 1997, 362-367).

In the Italian criminal law, the functions of punishment are circumscribed to the main ideas of retribution, intimidation and re-education, remarking that with the entry into force of the Republican Constitution, due to the influence of the discoveries in the field of criminology and sociology, which promoted the idea of general prevention, the focus is on the non-retributive mechanisms.

Thus, viewed from a retributive perspective, the main functions of the punishment are: reproach and blame. Blame is a real and indisputable social fact. Émile Durkheim stated that

the offense provokes a "*passionate reaction. All the offenses provoke a more or less violent emotional reaction, which turns against the offender*" (Cusson 1987, 83).

In this context, the formal retribution function aims to regulate the relations between two parties. It is the resultant which appears, which is offered in exchange for the offense. The promoters and supporters of the retribution function consider that the punishment is applied to the criminal, as he/she committed an offense and not for the purpose of preventing or fighting crime. For example, the criminals of the Nazi regime are punished in order to do justice and not for prevention.

Another function, that of guarantee, is an inevitable effect of retribution, so that every time a person commits an offense, he/she will bear the application and enforcement of the correlative punishment.

Supporters of retribution reproach the supporters of utilitarianism the fact that they instrumentalize the person, that they use him/her for preventive purposes and that in applying the punishment, their theory could lead to exaggerated sanctions compared to the gravity of the deed, even up to the punishment of an innocent person.

From **a preventionist perspective**, punishment has the following functions: general and special intimidation. Through the intimidation function, both the perpetrator and the individuals tempted to follow the example of the punished person are targeted. According to this function, the punishment works as an intimidating force from the moment it was stipulated in the law and it amplifies at the moment of its application and enforcement. In order for the intimidation to be effective, it is necessary for the application of punishments to have a certain consistency. The more regularly a criminal system works, the more intimidating the effect (Diaconu 2001, 111-112).

Neutralization or elimination is the way in which punishment works with maximum intensity for the social defense. Elimination can be temporary or permanent and can be carried out by the application of a prison sentence (Bulai 1997, 266).

Resocialization. This term was introduced into the legislation by E. Smidth. The concept of resocialization appears for the first time in the specialized literature after the First World War, in order to replace the term "correction" (to make better, to correct the delinquent). Resocialization is usually defined in antithesis with other terms, in particular that of "retribution". Thus, it manages to cover a very wide range of directions, starting from anti-retributivism and reaching neo-retributivism. In general, re-education is seen and wants to be perceived as, a real instrument able to influence the mentality of the convict (Pascu 2014, 373).

Thus, re-education consists in influencing the mentality and skills of the convict, in the sense of removing his/her antisocial attitudes and training other attitudes, corresponding to the requirements imposed by the society at a certain time (Diaconu 2001, 108), serving special prevention.

The re-education function has the role of completing the coercion function, there being a close connection between the two, since one cannot exist without the other. Coercion cannot lead to the achievement of the purpose of the punishment without a transformation of the convict, through the function of re-education. In order to carry out the activity of re-education of the convict, the foundations of an entire system of methods and means of education were laid. On the occasion of his/her criminal prosecution, an appeal is made to his/her conscience, indicating the committed offense, as well as the social disapproval. During the enforcement of the punishment, the convict is subjected to a complex system of training and raising of the cultural level. He/she is recommended to learn a job and is subject to an action of moralization, i.e., understanding the norms and moral requirements existing in society, and after serving his/her sentence, he/she is helped to find a job suitable to his/her skills (Oancea 1995, 206).

Exemplariness consists in the influence that the punishment of perpetrators has on other subjects, who, seeing the consequences they have to bear, will refrain from committing offenses, the so-called self-censorship. However, this function is conditioned by the speed and

promptness of prosecuting those who have committed offenses (Ungureanu 1995, 271), thus serving the general prevention.

Coercion derives from the nature of the punishment as a measure of coercion and consists in the intentional infliction of physical, material or moral suffering to the perpetrator, the obligation of the perpetrator to do or not to do something. The coercive function can be achieved by applying and imposing a fine, by imprisonment which consists in the deprivation of liberty, where the convict is removed from his/her family, is supervised and numerous restrictions are imposed on him/her.

Coercion can be seen as a deprivation of the perpetrator of material (money) or moral (rights) goods. Coercion can also be performed in the framework of the enforcement of the punishment in places of detention, or coercion of a moral nature which is felt at the moment of classifying the committed deed as an offense. These types of constraints have the ability to influence the convict to reflect on his/her past and future conduct. The coercion function helps post factum, special prevention. Coercion, as an instrument of achieving the usefulness of the punishment, must not cause suffering to the convict, other than those permitted by law. This is mentioned in the Constitution in art. 22 para. 2: "no one shall be subjected to torture or to inhuman or degrading treatment or punishment".

The function of ***elimination*** consists in the removal, temporary or permanent isolation (Lefterache 2018, 236) of the convict from society, through the application and enforcement of a custodial sentence (Boroi 2017, 447). In this way, the society is protected from the danger he/she would pose to it. Elimination contributes to the re-education of the convict, as well as to the change in his/her attitude towards the social values protected and promoted by the criminal law. Thus, it serves general and special prevention at the same time.

6. Principles governing the institution of criminal law sanctions

Sanctions of the criminal law and, implicitly, punishments, as fundamental institutions of criminal law are governed by certain basic, general ideas, in the absence of which their establishment and application would be incomplete and inaccurate. Some of the principles of criminal law sanctions are common to other fundamental institutions, but within criminal law sanctions, they act in a specific way. Thus, the principles of criminal law sanctions are considered to be: legality, humanism, revocability, individualization and personality.

Legality. The sanction must be established by the state, through its competent bodies and only under the law. This basic rule constitutes a limitation on the punishment, with the specification that only that measure of coercion which is clearly stipulated in the law becomes a punishment, as there can be no punishments outside the law ("*nulla poena sine lege*") (Oancea 1995, 200).

This legal norm ensures the prior knowledge, by the citizens, of the criminal sanctions corresponding to the incriminated deeds, thus realizing the preventive function of the criminal law by the simple fact of the provision of the sanction in the incrimination norm.

According to this principle, the incrimination norm provides, in addition to the description of the content of the offense and the applicable sanction, its duration and amount. Thus, it was established that, according to the degree of determination, there are three types of sanctions: absolutely determined (the only such sanction is life imprisonment), relatively determined sanctions, i.e., those determined by their nature - imprisonment or fine - and by general and special minimum and maximum limits (these being the most numerous sanctions) and undetermined sanctions - which are designated only by denomination, without the duration (this category includes security measures) (Ungureanu 1995, 269).

Humanism. This principle refers directly to the social-moral component of the punishment. Thus, criminal law must stipulate only those sanctions which are in accordance with the moral and legal consciousness of the society. Therefore, in the Romanian criminal

law, sanctions which, by being enforced, cause physical suffering, torment or torture or that would degrade the human being are not accepted (Streteanu, Nițu 2014, 286). The principle of humanism (Rotaru 2005, 350) must be respected in all the stages of the criminal repression: in the activity of establishing the sanctions, in their concrete individualization by the court, but also during their enforcement (Drăghici 2006, 378). Respecting the principle of humanism defends the human being with all of his/her attributes, the rule of law, as well as all the social values.

Revocability. It consists in retracting the applied sanctions, when it is established that they were ordered based on an error or there is no need to apply them. Thus, the prison sentence or the fine, the security or the educational measures can be revoked. However, the death penalty cannot be revoked (this being one of the causes which determined its abrogation from the Romanian Criminal Code).

Individualization. It means the adaptation (Mitra 2015, 29; Ancel, Hergoz 1954, 83) of the punishment, establishing and applying it quantitatively and qualitatively in relation to the concrete threat posed by the deed, but also of the threat posed by the perpetrator. In doing so, in the case of offenses against a person or against the state's security, the Criminal Code provides severe sanctions with higher limits, as they are considered offenses of great seriousness, whereas for lighter offenses, softer sanctions and with lower limits are provided.

Only by respecting this principle, the sanction becomes effective in generating transformations in the conscience of the perpetrator, in the sense of being able to prevent the commission of new offenses in the future. Individualization has several forms, depending on the existing procedural stage: legal, judicial or administrative.

Personality. It stipulates that the sanctions apply exclusively to the persons who commit offenses or have contributed in any way to the commission of any deed stipulated in criminal law (Mitrache & Mitrache 2012, 199). The strictly personal character derives from the nature and purpose of criminal law sanctions.

The aim of this principle is for the applied sanction to affect only the person who commits or contributes to the commission of an offense, not other persons. That is why, in the case of the fine, it must be set in such a way as not to put the convict in a position to no longer be able to fulfill his/her obligations regarding the natural activity of maintenance, upbringing, education and ensuring the professional training of those to whom he/she has legal obligations. Thus, the application and enforcement of a punishment must not have direct repercussions on the family members of the perpetrator or on his/her heirs. If the perpetrator dies, the sanctions are not transmitted to other persons and their enforcement ceases automatically.

7. Conclusions and proposals

Sanction is the third fundamental institution of criminal law, after the institution of the offense and that of criminal liability, representing the main means of defending against offenses the essential social values of our society.

The institution of sanction is one of the most important, interesting, and spectacular among the institutions of criminal law, through the vast issues it raises, but also through the solutions it has offered over time throughout various criminal legislations.

The main role of the punishment is to put an end to the criminal activity and to determine the change of the antisocial mentality of the perpetrator, through a series of modeling, coercive and educational actions.

Punishments are the central and fundamental element of legal and criminal regulations. In the first legal-criminal reports, those of compliance, the sanction stipulated expresses the abstract gravity of the incriminated deed and the warning addressed to all the recipients of the law regarding the consequences of not complying with the criminal law. In the content of the

legal-criminal conflict report, the sanction applied by the state appears as a normal consequence of criminal law, directly proportional to the concrete gravity of the deed, but also to the actual threat posed by the perpetrator.

Without fear of exaggerating, we can say that punishments are by far the most important criminal law sanctions, merging and sometimes even being confused with this branch of law. In fact, it has been argued that these are the toughest, harshest and most difficult to bear criminal law sanctions, given the fact that by applying and enforcing them, they have the particularity of affecting either the individual's freedom (Rotaru 2019, 270-271) or his/her patrimony.

The task of applying and enforcing punishment is a complex activity, full of challenges and uncertainties. It marks a particularly important stage in the fight against crime. The efficiency and effectiveness of the punishment is demonstrated when we witness an obvious decrease in recidivism and the resocialization of former convicts.

The application and enforcement of a punishment is a strong warning on the part of the state, in the sense that it demonstrates that it disapproves of this type of behavior, and the perpetrator must comply, since the enforcement of the punishment is not optional, but mandatory, it is not a mere formalism, but a true imperative.

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pentru modificarea şi completarea altor legi [Criminal law. The general part. Examination of the fundamental institutions of Criminal Law, according to the provisions of the Criminal Code in force, of the New Criminal Code and of the Draft Law for the amendment and completion of the Criminal Code in force, as well as for the amendment and completion of other laws]. Bucharest: Bren Publishing House.

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Some Aspects of the Modern and Contemporary History of Heritage. The Division of the Succession Patrimony of the Monks in the Romanian Law

Marilena Marin

Assoc. Prof. PhD, Faculty of Law and Administrative Sciences, "Ovidius" "University of Constanta, Romania
marilenamarin@yahoo.com

ABSTRACT: This paper proposes the historical and legal analysis of a part of the matter of inheritances, namely, the succession patrimony of the monks, from the perspective of Romanian law, in the modern era and the contemporary era. We started in the study of this subject from a problem encountered in practice, which concerned the request of the relatives of a deceased monk to hand over to them the goods he owned during his life, in their capacity as successors. First, I analyzed the legal issue through the prism of civil law, as the first impulse of the legal practitioner. After that, I researched the rules of canon law and the norms in the status of various cults, which regulate the legal status of goods that are acquired by monks during the period in which they function as such within the church. In Romanian law there are few cases of this kind, which would allow outlining a judicial practice in the field, which is why we can analyze the problem from the perspective of the normative acts in force and the doctrine, even if it is quite poor. At the same time, to have a correct representation of the factual and legal situation, but also to understand as correctly as possible the issue of inheritances as it is regulated and perceived in the monastic world, I considered necessary the analysis of modern and contemporary legislation and consulted the statute of several cults, to better understand the legal regulation specific to canon law.

KEYWORDS: inheritance, succession patrimony, church patrimony, potentials successors, successors

Introduction

The field of inheritances or successions has always been fascinating. It concludes, in a way, the series of legal acts and deeds that the individual can do, regardless of whether we are talking about testamentary deeds, concluded during life, but for the cause of death, or by passing his estate to successors, to the date of the opening of the succession, which is the date of death of the one who leaves the inheritance. The transfer of the succession patrimony gave the possibility to the natural persons to choose the way of transmitting their rights and obligations to the successors, regardless of the epoch.

Modern history and, later, contemporary history have known different regulations on succession. A special situation is the transfer of the succession of persons who, at the time of their death, had the quality of monks. Their patrimony will be transmitted in a special way, according to the rules of canon law and depending on their legal or ecclesiastical relationship with the institution he served until the moment of death. The succession quality with which we have become accustomed to civil law, as a common law, knows some exceptions that we will analyze in this material.

Some clarifications regarding the history of the inheritance institution in Romanian law

Starting from the definition given by the doctrine to the notion of "inheritance", this represents the transmission of the patrimony of a deceased natural person to one or more persons in existence, regardless of whether we are talking about natural persons or legal persons, including the state.

The *Romanian Civil Code* of 1864 (Rotaru 2014, 166, 179, 205) was inspired by the French Civil Code, also known as the Napoleonic Code. In relation to this normative act, the doctrinaires differentiated the areas where the old French law based on written law was applied, from the time of Justinian (*Codex Iuris Civilis, Novele,* 118, 127), individualistic system, which recognized the uniqueness of the patrimony and the areas where customary law was applied, inspired by the German custom based on family solidarity, but also on feudal conceptions (Eliescu 1997, 20-21), which regulated the division of the succession patrimony into several hereditary patrimonies.

As for customary law, it knew a few characteristics, including:

- the transmission of the succession was made under the law, and the will had an occasional character, for the elaboration of liberalities / testamentary dispositions.

- own property was divided into movable and immovable property, acquisition by way of inheritance or by other means of acquisition of property; each of which will be transmitted according to its own rules, to a single family member.

- the goods known as *noble goods*, fief and allodium belonged to the eldest son, according to the privilege of age, against his brothers and sisters.

The Romanian civil code of the modern era kept the Napoleonic succession system and completed some legal situations with regulations from the Romanian legislation. In this way, we have as an example the situation of the inheritance right of the widow, poor woman.

Subsequently, following the evolution of the society, the stipulations of the civil code have undergone some additions and changes regarding the successions, such as the family matter: the illegitimate child acquires succession rights (Law no. 445/1943), and the surviving spouse/surviving wife may inherit in competition with the descendants of the deceased (Law no. 319/1944).

The *Romanian Civil Code* of 1864, which we now call, in the current language "the old civil code", regulated the matter of successions distinctly, starting with the stipulations of the art. 650. The modern legislator said that *succession is deferred either by law, or according to the will of man, by will*. Also, the same legislator said that *the successions open through death*, making indisputable reference to the matter of inheritances.

We make this clarification because, in the legal language, the wording "successor in rights" is also used, referring, for example, to the buyer who becomes the owner of the purchased good, instead of the seller of that good. Therefore, the notion of succession or *successor in rights* also operates for legal acts between the living (*inter vivos*), not only for the cause of death (*mortis causa*). But our analysis in this study refers only to the matter of successions for the cause of death and thus we will develop the subject we have proposed.

The Romanian Civil Code of 2009 entered into force in October 2011 and is still known as the "new civil code", especially in situations where we talk about law enforcement over time and get to the analysis of the competition of laws, where we also meet the legislation prior to 2011.

The succession vocation and the quality of heir in the contemporary era

Succession vocation, also known as *inheritance vocation*, refers to the right of a person (whether it is a natural or legal person) to receive or collect, in whole or in part, the inheritance left by the deceased. It is not enough for that natural or legal person to have succession capacity, but it must also have a succession vocation, to have a call to inheritance (Stoica, Fălcușan, Dragu 2004, 161).

For a person to become an heir/successor, he must meet three cumulative conditions, namely:

- the person to have a call to inheritance or a succession vocation based on kinship relations (Botină 2015, 43) or of a civil legal act (will).

- the same person to have the capacity to succeed (Erimia 2016, 49-62).

- the person we talked about before to accept the respective succession.

Romanian law has known over time some changes in the type of heir, so nowadays it has reached the different qualification of these categories of heirs, as follows:

- *the heir* or *legal successor* that the law defines according to the rules shown above.

- *the testamentary heir*, the one who benefits from the inheritance under a unilateral civil legal act called "will".

- *the apparent heir*, defined as a person who owns all or part of the estate, as a legal or testamentary heir, without having this right and who can be sued by the real heir, under an action called "petition in heredity".

- *the sessional heir*, being that successor who has the possibility to enter into possession of the succession assets and to exercise his rights, without prior attestation; he may be held liable for a debt of the deceased, under current civil law, even if he does not yet hold a certificate of heir; but he can remove the liability by presenting in court an authenticated statement to the notary public, according to which he renounced that inheritance.

Because the theme of our work concerns a particular case in the whole matter of successions, namely, the succession patrimony of the monks, we bring into question the quality of heir of the church or cult on which the deceased served. It is real that the civil law, respectively, the civil code, which is the common law in the matter, speaks about the rights of the heirs and protects the observance of the right to inheritance, especially to those successors who have the quality of reserve or sessile heir. However, the rights governed by common law know some exceptions that also affect human rights (Erimia et al. 2016, 129-136; Rotaru 2019, 270-271).

Special cases provided by the church legal norms in the field of succession debate

In the sense of the above, we see the regulation in the statute of the Romanian Orthodox Church, over time, has regulated and maintained a relatively identical opinion, in the sense that *dioceses have a vocation on all the successor assets of their hierarchs* [art. 192]; *the goods of the monks brought with them or donated to the monastery at the entrance to monasticism, as well as those acquired in any way during the life in the monastery remain entirely to the monastery to which they belong and cannot be the object of subsequent claims* [art. 193]. This presupposes that none of the members of the deceased's family can touch the assets in the estate (Jurcă et al. 2014).

According to the statute of the Romanian Orthodox Church, *the dioceses have a vocation on the entire succession fortune of their hierarchs and are considered as reserve successors of 1/2 of this fortune in case they come in competition with the sessional or testamentary successors. The rights of the sessional or testamentary successors will be reported only on the half not reserved for the dioceses and are regulated according to the provisions of the Civil Code* [Statute no. 4593/1949, art. 194]. *The wealth of monks and nuns brought with them to monasteries, as well as that acquired in any way during monasticism, remains the whole of the monastery to which it belongs* [art. 196].

A similar regulation is found in other cults, such as:

- the status of the Baptist cult (2008), which provides in art. 46 that *the church is the exclusive owner of all movable and immovable property, of material and monetary values in its patrimony and acquired or obtained by any means or lawful means; also, that the material and monetary values, the movable and immovable goods that are the object of contributions of any kind - contributions, donations, successions, and others -, entered in the patrimony of the church, cannot be the object of the subsequent claims, these remaining in the exclusively cultic patrimony.*

- the statute of the Pentecostal cult (2008), provides in the content of art. 27: *membership in the church ceases by withdrawal, transfer, exclusion, or death. Withdrawal as a member must be communicated to the church leadership in writing. Persons who lose their*

membership have no right to the goods and values brought under any title in the patrimony of the church or their descendants.

Moreover, in the doctrine, it is spoken about the legal situation and the owner of the goods that enter the patrimony of the cults/churches (contributions, donations, successions) and that cannot be object of the claim of any person, not even of the one who would have acquired them or who, at some point, leaves that cult (Secretariat of State for Cults, 2018, 180).

We can say that the situation described above can be viewed or assimilated to *conventional inheritance* (Stoica, Fălcușan, Dragu 2004, 74), which is defined as a form of donation of future goods through which one of the contracting parties promises to leave at his death to the contractual partner all the inheritance, part of his own inheritance or some individually determined goods belonging to the patrimony of the promiser.

Conclusions

Following the reason given by the legislator, according to the historical and legal sources we referred to during this paper, we conclude that the diocese and the monastery have a universal succession vocation, regardless of the form of inheritance in question (inheritance legal or testamentary inheritance). In this context, we find a limitation of the right to leave the inheritance by a monk, if he tends to leave property from his patrimony to a third party, outside the church. The third party could benefit from the assets left by the deceased only if there is a will in this respect and if the church renounces / renounces the assets mentioned in the will.

Consequently, even the persons who would have the quality of legal heirs of the deceased monk will not receive any good or right from the succession patrimony, which will enter entirely in the patrimony of the monastery. The legal heirs, even if they have the quality of sessional and / or reserve heirs, have at hand the possibility to contest the succession quality of the monastery, but only by virtue of respecting the free access to justice, not necessarily because they could win the case.

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Specific Duties for the Romanian Ombudsman During the Period of the Pandemic

Mădălina Botină

Assoc. Prof. Ph.D., Faculty of Law and Administrative Sciences, Ovidius University of Constanța, Constanța, Romania, madalinabotina@yahoo.com

ABSTRACT: The year 2020 was a challenge for the entire planet in the fight against the pandemic of the spread of the new coronavirus, SARS-CoV-2. Romania was also part of this effort collectively, and the People's Advocate, in his capacity as constitutional guarantor of rights and fundamental freedoms, had to act constantly in order to preserve all rights, assuring citizens that whenever the exercise of some of their rights and freedoms were and are restricted, this is done entirely according to the Romanian Constitution, that is, it is prescribed by law, for the defense of other fundamental values and rights and on a determined duration, without affecting the very substance of those rights and freedoms. I chose as a research topic for this study one of the most important institutions in Romania, the "People's Advocate Institution". The structure of our paper begins with the presentation of the People's Advocate institution, its structure and the main attributions regarding the human rights situation, taking note of the establishment of the state of emergency and the state of alert on the territory of Romania, which led to monitoring the application of these measures.

KEYWORDS: People's Advocate Institution, human rights and freedoms, state of emergency/alert, human rights restrictions, constitutional order

Introduction

Regardless of the manner and name under which the Ombudsman institution has been established by each state, the role of the Ombudsman is, in the classical sense, that of defender the rights of individuals in their relations with public authorities, and the means of exercising this general mandate vary from state to state.

Created by the 1991 Constitution, revised in 2003, as a novelty in the legal and institutional scenery in Romania, the People's Advocate Institution was practically established and started to operate after the adoption of its organic law, in 1997.

The Romanian Constituent Assembly has chosen the name "the People's Advocate", an Ombudsman institution with general jurisdiction, which has as purpose the defense of individuals' rights and freedoms in their relationship with the public authorities.

The Departments of Romanian*'s* Ombudsman are specialized in the following fields of activity:

1) *Human rights, equality of chances between men and women, religious cults and national minorities;*

2) The rights of the family, youth, pensioners, persons with disabilities;

3) The defense, protection and promotion of the rights of the child;

4) Army, justice, police and prisons;

5) Property, labor, social protection, taxes and fees.

6) The prevention of torture and other cruel, inhuman or degrading treatment or punishment in places of detention, through the National Preventive Mechanism.

The main attributions of the Romanian People's Advocate:

1. ***The activity of solving the petitions;***

2. ***The activity regarding the constitutional contentious:***

a. formulates points of view, at the request of the Constitutional Court;

b. may notify the Constitutional Court regarding the unconstitutionality of the laws, before their promulgation;

c. may notify directly to the Constitutional Court exceptions for the unconstitutionality of laws and ordinances;

3. ***The activity regarding the administrative contentious***: it can notify the administrative contentious court, under the conditions of the administrative contentious law;

4. ***Promoting the appeal in the interest of the law before the High Court of Cassation and Justice,*** regarding the legal issues that were solved differently by the courts, by irrevocable court decisions;

5. ***Presents reports to the two Houses of Parliament,*** annually or at their request; the reports may contain recommendations on amendments to legislation or other measures to protect the rights and freedoms of citizens;

6. ***Reports to the Presidents of the two Houses of Parliament*** or, as the case may be, to the Prime Minister, in cases where it finds, on the occasion of investigations, gaps in legislation or serious cases of corruption or non-compliance with the laws of the country;

7. ***The People's Advocate may be consulted by the initiators of draft laws and ordinances,*** which, through the content of regulations, concern the rights and freedoms of citizens, provided by the Romanian Constitution, by international pacts and other treaties on fundamental human rights, to which Romania is a party.

We must also note the role of the People's Advocate as an institution of the rule of law:
It is important to specify that the General Assembly of the United Nations, by Resolution no. 75/186 - The role of the institutions of the Ombudsman in the promotion and protection of human rights, good governance and the rule of law, adopted on 16 December 2020, emphasized the need for Member States "to take measures to ensure adequate protection for The Ombudsman and the Ombudsman against coercion, retaliation, intimidation or threats", regardless of who they come from.

All the notifications that determined the pronouncement of the decisions of the Romanian Constitutional Court - regarding acts and restrictions of the exercise of some freedoms during COVID -19 - were formulated by the People's Advocate who, according to the Constitution, can address directly to the Constitutional Court, both through objections of unconstitutionality, as well as the exceptions of unconstitutionality.

Through **the role of the People's Advocate, for the promotion and protection of human rights**, this institution **can make a crucial contribution to signaling human rights issues during emergencies and to helping citizens affected by emergency measures**.

Therefore, "the People's Advocate can effectively complement parliamentary and judicial scrutiny."

Protection of rights and freedoms in the context of a state of emergency/alert due to COVID-19:
The most widespread restrictions on daily life experienced in peacetime in modern Europe affect everyone living in the E.U., albeit in different ways. This has implications for the enjoyment across our societies of nearly all the fundamental rights enshrined in the Charter (Marin and Popescu 2014, 445-448). The 27 EU Member States reintroduced or extended states of emergency or other emergency situations as the health situation deteriorated (Chilea 2013, 54). States of emergency typically allow certain rights to be limited, such as freedom of movement (Article 45 of the Charter), freedom of assembly and of association (Article 12), and private and family life (Article 7). (***European Union Agency for Fundamental Rights, 8).

Fundamental rights - the legal basis of all civil rights, are subjective rights, enshrined in the text of the Constitution which invests them with special legal guarantees (Niță 2019, 125).

Regarding the human rights situation, the People's Advocate, taking note of the establishment of the state of emergency and the state of alert on the territory of Romania, carefully monitored the application of these measures.

Ever since the establishment of the state of emergency on the Romanian territory by Decree no. 195 of March 16, 2020, the People's Advocate made a public appeal to the public

and the media to report by telephone, e-mail, post or fax any acts or facts in connection with which there are suspicions regarding possible violations of fundamental rights or freedoms.

Actions of Romanian Ombudsman:

1. Steps at the level of public authorities:
   - ***Government of Romania – Prime Minister, for example:***

- ❑ Request for capping prices for certain medicines, medical devices and health products; **The response of the General Secretariat of the Government:** The answer of the General Secretariat of the Government shows that the *Government of Romania* ***takes into consideration and analyzes the aspects notified by the People's Advocate.***
- ❑ Request regarding the transmission of the database of the Ministry of Health to the Ministry of Internal Affairs, respectively the communication of the administrative act by which the transmission of the database is performed; To this request there was no response.
- ❑ **Request regarding the provision of the protective equipment and apparatus necessary to combat COVID-19 to doctors**. The response of the Ministry of Internal Affairs – Department for Emergency Situations **until May 1, 2020, were distributed to all health units involved in combating the spread of the epidemic caused by Sars-Cov-2 the following protective materials.**

Request regarding the restriction of the freedom of expression; In the period following the establishment of the state of emergency on the Romanian territory, the People's Advocate took note of the requests addressed to the National Authority for Administration and Regulation in Communications (ANCOM) by the Ministry of Internal Affairs, at the proposal of the Strategic Communication Group, to shut down several websites that were considered to broadcast fake news about the evolution of the SARS-CoV-2 epidemic.

2. Steps taken to European institutions:

- During the reference period, the People's Advocate maintained a constant connection with the Ombudsman institutions in Europe, but also with other authorities at European level, as for example - ***The Federal Ministry of Labor and Social Affairs of the Federal Republic of Germany:*** regarding the sanitation safety of the Romanian seasonal workers

In the exercise of his/her duties, the People's Advocate issues recommendations. Through the issued recommendations, the People's Advocate notifies the public administration authorities about the illegality of their administrative acts or deeds.

Some examples of recommendations issued:

- **Recommendation on the right to healthcare and the right to social protection of the category of vulnerable persons in institutionalized care;**
- **Recommendation no. 125 of June 18, 2020, regarding the obligation to hospitalize asymptomatic persons found positive with COVID-19;**
- **Recommendation no. 133 of July 16, 2020, on the existing Euthyrox crisis at national level, a medicine necessary for thyroid disease patients;**
- **May 12, 2020 ‣ Request regarding the extension of the validity of the disability certificates. (**Manu 2020a**)**

In Romania, during the **state of emergency and the state of alert, established following the declaration of the coronavirus pandemic (COVID-19)**, in the exercise of its constitutional and legal powers to verify the constitutionality of laws or ordinances, contributing to the observance of fundamental rights and freedoms, **the People's Advocate notified the Constitutional Court with 5 exceptions of unconstitutionality which sought to clarify, improve and strengthen the legal framework for the establishment of state of emergency, state of alert, as well as quarantine and isolation measures**, so that they are compatible with the constitutional requirements for restricting certain rights and fundamental freedoms by law, as a formal act of Parliament. [The observance of human rights and the exceptional measures

ordered during the period of the state of emergency and the state of alert (March 16 - September 10, 2020)]

According to art. 53 of the Romanian Constitution (Muraru 2008, 527), **the restriction of the exercise of certain rights and freedoms is made only by LAW** and in compliance with the conditions established in the same constitutional text.

The motivation of the Constitutional Court Decision:

The Court stressed that "in exceptional situations, such as that caused by the spread of COVID-19 virus infection, the establishment of vigorous, prompt and appropriate measures to the seriousness of the situation is, in reality, a response of the authorities to the obligation provided in art. 34 paragraph (2) of the Constitution, according to which "the State is obliged to take measures to ensure hygiene and public health".

The Court also notes that both compulsory hospitalization in order to prevent the spread of communicable diseases and the quarantine measure are restrictions on the exercise of fundamental rights and freedoms which may be justified if reasons of necessity for public safety and health so require.

- However, the Court notes that the measures in question have severe effects on the rights and freedoms of the individual and that the relevant regulations must therefore comply strictly with all the constitutional requirements.

The exceptional, unpredictable nature of a situation cannot constitute a justification for violating the rule of law, legal and constitutional provisions regarding the competence of public authorities or those regarding the conditions under which restrictions may be exercised on the exercise of fundamental rights and freedoms (Manu 2020b).

Conclusions

National authorities - especially the central and local government - are best placed to identify and establish the set of actions needed to respond to each stage of the pandemic, but the measures can only be based on a primary legal framework, which it is subject to constitutional and international provisions regarding the restriction of the exercise of certain rights or freedoms.

Given that the crisis situation generated by a pandemic is the inevitable premise of such restrictions (Rotaru 2020, 71-82), national legislation must be accompanied by clear and effective safeguards against any abuse or discretionary or illegal action".

Specifically, the involvement of the People's Advocate in the protection of human rights and freedoms (Rotaru 2014, 256) through the constitutional review exercised during the state of emergency and the state of alert created the premises for the adoption by Parliament of the following normative acts:

- Law no. 55/2020 on certain measures to prevent and combat the effects of the COVID-19 pandemic;

- Law no. 136/2020 on the establishment of measures in the field of public health in situations of epidemiological and biological risk.

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A Strategy for Teaching Carrying in the Mathematical Operation of Addition to Students Who Are Deaf or Hard of Hearing

Mohammed Alajlan

Department of Special Education, College of Education, Qassim University, Buraydah, Saudi Arabia
msajan@qu.edu.sa

ABSTRACT: This study investigated the effectiveness of using manipulative items for teaching the process of carrying in the mathematical operation of addition with a third-grade student with hearing loss. A single subject reversal design protocol was used. The subject student had low achievement in addition of two-digit numbers with regrouping. When visual aids, concrete materials, and practice were implemented with the student, he was eventually able to achieve a top score of 90% on a 10-item quiz. The strategy was found to be very effective in this setting. Further research is needed to investigate whether the student would be able to implement this strategy successfully with three-digit numbers. The use of the intervention should also be explored with more than a single student and with younger students who are deaf or hard of hearing.

KEYWORDS: single subject design, deaf and hard of hearing students, ASL, math strategies, carrying numbers

Introduction

Students who are deaf or hard of hearing (D/HH) have been found to struggle in academic achievement in comparison with their hearing peers (Antia et al. 2009). While traditionally these deficits are observed most often in language-based subjects, there is evidence that these students may also experience challenges in task achievement in mathematics (Antia et al. 2009). This paper focuses on factors that cause low achievement in mathematics for students who are deaf or hard of hearing. By presenting additional visual and tactile props to assist in mathematical operations, it is asserted that these students can make greater gains in achievement in quantitative skill performance (Freese, 2008). Even though using different strategies for teaching this group of students have been shown to be effective, it is rare to find a study that is based on introducing manipulative items – visual, non-language-based tools to support learning – at different stages to help these students overcome mathematical difficulties that they may encounter.

The subject of this study, Ali (a pseudonym), is a third-grade student experiencing difficulty in employing carrying in addition problems. Ali attends a public school where he receives instruction as an ESL student. He has also been identified as requiring special education services for mathematics and so receives math instruction in a non-inclusive classroom. Like many D/HH students, Ali experiences difficulties with computational math. This study was designed to investigate the effectiveness of using manipulative items for teaching the process of carrying in addition to an elementary school student who is D/HH.

Literature review

Students with special needs often face academic challenges. Those who are deaf/hard of hearing tend to exhibit lower mathematical achievement than their hearing peers. In their study, Swanwick et al. (2005) analyzed a sample of 73 completed National Curriculum Test papers in mathematics completed by students who are D/HH in England in June of 2002. (This is an exam administered to all students at 14 years of age). They found these students have more language difficulties in math than hearing students (Swanwick et al. 2005). The results underline the importance of modifying the

general education mathematics curricula, because the language used in some textbooks is not accessible to many D/HH students. Furthermore, it exposed the need for teachers of mathematics to utilize more effective instructional strategies to explain mathematical procedures to these students. Concepts should be explained step-by-step. If instructors follow these practices, students who are deaf or hard of hearing may more readily understand mathematics (Swanwick et al. 2005).

Nunes and Moreno (2002) also confirmed that deaf and hard of hearing students differ from hearing students in math achievement. They observed these students tend to have lower achievement scores in math than their hearing peers. However, they stated that it was not their hearing impairment that was the direct cause of their difficulties in mathematics (Nunes & Moreno, 2002). Instead they asserted the achievement lag is linked to having fewer opportunities for incidental learning, even before starting school, and the difficulty children who are D/HH tend to have related to completing tasks that require them to "process a sequence of events over time, keeping in mind a gap for an unknown element in the sequence" (Nunes & Moreno 2002, 2).

Such students can clearly develop their knowledge and skills in mathematics, eventually; however, they need visual, tactile, and kinesthetic interventions to promote achievement. The incorporation of drawings, diagrams, and concrete materials can help children who are deaf or hard of hearing understand addition and subtraction. Classroom observations have established that this method of teaching helps these students understand addition and subtraction problems (Nunes & Moreno 2002).

Swanwick et al. (2005) stated that "consistent evidence from research studies between 1980 and 2000 indicates that deaf children lag behind hearing peers (by 2 to 3.5 years) in mathematics" (p. 2). Freese (2008) speculated that students who are D/HH encounter difficulties in mathematics related to delayed language development. Additionally, Freese asserted that the gap in mathematics achievement between students who are D/HH and their hearing peers can be overcome by educating teachers on the barriers these students face and determining how to present the curriculum in the most effective way to support their success. Freese (2008) argued that four factors impact math achievement. These are "(1) the amount of exposure to pre math concepts, (2) auditory memory, (3) delayed language, (4) the development of logical reasoning, and (5) the reading style/technique practiced by students" (Freese, 2008, p. 8). One of the most important factors here is the lack of exposure to verbal references to math concepts from an early age, which puts individuals who are deaf or hard of hearing at a disadvantage when they begin school.

To support the importance of these four factors, Freese (2008) analyzed textbooks used in the elementary math curriculum in Missouri and focused on certain factors: (a) the degree of simplicity of the language used, (b) the amount of relevant visual content used to teach concepts, (c) the amount of practice work available in the instructor's manual to support the introduction of a new concept, and (d) the amount of resources, not part of the textbook, that the publisher makes available to support instruction and be used alongside the textbook (e.g., websites).

Using visual techniques and concrete materials with students who are D/HH to teach mathematics produces positive results in performance. Moreover, these students also benefit when more, rather than fewer, practice opportunities are provided (Freese 2008). These techniques were found to successfully support improved achievement in these children (Freese 2008). After analysis of each textbook and comparison of the texts with the factors determined to be most supportive in D/HH mathematics instruction, Freese determined that the *Houghton Mifflin Math* (2005) textbook was the most appropriate text for use in a specialized mathematics curriculum for these students. It contains simpler and more concise language, has more appropriate and relevant illustrations, and provides more practice problems in the teacher's manual. These factors can be kept in mind for any mathematics curriculum at any grade level, regardless of the textbook, to support the learning of students who are deaf or hard of hearing.

Van de Walle et al. (2013) examined mathematics education from the perspective of a student-centered approach to learning. While their concepts are designed to be implemented with

all students, they are particularly useful to educating students who experience challenges. For example, these authors note that a key aspect of teaching addition to all students is explaining the concept of carrying numbers. In particular, it is critical for students to understand the concept of place value. In basic math where two-digit numbers are being added, this means that the student must understand the difference between the ones place and the tens place. One of the better methods for demonstrating this is to use cubes with different colors for ones and for tens, such as using a green color to represent the ones and a red color to represent the tens (Ali 2011). Using concrete objects and materials in instruction is useful for all children, particularly in the pre-K and early elementary years. Specifically, using visual representations to teach mathematical concepts is extremely effective for D/HH individuals, due to the language delays they are often found to experience (Nunes & Moreno 2002). Therefore, using such cubes to demonstrate the concept of ones and tens to support the learning of addition can improve the performance of students who are deaf or hard of hearing.

Another effective strategy for teaching addition visually, and reducing the reliance on language, is a practice where the teacher writes the addition problem on the right side of the board and presents a visual representation of it on the left side, where red sticks represent the tens and green cubes represent the ones (Van de Walle et al. 2013). Drawing a line dividing the ones and tens in addition problems of two-digit numbers that involve carrying numbers and drawing a small box above the tens is another strategy for reminding students to write carry numbers in their correct place (i.e., in the box). When students demonstrate that they understand the concept, the instructor can then employ the same strategy without using the small box above the tens column. Students then remember the concept of carrying the number over from the ones to the tens. This strategy has been found to be very useful in both demonstrating how carrying works in addition problems with two-digit numbers, and also how to teach a mathematical concept to students visually in a way that they can better understand and retain (Qaryouti et al. 2009).

Methodology

This study was designed to investigate the effectiveness of introducing manipulative items at different stages for teaching the process of carrying in the mathematical operation of addition to a student with hearing loss. It is rare to find a study implementing a single subject reversal design protocol that employs visual aids, concrete materials, and practice for helping a student who is D/HH overcome difficulties they encounter in math. The aim was that combining this protocol with the implementation of manipulative items would foster the process of learning math and help the student acquire the target skill in a more natural way.

Subject

While the researcher was conducting an experiment at a public school, the math teacher contacted him seeking help in teaching a student, who was a third-grader at an urban school in a U.S. city in the southeastern part of the country who was 9 years old. The student was born in a Central American country where the primary language is Spanish. Ali, a pseudonym, is not a native English-speaker and neither are his parents. In addition, Ali's father does not speak English very well and his mother does not speak English at all. For first and second grade, Ali attended school in his native country where the language of instruction was, of course, Spanish; this was his first year of school in the United States. Ali is considered "hard of hearing" and wears hearing aids. He had been placed in the ESL program at his school; he had not been diagnosed with any other learning disabilities.

Ali's teacher indicated that he exhibits several challenges in math learning. The one this study focuses on is his issue with comprehending how the concept of carrying works in addition. For example, when Ali is given an addition problem with two-digit addends, he tends to write all the resulting sums on the results line without carrying any numbers over from the ones to the tens.

A specific instance of this would be that when Ali adds [34 + 88], he sums the ones column and writes the total on the results line, then sums the tens column and writes that total on the results line as well. As in:

$$\begin{array}{r} 34 \\ +\ 88 \\ \hline 1112 \end{array}$$

Prior to Ali receiving the intervention in this study, Ali's teacher had relied on traditional methods of addition instruction to work with him regarding this issue.

Design

The researcher employed an A-B-A reversal design. This design type begins with a baseline phase (A), which is followed by a treatment phase (B), and then concludes with a withdrawal phase (A). This design was chosen because it enables the researcher to note any changes the subject exhibits as the intervention progresses. It also shows the results of the treatment in an effective way when there are a small number of subjects. The baseline phase helps the researcher observe and document the student's performance level without treatment (Engel & Schutt 2008). This allows the investigator to then apply the treatment and observe any changes that may occur during the process. Thus, the A-B-A design provides researchers with clear information about the treatment/intervention strategy and its impact on the subject.

Procedure

Once Ali had been identified by his math teacher as a good candidate for the research, his parents were contacted and asked to provide written consent for him to participate in the study. They were also asked to release their son's academic records to support the process. After these permissions had been received, the researcher was provided with background information on the subject, which included Ali's academic records and biographical background on him and his family. These data were acquired on February 12, 2018, from a number of sources.

His teacher also provided background on Ali's progress across subjects during the first semester of the school year, which was his first year in a U.S. elementary school. After this background data was acquired and reviewed, the process of implementing the intervention began. The course of the study was 8 weeks. The first of these was the baseline phase, which involved two observations that took place on 2 different days. Next, the treatment phase occurred, which involved seven sessions on 7 different days over a span of 6 weeks. The last phase was the withdrawal of the strategy, which included documenting Ali's achievement on three 10-item quizzes on 3 different days, after the intervention had ended.

Results

Baseline phase

The observation or baseline phase started on February 17, 2019, in a session that lasted 35 minutes. The researcher observed as Ali's math teacher gave Ali 10 addition problems after presenting a 20-minute lesson on addition from the textbook. The 10-carrying item quiz is considered the experimental probe and it was used to obtain data for all three phases of the study. During the first observation, Ali did not get any correct answers (0%) on the five addition problems that involved carrying numbers. However, he answered all of the five addition problems that did not require carrying correctly (e.g., 18 + 11 = 29), for a score of 50%. The second observation took place on February 19. During this class, Ali was given 15 minutes to complete the 10-carrying item quiz and

answered just one problem (10%) correctly. This demonstrated sufficiently that Ali needed intervention to develop his skill in carrying numbers in addition problems.

Treatment Phase

The intervention plan was based on strategies identified by the literature review, including: (a) using colorful cubes and sticks; (b) drawing a line between ones and tens, placing a small box above the tens, then removing the small box; and (c) using cubes. The treatment phase was initiated on February 24. The researcher's practice was to present material for about 15 minutes at the start of each class. The intervention was conducted during the remaining 35 minutes of the class. On February 24, the difference between the ones place and the tens place was explained to Ali, using green cubes to represent the ones and red cubes to represent the tens. The explanation took about 20 minutes. Next, he was given 10 addition problems, all of which involved carrying, and a box of cubes. On this occasion, Ali was able to answer two of the problems (20%) correctly.

The second intervention was then implemented on March 3, this time it employed a standard algorithm for addition strategy. This strategy seemed to be more effective in helping Ali understand carrying numbers. After this presentation, he was able to answer three (30%) of the addition problems correctly. Since giving students more opportunities to practice a strategy has been found to support better outcomes, this intervention was again delivered on March 10. On this occasion, Ali was able to answer six (60%) items correctly.

On March 19, the third intervention was presented. This involved demonstrating how to separate the ones and tens with a line and putting a small box above the tens column. Ali answered four problems (40%) correctly on this date. When the intervention was reintroduced on March 26, he answered six problems (60%) correctly. Continuing the weekly practice, the fourth intervention was implemented on April 1 and used the same strategy but without including the box above the tens column. Ali answered five (50%) of the addition problems correctly on this date. When this practice was repeated on April 8, Ali answered eight (80%) addition problems correctly.

It also has been found that positive reinforcement is beneficial in encouraging a student to work with teachers and/or researchers on an intervention. In this study, the subject received reinforcement twice during every lesson: (a) when he focused with the researcher during the lesson, and (b) when he showed improvement. Because he likes treats (e.g., chocolate, cookies, cake, and chips), these were presented in a basket and Ali could choose an item when any of the two situations was satisfied. Ali was very enthusiastic throughout the intervention and tried to do his best both during instruction and on the quizzes.

Withdrawal Phase

After using these strategies, Ali was found to be capable of solving almost any addition problem with two-digit addends. On April 14, the withdrawal phase (return to baseline conditions) was initiated, where Ali received instruction with his classmates and then took the same quiz that they were all administered. Ali answered eight (80%) of the addition problems correctly. Two days later, he achieved a 70% on the quiz. On April 20, he was able to solve nine (90%) addition problems correctly on the quiz. The following figure shows the progress Ali displayed, beginning from the baseline phase (A), followed by the treatment phase (B), and then during the withdrawal phase (A; see Figure 1).

Figure 1. Probe Data of Subject

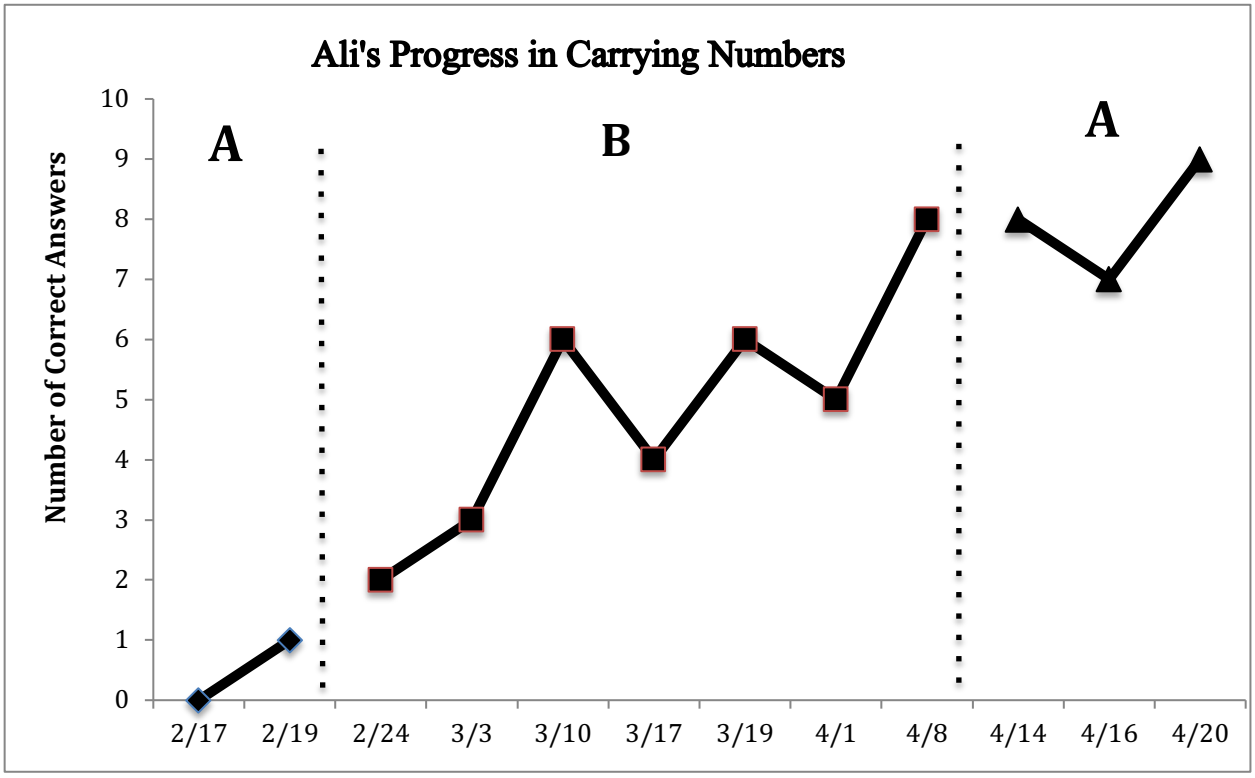

Figure 1 presents the results of Ali's testing, using 10-item quizzes, over the period of the study. Ali showed progress in his performance when manipulative items were introduced. He demonstrated that, through these practices, he obtained enough information to improve his understanding of the process of carrying in addition problems that involve two-digit numbers. Initially during the baseline phase, Ali's scores were very low, where he could only answer at most one question correctly on a 10-item quiz. This demonstrates that his performance level was very low prior to the study and that he needed support. During the intervention, Ali showed progress gradually. After the first intervention, he was able to answer 20% of the 10 items correctly. His performance then improved to where he could answer 80% of the items correctly. His achievement increased from an average of 5% (zero items or only one item answered correctly) during the baseline phase to 80% at the end of the intervention. As is typical with academic improvement in a specific skill, there is no real return to baseline scores since once a concept is mastered, it is not usually forgotten. Therefore, it was not surprising that Ali continued to show increased performance on probes during the withdrawal phase. Notably, he was able to answer nine (90%) problems correctly by the end of the withdrawal phase.

Discussion

The goal of this study was to demonstrate that the introduction of manipulative items – visual, non-language-based tools to support learning – results in improved outcomes for students who are deaf or hard of hearing. This study achieved its objective. Ali, a third-grader with hearing loss, was able to master the process of carrying in addition problems successfully, after undergoing various interventions that included manipulative items and positive reinforcement. The need for intervention was confirmed through observation during the baseline phase. Although Ali showed improvement during the intervention phase, his performance was not consistent. He would show some progress and then his scores would decrease. This may be attributed to changes in the strategy employed.

Whenever the strategy was modified, Ali's performance decreased. However, Ali's overall performance was progressively better from the baseline. The positive reinforcement that was introduced also greatly affected his enthusiasm and by extension, his performance.

Conclusion

Research has found that different factors affect the ability of students who are deaf or hard of hearing to master mathematics skills. This study examined one student, third-grader Ali, who is hard of hearing and 9 years old. Ali had been identified as having difficulty in successfully answering addition problems where it was necessary to carry over from the ones column to the tens column. This study utilized an A-B-A design with three phases: baseline, treatment, and withdrawal. Multiple interventions were used during the treatment (B) phase. After each lesson, Ali was presented with a 10-item quiz (a probe) consisting of addition problems that included carrying to evaluate his level of progress. Ali's difficulty was clearly documented in the baseline phase. During the treatment phase, his performance developed over multiple applications of the interventions. The intervention strategies employed led to success and strong achievement for this student. In the final phase, Ali was able to maintain that improvement and achieve excellent results on probes post-intervention.

Strengths and Limitations

The structure of this study allowed the researcher to obtain in-depth data on the benefits of implementing different interventions to support a student who is hard of hearing in obtaining improvement in his addition computational achievement. Since the researcher was able to implement the intervention over time, it was possible to examine and document the student's progress very closely. The primary limitation of this research is obvious in that it was a single-subject case study focusing on only one individual. Furthermore, the first language of the student is Spanish; English is his second language, and this was his first year of schooling where the primary language of instruction was English. Finally, the student was a third-grader. Therefore, it is not clear that the process of the intervention would achieve the same results with younger or older students who are deaf or hard of hearing.

Recommendations for Future Research

In the future, it would be beneficial to investigate whether the intervention would be as effective with students who are younger than Ali, because early intervention has been shown to be key to supporting the educational success of students with disabilities throughout their education. It would also be useful to conduct a study utilizing these strategies that investigated the student's ability to successfully learn carrying with three-digit numbers. Future research could examine whether the intervention might be employed to support other aspects of mathematic achievement in students who are deaf or hard of hearing. Such research should also evaluate the effectiveness of this study design with deaf students, versus students who are hard of hearing, to see whether there is any difference in the response to the strategy.

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Ethics of the Environment

Julia M. Puaschunder[1, 2]

[1]*The New School, Department of Economics, School of Public Engagement, New York, NY 10003, USA, Julia.Puaschunder@newschool.edu, www.juliampuaschunder.com*
[2]*Columbia University, Graduate School of Arts and Sciences, Julia.Puaschunder@columbia.edu, http://blogs.cuit.columbia.edu/jmp2265*

ABSTRACT: Globalization leveraged pressure on contemporary society. Today's most pressing social dilemmas regarding climate change demand for inclusive solutions that marry the idea of sustainable growth with environmental economics. Understanding the bounds of environmental limits to avoid ethical downfalls beyond the control of singular nation states infringing on intergenerational equity – the fairness to provide an at least as favorable standard of living to future generations as enjoyed today – has become a blatant demand. In a history of turning to natural law as a human-imbued moral compass for solving societal downfalls on a global scale in times of crises; the paper covers the ethical justification for environmental economics. Climate change demands for intergenerational equity in the 21st century and climate justice attention around the globe, while the gains and losses of a warming globe are distributed unequally. Only ethical foundations and imperatives will help to provide the groundwork on climate justice within a society, around the world and over time. Ethics of the environment derived from a human natural drive towards intergenerational fairness back climate justice based governance and private sector solutions.

KEYWORDS: Climate Bonds, Climate Change, Climate Justice, Climatorial Imperative, Economics of the Environment, Ethics, Environmental Justice, Environmental Governance, Heidegger, Kant, Public Policy, Rawls, Sustainability, Teaching

Introduction

The idea of intergenerational equity is as old as humankind. Intergenerational equity arises from the elderly wanting their offspring to prosper in at least as favorable conditions as experienced. Naturally, parents do not want their child to grow up worse than they did themselves and the elderly morally feel for future childrens' well-being. All major religions promote intergenerational equity. The natural behavioral law of intergenerational equity was lived for centuries and transpired in the social compound as practiced in ancient, traditional customs ever since. Intergenerational equality is grounded on a human-imbued wish for fairness, as there is an ethical preference for fair welfare distribution among different generations.

Acknowledging intergenerational equity as a natural behavioral law may serve as a legal basis for the codification of human rights of intergenerational equity. A pro-active overcompliance with contemporary sustainability legislation may stem from a broader social contract within society to incorporate novel responsibilities and embrace discretionary activities that contribute to societal welfare and the well-being of future generations. Globalization increasing internationalization of public and private concerns creates a need for an international outlook of intergenerational equity in order to solve global common goods predicaments and draw inferences on the harmonization of intergenerational justice on a global scale in the age of climate change in the 21st century.

A warming earth under climate change is putting pressure on future generations. Climate justice accounts for the most challenging global governance goal. In the current climate change mitigation and adaptation efforts, high- and low-income households but also developed and underdeveloped countries as well as various overlapping generations are affected differently. International climate change mitigation and adaptation regimes and differences in the climate change gains and losses distribution around the globe.

Behavioral aspects of intergenerational conscientiousness and environmental ethics are comprised of ethical foundations that nudge people into social responsibility and future-oriented decision. Ethical roots in climate justice are based on underlying a natural behavioral law of intergenerational fairness. Rational choice theory may be grounded on assumptions that are limited to explain choices in extremes and under constraints of novel human experiences and changed environmental conditions (Chichilnisky-Heal 2014).

Ethical imperatives to protect disadvantaged current world inhabitants and future generations from climate injustice are derivable from Immanuel Kant's categorical imperative, John Rawls' veil of ignorance and Martin Heidegger's future-oriented decision making. Based on insights on the current endeavor to finance climate change mitigation and adaptation around the globe, a 3-dimensional climate justice approach can be grounded in ethical imperatives to share the burden of climate change fair within society. Deriving respective policy recommendations for the wider climate change community is aimed at ensuring to share the burden but also the benefits of climate change within society, between countries and over time in an equitable and fair way.

In a macro-economic model integrating world temperatures and Gross Domestic Product (GDP) temperature peak conditions, Puaschunder (2020) showed that economic gains and losses of a warming globe are captured to be distributed unequal around the world. Mapping Climate Justice proposes a 3-dimensional climate justice approach to share economics benefits and the burden of climate change right, just and fair within a society (1), around the globe (2) and over time (3). (1) Climate justice within a country pays tribute to the fact that low- and high-income households carry the same burden proportional to their dispensable income (Puaschunder 2017c). (2) Based on Immanuel Kant's (1783/1993) categorical imperative and John Rawl's (1971) veil of ignorance, the ethical climatorial imperative demands for an equalization of the gains of climate change around the globe for all actors involved in order to offset for losses incurred due to climate change (Puaschunder 2017b, c). Fair climate change change burden sharing between countries ensures those countries benefiting more from climate change also bear a higher responsibility regarding climate change mitigation and adaptation efforts. (3) Climate justice over time is proposed in an innovative bonds climate change burden sharing strategy (Orlov, Rovenskaya, Puaschunder & Semmler 2018; Puaschunder 2016a).

Future wealth of nations depends on climate flexibility in terms of the range of temperature variation of a country. In a changing climate, temperature range spread is portrayed as a future asset for production flexibility and international trade of commodities implying comparative advantages of countries. Climate-related degrees of freedom imply an unprecedentedly described future climate wealth of nations in a globally warming world. Theoretical macro-economic modelling re-integrated temperature (T) into growth theory to be backtested on commodity prices. Public policy implementation strategies for environmental justice now and for future generations were given in Puaschunder (2020).

Climate models underline the unequal climate change impact

Mapping Climate Justice proposes a 3-dimensional environmental justice approach to share economic benefits and the burden of climate change right, just and fair around the globe. Scientific data is backed by ethical imperatives. Gross Domestic Product (GDP) gains and losses of a warming globe are captured to be distributed unequal around the world. The ethical climatorial imperative demands for an equalization of the gains of climate change around the globe in order to offset losses incurred due to climate change (Kant 1783/1993; Puaschunder 2017b, c; Rawls 1971).

First, climate justice within a country should pay tribute to the fact that low- and high-income households carry the same burden proportional to their disposable income, for instance, enabled through a progressive carbon taxation, consumption tax to curb harmful

behavior and/or corporate inheritance tax to reap benefits of past wealth accumulation that may have caused climate change (Puaschunder 2017c).

Secondly, fair climate change change burden sharing between countries ensures those countries benefiting more from a warmer environment also bear a higher responsibility regarding climate change mitigation and adaptation efforts (Puaschunder 2019a, b).

Thirdly, climate justice over time is proposed in an innovative climate change burden sharing bonds strategy, which distributes the benefits and burdens of a warming earth Pareto-optimal among generations (Puaschunder 2016a).

All these recommendations are aimed at sharing the burden but also the benefits of climate change within society in an economically efficient, legally equitable and practically feasible way now and also between generations.

Future Climate Wealth of Nations is derived from climate flexibility defined as the range of temperature variation of a country. In a changing climate, temperature range flexibility is portrayed as a future asset for production flexibility and international trade of commodities leading to comparative advantages of countries.

A broad spectrum of climate zones has never been defined as asset and comparative edge in free trade. But future climate change will require territories being more flexible in terms of changing economic production possibilities on a warming globe. The more climate variation a nation state possesses, this novel project argues, the more degrees of freedom a country has in terms of GDP production capabilities in a changing climate.

Modeling and empirical validation: These preliminary insights aid in answering what commodity prices, financial flows and trade patterns we can expect given predictions the earth will become hotter. Climate variation based on cyclical changes or climate zones will become subject to scrutiny for associations with climate-based advantages and risks. Economic modeling, cross-sectional world country comparisons, time series and panel regressions will scrutinize temperature data in relation to production in order to derive inferences for future Climate Wealth of Nations.

Already now, the degree of climate flexibility is found to be related to human migration inflows. The previously defined climate change winner and loser index is blended with the novel insights on climate flexibility, leading to an unprecedented outlook on future Climate Wealth of Nations in a climate changing world (Puaschunder 2020).

Ethical imperatives backing the case for climate justice

Based on the optimal temperatures for the agriculture, industry and service sectors productivity as well as climate projections of the year 2100 under the business as usual path per country, climate winners and losers around the world from now on until the year 2100 were revealed (Puaschunder 2020). Overall and simply seen from a narrow-minded GDP perspective, the world will macroeconomically benefit more from climate change until 2100 than lose. Winning and losing from a warming earth is significantly positively correlated with the Paris COP 21 emissions country percentage of Greenhouse Gas (GHG) for ratification.

As with all international obstacles weak incentives for compliance and non-ratification or adherence to universal international legally binding instruments, hinders a concerted action plan and follow-through (Chichilnisky-Heal 2014). In order to overcome generality and ineffectiveness, ethical imperatives and humane natural behavioral laws may aid in the establishment of global guidelines that can lead actors involved in a global-scale transition including member states representatives, observer states and market actors such as suppliers, transit states, and consumers of energy who must prioritize energy security (Chichilnisky-Heal 2014).

Immanuel Kant: Ethical justifications for attention to climate change aversion in light of the prospective economic gains are grounded in Immanuel Kant's (1783/1993) categorical imperative. The philosophical justification is grounded in the climatorial imperative – advocating for the need for fairness in the distribution of the global earth benefits among nations based on Kant's imperative (1788/2003) to only engage in actions one wants to experience being done to oneself. Passive neglect of action on climate mitigation is an active injustice to others (Chichilnisky 1996, Chichilnisky, Heal & Vercelli 1998; Puaschunder 2017b).

The climatorial imperative – advocating for the need for fairness in the distribution of the global earth benefits among nations based on Kant's imperative to only engage in actions one wants to experience themselves being done to oneself. While the method to measure the gains from climate change can certainly be refined in future studies, the following research is meant as very first preliminary step to open a gate to find climate mitigation incentives from a welfare redistribution perspective. Countries passive or agnostic about global warming mitigation that reap benefits from a warming earth should be obliged to finance international aid for those that are impacted negatively by climate change, e.g., climate refugees. In addition, building on common and international law, those countries that have better means of protection or conservation of the common climate should also face a greater responsibility to protect the earth (Puaschunder 2016b).

With reference to Immanuel Kant's Categorical Imperative proposing to 'not impose on other what you do not wish for yourself' and suggesting to 'treat others how you wish to be treated,' the climatorial imperative should fortify the common but differentiated responsibility to ensure a stable climate and share the benefits among the world to alleviate those parts of the world that have run out of favorable climate time already (Kant 1785/1993). Since the birth into a nation on earth is involuntary, by birth one owes to the population of the world a share of the windfall gains acquired simply by the fate of where one was born. As outlined by the correlation between GHG emissions and time to favorable climate extinction, birth in a climatorial prosperous region by fate naturally obliges to distribute some of the benefits due to the higher contribution to climate change onset and the unfair competitive advantage due to the unequally distributed time to climate extinction.

John Rawls: Society as a whole outlasts individual generations. Pareto optimality for society over time differs from the aggregated individual generations' preferences. As the sum of individual generations' preferences does not necessarily lead to societally favorable outcomes over time (Bürgenmeier 1994; Klaassen & Opschoor 1991), discounting based on individual generations' preferences can lead to an unjust advantage of living generations determining future living conditions. Based on social contract ideas in the tradition of Thomas Hobbes, Jean-Jacques Rousseau and John Lock, John Rawls' (1971) idea of the veil of ignorance is a thought experiment first introduced in the 1970s as a principle to structure a free, equal and moral society. Principles of justice should thereby be chosen by parties free from consideration of their original position. Similar concepts have been argued in Adam Smith with an impartial spectator, who is not incentivized by market mechanisms. Especially in situations, when there are climate change winners and losers, John Rawls' veil of ignorance would suggest that one should not weight in wether being a climate beneficiary or being a climate loser, which would also reveal incentives to care or not care about a heating up earth. Since the climate change problem connects the world in a common stratosphere and a global ecosystem but also given existence of tipping points and irreversible lock-ins, the climate agenda has to be pursued by the entire would community. Based on the political insight of the Conferences of the Parties (COP) agreements in the United Nations Framework Conventions that all world leaders have to come together to ratify climate agreements, one realizes the importance of a widespread support of climate change mitigation and adaptation around the globe. In order to enact this grand scale effort, John Rawls' veil of ignorance can aid structuring society to agree on climate change mitigation and adaptation efforts concurrently

without the consideration of whether or not one is a climate change winner or loser and in what position one may find her- or himself in a warming temperature. This market incentive blindness clearly goes against utilitarian arguments of the rational agents always striving to maximize expected outcomes. The idea of a veil of ignorance over the economic gains of climate change pays homage to behavioral economics attempts to bring in ethics and social care into the standard utility function.

After having evaluated the overall problem of climate justice behind a veil of ignorance that led to conclusion to take action concertedly against a warming globe, knowledge about the actual gains and losses will help find a well-balanced redistribution system.

As for redistributing the gains of a warming globe in order to offset losses incurred by global warming, a climate change bonds-and-tax finance strategy is proposed to bear the burden of climate change in a right, just and fair way within society, around the globe and over time (Puaschunder 2017a, b, c).

In climate change winner countries weighted by GDP per capita, taxation should become the main climate stability financialization strategy. Foremost, the industries winning from a warming climate should be taxed. Regarding concrete climate taxation strategies, a carbon tax on top of the existing taxation should be used to reduce the burden of climate change and encourage economic growth through subsidies. Within a country, high- and low-income households should face the same burden of climate stabilization adjusted for their disposable income. Finding the optimum balance between consumption tax adjusted for disposable income through a progressive tax scheme will foster tax compliance in the sustainability domain.

Governments in global warming loser countries weighted by GDP per capita should receive tax transfers in the present from the winning countries. The climate change loser countries should also borrow by loans or issuing of bonds to be paid back by future generations. Taxing future generations is justified as future generations avoid higher costs of climate change long-term damages and environmental irreversible lock-ins. Overall this tax-and-transfer mitigation policy thus appears as a Pareto-improving fair solution across the world and among different generations.

Tax-and-bonds transfers could be used to incentivize industry actors for choosing clean energy. The revenues raised from taxation and bonds would thereby be allocated to subsidize corporations choosing clean energy. This market incentive could shift the general race-to-the-bottom regarding price cutting behavior and choosing dirty, cheap energy to a race-to-the-top hunt for subsidies for going into clean energy and production.

Concluding, climate change winning countries are advised to use taxation of the gains in sectors to raise revenues to offset the losses incurred by climate change. Climate change losers should issue bonds to be paid back by taxing future generations. Climate justice within a country should also pay tribute to the fact that low- and high-income households share the same burden proportional to their dispensable income, for instance enabled through a progressive carbon taxation. Those who caused climate change could be regulated to bear a higher cost through carbon tax in combination with retroactive billing through a corporate inheritance tax to reap benefits from past wealth accumulation that contributed to global warming.

Martin Heidegger: The German philosopher Martin Heidegger was a proponent of the idea of individuals not only being future-oriented by nature (*man ist sich selbst immer voraus*) but also future-oriented in ethical endeavors. Future-oriented decision making is another skill that will help to enact climate action now for the sake of the preservation of future generations' living conditions. In the climate domain, intertemporal questions arise whether to invest in abatement today – in order to prevent negative effects of global warming – or to delay investment until more information on climate change is gained (Rovenskaya 2008). In general, resources are balanced across generations by social discounting to weight the well-

being of future generations relative to those alive today. Regarding climate justice, current generations are called upon to make sacrifices today for future generations to cut carbon emissions to avert global warming (Sachs 2014). Intergenerational balance is therefore accomplished through individual saving decisions of the present generation (Bauer 1957). Policies curbing preferences and taxes distributing welfare between the present and future generation may, however, decrease economic growth. But this climate change mitigation at the expense of lowered economic growth seems to pit the current generation against future ones. Costly climate change abatement prospects are thus hindering currently necessary action on climate change given a shrinking time window prior to reaching tipping points that make global warming irreversible (Oppenheimer, O'Neill, Webster & Agrawal 2011).

In the engagement of broad masses to contribute and give to future generations, future-oriented decision making is key. In the ample literature on discounting in the finance domain, the scarce resource time and future prospects have not been tested. Behavioral economics holds information about how to nudge people into considering future-oriented choices. Puaschunder and Schwarz (2012) find that bundling two choices with two different timeframes and presening the now concurrent with the future aids in making more intergenerationally harmonious choices. Puaschunder (2020) found in a survey that the social, economic and environmental time use varies over mental temporal accounting compartments of a day, week, month, year and decade. Social time was defined as time spent with other people and engaging in social interaction, communication or activities with others. Economic time was meant as time spent using one's labor power and productive capacity, likely to earn money and be or prospectively be a productive part of the labor force. Environmental time was given as time spent outdoors in the open environment. While there are no gender differences to report; age groups and parenthood make a difference when it comes to time allocation perceptions in the social sphere and the environmental domain. Time allocation depends on the economic, social and environmental context. In the environmental frame, time use is reported as highest over all categories. Then follows time use perception of those subjects in economic mindsets. Lastly, in the social condition, time use is perceived to be the lowest, even lower than the neutral baseline condition. These results indicate that individuals tend to feel they make the most out of their time when spent in the natural environment in comparison to economic time us and social time spent. All results hold invaluable insights on incentives to nudge individuals into benevolent time use and use external cues to motivate positive change. Elucidating how contexts and experiencing critical life stages influence temporal activity allocation choices holds manifold implications to improve decisions on education, health, asset management, career paths and common goods preservation throughout life. The found differences of social, economic and environmental cues impacting on temporal discounting but not social, economic and environment monetary allocations demand for future investigations of the relation of mental temporal discounting and financial allocation preferences.

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An Analytical Overview of Restaurant Job in New York City in the Wake of the Pandemic

Sonal Pandey

PhD, Middlesex County College, New Jersey
sonal.bhu@gmail.com, spandey@middlesexcc.edu

ABSTRACT: New York is the most corporate-oriented state in the U.S., as well as has instituted several tax benefits and incentives to help diminish the load on small business owners. The restaurant business in New York City is like no other business in the world. My research study is based on the hardship of the situation faced by the restaurant industry as well as their workers during this pandemic situation. Will they overcome this situation with flying colors? The objective is to suggest strategies lined up to live with the new normal. During my research study, I found that job growth of the restaurant industry from 2009-2019, is 61% and business also expanded during this period by 40 %, which shows that the rate of growth became double overall. But after 2019 picture changed and finding is surprising. Here is my research work to overview the impact of pandemic on the full-service job in restaurants in New York City in 2020 by 2 sample t-test (took 2019 and 2020 monthly restaurant employment as my sample data). I also tried to quantify the relationship between two variables that is COVID-19 cases from starting of outbreak till December 2020 and the change in full-service restaurant job in NYC during that period through linear regression analysis.

KEYWORDS: New York restaurants, COVID-19, impact on restaurant jobs, regression analysis, hypothesis test, future planes remedies

Introduction and significance of the study

In 2019, industry attained its highest number of jobs and establishments ever. Although average wages in the industry is exceptionally low as compared to other business, it provides a sturdy job opportunity for many minority populations, particularly Hispanic and Asian immigrants. There are more than 25 thousands eating and drinking establishments in the five boroughs (Ryan 2020). It was unimaginable just one or two weeks ago when we all were celebrating Valentine's day and talking about Easter that lives are going to be change in such a terrible way, due to the entry of undesirable pandemic name COVID-19.

Since March 2020 pandemic started hitting extremely hard to every corner and sectors of the world, our New York restaurants are one of the sectors among them. After the declaration of emergency on 7th march than life around New York has taken a new form. New York City became more like a ghost town with frightened people in the mask on the dark, quiet, and empty street, it looked like that our bustling metropolis celebrating Halloween in the month of March. All instructions given by government for mandatory closures, stay-at-home and social distancing, the inception of a severe economic recession, and top of that travel constraints have caused unprecedented disruption for the restaurant industry. The whole network of entire restaurant industry and small, independent farmers and producers that directly or indirectly rely on restaurants in farm to table movement shattered as quickly as comes to understand the reason.

Table 1. Monthly Data overview for change in employment in NYC Restaurant

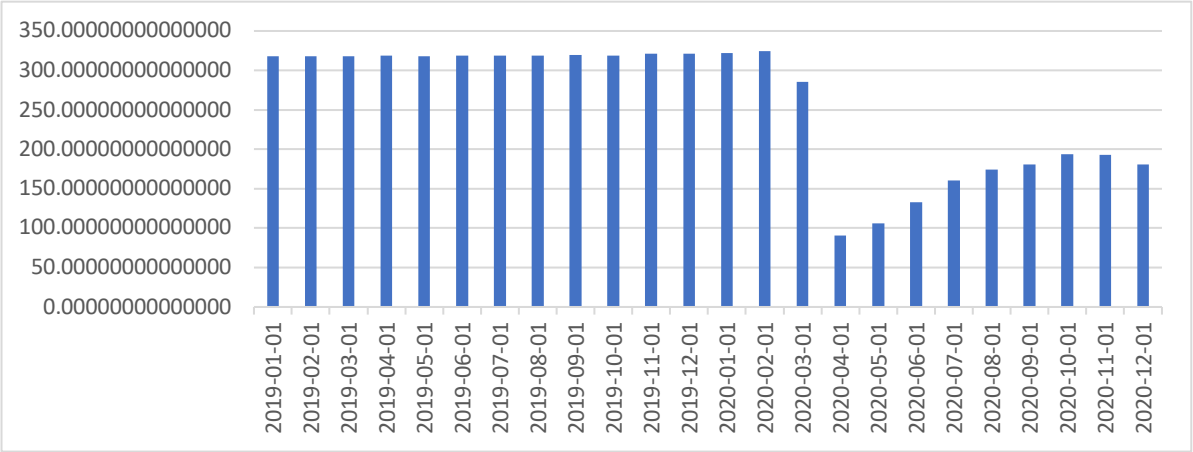
2019-01-01	318.01916552962600	2020-01-01	322.39345960722800
2019-02-01	317.68291530792100	2020-02-01	324.64481006203500

2019-03-01	318.34916821472400	2020-03-01	285.37514589393500
2019-04-01	318.95972336929100	2020-04-01	90.78554213358480
2019-05-01	318.24535720314700	2020-05-01	106.34861106930500
2019-06-01	318.46187687320600	2020-06-01	132.92587743133400
2019-07-01	318.76857214247200	2020-07-01	160.42666379041000
2019-08-01	318.71161899590900	2020-08-01	174.36173916597600
2019-09-01	319.89347962309400	2020-09-01	180.76253898250900
2019-10-01	318.56096190779200	2020-10-01	193.78076584905500
2019-11-01	321.27129266660000	2020-11-01	192.84706432891200
2019-12-01	321.38310287698000	2020-12-01	180.67055668534600

Source: FRED, Federal Reserve Bank of St. Louis. 2019. *(SMU36935617072200001SA All Employees: Leisure and Hospitality: Food Services and Drinking Places in New York City, NY, Thousands of Persons, Monthly, Seasonally Adjusted, 2019)*

In the figure below and data set above, we can see that how much change in employment in NYC restaurant in year 2020 if you compared with the previous year. I know there can be other factors too, but Pandemic played a very crucial role in this.

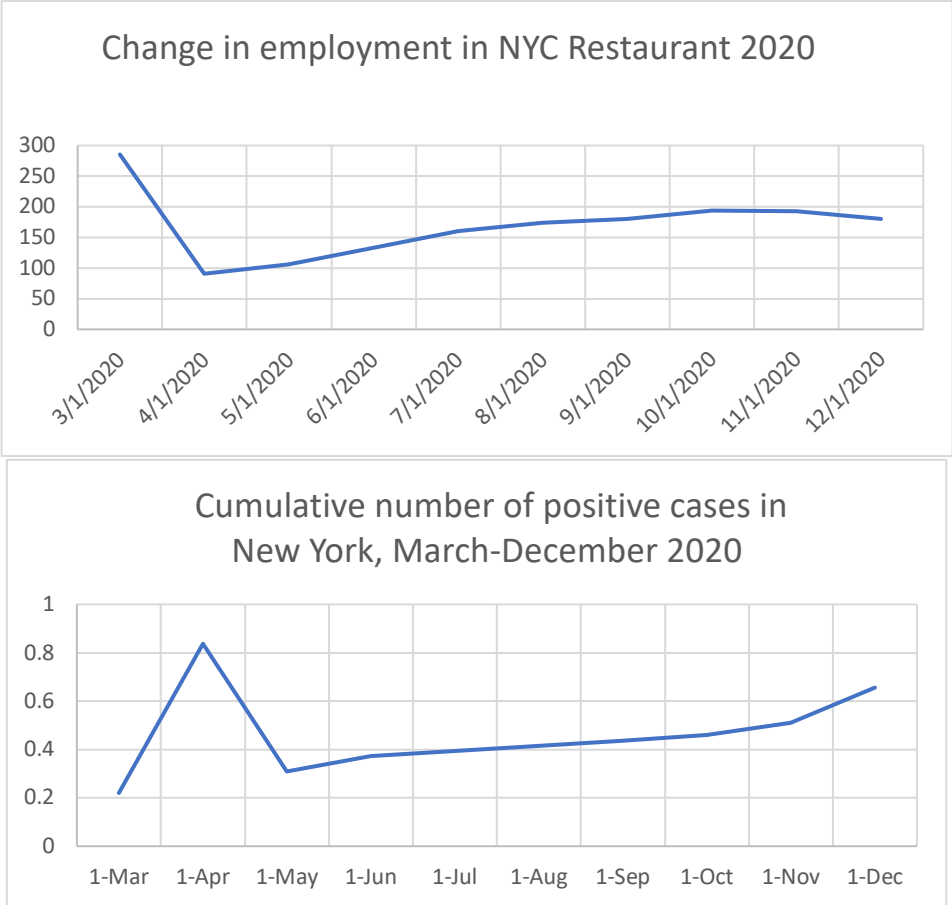
Figure 1. Comparable Monthly Data overview for change in employment in NYC Restaurant 2019 and 2020



Hypothesis T-test
State: wish to test the following hypothesis at the α=.01 level
H0: μ1=μ2
H1: μ1≠μ2
Where μ1 is the true mean number of employments in NYC restaurant in 2019
μ2 is the true mean number of employments in the NYC restaurant in 2020.
Plan: Conducted two sample T Test because sample size is not so big and its available.
*Normal: Assumed that the data is roughly normal distributed, unimodal, roughly symmetric, has no outliers, so it seems roughly normal. It is safe to use t-procedures.

*Independent: due to the random assignment and the isolation of each year, we can view the employment in each year as independent.
Result: Using 2 sample T Test with the help of Texas Instrument (TI-84)
'x-bar' 1= 319.02
'x-bar' 2= 195.45
Sx1 = 1.20
Sx2=77.35
N=12
t~5.5
p~.000017
Conclude: With a **P** value of approximately zero, which is less than any reasonable α value, **I reject H0**. There is overwhelming evidence to support the claim that there is difference in the true mean number of employments in 2019 and employment in 2020.

Fugure 2. Relationship between Monthly cumulative number of COVID-19 cases and Monthly change restaurant employment



Leaner Regression analysis

Y=A X + B

a statistical relationship between one dependent variable Y and one independent variable X. Dependent variable Y is also called response variable or outcome variable. Independent variable X is called predictor variable, regressor variable, or explanatory variable. The independent variable predicts the value of dependent variable for a given value of independent variable. The general equation for a straight line may be written as Y = A X+ B Where, Y is a value on the vertical axis , X is a value on the horizontal axis , B is the point where the line crosses the vertical axis and the

value of Y at X = 0, Y-intercept is the value of B when X = 0, A shows the amount, by which Y changes for each unit change in X, i.e. slope of the straight line. Figure explains these variables in a graphical format. Taking other factors out of scope and just focused on the change in Y variable in relation to change in X variable.

X coordinates represents-Change in cumulative number of positive cases in New York-March-December 2020

Y coordinate represents-Change in employment in New York City Restaurant from March-December 2020.

A= -148.2574076 B=238.130655 R^2=.2311973154

R=-.4808298195

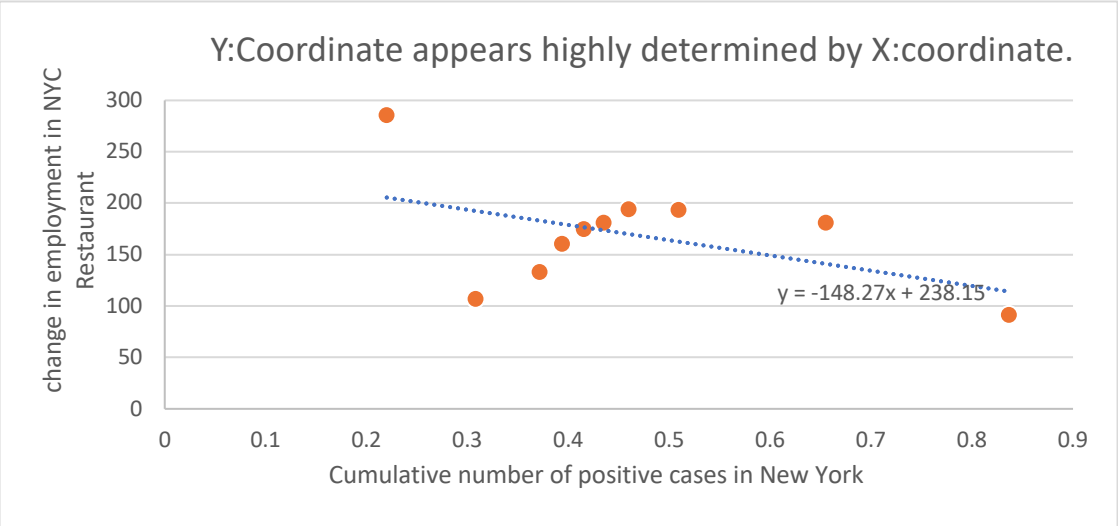
Here is some important piece of information – **R** is the correlation co-efficient; it tells us how close to perfect or positive/negative correlation in this case and it is -.48 (goes little further but taking here only two decimal places).

R squared is co-efficient of determination and that is 0 .23 (again taking two decimal places) and if we need to interpret the meaning of that we say that 23 % of the variability in the y variable which is our full-service restaurant employment can be accounted by the variability in the x variable (cumulative number of COVID-19 cases) so concisely we can say 23 % of variability in the full-service restaurant employment can be accounted by the variability in cumulative number of cases. The remaining 77% is coming from unexplained factors that are outside of the scope of problem, things like weather and natural factors, are outside of the scope of concern here.

Here equation of the regression line is – **Y = -148.26 X + 238.13**

Y = B+ AX Here, B is **238.130655** which is the value of Y when X is 0. But in this case the Cumulative number of positive cases can never be practically zero during that period. A is -**148.26** which is the number of changes in Y for each one unit change in X. So, by this regression equation we can conclude that increase in Cumulative number of positive cases decrease the full-service restaurant job in New York by 148.26 degree.

Figure 3. Change in employment in NYC Restaurant



Downward line indicates Negative correlation – So the two variables change in the opposite direction and in the same proportion. Each point on regression line shows the combination of change of two variables.

Conclusion: As par hypothetical two sample t-test, there is strong evidence that employment in 2020 is way less than in 2019 as we can see in test result change in employment number for both years are way far, so mean value is not equal. Now from the regression testing I concluded that monthly change employment in 2020 is impacted by number of cumulative cases increase in each month of 2020 from march to December, that viewed as negative regression line /slope.

Discussion /Suggestions / Future Hopes

New York City has roughly 26 thousands restaurants. Due to the quarantine nearly all of them have shut down. It is unknown when these workers can work again. Without aid, an estimated 75 percent of independent restaurants are likely to never reopen. This would make it difficult to restaurant workers to find job after the pandemic (www.nytimes.com/2020/03/24/opinion/coronavirous-restaurants-danny-meyer.html?searchRestaurantPosition=3).

Though many of the changes in the restaurant industry are likely here to stay, it does not mean that restaurants will not continue to evolve, improve, and serve an important role in people's lives. There just might be new expectations for what restaurants are and will be. “In six months, it will be a great time to open a restaurant," Bob Phibbs, CEO of The Retail Doctor, a New York-based retail consultancy, told the E-Commerce Times (Wagner 2020).

As we all know that situation is still not under control and City is in processes of recovery but from beginning of the pandemic to the end of the year 2020 restaurants business and their workers fought very well with all new techniques and precautions. "People will want to get out, and 50 percent of the existing businesses that were around a year ago will be gone. It will be a perfect time to open a new concept built around more space, digitized menus, contactless payment, and the like. If restaurants can just hold on until then, they'll be heroes and rewarded for making it through this dark time" (Wagner 2020).

Recently, The Renaissance Pavilion, had a collaboration between local non-profit Harlem Park to Park, WXY Architecture + Urban design, the Black-owned restaurants guide Eat Okra, UberEATS, and PR firm Valance,working together for making of multiple outdoor dining arrangements introducing artwork from local artists and heaters for diners to eat outside during the winter months. The outdoor structures is created entirely free of cost for the restaurants, and it will serve as a permanent outdoor dining feature along the street, now that NYC has allowed outdoor dining whole year.

It could be extremely exciting to see whole new regional food system that can survive these shocks and others that will come along. The restaurant industry will see a new reality, post COVID-19. Recovery will obviously be a challenge for all restaurants: both large and small and fact is that it will not happen overnight.

Who knows what other revelations may develop after COVID-19? The only thing we have control on is- acceptance of change and that is constant in our life.

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Monitoring and Evaluation (M&E) of the Green New Deal (GND) and European Green Deal (EGD)

Julia M. Puaschunder[1, 2]

[1]*The New School, Department of Economics, School of Public Engagement, New York, NY 10003, USA, Julia.Puaschunder@newschool.edu, www.juliampuaschunder.com*
[2]*Columbia University, Graduate School of Arts and Sciences, Julia.Puaschunder@columbia.edu, http://blogs.cuit.columbia.edu/jmp2265*

ABSTRACT: Monitoring and Evaluation (M&E) is used in the assessment of the performance of projects, institutions and programmes by governments, international organizations, Non-governmental organizations (NGOs) as well as social media campaigns. The goal of M&E is to improve the current and future management of outputs, outcomes and impact. As the continuous assessment of programmes, M&E grants insights for the controlled evolution of large-scale projects' relevance, effectiveness, efficiency and impact on a grand scale and with a future-oriented outlook. This article applies an M&E lens to the United States' Green New Deal (GND) as well as its European pendant the European Green Deal (EGD). Both programs are large-scale endeavors with a long-term impact.

KEYWORDS: Climate Bonds, Climate Change, Economics of the Environment, Ecotax, Environmental Justice, Environmental Governance, Fiscal Policy, Green New Deal, Monetary Policy, Multiplier, Sustainability, Teaching

Monitoring and Evaluation (M&E)

Monitoring and Evaluation (M&E) is a process in which independent evaluators use their expertise to make independent judgments of the credibility, efficiency and effectiveness of large-scale projects. Many international organizations such as the United Nations, World Bank or the IMF or regional public finance institutions engage in M&E processes to measure and estimate the effect of projects, policies and implementation efforts around the world. Monitoring thereby ensures the continuous assessment to provide all stakeholders with detailed information on the progress of the activities under scrutiny. The methods used target at determining the outputs, deliveries and schedules planned. Evaluation is the systemic and objective examination of the continuous relevance, effectiveness, efficiency and impact of activities in light of specified objectives of plans. M&E target at enhancing feedback, learning and improvement towards successful mechanisms of change. Usually, short term outcomes are evaluated and monitored in the assessment frame. Knowledge of the areas of analysis is key in the M&E focus on innovative projects. The following part grants insights into the different areas of expertise covered in the GND.

Green New Deal (GND)

The New Deal was historically a bonds financing strategy of the United States of America between 1932 and 1939. In total, around 15 to 35 billion USD were spent on a series of development programs that funded public work projects, financial reform, and regulation efforts on economic development. U.S. President Franklin D. Roosevelt's overarching goal for the project was to relieve and reform the country so it could recover from the Great Depression.

The recently proposed Green New Deal (GND 2019) advocates using both a carbon tax and green bonds in order to stimulate economic growth. Based on the foundations of Modern Monetary Theory, the GND aims to vitalize the economy through a transition to renewable energy and sustainable growth. The GND serves as a market solution to implement global environmental governance as "the sum of the many ways individuals and institutions, public

and private, manage their common affairs" (Puaschunder 2020a). The GND thereby combines Roosevelt's economic approach with modern ideas such as renewable energy and resource efficiency.

Framework

The Green New Deal group operates within the framework of the United Nations Environment Programme (UNEP) that since 2008 has encouraged countries to create jobs in green industries, thus boosting the world economy and curbing climate change at the same time. Since 2019 over 600 corporations signed a letter to the United States Congress in support of climate attention in support for the reduction of greenhouse gas emissions. Change that has been advocated for includes fossil fuel extraction and subsidies, transitioning to renewables, expansion of public transport and overall emissions reductions.

Since 2019 Senator Edward Markey and Representative Alexandria Ocasio-Cortez push for transitioning the United States to use renewable energy, such as electric cars and high-speed rail systems as an extension of Obama administration plans. The GND is to improve vulnerable communities via state-sponsored employment, universal health care, increased minimum wages and preventing monopolies. A 10-year national mobilization targets at work security and working conditions by high-quality health care, affordable housing, economic security, access to clean water, air, healthy food and nature, education, clean, renewable, zero-emission energy, repairing of infrastructure, energy efficient smart power grids, upgraded living conditions, pollution elimination, clean manufacturing and positive work collaborations. Various proposals for a GND have been made internationally, for instance in Australia, Canada and Europe.

Economic foundations

Economic theories that back the GND include John Maynard Keynes' spending multiplier effect (1936), which captures the ratio of a change in national income to any autonomous change in spending – such as private investment spending, consumer spending, government spending, or spending by foreigners on the country's exports that causes it.

Joseph Stiglitz famously advocated for the GND by saying "it is better to leave a legacy of financial debts than to hand down possibly unmanageable environmental disasters." Also Jeffrey Sachs supports financial overspending for the sake of avoiding irreversible tipping points and environmental lock-ins (Puaschunder 2019b, 2020b). Money will always exist and is fungible, whereas environmental resources are depletable and irreplacably destroyable.

Implementation

Global Environmental Governance could provide different means for implementing the GND, ranging from formal institutions (major global conferences and treaties), legal regimes, informal arrangements, intergovernmental relationships, nongovernmental organizations, global capital markets and multinational corporations (Puaschunder 2020b).

Fiscal policies: The public sector and governing institutions play a central role in overcoming free-rider problems and initiated market opportunities associated with externalities like climate change. Climate change mitigation and adaptation can be financed via tax revenues (Puaschunder 2019b). Carbon tax can create fiscal space. Proposed financing tools include (long) maturity bonds – such as discussed in Sachs (2014), Orlov, Rovenskaya, Puaschunder and Semmler (2019) and Braga, Fischermann and Semmler (2020).

Carbon Tax: To peg emissions to tax payments appears simple and fair. Around the globe, about 14% of CO_2 emissions are subject to taxation. But most of these taxation efforts are only a few cents or dollars per CO_2 ton of emissions. Climate effects are only predicted for around 40 USD and increasingly doubling the taxation after an introductory phase successively. So far, Sweden has been quite successful with this: Since 1991 the CO_2 tax has been raised to 130 USD and carbon emissions dropped for about 1/4th while the economy could still grow.

Monetary and credit policies: The importance of monetary policy in support of climate policy is visible in inflation targeting as a proper policy. Yet, adaptation, the provision of climate disasters, and the recovery are often producing bottleneck causing higher inflation rates. So targeting the inflation rate to move down inflation rates do not seem to be the appropriate policy if one has negative shocks on the supply side.

Insurance policies: Some researchers stress the importance of preventive actions and of policy buffers, designed to enhance resilience to shocks. Furthermore, the ease of borrowing constraints, greater reserves, and reserve fund accumulation is suggested. Low income countries and regions have limited access to issuing climate bonds and exercise little borrowing power. Besides tax increases, risk pooling through self-insurance or some collective insurance schemes, grants from donors, and buildup of financial buffers and disaster funds for contingencies are recommended.

Central banks: Departing from their central focus on monetary and economic stability (e.g., legal tender & setting the interest rate to achieve market stabilization), central banks have recently gained interest in aiding on the financialization of climate change mitigation and adaptation.

Emissions-Trading: Around the globe, emissions trading covered around 20% of the global CO_2 emissions in about 40 countries of the world and over 20 cities, municipals and provinces of the world ranging from China to the EU.

Green Bonds: Solar power and wind turbines, eco-friendly infrastructure and more research and development in clean energy and green technology are all investments for climate change. Addressing market changes and the financialization of climate justice are estimated to comprise of 5-7% of the contemporary world GDP, accounting for 5-6 billion USD. Green bonds could fund all these endeavors.

Environmental pricing reform is the process of adjusting market prices to include environmental costs and benefits. A negative externality exists where a market price omits environmental costs. Then rational (self-interested) economic decisions can lead to environmental harm, as well as to economic distortions and inefficiencies. Environmental pricing reform can is a market-based or economic instrument for environmental protection. Examples include green tax-shifting (ecotaxation), tradeable pollution permits, or the creation of markets for ecological services. “Ecological fiscal reform” differs in more narrowly dealing with fiscal (i.e. tax) policies as opposed to using non-fiscal regulations to achieve the government's environmental goals.

Absorbing CO_2 and forestation: As carbon-negative market solution CO_2 can be absorbed from the atmosphere. Examples of this are carbon-absorbing forests, green rooftops in cities, carbon-negative clothing through fungus-wear but also the absorption of CO_2 from the atmosphere by machinery and windmills as well as premia to stop deforestation. Another

ground-breaking innovation could be decentralized energy grids that are run on blockchain approaches. Thereby single households could generate energy, for instance via solar panels on the rooftop or isolated heating devices. Immediately as the energy is generated, the individual household could either use the energy or distribute energy to close neighbors in a grid. This point-to-point solution between closer distributors and decentralized energy sharing could revolutionize the dependency on a few energy providers.

Behavioral changes: In most recent decades, affluent people in high-income countries have defined environmental conscientiousness as luxury good. High-end consumers around the world then have proven interest in goods that do not cause CO_2 emissions. They travel and shop environmentally-conscientious with respect for the wider community and are investing to fund social and environmental causes in their local communities. Behavioral insight – hence the behavioral economics application onto global governance – proves in many powerful laboratory and field experiments the power of behavioral nudges and winks on consumer choices with less money incentives. Nudges, the behavioral means to change people's choices based on their emotions, status and other environmental and social conditions, have proven to be powerful and easily-implementable sources to educate and change people's behavior without direct enforcement (Puaschunder forthcoming a, b).

Sustainable tourism is the concept of visiting somewhere as a tourist and trying to make a positive impact on the environment, society, and economy. Tourism can involve primary transportation to the general location, local transportation, accommodations, entertainment, recreation, nourishment and shopping. It can be related to travel for leisure, business and visiting friends and relatives. There is now broad consensus that tourism development should be sustainable.

Innovation efforts financialization: Technological innovations are usually a result of a mix of private and public activities. The public sector can set frameworks and incentives, to support inventions through R&D and de-risk of innovation through public support and subsidies and setting incentives. Public actions – such as tax and subsidies – could enable the transition to a low carbon economy, and contributing to a faster transformation of the energy system toward a less carbon based energy provisions.

Intergenerational conscientiousness: In order to stabilize the climate, the current generations face high taxes and expenses. Future generations benefit from these investments for the future. With the right financialization strategy, these costs can be borne by future generations after the climate has been stabilized and is favorable for the humankind to come (Puaschunder 2018, 2019a, c). Green bonds would be able to enact this intergenerationally-harmonious solution. These financialization strategies are common in the public sector, for instance the New York water distribution is built on this bonds principle. With financial means that raised money via bonds, lakes could be built in mountains near New York. Now when water is consumed, the consumers pay off previous expenses.

Engaging Portfolio Managers: In an integrated economy, oil price fluctuations are causing disturbance in many industries. Portfolio and hedge fund managers strive for reducing risks to the overall portfolio, in the short and the long run. Renewable energy appears as crisis-stable market option as for being chosen in a quasi-religious act based on values and not on profit motives. Investment options based on renewable energy can reduce the risks and political dependencies on commodities associated with non-renewables.

Future outlook

With the novel Coronavirus (COVID-19) spreading around the world from the beginning of 2020 on, calls are made that the medicine of the future should prevent diseases instead of just treating their consequences. In the novel Coronavirus crisis, prevention and general, holistic medicine determine whether COVID-19 puts patients on a severe or just mild symptom trajectory. Obesity, but also the general status of the immune system are decisive in whether the Coronavirus becomes a danger for the individual. The COVID-19 crisis is therefore an important accelerator for necessary, fundamental changes in the health system, which also results in ecological impacts as a healthy diet is usually less carbon intensive.

Future leadership in teaching

Future leaders in the implementation of the GND will depend on a cadre of upcoming students, scientists and policy experts understanding the interaction and interdependence of economics and the environment. Longer term outcomes and impacts beyond targets but also the preventive character of environmental endeavors are challenges for classic M&E frames. Difficulties include the observability of results over time, a lack of bodies to measure grand-scale worldwide projects as well as the lack of systemic and objective examination criteria for not occurred risks as well as multiple stakeholder channels to discuss. Finding the right M&E framework to assess the success of the GND and EGD will be fundamental for determining the living conditions of this but foremost future world inhabitants.

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Crime Scene Reconstruction

Valentina Avrămescu

"Dimitrie Cantemir" Christian University of Bucharest, Romania, valentina.avramescu@gmail.com

ABSTRACT: In the present paper, aspects were analyzed regarding the tactical activity of artificial reproduction of the circumstances in which the criminal act was committed, known as reconstruction. It is possible to observe the way of carrying out this activity, by performing the verification of both the depositions and the samples. The characteristics underlying the reconstruction, the purpose and, last but not least, the importance of this probative procedure for finding out the truth are also presented. In order to carry out the reconstruction, there must be prior preparation and organization regarding the determination of the purpose and the establishment of activities to be carried out, so that the conduct of the reconstruction has positive results.

KEYWORDS: reconstruction, forensic tactics, criminal offence, artificial reproduction, investigator

Introduction

Reconstruction has been defined in the literature as a procedural activity and forensic tactics, which consists in the artificial reproduction of the circumstances in which the crime was committed or another fact of importance in the case, to determine whether the act was committed or could be committed in the given circumstances.

According to art. 193 alin. (1) of Criminal Procedure Code, "The criminal investigation body or the court, if they deem it necessary for the verification and ascertainment of data or evidence produced or to establish factual circumstances of importance for a case resolution, may proceed to the full or partial reconstruction of the manner and circumstances under which an act was committed".

Reconstruction is, in essence, an auxiliary procedural activity, a probative procedure intended to achieve the purpose of criminal proceedings (Dongoroz, Daringa, Kahane, Lucinescu, Nemeş, Popovici, Sîrbulescu and Stoian 1969, 81).

The defining characteristic feature of the reconstruction is outlined by the experimental reproduction of the conditions existing at the time of committing a criminal act, in order to directly verify by the judicial body their veracity, possibilities of perception, as well as verification of data obtained by other means - statements given by suspects or defendants, confrontations (Stancu 2015, 543).

The object of the reconstruction

The object of the reconstruction is the experimental reproduction, in whole or in part, of the facts investigated, of the manner and circumstances in which they were committed, including the conditions.

The judicial bodies proceed to the reconstruction of activities or situations, taking into account the circumstances in which the criminal act took place, based on the evidence administered. If the statements of the witnesses, parties or main procedural subjects regarding the reconstituted activities or situations are different, the reconstruction must be performed separately for each variant of the deed described by them (Ciobanu and Stancu 2017, 292-293).

The reconstruction takes place, preferably, right at the crime scene where certain activities will be reproduced, noting the possibility of perceiving them in the manner presented in the statements.

Reconstruction will check if the suspect has actually been able to perform certain activities alone (for example, opening a safe without proper keys, climbing a wall).

Generally, reconstruction is performed to verify all depositions and samples. Although the procedural law does not stipulate it as mandatory, we note that in practice, in almost all cases of murder and in numerous burglaries, reconstruction appears as a way of research (Ionescu 2007, 189).

Characteristics, purpose and importance of reconstruction

The *characteristics* of reconstruction are as follows:

- Reconstruction is an attempt to establish experimentally the possibilities of existence of facts or phenomena (Aionițoaie and Stancu 1992, 256).
- Reconstruction ensures the direct perception by the judicial body of the factual circumstances and realities on the spot in connection with the behavior of the perpetrator, witnesses, victims, their position and actions. The phenomena, the actions, and not their traces are perceived directly. Reconstruction does not have to mean the restoration or reproduction of the place of the deed;
- Reconstruction involves the artificial reproduction of circumstances, actions or phenomena related to the moment of committing crimes. In this sense, large-scale phenomena or actions taken in isolation, necessary to clarify certain aspects related to the commission of the crime, shall be reproduced. Reconstruction must be carried out in such a way that no law or public order is violated, no public moral harm is done; not to endanger the life or health of persons (Grofu 2019, 153-154). It is forbidden to commit new crimes or to harm the legitimate interests of the parties by reproducing an event (Theodoru 2008, 411).

The *purpose* of reconstruction consists in:

- Confirmation or refutation of the versions elaborated in question prior to the development of this activity (Ionescu 2009, 302).
- Verification and illustration of evidence obtained on the occasion of other criminal investigation activities;
- Obtaining new evidence in question (Grofu 2019, 154).

The importance of reconstruction results, first of all, from the role that this probative procedure has in shaping the constitutive elements of the crime, in finding out the truth. By reconstruction, questionable or simple evidence can, as the case may be, be retained as serious evidence or removed as worthless (Stancu 2015, 544).

The *functions* of reconstruction are:

- Verification and specification of data regarding the objective and subjective side of the crime, by artificial reproduction, total or partial, of the facts or circumstances of the case (Ciobanu and Stancu 2017, 293);
- Drawing conclusions not only regarding the veracity of the statements of the suspect or defendant or of the witness, but also in connection with the versions elaborated in the respective case (Pop 1947, 429);
- Possible obtaining of new evidence, undiscovered in an earlier phase, such as, for example, on-site research, even a search, followed by reconstruction (Ciobanu and Stancu 2017, 293).

Types of reconstruction

Depending on the particularities of each case, the probative force of the administered data and the purpose pursued, in judicial practice the following categories of reconstructions are used:

a) *Reconstruction intended to verify the statements of the suspect or defendant regarding the manner of committing the crime* (Buzatu 2013, 131). This kind of reconstruction aims at verifying the possibilities of committing crimes in the context of the facts and circumstances existing at the place where the illicit activity took place. As a rule, the actions taken by the suspect or defendant to enter or leave a certain place, for the transport of goods - product of the illicit activity, are artificially reproduced in conditions similar to those at the time of the crime. Such reconstructions result, for example, in the verification of the way in which the suspect climbed a fence, a wall, a balcony, of the way in which certain objects were removed through openings, cracks or holes of different shapes and sizes (Olteanu and Ruiu 2009, 279).

b) *Reconstruction performed in order to verify the statements of eyewitnesses and the injured person* (Buzatu 2013, 132).

The reconstruction verifies the fidelity of the witnesses, the facts and the circumstances of the case in the conditions of place, visibility, meteorological existing at the moment of committing the crime.

Because in the process of sensory perception the determining role belongs to sight and hearing, in judicial practice reconstructions are usually performed to verify the conditions under which the visual or auditory perception was made. Such reconstructions are conclusive in the case of false testimonies or biased complaints, when the reproductions are made impossible to perceive or fix in memory the facts and phenomena in the given conditions or on the contrary, the possibility to see the wrongful actions of the perpetrator or to hear noise during the commission of the crime (Olteanu and Ruiu 2009, 280).

c) *Reconstruction performed to verify the skills and abilities of the suspect or defendant to take certain actions, similar to those of the facts for which he is being investigated.* This kind of reconstruction is required whenever, in order to obtain the product of the illicit activity, specialized knowledge is required as well as practical qualities, skills and abilities that condition the success of the actions undertaken by the perpetrator (Olteanu and Ruiu 2009, 281).

Preparation and organization of reconstruction

The reconstruction involves a judicious organization based on a plan, which mainly considers: determining the purpose of the reconstruction, establishing the activities to be performed and the participants and ensuring the necessary technical means.

This activity must be carried out in conditions as close as possible to the place, time and manner with which the deed was committed.

The rules regarding the presence of the defender, legal representative or interpreter are mandatory. The reconstruction must be done in an atmosphere of calm and sobriety, without exaggerations or suggestions (Buzatu 2013, 132).

Reconstruction can be carried out both in the criminal investigation phase and in the trial phase, after the start of the judicial investigation, when the verification or specification of some data relevant to finding out the truth is not possible by administering other means of proof.

The moment of ordering the reconstruction depends on the particularities of each cause and the purpose pursued by this activity. Thus, if the reconstruction aims at obtaining new evidence, it will be carried out at the beginning of the criminal investigation, immediately after hearing the suspect, if from his statements it results that other traces or material evidence can be discovered whose removal must be done urgently for avoid degradation or destruction. At other times, when, for example, contradictions between witness statements could not be removed through confrontations and the data on which there are contradictions are essential to

the resolution of the case, the reconstruction will take place at the end of the criminal investigation.

The criminal investigation body orders the reconstruction by reasoned resolution and the court by conclusion.

In order to ensure the efficiency of the activities that are being reconstituted and the achievement of the aim pursued, the judicial body carries out the following preparatory activities:

a) Establishing the opportunity for reconstruction;

b) Determining the purpose of reconstruction;

c) Establishing the participants in the reconstruction and their tasks;

d) Technical-material insurance;

e) Re-arranging the place of the crime, when the verification or specification of the data from the case file is possible only by restoring the ambiance from the place where the illicit activity took place;

f) Preparation of the reconstruction plan (Olteanu and Ruiu 2009, 282).

Tactical rules for reconstruction

Reconstruction can be performed both in the criminal investigation phase and in the trial phase (Aioniţoaie and Stancu 1992, 264).

When performing the reconstruction, the criminal investigation body or the court may order the presence of the forensic doctor or of any person whose presence deems it necessary. When the suspect or defendant is in one of the situations of mandatory legal aid, the reconstruction is made in his presence, assisted by the defense counsel. When the suspect or defendant cannot or refuses to participate in the reconstruction, this is done with the participation of another person.

In carrying out the actual reconstruction, the following tactical rules will be observed (Grofu 2019, 158):

- Carrying out the reconstruction in conditions of proximity or similarity (Pletea 2003, 368). This implies the similarity between the conditions of the act and those of the experimental reproductions. The place and time of the reconstruction will be chosen so as to correspond to the place and time of the commission of the deed;

- The reproductions should not present a danger for the protected social values (Grofu 2019, 158). Facts that endanger the security of the state, life, bodily integrity, health, honor and dignity of persons are not reproduced. Also, the actual scenes of sexual crimes will not be reconstructed, the injury scenes will not be reproduced in dangerous places and the corpse will not be used to reconstruct the murder.

On the spot, it will not be fired with a firearm, but in the firing range. Explosive or incendiary materials will not be used on site, but in specially designed places (Buzatu 2013, 132).

- Carrying out the reconstruction in conditions of ensuring the quantity and quality of reproductions.

From a quantitative point of view, the following aspects must be taken into account: the planned activities must be carried out in rhythms that allow their correct observation by the participants; it is possible to proceed to the complication or simplification of the actions, to their development on different stages in order to ensure the possibilities of observation, notation, fixation and comparison of the results; in order to obtain a certain result, each activity must be repeated several times (Grofu 2019, 158-159).

In order to carry out the reconstruction, the team will be established, the persons to be present (suspect or defendant, defense counsel, experts, injured party, witnesses), the necessary technical equipment, the means to travel to the respective place. If possible, they

will respect the conditions of time and lighting in which the event to be reconstituted took place.

Certain activities can be reconstituted without moving to the scene, such as opening a car, picking up a package, hitting a person. Other activities, such as the verification of visibility or audibility, will necessarily be performed at the crime scene as close as possible to those existing at the time of the crime.

Reconstruction will be performed under the direction of the investigator, ensuring the presence of persons involved in the verified activity (perpetrator, victim, witness) produces strong emotions or fear generated by reliving events (Ionescu 2007, 189-190).

The reconstruction will not be limited to a single reproduction of the deed or of some circumstances, being necessary a repetition of them, so as to observe and fix the results accurately. For a correct assessment of the results, to avoid errors of perception, it is good to repeat the action at a slightly slower pace.

In order to ensure objectivity, correctness, and suggestions will be avoided, indications regarding the correct performance of certain gestures or deeds, the verified person being allowed to act according to his previous claims (Ciobanu and Stancu 2017, 304-305).

The results of the reconstruction, regardless of whether they are certain or positive, attest to a simple state of affairs, respectively whether or not the deed could have been committed or whether the circumstances of its commission could or could not be perceived. Such a state of affairs is insufficient to prove the existence or non-existence of the crime, as well as the guilt / innocence of the suspect / defendant.

Therefore, the results of the reconstruction cannot be grounds for criminal prosecution unless they are corroborated with the other evidence in question, or, in other words, unless they confirm the evidence in the file (Olteanu and Ruiu 2009, 291).

Fixing the reconstruction results

All activities performed during reconstruction shall be recorded in a report, a procedural act that refutes or confirms the reality of the data subject to verification. It will specify the atmospheric conditions, the conditions in which certain sequences were repeated and the result obtained, the replacement of some instruments etc. (Buzatu 2013, 133).

A technical means of fixing the results of the reconstruction is video recording and photography. The criminal investigation body must capture those sequences from which it results that the action was possible to be committed in the given conditions of time and space or that it was possible to perceive it in those circumstances.

A superior technical means of fixation is the audio-video recording; in special cases it is necessary for the complete and exact retention of the way in which the entire reconstruction took place.

Photographs and other recordings will accompany the minutes in which the mentions will be made regarding the sequence of images, the technical ways of rendering, as well as the sequences or scenes they represent (Stancu 2017, 550).

It is recommended that the entire reconstruction be as accurately as possible in the minutes and the forensic technique offers a series of means whose use can be of real use for the case (forensic photography, filming etc.).

During the reconstruction, the operative judicial fixation photograph is mainly used, which has the role of illustrating the mentions in the minutes that end on this occasion, but as with the other means of proof, the photograph faithfully illustrates the conditions under which the reconstruction was performed, the activities carried out on this occasion, but also the results obtained (Olteanu and Ruiu 2009, 292).

Conclusions

Reconstruction is a process of auxiliary forensic tactics that contributes to the possibility of finding out the truth about the facts and circumstances that led to the commission of a crime.

The purpose for this evidentiary procedure is performed to verify some data obtained through the statements given by suspects or defendants or witnesses, the reconstruction being an experimental reproduction of the investigated facts.

According to the legal provisions, the verification can be performed by the criminal investigation bodies or by the court at the crime scene, either in part or in full.

The results of the reconstruction are of real importance, helping investigators to find out the truth, without which further clarification would be needed on previous evidence.

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Green New Deal Leadership Determinants of the 21st Century: Teaching Economics of the Environment

Julia M. Puaschunder[1, 2]

[1]*The New School, Department of Economics, School of Public Engagement, New York, NY 10003, USA, Julia.Puaschunder@newschool.edu, www.juliampuaschunder.com*
[2]*Columbia University, Graduate School of Arts and Sciences, Julia.Puaschunder@columbia.edu, http://blogs.cuit.columbia.edu/jmp2265*

ABSTRACT: The future leadership on the Green New Deal (GND) will depend on teaching core concepts of the economics of the environment and evaluating the success of the transition implementation by monitoring and evaluation. The GND operates within the framework of the United Nations Environment Programme (UNEP) since 2008 to create jobs in green industries, thus boosting the world economy and curbing climate change at the same time. In 2019 over 600 organizations submitted a letter to the U.S. Congress declaring support for policies to reduce greenhouse gas emissions. This includes ending fossil fuel extraction and subsidies, transitioning to 100% clean renewable energy by 2035, expanding public transportation, and strict emission reductions rather than reliance on carbon emission trading. This paper describes the implementation of the GND but also underlying efforts to teach GND components for building a cadre of future environmental economists.

KEYWORDS: Climate Bonds, Climate Change, Economics of the Environment, Ecotax, Environmental Justice, Environmental Governance, Fiscal Policy, Green New Deal, Monetary Policy, Multiplier, Sustainability, Teaching

Historical emergence

Since 2019 Senator Edward Markey and Representative Alexandria Ocasio-Cortez push for transitioning the United States to use 100% renewable, zero-emission energy sources, including investment into electric cars and high-speed rail systems, and implementing the social cost of carbon that has been part of Obama administration's plans for addressing climate change within 10 years. Besides increasing state-sponsored jobs, this GND is also aimed to improve vulnerable communities via universal health care, increased minimum wages and preventing monopolies. A 10-year national mobilization targets at work security and working conditions by high-quality health care, affordable housing, economic security, access to clean water, air, healthy food and nature, education, clean, renewable, zero-emission energy, repairing of infrastructure, energy efficient smart power grids, upgraded living conditions, pollution elimination, clean manufacturing and positive work collaborations.

In January 2019, a letter signed by 626 organizations in support of a GND was sent to all members of Congress. It called for measures such as an expansion of the Clean Air Act, a ban on crude oil exports and fossil fuel subsidies and leasing and a phase-out of all gasoline-powered vehicles by 2040. The letter also opposed market-based mechanisms and technology options such as carbon and emissions trading and offsets. Various proposals for a GND have been made internationally, for instance in Australia, Canada and Europe.

Economic foundations

Economic theories that back the GND include John Maynard Keynes' spending multiplier effect (1936), which captures the ratio of a change in national income to any autonomous change in spending – such as private investment spending, consumer spending, government spending, or spending by foreigners on the country's exports that causes it.

Joseph Stiglitz famously advocated for the GND by saying "it is better to leave a legacy of financial debts than to hand down possibly unmanageable environmental disasters." Also, Jeffrey Sachs supports the idea of financial overspending for the sake of avoiding irreversible tipping points and environmental lock-ins. Money will always be there and is fungible, whereas environmental resources are depletable and irreplaceably destroyable.

Implementation

Governance

Global Environmental Governance features different means ranging from formal institutions (major global conferences and treaties), legal regimes, informal arrangements, intergovernmental relationships, nongovernmental organizations, global capital markets and multinational corporations. Obstacles in the past 20 years of Global Environmental negotiations is non-compliance as weak treaties may not go far enough due to lack of commitments on part of emission producing nations. Environmental Treaties addressing climate change are based on various sources and enforceability of international environmental law with unilateral, bilateral and multilateral actions. "Hard law", such as treaties (or agreements, protocols, covenants, conventions) are coupled with "Soft law" (such as policy declarations), of which both are not legally binding. No need for ratification is stressed so that the treaties are easier to adopt by a wider range of actors (e.g., also NGOs), yet the credibility of actor pledges and implementation are often lacking. Therefore, alternative governance means are recommended to be phased in concurrently to support and back environmental justice and climate change mitigation and adaptation efforts.

Governance

Fiscal policies: The public sector and governing institutions play a central role in overcoming free-rider problems and initiated market opportunities associated with externalities like climate change. Mitigation and adaptation policies and disaster risk prevention and recoveries may be supported by fiscal policy. Proposed financing tools include (long) maturity bonds – such as discussed in Sachs (2014), Orlov, Rovenskaya, Puaschunder and Semmler (2018) and Braga, Fischermann and Semmler (2020). Bond (credit) financing allows for better control and scaling of climate policies allowing capitalization of infrastructure, mitigation and adaptation policies as well as financing recoveries after disasters. Issuing bonds can be funded and supported by public and private sector institutions, including governments, municipalities, market institutions, grants from donors and development aid. The raised funds are allocated for climate related infrastructure and for mitigation and adaptation policies. Constraints are imposed through borrowing and bond issuing and a policy trade-off between the use of funds allocated to climate related infrastructure, for mitigation of greenhouse gas emissions and against extreme events to ameliorate local damages from such events. Harmful events might occur in spite of mitigation, but the probability of an extreme and harmful event is reduced with greater mitigation efforts.

Carbon Tax: To peg emissions to tax payments appears simple and fair. Around the globe, about 14% of CO_2 emissions are subject to taxation. But most of these taxation efforts are only a few cents or dollars per CO_2 ton of emissions. Climate effects are only predicted for around 40 USD and increasingly doubling the taxation after an introductory phase successively. So far, Sweden has been quite successful with this: Since 1991 the CO_2 tax has been raised to 130 USD and carbon emissions dropped for about 1/4th while the economy could still grow.

The advantages of taxing carbon emissions are that the costs and revenues are quite predictable. The disadvantages include that CO_2 taxes can be rolled over onto the consumer. Weaker societal income segments then share an unequal burden and the political attention to climate inequality is to this day limited. Economically this could be alleviated by having a

progressive taxation scheme. For instance, the Canadian Province British Columbia designed their CO_2 tax to be neutral by pegging it to the income tax. The more CO_2 an individual pays, the lower the income tax gets adjusted. In the US, a direct refund to citizens was discussed.

An ecotax (short for ecological taxation) is a tax levied on activities which are considered to be harmful to the environment and is intended to promote environmentally friendly activities via economic incentives. Such a policy can complement or avert the need for regulatory (command and control) approaches. Often, an ecotax policy proposal may attempt to maintain overall tax revenue by proportionately reducing other taxes (e.g. taxes on human labor and renewable resources). Such proposals are known as a green tax shift towards ecological taxation. Ecotaxes address the failure of free markets to consider environmental impacts. Ecotaxes are examples of Pigovian taxes, which are taxes that attempt to make the private parties involved feel the social burden of their actions Thomas Pogge's proposed Global Resources Dividend (Pogge 1998).

A Pigovian tax is a tax on any market activity that generates negative externalities intended to correct an undesirable or inefficient market outcome and does so by being set equal to the social cost of the negative externalities. Social cost includes private cost and external cost. However, in the presence of negative externalities, the social cost of a market activity is not covered by the private cost of the activity. In such a case, the market outcome is not efficient.

Overall, there is hardly any cooperation on tax regimes in the international arena. International financial streams are still risky and volatile. International taxation would require international tax cooperation and the risk remains of international tax havens, which we all witnessed recently with the Panama papers. Without international agreements and treaties, international trade disputes and tax evasion appear as potential weaknesses of the approach as a CO_2 tax could also be deducted together with import taxes.

Monetary and credit policies: The importance of monetary policy in support of climate policy is visible in inflation targeting as a proper policy. Yet, adaptation, the provision of climate disasters, and the recovery are often producing bottleneck causing higher inflation rates. So targeting the inflation rate to move down inflation rates do not seem to be the appropriate policy if one has negative shocks on the supply side.

Some of the literature also includes discussions on the role of the financial sector at large, including banks and central banks. After climate disasters have occurred there are not only bottlenecks on the supply side, but also severe credit constraints. Usually, collateral value for loans have declined, due to value losses from housing and real estate. So it is hard to obtain credit, or one obtains credit at large risk premia. To overcome those constraint should be a major task of central banks. Monetary policies could also be more supportive with respect to climate bonds. For example, if central banks accept green bonds as collateral, they could stimulate climate finance. There is some virtuous cycle: Central banks prefer investment grade bonds as collateral and rating firms try to rate climate bonds and they rate those bonds higher if they are accepted by central banks as collateral. Beside financial instruments such a credit and climate bonds, policies such as monetary policy can be considered, particularly the effect of the latter on credit constraints and risk premia. On the other hand, there exists a carbon foot print index of equity which may not only help issuing green bonds, but aid in preventing a fire sale of fossil fuel assets. Central banks could also ease credit flows after disasters, in particular to overcome bottlenecks in the supply of goods and services, in infrastructure, transport and other private and public sectors.

Insurance policies: Some researchers stress the importance of preventive actions and of policy buffers, designed to enhance resilience to shocks. Furthermore, the ease of borrowing constraints, greater reserves, and reserve fund accumulation is suggested. Low income countries and regions

have limited access to issuing climate bonds and exercise little borrowing power. Besides tax increases, risk pooling through self-insurance or some collective insurance schemes, grants from donors, and buildup of financial buffers and disaster funds for contingencies are recommended.

The issue of debt sustainability needs to be addressed as well. Indeed a broader concept of risk pooling could also aim at mechanisms of private or public insurance schemes, multilateral safety nets, regional catastrophic insurance schemes, and so on. Others have suggested that, beside donor grants, fiscal and financial policies and risk pooling and insurance funds, monetary policy should step in to provide for disaster affected regions and countries with low interest rate loans and sufficient credit flows to allow for reconstruction and recovery to avoid hysteresis effects on productive capacity to avoid trapping probabilities (Kovacevic & Semmler 2020).

Central banks: Departing from their central focus on monetary and economic stability (e.g., legal tender & setting the interest rate to achieve market stabilization), central banks have recently gained interest in aiding on the financialization of climate change mitigation and adaptation. The recent interest stems from the realization of the major risks imbued in irreversible environmental lock-ins and climate change tipping points that may impose large-scale irreversible market risks that weaken economies forever. Rising global population prospects and therefore rising economic consumption outlooks could naturally lead to a financial crash. Storms, floods, wildfires and other environmental catastrophes, such as droughts, hurricanes and heatwaves, can create large unpredictable risks that rise the costs exponentially for economies to recover – as visible in the Japan Fukushima disaster or Hurricane Katerina. Large insurance companies have already stepped away from insuring climate change risk havens, such as Long Island coastline property. Central banks now prospect that in the future they will become more and more the institutional backing of high environmental stakes insurance entities. Therefore, the scientific community, have broken ground to get central bankers on board to aid on finding the funds for climate change mitigation and adaptation and serve their purpose of long-term economic stabilizers. Central banks have recently started to invest governmental funds as collateral on environmental endeavors and issue governmental bonds as securities for large-scale environmental foresight, planning, catastrophe contingency planning and resiliency options.

The advantage lies in future economic stability through foresighted financial vigilance. Downsides include that the core focus of central banks is financial and losing ground on too many endeavors could weaken targeted aid. Central bank – to this day – have some doubt about the financial payoffs of the long-term precautionary principle argument of environmental conscientiousness as preventive market stabilizing mean. When it comes to climate change, the risks are simply too unpredictable and sometimes appear too temporally far away for politicians to be factored into historically purely monetary models with short-term attention. Climate stabilization financialization could be promoted as economic market stabilizer and inflation targeting mechanism in the wake of climate disaster-induced price spikes.

The cooperative element appears to be there as central banks are – by now – discussing the idea of climate stabilizing openly and together. For instance, ECB President Christine Lagarde has recently declared climate change financialization as one of the major goals for the European Central Bank. The Banque de France established a network of European Central Banks that coordinates common climate change mitigation and adaptation monetary means. In the US, the Federal Reserve and the Federal Reserves within the States have started concurrent action and a common goals dialogue to make climate stabilization financialization happening. Practical applications are found as well in Bangladesh, India, Brazil and China.

As to climate disasters, climate science is pointing now to similar challenges and urgency to develop and apply similar policy measures. Science has now sufficiently demonstrated that CO_2 emissions lead to rising average temperatures and localized damages

through extreme weather events. The private sector needs to move forward to mobilize real and financial resources to develop and green technology and to move beyond a carbon based energy system, supported by the public sector and public policies. As to public policy there appears to be a policy trade-off between the use of funds allocated to infrastructure for production, for mitigation of greenhouse gas emissions and infrastructure against extreme events to ameliorate damages from such events. Harmful events, as in the case of financial disasters, might occur in spite of mitigation, but the probability of an extreme and harmful event is reduced with greater mitigation efforts. The optimal mix and the relative timing for those two types of challenges is important for policymakers. For the interaction of the private and public sector an important mix of policies are needed – innovation policy, financial, fiscal, monetary, and insurance policies (Puaschunder 2020).

Emissions-Trading: Around the globe, emissions trading covered around 20% of the global CO_2 emissions in about 40 countries of the world and over 20 cities, municipals and provinces of the world ranging from China to the EU.

Advantageous appears that CO_2 can be measured and regulated quite precisely via certificates. However, the disadvantage is that the systems are quite complex and prices highly volatile. Within the EU many high-emission industries got exempt from emissions trading schemes – for instance coal and steel as well as the automotive sector – potentially due to lobbying, which is unfavorable for societal goals accomplishment and the credibility of the cap & trade system.

The international cooperation is hard as there are multiple attempts in different parts of the world that are to be connected. Theoretically, this system could be used by all and the market would expand and prices would become more stable. But developing nations would have a price disadvantage if global prices for a ton of CO_2 emissions are found in the international equilibrium price and worldwide natural price adjustment mechanisms.

Green Bonds: Solar power and wind turbines, eco-friendly infrastructure and more research and development in clean energy and green technology are all investments for climate change. Addressing market changes and the financialization of climate justice are estimated to comprise of 5-7% of the contemporary world GDP, accounting for 5-6 billion USD. Green bonds could fund all these endeavors.

Green bonds are currently planned and enacted by governments, regions, cities and the IMF but also Development Banks and Central Banks. All these entities are currently issuing bonds to invest in climate change mitigation and adaptation. These powerful institutions with long-term and global governance viewpoint serve as liabilities for bonds from the corporate clean technology and socially responsible investment sectors. For the future, green bonds have to be made more attractive for institutional investors and pension funds. In 2019 the worldwide green bonds market comprised of 257 billion USD with main markets residing in the USA and Europe but also growingly China. The potential of green bonds is estimated to reach around 1.5 billion USD.

Advantages of green bonds are a risk-free and easy capital for all those who implement clean energy and/or green environmental projects thanks to the governmental aid that backs the industry on green endeavors. Governments are on board as serving with liabilities and the issuance of green bonds as they appear to meet global common goals and climate stabilization endeavors whilst boosting innovation. Corporations are incentivized to compete over clean energy and green market solutions as for being remunerated with subsidies and tax breaks funded via the bonds. This turns the traditionally unfavorable race-to-the-bottom for dirty cheap energy production in a general market price-cutting behavior to an environmentally-favorable race-to-the-top in the competition over clean energy governmental aid. However,

regular financial market mechanisms lead to high costs due to high risk premia on future-oriented market options with relatively high uncertainty.

Export-oriented countries could use this approach, especially if capital is available for the market. An excellently educated population and traditional green solution-oriented market and clean energy-dominated technology sector aid in the implementation. Disadvantageous appears that green bonds could lead or propel already existing budget deficits – e.g., such as in the USA, Italy, Spain etc. The international cooperation in this approach appears most excellent in setting large-scale incentives potential for institutional investors.

Environmental pricing reform is the process of adjusting market prices to include environmental costs and benefits. A negative externality exists where a market price omits environmental costs. Then rational (self-interested) economic decisions can lead to environmental harm, as well as to economic distortions and inefficiencies. Environmental pricing reform can is a market-based or economic instrument for environmental protection. Examples include green tax-shifting (ecotaxation), tradeable pollution permits, or the creation of markets for ecological services. "Ecological fiscal reform" differs in more narrowly dealing with fiscal (i.e. tax) policies as opposed to using non-fiscal regulations to achieve the government's environmental goals.

An Eco-tariff, also known as an environmental tariff, is a trade barrier erected for the purpose of reducing pollution and improving the environment. These trade barriers may take the form of import or export taxes on products that have a large carbon footprint or are imported from countries with lax environmental regulations.

Net metering (or net energy metering, NEM) is an electricity billing mechanism that allows consumers who generate some or all of their own electricity to use that electricity anytime, instead of when it is generated. This is particularly important with renewable energy sources like wind and solar, which are non-dispatchable when not coupled to storage. Monthly net metering allows consumers to use solar power generated during the day at night, or wind from a windy day later in the month. Annual net metering rolls over a net kilowatt-hour (kWh) credit to the following month, which varies significantly by country and by state or province.

Absorbing CO_2 and forestation: As carbon-negative market solution CO_2 can be absorbed from the atmosphere. Examples of this are carbon-absorbing forests, green rooftops in cities, carbon-negative clothing through fungus-wear but also the absorption of CO_2 from the atmosphere by machinery and windmills as well as premia to stop deforestation. Another ground-breaking innovation could be decentralized energy grids that are run on blockchain approaches. Thereby single households could generate energy, for instance via solar panels on the rooftop or isolated heating devices. Immediately as the energy is generated, the individual household could either use the energy or distribute energy to close neighbors in a grid. This point-to-point solution between closer distributors and decentralized energy sharing could revolutionize the dependency on a few energy providers – e.g., two major pipelines for Europe that come from politically-instable regions outside the EU, US dependency on the gulf region that has led to political action previously, see Nell and Semmler's (2007) work on the gulf war and Iraq foreign policy approach. These decentralized energy grids would also make clean energy cheaper and more sustainable as currently the storage of sustainable energy appears to be driving up the price and making clean energy access unstable. For instance, just imagine that the sun does not always shine on solar panels, wind does not constantly turn windmills and rain does not always fall and spin water turbines in rivers. But a large grid with different power-generating options would diversify the opportunities – energy could be generated during sunshine and rain. Storage would not be expensive as the energy that is generated gets used up in the more locally-connected energy sharing net that has become independent of fluctuating oil prices and large central planner energy

storage and distribution facilities. Large scale investments for this innovative market approach are currently starting and appear to have future potential as prospective market changing opportunities.

All these market innovations can help in the standard predicament between economic growth versus climate stabilization in light of the connection between GDP growth and Greenhouse Gas emissions. These innovative market alternatives do not necessarily pit either economic innovative growth versus environmental protection. Yet to become successful and large-scale mainstream market options, innovations require time and financial means, which could – for instance – be secured via the previously-discussed climate change green bonds market solution.

The clear advantages are the innovative potential that rises hope to change markets forever. The International Climate Council estimates that forestation efforts could revert or compensate for CO2 emissions of all China if done properly. Disadvantages are that investors are often hard to get on board to invest in risky market options with unclear outcome. The cooperative approach seems to be good and many countries find a common ground in forestation, especially those countries with large land space but low income productive capacity. A coalition of countries, multilateral organizations, foundations and commercial certificates could aid fostering international collaboration efforts for reaching mutually-beneficial multi-party agreements.

Behavioral changes: In most recent decades, affluent people in high-income countries have defined environmental conscientiousness as luxury good. High-end consumers around the world then have proven interest in goods that do not cause CO_2 emissions. They travel and shop environmentally-conscientious with respect for the wider community and are investing to fund social and environmental causes in their local communities. Behavioral insight – hence the behavioral economics application onto global governance – proves in many powerful laboratory and field experiments the power of behavioral nudges and winks on consumer choices with less money incentives. Nudges, the behavioral means to change people's choices based on their emotions, status and other environmental and social conditions, have proven to be powerful and easily-implementable sources to educate and change people's behavior without direct enforcement (Puaschunder forthcoming a, b). What is more, these behavioral changes appear to hold strong as the often are based on basic ground emotions and natural behavioral laws (Puaschunder 2018). They become a stable emotional compass and beacon of light on what is right, just and fair that holds strong for very many different domains throughout different life periods and economic market fluctuations. For instance, green bonds and socially responsible investment (SRI) and corporate social responsibility (CSR) actions are based on social and environmental ideals that become quasi-religious value choices that people stick to sustainably and price-independently throughout all phases of market movements (Puaschunder 2019a, b). In creative advertisement, marketers have tapped into these alternative extra-premiums in order to raise prices, create images around the luxury of sustainability and local community investments. SRI funds have benefited significantly from being market-independent and extraordinarily robust during market fluctuations. Socially-conscientious investors stick to their choices as they were interested in these options for their values that they want to stand for and express to others. Not for seeking financial gains to begin with in socially-conscientious options, they stay with them even during times of economic upheaval. Socially-responsible market options thereby have leveraged into a luxury and status symbol.

Advantageous is that in Europe and the US consumers appear to be susceptible to behavioral nudges and have established environmentalism as CSR pledge that moves people's behavior large scale and long-term (Puaschunder forthcoming a, b). Environmental choices have leveraged into a prestige. Nudges are effective and easily-implementable cheap ways to steer markets. The fields of behavioral economics and especially behavioral insights are

fairly new and we are still learning more and more about this growing policy tool and novel market option. Disadvantages are that the direct impact is often hard to quantify and measure and the tools are sometimes vague and also contested if considering the potential to manipulate given the subliminal content of nudges.

The international cooperation on these endeavors is really questionable. Consumer behavior is highly dependent on culture and place. While the US and Europe is good in setting trends that get picked up in many different parts of the world, the historic predominance of these parts of the world appears to be slowly shifting to Asia. In addition, the application of these European and North American tools appears questionable in communities that are not as affluent and a power divide has become noticed in two groups: Those who nudge (the educated nudgers) and those who are being nudged (the uninformed target of nudging strategies). Especially with exporting these tools to other context, one has to warn of a hegemony of the Western nudging attempts trying to impose first-world goals onto uninformed communities in the developing world that are tricked into choices that may only be favorable in certain parts of the world (e.g., the Nairobi behavioral insights lab testing in slum areas what Western nudges are successful there…) (Puaschunder forthcoming a, b).

Sustainable tourism is the concept of visiting somewhere as a tourist and trying to make a positive impact on the environment, society, and economy. Tourism can involve primary transportation to the general location, local transportation, accommodations, entertainment, recreation, nourishment and shopping. It can be related to travel for leisure, business and visiting friends and relatives. There is now broad consensus that tourism development should be sustainable.

Innovation efforts financialization: Technological innovations are usually a result of a mix of private and public activities. The public sector can set frameworks and incentives, to support inventions through R&D and de-risk of innovation through public support and subsidies and setting incentives. Public actions – such as tax and subsidies – could enable the transition to a low carbon economy, and contributing to a faster transformation of the energy system toward a less carbon based energy provisions. As to the existing literature on innovation dynamics, it has been shown that this can be expected to display nonlinearities, thresholds and complex dynamics. Many sources of finance of new energy forms are available – such as self-financing, equity finance, bank loans, bond issuing on the capital markets, venture capital, crowd finance, tax breaks and subsidies etc. As to the real side, those new types of firms, the renewable energy firms, S&M firms, also face challenges. Recent studies on climate policy modeling have studied what challenges new entrants, with new technologies, in the energy sector face, when supports the phasing in of renewable energy firms when there are at the same time carbon-based oligopolies as incumbents, establishing and defending entry barriers against new innovators regarding renewable energy supply.

Major issues as to the real as well as the financial aspects of new inventions and innovations concerning the greening of the energy sector are the entry barriers and long-term costs for renewable energy varying fossil fuel energy prices and the need for financing sources of the new energy sources (self-financing, equity finance, credit from banks, bond issuing, venture capital crowd finance, tax breaks and subsidies).

There are also perils over over-expansions of innovating firms, and lock-ins of innovation firms. Moreover, there are dangers of disruptive effects of outdated fossil fuel technology and stranded assets which may have effects on the banking system and the financial market at large. One needs to pay more attention to portfolio models of two type of assets, either fossil fuel assets or a risk free asset, and alternatively a portfolio of renewable assets and risk free assets, and explore the performance of those portfolios. Additional studies of the dynamics of the entrants

and the incumbents and the possible destabilizing effects on innovation that might be triggered in the financial sector by the carbon-based energy sector are needed.

Intergenerational conscientiousness: In order to stabilize the climate, the current generations face high taxes and expenses. Future generations benefit from these investments for the future. With the right financialization strategy, these costs can be borne by future generations after the climate has been stabilized and is favorable for the humankind to come. Green bonds would be able to enact this intergenerationally-harmonious solution. These financialization strategies are common in the public sector, for instance the New York water distribution is built on this bonds principle. With financial means that raised money via bonds, lakes could be built in mountains near New York. Now when water is consumed, the consumers pay off previous expenses.

Advantageous appears that today's generations are not curbing economic growth potential by raising funds via debts. Future generations benefit from the long-term investment and enjoy an at least as favorable climate as is enjoyed today. Bonds are only successful finance strategies when there is a common faith in bonds and the governmental general debt appears somewhat feasible or the issuing entity somewhat credible to not default on debtors.

The cooperation between different generations appears as Pareto-optimal solution over time. Successful bonds could become a strategy that gets picked up by many countries paving the way for future international trade on green bonds.

Engaging Portfolio Managers: In an integrated economy, oil price fluctuations are causing disturbance in many industries. Portfolio and hedge fund managers strive for reducing risks to the overall portfolio, in the short and the long run. Renewable energy appears as crisis-stable market option as for being chosen in a quasi-religious act based on values and not on profit motives. Investment options based on renewable energy can reduce the risks and political dependencies on commodities associated with non-renewables.

This solution is market conform to attributing standard economic theories. However, until now green market options are usually market-underperforming with lower payoffs than conventional assets, which lowers their use in portfolios. Yet there is a certain trend into renewable energy. The larger this market will get, the more it may become a leader signaling change. The more the demand for green energy will grow signaling change, the more these green assets will become a standard expected part of the industry and the market options become more liquid and profitable due to economies of scale.

Critique on the GND include a too optimistic goals in terms of time and complexity, which should be alleviated by cutting of multiple parts of their plan and aspirational goals of 100% renewable energy that could undermine the credibility of the effort against climate change (Leibovitch, Stremitzer & Versteeg 2019). Left-wing commentators have also argued that the GND fails to tackle the real cause of the climate emergency, namely the concept of unending growth and consumption inherent in capitalism, and is instead an attempt to greenwash capitalism. In their view, not the monetization of Green policies and practices within capitalism are necessary, but an anti-capitalist adoption of policies for de-growth.

Future leadership in teaching

Future leaders in the implementation of the GND will depend on a cadre of upcoming students, scientists and policy experts understanding the interaction and interdependence of economics and the environment. An upcoming group of young minds will drive innovation in the field of ecological economics, who may also be trained with an openness to capture the larger scale of related sciences, such as environmental economics, climate economics and political economies. All these fields cover basic approaches to the relationships between ecological and economic systems, both traditional and alternative economic theories and worldviews.

Overall, future curricular may examine the role of economics in understanding and valuing environmental concern. Current environmental issues, such as climate change, biodiversity loss, land degradation, ocean acidification and freshwater use should become introduced through the framework of marrying environmentalism with an economics lens. Students should be guided to learn through multiple approaches and understand analytical frameworks developed historically and by unconventional economists to frame and interpret these issues. The application of ecological economic principles to environmental problem-solving should be taught by presenting a set of policies targeting areas such as pollution and natural resources management around the globe.

As for building a future cadre of environmental economist, students should learn how to think about the relationship between the economy and the environment, the role of economic analysis in understanding and valuing the environment, and examine problems of social and economic development, environmental and related policies.

Starting with providing an overview of economics with an application in the public domain; concrete teachings should also dare to provide a critical approach to the contemporary micro-, meso- and macro-economic analysis techniques of public choices in environmental decision making. By drawing from the historical foundations of political economy, innovative teachings should to advance the field of environmental economics through a critical stance on behavioral, economic and social sciences' use for guiding on public concerns. Teachers should be encouraged to take a heterodox economics stance in order to search for interdisciplinary improvement recommendations of the use of economics for global governance.

Student presentations of research projects featuring a multi-methodological approach will help gain invaluable information about the interaction of economic markets with the real-world economy with direct implications for policy makers alongside teaching upcoming scholars a broad variety of research methods and tools to conduct independent research projects. Throughout tangible learning approaches online and remotely, students from around the world could be guided to investigate and scientifically propose analysis strategies how to innovatively use and teach economics for the greater societal good. For instance, when it comes to the Green New Deal, students in the United States could outline their experience in reflection with students in Europe that brief on the European Green Deal coupled with experts in Asia who could highlight the most recent developments on the Copenhagen Green Climate Fund. Especially the online character higher education is shifting towards these days can become a forum for open debate around the world on global concerns. Teaching and learning consortia could embrace and engage like-minded specialists, who teach cases of their own environment that can be widely distanced from each other. Innovatively, theses efforts will be enhanced by a self-imposed leadership component, in which leadership aspects of the discussed contents will be highlighted and honed in practical experience and learning-by-doing on the ground. Leadership facets of the research findings should be debriefed during in-class experiences and final project presentations, in which participants may come together in in-person retreats.

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Management Guidelines in Insolvency Situations

Oana Horhogea

PhD student,"Alexandru Ioan Cuza" University, Iași, Romania, oana.horhogea@yahoo.com

ABSTRACT: Insolvency at the international level has been for hundreds of years an essential issue of commercial law in general and of international law in particular. There has been a constant attempt to find the appropriate legal instruments to solve creditors' problems in order to obtain the goodwill that belongs to them, but at the same time to protect the debtor. Along with the economic, social and financial development, there have been several changes in insolvency legislation both domestically and internationally. These legislative changes have become an essential pillar in the economic legislation of a state.

KEYWORDS: insolvency, laws, managers, management, company

Introduction

Insolvency in Romania has had a permanent development, from Phanariots to the contemporary period.

The Caragea code was the first to address this topic of insolvency. It was promulgated in 1818 during the reign of the Phanariot ruler Ioan Gheorghe Caragea. It entered into force on 01.09.1818 and was applied until 30.06.1865, when it was replaced by the Civil Code (1864). In Chapter VIII - For loans and debt, the insolvency was also discussed:

"Art. 15 If a debtor becomes bankrupt, they shall file a lawsuit, and if they prove their damages, their creditors shall exonerate them; otherwise, they shall accept their responsibility for false bankruptcy" (Civil Code, 1818)

Also, in the Calimach Code, the application of which became more consistent after 1833, the aim was to regulate the situation of the natural person who is obliged to go into insolvency.

"(…) The legal action based on which the creditors of a bankrupt are summoned together, by decision, to clarify and prove their claims, so that after this, they can divide the bankrupt's assets between them according to the classification analogy. The procedure against the bankrupt was opened by a court decision, subject to publicity both at the place of ruling and in other counties, the main effect of this act of jurisdiction being the dismissal of the bankrupt and the unenforceability in relation to the statements of assets and liabilities of the acts subsequently concluded by the debtor" (Bufan, Deli-Diaconescu, Moțiu 2014, 29).

"These regulations began to be dealt with later, in 1831, 1832 and in some organic Regulations, so the institution of insolvency became more and more regulated and later in 1887, the first Romanian Commercial Code came into force. This issue of bankruptcy has been addressed in two hundred and fifty articles. It should be mentioned that, by repealing the Commercial Code and by the taking over by the Civil Code of the title of common law in this matter, the legislator thus favoring the monistic conception, the classic distinction between civil and commercial relations also disappeared" (Urda 2016, 11).

In 1995, Law no. 64/1995, the first law on the procedure of judicial reorganization and bankruptcy, published in the Official Gazette no. 1066 of November 17, 2004, enters into force.

Due to social and commercial development at a national and international level, the need for legislative changes was felt. Thus, in 2006, Law 85 on insolvency prevention and insolvency proceedings, which includes judicial reorganization and bankruptcy under the name of judicial insolvency, enters into force.

The last legislative amendment in Romania regarding insolvency took place in 2014, when Law no. 85 on insolvency prevention and insolvency proceedings came into force. It also currently regulates the insolvency of professionals, dealing in depth with all existing practical issues, including and clarifying current legislative procedures and provisions, new situations that were encountered in the procedure and which the previous legislation was not prepared to cover.

Management guidelines in insolvency situations

The purpose of the insolvency laws was to create a procedure by which the manager of a company, in a situation of fiscal deadlock, is helped to reorganize the company, in order to extinguish the obligations thereof in relation to third parties natural or legal persons and to return to the operating situation.

Thus, by the last legislative amendment provided by Law no. 85/2014 on insolvency prevention and insolvency proceedings, several basic principles have been established in order to help and support the actions of a manager when the company is in a crisis situation:

- "maximizing the degree of asset capitalization and debt recovery;
- giving debtors a chance for an efficient and effective recovery of the business, either through insolvency prevention procedures or through the judicial reorganization procedure;
- ensuring efficient proceedings, including through appropriate mechanisms for communicating and conducting the proceedings in a timely and reasonable manner, in an objective and impartial manner, with minimum costs;
- ensuring the equal treatment of creditors of the same rank;
- ensuring a high degree of transparency and predictability in the procedure;
- admitting existing creditors' rights and compliance with the order of priority of claims, based on a clearly defined and uniformly applicable set of rules;
- limiting the credit risk and the systemic risk associated with transactions in derivative financial instruments by recognizing the close-out netting in the event of insolvency or in case of a proceeding destined to prevent the insolvency of a co-contractor, resulting in the reduction of the credit risk to a net amount due between the parties or even to zero when financial collaterals have been transferred to cover the net exposure;
- ensuring access to sources of financing in insolvency prevention proceedings, during the observation and reorganization period, with the establishment of an appropriate regime for the protection of these claims;
- substantiation of the vote for the approval of the reorganization plan based on clear criteria, ensuring equal treatment between creditors of the same rank, recognizing comparative priorities and accepting a majority decision, while the other creditors shall be offered equal or higher payments than they would receive in bankruptcy;
- favoring, in insolvency prevention proceedings, the amicable negotiation/ renegotiation of claims and the conclusion of an arrangement with creditors;
- capitalization of assets in a timely and efficient manner;
- in the case of the group of companies, coordinating insolvency proceedings, with a view to an integrated approach thereof;
- the management of the insolvency prevention and insolvency proceedings by insolvency practitioners and the development thereof under the control of the court." (S. 4, Law no. 85/2014).

The manager is the one who has the most critical role in the recovery of the company. If he/she has the necessary training and skills, he/she will be the one who will be able to make

the transition easier for all participants in this process, and therefore all the people involved will not suffer or will suffer less from this situation.

The management of a company in a crisis is the management that develops concrete tools that are specific to each field, which will allow the manager to implement and apply the management he/she will consider necessary and appropriate at that stage. Thus, there are situations in which:

"Ongoing contracts shall be deemed to be maintained at the date of the opening of the proceedings. (…) Any contractual clauses terminating the ongoing contracts, breaching the term or declaring an anticipated maturity date for the reason of the opening of the proceedings shall be null and void. The provisions relating to the maintenance of ongoing contracts and the nullity of clauses of termination or acceleration of obligations shall not apply to qualified financial contracts and bilateral clearing operations under a qualified financial contract or a bilateral clearing agreement (…). In order to maximize the value of the debtor's assets, within a 3-month limitation period from the date of the start of proceedings, the insolvency administrator/liquidator may terminate any contract, unexpired leases, other long-term contracts, as long as these contracts have not been performed in full or substantially by all parties involved" (S. 123, Law no. 85/2014).

"If a movable asset sold to the debtor and not paid by it, was in transit at the time of the opening of the proceedings and the asset is not yet available to the debtor, and no other parties have acquired rights over it, then the seller can take back the asset. In this case, all expenses will be borne by the seller, and it will have to return to the debtor any price pre-payment. If the seller allows for the asset to be delivered, it will be able to recover the price by entering his claim in the consolidated list of creditors. If the insolvency administrator/liquidator requests that the asset be delivered, it will have to take measures so that the full price due under the contract is paid from the debtor's property" (S. 124, Law no. 85/2014).

"If the debtor is a party to a contract contained in a master netting agreement, which provides the transfer of certain goods, securities representing goods or financial assets listed on a regulated market for goods, services and financial derivative instruments, on a particular date or in a specified period of time, and the maturity occurs or the period expires after the date of the opening of the proceedings, a bilateral clearing operation of all contracts included in the respective netting master agreement will be carried out, and the resulting difference will have to be paid to the debtor's property, if it is a creditor, and will be entered in the list of creditors, if it is a liability of the debtor's property" (S. 123, Law no. 85/2014).

"(…) owner of a leased property and debtor in the present proceedings shall not terminate the lease agreement unless the lease is lower than the market lease. However, the insolvency administrator/liquidator may refuse to provide any services owed by the lessor to the lessee during the lease. In this case, the lessee can evacuate the building and request the registration of its claim (…) or can still own the property, deducting from the lease it pays the cost of services owed by the lessor" (S. 128, Law no. 85/2014).

We exemplified some situations in which the companies' managers, in accordance with the legal provisions, have to take some decisions on the assets existing in the company's patrimony in order to recover it.

Although in Romanian society, the onset of insolvency is seen as a failure, because it comes along with financial difficulties, financial blockage, lack of money to pay the debts resulting from service, banking agreements etc., the insolvency of a company can also have beneficial results if the manager chooses to reorganize the company at the right time. This makes the difference between strategic management and underperforming management.

Usually, a manager who is under pressure considers that once the insolvency proceedings are started, the company will automatically go bankrupt and will have to close the business that he/she built for years. If the economic and financial context results, not infrequently, in the impossibility of covering the company's debts, this does not mean that the

management offered was not a quality management. There are situations when the management has been influenced by external factors, the clients no longer pay their contractual debts, the financing sources become less numerous or no longer exist, making it impossible for the company to continue.

By reorganizing the company, it will be sheltered, under the protection of legislation, giving the manager the opportunity to draft a reorganization plan, structured over a period of time, through which the company can recover. It is a good time for the company to change its business strategy. If you want to reorganize the company, in order to have a clear work image, it is recommended to have an assessment of the company from an economic but also legal point of view, starting from the check of the company's accounting documents and up to the check of the ongoing service, trade agreements.

In order to start the insolvency proceedings, in addition to being a good organizer and visionary, the manager must also be a good negotiator and in terms of the relationships with creditors, he/she must build or maintain a business relationship based on trust and transparency. In the end, the company can manage to resume its activity, and the creditors to recover their receivables or even to continue their activity, namely to conclude new contracts with the same partners.

At the international level, management is a reflection of the process of internationalization of economic life. Some differences in management occur due to the different contexts in which it is performed, due to the cultural diversity of the participants in transactions, as well as due to different managerial concepts and practices. While from a legislative point of view, the regulations at the international level are different, from a managerial point of view, the decisions depend on the manager's capacity to lead the company, to make decisions capable of achieving the set objectives through good coordination and efficient use of resources.

During the insolvency period of a company located on the territory of Romania, there are cases when the manager is forced to take the necessary steps to protect the company in terms of the enforcement of court decisions. The company is involved in this lawsuit, and the contracting parties come from two different states with different legislation. In this situation, in addition to his/her administration and negotiation skills, the manager must know the legislation governing his/her decisions at that time.

"While from a legislative point of view, there are inconsistencies between the provisions of Romanian legislation and those arising from treaties, conventions or any other form of international agreement, bi- or multilateral, to which Romania is a party, the provisions of the treaty, convention or international agreement shall apply with priority" (S. 275, Law 85/2014).

"Romanian courts have the possibility to refuse the recognition of a foreign procedure, the enforcement of a foreign court decision adopted within an insolvency proceeding if they find that a) the decision is the result of a fraud committed in the procedure observed abroad; b) if the decision breaches the provisions of public order under Romanian private international law" (S. 278, Law no. 85/2014).

"Within the forms of cooperation, the Romanian courts cooperate with the foreign courts and representatives by:

a) Coordinating the administration and supervision of the assets and activities of the companies belonging to the group of companies;

b) Coordinating the conduct of court hearings, including the possibility of establishing joint hearings;

c) Coordinating the approval and implementation of the reorganization plan;

d) Communicating information or procedural documents regarding the Romanian insolvency proceedings of one of the members of the group of companies;

e) The possibility to approve a cross-border insolvency agreement having as object the coordination of insolvency proceedings;

f) The possibility of appointing a typical representative in insolvency proceedings, with the check of the non-existence of a conflict of interests" (S. 308, Law no. 85/2014).

"Therefore, the manager must be aware that (…) the cooperation procedure between the Romanian courts, on the one hand, and the foreign courts and representatives, on the other hand, will not affect the principles of independence and impartiality under which the court authority operates or the legitimate rights and interests of the participants in the insolvency proceedings" (S. 309, Law no. 85/2014).

Conclusions

The management at both national and international level represents the totality of concepts, methods and tools that are necessary to identify business opportunities and the importance of the qualities of a manager for his/her actions of management, organization, promotion and negotiation of contracts.

It is vital for a manager to have managerial skills, the ability to make quick decisions and take risks in crisis situations, such as the period of insolvency. However, at the same time, he/she must have the ability to acquire additional information obtained from other related fields, such as the economic, legal and social ones, etc.

The bigger and more developed the company, the higher the capacity to select and hire more staff, setting up specialized departments, in order to support its activity. The specialized departments will be more and more diversified in terms of the established duties, but what happens when the company is small, with limited resources but needs to operate and grow? I believe that in this situation, the manager's effort will be much greater. In addition to technical, decision-making, conceptual and communication skills, he/she will always have to supplement his/her knowledge with economic, social and legislative information, which will enable him/her to accumulate extensive and in-depth specialized knowledge, becoming a successful multidisciplinary manager.

Successful managers are those who want to constantly progress, and in this respect, they will gather all the information, identify problems and establish business strategies not limited to their area of professional training. They will always try to scale the information frontier and obtain new information to achieve their goals.

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Organizational Triggers in Relation with Performance Indicators for Service Employees

Tamar Kvirikashvili

PhD student, Georgian-American University, Georgia, tamarkvirikashvili@gau.edu.ge

ABSTRACT: In recent years, performance measurement has become a major issue. If an organization has the ability to measure its vital activities at all organizational levels, then it will become critical to its success in today's fast-paced world. Workplace is a stressful environment, which involves many situations and for that reason, it may trigger strong negative feelings. In a complex and dynamic environment, for assessing the amount of desirability and utility of their activities each organization requires ranking and determining key performance indicators. They provide links among execution, strategy and ultimate value creation. Several studies are conducted to explore the individual effects of organizational triggers on employees' performance. Nowadays in organizations, there is a significant focus on services, creating the customer-responsive culture, and service standards. Based on extensive literature in the field, the paper is about the relationship between organizational triggers and performance indicators for employees in the service field.

KEYWORDS: performance management, performance indicators, organizational triggers, service employees

Introduction

By the literature on organizational behavior frontline service employees are entitled as boundary spanners. Service employees are responsible to stakeholders, also they link inside of an organization to the outside world. These roles frequently cause that frontline employees represent the firm to customers, when conduct the service delivery, and represent customers when communicate their requests and desires.

Performance Measurement

Performance measurement sometimes is failing in all organizations, whether or not they are multinational, government department, or small local charities. The measures that are adopted were dreamed up eventually with none linkage to the critical success factors of the organizations. Usually organizations use the measurements on a monthly or quarterly basis.

Many companies work with the incorrect measures, many of them are incorrectly termed key performance indicators (KPIs). The monitoring of true KPIs is a challenging goal for organizations. The four types of performance measures are (Parmenter 2010):

1. Key result indicators (KRIs) tell you ways you have got in critical success factor.
2. Result indicators (RIs) tell you what you have done.
3. Performance indicators (PIs) tell you what to try to do.
4. KPIs tell you what to try to extent performance dramatically.

There are many performance measures utilized by organizations which are mixture of these four types. To describe the connection of those four measures, we can use an onion analogy. The condition of the onion is described by the surface, the effect of water, sun, and nutrients it is receiving; and the way it is been handled from harvest to the supermarket.

Outside skin is the KRI. We discover more information, when we peel the layers off the onion. Result and performance indicators are represented by the layers, and then the core is represented by the key performance indicator.

If you are interested how your company is doing, KPIs are powerful metrics for it. It becomes easier to find out what is not working in your company, when you are ready to analyze and evaluate the performance of your company. can analyze several different criteria. From here, you will target on your strengths and understand your weaknesses. When you know other purposes that KPIs serve, then you may understand better why KPIs are important. Out of many reasons, these four are more important:

KPIs strengthen employee morale

It is the less known indicator and that's why it is important to start with this value of KPI. For performance the most important is a company's culture. Acknowledging employees' labor and securing their feeling of accountability and responsibility is tracked by KPI. Everyone at our company, has KPIs that they are responsible for. Sometimes, when the organization grows there are often an increasing sense of distance between the organization's achievements and therefore the individual's efforts toward them. People are more likely to receive more satisfaction from employment well done, when they feel responsible for KPIs.

KPIs influence and support business objectives

The reason why KPIs are important to business objectives is that they keep objectives at the forefront of deciding. When business objectives are well communicated across a company it's essential, so when people know and are accountable for their own KPIs, it ensures that the business's goals are top of mind. KPIs also make sure that performance is measured in respect to the larger business objectives. This implies that each part of work is completed with intentionality and for the correct purpose.

KPIs foster personal growth

It is not mandatory that every product update or campaign can reach the targets. Learning environment is created, when you monitor performance against those targets. KPIs let teams to see how they are engaging at any given moment and after that you can ask why, what, how and when... which makes you learn from successes and failures a daily activity. KPIs are also important for private growth because it builds off the concept of increased morale. Allowing employees to observe their performance and respond within the moment implies that they are more likely to attain their goals and better understand a way to do so within the future. When you have the sense of continuous improvement it allows you to realize much more than they may think, and therefor this is important for workplace satisfaction and continued personal growth.

KPIs are critical for performance management

The last one is the most important reason why key performance indicators are important, because all the reasons above are summed up: what is measured is managed. Performance is contributed by capacity and culture employee morale. Because KPIs allow everyone to see not only what they are doing, but what others, that’s why it simplifies performance management.

A trigger is something that performs a specific action. In addition, any stimulus that shapes our thoughts and actions can appear suddenly and it can be major or minor moments, pleasant or ambitious. Our environment is the most powerful mechanism of use in our lives, which does not always work in our favor, we make plans to achieve our goals, but the environment is constantly interfering. For example, when the smell of bacon comes out of the kitchen, we forget the doctor’s advice about lowering our cholesterol, and sometimes we have to skip a child’s football game because we are obligated to appreciate the staff and provide

them consistently because they work late every day and so on. This is how our environment interferes with our lives and we have to act against our will.

Our environment has feedback as a trigger. After all, our environment is constantly giving us new information that is important to our lives and changing our behavior. However, the similarities end here. Our environment often leads to bad behavior and this is done against our will and against better judgment and without awareness, where a well-designed feedback loop leads to the desired behavior. Change is taking place.

Dr. Robert Cialdini is a famous author of the bestseller books about influence, he is widely known for his breakthrough ideas in the field of influence and power research, regarded as the 'Godfather of influence', because of his years of scientific research on the psychology of influence.

Cialdini describes six triggers as the main drivers to influence others (Cialdini 2007): reciprocity, scarcity, consistency and commitment, authority, liking, social proof.

Reciprocity is a deeply ingrained psychological trigger. If we act in favor of another person, they will have an obligation to return. In other words, benefits for benefits. The initial small kindness can lead to much greater feedback.

Scarcity is about the shortages. Something is difficult to achieve when there is a shortage of resources or the faster, we want to achieve it. In short it is - scarcity. From an academic point of view, scarcity means that society does not have enough productive resources to meet all needs.

Consistency and Commitment - these are operated at the two levels. The first is that the best predictor of future behavior is its past. People try to conform to previous thoughts and actions. Therefore, making significant changes in lifestyle becomes much more successful when the goal is publicly announced. Second, the premise of great consent is small consent. In other words, the first "yes" to face-to-face sales is simpler than the next.

Authority is one of the scariest psychological triggers. Where social evidence is based on popular power - i.e., people 'just like me', - authority takes a principled step to use the power of particular individuals. Authority is dangerous because it has power. According to Cialdini, there is a tendency that the action may be repeated in response to simple symbols rather than its essence. Research has shown that the most effective symbol can be automobiles and clothes. In other words, people react not only to authority, but also to their appearance.

Liking is another obvious trigger that is not at all easy. No matter how logical our decisions may be, in reality "people prefer to give their yes to those who know and like them." In other words, if they like you, they will buy from you. Approval can be expressed in both physical attractiveness and common interests and similarities.

Social proof - whether we like to admit it or not, the crowd is a powerful force. We can easily understand this if we consider sales. To increase sales, the first psychological trigger must come not from us, but from people who are already using the product or service.

Managers of organizations often talk about performance. There are objectives and targets to achieve – at a team and at an individual level – to meet organization's overall goals. Performance indicators as standards can express authority, as managers trigger their employees to achieve the standard. When managers build a trust in performance management, it means that they are clear about what they expect from employees and that's why managers must link employee's goals to business priorities.

Working in service field receives increasing attention. Customer demands are changing rapidly, also the services that they require. Consumers participate within the service delivery process, services are provided from public stakeholder, and therefore the funding is especially provided by public resources. Public services must refer to justice, fairness and equity; they're not only about efficiency and effectiveness.

In service industry, managers search for competency in critical areas. In brief, managers want to know that employees are meeting established goals, working as contributing members of the team and applying critical thinking skills to assist that business operations are successful.

Teamwork

Colleagues are generally seen as strong and contributing team players, when they work effectively together on group projects and initiatives. Examples, where employees exhibit a sense of team commitment include (McQuerrey 2018):

- Participating in group brainstorming.
- Volunteering for roles on team projects.
- Supporting others' ideas and approaches.

Communication

An important part of every service employee's job is an accurate, appropriate, professional sales communication. With the following in mind, employers will evaluate this skill (McQuerrey 2018):

- Clear, concise verbal and written communications.
- Timely follow up to email and customer inquiries.
- An ability to accurately articulate ideas, concepts and feedback.

Customer Service

You are directly or indirectly serving your customer base through your position, regardless of the role you play. Employer will assess the employee in critical performance areas related to customer care, including (McQuerrey 2018):

- Professional, polite interactions with customers.
- Ensuring that problems are handled rather than being passed off.
- Offering options or solutions to resolve customer complaints.
- Timely responsiveness to customer needs.
- Perfect representation of the company.

Job Functions

Key performance indicators related directly to service employees' specific job functions will be appraised during an evaluation. Key performance indicators might include (McQuerrey 2018):

- Attention to detail.
- Timeliness.
- Good time management.
- Creativity and innovation.

I want to introduce the company where I work and talk about performance indicators in this public organization.

Education Management Information System (EMIS) was established in 2012. The mission of the management system is to provide the education system with advanced technologies and electronic resources for the best education and management. The strategy of

the Education Management Information System is to promote the functioning of the Ministry of Education and Science in the educational space through the introduction of modern information and communication technologies.

The KPIs aimed toward boosting the performance of the government officials in line with the government effort to boost public service delivery system and as assurance that the element of integrity and good governance are being carried out.

The study was conducted in EMIS using interviews with the respondents. The main objective was to study the implementation of key performance indicators in this government agency that offers services to the education system, to the universities, to the students.

What are the focuses of using KPIs in EMIS?

Key Performance Indicators at EMIS are focusing on two main aspects. EMIS develops the KPIs to measure efficiency and effectiveness of working process to supply and deliver services to customers (universities, schools, and students). How accurate the service is provided and delivered to customers is assessed by the efficiency of the process too supply and deliver the services to customers. The work process is being assessed by looking at the statistics develop by the management team.

Triggers, or triggering events, are outlined as circumstances that act as catalysts to structure learning. Like persons, organizations do not learn proactively (Watkins & Marsick, 1993). Given the tremendous pressures to perform and turn out results, organizations tend to over-invest in exploiting existing data and under-invest in learning or developing new data (Levinthal, 1991). Moreover, in order for organizations to learn, people should learn. Individuals carry out what is expected of them, each written and unwritten expectations. Written expectations are usually delivered through job descriptions, memos, e-mails, and official documents. Unwritten expectations are less clear for people. For understanding unwritten expectations, there are three groupings in organizations: motivators, enablers and triggers, according to Maira Arun and Peter Scott-Morgan (Arun & Scott-Morgan 1997).

Conclusion

Workplace is a stressful environment, which involves many situations and for that reason, it may trigger strong negative feelings. It is important for managers not only to help workers control emotional situations but be able to control their own feelings. This can help contribute to a healthy environment, allow workers to perform according to their potential and maintain workers' morale. It is important for most stressful situations that manager is able to respond in a rational, calm and positive manner. This helps encourage workers to see the situation more objectively. In contrast, when managers add their own emotions into the mix, it can be very unhelpful for fueling workers' emotions. Managers can send the message to workers, when they react in unhelpful ways, that they can lead the team through hard times and are incapable of remaining calm. When managers can help resolve an emotionally charged problem and demonstrate empathy can give workers confidence and that these workers are overseen by competent and strong leaders.

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