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# TABLE OF CONTENTS

On the Obsolescence of Long-Run Rationality <i>David Allen Axelrod</i>	1
Advances in Behavioral Economics and Finance Leadership <i>Julia M. PuaSCHunder</i>	13
Some Methodological Elements for Investigating Corruption Offences <i>Cosmin Butură</i>	18
The 4Ps of Marketing Mix and the Decision of Using Electrical Vehicles for Thai Consumer in Bangkok, Thailand <i>Sauwaluck Koojaroenprasit, Sumaree Pumpinyo</i>	24
The Psychology of Guilt in Criminal Law: A Comparative Review of Romanian Legal Aspects <i>Nicoleta-Elena Hegheș, Cristina-Gabriela Șchiopu</i>	30
Short Considerations on The Right to Life <i>Gabriel-Irimia Anghel</i>	38
Climate Stabilization Taxation-and-Bonds Strategy Adjusted for Consumption <i>Julia M. PuaSCHunder</i>	44
Considerations on Some Adverse Decisions of the Constitutional Court and their Impact on the field of Justice in Romania <i>Bogdan David</i>	51
Forensic Identification of Persons by Traits <i>Valentina Avrămescu</i>	55
The Digitalization of the Local Public Administration from Romania to Where? <i>Ana Dorina Pavel</i>	60
The Role of Foreign-Aid-To-Health in Public Health Expenditure Impact on Economic Growth in Nigeria: An Interactive Term Approach <i>Wasiu O. Abimbola</i>	65
Protection of Children in Difficulty under Romanian Law <i>Ciprian Raul Romișan</i>	72
Sustainable Lifestyle Revolution: Agrohoods, Ecowellness and Biophilia Trends <i>Julia M. PuaSCHunder</i>	82
A Comparison of the Church-State Relationship as seen by Catholics, Luther, Zwingli and Calvin, and the Anabaptists during the Reformation <i>Otniel Murza</i>	89

## Table of Contents

The Holy Apostles, Continuers of the Savior's Activity, Role Models of Spiritual Shepherds and Pastoral Means Used by Them <i>Vasile Miron</i>	<b>99</b>
The Communication Skills in Compliance with the Ethics of Caring for the Elderly People <i>Georgeta Stoica-Marcu</i>	<b>104</b>
Consequences of Non-Compliance with the Provisions of the General Data Protection Regulations (GDPR) <i>Vlad Mihai Dorel</i>	<b>108</b>

# On the Obsolescence of Long-Run Rationality

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**ABSTRACT:** The rapid pace of technological change challenges assumptions concerning the economic “long-run”. Consequentially, it disrupts the optimal psychological balance of emotion, reason, intuition and faith in our decision making. This is described in terms of the microeconomic conception of “runs”, decision frames defined by the scope of what is variable in the production process and endogenously determined. The four types are: market period, short, long and very long. These relate to time horizons that have parallels in terms of mindsets and the production of experiences. We show how a decrease in time between tech advances causes a sublimation from the short-run to the very long-run, thereby making long-run analysis obsolete. Further, these changes are associated with increased uncertainty about the future that is associated with increasing myopia. This can trigger a substitution out of reason into either emotion-based and/or intuition-based choice, as well as a greater demand on faith to maintain behavior. The implication is an exaggerated bifurcation in society between people driven by emotions to mediate the moment, and those reliant on vision and faith in technological progress to make their plans seem reasonable.

**KEYWORDS:** Long-Run, Uncertainty, Obsolescence, Microeconomics, Faith, Myopia

## Introduction

In 1923 Keynes wrote, “But the long run is a misleading guide to current affairs. In the long run we are all dead. Economists set themselves too easy, too useless a task if in tempestuous seasons they can only tell us that when the storm is long past the ocean is flat again.” (Keynes 1923, 80) In essence, it is a statement that the long run neoclassical economic analysis of the time was obsolete in the face of uncertainty and rapid structural change. Our paper elaborates on this obsolescence in the light of technological advance and its relationship to mind and society from a holistic economic perspective (a similar approach is well developed in *Holonomics* (Robinson and Robinson 2014)). It will not look at how to make a profit from the changes, or specific markets, or impact on employment. Rather it will consider the future in economic theory and decision-making frameworks, which has implications for psychology and modes of decision making. Indeed, the rapid advance of information technology led Vinge (1993) to write of a coming “singularity” where AI and computers would surpass human intelligence within thirty years. Kurzweil (2005) went further out, suggesting 2045 as the date of transcendence.

However, before such an inflection point, we could expect changes in the optimal balance of efforts between natural and artificial intelligence. Even if such a singularity occurred, leading to an absolute advantage by computers in all areas of human mental processes, there would still be the aspect of comparative advantage to consider. Comparative advantage refers to employing a resource how it is least disadvantaged, thereby still increasing overall production. Computers would have a comparative advantage in calculation, data processing, and logic, the quantitative side of economic reason. Humans would have a comparative advantage in the realms of emotions and intuition. This would lead to a specialization of mental labors. We already observe this as people outsource mathematical calculation and data memory to apps and servers (OECD 2012), and increasingly rely on emotions and faith to guide their decision making (Lerner et al. 2015, and Schieman 2011). Indeed, the field of behavioral economics has made great progress by accepting the “bandwidth” constraints of the human brain and mind (Mullainathan and Shafir 2014). There are also larger implications for decision making at the societal level, with serious consequences for democracy (Puaschunder 2019).

All of this finds its origins in the twentieth century when the limits of knowledge were explicated. While economics was dealing with Keynes and the role of risk, in 1927, physics saw Heisenberg develop the “Uncertainty Principle” expressing the limits on measurable observation (Busch, Heinonen, and Lahti 2007). For logic, 1931 saw Gödel prove the limits of mathematical deduction with his Incompleteness Theorems, taking us to the edge of recursive, self-referential systems being inconsistent (Raatikainen 2021). Then, Simon (1955) challenges that our ability to make decisions rationally is bounded by the information we have, and our capacity to process it. The fin de siècle economics of Walras’ 1877 *Elements of Pure Economics* (1954, English Translation), while still foundational, falters, as his bifurcation of persons and things ceases to describe the confounding of the consumer and product in the era of social media (Tabora 2019). These are all relevant, since they are various forms of uncertainty that constrain our capacity to make decisions rationally.

It will be useful to address a methodological issue at this point. In first-year courses, students are presented with the distinction between “positive” and “normative” economic statements (Asarta & Butters 2019). Positive statements are fact like, and can be tested against empirical evidence or logical consistency. Normative statements contain subjective judgements. Being able to distinguish between the two can be very useful. However, for our purposes, the following distinctions are suggested: descriptive, predictive, prescriptive, and proscriptive. These are summarized in Table 1. The reader is invited to consider these various ways of interpreting what our paper presents. The obsolescence of long-run rationality has as much to do with Greenspan’s (2008) “flaw in his model” being an idealized expression of how markets *should* operate, as it does with rapid structural changes happening in the economy.

Table 1. Suggested Economic Statement Types

Type	Aspect	Modality	Example
Descriptive	Historical	What Happened	The 2019 inflation rate was 1.8%
Predictive	Scientific	What Will Happen	The 2025 inflation rate will be 5%
Proscriptive	Political	What Should Happen	The 2025 inflation rate should be 2%
Prescriptive	Managerial	Deciding What Happens	Sell Treasury Bills to reduce inflation

### Economic “Runs”

A microeconomics course will also introduce the cost of production as distinguished by four runs: the market period, the short run, the long run and the very long run (Asarta & Butters 2019). Table 2 summarizes the four runs.

Table 2. Economic “Runs”

Run	Quantity Produced	Inputs	Production Function	Decision Making
Market Period	Fixed	Fixed	Static	Maximize Revenue
Short	Variable	Mixed	Static	Maximize (R – VC)
Long	Variable	Variable	Static	Maximize (R – TC)
Very Long	Variable	Variable	Dynamic	Tech. Change as a Cost

The “market period (or immediate run)” is when all inputs of production are fixed. One cannot change the amount one has produced, and hence the cost of production is fixed. An example is the day of a farmer’s market, where whatever one has grown or baked is the fixed supply for the day, and all one can do is try to maximize the revenue generated from that supply. The “short-run” has some fixed inputs (like size of manufacturing plant, number of

robots, retail store lease, etc.) and some variable inputs (labor, raw materials). Here there is some flexibility over how much to produce and there are variable costs based on the quantity produced. The “long-run” assumes the quantity of all inputs are variable, so there are no fixed costs (a time horizon where all contracts end, and can be renegotiated). However, all three of these assume a static production function. The production function embodies the technology available to turn inputs into finished products and services. Economists use the term “very long run” to refer to a scenario where even technology can change (think research and development).

The firm is assumed to be profit maximizing, where profit equals revenue minus total cost. Both revenue and cost are a function of  $Q$ , the quantity produced and sold. Cost always increases as quantity supplied increases. Total Cost (TC) is decomposed into fixed cost (FC) and variable cost (VC), where  $TC = FC + VC$ . Variable cost refers to those costs that vary with  $Q$ . Fixed cost do not vary with  $Q$ . Quantity demanded decreases as price increases. However, depending on the underlying demand, there may be a quantity at which revenue is maximized.

The optimal choice of how much to produce, which inputs to use, and selling price, changes based on run. In the market period, since  $Q$  is fixed, only price might be variable, and thus set to maximize revenue (since all costs are fixed). This can imply wastage of unsold product, and can show up as food chains throwing out food at the end of the day instead of giving it away free. Short-run analysis can be used to explain why firms might operate at a loss (exigencies preclude being profitable) as they maximize revenue ( $R$ ) minus variable costs ( $VC$ ), represented in the nomenclature as  $Max (R - VC)$ . Long-run analysis can be used to explain the number of firms operating in an industry, based on the assumption that they never have to operate at a loss. Here it is the maximization of revenue minus total costs,  $Max (R - TC)$ . These are essential for understanding why some businesses attempted to operate early during the pandemic (e.g., they had to pay leases anyhow, so better to make a little bit back), and then, over time, as fixed costs became variable, many chose to go out of business and not renew leases, so as to avoid unnecessary losses. The very long run framing considers structural changes and technological advances, for example remote work infrastructure and vaccines. So, businesses could *imagine* a future beyond lockdown, and hence enough prosperity to be willing to invest and expand.

It is important to distinguish a long-run decision from the limit of short-run decisions over time. It is tempting to conceive these as the same. They are not. Short-run decisions always have some fixed cost. As long as revenues exceed variable costs, the firm continues to operate, even if at a loss. If the losses are ongoing, they do not leave the industry as a business decision. They are forced out when they no longer have the assets to cover the fixed costs. Since long-run decisions have no fixed cost, a firm would leave an industry whenever operating can only produce a loss. They do not wait until they are forced out. Clearly, it would be beneficial for the owners of a firm to be able to make decisions from a long-run perspective.

We visually represent the static production function runs in terms of the amount of fixed cost relative to the market run, in Figure 1.

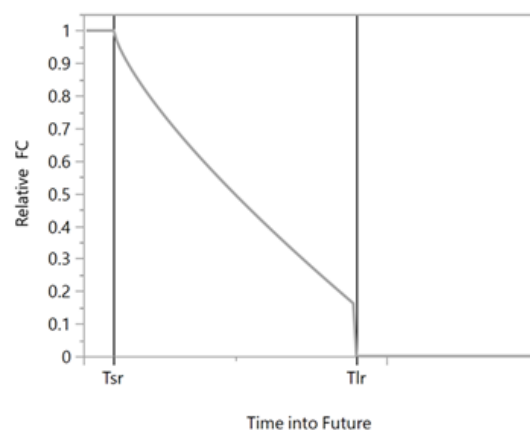


Figure 1. Relative Fixed Cost over Time

The market run occurs between 0 and  $T_{sr}$ , the short-run between  $T_{sr}$  and  $T_{lr}$ , and the long-run from  $T_{lr}$  on. The very long run is excluded for now, to clarify how time becomes identified with the operational context of economic runs. It will come back with a vengeance.

### Three Types of Time

Time enters decision making in three distinct ways: as a resource or product, as a distance to an event, and as a constraint on decision making. These can also be understood as time within a moment, time between moments, and time over a moment. We shall consider each, and their implications. A nice summary on the neuroscience of the brain, and its relationship to our perception and use of time, can be found in *Your Brain is a Time Machine* (Buonomano 2018).

First, time is a resource or product. It is often understood in labor economic or human resource terms. Businesses seek to efficiently use the time they've hired, whether a janitor, a teacher, or an executive. Likewise, individuals and households attempt to produce leisure time so as to savor and enjoy that which they have bought from their labor's compensation, which is based on their wage rate ( $w$ ). Time, as quantity of labor ( $L$ ), becomes one of the inputs that are optimized based on the choice of economic run. The quantity of capital is represented by  $K$ . In the standard short-run model, firms optimize  $L$  (which is variable) given  $K$  (which is fixed) so as to maximize  $(R - VC)$ . More realistic models may include unearned income from wealth, time and monetary costs for working, time used for home production, and budget effects on firm optimization, among others. Possibly the most visceral presentation of labor time as a resource is in the movie *Metropolis* (1927), in particular the scenes of workers on the machines.

Second, time is a distance to an event. One way this shows up is in financial present value calculations. The more distant into the future the realization of a cost or benefit, the less it is factored into a decision. This is referred to as temporal discounting, and also shows up in consumer behavior as how myopically they make choices. The steeper the discounting, the narrower the myopia. It can also be described as a time horizon, the distance into the future after which consequences are ignored. Policy debates over climate change and sustainability often are grounded in differing time preferences/discounting. The standard formula for the present value of stream of net income (NI) is

$$PV(NI) = \sum_0^T [(R_t - TC_t) * (1 + \delta)^{-t}] = PV(R) - PV(TC) \quad (1)$$

where  $T$  = the time horizon,  $t$  = the time into the future, and  $\delta$  = discount rate. Note the exponential decay of discounting. This is to assure self-consistency of the decision made. Self-consistency is the criteria that if the future is realized as planned, then the plan will not change (Strotz, 1955). Since  $TC = VC + FC$ , we get  $PV(TC) = PV(VC) + PV(FC)$ . This implies that a present value calculation that includes the present through the time horizon, will have some fixed cost, and thus the standard long-run model is not consistent with it (hence Keynes criticism). It would require ignoring what happens during the near term, to generate having no fixed costs. Letting LRPV be the Long Run Present Value, as an equation it would be:

$$LRPV(NI) = \sum_{T_{lr}}^{T_{vlr}} [(R_t - TC_t) * (1 + \delta)^{-t}] = LRPV(R) - LRPV(TC) \quad (2)$$

Note the introduction of the term  $T_{vlr}$ . This is required since long-run analysis assumes a static production function. It represents the time into the future when that assumption no longer holds.

Third, time is a constraint on decision making. Deadlines impact how much we can reflect and consider alternatives. This in turn affects how we make our decisions. In his highly acclaimed book, Kahneman (2011) describe two modes of thinking, "fast" and "slow." Fast refers to decisions requiring an immediate response (e.g. a car runs a red light in front of you). Slow refers to decisions that be can be more reflective (e.g. where to go on vacation next year). Recognizing this bifurcation, and how our brains embody it, is an enlightening advance in understanding the challenges of rationality for humans. However, we shall use a further

gradation to help us along. Table 3 suggests correspondences between time frame, type, nervous system structure, personal decision making, and firm decision making.

Table 3. Decision Making Correspondence

Time Frame	Type	Nervous System Structure	Personal Decision Making	Firm Decision Making
Very Short	Act: Reflexive	Brain Stem/ Spinal cord	Physical	Market Period
Short	Choose: Mediate, Non-reflective	Limbic System	Emotional	Short-Run
Long	Decide: Mediate, Reflective	Cerebral Cortex	Rational	Long-Run
Ambiguous	Meta-Choices: Recursive	Neuroplasticity	Transcendental	Very Long-Run

In very short time frames, at most 1-2 seconds, there must be an immediate, or reflexive, response to a stimulus. How our physical body is “wired” at that moment, determines how we *act*. For example, the reflex test of a knee tap. There is not enough time for brain processes to access anything deeper than the brain stem. This aligns with the market period where it is “sell” or “don’t sell” the product on hand. There is no capacity to produce different alternatives. With a little more time, reflexes can be mediated by emotional processes, typically centered in the limbic system. There are now some options. However, there is not enough time to reflect on the alternatives. One gets to *choose*, but they have to choose quickly. With increasing time before acting, before having to choose, there is increased potential to *decide*. Deciding is reflective deliberation as rational decisioning making (associated with the cerebral cortex in humans). This aligns with long-run decision making where variability of mental resource usage provides wider optimization of behavior, although *how* we can make those decisions is fixed. This would include aspects like tastes, preferences and commitments. To round out the correspondences, there are transcendental decisions, recursive *meta-choices* about how we make decisions. As for the brain, this is the realm of neuroplasticity and how the brain rewires itself (Doidge, 2007). This aligns with very long-run technological advances that change the production function itself. The time frame is ambiguous because of choices yet to be made.

Consider Figure 2, which visualizes the dynamic of awareness and decision making.

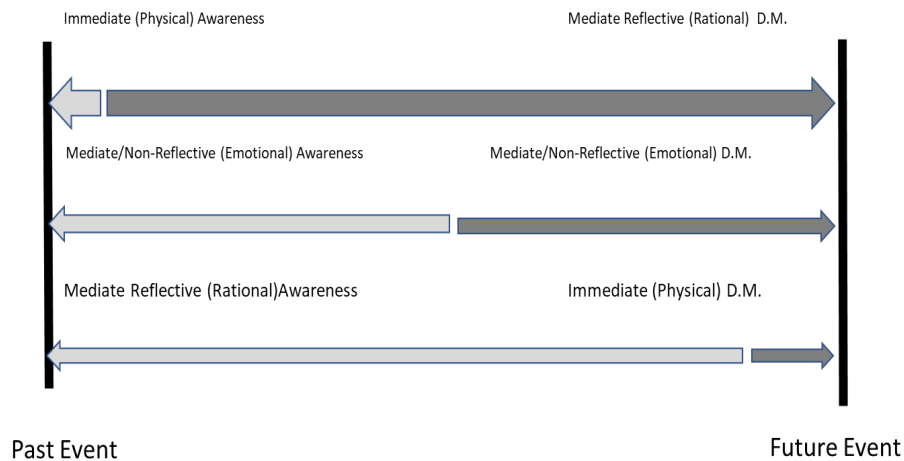


Figure 2. Dynamic of Awareness and Decision Making Between Events

Immediately after an event is the physical awareness of it. As time passes, emotional awareness becomes available, and a little further on rational, reflective awareness. While this expanding awareness of the past proceeds, the reverse occurs in regard to decision making over future events. When there is much time before the moment of action (future event), the behavior can still be mediated by rational reflection. As the lead time diminishes, this is lost and mediation can only occur from non-reflective emotions. Eventually, in the last moments, mediation is no longer possible, and behavior is determined by the immediate, physical “wiring” of the moment. This describes a very human experience: increasing comprehension of what we have done, and yet feeling as if we are helpless to change. Moreover, as the time between events shrinks (the same as events occurring more frequently), access to rational processes is lost.

The only way out of this would be by inducing a transcending decision maker, as if they had an “eternal” perspective from outside the flow of the person’s events. A perpendicular view as it were, where the long-run’s reflection on reflection through time, collapses into a single moment. The bright flash of insight from borrowing the seemingly dimmed light of the future. The capacity for intuition, and the faith to embrace it, overcomes the slog of reasoning and hesitancy to decide. The long-run may be measured against time, but the very long-run is measured against imagination. Figure 3 visualizes this. It is intended to suggest there is a trade-off. As one transforms the perception of what is feasible in the future, one also transforms the perception of what was feasible from the past.

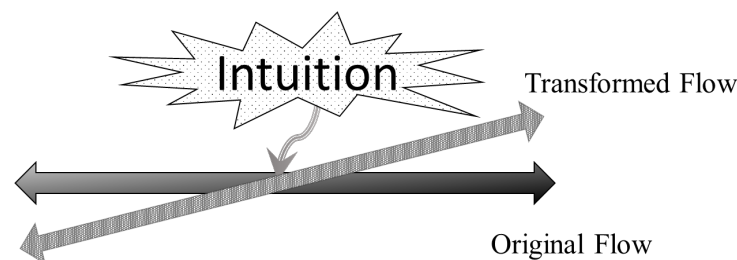


Figure 3. Intuition and The Transformation of Flow of Awareness/Decisions

Lest this seems too imaginary, it relates directly to economic theory via the principle of “revealed preference” or RP (Samuelson 1938). RP is based on inferring a consumer’s preferences based on their actual behavior. It assumes a consistent preference structure, and relies on knowledge of what was feasible, by taking the observed purchase and considering it preferred to any other alternative that was also affordable. While there has been significant progress since then to synthesize it with bounded rationality (Tippoe, Adams, and Crawford 2021), recognizing that if the self understands its own preferences based on what they had done, any change in the perception of what had been feasible in the past would impact the understanding of those preferences. Sometimes being able to change what you can do in the future requires rethinking what it was you “really” wanted in the past. Further, there is some neuroscientific evidence that supports that brain activity does work this way (Van Hoesck et al. 2013).

Another interpretation of the transcending decision maker is more recognizable, a different person. Whether family, friend, colleague, or neighbor, they see you from the outside, at a distance. Sometimes an honest conversation with a person that knows you well does make a difference. This also relates to some interesting neurobiology: that the brain region associated with interpersonal decision making is also associated with temporal discounting (Soutschek et al. 2016). All of the above raises an important policy issue, should we set social temporal discount rates (used in present value calculations of major development and infrastructure projects) based on observed interest rates via revealed preference, or do we set them on how we wish to account for the well-being of our future selves? We can see some of this as far back

as Ramsey's *A Mathematical Theory of Saving*, "One point should perhaps be emphasized more particularly; it is assumed that we do not discount later enjoyments in comparison with earlier ones, a practice which is ethically indefensible and arises merely from the weakness of the imagination..." (Ramsey 1928, 543).

### **Demand-Side Technology and Producing Experiences**

Pine and Gilmore (2011) conceive of experiences as products of the economy. They explicate a model describing the progression of economic value from commodities, through goods and services, upward toward experiences. Using their primary example of Disneyland, they describe the workplace as a stage, with the consumers as an audience. In the last chapters of their book, they conclude by elaborating on the transformation economy, where the value is generated by guiding a person through a series of experiences which leaves them transformed.

While this can show up in many ways, from an economic perspective this would include changes in satisfaction with their material life and preferences over behavior. It suggests that the economist's utility function can be interpreted as the production function of a subjective experience. Indeed, the mathematical assumptions of both are quite similar. For consumers, the very long run would refer to a dynamic utility function, which could be dependent on the choices they make now (Pollak 1978). It becomes a technological change in the production of experiences. This is very much the realm of neuroplasticity, where the brain is the means of production. Of course, this can be expanded to a well-being function with utility, pleasure, sentiment, profit, freedom, etc. as inputs. As such, personal growth, counseling, self-help, spiritual guidance, and similar activity, would be understood as the R & D for technological advance.

Which brings us to the distinction between supply-side and demand-side technology. Supply-side is the standard economic conception of technological advance as transformation of the production function, which implies more productivity, lower cost, and increase in supply. The demand-side refers to the capacity to change how consumers value a product and/or the purchase experience, and advances are associated with increased demand. To be precise, we should distinguish between value arising from the consumer finding greater satisfaction (subjective experience), and value as a measure of the inclination to buy (behavior). The conflating of the two simplifies the story telling, but obfuscates the demand side analysis. Marketing and advertising are essentially efforts to transform the consumer's *behavioral* preferences. The conflation retains the narrative of the consumer as a rational decision maker, by assuming they have the internal resources to reflect on the outcomes of their choices and modify their behavior appropriately. As suggested by Figure 2, in times of rapid change this breaks down. For example, by creating time pressure on a customer, a sales person can collapse the customer's time horizon/preference through triggering an emotional response (Zboja, Clark, and Haytko 2016). Hence, the necessity to develop behavioral economics, and the marketer's appealing to the consumer's divine nature.

### **The Very Long-Run and Fixed Cost**

We showed earlier how using present value calculation to account for benefits and costs into the long term, still leaves some fixed cost in the analysis. In the static technology runs, where there is no cost to avoid obsolescence, we do see how the share of fixed cost decreases as time horizon grows, and decision making becomes more long-run-like. Similarly, as temporal discounting increases so does the share of fixed costs, and decision making becomes more short-run-like. So, even if there remains some fixed cost in the analysis, at least there are conditions under which long-run rationality is approached.

This is not the case in a world where technology changes. Since we described how the very long-run is more accurately a distance in imagination and creativity, rather than a distance in

time, it does need to be far in the temporal future. To be precise (and referencing equation 2), if  $T_{vlr} < T_{lr}$ , then LRPV is undefined and can not be used as a decision making criteria.

In a dynamic technology model, since the firm must invest in the technology before using it for any amount of production, replacement acts like a fixed cost. So, fixed cost share is dependent on the expected costs around obsolescence. One aspect is the cost of adopting the new, and disposing of the old, technology. Another arises from the firm choosing to continue using the old technology, thereby facing loss of competitiveness and decrease in productivity, as well as an accelerated depreciation of their physical capital. In other words, as technology changes there are costs whether one adopts or not, hence the fixed cost quality. Still, some firms (and households) might continue with obsolete technology for both pecuniary (high financial cost) and non-pecuniary (high psychological cost) reasons.

The expected costs are based on assumptions made about the future, since the technology does not even exist yet. Moreover, since those assumptions influence the decisions made, they can affect how the technology develops. This is the recursive nature of very-long run decision making. Thus, it is reasonable to describe these as “faith-based” assumptions intended to increase the probability, and reduce the uncertainty, of a positive outcome.

Figure 4 modifies the graph of relative fixed cost over time by adding an increasing fixed cost for obsolescence, both slow (short dash) and fast (long dash), as well as an upper bound for LR cutoff.

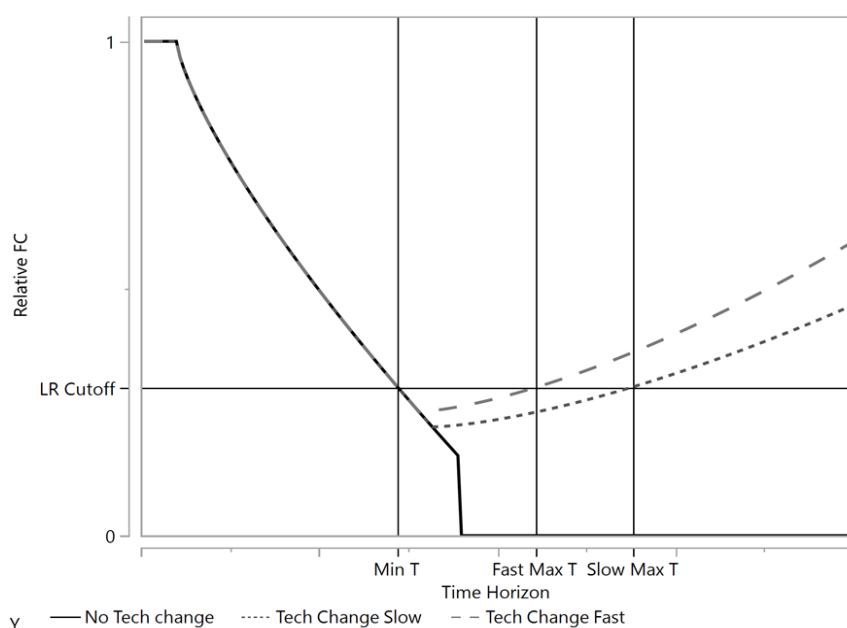


Figure 4. Relative Fixed Cost with Obsolescence, Before and After Acceleration

Although long-run rationality is invalidated (there are fixed costs), there is more. The time horizon associated with minimum relative fixed cost is closest to being long-run-like. We might expect that a decision maker committed to using long-run analysis would favor the use of that time horizon. If there is a maximum FC cutoff for using the long-run analysis, then there would be a time horizon range where it is applicable. For slower change it would be between Min T and Slow Max T. For faster change it would be between Min T and Fast Max T. So, we see as the rate of technological change accelerates, the cost of obsolescence increases, and the range shrinks. Thus, even if one were willing to accept the increasing predictive inaccuracies of a long-run analysis for some other benefit, there will eventually be a rate of change that precludes its usefulness. It becomes obsolete.

Recent neural network research (Lotter, Krieman, and Cox 2020; Spoerer et al. 2020) supports including prediction mimicry and processing limitations on time and energy resources for better emulation of human visual cognition. In essence, part of what drives how we perceive the world is not only the limitations of the human brain, and the brain's accounting for being limited, but also the brain's predicting how it is likely to perceive in the future (to aid in efficiently using those resources). If these continue to be confirmed, it reinforces a sublimation from short-run analysis (static production function) to very long-run analysis (dynamic production function). Part of "Future Shock" (Toffler 1970) is the loss of comfort from having a transitional phase when a fixed set of inputs are all variable before coping with a variable set of inputs to be fixed.

### **Uncertainty and Myopia**

Along with faster technological change, there is increased uncertainty of planning optimality. This arises since the cost of adapting new technology also depends on the cost of disposing of old technology. That includes the obvious wasting or recycling of a physical object, but also include the retraining of users. When technology advances slowly, say major changes every 40 years, then people might only need to be retrained once in a lifetime. If the rate of change is on the order of a year or less, businesses and workers may find it too costly to keep up with the latest technology. Increasing uncertainty about the future would be associated with increasing myopia (Axelrod 2017). This implies shorter time horizons and/or steeper discounting in decision making, leading to a potential myopic trap. In practical terms, those who cannot afford to keep up with the latest developments, stay permanently behind and could end up adopting new technology less frequently as their resources are affected. Since psychological energy, as in the resources required to process events and control behavior, is also limited, another implication is a reduction of investing one's mind toward expressing autonomy in the world (Axelrod 2019). When keeping up with the future outside becomes too much, one specializes in savoring their past within.

Another effect of increasing uncertainty is that it generates greater variance of expected profit. This increases the probability of loss, even if the expected profit is held constant. In the real world, the probability of loss is greater than zero, which contradicts the long-run assumption of no firms operating at a loss. This suggests an upward bias in terms of number firms operating and the total production in the industry.

### **Limitations of the Profit Motive**

The profit motive itself is insufficient to assure progress in the very long-run. Technological advance might decrease the average cost, but if expected revenues also fall due to increased competition, investing in research and development becomes less attractive. The existence of patent and copyright laws are intended to assure sufficient technological progress by benefitting the inventor/author (Shavel and van Ypersele 2001). There is something deeper, though. For the theory of long-run profit maximization to apply, total costs must include "implicit costs", such as normal profits (what could have been made in other industries), risk-premia and other compensating differentials. Often ignored is the necessity to include "implicit revenue." This would include, but is not limited to, the utility or enjoyment value of producing (in contrast to the utility of consuming). In other words, owners that love their work could find it optimal to produce more than the quantity that would maximize accounting profits.

The overall impact of implicit revenue depends on whether the firm is experiencing economy or diseconomy of scale. A small firm, such as a startup, will likely find their average total cost falling as they increase production. In this case, having an owner and employees who are excited by their work, and prefer to do more, will be beneficial as it reinforces a competitive advantage. On the other end of the spectrum, a large firm operating at the upper limits of

maximum efficiency would face increasing average total costs if its decision makers generated implicit revenue from greater production. From an accounting standpoint, the firm might be better off with an executive indifferent to how much is produced (but NOT indifferent to how much profit is made). Further, if there is a decreasing implicit revenue based on cumulative lifetime production, similar to decreasing marginal utility with increasing consumption, then we might expect an inverse relationship between time at an occupation and implicit revenue from production. In this case, a person could be enthusiastic when a novice, and eventually only work diligently enough to maximize financial income.

### **Economic Faith and the Very Long Run**

Faith enters the picture as the capacity to hold a belief, or maintain an action, in the presence of evidence that generates uncertainty about the truth of that belief or outcome of that action. Thus, another way to handle uncertainty is to compensate for it by investing faith in how technology will change, and one's ability to keep up with it. This can range from the confidence of tech leaders and visionaries, to an ill-fated attempt at an actual AI deity-based religion (Harris 2017). While this does not assure a superior outcome, it does allow one to rationalize the opportunity cost to keep pace with the changes. This enables the decision maker to remain technologically competitive, at least temporarily.

Faith would also be another scarce resource, for all involved. Thus, the ability to afford the tech and the training is dependent on the ability to borrow money or sell equity shares, which will depend on the faith the lenders and investors have in the person or business. Consider how during the 1990's dot.com bubble, and continuing through to current tech and app start-ups, the stock valuation of companies has been wildly exaggerated relative to actual profit and loss statements (Ming et al. 2020). The socioeconomic dynamic then leads to a bifurcation in society among those making decisions within the bounds of what is immediately feasible, and those requiring a continuing mutual expression of faith to make decisions based on what could be feasible in the future. This requires not only the physical investment to invent new technology and the educational/training investment to use it, but also a spiritual investment to maintain a very long run view. Indeed, there is evidence that those who hold these "faith-based" beliefs about technological progress have greater life satisfaction (Stavrova, Ehlebracht, and Fetchenhauer 2016). In a way, given the neuroplasticity of the brain, choosing to invest one's "faith capital" is an act of technological progress itself. We can look to *I am a Strange Loop* (Hoffstadter 2007, 176) to capture this, "... it leads us straight to the conclusion that the most efficient way to think about brains that have symbols — and for most purposes, the *truest* way — is to think that the microstuff inside them is pushed around by ideas and desires, rather than the reverse."

### **Conclusion**

As structural transformation of the economy accelerates, uncertainty about the future increases. Part of this is due to accelerating technological change, that will also propagate fixed costs further out the planning time line. It is a combination in conflict with the assumptions embedded in long-run economic analysis. Decision makers will be driven in one of two directions. The first is a more myopic, short-run view, tending to avoid the holistic costs of adopting new technology (both material and spiritual), and reinforcing negative emotional responses to change. The second is a more faith driven, very long-run view, that will accept the greater fixed costs, and thus requires a growing community to sustain it. Hence, the skill sets and worldview of long-run economic rationality will become less useful, and eventually obsolete, in a society split into reactionary cost-cutters, and faith-based technophiles.

And yet, the aspiration for a sustainable economy, with a stability of resources, culture, and institutions, if realized, would be the *raison d'être* of the long run model. A strange loop indeed!

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# Advances in Behavioral Economics and Finance Leadership

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**ABSTRACT:** Advances in Behavioral Economics and Finance Leadership are likely to show these three speculative trends and focus attention on: Ethics of Inclusion in the wake of social justice pledges will demand a comparative approach to understand the most contemporary responsibility challenges of our time. With the COVID-19 pandemic having exacerbated existing inequalities and rising new gaps within society, inequality alleviation will become essential in the post-COVID-19 era in the domains of access to affordable healthcare, finance, education, digitalization and sharing the burden to protect the environment. Law and Economics developments may aid in envisioning a transition to a more inclusive society. While the legal analysis grants insights about the disparate impact of policies, the economic analysis allows to study efficiency of burden sharing over time and with consideration of externalities. Digitalization offers unprecedented human advancement and democratization potential free from corruption. At the same time, shifting marketplaces to online virtual spaces opens gates for misinformation and disinformation being used in a competitive sense. Ethics of inclusion, Law and Economics advocacy and interdisciplinary dialogue building but also human-artificial intelligence algorithm compatibility are expected to become key advancements in behavioral economics and finance leadership of the future.

**KEYWORDS:** Artificial Intelligence, AI, Behavioral Economics, Coronavirus, COVID-19, Digitalization, Education, Environment, Finance, Finance Leadership, Generation COVID-19, Healthcare, Inclusion, Inequality, Law & Economics, Social Justice, Sustainability, Trend Analysis

## Advances in Behavioral Economics and Finance Leadership

In the most recent decades, human decision-making heuristics were studied to show how nudging and winking can help citizens to make rational choices. Behavioral economics started with outlining human decision making deviations from rationality, so-called heuristics or mental shortcuts. Heuristics were perceived as failures in the North American Behavioral Economics School, while the European tradition saw human decision making as successful strategy to cope with an overly complex world (Puauschunder 2020a, 2021b). Mental heuristics and biases were studied in field and laboratory experiment but also by the help of big data and online observations to retrieve powerful nudges to benefit from life and economic markets. Over time, a broad range of nudges and winks were developed to curb the harmful consequences of human decision-making or improve human fitness to adapt to the environment. Some techniques were communicated openly, while other behavioral insights informed more subliminal change strategies. Since a bit more than 10 years, the behavioral economics approach was applied to political context in the behavioral insights revolution (Puauschunder 2020a, 2021b). Behavioral Economics and Finance Leadership demonstrated how economics can be employed for the greater societal good. Most recently, leadership and followership directives on nudging in digitalized spaces emerged that appeal to scholars and policy makers interested in rational decision-making and the use of nudging and winking in the digital age.

## **Behavioral insights to overcome inequality in the post-COVID era**

COVID-19 accounts for the most widespread and large-scale complex external shock changing every sphere of human being (Gelter & Puauschunder 2021; Puauschunder & Gelter forthcoming). The COVID-19 pandemic is likely exacerbating existing inequalities between the finance world and the real economy given the financial market performance capabilities to exchange losing for winning industries during downturns and the real economy dependence on wages and trickle-down economic effects (Puauschunder 2021a, c). In addition, homeownership and inflation-adjusted salary schemes become a driver of inequality in our longest-lowest-ever inflation regime (Puauschunder forthcoming b). COVID-19 also made apparent vast differences in healthcare provision around the world and the country differences in quality care (Beerbaum & Puauschunder 2020; Puauschunder forthcoming c). Within workplace settings, digitalization will become essential and drive an already-existing gap between e-skilled and e-unskilled labor (Gelter & Puauschunder 2021; Puauschunder 2021a; Puauschunder, Gelter & Sharma 2020).

All these rising inequalities will drive the currently-unfolding demand for ethics of inclusion as the spring feather of equality and social justice heralding in our post-pandemic Renaissance (Puauschunder forthcoming a).

In the economics and finance sectors, inequality alleviation could bridge the performance gap between the finance world and the real economy with particular attention to inflation, low interest rate regimes and metropolitan versus rural areas. Disparate impact analyses will pave the way for a more diversified scheme of financial rescue and recovery aid. In the healthcare domain, the equal access to medical care pledge in innovations – such as telemedicine and artificial intelligence, robotics and big data insights – should be endeavored.

Health and well-being underlying human workforce productivity can be introduced as a hidden driver of economic growth in the eye of a global pandemic risk. Digital healthcare can bring along access to affordable quality care around the world free from corruption (Puauschunder forthcoming c). Digitalized healthcare information exchange has nowadays also proved as a means for a democratization of health and disease remedies when considering the role of online media forums to discuss COVID long-haul issues (Puauschunder & Gelter forthcoming). Ethics of inclusion of the future may advance online access to healthcare and a fair and protected information exchange of vulnerable patients.

Our workplace revolution in a truly digitalized economy will also drive novel inequalities and ethical dilemmas arising from digitalization. In addition, educational social transfer hubs with attention to online opportunities have transformed into a gateway of social justice transformation in the US that also account for the most promising international development advancement of our times (Corlatean 2020).

Environmental demands for a transition to a green economy are met in most novel economic attempts to stimulate the economy under the umbrella of sustainability and social inclusion – such as outlined in the Green New Deal and European Green Deal including a Sustainable Finance Taxonomy (Puauschunder 2020b). Future behavioral economics advancements and finance leadership will include the use of behavioral insights to improving the societal welfare under these novel frameworks. Behavioral insights for a greening of the economy will include micro-economic foundations but also build on a growing body of behavioral macro-economic findings of the unequal distribution of climate change gains and losses (Puauschunder 2020c).

## **Law & Economics**

Disparate impact analysis of law and economics interdisciplinary endeavors account for the most cutting-edge novel advancements in behavioral sciences (Puauschunder 2021c). On the macro-level, academic field of Law and Economics offers legal long-standing excellence on

accounting for disparate impact, inequality and redistribution. The analysis of macro-economic aggregates benefits from a legal scholarship-led reflection of diversified and temporal views of social preferences, given patterns of differences based on age, gender, race and professional propensity risks.

The economic inequality exacerbated by COVID-19 implies that future economic policy research may take inspiration from the legal concept of disparate impact to channel the currently unprecedentedly-large rescue and recovery aid wisely to alleviate inequality (Puaschunder forthcoming b). Measuring a potentially disparately-heavy impact of external shocks – such as COVID-19 but also climate change or racial disparities – on gender, race and other stratifying classifications that may lead to discrimination open gates for targeted rescue and recovery aid with particular attention to empowering minorities and/or alleviating disadvantages. Already now we see a pegging of governmental rescue and recovery aid to socially-uplifting causes to address inequality concerns and environmental causes (Puaschunder 2020b, forthcoming b). Future efforts could directly investigate if there is a heavier load of the societal burden due to COVID-19 on particular groups that hinder a speedy, full and fair recovery. Legal excellence on how to detect disparate impacts could be coupled with behavioral insights on how to alleviate biases via taxation redistribution in an uncertain world in order to rescue, uplift and empower weaker societal segments in the age of our post-COVID Renaissance.

### **Searchplace discrimination**

Digitalization offers unprecedented human advancement and democratization potential free from corruption (Puaschunder forthcoming c). For instance, in the medical sphere, telemedical assistance helps bring access to quality care and information about disease control to remote areas of the world or countries that are struck by corruption. Access to crowdsourcing information in online forums about novel diseases and alternative medical solutions for chronic debilitation is a groundbreaking phenomenon of our times (Bariffi & Puaschunder, 2021; Puaschunder & Gelter forthcoming). At the same time, shifting marketplaces to online virtual spaces opens gates for misinformation and disinformation in search engines and online forums being used in a competitive sense. The strategic manipulation of environments is a feature of behavioral economics. But while the focus is primarily on how to use nudges and winks to make the world a better place in helping humans make wiser decisions (Puaschunder 2020a, 2021b); less is written and known about how unethical behavior is used to curb and distort online environments by deleting information or clogging online searchplace users with unnecessary misinformation or compromising disinformation. Less documented and not regulated are behavioral black hat strategies that have become prominent to be used competitively in searchplaces, such as Google, Yahoo or Bing.

In the most recent decade, searchplaces, such as Google, Yahoo or Bing, have gained prominence for screening and scanning candidates in workplace related contexts. While we have a most important and emerging stream of literature on algorithmic discrimination and inherent biases in searchplaces and internet forums (Wu 2018); less is known about strategic searchplace distortion. So-called Search Engine De-optimization black hat strategies are competitive and unethical distortions of search engine results that either overemphasize unfavorable search results (enabled via clickfarms) or create a misinformation or disinformation overload that derails from accurate representations of individuals online. For instance, Google search results can get capped at a low number (indicated by Google) and unfavorable, misleading and/or compromising information can get highlighted via clickfarms.

Positive or content information can also be erased by flagging content online that gets immediately taken offline and hardly any resuscitation control by human reviews is installed. While there is a possibility to craft the internet search results together and flag and report inappropriate online content, little quality control is given to this option being used as a strategy

to push down or make content disappear that is appropriate in the wake of competition. For instance, competitors could use the flag and report button to make content of competitors unavailable. While the early 2000s was a period of advocacy for the ‘Right to Delete’ (Mayer-Schönberger 2009), the 2020s should also thematize the ‘Right to not be Deleted.’

Potentially quality control over what gets flagged and who manipulates search results strategically could be enacted. Legal advancements should include clear guidelines and oversight of fraudulent use of the internet in a competitive way that manipulates genuine algorithm results, for instance via clickfarms or backlinks that curb or tilt search results in a particular way. Lastly, those, who face a searchplace discrimination disadvantage should be protected by legal regulation, technical support and rescue funds established by the industry to uphold to favor quality over unethicity in their profession. After all, sensitivity for cyberbullying via misinformation and disinformation could help elevate professions to a more ethical ground and uphold focus on excellence and merit rather than discreditation potential due to unethical conduct and lacking human algorithmic control.

## Conclusion

Ethics of inclusion, Law and Economics interdisciplinary dialogue building and human-artificial intelligence algorithm compatibility are expected to become key advancements in behavioral economics and finance leadership of the future.

Ethics of Inclusion should offer a comparative approach to understand the most contemporary responsibility challenges of our time. The idea of fairness and social justice should be elucidated from an ethics perspective in our post-pandemic era. Ethics of Inclusion will embrace diversified potentials that overall empower society.

Inclusion should be free from any form of discrimination – may it be direct and obvious or more discrete. The age of digitalization opens gates for searchplace discrimination, which is hardly captured in legal regulation or workplace anti-discrimination laws. Future advancements in behavioral economics and finance leadership may address this abyss of discriminatory actions online and find ways how to avert the negative implications of searchplace black hat strategies. For instance, improving the algorithm-human-interaction gap could aid in quality control over online contents and content removal. The strategic display of information but also the competitive infiltration of online search results with nonsense or unrelated content should become subject to scrutiny and academic discourse over upholding ethics and merit-based anti-discrimination. Anti-discrimination measures of the future should start to integrate insights about searchplace strategies. Searchplace providers, such as search engines but also social media tools and career platforms should help refine search results and work towards wiser and more harmonious human-algorithmic interactions.

Most recent law and economics developments should become the basis for solving practical ethical dilemmas arising in the fair distribution of healthcare, financial aid, education, digitalization and carrying the burden of climate stabilization. In the distribution of COVID-19 relief, a system change may be accomplished when being guided by the interdisciplinary insights of ‘Law and Economics’ that in particular can address the disparate impact of the disease in order to derived targeted inequality alleviation strategies. Future economic policy research may be inspired by legal expertise on the measurement of disparate impact, which could open up the black box of the neoclassical aggregate economic functions calculus as a measure of economic growth. The combined expertise of Law and Economics in their unique interaction may shed light on disparate impacts of disease, public health and economic relief measures. This may lead to an interdisciplinary framework for crisis alleviation through redistribution that in combination can set the course for a better future in a more compassionate and inclusive world.

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# Some Methodological Elements for Investigating Corruption Offences

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**ABSTRACT:** Corruption arose from the moment when the need for a leader, guide, idol, etc., to ensure the proper functioning of a community arose. According to the statements of the great literary geniuses, who expressed their opinion on humanity in their works, a person is limited, as a result he cannot exceed the limits endowed by mother nature. This article will focus on the subject of the crime of corruption from the perspective of forensic investigation by going through different methodological elements in this regard. The first part of the article will present some preliminary considerations related to the provenance of corruption, some aspects related to the regulations of the corruption offense at European and national levels. The article will analyze the general criteria of forensic investigation of corruption represented by indices and problems related to the criminal investigation. Another sub-point framed in the article will be the finding of the flagrant offense consisting of elements such as the procedure of preparation for the finding of the crime, the essential problems, the composition of the investigation team, the forensic traps and the actual realization of the action. In the end, this article will explore tactics of carrying out other acts of criminal prosecution, represented by peculiarities in hearing the suspect, hearing the injured party, conducting confrontations and peculiarities regarding the search on computers.

**KEYWORDS:** corruption, politics, methodological elements, leader, justice, people, methods of investigation

## **Introduction**

To explain the idea of politics, we do a psychological analysis of a small community. Once a community grows in terms of the number of people, there is a need for guidance for the implementation of rules or laws. It is almost impossible for decisions on a set of laws to be made by the whole community, as a result, it is necessary for a person to represent it and to make decisions on the laws that ensure proper functioning. After a representative person has been selected, the community notes that there is no possibility for only one person to solve all the problems of the guild, as a result of which councils, commissions of law, public authority, etc. are born, meant to implement the policies issued by the leader.

So, here is how the psychology of leadership behavior intervenes, more precisely, the man who has reached a position of leader develops instincts of greed, the desire for master, supreme idol, etc. appears. In the literary works of the great geniuses, this behavior was described as a sense of God, more precisely those who ruled had their consciences reconciled with the idea of the undead. So, with the dominion comes wealth, because in the community, according to history and the present, the leader is the richest, followed by people occupying public office. According to history, there were only intellectual persons in public offices, the church clergy made up of priests and people who were enriched by trade activity such as: boyars, merchants, craftsmen. Therefore, we can say that only one aspect outlines the idea of corruption, the fear of riots.

Throughout history, peoples have rebelled over their conudence very often, through riots, civil wars, protests, etc. that have ultimately led to the removal of the leader and influential people around him. This fear that arises with the coming of the main character, to the leadership, develops the instinct of political survival, so in order to keep his position as a leader, that person needs support and we are not talking about the people themselves, but about the key people who can manipulate the people in favor of the leader, regardless of his acts. (Giurescu 1937, 377)

## Regulations on corruption offences in the European system

From a legal point of view, corruption is a relatively difficult concept to outline, although the term is used as such or in its derivative forms in several normative acts (Pascu, Buneci and Buneci 2020, 8).

To begin with, we specify that at the level of the Multidisciplinary Group on Corruption set up by the Committee of Ministers of the Council of Europe, in 1994, the notion of corruption was defined as “*Corruption includes occult commissions and all other actions involving persons invested with public or private functions, who have violated their obligations arising from their capacity as a public official, as a private employee, as a self-employed agent or from such a relationship, with a view to obtaining illicit advantages, whatever the nature of whatever nature, for themselves or for others*” (Council of Europe Criminal Convention).

From the point of view of the European doctrine in the legal field, corruption is divided into two categories, as follows:

- a) **active corruption:** refers to the promise, offer or intentional giving, by any person, directly or indirectly, of any undue use, to a public official, for another or himself, with the purpose of obtaining or refraining from performing an act or exercise of his function.
- b) **passive corruption:** refers to the intentional request or receipt by a public official, directly or indirectly, of an undue use, for himself or for another towards accepting a promise of different benefits, but which towards the end some acts or exercises lead to their fulfillment or abstention.

The effects of corruption have been felt over time in several areas at social, economic, public and private level. According to a World Bank study, corruption has contributed to:

- increasing the decline in living standards by providing poor quality services as well as to dismantle the economy;
- occupying public offices in the structures of organized crime, which bring prejudices at the economic and administrative level;
- the weaknesses that fuel corruption, such as the police, the court, and other areas where decisions can be made at the policy level.

## Corruption regulations at national level

Regarding the notion of corruption, we note that such a definition does not exist at the international level. Nor is the Convention against Corruption published in the Official Gazette no 903 of October 5, 2004, did not formulate such a definition. The Convention does not define corruption in general, but specific forms of its manifestation, such as taking a bribe, giving a bribe, influence peddling, buying influence, embezzlement, abuse of office etc. (Hegheş 2021, 236).

The process of seizing corruption in state and private institutions undermines the central powers in the state, the local administration and implicitly the way of activity of the emergency, security, medical, country defense institutions, etc. (G.D. no. 1065/2001).

However, corruption could not be allowed to become a control factor over the Romanian state, as a result it appears in the New Criminal Code, more precisely in art. 289-292, as corruption acts, the following: taking bribes, bribery, influence peddling, buying influence, acts committed by arbitration members or in connection with them.

The institution empowered to fight corruption at national level is the National Anticorruption Directorate headed by a prosecutor who meets the conditions for occupying the position. In addition to the above-mentioned offences, the competence of the National Anticorruption Directorate also includes corruption acts regarding crimes against the financial

interests of the state and of the European Union, provided for in article 300 of the New Criminal Code, updated with subsequent additions and amendments.

### **International cooperation in the fight against corruption**

In a union, if an allied member (i.e., a country) is going through a period when corruption has reached a higher level, steps are taken to ensure that that ally becomes again a “healthy part of the union”. On the other hand, however, if that criminal activity reaches the whole of the Union, the Member States need to resort to various measures to mitigate the accelerated increase in corruption in order to establish the normal course of the union's diplomacy and policy in the present case.

That is why, at European Union level, the initiative to develop laws to combat the criminal factor that had seized South-Eastern Europe was used. The laws in question were adopted in the Initiative for the Development of Laws of South-Eastern Europe, hereinafter referred to as I.D.L.S.E. This initiative had as main purpose the more thorough analysis of the criminal factor, namely corruption, meant to show what really specifies the problem of corruption at the public level and especially the seriousness of the phenomenon in social, institutional involvement and political decision-making groups.

### **General criteria for the forensic investigation of corruption and criminogenic indices**

Whether we are talking about an isolated case or a case at global level, in the field of forensics, the activity of corruption, several criteria are established that can give an overview of the phenomenon and, at the same time, sessions can be developed to implement solutions aimed at detecting, investigating and framing the legal of each case of corruption. As a result, several indices of a general criminogenic nature have been established as follows:

- the suspicion of actively participating in corruption: this index assesses a person's preferences in terms of achieving compromises of values and social principles, under the pressure of certain circumstances;
- the spread of corruption: this index refers to the wishes of some people to share corrupt practices, among the ranks of public officials, but also those in the political sphere;
- the prospects for corruption: this index refer to the definition of the potential of a shock that fights corruption.
- These criminogenic indices are subject to evaluation criteria, which are measured from individual to individual as follows:
  - the ability of a person, public official or politician, to exert direct or indirect pressure on citizens to obtain material benefits from them;
  - the capacity of professional groups, i.e., groups of doctors, policemen, magistrates, etc., to act in a professional group with the aim of imposing, through public pressure, the obtaining of material benefits illegally;
  - participation in corrupt practices, which refers, first of all, to self-participation in various forms of corruption, especially in countries that have crossed freshly from a totalitarian political regime to a liberal, democratic one.

### **Special measures for investigating the crime of corruption**

According to the New Criminal Code and the New Criminal of Procedure Code, when there are credible reasons for committing corruption acts by persons in public or private offices, in order to obtain for themselves or for a party of material benefits, the prosecutors of the National Anticorruption Directorate may order the following measures that may not exceed the duration of no more than 30 days:

- supervising bank accounts;

- putting suspects under operational supervision and/or intercepting them in real time;
- accessing the information systems used by the suspects.

The special surveillance methods listed in art. 138 paragraph 1 of the Romanian Criminal of Procedure Code are evidentiary procedures that are performed without the person concerned being notified (Buneci 2020, 154).

The Anticorruption Prosecutor's may also appeal to undercover investigators in order to collect data referring to the existence of the crime and the identification of the persons who committed the corruption acts. However, this method is adopted only if there is no impossibility to identify the perpetrator or the crime itself.

### **Finding of the flagrant offence**

It should be noted that this action is the best method of proving corruption. According to art. 293 of the New Code of Criminal Procedure *“is flagrant the offense discovered at the time of committing or immediately after a commission or the crime whose perpetrator, immediately after committing, is pursued by the public order and national security bodies”*.

As crimes with instantaneous consumption, we refer to bribery, bribery and influence peddling, so that is, these crimes cannot be subjected to the method of flagrant finding. In order to understand more precisely what bribery is, well this is the action that a public or private person having a status or influence of a decision-making nature, receives from a third person a certain amount of money or other material benefits in order to achieve his objectives in his personal interest.

It should be understood that the act of surprise in flagrante does not represent the finding of the commission of the crime, but on the contrary the finding of the receipt of material property illegally by a public or private official. Exceptions to such actions are made in cases where the receipt of material benefits are in conjunction with the crime itself and the catching in flagrante. As for the catching in flagrante, its organization is carried out carefully, in relation to the facts, the competent bodies being notified ex officio or by denunciation, in case of committing the act of corruption. When it comes to the action of taking or giving bribes, both participants profit from illegal arrangements. (Wison and Murphy 1996, passim)

References on the facts of corruption of this kind also rule from:

- Family environment: We are talking here by close relatives, even husband or wife, affected by some frustrations at the psychic;
- Professional environment: We are talking here by the workers or the heads or subordinates of the person or persons concerned, determined by the frustrations at the psychic;
- The environment of those trained in the Corruption Act: We are referring to those who have been forced to bribe or forced to pay a sum of money.

### **Preparation of forensic traps and use of other forensic technical means**

Specialized investigators have recourse to different methods of surprise of the corruption offense in an attempt to discourage certain criminal actions. One of the methods chosen by investigators in the case of crime making or bribery, refers to the registration of invisible banknotes, which can be detected using UV lamps, with the “bribes” inscription using a fluorescent pencil. This false money is then used for the purpose of bribing the person who has asked or subjected to the fidelity test towards the institution of which he is part of. Following this flagrant gripping action of the perpetrator, falsified banknotes by inscribing the word “bribes” reach a specialized laboratory where they will be subject to technical and scientific analyzes (Stancu 2015, 760).

### **Technical means of registration or supervision**

Although the investigators have successfully undertaken the action of the perpetrator's flagrant grip, cannot be used as unique and solid sample against the defendant. Ever since the laws and decisions that regulated the use of audio and video recordings as a means of evidence, many processes have proven to be effective, the applicants have a great deal.

As a result, only the flagrant gripping action is not considered to be effective, so the investigators also recourse to the audio and video recording of the deed, to become a solid and safe evidence to the dossier on the judiciary. Following the records, according to the procedure, the criminal prosecution body will draw up a minute that will include the following:

- the authorization given by the prosecutor;
- the numbers of the telephone stations between which the conversation is carried;
- the numbers of the people who carry the conversation;
- date, time and duration of each conversation;
- the name and quality of the person who made the registration;
- the number of ordines of the cassette, in the record of the service that performs the recording;
- Records played in written form.

According to the criminal proceedings, attached to the minutes will be sealed, the registration demonstrating the act committed. At the request of the prosecutor, the court or injured party, these records may be exposed to specialized expertise (Apetrei 1994, 94-95).

### **Tactics of other prosecution acts**

Regarding the peculiarities of listening to the suspect, it should be noted that the criminal prosecution body must prepare thoroughly for such activity. Note that the suspected profile shows it as a well-trained character in hijacking its interrogation process through various psychological methods.

As a result, the investigator's obligation is to analyze in detail all tracks that lead to the confession in the end of the suspect about the deed for which it is accused. The investigator needs to receive from the suspect, following the interrogation, all the steps he has taken, speaking here about the values that have been the subject of corruption, quantities and related amounts, or any other methods that can become evidence at the research dossier criminal. So, we mention that the investigator must draw up a suspect listening plan according to the particularities of each corruption, depending on the complexity and severity of the deed. In large part, the investigator must find out the workplace and the duties of the suspect, the circumstances that led to the third person in the action committed, the place, the time and conditions in which the material benefits arrived in possession of the suspect.

The criminal investigation body must gather evidence both in favor and against the suspect or defendant, even if he admits his facts (Buzatu 2013, 106).

### **Conclusion**

As a result of the analyzed documentation, they can unfortunately say that the crime of corruption cannot be eliminated, but this may be diminished or isolated in the sphere of areas that do not affect society. From the author's perspective, the education of generations that follow us should also include some legal materials in which young people learn about the facts of corruption, namely the ways of achieving, but also the consequences of the acts committed. An educated generation on citizens' rights and obligations as well as the types of offenses and their ways of achieving, as well as their consequences, can lead to a healthy society based on morality and respect for democratic laws and principles.

Finally, we can say that the crime of corruption can be the most serious and aggravating deed of a criminal nature that can lead to other serious facts such as the killing of a person, the fraud of money and material that are intended for charitable acts or acts of Nature to be used in the development of certain areas such as education, medicine, science, etc. However, corruption will remain the only criminal deed that cannot be fully controlled and can be avoided in criminal proceedings by corruption.

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# The 4Ps of Marketing Mix and the Decision of Using Electrical Vehicles for Thai Consumer in Bangkok, Thailand

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**ABSTRACT:** This research aimed to analyze the 4Ps (Product, Price, Place and Promotion) of marketing mix influencing decision to use electric vehicles (EV). The paper compares those who use electric vehicles with those who tend to use them soon. Primary data was obtained from questionnaire. The sample size was 415 comprising 224 of those who use EV and 191 of those who tend to use EV soon. The methodology employed the t statistics for hypotheses testing between these two groups. For Product, the result showed that two sample groups emphasized not significantly different in long-life electric motor, the effectiveness of electric motor power, safety system, design and modernity, multiple charging support, and driving mileage longer than fuel cars. For Price, the result showed that two sample groups emphasized not significantly different in reasonable price with high quality, maintenance cost, price of accessories, and lifetime battery. For Place, the result showed that two sample groups emphasized not significantly different in one-stop service center, many services center branches, and reserve new EV via online. For Promotion, the result showed that two sample groups emphasized not significantly different in car insurance, wall box, and quality assurance for the battery. According to the results, both sample groups were most concerned about price with high quality, and both emphasized not significantly different in reasonable price with high quality. The government should implement the reduction in import tax of EV.

**KEYWORDS:** marketing mix, EV

## Statement of Problem

In Thailand, both the private and government sector have been interested in the environmental problem. Most vehicles used fossil fuel engine. Internal Combustion Engine (ICE) is the main to drive the energy source and causes carbon dioxide; consequently, it leads to the global warming crisis. Government has launched new campaign to use Electric Vehicle (EV), the alternative energy substituted for fossil fuel. According to International Energy Agency (IEA), the government's promotion of electric vehicles in many countries has resulted in global car sales in 2012 reaching 113,000 and expects to increase around 20 million cars worldwide.

In Thailand, electric vehicles have been sold for more than nine years. Additionally, in 2009, the Energy Policy and Planning Office (EPPO) has promoted using Electrical Vehicle under the Energy Conservation Plan with the purpose of using plug-in hybrid electric vehicles (PHEV) and Battery Electric Vehicle (BEV) 1.2 million vehicles by the year 2036 (Department of alternative energy development and efficiency, 2017). Both the state enterprises and private sectors have begun to study and demonstrate using electrical cars, for instance, Petroleum Authority of Thailand (PTT), Electricity Generating Authority of Thailand (EGAT) and Bangchak Corporation Public Company (BCP) have used electric vehicles within the organization for transporting the document, shuttle bus, etc.

In 2019, the new registered electric vehicles were 27,074 nationwide consisted of 650 electric vehicles, 26,373 petrol-electric and 51 diesel-electric vehicles (Department of Land Transport, 2019). Thailand is in the beginning stage of development and the transition from

using fuel cars to electric vehicles. Therefore, the study of marketing mix factors influences buying electric vehicles is interesting.

### **Objective**

To analyze the 4Ps (Product, Price, Place and Promotion) of marketing mix influencing purchasing the electric vehicles in Bangkok, Thailand.

### **Benefit**

Manufacturers / dealers of EV can employ the result of this study for their marketing strategies.

### **Literature Review**

The objectives of this study were to analyze: 1) the marketing mix components affecting consumers' decision to buy battery electric vehicles; 2) the technology acceptance affecting the consumers' decision to buy battery electric vehicles; 3) the consumers' decision to buy battery electric vehicles in Bangkok and Metropolitan Area (Kumnerdpetch 2020).

The results showed that: 1) the marketing mix components affecting the consumers' decision to buy battery electric vehicles were found overall at a high level that product (after-sales service) was the most important component to buy battery electric vehicles; 2) the technology acceptance affecting the consumers' decision to buy battery electric vehicles were found overall at a high level; 3) the consumers' decision to buy battery electric vehicles in Bangkok and Metropolitan Area were found overall at a high level; 4) the analysis of the factors the affecting consumers' decision to buy battery electric vehicles revealed that product, technology acceptance in intention to use, attitude toward using and actual use all influenced the consumers' decision to buy battery electric vehicles in Bangkok and Metropolitan Area.

### **The Concept of Marketing Mix**

According to Kotler (1997), "Marketing Mix is the set of controllable variables that the firm can use to influence the buyer's response". The controllable variables in this context refer to the 4 Ps (product, price, place and promotion). Each firm strives to build up such a composition of 4Ps, which can create highest level of consumer satisfaction and at the same time meet its organizational objectives. Thus, this mix is assembled keeping in mind the needs of target customers, and it varies from one organization to another depending upon its available resources and marketing objectives.

**Product:** Product refers to the goods and services offered by the organization. All these are purchased because they satisfy one or more of our needs. We are paying not for the tangible product but for the benefit it will provide. Product can be described as a bundle of benefits which a marketer offers to the consumer for a price. Product can also take the form of a service like an air travel, telecommunication, etc. Thus, the term product refers to goods and services offered by the organization for sale.

**Price:** Price is the amount charged for a product or services. It is the second most important element in the marketing mix. Many factors like demand for a product, cost involved, consumer's ability to pay, prices charged by competitors for similar products, government restrictions etc., must be kept in mind while fixing the price. In fact, pricing is a very crucial decision area as it has its effect on demand for the product and on the profitability of the firm.

**Place:** Goods are produced to be sold to the consumers. They must be made available to the consumers at a place where they can conveniently make purchase. This involves a chain of individuals and institutions like distributors, wholesalers and retailers who constitute firm's distribution network (also called a channel of distribution).

Promotion: Promotion is an important element of marketing mix as it refers to a process of informing, persuading, and influencing a consumer to buy product. Promotion is done through means of personal selling, advertising, publicity, and sales promotion.

## Methodology

### *Data Collection*

This research collected the primary data by using questionnaire.

### *Population and Sample*

The population in this study was people live in Bangkok metropolis, including those who use electric vehicles and those who intend to use EV soon. Due to large and unknown number of populations, Cochran (1963) was employed to calculate the sample size.

$$n = \frac{z^2}{4e^2}$$

Where n is sample size

Z is equal to 1.96 at 95 percent confidence level

e is error

$$n = \frac{1.96^2}{4(0.05)^2} = 384.16 \approx 385$$

As a result, the sample size was 385. In this paper, the respondents were 415, comprising 224 of those who use EV and 191 of those who tend to use EV soon.

## Data Analysis

This study was conducted by employing the t statistic to test the average mean difference of two groups of samples. i.e., those who use EV and those who intend to use EV soon. The level of importance for marketing mix (4Ps) has 5 levels (5 for the most important, 4 for very important, 3 for moderate, 2 for less important, 1 for the least important, and 0 for undecided)

## Result

The average mean of the level of importance of marketing mix (product, price, place, and promotion) between the EV users and those who intend to use EV soon were shown in table 1 to table 4.

Table1 showed that EV users emphasized the safety system, the effectiveness of electric motor power, long life electric motor, fast electric charge, design and modernity, multiple charging support, driving mileage longer than fuel cars, cabin size, and luggage storage size, respectively. While the intended EV users emphasized long- life electric motor, long-life electric battery, fast electric charge, safety system, effectiveness of electric motor power, multiple charging support and driving mileage longer than fuel cars, design and modernity, cabin size, and luggage storage size, respectively.

For the hypothesis test between these two sample groups conducted by t statistic, the result showed that two sample groups emphasized significantly different in long life electric battery, cabin size, luggage storage size, and fast electric charge.

Table 1: The Level of Importance of Product

Product	EV users		Intended EV users		t-test
	$\bar{x}$	S.D.	$\bar{x}$	S.D.	
long life electric battery	4.17	0.72	4.42	1.04	-2.90***
long life electric motor	4.29	0.83	4.43	1.04	-1.50
effectiveness of electric motor power	4.33	0.77	4.27	1.15	0.69
cabin size	4.05	0.89	3.74	1.22	2.87***
luggage storage size	3.88	0.98	3.61	1.24	2.49**
safety system	4.35	0.77	4.34	1.05	0.13
design and modernity	4.10	0.86	3.93	1.23	1.57
fast electric charge	4.12	0.89	4.36	1.09	-2.44**
multiple charging support	4.09	1.00	4.26	1.16	-1.61
driving mileage longer than fuel cars	4.06	1.03	4.26	1.14	-1.85

**Note:**

\* significance at 10 percent level

\*\* significance at 5 percent level

\*\*\* significance at 1 percent level

Table 2: The level of Importance of Price

Price	EV users		Intended EV users		t-test
	$\bar{x}$	S.D.	$\bar{x}$	S.D.	
reasonable price with high quality	4.82	1.08	4.16	1.18	1.14
maintenance cost	4.25	0.97	4.08	1.20	1.63
car insurance fee	4.11	1.08	3.76	1.31	2.91***
cost of renew license plate	3.97	1.23	3.52	1.44	3.36***
price of accessories	3.76	1.24	3.62	1.38	1.08
lifetime of battery	4.11	0.98	4.14	1.28	-0.26
selling price of used EV	3.92	1.16	3.64	1.39	2.18**

**Note:**

\* significance at 10 percent level

\*\* significance at 5 percent level

\*\*\* significance at 1 percent level

Table 2 showed that EV users emphasized reasonable price with high quality, maintenance cost, car insurance fee and lifetime battery, cost of renew license plate, selling price of used EV, and price of accessories, respectively. While intended EV users emphasized reasonable price with high quality, lifetime of battery, maintenance cost, car insurance fee, price of accessories, and price of accessories, respectively. For the hypothesis test between these two sample groups conducted by t statistic, the result showed that two sample groups emphasized significantly different in car insurance fees, the cost of renewing license plates, and the selling price of used EV.

Table 3: The Level of Importance of Place

Place	EV users		Intended EV users		t-test
	$\bar{x}$	S.D.	$\bar{x}$	S.D.	
one-stop service center	4.09	0.88	4.15	1.10	-0.54
clean and well decorated service center	4.03	0.89	3.54	1.23	4.56***
large service center	4.02	0.93	3.73	1.22	2.72***
many services center branches	4.19	0.83	4.12	1.14	0.77
reserve new EV via online	2.26	1.26	2.49	1.68	-1.55
delivery service to doorstep	2.12	1.40	2.53	1.71	-2.69***

**Note:**

\* significance at 10 percent level

\*\* significance at 5 percent level

\*\*\* significance at 1 percent level

Table 3 showed that EV users emphasized many services center branches, one-stop service center, clean and well decorated service center, large service center, reserve new EV via online, and delivery service to doorstep, respectively. While intended EV users emphasized one-stop service center, many services center branches, large service center, clean and well decorated service center, delivery service to doorstep, and reserve new EV via online, respectively. For the hypothesis test between these two sample groups conducted by t statistic, the result showed that two sample groups emphasized significantly different in clean and well decorated service center, large service center, and delivery service to doorstep.

Table 4: The Level of Importance of Promotion

Promotion	EV users		Intended EV users		t-test
	$\bar{x}$	S.D.	$\bar{x}$	S.D.	
cash discount	2.75	1.55	4.09	1.28	-9.65***
free stuff	1.88	1.48	2.69	1.66	-5.25***
car insurance	4.14	0.92	3.99	1.25	1.36
glass coating	3.83	1.20	3.25	1.43	4.46***

wall box	4.16	1.01	4.06	1.22	0.88
quality assurance for the battery	4.34	0.76	4.37	1.11	-0.24

**Note:**

\* significance at 10 percent level

\*\* significance at 5 percent level

\*\*\* significance at 1 percent level

Table 4 showed that EV users emphasized quality assurance for the battery, wall box, car insurance, glass coating, cash discount, and free stuff, respectively. While intended EV users emphasized quality assurance for the battery, cash discount, wall box, car insurance, glass coating, and free stuff, respectively.

For the hypothesis test between these two sample groups conducted by t statistic, the result showed that two sample groups emphasized significantly different in cash discount, free stuff, and glass coating.

**Conclusion**

This paper analyzed the marketing mix factors (product, price, place, and promotion) influencing the decision of using EV in Bangkok, Thailand. There was two sample group, i.e., EV users and intended EV users (intend to use EV soon).

For Product, EV users emphasized the safety system while the intended EV users emphasized long- life electric motor and long-life electric battery. For the hypothesis test between these two sample groups, the result showed that two sample groups emphasized not significantly different in long life electric motor, effectiveness of electric motor power, safety system, design and modernity, multiple charging support, and driving mileage longer than fuel cars.

For Price, the result showed that both sample groups emphasized reasonable price with high quality. For the hypothesis test between these two sample groups, the result showed that two sample groups emphasized not significantly different in reasonable price with high quality, maintenance cost, price of accessories, and lifetime battery.

For Place, EV users emphasized many services center branches while intended EV users emphasized one-stop service center. For the hypothesis test between these two sample groups, the result showed that two sample groups emphasized not significantly different in one-stop service center, many services center branches, and reserve new EV via online.

For Promotion, both sample groups emphasized quality assurance for the battery.

For the hypothesis test between these two sample groups, the result showed that the two sample groups emphasized not significantly different in car insurance, wall box, and quality assurance for the battery.

**Policy Recommendation**

The results showed that both sample groups were most concerned about price with high quality, and both emphasized not significantly different in reasonable price with high quality. The government should implement the reduction in import tax of EV.

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# The Psychology of Guilt in Criminal Law: A Comparative Review of Romanian Legal Aspects

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**ABSTRACT:** Criminal law is based on a subjective characterization of an objective act. The dichotomy of the concept is the very base of the investigation process and, at the border of the two notions, stands the forensic psychiatry. It adds quality to quantity by constructing arguments and building a strong foundation for the undeniable definition of the criminal offence: guilt. If law analyses facts as quantitative manifestation of an antisocial activity, the psychological meaning of the guilt is dissected in a complex lexical and scientific family of equivalent aspects. Discernment, intent, responsibility, motivation, motive are constructs of environmental and internal cognitive and emotional influences that align into proportional connections, characterizing guilt, which implies past, present and future implications of a criminal offence.

**KEYWORDS:** criminal, guilt, discernment, expertise, psychiatry, law

## Introduction

Throughout the world, law, no matter its form and language in every civilization, defines a criminal offence, an antisocial act, by the guilt of the person that initiate that action. Every sentence, ending a judicial investigation process, finds the accused part guilty or not guilty, which defines in a general, quantitative way, the antisocial act, his mental integrity when committing that act and the responsibility he is taking for those actions which inquires assuming a punishment. Understanding the concept of guilt in its qualitative aspect, requires understanding all psychological processes behind a motivated action and all dimensions of the psychocognitive construct that flow from instinct, emotion and thoughts to materialized physical effort.

In order to understand the importance of the psychological meaning of guilt, we can give for example the irresponsibility of a psychiatric patient with violent behavior towards others. In this case, a forensic psychiatric expertise will examine the patient's mental state, elaborating all his psychological yield, by going through each layer of his cognitive, emotional and mental construct, in connection with the antisocial act of which he is accused. A mental illness will affect his judgmental capacities, proportionally with the severity of the disease and the cognitive levels affected by it. As such, a mild depression or an unstable emotional state will not affect his cognitive capacity as hard as schizophrenia or maniacal stage of bipolar disorder because the profound layers of conscience are not as severely affected. Moreover, emotional filter and their influence are somehow invert proportional to the way discernment works. Massive violence can be triggered by both affective impulses and psychosis but in the first case, emotional drive will bypass the neurological restrain pathways, without altering them while in the second case, there are few or no emotions involved, but only a damaged neurobiological pathway of cognition. A severe psychiatric disorder means the absence of guilt because the psychocognitive processes that construct the guilt are inconstant and disconnected, so all its dimensions are not equivalent and proportional (Gladchi 2016, 19-25).

Another example, this time referring to offenders with psychocognitive integrity, is the one of psychological profiling, especially in the cases of dangerous criminals or serial killers. Going back from the felony to the psychological bases of the act, understanding the way that person thinks, his motives, his intentions, his emotional drive, are all important parts of the

investigation but also of the prosecution because they demonstrate all the aspects of that person's guilt in relationship with his actions (Tănăsescu 2018).

This example reinforces the complexity of guilt beyond its judicial importance and the way the bases of criminal law are profound and complex and require a full understanding of the psychological qualitative aspect of the criminal act definition.

### **From material to immaterial – the cognitive construct of guilt**

In order to understand what guilt means in all profound psychological aspects, there are logical flowing processes to examine, going back from the objectiveness of law to the relativeness of psychology and physiology of the brain. Starting from the definition of criminal offence, Romanian law states that a criminal act is an antisocial activity manifested with guilt. Legal investigation gives a quantitative characteristic to guilt, it weights the amount of guilt proportionally with the complexity and severity of the action by gathering specific measurements, objective facts, proofs and scientific expertise. Guilt can be seen as a social, psychological and law phenomenon, all these parts being subsidiary to each other (Bobîlcă and Paraschiv 2009, 79; Tănăsescu and Tănăsescu 2004, 132-153). Psychological processes like brain mechanism, conscience, personality, emotional filters construct the mental state integrity that is the foundation of discernment, critical judgement which is the base of responsibility. Responsibility is the base of social integration and moral compass. Also, it is the characteristic that makes a person capable of assuming the blame for a wrong deed, understanding its negative impact and further, assuming the punishment and rehabilitating (Colţan 2008, 115-122; Tănăsescu 2014, 111-128).

### ***Intent and “culpa”***

Proceeding to the psychological analyzation, if the criminal act is the center of criminal law, as a quantitative measuring unit, then guilt is what adds qualitative weight to an act. In other words, we can describe guilt by dissecting it into two manifestations: the external manifestation which is the physical action or inaction in order to obtain a specific goal and the internal manifestation, which is the intention of doing an action. Intent has multiple layers with intent being the primary characteristic and “culpa” which define an involuntary skip of details when constructing a plan of actions. In U.S.A. law, one form of “culpa” is manslaughter and as we see, there are specific names for each type of “attenuated” intent but Romanian law gives them all the generic title of “culpa” (Grama 2007, 129-133; Tănăsescu 2012, 11-17).

Intent is viewed by the law as the primordial and elementary intrinsic aspect of guilt. It is a result of psychological processes no matter the physical outcome. Intent assumes a cognitive integrity in order to understand, motivate and critically assess the plan of action, its motive and its consequences. If we backward to the time when society's moral compass was managed by church and if we analyze the Christian beliefs, we could make some interesting parallels that will shed some light over the significance of intent. Sin is the equivalent of criminal offence but one is an action or inaction that makes a person responsible to God and the other responsible to the law. Sin begins in the soul of human being, altering his thoughts and making him plan something against the moral Christian order. The same thing happens with intent in criminal law. It begins with thinking about a plan, with emotional or material motivation and with assessing all possibilities before conducting the action. Proving the integrity of the mental state of a person means proving that he planned the deed with actual intent which gives that person, guilt. As a result of psychological processes, intent is analyzed in two directions: one is the intellectual factor and the other is the volitional factor. As such, there are 2 pathways that interact when the plan of an action begins in the thoughts. The intellectual factor describes the cognitive level at which, the criminal details of an action is known to the felon. Understanding the negative aspect of an activity is the first step. After

that, there is will that motivates the plan towards a goal and also, emotional filters act on volition like a volume button because it increases or decreases the motivation of that action (Ștefan 2021).

Intent has multiple extensions and subsidiary characteristics and each extension give unique features to a criminal act that will furthermore, be useful to judicial inclusion of the act in the Criminal code. As such, each feature is actually a psychological way of developing a plan, depending on the intensity of the intellectual or the volitional factor. The main classification of the intent is by how it is oriented to the goal and the result. We need to mention that goal and result or outcome do not always coincide. The first form of intention is the direct one. It is defined as planning the action foreseeing the outcome and desiring that outcome. It is the simplest form of the intention. For example, shooting a man in the head from close range is prove that the intent was killing, because he aimed a vital part of the body from a short distance in order to succeed. The second-degree intent is a special form of direct intent. In this case, the outcome of the action is a necessary condition for the final goal of the person involved. He is able to understand and accept that outcome in order to obtain something more important for himself. It can be described with the phrase “*the end justifies the means*”. For example, the owner of a building wants to collect insurance money. He is aware of the fact that people living in that building could be hurt but he needs to cause a fire in that building at a certain time. The outcome is death and injury of those people as a secondary result to his plan, which is burning down the building and collecting the money. The indirect intent is the case where the person is aware of the negative impact of his action, he accepts that it can produce damage and he continue the action although he doesn’t actually want that result to happen. For example, the owner of a land wants to secure his agriculture products and, in order to do that, he installs an electric fence. He knows that it could harm animals or even humans, but he relies on the scary impact of the fence and thinks that no one will approach it. None the less, no matter the possible harm he could cause, it is more important for him to secure his plantation. A person is injured by the electric fence. As we can see, in all these cases, the active subject is responsible for his actions because the intellectual process is upright but the volitional factor decreases as we progress from direct to indirect intent (Mîțu 2014, 107-110).

Of course, secondary extensions can be added to the main forms of intent. Spontaneous intent refers to a powerful emotional driven act, when the offender acts on powerful instinctual impulses, bypassing cerebral restraining pathways, as a response to severe stress or emotional tension. There is very fine line between self-defense, when powerful stress activates surviving instincts and interior psychological tension and impulsivity that drives someone to commit a violent act. This is the case of many crimes that take place during severe intra-familial arguing or between couples. As we can see, in this case, both intellectual and volitional factors are bypassed by affection and instinct, but with no real annulment of the critical judgment. Another variant is the premeditated intent that usually connects to the direct intent and adds judicial significance to it. It refers to the period of time that the offender took to prepare his crime and the action he took in order to complete his plan, to find the perfect time to do it, how to hide evidence from the law, what materials he gathered while planning. The most obvious example in that matter is the case of serial killers (Veresha 2016).

Another variant of intent is the exceeded intent. In this case, the offender’s actions exceed his expected outcome but in a negative way. Although the volitional factor is constant and somewhat clear, the characteristic of this variant resides in the details that he is unaware of or the miss-calculation of the circumstances. For example, a man hits his wife because he considers so during an argument. The woman is pregnant but loses her pregnancy because of injuries in the abdominal area. The result the man expected was “a corrective lesson” but the outcome was exceeded because of the injuries that caused the abortion. Another example is hitting a person with spontaneous intent, for example, but the victim loses his balance, falls down and hits his head. The cranio-cerebral trauma causes the victim’s death, so the expected

result (hitting in anger”), is exceeded by a new circumstance that appeared during the event – the loss of balance, fall and head trauma. This circumstance is a cause of the offender’s action but he could not calculate the force of the hit in that precise moment so he could not expect the actual result (van Kempen and Bemelmans 2018).

The term “culpa”, as stated above, is a term that generically defines, in Romanian law, a secondary form of intent or variants of indirect intent that actually act as attenuating circumstances if the fact are proved as such. Although other la systems defines each case with a penal codification name, psychological and forensically speaking, the generic term is necessary in order to understand the multiple dimensions of guilt. In terms of “culpa”, the intellectual factor refers to the capacity of the person to completely foresee the outcome of his action in special, usually spontaneous, circumstances. Foreseeing, in this case, means preventing a dangerous situation, usually by neglecting safety measures or prudence rules. There are two dimensions of “culpa”: one is the foreseeing type, in which case, a person engages in a dangerous activity being aware of the harm he can cause but he chooses to ignore the danger. An example is the case of a hunting team going after a boar. One of the shooters spots the animal close to a colleague and he decides to shoot even though he could harm the man standing near the boar. He is certain of his skills and talent and that, added to the intent of winning the hunt, overcomes the safety measures he has to take. He is guilty for all of the above and that, indirectly makes him guilty for his colleague injury. There is a very fine line between foreseeing “culpa” and indirect intent and sometimes there are confusing elements during investigations. In such cases, the differentiating element is finding out the initial plan, proportional with the facts. The character of the way the offender foresaw the outcome differentiates the penal character of the act. Foreseeing “culpa” means he foresaw the outcome but did not accept the result, even though he took it into consideration while indirect intent means that he foresaw the outcome, he took it into consideration and accepted it indifferently. The other type of “culpa” is the one without clear foreseeing, so the intention is actually bypassed completely. We can view it as the less harmful psychological form of intent but contrasted by the significance of the possible outcome because it is, finally the very definition of neglect. More specifically, even though the person could and should foresee a possible dangerous outcome, he does not think in any way at that outcome because he isn’t at all focused on a specific plan. As such, we could consider this case like an inaction more than an action. For example, a mother leaves the children alone in the house while she goes for some groceries. She thinks that everything will be fine s she doesn’t evaluate that she will be missing for more than half an hour. Meanwhile, the children find some cleaning products and one of them accidentally ingests some. The child’s injury is the responsibility of the mother, who, did not foresee the possible outcome and did not secure the products, even though she should have thought about it. As we can see, there is no plan of action in this case, but there is missing a plan of safety and the direct thinking of all possible damages and how to avoid them (Wright and Gudjonsson 2007, 307-316).

### ***Extrinsic manifestation of guilt***

The previous section explained that the intrinsic manifestation of guilt is intent, and the extrinsic manifestation of guilt is the criminal act. It begins as a plan, in many psychological variables, with inner and outer influences and passing through more or less emotional filters. We might think that intent will directly transform into action, into a material concretization, but actually, a criminal offence can be represented by either an action or inaction. The first case is a positive manifestation of will and intellect capacity towards a certain achievement. The second one is a negative manifestation that harms a law protected social asset. In fact, by not doing what the law or a rule state that should be done, a person can create harmful situations. While action is a clear manifestation against the law and according to a plan in order to obtain something, the inaction has a more complex concept. Likewise, “culpa”, there

are special forms of inaction or neglect, stated in the Romanian law (Mariț and Șomicu 2014, 106-111).

In every criminal act, the foundation of the active antisocial behavior is based on the relationship between offender and offended, one being the harmful factor and the other, the victim. In order to explain the theory of the inaction in Criminal law, there is a special type of relationship that rises in this matter, between the victim and aggressor. It is a kind of spontaneous relationship or a contractual based relationship in some cases. A baseline example is the case of a car accident, with victims. There is just one witness to that accident but that witness decides to ignore the scene and leaves without calling to emergency. This is a basic example of an inaction that represents a criminal offence. As we can observe, there is a special spontaneous responsibility relationship between the victim of the accident and the witness. It is a social and moral obligation to help a person in distress but also, a juridical one. Beginning from this example and from the bases of inaction as a criminal offence in law theory, the relationship that translates the responsibility between the two parties in specific circumstances, is considered as a guarantor position. That means that in special cases, the one who did not act and offended the law as such, develops a guarantor position for the victim, because, in those special cases, he is the only person that could act in the benefit of the victim but chose not to (Rea 2003, 381).

Romanian law describes three main situations that involve the inaction as a criminal offence by violating the guarantor position. The first is case in which the offender is the creator of a dangerous situation. For example, if a driver hits a pedestrian with his car due to alcohol consumption or exceeded speed, he automatically becomes a guarantor for the victim's life he has damaged. The criminal offence consists in him not taken responsibility for the victim and escaping the accident area without calling to the police. The second situation is the case where the offender does not control a dangerous situation. This is the case of dangerous breed dog owner that don't take all safety measures when walking his pet. If the dog attacks and injures someone, the dog owner becomes the guarantor for the victims' life. The third situation, refers to controlling third parties' actions. This is the case of contractual guarantor responsibilities as it involves persons that provide certain professional care to others. It is the case of teachers that do not interfere in bullying and violence cases during school hours or doctors that have contractual obligations to attend to their patient's life but more specific, an example is the case of psychiatric patients that become violent to each other while the doctor does not control the situation (Tănăsescu 2018).

### **Being responsible and responsibility**

Although both concepts refer to the relationship between individual and society as forms of integration, the notions have different practical meanings, as responsibility implies the person's psychologic capacity and his moral compass while taking responsibility is a psychological and material concretization of the first. Responsibility is the notion present before committing and action while taking responsibility implies a post-action concept. Responsibility is a generic notion that defines the integrity of mental functions, psychological processes and emotion filters in deep connections with all environmental influences. Taking responsibility is a more specific notion that refers to a person assuming the blame and understanding the severity of his actions, assuming the punishment and furthermore, assuming the right social reintegration (Denney 2005).

These equivalences are all dependent on the person's psychological capacity which, in the Romanian law, is the individual's psychological characteristics on cognitive, intellectual, character, volitional and affective levels that ensure the performance of organizing a motivated action that translates into facts and quantifiable results. It is a compatible attribute with practicing rights and obligations inside a social community. Examination of the integrity of the psychologic capacity is one of the main objectives of the forensic psychiatry which

aims to identify, those people that could be dangerous for themselves and the society due to the incapacity of understanding and assuming their actions, therefore being irresponsible. Of course, severe mental disorders are an example of irresponsibility but also, being under the age of 14. There are scenarios in which an individual can be considered irresponsible for his action even if he has a full psychologic capacity, such as error, emergency situations and self-defense. In these cases, not knowing the true circumstances of the case or being threatened and in immediate danger, could be considered attenuating factors of a criminal offence, but, in Romania, they do not annul the guilt completely (Packer 2009; Bobîlcă 2009, 79).

When referring individually to a criminal act, the person will be investigated for that action and not in a general perspective. As such, integrity of the psychologic capacity referred to one act is described as discernment. Discernment is a component of one's psychological abilities that allows him to understand the value and importance of his intentions and actions but also to appreciate the consequences of that action. This is the way the law views the discernment in quantifiable terms. The psychological aspect of discernment is more complex and variable. It's referred to the same conceptualization and understanding of the actions but with two conditions: the first is the existence of a balance between intellect, will and emotions and the second is assuming moral, law and social norms that act like an efficient interior mechanism of restrain or self-control. While the balance of one's feelings, intellect and will are a bio-psychological and social construct that builds the individual's uniqueness, the other is referred to his moral construct dependent to the first. As such, we can define discernment as a dynamic synthesis between personality and conscience.

Personality has many variables. Being a unique feature, it consists in temper, sensations, way of thinking, perceptions, all placed in an evolutionary hierarchical matrix. The exact type of personality is analyzed by its sectors and its developmental levels. There are 2 main sectors of personality and those are the somatic one and the psychological one. The psychological sector is constructed on 4 structures that work from the rawest to the most complex, basically from instinct to complex thinking. First is the instinctual level that is automatic. It involves basal needs of the body to ensure self-preservation, being an inferior unconscious level. The next is the affective structure which is semi-automatic at the subconscious levels. The cognitive structure is a conscious level that manages sensations and perceptions from the outside and transforms those stimuli into actions. The symbolic structure is the most evolved level where thinking, memory, imagination and creativity work. It is a fully conscious level that can be controlled at will (Stănilă 2011, 87-96).

On the other side, conscience, has also 4 levels that work in a proportional dynamic with the personality's levels. The first is the elementary conscience that involves vigilance, awake state and temporal/spatial orientation. The next level is the operational-logical conscience that involves intellectual processes and coherent thinking which provide a realistic reflection of reality. The axiological conscience involves the options of developing values by examining social criteria. Finally, there is the ethical conscience that draws delimitations of good and bad as part of social integration. As personality and conscience work in a proportional active dynamic, the upper levels of personality must always coincide with an active ethical conscience in order to fully assess the integrity of critical judgement and these are the bases of the primary form of guilt which is intent (Damir and Toader 2014).

Responsibility and intent depend on yet other psychological processes in order to be fully active: motivation, motive and mobile. Proving and explaining these concepts will be considered as an irrefutable argument of one's guilt. Basically, motivation, motive and mobile are the answers to the 3 main questions that start every criminal investigation but also, they are the inner psychological answers to the offender's needs and stimuli. They answer what, why and how questions related to every criminal act. Motivation is an intrinsic process that works on 3 levels: needs, emotions and environmental impact. It develops as wishes and instinctive thoughts of satisfaction of the stimuli of some psychological or physiological imbalance. The motive is the subjective transposition of those necessities that works actively

with 2 vectors: the triggering vector initiates the action toward the main goal and the orientation vector, is the manager of the direction of action toward the goal. Psychological attributes and cognitive function need to be perfectly aligned in order for all responsibility mechanisms to work and in this consists the work of the forensic psychiatry and the foundation of criminal law (Scripcaru, Astărăstoae and Boișteanu 2002).

## Conclusion

The institution of criminal law is an institution of guilt as this concept, with its qualitative and quantitative significance represents all subsidiary elements that reinforces the psychological, moral and lawful relationships between individual and society. Guilt is a complex phenomenon as it can be “measured” by law and analyzed by psychology in flowing hierarchical criteria, building its equivalent concept that is responsibility.

The primary form of guilt is an intrinsic psychological process that is the intent, a notion interconnected to both guilt and responsibility as there can be no guilt in criminal law without the offender having intent and therefore, the correct representation of the outcome of his actions which is responsibility.

In order to understand guilt as a law concept and quantitative characteristics, there is a need to exhaustively assess all qualitative notions that construct the guilt, beginning from intent to responsibility, imputability and ending with discernment. This flowing graphic of concepts, with all environmental and emotional influences, represent the construct of the psychological capacity of a person and it quantifies guilt in relationship with a criminal offence.

New studies have begun to immerse deeply into the neurobiology and cognitive physiological mechanisms of human behavior, with promising results for explaining antisocial activity, addictions and possible therapeutic solutions in some cases. An organic cause for some criminal behavior, other than severe psychiatric disorders, could turn around the way forensic psychiatry works.

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# Short Considerations on The Right to Life

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**ABSTRACT:** It is unanimously accepted that life is the most important social value. Without respecting it, the other rights would no longer be useful. Maslow's Hierarchy of Needs reinforces this idea, with survival being the basic level in the hierarchy of human needs. Throughout history, the lack of categorical regulations at the international level has led to the tolerance of violations of this right. This paper intends to nuance some historical and current regulations on the protection of the right to life, both nationally and internationally.

**KEYWORDS:** human, fundamental, right, life, history, Europe, Romania

## Introduction

If a century ago the normative acts regulating the right to life were not taken seriously, today, non-compliance with legal provisions can lead to sanctions both for the person who infringes this right and for the state, if it is found, following a thorough analysis, that he passively witnessed this violation.

The society fully felt the effects of war crimes, the repression of totalitarian political regimes and, with the establishment of democracy, demanded that *demos kratos* (translated *the power of the people*) be materialized not only by the right to elect the head of state, but also by establishing a mechanism of protection of the people who make up the *demos* - the citizens. The protection of the right to life is enshrined in international norms as well as in domestic norms, especially criminal law, given the importance that a person's life has not only for him but also for society as a whole (Buzatu 2013, 134; also see Corlăţean 2013, 215-220).

Although the right to life is a fundamental right, its violation can take various and complex forms: with direct or indirect intent, if the perpetrator foresaw the result of his act and pursued or only accepted the production of the result; through fault with or without foresight, if the perpetrator considered, without reason, that the result will not occur, respectively if he did not foresee it, although he had to foresee it; with exceeded intention, if the result produced is more serious than the one pursued; by omission, if there is a legal or contractual obligation to act or if the perpetrator of the omission, by a previous action or inaction, created for the protected social value a state of danger that facilitated the production of the result.

## Historical aspects of the right to life

In the pre-state period, the deeds directed against social values were followed by the reaction of the injured person, a reaction that took the form of revenge. Initially, revenge was unlimited, but as it led to the perpetuation of conflicts and the weakening of the collective, the first code of laws, the Code of Hammurabi, imposed the application of the law of retaliation, symbolized by the expression "An eye for an eye, a tooth for a tooth". Thus, the injured person was obliged to retaliate in proportion to the injury suffered.

Later, however, the composition replaced this rule, because the application of the law of retaliation encouraged the doubling of social losses. The composition consisted in the agreement reached between the parties, based on which the victim received an indemnity for the harm suffered. The composition was optional, then became mandatory. After the appearance of the state, the indemnity returned to it (Mitrache 2016, 27).

In the local historical criminal regulation, the Law of Country (*ius valachicum*) tried to make difficult the anachronistic practice of the law of retaliation, by applying a fine to those who would have dared to resort to revenge. At the same time, there were situations in which relatives paid for compensation to the victims. Homicide was punishable by death, and in case of non-discovery of the perpetrator of the murder, *dușegubina* (ransom, in cash or cattle, levied in Moldova and Wallachia for murdering, adultery or abduction of a girl) was applied on the owner of the place where the deed was committed or on the village if the place of the deed was on the territory of the village. In some cases, the culprits were redeemed through money and estates. Wounds, called blood, and blows were punished with *gloabe* (a fine that is imposed on someone as a result of committing crimes or offenses), and if they caused the death of the victim, the attacker was punished with death or imprisonment and loss of estates.

The composition had a much wider application, even those punished with death having the opportunity to redeem their “head”, “neck”. The prosecution of criminals and the execution of punishments were carried out through the existence of an apparatus of special servants, usually named after their functions: *dușegubinari*, *osluhari*, *pripășari* (Cernea 2013, 152).

At national level, the right to life was regulated for the first time in the Constitution of Cărvunars, this being "the first political and legal document of the Romanians in which a system of human and citizen rights and freedoms is regulated". Subsequently, several normative acts on human rights were adopted, namely: the Organic Regulation, the Wishes of the National Party of Moldova, the Blaj Motion and the Romanian Constitutions of 1866, 1923, 1948, 1952 and 1965 (Manasia 2019).

### **Abortion and euthanasia**

In Romania, abortion was banned by Decree no. 770 of September 29, 1966, as a measure of population growth. Exceptionally, abortion was allowed only in a few extreme situations, such as: endangering the mother's life, serious or hereditary diseases, severe physical or mental disability, the mother's age of over 45 years or if the pregnancy was the result of a rape or incest. Performing termination of pregnancy in other circumstances was punishable by law. Abortion was legalized in Romania at the end of 1989, following the Revolution.

The legalization of abortion, respectively its non-criminalization in the states where it was not forbidden, led to some controversies. In Romanian Criminal Law, it is not possible to speak at present about the recognition of the child who has not yet been born as having a right to life similar to a subject already born, who enjoys the fullness of his rights. Likewise, in the criminal doctrine there are different opinions about the moment of birth - one part considers that one can talk about birth from the moment of conception, and the other part claims that birth involves the expulsion of the fetus and the beginning of extrauterine life (Ciobanu n.d. 3).

Although, as previously mentioned, abortion is not prohibited in Romania, the Romanian Criminal Code provides for criminal penalties for those who terminate pregnancy under certain conditions, prohibited by law. For example, Article 201 provides that termination of pregnancy is punishable by imprisonment from 6 months to 3 years or a fine and a prohibition on the exercise of certain rights if it has been committed outside medical institutions or medical offices authorized for that purpose; by a person who does not have the quality of obstetrician-gynecologist and the right of free medical practice in this specialty; if the age of pregnancy has exceeded fourteen weeks. Also, the interruption of the pregnancy, committed under any conditions, without the consent of the pregnant woman, is punishable by imprisonment from 2 to 7 years and the prohibition of the exercise of certain rights. If the deeds mentioned above caused the pregnant woman a bodily injury, the punishment is imprisonment from 3 to 10 years and the prohibition of exercising certain rights, and if the deed resulted in the death of the pregnant woman, the punishment is imprisonment from 6 to 12 years and the prohibition of exercising certain rights. The last paragraph of this article provides that it is not an offense to terminate a pregnancy for therapeutic purposes by an

obstetrician-gynecologist until the age of twenty-four weeks of pregnancy, or to subsequently terminate the pregnancy for therapeutic purposes, in the interest of mother or fetus. Also, the pregnant woman who interrupts her pregnancy is not punished.

In Malta, abortion is prohibited, and in Northern Ireland and Poland only if the woman became pregnant as a result of rape, incest, if the fetus is seriously ill or in a situation where the mother's life is endangered, and in other states abortion is prohibited if a certain number of weeks are exceeded from conception.

Euthanasia, illegal in Romania, is allowed, subject to certain conditions, in other states, such as: the Netherlands, The United States of America, Mexico, Japan, Belgium. The Romanian Criminal Code imposes, however, a reduced punishment, Article 190 providing that the killing committed at the explicit, serious, conscious and repeated request of the victim suffering from an incurable disease or a serious illness certified medically, causing permanent and unbearable suffering, shall be punished by imprisonment from 1 to 5.

At European level, contrary to the expectations, the lack of opportunity to decide on life has led to apparition of requests to the European Court of Human Rights. For example, in *Pretty vs. United Kingdom* case (ECHR 2019, 1), the applicant, who was in the terminal stages of amyotrophic lateral sclerosis, a degenerative muscle disease that is incurable, painful and unworthy, wanted to be able to control how and when she would die. Due to her illness, the applicant could not commit suicide without help, which she wanted to receive from her husband. But, although suicide was not considered a crime under English law, the facilitation of suicide was considered as such. As the authorities rejected her request, the applicant complained that her husband had not been guaranteed he would not suffer a criminal prosecution if he had helped her die. According to the summary of the judgment, the Court ruled that the right to life was not violated, stating that the right to life cannot be interpreted, without distorting language, as ensuring the diametrically opposed right, ie the right to die.

### **The right to life in Romania**

The primacy of the right to life is also the reason why, at present, normative acts regulate this right before others. For example, Chapter II of Romania's fundamental law, the Constitution, entitled "Fundamental rights and freedoms", begins with Article 22 - The right to life and physical and mental integrity: "The right to life and the right to physical and mental integrity of the person are guaranteed. No one shall be subjected to torture or to inhuman or degrading treatment or punishment. The death punishment is forbidden." Also, the first offenses provided in the Special Part of the Criminal Code of Romania are the offenses against life, the commission of which attracts the application of the harshest punishments provided by the Romanian legislator. For example, aggravated murder, ie the intentional killing of a person, in certain circumstances expressly provided by law, is punishable by life imprisonment or imprisonment from 15 to 25 years and the prohibition of the exercise of certain rights.

The criminal code provides by art. 153 para. (3) lit. b) that the prescription does not remove the criminal liability in the case of the offenses provided in art. 188 (murder) and art. 189 (aggravated murder) and intentional offenses followed by the death of the victim. Through this article, the legislator considered that the one who, through fault, infringes the right to life of other persons, can be "forgiven" if the crime was not discovered in time.

However, as I mentioned before, punishments are also provided for those who, under certain conditions, infringe the right to life of the fetus or for those who, with exceeded intent, violate this right of other persons.

### **Protection of human rights at international level**

Important chronological highlights on the protection of human rights at the international level include the enactment of the Magna Carta Libertatum in 1215, the ratification of the

Declaration of Independence by The United States of America in 1776, the promulgation in France of the Declaration of the Rights of Man and of the Citizen of 1789.

However, the protection of human rights was effectively addressed as an imperative of the international community after the end of the Second World War, as a result of a society reaction against the atrocities committed in the war. Thus, the Universal Declaration of Human Rights was adopted by The United Nations General Assembly on December 10, 1948, the document containing 30 articles on human rights (Corlăţean 2015, 10).

At European level, the most important moment is the signing, in 1950, of the Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights, ratified by Romania by Law no. 30 of May 18, 1994, published in the Official Gazette no. 135 of May 31, 1994.

### **The right to life – ECHR**

The European Convention on Human Rights states in the first paragraph of Article 2 that “the right to life of every person is protected by law and that death cannot be intentionally caused to anyone except in the execution of a death sentence handed down by a court when the crime is sanctioned. with this punishment by law”. As is well known, the second sentence of this paragraph has fallen into disuse as all member states of the European Union have abolished the death penalty. Belarus is the only country on the European continent that continues to serve the death penalty, while in Russia there is a moratorium.

The following paragraph sets out the situations in which member states may infringe these social values by providing that “death shall not be deemed to have been caused by a breach of this article in cases where it would result from an absolute use of force:

- a. to ensure the protection of any person against unlawful violence;
- b. to make a lawful arrest or to prevent the escape of a lawfully detained person;
- c. to repress, in accordance with the law, violent disturbances or insurrection”.

As stated in European case law, paragraph 2 does not designate “the cases where the intentional killing of a person is permitted, but describes situations where the “use of force” is permitted which may, as an unintentional result, result in death. However, the use of force must be “absolutely necessary” for the purpose of achieving the purposes of points a, b or c” (McCann and Others, paragraph 148).

It is no coincidence that I chose to emphasize the word “absolute”. The jurisprudence of the European Court of Human Rights reveals a high level of exigency on this issue. For example, in *McCann and Others vs. United Kingdom*, the European Court held that the shooting of persons who were reported to be detonating a bomb was a violation of Article 2 in the event that the danger could be removed without necessary to kill suspects.

### **Obligations of states**

The authority overseeing compliance with the Convention and the additional protocols by the signatory states is called the European Court of Human Rights. It intervenes when it is notified and finds that the obligations assumed have not been complied with.

In the event that the applicant's application fulfills the conditions of admissibility, the Court will rule on Article 2 of the Convention by examining two aspects:

- substantially: regarding the observance of the positive duty of care by the claimed state;
- procedural: regarding the observance of the procedural obligation to carry out an effective investigation regarding the death of a person.

In any criminal case which has resulted in death - it has been revealed by the Court's practice - Member States have a procedural obligation to carry out an effective investigation into the death of a person. An investigation is effective if it meets certain standards, among which I mention: to be suitable to lead to the discovery of the facts and the discovery of the

perpetrator, to be prompt, to be initiated *ex officio*, the investigators to be independent, the evidence to be preserved.

As regards the ability of an investigation to lead to the discovery of the facts and to the finding of the perpetrator, it should be noted that this is not an obligation of result, but an obligation of means. In this regard, the Court will examine whether the authorities of that State have taken the necessary steps to find out the truth.

### **The positive duty**

With regard to this obligation, the Court examines whether the State against which the application was made would have been able to prevent and prevent the death of a person. In this regard, the European court considers that “states are not only obliged to refrain from causing death voluntarily and illegally, but also to take the necessary measures to protect the lives of persons under their jurisdiction, in particular by establishing an efficient criminal law supported by a mechanism for enforcing this legislation.”

It can be observed, therefore, that, by making a more or less appropriate analogy with domestic criminal law, the judgment finding a breach of this obligation is equivalent to pronouncing a solution to the conviction for committing an offense against life by omission. In order to avoid such a ruling, states must not only enact effective domestic law to effectively protect the right to life, but must also minimize any risk to that right when there are indications that a person’s life “is threatened by a real and imminent risk due to the criminal acts of a third party.”

Quantitatively, Article 2 of the Convention does not impose on the authorities an impossible or excessive task, but a reasonable one, with the complainant having to prove on the basis of evidence that the authorities knew or should have known that the victim’s life could have been in danger. Unlike the principle of necessity, which requires compliance with strict requirements between certain parameters, the positive obligation is not exhaustively defined, this flaw leading to the issuance of criticizable decisions and the emergence of controversy in the judiciary environment.

One of the most controversial rulings of the European Court of Human Rights is the *Osman vs. United Kingdom* case. The plaintiffs Mulkiye and Ahmet Osman, the wife and son of the late Ali Osman, invoked non-compliance with art. 2 substantially, since, in their view, the latter's death could have been avoided by complying with the duty of care.

### **Osman vs. United Kingdom**

According to the summary of the judgment, Mr. Paget-Lewis, a teaching staff member and perpetrator, admitted that he had developed an obsession with student Ahmet Osman, manifesting deviant behavior. Although the psychiatrist who examined Paget-Lewis did not consider the concerns justified, he mentions that “his way of forming a friendship with a student is suspicious and reprehensible.” The same doctor later found that Paget-Lewis “should be kept away from Homerton House” and declared him temporarily incapable of work, recommending that “his patient should be excluded from the teaching staff at Homerton House and transferred as soon as possible for medical reasons.”

The evidence and suspicions about Paget-Lewis's involvement in the denigratory inscriptions on the friendship of Ahmet Osman and Leslie Green, the attacks and acts of vandalism on the property of the Osman family, the collision between the cars in which Leslie Green and Paget-Lewis were, were not considered by to the authorities’ good reasons for his arrest, although he himself stated that he was going to commit a crime. Although the police stated that “families will get protection from the police”, this promise did not materialize, for unknown reasons. This was also Paget-Lewis's perplexity after he wounded Ahmet Osman and Mr. Perkins, the school principal, with a pistol, and killed Ali Osman and Mr. Perkins’

son, at the time of his arrest, asking the authorities why they had not arrested him before killing, claiming that he provided all the necessary preventive clues.

Although I am not sure that the summary of the judgment fully contains the data on which the Court based its solution, I have tried to read the government's defenses with deep empathy. Despite this effort, I still consider that the court's decision was erroneous and that it erred in finding that there had not been a substantial violation of Article 2 of the Convention. I fully agree with the divergent views that the authorities underestimated the danger posed by Paget-Lewis and had sufficient data to outline the possibility of committing such serious acts, as I find it difficult to appreciate that the latter's assertions were not sufficient for the application of a penalty. This purpose leads me to wonder what the solution of the European court would have been if it should have ruled on a recent incident in Romania - the murder by a man of his concubine and stepson shortly after the couple appeared on a TV show, during which the woman stated that he repeatedly assaulted her and threatened to kill her.

## Conclusions

Despite the recent desire to adopt uniform legislation at the international level, I believe that laws must be compliant, adapted to social reality, as the mentality, customs, traditions and values of one state will never completely coincide with those of another state.

Although, treating the issue of abortion with deep empathy, I can say that I oppose it, I believe that studies and statistics that reveal the lack of sex education among young people, the number of births as a result of sexual acts without consent, the minimum wage in some countries and the real possibility for young mothers to raise a child, taking into account existing shortages, should be taken into account.

However, with regard to the duty of care and with regard to the cases of *McCann and Others vs. United Kingdom* and *Osman vs. United Kingdom*, we reiterate that the ECHR shows a high level of tolerance and that, in issuing such decisions, it may encourage the lack of a prompt response from the authorities, discouraging necessary measures for the protection of life.

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# Climate Stabilization Taxation-and-Bonds Strategy Adjusted for Consumption

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**ABSTRACT:** Current climate change mitigation and adaptation financing efforts are calling for innovative green investment strategies. An emerging literature and awareness on the economic gains and losses of a warming globe being distributed unequally between countries can serve as novel basis of redistribution schemes. A taxation-and-bonds strategy over the entire world could fund climate change alleviation. A financial asset transfer could be enacted in form of tax-debt mechanisms. Proposed taxation and bonds strategy could aid in broad-based and long-term market incentivization of a transition to a clean energy economy. Strategies could feature some countries' financing green bonds via carbon taxation, while other countries are climate bonds premium recipients. The bonds recipients would be funded by the climate taxation countries. The bonds could be tradable and issued controlled by global governance institutions, such as the International Monetary Fund, the World Bank, the United Nations or the World Trade Organization. In most redistribution schemes with market incentives, such as – for example – the cap-and-trade emissions trading system, the CO<sub>2</sub> emissions levels are addressed. This article advocates for attention to potential economic gains from a warming globe as a source of assets for redistribution. These gains could be redistributed to areas and industries of the world that are clearly losing from climate change immediately. Contrary to most economic redistribution models concerning climate change that primarily weight in relative CO<sub>2</sub> emissions for production, this paper argues for attention to CO<sub>2</sub> emissions consumption levels. The trade-adjusted consumption-based CO<sub>2</sub> emissions levels appear fairer in the judgment what countries have a higher responsibility to fund the burden of climate change. Market-mechanisms – such as consumption taxation and price mark-ups for consumers – are discussed as additional market strategies to redistribute costs, risks and losses implied by climate change.

**KEYWORDS:** Climate Change, Climate Stabilization, Economics, Economics of the Environment, Environmental Justice, Environmental Governance, Equality, Law & Economics, Monetary policy, Redistribution, Social Justice, Sustainability

## Introduction

The climate change crisis has gained unprecedented urgency in the most recent decade. Climate change has already led to and will continuously lead to irreversible tipping points and lock-ins that will degrade the common welfare (Kellett, Weller, Faulwasser, Grüne & Semmler 2019). The extraction and use of non-renewable fossil fuels is attributed as one of the main causes of human-made global warming and a highly volatile market endeavor (Gevorkyan & Semmler 2016; Greiner, Mett & Semmler 2012; Maurer, Preuss, & Semmler 2014; Nyambuu & Semmler 2014, 2017, 2020). Global warming can be slowed by limiting the total cumulative global CO<sub>2</sub> emissions.

Historically, the advanced countries have gained welfare and rising living standards by the use of fossil fuel energy and intensive CO<sub>2</sub> emissions, while the developing countries have not emitted the same levels of CO<sub>2</sub> emissions and appear nowadays as the most burdened with the climate disasters. In the aftermath of the United Nations COP26 meeting it has been argued that the advanced countries have an obligation and responsibility to finance the adaptation to global warming of the low-income countries through direct transfers and credit guarantees

(Sachs 2021). Now the most pressing question arises, what measures should the world community take to determine the beneficiaries and victims of climate change. This paper addresses geographically-determined economic prospects in light of climate change and outlines vast inequalities in the distribution of future climate-induced economic gain or loss prospects. Ethical imperatives will be introduced that lead to the claim for redistribution of some of the gains of global warming into territories that are losing out from climate change. In the search for redistribution schemes, a taxation-and-bonds strategy will be proposed that allows for transfers within the world community in order to distribute the gains and losses of global warming throughout the world (Puaschunder forthcoming).

### **Climate justice redistribution schemes**

A most recent World Bank Report calls for a fair and climate taxation and bonds mix around the world (Semmler, Braga, Lichtenberger, Toure & Hayde 2021). While the World Bank Report presents a global overview on the current state of climate taxation and climate bonds usage around the globe, it calls for more macroeconomic models that enact climate bonds and tax strategies concurrent use coupled with redistribution and burden sharing (Semmler et al. 2021).

In the aftermath of the COP26 annual climate meeting of the United Nations, Jeffrey Sachs (2021) put forward an idea of funds for climate change mitigation and adaptation that should be raised by climate tax-funded grants provided by some countries as transfer payments, while other countries should be recipients of green bonds granted to low-income countries. While Sachs (2021) argues that half of the funds raised should be grants (transfers) and half green bonds that help the transitioning to renewable energy in low-income countries, this paper will bring forward a refinement in prioritizing which countries should be grantors and which recipients based on clear criteria.

### **Climate change gains and losses**

Approaches to raise funds for a transitioning to a green economy take a closer look at the macroeconomic impacts and economic growth prospects under climate change. Impacts of climate change vary around the world and are likely to impose considerable economic prospect changes, which will increase over time as global temperatures increase (Lomborg 2021). Global warming will likely cause economic gains and losses, which are distributed unequally throughout the world and over time (Lomborg 2021; Puaschunder 2017a, b, 2020b).

Economic research has elucidated the economic impact of climate change on the world and found stark national differences (Burke, Hsiang & Miguel 2015). Burke et al. (2015) estimate how climate change will affect GDP per capita. In addition, the International Monetary Fund conducted a cross-country analysis of the long-term macroeconomic effects of climate change and found country inequalities in global warming effects (Kahn, Mohaddes, Ng, Pesaran, Raissi & Yang 2019). One translation of climate change gains and losses in burden-sharing contribution schemes is usually defined in Nordhaus' Regional Integrated model of Climate and the Economy model (RICE model). This regional, dynamic, general-equilibrium model of the economy integrates economic activity with emissions levels as main driver of human-made climate change (Orlov, Rovenskaya, Puaschunder & Semmler 2018). In addition, The New York Times most recently discussed the disparate impact of climate policies and climate protection attention disparities (Flavelle 2021a, b).

Puaschunder (2020b) measured the Gross Domestic Product (GDP) prospect differences under climate change around the world and found exacerbating climate inequalities. Puaschunder (2020b) introduced a climate change winners and losers index based on the economic prospects under climate change around the world and over time. 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 agriculture, industry and service sector and the GDP sector composition per country in order to determine how far countries are deviating from their optimum productivity levels on a time scale (Puaschunder 2020b).

### **Ethical imperatives underlying climate justice redistribution mandates**

In order to alleviate inequalities in climate change impacts between countries ethical imperatives but also economic calculus led to redistribution mandates (Kant 1783/1993; Law & Smullen 2008; Rawls 1971). Following ethical considerations of Immanuel Kant's (1783/1993) categorical imperative and John Rawls' (1971) veil of ignorance, the climatorial imperative was formulated to advocate for the need for fairness in the distribution of the global earth benefits among nations (Kant 1783/1993; Puaschunder 2017c, 2020b). Based on Kant's imperative to only engage in actions one wants to experience themselves being done to oneself, every human being should act in such a way that one treats humanity, whether in one's own person or in the person of any other, never merely as a means to an end, but always at the same time as an end. Based on Kant's (1783/1993) categorical imperative, in the climate inequality sphere, no climate harm should be done to any country independent of a country's position on the climate winners and losers spectrum. Passive neglect of action on climate mitigation is an active injustice to others (Puaschunder 2020b).

Moral and ethical guidelines may be enhanced with the Kaldor-Hicks Compensation Criteria. The Kaldor-Hicks test for improvement potential within a society is aimed at moving an economy closer towards Pareto efficiency (Law & Smullen 2008). Kaldor-Hicks's criteria assume that any change usually makes some people better off and other worse off at the same time and tests if this imbalance can be alleviated by winners compensating losers for the change in conditions. In the Kaldor-Hicks's criteria both sides must also agree that the benefits exceed the costs of such action. The Kaldor-Hicks compensation can be applied to environmental constraints in regards to climate change.

As economic gains and losses from a warming earth are distributed unequally around the globe, ethical imperatives lead to the pledge to redistribute gains to losing territories in the quest for climate justice. Climate justice comprises fairness between countries but also over generations in a unique and unprecedented tax-and-bonds climate change gains and losses distribution strategy (Puaschunder 2018).

Applying the Kaldor criterion in the context of climate justice enacted via taxation and bonds would serve as an example by which the economy moves closer to a Pareto optimality if the maximum number of gainers are prepared to pay the losers and to agree that the change is greater than the minimum amount losers are prepared to accept. Climate change winning countries are advised to use taxation to raise revenues to offset the losses incurred by climate change. The climate change winners could therefore pay a tax in order to compensate climate change losers for climate change-induced economic losses. Climate change losers could be incentivized to receive bonds that have to be paid back by future generations (Puaschunder 2019a, b).

In order for the Kaldor compensation to work effectively, climate change economic winners and losers must also agree that the benefits of a commonly-agreed upon compensation scheme exceed the costs of such action. International cooperation and/or significant participation is an important way to internalize global externalities and avert climate change but also to agree upon a commonly-pursued rescue and resilience plan (Nordhaus 1994).

Aside from free-rider problems and penalties for non-compliance, in the environmental domain problematic appears the fungibility of compensation (money will always be there) but the irreversible lock-ins and tipping points of environmental degradation (climate may be irreversibly locked-in and degrade living conditions in a non-linear trajectory).

## Taxation and bonds strategy

A novel climate taxation-and-bonds strategy could redistribute climate change gains and raise widespread momentum for a transitioning to a zero-carbon global economy based on the notion that the redistribution is fair. A taxation-and-bonds strategy could outline a scheme of countries being either climate taxation bonds funders or climate bonds recipients based on economic prospects in light of climate change and CO<sub>2</sub> emissions consumption levels. While previous models focused on CO<sub>2</sub> emissions production levels per country, this article stresses the importance of consumption-based, trade-adjusted CO<sub>2</sub> emissions as a basis for climate justice. In a novel redistribution model, a country's starting ground on the climate gains and losses spectrum and a country's CO<sub>2</sub> emissions contributions in consumption levels could determine whether a country will be on the taxation regime for funding mutual climate stabilization or whether a country will be on the receiving end of climate bonds solutions.

Green bonds have recently been promoted as innovative climate stabilization strategy (Puaschunder 2020b; Sachs 2014; Semmler et al. 2021). Green bonds are in most cases governmental bonds. Issuance of a bond is taking a loan or getting credit that is to be repaid in the future. The issuer of bonds establishes the bond for bond buyers. Investors who purchase these bonds can expect to make profit as the bond matures.

Regarding taxation within the winning countries, foremost the gaining GDP sectors should be taxed. Those who caused climate change could be regulated to bear a higher cost through carbon tax in combination with retroactive billing through inheritance tax to map benefits from past wealth accumulation that potentially contributed to global warming (Puaschunder 2016a, b, c). Climate justice within a country should also pay tribute to the fact that low- and high-income households share the same burden proportional to their dispensable income, for instance enabled through a progressive carbon taxation and a carbon consumption tax. Climate gain and loss theories and empirical validations of the unequal climate change impact on countries lead towards contemporary climate taxation and bonds strategies to redistribute some of the gains of climate change to losing territories. As a foundation for the redistribution of climate gains and losses, the disparate impact of global warming on countries is considered. A model will be laid out that assumes that if a country has a rising GDP prospect in a warming climate, then this country should be redistributing some of the expected wealth increase to places that have a declining GDP prospect. The consumption-based, trade-adjusted CO<sub>2</sub> emissions should be taken into consideration (Our world in data 2019). Those countries that consume goods and services with high CO<sub>2</sub> emissions should be redistributing the expected gains from a warming globe into territories that are losing out from climate change the fastest and the most and do not consume goods and services that contribute to CO<sub>2</sub> emissions.

The rationale is that countries that have a current advantage from climate change, should redistribute some of the gains to losing territories and grant climate bonds in the now for those countries that lose out on climate change. Only the countries that have lowered economic prospects due to climate change should be able to shift some of the burden of climate change financing to future generations in bonds.

As Puaschunder (2020b) found in a worldwide dataset over all countries, being a climate change winner and emissions are related. The relation between GDP growth prospects in light of climate change and percentage of GHG for ratification was investigated based on the total and percent of greenhouse gas emissions communicated by the Paris COP 21 Parties to the Convention retrieved in their national communications and displayed in GHG inventory reports as of December 2015. Over a sample of 181 countries of the world, a highly significant correlation between being a climate change winner and the self-reported percentage of GHG emissions for ratification was found. As a cross-validation check, the percentage of GHG emissions for ratification was significantly positively correlated with self-reported GHG emissions per country. This result leads to the conclusion that those countries that emit more

GHG are the ones with a positive GDP prospect on the warming earth until 2100. The more time countries seem to have in a favorable climate for production, the more they are also likely to emit GHG and hence contribute to global warming (Puaschunder, 2020b).

A redistribution scheme could build on the insights that climate winners are more likely to be responsible for human-made climate change. Puaschunder (forthcoming) therefore brings forward different indices meant to provide a basic numerical scheme how to redistribute the economic gains of climate change to those countries that lose out on climate change the first. The higher each index, the more countries are advised to be aiding in the financing of climate stability with raising funds through taxation that will then be used as transfer payments to offset the costs for climate bonds subsidies. The actual index numbers translate into a numerical key that determines the relative position of each country to other countries on a scale from taxation to raise the funds for climate stabilization and subsidize climate bonds.

### **Consumption-based trade-adjusted CO<sub>2</sub> emissions**

This paper advocates for taking into consideration CO<sub>2</sub> emissions consumption rather than production. Most economic models are primarily concerned about the CO<sub>2</sub> emissions levels during production, which creates inequalities over inequalities since it appears to discriminate against developing nations that are producing goods that are consumed in the more developed world.

CO<sub>2</sub> emissions levels are typically measured in production terms in the countries that produce them. This territorial emissions standard as target for climate change burden sharing strategies places a heavier burden onto territories, where CO<sub>2</sub> emissions production occurs but the produced goods are then exported into other places in the world, where they are consumed. To address this deficiency, Hannah Ritchie and Max Roser (2019) created consumption-based, trade-adjusted CO<sub>2</sub> emissions. To calculate consumption-based emissions, Ritchie and Roser (2019) took data that tracks goods that are traded across the world and CO<sub>2</sub> emissions production and subtracted CO<sub>2</sub> emissions that were emitted in the production of goods that were exported. Consumption-based emissions reflects the consumption and lifestyle choices of a country's citizens (Our World in Data 2019). The consumption-based, trade-adjusted CO<sub>2</sub> emissions outline countries that are net importers of emissions as they import more CO<sub>2</sub> emissions embedded in goods than they export (e.g., Switzerland but also some African countries) (Our World in Data 2019). Countries are net exporters of emissions if they export more CO<sub>2</sub> emissions embedded in goods than they import (e.g., the Bahrain, Qatar) (Our World in Data 2019). The US is a net importer, China a net exporter of CO<sub>2</sub> emissions embedded in goods (Our World in Data 2019). Most Western European countries, the Americas and many African countries are net importers of emissions while most Eastern European and Asian countries are net exporters (Our World in Data 2019). Especially the role of China as the largest CO<sub>2</sub> emissions exporter but producer of goods for the rest of the world highlights the importance of consumption-based, trade adjusted CO<sub>2</sub> emissions consumption levels. The CO<sub>2</sub> emissions consumption level that accounts for trade also gives a clearer picture of genuine reductions of CO<sub>2</sub> emissions over time rather than outsourcing emissions to other countries, such as in the cases of Western world countries.

### **Conclusion**

A novel climate justice enactment could feature a redistribution of gains from a warming globe. The more a country is considered to win from global warming economically and the more a country is causing climate change in CO<sub>2</sub> emissions consumption, the more this country could serve with taxation of climate winners to fund climate bonds in economically-losing territories due to global warming. The more a country faces declining economic prospects in light of global warming and the less consuming CO<sub>2</sub> in relation to other, the more the country should be given helicopter funding

for participating in climate bonds that remunerate a transition to a renewable energy solution and can be co-financed via debt to be repaid by future generations. Within the countries funding climate stabilization via bonds, those countries that are the worst off from climate change and have the lowest CO<sub>2</sub> emission consumption levels in relation to others, should have the best subsidized conditions for climate bonds, thus investors should have the highest premium payments. Diversified financing of common green bonds with a unique incentive scheme for carbon reduction is a new method aimed at sharing the burden but also the benefits of climate change within society in an economically efficient, legally equitable and practically feasible way.

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# Considerations on Some Adverse Decisions of the Constitutional Court and their Impact on the field of Justice in Romania

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**ABSTRACT:** The present study brings to the attention of specialists in the field of legal sciences the inaccuracies of the decisions with identity of object to the Constitutional Court of Romania and the decadent consequences that they create. We also want to emphasize that the decisions of this high legal institution must harmonize from a legal point of view, judicial practice and the doctrine of this field in relation to multiple situations and not isolated legal situations, because it can create erratic and palliative situations that may have negative consequences on the Romanian criminal legislation.

**KEYWORDS:** decisions, Romanian Constitutional Court, exception of unconstitutionality, inconsistencies

## **Presentation of the legal situation subject to constitutional review**

The Romanian Constitutional Court was seized in order to rule on the exception of unconstitutionality of the provisions of art. 35 para. (1) of the Criminal Code and ruled in this regard, Decision no. 837 of 2015. The object of the exception of unconstitutionality is the provisions of art. 35 para. (1) of the Criminal Code, which reads as follows: "It is argued that the criticized text violates the constitutional provisions of art. 16 para. (1) on equal rights and art. 124 para. (2) regarding the administration of justice". The Court notes that the author invokes, through the arguments brought in support of the exception of unconstitutionality, the provisions of art. 1, para. (5) of the Constitution. Following the examination, *the Court rejected, as unfounded, the objection of unconstitutionality* raised by Andreas Nadasdy in File no. 16.233/3/2010 (3.909/2013) of the Bucharest Court of Appeal - Criminal Section II and finds that the provisions of art. 35 para. (1) of the Criminal Code are constitutional in relation to the criticisms made.

Having the same object of the notification, namely the provisions of art. 35 para. (1) of the Criminal Code, the Constitutional Court of Romania pronounced Decision no. 368 of May 30, 2017. In the motivation of this decision, regarding the unconstitutionality of the phrase "**and against the same passive subject**" of **art. 35 paragraph (1) Criminal Code**, which stipulates that "The offense is continued when a person performs at different intervals of time, but to achieve the same resolution and same subject passively against actions or inactions presenting, each one, the content of the same offense". Unanimously, the constitutional judges ruled that the criticized phrase creates discrimination within the same category of persons who commit at different time intervals, but in the realization of the same resolution, actions or inactions that each present the content of the same crime. In the opinion of RCC, the phrase contradicts art.16 par. (1) of the Romanian Constitution regarding the equality of citizens before the law, without privileges and without discrimination. Following the examination of the application, *the Constitutional Court admits the exception of unconstitutionality raised, ex officio, by the court in File no. 3.422/108/2015 of the Arad Tribunal - Criminal Section and finds that the phrase 'against the same passive subject' within the provisions of art. 35 paragraph (1) of the Criminal Code is unconstitutional.*

Subsequently, the RCC ruled that "*by maintaining the condition of committing the crime continued against the same passive subject, in the case of crimes against the person, the criticized text violates the Decision of the Constitutional Court no. 368 of May 30, 2017*".

And in order to clarify the argumentation of the present decision, in 2019, the Court reiterates its argument sustained in 2018, establishing that *“following the pronouncement of Decision no. 368 of May 30, 2017, the distinguishing mark between the continuing offense and the concurrence of offenses is exclusively the unity of the criminal resolution, [...] so that the option [...] to establish the retention of the continued form of the offense when the acts are committed against the same passive subject in the case of crimes against the person, violates Decision no. 368 of May 30, 2017”* (RCC, dec. no. 466/2019 regarding the objection of unconstitutionality of the Law for amending and supplementing Law no. 286/2009 on the Criminal Code, as well as Law no. 78/2000 for the prevention, discovery and sanctioning of acts of corruption).

### **Consequences of inconsistencies of RCC decisions with object identity**

We note that we are currently hearing two decisions of the RCC that are identical in object (the provisions of Article 35 paragraph (1) of the Criminal Code), but the solutions of the RCC are opposite. If in the first decision of 2015 RCC it was declared as constitutional the phrase **“and against the same passive subject” from art. 35 par. (1) of Criminal Code** and it does not violate the provisions of art.16 par. (1) of the Romanian Constitution, as pointed out by Andreas Nadasdy in File no. 16.233/3/2010 (3.909/2013) of the Bucharest Court of Appeal - Criminal Section II, in the decision of 2017 the same Constitutional Court decides that the phrase **“and against the same passive subject” from art. 35 par. (1) of Criminal Code** is not constitutional, being in contradiction with art. 16 par. (1) of the Romanian Constitution regarding the equality of citizens before the law, without privileges and without discrimination.

Basically, by Decision no. 368 of May 30, 2017, RCC returned to the old art. 41 para. 2 of the Criminal Code. Thus, the Court considers that it has put an end to the situations in which the courts are forced to apply sentences of more than 20 years of imprisonment to persons who have committed crimes with minor social danger, such as deception, but with several “passive subjects”. According to the provisions of the RCC’s 2017 decision, the persons concerned would have committed a series of offenses, more precisely as many offenses as the injured parties were, not a continuing offense, so that, after calculating the sentences, they would have served huge sentences, who, in concrete cases of convictions handed down by Romanian courts, have reached the age of 30.

We consider these pseudo-arguments of the RCC to be inadvertent and redundant because the cases in which these situations have occurred are limited and even if they are multiple, we consider that the clemency of the legislator is not the natural solution to limit the criminal phenomenon but the severity of punishments.

We believe that the framework for regulating and sanctioning crimes cannot be changed on the grounds that the offender will serve sentences of a very long duration, but the potential offender must know the severity of the legislator in case of committing even a single crime but a plurality of passive subjects. However, if we were to agree with the reasons for the RCC decision of 2017, we should admit, by a logical legal extension, that if drug trafficking and consumption increase, for example, in the end the legislator should reduce the penalties for this crime or even not to include it in the category of facts that constitute crimes and the examples could continue with other crimes.

The consequence of the Court’s finding of the unconstitutionality of the phrase **“and against the same passive subject”** in the provisions of Article 35 paragraph (1) of the Criminal Code is, in practice, a return to the solution adopted by judicial practice under the Criminal Code from 1969, in the sense of the existence of a limited compatibility between the continued crime and the plurality of passive subjects, compatibility to be retained on a case-by-case basis by the courts. The Court notes that, according to the practice of the judiciary crystallized under the Criminal Code from 1969, in order to determine whether all actions or inactions were committed in the same criminal resolution or whether they have their source in separate

resolutions, it is essential to examine all factual circumstances and conditions. in which they were committed, and the identity of the injured person may be taken into account, among other elements.

The unity of the passive subject cannot constitute a legal/obligatory criterion of differentiation between the continued crime and the competition of crimes. Thus, while the unity of the criminal resolution is an objective, intrinsic criterion, related to the cognitive process specific to the criminal behavior, being, implicitly, controllable by the active subject, the unity of the passive subject constitutes a criterion external to the will of the perpetrator for this reason, unjustified. The Court held that the aspect of committing the continuing crime against the person does not, *per se*, presuppose the knowledge by the active subject of the identity of the passive subject. Following the pronouncement of Decision no. 368 of May 30, 2017, the differentiating mark between the continued crime and the competition of crimes is, exclusively, the unit of criminal resolution, which we do not consider to be the fair and equitable interpretation of the law.

The Court considered it necessary to change its jurisprudence regarding the provisions of Article 35 paragraph (1) of the Criminal Code, taking into account the evolution of legislation, doctrine and judicial practice in the matter of continuing crime and re-evaluating the impact of in many situations in which it is not possible to justify, rationally and objectively, the incidence of the sanctioning treatment of the competition of crimes. Thus, the Court finds that the phrase ‘also against the same passive subject’ in the provisions of Article 35 paragraph (1) of the Criminal Code, which imposes the condition of unity of the passive subject in the case of continued crime, creates discrimination within the same category of persons different time intervals, but in the realization of the same resolution, actions or inactions that present, each in part, the content of the same crime, which attracts the violation of the provisions of art.16 paragraph (1) of the Constitution regarding the equality of citizens before the law. The Court notes that the defense of the constitutional order by means of criminal law falls within the competence of the Parliament, but it falls within the attributions of the Constitutional Court to verify the way in which the criminal policy configured by the legislator reflects on the fundamental rights and freedoms of the person in order to respect a fair balance in relation to the protected social value (Decision no. 903 of July 6, 2010, published in the Official Gazette of Romania, Part I, no. 584 of August 17, 2010, Decision no. 3 of January 15, 2014, published in the Official Gazette of Romania, Part I, no. 71 of January 29, 2014, and Decision no. 603 of October 6).

We are of the opinion that, in the present case, it cannot be a question of legislative evolution, or of doctrine, much less of judicial practice, because no multiple cases have been reported in which convictions for very large sentences have been reached, but on the contrary, these cases are isolated, or, the legislator legislates for general cases and not special or particular ones, thus creating the danger of violating the principle of legal certainty and the dynamic interpretation of a rule of law becomes unpredictable, in case of any jurisprudential reversal, interpretation” (Varga 2017).

In support of our argument, we highlight a case from the judicial practice in which the defendant, a school bus driver from Bacău, was accused of sexual assault against four minors aged between 9 and 13 years. His behavior in relation to the victims had strong sexual connotations: he locked the bus and pulled the curtains to be alone with the victims on various occasions. From the statements of the girls and the expert reports prepared by psychologists, it is clear that this behavior of the man was the source of strong traumas for the four minors. In such a case (Bacău Court of Appeal, dec. no. 1407/2018) the Bacau Court of Appeal ordered the change of the legal classification established by the first instance from 4 crimes of sexual assault committed in real competition in a single crime committed in a continuous form. In the motivation, among the grounds of this sentence, was also one of the decisions of the Constitutional Court regarding the unconstitutionality of the phrase “*and against the same passive subject*”.

We agree with an opinion expressed on this topic according to which, a potential solution would be to condition the existence of the crime continued by the uniqueness of the passive subject only in cases where those actions affect the life, liberty, health and physical or mental integrity of the person. A text of law constructed in this way, similar to the interpretations enshrined in judicial practice, would draw a clear limit on the incidence of the unity of the passive subject (Racoviță, asandru.ro).

## Conclusions

The courts of constitutional jurisdiction are the courts empowered to carry out the control of constitutionality, i.e., the activity of verifying the conformity of the laws and other normative acts with the provisions of the Fundamental Law. This type of control of legal norms is a consequence of the fact that the legal system is not presented as an indistinguishable set of norms, all placed at the same level, but as a hierarchy based on the legal value of the sources of law, articulated at the top with the supremacy of the Constitution.

Given the role of the courts of constitutional jurisdiction, their activity must be approached and analyzed in the complex system of relations determined by this evolution at national, international and supranational level. The amplification and consolidation of the dialogue of the constitutional judges, both domestically and internationally, determines a phenomenon of emergence towards common constitutional values. This type of cooperation leads to the constitutionalization and standardization of the law, respectively to a general consolidation of the protection of the values of the rule of law in Europe and in the world.

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# Forensic Identification of Persons by Traits

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**ABSTRACT:** The paper presents methods for identifying people by forensic facial identification, which can be defined as external features and which allow them to be identified in order to detain criminals. Over time, the spoken portrait method has been one of the most important methods of forensic identification, developed on the basis of judicial practice and investigation. In the procedures for identifying persons according to external traits, we can mention: the sketched portrait which consists in drawing a portrait, following the description of the victim or witnesses; the photo robot - a method of identification with the help of a photographic collage of facial elements, the photographic synthesizer, the computer robot portrait, etc.

**KEYWORDS:** the spoken portrait method, static features, dynamic features, photo robot, minicomposer

## Introduction

The external features of persons allow their identification in order to discover criminals, prosecute and detain perpetrators, as well as convicts who evade the execution of the sentence, recognition of repeat offenders, search for missing persons or identification of unknown bodies (Ionescu 2007, 145).

The methods of identifying people by external traits, by voice, as well as by other forensic procedures come to add to the possibilities of identifying the person based on the traces left by him in the criminal field (Stancu 2015, 187).

The person's features can be defined as external, general and particular features of a person, on the basis of which he can be recognized and identified. In Forensics, a special method of identifying the person by traits was developed, developed on the basis of judicial and investigative practice, called “the method of the spoken portrait” (Buzatu 2013, 91-92).

The description of the features takes into account the characteristics of the whole body, emphasizing the anatomical features of the face, the description refers to the volume, shape, position and color of the observed parts, each element being appreciated in relation to other anatomical elements that make up the set described (Stancu 2015, 189).

## The spoken portrait method

The spoken portrait is a method frequently applied and perfected over time, which serves to identify people based on the description of their external features by another person (Stancu 2015, 190). In describing a person's features, precise and uniform terminology must be used in a logical sequence. In applying this method, two categories of features are used, namely anatomical or static and functional or dynamic. Particular role is also played by particular signs, clothing and portable objects whose characteristics make it easier to identify (Buzatu 2013, 92).

Traits mean the external, general and particular features of a person, on the basis of which he can be identified (Panghe and Dumitrescu 1974, 3).

The identification of persons by traits is based on the great variability of the individual characteristics that distinguish one person from another (Suciu 1963, 423).

**Static features** refer to stable features, whether the body is moving or at rest. They concern the waist, the physical constitution, the shape of the face and its components (Ionescu 2007, 145).

*The waist* can be short, medium and tall.

*The physical constitution* is considered to be robust or solid, medium, weak, depending on the size of the bone system and the muscle mass of the individual.

*The general appearance or attire* of a person can be evaluated as sporty, elegant, athletic, cumbersome or associated with certain professions, such as officer, clerk, intellectual, sailor, student ballerina, etc. (Stancu 2015, 190).

*The shape of the head* can be elongated, oval, rectangular, triangular, square, angular. From the profile, the head can have a normal or regular contour.

*The face* is divided into three areas: frontal, nasal and buccal. The frontal area comprises the region between the base of the nose and its base; the mouth area includes the region between the base of the nose and the tip of the chin.

*Hair* is described by color, frontal insertion, shape (straight, wavy, curly), length, hairstyle.

*The forehead* is described by height, width, contour, inclination, manner of wrinkling

*The eyes* are described by shape, position, color, interocular space, the peculiarities of the eyelids and eyelashes.

*The nose* is characterized by the root, the dorsal line or the edge, the height, the width, the base, the conformation of the nostrils.

*The mouth and lips* are described by size, contour, position, color, thickness, prominence.

*The chin* is described according to its profile, width, height, its peculiarities (flat, sharp, buried, double chin) (Stancu 2015, 190-191).

Regarding the *ear*, one can describe the size (small, medium, large), shape (oval, round, triangular, rectangular), position (glued, removed).

*The skin* can vary depending on the color (white, pink, red, yellow), with certain features: eczema, warts, moles, tattoos, scars.

There are also wrinkles on the face, especially on the forehead and between the eyebrows (Buzatu and Ionescu 2010).

**Dynamic or functional features** are those that are highlighted when performing movements or when adopting different positions (Ionescu 2007, 148).

In everyday life we recognize people not only by the colour of their eyes, but by their look, not only by the contour of their face, but by their facial expressions, not only by the height and shape of their limbs, but also by their movement. Thus, the description of the anatomical features is completed with that of the functional features, which appear and can be observed on the occasion of performing different movements: body posture, head position, gait, gestures, facial expressions, voice and speech, habits in various activities.

The position of the head can be appreciated in the general attire of the body, but also as an element independently, when their own characteristics are presented, specific to a certain person. Thus, the *head* can be bent forward, bent backwards, held straight, bent to the left or to the right insofar as these positions are not accidental, but constant in the dynamism of body movements, they are retained as characteristic elements (Xdocs 2021).

A person's *gait* can be normal, relaxed, supple, sporty, cumbersome, hesitant, with big or small steps, jumping.

*The mode of manifestation*, by which we mean gestures or speech, depends on the personality and temperament of the individual. Thus, a person can be calm, nervous, slow, agitated, impulsive, fickle, taciturn.

*Speech* should be included in the outline of the "spoken portrait" through features such as normal speech, hurried, stuttering, organized, as well as timbre, accent, etc. (Stancu 2015, 192).

It should be noted that some *skills* can be disguised to a greater or lesser extent: the voice, the simulation of limping.

Referring to the spoken portrait method, we specify that among the external features of a person are more easily those related to sex, age, waist, head size, nose shape, hair and skin color, gait, facial expressions, voice and malformations (Ionescu 2007, 148).

### Technical methods used to identify persons by external features

*The sketched portrait* or the sketch of the portrait consists in the drawing of a portrait, according to the description of the victim or the witnesses, by a person with very good plastic qualities (Buzatu 2013, 95).

After drawing up, the sketch will be presented to the person who provided the features by description).

*The photo robot* is a method of identification with the help of a photographic collage of facial elements taken from photographs of the traits of different people (Stancu 2015, 193).

The method was introduced in 1953 by French Commissioner Pierre Chabot and is based on photographs of facial details. The composite photograph is taken with the help of descriptions made by the victim or a witness (Ionescu 2007, 152).

*The photo synthesizer* is an improved version of the photo robot. Select the facial elements from ordinary photos and make the montage with four devices that project an area of the face on a screen (Buzatu 2013, 95).

*The identi-kit* and the *photo-identi-kit* are among the technical means frequently used in the practice of criminal investigation bodies. At the disposal of the witness or the victim, an album is placed containing dozens of variants of the facial elements.

The person who makes up this robot portrait chooses from the album a certain variant characteristic of each facial element, after which the corresponding films are removed, which are placed, by overlapping, on a special support, with matte glass, illuminated from below (Stancu 2015, 193-194).

*The minicomposer* (MIMIC) uses the same principle as the *Identi-kit*, but the facial elements on the transparent celluloid strips are electromagnetically driven, by a device, behind a transparent screen (Buzatu 2013, 96).

*The computer robot portrait* consists of composing facial features using electronic computing, by efficiently exploiting data provided by victims and witnesses and by using data stored in computer memory that refers to identified criminals and missing persons (Cârjan 2004, 136).

The inherent difficulties encountered in practice, to identify based on the method of the spoken portrait or through technical procedures such as photo robot, have led to the search for new ways to make the robot portrait. For this, the specialists resorted to the electronic calculation technique which proves to be very useful in practice (<https://www.academia.edu/>).

- By design and execution, the computer and software used have remarkable advantages:
- the database offers a wide range of facial elements;
  - allows changes to be made to the morphophysiological elements such as: details, proportions, sizes;
  - storage of the robot portrait made due to the possibility of retaining it in the computer memory;
  - obtaining immediately a number of copies of the robot portrait by graphic transposition with the help of the printer;
  - the time to make the robot portrait is much reduced compared to the other methods (sketch, *identi-kit*, *minicomposer*);
  - the possibility to quickly and easily broadcast the robot portrait remotely through computer networks of this type;
  - easy transportability due to the small size of the hard elements (Ionescu 2007, 153).

### Forensic methods for identifying unknown bodies

In judicial practice, there are situations when the victim of the murder may be without a known identity: no documents can be found on his/her, there are no people to give

information about his/her identity, and the place where the body was found does not provide any clues as to his/her identity (i.e., the victim is found in the home).

In order to identify, operations are carried out such as: drawing up the spoken portrait, photographing, fingerprinting, taking biological samples (hairs from all regions of the body).

The identification of the corpses according to the description of the traits is made according to rigorous scientific criteria, resorting to an adequate and precise terminology of appreciation of the various details (Criminalistic.ro 2010).

*The over projection method* consists in projecting or superimposing the image of the unknown skull over the photographic image of the missing person, to whom the skull is supposed to have belonged. The two images are superimposed on a screen, in order to establish the coincidence or non-coincidence of the anatomical and anthropometric elements, appreciated as landmarks, the result being focused by photography.

Electronic image overlay is an improved version of over projection, based on the electronic combination of images of the unknown skull and those of the missing person (Qdidactic 2021).

*The reconstruction of the physiognomy after the skull* consists in the plastic and graphic reconstruction of the soft tissues of the head, the whole operation being performed on the skull of the corpse whose identity is being determined.

The results of this method are often spectacular, in most cases the resemblance reaching the degree of perfection, especially if a proper choice is made of hair colour, skin pigment, as well as the expression of the whole figure (Stancu 2015, 196).

*Identification of bone remains* is the subject of expertise in osteological traces. This method is performed by the anthropologist who is able to determine whether the osteological traces are human or not, if we are in the presence of a whole skeleton or if the bones belong to several people (Stancu 2015, 196),

Interesting results were obtained by reconstructing the face after the skull, based on the correspondence between the bony support of the skull and the soft tissues of the face.

Another way to identify is the *morphological comparison of the skull with the photograph of the missing person* in order to be able to deduce a sufficient number of correspondences of forms. One procedure is to overlap the photograph of the missing person over the cliché of the skull obtained by photographing at the same scale and from the same incidence (Ionescu 2007, 156).

*Identification by dental system and dental work.* This method of identification is particularly valuable due to the specific elements of individualization that a person's teeth present. To these particularities must be added the medical interventions performed for the maintenance or replacement of the teeth.

The possibility of reconstituting the physiognomy after the teeth must be taken all the more as the traces of the teeth serve for such reconstructions (Stancu 2015, 196-197).

## Conclusions

The identification of persons by features is an important element in forensic activity, with the aim of identifying the perpetrators and preventing the commission of criminal acts. This method helps to establish the truth in the judicial process, and the description of a person's features, in order to identify him/her, must be made clear and systematic, so as to eliminate any errors that may occur. The spoken portrait method is one of the most common methods of forensic identification, based on both the description of the perpetrator and that of the witness. Sometimes the recognition can be erroneous, in the sense that the victim's or witness's account of the outward appearance may be inaccurate or confusing. Therefore, the special method of identifying the person by features uses data from sciences such as: anatomy, physiology or anthropology.

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# The Digitalization of the Local Public Administration from Romania to Where?

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**ABSTRACT:** The current context of the contemporary society, but also that of the information society, changed in relation to the political paradigm, the political balance of powers, more and more aspects of personal and professional life are subject to the effect of digitization, computerization and are realized, using electronic devices: laptop, tablet, smartphone. The term that defines the era of computerization is e-government, representing an essential step in the reform of public administration, its modernization process and considers the process of digitalization of the public sector (Apubb.ro n.d.) a staged one, which would mediate an essential stage in the interaction between public institutions, in this case mayors and citizens, with the help of applications created for this purpose through information technology.

**KEYWORDS:** digitization, public administration, central administration, local administration, e-government, e-government, implementation, portal for e-government services, consequences

Nowadays, one of the strategic resources in society's development is information supported by modern information technologies. *“The impact of the implementation of information technologies in various fields of human activity is so strong that there is talk of a new phase in the evolution of society - the information society. One of the largest industries in the world is the information technology industry and it is constantly growing. Due to the advantages that information technology offers for economic and social growth, all economically developed and developing countries have adopted computerization strategies both in general and in certain special areas (Ciochină 2012b, 55-57).*

In our country, regarding the services from the Public Administration, the Government Decision no. 1007/2001 for the approval of the Government's strategy regarding the computerization of the Public Administration, as well as many normative acts, referring here to Law no. 455/2001 regarding the electronic signature; Law no. 52/2003 regarding the decisional transparency in the Public Administration; Law no. 291/2002 for the approval of the Government Ordinance no. 24/2002 on the collection by electronic means of local taxes and fees; Law no. 161/2003 on some measures to ensure transparency in the exercise of public dignities of public positions and in the business environment, the prevention and sanctioning of corruption.

*“The concept of computerization of the Public Administration cannot be included in a single definition, according to the strategy that the Government proposes to the citizens.*

*It has four main components:*

*- One of these components is that the citizen can benefit from any public service to which he is entitled through a request addressed to any administrative office authorized to exercise the service in question without having relevance his domicile of territorial competence;*

*- If there is a change in the life of the citizen or of a third person (relevant in the case) for which he must notify or notify the administration, he must be able to do so only once, at the time of the event. This notification should automatically produce the corresponding effects. The administration should keep for each citizen a separate file that will allow the transmission of the change to all interested bodies and the corresponding services to be activated;*

*- Once the citizen requesting a service (other than personal identity documents) has been identified, he or she must not provide other personal information that is (or should be) in the database of any State Administration;*

*The citizen can request a service exclusively based on his own needs without being obliged to know what each body deals with, without knowing how the state is organized, but to benefit from a combination of services from a single public service provider . In these conditions and taking into account the previously mentioned visions, the Government must elaborate the strategy regarding the computerization of the Public Administration so that the public services can also function in the service of the citizen. We affirm these starting from the elements that are included in the Government’s strategy regarding the computerization of the Public Administration” (Ciochină 2012c, 123-127).*

The citizen, in other words, a natural person within the meaning of Romanian civil law “*is a conventional name given to man as a legal entity. Every human being has the quality of a natural person and is subject to civil rights* (Ciochină 2012a). The citizen, for whom the state, is obliged to carry out all the necessary steps in facilitating them to the state services as easily and quickly as possible. Or digitalization is a process that must be implemented with priority in the service of the citizen.

The latest DESI studies published by the European Union illustrate that Romania is among the last countries to use information technology in order to facilitate access to the payment of taxes and communication and between state institutions and citizens. We might ask ourselves whether the rule of law shows good faith. Good faith is provided in the country’s constitution and the inclusion of the principle of good faith in the general principles of civil law has created a system of increased protection of social relations in the private sphere. Through this principle, respect for justice, order, fundamental rights, reason and other social values results from its substance” (Ciochină 2013, 243-248), doesn’t the state have the same duty towards the citizens? Does the state not have to prove and respect the principle of good faith?

Although we have the best connectivity to internet services and very good professionals, the percentage in which digitization is implemented in Romania is below the European average, which means that there is no strategy at a practical level, but only one at a theoretical level, approved only in February 2020.

Connectivity, capital, the use of internet data, the incorporation of innovative techniques through digitalisation and digital services are the principles on which the EC operates.

**The research problem** starts from this point of the DESI (2018) report published by the European Commission, in which Romania ranks last. Digitization illustrates a new stage of globalization, where both states and individuals, but especially states, think of important strategies. This research was conducted on several levels, once the author wanted to see how digitization is reflected in official documents of the European Union. Then the author did a research on the analysis of the opportunity to digitize public services for citizens provided by the local administration in Ilfov County.

It can be shown from research and studies that each state that achieves an increase in the level of digitization compared to other states, improves its financial potential. In addition to economic growth, significant growth can be achieved in the collection of taxes and duties. That is why, whether it is about the economic importance or the alignment of our country with the other Member States, we realize that a high degree of digitization only makes a profit.

*Electronic governance* (Vasilache 2008, 44) means a very important stage of reconfiguration within local public institutions, having as main objective the advantage of the interaction between public institutions and citizens, respectively the business environment, potential investors, often forgotten by local authorities, who are not aware of the special importance that the business environment has on the development of the area, through applications based on information technology.

An effervescent promoter and supporter of digitalisation is the European Digital Agenda (EDA), which seeks to stimulate the European budget by ensuring both lasting economic and social benefits, thanks to a digital single market (ANCOM 2020).

The European Commission's strong emphasis on implementing digitalisation intensifies the need to develop every public administration, understanding that e-Government is urgently needed to reduce and simplify bureaucratic procedures, reduce public spending, improve access to information, to reduce and at the same time fight corruption.

Therefore, through the research we conducted, we identified ways to improve by digitizing the quality of services offered locally in Ilfov County. By identifying and analyzing them, I want to formulate conclusions, to find the causes of the delayed implementation of this process in the local public administration, to improve the current situation, through the recommendations resulting from the research.

Currently, in some local administrative units (Periș, Dascălu and Ciolpani) the services offered are digitized, and in the other local administrative units in Ilfov County none of the services offered are digitized, either for receipts, public relations or for making payments. .

The implementation of digitized services greatly reduces the working time both between compartments, without repeating the same procedure at the level of each compartment, and through well-defined relationships between ATUs and citizens (SmartcityBlog 2017)

Starting from the current state of knowledge on digitization in local public administration aims to see what is the current state in the culture of digitization in administrative-territorial units and what is the state of scientific research in the field, we reach the analysis of the opportunity to digitize public services for citizens offered by the local administration from Ilfov county, presents the purpose and objectives of the research aimed at stating the purpose of the current paper and the objectives of this research.

The hypotheses and variables consider the development of working hypotheses and variables for piloting digitization methods to streamline the relationship between compartments, but also in the relationship with the public.

Research methodology - includes the following parts: target group , research design, sampling, research methods and tools used, data collection and systematization. The target group will be represented by the staff of the town halls, which will implement certain digitization methods for the efficiency of public services and it will be ascertained whether it is an optimal choice or not.

Determining the size of the research sample was represented by the choice of a number of ATUs involved in this research on the digitization of public services, in this case 11 ATUs.

Methods and techniques of the research used is the part in which the effective methods were chosen by which they were observed, analyzed from a qualitative and quantitative point of view, how the digitization works at the level of the sampled units and chosen for piloting. At this stage, citizen satisfaction questionnaires were conducted, as well as questionnaires for ATU staff to find out if digitization really facilitates work at the level of departments and helps to avoid repetition of activities within the departments.

The issue of digitization of services provided by public institutions has long been discussed and addressed in recent years, along with the huge progress made by the development of the Internet. Internet access has become easy, so any activity of the taxpayer is intended to be “a click away” (Todoruț and Tselentis 2018).

Creating complete databases of each citizen, with access from various inputs, could greatly improve and streamline the work of some institutions. For example, the data of a citizen can be accessed, at the mayor's office, by the agricultural directorate, which obtains from there all the information about the properties and assets owned by the citizen, and then the same database is accessed by the service Taxes, taxes where it can be clearly seen what the person's situation is. Under the signature of confidentiality and according to law no. 363 /

28.12.2018, personal data can be collected and processed only for well-defined purposes, so it would not endanger personal data.

At the same time, digitization can eliminate much of the bureaucracy. Just as some institutions in Bucharest have started to collaborate in support of the citizen, the same could be done at the level of smaller town halls, even in rural areas. We cannot rely indefinitely on the idea that the elderly do not have access to the internet and will never be able to solve their problems online, but we should think that their grandchildren and children live in the age of speed and have up- already graduated knowledge, so he certainly manages to help his older relatives.

Digitization can also improve communication between departments of the same institution, thinking only of the saved time that employees lost walking around colleagues, asking them about the files and situation of a taxpayer, then searching, unpacking documents, terms of postponement of the settlement, the return of the taxpayer to the mayor's office at a certain number of days to proceed to the settlement of the next stage and so on. Things were dragging on a lot, or digitization right here, in the most concrete way, comes in support of the citizen.

Often, the resumption of part of the documentation can lead to the creation of a set of photocopies addressed to each department, because employees have no way of knowing what documents their colleagues have in relation to one person or another, or the digital version. where all the documents of a taxpayer can be scanned, it would be very easy to access and confront online what the citizen presents at each counter at which he makes a request. This would save paper, toner and working time, so it would be twice as good for both the citizen and the employee.

Submitting various requests online to public institutions would significantly reduce the queues at the counters, especially if pre-arranged deadlines are also offered, so citizens would come to pick up their requested documents on a fixed date, within a well-established time frame, which would greatly help the good institution-citizen collaboration and the efficiency of the whole process. It can be understood that electronic archives occupy a virtual space that does not confuse man in carrying out his routine activity, while helping to have a beneficial effect on human health in the long run.

*The computerization of the Public Administration is necessary in order to increase the operational efficiency within the local and central administration. Having as beneficiary the citizens and the economic agents, the computerization of the services obliges to their integration in order to be able to ensure to the end users the access to information, in an electronically centralized form. At the same time as the priority of information and telecommunications systems, the Government's strategy requires the improvement of the legal framework that can make such actions possible, and especially the creation of additional organizational structures appropriate for both strategy development and project implementation (Ciochină 2014, 133-136).*

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# The Role of Foreign-Aid-To-Health in Public Health Expenditure Impact on Economic Growth in Nigeria: An Interactive Term Approach

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**ABSTRACT:** Public health expenditure is one of the important subsets of government expenditure used by governments in affecting the standard of living of their citizens, with Nigeria not left out. This is because health is seen as a channel through which human capital base of an economy can be improved. However, as the world is now a global village, it suffices to say that an outbreak/existence of disease in a country is an imminent spread of such diseases somewhere else in the globe. A vivid instance of this is the ravaging Covid-19 that has become a global pandemic. On this notion of preventing the spread and eradicating diseases and sicknesses, governments of developed worlds play important roles in granting health aids to the developing nation. It is on record that Nigeria has received robust foreign health aids from developed nations such as US, UK, France and so on, which might have helped in not only adding to her public health spending but also assisting in stimulating economic growth. However, debate still rages on whether the role of foreign aid is positive and effective in achieving the intentions of the foreign donors in helping boost the recipients' countries public health expenditure and economic growth or not. This research work therefore tries to mainly investigate the role of foreign health aid in public health expenditure-economic growth impact in Nigeria between 1980 and 2020 with the use of an interactive term and timeseries data sourced from OECD-DAC and CBN Statistical Bulletin. The time series data were analysed with the aid of the EVIEWS 10 package and the results presented. The result of the analysis reveals that foreign aid to health is individually statistically significant playing positive role in Nigeria's economy but jointly statistically insignificant with public health expenditure.

**KEYWORDS:** Foreign-Aid-To-Health, Public Health Expenditure, Economic Growth and Nigeria

## Introduction

One of the important subheadings of government expenditure used by governments of nations, with Nigeria not left out, in improving the standard of living of their citizens is public health expenditure. This is because sound health is seen as a channel through which human capital base of an economy can be improved with resultant effect on productivity and growth. Public health expenditure is an expenditure on health services not directly incurred by the citizenries. It includes both capital and recurrent expenditures budgeted for the health sector. However, as the world is now a global village, it suffices to say that an outbreak/existence of disease in a country is an imminent spread of such diseases somewhere else or across the globe. A vivid instance of this is the ravaging Covid-19 that has become a global pandemic. It is on this notion of preventing the spread and eradicating these communicable diseases and sicknesses that governments of developed worlds play important roles in granting health aids to developing nations such as Nigeria. It is on record that Nigeria as one of the developed countries of the world that has received robust foreign health aids both in cash and kind from the developed nations such as US, UK, France and so on. Corroborating this statement, Abimbola (2019) states that Nigeria has enjoyed and continue to enjoy robust foreign assistance on health both in technical and cash from various foreign governments and international non-governmental agencies. For instance; from United States only, Nigeria received the sum of \$41million, \$67million, \$123million, \$200million, \$211million, and \$255million respectively for the years 2004, 2005, 2007, 2008, 2009 and 2010 such that in the US, Nigeria was placed among the top 10 recipients of United States foreign aid assistance in 2010 (Hill 2011). Also, in 2009, Bill and Melinda Gates Foundation in agreement with the World Bank supported the purchase of

\$25million oral polio vaccines to Nigeria (Gates & Gates 2009). These foreign health aids in kind and cash might have helped not only in boosting her public spending on health but also assisted in stimulating economic growth. In addition, with the issuance of these aids to Nigeria from abroad and the nation's budget allocation to health sector, there is no doubt that the country's health expenditure has been on the increase. For instance, Nnamuchi (2007) states that the health sector witnessed robust growth, principally as a result of unfettered support by the government coupled with assistance from international donor agencies. However, debate still rages on whether the roles of foreign aid is positive and effective in achieving the intentions of the foreign donors in helping boosting the recipients countries public health expenditure and economic growth or not. Therefore, this paper sets out to investigate the role of foreign aid in mediating public health expenditure's effect on economic growth in Nigeria, with the scope covering a 30-year period from 1991 to 2020 and limited to the Nigerian economy only.

### **Statement of the Problem and Justification**

Schools of thoughts are divided in their thinking on whether expansion in government expenditure which encompasses its public health spending influences or hinders economic growth. While a school of thought views government expansion as detrimental to efficiency, productivity and growth others believe that for the economy to achieve high standard of living and economic growth active government participation is the key. For instance, Aboyade (1983) asserts that every developed or underdeveloped national economy requires the intervention of government in its development process. However, Ogundipe and Lawal (2011) see this as unnecessary as they perceived that health spending just like spending on environment is not necessary for development while it is the assertion of Bakare and Olubokun (2011) that the public health spending is still marginally low in Nigeria with an undetermined impact. Njeru (2003) in Abimbola (2019) views foreign aid as an important source of finance which augments the low savings, narrow export earnings and thin tax bases of most Sub-Saharan African nations. A view refuted by Williamson (2009) as he questioned the ability of foreign aid to achieve its goals stating that conceptual and empirical literatures suggest that foreign aid is ineffective. This is why this paper tries to examine foreign aid's role in public healthcare expenditure-economic growth nexus in Nigeria.

This is necessitated as no paper has been able to delve into the examination of the combined effect foreign aid to health and public health expenditure on economic growth in Nigeria at least to the best knowledge of this research work. Majority of papers only concentrated on either one of this in relation to growth with the attendant effect of overstated impact [see Bakare and Olubokun (2011); Ogundipe and Lawal (2011); Oluwatobi and Ogunrinola (2011) for instance]. It may be the case that a certain level of foreign aid is required for host countries to benefit from Health expenditure – economic growth multiplier effect.

### **Hypothesis**

H<sub>0</sub>: Foreign aid to health plays no significant positive role in health expenditure-economic growth nexus in Nigeria.

### **The Trend and Pattern of Public Health Expenditure, Foreign Aid to Health and Economic Growth**

The figure 1 below shows that both public health expenditure and foreign aid to health were very high in 1990 dropped in 1991 while GDP was very low in 1990 but picked up in 1991. In 1992, public health expenditure rose from its low value in 1991 to 286.0 but dropped sharply to its minimum value of 190.2 in 1994. During this period, foreign aid to health was gradually rising from its low value in 1991 while real GDP was also gradually falling from its high value (205,222.06) in 1991 to a low value (183,563.00) in 1994. In 1995, public health expenditure rose from its minimum value in 1994 to 223.9 and 360.4 in 1996, dropped sharply to 236.4 in 1997, real GDP also rose in

1995 to 201,036.27 and 205,971.40 in 1996 with a slight drop to 204,806.50 in the same year 1997 with public health expenditure while foreign aid to health was maintaining its upward movement. In 1998, public health expenditure rose to 443.2 and continued to rise up-till 2005 where it attained 5,080.9 but later had a slight drop in 2006 to 4,851.5 from where it picked up to 63,144.2 in 2012 and continued to rise until it dropped to 39,685.5 in 2013. During this period, foreign aid to health continued its upward movement, dropped in the year 1999 to 64,507.13, rose to 77,874.35 in 2000 and 80,015.23 in 2001, dropped again to 68,111.41 in 2002 from where it continued its downward trend to 44,688.69 in 2007 and started rising from the succeeding year 2008 except in 2011 when it dropped again while real GDP rose to 219,875.60 in 1998 and continued to rise till 2001 when it dropped slightly again. Immediately after its drop in 2013, public health expenditure rose again in 2014 and continued to rise to its peak in 2018 with 163,122.90 but dropped in 2019 to 120,736.0 and sluggishly rose to 122, 326.49 at its final year while foreign aid to health and real GDP maintained their upward trend, attaining their peak in the final year 2020 with 163,649.99 and 775,525.70 respectively except foreign aid to health that dropped to 151,891.21 in the same year 2019 with its public health expenditure counterpart.

In summary, the trend in both public health expenditure and foreign aid to health has continued to exhibit an upward movement but with a zig-zag pattern while real GDP only exhibit a zig-zag pattern at the beginning of the trend but later continued to maintain an upward movement afterwards. The figure 1 below shows the trend and pattern of the public health expenditure, foreign aid to health and real GDP as discussed above.

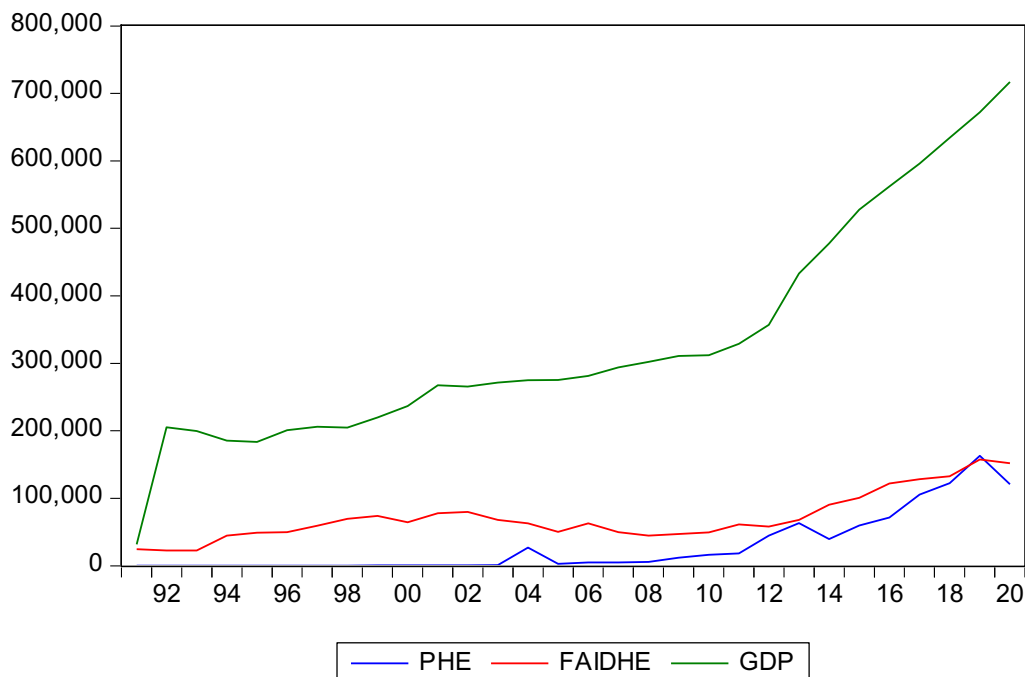


Figure 1: The Graph Showing the Trend and Pattern of Public Health Expenditure, Foreign Aid to Health and Economic Growth in Nigeria between 1990 and 2020 in Nigeria

**Model Specification, Methodology, Apriori Criteria and Data Sources**

This paper adopts the augmented Solow growth model as used by Kwak (2009) but with some modifications for the purpose of this study is an attempt to capture the role of foreign aid in public health expenditure-economic growth nexus. Econometrically, the OLS linear regression model is therefore stated as:

$$Y(t) = \alpha_0 + \alpha_1 K(t) + \alpha_2 A(t)L(t) + \alpha_3 PHE_t + \alpha_4 FAidHe_t + \alpha_5 PHE * FAidHe_t + \mu_t$$

Where:

$Y(t)$  = real gross domestic product as a proxy for economic growth,

$K(t)$  = Stock of physical capital which shall be represented by Gross Fixed capital Formation (GFCF),

PHE = Public Health Expenditure,

FAidHe = Foreign aid to health,

$A(t)L(t)$  = the effective labour which is simply taken as labour force in this study

$\alpha_0$  = constant or the intercept of the regression line.

$\alpha_1, \alpha_2, \alpha_3, \alpha_4$  = are all parameters to be estimated for the explanatory variables.

$\mu_t$  = error term, which is included to capture the effect of other variables not included in the model but also influence the level of economic growth.

The coefficients of the model,  $\alpha_0, \alpha_1, \alpha_2, \alpha_3, \alpha_4$  and  $\alpha_5$  are expected to have positive relationship with economic growth. The method of analysis of the study began by carrying out the descriptive statistics of the variables while the estimation technique commences by performing test of stationarity on the time series macro-variables in our model. In this wise, unit root test using both Augmented Dickey Fuller (ADF) and Phillip Peron is employed in this study in order to avoid spurious regression and for us to rely on forecasting power of the model parameters. After this, the study carried out its analysis by making use of econometrics software package called- E-views '9' in running the data. The interpretation of the analysis of the role of foreign aid to health expenditure economic growth nexus is done by comparing signs and magnitude of the coefficients of both foreign aid to health and public health expenditure of the analytical result.

**Real GDP:** This is total value of goods and services produced in an economy over a given period, usually a year, by its residents regardless of their nationality of the residents who produced them. Real GDP is nominal GDP deflated with a price index usually consumer price index. For the purpose of this study, GDP at current market prices which has been deflated in 1990 constant basic prices is used as a measure of our economic growth (see CBN Statistical Bulletin, 2017)

**Public Health Expenditures:** This is the government's expenditure to health sector of a country. It is a form of public expenditure that consists of recurrent and capital spending from government (central and local) budgets, external borrowings and grants (including donations from international agencies and nongovernmental organizations), and social (or compulsory) health insurance funds. It covers the provision of health services (preventive and curative), family planning activities, nutrition activities, and emergency aid designated for health but does not include provision of water and sanitation (World Health Organization National Health Account database). For this study, the sum of both government's recurrent and capital expenditures on health are used as proxy for our public health expenditure.

**Foreign Aid to Health:** This represents grants to a country's health sector by international governmental or non-governmental organizations either in form of cash or kind (technical or material assistance). For the purpose of this study, grants either in kind or cash denominated in US dollar is used as a measure of foreign aid to health.

This study makes use of secondary data. Therefore, annual time series data covering the period 1990 to 2020 are obtained on real GDP, capital formation, labour force, public health expenditure and foreign aid to health from the following secondary data sources: Central Bank of Nigeria (CBN) Statistical Bulletin, 2005 and 2010, Organization for Economic Development and Cooperation-Development Assistance Committee (OECD-DAC) and Pen World Tables (PWT).

## Data Analysis and Interpretation

### 1) Descriptive Statistics

Table 1: Descriptive Statistics

	GCF	GDP	LF	PHE	FAIDHE	PHEFAID
Mean	462964.1	334483.4	36604955	29608.90	71513.19	3.48E+09
Median	123747.9	278429.0	34412170	4956.200	62981.55	2.51E+08
Maximum	3048023.	716947.7	48851361	163122.9	157560.3	2.57E+10
Minimum	8799.500	31546.76	30578274	190.2000	22744.15	5645098.
Std. Dev.	745248.3	167181.8	5657624.	45045.22	35571.69	6.53E+09
Skewness	2.086146	0.842720	0.745629	1.582305	0.998062	2.113380
Kurtosis	6.672434	2.876780	2.217615	4.424211	3.273363	6.529591
Jarque-Bera Probability	38.61850 0.000000	3.569862 0.167809	3.544974 0.169910	15.05392 0.000538	5.074047 0.079101	37.90438 0.000000
Sum	13888922	10034502	1.10E+09	888266.9	2145396.	1.05E+11
Sum Sq. Dev.	1.61E+13	8.11E+11	9.28E+14	5.88E+10	3.67E+10	1.24E+21
Observations	30	30	30	30	30	30

It can be inferred from the table 1 above that all the series are in their high level of consistency. This implies that their mean and median are within the minimum and maximum values. The deviations of the data from their mean are also small. This is shown by the low standard deviation of some of the data. Also, the Jarque-bera test of normality or asymptotic property, which is a large sample test based on the OLS residuals first computed the skewness (which is lack of statistical symmetry) and kurtosis (which is a measure of the extent to which a distribution is concentrated about its mean) of the data shows that the data are normally distributed.

#### 2) Unit Root Test

Table 2: Unit Root Test Result Using Augmented Dickey Fuller at 5% Level of Significance

Variables	Order
Y	I(1)
K	I(1)
L	I(1)
PHE	I(1)
FAidHe	I(2)

The result from table 2 indicates that each of the series from 1990 to 2020 is stationary at first difference except foreign aid to health which is stationary a second difference using Augmented Dickey Fuller at 5%. Therefore, the null hypothesis of non-stationarity is hereby rejected at the 5% significance level suggesting that all the variables are stationary.

#### 3) Co-integration test Result

After establishing the stationarity of the variables under investigation, the study went ahead to carry out test of long run dynamics. The trace test of the co-integration result indicates two co-integrating equations. Therefore, the result confirms that there is existence of long-run relationship among the variables which makes the policy recommendations that may arise from the data analysis useful since it will have a long-run implication.

#### 4) OLS Result Presentation

Table 3: The result of the OLS is as presented below:

Dependent Variable: GDP  
Method: Least Squares  
Date: 12/04/21 Time: 22:41  
Sample: 1991 2020  
Included observations: 30

Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-412957.6	134495.0	-3.070430	0.0052
GCF	0.024059	0.031533	0.762974	0.4529
LF	0.016191	0.004077	3.971473	0.0006
PHE	0.947531	1.099815	0.861537	0.3975
FAIDHE	2.008170	0.416139	4.825722	0.0001
PHEFAID	-8.05E-06	6.96E-06	-1.155522	0.2593
R-squared	0.963805	Mean dependent var	334483.4	
Adjusted R-squared	0.956264	S.D. dependent var	167181.8	
S.E. of regression	34963.08	Akaike info criterion	23.93883	
Sum squared resid	2.93E+10	Schwarz criterion	24.21907	
Log likelihood	-353.0824	Hannan-Quinn criter.	24.02848	
F-statistic	127.8132	Durbin-Watson stat	1.512573	
Prob(F-statistic)	0.000000			

This is summarized as below:

$$Y = -412957.6 + 0.024059K + 0.016191L + 0.947531PHE + 2.008170FAIDHE + -8.05E-06 PHEFAID$$

$$Se = (134495.0) \quad (0.031533) \quad (0.004077) \quad (1.099815) \quad (0.416139) \quad (6.96E-06)$$

$$t = (-3.070430) \quad (0.762974) \quad (3.971473) \quad (0.861537) \quad (4.825722) \quad (-1.155522)$$

$$R^2 = 0.963805$$

$$\text{Adjusted } R^2 = 0.956264$$

$$F\text{-Statistic} = 127.8132$$

$$\text{Akaike Info criterion} = 23.93883$$

$$\text{Durbin-Watson Statistic} = 1.512573$$

$$\text{Schwarz Criterion} = 24.21907$$

The summary of table 3 above shows that the coefficient of the explanatory variables PHE and FAidHe are 0.947531 and 2.008170 respectively. This shows that public health expenditure and foreign aid to health are both positively related with GDP and therefore conform to their a priori criteria stated earlier. Specifically, with p-value less than 5%, it implies that foreign aid to health is individually statistically significant and therefore individually exerts a positive impact on economic growth in Nigeria. However, the joint interactive term combining foreign aid to health and public health expenditure was found to be statistically insignificant. This might be due to high level of corruption in Nigeria with health sector not left out. The coefficient of foreign aid to health also implies that a thousand naira spending by foreign aid donors in Nigeria would have an anticipated impact of positive role raising the GDP level by 2,008 units. This positive relationship in essence means that the more the government spends on health, the more the level of economic growth in the economy and the more foreign aid to health received by Nigeria from aid donors the better because of the positive role it plays in health expenditure-economic growth nexus. The Durbin-Watson statistic of 1.512573 indicates the absence of serial correlation thereby making the study free of spurious regression.

## Implications of Findings on Policy

Some of the policy implications of this research work are that it helps convince the foreign aid donors, both governmental and non-governmental, that aid plays positive roles in recipient countries, especially Nigeria, and therefore should be continued. Also, another policy implication is that governments especially Nigeria should create enabling environment with good economic policies that can attract more aid. This is because of the positive role and relationship that foreign aid to health was found to exhibit in the analysis of the data for this study.

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# Protection of Children in Difficulty under Romanian Law

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**ABSTRACT:** At present, in Romania, the main form of child protection is the parental authority, but in some cases, it can also be done through state intervention through its specialized bodies by means of alternative protection measures (by guardianship and special protection measures). Where the minor is temporarily or definitively deprived of the protection of his or her parents or cannot be left in their care, in order to protect his or her interests, the law establishes some special protection measures. In Romania, the legislation on the protection and promotion of the child's rights provides for special protection measures, such as placement, emergency placement and specialized supervision. The study presents and analyzes legal regulations regarding the special protection of the child who is temporarily or permanently deprived of parental protection.

**KEYWORDS:** minor, parental authority, special protection, placement, emergency placement, specialized supervision

## Legal regulations

After the Revolution in December 1989, in Romania, a wide-ranging process of amending, supplementing and adopting new legislation in all areas of economic and social life, including the protection of the rights of the child, has commenced.

Thus, to begin with, on the basis of the Government Emergency Ordinance No. 26/1997 on the protection of the child in difficulty, republished (Official Gazette of Romania, Part I, No. 276 of 24 July 1998), a modern protection system was established by establishing 41 county Directorates for child protection, as well as in the six districts of Bucharest. At central level, the Department for the Protection of the Child has been established, which currently operates as the National Authority for the Rights of Persons with Disabilities, Children and Adoption, the central institution that coordinates and develops policies in this field. After several attempts, the Law no. 272/2004 on the protection and promotion of the rights of the child was adopted, republished (Official Gazette of Romania, Part I, no. 159 of 5 March 2014), a modern law based on the regulations contained in the UN Convention on the Rights of the Child (Adopted by the United Nations General Assembly on 20 November 1989 and ratified by Romania by Law No 18/1990, republished in the Official Gazette of Romania, Part I, No 109 of 28 September 1989); revised European Convention on the adoption of children (adopted at Strasbourg on 27 November 2008. Romania acceded to this Convention by Law No 138/2011, published in the Official Gazette of Romania, Part I, No 515 of 21 July 2011); the Convention on the protection of children and cooperation in matters of international adoption (Romania has ratified the Convention on the Protection of children and cooperation in matters of international adoption, concluded in the Hague on 29 May 1993, by Law No 84/1994, published in the Official Gazette of Romania, Part I, No 298 of 21 October 1994), as well as those enshrined in the Romanian Constitution (the Constitution was adopted at the meeting of the Constitutional Assembly on 21 November 1991, was published in the Romanian Official Gazette, Part I, No 233 of 21 November 1991 and entered into force following its approval by the national referendum of 8 December 1991. It was reviewed and republished in the Official Gazette of Romania, Part I, no. 767 of 31 October 2003).

At the same time, the Law 272/2004, republished, correlates the national legislation in the field of the protection of the rights of the child with the case law of the European Court of Justice which, in all its decisions, points out that for a minor, living with his/her parents is a part

of family life and placing the child in a social protection institution *is an interference in family life*. The Court also ruled that measures to place the child in social protection institutions should be *temporary*, and that measure may be suspended at any time (Bârsan 2005, 636).

Thus, at present in Romania, the legal framework regarding the respect, promotion and guarantee of the rights of the child is governed by the Law No 272/2004, republished, as subsequently amended and supplemented [Article 1(1)]. According to the provisions of Article 7 of the above mentioned normative act, in Romania, all rights provided by this law “*are guaranteed to all children without discrimination, regardless of race, color, sex, language, religion, political or other opinion, nationality, ethnic or social origin, material situation, degree and type of deficiency, birth-status or acquired status, difficulties in training and development or other of the child, of parents or other legal representatives or of any other distinction.*”

### **Introductory concepts on special protection of the child**

The protection of the minor is that “legal institution which includes all the rights and obligations granted or imposed by law on certain persons or bodies, for the purpose of raising, educating and training children according to the general interests of society” (Radescu, Radescu and Stoican 2017, 652-653). At present, in Romania, the main form of child protection is the parental authority, but in some cases, it can also be performed through state intervention through its specialized bodies, with the help of alternative protection measures (by guardianship and special protection measures). For the purposes of the above, Article 106(1) of the Civil Code (Law No 287/2009 on the Civil Code, published in the Official Gazette of Romania, Part I, No. 511 of 24 July 2009), stipulates that “the protection of the minor is carried out through the parents, by the establishment of the guardianship, by placement or, as appropriate, by other special protection measures specifically provided for by law”. We should specify from the start that for the purposes of the legislation on the protection of the rights of the child, as well as the Romanian Civil Code, *the child* means that “*person who is not 18 years old nor has acquired full capacity for exercise*” [Article 4 letter a) of Law No 272/2004, republished; Article 263(5) of the Civil Code].

According to the provisions of Article 54 of Law No 272/2004, republished, the special protection of the child shall mean “all measures, benefits and services intended for the care and development of the child temporarily or definitively deprived from the protection of his/her parents or of the child who, in order to protect his/her interests, cannot be left in their care”.

In Romania, according to the regulations of the above-mentioned normative acts, *the special protection measures of the child* are: placement, emergency placement and specialized supervision (Article 59 of Law no. 272/2004, republished).

*The benefits* to which the legal text refers may consist of *money* (provided by the state exceptionally to children whose parents are unable to provide adequate living conditions) or *in kind* (food, clothing, school supplies, sports equipment, etc.).

Law No 272/2004, republished, lists three types of services intended for the care and development of the child temporarily or permanently deprived from his/her parents, namely: day-to-day services, family-type services and residential-type services [Article 119(1)].

- day-to-day services are defined as “those services which ensure the maintenance, restoration and development of the capacities of the child and his or her parents in order to overcome situations which might lead to the separation of the child from his or her family” [article 120(1)];

- family-type services are “those services by which the child is raised and care for, at the home of a natural person or family, temporarily or permanently, separated from his/her parents, as a result of the establishment under the conditions of this Law of the placement measure” (Article 121);

- residential-type services are “those services by which the protection, child raising and care are provided separately, either temporarily or permanently, from his/her parents, as a result of the establishment under the conditions of this law of the placement measure” [article 123(1)]. We must point out that this category includes all services that provide hosting for more than 24 hours.

It follows from the interpretation of the text of the child definition as well as from Article 55(1) of the Law No 272/2004, republished that in Romania the child benefits from special protection until full exercise capacity is acquired. “*Full capacity of exercise*” means “*that part of the civil capacity consisting of the ability of the natural person to acquire/exercise rights and assume/execute obligations through the conclusion of civil legal acts personally and alone*” [Nicolae (coord.), Băcu, Ilie and Rizoiu 2016, 198]. In Romania, the full capacity of exercise of a natural person starts with the majority, i.e. *at the age of 18*. This rule is also laid down in Article 38 of the Romanian Civil Code.

However, Romanian law also provides for some exceptions to this rule. Thus, if the young person continues his or her studies, upon his/her request, expressed after acquiring the full capacity of exercise, special protection can be granted only once in each form of day education, throughout his or her further education, but it should be pointed out that the age of 26 should not be exceeded [Article 55(2) of the Law No 272/2004, republished].

Also, where the young person has acquired full capacity of exercise and has benefited from a special protection measure, but no longer continues his or her studies or is not able to return to his or her family, upon request, he/she may receive special protection for a period of two years. It should be noted that this right is lost if the young person has been offered a job and/or housing at least twice, and he/she refused or lost them for reasons attributable to him/her [Article 55(3) of the Law No 272/2004, republished].

### **Special child protection measures**

According to Article 57(1) of the Law No 272/2004, republished, the measures for special protection of the child are established and applied on the basis of an *individualized protection plan*. It shall be drawn up and reviewed according to the methodological norms drawn up and approved by the Ministry of Labor and Social Protection [paragraph 2].

The individualized plan of protection is defined in Article 4(e) of Law No 272/2004, republished as being, “the document by which the planning of services, benefits and special protection measures for the child is carried out on the basis of the psychosocial assessment of the child and his/her family, in order to integrate the child who has been separated from his/her family into a permanent stable family environment as soon as possible”.

The individualized plan of protection shall be drawn up by the General Directorate for Social Assistance and Child Protection, within the territory of which the child resides, *within 30 days of receipt of the request for a special protection measure* or *immediately* after the head of the General Directorate for Social Assistance and Child Protection ordered the placement as a matter of urgency (Drăghici 2013, 237-238). We should specify that these provisions are not applicable to the child for whom the guardianship was established. The guardianship institution intervenes when the parents can no longer assume the obligation to raise and educate the child (For developments, regarding the child’s guardianship, Ungureanu and Munteanu 2015, 360-376).

As regards special protection measures for the child aged 14, these are established only with *the consent of the minor*. Where the child refuses to give his or her consent, the protection measures shall be determined only by *the court* which, in duly justified circumstances, may overrule his or her refusal to give his or her consent to the proposed measure [Article 57(3) of Law No 272/2004, republished].

When setting the objectives of the individualized protection plan, priority will be given to the reintegration of the child into the family, and if this is not possible, the procedure for

domestic adoption will be opened. We must point out that the reintegration of the child into the family is established after the compulsory consultation of the parents and members of the extended family who could be found. In other words, it is necessary to check whether there is a family environment favorable to the child's reintegration into the family.

Where guardianship could not be established or placement with an extended family, a maternal assistant or another person or family could not be ordered, Article 58(6) of Law No 272/2004, republished, stipulates that the individualized protection plan may provide for the placement of the child in a residential-type service.

We must point out that, according to the provisions of Article 61 of the Law No 272/2004, republished, parents or child aged 14 may challenge in court the special protection measures established by this normative act, and receive free legal assistance.

### ***1. Placement of the child***

The placement of the child is a special protection measure, is of a temporary nature and, according to Article 60 of the Law No 272/2004, republished, is ordered with regard to: “*the child whose parents are dead, unknown, precluded from the exercise of parental rights or who have been charged with the prohibition of parental rights, banned, declared to court dead or missing when the guardianship could not be established; the child who, in order to protect his or her interests, cannot be left in the care of the parents for reasons not attributable to them; the child abused or neglected; the child found or the child left in health establishments; the child who committed a criminal law deed and who is not criminally liable*” (see Ghiță and Ponea 2005, 32).

Where applicable, the placement of the child is at: a person or family; a maternal assistant; a residential-type service licensed under the law. It should be pointed out that, according to Article 62(2) of the Law No 272/2004, republished, the person or family receiving a minor in placement *must have their domicile in Romania* and must *also present the moral guarantees and material conditions* in order to receive a child in placement. Also, as regards the child's domicile, the law establishes that this one will be at the person, family, maternal assistant or residential-type service for the entire duration of the placement (Article 63).

As regards the placement of a child under the age of 7, it may be available only to the *extended family, the substitute family* or to a *maternal assistant*. The placement of a child under the age of 7 in a residential-type service is prohibited [Article 64(1) of Law No 272/2004, republished]. However, by way of exception, where the child under the age of 7 has serious disabilities, placement in a residential-type service may be ordered.

“Extended family” means “relatives of the child up to and including 4th degree” [Article 4(c) of Law No 272/2004, republished] and the substitute family is defined as “persons other than those belonging to the extended family, including in-laws up to the fourth degree and maternal assistants ensuring the raising and care of the child, under the law” [Article 4(d) of Law No 272/2004, republished]. The professional maternal assistant is “the natural person, certified according to law, who provides, through his/her activity at his/her domicile the raising, care and education, necessary for the harmonious development of the children he/she receives in placement or in custody” (Article 1 of Government Decision No 679/2003 on the conditions for obtaining the attestation, the attestation procedures and the status of the professional maternal assistant, published in the Official Gazette of Romania, Part I, No 443 of 23 June 2003).

From the interpretation of Article 64(1) of Law No 272/2004, republished, we note the inconsistency of the Romanian legislator, which, by this legal text, places the maternal assistant outside the substitute family, in contradiction with the definition in art. 4(d) of the same normative act (Lupascu and Craciunescu 2021, 637).

When taking the measure of placement of a minor, priority will be given to placing the child, to the extended family or to the substitute family, to keeping the siblings together and to facilitating the exercise of the right of parents to visit and maintain contact with the child.

The power to order the placement measure of the child shall lie, depending on the situation of the minor concerned, either *with the commission for the child protection* or *with the court* as follows:

- *to the commission for child protection*, with the agreement of the normal parents, will order the placement of children who cannot be left in their care, but for reasons not attributable to them, as well as for minors who committed a criminal deed, but they are not held criminally liable [Article 65(1) of Law No 272/2004, republished];

- *to the court*, at the request of the general directorate for social assistance and child protection, in the case of children whose parents are dead, unknown, precluded from parental rights, banned, declared dead or missing, of neglected or abused children or those abandoned by the mother in health care establishments when the measure of emergency placement is replaced by placement, as well as children who cannot be left in the care of their parents for reasons beyond their control and to those who committed a criminal deed, for which they are not held liable, where there is no parental agreement to establish placement [Article 65(2)(a) - (b) of Law No 272/2004, republished].

If the measure of placement of the child is determined by the commission for child protection, according to the provisions of Article 66 of the Law No 272/2004, republished, the parental rights and obligations shall continue to be maintained by the parents throughout the placement. In cases where placement has been established by the court, these rights shall be exercised by the Director of the General Directorate for Social Assistance and Child Protection (Ungureanu and Toader 2019, 492; Barbu and Jora 2020, 166).

It should be noted that, according to the provisions of Article 66(4) of the Law no. 272/2004, republished, all the legal regulations relating to the rights of natural parents to consent to the adoption of the child are properly applied.

As regards the amount of the monthly contribution of the parents to the maintenance of the child, Article 67(1) of the Law stipulates that it will be determined either by the commission for child protection, or by the court which ordered the placement of the minor. The sums collected shall become income to the budget of the local administration from which the child comes (the establishment and payment of the monthly allowance for placement are regulated by order No 1733 of 19 August 2015 approving the procedure for establishing and paying the monthly allowance for placement of the minister for labor, family and social protection and the elderly, published in the Official Gazette of Romania, Part I, No 680 of 8 September 2015). Where the parents cannot contribute to the maintenance of their child, the court will oblige the parent who is able to work to provide between 20 and 40 hours per month for each child, within the administrative area in which he/she domiciles or resides [Article 67(2) of Law No 272/2004, republished].

The provisions of Article 67 of Law No 272/2004 on the protection and promotion of the rights of the child, republished, were the subject of the plea of non-constitutionality because it was considered to constitute an obstacle to the fulfillment of the main purpose, that of establishing the placement measure. Thus, by Civil case sentence No 8 of 11 January 2018, Vrancea County Court, Section I Civil matters, brought an action before the Constitutional Court and in motivating the plea of non-constitutionality, it considered that “*the text of law is not precisely enough and clear in order to be enforced and, thus, it is in contradiction with the provisions of art. 1 (5) of the Constitution, regarding the principle of legality, in its component related to the quality of law. The court also considered that the criticized legal provision did not meet the requirement of predictability of the law, as it goes beyond the purpose of the court being notified (that is to put in place special child protection measures), and remains without concrete effects due to the impossibility of enforcement*”. Having examined the plea of non-constitutionality of the said text, the Court rejected it as groundless and “*held that the minor’s*

*best interests comprise all his or her rights, including that of receiving maintenance from his or her parents, so that the establishment of this obligation on the part of his or her parents is necessary, at risk of the child being deprived of this right. It is also necessary to make responsible the parent in temporary impossibility to fulfill his or her parental rights and duties directly. As regards any delays that may be caused by the settlement of the question of the amount of the allowance, the court may order the disjointing of the claims in order to ensure the expediency”* (Constitutional Court, Decision No 163/2019, published in the Official Gazette of Romania, Part I, No 460 of 7 June 2019).

## **2. Emergency placement of the child**

Emergency placement of the child is a special protection measure of a temporary nature and is established in the case of the child abused, neglected or subjected to any form of violence, as well as in the case of the child found or left in health care units. The term “*child found*” means “*child not under the legal supervision of a person, whether it is a child who has fled the surveillance or a child who has simply been lost*” (Florian 2007, 142). As for the concept of “*child left in health care units*”, we appreciate, along with other authors (Florian 2007, 142), that the legislator is considering the child abandoned in a health care unit and whose identity is not known.

In law, according to Article 94(1) of Law No 272/2004, republished, “abuse of the child” means “any voluntary action by a person who is in a relationship of responsibility, trust or authority toward him/her, by which life, physical, mental, spiritual, moral or social development, physical or mental health of the child are endangered, and is classified as physical, emotional, psychological, sexual and economic abuse”. For example, it can be framed as abusive action toward the child: physical violence or threats from a parent to the child, economic exploitation of the minor or even the presence of the child in disputes between his or her parents. As an objective criterion, abuse of the child can be easily proven either by hearing the child or by presenting forensic certificates.

As regards the concept of “neglect of the child”, it is defined, in Article 94(2) of Law No 272/2004, republished, as the “omission, whether voluntary or involuntarily, of a person responsible for the raising, the care or education of the child to take any measure required to fulfill this responsibility, which endangers life, physical, mental, spiritual, moral or social development, the child’s physical integrity, physical or mental health and can take several forms: food, clothing, hygiene neglect, medical neglect, educational neglect, emotional neglect or leaving the child/family abandonment, which is the most serious form of neglect”. It follows from the interpretation of the text of that article that this is also an objective criterion, but, unlike abuse, a number of elements have to be proved in order to be held by the court, such as: the passivity of the child’s legal guardian to the legal obligations in respect of his or her raising, education, supervision or maintenance, consisting of the act of negligence itself; the consequence detrimental to the life, development, integrity or, where appropriate, the health of the minor concerned. This may consist of an adverse result, or it may only be an endangering, judging after the expression used by the normative text under consideration; the causal link between the act of omission which constitutes negligence and the subsequent damaging consequence described.

In a case in which three children have been requested by way of an interim injunction as a matter of urgency to be placed at a person, family, maternal assistant or residential-type service licensed under the law, the court noted that “*parents have demonstrated a clear lack of concern about the needs of children and a serious lack of responsibility toward minors, with the development of minors, their physical and mental health being endangered. The Court also found that the three minors are exposed to a risk situation, and considered that the request to establish an emergency placement measure was justified. The best interests of the children, as characterized by the provisions of Article 2(6) of Law No 272/ 2004, republished, presupposes*

*the fulfillment of the needs of physical, psychological development, education and health, security, supervision and belonging to a family.*” [Timisoara Court of Appeal, Section I Civil matters, Civil Decision No 38 of 11 March 2021, available at [www.rolii.ro](http://www.rolii.ro) (accessed at 01.11.2021)].

This special protection measure may also be provided for a child whose sole legal guardian or both have been detained, arrested, admitted or where, for any other reason, they cannot exercise their parental rights and obligations with regard to the child [Article 68(2) of Law No 272/2004, republished]. This placement measure may be carried out, as appropriate, at a person or family, a maternal assistant or as part of a residential-type service.

It should be stressed that throughout the duration of the emergency placement, *the exercise of parental rights is suspended de jure*, until the court decides whether this measure is maintained or replaced. Furthermore, according to the provisions of Article 68(5) of Law No 272/2004, republished, *“during the period of suspension, the parental rights and obligations concerning the child shall be exercised and fulfilled respectively by the person, family, the maternal assistant or the head of the residential-type service which received the child in emergency placement and those concerning the child’s property are exercised and carried out respectively by the director of the general directorate for social assistance and child protection”*.

In the situation of the child being abused, neglected or subjected to any form of violence, as well as in the case of the child found or abandoned in health care units, the measure of emergency placement shall be determined by the director of the general directorate for social assistance and child protection in the administrative/territorial unit where the child is located, unless opposition is received from representatives of legal persons, as well as natural persons caring for or providing protection for that child. In the event of opposition, the measure of emergency placement shall be established by the court according to Article 100 (3) of Law No 272/2004, republished, which provides that where the representatives of the general directorate for social assistance and child protection are prevented or refused to carry out legal checks on the situation of the child, the court shall be informed and an interim injunction is requested for the child to be placed as a matter of urgency to a family, a maternal assistant or a residential service licensed under the law. For example, in a particular case, the court held that, *“the essence of the request for emergency placement by means of an interim injunction is that the legal guardians of the minor should explicitly refuse that the minor should benefit from the placement measure, this being a special condition which must be met cumulatively with the others under ordinary law. In the present case, however, no evidence has been provided that the parents of the minor clearly refuse that the minor to be taken into the protection system. No evidence was submitted on the case-file showing the explicit opposition of legal guardians, statements of those or other means of proof that would unquestionably result in the refusal of the parents or in any way in preventing the authorities from making the necessary findings. Consequently, the court considered that the application was groundless and would order its rejection”* [ Bacau Court of Appeal, Section I Civil matters, Civil Decision No 271 of 2 April 2021, available at [www.rolii.ro](http://www.rolii.ro) (accessed at 03.11.2021)].

The law establishes that if an emergency placement is ordered by *the Director of the General directorate for social assistance and child protection*, it is obliged to bring the matter before the court within 5 days of the date on which it ordered this measure. Where it is found that the circumstances underlying the establishment of the emergency placement measure are no longer maintained, the Director of the *General directorate for social assistance and child protection* may, within 5 days of the finding, order the removal of the measure of emergency placement. Depending on the outcome of the analysis carried out in each case, the court may order either the cessation of the emergency placement and the reintegration of the child into his/her family or the replacement of the emergency placement by the guardianship or the placement measure. In other words, in order to decide on the replacement of the emergency placement by the placement measure, the court must verify whether the reasons which led to the

special protection measure remain. The court will also rule on the exercise of parental rights (Article 70 of Law No 272/2004, republished). Thus, for example, in a particular case, the parents of the C.C.D. minor asked the General directorate for social assistance and child protection Suceava to analyze the revocation of the placement measure and his/her reintegration into the family. The documents submitted to the file found that both the mother and father and the minor brother are clinically healthy, psychologically able to raise and care for the minor, behave without deviating from the rules of moral and social conduct. As a result, the general directorate immediately informed the court with a view to ceasing the placement measure. Following the analysis carried out, the court indicated that *“the best interest of the child is to be raised and educated with his/her parents or in his/her family, the placement being an exceptional and temporary measure. It therefore follows that the best interests of the child and the right of the child to have been raised by his/her parent, in relation to which he/she must develop a family life, should be taken into account, and the case-law of the European Court of Human Rights should also be used to this end, enshrined in the application of Article 8 of the Convention as regards the right to family life. Furthermore, from the producing of the entire evidence, the court found that the circumstances underlying the determination of the placement measure had changed and would therefore accept the application and order the cessation of the special placement protection measure ordered for the minor and his/her reintegration into his/her family. It will also award back the exercise of the parental rights and obligations regarding the person and property of the minor, to the parents of the child”* [Suceava District Court, Section I Civil matters, Civil sentence No 1404 of 15 July 2021, available on [www.rolii.ro](http://www.rolii.ro) (accessed on 03.11.2021)].

In another case, the object of which was to replace the special protection measure of the emergency placement of a minor by the alternative family-type placement, the court found that *“the mother of the children left the legal domicile without maintaining relations with the family members, she does not have a realistic perception of her responsibilities as a parent. The father is known to be a person consuming alcoholic beverages, with poor relations in the wider family and in the community. The court also found that the mother was not aware of her role in bringing up and educating children, which was confirmed by leaving legal domicile without specifying the residing domicile and without maintaining relations with the family members. The assessment of parental abilities of adults highlights the following aspects: emotional indifference, cold and distant attitudes, with an unrealistic perception of children's needs, intolerance to frustrations and lack of affection, rigid educational principles, parental immaturity, leaving legal domicile on the part of the mother, perverse behavior maintained by both parents in the context of psycho-behavioral instability and alcohol consumption. It follows, therefore, that the minor is still in difficulty and is deprived of parental protection, so he/she must continue to benefit from the placement measure. Listened to by the court, the minor said she wanted to stay in the Center, agreeing to the placement measure. Thus, the court will order the replacement of the special protection measure of the emergency placement for the BFC child by the placement at the alternative protection service of family type within the Community service complex “N.R.C.” Barlad, with the parental rights and obligations to be exercised and fulfilled by the Director of the General Directorate for Social assistance and Child Protection Vaslui”* [Vaslui Law court, Civil sentence No 526 of 2 July 2020, available online on <https://www.avocati.info/jurisprudenta/> (accessed on 03.11.2021)).

### **3. Specialized supervision**

From the beginning we should mention that, as it has also been shown in the specialized literature (Bodoasca, Drăgici and Murgu 2020, 740), the special protection measure of the child should not be confused with the educational measure of the surveillance, provided for by Article 115(1) of the Romanian Penal Code (Law No 286/2009 on the Penal Code,

published in the Official Gazette of Romania, Part I, No. 510 of 24 July 2009, as subsequently amended and supplemented).

This measure shall be ordered in respect of the minor who committed a criminal deed and shall not be held criminally liable, either by the commission for the child protection, where there is no agreement of the parents or legal representative, or by the court in the absence of their agreement.

The measure of specialized supervision is *temporary* and consists of keeping the minor within his/her family, provided that it fulfills certain obligations: the pursuit of medical treatment, psychotherapy, prohibition to connect with certain persons, prohibition to attend certain places, child to attend school courses, child to attend some day-care services, etc.

According to the provisions of Article 72(1) of the Law No 272/2004, republished, the General directorate for social assistance and child protection *is required to verify on a quarterly basis* the circumstances which led to the establishment of special protection measures ordered by the commission for child protection or by the court. If it is found that those circumstances have changed, the matter shall be referred immediately to the child protection commission or, as the case may be, to the court with a view to amending or, as the case may be, bringing the measure to an end. Parents or other legal representative of the child as well as the child have the right to make the complaint [Article 72(2) to (3) of Law No 272/2004, republished].

On cessation of special protection measures by reintegrating the child into his/her family, the public social assistance service at home or, where appropriate, the residence of parents, shall be obliged to follow the development of the child, and how they exercise their rights and fulfill their obligations with regard to the minor. To this end, reports will be drawn up on a monthly basis for a minimum period of 6 months.

### **Court of competent jurisdiction**

All cases provided for by the Law no. 272/2004, republished, with subsequent amendments and supplements, in connection with the establishment of special protection measures of the child, *fall within the competence of the county court*. The county court for minors and family will deal with all the cases that fall within the jurisdiction of the county court in this field (unfortunately, in Romania, by the date of the study, only one specialized court has been established and operates in this field, namely: Braşov minors and family county court).

Territorially, jurisdiction shall lie with the county court of the place of residence of the child, and if the minor has no known domicile, jurisdiction shall lie with the county court in whose circumscription he/she was found.

### **Conclusions**

Our analysis shows that, in Romania, there is a legal framework regarding the respect, promotion and guarantee of the rights of the child. In this respect, the main legislative act in this area, the Law no. 272/2004, republished, contains a series of regulations on the rights of the child which are guaranteed to all, without discrimination, regardless of race, color, sex, language, religion, political or other opinion, nationality, ethnic or social origin, material situation, degree and type of deficiency, birth-status or acquired status, difficulties in training and development or other of the child, of parents or other legal representatives or of any other distinction.

Placement is one of the most commonly used forms of child protection and is ordered in the vast majority of cases. Placement is a special protection measure, has a temporary character and is ordered under the terms of Law No 272/2004, republished, to a person or family, to a maternal assistant or a residential-type service licensed under the law.

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# Sustainable Lifestyle Revolution: Agrohoods, Ecowellness and Biophilia Trends

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**ABSTRACT:** The novel coronavirus SARS-CoV-2 is an external shock to all world societies with lasting impact. With millions of infected already and no foreseeable end as well as an estimated 10-50% of those previously infected with COVID-19 to face a longer-term or long-term health impact and/or chronic debilitation, the broad-based and long-term impact COVID Long Haulers has the potential to change our world and modern society lastingly. Generation COVID-19 already now exhibits three trends towards de-urbanization to live in Agrohoods, attention to Ecowellness and Biophilia design preference. Since the onset of the COVID-19 pandemic, de-urbanization trends evolved with a massive flow of people having moved from large metropolitan areas to more rural spaces to socially distance and enjoy nature while being productive online. New community development in harmony with nature are forming in so-called Agri- or Agrohoods, which are neighborhoods that are directly attuned to the surrounding and celebrate the natural and cultural heritage. Creative Ecowellness options and sustainable lifestyle innovations take into account health and well-being, considering the given natural constraints set by ecological limits. The environment is also represented by biophilic architecture design trends booming, which resemble or use the natural environment. For instance, the fashion world has picked up the trend in the form of sustainable fabrics. The United Nations Conference of the Parties (COP-26) discussed sustainable fashion trend solutions as a broad-based integration of sustainability in everyone's lifestyle that aids in the transition to a greener economy. Plant- and fungus-based clothing booms in the design world as a carbon-negative and organic alternative to fast fashion. Given the widespread impetus of COVID-19 and the long-term impact of Coronavirus Long Haulers, the proposed trends are likely to become general sustainable changes heralding a pro-environmental Renaissance.

**KEYWORDS:** Agrohood, Architecture, Biophilia Trends, Biophilic Design, Community, Coronavirus, COVID-19, De-urbanization, Design, Ecowellness, Environment, Generation COVID-19, Lifestyle, Pandemic, Social Justice, Sustainability, Trend Analysis

## COVID-19

The novel coronavirus SARS-CoV-2 that first emerged in 2019 accounts for the most un-expected globally-widespread external shock to modern humankind. By now, almost 300 million recorded infections have caused over five million documented deaths in more than 220 countries and territories around the globe (Worldometer 2021). According to estimates, the actual number of infections is a multiple of around 4 up to 13 of the reported and recorded case numbers.

In light of the different infection variants, epidemiologists increasingly believe that all human beings will have some touchpoints with COVID at a certain point in their lives. From 10% upwards to more than 50% of those previously COVID infected develop long-term symptoms of the disease – potentially due to organ, nerve and tissue damage and/or an immune system reaction to virus debris in the body and/or overactivation of the body's unspecific immune system and/or an awakening of an autoimmune disease or other previous infections.

The large-scale dimension of COVID-19 infections around the world is underscored by an estimated 10-50% of those previously infected with COVID-19 facing some kind of longer-term or long-term health impact and/or chronic debilitation that is currently not well-understood by the medical profession. As the worldwide spread of the virus and the demographic likelihood to become a COVID Long Hauler peaks in the 30-50 years of age bracket, one can

predict a large-scale, long-term and global impetus of COVID long-haul induced changes. Given the large-scale and long-term impetus of the Coronavirus crisis, we can say that COVID-19 will be the most impactful external shock triggering lasting change in our lifetimes.

From the history of humankind and the knowledge about previous diseases, we can draw the inference that crises have always been turning points and ultimate spring feathers of lasting societal development. This paper argues that COVID-19 has the potential to change individual lifestyles profoundly. Overall, the COVID crisis has already now triggered and will likely exacerbate de-urbanization and Agrohood trends, an Ecowellness revolution as well as Biophilic Design advancements.

## **De-urbanization**

With the onset of the COVID-19 pandemic, individuals wanted to socially distance and therefore deurbanization trends evolved. A massive flow of people moved from large metropolitan areas to more rural spaces to socially distance and enjoy nature while being productive online (Donovan 2020; Levin & Ballentine 2021). COVID-19 has triggered the strongest move toward deurbanization in the United States in modern times, which applies both to private sector industries and households (Glaeser & Cutler 2021). Given the contagion risk in crowded metropolitan areas and the technological challenges of air purification in city skyscrapers with closed ventilation and elevators, COVID-19 precipitated an outflux of corporate headquarters to the suburbs while granting employees the option to work remotely (Florida 2020; Lall & Wahba 2020; Marquardt 2021; Ori 2020; Precision Global Consulting 2021; Uber blog 2021; Wedekind 2021).

The longer COVID rages, the riskier international supply chains will be re-shored, and the more likely will corporate headquarters be moving away from metropolitan areas (Reuters 2020; Uphoff 2020). While cities are still seen as disadvantaged in controlling the spread of the disease, retail increasingly shifted online to lower fixed cost of real estate and mitigate health risks (Abe 2020; Gertz 2020; Lighthizer 2020; McDonald 2020; Shalal, Alper & Zengerle 2020; The Economist 2019a, b; Theodosopoulos 2020). Because of widespread lockdowns, social distancing and increased home office work in many industries, there is a more widespread acceptance for instant communication tools, social engagement, and entertainment platforms (Corlatean 2020). Art and culture events scaled down to more rural communities or are currently being re-curated for socially distanced performances, or even are staged in newly emerging virtual luxury worlds (OECD 2020; Thorpe 2021; Feinstein 2021). Gastronomy temporarily shifted toward ordering in and shared virtual eating experiences (Morgan Stanley 2020). The sharing economy started to offer workspace closer to nature.

The trend toward deurbanization is not only fueled by fears of infection in dense areas, but also by cutting on persistently rising living expenses in cities. Inflationary pressure appears to rise disproportionately in metropolitan areas as housing and other unavoidable costs increase (Puaschunder forthcoming a). The so-called “doughnut effect” captures that tendency of urban population moving from large metropolitan areas to the suburbs or even the countryside leaving those remaining in the city without the left populations’ purchasing power and salary streams (Ramani & Bloom 2021). Home ownership booms in less densely populated areas – like Arizona, Texas or Florida – reflect the peoples’ preference to escape cities (Friedman 2021a; Ostrowski 2021).

The Doughnut Effect is believed to be a lasting trend due to remote work conditions and social distancing preferences (Ramani & Bloom 2021). Deurbanization has already affected market equilibria. For example, the price of used cars rose over the course of the pandemic due to a higher demand in suburban areas and an uncertainty about how long people will stay away from large cities (Vaughn 2021).

Those who work enjoy home office flexibility that outsources workplace health risks, while office glass walls in interior designs are being placed for security protection in workplace premises (Walsh 2021). The downside of remote work, however, besides social aspects lies in problems of accountability and stagnation in promotions as there is less oversight of performance in a home office (Harrington & Emanuel 2021).

### **Agrohoods**

In the suburbs or more rural areas, there is an ongoing trend to develop new communities in harmony with nature. So-called agri- or agrohoods are neighborhoods that are directly attuned to the surrounding and celebrate their natural and cultural heritage (Agritecture 2021; Garden Destinations 2021). With the re-shoring of global value chains, glocalization resembles the trend that communities want to become more self-sustaining and focus on the local repertoire of consumption (The Economist 2019a, b).

Moving to cheaper suburbs also allows a remote workforce to build wellness cocoons, in which individuals can pay attention to healthy living embedded harmoniously in nature. Long Haulers appear to have an appreciation for minimalistic stimulation at home and live in harmony with nature. With more efficient online retail options available, and people spending more time at home during lockdowns 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.

With international trade still being in a downturn and international value chains becoming riskier and more expensive, consumers attuned to their surroundings have developed an interest in shopping locally (Lighthizer 2021; Shalal et al. 2021; Gertz 2021). First attempts to eliminate points of contraction in stores include online delivery services, which may in the future be enhanced by drones. With people enjoying time off work in their Ecowellness hubs, low-paying service industry jobs with high human touchpoints, such as nursing, flight attendants, restaurant waiters, etc. will face massive staffing shortages. Labor supply shortages have and will continuously increase labor bargaining power and drive-up worker salaries but may also increase corporate social responsibility pressures to create a positive work-life balance in harmony with nature.

### **Ecowellness**

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 (Ecowellness Group 2020, 2021). Attention to healthy nutrition is on the rise among Long Haulers. Especially those with gastrointestinal issues and inflammatory post-viral arthritis appreciate an anti-inflammatory diet with no glutamates, additives and preservatives infused in meals that apparently can cause problems for COVID Long Haulers (Ecowellness Group 2021).

In the eye of the rising concern over climate change and the interconnected environmental impact on COVID Long Haulers' well-being partially determined by external stressors, future cities may also see ecologic pricing reforms that take into account the trend toward healthy living and environmentalism (Ecowellness Group 2021; Puschunder 2018, 2019a, b, 2020b, forthcoming b). Active cityscape projects may feature forestation to absorb CO<sub>2</sub> from the atmosphere but also governmental incentives for corporations to induce behavioral changes in their workforce (Puschunder 2020a). Already now we find a trend

towards possessing personal cars (Vaughn 2021). Further behavioral changes will likely force transportation to become more hygienic and individualized. The cities of tomorrow will also have to address intergenerational conscientiousness in protecting elder and low immune system risk groups from contagious diseases (Puaschunder 2019a, b, 2020c).

Corporate settings, industry demands and economic growth will likely stem from attuning to this trend of Ecowellness and sustainable lifestyles in the future (Ecowellness Group 2020, 2021; Puaschunder 2020c). Resiliency of corporations will increasingly require firms to ensure they work toward developing a healthy workforce (Brunnermeier 2021; Gelter & Puaschunder 2021, Puaschunder & Gelter forthcoming). In order to avoid a COVID infection in the corporate sector to begin with, the German *Präventionsgesetz* or *Prevention Act* grants governmental funding to corporations for preventive self-care and team learning of healthy lifestyles (Ecowellness 2020; Gesetz zur Stärkung der Gesundheitsförderung und der Prävention 2019). As never before in the history of industrialization, employers now watch out for creating a healthy workplace environment with hygienic interaction, constantly tracking workforce safety and requiring health self- and group monitoring (Puaschunder, Gelter & Sharma 2020a, b).

The coronavirus crisis has highlighted the importance of prevention as a necessary prerequisite for health in general medicine. Self-conscious prevention and the general status of the immune system have proven to be decisive prerequisites for whether a COVID-19 infection turns out to have severe or only a mild disease trajectory (Ecowellness 2021; Gelter & Puaschunder 2021; Puaschunder & Gelter forthcoming). Even when an initial coronavirus infection is mild, among about 10-50% of those previously infected the body becomes symptomatic in the long term, with the immune system becoming unbalanced and/or overshooting (Hart 2021; Searing 2021). The diffuse symptoms of long COVID are not yet fully understood, as there may be a complex interplay with genetic predispositions and environmental circumstances. While the waves of symptoms faced and recovery of COVID-19 Long Haulers are still not clear, recent evidence suggests that external and synthetic influences can trigger an overshooting immune reaction that causes inflammation and harm to one's own body. Scholars have therefore suggested that Long-Haul patients and chronic disease sufferers will become aware of and hypersensitive to their surroundings, resulting in a preference for balance and harmony with the natural environment rising (Ecowellness 2021; Gelter & Puaschunder 2021; Puaschunder & Gelter forthcoming). This rising Generation COVID-19 long-haul will likely shift preferences towards a healthy lifestyle with awareness for environmental balance. Attention to protect the environment but also caution to avoid drug residues in the groundwater, will spring out from the wish to create a non-stressful surrounding without environmental stressors and/or inflammatory triggers.

## **Biophilia**

The environment in everyday life is represented by biophilic architecture. Biophilia design is resembling the natural environment. Current biophilia trends are booming (Pearlman 2021). The fashion world has picked up the biophilia wave in the form of sustainable fabrics, which were praised during the United Nations Conference of the Parties (COP-26) to discuss sustainability in the fashion world (Cernansky 2021; Chan 2021; Friedman 2021b; Harley 2021; Linchpin 2021; Nguyen 2021). Fungus clothing booms in the design world as a carbon-negative and organic alternative to fast fashion (Wolfrom 2020).

During the Coronavirus pandemic, in the private living space and in interior design, cleanliness and hygiene have become key factors. COVID-19 and the potential long-term negative impetus of a virus infection have not only changed our perception of closeness and close contact with others in dense urban areas, but it has also revolutionized interior design in offices with glass and plastic protection. Aerosol sprays and air purification systems are in high

demand. Hygienic antibacterial surfaces optimized for cleanability and technologically-enhanced kitchens became prominent as outdoor dining plummeted. Home cooking became prominent instead of getting ready to leave the house and spending considerable amounts of time commuting and facing the risk of infection outside (Dizik 2020).

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# **A Comparison of the Church-State Relationship as seen by Catholics, Luther, Zwingli and Calvin, and the Anabaptists during the Reformation**

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**ABSTRACT:** The history of the Church and countries with a majority Christian population is dotted about with good or bad opinions on the role of the Church in relation to the government or the State. Sometimes the Church is accused of interfering with the government or local authorities over issues that should be only under the State jurisdiction. Some Christians would consider it a normality because they see God as a supreme King over the whole world, and therefore his will stated in the Bible should be made law and prevail in every country. On the other hand, secular people oppose such ideas and try to exclude any ties of the Church in politics, economics, and social life. From Constantine the Great to medieval Europe, there was a constant tension between the secular kings and the popes or the Church leaders. Some popes were able to make kings submit under the Church leadership. Should this be normality nowadays? Are there any models that can shine a light on that? During the Reformation, the tension between Church and State leaders and princes came to a new climax. This study focuses on comparing the Church-State relationship as seen by Catholics, Luther, Zwingli, Calvin, and the Anabaptists during the Reformation. Did the reformers touch only the spiritual side of the European society or also its social, economic, and political side? So, is it worth letting or encouraging the Church to get involved in the affairs of the State? If yes, are there any models that our contemporary society should copy?

**KEYWORDS:** State, Church, State, and Church relationship, Roman-Catholic, Lutheran, Zwinglian, Calvinist, Anabaptist, education, social welfare, labor

## **Introduction**

There is a constant tension in relations between the State and the Church, as some people believe that the State should be ruled according to Christian principles, while others who do not like Christianity or religion, in general, argue that the Church should not interfere in the affairs of the State. From Constantine the Great to the Reformation period, the Church was, in various forms, an integral part of the life of the State. Therefore, the intention of this study is to observe whether any of the patterns of relationship between State and Church from the Christian period to the end of the 16<sup>th</sup> century could be considered as a standard to be adopted by today's society. To this end, the concepts and practices of the Roman-Catholic Church, Martin Luther, Huldrych Zwingli, John Calvin, and the Anabaptists will be analyzed in turn. In the case of the Anabaptists, extremist factions will not be considered.

This study is not intended to diminish the esteem of any Church or religious organization and starts from the realization that any human system can be degraded by the actions of the people who form or lead it. As a result, the advantages or disadvantages are not analyzed from the perspective of orthodoxy to the Word of God but from the point of view of effectiveness in accommodating the individual in society. Inevitably, the Christian faith was at the heart of the life of European society, and at times, this topic will be touched upon.

Mainly, the reformers' individual views will prevail, regardless of the influence of other personal advisers or circles of influence. The analysis follows a chronological order according to the emergence of each organizational model and traces the relationship between the State and the Church on three coordinates: political-religious organization, the concept of labor and social welfare, and the educational system. In the end, some conclusions are drawn as to which model or parts of a model would be recommendable.

## 1. Roman-Catholic Church and State relationship development

Following the reign of Emperor Constantine, the Great, who promoted the Church very much, the Church discovered that it could strongly influence political life. At first, there was a balance in the State-Church relationship, and the bishops were somewhat in obedience to the emperor. In fact, it was Constantine the Great, an unbaptized catechumen, who summoned the Council of Nicaea (325). He also presided over the inaugural session and was involved in some of the discussions, and seems to have pushed on certain ideas. At that time, the State was in a somewhat superior position. In view of the emperor's concessions and openness to the Church, it was considered good that a person of such rank should pave the way for society to accept the Church's teaching. "Eusebius of Caesarea considered the Christian *imperium* of Constantine a gift of God, the beginning of the messianic kingdom prophesied in the Old Testament, the ideal form of government" (Popescu 2003, 74).

The change was slow and not well seen by all Roman-Catholic theologians. For example, Augustine of Hippo (354-430), who could see the changes that were taking place in society based on the growing union between State and Church, believed that the State was "a remedial instrument, which prevents greater evils. While Eusebius adopted the assumption that the Christian Roman Empire could embrace the standards of the Gospel, Augustine stressed that the two cities cannot be united in a perfect Christian State" (Popescu, 2003, 75). Augustine was trying to prove that what the State possesses are, in fact, instruments necessary because of the fall into sin, which originally did not exist in the natural world, created by God. In this regard, the greatest proof was "the law, the private property, and the army" (Popescu, 2003, 75).

However, the Church continued to be involved in imperial life, and what began in the time of Constantine the Great eventually led to a shift in the center of gravity as to whose authority was greater: that of the State or that of the Church? The mere fact that God is the King of kings was enough for the Church to demand and claim supremacy.

Pope Gregory VII can be considered a reforming pope because he tried to restore the position of the papacy. In the *Papal Decree* of 1075, he claimed that "only the pope can appoint and dismiss bishops, that he can dismiss kings and emperors, that his dominion extends over earthly rulers - who had to kiss his foot when they contacted him" (Hill 2008, 188).

The 11<sup>th</sup> century saw the emergence of the feudal system, and "the Church was caught in the web of the feudal system, forming part of that system. For example, a monastery could own land, and those who worked the land did not pay a local lord, but the monastery" (Hill 2008, 184). But even in these situations, the tension of authority between State and Church continued. The appointment of the clergy was made by the nobles, and the Church tried to resist this. Erasmus later concluded that the State [*civitas*] is nothing more than a large monastery. Diarmaid MacCulloch sees that "in Erasmus's ideal society, everyone was to become an active citizen of a *civitas*, as in the Greek city-states, and everyone was bound to behave as purely as the monks had to behave under the monastic rule... the person who made sure people did this was the prince" (MacCulloch 2011, 543).

Little by little, all this culminated in the 12<sup>th</sup> - 13<sup>th</sup> centuries in actions that proved the undeniable supremacy of the Church, when the Church came under the leadership of Pope Innocent III (in office during 1198-1216), who considered that he had authority over all temporal things because he was the vicar of Christ. At the same time, the fact that theologically all men needed forgiveness of sins brought them under the authority of Christ's substitute on earth. Jonathan Hill observed that "after all, all human actions, in every sphere, had spiritual overtones: all human actions were marked by sin and as such theologically significant, thus falling under papal forgiveness, which meant that he was not only the spiritual master of all Christians but also that of their political leaders" (Hill, 2008, 192). Thus, he successfully interfered in the political life of Europe, changing Emperor Otto and forcing England and France to cease their war with each other, forcing King John of England to "formally cede to him the whole kingdom which he had received back from the hands of the Pope to govern it. In this way, the King of England became merely the vassal of the Pope, under strict subordination according to the feudal system" (Hill 2008, 192-193).

At the same time, the emperors' advisors told them that their duty was to strengthen the Catholic faith by defending the Church from pagan attacks. They believed that "the Church could not be truly Catholic unless it had universal primacy over all otherworldly powers" (Pelikan, IV, 2006, 145). Later, in the papal bull *Unam Sanctam* (1302), Pope Boniface formalized the idea of the Pope's authority in temporal and spiritual matters, even to the point of dethroning those rulers who opposed him. This idea became a tradition of the Roman Catholic Church (Timothy, 1998, 118). To this was added one of the basic doctrines of the Jesuit order led by Ignatius of Loyola (1491-1556), which demanded "absolute obedience to God, therefore also to His representative on earth, the Pontiff, and to the supreme general of the Society [of Jesus]" (Eliade 2011, 219).

While the popes and emperors fought for their place at the helm of the Holy Roman Empire, the social welfare of the poor remained mainly on the shoulders of the Church.

Benjamin B. Warfield believes that the Reformation did not designate any winners but only helped the Church because "the problem that Augustine bequeathed to the Church for a solution, the Church required a thousand years to solve. But, even so, it is Augustine who gave us the Reformation. For the Reformation, inwardly considered, was just the ultimate triumph of Augustine's doctrine of grace over Augustine's doctrine of the Church" (Warfield 1971, 338).

Although the Church has managed to interfere and impose itself in social, economic, and political life, the prerogatives it has assumed have not always led to a better, more moral society from which poverty, immorality, wars, and oppression would disappear. On the contrary, when things went wrong, whether the fault lay with corrupt and unspiritual prelates or with some secular ruler, it ended up with blame from both sides: the parishioners and the world. One thing is quite clear: secular positions or offices held by the Church do not guarantee a better society, as the appointees may be vulnerable or in a rush for wealth.

## 2. Martin Luther's concept on Church-State relationships

In contrast to the tendency of the Roman Catholic Church to impose itself on the State, Martin Luther promoted the idea of the independence of the State from Church control. He developed the doctrine of the two kingdoms (spiritual and temporal) in opposition to the Roman Catholic model. In this respect, his former membership of the Augustinian order of monks can be seen, as Augustine promoted the idea of the Heavenly City and the Worldly City.

Bogdan Popescu adds the fact that there is a fine difference between Augustine's thought and Luther's in the way they define the secular State. For Luther, "the secular power is no longer considered to be a necessary evil invented by the children of this world. God is the creator of the two governments and gives the right and the authority to the earthly rulers" (Popescu 2003, 76). But Luther has a problem with his day's system and goes on to affirm that "the pope was not only the enemy of the emperor, but of all Christendom... he was the Antichrist; moreover, the whole apparatus of the Church was like the pope" (MacCulloch 2011, 551). He argued that the Pope should not intervene in the civil domain and that when needed, it was the rulers who should reform the Church. Eugen Jugaru understands that Martin Luther, although of a more rebellious nature, did not have a problem with the civil authority of princes but with the authority of the Pope. And this was because of the abuses that were being committed by the clergy in society and the Church (Jugaru 2017, 187).

As a result, Luther "placed ecclesiastical power in the hands of the civil authorities, who were considered representatives of the Christian community" (Renwick and Harman 2005, 99). Many princes agreed with Luther's ideas because they were to their advantage, allowing them better control of the Church in their territories and especially because he did not agree with revolutions to overthrow the rulers, believing that God would remove them when he was done with them.

He observed that German princes could command subjects and thus be of great help against those who did not wish to reform. In his conception, Luther claimed that God had entrusted the sword to the ruler of the State to maintain order and ensure peace for the faithful. On the other hand, he was aware that "the State was instituted by God as a concession to human sin. The State is not

the agent of God’s saving purpose for mankind” (Timothy 1998, 120). However, the State is endowed by God with limited powers, and as a result, “the earthly leaders were responsible before God for the use of their authority. The subjects had to obey them, even if their decisions were not always the best” (Jugaru 2017, 188).

The main difference in Luther’s thinking about the role of the State and the Church can be seen in the following point of view: the State could coerce those who did not seek to become good and righteous, while the Church, through its preachers, dealt with people who wanted to become good and righteous in order to inherit eternal life. For this, as mentioned above, he developed the teaching of the two kingdoms, which are like the two hands of God. Thus, the Christian is in the worldly kingdom, which is the State, and in the spiritual kingdom, which is the Church, and “must observe the laws of both kingdoms” (De Long 2006, 249). As to how the Christian was to be guided in the life of the city, Luther does not give sound biblical arguments, and at times seems to contradict himself, as he did in the case of the Peasants’ War. Yet, one thing is clear to Luther: “the teaching of the Scriptures is valid only in the spiritual realm” (De Long 2006, 249). Bogdan Popescu shows that, in fact, Luther encouraged the people to accept the civil State and institutions because if somebody is “a real child of God does not need all these external institutions and restrictions but accepts them for the sake of others” (Popescu 2003, 76).

Mirela de Long believes that the public’s attention to Martin Luther’s words and actions were drawn very strongly not because he burned the papal bull that excommunicated him, but because he burned the “Canonical Corpus” [*Corpus Juris Canonici*], which stated that anyone who disobeyed it would face eternal damnation. She believes that Luther touched with brutality “institutions that ensured the running of society at the time” (De Long 2003, 44). Luther did that by elevating obedience to baptized Christians holding public office to the same level as obedience to priests and bishops (De Long 2003, 261). In his view, any resistance to the State by force or rebellion was a sign that those people were under the leadership of the Devil of devils (De Long, 2006, 283-284).

The problems with the State were to be resolved by informing the nobility and princes, i.e., by peaceful discussion (De Long 2006, 269), and their response was to be considered as something God had granted. If it was an unfavorable response, the people had to wait for God to do something with the person placed in that position of authority.

In the case of the authorities’ interventions against rebellions or civil wars, Luther believes that the State and the authorities have a “God-given right” and obligation to punish by sword and death. Primarily because such mobs indulge in all kinds of robbery and plunder, break their oath of obedience to those higher in office, are disobedient and defilers of God (De Long 2006, 286).

Luther did not formulate a specific doctrine regarding the offices the Christians occupied in the State but confined himself to allowing Christians to hold positions as magistrates. Probably the main reasons remained that “the State was instituted by God as a concession to human sin” and that “the State is not the agent of saving purpose for mankind” (Timothy 1998, 120). As a result, he seems to indirectly encourage Christian involvement in the political and judicial life of the city.

In the area of work, Luther takes up the words of the apostle Paul in *2 Thessalonians* 3:10. He has the audacity to apply them even to the nobility. People of any social class were supposed to work for their riches because nobody should consume another’s labor for free. (De Long 2003, 317). Yet, getting rich on the basis of your own labor was considered a blessing from God.

By doing so, he encouraged the whole society to work. One of the major contributions in this regard comes from the statement “*Sola Gratia*,” whereby salvation no longer depended on works or labor. Perhaps the economic success of Western Europe may be due to some extent to this approach to the work ethic. Anyhow, Marius Nechita concludes that Protestant countries have understood, for example, that poverty is a social problem, and through the actions, they had taken, they promoted responsibility towards vulnerable people through the systems they built, but above all, through their example, they have influenced other countries (Nechita 2017, 321-322). For Luther, it did not matter what kind of work someone did because the work of a peasant was as valuable as that of a craftsman.

In the area of social welfare, Luther called for the secularization of monastery property and the conversion of monastery buildings into hospitals and schools. (De Long 2003, 40). The authority to implement these projects belonged to the State, represented at the time by the nobility and princes. Peter Forna believes that the reason the nobility supported him in this direction was due to the fact that his references were only to monastery estates, “leaving the enormous feuds and their system of administration untouched. It is also the reason why most representatives of the high nobility supported him.” (De Long 2003, 53). Along with these, the worldly authority also had to deal with the reintegration of monks and nuns into the lay society and the care of those who, for reasons of health or age, could no longer support themselves (De Long 2003, 53).

The unusual part for 21<sup>st</sup> century Christians is that Martin Luther did not necessarily base all his program on the Gospel. At least, this is clear from what he wrote to the imperial knight Ulrich von Hutten: “The Holy Scripture cannot be used as a means of shaping society because it is not a social-political program” (De Long 2006, 249).

In the field of education, Martin Luther called for educating young people and children and working to form a new intellectual class. The need for such an intellectual stratum was primarily to be found in the necessity to be able to carry on the Reformation. He encouraged the inclusion of ‘worldly’ disciplines in the curriculum. He gave two reasons for this: “for these would, on the one hand, curb the ecclesiastical influence on education, but, on the other, they would bring about a complete education.” (De Long 2003, 54). It should be noted that a good number of these requests are addressed directly to the German ruling class in two of his writings: *To the Christian Nobility of the German nation* (1520) and *To the Lords Councilors of all the cities of Germany to erect Christian schools and maintain them* (1524).

Spiritually, Luther believed that the Devil is strongly opposed to teaching or education because his power over young people is weakened by knowing the Word of God (De Long, 2006, 215). He noted this by comparing the fact that before, young people who were educated were trapped in the cloisters of the monasteries and could not leave, and after the Reformation began, many began to believe that education was no longer necessary because every believer is a priest before God. In part, it is possible that his call for education was adopted because he was able to equate the lack of education with neglect of the younger generation, with the greatest sin that could burden the world before God, worse even than the defilement of a virgin or a woman (Cf. De Long 2006, 218-219).

It seems that his categorical attitude was echoed, and the education program was implemented so that all over Europe, one can see schools being built or arranged in the vicinity of Lutheran churches. Marius Nechita points out that the successful society in which we live was created by the Reformation social transformations, and especially the educational transformations. These led to the development of a ‘scientific Christianity’ (Nechita 2017, 323).

### **3. Huldrych Zwingli’s concept on Church-State relationship**

As for the differences between Martin Luther’s concepts and those of Huldrych Zwingli, there would seem to be few. The Reformation initiated by Zwingli was sustained by its originator for a much shorter period than Luther did in Germany. The Reformation led by him can be considered to have begun in 1519 with his appointment as people’s priest in Zurich, and he led it until his death in 1531. This would be about 12 years, while Martin Luther’s Reformation is thought to have begun in 1517, and he led it until 1546, or 29 years.

While Luther approached the nobility and princes to lead the Reformation, Zwingli “wanted a bourgeois-republican hue” (De Long, 2003, 63). He believed that if the rule of the Pope and emperor were overthrown, then “a new era, almost a reign of the saints, could begin” (Potter 1976, 418). He considered the visible Church to be the very local congregations composed of those who have accepted Christ (Potter 1976, 395). Zwingli entrusted authority and decision-making power to the State. Thus, “the civil councilors became legitimate ecclesiastical representatives, and the clergy had to carry out the will of the State” (Popescu 2003, 77). In fact, Zwingli defended human justice

and “used it to legitimate close cooperation with the State” (Popescu 2003, 77). Through this close cooperation, he also promoted social welfare programs.

However, in contrast, particularly with the Anabaptists, Zwingli considered that it was the Christian community that should choose its civil government, and in this way, the two were theocratically united. He argued that any Christian government had a duty “to ensure that the name of God is honored among its subjects, and the kingdom of God is extended” (Pelikan 2010, 212) and that it follows “the rule of Christ,” that is, that the commandments and laws they give are in accordance with God’s will. If the government or magistrates did not conform to “the rule of Christ,” they could be brought down in the name of God.

His ideas on the organization of education are contained in his treatise *Quo pacto ingenii adolescentes formandi sint* (1523). Zwingli recommended the study of Greek and Latin, some mathematics, a little music, some history, the art of conversation. He encouraged the learning of Greek and Latin because it was useful for people to be able to reach a pure knowledge of the Scriptures.

Military training must be included since any man may be called upon to defend his Fatherland. All schoolboys, including intending ministers of religion, should, in any case, learn a trade or a craft for the benefit of the community and for the avoidance of pernicious idleness. Games were encouraged when they were in some way instructional or served to keep the body in good health – the running, the jumping, the fencing, and the throwing stones or rocks were suitable for the young Swiss, but not the wrestling and the swimming only in great moderation. (Potter 1976, 218)

In fact, compared to the modern education that Martin Luther encouraged, Zwingli’s interest in education was based on spreading the knowledge of God’s Word, and for that, people who could read and preach were needed. In fact, G. R. Potter insists that Zwingli did not ask the authorities to invest in school buildings from the public budgets. (Potter 1976, 219). In this, the educational model proposed by Zwingli lacks the force and appeal promoted by Luther.

#### **4. Jean Calvin’s concept on Church-State relationship**

Zwingli’s ideas were taken further by John Calvin, who was very convinced that the leadership of the Church should be chosen by its members and that “in spiritual matters, the Church should be independent of the State. However, he asserted that civil government was also a divine institution and that Church and State had to cooperate while respecting each other’s fields of activity.” (Renwick and Harman 2005, 106). Calvin was very careful to avoid some of the problems that Zwingli and Luther had. Therefore, Diarmaid MacCulloch is of the opinion that he kept some distance “between existing Church structures and town authorities” (MacCulloch 2011, 574-575).

For him, the Church was above the civil authorities, and in this respect, it seems like his idea resembled the Roman-Catholic one. Although he harmonized this idea well in Geneva, others who took up his ideas started revolutionary movements in Holland, Scotland, and France. In fact, he believed that “no man - no pope or emperor - can claim absolute power” (Shelley 1995, 261) and encouraged the growth of representative assemblies which, he said, had “their own right to resist the tyranny of monarchs” (Shelley 1995, 261). Calvin understood that God created the Church and State for the good of the people, and as a result, they were to work together in harmony. Bruce L. Shelley sees that the relationship between the State and the Church was one of submission and mutual help. The Church was to submit to secular authorities only in secular matters, but at the same time, it was “to guide secular authorities in spiritual matters” (Shelley 1995, 261). However, Bogdan Popescu sees this relationship at a level of mutual obligation: “Theology has to influence the political system ideologically, and the State must protect its source of inspiration. God is the absolute sovereign, and naturally, the word of God also becomes law in the political world.” (Popescu 2003, 78).

Bogdan Popescu comments that, according to Luther's model, a Christian ruler should not mix the inner Christian life with the outer responsibilities of his ruling office because one cannot always rule according to Christian principles. But Calvin is at the opposite pole because he states that those Christians who are placed in civil office must act on the basis of their faith and should influence political and social life (Popescu 2003, 79).

For Calvin, when there is a conflict between civil power and religious power, priority must be given to obedience to God. Eugen Jugaru points out that if a ruler chose not to obey divine commands, then he lost his authority (Jugaru 2017, 190). This observation is in some contradiction with that of Ciprian Terinte, who quotes Calvin regarding the fact that the people must "gladly submit to magistrates, for they have been installed by God to protect the human race" (Terinte 2017, 203) and that when abuses, cruelty, and tyranny occur from some people in authority, "the divine order is not invalidated by the weakness and sinfulness of the human nature" (Terinte, 2017, 205). Even so, the way to resist the State authorities had to be in a peaceful manner. Violent demonstrations would lose God's blessing. At the same time, Ciprian Terinte presents two of Calvin's principles regarding the moments or periods when the State abuses and does not fulfill its role correctly. On the one hand, it is a sign of "divine punishment for the sins of the people; therefore, the government still acts as an agent of God's justice. Civil government - be it just or unjust - is the instrument of divine justice anyway." On the other hand, these situations "facilitate the process of self-edification towards spiritual perfection." (Terinte 2017, 212).

Calvin considers that the State's main role is

to cherish and support the external worship of God, to preserve the pure doctrine of religion, to defend the constitution of the Church, to regulate our lives in a manner requisite for the society of men, to form our manners to civil justice, to promote our concord with each other, and to establish general peace and tranquility (Calvin, IV, XX, 2).

Following the organization of consistories of pastors and elders to oversee the theology and morals of the community and to impose punishments by excommunication, Calvin "used the State to impose more severe punishments. Such punishments proved far too severe, with 58 people executed and 76 exiled in 1546" (Earle 1997, 304). He believed that people should follow the religion of the State and that if they disobeyed, they could be punished even by death. On this point, Calvin resembles the Roman-Catholic Church and Luther, and partly Zwingli.

In the field of labor and social welfare, Bogdan Popescu believes that the term 'Christian socialism' was determined by the large number of laws passed by the Geneva government in this area. Based on these laws, the poor could borrow loans, jobs were provided, and public health and welfare services were organized (Popescu 2003, 78). In this area, Mircea Eliade believes that Calvin "anticipated the series of political theologies in vogue in the second half of the 20th century: labor theology, liberation theology, anti-colonialism theology, etc." (Eliade 2011, 217). Looking from these points of view, Mircea Eliade observed that Calvin's personal example demonstrated "the function and theological importance of political activity" (Eliade 2011, 217). Ciprian Terinte thinks that "some democratic ideals of the founding fathers of the United States, such as the republicanism, equality, and resistance to tyranny, had sprouted from the seedbed of Calvinistic ethos" (Terinte 2017, 193).

In the field of education, Calvin refined the work of Luther, and Mircea Eliade believes that the contribution of Luther and Calvin led to a slow process of desacralization of education. Thus, by organizing individual freedom and reforming public education, the 'modern world' was made possible (Eliade 2011, 217).

## **5. Anabaptist concept on Church-State relationship**

When comparing Luther and Calvin to those of the Anabaptists, one could see that they "opposed to the idea of a State Church as envisioned by Luther and Zwingli" (Renwick and Harman 2005, 99). They

came into direct conflict with Zwingli because they were originally in the territory where he was carrying out his Reformation. “The more radical Anabaptists, who opposed State control of religion, were jeopardizing his [Zwingli’s] plans to rally conservative authorities to the side of the Reformation” (Earle 1997, 297). In fact, the Anabaptists were also in opposition to the Roman Catholic conception and totally separated the Church from the State. As mentioned earlier, this study does not consider the ideas of the extremist groups that broke away from Anabaptism.

Although they “did not deny that magistrates are appointed to office by God to maintain law and order” (Timothy 1998, 335), they nevertheless denied the necessity of the union between Church and State, that is, the right of the State to govern religious life. Anabaptists advocated the total separation of the State from the Church. They also had problems because they objected to taking the oath in court, accepting civil office, and using arms at the command of the rulers. One of their leaders, Menno Simons, argued that Jesus’ command not to resist those who did them wrong and not to swear was to be obeyed literally (Timothy 1998, 321). He also demanded obedience to the State “in all matters that do not prejudice the requirements of faith” (Timothy 1998, 310).

Their separation from civil society went so far that they implemented ‘the interdiction,’ a form of separation from the community or exclusion of members who were corrupt or who were complicit in the affairs of the State. It seems that the Anabaptists were looking for a form of world organization consistent with the organization of the early Church. For Menno Simons, the organization of the Catholic, Lutheran, and Zwinglian churches was a demonstration of convenience, and as a result, he classified them as sects (Timothy 1998, 334).

In the area of work and welfare, Anabaptists believed that people in the community should devote themselves to each other, work, help each other with love, and in some groups, it was decided that property should be held in common. Although they are not the forerunners of modern socialism, in this regard, one can glimpse a socialist model that is truly based on biblical principles and is functional in Mennonite and Amish communities even in the 21<sup>st</sup> century.

## Conclusions

Little by little, the Roman-Catholic Church lost the authority and influence it claimed over the State. The Anabaptists failed to influence the State, and the Lutherans became weakened by the very fact that they allowed the rulers to interfere in Church affairs. Instead, it seems that Calvin’s ideas about the right to resist magistrates and monarchs who did not live by the ‘rule of Christ’ were “a key factor in the development of modern constitutional governments” (Shelley 1995, 261), and his ideas about the principles of popular representation led to the development of democracy. This could be the seedbed of the political organization of most states as democratic. Communist states that did not allow a democratic development, such as Romania, the Soviet Union, Hungary, Poland, and Czechoslovakia, lost out to democracy. In fact, James D. Hunter believes that the State has interfered so heavily in all areas that it has reached the stage where it can effectively prohibit all the society’s systems if there is anything contrary to its interest (Hunter 2010, 154).

The Roman-Catholic model of the relationship between the State and the Church has not been successful, especially after being so strongly challenged by the Reformation. In fact, in today’s society, it could not be followed at all, as most people would oppose having priests, pastors, and bishops in all political offices. Yet, there are countries where the Roman-Catholic Church is the main actor in social welfare or education work. But it no longer strictly follows the model it had before the Reformation. Catholic schools are not closed like the monasteries’ cloisters were, and pupils and students are free to go out and learn subjects that are not solely of the Christian spiritual realm. From this point of view, it seems that the Roman-Catholic Church and modern society have followed the model proposed by the reform programs of Luther and Calvin.

Regarding the concept of ownership, concepts that promoted and honored the covenant of poverty or the enrichment of prelates came to be opposed, challenged, and changed during the Reformation. The concept they developed of labor and earning a living and wealth resulted from personal labor gained ground, and the same idea is perpetuated today. That is why poverty, begging,

and idleness, or oppressing others for self-enrichment are not looked upon kindly and are even punished by law. However, the welfare systems promoted by Roman Catholics and reformers are functional, appreciated, and constantly improving in all modern countries. Even though some countries have social services closer to one of the Catholic or Reformed systems, it seems that no one perfect social welfare service can be implemented.

Luther, Zwingli, and Calvin were magisterial reformers. That is, they used the official authorities or the magisterium to support the Reformation. On the other hand, the Anabaptists had a radical Reformation in which they separated Church and State. In today's systems, it can be seen that the Church continues to be involved in social projects, education, and politics, but it does not always do so through its ecclesiastical leadership as in the Roman-Catholic model before the Reformation, nor according to the Lutheran or Zwinglian model, but rather according to a Calvinist one, because the involvement is through individuals who have understood that they can make a change in their sphere of activity. These individuals are responsible for proving their faith by the decisions and actions they take in each situation.

To this, we can add that Christians of all kinds and laypeople often get involved in helping the poor, providing free food and all kinds of materials and money to their fellow citizens or members of their own family or Christian community. We can see a trace of the Anabaptist welfare concept in this aspect. Any of these analyzed concepts or models individually taken would not fit perfectly for adoption in today's society. As a result, only a combination of theological and cultural ideas and actions that have been successful over time can be recommended for a successful situation. Even then, it is up to each society or community to choose whether they would like to apply that system.

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# The Holy Apostles, Continuers of the Savior's Activity, Role Models of Spiritual Shepherds and Pastoral Means Used by Them

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**ABSTRACT:** The Holy Apostles have assimilated the evangelical teaching of the Lord Jesus Christ thoroughly and lived by it, transposing the ideal example of life of their divine Teacher into reality. By the weapon of word, by the power of prayer and the unparalleled example of their clean and holy life, these organs of the Holy Ghost and messengers of the godly teaching have renewed it, bringing it into the light of knowing the true God.

**KEYWORDS:** apostles, word, worship, prayer, role models, feeling, love

## Introduction

During His earthly activity, the Savior Jesus Christ has reached hearts and conquered people's souls not only through the beauty and sublimity of His godly words, but also through the example of His holy life, because the example of deeds is more convincing and building than the spoken words. Fascinated by the teaching and wisdom of their divine Teacher as well as by His exemplary and impeccable moral life, the Holy Apostles have striven not only to convey His evangelical teaching to the people, but also to transpose the example of His life into reality, as Saint Apostle Paul said: *"I don't look back, I lengthen my stride, I run straight toward the goal to win the prize that God's heavenly call offers in Jesus Christ."* (Philippians 3:14).

## Content

In the Christian pastoral care, the example of deeds plays an essential and decisive role, overcoming all obstacles and hostility and conquering the sole, because good deeds are the expression of inner feeling and the seal of faith and Christian love.

Following the example of the Savior, the Holy Apostles proved the most honorable workers of good deeds. They had clear conscience that *"in all things God works for the good of those who love him"* (Romans 8:28). They were charismatic and virtuous people, noble and strong characters who overcame the hostilities of their times, making the Savior's teaching throughout the Roman Empire and beyond its borders. The most important means they used in the pastoral care was the word, this great gift which God has bestowed man to communicate and promote moral goodness. *"How horrible it will be for me if I don't spread the Good News"* (1 Corinthians 9:16), exclaimed enthusiastically Saint Apostle Paul and Saint Apostle Peter, aware of the effect of the seed of word planted in the field of soul, he urges his followers to be skillful in the art of handling the word: *"Always be ready - said he - to defend your confidence when anyone asks you to explain it"* (1 Peter 3:15). This text can serve as basis for the priest's duty to be constantly trained, instructed and initiate his believers in the knowledge of creeds. Saint Apostle Paul also insists on this aspect, when he urges his spiritual sons thus: *"Everything you say should be kind and well thought out so that you know how to answer everyone"* (Colossians 4:6).

The truth was discovered through word, was engrafted with faith, hope was strengthened, suffering was healed, souls were invigorated and warmed and wills were hardened. This did not escape the Apostles, who have dedicated all their passion and sacrifice

in the service of spreading God's word. *"So be alert! Remember - said Saint Apostle Paul to the priests of Ephesus - that I instructed each of you for three years, day and night, with tears in my eyes"* (Acts 20:31). They have used the weapon and power of the word, but this depends largely on the man who uses it, of the certainty and authority he relies on, of the faith which drives him and ardour which guides and warms him. Being enlightened by the Holy Ghost and leading a wholesome life and having a healthy mind, free of passionate thoughts and wronged teachings, they have understood the essence of creeds, they were deeply convinced by these truths and lived by them, so that Saint Apostle Paul, in order to avoid any suspicion and contradiction, was often referring to himself, saying: *"You and God are witnesses of how pure, honest, and blameless we were in our dealings with you believers"* (1 Thessalonians 2:10). That is why the message of their sermon also resonated and echoed in the souls of their listeners because it came from the seething of their heart, from all their conviction and inner feeling and their eloquence was unparalleled, even though they were speaking in plain, grandiose, attractive and commonly understood language. *"Strengthening the faith and forging the will of the believers according to the principles of faith was a constant care and preoccupation of the Apostles"* (Belu 1955, 256).

The Apostles began to exercise their teaching function after the Resurrection, when the Savior lays down their specific commandment: *"So wherever you go, make disciples of all nations, baptize them in the name of the Father, and of the Son, and of the Holy Spirit. Teach them to do everything I have commanded you..."* (Mathew 28:19-20). They have considered this teaching ministry as fundamental duty and fulfilled it diligently, as true servants of the embodied Word and achievers of His mission, according to the urging of Saint Apostle Paul to his follower Timothy: *"Be ready to spread the word whether or not the time is right. Point out errors, warn people, and encourage them. Be very patient when you teach."* (2 Timothy 4:2).

When the Christians began to grow in numbers, the Holy Apostles have chosen the seven deacons to handle the housekeeping work, so they can persist in prayer and in service of the word (Acts 6: 4). Saint Apostle Paul gave so much importance to preaching the word of God, that he dared say to the community of Corinth that Christ has sent him not to baptize, but to bare the good news (1 Corinthians 1:17), although as we know, the sacramental service outweighs that of teaching. He was aware that the flame of faith is kindled upon hearing the word of God and the effectiveness of the work of grace depends of the power of faith which is stimulated by listening and assimilating the word. Therefore, he was entitled to say: *"But how can people call on Him if they have not believed in Him? How can they believe in Him if they have not heard His message? How can they hear if no one tells the Good News? How can people tell the Good News if no one sends them?"* (Romans 10:14-15). The basis of the Apostles' preaching as well as the fact that they had the awareness of being sent lie in these words.

Their preaching resonated and had the power of persuasion, because it was not only based on rational arguments, but it came from a clean, sincere and loving heart, where there was no trace of repulsion and resentment. Therefore, they were not answering evil with evil, were not vindictive and never hated those who spoke ill of them and persecuted them, but as they were cursed, they blessed, as they were persecuted, they endured, as they were blasphemed, they prayed, becoming the garbage of the world (1 Corinthians 4:12-13). Their generosity, patience and forgiveness, proved abundantly that they were transposing the commandment of love (John 13:34), left as testament by the Savior and therefore there was no contradiction by them between word and deed. They lived deeply what they preached and therefore, their preaching had spirit, moving the most hardened of hearts. Because it came from clean heart, warm and full of conviction, their word reached the heart and produced religious convictions, germinating clean thoughts and good intentions. They carried out this work of spiritual building of the believers *"with the soul overwhelmed by deep joy, no matter how hard the obstacles and adversities they had to face (1 Thessalonians 2:7-8). The Apostle feels so totally integrated and absorbed in the work of bringing the listeners to the Gospel,*

*that his life has no other meaning other than this activity. Therefore, the interest for his physical life drops up to annihilation, as he is concentrated fully on the activity of evangelizer.”* (Belu 1955, 257)

Another pastoral tool used by the Holy Apostles, especially by Saint Apostle Paul was the divine worship which they were attending regularly, both at services in the Jewish temple and in synagogues. Ever since the apostolic century, the divine worship was *“the means of manifestation of religiosity and maintaining and deepening the spiritual bond with God. It originated and was implemented from the teaching of Jesus Christ, especially in the laying down of the Holy Eucharist, a Sacrament at the core of Holy Liturgy.”* (Călugăr 2005, 260). Saint Evangelist Luke tells us that after the Savior’s Ascension to heaven, the Apostles were lingering *“They were always in the temple, where they praised God”* (Luke 24:53). It was here where they were praying (Acts 3:1) and also here they were preaching the word of God (Acts 5:24,42) and were performing the ritual of the breaking of bread (Acts II, 46) that is they were performing the Eucharistic sacrifice of the Holy Liturgy. Saint Apostle Paul began his missionary activity in the synagogue (Acts 18:4), where he spoke to the people every Saturday, bringing many Jews and Pagans to the new Christian faith. In Corinth he *“lived in Corinth for a year and a half and taught God’s word to them”* (Acts 18:11), and in Ephesus he spoke boldly in the synagogue for three months (Acts 19: 8).

Another pastoral tool used by the Holy Apostles during their missionary activity was prayer, because *“the typical atmosphere of catechism, of prayer and Christian humility, through it warming the soul of the believers and creating the state of inner feeling of the religious life, but also of externalization in Christian actions useful to the Church and all her sons.”* (Călugăr 2005, 238). In the midst of the community of Jerusalem *“All these were persevering with one accord in prayer with the women, and with Mary, the mother of Jesus, and with His brothers”* (Acts 1:14).

Prayer was the oxygen of their spiritual life. Saint Apostle Paul was constantly praying for the growth of the spiritual life of the new converts to Christianity: *“For God is my witness, whom I serve in my spirit by the Gospel of His Son, that without ceasing I have kept a remembrance of you always in my prayers”* (Romans 1:9-10), he told the believers in Rome and those in Corinth he assured thus: *“This is also what we pray for: your perfection”* (II Corinthians 13:9). The Holy Apostles were masters of prayer. They made the prayer their utmost preoccupation, urging the believers to pray each day, to be worthy of God’s gift and help, Descendant from *“Father of the Lights”* (James 1:17) only through prayer. *“Pray without ceasing. Give thanks in everything. For this is the will of God in Christ Jesus for all of you”* (1 Thessalonians 5:17), said Saint Apostle Paul to the Thessalonians and Saint Apostle Peter recommends the practice of prayer as a weapon and shield against devilish temptations and machinations: *“Be sober and vigilant. For your adversary, the devil, is like a roaring lion, traveling around and seeking those whom he might devour”* (1 Peter 5:8).

Aware that the prayer strengthens the spirit of brotherly community, deepens the faith and builds the spiritual foundation of the new life, the Apostle of nations urges the Christian communities to pray for each other and the progress of his apostolate (Ephesians 6:19; 1 Thessalonians 5:25). He often underscores the value of the communal prayer, yet he also does not ignore the importance of private prayer (Acts XX, 7-11; Ephesians 5:19-20). With both types of prayer, the Apostles have molded the new man (Galatians 6:15), managing to create a community of saints in the midst of a corrupt world. With the help of prayer, they have polished and chiseled the stones on which they built the Church of Christ day by day, in its meaning of spiritual body and divine-human establishment. For this reason, they were always leaning with care and compassion to the newborn believers for the new life in Christ. *“My little sons, I am giving birth to you again, until Christ is formed in you”* (Galatians 4:19).

This exclamation shows the tireless ardour of the apostle yearning to turn the wanderers for whom he was praying day and night back to the path of salvation. *“For night and day, ever more abundantly, we are praying that we may see your face, and that we may complete*

*those things that are lacking in your faith*” (1 Thessalonians 3:10), said the great apostle of nations to his spiritual sons, converted to the new Christian faith and when they were growing in knowing and experiencing the evangelical deeds and virtues he felt a deep satisfaction and spiritual joy (1 Thessalonians 2:18-20; Philippians 4:1), like a mother constantly caring for her sons. Including in his thought and mind of those near and far, he strove to be ever more present in the midst of the communities of believers to guide them and improve them spiritually and this gave him utmost satisfaction. The other Apostles have also worked in this sense, but Saint Apostle Paul excelled the most, fulfilling his vocation of spiritual guide in exemplary fashion which was planted in him *“from his mother’s womb”* (Galatians 1:15).

The Holy Apostles’ prayer was based on the Holy Scripture they knew from the regular quotations and interpretations from the temple and synagogue. They had to find the most adequate arguments to justify the faith they were preaching, but first of all, they lived what they had to teach others. Living in the light of revealed truth and evangelical precepts was compelling by their very nature of shepherds and their high calling of communal workers with God to the work of restoration and existential renewal of the human being (1 Corinthians 3:9). Strengthening the faith and channeling the will of the believers in full agreement with the principles of Christian teaching was the Holy Apostles’ utmost and constant care and preoccupation (Acts 14:22; 15:41; 18:23, 27). Through the spiritual preaching and guidance of the Apostles, *“the Church did not demand provisional adherence to its teachings, but absolute and final faith. It is true. Yet these teachings have also been founded initially on experience and constantly verified”* (Oltramare 1925, 34). Saint Apostle Paul *„has fought idleness in word and deed”* (Mercier 1933, 185).

He gives himself an example of diligence and zeal, saying: *„For you yourselves know how you ought to follow our example. We were not idle when we were with you, nor did we eat anyone’s food without paying for it. On the contrary, we worked night and day, laboring and toiling so that we would not be a burden to any of you”* (2 Thessalonians 3:7-8). Therefore, their catechist teaching was preeminently pragmatic and had an instructive-educational purpose, to forge Christian characters and build religious personalities. *„Therefore, their catechist work did not stop in a conference room or at religious sermons, but was continued in Church at the actual mass for catechumens and the religious life with experiments of social Christianity”* (Bulacu 2009, 25).

In their pastoral and catechetical activity, they took into account the apperceptive organ that is the particularity of their listeners, adjusting the teaching and work methods to the specifics of various categories of people they were addressing, their age, temperament and level of education, because the gifts are different and not all listeners are equally gifted. There was one way to address the Pagans and another to address the Jews or those more or less enlightened. Also, they were scholarly and systematically outlining their creed, starting from simple to complex, from concrete to abstract, carefully following the process of assimilation and living of the creeds and rules of moral life. *“I gave you milk to drink, not solid food. For you were not yet able”* (1 Corinthians 3:2), said Saint Apostle Paul to the newly converted to Christianity. Unlike the other Apostles, Saint Apostle Paul has also explored the profane culture, illustrating his sermon with examples and quotations from the Pagan classic literature, from public law and his contemporary historiography and philosophy which he has researched meticulously. All these rhetorical elements borrowed from the laymen culture, conveyed the sermon briskness, naturalness, spontaneity, erudition and oratorical pathos.

They never attributed the success of their sermon to the craftsmanship of their words, but to the grace of God working through them. They were aware that *“And so, neither he who plants, nor he who waters, is anything, but only God, who provides the growth”* (1 Corinthians 3:7). All their toil of molding and guidance was driven and warmed by the flame of love, to which they dedicate famous hymns (1 Corinthians 13) and which they define marvelously in paradigms, syntagmas and appellatives, as Saint Apostle Paul outlines it in the advices to his follower Timothy: *“But you, man of God, ..... pursue righteousness,*

*godliness, faith, love, endurance and gentleness*” (1 Timothy 6:2). Naturally, these fruits of love are also obvious signs of the spiritual joy, “*and such shepherds, like clean mirrors of the Sun of justice shall reflect and share to the flock light and spiritual warmth*” (Galeriu 1978, 547).

Because the life of the first Christians was built on the foundation of love, „*The Church has made an obligation for its members from the preoccupation for the fellow man, for his well-being, thriving and happiness*” (Oltamare 1925, 26), totally complying the Savior’s teaching. Who has laid down for us the commandment of love as ground rule of Christian coexistence (John XIII, 34). The Church considers Saint Apostle Paul “*the apostle of Christian love par excellence*” (Mercier 1933, 186). He sings the praises to this virtue, practices it exemplary and warmly recommends it to his spiritual sons to put it into practice: “*But concerning the charity of brotherhood, we have no need to write to you. For you yourselves have learned from God that you should love one another*” (1Thessalonians 4:9).

The Person of Christ the Savior and His divine teaching were the barometer which the Apostles used to guide their life and pastoral-missionary activity. They were aware that they cannot remain steadfast in faith, clean in soul, patient in temptation and unaffected by passions and immoral deeds, except well-grounded and permanently rooted in Christ, in His Spirit, for “*For no one is able to lay any other foundation, in place of that which has been laid, which is Christ Jesus*” (1 Corinthians 3:11). “*I know in whom I have believed, and I am certain that he has the power to preserve what was entrusted to me*” (2 Timothy 1:12), would say Saint Apostle Paul to his follower Timothy. Therefore, “*Christ was working in them through their words and deeds*” (Staniloaie 1947, 22).

## Conclusions

In all their missionary and pastoral activity, the Apostles were driven by the love for Christ the Savior, about whom Saint Apostle Paul confesses so beautifully and convincingly: „*Then who will separate us from the love of Christ?*” (Romans 8:35). Looking into the founded communities, He sees the fruit of His toil and remains impressed that His followers remained steadfast and consistent in His commandments and urges, as He Himself said: “*We ought to give thanks always to God for you, brothers, in a fitting manner, because your faith is increasing greatly, and because the charity of each of you toward one another is abundant*” (2 Thessalonians 1:3).

Therefore, the complex methods of work, the craftsmanship, knowledge, wisdom, pedagogical tact and dedication of the Holy Apostles remain over centuries landmarks and major coordinates of the pastoral and missionary activity of the priests of our holy altars and their wholesome and saintly life, lived genuinely in the spirit of the Gospel of Christ, remains for us the guideline on which we orientate our steps in life in the work of salvation.

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# The Communication Skills in Compliance with the Ethics of Caring for the Elderly People

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**ABSTRACT:** The communication skills in compliance with the ethics of caring for the elderly people are a form of communication interaction based on principles, rules and basic regulations labeled by specialists. They are characterized by a focus on the relationship with the elderly people or with a group of elderly people to achieve good results. The people who take care of them participate in the communication interaction, respect the communication style and aim to obtain a result by solving the assigned tasks and reaching the established objects. The ability to lead a conversation with the elderly people competently means a correct understanding of the particularities of the personal characteristics of the elderly, their goals, objectives and interests. These can be considered determining factors for improving and increasing the quality of their life.

**KEYWORDS:** communication, communication skills, elderly people, ethics

## **Introduction**

As you get older, the vulnerability to disease increases, diseases are more easily contacted, the evolution is more pronounced and lasting, an illness can create social worker blockages in the relationship with vulnerable seniors can also be understood as a philosophy on morality. Due to the vulnerability of this social category, the need for social service is highlighted by an increasing number of elderly people, compared to all other disadvantaged people. Specialists are expected to work in full collaboration with the elderly people in need, pursuing their major interests, but also according attention to the rest of the people involved.

In this sense, the professional ethics of specialist specialized in working with the elderly people is a decisive factor in elucidating the moral problems of dependent elderly people through a cognitive approach, regulating both the professional relations of specialist with reference to standards of conduct in relations with beneficiaries, in our case in the relationship with the elderly persons in difficulty, as well as with colleagues or other categories of professionals.

## **Content**

There are certain techniques by which you can direct the attention of the elderly in your direction. The “proper name” technique is based on the obligatory pronunciation of the elderly person's name aloud. The “mirror of attitude” means that a smile on the face will instead provoke a smile, and an ugly grimace, on the contrary. A pleasant facial expression attracts the elderly man's attention. Congratulations are welcome in any conversation. They contain a slight exaggeration of the merits of the elderly, such as: How beautifully you dressed today! / Today you are in a good mood! / How beautifully you arranged your room! However, it is necessary to distinguish compliments from exaggerated praise, which consists in an exaggeration of the merits of the elderly. “Communication with the elderly is a science, an art and a plus of humanity, intelligence and prediction with which God endows some of his fellows” said the famous Mother Teresa (CEPECOM 2010).

Therefore, in the development of research and care practice of the elderly people, the following aspects are taken into account as a priority:

- the population of the elderly is growing, both numerically and proportionally;

- there is a close connection between the third age and the risk situation presented by the bio-psycho-social disabilities specific to the elderly;

- the social and medical protection system, as it is currently organized, is not yet fully able to meet the specific needs of this age group (Țigmeanu and Keller 2008, 3).

DeMont and Piemont says: communication, respectively the transmission of information or messages, has certain specificities in the case of working with the elderly. These are due to the physiological, psychological and social peculiarities of individuals belonging to a special population category. the group of older people they work with should respond appropriately to the proposed program of activities.

The peculiarities that influence the communication with the elderly people are related to:

- hearing and vision functions, which decrease;
- decrease in speech speed and voice volume, mainly due to decreased performance of the respiratory system; this impediment, in many cases present even at rest;
- the ability to communicate, to give answers, or to take over the messages sent by the social workers, is related to the elderly and to the decrease of the reaction speed in general. This decrease in reaction speed also affects memory (especially short-term memory), and decreases speech speed;
- facial expression and expressiveness, which are reduced in spectrum and which has not only some explanations related to the mental state (more depressed, more depressed) characteristic of this age, but also to some anatomical-histological changes. Thus, according to relatively recent research, the grumpy/angry/angry face of the elderly is also due to the significant decrease in fat from the fibers that make up the muscles of the face;
- sleep problems and its peculiarities (DeMont and Peatman 1993, 21-23).

The European Union recognizes and respects above all the rights of older people who are more likely to become dependent on care, to lead a dignified and independent life and to participate in social and cultural life (EU Charter of Fundamental Rights, Article 25) . Any restriction of these rights, if caused by age and dependency, must remain in clear legal grounds, transparent legal procedures, must be proportionate, reviewable, and even consider the party concerned with the highest interest. Neglect and disregard for these rights should be considered unacceptable. Member States should develop policies that promote these rights, at home and in care institutions, and support individuals to enforce them.

The principles underlying the fundamental values of social assistance are the provision of services in support of the beneficiaries, respectively of the elderly person in difficulty, respect for the dignity and uniqueness of the individual, the confidentiality and integrity of the person, self-determination and professional competence. Each social worker has acquired these values and principles, which will be found in his behavior, so as not to harm through his actions the image of the social worker profession (Țigmeanu and Keller 2008, 4). The social worker specialized in working with the elderly people needs to respect their rights (European Charter 2010, 4-14):

- the right to dignity (the right to respect and the defense of dignity), physical welfare (the right to health and access to institutions in this field) and mental, freedom and security (economic security and material security);
- psychological and emotional well-being;
- protection against medical and pharmaceutical abuse;
- the right to self-determination (the right to express the desire and choose the activity, the right to choose the place of living);
- right to privacy (the right to choose one's place and way of life);
- the right to high quality and adapted care (the right to care and help, the right to care granted by qualified personnel (the right to medical care);
- the right to continuous communication, participation and cultural activity
- the right to freedom of expression and freedom of thought / consciousness: beliefs, culture and religion (the right to religion)

Communication with elderly patients in the context of care involves a set of recommendations based on optimizing interactions between specialists and the elderly people:

1. expresses understanding, compassion and patience to help older people cope with the fear and uncertainty of aging and helplessness;
2. questions are asked about living conditions and social contacts, as well as the relationship with close relatives or the couple's relationship;
3. includes elderly patients in conversation even in the presence of relatives / family members and especially life partners;
4. personalize care by seeking information about the beliefs and cultural values of elderly patients related to illness and death;
5. involves the elderly in the process of making decisions related to housing, inheritance, health;
6. the assumptions of old age are avoided when providing information and recommendations on preventive care;
7. patient information is important, but how you convey the information is even more important;
8. a direct, concrete, action-focused language is used;
9. it is checked what the elderly people understood and retained in the conversation.

Vulnerable elderly people are encouraged to participate as much as possible and should be informed about the risks and possible benefits if they are taken decision to live lonely. Social workers are attentive to the principles of privacy, confidentiality and responsible use of information in their professional work, taking into account the age-specific vulnerability, the social aspects specific to the elderly people, they need to communicate more often with the members of their family.

Maria-Mădălina Bodescu stated that for the elderly, it can be stated that the need for communication is vital, its existence, quality and duration of life being threatened by the dissatisfaction of the need for communication, as well as by an inadequate communication. Sooner or later, an elderly person lives the last part of his life, which precedes the end, ending his existence. Communication, at this stage, has particular meanings and is, along with other elements of palliative care, a solution to the quality of life until the last moment.

With the help of communication can determine the type of person, psychological changes caused by aging, their degree of illness, suffering, social and psychological stress, disability. Communication provides valuable data on the needs of one person or another. Also, with the help of communication we can influence even in a therapeutic (psychotherapeutic) sense the person's condition, without taking into account the transmission for appropriation of our messages intended to help him (Bodescu 2007).

Article 6 in the European Charter talking about the right to continuous communication, participation and cultural activity of elderly people when they get old and depend on others on support and care, they continue to have the right to interact with others, and to participate in civic life, teaching self-learning. The elderly has the right to all the support all need to communicate. The elderly has the right to have all communication needs considered and perspectives, no matter how they are expressed (European Charter 2010,4-14). Life has taught us that old age is the price we must pay to attain wisdom, and humiliating the elderly means humiliating our own projection into the future. It is important to learn the art of aging.

## Conclusions

Unlike other types of communication interactions, for example, personal or social, communication with older people has its own significant characteristics and attributes. Assigning such features allows you to provide a more specific and complete definition of the concept of “communication with the elderly”. Respect for the ethics of caring for the elderly is being successfully determined today.

Biberi (1970,163). states that by being able to transcend himself, through communication with peers and through social cooperation, man mentally transcends the corner of the world where he appeared The progressive aging of the world's population has major social and economic consequences that will be crucial in the coming decades (CNPV 2013, 18), and communication skills with the elderly are an art that we must all possess.

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# Consequences of Non-Compliance with the Provisions of the General Data Protection Regulations (GDPR)

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**ABSTRACT:** In order to receive and validly register complaints, it is mandatory to provide the identification data of the complained operator or of the authorized person complained, such as name and surname, address/headquarters, or at least of the available information held by the petitioner, in order to identify them. Complaints sent are signed in handwriting or electronically, and in the case of petitions sent electronically that cannot be signed, ANSPDCP may request confirmation of the correctness of the data transmitted electronically.

**KEYWORDS:** the protection of individuals, personal data, prejudice, administrative or judicial remedies, supervisory authority

## Introduction

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC provides in VIII - Remedies, liability and sanctions applicable to infringements of the provisions of the Regulation In accordance with the provisions of Article 77 - the right of every data subject to submit a complaint to a supervisory authority is guaranteed. (Fuerea 2019, 166)

Thus, without prejudice to any other administrative or judicial remedies, any person concerned shall have the right to lodge a complaint with a supervisory authority, in particular in the Member State in which he has his habitual residence, where his place of residence is situated. work or where the alleged infringement has taken place, if it considers that the processing of personal data concerning it infringes this Regulation. (Fuerea 2019, 171)

The supervisory authority to which the complaint was lodged has an obligation to inform the complainant of the progress and outcome of the complaint, including the possibility of bringing a judicial appeal under Article 78 of the Regulation.

## Content

The procedure for receiving and resolving complaints is regulated by the provisions of Decision no. 133/2018 of the Chairman of the Supervisory Authority.

According to Decision no. 133/2018 and in accordance with Law no. 102/2005 on the establishment, organization and functioning of the National Authority for the Supervision of Personal Data Processing, with subsequent amendments and completions, for the receipt and valid registration of complaints it is mandatory to provide the following data of the petitioner: name, surname, home address or of residence.

If the complaint is submitted electronically, it is mandatory to provide the petitioner's e-mail address. (Popescu 2017, 137)

In the case of complaints submitted by the representative, in addition to the data of the petitioner mentioned in para. (1), it is mandatory to provide the following data of the representative: name and surname/name, postal address/office, e-mail address, telephone number, registration number in the register of associations and foundations, if applicable.

The national supervisory authority shall inform the data subject of the admissibility of the complaint within a maximum of 45 days of registration. If the information in the complaint or the documents submitted is found to be incomplete or insufficient, the National Supervisory Authority shall request the data subject to complete the complaint in order to be considered admissible for the purpose of an investigation.

A new period of no more than 45 days shall elapse from the date of completion of the complaint. The national supervisory authority shall inform the data subject of the progress or outcome of the investigation within 3 months from the date on which it was informed that the complaint was admissible.

Another right provided for in the Regulation in Article 78 is the right to an effective judicial remedy against a supervisory authority. Thus, every natural or legal person has the right to bring an effective judicial remedy against a legally binding decision of a supervisory authority concerning him or her, without prejudice to any other administrative or non-judicial remedies.

Without prejudice to any other administrative or non-judicial remedies, each data subject shall have the right to pursue an effective judicial remedy if the supervisory authority which is competent under Articles 55 and 56 does not deal with a complaint or inform it. The person concerned within three months of the progress or resolution of the complaint lodged under Article 77. Actions brought against a supervisory authority shall be brought before the courts of the Member State where the supervisory authority is established, and where actions are brought against a decision of a supervisory authority which was preceded by an opinion or a decision of the supervisory authority. The supervisory authority shall forward that opinion or decision to the Court in the framework of the coherence mechanism.

Art. 78 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC.

Article 79 regulates the right to an effective judicial remedy against an operator or a person empowered by the operator.

Without prejudice to any available administrative or non-judicial remedies, including the right to lodge a complaint with a supervisory authority under Article 77, each data subject shall have the right to pursue an effective judicial remedy if he or she considers that his rights under this Regulation have been infringed as a result of the processing of his personal data in breach of this Regulation. (Sandru 2020, 122)

Actions brought against an operator or a person authorized by the operator shall also be brought before the courts of the Member State where the operator or the person authorized by the operator has its registered office. Alternatively, such an action may be brought before the courts of the Member State in which the data subject has his habitual residence, unless the controller or the person authorized by the controller is a public authority of a Member State acting in the exercise of its public powers.

The right of representation of data subjects is provided for in Article 80 of the Regulation. In accordance with the provisions of this article, the data subject has the right to mandate a non-profit body, organization or association, which has been duly constituted in accordance with national law, whose statutory objectives are in the public interest, which are active in the field of protection of the rights and freedoms of data subjects with regard to the protection of their personal data, to lodge a complaint on his behalf, to exercise on his behalf the rights referred to in Articles 77, 78 and 79, and to exercise the right to compensation referred to in Article 82 on behalf of the data subject, if this is provided for in national law.

Member States may provide that anybody, organization or association referred to in paragraph 1 of this Article, regardless of the mandate of a data subject, has the right to lodge a complaint in that Member State with the supervisory authority competent under Article 77 and to exercise the rights referred to in Articles 78 and 79, where he considers that the rights of a data subject under this Regulation have been infringed as a result of the processing.

Article 81 - Suspension of proceedings 1. Where a competent court of a Member State has information that an action of the same object is pending before a court of another Member State in respect of the processing activities of the same controller, or of the same person empowered by the controller, that court shall contact the court of the other Member State to confirm the existence of such actions.

Art. 79 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC.

Art. 81 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC 2. Where an action before a court of another Member State has the same object in respect of the processing activities of the same controller or of the same person empowered by the controller, any court having jurisdiction other than the court first seized may stay the proceedings. the action in her role.

Where such an action is brought at first instance, any court subsequently referred to it may also, at the request of one of the parties, decline jurisdiction, provided that such action falls within the jurisdiction of the court first seized and that the law applicable to it allows the shares to be linked.

Article 82 - Right to compensation and liability 1. Any person who has suffered material or non-material damage as a result of a breach of this Regulation shall be entitled to compensation from the operator or the person authorized by the operator for the damage suffered. (Simionovici, Cireașă, Lungu and Dan 2019, 201)

Any operator involved in processing operations shall be liable for damage caused by his processing operations in breach of this Regulation. The controller shall be liable for the damage caused by the processor only if he has not complied with the obligations of this Regulation which are specifically incumbent on the controller or has acted outside or contrary to the legal instructions of the controller. The operator or the person authorized by the operator shall be released from liability pursuant to paragraph 2 if he proves that he is not liable in any way for the event which caused the damage.

Where several processors or several persons authorized by the controller, or one controller and one controller, are involved in the same processing operation and shall be liable pursuant to paragraphs 2 and 3, for any damage caused by the processing, each controller or person authorized by the controller is liable (s) for the entire damage to ensure the effective compensation of the data subject.

Where an operator or a person authorized by the operator has paid, in accordance with paragraph 4, full compensation for the damage caused, that operator or person authorized by the operator shall be entitled to claim from the other operators, or the other persons empowered by the controller involved in the same processing operation to recover that part of the compensation corresponding to their share of liability for damage, in accordance with the conditions set out in paragraph 2.

Actions for the exercise of the right to recover compensation paid shall be brought before the competent courts in accordance with the law of the Member State referred to in Article 79 (2).

Article 83 - General conditions for the imposition of administrative fines<sup>90</sup> 89 Art. 82 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC 90 Art. 83 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data 1. (Ploesteanu 2019, 88).

Each supervisory authority shall ensure that the imposition of administrative fines in accordance with this Article for infringements of this Regulation referred to in paragraphs 4, 5 and 6 it is, in each case, effective, proportionate and dissuasive. 2. Depending on the circumstances of

each case, administrative fines shall be imposed in addition to or in place of the measures referred to in points (a) to (h) and (j) of Article 58 (2).

When deciding whether to impose an administrative fine and deciding on the amount of the administrative fine in each individual case, due regard shall be paid to the following:

- (a) the nature, gravity and duration of the infringement, taking into account the nature, scope or purpose of the processing in question, as well as the number of data subjects affected and the level of damage suffered by them;
- (b) if the infringement was committed intentionally or negligently;
- (c) any action taken by the controller or the person authorized by the controller to reduce the damage suffered by the data subject;
- (d) the degree of responsibility of the operator or the person empowered by the operator, taking into account the technical and organizational measures implemented by them pursuant to Articles 25 and 32;
- (e) any previous relevant infringements committed by the controller or the person authorized by the controller;
- (f) the degree of cooperation with the supervisory authority to remedy the breach and mitigate the possible adverse effects of the breach;
- (g) the categories of personal data affected by the breach;
- (h) the manner in which the infringement has been brought to the attention of the supervisory authority, in particular whether and to what extent the operator or the person authorized by the operator has notified the infringement;
- (i) where the measures referred to in Article 58 (2) have previously been ordered against the operator or the person authorized by the operator concerned in respect of the same object, compliance with those measures;
- (j) adherence to approved codes of conduct in accordance with Article 40, or to approved certification mechanisms in accordance with Article 42; and
- (k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as the financial benefits gained or the losses directly or indirectly avoided as a result of the infringement. (Ploesteanu 2019, 97)

## Conclusions

Where an operator or a person authorized by the controller intentionally or negligently infringes, for the same processing operation or for related processing operations, several provisions of this Regulation, the total amount of the administrative fine may not exceed the amount provided for the most serious infringement. For infringements of the following provisions, in accordance with paragraph 2, administrative fines of up to EUR 10 000 000 or, in the case of an undertaking, of up to 2% of total annual global turnover for the preceding financial year shall apply, taking into account the highest value:

- (a) the obligations of the operator and the person empowered by the operator in accordance with Articles 8, 11, 25 to 39, 42 and 43;
- (b) the obligations of the certification body in accordance with Articles 42 and 43;
- (c) the obligations of the monitoring body in accordance with Article 41 (4). 5)

For infringements of the following provisions, in accordance with paragraph 2, administrative fines of up to EUR 20 000 000 or, in the case of an undertaking, of up to 4% of the total annual global turnover corresponding to the preceding financial year shall be imposed, taking into account the highest value is taken into account:

- (a) the basic principles for processing, including the conditions of consent, in accordance with Articles 5, 6, 7 and 9;
- (b) the rights of data subjects in accordance with Articles 12 to 22;
- (c) transfers of personal data to a recipient in a third country or an international organization in accordance with Articles 44 to 49;

(d) any obligations under national law adopted pursuant to Chapter IX; (e) failure to comply with an order or a temporary or permanent restriction on the processing, or suspension of data flows, issued by the supervisory authority pursuant to Article 58 (2), or failure to grant access in breach of Article 58 (1).

For the purpose of infringing an order issued by the supervisory authority in accordance with Article 58 (2), administrative fines of up to EUR 20 000 000 or, in the case of an undertaking, up to at 4% of the total annual global turnover for the previous financial year, taking into account the highest value.

Without prejudice to the corrective powers of the supervisory authorities referred to in Article 58 (2), each Member State may lay down rules determining whether and to what extent administrative fines may be imposed on public authorities and public bodies established in that Member State.

The exercise by the supervisory authority of its powers under this Article shall take place subject to the existence of appropriate procedural safeguards in accordance with Union and national law, including effective judicial remedies and the right to a fair trial.

Where the legal system of the Member State does not provide for administrative fines, this Article may be applied in such a way that the fine is initiated by the competent supervisory authority and imposed by the competent national courts, while ensuring that such remedies are attack are effective and have an effect equivalent to that of administrative fines imposed by the supervisory authorities. In any case, the fines imposed must be effective, proportionate and dissuasive.

Those Member States shall inform the Commission of the provisions of national law which they adopt pursuant to this paragraph by 25 May 2018, as well as, without delay, of any amending legislative act or any subsequent amendment thereto. 91 Art. 58 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC Article 87 - Penalties 1.

Member States shall lay down the rules on penalties applicable to infringements of this Regulation, in particular infringements that are not subject to administrative fines under Article 83. They shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate and dissuasive. Each Member State shall inform the Commission of the provisions of national law which it adopts pursuant to paragraph 1 by 25 May 2018 and, without delay, of any subsequent amendment thereto.

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