

RAIS CONFERENCE PROCEEDINGS

The 23rd International RAIS Conference
on Social Sciences and Humanities

AUGUST 15-16, 2021

EDITOR: NICOLETA-ELENA HEGHEŞ, PhD

This publication presents the proceedings of the *23rd International RAIS Conference on Social Sciences and Humanities* held online on August 15-16, 2021. The Conference was organized by Research Association for Interdisciplinary Studies.

The Research Association for Interdisciplinary Studies (RAIS) is an international, not-for-profit organization incorporated by the Maryland State Department of Assessments and Taxation, United States of America, and is exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c) (3), with the mission of promoting human values through interdisciplinary research.

© 2021 Authors

ISSN 2578-8574

ISBN: 978-1-945298-38-7

The Scientific Press, Cambridge, MA

Editor: Nicoleta-Elena Hegheş, PhD

This publication reflects the views only of the authors, and RAIS cannot be held responsible for any use that may be made of the information contained therein.

This publication is published by the Research Association for Interdisciplinary based in the United States, with offices located in Beltsville, Maryland, and Princeton, New Jersey, and is licensed under a Creative Commons Attribution (CC-BY) license.

Proceedings of the
23rd International RAIS Conference
on Social Sciences and Humanities

ISSN 2578-8574
ISBN: 978-1-945298-38-7

August 15-16, 2021
Princeton, NJ, USA

TABLE OF CONTENTS

Supply Chain Risks, Cybersecurity and C-TPAT, a Literature Review <i>Stephen Sullivan, Diana Garza</i>	1
Positioning Prospective Teachers' Awareness of Diversity: A Critical Literacy Context <i>Lorenzo Cherubini</i>	9
Climate Growth Theory <i>Julia M. Puaschunder</i>	13
Trust and Public Support for the Colombian Peace Agreement <i>Esmeralda Lopez</i>	26
Some Tactical Aspects of Computer Search <i>Nicoleta-Elena Heghes, Nelu Niță</i>	36
The Psychological Process of Forming Witness Statements <i>Valentina Avrămescu</i>	43
Strange Harmony: Human Nature and Tyranny in the Eyes of Czesław Miłosz <i>Milen Jissov</i>	48
Incrimination and Forensic Investigation of the Crimes Committed Against Safety and Health at Work in Romanian Legislation <i>Adrian Cristian Moise</i>	54
Anger as a Crime Generating Factor <i>Cristian Dan</i>	67
A Multi-Planet Species: Ethical and Environmental Impacts of Privatized Space Travel <i>Natalie Pierson</i>	71
Robots – A Strategic Solution from Recovery to Resilience <i>Florian Răpan, Ivona Răpan</i>	77
Possible Mistakes in Forensic Photography <i>Gabriel - Irimia Anghel</i>	83
Current Values of Education and Culture <i>Ioan-Gheorghe Rotaru</i>	87
January 6th and President Trump: A Study of Social Media in Today's America <i>Alex Sung, David Douglas Klein</i>	93
The Legal Benefits Provided by the Romanian Criminal Legislation in Favor of the Collaborators <i>Nadia Zlate</i>	99
Organizational Triggers in Managing Employee Performance Quality in Georgian Organizations <i>Tamar Kvirikashvili</i>	108

Table of Contents

What is the Pulse of Businesses in a Digitalised Era? <i>Ionut-Alexandru Horhoge</i>	115
Environmental, Social and Corporate Governance (ESG) Diplomacy: The Time Has Come for a Corporate and Financial Social Justice Great Reset <i>Julia M. Puaschunder</i>	119
Copyright System <i>Dorel Mihai Vlad</i>	125
Payroll Protection Plan Epilogue <i>Douglas David Klein, Zion Kang</i>	130
Non-Fungible Tokens (NFTs) – Regulation Vacuum and Challenges for Romania <i>Bogdan Radu</i>	137
The Role of the Social Assistant Worker in Romania and the Involvement of the Church <i>Georgeta Stoica-Marcu</i>	144
The Dark Side of the Preternatural World. A Suggestion to the Theological Approach of the Religious Experience <i>Fosztó Arpad</i>	149
The Adventist Children and Young People’s Perception of the Sabbath Day in Communist Romania <i>Ciprian Corneliu Ciurea</i>	155
The Role of Public Administration in the Realization of the Public Education Service <i>Elena Roxana Vişan</i>	167
Criminal Participation in the Form of Complicity <i>Petre Buneci</i>	172
The Problems of Third World and United Nations <i>Sabeen Azam</i>	184
Valences of Education <i>Ioan-Gheorghe Rotaru</i>	190
A New Model of Penitentiary <i>Dorian Chiriţă</i>	197
The Effects of COVID-19 Pandemic on Domestic Violence <i>Cosmin Butură</i>	201
The Use of Experts in Criminal Proceedings in Romania. Inquisitorial Background and Future Trends <i>Adrian Şandru</i>	205
Healthcare Dependent Multiplier <i>Julia M. Puaschunder</i>	211
Music on the Wrong Side of Art <i>Goranka Stanić</i>	219

Supply Chain Risks, Cybersecurity and C-TPAT, a Literature Review

Stephen Sullivan¹, Diana Garza, PhD²

¹*DBA Student, University of the Incarnate Word, United States, stsulliv@student.uiwtx.edu*

²*Associate Professor of Business, University of the Incarnate Word, United States, dgarzaor@uiwtx.edu*

ABSTRACT: The past year has seen critical fluctuations in business operations throughout the US and the world. Due to COVID-19, employees have been encouraged or forced to work from home instead of commuting to a regular work location. Remote work has disrupted and weakened security processes. Cyber criminals have seen an opportunity in this weakened infrastructure. Cybersecurity attacks have disrupted supply chains for businesses, schools, healthcare organizations and other entities. Organizations will need to reassess security strategies with the assumption that work-from-home will become permanent. The US Department of Homeland Security has stepped up its efforts to meet this risk head-on and has incorporated supply chain cybersecurity measures within the constructs of the Customs-Trade Partnership Against Terrorism (C-TPAT) program. This all-volunteer program was launched immediately after 9/11 to thwart potential supply chain risks that could open the door to major terrorist attacks on the US homeland. This research will explore the reasons why cybersecurity has become the nation's number one commercial concern for supply chains and logistics management and how C-TPAT is enabling the proper change to the current business climate as a risk mitigating option.

KEYWORDS: cyber-security, C-TPAT, supply chain, risk

Introduction

There have been unprecedented cyber-attacks on our nation's infrastructure and, moreover the supply chain, both in the public and private sectors. Cybercriminals have been a relentless force and trend in the news headlines as many firms were subject to supply chain disruptions due to cyber-attacks on their IT systems. Supply chains are composed of a wide network of multiple businesses operating in an ever-changing and dynamic environment. Due to the interrelationships among firms, supply chains become vulnerable to a myriad of risks. Business exposure may be caused by supply chains that extend over wide geographical areas. Other possible factors for supply chain exposure include a greater demand in product customization, prices, level of service, changes in technology, a dynamic economic landscape, lifestyle changes, and natural factors (Lambert & Copper 2000).

Companies need to be proactive to survive a complex and ever-changing environment. To respond efficiently to supply chain challenges, companies must have risk mitigation capabilities and the flexibility required to respond quickly. As defined by Christopher and Holweg (2011), structural flexibility is the ability to adapt to changes in the business environment. However, efficiently responding to challenges and changes involves a higher cost in the form of additional resources.

This paper will outline the impact cyberattacks have on supply chain management including chain disruptions, risk detection, mitigation, and recovery; the magnitude of the cyberattacks and the financial and reputational losses; the role of technology and IT infrastructure, potential strategies to mitigate supply chain risks, and the overall global impact; and the role of C-TPAT in efficient supply chain management.

The intent of this paper is specific to supply chain disruptions due to cyberattacks and the role of C-TPAT to the security of such supply chains. The limitations of this study include the limited literature based on the allowed length of the paper and this paper is not an

empirical study. Further research is encouraged on this topic as it continues to involve with the integration of technology and the increased risk of cyberattacks.

Supply Chain Management

Supply chain management involves individual businesses working as a wider network. Organizations that rely heavily on supply chain management (SCM) principles do so in various ways to accomplish value-added cost reductions throughout the chain. Supply chain management (SCM) is regarded as the centralized management of the flow of goods and services which includes all programs and processes that transform raw materials into final products. The supply chain is vast and encompasses production, vendor management, demand planning, transportation (global and domestic) and logistics, purchasing, distribution, and warehousing. By managing supply chains, stakeholders and companies can cut excess costs and deliver products to the consumer faster and at a competitive price. Efficient supply chain management keeps companies out of any negative press and away from expensive recalls and lawsuits. However, in most recent studies on SCM, sustainability of the supply chain has taken center stage from both an academic and operational side.

Sustainability came to the forefront of the world's attention when the Brundtland Commission of the United Nations defined sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (WCED 1987). This study was a breakthrough and had a significant effect on modern SCM in terms of businesses actively seeking ways to make profits and maximize the social and economic health of the environment on which it relies. Supply chain management is on the frontline of sustainability in business as it provides a valuable opportunity for the firm to incorporate SCM objectives and performance into its decision-making processes (WCED 1987).

Sustainable supply chain management (SSCM) extends the basic concept of supply chain management by broadening performance to consider further sustainability measurements. SSCM is defined as "the management of material, information, and capital flows, as well as cooperation among companies along the supply chain, while taking goals from all three dimensions of sustainable development into account" (Meixell and Luoma 2013). Thus, SSCM involves the wider set of performance objectives identified simply as economic, environmental, and social. A firm's stakeholders can be an important factor in facilitating effective supply chain management. Stakeholders in the supply chain include any individual or group that can affect or be affected by an organization (Freeman 1984). Academics look toward a stakeholder theory that suggests there should be a fit between the "values of the corporation and its managers, the expectations of stakeholders and the societal issues which will determine the ability of the firm to sell its products" (Freeman 2004). A stakeholder approach emphasizes active management of the business environment, relationships, and the promotion of shared interests which is a matter of long-term survival (Freeman and McVea 2005). However, sustainability in terms of cleaner environmental impact is paramount more now than ever.

According to the United Nations study on global transportation, the logistics aspect within the supply chain accounts for 22 percent of the world's carbon-dioxide emissions. High carbon emissions affect people, plants, animals, and the greater environment, all raising flags as to future sustainability of the world's resources and future goods and services production. Khan et. al., contend that the supply chain is intrinsically linked to the environment as the act of transporting goods globally impacts nature and that sustainable SCM depends on making better choices as far as vendors who provide low-emission options, such as compressed gas vehicles in their loading and cargo transport methods.

Supply Chain Disruptions

A supply chain disruption occurs when direct or indirect adverse and unexpected events disrupt the normal flow of the supply chain (Garvey et al. 2015). Garvey et al. (2015) differentiate between a disruption and a risk, defining disruptions as manifestations of the supply chain, whereas a risk can occur without disruption. There is also a difference between traditional and time sensitive supply chains, where time-sensitive supply chains may include disaster relief operations. DuHadway, Carnovale, and Hazen (2017), also differentiate between a disruption that is intentional and inadvertent and the source of such disruption is exogenous or endogenous. The authors further assert that intentional disruptions such as security threats are further exacerbated by weak supply chain infrastructure.

It is worth further differentiating between endogenous and exogenous disruptions. Events that occur from within the supply chain are said to be endogenous, whereas events that occur from outside the supply chain are exogenous (DuHadway et al. 2017). This research will focus on exogenous risks to the supply chain. Cybersecurity attacks or terrorist attacks are considered exogenous and impact multiple firms across various industries. Intentional exogenous disruptions lead to disruptive events for the entire network of businesses.

According to DuHadway et al. (2017), risk detection is an important component of risk mitigation strategies. Companies must be able to understand how to detect and anticipate risks to build better prevention and recovery strategies, yet not all disruptions can be anticipated. Kleindorfer and Saad (2005) posit that the robustness of the supply chain is determined by the weakest link in the entire supply chain. Particularly because of this reason, it is important to be aware of the risks that the supply chain is exposed to. DuHadway et al. (2017) assert that risk detection will be different based on the specific risk, but the detection strategies are similar in their approach. These strategies include information sharing, visibility, and integration with suppliers.

The mitigation of disruptions to the supply chain requires robust information processing capabilities. The requirements to build such capabilities must be included into a company's overall strategy. Firms with such capabilities are more competitive than rival firms. Tuggle and Gerwin (1980) suggest strategic orientations based on the information available and a response that focuses on performance. Ito and Peterson (1986) demonstrated that firm performance increases with information processing capabilities where organizations can navigate their network connections. The authors suggest that what becomes important is implementing the right capabilities and controls.

Risk recovery is based on the company's ability to recover from a disruption. Recovering from inadvertent disruptions proves to be one of the most challenging as it involves the entire network and involves the firm's ability to return to the previous state of the supply chain, also known as resilience within the literature (DuHadway et al. 2017).

Magnitude of Cyberattacks

According to IT security professionals, a cybersecurity threat is a, "malicious and deliberate attack by an individual or organization to gain unauthorized access to another individual's or organization's network to damage, disrupt, or steal IT assets, computer networks, intellectual property, or any other form of sensitive data" (Stealth Labs 2020). In today's digital world, cybersecurity measures are the key to defending a company's most precious assets. Those assets are intellectual property, customer information, financial and trade data, and employee records, among others. With increased internet connectivity comes the risk of a security breach of a company's IT systems.

A software supply chain attack occurs when a cyber threat actor, whether individual or nation-state, infiltrates a software network and introduces malicious code to compromise the supply chain software before the vendor sends it to their customers. The affected software

then compromises the customer's data or system. These attacks affect compromised software users and can have widespread consequences for government, critical infrastructure, and private sector software customers (NIST 2021). According to Industry Week (2021), and using sources from recently published IBM data, the average cost of a supply chain data breach is upwards of \$3.86 million per firm or institution, not including any ransom monies that could have been paid (Industry Week 2021).

Cyber-attacks are primarily focused on the following methods: malware attacks, phishing, man-in-the-middle attack, denial of service attack, SQL code injection, ransomware attacks, and DNS attack. In terms of relative statistics, 80 percent of all cyber-attacks are through some phishing activity, and with the most prevalent, malware is the most expensive. A malware attack, costs on average \$2.6 million in damages and mitigation to the average firm affected. Ransomware is said to affect the global multinational corporation sector in 2021 upwards of \$20 billion in lost revenue and productivity. Additionally, a business is subject to a ransomware attack every 11 seconds in 2021, and cyber-attacks increased by 400% in the US during the coronavirus pandemic (Stealth Labs 2020).

Attacks to corporations' supply chain come from many internal and external sources. Cyberthreats are common to the following groups: nation state attacks, criminal groups, corporate espionage, hackers, malicious insiders, and terrorist groups. A leading cybersecurity watchdog organization had determined that while certain threats concentrate their efforts on acquiring ransom monies or crippling supply or manufacturing infrastructures, over 60 percent of all cyberthreats are related to malicious insider activity. According to Stealth Labs, "insider threats are perhaps one of the most concerning cybersecurity risks that IT organizations face today." Whether the threat comes from an inadvertent employee, a malicious insider, or a contractor with compromised IT credentials, these threats are virtually impossible to detect and can go unnoticed for years (Stealth Labs 2020). However, some of the most damaging cyber threats come from nation state groups.

IT Infrastructure and Cyberattacks

An area of research relative to cyber threats and infrastructure is within the strict limits of cybersecurity, or in the protection of state, local, or private hardware, software, and data from cyberattacks in internet-connected systems. The development and implementation of such technological solutions require the apportionment of scarce firm-wide IT and operations resources as well as the time to implement of management processes to shape a new organizational culture which recognizes when cyber threats are imminent. State sponsored cyber-attacks are of the most important as these threats come from well-funded and technologically savvy perpetrators. Of late, nation state attacks have been primarily focused on energy grids and their respective IT infrastructures (Stealth Labs 2020).

Recently in the US, the Colonial Pipeline was attacked by cyber criminals who shut the pipeline, causing gasoline shortages throughout the southeastern seaboard states. Joseph Blount, CEO of Colonial Pipeline Co., defended his decision to pay on the received ransom demand, \$4.4 million to the culprits, noting that it was necessary to have "every tool at his disposal" to restore the 5,500-mile pipeline. The May attack on Colonial Pipeline demonstrated the security weakness of the nation's energy infrastructure and has spurred debate over how the U.S. and the oil-and-gas industry can better protect critical infrastructure against future cyber-assaults (Eaton 2021). According to a cybersecurity consultant, the attack that crippled the largest fuel pipeline in the U.S. was the result of a single compromised password. In addition to the threat brought on to the Colonial Pipeline, the attack on SolarWinds was equal in its destruction.

The SolarWinds hack was an attack primarily centered around their supply chain that compromised multiple systems of both foreign and domestic governments and companies

worldwide. This attack was initially discovered by the cybersecurity consulting firm called FireEye in December 2020. Employees at FireEye found uncommon data being sent from the company to an unknown server, which raised red flags. Regarding the formal investigation, it was discovered that one of the localized servers that provides access to software updates and data patches for SolarWinds system was compromised, thus allowing the hackers to insert malicious code into the updates and which ultimately infected multiple clients. This suspect code permitted data modification and extraction as well as allowing the perpetrators remote access to corporate IT systems that had the inserted software installed. Due to the intricacy, damage, and scope of this attack, it has since been labelled by experts as an Advanced Persistent Threat (APT) actor. Companies downstream, such as Microsoft and the US Department of Defense, were equally affected by this attack. However, it can be proposed that due to the breadth of such a high-level incident affecting multiple parties, this attack may prove the most damaging of 2020 (Downs 2020).

Cybercrime costs the global economy up to \$575 billion annually. A recent survey revealed that 90 percent of organizations that rely on operational technology, including critical IT infrastructure providers, experienced a cyberattack, and over half of those organizations suffered severe downtime because of cyberattacks. Further, 37 percent of UK firms surveyed reported that malware caused significant disruptions to their operations, 33 percent admitted experiencing “significant” downtime because of a cyberattack and, and 23 percent claimed they had been hit by attacks orchestrated by nation states (Lis and Mendel 2019).

Strategies to Mitigate Disruptions

Cybercriminals are a fluid and transient group that uses hidden IT networks to attack their victims and then flee to nation-states that either support such criminals or do not have cyber crime legislation to effectively prosecute them. According to cybercrime experts, there have been instances where companies have reached out to the government, calling for increased information sharing among agencies and the private sector. Especially with the oil and gas industry, companies have insisted that the government declassify cyber events and share them throughout the industry.

The recent cyber-attacks have led to the inception of a watchdog organizations, such as the North American Electric Reliability Corp., or NERC, which controls parts of the oil and gas utilities’ cybersecurity defenses and imposes fines on companies that do not meet certain IT safety standards. However, the question remains: should the U.S. government implement a similar agency or organization to ensure all American companies have cybersecurity minimum standards? The current administration (2021) has recently mandated that agencies improve their monitoring and communication efforts to detect cyberattacks and reinforce their partnerships with private industries. As a result, several cybersecurity-related bills are moving through Congress in support of these mandates. Additionally, the Transportation Security Administration, which has authority over pipeline cybersecurity, recently issued a directive that would require pipeline companies to report attacks to a cybersecurity division of the Department of Homeland Security (Eaton 2021).

Cybercrime experts state that the government has not gone far enough to combat cybercrime in the U.S. To mitigate cybercriminals’ activities, the U.S. needs to strengthen its global reach to punish perpetrators who flee to countries currently out of reach of U.S. jurisdiction. Organizations have stated that the U.S. government is too slow in responding to attacks. One example of this occurred when the Ukraine power-grid was attack in 2015, the cybersecurity industry waited months for U.S. Homeland Security to give us a completed assessment. In advance of any recent governmental activities to stem any cyber-attacks, U.S. Customs and Border Protection’s C-TPAT program has implemented requirements and standards for companies to take the upper hand on preventing cybercrime. A recent new

network technology called blockchain has become a new tool that can implement a forward-looking strategy to mitigate the effects of cyberattacks.

Blockchain is a type of electronic database, or more commonly referred to as an electronic ledger, which can hold critical company information. The blockchain continually grows as data are added and linked to the previous block of data using a cryptographic hash function. The result is if an attacker tries to infiltrate a blockchain network there are other chains of redundant data within the ledger stored on different computers that can provide valid backup information to complete the data chain. One advantage of the blockchain system is that for a hacker to be completely successful, one would have to affect over 50 percent of any chain node. This system is regarded as one of the best tools to avail itself over the last several years in the fight to defend systems against attack (Legrand 2020).

The Role of C-TPAT in Cyber Security Mitigation

To address cybersecurity and supply chain security measures, CBP updated the program's minimum-security requirements (MSRs) to place emphasis on acquiring mitigation relative to these supply chain risks. With special attention to cybersecurity, CBP defines cybersecurity as, "Cybersecurity is the activity or process that focuses on protecting computers, networks, programs, and data from unintended or unauthorized access, change or destruction" (C-TPAT Minimum Security Requirements 2020). It is the objective of every C-TPAT member to encourage "...the process of identifying, analyzing, assessing, and communicating a cyber-related risk and accepting, avoiding, transferring, or mitigating it to an acceptable level, considering costs and benefits taken" (C-TPAT website 2021).

With the changes made to the 2020 MSRs, CBP has given the mandate to the C-TPAT membership that cybersecurity is the next-level deterrent that mirrors the directives by the U.S. administration. CBP has introduced 10 new "must-have" and three "should-have" responses relative to cybersecurity measures that a company needs to address and demonstrate before CBP approves their application for membership. CBP goes deep into the aspects of securing IT networks and providing written guidance and instructions before the green light can be given to the member. Some evidence of CBP's requirements can be evidenced by looking at the MSRs. According to Section Four of the MSR, "Measures to secure a company's information technology (IT) and data are of paramount importance, and the listed criteria provide a foundation for an overall cybersecurity program for Members" (C-TPAT Minimum Security Requirements 2020).

Criteria included in the MSRs, focus on: providing sufficient written policy specifically related to cybersecurity defenses, a member must demonstrate and provide back-up evidencing the regular testing of IT systems to recognize IT threats, firms must install current IT security deterrent software, a system that identifies unauthorized access must be installed and reviewed on a regular basis, user access must be defined by activity and role as to defend against unwanted internal access, access to IT systems must be protected from malicious intent via the use of strong passwords, passphrases, or other forms of digital authentication, firms that have employees working remotely must secure their network by installing VPN access software, employees that access IT networks from personal computers must adhere to written cybersecurity policy governing the use of personal storage devices, etc., and finally, all media, hardware, or other IT equipment that contains sensitive information regarding the import/export process must be accounted for through regular inventories (Minimum Security Requirements 2020).

Discussion

Many high-profile cyberattacks have affected various U.S. companies over the last ten years. This research focused on supply-chain management and disruptions, infrastructure and cyberattacks,

and the role that C-TPAT has played in mitigating such attacks. This research also emphasized the limited role of government in preventing or punishing cyber criminals. It has become important that firms become more educated on cybercrime and the process of mitigation, deterrence, and prevention. Organizations and companies must do their share in defending themselves against cyber criminals. Education efforts must be part of corporate policy and operational requirements such as better password defense, phishing identification, and monitoring internal server activities. While increased corporate education surrounding cyber threats are critical paths toward defense and mitigation, the C-TPAT program offers advanced guidelines and instruction relative to the implementation of new standards for any company to use in assessing their cybersecurity program. It is the consensus of the authors that the U.S. government form a dedicated agency within the constructs of the government that has investigative, audit, and prosecution authority to address cybercrime on both the national and international levels. A suggestion, based on the present research, is to allow and give this new agency external responsibilities of transparency and information sharing through international organizations such as INTERPOL and the UN.

A newly formed agency must work seamlessly to share and disseminate information from agencies within the Departments of Homeland Security, Energy, Justice, Commerce, and State. Customs and Border Protection has taken the first step with the C-TPAT program, however, at present, the C-TPAT program only extends to companies engaged in trade and is not a mandatory nor is a statutory requirement for all U.S. companies. Many importers and C-TPAT members have argued that the requirements of the C-TPAT program must become law and that importers seeking admission to the program find the standards requisites in implementing such security guidelines. Security standards such as those outlined under the requirements for cybersecurity need to be elevated to a higher level beyond C-TPAT, Customs, or Homeland Security. New Biden Administration laws and legislation outlining cybersecurity should incorporate the requirements found in C-TPAT's MSRs and given multi-agency jurisdiction at the federal level.

References

- Christopher, M., and M. Holweg. 2011. "Supply Chain 2.0": Managing Supply Chains in the Era of Turbulence." *International Journal of Physical Distribution & Logistics Management* 41 (1): 63–82. 10.1108/09600031111101439.
- C-TPAT minimum security requirements for manufacturers. C-TPAT website, Customs and Border Protection, 2020. Retrieved from <https://www.cbp.gov/sites/default/files/assets/documents/2019-Dec/CTPAT%20U.S.%20Importers%20MSC%202019.pdf>.
- C-TPAT strengthens ability to manage supply chain: *Survey U.S. customs and border protection (CBP)*. 2007.
- Downs, F. 2020. "Top cyberattacks of 2020 and how to build cyberresiliency." *ISACA*, 6 November 2020, retrieved from <https://www.isaca.org/resources/news-and-trends/industry-news/2020/top-cyberattacks-of-2020-and-how-to-build-cyberresiliency>.
- Eaton, Collin. 2021, Jul 12. "Cyberattacks and ransomware: How can we protect our energy infrastructure?" *Journal report. Dow Jones Institutional News* Retrieved from <https://global.factiva.com/en/du/article.asp?accessionno==DJDN000020210712eh7c002id>.
- Framework for improving critical infrastructure cybersecurity. 2014. (Version 1.0. ed.). Gaithersburg, Md.: National Institute of Standards and Technology. Retrieved from <http://purl.fdlp.gov/GPO/gpo46587>.
- Freeman, R. E. 1984. *Strategic management: A stakeholder approach*. Cambridge: Cambridge University Press. Retrieved from <http://hdl.handle.net/2078/ebook:231874>.
- Freeman, R. E. 2004. "The Stakeholder Approach Revisited." *Zeitschrift für Wirtschafts- und Unternehmensethik* 5(3): 228. Retrieved from <https://search.proquest.com/docview/225264646>.
- Freeman, R. E., & McVie, J. 2005. "A stakeholder approach to strategic management." *The blackwell handbook of strategic management* (pp. 183–201). Oxford, UK: Blackwell Publishing Ltd. doi:10.1111/b.9780631218616.2006.00007.x Retrieved from <https://onlinelibrary.wiley.com/doi/abs/10.1111/b.9780631218616.2006.00007.x>.
- Garvey, M. D., Carnovale, S., & Yeniyurt, S. 2015. "An analytical framework for supply network risk propagation: A bayesian network approach." *European Journal of Operational Research*, 242(2): 618–627.
- Ito, J. K., & Peterson, R. B. 1986. "Effects of task difficulty and interunit interdependence on information processing systems." *Academy of Management Journal* 29(1): 139–149.

- Lambert, D. M., & M. C. Cooper. 2000. "Issues in Supply Chain Management." *Industrial Marketing Management* 29 (1): 65–83. 10.1016/S0019-8501(99)00113-3.
- Legrand, J. 2020. "The future use cases of blockchain for cybersecurity." *Cyber Management Alliance*. Retrieved from <https://www.cm-alliance.com/cybersecurity-blog/the-future-use-cases-of-blockchain-for-cybersecurity#:~:text=Blockchain%20technology%20is%20a%20distributed,record%20transactions%20between%20multiple%20computers.&text=The%20new%20technology%20is%20considered,in%20the%20integrity%20of%20transactions>.
- Lis, P., & Mendel, J. 2019. "Cyberattacks on critical infrastructure: An economic perspective." *Economics and Business Review* 5(2): 24-47. doi:10.18559/ebr.2019.2.2.
- Llegue, O., & Richer., *CBP there's more to compliance cooperation than just C-TPAT under-utilized business-to-government relationships facilitate supply chain risk management*.
- Meixell, M. J., & Luoma, P. 2015. "Stakeholder pressure in sustainable supply chain management." *International Journal of Physical Distribution & Logistics Management* 45(1/2): 69-89. doi:10.1108/IJPDLM-05-2013-0155.
- Ransomware attackers used compromised password to access colonial pipeline network. (Jun 45, 2021). *CNN Wire*.
- Rehman, Khan, S. A., Zhang, Y., Anees, M., Golpîra, H., Lahmar, A., & Qianli, D. 2018. "Green supply chain management, economic growth, and environment: A GMM based evidence." *Journal of Cleaner Production*, 185: 588-599. doi: 10.1016/j.jclepro.2018.02.226.
- StealthLabs. 2020. "Cyber security threats and attacks: all you need to know." <https://www.stealthlabs.com/blog/cyber-security-threats-all-you-need-to-know/>.
- Thielemann, K. Overview key findings recommendations SRM leaders in charge of technology, information and resilience risk management efforts should: Licensed for distribution.
- Tuggle, F. D., & Gerwin, D. 1980. "An information processing model of organizational perception, strategy, and choice." *Management Science* 26(6): 575–592.
- Voss, M. D., & Williams, Z. 2013. "Public-private partnerships and supply chain security: C-TPAT as an indicator of relational security." *Journal of Business Logistics*, 34(4): 320-334. doi:10.1111/jbl.12030.
- World Commission on Environment and Development (WCED). 1987. *Our Common Future*. Oxford: Oxford University Press. (Frequently referred to as the Brundtland report after Gro Harlem Brundtland, Chairman of the Commission).

Positioning Prospective Teachers' Awareness of Diversity: A Critical Literacy Context

Lorenzo Cherubini

Brock University, Ontario, Canada, Lorenzo.Cherubini@brocku.ca

ABSTRACT: This presentation discusses the third and final component of a multi-dimensional study using a distinct learner-centred Problem-Based Learning (PBL) model that invites prospective teachers to collaborate in small groups on inquiry-driven projects that deepen their appreciation of critical literacy. The literature attests to the success of PBL environments where student participation in peer-to-peer discussions furthers more sophisticated capacities to actively process new information. The PBL model is a core component of a mandatory third-year undergraduate concurrent Education course of study for all students enrolled in the Intermediate/Senior program (qualifications to teach grades 7 to 12). Each peer-group, consisting of four to five students, scripts and records a video presentation that accounts for the implications of a case-based dilemma. The PBL model is meant to promote prospective teachers' proficiency to meaningfully translate their understanding of the inquiry-problem as it applies to a broad range of topics and competencies. Consistent with the first two components of the larger study, the PBL instructional approach aims to scaffold prospective teachers' awareness of certain concepts in the broader context of critical literacy. Consequently, the critical literacy framework represents the theoretical basis that positions prospective teachers to be increasingly aware of the implications of ethnic, religious, and socio-economic diversity on case-based teachers and students.

KEYWORDS: critical literacy, prospective teacher development

Introduction

The research under discussion includes an objective to foster prospective teachers' understanding of critical literacy by inviting them to consider and reflect upon issues of equity and power as they relate to teaching and learning (Garrett & Segall 2013; May 2015). It acknowledges the importance of facilitating learning opportunities for prospective teachers to account for the multiple discourses and visions of various education stakeholders and the perspectives they represent in the context of equity and power issues (Florio-Ruane 2012; McElhone, Hebard, Scott, & Juel 2009; Toll, Nierstheimer, Lenski, & Kollof 2004).

Through a unique Problem-Based Learning (PBL), the prospective teacher students enrolled in a third-year concurrent Education program individually and collectively "unpack relationships of oppression to explore how people's belief systems reproduce dominant assumptions and structural inequalities" in schools and school communities (Nicolson, Last, & Widell 2012, 75; see also, Peters & Biesta 2009). The case-studies used in this research are intended to bridge the gap between the theory learned in prospective teachers' education coursework and the actual practice of teaching. The process of study is also intended to engage prospective teachers in a systematic process of inquiry to further their professional development and identity (Harrison 2007; Mead 2019). The constructivist approach employed in the hybrid PBL model under discussion invites prospective teachers to incorporate their prior learning, perceptions, and experiences as public-school students into the thoughtful discussions and reflections of the implications of the dilemma-based case studies (Chicoine 2004; Harfitt & Chan 2017). As Shulman (1992) and others have argued, case studies are particularly conducive to education courses of study since they can embody the complexity of teachers' decision-making and judgement. Moreover, the inductive approach to examining the respective case-based dilemmas serve to underscore the significance of reflection to professional practice (Schon 1987). The model used in this research project reflects a

pedagogical approach that is meant for prospective teachers to better understand interdisciplinary knowledge (Armour 2014; Stolz & Pill 2016).

The participants of this research project are enrolled in the third of a six-year course of a teacher education program in a mid-sized university in Canada. The PBL model is a hybrid version that accounts for some of the strategies that were traditionally used in medical and legal education programs (Cherubini 2020). As stated in a previous publication related to this research study, the model's inquiry process contributes to its uniqueness (Cherubini 2021). The prospective teachers enrolled in the Intermediate/Senior teaching qualification program (qualifying them to teach from grades seven to twelve) engage in a series of case-studies that require them to identify the specific needs of the case-based learning predicament, list and justify to their small group cohort the key objective of each inquiry, and research multiple perspectives and insights (including peer-reviewed journals) to further their understanding of the respective complexities in each case study. The PBL model positions prospective teachers as active learners, critical thinkers, and reflective practitioners (Cherubini 2019).

Context: A Hybrid Problem-Based Learning Model

As discussed in Cherubini (2021b), the hybrid PBL model invites prospective teachers to be active agents in the process of their learning and reflection of the case-based dilemmas, education theory, and their own experiences and beliefs about teaching and learning. Prospective teachers are presented with the model during the course introduction. It is explained that the systematic process of inquiry is meant to enable their critical thinking (Vijaya Kumari, 2014) of the implications, themes, and key developments in each case study.

As components of the process, prospective teachers first read the case, then proceed to discuss its content and significance in a small group cohort. The necessary time is afforded during class for each cohort to discuss their initial impressions of the case content. In advance of class the following week, the prospective teacher participants are required to consult education stakeholders for their perspectives on the case circumstances. An intriguing appeal to the study of cases in an inquiry seminar model such as the one being presented is the opportunities it affords to cross-examine all aspects of teaching, learning, research and practice. The intent is for prospective teachers to realize that ethical issues can often complement and implicate their perspectives on schools as institutions, teaching as practice, and learning as behaviour. To interrogate the cases thoughtfully implies a fundamental concentration on the part of the prospective teacher participants to consider their basic assumptions about teaching, learning, curriculum, and schooling. The knowledge gained through the various interactions as the inquiry unfolds will engage prospective teachers to be deliberate thinkers.

Prospective teachers are, in this way, challenged to imagine possibilities – possibilities that may not necessarily have been part of their experiences and consciousness prior to their enrollment in teacher education. As prospective teachers read the cases and participate in the inquiry-seminar model, they are encouraged to broaden the respective analyses further. The prospective teacher participants are encouraged to enter thoughtfully into the purposeful disruption of what they thought they knew.

This is not to suggest that the inquiry model is meant to undermine the social, cultural, and professional traditions established for teachers and schools; instead, it is to endorse a view of learning that refuses to hinder sincere, thoughtful, and critical engagement. It is a paradigm of learning that values a range of responses to circumstances. It is, in fact, a value-based systemic approach to considering viable questions. From a pedagogical perspective, the hybrid PBL model is conceptualized to foster prospective teachers' thinking, reflection and inquiry skills about organizational, social, political, ethical, and cultural considerations. The anticipated learning rests first in the exploration of the professional dilemmas and then in

the ensuing thoughtful (and ideally provocative) dialogue amongst peers, in the informed voices of educators, the respective literature, and other professionals (Cherubini 2017).

Theoretical Context

Each prospective teacher cohort is expected to share a video production of a case analysis. In doing so, they account for the range of diverse ethnic, religious, and socio-economic diversity that exists in the respective cases. According to the literature, some teachers are not prepared to address the challenges of cultural diversity (Guo 2011; Palmer 1998; Turner 2007). Instead of perceiving “difference and diversity as an opportunity to enhance learning by using the diverse strengths, experiences, knowledge, perspectives of students and parents from various cultural groups, the ‘difference as deficit’ model sees diversity ignored, minimized, or as an obstacle to the learning process” (Guo 2011, 5; Cummins 2003; Dei 1996). The inquiry process, thus, is meant to position prospective teachers to analyze how the case-based circumstances and relations implicate a challenging and complex series of cultural values, spiritual beliefs, traditions, and worldviews (Sensoy & DiAngelo 2017).

Educational Significance: Critical Literacy

The analysis of a wide range of diversity that exists in the cases enabled prospective teachers to appreciate literacy as it includes “social practices and relationships, about knowledge, language and culture” (OME Language Document 2006, 3). As some examples, it drew their attention to the importance of implementing a curriculum that reflects the diverse backgrounds of their students in order to honour their unique perspectives. By examining and reflecting upon the actions of case-based teachers, the prospective teacher participants became more mindful of ensuring that student diversity is appropriately and meaningfully represented in their classrooms.

Given that the inquiry process allows for external consultation, prospective teachers cited the significance of various provincial ministry documents, including *Many Roots, Many Voices* (2005) and *Ontario’s Equity Education Strategy* (2009), to discuss discriminatory bias and obstacles to student achievement in public school classrooms. Prospective teachers examined how students’ identities include race, faith, and socio-economic status. The inquiry process allowed for extensive conversations related to teachers’ professional obligation to create learning environments that are responsive to student diversity. In many respects, prospective teachers became more self-aware of their responsibilities to cater to student diversity. The process, interestingly enough, often contributed to prospective teachers’ heightened awareness of how students’ social and cultural identities impacts on their sense of belonging. In addition, prospective teachers reflected critically upon their own assumptions and biases across varying contexts related to diversity. They underscored, based on the case analyses, the significance of teachers creating safe spaces for open and candid conversations with students. They determined the importance of accurately representing racially driven historical events where teachers serve to facilitate student learning. Ultimately, prospective teachers prioritized student engagement and learning in terms of assisting students, too, to think critically about issues of diversity.

References

- Armour, K. 2014. “Pedagogical cases explained.” In K. Armour (Ed.), *Pedagogical cases in physical education and youth sport* (pp. 6–21). London: Routledge.
- Cherubini, L. 2021a. “Positioning prospective teachers’ examination of the hidden curriculum: A critical literacy context.” *Proceedings of the Scientia Moralitas Conference*, New Jersey, United States of America, 8-12. ISBN 978-1-945298-43-1.
- Cherubini, L. 2021b. “Positioning prospective teachers’ awareness of classroom learning climate: A critical literacy context.” Presented at the *22nd International Conference on Social Sciences and Humanities*, Research Association for Interdisciplinary Studies, New Jersey, United States of America.

- Cherubini, L. 2020. "A unique hybrid problem-based learning model: Prospective teacher education and development." *Journal of Advances in Education Research* 5(2): 60-69.
- Cherubini, L. 2017. *Case study inquiry seminars: A research-to-practice model*. (Second Edition). Welland, ON: Soleil Publishing.
- Cherubini, L. 2019. "Enhancing critical literacy through case-based pedagogy." *Proceedings of the International Conference on Management, Economics and Social Science*, Toronto, ON, 12-16.
- Chicoine, D. 2004. "Ignoring the obvious: A constructivist critique of a traditional teacher education program." *Educational Studies* 36(3).
- Cummins, J. 2003. "Challenging the construction of difference as deficit: Where are identity, intellect, imagination, and power in the new regime of truth?" In P. P. Trifonas (Ed.), *Pedagogy of difference: Rethinking education for social change* (pp. 41-60). New York: Routledge Falmer.
- Dei, G. 1996. *Anti-racism education: Theory and practice*. Halifax: Fernwood Publishing.
- Florio-Ruane, S. 2012. "Standing strong: Local knowledge and problem solving in times of change." In L. Pardo, K. Highfield, & S. Florio-Ruane (Eds.), *Standing for literacy: Teaching in the context of change* (pp. 117-127). New York: Hampton Press, Inc.
- Garrett, H. J., & Segall, A. 2013. "(Re)considerations of ignorance and resistance in teacher education." *Journal of Teacher Education* 64(4): 294-304. doi:10.1177/0022487113487752.
- Guo, Y. 2011. *Diversity in public education: acknowledging immigrant parent knowledge*. Prairie Metropolis Centre.
- Harfitt, G. J., & Chan, C. 2017. "Constructivist learning theories in teacher education programmes: A pedagogical perspective." In *International handbook of research on teacher education*. SAGE Publisher.
- Harrison, J. 2007. "The assessment of ITT standard one professional values and practice: measuring performance or what?" *Journal of Education for Teaching* 33(3): 323-340.
- May, L. 2015. "Preservice teacher bricolage: Incorporating critical literacy, negotiating competing visions." *Critical Literacy* 9(2): 3-17.
- McElhone, D., Hebard, H., Scott, R., & Juel, C. 2009. "The role of vision in trajectories of literacy practice among new teachers." *Studying Teacher Education: A Journal of Self-Study of Teacher Education Practices* 5(1): 147-158.
- Mead, N. 2019. *Values and professional knowledge in teacher education*. Routledge. <https://doi.org/10.4324/9781351003346>.
- Nicolson, M., Last, A., & Widell, N. 2012. "Response to gaps and silences." *Critical Literacy* 6(1): 75-79.
- Ontario Ministry of Education. 2005. *Many roots, many voices*. Toronto, ON: Queen's Printer for Ontario.
- Ontario Ministry of Education. 2006. *The Ontario curriculum, Grades 1-8: Language*. Toronto, ON: Queen's Printer for Ontario.
- Ontario Ministry of Education. 2009. *Realizing the promise of diversity: Ontario's equity and inclusive education strategy*. Toronto, ON: Queen's Printer for Ontario.
- Palmer, P. 1998. *The courage to teach: Exploring the inner landscape of a teacher's life*. San Francisco: Jossey-Bass.
- Peters, M.A. & Biesta, G. 2009. *Deconstruction, and the politics of pedagogy*. New York: Peter Lang Publishing.
- Schön, D. 1987. *Educating the reflective practitioner*. San Francisco, CA: Jossey-Bass.
- Sensoy, Ö., & DiAngelo, R. 2017. "We Are All for Diversity, but...": How Faculty Hiring Committees Reproduce Whiteness and Practical Suggestions for How They Can Change. *Harvard Educational Review* 87(4): 557-580.
- Shulman, L. 1992. "Toward a pedagogy of cases." In L. Schulman (Ed.), *Case methods in teacher education* (pp. 1-30). New York, NY: Teachers College Press.
- Stolz, S., & Pill, S. 2016. "Telling physical education teacher education tales through pedagogical case studies." *Sport, Education and Society* 21(6): 868-887. <https://doi.org/10.1080/13573322.2014.962495>.
- Toll, C. A., Nierstheimer, S. L., Lenski, S. D., & Kolloff, P. B. 2004. "Washing our students clean: Internal conflicts in response to preservice teachers' beliefs and practices." *Journal of Teacher Education* 55(2): 164-176.
- Turner, J. D. 2007. "Beyond cultural awareness: Prospective teachers' visions of culturally responsive literacy teaching." *Action in Teacher Education* 29(3): 12-24.
- Vijaya Kumari, S. N. 2014. "Constructivist approach to teacher education: An integrative model for reflective teaching." *Journal on Educational Psychology* 7(4): 31-40.

Climate Growth Theory

Julia M. Puauschunder^{1,2}

¹*The New School, Department of Economics, Eugene Lang College, New York, NY 10003, USA,
Julia.Puauschunder@newschool.edu, www.juliampuauschunder.com*

²*Columbia University, Graduate School of Arts and Sciences, Julia.Puauschunder@columbia.edu,
<http://blogs.cuit.columbia.edu/jmp2265>*

ABSTRACT: The climate change crisis has gained unprecedented urgency in the most recent decade. Overall, climate change has already led to and will continuously lead to environmental tipping points and irreversible lock-ins that will decrease the overall productivity and common welfare. When taking a closer look at the macroeconomic growth prospects as measured in Gross Domestic Product (GDP) per country, a changing climate will affect countries differently, when considering different mean temperatures but also differences in the GDP sector composition per country and a differing peak temperature at which a GDP sector can be most productive. In the first economic ‘classic’ theories of Adam Smith, Thomas Robert Malthus, David Ricardo, Karl Marx and Joseph Schumpeter land productivity was considered as an underlying growth driver. In the evolution of Modern Growth Theory (MGT), these theories and insights got abandoned. With climate change pressuring economic productivity and the rising impact of global warming expected to determine economic output more and more so in the future, this paper calls for a reintegration of climate and temperature into standard growth theory. In light of the enormous effect of temperature and climate on economic productivity that is likely to rise in the years to come but also with reference to the highly unequally distributed economic winning and losing prospects in-between countries and over time, this article argues for an integration of temperature and climate in contemporary Growth Theory, called Climate Growth Theory. Micro- and macroeconomic attempts to integrate productivity differences between countries based on energy supply, climate and overall favorable working conditions will be presented alongside most recent models to integrate temperature and climate into macroeconomic growth models and sustainable consumption patterns.

KEYWORDS: Climate Change, Economics of the Environment, Endogenous Growth Theory, Energy, Environmental Governance, Environmental Justice, Exogenous Growth Theory, Green New Deal, Intergenerational Equity, Monetary Policy, Multiplier, Non-renewable energy, Renewable energy, Sustainability

Introduction

Attention to the climate change crisis has unprecedented urgency. Climate change has already led to and will continuously lead to environmental tipping points and irreversible lock-ins that will decrease the overall productivity and common welfare (Puauschunder 2020b). With climate stability becoming constraint over time, a broad range of temperature will become a scarcity and therefore more precious in the future to come (Puauschunder 2020b). With more and more attention expected to climate and temperature for economic production, this paper argues that temperature as an indicator for the favorability of a country’s climate will become an essential economic growth determinant even more so in the future.

When taking a closer look at the macroeconomic growth prospects as measured in Gross Domestic Product (GDP) per country, a changing climate will affect countries differently, when considering different mean temperatures per country but also differences in the GDP sector composition by country and a differing peak temperature at which a GDP sector can be productive (Puauschunder 2020b).

Standard neoclassical growth theory begins with the classicals’ productivity theories of Adam Smith, Thomas Robert Malthus, David Ricardo, Karl Marx and Joseph Schumpeter. Some of the classics address the necessity of having a favorable environmental climate to

produce, especially in the theories of ground rent of Ricardo and Malthus that later get picked up by Nicholas Kaldor but also in environmentally-induced food shortages (Malthus 1798; Walpole, Sinden & Yapp 1996).

In the evolution of Modern Growth Theory (MGT), these insights about the impact of climate and temperature became sidelined with the major focus on capital (K) as the means of production and labor (L) becoming the main focus of attention for productivity estimations. With climate change pressuring economic productivity and the rising impact of global warming expected to determine economic output more and more so in the future, this paper calls for a reintegration of climate and temperature into standard growth theory.

Modern Growth Theory of the 20th century is primarily focused on the two input factors: capital (K) and labor (L). Traditional economic growth theories considered capital and labor as essential growth factors for every economy. Exogenous growth theory is centered on exogenous shocks – like new technology innovations or natural crises, such as pandemics – as major drivers or downturns of economic growth measured in their impact on capital and labor productivity. Endogenous growth theory subsequently drew attention to dynamic variable interactions between capital and labor but also system-inherent growth derived from ideas, innovation and learning. Growth concepts were opened up for innovation generated in productive group interaction and learning inside firms in teams, learning-by-doing while performing tasks and learning-by-using of new technology (Puaschunder, Gelter & Sharma 2020). Most novel extensions of Modern Growth Theory since the outbreak of the novel Coronavirus (COVID-19) pay attention to health of Labor (Puaschunder 2020c). Group and team learning to create a risk-free working culture, environment, industry and country are expected to flourish growth in a COVID-19-struck economy (Puaschunder 2020c). In endogenous growth theory terms, team hygiene and group monitoring of the collective health status but also learning-to-preventing holds future economic growth potential (Puaschunder et al. 2020).

This paper will address the wider impact of temperature and climate on economic productivity. The economic prospects of a warming earth have recently outlined in the Mapping Climate Justice idea (Puaschunder 2020b). Paying attention to novel arising climate change inequalities in economic productivity, the Mapping Climate Justice Theory outlines macroeconomic gains and losses of a warming earth per country in order to find ways how to share the expected benefits around the world or conserve the financial assets for future generations. Attempts to integrate productivity differences between countries based on climate and overall favorable working conditions have existed in Modern Growth Theory and international development resulting in the Kaldor-Hicks's efficiency debate finding that any losing territories could be compensated by gains in the wake of a changing condition, such as climate. In light of the enormous effect of temperature and climate on economic productivity that is likely to rise in the years to come but also with reference to the highly unequally distributed economic winning and losing prospects in-between countries and over time, this article argues for an integration of temperature and climate in contemporary Growth Theory, called Climate Growth Theory.

Climate change

Never before in the history of humankind have environmental concerns in the wake of economic growth heralded governance predicaments as we face today. Climate change presents societal, international and intergenerational fairness as challenge for modern economies and contemporary democracies (Puaschunder 2019a, b). In today's climate change mitigation and adaptation efforts, high- and low-income households, developed and underdeveloped countries as well as overlapping generations are affected differently (Puaschunder 2018, 2020b).

Modern Growth Theory is primarily focused on external drivers of economic growth such as innovation or internal learning mechanism of Labor. Macroeconomic growth theory has recently addressed the economics and politics of climate change. Global warming is believed to have an extraordinary impact on the economic, social and eco-system effects of market economics. In the current empirical trends and international efforts to combat climate change, an understanding of the economic impetus of climate change has gained unprecedented attention. With the growing awareness of climate and temperature becoming more and more important drivers of economic in the future, an integration of climate in economic productivity has become essential.

In the financialization of climate policies, fair climate change benefits and burden sharing within society, in-between countries but also over generations are necessary. Climate change induced inequalities are proposed to be alleviated with a climate taxation-bonds strategy that incentivizes market actors to transform the energy sector and mitigate as well as adapt to climate change. Understanding economic outcomes of climate change will aid in trends prediction but also open gates to redistribute prospective economic gains in a way that the climate change burden is shared equally around the globe.

To address the economic effects of climate change, standard economic growth theory could draw from the historic sources on theories of land rent and value. Economic theories extension to climate-related aspects set the stage for integrating the factor climate and temperature into growth concepts. After a historical overview of growth theories, modern macroeconomic growth models with attention to climate change and energy efficiency will be presented with regards to climate-related differences between countries and over time.

Growth theory

Historical foundations of economic growth calculus date back to the economics classics in the work of Adam Smith, Thomas Robert Malthus, David Ricardo and Karl Marx. The early accounts of labor theories of value and theories of land rent prepare first ideas on how input factors generate economic productivity. In Malthus (1815) agriculture production yields a surplus. Wage and fertility dynamics guarantee that the price of corn remains steadily above its costs of production. Scarcity of fertile land plays a major role for economic growth.

David Ricardo followed up on the argument with adding that land differs in quality and is limited in quantity, which explains rent (Dorfman 1989). Ricardo incorporated Malthus' Theory of Rent with his Theory of Profits, which led to a first discourse on the Theory of Distribution (Dorfman 1989). Ricardo's *On the Principles of Political Economy and Taxation* (1817) concludes that land rent grows as population increases and connects growth with comparative advantage – a nation's advantage in producing in comparison to other nations serving the better producing country's economic growth. Subsequent famous advocacy against imposing British tariffs in the so-called Corn Laws of David Ricardo argued against protectionism for national agriculture protection, which became the spring feather for international trade advocacy (Case & Fair 1999). Qualitative ideas – such as Schumpeter's creative destruction – are later mathematically formalized in growth theories and models of Solow (1973), Lucas (1988), Aghion and Howitt (1992).

Modern growth theory (MGT) starts in the 20th century. From Sir Henry Roy Forbes Harrod to Robert Solow to Paul Michael Romer, growth theory in the 20th century became more apolitical, equilibrium-focused with an application of a set of mathematical tools in the development of the ideas of the classicals. Environmental conditions and the productivity of land became abandoned in the development of a more mathematical formalization of economic growth. The Solow Growth Model uses the Aggregate Production Function, in which net national product Y is a function of Capital K and Labor L in $\overline{Y} = F(K, L)$. The

aggregate production function is fixed, meaning how the product depends on capital and labor does not change over time.

The starting point of MGT can be attributed to Harrod (1939) and Evsey Domar (1946), who studied business cycles as drivers of growth. Roy Harrod wrote in *An Essay in Dynamic Theory* (1939) to move away from a static theory of equilibrium towards dynamic economic analysis. At the heart of the start of MGT was the level of a community's income as the most important determinant of its supply of savings. The rate of increase of its income is an important determinant of its demand for saving. Demand was always seen as equal to supply ex post. Fundamental determinants of continuous growth were captured in the warranted rate of growth as the ideal growth rate, where there is no leakage and all savings are invested. The warranted growth rate in the economy is primarily affected by the propensity to save and the overall state of technology in a country. Capital-output ratios, savings rates and the natural rate of growth, where labor productivity and population growth are integrated, all serve as determinants of the maximum-sustainable rate of growth regarded as the welfare optimum.

MGT is thus primarily focused on capital, whose marginal product is constant and there are constant returns to scale. Harrod (1939) argues growth in a developed capitalist economy will exhibit the possibility of steady state growth at full employment, the improbability of steady state growth at full employment and the instability of the warranted growth rate, which Solow (1973) later interprets as the knife edge. Growth is considered as not stable and moves in a dynamic approach, where the actual growth rate can move away from the warranted rate of growth. The warranted growth rate need not be equal to the natural growth rate because there is no automatic mechanism which will ensure this. The further the actual rate deviates from the warranted, the stronger the forces become creating a continuous movement away from the warranted rate of growth (multiplier mechanism). Only when the actual growth rate equals the warranted rate of growth, will the economy achieve full employment equilibrium. This inherently instable nature of dynamic equilibrium calls for policy to combat the tendency to oscillate. Evsey Domar (1946) adds that maintaining full employment requires growth, specifically of income.

Overall, Harrod and Domar (H-D) considered growth without isolating it from fluctuations and maintained a link with "classical" growth theory. Harrod and Domar's models are based on the Leontief production function, which means output is limited by either the output of capital employed or the output of labor employed and there is just one way to combine labor and capital to produce output, so the marginal product of labor and capital are not well determined.

Robert Merton Solow and Trevor Swan introduced the Solow-Swan model as a hallmark of neoclassical growth theory (Solow 1956, 1957; Swan 1956). The Solow-Swan growth model is based on the neoclassical Cobb-Douglas production function of capital and labor assumed to be freely substitutable. If the price of labor is relatively high compared with capital, then capital can be freely substituted in place of labor until equality is reached once again. In the Solow-Swan model, a balanced growth steady state solution for the model exists. The balanced rate of growth in the model is constant and equal to the exogenous labor force growth rate. In the long run, the growth rate is independent of the savings rate. At the steady state, savings per unit labor (actual investment) equals break-even investment. An increase in capital no longer creates economic growth due to diminishing returns to capital. Thus, any attempt to boost growth by encouraging people to save more will ultimately fail. The only way left to grow is to invent new technologies. In the long-run, the growth of an economy depends on technological progress, which is by definition exogenous within the Solow-Swan framework. Just like the Harrod-Domar model, the fact that the main driving force behind long-run economic growth is exogenous. In Solow's model there is no instability, the economy will be pushed back into equilibrium because of the substitution effects of K and L, flexible labor markets and market clearing. Differences (in the short-run)

in income levels across countries is explained by rich countries having higher saving (investment) rates in relation to population growth than poorer countries. Permanent (long-run) cross-country differences can only result from differences in rate of technological progress and access to the same technology.

Lacking empirical validations of exogenous growth models, led to the conclusion that some influence factors are missing to explain cross-country differences in income. Durlauf and Johnson (1995) take into account structural factors and initial conditions, casting doubt on the empirical validity of the Solow growth model. Hall and Jones (1999) show that differences in social infrastructure play an important role in explaining differences output per worker between countries. Neoclassical growth theory literature was superseded by endogenous growth theory or the new growth theory.

Endogenous Growth Theory emerged during the apparent sudden rise of a new group of inter-related Asian ‘Tigers’ (Singapore, Hong Kong, Taiwan, Korea) as fully-fledged members of the league of developed nations that could not be explained with exogenous growth theory. The idea of externalities and spillover effects originally formalized by Arrow (1962) who argued that externalities arising from learning-by-doing and knowledge spillover positively affect labor productivity on the aggregate level of the economy. Endogenization of knowledge and technology actually leads to an explanation of growth. Knowledge and technology are characterized by increasing returns unlike physical capital. In Romer’s New Growth Theory (1986) persistent growth is explained by the impact of externalities on economic development. Romer (1990) considered the creation of new knowledge as a source of growth. In the late 1980s, Romer and Lucas incept endogenous growth theory, in which economic growth is determined by the production of knowledge and ideas. Building on Uzawa (1965), Lucas (1988) emphasized human capital creation as a source of growth. In Aghion and Howitt (1992, 1998), the Schumpeterian process of creative destruction becomes central to growth.

Both Lucas and Romer include knowledge (human capital) in their respective models to embody technological change. The growth in human capital is what spurs technological change within the model. There are little defining characteristics of the process in which knowledge transforms into technological change. Romer suggests that investment in R&D, along with the given state of technology, will spur innovation that leads to growth. The use of existing and the creation of new ideas is introduced as the driver of growth in the long-run. Lucas emphasizes that human capital can grow from education as well as learning-by-doing. Endogenous growth models are built on microeconomic foundations, where households maximize utility subject to budget constraints, while firms maximize profits. Policy implications are a mix of goods to accumulate human capital, subsidies for skills development and create incentives for workers to accumulate human capital.

Nicholas Kaldor’s (1961) original stylized facts assume continued growth in the aggregate volume of production and in the productivity of labor at a steady rate. High correlation between share of profits in income and the share of investment in output are found and a steady share of profits and wages in societies and/or time periods in which the investment coefficient (share of investment in output) is constant. Constant wage share and constant growth imply a rising absolute real wage.

Over the entire world and in the prospect of time, for thousands of years, growth in both population and per capita GDP has accelerated, rising from virtually zero to the relatively rapid rates observed in the last century. Romer (1986, 1990) adds new stylized facts in pointing at increased flows of goods, ideas, finance, and people — via globalization as well as urbanization — have increased the extent of the market for all workers and consumers. Variation in the rate of growth of per capita GDP increases with the distance from the technology frontier.

Real Business Cycle (RBC) modelers stress role of technology shocks in driving business cycles and long run growth, whereas Keynesians and New Keynesians emphasize demand shocks. At core of arguments is the size of the multiplier, i.e., how much the increase in government spending leads to an increase in output.

As for macroeconomic methods effective as growth measurement, the Dynamic Stochastic General Equilibrium (DSGE) is often employed by monetary and fiscal authorities for explaining historical time-series data, policy analysis, as well as future forecasting purposes (Vitek 2017). DSGE methodology attempts to explain aggregate economic phenomena, such as economic growth, business cycles and effects of monetary and fiscal policy on basis of macroeconomic models derived from microeconomic principles. DSGE models are commonly used by central banks and have influence on public policy making.

There have been a number of empirical studies using new growth theory, with the early phase of empirical work being largely focused on cross-section studies. In cross-sectional studies, the growth rate is taken over long-time horizons, which allows elimination of business cycle effects, which may dominate fluctuations in economic variables at high frequencies to suit the long-run or secular trend study of growth. Over long-time horizons, cross-sectional studies are less likely to be affected by structural breaks. The data is relatively easily available for several countries at one point in time, compared to long time series for separate countries.

A time-series approach takes into account micro-behavior, though embedded in a macro environment, which can be allowed to change over time. In growth models with dynamic optimization by households and firms, first order conditions lead to a system of differential equations of state and control variables. The parameters of the model can then be estimated through time-series analysis and compared to the data.

Economic growth in light of climate change

Economics of climate change historically stems from sustainability research. There are many different definitions of sustainability, but all have two points in common: First, there is a recognition that resource and environmental constraints affect the patterns of development and consumption in the long run. Second, sustainability is concerned about intergenerational equity. One of the most famous and first definitions was stated by the Brundtland Commission in 1987: “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” Solow (1973) defines sustainability as “an obligation to conduct ourselves so that we leave to future the option or the capacity to be as well off as we are” (Greiner & Semmler 2008). Pearce, Barbier & Markandya (1990) point out that “natural capital stock should not decrease over time.” Pezzey (1961) defines sustainable economic growth as “non-declining output or consumption over time” and sustainable economic development as “non-declining utility over time” (Greiner & Semmler 2008). In all these definitions it becomes obvious that there is a trade-off between economic growth versus sustainability. The presented standard economics growth models do not integrate sustainability calculus. Temperature and climate change have employment effects and industry-specific professional impacts (Kato et al. 2014).

Since the late 1960s and early 1970s, there was growing concern that economic growth has increasingly depleted the available natural resources, leading to ultimate environmental degradation. As economic decisions are restricted by the finiteness of natural resources and by the limited capacity of the nature to absorb pollution, attention is devoted to the question of whether it is possible and desirable to continue present patterns of economic growth. A general consensus in the debate is that there is a trade-off among environmental and economic goals: economic activity that ignores its effects on the environment is not sustainable.

Economists such as Meadows, Meadows, Randers & Behrens (1972) in *The Limits to Growth* or Daly (1987) have put forward predictions about a “sudden and uncontrollable decline in both population and industrial capacity” if no “conditions for ecological and economic stability that is sustainable far into the future” are established. General consensus is that there are trade-offs among environmental and economic goals, and that economic activity that ignores the biological or social system is not sustainable.

Economic growth models that integrate natural resources over time started with the Hotelling model, which includes system dynamics (Hotelling 1931 in Chari & Christiano 2014; Shogren 2013). The Hotelling (1931 in Chari & Christiano 2014) oil extraction model assumes that the market for the exhaustible resource is perfectly competitive. A representative supplier of the resource solves an intertemporal optimization problem where the problem is to find the optimal rate of extraction given the price trajectory. The solution to that problem, which is equivalent to the social optimum, shows that the price of the resource grows at the interest rate that is used to discount profits. This rule is the so-called Hotelling’s rule which is at the heart of the economics of non-renewable resources. The oil market does not seem to be characterized by perfect competition as producers have a certain control over prices.

The Intergovernmental Panel on Climate Change (IPCC) and related work of Ottmar Edenhofer’s (2007, 2014, 2021) at the Mercator Research Institute on Global Commons and Climate Change (MCC) integrate natural resources in energy consumption for economic welfare calculus. Gevorkyan and Semmler (2016) or Nyambuu and Semmler (2020) calculate energy sector influences on economic growth and overall welfare, even with finite horizons. Energy supply depends on climate as is experienced in price volatility of renewable and non-renewable commodities (Gevorkyan & Semmler 2016; Nyambuu & Semmler 2020).

Growth models with non-renewable resources take into account the extent to which economic growth process is restricted by the finiteness of resource stocks and whether sustained consumption and utility levels are feasible. Exhaustible natural resources are used as an input for the production of a good that is then either consumed or added to the capital stock to enhance future production. Their growth rate is nil, and non-renewables are unrecyclable and used up as input in production. Natural resources are considered as essentials, that is, production is impossible without them. Economists like Dasgupta and Heal (1974), Stiglitz (1974), and Solow (1973) analyze the optimal depletion of exhaustible natural resources in the context of a growth model where the resource is used as an input for the production of a composite commodity.

Pindyck (1978) builds a model with exploratory activity as the means of accumulating or maintaining a level of reserves, and treats depletion by assuming that reserve additions ("discoveries") resulting from exploratory activity fall as cumulative discoveries increase. Thus, producers must simultaneously determine optimal levels of exploratory activity and production resulting in an optimal reserve level that balance revenues with exploration costs, production costs, and the "user cost" of depletion. Pindyck (1981) examines the optimal production of oil when its price is determined exogenously (e.g., by a cartel such as the OPEC), and is subject to stochastic fluctuations away from an expected growth path. Uncertainty about future price affects the optimal production rate.

Empirical facts indicate that production and consumption of all fossil fuels have increased over time. As production of these non-renewable resources continues to rise significantly, the growth rate of reserves will not be able to keep pace. Greiner and Semmler (2008) presented a model with monopolistic owner of the resource who knows only a certain part of the total stock of the resource and who discovers new reserves at a certain rate. Assuming that the price of the resource depends on the current extraction rate and on cumulated extraction, the model also reproduces the hump-shaped extraction rates and U-shaped prices.

Semmler and colleagues (for example see Maurer, Preuss & Semmler 2014; Maurer & Semmler 2015; Nell, Semmler & Rezai 2009; Nyambuu & Semmler 2014, 2017, 2020; Popp 2015; Semmler, Braga, Lichtenberger, Toure & Hayde 2021; Semmler, Lessmann & Tahri 2020; Semmler, Maurer & Bonen 2016) use large-scale macroeconomic models to calibrate country- and institution-specific circumstances for determining the relative share of public capital to be committed to growth-enhancing infrastructure, mitigation of, and adaptation to climate change. Semmler and colleagues demonstrated that 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.

Semmler (2021) concludes that climate policies and phasing in of renewable energy creates job distraction but also job creation. There will be structural change and employment changes. Climate change mitigation and adaptation financialization will need modeling of shifts in industry structure, employment and skills. Transformation needs support by fiscal, monetary, industrial, labor market and compensation policies.

From a microeconomic growth perspective, preferences are often evolving historically and are impacted by sociological and cultural factors, for example through role models and adapting the behavior of others (Puaschunder 2020a). Conspicuous consumption in the sense of Veblen (1899) is an example which leads to a certain preference adoption. Population segments may copy the behavior of other population segments as Veblen suggested. Activities of green political movements may influence the behavior of households, purchasing and using less carbon intensive goods and services. Preferences may also be given incentives to change through regulations and standards, norms and conventions, development policies, voluntary agreements and information instruments. If standards and rules are set for construction of housing and for fuel efficiency of cars then preferences are likely to change over time (Braga, Fischermann & Semmler 2020).

Climate change and environmental influences also have disparate impacts on income compensation. Low-income households have higher cost through carbon pricing and are less likely to substitute away from rising fossil energy prices.

A growth theory and climate change connection is made by Kato, Mitnik, Semmler & Samaan (2014) who talk about structural change in the light of climate change building on models of growth and structural change (Kuznets 1957; Kaldor 1957; Pasinetti 1983) in the tradition of Keynesian-oriented growth models. Pasinetti (1983) argues that structural change occurs through a change in final demand driven by the income elasticity of demand (Engel curves). Kuznets-Kaldor-Pasinetti incorporated into a recent optimal growth model that allows for structural change (Kongsamut, Rebelo & Xie 2001). Three types of preferences are driving structural change: Preferences for agricultural goods, manufactured goods and services. Resources are continuously shifting in a so-called generalized balanced growth path. Since models of this type allow to trace the impact of climate policies on structural change along the growth path, they are used as starting point to model the impact of climate policies on growth, and the structure of output and employment.

In the absence of such measures, intergenerational equity as a natural behavioral law may establish temporal justice as a prerequisite of sustainable development (Puaschunder 2018). In order for a mitigation policy to be accepted and work effectively, it is recognized and emphasized that attention should be paid to fairness within the generation and, notably, across generations.

With respect for the standard Solow Growth Model that uses the Aggregate Production Function, climate could be added as a variable. The net national product Y would then be a function of Capital K and Labor L and Climate C in $\overline{Y} = F(K, L, C)$.

Standard growth models remain limited for finding an intergenerational fair solution to alleviate the economic growth vs. sustainability predicament. The Canonical Nordhaus Model (IAM, DICE Model) is based on the assumption that economic growth leads to anthropogenic

CO₂ emissions causing global warming (Francis & Ramey 2002; Nordhaus 1994, 2008, 2013). Building on Nordhaus (2008, 2013) novel approaches of inclusive growth for climate justice over time are put forward by Jeffrey Sachs (2015), Willi Semmler and Lucas Bernard (2015), Sergey Orlov, Elena Rovenskaya, Julia Puauschunder and Willi Semmler (2018) and in Puauschunder's Mapping Climate Justice idea (2020). Time series inform models like in Orlov, Rovenskaya, Puauschunder & Semmler (2018) set the stage for Puauschunder's (2020b) Mapping Climate Justice, which compares different countries' peak condition for economic production in the light of climate change. The Mapping Climate Project presents macroeconomic results that introduce the gains of a warming earth in order to find ways how to share the expected benefits around the world or conserve the financial assets for future generations (Puauschunder 2020b). The results offer a novel contribution to contemporary carbon taxes and green bond solution strategies to help raise substantial revenue to subsidize countries for decarbonization (Marron & Morris 2016; Puauschunder 2018). 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 CO₂ emissions.

Orlov, Rovenskaya, Puauschunder & Semmler (2018) build on growth models in their evaluation of 'Green bonds, transition to a low-carbon economy, and intergenerational fairness.' Thereby current generations will have to carry the burden of paying for the transition to a low carbon economy, while the next generations will enjoy its benefits for free. Such intergenerational uneven treatment is one of the reasons why politicians are hesitant to go ahead and implement the carbon tax that is likely to be un-favored by the public – and the democratically-elected governments might not want to make the current generation worse off in terms of taxation.

Green Bonds solution (or climate bonds) have been suggested as an innovative approach to finance mitigation costs – and possibly future damages – thereby making climate policies more feasible, speeding up the transition to a low carbon economy, increasing welfare and ensuring greater intergenerational equity and fairness (Flaherty et al. 2017; Sachs 2015). Green bonds can be issued by companies, municipalities, states and sovereign governments, by international institutions to raise money and finance mitigation, as well as a variety of future-oriented long-term environmental and climate related projects and activities (Flaherty et al. 2017; The World Economic Forum Report 2015). As a debt instrument, by which investors lend money to an entity, bonds allow to borrow funds from the populace for a defined period of time at a variable or fixed interest rate. Historically, bonds have been used to fund large-scale projects ranging from infrastructure to wars. For example, the UK used loans to finance their participation in World War II, whereby the US was the creditor – the repayment of this loan was stretched out until recently. The first green bonds were issued by the European Investment Bank in 2006. In 2016 the bond market reached a level as high as 80 billion USD that are used to fund environment-friendly projects. To provide evidence of whether green bonds can be effective in reducing intergenerational unfairness and hence in enhancing the acceptance of more aggressive mitigation, Sachs (2015) was the first to use a stylized modeling framework. He considered and analyzed an overlapping-generations model, in which individuals' wages are negatively affected by the amount of greenhouse gases in the atmosphere, as well as by the mitigation efforts of the government. Policy makers, aiming to balance the interests across generations, can affect the wealth distribution by applying bonds and taxes policies.

Orlov, Rovenskaya, Puauschunder & Semmler (2018) examine whether green bonds can be used to finance mitigation in an economy, in which abatement decisions are made endogenously with the aim to maximize the social welfare function over a finite (long enough) time horizon. They employ the DICE model and extend it by adding green bonds, which can be used to compensate the economic losses from mitigation. Once a certain level of emission reduction is achieved, the economic activity is being taxed and bonds are being

repaid. Orlov et al. (2018) provide quantitative estimates of the key policy effects to demonstrate the effectiveness of green bonds in terms of the emission reduction, the welfare improvement and the intergenerational inequity minimization. The model proposes a new tradeoff between a greater consumption today and investment in capital, which will enable a greater consumption in future. In addition to the economic dynamics, the DICE model also contains a simple representation of the global carbon cycle as well as climate and economic losses from climate change. The model is global and full participation of the world's greenhouse gas emitting nations is assumed. The DICE model illuminates another tradeoff that is the one between a greater investment, more production, higher greenhouse gas emissions, more pronounced global warming and hence greater economic losses on the one hand, and a higher abatement, lower economic losses and hence a lower consumption on the other hand. By choosing the investment/saving rate and abatement policies, a policy-maker maximizes the integrated discounted welfare derived from per capita consumption and hence finds an optimal level of global warming and its effects to be accepted, as well as the resultant optimal economic path.

The inclusion of bonds introduces another policy variable, namely, a tax to repay the bonds, together with two further tradeoffs. The first tradeoff is associated with the total amount of bonds to be issued: a larger amount would help ensure a higher emission reduction and hence would also mitigate a larger portion of the climate change losses, but on the other hand it is a larger amount of bonds inflated by the interest rate that will need to be repaid later. The second tradeoff relates to the taxation rate and the duration of the taxation period, during which the bonds should be fully repaid including the interest rate: a lower rate implies a longer repayment period and hence a higher total interest. Additional financial resources, which can be borrowed from future generations in the form of green bonds, might be used to compensate the mitigation costs now.

Puaschunder (2020b) emphasizes in a macroeconomic model that GDP-related climate change gains and losses will be distributed unequally throughout the world. A climate change winners and losers index was based on the economic prospects under climate change around the world (Puaschunder 2020b). This index captures how far countries are deviating from their optimum productivity levels on a time scale based on the optimum temperature for GDP productivity. The index attributed economic gain and loss prospects based on the medium temperature per country in relation to the optimum temperature for economic productivity per GDP sector composition per country. As economic gains and losses from a warming earth are distributed unequally around the globe, ethical imperatives lead to the pledge to redistribute economic gains due to climate change to territories that lose from global warming in the quest for climate justice. Climate justice comprises fairness within society, between countries but also over generations in a unique and unprecedented tax-and-bonds climate change gains and losses distribution strategy.

The most novel extension of the model describes an international climate change fund with diversified interest rates that could be based on a country's initial position on the climate change gains and losses index spectrum in combination with CO₂ emissions levels. An overall redistribution key would determine per country transfers based on the climate change winner or loser status as well as the contribution to the climate change problem measured by per country CO₂ emissions. The bonds should be issued based on taxes from countries that are high climate change winners on the winners and loser index spectrum as well as have high rates of CO₂ emissions. A high bond payout should be offered to countries with climate change losing prospect as well as low CO₂ emissions. Moderate bond outputs should be given to countries in the middle of the climate change winners and loser index spectrum as well as medium rates of CO₂ emissions.

The range of interest rates offered by a country could also be weighted by the country's overall climate flexibility in relation to other countries as this determines the future

comparative advantage to other nations in the world. The countries would be able to offer an interest rate spread based on their climate flexibility, hence their range of temperature spreads from highest temperature to the lowest within the country, which determines their future climate diversification potential and trade degrees of freedom.

The idea of diversified interest rate regimes is also extendable to sector-specific bond interest rate regimes as well as per country climate flexibility levels. Within a country, the bonds could be offered by commissioning agents, such as local investment banks, who could offer industry-specific diversified interest rate maturity bond yields based on the environmental sustainability of an industry, e.g., as measured by the European Sustainable Finance Taxonomy. The more sustainable an industry performs, the higher bond payouts should be offered in sector-specific interest rate regimes within a country. Bond yield differences between industries could set market incentives for a transitioning to renewable energy productivity solutions.

Diversified repayment of bonds is a new incentivization method aimed at ensuring to share the burden but also the benefits of climate change over time, within countries and markets but also within society in an economically efficient, legally equitable and practically feasible way.

References

- Aghion, Philippe & Peter Howitt. 1992. "A Model of Growth Through Creative Destruction." *Econometrica* 60(2): 323-351.
- Aghion, Philippe & Peter Howitt. 1998. *Endogenous Growth Theory*. Cambridge, MA: Massachusetts Institute of Technology Press.
- Arrow, Kenneth J. 1962. "Economic welfare and the allocation of resources for invention." In R. R. Nelson (Ed.) *The Rate and Direction of Inventive Activity*. Princeton: Princeton University Press.
- Braga, João Paulo, Thomas Fischermann & Willi Semmler. 2020. „Ökonomie und Klimapolitik: So könnte es gehen.“ *Die Zeit*, March 5, 2020. Retrieved at <https://www.zeit.de/zustimmung?url=https%3A%2F%2Fwww.zeit.de%2F2020%2F11%2Feuropaeischer-green-deal-emissionshandel-wirtschaft-klimaschutz>.
- Case, Karl E. & Ray C. Fair. 1999. *Principles of economics*. London: Prentice-Hall.
- Chari, V.V. & Lawrence J. Christiano. 2014. *The Optimal Extraction of Exhaustible Resources: Conventional theory can't explain historic commodity price fluctuations, but modified models may provide better guidance*. Minneapolis, The Federal Reserve Bank of Minneapolis, December 11, 2014. Retrieved at <https://www.minneapolisfed.org/article/2014/the-optimal-extraction-of-exhaustible-resources>
- Daly, Herman E. 1987. "The economic growth debate: What some economists have learned but many have not." *Journal of Environmental Economics and Management* 14(4): 323-336.
- Dasgupta, Partha & Geoffrey Heal. 1974. "The Optimal Depletion of Exhaustible Resources." *The Review of Economic Studies, Symposium on the Economics of Exhaustible Resources* 41: 3-28.
- Domar, Evse. 1946. *Capital Expansion, Rate of Growth, and Employment*, *Econometrica* 14 (2): 137–147.
- Dorfman, Robert. 1989. "Thomas Robert Malthus and David Ricardo." *Journal of Economic Perspectives* 3(3): 153-164.
- Durlauf, Steven & Paul Johnson. 1995. "Multiple Regimes and Cross-Country Growth Behaviour." *Journal of Applied Econometrics* 10(4): 365-384.
- Flaherty, Michael, Arkady Gevorkyan, Siavash Radpour & Semmler, W. 2017. "Financing climate policies through climate bonds: A three stage model and empirics." *Research in International Business and Finance* 42: 468-479.
- Francis, Neville & Valerie A. Ramey. 2002. *Is the Technology-Driven Real Business Cycle Hypothesis Dead?* Cambridge, MA: National Bureau of Economic Research, Working Paper 8726.
- Gevorkyan, Arkady & Willi Semmler. 2016. "Oil price, overleveraging and shakeout in the shale energy sector: Game changers in the oil industry." *Economic Modeling* 54: 244-259.
- Greiner, Alfred & Willi Semmler. 2008. *The Global Environment, Natural Resources, and Economic Growth*. Oxford: Oxford University Press.
- Hall, Robert E. & Charles I. Jones. 1999. "Why Do Some Countries Produce So Much More Output Per Worker Than Others?" *The Quarterly Journal of Economics* 114(1): 83-116, Feb.
- Harrod, Roy Forbes, Sir. 1939. "An Essay in Dynamic Theory." *The Economic Journal* 49 (193):14-33, March.
- Harold Hotelling. 1931. "The economics of exhaustible resources. *Journal of Political Economy*, 39: 137–175, April 1931.

- Intergovernmental Panel on Climate Change (IPCC) 4th Assessment Report (2007). AR4.*
<https://www.ipcc.ch/assessment-report/ar4/>.
- Intergovernmental Panel on Climate Change (IPCC). 2014. Climate Change 2014, Mitigation of Climate Change Working Group III Contribution to the 5th Assessment Report of the Intergovernmental Panel on Climate Change.* Retrieved at https://www.ipcc.ch/site/assets/uploads/2018/02/ipcc_wg3_ar5_frontmatter.pdf.
- Intergovernmental Panel on Climate Change (IPCC) 6th Assessment Report (2021). AR6 Climate Change 2021: The physical science basis.* Retrieved at <https://www.ipcc.ch/report/ar6/wg1/>
- Kaldor, Nicholas. 1957. "A Model of Economic Growth." *The Economic Journal* 67(268): 591-624.
- Kaldor, Nicholas. 1961. "Capital Accumulation and Economic Growth." In F.A. Lutz and D.C. Hague (Eds.), *The Theory of Capital*, St. Martin's Press, pp. 177–222.
- Kato, Mika, Stefan Mittnik, Daniel Samaan & Willi Semmler. 2014. "Employment and output effects of climate policies." In L. Bernard & W. Semmler (Eds.), *The Oxford Handbook of the Macroeconomics of Global Warming*, pp. 445-476. Oxford: Oxford University Press.
- Kongsamut, Piyabha, Sergio Rebelo & Danyang Xie. 2001. "Beyond balanced growth." *Review of Economic Studies* 68(4): 869-882.
- Kuznets, Simon. 1957. "Quantitative Aspects of the Economic Growth of Nations: II. Industrial Distribution of National Product and Labor Force." *Economic Development and Cultural Change* 5(4): 1-111.
- Lucas, Robert E. 1988. "On the mechanics of economic development." *Journal of Monetary Economics* 22:3-42.
- Malthus, Thomas Robert. 1988. *An essay on the principle of population*. London: Johnson.
- Malthus, Thomas Robert. 1815. *An Inquiry into the Nature and Progress of Rent, and the Principles by which it is Regulated*. London: John Murray.
- Marron, Donald B. & Adele C. Morris. 2016. *How to Use Carbon Tax Revenues*. Washington D.C.: Tax Policy Center.
- Maurer, Helmut, Johann Jakob Preuss & Willi Semmler, W. 2014. "Scenarios in a model of economic growth and climate change." In L. Bernard & W. Semmler (Eds.), *The Oxford Handbook of the Macroeconomics of Global Warming*, pp. 82-113. Oxford: Oxford University Press.
- Maurer, Helmut & Willi Semmler. 2015. "Expediting the transition from non-renewable to renewable energy." *Discrete and Continuous Dynamic Systems*, 35(9): 4503-4525.
- Meadows, Donella H., Dennis L. Meadows, Randers Jørgen & William W. Behrens. 1972. *The Limits to Growth: A Report for the Club of Rome's Project on the Predicament of Mankind*. New York: Universe Books.
- Nell, Edward, Willi Semmler & Armon Rezai. 2009. *Economic growth and climate change: Cap-and-trade or carbon tax?* Schwartz Center for Economic Policy Analysis working paper 2009-4. Retrieved at https://www.economicpolicyresearch.org/images/docs/research/climate_change/SCEPA%20Working%20Paper%202009-4.pdf, 2009.
- Nordhaus, William D. 1994. *Mapping the global commons: The economics of climate change*. Cambridge, MA: MIT Press.
- Nordhaus, William D. 2008. *A question of balance: Weighing the options on global warming policies*. New Haven: Yale University Press.
- Nordhaus, William D. 2013. *The climate casino: Risk, uncertainty and economics for a warming world*. New Haven: Yale University Press.
- Nyambuu, Unurjargal & Willi Semmler. 2014. "Trends in the extraction of non-renewable resources: The case of fossil energy." *Economic Modelling* 37: 271-279.
- Nyambuu, Unurjargal & Willi Semmler. 2017. "Emerging markets' resource booms and busts, borrowing risk and regime change." *Structural Change and Economic Dynamics* 41: 29-45.
- Nyambuu, Unurjargal & Willi Semmler. 2020. "Climate change and the transition to a low carbon economy: Carbon targets and the carbon budget." *Economic Modelling* 84: 367-376.
- Orlov, Sergey, Elena Rovenskaya, Julia Margarete Puschunder & Willi Semmler. 2018. *Green bonds, transition to a low-carbon economy, and intergenerational fairness: Evidence from an extended DICE model*. International Institute for Applied Systems Analysis Working Paper WP-18-001, 2018. IIASA, Laxenburg, Austria, European Union.
- Pasinetti, Luigi L. 1983. *Structural Change and Economic Growth: A Theoretical Essay on the Dynamics of the Wealth of Nations*. Cambridge, UK: Cambridge University Press.
- Pearce, David Edward Barbier & Anil Markandya. 1990. *Sustainable Development: Economics and Environment in the Third World*. London: Edward Elgar.
- Pindyck, Robert. 1978. "The Optimal Exploration and Production of Nonrenewable Resources." *Journal of Political Economy* 86(5): 841-861.
- Pindyck, Robert. 1981. "The Optimal Production of an Exhaustible Resource When Price is Exogenous and Stochastic." In: *The Impact of Rising Oil Prices on the World Economy*, Part of the *Scandinavian Journal of Economics Book Series (SJE)*, pp. 137-148.

- Popp, David. 2015. "Climate-friendly technological change for developing countries." In Bernard, L. & Semmler, W. (Eds.), *The Oxford Handbook of the Macroeconomics of Global Warming*, pp. 321-348. Oxford: Oxford University Press.
- Puaschunder, Julia Margarete. 2018. *Intergenerational Responsibility in the 21st Century*. Wilmington, US: Vernon Arts & Science, 2018.
- Puaschunder, Julia Margarete. 2019a. *Corporate and Financial Intergenerational Leadership*. Lady Stephenson, Newcastle upon Tyne, UK: Cambridge Scholars Publishing.
- Puaschunder, Julia Margarete. 2019b. *Intergenerational Equity: Corporate and Financial Leadership*. Cheltenham, UK & Northampton, MA: Edward Elgar.
- Puaschunder, Julia Margarete. 2020a. *Behavioral Economics and Finance: Nudging and Winking to make Better Choices*. Cham: Springer Nature.
- Puaschunder, Julia Margarete. 2020b. *Governance and Climate Justice: Global South and Developing Nations*. New York, New York: Palgrave Macmillan. Cham, Switzerland: Springer Nature.
- Puaschunder, Julia Margarete. 2020c. "The future of the city after COVID-19: Digitalization, preventism and environmentalism." *ConSciencS Conference Proceedings*, September 28-29, 2020, pp. 125-129, Research Association for Interdisciplinary Studies.
- Puaschunder, Julia Margarete. Martin Gelter & Siegfried Sharma. 2020. "COVID-19-Shock: Considerations on Socio-Technological, Legal, Corporate, Economic and Governance Changes and Trends." *Proceedings of the 16th International Research Association for Interdisciplinary Studies (RAIS) Conference on Social Sciences and Humanities*. Princeton, NJ, August 17-18, pp. 82-93.
- Ricardo, David. 1817. *On the Principles of Political Economy and Taxation*. London: John Murray.
- Romer, Paul M. 1986. "Increasing Returns and Long-Run Growth." *Journal of Political Economy* 94(5): 1002-1037.
- Romer, Paul M. 1990. "Endogenous Technological Change." *Journal of Political Economy* 98(5): 71-102.
- Sachs, Jeffrey D. 2015. "Climate change and intergenerational well-being." In Bernard, L. & Semmler, W. (Eds.), *The Oxford Handbook of the Macroeconomics of Global Warming*, pp. 248-259. Oxford: Oxford University Press.
- Semmler, Willi. 2021. *Economics of Climate Change*. Lecture notes, New York: The New School for Social Research.
- Semmler, Willi, João Paulo Braga, Andreas Lichtenberger, Marieme Toure & Erin Hayde. 2021. *Fiscal policies for a low-carbon economy*. Washington, D.C.: World Bank Report. Retrieved at <https://documents1.worldbank.org/curated/en/998821623308445356/pdf/Fiscal-Policies-for-a-Low-Carbon-Economy.pdf>.
- Semmler, Willi, Kai Lessmann & Ibrahim Tahri. 2020. *Energy transition, asset price fluctuations, and dynamic portfolio decisions*. Retrieved at <https://ssrn.com/abstract=3688293>.
- Semmler, Willi, Helmut Maurer & Anthony Bonen. 2016. *An extended integrated assessment model for mitigation and adaptation policies on climate change*. Pisa: Scuola Superiore Sant'Anna working paper. Retrieved at https://www.santannapisa.it/sites/default/files/iampaper_mitgateadapt_oct2016_0.pdf.
- Shogren, Jason F. 2013. *Encyclopedia of Energy, Natural Resource, and Environmental Economics*, Elsevier Science.
- Solow, Robert M. 1973. *Is the End of the World at Hand? Challenge* 16(1): 39-50 March/April.
- Solow, Robert M. 1956. "A contribution to the theory of economic growth." *Quarterly Journal of Economics* 70(1): 65-94.
- Solow, Robert M. 1957. "Technical change and the aggregate production function." *Review of Economics and Statistics* 39(3): 312-320.
- Stiglitz, Joseph. 1974. "Growth with Exhaustible Natural Resources: The Competitive Economy." *Review of Economic Studies* 41(5): 139-152.
- Swan, Trevor W. 1956. "Economic growth and capital accumulation." *Economic Record* 32(2): 334-361.
- Uzawa, Hirofumi. 1965. "Optimum Technical Change in An Aggregative Model of Economic Growth." *International Economic Review* 6(1): 18-31.
- Veblen, Thorstein. 1899. *The Theory of the Leisure Class*. New York: MacMillan, Retrieved at <http://moglen.law.columbia.edu/LCS/theoryleisureclass.pdf>.
- Vitek, Francis. 2017. *Policy, Risk and Spillover Analysis in the World Economy: A Panel Dynamic Stochastic General Equilibrium Approach*. Washington, D.C.: International Monetary Fund.
- Walpole, Sandra, Jack Sinden & Tim Yapp. 1996. "Land quality as an input to production: The case of land degradation and agricultural output." *Economic Analysis and Policy* 26(2): 185-207.

Trust and Public Support for the Colombian Peace Agreement

Esmeralda Lopez

*Research Fellow, University of North Texas, United States
EsmeraldaLopez3@my.unt.edu*

ABSTRACT: The 2016 Colombian peace agreement failed by a narrow margin when put to a public vote, but a month later, the legislature bypassed the need for public support officially ending the 52-year armed conflict between the government and the Revolutionary Armed Forces of Colombia [FARC]. Today, few promises of the agreement have come to fruition, leaving Colombia's rural population in need and causing some ex-combatants to return to the FARC. While some attributed failure of the peace agreement to low voter turnout, a better understanding of the public's lack of support for the peace agreement is needed. This study uses logistic regression to analyze 2016 survey data from the Latin American Public Opinion Project to examine how institutional trust correlates with predicting support for the Colombian peace agreement. Variables such as public opinion regarding trust in government institutions (the legislature, executive, judiciary, and elections) and trust in the FARC, including a belief that the FARC will demobilize, are included within the study. The model supports the hypothesis that greater trust in institutions increases the probability that the respondent will support the peace agreement. Five of the six variables are statistically significant, and the trust in the national legislature variable is approaching significance. Future studies related to this topic should include greater analysis of Colombia's rural population who was most affected by forced displacement and other forms of violence during the conflict.

KEYWORDS: Colombia, armed conflict, peace agreement, public opinion, trust

Introduction

In early October of 2016, Colombia's long-awaited peace agreement with the Revolutionary Armed Forces of Colombia [FARC] was put to a public referendum where it narrowly failed (Tellez 2019a, 833). Despite this indication of insufficient public support, the legislature voted to pass a revised version of the agreement only a month later, and Colombia's 52-year armed conflict with the FARC finally came to a close (Revelo and Sottilotta 2020, 3). In the years since the conflict, the people of Colombia are still burdened with violence, tension, and unkept promises of reform and peace (Casey 2019). Some research suggests that

Though the agreement nominally ended the conflict, violence and tension persists in Colombia years down the line (Casey 2019), and the government has yet to bring its promises of peace and reform to the people. For agreements such as Colombia's, public support is integral to implementing peace (García-Sánchez and Carlin 2020, 245; Revelo and Sottilotta 2020, 5), which is why understanding the low support for the peace agreement during the 2016 referendum may be the key to strengthening the impact of the agreement.

This study will look at variables relating to institutional trust – more specifically, trust in the legislature, executive, judiciary, and elections as well as trust in the FARC and the belief that the FARC will demobilize after the agreement – and observe how these variables relate to support for the peace agreement. To make this analysis, data from the AmericasBarometer has been incorporated into a logistic regression model. Variables pertaining to trust have been chosen due to the healing role that trust plays post-conflict. Upon finding a relationship with the dependent variable, the trust variables may be used to predict whether or not a person supported the signing of the agreement in 2016. That could then provide insight as to how to public support for the agreement may be increased.

Historical Context

Colombia's armed conflict began in 1964 with the creation of the FARC. The conflict intensified as the FARC grew in size and influence, amassing 17,000 fighters and contributing to Colombia having the most coca fields of any other country by the late 1990s (Gentry and Spencer 2010, 456; Gutiérrez and Thomson 2020, 33). In 2002, President Álvaro Uribe Vélez took office during this intensified period of conflict spanning from the late 1990s into the 2000s (Gentry and Spencer 2010, 456). Uribe's approach to the conflict was aggressive and reliant on the military, but the *Seguridad Democrática*, his counter-insurgency strategy, was unsuccessful in ending the conflict (Revelo and Sottilotta 2020, 2).

After Uribe completed his two terms, President Juan Manuel Santos was inaugurated in 2010 and began negotiations with the FARC in 2012 in Havana, Cuba, demonstrating a contrast between the two presidents' approaches to the conflict (Tellez 2019a, 832; Liendo and Braithwaite 2018, 626). Ultimately, Santos' peacemaking would prove successful when both the government and the FARC finalized their peace agreement in 2016 (Revelo and Sottilotta 2020, 2; Tellez 2019a, 832).

The Havana peace talks covered six primary topics: land reform, political participation of the FARC, combatant reintegration and disarmament, drug policy reform, transitional justice, and peace agreement implementation (Revelo and Sottilotta 2020, 3; Tellez 2019a, 832-833). The Colombian government agreed to work on rural infrastructure, to allow the FARC guaranteed political participation as a sanctioned political party from 2018 to 2026 (García-Sánchez and Carlin 2020, 241), and to most ex-combatants not receiving prison time. Meanwhile, the FARC agreed to quickly disarm and reintegrate. Additionally, the FARC obliged with the government's request that a public referendum be used to pass the agreement (Tellez 2019a, 833).

The public referendum ended in opposition to the passage of the agreement, though this conclusion was reached by a narrow 50.2 to 49.7 per cent vote (Revelo and Sottilotta 2020, 2-3; Tellez 2019a, 833). After the failed referendum, both parties again assembled at the negotiating table where they adjusted the original agreement (Tellez 2019a, 833).

On November 24, 2016, only a month after the initial agreement, the updated agreement was passed in the legislature, bypassing the need for public support (Revelo and Sottilotta 2020, 3; Tellez 2019a, 833). Despite this nominal end to the armed conflict, promises have not been kept and conflict violence has persisted.

Trust and the Peace Agreement

The failure of the peace agreement at the 2016 public referendum is curious. Though the agreement could end the half-century civil conflict in Colombia, the referendum attracted low voter turnout, and those who did show ultimately voted against the agreement (Revelo and Sottilotta 2020, 2-3; Tellez 2019a, 833). While some blame the low turnout for the failure of the agreement, further analysis of the factors associated with public support for the agreement is needed.

Trust for the Legislature

During the 2016 referendum, both Colombia's House of Representatives and Senate lacked a clear majority party (Dávalos et al. 2018, 103). Instead, a variety of parties claimed the 102 Senate seats and 166 House seats. Amongst that variety was the *Partido Social de Unidad Nacional* [*Partido de la U*], founded by Santos, and the *Centro Democrático*, founded by Uribe. Despite Santos winning the presidency in 2014, his party earned few more congressional seats, allocated proportionally (Political Database of the Americas 2011), than

the *Centro Democrático*, a vehement critic of the peace process (Dávalos et al. 2018, 103). This varied composition of the legislature, continuing through 2016, may have given those strongly for and strongly against the agreement reason to perceive the legislature as disorganized and insincere.

Interviews conducted by researchers Revelo and Sottilotta (2020) during the year of the referendum also indicate dissatisfaction with congressional efforts towards the agreement. Respondents agreed with peace in the abstract but disapproved of the agreement itself, claiming “the congressmen still need[ed] to make a bigger effort to make [peace] happen” and noting insufficient congressional accountability for the agreement’s implementation (Revelo and Sottilotta 2020, 13, 14).

Taken together, the legislature’s political composition and the 2016 interviews point to a positive relationship between peace agreement support and trust in the legislature.

Hypothesis 1: People who trust the national legislature are more likely to support the peace agreement than those who do not trust the national legislature.

Trust for the Executive

Much of the politicization of the peace process involved former Presidents Uribe and Santos. Both served office shortly before and during the development of the agreement, and both carried strong beliefs relating to peace. For instance, Uribe refused to partake in serious negotiations with the FARC (Tellez 2019a, 832) and created the *Centro Democrático* to undermine the agreement (Liendo and Braithwaite 2018, 626; Revelo and Sottilotta 2020, 2-3). Santos, on the other hand, was quick to begin the peace process, which was responsible for several unpopular concessions to the FARC by the government (Liendo and Braithwaite 2018, 626).

Interviews conducted by Revelo and Sottilotta (2020, 9) in 2017 point to presidential politicization of the agreement as some respondents hinted that the peace process was no longer a priority as anti-corruption would instead be the focus of the upcoming presidential elections in 2018. Research conducted in 2016 also links the presidency to the peace agreement, finding that the peace process gained legitimacy as Santos gained public trust and vice versa (Carlin et al. 2016, 12).

Because trust of Santos as an individual president is significant, it follows that trust of the executive office will be significant as well. The involvement of the executive in politicizing the agreement points to a positive relationship between peace agreement support and trust in the executive.

Hypothesis 2: People who trust the executive office are more likely to support the peace agreement than those who do not trust the executive office.

Trust for the Judiciary

The possibility of criminal ex-combatants evading justice was a concern at the center of the peace agreement debate. Those who opposed the agreement claimed that criminal ex-combatants would not be punished (Revelo and Sottilotta 2020, 3), and the issue of justice was a deciding factor for some, with many greatly preferring punitive measures. For instance, those who voted “No” in the referendum would have been more likely to vote for the agreement had more retributive justice provisions been in place (Tellez 2019a, 836). Additionally, the *Justicia Especial para la Paz* [JEP], Colombia’s transitional justice tribunal, was less supported when it dealt restorative rather than punitive sentences (Botero 2020, 317-318).

One study found that perceived effectiveness of the judiciary – measured by the belief that the judicial system “guarantee[s] a fair trial” and is likely to punish criminal – is related to increased support for the peace agreement (Montoya and Tellez 2020, 264, 273, 275). This

finding, taken with the preferment of retributive justice, indicates the possibility of a positive relationship between trust for the judicial branch and support for the peace agreement.

Hypothesis 3: People who trust the judiciary are more likely to support the peace agreement than those who do not trust the judiciary.

Trust for Elections

At a mere 37.44 per cent, the turnout for the 2016 referendum was the lowest Colombia had seen since the 2003 constitutional referendum (IFES Election Guide 2021) and is often cited as a factor behind the failure to pass the peace agreement (Revelo and Sottilotta 2020, 2-3). One explanation for low turnout in Colombia and other Latin American countries is perceived political corruption, and Colombia specifically may be especially vulnerable to low turnout because of its voluntary voting system (Carreras and Vera 2018, 87, 88).

Decreased political participation is not the only effect of perceived corruption, which also weakens trust in government institutions and satisfaction with democratic government (Carreras and Vera 2018, 87; Seligson 2002, 413, 423). Corruption negatively affects these areas even when the corrupt politician leads effectively and supports the community (Carreras and Vera 2018, 87). Because perceived corruption weakens attitudes towards political participation, government institutions, and democracy, it seems that low trust for elections will be associated with low support for the peace agreement and vice versa.

Hypothesis 4: People who trust the elections are more likely to support the peace agreement than those who do not trust the elections.

Trust for the FARC

The Havana peace talks initiated by Santos in 2012 were not the first time that peace between Colombia and the FARC was attempted, but every prior attempt at peace with the FARC had failed (Revelo and Sottilotta 2020, 2; Tellez 2019a, 832), despite the peace drawn between Colombia and other guerrilla groups, such as M-19 and the Popular Liberation Army [EPL] (García-Sánchez and Carlin 2020, 240).

Data from 2005 to 2014 indicates that less than four per cent of respondents claimed to trust the FARC. In 2016, when the peace agreement was finalized, trust increased to a mere 6.2 per cent (García-Sánchez and Carlin 2020, 242). This distaste for the FARC could be traced back to their violent reputation according to respondents in a separate survey (Revelo and Sottilotta 2020, 8).

The government made concessions to the FARC in exchange for demobilization and an end to the violence (Tellez 2019a, 832-833). The government operated under the assumption of sincerity on behalf of the FARC, so in this way, support for the peace agreement necessitates trust in the FARC.

Hypothesis 5: People who trust the FARC are more likely to support the peace agreement than persons who do not trust the FARC.

Belief that the FARC Will Demobilize

There was widespread disapproval of the peace agreement reintegration provisions (García-Sánchez and Carlin 2020, 240), which is unsurprising considering the lack of trust in the FARC. Of the provisions, the allowance and encouragement of FARC political participation as well as the approach to transitional justice were criticized most heavily (García-Sánchez and Carlin 2020, 240). The *Centro Democrático* in particular had been vocal in its opposition

of the allegedly lenient reintegration provisions since the beginning of the negotiations (García-Sánchez and Carlin 2020, 240; Revelo and Sottillotta 2020, 2-3).

The FARC was to enjoy the benefit of a guaranteed political voice and little jail time in exchange for their agreement to quick disarmament, which was one of the most significant provisions for Colombia during the negotiations (Tellez 2019a, 832-833). However, the process of quick disarmament is not one that can be viewed as a victory for Colombia or a success of the agreement if the public does not believe that the FARC will follow through.

Hypothesis 6: People who believe that the FARC will demobilize after the peace agreement are more likely to support the peace agreement than those who do not believe that the FARC will demobilize after the peace agreement.

Methods

To answer the question of how institutional trust relates to the 2016 Colombian peace agreement, I have used data from the 2016 AmericasBarometer, conducted by the Latin American Public Opinion Project [LAPOP], to create a multinomial logistic regression clustered by municipality (Table 1). The model includes 1,238 observations of six independent variables and explains approximately 30 per cent of peace agreement support. The six independent variables – trust in the legislature, executive, judiciary, elections, and FARC and the belief that the FARC will demobilize after the agreement – each correlate positively with support for the peace agreement (Table 2), supporting my hypotheses.

Support for the peace agreement is measured with data from question COLPROPAZ1B, which asks, “The government of President Juan Manuel Santos and the FARC signed a peace agreement. To what extent do you support this peace agreement?” The answers were originally on a one through seven scale. One indicated that the respondent has no support for the agreement and seven indicated that the respondent had a lot of support for the agreement (Latin American Public Opinion Project 2016). The variable was recoded to better reflect the data; now one through three represent “No” to support and four through seven represent “Yes.”

The six independent variables were also recoded. The trust variables – trust in the legislature, executive, judiciary, elections, and FARC – were initially measured on the same one through seven scale as the peace agreement variable (Latin American Public Opinion Project 2016). After being recoded, one through three represent “No” to trust, four represents “Neutral” trust, and five through seven represent “Yes.” The belief that the FARC will demobilize variable was originally coded on a scale of one to four with one representing demobilization as “Very Likely” and four representing demobilization as “Very Unlikely” (Latin American Public Opinion Project 2016). After the recoding, the FARC demobilization variable is now a dichotomous variable where one is “Unlikely” and two is “Likely.”

In addition to the six independent variables, four demographic control variables were measured against support for the peace agreement. These include ethnicity, gender, level of education, and level of income. Despite the assumption that different circumstances and identities may affect a person’s conflict experience, none of the control variables are statistically significant.

The control variables, except gender, were also recoded. Ethnicity was recoded so that one represents white, two represents mestizo, and three represents indigenous, black, mulatto, and other. Gender kept its initial coding where man is one and woman is two (Latin American Public Opinion Project 2016). Education is measured by years of schooling and recoded so that no schooling and one through 11 years of schooling is one and 12 or more years of schooling – which would signify some amount of post-secondary education – is two. Finally, level of income is measured through an income quartile.

Table 1. Logistic Regression

Support for Peace Agreement	Coefficient	Standard Error	z	P>z	[95% Confidence	Interval]
Trust in National Legislature	0.148	0.091	1.64	0.102	-0.029	0.326
Trust in Executive	1.004	0.117	8.55	0.000	0.774	1.23
Trust in Judiciary	0.272	0.103	2.64	0.008	0.070	0.475
Trust in Elections	0.237	0.089	2.65	0.008	0.062	0.412
Trust in FARC	0.730	0.147	4.98	0.000	0.443	1.018
Belief in FARC Demobilization	1.782	0.140	12.70	0.000	1.506	2.06
Ethnicity	0.117	0.086	1.36	0.175	-0.052	0.286
Gender	-0.044	0.115	-0.39	0.699	-0.269	0.181
Level of Education	0.230	0.162	1.43	0.154	-0.086	0.547
Income Quartile	0.021	0.069	0.31	0.76	-0.114	0.156
Constant	-6.064	0.385	-15.8	0.000	-6.818	-5.310
Pseudo R ²	0.3037					
47 clusters on municipality	<i>n</i> = 1,238					

Table 2. Variables

Variable	Label	Frequency	Percent
Support for the Peace Agreement	No	716	46.4
	Yes	827	53.6
	Total	1,543	100
Trust for the National Legislature	No	861	56.31
	Neutral	296	19.36
	Yes	372	24.33
	Total	1,529	100
Trust for the Executive	No	964	61.99
	Neutral	194	12.48
	Yes	397	25.53
	Total	1,555	100
Trust for the Judiciary	No	843	54.56
	Neutral	274	17.73
	Yes	428	27.7
	Total	1,545	100
Trust for Elections	No	883	57.04
	Neutral	294	18.99
	Yes	371	23.97
	Total	1,548	100
Trust in the FARC	No	1,351	87.9
	Neutral	90	5.86
	Yes	96	6.25
	Total	1,537	100
Belief that the FARC Will Demobilize	Demobilization is Unlikely	1,039	67.56
	Demobilization is Likely	499	32.44
	Total	1,538	100

Results and Discussion

Trust in the National Legislature

The trust in the national legislature variable originates from question B13 of the survey asking, “To what extent do you have confidence in the National Congress?” (Latin American Public Opinion Project 2016). The trust in the national legislature has a coefficient of 0.148, indicating that support for the peace agreement increases by 0.148 for every unit increase in trust in the national legislature. The variable approaches significance with a p-value of 0.102.

During the LAPOP survey conducted in 2016, only 24.33 per cent of 1,529 respondents reported having trust in their National Congress. Most respondents, 56.31 per cent, did not trust the national legislature (Table 2). The correlation between low trust in the legislature and decreased support for the peace agreement is a function of the public’s perception of Congress’s negotiation and implementation abilities.

Through the 2016 referendum, the public demonstrated to the legislature that they had failed the public's "implicit evaluation" (Montoya and Tellez 2020, 267) of their abilities as few showed at the polls and the agreement failed to pass (Revelo and Sottilotta 2020, 2; Tellez 2019a, 833). As previously discussed, the low trust in 2016 may be due to the absence of a majority party (Dávalos et al. 2018, 103), specifically because neither the *Partido de la U* in favor of the agreement or the *Centro Democrático* in opposition to the agreement held a majority. Colombia's past failures to draw a peace agreement with the FARC (Revelo and Sottilotta 2020, 2; Tellez 2019a, 832) may have been associated with the effectiveness of the legislature and thus also affected the public's trust.

Though low trust in the legislature may explain some of the lack of support for the agreement, the link between the two variables is still statistically insignificant, possibly due to political disinterest by the public (Revelo and Sottilotta 2020, 14). Such disinterest may not influence the executive and judicial branches' relations to the agreement as the executive and judiciary played clearer roles in developing and enforcing the peace agreement.

Trust in the Executive

The trust in the executive variable has its basis in question B21A: "To what extent do you have confidence in the president?" (Latin American Public Opinion Project 2016) and demonstrates statistical significance with a p-value of zero. The variable's coefficient provides for a positive relationship between trust in the executive and peace agreement support. For every unit increase in trust in the executive, support for the peace agreement increases by 1.004.

The significance and high coefficient indicate that a person's trust in the executive plays an important role in predicting their support for the peace agreement. This importance likely stems from the executive's role in implementing the peace agreement. Like the legislature, the executive was also responsible for negotiating and implementing the agreement, which may motivate the similarities between the variables. For example, the executive was also not well trusted by the public in 2016. Only 25.53 per cent of the 1,555 respondents who were asked question B21A reported confidence in the president (Table 2). Additionally, much like the relationship between trust in the legislature and support for the peace agreement, the relationship between trust in the executive and support for the peace agreement reflects the public's assessment of the government's ability to make peace. Just as the legislature failed the public's "implicit evaluation" (Montoya and Tellez 2020, 267), so did the executive.

Trust in the executive is a stronger indicator of support for the peace agreement than trust in the legislature and trust in the judiciary. This is likely because, though each branch was responsible for establishing peace, the actions of the executive office were most visible. This visibility is in part related to the more publicized presidential controversy, such as the deployment of the Colombian armed forces and the splintering of political parties due to the divisive nature of the negotiations (Liendo and Braithwaite 2018, 626; Tellez 2019a, 832).

Trust in the Judiciary

The trust in the judiciary variable is based on question B10A, which asks, "To what extent do you have confidence in the justice system?" (Latin American Public Opinion Project 2016). For every unit increase in the trust measured by this question, support for the peace agreement increases by 0.272. With a p-value of 0.008, these findings are statistically significant.

Like the other branches, the judiciary experienced low trust in 2016, when a mere 27.7 per cent of the 1,545 respondents to question B10A trusted the judiciary (Table 2). Trust in the judiciary is comparable to the trust observed for the legislature and executive as the judiciary was also responsible for part of peace process. The support for the peace agreement's relation to trust in the judiciary – like its relation to the other branches – indicates the public's perception of the institution's competence in fulfilling the promises of the peace

agreement. Therefore, the public's message to the legislature and executive through the 2016 referendum was addressed to the judiciary as well.

The judiciary is responsible for implementing transitional justice through the JEP, and the public has demonstrated a strong preference for retributive justice and punitive measures taken against ex-combatants (Botero 2020, 317-318; Revelo and Sottilotta 2020, 3; Tellez 2019a, 836) In this way, there is a clear relationship between what the public wants and how the judiciary can satisfy that want, which makes the link between the judiciary and the peace process both discernable and important to the public. Moreover, the political disinterest discussed with regards to the legislature likely did not have a large effect on trust in the judiciary. Even the politically disinterested described listening to what was said on the "radio" and "in social networks" in 2016 (Revelo and Sottilotta 2020, 14), making them susceptible to the spread of fear and hatred of ex-combatants, driving a preference for retributive justice which can only be achieved through the judiciary.

Trust in the Elections

Question B47A, asking "To what extent do you have confidence in the elections in this country?" (Latin American Public Opinion Project 2016), provides the basis for the trust in elections variable. For every unit increase in trust in elections, support for the peace agreement increases by 0.237. Because the p-value of the variable is 0.008, these findings are statistically significant.

While the variables previously discussed measure trust in government institutions and demonstrate the public's perception of the institutions' competency, trust in the country's elections is a function of trust in the government and is more closely related to perceived corruption. Just as trust in the legislature, executive, and judiciary was low in 2016, so was trust in the elections; only 23.97 per cent of the 1,548 people asked question B47A reported having trust in Colombia's elections (Table 2). This low trust in elections was reflected in the referendum, not by the success of the "No" vote but by the low turnout: 37.44 per cent compared to the average of 45.15 per cent turnout (IFES Election Guide 2021).

In its national elections, Colombia elects its president, Senate, and House of Representatives (IFES Election Guide 2021; Political Database of the Americas 2011). Accusations of both corrupt elections and corrupt conduct associated with those elected offices are widespread. Two presidents and a fourth of Congress were investigated for misconduct and abuse of power in 2013 (Gutiérrez 2013, 3), and there have been many other accusations of corruption in Colombia, so much so that anti-corruption was a focus of Colombia's 2018 presidential election (Grattan 2018; Revelo and Sottilotta 2020, 9). In 2016, perceived corruption led voters to stay home, contributing to the referendum's failure (Revelo and Sottilotta 2020, 2-3). With greater trust in Colombia's elections, support for the referendum would have been more likely, as corroborated by the coefficient and significance of the trust in elections variable.

Trust for the FARC

The FARC trust variable is based on survey question COLB60: "To what extent do you have confidence in the FARC?" (Latin American Public Opinion Project 2016). As determined by the coefficient, support for the peace agreement increases by 0.730 with each unit increase in trust in the FARC. The p-value of zero indicates that these results are significant.

Of all the trust variables examined in the model, the FARC are by far the least trusted. A mere 6.25 per cent of Colombians trusted the FARC, whereas 87.9 per cent decidedly did not. The trust in the FARC variable again stands out with respect to neutral respondents. Only 5.86 per cent of respondents to question COLB60 reported neutrality, compared to an average of 17.14 per cent of neutral respondents to the other trust variables (Table 2).

The FARC began as a group “dedicated to fighting for Colombia’s rural poor people” (Gentry and Spencer 2010, 454), and the land reform advocated for by the FARC was a popular policy in 2016 (Tellez 2019a, 836). Still, the FARC has been consistently distrusted (García-Sánchez and Carlin 2020, 242) as the murders, sexual violence, forced displacement, kidnappings, drug trade involvement, and other human rights violations associated with the group undermined its political beliefs (Esparza et al. 2020, 1246; Gutiérrez and Thomson 2020, 34).

Belief that the FARC Will Demobilize

To measure belief in FARC demobilization, respondents were asked question COLPROPAZ2B: “How likely do you think that after the signing of the peace agreement between the government and the FARC, this guerrilla group will demobilize definitively?”. Like trust in the FARC, belief in FARC demobilization is statistically significant. The survey results for FARC demobilization are less dramatic than those relating to trust in the FARC: 32.44 per cent believed demobilization was likely, and 67.56 per cent did not (Table 2).

The factors affecting trust in the FARC also affect belief in FARC demobilization because belief in demobilization is a function of trust. One factor that likely impacts belief in demobilization more directly is the failure of previous attempts to make peace with the FARC. For example, the effort to reach peace with the FARC in 1998 was unsuccessful after the FARC continued its aggression even as the peace negotiations began (Tellez 2019a, 832). Ultimately, those who trust the FARC and believe they will disarm are more likely to support the agreement.

Conclusion

Many promises made in the peace agreement have not come into fruition. The government has failed to bring infrastructure, schools, and electricity to rural areas, and coca production and drug trafficking continue (Casey 2019; Revelo and Sottilotta 2020, 1). This difficulty in implementing peace has led to public skepticism of the agreement (Revelo and Sottilotta 2020, 1) and continued distrust of the government (Revelo and Sottilotta 2020, 13).

The FARC is also the target of continued distrust. As of 2019, 3,000 ex-combatants had again taken up arms (Casey 2019), arguably justifying the low trust in the FARC and the prediction that the FARC would not definitively demobilize in 2016. Violence has also persisted despite the official end to the conflict. By 2019, over 500 community organizers and activists had been killed, and 210,000 people had been displaced (Casey 2019). The Human Rights Watch (2021) reported that FARC dissidents have continued to commit acts of violence while some FARC ex-combatants have been assassinated (Esparza et al. 2020, 1242).

Future research on this topic should include more rural analysis, as the LAPOP survey that this research is based on has a small rural sample size. A greater focus on Colombia’s rural population is necessary because experience with violence greatly changes a person’s conflict experience, and those who witnessed much of the violence during the conflict and who now need the most support are primarily from rural areas.

The peace agreement has not been entirely successful, but there has been some progress: approximately 23 per cent of the agreement’s 578 provisions had been fully implemented by 2019 (Casey 2019). Establishing peace takes time (Revelo and Sottilotta 2020, 2), but for some, the success of the agreement is the difference between security and vulnerability, life and death. For these reasons, the government must continue working to implement the agreement while fostering trust with the people.

References

- Botero, S. 2020. “Trust in Colombia’s Justicia Especial Para La Paz: Experimental Evidence.” *Journal of Politics in Latin America* 12(3): 300–322. <https://doi.org/10.1177/1866802X20959509>.
- Carlin, RE, JL McCoy, J Subotic. 2016. “Legitimacy Deficits in Colombia’s Peace Talks: Elites, Trust, and Support for Transitional Justice.” United States Agency for International Development (USAID).
- Carreras, M and S Vera. 2018. “Do Corrupt Politicians Mobilize or Demobilize Voters? A Vignette Experiment in Colombia.” *Latin American Politics and Society* 60(3): 77–95. <https://doi.org/10.1017/lap.2018.25>.
- Casey, N. 2018. “Colombia’s Peace Deal Promised a New Era. So Why Are These Rebels Rearing?” *The New York Times*, 17 May. <https://www.nytimes.com/2019/05/17/world/americas/colombia-farc-peace-deal.html>.
- Dávalos, E, LF Morales, JS Holmes, and L Dávalos. 2018. “Opposition Support and the Experience of Violence Explain Colombian Peace Referendum Results.” *Journal of Politics in Latin America* 10(2): 99–122. <https://doi.org/10.1177/1866802X1801000204>.
- Esparza, D, V Martinez-Ebers, R Branton, K King, and J Meernik. 2020. “Violence, Trust, and Public Support for the Colombian Peace Agreement.” *Social Science Quarterly* 101(4): 1236–1254. <https://doi.org/10.1111/ssqu.12818>.
- García-Sánchez, M and RE Carlin. 2020. “The FARC in the Public Eye: Negotiation, Integration, and Political Participation.” *Journal of Politics in Latin America* 12(3): 239–251. <https://doi.org/10.1177/1866802X20970805>.
- Gentry, JA and DE Spencer. 2010. “Colombia’s FARC: A Portrait of Insurgent Intelligence.” *Intelligence and National Security* 25(4): 453–478. <https://doi.org/10.1080/02684527.2010.537024>.
- Grattan, S. 2018. “Colombia’s rampant corruption a hot topic in presidential vote.” *Reuters*, 15 June. <https://www.reuters.com/article/us-colombia-election-corruption/colombias-rampant-corruption-a-hot-topic-in-presidential-vote-idUSKBN1JB252>.
- Gutiérrez, H. 2013. “Colombia: Overview of corruption and anti-corruption.” *U4 Expert Answer*. <https://assets.publishing.service.gov.uk/media/57a089ffed915d622c0004db/expertanswer-373.pdf>.
- Gutiérrez, D JA and F Thomson. 2020. “Rebels-Turned-Narcos? The FARC-EP’s Political Involvement in Colombia’s Cocaine Economy.” *Studies in Conflict & Terrorism* 44(1): 26–51. <https://doi.org/10.1080/1057610X.2020.1793456>.
- Human Rights Watch. 2021. “Colombia Events of 2020.” Accessed March 20, 2021. <https://www.hrw.org/world-report/2021/country-chapters/colombia>.
- IFES Election Guide. 2021. “Country Profile: Colombia.” Accessed March 26, 2021. <https://www.electionguide.org/countries/id/48/>.
- Latin American Public Opinion Project. 2016. AmericasBarometer: Colombia.
- Liendo, N and JM Braithwaite. 2018. “Determinants of Colombian attitudes toward the peace process.” *Conflict Management and Peace Science* 35(6): 622–636. <https://doi.org/10.1177/0738894218787783>.
- Montoya, AM and J Tellez. 2020. “Who Wants Peace? Predicting Civilian Preferences in Conflict Negotiations.” *Journal of Politics in Latin America* 12(3): 252–276. <https://doi.org/10.1177/1866802X20960281>.
- Political Database of the Americas. 2011. “Republic of Colombia: Electoral System.” Accessed March 23, 2021. <https://pdba.georgetown.edu/ElecSys/Colombia/colombia.html>.
- Revelo, DR and CE Sottilotta. 2020. “Barriers to Peace? Colombian Citizens’ Beliefs and Attitudes Vis-à-Vis the Government-FARC-EP Agreement.” *Studies in Conflict & Terrorism*. Epub ahead of print 15 April 2020. DOI: 10.1080/1057610X.2020.1752008.
- Seligson, MA. 2002. “The Impact of Corruption on Regime Legitimacy: A Comparative Study of Four Latin American Countries.” *Journal of Politics* 64(2): 408–433.
- Tellez, JF. 2019a. “Peace agreement design and public support for peace: Evidence from Colombia.” *Journal of Peace Research* 56(6): 827–844. <https://doi.org/10.1177/0022343319853603>.

Some Tactical Aspects of Computer Search

Nicoleta-Elena Hegheș¹, Nelu Niță²

¹*“Dimitrie Cantemir” Christian University of Bucharest, Romania, nicoleta.heghes@ucdc.ro*

²*“George Bacovia” University of Bacău, Romania, nita_nelu@yahoo.com*

ABSTRACT: Due to the process of globalization in general, and computer networks in particular, as a result of the continuous development of information and communication technology, in addition to the undeniable progress of society, new forms of crime specific to cybercrime have emerged and are spreading. It is also one of the greatest threats to humanity of all time. Computer search is an activity different from any other evidentiary procedure, requiring specific rules to take into account its nature. The computer search can be ordered during the criminal investigation by conclusion by the judge of rights and freedoms, and during the trial by the Court.

KEYWORDS: computer systems, cybercrime, computer search warrant, computer search, the tactic of conducting the computer search

Introduction

Cybercrime is based on the use of computer systems, consisting of any device or set of devices interconnected or in a functional relationship, of which one or more insures automatic data processing, using a computer program (see Popa 2002, 70). Even at this time, there is no unanimously accepted definition of the notion of cybercrime. Attempts to define the term are multiple, this being explained by the complexity and magnitude with which the phenomenon manifests itself. However, worldwide, computer crimes are defined as those committed with the help of a computer, committed in virtual space, have no borders and can touch any computer in the world. Cybercrime is a form of transnational crime, and highlighting it requires international cooperation.

The main forms of cybercrime known and committed frequently in Romania so far are: illegal access to computer systems; illegal interception of a computer data transmission; altering the integrity of computer data; disruption of the functioning of computer systems; forgery and computer fraud; child pornography via computer systems; forgery of electronic payment instruments; conducting electronic financial transactions fraudulently; document forgery fraud; economic crimes; distribution of information of an illegal or prejudicial nature; crimes against life; computer espionage; computer sabotage; electronic warfare etc.

To ensure the rapid progress of society, the Internet has created a huge potential for development in all areas of social life, its potential applications being virtually inexhaustible. At the same time, however, new technologies of computer devices and systems open up new horizons and perspectives for committing “classic” crimes, such as theft and fraud, but especially crimes specific to the computer field, with a much more sophisticated and extremely difficult to discover and prove. Thus, obviously, the ease of use, the low cost, the speed and the assurance of an anonymous character make the Internet an extremely favorable environment for committing computer crimes. Moreover, due to the global character of the computer network and its huge complexity, the possibilities of “hiding” of the author are practically unlimited, encouraging for this reason also the commission of crimes. Thus, cybercrime is “a way of life for criminals” (Dobrinouiu 2009, 1), being preferred by them because they can easily hide their identity and disguise their illegal activities.

The victims of cybercrime are not only individuals, but, as experts say, “victims of war in cyberspace can be individuals, large corporations or industrial and economic concerns and even states, the targets being government IT infrastructures, intelligence agencies or defense,

the critical infrastructure of a country: electricity and gas distribution networks, power plants, nuclear power plants, communications systems, transmission networks, etc.“ (Postelnicu and Marmandiu 2012, 44).

All this is possible only due to the fact that the Internet has become the easiest way to commit a cybercrime, the place where with a simple “click” you can earn millions of euros or the damage can be so great that it can no longer be recovered nothing. And studies in this regard show that we are entering the “fourth era” of organized crime (www.baesystemsdetica.com).

In order to detect complex and sophisticated cybercrime crimes, it is necessary to use highly specialized specialists who have and can use equally sophisticated technologies, and at the same time keep up with the means and methods used by offenders. One of the important problems in preventing and combating cybercrime, the investigation of crimes committed in this way, which can also be cross-border, is frequently hit by national barriers, the lack or insufficiency of international regulations and even the lack of specific offenses in some laws long after the development of the phenomenon.

Computer searches are a probative process that involves investigating a computer system or data storage media by criminal investigation bodies in order to discover and gather the evidence needed to solve the case. Article 168 of the Code of Criminal Procedure contains rules on the procedural institution of the search. The provisions of the Code of Criminal Procedure concerning home searches are also properly applied in the case of IT searches. (Moise 2017, 2654).

According to the Romanian legal provisions (Art. 168 para. (1) of the Romanian Criminal Procedure Code), the computer search or of a computer data storage medium represents the procedure of research, discovery, identification and collection of evidence stored in a system computer or data storage medium, made by means of appropriate technical means and procedures, such as to ensure the integrity of the information contained therein.

The computer search will be ordered only when the measure is necessary and proportionate to the purpose pursued (Moise 2011, 205).

In practical terms, we appreciate that arranging and conducting a computer search, in addition to the preparatory activities mentioned above (case study, legislation study, computer science study, etc.), necessarily involves the development of specific activities, structured in four phases, respectively: 1. preparation of the computer search; 2. obtaining the computer search warrant; 3. execution of the computer search warrant; 4. performing the actual computer search.

Preparing the computer search

From a tactical point of view, it should be noted that, in order to establish the purpose and objectives of a computer search, the data and information resulting from the ongoing criminal investigation must be necessarily and usefully supplemented with data from investigations conducted by the investigative body to determine in particular: computer systems, their equipment (including peripherals) and any other devices that should be searched, as well as potential information that could be stored on them that could be useful to the criminal case in finding out the truth; network connections of suspicious computer systems; the natural and legal persons who own and manage them, including their addresses and the locations where the computer equipment is located.

As a result, the preparation of the computer search requires the observance of the following steps (Prună and Mihai 2008):

a) Collecting information on the computer systems to be searched, the type of data storage, the location of the equipment and storage devices etc.;

b) The choice of the moment of performing the computer search, which depends on two factors: the status of the computer system and the presence or absence of certain persons;

c) Establishing the participants in the computer search, in the sense that, in addition to the investigators, persons with adequate technical qualification (forensic scientists, system engineers, etc.) will also participate;

d) Establishing the place where the actual computer search will be carried out (at the place where the computer equipment and devices are discovered or in the laboratory), depending on the volume of the equipment and the technical difficulties related to their search, or depending on the severity with which the activity of the persons holding these objects is affected;

e) Establishing the logistics to be used (tools, software, unregistered storage media etc.).

Obtaining the computer search warrant

During the criminal investigation, in any situation where it is found that for the discovery and gathering of evidence it is necessary to search for a computer system or a computer data storage medium, including in the case of those seized during the home or vehicle search or baggage search, the prosecutor must make and submit to the judge of rights and freedoms a application requesting the approval of the computer search and the issuance of the computer search warrant. It should be noted that if, during a home search, the judicial body finds a computer system at the place of the search, in connection with which it considers it necessary to verify the stored data and information, it is necessary to obtain a separate search warrant distinct from the first, from the judge of rights and freedoms, other than the mandate that had as object the house search.

The application requesting the approval of the computer search must contain data on the computer media to be searched (stand-alone computers, computer networks and portable storage media, as appropriate), the location of the computer media to be searched, the place where the analysis of the computer samples will be carried out (the actual computer search), the place where they are discovered or in the laboratory, as well as the fact that they will be searched and any other storage media found at the location and which are considered of interest solving the case (Stancu 2011).

The judge of rights and freedoms thus notified, by conclusion, orders the admission of the request and the approval to carry out the computer search, when it is grounded, and immediately issues the computer search warrant.

The conclusion and the mandate of the computer search must include the following data: the name of the court; date, time and place of issue; the name, surname and capacity of the person who issued the warrant; the period for which the mandate was issued and within which the ordered activity must be performed; the purpose for which it was issued; the computer system or computer data storage medium to be searched, as well as the name of the suspect or defendant, if known; the judge's signature and the court stamp.

During the trial, the computer search is ordered by the court, ex officio or at the request of the prosecutor, the parties or the injured person. The warrant to carry out the computer search ordered by the court is communicated to the prosecutor, in order to carry out the computer search.

Tactics for enforcing the search warrant

Depending on the volume of the equipment and the technical difficulties related to its analysis, regarding the execution of the computer search warrant, the judicial body may take one of the following two decisions: 1. search the computer system at the place where it was found; 2. picking up the equipment of the computer system to be searched in the laboratory.

Also, if the removal of objects containing computer data would seriously affect the activity of persons holding these objects, the prosecutor may order the making of copies, which serve as evidence (Art. 168 para. (10) of the Romanian Criminal Procedure Code). Copies shall be made with appropriate technical means and procedures, such as to ensure the integrity of the information contained therein.

Regardless of the decision taken, the initiation of the activity of executing the computer search warrant, similar to the home search, takes place by presenting the team at the location where it was established that the computer system equipment to be subjected to the computer search for which the search warrant was obtained.

The search of a computer system or of a computer data storage medium can be carried out in the presence of the suspect or the defendant, the team carrying out the search must include specialists working within or outside the judiciary, or specialized police workers, acting in the presence of the prosecutor or the criminal investigation body.

Arriving at the location of the equipment for which a search warrant was obtained, similar to the home search, the team leader identifies himself and hands a copy of the search warrant to the person to be searched, his representative or a family member, and failing that, to any other person with full exercise capacity who knows the person to whom the computer search will be carried out and, if applicable, the custodian.

In the case of a search carried out at the premises of a legal person, the computer search warrant shall be handed to its representative or, in the absence of the representative, to any other person with full capacity who is in the premises or is an employee of that legal entity. These persons are required to voluntarily hand over the equipment of the computer systems and the objects containing the stored computer data sought. If they are handed over, the computer search may take place in the same location or may be carried out in order to carry out the computer search in laboratory conditions. If they are not handed over voluntarily, based on the computer search warrant, the equipment is searched within the location, without pursuing other goals and objectives, specific to home search. Once the searched computer equipment is discovered, as if it had been handed over voluntarily, the computer search can take place in the same location or it can be picked up in order to perform the computer search in laboratory conditions.

Regardless of the decision taken, from a tactical point of view, before proceeding with the search or seizure of computer systems, team members must consider compliance with the main rules of forensic tactics, consisting primarily in searching, discovering, fixing and tracking and other material means of proof on each component of the equipment that makes up the computer system, as well as on objects in their vicinity, such as: fingerprints and/or handprints, footprints, prints created by different parts of the computer human body, biological traces, etc. Also, from a tactical point of view, depending on the criminal acts investigated and the objectives of the computer search, if the computer, laptop or tablet looking for is running, the image displayed on the monitor screen when found by the team may have some relevance search, so that image is recommended from the point of view of forensic tactics to be fixed by photo and video recording. During the computer search of the location, team members must prevent any approach of the suspect to the computer system, to remove any possibility of alteration of data and information on it, by intentionally making orders taking advantage of their lack of attention.

In most cases, it is decided to pick up the computer equipment, in which case the following rules of forensic tactics must be observed:

a) *Description, photography and filming of computer equipment*, in order to ensure the conditions for the exact reconstruction of the system in the laboratory; the minutes of the lifting shall be record the spatial arrangement of the components of the computer system, including the modems and devices used to create a network of equipment and/or Internet access, insisting on photography and filming on the cables and connections between them;

b) *Ensuring data integrity and shutting down the system*, taking all necessary measures to protect against the destruction and alteration of all electronic evidence; If the computer system has been found closed, it no longer needs to be opened;

c) *Marking and labeling of components*, to ensure compliance with the configuration of the computer system when reconstituting it in the laboratory;

d) *Packaging, sealing and labeling of raised equipment*, to avoid any appeals concerning subsequent external interference with them and to ensure their veracity; it is recommended that the equipment be packed, sealed and labeled in its original packaging, if found, or in a special packaging that ensures their electrostatic protection; sealing is done in such a way that access to the equipment is not possible until the packaging is opened in the laboratory, so that the information stored on it is not disputed; the label on the packaging must contain information on the packaged components, the date, place and circumstances of their removal, the persons who packed them and their signatures, etc.,

e) *The transport of raised equipment is carried out* in such a way as to avoid shocks, vibrations and electromagnetic fields which could damage them;

f) *The storage of packaged and sealed equipment* is done in rooms without humidity or dust, in order to avoid their alteration or destruction and the information stored on them.

The activities carried out during the lifting of the computer equipment are recorded in a report that is signed on each page and at the end by the one who concludes it, by the person from whom the computer equipment was picked up, by his lawyer, if he was present, as well as by all persons present at the performance of the activities mentioned above. If any of these persons cannot or refuses to sign, this shall be stated, as well as the reasons for the impossibility or refusal to sign.

A copy of the report shall be left to the person from whom the computer equipment was taken or to the family member or representative who participated in its collection. The place where the computer equipment was found and picked up are photographed or audio-video recorded, all of which are attached to the lifting report, being an integral part of it.

Performing the actual computer search

The actual search of the computer in the location where the computer equipment was found or in laboratory conditions, consisting in the analysis of the information stored in the computer system or in the computer data storage media that were collected, is performed only in the presence of the suspect or the defendant (if possible) (art. 168 para. (11) of the Romanian Criminal Procedure Code), or a representative thereof or a witness, by making faithful copies (clones) of them, with the help of programs and special devices (Dascălu, Ștefan and Țupulan 2008, 111).

Thus, the main stages of conducting the actual computer search are the following:

a) Unsealing computer systems or high storage media (after checking the integrity of the seal, in case of lifting them);

b) Identification of the correspondence between the devices raised and those mentioned in the computer search warrant;

c) Assembling the components in order to reconstruct the original computer system;

d) Making a copy of the data and information stored in each computer data storage medium;

e) Performing the actual computer search on the copies made on each computer data storage medium;

f) Making new copies of computer data, with data and information relevant to the criminal case, which were identified in the search process, to be submitted to the case file and to be considered in the administration of evidence;

g) Sealing the storage medium on which the copy on which the search was made is located;

h) Concluding the computer search report;

i) Restitution of equipment or resealing (as a final activity with the equipment lifted).

The technical aspects regarding the computer search are extremely numerous, and some of them present an extremely high degree of complexity. In these conditions, we consider that it is useful to present only two aspects that we consider to be of maximum interest, without trying an in-depth and *in extenso* analysis (Zlati 2014).

The first important aspect is that the actual computer search of each component of computer equipment differs depending on the technical means to be searched, respectively: server, computer, laptop, tablet, smartphone, printer, hard drive external disk, data storage stick, etc. In this respect, the different types of hardware and software at the level of storage media must be taken into account, depending on the type of equipment and devices searched. As a result, each time, in order to perform the computer search, different computer programs are used, depending on the searched computer environment.

A second important aspect is that the operating system through which the computer system user or a third party interacted with computer data, differs depending on the characteristics of the operating system (Microsoft Windows, Linux, Mac, iOS, Android etc.). In these circumstances, the practical consequence is that, depending on the computer system used by the suspect, it is possible those certain fingerprints cannot be identified, or that their identification may require a certain procedure.

Conclusions

As we said above, at the end of the computer search, the specialist who performed this search must conclude a computer search report, according to the rules stipulated by art. 168 para. (13) of the Romanian Criminal Procedure Code.

The prosecuting authorities must ensure that the computerized search is carried out without the facts and circumstances in the personal life of the person being searched being unjustifiably made public.

The computer data identified as secret shall be kept in accordance with the law so that their security can be ensured, depending on the nature of the classified information, including as regards persons investigating or prosecuting the criminal cases concerned.

References

- Dascălu, Ioan, Cristian-Eduard Ștefan, and Marin-Claudiu Țupulan. 2008. *Percheziția judiciară [Judicial search warrants]*. Craiova: Sitech Publishing House.
- Dobrinou, Maxim. 2009. "Provocarea legislativă a rețelelor Wi-Fi [The legislative challenge of Wi-Fi networks]" in *Intelligence*. Year VI, no 16, July.
- Moise, Adrian Cristian. 2011. *Metodologia investigării criminalistice a infracțiunilor informatice [Forensic investigation methodology of cybercrime]*. Bucharest: Universul Juridic Publishing House.
- Moise, Adrian Cristian. 2017. "Some technical-tactical aspects of computer search." In *Romanian Journal of Forensic Science* no. 4: 2654.
- Organised Crime in the Digital Age: The Real Picture, Executive Summary of BAE Systems Detica and the John Grieve Center for Policing and Community Safety "Organised Crime in the Digital Age" research report, p. 3, study available at: <http://www.baesystemsdetica.com>.
- Popa, Teodor. 2002. *Frauda informatică [Fraud Informatics]*. Oradea: Oradea University Publishing House.
- Postelnicu, Carmen and Sorana Marmandiu. 2012. "Perspective teoretice asupra amenințărilor cu incidență în domeniul securității [Theoretical perspectives on security threats]." In *Intelligence* no 23.
- Prună, Ștefan and Mihai, Ioan-Cosmin. 2008. *Criminalitatea informatică [Cybercrime]*. Craiova: Sitech Publishing House.
- Romanian Criminal Procedure Code,
- Stancu, Emilian. 2011. *Procedee tactice folosite în investigațiile penale. Evoluții. [Tactical Procedures Applied in Criminal Investigations. Evolutions]*. Bucharest: AIT Laboratories Publishing House. Source:

<http://www.criminalitatea-informatica.ro/tehnici-de-investigare/efectuarea-verificarilor-si-perchezitiilor-in-mediul-informatic/>, accesed on 15 iulie 2021.

Zlati, George. 2014. "Procedura de percheziționare în mediul informatic – Efectuarea percheziției informatice propriu-zise [Search procedure in the computer environment]." *Universuljuridic.ro*. <https://www.universuljuridic.ro/procedura-de-perchezitionare-mediul-informatic-efectuarea-perchezitiei-informatic-propriu-zise/>.

The Psychological Process of Forming Witness Statements

Valentina Avrămescu

*“Dimitrie Cantemir” Christian University of Bucharest, Romania
valentina.avramescu@gmail.com*

ABSTRACT: In this paper, we have analyzed aspects of the psychological mechanisms underlying the formation of the authenticity of the testimony. The elements that define the sensory reception are identified, the sensation and the perception shaping the psychic process of knowledge. Also, the factors likely to distort the sensory reception of the witnesses are presented and aspects of a subjective nature that influence the perceptual process are highlighted.

KEYWORDS: perception, sensory reception, emotional state, memory storage, memory reactivation

Introduction

Throughout the legal literature, forensics or forensic psychology, it is rightly emphasized that the veracity of the statements of a witness even of goodwill being, as well as the appreciation of their probative force, cannot be conceived without the knowledge of psychological mechanisms which form the basis of the formation of the testimony.

If we were to define the testimony, from the perspective of forensic psychology, we would say that it is the result of a process of involuntary observation and memorization of a legal fact, followed by its reproduction, in oral or written form, before criminal prosecution bodies or courts (Stancu 2017, 414).

From a psychological point of view, the testimony consists in the involuntary observation and memorization of an act and then its reproduction, in writing or orally before the court (Bogdan 1973, 156). Establishing the sincerity of the witness is a particularly important element, as if the judicial body is not fully convinced that the witness is sincere, it will not use the statement to resolve the case (Buzatu 2013, 119).

When listening to witnesses, several elements will have to be taken into account that can influence both the objectivity of the realities and their accuracy. In order to be able to assess the objectivity of the witnesses' statements, in addition to observing the tactical rules of listening, it is necessary for the investigator to know and understand the psychic postulates on which the processes of knowing objective reality are based: perception and memorization (Ionescu 2003, 133-134).

Reception of facts and circumstances by witnesses

The elements that define the sensory reception of some events as the first stage of the formation of the testimony outline a psychic process of knowledge, which goes through several stages (Roșca 1975, 237):

a) Sensation is the simplest form of sensory reflection of the isolated properties of objects or persons, through one of our sense organs. The appearance of sensations and, subsequently, of perception, depends on the intensity of the stimuli that act on the analyzers.

It is important to note that the minimum or maximum intensity through which stimuli can cause a sensation-known as sensation thresholds, varies from person to person, the magistrate must assess in each case the limits of the possibilities of perception of a witness (Stancu 2017, 415).

b) Perception is a superior form of sensory knowledge (Zlate 2006, 173). The transition from sensation to perception occurs as sensory impressions or sensations begin to function not only as signals, but also as images of objects (Rubinstein 1962, 87).

The limits of the possibilities of perception are also determined by the quality of the receiving organs, by the presence of some disease states that can negatively influence the appearance of the sensation or distort the information. Facts, objects or persons are perceived differently, some being recorded immediately, as opposed to others that pass on a secondary place, although they have the possibility to influence the analyzers (Stancu 2017, 415-416).

Factors distorting the sensory reception of witnesses from a forensic perspective

Factors of an objective nature, determined by the circumstances in which perception takes place, are:

a) *Visibility* can be reduced by the distance from which the perception is made, by the lighting conditions (darkness, shadow, sun beating in front etc.), by the meteorological conditions (fog, snow, rain), by various obstacles between the one who it also perceives the place where the event takes place.

b) *Audibility* is influenced by distance, by the conditions of sound propagation, specific to each place, by the existence of sound sources that can disturb hearing and meteorological factors (wind, rain, storm), obstacles that can give rise to echoes etc.

c) *The duration* of perception is another important objective factor on which the quality of reception depends. The time interval in which perception is possible may depend on the longer or shorter period in which an action takes place, the speed of movement, or of the person or object perceived, or of the perceiver, and sometimes the type of lighting (for example, facts perceived in the light of lightning or headlights of a car). Some of the factors mentioned above can also influence tactile or olfactory perception. For example, the specific smell of toxic substances or gunfire can be reduced under the action of air currents, heat.

d) *The concealment of the appearance* is determined by the person of the perpetrator himself, who tries to be perceived as difficult as possible, in this sense appeal to disguises, acting quickly, seeking to distract even with the help of accomplices, using darkness or various obstacles so as not to be seen.

Subjective factors are represented entirely by psychic-physiological features and individual personality, able to influence the perceptual process. Among them, we mention the most important:

a) *The quality of the sense organs* is an essential psycho-physiological factor for a good perception, any defect in them, either on the perceptual side or on the cortex (blindness, myopia, deafness, etc.), reducing to cancellation some of the receptive possibilities of person (Stancu 2017, 415-416).

b) *The personality and the degree of training of the individual* play a significant role in the perceptual process, especially when they are higher or closer to the specifics of the deed they are witnessing. For example, the doctor who may perceive a certain pathological condition or the driver who more accurately assesses the speed of a vehicle.

c) *The age and intelligence of the person* represent other major subjective factors in perception, both life experience and intellectual qualities having a special contribution in receiving the facts, the circumstances in which a particular event took place.

d) *The temperament and the degree of mobility of the thought processes* are factors according to which the distinction must be made between one individual and another regarding the capacity and the way to reason and to distinguish facts or data.

e) *Fatigue*, as well as reduced perceptual capacity due to the influence of alcohol, drugs, medications, also lead to a decrease in sensory acuity.

f) *Affective states*, especially those with a certain degree of intensity have an inhibitory influence on the perceptual process, causing its alteration or disorganization, a situation quite common in people who witness acts of a shocking nature (serious accidents, scandals, murders, etc.) and especially when, in the commission of those acts, relatives, friends or close acquaintances are involved.

g) *Attention* is one of the factors on which the quality and informational realism of perception directly depend. First of all, the qualities of attention should be taken into account, such as its stability and mobility, the degree of concentration and its distribution. Secondly, we must take into account the types of attention, voluntary or involuntary, the latter more common in the case of witnesses, due to the unexpected appearance of a strong, shocking stimulus (screaming, shooting) or the interest that a person, object, discussion, action can attract.

h) *Perceptual type*. The analytical type control witness (generally specific to women) has the ability to retain more details, as opposed to the synthetic type, which retains the whole, its general characteristics.

We specify that to these subjective factors must be added the distortion factors typical of the general laws of sensoriality mentioned above (Stancu 2017, 416-418).

Information processing

The information received is decoded, even partially, acquiring a certain meaning in the consciousness of others. The most important factors that directly influence the quality of processing are: stored experience, profession, the meaning given to words and phenomena, the ability to appreciate time, distances, speeds etc. (Buzatu 2013, 119).

Appreciation of space and size

The appreciation of space, of the dimensions of some objects is a relative process that presupposes a life experience or skills encountered in a small number of professions (military, builders, pilots). Thus, depending on the concrete situation, the judicial body will have to test the reception capacity of the listener, making him appreciate the distance between various objects or people, the size of some bodies at hand, the surface of the room, a piece of land, on the street. We mention that these checks are necessary due to the tendencies of overestimating the dimensions of some objects perceived from a very short distance or located in the vicinity of smaller bodies.

The perception of the time

The perception of the time or duration of an event is relative, to which a multitude of factors contributes:

- locating an event in time is difficult as the period between the moment of perception and that of rendering increases. Thus, at the interval of one year, the witness who was not interested in a certain fact or who cannot associate it with an event in his life will find it more difficult to indicate on what day or at what time it happened, as he will admit a person with real difficulty.

- the appreciation of the duration of an action depends on the subjective time, different from the official one, the tendencies of time compression, meeting in the positive affective states (Ciobanu and Stancu 2017, 94-96).

The appreciation of speed

The appreciation of speed and, in general, of movement, is, in turn, a complex process involving temporal and spatial perceptions related to the road traveled in a certain time, the objects you pass, as well as the distance from which you pass makes the perception. The

assessment of speed depends directly on the degree of specialization of the witness. For example, a driver or traffic officer is able to more accurately assess the speed of a vehicle involved in an accident, as opposed to a person unfamiliar with driving it.

In connection with the appreciation of speed, as well as time or space, it should be emphasized that this process occurs as a result of collaboration between the organs of sense and thought, memory, which explains the influence of associative processes on the reception and processing of information (Stancu 2017, 419).

Memorization

The information storage phase is influenced by memory qualities, i.e. belonging to the auditory or visual type, intellectual abilities that are influenced by fatigue, alcohol consumption and how it is stored in primary or short-term memory or in secondary or relative memory (Buzatu 2013, 119).

Memorial storage is not a simple mechanical recording, an absolutely accurate photograph of what is perceived by a person, but a dynamic, active process of processing and systematization of received data, depending on the personality of each individual, the interest shown in a particular problem. In listening to witnesses, several factors will have to be taken into accounts that condition the memorization process, such as:

a) *Speed and duration of memory storage*

The speed of fixation and the retention time of the perceived information, which depends on the memory duration (short, medium or long) and the cause of forgetting.

We meet witnesses with a quick perception, but in whose memory the received data is kept for a short time. Their testimony can be correct and faithful only if the listening takes place in an interval as close as possible to the moment of perception.

Other witnesses have a slower perception and fixation, but store those received longer. Their statements can be correct only insofar as the perceived event was not too complex and did not take place quickly, thus the reception becoming incomplete.

b) *Witness memory type*. Depending on this criterion, there are witnesses with a dominant visual, auditory, affective memory so that the memory can be mechanical or logical, as it is absent or shows the understanding of the received informative material.

The memory can be voluntary or involuntary, depending on the attitude, of the interest shown by the witness in retaining the perceived aspects.

We mention the fact that the testimony involves involuntary memory, in relation to the character of the perceived aspects, if they had a certain psychological influence on the witness. (Ciobanu and Stancu 2017, 98).

c) *Forgetting* is of course a natural and even natural phenomenon necessary, resulting from the degradation of temporary connections of cortical nerve cells, without this degradation meaning their total disappearance. On the other hand, it must be borne in mind that the intervention of too long emotional states (fear, humiliation) can inhibit temporary nerve connections, affecting the memory process.

Under these conditions, against the background of negative stimuli, false memories and involuntary interpretations imprinted distorted in the person's mind can appear. Other factors may also occur over time, such as: rumors, distortions that deform the stored image (Ionescu 2003, 135).

Memorial reactivation is the last stage of the memorization process, encountered either in the form of reproduction or in the form of recognition, in its psychological sense (Ciobanu and Stancu 2017, 99)

Reproduction may be verbal or written. The quality of the reproduced data content depends on the quality of perception of facts or circumstances, on the objective and subjective

conditions that could have influenced the perceptual process, on fixing the data in the witness's memory (Mitrofan, Zdrengea and Butoi 1992, 158-159).

This phase depends on certain factors such as: time elapsed from the event, verbal ability, attitude towards the event and investigator, as well as other phenomena such as memory forcing conditions, repetition, audience pressure, investigator pressure, uncertainty, persistence in error (Buzatu 2013, 119-120).

Conclusions

In the relationship that forms between the witness and the investigator, there are those psychological phenomena consisting of their consciousness and conduct. It can be appreciated that there is a concordance relationship between the two, and in the absence of this relationship, the whole investigation may have repercussions.

There are many causes for the alteration of reality, and one of them refers to the inability of the human brain to receive and take all the information around.

To find out the truth, the statements of witnesses, even those of goodwill, cannot be conceived without the psychological methods underlying the testimony, as the forensic, legal or judicial psychology literature points out.

The testimony is, in fact, an involuntary observation and memorization that is related to a legal act and, later, can be reproduced either orally or in writing, before the criminal investigation bodies or the court.

Forensics uses various tactical procedures to hear witnesses, so that the prosecuting body that conducts the hearing obtains the best result. The literature shows us that, in order to obtain a valuable statement that leads to finding out the truth, we must start from the psychology of the witness and from the preparation of the hearing.

References

- Bogdan, T. 1973. *Probleme de psihologie judiciară (Problems of Forensic Psychology)*. Bucharest: Științifică Publishing House.
- Buzatu, N-E. 2013. *Criminalistică (Forensics)*. Bucharest: Pro Universitaria Publishing House.
- Ciobanu, P. and Stancu, E. 2017. *Criminalistică. Tactica criminalistică (Forensics. Forensic tactics)*. Bucharest: Universul Juridic Publishing House.
- Ionescu, L. 2003. *Criminalistică. Note de curs (Forensics. Course notes)*. "Dimitrie Cantemir" Christian University of Bucharest.
- Mitrofan, N., Zdrengea, U. and Butoi, T.1992. *Psihologie judiciară (Forensic Psychology)*. Bucharest: Casa de Editură și Presă ȘANSA SRL.
- Roșca, Al. 1975. *Psihologie general (General Psychology)*. Bucharest: Didactică și Pedagogică Publishing House.
- Rubinstein, S-L. 1962. *Existență și conștiință (Existence and Consciousness)*. Bucharest: Științifică Publishing House.
- Stancu, E. 2017. *Tratat de Criminalistică (Forensics Treaty)*. Bucharest: Universul Juridic Publishing House.
- Zlate, M. 2006. *Fundamentele psihologiei (Fundamentals of Psychology)*. Bucharest: Universitară Publishing House.

Strange Harmony: Human Nature and Tyranny in the Eyes of Czesław Miłosz

Milen Jissov

BNU-HKBU United International College, China, mjissov@uic.edu.cn

ABSTRACT: If every age has its signature works, *The Captive Mind* by Czesław Miłosz is such a work for the Cold War. Published in 1953 and valorized in the West as an incisive critique of the Soviet Bloc, it analyzes the inner world of Eastern Europeans caught in the grip of Stalinist tyranny. This subjectivity is what Miłosz calls “the captive mind.” But with the Cold War long over, it is time to rethink and reassess his classic. This is the purpose of this paper. Casting a critical look at it, the paper argues that *The Captive Mind* is afflicted and debilitated by an implicit, but all too serious, aporia. As a part of his analysis of Eastern Europe’s incarcerated mind, Miłosz articulates a conception of human nature. In a profound irony, however, that conception aligns with—harmonizes with—his portrayal of the evil Stalinist tyranny enthraling Eastern Europe. Unwittingly, Miłosz in effect naturalizes that tyranny. He suggests that, rather than being evil, it is all too human—corresponding to elemental propensities of human nature. This paper problematizes this dramatic contradiction. Ultimately, it reflects on the implications of this momentous paradox for understanding the character and history of political oppression.

KEYWORDS: Czesław Miłosz, Tyranny, Totalitarianism, Subjectivity, Eastern Europe, The Cold War

Introduction

The middle decades of the twentieth century constituted the nadir of modern European history. Political tyranny, embodied most radically by Stalinism in the Soviet Union and especially by Nazism in Germany, threatened to destroy Western civilization. At this darkest historical hour, Western intellectuals naturally sought to understand the evil of tyranny. One crucial aspect of it that drew their attention was the subjectivity of the subjects of tyranny. Thus, as Nazism was raging in Europe, academics associated with the Frankfurt School of social theory analyzed the psychology of the supporter of tyranny in a now-classic of twentieth-century social science—*The Authoritarian Personality* (Adorno, Frenkel-Brunswik, Levinson, and Sanford 1950).

Another thinker who probed the inner world of tyranny’s subjects was the Nobel laureate for literature, Czesław Miłosz. He did so in his best-known work, *The Captive Mind*. Published in 1953, it is a work of non-fiction. It is a critical, politically dissident, historical and cultural analysis of the Eastern Europe of its time. Its main objective, as formulated by Miłosz, is “to explain how the human mind functions” in Eastern Europe (Miłosz 2001, xv). A more general aim is to understand “the power of attraction” of totalitarianism over “the twentieth century [*sic*] mind” (vii-viii). To achieve these goals, Miłosz focuses mainly on a milieu all too “familiar” to him: the “world” of the intellectuals of Eastern Europe at that time (xv). Miłosz, it should be noted, understands the term “mind” in a general way. He equates it with the entire inner life of humans, including cognition and rationality, as well as human psychology.

Critics have commended Miłosz for achieving his objectives. No less a luminary than Karl Jaspers applauded his book as an “analysis of the highest order” (Jaspers 1953, 13). Recently, Tony Judt has called the book “by far the most insightful and enduring account of the attraction of intellectuals to Stalinism and, more generally, of the appeal of authority and authoritarianism to the intelligentsia” (Judt 2010). This paper, however, takes a contrary view. Casting a critical look at *The Captive Mind*, it argues that Miłosz’s analysis of the human “mind” in tyrannized Eastern Europe slips into a significant aporia. While probing how it

“captivates” that “mind,” Miłosz shows, unwittingly, that the political tyranny over Eastern Europe corresponds powerfully to what he understands to be human nature. Ironically, he thus reveals that tyranny exists in a strange harmony with our nature. The purpose of this paper is to explore this momentous paradox.

***The Captive Mind* and “Immanent Humanity”**

The Captive Mind is, indeed, a resolute critique of the Stalinist political tyranny established in Eastern Europe after World War II. Using an ideologically loaded term of the Cold War, Miłosz freely terms that tyranny “totalitarianism” (Miłosz 2001, viii; Gleason 1995). And he minces no words in repudiating it: he calls it “stupefying and loathsome” (Miłosz 2001, xv). In what is his main argument, he claims, *à la* George Orwell (1990), that the foundation of this hateful regime is mind control. Eastern European totalitarianism, he asserts, imposes a “rule,” a “mastery,” “over the mind” (161, 191, 197). And it does so by enforcing a “total rationalism” on human thinking (215). Miłosz has in mind a specific kind of rationalism—that of communist ideology. He calls that ideology “the New Faith” and “Diamat”—the latter being a shorthand for “the revision” of Marx’s “dialectical materialism ... by Lenin and Stalin” (xii-xiii, 52). “Diamat” is Leninism and Stalinism.

Miłosz insists that Diamat is, indeed, a “total”—a totalitarian—kind of rationalism. It is a logically consistent system of ideas that imposes itself aggressively on human beings and their world. It seeks to explain society and human life exclusively according to its precepts (48, 219-220). It also interprets the historical evolution of humanity mechanically, rigidly in line with its doctrinaire philosophy of history (201). And it forcefully ideologizes intellectual inquiry and art (49). Thus, it locks up human thinking in the prison of its dogma. The mind is forced to work, and to perceive humans, their past, and their present reality, only through the ideology. This is the “captivity” of mind that titles Miłosz’s book.

In stressing this imprisonment, Miłosz implies that Eastern European totalitarianism abuses humans. That it twists them out of shape, distorting their rationality and suppressing any non-rational dimensions of being human. Thus, Miłosz’s thinking on Eastern Europe’s “captive mind” is related to the philosophical problem of human nature. In fact, this problem, as scholars have observed, is an important theme in Miłosz’s oeuvre. The work of Aleksander Fiut is the prime case in point (Fiut 1987, 1990). Noting its “anthropocentric” character, Fiut has argued that Miłosz’s poetry “persuades us—in spite of numerous doubts and reservations ... —to believe in the existence of an undiminished element in human nature” (Fiut 1987, 65, 67). In other words, in his poetry Miłosz implies—posits, hesitatingly—the actuality of a human nature.

This is precisely what happens in *The Captive Mind* as well. Admittedly, the book is not a treatise on human nature; it does not develop a systematic theory thereof. But Miłosz does identify aspects of being human that, for him, undoubtedly *exist*. As we will see, he hesitates in ascribing them to human nature unequivocally; he is not absolutely sure whether they stem from nature, or nurture. Yet, as he understands them, the traits that he sees as elements of being human are all too real; he postulates their existence. In this sense, he articulates a conception of what could be called “immanent humanity.”

In his analysis of Eastern Europe, Miłosz discovers, and acknowledges, that political tyranny and immanent humanity synchronize in some ways. And he explores how they do so. Yet, simultaneously, he insists that tyranny deforms immanent humanity. His text, however, belies this insistence. Inadvertently, it shows that totalitarianism and human nature harmonize far more strongly than Miłosz thinks. To my knowledge, scholars have not noticed, let alone explored, this inadvertent harmony. And this harmony is, indeed, momentous: it subverts the main goal of Miłosz’s book—to analyze the *modus operandi* of Eastern Europe’s “captive mind.” In what follows, I explore this subversion. But before I do that, let us first examine Miłosz’s discovery that tyranny and immanent humanity sync.

In Sync: Harmony between Tyranny and Human Nature

At the very outset of his book, Miłosz rejects the myth that the political tyranny over 1950s Eastern Europe rests on terrorized obedience. This notion, he notes, is common in the West; but, it “is wrong” (Miłosz 2001, 6). “There is,” he declares, “an internal longing for harmony and happiness that lies deeper than ordinary fear or the desire to escape misery or physical destruction” (6). This is the human, all too human, wish for what Western philosophy has for centuries dreamt of as “the good life”—a wish for individual and social bliss. Eastern European totalitarianism, Miłosz proffers, aligns with, and satisfies, precisely that impulse in important ways (6). Thus, for him, “the nature of humankind” actually feeds that totalitarianism (6, 22-23).

Focusing on Eastern European intellectuals, Miłosz explores how this harmony transpires among them (6-7). He divides his peers in two classes (6-7). The first consists of true believers in Diamat—for whom the ideology is *the* path to “the good life.” Miłosz confesses that he actually admires such people. In their case, the tyranny of Diamat is no tyranny at all; it satisfies directly their impulse for “harmony and happiness” (6-7). The second class are half-hearted believers. They do not embrace Diamat sincerely, and with all of their heart and mind; for them, acceptance of Diamat is a tolerable arrangement, an okay deal. Miłosz calls them “intellectuals who *adapt* themselves” (7). To him, these chameleons merit little respect (7).

Still, Miłosz profiles their chameleonic subjectivity. One key factor that spawns it, he claims, is “social usefulness” (9). In days of yore, he reasons, religion served as a cement of society, providing a common set of ideas for all of its members, thereby bringing their thinking together. In Miłosz’s secular present, Diamat has taken on the function of a social glue. Intellectuals, the luminaries of society, feel connected to it—through Diamat. They are not social outsiders; they have a role to play in society, and even to become its leaders—as Diamat’s prophets (7-9). As Miłosz sees it, this prospect of their social utility, and even prominence, converts Eastern European intellectuals to Diamat.

In Prison: Tyranny’s Deformation of Human Nature

While satisfying human traits, Stalinist totalitarianism, Miłosz claims, also deforms them. The human mind, he thinks, has a *non*-rational dimension—and one that totalitarianism seeks to crush. Miłosz identifies what he takes to be the main aspects of that dimension. Thus, he notes that humans have what he calls “spiritual needs” (40). And that Eastern Europe’s tyranny “is incapable of satisfying” them (40). Chief among them is a wish for new, worthwhile “cultural values”—non-Diamat values, ones promising a better future (40). In Diamatized Eastern Europe, claims Miłosz, these values simply don’t exist (40).

Apropos of culture, another aspect of non-rationality for Miłosz is what he calls our “aesthetic needs” (68). These include a “need of ... harmonious forms”—a desire for beauty (68). They also include a “hunger for *strangeness*” (67). And they consist, too, of a yearning for “mystery”—for a chance of experiencing something “unexpected”—a surprise (66). Eastern European totalitarianism, Miłosz stresses, has declared war on these impulses. Coldness stamps the architectural demeanor of its cities; the closure of small businesses, now seen as germs of capitalism, stamps out the once-picturesque hustle and bustle of everyday urban life. Austere and uniform clothing gives people a standardized look. Conformist behavior, down to body language, transforms them into automatons. Beauty, “strangeness,” surprise, are killed in Eastern Europe. Boredom reigns (65-67).

This Reign of Boredom also victimizes art. The official doctrine of art, explains Miłosz, is “socialist realism.” For him, socialist realism is a devilish dogma. It “is not ... merely an esthetic theory,” he writes, but “involves ... the whole Leninist-Stalinist doctrine.

... In the field of literature it forbids what has in every age been the writer's essential task—to look at the world from his own independent viewpoint, to tell the truth as he sees it, and so to keep watch and ward in the interest of society as a whole" (xiii-xiv). Socialist realism is highly detrimental to art, as it demands a thoroughly ideological art, one that murders truth. By enforcing it, Eastern European totalitarianism stifles the aesthetic urges of its subjects.

Significantly, in his analysis of this deformation of humans, Miłosz refrains from affirming that our aesthetic impulses are natural. He stops short of ascribing them to human nature. He suggests that they *might be* natural, but he does not claim unequivocally that they *are*. Reflecting on them, he poses a rhetorical question, which he leaves unanswered: "How can one still the thought," he exclaims, "that aesthetic experiences arise out of something organic" (69)?

Besides aestheticism, another side of the non-rational mind, as Miłosz conceives it, is emotionality. Humans, he thinks, have a "rich" "emotional life" (201, 205). Foisting itself upon the human mind, he claims, the extreme rationalism of Eastern Europe's political tyranny represses that life severely. Yet, it cannot stifle the human emotions out of existence. Though badly mutilated, they survive. In fact, they metamorphose into inner, emotional "resistance" to the tyranny, into a "terrible hatred" against it (201, 205).

For Miłosz, the most important part of humans' "emotional life" is our "religious needs" (205, 206). Once again, Miłosz is not sure whether human religiosity is natural or nurtured; as with aesthetics, he hesitates (206-207). But he is sure that it is all too real. "... [I]t matters little," he asserts, "whether religious drives result from 'human nature' or from centuries of conditioning; they exist" (207). Militantly atheistic, Eastern European totalitarianism is their open enemy.

Strange Sync: Tyranny's Inadvertent Harmony with Human Nature

While claiming that Eastern European totalitarianism abuses the human mind, Miłosz's book also shows that that mind harmonizes with that tyranny far more than he realizes. Let us now look at this inadvertent puzzle.

The puzzle appears significantly in relation to human emotionality. For Miłosz, as we just noted, our "religious needs" are its core; driven by a militant atheism, the tyranny of Diamat wars against them. Yet, it does not simply extirpate them; it also tries to satisfy them, at least partially. Miłosz calls Diamat a "New Faith"—an entire, new, surrogate religion. Its tyranny has invented "a new institution[—]the 'club'" (197). Born in the Soviet Union in the 1920s, the club was a cultural-political organization, of various sizes, whose purpose was to promote socialist culture, to serve as a venue for leisure activities, and to provide political education into socialist ideology (Bokov 2017; Siegelbaum 1999; Tsiupursky 2016). This establishment, notes Miłosz, is ubiquitous in the Eastern Bloc. Significantly, it works as a kind of religious temple, bewitching people into embracing the values and ideas of the New Faith (Miłosz 2001, 197-199). "On its walls," writes Miłosz, "hang portraits of Party leaders draped with red bunting. Every few days, meetings following pre-arranged agendas take place, meetings that are as potent as religious rites. ... [These] [c]ollective religious ceremonies induce a state of belief [in the New Faith]" (198). More generally, the totalitarianism of the Eastern Bloc mobilizes education, the mass media, the whole culture of the Bloc, to convert its subjects to Diamat (197-199, 207-208). In effect, observes Miłosz, it has come to resemble a new species of "church" (207). As such, implies Miłosz inadvertently, it meets, at least partway, the immanent religiosity of human beings.

No less surprisingly, Stalinist tyranny also meets partway humans' immanent aestheticism. Miłosz's ostensible claim is that it kills that aestheticism. His text, however, belies this claim. It aligns the two. Thus, it synchronizes Eastern European totalitarianism with our desire for "mystery." Despite his great stress on its rationalism, Miłosz represents the

Eastern Bloc as mysterious. “Mystery,” he observes, “shrouds the political moves determined on high in the distant Center, Moscow” (16). The government of the Soviet Union resembles a secretive, ghostly, sorcerous control center manipulating the entire Eastern Bloc. Mystery also inheres in the Bloc’s ruling ideology. Diamat, writes Miłosz, “is mysterious; no one understands it completely—but that merely enhances its magic power. Its elasticity, as exploited by the Russians, who do not possess the virtue of moderation, can result at times in the most painful edicts” (51). Not comprehended and expounded fully, Diamat allows interpretation, misinterpretation, and manipulation. In Miłosz’s Russophobic words, it is an enigma. Curiously, Miłosz himself acknowledges in his words that this enigma is a source of Diamat’s power of attraction. In describing the Soviet government and Diamat in this way, he mystifies them. By doing so, he aligns them with his conception of immanent humanity. In his text, even though he does not acknowledge it, there is not too much mystery in Diamat’s appeal: the ideology corresponds to humans’ bent for “mystery.”

Even further, the Diamat tyranny corresponds to another human aesthetic impulse: our craving for “strangeness.” This affinity is also striking, given Miłosz’s strong stress on the aggressive dullness of the Eastern Bloc. But, contradicting that emphasis, he also stresses that the Bloc’s realm of tyrannical boredom is exceedingly strange. Indeed, for him, it is downright weird. Describing it, he writes: “The inhabitants of Western countries little realize that millions of their fellow-men, who seem superficially more or less similar to them, live in a world as fantastic as that of the men from Mars” (78). Here, Miłosz is mocking the Eastern Bloc. For him, it is truly an alien universe. In fact, he stresses this weirdness dramatically by foregrounding it in the very preface of his book. There, he confesses:

If I have been able to write this book, it is because the system invented by Moscow has seemed, and still seems to me infinitely strange. Any civilization, if one looks at it with an assumption of naive simplicity (as Swift looked at the England of his day), will present a number of bizarre features which men accept as perfectly natural because they are familiar. But nowhere is this so marked as in the new civilization of the East, which moulds the lives of eight hundred millions of human beings. (xv)

Miłosz, then, approaches the Soviet Union and Eastern Europe as an absurd universe. For him, they come straight out of Kafka. By seeing them in this way, however, he also harmonizes them with what he sees as immanent human aestheticism. Indeed, if the impulse to “strangeness” does belong to human nature, then Miłosz’s claim that the victims of Eastern European tyranny “accept [it] as perfectly natural because they are familiar” with it, makes little sense. On his understanding of human nature, they should accept it not because of its familiarity, but because of its absurdity. What is more, on that understanding, Stalinist totalitarianism should be appealing, naturally, to outsiders—including Miłosz himself. Thus, how he finds it hateful, rather than attractive, appears itself rather bizarre.

Conclusion: Understanding Political Tyranny

Setting out to explore the Stalinist political tyranny enthralled Cold-War Eastern Europe, Miłosz shows, inadvertently, that that tyranny actually aligns with his understanding of human nature. By implying that it corresponds to key traits of “immanent humanity,” he naturalizes that tyranny. This paradox has important implications regarding understanding the character and history of political tyranny. In *The Captive Mind*, as this paper has suggested, essentialized “immanent humanity” obstructs Miłosz’s analysis of tyranny. Thus: postulating a putative human nature—essentializing being human—is a possible impediment to understanding the historical pathology of political tyranny.

References

- Adorno, Theodor W., Else Frenkel-Brunswik, Daniel J. Levinson, and R. Nevitt Sanford. 1950. *The Authoritarian Personality*. New York: Harper.
- Bokov, Anna. 2017. "Soviet Workers' Clubs: Lessons from the Social Condensers." *The Journal of Architecture* 22 (3): 403-436. DOI: 10.1080/13602365.2017.1314316.
- Fiut, Aleksander. 1987. "Czesław Miłosz's Search for 'Humanness.'" *The Slavic and East European Journal* 31 no. 1 (Spring): 65-75. Accessed Dec. 30, 2019. <https://www.jstor.org/stable/307014>.
- Fiut, Aleksander. 1990. *The Eternal Moment: The Poetry of Czesław Miłosz*. Translated by Theodosia S. Robertson. Berkeley and Los Angeles: University of California Press.
- Gleason, Abbott. 1995. *Totalitarianism: The Inner History of the Cold War*. New York: Oxford University Press.
- Jaspers, Karl. 1953. "Endurance and Miracle [Review of *The Captive Mind*]." *Saturday Review*, June 6, 1953, 13, 30.
- Judt, Tony. 2010. "Captive Minds, Then and Now." *The New York Review of Books*, July 13, 2010. Accessed Sept. 18, 2020. <https://www.nybooks.com/daily/2010/07/13/captive-minds-then-and-now/>.
- Miłosz, Czesław. 2001. *The Captive Mind*. Translated by Jane Zielonko. London: Penguin.
- Orwell, George. 1990. *Nineteen Eighty-Four*. London: Penguin.
- Siegelbaum, Lewis H. 1999. "The Shaping of Soviet Workers' Leisure: Workers' Clubs and Palaces of Culture in the 1930s." *International Labor and Working-Class History*, "Gendered Labor" no. 56 (Fall): 78-92. Accessed Feb. 3, 2021. <https://www.jstor.org/stable/27672597>.
- Tsipursky, Gleb. 2016. "Jazz, Power, and Soviet Youth in the Early Cold War, 1948–1953." *The Journal of Musicology* 33 (3): 332-61. Accessed May 5, 2021. <https://www.jstor.org/stable/26414239>.

Incrimination and Forensic Investigation of the Crimes Committed Against Safety and Health at Work in Romanian Legislation

Adrian Cristian Moise

*Associate Professor, PhD, Spiru Haret University of Bucharest, Bucharest, Romania
adriancristian.moise@gmail.com*

ABSTRACT: The study makes a detailed analysis of the main aspects related to the incrimination and the forensic investigation of the crimes committed against safety and health at work in Romanian legislation. Thus, the study first analyzes the offences against safety and health at work contained in the Romanian Criminal Code: the offence of not taking the legal measures of safety and health at work provided by Article 349 of the Romanian Criminal Code and the offence of non-compliance with the legal measures of safety and health at work, stipulated by Article 350 of the Romanian Criminal Code. The study also presents and analyzes the provisions of Article 264 and of Article 265 of the Romanian Labour Code, which refer to crimes in the field of labour relations, safety and health at work. Moreover, the article analyzes and presents some aspects related to Law no. 319/2006 on safety and health at work. This study presents and analyzes several aspects related to the investigation of crimes against safety and health at work, such as: the main issues that need to be clarified by investigating an accident at work and the disposition and conduct of some criminal prosecution acts.

KEYWORDS: crimes committed against safety and health at work, incrimination, forensic, investigation; work accident, criminal prosecution act, Romanian Criminal Code, Romanian Labour Code, Law no. 319/2006

Introduction

The development of labour relations, through the relations between the employee and the employer, presupposes the existence of some rights and obligations of the persons engaged in the labour relations. The rights and obligations of the parties involved in labour relations are regulated by the Romanian Labour Code.

The labour relations are based on the principle of consensuality and good faith.

According to the provisions of Article 5 (n) from Law no. 319/2006 on safety and health at work, *the safety and health at work* means „a set of institutionalized activities aimed at ensuring the best conditions in the work process, defense of life, physical and mental integrity, health of workers and other persons participating in the work process”.

Article 3 of the Romanian Labour Code stipulates the following: “Freedom of labour is guaranteed by the Constitution. The right to work cannot be restricted. Everyone is free to choose the job and profession, trade or activity he/she is to perform. No one may be compelled to work or not to work in a particular job or profession, whatever that may be. Any employment contract that is concluded in non-compliance with the provisions of Article 3 of the Romanian Labour Code is null”.

The forced labour is prohibited. In accordance with the provisions of Article 4 of the Romanian Labour Code, “the term *forced labour* means any work or service imposed on a person under threat or for which the person has not freely expressed his or her consent”.

The principle of equal treatment of all employees and employers works in labour relations. Thus, according to the provisions of Article 5 (2) of the Romanian Labour Code, “any direct or indirect discrimination against an employee, discrimination by association, harassment or victimization, based on the criteria of race, nationality, ethnicity, color, language, religion, social origin, genetic traits, sex, sexual orientation, age, disability, chronic

non-contagious disease, HIV infection, political choice, family situation or responsibility, membership or trade union activity, membership in a disadvantaged category, is prohibited”.

Discrimination refers to any behaviour that consists in ordering, in writing or verbally, a person to use a form of discrimination, which is based on one of the criteria stipulated in Article 5 (2) of the Romanian Labour Code, against one or more persons.

We would like to point out that exclusion, distinction, restriction or preference in respect of a particular job does not constitute discrimination where, by the specific nature of the activity in question or the conditions under which the activity is carried out, there are certain essential and decisive professional requirements, provided that the purpose is legitimate and the requirements are proportionate.

It constitutes direct discrimination any act or deed of distinction, exclusion, restriction or preference, based on one or more of the criteria stipulated in Article 5 (2) of the Romanian Labour Code, which have as purpose or effect the non-granting, restriction or removal of the recognition, use or exercise of the rights provided in the labor legislation.

Indirect discrimination constitutes any provision, action, criterion or apparently neutral practice that has the effect of disadvantaging a person over another person based on one of the criteria stipulated in Article 5 (2) of the Romanian Labour Code unless that provision, action, criterion or practice is objectively justified, by a legitimate aim, and if the means to achieve that aim are proportionate, appropriate and necessary.

According to the provisions of Article 5 (5) of the Romanian Labour Code, harassment “consists of any type of behavior based on one of the criteria stipulated in the Article 5 (2) of the Romanian Labour Code, which has as its purpose or effect the damage of a person's dignity and leads to the creation of an intimidating, hostile, degrading, humiliating or offensive environment”.

In accordance with the provisions of Article 5 (6) of the Romanian Labour Code, discrimination by association “consists of any act or deed of discrimination committed against a person who, although not part of a category of persons identified according to the criteria stipulated in Article 5 (2) of the Romanian Labour Code, is associated or presumed to be associated with one or more persons belonging to such a category of persons”.

Therefore, Article 5 (7) of the Romanian Labour Code defines the notion of victimization, which is “any adverse treatment that arises in response to a complaint or legal action for breach of the principle of equal treatment and non-discrimination”.

According to Article 5 (g) of the Law no. 319/2006 on safety and health at work, the work accident means “violent injury to the body, as well as acute occupational intoxication, which occur during the work process or in the performance of duties and which cause temporary incapacity for work for at least 3 calendar days, disability or death”.

In essence, the specialty literature supports the theory that the accident at work is an unexpected event, caused by a violent injury of a person participating in the production process, likely to interrupt the normal work and cause physical, moral and material damage to the victim, as well as the unit in which it took place (Stancu 2010, 654).

Thus, we are of the opinion that the violent, unexpected occurrence of a work accident should not be confused with what is unpredictable, fortuitous, work accidents being in most cases possible to predict and, therefore, prevent, essential aspect for establishing legal liability.

The classification of work accidents is made according to several criteria, according to the provisions of Article 31 of the Law no. 319/2006, respectively that of the consequences produced and the number of injured persons. Thus, work accidents are classified into: accidents that cause temporary incapacity for work of at least three calendar days; accidents that cause disability; fatal accident; collective accidents, when at least three people are injured at the same time and for the same reason.

The registration of the work accident is made on the basis of the search investigation report. The work accident registered by the employer is reported by him to the territorial labour inspectorate, as well as to the insurer, according to Article 32 (1) (2) of the Law no. 319/2006 on safety and health at work.

The offences committed against safety and health at work contained in the Romanian Criminal Code are the following: the offence of not taking the legal measures of safety and health at work provided by Article 349 of the Romanian Criminal Code and the offence of non-compliance with the legal measures of safety and health at work, stipulated by Article 350 of the Romanian Criminal Code.

The legal text of the 349 of the Romanian Criminal Code states: “(1) Failure to take any of the legal measures for safety and health at work by the person who had the duty to take such measures, if an imminent danger of an accident at work or occupational disease is created, shall be punished by imprisonment from six months to three years or with a fine. (2) The deed provided by para. (1) committed through guilt shall be punished by imprisonment from three months to one year or by a fine”.

The legal text of the 350 of the Romanian Criminal Code states: “(1) Failure by any person to comply with the obligations and measures laid down in respect of safety and health at work, if this creates an imminent danger of an accident at work or of an occupational disease, shall be punishable by imprisonment from six months to three years or with a fine. (2) The reinstatement of the installations, machines and equipments shall be sanctioned with the same penalty, before the elimination of all deficiencies for which the measure of stopping them has been taken. (3) The facts stipulated by para. (1) and para. (2) committed through guilt shall be punished by imprisonment from three months to one year or with a fine”.

The offences in the field of labour relations, safety and health at work are contained in Article 264 and Article 265 of the Romanian Labour Code.

The legal text of Article 264 of the Romanian Labour Code states: “(1) It constitutes an offence and is punishable by imprisonment from one month to one year or by a criminal fine for the act of the person who repeatedly establishes for employees employed under the individual employment contract salaries below the minimum gross country wage guaranteed in payment, provided by law. (2) With the punishment provided by para. (1) the offence consisting in the unjustified refusal of a person to submit legal documents to the competent bodies, in order to prevent checks on the application of general and special regulations in the field of labour relations, safety and health at work, within a maximum of fifteen days from the receipt of the second request. (3) With the punishment provided by para. (1) shall also be sanctioned the offence consisting in preventing in any form the competent bodies from entering, under the conditions provided by law, in areas, premises, spaces, lands or means of transport that the employer uses them in carrying out his professional activity, for to carry out checks on the application of general and special regulations in the field of labour relations, safety and health at work”.

The legal text of Article 265 of the Romanian Labour Code states: “(1) The employment of a minor with non-compliance with the legal conditions of age or his use for the performance of activities in violation of the legal provisions regarding the employment of minors is a crime and is punishable by imprisonment from 3 months to 2 years or a fine. (2) The employment of a person in a situation of illegal residence in Romania, knowing that he/she is a victim of human trafficking, constitutes a crime and is punishable by imprisonment from 3 months to 2 years or a fine. (3) If the work performed by the persons stipulated by para. (2) is likely to endanger their life, integrity or health, the punishment is imprisonment from 6 months to 3 years. (4) In case of committing one of the offences stipulated by para. (2) and para. (3), the court may also order the application of one or more complementary penalties”.

The pre-existing conditions of the offences committed against safety and health at work contained in the Romanian Criminal Code

In the case of the offence of not taking the legal measures of safety and health at work provided by Article 349 of the Romanian Criminal Code, in the structure of the incrimination there is a typical criminal variant and an attenuated variant. The difference between the two variants is given by the form of fault with which the deed is committed. The typical variant from the point of view of the subjective side presupposes the form of fault of the intention, while for the attenuated variant the form of fault is the guilt.

In the case of the offence of non-compliance with the legal measures of safety and health at work, stipulated by Article 350 of the Romanian Criminal Code, in the structure of the incrimination there is a typical criminal variant, an assimilated variant and a common attenuated variant. In the case of the common attenuated variant, the form of fault is the guilt.

The special legal object of the offence of not taking the legal measures of safety and health at work and of the offence of non-compliance with the legal measures of safety and health at work consists of the social relations that are formed and developed in connection with labour protection, whose existence is conditioned by the taking and observance of legal measures of safety and health at work by the persons who organize, lead and control the work process (Dobrinouiu, Pascu, Hotca, Chiş, Gorunescu, Neagu, Dobrinouiu and Sinescu 2014, 790).

The material object of the offences contained in Article 349 and in Article 350 of the Romanian Criminal Code could be the body of a person who suffers an accident at work or an occupational disease as a result of failure to take the legal measures for safety and health at work or non-compliance with the legal measures of safety and health at work.

However, the majority opinion in the specialty literature, in the case of these two crimes is that the material object is missing, only in exceptional cases the crimes contained in Article 349 and in Article 350 of the Romanian Criminal Code could have as material object the body of a person suffering physical injury, without being met the conditions for the existence of other offences such as, for example, the crime of bodily injury, or the crime of hitting or other violence (Dobrinouiu, Pascu, Hotca, Chiş, Gorunescu, Neagu, Dobrinouiu and Sinescu 2014, 790).

The active subject of the crime of not taking the legal measures of safety and health at work stipulated by Article 349 of the Romanian Criminal Code is qualified, as this crime can be committed only by any person who had the task according to the law to take the legal measures of safety and health in the work process. Usually the physical person is the active subject of this crime, because it leads and controls the work process, having clear responsibilities in taking occupational safety and health measures.

However, we are of the opinion that the legal person may also be an active subject of the offence provided by Article 349 of the Romanian Criminal Code. The criminal participation is possible in all its forms, co-author, incitement and complicity, only if the condition regarding the special quality required by law is met.

The active subject of the crime of non-compliance with the legal measures of safety and health at work stipulated by Article 350 of the Romanian Criminal Code can be a physical person, ie a person who has the status of employee or worker and can also be a legal person who has the status of employer, being in employment or service relations with a certain employee and who manages that enterprise. The criminal participation is possible in all its forms, co-author, incitement and complicity.

The passive subject of the crime of not taking the legal measures of safety and health at work and of the crime of non-compliance with the legal measures of safety and health at work it is always the Romanian state. The two offences from the Romanian Criminal Code can also have a *secondary passive subject*, only in the situation when the physical persons are injured by the committed deeds.

The constitutive content of the offences committed against safety and health at work contained in the Romanian Criminal Code

The material element of the objective side, in the case of the crime of not taking the legal measures of safety and health at work provided by Article 349 of the Romanian Criminal Code consists in an inaction, respectively in the omission to take the legal measures regarding safety and health at work by the person who has these attributions at work, only if this conduct creates an imminent danger of an accident at work or of an occupational disease.

We emphasize that the failure to take these legal measures of safety and health at work can be achieved by a total omission, when the active subject does not take any legal measures of safety and health at work to ensure the conditions for safe work or by a partial omission, in the situation where the active subject has taken at least a measure of labour protection, but has not taken all the measures of labour protection that from the point of view of the labor legislation had to take, having this obligation.

By way of example, according to the provisions of Article 7 (1) of Law no. 319/2006 on safety and health at work, the employer has the obligation to take the necessary measures to: ensuring the safety and protection of workers' health; occupational risk prevention; informing and training workers; ensuring the organizational framework and the means necessary for safety and health at work. The employer has the obligation to follow the adaptation of these listed measures, taking into account the modification of the conditions, and to improve the existing situations.

The employer is also obliged to implement these measures on the basis of the following general principles of prevention: assessment of unavoidable risks, risk avoidance; combating risks at source; adapting work to man, in particular as regards the design of jobs, the choice of work equipment, working and production methods, in order to reduce the monotony of work, the work at a predetermined pace and reduce their effects on health; adaptation to technical progress; replacing what is dangerous with what is not dangerous or with what is less dangerous; developing a coherent prevention policy that includes technologies, work organization, working conditions, social relations and the influence of factors in the work environment; the adoption, as a matter of priority, of collective protection measures over individual protection measures; providing appropriate instructions to workers.

According to the provisions of Article 7 (4) of Law no. 319/2006, taking into account the nature of the activities of the enterprise and/or unit, the employer has the obligation: to assess the risks to the safety and health of workers, including the choice of work equipment, chemicals or preparations used and the arrangement of workplaces; the prevention measures, as well as the working and production methods applied by the employer to ensure the improvement of the level of safety and protection of workers' health and to be integrated into all the activities of the enterprise and/or unit concerned and at all hierarchical levels; to take into account the worker's safety and health capabilities at work when entrusting him with tasks; to ensure that the planning and introduction of new technologies are the subject of consultations with workers and/or their representatives regarding the consequences for workers' safety and health, determined by the choice of equipment, conditions and working environment; take appropriate measures to ensure that, in high and specific risk areas, access is allowed only to workers who have received and mastered the appropriate instructions.

Another condition for the fulfillment of the material element of the crime contained in Article 349 of the Romanian Criminal Code is that this crime must be committed only at the workplace, which may be located in the premises of the enterprise or elsewhere in the area of that enterprise where the employee has access to the work process.

The material element of the objective side, in the case of the crime of non-compliance with the legal measures of safety and health at work provided by Article 350 of the Romanian Criminal Code consists in an inaction, respectively in the omission to comply with the

obligations and measures established in respect of safety and health at work, if such non-compliance creates an imminent danger of an accident at work or of an occupational disease. The omission may be total when the active subject does not comply with any measure or obligation, or partly when the active subject has not fulfilled or has complied with one or more established obligations or measures regarding safety and health at work (Dobrinouiu, Pascu, Hotca, Chiş, Gorunescu, Neagu, Dobrinouiu and Sinescu 2014, 794).

We note that non-compliance with the obligations and measures established with regard to safety and health at work can also be done through an action, ie through the option provided by Article 350 (2) of the Romanian Criminal Code, which refers to the reinstatement of the installations, machines and equipments, before the elimination of all deficiencies for which the measure of stopping them has been taken.

Another condition for the fulfillment of the material element of the crime stipulated by Article 350 of the Romanian Criminal Code is that this crime must be committed only at the workplace, which may be located in the premises of the enterprise or elsewhere in the area of that enterprise where the employee has access to the work process.

The immediate consequence, in the case of the offence of not taking the legal measures of safety and health at work provided by Article 349 of the Romanian Criminal Code consists of an imminent danger of an accident at work or an occupational disease (Dobrinouiu, Pascu, Hotca, Chiş, Gorunescu, Neagu, Dobrinouiu and Sinescu 2014, 791).

We consider that the existence of the crime contained in Article 349 of the Romanian Criminal Code is not conditioned by the occurrence of an accident at work or an occupational disease, being sufficient to create an imminent danger of injury. In accordance with the provisions of Article 5 (l) from the Law no. 319/2006 the notion of serious and imminent danger of injury is defined “as the concrete, real and current situation which lacks only the triggering opportunity to cause an accident at any time”.

If, after committing the deed contained in Article 349 of the Romanian Criminal Code, there is also a physical injury of the employee, then the rules of the competition of offences under Article 38 of the Romanian Criminal Code will be applied.

According to Article 5 (g) of Law no. 319/2006, the work accident represents “the violent injury of the organism, as well as the acute professional intoxication, which take place during the work process or in the performance of work duties and which cause temporary incapacity for work of at least 3 calendar days, disability or death”.

Moreover, Article 5 (h) of Law no. 319/2006 defines the notion of occupational disease as “a condition that occurs as a result of the exercise of a mystery or profession, caused by harmful physical, chemical or biological agents characteristic of the workplace, as well as by overloading various organs or systems of the body in the work process”.

The immediate consequence, in the case of the offence of non-compliance with the legal measures of safety and health at work stipulated by Article 350 of the Romanian Criminal Code consists of an imminent danger of an accident at work or an occupational disease (Dobrinouiu, Pascu, Hotca, Chiş, Gorunescu, Neagu, Dobrinouiu and Sinescu 2014, 795). And in this situation, we believe that the existence of the crime contained in Article 350 of the Romanian Criminal Code is not conditioned by the occurrence of an accident at work or an occupational disease, being sufficient to create an imminent danger of injury.

We emphasize that if, after committing the deed contained in the text of the Article 350 of the Romanian Criminal Code, a physical assault occurs, then the rules of the competition of offences under Article 38 of the Romanian Criminal Code will apply.

In the case of the offence of not taking the legal measures of safety and health at work provided by Article 349 of the Romanian Criminal Code, as well as in the case of the offence of non-compliance with the legal measures of safety and health at work stipulated by Article 350 of the Romanian Criminal Code there must be a *causality link* between the activity of the offender and the consequence produced, which usually results from the materiality of the act.

Regarding *the subjective side*, we note that the offence of not taking the legal measures of safety and health at work provided by Article 349 of the Romanian Criminal Code, in the case of the typical variant, is committed with the form of fault of both direct and indirect intention. In the case of the attenuated variant for the crime included in Article 349 of the Romanian Criminal Code the commission of the deed is performed with the form of fault of guilt.

As for *the subjective side*, we note that the offences of non-compliance with the legal measures of safety and health at work stipulated by the Article 350 of the Romanian Criminal Code, in the case of the typical variant and of the assimilated variant are committed with the form of fault of both direct and indirect intention. We emphasize that in the case of the common attenuated variant of the offence of non-compliance with the legal measures of safety and health at work, the form of fault is the guilt.

The forms of the offences committed against safety and health at work contained in the Romanian Criminal Code

For offences contained in Article 349 and Article 350 of the Romanian Criminal Code *the preparatory acts* and *the attempt* they are not criminalised and thus they are not punishable.

The offence of not taking the legal measures of safety and health at work stipulated by Article 349 of the Romanian Criminal Code and the offence of non-compliance with the legal measures of safety and health at work stipulated by Article 350 of the Romanian Criminal Code are both *consumed* when the material element is fully executed and the imminent danger of an accident at work or occupational disease is formed.

Therefore, the offences committed against safety and health at work contained in the Romanian Criminal Code are *consumed* when the material element is carried out and the socially dangerous result is produced.

We want to emphasize that the *exhaustion* of the offences committed against safety and health at work contained in the Romanian Criminal Code occurs at the time of committing the last act criminalised by law.

The offences committed against safety and health at work contained in the Romanian Criminal Code can be committed in continued form.

Sanctions for the offences committed against safety and health at work contained in the Romanian Criminal Code

The offence of failure to take the legal measures for safety and health at work by persons who were required to take such measures is punishable by imprisonment from 6 months to 3 years or a fine. The same deed committed with the form of fault of guilt is punishable by imprisonment from 3 months to one year or a fine.

The commission of the deeds in Article 350 (1) and (2) of the Romanian Criminal Code shall be punishable by imprisonment from 6 months to 3 years or by a fine. The offences committed with the form of fault of guilt under Article 350 (3) from the Romanian Criminal Code shall be punished by imprisonment from 3 months to one year or by a fine.

The pre-existing conditions of the offences in the field of labour relations, safety and health at work contained in the Romanian Labour Code

The special legal object of the offences in the field of labour relations, safety and health at work, stipulated by Article 264 and Article 265 of the Romanian Labour Code consists of the social relations that are formed in connection with the obligations of the employers regarding

the application of the provisions in the field of labour relations, safety and health at work (Hotca, Gorunescu, Neagu, Pop, Sitaru and Geamănu 2019, 220).

The offences in the field of labour relations, safety and health at work, stipulated by Article 264 and Article 265 of the Romanian Labour Code have no *material object*.

We emphasize, however, that there is an exception, in the case of the Article 265 of the Romanian Labour Code the material object is the body of the employed person, who is in a situation of illegal residence in Romania, being victim of human trafficking, and the work performed by this employed person endangering one's own life, integrity or health.

The active subject of the offences in the field of labour relations, safety and health at work, stipulated by Article 264 and Article 265 of the Romanian Labour Code can be any person, whether physical or legal who meets the general conditions to be criminally liable. The criminal participation is possible in all its forms, co-author, incitement and complicity (Hotca, Gorunescu, Neagu, Pop, Sitaru, Geamănu, 2019, 223).

The passive subject of the offence in the field of labour relations, safety and health at work, stipulated by Article 264 of the Romanian Labour Code it is always the Romanian state. Regarding the offence in the field of labour relations, safety and health at work, stipulated by Article 265 of the Romanian Labour Code, it has as its *main passive subject* the Romanian state.

The offence stipulated by Article 265 of the Romanian Labour Code can also have a *secondary passive subject*, only in the situation when the physical persons are injured by the committed deeds, endangering their lives, integrity or health.

The constitutive content of the offences in the field of labour relations, safety and health at work contained in the Romanian Labour Code

The material element of the objective side, in the case of the offence in the field of labour relations, safety and health at work provided by Article 264 (1) of the Romanian Labour Code consists in an action by which repeatedly it is established for the employees employed under the individual employment contract salaries below the minimum gross country wage guaranteed in payment, provided by law. Therefore, this act constitutes an offence only if it is committed repeatedly, at least twice. We specify that the minimum salary on gross economy in Romania is currently 2300 Romanian lions.

The material element of the objective side, in the case of the offence in the field of labour relations, safety and health at work provided by Article 264 (2) of the Romanian Labour Code consists in an action by which a person unjustifiably refuses to submit legal documents to the competent bodies, in order to prevent checks on the application of general and special regulations in the field of labour relations, safety and health at work, within a maximum of fifteen days from the receipt of the second request (Hotca, Gorunescu, Neagu, Pop, Sitaru and Geamănu 2019, 221).

We emphasize that the unjustified refusal of a person to submit legal documents to the competent bodies must be preceded by two requests from these competent bodies to verify whether the general and special regulations in the field of labour relations, health and safety at work apply, and in the situation in which a single request was made, this deed does not constitute a crime, but at most this deed is a contravention.

The material element of the objective side, in the case of the offence in the field of labour relations, safety and health at work provided by Article 264 (3) of the Romanian Labour Code consists in an action whereby the competent bodies are prevented from entering under the conditions provided by law in areas, premises, spaces, lands or means of transport that the employer uses them in carrying out his professional activity, for to carry out checks on the application of general and special regulations in the field of labour relations, safety and health at work.

In order for the offence provided by Article 264 (3) the Romanian Labour Code to exist, the competent control bodies must carry out the activity of verifying the application of general and special rules in the field of labour relations, safety and health at work only in compliance with all the legal rules in the field.

The material element of the objective side, in the case of the offence in the field of labour relations, safety and health at work provided by Article 265 (1) of the Romanian Labour Code consists in an employment action of a minor with non-compliance with the legal conditions of age or his use for the performance of activities in violation of the legal provisions regarding the employment of minors (Hotca, Gorunescu, Neagu, Pop, Sitaru and Geamănu 2019, 223).

Thus, the deed described by this rule of incrimination constitutes an offence, only if the perpetrator employs a minor under the age of 15, according to the provisions of Article 49 (4) of the Romanian Constitution, which state: “minors under the age of 15 may not be employed as employees”.

The material element of the objective side, in the case of the offence in the field of labour relations, safety and health at work provided by Article 265 (2) of the Romanian Labour Code consists in an employment action of a person in a situation of illegal residence in Romania, knowing that he/she is a victim of human trafficking.

The material element of the objective side, in the case of the offence in the field of labour relations, safety and health at work provided by Article 265 (3) of the Romanian Labour Code consists in an action whereby the persons referred to Article 265 (2) of the Romanian Labour Code perform work which is likely to endanger their life, integrity or health.

The immediate consequence, in the case of the offences in the field of labour relations, safety and health at work provided by Article 264 and Article 265 of the Romanian Labour Code consists in the non-fulfillment of the obligations by the employers regarding the application of the provisions in the field of labour relations, safety and health at work, these regulations in the field of the labour law not being applied or being illegally applied by the employers.

In the case of the offences in the field of labour relations, safety and health at work provided by Article 264 and Article 265 of the Romanian Labour Code there must be a *causality link* between the activity of the criminal of and the consequence produced, which usually results from the materiality of the act.

Regarding *the subjective* side, we note that the offences in the field of labour relations, safety and health at work provided by Article 264 and Article 265 of the Romanian Labour Code are committed with the form of fault of both direct and indirect intention.

The forms of the offences in the field of labour relations, safety and health at work contained in the Romanian Labour Code

For offences contained in Article 264 and Article 265 of the Romanian Labour Code *the preparatory acts* and *the attempt* they are not criminalised and thus they are not punishable.

The offences in the field of labour relations, safety and health at work contained in the Romanian Labour Code are *consumed* when the material element is carried out and the socially dangerous result is produced.

We remark that the *exhaustion* of the offences in the field of labour relations, safety and health at work contained in the Romanian Labour Code occurs at the time of committing the last act criminalised by law.

The offences in the field of labour relations, safety and health at work contained in the Romanian Labour Code can be committed in continued form.

Sanctions for the offences in the field of labour relations, safety and health at work contained in the Romanian Labour Code

The offence in the field of labour relations, safety and health at work provided by Article 264 of the Romanian Labour Code is punishable by imprisonment from one month to 1 year or a fine. The same deed committed with the form of fault of guilt is punishable by imprisonment from one month to one year or by a criminal fine.

The two simple variants of the offence in the field of labour relations, safety and health at work provided by Article 265 (1) (2) of the Romanian Labour Code are punishable by imprisonment from 3 months to 2 years or a fine. The aggravating variant of the offence in the field of labour relations, safety and health at work provided by Article 265 (3) of the Romanian Labour Code is punishable by imprisonment from 6 months to 3 years.

The forensic investigation of the crimes committed against safety and health at work

The forensic investigation of the crimes committed against safety and health at work, in its broadest sense, is an activity that differs from the investigation of other facts or events in that it is applicable not only the actual forensic methodological rules but also rules expressly provided in labour law or in other special normative acts.

In accordance with the provisions of Article 29 (1) from the Law no. 319/2006 on safety and health at work the investigation of work accidents is mandatory and is carried out as follows: by the employer, in the case of events that have produced temporary incapacity for work; by the territorial labour inspectorates, in the case of events that caused obvious or confirmed disability, death, collective accidents, dangerous incidents, in the case of events that caused temporary incapacity for work to employees at employers of physical persons, as well as in situations with missing persons; by the Labour Inspectorate, in case of collective accidents, generated by some special events, such as damages or explosions; by the territorial public health authorities, respectively of the municipality of Bucharest, in case of suspicions of occupational disease and diseases related to the profession.

The result of the investigation of the event will be recorded in a report, which will establish: the causes and circumstances in which the work accident took place; the provisions of the labour protection norms that were not observed; the persons who are responsible for the non-observance of the labour protection norms; the sanctions applied; the legal or physical person to whom the work accident is registered; measures to be taken to prevent other accidents.

According to the provisions of Article 29 (3) from the Law no. 319/2006, “in case of death of the injured person as a result of an event, the competent forensic institution is obliged to submit to the territorial labour inspectorate, within 7 days from the date of death, a copy of the forensic medicine report”.

According to the provisions of Article 5 (f) from the Law no. 319/2006, the *event* represents “the accident that caused the death or injury of the body, produced during the work process or in the performance of duties, the situation of a missing person or the road or traffic accident, in the conditions in which employees were involved, the incident dangerous, as well as the case susceptible to occupational or occupational disease”.

Thus, any event will be communicated immediately to the employer, by the manager of the workplace or by any other person who has knowledge about its occurrence.

According to the provisions of Article 27 (1) from the Law no. 319/2006, the employer has the obligation to communicate the events, immediately, as follows to: “the territorial labour inspectorates; the insurer, according to the Law no. 346/2002 on insurance for accidents at work and occupational diseases, as subsequently amended and supplemented,

events followed by temporary incapacity for work, invalidity or death, upon their confirmation; the criminal investigation bodies”.

Any medicine doctor, including the labour medicine doctor who has a contractual relationship with the employer, according to the legal provisions, will mandatorily signal the suspicion of occupational or profession-related disease, detected on the occasion of medical services.

We mention that this action to signal suspicions related to occupational disease will be carried out by the territorial public health directorate.

A characteristic of the forensic investigation process of crimes committed against safety and health at work is determined not only by the fact that it is carried out according to the particularities of each case, but also by the composition of the team that performs it, it has a complex composition (Newton, 2008, 65).

We specify, in addition to the competent prosecutor to carry out the criminal investigation phase in question, and to the police bodies, forensic experts, also participate specialists in the field of labour protection in which the event took place, including the forensic medicine examiner, if the accident caused injury or death to persons (Newton, 2008, 65-66).

The notification of the criminal investigation bodies, regarding the commission of crimes against safety and health at work is carried out according to the provisions of Article 288 (1) of the Romanian Criminal Procedure Code, by complaint or denunciation, and by acts concluded by other finding bodies provided by law or *ex officio* (Moise and Stancu 2017, 108).

The criminal prosecution phase in the case of the crimes committed against safety and health at work is usually carried out by the local Prosecutor's Offices, and their jurisdiction for the trial phase belongs to the Courts.

The phase of the criminal prosecution within the criminal process, in the case of crimes committed against safety and health at work, is carried out obligatorily by the prosecutor, who is the only one authorized to establish the causes and circumstances of the work accident, in order to establish whether it meets the constitutive elements of the crimes committed against safety and health at work.

The main issues that need to be clarified by investigating an accident at work are the following (Moise and Stancu 2017, 109-110): identification of the causes of the work accident; determining the circumstances in which the work accident took place; determining the consequences of the work accident; establishing the legal provisions that have been violated; identifying the persons responsible for the organization and management of the production process; initiation of measures to prevent other work accidents.

In the case of the forensic investigation of the crimes committed against safety and health at work, the most frequently ordered acts of criminal prosecution by the judicial bodies are the following: the crime scene investigation; the hearing of witnesses, suspects or defendants; the disposition and performing of the judicial expertises; performing confrontations and re-enactments; performing home searches (Scheb, Scheb II 2011, 451).

The crime scene investigation of the work accidents is a very important activity, the quality of which depends effectively on the entire resolution of the case. The crime scene investigation of accidents at work must be carried out as a matter of urgency by the crime scene investigation team, which will include the competent judicial bodies to carry out the criminal investigation.

The actual investigation of the crime scene, in the case of crimes committed against safety and health at work is to be carried out, in general, according to the forensic tactical rules of this procedural activity, going through the same phases, static and dynamic, of course, after taking the first measures and after the preliminary preparing of the crime scene investigation.

It should be emphasized that one of the first issues that investigators need to pay special attention to is the determination of the changes made at the scene of the accident or

breakdown. In this regard, forensic practice has prohibited any change in the position of objects of any kind that have been involved in the work accident.

However, there is only one case in which it is possible to change the initial state of the crime scene, namely whether it could cause other accidents or endanger the life and health of people or the security of the company.

Therefore, before changing the place of the work accident, the investigators will fix with the help of the digital camera or through the video recording the whole scene of the crime, they will make sketches, which will be made available to the judicial bodies (Palmiotto 1994, 151). We point out that all these actions are taken by the crime scene investigation team in order to prevent some attempts to change intentionally the location of the event by some people working in the company.

The crime scene investigation team, in the case of the crimes committed against safety and health at work must pursue the following objectives (Moise and Stancu 2017, 111): establishing the position, initial condition of installations, machines and equipment, considering whether or not they were in operation before the accident, whether they were handled by authorized workers, whether or not anomalies were observed in operation; thorough research of the traces, for this purpose paying attention to the discovery, fixation and removal of all categories of traces in order to clarify the facts in which the work accident occurred; thorough examination of the victim, if he was not transported from the scene of the work accident, of the position report to the machines, installations or equipment involved in the work accident; verification and collection of registers, journals, records, diagrams, which may contain data on the development of the technological process, the condition of the installations, the taking of appropriate labour protection measures, their observance, the performance of revisions; clarification of any negative circumstances in the factual state of the accident site, a circumstance likely to provide indications regarding the attempt to conceal the nature of the event produced; knowledge of the specifics and peculiarities of the place where the work accident occurred; initiation of the first technical and organizational measures to prevent other events, the judicial bodies having the obligation to supervise their implementation; hearing the eyewitnesses and the victims of work accidents.

The results of crime scene investigation of the work accidents are fixed by means of the crime scene investigation report, being the main means of fixing this act of criminal investigation.

The crime scene investigation report is concluded by the criminal investigation bodies on the occasion of the investigation of the crime scene of the work accidents, in accordance with the provisions of Article 199 of the Romanian Criminal Procedure Code and with the provisions of Article 195 Romanian Criminal Procedure Code, and to which sketches, photo pictures and audio-video recordings can be attached (Buquet 2011, 271).

According to the provisions of Article 28 from the Law no. 319/2006 on safety and health at work, in the case of traffic accidents on public roads, in which among the victims are also persons performing duties, the competent traffic police bodies will send to the employers and to the territorial labour inspectorates within 5 days from the date of the request, a copy of the crime scene investigation report.

Other important criminal prosecution acts in the forensic investigation process of the crimes committed against safety and health at work are the judicial expertises: the forensic expertises and the forensic medicine expertises.

Conclusions

Considering the analysis performed on crimes committed against safety and health at work, we noticed that these crimes are not incriminated in a unitary way in the Romanian legislation, being at present too many normative acts in force in this field (the Romanian

Criminal Code, the Romanian Labour Code and the Law no. 319/2006 on safety and health at work) which contain provisions that can sometimes overlap. That is why, we propose that in the future all regulations related to the crimes in the field of labour relations, safety and health at work should be included in a single legal instrument.

We highlight the importance of the crime scene investigation, which is the most often approved and carried out criminal prosecution act during the forensic investigation process of the crimes committed against safety and health at work.

The crime scene investigation, in the case of crimes committed against safety and health at work is carried out by a complex team of investigators composed of prosecutors and specialists in various fields, such as judicial police, forensic medicine examiners, forensic experts, inspectors from the territorial labour inspectorates and from the territorial directorates of labour protection, occupational medicine doctors.

Therefore, the crime scene investigation team in the case of crimes committed against safety and health at work, consists of specialists in the fields of different sciences, which obliges them to work continuously together throughout the forensic investigation process.

The crime scene investigation team has a very important mission, that of identifying all the circumstances in which the accident at work took place in order to establish the correct legal framework of the deed, the forms of guilt and the legal or administrative liability of each person involved in the work accident. Another important mission of the crime scene investigation team is to clarify whether the accident occurred during the work process, and whether the injured person was performing his/her duties.

We want to underline that the crime scene investigation team that investigates the crimes committed against safety and health at work is not to be confused with the work accident investigation commission, appointed by the management of the legal entity, in the event of work accidents that result in the temporary disability of at least one day of an employee. Moreover, the crime scene investigation team it should also not be confused with the team investigating events such as fire or explosion damage.

References

- Buquet, Alain. 2011. *Manuel de criminalistique moderne et de police scientifique, cinquième édition argumentée et mise à jour*. Paris: Presses Universitaires de France.
- Dobrinou, Vasile, Ilie Pascu, Mihai Adrian Hotca, Ioan Chiş, Mirela Gorunescu, Norel Neagu, Maxim Dobrinou, Mircea Constantin Sinescu. 2014. *The new Criminal Code commented. The special part*, Second Edition. Bucharest: Universul Juridic Publishing House.
- Hotca, Mihai Adrian, Mirela Gorunescu, Norel Neagu, George Dominic Pop, Alexandru Sitaru, Radu Florin Geamănu. 2019. *Crimes under special laws. Comments and explanations*, Fifth Edition. Bucharest: C.H. Beck Publishing House.
- Moise, Adrian Cristian and Emilian Stancu. 2017. *Forensics. Methodological elements for investigating offences. University course*. Bucharest: Universul Juridic Publishing House.
- Newton, Michael. 2008. *The Encyclopedia of Crime Scene Investigation, New York*. New York: Infobase Publishing Inc.
- Palmiotto, Michael J. 1994. *Criminal investigation*. Chicago, Illinois: Nelson-Hall Publishers.
- Scheb, John M., and John M. Scheb II. 2011. *Criminal Law and Procedure*, Seventh Edition. Wadsworth, Ohio: Cengage Learning.

Anger as a Crime Generating Factor

Cristian Dan

“Dimitrie Cantemir” Christian University of Bucharest, Romania
danrcristian@gmail.com

ABSTRACT: In the early stages of the evolution of the human species, feelings and sensations played a particularly important role in adapting and sustaining existential activities and how to integrate man in relation to the surrounding nature. Of all the feelings, the predominant psychological characteristic was the feeling of anger, coming from the need to preserve, to defend life and things acquired, in front of the attackers who could be both fierce animals and other fellows of the same species. For millions of years, these mechanisms have contributed to the intrinsic and external development of society, being present in human interactions within tribes, cities, villages and cities. Being a sentimental trait developed over such a long period of time, the feeling of anger, inscribed in human DNA, is nowadays a dangerous factor, generating antisocial behaviors and actions that are subject to Criminal Law, which we often learn to control it. The article aims to analyze this mechanism, from a historical, psychological and cultural point of view in relation to Criminal Law and the facts determined by this feeling, highlighting, on the one hand, the crimes that can be committed under its rule, and on the other part, the methods of preventing and combating them identified in today's society.

KEYWORDS: anger, morality, genetics, criminal law, crime, psychology, embezzlement, theft, violence, history, legal system, conduct, prevention, combat, rape

The origins of anger and the ways of manifestation in different cultures in history

Existence on our planet in the prehistoric period was very difficult, especially against the background of the struggles for the supremacy of the species. Often, grand animals or those that had already developed conservation mechanisms over millions of years threatened the few resources necessary for life, which man collected in his migrations. This is why the human species has had to psychologically develop a system of self-defense that anatomically facilitates functions of attack and removal of danger. This is how the feeling of anger arises (Marr 2012, 136).

Psychologists explain anger as that unconscious mechanism, developed empirically, transmitted genetically from generation to generation, which contributes to the conservation of the species by increasing the ability to perform aggressive actions in order to meet the primary need for human safety and development (Zlate 2000, 54).

Throughout history, this deeply primitive feeling imprinted in the structure of human behavior has manifested itself in various forms of aggression such as tribal wars, hunting, physical abuse applied to those who disobeyed the leaders, inquisitions of all kinds and struggles for religious supremacy and more (Geiss 2012, 31).

A particularly important aspect in the development of the human intellect is the repetition, in this matter, the science of neurolinguistics programming, called the automatic behavior of the human being with the term cognitive anchor, i.e. that ability to perform actions or model certain patterns of behavior unconsciously, based on the long-term execution of an activity that becomes part of the behavior (Oconnor 2019, 311).

A relatively new science, synergology, presents anger as the feeling highlighted by the raising of the eyebrows, the expansion of the temples and the clenching of the jaw on the face, followed by the strong vascularization of the arms and legs at the trunk, mechanisms that allow man to hit, run or to be afraid of other members of the species. This branch of psychology states that modern anger often stems from cognitive trauma developed in early childhood and which develops during adulthood into primary behaviors giving rise to more or less deliberate actions (Turchet 2018, 161).

In any case, the development of the human species has rendered useless any innate feeling of anger, nowadays, man, having the ability to react consciously to the emergence of various external threats designed to destabilize the proper conduct of business or damage vital aspects of its existence or of socio-economic needs (Stănilă 2021a, 66).

Even so, the anchors accumulated throughout history, make it almost impossible to eliminate aggressive behaviors from the genetic system, often activating systems of attack on peers, which give rise to the execution of acts provided and incriminated by criminal law such as violence, rape, embezzlement, theft, threat, murder and more (Boroi 2019, 198).

Crimes committed by activating different types of anger

From the point of view of the object pursued, which can activate the feeling of anger, there are two broad categories of human activities on which it can be carried out, the social plan and the economic plan. Depending on the two types, we can distinguish three aggressive typologies directed against other people social anger, economic anger and sexual anger (Butoi 2019, 301).

Each of the three types of anger gives rise to various illicit conduct, incriminated by criminal law and contrary to social norms unanimously accepted in human interactions as viewed by today's society, called crimes (Stănilă 2021b, 63).

Thus, social anger leads to the commission of crimes that consciously satisfy human social needs such as respect, social status, recognition of others, and crimes that can be committed in these circumstances are beatings and other violence, the threat, killing, murder, which are punished according to the legislation in force (Rotaru, Trandafir and Cioclei 2021, 135). Strikes and other violence can be understood as the action of physically injuring a person, with a well-defined purpose when the action is performed (Toader 2019, 143).

The threat is the act provided by the criminal law which consists in inducing a certain degree of fear towards one's own safety or towards the safety of others of a person, in order to determine him to participate or to refrain from taking an action that he could take according to his freedoms (Mitrache and Mitrache 2019, 316).

In the case of killing and murder, the situation is slightly different, because these crimes are particularly serious, the end result being the loss of a person's life, the penalties for such acts are very high in severity (Bogdan and Șerban 2020, 162).

Most of the time, social anger is determined by the aggressive behavior of parents towards children or children between them. By repeating on the subject, the different behaviors of humiliation, discrimination, subjugation and any other psychological traits meant to diminish the person's self-esteem, the genetic traits of primitive defense against them are activated (Duțu 2013, 332)

In the case of economic anger, the precarious financial situation leads to the commission by the perpetrator of illicit actions that usually concern the assets of other persons or groups of persons. These crimes are committed depending on several factors or the social role that the person has in society, and can range from simple theft to embezzlement (Ristea 2020, 217).

Theft as a crime provided by the criminal law is defined as the act of stealing a movable property from the possession of a person without his consent, without right and in order to increase the property of the perpetrator (Cioclei 2020, 253).

This illegal encryption can be committed on the one hand in the physical environment by actions against the persons concerned or in the digital environment by using high-performance programs designed to attack bank accounts and transfer certain amounts of money from one account to another (Ioniță 2012, 212).

Legal entities may also be active in illegal economic activities, most of which are committed in connection with tax evasion, which is defined as the way in which natural or

legal persons evade the payment of contributions to the state or to that of the taxes due according to the legislation in force (Costaş 2021, 88).

As regards embezzlement, this offense presupposes that the person or group of persons committing it has the status of civil servants. It is characterized by the appropriation, trafficking or use by officials of goods that are part of the state patrimony and that are the object of the activity carried out by them, in personal interest or of other persons (Manea 2021, 122).

The psychological factor that determines such a typology of anger has its origins in childhood as well. The deprivation of certain material goods or benefits meant to satisfy some natural needs or cognitive desires of the child lead to the activation of the conservation mechanisms inscribed in his genetic code (Cioclei 2021, 95).

The last typology of anger is sexual. Although it can be included in the sphere of social activities, this typology represents an individual side of them as it connects two human needs located on different hierarchical levels, the need for love and affection to purely sexual needs (Tănăsescu 2013, 308).

Rape as a sexual offense involves forcing a person to engage in sexual activity against his or her will. This act refers to the unjust fulfillment of the primary human needs of the perpetrator through the use of physical force (Ionescu-Dumitrache 2021, 210). The same category includes sexual harassment, which is the activity of pursuing or supervising a person in order to induce a certain state of domination in order to consent to sexual intercourse. Often, such a perpetrator seeks to obtain more than the activity itself, he wants in addition to the consent of the victim and his feelings (Ionescu-Dumitrache 2021, 113).

What distinguishes sexual anger from the other two typologies of this feeling is the fact that it can be triggered by past events both in childhood and in the adult life of the individual. Lack of affection from parents, friends, classmates, co-workers or any social activities that involve human interaction can trigger the genetically imprinted defense and conservation mechanism (Dogaru 2019, 119).

Methods of preventing and combating crimes of anger

Nowadays, the mechanisms for conserving and ensuring the existence of the human species developed during evolution since the earliest periods of human activity are no longer useful, because most social and economic interactions are regulated in such a way as to promote good understanding between species members, and the ferocious animals that threatened human life were either eradicated or domesticated, these no longer representing real dangers.

In this sense, society has developed many methods to control instinctual impulses to the advantage of rational thinking, based on well-established social norms, determined and accepted by all members of a community.

The most effective method of preventing and combating crimes from different types of anger is education. Through repeated participation in various educational activities, members of society learn unconscious abilities to inhibit animal starts and to discern their appearance and manner.

Another effective method in preventing the commission of the acts incriminated by the criminal law is to display the punishments applied for the execution of such actions, because they are meant to produce a feeling of fear of committing them, and viewed repeatedly, a psychological anchor fear is created, and that will help inhibit criminal offenses.

Awareness of the effects of such illicit activities is another method of combating, carried out through posters, films or audio materials designed to depict the consequences of adopting illegal conduct, producing feelings contrary to those of anger of any kind.

Last but not least, the therapeutic sessions performed together with psychologists specially trained in the field of human anger can lead to the inhibition of the animal mechanisms imprinted genetically in the DNA structure of the individual.

Conclusions

In the early stages of the human species, it has developed certain mechanisms to ensure its assistance, protection against threats from dangerous animals or other fellows of the same species. The most common mechanism for the development and conservation of the human species is the feeling of anger that manifests itself at the psycho-motor level and offers the individual the opportunity to increase their physiological and cognitive abilities in order to meet their needs.

These mechanisms, repeated over time, have been imprinted in the genetic structure of the individual, forming the concept of animal instinct.

There are three more typologies of anger that lead to crime: social anger, economic anger and sexual anger. They give rise to certain illegal behaviors such as threatening, hitting and other violence, theft, rape, embezzlement, tax evasion, sexual harassment, murder, etc.

In today's society, where social, economic and socio-economic relations are very well regulated, determined and accepted by all citizens, a mechanism of conservation through anger is no longer necessary. That is why people are constantly developing methods to prevent and combat crime in general and those from anger in particular.

Numerous methods of inhibiting the genetic mechanisms of anger have been identified so far, by inducing fear of the punishments applied in case of their commission, presenting the consequences of performing such activities through audio-video materials and posters and much more. But the most effective methods in the fight against inappropriate behaviors resulting from the feeling of anger remain a healthy education and psychological therapy sessions conducted with specialists in the field.

References

- Bogdan, S. and Șerban A. 2020. *The Criminal Law. Special Part*. Bucharest: Universul Juridic Publishing House.
- Boroi, A. 2019. *The Criminal Law. Special Part*. Bucharest: C. H. Beck Publishing House.
- Butoi, T. 2019. *University treatise on forensic psychology*. Bucharest: PRO Universitaria Publishing House.
- Cioclei, V. 2020. *The Criminal Law. Special Part*. Bucharest: C. H. Beck Publishing House.
- Cioclei, V. 2021. *Criminology textbook*. Bucharest: C. H. Beck Publishing House.
- Costaș, C. 2021. *Tax Law*. Bucharest: Universul Juridic Publishing House.
- Dogaru, L. 2019. *Criminology*. Bucharest: PRO Universitaria Publishing House.
- Duțu, O. 2013. *Legal Psychology*. Bucharest: Universul Juridic Publishing House.
- Geiss, I. 2012. *The history of the world from prehistory to the present*. Bucharest: ALL Publishing House.
- Ionescu-Dumitrache, A. 2021. *The Criminal Law. Special Part II*. Bucharest: Universul Juridic Publishing House.
- Ioniță, G. 2012. *Crimes in the field of cybercrime*. Bucharest: Universul Juridic Publishing House.
- Manea, T. 2021. *The Criminal Law. Special Part and offenses provided for in special laws*. Bucharest: Hamangiu Publishing House.
- Marr, A. 2012. *The World History*. Bucharest: Nemira Publishing House.
- Mitrache, C-tin. and Mitrache C. 2019. *Romanian Criminal Law. General Part*. Bucharest: Universul Juridic Publishing House.
- Oconnor, J. 2019. *NLP textbook*. Bucharest: Curtea Veche Publishing House.
- Ristea, I. 2020. *The Criminal Law. Special Part*. Bucharest: Universul Juridic Publishing House.
- Rotaru, C. and Trandafir A., and Cioclei V. 2021. *The Criminal Law. Special Part II*. Bucharest: C.H. Beck Publishing House.
- Stănilă, L. 2021a. *The Criminal Law. General Part II*. Bucharest: Universul Juridic Publishing House.
- Stănilă, L. 2021b. *Legal Sociology*. Bucharest: Universul Juridic Publishing House.
- Tănăsescu, C. 2013. *Criminology*. Bucharest: Universul Juridic Publishing House.
- Toader, T. 2019. *Romanian Criminal Law. Special Part*. Bucharest: Universul Juridic Publishing House.
- Turchet, P. 2018. *Sinergology*. Bucharest: Polirom Publishing House.
- Zlate, M. 2000. *Introduction in psychology*. Bucharest: Polirom Publishing House.

A Multi-Planet Species: Ethical and Environmental Impacts of Privatized Space Travel

Natalie Pierson

The New School, United States, piern972@newschool.edu

ABSTRACT: This paper examines private exploration and colonization of space, inspired by the growing interest and advancements in developing space by private industries, notably SpaceX. Marx's theory of primitive accumulation and David Harvey's theory of "spatial fix" provide a framework from which to understand why billionaires are attracted to the business of space. Matters of legality are considered in the regulation of space including treaties, their applications, and the unforeseen gaps in the law left by unanticipated private sector growth. Economic feasibility is discussed through cost and revenue estimates of possible marketable products. Environmental impacts, both on Mars and Earth, are reviewed regarding physical landscape and biological contamination. Finally, it explores the ethics of a developing colony in a stressful environment and seeks to unpack the term colonization in a celestial setting. This paper concludes that bringing capitalist ideals and methods into space is not a solution for problems created by capitalism on Earth. Given the concerns identified, it may well exacerbate them.

KEYWORDS: Mars, space, colonization, primitive accumulation, private industry

Introduction

In 2018, SpaceX launched its rocket *Falcon Heavy*. A reflection of Elon Musk's propensity for a dramatic flair, the rocket carried a Tesla and played David Bowie's 'Space Oddity' on repeat (Shamas and Holen 2019, 1). Along with the eccentric stowaways, the *Falcon Heavy* is the world's most powerful operational rocket to date and can carry up to 140,660 pounds of payload (SpaceX 2021). With this achievement, Elon Musk wants humans to be a "multi-planet species," a goal that is integral to SpaceX and central in its mission (SpaceX 2021). The progress in rocket science technology reflected by this launch is astronomical, and our society is closer than ever to the possibility of a Mars colony. However, critics note the legal, economic, and environmental impacts of such a colony. A massive leap like this requires critical thinking and a risk assessment. Why is there such a push towards privatized space travel, and what are its impacts? This paper seeks to examine privatized space travel and colonization through theoretical, legal, economic, environmental, and ethical perspectives.

Theoretical Background

To understand why the private industry is so adamant about Mars colonization, one must analyze the roots of capitalism as explained by Karl Marx. His theory of primitive accumulation explains that capitalism begins with a capitalist taking away a person's natural resources in order to turn it into private property and sell it back to them (Marx 1887). "The whole movement, therefore, seems to turn in a vicious circle, out of which we can only get by supposing a primitive accumulation (previous accumulation of Adam Smith) preceding capitalist accumulation; an accumulation not the result of the capitalist mode of production, but its starting point" (1887, 507). There are limits to this application when it comes to Mars colonization because it could be argued that no one currently owns or has a livelihood on Mars, and therefore privatization would not involve taking something away from the people. To apply Marx's work, outer space would need to be reframed as a communal public and educational space. In this way, the privatization of Mars would be taking capital away from the people in order to sell it back to them.

David Harvey (2001, 24) expands Marx's concept of primitive accumulation through a geographical lens with his theory of the 'spatial fix.' He defines the 'spatial fix' as the acquisition of new land as a temporary solution for overaccumulation in an area. "Fresh room for accumulation must exist or be created if capitalism is to survive. If the capitalist mode of production dominated in every respect, in every sphere, and in all parts of the world, there would be little or no room left for further accumulation" (Harvey 1975, 13). The problem with the spatial fix is contained within its definition, it is temporary. Capitalism requires a consistent influx of land to continue its' cycle of sale and profit, and countries and corporations fill this need by conquering new territories, extracting natural resources and selling them. Using this logic, it makes sense why billionaires are thinking multi-planetary. Practically every corner of the globe has been developed by or put under conservation by humans. Just as Europe colonized the globe in its many conquests for natural resources and slave labor, capitalists have started to look beyond the Earth for new land to consume. The question is, should we let them?

The Legality of Space Colonies

Beyond why private industry is interested in space colonies, there are questions of legality and feasibility. As of now, the answers are complicated. The "Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies" is a United Nations (1967) treaty stating that outer space should fall under maritime law and be treated as international waters. This means no one country can claim planets or moons as their territory. It also means that companies are bound by the laws of the flag they fly. So, in theory, SpaceX missions would be governed by United States law even though the territory is considered international (Levchenko, Xu, Mazouffre, Keidar, and Bazaka 2018). Currently, rocket launches of any kind require government approval, and some activities (like launching a satellite) require further licensing (Fecht 2016).

This treaty, however, does not mention private industry or colonies of any kind, most likely because that seemed unfeasible in the late 60s when it was created. Using the laws in place now, it is possible that a company like SpaceX could create a base on Mars that was open internationally for tourism but fell under United States law. It is a stretch, but the few regulations make it feasible that billionaires with a team of lawyers could make it happen. The coming era of capitalistic space travel, dubbed 'NewSpace' by Shamas and Holen (2019), requires much more extensive legal protections than are in place now.

Costs and Revenues

Currently, the cost of flying a crew of four colonists to Mars is estimated at 12 billion US dollars, with a cumulative cost of about 100 billion US dollars (Levchenko, Xu, Mazouffre, Keidar, and Bazaka 2018). That is an exorbitant amount of money, but people like Elon Musk and Jeff Bezos have reached a hundred-billionaire status, so it is not unattainable for them.

Although some exceptions exist, most revenues for companies like SpaceX are estimated to be from tourism, not mining. That being said, there is a 2km long asteroid, Anteros, that is estimated to pass Earth at about 7 million miles away (which is 25 times closer to Earth than Mars) in 2038 (Kramer 2017, 131). Anteros is believed to contain 5.5 trillion dollars' worth of magnesium silicate, aluminum, and iron silicate that companies are already competing over to mine (Kramer 2017, 131).

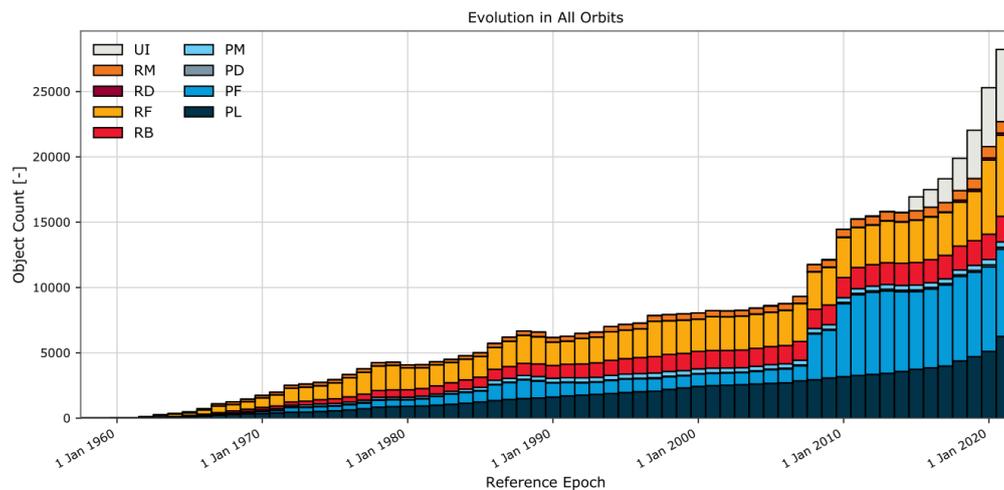
Mining on Mars, however, would be a difficult task. The amount of energy and money it would take to ship mined materials from Mars to the Earth regularly would outweigh the amount of profit made from selling those materials, as Elon Musk explains himself, "I do not think it is going to be economical to mine things on Mars and then transport them back to

Earth because the transport costs would overwhelm the value of whatever you mined, there will likely be a lot of mining on Mars that's useful for a Mars base, but it is unlikely to be transferred back to Earth. I think the economic exchange between a Mars base and Earth would be mostly in the form of intellectual property" (Levchenko, Xu, Mazouffre, Keidar, and Bazaka 2018). While this might seem like it contradicts the resource exploitation contained in Marx and Harvey's theories, it could be argued that tourism does not subvert this theory but rearranges it. Instead of bringing the resources to the buyers, companies bring buyers to the resources, and environmental damage can be done without the invasive practice of mining.

Environmental impact

When thinking about the environmental impact of space travel, there are two concerns: the protection of Earth environments and the protection of Celestial environments. Starting with the former, SpaceX uses kerosine and methane-based engines for their rockets, which are greenhouse gasses. There are not frequent enough rocket launches for this to be a significant problem yet, but if colonization is the ultimate goal, then the move to Mars would damage the Earth's atmosphere. Rocket and satellite launches also create space debris, which are objects of human origins that orbit the Earth (Miller 2001). The first space debris was detected in 1960, and since then, that number has grown to over 25,000 objects (shown below).

Graph 1: Evolution of Number of Objects in Geocentric Orbit by Object Class



Source: European Space Agency Space Debris Office

This debris causes collisions and explosions of ships in orbit, and the more debris that is created, the harder it will become to send astronauts into orbit safely.

For the second concern, Environmental protection of celestial bodies, or astroenvironmentalism, considers the possibility of extraterrestrial life as a reason not to colonize Mars (Miller 2001). Spacesuits, as they are constructed now, are not made to prevent biological contamination, they are meant to protect humans from space. In the event that Mars is colonized, and some form of extremophile is discovered on the surface, how will scientists be able to determine if it is alien life or human contamination? International Institute of Space Law award winner Frans Von der Dunk says, "If Earth microbes take root on Mars or Europa, we may never have the chance to find out if those worlds ever hosted alien life. So, the major space agencies have a sort of 'gentleman's agreement,' to decontaminate their spacecraft as much as possible before sending them to other worlds. But human bodies are much harder to decontaminate since our health depends on our microbes" (Fecht 2016).

There is the possibility of contaminating Mars with terrestrial organisms, but there is also the possibility of killing extraterrestrial life on Mars. Elon Musk is a believer in Mars terraforming, what started as an idea to launch nuclear bombs on the surface of Mars to simulate artificial suns, after receiving scientific backlash, turned into a collection of satellites to warm Mars' atmosphere (Hamilton 2019). Transforming Mars to fit human needs is a huge threat to potential microbial alien life. Some might argue that humans kill microbial life all the time on Earth for human safety, like in our food and water systems. However, that argument implies that Mars colonization is necessary for human survival, which is untrue (Levchenko, Xu, Mazouffre, Keidar, and Bazaka 2018).

The (Un)Ethics of Colonization

Following questions of why and how leave questions of ethical implications. Beginning with the logistics of sending people to colonize Mars, there are immediate ethical issues. Besides the obvious physical life-threatening situations that come with space travel, the psychology associated with being in confined spaces with a limited amount of people in high-pressure situations is complex, especially when the survival of the group or success of the mission is the priority, not the safety of individuals (Levchenko, Xu, Mazouffre, Keidar, and Bazaka 2018).

Sustaining a Mars colony would also require some form of pregnancy and birth in order to sustain the colony. Currently, NASA policies forbid sex in space, and there are no confirmed reports of it happening (Schuster and Peck 2016). Considering astronauts are technically coworkers, this makes sense. Beyond that, the threat of pregnancy in space is another challenge. Based on experiments done with rats in the international space station, scientists discovered that low gravity pregnancy results in more stillbirths and disrupts the development of the vestibular system that affects balance (2016). Astronauts are also affected by cosmic radiation because there is no ozone layer in space to protect life from the harmful rays. This increases the risk of astronauts developing cancer, and no scientific studies have been done to see how cosmic radiation would affect fetus development (2016). Despite all these risks, intercourse and pregnancy (natural or IVF) would be required in order to sustain a mars colony. This would require a balance of intimacy between coworkers that is ethically fraught.

Beyond the ethics of individuals in space, there are ethical questions about how colonization will affect the community on Earth. Starting with the word “colonization” itself, it is a method to spread capitalism, and it is inherently unethical. There is so much work to be done to end the ongoing colonization on Earth, and expanding those violent actions into space will only cause harm, as explained by Levchenko and others in their deep dive into Mars colonization:

“Indeed, at its early stages of settlement, the small colony is likely to be composed of altruistic, selfless, technologically savvy individuals who may thrive in an equitable and libertarian society and may be prepared to sacrifice individual desires and benefits for the greater good of the group. However, it is far less likely that such a system can be sustained once the population of colonists grows to thousands and millions and becomes more diverse. Inevitably, a socio-economic and political order will emerge, and it is likely to be different from the initial system. Would it be possible not to repeat mistakes that we have made when colonizing continents here on Earth?” (Levchenko et al. 2018)

However, the comparison of space colonization and colonization on Earth is not perfect; space colonization is not built on genocide and the erasure of culture. However, framing colonization as a method from which to spread capitalism, and going back to Marx and Harvey's theories, it is fair to say that space colonization would cause harm in order to make a profit. “Our history tells us that colonists, no matter how responsible, would inevitably affect the environment they colonize” (2018).

Conclusions

Elon Musk wants humans to be multi-planetary; he even suggests that the acceleration of climate change will leave Mars as the only option for human survival. But a solution that only saves the richest and most politically powerful is not a solution at all. Capitalist logic deems billionaires as the smartest and most qualified among us, and therefore can and should get things done more effectively and efficiently than the collective. While there may be some truth to the speed at which private industry can innovate, it does not guarantee ethical practices or long-term protections. Private corporations like SpaceX might be able to move and innovate faster, but is that a good thing? Is space travel something that needs to be rushed?

It is incredible that humans have come to the point where the debate laid out in this paper is even possible. However, framing space colonization as a solution to problems caused by capitalist destruction of the environment is foolish. Colonizing Mars will not solve human-created problems; in fact, these problems are only multiplied when considering the legal, economic, environmental, and ethical impact that Mars colonization could have.

Still, there is an air of romanticism that surrounds space travel. There is even a trope in science fiction that space travel or the discovery of alien life has a unifying effect on the human population, what Levchenko (2018) calls a “naïvely humanistic vision.” But how universal is space travel if only the wealthiest countries or individuals can participate in it? We should use the childlike wonder associated with space travel as inspiration to treat outer space as a communal wilderness, a place to be studied and appreciated, not a place to expand violent practices, or as Sinha (2016) writes, “Do we deserve to become multi-planetary? Let us become productive participants in the glorious dance of life. If we can dream of the insurmountable task of becoming multi-planetary, then surely, we can fathom expending the energy, resources and willpower that come with making mindful purchase and waste decisions.”

Acknowledgments

I would like to offer a special thanks to my professor Julia M. Puaschunder for creating such an encouraging environment for research and presentation.

References

- ESA Space Debris Office. 2021. *ESA's Annual Space Environment Report*. Darmstadt, Germany: European Space Operations Centre.
- Fecht, Sarah. 2016. “Do Earth Laws Apply to Mars Colonists?” *Popular Science*. <https://www.popsoci.com/who-would-rule-colony-on-mars/>.
- Hamilton, Isobel Asher. 2019. “Elon Musk is walking back his 'nuke Mars' theory and instead proposing to launch thousands of satellites to warm the red planet.” *Insider*. <https://www.businessinsider.com/elon-musk-walks-back-nuke-mars-theory-2019-8#:~:text=%22Nuke%20Mars%20refers%20to%20a,method%20was%20%22not%20risky.%22>.
- Harvey, David. 2001. “Globalization and the ‘Spatial Fix.’” *Geographische revue*, 23-30. https://publishup.uni-potsdam.de/opus4-ubp/frontdoor/deliver/index/docId/2251/file/gr2_01_Ess02.pdf.
- Harvey, David. 1975. “The geography of capitalist accumulation: a reconstruction of the Marxian theory.” *Antipode* 2, 9-21.
- Kramer, William R. 2017. “In Dreams Begin Responsibilities – Environmental Impact Assessment and Outer Space Development.” *Environmental Practice* 19(3):128-138. <http://dx.doi.org/10.1080/14660466.2017.1338874>.
- Levchenko, Igor, Shuyan Xu, Stéphane Mazouffre, Michael Keidar, and Kateryna Bazaka. 2018. “Mars Colonization: Beyond Getting There.” *Global challenges* 3(1). doi:10.1002/gch2.201800062.
- Marx, Karl. 1887. “Chapter Twenty-Six: The Secret of Primitive Accumulation.” *Capital Volume I*. Translated by Samuel Moore and Edward Aveling, 507-509. Moscow: Progress Publishers.
- Miller, Rider W. 2001. “Astroenvironmentalism: The Case for Space Exploration as An Environmental Issue.” *Electronic Green Journal* 15. https://escholarship.org/uc/item/2d37b8cx#article_main.

- Plait, Phil. 2015. "To Mars." *Slate*. <https://slate.com/technology/2015/04/elon-musk-and-mars-spacex-ceo-and-our-multiplanet-species.html>.
- Schuster, Haley, and Steven L. Peck. 2016. "Mars Ain't the Kind of Place to Raise your Kid: Ethical Implications of Pregnancy on Missions to Colonize Other Planets." *Life Sciences, Society and Policy* 12, no. 10. <https://link-springer-com.libproxy.newschool.edu/article/10.1186/s40504-016-0043-5>.
- Shamas, Victor L., and Tomas B. Holen. 2019. "One Giant Leap for Capitalistkind: Private Enterprise in Outer Space." *Palgrave Communications* 5, no. 10. <https://doi.org/10.1057/s41599-019-0218-9>.
- Sinha, Shivika. 2016. "The Ethics of Colonizing Mars." *TechCrunch*. <https://techcrunch.com/2016/10/30/the-ethics-of-colonizing-mars/>.
- SpaceX. 2021a. "Falcon Heavy: The World's Most Powerful Rocket." SpaceX, Accessed April 23, 2021. <https://www.spacex.com/vehicles/falcon-heavy/>.
- SpaceX. 2021b. "SpaceX - Mission." SpaceX, Accessed April 23rd, 2021. <https://www.spacex.com/mission/>.
- United Nations Office for Outer Space Affairs. 1967. "Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies." Opened for signature January 1967. United Nations Office for Outer Space Affairs. <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/outerspacetreaty.html>.

Robots – A Strategic Solution from Recovery to Resilience

Răpan Florian¹, Răpan Ivona²

¹*“Dimitrie Cantemir” Christian University, Bucharest, Romania, rapan_florian@yahoo.com*

²*Romanian Academy, Institute of National Economy, Bucharest, Romania, stradivonas@gmail.com*

ABSTRACT: Robots together with the other components of Industry 4.0 represent an important part of the recovery and resilience strategy of the Member States. In short periods of time, the labor market is affected by the dislocations caused by robotics and automation, but in the long term, employees will be reoriented through retraining and thus more jobs will be generated that will ensure a lower unemployment rate. The paper analyzes possible strategies to help the Member States pass from recovery to resilience, which means getting to a higher level than before the shock or crisis. Strategic directions are designed based on composite Digital Economy and Society Index (DESI) subindicators and integrative concepts also are being approached. An example of integrative concept is autopoiesis, that metaphorical could be a solution from recovery to resilience applied on different countries referring to institutions, government by using the same strategy to selfrecover and grow from inside as an autonomous system. Other strategies are offered, the analysis of critical points seen as decisional aspects, the identification of the center of gravity and the existence of an operational plan within the strategic one. The strategic solutions that will lead to recovery and resilience, first of all, must have a vision.

KEYWORDS: robots, recovery, resilience, digitalisation

Introduction

“The digital shift was dramatic and ubiquitous, even among B2B industries, like Manufacturing, that, traditionally, have been comparatively slow to digital transformation” (Adobe 2021). “Manufacturing workers in lower-income areas tend to have lower skill levels and are therefore more vulnerable to automation. There is typically a difference in the number of robots per manufacturing worker between higher and lower-income regions, indicating that those in lower-income regions are, on average, less productive” (Cone 2019).

“Automation, though already advanced, can be further extended, e.g., to cover automated line replenishments, towards an extended use of industrial robots as well as to the deployment of collaborative and unfenced robots that work in close collaboration with humans” (European Commission 2019).

According to the International Federation of Robotics (IFR 2016), an industrial robot is “an automatically controlled, reprogrammable, multifunctional manipulator programmable in three or more axes, which can be either fixed or mobile for use in industrial automation applications”. Industrial robots are fully autonomous machines that do not require a human operator and can be programmed to perform multiple manual tasks, such as welding, painting, assembling, handling materials or packaging. In the global context, the use of industrial robots is particularly widespread in Europe, where, on average, every thousand workers were exposed to 0.6 industrial robots in 1995 and 1.9 in 2016. By comparison, the number of units in the US of robots per thousand workers was 0.4 and 1.6, respectively (Figure 1). The increase in the number of robots per thousand workers is particularly high for China, where it exceeds the respective growth rates in the EU and the US after 2009.

“Given that robots perform their tasks at constant quality and almost an unlimited number of times, industries characterized by a large share of workers that carry out repetitive tasks may find it profitable to substitute workers for robots” (Carbonero, Ernst, & Weber 2018).

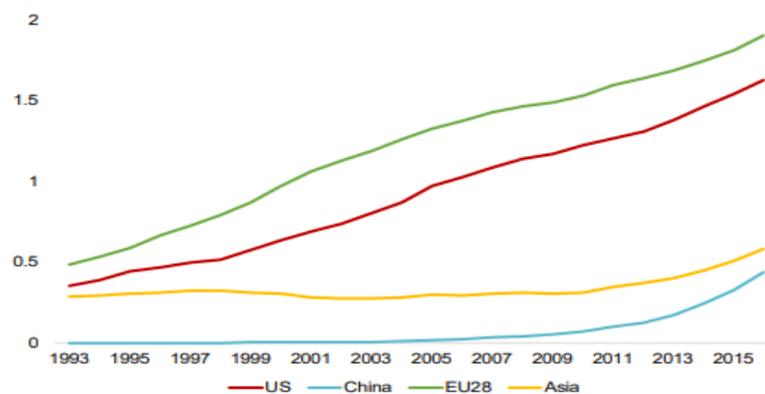


Figure 1. Robot density (robots per 1000 inhabitants)
 Source: Data is based on IFR and EU-KLEMS

A study by the Joint Research Center (JRC), an integral part of the European science hub within the European Commission, reveals that in the pre-crisis period, the use of industrial robots in developed countries in 1995-2015 led to a small increase in the number of jobs. The same cannot be said for the pandemic period in the case of poorly and very poorly developed countries, the increase in automation and robotization has led to the dismissal of employees and the loss of an average of 30 employees at short intervals of three months, according to an analysis performed on employees of multinationals. The phenomenon created during the quarantine of low-level developed countries is the impossibility of companies to pay rents for workspaces and the replacement of routine work with the implementation of robotic process automation (Robotic Process Automation). In this way, the multinational corporations laid off their employees, thus increasing the unemployment rate. Those who lost their jobs had to retrain, companies and the Government did not support them by finding solutions for professional conversion and retraining of the field of activity. Thus, the labor market in countries less developed have suffered from the increase of the unemployed population and implicitly from the increase of the unemployment rate. Many of those made redundant, even if they worked in secondary or higher education, turned to ride sharing because taxis in big and crowded towns remained among the few businesses for which there were always requests that were not affected by the pandemic. Other industries that prospered were the pharmaceutical industry, to which are added the companies producing not only medicines and nutritional supplements but also those that produce consumables such as masks, disinfectant solutions, sterile media, etc. Based on reports from the Joint Research Center (JRC 2021), “the impact of robots on the labor market in developed countries has seen a slight decline in employment between 1995 and 2005 and a slight increase between 2005 and 2015.” The labor market from countries less developed was not stable even before the pandemic, which made it even more vulnerable to the impact of the shock. Those who are advantaged and supported during this period are the employees in positions with higher education and the others with reduced skills in positions with secondary education have been displaced.

The intensified use of industrial robots has contributed to increasing labor productivity, eliminating routine work. The time left for employees is used for creativity. Robots, along with other components of Industry 4.0 lead to a paradigm shift.

Recovery and resilience. Strategies for consolidating the countries

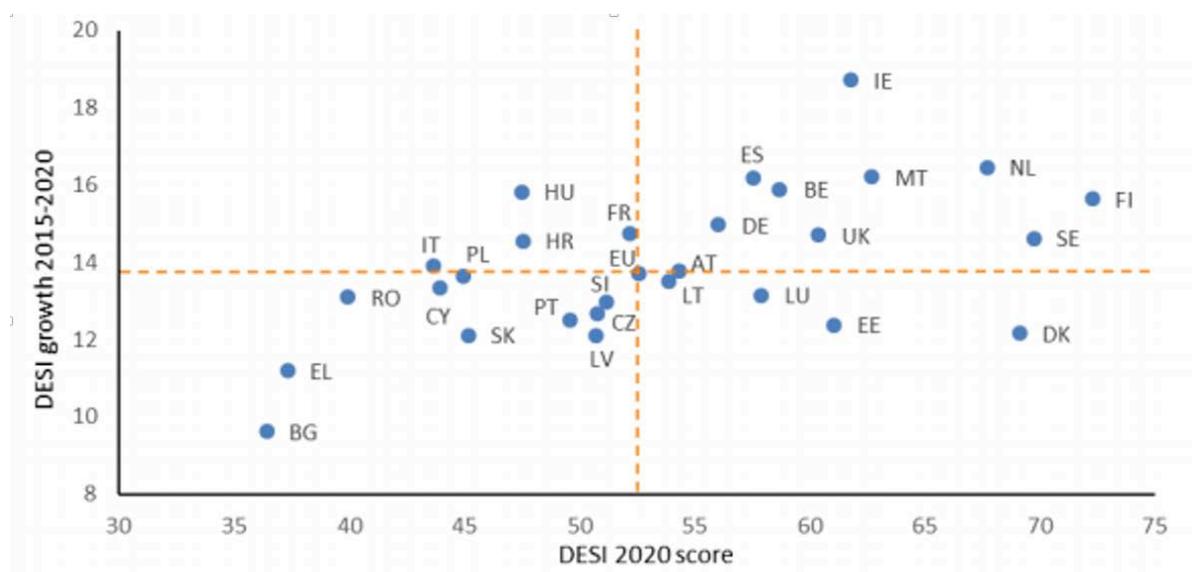
At present, the EU and Member States level focus is on identifying and integrating recovery and resilience strategies. The recovery implies a return to the highest level in the researched field, after the decline generated by the crisis. Resilience involves a strategy of returning to a higher level, which means that recovery is an integral part of resilience. The aim is to achieve in stages, gradually and to consolidate the resilience acquired by the state that applies such strategies of

recovery and resilience by investing and developing new technologies and the implementation of industrial robots and services. The term resilience means a country's ability to withstand, adapt, recover and overcome the level it was at before it went through a crisis or shock.

According to the speeches at the “Building a Resilient Europe in a Globalized World” conference in Brussels in 2015, resilience is based on 3 important attributes: anticipation, interaction and a multidisciplinary approach. Permanent solutions are needed that do not surprisingly, governments should be able to apply a strategy to dissipate the shock in order to make it less felt. Resilience is a dynamic process that needs to be strengthened through knowledge, research and innovation. The effects of the crisis within the state, to make it more stable and more secure, to share the impact of the shocks felt by EU member states and the Monetary Economic Union (EMU) and to share existing risks at micro and macro level.

Contributions to integrating robots in the digitalization process

EU Member States in the period 2015-2020, before the pandemic, recorded increasing trends in the level of digitalization of the economy and society. This leads to the idea of progress and development in the direction of digitalization. Ireland had the highest level of progress compared to the period before COVID-19, followed by the Netherlands, Malta and Spain. These countries performed at that time with values according to the DESI score above the EU average, with sustained and investment-focused policies in all areas where digitalization has penetrated. “Finland and Sweden are among the leading digital performance leaders on the map of digitalization, but in terms of technological progress they have been slightly above average, as are Belgium and Germany” (European Commission, DESI 2020a). Being developed countries that have had high periods of performance ahead of other countries since 2000, in 2020 they were in a position of slight growth, and in the pandemic period, they had the highest recovery capacity and resilience to the economic and social shock felt.



Source: DESI 2020, European Commission.

Figure 2. Digital Economy and Society Index (DESI) – EU States Members progress in the period 2015-2020

The reporting was done on the 27 EU Member States, including the United Kingdom of Great Britain and Northern Ireland (UK) and the data were registered including 2019. Denmark, Estonia and Luxembourg recorded values showing a low level of digitalization but still remain among the best performing Member States in the DESI ranking. Luxembourg is pursuing the development strategy including the digital transformation of business, which is

not that at a high level. The same is the case of Estonia, which is not very competitive in terms of connectivity and business transformation. Figure 3 shows the DESI ranking on the 5 composite sub-indicators: Connectivity, Human Capital, Use of Internet, Integration of Digital Technologies, Digital Public Services.

Table 1. The structure of DESI in 2020

1 Connectivity	Fixed broadband take-up, fixed broadband coverage, mobile broadband and broadband prices
2 Human capital	Internet user skills and advanced skills
3 Use of internet	Citizens' use of internet services and online transactions
4 Integration of digital technology	Business digitisation and e-commerce
5 Digital public services	e-Government

Source: European Commission 2020a, Digital Economy and Society Index (DESI)

Connectivity refers to the existing infrastructure that provides the framework for digitalization. Of the EU Member States, only 17 have been co-opted for the pioneering 5G band, Finland, Germany, Hungary and Italy being the most prepared and for connectivity as a whole and Denmark, Sweden and Luxembourg are at high values. Countries less developed don't appear on the digital map of Europe and is not considered to have high connectivity, although here the Internet works excellently, special 5G relays have been placed and the online infrastructure is very well prepared. Human capital as an indicator consists in the development of digital skills that will be useful especially in periods when travel is prohibited. **The use of Internet** is another priority indicator that refers to individuals' access to the Internet for telework, e-commerce, e-government services, but also entertainment and Social Media platforms. **The integration of digital technologies** involves transforming businesses and adapting them to new ways of working with employees, collaborative platforms or teleworking to ensure a consolidated recovery in the short, medium and long term.

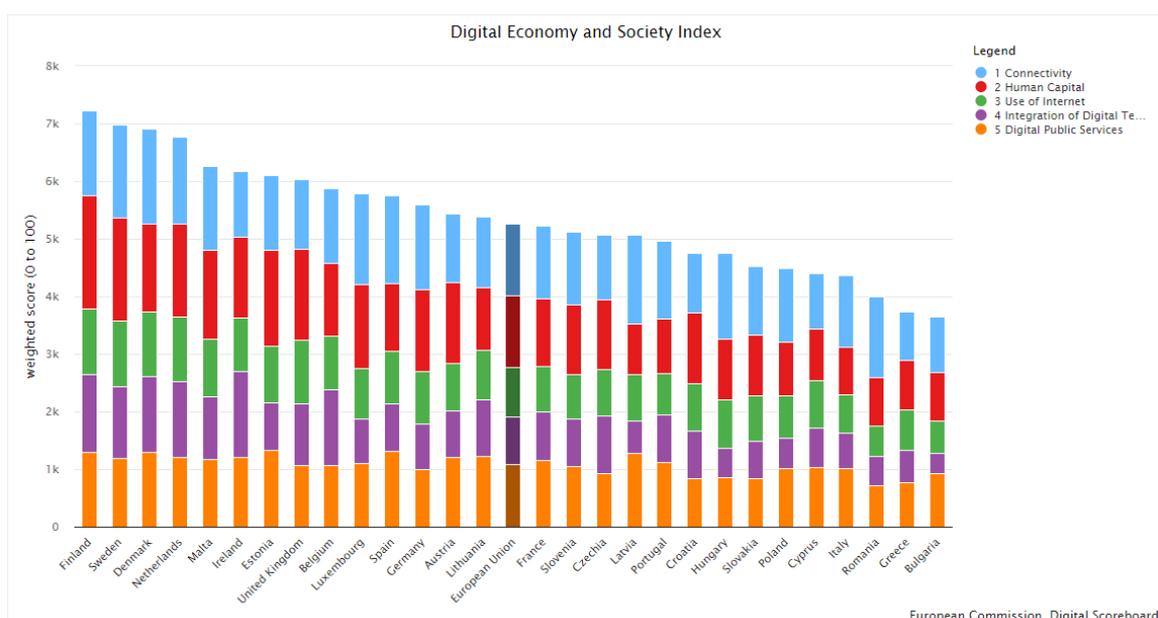


Figure 3. DESI, 2020 on composite indicators

Digital public services are a very important indicator especially during the crisis of COVID-19 were enhanced for the functioning of government activities in conditions of social distancing. These services include e-health, e-governance and the development of advanced technologies in Big Data and Artificial Intelligence.

Conclusions

Identifying common strategies will help Member States to develop resilience and shock resilience. Digitalization priorities are in descending order in the industrial sectors in the manufacturing industry, especially automotive, banking, JIT (Just in Time) payments, e-commerce and certain services, e-Education, e-Governance, e-Health. It should be noted how many units of robots are bought, how many are sold because production is dynamic, demand is high and supply is uniform. Another problem is the coexistence of different technological generations of robots. This required DESI analysis which provides data on the integration of digitalization. For the EU Member States, it is mandatory an objective determination of the priorities of technology transfer, technology diffusion and digitalization is required. The order of priority correlated with those mentioned above should refer to the automotive industry (belt operations), extractive industry, food, textile, medicine, research (a field of an vanguard), agriculture (drones for measuring soil temperature and degree moisture on large areas for crops). It is necessary first of all to identify the decisive points of gravity, the existence of an operational plan in which to operate a coherent and realistic strategic plan on the types of crises that could occur, but the mechanism must be applicable in any situation and the regenerative capacity of states must be achieved in a short period of time and over a longer period to consolidate their position in the resilience level. It could also be a mechanism of self-regeneration (Maturana and Varela 1980) through autopoiesis this integrative concept with dissipative character that gives to the system / economic process in close connection with other characteristics such as self-recovery, self-regeneration, autonomous and self-stabilization. There is a need, at the hypothetical stage for the time being, to develop a capacity for recovery from biological systems that can regenerate their limbs or to create certain behaviors that compensate for the role of the lost limb.

This concept of autopoiesis is desirable to be implemented throughout robots and other components of Industry 4.0, artificial intelligence (AI), IoT, Cloud computing, Big Data, Collaborative Platforms, Blockchain, Quantum Computers. It is mandatory that the digitalization strategy of EU Member States goes towards the concept of Digital Single Market, on reducing the gaps between various indicators because the components of Industry 4.0 have a growth trend also for the less developed countries, but not at the same level of those registered in the advanced countries.

Robots are a factor of sustainable development for all Member States, increasing their use contributing to bring again the economic growth from the field of social exclusion to that of inclusion and reducing inequities.

References

- Adobe. 2021. *2021 Digital Trends Experience Index*. <https://www.adobe.com/sg/offer/digital-trends-2021.html>.
- Building resilient Europe Summary Report*. 2019. [Online], https://ec.europa.eu/jrc/sites/default/files/jrc-building-resilient-europe-summary-report_en.pdf, retrieved at 10 June, 2021.
- Carbonero, F., E. Ernst, and E. Weber. 2018. *Robots worldwide: The impact of automation on employment and trade*, [online], available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_648063.pdf, retrieved 11 June, 2021.
- Cone, E. 2019. "How robots change the world." *Oxford Economics*, [online], available at <https://www.oxfordeconomics.com/recent-releases/how-robots-change-the-world>.
- European Commission. 2019. *Artificial Intelligence – Critical industrial applications*. Brussels. <https://ec.europa.eu/futurium/en/european-ai-alliance/critical-industrial-applications-ai-smes.html>.
- European Commission. 2020a. *Digital Economy and Society Index (DESI)*. [Online], [<https://digital-strategy.ec.europa.eu/en/policies/desi>], retrieved 13 June, 2021.

- European Commission. 2020b. *Digital Scoreboard*. <https://digital-agenda-data.eu/>, retrieved 11 June, 2021.
- International Federation of Robotics (IFR). 2020. *Executive Summary World Robotics 2020 Industrial Robots*. [Online], https://ifr.org/img/worldrobotics/Executive_Summary_WR_2020_Industrial_Robots_1.pdf.
- Jäger, K. 2018. “EU KLEMS Growth and Productivity Accounts 2018 Release, Statistical Module1.” [online], available at http://www.euklems.net/TCB/2018/Methodology_EUKLEMS_2017_revised.pdf.
- Maturana, H.R., and F.J. Varela. 1980. *Autopoiesis and Cognition*, Springer, p. 25.

Possible Mistakes in Forensic Photography

Gabriel - Irimia Anghel

*“Dimitrie Cantemir” Christian University from Bucharest – Faculty of Law and Administrative Sciences,
Bucharest, Romania, anghel.ergosum@gmail.com*

ABSTRACT: As Confucius said, a picture is worth a thousand words. Moreover, when we talk about forensic photography, we must choose our “words” carefully, as they must lead to the satisfaction of the purpose of the criminal trial, namely the finding of the truth or, more precisely, the timely and complete ascertainment of the facts which constitute crimes, so that no innocent person is held criminally liable, and any person who has committed a crime is punished according to law. Forensic photography, unlike the other branches of photography, has the ability to become a decision-maker in sentencing or acquitting a defendant, just as it can make the difference between life and death in states where the capital sentence still applies. For these reasons, I have proposed that, in this paper, I expose mistakes that may occur in the execution of forensic photographs, the causes of these mistakes and the solutions for their prevention and removal.

KEYWORDS: mistakes, forensic, photography, crime, investigation

Introduction

Forensic photography is the first set of procedures for forensics. After the emergence of daguerreotype, professional photographers were hired in order to take portrait photos of criminals. This early application later led to the emergence of the standard procedure known today internationally as mug shot. Although there were no technical rules to follow, the photographs taken of criminals were different from those usually taken, as they were not used for artistic purposes, but were intended to provide an evidence of those who committed crimes.

Today, however, forensic photography is defined as “a system of special technical methods and procedures of photography with application in the activity of prevention and detection of crimes, in performing criminal prosecution, investigation, operative supervision, expertise and technical-scientific finding.” (Iurie 2015, 1).

Objectivity and visual fidelity are the main features of this branch of forensics (Stancu 2015, 86). For example, in the case of on-site photography, it is considered that, as long as the rules and technical recommendations are observed, the photographs will honestly and completely capture the crime scene, as well as the elements that compose it - weapon, corpse, traces, and utensils. Therefore, in order to place the result of these activities in the vicinity of the truth, it is imperative to follow certain rules and recommendations.

Preliminary mistakes

The most common mistakes in carrying out any activity take place just before this moment. These include inadequate technical equipment and lack of technical training. With regard to the equipment available to persons designated to perform such tasks, they must be sufficient to cover any shooting hypotheses, regardless of the procedure, time, place, environment, weather conditions, workload, any obstacles, and lighting conditions. In this sense, if daytime shooting does not present a high degree of difficulty, low light conditions create difficulties in the absence of professional equipment. Without addressing this in detail, it is recommended that a complete photography kit contains at least a high-performance camera, wide aperture lenses that cover a wide range of focal lengths (from ultra-wide to super-tele), a tripod, filters, sources of artificial light, diffusion and reflection elements, batteries and memory cards, cleaning kit. It is also important to equip the photography kit with a backup camera, as there are many situations in which the shutter system stops working due to the large number of photos taken.

Photographers need to know in detail the functions, buttons and settings of the devices they use, as the time available is not always enough to search through the camera menu or to consult the instruction manual or the user guide. It is also recommended to shoot in RAW format, with the help of which much more details can be obtained during the post-processing of images in a photo editing software.

Insufficient documentation

A general mistake is an insufficient photographic documentation, which consists in taking a small number of photographs related to the case, in omitting to capture all the elements relevant to the case or not performing all the photography procedures required in those circumstances.

There must be some proportionality between the complexity of the case, the elements, the existing objects in the criminal field and the number of photographs. If excessive photography is not an impediment to fulfilling the purpose of the criminal trial, insufficient photography is a mistake that can lead to not finding out the truth. It is recommended to perform all shooting procedures, the rule being shooting from general to particular. As such, when photographing a corpse in an apartment, it must be photographed as well as the vicinity of the block where the apartment is located, the staircase of the block, the landing, the apartment, the weapon with which the murder was committed, traces and other elements that have the ability to be relevant in solving the case.

Wrong photo exposure

Outside the realm of forensic activities, exposing a technically incorrect photograph can lead to pleasing visual effects on the human eye. Underexposing a photo can lead to complete darkening of shadow areas and “low-key photos” or even “silhouette photos”, images that can attract the viewer's attention. Likewise, overexposing a photo can lead to so-called “high-key photos”, where illuminated areas turn into white areas. But the judicial photos are placed in the opposite corner to the artistic photos. These must first be executed technically correctly as criminal investigation activities impose rules of an imperative nature, and the delivery of a conviction must be based on clear evidence. Improper exposure of a photo is one of the most common mistakes when taking a photo and is mainly caused by two situations: using the camera in manual mode and setting the parameters (aperture, shutter speed, ISO value) incorrectly; using the camera in automatic or semi-automatic mode (aperture priority, shutter speed priority), the cause of the error may be incorrect selection of the camera's measurement mode or lack of camera accuracy in measuring available light and calculating required light).

First, it should be noted that it is recommended to use the manual mode of the camera whenever the situation allows, in order to have total control over the image. In situations where there are quick and considerable changes in the amount of light, and the time available does not allow adjusting the settings, it is recommended to use semi-automatic modes, so that these radical changes do not completely compromise the photos. At the same time, it is imperative to take pictures every time in RAW format, uncompressed. This image format allows the storage of a much larger amount of information, so that, with the help of post-processing, blown highlights or clipped shadows can be recovered, which is not possible using the JPEG format.

The aperture value must be chosen so that the depth of field includes all the elements of interest, depending on the chosen shooting procedure. As a rule, in wide-angle photography, wide-aperture photography is not practiced, except in low light conditions, because forensic photography does not require the separation of the subject from the background, as is practiced in portrait photography. On the other hand, shooting at high aperture values is also not recommended, as the optical phenomenon called diffraction will occur, which affects the image quality.

The exposure time will be chosen according to the photographed scene, so that the photographed subject is clearly captured, frozen, and motionless. Therefore, if the scene is static and the lighting conditions are favourable, it will be photographed by hand, in this situation the longest recommended exposure time being $1/2 \times$ focal length. For example, if shooting at a focal length of 50mm, the maximum recommended exposure time will be 1/100s. However, it can be overcome if the user has dexterous hands, if the lens is equipped with a vibration reduction system, or if the camera is equipped with an image stabilization system. If the scene is static, but the lighting conditions are not favourable, a tripod will be used, on which the camera will be mounted. With the tripod, images can be taken at a long exposure time. For dynamic scenes, the shutter speed must be chosen both according to the movement of the camera and the speed of movement of the subject.

The recommended ISO value is the minimum, as raising it will affect the quality of the photo. However, cameras are equipped with increasingly high-performance sensors, and the use of a high ISO value may be absolutely necessary in certain situations, such as flagrant crime (dynamic scene) shooting in low light conditions. Finally, all these three parameters are in full agreement and influence the exposure and image quality.

Inaccurate focusing

In common parlance, “a blurred, unfocused photograph” is a photograph whose subject is not in the depth of field. Although cameras are equipped with high-performance focusing systems, there are many situations in which such photos appear. The sources of this problem are diverse: camera movement, subject movement, low light conditions, and focus errors caused by lenses or cameras. A general solution to avoid focusing problems is to use a closed aperture so that the depth of field allows the camera or/and the subject to move and does not lead to their exclusion from the depth of field. Another solution to prevent this problem, especially in the case of static scenes, is manual focusing.

Regarding dynamic scenes, where the subject is in constant motion, I consider that the equipment with which photography is played plays an extremely important role, as only the lenses and cameras in the professional range are equipped with the appropriate focusing systems for such scenes. For the highest chances of success, it is recommended to switch the focus system to continuous focus, using all available focus points and shooting in burst mode.

Focusing in low light conditions can create difficulties, whether done manually or automatically. For this reason, some camera models are equipped with a focusing lamp. If this lamp is non-existent, the photographer can use any artificial light source, such as lamps, telephone flashes, flashlights.

Station point

The first rules regarding the choice of the station point were created by Alphonse Bertillon, the creator of the aforementioned mug shot photography process. His rules required that, in the case of photographing those who committed crimes, they be photographed from the front and in profile, so that the photographs capture as many facial features as possible, from two different angles.

Today, in specialized works, it is often recommended to choose a certain station point. For example, in the case of orientation photography, it is considered that the camera should be placed as high as possible, sometimes even using aerial photography. Likewise, the process called the photography of the main objects requires the photography of the corpse, the weapon and other objects from the perpendicular plane. Footprints found in the criminal field are photographed both individually to measure the size of the footprints and reveal the footprint or shoe, and as a whole,

to indicate the direction and direction of the perpetrator, recommending that the camera be positioned above the traces, in a plane position parallel to the trace.

As an exception to these rules, it is proposed to choose the station point carefully, even if it leads to a violation of the general rules mentioned above, as it is advisable to avoid large objects covering the small ones (Aionițoaie et al. 1992, 68).

The choice of the station point directly influences the visual estimation of the dimensions of the captured objects or spaces, as well as their proportions. It is necessary to mention that the use of a wide-angle lens and the choice of an inappropriate station point can lead, together, to the appearance of some geometric distortions.

Conclusions

Over time, various rules and recommendations have been formulated in the specialized works, including some that do not find universal applicability. For example, in some works it is recommended that, in the case of sector sketch photography, the photographs be taken with the same settings, which is totally detrimental to the photographs in the hypothesis that the rooms would have different lighting conditions.

The only rule that knows no exceptions and from which it cannot deviate is the one that requires that photographs capture honestly, as faithfully and objectively as possible the reality of reality, since they must serve to find out the truth. At the same time, it should be mentioned that the photos can serve as evidence in the civil process, which seeks to repair the damage caused.

References

- Aionițoaie, Constantin, Vasile Bercheșan, Tudorel Butoi, Ilie Marcu, Eugen Pălănceanu, Constantin Pletea, Ion-Eugen Sandu, Emilian Stancu. 1992. *Treaty of Forensic Tactics*. Craiova: “Carpați” Publishing House.
- Iurie, Mihăilă. 2015. *Forensic Photography*. Chișinău: State University from Moldova.
- Stancu, Emilian. 2015. *Treaty of Forensics*. Bucharest: Universul Juridic Publishing House.

Current Values of Education and Culture

Ioan-Gheorghe Rotaru

*Professor Ph.D.Dr.Habil. 'Timotheus' Brethren Theological Institute of Bucharest, Romania
dr_ionicarotaru@yahoo.com*

ABSTRACT: The natural purpose of an educational institution is to awaken, to wise, cultivating the intellectual skills in the heart of the learner/student, along with his need to learn all his life. School is also important for us as people because it helps the progress of society, increases trust in people and teaches us to make and maintain friendships, and helps us learn how to work together as a team, which is the main foundation of any successful society. Without school, knowledge could not spread as quickly, and our access to new ideas and people could be hampered. A schoolless world would create difficulties and would prevent the dispersion of economic growth, tolerance and appreciation of our fellow human beings. The purpose of the school is to turn mirrors into windows. Nothing can develop our intellect more than a book, yet in the 21st century, it is read less and less because technology has dethroned the book.

KEYWORDS: school, education, culture, skills, book, technology

Introduction. The benefits of education

The American writer Ellen G. White wrote that: "Our ideas of education take too narrow and too low a range. There is need of a broader scope, a higher aim. True education means more than the pursual of a certain course of study. It means more than a preparation for the life that now is. It has to do with the whole being, and with the whole period of existence possible to man. It is the harmonious development of the physical, the mental, and the spiritual powers. It prepares the student for the joy of service in this world and for the higher joy of wider service in the world to come"(White 2001,9).

Looking at these things from a Christian perspective: "The source of such an education is brought to view in these words of Holy Writ, pointing to the Infinite One: In Him "are hid all the treasures of wisdom." (Bible, KJV, Colossians 2,3). "He hath counsel and understanding." (Bible, KJV, Job 12:13.). "In a knowledge of God all true knowledge and real development have their source. Wherever we turn, in the physical, the mental, or the spiritual realm; in whatever we behold, apart from the blight of sin, this knowledge is revealed. Whatever line of investigation we pursue, with a sincere purpose to arrive at truth, we are brought in touch with the unseen, mighty Intelligence that is working in and through all. The mind of man is brought into communion with the mind of God, the finite with the Infinite. The effect of such communion on body and mind and soul is beyond estimate. In this communion is found the highest education. It is God's own method of development" (White 2001, 9-10).

The natural purpose of the school is not to teach, but first of all, to awaken by cultivating the intellectual skills in the heart of the student, the need to learn all their life, as Ioan Slavici said. While the first years of school are often greeted with tears and dissatisfaction, etc., it is our civic duty as parents, but also as human beings to educate our children, and ourselves. The school serves a number of purposes, including building trust, teaching children about the importance of teamwork and working with others. The school helps young people to guide themselves the establishment of a daily routine, which is extremely important, as they are directed to their job, to become productive members of society. Students are given access to new ideas, including science and language, and are given the opportunity to learn more about world cultures, geography, and history.

There are many types of schools available, from public to private, homeschooling, online academies that offer internet-based learning. Whatever the choice would be, a person's schooling

is always more effective, if a positive strengthening is added by parents or guardians. Learning about new disciplines and knowing the skills can help a child or even an adult to grow exponentially. People are "social animals" and need people around them in order to survive. School, be it online, can be a great way to build a network of friends and a similar community. Friendships are not the only important relationships that can be built through school. A school environment offers the chance to learn to work with others, which is a very important skill for the real world. All forms of education can lead us to a fulfilling life. There is a job for everyone and perhaps one of the most important reasons to go to school is the wealth of knowledge and information provided within the school, which represents a safe refuge for spreading ideas and often gives us access to topics and ideas which we would not find regularly in our homes or within our friends. Learning a foreign language, for example, is also a good achievement, school is good for everyone and it is important to know that everyone can improve their situation through the act of learning.

School is not only important for us as human beings, but also because it helps at the progress of the society, by educating its members who bring workforce to the individual through the new information acquired within an educational institution. School increases people's trust and teaches us to make and maintain friendships, helps us learn how to work together as a team, which is the main foundation of any successful society. Without school, knowledge could not spread as quickly, and our access to new ideas and people could be easily hampered. A schoolless world would create difficulties and prevent the dispersion of economic growth, tolerance and appreciation of our fellow human beings. For those who are currently enrolled in school, keep it that way, because the whole purpose of education is to turn mirrors into windows.

Comenius said that for every man "life is a school from the cradle to the grave," which would mean that man learns all his life, in search of personal development and self-transcendence. School and professional guidance represent a system of socio-educational actions aiming at the proper integration of each person in society. Ion Heliade Rădulescu's statement regarding the importance of school in the formation of an individual is still valid, although some voices claim that the school of life is the one that forms us for the future. Some parents see the school as a laboratory in which the child, once entered, is still subjected to scientific operations, and after them it is assumed that, after a few years, he will become smarter, more learned, more enlightened. Parents in this category show full confidence in the educational institution, without being particularly involved in the activities it carries out. Parents in this category believe that this is why they send their child to school so that he can learn there. The school informs and trains students taking into account certain principles, taking care to evaluate how the objectives have been achieved. Therefore, the school is not the only laboratory in which the child learns, but only one of them, more specialized and more competent in the field of education than others. It is good for the parent to trust the school, but for the child's education to rise to the expected level, he must get involved, he must collaborate with the teaching staff, so that the proposed methods and objectives to be convergent. Furthermore, even if the school of life has an important role in the life of each of us, it has often proved to be insufficient and therefore, the education acquired in the school environment has always represented a very good basis on which to build life experience. For some parents, a good school is the institution in which children are allowed to freely develop their personality. Secondly, regardless of the situation, we must not deny the fact that the school is an educational institution, quite important, with strict rules, which must be respected in such a way that the child to benefit from the best learning.

Also, through school, the child could interact with classmates, integrate into a new social environment, acquire certain practical skills, language learning or computer skills. He will be listened and evaluated regularly so that teachers to be sure that the student had accumulated the amount of knowledge needed to complete each useful period of study in later years. If the parent expresses dissatisfaction with the teacher who teaches the child, and the child becomes aware of this, in a few years, there will be discipline problems created by the child. In conclusion, if the

parent's attitude towards the school and towards the teacher is indifferent or hostile, the child will quickly catch this and will learn to show negativity towards any form of authority. It is important how parents express their feelings towards the school in front of their children. The school can have only two purposes: the first purpose is that of instruction, respectively to give the child the general knowledge he will need to use. The second purpose is to prepare the child for tomorrow and this is actually education, which does not really mean preparation for life, because education is life itself.

Basic education helps us to have certain skills. We can go on a larger arena, where the training received is wider but less deep or from a certain level, we reach a focus on a few basic disciplines, three or four, in which the young person is talented and will specialize in them. There are also systems in which the restriction to a certain curricular area that you can master in detail, on which you can acquire a kind of hyperspecialization or expertise, has shown that it can generate great benefits, both at individual level and at the level of society. No recipe turns out to be perfect, but these ideas should be carefully reflected when considering any kind of change in education. Education is provided by educational institutions, but the tendency is for certain programs to be developed even by other entities, even companies with state or private capital.

There is no shame in taking courses or even attending college even at the age of 60, although very few do so, but no matter how many faculties someone has done up to the age of 30-40-50, it is important to follow the market from which the person in question is part, to learn continuously, to read, to participate in courses, to be involved in debates, to be part of the social networks that are related to his field of interest. The man, as long as he lives, he learns, is the thinking that should follow any of us, every day, and the curiosity for discovering new things should not cease at any age.

The education system teaches you to think

School, college, is essential; it helps you think in a certain way specific to the job and even if you don't learn too much while you are in it, it still forms a certain way of thinking. The college teaches you, tangentially, what the respective profession is facing, namely the theoretical bases, but it will also educate your way of thinking that must be appropriate to the deontology and customs of the science of that specialty. After graduating from college, you are not a specialist, but you are just at the base of a pyramid represented by the professional group you want to enter. You are allowed to look up and aspire higher. College is the beginning, but it is an essential one. Not going to college, it's a shame, it's like spending a lifetime without enjoying classical music. It is true that you could live well without it, but you will lose an essential dimension of life. You don't have to follow a college in order to achieve something, but because you like the subject, the respective field. We as human beings live only once and it is a shame to spend your time with something you do not like, it does not satisfy you, just because your parents or even you think that it gives you better chances because that job is well paid. The world is extremely interesting. You don't have to waste your time with little things, because if you really like something and if you are really good, no matter what you choose to do in the future, you will do well and you will end up being well rewarded financially for what you do, while if you do something with half your heart, just because you have to do it, you will never be good enough and you will be frustrated on top of that. If you don't like your college, either finish it and start another, or simply change your field and move on. Simion Mehedinți said that school means order and careful consideration every moment, and Victor Hugo said that whoever opens a school closes a prison.

Nowadays when the internet is available to anyone, man has a lot of learning tools at his disposal. Beyond online courses or video tutorials, the person can also go to seminars or conferences in the field he is concerned with. It is important to follow the experts in your field of interest, to subscribe to their Facebook pages, to read their blog, and when time allows you to participate in the events in which they are invited as speakers, where if you can not be present in

the hall, you can watch the event live on the internet, if this possibility is also offered, or you can look for the registration of the event. Learning did not over with the end of the school, because people learn as long as they live or at least that would be ideal. Beyond the theoretical knowledge, a new skill can be developed: get your driver's license, learn a new language, get a certification in your field of activity or learn to play a musical instrument, because any new skill is useful and helps to grow self-esteem, helping you become more resourceful and confident on your own.

There is even a list of things to do, a to-do list, which has its useful value because it will help you see things much more structured and organized, achieving with its help prioritization of activities that you have can do. The list can be made daily or can be made for big goals in life, which in their turn can be divided into three categories: things you can do now, things that take time and things for which you need extra skills. This list should always be consulted and what you have already achieved should be checked. In the situation where certain things are more difficult to achieve, you should not be discouraged, yet you should persevere. The purpose of such a list is to keep you always motivated and to put you in a position to always highlight what is truly valuable and important to you and to your life.

Another kind of lesson

Being happy and grateful is part of the treatment for our mental health. Always be positive, happy and always grateful. Happiness is a choice, so you need to focus on the positive aspects of life and look at all the reasons to be grateful. Take time every day, maybe 5-10 minutes, to think of 3-5 things or people you are grateful for. In time, educate your mind to look at things from any situation. Psychologists teach us that happiness is a tool that helps us to be more productive in what we do, so investing in oneself is one of the most effective investments, with guaranteed results and zero losses. Any new thing learned, any book read, any skill acquired, will help you sooner or later and you just must trust your own strength and give yourself the time you need for this type of investment.

Count your good deeds every morning and fill your mind with positive thoughts. This is the secret to being happy and inspired throughout the day. An extremely important thing that should be done to have a beautiful life is not to get stuck in the past, a past that no longer exists and will never exist, and getting stuck in the past can be very harmful both for your present life as well as for your future life. Our past must be seen only as a life lesson and we must gather from it only those lessons that we need in our evolution and that's it. What we have to do is to analyze very correctly the hardships and sufferings of the past and collect from them the lessons we have learned. But we must understand one thing, namely that the people and experiences from the past were necessary to us then, at that moment, in order to learn what we had to learn and to determine ourselves to become stronger, better and wiser.

Let us not insist on condemning people and situations in the past and thinking of them with resentment and repulsion because this way of acting would distract us from learning from the past and at the same time would create an unhappy present. We must understand that life is not built only from pleasant moments, that sometimes quite difficult and unpleasant people and situations appear in our lives, but what we should do is look at those situations as opportunities for our present and future evolution. Once we learn to extract lessons from these situations and think only of those beautiful moments in the past, it will be much easier for us to forgive those people who once hurted us so much and it must be said that only forgiveness is the true release of the past. Until you don't learn to forgive the one who made you wrong, you will certainly not free yourself and you will not find peace in the present. So, learn to give up negative thoughts about your past, leave it behind because that is its place and pay attention only to your present, because only your present really matters and give yourself the chance to be happy every day, living only in the present.

Culture makes you wiser

Culture is par excellence a relationship issue, so it has inevitably proved that it has sometimes been placed after health and economy. Someone said that without culture we can live, but without economy and health, we can't, if you look at things in a very superficial way. Culture, in its very general sense, is found in every gesture and activity of the modern man. Health in today's world, both personal and collective, cannot be sustained without a medical culture. Economics is not an abstract gear, it operates according to certain rules embedded in an economic culture, starting from some very simple and reaching some very sophisticated rules, which ultimately concern us all. It's the same for all other areas of a science-based culture.

The culture of each field has been profoundly influenced by the pandemic, being equal in front of death and divinity, but we do not live our lives in only one way, according to the same material, moral and spiritual demands. We aren't equal in front of life because we differ in culture, and in wealth we differ only at very least. We differ in religious or political behavior, we have different options, also due to culture or due to a tradition that we assume, a tradition that also means culture. We cannot live without culture or civilization. One of the major conclusions would be that the situation of the pandemic has accentuated the previous negative tendencies regarding the cultural consumption, namely the alienation of the public from the culture has been deepened, in the classical sense.

Reading is less and less, and many, especially young people spend a lot of time on the internet. The film won on portals and subscriptions at home. Music and other videos are watched on youtube and on all TV channels, museums make their visit online, book launches are done online. We are witnessing the triumph of the intermediary in communication; the direct meeting is avoided or postponed. The electronic support has become crucial for all cultural activities. The phenomenon is relatively well known, but what is worrying is the fact that we may become so accustomed to such an attitude towards culture, as it was in the pandemic, stuck in a cautious isolation and in a passive attitude, and many of us, more and more, might be convinced that one can live without a major culture, contenting oneself with surrogates and indulging in entertainment.

Culture does not only mean books, paintings, symphonies, sculptures, philosophy, because culture, once named for better clarity, general culture, means knowledge in any field. A man of the third millennium should have at least a general idea of Mendeleev's Table, the most important writers in history, notions of religion, outer space, Michelangelo, Beethoven, some great movies, Shakespeare's play, how a computer works, what Pithagoras' theorem is used for, information about great explorers, great athletes, etc. Any field of culture provides you with ideas, a necessary thinking, fun, routine escape, the ability to live the lives of the characters and many other things that are useful, to home decorating ideas, culinary recipes and suggestions on how to manage relationships with those around you, holiday destinations. Culture is not a fad, something to prance in a discussion with friends or with anyone else, but it is something very necessary and useful. Certainly, culture makes you smarter.

Nowadays, reading is more and more neglected, and the causes that determine the lack of reading are diverse, and opinions are always divided. Some people exigent ascertain that the clutches of technological devices are to blame, while others blame their parents or teachers. Reading can be likened to appetite, just as reading, or the passion for books, must come from the inside, being the result of reading as many books as possible. In the present, the intuitive and attractive support of films and drawings surpasses the bland lines from the books' pages.

For parents who want to cultivate that seed of passion for reading, it is recommended to address several topics and focus on what is of interest for their children. A subject that appeals to the soul can be a solution closer to reading. It may be considered an obsolete, subject, but the impact of those Christian stories is an important part of personal development on all levels. Skeptics regard the soul as just a form of energy that is driven by hormones, while religion

teaches us that the soul is what makes us unique in the divine creation. The books contain events that have left their mark on the souls of many Christians and changed their perception about life.

When you open a book, you are actually opening a new world

Books have become inevitable for mankind, being part of everyone's daily life. A book is your good friend who never leaves you. The books are full of knowledge, perspectives of a happy life, life lessons, love, prayer and useful advices. They have been around for centuries, and without them, today's knowledge about our ancestors, culture, and past civilizations would be non-existent. What would have happened if intellectuals had never documented their studies? Can we reach an age where we no longer need to read? By reading we expose ourselves to new information, ideas, ways to solve a certain problem and methods to reach a certain goal easily. Reading can help you discover new hobbies or explore things you didn't know you would like. Exploration starts with reading and understanding, because reading helps you to understand the world more, to find certain truths much easier, to rationally analyze things or situations. By reading you can find out more things about society and how to adapt to it. If someone is limited by his own imagination, books will come to his aid to solve this problem. Reading broadens horizons, helps people understand what is and what is not possible, giving a glimmer of hope towards good. Studies show that reading substantially reduces stress, develops reason and improves perception of things, helping to maintain a clear memory and increases alert thinking. Reading is also fun, and a good quality book also creates a good mood, but at the same time develops the intellect. Nothing can develop our intellect as the book does, and yet in the 21st century we read less and less because technology has dethroned the book.

Conclusions

Reading has real benefits that readers can fully enjoy. Reading, the book, contributes especially to the enrichment of vocabulary. However, as a conclusion to the needs of education, I present the idea of the American author Ellen G. White, who presents so elegantly that: "Every human being, created in the image of God, is endowed with a power akin to that of the Creator—individuality, power to think and to do. The men in whom this power is developed are the men who bear responsibilities, who are leaders in enterprise, and who influence character. It is the work of true education to develop this power, to train the youth to be thinkers, and not mere reflectors of other men's thought. Instead of confining their study to that which men have said or written, let students be directed to the sources of truth, to the vast fields opened for research in nature and revelation. Let them contemplate the great facts of duty and destiny, and the mind will expand and strengthen. Instead of educated weaklings, institutions of learning may send forth men strong to think and to act, men who are masters and not slaves of circumstances, men who possess breadth of mind, clearness of thought, and the courage of their convictions. Such an education provides more than mental discipline; it provides more than physical training. It strengthens the character, so that truth and uprightness are not sacrificed to selfish desire or worldly ambition. It fortifies the mind against evil. Instead of some master passion becoming a power to destroy, every motive and desire are brought into conformity to the great principles of right. As the perfection of His character is dwelt upon, the mind is renewed, and the soul is re-created in the image of God. What education can be higher than this? What can equal it in value?" (White 2001, 12-13).

References

Ellen G. White. 2001. *Educație [Education]*. Bucharest: Viata si Sanatate Publishing House.
The Holy Bible, King James Version. Cambridge: Cambridge University Press.

January 6th and President Trump: A Study of Social Media in Today's America

Alex Sung¹, David Douglas Klein²

¹Student, USA, alexleesung@gmail.com

²Adjunct Instructor, New Jersey City University, USA, dougkleinteacher@gmail.com

ABSTRACT: In the wake of the January 6th mob insurrection at the US Capitol, does the Federal government need to implement protocols that flag insurrection and domestic terrorism on social media platforms such as Facebook and Twitter? The US Supreme Court protects Free Speech on privately owned media, but the most popular Internet sites have evolved by 2021 to become wide-spread spaces for public and private communication. Currently, these global platforms are permitted to selectively censor and regulate speech at their discretion without infringing upon First Amendment rights. The ubiquity of social media means that the publicly-available speech (e.g. posts) of Twitter and Facebook's billions of users is controlled by what's recently called by Congressional critics and commentators as "Big Tech". The most recent President of the United States Donald Trump was permanently banned from the largest social media platforms. On July 7, 2021 he filed class-action lawsuits targeting Facebook, Google (owner of YouTube) and Twitter. Many Americans with conservative views feel social media silence their voices, while those with liberal views argue that social media platforms do not eliminate hate speech. This paper will delve into whether increased government oversight and applying the rights of the First Amendment to individuals online can maintain peaceful public discourse, avoiding any future violence. The paper will also provide an overview of the essential legal hurdles the Trump lawsuit faces but will not analyze the strengths and weaknesses of the Trump case.

KEYWORDS: censorship, social media, January 6 riot, free speech rights, Trump ban, Facebook, Twitter, political bias

On January 6th, 2021, supporters of President Donald Trump violently stormed the Capitol to disrupt the counting of electoral votes that would seal Joe Biden's victory. Several protestors died during the event - one from a gunshot as she attempted to enter a barricaded door, and one woman was trampled to death at an outer entrance to the Capital. Three police officers died after the event (Healy 2021). Right-wing extremists planned the insurrection out in the open on mainstream and obscure social media sites (Lytvynenko, 2021).

Currently, global social media platforms are permitted to selectively censor and regulate speech at their discretion without infringing upon First Amendment rights in compliance with Section 230 of the Communications Decency Act (CDA), 47 U.S.C. § 230. The ubiquitous nature of social media means that companies that Congressional critics, former President Trump and commentators label as "Big Tech" (Gabatt 2021) control public speech on mainstream online forums and websites. Trump was temporarily - and then permanently - banned from Facebook, Youtube, and Twitter in January 2021. Trump launched class-action lawsuits against these entities on July 7th, 2021, claiming censorship (Lange and Wolfe 2021).

January 6th was the day circled on the calendar by Trump supporters because of the vote in Congress to certify the 2020 Electoral College results, designating Joseph Biden as the winner of the Presidential election. It was also the date of the March to Save America Rally, organized by the Woman for America First, which brought thousands of Trump supporters to Washington, DC (Trumpmarch.com [now defunct] web.archive.org, 2021). Trump spoke to the Rally throng on the Mall from 12 noon to 1:10 pm and ended with words, "We are going to the Capitol," he said. "We are going to try and give them [Republicans] the kind of pride and boldness that they need to take back our country" (Naylor 2021).

On right-wing social media sites, such as Parler, and even mainstream ones such as Facebook, Trump supporters organized and planned to storm the Capitol before Trump spoke

on January 6th (Lytvynenko 2021). Government agencies such as the Department of Homeland Security and the FBI were fully aware of the planning online but did not issue any warnings (Temple-Raston 2021). Investigators and journalists have found many expressions (the evidence in cases will prove whether the number of violent posts was in the thousands, tens of thousands, hundreds of thousands, or millions). A video posted on news websites shows leaders talking about using violence. Protesters came with weapons, mace, military gear, battle attire, explosives, and even a noose. One allegedly tweeted that he wanted to “Assassinate AOC” (Lytvynenko 2021).

Inside the building, the mob called out for Vice President Pence, and if he was caught in the crowd, the outcome might have been disastrous. In a video posted on social media, the crowd inside the Capitol could be heard chanting “Hang Mike Pence” repeatedly (CNN 2021). Never in recent memory has there been such an outcry for the assassination of a high-ranking public official such as Pence. Whether Trump is implicit in instigating the riots on the Capitol and the threats on his vice president are still up to much debate in Congress (Ellis and Wong 2021). As of this writing, the House of Representatives is embroiled in tension along partisan lines over who will be selected onto the committee to investigate the insurrection (Hendrix 2021).

Let’s turn to how people use social media to post threats and to mobilize to fight. While individuals sometimes claim that Twitter and Facebook violate free speech rights by restricting posts, Federal courts have held that the First Amendment to the US Constitution, which protects against state action, cannot invoke non-governmental companies owned by stockholders (Brudney 1981). Second, courts have concluded that many non-constitutional claims are barred by Section 230 of the Communications Decency Act (CDA), 47 U.S.C. § 230, which “provides immunity to providers of interactive computer services, including social media providers, both for certain decisions to host content created by others and for actions taken ‘voluntarily’ and ‘in good faith’ to restrict access to ‘objectionable’ material” (Brannon 2019). Moreover, while Section 230 gives a pathway for social media sites to remove harmful content, the onus is placed upon the individual private enterprises to regulate the speech. Since the Federal government cannot compel these companies to remove content, some social media sites that present themselves as “free-speech” social media platforms, such as Parler, did not take action (that’s publicly evident) to police insurrection chatter.

After Biden won the Presidential election in November, Trump repeatedly claimed widespread voter fraud, that the election was “stolen from him,” and Biden’s win was illegitimate (Yen 2021). This premise is laughable, and one can hardly believe that any rational person can say a Presidential election was stolen with a straight face - much less the Commander in Chief of the United States. From a legal point of view, one can say that Trump’s claims were without merit, baseless, fictional, even wacky - but were the messages Trump posted on social media violent, harassing, obscene, as the law stipulates for censorship? That is one element of the intellectual debate.

According to Twitter, Trump’s remarks regarding the election were violent as Twitter’s official statement reads, “President Trump’s statement that he will not be attending the Inauguration is being received by a number of his supporters as further confirmation that the election was not legitimate” and that it “may also serve as an encouragement to those potentially considering violent acts that the Inauguration would be a ‘safe’ target, as he will not be attending” (Permanent Suspension of @realDonaldTrump. Twitter Inc., 2021)

Parler, an alternative social media site started by conservative investors, quickly became popular with right-wing personalities Senator Ted Cruz, Eric Trump, and Sean Hannity after it was launched. Parler touted itself as a neutral social media platform focused on real user experiences and engagement (Bell 2021). However, Parler discovered that they did not control “its airwaves” - it was dependent on outside vendors to acquire users and for web hosting services (Parler used Amazon Web Services to host their servers) (Bazon 2021). In the days

after the Capitol assault, Apple and Google removed Parler from their respective app stores. Then Amazon Web Services stopped hosting Parler, effectively cutting off its plumbing. Parler sued, but it had agreed, in its contract, not to host content that “may be harmful to others.” In a court filing, Amazon provided samples of about 100 posts it had notified Parler violated its contract in the weeks before the Capitol assault. “Fry ’em up,” one said, with a list of targets that included Nancy Pelosi and Chuck Schumer. “We are coming for you, and you will know it.” On January 21st, 2021, a judge denied Parler’s demand to reinstate Amazon’s services (Bazelon 2021).

Parler was able to find another cloud host, LA-Based Skysilk, a month after the insurrection, ensuring their operation would continue running (Turton 2021). Even if Parler were permanently shut down, the violent and extremist speech would not have halted; in the month that Parler ceased services, Donald Trump supporters embraced Signal, Telegram, and other ‘free speech’ apps (Chau 2021). The user base Signal, Telegram, and privacy-focused search engine DuckDuckGo skyrocketed in the days following January 6th (Chau 2021). Even little-known apps such as MeWe, Rumble, CloutHub, and Gab have experienced substantial growth in downloaded users (Lonas 2021).

Gab is a social network that says it “champions free speech, individual liberty, and the free flow of information online” on its official website. Many of the posts on Gab, however, prompt violent ideas. For example, posts found on Gab included a user writing, “just so you know, I’m going to terrorize and burn some Democrats’ places. Come bail me out.” Another saying is, “if you ever want info on someone, let me know. I [can] hunt anyone down. I’m using my skip tracing skills to “give back” to the democratic community. It’s only fair” (Lee 2021). These posts were left upon Gab, helping right-wing extremists spread their ideology across the internet. Anti-Defamation League President Andrew Torblatt says that “Gab is not moderating this extremist content, and their CEO seems to be encouraging users to upload it” (Boigon 2021).

This paper is steering clear of political viewpoints and the broad subject of reviewing political polarization in the United States. However, the last five years have been terra nova in linking non-political concepts to a political leaning. Who imagined that getting a Covid shot would be correlated with one’s political stance? Were rubella and tuberculosis ever politicized? Well, that is where we are in America in 2021.

Where are the lines of division? Most U.S. adults believe that social media companies intentionally censor posts about politics, according to a Pew Research Center survey released in 2020 (Johnson 2020). Roughly three out of four people, or 73% of respondents, said they believe platforms like Facebook and Twitter practice censorship of political speech. That’s up slightly from 72% when Pew last asked that question in 2018 (Johnson 2020). Most people who identify as Democrat or Republican believe social media platforms censor users, but the belief is more common among Republicans. The idea that social media companies practice censorship jumps to 9 in 10 for Republicans, while only 19% of Democrats believe this to be very likely and 40% believe it to be somewhat likely. Roughly 7 in 10 Republicans or Republican-leaning respondents said social media favors liberals over conservatives, also up from 2018 figures.

So will this be proven true? Former President Trump, after all, has launched a class-action lawsuit against Facebook, Google, and Twitter based on “censorship” (Lange and Wolfe 2021). However, a study by data analytics firm Crowdtangle found that news on sites such as Facebook tends to lean conservative, and Facebook executives have not moderated conservative content out of the fear of losing their strong conservative American consumer base (Johnson, 2020). Another study conducted by the non-profit organization Media Matters for America found that right-leaning Facebook pages accounted for 45% of all interactions on the site. MMFA also found that right-wing pages earned around nine billion likes or comments compared with just five billion for liberal pages (Gabatt 2021). These metrics above indicate that the “free market” of political views shows a robust consumer demand for right-leaning

content in the US – as a for-profit company, Facebook will naturally want to continue to benefit from the most popular posts that keep customers returning. Regardless, at least 18 states have pending legislation protecting social media speech - mostly “red” or Republican leading states. (Khashtan 2021).

It finally begs the question of whether the federal government should play a more significant role, if a role at all, in regulating social media. The House Select Committee formed to investigate the insurrection is considering legislation that will strengthen ties between social media companies and law enforcement and look into whether actions could have been taken to prevent the planning of January 6th on social media (Hendrix 2021). In fact, as of this writing, President Biden’s administration has begun a campaign against misinformation on Facebook (Rodriguez 2021). The Biden administration is calling on Facebook to remove posts that encourage American citizens not to get vaccinated (Rodriguez 2021). The government can make life harder for Facebook if the request is not complied with. For example, the Federal Trade Commission could refile its antitrust lawsuit against Facebook (Sullum 2021). Increased scrutiny towards the way private enterprise has regulated free speech is not just shared by the Democratic Party. There is bipartisan opposition to the clause in Section 230 that shields social media platforms from liability for content posted by users (Sullum 2021). Government agencies could remove posts that spread misinformation (such as vaccines) and incite violence (January 6th).

The New York Times noted that Big Tech companies have more stringent guidelines than what is provided in the exceptions to the First Amendment (Bazelon 2021). Legal Scholar David Hudson, writing in the American Bar Association Journal, says that “when a private actor has control over online communications and online forums, these private actors are analogous to a governmental actor” (Hudson 2021). Social media companies’ immense power is shown in the widespread suspension/removal of former President Trump across various social media platforms. Trump has been banned from Twitter indefinitely (Permanent suspension of @realDonaldTrump. Twitter Inc. 2021), and Facebook for two years retroactive to January 7th (Wolfe and Lange 2021). These two social media companies were integral to the success of the Trump Presidential campaign in 2016, with campaign director Brad Pascale admitting that “Facebook and Twitter were the reason we won this thing” (Lapowsky 2016).

In a recent opinion piece written by Trump in the Wall Street Journal, the former president posits that “in recent years, we [the American people] have all watched Congress haul Big Tech CEOs before their committees and demand that they censor ‘false’ stories and ‘disinformation’—labels determined by an army of partisan fact-checkers loyal to the Democrat Party” and that “Big Tech has been illegally deputized as the censorship arm of the U.S. government...it is unacceptable, unlawful and un-American” (Trump 2021). While Trump’s first claim is debunked by the Pew Research and MMFA studies, his second point is a subject of much ongoing legal debate.

Big Tech removing posts is not illegal or unlawful. Still, reforms could be underway, starting with the House Committee on the insurrection, which will review the extent of government surveillance and intervention on social media (Hendrix 2021). Having tech companies regulate themselves may lead to the same companies controlling political narratives and news flow - because Social Media companies – as we showed with metrics earlier in this paper - have an incentive to sell advertising viewed by hundreds of millions of users (Brannon 2019). Legal scholar David Hudson proposes that the U.S. Supreme Court interpret the First Amendment to limit the “unreasonably restrictive and oppressive conduct” by certain powerful, private entities—such as social media entities—that flagrantly censor freedom of expression. (Hudson 2021).

By simply deeming social media platforms as public spaces, will we see in the future that the Federal government will regulate speech based on the exceptions to the First Amendment? The alternative could be placing more onus on the social media companies themselves. An

opinion piece in the Washington Post says that while Trump’s removal from social media was warranted, it was done through arbitrary rules. “Making the rules clearer will provide users with set guidelines that they must adhere to, rather than having their posts removed at the companies’ discretion” (The Washington Post Editorial Board 2021).

As of this writing, the Department of Justice has reported that 535 defendants have been arrested for various charges, from misdemeanors to felonies, while about 300 suspects have remained unidentified. Grand juries indicted at least 204 of the individuals arrested, 21 have pled guilty to their charges, but only six have been charged with felonies (Hymes, McDonald, and Watson 2021). Trump’s ongoing lawsuits against Big Tech are unlikely to succeed according to multiple legal scholars; Eric Goldman, a law professor at Santa Clara University, says Trump’s legal team has “argued everything under the sun, including the first amendment, and they get nowhere,” and Vera Eidelman, an attorney with the ACLU says Trump’s lawsuits are “meritless” (Paul 2021). January 6th provides a precedent that when someone threatens a government building or elected official, they must be believed - no matter how crazy it appears.

References

- Bazon, Emily. 2021. “Why Is Big Tech Policing Speech? Because the Government Isn't.” *The New York Times*, January 26, 2021.
- Brannon, Valerie C. 2021. “Free Speech and the Regulation of Social Media Content.” *Congressional Research Service*, March 27, 2021.
- Brudney, Victor. 1981. “Business Corporations and Stockholders' Rights under the First Amendment.” *The Yale Law Journal* 91(2): 235.
- Chau, David. 2021. “Dangerous New Phase: Trump SUPPORTERS Rush to Join New 'Free Speech' Apps.” *ABC News*, January 20, 2021. <https://www.abc.net.au/news/2021-01-20/donald-trump-social-media-apps-free-speech-privacy/13071206>.
- “Department of Justice's Review of Section 230 of the Communications Decency Act of 1996.” The United States Department of Justice, January 20, 2021.
- Gabbatt, Adam. 2021. “Republicans Cry Big Tech Bias – on the Very Platforms They Have Dominated.” *The Guardian*. Guardian News and Media, May 9, 2021.
- Hendrix, Justin. 2021. “Jan 6 Select Committee and Social Media Companies: 10 Key Pieces of Information to Subpoena.” *Just Security*, July 25, 2021. <https://www.justsecurity.org/77571/jan-6-select-committee-and-social-media-companies-10-key-pieces-of-information-to-subpoena/>.
- Hudson, David L. 2021. “In the Age of Social Media, Expand the Reach of the First Amendment.” *American Bar Association*. Accessed July 26, 2021.
- Hymes, Claire, Cassidy McDonald, and Eleanor Watson. 2021. “More than 535 Arrested so Far in Capitol Riot Case, While More than 300 Suspects Remain Unidentified.” *CBS News*. CBS Interactive, July 21, 2021. <https://www.cbsnews.com/news/capitol-riot-arrests-latest-2021-07-22/>.
- Johnson, Khari. 2020. “Pew: 73% of Americans Believe Social Media Platforms Censor Political Speech.” *VentureBeat*, August 19, 2020. <https://venturebeat.com/2020/08/19/pew-73-of-americans-believe-social-media-platforms-censor-political-speech/>.
- Lapowsky, Iessie. 2016. “This Is How Facebook Actually Won Trump the Presidency.” *Wired*. Conde Nast, November 15, 2016. <https://www.wired.com/2016/11/facebook-won-trump-election-not-just-fake-news/>.
- Lee, Micah. 2021. “Inside Gab, the Online Safe Space for Far-Right Extremists.” *The Intercept*, March 15, 2021. <https://theintercept.com/2021/03/15/gab-hack-donald-trump-parler-extremists/>.
- Lonas, Lexi. 2021. “Social Media Platform Gab Gains Traffic, Users Following Capitol Riot Fallout.” *The Hill*, January 10, 2021. <https://thehill.com/policy/technology/533502-far-right-social-media-platform-gaining-traction-captiol-riots>.
- Lytvynenko, Jane. 2021. “The Rioters Who Took Over the Capitol Have Been Planning Online in the Open for Weeks.” *BuzzFeed News*, January 8, 2021. <https://www.buzzfeednews.com/article/janeltyvynenko/trump-rioters-planned-online?scrolla=5eb6d68b7fedc32c19ef33b4>.
- “Permanent Suspension of @realDonaldTrump.” 2021. *Twitter*. Accessed July 26, 2021. https://blog.twitter.com/en_us/topics/company/2020/suspension.
- “Rioters Chanted 'Hang Mike Pence' at Capitol as Pence Fled with Family Seconds before - CNN Video.” *CNN Cable News Network*, January 15, 2021. <https://www.cnn.com/videos/politics/2021/01/15/mike-pence-close-call-capitol-riot-foreman-vpx.cnn>.

- Rodriguez, Salvador. 2021. "Biden on Facebook: 'They're Killing People' with Vaccine Misinformation." *CNBC*, July 18, 2021. <https://www.cnbc.com/2021/07/16/white-house-says-facebook-needs-to-do-more-to-fight-vaccine-misinformation.html>.
- Sullum, Jacob. 2021. "Biden's Campaign against Facebook and Vaccine Misinformation Is Censorship by Proxy." *Chicago Sun-Times*, July 21, 2021.
- Temple-Raston, Dina. 2021. "Why Didn't the FBI And DHS Produce A Threat Report Ahead of The Capitol Insurrection?" *NPR*, January 14, 2021. <https://www.npr.org/2021/01/13/956359496/why-didnt-the-fbi-and-dhs-produce-a-threat-report-ahead-of-the-capitol-insurrect>.
- Trump, Donald J. 2021. "Opinion | Donald J. Trump: Why I'm Suing Big Tech." *The Wall Street Journal*. Dow Jones & Company, July 8, 2021.
- Turton, William. 2021. "Parler Is Back Online, Running on Cloud Hosting Provider SkySilk." *Bloomberg*, February 16, 2021.
- Vogels, Emily A., Andrew Perrin, and Monica Anderson. 2020. "Most Americans Think Social Media Sites Censor Political Viewpoints." *Pew Research Center: Internet, Science & Tech*. Pew Research Center, September 18, 2020.
- The Washington Post Editorial Board. 2021. "Opinion | Trump's Removal from Social Media Was Warranted - but Arbitrary. It's Time for Clearer Rules." *The Washington Post*. WP Company, February 1, 2021.
- Wolfe, Jan, and Jason Lange. 2021. "Trump Sues Facebook, Twitter and Google, Claiming Censorship." *Thomson Reuters*, July 7, 2021. <https://www.reuters.com/world/us/trump-says-he-is-suing-facebook-twitter-google-claiming-bias-2021-07-07/>.
- Yen, Hope. 2021. "AP Fact Check: Yes, Trump Lost Election despite What He Says." *AP News*. Associated Press, May 6, 2021. <https://apnews.com/article/donald-trump-michael-pence-electoral-college-elections-health-2d9bd47a8bd3561682ac46c6b3873a10>.

The Legal Benefits Provided by the Romanian Criminal Legislation in Favor of the Collaborators

Nadia Zlate

*National Anticorruption Directorate, Romania
zlate_nadia@yahoo.com*

ABSTRACT: In the Romanian criminal process, a collaborator can be any person who does not act as an operative agent within the judicial police and who helps the criminal investigation authorities to obtain data and information in criminal cases for the identification and criminal prosecution of perpetrators, as well as for taking all legal procedural measures in the criminal case (for example, for identifying goods subject to special confiscation). Thus, the collaborators may have the quality of parties or main procedural subjects (defendant, civil party, civilly responsible party, injured person, and suspect) or of other procedural subjects according to the provisions of art. 34 of the Romanian Code of Criminal Procedure, such as the witness. The use of the collaborators, in addition to other special methods of surveillance and investigation provided by the Code of Criminal Procedure, is often essential in the investigation of drug trafficking offenses or other illicit activities carried out by organized criminal groups, given the secrecy of their activity and the difficulty of infiltrating foreigners into the criminal environment. The legal benefits that can be given to collaborators to persuade them to cooperate with criminal investigation authorities in order to gather the data and information necessary to find out the truth in criminal cases and prevent the commission of crimes are the application of a case of impunity or reduction of punishment and financial rewards. However, special attention must be paid to employees' motivations to assess their credibility, both by the criminal investigation authorities and by the court.

KEYWORDS: special investigation methods, use of undercover investigators and collaborators, motivation of collaborators, legal benefits

Introduction

Traditionally, criminal investigations were reactive when they looked at crimes of corruption, organized crime, economic crime and other serious crimes, which presuppose that they were already consumed, and investigative bodies administered evidence that was subsequently corroborated to establish the situation fact.

It was noted in the Deployment of Special Investigative Means (written as part of the Project on the Recovery of Crime Proceeds in Serbia, available at www.coe.int - Council of Europe, 1-2) that such investigations have proved effective when, for example, there are reliable witnesses capable of providing strong evidence or when accused persons have been willing to cooperate with the authorities and report and provide evidence against participants in such offenses or when there is a detailed written record of financial transactions.

Given the increasingly sophisticated nature of serious organized crime, corruption and economic crime, there is a reduced likelihood that there will be a foreign witness to the criminal activity to assist in its commission or that participants in crime will assist the prosecuting authorities to find out the truth. It is also most likely that the documentary evidence will not be sufficient to prove the criminal activity.

For these reasons, as the capacity of the judiciary to gather and process information increases, proactive investigations are conducted in increasingly diverse jurisdictions to combat serious crime.

Proactive investigations enable investigating bodies to detect and stop suspects while committing crimes.

Collaborators. Definition

The Romanian legislator did not provide a generic definition of special investigative means, but listed and defined each one in Title IV, Chapter IV of the Code of Criminal Procedure, entitled “Special methods of surveillance or investigation”, in article 138.

A generic definition of special investigative means was provided in the paper “Deployment of Special Investigative Means” (Idem, 12), which showed that special investigative techniques are those techniques used to gather evidence and/or information in such a way as not to alert people who are being investigated.

According to art. 138 of the Romanian Code of Criminal Procedure, special means of surveillance or investigation are the following: interception of communications or any type of remote communication, access to a computer system, video, audio or photography surveillance, location or tracking by technical means, obtaining data on a person’s financial transactions, withholding, handing over or searching postal items, use of undercover investigators and collaborators, authorized participation in certain activities, supervised delivery and obtaining traffic and location data processed by providers of public electronic communications networks or providers of electronic communications services intended for the public.

It was pointed out in the doctrine that the emergence of the legal framework governing the activity of undercover investigators was unanimously determined by the needs of the fight against atypical forms of crime, which operate in an organized and “hermetic” way, so that the documentation of the criminal activity by normal methods becomes particularly difficult, if not impossible (Trif 2016, 88).

The use of undercover investigators and collaborators, as a special mean of investigation, is regulated in articles 148 and 149 of the Romanian Code of Criminal Procedure, which provide the legal conditions for using this technique, its duration, and the limits within which undercover investigators and collaborators can carry out activities.

The measure is ordered by the prosecutor, *ex officio* or at the request of the investigation body, by ordinance, which must include an indication of the activities that the undercover investigator is authorized to carry out, the period for which the measure was authorized, and the identity assigned to the undercover investigator.

The prosecutor will authorize the use of undercover investigators and collaborators if all the conditions provided by law are met, including those related to the proportionality and subsidiarity of the measure so that there is no unjustified interference in the privacy of the subject. Also, the prosecutor's decision will be subject to the judge’s analysis when assessing the legality of the administration of evidence in the criminal investigation phase, which also involves a filter from the latter.

Undercover investigators are operative workers within the judicial police (for example within the Special Operations Directorate or the General Anticorruption Directorate), while in case of investigation of crimes against national security and terrorist offenses there can also be used as undercover investigators operative workers within the bodies that carry out, according to the law, intelligence activities in order to ensure national security. Thus, in the case of the investigation of crimes against national security and terrorist offenses (art. 394-410 of the Romanian Code of Criminal Procedure and art. 32-38 of Law 535/2004 on preventing and combating terrorism), there can be used as undercover investigators also operative agents within the state bodies that carry out according to the law, intelligence activities for national security (officers of the Romanian Intelligence Service, the Foreign Intelligence Service, the Intelligence and Internal Protection Directorate of the Ministry of Internal Affairs, the General Intelligence Directorate within the Ministry of National Defense, Protection and Guard Service).”

Unlike the undercover investigator, the “collaborator” does not have a definition in the Romanian procedural legislation, this being done in a doctrinal and jurisprudential way. The collaborator was defined in the doctrine as “that person who is not part of the judicial bodies and who acts under their coordination to obtain data and information” (Șuiian 2016, 15-16).

The Constitutional Court mentioned in Decision no. 323/2017 (regarding the rejection of the exception of unconstitutionality of the provisions of art. 148 par. 2 c of the Romanian Code of Criminal Procedure, published in the Official Journal no. 640 of August 4, 2017, Part I) the categories of persons who may have the quality of collaborators in the criminal process showing that “a collaborator is not a member of the judicial police and can be any person in the circle of suspects or who has interacted with the criminal area and can provide evidence in proving crimes. Thus, since in many cases the infiltration of an undercover or real-identity investigator is impossible due to the concrete conditions regarding the secrecy of the criminal structure or the relationships within the groups, judicial bodies may recruit a member of the criminal network or a person who may infiltrate into it thanks to the trust it enjoys among its members” (par. 22).

Some authors have shown that collaborators are usually “criminals who have been identified by the criminal investigation authorities and are determined to offer their support through various methods. The possibility that a person who has not committed illegal acts incriminated by the criminal law to become a collaborator is not excluded, but the reality teaches us that a person who is not interested in any way (financially, benefit from a case of impunity or a cause of reduction of the sentence) will not endanger his life to help the criminal investigation bodies, and can be, in the best case, an anonymous informant or a whistleblower” (Șuiian 2016, 17):

The same author pointed out that “the advantage of using a collaborator is that he is often infiltrated in the targeted criminal group and does not have to prove his loyalty to the group to obtain data and information. As such, the collaborator will not be assigned another identity in most cases, but will assume his or her own identity and continue his or her activities within the group for the period for which he or she continues to be used as a collaborator. However, the provisions of art. 148 par. 10 Romanian Code of Criminal Procedure do not rule out the possibility that a collaborator may be assigned a new identity (Șuiian, 2016, 17-18).

Collaborators’ motivation

It was emphasized in the doctrine that “the issue of motivating collaborators and even informants is particularly important for finding out the truth, both from the perspective of criminal prosecution authorities and the lawyer of the suspect or defendant, due to the possibility that evidence, data or information obtained by using of collaborators and informants to be vitiated by the very factors that determine them to help the criminal investigation bodies”.

The legislator has not created a procedural mechanism to effectively verify the motivation behind the acceptance of a collaborator or informant to help prosecutors, currently, the only way to find out this motivation is through hearing the collaborator.

The same author expressed reservations about the effectiveness of this solution in relation to the court's ability to censor any question that could lead to disclosure of the person’s identity, so that the accused’s lawyer will not be able to invoke the collaborator’s motivation to give false statements. The reasons behind the help provided by collaborators and informants are important to know by the court, in order to avoid solutions that are far from the truth and are determined by the false statements of a collaborator interested in obtaining a benefit as a result of helping the prosecution authorities.

From the prosecutor's perspective, it was shown that it is necessary for the collaborator's motivation to weigh heavily in assessing their credibility, and he must know at all times what determined that person to help the investigators, in order to keep the person on the same side and to avoid, in particular, obtaining information on the investigation by the persons against whom the investigative measure was ordered (situation of a collaborator - double agent). It should not be forgotten that a collaborator and an informant have access to information known only by the investigators, and these can be essential for the proper conduct of a case. An example that can be imagined is the authorization of several collaborators, one of which is a so-called double agent, infiltrated within the investigation bodies to discover the identity of other collaborators or informants.

Regarding the role of the lawyer in hearing a collaborator during the criminal trial, it was considered that the development of an effective defense strategy requires finding out the reasons that determined the collaborator to cooperate with the investigators so the defense is able to verify the loyalty of obtaining evidence derived from the investigative measure. When the entire criminal investigation was carried out with the help of a collaborator (complaint made by him, providing several statements, environmental recording of conversations in his home, wearing the operative technique at meetings with other people etc.), even though he has that quality of a participant at the process as a whistleblower, the defense strategy will be decisively affected by the way in which the motivation of this collaborator will be found out.

Consequently, it was proposed that during the criminal investigation, before the issuance of the order authorizing the use of collaborators, a collaboration agreement be concluded between the prosecutor and the future collaborator in which to highlight the benefits offered to the collaborator in exchange for his services for the good serving of justice.

With regard to the latter proposal, we note that it is part of the recommendations issued by European Union specialists to which we referred earlier, but special attention must be paid to the fact that, by revealing the motivation of the collaborator, his identity could be indirectly found by the accused person.

Therefore, we are of the opinion that the court will have to assess on a case-by-case basis whether it will allow the participants in the process to be aware of the collaborator's motivation, and will take into account all aspects related to the fairness of the procedure, the reliability of the evidence obtained as a result of the use of collaborators, including in terms of their motivation.

In the case of *Cornelis v. The Netherlands* (Judgment of 25 May 2004, available at www.echr.coe.int - European Court of Human Rights), the European Court of Human Rights has stated that the use of witness statements in exchange for immunity or other benefits is an important tool in the fight against serious crime. However, the way in which this instrument may compromise the fairness of the proceedings against the defendant raise delicate issues, given that, by their very nature, such statements are subject to manipulation and can only be made in order to obtain the benefits offered in return or for personal revenge. The sometimes-ambiguous nature of such statements and the risk that a person may be accused and tried on the basis of unverified statements that are not necessarily disinterested should therefore not be underestimated. However, the use of such statements is not in itself sufficient to make the procedure unfair, depending on the particularities of each case.

The United Nations Convention against Transnational Organized Crime (Adopted by the General Assembly of the United Nations (UN) on November 15, 2000, ratified by Romania by Law 565/2002 and published in the Official Journal. no. 813 of 08.11.2002, Part I) provides in art. 26 that each State Party shall take appropriate measures to encourage persons participating in or having participated in organized criminal groups. Each State Party shall rule for the possibility, in accordance with the fundamental principles of its domestic law, of granting immunity from prosecution to a person who cooperates substantially in the investigation or prosecution of an offense under the Convention.

Collaborators' motivations to help judicial authorities in conducting investigations are varied, including money, fear, revenge, threats from perpetrators, special treatment during detention, ego, and threats of deportation, remorse or duty, civic sense, immunity from prosecution or reduction of punishment.

The legal benefits that can be granted to collaborators

a) Benefiting from a cause of impunity or a cause of reduction of the punishment.

The causes of impunity or reduction of the punishment can be established only by law, by the Romanian Criminal Code or by the special criminal legislation.

The Romanian Criminal Code regulates in the case of corruption offenses two situations in which the person who committed an act of corruption will not be punished if he makes a complaint about his own act of corruption, before the criminal investigation authority to have been notified regarding its commission, respectively in the case of the offenses of bribery and purchase of influence, the causes of impunity being established by the provisions of art. 290 par. 3 of the Criminal Code and art. 292 par. 2 of the Criminal Code.

In the case of the crime of initiating or setting up an organized criminal group incriminated in art. 367 of the Romanian Criminal Code, the law provides a cause of impunity and a cause of reduction of punishment. The cause of impunity from art. 367 par. 4 of the Romanian Code of Criminal Procedure presupposes that a member of the group denounces its existence to the criminal investigation authorities before it has been discovered and before the commission of the crimes falling within the scope of the group has begun.

Another cause of reduction of the punishment is provided by art. 411 of the Romanian Criminal Code in case of committing a crime against national security, whereby the person who committed such an act will benefit from the reduction of the special limits of punishment by half if, during the criminal investigation, will facilitate finding the truth and prosecuting the perpetrator or of the participants in that act.

Also, in the case of corruption offenses, a cause of reduction of the punishment limits may be incident, included in the provisions of art. 19 of the Government Emergency Ordinance no. 43/2002 regarding the National Anticorruption Directorate (published in the Official Journal. no. 244 of April 11, 2002, Part I). This cause of reduction of the punishment limits will be incident if a person has committed an act that falls within the competence of the National Anticorruption Directorate, and during the criminal investigation, denounces and facilitates the identification and prosecution of other persons who committed such crimes.

It was noted in the doctrine that from the way in which the cause of reduction of the punishment is regulated, it is observed that the prosecutor will have a wide appreciation regarding the determinant character of facilitating the criminal prosecution of other persons. If this cause of reduction of the punishment is applied, the benefit will consist in reducing by half the limits of the punishment provided by law for the committed deed and which falls within the competence of the National Anticorruption Directorate.

Also Law no. 508/2004 regarding the establishment, organization and functioning within the Public Ministry of the Directorate for the Investigation of Organized Crime and Terrorism Crimes (published in the Official Journal no. 1089 of November 23, 2004, Part I) provides in art. 18 a cause of reduction of the punishment, in the sense that if the person who committed a crime assigned in the competence of the Directorate for the Investigation of Organized Crime and Terrorism for investigation, and during the criminal investigation denounces and facilitates the identification and prosecution of other participants when committing the crime, he benefits from the reduction by half of the limits of the punishment provided by law.

Unlike the cause of reduction of the punishment regulated by art. 19 of Government Emergency Ordinance no. 43/2002, the applicability is restricted only to the crime of which the person is accused, as a result of the use of the term participants.

In the case of crimes incriminated by Law no. 143/2000 on preventing and combating illicit drug trafficking and consumption, republished (published in the Official Journal no. 163 of March 6, 2014, Part I), will be applicable a cause of impunity or a cause of reduction of punishment.

According to art. 14 of the law mentioned above, in case of committing the offenses provided by art. 2-9 of Law no. 143/2000, the offender will not be held criminally liable if, before the criminal investigation is initiated, he denounces his participation in the commission of crimes, thus contributing to the identification and prosecution of the perpetrator or the other participants. The cause of impunity involves the denunciation of one's own deed and does not imply that the perpetrator contributes in addition to the criminal prosecution of the other persons who participated in the commission of the crime.

The condition for applying this cause of impunity is the absence of a criminal complaint regarding the criminal offence of the future collaborator. In the situation where there is already a notification regarding his deed, it will be possible to apply a cause of reduction of the punishment which, according to art. 15 of Law 143/2000 will entail a reduction by half of the punishment limits provided by law for drug-related offenses, provided that the person in question denounces and facilitates the prosecution of other persons who have committed crimes (including other drug-related offenses.)

Furthermore, the Law no. 682/2002 on the protection of witnesses, republished (published in the Official Journal no. 288 of April 18, 2014, Part I), has provided in art. 19 a legal cause of reduction of the punishment applicable to witnesses within the meaning of the provisions of the special law (According to art. 2 of Law 682/2002, the witness is the person who is in one of the following situations: 1. has the quality of a witness, according to the Code of Criminal Procedure, and through his statements provides information and data of a decisive nature in finding out the truth about serious crimes or which contribute to preventing the occurrence or recovery of special damages that could be caused by committing such crimes; 2. without having a procedural quality in question, through information and data of a decisive nature contributes to finding out the truth in cases of serious crimes or to preventing the occurrence of special damages that could be caused by committing such crimes or recovering them; this category also includes the person who has the quality of defendant in another case; 3. is in the course of the execution of a custodial sentence and, through the decisive information and data he provides, contributes to finding out the truth in cases of serious crimes or to preventing the occurrence or recovery of special damages that could be caused by committing such crimes).

Thus, according to art. 2 of the law, it will not be necessary for the person to have the quality of witness during the criminal process, but only that of witness within the meaning of the special law, the legal provisions applicable to collaborators and informants. It is necessary for the witness to report and facilitate the prosecution of other persons who have committed serious crimes. Regarding the phase of the criminal trial in which the witness can act for the benefit of the cause of reduction of the sentence, the text of the law shows that the denunciation and facilitation of prosecution may occur before the prosecution, during the criminal investigation or during the trial. The procedural phases refer to the investigation and judgment of the deeds of the witness and not of the persons against whom a complaint is made. The legal cause of reduction of the punishment has a broader character than those shown above, being applicable to persons who have committed a serious crime. Although the law stipulates the condition that the crime committed must be a serious one, the Constitutional Court ruled in Decision no. 67 of 25 February 2015 (regarding the admission of the exception of unconstitutionality of the provisions of art. 19 of Law no. 682/2002 on the protection of

witnesses, published in the Official Journal. no. 185 of March 18, 2015, Part I) that this provision is unconstitutional, being discriminatory, as it would not allow the application of the cause of reduction of the sentence if the witness did not commit a serious crime within the meaning of Law 682/2002 (according to art. 2 of Law 682/2002, the serious crime is the crime that falls into one of the following categories: genocide and crimes against humanity and war crimes, crimes against national security, terrorism, murder, crimes related to drug trafficking, human trafficking, money laundering, counterfeiting of coins or other valuables, offenses related to non-compliance with the regime of weapons, ammunition, explosives, nuclear or other radioactive materials, corruption offenses, as well as any other offense for which the law provides for special imprisonment maximum at least ten years).

b) Money as motivation of collaborators

In the Romanian criminal legislation, there is only one case in which funds are allocated from the state budget to be used to pay collaborators and informants, but it is limited to cases investigated by the Directorate for the Investigation of Organized Crime and Terrorism.

According to art. 1 par. 6 of Law no. 508/2004 on the establishment, organization and functioning within the Public Ministry of the Directorate for the Investigation of Organized Crime and Terrorism (published in the Official Journal. no. 1089 of November 23, 2004, Part I): “An annual deposit of 1,000,000 lei is established for actions regarding the organization and finding of flagrant crimes or occasioned by the use of undercover investigators, informants or their collaborators, at the disposal of the chief prosecutor of the Directorate for Investigation of Organized Crime and Terrorism, and its mode of management and use will be established by order of the Chief Prosecutor of this Directorate.

Expenditure on the use of undercover investigators by informants and collaborators means, in particular, expenditure incurred by the Public Ministry to give them credibility with members of the groups they infiltrate or to provide logistical support in conducting research measures (e.g. renting a building to serve as a home for the employee). A concrete example is the participation in certain activities through which an employee purchases a quantity of drugs from a person, using money received from the liaison officer in order to carry out this transaction.” In addition to these uses, the text of the law allows the payment from these funds of collaborators and informants as remuneration for services provided in support of criminal prosecution bodies, given that few people would be willing to put themselves in danger without being assured that they will receive a substantial remuneration.

It was emphasized in the doctrine that the real problem is not the payment of sums of money but the conditioning of receiving sums of money by obtaining results, such as confiscation of quantities of drugs, criminal prosecution of certain persons, discovery of new crimes, etc. Given that the criminal investigation bodies would recognize the collaborators’ motivation as a patrimonial one and would specify it, this circumstance would contribute to establishing the probative value of his statement. For example, if the sums of money offered were significant and conditioned by obtaining results, the honesty of collaborator’s statements is questioned because the collaborator has a patrimonial interest in sanctioning a defendant, especially if the sums of money are not paid until the case is resolved. Informants and collaborators, if they are paid according to the results they obtain and if these results are quantified in the number of people arrested or sent to trial, can become the subordinates of the criminal investigation bodies very easily. They become “habitual collaborators” and will be financially interested in helping to solve as many cases as possible (Șuian 2016, 18).

Conclusions

The institution of using of the collaborator, as a special mean of criminal investigation, has shown that it is particularly useful in proving certain crimes, such as corruption, in which the

subjects involved have a high degree of intelligence and commit crimes in such way to avoid the risk of them being discovered.

Also, the use of the collaborator, in addition to other special means of surveillance and investigation provided by the Romanian Code of Criminal Procedure, is often essential in the investigation of drug trafficking offenses or other illicit activities carried out by organized criminal groups, given the clandestine activity and the difficulty of infiltrating foreigners into the criminal environment.

The collaborator may be subject to serious risks when performing undercover operations, which may endanger his life, the physical or mental integrity of himself or other close people, the workplace, etc. Therefore, the process of recruiting private individuals to help investigators in obtaining data and information in criminal investigations can be particularly difficult.

We consider particularly appropriate the legal benefits that can be applied to collaborators in order to persuade them to cooperate with the investigators and thus to gather the data and information necessary to find out the truth in criminal cases and to prevent the commission of criminal offenses. However, special attention must be paid to the motivations of collaborators in order to assess their credibility, both by the criminal investigation authorities and by the court.

We appreciate that it is necessary to regulate the way of recruiting collaborators in the criminal process in order to follow a clearer procedure by the criminal investigation authorities when they decide to approach a private person to cooperate with them.

At the very least, there is a need to develop guidelines in the above-mentioned sense for greater transparency and ethics in the recruitment procedure, guidelines that also provide for the need to prepare documentation on the terms and conditions of collaboration, including on the benefits that can be granted the collaborator. However, this documentation should only be accessible to the courts if the identity of the collaborator is hidden.

De lege ferenda, we consider that it is necessary to remove the legal limitations on cases of impunity and cases of reduction of penalties to acts whose participants have been reported and facilitated their prosecution, as it reduces the chances of serious crimes being discovered and of which potential collaborators are aware and can help the investigators to prove them.

We also appreciate that it is necessary for the Romanian legislator to provide other benefits that can be granted to collaborators for a more effective encouragement to cooperate with criminal prosecution bodies, such as more permissive conditions for suspension under supervision or to postpone the application of punishment.

References

- Cornelis v. The Netherlands, Judgment of 25 May 2004*, European Court of Human Rights, available at www.echr.coe.int.
- Council of Europe. 2013. *Deployment of Special Investigative Means*, Belgrade, March 2013. <https://rm.coe.int/deployment-of-special-investigative-means-eng/16807828fa>.
- Decision no. 323/2017 regarding the rejection of the exception of unconstitutionality of the provisions of art. 148 par. 2 c of the Romanian Code of Criminal Procedure, published in the Official Journal no. 640 of August 4, 2017, Part I.
- Decision no. 67 of 25 February 2015 regarding the admission of the exception of unconstitutionality of the provisions of art. 19 of Law no. 682/2002 on the protection of witnesses, published in the Official Journal no. 185 of March 18, 2015, Part I.
- Government Emergency Ordinance no. 43/2002 regarding the National Anticorruption Directorate published in the Official Journal. no. 244 of April 11, 2002, Part I.
- International law and Domestic law.
- Jurisprudence of the European Court of Human Rights.
- Jurisprudence of the Romanian Constitutional Court.
- Law 535/2004 on preventing and combating terrorism, <http://www.onpcsb.ro/pdf/Law%20535-2004.pdf>
- Law no. 143/2000 on preventing and combating illicit drug trafficking and consumption, republished.

- Law no. 508/2004 on the establishment, organization and functioning within the Public Ministry of the Directorate for the Investigation of Organized Crime and Terrorism published in the Official Journal, no. 1089 of November 23, 2004.
- Law no. 682/2002 on the protection of witnesses published in Official Journal no. 964 of December 28, 2002, and republished in the Official Journal no. 288 of 18 April 2014.
- Petre, Adrian and Trif, Valentin. 2016. *Constatarea infractiunilor de coruptie*. Bucharest: C.H. Beck Publishing House.
- Romanian Code of Criminal Procedure.
- Romanian Criminal Code.
- Șuiian, Mihai. 2016. “Unele aspecte privind folosirea investigatorilor sub acoperire și a colaboratorilor” in *Revista penalmente relevant* available at www.revista.penalmente.ro. UN General Assembly, United Nations Convention against Transnational Organized Crime, resolution adopted on 8 January 2001, A/RES/55/25.

Organizational Triggers in Managing Employee Performance Quality in Georgian Organizations

Tamar Kvirikashvili

*Tamar Kvirikashvili, PhD student, Georgian-American University, Georgia
tamarkvirikashvili@gau.edu.ge*

ABSTRACT: Our environment has feedback as a trigger. After all, our environment constantly gives us new information important to our lives and changes our behavior. Triggers are often some sort of internal or external stimulus that causes the former addict and are reminders that put people in emotional and mental place of pain, anger, distress, frustration and other strong emotions. Therefore, it is important for managers in organizations not only to help workers control emotional situations but be able to control their own feelings, which can help contribute to a healthy environment, allow workers to perform according to their potential and maintain workers' morale. The paper is about qualitative research in two Georgian organizations. It was interesting which organizational triggers were used in these companies and how these triggers were used by managers for improving the performance quality of service employees, therefore interviews were conducted with the people who were involved in managing people.

KEYWORDS: organizational triggers, performance quality, service employees

Introduction

A trigger is something that performs a specific action. Also, 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. It is always interesting which organizational triggers have place in organizations and the effect of these triggers on employee performance.

Organizational Triggers

A specific action is performed by a trigger. Also, 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.

I want to mention two deep researchers on the triggers in psychology: Robert Cialdini and Marshall Goldsmith. If we want to achieve that, at first, we must define the term trigger. Marshall Goldsmith defined trigger as a stimulus that impacts our behaviour (Goldsmith 2007). Cialdini believes that money, time, and our lives can manipulate us if we are not careful. To protect yourself, one way is to be aware of all the tricks that people use to convince us. For this, Cialdini earned a reputation as a "master of influence".

There are six triggers described by Cialdini as the main drivers to influence others:

- Reciprocity- It is deeply ingrained psychological trigger. When we act in favour of another person, they have also an obligation to return, which means - benefits for benefits. Much greater feedback can be led by the initial small kindness.
- Scarcity- Something is difficult to achieve when there is a shortage of resources or the faster, we want to achieve it. Shortly it's - scarcity. When society does not have

enough productive resources to meet all needs, it is scarcity, from an academic point of view.

- Consistency and Commitment – these two are operated on two levels. For the future behaviour, the best predictor is its past, this is the first level. People try to conform to previous actions and thoughts. Therefore, when the goal is publicly announced, making significant changes in lifestyle becomes much more successful. Second, the premise of great consent is small consent, which means that the first "yes" to face-to-face sales is simpler than the next.
- Authority- This is one of the scariest psychological triggers. Authority takes a principled step to use the power of particular individuals, where social evidence is based on popular power - i.e., people "just like me". Authority is dangerous because it has power. According to Cialdini, there is a tendency that the action can be repeated in response to simple symbols rather than its essence. The most effective symbol can be automobiles and clothe, this is shown by the research. In other words, people react also to authority's appearance.
- Liking - 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." To say in short, when they like you, they will buy from you. Approval can be expressed in both: common interests and similarities and physical attractiveness.
- Social proof – The crowd is a powerful force, whether we like to admit it or not. If we consider sales, then we can understand this easily. To increase sales, the first psychological trigger must come from people who are already using the product or service and not from us.

Triggers are positive and negative. The negative triggers can cause the most damaging effects. Common triggers may lead to depression, frustration, isolation, broken relationships, and in some cases, it may lead to suicide.

When individuals are triggered, spiralling into various compulsions and behaviours, irritability, guilt, low self-esteem and anger can surface. Emotional and mental triggers can be traumatizing and run very deep. Individuals may push to adopt unhealthy ways of coping, such as harm to others, self-harm, and substance abuse.

Triggers in the workplace context

People should learn in order for organizations to learn. Individuals carry out what's expected of them, each written and unwritten expectations. Written expectations are usually delivered through job descriptions, memos, e-mails, and official documents. What's less clear for people within a structure are the unwritten expectations. For understanding unwritten expectations, three groupings in organizations, according to Maira and Scott-Morgan (1997) are: triggers, motivators and enablers.

Triggers, or triggering events, are outlined as circumstances that act as catalysts to structure learning. Like persons, organizations don't learn proactively (Watkins and 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).

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. When they react in unhelpful ways, managers can send the message to workers that they can lead the team through hard times and are incapable of remaining calm. When managers have the ability to resolve an emotionally charged problem and demonstrate empathy, it can give workers confidence and that competent and strong leaders oversee these workers.

Qualitative research

Qualitative methodologies are used to evaluate and analyze non-numerical information. These methods are applicable to studies that involve relationships between individuals, individuals and their environments, and motives that drive individual action and behavior. According to Berrios and Lucca (2006) qualitative methods provide for a "better understanding of human development" and according to Gerdes and Conn (2001) qualitative methods allow looking at the "whole rather than the parts". Because qualitative research method process emerges from patterns found in the data, these methods permit flexibility and procedure change.

At first, in order to gain some information about organizational triggers in Georgian organizations, I decided to make interview the people involved in managing people. Their opinion was interesting and important about organizational triggers. I was interested which organizational triggers were used in these companies and how these triggers were used by managers for improving the performance quality of service employees.

For the interviews, I selected managers from two organizations that were associated with education. One was public organization – EMIS (Education Management Information System) and second – private – Ell (English Language and Life). The number of samples was – 18 respondents. I will briefly introduce the mentioned companies.

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.

LEPL - Education Management Information System objectives:

In order to fulfill the mission, the goal of the management system in the education system of Georgia is:

- Development of information and communication technologies and ensuring their accessibility in the learning process;
- Development of management information systems;
- Providing information on decision-making processes;
- Production and dissemination of educational statistics.

In 2002 in Tbilisi, Educational Agency ELL was established.

At that time ELL was the first educational agency in the Georgian market and today they are already considered one of the most experienced and professional agencies, with a good reputation and excellent recommendations from their clients and educational institutions.

In 2015, the ELL English Language Center was recognized as the best language center in Georgia by the Cambridge English Language Assessment, preparing students for the Cambridge International Examinations and awarding them the relevant qualification certificate.

In addition, the ELL English Language Center is the holder of the UK Council's Advantage Gold Program as the best student preparation center for the Cambridge exams.

18 interviews were conducted, 11 of them in the Education Management Information System (EMIS) and 7 in English Language and Life (ELL). Respondents who participated

were representatives of the management of these companies, because I was interested in the impact of triggers on employees whose quality of work was then reflected in the provided services.

Table 1. Demographic Data of Respondents

Number of Respondents	18
Position	Managers
Gender	12 women, 6 men
Age	31 average

Source: own research

When I started the interview process by asking what they thought and tell briefly about the organization where they worked, I was pleasantly surprised when all twenty of them evaluated the companies almost similarly and positively. It was noted that this was a place where they were able to freely use their abilities, talents, implement ideas, as it was the leaders who helped. The answer of the sixth interviewer was: "This is an institution that does a great job for the country, for the education system, for the students, for the universities. I am happy to work here because I know every job, I do is a step forward in both my career and the country's education system."

When asked which performance appraisal method was used by them, some respondents indicated that they and employees together identify, plan, organize and communicate objectives and after setting clear goals, they periodically discuss the progress made to control and have conversation on the feasibility of achieving those set objectives. This appraisal method is called Management by objectives (MBO), it is a process where the goals of the organization are defined and management conveys it to employees with the intention to achieve each objective.

Some of the respondents noticed that they have also self-evaluation assessment, where employees conduct their performance assessment firstly on their own against a set list of criteria. This appraisal method is called self-evaluation. The fourth respondent replied: "At the end of each quarter, we have developed a self-assessment report which compares the employee's work with the pre-defined work. When each employee fills out a form, management will analyze the work which is done and not done, after which changes will be made, if it is necessary."

Most of the respondents mentioned that the performance appraisal of the employees was best done by the customer. Accordingly, they rated performance when listening to customer reviews. This appraisal method is called 360-degree feedback, where review includes not just the direct feedback from the manager, but also from other sources.

The answer of the ninth respondent: "It is very nice when the customer, in this case a student or an educational institution, hears that the issue is completed on time and with quality, when they are satisfied with the work done by the staff and when the work done helps them a lot. Do you know? There was an accident, when minutes interrupt too much in a student's life and there is nothing more enjoyable than seeing the student's lightened eyes and the cause of which is precisely the timely performance of your employee."

As for questions about performance indicators, which indicators were key in their organization, respondents' opinions were divided. The results were distributed as follows:

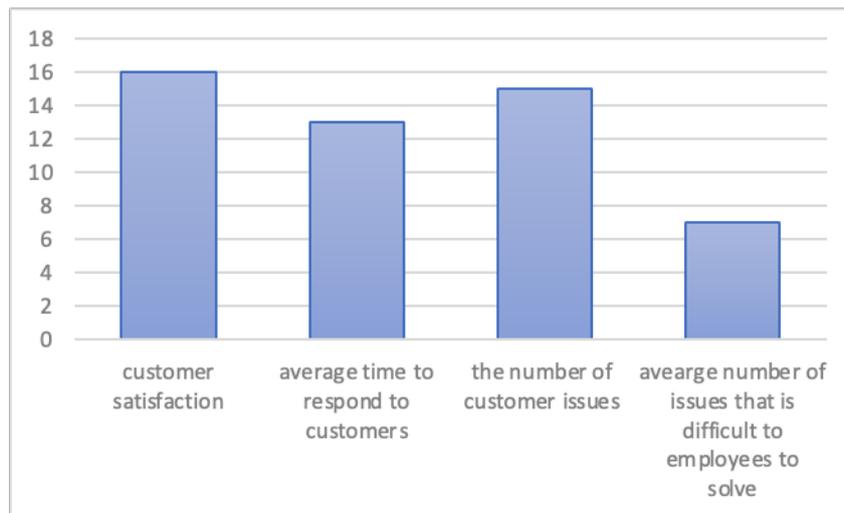


Figure 1. Key performance indicators in their organizations

Customer satisfaction was mentioned by almost all of them. When you provide services to students, educational institutions, they think it is necessary to measure their level of satisfaction as well. In their view performance indicators can also be the average time it takes to respond to customers, the number of customer issues and the average number of issues that is difficult for employee to solve.

When respondents named the triggers that were implemented in their organization, I asked the nominees to select the ones that had the greatest impact on employees.

The result looks like this:

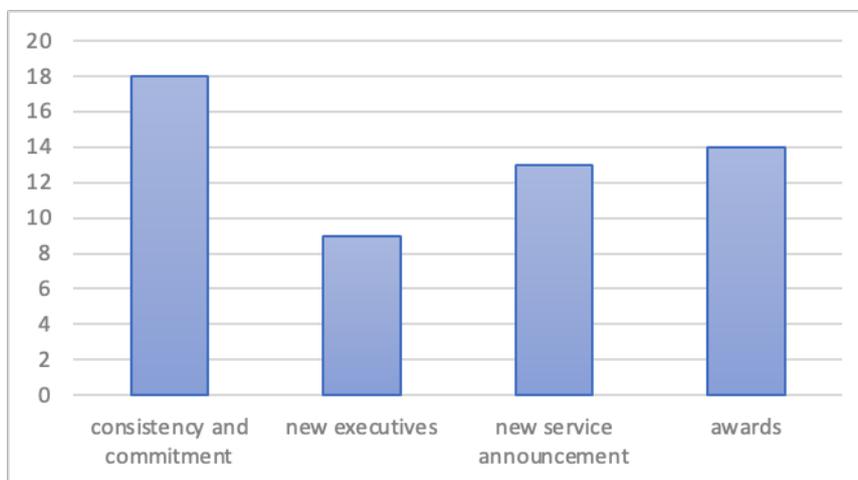


Figure 2. "Organizational triggers" which have the greatest impact on employees

When people have made a voluntary public and written commitment to doing so, they are more likely to embrace a proposal. Respondents think consistency and commitment has the biggest impact on employees. One of them noted: "During meetings, when an assignment is publicly issued to each employee and a public commitment is made to complete it on time, it all has the greatest impact on him and the work done. The reason is the responsibility that arose after making a public commitment".

Typically, new executives are a sign of wide-ranging changes in the organization. They are ready to meet with employees, for wide discussions, are purposeful, try to solve existing gaps or problems, are looking to prove their value quickly and they are more open to fresh ideas. Accordingly, each employee tries to influence them as much as possible and do their

best. Introducing a new service in the company requires more effort from employees as the number of jobs increases, the execution time does not change, the customer becomes more demanding. Consequently each employee becomes more motivated to live up to management hopes. Any kind of reward should somehow make a person more motivated. Raises self-esteem, is satisfied with the work done and tries to get the same in the future.

Employers are promoting self-efficacy among staff, when they provide employee recognition at the organizational level. Similarly, employers are promoting employee motivation, when they support the value of work at the individual level.

Respondents from both companies noted that since each of them is unique, the management used an individually selected form of incentive because they were confident that the selected reward would be significant to a particular employee.

The stimulus unanimously mentioned by respondents from both companies was the promotion opportunities. The reason is clear, when employees are provided by opportunities for the growth and advancement, they feel contented and satisfied and become more committed to the organization. The next stimuli which was mentioned was job enrichment, when employers increase employees’ responsibilities by giving them an important designation. Other stimuli were: providing positive feedback for quality work, competitive salary, bonuses, paid seek and parental leave, quality health insurance, flexibility to work at home, staff celebrations, desirable office space and work equipment.

Table 2. Stimuli that is used for better performance in organizations

EMIS:	ELL:
<ul style="list-style-type: none"> • Promotion opportunities • Job enrichment • Positive feedback for quality work • Competitive salary • Paid seek and parental leave • Flexibility to work at home • Staff celebrations • Quality health insurance • Desirable office space • Desirable work equipment 	<ul style="list-style-type: none"> • Job enrichment • Bonuses • Staff celebrations • Quality health insurance • Desirable office space • Desirable work equipment

Source: own research

Conclusion

By focusing on the development of employees and the alignment of company goals, managers can create a work environment that enables both employees and companies to thrive. In any organization, it's important to understand what your employees are doing, why they are doing and how they are doing it. When there is no system in place to define roles, provide constructive feedback, understand individual strengths and weaknesses, trigger interventions and reward positive behavior, it is much more difficult for managers to effectively lead their employees.

The article clearly shows the importance of organizational triggers for employees and that each trigger has a fairly large impact on the quality of their performance. Consequently, this issue should be the subject of frequent observations by management, as each incorrect trigger can dramatically drop the quality of performance and consequently have a major impact on the company in the end.

References

- Berrios, R., & Lucca, N. 2006. "Qualitative methodology in counseling research: Recent contributions and challenges for a new century." *Journal of Counseling & Development* 84:174–186.
- Gerdes, D., & Conn, J. 2001. "A use-friendly look at qualitative research methods." *Physical Educator* 58(4): 183-190.
- Goldsmith, M. &. 2007. *What got you here won't get you there: how successful people become even more successful*. New York: NY: Hyperion.
- Levinthal, Daniel A. 1991. "Organizational Adaptation and Environmental Selection-Interrelated Processes of Change." *Organization Science* 2(1): 140-145.
- Maira, Arun and Peter Scott-Morgan.1997. *The accelerating organization: embracing the human face of change*. McGraw-Hill, New York.
- Watkins, Karen E., and Victoria J. Marsick. 1993. *Sculpting the Learning Organization: Lessons in the Art and Science of Systemic Change*. San Francisco: Jossey-Bass.

What is the Pulse of Businesses in a Digitalised Era?

Ionut-Alexandru Horhoge

*“University of Birmingham”, Birmingham, United Kingdom,
alexandru.horhoge100@gmail.com*

ABSTRACT: Previously, the laborers believing in an automatized business could have been considered dreamy, looking to skip daily tasks. Nowadays, the spectrum upon automatization and platforms facilitating e-commerce has changed and highlights the jump from a brick and mortar store to a virtual one. More and more established brands are replacing classic locations with logistic warehouses to deliver products more efficiently. Well-known companies, e.g., Zara, Amazon, eBay that have been recently founded, embraced this change and took the best out of it. However, our attention will fall on smaller businesses and the difficulties they face during such a transition and analyses from various standpoints the goods and the bads of each. Should the jump from a physical to an online facility be considered or left untouched? What is the best model to be followed in order to level a business? Let us find in the following.

KEYWORDS: digital business, physical store, evolution, management, marketing, logistics

Introduction

Taking a flexible standpoint when opening a new business is important and might influence its evolution positively or negatively. For this reason, before stepping on this path, every business owner should gather enough valid information that can later be transformed into knowledge and experience. With a great pack of data, the process of creating, sustaining and leveling a business can flow correctly. Only after succeeding in such steps “by the book”, the owner would have built a strong base of valuable assets and can take strong decisions. However, businesses inclining towards digitalization should change the classic patterns of seeing the customer, managing the employees, creating marketing campaigns, managing the logistics and costs. In the lines below, we will observe the impact of such a transition and analyses the matter two-sided.

What is the Pulse of Businesses in a Digitalized Era?

Firstly, the overall image of the customer is changed in the digital environment. A major drawback of “meeting” someone in an online store is the inability to read emotions and observe their exact behavior. Let us assume that the client is placed on a pedestal; why you may wonder? Because that is the best place from which the individual can be observed from all points of view, i.e., physical, mental and emotional. On account of this, the company must create a customer portrait and understand what they are selling to who. There are plenty of analysis patterns available, but questions such as: Who is the audience? What are their personality traits? or what tone should be used when passing on information and emotions are universally available. By creating this imaginary representation of the buyer, we may know what should be done next. Unfortunately, the connection between you as the business owner and the consumer is limited to the website’s interface, online means of communication, e.g., live chat, e-mail, Gmail and but not limited to data analytics, e.g., Facebook pixels, Live data retrieved from the used platform or economic analytics such as ROAS. All of the above offer an idea of what a virtual customer looks like and the areas for improvement.

The advantage of having such tools available is impressive. The quality of retrieved data from Pixels, Google Analytics and other tools are excellent in segmenting consumer markets from a Geographic, Demographic, Geodemographic, Psychographic or Behavioral point of view (Lloyd 2020) that we are going to discuss later in the marketing section; tools unavailable or hard to categorize in a classic business.

In contrast, the physical buyer met into a brick and mortar store is not far from being strategically analyzed in that manner. A virtual or palpable database can be created and filled with everyday customer profiles, e.g., individuals or other businesses and successfully create a view upon The Value Proposition that we can observe below.

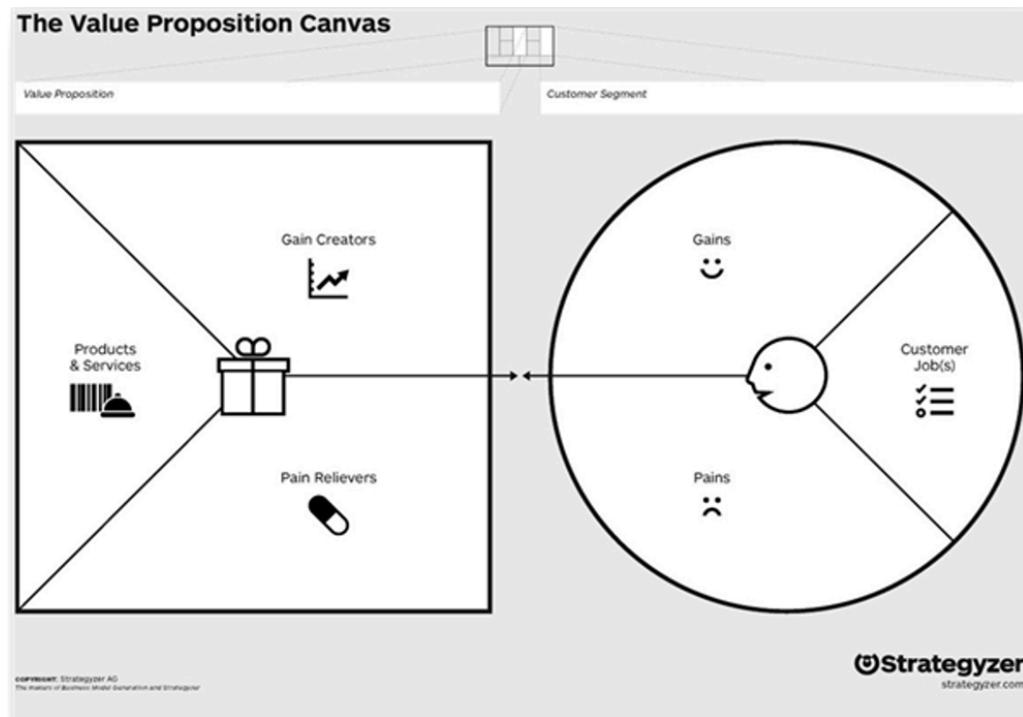


Figure 1. Strategyzer (No date), 'The Value Propostion Canvas' Available at: strategyzer.com

The visual representation of The Value Proposition divides the “Gains” from the “Pains” in the customer’s eyes. Further, that information helps us understand the fears a person might face when buying the product and what should be annihilated to offer the best possible experience. In this manner, a better view can be created upon the sold products by seeing and understanding the “Pain Relievers”, “Gain Creators”, and the offered Products & Services. By following such a method, a physical store is able to enter a competitive market. From the arguments listed above, we can observe that a digital store is likely to get more information about the customer and use it for the sake of profit and competitive advantage.

Secondly, the perception of labor upon how tasks are meant to be done have changed compared to the last century. Brute force, “hard work”, and a threshold higher than fifty hours of work per week were replaced by robots carrying dangerous or small tasks, intelligent targets and a regulated working schedule not surpassing the initial threshold (Spurgeon, Harrington and Cooper 1997). Not a long time ago, humans were seen only as “labor,” which dissolved their unique human qualities (Galloway and Vedder 2003). Sometimes, tasks within a company were supposed to be done in a singular way imposed by the manager and tailored by his knowledge. There is not a flawed approach considering his more remarkable experience, but there are certain disadvantages we can divide into two categories: labor and customers. The former refers to the working force within an organization that might feel pressured by an authoritarian manager. The latter portrays a lack of diversity; When customers face the same ideas, products, visuals or responses from the company, their interest will slowly decrease due to inadaptability to each customer needs.

Nowadays, in this pandemic context, we face a forced digitalization from many points of view, e.g., education, work, payment methods, transport and not only. For the first time, older age groups, e.g., 40-50 or 60+, are getting involved more and more in the digital conversion, which

would not happen in other circumstances. However, why is that? Because there existed alternatives and older labor did not feel pushed to do something “unpleasant” like using a computer. Today, we have finished the first year of pandemic transformation and advantages such as connectivity, time-saving, reaching targets quicker, and overall productivity appeared on the surface. “Perhaps the most important finding from the data is that remote working does not result in productivity declining. Indeed, for many, the remote environment has made them more productive because they are better able to craft an environment that works for them” (Gaskell, 2020). The ability to reach more customers via the internet, e.g., Social Platforms through advertising, changed the standpoint upon digitalization in the workplace towards better.

Nevertheless, some disadvantages are to be mentioned. Constantly being out of sight of your superior and experiencing permanent freedom by remote working “forced so many to pare back to the very basics rather than worrying about experimentation and innovation.” (ibid 2020). Along with this lack of revolution, some elements to fight against it have been recommended by Gaskell. Creating a hybrid form of working in the future and providing better ways for employees to connect are some of the mentioned ideas.

Thirdly, the marketing campaigns are remarkably changed compared to a couple of decades ago. The classic door-to-door salesman found its end at the beginning of the 2000s and made space for a revolutionizing way of selling called digital marketing. There is no doubt that consecrated methods of advertising products are still in use today, e.g., banners, television ads, telemarketing, flyers, radio marketing or organic marketing. However, along with the internet, companies worldwide understood the importance of monopolizing this platform and slowly started to invest in creating websites, e.g., eBay, Amazon and promoting products via new platforms like Youtube, Google, and later Facebook via Pixels. However, this category is more balanced than others as individuals still use entertainment methods similar to those in the past, e.g., television. This results in the extended life of classic marketing campaigns. Sticking with the principle of “go with the flow”, modern businesses promote their services or products via the internet, having access to a more extensive database of people. In the first paragraph, we listed some criteria after which brands guide themselves. In the chart below, we can observe the meaning of each market segmentation, e.g., Geographic, Demographic, Psychographic and Behavioral, along with a brief categorization of what they consist of. These are tools offered by digital platforms in order to select, change and adapt your target audience and who is seeing your tailored ads.

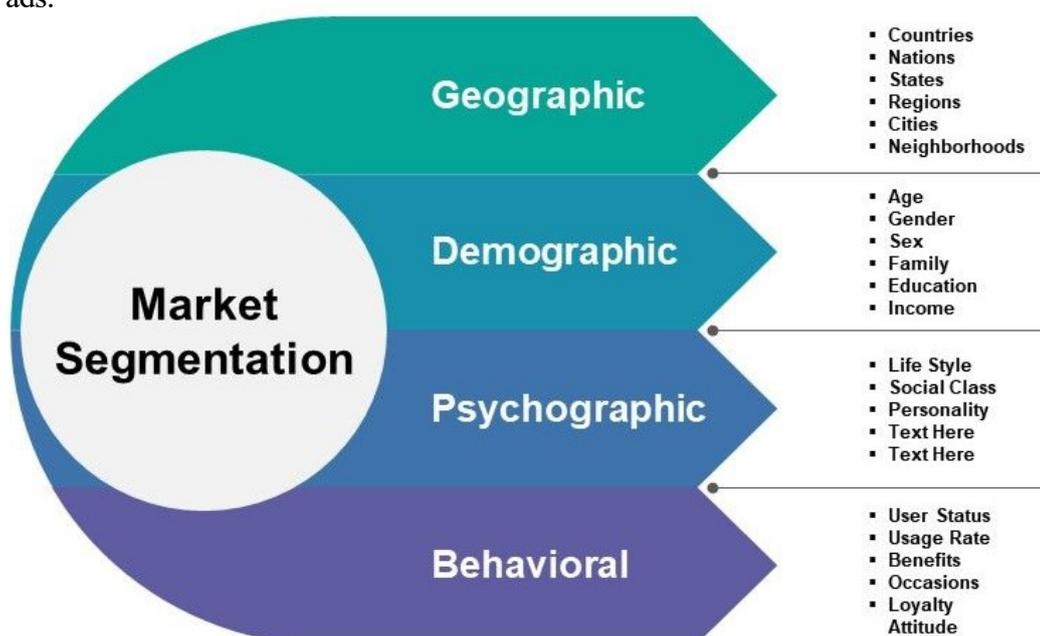


Figure 2. Slide Team n.d., ‘Market Segmentation Strategy Geographic Demographic Psychographic Behavioral’
Available at: slideteam.net

As for disadvantages, there is a high level of competition on these platforms and saturated pages, including various products. Only a well-created advertisement, respecting the marketing mix, e.g., Price, Product, Promotion and Place, correctly using the segmentation tools and offering good visuals along with a background story, will successfully establish a well-known and beloved brand.

Lastly, we are going to analyze how the logistics and costs are managed in a digital store versus a physical one. There is not enough to have a qualitative product or a reasonable price when it comes to delivery. The client must be provided with a reasonable shipping time and a tracking number, e.g., air waybill, to follow where his parcel is. He should be constantly updated via e-mail or other means of communication regarding the delivery status. This is the point where digital transformation plays a crucial role in our lives. The freedom of seeing, understanding and choosing what we want and when we want for the minimum cost is harder to be fulfilled in a store where the items are limited; special orders take time to arrive in the shop, and the process is more expensive. In the case of a digital business, a logistic warehouse is enough to send orders to at least one continent for a small amount of money, e.g., working B2B with a third-party warehouse owner.

Disadvantages regarding this category are similar between a physical and a virtual store. The rate of return (RoR), the cost of delivery (CoD) or packaging fees and transport are pretty much unchanged; but, the volume of sales the former store can provide if the above marketing steps are followed is much more significant, and there is no reason to limit yourself only to a physical company.

Conclusion

In closing, both advantages and disadvantages considering two types of businesses, i.e., online and brick and mortar, were discussed and analyzed. Each of them indeed comes with their set of goods and bads. However, the balance inclines towards the first category by settling significant problems as reaching a higher public, targeting it better and lowering the cost of production and delivery. Not to be neglected, especially when it comes to marketing, classic means of promoting a brand will not die shortly as people still find peace in similar actions as they did a century ago, and a hybrid between those two will succeed.

References

- Galloway L. and Vedder R. 2003. "Ideas versus ideology: the origins of modern labour economics." *J Lab Res* 24(4):643–668.
- Gaskell A. 2020. "Productivity in Times Of Covid". Forbes Magazine. <https://www.forbes.com/sites/adigaskell/2020/12/08/productivity-in-times-of-covid/?sh=47ff57d51fa1>
- Lloyd, C.H. 2020. "Segmentation, Targeting, Differentiation and Positioning." Birmingham Business School Lecture. Available on a private Canvas lecture.
- Slide Team. n.d. "Market Segmentation Strategy Geographic Demographic Psychographic Behavioral." <https://www.slideteam.net/market-segmentation-strategy-geographic-demographic-psychographic-behavioral.html>.
- Spurgeon A., Harrington J.M. and Cooper C.L. 1997. "Health and safety problems associated with long working hours: a review of the current position." *Occupational and Environmental Medicine*, p. 374.
- Strategyzer. n.d. "The Value Proposition Canvas." *Strategyzer.com*.

Environmental, Social and Corporate Governance (ESG) Diplomacy: The Time Has Come for a Corporate and Financial Social Justice Great Reset

Julia M. Puaschunder^{1,2}

¹*The New School, Department of Economics, Eugene Lang College, 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 external shock of the novel Coronavirus SARS-CoV-2 has profound impacts around the world for this generation and the following. Although accounting for the most drastic societal shift in modern history, the Coronavirus pandemic also holds the potential of a Great Reset. This paper addresses three trends that have become prevalent in the wake of the Coronavirus pandemic: (1) A rising inequality experienced has led to demands for Corporate Social Justice, namely the corporate engagement in social justice initiatives and action. (2) The finance world has had opportunities to diversify and exchange COVID-struck industries for COVID-profiting market segments and therefore a rising financial market performance versus real economy budget constraint gap has arisen. (3) Governments around the world are pegging economic COVID-19 rescue and recovery aid to pursue noble goals – such as climate change abatement and a transitioning to renewable energy in the United States Green New Deal and the European Green Deal and the European Sustainable Finance Taxonomy. These trends point at the integration of environmental, social and corporate governance in the corporate sector. The aftermath of the crisis is now a time for a great system reset to integrate environmental, social and corporate governance in the corporate and finance sectors. Future economic policy research may be inspired by legal expertise on disparate impact. With respect for current trends of citizen scientists and science diplomacy, public policy work may embrace environmental, social and corporate governance whole-roundedly. While natural behavioral laws were guiding anchors to address inequality during a turbulent time of the pandemic, more rational behavioral insights could nudge people into more equitable growth strategies in a recovering world.

KEYWORDS: Change management, Corporate Social Justice, Coronavirus, Corporate sector, COVID-19, Disparate impact, Environmental, European Green Deal, Social and Corporate Governance (ESG), Equitable Growth, Equality, Equity, Finance, Great reset, Green New Deal, Law and economics, Pandemic, Public policy, Recovery

Introduction

The novel Coronavirus SARS-CoV-2 that first emerged in 2019 accounts for the most unexpected globally-widespread external shock to modern humankind. COVID-19 changed behavioral patterns around the world dramatically and will have a lasting impact on society (Baldwin & Weder di Mauro 2020). By now, over 200 million recorded infections have caused over four million documented deaths in over 220 countries and territories around the globe (Coronavirus Worldometer). According to estimates, the actual number of infections is a multiple of around 4 to 5 of the reported and recorded case numbers. Early scientific estimates predicted that about 80% of the world population would get infected with the virus in densely populated areas in one form or another at a point in their life (BBC News March 2, 2020). With the initial virus being replaced by different variants, epidemiologists increasingly believe that every human being will have some touchpoint with COVID at a certain point in their lives (Zhang 2021).

From the history of humankind and the knowledge about previous diseases we can draw the inference that crises and external shocks have always been turning points and ultimate spring

feathers of lasting change (EcoWellness Group 2020, 2021; Schmelzing 2020). This paper argues that COVID-19 has the potential to change lasting living conditions as for predictive and speculative trends: Rising inequality, especially between the finance world and the real economy, have heightened demands for social justice in society. In light of global warming, social justice pledges and rising inequality, governments around the world seize the opportunity to peg historically-unprecedented large rescue and recovery aid to alleviate climate change and enact a more equal opportunity environment (Puaschunder 2020, 2021). In our post-pandemic world, the time has come for a new Renaissance that integrates environmental, social and corporate governance in the corporate sector and the finance world. These endeavors are prospected to become future soft diplomacy skills and sources of wealth of nations. Addressing to these concerns and outlining a balanced economic, social and environmental aspiration in diplomacy are tomorrow's essential strategic assets.

Inequality

The Union Bank of Switzerland (UBS) points out that the largest economic gap between world economies in at least 40 years opened up in the aftermath of the COVID outbreak (The Economist 2020). Inequality is not only rising in terms of the quantitative output gap. Already now it has also become apparent that the COVID-19 crisis accelerates already prevalent inequality (Puaschunder, Gelter & Sharma 2020). The external shock caused by COVID-19 clearly heightened economic disparity between nations, industries and societal groups that often have already existed prior to the crisis, but are now more accentuated – for instance, such as in access to corruption-free quality healthcare, subsidized preventive medicine and healthy nutrition but also in terms of access to digitalization benefits within society and around the globe (Puaschunder 2018, 2019a, b; Puaschunder & Beerbaum 2020).

The COVID-19 crisis turns out to be a crisis of rising inequality. Some features of inequality that persisted prior to the outbreak of the novel Coronavirus were exacerbated in the wake of the crisis, such as, for instance, access to affordable quality healthcare inequality around the world or income inequality within Western society. Other inequality patterns that were not so obvious became accentuated by COVID-19 to a point that inequality became apparent to the broader public – for example, we saw rising inequality in the finance world versus real economy gap but also disparate effects of inflation and a low interest rate regime are currently becoming more and more obvious in an analysis of socio-psychological propensities determined by industry classes.

While COVID-19 created significant health and security risks as well as economic costs, the pandemic also brought about unanticipated opportunities for specific market segments (Puaschunder 2020). Some industries actually profited economically from the pandemic due to a heightened demand – for instance hygiene producers, medical care facilities, pharmaceuticals (including developers of vaccines) and medical supply chain providers, as well the medical professions curing widespread COVID symptoms and chronic diseases arising from long-haul COVID (Lerner 2020; Agrawal et al. 2020; McKinsey & Co 2020; World Economic Forum 2020; Kumar & Haydon 2020; Dodd 2020; Aravanis 2020; Arora 2020).

During the COVID-19 downturn, financial markets actually performed relatively well in comparison to the real economy. The reason for this widening finance-real economy gap is in part due to the finance world seizing opportunities to benefit from COVID, while the real economy experienced a liquidity crunch induced by lockdowns and halted consumption opportunities triggering waves of private bankruptcies in small and medium enterprises. This created liquidity bottlenecks for smaller entities, including private households.

While the real economy faced economic constraints, the clear distinction between COVID-19 profit and loss industries made it possible for today's highly flexible financial world to disinvest from weakened market segments – such as oil, public transport and aviation, face-

to-face service sectors such as international hospitality and gastronomy – and instead invest in better performing industries – such as pharmaceutical companies and emergency medical devices for healthcare, digital technologies, fintech, artificial intelligence and big data analytics industries, online retail, automotive and interior design industries (Baldwin & di Mauro 2020).

The clear difference to previous financial market system-inherently caused recessions – such as the 2008/09 World Financial Recession that mainly stemmed from turmoil in the finance sector and banking liquidity constraints – is that the shock to the economy caused by COVID-19 soon reverted to an overly rapid recovery of financial markets, funds and investment banks. For instance, the Financial Times Stock Exchange Index, Dow Jones Industrial Average, and Nikkei plummeted in the first quarter of 2020 drastically. At the same time, Deutsche Bank recorded rising earnings after the onset of Coronavirus crisis in Europe, with its investment bank branch seeing rising earnings of 43% or 2.4 billion euros in the third quarter of 2020 (Smith 2020). The S&P 500 recovered 50% of its pre-COVID value within the first three months after the crisis, regained pre-pandemic highs by June 2020 and reached an all-time high by August 2020 (Ycharts 2021). New and alternative finance opportunities – such as cryptocurrencies and crowdfunding – allowed investors to further benefit from changing financial markets and consumer sentiments.

From historical examples, such as the great plague of the 14th century in Europe that caused about one third of the population to cease, we know that pandemics can become essential turning points and phases of human advancement after all (Piper 2020).

Economic rescue and recovery pegged to social causes

Throughout the history of humankind, very many different plagues and crises throughout the world have heralded betterment in the overall grand theme of developments that were adopted. The COVID-19 pandemic holds opportunities for a reset to embark on a better, more just and equal world. The way we lived, worked and structured our days has changed dramatically since the outbreak of the crisis (Puaschunder 2020c). In record speed the world has seen drastic changes implemented in the healthcare, finance and economics sectors. In the aggregate, the modes of operation of corporations, governments and governance were challenged and redefined throughout the crisis as we go along with the recovery. Unprecedented policy shifts coupled with extraordinarily rescue and recovery packages sprouted throughout the world. In most cases these aids are pegged to noble causes and the wish to make the world a better place for this generation and the following. While it is still too early to tell whether the efforts in the aftermath of the crisis will become established and fruitful transitions to a better state, already now it is apparent is that the rescue and recovery help offers a once-in-a-lifetime generational shift and a potential gateway to a new era.

What will it take for the COVID-19 crisis to be remembered by historians as the beginning of a golden age or a new renaissance? Learning from the examples of previous pandemics, we can say that strong governmental support of productive causes has a history of transferring society to higher social welfare levels. The combination of economic stimulus in large scale production and consumption coupled with educational and moral grounds appears to foster an extraordinarily vital societal development. Building growth on economic capital enhanced with human capital and strengthening the social glue is key in making something good out of a devastating crisis.

Governments' role during the COVID pandemic can become to be the great equalizer and inequality alleviation via reset funding. Governments all over the world can advocate for a sustainable finance world and equally accessible economic growth benefits. Governmental leadership can bring back the financial world in the service of improving and stabilizing the real economy in a stricter separation between investment and consumer banks, which already began in the course of the regulations following the 2008/09 recession.

In the wake of ambitious bailout and recovery plans, the obvious and unnoticed disparate impact facets of economic fallouts to a common crisis should be considered when choosing capital transfer targets. COVID-19 rescue and recovery aid echoes all these contemporary concerns in currently being concurrently rolled out and/or pegged to green economy efforts and social justice pledges. This is foremost the case in the United States with the U.S. President Biden administration fostering the Green New Deal (GND) but also the European Union Commission sponsoring the European Green Deal and a Sustainable Finance Taxonomy (Puaschunder 2021). These ambitious acts and plans account for the most vibrant and large-scale developments in our lifetime if considering the massive amount of funds involved but also the widespread impact energy transition will have (Alpert 2021).

The GND is a governmental strategy to strengthen the United States economy and foster inclusive growth (Puaschunder 2021). The GND is targeted at sharing economic growth benefits more equally within society. How to align economic interest with justice and fairness notions is the question of our times when considering the massive challenges faced in terms of environmental challenges, healthcare demands and social justice pledges. Ethical imperatives and equity mandates lead the economic rationale behind redistribution in the GND as social peace, health and favorable environmental conditions are prerequisites for productivity. The GND offers hope in making the world and society but also overlapping generations more equitable and thus to bestow peace within society, around the world and over time.

ESG diplomacy

We are entering the age of corporate social justice. In the wake of the rising social justice movement, social justice plays a crucial role in pushing for societal change. The outperformance in social justice striving is the excellence of our times (Puaschunder forthcoming). With the Green New Deal and the European Green Deal being pegged to noble causes, such as the greening of the economy and social justice, tomorrow's ethics of inclusion will likely feature a comparative approach to understand the most contemporary responsibility challenges of our time (Puaschunder 2021). In a highly dynamic social transition, virtues of fairness and social justice should be analyzed from an ethics perspective in our post-pandemic era. Future science and diplomacy efforts should focus on law and economics developments but also with a practical ethical dilemma solving aspect arising in healthcare, economics and finance, education, digitalization and the environment in order to envision a transition to a more inclusive society (Puaschunder forthcoming).

In the healthcare domain, diplomacy could feature the equal access to medical care pledge in innovations such as telemedicine and artificial intelligence, robotics and big data insights (Puaschunder & Beerbaum 2020).

Economics and finance will cover inequality alleviation with particular attention to the finance world and real economy performance gap rising in the post-COVID-19 era featuring unprecedented levels of inflation and low interest rate regimes.

Educational social transfer hubs with attention to online opportunities will be portrayed as a gateway of social justice transformation in the United States that also account for the most promising international development advancement of our times.

Our workplace revolution in a truly digitalized economy should be thematized but also novel inequalities and ethical dilemmas arising from digitalization. Health and well-being underlying human workforce productivity will be introduced as a hidden driver of economic growth in the eye of a global pandemic risk.

In line with the novel societal transition as envisioned by the Green New Deal and European Green Deal including a Sustainable Finance Taxonomy, criteria to structure goals in society should feature the known three dimensions of inclusivity – the economic, social and environmental aspects.

Overall, in a more and more globally connected world, these pillars of social justice and inclusiveness should guide diplomacy and serve as an homage for ethics of inclusion. Diplomacy under the guidance of economic, social and environmental goals in harmony with social justice pledges can become the spring feather of equality and social justice heralding in our post-pandemic Renaissance. Diplomacy vigilant of these emerging trends will likely become future assets of nations that determine wealth of nations for this generation and the following. With respect for current trends of citizen scientists and science diplomacy, public policy work may embrace environmental, social and corporate governance whole-roundedly. While natural behavioral laws were guiding anchors to address inequality during a turbulent time of the pandemic, more rational behavioral insights could nudge people into more equitable growth strategies in a recovering world (Puaschunder 2020a).

References

- Agrawal, Gaurav, et al. 2020. “Winning Against COVID-19: The Implications for Biopharma.” *MCKINSEY & CO.* (Apr. 15, 2020), <https://www.mckinsey.com/industries/pharmaceuticals-and-medical-products/our-insights/winning-against-covid-19-the-implications-for-biopharma#the-implications-for-biopharma>.
- Alpert, Gabe. 2021. “International COVID-19 Stimulus and Relief: International fiscal and monetary stimulus and relief efforts.” *INVESTOPEDIA* (May 26, 2021), <https://www.investopedia.com/government-stimulus-and-relief-efforts-to-fight-the-covid-19-crisis-5113980>.
- Aravanis, Jason. 2020. “Five Industries Set to Outperform Due to COVID-19.” *IBISWORLD* (Apr. 7, 2020), <https://www.ibisworld.com/industry-insider/coronavirus-insights/five-industries-set-to-outperform-due-to-covid-19/>.
- Arora, Rohit. 2020. “Which Companies Did Well During the Coronavirus Pandemic?” *FORBES* (June 30, 2020), <https://www.forbes.com/sites/rohitarora/2020/06/30/which-companies-did-well-during-the-coronavirus-pandemic/#17fe6c9b7409>.
- Baldwin, Richard & Beatrice Weder di Mauro (eds.). 2020. “Economics in the Time of COVID-19.” *CEPR Press*. <https://cepr.org/sites/default/files/news/COVID-19.pdf>.
- BBC News Scotland. 2020. ‘50-80% of population’ could be affected by coronavirus, (Mar. 2, 2020), <https://www.bbc.com/news/av/uk-scotland-51711747>.
- Dodd, Darren. 2020. “COVID 19’s corporate casualties.” *FIN. TIMES* (June 22, 2020), <https://www.ft.com/content/eb6efc36-bf99-4086-a98a-7d121738b4b4>.
- The Economist. 2020. *The pandemic has caused the world’s economies to diverge*, (Oct. 8, 2020), <https://www.economist.com/leaders/2020/10/08/the-pandemic-has-caused-the-worlds-economies-to-diverge>.
- EcoWellness Group. 2020. *Salzburg Declaration: Interdisciplinary Conference on ‘System change?! The chance of transformation of the healthcare system: Analysis and chances of the coronavirus crisis*, July 14-15, 2020, <https://www.oekowellness.de/laenderuebergreifende-konzerenz-zum-thema-system-change-die-chance-der-transformation-des-gesundheitswesens-14-07-2020/> (last visited August 12, 2020).
- EcoWellness Group. 2021. *Salzburg European Declaration from the Gasteinertal: Interdisciplinary Conference on ‘System change?! The chance of transformation of the healthcare system*, July 14-15, 2021, https://www.oekowellness.de/wp-content/uploads/2021/07/Final-Stand-5.7.-2021.07.04_Programm-14.7.-und-15.07.2021-2.pdf (last visited August 23, 2021).
- Kumar, Neeraj, & Danny Haydon. 2020. “Industries Most and Least Impacted by COVID-19 from a Probability of Default Perspective – March 2020 Update.” *S&P GLOBAL MKT. INTEL.* (Apr. 7, 2020), <https://www.spglobal.com/marketintelligence/en/news-insights/blog/industries-most-and-least-impacted-by-covid-19-from-a-probability-of-default-perspective-march-2020-update>.
- Lerner, Sharon. 2020. “Big Pharma Prepares to Profit from the Coronavirus: Pharmaceutical Companies View the Coronavirus Pandemic as a Once-in-a-Lifetime Business Opportunity.” *INTERCEPT* (Mar. 13, 2020, 1:46 PM), <https://theintercept.com/2020/03/13/big-pharma-drug-pricing-coronavirus-profits>.
- McKinsey, Public Sector Practice report by Ziyad Cassim, Borko Handjiski, Jörg Schubert, and Yassir Zouaoui. 2020. *The \$10 trillion rescue: How governments can deliver impact Governments have announced the provision of trillions of dollars in crisis relief, but translating that into sustained recovery will not be easy.* McKinsey, Public Sector Practice report (June 2020), <https://www.mckinsey.com/~media/McKinsey/Industries/Public%20Sector/Our%20Insights/The%2010%20trillion%20dollar%20rescue%20How%20governments%20can%20deliver%20impact/The-10-trillion-dollar-rescue-How-governments-can-deliver-impact-vF.pdf>.
- Piper, Nikolaus. 2020. „Die Ökonomie des Todes.“ *SÜDDEUTSCHE ZEITUNG* (Apr. 10, 2020), <https://www.sueddeutsche.de/wirtschaft/pest-coronavirus-wirtschaft-1.4873813>.

- Puaschunder, Julia Margarete. 2018. *Intergenerational Responsibility in the 21st Century*. Wilmington, US: Vernon Arts & Science.
- Puaschunder, Julia Margarete. 2019a. *Corporate and Financial Intergenerational Leadership*. Lady Stephenson, Newcastle upon Tyne, UK: Cambridge Scholars Publishing.
- Puaschunder, Julia Margarete. 2019b. *Intergenerational Equity: Corporate and Financial Leadership*. Cheltenham, UK & Northampton, MA: Edward Elgar.
- Puaschunder, Julia Margarete. 2020a. *Behavioral Economics and Finance: Nudging and Winking to make Better Choices*. Cham: Springer Nature.
- Puaschunder, Julia Margarete. 2020b. *Governance and Climate Justice: Global South and Developing Nations*. New York, New York: Palgrave Macmillan. Cham, Switzerland: Springer Nature.
- Puaschunder, Julia Margarete. 2020c. “The future of the city after COVID-19: Digitalization, preventism and environmentalism.” *ConSciS Conference Proceedings*, September 28-29, 2020, pp. 125-129, Research Association for Interdisciplinary Studies.
- Puaschunder, Julia Margarete. 2021. “Equitable Green New Deal.” *The 22nd International RAIS Conference on Social Sciences and Humanities* of the Research Association for Interdisciplinary Sciences (Jun. 21, 2021), 27-32.
- Puaschunder, Julia Margarete. (forthcoming). *Ethics of Inclusion: The cases of Health, Economics, Education, Digitalization and the Environment in the post-COVID-19 Era*. London: Ethics International.
- Puaschunder, Julia Margarete & Dirk Beerbaum. 2020. *Healthcare inequality in the digital 21st century: The case for a mandate for equal access to quality medicine for all*. Proceedings of the 1st Unequal World Conference, United Nations New York, New York, United States.
- Puaschunder, Julia Margarete, Martin Gelter & Siegfried Sharma. 2020. “COVID-19-Shock: Considerations on Socio-Technological, Legal, Corporate, Economic and Governance Changes and Trends.” *Proceedings of the 16th RAIS Conference on Social Sciences and Humanities* of the Research Association for Interdisciplinary Sciences, Princeton University, Princeton, NJ, August 17-18, pp. 82-93.
- Schmelzing, Paul. 2020. *Eight centuries of global real interest rates, R-G, and the ‘suprasecular’ decline, 1311-2018*, Bank of England Staff working paper No. 845, Jan. 2020), <https://www.bankofengland.co.uk/working-paper/2020/eight-centuries-of-global-real-interest-rates-r-g-and-the-suprasecular-decline-1311-2018>.
- Smith, Elliot. 2020. “Deutsche Bank swings back to profit in third quarter, beats expectations.” *CNBC*. (Oct. 28, 2020), <https://www.cnbc.com/2020/10/28/deutsche-bank-q3-earnings-2020.html>.
- World Economic Forum. 2020. *The Great Reset: A Unique Twin Summit to Begin 2021*, (June 3, 2020), <https://www.weforum.org/press/2020/06/the-great-reset-a-unique-twin-summit-to-begin-2021/>.
- Worldometer, 2021. *Coronavirus Cases*, <https://www.worldometers.info/coronavirus/>.
- Ycharts, Ycharts.com, Accessed April 10, 2021.
- Zhang, Sarah. 2021. “The Coronavirus is here forever: This is how we live with it.” *The Atlantic* (Aug. 17, 2021), <https://www.theatlantic.com/science/archive/2021/08/how-we-live-coronavirus-forever/619783/>.

Copyright System

Dorel Mihai Vlad

*“Dimitrie Cantemir” Christian University from Bucharest – Faculty of Law and Administrative Sciences,
Bucharest, Romania, vladmdorel@yahoo.com*

ABSTRACT: The protection of copyright and related rights is done through a series of administrative, civil, and criminal law means. The appearance of a law, in accordance with the relevant international legislation, allowed entry into legality in this field as well, due to the changes in technology that required this. Also, the regulation of related rights was another step in creating the legislative framework necessary to defend these rights.

KEYWORDS: copyright, system, innovation, technological transfer, competitiveness

Introduction

Intellectual property is an indicator that reveals very exactly the evolution of society, and intellectual property law manages to illustrate perhaps the best way in which the rule of law keeps pace with social realities. Technological progress by providing new forms of expression, new categories of works and new needs appear from a legal point of view, in order to protect them. In the chronological axis of the development of the copyright system, it is obvious that we can record new inventions that have revolutionized society that as a result of technological progress, in this sense, we can enumerate without hesitation the appearance of printing, cameras, film, etc.

These forms resulting from the development of technology are assimilated in the daily life of the individual and meet certain needs but their novelty makes it very difficult to assess in the future the possible problems that may arise, especially since the speed of technological development is a feature of nowadays (Simler 2010).

The copyright system is an important method of protection that, initially, had as object an activity or a form that presupposed a minimum degree of creativity or originality, in the system of continental law, respectively in the common law system. Over time, there has been a liberalization in the sense that the object of copyright protection can be directed from the idea of creativity even to utility. Moreover, copyright no longer ensures only the protection of creations that can be incorporated into a material medium, but it is now extended to intangible assets. The traditional concept of copyright revolves around the idea of creativity or around novelty from an artistic point of view, but today it also focuses on new information, without satisfying any artistic requirement.

Balancing the beginning of the protection system with the current reality, we notice that today we have to deal more and more with the functional nature of the object of copyright protection, as technology comes with new rules; the concept of creation is rather replaced or at least it is added; the concept of the new product - probably a more commercial approach. Hence a conversion and a legal reconsideration of the effects of copyright, both patrimonial and non-patrimonial (Puttemans 2000).

The normative system and the literature adapt and try to answer the new problems, but in this situation, we can remember a proverbial statement expressed in the doctrine, according to which where technology poses problems, probably all technology must find solutions, but must not we overlook the important role of intellectual property law.

The notion of multimedia attracts many discussions due to its hybrid character in terms of protection specific to intellectual property. A multimedia product is often a mixture of other works, creations or information pre-existing its realization. Given that at the international level we distinguish in two categories the protection of intellectual property

rights (on the one hand, we have the Paris Convention of 1883 on the Protection of Industrial Property and on the other hand the Berne Convention on the protection of literary and artistic works), the placement of these categories of works between is quite difficult and must be done carefully (Picard 1928).

The term multimedia has various definitions, ranging from communication systems, the Internet and virtual reality to television or simple computer games. But what particularizes all these elements and being the starting point in defining the concept of multimedia is the fact that it involves an amalgam of various works or information meant to be a single creation, in a single environment. The information contained is digitized and may, most importantly, involve the possibility of a dialogue between a system and its user. Literally, multimedia presupposes the existence of several means of communication, and the term began to be used around 1980, referring to companies that printed various materials or advertised.

Combining texts, sounds, images and other various formats, multimedia creates a unique source of information in a single integrated system, so legal protection is more difficult to establish. It was noted that there are several options in this regard:

- Protection of the content of a multimedia product;
- The projection of the multimedia product itself;
- Protection of the technical support, of the base in which it is incorporated.

In practice, however, it is very difficult to assess which of the three variants to apply because, for example, a multimedia product is not always a computer program, but can only be used by using such a program. Hence the need for legal flexibility, because content protection has an effect on the product and vice versa, product protection has an effect on the content (Simler 2010).

In the first situation, content protection it is about the protection of some pre-existing elements or of some works whose existence is justified only by creating the multimedia product. Since the components may have an independent existence, they may benefit individually from copyright protection, patenting or any other available means conferred by the intellectual or industrial property, as the case may be. This does not exclude the possibility of protection from other branches of law, such as contractual protection or by incurring tortious civil liability.

The second situation - the protection of the product itself - implies that the components are combined in a digital format with an interactive potential, without assimilating individual rights. This creates a new right of protection, which serves a new function, as the product has autonomous value (Cremona 2001).

The third situation refers to the material or technical support of the product:

- a) A platform that is divided into:
 - Hardware;
 - Software, operating system that is used to use the multimedia application on a particular hardware support (e.g., Windows XP).
- b) The program that creates the multimedia application. By using this program, the multimedia application is born but it is not assimilated to the newly obtained product.
- c) The driver that offers the user to access and operate with the information available in the content of the multimedia product.
- d) The distribution of the product which can take either a physical or online format: C.D.-ROM, U.S.B. Drive or communication and information transmission networks.

The situation of the participants in the creation of a multimedia product also requires certain clarifications. Usually these are:

- The authors, who are either authors of pre-existing works who have agreed to include their works in the multimedia product or persons who have created new products either independently or on the basis of a contract;

- Copyright holders, on those individual works created by other persons. They can be individuals or legal entities and do not have the moral rights of copyright;
- The manufacturer (or provider of a multimedia service) or a publisher. This is the architect of the project, combining the works of all participants. The idea and concept of the product comes from it, in some cases an editor can only supervise the realization of the product;
- The developer is a person who deals only with the physical component and the technical organization of the product. He does not take part in the process of structuring and planning the product, but together with the producer, he has an active role in the part of creativity related to the product;
- Users, i.e., those who do not play an active role in multimedia work but represent only the finality.

Traditional Literary Works

In the beginning, the copyright system protected literary works, understood in a generic sense both in written and oral form and which may be of a scientific, literary or other nature. For example, Belgian law refers to any kind of work (*écrits de tout genre, manifestations orales de la pensée*), Swiss law to *creations de l'esprit*, and in the United Kingdom it refers to any written, spoken or sung work (in the UK'S Copyright Designs and Patents Act 1988).

Regardless of the form they take, the common denominator of literary works is the fact that they operate with concepts within language. There are legal systems in which a work cannot be subject to copyright protection unless it is written, recorded or placed on a certain material medium. This is an effect of the Berne Convention, which has been influenced by delegates from common law countries, especially the United Kingdom (Bertrand 2005).

Literary works in the narrow sense of the word presuppose a text. The text is inextricably linked to language and its ability to be communicated and understood by others. In order for a text to be protected, it must be expressed in a current language or in a language that has existed in the past (e.g., Latin). In a more technical approach, we should point out that language is distinct from words. Language does not necessarily require a text composed of words. Words are a means of language, not language itself.

The question was whether an artificial language could be protected by the emergence of a large number of new technological products, computer programs being the first to be included in the spectrum of written works and thus the language is enriched, creating a niche of communication between experts rather than simple individuals.

Another example of the liberalization of copyright protection is its extension to databases. Databases are hybrid works as well as computer programs and fall within the scope of protection through the originality of selections and/or arrangement of materials. In this case, the author's personal contribution is very limited, sometimes non-existent, and this is due, on the one hand, to the fact that they are often made by many people and require a combination of efforts and substantial investments. Again, it is not originality and creativity that remain as an essential element in falling under the umbrella of copyright protection, but their usefulness and functionality (Roş 2001).

At European level, the seat of the subject in relation to the databases is represented by Directive 96/9/C.E. on the legal protection of databases. But the European legislation was not the first to grant copyright protection but, in addition to various national laws, this was achieved through art. 10.2 of the T.R.I.P. n.s. see the name. Later, the treaty [The] World Intellectual Property Organization (WIPO) comes to complete at the normative level the legal order regarding their protection. However, they do not provide a definite definition. The first complete definition of a normative act is found in Article 1.2 of the European Directive

according to which a database represents a collection of independent works, data or other materials arranged in a systematic way accessible by an electronic system or other means.

First of all, it should be noted that the computer program used in the construction of the database is not included in the scope of protection, which remains within the scope of the software directive. The component elements of a database can be very diverse, including: text of any kind, images, diagrams, figures, figures, sounds, etc. There is no limit to the number of components, but there is a limit to certain types of combinations: the materials that make up the contents of the database must be independent, individually accessible, and systematically arranged (The Marrakesh Agreement 1994).

The informational content of the databases, seen in the individuality of the components, although independent, is not protected separately by copyright, but only together with the database. The selection and arrangements must be the creation and intellectual property of the author in accordance with the provisions of European directives. The *sui generis* right is guaranteed to the person who creates the database, so that he can prevent third parties from extracting and/or reusing in whole or in part elements of his work without his permission. It is important that the creation of a database is done by involving a considerable qualitative and quantitative investment for obtaining, verifying and presenting the components.

Audiovisual Works

Not all national laws contain a definition of audiovisual works. For example, France provides in its legislation as works consisting in the development of images with or without sound. Although the term audiovisual implies the existence of a sound element, this element does not need to exist. Soundless images or documentaries that present only visual documents with or without the addition of any sound are also audiovisual works (Macovei 2010).

In the U.S., although the Copyright Act is a more precise piece of legislation, it tends to be more permissive and relaxed about the moving image element. Both in the U.S. as in France or Belgium, audiovisual works represent a generic term, to which several notions-species are related: cinematographic works, films, etc.

Only cinematographic works are mentioned in the Berne Convention. The criterion used here is not the dynamics of images or sound, but the use of cinematic processes. The presence of image or sound elements exists implicitly, as does the appearance of image dynamics or the dynamic potential of images. The definition and conditions are left to the discretion of the member states, possibly deriving from the traditional notion of cinematography.

The requirement of the Convention regarding the process to be either cinematic or similar suggests that some support is needed. If there is no material support, it is difficult to detect such a process, although it would contradict art. 2 (2) in which it is left to the discretion of the Member States to provide that works will be generally or exceptionally unprotected unless the works are fixed to a material support.

Conclusions

The value of a multimedia product does not necessarily lie in the originality of its components. If it were a question of some originality, it would possibly relate to the appearance of the product or to the ease with which it can be used, this due to the usefulness that such a product must have. Creativity consists rather in the way of combining and the variety of the various components.

Multimedia creation is computerized, it is not necessarily a computer program, but it can often be enhanced only by using a computer. Therefore, this new category of creation is no longer necessarily based on material support. It is a good in itself, and its value is given by the tendency to dematerialize information (OMPI 2001).

The first copyright convention was the “Berne Convention for the Protection of Literary and Artistic Works”. Encouraged by the elaboration of the Paris Convention on Industrial Property, at the Congress held in Bern on September 10-13, 1883, the International Literary and Artistic Association (ALAI) adopted a draft “convention for the establishment of the General Union for the Protection of the Rights of Authors over their Works literary and artistic”. The Swiss Federal Council sent this project to “all civilized countries” informing them of the holding of a diplomatic conference next year to discuss the project. In fact, three international conferences were needed before the final text was adopted. The Berne Convention of 12 September 1886, the result of the work of 17 “scientists” representing 12 countries, was considered, in its time, to be “the most perfect model of legislative texts”.

The Bern Convention of 1886 was first amended in Paris on May 4, 1896, followed by a first revision in Berlin in 1908, a new amendment on March 20, 1914, and a new revision - the Rome Act - of June 2, 1928, followed by another revision - the Brussels Act - of 26 June 1948. These various revisions were aimed at raising the level of protection of conventional rules. The last two revisions of the Berne Convention, the 1967 Stockholm Convention and the 1971 Paris Convention, on the other hand, have reduced the protection afforded by conventional rules by provisions derogating from copyright in favor of developing countries.

References

- Bertrand, Andre. 2005. *Droit des marques et des noms de domaine*. Paris: Dalloz, deuxième édition.
- Cremona, R. 2001. Le droit à l'image des biens, quoting Pierre Kayser.
- Macovei, Ioan. 2010. *Tratat de drept al proprietății intelectuale [Intellectual property law treaty]*. Bucharest: C.H. Beck, Publishing House.
- OMPI. 2001. *Introducere în proprietatea intelectuală [Introduction to intellectual property]*. Bucharest: Rosetti Publishing House.
- Picard, Edmond. 1928. *Le Droit Pur*. Paris: Ernest Flammarion éditeur.
- Puttemans, A. 2000. *Droits Intellectuelles et Concurrence Déloyale*. Bruxelles: Bruylant.
- Roș, Viorel. 2001. *Dreptul proprietății intelectuale [Intellectual property law]*. Bucharest: Global Lex Publishing House.
- Simler, Christel. 2010. *Droit d'auteur et droit commun des biens*. Thèse de doctorat. Litec.
- The Marrakesh Agreement, ratified by Romania by Law no 133 published in the Official Gazette no. 360 of December 27, 1994.

Payroll Protection Plan Epilogue

Douglas David Klein¹, Zion Kang²

¹*Adjunct Professor, New Jersey City University, United States, dougkleinteacher@gmail.com*

²*Student, Jeju International School, Korea, zokang222@gmail.com*

ABSTRACT: The Paycheck Protection Program (PPP), part of the CARES Act passed by the United States Congress in 2020, was instituted as a response to social distancing restrictions during the COVID pandemic that shut down large parts of the American economy. The purpose of PPP was to provide small businesses (and corporations with 500 employees and less) with easy-access loans to help make essential operating payments such as rent, utilities and payroll. If PPP funds were properly used as promised, then the amount borrowed would be forgiven - meaning the loan would be converted to a grant and the borrowed funds would never have to be repaid. The PPP was rolled out in two phases: April 2020 and January 2021. This paper will address if the program worked as envisioned - what was the PPP's ultimate effectiveness? Did it really save jobs and businesses from failing? This paper will also research the percentage of fraudulent or criminal PPP loans - was there widespread fraud, abuse and misuse of the easy-access funds?

KEYWORDS: Paycheck Protection Program, effectiveness, fraud, abuse, businesses, jobs, loans

Introduction

The Paycheck Protection Program (PPP) provided loans for small businesses to keep employees on their payroll and to keep the business itself viable after social distancing restrictions and shutdowns were ordered by state and local governments. The PPP was established in April, 2020 under the Coronavirus Aid, Relief and Economic Security Act (CARES Act). Originally, under CARES, 75% of the PPP loan had to be used for employee related expenses, including wages, salaries, benefits (including vacation and parental, family, medical, or sick leave) and the state and local taxes on compensation. This provision was amended to 60% in June 2020 (Calzacorta 2021).

The PPP loan application and guidelines for approval process were overseen by the Small Business Administration, a division of the US Department of Commerce. However, the loans themselves were funded by commercial banks and then guaranteed by the SBA (Brumberg 2020). The PPP was rolled out in two phases: April 2020 and January 2021. The April stage funded \$525 billion dollars in loans that were meant for companies that had no cash cushion and little access to additional capital. Roughly 5.2 million loans were funded to companies from April to August, 2020. The First Draw PPP Loans were intended to be used to help fund payroll costs (including benefits), mortgage interest, rent, utilities, and worker protection costs related to COVID-19, uninsured property damage costs caused by looting or vandalism during 2020, and certain supplier costs and expenses for operations (Stewart 2020).

The basic concept was that the SBA would forgive loans from borrower repayment e.g., the Federal government pays the banks back - if all employee retention criteria were met, and the funds were used for eligible expenses. However, loan forgiveness is not simple 1) the process that borrowers needed to complete to become eligible for forgiveness was hard to find 2) when a loan is forgiven, it creates IRS income tax reporting issues, namely the borrower cannot claim as a business deduction expenses that were paid for with PPP funds (normally, forgiven loans must be reported as income, but in this case, the forgiven loans would not be reportable) (Ransom 2020).

Terms and Conditions (from the SBA)

PPP loans had an interest rate of 1%. Loans issued prior to June 5, 2020 have a maturity of two years. Loans issued after June 5, 2020 have a maturity of five years. Loan payments will be

deferred for borrowers who apply for loan forgiveness until SBA remits the borrower's loan forgiveness amount to the lender. If a borrower does not apply for loan forgiveness, payments are deferred 10 months after the end of the covered period for the borrower's loan forgiveness (between 8 weeks and 24 weeks).

No collateral or personal guarantees were required. Neither the government nor lenders will charge small businesses any fees (SBA 2020). If the funds were properly used from the 1st Draw, small businesses could apply for a 2nd Draw if PPP funds were still available (Gregg 2020).

By September 2020, Congressional Committee investigations found that some loans went to wealthy individuals or companies that were owned by politically powerful and well-connected borrowers (Madore 2020). The investigations also found that some loans were fraudulent, with borrowers engaging in criminal intent (Madore 2020). In Jan, 2021, the SBA released a document “Myth vs. Fact” to dispel beliefs that the PPP was wrought with waste and fraud (SBA Office of Capital Access, 2021). The agency announced all loans “are being reviewed” and outlined the process the SBA has in place for loan approvals, including a manual review for all requests of \$2 million and more (SBA Office of Capital Access 2021).

After popular outcry on social media and stories of fraud appeared in the media, the SBA released the names of all companies who applied for PPP - but it didn't mean the business actually received PPP loans, simply applied (O'Connell 2020). 75% of all PPP loans went to a business with 9 or fewer employees and 87% of loans were for \$150,000 or less. The SBA reported that \$130 billion from the first phase of PPP went unclaimed. Ultimately, PPP supported 51 million employees (SBA Office of Capital Access 2021).

By the end of January, 2021, the US national employment rate was 6.7% and the SBA says that the PPP helped to achieve this statistic. In an attempt to have funds distributed in rural locations and minority neighborhoods, the SBA and the US Treasury Department executed an aggressive outreach campaign to ensure PPP participation by Community Development Financial Institutions (CDFIs), Minority Depository Institutions (MDIs), and minority, women, veteran, or military-owned lenders due to their existing presence in underserved communities. The SBA and Treasury's claim that their outreach campaign to underserved communities worked: As of August 8, 2020, when the PPP Phase 1 closed to new loan applications, 432 MDIs and CDFIs had participated from across the country, providing over 221,000 loans for more than \$16.4 billion (SBA Myths and Facts 2021).

PPP delivered \$133 billion of loans to businesses in Historically Underutilized Business Zones, accounting for more than 25 percent of all PPP funding. What's more, a review of census tracts showed 28 percent of the U.S. population lives in low- and moderate-income census tracts, and when matched against the distribution of PPP loans, 27 percent of the PPP funds went to low and moderate income communities, which is in line with their representation in the population (Borawski and Schweitzer 2021).

Not surprisingly, the Federal government declared the PPP a success. But what was the extent of fraud and abuse? In September, 2020, the US Justice Department charged 57 people with trying to steal a total of \$175 million in taxpayer-backed coronavirus pandemic loans (Gregg 2020). The funds were disbursed with relatively little vetting, and businesses were allowed to certify their own eligibility (Gregg, 2020). This fact made the illegal activity easier to accomplish for criminals who saw the PPP as an opportunity. The \$175 million that applicants attempted to steal has entailed a known loss of \$80 million to the government, officials said. The Justice Department was able to recover \$30 million (Rochelle 2021).

It's not easy to forgive

By October of 2020, it became clear to borrowers that the administrative process of having the PPP loans forgiven was not easy to accomplish. There were hundreds of thousands of PPP borrowers, and that meant a crush of forgiveness applications for personnel to receive and acknowledge. In these modern times, borrowers expect to find a web portal on the lender's

website to complete the forgiveness form. Will the banks have the manpower to develop the online form on time? Will the software work as designed? How about the small regional and minority owned financial institutions - will they have the resources to deliver online forgiveness applications? (Ransom 2020)

Moving on from the questions on how the forgiveness process will be administratively offered to the borrowers - how will the hundreds of thousands of applications be processed efficiently by the lenders in a timely manner? Banks - just like any other employer - staff their businesses based on normal business volume. The national lobbying and interest of banks - the American Banking Association - submitted a formal letter summarizing their concerns about processing forgiveness in January 2021 (Nicholls 2021).

How and when to apply for loan forgiveness?

1. The first step in the process of having your PPP loan converted to the forgiveness stage is to contact the lender and complete the correct form (SBA Form 3508 or the shortened versions SBA Form 3508EZ or SBA Form 3508S)

2. The 2nd step is compiling the documentation the SBA requires:

Payroll documentation for all payroll periods that overlapped with the period covered by the PPP, including bank account statements or third-party payroll provider reports documenting the amount of cash compensation paid to employees. Also required are the payroll tax forms (or equivalent third-party payroll service provider reports) for the periods that overlap with the PPP, typically, Form 941 and State quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state (SBA.gov 2021).

As noted above, non-payroll expenses deemed essential and intrinsic to keeping a business open were covered. Property damage because of rioting was also covered. The SBA also advised borrowers to follow up with lenders to submit additional documentation as requested in a timely manner. If SBA undertakes a review of your loan, your lender will notify you of the review and the SBA loan review decision. You have the right to appeal certain SBA loan review decisions. Your lender is responsible for notifying you of the forgiveness amount paid by SBA and the date on which your first payment will be due, if applicable (SBA.gov 2021).

How well did the process work?

The SBA has been posting information, data and statistics on the PPP since April 2020 at this site <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/ppp-data>

Data as of May 24, 2021

Table 1. PPP Loans Issued, Forgiven and Under Review

Total 2020 PPP volume	5.2 million loans for \$521.2 Billion - 70% of all loans were for less than \$50,000
Loans Forgiven	3.3 million loans for a total of \$279.4 Billion
PPP Loan amount NOT forgiven	\$1 billion
PPP Loans Under review	145,000 loans representing \$81.5 Billion
Applications not yet received	1.7 million loans representing \$159.1 billion

Source: Small Business Administration

But owners had to wait months for clarity on how to apply for forgiveness. By the Fall of 2020, there were still not clear guidelines on how to file for forgiveness. And when the new year of 2021 began, there was still plenty of confusion (Cowley 2020).

Putting the question of loan forgiveness aside...was PPP a success?

Not according to Raj Chetty, a leading American labor economist and professor at Harvard University. In a paper he co-wrote for the National Bureau of Economic Research, the \$600 billion spent should have had a much greater boost in the economy (Chetty and Stepner 2020). In terms of saving people's jobs, the program spent vastly more money than the number of jobs it saved," economist Michael Stepner, one of the paper's co-authors. About 90% of those workers whose paychecks were paid out of the fund were not at risk of being laid off in the first place, according to the analysis. The bulk of the funds were allocated to businesses in the professional, scientific and technical services industries — sectors in which employees can typically telecommute (Chetty and Stepner 2020).

And small business owners questioned how the program's logic - in order to receive a loan, the business owner had to keep workers employed (Chetty and Stepner 2020). But there weren't enough customers to pay the businesses' other bills. It's possible that the loans were attractive to those business owners who knew their payrolls would remain unchanged. "If they weren't going to lay employees off anyway, they are just getting a grant from the government. That made the loans particularly attractive to firms that knew they could keep employees on payroll," Stepner said (Chetty and Stepner 2020).

Other Economic Studies

Other studies performed by academics were less critical than the NBER report. A widespread study conducted by MIT in July 2020 concluded that the PPP increased employment by 2.3 million workers (Autor, Cho 2020). Preliminary July 22, 2020. This study utilized employer data provided by the largest US payroll processing firm ADP, representing anonymized payroll information of 26 million employees across all industries. The MIT study found that small firms eligible for PPP loans evinced the same decrease in employment as large firms in the early days of the pandemic - March and April of 2020. But after the PPP became active, small firms showed a quicker and larger employment recovery to pre-pandemic levels: "We estimate that through the end of May the PPP increased the level of employment at eligible firms by between 2 percent and 4.5 percent" providing some empirical evidence that the premise behind the legislation was working in practice (Autor, Cho 2020).

Conservative Academic Perspective

In a paper entitled "Has the Paycheck Protection Program succeeded" economists Glenn Hubbard, Professor of Finance and Economics at the Columbia Business School, and Michael R. Strain, Director of Economic Policy Studies at the American Enterprise Institute, concluded that the first phase of PPP appeared to be a success. Though they did caution that it was too early to declare a conclusive judgment, Hubbard and Strain found that small firms that received PPP loans were in better financial health than larger companies that received no PPP funds. (Hubbard and Strain, 2020)

This thesis was based on corporate data provided by Dun and Bradstreet, one of the largest and oldest aggregators of business information in the US. Noting that 47% of all private sector jobs are with an employer with 500 employees or less, Hubbard and Strain compared firms that applied for PPP loans of at least \$150,000 and researched the following:

- Were they still in business?
- Where they paying bills on time?
- Did they maintain pre-pandemic employment levels?

The data evinced that the smaller firms eligible for PPP loans were in fact healthier by September 2020 based on all three metrics delineated above. Thus, they concluded that the

PPP succeeded in its short-term goals of allowing smaller businesses to maintain employment connections with workers while absorbing the sudden shock of plummeting or zero revenues. (Hubbard and Strain 2020).

Incidents of Fraud

When the PPP was first announced in April 2020, there were fears of widespread fraud. A year later, the Project on Government Oversight (POGO) - after reviewing comprehensive statistics from the Department of Justice and the Small Business Administration, found that only 209 people were charged with theft and fraud up to April 2, 2021. The total amount allegedly stolen according to POGO was \$445 million. Since the total SBA PPP funding was \$755 BILLION, the alleged fraud is .0006% of the total funded - a very low ratio (Schwellenback and Summers 2021).

A different program known as the Economic Injury Disaster loan, also supervised by the Small Business Administration, had a much higher rate of fraud. The POGO study found that over \$580 million was seized back by the SBA, representing 23,000 loans found to be fraudulent. Since only \$202 billion in EID loans were issued, the ratio of .003%, 20 times higher than the fraud rate of PPP loans (Schwellenback and Summers 2021).

Will the number of jobs saved ever be counted?

One year after Congress created the Paycheck Protection Program, taxpayers don't know how many jobs were saved by the nearly \$1 trillion in forgivable loans issued to businesses during the pandemic (Wire 2021). And economists and government watchdog groups say they probably never will — because the government didn't count. The PPP was pitched as a way to save millions of jobs threatened during the COVID-19 recession. But the Small Business Administration under President Trump — and now under President Biden — hasn't tracked figures on jobs that were saved, despite a legal requirement to do so (Wire 2021). “No one will actually know except for the recipients whatever happened with the loan and with the jobs,” said Sean Moulton, senior policy analyst at the Project on Government Oversight, a watchdog group (Wire 2021). The SBA's initial estimate of 50 million jobs “supported” by the PPP was quickly dismissed as wildly inaccurate. Treasury Department economists place the number closer to 19 million, while economists studying the program estimate it's between 2 million and 5 million (Wire 2021).

More than 8.7 million forgivable loans worth \$961 billion have been made so far. And Joseph Biden signed a two-month extension at the start of his Presidency, allowing the SBA to accept applications for \$79 billion in loans through May 31. SBA officials told Congress they expect the money to be exhausted by the end of April (Wire 2021).

In April 2020, just days after the program began issuing loans, the Trump administration's Office of Management and Budget instructed the agency not to ask loan recipients to report back on the estimated number of jobs created or retained (Wire 2021).

The budget office said “centrally available economic data” would provide sufficient information to produce the report. Its memo did not say where those data would come from, how they would be verified or why the budget office did not want the businesses to provide the information (Wire 2021).

In January, the agency's inspector general emphasized in a report that reliable information on the number of jobs saved was not available because the SBA did not collect it. “SBA officials and national leaders do not have enough information to make informed decisions or determine to what extent the PPP met national program objectives. Additionally, SBA cannot accurately report jobs retained by PPP borrowers” (Wire 2021).

Moulton said applications for forgiveness would provide only a snapshot of current conditions, not the five years of jobs data that Congress specifically asked for in the CARES Act to verify whether the loans kept people in their jobs in the long term. Employees who were paid using the loan could have been laid off as soon as the money ran out, he said (Wire 2020). No one disputes that the program probably helped thousands of small businesses survive. The scope of

how many closed and how many stayed open will become more obvious as tax filings and bankruptcy data become available in time, economists say (Wire 2021).

Eric Zwick, an economist at the University of Chicago's business school who has studied the program, said Congress could have modified the program in the early months of the pandemic after seeing how much money was going to businesses that weren't in regions or industries facing economic peril because of shutdowns. Congress waited until December to prioritize loans for businesses with fewer employees and with major drops in revenue. "You could have had the same program, just as [beneficial], possibly for half the price," Zwick said (Wire 2021).

UC Berkeley law professor Robert Bartlett, who surveyed businesses in Oakland during the pandemic, found that how much the loan contributed to a business' expectation of survival depended largely on how many people it employed (Wire 2021). Microbusinesses of fewer than five employees needed their people to continue working in order to stay open and thus benefited the most from payroll support, Bartlett said. They were 20% more likely to say they expected to be open in six months because of the loan (Wire 2020). But for businesses with more than five employees, layoffs were the best way to manage cash flow, and they needed rent help from the government more than payroll support, Bartlett said. Though the PPP delayed layoffs for a few months, the businesses reported that the loans did not have a lasting effect on their ability to survive the next six months (Wire 2020).

The PPP lapsed in August, but Congress in December approved a second round of loans, tightening eligibility requirements to focus support on the smallest, hardest-hit firms and those with the greatest drops in revenue. Only businesses with fewer than 300 employees could apply for a second loan, and money was set aside for particularly small and minority-owned businesses (Warmbrodt 2021). It also created direct grants for performing venues and restaurants, which the SBA expects to make available this month. Businesses applying for PPP loans still need not report the number of jobs saved (Warmbrodt 2021).

References

- Autor, David, et al. "An Evaluation of the Payroll Protection Program Using Administrative Payroll Micro Data." July 22, 2020. <http://economics.mit.edu/files/20094>.
- Borawski, Garrett, and Mark Schweitzer. 2021. "How Well Did PPP Loans Reach Low- and Moderate-Income Communities?" May 27, 2021. <https://www.clevelandfed.org/en/newsroom-and-events/publications/economic-commentary/2021-economic-commentaries/ec-202113-reach-of-ppp-loans-in-lmi-communities.aspx>.
- Brumberg, Bruce. 2020. "You Got Your Paycheck Protection Program Loan. Now What? Advice from Small-Business Lawyers." *Forbes Magazine*, April 17, 2020. <https://www.forbes.com/sites/brucebrumberg/2020/04/17/so-you-got-your-paycheck-protection-program-loan-now-what-advice-from-small-business-lawyers/?sh=74d7d36c5a7d>.
- Calzacorta, Carmen. 2021. "What to Know about the Paycheck Protection Program, Round Two – First Draw PPP Loans (Updated 5/5/2021)." *Schwabe, Williamson & Wyatt PC*, May 5, 2021. <https://www.schwabe.com/newsroom-publications-what-to-know-about-the-paycheck-protection-program-round-two>.
- Chetty, Raj. 2020. "Raj Chetty Addresses the Economic Impacts of COVID-19 Based on Evidence from a New Public Database Built Using Private Sector Data," September 21, 2020. *NBER*. <https://www.nber.org/affiliated-scholars/researchspotlight/raj-chetty-addresses-economic-impacts-covid-19-based-evidence-new-public-database-built-using>.
- Cowley, Stacy. 2020. "Small-Business Loans Will Be Forgiven, but Don't Ask How." *NYTimes*. October 9, 2020. <https://www.nytimes.com/2020/10/09/business/small-business-ppp-loans-forgiveness.html>.
- Gregg, Aaron. 2021. "How to Get a SMALL-BUSINESS Loan under the Biden Administration's New Ppp Rules." *Washingtonpost*, March 3, 2021. <https://www.washingtonpost.com/business/2021/01/08/sba-ppp-loans/>.
- Hubbard, Glenn, and Michael R. Strain. 2020. "Has the Paycheck Protection Program Succeeded?" *Brookings.edu*, September 28, 2020. <https://www.brookings.edu/bpea-articles/has-the-paycheck-protection-program-succeeded/>.

- Madore, James T. 2020. "Incidences of PPP Fraud and Abuse: Report." *Newsday*, September 3, 2020. <https://www.newsday.com/business/coronavirus/ppp-fraud-waste-abuse-small-business-coronavirus-1.48909722>.
- Nichols, Bob. 2021. "ABA Letter to Treasury and SBA: Paycheck Protection Program," January 15, 2021. https://www.aba.com/advocacy/policy-analysis/aba-letter-to-treasury-and-sba-paycheck-protection-program#_ga=2.183248294.1823984433.1612100122-129467477.1612100122.
- O'Connell, Jonathan, and Aaron Gregg. 2020. "Treasury, SBA Data Show Small-Business Loans Went to Private-Equity BACKED Chains, Members of Congress." *Washingtonpost*, July 13, 2020. <https://www.washingtonpost.com/business/2020/07/06/sba-ppp-loans-data/>.
- Ransom, Diana. 2020. "Why PPP Loan Forgiveness Delays Aren't Such a Bad Thing." October 5, 2020. <https://www.inc.com/diana-ransom/ppp-loan-forgiveness-delays-sba-banks-taxes.html>.
- Rochelle, Bill. 2020. "Justice Department Has Charged 57 People with Trying Steal \$175 Million in Coronavirus Relief Funds." September 10, 2020. <https://www.abi.org/newsroom/bankruptcy-brief/senate-republicans-fail-to-advance-skinny-stimulus-bill-as-stalemate>.
- SBA Office of, Capital Access. 2021. "Myths v. Facts about the Paycheck Protection Program." Accessed July 18, 2021. <https://www.sba.gov/document/support-ppp-myth-vs-fact>.
- SBA, ed. 2020. "PPP Loan Forgiveness." *U.S. Small Business Administration*. <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/ppp-loan-forgiveness>.
- Schwellenbach, Nick, and Ryan Summers. 2021. "Red Flags: The First Year of Covid-19 Loan Fraud Cases." *POGO*, April 15, 2021. <https://www.pogo.org/investigation/2021/04/red-flags-the-first-year-of-covid-19-loan-fraud-cases/>.
- Stewart, Emily. 2020. "The Ppp Worked How It Was Supposed to. That's the Problem." *VOX*, July 13, 2020. <https://www.vox.com/recode/2020/7/13/21320179/ppp-loans-sba-paycheck-protection-program-polling-kanye-west>.
- Warmbrodt, Zachary. 2021. "Congress Backed a Trillion-Dollar JOB-SAVING Program. 'No One Really KNOWS' If It's Working." *Politico*, March 26, 2021. <https://www.politico.com/news/2021/03/26/congress-trillion-dollar-question-how-many-jobs-did-small-business-rescue-save-478085>.
- Wire, Sarah. 2021. "Taxpayers Don't Know How Many Jobs Ppp Loans Saved during the Pandemic. No One Counted." *Latimes.com*, April 1, 2021. <https://www.latimes.com/politics/story/2021-04-01/taxpayers-may-never-know-how-many-jobs-the-1-trillion-ppp-saved-the-government-didnt-keep-count>.

Non-Fungible Tokens (NFTs) – Regulation Vacuum and Challenges for Romania

Bogdan Radu

*Phd, Dimitrie Cantemir” Christian University, Bucharest, Romania
radu.bogdan@ucdc.ro*

ABSTRACT: This article aims at presenting the strengths and weaknesses of the Romanian legislation towards non-fungible tokens (NFTs). We start by recognizing that there is no active legislation that deals with cryptocurrency, NFTs or any other digital asset using a digital ledger of transactions (DLT). The starting point is the analysis of the legal characteristics of an NFT through the classical qualification and distinction made for goods by the Romanian Civil code. Further, we raise some issues regarding establishing a clear tax regime and the correlation between NFTs and intellectual property rights, and finally conclude that when it comes to qualifying crypto-assets, we need to adopt a ‘substance over form’ approach, in order to avoid regulatory unpredictability.

KEYWORDS: Non-fungible tokens, NFT, cryptocurrency, DLT, blockchain

Introduction

Cryptocurrency and NFTs started the new gold-rush of the digital era. Due to the fact that the market for these digital goods has been established quite recently and has grown without precedent, the legal interest in this phenomenon is a professional obligation.

With the growth of a new financial market in trading digital assets like cryptocurrency (fungible tokens), non-fungible tokens (NFTs) have also made quite an impact. The selling of Mike Winkelmann’s (Beeple) NFT by Christies for an astonishing 69 million US dollars (<https://www.christies.com/features/Monumental-collage-by-Beeple-is-first-purely-digital-artwork-NFT-to-come-to-auction-11510-7.aspx>) reverberated across the planet and caught the attention of everybody, especially legal scholars.

An NFT is basically a digital asset that, through the aid of blockchain technology, is unique and registered as such in a digital ledger (DLT – digital ledger of transactions) where its creation and all subsequent transfers are noted so as to give the possessor of the NFT the rank of owner. The uniqueness and scarcity of an NFT is what gives it its underlying value (Bosovic 2021). But can this process of creation and transfer of NFTs be considered absolute proof in the eyes of the Romanian law that the possessor of the token is in fact a true owner?

The uniqueness of the NFTs only translates to the digital world because NFTs can be a representation of real-world goods or videos which can further entail intellectual property (IP) issues. Analyzing the NFT through the Romanian legal frame of reference some interesting points can be made.

Legal characteristics of an NFT as seen through the Romanian Civil code

Due to the novelty of it, NFTs do not benefit from special attention from the Romanian legislation, thus only an analysis of its genus can reveal certain legal characteristics.

So, what is an NFT? Is it merely a *thing* or does it rise to the *goods* status, distinction the Romanian legislation makes? If, indeed, it’s a good, what precise kind of good is it?

According to art. 535 of the Romanian Civil code (C.c.) “goods represent things, that can be corporeal or intangible, which constitute the object of a patrimonial right”. From the perspective of Romanian private law there is a difference between the notion of *things* and *goods*, in the sense that the first refers to any corporeal or intangible element in the objective reality that has its own configuration, while the second, as mentioned before, is juridically a

thing that has economic value through appropriation. The doctrine offers as example of things the *res communis*: air, light, water, basic ideas, or cultural traditions (Boroi and Anghelescu 2012, 78).

The only mention in the C.c. of *things* is in the art. 535 and in art. 1376 “Liability for damage caused by things” (“*Everyone is obliged to repair, independently of any fault, the damage caused by the thing under his care*”).

It should be underlined that an action or inaction does not constitute a *thing*. At most it can be considered a performance inside or outside of a contract that produces legal consequences. The capacity of an action to be objectified in a material matter is not enough to change its nature even though it can create, modify or even destroy a good (the possibility of destruction of a certain good, while fulfilling all other legal requirements if requested, is based on the attribute of *jus abutendi* of the ownership right).

According to Gaius, the triad of the juridical world is formed by the persons, performances (rights and obligations) and goods (Stoica 2017).

As a partial conclusion, the NFTs cannot be interpreted as being just things in the eyes of the Romanian law, but goods. Even though the inherent economic value of a good, and thus an NFT, is not enough in itself to be considered an asset in the patrimonial sense, the appropriation element completes the scheme. For example, as in the case of lost goods that cannot be taken into account when summing up the entirety of someone patrimony, if the owner of an NFT loses the public and/or private key or the hard-drive that offers access to the respective asset, in the eyes of the Romanian law the respective NFT ceases to be a good, only reverting to this status once the keys or hard-drive are found again. The implications are numerous especially in cases of bankruptcy, succession debate or enforcement action; sometimes the implications can be criminal if the debtor alienates, hides, damages or destroys, in whole or in part, NFTs in his patrimony or if invokes fictitious transfers for the purpose of creditors' fraud; according to art. 239 of Romanian Penal code any of the aforementioned acts is punishable by imprisonment from 6 months to 3 years or a fine. Due to the limited identification capability of the owners or receivers of block-chain based tokens the criminal aspect of hiding assets in the form of NFTs or cryptocurrencies poses a challenge for any state.

After establishing that NFTs can be the object of a patrimonial right and thus be considered a good we need to understand what kind of good it is, according to the C.c.'s different criteria.

The lack of specific legislation to regulate NFTs can create difficulties in considering them or not as being able to take part in the civil circuit through juridical acts.

As a rule, the regime of legal circulation of goods in Romania is that until otherwise stipulated in an express manner by the law goods can be legally circulated. Circulation of goods can take place without restrictions, like in most case, or with certain restrictions, as is the case with firearms, fireworks, or some pharmaceutical drugs.

According to art. 1229 “only goods that are in the civil circuit can be the subject of a contractual performance”.

Currently, Romania has neither regulated NFTs nor cryptocurrencies for that matter but hasn't banned them either, a precedent which India has just set with virtual currency making it illegal to have, issue or sell such currency.

As another partial conclusion, the NFTs can be considered goods which can take part of the Romanian civil circuit through contracts.

An additional criterion by which goods are classified by the C.c. is the one that separates corporeal goods from the intangible goods which in Roman law it was expressed by the adage: “*corporeales hae sunt quae tangi possunt, velut fundus, vestis, aurum; incorporales quae tangi non possunt, qualia sunt quae in iure consistunt, sicut hereditas, usufructus, obligationes.*”

As stated before, when we discussed appropriation, ownership is just a tool through which a good is appropriated. The Romanian C.c. prescribe the ways in which one takes ownership over a good, movable or immovable. According to art. 557 C.c.: “the right of ownership may be acquired, under the law, by convention, legal or testamentary inheritance, accession, usucapion, as an effect of possession in good faith in the case of movable property and legal fruit, by occupation, tradition, as well as by court’s judgment, when it is translational of property by itself”.

But there are some particularities of appropriation of intangible goods:

a) With corporeal goods appropriation happens to an external object without the authorization from the law for each category of goods – the law may only restrict certain corporeal goods from appropriation – but, with intangible goods appropriation may occur only if permitted by law. The law, thus, covers transactions of digital goods for tax purposes, most of NFTs being unique digital art, assets in the form of pictures, videos or songs, it however does not recognize virtual currency like Bitcoin and Ethereum, only digital currency (see Law 210/2019 on the activity of issuing electronic money).

b) In order for the juridical possession of an intangible good not to contain only the element of *animus* (to the intention or will of the holder of the right to own the property for himself and to act as the holder of the respective real right) but also *corpus* it is necessary for the appropriation process to have a material support onto which we are able to fix the immateriality of the intangible good.

The intangibility of goods comes with some juridical restrictions. For example, the tradition or the acquisition of property over movable property as an effect of the possession in good faith, as prescribed by art. 935 of the C.c., refers only to tangible movable property; it does however allow, only exceptionally, some intangible movable property, namely bearer securities, as per art. 940 C.c. (Stoica 2013, 332-333)

There is, however, a particular case where intangible goods act like tangible goods but only in their effects, not in nature: tradition. Nowadays, in the digital age, the manual gift can be legitimately received through procedures that do not include the actual and material delivery of the given good, but nonetheless guarantee successful transfer of values from one patrimony to another – e.g. transferring a file or files to a computer, or sending money using a debit card.

In order to exemplify intangible goods, we can list the following: real rights, other than property rights; intangible properties like industrial property rights, copyright and their related rights – here we can also include NFTs; securities like shares, bonds, derivatives or any other credit securities classified by the National Securities Commission in this category, as well as trade effects like bills of exchange, promissory notes and checks; debt rights.

As a further partial conclusion, interpreting Romanian law, NFTs are intangible goods, more precisely they represent intangible property.

De lege ferenda, we find useful, considering the innovations of the digital world in matters of digital assets, the regulation of a *deposit contract (depositum) for intangible goods* since in most cases, NFTs are minted from embedding links to webpages that are hosted on the servers of third parties, which poses a legal vulnerability. Blockchain technology can only attest proof of ownership of the token and transaction history of it, the code embedded in the token usually being a link to a picture, video or song *deposited* (hosted) on a server. It’s important to understand that ownership over an NFT doesn’t always mean intellectual property of the asset represented in the NFT; one the biggest advantages of blockchain technology may be its biggest weakness: immutability and irreversibility. So, in case of art fraud, the person unknowingly paying for the *faux* NFT in cryptocurrency may consider the transaction a loss, there not being a possibility for the revertment of payment as it is paying by fiduciary money.

According to Romanian doctrine, the deposit contract is a *contractus in re* meaning that the handing over of the asset is a condition for the valid conclusion of the deposit contract, unless the depositary already holds the asset for another purpose. In essence, according to art. 2103 C.c. the depositary receives from the depositor a movable property, with the obligation to keep it for a period of time and to return it. It is evident that, *ex lege*, the object of this contract could only be a corporeal asset.

Let's presume that we minted a token (most NFTs are registered on Ethereum's blockchain, a decentralized platform) that consists of original digital art: in order to create a block of data to be included in the chain, either a) the token must be integrated in the block (it may be costly if the token is a video or any large amount of data that needs computing), or b) the URL (Uniform Resource Locator) that connects the owner to the original token. Further discussing point b), the *sine qua non* condition for the NFT to have value is for the art-piece to be accessible online, otherwise the digital ledger of transactions attests that a person is the owner of a broken link. Thus, it becomes evident the importance of choosing a cloud-computing service provider as a depositary to host one's digital assets (Radu 2015a; Radu 2015b).

Coming back to *depositum* contract a question arises: how would the return of an intangible good like an NFT would work? As we discussed earlier about appropriating intangible things in order for them to become goods, they must be fixed on a material support, in this case a hard-drive. Restitution of intangible nonfungible digital goods can be accomplished by either using a server data migration software to transfer the database or by physically surrendering the data storage medium.

Consenting parties, of course, can draw-up the terms of any agreement if they respect public-policy, but often the lack of regulation can give way to contractual abuse from the economically dominant party.

In a case of such legislative vacuum we could apply the provisions of the deposit contract taking into account the rules for what are considered to be the normative sources of the civil law. Thus, in the situation where the law does not provide for a certain legal situation and there are no customs, the Romanian court may consider, according to art. 1 para. 2 C.c. as a source of law the legal provisions regarding similar situations – the deposit contract regulated by the C.c. in art. 2103-2123.

Another criterion that Romanian doctrine uses to distinguish among goods is based on their ability to be replaced by another in performing a contractual obligation as *payment* (Pop, Popa and Vidu 2015, 521). Thus, goods may be fungible and non-fungible. According to art. 543 par. 2 C.c., goods that can be determined by number, size or weight are fungible, so that they can be replaced by each other in the performance of an obligation. *Per a contrario*, non-fungibility lacks the equivalence ratio between two or more things.

The most important effect of this classification, besides appreciating the validity of a payment, is the moment transfer of ownership takes place. As stated in art. 1674 C.c. the property right is transferred *ex lege* to the buyer from the moment of concluding the contract, even if the good has not been handed over or the price has not been paid yet, except in the cases provided by law or if the will of the parties does not show otherwise. Meanwhile, when the sale concerns fungible goods, including goods of a limited kind, the property is transferred to the buyer on the date of their individualization by delivery, counting, weighing, and measuring or by any other means agreed or imposed by the nature of the good, as per art. 1678 C.c. (Stănciulescu 2012, 147).

This has important implications trading NFTs under Romanian law: Sale of NFTs fall under the rules of art. 1674 C.c. meaning that it does not matter if a transactional block of data was chained to the others for it to operate the transfer of ownership in the eyes of the civil law as long as the conditions of validity of the act were respected. As a rule, for a sale to be considered valid certain essential conditions must be met: the ability to contract; the consent

of the parties; a determined and lawful object; a lawful and moral cause; and, to the extent that the law provides for it, a certain form of contract must be complied with.

The selling of NFTs does not require for the contract to take any special form, the consensus principle established in art. 1178 C.c. being applicable. We might be tempted to believe that embedding the new transaction in the blockchain has the constitutive effect of rights when in reality it represents fulfillment of the delivery obligation that comes with the transfer of ownership and also serves the function of opposability to third parties.

Of course, the main issue in case of lack of consistency between the real owner and the one mentioned in the ledger is the proof of ownership and claiming damages. According to art. 309 of the Civil procedural code, no legal act can be proved with witnesses if the value of its object is higher than 250 RON. The issue becomes more real as most NFTs are evaluated at much higher prices than aprox. 60 USD or 50 EUR. So, if a person consents to selling an NFT for 1.000 USD, receives the money but there is no deed to prove this agreement nor an invoice of a money transfer, then the buyer may find himself at the mercy of the seller's good will to deliver the NFT. The equation gets more complicated if the seller sells to more than one person. If both have deeds then better claim has the one who received the NFT, the transaction having opposability to third parties; of course, in this situation the seller is liable for damages produced to the other buyer.

Fiscal regime of crypto-assets

On the European level, there are efforts being made to regulate crypto-assets and thus bring stability, prediction, and protection to the crypto-market. Negotiations are currently taking place between the Member States on the basis of a proposal for a Regulation drawn up by the European Commission on the cryptocurrency market (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020PC0593>).

Taxwise there are a few issues that NFTs, like any other crypto-based asset, can create for the Romanian state. There is uncertainty about the legal status of crypto-assets, and this may contribute to the difficulty in tax treatment of transactions using crypto-assets because any asset can theoretically be tokenized, and the rights to those assets can be represented on a DLT – real property rights of material goods like land, houses, paintings, or the intellectual property rights over an exclusively digital asset.

Due to the fact the transactions on a DLT prove a high level of anonymity, as another challenge for tax administrations may be that crypto-assets can make it easier to avoid paying tax. As mentioned before, NFTs are not only art thus one cannot presume, *ab initio*, that transactions with NFT follow the fiscal regime of art commerce.

In Romania, electronic money was defined as money stored electronically, including magnetically, representing a claim on the issuer, issued upon receipt of funds for the purpose of conducting payment operations, and accepted by a person other than the electronic money issuer, according to Law 127/2011 on the activity of issuing electronic money. It's worth noting that the National Bank of Romania and the Financial Supervision Authority believe these currencies aren't electronic currencies or financial instruments, and thus a fiscal regime can't be underlined under the current regulated legislative framework (National Agency for Fiscal Administration 2015).

NFTs and intellectual property rights (IP)

The IP associated with the asset represented in the NFT is not transferred with the NFT (Chintalapoodi 2021). Copyrights, as a transferrable patrimonial right, stay with the artist unless said artist agrees with the commercialization of the author's IP to the benefit of the purchaser of NFT.

It must be underlined that owning an NFT doesn't restrict access to copies of it but it makes impossible for anyone else to assume ownership in the respective network of blockchains due to the transfer ledger and timestamp – it does not mean however that an NFT confirms the authenticity of the goods themselves.

It may be recommended for anyone who plans on buying NFT to pay attention in certain regards: we must obtain proof that the creator of the NFT is its true creator and has legitimate title over it that he agreed to the creation of the NFT, and the yield of its IP or copyrights.

IP rights, in the European legal framework and thus Romanian as well, encompass two elements: moral rights and patrimonial rights.

According to art. 10 of Law 8/1996 on copyright and related rights, the author of a work has the following moral rights: a) the right to decide whether, in what manner and when the work will be made public; b) the right to claim recognition of the authorship of the work; c) the right to decide under what name the work will be brought to the public knowledge; d) the right to claim respect for the integrity of the work and to oppose any modification, as well as any damage to the work, if it harms its honor or reputation; e) the right to withdraw the work, compensating, if necessary, the holders of the rights of use, harmed by the exercise of the withdrawal.

Moral rights are non-transferable and can't be forfeited. The author of a work has the exclusive patrimonial right to decide if, in what way and when his work will be used, including to consent to the use of the work by others.

The use of a work gives rise to the author's distinct and exclusive property rights to authorize or prohibit: a) reproduction of the work; b) distribution of the work; c) the import for the purpose of marketing on the domestic market the copies made, with the author's consent, after the work; d) renting the work; e) the loan of the work; f) the public communication, directly or indirectly, of the work, by any means, including by making the work available to the public, so that it can be accessed in any place and at any time chosen, individually, by the public; g) broadcasting the work; h) cable retransmission of the work; i) realization of derived works.

Conclusions

To avoid regulatory arbitrage, we need to take a "content over form" approach when it comes to classifying crypto-assets. Because of their diversity, applying the same criteria to all crypto-assets is deemed irrelevant.

At this moment, Romania and the European Union, are not yet prepared to face the challenges cryptography pose for the keeping of assets.

We may understand the temptation crypto-assets represent: any asset can theoretically be tokenized, and the rights to those assets can be represented on a DLT. Through such tokenization owners of corporeal assets may find liquidity easier; owners of immaterial assets have the advantage of protection and monetization of their rights. There are still some legislative hurdles to pass by the national authorities: problems in data privacy and tax compliance need to be addressed.

References

- Bloscovic, D. 2021 "How Nonfungible Tokens Work and Where They Get Their Value – a Cryptocurrency Expert Explains NFTs." *Nextgov.com*. <https://www.nextgov.com/ideas/2021/03/how-nonfungible-tokens-work-and-where-they-get-their-value-cryptocurrency-expert-explains-nfts/173045/>.
- Boroi, G. and Angheliescu C.A. 2012. *Curs de drept civil. Partea Generală [Civil law course. The General Part]*. 2nd Edition. Bucharest: Hamangiu Publishing House.
- Chintalapoodi, P. 2021. "Legal Implications of Non-Fungible Tokens (NFT)." *Lexology*, 5 April 2021, available at: <https://www.lexology.com/library/detail.aspx?g=176215ed-1924-4e47-8443-fd1023dfd5dc>

- National Agency for Fiscal Administration. 2015. "Taxation guidance and assistance session. July 22, 2015." https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/Facebook/10_Sesiune_22_iulie_2015.pdf.
- Pop, L., Popa I.F. and Vidu S.I. 2015. *Curs de drept civil. Obligațiile* [Civil law course. Obligations]. Bucharest: Universul Juridic Publishing House.
- Radu, B. 2015a. "Key aspects of Cloud-Computing Services Related Contracts." *National Strategies Observer* 29 (2): 128-135. <http://nos.iem.ro/123456789/416>.
- Radu, B. 2015b. "The use of web-based applications developed on Cloud infrastructures – Juridical implications for the juridical professions." *National Strategies Observer* 2(2): 143-154, <http://nos.iem.ro/123456789/415>.
- Stanciulescu, L. 2012. *Curs de drept civil. Contracte* [Civil law course. The Contracts]. Bucharest: Hamangiu Publishing House.
- Stoica, V. 2013. *Drept civil. Drepturile reale principale* [Civil law. The primary real rights]. Bucharest: C.H. Beck Publishing House.
- Stoica, V. 2017. "Noțiunea de bun incorporeal în dreptul civil român [Concept of intangible asset in the Romanian civil law]." *Revista română de drept privat* no. 3/2017. Bucharest: Universul Juridic, last accessed 31 July 2021. <https://www.juridice.ro/essentials/1646/notiunea-de-bun-incorporeal-in-dreptul-civil-roman>.

The Role of the Social Assistant Worker in Romania and the Involvement of the Church

Georgeta Stoica-Marcu

*Assoc. Prof. Ph.D., Ovidius University from Constanta, Romania
daniella_gsm@yahoo.com*

ABSTRACT: In Romania, social assistance is the totality of measures taken by the state, the Church and other non-governmental organizations to support people in special situations of difficulty due to poor mental or physical conditions such as chronic diseases, accidents, natural disasters, age and others, in order to overcome the state of difficulty. Social assistance in the form of social policies and the implementation of these actions in the territory is done by applying legislative regulations, which focus on people in difficulty. The social assistant worker must know the main forms of the social assistance system, is the most important normative acts of the moment and the institutions that deal with their provision. According to Father Stăniloae “deeds are the manifestations of the loving relationship between person and person” (Stăniloae 2003, 244). The importance of good works is based on the conception of God and man as personal realities.

KEYWORDS: Romania, social assistance, social assistant worker

Introduction

Epidemic and pandemic are words that cause fear. I am thinking of an overworked health system, protective masks and an increase in deaths. These associations are understandable but have nothing in common with the definition of the two terms.

We talk about an epidemic when a certain disease occurs unnaturally frequently, in a certain region, in a limited period of time. A pandemic is an epidemic that spreads beyond the borders of a state or a continent. In our case it is a pandemic called Covid-19.

The struggle in hospitals is supported by the effort of the social worker who, by carrying out the profession, ensures the absolute balance necessary for the life of the social worker. When the isolation given by the conditions of the Covid epidemic has cut off any connection between people, the only help remains in volunteers but especially in the social worker who can fight for a normal life of those who need support. Involvement is one of the great achievements of the entire social assistance system and the support given by the state, the Church and people of good faith has proved to be absolutely necessary because there are people who actually depend on the support given.

The life of the social worker was made more difficult by his own exposure to the virus, the establishment of barriers given by the isolation of target groups but the adaptation to reality could be done only by giving and worshipping work in the service of God and for the benefit of suffering people.

The Church’s involvement in social assistance

The construction of new churches and chapels, monasteries and hermitages, which can be found today in Romania, is permanently accompanied by the creation of social and philanthropic structures, such as: canteens for the poor, orphaned or abandoned children’s homes, nursing homes and social health centers.

The economic crisis, unemployment, health problems, loneliness and suffering urge our Church to be, above all, sensitive to the presence of Christ in the Eucharist and, at the same time, in the social and philanthropic activity of the Church. Christ the sufferer in every human being in this world calls Christ the servant to manifest himself iconically in the social work of

Christians, that is, Christ is present in both the sufferer and the one who alleviates suffering. In this connection, it can be said that liturgical prayer has a social dimension (often invisible but real), just as the social work of Christians has a liturgical dimension in the love of God. Today we must both extend the liturgical prayers in the philanthropic work and unite the social work with the prayer.

The Church's involvement in social assistance is both a spiritual vocation and a practical necessity. The social work of the Church derives from the Gospel of the love of Christ for all men and from the Holy Liturgy of the Church, in which the merciful and sacrificial love of Christ for the salvation of men is celebrated. This explains the multitude of charitable institutions or social assistance established or patronized by the Church over the centuries, often with the support of Christian emperors, kings and rulers, but also with the support of all the merciful and generous, with greater or more modest help.

The one who opens the way in social terms is Saint Basil who lays the foundations of the famous Vasiliade, a social assistance complex, conceived as a real fortress, next to the fortress itself, with hospitals, orphanages, guest houses, schools and workshops, with the church, and next to it a bishop's seat and housing for monks. The placement of the Church in the center of the city indicates that the Christian service is born of the Liturgy. The Church does not withdraw from the world, but is present and active, where man suffers and is wronged. In addition to its spiritual mission, the patristic Church thus fulfilled an important humanitarian, Samaritan function, remaining an example for the Church's effort today in its openness to the world. The social activity of Saint Basil was animated by an incomparable love for God and people, for the realization of human communion, according to the supreme model of the communion of the Holy Trinity. As a monk and great ascetic, St. Basil was one of the great organizers of monastic life.

The monastic model established by Saint Basil has a strong social extension, of service in the social space. Monks serve each other in the monastic community, but in this way, they serve the entire social community, without remaining isolated in a space outside the world in which they live. The heyday of charity is reached by the amazing philanthropic work of Saint Basil the Great, a model of Christian love and organization. St. Basil the Great organized social assistance in the Church since his pastorate as a priest. He built a complete charitable institution, which remained unique in its own way, even in the history of Christianity. The great social assistance establishment near Caesarea Cappadocia, called Vasiliada (Câdea 2010, 67), was founded in 369-370 (Vătămanu 1969, 301) and inaugurated in 374, being invited by St. Gregory of Nazianzus who gave a famous speech on this occasion (Ioniță 1983, 13).

St. Basil the Great generalized his initiative, asking his choir bishops to establish settlements for the sick and poor, as he did in Caesarea. St. Basil the Great, in addition to giving his faithful the social assistance establishment, to set it up, endow it and lead it, to put in it the rest of the wealth and the gift of the heart, did something more: he gave him all his soul, all his care, all the time and his joy as a father, and through this he transforms the sporadic and accidental character of the Christian charity into an institution of the church, permanent and organized (Ioniță 1983, 13).

The revolutionary novelty that the creator of Vasiliada offers to the society in the 4th century, is that every man, and first of all those who did not have the means of subsistence, not only had the daily bread insured in the Christian society, but they found here the possibility of asserting themselves according to the gifts and inclinations of each. Through such ideas, Christianity could no longer fear the competition of dying paganism, structured on social discrimination. St. Basil the Great was a preacher of almsgiving and his actions were widely debated in sermons.

According to Father Stăniloae, "deeds are the manifestations of the loving relationship between person and person" (Stăniloae 2003, 244). The importance of good works is based on the conception of God and man as personal realities. In this context, "every good deed is an

opening in love to another or to several others, to the world, from the opening which Christ himself has to the virtuous” (Radu 2007, 82). Salvation can in no way be seen outside the facts. Man is called to respond to God's love by works, which are also a sign of his righteousness. As a person, man cannot remain insensitive to the love of God. Man manifests this love; it is open to God with whom he is in dialogue.

In Romania, social assistance is the totality of measures taken by the state, the Church and other non-governmental organizations to support people in special situations of difficulty due to poor mental or physical conditions such as chronic diseases, accidents, natural disasters, age and others, in order to overcome the state of difficulty.

The role of the social assistant worker and the social assistance legislation

Social assistance in the form of social policies and the implementation of these actions in the territory is done by applying legislative regulations, which focus on people in difficulty. The social worker must know the main forms of the social assistance system and the institutions that deal with them.

According to Buzducea (2005), the mission of the social worker is to participate in solving community social problems, ensuring a decent minimum standard of living and increasing the quality of life of vulnerable social groups, in improving the social functioning of people. Hence the need for the social worker to have certain specific skills, but also theoretical knowledge (psychology, sociology, law etc.), but, not least, to have a vocation. In fact, this is a prerequisite for practicing this profession.

According to the sociologist Buzducea (2005), in general, the values on which the social worker should base the help process are respect for the person and his dignity, respect for privacy, respect for confidentiality, respect for the right to choice and self-determination of the client, but also respect for traditions and the local cultural model, cooperation with local social actors and adapting the intervention to the specifics of the community and its adequacy according to its cultural values.

With regard to social responsibilities, the social worker must:

- a) to advocate for the improvement of social conditions in order to satisfy basic human needs and to promote social justice;
- b) to act in order to facilitate the access to specific services and the possibility to choose for the vulnerable, disadvantaged or in difficulty persons;
- c) to promote conditions that encourage respect for social and cultural diversity;
- d) to promote policies and practices that encourage awareness and respect for human diversity;
- e) to facilitate and inform the public about the participation in community life and the social changes that take place.

The state has assumed the main role in the training of social workers, starting with their schooling in prestigious institutions, their training through postgraduate and professional courses and by setting up the National College of Social Workers. The mission of the social worker is to participate in solving community social problems, ensuring a decent minimum standard of living and increasing the quality of life (Lazăr 2015, 7).

The professional vocation of the social worker is to contribute to the well-being and self-realization of the human being. The social worker has duties such as assisting people who are going through difficult times in life, developing their own personal skills to deal creatively and effectively with problems, mobilizing community resources to support those in difficulty, participating in initiating, developing and implementing policy measures social participation in the field and active participation in social life.

Social assistance is a vast field of activity that has well-developed and well-founded legislative regulations. In our country the most important is Law 292/2011 - the law on social

assistance (Legislativ/Asistentă socială, 2018). Later, Law no. 231/2020 for completing the Social Assistance Law no. 292/2011 (M. Of. nr. 1036/2020).

Government Decision no. 797/2017 on the approval of the framework regulations for the organization and functioning of public social assistance services and the indicative staff structure, Law no. 197/2012 on quality assurance in the field of social assistance, Government Decision no. 08/2011 on granting the levels of professional competence of social workers, Order no. 1313/2011 on the approval of the Action Plan for the implementation of the Strategy on reform in the field of general assistance, Government Decision no. 1826/2005 for the approval of the National Strategy for the development of social services, Government Decision no. 539/2005 for the approval of the Nomenclature of Social Assistance Institutions and of the indicative staff structure, of the Framework Regulation for the organization and functioning of Social Assistance Institutions, as well as of the Methodological Norms for applying the provisions of Government Ordinance no. 68/2003 on social services (updated) and Law 466/2004 on the status of the assistant socially forms as a whole the basic legislative regulations of Romania.

The rule imposed by the quarantine of social workers in social centers, although respected, was not generally and unanimously accepted. It can be seen that the individual demand was high and with a profound impact on social workers. The social assistance system has been subjected to a functional stress due to the lack of staff reserves and the decrease of work capacity due to the illness of its own staff.

Social assistance directly felt the blockade at the national level as an effect of the effort to combat the spread of coronavirus (COVID-19). Among the issues highlighted were:

- The effect of the isolation imposed on residential care for the elderly, the occurrence of anxiety and even paranoia in people but especially for those suffering from mental problems;
- Serious impairment of social activity by changing habits, affecting the upbringing and education of children, measures against religious freedom;
- The creation of moral blockages due to the impossibility of access, the embracing of loved ones hospitalized in COVID wards, intensive care or the Christian burial of those who died during the pandemic, the further isolation of those in the environment with restrictions on freedom and movement (prisons, asylums, militarized institutions, etc.);
- “Solving the isolation in the house” for those who do not have a house;
- Exposure in the absence of protective equipment;
- Individualized existential crises were forgotten in the context of the crisis of hospital beds and ventilators in ATI wards.

Conclusions

In this moment of relative calm, of uncertainty given by the end of the pandemic, we can show the good things given by the legislative adaptations to the concrete situations, the legislative coherence in the field, the immense effort of the workers in the field that must be recognized and respected. Things that have not gone well can be solved in time through the joint effort of social workers, employers, professional associations and policy makers. Using the results of social (socio-human) studies carried out on the basis of adequate scientific theoretical basis, the politician can anticipate and regulate a coherent legislation in support of all forces participating in the social act that has the beneficiary in the foreground and can take care of those who do not to overcome alone in the face of social problems (old age, medical, economic, security etc.).

The social worker is directly linked to ethical values assumed as respect, empathy and compassion for the people he treats, so the difficulties in providing social services have made him vulnerable, exhausted physically and emotionally. These ethical implications are of a new

nature, unknown before the pandemic and they need to be rethought so as to remove the serious effects and inequities suffered by people during the pandemic. The effect of globalization acquires new valences in the face of the new challenges posed by the pandemic, social workers being now generally affected by the same ethical and economic problems.

An indefatigable guide in grace and spirit is I.P.S. Teodosie, the archbishop of Tomis, who through his charitable actions is closer to the heart of the needy. His Holiness puts clarity of thought in the service of the common good, brings relief to the oppressed (newly built and sanctified social settlements), support of the homeless, but especially creates the support of uniting the power of those who want to do a good deed under the sign of blessing.

In everyday life, people in need seek support in the family, society, God and social assistance. Social workers have social and philanthropic activities in addition to professional ones. The love of one's neighbor with faith in God brings with it all the qualities of a good social worker, and the essence of the code of ethics is based on the legitimacy of their actions.

References

- Buzducea, Doru. 2005. *Aspecte contemporane în asistența socială [Contemporary aspects in social assistance]*. Iași: Polirom Publishing House.
- Cândea, Ioan Căprian. 2010. “Misiune și slujire în Instituțiile social-medice” [Mission and service in Social-Medical Institutions]. *Revista Teologică* no 3, Sibiu: Andreiana Publishing House.
- Ioniță, Viorel. 1983. “Rolul Bisericii în societate după Sfinții Trei Ierarhi” [The role of the Church in society by the Holy Three Hierarchs]. *Journal Studii teologice*, an. XXXV, no 1-2:13, Bucharest: EIB Publishing House.
- Lazăr, Florin. 2015. *Profilul asistenților sociali din România [The profile of social workers in Romania]*. Timișoara: Vest Publishing House. https://main.components.ro/uploads/12c6a09675620f589055800ba6ceceee/2017/02/Profilul_asistentilor_sociali_din_Romania.pdf. Accessed July 30, 2021.
- Radu, Dumitru. 2007. *Despre înnoirea și îndumnezeirea omului în Hristos [About the renewal and deification of man in Christ]*, chapter Mântuirea prin credință și fapte bune. Craiova: Mitropolia Olteniei Publishing House.
- Social Assistance Law no. 292/2011, later, Law no. 231/2020, published in Official Gazette no 1036, November 05, 2020. Accessed July 30, 2021. <https://www.universuljuridic.ro/legea-asistentei-sociale-nr-292-2011-completari-legea-nr-231-2020/>; https://mmuncii.ro/j33/images/Documente/Legislatie/Asistenta-sociala-2018/Legea_asistentei_sociale_18012018.pdf.
- Stăniloae, Dumitru. 2003. *Teologia Dogmatică Ortodoxă [Orthodox Dogmatic Theology]*. Vol 1. Bucharest: EIB Publishing House.
- Vătămanu, Nicolae. 1969. “1600 de ani de la înființarea Vasiliadei. Cel dintâi așezământ de asistență socială și sanitară Biserica Ortodoxă Română.” *Journal Biserica Ortodoxă Română* no 3-4. Bucharest: EIB Publishing House.

The Dark Side of the Preternatural World. A Suggestion to the Theological Approach of the Religious Experience

Foszto Arpad

*PhD (c) "Aurel Vlaicu" University of Arad, Romania
arpifoszto@yahoo.com*

ABSTRACT: There is today an optimistic approach, on a widespread scale, to every issue of life, which in appearance seems good and commendable. This is a result of a general secular mindset that reinterprets love and empathy unsuccessfully, and that is the case even when dealing with the religious experience. But the Apostle Paul challenged the first century's Greek and Roman polytheism in a way that should challenge our twenty-first century's approach to religious experience. For him, the demons were real, and they were powerful and fearful. Augustine of Hippo, in *De civitate Dei contra paganos*, was thinking alike, and this was the general view during the most part of history. This paper aimed to reclaim into the taxonomy of the religious experience the place rightly owned by the actors of the dark side.

KEYWORDS: preternatural, demons, taxonomy, religious experience

Introductory notes. Terminology

Religious experience is an important part of the study of religions. The academic literature concerning this topic is abundant, being as wide as it is old. The sacred scriptures of the world's great nations all include stories that fit the description of a religious experience. During the last two millenniums, in the Western culture, dominated by the Christian faith, it is common knowledge that there was a great multitude of mystics who seem to have had authenticated religious experiences. But even in the pre-Christian era, humans were aware of the evil actors of the world. Ulysses and his companions were tempted by the sirens, in an attempt of the sirens to kill them. Circe was a witch that had the power to change people into swine. And the Greek 'gods' were also able to harm people as they wished.

In this paper, I will present several approaches to the taxonomy of religious experiences, bringing to attention that there are just a few mentions about non-benevolent entities in most of them. Afterward, I will show that the Bible and the Christian authors have a different approach, and it is on the opposite side of the spectrum, suggesting the existence of a preternatural world that is darker and more harmful (Laycock 2012, 100) than what most of the scholars believe.

It is important to draw attention right from the beginning to the fact that the term "religious experience" is full of ambiguity. Gelpi called it a "weasel" word, one that when the reader thinks he understood its meaning, it already changes into something else (Gelpi 1994, 2). This is the reason why in this paper I will define it according to what the German scholars would call *Erlebnis* (experiencing something), the "lived experience" (Hanich 2019, 14) the episodic, isolated phenomenon, that has no effect on the collective consciousness; contrary to *Erfahrung*, which is a long term experience, accumulated during a lengthy time. According to Gelpi, *Erfahrung* (although he never mentioned this word) represents the practical wisdom gained by the long exposure to a certain reality, procedure or problem (Gelpi 1994, 2).

It is also important to define some key terms that define the unseen realms, to avoid the confusions that could arise. The supernatural is meant only when dealing with God and His abode, the "aethereal" heaven (Augustine of Hippo), a place that the ancient and medieval poets have named the Empyrean Heaven, imagined to be the 10th one, according to Dante (Kay 2003, 37), or the heaven of heavens, as imagined by Milton (Gilbert 1923, 444). According to the Apostle Paul, the ultimate source on this matter, that would be the 3rd heaven (2 Corinthians

12:2). The demons and evil spirits belong to a world that is called preternatural. These definitions have been made by the Church Fathers, and I strongly believe that they are still actual and useful.

I will not give too many details about specific information, definitions, descriptions, because the only goal of this paper is to have a clear picture of the taxonomy of the religious experience, as presented by both secular and Christian scholars, emphasizing the rejection of the malignant actors. It suffices to say that, according to Gothoni, in an excellent article about the difference between superstition and religion (Gothoni 1994, 37-46), the latter is characteristic of the cultivated person, who invested his time in reading about the supernatural, and who adjusts his attitude according to God's will.

Secular taxonomies of the religious experience. A taxonomy according to Hardy, Rankin, Davis

There is rich scholarly literature debating this topic, going back far in history. The academics of all the times were interested in explaining magic, demon possessions, or other related issues and extracting out of them epistemological conclusions. But in the 20th and 21st centuries, renamed scholars had a slightly different approach because they had the chance to rely on an abundantly rich literature, and they were also freed from the danger of repercussions from the representatives of the Church. At the beginning of the 20th century, William James, followed by C. G. Jung or Alister Hardy, are just a few of the greatest names. Strangely enough, both William James and Alister Hardy have very little to say about a potentially dangerous dimension of the spiritual world. Another interesting aspect is the lack of interest in God as *per se*, which could be linked to the refusal to mention non-benevolent entities in the Western world: "God is not known, he is not understood; he is used – sometimes as meat-purveyor, sometimes as moral support, sometimes as friend, sometimes as an object of love. [...] Does God really exist? How does He exist? What is He? Are so many irrelevant questions. Not God, but life, more life, a larger, richer, more satisfying life, is in the last analysis, the end of religion." (Hardy 2006, 5).

The mainly positive reports about religious experiences build a deformed worldview in which the good is the main characteristic, and the evil is almost meaningless. This is not according to the experienced reality, and is not according to the Scriptures either. The authors of the Bible have emphasized the high frequency of experiences originated by evil forces, to show the importance they have in the spiritual battle against mankind.

As mentioned above, there is very rich literature dealing with the religious experience. I chose only a few of them, almost randomly, in order to prove my thesis that the scholarship doesn't really believe in evil forces, so most of the reported experiences are, in their view, uplifting and well-intended. Astley (Astley 2020, 30) believes that it is quite difficult to make a realistic taxonomy of the religious experience because they usually have a combined nature, so he suggests to list their properties instead.

Hardy, as a leader of the Religious Experience Research Center, received several thousand reports about religious experiences, and he classified them (Hardy 2006, 26-28) as follows: 1. Visual (visions, illuminations, lights, out of body, feeling of unity, déjà-vu, transformation of surroundings), 2. Auditory (calming voices, guiding voices, gift of tongues, music), 3. Touch (healing, comforting, warmth, shock, guiding), 4. Smell, 5. Supposed extra-sensory perceptions (telepathy, precognition, clairvoyance, supposed contact with the dead, apparitions), 6. Behavioral changes (comforting, guiding, exorcism, heroism), 7. Cognitive and affective elements (sense of security, sense of joy, sense of new strength in oneself, sense of guidance, awe, reverence, wonder, sense of certainty, clarity, enlightenment, exaltation, excitement, ecstasy, fear, horror, sense of prayer answered in events, sense of non-human presence).

Analyzing the dynamic patterns in experience (Hardy 2006, 28), their results show that: 1. There are positive or constructive ones, such as a. *grace*: the initiative felt to be beyond the self, coming "out of the blue" (an average of 124 respondents in every 1,000), or b. *prayers answered*: when initiative felt to lie within the self, but response from beyond (322 respondents in every 1,000); 2. Negative or destructive patterns: when there is a sense of external evil force as having

initiative (44 respondents in every 1,000). The sum of the first two groups of respondents, who reported positive patterns (446), is ten times larger than of those who experienced negative dynamic patterns.

As the results from Hardy's statistics prove, there are positive consequences of these experiences (Hardy 2006, 29), such as a. a sense of purpose or new meaning in life; b. changes in religious beliefs; c. changes in attitudes to others. The second one, the changes in religious belief, is reported by an average of 38 respondents out of 1,000, which shows how relatively small amount of people convert to new religious ideas due to the religious experiences. It is also important to emphasize the fact that out of these several thousand reports, only an average of 3 (!) out of 1,000 are presented by Hardy as having evil actors in what he is calling behavioral changes and enhanced or superhuman power displayed by the respondents. These small figures have been noticed by Hardy himself, who explained this as follows: "It seems likely that the proportion of people who have such experiences may be much greater than our figures would suggest, for our appeal was for records of religious or spiritual experience rather than those of an evil nature." (Hardy 2006, 78). This doesn't seem to explain the extremely low percentage of evil actors in the statistics prepared by Hardy's team.

Marianne Rankin (Rankin 2009, 91-146) has produced an equally long list of categories for the religious experiences, as follows: spiritual experiences in childhood, initiatory experiences, conversion, regenerative experiences, healing, miracles, guidance, solitary, communal, visions, light, love, voices, tongues, angels, dreams, shamanic journey, shamanic healing, drugs and trips, synchronicity, sense of presence, the numinous, the dark night of the soul. Only after listing these positive categories she mentions, at the end of her list we can find the dark side (negative spiritual experiences), dangerous aspects of spiritual movements and irreligious experiences or de-conversion. According to Rankin (Rankin 2009, 141), people are reluctant to admit that they had negative spiritual experiences, for the protection of others or because of a feeling of guilt. This is the reason why there is only a very small number of accounts archived in RERC (Religious Experience Research Center).

Caroline Davis (Davis 1999, 19-64) seems to have a slightly different approach than the above. The taxonomy she suggests classifies the experiences in interpretive, quasi-sensory, revelatory, regenerative, numinous, and mystical. During the mystical experiences the experiencer has a strong feeling of unity with the world and the divinity. Guiley (Guiley 1991, 384), by citing William James, lists four properties of the mystical experiences: ineffability – due to the strong physical sensations that are difficult to describe in words; noetical dimension – as they imply knowledge, revelation, consciousness, illumination; transience – limited in time; passivity – being overpowered by a superior being, without the possibility of being capable for self defence.

Interestingly enough, there are reported situations when the evil forces are kept away only by making the sign of the cross in their presence (Davis 1999, 51). This is contradictory to many episodes of the Bible where evil spirits or people inhabited by evil spirits display a superhuman strength. Relevant examples would be the episode of the sons of Sceva (Acts 19:11-20) or of the Gadarene demoniac (Mark 5:1-20). In this way the malignant powers seem to be presented as weaker than they really are, which is affecting the spiritual health of the human persons.

A Christian taxonomy of the religious experience

We turn now to the religious experiences of the Christian dimension. The Acts of the Apostles is a book that has many references to religious experiences. We can find many of those mentioned in the previous pages. I would like to bring into attention a few episodes that lay special emphasis on the existence and activities of the malignant spiritual beings. About Simon Magus (Acts 8:9-24) the Scripture says that he "used sorcery, and bewitched the people of Samaria, giving out that himself was some great one". Despite his knowledge in these arts, he was marveled by Peter, John and Philips' miracles, done through the power of the Holy Spirit. Being involved in occult practices, even

after his baptism it was difficult for him to live in sincerity, and only the shocking speech of Peter made him able to repent genuinely. Witchcraft had a great success those days. The Ephesians who repented have burnt their witchcraft books, whose total value exceeded fifty thousand pieces of silver.

In the 13th chapter we meet Elymas, a sorcerer from Cyprus, who was described as a false prophet that withstood Paul and Barnabas in order to influence the governor. In a similar way like Simon Magus, he was strongly admonished, this time by Paul, and he lost his eyesight. Although witchcraft doesn't seem to belong to religious experience, there is a strong tie between the two, so much so, that Paul calls him "thou child of the devil, thou enemy of all righteousness" (Acts 13:10).

Further on, in Acts 16, Paul is disturbed for many days by a woman who had a spirit of divination. These women who were possessed by spirits, and were able to foretell the future, were generally known as Pythonesse. They were of high esteem because people could take decisions according to their divinations. The sons of Sceva, in Acts 19, face also a person who was possessed by a spirit. This time, though, the outcome of the story is different because the spirit has overcome these men. To conclude, the above examples prove that the actors from the dark side were well known and accepted as such by the population. Atheists of all ages have fought against the belief in the existence of evil, and they succeeded very well in modern times when there is so little mention about the powers (principalities, powers, rulers of the darkness of this world) mentioned by Paul in Ephesians 6:12. For Paul, it is obvious that there is a dark side that has a policy of turning aside people from the true God (Ephesians 4:22, 27), by deceit ("And no marvel, for Satan himself is transformed into an angel of light", 2 Corinthians 11:14). According to him, even the sacrifices to idols are, in fact, sacrifices brought to demons (1 Corinthians 10:20). And Paul is just following on Jesus' steps, who mentioned several times the devil or demons (Matthew 11:18, 13:39, 25:41, Mark 7:29, John 6:70, 8:44).

Augustine of Hippo is only one of the many Christian authors that dealt extensively with the preternatural world. For him all the information regarding the Greek and Roman polytheism was still fresh. He had this information right from the source, and his knowledge about these gods was completed by the literature produced by Plato, Tacitus, Titus Livius, Varro, Apuleius, Plotin and the other scholars that lived before him. Strangely enough, it is common knowledge that the Latin and Greek cultures did not produce saints, but only heroes. It was the lack of God's Holy Spirit that made a fistful of the choicest of this people to know by intuition the virtues, without being able to practice them fully. He had first hand information about all the depravity that accompanied the cultic services of the Pagan world. For him (Augustine 1998, 157), the pagan gods, by not interfering against the immorality of the nations, proved their agreement for the nations' destruction. The Bishop of Hippo even mentioned a fight at Campania, where the preternatural powers have been seen fighting a few days before the human fight (Augustine 1998, 167). The main role of the pagan gods, according to Augustine, was to induce in the mortal's corruption, and transform them in their slaves, because they themselves exult everything that is sinful and deceitful, being enemies of the true faith (Augustine 1998, 325). He also recommends using the name "good angels" for all the good creatures, to those that serve God in faithfulness, and use the name "demons" or "unclean spirits" for all the invisible creatures that are fighting against God and His order.

Regarding the taxonomy of the religious experience, some of the Christian authors share the same attitude like the secular ones presented above. Stark has published the results of a survey realized from a sample of Protestant and roman Catholic church members from the San Francisco Bay Area. According to his study, the church members have reported the following categories of experiences: 1. The confirming experience (Stark 1999, 100) which provide a feeling or awareness of something true or sacred, with the following subtypes: a generalized sense of sacredness, or a specific awareness of the presence of divinity; 2. The responsive experience, which is mutual, and is salvational (the person feels that it belongs to a divine fellowship), miraculous (such as healing, rescues from danger, actions for the material benefit of the persons) or sanctioning; 3. The ecstatic experience; 4. The revelational experience, which brings to light divine wishes or confirms information already available. These ecstatic and

revelational experiences are dealt with in a very rich literature, and I will not detail it, for reasons I stated above.

As Stark acknowledges, he made this taxonomy of the experiences that constitute encounters with good divinity (Stark 1999, 112). Only afterwards he separates the religious experiences in two categories: the divine and the diabolic, as ‘diabolic contacts have played nearly as important a role as the divine in Western religious life, any attempt to provide a classificatory scheme for religious experiences should address both kinds of supernatural contacts’ (Stark 1999, 112). The author thinks that the same taxonomy applies to the dark side also: 1. Confirming experiences: a generalized sense of evil; 2. The responsive experiences: encounters with “supernatural powers”; 3. The terrorizing experiences, such as the personal involvement of the devils in the lives of people; 4. Possessional experiences, when people feel that they lose their responsibility for their own deeds.

I would suggest the following taxonomy of the Erlebnis type of religious experience, slightly different than the above: 1. Happening at God’s initiative, 2. As a result of human initiative, 3. Ecstasies initiated by humans under the Holy Spirit’s influence, 4. External factors that trigger ecstasy or visions, the last one called transcendental experience, as the experiencers use a certain personal mantra in order to attain the 4th stage of consciousness, the transcendental consciousness (Guiley 1991, 620); 5. Oniric experiences, 6. Experiences initiated by humans in order to manipulate benevolent or malignant forces, 7. Projections of the subconscious of a person who is in distress, 8. Experiences with malignant forces.

Conclusions

The small amount of reports about non-benevolent agents or the little attention given by scholars to the negative preternatural (malignant) actors is due to the humanistic, secularized mentality of both the lay people and of the scholarship. They view humans as naturally good, and the experiences they have preponderantly are invitations to improve even more. Other people’s experiences also improve their mental comfort, their well-being. There is a lot of talk about God, but there are just a very few mentions of God as He really is. Instead, the respondents feel that they experienced an all-loving divine being that highly appreciate them as they are. They do not realize that humans are not just *homo religious*, but also *homo teleologicus*, who have to attain a fundamental and important goal in life (Moser 2020, 18).

It is important also to use the right terminology. As noted with Stark, there is a confusion between the supernatural and what many of us would simply call preternatural, as defined in the introduction. It seems a general attitude to be considered childish or foolish when mentioning the evil spirits and their actions in everyday life. But not believing anymore in these creatures could be dangerous for people’s everyday Christian walk. The Apostle Paul, on the contrary, did think that it is crucial to name the powers that the believers are fighting against: “*For we wrestle not against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this world, against spiritual wickedness in high places*” (Ephesians 6:12). These creatures act out of their hatred towards mankind, and they lack love. This is what makes a difference between them and the authentic Christians: we show love to each other: “*The greatest of these is charity.*” (1 Corinthians 13:13b)

References

- Astley, Jeff. 2020. *SCM Studyguide to Religious and Spiritual Experience*. London: UK, SCM Press.
- Augustin. 1998. *City of God*. Transl. Gheorghe Vlăduțescu and Paul Găleşanu. Bucharest: Scientific Press.
- Cardeña, Etzel, Steven J. Lynn, and Stanley Krippner. 2014. *Varieties of Anomalous Experience: Examining the Scientific Evidence*. Washington, DC: American Psychological Association.
- Davis, Caroline Franks. 1999. *The Evidential Force of Religious Experience*. Oxford: Clarendon Press.
- Gelpi, Donald L., 1994. *The Turn to Experience in Contemporary Theology*. New York: Paulist Press.

- Gelpi, Donald L., 2007. *Varieties of Transcendental Experience: A Study in Constructive Postmodernism*, Eugene, Ore: Wipf & Stock Publishers.
- Gilbert, Allan H. 1923. "The outside Shell of Milton's World." *Studies in Philology* 20(4): 444-47.
- Gothóni, René. 1994. "Religio and Superstitio Reconsidered." *Archiv Für Religionspsychologie / Archive for the Psychology of Religion* 21(1): 37-46. Accessed January 30, 2021. <http://www.jstor.org/stable/23915009>.
- Guiley, Rosemary Ellen. 1991. *Harper's Encyclopedia of Mystical [and] Paranormal Experience*. San Francisco (Calif.): Harper.
- Hanich, Julian, Daniel Fairfax, and Jean-Pierre Meunier. 2019. "'Every Theory Needs a Reference to Lived Experience': An Interview with Jean-Pierre Meunier." In *The Structures of the Film Experience by Jean-Pierre Meunier: Historical Assessments and Phenomenological Expansions*, edited by Hanich Julian and Fairfax Daniel, 14-30. Amsterdam: Amsterdam University Press. Accessed February 1, 2021. doi:10.2307/j.ctvpbnq82.4.
- Hardy, Alister. 2006. *The Spiritual Nature of Man: A Study of Contemporary Religious Experience*. Lampeter: Religious Experience Research Centre.
- Hood, Ralph W. 2002. *Dimensions of Mystical Experiences: Empirical Studies and Psychological Links*. Amsterdam: Rodopi.
- Hulin, Michel. 2014. *La mystique sauvage : aux antipodes de l'esprit*. Paris : Puf.
- James, William. 2019. *The Varieties of Religious Experience: A Study in Human Nature*. New York: Snova.
- Kay, Richard. 2003. "Dante's Empyrean and the Eye of God." *Speculum* 78(1): 37-65.
- Laycock, Joseph. 2012. "Carnal Knowledge: The Epistemology of Sexual Trauma in Witches' Sabbaths, Satanic Ritual Abuse, and Alien Abduction Narratives." *Preternature: Critical and Historical Studies on the Preternatural* 1(1): 100-29.
- Moser, Paul K. 2020. *Understanding Religious Experience: From Conviction to Life's Meaning*. Cambridge, United Kingdom; New York, NY, USA: Cambridge University Press.
- Rankin, Marianne. 2009. *An Introduction to Religious and Spiritual Experience*. London: Continuum.
- Stark, Rodney. 1999. "A Theory of Revelations." *Journal for the Scientific Study of Religion* 38(2): 287-308.
- The Holy Bible. 2004. King James Version. Dallas, TX: Brown Books Publishing.

The Adventist Children and Young People's Perception of the Sabbath Day in Communist Romania

Ciprian Corneliu Ciurea

*Pastor, Ph.D. Candidate „Aurel Vlaicu” University, Arad, Romania
cipriancorneliuciurea@gmail.com*

ABSTRACT: During the communist period, Romanian authorities faced a problem specific to the Adventist Church - the Adventist children did not attend school on Saturdays. Although they used the most varied methods of persuasion and coercion of children and parents to solve this problem, the authorities have not managed to fully defeat their resistance. This was the "big Adventist problem" that caused serious problems to the Department of Cults and to the Securitate bodies, the Ministry of Education, the County School Inspectorates, the organizations of pioneers and youth, and the schools.

KEYWORDS: church, Adventists, pupils, students, communism, repressive measures, Saturday

Introduction

This article represents a revised and added subchapter from the Graduate Thesis titled *The Religious Education of Neo-Protestant 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.

This study addresses the issue of Adventist pupils and students attending courses on Saturday during the communist era. It also captures the resistance and opposition of the Adventist parents to send their children to school on Saturday, despite the measures taken against them by both the Department of Cults and the religious leadership. The investigation 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.).

The Scale of the Phenomenon

One of the sore points that constantly drew the attention of the Securitate bodies and of the Department of Cults was the absenteeism of students from adventist families on Saturdays, in fact, against the background of a tendency to increase their knowledge. Pastors guided their believers to direct their high school children to faculties, and children and young people were often directed to professions where the service hours provided them the possibility to have Saturdays free (photographers, health professionals, technicians, operators) (Popescu 1989, 23). In the area cooperatives Gherla and Mociu, the Adventists even took the initiative of setting up new sections to help the Adventist craftsmen. In this respect, the authorities put an end to this confessional momentum in the summer of 1974 (A.S.S.C., no. 9371/2119/2 May 1975, 9).

The absence from classes, one day every week, was, however, proof of great boldness, although in 1946, at the request of the Adventist Church, the Ministry of Cults had investigated its status of the organization and recognized Saturday as a day of rest (*Monitorul Oficial -Official Gazette*, no. 45/1946). Having that admitted, the Adventists were concerned to bring their children to church on Saturday (A. S. S. C., no. 93/1959, vol. 8, inv. 99, 1). The school also allowed to be four times absent per month on each subject, with no sanctions to be applied to

pupils and students than from eight absences per month upwards (A.S.S.C., no. 412/4 June 1973, 3; A.S.S.C., no. - /1971, 5). But this rule was not known by ordinary people, so it never applied. So, the Adventist pupils and students were not regarded, by any means, as having any rights in addition to others, the documents we studied even indicating the contrary.

In most of the Adventist churches in the country, there were students from Adventist families who were absent from school on Saturdays, with many localities reporting such situations. In an informative note from 7th April 1945 from the Merigoala (Teleorman) gendarmerie station, it was reported that the Adventists refused to send their children to school on Saturday, although they were "pressured by teachers to attend the courses on this day" (A.C.N.S.A.S., no. 2672, vol. 30, 244). Applications submitted to school inspectorates could be identified, whereby parents asked that on Saturday their children be left free to participate in religious services, 'otherwise they would be removed from schools' (A.C.N.S.A.S., no. 6899, volume 1, 327). The Bucharest Securitate department also reported in April 1949 that Adventists were expelled for absences on Saturdays (Modoran 2013, 144). And the representative of Bacău region reported in the course of November 1961 that some of the Adventist believers in Bacău did not send their children to school on Saturday (A.S.S.C., no. 93/1961, vol. 2, inv. 69, 3). During the school year 1971-1972, some counties across the country identified some 400 children who were not attending school on Saturdays. In Războieni, Iași County, 60 children were not attending school. Despite the measures taken to convince the parents, they remained uncompromising, "because of their excessive fanaticism". In Sic village, Cluj county, 36 children were absent from school on Saturdays. In Laslea, Sibiu County, at the beginning of 1972 – 1973, things were not different, 28 students not taking up school on Saturdays (A.C.N.S.A.S., no. 141, vol. 1, 41 – 45). And in the Adventist Church of Curtișoara, Olt County, there were many young people skipping classes courses on Saturdays (A.S.S.C., no. - /1 February 1986, 8; A.S.S.C., no. 109/1962, vol. 1, inv. 85, 16-20). It was also reported that in Dumbrăveni commune, Suceava region, "because of the children's absences at school on Saturdays, the school situation of 35 pupils in primary school classes could not be completed in the first quarter of 1963". (A.S.S.C., no. 109/1963, vol. 3, inv. 100, 453; A.S.S.C., no. 109/1962, vol. 2, inv. 99, 21).

There were also situations in which the Securitate departments were putting pressure on school inspectorates to coerce and fine people who were skipping school on Saturdays. Sometimes these (the case of Ilfov County Inspectorate) were researching and could easily notice that, after the education reform of August 1948, no such restrictions were foreseen against those who were absent from the classes on Saturday, all of which was based on "clarification work". The inspectorates objected to the intervention of the Securitate and said they would not make decisions until they consulted with the party (A.C.N.S.A.S., no. 2672, volume 6, 68). It is therefore easy to notice that the party was the one to impose measures of coercion by threats, fines, expulsion, prosecution etc.

In a report dated 22nd December 1972, by the Head of Service IV of Directorate I, lt. col. I. Banciu attested that about 4.000 children were identified whose parents did not allow them to go to school on Saturdays, "with all the attempts to clarify the competent bodies", the most important counties being Sibiu (90), Cluj (80), Iași (60), Bacău (50), Teleorman and Suceava (35), Vaslui (30) and Prahova (20) (A.C.N.S.A.S., no 141, vol. 14, 41 – 150).

The issue of students attending courses on Saturdays became the "great Adventist challenge" for both the religious Department and the Securitate bodies, the Ministry of Education, the District School Inspectorates, the organizations of pioneers and youth, schools, etc., because there were such students in every church in the country (A.C.N.S.A.S., no. 628, 17). From the analysis of the absences, it was found that the younger pupils went to school on Saturdays, but as they grew up, absences increased in number. In response to this, the leaders of Adventist churches Vaidacămăraș and Sic said that "the little ones do not understand much" and that "they are not trapped in the structural organization of the choirs, orchestras and do not have an active role in the church, but as they grow, they become active members and their presence is mandatory in religious activities" (A.C.N.S.A.S., no. 141, vol. 14, 5).

Causes of the Phenomenon and Analysis of Taking Measures

By studying the phenomenon, the Securitate bodies identified some causes for which Adventist children and young people did not regularly attend school (Modoran 2013, 147).

The strong influence of fanatical Adventist parents. The Braşov Securitate reported in April 1950 that the Adventists in Bicăzul Ardelean continued kept on not sending their children to school on Saturdays, preferring to pay fines. An informative note, dated two weeks later, said that, although they had been fined between 500 and 1.000 lei, "they still do not send them to school". Consequently, the Braşov Securitate Directorate was ordered to intervene in the Educational Sector 'in order to impose fines with a mark-up' (A.C.N.S.A.S., nr. 2672, vol. 6, 122. 267).

In general, the promoters of this attitude were **members of the boards of local churches**, and they refused to send their children to school on Saturdays, thus being a "negative" example for other believers. The elders were often approached by local inspectors, asking them not only to send their own children to school, but to make other believers do the same (A.S.S.C., no. 109/1963, volume 2, inv. 99, 19). The Neamţ county official reported that out of the six members of the committee, four had children of school age and did not even plan to send them to school on Saturdays (A.S.S.C., 000716/13 January 1975). Also, at the church in Comişani, Târgovişte district, the son of elder Petre Stanciu, did not attend classes on Saturdays (A.S.S.C., no. 109/1961, volume 1, inv. 103, 40). In Bătrâni and Gheorghişa communes, Dâmboviţa county, when some believers gave in to pressure and sent their children to school on Saturday, they were blamed by the local elders and accused of breaking the doctrine (A.S.S.C., Documentary Material on Sectarian Activity, no. - , 1).

Also, some **pastors** were among those who claimed it was a sin for parents to send their children to school on Saturday, many of them seriously suffering from this. The members of the Securitate mentioned that in Moldova fanaticism was so intense that almost the whole pastoral body refused to send their children to school on Saturday (A.C.N.S.A.S., no. 628, 147). In Măluşteni commune, Vaslui county, pastor Liga Laurenţiu, besides not sending his three children to school on Saturdays, he also refused to send them on a school-organized trip on a Saturday, although he had paid for the cost of the excursion (A.C.N.S.A.S., no. 141, vol. 14, 6). And Câmpulung pastor, Stoichici Dinu, kept his children from going to school on Saturday (A.S.S.C., no. 6436/1973, inv. 1783, 3). Pastor Iosafat Liga did the same thing for his own children (A.S.S.C., no. - /March 1, 1974, 6). The pastor in Făgăraş refused to let his daughter go to school on Saturday, being pressured to do so by the religious authority, he promised to allow her to go to school and requested that she stayed home one Saturday a month. The application was provisionally approved (Varadi 2002, 108; A.S.S.C., no. 1341/18 November 1957, 1). But mostly the pastors who were in the management, gave in, while some of the ordinary believers opposed resistance. And this has only weakened the lines of resistance.

Another cause of this phenomenon was seen in **the absence of disciplinary actions from the church leadership against Adventist pastors** who promoted such ideas. And last but not least, the lack of concern on the part of the teachers. The Education Ministry in a survey conducted in Cluj county by the Department of Cults trustee, and a county inspector in education found that in all the schools they controlled, the teachers had not asked for the reason why some students had the highest number of absences on Saturdays.

Solutions were proposed which showed how complex this phenomenon was. To begin with, proposals were made by the Department of Cults to **amend the Statute of the Organization** of the cult, especially Article 26 which regulated the issue of the worship day of the Adventists: "the divine services of the cult are public and take place on the seventh day, that is on Saturday, which, according to the confession of faith annexed to this Statute, is the weekly resting day of the Adventists" (*Monitorul Oficial* – Official Gazette, no. 45/1946). In particular, only the second

part of this Article was proposed for cancellation by the Presidium of the Great National Assembly, which had approved the Statute, ‘in order to cancel any pretentious claims by the Adventist to respect their resting day’ (A.S.S.C., no. 95/1958, volume 13, inv. 86, 14).

At the same time, it was intended **to impose abusive measures in close connection with persons attached to the management of the religious leadership**, in order not to lead to a reaction of the believers who disapproved the anti-religious policy of the communist regime (Petcu 2005, 365). **Educational measures** were also proposed **to attract children to school**, influence through **the information network** (many success stories are achieved by this method), as well as **a more operatively involvement of the county inspectors** of cults to expose and remove such situations (Petcu 2005, 385-386). During the years ‘70s and ‘80s, the authorities’ fight against those who continued to skip classes on Saturdays intensified.

1. Restrictive Measures

1.1. *The situation in Moldova Conference*

From the perspective of the cult inspectors, the most critical situation was found in Moldova at the Conference of Bacău (A.S.S.C., no. 109/1963, vol. 1, inv. 98, 21). Starting with the pastors and continuing with the ordinary believers, all refused to send their children to school on Saturday, to the despair of the local teachers, who had exhausted all means of conviction (A.S.S.C., no. 93/1963, vol. 7/1, 12). This was due both to the conservative attitude of the clergymen and to the calls for resistance preached by some believers. At Piatra Neamț, where Daniel Geantă was pastor, before the arrival of Stroescu Virgil, 60 – 70% of the children went to school on Saturday, managing to change people's mentality within months. Pastor Daniel was severely warned and urged to recover lost ground (A.S.S.C., no. 167/23 March 1982, 1).

Local authorities have tried to solve the situation in Moldova directly. With the help of the regional representative, the town party committee in Bacău contacted the secretary of Bacău Conference, Pintlie Baci, who was asked to take measures, first and foremost among the clergymen, to send their children to school on Saturday, and secondly to determine the other believers to do so (A.S.S.C., no 3413/21 February 1961, 1; A.S.S.C., no 818/2 February 1961). Not noticing any changes, the Department of Cults called upon the leadership of the Adventist Union and entrusted it with resolving this problem as soon as possible. In 1967, the leadership of the Union met with the leadership of the Conference of Bacău and the representatives of the Department of Cults in order to address this issue. During the discussions, Popescu Ioan, a minister in a district in Suceava county, took the floor. In a firm and authoritarian tone, he accused the Union leadership of not taking a firm stand to condemn those who sent their children to school on Saturday. He also spoke against the Department of Cults, claiming that "it had no right to put pressure on the church and parents to send their children to school on Saturday." In the end, he called for all those present, elders and pastors, to adopt a firm attitude towards this issue. The leadership of the cult was accused of not taking attitude against this pastor and it was proposed that the pastor's license card be withdrawn. This was done very soon. Shortly after, Ioan Popescu went to the head of the Department of Cults and retracted the action taken in Bacău, assuming responsibility for launching a program to persuade parents and pastors to send their children to school on Saturday. As a result of this attitude, it was proposed to be reactivated as a church pastor, even more so, to be appointed as an adviser to the Union Committee. He had even printed a material to be published in *Curierul Adventist*, but because he was not known among the Adventist members, the article was to be countersigned by Dumitru Popa, the editor of the magazine. The leadership of the Union only agreed to the first proposal, claiming that if he returns to churches, claiming the contrary to what was said earlier, he would cause more damage than gain. But they agreed to go to his previous district and do there what they had proposed to be done at a national level. Angered by the fact that he had not been promoted, he left the church working close to his retirement as a mechanic, then as a reformed pastor (Popa 1991, 12-14).

The Union of Conferences had a great resistance from the Conference in Bacău, the only success materialized in the promise of the Conference's leadership to solve the problem in two to three months. For the Department of Cults, however, this period was too long, which is why the Union was given only one month to clarify its own believers, otherwise determined action was to be taken, first against the most resistant, then on a case-by-case basis, against the other leaders of the Conference.

According to this provision, it is no wonder that they immediately withdraw the right to be a pastor for Baciú Pintilie, secretary of Bacău Conference and for Herghelegiu Dumitru, who was the pastor of the Adventist Church in Bacău, considered as the generators of the issue (A.S.S.C., no. 3413/21 February 1961, 2).

1.2. The situation on national level

On national level, the Securitate bodies and the of Cults have put great pressure on the church leadership to solve, at the level of the Union, the problem of absenteeism at school courses on Saturday. Thus, in 1963, the President of the Church, Pavel Crişan, was asked to draw up a work plan, with concrete proposals and measures, to convince the faithful parents that sending children to school on Saturday is not a sin, "absolving" the ordinary people from keeping the Sabbath (A.C.N.S.A.S., no. 628, 21).

Specifically, this plan meant the formation of delegations consisting of Union leaders and conference representatives who were to travel through churches in order to convince believers. Delegations were to hold biblical, doctrinaire arguments, based on a religious bibliography (Bible arguments and the writings of the church prophet – Ellen White). Even some "theories" appeared, claiming that the fourth commandment of the Decalogue should no longer be applied literally, because today we no longer have slaves, and the city dwellers no longer have animals. We can rent the houses, but we cannot force the tenants to observe Saturday.

It is also said that the Jews in Egypt did not respect the Sabbath as a day of resting, because they were slaves and had no school of their own. So, the Sabbath is no longer compulsory either, because at present they were under Russian bondage. Constantin Alexe, the representative of the Union, who had once provided children with material suitable for their religious training in every community in Bucharest and had raised the level of the tutors of the Sabbath school, promoted and officially supported, with great skill, the new guidance of children going to school on Saturday (Cojea 2008, 337). So, the new official message of the cult in the above-mentioned issue was that "we must send our children to school on Saturday" (A.S.S.C., no. 12/6/1975, volume 1, inv. 3, 2), because "this is the necessity of our time" (Cojea 2008, 337).

So-called "orientation assemblies" started to be organized, with the obvious aim of "disorienting" those willing to listen to it from fear, credulity, opportunism, temporary advantages, or cowardice. Very often, these guidelines loaded clean consciences, but they gave the appearance of liberation to those who fled suffering, hardship, and trouble. The clergymen called the article which was quoted at such meetings and asked for the children to be sent to school on Saturday "wrong book", but officially its name was "guidebook" (Gercos 1997, 115). If they were to face major resistance from ordinary believers, delegates had to take opt-out measures. In the case of clergymen or other responsible persons who would have opposed them, they would be dismissed from the clerical or administrative duties.

1.3. The practical enforcement of repressive measures

The measures taken by the Union leadership have succeeded in **withdrawing the authorization** of pastors whose children were not attending school on Saturday. There are many examples of pastors left without license to practice (A.S.S.C., 109/1963, vol 2, inv. 99, 255; Cojea 2003, 27). The leaders of the Conference of Bacău preferred to have their license withdrawn rather than to be taxed as "sold to the state" (A.C.N.S.A.S., no. 628, 147). Pastor Vulvară Ion was summoned before the committee of Sibiu Conference in the presence of the Department of Cults representatives to be convinced to let

his children go to school on Saturday. Alexe Constantin and Petcu Constantin were present from the Union. The conclusion of the mandate was: "He is stubborn and refuses". He was then discussed in the meeting of the pastors from the Conference of Sibiu, in the presence of the Union president, Tachici Ioan. He did not answer anything, but when, in private, he was told that his card would be withdrawn, he stated he could not give up his position for which he would even be willing to give his life (A.C.N.S.A.S., no. 73569, 4). An elder who was an informant, Nuță Dumitru, complained to the Securitate bodies about such pastors, that the parishioners accused him of being sold to the state, and they considered some of their leaders as real leaders (A.S.S.C., no. 12/6/1975, vol. 1, inv. 3).

On the other hand, among the measures taken by the Union's leadership, was **to move the pastors who were inefficient in convincing their parishioners**, to send children to school on Saturday. The Galați district's representative supported the proposal to transfer pastor Marinică to another district, on the basis that he was unable to determine the faithful parents send their children to school on Saturday, and to bring another minister to solve this problem (A.S.S.C., no. 109/1962, volume 1, inv. 89, 36). In Gherla commune, parents also replied to teachers that "the pastor left us free choice to decide whether to send or not our children to school". The pastor accused of lack of firmness was Borbath Zoltan (A.S.S.C., no. 12/6/1975, vol. 1, inv. 3, 1).

Along with them, there were also pastors willing to give up their leadership rather than to break their principles. Pastor Nicușor Ghițescu was summoned by the Union president to a discussion on how bad it is for the Adventists to send their children to school on Saturday. The talks did not yield any results. A week later, Nicușor Ghițescu came to the Union, claiming it is a sin for parents to send their children to school on Saturday, saying: "I am fully aware of what is expected of me, but at the same time I am happy, and if necessary, I will even give my life for my religious beliefs. I sit here and cannot say otherwise; so help me God!" As a result of his position, he was dismissed from the position of teacher and transferred to the Conference, to a certain service, which the president of the Conference, told him, in tears, was "dirty work" (compared to the position of teacher). Another disciplinary measure taken against pastor Nicușor Ghițescu was that "he was not even allowed to pray from the pulpit in church, so that he would not influence others to adopt his views." After these events, Nicușor Ghițescu met with the Union President who congratulated him "for your respectful but determined attitude to the observance of the Sabbath by our church children and young people in schools. This is the Bible doctrine, as well as the General Conference recommendation, but we had orders from the Department of Cults to act as such in your case" (Varadi 2002, 108-109).

Also, the **churches** in which such believers existed were threatened with the withdrawal of **the operating license** (A.S.S.C., no. 109/1963, volume 2, inv. 29, 225), and those believers who continued to refuse to send their children to school on Saturday were even excluded (A.S.S.C., no. 12/6/1975, vol. 1, inv. 3, 1).

On the other hand, through local authorities, school inspectorates, and school leadership, **strong pressure has been put on parents, pupils, and students**. Parents who refused to send their children to school on Saturday were fined almost weekly (A.S.S.C., no. - /March 1, 1974, 6). As for pupils and students who were systematically absent, it was decided to be expelled (A.S.S.C., no. 103/1958, vol. 1, inv. 122, 4). A first step in this direction was the refusal of teachers or schools to further motivate the absences accumulated on Saturdays, although in the past there had been no problem in their motivation (Cojea 1998, 345). Then threats and expulsion began. Matei Magdalena, a second-year student at the "Ciprian Porumbescu" Music Conservatory in Bucharest, the Faculty of Pedagogy, Conducting and Composition, presented her case to the rector for a solution. On 15th April 1964, she was notified by the rector that she would no longer attend the courses. This was the result of another harmful incident, namely in the first half of the term, the psychology teacher had refused to allow her to participate in class because of her unmotivated absences on Saturdays. Oblivious of the rector's notice, she continued to attend the classes, after a while, even called out and noted her presence. The student also specified that the reasons for not taking part in classes were well known to the teachers. As a result, she was expelled by verbal notice. The student expressed indignation at the fact that on May 22nd, 1964, at

the school noticeboard, she had seen a list of three people expelled on grounds of lack of interest in education, proved by unmotivated absences in the second half of 1964. Although she had the right to re-apply in the next year, with the amendment that at the first absences she would be expelled without the right to re-enroll, the student had to specify the already known reason for her absence from classes, that is, because of religion and conscience. In the application, the student calls for a reconsideration of the expulsion decision and of the notice from the board, on the grounds that it affected her reputation and honor. Also, the daughter of Cazan Gheorghe, president of Oltenia-Banat Conference, was expelled because she was absent from school on Saturdays. In class she was called “fascist and enemy of the people” (A.S.S.C., 105/1961, volume 11/4, inv. 144, 1; A.S.S.C., no. 93/1957, vol. 13/2, inv. 100). Bighescu, from Bacău and Săndulache Sorin, from Grigoreni, were also expelled from the Health Technical School in Bacău in January 1973 because on Saturday they did not attend the courses (A.S.S.C., no. 52/29 January 1973, 3). Also, on March 20th, 1969, Ioan Hughas, from Gheorghe Gheorghiu Dej, Bacău county, asked for a reconsideration of the decision to expel his son from the 10th grade of High School no.1, on the grounds of his absences from school on Saturdays. He showed indignation because the expulsion was not based on accumulated absences on Saturdays, neither on low grades nor on indiscipline. And, as a counterargument, he specified that his son had received the first prize twice, twice the second prize and his 9th grade grades were between 7 and 10. Besides these things, the father also specified that for the class of Russian, he had been graded ranging from 2 to 5, so that he would no longer be first in class. The father requested the re-admission of his son in the ninth grade, the third semester, from 1969, the re-examination for the Russian language, in order to correct the wrong grades and to allow him to take the tests he had missed, in the second semester following his expulsion (Cojea 1998, 393-396). Although very isolated, there were also cases of Adventist students who managed to graduate from university without going to classes or exams on Saturday. For example, the children of pastor Ștefan Demetrescu graduated from university without going to school on Saturday (Cojea 2004, 51).

Other children were simply dropouts, humiliated and mocked for their faith. It is to be noted that all these injustices happened even if the pupil was allowed to skip four times a month from school without being fined in any way. Pastor Pițurlea Gheorghe submitted a Memorandum to the Ministry of Education and the Bacău Education Section to approve a Commission to reexamine his son who had been flunking because of his absences. The school approved, but the school also decided to reexamine him on Saturday. His son was declared dropout (A.C.N.S.A.S., no. 131545, 36). In addition, Pescuț Gheorghe, residing in Vlădești village, Argeș county, presented the case of his daughter, who was a dropout, before the school inspector. He presented her headteacher’s refusal (a professor of anatomy) to examine her on a different day than Saturday, when, for reasons of conscience, she could not attend school. The father was extremely annoyed that his daughter was put together with the other students who were absent for various reasons and he argued that on Saturday all his family went to church for religious education. He was also very surprised that during the first years of education, his daughter had been promoted with the same number of absences on Saturdays (Cojea 1998, 389-391). In the village of Gheorghe Doja, there were cases of pupils who were repeatedly dropouts because of the systematic absences in school on Saturday (A.S.S.C., no. 109/1981, vol. 1, inv. 103, 28).

The teachers who did not attend the courses on Saturday had to suffer. Professor of music Orban Adalbert from the General School of Arts in Miercurea Ciuc, Harghita County, had arranged with the school leadership to be free on Saturday. As soon as it was reported, his case was submitted to the Department of Cults in order to establish the penalty to be assigned to him (A.C.N.S.A.S, no 141, vol. 14, 9). Exemplary cases in this respect are also those of teachers Titu Ghejan, professor of mathematics and Ioan Gabriel, professor of music, both dismissed from education and regarded as retrograde and socially harmful elements because of their religious belief (Cojea 2004, 18). Among other Adventist teachers who were cut off their employment contract can be mentioned: Mândoianu Lidia, Russian language teacher, Goicea Dan and Neagu

David, physics and chemistry teachers and, last but not least, Modoran Gheorghe, history professor (A.S.S.C., no. 132/3 March 1973, 1).

1.4. Resistance

As it was normal to happen, there were reactions, objections, disputes against the compulsory attendance of children and young Adventists on Saturday, which is true, most of the times these were anonymous. Anko Arpad, the territorial inspector of Mureș County, filed the text of an anonymous "Complaint" against the compulsory attendance of Adventist children on Saturdays. The objectors qualified this obligation as prejudice of freedom of conscience, discrimination in the application of international conventions in the field of education, to which our country had also joined. At the same time, they did not regard the absence of children from school on Saturday as a violation of the law, on the contrary, it was a materialization of religious freedom. The authors requested that the Saturday timetable provide only for subjects which are also taught on the other days, so that those who were absent on this day could recover the information on other days (A.S.S.C., no. 12/6/1975, volume 1, inv. 3, 1).

However, despite any opposition attempts, the oppression and the measures taken have reduced the phenomenon significantly. An overwhelming majority of Adventists began attending school even on Saturdays but did not participate in agricultural or manual work (Petcu 2005, 385-386; A.C.N.S.A.S., no. 141, vol. 14, 3), in this regard the success rate being even more than 90%. In the church of Matca in a community of more than 300 members, only four or five families kept their initial decision. Out of about 120 school-age children, only these families alone, about 20 children, remained firm on their grounds. There were clarification arguments with the remaining ones, considering that they would finally join the majority (A.S.S.C., no. 12/6/1975, volume 1, inv. 3, 1). Even in the Conference of Bacău, where the greatest resistance had been, it was shown that the number of students who did not attend school on Saturday was reduced to 80% (A.S.S.C., no. 23/November 1975, 1). We also mention here that in an information note from the Union, it was established that in the Adventist churches Peretu I and II in Teleorman County, out of the 134 children of school age, 108 went to school on Saturday. In one community there were 16 children left, while in the other ten children in four families who had not sent their children to school on Saturday (A.S.S.C., no. 117/A, 1). Another category included children who started to attend school on Saturday, but definitely refused to do any school activity. Szogyor Veronica, a student at a post-secondary course for the training of the educators at High School no. 1, in Miercurea Ciuc, Harghita County, became an Adventist in the summer of 1972. As a result, she did not go to school on Saturday. Being approached by the high school leadership in this matter, she began to attend school on Saturday, but she did not do anything, she did not touch any books, she did not write, or answer to lessons (A.C.N.S.A.S., no. 141, vol. 14, 2-3). Pupils and students began attending churches only on Saturdays in the after-afternoon or in the morning, when they had no classes. But even in such situations, they were hunted by the inspectors of cults to take measures against them (A.S.S.C., no. 22/18 February 1973, 2).

It was common for some children to attend both school and church alternatively. But the children who chose the path of resistance were guided by parents to learn very well, in order to make this "guilt" easier in some way (A.S.S.C., no. 93/1959, volume 8, inv. 99, 1). Some parents went so far that they paid out of their own funds for teachers to teach their children on Sunday. The Iași district's representative reported such a case in the village of Războieni, Țibănești commune (A.S.S.C., no. 109/1963, vol. 2, inv. 99, 16).

There were even reported cases when non-adventist students defended their Adventist colleagues. At Calistrat Hogaș high school, the son of an engineer in the 9th grade was a pupil there and he would absent from school on Saturday. When the test on mathematics was fixed on a Saturday, the whole class reacted, asking for the day to be changed, because the student „Prisecaru does not come to school on Saturday” (A.S.S.C., 13/612/1976, vol. 2, inv. 4).

There were situations when, as a result of monitoring, were found teachers who had not asked for the reason why some of the students had the largest number of absences on Saturdays (A.C.N.S.A.S., no. 141, volume 14, 8). Sometimes, some directors even modified the school schedule to facilitate attendance for Adventist children on Saturday, excluding from the schedule objects which would require practical activity (A.S.S.C., no. 2509/2 February 1973, 5). Other directors went as far as they tried to hide the cases of pupils who did not attend the courses on Saturday (A.S.S.C., no. 2509/2 February 1973, 5). By virtue of some relations with the Adventists, the management of some schools facilitated the motivated absenteeism of several Adventists from school, which frustrated those Adventists who sent their children to school (A.C.N.S.A.S., no. 141, volume 14, 9). It went so far that some compromises were made between school leaders and local churches, in the sense that, during the student practice in agricultural work, instead of Saturday, the students had to catch up with the work on Sundays (A.C.N.S.A.S., no. 141, volume 14, 4). During this period, many parents and children, even pastors, had chosen the path of resistance, despite the efforts of the cult leadership and the numerous pressures and measures taken by the authorities to make them give up their position.

In parallel with the work of the “specialized” church management advisers on the issue of “clarification” of parents to send their children to school on Saturday, there were still people who encouraged and supported those employed in resistance. One of the most prominent figures who stood up against violations of religious provisions and persecution of observing the day of resting was pastor Ștefan Demetrescu, an adviser on the Union committee. In 1957, he wrote an Article entitled "Religious freedom in Romania", which shows that religious freedom has long been ensured to Adventists in schools, youngsters in the military and working believers. The article then came to the point that many Adventists suffered because of their religious beliefs. Also, in 1957, on 16th December, during the sermon, after presenting a number of cases of Adventists persecuted for their faith, he invited the worshippers of the Labirint community to pray for them. However, the protest and condemnation of such acts of violation of religious freedoms were very bold acts at the time, thus shaking quite strongly the relationship between the leadership of the Adventist Union and the Department of Cults. The entire committee of the Union, together with the conference presidents, was called upon to the Department to present its position on the article and, in particular, on the preaching. However, having no support from the leaders of the cult (A.C.N.S.A.S., no. 137608, 22), Ștefan Demetrescu was sentenced for the harm caused to the relationship of the cult with the Department, removed from the leadership of the Union and retired, with total ban on carrying out any religious activity within the cult. The reason for the removal referred to by the authorities was that ‘the so-called minister used religious freedom to stir against the State and incite pastors to attitudes of disloyalty’ (A.S.S.C., no. 93/1958, volume 13, inv. 86, 14). Victor Diaconescu, another adviser at the Union, was sent to be a pastor in Pucioasa, because he had not condemned the attitude of pastor Demetrescu.

The concern also prompted with a "Memorandum" of protest written by a believer in Ploiești, in which he incriminated the violation of the freedom to choose one's day of rest, reinforcing the idea that the Adventists will go to the International Criminal Court in Hague to protest (A.S.S.C., no. 93/1958, volume 6, inv. 83, 2). Also, the president of the Conference Dunărea (Danube), Pompiliu Sersea, in his message of July 23rd, 1969, said that ‘Moses did not give in to Pharaoh. He took the children with all the people to worship in the wilderness and we are asked not to come with our children to church. We will not leave our children at home.' The information had been provided by informant Mocanu Gabriel, former Secretary of the Conference Dunărea (A.S.S.C., no. 695/14 September 1969, 1). Of course, it was proposed for dismissal from his office, for the state of agitation produced.

When it appeared that things were going into normality, a new earthquake was also triggered at the largest Adventist Church in the country, Labirint church. Two days before the start of the new school year, namely Friday evening, on 13th September 1968, two young people (who were also brothers) reported a real story entitled "A sad harvest", which occurred in the old church Grant, which the youngest had seen in person. The two reported that a mother kept urging

her child to leave the divine service and go to school, to get there on time, but then she was very puzzled why, several years after leaving school, the now teenager, left the bored and indifferent church. This story was read in all five Adventist churches in Bucharest the next day, on September 14th, 1968, at the music hour.

In the same church, on September 14th, 1968, during the musical time, a group of young people, made up of Stroescu Virgil, student at the Cyber Economy, Turlea Lucian, student at the University of Medicine and Stoica Napoleon, student at the Adventist Theological Seminary, they presented a material in which they argued that sending the children to school on Saturday was a sin, thus presenting an opposite position to the one expressed by the cult leadership. The material they presented came from pastor Nicușor Ghițescu and consisted of a material gathered from Ellen White's writings. To these was added a material in which Virgil Stroescu fought against the "theories and directives" that were circulating in the church under the protection of the religious leadership, contrary to the 4th commandment. The musical program entitled "Children going to school on Sabbath" culminated with the hymn "Ești pe calea mântuirii, dar copiii unde-ți sunt?" (You are heading to heaven, but where are your children?) and with the chorus singing "Voia Ta, Doamne!" (Your will, my God). As soon as the program was finished, the three young people were invited to a committee meeting. Then, for six months, they attended other committee meetings to make statements and to be reprimanded that they had not announced the subject of the music program. Subsequently, the Department of Cults intervened by asking the Union committee to deal with the problem in front of Labirint church. Finally, there was an administrative hour where, although the three young people were to be excluded, they were defended by the entire community. But the measures taken by the religious leadership were in line with the earthquake that occurred among the church. The young people have been imposed a total ban on speaking in church, and they were frequently asked whether they were still preparing some surprise elements. Also, pastor Pascu Ion was disciplinary transferred, and the community committee was disbanded, and new elections were held immediately (A.S.S.C., no. 2249/16 October 1968).

On 14th June 1990, together with the first free elections, the new committee of the Adventist Union issued a 'Memo' to 812 churches that existed at the time in Romania, by which it expressed its "deep regret for all the confusing attitudes towards the principles of the Church of God, such as guarding the Sabbath for us and our children." It was also recognized that "all the hesitations among the cult's leadership caused occasions of unfaithfulness toward God by many of the people" (Cojea 2004, 37). Despite the repressive measures taken by the authorities, despite the loyalty to the state position of most Adventist leaders and most clergymen, authorities have never been able to declare that the issue of students attending courses on Saturday was fully and definitively resolved. The significant number of those who chose the path of resistance added to the number of students who, after passing the repressive waves, returned to the practice of not taking classes.

Conclusions

History must not be beautified, but must always be based on truth, even if it sometimes hurts. The history of the Adventist Church during the communist period is a history of heroes and criminals, failures and vanities, lights and shadows, a history carried out on two fronts. On the one hand, it is a history characterized by numerous compromises in relation to the communist regime (leadership, pastors, laymen), and on the other hand it is a history of courage and resistance of church members and some pastors, who refused to be bowed down by the regime. Although the Communists achieved temporary success, the implementation of atheistic vision among Adventist children and young people was a complete failure, because they were willing to bear consequences, to be dropouts, to be expelled, to have low grades on behavior, to be beaten and humiliated, they were even willing to stop going to college.

We must also recognize that there has been a limit in understanding the need for education among the Adventists, a barrier that has held back the momentum of children and young people in terms of education. The doctrine of Christ's return and the fact that the end of the world is close was promoted very strongly. Thus, many young people have remained only with secondary education, and were only focused on schools where learning crafts would have given them free Saturdays once employed. Also, in order to be exempted from future complications on Sabbath, Adventists were sent to music high schools, health high schools, then to the Conservatory and Faculties of Medicine.

References

- Cojea, V. D. 1998. *Vechi cărări advent [Old Adventist Paths]*. Bucharest: Card.
- Cojea, V. D. 2003. *Adventismul sub comunism [Adventism in Communism]*. Bucharest: Card.
- Cojea, V. D. 2004. *Advenșiții de ziua a șaptea în timpul regimului comunist [Seventh Day Adventists during the communist regime]* Bucharest: Card.
- Gercos, Marcel Asanache. 1997. "Eseu de istorie adventă în Transilvania" [Essay on Adventist history in Transylvania]. Graduate thesis, Universitatea Babeș-Bolyai.
- Monitorul Oficial. nr. 45/1946.
- Petcu, Adrian Nicolae. 2005. *Partidul, securitatea și cultele – 1945 – 1989 [The Party, Securitate and the cults – 1945-1989]*. Bucharest: Nemira.
- Popa, Dumitru. 1991. "Pagini inedite de istorie adventă" [Unique Adventist history]. *Curierul Adventist [The Adventist Herald]* 12–14.
- Popescu, Ion Mihail. 1986. *Observații asupra dinamicii fenomenului religios și asupra proceselor de secularizare și de educație ateistă [Notes on the dynamic of the religious phenomenon and on the secularization processes and atheistic education]*. Bucharest: University of Bucharest.
- Varadi, Iosif. 2002. *Persecuția comunistă în istoria adventă din România [Communist persecution in Adventist history in Romania]*. Dej: DSG Press.

Archive Documents

Arhiva Secretariatului de Stat pentru Culte (A. S. S. C.), (The Archive of the State Secretariat for Cults)
 Arhiva Consiliului Național pentru Studierea Arhivelor Securității (A. C. N. S. A. S.) (The Archive of the National Council for the Study of the Securitate Archives)

- A. C. N. S. A. S., file no. 131545.
- A. C. N. S. A. S., fond Documentar [Documentary fond], file no. 141, vol. 14.
- A. C. N. S. A. S., fond Documentar [Documentary fond], file no. 141, vol. 1.
- A. C. N. S. A. S., fond Documentar [Documentary fond], file no. 6899, vol. 1.
- A. C. N. S. A. S., fond Informativ, [Informative fond], file no. 137608.
- A. C. N. S. A. S., fond Informativ, [Informative fond], file no. 2672, vol. 30.
- A. C. N. S. A. S., fond Informativ, [Informative fond], file no. 2672, vol. 6.
- A. C. N. S. A. S., fond Informativ, [Informative fond], file no. 73569.
- A. C. N. S. A. S., fond Rețea [Network fond], file no. 628.
- A. S. S. C., document no. 000716/13 January 1975.
- A. S. S. C., file no. 109/1961, vol. 1, inv. 103.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], document no. - /1 February 1986.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], document no. - /1 March 1974.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], document no. - /1971.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], document no. 000716/13 January 1975.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], document no. 117/A.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], document no. 132/3 March 1973.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], document no. 1341/18 November 1957.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], document no. 167/23 March 1982.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], document no. 22/18 February 1973.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], document no. 2249/16 October 1968.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], document no. 23/November 1975.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], document no. 3413/ 21 February 1961.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], document no. 412/4 June 1973.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], document no. 52/29 January 1973.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], document no. 695/14 September 1969.

- A. S. S. C., fond Direcția de studii [Research Directorate fond], document no. 818/2 February 1961.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], document no. 9371/2119/2 May 1975.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 109/1963, vol. 1, inv. 98.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 13/612/1976, vol. 2, inv. 4.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 103/1958, vol. 1, inv. 122.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 109/1962, vol. 1, inv. 85.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 109/1962, vol. 1, inv. 89.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 109/1963, vol. 2, inv. 29.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 109/1963, vol. 2, inv. 99.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 109/1963, vol. 3, inv. 100.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 109/1981, vol. 1, inv. 103.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 12/6/1975, vol. 1, inv. 3.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 6436/1973, inv. 1783.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 93/1957, vol. 13/2, inv. 100.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 93/1958, vol. 13, inv. 86.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 93/1958, vol. 6, inv. 83.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 93/1959, vol. 8, inv. 99.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 93/1961, vol. 2, inv. 69.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 93/1963, vol. 7/1.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], file no. 95/1958, vol. 13, inv. 86.
- A. S. S. C., fond Direcția de studii [Research Directorate fond], Material documentar privind activitatea sectelor [Documentary Material Regarding the Sectarian Activity], document no. -, undated.
- A. S. S. C., fond Direcția înputerniciților [Trustee Directorate fond], file no. 105/1961, vol. 11/4, inv. 144.
- A. S. S. C., fond Direcția propagandă și agitație a Comitetului Central al Partidului Comunist Român [The Propaganda and Agitation Directorate of the Central Committee of the Romanian Communist Party fond], document no. 2509/2 February 1973.

The Role of Public Administration in the Realization of the Public Education Service

Elena Roxana Vișan

*PhD Student, National School of Political Studies and Public Administration, (NUSPA), Bucharest, Romania
Member of the European Law Institute, Vienna, roxanne_lex@yahoo.com*

ABSTRACT: Due to the multiple roles held within the social system, the public administration field is positioned in the service of the citizen, and through its entire activity interferes with the political, economic and socio-cultural dimensions, where the beneficiary becomes the goal and not the means. It is thus understood that public administration has significance only in interaction with parts of the social system. An important part of the social system, which is in direct line with the public administration, is education, due to its public service performance. Under these conditions, education becomes a service of public interest, where the educational policy is ensured through the specialized public administration. What is the role and how the administration involved in the realization of the public education service is, are questions generating the depth of knowledge at the empirical level in this undertaken approach.

KEYWORDS: public administration, social system, public education service, responsibility

Introduction

Confronted with the international challenges imposed by the current epidemiological context, being aware of the role of education in the human rights system, aware of the major importance given to the governance of the educational systems, the current state actors have given a new meaning to the right to education – seen as a strategic objective - as it “ensures the genuine existence of other rights” (Mahler 1979) and thus the development of society as a whole. Exercised through the educational systems of all nations, efficiency in education is supported by the involvement of a good administration of the educational service. Throughout its entire process, the public administration will promptly respond to satisfy the educational beneficiaries’ interest by providing proper educational service, responsible management of the administrative capacity of the educational system and good governance of the educational process. Moreover, a relationship strengthened on respect for human rights is established between the rulers and the governed in the educational process. At the same time, the interdependence of the right to education with the other rights is noted, where “the theoretical dimension as well as their practical application, must be considered a priority of education policies” (Zlătescu Moroianu 2007, 15).

This context has subjected educational systems to the adaptation and the re-evaluation of the public policies in the field of education in order to provide all the beneficiaries with a quality educational service, “permanently adapted to the existing trends at the European and the international level” (Alexandru 2020, 75). The approach of the administrative phenomenon in the educational systems entails the accomplishment of the public interest by enforcing the public educational service. Starting from these considerations, it is obvious that exercising the right to education is possible through the public educational service, where the “mechanisms and resources of the administration necessary to satisfy the public interest” are highlighted (Alexandru 2019, 229). At the same time, the administrative phenomenon related to the public educational service illustrates legal, political, economic, sociological interferences, where public administration acquires a threefold meaning: the human activity to coordinate/manage/lead a structure/social group, the way of organizing activities and the institution/complex of institutions profiled by fields of activity in order to fulfill specific tasks (Onofrei n.d. 6). Analyzing the three meanings, we understand that the actions taken by the public administration seek to satisfy the interests of the human communities, organized in the state-type administrative forms, often called

“general interests” (*Idem*). Relevant notes for defining the concept of public administration can also be found in the “Dictionary of American Government and Politics”, coordinated by Jay M. Shafritz, which notes the following meanings: the collective term for dignitaries in the government apparatus, the execution of the public policies, the coordination of the governments/institutions, the mandate assigned to the staff in a position of chief executive (governor/mayor). The multiple meanings outline edifying notes for identifying the reasons for the administrative phenomenon. Thus, value judgments and actions are highlighted in the administration process at the political, legal, and managerial levels for the legislative and executive mandates to provide the necessary services to society in general and specifically. In these respects, the public administration must serve the citizens' interests and thus promptly solve the problems they face promptly and effectively. Here, through the issued public policies, the public administration becomes a facilitator in achieving the ideal of social solidarity (Morand-Deviller, 1994).

The enforcement of the educational service from the perspective of public administration springs from the responsible application of the fundamental principles of democracy twinned with the standards of a good administration of the educational system. Therefore, the assumption of a democratic society is built starting from the establishment of a central place for education and its prerogatives of affirmation in the relationship with the citizen and the administration. The connection between the public administration and the public educational service is reflected in the legal rights enforcement and in the obligations, principles applicable to common and administrative law, stipulated in special laws, normative acts, and quality standards of the educational process with deep visibility in the activity of the administration entities within the public educational system. According to these directions, the public educational service requires approaches from different perspectives: ideological, social, legal. The mechanism of accomplishing the public educational service begins with the ideological perspective, which aims to ensure the common good through the beneficial management of the relationship between the state apparatus and the citizen (Alexandru 2020, 10) in the educational process, a firm assurance, a finite product of involvement and responsibility at the public level. The social perspective of the public education service takes the form of the relationship with the internal and external environment, thus determining impulses both among the beneficiaries and the promoters, the educational decision makers. In this way, the needs of the target group in the educational system are quantified and the directions of the action are identified in order to respond to the required needs. In other words, the good functioning of the public education service is conditioned on the one hand by the correct application of the normative card, and on the other hand by the cause-effect, question-answer, decision-action interaction (Dulschi 2019, 21). In the same note, the social perspective engages the service of the rational and efficient administration of the “human, material and financial resources” (Onofrei n.d. 8-9) in the public educational service, in order to “meet the requirements of general interest”, using in case of necessity the prerogatives (attributions) of the public power” (*Idem*). The public educational service from a legal perspective reflects the enforcement of existing legislation and practices regarding the application of social requirements. Such a direction contributes to the definition of the relationship between the legislature and the executive, confirming the position of public administration towards the legislative power, its mission being secondary through the implementation of laws, even in the field of education. The attributions conferred by law through the representative bodies of the state are fulfilled, in our case by the Ministry of National Education.

Considered a national priority (National Education Law no. 1/2011), education requires more attention from the specialized central public administration to ensure “the security of legal relations in the field of education and to implement all the necessary measures so that the negative effects generated by the pandemic of SARS-CoV-2 coronavirus to have a minimal impact on the education system” (OU no. 58/2020). In this framework, for the national educational service implementation, it is necessary to treat political-administrative, socio-economic aspects, based on

which the access to learning should be without discrimination, and the education should respond to the needs of the personal and the economic-social development (National Education Law no. 1/2011). Originating from an objective necessity, the role of the public administration in the public educational service implementation in the given scientific approach, entails both a theoretical and pragmatical vision of the field, which coagulates an approach based on the axes: “Administration - Politics, Administration - Economy, Administration - Civil society” (Alexandru 2010, 75). We signal the outline of an overview with reference to the development of a relationship between the public administration - body of the executive power, the public education service - mechanism for exercising the right to education and the citizen-beneficiary of the public service. The substantiation of these relations consolidates the role of the public administration in relation to the way in which the public education service is carried out and establishes especially the position of the public administration “as an integrated system in the environment in which it is expressed” (*Ibidem*). In this situation, it is obvious “the prevalence of the importance of providing public services in the relations between their citizen/beneficiary and public authorities” (Seciu 2016, 7). Treated as “the set of institutions specialized in the organization and development of education and training” (*Idem*), the public education service is performed in relation to the political, economic and social sphere. Starting from these aspects, in the following approach we will highlight the way in which the three axes are relevant in the process of relationship and integration of the public administration in the public educational service development.

The Administration-Politics Axis condenses the political attributions seen in the organization and functioning within the educational service, because the good administration of the educational system is possible through changes in the content of regulations, application of administrative principles and standards influenced by the political choices of the executive power. In other words, it is confirmed that the activity of the public administration is complemented by the political one through decisions, legal provisions developed and issued in the field of education. Similarly, the realization of the educational service is determined by the way in which “the activities that form the content of the administration” (Bălan 2008, 53) are to be implemented in order to exercise competencies in the field of education. Thus, the public education service is governed by the specialized central public administration, the Ministry of Education as a “branch body” (Apostol Tofan 2008, 244). In government actions, the public education service is carried out through “different degrees of dependence on the center, respectively either through centralization or through decentralization or administrative decentralization, principles that dominate the organization of public administration” (Bălan 2008, 56). The two principles are committed to ensuring the foundation of “organizing the public administration system” (*Idem*), involving the provision of distinct public services, for the benefit of the citizen and building a “performing administrative system” (Văcăreanu 2020, 100). At the level of these principles, a prefigured relationship is outlined in terms of educational policy materialized in a normative framework that offers solutions and good practices for the dynamics of the educational systems.

The Administration-Economy axis is reflected through an extensive process of production of goods and services, where the economy ensures the elements of survival and development at the societal level, and the administration efficiently manages human and material resources. In this context, for economic reasons, education is provided with the material substratum of the exercise of the right to education. Therefore, the economy manifests its influence on education through a “central element, determinant and determinative, educational capital it is the dual component of human capital, defining element through the immanence of work, the economy” (Manolescu 2009). In order to illustrate the directions of the educational capital, we turn our attention to the costs allocated per capita, the adaptation of educational capital (curriculum, human resources, skills, financial resources) to the requirements of the labor market and why not, the costs of investing in educational policies, etc. Beyond these aspects, the administration-economy axis draws our attention to the educational system, to the way in which the educational means and needs can be covered. In a general sense, the channeled resource-needs relationship is obvious to

the way in which it can be covered. Can the needs be addressed from within the system or is there a need for administrative and economic bias and involvement? From a much deeper analysis, it is found that the emergence and satisfaction of these needs depend on the economic availability of resources and their good management. According to these findings, between the administration and the economy there is a relationship of interdependence, based on the development of resources-meeting needs, in other words, a direction of coevolution.

The Administration-Civil Society axis is strongly anchored in the social progress of human communities, aiming to maintain the harmony between the representatives of the public administration and the beneficiaries of their actions by respecting the citizens' rights and freedoms. The integration of this axis in the public education service also brings to the core the complex nature of education, as "education has as its object the construction of the social being" (Durkheim 2002, 39-40). In the context of studying this axis and referring to the social relations (Iorgovan 2005, 121) outlined by the object of the administrative law, the public administration is conceived through the involvement of the human capital (Apostol Tofan 2008, 9). The activities of the public interest undertaken by the public administration emphasize the social character of the guiding directions regarding the education process and its link with the civil society. Therefore, in-depth research of public administration is also carried out in relation to the social environment. Currently, the administration of the national education system becomes "efficient when depending on the degree of knowledge of society, on educators' quality, authenticity, complexity and efficiency of information" (Dulschi 2009), due to the social values of their culture. The elements that substantiate this axis are provided by sociology, by applying modern research techniques and methods, in order to diagnose the object of administration (*Idem*). The adaptation of public administration in the field of education to the social environment is supported by sociological processes that lead to an "individual-centered analysis of the determinations of school results and the effects of these results on the transmission of status and social mobility" (Hatos 2006, 2-3).

From the analysis of these three axes, we find in particular a relationship of complementarity and interdependence in equal measure, which certainly ensures the functional balance of the public educational service supported by the political, economic and social factors, promoters of personal and collective well-being (Raghuram 2009) of the nations of the world. The optimization of the public education service thus depends on the way in which the public administration intervenes in the management of the educational system, this being a condition for the application of structural changes, which effectively aim at smart growth and sustainable development. To the same extent, the development of an efficient educational service presupposes the realization of the general interest, animated by ensuring the balance between the public administration and the citizen, the beneficiary of education, the latter being the subject of the administration and not being the purpose of its actions. All these considerations come to strengthen the fundamental role played by the administration in the development of the public education service, a way of access and fulfillment to the highest possible standards of the educational mechanism, accelerated today, due to the desire to serve the citizen's interest and to position them in the center of the global social system.

Acknowledgments

"Researcher-Entrepreneur on Labour Market in the Fields of Intelligent Specialization (CERT-ANTREP)", coordinated by the National University of Political Studies and Public Administration and the financially is supported by the Human Capital Operational Program 2014-2020, co-financed by the European Social Fund, under the project POCU/380/6/13/124708 no. 37141/23.05.2019.

References

- Alexandru, Dana. 2016. "Mechanisms and resources of local public administration in the provision of public services," in Emil Bălan, Cristi Iftene, Marius Văcărelu, *State Reform. Institutions, procedures, public administration resources*. Bucharest: Wolters Kluwer Publishing House.
- Alexandru, Dana. 2020. "Spatial data infrastructures and good governance: legal, institutional and socio-economic framework for the reform of land management systems," in Emil Bălan, Dragoș Troanță, Marius Văcărelu, *Public administration regulations and practices. Between the vision of scientific research and the avatars of reality*. Bucharest: Wolters Kluwer Publishing House.
- Alexandru, Ioan. 2010. *Interdisciplinarity. The new paradigm in public administration research and reform*. Bucharest: Romanian Academy Publishing House.
- Alexandru, Ioan. 2020. "Challenges on globalization and public administration," in Irina Moroianu Zlătescu et al (ed. Coord.), *Globalization of Society. Globalization of Law*. Bucharest: Universul Academic Publishing House in co-production with the University Publishing House.
- Apostol Tofan, Dana. 2008. *Administrative Law*, vol. I, 2nd edition. Bucharest: CH. Beck Publishing House.
- Bălan, Emil. 2008. *Administrative Institutions*. Bucharest: C.H. Beck Publishing House.
- Dulschi, Ion. 2009. "Sociology in the service of public administration." *Administrația Publică*, no. 2, Academy of Public Administration under the President of the Republic of Moldova. Available at <http://dspace.aap.gov.md/bitstream/handle/123456789/846/10.Sociologia%20in%20serviciul%20administratiei%20publice.pdf?sequence=1&isAllowed=y>, accessed on 28.02.2021.
- Dulschi, Silvia. 2019. *Administrative System - Component of The Social Environment*, in Public Administrativ Journal no. 2, Available at <http://aap.gov.md/files/publicatii/revista/articole/102/ro/Dulschi.pdf>, p. 21, accessed on 8.08.2021.
- Durkheim, Émile. 2002. *The rules of the sociological method*. Iași: Polirom Publishing House.
- Emergency Ordinance no. 58/2020 on taking measures for the proper functioning of the education system.
- Hatos, Adrian. 2006. *Sociology of education*. Iași: Collegium Polirom Publishing House.
- Iorgovan, Antonie. 2005. *Treatise on Administrative Law*, vol. I, *Introduction. Administrative organization. Civil service*. Bucharest: All Beck Publishing House.
- Mahler, Fred. 1979. "The right to education - a fundamental right of all children in the world." *Journal of Pedagogy*, Bucharest.
- Manolescu, Gheorghe. 2009. "Alternatives and tools in financing education." *Financial Studies*, no. 2, Monetary studies - Current monetary issues; Available at http://www.ipe.ro/RePEc/vls/vls_pdf/vol13i2p18-38.pdf, accessed on 3.03.2021.
- Morand-Deville, Jaqueline. 1994. *Administrative Law course, Themes of reflection. Comments d. Arrtes avec corriges*, VII-th edition, Paris I, Sorbonne.
- Moraru, Adrian, Florin Bondar, and Violeta Alexandru. 2019. *Public Policy Manual*, 2nd edition. Bucharest: Institute for Public Policy Publishing House.
- National Education Law no. 1/2011, published in the Official Gazette, Part I no. 18/10.01.2011.
- Onofrei, Mihaela. n.d. "Basic notions regarding public administration, Course support." in *Elements of administration science*, <http://portal.feaa.uaic.ro/definitivare/licenta/PublishingImages/Pages/default/1AP%20Note%20de%20curs%20Elemente%20de%20C5%9Ftiin%20C5%A3a%20administra%C5%A3iei.pdf>, accessed on 3.08.2021.
- Raghuram, P. 1979. *Which Migration, What Development? Unsettling the Edifice of Migration and Development*; Available at <http://onlinelibrary.wiley.com/doi/10.1002/psp.536/pdf>; Castles S. *Development and migration or migration and development: What comes first?* in *Asian and Pacific Migration Journal* 18 (4), 441–469; Levitt P. and Nyberg-Sørensen N. *The transnational turn in migration studies*.
- Seciu, Lăcrămioara. 2016. *Management of school units*. Bacău: Rovimed Publishers Publishing House.
- Văcărelu, Marius. 2020. "Research on the phenomenon of public administration and its effects on the position of the citizen in public law", in Emil Bălan, Dragoș Troanță, Marius Văcărelu, *Regulations and practices of public administration*. Bucharest: Wolters Kluwer Publishing House.
- Zlătescu Moroianu, Irina. 2007. "The right to education, a fundamental human right." In *Journal of Human Rights*, no. 2. Bucharest: IRDO Publishing House.

Criminal Participation in the Form of Complicity

Petre Buneci

*Professor Ph.D., Faculty of Law, Ecological University of Bucharest, Romania
bunpetre56@yahoo.com*

ABSTRACT: The plurality of criminals over time has evolved, so that today we have a natural plurality, constituted plurality, occasional plurality or criminal participation. Thus, within the criminal participation, the accomplices carry out a secondary activity in the sense of facilitating, helping or promising the perpetrator (co-perpetrators) who commit the act directly. This activity of the accomplice takes place before or at the same time as the commission of the criminal act. In judicial practice, the modalities of complicity (previous, concomitant, moral, and material, negative) in which a person intentionally facilitates or helps the perpetrator to commit a criminal act have been shown.

KEYWORDS: plurality, criminal participation, complicity, authors, co-authors, Criminal Code

The issue of criminal participation, as well as complicity over time, has raised some issues regarding the relationship between the perpetrator of a criminal act and those who have a mediated participation in the commission of the criminal act.

Thus, complicity was considered an eminently accessory form of criminal participation. Compared to the old Criminal Code of 1968, where participation was provided in art. 23-31, the current Criminal Code refers to the author and the participants in art. 46-52. The explanatory memorandum of the current Criminal Code sought to correct the mistake in the previous Criminal Code in which the perpetrator was listed along with instigators and accomplices as a participant in the crime, although there was a qualitative difference between them; the perpetrator directly commits the deed provided by the criminal law, and the instigators and accomplices commit the deed through the perpetrator. Thus, in paragraph 2 of art. 46 was also regulated the situation of co-authorship required by doctrine and practice, being maintained the institution of improper participation, which became traditional in our law and proved to be functional without difficulties in practice, but being supplemented by the provisions on co-authorship.

To begin with, however, we should make some assessments of the plurality of offenders (when an offense is committed by the contribution of two or more persons in terms of the objective side having a common will in terms of the subjective side for committing the act) in order to later develop criminal participation in the form of complicity.

If in Chapter VI of the current Criminal Code, references are made to the author and the participants, it would result that the author could never be part of the participants and that the latter would be only co-authors, instigators and accomplices. From the analysis of Article 46, however, it follows that both in paragraph 1 when talking about the perpetrator and in paragraph 2 when talking about co-perpetrators, they are the persons who directly commit an act provided by criminal law.

From the point of view of the plurality of offenders, we can have a natural plurality, a constituted plurality and an occasional plurality of offenders or a criminal participation. For the natural plurality we have a plurality of criminals in the sense that the respective crimes can be committed only by the contribution of at least two natural persons. We can give as an example here the crime of bigamy by concluding a new marriage by a married person or the crime of incest provided in art. 377 C. pen. regarding consensual sexual intercourse between direct relatives or between brothers and sisters. However, there are also crimes in which the criminal action is necessary, such as the fight provided in art. 198 - participation in a fight between several persons or actions against the constitutional order provided by art. 397 - the

armed action undertaken in order to change the constitutional order or to hinder or impede the exercise of state power.

With regard to complicity in these types of crimes, we can show that, for example, in the crime of incest or bigamy, complicity is unique in the sense of help given for the crime by both active subjects (only in the case of co-authorship when both man and woman are people married at the time of bigamy and both know this).

Regarding complicity, several opinions have been expressed in the literature regarding the crimes of taking and bribery. Thus, the idea that the granting of aid by the accomplice is made to both perpetrators of the two crimes was credited, there may be complicity only in one of the two crimes or in another opinion that we would have dissociated bilateral crimes in which the acts of assistance directly for one of the authors would indirectly be an aid to the other (Pascu et al. 2015, 46).

We also consider together with the quoted author who revealed those opinions in the sense that there can be only one complicity regarding one of the two crimes, and if the evidence shows that acts of facilitation or assistance were performed for both active subjects of to the two crimes, we could have double complicity in those crimes.

Given that we would have a plurality with a larger number of people, also called collective plurality, here we consider that the minimum number of people must be at least three and we would give as an example here the crime of brawl with the phrase “brawl between several persons” as well as to art. 397 para. (1) “armed action” and para. (2) “committed by several persons together”, as the legislator did not specify the minimum number of persons for any of these offenses by the natural plurality of offenders.

From the point of view of the constituted plurality, things are simpler here because the form of the plurality of criminals is made by associating or grouping several persons to commit crimes, eloquently in this case being the provisions of art. 367 C. pen. regarding the establishment of an organized criminal group, art. 409 C. pen. regarding the establishment of illegal information structures, and art. 35 para. (1) of Law no. 535/2004 on preventing and combating terrorism (published in Official Gazette of Romania, Part I no. 1161 of December 8, 2004) - *the act of associating or initiating the establishment of an association for the purpose of committing acts of terrorism or joining or supporting, in any form, such an association.*

In such forms of plurality, there must be a multi-person group, structured, acting in a coordinated manner over a period of time in order to commit a crime.

With regard to complicity, in the case of the plurality constituted, the perpetrators will be liable in this form of criminal participation, provided that they intentionally facilitate or help in any way to commit a criminal act by the group constituted for the purpose of committing crimes. However, if they will help the group in the form of moral complicity through the promise of favoritism or concealment, we will be in the situation of *supporting the criminal group in any form (advice or help) or if it supports it materially, being similar to material complicity.*

The occasional plurality of *perpetrators or criminal* participation is when a greater number of persons participate in the commission of an act provided by the criminal law than is necessary for its commission.

In the Romanian Criminal Code, criminal participation refers to “*committing an act provided by the criminal law*”, considering that this term has a much wider scope and does not refer only to those who contributed to the criminal commission of a crime but also when the perpetrator commits the act without guilt because in both situations criminal participation exists.

If we were to refer to some European countries, such as France, for example, the perpetrator is the perpetrator of the crime; tries to commit a crime or, in the cases provided by law, a crime (art. 121-4), and the accomplice of a crime or a crime is the person who,

knowingly, through help or assistance, facilitated its preparation or consumption (art. 121-7). Also, in Italy, art. 110 refer to the punishment for those who participate in the crime, and in Sweden Chapter 23, art. 4 refer to complicity in the crime (*will be criminally liable... not only the person who committed the act, but also another person who facilitated it with advice or gestures*). In Germany in art. 25 shows similarly as in our country who is the perpetrator and co-perpetrators of a criminal act, without explaining, however, that they commit the act directly, and the accomplices according to art. 27 is the person who intentionally helped another person to intentionally commit an illegal act (excludes guilt).

This criminal participation is made only when the deed is provided by the criminal law (art. 15 para. 1 Criminal Code - the crime is the deed provided by the criminal law, committed with guilt, unjustified and imputable to the person who committed it), at the commission of the deed several people participate depending on the contribution of each and there is an intrinsic connection from a psychic point of view between the participants to commit an act provided by criminal law. It goes without saying that this participation through a psychic connection must exist either before the commission of the act or even at the time of the act. It is not necessarily obligatory to conclude an agreement prior to the commission of the deed, it can also be spontaneous, but it can also result from a tacit agreement.

There is criminal participation in all types of crimes (intentional or outdated - pre-intentional) where for their commission a single active subject is required as well as those that have a plurality of active subjects. It exists even when we have simple or complex, continuous, continuous, instantaneous crimes that admit participation. As an exception, we could present here the usual offenses in which we would mention art. 214 C. pen. - exploitation of begging, sexual harassment from art. 223 C. pen. (repeatedly claiming sexual favors) and art. 351 C. pen. usury (giving money with interest as an occupation by an unauthorized person) in which the participant must contribute a number of repeated actions that may give the character of habit or occupation.

From the point of view of the psychic attitude of the participants in Chapter VI regarding the author and the participants in the Criminal Code, we can speak of our own participation when everyone acts with the guilt of intention, or we have an improper participation provided in art. 52 C. pen. when the deed provided by the criminal law is committed with intent to which, however, another person at fault or without guilt contributes with acts of execution.

It is important for this criminal participation that the one who has an accessory participation, such as the accomplice, be prior or concomitant with the commission of the criminal act.

If we were to mention from a historical point of view, in the Criminal Code of 1864, complicity was provided in the provisions of art. 47 (*Provocative agents are those who, through gifts, promises, threats, abuse of authority or power, guilty plots, will be provoked to a crime or will be given instructions to commit it.*

Such provocative agents are those who, by any of the means listed in art. 294, will be directly provoked to commit a crime or an offense provided by the criminal code.

These agents are punished just like the perpetrator), and in the judicial practice of the time it was established that *“the innocence of the accomplice does not immediately attract that of the main perpetrator, because the crime of complicity consists in incidental deeds meant to prepare or facilitate the commission of a crime, and not in deeds that directly and immediately committing the crime and therefore, if the fact imputed to the accomplice does not meet the constitutive elements of the crime of complicity, lacking for example the fraudulent intention this circumstance cannot have any rooting on the main fact.”* (Cas. II no. 1485/916)

Also, in the same period, the judicial practice showed that the aggravating circumstances of the main author did not concern the accomplices, and the real circumstances

regarding the deed such as the place, time affected the accomplice only if they were known to him. In situations where there were several co-perpetrators when the crime was committed, it was shown that a co-perpetrator can never be an accomplice, as it is impossible for the same fact to constitute at the same time a main participation and an ancillary participation. In this sense was the French jurisprudence and doctrine - Grraud, II, 246 (Pastion and Popadopolu 1922, 26). The problem of the accomplice's liability was raised when the perpetrator of the criminal act was acquitted for lack of guilty will or fraudulent intent and when if there was no other alleged main perpetrator, the accomplice was also acquitted.

During that period, for the existence of complicity, *four conditions* had to be met (*Ibidem*, 101): a) to have a crime, because the punishment of this deed was lent to the accomplice (the existence of the crime was necessary and was not followed); b) the crime constituted a crime or misdemeanor, because there was no complicity in the matter of the contravention; c) the aid was given by accomplices with intent (it could not have been complicity on the part of the one who helped without knowing the guilty action of the offender). It was necessary for the crime to be intentional because, as Tanoviceanu pointed out there can be no complicity in unintentional crimes, whether they be crimes provided for in the Criminal Code or crimes under special laws. From then on, there was talk of negative complicity by not preventing the crime or not reporting it, but it was not allowed. It was provided only in art. 157 of the existence of complicity by omission in the case of a senior official who tolerated offenses - any senior official who, by deception, causes his subordinates to commit a crime or offense in the performance of their duties, or who, knowing such crimes or offenses on the part of his subordinates, tolerates them, shall be punished by the punishment applicable to those crimes or those crimes); d) for the existence of complicity, the instruction had to prove what kind of complicity it is (unfortunately it is not provided today in the legal provisions, and the courts refer only to the term of complicity).

In the case of continuous crimes, it was found that there was no complicity when, for example, the theft was committed when the accomplice did not take part.

The judicial practice of the time showed in some situations that it was necessary for the accomplice to have been aware of the criminal nature of the main fact, to have a criminal intent being necessary to be punished for complicity. In other cases, it was decided that the complicit intent of the accomplice had to be proved in the knowledge that the agent has to commit the constitutive acts of complicity, knowing that he is associated with a criminal act that provokes or favors this crime, actually working to commit the crime. And then, as now, complicity was an accessory fact that had to be attached to a main fact provided and punished by law.

In the Criminal Code of 1936 (published in the Official Gazette of Romania no. 65 of March 18, 1936) the complicity was provided in the provisions of art. 121 the accomplice being the one who intentionally: *1. Facilitates, facilitates or helps, the commission of a crime or an offense; 2. agrees with the perpetrators and their accomplices, before or during the execution of the crime, to conceal the proceeds of the crime, or to ensure the benefit realized, or to give them accommodation, escape or meeting, so as not to be discover or escape pursuit; 3. determines another to any of the acts provided in par. 1 and 2, if those acts were committed.*

At that time, the theory of the single crime was taken into account, which represented a classical and traditional theory in which all participants are responsible for the fact that they all wanted this and each did something to commit it. For this reason, most European legislations distinguished between participants who committed the important acts of the act and those who committed only secondary acts, who helped by deciding that the entire punishment should be given to the first category, and the others (accomplices, auxiliaries) to - a more severe punishment is given. The exception was French law which considered participation as a single crime but with equality for all participants as accomplices or

auxiliaries borrow the criminality of the main perpetrator, but are punished with an equal punishment. Here, too, complicity is a category or a form of *criminal participation*, providing as a first condition in paragraph 1 of art. 121 intention, being the general condition of all categories of participation. The other conditions were the act of complicity and a principal criminal act. Complicity could be material (consisting of an act of aiding or abetting the offense) or *moral* (of a nature to assist, facilitate or promote the commission of the offense) (Pop, et al.1937, 292).

The accomplice was the person who helps to commit the crime he neither determines the criminal resolution of the perpetrator nor took part in the execution of the crime. The forms or modalities of complicity were presented in the three paragraphs of art. 121, and it could be antecedent or concomitant. Complicity could be subsequent only if it was promised prior to or during the commission of the offense.

It is worth mentioning art. 122 in which the personal circumstances of one of the participants did not affect the other participants, and the real circumstances affected only if they were not known or predicted by them. The circumstances inherent in the act were real or part of it, as constitutive elements or as aggravating legal circumstances, or excluded the crime, as justifying facts.

In the Criminal Code of 1968 the complicity was provided in the provisions of art. 26 (an accomplice is a person who, intentionally, facilitates or helps in any way to commit an act provided by criminal law; the person who promises, before or during the commission of the act, that he will conceal the goods derived from it or that he will favor the perpetrator, even if after the commission of the act the promise is not fulfilled) having the same content as the provisions regarding complicity in art. 48 of the current Criminal Code.

From this perspective, we could give some aspects of the judicial practice of the former Supreme Court, which complicity involved the existence of acts of execution of a crime - committed by another person - to which a contribution was made by acts external to the incriminated action. The fact that the defendant did not know the value of the stolen goods and that he transported them in this case was irrelevant for the complicity; what was relevant from a subjective point of view, was the fact that the accomplice knew what the perpetrators were after and wanted to help them, thus also following the result of the crimes to which he contributed (Supreme Court, Penal Section, dec. no. 174/1980, 62). In another decision it is shown that, accomplice as provided by art. 26 was only the person who intentionally facilitated or helped in any way to commit an act provided by the criminal law, but also the person who promises, before or during the commission of the act that he will conceal the goods derived from it or that he will favor the perpetrator. In the latter way, the complicity was achieved at the date of the agreement between the author and the accomplice, since he was placed before or at the same time as committing the criminal act - and not at the date of fulfillment of the promise by the accomplice. (Supreme Court, Penal Section, dec. No. 244/1979, 69) Also, according to the principles contained in the former article 28 par. 2 of the Penal Code, the circumstances regarding the deed affected the participants only if they knew or foresaw them, or - in the case of premeditated crimes - if they could foresee them (Supreme Court, Penal Section, dec. No. 1641/1976, 67). Also in practice it was shown that there is no complicity if the defendant, without a previous or concomitant agreement, helped him on the perpetrator, after consuming the theft, to remove the goods from the unit (Supreme Court, Penal Section, dec. No. 2873/1983, Papadopol and Daneş, Repertoire of judicial practice in criminal matters for the years 1981 - 1985, 1988, 125). Also, if the defendant belonging to the group of aggressors was near the victims while they were beaten and dispossessed of their property, there is a moral complicity in the crime of robbery (Bucharest Municipal Court, Second Criminal Section, decision No. 197/1982, Papadopol and Daneş 1988, 46).

In another decision (TS criminal section, criminal decision no. 1789 of 1974 – Papadopol and Popovici 1977, 81) it was shown that the psychic position of the accomplice

was characterized by the will to commit the act of facilitating the author knowing the activity he will carry out and providing his socially dangerous result. In this decision, it should be noted that the accomplice in his volitional activity did not consider only his own deed, as he wanted to help the author, but also the deed of the author who seeks to achieve a certain result, he realizing the nature of the activity carried out by the author. For these reasons and according to the former art. 28 para. 2, there is the impossibility of holding the accomplice accountable for the deeds committed by the author insofar as he did not know them or did not foresee them.

Given that the provisions on complicity were not amended after 1990 by the Superior Court of Justice through the Criminal Section, Decision 1021 of 19 September 1990 allowed an appeal declared by the prosecutor on the grounds that for the accomplice who died during the trial, the acquittal the perpetrator for the non-existence of the deed, and for the accomplice the criminal trial was terminated. The Supreme Court considered this decision wrong because as soon as it was established that the deed did not exist and the acquittal was ordered on this basis, it was necessary that the acquittal be ordered on the same legal basis as the accomplice.

According to art. 48 of the current Criminal Code (Law no. 286/2009 on the Criminal Code published in the Official Gazette of Romania, Part I no. 510 of July 24, 2009 implemented by Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code, with subsequent amendments) states in paragraph 1: “An accomplice is a person who, intentionally, facilitates or helps in any way to commit an act provided by criminal law”, and in paragraph 2: “an accomplice is also a person which promises, before or during the commission of the deed, that it will conceal the goods derived from it or that it will favor the perpetrator, even if after the commission of the deed the promise is not fulfilled”, a legal provision that was the same in art. 26 of the Criminal Code of 1968, being similar to art. 121 of the Criminal Code of 1936.

In older criminal doctrine, complicity was defined as knowingly aiding and abetting an offense in one of the ways provided by law (Tanoviceanu 1912, 3).

From the legal norm provided in the Criminal Code and from the provisions regarding the perpetrator, who is the person who directly commits an act provided by the criminal law, *complicity is a secondary way of criminal participation.*

The participation of the accomplice will always have a mediated, indirect character, of facilitating the accomplishment of the deed by the author. We can show here that compared to the old regulations of both Article 47 of the Criminal Code of 1865 or art. 121 of the Criminal Code of 1936, where accomplices were punished to a lesser degree than the main perpetrator, later by the Criminal Code of 1968 and the current one, the punishment in the case of participants, including accomplices to a crime committed intentionally is as punishment provided by law for the author.

This complicity may precede the perpetration of the act by the perpetrator, when he in various ways materially helps the perpetrator (support, assistance, procurement of tools, making the necessary means to commit the crime) or when from a moral point of view, by advice or encouragement, helps the perpetrator to commit the act (moral complicity). It should be mentioned here that in order to be a moral complicity in this situation, the perpetrator must have previously decided to commit the act, because otherwise we no longer have a moral complicity that had the role of strengthening the author's resolution, but not we would find out in the situation of the instigator, who intentionally determines a person to commit an act provided by the criminal law.

Also, complicity can be concomitant when it helps the perpetrator to commit the act, complicity being also a secondary modality as he does not participate directly in the commission of the *act provided by the criminal law.*

If several persons directly participate in the commission of the act provided by the criminal law, they are *co-perpetrators* because they directly commit the act, even if they help in any way any of the other perpetrators to commit the crime.

Conditions of complicity

1. As provided in the criminal provisions, there must be an act provided by the criminal law committed by another person, directly, having the quality of perpetrator. It is necessary to commit a criminal act because without it there can be no complicity. As we showed at the beginning, criminal participation refers to "committing an act provided by criminal law" as there may be situations when the perpetrator commits the act without guilt, and the accomplice may be criminally liable.

There may be situations in which the perpetrator does not start the execution of the deed, and the attempt is not punishable for that crime, so that the accomplice will not be criminally liable unless in situations where his acts of facilitation would constitute a separate crime. Depending on the act committed by the perpetrator, the accomplice will be criminally liable for the act committed by him, but if a more serious act is committed he can only be liable for the intentional act by which he helped the perpetrator (this must be proved) and not provided for the commission of a more serious offense. Otherwise, he will be liable with the perpetrator even for an offense in which the intent is outdated.

2. Along with the author's activity in committing an act provided by the criminal law, there must be an effective contribution of the accomplice either through a material or moral contribution. It must be demonstrated whether the facilitation or assistance given was useful to the perpetrator. There may be situations in which if the help given was not useful to the perpetrator, we would be in the presence of a moral complicity that would have led to the strengthening of the criminal resolution of the perpetrator.

3. The legislator provided for an intrinsic connection from a psychic point of view between the participants to commit an act provided by the criminal law. Thus, in their own participation, all participants must act intentionally, as shown in the provisions of art. 47 - 49 Penal Code. If we are in the case of improper participation provided in art. 52, here the psychic attitude of the participants is different because the deed is committed with intent to which, however, another person through fault or innocence contributes with acts of execution. Complicity requires that the facilitation, help, or promise be made on purpose. Even if the criminogenic construct of the accomplice from the point of view of criminal responsibility is the same as the perpetrator (motivation, criminal intent, deliberation, criminal decision, act and violation of the criminal rule) there must be a common mental cohesion (conscience and will) with the author, even if the latter can act without guilt or fault. From the point of view of psychic cohesion, there is no legal provision stipulating that there must be an understanding between the author and the accomplice, there are sufficient acts of facilitation or effective help of the author's action, even if he (the author) does not know this. If there is no fraudulent intent on the part of the accomplice, he cannot answer in the form of complicity and there may be situations in which he may be a co-perpetrator, such as for crimes of guilt.

Ways of committing complicity

The provisions of art. 48 show in paragraph 1 the facilitation or aid that the accomplice intentionally gives when committing an act provided by the criminal law.

The acts of facilitation of the accomplice are those activities performed before the perpetrator by the perpetrator, being in the situation of previous complicity. These activities consist of procuring instruments or making them in order to commit the crime, giving sums of money in order to commit the crime or providing security during the commission of a crime,

being here in the form of material complicity or if the accomplice strengthens the criminal resolution of the author we are in the form of moral complicity.

In this sense, the judicial practice was pronounced when different crimes were committed, namely: Bucharest Court of Appeal, Criminal Section II, criminal decision no. 637/2016, where in the case of an offense of initiating, forming an organized criminal group, joining or supporting such a group showed that the act committed by the defendant by initiating the establishment of an organized criminal group (group formed for the purpose of committing smuggling offenses) also realized the constitutive elements of the offenses of complicity in smuggling by facilitation provided by the former art. 26 C. pen. rap. the art. 270 para. (2) lit. of Law no. 86/2006, since prior to the crime of smuggling committed various acts by involvement in taking over the shares in a company, made available to the group the hall where the cigarette maneuvers were performed, identified the business opportunity for the group and established the contact of the defendants with the authorized importers of tobacco. Also, the Bucharest Court of Appeal, Criminal Section I by criminal decision no. 395/2021, in a case regarding the illegal access to an information system provided by art. 360 of the Criminal Code showed that there is complicity in the crime of false material in official documents provided by art. 48 para. (1) C. pen. rap. the art. 320 para. (1) C. pen. against a defendant who provided an unknown person with an identity card for the purpose of obtaining a forged driving license, thus facilitating the forgery by counterfeiting, by an unknown person, of an official document (the driving license is officially registered in the sense provisions of Article 178 paragraph 2 of the Penal Code with reference to Article 176 of the Penal Code), a previous complicity being achieved. For the same defendant, a complicity in the crime of theft was also retained (art. 48 para. 1 C: pen. Rap. To art. 228 para. 1 C: pen. With application of art. 77 letter of the Penal Code) in the sense that it contributed to the crime of theft by prosecuting the injured person, accompanying the co-perpetrators to the crime and positioning the defendant next to the victim to allow the perpetrators to steal a wallet from the injured person's purse. In the same case, the respective defendant also committed the crime of illegal access to an information system provided by art. 360 of the Penal Code, being assisted by an accomplice who communicated to him the PIN codes mentioned in the documents identified in the stolen wallet (*material complicity*) and by accompanying him to the ATM to withdraw the sums of money (*moral complicity*).

Complicity in the form of aid can exist only during the execution of the deed by the perpetrator and we are in the form of concomitant complicity. The assistance can be given in several forms, namely by handing over objects for the commission of the crime, removing alarm systems or by assisting in the commission of the crime. In this sense, the Bucharest Court of Appeal, Criminal Section II, in the criminal decision no. 767/2020 regarding a crime of robbery provided by art. 233 of the Criminal Code, the court showed that one defendant helped the other co-accused by the manner of moral complicity as he witnessed a crime of robbery considering that there was a subjective connection between the perpetrator and the moral accomplice, the perpetrator being more reckless in his activities, having the psychic comfort that he is supported by the accomplices who assist in committing the deed. In this case, it was considered that the activity carried out by the accomplice should serve the perpetrator in committing the typical act.

However, in another older criminal case, the former Supreme Court of Justice, by unpublished Criminal Decision 1101/1993, considered that for the existence of moral complicity it is necessary to establish through evidence that the alleged accomplice knew the author's resolution to commit the crime. In that case, the presence of the appellant defendant with his brother or the perpetrator of the murder cannot be considered as moral aid, so a conscious contribution to the crime, because he followed the victim under the influence of alcohol and the impulse of a previous incident, without knowing that the brother he will hit him with a fork and without using the knife he was carrying.

In the situations in which a person helps the perpetrator of the criminal act after the consummation of the deed, we are no longer in the situation of a concomitant complicity of aid and we can be in the situation of the crime of concealment provided by art. 270 of the Criminal Code or favoring the perpetrator provided by art. 269 of the Criminal Code.

Also, in the form of concomitant complicity we are in the situation where a guard of a unit that lets several people steal goods from a unit, is complicit in the crime of aggravated theft and not in favor of the perpetrator provided by art. 269 of the Criminal Code.

In the provisions of art. 48 para. 2 we have both a previous complicity and a concomitant complicity, in which the accomplice promises before or during the deed, that he will conceal the goods derived from them or will favor the perpetrator even if after the deed, the promise is not fulfilled. The same provision was included in art. 121 para. 2 of the Criminal Code of 1936, as well as art. 26 of the Criminal Code of 1968.

The legislator imposed the condition that the person be an accomplice, to promise before or during the commission of the deed, because if he does so after consuming the facts, we can have two independent crimes, respectively: favoring the perpetrator provided by art. 269 of the Criminal Code and the concealment provided by art. 270 of the Criminal Code. In order for the person to answer in the form of criminal participation of complicity, no matter the form in which he promises the help given to the author for concealment or favoritism, he will be criminally liable even if the perpetrator does not fulfill the promise.

A similar provision was in the old Criminal Code of 1865 in provided art. 56 in which a person was an accomplice in the conditions in which before or during the commission of the crime or offense, he would have had an agreement to hide the hidden things that will come from the crime, excluding complicity in favor.

This promise of concealment or favor was maintained, considering that we also have a form of moral complicity, as this strengthened the author's criminal resolution, because he was sure that after the deed, he would be able to capitalize his goods or be favored by accomplices.

We could mention here an example from the judicial practice, where several people agreed with the manager to buy the goods stolen from him from management (pre-promised concealment), these people having the quality of accomplices in relation to the goods stolen from the manager (Supreme Court - Criminal Section, Decision No 1703/1983) (Ionescu in Antoniu 2006, 437).

In the current judicial practice, the Iași Court of Appeal, the criminal section and for cases with minors, by Decision no. 207/2020, in a crime of concealment provided by art. 270 of the Criminal Code ordered the termination of the criminal trial due to the intervention of the defendant's accomplice in a theft committed by two co-perpetrators both for the crime of concealment which was committed in the form of recidivism and for the crime of complicity in aggravated theft provided by art. 48 reported to art. 228 paragraph 1 - art. 229 para. 1 lit. b) and d) and paragraph 2 letter. b) of the Criminal Code with the application of art. 41 para. 1 of the Criminal Code, considering that in some stolen goods he helped to commit the deeds, and in others he concealed them without having a promise that he would conceal the goods from the theft.

If so far there have been examples of previous or concomitant complicity committed by the facilitation or assistance given by the accomplice we can also have a complicity by inaction, for example, when the porter of a company fails to close the front door at a time when he was obliged to perform this task. It is necessary to see complicity by omission in order to be able to distinguish it from *negative complicity* (Pascu 2015, 553-554).

In the Criminal Code there are two offenses provided by art. 266 of the Criminal Code regarding non-denunciation, when a person becomes aware of a deed provided by the criminal law against life or which resulted in the death of a person, does not immediately notify the authorities and art. 410 of the Criminal Code regarding the non-reporting of crimes against

national security, where only for these crimes there is an obligation provided by law to notify the authorities. Here we are in a situation of negative complicity when a person has become aware of the preparation or commission of some of those acts and does not notify the authorities.

In judicial practice in a drug trafficking offense, (Law no. 143/2002, art. 2), Bucharest Court of Appeal, criminal section I, by Decision no. 1568/2019 considered that the wife of the defendant who was sent to trial for moral complicity by inaction, an act of complicity that takes the form of an omission, can speak of this complicity by omission only when the accomplice was required to perform the omitted action. The act of the defendant not to stop the activity of the defendant by denouncing him for drug trafficking is not equivalent to an act of participation in the respective crime, provided that she did not have the obligation to act to stop the activity of the husband. The court found that complicity could not be qualified as mere approval of the deed in the absence of a psychic influence that could be proven, for example, by removing the last doubts or restraints of the author. The mere tolerance of the existence of drugs in the common home of the two cannot be qualified as an act of strengthening or maintaining the author's resolution to commit drug trafficking acts, and not denouncing the deed does not constitute acts of assistance (in fact, there is no obligation law for denunciation, so that one cannot speak of complicity by omission).

In judicial practice, we can have situations in which a continuous crime and material complicity take this continued form, so the Bucharest Court of Appeal, by Decision 1382/2019 found that the deeds of a defendant who based on the same criminal resolution in a period of for a year, he repeatedly received sums of money, the advance payment of motor vehicles ordered by other persons within the intra-Community space, as well as the corresponding proforma invoices, which he handed over to two other defendants, instructed them to make external payments and draw up fictitious fiscal invoices prejudicing the state budget with a large amount of money, meet the constitutive elements of the crime of material complicity in tax evasion in aggravated form provided by art. 48 Criminal Code reported in art. 9 para. 1 lit. c), para. 2 of Law no. 241/2005 with the application of art. 35 para. 1 Criminal Code (20 material acts).

We can have a complicity in instigation in the situation where the accomplice offers goods or a sum of money to an instigator so that he can determine the perpetrator to commit the deed, a complicity in complicity when an accomplice helps another accomplice because the latter to assist the perpetrator in committing the act. There may also be instigation to complicity when the instigator determines a person who by acts of complicity to assist the perpetrator in committing a crime.

For the existence of complicity, the form of direct or indirect intention is mandatory in the sense that the action can constitute a material or moral support for the author or provides the result of his deed, although he does not pursue it, accepts the possibility of its production.

Given that the activity of a defendant is materialized in material acts of complicity concomitant with the crime of robbery committed with two other defendants, the fact that he accompanied one of them not to be alone when he recovers his debt, Bucharest Court of Appeal - criminal section I, Decision no. 755/2020 considered that the activities of the accomplice enhanced the confidence of the two defendants that their numerical superiority will create the necessary mental pressure for the injured person to give them goods and money on account of the alleged debt, so that the acts of material complicity were absorbed by the documents. of execution corresponding to the crime of robbery retained in the charge of the defendant through the form of participation of the co-author provided by art. 46 para. 2 of the Criminal Code for the crime of robbery.

As mentioned in art. 49 accomplices to an act provided for in the criminal law committed with intent are sanctioned with the punishment provided by law for the perpetrator, but there is an obligation that when establishing the sentence the judge takes into account the

contribution of each to the crime, as well as the provisions of art. 74 of the *Criminal Code* which shows the general criteria for individualization of punishment. There may be situations in which the punishment established by the judge for the accomplice, depending on the circumstances and the manner of committing the crime as well as on the other criteria provided by art. 74 to give a greater or lesser punishment to him than the punishment applied to the perpetrator.

Even if the system of equalization applies to us in the sense that there would be a parity of punishment between accomplices and the main perpetrators or the system of diversification in which the actual contribution of each participant would be made in a certain form of hierarchy in our legislation, it is preferable to equalize in the sense that all participants contribute to the commission of a criminal act. It is to be discussed here how to punish those who have a certain connection with the perpetrators of the acts of affinity or kinship, but the legislator left it to the judge's discretion, when applying art. 74 lit. g) of the *Criminal Code* which also refers to the family and social situation.

When an offense provides that we have a family member who has committed a complicity, for example, favoring the perpetrator provided by art. 269 of the *Criminal Code* and the crime of concealment provided by art. 270 of the *Criminal Code*, the accomplice is not punished if he is a family member, as provided by the provisions of art. 177 *Criminal Code* - regarding family members.

From the point of view of the personal circumstances concerning the person of the author or a participant, they do not affect the other participants in the commission of a criminal act (art. 50 paragraph 1 of the *Criminal Code*). According to art. 50 para. 2 of the *Criminal Code*, the circumstances regarding the deed affect the perpetrator and the participants in the commission of the deed only insofar as they knew or foresaw them.

The problem that arises in the situation of accomplices who participate in the commission of a criminal act through the means of facilitation, assistance, by promise is to prove whether they knew the circumstances of the act or provided for them. For example, the Bucharest Court of Appeal, criminal section I, by Decision no. 433/2017, showed that several defendants committed a crime of aggravated robbery followed by the death of the victim provided by art. 233 - 234 lit. d) and f), par. 1, and art. 236 of the *Criminal Code*, while other *defendants provided security*, being convicted for complicity in the attempted robbery provided by art. 48 para. 1 reported to art. 32 rap. 233-234 alin. 1 lit. d) and f) *Criminal Code* with the application of art. 77 lit. a) *Criminal Code* considering that there can be no complicity in the crime of aggravated murder given that the criminal decision taken by the defendants consisted in stealing property from the victim's home (which they knew was an elderly person unable to defend himself), were unaware that violence was to be inflicted on the victim, as they could not foresee that it could cause serious harm, including death; or according to art. 50 para. 2 of the *Criminal Code*, the circumstances regarding the deed affect the participants only insofar as they knew or foresaw them. Only on the basis of certain evidence in the accusation can the presumption of innocence established by art. 4 of the *Code of Criminal Procedure*, in favor of any person otherwise it operates fully by virtue of the principle in *dubio pro reo* (any doubt in the formation of the conviction of the judicial bodies is interpreted in favor of the suspect or defendant).

In another case solved this time by the High Court of Cassation and Justice, by the criminal Decision no. 239/A/2019, it sentenced a defendant to complicity in the crime of abuse of office provided by the old legislation, in art. 26 of the *Criminal Code* 1969 rap. art. 132 of Law 78/2000 combined with art. 248 and 2481 of the *Criminal Code* of 1969. Both the court of first instance and the supreme court, although they retained a complicity (probably concomitant) with the commission of the abuse of three other defendants, did not prove the aid, if there was an agreement between the accomplices and the other defendants and not even if there was a mental cohesion between the accomplices and the perpetrators and if the

accomplices without the authors' knowledge wanted to help them intentionally commit the acts of abuse. The appellate court did not hold all the defendants liable to cause damage, not even in terms of causing a significant disturbance to the smooth running of the institution as provided in the previous Criminal Code. Even the Supreme Court held in the decision that from the perspective of the requirements of objective complicity specific to abuse of office, an incorrect or incomplete documentary justification of some operations is not sufficient to contain the crime, it is necessary to verify at the same time whether those operations were carried out reality and what was their legal basis or content. This is because one of the requirements of the objective side of the crime of abuse of office is to cause damage which means a corresponding loss of assets - tab 147 of the Decision. For this reason, we consider that the supreme court erred in failing to demonstrate when the accomplice made the criminal resolution to assist the other co-accused in committing the crime of abuse of office, strangely enough that the complicity was retained even unknowingly where the appellant understood all the while that through his activities he does deeds permitted by law, he being convicted without proving the existence of the intention. We do not believe that the alleged crime of abuse can be lent to accomplices as to the existence of the criminal intent which should have been demonstrated and not presumed. In this sense, the court did not demonstrate as required by art. 28 para. 2 of the Criminal Code of 1969 (the same content has the same as art. 50 para. 2 of the current Criminal Code) that several cumulative conditions must be met, namely: the provision by the accomplice of the action or inaction to be executed by the perpetrator and the consequences them, the joining of the accomplice's act to the action or inaction performed by the perpetrator, the acceptance or pursuit of the accomplice of the foreseen consequences and the effective contribution of the accomplice to the commission of the deed - see Criminal Decision no. 2892/2006 and I.C.C.J. - Criminal section.

Also, the supreme court did not even clarify whether at the time of taking the criminal resolution of the accomplice, he knew of a state (the investigated issues were ordered by collective decisions of the County Council), *situations* (Directed by accomplices was subordinated to the County Council), or circumstances (exercising the function of director of the accomplice) and that he would have known the facts of the co-perpetrators of abuse of office in order not to apply the provisions of art. 30 para. 1 Penal Code.

References

- Antoniou, George (coordinator). 2006. *Noul Cod Penal [The New Penal Code]*, vol. I (art. 1-56). Bucharest: C.H. Beck Publishing House.
- Criminal Code of 1936 published in the Official Gazette of Romania no. 65 of March 18, 1936.
- Law no. 286/2009 on the Criminal Code published in the Official Gazette of Romania, Part I no. 510 of July 24, 2009 implemented by Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code, with subsequent amendments.
- Law no. 535/2004 on preventing and combating terrorism published in the Official Gazette of Romania, Part I no. 1161 of December 8, 2004.
- Pascu, Ilie, et al. 2015. *Explicațiile noului Cod penal [Explanations of the new Criminal Code]*. Vol. I, Art. 1-52. Bucharest: Universul Juridic Publishing House.
- Pastion, I. Paul and Popadopolu M.I. 1922. *Codul penal adnotat [Annotated criminal code]*. Bucharest: Socec & Comp. Bookstore Publishing House.
- Pop, Traian et al. 1937. *Codul penal adnotat [Annotated criminal code]*. Vol. I, Partea Generală (Art. 1-183). Bucharest: Socec & Comp. Bookstore Publishing House.
- Tanoviceanu, Ioan. 1912. *Curs de drept penal [Criminal law course]*. Vol. II. Bucharest: Socec & Comp. Bookstore Publishing House.

The Problems of Third World and United Nations

Sabeen Azam

*M. Phil International Relations, Greenwich University, Pakistan
cliquish.hansell786@gmail.com*

ABSTRACT: In the International scenario, the world order is shifting from time to time. From post-modernism to the current modern era, the terms and relations of the countries have been gone through changes. The previous First, Second and Third world concepts are still going through alteration. The term "third world" was coined to designate nations that did not develop economically capitalist (the first world) nor was part of the communist system of the Soviet Union (second world). The term became inappropriate and then later disappeared. But the recent history of each country has forced us to rethink about the nations who are considered within or outside the group. Based on the characteristics which each class possesses out of the all the existing countries of the world. The main international organization United Nations must revisit the reforms and ought to bound the member states to follow international law. As the exploitations and balance of the power should be maintained. The key role is of the United Nations to maintain the development in all countries of the world.

KEYWORDS: Term, Third World, United Nations, Role, Development

Introduction

The first French economist to use this distinction is said as Alfred Sowie, in a 1952 issue of the magazine L'Observateur, entitled "Three Worlds, One Planet". It was in the Third World countries of Asia, Africa and Latin America, marking the third state in the French Revolution. It was then agreed that the economic and political situation was similar to that of countries in the south of the planet, so the term could refer to both geographical location and the level of geopolitics or economic development (Worsley 1970).

For this reason, it is difficult to find a country as a Third World because everyone's circumstances have changed, making it difficult to put them all in the same category. However, efforts are still being made to list and limit their features.

Features

The importance of the term is its ultimate goal that the countries in this category have all kinds of support from the rest of the world. The current international policy seeks to develop strategies to reduce inequality by focusing on third world countries. Below we describe the most prominent features of the countries belonging to this country:

Small Technical Development

In Third World countries, some of the available technological advances are usually introduced by foreign companies or other countries with economic activities. Only those involved in these activities have access to technology, while most of the population is completely unaware of it. It refers not only to communication technology but also to other areas of life such as transport, infrastructure, health, basic services and education, which directly affect the quality of life of its inhabitants (Cooke 2004).

Low Level of Industrialization

As a result of very little technological advancement and low level of education, it can be said that the so-called Industrial Revolution did not pass close to these countries. Their production

systems are neither dangerous nor very efficient, both in terms of technology and process. This often leads to wastage, misuse or low productivity of the natural resources available to these countries (Cooke 2004).

Economy dependent on exports of agricultural products and raw materials

Since its production process is quite obsolete and the small technology in it is usually carried out by foreign agents (foreign companies and other countries), its economy is mainly based on basic products because it does not have the necessary information or methods to implement. The price of these basic products is determined by the market of the big companies that buy them and the countries that manufacture them can say very little about it. This makes them financially dependent on agents who in turn are the ones who usually invest in the product (Cooke 2004).

Increase in foreign loans

One of the defining characteristics of these countries is usually their foreign debt, which is considered a vicious circle from which very few people can escape. By relying on both countries or foreign companies to negotiate or exchange their products and resources, they lose almost all of their contracts. They need to borrow to acquire the required technology and knowledge required for their production activities. Still, after implementing them, they do not receive much to cover the investment received for their products. As a result, its debt increases every day, and its GDP is proportionately lower (David 1991).

Significant population growth

In general, these countries have provocative population growth, resulting in very high infant mortality rates. To overcome this issue, policies have been developed that seek to curb the birth rate, ranging from the distribution of free contraceptives to restrictions on those who have legal rights. But there are more children than allowed (Cooke 2004).

The reason for stopping the increase in birth rates in these countries is that where there is a large population, very few resources should already be distributed to as many people as possible, so that there is less equality for everyone. When more people are available than resources, it's about population, which is a common feature of the Third World (David 1991).

Political instability

Historically, and until recently, Third World countries were colonies of other countries. Borders and political differences arose between the nations that colonized them, conflicts which still exist today. In such countries, dictatorship is common, and democracy is lacking, so rebellion, corruption, armed conflict, violence and insurgency or civil war are very common for reasons ranging from religious to economic. This exacerbates the plight of these countries and hinders their economic recovery (Harris 1987).

Low level of industrialization

As a result of very little technological advancement and low level of education, it can be said that the so-called Industrial Revolution did not pass close to these countries. Their production systems are neither dangerous nor very efficient, both in terms of technology and process. This often leads to wastage, misuse or low productivity of the natural resources available to these countries (David 1991).

Lack of health and education system

Due to low economic status and high congestion, it is difficult for all residents to get a better health and education system. As a result, many of these countries have diseases that are virtually non-existent, illiteracy rates are high and access to education is low. Outbreaks appear to be exacerbated in Third World countries, due to a lack of medical supplies (such as vaccines and antibiotics, among others) and a lack of systems that provide some supply to the entire country (Cooke 2004).

Standards of living

In addition to political, technical, economic, health and education issues, the quality of life of people living in Third World countries is severely affected by the absence of labor rights. As a result of globalization, large international companies moved part of their production process to these countries because of how cheap the labor force (mostly unskilled) could be, including child labor and labor exploitation which often considered slavery and Poverty rate. Another important feature of Third World countries is that they have high levels of poverty, the causes of which are considered both external and internal (Harris 1987).

Various international and non-governmental organizations are trying to implement measures to reduce these levels, but inequality in these countries is still uncommon.

A small part of the population concentrates on almost all economic and political power, it forms the considered elite or upper class, while the rest live a life of uncertainty called poverty or extreme poverty (i.e., lower social class). That is why the absence of a middle class is common. Gross Domestic Product (GDP) or per capita income of these countries is generally the lowest in the world and often declines (Escobar 2011).

Term replacement

The term "third world" or "third world countries" has been replaced by developing, under developing or backward countries, which, more or less, meet the above characteristics due to the inevitability of a natural disaster., But for historical reasons (social, political or economic) (Cooke 2004).

Human Development Index (HDI)

With the Human Development Index (HDI) measurement, the United Nations (UN) ranks as the developed countries with the lowest indicators. This measurement considers life expectancy at birth, adult literacy rate, enrollment rate at all three levels of education, and each country's GDP. The United Nations has designated the following developed countries:

This feature includes loss or lack of access to essential resources such as drinking water, food, electricity, and information, either due to lack of proper distribution system or due to pollution or climate change, which has affected them. All of this increases the mortality rate every day and lowers the life expectancy of its population (Worsley, 1970).

Poverty Rate

Another important feature of Third World countries is that they have high levels of poverty, the causes of which are considered both external and internal. Various international and non-governmental organizations are trying to implement measures to reduce these levels, but inequality in these countries is still uncommon (Escobar 2011).

The UN and the Third World Countries

The United Nations, formed after the League of Nations on June 26, 1945, has become controversial. It has deviated from its original purpose and started following the lead of a few

preferred powers. The League of Nations played an active role in the economic, economic, and political arenas but failed to bring peace to the world. In order to save the world from the Third World War, all the member states of the United Nations are members of the General Assembly, while the number of members of the Security Council is (11) with five permanent members who have veto power. These countries are the United States, Britain, Russia, France, and China. The General Assembly meets once a year but may be convened at any time in an emergency (Tomlinson, 2003).

Let us now turn to the question of whether the United Nations has played its role well in recent years. Has the world really moved away from the dangers of war? Do member states still have full confidence in their performance?

In the last two decades, the world has been divided into two parts. The factionalism of the United States and Russia has crushed Asian and Third World countries. After the disintegration of Russia in 1991, the world changed into a new world order. The G8, an organization of economically and economically stable countries, emerged, while staggering and crutching countries resorted to the SARC. Rich countries became richer and poorer countries went below the poverty line. As a result, the current division of the world is a division between the rich and the poor. According to experts, the third world war will now be between the rich and the poor. For developing countries, the United Nations is no longer a forum for resolving issues but a means of using force against them (Harris 1987).

Decisions made by the United Nations in the last few years have been made only to please the superpowers. They had the power of powerful factions. Whether it's the use of force in Iraq, the military operation in Afghanistan, the sanctions on Iran's nuclear program, or the resolutions against North Korea, these are all unilateral and counter-terrorism tactics. After 9/11, the United Nations emerged as the only diplomatic institution of the United States and Britain. Unjustified military action in Iraq has undermined world peace. The whole world is on fire right now. Suicide bombings and daily attacks on US and British troops have become a source of concern for the United States and its allies. It was not long before the United Nations authorized an invasion of Afghanistan. Under the pretext of capturing Osama and Mullah Omar, the scope of this war has been extended to the borders of Pakistan. The operation in the Northern Areas and Swat is being carried out at the behest of the forces behind it. Today, nations are concerned about Iran's nuclear program. Today, North Korea's nuclear program is a wake-up call (Tomlinson 2003).

Who will guarantee the nuclear program of the United States, Britain, France and China?

Why doesn't the United Nations see terrorism in Palestine and Kashmir, which is growing on the bones of the United States and Britain? Why is the scale of quality different here? Why does the US veto the pet against Israel? Why is no action taken against Dina's biggest terrorist country India which is crushing 700,000 innocent Kashmiris? Humans do not live here. Is the violation of human rights hidden from the eyes of the United Nations?

It is better to stop this drama now which has no authority to implement its own resolutions. The silence of the world on the aggression of Israel and India is significant. Perhaps Third World countries are doomed. It is futile to associate them with any hope from the American people.

A living example of Third world practices

A living example of Third World practices is the recent ban on some of Pakistan's religious parties by the Security Council. Three religious parties, were banned without hearing Pakistan's position after the Bombay bombings. It is tantamount to robbing any country of its sovereignty. Action against any country without investigation, without evidence and without solid evidence is open terrorism and bullying (Roul 2015).

United Nations a Tool for Some Powerful Countries

Today, third countries or developing countries are fighting for their survival. They face internal and external threats. Unfortunately, there is no world forum to hear them. The United Nations has become a tool of some powerful countries. Some countries are using it against weak and economically weak countries to achieve their goals. The currency of these countries is depreciating against the dollar day by day. Inflation is on the rise. 33% of the budget of a developing country like Pakistan is being spent on the markup of these loans. Programs of organizations like UNESCO and UNICEF are like charities for these countries. In these circumstances, instead of healing the wounds of these countries, the United Nations is working to increase the conditions every year. The global market, which is monopolized by a few countries and is favored by the United Nations, is bent on destroying the economic condition of third world countries. In these circumstances, instead of healing the wounds of these countries, the United Nations is working to increase the conditions every year (Tomlinson, 2003).

Third World Countries in the World

In today's world UN has set few parameters for the third world indication. The names of the countries are mentioned as under:

- Africa

In Africa, Angola, Burkina Faso, Benin, Burundi, Comoros, Chad, Ethiopia, Eritrea, Guyana, Gambia, Guyana – Basao, Liberia, Lesotho, Madagascar, Financial, Malawi, Mauritania, Nigeria, Mozambique, United Republic of Tanzania, Democratic Republic of the Congo, Sao Tome and Principe, Rwanda, Central African Democracy, Senegal, Somalia, Sierra Leone, Sudan, South Sudan, Uganda, Zambia, Djibouti, Gabon, and Algeria are listed as underdeveloped countries by UN indicators (UNDP 2021).

- United States

In US, Haiti, Belize, Costa Rica, Colombia, Cuba, Saviour, Ecuador, Nicaragua, Venezuela, Paraguay, Panama, Peru, Uruguay, and Dominican Republic are listed as underdeveloped countries by UN indicators (UNDP 2021).

- Asia and Oceania

In Asia and Oceania, Bangladesh, Afghanistan, Bhutan, Burma, Caribbean, Cambodia, Yemen, Solomon Islands, Lao People's Democratic Republic, Nepal, East Timor, Vanuatu, Mongolia, Saudi Arabia, Syria, and Iraq are listed as underdeveloped countries by UN indicators (UNDP 2021).

Conclusion

The global market, which is monopolized by a few countries and is favored by the United Nations, is bent on destroying the economic condition of third world countries. The point is to revisit the United Nations charters, which do have the power to make independent decisions and their implications. Third world countries are no longer afraid of war, they don't want atomic bombs. They need a livelihood, not a weapon to fight, or the veto power must end. Or all stakeholders should also have the power of veto power to represent their countries. Then the balance of power will change and the exploitation of third world countries will stop.

References

- Cooke, B. 2004. "The managing of the (third) world." *Organization 11*(5): 603-629.
David, S. R. 1991. "Explaining third world alignment." *World Politics 43*(2): 233-256.

- Escobar, A. 2011. *Encountering development: The making and unmaking of the Third World* (Vol. 1). Princeton University Press.
- Harris, N. 1987. “The end of the ‘third world’?” *Habitat International* 11(1): 119-132.
- Roul, A. 2015. “Jamaat-ud daawa: into the mainstream.” *CTC Sentinel* 8(4): 1-26.
- Tomlinson, B. R. 2003. “What Was the Third World?” *Journal of Contemporary History* 38(2): 307-321.
- UNDP. 2021. United Nations Development Programme, *Human Development Reports*. <http://hdr.undp.org/>
- Worsley, P. 1970. *The Third World*. Chicago: University of Chicago Press.

Valences of Education

Ioan-Gheorghe Rotaru

*Professor Ph.D.Dr.Habil. 'Timotheus' Brethren Theological Institute of Bucharest, Romania
dr_ionicarotaru@yahoo.com*

ABSTRACT: Today's society is constantly evolving and it is not enough to learn just to become something for tomorrow, but it is necessary to be able to cope with the multiple demands of life. Humanity sees education as a practical, social, current and permanent issue, an indispensable tool for achieving the ideals of peace, freedom and social justice of a nation. If people aspire to a materially, socially and spiritually emancipated society, parents and teachers will find a way to make a common front together without excluding the child, helping him tactfully and gently to accumulate information, knowledge, but also to avoid many unpleasant events that can seriously mark him later in life. A properly educated child is a gain for society, and his education materializes both at home and in educational institutions. Education is and must be treated as a priority activity of society. High quality education is a necessity and that is why it must become a cornerstone of the society in which we live.

KEYWORDS: education, priority, educational system, formal education, non-formal education, informal education

Education, a priority of any society

"Every person must face the practical realities of life—its opportunities, its responsibilities, its defeats, and its successes. How he is to meet these experiences, whether he is to become master or victim of circumstances, depends largely upon his preparation to cope with them—his education" (White 2001, 5), said the American writer Ellen G. White.

Humanity sees education as a practical, social, current and permanent issue, an indispensable tool for achieving the ideals of peace, freedom and social justice of a nation. If people aspire to a materially, socially and spiritually emancipated society, parents and teachers will find a way to make a common front together without excluding the child, helping him tactfully and gently to accumulate information, knowledge, but also to avoid many unpleasant events that can seriously mark him later in life. A properly educated child is a gain for the society, and his education materializes both at home and in educational institutions.

The purpose of education is to prepare the child for life, for his future, for the world in which he shall live. The purpose of home and school education is to prepare the child to be able to settle conflict situations, while preserving his love for the truth and thus making him much more balanced and stronger.

Immanuel Kant said that man can only become human through education, which is very true, but this requires a quality education system, with competent and highly qualified teachers, with teachers that have access to technology and to profile, specialized education. Education is and must be treated as a priority activity of the society. High quality education is a necessity and that is why it must become a cornerstone of the society in which we live.

We must start from the idea that the access of individuals to education means giving equal opportunities to all, such as the promotion and implementation of policies for the integration of children with special needs in the common normal educational system. An ideal school is one that does not exclude children with special needs, through direct and indirect means, such as: marginalization by their colleagues or lack of attention from their teachers.

Children go to school to acquire the necessary skills, to make them able to play their chosen roles for which they have prepared in the society of which they are part. Not only parents or teachers are responsible for the education of children and young people, but also

the students. Adults can also lead the scholar, but if they try to push him to school from behind, they will only create opposition from his part, because the main goal is to accumulate information and to form correct and appropriate skills corresponding to the society from which they are part.

The parents were once children and it depends a lot on how they were raised. Their education, like ours of the majority, also had certain deficiencies, certain shortcomings and the wrongly learned habits are difficult to be replaced in adulthood, and sometimes these gaps can never be replaced. Because of this, many parents try to raise their children according to their own rules and methods, but they make a mistake by experimenting the rules on them. In turn, parents also need education to raise their children. This is a clear proof that man learns as long as he lives, education means the development of intellectual and of moral faculties. Man learns from the first years of life, how to survive. With the first steps we learn to talk, to walk, to button up our clothes.

Today's society is constantly evolving and we are not just learning to become something for tomorrow, but we are learning to be able to cope with the multiple demands of life. For example, a woman in society will have the role of mother, wife, employee, supervisor or teacher for her child, and the list could go on, and all these are learned every day of our life, which is why we need permanent training for a quality life. "True education does not ignore the value of scientific knowledge or literary acquirements; but above information it values power; above power, goodness; above intellectual acquirements, character. The world does not so much need men of great intellect as of noble character. It needs men in whom ability is controlled by steadfast principle" (White 2001,179).

Education has in it the power of change

"Character building is the most important work ever entrusted to human beings; and never before was its diligent study so important as now. Never was any previous generation called to meet issues so momentous; never before were young men and young women confronted by perils so great as confront them today. At such a time as this, what is the trend of the education given? To what motive is appeal most often made? To self-seeking. Much of the education given is a perversion of the name. In true education the selfish ambition, the greed for power, the disregard for the rights and needs of humanity, that are the curse of our world, find a counterinfluence" (White 2001,179).

In his turn, Nelson Mandela said that education is the most powerful weapon that can be used to change the world we live in. Looking at the teachers from various educational institutions we realize that many things can be learned, starting from the fact that the profession of educator must be drawn from an authentic, permanent vocation, which should bring on its foundations, the real desire to transmit further knowledge, values, moods, balance, elements necessary for the personality formation. Education is like an initiatory labyrinth, in which the teacher is both a mentor and a spiritual guide, because not only the mind must be cultivated, but also the body and especially what defines us as human beings, the spirit.

"Our ideas of education take too narrow and too low a range. There is need of a broader scope, a higher aim. True education means more than the pursual of a certain course of study. It means more than a preparation for the life that now is. It has to do with the whole being, and with the whole period of existence possible to man. It is the harmonious development of the physical, the mental, and the spiritual powers" (White 2001, 9).

Nowadays, is observed the phenomenon that everyone learns everyone, namely, everyone feels obliged when a simple question is asked to build an empire of answers, scenarios or projects, which are more or less sophisticated and which pretend to be full of wisdom. Some teach you how to grow, how to develop, how you should spread your wings, so as not to tangle in them when you rush with full speed forward, others initiate you, encourage you to see not only your

qualities, which can be fleeting, but above all they initiate you to know the limits that should push you to go on and on. On the other hand, we will find those who instruct you to go forward with all your forces, seeing you on the edge of the abyss, convinced that it will not be their fault when you will break your neck, those who encourage you in a wrong direction, those who make you have courage in evil, in heresy and immorality, becoming addicted to things that can disappear overnight. Every man receives two kinds of education, one that others give him, and another much more important, which he acquires himself.

A really good teacher will always know how to guide you in such a way that you can very well select the information you will need, as well as the value of the people you will meet in life. Through education, we can acquire, we can add the things we do not have from birth. Jean-Jacques Rousseau said: "We are born weak and we need strength; we are born helpless and we need help; we are born limited and we need judgment. What we are missing when we are born, and which we need later, is provided to us through education." "Everything we don't have from birth and what we need when we grow up is given to us through education. This education comes to us from nature, from people or from things."

Education can make a difference

Over time, education has been achieved in a diffuse way, through more or less studied methods, based on instinct and senses. Over time, for pragmatic reasons and for the efficiency of education, it has undergone major changes, it has become rational, structural and organized. Education is oriented towards achieving a goal, which involves establishing stages that have the role of reaching certain limits.

The importance of education has always weighed in favor of the training of educated and evolved citizens, regardless of the specifics and characteristics of the societies to which they belonged at one time. A society whose future was secured by fighting and wars required a warrior, military education, because it trained fighters and continuously sought techniques and methods to master the specific skills of fighters. A society whose future was ensured through negotiations and collaborations required an education through which the skills of diplomacy and relations were developed and cultivated, a society that lived through trade and exchange of goods educated its young people so that they could meet economic, commercial demands. Regardless of the historical moment and the social specificity, the importance of education was permanently manifested, differing only the techniques and methods of application, as well as the goals taken as a target.

Education is carried out on different levels, respectively: at the level of the family, of the environment in which we are born and grow and in an institutionalized system, respectively schools and various educational institutions. The first factor that forms the individual is the family, in which a huge influence is exerted on the individual, even indirectly, there laying the foundations of the first elements of conduct, because the family forms more than informs. At the school level, education is achieved through systematic and continuous methods, which have the role of forming, developing, discovering skills, attitudes and behaviors of each child. Education can also be achieved through the Church, an education that does not necessarily have to be of a religious nature, but one of a moral, civic, social, aesthetic nature. The educational influence of the Church can also give remarkable results.

Cultural institutions, the media, children's and youth associations, charities, non-governmental organizations, all these can support the process of education and training in a beneficial way, coming in to support the educational institutions. All these plans through which education is achieved must be in a collaborative relationship, so that the result to leave its mark on the society in a natural way, and the level of education to be high.

A society, whose members have shortcomings in education, is a society without hope for a good future, a society in which can not be established rules that have a role in the

development, in the individual and collective evolution. Education must meet the requirements of national and international development and is achieved in the perspective of an ideal of human personality in accordance with historical and cultural references. The importance of education in our society is huge, because an educated, trained generation, to which moral, cultural and historical values have been passed on, can carry on the legacy received from their predecessors and can give a better chance to the future. An educated society can differentiate between good and evil, between negative and positive influences.

Education develops

Education in a person's life has a very important role in the sense that it develops countless sensitive, emotional, as well as pragmatic aspects of life. Education, by definition, is a social phenomenon, which represents the transmission of data, information and existential feelings of generations about culture and society. Education develops the style of a man, who in the end teaches himself this kind of learning, learning that helps him to form a purpose in life, to form his future, but also the quantity makes the difference in this case, and depending on the teachings received, in the end, the personalities are also different. For example: a man full of culture and learned by the book, will never be the most popular or the one who knows most of the practical things, but he will be the one who is educated to cope physically with life, certainly he will not possess such a large amount of logical and theoretical information.

The development of a person's personality begins when the person in question is able to make choices, because a man who knows how to go in one direction also knows the motivation for choosing to go in that direction. Education presumes just that, namely knowing why you are doing a certain thing and knowing how to do it. Everything matters in a world where there are fewer people who focus on the book, and the rest it is part of the the 6 or 7 years of home education, those years that will turn into a life later. Thus, whether importance is given to school education, or importance is given to education as an ordinary person, education of life, as it is also called, learning is important for one's character and development, consequently motivation and will being shaped. An unfortunate incident in your life, should not derail what education has taught you to do.

"The best school for this language study is the home; but since the work of the home is so often neglected, it devolves on the teacher to aid his pupils in forming right habits of speech" (White 2001, 186). should be taught the necessity and the power of application. Upon this, far more than as a human being you must always have a target and you must shoot continuously towards that target. There are many opinions about education, some good, some less positive, but everyone must know that they need a strong personality to be able to succeed in the contemporary society full of requirements. The theory alone cannot give you that spoonful of food that you dream to receive for your work. Apply what you have studied in your daily life, making any information you receive relevant, if you really want to grow. Choose to have a purpose in life, choose to have a direction in life, choose to be educated to know what you want to achieve from life.

"The same personal interest, the same attention to individual development, are needed in educational work today. Many apparently unpromising youths are richly endowed with talents that are put to no use. Their faculties lie hidden because of a lack of discernment on the part of their educators. In many a boy or girl outwardly as unattractive as a rough-hewn stone, may be found precious material that will stand the test of heat and storm and pressure. The true educator, keeping in view what his pupils may become, will recognize the value of the material upon which he is working. He will take a personal interest in each pupil and will seek to develop all his powers. However imperfect, every effort to conform to right principles will be encouraged" (White 2001, 184).

"Every youth should be taught the necessity and the power of application. Upon this, far more than upon genius or talent, does success depend. Without application the most brilliant talents avail little, while with rightly directed effort persons of very ordinary natural abilities have accomplished wonders. And genius, at whose achievements we marvel, is almost invariably united with untiring, concentrated effort" (White 2001, 184-185).

The importance of school and formal education

To educate means to train, to form, to develop. Etymologically the term comes from the Latin *educare*, *educare*, which means to care for, instruct, raise, or from *educere*, *educere*, which means to lead, to take out. It is found that both etymological paths are correct, and the semantic ramifications lead to the current meaning of the term.

The importance of education is essential for the development of the individual within the social context and implicitly for the development of a society. An educated person will have the ability to respond to complex needs and situations, will be able to be aware of new situations, individual and collective needs, acquiring a greater sensitivity to a deadlock situation, finding optimal solutions. An educated man will support the efforts of education, will support the fight against ignorance, vulgar things and against the cultivation of the lack of values, because it is impossible to remain indifferent once you've tasted what culture and science means.

Education is done in three ways: formal education, non-formal education, and informal education. Formal education is carried out in educational institutions and aims to introduce students, progressively, in the paradigms of knowledge and to transfer techniques that will ensure a certain educational autonomy. This type of education needs specialists, who prepare the elaborated and well-staggered way, in which information is transferred. Formal education is provided through the school, educational institutions and teachers. In school, the student will focus on which profession he would like to pursue, and the teacher has the freedom and opportunity to choose the methods and techniques considered to be the most appropriate for educating the new generations.

"The youth should be taught to aim at the development of all their faculties, the weaker as well as the stronger. With many there is a disposition to restrict their study to certain lines, for which they have a natural liking. This error should be guarded against. The natural aptitudes indicate the direction of the lifework, and, when legitimate, should be carefully cultivated. At the same time, it must be kept in mind that a well-balanced character and efficient work in any line depend, to a great degree, on that symmetrical development which is the result of thorough, all-round training" (White 2001,185).

Through formal education, social identity is transferred to students, they are historically and socially located, they acquire knowledge that has the role of facilitating their personal and professional development, to fulfil their potential as individuals, to integrate socially. These are some of the reasons for which school must be chosen as a factor of education, in order to introduce us in the secrets of intellectual, organized work, giving us the opportunity to acquire knowledge, helping us to recognize the information accumulated and to apply it. "True education is well defined as the harmonious development of all the faculties—a full and adequate preparation for this life and the future eternal life. It is in the early years in the home and in the formal schoolwork that the mind develops, a pattern of living is established, and character is formed," said the American writer Ellen G. White (2001, 5).

Non-formal education and continuous development

Non-formal education is carried out outside the classroom, through extracurricular activities and through optional or facultative activities. The term non-formal means less formalized or non-

formalized, but with formative effects. The importance of non-formal education is to meet the varied and individual interests of students and is characterized by flexibility, being a type of education with great advantages because it offers the chance to discover certain inclinations and interests and supports those who want to develop in certain sectors of activity, helping them to explore their personal resources.

It is not known how many parents think about all these theoretical things, but there are enough parents who take their children to classes in painting, piano, ballet, swimming, violin, foreign languages, etc. Maybe they have not even thought that all this could be part of what we call today the type of non-formal education, but all these pieces put together can form a useful puzzle for the development of a child. In order for the results of this type of education to be as effective as possible, they should be combined with the activities of formal education in educational institutions.

The non-formal education is important because it responds to the needs of action and because allows the extraction of knowledge from practice, facilitating contact with new information. UNESCO refers to non-formal education as consisting of any educational, organized and sustained activities that do not correspond to what we call formal education, which can be carried out in or outside educational institutions, with addressability to people of all ages. Non-formal education does not follow a hierarchical system and may differ in duration without necessarily involving the certification of the achieved learning outcomes. Non-formal education involves a new approach of learning through motivating, engaging but also fun interactive activities at the same time.

The advantages of such a type of education are multiple. This type of education appeared due to the fact that the formal education system adapts too slowly to the socio-economic and cultural changes of the world we live in and therefore appeared the alternative of other possibilities to prepare children, young people or even adults in their desire to be able to respond adequately to other societal challenges, and these learning opportunities can come not only from formal education, but also from the wider field of society or from certain sectors of society. It is important to remember that no matter how we want to develop ourselves, we must choose to do so, because an educated person can make it much easier to differentiate between good and evil, between negative and positive influences.

Informal education and everyday experiences

Informal education is what the individual faces in everyday life. Etymologically, the term informal education comes from the Latin *informis*, *informalis*, which means spontaneous, unexpected. This type of information includes all unintentional, diffuse information that comes in an unexpected and unworked wave. From a pedagogical point of view, this type of education brings data that are unconsciously introduced into our thinking and behavior, in spontaneous circumstances and contacts. This type of education includes family education, education in the group of friends, in the playgroup, neighbors, education through the media, education through the written press, through radio-TV, education through cultural and social actions, education through museums, exhibitions.

Informal education is done in daily experiments, which are not planned or organized, leading to informal learning. When these (experiences and experiments) are interpreted by the elderly or by members of the community, they constitute informal education, a process that extends throughout life, through which the individual acquires information, develops skills and abilities, structures beliefs and attitudes, develop through everyday experiences.

As for informal educators, they can be both parents and friends, relatives or even others, while in our turn each of us is an informal educator for those around us and for ourselves, sometimes doing so intentionally, sometimes intuitive. This type of education has a reduced formative function, because less information becomes knowledge and more than that, through

this type of education, sometimes we have information that may contradict what we know and the purposes of formal and non-formal education. We must be very careful how the information is filtered, in order to differentiate between good and evil, between negative and positive influences.

Conclusions

In conclusion, I would appeal to the words of the remarkable American writer Ellen G. White, who, speaking about the purpose of education, said, in words rich in content, that: "every human being, created in the image of God, is endowed with a power akin to that of the Creator—individuality, power to think and to do. The men in whom this power is developed are the men who bear responsibilities, who are leaders in enterprise, and who influence character. It is the work of true education to develop this power, to train the youth to be thinkers, and not mere reflectors of other men's thought. Instead of confining their study to that which men have said or written, let students be directed to the sources of truth, to the vast fields opened for research in nature and revelation. Let them contemplate the great facts of duty and destiny, and the mind will expand and strengthen. Instead of educated weaklings, institutions of learning may send forth men strong to think and to act, men who are masters and not slaves of circumstances, men who possess breadth of mind, clearness of thought, and the courage of their convictions" (White 2001, 12).

"In its wide range of style and subjects the Bible has something to interest every mind and appeal to every heart. In its wide range of style and subjects the Bible has something to interest every mind and appeal to every heart. In its pages are found history the most ancient; biography the truest to life; principles of government for the control of the state, for the regulation of the household—principles that human wisdom has never equaled. It contains philosophy the most profound, poetry the sweetest and the most sublime, the most impassioned and the most pathetic. Immeasurably superior in value to the productions of any human author are the Bible writings, even when thus considered; but of infinitely wider scope, of infinitely greater value, are they when viewed in their relation to the grand central thought. Viewed in the light of this thought, every topic has a new significance. In the most simply stated truths are involved principles that are as high as heaven and that compass eternity" (White 2001, 98-99). In his book, Job wrote in poetic words, some truths of great value:

"It cannot be gotten for gold,
Neither shall silver be weighed for the price thereof.
It cannot be valued with the gold of Ophir,
With the precious onyx, or the sapphire.
The gold and the crystal cannot equal it
And the exchange of it shall not be for jewels of fine gold.
No mention shall be made of coral, or of pearls:
For the price of wisdom is above rubies" (Bible, KJV, Job 28, 15-18).

"Every youth should be taught the necessity and the power of application. Upon this, far more than upon genius or talent, does success depend. Without application the most brilliant talents avail little, while with rightly directed effort persons of very ordinary natural abilities have accomplished wonders. And genius, at whose achievements we marvel, is almost invariably united with untiring, concentrated effort" (White 2001, 184-185).

References

- Ellen G. White. 2001. *Educație [Education]*. Bucharest: Viata si Sanatate Publishing House.
The Holy Bible. 2004. King James Version. Dallas, TX: Brown Books Publishing.

A New Model of Penitentiary

Dorian Chiriță

Judge, Craiova Court of Appeal, Craiova, Romania, dorian.chirita@yahoo.com

ABSTRACT: In order to create a better society, due importance must be given to persons deprived of their liberty, in the sense of changing their behavior, so that in the end they no longer commit antisocial acts. As a result, the necessary attention must be paid to the development of appropriate educational and social programs, as well as to places of detention. Thus, as we will show below, the architecture of the penitentiary should be different, both inside and out. We cannot achieve the expected resocialization if we do not adapt the construction of detention units and educational programs to a positive purpose and not to a punitive one.

KEYWORDS: Rehabilitation, reintegration into society, penitentiary architecture, healthy environment, communication between detainees and guards, educational programs

In our opinion, the conception and construction of any modern penitentiary must take into account all the evolutions of criminal justice but also of society in general (Micle 2021). Thus, first of all, the architecture of penitentiaries must essentially refer to the detention regimes for which they are intended and to the categories of detainees, as it is not acceptable that in the future, in prisons, there are the same problems as currently related to the detention of minors in the same places of detention as adults, even if there is a separation of the areas intended for them.

We believe that juvenile detention centers should be located separately from the prisons where adults are to be detained, and their architecture, organization and operation should take into account the special needs of minors, and the programs will focus mainly on achieving the educational goal and not repressive of punishment.

In the future, penitentiaries should also be designed separately for men and women, and detainees belonging to sexual minorities should be assigned to male or female penitentiaries, depending on their assumed sexual identity.

Of course, at present it can be seen that, in terms of the construction of detention centers, the new units are gradually moving away from the classic models of penitentiary architecture, characterized by undersized concrete cells along narrow corridors, high-perimeter fenced wires, as well as by other such elements, but, although these buildings have very little in common with those of the last centuries, the architecture of penitentiaries has remained largely standardized throughout the world: large institutions, often located in areas urban, with heavy security features that impress negatively (high perimeters covered with electric wire, visible towers and heavy gates).

Inside, we find sober colors, large rooms in which there are a large number of detainees in small cells, with steel windows, developed on long and narrow corridors. We appreciate that this concept of detention space must be re-evaluated, in the sense of building a truly modern but also useful penitentiary, being necessary to build a detention unit with as many utilities as possible. For a detention center to function as a rehabilitation tool, when designing it, we should start from the premise that people are capable of change and improvement, which is also the purpose of incarceration, respectively that detainees be changed in a positive way at the end period of detention.

It is necessary that the architecture of the penitentiary but also the interior decorations send the message that the incarcerated people are valuable for the society and that the purpose of detention is that of transformation, that from a criminal past we reach a constructive future, and the applied practices take into account the research results conducted in similar institutional settings such as hospitals and long-term care centers.

As a public, social institution, the penitentiary should integrate as a correctional facility, ie integrate as much as possible into the community where the detainee will be released and merge with the surrounding area.

Although it is necessary to maintain a barrier with the outside world, for the safety of citizens, the aesthetic and location objectives of the center should lead to the deinstitutionalization of the building and its integration into the wider community by presenting a modern, citizen-oriented exterior impress negatively or even arouse revulsion.

The penitentiary of the future should also be properly sized: in order to carry out a truly effective rehabilitation program, the operational capacity of any detention center must never exceed one thousand offenders. The smaller the size of the detention center, the greater the chances that program administrators and staff will actually know many of the detainees, that is, their needs, shortcomings, and weaknesses or strengths, and thus better identify efficient ways to treat you.

It thus appears obvious that, when kept in sufficiently small spaces (of course, in compliance with the national and European regulations in force), detainees can receive more attention, training and better individualized treatment. In addition, research has shown that the feeling of isolation and anxiety of the individual is determined by large and crowded spaces.

Consequently, in order to make rehabilitation easier, the centers should be divided into relatively small units, but in accordance with the number of prisoners, properly sized, taking into account the risk and security needs. In order to avoid mixing groups of detainees, each room should provide sufficient space for privacy, which should also include a variety of collective spaces where groups of people can meet to carry out some of the activities practiced and in freedom: cooking, dining, studying, watching TV, reading, playing games and exercising.

In order to ensure specific security, linear projects should be used that provide clear views throughout the center, thus improving search and orientation. To ensure adequate supervision, the organization of direct observation spaces should be organized, with an open office, with a large panoramic window of the penitentiary officer strategically located inside the living area, with a clear and direct view of the detention rooms.

The purpose of direct supervision is to promote constant, direct interaction and normal communication between staff and detainees, proactively identifying and addressing potentially negative events before escalating.

Direct and continuous surveillance of the detention rooms, of detainees entering and leaving these rooms, of observing the route from the exit of the room, along the whole corridor to the entrance to the next corridor, creates an environment conducive to change and self-awareness, encouraging the person deprived of liberty to manage his own behavior and to make responsible decisions regarding his participation in daily activities.

It is necessary to provide a healthy and safe environment: organizing activities that lift the spirits of those deprived of their liberty can benefit not only them, but also the staff, who often spend more time in these facilities than the detainees themselves. Providing a healthy and safe environment throughout the penitentiary is also essential to encourage community involvement and participation, which is essential to the success of the rehabilitation mission.

A living environment that helps rehabilitation more is one that provides a familiar feeling and improves the quality of life. An environment that stimulates detainees in a positive way has abundant sunlight, openness, unobstructed views, good landscaping, access to nature, wooden doors without bars and large windows, mobile furniture, similar to home, with warm colors that express calm and helps protect monotony and motivate the senses.

In addition, allowing a certain degree of confidentiality is a key aspect of the transformation process. Detainees must have the right to privacy for sleep, maintenance and personal hygiene and to the safe keeping of personal belongings. In turn, the personalization of the space should be promoted, for example, by allowing detainees to personalize their

rooms, reorganize the furniture in the living area or adjust lighting fixtures. This promotes a sense of personal dignity and respect for oneself and, in equal measure, respect for the other.

Therefore, a modern detention center requires, in terms of design, a humanizing approach that few other types of public architecture require. A new generation of rehabilitation centers should provide spaces that reduce stress, fear and trauma, spaces that stimulate motivation to participate in positive activities, that reduce negative behavior and that do not create a sense of incarceration and isolation for inmates, but to it helps them to reintegrate into society as future law-abiding citizens.

Life in the safe perimeter of a rehabilitation center should allow as much normality as possible, ensuring detainees a level of responsibility and autonomy that will prepare them for life outside and impose as few restrictive conditions as possible on spaces, traffic and access to indoor and outdoor spaces. However, for those spatial and environmental considerations and their positive attributes to be valuable, they must be accompanied by positive and constructive prisoner management policies, practices and procedures, as well as well-trained staff.

Correspondingly, it should be noted that in the penitentiary system, in addition to the phenomenon of overcrowding which puts detainees in a situation of living in inappropriate and even inhuman living conditions, there are a number of other equally serious problems that need to be resolved and taken into account view on the occasion of the construction, endowment and organization of a modern penitentiary (Zaharia, Turcan, and Romanciuc 2008).

Nature has a special importance on the human psyche, so it is essential that the encounter with nature takes place both outside and inside the penitentiary, for as long as possible. It is therefore essential that detention facilities offer, in this respect, a wide range of outdoor facilities, including an amphitheater, outdoor meeting spaces, walking paths, public art and extensive facilities that detainees maintain as part of their vocational education program.

The creation of spaces in nature for self-reflection, interaction in small groups and meditation contributes to a better re-education. These elements help to create a sense of comfort, protection and belonging and, most importantly, promote rehabilitation and healing, being not only, in the long run, re-education, but also lead to a decrease in incidents of violence between detainees, as well as of detainees to staff. In this context, it should be noted that, given that the prison environment has a particular impact on recidivism, complex solutions must be addressed, using improved design practices that have proven to be effective, ie the old mentality must be abandoned and a new one adopted that is, a mentality of the punishment of rehabilitation and reintegration, so that the current detainees are productive members of the society on release, instead of continuing in the vicious circle of crime.

In many ways, it is difficult to make strong enough arguments to persuade the authorities to build modern detention centers in the future, in parallel with the decommissioning of traditional prisons, punitive buildings whose massive walls express state reproach and are reminiscent of prisons in the distant history of incarceration.

Modern detention facilities need to provide detainees, especially those in the open, with more involvement: their own cell keys, meaningful jobs, better education and mixed age groups - even to allow them to - pain your cells so that you get a sense of familiar place and transform a landscape surrounded by buildings: the library, sports facilities, even a recording studio.

Therefore, more openness is needed in detention centers, with better staff-prisoner relations being a significant factor in preventing recidivism. Therefore, among the architectural elements that should be integrated in the design of a modern penitentiary can be listed a location outside a locality, welcoming entrances to the penitentiary, an atmosphere rather like a civic building, freedom of movement and soft furniture, instead of furniture tough, fixed, access to yards, gardens and technology.

The old prison-style should be linked only to the most difficult detainees by designing or using them only in the most difficult cases. Of course, it should be noted that there are many imperatives that need to be taken into account when it comes to issues of prison inmates, such as access to legal services, the prevention of torture and the effectiveness of the justice system, but it is also essential how to design and build buildings in which prisoners will spend their time.

This is because the architectural design of places of detention is important in itself from the perspective of human rights and human treatment. This is because the architecture sends a silent message to all those who are outside but also inside the place of detention. Inside, architecture has the power to suggest to the detainee what to expect and what are the limits of his behavior.

Unfortunately, in Romania, prisons are about the same. Therefore, in my opinion, their redesign is essential for creating an environment in which detainees can live and not become institutionalized.

Specifically, the emphasis must be on socialization and not on institutionalization, which means providing spaces to stay in touch with their families, work, education and sports activities.

Local cultural values must also be taken into account, taking into account first of all the purpose of applying a custodial sentence, and thus to prepare the detainees not only for the observance of the rules in the penitentiary, but especially for the post-detention period. Thus, if detainees are to lead a law-abiding life when they leave the penitentiary, it is essential that the design of places of detention be carried out in such a way that they can keep up with social practices and community life.

In **conclusion**, I believe that the evolution of society as a whole, but also of those in special situations, such as detention, is, above all, a matter of normalcy.

Regarding the situation of persons deprived of liberty, it must be adapted to the new social, economic, legal and psychological realities. The use of outdated psychological programs can no longer have the expected effect, as society's way of thinking has changed and is changing day by day as much as possible.

Therefore, the change of the legal framework, of the architecture of the penitentiaries, of the psychological programs is very necessary, this affecting, at the same time, the detainees, their families, and the whole society.

References

- Micle, Mihai Ioan. *Resocializarea deținuților*. <https://www.google.com/search?client=firefox-b-d&q=resocializarea+detinutilor>. Accessed on July 24, 2021.
- Zaharia, V, V. Turcan, and S. Romanciuc. 2008. *Instruirea în domeniul drepturilor omului a colaboratorilor din sistemul penitenciar* [Training in the field of human rights of collaborators from the penitentiary system].

The Effects of COVID-19 Pandemic on Domestic Violence

Cosmin Butură

*“Dimitrie Cantemir” Christian University - Faculty of Juridical and Administrative Sciences,
Bucharest, Romania, cosminbutura@yahoo.com*

ABSTRACT: Starting with the end of 2019, and so far, the pandemic challenged by the SARS-COV-2 virus called popular Corona Virus, has produced positive and negative effects from the perspective of different areas. If we are heading for the environment, we notice that statistics have shown a substantial increase in the ozone layer; The nature breathed and the air was cleaner, which was considered a positive effect. In the field of HORECA, hundreds of restaurants, cafes, bars, clubs and hotels closed, employers have to dismiss employees because of the long period of restrictions, so it is understood that the generated effect was negative. Also, in the social environment, education was under restrictions, pupils and students having to attend courses through online platforms, thus reducing inter-human socialization. However, not all the effects of the pandemic were visible to society and the press. During the emergency state, the population was blocked in housing, but this political action took into account the fact that every family is different in its own way? I therefore analyze the effects of COVID-19 pandemic among less perfect families from the perspective of forensics. Whether we accept or not, the idea of domestic violence is clearly described by annual statistics both at national and international level.

KEYWORDS: family, violence, forensics, indices, factors, pandemic, virus

Introduction

To begin with, I will analyze the notion of domestic violence. As a result, in the literature, it is defined as “threat or other violent behavior in families, which can be physical, sexual, psychological or economic and may include child abuses and violence in intimate partnership” (Usher, Bhullar, Durkin, Gyamfi, and Jackson 2020).

As we specified, during the COVID-19 pandemic, these negative factors have emerged on the social environment that, we can say, leaves physical and psychic fingerprints hard to eliminate. In the following, I will divide into two forms, the term violence in the family more precisely: the mild form and the aggravated form.

–*Easy form*, as it is called, refers to external factors that cause family participants in different acts likely to damage psychic integrity through injuries and here are words (insults), gestures or offensive acts.

The first easy factor that transforms the relationship between couples is the financial situation. As we know from statistics, many people have lost their jobs, some people entering technical unemployment and other people reaching debt failure. This aspect is as dramatic as it can cause the person concerned to resort to inappropriate gestures, for example, a person who has just lost his job perceives this as a fear of social fall, therefore in the psychic. In depression, and depression is improved by alcohol or narcotic consumption.

In this category, as a rule, people exposed to the negative effects mentioned above are males. During this period, the lack of money and moral instability of men are treated differently, so every man will react according to nationality, religious cult, tradition, principles, etc. That is, in some cases, the man will go well for the hard time by consulting his life partner or other family members, while another man can react violently, considering that he is the foundation of the family and disappointed it, and and protect and maintain family.

We come to the conclusion that the stress caused leads to domestic violence in a mild form, for example, the life partner attempts to support it, but the active subject being too preoccupied with the resolution of the serious problem in his life, resorts to domestic violence,

being influenced by of toxic substances consumed (alcohol, drugs, etc.) Although we cannot consider this act, its obnoxiousness is characterized by the finality of the ignition and verbal injuries, both of which are alive (Bradbury-Jones & Isham 2020).

At international level, statistics show accelerated growth in emergency calls that have domestic violence in the forefront, and all due to the imposed isolation restrictions. For example, according to the statements of the Australian authorities, the crime rate decreased by 40% but the number of calls to the National Emergency Service increased by 5% on domestic violence. Another aspect at international level we are discovering in online search engines, thus according to Google statistics, the subject of domestic abuse was 75% (Commonwealth Bank Group 2020).

–*Aggravated form* refers to the acts of verbal violence that are temporary and turns into physical violence.

If at the first form, the victim is not physically damaged, that is not affected by body integrity, in this case, we have the opposite, as a result of the gravity of the shape is measured by means of an index. The index that determines the gravity of the form is the physical violence caused by one of the family members. An important aspect to be analyzed in the case of the two forms would be the relationship of social collaboration between the two. So, the aggravated form would also be caused by the involvement of the mild form. Deriving from this statement, we obtain the result that the aggravated form is divided into two independent and dependent forms, as follows:

–*Aggravated form independent*: It is the form of physical violence that does not require intervention from an external factor, as a result, violence starts from the trigger subject.

–*Dependent aggravated form*: It is the form of physical violence that depends on certain external factors that can turn into a plurality of new trigger topics in addition to the initial.

However, we understand that family violence is a sensitive, easy-triggered and controlled act according to the intensity of external factors and the main subject.

Isolation and domestic violence

Whether we like it or not, we must remind each other how the COVID-19 virus has spread, so I will show social effects on citizens, caused by political measures. Towards the end of 2019, the national alarm was given on a possible epidemic of Coronavirus and spreading through the air. Despite strict measures in order not to spread the virus and more, it reached early 2020 to cover a large infection surface in Europe, America and the rest of continents.

The measures imposed by the authorities were clear, decided to close administrative, social and private buildings thus isolating the socialization population. This isolation we look at it, families are isolated, so the life partners will have a high intensity of inter-human contact, they will further observe the defects of each, and the lack of family support in both camps will be strongly felt. Specifically, parents and relatives cannot physically socially intervene in the daily life of the couple. If the couple also has children, the situation is changing, because it isolates them in an unstable emotional, physical and financial family, produces negative effects on life (Campbell 2020).

The negative effects for the child are: social insulation, the desire to be violent, emotional instability, fear of parents, etc. But all of this will characterize the child, unfortunately, depending on his perception of things becoming shy or instigator.

A perfect storm

We have talked so far about family violence that can only occur in this pandemic in various factors and indices analyzed above. The question is, what is happening with families who have already had social and material instability before? For example, in the case of insulation measures, the conflict

between partners increases to the pandemic, and in the present case, the man consumes alcohol more regularly, maintaining it.

Let's analyze the partnership typology that already had problems in the family and we start with the partner who often consumes alcohol, in the present man. For example, before the pandemic, thanks to the applicant's job, the man fails to have too intense contact with his wife, but after approving the insulation measure at home, he has a contactinens, and blood alcohol intake increases exponentially. Because of this, his partner is no longer seen as a family member, as a friend, like a man of hope, etc. but on the contrary sees it as an enemy who penetrated his "land." So, isolation, which produces physical and psychological sedentarism, and alcohol consumption together makes a so-called wave of violence. Another important aspect to take into account is that during iozolation at home, victims can no longer request help so easily because the partners who hunt are continuously in the same dwelling. As a result, this isolation becomes a shield against the law for family abuses, beatings, offenses, humiliations, etc., keeping under anonymous (Davies & Batha 2020).

COVID-19 and coercive control

In order to discuss the notion of coercive control, we need to know what the general aspects of this are. As defined, the coercive element is "the element that holds power, control, which has the power to constrain".

In relation to the pandemic situation, the instigator partner is used by determining a coercive control mechanism more precisely it supplements the relationship with its partner during the isolation by fear, threat, sexual abuse, etc. If there is a possibility that because of the noise caused by family violence the neighbors to waters to the Single DeUrgency Service 112 to report the police caused by subjects. Officers can be presented at the suspect's door to get in touch with it and evaluate the domestic situation in the dwelling. This control of the police bodies does not prevent the aggressor from giving up and as a result of the pandemic situation and will not allow access to the dwelling, disinforming the acts committed against the life or concubine partner (Ruiu 2017).

I conclude by saying that, due to repeated abuses of aggressor, the victim induces a fear of demanding specialized medical treatment, more precisely refuses hospitalization.

Reimagination of support networks for people living in domestic violence in these difficult times

There is an international awareness of the population on the vulnerability of families and children. However, the company in which we live enters and in civic duties on the legal field and the security of the population and in the moral attributions to protect the person next to you. Thus, several non-governmental organizations or even governments itself have been asked for emergency departments in each state to pay interest in this period on domestic situations in housing.

Following these solutions, several NGOs and government departments have launched campaigns for informing and supporting victims who fall abuses during isolation. Many successful entrepreneurs have found different solutions to prevent family abuse, sponsored the governments and departments. Even once there is a civic sense for victims of suffering and we understand that the pandemic of COVID-19 is even difficult (Knowles 2020).

Conclusions

Within this article, we have generally treated tactical elements and forensic probation in the case of domestic violence, as if the complexity of the elements cannot fit the pages of the article.

As a result, we need to understand that the forensic field plays an important role in criminal investigations, with the activity of whichever focusing where any offense has been committed and analyzed each detail through numerous specific methods.

I believe that these acts made by active subjects are applied with a sense of responsibility during the periods in which the country of origin or whole globe goes through a disaster of proportions (huge explosions, natural disasters, biological wars, civil wars, etc.). They are used above mentioned as opportunities for applying bad plans. In these cases of crossroads, when political power is bound to resort to population isolation measures under the law, it greatly increases the rate of crime and family violence in this case. So, governments around the world must always have a well-designed social strategy to combat the possible abuse by one of the partners.

References

- Allen-Ebrahimian, B. 2020. "China's Domestic Violence Epidemic." *Axios*. Retrieved from, 7 April 2020. <https://www.axios.com/china-domestic-violencecoronavirusquarantine-7b00c3ba-35bc-4d16-afdd-b76ecfb28882.html>.
- Bradbury-Jones, C. & Isham, L. 2020. "The pandemic paradox: the consequences of COVID-19 on domestic violence." *Journal of Clinical Nursing* 29(13–14):2047–9. Doi: 10.1111/jocn.15296.
- Campbell, A. M. 2020. "An Increasing Risk of Family Violence during the Covid-19 Pandemic: Strengthening Community Collaborations to Save Lives." *Forensic Science International: Reports*. Doi: 10.1016/j.fsir.2020.100089.
- Commonwealth Bank Group. 2020. "An early look at how the Coronavirus is affecting household spending." *Global Economic & Markets Research*; Commonwealth Bank Group Australia. Retrieved from, 10 April 2020 and 10 March 2020.
- Davies, S. & Batha, E. 2020. "Europe braces for domestic abuse 'perfect storm' amid coronavirus lockdown." *Thomas Reuters Foundation News*. Retrieved, from, 7 April 2020.
- Knowles, M. 2020. "Coronavirus lockdown risks murder frenzy - PM sent warning on domestic abuse." *The Express*. Retrieved from, 7 April 2020.
- Ruiu, Marin. 2017. *Criminalistică. Elemente de tactică criminalistică [Forensics. Elements of forensic tactics]*. Bucharest: Universul Juridic Publishing House.
- Usher, K., N. Bhullar, J. Durkin, N. Gyamfi, and D. Jakson. 2020. "Family violence and COVID-19: Increased vulnerability and reduced options for support." *Int J Ment Health Nurs* 29(4): 549-552. <https://doi.org/10.1111/inm.12735>.

The Use of Experts in Criminal Proceedings in Romania. Inquisitorial Background and Future Trends

Adrian Șandru

*PhD student, Institute of Juridical Studies "Acad. Andrei Rădulescu" of Romanian Academy, Romania
asandru30@gmail.com*

ABSTRACT: This paper aims to study and expose by comparing the institution of scientific evidence and the use of the expert in criminal proceedings, starting from the structural differences in evidence legal framework between the adversarial system and the continental system, to comparing procedural details on the disposition, conduct or assessment of an expert report. A comparative analysis of different legal systems, pointing out their advantages and disadvantages, should not lead necessary to a legal transplant, but could generate new visions that can materialize in certain proposals to improve criminal proceedings legislation through innovative legislative solutions that are inspired both from adversarial and continental systems and taking into consideration all the rules of criminal procedure at Romanian internal level.

KEYWORDS: expert evidence, criminal proceedings, evidence law, scientific evidence

Introduction

Irrespective of the system of criminal procedural law, evidence is indisputably the central element of any criminal trial, as invariably the legality, reliability and the merits of the evidence are the only characteristics that can lead courts to substantiate any conviction or acquittal. Due to the importance of the institution of Evidence in criminal proceedings, there are often legal debates, especially in the doctrine of *common law* systems, about a so-called Law of Evidence.

In all states (with a continental or *common law* systems), problems arising from the legal regime of evidence and debates surrounding the institution of evidence in criminal proceedings are an endless hot topic.

From a global perspective, it can be stated that the differences between the two classic types of criminal proceedings, the inquisitorial and the adversarial, invariably affect the principles of evidence gathering, admissibility and evaluation.

Starting from these two classical systems of criminal procedural law, the criminal justice laws of certain states have developed and acquired their own defining characteristics.

In this sense, before presenting the differences of vision between the scientific evidence and the use of experts in criminal proceedings, starting from the two types of procedural law systems, we consider it useful to briefly present the Romanian criminal procedural legislation on expertise in criminal proceedings.

According to art. 172 Criminal procedure Code: "(1) An expert report is ordered when the opinion of an expert is also required for the ascertaining, clarification or assessment of facts or circumstances that have importance for finding the truth in a case. (2) An expert report shall be ordered under the terms of Art. 100, upon request or ex officio, by criminal investigation bodies, through a reasoned order, while during the trial, this is ordered by the court, through a reasoned court resolution. (3) An application for the development of an expert report has to be filed in writing, indicating the facts and circumstances subject to assessment and the objectives that need to be clarified by the expert. (4) An expert report can be conducted by official experts from specialist laboratories or institutions or by independent authorized experts from the country or from abroad, under the law. (5) A forensic medical

examination and expert report shall be conducted within forensic medical institutions. (6) An order of the criminal investigation bodies or a court resolution ordering the development of an expert report has to indicate the facts or circumstances that need to be confirmed, clarified and assessed by the expert, the objectives they have to meet, the time frame within which they have to develop the expert report, as well as the appointed institution or experts. (7) In strictly specialized areas, if specific knowledge or other such knowledge is necessary for the understanding of evidence, the court or criminal investigation bodies may request the opinion of specialists working within judicial bodies or of external ones. The provisions referring to the hearing of witnesses shall apply accordingly. (8) During the conducting of an expert report, independent authorized experts, appointed upon request by the parties or main trial subjects, may also participate. (9) When there is a danger related to the disappearance of evidence or to the change of a factual situation, or when the urgent clarification of facts or circumstances of the case is necessary, criminal investigation bodies may order, through a prosecutorial order, the conducting of a finding of fact. (10) Such fact finding is conducted by a specialist working with the judicial bodies or by an external one. (11) A forensic medical report has the value of a fact-finding report. (12) Following completion of a fact-finding report, when judicial bodies believe that an expert opinion is necessary or when the conclusions of the fact-finding report are challenged, the development of an expert report is ordered.” Regarding the appointment of the expert, this is done according to art. 173 para. (1) Criminal Procedure Code of Romania that states: “*Experts are appointed by prosecutorial order or by court resolution.*”

Expert evidence in both adversarial and inquisitorial systems

In continental law systems such as France, Germany and Italy, the court has a more active and leading role in the criminal process. The expert is a court-ordered assistant. The expert carries out his activity coordinated by the court and has a special legal statute. This statute is established to ensure that experts are neutral, as a battle of experts can be difficult to establish for a judge who does not have the necessary technical expertise to respond a factual question essential to the case. However, these systems require a mechanism to ensure the quality and swiftness of the expert report are working.

The inquisitorial criminal procedure is initiated and conducted by non-partisan officials. The parties have no role or at least no decisive role in this model of investigation and trial. On the contrary, the parties may not choose, even by consensus, to waive criminal proceedings.

The inquisitorial approach means that an expert is appointed by the court and that expert must meet requirements similar to those required of a judge in legal procedure. The contradictory approach, on the other hand, conceptually implies that the expert does not serve a common, objective purpose, but works according to a partisan logic. Terminologically, one could distinguish between the ‘expert appointed by the inquisitorial court’ and a contradictory ‘partisan expert.’ The inquisitorial criminal procedure consists of a single investigation that is supposed to be objective, while the adversarial criminal procedure is based on two (or more) preliminary investigations conducted by the parties. Applying this theory to the gathering of expert information, the contradictory context requires each party to be able to obtain and produce its own expert opinions.

In the Bonisch case of 1985, the ECtHR found, as the Austrian Government pointed out, that the expert in the inquisitorial criminal case had been appointed by a court and was therefore ‘formally conferred with the function of neutral and impartial assistant court’ (ECtHR Bonisch 1985). The ECtHR immediately emphasizes the consequence of this finding: “for this reason, his statements must have had a greater weight than those of an ‘expert witness’ called (...) by the accused.”

The confrontational approach in adversarial cases has the advantage of a full debate in public. However, it has been shown that two disadvantages are intrinsically linked to this system. The first is that an alternative expertise is not possible in all cases (Decaigny 2014, 165).

The other, which is another advantage of the inquisitorial system over the common law system, is that there may be situations such as when the material to be examined by the institutional expert is no longer available or is adequate for a second (or third) examination, or the person subject to the expert report may no longer be willing to cooperate. Secondly, the clash of ideas based on reports by partisan experts is a polarized debate, led and resolved by lawyers. The technical field of expert examination refers, by definition, to knowledge outside the familiarity of courts. In this way, it is very difficult for these professional and judges to assess the quality and reliability of the arguments and evidence that are presented by the expert (Decaigny 2014, 165).

Instead, in the inquisitorial system, the rule of participation of the defense in the expert procedure offers the possibility of a more constructive discussion, led by the expert appointed by the court and joined by partisan experts. In a pragmatic approach, it could be said that such a finding limited to a technical field is separate from the classic judicial finding, as research and debate between experts take place at the stage of drafting the expert report. In this type of expertise, the right to defense is respected if the defense is allowed to intervene at the moment of fact finding, i.e. during the procedure of the expertise.

The expert. Between witness and auxiliary of justice. Comparative analysis between adversarial and continental systems

As we have already shown, in the modern states there are two different systems of investing a court with the information or opinions of a legal expert, generated by the structural differences between the types of criminal proceedings between different states.

On the one hand, there is the system of conflicting expert witnesses adopted by the common law systems (ie, inter alia, the United Kingdom and the United States of America). Here the prosecutor and the accused each choose and appoint an expert. These experts perform their task not under the control and guidance of the court, but under the coordination of the party that appointed them. According to the legislation of these states, experts in criminal proceedings do not have a special statute and are treated, in principle, as witnesses. This is why, in UK and US, the expert is named expert witnesses (World Bank 2010, 25).

On the other hand, the second system is that of the expert appointed by the official court (expert or technical consultant in Italy, judicial expert or technician in France and *Sachverstaendiger* in Germany), a system that exists throughout the European continent (including, among many others) in the procedural laws of Italy, France and Germany. In continental European jurisprudence - strongly influenced by French jurisprudence, experts are commonly referred to as court assistants. In essence, this is just another word for 'assistant' (in German the term is *Richtergerhilfe*) and therefore experts have their own special statute (in French doctrine, for example, it is argued that 'experts are not witnesses') (Pradel 2006, 178).

Since the experts are appointed by the court (or by the investigating judge, insofar as such a judge is responsible for the preliminary phase of the trial, in Romania they are appointed by the prosecutor before sending the case to court), it is argued that they must to carry out their mission under the leadership of the court and to respect the field of research in which the court has specifically required them, usually through a set of questions addressed to the expert, to carry out their work.

Although the systems influenced by French law have mainly chosen the official expert and the common law systems are based on expert witnesses, in fact things are more complicated. On the one hand, there are very specific cases in French law where a rule

provides for a system of conflicting experts: for fraud and forgery. On the other hand, a fact too little discussed by lawyers in the US, that the US Federal Evidence Rules explicitly provide for the possibility of appointing experts directly to court under FRE 706. For example, in US criminal cases, once the guilt of the accused has been established, the court frequently requests to obtain information about his mental or physical health before handing down the sentence. For this matter an expert is called to examine the defendant and this expert is generally appointed and paid by the court (World Bank 2010, 26).

The rol of the judicial expert in criminal proceedings in Romania

Article 34 Criminal Procedure Code of Romania states that *'In addition to the participants listed under Art. 33, the following are litigants: witnesses, experts, interpreters, procedural agents, specialized fact-finding bodies, as well as any other persons or bodies set by the law as having specific rights, obligations and prerogatives in criminal judicial proceedings'*. Therefore, the expert is in the category of procedural subjects together with the witness, interpreter or other persons selected by law, not being included in a special category.

The absence of a special statute of the expert in criminal proceedings may be attributed to the principle of free evaluation of evidence. Given that the evidence in the criminal process does not have a pre-established value, neither the expert report nor the expert does not seem to occupy a special statute in the legal framework of evidence. However, as already mentioned, the role of the expert is a major one, especially in the case of economic crimes in which it has the role of clarifying essential factual elements in relation to the constituent elements of the investigated crimes.

As we have shown in this paper, the legal status of the expert is different in criminal proceedings, depending on the *common law* or continental influences that have an impact on the criminal procedural regulations in a particular state. If in common law systems the expert has the status of a mere witness, in the continental states it has been ruled that the expert has a more official status, that of auxiliary justice.

Regarding the regulations in Romania, it can be deduced from the content of art. 172 para. (4) Criminal Procedure Code of Romania that the expertise procedure may be performed only by official experts from laboratories or specialized institutions or by independent experts authorized in the country or abroad, under the law, which shows that the lack of authorization of a specialist is an incapacity for this in carrying out an expertise in the criminal process. In retrospect, similar to the old regulation, the scope of persons who can perform expertise is restricted only to official and authorized experts under the law.

There is a difference regarding the technical-scientific finding made by a specialist working within or outside the judiciary, and it is not necessary to obtain an authorization, as in the case of the expert. This differentiation is providential especially in the situation of investigating economic crimes, such as tax fraud, in which often the damage to the state budget is established by reports of technical and scientific findings.

According to a definition stated by certain accounting authors, *"The concept of expertise is a thorough research, with a technical character, made by an expert, high class specialist, in a certain field. Expertise is an attribute of science, and the expert was, is and will be the scientist"* (Oncioiu, Oncioiu and Chirița 2017, 5).

It was also stated that *"despite their specialization and professional experience, neither the expert nor the specialist can receive (by entrustment or acquisition) specific attributions to the subjects exercising judicial functions - judicial bodies"* (Zarafiū 2015, 205).

Regarding the quality of the civil servant expert, it was established by the High Court of Cassation and Justice (HCCJ, Decision no. 20/2014 regarding the examination of the notification formulated by the Craiova Court of Appeal - Criminal Section and for cases with minors in File no. / 95/2014 by which, based on Article 475 of the Code of Criminal

Procedure, the High Court of Cassation and Justice is requested to issue a preliminary ruling to resolve in principle the interpretation of the provisions of Article 175 para. (1) and (2) of the Criminal Code on civil servants, respectively if the judicial expert is a civil servant within the meaning of paragraph (1) or paragraph (2), published in the Official Gazette, Part I No. 766 of October 22, 2014) that the technical judicial expert is civil servant in accordance with the provisions of art. 175 para. (2) first sentence C. pen.

In the criminal procedure doctrine of Romania, several conceptions have emerged regarding the procedural position of the expert (Mateuț 2019, 645).

As a preliminary point, we note that the expert is regarded as a scientific witness, a statement based on jurisprudence (ECtHR Bonisch 1985) ECtHR which includes the expert under the broader vault of the witness in criminal proceedings, thus applying to the expert all the rights and obligations of the witness, even if the expert does not report what he saw or felt *ex propriis sensibus*, his role being only to clarify certain scientific issues regarding the specific issue in which his opinion is requested.

In addition, the expert is also considered an auxiliary of justice, as he conducts investigations specific to the judiciary, but in order to clarify circumstances that require expertise, although he cannot become an investigator or receive specific powers of the judiciary (Mateuț 2019, 645).

It has also been shown that the expert is in fact a judge of the circumstances he is required to clarify in the process, through the scientific information he has, but the expert's judgment does not in any way oblige the judiciary to make a decision, as the evidence has no pre-established value (Mateuț 2019, 645).

According to another point of view, it is argued that the expert has his own procedural position, *sui generis*, being rather an occasional procedural subject, when the clarification of some essential aspects of the case requires the opinion of a person who has specialized knowledge in a particular field. In the matter of economic crimes, the fields of accounting, tax or even digitalization are taken into account (Mateuț 2019, 645).

In Romania, the Code of Criminal Procedure is completed with Ordinance no. 2/2000 regarding the organization of the activity of judicial and extrajudicial technical expertise that orders the way of acquiring the quality of expert and the activity of judicial and extrajudicial technical expertise.

Compared to the officiality of the expertise procedure, as well as to the possibility of appointing an expert party, it is found that in Romania regarding the disposition of an expert report has both *common law* influences (considering the appointment of the partisan expert of the party together with the institutional expert) and mainly influences of type continental in view of the conditions of the authorization which a person must hold in order to be an expert in a particular case.

We consider that the expert-party must effectively participate in conducting a forensic examination, ordered in a criminal case, and his point of view in relation to the expert report represents a proof in criminal proceeding.

Conclusions

The criminal process in Romania, being strongly influenced at historical level by the continental type systems, presents structural differences compared to the criminal procedural systems in the *common law*. However, one can say that there are certain provisions or practices that, passed through the filter of harmonization with Romanian legislation that could lead to proposals to improve legislation. When we say this, we are referring in particular to the contradiction in gathering evidence throughout expertise procedure or the possibility to effectively challenge certain evidence in criminal proceedings.

Our view is that the entire institution of appointing an expert in criminal proceedings in Romania should be reformed. The legislator must consider expanding by law means the number of people that can have the capacity of expert in a criminal trial, given the accelerated technological developments in society, while respecting certain guarantees and continental requirements.

Furthermore, the system for evaluating an expert report should be reformed by adapting from the *common law* system the oral and contradictory nature by which an expert's opinion is assessed in a criminal trial. Beyond the technical language of expert reports in criminal proceedings, the hearing of the expert should be the rule in every criminal trial and his conclusions should be expressed in the least technical way so that they can be understood by the parties.

In addition, we believe that the role of the expert-party should be better defined by the Romanian legislator, given that the criminal procedure law does not mention what happens to the expert-party in making the supplement and it would be normal for him to actually participate in this activity.

References

- Constitutional Court of Romania, 2002.
- Criminal Procedure Code of Romania, The Law no. 135/2010 published in the Official Monitor of Romania, no. 486/15th of July, 2010, came into force on the 1st of February 2014 by Law no. 255/2013 published in the Official Gazette of Romania.
- Decaigny, Tom. 2014. "Inquisitorial and adversarial expert examinations in the case law of the European Court of Human Rights." *New Journal of European Criminal Law*, Vol 5, Issue 2.
- High Court of Cassation and Justice, Decision no. 20/2014 regarding the examination of the notification formulated by the Craiova Court of Appeal - Criminal Section and for cases with minors in File no./95/2014 by which, based on Article 475 of the Code of Criminal Procedure.
- Mateuț, Gheorghita. 2019. *Procedură penală, Partea generală [Criminal Procedure, General Part]*. Bucharest: Editura Universul Juridic Publishing House.
- Oncioiu, Ionica, Florin Oncioiu, and Razvan Chirita. 2017. "Expertiza contabilă ca mijloc de probă în procesele penale." *Institute for the developing human resources*. Bucharest. Accessed July 20, 2021. <https://idru.ro>.
- Pradel, Jean. 2006. *Procedure penale*, 13th edition, Paris: Cujanas Publishing House.
- World Bank. 2010. *Report no. 62832, Comparative study on the expert witnesses in court proceedings*, Washington, D.C. Accessed July 21, 2021. <https://documents.worldbank.org/curated/en/801721468339116562/Comparative-study-on-expert-witnesses-in-court-proceedings>.
- Zarafiu, Andrei. 2015. *Procedură penală, Partea generală. Partea specială [Criminal proceedings, The general part. The special part]*. 2th Edition. Bucharest: C.H. Beck Publishing House.

Healthcare Dependent Multiplier

Julia M. Puaschunder^{1, 2}

¹*The New School, Department of Economics, 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 currently ongoing COVID-19 crisis has challenged healthcare around the world. The call for global solutions in international healthcare pandemic outbreak monitoring and crisis risk management has reached unprecedented momentum. The novel coronavirus SARS-CoV-2 imposes the most unexpected external economic shock to modern humankind, triggering abrupt consumption and behavior pattern shifts around the world with widespread socio-economic impacts. In order to alleviate unexpected negative fallouts from the crisis, governments around the world have incepted the largest ever amount of strategic economic bailout rescue and recovery packages that particularly focus on economic and social targets. The potential focus of bailouts and recovery ranges from urban-local and national to even global and future-oriented beneficiaries, as pursued in public investments on climate stabilization in the United States Green New Deal or the European Green Deal Sustainable Finance Taxonomy. Large-scale and future-oriented governmental investments are valuable macroeconomic multipliers that can benefit society as a whole in the short run and long term. Economic multipliers trickle down positively in society since governmental spending incepting projects leads to increased salaries, opportunities to support a family and employ other people in the consumption of goods and services, to name a few economic multiplying growth opportunities in the wake of governmental spending. This paper proposes the idea that multiplier effects may vary based on the causes that receive governmental funding. Evidence of country differences in multiplier effectiveness already exist. Multipliers also appear to trickle down in society with a certain time lag. Lastly, multiplier effects can also be negative if the government chooses to cut spending during austerity measures. The discussion proposes potential future hypothesis testing opportunities for investigating healthcare dependent multipliers. Given the enormous amount of governmental COVID rescue and recovery aid in the aftermath of the COVID-19 crisis and the blatant importance of health in the eye of the pandemic, the time has come to investigate if there is a certain effect of governmental spending on healthcare that influences the multiplier. In order to understand a potential multiplier effect of governmental spending on healthcare, a healthcare dependent multiplier effect could test if healthcare related governmental spending leads to a higher or lower than 1.6 multiplying factor. If a relation between multiplier effects and healthcare exists, a future step would be to investigate if it also holds or varies for particular governmental investment in prevention and preventive healthcare. If there are effects for governmental spending on healthcare, well-being and social welfare are potential moderators of the effect. In the 21st century, healthcare is directly related to digitalization and technological advancement, which could be other moderators to control for. Lastly, corruption has been found to be negatively related to quality healthcare and may also be accounted for in future healthcare related multiplier investigations. The paper ends with an outlook on policy implications of the prospective envisioned research.

KEYWORDS: Austerity, Coronavirus, Corruption, COVID-19, Digitalization, Economic contraction, Economic growth, European Green Deal, Finance, Green New Deal, Government spending, Health, Healthcare, Multiplier, Negative multiplier, Pandemic, Positive multiplier, Prevention, Preventive care, Public policy, Recovery, Rescue and recovery aid, Social welfare, Trickle down effect, Well-being

Introduction

The novel coronavirus SARS-CoV-2 imposes the most unexpected external economic shock to modern humankind (Baldwin & di Mauro 2021). So far over 200 million recorded infected people have caused over four million documented deaths related to the disease in over 220 countries and territories around the globe (Worldometer 2021). Early on scientific estimations accounted for about 80% of the world population to get infected with the virus in dense areas in

one form or another at a point in their life (BBC 2020). With about 10-up to over 30% of previously infected to develop long-term impacts of the disease, we can say that COVID-19 will be the most prevailing external change factor of our current generation (Coleman 2021; Economist 2021).

In almost all major world countries, the pandemic required governments to take drastic steps to stabilize the economy since consumption, trade and finance flows changed dramatically. In the international arena, central banks of all major world economies – such as Australia, Brazil, Canada, Denmark, Japan, New Zealand, Singapore, South Korea, Sweden, Switzerland, United Kingdom, United States – and the European Central bank coordinated to lower the price of USD liquidity swap line arrangements in order to foster the provision of global liquidity (Alpert 2021). The International Monetary Fund (IMF) and the World Bank issued economic stimulus and relief efforts in the range of around 260 billion USD with the majority of relief aid being distributed in the developing world (Alpert 2021; World Bank 2020). As of May 2021, all major economies responded to the economic fallout of COVID-19. In response to the ongoing COVID-19 crisis, all major economies around the world have rolled out economic-assistance packages or recovery releases that by mid-2020 already are summing up to over 10 trillion USD and with continuous prospects of renewal and further development (Cassim 2020; The White House 2020).

Across countries, economic-stimulus responses to the COVID-19 crisis outsize those to the 2008 financial crisis (Cassim, Handjiski, Schubert & Zouaoui 2020; The White House 2020). The qualitative and quantitative stimulus, rescue and recovery aid have surpassed any other similar attempt in human history. Economic COVID-19 stimulus and relief efforts mainly comprise of international fiscal and monetary stimulus and relief efforts but also direct rescue bailout packages. The potential focus of bailouts and recovery ranges from urban-local and national to even global and future-oriented beneficiaries, as pursued in public investments on climate stabilization in the United States Green New Deal or European Green Deal Sustainable Finance Taxonomy.

The paper sheds light on the potential to use the funds to aid healthcare with particular attention to John Maynard Keynes' idea of the multiplier. This paper addresses the unprecedentedly large governmental rescue and recovery aid in light of its potential to invest in healthcare.

The traditional Keynesian approach (1936) gave rise to the concept of the government spending multiplier. During the Great Depression of the 1930s, economist John Maynard Keynes argued that 1 point change in government spending, G , total output, Y would increase by a greater factor, estimated to be around 1.6 points. The increase in investment or government spending will raise output one-for-one, but then some of the income generated by output increase will be spent on consumption, which will generate more output and so on. The overall total output function of an economy would be $Y = C + I + G$ where C and I are total consumption and investment in a closed economy model. The intuition of the multiplier can be derived from accounting relationships.

The currently ongoing COVID-19 crisis has challenged healthcare around the world. The pandemic has made already long existing healthcare inequality even more blatantly transparent as ever before (Puaschunder & Beerbaum 2020). With the Coronavirus crisis imposing the most challenging healthcare crisis of the last century and the most worldwide spread pandemic ever occurred in our contemporary society, we need a better understanding how to use governmental unprecedentedly-highest-ever rescue and recovery for health purposes and if a specific focus on preventive care and healthy long-term lifestyles impacts the economic multiplier, well-being and/or societal welfare. The discussion highlights future proposed research also in light of the United States Green New Deal and the European Green Deal.

Coronavirus crisis

The novel coronavirus SARS-CoV-2 imposes the most unexpected external economic shock to modern humankind (Baldwin & di Mauro 2021). So far over 200 million recorded infected people have caused over four million documented deaths related to the disease in over 220 countries and territories around the globe (Worldometer 2021). Early on scientific estimations accounted for about 80% of the world population to get infected with the virus in dense areas in one form or another at a point in their life (BBC 2020). With about 10-up to over 30% of previously infected to develop long-term impacts of the disease, we can say that COVID-19 will be the most prevailing external change factor of our current generation (Coleman 2021; Economist 2021).

Coronavirus crisis rescue and recovery aid

In order to alleviate unexpected negative fallouts from the crisis, global governance and governments around the globe engaged in bailouts and recovery packages of extraordinary size and scope (Alpert 2021). In the international arena, central banks of all major world economies – such as Australia, Brazil, Canada, Denmark, Japan, New Zealand, Singapore, South Korea, Sweden, Switzerland, United Kingdom, United States – and the European Central bank coordinated to lower the price of USD liquidity swap line arrangements in order to foster the provision of global liquidity (Alpert 2021; European Central Bank 2020; Federal Reserve Bank of the United States of America 2020). The International Monetary Fund (IMF) and the World Bank issued economic stimulus and relief efforts in the range of around 260 billion USD with most of the relief aid being distributed in the developing world (World Bank 2020).

As of May 2021, all major economies responded to the economic fallout of COVID-19. In response to the ongoing COVID-19 crisis, all major economies around the world have rolled out economic-assistance packages or recovery releases that by mid-2020 already are summing up to over 10 trillion USD and with continuous prospects of renewal and further development (Cassim et al. 2020; The White House 2021).

Across countries, economic-stimulus responses to the COVID-19 crisis outsize those to the 2008 financial crisis. The qualitative and quantitative stimulus, rescue and recovery aid have surpassed any other similar attempt in human history (Alpert 2021). Economic COVID-19 stimulus and relief efforts mainly comprise of international fiscal and monetary stimulus and relief efforts but also direct rescue bailout packages (Alpert 2021). The highest-ever and most broad-based often-intergovernmentally concerted funding efforts around the world are often targeted at specific causes. For instance, the potential focus of bailouts and recovery ranges from urban-local and national to even global and future-oriented beneficiaries, as pursued in public investments on climate stabilization in the Green New Deal or European Green Deal Sustainable Finance Taxonomy.

Multiplier effect

The unprecedented size, scope and focus of large-scale governmental investments around the world are economically justified by the idea of the economic multiplier effect of governmental investments, which was first described in John Maynard Keynes' *The General Theory of Employment, Interest and Money* (1936). During the Great Depression of the 1930s, Keynes (1936) found that large construction projects but also innovation in research and development are valuable macroeconomic accelerators and multipliers that can benefit society as a whole in the short and long term.

The general positive multiplier effect is estimated to be around a 1.6 multiplier – meaning that 1 USD spent by the government leads to an overall increase of the economy by 1.6 USD due to multiplier effects in money spent leading to consumption leading to economic

growth. The underlying assumption is that governmental spending in investment projects create economic growth and prosperity for all parts of society due to trickle down effects.

There is also a negative multiplier, hence a contraction in case of governmental austerity measures, which can be found on the international level (Social Research 2013). If austerity is implemented, economic growth potential is restricted. During recessions, austerity policies hamper economic recovery (Social Research 2013). Semmler (2013) analyzes austerity in the European Union and shows that in periods of high financial stress and recession, the fiscal consolidation intended to stabilize debt is costly in terms of harming growth. Semmler (2013) concludes that the cure is worse than the disease and in fact contributes to it.

Governmental spending in the multiplier is unique insofar as governments and intergovernmental bodies have the long-term vision and financial freedom to operate on deficits but also the regulatory means to enact large-scale redistribution and long-term wealth creation in grand investments for the future. State-dependent multiplier studies find differences between countries (Mittnik & Semmler 2011). Mittnik and Semmler (2011) empirically outline that the multiplier depends on the timing of the demand shock as there is a significantly higher multiplier in times of low demand than in times of high demand. This is because there are significant constraints in times of recession in the labor, product and financial markets. Multipliers appear to have a higher impact in high stress regimes, evidenced by the strong contractionary multiplier that Greece in the aftermath of the 2008/09 crisis witnessed due to constraints in the labor, product, and financial markets worsening due to austerity (Mittnik & Semmler 2011). Not only is the multiplier stronger in bad times, but its effects are also stronger for big shocks (Mittnik & Semmler 2011). In 2012, the International Monetary Fund (IMF) found that the state dependent multiplier triggered by austerity was strongly contractionary when enacted in a recession (Mittnik & Semmler 2011). All these results imply the importance to consider the particular state of the economy at the time the fiscal expenditure becomes effective consistent with Keynesian theory and empirical trends of net borrowing over the business cycle (Mittnik & Semmler 2011).

Multiplier effect during the Coronavirus crisis

In the aftermath of the COVID-19 pandemic shock and its subsequent economic fallout, the currently largest-ever governmental rescue and recovery aid is justified by the positive multiplier effect in the hope for a revitalization of the economy. In many countries, governmental crisis aid is particularly pegged to concrete social, economic and environmental causes. For instance, in the United States, the current rescue funds are targeting a transition to renewable energy in the wake of the so-called Green New Deal (GND).

Inspired by the economic success story of the New Deal reform of the United States to recover from the Great Depression of the 1920s, the so-called Green New Deal (GND) is the most advanced governmental attempt to secure a sustainable economic solution in harmony with the earth's resources (Braga, Fischermann & Semmler 2020). The GND advocates for using a transition to renewable energy and sustainable growth in order to stimulate economic growth (116th Congress of the United States, House Resolution 109, Introduced Feb 7, 2019). The post-COVID-19 recovery era is also a time of blatant disparities and inequalities in terms of access to healthcare and social justice. In times of rising inequality, the GND has also become a vehicle to determine the COVID-19 economic bailout and recovery aid targets. The GND thereby combines Roosevelt's economic approach with modern ideas of economic stimulus incentivizing industries for a transition to renewable energy and resource efficiency as well as healthcare equality and social justice pledges (Puaschunder 2020, 2021).

The currently ongoing COVID-19 crisis has challenged healthcare around the world. The pandemic has made already long existing healthcare inequality even more blatantly

transparent as ever before (Puaschunder & Beerbaum 2020). The common call for global solutions in international healthcare pandemic outbreak monitoring and crisis risk management has reached unprecedented momentum. With the Coronavirus crisis imposing the most challenging healthcare crisis of the last century and the most worldwide spread pandemic ever occurred in our contemporary society, the largest-ever governmental rescue and recovery aid could target at boosting healthcare. COVID-19 can also be interpreted as a great reset advantage to use the potential of released funding for the improvement of healthcare provision, potentially with a focus on preventive care as prevention and a healthy diet have been proven to aid on COVID trajectories and disease outcomes (Salzburg Declaration 2020; Salzburg European Declaration 2021).

Research proposal

Future hypothesis testing opportunities could investigate the relation between governmental spending on healthcare associated with multiplier effects, which would indicate if there is a healthcare dependent multiplier effect. If a relation between multiplier effects and healthcare exists, a future step would be to investigate if it also holds or varies for particular governmental investment in prevention and if well-being and social welfare or digitalization and corruption are potential moderators of the effect.

While prevention could curb multiplier effects, especially in terms of healthy nutrition and less food intake, preventive care may boost the overall well-being and social welfare of a society. With pre-existing prevalence, such as obesity and diabetes, but also the immune system influencing the COVID disease trajectory, preventive care and whole-rounded lifestyles have gained unprecedented societal attention and demand (Ecowellness Group 2020, 2021). Creative Ecowellness options and sustainable lifestyle innovations take into account health and well-being, considering the given natural constraints set by ecological limits. The outbreak of the novel Coronavirus has sparked new community development to live in harmony with nature, which is forming in so-called agri- or agrohoods, which are neighborhoods that are directly attuned to the surrounding and celebrate the natural and cultural heritage (Agritecture 2021; Garden Destinations 2021). Moving to cheaper suburbs allows a remote workforce to build wellness cocoons, in which individuals can pay attention to healthy living embedded harmoniously in nature. The environment is also represented by biophilic architecture resembling the natural environment, which is currently booming (Pearlman 2020). The fashion world has picked up the trend in the form of sustainable fabrics (Team Linchpin 2021). Fungus clothing booms in the design world as a carbon-negative and organic alternative to fast fashion (Wolfrom 2020). In interior design of private living spaces, cleanliness and hygiene have become key factors. Aerosol sprays and air purification systems boom. Hygienic antibacterial surfaces optimized for cleanability and technologically-enhanced kitchens came into high demand as outdoor dining plummeted and people were in a better position for home cooking instead of spending considerable amounts of time commuting and getting ready to leave the house (Dizik 2020). Attention to healthy nutrition is on the rise among Long Haulers, many of whom appear to have a craving for minimalistic stimulation at home and an anti-inflammatory diet with no glutamates, additives and preservatives infused in meals that apparently can cause problems for COVID Long Haulers (Ecowellness Group 2020, 2021). With more efficient online retail options available, and people spending more time at home during lock-downs and moving to the suburbs, minimalism has become a home trend for Long Haulers. Exhausted long-term sufferers from COVID appear to try to make sense of an even more complex world and will likely eliminate unnecessary items that clog their primary location in a search for simplicity.

Future studies may investigate if preventive healthcare related governmental support is either a positive multiplier due to general well-being enhancement, healthier life outcomes

and societal welfare elevation. In light of the minimalism practiced, however, preventive healthcare related investment may also lead to a short-term consumption crunch.

In terms of digitalization, healthcare of tomorrow consists of Artificial Intelligence, algorithms, big data-derived inferences and robotics in healthcare (Puaschunder 2019a, b). Examining medical responses to COVID-19 on a global scale makes international differences in the approaches to combat global pandemics with technological solutions apparent. In the medical sector, individual medical information could be interpreted in the context of larger datasets in order to diagnose and predict the individual health status and likely outcomes of medical conditions. To prevent future pandemics, mobile monitoring and digital health resource tracking will play an unprecedented role. Thanks to new technologies for self-motivated health monitoring, it is currently possible for everyone to monitor their health independently and change their lifestyle over a longer time horizon. Individualized health status apps are currently being developed to track body functions and detect virus infections in real-time. Big data that is used to obtain objective disease risk and outcome trajectory every person faces can aid in optimizing one's own lifestyle and health to prevent negative consequences early on. Currently emerging innovations such as real-time monitoring of the immune system, microchips for tracking biomarkers or large data and the use of Bluetooth technology for cartography of healthcare devices could be used to overcome bottlenecks allocation problems and combats the misuse of resources.

Empirically, the future research could investigate if investment in healthcare improves the multiplier effect and if digitalization has a moderator effect on this relationship. For instance, internet connectivity could serve as a proxy for digitalization.

When comparing countries worldwide, AI advancement is found to be positively correlated with anti-corruption (Puaschunder forthcoming). AI thus springs from non-corrupt territories of the world. Puaschunder and Beerbaum (2020) presented a novel anti-corruption artificial healthcare index that highlights those countries in the world that have vital AI growth in a non-corrupt environment. These non-corrupt AI centers hold comparative advantages to lead on global artificial healthcare solutions against COVID-19 and serve as pandemic crisis and risk management innovators of the future. Anti-corruption is also positively related with better general healthcare. Anti-corruption thus appears to be an interesting additional moderator variable to test in when investigating the healthcare dependent multiplier.

Overall, highlighting longer term outcomes and impacts in the preventive healthcare provision around the world, will determine the living conditions and peace prospects of this generation and those to come.

References

- 116TH CONGRESS OF THE UNITED STATES, HOUSE RESOLUTION 109, Introduced Feb 7, 2019, *Recognizing the duty of the Federal Government to create a Green New Deal*. Accessed Sept 30, 2020 at <https://www.congress.gov/116/bills/hres/109/BILLS-116hres109ih.pdf>.
- Agritecture. 2021. *The Agrihoods are coming*. Jun. 17, 2021, <https://www.agritecture.com/blog/2021/6/17/the-agrihoods-are-coming>.
- Alpert, Gabe. 2021. "International COVID-19 Stimulus and Relief: International fiscal and monetary stimulus and relief efforts." *INVESTOPEDIA*. May 26, 2021, <https://www.investopedia.com/government-stimulus-and-relief-efforts-to-fight-the-covid-19-crisis-5113980>.
- Baldwin, Richard & Beatrice Weder di Mauro (eds.). 2021. "Economics in the Time of COVID-19." *CERP Press*. <https://cepr.org/sites/default/files/news/COVID-19.pdf>.
- BBC News Scotland. 2020. "50-80% of population could be affected by coronavirus." March 2, 2020, <https://www.bbc.com/news/av/uk-scotland-51711747>.
- Braga, João Paulo, Thomas Fischermann & Willi Semmler. 2020. „Ökonomie und Klimapolitik: So könnte es gehen.“ *Die Zeit*, 11, 5, March 10, 2020.
- Cassim, Ziyad, Borko Handjiski, Jörg Schubert, and Yassir Zouaoui. 2020. "The \$10 trillion rescue: How governments can deliver impact Governments have announced the provision of trillions of dollars in crisis

- relief, but translating that into sustained recovery will not be easy.” *McKinsey*, Public Sector Practice report, June 2020. <https://www.mckinsey.com/~media/McKinsey/Industries/Public%20Sector/Our%20Insights/The%2010%20trillion%20dollar%20rescue%20How%20governments%20can%20deliver%20impact/The-10-trillion-dollar-rescue-How-governments-can-deliver-impact-vF.pdf>
- Coleman, Justine. 2021. “CDC study on COVID-19 long-haulers: Two-thirds of non-hospitalized patients receive new diagnoses.” *The Hill*, Apr. 23, 2021. <https://thehill.com/policy/healthcare/549950-cdc-study-on-covid-19-long-haulers-two-thirds-of-non-hospitalized-patients>.
- Dizik, Alina. 2020. “Top Interior Design Trends of 2020: From Home Offices to Two-Tone Kitchens Homeowners stuck inside because of Covid-19 are analyzing every detail, from fixtures and color schemes to how each room is utilized.” *The Wall Street Journal*, Aug. 16, 2020, <https://www.wsj.com/articles/top-interior-design-trends-2020-11597342299>.
- EcoWellness Group. 2021. “Salzburg European Declaration from the Gasteinertal: Interdisciplinary Conference on ‘System change?! The chance of transformation of the healthcare system.’” July 14–15, 2021, https://www.oekowellness.de/wp-content/uploads/2021/07/Final-Stand-5.7.-2021.07.04_Programm-14.7.-und-15.07.2021-2.pdf (last visited August 23, 2021).
- European Central Bank. 2020. Coordinated central bank action to enhance the provision of global US dollar liquidity (Mar. 15, 2020), <https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr200315~1fab6a9f1f.sv.html>.
- Federal Reserve of the United States of America. 2020. Federal Reserve announces the establishment of temporary U.S. dollar liquidity arrangements with other central banks, Mar. 19, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200319b.htm>.
- Garden Destinations. 2021. *Agrihoods: A new trend in lifestyle living*. Accessed September 7, 2021, <https://www.gardendestinations.com/agrihoods-a-new-trend-in-lifestyle-living/>.
- Keynes, John Maynard. 1936. *The general theory of employment, interest and money*. London: Macmillan.
- Pearlman, Alex. 2020. *Biophilic homes prove nature is the best medicine: Living design elements create a serene, multisensory, healing experience*. Accessed September 7, 2021, <https://neo.life/2020/12/biophilic-homes-prove-nature-is-the-best-medicine/>.
- Puaschunder, Julia Margarete. 2019a. *Artificial Intelligence, Big Data, and Algorithms in Healthcare*, Report on behalf of the European Parliament European Liberal Forum in cooperation with The New Austria and Liberal Forum, 2019. Retrieved at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3472885
- Puaschunder, Julia Margarete. 2019b. Artificial Intelligence Market Disruption. Proceedings of the International RAIS Conference on Social Sciences and Humanities organized by Research Association for Interdisciplinary Studies at Johns Hopkins University, Montgomery County Campus, Rockville, MD, United States, June 10–11, (2019b): 1–8.
- Puaschunder, Julia Margarete. 2020. “The Green New Deal: Historical foundations, economic fundamentals and implementation strategies.” *Proceedings of the 18th Research Association for Interdisciplinary Studies Conference on Social Sciences and Humanities*, August 17, 2020.
- Puaschunder, Julia Margarete. 2021. “Monitoring and Evaluation (M&E) of the Green New Deal (GND) and European Green Deal (EGD).” *21st Research Association for Interdisciplinary Studies (RAIS) Conference Proceedings*, pp. 202–206, March 1, 2021.
- Puaschunder, Julia Margarete. forthcoming. *The future of Artificial Intelligence in international healthcare: An index*. Vienna, Austria: Austrian Academy of Sciences.
- Puaschunder, Julia Margarete. & Dirk Beerbaum. 2020. “Healthcare inequality in the digital 21st century: The case for a mandate for equal access to quality medicine for all.” *Proceedings of the 1st Unequal World Conference*, United Nations New York, New York, United States.
- Semmler, Willi. 2013. “The Macroeconomics of Austerity in the European Union.” In: *Social Research: An International Quarterly*, Special issue on Austerity: Failed economics but persistent policy, 80, 3, The New School for Social Research
- Social Research: An International Quarterly. 2013. Special issue on Austerity: Failed economics but persistent policy, 80, 3, The New School for Social Research.
- Team Linchpin. 2021. *Trends Transforming the Sustainable Clothing Industry Outlook In 2021* (Jun. 17, 2021), <https://linchpinseo.com/trends-in-the-sustainable-clothing-industry/>.
- Tomek, Reinhardt Stefan et al. 2020. Salzburg Declaration, Outcome of the Conference on “System Change?! The Chance of Transformation of the Healthcare Sector: Analysis and Chance Within the Coronavirus Crisis.” Sept. 2020, <https://europepmc.org/article/ppr/ppr242581>, 2020.
- The Economist. 2021. “Post-COVID syndrome researchers are closing in on long covid: The results are alarming.” *ECONOMIST*, Apr. 29, 2021. <https://www.economist.com/special-report/2020/10/08/changing-places>, <https://www.economist.com/science-and-technology/2021/04/29/researchers-are-closing-in-on-long-covid>
- The IMF's Response to COVID-19, INT'L MONETARY FUND, Accessed May 13, 2020, <https://www.imf.org/en/About/FAQ/imf-response-to-covid-19>.

- The White House. 2020. “Briefing Room, President Biden Announces American Rescue Plan.” January 20, 2021. *THE WHITE HOUSE*, <https://www.whitehouse.gov/briefing-room/legislation/2021/01/20/president-biden-announces-american-rescue-plan/>
- Wolfrom, Jessica. 2020. “When Fashion is Fungal.” *WASHINGTON POST*, Aug. 31, 2020. <https://www.washingtonpost.com/climate-solutions/2020/08/31/fashion-mushrooms-mycelium-climate/>.
- World Bank, Press Release. 2020a. “World Bank Group: 100 Countries Get Support in Response to COVID-19 (Coronavirus).” *WORLD BANK*, Accessed Sept. 7, 2020, <https://www.worldbank.org/en/news/press-release/2020/05/19/world-bank-group-100-countries-get-support-in-response-to-covid-19-coronavirus#:~:text=WASHINGTON%2C%20May%2019%2C%202020%E2%80%9494,70%25%20of%20the%20world%27s%20population.&text=Of%20the%20100%20countries%2C%2039%20are%20in%20Sub%2DSaharan%20Africa.>
- World Bank, Press Release. 2020b. “World Bank Group Announces Up to \$12 Billion Immediate Support for COVID-19 Country Response.” *WORLD BANK*, Accessed March 16, 2020, <https://www.worldbank.org/en/news/press-release/2020/03/03/world-bank-group-announces-up-to-12-billion-immediate-support-for-covid-19-country-response#:~:text=WASHINGTON%2C%20March%203%2C%202020%E2%80%9494,impacts%20of%20the%20global%20outbreak.>
- World Bank, Press Release. 2020c. “World Bank Group Increases COVID-19 Response to \$14 Billion To Help Sustain Economies, Protect Jobs.” Accessed March 17, 2020, <https://www.worldbank.org/en/news/press-release/2020/03/17/world-bank-group-increases-covid-19-response-to-14-billion-to-help-sustain-economies-protect-jobs.>
- Worldometer. 2021. *Coronavirus Live Update*, <https://www.worldometers.info/coronavirus/>.

Music on the Wrong Side of Art

Goranka Stanić

*Professor Advisor, Graduate engineer, School of Art and Design, Osijek, Croatia
goranka.stanic@skole.hr*

ABSTRACT: Music and dance follow human development. The beginnings of music spontaneously hit various kinds of behaving that accompanied free movement (dance) within the community. In addition to relaxation and enjoyment, music has often been used in some undesirable behavior forms by today's standards. Music encourages soldiers to raise the morale and willingness of the army to win. This act intimidated opponents—the first example of using musical instruments in the best-selling Christian book of the Bible (Jericho). Today, music is wide-ranging and classified into different categories; this happens freely in other performers who may encounter hate speech. Music is used as a means of provoking and intimidating certain target groups. Depending on the country and the area, we come across numerous music examples on the "wrong side." The examination refers to how to use music that should inspire and raise the values of human beings in a strange way that causes fear, panic, hiding, discrimination in some groups. These people are primarily in the minority: nationality, religion, skin color, sexual orientation, or any other isolation and mockingly aggressive attitude towards selected people. Music began to use for ideological purposes during the French Revolution, and this firefighting practice spread to Europe in the 19th century. Music by manipulation became the music of hatred towards different and others. Beautiful and sublime, placed in the proper context, music can evoke strong emotions. The desired effect is achieved by the synergy of music and text, its persistent appearance within a particular ideology, and asocial.

KEYWORDS: prejudice, music, hatred, discrimination, misuse of music, the influence of music

1. Introduction

Synthesis of the essence and power of music can cause harmful products of the human mind. Ancient philosophers dealt with the question of the influence of music on the human mind. Music is ubiquitous in people's lives, whether it is the deliberate choice of a person or imposed by the media, corporations, or individuals.

Since its oldest history, music, sounds, and screaming have served as a means of communication. From today's primary means of communication, just as words can "hit" us and provoke negative emotions in us, sounds can cause the same symptoms. Music is an art and, as such, is primarily presented in a positive light and, among other things, serves people to help with relaxation, fun, etc. The fact is that music can have the opposite effect. People consciously or unconsciously resort to the theme that corresponds to their mental state at a certain point in time. In this paper, several problems have been investigated and solved: how music evokes negative emotions in listeners; why we listen to music that makes us sad or cries; how disturbing piece affects the perception of the situation and human emotions when watching movies; to what extent the lyrics negatively affect behavior and what messages they convey to us; how music can aggravate the mental state; music therapies; how inmates tortured prisoners with music; how piece affects mental health. With an impact on mental states, processes in the brain are represented by active or passive listening to music; they describe a negative impact on the physical condition, clearer hearing.

2. Prejudices and stereotypes

Prejudice is most often negative judgments about groups of people who share a common trait, so a warning about some of their negative characteristics should protect us from them. There are several different prejudices, such as those about people from other parts of the country,

about people of different professions, men or women, young or older, and they all have the same description all people based on one character in the group. Prejudice refers to a pre-adapted "Judgment" on something that a person does not know enough that the concept of prejudice is closely related to stereotypes, that is, generalizations.

Stereotypes represent the assignment of specific characteristics to people based on the group to which they belong. Prejudices and stereotypes encourage us not to connect with those according to whom we have negative prejudices, and we do not have the opportunity to understand that these prejudices are incorrect and cannot apply to whole groups of people.

Neither prejudice nor stereotypes are usually correct. People usually judge other people based on known data that is often incomplete, subjective and accurate. Even though experts have confirmed that people in the first assessments of people are wrong, this does not seem to prevent us from creating new stereotypes and prejudices.

In addition to affecting a person's self-esteem, prejudices regularly offend racial, sexual, religious, political and many other individual traits.

One of the accepted definitions of stereotypes is: "A standardized mental image accepted by members of a particular group and represents a simplified opinion, biased attitude or non-critical assessment" (Poljak 2018). This definition clearly reflects the common belief that stereotypes are accurate and lead to negative generalization. This popular opinion is most often wrong. Prejudice and stereotypes necessarily lead to discrimination against other individuals or groups. Discrimination can be defined as the unfair treatment of individuals belonging to a particular social group (Bordalo et al. 2014).

2.1. Prejudice is dangerous

Precisely because they often result in discrimination, unjustified, harmful behavior towards group members, simply because they belong to that group, prejudice can indeed be dangerous. Moreover, they are often the source of many conflicts. Experts believe that culture (parents, community, and media) deliberately or unfoundedly teaches us to attribute negativity and characteristics to different people.

2.2. Modern prejudice

A more recent term in psychology, but above all present in society, is modern prejudice. It is about unbiased behavior in front of others while maintaining discrimination. It would also mean that prejudices were not eradicated but only became more secret. People have become more cautious in expressing their prejudices, but they are very present. In races, this phenomenon is called modern racism, which means that people have learned to hide prejudices not to be called racist, and when the situation is "safe," their prejudices come to light. As Albert Einstein said "It's harder to break prejudice than an atom."

3. Music as a medium

The development of recording techniques in the second half of the 20th century revolutionizes music availability. Most people have access to all kinds of music 24 hours a day at the touch of a button. The flip side of the coin is that people often take it for granted because of this facilitated approach to music in the Western world. Music is a compelling medium, and there has been an attempt to control its use in some societies. However, it has a strong influence at the social group level because it allows communication that no longer needs words, encompasses the meanings and meanings that the group shares, and encourages the development and well-being of individual, group, cultural and national subjects.

On an individual level, music is powerful because it can provoke multiple reactions - psychological, movement reactions, mood swings, emotional, cognitive (cognitive), and behavioral (at the behavioral level). Several things can cause such a significant effect on such

a wide range of human functions. Since the brain processes music more than once, it is difficult to predict some piece's impact on the individual accurately. Music is also used to provoke appropriate behavior in groups of susceptible, vulnerable people and improve people's quality of life who cannot help by medical or pharmaceutical means.

3.1. Music Options

Music is art expressed by sound; art, knowledge, or skill of combining sounds within the sound system; the same product of the composer's sounds: composition, structure, song - a synonym that music uses in most languages. There are many different definitions of music, depending on the accent of its societies: meaning, Plato (Harnden 2014), individual experience (ability to distinguish tones, Ptolemy (Poljak 2018), sensibility (expression of feelings by techniques), within. Structure (nature of sound design, Kleonik (Poljak 2018), tonal word, proper singing, music (Renaissance), and various philosophers; definitions of its meaning, at the latest.

3.2.1. Aesthetics and music.

Theory (musicology), which explores the development of music, is associated with the very beginnings of human expression, especially in connection with cults, most often together with dance. In addition, music is associated with poetry, confirmed in the first sheet music systems and theoretical discussion of music. The social significance of music in prehistory, but partly in antiquity, the work of the musical society, magical ceremonies, ceremonies, and other events. Music is a compelling medium.

3.2. The power of music

Music can very strongly affect our feelings, mood, and behavior. Music can trace back centuries. Throughout history, the music theme was used for such different purposes as cheering before battle, putting babies to sleep, encouraging courtship, and following various ceremonies and important events throughout life. Music was used to trigger a riot, but also music can also shake a truce. Music is considered a powerful tool that the government seeks to control or even ban in some cultures. In Nazi Germany, music was carefully selected for public gatherings to produce appropriate patriotic sentiments. In the former USSR, the government banned Shostakovich's music. During the Cultural Revolution in China, Western music was declared decadent and forbidden. In Iran, strict restrictions were placed on certain types of music during the reign of Ayatollah Khomeini. Music is also used to provoke appropriate behavior in groups of susceptible, vulnerable people and improve people's quality of life who cannot help by medical or pharmaceutical means. In white-dominated South Africa, centers of African music were demolished, while musicians living in emigration continued to influence the world's stance against the prevailing white political regime with their music.

There is a lot of evidence that Western 'institutions' criticise rock music as well as its consequences. How powerful music is illustrated by the special attention paid to observing the influence of certain types of music and their possible excitement with antisocial or self-destructive behavior. Since music plays an important role in adolescence, older generations are constantly concerned about possible negative effects on the behavior of young people.

Listening to any music, in itself, is unlikely to provoke aggression, but in people who are already predisposed to violence and who have already taken the views expressed in the music in question, this may support a certain action. One study of listener perceptions found that only a few believe music really influences their behavior. Nevertheless, belonging to a particular youth music culture in some countries may increase the likelihood of psychiatric hospitalization.

Listeners of one culture often have difficulty understanding the feelings expressed by the music of another culture because the emotional expression is culturally determined. In most cultures, music has functions that are not only the fun and aesthetic enjoyment of the individual.

Music is actually an alternative means of communication between individuals and groups, although this communication may be limited to those who understand the specific meaning of the musical genre used. As an example, in Montreal when classical music was played on the subway, trying to convince young people that they should not stay there. The procedure was very effective. Music plays a role in most of our social institutions and religious ceremonies, for example, at birthdays, weddings and funerals, sports competitions, military events in some cases, music can be a powerful tool for change. It can play an important role in uniting and expressing solidarity in people who challenge social norms and actions. It can also be a powerful tool for maintaining the continuity and stability of society through folk music (folklore) and songs that talk about myths and legends and record important events. In our increasingly global society, folk music can be an important tool for preserving the identity of minority cultures

3.3. Impact of heavy and deadly metal music rock

By analyzing the influence of hard rock, heavy and death metal music, it is necessary to pay attention to a very important aspect of these types of music, which are song lyrics. In many songs it is very explicit according to topics such as sexual relations, violence, drug use and death. Heavy metal, whose numerous texts express dangerous and suicidal messages to adolescents in psychological development who are psychologically very vulnerable at that age, gave the greatest concern, given that this is when their upbringing begins.

The article of American pediatricians provides information about adolescents who show the consequences of frequently listening to songs whose lyrics are not appropriate for their age, and some of these consequences are: suicides, sexually transmitted diseases due to uneducatedness, unwanted pregnancy, self-harm, etc. Therefore, under the influence of listening to negative texts, mentally unstable adolescents without parental supervision will eventually begin to understand procedures such as rape, aggression, murder, etc., by normal behavior. Even the ancient philosopher Plato associated music with an "irrational", barbaric "part of the soul," arguing that music directly influences feelings long before reason can interpret whether it is a threat to content (Harnden 2014). What is negative about song slogans, Milos (1996) says, analyzing the lyrics of famous artists, only one of the slogans is: "Sex, drugs and rock 'n' roll are all your body needs."

Due to loud musical communication, people are difficult, so they are isolated from society. Although they are in a multitude of music lovers, they are preoccupied with their own thoughts that music affects, they have only physical contact with other people and are focused on performing on stage. Milos (1996) cites, for example, Frank Zappa (Poljak 2018), who staged puppets during the show and showed sexual intercourse with minors and animals, and Vincent Furnier (Milos 1996), who also used dolls and showed scenes of crippling the human body, as well as terrifying rituals of raping children and lifeless bodies.

What young people don't see, and may not know, is the fact that after the concert, some performers suffer terrible consequences caused by the use of LSD and other narcotic drugs. The music industry of hard rock, heavy and death metal music is subjected to frequent verbal attacks, mainly by parents, for its content (suicidal and inappropriate, vulgar messages ...) that are presented to the public, and therefore directly to children and young people. Milos (1996) points out that metal music peaked in the 20th century. We can not declare the nerdy genre completely negative. Depending on the mental state of the individual, so the data of Charles Manson (Harnden 2009) was recorded, who said that he found inspiration for the murders he committed in the Beatles lyrics, which he interpreted in his own way and read differently messages.

A brief analysis of the main components of the songs of Stabwound *Necrophagist* and *Your Tachchery Die With You*, by Dying Fetus, can read the usual musical components through which elements can be observed that warn of the existence of negative flu.

The singer who performs the vocal part of such a song, like many other artists of the same genre and hard rock genre, uses the technique of growling. It is about performing mostly quiet tones, with a throaty voice, with the intention of sounding rough, cutting, similar to the voice of animals, while wanting to express extremely strong emotions. Since the technique of singing is compared with the voice of animals, then their facial expression can also be compared.

4. Emotions and music

There is a difference between emotions and feelings and moods. Emotions are unconscious, while feelings of consciousness and upgrading of feelings caused by stimuli are instantaneous, a transient state, which can lead to mood swings, which unlike emotions, last longer and have a greater degree of influence on the mind.

Emotions are the answer to stimuli that stimulate centers in the brain and lead to psychological changes, and in order for someone to recognize them in stimuli like music, it is necessary to have a certain amount of empathy and emotional intelligence.

Brauer (2016) describes one situation of psychological harassment: "...The beginning of the war brought to Sachsenhausen the deportations of tens of thousands of people across Europe. In 1944, less than ten percent of prisoners were native German. Ignorance of German songs was enough to provoke punishment." Furthermore, Brauer (2016) explains that psychological abuse was an obligation of physical abuse, which would mean that everything happened through simultaneous physical abuse or forced physical activity of prisoners, such as marching, loud singing and simultaneous execution of push-ups and similar physical exertions. Prisoners would march more than thirty kilometres a day in inappropriate footwear, with cargo to transport, singing songs whose lyrics were a symbolic reflection of the situation they found themselves in, with pitiful messages.

The mere stay in concentration camps adversely affected the psyche of individuals. During the reign of the Greek military junta, the sound of a gong or motor vehicle was repeatedly played with torture to cover up screams of torture. Day and night there would be a loud sound of the engine hitting metal objects. That way, the prisoners weren't allowed to sleep. During all this time, the cries and cries of martyrs were clearly heard, which further instilled fear, while panicked conditions, mental disorders, healing and frightening situations and the inability to think realistically arose from the frequent and prolonged playing of these sounds

When people are constantly exposed to the same sounds or songs, these sounds and songs affect the mind on an unconscious level. So much negativity and emotional instability put prisoners in a state of despair and depression, which can worsen over time. The brain combines the elements offered to it into one whole, in other words, it connects visual, auditory and tactile images into one whole, that is, into a single feeling. Therefore, if a person observes another person's violence or is subjected to violent methods, hears screams and pain momentum and feels the same pain, the brain will generally perceive it as a negative effect that will manifest itself in mental health problems. This method was applied to prisoners: the unification of all negative elements into one whole, all for the purpose of harassment. It can be said that the whole process is well psychologically based. Music is systematically used to discipline and harass prisoners. "In the afternoon, somewhere outside there were a lot of beatings and I heard shouts from the martyrs. They turned up the speakers so the voices wouldn't be heard. The motive was a song I was going to go into the jungle with Tarzan. There was a song we listened to the whole time we weren't leaving. And a military policeman yelled, 'Wait your turn!' the wait was worse than a beating." Listening to the song, it was known what to expect, so it was a song that aroused fear and caused negative emotions due to the awareness of impending suffering. For days without water, tortured, listening to one and the same song, "Witness F" highlights the appearance of hallucinations: he saw the wall as a refrigerator with a drink, and security guards as family members. Music in such situations loses its original function of fun

and relaxation and becomes exclusively synonymous with terror and fear, and fear is precisely the sense of origin from which the amygdala is important, a structure in the limbic system of the brain that recognizes and expresses fear as feelings. Brauer (2016, 100) cites an important fact from the Auschwitz concentration camp about the existence of orchestras that played when Jewish prisoners arrived, knowing that they had been taken to gas chambers. The repertoire included classical compositions by famous composers, and the negative impact was seen in the fact that before arriving at the camp, musicians performed compositions with pleasure, out of love for music, in order to convey messages and emotions to the audience. But in this case, the act of playing itself is guided by completely contrasting reasons. Music no longer meant honor and pleasure to them, but indescribable fear and sadness. She's got a second function and as she remains etched for life. Members of the orchestra were rescued on the one hand because, thankfully, they were needed. "... new emotions appeared among the musicians, including anger, despair and shame. The stress was associated with the fear of failure in the eyes of the SS guards. These new negative emotions have been eashed on them and redefined the musician's connection to music. It is clear that music, with its strong connections to memory, emotions and identity, has the potential destroy the whole being..." The reason why identity matters when it comes to stimuli.

5. Conclusions

Music not only has positive effects on the human mind, but can also be negative. From the medical, psychological, philosophical, historical and musical aspects, many studies have been carried out and a lot of information has been collected about the negative impact of music on people's daily lives. EEG tests have shown that music, among other things, can cause emotions such as sadness, anxiety and fear, as well as mental and physical anxiety. From a medical point of view, it has been proven that the implementation of music therapy can be contraindicated in the mental states of patients and can change the therapeutic appearance in the direction of the negative. By studying this topic, we can shed light on the problems and consequences of epileptic seizures in musicogenic epilepsy and find out why some musical works in us cause tension and cause anxiety. The psychological aspect shows the impact of music on the brain during active or passive listening or making music and explains the ways in which the brain perceives sound stimuli and describes phenomena such as musical illusions.

Influence of hard rock, heavy and death metal music, with an emphasis on lyrics that further contribute to the negative impact on the human mind. Negative impact of this music on the behavior of young people. These types of music are often full of violent and suicidal lyrics. Listening to such music can cause mental disorders that can cause forced action, depression, anger and aggressive conditions. There are cases in which people with a predisposition to violent behavior have tried to commit suicide and inflict harm precisely because of the influence of songs whose lyrics combined with music and visual effects provoke their frustrations or anxiety states. From a historical point of view, emotions and the influence of music on them have been studied for centuries, and emotions will be at the heart of this work, because they are an important reflection of a person's mental state. Frequent listening to certain music in individuals promotes negative thinking or sad emotions, resulting in a worse state of the organism at the physiological and psychological level.

The brain is a center controlled by the organism, and the diagnostic method positron emission tomography shows which part of the brain is active during certain activities, including listening to certain music that provokes anti- and self-destructive behavior. Certain music stimulates negative thoughts and feelings, the harmful effect of certain volumes of music that has on the physiological and psychological aspect of a person is presented, with an emphasis on changes and hearing impairment.

References

- Bordalo, P., Coffman, K., Gennaioli, N. I Shleifer, A. 2016. “Stereotypes.” *The Quarterly Journal of Economics* 131(4): 1753-1794.
- Brauer, Juliane. 2016. “How Can Music Be Torturous? Music in Nazi Concentration and Extermination Camps.” *Music and Politics* 10(1): 1-34.
- Harnden, Toby. 2009. “Musicians’ Anger at Guantanamo Bay Torture.” *The Telegraph*, October 22, 2009, accessed December 15, 2014. <https://www.telegraph.co.uk/news/6409083/Musicians-anger-at-Guantanamo-Bay-torture.html>.
- Milos, Branko. 1996. “The Influence of Rock Music on Youth.” [expert article] *Renewed Life* 5(41): 559- 586.
- Poljak, Antea, The negative impact of music on the human mind. Haines, E. L., Deaux, K. I. Lofaro, N. 2016. “The times they are a-changing or are they not? A comparison of gender stereotypes. 1983–2014.” *Psychology of Women Quarterly* 40(3): 353-363.

ISSN 2578-8574

ISBN: 978-1-945298-38-7



RESEARCH ASSOCIATION FOR INTERDISCIPLINARY STUDIES