

# RAIS CONFERENCE PROCEEDINGS

The 30th International RAIS Conference  
on Social Sciences and Humanities

OCTOBER 23-24, 2022

EDITORS: SHAKEEL KHAN, PhD

AVGUSTINA PEYCHEVA PhD

This publication presents the proceedings of the *30th International RAIS Conference on Social Sciences and Humanities* held at American University, in Washington DC, USA, on October 23-24, 2022. The Conference was organized by Research Association for Interdisciplinary Studies. The Research Association for Interdisciplinary Studies is an international scientific organization based in the United States of America with the mission of promoting human values through interdisciplinary scientific research.

© 2022 Authors

ISSN 2578-8574

ISBN: 978-1-945298-53-0

The Scientific Press, Cambridge, MA

Editors: Shakeel Khan, PhD

Avgustina Peycheva, PhD

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

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

Proceedings of the  
30th International RAIS Conference  
on Social Sciences and Humanities

ISSN 2578-8574  
ISBN: 978-1-945298-53-0

October 23-24, 2022  
Washington DC, USA

# TABLE OF CONTENTS

Extension of Endogenous Growth Theory: Artificial Intelligence as a Self-Learning Entity <i>Julia M. Puaschunder</i>	1
Challenges and Opportunities of E-Commerce. A Contemporary Context of Pakistan after COVID-19 <i>Shakeel Khan</i>	7
Freedom in Business. Concept and Forms of Manifestation <i>Manuela Niță</i>	16
Preconditions for the Compliance in Cybersecurity <i>Inga Malinauskaite-van de Castel</i>	21
The Impact of E-Training System on Employees' Job Performance <i>Dareen Ahmed Farouk</i>	30
The Involvement of the European Commission in the Implementation of the "European Union for Health" Program for the Period 2021-2027 Relevant Union Legislative Mechanisms <i>Elise-Nicoleta Vălcu</i>	42
Texas' Teens Face a Social Media Ban: A New Start or a Recipe for Destructive Isolation? <i>Daniel B. Kurz, Spencer Jahng</i>	47
Aspects of the Seller's Warranty Against Vices in the Good Sold in Romania <i>Robert Șerbănescu</i>	55
An Exploratory Study on the Grieving of the Bereaved Father in Hong Kong – from Grief Support Workers' Perspective <i>Chi Lok Jerry Wong, Kar Choi Chan</i>	59
Behavioral Advantages of Diversity: Strategies to make Inclusivity work in the Age of Corporate Social Justice <i>Julia M. Puaschunder</i>	74
Climate Change and Security Implications <i>Alexandru Petrea</i>	82
Bulgaria and Russia: A Diplomatic Deficit <i>Avgustina Asenova Peycheva</i>	88
Can the Lacunary Provisions be Covered by a Preliminary Judgement of the High Court of Cassation and Justice? <i>Iulia Boghirnea</i>	98
Analysis of the New European Legislative Measures Adopted in the Field of Drug Precursors <i>Cristina-Luiza Erimia, Denisa-Elena Dumitrescu</i>	103
The Effect of Visual and Verbal Elements of Food Product Packaging on Consumer Buying Decision <i>Shaymaa El-Said Salem</i>	109

## Table of Contents

From Victim to Aggressor. The Origins of Criminal Behavior <i>Cristian Dan</i>	120
From the Roman Magistratus of the Republic Era to the Absolute Monarchy <i>Ionuț Ciutacu</i>	125
Neo-Confucian Ethics and Economic Development in East Asia: From the Perspective of Confucian Modernity and Political Democracy <i>Yuxin Zhang</i>	130
Considerations of the Beautiful and the Sublime In Art <i>Simina Georgiana Cherecheș</i>	138
Mental Health Education Programs at Korean High Schools: The Investigation of Student Satisfaction with the Current School-based Programs and Means to Improve <i>Jiho Chang</i>	147
“Subject to Magistrates, and Princes, and Powers, but within the Limits of Discipline”: Romans 13:1–7 before the Edict of Constantine the Great (c. 167–250 CE) <i>Amiel Drimbe</i>	155
Brief Considerations regarding the Main Union Legislative and Transposition Instruments, adopted with the View to Supporting Ukraine in the Context of the Russian Invasion <i>Elise-Nicoleta Vâlcu</i>	166
Theoretical and Practical Aspects Regarding the Commission of the Offence of Destruction by Participants in Sports Events <i>Nicoleta-Elena Hegheș</i>	173
Criteria for Appointing an Undercover Investigator to Obtain Evidence and Information in a Criminal Case <i>Nadia Zlate</i>	178
Theoretical and Practical Study on Value Added Tax at National and Community Level (First part) <i>Agatador Mihaela Popescu, Mariana Rodica Țirlea</i>	182

# Extension of Endogenous Growth Theory: Artificial Intelligence as a Self-Learning Entity

**Julia M. Puaschunder**

*Columbia University, Graduate School of Arts and Sciences, Julia.Puaschunder@columbia.edu,  
<http://blogs.cuit.columbia.edu/jmp2265>, [www.juliampuaschunder.com](http://www.juliampuaschunder.com)*

**ABSTRACT:** The Artificial Intelligence (AI) evolution is a broad set of methods, algorithms, and technologies making software human-like intelligent that is encroaching our contemporary workplace. Thinking like humans but acting rational is the primary goal of AI innovations. The current market disruption with AI lies at the core of the IT-enhanced economic growth driven by algorithms – for instance enabled via the sharing economies and big data information gains, self-check outs, online purchases and bookings, medical services social care, law, retail, logistics and finance to name a few domains in which AI leads to productivity enhancement. While we have ample account of AI entering our everyday lives, we hardly have any information about economic growth driven by AI. Preliminary studies found a negative relation between digitalization and economic growth, indicating that we lack a proper growth theory capturing the economic value imbued in AI. We also have information that indicates AI-led growth based on ICT technologies may widen an inequality-rising skilled versus unskilled labor wage gap. This paper makes the theoretical case of AI as a self-learning entity to be integrated into endogenous growth theory, which gives credit to learning and knowledge transformation as vital economic productivity ingredients. Future research may empirically validate the claim that AI as a self-learning entity is a driver of endogenous growth. All these endeavors may prepare for research on how to enhance human welfare with AI-induced growth based on inclusive AI-human compatibility and mutual exchange between machines and human beings.

**KEYWORDS:** Algorithms, Artificial Intelligence (AI), Digitalization, Digitalization disruption, Digital inequality, Economic growth, Endogenous growth, Gross Domestic Product (GDP), Innovation, Learning, Productivity, Self-Learning, Software, Technology

## **Introduction**

The Artificial Intelligence (AI) evolution as a broad set of methods, algorithms, and technologies making software human-like intelligent has revolutionized modern economies. Thinking like humans but acting rational is the goal of self-learning entities. To this day, the clear effect of AI on economic growth is not captured sufficiently. Preliminary studies found a negative relation between digitalization and economic growth, indicating that we lack a proper economic growth theory fully capturing the productive value imbued in AI (Puaschunder 2022a). This paper therefore theoretical introduces AI as a self-learning entity to be integrated into endogenous growth theory. The discussion stresses the need for further research to empirically validate the claim that AI as a self-learning entity is a driver of endogenous growth in order to prepare for research on how to enhance human welfare with AI-induced growth.

## **Artificial Intelligence**

AI is “a broad set of methods, algorithms, and technologies that make software ‘smart’ in a way that may seem human-like” (Noyes 2016). The Oxford Dictionary defines AI as “the theory and development of computer systems able to perform tasks normally requiring human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages.” AI describes the capacity of a computer to perform like human beings including the ability to review, discern meaning, generalize, learn from past experience and find patterns and relations to respond dynamically to changing situations. AI is perceived as the sum of different technological advancements with currently developing regulation (Dowell 2018). Machine learning

is based on computational algorithms that learn from big data sources in order to derive inferences for constantly improving future decisions and choices.

The self-learning nature of AI makes it different from any other previous industrialization revolution as this time human beings give up decision-making autonomy and train another species to take over control of their everyday tasks and human choices. To this day, no clear account exists on the economic role of AI encroaching economic space and human beings giving up decision-making control to this novel entity, which has components of technology as it has human features. This paper presents the first introduction of endogenous growth theory with respect for self-learning credentials of AI and discusses novel inequalities arising from AI-led growth.

## Growth theory

Historical foundations of economic growth calculus date back to the economics classics in the work of Adam Smith, Thomas Robert Malthus, David Ricardo and Karl Marx. The early accounts of labor theories of value and theories of land rent prepare first ideas on how input factors generate economic productivity.

Modern growth theory (MGT) starts in the 20th century. The starting point of MGT can be attributed to Roy Harrod (1939) and Evsey Domar (1946), who studied business cycles as drivers of growth. MGT is thus primarily focused on capital with constant marginal product and constant returns to scale. From Sir Roy Harrod to Robert Solow and Paul Michael Romer, growth theory in the 20th century became more apolitical, equilibrium-focused with an application of a set of mathematical tools in the development of the ideas of the classicals.

Robert Merton Solow and Trevor Swan introduced the Solow-Swan model as a hallmark of neoclassical growth theory (Solow 1956, 1957; Swan 1956). The Solow-Swan growth model is based on the neoclassical Cobb-Douglas production function of capital and labor assumed to be freely substitutable. The Solow Growth Model uses the Aggregate Production Function, in which net national product  $Y$  is a function of Capital  $K$  and Labor  $L$  in  $Y = F(K, L)$ . The aggregate production function is fixed, meaning how the product depends on capital and labor does not change over time. In Solow's model differences (in the short-run) in income levels across countries are explained by rich countries having higher saving (investment) rates in relation to population growth than poorer countries. Permanent (long-run) cross-country differences can only result from differences in the rate of technological progress and access to the same technology.

Neoclassical growth theory literature was superseded by endogenous growth theory or the new growth theory. Endogenous Growth Theory (EGT) emerged during the apparent sudden rise of a new group of inter-related Asian 'Tigers' (Singapore, Hong Kong, Taiwan, Korea) as fully fledged members of the league of developed nations that could not be explained with exogenous growth theory. The idea of externalities and spillover effects was originally formalized by Arrow (1962) who argued that externalities arising from learning-by-doing and knowledge spillovers positively affect labor productivity on the aggregate level of the economy. Endogenization of knowledge and technology actually led to an explanation of endogenous growth. In the late 1980s, Romer and Lucas incept EGT, in which economic growth is determined by the production of knowledge and ideas. Building on Uzawa (1965), Lucas (1988) emphasized human capital creation as a source of growth. Knowledge and technology are characterized by increasing returns unlike physical capital. In Romer's New Growth Theory (1986) persistent growth is explained by the impact of externalities on economic development. Romer (1990) considered the creation of new knowledge as a source of growth. Qualitative ideas – such as Schumpeter's creative destruction – are later mathematically formalized in growth theories and models of Solow (1973), Lucas (1988), Aghion and Howitt (1992). In

Aghion and Howitt (1992, 1998), the Schumpeterian process of creative destruction becomes central to growth.

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

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

Most recent developments and additions to growth theory include health precautions as experienced during the COVID-19 pandemic to enhance labor productivity (Puaschunder 2022b), climate change impacts on economic growth outlooks (Puaschunder 2020, 2021) and digitalization's relation to growth, which is surprisingly negative indicating that contemporary growth theory does not fully capture AI's impact on economic growth (Puaschunder 2020).

### **Growth theory and technical change**

We currently live in a transition period from factor-neutral to factor-biased technical change. The traditional measure of economy-wide technological change, introduced by Solow (1957), is aggregate total factor productivity (TFP). Solow defines a TFP advancement as an increase in output that leaves marginal rates of transformations untouched for given inputs; thus, a change in TFP is a form of factor-neutral technical change. There used to be an overwhelming consensus that neutral technological improvements are the primary source of growth in income per capita. However, recent data highlights the limits of this conceptualization of technical change. In the last three decades, the rental price of skilled labor has soared dramatically relative to that of unskilled labor despite a major uprise in the relative supply of skills. Given the observed movements in the relative quantities, these price changes could not be generated by movements “along the production function.” Neutral technical change is, by definition, silent on changes in relative prices. To make sense of these recent developments, one must introduce the concept of factor-biased technical change.

There is a skill-bias of IT-led growth. In the past 30 years in the wake of the IT revolution, technological change in the production process has been skill-biased with the rise in a disproportionate skills-premium. The rapid diffusion of ICT in the workplace, expenditures in information processing equipment and software, as a share of U.S. private nonresidential fixed investment, rose from 6% in 1960 to 40% in 2000 due to semiconductors. Ample microeconomic research and several case studies document a statistical correlation between the use of new technologies, like computers, and either the employment share of skilled workers or their wage share across industries. Skill-biased technical change (SBTC) occurs as shifts in production technology that favors skilled (hence more educated, able, experienced) labor over

unskilled labor by increasing its relative productivity and relative demand for and rise in skills-premium, defined as the skilled:unskilled wages ratio.

Technology skill complementarity takes three alternative formulations: (1) Postwar U.S. economy sharp decline of the constant-quality relative price of equipment investment, especially evident for information technologies whose prices fell at 10% per year. (2) Nelson-Phelps view of human capital (1966), “educated people make good innovators, so that education speeds the process of technological diffusion.” The more educated, able or experienced labor deals better with technological change. (3) Milgrom and Roberts (1990) argue that information technologies reduce costs of data storage, communication, monitoring and supervision activities within the firm which triggers a shift towards a skill-biased organizational design. Microeconomic evidence consistent with all these formulations of the technology-skill complementarity hypothesis exists.

The current state-of-the-art conclusion on technology-driven growth is that traditionally, in the growth literature, technological progress is associated with productivity improvements that benefit all workers and it is viewed as the chief long-run determinant of average income levels. Preliminary research found growth theory not fully capturing AI-induced growth, demanding for an investigation of the contribution of AI to productivity. This paper attempts to introduce the self-learning capacities of AI as a driver of endogenous growth in order to make the case that inclusive human-AI compatibility grants the optimum conditions in order to flourish AI-led growth on a social-welfare enhancing path.

### **AI as a driver of endogenous growth**

In today’s economy, robots and algorithms are taking over human decision-making tasks and entering the workforce. Most recently, big data has evolved to become a source of major assets and governments around the world are endeavoring to tax wealth creation from information transfer. This trend currently challenges conventional economic theory to capture growth based on purely capital and labor components. Algorithms, machine learning, and big data gains but also the sharing economy do not seem to be represented accurately in conventional growth theory components of capital and labor.

It is therefore proposed that contemporary growth theory should be revised as for integrating growth related to AI. Micro-macro and endogenous and exogenous growth theories could hold a novel component for AI as comprised of machine learning, big data, and robotics-induced growth components that are self-learning.

The new growth theory proposed is

$$Yn(t) = (A(t)K(t))^{\alpha}(A(t)L(t))^{\beta}(A(t)I(t))^{1-\alpha-\beta}$$

whereby  $Yn(t)$  denotes total new production function,  $A(t)$  refers to capital and labor-augmenting technologies or AI knowledge,  $K(t)$  is the capital,  $L(t)$  is the labor, and  $I(t)$  represents information gain, which Internet connectivity and self-learning capacities have made more accessible and available to flourish economically from.

Information sharing and big data storage as well as computation power are most novel features of AI. Access to information but also reaping benefits from information sharing through synergizing information and deriving inferences in relation to big data is an innovative value generation in the artificial age differing from conventional capital or labor. Having already a big data collection enhances the productivity of  $I(t)$  due to network effects. In addition, information is a non-rivalrous good, with a marginal utility gain that is exponential. Information is non-rivalrous as the consumption of one piece of information does not decrease or deplete the opportunity for another person to consume the information. Network effects from information and connectivity increase per additional user. The more information one holds, the better—hence, the marginal utility of information rises exponentially with

information gain. In all these features—network effect gains, non-rivalrous information consumption opportunities, and exponential marginal utility gains of knowledge—information is completely different from classical notions of capital and labor. Where capital and labor are exclusive, the knowledge economy and big data-driven growth are non-exclusive (Clancy 1998). A piece of information shared or written online does not take anything away or decrease utility; it actually increases people's utility non-depletable (Stiglitz 1998; Stroebe & Frey 1982).

Self-learning algorithms resemble learning entities that are capable to derive inferences from big data in order to make more rational decisions and plan strategically into the future. Therefore, it is proposed to measure AI as completely novel component to be considered in standard growth theory. Economically, the current AI revolution is thus believed to differ from conventional technology shocks by the knowledge economy obeying different laws of economic exchange (Lucas 2004).

### **Future research avenues**

Future research on the role of AI as self-learning entity for endogenous growth may address the notion of skills-biases due to technology transitions as a prerequisite for societal inequality and obstacle of international development. Capturing the hidden inequalities and disparate impacts of AI-induced growth is targeted at alleviating technological frictions and socio-economic impediments of technological change.

Skills-biases have introduced the theoretical possibility that technological progress benefits only a sub-group of society, placing technical change also at the center stage of the income distribution debate. Technical change implies rising inequality depending on the nature of technical change as well as circumstances within which change takes place (e.g., production process, institutional conditions, endogenous or exogenous change factors). Labor-saving technical change in labor-intensive processes implies a reduction in demand for labor and lower wage, which lowers costs of production and means higher profits for capitalists.

Technical change can also restructure industries so labor does not get reduced. Newly created work could re-employ if workers adapt and gain necessary skills to work with new technology and equipment, which depends on institutional factors such as law, policy, motivation and incentives to capitalists and bargaining power of trade unions. Future research may focus on determining positive influences on the dissemination of new technology that shares AI-gains democratically in society that reduces inequality. When providing people with more equal economic opportunities and capabilities, for instance, technology-led growth can lead to a network of learning even if fundamental inequalities between ownership of large-scale industrial means of production remain in place (e.g., smartphones and computers with internet encourage people to set up their own enterprises, access to stock market investments etc.). Institutional factors – such as intellectual property rights and patents – add competitive market advantage over rivals, yet persist inequality between firms.

In the future, most important work is needed to address human-machine compatibility in order to increase and cultivate a vital flow between AI-led growth and human learning capacities. A bundling of AI with human beings may benefit both worlds: With human help, AI can be improved in creative thinking skills and human decision capabilities, which are complex and add an emotional and irrational humanistic touch to economic productivity. Human beings can benefit from reaping the value of AI in enormous data storage and analyzing capacities that offer to be efficient, rational and eternally exponentially growing. So, for growth to be productive and humanistic, a harmonized interaction between human and AI is called for to pave the way for future wealth of mutually AI-human-driven nations.

## References

- Aghion, Philippe & Peter Howitt. 1992. “A Model of Growth Through Creative Destruction.” *Econometrica* 60(2): 323-351.
- Aghion, Philippe & Peter Howitt. 1998. *Endogenous Growth Theory*. Cambridge, MA: Massachusetts Institute of Technology Press.
- Arrow, Kenneth J. 1962. “Economic welfare and the allocation of resources for invention.” In R. R. Nelson (Ed.) *The Rate and Direction of Inventive Activity*. Princeton: Princeton University Press.
- Clancy, Erin A. 1998. “The tragedy of the global commons.” *Indiana Journal of Global Legal Studies* 5(2): 601–619.
- Domar, Evsey. 1946. “Capital Expansion, Rate of Growth, and Employment.” *Econometrica* 14 (2): 137–147.
- Dowell, Ryan. 2018. “Fundamental protections for non-biological intelligences or: How we learn to stop worrying and love our robot Brethren.” *Minnesota Journal of Law, Science & Technology*, 19, 1, 305–336.
- Harrod, Roy Forbes, Sir. 1939. “An Essay in Dynamic Theory.” *The Economic Journal* 49 (193):14-33, March.
- Lucas, Robert E. 1988. “On the mechanics of economic development.” *Journal of Monetary Economics* 22:3-42.
- Lucas, Robert E. 2004. The industrial revolution: Past and future. Annual Report of the Federal Reserve Bank of Minneapolis, May, pp. 5–20.
- Milgrom, Paul & Roberts, John. 1990. Manufacturing is undergoing a revolution: Technology, Strategy, and Organization. *American Economic Review* 80(3): 511-528.
- Nelson, Richard R. & Phelps, Edmund S. 1966. Investment in Humans, Technological Diffusion, and Economic Growth. *The American Economic Review* 56(1/2) 69-75.
- Noyes, Katherine. 2016. 5 things you need to know about A.I.: Cognitive, neural and deep, oh my! *Computerworld*, March 3, 2016. Retrieved at [www.computerworld.com/article/3040563/enterprise-applications/5-things-you-need-to-know-about-ai-cognitive-neural-and-deep-oh-my.html](http://www.computerworld.com/article/3040563/enterprise-applications/5-things-you-need-to-know-about-ai-cognitive-neural-and-deep-oh-my.html)
- Puaschunder, Julia Margarete. 2020. *Behavioral Economics and Finance Leadership: Nudging and Winking to make better Choices*. Cham: Springer Nature.
- Puaschunder, Julia Margarete. 2021. *Climate Growth Theory*. Proceedings of the 23rd Research Association for Interdisciplinary Studies (RAIS) conference, pp. 13-25, August 15, 2021.
- Puaschunder, Julia Margarete. 2022a. *Advances in Behavioral Economics and Finance Leadership: Strategic Leadership, Wise Followership and Conscientious Usership in the Digital Century*. Cham: Springer Nature.
- Puaschunder, Julia Margarete. 2022b. *Health Capital and Health Wealth*. Proceedings of the 29th International RAIS Conference on Social Sciences and Humanities organized by Research Association for Interdisciplinary Studies (RAIS), pp. 8-15, August 14, 2022b.
- Romer, Paul M. 1986. “Increasing Returns and Long-Run Growth.” *Journal of Political Economy* 94(5): 1002-1037.
- Romer, Paul M. 1990. “Endogenous Technological Change.” *Journal of Political Economy* 98(5): 71-102.
- Solow, Robert M. 1956. “A contribution to the theory of economic growth.” *Quarterly Journal of Economics* 70(1): 65-94.
- Solow, Robert M. 1957. “Technical change and the aggregate production function.” *Review of Economics and Statistics* 39(3): 312-320.
- Solow, Robert M. 1973. Is the End of the World at Hand? *Challenge* 16(1): 39-50 March/April.
- Stiglitz, Joseph. 1998. “Distinguished Lecture on Economics in Government: The Private Uses of Public Interests: Incentives and Institutions.” *Journal of Economic Perspectives* 12(2), pp. 3-22.
- Stroebe, Wolfgang & Frey, Bruno S. 1982. “Self-interest and collective action: The economics and psychology of public goods.” *British Journal of Social Psychology*, 21(2), 121–137.
- Swan, Trevor W. 1956. “Economic growth and capital accumulation.” *Economic Record* 32(2): 334-361.
- Uzawa, Hirofumi. 1965. “Optimum Technical Change in An Aggregative Model of Economic Growth.” *International Economic Review* 6(1): 18-31.

# Challenges and Opportunities of E-Commerce. A Contemporary Context of Pakistan after COVID-19

**Shakeel Khan**

*PhD Lecturer, Institute of Management Studies, University of Peshawar Pakistan  
Shakeel.ims@uop.edu.pk*

**ABSTRACT:** This research entitles us to know about the surge in trends of e-commerce in a developing country like Pakistan with real time-issues that many of its factors are facing and the potential opportunities in the Pakistan market. These different challenges are poor e-readiness, poor internet access, skepticism, and computer illiteracy. The research focuses on the hovering e-commerce opportunities that got a growth after the COVID-19 pandemic and how the socio-economic and political factors play their role in this regard. This research has used different newspaper, articles and reports as secondary data. Thus qualitative approach was used to find out the imminent opportunities and weaknesses of e-commerce in Pakistan. Finally, after detailed analysis of the data, the research concluded on how to take some lucid steps in order to sort out these issues and get advantage of the potential e-commerce opportunities in Pakistan.

**KEYWORDS:** growth, opportunities, challenges, pandemic, socio-economic, political, COVID-19, e-commerce, developing economies

## Introduction

Pakistan is the world 5<sup>th</sup> largest country in the world by population, with a total population of 227 million, situated in South Asia. It has the world's second-largest Muslim population. As many of the developing countries have the capabilities to flourish in e-business market via utilizing telephone, internet and other forms of communication and information technology (ICT) (World Trade Organization, 2013). Pakistan has an astonishing 6 billion e-commerce market and is ranked 37<sup>th</sup> in the world, placing it ahead of Iran and behind Israel. It has a surge in the domestic e-business market by 37% and contributes 29% worldwide. According to the Statista Digital Market Outlook, Pakistan e-commerce will continue to grow in the next few years. It is estimated that the compounded Annual Growth for the upcoming four years would be surged to 7% (statista Digital Market Outlook, CAGR 2021-25). It is estimated that 19% of the Pakistan population has at least bought 1 product in their life. Segregating the total population's taste and their behavior for online shopping, Fashion ranked at the top with generating 70% of revenue. It is followed by Electronic and Media with 12% of revenue share. Food and Personal Care share 11%, Toys make 4% and Furniture and Appliances with 4%. Pakistan is an under-developed country which means it is very much difficult for the e-business market to grow due to certain factors .i.e., computer illiteracy, skepticism, poor internet access, e-readiness, socio-economic and political. E-commerce groups are trying to manage these challenges and trying to devise solutions of the problems they are being jeopardy to during this crucial period (Waqas et al. 2020). Coronavirus was first discovered in China in 2019, which adversely affects the production and operations activities in China. China is the main production hub in the world that exports billions of worth products across the world. Pandemic put a cap on that exports and thus it badly affected the global economy (Meyer 2020). However this e-business trend got soar after the COVID-19 pandemic with an increase in the opportunities for new start-ups and online platforms. The COVID-19 has made a huge contribution in the growth of electronics and online accessories so that anyone can place online orders for products like fashion, electronic, foods, clothes and tactical gadgets. During the pre-covid-19 era people were very skeptical about placing order for online products, people were unaware of different online platforms and basic literacy to use smart phones. Post pandemic has dramatically changed the trends as a large portion of the population is now opting

to order online and is getting efficient day by day to recognize the genuine and real shopping platforms. It was at this reason people during the pandemic has survive their basics needs due to e-business (Ahmad & Hui 2020).

The pandemic was out of the thin air and no one was ready to face it and it really plummeted the world economies. As the situation was getting worse day by day for that reason people took resort to online platforms for grocery (Mehraeen et al. 2020). The launch of Web 3.0 has alarmed all the digital and online platforms to prove their mettle in the world of economies and all the developing countries including Pakistan would be of good if resorts to e-commerce stream for generating revenue and Pakistan has announced that this sector would be totally tax free which herald a great future for new start-ups in Pakistan. E-commerce has been predicted to be a new driver of economic growth for developing countries, (Humphrey et al. 2003).

### Literature Review

When we talk about the developing countries, we mean all the countries came in to being after the colonization and third world countries that are still at the receiving end of technology and IT infrastructure. These countries are always entitled to poverty, insecurity and instability (Japhet et al. 2010). Despite the fact that e-commerce is proving its mettle in most of the developing economies it is still facing barriers in its mushrooming i.e., (technology, network availability of information and communication technology skills, qualified human resources); cost factors (costs of Information and communication technology equipment's and networks); and insecurity and mistrust factors (no payment gateway, and legal frameworks), poor distribution logistics services, "skepticism with online purchases", and "problems in returning products (OECD 2004). These are the main factors for which the e-commerce in developing countries is facing hurdles as despite flurry smart phones and electronic usages in these economies ,people won't just go for online shopping due this main reason that there is no such secure payment gateway. The internet availability is not just ample enough for the development of e-commerce. (Oxley & Yeung 2001). However, despite these hurdles e-commerce in developing countries like Pakistan has significantly got flourished saying by a research as of March 2020 clearly shows that the number of online shopping has grown in the market of retail application and e-commerce mobile apps (Jebril 2020). Segregation of these online customers depicts a surge in usage of applications that offer food delivery and services in Paksitan, Malaysia, Thailand, and Singapore ( Karimi-Zarchi 2020). It is published in a research that these new users are getting an increase in numbers day by day since April 2020 (Pymnts 2020). There is a question that arises that what are the main factors in the growth of e-commerce that makes developed countries more suitable for it than developing countries i.e., tradition business model, consumer expectations and conventional consumer behavior in this regard (Thoung 2002). Side by Side with the internal factors, there are some external factors that impede the growth of e-commerce in under-developed country i.e., infrastructure technological, economic, political, legal, social and cultural barriers that exist in the country that is the External Barriers (Terence 2007). To make these issues to be pacified, Bough (2004) has given us four main e-commerce strategies: empowerment, customer satisfaction, leadership and discerning pricing strategies, that will possibly help out the future and growth of e-commerce in these countries.

There has been a substantial increase in the e-commerce market of Pakistan referring to the last few years which marked around Rs. 51.8 billion in FY 17 that got continuous increase till 99.3 billion in FY 18 (KCCI. E-commerce 2019) depicting a marvelous growth of 92%. There has been private as well plenty government initiatives that upheld this sector in more advancement in ICT technology served as a basis of development to this sector. Government backed policies i.e. E-commerce policy and digital Pakistan policy are some initiatives. Despite the bleak and exacerbated payment and transaction security of Pakistan it has been

developing good transaction gateways and for an effective e-business to run, these seem to be rudiments. Side by side with the e-commerce development in Pakistan there have been barricades that impede its growth i.e., improper infrastructure and secure payment gateways that delay the flow of payments on both sides. Most customers are still dealing on cash on delivery transaction system (Research and Markets. Pakistan B2C ECommerce Market 2015). People are unacquainted of e-banking and at the same are very skeptical with the online payment system and go for cash on delivery (Moomal et al. 2015). Pakistan has been facing one of the major issue of the people illiteracy and their unacceptability of e-businesses and online mode of payment. Referring to the context of Pakistan in 2017, only 5% of the total internet users in Pakistan are engaged shoppers, compared with 11% in India and 8% in Bangladesh. When this data has been compared with the total population of Pakistan, it was found that only 1% of them, it are actually using internet which is quite below than average and needs to be developed in order to promote the culture of e-commerce in Pakistan. Internet is the backbone of e-business, according to Olarreaga and Austin (Olarreaga et al. 2012) and Borga and Koncz Bruner (2011) internet is crucial like life blood for physical as well as digital services (Lendle et al. 2016). According to a survey conducted by World Bank of e-commerce enterprises, the main issue they pointed out for inter-border e-commerce was connectivity issue. (Saez et al. 2020) there are two main reason for the restriction of digitalization I.e. poor infrastructure and skills, which is then followed by poor and intermittent energy shortages that has bad impact on businesses and has curb their sales by up to 60%. The intermittent and poor electricity embedded with high energy cost is the reason Pakistan is lagging behind in the industrial sector. The bad and poor management on the side of parcel delivery and unscrupulous tracking system with inefficient staff lead to business catastrophe. Majority businesses has recently has shut down their service in Pakistan due to the above mention reasons i.e., Airlift.pk.

## **Methodology**

This research has utilized qualitative approaches i.e. and based on secondary data for analysis and data is collected from different reports published by government and other organizations. Qualitative approaches are utilized in gathering non-numerical data to comprehend the basic concepts, opinions, or expression. The qualitative research data is generally collected from diversified sources which may incorporate both primary as well as secondary resources Qualitative approaches are efficacious to gather data about social sciences and humanities (Pritha Bhandari 2020). After detail analysis of the resulted data we have been able to describe some of the issues and ground reality of the e-commerce market in Pakistan. These realities are as follow:

### ***Strength:***

There are many factors which can lead to a prosperous e-commerce development i.e. attractive global production, protecting startups, detain business and consumers, human resource training, government policies and regulations (Khatibi 2002). Soon after inception of COVID-19, there was a substantial increase in the e-commerce sector. Majority of people were under restriction of lockdown and were unable to reach the physical market for their daily needs for which they shifted to the online platform and thus the sobriquet of e-commerce was recognized and acknowledged by the society. Some of the key steps was taken by the hitherto government in order to prosperous the growth of e-commerce by laying down the following key steps:

#### **1. Financial inclusion and digitization through Payment Infrastructure:**

They have done their best to connect the different startups and existing enterprises with the banking channel so that all the transaction get a record i.e., payment gateway, where no offensive buyer or offensive seller will take advantage of the unsecure payment. Secondly they drove a campaign in order to impede the cash on

delivery system and to make a uniform payment gateway so that a digitalization of economy gets sway.

## **2. Empowering Youth and Small and Medium Enterprises (SMEs) through e-Commerce:**

The New e-commerce policy has emphasized greatly on the new SME in the field of e-commerce startups as SME contribute a major about 95% in the GDP of Pakistan. They have been given opportunities to get themselves up to mark by providing them new e-Commerce business facilitation hubs, establishing a national e-Commerce aggregator, empowering youth and SMEs and extending access to finance for SMEs to promote digitization and skill development.

## **3. Consumer Protection:**

Existing consumer protection laws in Pakistan is not up to the mark for which the new e-commerce policy has made it mandatory for online ‘dispute resolution mechanism’, a mechanism that is made by the federal and provincial government in order to subject all the online transaction on “dispute resolution mechanism”.

## **4. Taxation Structure:**

In order to reduce the burden of double taxation on corporate sector the government in its new policy has enacted a tax free advantage for the web developers that create software and applications.

## **5. ICT Sector and Telecom Services in Pakistan:**

In 2003 the IT and communication sector were de regulated by the then government after that it has witnessed a substantial growth in its market and shares. In 2014 after the inception of 3G/4G this sector has got more increase and growth. For supporting the equitable and sustainable growth of telecommunication/broadband services, the Government of Pakistan has established Universal Services Fund. Several programs have been rolled out by MoITT through the Universal Service Fund aimed at the provision of telecommunication services in commercially non-viable un-served/under-served areas.

## **6. Data protection and Investment:**

In order to have an effective e-commerce base in Pakistan has enacted some new rules and regulation for the data infringement and protection of customers. This is truly a new dawn for the e-commerce sector in Pakistan.

### ***Weaknesses:***

With the emergence of e-commerce there are still some barriers that impede its growth in Pakistan. Some of them are as follows:

#### **1. Offensive Customers:**

In an under develop country one must not be astonished about the primitive attitude and behavior of some customers. A lot of issues have been facing by e-commerce enterprises about the fake order placement, wrong addresses, and obscene language with the rider and fake reasoning about the order return and replacement. This type behavior badly maligns the culmination of such businesses. In order to tackle it, government must take precautionary measures to secure the interests of online shops by making a safe payment gateway for all the transactions.

#### **2. Offensive Sellers:**

E commerce in Pakistan is still in the preliminary stages, which makes majority of the customers unaware of the fake sellers and products. They place order for one

item and get another on delivery. This type of behavior badly damages the trust of both genuine seller and customer and make the jeopardy of online businesses.

### **3. Illiteracy:**

One of the main reasons in the growth of online businesses is the uneducated and illiterate people of the Pakistan. They are unaware about order placement and putting delivery information which makes it very difficult for the rider to deliver the parcel to its appropriate place.

### **4. Ineffective Logistics Services:**

One of the most reasons for impediment of e-commerce growth is the poor logistics services .i.e. fake reasons of riders about locations and customers response. These fake reasons led by parcels replacement and return badly damage the inventory turnover of the online seller.

### ***Threats:***

Living in a country like Pakistan one must witness the potential and imminent threats to e-commerce .i.e. poor human resource, unqualified staff, cybercrime, political turmoil, and economic contingency. Above all the threats the most vicious one is the internal threats start from poor and unqualified staff, lacking technical and professional skills which can have adverse effects on company performance and reputation. Some external threats are from cyber hacking activities that can directly hack low secure websites and can emanate private data. Pakistan is a developing country where there would be consistent political turmoil intermittently which creates a cauldron for this sector. These threats are elaborated in a more detailed way below;

#### **1. Political Threats**

It is evident that Pakistan is one of the developing countries where political turmoil is usual to be seen. In such economic crises that has already engulfed world's stable economies; it makes Pakistan e-business more prone to the adverse impact of the political instability.

#### **2. Cyber-Crime**

Pakistan is in the preliminary stages to be embedded with modern technology yet it is very jeopardy to flurry online frauds and cybercrimes as technological literacy is yet to be diffused among the people. E-business finds it very hard to flourish in such skeptical environment.

#### **3. Economic Uncertainty**

Pakistan economic always finds itself between the devil and deep blue sea which make the investor more risk averse and a spate of bearish trend of KSE-index could be seen evidently. This continuous faltering trend of rupee against the dollar makes it very lousy for the e-business organizations to survive. These trends could be hover depending on the government policies and foreign trade relations.

#### **4. Taxation System**

The Federal board of revenue issued SRO 984(I)/2021 for the imposition of withholding tax on online market place under the eleventh schedule to the Sales Tax Act, 1990. The Federal Board of Revenue (FBR) has notified September 1, 2021 as the effective date for applicability of two percent sales tax of the gross value of supplies on online market places. Apart from this tax there are plethora preliminary taxes at the start of registering company. This adversely affects the business and grit of the employer to pursue his future vision and mission. Government of Pakistan should amend its taxation system in such a way that it neither affects country own revenue nor organization revenue.

## Opportunities

### 1. Government and private sector initiatives:

Government of Pakistan has launched several initiatives for young entrepreneurs to pursue their career and curb the extra burden of un-employment on government. The ex-prime minister of Pakistan, Imran Khan has kicked off many such projects including tax exemption of this sector. The new government is also devising a way out to gather revenue as well as woo the e-commerce sector as government is already between the devil and deep blue sea. Private sector has also started initiatives like extreme commerce by Sunny Ali, enablers by Saqib Azhar etc where proliferate incubates are being inculcated with a diverse skills and knowledge. These incubates when get proficiency can contribute very well in national economy. Their commendable commitment to bind the youth with more advance and competitive skills of online earning and to make them self-independent especially women. It is for this reason Pakistan has ranked 37<sup>th</sup> for e-commerce revenue generation of about \$6 billion (statista Digital market outlook, CAGR 2021-25). It depicts the future of e-commerce in Pakistan and all the development of economy depending on it.

### 2. Technological advancement:

As the world is dynamic and with the passage of time new technologies get evolved that create surfeit opportunities to assuage the customer needs and demands. With the development of IT infrastructure in Pakistan, customer needs and demands are mainly fulfilled with electronic means.

### 3. Market viability:

People in Pakistan are now acquainted with online shopping and the ratio of engaged online shoppers are now soaring day by day. Business markets are substantially turning towards online and electronic means which is why people are now accepting the online businesses and shopping.



1.0 Flowchart for SWAT analysis

**Challenges:****1. Un-secure Payment Gateways:**

Despite the unprecedented growth of e-business in Pakistan there is still no such secure payment gateway where customer and seller transactions could be preserved.

**2. Logistic Issues:**

Main impediment in the growth of e-business in Pakistan is ineffective logistics services. There have been plenty issues from the logistics side on the part of late delivery, fake reasons, offensive and churlish behaviors with the customers.

**3. Supplier Issues:**

Developing country like Pakistan is being damaged severely due to fake items delivery to their customer. This custom badly mistrusts the engaged shoppers against the electronic mean of shopping and they shift their taste of shopping from online to physical mean.

**4. Taxation and bylaws:**

The current taxation system has badly plummeted the grit of entrepreneur to pursue their career in electronic business due to heavy tax burden on them from the government side.



2.0 Flowchart of Challenges and opportunities

**Conclusion**

Electronic commerce has opened new dynamic doors for businesses; it has substantially created new grounds in education fields. It has rendered the basic idea that there is proliferate existing potential for the inculcation of e-commerce. Preliminary, new users of Internet literate would be impeding to pursue any sort of business activities via electronic means, pertaining to investment and return security as their main concern. Having a certain and substantial grit to establish customer viability on electronic means of shopping and other e-commerce services, their skepticism, imminent issues and ethical hazard should be defined, comprehended and curbed. E-business has brought abundant advantages in various fields, however, it requires vigilant attention to preserve consumer rights at the same time. For the development of e-commerce scion it would certainly take into account the efficiency and development of IT infrastructure and security frameworks, secure payment gateways which cannot be possible without technological advancement and system bylaws. E-Commerce is the eventual fate of shopping. The initiation spree of 3G and 4G networks, the web economy kept on expanding vociferously. In the upcoming 5-6 years, Pakistan will be having about 40 million net users which will protrude many developed and well settled countries in the world. This shows a bright future of e-commerce in Pakistan. E-commerce in Pakistan is still in developing stages and would need plethora time to establish its

mettle when all these impediments would be obliterated. There are certain steps taken by the previous government to uphold this sector by exempting it completely from taxes, however the current government has yet again bombarded this sector with tax. The web 3.0 is in the preliminary stages but once it is launched completely, would certainly proliferate its scion in Pakistan. Government should start basic inculcation and acquaintance to the general public so that they get to know about the pros and cons of e-business. They should also establish as much as incubation center, free of cost for youth so they may get a sense of self-employment in basic stages. This will also mitigate the un-employment burden on already economic-faltering Pakistan. Government should really devise a new friendly taxation system for e-business so that it motivates to-be and nascent entrepreneurs to establish new businesses.

## References

- Ahmad, T., Baig, M., & Hui, J. 2020. "Coronavirus disease 2019 (COVID-19) pandemic and economic impact." *Pakistan journal of medical sciences*, 36(COVID19-S4), S73.
- Ashraf, M. W., Latif, K., Khan, Q., & Jabbar, J. 2020. "The consequence of corona-virus (covid-19) on e-business in Pakistan." *International Journal of Engineering & Technology* 9(3): 612-615.
- Baker, S. R., Farrokhnia, R. A., Meyer, S., Pagel, M., & Yannelis, C. 2020. "How does household spending respond to an epidemic? Consumption during the 2020 COVID-19 pandemic." *The Review of Asset Pricing Studies* 10(4): 834-862.
- Baldwin, R. 2016. "The World Trade Organization and the future of multilateralism." *Journal of Economic Perspectives* 30(1): 95-116.
- Borga, M., & Koncz-Bruner, J. 2012. "Trends in digitally-enabled trade in services." *Bureau of Economic Analysis US Department of Commerce*.
- Bough, P. 2004. "Taxonomy of e-business adoption and strategies in small and medium enterprises." *Journal of John Wiley & Sons*.
- Gocha, A. 2018. "Smart materials make smartphones." *Am Ceram Soc Bull* 97: 8-23.
- Humphrey, J., Mansell, R., Paré, D., & Schmitz, H. 2003. Reality of e-commerce with developing countries.
- Javed, A. 2020. "Prospects and Problems for E-commerce in Pakistan." *Asian Journal of Economics, Finance and Management*, 131-139.
- Karimi-Zarchi, M., Neamatzadeh, H., Dastgheib, S. A., Abbasi, H., Mirjalili, S. R., Behforouz, A., ... & Bahrami, R. 2020. "Vertical transmission of coronavirus disease 19 (COVID-19) from infected pregnant mothers to neonates: a review." *Fetal and pediatric pathology* 39(3): 246-250.
- Khatibi, A. A., Ismail, H., & Thyagarajan, V. 2002. "What drives customer loyalty: An analysis from the telecommunications industry." *Journal of Targeting, Measurement and Analysis for Marketing* 11(1): 34-44.
- Lawrence, D. J. E., & Tar, D. U. A. 2010. Barriers to E-Retailing in Developing Countries.
- Le, T. T., & Koh, A. C. 2002. "A managerial perspective on electronic commerce development in Malaysia." *Electronic commerce research* 2(1): 7-29.
- Lendle, A., Olarreaga, M., Schropp, S., & Vézina, P. L. 2016. "There goes gravity: eBay and the death of distance." *The Economic Journal* 126(591): 406-441.
- Mehraeen, E., Hayati, B., Saeidi, S., Heydari, M., & Seyedalinaghi, S. 2020. "Self-care instructions for people not requiring hospitalization for coronavirus disease 2019 (COVID-19)." *Archives of Clinical Infectious Diseases*, 15(COVID-19).
- Moomal, A., & Masrom, M. 2015. "ICT Development and Its Impact on e-Business and HRM Strategies in the Organizations of Pakistan." *Journal of Advanced Management Science Vol, 3*.
- OECD, O. 2004. "The OECD principles of corporate governance." *Contaduría y Administración*, (216).
- Olarreaga, M. 2012. Enabling TradErs To EnTEr and grow on ThE global sTagE.
- Oxley, J. E., & Yeung, B. 2001. "E-commerce readiness: Institutional environment and international competitiveness." *Journal of International Business Studies* 32(4): 705-723.
- Saez, S., Rizwan, N., & van der Marel, E. 2020. Digital Pakistan: A Business and Trade Assessment.

- Sharma, A., Gupta, P., & Jha, R. 2020. "COVID-19: Impact on health supply chain and lessons to be learnt." *Journal of Health Management* 22(2): 248-261.
- Sharma, A., Gupta, P., & Jha, R. 2020. "COVID-19: Impact on health supply chain and lessons to be learnt." *Journal of Health Management* 22(2): 248-261.
- Sosoranga Morales, M. R. 2020. *Influence of motivational techniques for the development of writing skill* (Bachelor's thesis, Universidad de Guayaquil. Facultad de Filosofía, Letras y Ciencias de la Educación).
- Tse, T. 2007. "Reconsidering the source of value of e-business strategies." *Strategic Change* 16(3): 117-126.

# Freedom in Business. Concept and Forms of Manifestation

**Manuela Niță**

*Faculty of Law and Administrative Sciences of Valahia University in Târgoviște, Romania  
manuela\_nita74@yahoo.com*

**ABSTRACT:** Liberty is generally regarded as the right of any individual to act according to his own will. This freedom is also transposed in business as the freedom of initiative in which the entrepreneur manifests his legal will according to his interests. The present analysis starts from the role of the principle of freedom in business within the branch of law, in order to identify the normative benchmarks that give it substance and the components of this freedom from an economic and legal perspective, with references to practical elements. The study also addresses the correlation between the values of this freedom and the existence of standard, framework and adhesion contracts that do not exclude the manifestation of the will of the parties in giving content to the business, being protected from any attempt at discrimination or abuse by the authorities. Freedom in business and freedom of contract is analyzed with reference to Romanian and European legislation, but also to specific norms of international trade law, especially regarding the freedom to choose the applicable law.

**KEYWORDS:** undertake, legal will, competition, usury clause, consensualism

## **Introduction**

As in any branch of law, the principles are meant not only to characterize, to individualize a certain branch of law, but also to provide an impersonal, comprehensive guide for orientation in the respective legal relationships and as premises for solutions, for solutions in the situations in that there is no concrete legal coverage, in this case.

The principles are meant to compromise, to remove, to highlight the lack of substantiation, of reason, the illegitimacy of particular norms, of a way of proceeding, and, in general, the excessive, alienated exercise of regulatory authorities, of control and sanctioning, authorities that are enslaved, taxation of the so-called “regular”, “praetorian” law. (e.g.: General Anti-Tax Fraud Directorate, Court of Accounts).

These principles participate in the status of autonomy of business rights. Also, they are true rules of conduct, of orientation, in business when the legal norms are lacunae, incomplete, confused, anachronistic, out of date or are texts adopted considering other historical realities.

General principles that we find in business law are: the principle of freedom in trade; the principle of appearance in commerce; the principle of onerous nature of business; the principle of fair and normal competition; the principle of promoting consumer rights. As is natural, these principles are subordinated to the general principles of law (Boghirnea, Dinică and Dinică 2011, 333-342; Ionescu 2005, 69-71).

## **The content and normative support**

The principle of freedom in business is a composite principle, having a predominantly economic aspect - namely the freedom to undertake - and a predominantly legal aspect - namely the freedom of legal expression.

Legal support and coverage are the concern of the fundamental law - the Constitution and the laws that guarantee and regulate the fundamentals of the market economy, followed by competition laws, company law, trade convention regulations.

The normativity of this principle would not have been created, without the ideological option for the market economy and trade civilization. It is marked by the emblematic declaration of art. 135 para. 1 of the Constitution: “Romania’s economy is a market economy,

based on free initiative and competition.” This constitutional declaration corresponds to a fundamental and irrevocable obligation in accordance with the European Union treaties.

It should be noted for this correspondence, the provisions of art. 3 paragraph 5 of the Treaty on European Union “In its relations with the rest of the international community, the Union affirms and promotes its values and interests and contributes to the protection of its citizens. It contributes to peace, security, ..., free and fair trade, ..., as well as to the strict observance and development of international law, including respect for the principles of the United Nations Charter”. Also, art. 120 of the Treaty on the Functioning of the European Union establishes that “... Member States and the Union act in accordance with the principle of an open market economy, in which competition is free, favoring the efficient allocation of resources, in accordance with the principles established in Article 119.”

### **Freedom to undertake**

The freedom of enterprise or initiative, along with the freedom of competition, is the most concentrated matrix and substantial expression of the market economy.

The Romanian Constitution expresses it in art. 135 para. 2 lit. an as being “freedom of trade through the state’s obligation to ensure the protection of fair competition, the creation of a favorable framework for the exploitation of all production factors.” Upon a careful reading of the text, freedom in trade appears supported and conditioned by the stimulation of fair competition and equal opportunity in trade.

The freedom to undertake or of economic initiative means precisely the absence of any factors, circumstances, elements that are under the control of the authorities in front of the decision of the entrepreneur, the investor, the company and the businessman - to conceive and carry out operations that supply the “open” market, the products and services claimed by it and by consumers.

The constitutional framework is specified in the Competition Law by prohibiting any “actions of central or local public administration bodies, having as their object or having the effect of restricting, preventing or distorting competition...”, by limiting the freedom of trade or the autonomy of professional traders to exercise licit and regular trade by establishing discriminatory conditions for their activity.

The Treaty on the Functioning of the European Union (2008) requires member states to establish and guarantee “economic policies in accordance with the principle of an open market economy, in which competition is free” (extract from art. 119). The operation and efficiency of this principle presupposes the absence of constraints, discriminations, inequalities.

Freedom in trade is the freedom to undertake, to conceive, to mobilize funds, to make investments, to establish profitable enterprises, to capitalize on capital, other resources, to exploit the trade fund. It is not reconciled with political constraints, such as those blocking the market economy, the free, normal competition. It is not reconciled either with administrative constraints, such as the restriction of the field of private initiative, with monopolies, quasi-monopolies, pathological bureaucracy, nor with economic limitations, which prohibit access to resources, the presence in the civil circuit of some goods and economic values, currency regime, fiscal regime and customs.

Based on this principle, by art. 44 par. 8 of the Romanian Constitution, “Property acquired lawfully cannot be confiscated. The legal character of the acquisition is presumed”, in other words, the interested authority must prove the illegal character and not the targeted enterprise. Freedom in trade also means the governance of the healthy, normal competitive game by the state.

## Freedom of legal expression

Freedom of legal expression is the freedom of expression of any person, within the limits of a legal capacity, freedom according to which the subject of law, its bearer, decides unhindered, unconstrained, whether to engage, compare or not in a certain legal relationship: to make a contract or not, to marry or not, to enter into an employment relationship or not and other infinite number of acts that presuppose the manifestation of legal will.

The legal will is that which creates a special bond between two or more persons, covered or controlled by legal norms, norms of conduct whose realization is assisted and guaranteed by the public force.

The freedom of legal expression in business is expressed by the recognized availability of participants in business relations to engage, to set up or not a business, to do it in one form or another, with one instrument or another, to give a concept content exclusively personal to the business: a freedom of business conception, of choosing a partner, a freedom of legal form, of a legal instrument, a freedom of stipulation of the elements and conditions of the business.

### a) *Freedom of form*

Unlike civil law, where certain acts and legal operations must take on a solemn, authentic form in order to be valid, in commercial law and business law there is, in principle, no condition for the validity of a certain form of the contract. Even in civil law, this condition is not the rule. The rule is consensualism (what works is consensus, without a special form), but in civil law exceptions have a frequency that seriously affects the principle. Ex.: any mortgage must have the authentic, notarial form, as well as land alienations, wills, subrogation in the rights of the paid creditor consented to by the debtor. There are certain eminently civil operations: the alienation of land, from which a person or business firm cannot dispense. These operations must be done in the authentic form, even if they serve to set up a business, for the location of a factory or dismantling of the company.

This freedom of form is not contradicted by the proliferation of standard contracts, framework contracts and adhesion contracts.

*The standard contract* is a contract whose clauses are mostly prefabricated by the contract offeror and the business, their purpose being to facilitate the completion of operations, to avoid stipulation gaps and to provide the business with an elaborate legal instrument. The contract also has "free spaces" where the parties introduce particular stipulations, for a specific business. These contracts are justified, but they may represent an abuse, an excess of a dominant position, but they are justified by the particular technicality or complexity of a certain business, by the uniformity and frequency of certain businesses and, in general, they are justified by the desire to facilitate the achievement business and to give it a more coherent, safer legal framework, e.g., the compulsory insurance contract for car civil liability, the bank credit contract.

Rules for using these model contracts:

1) A prefabricated clause is not considered modified if the modification is not perfectly identical in all copies;

2) The added clause, from the free spaces, which contradicts the prefabricated clause, prevails.

*Framework contracts* are a kind of model contracts, but of legal extraction, with form recommendations resulting from international conventions. They are approved by various normative acts, being contracts for services, services that are of general interest, executed under certain conditions that demand uniformity, e.g., the social insurance contract, the family doctors' contract, tuition contracts, lease contracts, contracts for complex, industrial supplies. The framework contracts were justified by the particular complexity and technicality of the operations.

*The adhesion contracts*, unlike the first ones, are not only prefabricated, they are the expression of a predominant will of the economic agents who offer the service, the supply, the performance due in essence to the monopoly, as well as the special technicality, the special conditions in which the performance can be performed in general. Ex.: the drinking water supply contract.

We also find these types of contracts in international trade, with international bodies and associations constantly concerned with developing model, framework, standard contract models, contracting guidelines and general contracting conditions. This activity, as a whole, is called standardization. The UN Economic Commission has a special role in this regard, for Europe (Sitaru 2008, 146-147).

b) *The freedom to choose the legal instrument, to design it*

Business partners are free to use a regulated (named) contract or to design an unregulated (unnamed) (Militaru 2015, 43-46; Vâlcu and Didea 2013, 31-42) contract themselves. They can create a hybrid, a composite contract, and in the case of supplementary rules, they can derogate from the legal regulation of a certain contract, leaving it up to the parties to choose the conduct, and if they have not chosen, the provisions of the rule apply. This regulation is a content offer only. In practice, if the partners correctly identify the contract, the legal texts, which regulate the rights and obligations of the parties, they must not be expressly reproduced in the contract, it being sufficient to correctly mention the normative act and the applicable article in the respective issue, or the parties can waive a certain benefit provided in a normative act, if the norm is permissive, for example they can waive liability for hidden defects in the case of a sales contract, the guarantee for eviction.

In business there is a true freedom of technical-legal creation. According to art. 1169 of the Romanian Civil Code (2011). We must specify that in Romanian law the framework regulation in contractual matters is represented by the provisions of art. 1166-1323, art. 1469-1565 of the Civil Code) “The parties are free to conclude any contracts and determine their content, within the limits imposed by law, public order and good morals.” It is enough to remember that leasing operations were practiced until 1997, although the regulation was given for the first time by Ordinance 51/1997 (published in Official Gazette no. 224/30 08.1997). In the same situation are franchise operations (Ordinance 52/1997 regarding the legal regime of the franchise), the factoring contract, as a financing technique (factoring as a commercial operation was mentioned in the Government Emergency Ordinance no. 10/1997 regarding the reduction of financial blockage and economic losses, but a complete definition was given by art. 6 paragraph (2) of Law no. 469/2002. Even under these conditions both normative acts were abrogated). Thus, the parties chose an unnamed co-contract, which later became a named one through legislation. The Romanian Civil Code in art. 1168, in the chapter Rules applicable to unnamed contracts establishes that “The provisions of this chapter are applied to contracts not regulated by law, and if they are not sufficient, the special rules regarding the contract with which they are most similar.”

c) *Freedom to choose the applicable law in international commercial contracts*

The identification of the law applicable to a contract is questioned only in international contracts marked by an element of foreignness, an element of such intensity that it can subject that legal relationship to the application of at least two distinct legal systems. *Lex causae* (applicable law) is a *lex voluntatis*, the law resulting from the will of the parties. This freedom of choice is translated into the possibility that in an international operation the partners may stipulate that the applicable law is even a third-party law, which is not the state of headquarters or citizenship/domicile of any of them, such as the law of the country in which concludes the act or the law of the country in which the ascertaining document is drawn up (Dumitrescu 2014, 108-109).

Concluding what we have shown about the freedom of legal expression, we must remember that the principle of freedom in business is limited by the rejection of two types of clauses (Militaru 2013, 170-173):

1) Leonine clauses – when one of the parties’ reserves all or most of the benefit without participating in the losses.

2) Usury clauses – clauses by which one of the parties waives any responsibility for non-execution of the contract, thus creating a contractual immunity, i.e., a discretionary position.

It is a principle with constitutional support: art. 135 para. 2, lit. a) from the Constitution obliging the state to ensure “freedom of trade, protection of fair competition, creation of a favorable framework for the exploitation of all production factors.” According to this principle, the freedom of economic initiative must be guaranteed by the state, by the public authorities. They have the obligation to stimulate all initiative factors and to provide them with an environment conducive to licit businesses.

## Conclusions

Freedom is a very generous term with many meanings, and precisely for that reason, we tried to capture in the present study what characterizes its manifestation in the commercial business field. Whether we are talking about the freedom to undertake, to have private initiative, whether we are discussing the freedom of legal expression, all of these presuppose the manifestation of the will of the parties, an aspect that is valid both in domestic law and in international trade. The parties must show themselves in this sense because the business means innovation, technical and/or legal creation, it means overcoming some temporal or spatial barriers. Trade has an extraordinary expansion, visibly marked by digitization, electronic operations, in the online environment. All this does not reduce the role of the principle of freedom in business, but strengthens it. There is the concern of the states, the international community, the Chambers of Commerce and Industry to ensure, on the one hand, the operation of freedom within the limits of the law and, on the other hand, to promote freedom through their own instruments and to maintain it as a matter of principle.

## References

- Boghirnea, Iulia, Dinică, Corina, and Dinică, Mihai. 2011. “Role of Law in the General Principles”. In *Journal of Legal Studies*, Year VI, Supplementary no. 2.
- Dumitrescu, Aida Diana. 2014. *Dreptul comerțului internațional (International Trade Law)*. Bucharest: C.H. Beck Publishing House.
- European Union. 2008. Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, 2008/C 115/01. Published in the *Official Journal of the European Union* (OJ C 115/47) of 9 May 2008.
- Ionescu, Steluța. 2005. “Principiile generale ale dreptului și jurisprudența” (“General Principles of Law and Jurisprudence”). In *Annals of the Faculty of Legal Sciences*, nr. 2 (4), Anul II. Târgoviște: Bibliotheca.
- Militaru, Ioana Nely. 2013. “Obligațiile complexe potrivit noului Cod Civil” (“Complex obligations according to the new Civil Code”). In Volume *Agrarian economy and rural development - realities and perspectives for Romania*. Bucharest: ASE Publishing House.
- Militaru, Ioana Nely. 2015. “Classification of Contracts according to the New Civil Code”. In *Romanian Journal of Statistics*, Supplement no. 1.
- Ordinance 51/1997 regarding leasing operations and leasing companies. Published in Official Gazette no. 224/30.08.1997.
- Ordinance 52/1997 regarding the legal regime of the franchise, published in Official Gazette no. 224/30.08.1997.
- Romanian Civil Code. Published in Official Gazette no. 505 of July 15, 2011.
- Sitaru, Dragoș-Alexandru. 2008. *Dreptul comerțului internațional. Partea generală (International Trade Law. The general part)*. Bucharest: Universul Juridic Publishing House.
- The Romanian Constitution. (1991/rev. 2003). Published in the official gazette of Romania, Monitorul Oficial, Part I, No. 233 dated 21 November 1991.
- Vălcu, Elise-Nicoleta, and Didea, Ionel. 2013. “Brief considerations on the influences of the Union’s provisions in the new Romanian Civil Code.” In *Agora International Journal of Juridical Sciences*, v. 7, n. 2.

# Preconditions for the Compliance in Cybersecurity

Inga Malinauskaite-van de Castel

*PhD, Mykolas Romeris University, inga.malinauskaite@mruni.eu*

**ABSTRACT:** In the last few decades, cybersecurity regulations have developed rapidly, and there have emerged new regulatory areas that may influence security, which were not known before, and which have to be followed up on. Individual persons, companies, and states have to adjust quickly to these new approaches and comply with the norms of cybersecurity. This article reveals the main preconditions for a successful cybersecurity compliance process. The aim of this article is to reveal the preconditions which impact a successful cybersecurity compliance process in organizations and companies.

**KEYWORDS:** compliance, cybersecurity, preconditions for compliance implementation

## 1. Introduction

The term *compliance* has become well known during the last decade, when regions and countries have enacted new regulations which have had to be implemented. Generally, compliance means adhering to a rule, such as a policy, standard, specification, or law. According to the Cambridge Dictionary (2022), in law the word *compliance* refers to the obeying of a particular law or rule or acting in accordance with an agreement. Political scientist John Scholz has used game theory to understand the interactions between regulators and the regulated and has developed the question of compliance from the perspective of behavioral psychology (Roch, Scholz, and McGraw 2000). These discussions may further lead to sectoral compliance matters, including healthcare, the financial sector, energy, and government. From a practical point of view, compliance needs to be viewed as a continuous organizational process and not as a reactive response.

*Cybersecurity* covers all aspects of the prevention, forecasting, tolerance, detection, mitigation, removal, analysis, and investigation of cyber incidents (ENISA 2017). It is critically important to implement the necessary legal regulations (including IT, legal, and privacy norms) in order to ensure the success of cybersecurity. Cybersecurity regulations themselves are quite recent developments, and cybersecurity strategies are akin to guidelines; basic acting points which the governments of different countries follow. Each country chooses its own method of regulating cybersecurity issues by issuing the main cybersecurity laws and the ensuing governmental decisions.

This article researches the connection between compliance and cybersecurity. The author will reveal the main reasons and preconditions for formal compliance and will assess those reasons with the help of experts by implementing qualitative expert questionnaires. The conclusions and recommendations will be presented in the final section of this article.

## 2. Overview of the Main Reasons and Preconditions for Successful Compliance in Cybersecurity

In reality, compliance ensures a base level of security to which companies must adhere in order to “tick the box” and receive an official signature on a document. The concrete criteria which define compliance in cybersecurity will be further analyzed. Cybersecurity compliance is a continuous process, which should be handled in a very structured and accurate manner in order to achieve the desired results. Having in mind the gap between the legal regulation setting the requirements and real practical implementation in cybersecurity, the process of cybersecurity compliance should be handled very seriously as an important matter. Therefore, there should be a culture and mentality of compliance in cybersecurity from top-level management, which needs to constantly be updated. Afterwards, the necessary resources should be provided – for example, an information security officer, who should lead by continually communicating strategy and a vision of

cybersecurity compliance. Lastly, the required policies should be in place – for example, an information security policy establishing the constant monitoring of cybersecurity matters in the organization and providing annual (or more frequent, if necessary) reports on those matters to management. Each of these criteria is further presented in a more detailed manner.

### ***2.1. The commitment of senior management***

The importance of cybersecurity matters in an organization should come from the highest level of management. As was established by ENISA, senior management should set a new direction of security culture through statements, slogans, awareness campaigns, examples, rewards, and sanctions (ENISA 2017). These scientific findings emphasize the critical role that top-level management plays in mediating the influence of institutional pressures on cybersecurity strategy (Ogbanufe, Kim, and Jones 2021).

Organizational culture will change as it is shaped by the commitment of senior management and reinforced through a corporate information security policy. In day-to-day business, senior managers should demonstrate the importance of cybersecurity in organizations. The objects and activities of information security must be in line with the organization's business objectives and the requirements imposed by them. Senior management must take charge of this, providing visible support and showing real commitment. In practical terms, this commitment involves allocating the necessary funding to information security work and responding without delay to new situations. Senior managers should demonstrate an attitude and an ongoing commitment towards the implementation of cybersecurity in their organizations. Senior managers should also take the initiative in organizing cybersecurity awareness programs, which are well established strategies for raising the cybersecurity resilience of employees.

In addition, senior management must also continuously increase their knowledge regarding cybersecurity. Training for a better understanding of the complexities of cybersecurity is essential for experienced managers to improve their decision-making (Jalali, Siegel, and Madnick 2019).

### ***2.2. Facilitating a culture of cybersecurity***

One of the strongest factors in the cybersecurity of an organization is human involvement and engagement in these processes. Considering that nearly half of all cybersecurity incidents are due to human error (Jeong et al. 2019), this author strongly believes that students should become acquainted with certain cybersecurity programs in the early days of schooling. Such programs would contribute to forming the correct beliefs, attitudes, assumptions, and, later, behaviors, which may have a highly relevant impact when addressing cybersecurity culture. Employees are often seen as the weak link in cybersecurity (Reegård, Blackett and Katta 2019). In other words, employees have certain values, and therefore demonstrate certain behaviors that can either support the protection of organizational assets or endanger them (Al Hogail and Mirza 2015). In addition, cybersecurity culture carries important practical consequences. Organizations must develop a certain level of cybersecurity culture in order to reduce or minimize the risks incurred by employees. Scientific research refers to the following dimensions of cybersecurity culture: support of management, cybersecurity policy, cybersecurity awareness and training, involvement and communications, and learning from experience (Al Hogail and Mirza 2015). Other authors refer to strategy, technology, people, organization, and environment (Al Hogail 2015); whilst some refer to management commitment, employees' attitudes, reporting culture and reactions to incident reporting, safety training and education, and general information security issues (Nævestad et al. 2018).

In the opinion of this author, there are 3 important layers when talking about the cybersecurity culture of an organization: 1) personal (human); 2) technological (systems); and

3) organizational (policies). In order to achieve the minimum standard of cybersecurity culture, all 3 layers must be addressed.

At the personal level, aspects such as cyber hygiene, individual personality, self-discipline, and knowledge must be taken into consideration. To ensure personnel are actively contributing to the security culture of their organization, a cybersecurity awareness training program should be developed. An information security officer should be responsible for cybersecurity within their organization – they should oversee the development and operation of the cybersecurity awareness training program. Research implemented in 2012 revealed that individuals with different personality traits indeed reacted differently to the same scenarios, implying that the approach we adopt to cybersecurity training must also differentiate between individual employee personality types (McBride, Carter, and Warkentin 2012).

At the technological level, technological aspects such as software and hardware, portable devices, usage of email, internet, and authentication must be reviewed in the organization. Personnel should be advised to take special care not to post work information online unless authorized to do so, especially on internet forums and on social media. In addition, to ensure that the personal opinions of individuals are not misinterpreted, personnel should be advised to maintain separate work and personal accounts for online services, especially when using social media. When personnel send and receive files via unauthorized online services, such as messaging apps and social media, they often bypass security controls put in place to detect and quarantine malicious code.

Finally, at the organizational level, an empowered and constantly-maintained knowledge-based organizational cybersecurity culture should be promoted. This includes culture through statements, slogans, awareness campaigns, examples, rewards, and sanctions. For example, when entering the organization, future employees should be presented with a cybersecurity knowledge test that evaluates their preparedness to become part of the organization. Based on the first assessment, the employee should then receive proper training and future cybersecurity-awareness-raising activities should be scheduled.

### ***2.3. A dedicated budget***

What is the value of cybersecurity in an organization? Most current research suggests that cybersecurity in an organization can improve competitive advantage (Kosutic and Pini, 2022). In order to achieve this goal, organizations should assign a concrete amount of money to the management of cybersecurity. Some organizations even insure their practices against cybersecurity threats. The size of the global cybersecurity insurance market in the post-COVID-19 world is projected to grow from \$7.8 billion in 2020 to \$20.4 billion by 2025, at a CAGR of 21.2% during the forecast period (MarketsandMarkets 2022).

What is the typical cybersecurity budget of an organization? There is no one-size-fits-all answer when trying to decide what a ‘typical budget’ looks like for cybersecurity operations, but there are a few studies that can provide some insight. A recent study by Deloitte and the Financial Services Information Sharing and Analysis Center (Deloitte Insights, 2020) found that financial services on average spend 10% of their IT budgets on cybersecurity. This is approximately 0.2% to 0.9% of company revenue, or \$1,300 to \$3,000 spent per full-time employee.

Coming from the concrete numbers to the inside of the organization, some important factors should be addressed. Cybersecurity measures in a budget can include regular training, safe email practices, secured systems, and a good cybersecurity policy (Santini 2017). One of the most vulnerable elements of cybersecurity is the personnel or human factor; therefore, some amount of money needs to be dedicated to the constant training of employees. Second comes the technological part of the organization. Each organization is different depending on its size and type of activity; however, the majority are currently dependent on technological

and internet-based solutions, and the protection of this needs to be regularly updated. Therefore, organizations need to dedicate some amount of money to the protection of their assets. Lastly, there exists the possibility to insure the organization against cyberattacks and related damages.

#### ***2.4. The information security officer's duties***

Studies indicate that following IT security breaches, some impacted firms adopt a reactive plan that entails the re-organization of the existing IT security strategy and the hiring of an information security officer (Karanja 2017). An information security officer should be responsible for the whole continuous process of cybersecurity compliance in the organization, and should have a risk road map for the organization.

This NIS directive helps to empower the information security officer's visibility and communication with the senior management team (European Union Agency for Cyber Security 2016). The information security officer's functions might be as follows:

- a) Be responsible for making sure that all information assets and technologies are properly protected, including third parties' handling of them.
- b) Own the Information Security Policy in the organization and be responsible for reducing information and IT risks.
- c) Direct the establishment and implementation of the Information Security Policy and related procedures.
- d) Monitor the application of the information security objectives through key risk indicators.
- e) Report and advise the management body regularly and, on an ad hoc basis as needed, report on the status of the information security management system and risks, including cybersecurity policies and material cybersecurity risk to the institution. This may include, for example, information about information security projects, information security incidents, and the results of information security reviews.
- f) Ensure, upon signed acknowledgment, the acquainting of new employees with the requirements and responsibilities laid down in the Information Security Policy and other internal legal acts of the organization regulating information security.
- g) Ensure the explicit defining of tangible property, as well as the execution and maintenance of the inventory of tangible property.
- h) Provide and adapt physical protection measures with the purpose of protection of the organization's property from damage that may be caused by fire, flood, or other natural or human disasters.
- i) Organize the risk and compliance assessment.
- j) Coordinate the investigation of information security incidents, cooperate with competent authorities, and notify them on information security incidents that have occurred.
- k) Notify the Head of Administration of any important security event or incident and their investigation thereof.
- l) Organize the training of employees in the field of information security, periodically notify employees of new threats, and submit recommendations regarding information security.

Regarding the hierarchical positioning of the information security officer in the organization, it is definitely encouraged to have them serve as the independent officer accountable to senior management. Studies suggest that there is an alignment with the need for an information security officer to directly report to the board and to be independent (Monzelo and Nunes 2019). There is also the view that the information security officer should

be part of the board itself, deriving from the criticality of their function for business strategy (Monzelo and Nunes 2019).

### 2.5. Risk management as a process in cybersecurity compliance

Based on the above annual reports (for example, the Netherlands), it might be noted that risk management becomes one of the key elements in cybersecurity. Elements of cybersecurity risk management include identifying risks, defining preventative implementation measures, mitigating the impact of an attack, and establishing a continuity plan.

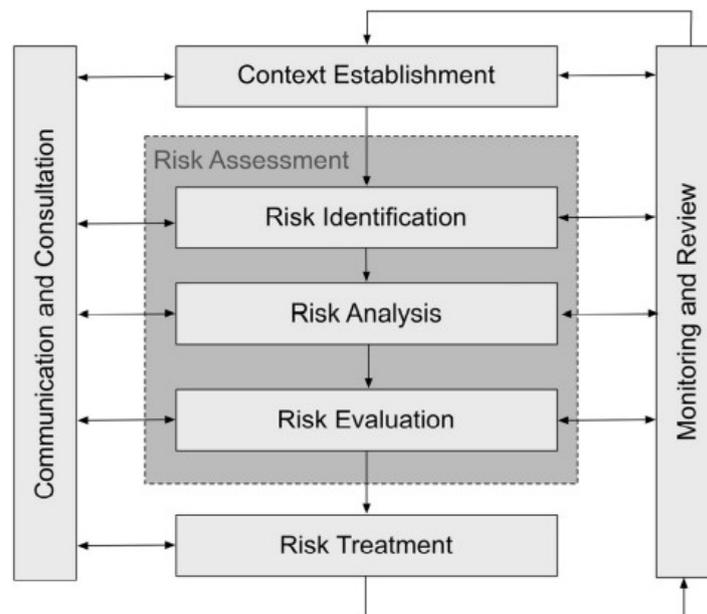


Figure 1. The risk management process

Source: ISO, 2009

A cybersecurity risk assessment helps organizations determine key business objectives and then identify the appropriate IT assets required to realize their objectives. A cybersecurity risk assessment should map out the entire threat environment and how it can impact the organization's business objectives. The result of this assessment should assist security teams and relevant stakeholders in making informed decisions about the implementation of security measures that mitigate these risks.

A range of standards and normative documents related to risk management and risk assessment has been devised over the years for IT systems. The National Institute of Standards and Technology Cybersecurity Framework (NIST CSF) is a popular framework (Computer Security Resource Center, no date). The NIST CSF provides a comprehensive set of best practices that standardize risk management and defines a map of activities and outcomes related to the core functions of cybersecurity risk management: protect, detect, identify, respond, and recover. The International Organization for Standardization (ISO) created the ISO/IEC 270001 in partnership with the International Electrotechnical Commission (IEC). The ISO/IEC 270001 cybersecurity framework offers a certifiable set of standards defined to systematically manage risks posed by information systems. Organizations can also use the ISO 31000 standard, which provides guidelines for enterprise risk management. The Department of Defense (DoD) Risk Management Framework (RMF) defines guidelines that DoD agencies use when assessing and managing cybersecurity risks. RMF splits the cyber risk management strategy into six key steps: categorize, select,

implement, assess, authorize, and monitor. The Factor Analysis of Information Risk (FAIR) framework is defined for the purpose of helping enterprises measure, analyse, and understand information risks. The goal is to guide enterprises through the process of making well-informed decisions when creating cybersecurity best practices.

Daily cybersecurity risk management involves many concrete actions which form overall measures in mitigating cybersecurity risks in an organization. Recording cybersecurity incidents in a register can assist with ensuring that appropriate remediation activities are undertaken. When gathering evidence following a cybersecurity incident, it is important that its integrity is maintained. Even though an investigation may not directly lead to a prosecution, it is important that the integrity of evidence, such as manual logs, automatic audit trails, and intrusion detection tool outputs, be protected. Reporting cybersecurity incidents to an organization's information security officer as soon as possible after they occur or are discovered provides senior management with the opportunity to assess the impact on their organization and to take remediation actions if necessary. Cyber supply chain risk management activities should be conducted at the earliest possible stage of procurement processes. In particular, organizations should consider the security risks that may arise as systems, software, and hardware are designed, built, stored, delivered, installed, operated, maintained, and decommissioned. This includes identifying and managing jurisdictional, governance, privacy, and security risks associated with the use of suppliers and service providers.

An important factor is that the organization appoints an individual, for example an information security officer, who is responsible for the risk management process and implements their tasks following those responsibilities. These tasks should be agreed in the internal policies of the organization. In addition, the commitment of management is a key element in the cybersecurity risk management process. If senior management does not demonstrate sufficient attention to the risk management process, the organization may not achieve a successful compliance process. When there is a distance between real and perceived security risk, there is the possibility that the control policy (risk identification, control, monitoring action, compliance) set at the executive management level does not translate in an expected manner to lower-level staff (Barker 2014). The management of cybersecurity risk should be an integrated part of the organization's corporate governance. The implementation of information security governance maybe achieved if: a) the board of directors and executive management place extra attention on information security matters instead of treating them as technological issues that fall under the responsibility of technical managers; b) information security measures are clearly communicated from the top- level management to lower-level staff; c) low-level staff are involved in the formulation of information security policies to avoid setback or policy implementation rejection; and d) all stakeholders are aware of the value added by the implementation of information security governance, which results in higher investment in information security control (Fazlida and Saidb 2015).

## ***2.6. Structured cybersecurity requirements***

The potential structure of cybersecurity legal requirements at the national level is a huge challenge. The European Court of Auditors published a report providing an excellent overview of the EU's complicated cybersecurity policy framework. This report identified many challenges to effective policy delivery, such as: the meaningful evaluation and accountability of policy and legislative framework; addressing gaps in EU law and its uneven transposition; aligning investment levels with goals; the need for a clear overview of EU budget spending; adequately resourcing the EU's agencies; and strengthening information security governance and threat and risk assessments (European Court of Auditors 2019).

At the organizational level, the main requirements of cybersecurity are structured in the cybersecurity strategy document. A cybersecurity strategy sets out an organization's guiding

principles, objectives, and priorities for cybersecurity, typically over a three-to-five-year period. In addition, a cybersecurity strategy may also cover an organization's threat environment, cybersecurity initiatives, or investments the organization plans to make as part of its cybersecurity program. The policy owner should be the information security officer, who is responsible for the successful implementation of the cybersecurity requirements. The application of the defence-in-depth principle to the protection of systems and different hardware through the execution of physical security should be described and implemented in the organization.

In addition to the cybersecurity strategy, an organization may approve system-specific security documentation, such as a system security plan, incident response plan, continuous monitoring plan, or security assessment report. As such, it is important that those documents are developed by personnel with good understandings of security matters, the technologies being used, and the business requirements of the organization. For example, having an incident response plan ensures that when a cybersecurity incident occurs, a plan is in place to respond appropriately to the situation. In most situations, the aim of the response will be to prevent the cybersecurity incident from escalating, restore any impacted system or data, and preserve any evidence. A continuous monitoring plan can assist organizations in proactively identifying, prioritizing, and responding to security vulnerabilities.

Following the implementation of the cybersecurity strategy, frequent reports should be drafted by the information security officer and presented to the senior government of the organization. This will assist the organization in performing the minimum necessary control over the actions of the cybersecurity process as well as guiding the development of the future plan of action and milestones.

### **3. Conclusions**

A sound cybersecurity compliance process can be achieved through continuous and complex daily work. The aim of this article was to reveal the main factors which describe a successful cybersecurity compliance process. The implemented research revealed several factors which can contribute towards a successful compliance process in an organization: the commitment of senior management, facilitating a cybersecurity culture, and the continuous implementation of a risk management process.

Senior management should set the guiding direction of a security culture through statements, awareness campaigns, and other concrete actions. In day-to-day business, senior managers should demonstrate the importance of cybersecurity in the organization. Organizations must develop a certain level of cybersecurity culture in order to reduce or minimize the risks incurred by employees. Such a culture should be maintained through certain programs and constant training in order to achieve cybersecurity awareness and secure the involvement of employees. Annually-implemented risk management includes identifying risks, defining preventative implementation measures, mitigating the impact of an attack, and establishing a continuity plan. This approach to cybersecurity needs to be based on risk management. Additional preconditions – such as a dedicated cybersecurity budget, structured and followed-up-on cybersecurity requirements, and the active role of the information security officer – serve as secondary criteria which should additionally support the successful implementation of the cybersecurity compliance process in an organization.

In real-life situations, the main preconditions for the implementation of cybersecurity compliance might also be implemented incorrectly or only partially. For example, cybersecurity policies are often not properly communicated to employees or do not receive sufficient commitment from senior management, and therefore pose the risk of merely formal implementation of cybersecurity requirements in practice.

## Acknowledgement

The author is grateful for the European Social Fund measure No 09.3.3-LMT-K-712 ‘Development of Competences of Scientists, other Researchers and Students through Practical Research Activities’ under grant agreement with the Research Council of Lithuania, who funded this article as a part of the research ‘The Problematic Matters and Solutions of Formal Compliance in Cybersecurity’.

## References

- Cambridge Dictionary. 2022. ‘Compliance’. Available at: <https://dictionary.cambridge.org/dictionary/english/compliance?q=compliance> (Accessed: 1 April 2022).
- Computer Security Resource Center (n.d). *NIST Risk management framework*. Available at: <https://csrc.nist.gov/projects/risk-management/about-rmf> (Accessed: 1 April 2022).
- Deloitte Insights. 2020. *Reshaping the cybersecurity landscape*. Available at: <https://www2.deloitte.com/content/dam/Deloitte/pt/Documents/risk/Cybersecurity.pdf>.
- Directive (EU) 2016/1148 of the European Parliament and the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union. OJ L 194, 19.7.2016, pp. 1–30. Available at: <https://eur-lex.europa.eu/eli/dir/2016/1148/oj> (Accessed: 1 April 2022).
- ENISA. 2017. *ENISA overview of cybersecurity and related terminology* (Version 1). Available at: <https://www.enisa.europa.eu/publications/enisa-position-papers-and-opinions/enisa-overview-of-cybersecurity-and-related-terminology> (Accessed: 1 April 2022)
- ENISA. 2018. *Cyber security culture in organisations*. Available at: <https://www.enisa.europa.eu/publications/cyber-security-culture-in-organisations> (Accessed: 1 April 2022).
- European Commission. 2020. *Joint communication to the European Parliament and the Council. The EU's Cybersecurity Strategy for the Digital Decade* (Brussels, 16.12.2020, JOIN(2020) 18 final). Available at: <https://digital-strategy.ec.europa.eu/en/library/eus-cybersecurity-strategy-digital-decade-0> (Accessed: 1 April 2022).
- European Court of Auditors. 2019. *Challenges to effective EU cybersecurity policy*. Available at: [https://www.eca.europa.eu/lists/ecadocuments/brp\\_cybersecurity/brp\\_cybersecurity\\_en.pdf](https://www.eca.europa.eu/lists/ecadocuments/brp_cybersecurity/brp_cybersecurity_en.pdf) (Accessed: 1 April 2022).
- European Union Agency for Cyber Security. 2016. *Cyber insurance: Recent advances, good practices & challenges*. ENISA. DOI: <https://doi.org/10.2824/065381>.
- Fazlida, M.R. and Saidb, J. 2015. “Information security: Risk, governance and implementation setback.” *Procedia Economics and Finance* 28: 243–248. DOI: [https://doi.org/10.1016/S2212-5671\(15\)01106-5](https://doi.org/10.1016/S2212-5671(15)01106-5).
- ISO 31000:2009. Available at: [https://bambangkesit.files.wordpress.com/2015/12/iso-31000\\_principles-guidelines-risk-manajemen.pdf](https://bambangkesit.files.wordpress.com/2015/12/iso-31000_principles-guidelines-risk-manajemen.pdf) (Accessed: 1 April 2022).
- Jalali, M.S., Siegel, M. and Madnick, S. 2019. “Decision making and biases in cybersecurity capability development: Evidence from a simulation game experiment.” *The Journal of Strategic Information Systems* 28(1): 66–82. DOI: <https://doi.org/10.1016/j.jsis.2018.09.003>.
- Jeong, J., Mihelcic, J., Oliver, G. and Rudolph, C. 2019. “Towards an improved understanding of human factors in cybersecurity.” *IEEE 5th International Conference on Collaboration and Internet Computing (CIC)*, pp. 338–345. DOI: <https://doi.org/10.1109/CIC48465.2019.00047>.
- Karanja, E. 2017. “The role of the chief information security officer in the management of IT security.” *Information and Computer Security* 25(3): 300–329. DOI: <https://doi.org/10.1108/ICS-02-2016-0013>.
- Kosutic, D. and Pini, F. 2022. “Cybersecurity: Investing for competitive outcomes.” *Journal of Business Strategy* 43(1): 28–36. DOI: <https://doi.org/10.1108/JBS-06-2020-0116>.
- Marketsandmarkets. 2022. “New Market Reports.” Available at <https://www.marketsandmarkets.com/new-reports.asp>.
- McBride, M., Carter, L. and Warkentin, M. 2012. *Exploring the role of individual employee characteristics and personality on employee compliance with cybersecurity policies* (prepared by RTI International – Institute for Homeland Security Solutions under contract 3-312-0212782). Available at: <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.453.3551&rep=rep1&type=pdf> (Accessed: 1 April 2022).
- Monzelo, P. and Nunes, S. 2019. “The role of the chief information security officer (CISO) in Organizations.” *CAPSI 2019 Proceedings*, 36. Available at: <https://aisel.aisnet.org/capsi2019/36/> (Accessed 1 April 2022)
- Nævestad, T.O., Meyer, S.F. and Honerud, J.H. 2018. “Organizational information security culture in critical infrastructure: Developing and testing a scale and its relationships to other measures of information

- security.” In Haugen, S., Barros, A., van Guijk, C., Kongsvik, T. and Vinnem, J.E. (eds.), *Safety and reliability—Safe societies in a changing world*. London: CRC Press, pp. 3021–3029.
- Ogbanufe, O., Kim, D.J. and Jones, M.C. 2021. “Informing cybersecurity strategic commitment through top management perceptions: The role of institutional pressures.” *Information & Management* 58(7): 103507. DOI: <https://doi.org/10.1016/j.im.2021.103507>.
- Reegård, K., Blackett, C. and Katta, V. 2019. “The concept of cybersecurity culture.” In Beer, M. and Zio, E. (eds.), *Proceedings of the 29th European Safety and Reliability Conference*. Singapore: Research Publishing, pp. 4036–4043. DOI: [http://dx.doi.org/10.3850/978-981-11-2724-3\\_0761-cd](http://dx.doi.org/10.3850/978-981-11-2724-3_0761-cd)
- Roch, C.H., Scholz, J.T. and McGraw, K.M. 2000. “Social networks and citizen response to legal change.” *American Journal of Political Science* 44(4): 777–791. DOI: <https://doi.org/10.2307/2669281>.
- Santini, F. 2017. “Prioritizing cybersecurity on a limited budget.” *Law Practice* 43(5): 59–61.

# The Impact of E-Training System on Employees' Job Performance

**Dareen Ahmed Farouk**

*Faculty of Management Technology, German University in Cairo, Egypt  
dareenahmed.f@gmail.com*

**ABSTRACT:** The development of information and communication technology has made e-training a vital function of human resource management within any organization, especially in recent years. Reliance on this type of training has increased to invest in human assets and help employees acquire new skills and knowledge, develop their current skills, increase their productivity and raise the quality of their performance in the work environment. The aim of this paper is to explore the impact of the E-Training System dimensions (Efficiency – Methods – Environment) on employee job performance. It is a quantitative study that uses an electronic questionnaire as a data collecting tool from a sample of (103 employees) working in private sector companies in the Egyptian market. The main findings demonstrated that the perceived E-Training dimensions (Efficiency – Methods – Environment) has a positive impact on Employee Job performance. Moreover, it also showed that perceived E-Training efficiency (content & trainer) is the most significant predictor for employee job performance, followed by the E-Training environment. However, there were no significant differences in employees' perceptions of (a-E-Training Efficiency b- E-Training Methods c- E-Training Environment) according to their gender, educational level, and age groups.

**KEYWORDS:** Human Resources Management Practices (HRMP), E-Training, Job Satisfaction, Productivity, Job Performance

## 1. Introduction

In a competitive world, organizations are facing increased challenges due to globalization. They strive to achieve success and differentiate themselves from competitors in the same industry. So, organizations have to attract the best talent for their human resources and utilize them effectively (Bafaneli & Setibi 2015, 239). According to Wolor et al. (2020, 444), human capital is seen as a valuable commodity that contributes to the growth of the company's market value, it is one of the most effective resources of any company and the basis of its success and continuity. Therefore, organizations must invest in and develop these resources on an ongoing basis, to gain a competitive advantage over competitors (Kazi et al. 2019, 3).

There is no doubt that managing the human element is the main function of human resource management within any organization, as it is responsible for attracting and motivating employees, managing their skills and talents efficiently, achieving job satisfaction, and retaining them. So, organizations need effective management of human resources, as they affect the achievement of organizational goals; through its function in preparing an effective system for training and developing the employees and workers of the organization (Kazi et al. 2019: 3).

Moreover, the awareness of employees has developed, and their sense of responsibility has increased towards enhancing their current skills and adding new skills to meet the needs and tasks of the work, and they become more eager to take advantage of the available training opportunities to ensure their employability or to move to a better place, or to advance within the organization in which they work (Karam 2019, 195; Kazi et al., 2019: 3; Mikołajczyk 2022, 546).

Advances in information technology have led to an increased reliance on e-training models in the last few years. According to Asamoah and Avenorgbo (2021, 35), E-training is defined as a remote training process through the use of the Internet or Intranet, which helps

individuals acquire the knowledge and skills they need to improve their performance in various disciplines and aspects of general knowledge. Companies' demand for this type of training has grown; to achieve many advantages such as saving travel expenses, flexibility, availability of diverse content, continuity of training and learning, enhancing worker performance and increasing the number of trained employees, and competitiveness. So, the main objective of e-training is to enhance job performance and create a productive workforce. (Kamal, Aghbari & Atteia 2016, 2; Yang & Lin 2021, 459). Moreover, for many individuals, e-training is seen as the preferred learning medium due to its universal accessibility (Kamal, Aghbari & Atteia 2016, 2).

Accordingly, this paper seeks to identify the impact of the E-Training System dimensions on employee job performance, in the private sector companies operating in Egypt. The following are the objectives of this study:

- a) To examine employees' perceptions of E-training (Efficiency – Methods – Environment).
- b) To assess the impact of E-training (Efficiency – Methods – Environment) on employees' job performance.

## **2. Literature Review**

### ***2.1. Human Resource Management Practices (HRMP)***

Employee performance refers to how an employee goes above and beyond his/her responsibilities. Several studies have shown that employee performance has a significant impact on job satisfaction, as high-performing people feel more fulfilled and happier at work, which is reflected in the company's performance and long-term profits. (Top et al. 2020, 51; Zardasht et al. 2020, 49).

HR practices are defined as a set of internally coherent and consistent practices for which they are designed to enhance employee efficiency, motivation, and commitment (Najam et al. 2020, 2). It is also defined as planned practices aimed at the effective management of human capital (Kadiresan et al. 2015, 163). Therefore, these practices enable companies to become more effective to achieve outstanding business performance and gain a competitive advantage in the market (Domínguez-Falcón et al. 2016, 491; Elrehail et al. 2020, 126).

Human resources (HR) are a vital resource for any organization, and effective management of these resources can help the organization achieve its goals and objectives (Elrehail et al. 2020, 126). Therefore, the essential role that Human Resource Management (HRM) plays in determining business survival, effectiveness, and competitiveness is just as important as making a profit. Human resource management practices have helped support any company's business strategy, as companies maintain and increase competitive advantage through strategic human resource management that depends on the quality and competence of their employees (Chong et al. 2020, 121; Beijer et al. 2021, 4).

According to (Najam et al. 2020: 3), the main areas of Human Resources Management Practices (HRMP) include (1) employee skills, which includes selection and recruitment; (2) motivation, which includes performance-based appreciation; and (3) empowerment, which includes equal participation rights. This study will focus on human resource management practices related to the E-training system and its impact on employees' job performance and productivity at work.

### ***2.2. E-Training***

#### ***2.2.1. Definition and Characteristics***

The process of training and developing employees within any organization is a reciprocal process with great impact. It helps the organization achieve its goals with the required efficiency and quality, and on the other hand, it helps the employee to develop and feel a sense of achievement

and positive self-satisfaction, raise his productivity and increase his level of performance (Govand & Shukur 2015, 66; Khan et al. 2016, 34).

The concept of training refers to all procedures for learning experiences and activities that aim to increase the effectiveness of performance and behavior, by acquiring new skills, knowledge, and experiences (Govand & Shukur 2015, 66). Training is a short-term intervention that aims to transform people by providing them with the required and adequate information, skills, and attitudes to meet or exceed customer expectations and accomplish outcomes. It is also defined as an organized and systematic activity that leads to an increase in the skills, knowledge, and competence necessary to carry out job tasks effectively (Khan et al. 2016, 34). In the same context, Maršíková & Šlaichová (2015, 14) defined training as a planned effort by the organization to facilitate employee learning of job-related competencies.

With regard to e-training, it is similar to e-learning in some characteristics, such as technology usage and content delivery method, but the training takes a much shorter period to achieve a specific educational goal or acquire a specialized skill (Kamal, Aghbari & Atteia 2016, 1). E-training can define as a remote training process through the use of the Internet or Intranet, which gives the trainees the required knowledge and skills on the various selected topics. So, the term e-training refers to the use of multimedia technologies, the Internet, and modern means of communication to provide interactive training programs that suit the needs of the target group of trainees in various fields and overcome the conditions of time and place (Amara & Atia 2016, 3).

It is clear from the above that e-training is the process of acquiring a set of knowledge, skills, and attitudes, and this process is characterized by a set of characteristics such as the reliance on modern technological means, interaction, flexibility, connectivity, diversity of knowledge sources, variety of means of content delivery, saving time, effort, and cost (Amara & Atia 2016, 5; Kamal, Aghbari & Atteia 2016, 2).

### *2.2.2. E-Training Importance*

Due to globalization, many companies have started to rely on e-training due to its ability to reach large groups of target audiences in different regions or countries at a lower cost and with varied methods that suit target audiences from different fields and disciplines. Moreover, for many individuals, e-training is a preferred channel of learning due to its universality, accessibility, and availability. (Kamal, Aghbari & Atteia 2016: 1; Asamoah & Avenorgbo 202, 35).

The COVID-19 pandemic has caused economic closures and the management of commercial and service activities via the virtual environment; as a way to limit the spread of the virus. These circumstances made organizations face the challenges of training their employees to enhance their performance, so they turned to the electronic training system. Since then, organizations have been interested in developing their technological infrastructure to keep pace with the rapid changes that occurred in the learning and training environment (Asamoah & Avenorgbo 2021, 34). Therefore, the importance of e-training and skills development for employees has increased, as organizations have found themselves in need of developing the skills of their employees, especially technological skills; This led them to search for new methods and tools to develop the performance of their employees and train them remotely (Mikołajczyk 2022, 545).

Learning is a continuous process in which an individual improves his knowledge and skills, which must evolve with technological development and job requirements. An employee who is suitable for his current job, and believes that he is stable in his work and does not need to learn new skills, may face new job challenges to improve performance or productivity, which can be removed through training (Kamal, Aghbari & Atteia 2016: 1; Khan et al. 2016, 34). Therefore, many organizations have recently resorted to e-training to develop the efficiency of their employees to reach the appropriate required levels at a lower cost and greater flexibility. Where training can identify and distinguish skills gaps in the organization; it is the gap that arises due to the difference between the skills and abilities that

employees possess and the skills and abilities that the organization wants them to have or require (Oluwaseun 2018, 184; Karam 2019, 193).

### *2.2.3. E-Training Dimensions*

This study sheds light on the dimensions of e-training, which include the efficiency of E-Training in terms of the efficiency of the trainer and the content he provides, e-training methods, and the e-training environment, as follows (Kamal, Aghbari & Atteia 2016, 2; Karam 2019, 195; Asamoah & Avenorgbo 2021, 35,37):

- E-training efficiency (trainer and content): it means the extent to which the content of the training programs is updated, well-designed, and matches the training needs. Moreover, the extent to which the trainer's experience in his field of specialization, his skills in presenting the content, and his ability to design relevant training activities. Besides, the trainer's skills in managing programs and interacting with participants.
- E-training methods: e- training has a variety of methods and tools that can use. The selection of the most appropriate ones depends on the specific needs and goals of the training program, and the organization's resources and technological capabilities. Examples of these methods include the use of computer-based operation networks, interactive platforms, internet worldwide websites, video and multimedia, and electronic applications. These methods of delivery help employees to engage in a long-term learning process because training is not just providing information, but practice, application, and feedback.
- E-training environment: The e-training system is meaningful to employees when IT support and other maintenance infrastructure services are available at the company. Moreover, when it is easily accessible, efficient, has flexible schedules and activities with work tasks, and has a facilitated and motivating learning environment.

### *2.3. E-Training and job performance*

Job performance means achieving a goal or set of goals within a job. It is not a single job but intertwined activities and tasks. Job performance is a separate behavior from the results of a particular job and is related to success and productivity (Top, Abdullah & Faraj 2020, 51).

Globalization has led many companies to use e-learning and e-training strategies in an attempt to create a competitive advantage, meet the demand for learning, align the needs of their employees with strategic organizational goals, in addition to the fact that companies use various Internet applications and distance learning has become an indicator of the extent to which these companies have developed. And its ability to keep pace with the requirements of the competitive global market (Kamal, Aghbari & Atteia 2016, 1; Mikołajczyk 2022, 548).

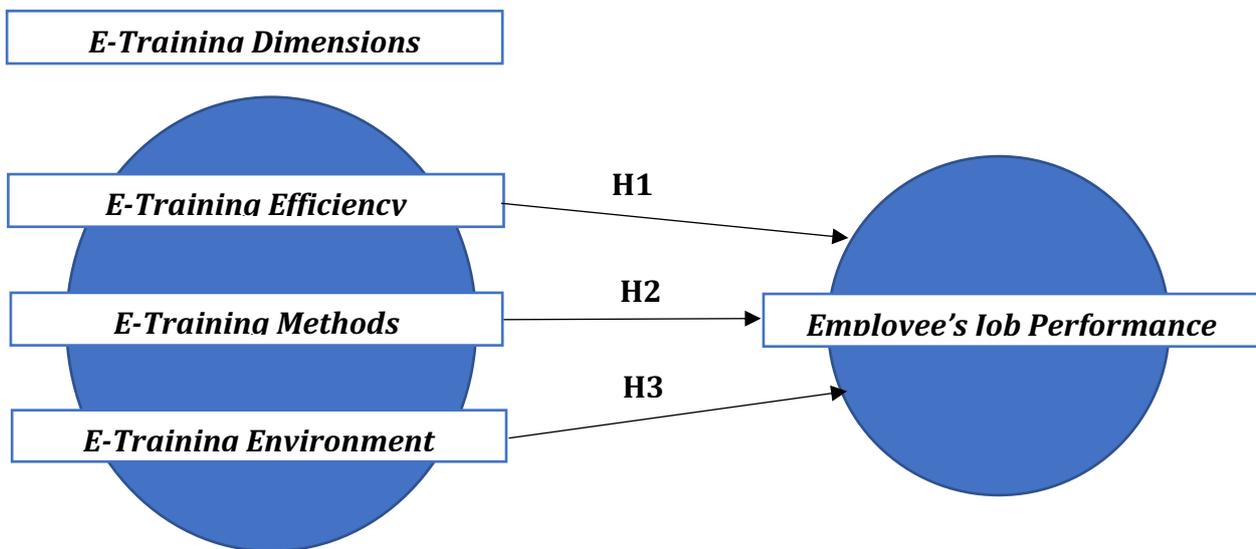
According to Kamal, Aghbari & Atteia (2016, 2), the use of e-training by employees had varying associations with job productivity and job performance. It turns out that the use of technology alone will not lead to the desired results, where companies should provide administrative support and motivation side by side with providing e-training opportunities for their employees. Therefore, companies must evaluate the benefits of this type of training and its return on job performance to justify continuing investment in these training programs. It is necessary to know whether the employees are satisfied with the e-training system provided by the organizations or not. Do they have the self-motivation to pursue e-training in the future, and will the targeted benefits be achieved (Wolor et al. 2020, 445)?

Regarding, the relationship between job training satisfaction and job performance, it means how employees feel about the aspects of job training they receive, in terms of their attitudes towards the degree to which training activities and programs fit their job level, the extent to which they can develop their knowledge and skills, and the extent to which they help them perform job tasks efficiently and effectively. Moreover, some studies have indicated the positive effect of employees' training satisfaction on their overall job performance. It also

affects their attitudes towards the organization they work at in terms of commitment, participation, and job citizenship, and they are less inclined and less willing to work in other organizations (Khan et al. 2016, 35; Huang 2019, 11; Nguyen & Duong 2020, 375).

### 3. The Research Model and Hypothesis

Based on the above literature review, this study proposed a model that explains the correlation hypothesis of the study as shown in Figure 1.



**Figure 1:** The Proposed Research model

**H1:** Perceived E-Training efficiency (Content & Trainer) has a positive impact on an employee's job performance.

**H2:** Perceived E-Training methods have a positive impact on an employee's job performance.

**H3:** Perceived E-Training environment has a positive impact on an employee's job performance.

### 4. Research methodology

#### 4.1 Research sample

The current research is a descriptive study based on primary and secondary methods of data collection. The study relied on a quantitative research design because it aims to achieve the research objectives by testing the validity of its hypotheses. In this study, an online questionnaire used to collect primary data from the respondents; since this study is quantitative and is concerned with collecting data and converting it into numerical values.

The population of this study was the employees across different fields working in the private sector companies operating in Egypt; and who had experience in using e-training at their workplace. The total sample was determined based on the number of participants in the online survey. A total of (103) questionnaires were submitted back and used in the final analysis. Therefore, purposive sampling under non-probability sampling is applied. A non-probability sample is arbitrary, and we typically select it subjectively with put a pattern or scheme in mind. In purposive sampling, the researcher selects specific cases, which are more typical of the population, and includes them in the study sample. This type of sampling is very useful in situations where you need to reach a target sample quickly and where sample proportionality is not the main concern (Picardi & Masick 2013, 156).

## 4.2 Instrument Development

This section provides details about the instrument used, which is an online questionnaire, to collect data in order to test the validity of research hypotheses. The questionnaire consisted of two separate parts; the first part was regarding participants' demographic characteristics and job information questions. The second part was divided into questions related to employees' perceptions of E-training dimensions (Efficiency- Methods- Environment), and questions related to employees' job performance.

The researcher used five-point Likert scales ranging from strongly disagree to strongly agree. The questionnaire statements were adapted from different sources. The statements of questions regarding employees' perceptions of the E-training system dimensions (Efficiency - Methods – Environment) adapted from (Govand & Shukur 2015, 69; Kamal, Aghbari & Atteia 2016, 4; Asamoah & Avenorgbo 2021, 39). In terms of questions regarding employees' job performance; the statements adapted from (Kamal, Aghbari & Atteia 2016, 5; Nguyen & Duong 2020, 379).

## 5. Data Analysis Results

### 5.1. Descriptive Statistics

**Table 1:** Demographic information of respondents

Gender	Frequency	Percent	Valid Percent	Cumulative Percent
Male	60	58.3	58.3	58.3
Female	43	41.7	41.7	100
Total	103	100	100	

Age Group	Frequency	Percent	Valid Percent	Cumulative Percent
20-30	61	59.2	59.2	59.2
31-40	28	27.2	27.2	86.4
41-50	10	9.7	9.7	96.1
Above 50	4	3.9	3.9	100
Total	103	100	100	

Educational Level	Frequency	Percent	Valid Percent	Cumulative Percent
Bachelor's Degree	84	81.6	81.6	81.6
Postgraduate	19	18.4	18.4	100
Total	103	100	100	

Monthly income	Frequency	Percent	Valid Percent	Cumulative Percent
Less than 5000 LE	26	25.2	25.2	25.2
5000 LE- less than 10000 LE	22	21.4	21.4	46.6
10000 LE- less than 15000 LE	30	29.1	29.1	75.7
10000 LE- less than 15000 LE	15	14.6	14.6	90.3
Above 20000 LE	10	9.7	9.7	100
Total	103	100	100	

### 5.2. Reliability Test

To test the reliability of questionnaire statements used in this study, Cronbach's alpha was used, with the following results: E-Training Efficiency (Content & Trainer) 0.799, E-Training Methods 0.803, E-Training Environment 0.751, and Employee Job performance 0.894. Thus, alpha ranged from 0.89 to 0.75, exceeding the minimum standard for reliability of 0.70 recommended by Picardi & Masick (2013, 51), which is a satisfactory level. Table 6 summarizes these results.

**Table 2: Reliability**

Variable	Reliability Statistics Cronbach's Alpha	NO. of items
E-Training Efficiency (Content & Trainer)	<b>0.799</b>	<b>4</b>
E-Training Methods	<b>0.803</b>	<b>6</b>
E-Training Environment	<b>0.751</b>	<b>5</b>
Employee Job performance	<b>0.894</b>	<b>7</b>

### 5.3. Validity Test

Content validity assesses whether the content is representative of all aspects of the construct and reflects the measurements. To produce valid results, the content of a survey or measurement method must cover all relevant parts of the subject it aims to measure (Patten & Newhart 2017, 126). The questionnaire of this study contains a series of questions and measurements. It has been validated by submitting it to the academic supervisor for reviewing and suggesting the required adjustments before publishing it online to be filled out by the target group.

### 5.4. Hypothesis Testing Results

**H1:** Perceived E-Training efficiency (Content & Trainer) has a positive impact on employees' job performance.

**Table 3:** Linear Regression test of E-Training Efficiency against Employee Job performance

Model Summary						
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate		
1	.605	.366	.359	.48724		
ANOVA						
Model	Sum of Squares	df	Mean Square	F	Sig.	
1	Regression	13.813	1	13.813	58.185	<.001
	Residual	23.978	101	.237		
	Total	37.791	102			
Coefficients						
Model	Standardized B	Coefficients Std. Error	Standardized Coefficients Beta	t	Sig.	
1	(Constant)	1.662	.309		5.383	<.001
	E-Training Efficiency	.599	.079	.605	7.628	<.001

Dependent Variable: Employee Job Performance

Predictors: (Constant), E-Training Efficiency

A simple linear regression was performed to determine how much variation in Employee Job Performance is explained by perceived E-Training efficiency (Content & Trainer). By reviewing the ANOVA table, the findings showed that the model is significant

( $P < .001$ ). According to the results of the model summary table, perceived E-Training efficiency ( $R = .605$ ,  $R^2 = .366$ ,  $\beta = .605$ ,  $t = 7.62$ ,  $p < 0.001$ ) accounts for 36.6% of the variance in Employee Job Performance. This means that perceived E-Training Efficiency has a positive impact on Employee Job performance, **supporting H1**.

**H2:** Perceived E-Training methods have a positive impact on employees' job performance.

**Table 4:** Linear Regression test of E-Training Methods against Employee Job performance

Model Summary						
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate		
1	.535	.287	.280	.51666		
ANOVA						
Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	10.830	1	10.830	40.572	<.001
	Residual	26.961	101	.267		
	Total	37.791	102			
Coefficients						
Model		Standardized B	Coefficients Std. Error	Standardized Coefficients Beta	t	Sig.
1	(Constant)	1.867	.337		5.539	<.001
	E-Training Methods	.545	.086	.535	6.370	<.001

Dependent Variable: Employee Job Performance

Predictors: (Constant), E-Training Methods

A simple linear regression was performed to determine how much variation in Employee Job Performance is explained by perceived E-Training methods. By reviewing the ANOVA table, the findings showed that the model is significant ( $P < .001$ ). According to the results of the model summary table, perceived E-Training methods ( $R = .535$ ,  $R^2 = .287$ ,  $\beta = .535$ ,  $t = 6.37$ ,  $p < 0.001$ ) account for 28.7% of the variance in Employee Job Performance. This means that perceived E-Training methods have a positive impact on Employee Job performance, **supporting H2**.

**H3:** Perceived E-Training Environment has a positive impact on employees' job performance

**Table 5:** Linear Regression test of E-Training Environment against Employee Job performance

Model Summary						
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate		
1	.568	.323	.316	.50336		
ANOVA						
Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	12.201	1	12.201	48.156	<.001
	Residual	25.590	101	.253		
	Total	37.791	102			
Coefficients						
Model		Standardized B	Coefficients Std. Error	Standardized Coefficients Beta	t	Sig.
1	(Constant)	1.856	.311		5.959	<.001
	E-Training Environment	.560	.081	.568	6.939	<.001

Dependent Variable: Employee Job Performance

Predictors: (Constant), E-Training Environment

A simple linear regression was performed to determine how much variation in Employee Job Performance is explained by the perceived E-Training environment. By

reviewing the ANOVA table, the findings showed that the model is significant ( $P < .001$ ). According to the results of the model summary table, the perceived E-Training environment ( $R = .568$ ,  $R^2 = .323$ ,  $\beta = .568$ ,  $t = 6.93$ ,  $p < 0.001$ ) accounts for 32.3% of the variance in Employee Job Performance. This means that the perceived E-Training environment has a positive impact on Employee Job performance, **supporting H3**.

After conducting the simple linear regression, the researcher wanted to perform multiple linear regression to determine which of the independent variables is the most significant predictor for the dependent variable.

**Table 6: Multiple Regression Test**

Model Summary						
Model	R	R Square	Adjusted R Square		Std. Error of the Estimate	
1	.654	.428	.411		.46718	
ANOVA						
	Model	Sum of Squares	df	Mean Square	F	Sig.
1	Regression	16.184	3	5.395	24.717	<.001
	Residual	21.607	99	.218		
	Total	37.791	102			
Coefficients						
Model		Standardized B	Coefficients Std. Error	Standardized Coefficients Beta	t	Sig.
1	(Constant)	1.139	.339		3.360	.001
	E-Training Efficiency	.322	.115	.325	2.807	.006
	E-Training Methods	.162	.110	.159	1.476	.143
	E-Training Environment	.254	.104	.258	2.456	.016

Dependent Variable: Employee Job Performance

Predictors: (Constant), E-Training Efficiency, E-Training Methods, E-Training Environment

Multiple regression was performed to determine which dimension of the E-Training is the most significant predictor for Employee Job performance. By reviewing the ANOVA table, the findings showed that the model is significant ( $P < .001$ ). The results indicate that perceived E-Training efficiency ( $\beta = .325$ ,  $t = 2.80$ ,  $p < 0.001$ ) has the most impact on Employee Job performance, followed by perceived E-Training environment ( $\beta = .258$ ,  $t = 2.45$ ,  $p < 0.016$ ).

### 5.5. Summary of Hypothesis Testing Results

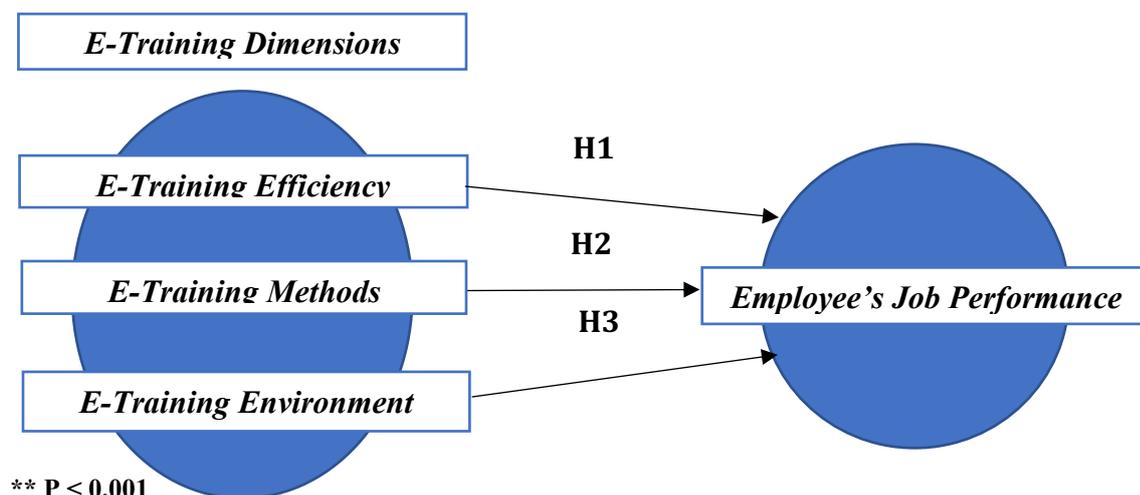


Figure 2. The results of hypothesis testing

## 6. Discussion

The main results of this study have supported the three correlation hypotheses, as it concluded that E-training dimensions (Efficiency- Methods- Environment) positively affect the employees' job performance. This means that companies need to continue investing in the development of e-training infrastructure, especially after the spread of the Covid-19 pandemic, as companies' reliance on this type of training increased even after the epidemic subsided. So, technological progress and the mechanisms of globalization that the world is witnessing today impose on contemporary organizations to take care of their human resources by using the latest technology applications to provide them with valuable knowledge, skills, and capabilities to achieve their goals effectively. Therefore, organizations must focus their efforts on the optimal use of their employees through job satisfaction, continuous improvement in their functional performance, and creating the appropriate environment to motivate them to achieve the highest productivity.

The study revealed that E-training efficiency is the most influential dimension of employee performance, which is related to the quality of the content provided, and the eligibility of the trainer. Thus, companies should be eager in engaging qualified and experienced trainers in their field and have communication skills that qualify them to manage training programs effectively. Hence the importance of the Training Needs Assessment before starting the training program, as it helps in selecting the right people for the training programs, choosing the appropriate training style, level, and topics for them, and the suitable duration of the program to achieve the training objectives efficiently and productively. This finding is in line with a study by Kamal, Aghbari & Atteia (2016, 5), which indicated to the importance of E-training efficiency in influencing employee performance.

Moreover, the study also concluded that the E-training environment variable has received the second highest correlation to job performance, this finding confirms a study by Kamal, Aghbari & Atteia (2016, 6). On the other hand, the E-training methods variable has received the least impact on employee performance. This finding is not in line with a study by Asamoah & Avenorgbo (2021, 44), which indicated that the various methods used in E-training programs have a strong significant relationship with employee performance.

## 7. Conclusion

Improving job performance and increasing productivity is one of the most important goals that organizations aim at. These organizations have realized that human investment is the best way to achieve this goal, so they have focused on training their employees and developing their knowledge and functional skills. In general, E-Training not only leads to an increase in the productive and professional efficiency of employees but it is also considered one of the core factors that help in improving their sense of satisfaction and job security. Many organizations have realized this fact, so training programs are no longer limited to learning the necessary skills to increase productivity but are also concerned with educating employees in many fields related to their work and lives.

This study sheds light on the importance of E-Training, as its impact and applications have increased in recent years due to the development of communication and information technology, and the expansion of online training strategies and remote work. In recent years, e-training has become an important strategy that helps employees learn job-related competencies and other life communication skills. This has encouraged many business organizations to rely on the e-training system. This study concluded that the dimension of E-Training Efficiency (Content & Trainer) had the most impact on employee performance, followed by the E-Training Environment, and finally E-Training Methods. Therefore, organizations should focus on improving e-training methods to raise the level of their impact on employee performance, continue investing in e-training infrastructure, and attract qualified trainers who are able to design training programs and updated content that achieve the organization's goals and improve its competitiveness. In addition, provide a motivating work environment for career development and advancement.

## References

- Amara, N. B., & Atia, L. 2016. "E-Training and Its Role In Human Resources Development." *Global Journal of Human Resource Management* 4(1): 1-12. Available at: <https://www.eajournals.org/wp-content/uploads/E-Training-and-Its-Role-in-Human-Resources-Development.pdf>.
- Asamoah, E.S. & Avenorgbo, M. 2021. "The Effect of E-Training on the Performance of Employees in Small and Medium Scale Enterprise amidst the Covid-19 pandemic." *Acta Universitatis Bohemiae Meridionalis* 24(2): 34-48. Available at: DOI 10.32725/acta.2021.006.
- Bafaneli, S., & Setibi, G. 2015. "The impact of on-the-job training on employee performance: The case of Riley's Hotel." *Journal of Business Theory and Practice* 3(2): 239-251. DOI: <https://doi.org/10.22158/jbtp.v3n2p239>.
- Beijer, S., Peccei, R., Van Veldhoven, M., & Paauwe, J. 2021. "The turn to employees in the measurement of human resource practices: A critical review and proposed way forward." *Human Resource Management Journal* 31(1): 1–17. <https://doi.org/10.1111/1748-8583.12229>.
- Chong, L., Ngolob, R.A. and. Palaoag, T.D. 2020. "Human Resource Management (HRM) Practices." *Journal of Advanced Management Science* 8(4): 121-125. Doi: 10.18178/joams.8.4.121-125.
- Domínguez-Falcón, C., Martín-Santana, J.D. and De Saá-Pérez, P. 2016. "Human resources management and performance in the hotel industry." *International Journal of Contemporary Hospitality Management*, Vol. 28 (3): 490-515, doi: 10.1108/IJCHM-08-2014-0386.
- Ellis, F. & Kuznia, K. 2014. "Corporate E-Learning Impact on Employees." *Global Journal of Business Research* 8(4): 1-15.
- Elrehail, H., Alzghoul, A., Alnajdawi, S. & Ibrahim, H. 2020. "Employee satisfaction, human resource management practices and competitive advantage." *European Journal of Management and Business Economics* 29(2): 125-149. <https://doi.org/10.1108/EJMBE-01-2019-0001>.
- Govand, A. & Shukur, I. 2015. "The Impact of Training and Development on Job Satisfaction: A Case Study of Private Banks in Erbil." *International Journal of Social Sciences & Educational Studies* 2(1): 65-72. <https://www.proquest.com/openview/473fddf6d6b1d03e735c07a704f8dc6b/1?pq-origsite=gscholar&cbl=4672073>.
- Huang, W. 2019. "Job Training Satisfaction, Job Satisfaction, and Job Performance." Book chapter available online at: DOI: <http://dx.doi.org/10.5772/intechopen.89117>.
- Iqbal, M. Z., Malik, S. A., & Khan, R. A. 2012. "Answering the journalistic six on the training needs assessment of pharmaceutical sales representatives: Comparative perspectives of trainers and trainees." *International Journal of Pharmaceutical and Healthcare Marketing* 6(1): 71–96. doi:10.1108/17506121211216914.
- Kadiresan, V., Selamat, M., Selladurai, S., SPR, C. & Mohamed, R. K. 2015. "Performance Appraisal and Training and Development of Human Resource Management Practices (HRM) on Organizational Commitment and Turnover Intention." *Asian Social Science* 11(24): 162-176. doi:10.5539/ass.v11n24p162.
- Kamal, K., Al Aghbari, M. & Atteia, M. 2016. "E-Training & Employees' Performance a Practical Study on the Ministry of Education in the Kingdom of Bahrain." *Journal of Resources Development and Management* 18 (1-8). Available at: [https://www.researchgate.net/publication/331928494\\_E-training\\_employees'\\_performance\\_a\\_practical\\_study\\_on\\_the\\_ministry\\_of\\_education\\_in\\_the\\_Kingdom\\_of\\_Bahrain](https://www.researchgate.net/publication/331928494_E-training_employees'_performance_a_practical_study_on_the_ministry_of_education_in_the_Kingdom_of_Bahrain).
- Karam, A.A. 2019. "The Impact of Training and Development on Different Cultural Employees Performance through Interaction Employees Motivation in Erbil Public and Private Banks." *Mediterranean Journal of Social Sciences* 10(1): 194-206. Doi: 10.2478/mjss-2019-0017.
- Kazi, T.M. et al. 2019. "Impact of training needs assessment on the performance of employees: Evidence from Bangladesh." *Cogent Social Sciences* 5(1): 1-14. <https://doi.org/10.1080/23311886.2019.1705627>.
- Khan, A. et al. 2016. "Impact of Training and Development of Employees on Employee Performance through Job Satisfaction: A Study of Telecom Sector of Pakistan." *Business Management and Strategy* 7(1): 29-46. DOI: <https://doi.org/10.5296/bms.v7i1.9024>.
- Khan, A., & Masrek, M. N. 2017. "Training needs analysis based on mismatch between the acquired and required levels of collection management skills of academic librarians." *Collection Building* 36(1): 20–28. doi:10.1108/CB-06-2016-0012.
- Maršíková, K. & Šlaichová, E. 2015. "Perspectives of employee training and development: methods and approaches." *ACC Journal* 21(3): 13-23. DOI: 10.15240/tul/004/2015-3-002.
- Mello, J.A. 2011. *Strategic Management of Human Resources*. 3rd ed. Boston: South-Western Cengage Learning.
- Mikołajczyk, K. 2022. "Changes in the approach to employee development in organizations as a result of the COVID-19 pandemic." *European Journal of Training and Development* 46 (5/6): 544-562. <https://doi.org/10.1108/EJTD-12-2020-0171>.
- Najam, U. et al. 2020. "A Link Between Human Resources Management Practices and Customer Satisfaction: A Moderated Mediation Model." *SAGE Open* 10(4): 1-16. <https://doi.org/10.1177/2158244020968785>.

- Nguyen, C. & Duong, A. 2020. "The Impact of Training and Development, Job Satisfaction and Job Performance on Young Employee Retention." *International Journal of Future Generation Communication and Networking* 13(3): 373-386.
- Oluwaseun. O. 2018. "Employee Training and Development as a Model for Organizational Success." *International Journal of Engineering Technologies and Management Research* 5(3): 181-189. DOI:10.5281/zenodo.1218174.
- Patten, M.L. & Newhart, M. 2017. *Understanding Research Methods: An Overview of the Essentials*. New York: Taylor & Francis by Routledge.
- Picardi, C.A. & Masick, K.D. 2013. *Research Methods: Designing and Conducting Research with a Real-World Focus*. SAGE Publications, Inc, USA.
- Praslova L. 2010. "Adaptation of Kirkpatrick's four level model of training criteria to assessment of learning outcomes and program evaluation in higher education." *Educational Assessment, Evaluation and Accountability* 22(3): 215-225. Available at: doi:10.1007/s11092-010-9098-7.
- Top, C., Abdullah, B. M. S., & Faraj, A. H. M. 2020. "Transformational leadership impact on employee's performance." *Eurasian Journal of Management & Social Sciences* 1(1): 49-59. Doi: 10.23918/ejmss.v1i1p49.
- Urbancová, H., Vrabcová, P., Hudáková, M. & Petru, G.J. 2021. "Effective Training Evaluation: The Role of Factors Influencing the Evaluation of Effectiveness of Employee Training and Development." *Sustainability* 13(5): 2721. <https://doi.org/10.3390/su13052721>.
- Wolor, C.W. et al. 2020. "Effectiveness of E-Training, E-Leadership, and Work Life Balance on Employee Performance during COVID-19." *Journal of Asian Finance, Economics and Business*, Vol 7, No.10, pp.443–450. Available at: doi:10.13106/jafeb.2020.vol7.no10.443.
- Yang, S.C. & Lin, CH. 2021. "The Effect of Online Training on Employee's Performance." *Journal of Computers* 6(3): 458-465. doi: 10.4304/jcp.6.3.458-465.
- Zardasht, P., Omed, S., & Taha, S. 2020. "Importance of HRM Policies on Employee Job Satisfaction." *Black Sea Journal of Management and Marketing* 1(1): 49-57. doi:10.47299/bsjmm.v1i1.15.

# **The Involvement of the European Commission in the Implementation of the “European Union for Health” Program for the Period 2021-2027 Relevant Union Legislative Mechanisms**

**Elise-Nicoleta Vâlcu**

*Associate Professor, PhD, Faculty of Economic Sciences and Law, University of Pitesti, Romania  
elisevalcu@yahoo.com*

**ABSTRACT:** The need for a new concerted approach by the member states of the European Union starting with 2020, regarding the "EU policy in the field of health" was generated by the outbreak of the crisis caused by COVID-19. On 11 March 2020, the World Health Organization (WHO) declared the epidemic caused by the new coronavirus (COVID-19) as a global pandemic, causing an unprecedented health crisis. Faced with this cross-border threat to public health, the member states have concluded that additional action at the European Union level is necessary to support cooperation and coordination between them. Therefore, the Union co-legislator adopted Regulation (EU) 2021/522 of the Parliament and of the Council on 24 March 2021, establishing a program of action of the European Union in the field of health "European Union Program for Health" for the period 2021-2027 (Regulation (EU) 2021/522 of the Parliament and of the Council of 24 March 2021 establishing an action program of the European Union in the field of health ("the "EU program for health") for the period 2021-2027 (OJ L 107, 26.3 .2021, p. 1-29) repealed Regulation (EU) no. 282/2014. This regulation is mandatory in all its elements and applies directly in all member states from January 1, 2021).

**KEYWORDS:** health programme, member states, financing, actions, governance

## **Introductory provisions regarding the context of the adoption of the “European Union for Health” Program 2021-2027**

In accordance with the provisions established by Articles 9 (“In defining and implementing its policies and actions, the Union takes into account the requirements for promoting a high level of employment, guaranteeing adequate social protection, combating social exclusion, as well as the requirements for a high level of education, of professional training and protection of human health”) and 168((1) “A high level of protection of human health shall be ensured in the definition and implementation of all policies and actions of the Union. (2) The Union encourages cooperation between member states in the fields covered by this article and, if necessary, supports their action. It encourages, in particular, cooperation between Member States to improve the complementarity of their health services in cross-border regions. (3) The Union and the member states favour cooperation with third countries and with competent international organizations in the field of public health”) (ex-Article 158 TEC) of the Treaty on the Functioning of the European Union (TFEU) and Article 35 (Every person has the right to access preventive healthcare and to benefit from medical care under the conditions established by national laws and practices. A high level of protection of human health shall be ensured in the definition and implementation of all Union policies and actions. The principles contained in this article are based on articles 11 and 13 of the European Social Charter) of the Charter of Fundamental Rights of the European Union, in the definition and implementation of all Union policies and actions the prevention of the direct and collateral effects of future health crises on the citizens of the member states is ensured.

Regulation (EU) 2021/522 has as its regulatory object the establishment of an action program of the European Union in the field of health (“The EU program for health”) for the period 2021-2027, adopted in synergy with other programs of the European Union among

which we mention the InvestEU Program established by Regulation (EU) 2021/523 of the European Parliament and of the Council (Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Program and amending Regulation (EU) 2015/1017) and the Recovery and Resilience Mechanism established by Regulation (EU) 2021/241 of the European Parliament and of the Council (Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Mechanism (OJ L 57, 18.02.2021, 17)

The crisis caused by COVID-19 has highlighted many challenges, including the dependence of the European Union on third countries in terms of ensuring the health systems of the member states regarding the supply of raw materials, medicines, medical devices needed during health crises, especially pandemics.

As stipulated in Article 3 of Regulation (EU) 2021/522, “The Program has an added value for the Union and complements the policies of the Member States with a view to improving human health throughout the Union” meaning that it proposes a set of general objectives, among which we mention:

- a) supporting the promotion of health in order to prevent diseases, by reducing health inequalities, by promoting a healthy lifestyle and by promoting access to healthcare;
- b) protecting Union citizens against serious cross-border threats to health and strengthening the reaction capacity of Member States’ health systems;
- c) improving the availability and accessibility in the Union of medication and medical devices, products needed in crisis situations, as well as supporting innovation in such products;
- d) strengthening health systems by improving their resilience and resource efficiency, in particular by: (i) supporting an integrated and coordinated activity between member states; (ii) promoting the implementation of best practices and promoting data exchange; (iii) strengthening the health workforce.

In accordance with the provisions of Article 6 of the Union norm, in order to implement (In order to implement the program for the period 2021-2027, the European Union allocates a financial package of 2 446 000 000 EUR which is increased by an additional allocation of 2 900 000 000 EUR as established in accordance with the provisions of Article 5 of the Regulation (EU, Euratom) 2020/2093 of the Council of 17 December 2020 establishing the multiannual financial framework for the period 2021-2027 (OJ L I, 22.12.2020, p.11). The distribution of the amounts is done as follows: a) a minimum percentage of 20% of the total amount is reserved for health promotion and disease prevention actions; b) a maximum percentage of 12.5% of the total amount is reserved for public purchases in order to build stocks of essential products for health crisis situations; c) a maximum percentage of 12.5% of the total amount is reserved for supporting the international commitments undertaken by the European Union on behalf of the member states; d) a maximum percentage of 8% of the total amount is reserved for preparation, monitoring, control, audit and evaluation activities) the above-mentioned objectives, together with the European Union, the following may participate:

- third countries that are member states of the European Free Trade Association, members of the European Economic Area (EEA) ( The member states of the EEA are: a) the member countries of the European Union (EU): Austria, St. Bartholomew Belgium, Bulgaria, Cyprus (excluding Northern Cyprus), Czech Republic, Croatia, Denmark, Estonia, Finland, France, Guadeloupe, French Guiana , Germany, Greece, Ireland, Italy, Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, St. Martin, Martinique, Mayotte, Norway, Holland, Poland, Portugal (including the Azores and Madeira islands), Romania, Reunion, Slovakia, Slovenia, Spain (including Tenerife, Balearic and Canary Islands), Sweden, Hungary; and b) Member States of the European Free Trade Association, respectively Liechtenstein, Norway and Switzerland, Iceland);

- acceding countries, candidate countries and potential candidate countries, in accordance with the general principles established by the framework agreements concluded with the European Union;
- the countries within the European neighborhood policy, in accordance with the general principles and the general clauses and conditions for the participation of the respective countries in the Union's programs.

### **The role of the European Commission in the implementation of the “European Union for Health” Program 2021-2027**

The actions to be taken by the member states based on the provisions of this regulation will be constantly supported by the institutions of the European Union, in accordance with the principle of subsidiarity, as provided for in paragraph 3 of article 5 ("Based on the principle of subsidiarity, in areas that are not within its exclusive competence, the Union intervenes only if and to the extent that the objectives of the intended action cannot be satisfactorily achieved by the member states, neither at the central level, nor at the regional or local level, but due to the dimensions and effects of the intended action, they can be better achieved at the level of the Union") of the TEU. Also, third countries that are members of the European Economic Area (EEA) may participate in Union programs within the framework of the cooperation established under the Agreement on the European Economic Area (JO L 1, 03.01.1994, p.3) that provides for the implementation of such programs.

Specifically, from a legislative point of view, the competence of the European Commission to adopt acts based on a *delegated competence* is foreseen, in accordance with the provisions of Article 290 of the TFEU. Thus, in accordance with the provisions of paragraph (1), a Union legislative act can delegate to the European Commission the power to adopt non-legislative acts with a general scope of application, which complete or modify certain non-essential elements of the Union legislative act.

The delegated competence (In accordance with the provisions of article 19 in conjunction with the provisions of article 25 of Regulation (EU) 2021/522) of the European Commission regarding the “Health Programme” is retained in relation to the review, modification and addition of the indicators provided for in Annex II, of this regulation. Specifically, when exercising its delegated powers, the Commission (meetings of the Commission's expert groups tasked with the preparation of delegated acts) must organize appropriate consultations with the European Parliament and the Council, and consult the experts designated by each member state, those consultations being carried out in accordance with the principles established in the Interinstitutional Agreement on Better Law-Making of April 13, 2016 (JO L 123, 12.05.2016, p. 1). The competence to adopt delegated acts in the matter derived from this analysis is conferred on the European Commission for a period of seven years starting on March 26, 2021.

In the event that neither the European Parliament nor the Council have raised objections within two months of the notification of the draft program by the Commission, or in the event that, before the expiry of the aforementioned term, the European Parliament and the Council have informed the Commission that they will not raise objections, the delegated act draft will be considered adopted and will enter into force. The respective term can be extended by two months, only at the initiative of the European Parliament or the Council. Immediately after the delegated act has been adopted, the Commission notifies it simultaneously to the European Parliament and the Council.

The delegation of powers referred to in Article 19 paragraph (2) may be revoked at any time by the European Parliament or the Council. The revocation decision takes effect from the day following its publication in the Official Journal of the European Union (Boghirnea 2015, 119-124) or from a later date mentioned in the content of the decision.

Paragraph (2) of Article 291 of the TFEU regulates *the execution competence* of the European Commission, in case it is necessary to develop the necessary conditions for the

implementation of the Union regulations, directives and decisions (Niță 2016, 242-248; Militaru 2017, 117-120).

With a view to uniform application of the provisions of the regulation deduced from the analysis, one acknowledges *the execution competence* of the European Commission, in accordance with the provisions of paragraph (2) of Article 291 TFEU stated above, applying the examination procedure, in order to adopt implementing acts through which are adopted: a) annual work programs in accordance with the criteria provided in this regulation; b) rules regarding the technical and administrative provisions necessary to implement the actions of the program, as well as regarding the uniform data collection models necessary to monitor the implementation of the program (Both the delegated competence and the execution competence are exercised in accordance with Regulation (EU) no. 182/2011 of the European Parliament and of the Council of 16 February 2011 establishing the rules and general principles regarding the control mechanisms by the Member States of the exercise of enforcement powers by the Commission (OJ L 55, 28.02.2011, p.13))

Regarding the procedural mechanism appropriate to this program, we specify that Article 15 paragraph (1) of the Union norm regulates the establishment of a coordination group of the “European Union for Health” program made up of the European Commission and the member states. At the representation level, each member state appoints a member and an alternate member within the Coordination Group of the “EU for Health” program. *How can the involvement of the European Commission in the implementation of the Health Program be summarized?*

Regarding the Commission's involvement as a member of the Coordination Group of the “EU for Health” program, we retain the following competences:

(a) Consults the Steering Group of the EU Health Program on: the preparatory work of the Commission for the annual work programmes, each year at least six months before the presentation of the draft annual work programme. In this sense, the Commission meets at least once a year, during the six months preceding the presentation of the draft work program, and with relevant stakeholders, including representatives of civil society and patient organizations (See for more details Article 16(2) of Regulation (EU) 2021/522).

(b) Every year, before the last meeting of the EU Health Program Coordination Group, the Commission presents to the European Parliament the results of the work of the EU Health Program Coordination Group and the stakeholder consultation mentioned above.

(c) Adopts, through implementing acts, the annual work programs, which establish, in particular, the component actions of the program, the related allocation of financial resources; eligible shares of legal entities established under European Union law or an international organization; eligible shares of legal entities from a third country associated with the program; the actions of legal entities that are established in a third country that is not associated with the program but that can be declared eligible, under exceptional conditions “if this participation is necessary to achieve the objectives of a certain action” (See for more details, Article 13 paragraphs (1) – (3) of Regulation (EU) 2021/522).

(d) Participates in the adoption of its own rules of procedure, which contain provisions to ensure that the group meets at least three times a year, meetings that ensure a constant exchange of views between member states.

(e) Ensures coherence and complementarity between the health policies of the Member States, as well as between this program and other policies and actions of the European Union;

(f) Coordinates monitoring of program implementation and propose any necessary adjustments based on evaluations (See for more details Article 15 of Regulation (EU) 2021/522).

## Conclusion

The legislation of the European Union in the field of health has an immediate and direct impact on public health, on the efficiency and resilience of the health systems of the member states and, last but not least, on the good functioning of the internal market.

Therefore, the appropriate “European Union for Health” Program for the period 2021-2027, aims to strengthen resilience at the Union level in case of cross-border threats to the health of its citizens, but also to support, develop, implement and ensure compliance with Union legislation in the field of health. Also, the Union institutions involved in the implementation of the program, especially the European Commission, propose a constant collaboration with relevant bodies such as the European Medicines Organization and ECDC, thus, they will provide data, including from real medical practice, in order to support the development of policies, including monitoring their implementation, while also developing tools to evaluate the progress made by the member states in this field.

## References

- Boghirnea, Iulia. 2015. “The Importance and Utility of the Preliminary Ruling Procedure of the Court of Justice of the European Union.” In *Research and Science Today Journal* no 1 (9).
- Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 establishing the multiannual financial framework for the period 2021-2027 (OJ L I, 22.12.2020, p. 1).
- Interinstitutional Agreement on Better Law-Making of April 13, 2016.
- Militaru, Ioana Nely. 2017. *European Union Law. Chronology. Springs. Principles. Institutions. The internal market of the European Union. Fundamental Freedoms*. Third edition, revised and added. Bucharest: Universul Juridic Publishing House.
- Niță, Manuela. 2016. “Decision-Maker Action in Developing a Public Policy”. In *International Conference “Society based on knowledge. Norms, values and contemporary benchmarks”*, June 10-11, Targoviste, published in the Supplement of Valahia University Law Study. Bibliotheca Publishing House, pp. 242-248.
- Regulation (EU) 2021/522 of the Parliament and of the Council of 24 March 2021 establishing an action program of the European Union in the field of health (“The EU program for health”) for the period 2021-2027 (OJ L 107, 26.3.2021, pp. 1-29).
- Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007.

# Texas' Teens Face a Social Media Ban: A New Start or a Recipe for Destructive Isolation?

Daniel B. Kurz<sup>1</sup>, Spencer Jahng<sup>2</sup>

<sup>1</sup>*M.A., Adjunct Professor of History and Social Sciences, Middlesex College, Edison, New Jersey, USA  
Dbkurz415@aol.com*

<sup>2</sup>*Rising Senior, The Pingry School, Basking Ridge, New Jersey, USA, spencerjahng@gmail.com*

**ABSTRACT:** The Texas State Legislature has been dominated by the Republican Party for over a decade, with solid majorities in both houses. This has enabled it to rapidly take ideas from the so-called 'Conservative Public Sphere' and enact them into genuine policy in very short periods of time. In other words, when prominent Texas Republicans think out loud, it is not very long until many of those thoughts become law. Just this June, the conservative *Texas Public Policy Foundation* called for a 'Social Media Ban' based on its own research. According to the Foundation, teens should be totally barred from using all platforms in this sphere until they are adults due to the immense harm they pose to young people. Within a few weeks, major Texas Republicans echoed this sentiment on social platforms like Twitter, with one, Representative James Patterson, going the furthest. He has pledged in the next session to introduce a bill aimed at shutting off social media access to *all* Texas teens in 2023. (Whiting 2022). In this short paper, we will try to consider what accounts for the enormous speed of radical policymaking. Do these aims go beyond mere protection and exceed the First Amendment rights of teens? How will such a ban be enforced? What are the potential complexities and impact of such a change on the lives of Texas teens?

**KEYWORDS:** Adolescence, Internet, Grooming, First Amendment, Networking, Isolation, Mental Illness, Texas, Legislature, Legislation, Overreaction

Teens have long been blamed, with and without cause, for being unduly influenced by different forms of media. While the latest focus is, especially in the state of Texas, on the harmful effects of social media, during much of the mid-20th century, authorities figures such as politicians, preachers and educators blamed comic books for tempting teens into lives of crime as well as exposing them to sexualized images and themes. Sometimes these accusations turned into full-fledged policy initiatives and investigations, as were seen with the United States Congress and several state legislatures. Suffice to say, there were no bans that ultimately came into effect, and one could make the case that the cause for comic books sales was actually aided by the controversy more than not (Senate Report 1954).

The idea that the Internet is a vast source of monstrous danger, especially for minors, is one that has been in wide circulation since the 'old days' of dial-up web access in the 1990's. Perhaps one of the most dramatic examples of this was during one of the many congressional investigations of the era, when one teen witness stated that "the boogeyman is real and he lives on the Internet." Even during this earlier era, parents and other authority figures lamented the newfound access for teens to pornographic imagery, violent scenes and ultimately each other, instantly, over vast distances (House Report 2007).

By the early 2000's, the landscape had vastly transformed to one based on ubiquitous broadband connections via 4gLTE and Wi-Fi. What was once a dial-up experience from a clunky computer was now streaming like a river on a 24/7 basis on multiple devices, from PC's to laptops to tablets to smartphones. Teens became far more invested and involved in the web, and their social lives would be transformed by such platforms at Facebook, Twitter, Snapchat, Instagram, and more recently, TikTok (Pew Research 2015).

With these websites came a myriad of problems and possibilities. Students could now showcase their talents, literally model for others, and equally as important, network through related messaging apps like Facebook Messenger, WhatsApp, WeChat, Instagram Chat and Twitter DM's. By 2019, social media and direct messaging became intensely intertwined. Teens' lives at school or in other shared environments took on a non-stop existence of their own. Through such media, teens chatted, organized, studied, teleconferenced, expressed themselves, supported, courted, harassed, and persecuted each other (Pew Research 2015).

School policies towards web access, smart devices, and integration of social media have also changed rapidly over the past decade. Most schools banned smartphones when they first became common in the early 2000's, but this situation has rapidly reversed for several reasons. First, wireless networking went from a luxury to being viewed as a necessity and even a right in the pandemic era, as students could utilize their access to conduct a myriad of positive activities. And with the Covid pandemic striking in March of 2020, schools completely reversed course and went almost completely online, utilizing newer social media apps that were now partially connected or wholly funded by schools, such as *Google Meet*, *Slack* and *Microsoft Teams*. To further complicate the situation, students were literally using the same companies and websites to access school-provided material and environments as well as their own private spheres of expression and networking (Burke 2022).

Parents and schools have also long tried to censor or 'filter' web access for students depending on their age and/or the values of their family and community. To date, school districts have spent millions of dollars on software and website access to 'protect' students from explicit sexual imagery, gratuitous violence, and adult predation. For the most part, these efforts have met with limited success for several reasons, but the most damaging has been the 'dual network' problem. This being that students, while essentially 'protected' on school and official networks, can and do simultaneously provide their own LTE network access that is typically not controlled or monitored and specifically meant for adult use. Students once were only able to use their cell phones to access outside LTE networks in school and other controlled environments, but now many other devices are enabled to use LTE. Additionally, students can, much of the time, automatically make their own devices into 'tethered' broadcasting (via Wi-Fi) hubs anywhere and anytime, as long as they have paid for the data (Andrade 2021). But with increasing virtual access to each other and the 'outside world' over the past two decades have come a disturbing development: greater physical isolation. While the level of isolation varies by locale and access to capital, this is becoming a front-burning issue.

In the past, teens in America experienced a high degree of physical mobility. Until recently, driving and even car ownership were common, but with rising expenses, from the cost of a car to insurance to fuel, more and more teens are giving up on driving. And with the decline of public transportation in most American suburbs and cities, many teens see declining methods of getting around. In rural America, the issue doesn't seem to be getting any better (Klurman 2020).

Two more recent developments in particular have had a serious impact on the limitation of teen movement and physical sociability. The first is the hardening of school and similar campus settings. Due largely to the reality of mass shootings, public and private schools (along with their campuses) are doubling-down on physical access to their premises and even internal movement. Honestly, the security regime at many modern U.S. public schools resemble that of boarding an airplane or even entering a prison. Secure IDs, long entry lines, bag searches, transparent backpack requirements and interrogations have become the norm, not the exception (Boyd 2022).

Amid this anxiety-ridden and preventative-oriented atmosphere came the ultimate isolating event: The Covid Pandemic. As the virus spread like wildfire globally in February and March of 2020, schools were particularly affected as major gathering points and became

hubs for serious illness and even death. The first few months of the pandemic were particularly devastating to teens, as accurate information was difficult to come by concerning the contagion, from how it spread to its treatment to the horrendous impact it had on educators. Within the first year, thousands of teachers and administrators lost their lives, and in subsequent waves, all public spaces were largely abandoned (Maxwell 2021).

For the remainder of 2020 and since then, public and private schools, large and small, have experienced sudden and prolonged closures, and nerve-racking re-openings filled with unease. Millions of students found themselves at home, quarantined, and wholly dependent on their online connections in order to function academically and socially (Maxwell 2021).

While the pandemic has somewhat eased as of late (though with a rapidly mutating virus, and with the onset of Monkeypox, that could quickly change), most *physical* social spaces for teens have not recovered, and teens remain particularly vulnerable to extreme physical isolation. Therefore, proposals to bar teens from social media platforms and their related texting, audio and videoconferencing features remain particularly important and impactful.

Even the pre-pandemic numbers, according to several Pew research studies, testify to the enormous role the online sector plays in the social lives of American teens. As technology has become more advanced, social media has given young teens a platform to connect with others, unlike any other methods seen before. In a 2015 study, Pew learned that American adolescence had become totally and perhaps irrevocably transformed by the Web. Over half of all teens had made friends online, and from a variety of online activities from social media postings to message boards to connected group gameplay. Older teens were even more likely to socialize and make *lasting friendships* online. According to another Pew research study from 2018, “Roughly three-quarters of online group participants (74%) say [online resources] play a role in exposing them to new types of people. The same study says that “81% of teens say social media makes them feel more connected to what’s going on in their friends’ lives.” (Pew Research 2018).

But one particularly popular and vibrant method emerged as especially central: texting. Direct peer-to-peer contact has become a major feature of every social media platform, though these features vary in their security, blocking and exclusivity features. Facebook and Instagram are directly attached to Messenger, Twitter has its ‘Direct Messaging’ system, iMessage is installed on every Apple Device and WeChat has hundreds of millions of users and posters between the United States and China. In 2022, these features are now a fundamental part of these platforms and largely inseparable from them (Pew Research 2018). Even by 2015’s somewhat distant standards, the statistics were astounding. A full 79 percent of all teens used some kind of instant messaging daily, and 59 percent utilized the video chat features (Pew Research 2015).

Video game platforms are also socially connective, and Pew estimates that more than half of all teen boys have made friends and social connections with this method. Many parents, raised in the 80’s, simply do not understand the degree of connectivity in modern gaming. After all, no one ever connected with a distant acquaintance, relative or friend while playing *Asteroids* or *Pac Man* on their *Atari 2600* gaming system. Yet today’s games comprise of vast social sandboxes, linking like-minded teens who have created *entire collective worlds* and experiences on platforms like *Minecraft*, *War of Warcraft* and *Roblox* (Poisso 2010).

Teens have fueled social media on every level in America, creating thousands of new large and small companies – and hundreds of thousands of jobs – to service their wants and needs. While Facebook and Twitter remain ‘free’ to use (in exchange for the data teens create, of course, that’s later sold to advertisers), other networks demand payment for entry. Sony’s PlayStation Network, another socially-intensive online locale, has several pay tiers, as does Nintendo and Blizzard. Entire American cities and communities rely on these corporations as

sources of steady employment and consistent tax revenue. Teens also utilize online businesses like *Paypal* and *Zelle* to electronically exchange funds, and Ebay and Amazon – all which also have *social* components to them (Johnston 2021).

Social media platforms such as TikTok, YouTube, and Instagram also act as creative outlets for teens to share their interests and passions with others. Furthermore, these channels are not only a vehicle to share creativity or views, but also a space for collaborative learning for teens. One example is TikTok star Charli D’Amelio who was able to share her dancing on a social media platform with over 125 million followers created by TikTok. Another example is Muhammad Najem, otherwise known as the “Little Journalist.” Najem uses YouTube to post videos documenting the effects of chemical weapon attacks on his hometown in Syria. Without social media, Najem would not have been able to share the harrowing truth about the situation in Syria with the rest of the world.

Additionally, social media and the internet educate youth by exposing them to news and current events in local, national, and international communities. This stream of information, which would otherwise not be as easily accessible for teens, can inspire them to make an impact on their own communities. For example, Greta Thunberg, a Swedish environmental activist, utilized social media to expand the outreach of her climate change school strike, which has now become a global effort connecting millions of teens around the world who are trying to make similar impacts on their local communities. Furthermore, a majority of teens “credit social media with helping teens find different points of view (67%) or helping teens show their support for causes or issues (66%)” (Pew Research 2018).

Furthermore, the Employment statistics are nothing less than stunning. San Francisco-based Twitter has over 7500 employees, many of them engineers but also educators, public relation managers, executives and others. Blizzard, another major gaming and social network, employs over 8000 in America with most jobs paying extremely well. All of these services and business would surely be financially impacted – and perhaps even devastated – by the sudden withdrawal of *every user that constitutes a minor* (Johnston 2021).

Despite all of the facts, studies and observations presented here, the movement to ban minors from all forms of social media is active and rapidly gaining steam in Texas, a state that has long prided itself on its energy sector and technological innovation.

In June of 2022, the powerful, conservative-leaning Texas Public Policy Foundation released a report and numerous press releases calling for the ban. The Foundation based its findings on familiar grounds, those being that social media can be addictive, that it has the ability to eat away at teen self-esteem, that it can present young people with a degree of sexualization they’re not yet ready for, and that it’s a universe where teens can be preyed upon by each other, traffickers and others. Additionally, the Foundation somewhat correctly claims that social media giants, due to their algorithmic, profit-driven models, have customized their platforms to appeal to the most anti-social and destructive sides of children and adolescents (Whiting 2022).

The Foundation also used specific examples of how social media utilization amongst teens had destroyed academic careers and led to attempted and successful suicides. From the Foundation’s point of view, there was no doubt that regardless of whatever good once emerged from it, social media use now posed a kind of existential threat to the mental health and very lives of American teens. It was now the ultimate ‘boogeyman’ – again (Whiting 2022).

The Texas Public Policy Foundation is incredibly influential. Over the past five years, many of its most extreme policy papers and recommendations have rapidly found themselves not only verbally supported by Lone Star State legislators – but also enacted into law. This is especially true of abortion, which has been a target of the organization for over a decade. Texas recently adopted one of the nation’s most extreme anti-abortion laws, as well as one of the nation’s strongest collection of voter suppression regulations (Quintero and Ennis 2022).

So it came a little surprise when, within days of the Foundation's condemnation of teen use of Social Media, key Texas Republican legislators began to respond to its extreme proposition. One of these legislators was Jared Patterson, a State Representative of Texas. Patterson pledged to introduce a bill in the next session to effectively 'grant' the Foundation its ambitious 'wish.' Subsequent events would prove he was as good as his word (McCardel 2022).

By August Patterson had recruited many of his fellow Republican members of the House Homeland Security and Public Safety as well as the Youth Health and Safety committees to target the Social Media Giants. Patterson made it clear that he was holding the corporations responsible for the recent school massacre at Uvalde. According to the legislator, the massacre might have been prevented had the corporations acted on reports of other users on the violent rhetoric coming from the shooter's accounts. Regardless of this imagined timeline, Patterson never addressed the numerous other causes of the massacre, the foremost being the ease of young adults in the acquisition of lethal, semi-automatic firearms in the state (Patterson 2022).

Representatives of the corporations ignored his requests to attend an August 8 Austin hearing on the issue. While they never made it clear either to him or the press why no one showed up, Patterson continued to blame and villainize them verbally and in major press releases; one read:

"Social media is the pre-1964 cigarette. Evidence continues to point toward the damage social media use has on our youth." Rep. Patterson stated. "For years, social media platforms like Facebook, Twitter and TikTok, have refused invitations to testify. It's a slap in the face of all Texans that these platforms refuse to publicly answer questions from those elected to represent the people. However, as other committee members expressed, if you're not at the table then you're on the menu."

Patterson's combative tone reflected the extreme rhetoric of the Foundation's own reports and press releases. His comparison to the 'Pre-1964 Cigarette' was especially telling, in that he was referring to a product that, when properly used, was designed to plague consumers with sickness and ultimately death. Apparently social media use had so little positive effect on teens that it was now the ultimate enemy, justifiably to be regarded with annihilation (Patterson 2022).

As stated earlier, such rhetoric, when implemented into Texas law, frequently comes with genuine 'teeth' in the form of law enforcement activity. Texas Republicans have long been enamored with punitive measures and 'innovative' methods to invoke fear in citizens believed to be exercising anti-social behavior. The recent anti-abortion law included a strange "bounty system" in which any citizen could sue providers or anyone involved in the abortion process in order to dissuade and even terrorize anyone involved in the process – right down to the 'Uber driver' that transported a woman to a provider (Carlson 2021).

Another recent law targeting minors involved in sexual transitions included provisions that would strip parents' custodial rights away under certain circumstances. Wasting no time after the passage of this bill, Texas' Governor Abbott ordered the state's Family Services authority to investigate families with such children on the grounds of child abuse. While the investigations were ultimately paused by state courts, the chilling effect had already reverberated against the intended target: the state's large LGBTQ community. When Texas Republicans want to put teeth into a law, and get it passed, they're not afraid to begin biting. The timeline between rhetoric, report, debate, legislation and enforcement in Texas is truly a condensed one (Perez 2022).

Patterson's radical plan to ban social media will have lasting consequences on Texas teens and requires complicated workarounds and solutions. As mentioned previously, social media has become an integral part of young teens' lives. It is almost a necessity to

communicate and interact with friends and family these days. Patterson's bill would create a situation in which Texas teens face possibly harmful levels of isolation. According to the American Psychological Association, social isolation can result in negative consequences such as "depression, poor sleep quality, . . . accelerated cognitive decline, . . . and impaired immunity at every stage of life." By banning social media, teens will face the numerous effects listed above. Furthermore, questions arise about how teens are expected to socialize and interact with one another when not physically together, and services such as chatrooms are not available. Once students leave the school building they become disconnected, with the exception of online interactions. If social media is banned, how are teens expected to interact with each other when outside of school or in other organized activities? In fact, a Pew research study describes how 60% of a group of teens reported they actually interact with their friends online on a daily basis or almost every day while only 24% of the same group said they spend time with friends in person on a daily basis or almost every day. While online social situations are not completely the same as old-fashioned in-person interactions, they have become the primary method of communicating among teens and are necessary to prevent social isolation (Pew Research 2018).

In addition to limited social interactions which in turn will cause isolation and negative effects on mental health this bill could create, Patterson's bill brings up many questions about enforcement procedures and retribution. With social media being such a prevalent part of life now, how is such a major change going to be put into place? Social media includes a wide category of apps, websites, and online platforms. Many of them don't have age restrictions or at least systems that are highly comprehensive. If Patterson's bill is enacted, how is the state of Texas going to monitor the usage of all sites and apps that are considered social media? Will companies such as Instagram and TikTok be forced to create an authentication system, just for usage in the state of Texas? Will Apple and Android need to create a new age restriction system on their products? If some sort of tracking system is put in place, this bill seems to propose some form of "big brother" system that encroaches on rights provided by the Fourth Amendment, or in other words an invasion of privacy as Texas tries to monitor every child's use of technology.

With the thought that Texas is known to be a state where it is notoriously easy to be sent to jail in mind, what will the actual consequence be if a child uses social media? Will parents be held responsible for their children's activities? While Patterson is trying to implement safeguards for the well-being of Texas teens, the issue that he is trying to address is on a much larger scale than just the teens in one state. The use of social media is now a global phenomenon and requires a "global" mindset when trying to create new procedures and policies. Like a modern-day 'Sword of Damocles,' the genuine threat of the end of minor involvement in most online social interactions and platforms looms over Texas. This begs one last question: what about First Amendment and other Constitutional considerations?

When evaluating Patterson's proposal to ban social media, the past precedent and similar situations serve as benchmarks to set expectations for what is considered constitutional or not and how the general public will respond. In today's instance when teens' rights provided by the First Amendment are threatened, *Hazelwood v. Kuhlmeier* provides significant insight into how teens might react when they feel their freedom of speech will be taken away. While not identical in nature, this case most closely resembles the situation and potential implications of Patterson's bill. To quickly summarize the *Hazelwood v. Kuhlmeier* court case, the case was initiated when a school principal deleted several articles from a soon-to-be-published student newspaper that he considered to contain both offensive and non-offensive stories without telling the students and providing reasonable explanations. Hazelwood East High School students sued the St. Louis, Missouri high school district in 1983, claiming their First Amendment rights were being attacked. After several rounds of different court rulings and appeals from both parties at different court levels, ultimately in

1988, the Supreme Court ruled 5-3 in favor of the school determining that “public schools do not have to allow student speech if it is inconsistent with the school’s educational mission.” Furthermore, the Supreme Court sided with the principal’s claims that the articles were inconsistent with what the Hazelwood East High School’s board of education deemed to be the school’s “fundamental values” and the school’s mission of preparing students to be fully functioning, critical-thinking members of society (Hall 2009).

While the Supreme Court decided that Hazelwood East High School was allowed to prevent students from publishing certain content, the context of said censorship is imperative. The Supreme Court stated that in general, public schools must allow students to express their ideas unless the student’s speech goes directly against the school’s basic educational mission. The example this court decision sets is that schools can censor students if the students are publishing defaming or truly negative content, but the school can’t prevent them from sharing creative content simply because some might consider the article offensive. In today’s situation, Patterson’s bill is essentially taking away Texas teens’ freedom of speech in a similar fashion to how the Hazelwood principal wanted to get rid of content he deemed too offensive.

## Conclusions

Patterson’s legislation is yet to be formally introduced, but from all information gleaned from his statements and committee hearings, we feel we can draw some reasonable suppositions. We feel his efforts paint way too broad a brush on the subject of minors, especially teens, and their online interactions. In 2022, social media covers just about every platform online, regardless of purpose or aim. From online gaming to socializing to commerce, every platform involves some degree of interaction, whether specific or anonymous. Judging from both his legislative history and that of the recent Texas Republican Party, absolute disconnection from all interactive online media may very well be the aim here.

There is the issue of enforcement. Who will ultimately be held responsible for infractions? Parents? The Platforms? The minors themselves? Will there be a graduated system of penalties, or will they be immediately draconian? Additionally, will minors be grouped as a single category or will they be placed in different classes based on age or some other feature? Which state agency will be tasked with enforcement? The Police? Texas’ already overburdened family service agencies? Or perhaps through *individual civil enforcement*, as with Texas’ current anti-abortion law?

We do not believe that, at least for middle and high school students, this idea passes constitutional muster. While it *is* true that minors’ constitutional rights can be limited, eventually these individuals will become full-fledged adult citizens. Baring minors from social media in no way prepares them for the rigorous and critical skills needed to function as an adult online in the 21<sup>st</sup> century. Any law regulating young people needs to bear this in mind, and we doubt the courts – especially on the Federal level – will simply accept a total ban. The online world does have genuine problems, and there are dangers that children face. But to cut them off from the global communications (and each other) completely is a damaging, regressive overreaction.

## References

- Andrade, David. 2021. “What Does the Future of Content Filtering Look Like For K-12 Education?” *Ed Tech Focus On K-12*. Available at <https://edtechmagazine.com/k12/article/2021/11/what-does-future-content-filtering-look-k-12-education>.
- Boyd, Megan. 2022. “We Don’t Want Students Feeling Like They’re Going Into Prison.” *KWTX Channel Online*. Available at <https://www.kwtx.com/2022/05/18/we-dont-want-our-students-feeling-like-theyre-going-into-prison-experts-school-officials-weigh-metal-detectors-schools/>.
- Burke, Anne. 2022. “How Some Children Prospered in Pandemic Online Learning.” *The Conversation*. Memorial University of Newfoundland. Available at <https://theconversation.com/how-some-children-prospered-in-pandemic-online-learning-180274>.

- Carlson, Kara. 2021. "Lyft, Uber Say They'll Cover Legal Fees for Drivers Sued Under New Texas Abortion Law." *Austin American Statesman*. Available at <https://www.statesman.com/story/business/2021/09/03/uber-lyft-pay-legal-fees-drivers-sued-under-texas-abortion-law/5718736001/>.
- Hall, H. L. 2009. *Hazelwood School District v. Kuhlmeier (1988)*. Available at <https://www.mtsu.edu/first-amendment/article/657/hazelwood-school-district-v-kuhlmeier>.
- House Report on Sex Crimes and the Internet*. 2007. Judiciary Committee of the U.S. House of Representatives. Washington, D.C. Available at <https://www.govinfo.gov/content/pkg/CHRG-110hrg38335/pdf/CHRG-110hrg38335.pdf>.
- Johnston, S. *San Francisco Bay Area Retains Top Spot on CBRE's Annual Scoring Tech Talent Report*. 2021. Available at <https://www.cbre.com/press-releases/san-francisco-bay-area-ranks-first-among-north-american-tech-hubs-with-the-largest-tech-labor-pool#content>.
- Klurman, M. 2022. "Teens Don't Have Interest in Driving Anymore and That's OK." *Parents Magazine*. Available at <https://www.parents.com/kids/responsibility/driving/teens-dont-have-interest-in-driving-anymore-and-thats-ok/>.
- Maxwell, Lesli. 2021. "We Feel Your Grief: Remembering the 1000 Plus Educators Lost to Covid-19." *Education Week*. Available at <https://www.edweek.org/teaching-learning/we-feel-your-grief-remembering-the-1-000-plus-educators-whove-died-of-covid-19/2021/09>.
- McCardel, M. 2022. *Texas Republican Working on Bill to Ban Minors from Social Media*. WFAA Online. Available at <https://www.wfaa.com/article/news/politics/inside-politics/texas-republican-bill-ban-minors-social-media/287-01e2af53-b88c-4720-a3b4-ef85f569816c>.
- Novotney, Amy. 2019. "The Risks of Social Isolation." *American Psychological Association*. Available at <https://www.apa.org/monitor/2019/05/ce-corner-isolation>.
- Patterson, Jared. 2022. "Representative Patterson Condemns Social Media Social Media Platforms Absence at Joint Committee Hearing." Available at <https://jaredpatterson.net/rep-patterson-condemns-social-media-platforms-absence-at-joint-committee-hearing/>.
- Perez, J. 2022. "Abbott Orders Texas Probe of Medical Procedures For Transgender Children." *Politico Online*. Available at <https://www.politico.com/news/2022/02/23/texas-governor-orders-probe-of-abusive-procedures-for-transgender-children-00011057>.
- Pew Research Center. 2015. "Teens, Technology and Friendships." Available at <https://www.pewresearch.org/wp-content/uploads/sites/9/2015/08/Teens-and-Friendships-FINAL2.pdf>.
- Pew Research Center. 2018. "Teens' Social Media Habits and Experiences." Available at [https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2018/11/PI\\_2018.11.28\\_teens-social-media\\_FINAL4.pdf](https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2018/11/PI_2018.11.28_teens-social-media_FINAL4.pdf).
- Possio, L. 2010. "World of Warcraft Rookie: Ten Ways to Meet Other New Players." *Engadget*. Available at <https://www.engadget.com/2010-04-29-wow-rookie-10-ways-to-meet-other-new-players.html>.
- Quintero, James and Ennis, Sam. 2022. "Hijacked: How A Recent Guilty Plea Proves the Need for Election Integrity Laws." Available at <https://www.texaspolicy.com/hijacked-how-a-recent-guilty-plea-proves-the-need-for-election-integrity-laws/>.
- Senate Report on Comic Books and Children*. 1954. Judiciary Committee of the United States Senate. Washington, D.C. Available at <https://archive.org/details/juveniledelinque54unit/page/n7/mode/2up>.
- Whiting, Zach. 2022. "Why Texas Should Ban Social Media For Minors." *Texas Public Policy Foundation*. Available at <https://www.texaspolicy.com/why-texas-should-ban-social-media-for-minors/>.

# Aspects of the Seller's Warranty Against Vices in the Good Sold in Romania

Robert Șerbănescu

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

**ABSTRACT:** The sales contract has the legal nature of a consensual civil legal act, i.e., it takes the form *ad validitatem*, the simple agreement of will between the parties, if the law does not provide otherwise being sufficient for its valid conclusion. Being a synalagmatic contract, it gives rise to rights and obligations on both sides that are interconnected in order to achieve the agreement of will in the way it was expressed at the conclusion of the contract. However, there are situations when, after the termination of the legal relationship, certain circumstances may arise that make it impossible to exercise the buyer's ownership right over the purchased asset. In this sense, it is required that the party called the seller, before the termination of the civil legal relationship between him and the buyer, undertakes obligations to guarantee the right of ownership transmitted through the sales contract. The importance of this obligation also emerges from certain aspects that are presumed at the conclusion of any civil legal act, namely, the good faith of the parties at their conclusion, a presumption that can be overturned by any means of evidence by the party invoking bad faith. The article aims to analyze some of the most important aspects of the sales contract in relation to the seller's obligations to guarantee the buyer against hidden vices of the purchased good. Some conclusions at the end of the paper will aim to summarize all the information presented in a clearer way.

**KEYWORDS:** buyer, Civil Law, contract, vices, property, guarantee, good faith, obligations, relationship of will, seller, legal relationship, rights, consent

## **The warranty against vices of the sold goods**

According to Romanian legislation, the seller has the obligation to guarantee the buyer against any hidden vices of the good at the time of transfer of ownership or only a dismantling of this right to the buyer. (Dobrilă and Macovei 2019, 132).

The legal consequence of the guarantee of the thing sold against any of its vices is one of substance, so that any element of subjectivity of the proven or presumed fault of the debtor is eliminated (Florea 2013, 112). The guarantee being automatic and abstract, the seller's fault does not constitute an element of its employment, a fact that gives it, from a legal point of view, a character of objectivity (Deak, Mihai and Popescu 2017, 328).

This fact means that the debtor of the guarantee obligation cannot be exempted from the obligations even if there is a case of force majeure, which means that this obligation has nothing to do with the subjective circumstances in which the force majeure arose, being considered as an obligation to result (Ciochină 2019, 213).

With regard to European legislation in this matter, the European Union adopted on the one hand Directive no. 374 of July 25, 1985, which establishes a no-fault liability for the act of defective products, called "security vice", the scope of the regulation being smaller than that of the warranty for a hidden vice (Marcusohn 2018, 154).

And on the other hand, Directive CE/44/1999 of May 25, 1999 on some aspects of the sale and guarantees of consumer goods, which regulates the material guarantee of the seller of tangible movable goods acting in the framework of his professional or commercial activity, against of the buyer, in his capacity as a consumer, sales between consumers and those between professionals being excluded (Urs 2017, 125).

### **The notion of hidden vice**

In understanding the term hidden vice, two of its specific elements must be taken into account, namely: a hidden vice makes the good unsuitable for the use for which it is intended or reduces its use or value, and also, a hidden vice cannot be discovered on the date of contracting (Urs 2015, 115). Therefore, we derive the idea that the hidden vice refers to deficiencies in the use of the work, such as making it unsuitable for the use of its destination or the expectation of the buyer (Turianu and Duțu 2016, 432).

The seller's warranty obligation thus extended to all hidden vices consisting of the physical defects of the thing sold, such as malfunctioning, poor condition, the impossibility of use according to the destination and others (Comăniță and Comăniță 2013, 155). This obligation of guarantee against hidden vices of the sold good extended, however, also to its legal vices. The only legal condition to be considered a hidden vice of a good is that the circumstance is redhibitory, i.e., it prevents the use of the thing, having no relevance if the vice is important or secondary or the thing is easy to repair (Ciochină 2012, 231). But the situation of the occult nature of the hidden vice is also accepted, that is, the circumstance in which the vice is not observable or cannot be discovered by the buyer at the time of contracting.

There is also a situation where the seller informs the buyer of some vices in the sold good or these vices are only apparent, not making the good unusable, and in these situations, we cannot talk about a hidden vice of the asset at the conclusion of the sales contract (Moțiu 2020, 86). This situation is only an exception to the legal notion of a hidden vice of the good and is relative, depending on the qualities of the buyer or the nature of the good sold through the sales contract concluded between the parties.

Regarding the buyers, they can be casual or professional, regardless of the category they belong to, the relation to the quality of the buyer being considered from the perspective of a prudent and diligent one (Turianu and Duțu 2016, 435). Casual buyers are considered those who do not have the technical competence to allow them to know the hidden vices of the work, while professional buyers have the competence to notice, especially if they work in the same specialty as the seller, certain defective aspects of the sold good (Marcusohn 2018, 155).

Regarding the nature of the good sold, the guarantee against hidden vices is also analyzed according to the essence of the good, a matter left, in principle, to the discretion of the magistrate. The objective aspects taken into account regarding the nature of the good are those related to the fact that the good is new or used, that it is the subject of special training for certain categories of goods and others (Chirică 2017, 217).

A particularly important aspect in considering the hidden vices of the sold good is that the vice exists on the date of delivery of the good. Thus, the seller guarantees the buyer only for hidden vices already existing at the time of delivery of the good, as well as when vices are in the bud in the case of agricultural or other products in which the essence of the good consists in the production of fruits (Adam 2011, 512).

From this point of view, we can speak of a moment of appreciation of the existence of the hidden vice, this being retained at the time of the conclusion of the contract, the date of delivery of the work being established by the contracting parties, and in the absence of a clause, it is considered as the date of delivery of that work of conclusion of the contract or, in the case of gender goods, the date of their individualization (Popa 2020, 302). In other words, the warranty does not work for vices that appeared after the handover of the good because, from the moment of handover, the risks pass to the buyer. In the case of forced sales, a guarantee against the hidden vice of the sold good is not due from the seller (Mocanu 2018, 122).

### **The effects of the guarantee against hidden vices of the good**

The buyer is granted, based on the seller's warranty obligation against vices, a right of option regarding the remedial measures provided for by law. He can opt for the removal of the vices by the seller or, at his expense, the replacement of the sold good with a good of the same kind, but without vices, the corresponding price reduction or the resolution of the sale (Urs 2017, 129).

The buyer's right of option must be proportional to the seriousness of the vices, the purpose for which the contract was concluded, as well as other circumstances considered by the parties or arising later, so that the negative effects borne by the buyer are removed (Popa 2020, 307). If the chosen measure is disproportionate to the mentioned legal benchmarks, at the request of the seller, the court, based on the evidence administered, may order a different measure than the one requested by the buyer (Moțiu 2020, 93).

In the situation where the buyer has chosen the option for the seller to remove the vices or to remove them at his own expense, the good is considered repaired if it no longer has any vices at all. However, there are also situations in which vices do not affect all the goods sold, that is, situations in which the goods are sold in bulk, the case of the sale of generic goods, as well as the sale of a main good and an accessory, when several goods are handed over to the buyer (Mocanu 2018, 128).

In these situations, if only some of the goods sold are affected by vices and they can be separated from the others without damage to the buyer, and the court orders the resolution only for those affected, the contract is terminated only in part (Dobrilă and Macovei 2019, 140). In the case of the sale of a main good accompanied by an accessory, the resolution of the contract, with regard to the main good, also triggers the resolution regarding the accessory good, a different situation if the accessory good is the subject of the resolution, when this does not also trigger the resolution of the main good (Chirică 2017, 223).

### **Conclusions**

In the case of the sales contract, which is a consensual, synalagmatic legal act, a party called the seller undertakes to hand over the right of ownership or only a part of it to the other party called the buyer. By fulfilling all the obligations established in the contract for the sale of the good, or as the case may be, of goods in bulk, goods of the same kind or main goods accompanied by accessory goods and which are the subject of the respective contract, the legal relationship born by the contract is extinguished.

However, Romanian law provides for certain situations in which, after the termination of the civil legal relationship, certain circumstances may arise that make the respective asset unusable, in which case the buyer would be harmed. For these situations, both the Romanian legislator and the European Union, of which Romania is a part, have provided certain aspects to protect the buyer from possible situations that may arise in relation to the purchased good.

A particularly important aspect is that of the guarantee against hidden vices of the good sold by the seller at the time of delivery of the good, the law giving the buyer a right of action whose prescription begins to run, either from one year after the delivery of the good or from to 3 years in the case of constructions, or from the date on which the buyer ascertained the existence of vices in the case of both types of goods.

The obligation to guarantee against hidden vices of the good when rests with the seller who, depending on the option of the buyer and in the case of the existence of the vice at the time of delivery, will be able to either remove the vice, or repair the good at his own expense, or reduce the price accordingly or return it in full.

Depending on the type of seller, the law provides for separate sanctions for the existence of hidden vices in the goods sold. For bona fide sellers, the penalty is provided by law and consists of the buyer's option to choose from the options mentioned above. For the

one in bad faith, in addition to the legal sanction, he will also have to pay certain damages and interests established by the court.

Also, through the sales contract, the parties can agree on the exemption of the seller from the obligation to guarantee the good against its hidden vices, if absolutely all the vices were presented at the time of handing over the good, otherwise, the exoneration clause is null and void. The seller, through the guarantee against hidden vices of the sold good, is also responsible for its situation in the case of force majeure, because before handing over, the respective good is in his ownership. A case of guarantee against hidden vices of the goods sold is also the guarantee that the goods sold by sample or model correspond to those that the buyer is to receive upon delivery.

Regarding the buyers, they can be of two types depending on the quality they have: occasional buyers, who do not have the ability to immediately notice the possible hidden vices of the good, and professional buyers who have this ability.

In the case of the latter, the law obliges them to inform the seller of the existence of hidden vices within two working days at most from the date of delivery of the good.

## References

- Adam, I. 2011. *The obligations, The contract*. Bucharest: C. H. Beck Publishing House.
- Chirică, D. 2017. *Civil Law Treaty. Special contracts*. Bucharest: Hamangiu Publishing House.
- Ciochină, D., 2012. *Civil Law. Special Contracts*. Bucharest: Universul Juridic Publishing House.
- Ciochină, D., 2019. *Civil Law. The contracts*. Bucharest: Universul Juridic Publishing House.
- Comăniță, G., and Comăniță, I. 2013. *Civil Law. Special contracts*. Bucharest: Universul Juridic Publishing House.
- Deak, F., Mihai L., and Popescu, R. 2017. *Civil Law Treaty. Special contracts*. Bucharest: Universul Juridic Publishing House.
- Dobrilă, M., and Macovei, C. 2019. *Civil Law. Property transfer contracts*. Bucharest: Universul Juridic Publishing House.
- Florea, B. 2013. *Civil Law. Special contracts*. Bucharest: Universul Juridic Publishing House.
- Marcusohn, V. 2018. *Civil Law. Special contracts*. Bucharest: Universul Juridic Publishing House.
- Mocanu, M. 2018. *Civil Law. Special contracts*. Bucharest: Universul Juridic Publishing House.
- Moțiu, F. 2020. *Civil Law. Special contracts*. Bucharest: Universul Juridic Publishing House.
- Popa, I. 2020. *Civil contracts*. Bucharest: Universul Juridic Publishing House.
- Turianu, C. and Duțu A. 2016. *Compendiul. Introduction. The persons. Real rights, General theory of obligations, Special contracts. Legacies. Liberality*, Bucharest: Universul Juridic Publishing House.
- Urs, I. 2015. *Civil Law. Special contracts*. Bucharest: Universul Juridic Publishing House.
- Urs, I. 2017. *Civil Law. Special contracts*. Bucharest: Pro Universitaria Publishing House.

# **An Exploratory Study on the Grieving of the Bereaved Father in Hong Kong – from Grief Support Workers’ Perspective**

**Chi Lok Jerry Wong,<sup>1</sup> Kar Choi Chan<sup>2</sup>**

*<sup>1</sup>Department of Social Work, The Chinese University of Hong Kong, Hong Kong, China, wongjerry@link.cuhk.edu.hk*

*<sup>2</sup>Department of Social Work, The Chinese University of Hong Kong, Hong Kong, China, kcchan@swk.cuhk.edu.hk*

**ABSTRACT:** Chinese culture expects men to be strong and capable of emotional restraint, and therefore, the grief of bereaved fathers is often being overlooked in Chinese society. However, there has been little research done to understand the emotions and needs of these grief-stricken men, especially from the observations and perspectives of support professionals. This exploratory study attempted to address the knowledge gap concerning the bereaved fathers in Hong Kong through interviews of grief support workers. The study aimed at studying the needs and the pattern of grief of these fathers, plus the effects of gender and cultural expectations on their grief expression. Appropriate support and interventions were also explored. In-depth qualitative interviews were conducted with five grief support workers who had substantial experience in providing support and counseling to bereaved fathers, and reflexive thematic analysis was used in the data analysis. Results of the study showed that the bereaved fathers in Hong Kong tend to maintain their toughness and invulnerability as circumscribed by society and cultural norms amid the loss. Also, behaviors associated with the instrumental pattern of grief are more commonly observed among bereaved fathers. With respect to professional interventions, grief support workers recognized the importance of both instrumental and intuitive pattern of grief when working with the bereaved fathers and indicated that they had greater success in engaging these fathers through culturally-sensitive practice by paying attention to the societal and cultural expectations on men and respecting the fathers’ preferred choice and priority in the grief process.

**KEYWORDS:** fathers’ grief, Chinese men, pattern of grief, Hong Kong, grief counseling, grief support workers, bereavement

## **Introduction**

The death of a loved one is one of the most difficult times in one’s life. The death of one’s beloved parents, family members and friends could be the direst moment one can encounter in their life (Lannen et al. 2008). Grief is one of the inevitable parts one will experience over life course. However, the death of one’s child is described to be a kind of death which the parents cannot be prepared for (Limbo and Davies 2015). The bereaved parents, since they bonded with the deceased biologically, are the ones who would naturally experience the most intense, devastating pain in the grieving process of the deceased child.

The number of bereaved mothers who felt the need of seeking help is higher than bereaved fathers (de Groot 2006). Chan and Cheung (2020) ascribed this phenomenon to the masculine stereotype of men as protectors. Although bereaved fathers tend not to seek help, they still suffer from the death of the child, such as self-blaming, fatherhood role confusion, desire for fatherhood role recognition and validation (Cacciatore et al. 2013). Nonetheless, there is very little research that focuses on the experience of bereaved fathers, and, as of this date, there is only a very few studies in Hong Kong focusing on the grief experience of bereaved men who lost their wife or children.

This exploratory qualitative study is intended to address this knowledge gap by focusing on the grief experience of bereaved fathers in Hong Kong and try to understand these men’s often unexpressed needs.

## Research Background

Literature in analyzing the difference between grief, bereavement and mourning are limited and the three terms are used interchangeably (Graves 1978). However, for this research, the definitions proposed by Worden (2018) will be used to distinguish the differences among the three concepts.

Grief refers to the experience of the loss of a loved one to death, including beloved human beings (Worden, 2018), or even pets (Redmalm 2015). The grieving experience is comprised of one's feelings, physiological reactions, behavioural reactions following a loss (Worden 2018). Mourning refers to the process where a person adapts to the loss (Worden 2018) and theorists tend to analyze the mourning process based upon stages, phases or tasks. Similar to the concept of grief, bereavement refers to the experience of losing someone close (Worden 2018).

It is almost inescapable that every individual will come across situations in which they are engaged in the grief of a loved one. Grief experiences vary among bereaved individuals, some may experience prolonged, intensive grief for years, while others may be able to move on from the passing of the deceased and work on the new challenges in life after a short period of grief (Bonanno and Kaltman 2001). According to a review of empirical evidence done by Bonanno and Kaltman (2001), 50 – 85% of bereaved individuals in the first year of bereavement would show emotional and behavioral patterns, similar to those of a common grief, a non-pathological situation defined in the Diagnostic and Statistical Manual of Mental Disorders (4th ed.) (DSM-IV) (American Psychiatric Association 1994). And the common grief, for most of these bereaved individuals, will gradually subside by the end of the first year. Only about 15% of them will develop into chronic or complicated grief, which could bring up mental health issues, such as depressive disorder, anxiety disorder and post-traumatic stress disorder (PTSD).

In the study of the bereaved, the majority of research focused on grief originated from spousal loss (Maccallum et al. 2015), there is little research focused on bereaved parents. However, in a study, with a sample size of more than 2500, concerning the trajectories of depression following spousal and child loss by Maccallum et al. (2015), it was found that bereaved parents are more likely to develop chronic grief than widows or widowers, implying that the impacts caused by the loss of a child can often be more severe or long-lasting than the loss of a spouse. From a meaning-making perspective, losing a child could lead to a critical existential crisis in bereaved parents. People tend to look for meaning when encountering the loss of a loved one, and their quest is usually related to the three fundamental questions confronting the bereaved during the grieving process, namely, sense-making of the death, looking for insights from the experience and undertaking change of identity (Gillies & Neimeyer 2006).

As the younger generation ought to outlive their parents and the older generation (Bogensperger and Lueger-Schuster, 2014), the death of a child was a significant bereavement challenge for the parents as the event defies parents' assumptions towards the world and the objectives and meanings that related to the deceased child (Wheeler 2001). From a constructivist perspective, suffering from child-loss poses a profoundly difficult and existential challenge to parents. The bereaved parents need to reconstruct the meanings of an event that shook their sense of purpose, identity, the fundamental meaning of the life of the children, etc (Lichtenthal et al. 2010), as the meaning reconstruction may help to alleviate the suffering from the great loss.

In a systemic review regarding the impacts on women after stillbirth, it was found that many mothers would suffer from depressive disorder and/or PTSD due to the loss (Huberty et al. 2017). This research showed that the loss of children could be an extremely traumatic, devastating event for the parents.

However, many studies focused on the grief experience of mothers, and there have been very few which attended to the experience and the needs of bereaved fathers who may also suffer greatly from deep grief at the loss of a child (Cacciatore et al. 2013). In order to create more relevant support for fathers who have been confronted with this type of profound loss, it is worth to develop better knowledge through research about factors which may affect the emotional or behavioral expressions or account for the variations happening in the mourning process of bereaved fathers.

### ***A. Child loss as a disenfranchised grief for fathers***

Child loss is a type of disenfranchised grief in Hong Kong for a father. People are socialized to conform to different rules that are associated with expectations towards social roles in society. ‘Feeling rules’ are regulations that we learnt for emotional expressions socially, which control the way we are expected to sense (Doka 2017). Mourning, in front of others, for some types of the loss is considered more socially acceptable, such as the loss of parents, while doing the same for some other types of loss may not be regarded as socially desirable and hence, the associated grief may become disenfranchised. Disenfranchised grief is defined as “grief that a person experiences when it incurs a loss that is not or cannot be openly acknowledged, publicly mourned, or socially supported (Doka 1989, 4)”. Grief about child loss is often considered disenfranchised for a father partly because of the social roles a man is expected to assume.

Men are expected to be a protector of the family and are encouraged to suppress their feelings to show a masculine image. It was found by Kung (2003, as cited in Chan and Cheung 2020) that men perceive themselves as stronger when they can publicly control their emotional expressions. Restraining emotional expression is also being viewed as a virtue to promote interpersonal harmony (Yeung et al. 2015). According to Yeung et al., (2015), a tendency for men to suppress their emotions to fit into social expectations is called “emotional-control masculine norm”. This norm persists in many countries in the world, but it is found that Chinese men tend to have a higher unwillingness to emotional expressions than Caucasian men (Chia et al. 1994) and Chinese fathers are less expressive than American fathers emotionally (Hsu 1981, as cited in Yeung et al. 2015). The emotional-control masculine norm towards grief in men was reflected in Hong Kong samples (Chan & Cheung 2020) and the norm was also found to have a negative correlation with psychological well-being among Hong Kong Chinese men (Yeung et al. 2015). One of the causes of conformity towards this norm by men is due to the socialization process in their upbringing (Yeung et al. 2015). As emotional expressions are seen as a symbol of weakness, expressing grief for the loss of a child openly is discouraged and disenfranchised.

### ***B. Attitude towards death by society***

Traditional perceptions towards children’s death in a family also impact the mourning process of fathers. According to Huang and Wu (2008), traditional family viewed birth-giving as one of the most important functions of a family, and women was expected to give birth to children in order to inherit the family legacy. Chinese culture regards birth-giving as blessings to couples and families. There is a Chinese saying “He sees *loneliness* if he is childless at his 40s, feels *disrespected* if he is childless at his 50s, tastes *isolation* if he is childless at his 60s, experiences *real suffering* if he is childless when he becomes old (四十無子冷清清, 五十無子沒人敬, 六十無子斷六親, 老來無子真是苦) (Huang and Wu 2008, 96)”, showing that birth-giving carries crucial meanings to a person in Chinese culture. When a child passed away, Chan et al. (2005) found that the bereaved parents may blame themselves by thinking that the tremendous loss as the consequence of *Karma* and *Yuan* (緣). A very derogatory folk saying : ‘pass away without surviving children (無仔送終)’ also represents the worse curse that one could use to provoke or insult an individual or a family. As the death of children

would be seen as a deprivation of blessings, the stigma attaching to this tragic loss could inhibit the bereaved father to seek for help or support in their mourning process.

### ***C. Conceptual framework***

Grief work traditionally hypothesizes that ‘one has to confront the experience of bereavement to come to terms with loss and avoid detrimental health consequences (Stroebe and Schut 1999, 199)’. Therefore, under this perspective, a bereaved person who cries in despair, and seeks for emotional outlets would be viewed as positive actions in grief work, while a person who suppresses his/her feelings and chooses not to disclose would be considered as potentially problematic in grief. Hence, it is common that traditional grief work tends to categorize a lot of men, especially those who seem to be suppressing their feelings, as maladaptive grievers (Martin and Wang 2006).

Doka and Martin (2010) believed that expressions of grief were multifaceted and there was multiplicity in the adaptive strategies the bereaved individual used. They suggested two patterns for the individuals to respond to the loss, namely instrumental griever and intuitive griever, and the two patterns vary in two ways: their internal experience of grief and expression of that experience.

Doka and Martin (2010) classified the grieving style by putting the grievers along a spectrum of grieving with intuitive griever on one pole and the instrumental griever on the other pole. Intuitive grievers mainly express their grieving experience through sentiments, and intensely painful feelings make up a big part in their grief. Similar to the ‘normal’ griever in the traditional grief work hypothesis (Stroebe and Schut 1999), intuitive grievers may express their grief through open display of their intense sorrow and sadness, such as crying; and/or verbally sharing their emotions and other inner feelings with friends and relatives. Conversely, instrumental grievers devote most of their internal psychic energy from the loss to tasks or activities that are related to the cognitive domain. They prefer to resolve the problems brought to them after the loss rather than showing their painful feelings. With the concept of a spectrum in mind, there are no ‘pure’ intuitive grievers or instrumental grievers, and we can only distinguish grievers who are more intuitive than instrumental or vice versa. If an individual was found to exhibit both the elements of intuitive and instrumental patterns, that could be a manifest of the blended pattern of grief.

Doka and Martin (2010) believed that grievers even fall into a predominated grief pattern with this intuitive-instrumental grieving spectrum, had the need to express themselves in ways that may be atypical of their predominant pattern. For example, an instrumental griever has to look for an outlet for their painful feelings, and an intuitive griever has to discover ways to express their cognitive thoughts and to handle practical tasks (Doka and Martin 2010). Effective and adaptive strategies have to be found to facilitate the dominant way of grief expression, (i.e. cognition for instrumental pattern and feelings for intuitive pattern), and to explore complementary ways for the alternate grief expression, feeling expressions for the instrumental griever and cognitive-based activity for the intuitive griever. However, it should be stressed that the two patterns of grief are acceptable, and “no pattern is superior or inferior to the other (Doka and Martin 2010, 57).”

Therefore, this research aimed to solve the following questions: 1) What are the needs throughout the grieving process of bereaved fathers with different patterns of grief? and 2) How would the cultural practice or expectations towards men alter or affect the needs of the bereaved father throughout the grief experience?

### **Participants**

This study was designed as an exploratory study using a qualitative method. Informant-based in-depth interviews with grief support workers were arranged. Recruitment period started in early 2022, and 5 grief support workers were successfully recruited.

The key informants were selected based on their specialty in the grief counselling service. At the point of searching for key informants, there were three non-governmental organizations (NGOs) providing grief counselling services in Hong Kong (Lui 2020). Among the 5 key informants recruited, 4 came from two of the above NGOs, and one came from a children palliative care support organization in Hong Kong. The decision to use key informant interviews, instead of direct interviews of bereaved fathers in this research, is that the method is considered a reliable and feasible way to collect data that could still be capable of reflecting the general trend (Rubin and Barbie 2016), as original plan and attempts to recruit or engage bereaved fathers as subjects for qualitative interviews have not been successful.

Table 1. Participants

	Sex	Experience in grief counselling	Qualification
Participant A	Female	24 years	Registered Nurse
Participant B	Male	2 years	Registered Social Worker
Participant C	Female	4 years	Registered Social Worker
Participant D	Female	More than 10 years	Registered Social Worker
Participant E	Male	14 years	Registered Social Worker

## Methods

Four interviews were conducted with five participants, of which one was a joint interview. Each interview lasted for 30 to 60 minutes. Three of the interviews were accomplished through the ZOOM video conference platform, while the remaining one was conducted through telephone call. Participant A, D, E had separate individual interviews, whereas participant B and C participated in a single joint interview, per these participants' request.

Semi-structured interviews were conducted with the participants. The four key research questions that guided the interviews are:

1. Is a particular pattern of grief more typical in Chinese bereaved fathers – instrumental vs intuitive?
2. What are the needs of bereaved fathers with different patterns of grief?
3. How would the gender expectations or cultural practices towards men affect the needs of bereaved fathers? And
4. What were the intervention strategies or approaches that the key informants used in working with bereaved fathers?

## Thematic analysis plan

Reflexive thematic analysis was used to identify patterns and themes during the data analysis of the research. Due to the exploratory nature of this research, the reflexive approach was selected, and the six stages suggested by Braun and Clarke (2022) were adopted in data analysis.

The data was first coded in the first stage. The interviews were transcribed into four transcripts on a word-by-word basis. We adopted an inductive coding approach, meaning that the coding process and the theme establishment are driven by the data (Braun and Clarke 2022). Code names were given to any data that might relate to the topic, on both semantic level, the explicit meaning of the data, as well as latent level, the implicit meaning of the data set (Braun and Clarke 2022). To ensure thorough coding and minimize the researcher's bias in initial coding, the whole coding process was repeated once more, and the sequence of the transcripts coded was randomly assigned in the second coding trial.

The data was cleaned in the second stage. All codes were entered into a spreadsheet in Microsoft Excel. The same name was applied to codes with very similar meanings to improve

coding consistency. For an easier reference to analysis tracing, each version of transcript and code list were kept. A table on the total occurrences of different codes was generated to overview the patterns of the dataset statistically.

Themes were subsequently developed in the latter phase. In the reflexive approach, themes have to be distinctive and guided by a central organizing concept (Braun and Clarke 2022). Thematic map was developed to categorize codes into different sub-themes. The sub-themes were grouped into different candidate themes. The candidate themes were refined after discussion with the research supervisor and self-review. Eventually, there were four themes developed from the dataset out of this process.

## Results

The four themes that emerged are 1) child loss makes no sense to the fathers, 2) maintaining a strong-man image amid the loss, 3) grief pattern of the bereaved fathers, and 4) working with the bereaved fathers.

### *Theme 1: Child loss makes no sense to the fathers.*

All of the participants reported that bereaved fathers tend to view their child loss as an event that makes no sense, as the loss subverts parents' belief about life and its meaning. Losing a child challenges the very assumption that 'children ought to outlive their parents'. Participant E observed that nearly all parents, whom they have worked with, thought that their child-loss as an event which they could hardly comprehend and make sense of, due to the notion that 'no parent wants his/her offspring to pass away earlier than him/herself'. The loss also crumbled the father's values in their own lives.

“There is a father who lost his 14-year-old son to liver cancer, and the son is his only child. When he was informed with the diagnosis, he told me ‘Miss, I will never do any good deeds again’... He has been good to his family, but he didn't understand why his child would have such incurable disease. (Participant A)”

The workers revealed that some fathers regarded their children as a significant source of giving them the meaning of life. Providing good nurture to their child has always been their life's purpose. However, when their child passed away, their meaning of life was abruptly disrupted, causing a critical existential crisis. According to one of the participants, a bereaved father had once contemplated the idea of committing suicide because of disillusionment after the tragic loss.

“One of the clients told me ‘I no longer know what I am working for in my life. I worked hard to earn more money for my son's tuition and his flat after marriage.’ He didn't know what his life is for after his child's passing. (Participant A)”

Despite a child's death being an event which is hard to comprehend, two key informants noted that fathers with religious beliefs tended to overcome the grieving process in a more positive way. They believed that religions provided another perspective on viewing death. For example, a Christian parent believed that their son is their gift from God, and they have fulfilled their responsibility to nurture him until his passing.

“He (a bereaved father) said they don't think death as a permanent separation, and they believe they will meet their son again in the future. They emphasized their separation as temporary as they fulfilled the roles of parent that were given by God. (Participant C)”

Meanwhile, most participants in this research observed that younger fathers were less likely to view the loss as the consequence of karma, but this karma belief was more prominent among middle-aged and older-aged fathers. Participant A pointed out that for the believers of

karma, they might think that they might have done something wrong in their previous life, which caused them to lose their child in their current life.

However, most fathers would show feelings of guilt and self-blaming after the loss, while such feelings were less significant towards the loss of an adult family member. Among younger bereaved fathers, it seemed they were more likely to think that the total responsibility of bringing up a child rested with them and they might blame themselves for such losses, including criticizing or feeling regret towards their past decisions about child-rearing, such as ways of parenting, fulfilment of children's requests, or even the decisions to have children

### ***Theme 2: Maintaining a 'strong' man image amid the loss***

Participants in this research revealed that bereaved fathers seem to follow the social expectations of remaining calm and strong. Chinese culture believes that men need to be strong and not swayed by emotions, as they are the pillar of the family. Our participants observed that this group of fathers seemed to behave in accordance with cultural expectations. They believed that these fathers reminded themselves of being the leader, the protector and the breadwinner of their family. Since emotional expressions of men, especially in front of others, are often considered not socially appropriate, fathers might suppress or avoid display of strong emotions in order to maintain the image of the leader and the protector of a family.

“We always assume a father is the leader of his family, and we seek fathers' help whenever there are any challenges and problems. These made the father as a strong pillar of the family. (Participant C)”

“Father has the role of breadwinner and family leader in Chinese family. They have to protect their family pragmatically and emotionally. However, protecting his family doesn't mean they are capable of responding to their emotions. (Participant D)”

Key informants also pointed out that bereaved fathers tend not to reveal or acknowledge their emotional needs and therefore, their motivation to seek help for themselves is relatively low. They tend to reach for workers' help for funeral arrangement issues or worries about their families' emotions, rather than their own distress and needs. These are the typical coping behaviours of an instrumental pattern of grief, which will be discussed later.

“It is hard to reach bereaved fathers to share their experience of grief, as the gender role of men discourage them to express their emotions verbally (Participant C)”

“They (bereaved fathers) are not aware of their emotional needs. Instead, they would say 'Help my family, I am fine. If you can provide counselling to us, please do it with my family' (Participant E)”

### ***Theme 3: Grief pattern of the fathers***

The instrumental pattern of grief is more noticeable among bereaved fathers by key informants' report. Key informants commonly identified that bereaved fathers tend to adopt emotional suppression and cognitive measures during their grief.

Firstly, bereaved fathers are inclined to apply emotional suppression and avoidance in handling their grief. Suppression refers to the inhibitions of thoughts and feelings from grief (Hudson, 2016). Our research participants pointed out that fathers use suppression as coping, which is in line with social expectations. Also, one participant pointed out that the relational factors, such as the marital relationship, within the family may reinforce a bereaved father to resort to suppression in handling grief. Another participant postulated that the suppression of grief may develop into different types of obsessions, as means of escape or distraction from the loss, such as becoming workaholics, or developing gambling and alcohol addiction.

“Some fathers kept on apologizing to their wife during counselling. I can feel the emotions are not formed solely from the grief from child loss, but also mixed feelings from the marital relationship. (Participant D)”

“Men tended not to talk about these (emotions) with their friends. Women are more willing to talk, that’s why they could ventilate their emotions more effectively. Some of these men would suppress their emotions and turn into addiction, such as alcohol, gambling or use work to distract from the loss or to numb themselves of the pain. (Participant A)”

Apart from suppressing emotions, avoiding places or events that may trigger emotions relating to the child loss is also common. Key informants reported that some bereaved fathers may avoid mentioning the deceased child and also forbid the family from talking about the child. Some fathers have even refused to visit the grave of the child. Key informants described this kind of behavior as ‘avoidance’, which, they believe, is normal and not an atypical characteristic of male grievers.

The focus on solving tangible and practical problems as a form of grief expression is also common among bereaved fathers. As mentioned earlier, fathers tend to approach grief support workers when they are in need of help to solve practical issues arising from the loss, such as funeral arrangements or other tangible issues brought along by the loss. There were incidents where bereaved fathers may come to seek help because of their concerns about particular family members who they think could not manage their emotions due to the loss. An informant pointed out that in some cases they have supported, bereaved fathers accompanied their families to seek help as he was feeling guilty towards his wife for his inadequate care for or lack of time spent with the family before the child’s death. Another observation revealed by the key informants, is that when they were holding joint interviews with bereaved parents, it was often the fathers tended not to disclose or divulge their feelings and emotions because these fathers believed their family should be the ones who were actually in need and all the help or support should be directed to the family members.

“The utmost need (of these fathers) is need for information, as they want their problems and enquiries to be solved or answered. Secondly, the fathers are very concerned with their family, they care much about the emotions of family members rather than themselves... as the fathers don’t know how to address or support the emotions of his family (Participant E)”

Despite the instrumental pattern being more noticeable among fathers, key informants observed that some fathers they supported were adopting the intuitive pattern of grief. Participant B shared that he met a father who cried in nearly every session during the engagement phase of support. Participant C also pointed out that there was a father who was emotionally expressive, that he often cried when revisiting the loss, though the informant described that a father who displayed the intuitive pattern upon their first service contact was pretty rare.

“There was an outlier case in which the mother appeared tough and seldom cried, and she believed she has accepted the loss, while the father seemed very sentimental. He was the one who cried every night. I used to believe that the cultural expectations on gender play a role in it (the type of emotional expression), but (this case) shows me that there are exceptions that fathers could express in their own (unconventional) way. (Participant C)”

Participants of this research also reported that the intuitive expressions of grief could take place under certain circumstances, such as when the fathers are attending groups with other bereaved parents, and/or when bereaved fathers are feeling safe to express their emotions within a trusted worker-client relationship. And almost all participants believed that bereaved fathers have both instrumental needs and emotional needs while they are in grief.

“There was a men who came (to seek for support) for some practical issues, but when he joined a mutual support group, he shed lots of tears. It (father being an intuitive or instrumental griever) is not an ‘either-or’ question, but they will show different facets of grief under different circumstances (Participant D)”

“I started with my cases with problem-solving, then gradually moved on to attend to their emotional needs. When he (a bereaved father) brought a lot of questions to you, but instead of helping him to address these questions, you chose to asking questions pin-pointing his emotions. He would think that you could not or were not keen to help. No matter how skilful you are, you cannot offer him support if he is not willing to come back. I believe they have their emotional needs, but we have to beware of the approach or the biases when we intervene or offer help. (Participant E)”

#### ***Theme 4: Working with the bereaved fathers***

Firstly, in terms of the need for sense-making, one key informant shared that some bereaved fathers would attempt to derive new meanings in life through looking for actions that are meaningful to them, for example, regularly visiting their in-law parents. The same informant highlighted that bereaved fathers are inclined to show stronger motivation for actions that they could do for the deceased than for themselves.

“The fathers had lower motivation to do things for themselves, such as self-care. Nevertheless, if the event was linked with his deceased wife and child, he had a stronger motivation, for example, he understood that his wife wanted him to visit his mother-in-law regularly, then he would be more motivated to spend time with his mother-in-law. (Participant B)”

Another key informant (Participant A) mentioned the importance of early intervention to facilitate fathers’ sense-making process. She would attempt to include the child with the fatal disease in her intervention to address the fathers’ anticipatory grief. She discovered that the messages and gifts given by the dying child could help the bereaved fathers to make sense of the inevitable loss easier, as there could be fewer regrets and guilt for the fathers. Based upon suggestions offered by this informant, it appears that early and pre-grief intervention could be important for providing adequate support to these fathers. Participant A described that current bereavement service encourage the bereaved fathers to seek help only after the child passed away. Due to the socio-cultural expectations on men in society, participant A believed that this kind of service arrangement may exclude some male clients who are greatly in need of early support, as these fathers are often unaccustomed to reaching out for help. Therefore, Participant A believed that support services could engage these fathers while their child are receiving palliative or end-of-life care, so that the support workers could have more time to build trust and develop rapport with the fathers. Participant A suggested that early or pre-grief intervention could reach more fathers who are in this type of circumstances, especially she believed that many bereaved fathers may become difficult to engage after their child’s passing.

Secondly, it was suggested by the key informant interviews that support workers should often maintain their reflexivity in practice. Most informants shared that they need to have regular reflection on how gender role expectations are affecting bereaved fathers, as well as socio-cultural practice. They acknowledged that fathers’ grief is somewhat affected by society and cultural norms. For example, they were aware that in Chinese culture, ‘face-saving’ plays a crucial part in people's lives, especially for men, and it is pivotal to pay attention and respect this cultural need and characteristic while facilitating fathers’ emotional expression.

“I always remind myself not to side with the gender stereotypes about men shaped by society. We have to reflect on how the Chinese society adds burdens to men (through

gender role expectations), and we should not be one that reinforces these stereotypes. (Participant D)”

“Most of the men care about their ‘face’, and they are reluctant to show their vulnerable side to us, that’s why they keep on telling us that they are okay and capable of facing these (grief). Our role is not to tell them ‘they are not okay’, but to let them know that we would be available if they need us. (Participant E)”

The key informants also suggested that it is preferable to adopt a strength-based attitude when working with bereaved fathers. For example, they found it useful to focus on the contributions these fathers made to the family. Participant C believes that some families internalize the fathers’ role of being a strong protector and take the fathers’ role for granted, and often times family members and even the fathers themselves either overlook or fail to openly recognize and acknowledge the significance of fathers’ endurance and contributions in the family process, especially after the child- loss. In working with bereaved fathers, it is suggested that support workers would help fathers to identify and acknowledge their past or current contributions, including their efforts and resilience displayed during the grief process.

Most of the key informants agreed that bereaved fathers have both instrumental needs and emotional needs, despite variations in the relative degree of these needs. As grief support workers, these informants described that one of the key functions in this role is to act as facilitators to help bereaved fathers to express and to address both of these needs. However, they remarked that they would use different skills and measures when responding to the different needs.

Firstly, the informants emphasized that a good working relationship with bereaved fathers is important. As mentioned earlier, Participant A indicated that she would like to build rapport even if these fathers are in the anticipatory grief period. Besides, Participant E believed that building a good working relationship starts from the point when support workers actively respond to the presenting problems of the fathers. Participants E gave an example: if a bereaved father asked for help in solving practical problems, he would first support the father in resolving the problems being raised, which then helped to pave the way for tackling emotional issues or needs for which trust and a good working relationship were pre-requisites.

Secondly, Participant E, as a support worker, would create opportunities or suitable contexts for bereaved fathers to understand and express their grief emotions, such as inviting them to join mutual help groups.

He would also use different intervention methods to facilitate fathers’ awareness and understanding of their own grief. Sometimes, he would facilitate fathers’ emotional expressions indirectly, if he thought that was the way in which the fathers would feel more comfortable with, for example, inviting a bereaved father to describe his observations and concerns about other family members’ reactions during the grief, rather than revealing his own emotions towards the loss.

“I would not ask him ‘how do you feel’ directly, as he possibly could not answer this question. Instead, I will try to ask him about how he feels about the conditions of his family. I try to direct him to talk about OTHERS’s emotions, rather than HIS own. This is easier for men to talk about their emotions as they may share about their worries over the family, and this is how I try to start (helping him to become more cognizant of his own feelings) my intervention. (Participant E)”

Participant E mentioned that as fathers tend to focus more on the family rather than their own personal circumstances, he would first offer bereaved fathers some basic knowledge about how people grieve and ask if they were aware of anyone in their family displaying similar behaviors or emotions. And often, through that process, the father, himself, could be more aware of his own grief.

Another interesting point brought up in the key informant interviews, is that during COVID-19 pandemic, lots of hospital services and operation have been cancelled or constrained, and Participant A pointed out that bereavement care has also been greatly affected and cannot be optimized under threats of the pandemic. The ban on hospital visits has complicated the grief of the bereaved. Firstly, the process of getting diagnosed till the completion of funeral rituals has been compressed, especially for COVID-19 patients due to various restrictions. She believes that this situation has rendered more hardships and complications for bereaved families to grieve for the loss.

At the same time, the ban on hospital visits caused the support workers more difficulty initiating early intervention. Participant A was aware that there have been international discussions on the needs for palliative care for COVID-19 patients, but there are limited discussions relating to challenges faced by grief support workers under the COVID-19 pandemic being brought up in Hong Kong.

## **Discussion**

The findings provide insights on the characteristics of bereaved fathers from the grief support workers' perspectives, as well as highlighting possible interventions used by the grief support workers to work with this group of fathers in Hong Kong.

### ***Question 1: Is a particular pattern of grief more typical in Chinese bereaved fathers?***

Based on the data collected from the key informants in this research, it seems that behaviours featuring the instrumental pattern of grief are more commonly observed among bereaved fathers in Hong Kong. Doka and Martin (2010) placed different patterns of grief along a continuum with two ends, namely, the pure instrumental pattern and the pure intuitive pattern. They believed that men are more likely to display the instrumental pattern of grief, and that the three core characteristics of instrumental grievers are: i) focus on cognition, ii) mastering emotions and showing reluctance to talk about feelings, and iii) problem-solving activity (Doka and Martin 2010). This postulation seems to be consistent with our findings from this exploratory study. According to our key informants, the common behaviours of bereaved fathers shown after the child loss seem to focus on solving practical or tangible tasks arising from the loss, such as funeral arrangements and the emotions of their family members. Also, it is quite common for these fathers to suppress or avoid emotions, particularly during the loss impact phase.

However, our key informants also observed that not all bereaved fathers they had encountered adopt the instrumental pattern. There were a few exhibiting behaviours that were more typical of the intuitive pattern of grief, such as crying. From our findings, gender role expectations could exert a strong influence on bereaved fathers, such as suppressing their emotions as a way to highlight their role as protector of the family. Nevertheless, our informants also cautioned that 'typical' does not mean 'invariable', and echoed with Doka and Martin (2010) that practitioners should not assume without assessment that any male griever is instrumental.

Similarly, 'typical' also does not mean 'permanent'. Participant B mentioned that there was a bereaved father he supported, who exhibited a strong urge to express emotions at the very beginning of the intervention, but such intense urge became weaker months after the loss. This showed that one's pattern can change over time. Doka and Martin (2010) believed that an individual's grief pattern has to be re-evaluated every few weeks, so it is just reasonable to think that the pattern of grief a father adopts is not unchanging. Although this research did not follow the change of grief pattern longitudinally, practitioners should not miss possible pattern changes in grief when applying the model.

***Question 2: What are the needs of the bereaved fathers with different patterns of grief?***

Firstly, the fathers seemed to have a great need to make sense of the child loss. From the qualitative data of this study, child loss is an event that bereaved fathers appeared having great difficulty to make sense of. It challenges the fathers' core beliefs as well as subverts their perceived meanings in life. The key informants believed that bereaved fathers have a great need to make sense of the death. This assertion is in line with the findings by previous literatures, such as sense-making as the need of the bereaved (Gillies and Neimeyer 2006), the child loss challenged the fathers' belief and meaning of life (Bogensperger and Lueger-Schuster 2014; Wheeler 2001; Lichtenthal et al. 2010).

Secondly, our data also reflect that these fathers seemed to have the need for the recognition of their past and ongoing contributions, and this need was often overlooked by their family due to societal expectations for men. According to our informants, the feelings of guilt and self-blame vary among bereaved fathers. The informants noted that some fathers had deep regrets and tended to blame themselves for the loss or things that they had not done when the deceased child was still alive. When we tried to find plausible explanation to this reported phenomenon, it seemed that it is important to understand the issue from the relational aspects of self-blame and guilt. Yeung et al. (2015) found that Hong Kong men are conforming the Chinese cultural norm to suppress their emotions in order to maintain their 'strong-men' image, and Chan and Cheung (2020) found that bereaved men attempt to maintain their toughness by not showing grief emotions. Our informants furthered that the cultural norm not only affects the fathers, but also the way other family members are able to recognize and acknowledge the contributions made by the fathers. In other words, in some families, the self-blame and guilt in these fathers may be exacerbated by other family members' attitude or response, as those family members may take these fathers' contributions for granted while blaming the fathers for their inadequate care for the family, especially for the time when the deceased child was still alive. This analysis may help to provide a new contextual understanding of bereaved fathers' grief and self-blame.

Thirdly, our data suggests that bereaved fathers seem to have the need to develop their unique ways to express their grief instrumentally and intuitively. Doka and Martin (2010) emphasized that both instrumental and intuitive patterns are equal and each type of griever has the need to express themselves in ways that may be opposite to their dominating pattern. Most of the key informants in our study agreed that bereaved fathers could have both their instrumental and intuitive needs during grief. The role of grief support workers in interventions is perhaps to facilitate fathers' searching and developing their unique ways to respond to both needs.

***Question 3: How will the gender role expectations or cultural practices towards men affect the grief of the bereaved fathers?***

Firstly, our key informants observed that many of the fathers maintain a 'strong' or 'tough' image amid the loss. The fathers were socialized to view themselves as the head, the protector and the breadwinner of the family. The idea is similar to the fathers in traditional family culture (Kwok et al. 2013). Society views emotional expressions as weak or vulnerable actions (Yeung et al. 2015). And our informants also observed that some of the bereaved fathers they had worked with had adopted suppression and avoidance in order to maintain their 'strong-father' image.

Chan et al. (2005) pointed out that Chinese people often regard the cause of death as the consequence of *karma* and *yuan*, and attempted to attribute the cause of death to the control of higher power. However, our informants indicated that the younger bereaved fathers were less likely to regard the cause of death as the actions of a higher power or supernatural force, or to consider the tragic deaths as the consequence of *karma* and *yuan*. Our thematic analysis shows that such beliefs seemed to be more prominent in middle-aged or older-aged fathers.

***Question 4: What are the intervention strategies the worker used in working with bereaved fathers?***

Traditional grief work theories consider effortful emotional expressions as the only means to overcome grief (Stroebe and Schut 1999). With this approach, bereaved fathers who are adopting the instrumental pattern could be seen as maladaptive grievers. However, this assertion is not well-supported by our findings. Instead, the qualitative data of this study shows that bereaved fathers exhibiting both instrumental and intuitive pattern were common and probably beneficial. Our informants reiterated that it is important to hold an accepting and open-minded attitude towards the grief behaviors bereaved fathers used in responding and managing the loss, and at the same time maintaining sensitivity as well as demonstrating flexibility in supporting both the fathers' instrumental and intuitive needs.

Doka and Martin (2010) pointed out three possible reasons for the instrumental grievers to look for professional help. Firstly, as grief works emphasize emotional ventilations as the dominant and preferred method during grief, the instrumental grievers may seek help to reassure their way of grieving being seen as normal. Second, they seek help as different patterns of grief emerged within the family, and the instrumental grievers want to resolve possible conflicts between family members. Third, the instrumental grievers want to explore different and possible coping strategies and to evaluate the advantages and disadvantages in adopting different strategies.

Our informants offered additional and feasible advices regarding intervention strategies when working with the bereaved fathers, and some of these advices seem particularly relevant for bereaved fathers who present the instrumental pattern of grief.

Firstly, as these fathers are often difficult to engage after the child death, early-intervention, which could start in the period of anticipatory grief is suggested. This may help to lessen guilt and regrets in these fathers and paving way for subsequent bereavement care. Creating memorial books and reading letters to the parents written by the critically-ill child may be possible methods to engage and prepare fathers or parents who would soon to face the tragic loss.

Secondly, culturally sensitive practice should be encouraged when working with bereaved fathers. The sensitivity towards relevant cultural issues and gender-role expectations, such as the "face-saving" tradition, and the cultural conception of masculinity have to be properly integrated into the grief support work when helping bereaved fathers and family to grieve.

Finally, individualization is crucial in the grief work practice. Accepting and respecting a bereaved father's preferred way of grief expression; and supporting him according to his dominating pattern of grief at a particular phase of grief or mourning would make the intervention or support more engaging and effective.

There is a different case, though not about a bereaved father, shared by Participant E which could serve a good reminder of the last advice.

"There was a men who lost his elder brother came to me. He shared that other counsellors he met often make him feel uncomfortable, as they always asked about his emotions, even after he showed his reluctance to the counsellors about sharing his feelings. I am aware of this (his unwillingness to talk about emotions), and I try to ask the same question at the beginning of every session – 'What you would like to share today? You can talk about everything you want.' ... I gave him the leading role of the conversation, even if he didn't talk anything about his grief in that session. It's okay. (Participant E)"

**Limitations and conclusion**

There are a few limitations of this research that we would like to point out. Firstly, the qualitative nature of the study and the method of analysis on the grieving process of the bereaved fathers would be difficult to offer a representative picture about bereaved fathers,

and therefore readers have to be cautious about the generalizability of the findings. This research adopted informant-based interviews in data collection. The cases shared in the interviews were selected and interpreted by the grief support workers, and therefore these are information not coming directly from bereaved fathers, which may not form exact pictures reflecting the feelings and thoughts in this group of fathers. Doka and Martin (2010) has pointed out that it has been observed that instrumental grievers tend not to seek help, which implies that the bereaved fathers who seek help may only represent a minority portion of the bereaved fathers. Therefore, the findings from this study regarding the grieving process of the fathers are considered exploratory in nature and may not be able to represent all bereaved fathers in Hong Kong.

Also, the target of this study is to focus on only one of the bereaved parents, which may miss out the contextual complexity of the bereaved fathers. It is believed that greater insights could be generated if the research could also cover the other marital partner and the interpersonal dynamics of bereaved families, for example, investigating how the marital relationship and parent-child relationship affect the grief of fathers. Therefore, family-based research could be conducted in future in order to capture the contextual complexity within the event of child loss.

Future studies may attempt to adopt a longitudinal research format to capture the possible change of the pattern of grief in these fathers along the grieving process. Besides, future research focused on the bereaved fathers could study the age factor of the deceased child, as it may offer us more specific information and knowledge of the different impacts as well as the diverse needs of the bereaved fathers that are associated with the age of the deceased child when the death happened.

### Acknowledgement

I would like to express my sincere gratitude for Prof. Wallace Chan, Dr. Joanne Leung, Dr. Fiona Chang, Mr. L.F. Chan and the interviewees who acted as key informants for their genuine help and contribution to this project.

### References

- American Psychiatric Association. 1994. *Diagnostic and statistical manual of mental disorders (4th ed.)*. Washington, DC: American Psychiatric Association.
- Bogensperger, J., and Lueger-Schuster, B. 2014. "Losing a child: finding meaning in bereavement." *European Journal of Psychotraumatology*. Doi: 10.3402/ejpt.v5.22910.
- Bonanno, G. A., and Kaltman, S. 2001. "The Varieties of Grief Experience." *Clinical Psychology Review*, 705 - 734.
- Braun, V., and Clarke, V. 2022. *Thematic analysis: a practical guide*. London: SAGE.
- Cacciatore, J., Erlandsson, K., and Rådestad, I. 2013. "Fatherhood and suffering: A qualitative exploration of Swedish men's experiences of care after the death of a baby." *International Journal of Nursing Studies* 50 (2013): 664-670.
- Chan, C. L., Chow, A. Y., Ho, S. M., Tsui, Y. K., Tin, A. F., Koo, B. W., and Koo, E. W. 2005. "The Experience of Chinese Bereaved Persons: A Preliminary Study of Meaning Making and Continuing Bonds." *Death Studies* 29(10):923-947.
- Chan, T. M., and Cheung, M. 2020. "The "men in grief" phenomenon among suicide bereaved Chinese men in Hong Kong." *Death Studies*, 1-8. <https://doi.org/10.1177/00207640221123>.
- Chia, R. C., Moore, J. L., Lam, K. N., Chuang, C., and Cheng, B. 1994. "Cultural Differences in Gender Role Attitudes Between Chinese and American Students." *Sex Roles*, 31(1-2): 23-30.
- de Groot, M. H., de Keijser, J., and Neeleman, J. 2006. "Grief Shortly After Suicide And Natural Death: A Comparative Study Among Spouses and First-Degree Relatives." *Suicide and Life - Threatening Behavior*, 418 - 431.
- Doka, K. J. 1989. *Disenfranchised Grief: Recognizing Hidden Sorrow*. New York: Lexington Books.
- Doka, K. J., and Martin, T. L. 2010. *Grieving Beyond Gender: Understanding the Ways Men and Women Mourn*. New York: Routledge.
- Doka, K. J. 2017. "The Disenfranchised Grief of Children and Adolescents." In R. G. Stevenson, and G. R. Cox, *Children, Adolescents and Death: Questions and Answers* (pp. 37-43). New York: Routledge.

- Gillies, J., and Neimeyer, R. A. 2006. "Loss, Grief, and the Search for Significance: Toward a Model of Meaning Reconstruction in Bereavement." *Journal of Constructivist Psychology*, 31-65.
- Huang, J. Z. and Wu. S. S. 黃菊珍, and 吳庶深. 2008. 剝奪的悲傷-新生兒死亡父母親的悲傷與輔導 [Deprived grief: the grief of the parents of stillborn and counselling]. Taipei: Psychological Publishing Co., Ltd.
- Hudson, M. R. 2016. "Brooding, Avoidance, and Suppression as Mechanisms Linking Shame-Proneness with Depressive Symptoms." *Clinical Psychology Dissertations*. [https://digitalcommons.spu.edu/cpy\\_etd/21](https://digitalcommons.spu.edu/cpy_etd/21).
- Lannen, P. K., Wolfe, J., Prigerson, H. G., Onelov, E., and Kreicbergs, U. C. 2008. "Unresolved Grief in a National Sample of Bereaved Parents: Impaired Mental and Physical Health 4 to 9 Years Later." *Journal of Clinical Oncology* 26(36): 5870–5876.
- Lichtenthal, W. G., Currier, J. M., Neimeyer, R. A., and Keesee, N. J. (2010). "Sense and Significance: A Mixed Methods Examination of Meaning Making Aftr the Loss of One's Child." *Journal of Clinical Psychology*, 791-812.
- Limbo, R., and Davies, B. 2015. "Grief and Bereavement in Pediatric Palliative Care." In B. R. Ferrell, *Pediatric Palliative Care* (pp. 121-140). Oxford: Oxford University Press, Incorporated.
- Lui, Y. M. 呂凝敏. 2020. 非牟利機構九成個案來自公營 每月60個案僅5人處理 [90% of cases of Non-Governmental Organizations are referred from public hospital, there are only 5 workers for every 60 cases]. Retrieved from HK01: <https://bit.ly/3qJhOTL>.
- Kwok, S. Y., Ling, C. C., Leung, C. L., and Li, J. C. 2013. "Fathering Self-Efficacy, Marital Satisfaction and Father Involvement in Hong Kong." *J Child Fam Stud*, 1051-1060. doi: 10.3389/fpsyg.2018.01063.
- Maccallum, F., Galatzer-Levy, I. R., and Bonanno, G. A. 2015. "Trajectories of depression following spousal and child bereavement: A comparison of the heterogeneity in outcomes." *Journal of Psychiatric Research* 69: 72-79.
- Martin, T.-L., and Wang, W.-C. 2006. "A pilot study of the development of a tool to measure instrumental and intuitive style of grieving." *Omega: Journal of Death and Dying*, 263-276.
- Redmalm, D. 2015. "Pet Grief: When is Non-Human Life Grievable?" *The Sociological Review* 63(1): 19–35.
- Rubin, A., and Babbie, E. R. 2016. *Empowerment Series: Research Methods for Social Work*. Mason, OH: Cengage Learning.
- Stroebe, M., and Schut, H. 1999. "The dual process model of coping with bereavement: Rationale and description." *Death Studies* 23(3):197-224.
- Wheeler, I. 2001. "Parental Bereavement: The Crisis of Meaning." *Death Studies* 25(1):51-66.
- Worden, J. W. 2018. *Grief Counseling and Grief Therapy: A Handbook for the Mental Health Practitioner*. New York: Springer Publishing Company.
- Yeung, N. C., Mak, W. W., and Cheung, L. K. 2015. "Conformity to the Emotional-Control Masculine Norm and Psychological Well-Being Among Chinese Men in Hong Kong: The Mediating Role of Stress Appraisal for Expressing Tender Emotions." *Psychology of Men and Masculinity*, 304 - 311.

# **Behavioral Advantages of Diversity: Strategies to make Inclusivity work in the Age of Corporate Social Justice**

**Julia M. Puaschunder**

*Columbia University, Graduate School of Arts and Sciences, Julia.Puaschunder@columbia.edu,  
<http://blogs.cuit.columbia.edu/jmp2265>, [www.juliampuaschunder.com](http://www.juliampuaschunder.com)*

**ABSTRACT:** We live in the age of Corporate Social Justice. After decades of advancements in behavioral economics and finance leadership, the time has come to highlight behavioral advantages of diversity. When people make decisions behaviorally with biases and quick error-prone irrationality, diversity can grant implicit means to overcome decision-making anomalies from rational choice. In particular, the present bias can be averted in opting for diversity, which is one of the most future-oriented choices as inclusivity is an innovatively-vibrant field of societal advancement in the age of Corporate Social Justice. Diversity preference for something new curbs repetitive choices and sunk cost fallacies when opting for inclusiveness of the new. Similarity preference biases that lead to suboptimally-limited choice ranges and inflexible considerations of already-known preferences as well as long-term formation of stereotypes and discrimination can be avoided by choosing what is new and different from the given in diversity implementation. Diversity management can also lower harmful social and cultural influences that imply conformity groupthink errors and tunnel vision leading to suboptimal choices and harmful consequences. In order for diversity to work and to reap the multifaceted behavioral benefits of inclusivity, this article also draws attention to three implementation strategies to make diversity flourish and foster meaningful inclusivity: (1) *Bundling extremely diverse groups within networks* and enhancing constructive exchange between representatives of diverse groups to foster the benefits of cross-pollination and creative ideas generation, (2) Diversification of human capital to profit from complementary skills enhancement, (3) Qualitative and quantitative diversity quality checks to ensure the authenticity of diverse representations within corporations in order to contribute to meaningful and positive societal change that diversity and inclusiveness are – in the end – foremost about.

**KEYWORDS:** Authenticity, Behavioral Economics, Behavioral Ethics, Behavioral Insights, Behavioral Advantages, Corporate Social Justice, Democracy, Diversity, Diversity Bundling, Ethics, Ethics of Inclusion, Fairness, Inclusion, Inclusivity, Quantitative and Qualitative Diversity Quality Checks, Social Change, Social Justice, Social Transformation

## **Introduction**

Behavioral Economics started around the 1950s in a critique of classic economics concepts, such as efficiency and rationality. Behavioral economists then showed in laboratory and field experiments that human beings tend to deviate from rationality in their everyday choices (Puaschunder 2020, 2022). The sole purpose of corporations was proven not only to strive for efficiency but rather be social entities in entropy with their environment that are embedded in social, environmental and community purposes. Recently, behavioral insights have applied the manifold findings of irrational human beings to public policy domains. Macroeconomists have been inspired to dissect the disparate impacts of environmental conditions on various demographic groups.

This article will first outline some of the behavioral economics findings on bounded rationality in order to then show how diversity can naturally curb harmful decision-making fallibility. Lastly, three strategies to manage diversity and societal inclusivity successfully will be introduced in (1) bundling of diverse group representatives, (2) fostering authenticity to enhance diversification potential of diverse groups as well as (3) quantitative and qualitative checks of the quality and effectiveness of diversity management and societal long-term outcomes of inclusivity.

## **Behavioral Economics bounded rationality**

Behavioral economics has challenged the neoclassical concept of 'efficiency' as a maxim of life. Beginning in the 1950s, heterodox economists from various disciplines other than economics began to question the basic axioms of classical economics. Theoretically, rationality as a driver of human behavior was critically evaluated. In empirical investigations, human beings were soon after found as irrational and bound by cognitive capacity limits. Markets are ultimately based on human decisions that are made under uncertainty and in social contexts. People constantly muddle through a complex world. Human often jump quickly into decisions based on learned experience and gut feelings. Decision preferences also change over time and across the entire lifespan. And small environmental stimulus variations can lead to drastic behavioral changes.

With the behavioral economics advent, rational choice propagating classical economics was humanized. Behavioral economics' empirical work managed to provide results that were closer to describing how actual behavior happens. Behavioral insights could thus better project how human beings actually will behave than rational choice theory would suggest. Leaders and high achievers in life are those who are well-calibrated to decide for themselves which decision is important and therefore requires either rational calculation and mental energy or can be made as a quick gut decision. Deciding what to have for lunch or whom to marry obviously involves varying levels of depth and cognitive complexity. And those who are more empowered to make long-term decisions about what to eat for lunch each day and ignore the big picture of life also arguably eat smarter, tend to be healthier, and live in more sustainable relationships—all of which have evolutionary benefits.

From the 1970s onwards, psychologists then systematically began to show in laboratory experiments where people deviate from rationality and efficiency in their decisions and behavior on a daily basis. The human biases or decision errors were first mapped in order to then provoke a conscious or even unconscious change in behavior in order to save people from their irrationality. Incidentally, these human decision-making anomalies, which empirical behavioral economics is committed to uncover, are viewed differently: while the European school believes more in evolutionary advantageous rules-of-thumb that are actually helpful to come to a quick choice under uncertainty and mental constraints; in North America the opinion prevailed that quick and ill-considered human decision-making behavior is biased and must be corrected. In North America, therefore, there was a behavioral psychological revolution of rules of action and small mental nudges or advantageous environmental architectures that were supposed to get people, consciously or unconsciously, to make 'better' decisions or to fall into them automatically by the direct or subliminal intervention of behavioral strategists.

The economy was breathed into reality and gently revolutionized. No other field in economics has received as many Nobel Prizes in the past 20 years as behavioral economics and behavioral finance. The opening of economic rationality to psychological, sociological and socially relevant influences increasingly led to the use of chief economists with sociological and psychological knowledge. For instance, the husband of the first female Federal Reserve Chair, Janet Yellen, is George Akerlof – a behavioral sociologist who won the Nobel Prize for showing the value of information for the efficiency of markets and that markets are inefficient when information is suppressed. On the financial markets, the 2008 recession made it clear that the neoclassical economic rationale that one can accurately assess risks – keyword 'value at risk' – brings along substantial system problems with it.

As the newest development in behavioral economics, a more participative behavioral economics approach is currently being advocated for (Liscow & Markovits 2022; Puauschunder 2022). People should be guided to understand their decision-making patterns and see through their behavioral weaknesses in order to then make a self-determined and well-informed decision that suits them and their environment.

## **Bounded rationality**

Some of the most obvious bounded rationality phenomena that were also replicated in many different domains, over time and in different contexts and countries are: (1) Present bias, (2) Similarity preference, (3) Sunk costs and (4) Social and environmental influences.

- (1) The present bias finds that people are mentally short-sighted, focused on the here and now. People tend to discount hyperbolically, which means that today has a much higher relevance than yesterday or tomorrow, where the inflexibility of the posited past discourages from thinking about the past too much and the uncertainty of the future simply seems too great to think long and too hard to plan for. The main focus on today and a generally positive basic attitude of people in the present state not only explains why people do too little preventive health care when they are young and often save too little for their pension in the future over the course of their lives. Myopic decision-making horizon is also the problem why sustainability tends to be given too little consideration and the value of nature only becomes clear when it has suffered irreversible damage.
- (2) The similarity bias finds that we tend to prefer similar contexts and people who resemble us. This bias of searching for those who are similar even exacerbates under uncertainty and in time constraints. Preferring those who are similar may lead us to jump into limited option ranges and may breed unfavorable stereotyping and harmful discrimination.
- (3) Human beings like to learn habits and once formed, they prefer to stick to their habits. This tendency even increases if costs have been incurred for learning the habits. The sunk cost fallacy describes that human beings tend to stay with their choice and if costs have been suffered for choosing or habit formation, then they like to stay with their choice even if they know that it is suboptimal.
- (4) Another revolution in decision-making behavior that behavioral economists have unleashed is attention to social influences. As herd animals, humans are subject to social influences. Groupthink, has been shown in many domains, leads to suboptimal behavior and tunnel vision, in which social conformity often leads to neglecting rational warning signs of risk or dangers. Groupthink can have disastrous consequences in research, finance and politics, to name a few domains in which it was proven to occur.

## **Diversity to curb biases**

Diversity can curb the mentioned biases in multiple ways: First, diversity allows for complementary qualification alignment. For instance, in the financial sector, language barriers were found to be an obstacle for information transfer in markets (Chang, Hong, Tiedens, Wang & Zhao 2015). But having analysts with different language skills evaluate market options together actually improves the overall market performance of the mutually-composed fund (U.S. Supreme Court Arguments *Students for Fair Admissions v. President and Fellows of Harvard* 2022).

Diversity management grants human capital diversification potential and risk management opportunities (UBS Nobel Perspectives, Harry M. Markowitz). From a classic economic point of view, diversity enables risk to be spread and expands the range of qualifications, which brings along resilience advantages naturally, especially in uncertain times.

If you go hiking and are unsure about the weather, it is recommended to pack sunscreen and rain gear. The Nobel Prize-winning Harry Markowitz Portfolio Theory describes that diversification in financial markets reduces risk (UBS Nobel Perspectives, Harry M. Markowitz). In nature, too, one can see that vegetation with different structures withstands storms better (Brunnermeier 2021). This idea of risk minimization through different perspectives in corporate management can also be used for the composition of a company's

decision-making bodies and board directors. After the 2008 recession, the only bank in Iceland to continue relatively unscathed was one with female leadership and more risk-averse strategies (Reuters 2010). Females may also breed a climate of respect for family values that may help in stopping negative ‘old-boys’ behavior that may bleed into harmful scandals for corporations, as many banking or gasoline industry problems of the past have outlined.

Diversity also offers a broad stakeholder engagement potential. Demographically-diverse representations on corporate boards and within the corporate leadership and employee structure allow for multiple communication channels with a broad set of stakeholders. Differing opinions and societal groups also grant diverse insights for early trend sensing. During the COVID-19 crisis, different surprises on the disparate impacts of an external shock onto various societal groups became blatantly apparent. Having multiple representatives of manifold societal groups within a corporation or institution allows for detecting newest trends fast and responding efficiently with targeted aid and individualized communication strategies.

A well-balanced human capital portfolio also leads to more harmonious and balanced compromises within the organization. As used in court jury decision-making that pursues a well-balanced representation of different demographics – e.g., in age, gender, socio-economic backgrounds, race, religion and sexual orientation – having a multitude of different group adherences represented in one entity allows for coming to more balanced, democratic and the whole society-representing results.

In its feature to represent future-oriented choices that symbolize innovation, diversity management stands for flexibility and resilience in uncertain times. Embracing a culture that celebrates diversity breeds an open and flexible corporate culture that fosters creative thinking. Results from scientific investigations in the natural sciences held diverse work groups to be more creative (U.S. Supreme Court Arguments *Students for Fair Admissions v. President and Fellows of Harvard* 2022). In nurturing a climate of respect for different viewpoints, diversity therefore naturally curbs tendencies of negative groupthink and tunnel vision due to conformity.

Diversity as the trend of our times also allows portraying an institution as future-oriented that does not rest in yesterday’s culture but lives for innovations of tomorrow. Diversity management thus helps overcome a harmful presence bias. Diverse institutions count as being agile and not remaining overly obsessed with old trends and clinging onto outdated practices due to sunk costs. Diversity thereby can foster credibility of an institution. Signaling positive values, such as flexibility, creativity, inspiration and trust in one’s own opinion, à la longue breeds positive reputation capital. The appealing reputation of an innovative institution with a diverse culture attracts the most future-oriented and innovative human capital with an open, flexible mind and a diplomatic soul that embraces differences with a noble tact and strategic focus.

### **Ingredients of successful inclusion**

In order to foster successful inclusion and corporate diversity strategies, three components are emphasized: (1) Bundling of diverse representations in order to reap the benefits of complementary credentials enhancing diversification, (2) Authentic inclusion in order to secure valuable risk management potentials, (3) Quantitative and qualitative quality checks of successful diversity management and societal transformation for enhancing meaningful inclusion.

#### *(1) Bundling of diverse representations*

A current discussion at the U.S. Supreme Court argues for diversity in US educational institutions to train students as to become more holistic future colleagues, citizens and leaders (U.S. Supreme Court Arguments *Students for Fair Admissions v. President and Fellows of Harvard* 2022). In order to foster diversity potential, the most diverse groups could be brought in close contact with each other (Puaschunder 2016).

The diversity bundling strategy is an innovative and real-world relevant approach for societal welfare and intergenerational mobility advancement but also economic network theory development. Value transfer through diversity bundling promises systemic hierarchies to be permeable.

Because the highest transfer opportunities are given in dyads with diverting agents, bringing diverse opinions and camps closer together by promoting collaborative exchanges targets at improving many systems, from school to university to corporate culture. For instance, at universities legacy admits could be bundled with most excellent strivers that represent social justice-driven diversity admission. Both representatives could be incentivized to exchange ideas and strategies on how to thrive in competitive settings. One can imagine that legacy admits can teach a lesson about social capital and access to networking opportunities, while social justice offers academic excellence alongside most innovative anti-discrimination resilience strategies.

What is essential for this intellectual and cultural cross-pollination to work is a corporate and/or institutional culture that promotes respectful interaction and honest interest in other perspectives in order to find a common denominator for mutual exchange. Diversity must be taken seriously and lived honestly in order to achieve diversification efficiently. Presenting the idea of institutions and corporations as social transformation hubs that can be accessed is also dependent on the authenticity of diversity representatives.

## *(2) Authenticity*

Authenticity of diversity management has three layers: Within the organization, through the representatives of diversity management and within the wider society.

Within the organization, authenticity of diversity management and inclusion mainly addresses the attitude of the board and leadership of the company to engage in true diversity appreciation. This means that the board and leadership honestly embrace differences and diverse standpoints in order to fully tap into the diversification potential diversity has to offer.

In the first place to practice authentic diversity management, the corporate leadership must decide on what aspect of diversity the corporation should focus and align the diversity practice with the corporate goals and corporate culture. The focus of the diversity management should be close to the corporate style and preference of its employees as in the end, all employees must carry out the common plan to live an inclusive culture that is open to discourse and accepts differences. In order to make diversity then flourish in the long run, the corporate culture should breed appreciation for differences. Respect for different viewpoints and a culture of trust in the common goals despite different approaches and viewpoints must be harnessed. A fair culture of diversity that is authentic will serve as the best human resources risk mitigation strategy. As for resilience potential, authentic diversity grants the opportunity to naturally ward off litigation risks and scandals of unhappy employees, for instance when it comes to equal pay claims or the danger of explicit or implicit discrimination within the organization.

The representatives of diversity management are mainly individuals with extraordinary qualifications and diverse assets. These oftentimes minority representatives are advised to be encouraged to live their diversity to the fullest in order to enhance diversification potentials. These excellently gifted minority representatives should be connected with each other in order to avert their isolation. They should also be bundled with other diverse representatives in order to foster mutually-lived diverse information exchange.

The authenticity of these diversity representatives is important to enhance their diverse assets. Only if diversity representatives are encouraged to live their diverseness to the fullest, their role model function in society is granted. If diversity representatives are forced to conformity, not only diversification capital vanishes, but also their role as model to lead other minorities to aspire and strive to follow their path into positions of power weakens.

### (3) *Quantitative and qualitative quality control*

Lastly, quantitative and qualitative quality control plays a crucial role to foster credible and sustainable inclusiveness leading to meaningful diversity results in the long run and on a grand societal scale.

Quantitative aspects of quality control are concerned when quota requirements come in. How much diversity representation is recommended? One can say that around 25-30% representation, the quota-sponsored minority representatives do not feel isolated anymore, which is fundamental for curbing drop-out rates (U.S. Supreme Court Arguments *Students for Fair Admissions v. President and Fellows of Harvard* 2022). On the other hand, if the overall societal pool of diversity representatives is low, unreflected quota stuffing with some representatives that claim many slots at different institutions at the same time is rather harmful than helpful for society. In the case of gender quotas on Norwegian boards, for instance, some women held multiple positions at the same time. Two cases, for example, concerned two women who held 90 and 185 board membership appointments concurrently (DNA India 2012; Farbrot 2012; Treanor 2013). These diversity rock stars, who are all over the place, restrict the selection repertoire, which is criticized in the so-called 'Golden Skirt' phenomenon. Multiple appointments at a time may also raise conflicts of interest and due diligence problems. Considering that Norway is one of the most generous countries in the world when it comes to childcare, holidays and time off from work, there may be only a few minutes of supervision per company when dividing net work time through 90 or 185 appointments and potentially little room to help other women through social mingling or networking strategies. And diversity and inclusion, as the basic legitimacy of democracy, suggest that rotation is also needed, apart from the economic efficiency of diversification and the negative dependency that monopoly positions of a rock star result in. And socially, such women tend to be counterproductive because they block too many other women from fair access to supervisory board positions (Treanor 2013).

Qualitative quality control concerns the work climate and possibility of quota representatives' potential to remain authentic. Is the work climate one that fosters mutual exchange and respect for diversity? Are quota-placed individuals authentic and can they remain credible representatives of their minority (U.S. Supreme Court Arguments *Students for Fair Admissions v. President and Fellows of Harvard* 2022)? And are the quota representatives good role models that represent diversity authentically and are they interested in bringing up and sponsoring a pipeline of likewise successful minority representatives in order to accomplish the long-term goal of positive societal change? Delineating explicit and implicit diversity constraints in qualitative quality control will help create cultures that promote and encourage transfers towards meaningful diversity and sustainable inclusion.

### **Discussion and future outlook**

As for the novelty of the proposed idea, future studies may address particularities of positive transfers between diverse agents within societal networks. In the contemporary extensive writing on inequality, unraveling equity transfers opens ways to steer intertemporal social mobility (Arrow et al. 1999; Becker & Tomes 1986; Piketty 2014; Puauschunder 2015). Power agglomerations based on inequality and how to grant access in a societally just manner are additional quests arising from the detected research gaps.

Investigating transfers from a global governance perspective will help understand the impact of public and private sector contributions on equality. Capturing social transfer triggers will help designing context that advance social justice mobility. Implicit value transfers should be unraveled in order to complement institutional efforts to solicit direct resource redistribution following the greater goal to advance economic growth, social justice and societal inclusion (Shell 1967; Tobin 1967). Outlining public or private sector endeavors in coordinating societal

exchange would provide concrete means how to balance benefits between different societal strata in a fair way (Broome 1999; Puauschunder 2015). Deriving information on circumstances under which decision-makers are likely to grant access to elite clubs or share their intelligentsia and ambition within social transformation hubs is targeted at outlining ways how to improve ethics of inclusion to alleviate inequality and transform society to a fairer access to opportunities to complement democratic legal enforcement and governmental control.

In future studies, the complex interplay of individual and environmental variables on corporate and institutional diversity success should be studied in order to retrieve contextual influences on equity. Institutional rules, policies and regulations should be analyzed in the search for meritocracy-accessed opportunities in harmony with implementing diversity. Further, light should be shed on how the public and the private sectors can be systematically designed to promote a harmonious interplay of diversity management representatives in order to retrieve real-world relevant success factors of inclusion. Studying the interplay of individuals' propensity to engage in transfers and contextual environments to support equal access to transformation hubs will allow controlling the interaction of individual and external variables to steer equality within societal networks.

Future research on diversity may help in understanding the socio-dynamics of equality transfers as enhanced by social norms, public and private rules, policies, and procedures that establish equality transfers as a prerequisite for a harmonious society. The impacts and social dynamics of diverse agent dyads should be studied and successful diversity bundles that lead to creative cross-pollination and complementary skills exchanges should be outlined.

Overall, all these measures could aid in improving fair access to economic market opportunities and minimize discrimination. Enhanced knowledge transfers will build trust and hope in equal opportunity and fair inclusion. Respect for diversity as the socio-psychological backbone of a fair democratic society, together with trust in equal access to opportunities are key drivers of economic productivity, societal welfare and human dignity.

## References

- Arrow, Kenneth, Samuel Bowles & Steven Durlauf. 1999. *Meritocracy and economic inequality*. Princeton, N.J.: Princeton University Press.
- Becker, Gary S. & Nigel Tomes. 1986. "Human capital and the rise and fall of families." *Journal of Labor Economics* 4 (4): 1-39.
- Broome, John. 1999. *Ethics out of economics*. Cambridge: Cambridge University Press.
- Brunnermeier, Markus Konrad. 2021. *The resilient society: Lessons from the pandemic for recovering from the next major shock*. Princeton: Princeton University Press.
- Chang, Yen-Cheng, Harrison G. Hong, Larissa Tiedens, Na Wang & Bin Zhao. 2015. "Does diversity lead to diverse opinions? Evidence from languages and stock markets." Rock Center for Corporate Governance at Stanford University Working Paper 168. Retrieved at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2373097](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2373097).
- DNA India. 2012. "The Golden Skirt and Norway's boardroom bias." March 18, 2012. Retrieved at <https://www.dnaindia.com/world/report-the-golden-skirt-and-norways-boardroom-bias-1663971>.
- Farbrot, Audun. 2012. "Golden skirts fill the board room." Partner Science Norway. October 31, 2012. Retrieved at <https://partner.sciencenorway.no/bi-business-equal-rights/golden-skirts-fill-the-board-rooms/1378363>.
- Liscow, Zachary & Daniel Markovits. 2022. "Democratizing Behavioral Economics." *Yale Journal of Regulation* 39(3): 1274-1342. Retrieved at <https://www.yalejreg.com/print/democratizing-behavioral-economics/>.
- Piketty, Thomas. 2014. *Capital in the 21st century*. Cambridge, MA: Harvard University Press.
- Puauschunder, Julia M. 2015. "Meritocracy builds equality." *The Worldly Philosopher*. Schwartz Center for Economic Policy Analysis. Accessed at <http://www.economicpolicyresearch.org/index.php/the-worldly-philosopher>.
- Puauschunder, Julia M. 2016. "The beauty of ivy: When inequality meets equality." *Global Journal of Management and Business Research: Economics and Commerce* 16 (3): 1-11.
- Puauschunder, Julia M. 2020. *Behavioral Economics and Finance Leadership: Nudging and Winking to make Better Choices*. Cham: Springer Nature.
- Puauschunder, Julia M. 2022. *Advances in Behavioral Economics and Finance Leadership: Strategic Leadership, Wise Followership and Conscientious Usership in the Digital Century*. Cham: Springer Nature.
- Reuters. 2010. "Iceland asset manager banks on feminine approach." *Reuters*, December 7. Retrieved at <https://www.reuters.com/article/uk-iceland-audur-interview-idUKTRE6B63R020101207>.
- Shell, Karl. 1967. *Essays on the theory of optimal growth*. Cambridge, MA: MIT Press.

- Supreme Court of the United States. 2022. Public hearing argument transcripts of *Students for Fair Admissions v. President and Fellows of Harvard*, October 31, 2022. Retrieved at [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2022/21-707\\_9o6b.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2022/21-707_9o6b.pdf).
- Tobin, James. 1967. "Life cycle saving and balanced growth." In Irwin Fisher & William Fellner (Eds.), *Ten Economic Studies in the Tradition of Irving Fisher*, pp. 231-256. New York: Wiley.
- Treanor, Jill. 2013. "Norway's female boardroom pioneer rejects quotas for women." *The Guardian*, January 24, Retrieved at <https://www.theguardian.com/business/2013/jan/24/norway-female-boardroom-ibsen-reject-quota>.
- UBS Nobel Perspectives Harry M. Markowitz. Retrieved at <https://www.ubs.com/microsites/nobel-perspectives/en/laureates/harry-markowitz.html>.

# Climate Change and Security Implications

Alexandru Petrea

*PhD student, Military Academy of the Armed Forces "Alexandru Cel Bun" Republic of Moldova*

**ABSTRACT:** Climate change is arguably the first truly global security challenge in that, according to UN reports, only 11 out of the current 193 UN member states do not currently experience its impact in one form or another. In this sense, the Alliance includes in its policies the risks generated by the stress of climate change and orients its security strategies to take into account the impact of climate change. Continuous information, the approach based on prevention and resilience as well as the responsible determination of the energy independence that can be provided by renewable resources are some of the impactful measures in limiting these changes.

**KEYWORDS:** climate change, security, conflict, climate security, natural disasters, NATO

## Introduction

Climate change does not occur in a vacuum; in many areas of the world, they are accompanied by a decrease or rapid increase in population, a lack of resources or an increase in the price of energy. Analytically, it is difficult to separate the effects of climate change from other factors, such as food shortages, migration, ethnic tensions, and other issues that could generate violence. However, the potential impact of climate change on water, energy and agriculture will turn this process into a central driver of change, tension and conflict. An unsettling conclusion follows from this: the impact of climate change has combined effects on various societal dimensions and thus becomes a threat to the global economy, society as we know it today, collective security and global order in the first half of the 21st century.

## Is climate change a direct cause of current instability and conflict?

Experts agree that over the past century, climate variability, hazards and trends have affected armed conflicts that have broken out in some countries. However, research conducted in recent years in the field suggests a relationship between global warming and the outbreak of future conflicts in different areas of the world. Or, to put it another way, global warming is among the most common causes of tension and conflict that humanity is dealing with today. They agree that there are other factors far more influential than climate change. In the mentioned study, starting from a list of 16 factors determined by the collective of researchers each, the expert ranked the factors based on the degree of uncertainty regarding their influence in the outbreak of conflicts. Climate variability and/or change is low on the list of most likely conflict factors, and experts rank it as the most uncertain in its influence, not surprisingly. We believe that assessing the outcomes of climate change are difficult to quantify, but may have large consequences relevant to the decision-making processes of today's leaders.

Researchers (Mach et al. 2019) found that intensifying climate change is likely to increase the risk of future armed conflict within countries, estimating that climate change or climate variability has influenced between 3% and 20% of the risk of armed conflict over the past century. The study also found that if global emission rates are not reduced, the risk of climate-induced violence is five times greater.

Some leaders have since committed to reducing greenhouse gas emissions, but the world is facing new risks and variables in national and international security, and in this context, it appears that it is not yet ready to slow warming to set levels through the Paris Agreement in 2015 (United Nations / Framework Convention on Climate Change 2015). Even the new emissions targets set by governments around the world are not strict enough to prevent global warming of more than 1.5 degrees Celsius by the end of the century, the aforementioned report says.

Extreme weather events, exacerbated by accelerated sea and ocean level rise, will particularly affect some areas – including Europe, South Asia, Southeast Asia and the Western Hemisphere. When we say extreme weather events, we mean a series of climatic manifestations such as thermal stress, tropical cyclones, cold waves, heat waves or drought that leave behind significant damage. The disasters produced by these weather events are difficult to place on a chart of severity or relevance and experts hesitate to pronounce on this. "It's very difficult to make a selection because we've had many extraordinary events: the record in western Canada with a temperature of 49.6 degrees Celsius is just one of them" (Bojariu 2021). Regarding heat waves, the one in China should be mentioned here, but also the 2021 record in Sicily, of 48.8 degrees Celsius, as well as the fact that these extremes are no longer rare events and have become common in recent decades.

Water and food insecurity compounded by heat waves, droughts and floods are already increasing the risk of conflict in countries such as Egypt, Ethiopia, Iraq and Jordan, which have already been dealing with these phenomena for a significant period of time. The global threat assessment also highlighted the risk of tensions between Russia and China as sea routes open up in the Arctic and the rush for natural resources at the top of the world increases. "Food insecurity and water stress are also possible consequences of climate change. Where these factors interact, the rationale holds that tensions could increase competition for scarce resources; escalation could further limit access to resources, causing previously unaffected people to face scarcity and, in the process, increasing the likelihood of conflict." (Scheffran and Battaglini, 2011; Schellnhuber 2022).

Extreme weather events are increasing in frequency and intensity. Thus, the occurrence of an increasing number of tropical cyclones, severe storms and tornadoes, coastal flooding or long periods of drought causes extensive damage to infrastructure, arable land, habitat and raw materials for the food industry and more and creates conditions for insecurity and instability. The resulting hunger, drought or pollution forces migration, exacerbated by the expansion of transnational criminal and extremist activity, and border tensions will be a recipe for conflict." (Auffhammer et al. 2014).

If we refer to Romania, the extreme phenomena were numerous, heavily publicized and increasingly associated with climate warming. The resulting conclusions consist in the fact that natural disasters can weaken the capacity to ensure national security and can increase the need for international collaboration and partnerships. Among the effects we can list a weak response to the energy crisis caused by the Russian-Ukrainian war, the increase in international migration and implicitly the decrease in Romania's population, or the increase in competition for livelihood options. These topics are also researched in their relationship with specific elements of security as it emerges from the specialized literature. The issues posed by these two critical aspects of climate security-the role of the Arctic and the transboundary and international nature of the problem-are discussed with remarkable frequency by researchers trying to model the link between climate change and security.

We can conclude that climate change is rarely seen as a direct cause of instability and conflict, but experts generally consider this process a "threat multiplier", a phenomenon that can aggravate or exacerbate other sources of instability and conflict, such as competition for natural resources or ethnic tensions. Discussions generally fall into two areas: the impact of warming on conflicts between nations and between ethnic groups within nations, and the impact of warming on military infrastructure and operations. The idea that a warming planet threatens stability across the globe is not new. The primary and secondary socio-economic impact can affect all geographical areas, but we find it more intense in low-income countries, where government finances are not very strong, where the management of natural disasters is not done at a sufficiently efficient level and the involvement of institutions is uneven.

### **The impact of climate change on security**

As we know, when we say “climate change” we go beyond the idea of climate, because the impact is much broader and the challenges much more diverse. It's a triad of main challenges, and here we're talking about solving the energy problem that, as we know, contributes to about 80% of global human emissions (Climate Change Summit 2022).

A second challenge is air pollution and statistics say that there are at least 5 million premature deaths every year because of this. This raises a significant public health issue, one that is much less on the current agenda than it probably should be. The third element of the triad is the poverty of energy sources. Currently, approximately 3 billion people cook with biomass and a billion people do not have access to electricity. (Climate Change Summit 2022). These statistics actually hide an energy poverty that is very closely related to human development.

During the last decade, Romania, together with other states of the North Atlantic Alliance (NATO), recognized the direct influence of the climate on security. However, NATO's involvement in climate and environmental security is modest. NATO's efforts are mainly directed towards maintaining basic awareness of the issue, sponsoring and participating in events or providing assistance to partner countries. However, at the level of the Alliance, the impact of climate change on security was studied; the bottom line is that climate change is one of the defining challenges of our time.

In this sense, NATO recognizes climate change as a “general challenge of our time” that will measurably increase security risks and “will worsen as the world continues to warm” (Nato.int 2022). It calls for a fundamental transformation of the Alliance's approach to security and establishes NATO as a leading international organization in understanding and adapting to climate change. In this sense, NATO leaders adopted at the 2021 Brussels Summit the New Strategic Concept of NATO which recognizes, for the first time, the security implications of climate change as a major security challenge in the next decade. The new Strategic Concept directs the Alliance to respond to current security threats and challenges and to develop politically and militarily so that it is ready to respond to future threats and risks.

If we analyze the effects of climate change, we can affirm the fact that they shape our geopolitical environment and influence the behavior of the state. For example, oil-exporting economies will have to deal with failing assets as they switch to other energy sources, while mineral-exporting countries could benefit from a green transition. Another area where conflict risks need to be mitigated is the extraction of raw materials, desertification or the opening of new shipping lanes. It should be noted that geopolitical risk is determined more by climate change events acting in one region, which then cause ripple effects on neighboring countries or even more distant countries. We can state that geopolitical factors are increasingly influenced by the direct effects of climate change and lead to increased instability and geostrategic competition.

Another result is exacerbating countries' structural weaknesses, such as weak sovereign finances, health care security or low emergency response capacity, as well as causing social unrest. It is also relevant that extreme weather events put pressure on the ability of governments to fulfill their promises and force reprioritization of policies and finally climate change can increase tensions between countries, for reasons related to water, air, pollution or environmental degradation.

At the level of the countries within the Alliance, the opinion that climate change makes it difficult for the armies to fulfill their objectives and missions is unanimously accepted. Extreme climate events such as sea level rise, rapid changes in precipitation patterns test the resilience of critical military infrastructure and affect the effectiveness of military capabilities; they can also create harsher conditions for military and humanitarian operations and missions.

The implications of climate change include drought, soil erosion and marine degradation, processes that can lead to famine, flooding, loss of land and livelihoods, and which disproportionately impact poor, vulnerable or marginalized populations and may exacerbate the fragility of the state and fuels the conflicts in the area. For a security community like the Alliance, which reacts to and manages crises and conflicts, anticipating the effects of climate change would not seem difficult to assess. Thus they could have a particular impact in the future and could massively affect vast areas of the world, such as sub-Saharan Africa or the Middle East and Central Asia, territories where the Alliance has been little engaged.

However, environmental challenges have been addressed from a research perspective within NATO for over half a century and during this time a number of environmental standards and guidelines have been developed. In this sense the Strategic Concept of 2010, a green defense framework adopted in 2014, climate issues being highlighted in the declarations adopted since Lisbon 2010. From these documents it follows that NATO takes into account the impact of climate change on security with the well-stated aim of - successfully fulfill its three core tasks: collective defense, crisis management and cooperative security.

In 2021, NATO's foreign ministers approved the NATO Agenda on Climate Change and Security (Nato.int 2021), where it is established that "NATO will become the main international organization in terms of understanding and adapting to the impact that climate change has on security" (Idem). The NATO Agenda results in formulating a realistic, ambitious and concrete target for the reduction of greenhouse gas emissions by NATO's political and military structures and facilities, and assessing the feasibility of a goal of complete elimination of emissions by 2050. In this therefore, a regular high-level dialogue on climate change and security issues is required.

If we analyze the reactions of the European Union (EU) to the increasingly visible effects of climate change, we can bring to attention the latest report of the Intergovernmental Panel on Climate Change (IPCC) from which it follows that "global warming causes increased changes, and in some irreversible cases of precipitation, ocean and wind patterns in all regions of the world. For Europe, the report predicts an increase in the frequency and intensity of extreme weather events, including marine heat waves, and warns that a 2°C rise in temperature will have critical effects on nature and people" (Council of the EU 2022). In this sense, EU leaders have adopted the objective of achieving a climate-neutral EU by 2050. The European Council emphasized that the transition to climate neutrality significantly influences economic growth, markets, job dynamics and technological development.

The European Green Deal provides the blueprint and roadmap for the EU to turn its climate ambitions into reality. But the far-reaching effects of Russia's attack on Ukraine by triggering a global energy crisis pose an indirect threat to the EU's climate goals. It is well known that this conflict has imposed energy insecurity and dependence on fossil fuels. World leaders found themselves caught between ambitious goals to move away from fossil fuels and the immediate political and economic pressures of war. Also, the Russo-Ukrainian war demonstrated that climate change adds another dimension to the link between militaries and fossil fuels, which have seen a resurgence during wartime.

As a result, fossil fuel companies are now lobbying hard for long-term infrastructure investment that risks derailing world leaders from recently agreed international climate goals. Supporting this view, Jennifer Morgan, Ambassador-at-Large for Climate Change in the German Foreign Ministry and former president of Greenpeace International, says that "we are in a moment of massive disruption due to the invasion, and this is either a big risk or an opening big on the climate." The bottom line is that one of the most pressing challenges facing European leaders today is how to lessen their dependence on Russian energy while accelerating the fight against the climate crisis.

## Conclusions

Most of the time, when it comes to doing things about climate change, we tend to become reluctant because we perceive these actions as interfering with our comfortable lives that depend on using cars in our daily lives, the use of technical devices in the house that we can use at our discretion, working continuously on our computers whenever we want, recycling software or flying to all the holiday destinations. However, it is well known that it is human action that can change the course of events. Immediate, rapid and large-scale reductions in greenhouse gas emissions and net-zero CO<sub>2</sub> emissions have the potential to limit climate change and its effects.

Regarding the global effectiveness of measures taken against climate change, according to Founders Pledge and Johannes Ackva, there are 3 main pillars that can change the game: climate finance - a pillar that if targeted to areas where carbon emissions are increasing and which will prove its effectiveness; policies in the field from countries with developed economies that have credible, domino effects in other states as well as the energy innovation currently taking place in a growing energy market with low coordination and heavily influenced by ongoing conflicts. Because by triggering a global energy crisis, the war in Ukraine represents an indirect threat to global climate goals.

It is nothing new that in this troubled security context, NATO countries are planning to increase their military budgets, with Germany announcing an increase of 100 billion euros. Military spending is carbon intensive due to the dependence of many military capabilities on fossil fuels. The logic goes that action to limit global warming to 1.5 degrees Celsius will require a full energy transition through renewables, meaning there will be less money to be made from fossil fuel exports. So, we expect to find as collateral damage of this war in Ukraine and those arising from the climate agenda. What could be done? It is time to take a serious look at the energy independence that renewable resources can offer and make the case for solar and wind power that seems stronger than ever.

## References

- Auffhammer M., et al. 2014. “Detecting and attributing observed impacts”. In *Climate Change 2014: Impacts, Adaptation and Vulnerability*. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Ed. C.B. Field et al. Cambridge, UK and New York, NY, USA: Cambridge University Press, Embracing Uncertainty: Scenario Planning for the Security Challenges and Opportunities of Climate Change, <https://www.pnas.org/doi/abs/10.1073/pnas.1613193114>.
- Bojariu R. 2021. *Extreme phenomena of 2021 and what to expect in the future*, December 30, 2021, <https://romania.europalibera.org/a/fenomene-extreme-clima/31628067.html>.
- Climate Change Summit. 2022. October 04-05, Bucharest, <https://climatechange-summit.org/>.
- Council of the EU. 2022. “Climate Diplomacy: Council calls for accelerating the implementation of the Glasgow COP26 outcomes.” Council of the EU, Press release February 21, 2022, <https://www.consilium.europa.eu/en/press/press-releases/2022/02/21/climate-diplomacy-council-calls-for-accelerating-the-implementation-of-the-glasgow-cop26-outcomes/>, accessed at September 19, 2022.
- Mach, K.J., Kraan, C.M., Adger, W.N. et al. 2019. “Climate as a risk factor for armed conflict.” *Nature* 571: 193–197. <https://doi.org/10.1038/s41586-019-1300-6>. Accessed at September 19, 2022.
- Nato.int. 2021. “Brussels Summit Communiqué, Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Brussels 14 June 2021.” [https://www.nato.int/cps/en/natohq/news\\_185000.htm?selectedLocale=en&fbclid=IwAR12YZ3gRz2Hlb-i4S4KwGLR0AtR4JdPKz-6uGI8aQcPoyQwJBahpF0owHk](https://www.nato.int/cps/en/natohq/news_185000.htm?selectedLocale=en&fbclid=IwAR12YZ3gRz2Hlb-i4S4KwGLR0AtR4JdPKz-6uGI8aQcPoyQwJBahpF0owHk). Accessed at September 19, 2022.
- Nato.int. 2022. “NATO in a New Era: Global Shifts, Global Challenges.” <https://www.gmfus.org/news/nato-and-climate-change-better-late-never>. “NATO releases its Climate Change and Security Impact Assessment.” Jun. 28, 2022, [https://www.nato.int/cps/en/natohq/news\\_197241.htm](https://www.nato.int/cps/en/natohq/news_197241.htm). Accessed at September 19, 2022.
- Salehyan, I. 2014. “Climate change and conflict: making sense of disparate findings.” *Polit. Geogr.* 43: 1–5 (2014). Article Google Scholar.
- Scheffran, J. and Antonella Battaglini. 2011. “Climate and Conflicts: The Security Risks of Global Warming.” *Regional Environmental Change* 11(1): 27–39.

Schellnhuber, The World in Transition - Climate Change as a Security Risk, <https://www.msci.com>. Accessed at September 15, 2022.

United Nations / Framework Convention on Climate Change. 2015. *Adoption of the Paris Agreement, 21st Conference of the Parties*. Paris: United Nations. <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>, accessed at September 19, 2022.

# Bulgaria and Russia: A Diplomatic Deficit

**Avgustina Asenova Peycheva**

*Reichman University ICT Research Assistant; CIOR NATO Bulgaria Expert; WIIS; PhD Moscow State Institute for International Relations, Sofia, Bulgaria, a.a.peycheva@gmail.com*

**ABSTRACT:** The article examines the contemporary Bulgarian - Russian relations and the definition of NATO information operations through a descriptive political analysis. The scientific relevance of the research topic is found in the insufficient study of it in political science due to its novelty. The purpose of this case study is to analyze the peculiarities of NATO information operations of Bulgarian - Russian relations and assess the possibility to re-apply them for the improvement of the current worldwide state of matters. The policy analysis makes use of the interdisciplinary approach to reassessing and redefining NATO information operations through historical, political, psychological analysis with the perspective of influencing the decision making of adversaries and potential adversaries in order to dissolve disagreements and adopt conflict resolution through communication and inclusivity. The authors H. D. Lasswell and B. McNair, who discuss tactics of manipulation and propaganda are used as a base to explain the theory of information operations. Complimentary authors, who explain for media communication's influence are ones such as C.E. Merriam, T.V. Adorno, H. Marcuse. The duality of information operations is assessed too. The author concludes that the diplomatic deficit stems from a lack of understanding of information operations worldwide, the lack of clear laws approving, assessing, limiting and punishing for abuses of information operations. As a result, due to the need for peace, stability and development, conditions are created to enhance international efforts to take action against different types of contemporary terrorism and force diplomacy to prevail.

**KEYWORDS:** Bulgaria, Russia, information operations, diplomacy, NATO

## **Introduction**

The topic of diplomacy is most relevant during war. The interdisciplinary approach is essential to the study of the diplomatic deficit between Bulgaria and Russia and its correlation to the understanding of the definition of NATO information operations on theory and practice, since no single disciplinary perspective can adequately address this issue. In order to conduct a whole round assessment, examples from other NATO member states apart from Bulgaria will also be mentioned. Analyzing the contemporary diplomatic relations, the "fall outs" and the peculiarities of NATO information operations, their effects on the diplomatic relations helps to establish a new understanding of NATO information operations. This new reading ought to be re-applied worldwide in order to prevent conflicts, since, currently, there is space to claim the current understanding of NATO information operations has shortcomings, which create diplomatic tension as revised in the example of Russia and Bulgaria. A number of authors will be used to support the thesis of the research, as well as, a variety of contemporary data and international resources.

## **Theoretical Methodological Basis of the Research**

The current situation in Europe is best described as a diplomatic paradox. To best assess this diplomatic paradox, one has chosen to begin with H.D. Lasswell's introduction of the 5W Model: (1) Who? (2) Says what? (3) In which channel? (4) To whom? (5) With what effect? As well as, the model of communication, which he proposed, which was divided in the following 5 parts respectively: (1) communicator, (2) information, (3) media, (4) audience and (5) effect. These have greatly eased the study of new media, NATO information operations and current events as the relations between Bulgaria and Russia and others (Lasswell 1948, 37-51). Relevantly, B. McNair argues that "an expanding globalized public sphere and digital media network have

transformed political communication, allowing political actors, from politicians and pressure groups to trade unions and terrorist organizations, to bypass traditional, established media in communicating their messages” (McNair 2017, intro - 16). This trend evidently poses dangers due to the existing abuses created, hampering of nation’s development, threats to other nations’ security, etc. In that sense, authors such as C. E. Merriam who encouraged for the greater use of statistics in empirical observation and measures, as well as, “intelligent social control” are essential for strengthening core theories and the necessity of activities resulting from the attained information from discussions, data from long term experiments, etc. (Merriam 1925, 15-30). He also greatly relied on political psychology and is considered one of the greatest contributors to the behavioral movement in political science. It is widely known that T.W. Adorno and H. Marcuse were a part of the group of scholars making up the Frankfurt School. The Frankfurt School believed that through revising various points of view, which are contradictory to one another, much could be learned from the discourse, also referred to as the dialectical method of learning. This concept seems also very close to the modern understanding of diplomatic negotiations and conflict resolution. Adorno and Marcuse are also known as proponents of critical theory, which is a social theory that aims to critique and change society, while being explanatory, practical and normative simultaneously. Marcuse has claimed the following “Free election of masters does not abolish the masters or the slaves” and „The liberating force of technology—the instrumentalization of things—turns into ... the instrumentalization of man” (Marcuse 1964, 159). This being said, it is necessary to constantly challenge social processes in order to prevent and even reverse the instrumentalization of man, to abolish this modern concept of masters and slaves, the totalitarian rule of consumerism, technological capitalism and even the modern process of creating victims of war within the concept of hybrid warfare starting as mere informational warfare and ending in proxy war, "victim blaming", etc. The research methods reflected a set of general scientific and special approaches to the study of political and information processes.

### **Russian Perspective on NATO Information Operations**

Data on the contemporary Russian perspectives collected within many articles, already published, reflecting about 10 years of research in Russia conducted by the author, showcase a Russian trend, which views NATO information operations as something beyond mere influence operations (Peycheva 2021). They are viewed as interventions, which are targeting Russia and are aiming to destabilize it socially, economically, politically and militarily by attacking Russia’s image in the information sphere and media via official NATO channels by NATO and individual NATO member states per NATO HQ orders via falsifying history, creating grounds for discriminating against Russia due to other countries as Turkey, for example, sanctions, etc. Also, through creating circumstances forcing Russia to act militarily in the region due to the creation of security threats it can not ignore such as border attacks, neo nazi battalions as a part of the Ukrainian army in it’s “back yard”, NATO exercises conducted with high tech weaponry possibly with use beyond defense purposes, according to Russian experts, aggressive and quick expansion of NATO in the region. All this, while NATO is expressing open support financially, with training and with arms to Ukraine, while Ukraine has made no effort to dismantle extremist and openly neo nazi battalions from its state army, such as Azov and others, since 2013 until contemporary times.

With this in mind, revising this issue is a very interesting process due to the fact, that, generally, NATO information operations had been publicly recognizable to be operations conducted in Yugoslavia “words not bombs” (Information Operations Modeling 2015), Pakistan (NATO 2005), Somalia (BBC 2008) and other places for the aim to help countries attain peace, help as airplanes during earthquake evacuation, to battle pirates, resolve issues, make friends, etc.

### Definitions of the Core Term

Simultaneously, after extensive research the following Table 1 of some main definitions of information operations throughout time leading to the contemporary given definition of NATO information operations can be provided, showing for some evidence in partial support of the “Russian fears”:

Table 1. Information Operations definitions

Country / Alliance	Document title	Date of issue	Definition
Proposed definition by author and scientific supervisor	Phd dissertation “Peculiarities of NATO information operations in Europe in the 21st century”	Upcoming	“Information operations are campaigns of influence on public opinion at the level of mass consciousness, as well as, at the level of representations of the political elite. Information operations are designed to influence the decision-making process and the state of political institutions in the target countries of information operations, with the aim of executing the interests of the subject countries conducting these operations.”
NATO	Allied Joint Doctrine for the Conduct of Operations (AJP) 3	Latest version 2019	“Information operations is a military function to provide advice and coordinate military information activities to create desired effects on the will, understanding and capability of adversaries, potential adversaries and other North Atlantic Council approved parties in support of Alliance mission objectives. Information activities are actions designed to affect information and or information systems and can be performed by any actor and include protective measures.” (AJP- 3 2019, A- 8 )
USA	Joint Publication (JP) 3-13	Latest version 2012	“The integrated employment, during military operations, of information-related capabilities in concert with other lines of operation to influence, disrupt, corrupt, or usurp the decision-making of adversaries and potential adversaries while protecting our own. Also called IO.” (JP 3-13 2012, GL - 3)
UK	Joint Warfare Publication (JWP) 3-80	2002	“Coordinated actions undertaken to influence an adversary or potential adversary in support of political and military objectives by undermining his will, cohesion and decision making ability, through affecting his information, information based processes and systems while protecting one’s own decision-makers and decision-making processes’.” (JWP 2002, 2-1)

### Assessing Russian Fears of NATO Information Operations

Available are many UK, US, NATO and Bulgarian media publications against the Russian Federation and its alleged activities. These allegations have been rather controversial, due to a lack of evidence to charge Russia/ Russian citizens. Yet again, even though the adoption of the EU action plan to combat racism for 2020-2025, which can bring tangible benefits in the fight against anti-semitism, racism, xenophobia and discrimination, discriminatory media articles were published and Heads of State and Alliances had made comments condemning Russia as guilty until proven innocent, causing for russophobic tendencies, asset seizing, visa limitations, etc. (Stephan 2022). Apart from this, there had been steady activity, a vilification of Russia campaign, that even sometimes glorified nazi Germany throughout the EU, the main of these cases and threats are depicted in the following Table 2. It is important to note, that a number of these cases are prior to the so called annexation/ accession of Crimea and Sevastopol in 2014, the main reason for the diplomatic deficit according to NATO (Stoltenberg 2016, 20).

Table 2. Diplomatic deficit in relations with Russia

Country	Case	Year	Claim
Ukraine	Regional extremism and terrorism nested in Ukraine's army: a direct threat to Russian national security and Russian, Ukrainian and Bulgarian citizens in Ukraine	2022 - 2013	In Ukraine, such neo - nazi, racist, antisemitic and xenophobic groups as "Right Sector", "Freedom", "National Corps", "S-14", "Azov", the Congress of Ukrainian Nationalists, etc. are permitted to be official battalions of the Ukraine army and eventually, began to receive funding, training and weapons from the EU and NATO, while acting openly and with impunity (Al Jazeera 2022); These groups do not reflect the official principles of goodwill neither of the EU nor of NATO (NATO 2010, 1); if they functioned within the EU, they would be considered automatically a terror threat-dangerous double standards threatening Ukrainian, Bulgarian and Russian lives (Jukneviciene 2017, 4).
Bulgaria	Ending gas supply relations and portraying Russia as gas blackmailers	2022	Bulgaria took part in projects as Nord Stream 2 and others, which EU members called "diversification", although still Russian gas. Russia was preferred due to low prices. Years of deflection of EU funds for diversification, corruption, etc. are also a factor. A media campaign against Russia to cover that up doesn't change history, it only hampers Russia (Zinoveva 2014, 49).
Bulgaria	Expelling Russian diplomats on spy allegations; media frenzy during elections	2022	Worsening relations with Russia and closing down embassies was very contra productive considering the fact that there are huge Bulgarian diasporas in Ukraine and Russia and diplomatic relations are a must in order to protect Bulgarian citizens.

Bulgaria	Bulgaria closed its airspace to Russian planes due to EU, NATO and for media frenzy for votes	2022	Instead of being a diplomatic middleman and to bring checks and balances in NATO, EU - Russia relations to try to dissolve the regional tensions diplomatically, Bulgaria chose to hamper its citizens in Russia, Ukraine with a strong stance against Russia hampering businesses, people and state relations.
UK	British military provocation in the Black Sea	2021	Diplomatic incident in the Black Sea 2021, when the British destroyer HMS Defender deliberately provoked a Russian Su-24M military aircraft to make a warning shot, forcing the British warship to leave the territory in the questionable waters it passed through as a short cut with no prior warning whatsoever given to Russia (Tass 2021).
Bulgaria	Vilification of USSR	2020	Bulgarian Foreign Ministry called the Soviet Union's liberation of Europe from the Nazi yoke in 1945 a "dubious historical thesis".
Germany	Scandal with the poisoning of A. Navalny by the Russian Federation in Russia	2020	Navalny was transported from Russia to Germany in an attempt to save his life after he was hospitalized in Russia. The alleged poisonous chemical was not isolated well enough to produce an inclusive report in Germany and evidence the Russian state attempted to murder Navalny was never produced either. NATO was very firm on the matter of protecting Navalny from Russia (NATO Sec.Gen. 2020).
UK	Scandal with the poisoning of Skripals by the Russian Federation in the UK	2018	Claims that the Russian Federation poisoned the Skripals and declarations by Teresa May, MI-5, MI-6 and NATO, that Russia must de-classify its research on a supposedly Russian "novichok" substance the Skripals were poisoned with allegedly. (Asthana 2018) Evidence that could hold in court, that the Russian state was involved was not produced (Bellingcat 2018).
Belgium	Glorification of nazism in Latvia	2018	a monument in honor of Latvian Waffen-SS legionnaires was erected in the Belgian Zedelgem.
Poland	Glorification of nazism; defaming of the soviet soldiers who fought to free Poland	2018 - 2011	28 monuments erected in honor of Red Army soldiers were dismantled in 2018; Nazi marches were held in Poland by the right-wing radical group "Pride and Modernity" of honor of Hitler's birthday 2018, 2017, documented celebrations, since 2011.
Bulgaria	Poisoning of E. Gebrev by the Russian Federation in Bulgaria	2015	A Bulgarian arms dealer's attempted murder became a scandal claiming the Russian state was conducting "wet works" in Bulgaria. It was never proven that Russia as a state was involved ( Zviagina 2019).

In Bulgaria, Serbia, Greece and some other countries, Russia used to be perceived as an important business partner, that could provide financial and economic assistance in the future. Simultaneously, deeply rooted corruption also exists due to relations with Russia. The new regional main financial partner is NATO and the EU. At the same time, wanting to become the "favorites of NATO and the EU", Bulgarians and others oppose Russia, seek to undermine its political and economic role in the world, defame it in the media, even provoke it to retaliatory and aggressive measures despite the security of their citizens abroad. All this prevents Russia from maintaining good relations with NATO. Some consider their attitudes a NATO information operation against Russia. Even though this is so, the Bulgarian expert in countering terrorism, deputy chairman of the NATO CIOR – Bulgaria organization, Dr. Asen Peychev has stated: "Cooperation between NATO and Russia is a prerequisite for effective counteraction to international terrorism." According to him, NATO's cooperation with Russia should be built on the basis of strategic communications (Peychev 2016). In this case, it is clear that it is solely up to Russia to strategically communicate to countries like Bulgaria and other NATO states their topics of concern in order to correct the diplomatic deficit, dissolve conflicts, negotiate and most importantly, disarm.

### **Threats to National and International Security: Diplomatic Deficit**

According to research from Russia, alleged information operations carried out by Western countries against Russia are a direct threat to its national sovereignty, as well as regional, international and global security. The tendency of white washing Turkey and vilifying Russia is present in NATO official reports, where it is stated that Russia is supposedly the first country to "invade" another country, since the Second World War entirely ignoring the fact that Turkey invaded Cyprus in 1974, for example (Turner 2016, 14). To improve diplomatic ties with Turkey, Bulgaria re-wrote its history books on the Ottoman empire from Bulgaria having been 500 years under "Ottoman slavery" to "Ottoman influence". This diplomatic approach has not been adopted when dealing with Russia and the USSR. Bulgaria is EU's most corrupt and poorest country. Bulgarian communists are known to pretend being democrats just to get in power and corrupt the system from within. EU and NATO were supposed to improve the informational environment in Bulgaria, not hamper it by regressing to discrimination and a rhetoric of hate as the one Bulgaria had during WWII when it was a nazi state and until 1990 when it was communist. The stance against Russia Bulgaria is supposedly obliged to have is one of diplomatic deficit, which was clear during the Sofia discussions with Ambassador Mitrofinina on March 2022 and threats to make her a "persona non grata" in Bulgaria for trying to negotiate a way out of expelling her staff. Evidently, attempts by Russian officials to have discussions post the start of the operations/ invasion was to be perceived as a dangerous and difficult endeavor.

Even though this is so, Russia was involved in many scandals prior. One serious scandal was in reference to the INF treaty, a treaty which Russia left in 2019. With the onset of COVID-19 not only many regional, but international relations exacerbated. Another major issue was personal insults by the new US President towards Putin, calling him a "killer" in May 2021, etc. Relations between NATO and Russia worsened due to espionage allegations and diplomatic representation in Russia and the NATO HQs came to an end in October 2021, leading to decreased cooperation on many matters including counter terror. Russia was constantly portrayed in the media as being "too assertive" and as an enemy by NATO, with no mention of the neo nazi extremist problem in Ukraine, which they view as a direct threat to Russian and regional security, alongside the high levels of corruption in Ukraine (Stoltenberg 2020, 6). Allegations of Russian spies in Bulgaria is also very common news for the past decade. Due to this and other reasons, Russia's international relations worsened, but yet again, only Bulgaria and the Baltic states declared to be ready to end all diplomatic ties with Russia. Russia began to limit Western content and ended up blocking Instagram and Facebook platforms in Russia in 2022. After the whole

world continued to sanction Russia for allegedly not respecting the NATO Russia Founding Treaty in 2014 without considering its motives as protection of human rights, right to self determination, ethnicity, historical ties, the referenda, etc. and after it was made clear by internal and open sources that NATO is financing, training and arming the extremist battalions within the Ukrainian army, the ones who committed genocide in Donbas against Russians, Ukrainians and Bulgarians since 2013, and that Ukraine plans to invade Russia, President Putin declared the start of his “special operations for denazification and demilitarization of Ukraine”. The war between Russia and Ukraine officially began February 24th 2022. Many Ukrainians fled the country and are currently refugees. Many attempts for negotiations were made, but none were fruitful. Half a year later, President Putin partially mobilized the Russian citizens for army duty, but a backlash occurred with many fleeing Russia just as how many fled Ukraine at the onset and during the war activities there. It must be pointed out that with the start of the special operations, Putin warned the West that his nuclear weapons are on high alert, not to intervene in Ukraine. Yet again, the West continued to send weapons and trained soldiers, made statements as “we will fight until the last Ukrainian”, made claims “the conflict must not spill over beyond Ukraine”, etc. (Reuters 2022). As it was with the Crimea and Sevastopol referenda in 2014, the same concept is applied today with the Donbas referenda in Donetsk and Luhansk. That is, whether there would be recognition or the regions would be considered occupied land seems to be irrelevant to Russia as long as Ukraine’s extremists can not access the area and Russia can attain procedural jurisdiction over it (Statement 2021). The votes for both areas to attain autonomy from Ukraine and merge with Russia ended up being in the high percentage scales. The referenda were stated to be “sham” by most Westerners.

To note is that, there were a number of attempts to peacefully retaliate against the West’s information operations without having to occupy land or wage war. Russia was involved with the UN and NATO, as well as, having had economic interests with the EU to improve relations. Russia has a passport scheme: to provide Russian passports to neighboring countries with quick procedures. There were also sessions of the CSTO Collective Security Council in 2013, 2014 and onwards against regional terrorism, extremism, and to encouraging regional unity in the face of modern challenges. The Crimea and Sevastopol referenda came as a surprise to many, since this venture cost Russia billions. It delayed anticipated wage increases and sociological poles showed it only slightly contributed to the improvement of Putin’s image. Inter alia other attempts to improve the exacerbated relations post 2014, in 2019, the resolution 74/247 “Countering the use of information and communications technologies for criminal purposes” was adopted by the UN General Assembly, proposed by Russia. (Res. 74/ 247 2019). In 2020, the same occurred with the resolution 75/240 of the UN General Assembly on Developments in the field of information and telecommunications in the context of international security”; it being an update of the 53/70 version from 1998. (Res. 75/240 2020). Also, very importantly the new START treaty was extended in 2021, etc. As mentioned above already, many attempts for negotiations between NATO, Ukraine and Russia were made, but none were fruitful.

### **Nuclear War or Negotiations for Peace?**

Nevertheless, from half a year, the world is living with the threat that a nuclear war might be a reality due to a lack of diplomacy, a lack of desire to stop gambling with human lives even in Europe and a lack of adequate leadership (Potomac 2022). The New World Order is jeopardized by corruption that has eaten away the foundations of contemporary democracies. It is also jeopardized by the currently most dangerous world terror threat: neo nazism. Data from the Global Terror Index has confirmed the neo nazi terror threat since 2020 (Global Terrorism Index 2020, 3). Footage of Ukraine’s soldiers bearing swastika, Hitler portrait and 88 tattoos, as well as, allegations of rape, brutality, etc. has confirmed the terror threat is active in within Ukraine’s army in about 50 recognized and registered battalions and their captured soldiers in 2022.

### **Dangers of the Far- Right on the European Continent: Again**

Another worrying trend is data from political elections in Europe. Actively, since 2016 until most recently in Italy, especially, data proves, that there is a constantly steady rise of far- right to neo - nazi / neo - fascist parties becoming more and more popular, attaining power and influencing negatively the course of political decision making, which jeopardizes the peace and prosperity Europe once had. The nazi threat was typical primarily for jails, poor neighborhoods, football hooligan groups, but in Bulgaria it had been a part of the subculture, since WWII and the political scene, since 2 decades already. Nazi Germany's influence and symbols have been imbedded in Bulgarian street art, graffiti, and most criminal gangs, as if it is Bulgarian symbols and influence. Nazi Germany does not exist any more, because Germany is a liberal democracy today, but Bulgaria has improved very little. This trend had a spill over effect towards Greece, which ended up with violent turmoil and public murders committed by the famous "Golden Dawn" and very aggressive anti migrant policies by parties as "New Democracy" and others, since 2009. The infection then spread all over the EU. At some point, almost a decade ago, even Russia had been involved with the far right in Europe famously for lending loans to Marine Le Pen and others.

As a result to the actions taken by the Russian Federation against the neo nazi threat they recognized in Ukraine, one can declare that the current relations between Russia, Bulgaria, EU and NATO have exacerbated, since issues of sovereignty were also involved. Whether this is normative shortcomings, an issue of counter terror or a diplomatic deficit or all in one is hard to confirm. Unlike Russia, NATO and the EU, Bulgaria has chosen not to involve itself militarily directly, but just like Russia and Ukraine, Bulgaria is losing people in these war activities/operations daily. It is very important to return to the negotiation's table instead of to have Russia conduct further activities with referenda, special operations and alleged one sided counter terror duty, based on a unilateral assumed perception of NATO information operations and the local situation.

### **Discussion**

The threat of nuclear war is becoming more of a reality with each passing day and the lack of communication on an official level, as well as, on a regular mass level only contributes to more misunderstandings and turmoil. Compromises on all sides have to be made in order to hold accountable the people and nations who have glorified nazism, have revived nazism in Europe in Ukraine's army, state army terror, and who have allowed for the negligence causing for the loss of so many lives in Ukraine, since 2013 and today in order to stop the steady rise of the far- right in Europe as seen from data from 2017 (Aisch 2017) and today (Fleck 2022). Russian activity in Ukraine also has to be put an end to too. Neither the Russian Federation nor NATO should be perceived as threats to one another and as long as this is accepted by both parties and is reflected by both parties' official channels of communication, the duality of NATO information operations can thus contribute to improving diplomatic relations as opposed to forcing a diplomatic deficit, regional instability and war activities in Ukraine due to misconceptions, a lack of assessment tools and limitations of the activities.

Neo nazi, religious, neo leftist extremism and terrorism should be unrooted from the daily agenda of the people living in the 21st century via peace, education, close cooperation, constant communication, framework of signals, better exchange of signals information by intelligent agencies, know how exchange and pre planned prevention schemes in order to save lives. COVID-19 and the possible threat of global bio terror should have been a warning that more international and bilateral cooperation is necessary in order to quickly dissolve threats, as well as, to even be able to quickly prevent them. Any continuation of abusing the concepts of information operations or counter productive attempts to countering them by the parties mentioned above should be assessable, limits should be enforced, as well as, punishments. If information operations, as how they are applied now, are a threat to another country, if they can be considered an intervention, an informational invasion, that deprives the adversary of free will and

compromises the sovereignty of the state without or with the physical element, then there is a deeply rooted problem, that must be resolved as soon as possible. Delays in updating international frameworks, which is to the benefit of particular groups and countries should be considered as a serious signal for international corruption and systemic malpractices. (Stoltenberg 2020, 84)

This constitutes the duality of information operations of NATO, some simplifying NATO information operations to merely “destroying in any means and ways the adversary or potential adversary by taking away their free will by pressuring them one way or another” and the re-reading of the military function to it being “to mobilize all spheres of influence as economic, electronic, cyber, psychological, military, etc. to function as one in finding a way to use strategic communication and other ways to receive enough information about the adversary or potential adversary in order to have dialogue and prevent conflict/dissolve the issues explicit to the perception of the given country being an adversary/ potential adversary in order to best secure one’s own safety/security”. Seemingly, this is a reminder of the Gerasimov Doctrine definition of informational conflicts, but with a diplomatic twist (Gerasimov 2013).

## Conclusion

In conclusion, with the current chaos around the Ukraine crisis this is the way, through which NATO information operations can be reassessed and reread for its better reapplication for foreign matters, as well as, domestic transparency: diplomacy to prevail. NATO is still a work in progress and these shortcomings can be viewed as trial and error becoming checks and balances. Bulgarian relations with neighbors have in some instances improved, but in other instances not only foreign relations, but also internal affairs were directly hampered by delegating sovereignty to EU and NATO, but mainly due to a lack of accountability, corruption, etc. This includes the exacerbated relations between Bulgaria and Russia. This paradox must be further examined, explained, contained and measures have to be taken to prevent chaos in the form of extremism/terrorism/radicalism to spur from groups, countries, Alliances and individuals, because the agenda of peace goes hand in hand with diplomacy and only development in peace is profitable to all. The war in Ukraine is an international conflicts resolution failure. Diplomacy has to prevail.

## References

- Aisch, G., Pearce A., Rousseau B. 2017. “How far is Europe swinging to the right?” *New York Times*. <https://www.nytimes.com/interactive/2016/05/22/world/europe/europe-right-wing-austria-hungary.html>.
- AJP -3. 2019, pp. A-8. Allied Joint Doctrine For The Conduct Of Operations NATO Standards (AJP -3) Version 1, Edition C, February 2019. <https://assets.publishing.service.gov.uk>.
- Al-Jazeera. 2022. “Profile: Who are Ukraine’s far-right Azov regiment?” *Al Jazeera Website*. <https://www.aljazeera.com/news/2022/3/1/who-are-the-azov-regiment>.
- Asthana, A., Roth A., Harding L. and MacAskill E. 2018. “Russian spy poisoning: Theresa May issues ultimatum.” *The Guardian*. <https://www.theguardian.com/uk-news/2018/mar/12/russia-highly-likely-to-be-behind-poisoning-of-spy-says-theresa-may>.
- BBC. 2008. “NATO to target Somalia’s pirates.” *BBC website*. [news.bbc.co.uk/2/hi/7661927.stm](https://www.bbc.co.uk/2/hi/7661927.stm).
- Bellingcat. 2018. “Full Report: Skripal Poisoning Suspect Dr. Alexander Mishkin, Hero of Russia.” *Bellingcat website*. <https://www.bellingcat.com/news/uk-and-europe/2018/10/09/full-report-skripal-poisoning-suspect-dr-alexander-mishkin-hero-russia/>.
- Fleck, A. 2022. “Right Wing Populism.” *Statistica Website*. <https://www.statista.com/chart/6852/right-wing-populisms-enormous-potential-across-europe/>.
- Gerasimov, V.V. 2013. “The value of science in foresight.” *Military-industrial courier*, № 8(476). <https://vpk-news.ru/articles/14632>.
- Global Terrorism Index. 2020. <https://www.visionofhumanity.org/wp-content/uploads/2020/11/GTI-2020-web-1.pdf>.
- Information Operations Modeling. 2015. [https://youtu.be/3J\\_mWD9TEZ4](https://youtu.be/3J_mWD9TEZ4).
- JP 3-13. 2012, pp. GL-3. Information Operations. Joint Publication 3-13 (JP 3-13). 27.11.2012. [https://defenseinnovationmarketplace.dtic.mil/wp-content/uploads/2018/02/12102012\\_io1.pdf](https://defenseinnovationmarketplace.dtic.mil/wp-content/uploads/2018/02/12102012_io1.pdf).
- Jukneviencie, R. 2017, pp. 4. Russia: Jukneviencie report: document 170 PC 17 E rev. *NATO official website*. <https://www.nato-pa.int/document/2017-russia-jukneviencie-report-170-pc-17-e-rev1-fin>.

- JWP 3-80. 2002, pp. 2-1. Information Operations. Joint Warfare Publication 3-80 (JWP 3-80). June 2002. [http://www.stratcomhellas.weebly.com/uploads/5/1/6/5/51658901/jwp3\\_80\\_uk\\_info\\_ops\\_doctrine.pdf](http://www.stratcomhellas.weebly.com/uploads/5/1/6/5/51658901/jwp3_80_uk_info_ops_doctrine.pdf)
- Lasswell, H. D. 1948. "The structure and function of communication in society." In L. Bryson (Ed.), *The communication of ideas*, pp. 37-51. New York: Harper and Row.
- Marcuse, H. 1964. *One-Dimensional Man*. Routledge: NY, London.
- McNair, B. 2018. *An Introduction to Political Communication.*, pp. intro-16. Routledge: Taylor and Francis Group.
- Merriam, C.E. 1925. *New Aspects of politics*. The University of Chicago Press.
- NATO. 2005. "Pakistan earthquake relief operation." *NATO website*. <https://www.nato.int/eadrcc/2005/pakistan/index.htm>.
- NATO. 2010. "Strategic concept for the defence and security of the members of the North Atlantic Treaty Organisation", adopted by Heads of State and Government in Lisbon." *NATO official website*. <https://www.nato.int/lisbon2010/strategic-concept-2010-eng.pdf>.
- NATO Sec. Gen. 2020. "Press Conference on the Novichok Attack on Alexey Navalny." *NATO News*. 04.11.2020. <https://youtu.be/J3vF9R8U-oo>.
- Psychev, A. 2016. "The CIOR2016 Madrid Summer Congress Is Underway. Interallied Confederation of Reserve Officers." *CIOR official website*. <https://cior.net/the-cior-2016-madrid-summer-congress-is-underway/>.
- Psycheva, A.A. 2021. "Strategic communication within the framework of information operations: the reality of modern political communication." [https://lomonosov-msu.ru/archive/Lomonosov\\_2021/data/22446/130692\\_uid239867\\_report.pdf](https://lomonosov-msu.ru/archive/Lomonosov_2021/data/22446/130692_uid239867_report.pdf).
- Potomac Institute for Policy Studies. 2022. "IUCTS Preventing Nuclear Terrorism in Ukraine and Beyond: International Dimensions." March 24th 2022. [www.youtube.com/watch?v=TiXt5N66-V8](http://www.youtube.com/watch?v=TiXt5N66-V8).
- Res. 74/ 247. 2019. District General UN General Assembly Res. 74/ 247. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/440/28/PDF/N1944028.pdf?OpenElement>].
- Res. 75/240. 2020. District General UN General Assembly Res. 75/240. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/000/25/PDF/N2100025.pdf?OpenElement>].
- Reuters. 2022. NATO says Russia's war must not escalate beyond Ukraine. *Reuters website*. <https://www.reuters.com/world/nato-says-russias-war-must-not-escalate-beyond-ukraine-2022-03-08/>.
- Statement by the delegation of Ukraine at the UN General Assembly debate on agenda item. 2021. "Situation in the temporarily occupied territories of Ukraine". *UN official website*. <https://ukraineun.org/en/press-center/466-statement-by-the-delegation-of-ukraine-at-the-un-general-assembly-debate-on-agenda-item-situation-in-the-temporarily-occupied-territories-of-ukraine-23-february-2021/>.
- Stephan B. P. 2022. No, Biden can't just sell off seized Russian yachts and central bank assets to help aid Ukraine – international law and the US Constitution forbid it. *The Conversation*. <https://theconversation.com/no-biden-cant-just-sell-off-seized-russian-yachts-and-central-bank-assets-to-help-aid-ukraine-international-law-and-the-us-constitution-forbid-it-182214>.
- Stoltenberg, J. 2016, pp. 20. Secretary General's Annual Report. *NATO official website*. [https://www.nato.int/cps/en/natohq/topics\\_142237.htm](https://www.nato.int/cps/en/natohq/topics_142237.htm).
- Stoltenberg, J. 2020. Press conference by the NATO Secretary General following the meeting of NATO defense ministers. 17 June 2020. <https://www.youtube.com/watch?v=0HwdsplpvHA>.
- Stoltenberg, J. 2020. Secretary General's Annual Report 2019, pp. 6. and 84. *NATO official website*. [https://www.nato.int/cps/en/natohq/topics\\_174399.htm](https://www.nato.int/cps/en/natohq/topics_174399.htm).
- Tass. 2021. Russian Defense Ministry Revealed the Details of Intercepting HMS Defender in the Black Sea. *TASS website*. <https://tass.ru/armiya-i-opk/12103169>.
- Turner, Hon. Michael R. 2016, pp. 14. Detering to Defend: Delivering on NATO's Promise. *NATO official website*. <https://www.nato-pa.int/document/detering-defend-delivering-natos-promise-turner-2016>.
- Zinoveva, E. 2014, pp. 49. Analysis of Russian Federation foreign policy in the field of international information security. *MGIMO newspaper*. №6 (39). <https://cyberleninka.ru/article/n/analiz-vneshnepoliticheskikh-initsiativ-rf-v-oblasti-mezhdunarodnoy-informatsionnoy-bezopasnosti>.
- Zviagina, Z. 2019. "Bulgaria Urged not to Consider the Struggle of Soviet People with Nazism the Liberation of Europe." *Parlamentskaya gazeta*. <https://www.pnp.ru/politics/bolgariya-prizvala-ne-schitat-borbu-sovetskogo-naroda-s-nacizmom-osvobozhdeniem-evropy.html>.

# Can the Lacunary Provisions be Covered by a Preliminary Judgement of the High Court of Cassation and Justice?

**Iulia Boghirnea**

*Lecturer PhD, University of Pitești, Pitești, Romania  
iulia.boghirnea@upit.ro*

**ABSTRACT:** This study analyzes the possibility, mentioned in the Decision of the High Court of Cassation and Justice no. 77/November 2021 - the Panel for solving some legal issues, in which the supreme court suggests that it could be referred by the judges, entrusted with the solution of the case in the last instance, with a question of law, so as to “facilitate” for them “the elimination of some gaps in the legal texts, the clarification of which is requested, in order to ensure adequate and unified jurisdictional resolutions”. In our opinion, if it were to rule in this situation, the supreme court would add to the law by creating a rule of law, and the preliminary ruling, being binding for all courts, by law, would become a true judicial precedent.

**KEYWORDS:** preliminary ruling, High Court of Cassation and Justice, legislative gap, judicial precedent, the unconstitutionality of the HCCJ Decision

## **Introduction**

According to Art 126 Para 3 of the Romanian Constitution, revised and republished, the High Court of Cassation and Justice has the role of ensuring the uniform interpretation and application of the law by the other courts, according to its competence. Until 2013, the only procedural lever that ensured the unity of interpretation of the law by the courts was the appeal in the interest of the law, a French-inspired procedure with a curative effect of jurisprudence divergences, which is also currently regulated in the new Civil Procedure Code (Law no 134/2010 published in the Official Gazette of Romania, Part 1, no 485/15 July 2010, which entered into force on 15 February 2013) stating that “In order to ensure the uniform interpretation and application of the law by all courts, the general prosecutor of the Prosecutor’s Office attached to the High Court of Cassation and Justice, ex officio or at the request of the Minister of Justice, the Governing Board of the High Court of Cassation and Justice, the governing boards of the appeal courts, as well as the People’s Advocate, have the duty to ask the High Court of Cassation and Justice to rule on legal issues that have been resolved differently by the courts” (Art 514 of the Civil Procedure Code).

According to Prof. M. Andreescu, “such a legal institution would not be necessary if all appeals were judged by the High Court of Cassation and Justice. In such a hypothesis, the supreme court could achieve the unified interpretation and application of the law. However, the normative regulations in force also establish the competence of the tribunals and the appeal courts to resolve the appeal, which creates the possibility of different and even wrong interpretations of the laws” (Andreescu 2011, 32-36).

Since litigants were not guaranteed equality in front of the law and the public authorities, including in front of the courts, the predictability of the judicial act and legal security, in order to “fix this serious deficiency” (Nicolae, 2014, 16), the legislator also created a new procedural institution with the role of standardizing the unitary judicial practice at the level of the entire country, but with a preventive feature, also of French inspiration, called the “notification of the High Court of Cassation and Justice with a view to pronouncing a preliminary decision for solving some legal issues” stated in Art 519-521 of the Romanian Civil Procedure Code. This procedure is not new. B. Oppetit in his article “La resurgence du rescrit” mentions that this institution appeared during the Roman Empire, the author defining the rescrit as “an opinion

emanating from an authority consulted by a private person or a public body for the interpretation and application of a norm” (Oppetit 1991, 105; Boghirnea 2006, 20-25). In the Union law, the Treaty on the Functioning of the European Union provides in Art 267 the preliminary referral procedure before the Court of Justice of the European Union, which is also a variant of 20<sup>th</sup> century of the Roman rescript (Boghirnea and Vâlcu 2009, 253-258; Militaru 2005, 26-40; Militaru 2005, 26-40; Vâlcu 2016, 332-337).

Thus, Art 519 of the Romanian Civil Procedure Code provides that if, during the trial, a panel of the High Court of Cassation and Justice, of the court of appeal or of the tribunal, entrusted with the resolution of the case in the last instance, finding that a question of law, the resolution of which depends on the merits of the respective case, is new and the High Court of Cassation and Justice has not ruled on it nor is it the subject of an appeal in the interest of the law pending resolution, it will be able to request the High Court of Cassation and Justice to issue a decision by which the legal matter with which it was referred is resolved in principle.

The legislator uses the expression “matter of law”, which “is new”, an expression also used in the French legislation which provides in Art 144-1 of the French Civil Procedure Code that “Before ruling on a new question of law, which presents a serious difficulty and which is recurring in several litigations, the judicial courts may, through a decision that cannot be subject to appeal, request the opinion of the Court of Cassation”. Similar French judicial procedure created by Law no 91-491 amending the Judicial Organization Code and establishing the “saisine pour avis de la Cour de Cassation” procedure (JORF May 18, 1991).

The referral raises a precise and abstract question of law, independent of the factual circumstances of the initial litigation. In France, the Court of Cassation rejected requests for opinion in cases concerning a mixture of facts and law (Cass. opinion, October 8, 1993, no 09-30009, Bull., opinion no 12), which did not formulate the question of law (Cass. opinion, October 8, 1993, no 09-30012, Bull., opinion no 11) or which was formulated “in a very general manner”, in reality not being “any precise question of law” (Cass. opinion, October 27, 2007, no 07-30014, Bull. Civ. 2007, opinion no 12) and, finally, issues that involved the assessment of spatial circumstances, which fell to the sovereign discretion of the trial judge (Cass. opinion, June 14, 1993, n. 09-30003, Bull., opinion no 8) - (jurisprudence extracted from Charbonneau, 2011, 178). And in Romania, the High Court of Cassation and Justice rejected it on the same grounds. See the decisions, the HCCJ from our country, the Panel for resolving some legal issues, Decision no 5/2018, published in the Official Gazette of Romania, Part I, no. 186 of February 28, 2018, Decision no 62/2017, published in the Official Gazette of Romania, Part I, no 797 of October 9, 2017, and Decision no 6/2017, published in the Official Gazette of Romania, Part I, no 144 of February 24, 2017, pronounced by the High Court of Cassation and Justice – the Panel for resolving some legal issues.

Regarding the terminology used by the legislator, we note the fact that he does not use the term new text, new regulation, new provision, but the expression “new legal matter”. In the specialized literature (Cornu 2007, 750 apud. Bălan 2015, 22) a meaning of the term “issue” from the lexicon is provided legal meaning of “interrogation, question posed to a person, an assembly, a council, etc.; request for explanations; by extension, a procedure of this interrogative approach”.

We thus understand why the legislator used the expression “matter of law” in the Civil Procedure Code, as he had in mind the unravelling of a specific “question” of law, to which the HCCJ should answer for their clarification.

### **Legislative gaps and prior rulings. Discussions on a Decision of the HCCJ**

Considering the rapidity of the current economic-social transformations (Niță 2020, 53-61) as a result of the progress of science, there may be situations in which the legislation does not reflect a current and complete picture at a given moment, or there may be new situations, which the legislator has not regulated or had time to regulate them.

Thus, the problem arises of a newly emerging situation not regulated by the legislator and on which the judge must rule (Grigore-Rădulescu 2014, 37-51), being obliged by law to judge as provided by Art 5 Para 1-3 of Romanian Civil Procedure Code marginally titled “Duties regarding the receipt and resolution of requests” that judges have the duty to receive and resolve any request within the jurisdiction of the courts, according to the law (Para 1).

No judge can refuse to judge on the grounds that the law does not provide, is unclear or incomplete (Para 2). In the event that a litigation cannot be resolved either on the basis of the law or the customs, and in the absence of the latter, nor on the basis of the legal provisions regarding similar situations, it will have to be judged on the basis of the general principles of the law (aspect also valid in the settlement of cases between professionals, who use new legal instruments, on which there may be confusion, Niță 2014, 98-105), taking into account all its circumstances and taking into account the requirements of equity (Para 3).

But, when there is not even a similar text, in the latter situation, since the resolution of the respective case depends on the merits, according to the law, the panel of judges “after contradictory debates” (Art 520 of the Romanian Civil Procedure Code), shall request the High Court of Cassation and Justice to rule a decision giving a “basic solution” to the new question of law with which it was referred.

The High Court of Cassation and Justice, Competence for resolving legal issues, by its Decision no 77/15 November 2021 referred to the “elimination of gaps in the legal texts”, stating that “In the procedure of pronouncing a preliminary decision, the High Court of Cassation and Justice does not substitute the fundamental attribute of the courts, of interpreting and applying the law, but is limited to make it easier for the judge to eliminate the ambiguities, inaccuracies or gaps in the legal texts whose clarification is requested, in order to ensure adequate and unified jurisdictional decisions”. Analogously, with the same interpretation, we quote another decision of the HCCJ no 11/2016, for which the Panel also ruled that “the premises of the appeal in the interest of the law are those that a legal provision contains doubtful regulations, gaps or unclear, necessary to be clarified in terms of interpretation, in order to remove a non-unitary application of it”, decision that has a curative effect. Going by analogy, they can also be the premises for the pronouncement of a preliminary decision, in the case of a legal provision that contains laconic regulations that must be clarified in terms of interpretation, to prevent the emergence of divergences of jurisprudence or its non-unitary application.

How can the High Court of Cassation and Justice eliminate the gaps in the legal texts through this judicial procedure, other than by completing the law?

This possibility, regarding the elimination of lacunar legal texts, invoked by the Supreme Court in its decision, is criticisable in our opinion, since on the one hand we have a legal text (Art 5 Civil Procedure Code) which provides that “If a cause cannot be resolved either on the basis of the law or the customs, and in the absence of the latter, nor on the basis of the legal provisions regarding similar situations, it will have to be judged on the basis of the general principles of the law, taking into account all its circumstances and taking into account the requirements of equity” (Rîpeanu 2021, 91-101).

And on the other hand, when the HCCJ would be referred to resolve some legal issues derived from the legal gaps, it will be able to rule the decision only based on the factual situation, which generated the question for which it has been consulted. Or, if other factual situations arise later, other hypotheses that would concern the same laconic text, it is possible that the decision of the supreme court will no longer be consistent with the new situations that concerned that laconic text so that it will have to change its own decision, which is not possible, because according to the law, decisions on the resolution of a matter of law are binding and, in our opinion, irrevocable. The solving of legal issues is mandatory from the date of publication of the decision in the Official Gazette of Romania, Part I, and for the court that requested the solution, from the date at which the decision is issued (Art. 521 Para 3 of the Civil Procedure Code).

We agree with Prof M. Andreescu's opinion according to which "Decisions of the High Court of Cassation and Justice must be strictly limited to the interpretation of the law. The supreme court cannot complete, modify or abrogate the rules stated in the law. Otherwise, the principle of separation and balance of powers in the state explicitly enshrined in the provisions of Art .1, Para 4 of the Constitution is violated, because the court exceeded the limits of judicial power and would manifest itself as a legislative authority. The rule of compliance with constitutional norms also refers to other provisions of the Constitution" (Andreescu, p. 33).

The process of legislation, in our legal system, belongs exclusively to the legislator. By Decision no 838/2009 (published in the Official Gazette of Romania no 461/3 July, 2009) the Constitutional Court ruled that "In exercising the powers provided by Art 126 Para 3 of the Constitution, the High Court of Cassation and Justice has the obligation to ensure the unified interpretation and application of the law by all courts, respecting the fundamental principle of the separation of powers enshrined in Art. 1 Para. 4 from the Romanian Constitution. The High Court of Cassation and Justice does not have the constitutional competence to establish, modify or abrogate legal norms with the force of law, or to carry out their constitutional review". Such a decision of the High Court of Cassation and Justice, which is binding *erga omnes*, would be unconstitutional, as it would allow the judge to add to the law, thus exceeding the limits of judicial power. We appreciate that the solution imposed by the French legislator, that notices for referral are optional for the courts and not mandatory (Boghirnea 2022, 34-37), was precisely in order not to end up in such situations where the supreme court would create judicial precedents through interpretive decisions.

## Conclusions

The previous decisions of the High Court of Cassation and Justice have value only as binding interpretive judicial precedent for the courts, and not normative (Grigore-Rădulescu 2014, 76-77).

First of all, it is desirable for the High Court of Cassation and Justice to reject the possible notifications made by the courts regarding the "elimination" of the laconic regulations, by covering them with legal norms, since we have a law text that in such situations the judges must decide based on the general principles of the law, taking into account all its circumstances and taking into account the requirements of equity" and on the other hand, the mentioned constitutional principles are violated.

Secondly, given this imperative legislative text, which requires the judge to rule according to the general principles of law and equity, we consider that it is prohibited for the courts to refer the High Court of Cassation and Justice in order to pronounce a preliminary decision to resolve some matters of law that aims to cover the gaps in the legal texts whose clarification is requested as it must apply the analogy of law and equity.

We believe that, in such a situation, the formation of a constant judicial practice (just as a custom is formed, over a long period of time) at the level of judicial courts that apply the law in equity in the case of some lacunar regulations, although it creates divergences of jurisprudence lead "in the end, to balancing the dynamics of the legal order and, without a doubt, to the progress of the law" (Croze 2003, 221).

This solution, imposed by the legislator, has the major advantage of the fact that judges come into direct contact with concrete social realities, the court being "a center for receiving" real and individual facts, and "a laboratory" for observing, identifying and processing signals objective reality, under all the assumptions made in practice (Naschitz and Fodor 1961, 98).

Time, in the case of gaps in the legal texts, makes the legal issue "leaven", generating a constant judicial practice (for example: the institution of contingency, currently codified in the New Civil Code).

A constant judicial practice does not compel the judges, who judge subsequent similar cases, to apply it mechanically because it is, in principle, in the Romano-Germanic legal system, that the judge is subject only to the law, and not to the judicial precedent.

## References

- Andreescu, Marius. 2011. “Constituționalitatea recursului în interesul legii și a deciziilor pronunțate.” *Curierul Judiciar Magazine*, no 1.
- Bălan, Ioan. 2015. “Sesizarea Înaltei Curți de Casație și Justiție pentru pronunțarea unei hotărâri prealabile/prejudiciale în temeiul Codului de procedură civilă.” *Dreptul Magazine*, no 6.
- Boghirnea, Iulia. 2016. “Brief Historical and Comparative View Regarding the Decision for Solving a Matter of Law by the High Court of Cassation and Justice.” *Journal Horizons for Sustainability*, no 1(1).
- Boghirnea, Iulia, and Vâlcu, Elise-Nicoleta. 2009. “Jurisprudence and the Judicial Precedent of the European Court of Law as Sources of Law”. In *Lex et Scientia International Journal*, no. XVI, 2<sup>nd</sup> Volume. Bucharest: Nicolae Titulescu University Press.
- Boghirnea, Iulia. 2022. “Analysis of the French Doctrine Regarding the Normative Power of the Opinions of the Court of Cassation”. In *Agora International Journal of Juridical Sciences*, 16 Volume, no 1.
- Charbonneau, C. 2011. *La contribution de la Cour de cassation à l'élaboration de la norme*. Paris: IRJS Publishing House.
- Croze, H. 2003. *Le traitement des divergences de jurisprudence. Les procédures de traitement et prevention. La divergence de jurisprudence*. Publication de l'Université de Saint-Étienne.
- Grigore-Rădulescu, Maria-Irina. 2014. “Despre jurisprudență și precedent judiciar din perspectiva izvoarelor dreptului.” *Pandectele Române*, no 2.
- Grigore-Rădulescu, Maria-Irina. 2014. “Analogia legii și analogia dreptului. Aspecte teoretice și consecințe practice.” *Pandectele Române*, no 6.
- Militaru, Ioana-Nely. 2005. “Procedura trimiterii prejudiciare în fața Curții de Justiție de la Luxemburg”. In *Romanian Review of Comunitary Law*, no 3, Rosetti Publishing House.
- Naschitz, A.M., and I. Fodor. 1961. *Rolul practicii judiciare în formarea și perfecționarea normelor de drept...*, Academy Press.
- Nicolae, M. 2014. “Recursul în interesul legii și dezlegarea, în prealabil, a unei chestiuni de drept noi de către Înalta Curte de Casație și Justiție în lumina noului cod de procedură civilă”. In *Dreptul Magazine*, no 2.
- Niță, Manuela. 2014. “Non-Specific Payment Instruments.” In *Supplement of Valahia University Law Study*. Bucharest: Bibliotheca Publ.-house.
- Niță, Manuela. 2020. “Digitization, the Key to Success for the Struggling Entrepreneur.” In *Valahia University Law Study*, Vol. XXXV, no 1.
- Oppetit, Bruno. 1991. *La résurgence du rescrit*, 18<sup>eme</sup> Cahier - Chronique XX. Recueil Dalloz Sirey.
- Rîpeanu, Andreea. 2021. “On the theory of equity, rely on the elaboration of codes in the centuries XVIII-XIX”. In *Supplement of Valahia University Law Study*.
- Zenati, Frédéric. 1992. *La saisine pour avis de la Cour de cassation, Loi n. 91-491 du 15 mai 1991. Decret n. 92-228 du 12 mars 1992*. Recueil Dalloz Sirey, Cronique – XLIX.
- Vâlcu, Elise-Nicoleta. 2016. “The expedited procedure and the urgent preliminary procedure – Procedure for trial specific to the form of judicial cooperation within the European Union.” In *Law Study, Supplement*.

# Analysis of the New European Legislative Measures Adopted in the Field of Drug Precursors

Cristina-Luiza Erimia<sup>1</sup>, Denisa-Elena Dumitrescu<sup>1</sup>

<sup>1</sup>*Ovidius University of Constanta, Faculty of Pharmacy, Constanta, Romania  
cristinaerimia@gmail.com*

**ABSTRACT:** Drug precursors are chemicals that are primarily used for the legal production of a wide range of products such as medicines, perfumes, plastics, cosmetics, etc. However, by diversion from the licit circuit, these chemicals can be used for the illicit production of drugs. Given the wide range of legitimate uses of drug precursors, their trade cannot be banned. To prevent the diversion of precursors from licit channels, specific rules have been put in place at both international and EU levels to control their legitimate trade at EU borders and on the internal market. European legislation on precursors aims to strike a balance between the control needed to prevent their diversion and their legitimate trade and use, without creating unnecessary administrative burdens. This article aims to analyze the legislative measures taken at EU level to monitor the trade in drug precursors between the Union and third countries and the harmonization of the national legislative framework in this area. It also aims to analyze the effectiveness, efficiency, relevance and coherence of the legislative framework on drug precursors and how this is integrated into EU drug policy.

**KEYWORDS:** EU legislation, drug precursors, internal market, legitimate trade, unscheduled substances

## Introduction

Drug precursors are chemicals that are primarily used for the legal production of a wide range of products such as medicines, perfumes, plastics, cosmetics, etc. However, by diversion from the licit circuit, these chemicals can be used for the illicit production of drugs. Given the wide range of legitimate uses of drug precursors, their trade cannot be banned. However, to prevent the diversion of precursors, specific rules have been put in place at both international and EU levels to control their legitimate trade at EU borders and on the internal market.

Legislation on drug precursors aims to strike a balance between the control needed to prevent their diversion and their legitimate trade and use, without creating unnecessary administrative burdens. The manufacture of illicit drugs such as heroin, cocaine and amphetamines requires the use of chemicals. However, these chemicals primarily have wide and diverse legitimate uses, for example, in the production of pharmaceuticals, cosmetics, plastics and perfumes. These chemicals are referred to as drug precursors. Drug precursors are rarely produced by criminals who intend to use them in illicit drug manufacture, as their production often requires a substantial infrastructure.

## Theory

The trade in drug precursors is not in itself prohibited because of the wide range of legitimate uses. Effective monitoring and control of legitimate trade in these chemicals is the best way to combat their diversion into illicit drug manufacture. To this end, a specific regulatory framework has been put in place at both international and EU levels.

At international level, the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was adopted in Vienna on 19 December 1988 and contains provisions aimed at preventing the diversion of substances commonly used in the illicit manufacture of drugs.

At EU level, Regulation (EC) No 111/2005, Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors and their joint delegated and implementing regulations have been enacted for this purpose.

Regulation (EC) No 111/2005 lays down rules for monitoring trade in drug precursors between the European Union (EU) and third countries. It applies to the import, export and transit of drug precursors in order to prevent their diversion.

The objectives of this regulation are:

- to introduce import and export licensing requirements for targeted drug precursors;
- to require all operators to label and attach appropriate documentation to drug precursors;
- to require all operators to be authorized;
- to ensure that all batches of drug precursors are inspected within the EU;
- to tighten import and export controls;
- to conduct special EU-wide controls in high-risk diversion areas, such as free zones and transshipment zones.

Member States must provide the competent authorities with the means to obtain the information and carry out the investigations necessary to prevent diversion. Mutual assistance and confidentiality between Member States' administrations are essential. Member States shall lay down appropriate penalties for infringements of the provisions of the Regulation. Each year they send the Commission the results of the monitoring measures, based on which the Commission draws up an annual report to be submitted to the International Narcotics Control Board.

The Commission also draws up guidelines for the chemical industry, including information on how to recognize and report suspicious transactions and an updated list of unscheduled substances used in the illicit manufacture of narcotic drugs and psychotropic substances.

### **Results and discussions**

Although Regulation (EC) No 273/2004 concerns internal trade and Regulation (EC) No 111/2005 concerns international trade, many of the provisions are common to both Regulations. To ensure consistency, a single delegated act has been adopted covering and complementing both Regulations, Delegated Regulation (EU) 2015/1011.

To ensure legal clarity and consistent application across EU states, the Regulation defines the term commercial space as the building(s) and land that an operator occupies at every single site. The necessary authorizations and registrations for operators intending to carry out activities involving drug precursors which may be used for the illicit manufacture of narcotic drugs or psychotropic substances are granted only to reliable operators who so request. To receive the authorization, operators must implement appropriate measures to ensure the safe treatment and storage of these drug precursors and appoint an identifiable responsible person to ensure that activities involving these substances are carried out in accordance with the relevant legal provisions.

The Regulation exempts from the requirement to hold an authorization or registration to carry out activities involving drug precursors certain operators dealing with drug precursors for medical use, such as pharmacies and veterinary practices, as well as certain public authorities.

Operators engaged in activities involving drug precursors which are not intended for the Union market but have been introduced into the EU customs territory must provide information showing that the export of these substances has been carried out in accordance with the relevant international conventions, to demonstrate the licit purposes of the related transaction.

In addition, to facilitate the monitoring by competent authorities of the trade in drug precursors, the Regulation requires operators established in the EU to provide certain basic information on the activities they have carried out. To minimise the risk of diversion of certain drug precursors, their export must be preceded by a pre-export notification and an

export authorization. In order to reduce the administrative burden for trade in certain categories of drug precursors, the Regulation lays down a simplified procedure for the pre-export notification and the export authorization.

As there are frequent changes to the lists of third countries of destination for the export of substances listed in categories 2 and 3 of the Annex to Regulation (EC) No 111/2005 and to allow for a timely update of these lists in accordance with the criteria for them set out in the new Regulation, these lists will be published on the Commission's website. Delegated Regulation (EU) 2015/1011 requires Member States to regularly submit to the Commission information on seized or confiscated drug precursors, precisely in order to improve the coordination of the implementation of the regulated monitoring measures.

Implementing Regulation (EU) 2015/1013 lays down uniform rules for the implementation of Regulations (EC) No 273/2004 and (EC) No 111/2005 as regards the authorization and registration of operators and users and their inclusion in the European database on drug precursors, the provision by operators of information necessary for the monitoring of trade and of export and import licences for drug precursors.

Combating the diversion and trafficking of drug precursors is one of the objectives of the EU Agenda and Action Plan on Drugs 2021-2025. These measures are included in the global strategic priority of improving security by disrupting drug markets. Since both Regulations (Article 16 (3) of Regulation (EC) No 273/2004 and Article 32 (4) of Regulation (EC) No 111/2005) lay down the requirement that by 31 December 2019, “The Commission shall report to the European Parliament and the Council on the implementation and functioning of this Regulation and, in particular, on the possible need for further action to monitor and control suspicious transactions in unscheduled substances.” The implementation, effectiveness, efficiency, relevance, coherence and EU-added value of the Regulations were assessed in the period 2017 - 2019.

The report on the evaluation of the drug precursor regulations was supported by a study commissioned by the Commission from an external contractor, and stakeholder and public consultations, interviews and a stakeholder workshop were also organised. The evaluation found that the Drug Precursors Regulations are directly applicable in the Member States and therefore there is no need for the Member States to transpose them into their national legislation.

The most important actors in preventing the diversion of drug precursors are the operators involved in the legal trade (manufacturers, distributors, brokers, importers, exporters, and wholesale distributors). The legislation requires them to take measures against theft, check the good faith of their customers, detect suspicious transactions, and alert the authorities. The Commission, therefore, believes that an effective partnership between the industry and the authorities is the cornerstone of the implementation of the regulatory framework.

The evaluation revealed that a potential consistency problem is caused by the fact that a particular substance, gamma-butyrolactone (GBL), is both a drug precursor and a drug in its own right. The ambiguous status of the substance has led to a situation where it is regulated in very different ways from one Member State to another. Several substances have also been identified as being classified as drugs in the narcotics legislation at Member State level and as drug precursors in the regulations. By themselves, these issues do not affect the effectiveness of the Regulations, but in some cases may cause problems in terms of the integrity of the EU internal market. However, this is not due to the provisions in the Regulations themselves, nor is it possible to eliminate this threat by amending the Regulations. Indeed, substances included in the schedules of the 1988 UN Convention must remain classified in the drug precursor regulations, regardless of whether some of them are considered drugs (and treated as such) by some Member States. From the point of view of the Regulations, it is important to ensure that substances are classified according to consistently applied criteria, although this

cannot be assured with absolute certainty, given the legal obligations arising from the text of the 1988 UN Convention.

In its report to the European Parliament and to the Council, the Commission showed that the main drug precursors for amphetamine and MDMA production in the EU are now almost exclusively modified precursors. Modified precursors are chemically close relatives of a scheduled drug precursor, which are specially manufactured to avoid control by the authorities and usually have no known legitimate use. In addition, methamphetamine is also often produced in the EU based on the main precursors, ephedrine and pseudoephedrine. In many cases, these are extracted from medicines containing these substances which have been legally purchased, without prescription, in pharmacies in certain Member States. In other words, these precursors are not ‘diverted’ in the traditional sense of the word either.

In addition to the main drug precursors, the production of synthetic drugs in the EU also requires large quantities and different types of ancillary drug precursors, such as reagents, solvents, separating or dispersing agents, which are used during chemical synthesis but are not incorporated into the drug.

Because these chemicals are usually produced and traded in very large quantities, preventing their diversion from licit channels is particularly difficult. Even if the overwhelming majority of operators fully comply with the regulations, it only takes a very limited number of careless or corrupt operators to supply the necessary ancillary drug precursors to illegal drug producers. In view of these issues, with regard to the manufacture of synthetic drugs in the EU and in the case of ancillary substances, the prevention of diversion of drug precursors has not been effective in the EU through the enforcement of the regulations.

In terms of domestic legislation, Law No 142 of 18 June 2018 regulates the legal regime of substances frequently used in the illicit manufacture of narcotic and psychotropic substances. The law contains provisions on the legal regime of drug precursors and lays down the necessary measures to implement at the national level the provisions contained in the Delegated Regulation (EU) 2015/1011 and the Implementing Regulation (EU) 2015/1013.

The competent authority in the field of precursors is the National Anti-Drug Agency under the Ministry of Internal Affairs, which performs the following main functions:

- monitors operators and operations with scheduled and unscheduled substances in order to ensure the legality of operations with drug precursors and applies, for this purpose, the administrative control measures provided for by law;
- coordinates, at the national level, the activities carried out by the national authorities and institutions responsible for preventing the diversion of drug precursors;
- ensures cooperation with the civil society and with international authorities and bodies in the field of drug precursors, by organising or participating in meetings or working groups with their representatives, information, data exchange and any other activities necessary to carry out its specific functions;
- sets up and manages the national database on drug precursors under the conditions laid down in the implementing regulation;
- constitutes the single contact point in accordance with Article 12 of Implementing Regulation 2015/1013;
- forwards to the European Commission the communications referred to in Article 13(1) of Regulation (EC) No 273/2004 and of Article 32(1) of Regulation (EC) No 111/2005 under the conditions laid down in Article 13 of the Delegated Regulation 2015/1011. The contact of operators and users of drug precursors with the relevant national authorities, to fulfil the obligations provided for in this Law, shall be carried out through the specialised structure of the National Anti-Drug Agency, which shall act as a one-stop shop for drug precursors.

The National Anti-Drug Agency shall ensure that operators of drug precursors are made aware of the guidelines drawn up by the European Commission, provided for in Article 9 of Regulation No 273/2004, and of the guidelines in Regulation No 111/2005, as well as of the list of unscheduled substances, by any means it deems appropriate to fulfil its purpose.

In application of Article 10(4) of Regulation No 111/2005, the National Anti-Drug Agency, after consulting, where appropriate, with the relevant national authorities, may propose to the European Commission to add an unscheduled substance to the list referred to in Article 10(2) letter b) of Regulation No 111/2005.

To verify the legitimacy of operations with drug precursors or the reality of the data contained in the applications made by operators or users of drug precursors, the National Anti-Drug Agency may request relevant data and information from public or private entities holding such data.

The control of compliance with the legal regime of drug precursors, including at the premises of operators and users, shall be exercised by the National Anti-Drug Agency, the General Inspectorate of the Romanian Police, the General Inspectorate of the Border Police or their subordinate units, as appropriate, as well as by the competent customs authority, in accordance with their duties in their areas of activity.

## Conclusions

The Regulations apply to drug precursors which are defined as ‘scheduled substances’ and which are included in the annexes to the Regulations. However, they also contain some provisions that apply to ‘unscheduled substances’, in particular the need to report suspicious transactions to the authorities. Unscheduled drug precursors are substances that, although not covered by EU drug precursor legislation, can be used to manufacture illegal drugs. The most commonly used unscheduled substances are included in the EU voluntary monitoring list of unscheduled substances. This list is confidential and is distributed only to trusted economic operators, who are asked to report to the authorities any suspicious transactions involving substances on the list.

Chemical substances are ‘scheduled’ (formally included in regulations) when the cost of classification to operators and competent authorities does not outweigh the benefits of stricter control or because the substance can easily be diverted to the manufacture of illegal drugs. The European Commission’s assessment showed that the implementation of the drug precursor regulations varies considerably between Member States. This is the result, among other things, of varying staff resources allocated to these tasks by different Member States, of significant differences in the frequency of on-the-spot checks carried out on authorization or registration holders, of different interpretations of the definition of mixtures containing drug precursors, of the level of penalties applicable in the event of infringements of the regulations, and of significant differences in the number of suspicious transaction reports from different Member States.

However, a significant degree of variability is likely to be due to the existence of specific circumstances at the Member State level. For example, there are considerable differences between Member States in the scale and level of development of chemical industries. In addition, the scale of illicit drug production varies greatly between Member States, which has an impact on the importance given to drug precursor policy.

In addition, the wide differences in the illicit drugs that cause the most health and social harm also explain why Member States pay different attention to the monitoring of certain drug precursors. For example, a Member State where illicit methamphetamine production or use is non-existent or marginal may not give high priority to monitoring the drug precursors needed for illicit methamphetamine production.

As there are considerable differences in Member States’ legislation in terms of sanctions applied for violations of EU drug precursor legislation, EU authorities need to pay

close attention, in particular, to assess whether sanctioning measures are dissuasive, effective and proportionate.

Given that the diversion of and trafficking in drug precursors is a global phenomenon which also requires international cooperation, the current EU drug precursor control and monitoring regime can no longer successfully respond to the overall societal needs it was designed to meet.

## References

- Commission Delegated Regulation (EU) 2015/1011 of 24 April 2015 supplementing Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors, and repealing Commission Regulation (EC) No 1277/2005, published in the Official Journal of the European Union, L 162 of 27 June 2015.
- Commission Implementing Regulation (EU) 2015/1013 of 25 June 2015 laying down rules on Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and of Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors, published in the Official Journal of the European Union, L 162 of 27 June 2015.
- Council of the European Union, General Secretariat, *EU Drugs Strategy 2021-2025*, Publications Office of the European Union, Brussels, 2021, ISBN 978-92-824-7960-5, doi:10.2860/802362.
- Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors, published in the Official Journal of the European Union L 22 of 20.1.2005.
- European Commission. 2020. Report from the Commission to the European Parliament and the Council: *Evaluation of the EU drug precursor regulations*, Brussels, 30.11.2020 COM (2020) 768 final.
- Law No 142 of 18 June 2018 on drug precursors, published in the Official Gazette No 519 of 25 June 2018.
- Regulation implementing Law No 142/2018 on drug precursors of 18.04.2019, published in the Official Gazette No 360 of 9 May 2019.
- Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors, published in Official Journal of the European Union L 47 of 18.2.2004.

# The Effect of Visual and Verbal Elements of Food Product Packaging on Consumer Buying Decision

**Shaymaa El-Said Salem**

*Prof., College of Mass Communication, Ajman University, UAE  
s.omar@ajman.ac.ae*

**ABSTRACT:** In today's business world, marketers operate in a highly competitive and dynamic environment. Competition for consumer attention at the point of purchase has become more intense. Marketers are now fully aware that product packaging plays a critical role in a brand's marketing strategy to influence shopping behavior at the point of purchase, where most buying decisions are made. Indeed, packaging has become a critical element in product marketing strategy to distinguish a company's product and deal with the competition. The purpose of this study is to identify consumers' attitudes toward the visual and verbal elements of food product packaging and to examine its impacts on their buying decision. The main findings indicate that the visual elements of packaging (Color – Design – Shape) affect positively consumers' buying decisions for food products. However, no meaningful relationship was found between the consumer buying decision and the visual elements of packaging regarding size and materials. The results also demonstrate that the verbal elements of packaging (Product Information – Product Name) affect positively consumers' buying decisions, While the element of (Country-of-origin) has no effect on their decisions.

**KEYWORDS:** Product packaging- Packaging elements- Consumer purchase decision

## 1. Introduction

Packaging has become an essential tool for marketing communication mix and a crucial part of the sales process, especially at the points of sale. The packaging is no longer just a container to protect and preserve the product, but rather it has become a promotional tool that replaces the salesmen by attracting the consumer's attention, giving a good impression of the product, and providing information as well. It becomes an ultimate selling proposition stimulating impulsive buying behavior, increasing market share, and reducing promotional costs (Chitturi, Londono and Amezcua 2019, 42; Neupane 2018, 141; Alhamdi 2020, 1191). Moreover, the product packaging acts as a communication message that the marketer sends to the consumer through its visual and verbal elements. Therefore, it is a significant factor in defining the product and determining its identity, and it is the only communication message that differentiates and distinguishes between one product and another (Raheem, Vishnu and Ahmed 2014, 125; Olalekan and Adewale 2017, 302).

Additionally, consumers look at packaging as a criterion to judge product quality, and they tend to buy products with good packaging, especially in light of intense competition between brands, the changing lifestyle of individuals, and their desire for uniqueness and distinction. Hence, companies have realized the importance of packaging in influencing the purchasing decision of consumers, as high-quality materials will attract customers more than low-quality materials. Therefore, organizations have been keen to design their product packaging in an innovative and distinctive style, according to the needs of the target market, and in line with their marketing strategy (Mercado 2017, 12; Banerjee and Kedia 2018, 42).

The main purpose of this paper is to identify the effect of product packaging elements on consumers' buying decisions. It discusses whether the visual or verbal elements of the food product packaging have a greater impact on the consumers' buying behavior.

## 2. Literature Review

### 2.1 Definition of Product Packaging

Packaging is all actions of designing and producing the container for a product (Olalekan and Adewale 2017, 302). It is a product protection method from the external environment (Waheed, Khan, and Ahmed 2018, 97). It is also defined as a material that contains a consumer good with the aim of keeping it clean and ensuring that the product can be attractively presented (Fadzil et al. 2015, 29). In another context, Neupane (2018, 141) defined the packaging from the perspective of its marketing function as a promotional tool that has become important at the point of purchase, which permits companies to be diverse from each other. Complementing the previous definition, the study of Raheem, Vishnu and Ahmed (2014, 125) demonstrated that packaging has become an effective product promotion tool for all companies.

### 2.2 Types of Packaging

The type of packing depends on various factors such as product features, production process, quality of the product, assumed shelf life, and transport considerations. According to the study of Olalekan and Adewale (2017, 302), there are major types of packaging as follows:

- Primary packaging; is the basic material that is frequently used in product packaging.
- Secondary packaging; is the container used to provide an additional package for a product.
- Display packaging; is the outer shell used to display the product at the point of purchase.
- Transportation packaging; is the material used to package the product to ensure ease of transport and storage.

There is another classification of packaging types according to their functions. The logistical function of packaging is mainly to protect the product during storage and distribution operations. Otherwise, the marketing function aims to deliver positive messages to consumers about the characteristics of the product at the point of sale (Ansari and Siddiqui 2019, 1055). Additionally, the study of Orzan et al. (2018, 1) referred to a different type of packaging, which is environmentally friendly or (eco- packaging), it has multiple benefits for the consumer, as it is safe and healthy for the individual and society, as its components can be recycled to be renewable energy sources, and it can be reused safely. In this context, the packaging has an important role in the healthy lifestyle of the consumer, especially the packaging of food products, due to the increase in consumer interest in health and diet matters (Arslanagić, Peštek, and Maglajlić 2014, 79). The eco-packaging is now considering one of the factors that helped spread the concept of green marketing, which has become a major trend for companies recently, driven by the change of consumers' lifestyle (Lado, Martínez-Ros and Martos-Partal 2012, 364).

### 2.3 Product Packaging Functions

According to Akabogu (2013, 49-50), the packaging design is evaluated through its ability to perform four basic functions: Visibility, Information, Emotion, & Workability (VIEW model) as follows: Attracting attention through visual elements, information that can be conveyed to the consumer, the emotion that can arise in the customer's psyche and creating the desire to buy, the functional tasks that it performs. In addition, the packaging performs an advertising function, as most advertising campaigns focus on the product packaging and the extent of its distinction, whether through size, shape, design, or the benefits of use (Fadzil et al. 2015, 29). Complementary to this context, Lado, Martínez-Ros and Martos-Partal (2012, 364) indicated that product packaging is a form of advertising, because it carries a strategic communication message, such as information, logo, and slogan. Besides, the messages reach the consumer through design, colors, and shapes.

Another function of the packaging is to stimulate the consumer's memories about the product and the brand by automatically pushing ideas, knowledge, and feelings into the consumer's awareness during the shopping process (Raheem et al. 2014, 465). The packaging also reflects the brand's values and its market position, and to achieve this, it must be integrated with the rest of the product's marketing communications, and compatible with the tendencies and culture of the target audience (Silayoi and Speece 2004, 607).

## ***2.4 The Elements of Packaging***

Packaging is a very vital marketing element that affects consumer buying behavior (Raheem et al. 2014, 466). According to Silayoi and Speece (2004, 610), there are major elements of product packaging that influence consumer buying decisions, which are separated into two categories: visual and informational. The visual elements are graphics, shape, size of the package, and colors, which are related to the emotional side of the decision-making. Otherwise, the informational elements affect the cognitive part of decisions.

### *2.4.1 Visual Elements*

According to several studies that will be displayed, five main elements must be considered by the package designer to make it attractive and effective as follows: shape, size, color, graphics, and materials.

- *Design*: The Packaging Design has a complex impact on the business environment due to technological development, the necessity of availability of new materials and logistical requirements, as well as the change in consumer preferences (Fadzil et al. 2015, 30). According to Ashaduzzaman and Mahbub (2016, 24) packaging design, varies from brand to brand and product to product. It also plays a vital role in brand differentiation, attracting consumers, and influencing their purchasing behavior. In the same context, Silayoi and Speece (2004, 611) demonstrate that product design includes images and graphics, the type and technology of printing, and product photography. These elements contribute to influencing the consumer's perceptions of the product, and hence his purchasing decision. From another perspective, Mercado (2017, 14) pointed to the importance of considering consumer characteristics when designing product packaging, as the degree of design impact on consumer perception and preferences varies with different age groups, gender, and other demographic factors.
- *Shape and Size*: The shape and size of the packaging are an influencing component of consumer behavior. For example, several studies conducted on the packaging shape concluded that innovative packaging might assist the consumer in choosing a product. It also indicated that the straight-shaped product had a positive effect on consumer choices compared to the curved-shaped product, and the same result was observed for classic packaging, unlike the colorful design (Ansari and Siddiqui, 2019: 1058; Chitturi, Londoño & Henriquez 2022, 729). It also noted that the shape of the packaging, especially of the bottles, has an impact on customers' perception of the brand since it conveys the characteristics of the product. Additionally, customers tend to judge the suitability of a product based on its size and shape, especially in food packaging (Chitturi, Londono and Amezcuita 2019, 44). Moreover, the shape of the packaging that meets the needs of the consumer represents an added value to the product such as easy-open, easy-store, easy-carrying, non-breakability, and reuse for other purposes (Ampuero and Vila 2006, 103; Ashaduzzaman and Mahbub 2016, 25). In another context, innovative packaging adds value to a product if it meets the needs of the consumer and provides benefit such as safe packaging reuse, ease of storage, portability, and non-fragility. Therefore, manufacturers seek today to use packaging to

emphasize product characteristics and brand characteristics (Ashaduzzaman and Mahbub 2016, 25).

- *Color*: The color of the packaging attracts consumers' attention to the product and distinguishes it from competitive brands (Neupane 2018, 142; He & Guang Lv 2022, 758). Besides, colors are used to give different impressions of the product. Pharmaceutical companies, for example, use white and light colors in their packaging to express purity, cleanliness, and health, while eco-packaging uses green colors to express health and nature. Furthermore, colors should be used carefully because their meanings differ according to the cultures and values that govern them (Raheem et al. 2014, 466; Waheed, Khan, and Ahmed 2018, 100). Complementary to the previously mentioned, Ashaduzzaman and Mahbub (2016, 23) demonstrated that color psychology is used effectively in advertising and product packaging design. For example, red symbolizes activity and movement, blue symbolizes purity and distinction, and black symbolizes luxury and sophistication, and so on. According to Fadzil et al. (2015, 30-31), colors can enhance product and brand image through visual media. Hence, businesses must understand customers' color preferences. In addition, color pictures contribute to improving the effectiveness of signaling and perception in mental processes. It helps to define the brand's identity and distinguish it from competing brands, and increase the degree to which consumers are aware of it, remember it, and recall it when purchasing. Additionally, audience characteristics must be considered when choosing product-packaging colors. For example, in children's product packaging there are three preferred colors for product backgrounds such as red, blue, and brown, as children get older, their color preferences will change from warm colors to cool colors.
- *Materials*: The packaging material keeps products from being damaged. In general, cardboard, glass, and plastic are used in the packaging of most products. For example, it was evident that customers were attracted to glass containers due to their transparency and hygienic nature (Ashaduzzaman and Mahbub 2016, 20). Besides, the packaging material is the first property of the product that is in direct contact with the consumer. Therefore, consumers tend to judge product materials by their visual attractiveness and packaging design. When consumers see packaging made from low-quality materials, they assume that the product's quality will also be low. So packaging materials have a strong influence on consumer buying behavior. (Rheem et al. 2014, 467; Waheed, Khan, and Ahmed 2018, 100). According to Orzan et al. (2018, 2), consumers are becoming more aware of changes in the environment and the impact of their consumption behavior on it. Thus, the consumer has prioritized the packaging of products that are made from environmentally friendly materials and contribute to improving the quality of life; therefore, packaging material has become one of the factors affecting consumers' purchasing decisions. Because of the growing concept of corporate social responsibility and its role in sustainable development, many companies have turned to the production of packages made of lighter weight and recyclable materials, considering the environmental and health dimension, which is called the "green package", it performs four main functions: reduce, reuse, reclaim, and recycle (Zhang and Zhao 2012, 902).

#### 2.4.2 Informational elements

Despite the importance of visual elements of the packaging in the process of attracting the consumer's attention and arousing his interest, the verbal elements such as information related to the characteristics, components of the product, instructions for use, validity, and limitations of use, and the country of origin has a crucial role in the process of making the purchasing decision. Therefore, the information written on the packaging can assist consumers in determining their

preferences carefully, as it informs them of the key product features and expected benefits (Akabogu 2013, 47). In this context, a study by Lado, Martínez-Ros, and Martos-Partal (2012, 364) pointed out the importance of the content written on the packages of food products (for example, low fat, number of calories, calcium percentage), as such nutrition facts that have a great impact on the consumer's purchasing decision. (Arslanagić, Peštek, and Maglajlić (2014, 81) discovered that there are differences between males and females in terms of their perception of the information credibility of healthy food products, as it was found that males more believing of the packaging information than females.

In addition, the verbal elements of the packaging perform the same function as the advertisement by adding a sentence or phrase that distinguishes the product or its trademark and gives them a specificity (Slogan), and links the packaging with other marketing communication efforts. Nonetheless, packing information can create contrary results, if misleading and inaccurate information is conveyed, or because of using very small fonts and densest writing patterns to present comprehensive information on the label, resulting in poor reading and sometimes confusion (Silayoi and Speece 2004, 612; Neupane 2018, 142).

### ***2.5 Consumer Buying Decision***

In today's business world, marketers operate in a highly competitive and dynamic environment. Competition for consumer attention, at the point of purchase, has become more intense. Marketers are now fully aware that product packaging plays a critical role in a brand's marketing strategy to influence shopping behavior at the point of purchase, where most buying decisions are made. Indeed, packaging has today become a vital element in product marketing strategy to distinguish a company's product and deal with the competition.

Consumer buying decision relates to a series of activities that the consumer undertakes before purchasing the product, starting from searching for and evaluating the product until choosing and buying it, with the aim of satisfying his needs and desires (Olalekan and Adewale 2017, 304). According to Chitturi, Londono, and Amezquita (2019, 45), the effect of the packaging on the consumer's purchasing decision begins first by influencing his perception of the product through the visual elements of the package such as design, color, size, and shape, then stimulating the emotional areas of his brain to influence his preferences and choices. While Raheem et al. (2014, 466) demonstrated that product packaging affects the consumer's purchasing decision by supporting the brand image, maintaining the likeness of the product in-store, establishing the relationship with customers, and raising awareness of new products.

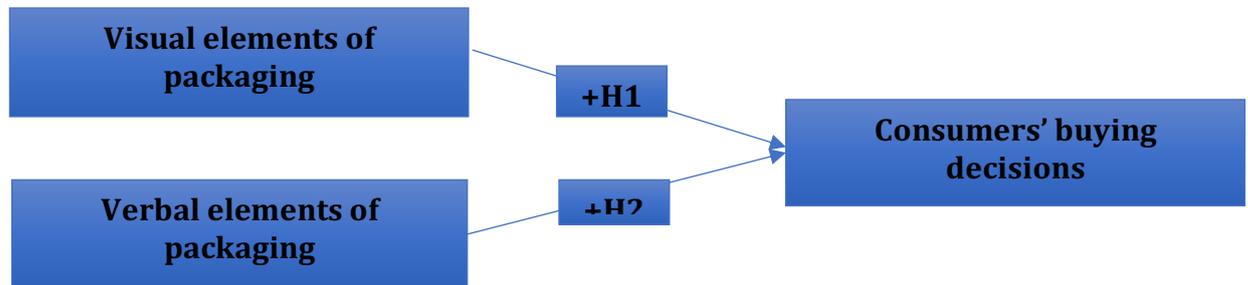
From the managerial perspective, the packaging is related to the strategic marketing decisions, while from the consumer point of view, it plays a major role, as it is the last thing that he sees before making the final purchase decision, and the last chance for the producers to sway the customer towards their products. In addition, the spread of major retailers also led to the emergence of the concept of self-service, which made the consumer depend on himself in choosing the product. Thus, the information delivery function switched from the salesperson to advertising and packaging (Ampuero and Vila 2006, 101).

There are intermediate variables that influence a consumer's buying decision, such as when the consumer is pressured in time during the buying process. This causes the visual elements of the packaging to be more effective in the consumer's choice of the product. On the other hand, verbal elements are more effective when the consumer has plenty of time to shop (Silayoi and Speece 2004, 611).

### **3. The Research Hypothesis**

Based on the above literature review, the importance of product packaging is evident as one of the key elements of marketing communications in influencing consumer behavior, especially,

because of competition between brands, changing the lifestyle of consumers, and increasing their aspirations and the diversity of their needs. In this context, this study aims to identify the effects of the visual and verbal elements of food product packaging on consumers' buying decisions. It proposed a model that explains the correlation hypothesis of the study as shown in Figure 1.



**Figure 1:** The Proposed Research model

**H1:** The visual elements of the food product packaging (a. design – b. color- c. size- d. shape- e. material) have positive effects on the consumers' buying decisions.

**H2:** The verbal elements of the food product packaging (a. product information- b. brand name – c. country of origin) have positive effects on the consumers' buying decisions.

#### 4. Methodology

The United Arab Emirates represents a very suitable context for testing the impact of food product packaging on consumers' buying decisions, as it is an open and highly competitive market, especially in the field of food products. It is also witnessing an increasing growth of modern retail stores, as it is spread by the most important and famous retail chains in the world.

The population of this study was the consumers in UAE. Participants were asked to answer an online survey based on their past or current experience with food products shopping and the extent to which the product's packaging influences their buying decisions. The total sample was determined based on the number of participants in the online survey. A total of (200) questionnaires were submitted back and used in the final analysis.

An online questionnaire was used for collecting data in order to test the validity of the research hypotheses. The questionnaire consisted of three separate parts; the first part was regarding participants' demographic characteristics. The second part regards the visual and verbal elements of food product packaging. The visual elements measured by 23 five-point items (1=strongly disagree/ very unsatisfied to 5=strongly agree/ very satisfied) included the effects of package design (5 items), package color (5 items), package size, package shape (6 items), and package materials (3 items). Also, the verbal elements measured by (10 items) (1=strongly disagree to 5=strongly agree), including the effect of product information (4 items), brand name (4 items), and country of origin (2 items). The third part included (6 items) to measure the effects of packaging elements on the consumers' buying decisions.

#### 5. Data Analysis

##### 5.1 Characteristics of the Sample

Information regarding the respondents' demographic characteristics is presented in Table 1. It can be observed that respondents in the study are mostly “women” (68.5%) and “married” (70.0%). They are predominantly between the ages of “20 and 30” (43%) and educated at the “university level” (72.5%). Economically, (41.0%) of the respondents had a monthly income between “5000 and 10000” AED. Table 1 summarizes the detailed results as follows.

Table 1: Demographic characteristics of respondents

<b>Gender</b>	<b>Frequency</b>	<b>Percentage %</b>
Male	63	31.5
Female	137	68.5
Total	200	100
<b>Age Group</b>	<b>Frequency</b>	<b>Percentage %</b>
20-30	86	43.0
31-40	57	28.5
41-50	48	24.0
Above 50	9	4.5
Total	200	100
<b>Marital Status</b>	<b>Frequency</b>	<b>Percentage %</b>
Single	60	30
Married	140	70
Total	200	100
<b>Educational Level</b>	<b>Frequency</b>	<b>Percentage %</b>
High School	22	11
University level	145	72.5
Postgraduate	33	16.5
Total	200	100
<b>Monthly Income</b>	<b>Frequency</b>	<b>Percentage %</b>
Less than 5000 LE	7	3.5
5000 LE- less than10000 LE	82	41
10000 LE- less than15000 LE	49	24.5
15000 LE- less than 20000 LE	52	26.0
Above 20000 LE	10	5.0
Total	200	100

### 5.2 Reliability Test

Cronbach's alpha was used to test the reliability of questionnaire statements, Table 2 summarizes the results of this test as follows.

Table 2: Reliability Test

	<b>Variable</b>	<b>Reliability Statistics Cronbach's Alpha</b>	<b>NO. of items</b>
<b>Visual Elements of Packaging</b>	Package Design	<b>0.803</b>	<b>5</b>
	Package Color	<b>0.828</b>	<b>5</b>
	Package Shape	<b>0.812</b>	<b>6</b>
	Package Size	<b>0.824</b>	<b>3</b>
	Package Material	<b>0.795</b>	<b>4</b>
<b>Verbal Elements of Packaging</b>	Product Information	<b>0.786</b>	<b>4</b>
	Brand Name	<b>0.767</b>	<b>4</b>
	Country-of-Origin	<b>0.819</b>	<b>2</b>
<b>Consumers' buying decisions</b>		<b>0.807</b>	<b>6</b>

### 5.3 Hypothesis Testing Results

**H1:** The visual elements of the food product packaging (a. design – b. color- c. size- d. shape- e. material) have a positive effect on the consumers' buying decisions.

Table 3: Stepwise Regression to test the effect of visual elements of the food product packaging on the consumers' buying decisions

Model	variable	R	R <sup>2</sup>	β	t-value	t-Sig.	f.value	df	f.Sig
<b>Model.1</b>	(Constant)			2.283	7.076	0.000			
	Package Design	.460	0.236	0.396	5.434	0.000	29.525	1 198	0.000
<b>Consumers' buying decisions= 2.283 + (0.396) Consumer attitudes towards Package Design</b>									
<b>Model.2</b>	(Constant)			1.849	5.472	0.000			
	Package Design	.587	0.322	0.336	4.596	0.000	21.614	2	0.000
	Package Color			0.186	3.476	0.001		197	
<b>Consumers' buying decisions= 1.849 + (0.336) Consumer attitudes towards Package Design + (0.186) Package Color</b>									
<b>Model.3</b>	(Constant)			1.646	4.797	0.000			
	Package Design	.0771	0.346	0.238	4.773	0.006	16.173	3 196	0.000
	Package Color			0.183	3.445	0.001			
	Package Shape			0.152	2.126	0.035			
<b>Consumers' buying decisions= 1.646 + (0.238) Consumer attitudes towards Package Design + (0.183) Package Color + (0.152) Package Shape</b>									
<b>Excluded Variables</b>	<b>Package Size</b>	<b>t-value= 1.225</b>		<b>t. seg= 0.083</b>		<b>(Not statistically significant)</b>			
	<b>Package Material</b>	<b>t-value= 1.465</b>		<b>t. seg= 0.096</b>		<b>(Not statistically significant)</b>			
<b>N=200</b>									

Dependent Variable: Consumers' buying decisions

Predictors: (Constant), Design – Color- Shape- Size- Material

Stepwise regression was used. There are three models to explain the effect of the visual elements of food product packaging on the consumers' purchasing decisions, as follows:

- By reviewing table 3, the findings showed that **Model.1** is significant ( $P < .001$ ), and indicated that Package Design ( $R^2 = 0.236$ ,  $\beta = 0.396$ ,  $t = 5.434$ ) represents 23.6% of the elements affecting the consumers' purchasing decisions. It also demonstrated that there is a positive and moderate correlation ( $R = 0.460$ ) between consumers' perceptions of packaging design and their purchasing decision.
- **Model.2** is significant ( $P < .001$ ) also, the results indicated that Package Design ( $\beta = 0.336$ ,  $t = 4.596$ ) and Package Color ( $\beta = 0.186$ ,  $t = 3.476$ ) respectively, have a significant positive effect on consumers' purchasing decisions. The ( $R^2 = 0.322$ ), so the two variables together affect the purchasing decision of consumers by 32.2%.

- In **Model.3** the findings showed that the model is significant ( $P < .001$ ). The results indicated that Package Design ( $\beta = .238$ ,  $t = 4.773$ ,  $p < 0.006$ ) has the most impact on consumers' purchasing decisions, followed by Package Color ( $\beta = .183$ ,  $t = 3.445$ ,  $p < 0.001$ ), and Package Shape ( $\beta = .152$ ,  $t = 2.126$ ,  $p < 0.035$ ), respectively. The ( $R^2 = 0.346$ ), so the three variables together affect the purchasing decision of consumers by 34.6%. The results also demonstrated that there are positive and strong correlations ( $R = 0.771$ ) between consumers' perceptions of packaging design and their purchasing decision.
- The variables Package Size ( $t = 1.225$ ) and Package Materials ( $t = 1.465$ ) were excluded as they are not statistically significant, which means that these two variables do not affect the purchasing decision of consumers towards food products.

**Therefore, H1 was supported partially.** The sub-hypotheses (a-b-d) were supported, which assume that visual packaging elements (a. design -b. colors, d. shape) positively affect consumers' purchasing decisions. While the two sub-hypotheses (c-e), which assume that the package size, and the package materials, have a positive effect on consumers' purchasing decisions, were not supported.

H2: The verbal elements of the food product packaging (a. product information- b. brand name – c. country of origin) have a positive effect on the consumers' buying decisions.

Table 4: Multiple Regression to test the effect of verbal elements of the food product packaging on the consumers' buying decisions

Dependent Variable: Consumers' buying decisions							
Model	Variables	Coefficients ( $\beta$ )	R	R Square	t-Values	Sig.	Outcome
1	(Constant)	3.020	.796	.434	14.550	.000	
	Product Information	0.377			5.883	.000	(H2a)*** Supported
	Brand Name	0.247			4.905	.000	(H2b)*** Supported
	Country-of-Origin	0.116			0.437	0.662	(H2c) Not Supported
F = 19.438			df = (2, 197)		Sig = .000		
<b>MODEL: Consumers' buying decisions = <math>\beta</math> (3.020) + <math>\beta_1</math> (0.377) Product Information + <math>\beta_2</math> (0.247) Brand Name</b>							

Dependent Variable: Consumers' buying decisions

Predictors: (Constant), Product Information- Brand Name - Country-of-Origin

According to the above regression weights in Table (4), H2 is partially supported. The results indicated that verbal elements of the food product packaging; Product information ( $\beta = .377$ ,  $t = 5.883$ ,  $p < 0.001$ ), and brand name ( $\beta = .247$ ,  $t = 4.905$ ,  $p < 0.001$ ), have significant positive effects on consumers' buying decisions; as Product information received the highest positive effect followed by brand name, while the country of origin variable ( $\beta = .116$ ,  $t = 0.437$ , not statistically significant) has not any effect consumers' buying decisions.

Accordingly, H2 was supported partially; as the sub-hypotheses (a-b) were supported, which assume that verbal packaging elements (a. product information -b. brand name) positively affect consumers' purchasing decisions., while the sub-hypothesis (c), which

assumes that the country of origin has a positive effect on consumers' purchasing decisions, was not supported.

## 6. Conclusion

Recently, many marketers have tended to pay attention to product packaging as one of the strong and direct means of communication with the consumer, as it delivers free communication messages about the product. In addition to its role in preserving the product, attracting attention to it, distinguishing it from competing products, and most importantly stimulating the purchasing decision of the consumer at various points of sale.

In this context, this study concluded many important practical findings. The results of the analyses highlighted the importance of visual packaging elements. It turns out that the design, colors, and shape of the food packaging are the most powerful visual elements affecting the consumers' buying decisions toward food products. Therefore, these results give product designers and marketing managers insights on how to use design, color, and shape to gain consumer preference and achieve the maximum effectiveness and impact of the visual elements on consumer choices and decisions.

The findings also showed that the information related to the product's characteristics and the brand name were the most powerful verbal elements in affecting the consumer buying decision. Therefore, the integration between the visual and verbal elements of the package must be considered, in order to combine the impact of both the emotional and cognitive sides of the package, to make the product more attractive and effective in influencing the purchasing decision of the consumer.

It is important for marketers to consider product packaging as a marketing tool and a competitive advantage for the product and the brand, by increasing the budget for packaging design and development. In addition to identifying the latest trends in the field of product packaging in proportion to the product type and the tendencies and preferences of the target audience, which leads to increasing its effectiveness in stimulating the purchasing decision of the consumer. It should be also noted the importance of integration between packaging and other marketing activities, in order to enhance their effectiveness by focusing on the product packaging in advertisements to make it easier to remember and recall at the time of purchase.

## References

- Akabogu, O. C. 2013. "Application of the "VIEW" Concept of Packaging in Evaluation of Promotional Effectiveness." *Business Management Dynamics* 3(1): 47-57.
- Alhamdi, F. M. 2020. "Role of Packaging in Consumer Buying Behavior." *Management Science Letters* 10 (6): 1191-1196.
- Ampuero, O. and Vila, N. 2006. "Consumer perceptions of product packaging." *Journal of Consumer Marketing* 23 (2): 100-112.
- Ansari, M. U. and Siddiqui, D. A. 2019. "Packaging Features and Consumer Buying Behavior towards Packaged Food Items." *Global Scientific Journal* 7(3): 1050-1073. <http://dx.doi.org/10.2139/ssrn.3381882>.
- Arslanagić, M., Peštek, A. and Maglajlić, S. 2014. "Perceptions of healthy food packaging information: do men and women perceive differently?" *Procedia - Social and Behavioral Sciences* 109, pp. 78-82.
- Ashaduzzaman, M. and Mahbub, F. 2016. "Understanding the Role of Packaging Elements on Buying Detergent Powder in Dhaka City: A study on Bangladesh." *Asian Journal of Business* 6(1): 19-32.
- Banerjee, S. and Kedia, A. 2018. "Influence of Packaging of FMCG products on the Consumer's Purchase Decision -A Study." *International Journal of Management Studies*, Vol. V, 3(2): 36-44.
- Chitturi, R., Londono, J. & Amezcua, C. 2019. "The Influence of Color and Shape of Package Design on Consumer Preference: The Case of Orange Juice." *International Journal of Innovation and Economic Development* 5(2): 1-16.
- Chitturi, R., Londoño, J.C. & Henríquez, M.C. 2022. "Visual design elements of product packaging: Implications for consumers' emotions, perceptions of quality, and price." *Color Research and Application* 47(3): 729-744.

- Fadzil, A., Zaki, N., Nasir, S. and Sukery, M. 2015. "Product Packaging and Consumers' Buying Decision: A Case Study in Company A." *Proceeding: 1st International Conference on Business & Tourism (ICBT)*, pp. 29-34.
- He, X.F. & Guang Lv, X. 2022. "From the color composition to the color psychology: Soft drink packaging in warm colors, and spirits packaging in dark colors." *Color Research and Application* 47(3): 758-770.
- Lado, N., Martínez-Ros, E. and Martos-Partal, M. 2012. "The Power of a Package Product Claims Drive Purchase Decisions." *Journal of Advertising Research* 52(3): 364-375.
- Mercado, M. C. 2017. "Effect of Packaging Design in the Purchase Decision Process: A Comparison of Generations." *Global Journal of Business Research* 11(2): 11-26.
- Neupane, R. 2018. "Packaging and Its Role on Consumers' Perception at Point of Purchase in Kathmandu Valley." *International Journal of Computer Science & Communication* 9(2): 141-150.
- Olalekan, S. O. and Adewale, A. G. 2017. "Effects of Packaging on Consumers' Purchasing Decisions." *International Journal of Trend in Scientific Research and Development* 1(6): 301-309.
- Orzan, G., Cruceru, A., Bălăceanu, C. & Chivu, R. 2018. "Consumers' Behavior Concerning Sustainable Packaging: An Exploratory Study on Romanian Consumers." *Sustainability*10(6): 1-11.
- Raheem, A. R., Vishnu, P. and Ahmed, A.M. 2014. "Impact of Product Packaging on Consumer's Buying Behavior." *European Journal of Scientific Research* 122 (2): 125-134.
- Raheem, A., Nawaz, A., Vishnu, P. and Imamuddin, K. 2014. "Role of Packaging Labeling on Pakistani Consumers Purchase Decision." *European Scientific Journal* 10(16): 464-473.
- Silayoi, P. and Speece, M. 2004. "Packaging and purchase Decisions: An exploratory study on the impact of involvement level and time pressure." *British Food Journal* 106(8): 607-628.
- Waheed, S., Khan, M. & Ahmad, N. 2018. "Product Packaging and Consumer Purchase Intentions." *Market Forces* 13(2): 1-18.
- Zhang, G. & Zhao, Z. 2012. "Green Packaging Management of Logistics Enterprises." *Physics Procedia* 24: 900-905.

# **From Victim to Aggressor. The Origins of Criminal Behavior**

**Cristian Dan**

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

**ABSTRACT:** In our current society, the situation in which certain people either have a genetic predisposition that gives rise to certain deviant behaviors, or acquire this type of behavior as a result of social experience, is increasingly being debated. However, it is observed that day by day, the crime rate increases exponentially, which leads to the confirmation of the validity of the second hypothesis to a greater extent compared to the first. As can be seen, certain traumas, deprivations, needs and experiences that the individual encounters during his life can give rise to socially unhealthy behaviors and can lead to the development of habits in terms of knowingly violating laws. The present work aims to analyze some such experiences that individuals accumulate in their childhood or adolescence and to make the connection between them and the criminal behavior in the adult life of the person subjected to such treatments by referring to the emotional consciousness of the subject, to the experiences and his feelings in a certain situation. Also, some conclusions at the end of the paper will aim to identify some solutions to avoid the generation of criminal behavior in relation to the reasons underlying its acquisition, presented along the way.

**KEYWORDS:** bullying, morality, Criminal Law, crime, psychology, theft, trauma, violence, conduct, prevention, combat, aggression, inhibition

## **The experiences that give rise to criminal behavior**

Throughout history, the study of the lives of the many personalities who stood out for their aggressive, often terrorizing behavior has revealed that they suffered, for most of their childhood and adolescence, abuse from the society in which they lived. Whether they were exercised as a result of the noble titles or the social status of the aggrieved, it was shown that, in reality, precisely these abuses were the basis of the tyrannical way in which certain rulers chose to exercise their rights over the citizens (Marr 2012, 209).

From a psychological point of view, being subjected to mistreatment of any kind causes the subject to acquire a mental resistance to certain cognitive receptors and thus learn, over time, a natural resistance to sensitivity, this leading to characterized empathic deficiencies, usually, through a sociopathic behavior (Zlate 2000, 165).

One of the greatest dangers that give rise to illegal conduct in the adult life of the individual is the phenomenon of bullying which is characterized by aggression towards individuals lacking the power to defend themselves and which is present in society in many aspects, including in the virtual environment where, under the protection of anonymity, individuals learn quickly and from a very young age that they can get whatever they want from their peers as long as they can use the threat to determine a certain type of behavior from them (Horowitz and Bollinger 2014 , 28).

On the other hand, the aggression must not be directed only against the person who will acquire a similar behavior in his adult life, it can also be directed at close people whom the individual considers vital for his life. In this matter, a determining factor in the behavior of the adult is domestic violence, the abuses between spouses that the child or adolescent repeatedly witnesses can generate a similar behavior (Gătej 2021, 47).

In cases where the bad treatments are applied directly to the person in training, the more serious and the faster, the child or teenager will learn illegal behaviors by externalizing all

emotional experiences in the environment where they will feel the safest. This is how different deviant actions are born that the individual exercises within the group of friends, in the relationships between schoolmates, in those between students and teachers and, in general, in any environment where he will not feel restricted (Stănilă 2021, 83).

Another particularly important element in the formation of the child or adolescent is social inequality resulting from race or from physiological differences that lead to a difference in treatment from peers of the same age. In these cases, the individual learns that he is different from his peers and, therefore, that he will have to adapt as best he can against physical or social shortcomings, considering that the law is against him as it refers to the great majority (Butoi 2019, 217).

Among the most common factors that give rise to deviant behavior since adolescence is the financial inequality between peers within the same social group. In this way, the student learns illegal behaviors by which he tries to resolve these differences by proceeding to equalize the patrimonial level in relation to his peers (Boroi A. 2019, 145).

In any case, the social experiences to which the child is told, first of all, and later, the adolescent, determine to a large extent what kind of social behavior he will adopt in his adult life. Thus, different types of abuse suffered by him can lead to the development of antisocial behavior, to the total or partial lack of empathy towards his peers or can lead him to try to repair social or financial inequality of any form by committing crimes (Ioniță 2012, 187).

### **Crimes arising from social experiences**

From the point of view of the social experiences that give rise to criminal conduct, they can be divided into categories according to the trauma suffered by the one who commits them as follows: crimes related to social experiences of a physical nature, those related to with social experiences of an economic nature and those related to experiences of a social or socio-cultural nature (Butoi 2019, 301).

Among the three categories, in the order of their criminalization, crimes of a physical nature are considered more important than those of an economic nature, and the latter have a greater importance in relation to those of a social or socio-cultural nature and are therefore criminalized of the Criminal Code in different ways, from those whose punishment results in many years of imprisonment, to those whose violation is punished more leniently (Stănilă 2021, 12).

In this way, some of the crimes of a physical nature that have as their object the body of the person who is affected by the illegal conduct are murder, beatings and other violence, killing, threatening, and these are punished much more harshly compared to other incriminated crimes. Also, they are often the visible result of abuses originating from the same type of actions as those used by the offender (Rotaru, Trandafir and Cioclei 2021, 46).

When we talk about hitting or other violence, we refer to the action exerted by a person on the body of another person with the clear intention of causing damage to the skin or internal damage, causing an infirmity or a deterioration in appearance (Toader 2019, 101).

Regarding the threat, this crime has the role of causing the threatened person a fear of a future act in order to affect him psychologically and thus immobilize him regarding an action that he could have done if he was not threatened or for to induce a paralysis of the person's will and thus facilitate the offender's action with regard to the respective victim (Mitrache and Mitrache 2019, 270). Killing and murder are aimed exclusively at the life of the person and have as a criminal resolution the clear intention of the perpetrator to make the victim die in order to prevent him from taking any kind of future actions that could endanger the activity of the active subject. As a rule, killers and criminals choose their victims based on common behavioral or physiognomic traits, such as those possessed by the person who assaulted them during childhood or adolescence (Bogdan and Șerban 2020, 162).

Thus, crimes of a physical nature committed against his peers create a state of social equilibrium for the offender, his behavior being explained both by the desire for fairness between his deeds and those endured by him from those who physically abused him during his childhood years or adolescence, as well as from the desire to stop such abusive behavior towards other children or adolescents (Duțu 2013, 299).

Another category of crimes is those resulting from economic inequality between peers that give rise to illegal conduct aimed at equalizing the economic status of the perpetrator by transferring property without the consent of the holder or owner, from the latter to that of the perpetrator of the crime (Ristea 2020, 222).

One of the most common such crimes is theft, which is characterized by the passing of an asset from its owner into the possession of the offender without the consent of the former, unjustly and unjustifiably as a result of the act of evasion executed by the perpetrator directly, spontaneously or planned (Cioclei 2020, 241).

But, in the matter of this crime, a very important role is also played by technology, because, nowadays, it is no longer necessary for the criminal to carry out his illegal acts in the physical environment, they can also be carried out in the virtual environment, if the active subject has enough digital information to commit such an act (Ioniță 2012, 200).

In terms of wealth accumulation through the execution of illegal acts, this can also be done through other types of crimes such as blackmail, embezzlement, tax evasion, various types of forgery, influence peddling and others, but for all of these the criminal resolution it generally comes from the material lacks suffered by the perpetrator over time in relation to his social experiences (Costaș 2021, 112).

Also, within this type of crimes stemming from reasons of inequality, crimes that defy the law are also born, such as insult, vandalism, incitement to violence, destruction of public patrimony and other similar illegal behaviors through which the perpetrator tries to balance his situation in relation to the law, considering it unfair in relation to his own social needs and, as a result of this fact, contemptible (Manea 2021, 103).

The last category of experiences that give rise to criminal behavior is that of social and socio-cultural abuses. As a rule, these types of traumas that create differences between members of the same community and that give rise to phenomena such as bullying or social rejection, create the opportunity for the future adult individual to commit crimes related to a certain social group, a certain category of persons or who have identical features with the persons who exercised the respective type of abuse (Cioclei 2021, 118).

The most common crime in this category is rape, which takes the form of forcing the victim to agree to have sexual relations without her consent, sometimes the offender also affects the victim's body in the process through the injuries resulting from immobilization and subjecting her to such sexual treatments (Tănăsescu 2013, 256).

Likewise, slavery is a crime characterized by forcing one or more people to perform unpaid work, without their consent, unjustly, by threatening future harm or by affecting or creating certain situations that favor blackmail. As a rule, this type of crime is committed against a group of people with the aim of repairing the behavior of individuals with common traits with those of the victims in the social relationships that the perpetrator experienced (Ionescu-Dumitrache 2021, 177).

Another crime resulting from social exclusion, but which is not so common, is that of violating the secrecy of correspondence, which can be defined as the act of intercepting someone's correspondence without that person knowing or having given their consent regarding this and which may come from the fact that, towards the perpetrator, members of his social community deprived him of certain discussions, of certain information or excluded him on certain occasions when aspects considered important by him were considered (Ionescu-Dumitrache 2021, 102). From a psychological point of view, this category of abuse gives rise to organized, carefully prepared or repetitive criminal behaviors, this aspect

resulting from the criminal's inability to adapt to the surrounding social environment, from his lack of skills to integrate into a group, or from the attempt to recover certain lacks that he suffered in childhood and adolescence, which makes crimes stemming from a social or socio-cultural trauma form a separate group of abuses compared to the others (Dogaru 2019, 125).

## Conclusions

Criminal behavior has its origins in the way the criminal grew up and developed, in his emotional experiences during childhood and adolescence, in the situations he faced, in the economic, social and socio-cultural differences between the members of his social group in relative to the amount of abuse he suffered.

The most common cause for such deviant behavior is found in the actions exerted by the family on the future adult individual, the bad treatments applied to him giving rise to a lack of sensitivity, a deficiency of empathy and the permanent attempt to balance the situation through various manifestations of aggression in the environment where the individual feels the safest.

Another particularly important factor in determining criminal behavior is the phenomenon of bullying, more and more common nowadays, especially under the anonymity of the virtual environment where young people very quickly discover that they possess a certain power in terms of determining other people to behaves in a certain way desired by them.

Also, a particularly important component in determining the future actions of children and adolescents is racial hatred, which leads to certain inabilityes of social integration with regard to a certain social category, a fact that causes the abused to understand the injustice makes and in turn behave unfairly towards his fellows.

A particularly effective method to mitigate such a change in the development of individuals is to encourage them to participate in various psychological counseling sessions within the educational units they attend, where they can discover their qualities and the ways in which they can capitalize on them.

Another method with effective results, as shown in various specialized studies, would be that of introducing social integration, intercultural awareness and interethnic acceptance courses into the didactic activities of students of different compulsory education units.

Last but not least, the state could create certain departments within social assistance institutions, whose special task is to identify possible abusive cases of domestic violence, so that the individual subjected to bad treatment by the family or group friends to be able to be counseled regarding the abuses they suffer since the period of behavior formation.

But the most effective method to stop any forms of criminal behavior remains healthy education, and this can be easily applied in educational institutions, in social campaigns of public interest, in public institutions and, in general, in any aspect of the individual whether in the situation of the aggressor or in that of the victim.

## References

- Bogdan, S., and Șerban A. 2020. *The Criminal Law. Special Part*. Bucharest: Universul Juridic Publishing House.
- Boroi, A. 2019. *The Criminal Law. Special Part*. Bucharest: C. H. Beck Publishing House.
- Butoi, T. 2019. *University Treatise on Forensic Psychology*. Bucharest: PRO Universitaria Publishing House.
- Ciolei, V. 2020. *The Criminal Law. Special Part*. Bucharest: C. H. Beck Publishing House.
- Ciolei, V. 2021. *Criminology textbook*. Bucharest: C. H. Beck Publishing House.
- Costaș, C. 2021. *Tax Law*. Bucharest: Universul Juridic Publishing House.
- Dogaru, L. 2019. *Criminology*. Bucharest: PRO Universitaria Publishing House.
- Duțu, O. 2013. *Legal Psychology*. Bucharest: Universul Juridic Publishing House.
- Gătej, M. 2021. *Violence in the family*. Bucharest: Orizonturi Publishing House.

- Horowitz, M., and Bollinger, D. 2014. *Cyberbullying in social media within educational institutions: featuring student, employee, and parent information*, Lanham, Maryland: Rowman and Littlefield in partnership with the American Association of School Publishing House.
- Ionescu-Dumitrache, A. 2021. *The Criminal Law. Special Part*. Bucharest: Universul Juridic Publishing House.
- Ionescu-Dumitrache, A. 2021. *The Criminal Law. Special Part II*. Bucharest: Universul Juridic Publishing House.
- Ioniță, G. 2012. *Crimes in the field of cybercrime*. Bucharest: Universul Juridic Publishing House.
- Manea, T. 2021. *The Criminal Law. Special Part and offenses provided for in special laws*. Bucharest: Hamangiu Publishing House.
- Marr, A. 2012. *The World History*. Bucharest: Nemira Publishing House.
- Mitrache, C., and Mitrache, C. 2019. *Romanian Criminal Law. General Part*. Bucharest: Universul Juridic Publishing House.
- Ristea, I. 2020. *The Criminal Law. Special Part*. Bucharest: Universul Juridic Publishing House.
- Rotaru, C., and Trandafir, A., and Cioclei, V. 2021. *The Criminal Law. Special Part II*. Bucharest: C. H. Beck Publishing House.
- Stănilă, L. 2021. *Legal Sociology*. Bucharest: Universul Juridic Publishing House.
- Stănilă, L. 2021. *The Criminal Law. General Part II*. Bucharest: Universul Juridic Publishing House.
- Tănăsescu, C. 2013. *Criminology*. Bucharest: Universul Juridic Publishing House.
- Toader, T. 2019. *Romanian Criminal Law. Special Part*. Bucharest: Universul Juridic Publishing House.
- Zlate, M. 2000. *Introduction in Psychology*. Bucharest: Polirom Publishing House.

# From the Roman Magistratus of the Republic Era to the Absolute Monarchy

Ionuț Ciutacu

Lecturer PhD, "Dimitrie Cantemir", Christian University of Bucharest, Faculty of Juridical and Administrative Sciences, Bucharest, Romania, e-mail [ionutciutacu@yahoo.com](mailto:ionutciutacu@yahoo.com)

**ABSTRACT:** Republican political institutions appeared in Rome in 509 B.C. They have their origin in the institutions created by the Ancient Romans, who were conservative, proof that they cared about its values. Therefore, they sought to preserve the old institutions, which they considered to be of divine origin. Being, at the same time, pragmatic, they sought to adapt the existing institutions to the new realities, taking them, practically, to the last consequences. They applied this principle not only in the field of Private Law, but also in that of Public Law.

**KEYWORDS:** *imperator, princeps*, magistrates, Republic, Principate, Dominate

## Introduction

In its millennial evolution, the Roman State went through several phases of evolution, of which we only mention the Republic, the Principate and the Dominate. Each era is characterized by the existence of state institutions that were modeled after the institutions created by the Ancient Romans. This is due to the conservatism of the Romans, but also to the fact that, for a long time, it was considered that the institutions of Public Law and those of Private Law were of divine origin.

The first of the mentioned eras was established in the middle of the 1st century B.C., when Rome was a simple city in Italy. At that time, political power was held by the magistrates, the people's assemblies and the Senate. Gradually, with the beginning of the wars of conquest, Rome extended its rule over the neighboring cities, reaching that, towards the end of the 1st century B.C., to become the most important state of antiquity and includes all of Italy, but also parts of Asia and Africa.

In the new conditions, the existing state institutions proved to be outdated, because they had been created in the first centuries of the Roman Republic, when Rome was a fortress in the area of Latium (Molcuț 2011, 28); the reality demonstrated that the republican institutions were unable to ensure the exercise of state powers on such a territory and that the transition from republican type institutions to those specific to the monarchy was required (Hanga 1967, 13).

However, the absolute monarchy could not be openly established, due to the opposition of the Romans, who did not approve of the idea of all power being held by one person. The Romans did not take kindly to the dictatorships of Sulla and Caesar, proof that in 79 B.C., 3 years after he had been appointed dictator for an indefinite period, Sulla renounced the dictatorship, and Caesar was assassinated in 44 B.C., shortly after he was appointed dictator for life (Tudor coord., 1982, 398). In order to manage the mentality of the Romans, a system based on appearances was resorted to, the application of which required a lot of time, so that the Romans would get used to the idea. According to this system, state powers continued to be exercised, *de jure*, by republican institutions: the magistrates, the Senate, the people's assemblies. In reality, as will be seen, these institutions were subordinate to the emperor. This process, once started, could not be interrupted. It ended with the establishment of absolute monarchy in the Roman Empire and, implicitly, with the establishment of a new form of state organization - the Dominate, which had as its model the institutions of the Principate era, as well as the republican ones.

### **State institutions in the Republic Era**

The Roman Republic was established in 509 B.C., when the last king, Tarquinius Superbus, was dethroned. Dissatisfied with the abuses he had committed the Romans decided to renounce the monarchy and establish a new form of government.

In this era, Roman legal texts mention the existence of three state institutions: the magistrates, the Senate and the people's assemblies. The magistrates were created in the era of the Republic, unlike the Senate and the assemblies of the people, inherited from previous eras: royalty in state form (half of the 6<sup>th</sup> century B.C. - 509 B.C.) and the pre-state era (753 B.C. - half of the 6<sup>th</sup> century B.C.).

Magistrates were high dignitaries of the Roman State who exercised military, administrative and judicial powers (Girard 1906, 29). Among them, the most important are the consuls, because they exercised the supreme power. This institution, even though it was new, had as a model the institution of the king. Unlike this one, who was elected for life, the consulate was exercised for one year. This solution was resorted to, because the Romans hated the idea of being led by a single person.

Initially, the consuls could only be elected from among the members of the privileged social category, known as the patricians. As the plebeians (members of the disadvantaged social category) requested access to the leadership of the state, we will see that certain powers will be taken from the consuls in order to create new magistrates. However, the consuls retained the prerogatives to convene the Comitia Centuriata and the Senate.

This process, of dividing the consuls' duties to other magistrates, had advantages. Advantages, because it satisfied the needs of the plebeians, who wanted to access positions of dignity, but also for the optimal exercise of administrative duties. Against the background of the development of society and the conquest of new territories, specific to the end of the Republic, this system became ineffective, proof that in the era of the Principality the magistrates will acquire new functions, able to respond to the new realities.

Apart from the consulate, the Romans also created a magistracy modeled after the institution of the king. This is called dictatorship and it was instituted in case Rome faced any internal or external danger, and had the effect of suspending the other magistracies, because crisis situations required unity of thought and action. Practically, the dictator was elected for a term of six months, he was a "king for a fixed period", and could be re-elected, if the danger prolonged (Willems 1888, 256).

The Roman legal texts also sent us information about another magistracy that played an important role in the further development of the Roman State. It is about the tribunate of the plebeians, which appeared at the beginning of the 5<sup>th</sup> century B.C. Initially, its holder could convene the works of the Concilium Plebis (assembly of the plebeians), and later, the Comitia Tributa, in the works of which both the patricians and the plebeians participated.

The analysis dedicated to this era cannot be completed without presenting some information about the people's assemblies and the Senate, because their activity was closely related to the duties of certain magistrates.

Initially, at the beginning of the Republic, the Roman people met in 3 assemblies, the Comitia Curiata, the Comitia Centuriata and the Concilium Plebis, which later became the Comitia Tributa. The people's assemblies were created at a time when the population of Rome was not large, a fact that allowed their involvement in the decision-making process. Towards the end of this Era, this mechanism proved to be inadequate to the new social realities. However, Roman legal texts mentioned the effective functioning of the Centuriata Comitia and the Tributa Comitia. Patricians and plebeians participated in the works of the Centuriata Committee, they were organized in belts, which were, at the same time, military units and voting units. This explains the fact that the draft laws drawn up by the consuls, who were the heads of the army, were submitted to the Centuriata Comitia for adoption. Only the plebeians participated in the work of the Concilium Plebis. After the patricians began to

participate in the work of this assembly of the people, it turned into the *Comitia Tributa*. This explains the fact that, initially, the tribunes of the plebeians could propose plebiscite projects for adoption by this assembly and later, draft laws.

Unlike the era of state royalty, the **Senate** became the most important institution of the Roman state (Mommsen 1891, 1). In this capacity, he exercised executive powers (declaring a state of siege, suspending magistrates and appointing a dictator, managing the provinces and the public treasury, coordinating foreign policy, declaring war and concluding peace, appointing military commanders), overseeing the observance of the traditions and morals of the Roman people and exercised powers that influenced the legislative process (ratifies laws, interprets their provisions, could suspend the application of laws in certain situations).

Towards the end of the Republic, Rome was shaken by four civil wars. The instability generated by these events and the incorporation of new territories into the Roman State demonstrated that the republican state institutions were ineffective. To solve these problems, several solutions were resorted to, among which we mention the dictatorship for an indefinite period and the triumvirate. The reality, however, demonstrated that the establishment of the monarchy could no longer be postponed. Caius Julius Caesar understood this and tried to openly impose despotism of the Oriental type. His attempt failed because of the republican mentality of the Romans, as evidenced by the fact that he was assassinated in the Senate in 44 B.C. After the death of Caesar, 2 triumvirate were established, each for a term of 5 years, between Octavian, Marcus Antonius and Lepidus. After the removal of Lepidus, the conflict between Marcus Antonius and Octavian becomes inevitable. This conflict will be settled by the Battle of Actium in 31 B.C., won by Octavian, and will result in the establishment of a new form of government - the Principate.

### **State institutions in the Principate Era**

The Principate has its origin in the Latin *princeps*, which means supreme power, empire. The Principate is a new form of government of the Roman Empire, lasting from 27 B.C., until the year 284. It is characterized by the reformation of certain institutions from the previous era and by the fact that the government was carried out by the emperor together with the Senate. This is the result of the skillful maneuvering of Augustus, who, unlike Caius Julius Caesar, understood that the new form of government could not be introduced suddenly.

After the death of Marcus Antonius, Augustus was left alone at the head of the Roman state. Aware of the fact that this was unpleasant to the Romans, on January 13, 27 B.C., convened the Senate, at the proceedings of which he affirmed that he would leave public life and reinstate the republican institutions, because peace had been established in the Empire, and the exceptional powers with which he had been invested, as a triumvir, were no longer useful. Finally, after a long period of internal, bloody wars, peace reigned in Rome. Realizing this, the senators begged him not to give up the leadership of the state, because everyone wanted to enjoy the benefits of peace. Augustus accepted the proposal of the senators, on the condition that they rule together with him (Tudor coord. 1982, 615).

In order to be able to exercise power, Augustus was proclaimed, among other things, princeps, consul and tribune for life. As we observe, he was not declared emperor, as the reader would have expected, but certain republican dignities were assigned to him. As princeps, he was the first of the senators (Mommsen 1891, 156). This was perfectly combined with the quality of consul, because this magistrate convened the Senate and he was also the one who draw up the draft *senatusconsult* (decision of the Senate), which was to be adopted by the senators and which, from the time of Emperor Hadrian, would acquire the force of law. Also, as consul, he could convene the *Comitia Centuriata* and propose to it draft laws for adoption. As tribune of the plebeians, the emperor could convene the *Comitia Tributa*.

Taking advantage of the fact that the jurisconsults managed to expand the scope of the law, the emperor associated his best jurisconsults, granting them a special right (*ius publice*

*respondendi ex auctoritate principis*), by virtue of which they offered consultations of an official nature and they contributed to the expansion of the scope of the law. The Roman emperors who reigned before Hadrian knew how to benefit from the fact that the praetors sanctioned new subjective rights through the processes organized between citizens, and the Senate had taken over the legislative powers from the people's assemblies. As the emperor took over the duties of the other state institutions, the assemblies of the people were no longer convened, and the praetor's edict was codified, on the grounds that there was legislative stability. This is how, through ingenious reforms, the Roman emperors contributed to the disappearance of obsolete state institutions.

In parallel with these reforms, the emperor created new magistracies. Unlike the republican magistrates, who were not subordinate to each other, the holders of the new magistracies were subordinate to the emperor and were appointed and dismissed from office by him. This is what happens with the *praefectus praetorio* and with the imperial legates who were in charge of the provinces.

Some historians said that Augustus saved the Republic. Others, with a more developed sense of reality, said that he created the Empire. Both are right. The reality is that Augustus created the state institutions of the Empire and established the monarchy using the old republican institutions as a model (Grimal 1993, 69). As will be seen, the Principate Era was one of transition from republican institutions to absolutist institutions.

### **State institutions in the Dominate Era**

In Rome, the Dominate Era lasted from AD 284 to AD 565. The name of the era originates from the Latin *dominus*, which means master. This period is characterized by the existence of the absolute monarchy, which emerged after a long process. The legal and historical texts that analyze this period mention the existence of public institutions at the central level: the emperor and the *consistorium principis*.

The emperor held the supreme power in the state, as Master and Deity, respectively Master and God, after the acceptance of Christianity as the official religion. He had accumulated over time the state attributions exercised by the other institutions from the Principate Era, which had disappeared from the political scene or whose role was minimized. Thus, the people's assemblies had disappeared since the Principate Era, the Senate had declined to the level of a simple city council, and the republican magistrates, to the extent that they still existed, had become decorative functions (Girard, 1906 70-71).

The *consistorium principis* was a collective body that carried out its activity at the central level (Willems 1883, 569). His role was to assist the emperor in the exercise of his duties. Subordinated to the council was a huge apparatus made up of civil servants (Molcūt 2011, 34).

### **Conclusions**

The Roman Monarchy is the result of a long process, which has its origin in the state institutions of previous eras. Thanks to its millennial life, we can observe all the phases of evolution that the Roman state went through and we can know how the Roman mentality influenced the creation of state institutions in most historical eras. As we have observed, the Romans were a conservative people, and, inexplicably, at the same time, a pragmatic people, who used their own institutions and constantly adapted them to reality, taking them to their last consequences.

Our approach is not only theoretical, but also useful for those who research the Roman legal phenomenon. With the help of the tools made available by this study, jurists will discover legal tools with which to optimize or even create an effective model of political organization.

## References

- Girard, Paul Frederic. 1906. *Manuel élémentaire de droit romain*, quatrième édition revue et augmentée. Paris. Librairie Nouvelle de Droit et de Jurisprudence Arthur Rousseau.
- Grimal, P. 1993. *L'Empire romain*. Le Livre de Poche, Éditions de Fallois.
- Hanga, Vladimir. 1967. *Caius Iulius Caesar*. Bucharest: Tineretului Publishing House.
- Molcuț, Emil. 2011. *Drept privat roman (Roman Private Law)*, revised and added edition. Bucharest: Universul Juridic Publishing House.
- Mommsen, Théodore. 1891. *Le droit public romain*, tome septième, traduit de l'allemand avec l'autorisation de l'auteur par Paul Frédéric Girard. Paris: Ernest Thorin, Éditeur.
- Tudor, Dumitru. coord. 1982. *Enciclopedia civilizației romane (Encyclopedia of Roman civilization)*. Bucharest Științifică și Enciclopedică Publishing House.
- Willems, P. 1883. *Droit public romain*, sixième édition. Louvain. Ch. Peeters Librairie-Éditeur. Paris. L. Larose&Forcel. Libraires-Éditeurs.
- Willems, P. 1888. *Droit public romain*, sixième édition. Louvain. Ch. Peeters Librairie-Éditeur. Paris. L. Larose&Forcel. Libraires-Éditeurs.

# **Neo-Confucian Ethics and Economic Development in East Asia: From the Perspective of Confucian Modernity and Political Democracy**

**Yuxin Zhang**

*Lanzhou University, Lanzhou, China, yuxinzhang365@gmail.com*

**ABSTRACT:** It is a theoretical and practical difficulty to re-examine the relationship between Confucianism and modernization in the era of "cultural globalization" and "postmodern". This study claims that the connection between Confucianism and modernization is determined by the continuity of social development and the historical inheritance of culture, based on the historical perspective and the enlightenment spirit of Confucianism. Even at the start of East Asia's modernization, Confucianism's Tradition never entirely faded from history, and Confucianism's involvement in the transformation of East Asian countries from tradition to modernity is obvious. From East Asia's authoritarian politics to Asian-style democracy, East Asia's political democracy is a shadow of Confucianism rather than a carbon duplicate of Western democracy. The new Confucian ethics has its own logic, emphasizing the importance of the self in all sorts of relationships, as well as the sense of obligation, self-control, self-cultivation, consensus, and cooperation. It places a great importance on politeness and education. It is mostly concerned with the credit community and government leadership. The "new Confucian ethics" incorporated some western principles into its ethical structure, resulting in the formation of a new modernity: East Asian industrial civilization, which aided East Asia's economic prosperity. Indeed, Confucian principles have shaped Chinese merchant culture and spirit in both traditional and modern periods, and the birth and shift of new ideas in Confucianism have the potential to disrupt the tradition. Confucianism will confront greater obstacles as well as more development prospects as society develops and there is more interaction, communication, and dialogue among many cultures around the world. Therefore, this paper presents the close relationship between the Neo-Confucian Ethics and the rise of Asia from the perspective of the modernity of the Confucian tradition in East Asia and Asian political democracy. Neo-Confucian Ethics has shaped Asia's industrial civilization, and Asia's economic development is consistent with the philosophical theory inherent in Confucian ethics.

**KEYWORDS:** Confucian, Rise of East Asia, Neo-Confucian Ethics, East Asian Politics, Economic Development

## **1. Introduction**

The relationship between Confucianism and modernization, and the positioning of Confucianism in Eastern and Western cultures, are questions that have been raised in recent times. Contemporary Neo-Confucianism has responded to this question theoretically, while the history of East Asian countries' groping toward modernization has answered it practically. After the 1970s, Japan and the Four Asian Tigers created a miracle of growth and development in the process of exploring their own new paths that were suitable for the new international environment and national conditions. The miraculous rise of the East Asian region won the respect of the world. This historical event with a sense of renewal has led scholars to re-examine the positive role of the Confucian tradition in the modernization of East Asia. This encompasses not only issues of socio-economic growth and economic development strategies but also deeper issues of political philosophy. Therefore, this paper presents the close relationship between the Neo-Confucian Ethics and the rise of Asia from the perspective of the modernity of the Confucian tradition in East Asia and Asian political democracy. Neo-Confucian Ethics has shaped Asia's industrial civilization, and Asia's economic development is consistent with the philosophical theory inherent in Confucian ethics.

## 2. Modernity of Confucian Traditions in East Asia

### 2.1. *Historical Perspective*

Historically, Tu (2003) divides the development of Confucianism into three periods: Classical Confucianism (starting with Confucius), Neo-Confucianism (the first phase of the Confucian Revival, which began in the Song Dynasty), and Contemporary Confucianism in the 20th century (the second phase of the Confucian Revival). The first phase of Confucianism was limited to China (Tu 2000). The development of Confucianism in the second and third phrase went beyond the scope of China. In the second phrase, Confucianism expanded to East Asia, forming a socio-cultural circle of East Asian Confucian or Confucian East Asia (Tu 2000). In the third phase, Confucianism will be revived from Industrial East Asia and will expand globally to become an important member of the global dialogue of civilizations (Tu 2000). The emergence and development of Confucianism in East Asia was the result of the development of Confucianism in the second and third phrase, and an opportunity for further development.

Prior to the sudden invasion of Western powers in the mid-19th century, the politics, society, and culture of East Asia were highly integrated with Confucianism (Chow 1996), to the extent that the administration, social ethics, and even psychological habits of China, Vietnam, Korea and Japan were characterized by Confucianism in languages and actions. The flexibility of Confucian doctrine and its ability to adapt to various styles of government, education, and organizations (including families) allows it to maintain a coherent worldview in a variety of different contexts (Cheng 1991). Moreover, unlike Christianity, Islam, and Buddhism, Confucianism is so much an organic component of East Asian culture and a prominent feature of the Chinese-speaking world that it is often seen as a regional phenomenon rather than a world religion.

Industrial East Asia after 1960 and socialist East Asia after 1980 experienced a revival of Confucianism, which became a combination of political ideology, academic discourse, business ethics, family values, and a spirit of protest (Angle 2012). Although there are tensions and conflicts rooted in blood ties, the overall pattern of life in East Asia contains consensus structures that are built on values significantly different from those of the modern West, which emphasizes contractual relationships.

### 2.2. *Enlightenment in the Confucian Traditions*

In terms of the spirit of enlightenment embedded in Confucian traditions, Confucianism has a spirit of enlightenment centered on “learning to be a man” (Tu 2003). The basic spirit of the Confucian tradition is centered on human beings with intrinsic values. Confucius' so-called “Study for Oneself” is strictly for the completion of one's own personality (Tu 2010). Mencius raised four major issues concerning the human spirits (De Bary 1970). The Confucians of the pre-Qin dynasty actually analyzed the essential value of human beings, the essential value of civilization, the inner spirit of morality, or the essential value of politics (Schefer 2020). Among them, the problem of civilization, morality, and politics is also essentially a problem of human beings. Confucianism is a profound exploration of the complexity of human beings. The Five Classics, in an abstract and symbolic sense, address the emotional issues (The Book of Songs), social issues (The Classic of Rites), political issues (The Classic of History), historical memory (The spring and Autumn Annals), and metaphysical issues (The Book of Changes) of human beings (Nylan 2008).

Man is not a being that can be statutorily defined in a simple way. The humanism embodied in the Confucian tradition is not only a horizontal expansion, but also a deepening process. How to make the individual and society mutually beneficial, make human beings and nature harmonious, make the heart and the way of heaven united are all indispensable concerns of Confucian humanism. Confucianism in Song and Ming Dynasty developed a new type of humanistic spirit on the basis of reinterpreting the original wisdom of pre-Qin Dynasty

Confucianism (Bockover 2012)<sup>1</sup>. This new humanism responds to the challenges of Buddhism, Taoism, the examination system, and political culture, draws on the rich resources of traditional Chinese culture, and brings into play a spirit of protest with a critical consciousness. Since modern times, the Confucian tradition has undergone the baptism of liberal democracy, which is a comprehensive and profound value transformation (Yao 1999). Only after being baptized by Western democratic and liberal thinking has the Confucian tradition gradually fought for the right and obligation to criticize the ills of Western culture due to the Enlightenment mentality. There is no doubt that, in the broad sense of humanism, Confucianism affirms the dignity of human beings, the inherent freedom of human beings, and the right of human beings to self-development, emphasizing that human beings should have a conscience, should be rational, and should be an inseparable part of a community. Confucian tradition provides rich symbolic and practical resources for such contemporary issues.

### ***2.3. The Modern Spirit Embedded in East Asian Confucianism***

Reviewing the contradictions in the modern Western psychiatric analysis of industrial civilization can help understand the serious problems encountered by mankind today, to which Confucianism can bring in its source of living water to make a creative response. The spirit of the modern West consists mainly of the spirit of science, the spirit of democracy, and the spirit of religious transcendence (Weber 2008). In terms of the spirit of science, science had a great influence in the 20th century because of the major breakthroughs in the growth of technology (Weber & Kalberg 2013). The breakthrough and influence of technology basically hindered the further development of science, and there was a great conflict between science and technology. Therefore, to further develop Confucianism, it is necessary to introduce the spirit of science, but it is also necessary to take into account the dilemma encountered by modern scientific civilization - a technical civilization dominated by instrumental reason. From the point of view of the spirit of democracy, generally speaking, the healthier development of democracy has been in Western Europe. In the Philippines, India, and Latin America, the development of democracy has encountered great difficulties. There is a complex problem in the middle, that is, democracy is based on a pluralistic system of counterbalance. It can be fully developed only if there is a civil society, if there are different pressure groups, if there is a legal concept, if there is a full development of the concept of rights, if everyone is aware of his or her rights and the interests of the body to which he or she belongs, and if he or she is willing to operate through procedural politics and accept the rules of the electoral game (Weber 2008). However, none of these conditions can be contained in democracy as an institution in itself. Therefore, Confucianism can promote the development of democracy and construct a system that transcends existing democracy. In terms of religious transcendence, many Western moral philosophers have always believed that if God did not exist, the entire value system would inevitably collapse. The source of value in the West is transcendent and external. However, the "transcendental external" or "absolute otherness" encounters the difficulty that there is an unbridgeable gap between the mundane world we live in and the transcendental God (Weber 2013). We simply cannot rely on our limited human reason to understand what God is. In summary, all three questions are about what the man is.

The paradox in industrial civilization is still the recognition of "man" in "modernity". The first is the contradiction between the rate of economic development and the quality of life (Sternberg 2011). It seems that the higher the rate of economic development, the more human beings are harmed. Second, in the process of democratization, different kinds of authority are challenged (Sternberg 2011). The emergence of civil society seems inevitable, but an unhealthy civil society does not eliminate the ills of monopoly. We often subjectively envision that all good values complement each other, yet, in fact, many good values are in great conflict with each other. More noteworthy is the crisis caused by the corruption of various authorities. The deep reflection on "man" and studying to be a man" are the cornerstones of the modernization of the Confucian traditions and the foundation of East Asian modernity.

### **3. Political Democracy in East Asia**

#### ***3.1. Politics of Authority in East Asia***

Generally speaking, scholars generally consider the political system in East Asia to be a neo-authoritarianism rather than a democracy (Goh 2002). In the Western context, "authoritarianism" is a pejorative political term. However, when people use the concept of so-called neo-authoritarianism, they are referring to a transformed authoritarianism, a political system that achieves a combination of authority and freedom (Li 2015). In East Asia, there has historically been a highly centralized system, and in Confucianism, a strong sense of elitism is reflected. The combination of this centralized political system and a strong elite consciousness in the modernization of East Asia with Western ideas of democracy and freedom has resulted in the emergence of a new authoritarian political system.

While the contemporary neo-authoritarian system of government in East Asia is far removed from the pluralistic politics of the West, it is also very different from the centralized political systems of the past. It is a system that combines the advantages of traditional Eastern culture and modern Western culture in favor of the development of the country and the region, thus forming its own political and cultural system. The most prominent point is that although East Asian countries (regions) do not have a democratic and liberal political system in the Western sense, they have established a very sound legal system (Whittall 1991). For example, Singapore, Hong Kong and other countries are examples of the so-called "no democracy, no freedom but the rule of law" (Guang-qing 2011), while Japan, Taiwan and Korea are examples of what is called "a collectivist rule of law" (Thompson 2004). This kind of political system, which blends East and West cultures, provides an excellent cultural foundation and institutional environment for the modernization of East Asian countries (regions). In fact, this system is quite modern, as it is the product of the combination of Western civilization and traditional Eastern civilization.

The neo-authoritarian political system played a rather positive role in the rise of East Asia. On the one hand, it maintained the basic order and authority, and created a stable peaceful political and social environment for the rise of East Asia. At that time, the primary concern in East Asia was not freedom, but the establishment of a legitimate public order. One can certainly have order without freedom, but one cannot have freedom without order. Authority must exist before we can talk about limiting it. On the other hand, while maintaining the basic political order, the neo-authoritarian political system with elitism also promotes the modernization and industrialization of the whole country from the level of government-led economy, and has achieved remarkable results (Sim 2006). The distinctive feature of the East Asian modernization model is "authoritarianism + economic development".

The role of the neo-authoritarian political system in East Asia cannot be achieved without cultural background and conceptual support. In East Asia, Confucianism has been a strong supporter of the new authoritarian system, and has ultimately contributed to the formation of a "holistic call mechanism" for government.

#### ***3.2. Asian-style Democracy***

Neo-authoritarianism has played a positive role in the political stability and economic development of East Asian countries, promoting the modernization and industrialization of East Asia and accomplishing the miraculous rise of East Asia. If this system is already applicable to East Asia, do we still need to propose "Asian-style Democracy"? Given the predominance of democracy in the world today, any examination of the moral foundations of politics must undoubtedly take into account the role that democracy plays in legitimizing political institutions (Kim 1997). In today's world, the acceptance of the concept of democracy has become nearly absolute. In other words, despite the impressive achievements of neo-authoritarianism in East

Asian countries, the political legitimacy of East Asian governments, which are based on neo-authoritarianism as the foundation of their statehood, is constantly under attack from the democracy of the world. However, the political legitimacy of East Asian governments, which are founded on neo-authoritarianism, is constantly challenged by the modern concept of democracy. Therefore, the tension between the two has undoubtedly become a common concern for East Asian governments and scholars.

East Asia's neo-authoritarianism based on elitism is definitely not a democracy based on individualism in the Western sense. However, in order to ensure that the legitimacy of this political system is not challenged and thus continues to maintain political and social stability, and in order for the system to be further accepted by the world, it must be democratized or at least compatible with democracy. This is the theoretical dilemma that contemporary East Asian neo-authoritarianism encounters that is difficult to resolve. The concept of so-called Asian-style democracy is an attempt to resolve this dilemma. We can see from the concept of Asian-style democracy itself that those who propose it try to emphasize the democratic nature of Asian political systems while at the same time emphasizing the Asian character of the democracy (Thompson 2015). Under this concept, one can see the differences between the political systems and concepts of the East and the West. First, the Asian model of democracy tends to emphasize the role of the collective rather than the individual, which is the most important characteristic of this system. The goal of Asian-style democracy is to establish a "good government" that overrides society, that is, a moral government that meets the needs of national economic development and maintains social stability. There is a huge difference between this sense of democracy and the Western sense of democracy, and Confucianism is the main ideological source of this difference. We can attribute it to a differential democracy, different from the Western one (Thompson 2015). The idea of Asian-style Democracy has received a great deal of attention from various fields to heads of state to academic elites, who are involved in discussions and research. If this idea can take hold, it will undoubtedly be a subversive challenge to the modern model of democracy modeled on the West, as well as a full-scale rebound of traditional East Asian political culture and political thought with Confucianism as its core. Generally speaking, if we take Western democracy as a reference point, then the lack of democratic consciousness is one of the characteristics of traditional Confucianism and the continued development of East Asia in the 21st century depends to a large extent on its degree of democratization. However, if we take the East's own tradition as a reference point, Confucianism has many systematic resources that can be used in modern times, especially as the intellectual and theoretical basis for "Asian-style Democracy".

#### **4. Neo-Confucian Ethics and the Rise of East Asia**

##### ***4.1. Neo-Confucian Ethics and Industrial East Asia***

###### *4.1.1. From agricultural Ethics to Industrial Ethics*

The Neo-Confucian Ethics is a creative response to the Western Onslaught (Angle 2009). This new Confucian ethic has already incorporated some Western values into its ethical structure. The Neo-Confucian Ethics is shaping a new modernity: East Asian industrial civilization or Industrial East Asia. The entrepreneurial spirit represented by Industrial East Asia and the particular political development path guided by the social organization of East Asia, together with the predominantly Confucian cultural values, have created a form of life different from that of the West (Makeham 2010). This phenomenon posed a great challenge to the entire Western economic theory. The formation of Industrial East Asia is inseparable from the challenge of Western modernization and their creative response. The rise of Industrial East Asia was the result of the combined effect of Western modernization challenges, as well as an opportunity for the revival of a New East Asian Civilization or Neo-Confucian Civilization. Although the Confucian tradition

has undergone many twists and turns since the Opium War, it has not disappeared from East Asian civilization, and it still has great social power.

How can Confucian ethics be transformed from an agricultural ethic to an industrial ethic? From the unconscious level, Confucian ethics has been used and strengthened in the process of modernization with its factors favoring industrialization and economic growth (Tu 2020). The factors that are not conducive to industrialization and economic growth are unconsciously suppressed and removed. This is the relationship between the Protestant ethics and the capitalist spirit, as Weber (2013) metaphorically put it. On a reflective level, any living culture should be able to thoroughly criticize its own negative aspects and at the same time be able to introduce other sources. Only by being able to critically inherit and develop can it deeply introduce the spiritual values of Western culture, including Christian civilization, science, democracy, and freedom, etc.; at the same time, by being able to severely reject the superficial phenomena caused by Western civilization, can it critically introduce the spirit of modern Western civilization in a healthy way.

#### *4.1.2. Neo-Confucian Ethics*

In the 1960s, most Western sociologists and philosophers, as well as Taiwanese, Japanese, and Korean scholars, considered Confucianism and rapid modernization to be mutually incompatible (Tiwald 2011; Rozman 2002; Palley 1992; Sonoda 1991). The main reason, they argued, was Confucianism's emphasis on harmony, collaboration, collectivity, social stability, a humanistic rather than technical education, and history and culture in a broad sense (Ibid.). By the late 1970s, the situation had changed dramatically. The leaps and bounds of economic development in Japan, Korea, Taiwan, Hong Kong, and Singapore after the Second World War led people to question earlier assumptions. They came to feel that a different ethic was at work. The economic development of East Asia exhibits characteristics that are quite different from those of the West. Egoism, or the value of simple individualism, was not valued at all (Huang & Chang 2017). Instead, the emphasis is on loyalty to the company, coordination within the collective environment, and cooperation. And education is highly valued. The remarkable fact is that these are the very values that in the 1960s were considered harmful to, or incompatible with, modernity. Today, these values are recognized by many experts as important factors that have contributed to the successful development of many regions in East Asia.

The success of modernization in any society cannot be achieved without spiritual resources. In response to the rise of East Asia, Peter Berg (1988) has even coined a new term "a modern capitalism" or "second-wave of modernity ". This particular type of capitalism emphasizes the self as the center of all relationships, a sense of obligation, self-restraint, self-cultivation, agreement, and cooperation. It places a high value on education and manners and it focuses on credit community and government leadership.

A single cause-and-effect relationship is not the only way to understand the interrelationship between Confucian ethics and East Asian entrepreneurship. In the case of Confucian ethics, its values have been accepted and digested by many East Asian countries. These values are essential to East Asian success. However, we cannot regard East Asian success as the fruit of Confucian ethics to the exclusion of other factors. The Confucian ethics that embodies the "East Asian entrepreneurial spirit" is a "new Confucian ethics (Barbalet 2014). This new Confucian ethic does not reject Western ideas of rights, individual dignity, autonomy, or competitiveness in a healthy and positive sense. This Neo-Confucian Ethics contributes to a new type of capitalism in East Asia. Although it is essentially the same as the Western work ethic, it has a very different structure and spiritual orientation. Unlike the Protestant ethic, which emphasizes a sense of individual rights, its basic point is the emphasis on "responsibility". It promotes not individualism, but our commitment to a larger entity. This entity can be our family, our company, our collective or our nation.

#### ***4.2. Neo-Confucian Ethics and Economic Development in East Asia***

Historically, the traditional Confucian ethics has been subject to various criticisms and reproaches because it did not produce the spirit of capitalism in the Weberian sense. However, in the context of the rise of East Asia, Weber's judgment has been greatly challenged, as modern Neo-Confucian scholars have responded on two historical levels: the Confucian ethics before encountering with the West and the Confucian ethics after encountering with the West. The former, for example, is Yu Ying-shih (1967), who argues that the secularizing tendencies of traditional Chinese religion led to the awakening of the merchant spirit in the Song Dynasty. The development of Confucianism in late Ming Dynasty likewise reflected a new developmental trend. The latter, according to Tu Weiming (2020), argues that Confucian ethics in modern times has undergone a great transformation due to the challenge and impact of Western culture and values. This transformation has resulted in the emergence of the so-called Neo-Confucian Ethics. In fact, Confucian ethics has played a significant role in shaping the culture and spirit of Chinese businessmen, both traditionally and in modern times, and the emergence and transformation of heretical ideas within Confucianism has also made it possible to break with tradition.

It can be seen that there are two main differences between the East Asian model of economic development and the West, one being the government's attitude toward the economy. Under the Western market economy model, the government mainly acts as a "watchman" and does not interfere too much in the economy. "Economy" and "democracy" are the two pillars of Western society as a whole, and they have tried to change other developing countries with them. However, in East Asia, government intervention and economic domination became a dominant form and had the amazing effect of promoting rapid economic take-off. On the other hand, the influence of Confucian culture affects the economic development. According to Weber (2013), Western capitalism originated from the Protestant ethic, while East Asian modernization partly originated from the Neo-Confucian Ethics the different cultural traditions led to completely different development concepts and paths. The former is a pioneering capitalism based on individualism, while the latter is a later capitalism based on collectivism. We can see how these two aspects are reflected in the economic development of Korea. Confucianism did play a positive role in Korea's government-led industrialization based on factor accumulation, as it reduced the cost of government arrangements and accelerated factor accumulation (Robinson 2014). The "government-led" and "Confucian culture" became the main factors that distinguished Korea and East Asia as a whole from the developed countries of the West in their rapid rise. The rise of Confucian capitalism in East Asia will fundamentally reshape the world economic, political, and cultural order constructed by Western Protestant capitalism, and thus change the foundations of the existence of Western universal values and universal consciousness based on Western centrism. Moreover, this would certainly revolutionize the Euro-American-centered economic theory that has been in place until now.

#### **5. Conclusion**

The economic miracle created by the East Asian model has shocked the world and brought a rare opportunity for the revival and rebirth of the ancient cultural traditions of East Asia. Confucianism, as the common cultural background of East Asia, has laid the cultural foundation and philosophical support for the emergence and development of the entire East Asian miracle, thus providing the basic political order, moral foundation and ethical values for real political and social life, and achieving effective social integration, cohesion and development. In this process, Confucianism has increasingly become the carrier of self-awareness and self-worth in East Asia, and has become the ideology and cultural resource that distinguishes and confronts Western civilization in East Asia. Therefore, the positive role of Confucian philosophical thought in the rise of East Asian civilization is an undeniable fact, and this influence will continue to persist.

## References

- Angle, S. C. 2009. *Sagehood: The contemporary significance of Neo-Confucian philosophy*. New York, NY: Oxford University Press.
- Angle, S. C. 2012. *Contemporary Confucian Political Philosophy*. Cambridge, UK: Polity.
- Barbalet, J. 2014. "Confucian values and East Asian capitalism: A variable Weberian trajectory." In *Routledge handbook of religions in Asia* (pp. 329-342). Routledge.
- Berger, P. L., & Hsiao, H. H. M. 1988. In Search of an East Asian Development Model fu.
- Bockover, M. I. 2012. "Confucian ritual as body language of self, society, and spirit." *Sophia* 51(2): 177-194.
- Cheng, Z. 1991. *New Dimensions of Confucian and Neo-Confucian Philosophy: Contemporary Allegory and the Search for Postmodern Faith*. New York, NY: SUNY Press.
- Chow, K. W. 1996. *The rise of Confucian ritualism in late imperial China: Ethics, classics, and lineage discourse*. Stanford, CA: Stanford University Press.
- De Bary, W. T. 1970. Neo-Confucian Cultivation and the Seventeenth-Century "Enlightenment". In *The Unfolding of Neo-Confucianism* (pp. 141-216). Columbia University Press.
- Goh, D. 2002. "The Rise of Neo-Authoritarianism: Political Economy and Culture in the Trajectory of Singaporean Capitalism." *Center for Research on Social Organization Working Paper Series*.
- Guang-qing, T. I. A. N. 2011. "Limited Rationality of Neo-Authoritarianism and Inevitability of Democratic Transition—East Asian Countries and Regions As the Main Discourse Objects." *Journal of China Executive Leadership Academy*, Pudong, 04.
- Huang, M. H., & Chang, S. H. 2017. "Similarities and differences in East Asian Confucian Culture: A comparative analysis." *OMNES: The Journal of Multicultural Society* 7(2): 1-40.
- Kim, Y. M. 1997. "Asian-Style Democracy": A Critique from East Asia. *Asian Survey* 37(12): 1119-1134.
- Li, H. 2015. Neo-authoritarianism. In *Political Thought and China's Transformation* (pp. 31-45). London: Palgrave Macmillan.
- Makeham, J. (Ed.). 2010. "Dao companion to Neo-Confucian philosophy" Vol. 1. Springer Science & Business Media.
- Nylan, M. 2008. *The five "Confucian" classics*. New Haven, CT: Yale University Press.
- Palley, H. A. 1992. "Social policy and the elderly in South Korea: Confucianism, modernization, and development." *Asian Survey* 32(9): 787-801.
- Robinson, M. 2014. "Perceptions of Confucianism in twentieth-century Korea." In *The East Asian Region* (pp. 204-226). Princeton University Press.
- Rozman, G. 2002. "Can Confucianism survive in an age of universalism and globalization?" *Pacific Affairs* 75(1):11-37. DOI:10.2307/4127239.
- Schefer, N. 2020. "Enlightenment and Freedom in a Confucian Way." In *Confucian Perspectives on Learning and Self-Transformation* (pp. 91-103). Springer, Cham.
- Sim, S. F. 2006. "Hegemonic authoritarianism and Singapore: Economics, ideology and the Asian economic crisis." *Journal of Contemporary Asia* 36(2): 143-159.
- Sonoda, S. 1991. "Confucianism and modernization: A tentative analysis" (1). *International Review of Sociology* 2(3): 175-196.
- Sternberg, Y. 2001. "Modernity, civilization and globalization." In *Identity, Culture and Globalization* (pp. 75-92). Leiden: Brill.
- Thompson, M. R. 2004. "Pacific Asia after 'Asian values': authoritarianism, democracy, and 'good governance'". *Third World Quarterly* 25(6): 1079-1095.
- Thompson, M. R. 2015. "Democracy with Asian characteristics." *The Journal of Asian Studies* 74(4): 875-887.
- Tiwald, J. 2011. Stephen C. Angle: "Sagehood: The Contemporary Significance of Neo-Confucian Philosophy." *Dao* 10(2): 231-235.
- Tu, W. M. 2000. "Implications of the rise of 'Confucian' East Asia." *Daedalus* 129(1): 195-218.
- Tu, W. M. 2003. "Beyond the Enlightenment Mentality." In R. S. Gottlieb (Ed.), *Liberating faith: Religious voices for justice, peace, and ecological wisdom*, 163.
- Tu, W. M. 2010. "Confucian encounter with the enlightenment mentality of the modern west." *Oriens Extremus* 49: 249-308.
- Tu, W. M. 2020. *Neo-Confucian thought in action*. Berkeley: University of California Press.
- Weber, M. 2008. *The Protestant Ethic and the Spirit of Capitalism: With Other Writings on the Rise of the West*. Oxford, UK: Oxford University Press.
- Weber, M., & Kalberg, S. 2013. *The Protestant ethic and the spirit of capitalism*. Routledge.
- Whittall, D. 1991. "Chinese Neo authoritarianism and Hong Kong." *Global Economic Review* 20(2): 23-34.
- Yao, X. 1999. "Confucianism and its modern values: Confucian moral, educational and spiritual heritages revisited." *Journal of Beliefs and Values* 20(1): 30-40.
- Yü, Y. S. 1967. *Trade and expansion in Han China*. Berkeley and Los Angeles: University of California Press.

# Considerations of the Beautiful and the Sublime in Art

**Simina Georgiana Chereches**

*Mrd. "Babeş-Bolyai" University, Cluj-Napoca, Romania  
simina.chereches@yahoo.com*

**ABSTRACT:** By deepening these two themes of the world that surrounds us we find an aesthetics of the environment, of the pleasant environment that we find in beautiful objects and human works created by man over the centuries. By beautiful, we find the idea of pleasantness, of things with an aspect out of relief, of human qualities that we cannot but expose and detail in the most meaningful way. Although the things around us have a certain aesthetic and give us a more pleasant mood, they are transient, like any creation that man has created over time, because they are designed, evolve, and must periodically reinvent themselves in order to preserve this form of beauty. But what truly remains a beautiful thing that always makes us feel good and has remained the same since life on earth began is what we call human qualities, kindness, honesty, love from where we least expect it, and the care we receive from our loved ones. Most famous thinkers expound human values as those that are driven by the idea of beauty. The sublime is what we might describe when we experience a state of awe, when we experience unique moments in our lives, when we glimpse a phenomenon in nature that touches our heartstrings, when we see a rainbow, when we take part in a solar eclipse or a volcano eruption, these things bring man to the point where his heartstrings are touched and he feels life on another level. Although man has succeeded in creating impressive things through painting and sculpture, thus creating a pleasant environment, he does not succeed in exposing artistic experiences as deeply as the natural environment does.

**KEYWORDS:** beauty, art, sublime, aesthetics, amazement, ecstasy, surprise, ambience, perfection

## **Introduction**

In this article we have presented some considerations on the beautiful and the sublime, considering that the beautiful represents those things for which we as humans yearn, along with our image that we try to display in society, trying to have as good and beautiful an image of ourselves as possible to receive the appreciation we desire, and about the sublime, the fact that most of the time the sublime things in our lives represent intense emotions inside us that we feel when we see something out of the ordinary, by which we are surprised either by nature or by human creation.

## **Beautiful in Art**

"There is no science of beauty, only criticism, no science of beauty, only beautiful art. For as regards the former, what would be scientific in it, i.e. should prove by arguments, whether something is considered beautiful or not; so if it belonged to science, then the judgment of beauty would not be a judgment of taste. As for the second, a science which as such must be beautiful, is an absurdity. For if from it as a science we demanded grounds and proofs, we would only arrive at judgments of taste" (Kant 2007, 268).

Immanuel Kant points out that beauty can only have a criticism because it can thus receive the grade of pleasant or not, and this means that we must look at it as something that can be improved, but not as something fixed to guide our lives. He believes that beauty is transient and only by living and experiencing it can we categorize it in a certain way, the form it takes is according to what we like and moulds to our temperament and character. Beautiful things are in a constant state of change, and what he is saying here is that beauty, we can only experience it and define it according to our taste but it is by no means something fixed like

science which remains the same over time and which we can rely on because we know that it is something that brings us the necessary evidence in which we can have the conviction that we have not made a mistake and thus the certainty is formed in us that what we know and acquire is tangible and we have the certainty that it will not disappear. But of the beautiful, he says that it is relative, and that it is in constant rotation.

Beauty cannot be proven, the only thing he states is that beauty can be categorized in a certain way, something can remain beautiful but receive a lower grade but still remain a beautiful thing but it can never be put in a certain category that requires justification.

"Goth. Lessing attributes to beauty the role of a fundamental principle of the plastic arts. The artist, he says, is obliged to show us the true essence of good and evil. Lessing advocates the recognition of the specificity of each art, starting from the need to extend the possibilities of art to reflect different aspects of reality. He also argues that in the case of the Greeks, genius is visibly manifested, this is rendered by the Laocoon group of statues, in which the cry of physical pain is given in the form of a sigh" (Baciu 2009). "Baumgarten states that this world is the best of all possible worlds, so the artist must imitate nature, which contains the ideal. The ideal will contain within it the beautiful, which represents perfection and clarity" (Baciu 2009).

Both Lessing and Baumgarten say that beauty is the artist's main object, so he must bring out that part in which beauty predominates and delights because through painting he highlights the spectacular sides that he can outline to the desired intensity illustrating a more complex and more enchanting image of reality. Lessing is of the opinion that the artist must identify that negative or positive side and succeed in bringing it out as strongly as possible in order to bring out that dark and daylight so that the painting is as expressive as possible and so that he can bring it into the light he wants.

Lessing points out that the artist must bring out that human experience as intensely as possible in order to be as expressive as possible, and this means that the painting, in addition to the perfect form it must have, must be very vivid and as close to reality as possible in order to be considered as giving us a special mood and thus to see in it another world, another story of life in which nature is shrouded in mystery and its expression as close as possible to what we call magic in order to captivate us and to consider that picture as unique and full of life, because that is the only way we will sit for hours looking at it and not being able to detach ourselves from it, because if it does not have the depth Lessing speaks of, then we will not consider it something worthy of all our wonder and all our appreciation.

Baumgarten states that this world is the best for us and for our soul development and by being here and by being here and by being in awe of every day, and of the same sunrise that we see every day, then it is the most appropriate thing an artist can do and that is to shape this perfect world and bring it to a much deeper and more intense level than we see it. The artist, he says, must know how to keep the shape of reality but give it the light it needs to form a story and a depth to what we see, he through his painting can make from a sunrise a whole string of emotions that take our breath away every time we see it. However, with our eyes free we can only see so much that a painting that represents a sunrise in which the painter has put all his passion to tell us how perfect this world is and how ideal it is for us.

Lessing, unlike Baumgarten, tells us that the artist has the role of highlighting and teaching us what is good and what is bad. He can outline that negative part that leaves us with a lesson learned, if we are put in a certain situation, we may repeat it and make a mistake, but the artist, through painting, outlines in the greatest capacity that which he brings out in a negative and unbeneficial light for our development, because he can put that experience of man that we would not want to feel on our skin and thus we remain with a lesson learned. The artist must make that negative story a beautiful and mysterious one, namely that life has its ups and downs and problems are only small parts that make up the whole, and the picture must instill a beauty that we cannot blame for our own pleasure.

"B. Croce noted the wide and undifferentiated use of the very term beautiful in non-aesthetic appreciations, which displease because they convey the immediate and unprocessed impressions of reality, uncorrected and not fused into a poetic motif" (Popescu 2009, 51).

Croce points out that the artist can put anything negative in a positive light because it expresses a situation from which we have learned something at some point, or that there is something positive in the whole image that is being rendered to us. The fact that it mirrors our own life or some situations in it when we feel that we have a hard time but we got over it, and we are glad that we lived that moment and today we are much better people because we had negative experiences and we were tried in life and the artist brings to light that part where we have something good left and that the world is built of negative things as well as positive things and so a balance is created in the world and in our everyday life.

The negative side to which Croce refers to those things that displease and lack the symmetry necessary to be considered aesthetic is that he can give such a strong charm to a part of the painting that the painting can be special in that non-aesthetic and thus be unique and full of life. The beauty that we consider is the one that has been planted in our minds and so the painter must try to bring out that side that we find amazing in order for the non-aesthetic to be considered beautiful.

For the German philosopher Schopenhauer, art is the bringer of bliss. Art is the most immediate step of consciousness, that which in its original purity also precedes common perception with its placements in the spatial and temporal series. Art is the flower of life; "the contemplator is the pure knowing subject, free, liberated from will" (Baciu 2009).

Schopenhauer tells us that art is something that awakens in us a state of well-being but also a powerful vibration that heightens and delights our senses, through art we experience things much more intensely than we see them in reality and this depends on the involvement and intensity of the painter. He says that through art, our lives become more beautiful because we have the free hand to create things and make another world perhaps more pleasing to the human eye than anything natural that surrounds us. Schopenhauer believes that our life is infinitely better because of our creations and our human imagination and our ability to make little worlds in which we expose every feeling we had at a certain moment through a simple canvas and some colours that we combine as pleasantly as possible and thus managing to outline another reality that perhaps does not even exist in real life but is only an episode in the artist's vision.

The uplifting states are the ones that pleasantly surprise us and that we don't see on a daily basis, and through painting or any other form of art we can see and find exactly that part that we want, and that we feel we need at that moment. Schopenhauer points out that through art man becomes more aware of himself and of what is around him, only in this way can he remember what our moral values are in this life and what our purpose is, because it elevates us through its way of being and so we reach a stage where we are confronted with feelings and experiences much deeper than what we see in reality.

Both Bernedotto Croce and Arthur Schopenhauer say about art that no matter what form it is put in, it attracts positive opinions because even if the artist has highlighted in a painting an image of a man with exaggerated or repulsive features, he has been able to highlight that part that perhaps shows the goodness in him or the sharp intelligence that the character shows and this means that the work of art is beautiful through other features that are not necessarily aesthetic. And Schopenhauer draws our attention to the fact that through painting we experience the perfection of things and only in this way can we build a perfect world in which everything is in perfect harmony.

"The Stoics praised art for its resemblance to nature, as nature is to art. But the beauty of nature and that achieved by art, for all their similarities, belong to different categories. Using natural elements, art transfigures them, intuiting a more complex and interesting reality. The modern artist regards nature as a "field of experience" regardless of the similarity

of its representation to the elements that generated it. "Mere raw matter/.../provides, from an aesthetic point of view, a somewhat neutral state. It is not necessarily beautiful, but neither necessarily ugly: it is accidental". The most "accidental" disorder may pass into the most unpredictable contours, but their primary form does not, in itself, achieve any expression. Autumn plants are beautiful almost without exception they produce infinite pictorial effects, but these are directed by a natural process of innovation that dries them out. Then the landscape impression depends on light, so that every form "can be configured both beautiful and ugly" their monotony is associated with ugliness. Nature as landscape has only a formal vocation of art, linking the invisible to the visible, and landscape as a reflection of the whole, leading to contiguity with the external space of the work, but signifying in itself what the work intended" (Popescu 2009, 17).

Through art and especially through painting the artist can build a more vivid image of reality, he can strongly outline both the image of beauty and what other nuances he wants. The naked eye sees a vague, common and familiar picture, for it there must be a much more sublime part of what it sees in order to notice a certain thing. The artist can bring out very strongly an impact that is having, for example, in winter when the trees are laden with snow, and thus bring out a depth of what is going on at that moment in nature, or if we look out of the window and see that it is snowing we will have a superficial image of the weather, if this image is not accompanied by something sublime that can delight or astonish him. In art we can discover things much more intense and profound than we see with the naked eye.

When we look at an old person we will only see a man, even if we see a photograph, but the artist can highlight some features of that man very strongly in order to express his whole life or what kind of man he is, or what he is living at that moment. The beauty in art is highlighted by the fact that things are a little out of proportion and the artist can put all the emotional charge that is needed. We look every day at the tree in our backyard or the river behind the house but we will never feel the emotion that a painting with the same image can bring out very strongly in our lives and in this way we can relive some of the things we experienced as children.

Art is what adds to our lives, and what reflects much more intensely than the simple images we see every day. Artistic beauty is that which conveys a deep state to us regardless of the aesthetic form it takes, often artistic beauty is very different from natural and natural beauty, we will see that a work of art is imperfect, it may have many aspects that we could not characterize as beautiful but nevertheless it shows us an image of a different kind of beauty, an image of depth, an image of something that conveys a strong emotional impact.

Beauty (Rotaru 2005, 38) is that thing that takes us out of anonymity and delights our senses with our eyes, anything we see and find beautiful we want to have it, we want a beautiful coat that changes our mood and makes us more productive than we were before, we want to make our home as beautiful as possible accompanied by artistic objects and things that make us more productive and happy. Beauty can also be a state of mind that we have at a certain point in our lives when we are alone and listening to a song that makes us dream of our future, and it can also be something that we considered beautiful at the time and with time we get tired of it and consider it boring or even ugly. Many times in life we experience moments that in some situations we consider sublime and that make us radiate but we reach a point where we start to regret them or do not consider them very beneficial for us or for our future.

Art, that's basically what it does, it shows us an overview of things regardless of their nature by framing them in an image that gives them a particularly good and particularly deep state of what the artist wanted to convey. If we look at a leaf we will see only one leaf among millions of other leaves but the artist can illustrate a whole picture in which he composes on that leaf another universe, and a thing that has life just like us.

"The pastel colours of autumn, so praised and portrayed for the impression they produce, are nothing but forms of the plant's agony, its last phase before atonement. Nature adorns her lethal, proceeding to an ephemeral crowning of her destiny. After all, the pastel autumn is nothing but a huge ornamental cemetery. There is a peak moment, usually of a few days when the aesthetic predominates and delights, after which what was announced by the predominance of colour begins to predominate, the abundance of colour bearing a kind of reminder of the natural life before it and recalling the resurrection of spring. The spectacle of agony promises resurrection, but to neglect its tragic side -the chromatic suggestion of the cry of death- is a misunderstanding and an infinitude towards nature itself" (Popescu 2009, 18).

The image that autumn gives us is perhaps the only one in which we experience a spectacle of colours, and in which we have the impression that we see something different because we are surrounded by so many colours and with a spectacle of nature that it gives us at the end of its life cycle, in this way our eye can see what the artist represents in a painting when he wants to highlight something or to notice an aspect of nature in which a freshness of the past year is highlighted. Aesthetically autumn, the artist can display the variety of colors at his disposal to frame it in a realistic landscape; in autumn, we start to feel all the emotions, to remember what we did in the previous year, what we are going to do next. It makes us visualize our life much more deeply because we have so wide varieties of colors that make us dream and start to visualize some things because it is a time when nature ends its life cycle, and so we wake up in an amalgam of soul states. Nature always portrays a state in which we get to reflect on ourselves and our lives.

"Art is part of each person's culture, and is perceived differently in the interpretation of certain artistic images; it depends on one's sensibility, aesthetic taste in: literature, painting, music, cinema, architecture, etc. We appreciate reality aesthetically, if reality existed it would not be accessible to us, to humans. There is no standard in the art of beauty, a limited standard, but art shows the truth in the universe of values, which is why some works become masterpieces of the sublime, of the experiences that arise from contemplation. Beautiful art naturally produces delight! The beautiful and the sublime are found in the work of art, and it is based on creativity, intellect...Creativity is the ability to express oneself in different ways" (Viataoperadearta.wordpress.com 2022).

In general, nowadays, we can afford to have beautiful objects because of the increased standard of living we have nowadays, we now want to be surrounded by luxury and beautiful things to delight our eyes on a daily basis, our life has become much more prosperous due to improvements in the economy and better coordination of these, today we are willing to pay a huge amount just to have a decorative object in the yard, or in the city centers to become more attractive to tourists visiting our area. We see that in order to attract tourists to our area and to encourage tourism we need to be a tourist attraction and this is only possible because of investments that are made in various objects to restructure them as architecture or to make them more pleasant for people.

We see that we are willing, as humans, to travel thousands of miles to see certain landscapes, objects or buildings. If we look at the fact that people generally travel to see impressive buildings, glass skyscrapers, artesian fountains, monumental buildings, museums, natural landscapes, places where we want to wake up in the morning and have a sublime scenery in the background that we can consider, as one ripped from heaven, having an experience that we wanted and that delights our eyes.

### **The Sublime in Art**

"The sublime is particularly associated with nature, and its features do not vary much in the course of art history, at least not until modernism. For example, the Baroque emphasized in artwork the depth of the plane and the interplay between the near and far plane. Romanticism sought to subjectivize the external environment. The Victorian sublime celebrated death and the

terrifying, the density of colour and the grandiose, whether figurative or chromatic. Modernism, though it considered the sublime old-fashioned, nevertheless continued its depictions of the sublime in art, thanks to artists such as Malevich, Rothko, Newman and Smithson" (Schoppel 2017). The four have tried to preserve that touch of the sublime in the modern age so that each thing that was highly prized in its time remains a masterpiece and retains that touch of the ancient sublime, and that is what has succeeded, in large part, in making some objects so valuable and so valuable today. Since modernism, things have started to take on a different form, eccentric things have started to be highly valued, and less commonplace things, and even if they were considered beautiful, they started to lose their sublimity because man felt the need for something new and this trend caught on very strongly and people started to want eccentric things.

Things if they are put in a very bright light become very important and this is because we want this and because through this man has tried to find to portray and to enliven things and objects with the sublimity of the sky, of the whole, through the creation of each thing so that man can find something spectacular in a thing.

In the writings of the great philosophers we will see a work of art in the different ideas of putting down on paper in the most impeccable way the origins of mankind and the essence of our life to be able to be as receptive as possible to what we study, about life we have been fascinated since childhood, we have always asked ourselves questions and we have always wanted to know its components and the origins of our species and the world we live in, we are fascinated by philosophical thinking that manages to transcend common thinking, we want to see an originality of ideas and some evidence by which we can explain what we live and what has been our evolution since the beginning of our cycle on this world.

If a place of worship is surrounded by an aura of objects that represent the depth of wisdom, people will enjoy visiting them and this will make them more engaged in what is happening during a sermon or religious service (Rotaru 2019, 269-271) because it captivates them and they feel that it is a different and special place, a place that conveys that man is under divine protection, that man, in that place, is entering the house of God and that he is thus living at full intensity, having a much greater openness to that place which he basically considers divine and full of wisdom.

"Gheorghe Fikl uses sumptuous sets, especially neoclassical and baroque. Altars, curtains, sumptuous atmosphere and chandeliers are elements that propose to introduce the viewer into elegant, possibly royal or religious interiors. In these rooms there is something of the drama of chiaroscuro, where the play of light and shadow creates an eerie and seductive atmosphere. Even in the exhibition moments, Gheorghe Fikl places his lighting sources somewhere above the works, the surface of the paintings being only partially illuminated. In this way, the eye is drawn to the centre and top of the work. Thanks to the size of the works, the viewer seems to participate in the scenes depicted, not just watch them passively from a distance"(Schoppel 2017).

In Fikl's work, *Herd and Chandelier*, he highlights the elegance and grace of a painting that shows that it is the strong light coming through the windows that adds an intensity to the painting, because he wants to show the grace of the place and that there must be elegance in every place. The chandelier is the sublime factor in this painting because it is of immeasurable completeness and grandeur, and combined in this picture it is the centre of the painting. By the intensity of the outside light pouring strongly into the interior, it makes the place feel magical and gives it an aura of mystery because that chandelier is on and this shows us that it is not the outside light that adds to the elegance and refinement. The animals represent life, and they put in this light and in this place make the painting charged with sublime notes that astonish us because it goes a little beyond the limit of realism and takes it to an extreme nuance by which the artist wants to shock and take elegance to the most shocking level. The artist wants to attract attention both by the shape of the room, by the fact that it is not a house

that can afford the decoration of the central object that amazes us and makes the whole place take on a different form and thus become more intense for the viewer's eyes.

The play of lights that Gheorghe Fikl highlighted so strongly makes the central point for the viewer to fall on the animals and thus this painting seems particularly enchanting because he highlighted the fact that this place is used in a room where there are animals and that would not have any nuance of sublime because it is something common and banal and simple animals eating or sleeping would not have any nuance of grandiose and thus he tried to expose a particularly elegant nuance.

Through painting, the image that the artist gives us can be particularly beautiful and uplifting, but in real life things are quite different because we could not conceive of seeing so much grandeur in a place where grazing animals that have no aesthetic nuance and no ability to appreciate things. However, through painting this nuance is perfected because it is the only way we can see a difference between the banal and the extravagant.

"The work of art which, by the harmony of content and form, by artistic realization, by the content of ideas and feelings, arouses a maximum tension in the soul of the receiver, reaches the sublime - that state which is at a great height in the hierarchy of moral, aesthetic and intellectual values. In literary theory, the sublime means greatness, perfection and grandeur. Many aestheticians define the sublime as a state of wonder, of ecstasy. Moral and aesthetic values tend towards the sublime. An example of the moral sublime was given by the great German philosopher Kant, who said, "Two things fill my soul with ever new and increasing admiration and awe...: the starry sky above me and the moral law within me" (Voiculescu 2021).

Through poetry, the poet can have a very deep impact on some situations in order to relate some experiences he had and to be as explicit as possible with what he experienced in some situations he was put in. Through poetry he exudes a strong energy to have an impact on the reader, in his writings he can express how much pain or pleasure he felt in some moments, just like in art when we see a masterpiece, or a painting that seems to live the moment and the situation he is put in.

A simple poem can awaken in you an accumulation of feelings or situations that you may or may not be familiar with, it can raise you to a certain level and lower you to another level and in this way you can experience a state of delight. Through what he meant we begin to feel that we are part of what he is saying and perhaps even react differently to some things. Some of us may have a poem that we learned in school or high school and so it follows us all our lives by the powerful impact it had on us and on our psyche. The poet can bring the reader up and down in different ways, he can reflect on the surface exactly what he wants and stir up powerful feelings inside the reader.

The poet is the one who can combine all the elements that the reader needs to have a different mood. In life we will always be looking for something to take us out of our anonymity, out of the banal mood we sometimes have, or those moments when we read a poem we can put ourselves into it, we can imagine we are the main character and experience the rain falling on our shoulders and the bright sun warming our hands. Art is a sublime way of very powerfully externalising our inner feelings, the joy we feel while reading a poem or while looking at a painting or while we are painting it.

We often experience very strong emotions inside us, much stronger than what is seen on the surface, inside we are us with our self and we are in our comfort zone and we know we are safe there. Within ourselves we can express to the fullest a certain experience from the past and in which we have been able to enjoy our life and our youth to the fullest, having things that we have preserved over time and that have not lost their authenticity we relive with enthusiasm and great joy some moments that are sublime experiences that we have and that we cannot consider indifferent, and that have perhaps left a very strong imprint on us (Rotaru 2016, 29-43).

"If there is an artist of total will bordering on dogmatism, it is Michelangelo. His Titanism, so often invoked, corresponds to the maximum tension of desire and its fulfilment. To be a Savonarola of artistic immanence is a terrible incongruity, the untamedness of which, however, can be radicalized into an infinite programme. Michelangelo does not put a point at the end of any sentence, for him nothing has an end, every end looks like a beginning, like an uninterrupted opinion. His most fascinating works are the unfinished ones, with perfection inscribed in the unfinished, in a proudly displayed imperfection" (Ianosi 1984, 251).

The *Madonna and Child* sketch represents the way in which man becomes a creator in his turn, thus through some lines drawn on a canvas he competes with what we call life, with the mother who gives birth to the child and thus he details the aspects that make up the human body, the human skeleton, and then the muscles on the skeleton, thus he manages to show us how perfect the human body is and how it begins to transform through the organs we have and the muscular component we have to catch life. Michelangelo was able to elicit much stronger reactions than other painters because he sought to find perfection in his work, and the commitment we see in each of his works is flawless.

Michelangelo believes that the truly interesting things are those that never end and continue their story in another form. Michelangelo's creations were intended to surprise and highlight the perfection of paintings that we have the impression are real and have a perfect expressiveness. Through his paintings, he tried to show the creation of the world through all that it represents.

"Leibniz conceived of the universe as divine architecture, reflected in the splendours of royal palaces, especially the Louvre and Versailles, which even Malebranche considered to be a model of glorious and triumphal sublimity, worthy of being projected on the skies of theology. For Leibniz, graceful harmony and triumphal grace ensured the perfection of nature and its spirituality. The voluptuousness of perfection sensitizes the infinite, the manifold unifies, unity multiplies in a dance of multiplication to infinity because the philosopher found a compound verb: "infiniplicare" (Ianosi 1984, 269).

Leibniz believes that the universe is perfect, that absolute and unbeatable perfection is to be found in it, and that it finds a small horizon in objects and royal palaces where perfection and good taste are at home. In the royal palaces we will find the most spectacular objects that will leave us amazed, in these places we will see how much a simple object that the king uses can represent and how great is the value of these things through perfection and human involvement in their design. Thus Leibniz believes that in the royal world we will see a small part of what the divine perfection of the universe and the cosmos signifies.

## Conclusions

As mentioned in the introduction, in this study we have presented some considerations on the beautiful and the sublime, considering that the beautiful represents those things for which we as humans yearn, along with the image that we try to display in society, trying to have as good and beautiful an image of ourselves as possible in order to receive the appreciation we desire, and about the sublime, the fact that most of the time the sublime things in our lives represent intense emotions within us that we feel when we see something out of the ordinary, which surprises us either nature or human creation.

The beautiful is what delights our eyes and the sublime is what amazes us and brings us to ecstasy, something we see every day, which lifts us spiritually and makes us dream, practically touching the chords of our soul. As humans, in life we seek this aspect in which we find ourselves in a sublime state and everything around us seems perfect, we long for that soul state of perfection and ecstasy.

The sublime is a much more complex category of beauty, beauty gives us a state of well-being and good mood, but the sublime gives us a state of wonder. We find ourselves at certain moments in our lives, in a certain situation or a certain moment where we sit and stop

for a few moments and think how beautiful everything around us is and how carefully the things in our lives and around us have been constructed. Beautiful and sublime moments in life make us aware of how intensely we can live things and how pleasant and wonderful life is with all its moments, even the negative ones, living them as if they were perfect and full of charm, feeling in those moments that life is full of charm, value and various moments to make it totally special. Man, a masterpiece of beautiful things, should do his best to enjoy all things in his life, wanting to grasp and value the offer of life, the offer of the One who is the Author of all that is beautiful and sublime, the beautiful offer of the Great Creator (Rotaru 2015, 4,7).

## References

- Baciu, Ioana. 2009. *Evoluția ideii de frumos (The evolution of the idea of beauty)*. Accessed 22.09.2022. [https://www.poezie.ro/index.php/prose/1830392/Evolutia\\_ideii\\_de\\_frumos](https://www.poezie.ro/index.php/prose/1830392/Evolutia_ideii_de_frumos).
- Ianoși, Ion. 1984. *Sublimul în artă - Un drum în cultura lumii (The Sublime in Art - A Journey in World Culture)*. Bucharest: Meridiane Publishing.
- Kant, Immanuel. 2007. *Critica facultății de judecare (Criticism of the faculty of judgment)*. Bucharest: Bic All Publishing.
- Popescu, Titu. 2009. *Frumosul natural și frumosul artistic (Natural beauty and artistic beauty)*. Cluj-Napoca: Casa Cărții de Știință Publishing.
- Rotaru, Ioan-Gheorghe. 2005. *Istoria filosofiei, de la începuturi până la Renaștere (The history of philosophy, from the beginnings to the Renaissance)*. Cluj-Napoca: Cluj University Press.
- Rotaru, Ioan-Gheorghe. 2015. "Prețuiește bine fiecare clipă a vieții tale și dă-i valoarea care i se cuvine, pentru a nu pierde Sfânta Împărăție a Domnului" (Cherish well every moment of your life and give it its due value, lest you lose the Holy Kingdom of God). *Argeșul ortodox* XIII/615: 4,7.
- Rotaru, Ioan-Gheorghe. 2016. "Plea for Human Dignity." *Scientia Moralitas Journal. Human Dignity - A Contemporary Perspectives* 1: 29-43.
- Rotaru, Ioan-Gheorghe. 2019. *Om-Demnitare-Libertate (Human-Dignity-Freedom)*. Cluj-Napoca: Risoprint Publishing.
- Schoppel, Carla-Francesca. 2017. *Tragicul și estetica sublimului în arta lui Gheorghe Fikl (The tragic and the aesthetics of the sublime in Gheorghe Fikl's art)*. Accessed 22.09.2022. <http://societatesicultura.ro/2017/05/gheorghe-fikl/>.
- Viataoperadearta.wordpress.com 2022. *Să zărim lumina (Let's see the light)*. Accessed 22.09.2022. <https://viataoperadearta.wordpress.com/tag/frumosul-sublimul-in-arta/>.
- Voiculescu, Constantin. 2021. „Sublimul în poezia lui M. Eminescu” ("The Sublime in the Poetry of M. Eminescu"). In *Argeș Expres*. Accessed 22.09.2022. <https://www.argesexpres.ro/index.php/cultura/37301-sublimul-in-poezia-lui-m-eminescu>.

# **Mental Health Education Programs at Korean High Schools: The Investigation of Student Satisfaction with the Current School-based Programs and Means to Improve**

**Jiho Chang**

*Branksome Hall Asia, Jeju, South Korea, jihochang05@gmail.com*

**ABSTRACT:** Instances of debilitating stress, depression and suicidal ideation have been broadly documented in academic settings in South Korea. In response, a number of mental health programs have been introduced by schools to help students manage the pressures of academic life and combat hidden narratives of anxiety and depression. Via a week-long survey, this study investigates student responses to various mental health education programs at high schools in South Korea. The voices of the students shed light on their educational needs in terms of positive mental health outcomes, the systematic factors influencing their discontent, and the general importance of creating more realistic and implementable solutions to common mental health concerns. The data from the surveys were then combined with a case study analysis of mental health initiatives across different types of schools in South Korea and in the United States so as to gain insights from a complex, cross-cultural perspective. By acknowledging the points of view of the students as well as articles, academic papers and psychological reports, the research is better able to bridge the gap between the current idealistic model of mental health education and highly-customized best practices going forward. The findings are also impactful in terms of policy making and the introduction of student-centric, contextually sound, and sensitive formats and curriculums in the future.

**KEYWORDS:** Psychological counseling, School-based mental health education, Korean academic settings, Teen's mental health, trust issues

## **Introduction**

Adolescence is a period when people start to experience psychological maturation; amidst the change, people tend to be affected by the environment they inhabit and their impulse during this time, leading them to be more vulnerable. Although the percentage of teenagers feeling distressed or depressed has shown a decrease by 9.3%p in 2018 since 2008's 46.5%, suicidal death has been the greatest driving factor of teenagers' mortality for over a decade in Korea. Professor Kim from Kosin University of Korea has demonstrated with her research result that the majority of adolescents are stressed; 77.5% of male and 89.8% of female students have responded positively to the question asking if they felt stressed in their daily lives (Kim 2020, 479). As this result shows, stress is a typical human reaction for youth. However, this frequent and familiar reaction can be damaging to students if they attempt to relieve it with unhealthy and ineffective means. For example, a survey result constructed by Korean Health Promotion Foundation has demonstrated that 66% of adolescents hold back their stress, 13% swear, and 6% yell or throw things to get rid of stress. Reporter Kang has indicated that such emotional approaches and avoidance cannot be helpful in overcoming negative emotions, therefore proving the importance of medically effective methods for mitigating inner stress (Kang 2019). Stress should be resolved before it converts into long-term stress because extremely consistent stress will not only be emotionally damaging, but also raising the risk of heart attack, stroke, and/or hypertension (APA 2018).

As previously stated, long-term stress may leave psychologically harmful effects on teenagers. Hence, it is necessary for them to be exposed to a supporting environment, which can provide effective intervention services. Numerous schools implement mental health services since most adolescents spend their time at school. They employ therapists or counselors who can support students suffering from school life, and the school-based social

workers sometimes hold programs that educate the significance of looking over one's own mental health and ways to do so. Nonetheless, several problems may occur regarding students' actual satisfaction with those programs, especially relating to their agendas: lack of unity within the curriculum, unclear directivity or forced sessions with unengaging activities may be the reasons for students' dissatisfaction because they can be emotionally satisfied when they are allowed to participate in activities with their own initiatives (Lim and Yoo 2017, 15). In addition, the agendas are constructed by faculties from school, therefore lacking the ability to reflect on students' psychological demands, which generally refer to greater power, fun, freedom, and love and belonging (Erden and Aliyev 2022, 5).

This paper tends to examine the effectiveness of current Korean high school-based mental health facilities and to furthermore suggest methods to improve the present situation.

## Background

### *The History of Mental Health Programs*

The origin of American schools' mental health system differs from that of Korean schools' mental health system. This section includes the history of US school-based mental health programs because the first Korean school-based mental health program was launched after American Education delegations were involved in altering the Korean education system.

Since 1907, Detroit Public Schools has initiated the original 'school counseling' by including life guidance in its curriculum. This *vocational and moral guidance*, specifically, was constructed in order to help students discover their internal identities, so they could grow up as moral and socially responsible members of the community (Baker, 2000). The counseling system within schools converted into the social counseling system after high school students' mental health became one of the chief affairs as Mental Hygiene Movement emerged. According to Lee, Oh, and Seo, the reregulation of school counselors' duties happened around the 1920s-1930s. The time when Guidance Reform Movement for better-qualified school counseling programs occurred was in the 1970s, and its success by the 1980s resulted in more specified templates for comprehensive school counseling programs and more varied versions of programs that could suit a greater number of schools from different regions (Lee, Oh, and Seo 2007, 543). Referring to Transforming School Counseling Movement, it can be inferred that American school-based mental health aids primarily focus on supporting teenaged students, transcending the emotional aspect; advocates of the movement assert that school counselors should be capable of assisting students as instructors, monitors, educational professionals of problem-solving, etc, especially to prevent academic failure of students from ethnic minority groups or low-income families.

On the other hand, Korean school-based mental health programs first started in the 1950s, when American Education delegations visited South Korea after the Korean Civil War to educationally succor the nation. Central Educational Research Center was where school counseling and theories of guidance were studied by Korean Association for Education. As a result, the first *correctional teachers* were hired by middle schools in Seoul in 1958-1961, and high school counselors were employed in 1963, nationwide. Subsequently, in 1964, a qualification system for training counselors was legally activated. The initial roles of school counselors were advisory counseling, managing students' private information, and providing any news or information to the students. Since the correctional teachers system originally focused on life guidance for students, it was in 1999 that the job title was converted to *counselors* from correctional teachers. This change was based on Article 21 of Elementary and Secondary Education Act (Lee, Oh, and Seo 2007, 539).

Comparing school-based mental programs from the US and Korea, it can be concluded that the American counseling system sought for simultaneous development in schools' academic programs, thus it was fundamentally based on an academic foundation. In contrast,

the Korean school-based mental health programs originated from the government's attempt to legalize the role of school counselors, inspired by American Education delegations. Korean school counseling seemingly progressed slower as it had weaker theoretical support, impractical policies, etc. These systematic errors must be resolved by institutional enhancement and provision of more specific rules for the counseling staff to be acknowledged, according to "Comparison Study of Korean and American School Counseling for Developing a Korean School Counseling Model" (Lee, Oh, and Seo 2007, 539).

### ***Current system of mental health programs***

The Adolescent Mental Health and Problem Behavior Questionnaire-II (AMPQ-II) has been held annually in Korean middle and high schools, in order to numerically measure students' mental health status at middle and high school levels since 2012. AMPQ-II tends to examine the severity of different factors that are considered to be influencing students' mental health, such as mood changes, suicidal ideation, anxiety, sleep, impulsivity, etc (Park, Lee, Jung, and Hong, 2019, 2). The significance of schools providing such mental health care service can be found from its benefits of preventing school failure and comorbid substance abuse (Stephan, Weist, Kataoka, Adelsheim, and Mills 2007, 1333).

Following the current circumstances of Korean schools, a great proportion of international schools, especially those located in western countries, were reported that their governments and educational administrations were supporting both financially and politically to strengthen the youth mental health care system held by schools (Wei and Kutcher 2012, 12-13). According to the same research paper's table, the adopted intervention domains are Promotion/Pro-social, Stigma, Depression, Anxiety, Suicide, and Eating disorders (Wei and Kutcher 2012, 16-21).

In the US, a vast array of models for school counseling were structured, which were often independently advised from certain states. The proliferation of state-independent school counseling templates later contributed to the country scale of school counseling policies, which was started in 1997 by the American School Counselor Association (ASCA). This long-term project ended in 2003, encompassing the prior school counseling system among different states of the US. The system is consistently developing since then, and recently, National Educational Trust has triggered Transforming School Counseling Movement (Lee, Oh, and Seo 2007, 539).

### ***Problems of current mental health programs***

As it is stated above, teenagers can be best satisfied when they are amidst an environment that allows them to self-direct their education. To probe the educational environment Korean students are usually exposed to, a study done by Chin, Kang, and Yi (2018, 120) has proven that 100% of the school samples (115 in total) execute student emotional • behavioral characteristics tests, 98.3% are running successive programs, and 43.5% are inviting professional lecturers from external institutions to educate students. What students consider problematic are not the absence or lack of mental health programs and examinations provided by schools, but the current mental health programs that are unlikely to fulfill the demands due to their forcibleness, lack of unity and activities, and disregarded relationship (personal interaction) between students and counselors.

A pre-interview was conducted at the beginning of July in order to collect Korean high school students' feedback for school-based mental health related facilities. According to the results of the pre-interview that was conducted from July 2nd to July 4th of 2022, out of the 10 interviewees, 8 have shown dissatisfaction to the school environment that can expose their visits to social counselors, 4 have shown dissatisfaction to the lack of confidentiality (disclosure of their privacy), and 3 have shown dissatisfaction to the circumstances that they feel emotional barriers to their counselors. This pre-interview was followed up by a survey that was held since July 8th, 2022, and served as a secondary means of an audit.

## Results and Discussions

In order to investigate the contents of the programs, students' satisfaction level, and the efficiency of the programs, a survey targeting Korean high school students and graduates was held from July 8th, 2022, until July 15th, 2022, via a social media platform.

Which category does your past or current high school belong to?

1. 귀하가 소속된/소속되었던 교육기관은 다음 중 어느 분류에 속합니까?

응답 59개



Figure 1. Summary Chart of the Answers for Question no. 1

Out of 59 respondents, 59.3% were from public schools, 35.6% were from private schools, and 5.1% were from international schools. Three categories of schools were chosen referring to the distinct educational system each adopted. By doing so, the data could be collected from vast array of samples from different types of schools.

Does your school provide any mental health related programs or systems to support students?

2. 귀하의 소속 교육기관엔 학생들의 정신건강 지원을 위한 프로그램이나 시스템이 마련되어 있습니까?

응답 59개

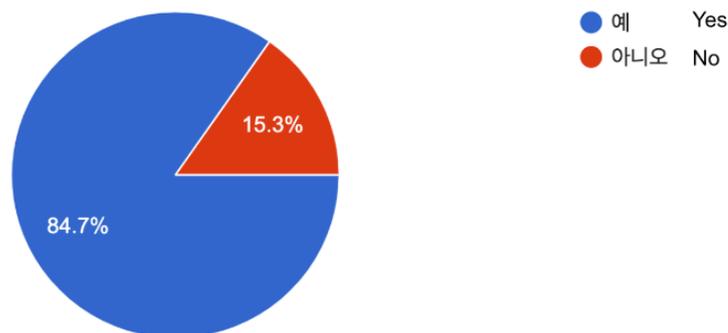


Figure 2. Summary Chart of the Answers for Question no. 2

Out of total, 84.7% replied that their schools provide at least one program to enrich students' mental health. The third question from the survey asked the exact type of school-based mental health education facilities: the majority of the mental health supports provided by schools were related to Wee Class<sup>1</sup> (64.4%), education for life protection (59.3%), and student emotional behavioral characteristics tests (47.5%). However, some of the respondents

<sup>1</sup> Wee Class is a public service provided by majority of Korean schools, which offers counseling and education sessions to students whenever needed (Wee Project Agencies).

commented that they want their schools to provide education for life protection to the question that was asking remedies.

If your school did run any school-based mental health education programs, would they be effective?

4. 귀하의 소속 교육기관에서 집단 교육 프로그램(정신건강 증진 교육, 생명 존중 및 자살 예방 교육 등)을 실시하였을 경우, 긍정적인 효과가 있다고 생각하십니까?

응답 59개

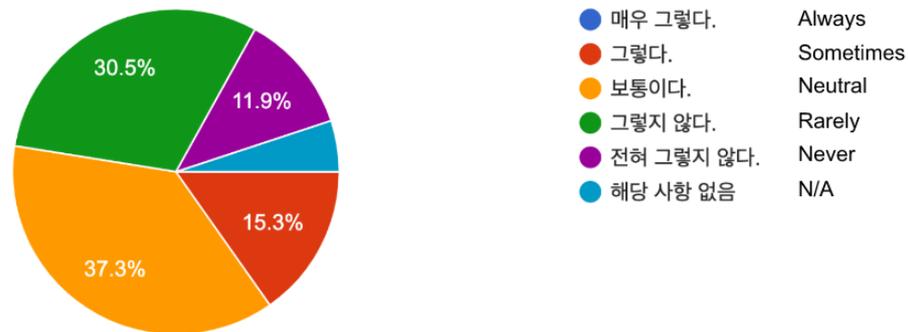


Figure 3. Summary Chart of the Answers for Question no. 4

While 37.3% has answered ‘Neutral’, and 42.4% has answered either ‘Rarely’ or ‘Never’, only 15.3% responded positively (‘Sometimes’) to the question if they consider the school-based mental health programs effective. As a result, it can be inferred that majority of the Korean high schools do provide service to psychologically support their students, and yet those students are showing low satisfaction level.

Some of the responses from the survey followed a similar logic to the rationale involuntary clients claimed regarding counseling: they do not admit the issue (rather external or internal), do not want to confront changes, and do not know how to change (Ritchie 1986, 516). Each of these reasons can be linked to separate phenomena: first, students do not recognize the significance of mental health problems (specifically relating to Korean college admissions, the study results also indicated that Korean high school students are amidst the environment in which they can hardly concentrate during the programs their schools enforce); second, they find it difficult to adapt to the school’s new programs as they are already “busy with other academic work” (33.9% of the survey respondents chose ‘unclear effectiveness of the lessons and hardly understood purpose of the program’ as the reason for their dissatisfaction); third, the programs are not properly educating them to understand the key concepts.

The current construction of the program can be problematic since one-way lecture lacks active interaction between counselors and students, thus resulting in low efficiency. One of the respondents replied to the question asking specifics about their dissatisfaction upon the current programs that “a lecture format of these programs hardly evoked students’ attention and interest”. Furthermore, a meta-analysis of studies published in the Proceedings of the National Academy of Sciences of the United States of America (PNAS) has proven that a lecture involving no physical engagement of the listeners is ineffective for educating them (Daub 2014). In other words, the driving demotivating factors for students attentively participating in school-based mental health education programs were found out to be the forcibleness of the sessions disregarding students’ academic schedules, mundane and nebulous contents of the curriculum, and unidirectional lectures involved in every session.

## **Recommendations**

### ***Cases from an international school in South Korea***

Referring to the ratio of respondents' school of origin, it can be inferred that the responses from international school students are not generally included, since the number of international schools in Korea is much smaller than that of other public and private high schools. Hence, the following example tends to elaborate on cases of teenagers' reaction to mental health education programs adopted by a Korean international school.

The school, located on Jeju Island in South Korea, enforces its students to participate in mental-health-related sessions weekly during the periods when they are “seemingly distressed”. Three different sessions are held, each of them presenting eating disorders, self-talk, and anxiety and depression. The concepts educated via this program are more varied than those included in Korean public school-based mental health programs, yet students from this international school are unexpectedly unsatisfied. Reasons for such inclination are that first, the curricula containing uninteresting or exact same contents make students easily get disinterested, second, the agenda for all classes involves a presentation, short group activities, reflection, and feedback surveys, which are all forced to be done as tasks, leaving extra burden on students, and third, the sessions were held during the exams periods; the schedule is making students get stressed.

The differences between educational systems from international schools and other Korean public and private schools were well acknowledged, but high levels of students' dissatisfaction were in common, so the conducted survey had to include an inclusive question for all respondents that asked about their specific needs reflecting on the current flaws of mental health education programs their schools have provided.

### ***Students' demands for the school-provided mental health programs***

The last question of the survey, in which 23 people have answered, asked the respondents' demands for the improvements that can be made for the mental health programs, and the responses mainly included educating about appropriate methods to relieve stress (73.9%), suicide prevention (17.4%), and proper civic perceptions of psychiatry clinics (30.4%). 54.2% of them selected ineffective programs (mundane contents) as the disadvantage of mental health programs provided by their schools. The significance of psychological support can be rationalized by a study result, which has shown that 46% of students in secondary schools failed academically due to their psychiatric disorders (Stephan, Weist, Kataoka, Adelsheim, and Mills 2007, 1334).

Others suggested better “systematic” agenda to be constructed, which was interpreted as more engaging content of the programs' curricula. This interpretation can be explained by the trend in which a number of respondents claimed systematic enhancements.

The study also revealed that institutions' resourcing such as employing, training, and supporting the staff might also be an impactful element to consider. Another study made an assertion to make sure that all the stakeholders—“parents, teachers, students, student service providers, and primary care health providers (Wei and Kutcher 2012, 23)”—are wholly involved in the process of developing a mental health program within schools.

Referring to all of the study results and analyses which are done above, parts to focus on for the new mental health program models will be generally educating contents that students want, scheduled before or after exam periods, and including activities that can better entice students to feel interested in the topics introduced.

## Conclusion

### *Summary and discussion*

This study intends to examine the efficiency of currently existing psychiatric care systems in high schools located in South Korea, including public schools, private schools, and international schools. Regardless of different types and/or services that are provided by their schools, students were not adequately satisfied with them. Therefore, based on the collected data, the developed version of mental health programs will edit the curricula to include contents that are more appealing to the students, schedule the sessions on dates that are not overlapping with exam periods, and add activities that can better entice students to focus on each session's topic.

A weakness found in the study is the small number of respondents who responded to the survey. Fifty-nine people were not enough to represent the eventual inclination of all Korean high school students about their thoughts regarding school-based mental health programs. Although the number of the sample was insufficient to represent the entire group of the high school students in Korea, their responses were collected and reflected on to construct a clearer guideline, which now includes more specific and rightly oriented agenda, from the aspects of being timely, effective, and engaging.

Since only 5.1% of the sample were international school students, the survey also lacks a variety of respondents. This problem can be solved by increasing the proportion of international schools students when designing the survey for a future study, and such solution can also increase the number of total respondents. Future research should include more participants with an increased ratio of international or foreign school students to interpret the numerical data with better certainty.

### *Implications for Korean students' overall mental health care*

Health care is a topic to be seriously considered among the general public since medical welfare is a major factor which hugely affects the well-being of people. Especially in an environment exposed to strong 'education fever', students are likely to be stressed out and experience burn-outs, thus the issue of mental health must be contemplated seriously. One of the greatest merits for enhancing the quality of psychiatric support for high school students is that their stress and/or anxiety levels can be much lowered; a student who responded to the pre-interview said that she would feel much relieved despite the burden of studying and preparing for college admissions throughout her senior year if the school provided qualified psychiatric services and counseling system. This study can have its result applied to Korean education at the moment, since this paper communicates the issue of students' dissatisfaction about the mental health care services their schools are providing. Problems suggested at the beginning of the paper, such as irrelevant and ineffectively planned curricula of the programs, negative consequences of uni-directional lectures about mental health, and inadequate schedules for the educational sessions, must be mitigated as their significance is directly related to students' performance in schools (Stephan, Weist, Kataoka, Adelsheim, and Mills 2007, 1335). Students' demands must be fulfilled to enhance the teenagers' mental health overall.

## References

- American Psychological Association (APA). 2018. "Stress effects on the body." November 1. <https://www.apa.org/topics/stress/body>.
- Baker, S. B. 2000. *School counseling for the twenty-first century*. Upper Saddle River, NJ: Macmillan Publishing Company.
- Chin, Young Ran, et al. 2018. "The Current Status of Student Mental Health Programs and the Needs for Related Training: Focusing on School Nurses and School Counselors." *Journal of the Korean Society of School Health* 117-126. Doi: 10.15434/KSSH.2018.31.2.117.
- Daub, Travis. 2014. "University lectures are ineffective for learning, analysis finds." *PBS*, May 12. <https://www.pbs.org/newshour/science/university-lectures-ineffective-learning-analysis-finds>.

- Erden, Zehra Şeyda, and Ramin Aliyev. 2022. "Anxiety and psychological needs of high school students: COVID-19 period." *Psychology in the Schools* 1-19. Doi: 10.1002/pits.22767.
- Kang, Yeong Kwan. 2019. "Six Schools have Adopted 'Spaces for Stress Management of Youth' in Seoul." *Aju News*, March 11. <https://www.ajunews.com/view/20190311133304950>.
- Kim, Kyeong Na. 2020. "Factors Related to Mental Health of Juveniles – Using the Korea Youth Risk Behavior Web-Based Survey" 2019. *Journal of Korea Academia-Industrial cooperation Society* 475-481. Doi: 10.5762/KAIS.2020.21.6.475.
- Lee, Sang min, Insoo Oh, and Su Hyun Seo. 2007. "Comparison Study of Korean and American School Counseling for Developing a Korean School Counseling Model." *Korean Journal of Counseling and Psychotherapy* 539-567. UCI: G704-000523.2007.19.3.009.
- Lim, Heejin, and Jaemin Yoo. 2007. "Exploration of Protection and Risk Factors for the Uncertainty in Teenagers' Career Situations." In *Research Report of the National Youth Policy Institute*, edited by National Youth Policy Institute, 1-71.
- Park, Seongjun, Dayoung Lee, Song Jung, and Hyun Ju Hong. 2018. "Four-year trajectory of Korean youth mental health and impacts of school environment and school counselling: an observational study using national schools database." *British Medical Journal*. Doi: 10.1136/bmjopen-2018-027578.
- Ritchie, Martin H. 1986. "Counselling the Involuntary Client." *Journal of Counseling & Development* 516-518. Doi: 10.1002/j.1556-6676.1986.tb01186.x.
- Stephan, Sharon Hoover, Mark Weist, Sheryl Kataoka, Steven Adelsheim, and Carrie Mills. 2007. "Transformation of Children's Mental Health Services: The Role of School Mental Health." *Psychiatric Services* 1330-1338. Doi: 10.1176/ps.2007.58.10.1330.
- The Wee Project. n.d. "Wee Project Agencies: Implementation System." Accessed July 31, 2022. [https://www.wee.go.kr/eng/cms/cmsCont.do?cntnts\\_sn=123](https://www.wee.go.kr/eng/cms/cmsCont.do?cntnts_sn=123).
- Wei, Yifeng, and Stan Kutcher. 2012. "International School Mental Health: Global Approaches, Global Challenges, and Global Opportunities." *Child and Adolescent Psychiatric Clinic of North America* 11-27. Doi: 10.1016/j.chc.2011.09.005.

# **“Subject to Magistrates, and Princes, and Powers, but within the Limits of Discipline”: Romans 13:1–7 before the Edict of Constantine the Great (c. 167–250 CE)**

**Amiel Drimbe**

*Baptist Theological Institute of Bucharest, Romania  
Midwestern Baptist Theological Seminary, Kansas City, Missouri, USA  
adrimbe@mbts.edu*

**ABSTRACT:** Romans 13:1–7 is among the best-known passages in the New Testament that addresses the submission of early Christians to the ruling powers of the day. Christians are to submit to the governing authorities, for they are ordained by God. Likewise, rebellion against the governing authorities means rebellion against God (Rom. 13:1–2). Yet Paul has in view only the ideal iteration of governance, in which rulers are “servants of God” (Rom. 13:4,6) and they reward the good and punish the evil. In times of tyranny and persecution, however, later ecclesiastics had to look back at Romans 13:1–7 from a different perspective: should Christians submit to unjust and despotic rulers? The answer that takes shape during the first two centuries of the Christian era (c. 167–250 CE) is a conditioned “Yes”. The approach of these writers is mainly positive and constructive. Christians are to respect tyrannical rulers at all time, even when they must be resisted. Christians are to obey tyrannical rulers whenever they act justly and in everything that is not contrary to their faith. Christians are to pray for tyrannical rulers sincerely and without ceasing. There are, however, limits to Christians’ submission to governing authorities. They are to resist any demand that goes against “the rules of Christian life”: a ruler that claims the honor that belongs only to God, acts against the will and word of God, or acts under the influence of the devil, is to be resisted. Yet there are also limitations placed on their resistance, as there are limitations placed on their obedience. Christians are to resist tyrannical rulers in a manner that is brave, yet respectful, righteous, and peaceful.

**KEYWORDS:** Romans 13:1–7, governing authorities, tyranny, persecution, submission, resistance, limits

## **Introduction**

Romans 13:1–7 is among the best-known passages in the New Testament to address the relationship between church and state, particularly the submission of early Christians to the ruling powers of the day: “Let everyone be subject to the governing authorities, for there is no authority except that which God has established... whoever rebels against the authority is rebelling against what God has instituted” (Rom. 13:1–2). If the relationship between early Christians and the Roman Empire is in view, then undoubtedly the pivotal landmark of the first centuries of the common era is the edict of Mediolanum (Milan), issued by Constantine the Great, by which Christians were granted freedom of religion (313 CE). Before the time of Constantine, Christianity was viewed largely as a *superstitio* (Tacitus, *Annales* 15.44; Pliny the Younger, *Epistulae* 10.96; cf. Suetonius, *Nero* 16) and was treated by local magistrates as a *religio illicita* (cf. Tertullian, *Apologeticum* 21.1; Esler 1996, 211). During this time, Christians faced social discrimination, religious opposition, and even several waves of political persecution – mainly local, approved or tolerated by provincial rulers, but also centralized, ordered by a few emperors.

Given the hostile environment in which early Christianity took shape, the issue of Christians’ submission to the governing authorities could not be avoided. Moreover, Romans 13:1–7 could not be avoided. How radical is the exhortation of the apostle Paul? Are there limits or exceptions to the submission required in Romans 13? If rulers are appointed by God, how should Christians react when rulers turn against God? If rulers are instituted to reward

the good and punish the evil, what is to be done in the case of reversal – the good is being punished and the evil rewarded? Questions like these seem to appear repeatedly in early Christianity, setting the background for the perspectives offered by various ecclesiastics, such as Irenaeus, Tertullian, Origen, and others.

When compared with the numerous references to Romans 13:1–7 after the edict of 313 CE, those during the first two centuries of Christianity are scarce, yet they provide an important window into the struggles and dilemmas of the early Christians, as they attempt to “give to Caesar what is Caesar’s and to God what is God’s” (Matthew 22:21). In this study, only the *most significant readings* of Romans 13:1–7 will be analysed, from *Martyrdom of Polycarp* (c. 167 CE) to Origen’s *Contra Celsum* (c. 250 CE). A few readings during this period are either not considered or merely mentioned, for they apply Romans 13 to contexts other than Christians’ submission to authorities or do not offer sufficient data for a proper analysis: e.g., Irenaeus, *Adversus haereses* 4.36.6; Tertullian, *De anima* 33.6; Cyprian, *Ad Quirinum*, 3.5. Before the reception of Romans 13:1–7 in the selected writings is examined, however, a brief analysis of the text itself is requisite.

### Some notes on Romans 13:1–7

In his letter to the Christians of Rome, the apostle Paul addresses the topic of submission of citizens to the governing authorities (Rom. 13:1–7). All humans (lit. “every soul”), but Christians primarily, should be subjected to both central and local rulers, for “the authorities that exist have been established by God” (Rom. 13:1). Douglas J. Moo (1996, 791) sets this section in the context of “Paul’s teaching about the transitory nature of this world” (cf. Rom. 13:11–14): “His purpose may be to stifle the kind of extremism that would pervert his emphasis on the coming of a new era and on the ‘new creation’ into a rejection of every human and societal convention — including the government.” Although Christians have become “citizens of heaven” (cf. Phil. 3:20) and are placed under the absolute authority of King Jesus (McKnight & Modica 2013), they are still citizens of the nations of this world. Moreover, the established human institutions, including political and administrative structures, are a manifestation of God’s ongoing care for the world (Moo 1996, 791). Thus, to respect the political authorities means, for Paul, to submit to the ordering that God has instituted on earth (Rom. 13:1–2).

Aside from the literary context above, there could be also a historical context behind Romans 13:1–7. As Gordon D. Fee (Fee & Stuart 1993, 52–53) remarks, Paul’s letters are occasional, part of a dialogue out of which the modern readers only hear the answers, while the questions remain silent:

Most of our problems in interpreting the Epistles are due to this fact of their being occasional. We have the answers, but we do not always know what the questions or problems were, or even if there was a problem. It is much like listening to one end of a telephone conversation and trying to figure out who is on the other end and what that unseen party is saying. Yet in many cases it is especially important for us to try to hear “the other end” so that we know what our passage is an answer to.

For certain scholars (e.g., Dunn 1988, 766), the background of Romans 13:1–7 is the rebellious attitude of those Christians in Rome who “had been infected by their fellow citizens with a resistance to paying taxes to an increasingly rapacious Roman government”. Indeed, the Roman historian Tacitus (*Annales* 13.50–51) refers to the people’s refusal to pay “indirect” taxes to Emperor Nero during the 50s CE, a refusal that escalated into a revolt against taxation in 58 CE (cf. Suetonius, *Nero* 6.10.1). That this is the actual historical background of Romans 13 is uncertain, as there is only a secondary emphasis on taxation (Rom. 13:6–7) (see Moo 1996, 793).

It is noteworthy that Paul writes Romans 13 under the rule of Nero (r. 54–68 CE). Yet the years 56–57 CE, the date of the composition of Romans that is agreed upon by the bulk of scholars (e.g., Jewett 2006, 21), were the early years of Nero’s reign. As Ben Witherington III

(2004, 305) notes, “Until 59, there was relative peace and calm, especially in Rome, and there was much hope that the emperor would continue along the positive track he was following. He had, after all, promised such at his accession” (cf. Seneca, *De Clementia* 1.2–4). Soon afterwards, Nero’s rule changes drastically and he becomes the infamous tyrant that is remembered today (e.g., Griffin 2013). Would Paul have written a similar exhortation as in Romans 13:1–7, if he would have written it sometime later, during the final years of Nero’s reign? The answer is both “Yes” and “No”.

By the time he writes Romans, Paul has lived as a Christian under three Caesars: Tiberius (r. 14–37 CE), Caligula (r. 37–41 CE) and Claudius (r. 41–54 CE). All three emperors were known for their tyrannical abuses and immoral excesses. Moreover, Paul himself suffered injustice from various rulers and administrators of the Roman provinces (e.g., Acts 16:16–40; 18:12–15; 2 Cor. 11:32–33). By now, he has seen enough instances of unjust and tyrannic rule. How are Christians to submit to such rulers and to their oppressive regimes? On the one hand, Paul’s language in Romans 13:1–7 is universal: “*all souls... the authorities that exist have been established by God*” (Rom. 13:1). Also, in the larger context of the letter, such submission to earthly rulers is an attestation to the transforming power the Gospel (Moo 1996, 744). Thus, this exhortation goes beyond the occasional character of the letter (cf. Jewett 2006, 786–787). On the other hand, scholars have noted that Paul has in view only positive aspects with regard to the governing authorities (Rom. 13:3–6): “For rulers hold no terror for those who do right... the one in authority is *God’s servant* for your good... They are *God’s servants*, agents of wrath to bring punishment on the wrongdoer... the authorities are *God’s servants*, who give their full time to governing.” There are no indications that Paul has also in view instances of tyranny, abuse or injustice. Rulers, therefore, are to be obeyed as long as they fulfil their rightful duties and remain “*God’s servants*”. When they become *God’s adversaries*, Christian resistance is a must. As Thomas R. Schreiner (1998, 687–88) concludes,

This text is misunderstood if it is taken out of context and used as an absolute word so that Christians uncritically comply with the state no matter what is being demanded. What we have here is a general exhortation that delineates what is usually the case: people should normally obey ruling authorities. The text is not intended as a full-blown treatise on the relationship of believers to the state. It is a general exhortation setting forth the typical obligations one has to civil authorities. Indeed, Paul envisions a situation in which the governing authority carries out its task by punishing evildoers and rewarding those who do what is good. I am not persuaded that one can account for this passage by appealing to Paul’s good relationship with civil authorities or the more genial part of Nero’s reign. Paul was keenly aware that the ruling authorities had put Jesus to death, and as a student of the OT and Jewish tradition he was well schooled in the evil that governments had inflicted on the people of God. It was simply not his intention to detail here the full relationship of believers to the government. Stein (1989, 334) says rightly, “Governments, even oppressive governments, by their very nature seek to prevent the evils of indiscriminate murder, riot, thievery, as well as general instability and chaos, and good acts do at times meet with its approval and praise.” Paul would not disagree with the call to obey God rather than rulers when they attempted to squelch the preaching of the gospel (Acts 5:29; cf. Mart. Pol. 10.1–2, where rulers are respected but Polycarp will not render worship to the genius of Caesar). Nor would he dispute the claim that the state can function as an evil beast (Rev. 13), since John’s teaching stems from Dan. 7, and Paul himself expects an evil ruler to arise (2 Thess. 2:1–12). The intention in Romans is to sketch in the normal and usual relationship between believers and ruling power (cf. Titus 3:1; 1 Pet. 2:13–17). Christians should submit to such authority and carry out its statutes, unless the state commands believers to do that which is contrary to the will of God.

For Schreiner, the emphasis seems to be on the active and positive: governing authorities, even those abusive and unjust, are to be obeyed in all they are doing right and whenever it is possible. During the first centuries of the Christian era, however, this proved to be a challenging matter, with various nuances and novel contexts. In the following sections, therefore, the most significant instances of the reception of Romans 13:1–7 will be traced throughout early Christian history, namely the period before the edict of 313 CE, by which all

Christians throughout the Roman Empire were granted freedom of religion and political protection.

### ***Martyrdom of Polycarp (c. 167 CE)***

Given the complicated relationship between Christians and the governing authorities of the Roman regions prior to the edict of Constantin the Great (313 CE), including the local and systematic waves of persecution, it is of little surprise that references to Romans 13:1–7 are scarce in the first two centuries. It is also of little surprise that (perhaps) the earliest direct reference to Paul’s exhortation still extant comes from the *Martyrdom of Polycarp* 9.3–10.2 (Holmes 2007, 301–302), which is a textual pattern of the Christian resistance to Caesar’s cult:

9:3 But when the magistrate persisted and said, “Swear the oath, and I will release you; revile Christ”, Polycarp replied, “For eighty-six years I have been his servant, and he has done me no wrong. How can I blaspheme my King who saved me?” 10:1 But as [the magistrate] continued to insist, saying: “Swear by the genius of Caesar”, [Polycarp] answered: “If you vainly suppose that I will swear by the genius of Caesar, as you request, and pretend not to know who I am, listen carefully: I am a Christian. Now, if you want to learn the doctrine of Christianity, name a day and give me a hearing.” 2 The proconsul said: “Persuade the people.” But Polycarp said: “You I might have considered worthy of a reply, for we have been taught to pay proper respect to rulers and authorities appointed by God [Rom. 13:1–7], as long as it does us no harm; but as for these, I do not think they are worthy that I should have to defend myself before them”.

Eusebius of Caesarea (*Historia ecclesiastica* 4.14.10–4.15.1) erroneously places Polycarp’s martyrdom in the reign of Marcus Aurelius (r. 161–180), while modern scholars (e.g., Barnes 1969, 131; Parvis 2007, 127–132) prefer an earlier date, during the reign of Antoninus Pius (r. 138–161). A more precise framing is unnecessary for the purpose of this study, as Christians were persecuted *for being Christians* during both reigns – yet not by the emperors themselves (Keresztes 1968; 1971). The persecutions were local, rather than central.

Under the threat of death penalty, Polycarp, then Bishop of Smyrna, is asked by the local magistrate to “swear by the genius [or the fortune] of Caesar”, which is a form of declaring the deity of the emperor. In the words of Origen (*Contra Celsum* 8.65), “We will never swear by ‘the fortune of the king’, nor by ought else that is considered equivalent to God.... If, on the other hand (as is thought by others, who say that to swear by the fortune of the king of the Romans is to swear by his demon), what is called the fortune of the king is in the power of demons, then in that case we must die sooner than swear by [it].” Indeed, Polycarp prefers to be martyred rather than blaspheme Jesus and proclaim Caesar as Lord. It is in this context that he cites broadly Romans 13:1–2. For the sake of brevity, a single aspect shall be emphasised at this point. Polycarp’s citation is followed by a conditional phrase: “as long as...”. The partial submission to Caesar and local magistrates is conditioned by the absolute submission to God and to “King” Jesus. When the two are in conflict, “I am a Christian” means to choose the latter, regardless of the consequences.

### ***Irenaeus of Lugdunum (c. 175–180 CE)***

Interestingly, the devil almost disappears as a subject of interest for post-apostolic Christian authors (c. 90–170 CE). For several decades, references to the devil have been absent, secondary or implicit (Burke 2016; cf. Farrar 2018). In *Adversus haereses* (c. 175–180 CE), Irenaeus shows a renewed interest for the topic, addressing the influence of Satan over the powers and governments of the world (5.24.1–2):

<sup>1</sup>As therefore the devil lied at the beginning, so did he also in the end, when he said, “All these are delivered unto me, and to whomsoever I will I give them” [Matthew 4:9]. For it is not he who has appointed the kingdoms of this world, but God; for “the heart of the king is in the hand of God” [Proverbs 21:1]. And the Word also says by Solomon, “By me kings do reign, and princes administer justice. By me chiefs are raised up, and by me kings rule the earth” [Proverbs 8:15]. Paul the apostle also says upon this same subject: “Be ye subject to all the higher powers; for there is no power but of God:

now those which are have been ordained of God” [Romans 13:1]. And again, in reference to them he says, “For he bears not the sword in vain; for he is the minister of God, the avenger for wrath to him who does evil” [Romans 13:4]. Now, that he spoke these words, not in regard to angelical powers, nor of invisible rulers — as some venture to expound the passage — but of those of actual human authorities, [he shows when] he says, “For this cause pay ye tribute also: for they are God’s ministers, doing service for this very thing” [Romans 13:6]. This also the Lord confirmed, when He did not do what He was tempted to by the devil; but He gave directions that tribute should be paid to the tax-gatherers for Himself and Peter [Matthew 17:27]; because “they are the ministers of God, serving for this very thing” [Romans 13:6].<sup>2</sup>For since man, by departing from God, reached such a pitch of fury as even to look upon his brother as his enemy, and engaged without fear in every kind of restless conduct, and murder, and avarice; God imposed upon mankind the fear of man, as they did not acknowledge the fear of God, in order that, being subjected to the authority of men, and kept under restraint by their laws, they might attain to some degree of justice, and exercise mutual forbearance through dread of the sword suspended full in their view, as the apostle says: “For he bears not the sword in vain; for he is the minister of God, the avenger for wrath upon him who does evil” [Romans 13:4]. And for this reason too, *magistrates themselves, having laws as a clothing of righteousness whenever they act in a just and legitimate manner, shall not be called in question for their conduct, nor be liable to punishment. But whatsoever they do to the subversion of justice, iniquitously, and impiously, and illegally, and tyrannically, in these things shall they also perish; for the just judgment of God comes equally upon all, and in no case is defective. Earthly rule, therefore, has been appointed by God for the benefit of nations, and not by the devil, who is never at rest at all, nay, who does not love to see even nations conducting themselves after a quiet manner*, so that under the fear of human rule, men may not eat each other up like fishes; but that, by means of the establishment of laws, they may keep down an excess of wickedness among the nations. And considered from this point of view, those who exact tribute from us are “God’s ministers, serving for this very purpose” [Romans 13:6].

In 177 CE, Christians in Roman Gaul faced a severe persecution (e.g., Eusebius, *Historia ecclesiastica* 5.1.1–63). Irenaeus himself escaped it, as he was in Rome at the time, carrying a letter to Bishop Eleutherus, on behalf of the suffering brethren. Returning to Lugdunum after the persecution relented, he takes up the place of the local bishop, who had been among those martyred. Could this tragic event set the background for *Adversus haereses* 5.24? Unfortunately, there is no certain answer. Nevertheless, there is certainty that, for Irenaeus, the authorities who persecuted Christians in Gaul were doing the work of the devil.

It is God who ordains governing authorities, yet it is the devil who perverts their act of governance. On the one hand, God has given rulers “for the correction and the benefit of their subjects, and for the preservation of justice; others, for the purposes of fear and punishment and rebuke; others, as [the subjects] deserve it, are for deception, disgrace, and pride” (*Adversus haereses* 5.24.3). Irenaeus expresses here an idea similar to Joseph de Maistre (1811): “Toute nation a le gouvernement qu’elle mérite.” Maistre, however, has democracy in view, while for Irenaeus it is God who appoints all rulers.

On the other hand, in the case of tyrants and persecutors, it is the devil who “deceives and leads astray the mind”, in order to make them usurp the status, authority, and adoration that rightfully belongs to God (*Adversus haereses* 5.24.3c–4):

<sup>3</sup>The devil, however, as he is the apostate angel, can only go to this length, as he did at the beginning, [namely] to deceive and lead astray the mind of man into disobeying the commandments of God, and gradually to darken the hearts of those who would endeavour to serve him, to the forgetting of the true God, but to the adoration of himself as God. <sup>4</sup>Just as if any one, being an apostate, and seizing in a hostile manner another man’s territory, should harass the inhabitants of it, in order that he might claim for himself the glory of a king among those ignorant of his apostasy and robbery [...] And as his apostasy was exposed by man, and man became the [means of] searching out his thoughts, he has set himself to this with greater and greater determination, in opposition to man, envying his life, and wishing to involve him in his own apostate power.

Therefore, Christians should be subjected to the governing authorities only as long as the authorities themselves are subjected to God and “act in a just and legitimate manner”, “for the benefit of nations”. However, whenever the rulers of the world assume the “apostate power” of the devil and act “to the subversion of justice, iniquitously, and impiously, and

illegally, and tyrannically”, Christians are to resist their demands – but peacefully and sacrificially, awaiting “for the just judgment of God” (cf. Romans 13:1–7 in *Adversus haereses* 4.36.6). For, in resisting these tyrannic rulers, they are actually resisting the devil.

### Theophilus of Antioch (c. 180–185 CE)

Sometime between 180 and 185 CE, Theophilus of Alexandria wrote a series of tractates to his “very good friend Autolytus”. The tractates discuss the Christian “religion” of Theophilus and aim “to make the truth plain” to his partner in dialogue (*Ad Autolytum* 2.1). In spite of their previous conversations, Autolytus continued to hold the “opinion that the word of truth is an idle tale”, hence the need for the third tractate (*Ad Autolytum* 3.1). In this tractate, Theophilus briefly mentions the topic of submission to governing authorities (3.14):

And that we should be kindly disposed, not only towards those of our own stock, as some suppose, Isaiah the prophet said: “Say to those that hate you, and that cast you out, you are our brethren, that the name of the Lord may be glorified, and be apparent in their joy” [Isaiah 66:5]. And the Gospel says: “Love your enemies, and pray for them that despitefully use you. For if you love them who love you, what reward will you have? This do also the robbers and the publicans” [Matthew 5:44, 46]. And those that do good it teaches not to boast, lest they become men-pleasers. For it says: “Let not your left hand know what your right hand does” [Matthew 6:3]. Moreover, concerning subjection to authorities and powers, and prayer for them, the divine word gives us instructions, in order that “we may lead a quiet and peaceable life” [1 Timothy 2:2]. And it teaches us to render all things to all: “honour to whom honour, fear to whom fear, tribute to whom tribute; to owe no man anything, but to love all” [Romans 13:7–8].

It is noteworthy that the topic of submission belongs to a section called “On Loving Our Enemies”. By quoting Matthew 5:44, 46, Theophilus implies that the enemies are to be loved and prayed for. Similarly, in the following paragraph, Christians are to be subject to “authorities and powers”, but also are to “[pray] for them”. It could therefore be inferred that, for Theophilus, the governing authorities are among the enemies. After all, the three tractates are to be dated around the end of Marcus Aurelius’ reign, when local persecutions against Christians seem to have increased. Also, it is not incidental that in the immediately following lines (*Ad Autolytum* 3.15), he defends Christians against public charges of atheism, cannibalism, incest, and civic noncompliance:

But far be it from Christians to conceive any such deeds [cannibalism, incest, etc.]; for with them temperance dwells, self-restraint is practiced, monogamy is observed, chastity is guarded, iniquity exterminated, sin extirpated, righteousness exercised, law administered, worship performed, God acknowledged: truth governs, grace guards, peace screens them; the holy word guides, wisdom teaches, life directs, God reigns.

Thus, even when the rulers are the enemy, they are to be obeyed (“subjection to authorities and powers”). That is submission in public. But they are also to be prayed for (“prayer for them”). That is submission in private. Apostle Paul makes a similar point in Romans 13:5 (“Therefore, it is necessary to submit to the authorities, not only because of possible punishment [public] but also as a matter of conscience [private]”).

It is difficult to ascertain how radical or temperate is Theophilus in his reading of Romans 13:7–8. Several clues argue for the latter. As in Paul, there is only a positive context to this citation: “a quiet and peaceable life”. What about those cases of persecution and martyrdom? Theophilus follows in the line of Paul and keeps silent about the negative. Even if the rules are the enemy, there is still common ground to be searched for, with the hope of living a peaceful life. Secondly, the submission to the authorities is seen as obedience to the “instruction” of the “divine word”. In fact, there are no fewer than five explicit biblical quotations in *Ad Autolytum* 3.14, comprising 65% of all the words of the section. It is not submission for the sake of the rulers, but for the sake of the “divine word”. In this case, the “divine word” is the higher authority. Thirdly, to love the enemy does not mean to “become men-pleasers”: “And those that do good it teaches not to boast, lest they become men-

pleasers”. To obey is one thing; to please is another. It is precisely this warning against “men-pleasers” that introduces the paragraph “concerning subjection to authorities and powers”. Finally, in his defence of the innocence of Christians (*Ad Autolyicum* 3.15), Theophilus states clearly that it is God who is to be acknowledged, for it is God who reigns.

### **Clement of Alexandria (c. 200 CE)**

*Paedagogus* (c. 200 CE) is the second writing of Clement’s major trilogy, dealing mainly with various aspects of the Christian way of life: eating, drinking, sleeping, material possessions, life together, vocabulary, etc. In *Paedagogus* 1.9, Clement discusses God’s discipline and its beneficial effects: “the system He pursues to inspire fear is the source of salvation”. It is in this context that he makes the following comparison:

For if rulers are not a terror to a good work, how shall God, who is by nature good, be a terror to him who sins not? “If you do evil, be afraid,” says the apostle [Rom. 13:3–4]. Wherefore the apostle himself also in every case uses stringent language to the churches, after the Lord’s example...

Clement has witnessed the outbreak of persecution against the Christians of Alexandria during the reign of Septimius Severus (r. 193–211 CE), he himself fleeing from Alexandria in 202 CE (Osborn 2005; Ashwin-Siejkowski 2008). Even so, he states, “rulers are not a terror to a good work”. Why is this? Clement repeatedly refers to “persecution for righteousness’ sake”, as a way of “perfection”, which is a key theme in his writings (Ashwin-Siejkowski 2008):

“Blessed are they”, says He [Jesus Christ], “who are persecuted for righteousness’ sake, for they shall be called the sons of God”; or, as some of those who transpose the Gospels say, “Blessed are they who are persecuted by righteousness, *for they shall be perfect*”. And, “Blessed are they who are persecuted for my sake; for they shall have a place where they shall not be persecuted”. And, “Blessed are ye when men shall hate you, when they shall separate you, when they shall cast out your name as evil, for the Son of man’s sake”; if we do not detest our persecutors, and undergo punishments at their hands, not hating them under the idea that we have been put to trial more tardily than we looked for; but knowing this also, that every instance of trial is an occasion for testifying. (*Stromata* 4.6)

In this larger context of Christian “perfection”, the governing authorities are God’s instruments to either punish or to perfect. In the case of good works, even the unjust persecution of Christians becomes a mean of perfection. While in the case of evil works, the punishment of both God and earthly rulers is deserved. Seen in this context, Romans 13:3–4 seems to be used by Clement to warn fellow Christians in a manner similar to 1 Peter 4:12–16:

<sup>12</sup>Dear friends, do not be surprised at the fiery ordeal that has come on you to test you, as though something strange were happening to you. <sup>13</sup>But rejoice inasmuch as you participate in the sufferings of Christ, so that you may be overjoyed when his glory is revealed. <sup>14</sup>If you are insulted because of the name of Christ, you are blessed, for the Spirit of glory and of God rests on you. <sup>15</sup>If you suffer, it should not be as a murderer or thief or any other kind of criminal, or even as a meddler. <sup>16</sup>However, if you suffer as a Christian, do not be ashamed, but praise God that you bear that name.

For Clement, persecutions against Christians are to be expected from the governing authorities of the Roman provinces (e.g., *Stromata* 4.6). However, these rulers should not be given reasons to act justly. If the works of Christians are good and God is feared at all times, earthly rulers are not to be feared, even in times of persecution.

### **Tertullian of Carthage (c. 203–206 CE)**

Among the most cited sayings of Tertullian of Carthage is the one regarding Christian persecution, written at the end of his *Apologeticum* (50.13): “The oftener we are mown down by you, the more in number we grow; *the blood of Christians is seed*” (cf. 21.25: “Nero’s cruel sword sowed the seed of Christian blood at Rome”). In modern times, however, the quotation is usually rendered as “The blood of the martyrs is the seed of the Church”, under the influence of a

long tradition of evolved citations (see Dodgson 1842, 105). Indeed, several treatises authored by Tertullian were written during persecution, such as *Scorpiace* (c. 203–204 CE; so Barnes 1969, 131): “This among Christians is a [season of] persecution” (1.5). Given this dominant theme, addressing the topic of Christians’ submission to persecuting authorities is to be expected. Indeed, in *Scorpiace* 14.1–3, Tertullian reads Romans 13 as follows:

1No doubt the apostle admonishes the Romans to be subject to all power, because there is no power but of God, and because [the ruler] does not carry the sword without reason, and is the servant of God, nay also, says he, a revenger to execute wrath upon him that does evil [Romans 13:1, 4]. For he had also previously spoken thus: “For rulers are not a terror to a good work, but to an evil. Will you then not be afraid of the power? Do that which is good, and you shall have praise of it. Therefore, he is a minister of God to you for good. But if you do that which is evil, be afraid” [Romans 13:3–4]. 2Thus, he bids you be subject to the powers, not on an opportunity occurring for his avoiding martyrdom, but when he is making an appeal in behalf of a good life, under the view also of their being as it were assistants bestowed upon righteousness, as it were handmaids of the divine court of justice, which even here pronounces sentence beforehand upon the guilty. Then he goes on also to show how he wishes you to be subject to the powers, bidding you pay tribute to whom tribute is due, custom to whom custom [Romans 13:6], that is, the things which are Caesar’s to Caesar, and the things which are God’s to God [Matthew 22:21]; but man is the property of God alone. 3Peter, no doubt, had likewise said that the king indeed must be honoured [1 Peter 2:13], yet so that the king be honoured only when he keeps to his own sphere, when he is far from assuming divine honours; because both father and mother will be loved along with God, not put on an equality with Him. Besides, one will not be permitted to love even life more than God.

Explicitly, Tertullian both affirms and limits the power of the governing authorities. On the one hand, God is the ultimate repository of all authority (“power”), and it is He who bestows it to *all* earthly rulers (14.1). On the other hand, “man is the property of God alone” (14.2), so the rulers must “keep to [their] own sphere” (14.3). God must be placed above all humans and must be loved even more than life (14.3). For Tertullian, this means to obey God rather than the rulers, even when this decision leads to martyrdom: “be subject to the powers, not on an opportunity occurring for his avoiding martyrdom” (14.2). Rulers are to be obeyed only when they comply to the will of God and lead accordingly, as His servants: “but when [ruler] is making an appeal in behalf of a good life, under the view also of their being as it were assistants bestowed upon righteousness, as it were handmaids of the divine court of justice...”

When rulers, on the contrary, demand what is God’s alone, Paul’s “admonishment” to the Romans no longer applies to their situation: “[the apostle] bids you be subject to the powers... but...; he wishes you to be subject to the powers... but...” A similar point is made in *De Idololatria* 15 (c. 203–206 CE; so Waszink & van Winden 1987, 13), yet with an important emphasis on the negative, i.e., any obedience to the ruler who transgresses “the limits” and claims divine honors for himself is idolatry (15.3, 8b–9):

<sup>3</sup>“Render to Caesar what are Caesar’s, and what are God’s to God” [Matthew 22:21], that is, the image of Caesar, which is on the coin, to Caesar, and the image of God, which is on man, to God; so as to render to Caesar indeed money, to God yourself. Otherwise, what will be God’s, if all things are Caesar’s? [...] <sup>8b</sup>Therefore, as to what relates to the honours due to kings or emperors, we have a prescript sufficient, that it behoves us to be in all obedience, according to the apostle’s precept, “subject to magistrates, and princes, and powers” [Romans 13:1; Titus 3:1], *but within the limits of discipline*, so long as we keep ourselves separate from idolatry. <sup>9</sup>For it is for this reason, too, that that example of the three brethren has forerun us, who, in other respects obedient toward king Nebuchodonosor rejected with all constancy the honour to his image [Daniel 3:1–30], proving that whatever is extolled beyond the measure of human honour, unto the resemblance of divine sublimity, is idolatry.

The same literary pattern is used here, as in *Scorpiace*: “be in all obedience... subject to magistrates, and princes, and powers, *but* within the limits of discipline (*intra limites disciplinae*)”. When the limits of discipline or “the rules of Christian life” (Waszink & van Winden 1987, 245) are disregarded by the rulers, Christians’ full resistance is imperative, following the example of Daniel’s three friends, Shadrach, Meshach, and Abednego.

Tertullian is the first author to use the word “limits” when he applies the “precepts” of Romans 13:1–7 to his time. There are limits to what earthly rules could have or demand. There are limits even to what Caesar could have or demand. For no one can have what only God has, no one can demand what only God demands: “what will be God’s, if all things are Caesar’s” (*De Idololatria* 15.3).

### Origen of Alexandria (c. 250 CE)

While in Irenaeus’ *Adversus haereses* 5.24 the *passive* resistance of Christians against the demonic tyrants is implicit, for Origen this becomes an important point. In *Contra Celsum* (c. 250 CE), probably written while he resided in Caesarea, he states (8.65):

Moreover, we are to despise ingratiating ourselves with kings or any other men, not only if their favour is to be won by murders, licentiousness, or deeds of cruelty, but even if it involves impiety towards God, or any servile expressions of flattery and obsequiousness, which things are unworthy of brave and high-principled men, who aim at joining with their other virtues that highest of virtues, patience and fortitude. But while we do nothing which is contrary to the law and word of God, we are not so mad as to stir up against us the wrath of kings and princes, which will bring upon us sufferings and tortures, or even death. For we read: “Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resists the power, resists the ordinance of God” [Romans 13:1–2] These words we have in our exposition of the Epistle to the Romans, to the best of our ability, explained at length, and with various applications; but for the present we have taken them in their more obvious and generally received acceptance, to meet the saying of Celsus, that “it is not without the power of demons that kings have been raised to their regal dignity”. Here much might be said on the constitution of kings and rulers, for the subject is a wide one, embracing such rulers as reign cruelly and tyrannically, and such as make the kingly office the means of indulging in luxury and sinful pleasures. We shall therefore, for the present, pass over the full consideration of this subject. We will, however, never swear by “the fortune of the king”, nor by all else that is considered equivalent to God...

For Celsus, a Greek philosopher of the second century CE and a major opponent of the Christian religion, the demons are at the origin of a tyrant’s raise to power: “it is not without the power of demons that kings have been raised to their regal dignity”. This explains satisfactorily the deviant and abusive behavior of certain rulers. For Irenaeus and Origen, however, following apostle Paul, “there is no power but of God: the powers that be are ordained of God” (Romans 13:1–2). In other words, even the tyrants and persecutors of Christians are appointed by God. While Irenaeus explains this paradox by arguing for the ruler’s subsequent deception of the devil, Origen leaves Celsus’ point mainly unanswered. He simply sets his quotation against Romans 13:1–2.

Origen focuses on explaining the apparently contradictory response that Christians should give: a tyrant should be obeyed, since he is ordained by God; at the same time, a tyrant should be resisted, since he “[reigns] cruelly and tyrannically”. But where is the line? Origen suggests two practical responses. First, Christians should honor God by *resisting the rulers* who act as if they were gods or demand honor “equivalent to God, as in the case of swearing by “the fortune of the king” (cf. *Martyrdom of Polycarp* 9.3–10.2). Second, Christians should honor earthly rulers by *resisting them passively and peacefully*. This is an act of obedience to God’s command in Romans 13:1–7, but also a sign of practical wisdom. Rebellions against rulers usually produce chaos, suffering, and death: “But while we do nothing which is contrary to the law and word of God, we are not so mad as to stir up against us the wrath of kings and princes, which will bring upon us sufferings and tortures, or even death.” As mentioned above, *Contra Celsum* was probably written while Origen resided in Caesarea. Could it be that the tragic memories of the Jewish revolts against the Roman Empire (66–73, 132–136 CE) were still vivid in his area?

### Synthesis

Those who are subject to the governing authorities are subject to God. Those who rebel against the governing authorities, rebel against God (Rom. 13:1–2). These two precepts are fundamental

to Paul's argument in Romans 13:1–7. Yet Paul, as shown above, has in view only the positive side of governance, in which rulers are "servants of God" (Rom. 13:4, 6), who reward the good and punish the evil. The apostle seems to envisage here the ideal ruler. As for the opposite situation, much closer to the political realities of the day, in which rulers claim the honour due to a god, disregard good and commit evil themselves, Paul leaves the issue unaddressed. It falls to the post-apostolic ecclesiastics to offer answers to and guidelines for their fellow Christians who face such a harsh political reality, while enduring tyranny and persecution.

#### *Limits to the submission*

It is noteworthy that all the major interpretations of Romans 13:1–7, before the edict of 313 CE, are composed in the context of opposition and, especially, persecution against Christians. In times like these, questions regarding the limits of submission to unjust authorities are urgent. None of the ecclesiastics above note explicitly that Paul's exhortation to submit to the authorities has limits, for the apostle only addresses an ideal case. Nevertheless, they all read Romans 13:1–7 with this mindset. An approach closer to Paul's is that of Theophilus of Antioch. Like Paul, Theophilus does not set clear limits between submission and resistance to the rulers, yet he circumscribes the obedience within the positive framework of "a quiet and peaceable life". Even when the rulers represent the enemy, Christians should seek to live as law-abiding citizens, yet all the while giving final authority to the rule of God.

More clearly defined lines are drawn by Polycarp, Irenaeus, and Tertullian. (1) For Polycarp, "paying proper respect to rulers and authorities appointed by God" is conditioned: "as long as it does us no harm". By "harm", he means primarily harm to the integrity of the Christian faith, as he was ordered to "revile Christ" and to "blaspheme [his] King". Thus, for the bishop of Smyrna, Romans 13:1–7 must be followed by the conditional "as long as". Freedom of conscience and religion are among the limits defining submission to rulers. (2) When interpreting Romans 13:4, Irenaeus clearly defines the line between submission and resistance with the use of the adversative "but". Christians are to resist any ruler that acts not as "God's servant" and "for the benefit of nations", *but* acts in the service of the devil. (3) Tertullian is the first author to use the word "limits" when applying Romans 13:1–7: "subject to magistrates, and princes, and powers, *but within the limits* of discipline". By "discipline" he means "the rules of Christian life".

#### *Limits to the limits*

At the same time, there are limits to the limits of submission to the rulers. (1) Polycarp answers respectfully to the request of his executioner: "You [i.e., the proconsul] I might have considered worthy of a reply, for we have been taught to pay proper respect to rulers and authorities appointed by God". If the requests of a ruler, be it tyrant and persecutor, are not harmful to the faith or conscience of Christians, he is to be obeyed. (2) For Clement, persecution is a path to "perfection". Thus, even when persecuted, Christians are to behave in a manner worthy of the perfection they are called to seek: and "every instance of trial is an occasion for testifying". Christians who suffer because of evil doings are not persecuted; they are punished. Persecution is only "for the righteousness' sake". In sum, the cause of persecution should be righteousness; the result of persecution should be perfection. (3) Origen argues for the need of a *peaceful resistance*. On the one hand, Christians may not submit to a ruler, if this is "contrary to the law and word of God". On the other hand, any resistance that is not peaceful and respectful to the ruler, is an act of madness, not faithfulness: "we are not so mad as to stir up against us the wrath of kings and princes, which will bring upon us sufferings and tortures, or even death".

## Conclusions

Romans 13:1–7 is among the best-known passages in the New Testament that addresses the submission of early Christians to the ruling powers of the day. Christians are to submit to the governing authorities, for they are ordained by God. Likewise, rebellion against the governing authorities means rebellion against God (Rom. 13:1–2). Yet Paul has in view only the ideal iteration of governance, in which rulers are “servants of God” (Rom. 13:4, 6) and they reward the good and punish the evil. In times of tyranny and persecution, however, later ecclesiastics had to look back at Romans 13:1–7 from a different perspective: should Christians submit to unjust and despotic rulers? The answer that takes shape during the first two centuries of the Christian era (c. 167–250 CE) is a conditioned “Yes”. The approach of these writers is mainly positive and constructive. Christians are to respect tyrannical rulers at all time, even when they must be resisted. Christians are to obey tyrannical rulers whenever they act justly and in everything that is not contrary to their faith. Christians are to pray for tyrannical rulers sincerely and without ceasing.

There are, however, limits to Christians’ submission to governing authorities. They are to resist any demand that goes against “the rules of Christian life”: a ruler that claims the honor that belongs only to God, acts against the will and word of God, or acts under the influence of the devil, is to be resisted. Yet there are also limitations placed on their resistance, as there are limitations placed on their obedience. Christians are to resist tyrannical rulers in a manner that is brave, yet respectful, righteous, and peaceful.

## References

- Ashwin-Siejkowski, Piotr. 2008. *Clement of Alexandria: A Project of Christian Perfection* (T&T Clark Theology). London and New York: T&T Clark.
- Barnes, Timothy D. 1969. “Tertullian’s *Scorpiace*.” *Journal of Theological Studies* 20:105–132.
- Burke, Jonathan. 2016. “Satan and Demons in the Apostolic Fathers: A Minority Report.” *Svensk Exegetisk Årsbok* 81:127–168.
- Dunn, James D.G. 1988. *Romans 9–16* (Word Biblical Commentary 38B). Dallas, TX: Word Books.
- Farrar, Thomas J. 2018. “Satanology and Demonology in the Apostolic Fathers: A Response to Jonathan Burke.” *Svensk Exegetisk Årsbok* 83:156–191.
- Fee, Gordon D., and Douglas Stuart. 1993. *How to Read the Bible for All Its Worth: A Guide to Understanding the Bible* (2<sup>nd</sup> edition). Grand Rapids, MI: Zondervan.
- Griffin, Miriam T. 2013. *Nero: The End of a Dynasty* (Roman Imperial Biographies). London and New York: Routledge.
- Holmes, Michael W. 2007. *The Apostolic Fathers: Greek Text and English Translation* (3<sup>rd</sup> edition). Grand Rapids, MI: Baker Academic.
- Keresztes, Paul. 1968. “Marcus Aurelius a Persecutor?” *Harvard Theological Review* 61/3:321–341. doi:10.1017/S0017816000029230.
- Keresztes, Paul. 1971. “The Emperor Antoninus Pius and the Christians.” *Journal of Ecclesiastical History* 22/1:1–18. doi:10.1017/S002204690005747X.
- McKnight, Scot, and Joseph B. Modica. 2013. *Jesus is Lord, Caesar is Not: Evaluating Empire in New Testament Studies*. Downers Grove, IL: IVP Academic.
- Moo, Douglas J. 1996. *The Epistle to the Romans* (New International Commentary on the New Testament). Grand Rapids, MI: Eerdmans.
- Osborn, Eric. 2005. *Clement of Alexandria*. Cambridge and New York: Cambridge University Press.
- Parvis, Sara. 2007. “The *Martyrdom of Polycarp*.” In *The Writings of the Apostolic Fathers* (T&T Clark Biblical Studies), edited by Paul Foster, 126–146. London and New York: T&T Clark.
- Schaff, Philip (editor). 2014. *The Complete Ante-Nicene & Nicene and Post-Nicene Church Fathers Collection*. London: Catholic Way Publishing.
- Schreiner, Thomas R. 1998. *Romans* (Baker Exegetical Commentary on the New Testament). Grand Rapids, MI: Baker Academic.
- Waszink, J.H. and J.C.M. Van Winden. 1987. *Tertullianus De Idololatria: Critical Text, Translation and Commentary* (Vigiliae Christianae, Supplements 1). Leiden and New York: Brill.
- Witherington, Ben, III (with Darlene Hyatt). 2004. *Paul’s Letter to the Romans: A Socio-Rhetorical Commentary*. Grand Rapids, MI: Eerdmans.

# **Brief Considerations regarding the Main Union Legislative and Transposition Instruments, adopted with the View to Supporting Ukraine in the Context of the Russian Invasion**

**Elise-Nicoleta Vâlcu**

*Associate Professor, PhD, Faculty of Economic Sciences and Law, University of Pitesti, Romania  
elisevalcu@yahoo.com*

**ABSTRACT:** On February 24, 2022, the European Council condemned, in the strongest terms, Russia's invasion of Ukraine, considering it "a serious violation of the territorial integrity, of the sovereignty" of an independent state, also representing a serious violation of international law and the principles of the United Nations Charter. In the same context, the European Council reaffirmed the need to adopt protective measures for refugees from Ukraine and to support the Ukrainian economy. Therefore, the member states of the European Union have determined that it is necessary for the Union legislator to adopt an appropriate regulatory framework, to which this material refers and which is to be presented, prioritizing two fundamental directions: (a) providing support both to Ukrainian citizens as well as to other refugees from Ukraine, located in the territory of any state of the European Union; (b) granting concessions to the Ukrainian authorities by adopting trade liberalization measures for all products, adopting policies on accelerating the elimination of customs duties for trade between the Union and Ukraine.

**KEYWORDS:** preferential treatment, trade liberalization, temporary protection, refugee, rights

## **Introduction**

The invasion of Ukraine by Russia on February 24, 2022, had a profound negative impact both on the daily life of the inhabitants of Ukraine, regardless of whether they are citizens of this country or foreigners under conditions of legal stay, and on Ukraine's ability to trade with the Union European both because of the destruction of the road and railway infrastructure, because of the closure of access to the Black Sea as a result of the attack on the port cities and because of the destruction of the production capacity.

In what follows, we will identify the main legal instruments of the Union as well as the rules of transposition regarding the two previously specified directions.

Regarding the protection of refugees from Ukraine, the member states have activated the *temporary protection* provided for in Decision (EU) 2022/382, establishing the existence of a massive influx of displaced persons from Ukraine to allow temporary refuge in the European Union as well as the sharing of responsibility between the state's members of the management of the situation of refugees from Ukraine.

In agreement with the EU legislative approach, the Government of Romania adopted Emergency Government Ordinance no. 15/2022 regarding the provision of humanitarian support and assistance by the Romanian state to foreign citizens or stateless persons in special situations, originating from the conflict zone of Ukraine, completed and amended by the Emergency Ordinance no. 20/2022 regarding the amendment and completion of some normative acts as well as for the establishment of some support measures and humanitarian assistance.

With reference to the commercial relations between the European Union and Ukraine, they are based on the "Association Agreement between the European Union and the European Atomic Energy Community and their member states, on the one hand, and Ukraine, on the other" (OJ L 161, 29.05.2014, p. 3; In accordance with Council Decision 2014/668/EU of 23 June 2014 on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and the European Energy Community Atomic Energy and their Member States, on the one hand, and Ukraine, on the other, Title IV

of the Association Agreement, which deals with trade and trade-related matters, applied provisionally from January 1, 2016, and entered into force on September 1, 2017, following ratification by all member states).

Through this Association Agreement, the European Union and Ukraine express their desire to strengthen and at the same time expand relations in order to achieve a gradual economic integration of Ukraine, in this sense, Article 25 of the Agreement provides for the progressive establishment of a free trade zone between the parties, in accordance with Article XXIV of the General Agreement on Tariffs and Trade 1994, hereinafter referred to as “GATT 1994”.

Thus, in the economic field, in order to support Ukraine, the European Union adopted Regulation (EU) 2022/870 of the European Parliament and of the Council of May 30, 2022, regarding temporary trade liberalization measures in addition to the commercial concessions applicable to Ukrainian products under the Agreement of association between the European Union and the European Atomic Energy Community and their member states, on the one hand, and Ukraine, on the other (OJ L 152, 03.06.2022, entered into force on 04.06.2022 with applicability until 05.06.2023, see in this regard, article 8 paragraphs (1) and (2)).

### **Union legislative and transposing provisions on "temporary protection" applicable to refugees from Ukraine**

On March 4, 2022, the Council adopted Implementing Decision (EU) 2022/382 establishing the existence of a massive influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing a temporary protection. (Council Directive 2001/55/EC of July 20, 2001, regarding the minimum standards for granting temporary protection, in the event of a massive influx of displaced persons, and measures to promote a balance between the efforts of the Member States to receive these persons and bear the consequences of this reception - OJ L 212, 07.08.2001, p.12)

*What is “temporary protection” and what rights does it give to the beneficiaries?*

In the sense of Article 2 of Directive 2001/55/EC, “temporary protection” means a procedure of an exceptional nature intended to ensure, in the event of a massive and imminent influx of displaced persons from third countries who cannot return to their country of origin, immediate and temporary protection, especially if there is also a risk that the asylum system will not be able to handle this influx”.

In the sense of GEO no. 15/2022, norm of transposition of the directive mentioned above, the *beneficiaries* of the provisions of this GEO are considered “foreign citizens and stateless persons in special situations who come from the area of the armed conflict in Ukraine and enter Romania and who do not request a form of protection according to Law no. 122/2006 on asylum in Romania” (see in this regard article 1 paragraph (1) of GEO no. 15/2022) who are in temporary accommodation camps and humanitarian assistance.

Decision (EU) 2022/382 constitutes the legislative context for the application of the provisions of Directive 2001/55/EC, with application starting on or after February 24, 2022, to the following categories:

- (a) Ukrainian citizens residing in Ukraine before February 24, 2022;
- (b) stateless persons and nationals of third countries, other than Ukraine, who benefited from international protection or equivalent national protection (who can prove that they had a legal residence in Ukraine before February 24, 2022, having, as the case may be, a permanent stay, temporary, or studying, on the basis of a valid permit issued in accordance with Ukrainian law and who cannot return under safe and stable conditions to their country or region of origin) in Ukraine before February 24, 2022;
- (c) family members of the categories mentioned above.

For the purposes of this decision, in conjunction with the provisions of Article 15 paragraph (1) of Directive 2002/55/EC, the following terms are defined as follows:

(i) “supporter of family reunification” means the refugee from Ukraine who is granted temporary protection in a Member State of the European Union and who wishes to be joined by one or more members of his family.

(ii) family member means:

a) the spouse, the supporter of family reunification, but also the partner with whom they are in a stable relationship, when the legislation or practice in force of the Member State in question applies to unmarried couples a treatment comparable to that applied to married couples, under its national legislation on foreigners;

b) unmarried minor children of a person mentioned above or of his/her spouse, regardless of whether they are legitimate, born out of wedlock or adopted;

c) other close relatives who were living together as part of the family when the events that led to the massive influx of displaced persons took place.

We must specify, that pursuant to Article 15 paragraph (6) of Directive 2001/55/EC, the members of the reunited family are granted residence permits, based on temporary protection.

*What is the period for which refugees from Ukraine are recognized the right to temporary protection on the territory of the European Union?* The duration of temporary protection is one year. If the conflict in Ukraine does not end within this period, the protection is automatically extended, with periods of six months, for a maximum duration of one year. Although the union text does not provide, we are of the opinion that this maximum term of one year can be extended under the conditions of maintaining the state of war, after a prior decision of the Council on the proposal of the European Commission.

On the basis of temporary protection, the persons concerned can benefit from rights (Militaru 2019, 119) harmonized throughout the territory of the European Union, among which we mention:

- the right to have residence permits for the entire duration of protection, so they will benefit from visas in the shortest time, including transit visas; (see in this regard article 8 of Directive 2001/55/EC).

- the right to be informed in the Ukrainian language or in a language they understand about the rights conferred by the status of beneficiary of temporary protection; (see in this regard article 9 of Directive 2001/55/EC).

- the right to carry out, as appropriate, salaried or independent activities, educational actions for adults, professional training courses and practical training internships at the workplace; (see in this regard article 12 of Directive 2001/55/EC). Applicants for temporary protection, coming from Ukraine and located on the territory of Romania, can be employed without the employment permit provided for in article 3 paragraph (1) and article 17 paragraph (1) of the O.G. no. 25/2014 regarding the employment and posting of foreigners on the territory of Romania and for the modification and completion of some normative acts regarding the regime of foreigners in Romania (On the date of entry into force of O.G. no. 25/2014, O.U.G. no. 56/2007 is repealed regarding the employment and posting of foreigners on the territory of Romania), approved by Law no. 14/2016 with subsequent amendments and additions. Moreover, the above-mentioned persons are extended the right of residence for the purpose of work according to O.U.G. no. 194/2002 regarding the regime of foreigners in Romania, republished, with subsequent amendments and additions, without the obligation to obtain a long-stay visa for employment.

*What happens to applicants for temporary protection who do not have documents to prove their professional qualification or experience in the activity necessary for employment?* Article VI paragraph (3) of O.U.G. no. 20/2022 brings the legal solution to such a reality. In concrete terms, the beneficiaries applying for temporary protection in the situation mentioned above can be employed for a period of 12 months with the possibility of extension by periods of 6 months, for a maximum of one year, based on their declaration on their own responsibility

in the sense that they meet the conditions of professional qualification and experience in the activity necessary to occupy the job in which they are going to be employed.

- the right to benefit from the provisions of the legislation in force in the member states regarding access to social security systems. On the territory of Romania, applicants for temporary protection arrived from the conflict zone of Ukraine, have access to the unemployment insurance system, to unemployment prevention measures following their registration at the territorial and Bucharest employment agencies, under the conditions established for Romanian citizens by the provisions of Law no. 76/2002 regarding the unemployment insurance system and the stimulation of employment with subsequent amendments and additions.

- the recognized right of different categories of people to benefit from the necessary support, in terms of social assistance as well as medical care. In the application of this regulation, with reference to refugees from Ukraine located on the territory of Romania, we mention the application of articles 2<sup>1</sup>-2<sup>6</sup> of GEO no. 20/2022 with reference to: a) *“persons with disabilities accompanied or unaccompanied who come from the area of conflict”* who benefit on the territory of Romania, free of charge, from the social services from the centres provided for in Article 51 paragraph (3) of Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities, republished with subsequent amendments and additions, being taken in the records of the general directions of social assistance of the county respectively of the sectors of the city of Bucharest. b) *“accompanying persons with disabilities”* benefit from social services together with them under the same conditions; c) *“elderly persons with reduced mobility or in a situation of dependency”* who come from the conflict zone and are on the territory of Romania benefit, upon request, from social services free of charge in accordance with the provisions of Law no. 17/2000 on assistance social assistance of elderly persons, republished (Law no. 17/2000 on social assistance of elderly persons republished pursuant to the provisions of art. II of Law no. 281/2006 for the amendment and completion of Law no. 17/2000 on social assistance of elderly persons, published in the Official Gazette of Romania, Part I, no. 600 of July 11, 2006; Chapter II was amended by Point 1, single article of Law no. 19 of January 12, 2018, published in the Official Gazette no. 44 of January 17 2018)

- during the period of temporary protection, the member states order that the unaccompanied minor be placed: with adult relatives; with a host family; in reception centers with special facilities for minors or in other forms of accommodation suitable for minors; with the person taking care of the child at the time of travel (See in this regard article 13 paragraph (2) in conjunction with article 16 paragraph (2) of Directive 2001/55/EC);

- providing the necessary medical assistance or other type of assistance to persons with special needs such as, for example, unaccompanied minors or persons who have suffered torture, rape or other serious forms of psychological, physical or sexual violence; (see in this regard article 13 paragraph (4) of Directive 2001/55/EC);

- the right of minors to benefit from access to the education system under the same conditions as nationals of the host Member State. With reference to the rights of refugee minors from Ukraine, located on the territory of Romania, article 10 introduced in GEO no. 20/2022 regulates a series of rights in the educational field, as follows: the right to education in school units under the same conditions and with funding from the same budgets as preschoolers, schoolers, and Romanian pupils; the right to free accommodation in boarding schools, the food allowance, the right to supplies, clothes, shoes, textbooks; the quality of *“audient”* is regulated as being the student educated in an education system from another country, who continues his/her studies at the request of his/her parent or legal representative in an educational unit in Romania until the equivalence of his/her studies and the support of any differences after which they can acquire the status of a student in Romania.

*How does the European Union manage, from a financial point of view, the influx of refugees from Ukraine?*

The financial implications arising from this temporary protection are ensured by the Fund for asylum, migration and integration established by Regulation (EU) 2021/1147 of the European Parliament and of the Council of July 7, 2021 establishing the Fund for asylum, migration and integration (OJ L 251, 15.07.2021, p. 1). Furthermore, the European Union's civil protection mechanism has been activated, so member states can request essential funds to meet the needs of displaced persons from Ukraine present on their territory and can benefit from co-financing for the provision of such assistance (see for more many details, Regulation (EU) 2021/836 of the European Parliament and of the Council of 20 May 2021 amending Decision No. 1313/2013/EU on a Union civil protection mechanism - OJ L 185.26.05.2021, p. 1).

It is necessary to mention in the given context, Regulation (EU) 2022/613 of the European Parliament and of the Council of April 12, 2022 amending Regulations (EU) no. 1303/2013 and (EU) no. 223/2014 regarding the increase of pre-financing from REACT-EU resources and the establishment of a unit cost. Thus, as a result of Russia's military aggression, the states in the immediate vicinity of Ukraine, including Romania, are facing a substantial influx of people. This represents an additional challenge for the public budgets of these countries, at a time when the economies of the Member States are in the recovery phase following the impact of the COVID-19 pandemic.

As a result, article 68c of Regulation (EU) no. 1303/2013 is amended by Article 1 of Regulation (EU) 2022/613, in the sense that for the implementation of operations related to the migration of refugees from Ukraine, member states may include in the expenses declared in the payment requests a unit cost for the persons who have been granted temporary protection, in accordance with Council Implementing Decision (EU) 2022/382, in the amount of EUR 40 per week for each full or partial week that the person is in the Member State concerned. The unit cost can be used for a maximum of 13 weeks in total, starting from the date of the person's arrival in the Union.

With reference to the amendment of Regulation (EU) no. 223/2014 we specify that the text of Article 6a paragraph (4) was modified by Article 2 of Regulation (EU) 2022/613 in the sense that, compared to the initial pre-financing mentioned above, the European Commission pays 4% of the REACT-EU resources allocated to the programs for the year 2021 as an additional initial pre-financing in 2022. For programs in Member States that recorded a level of arrivals of people from Ukraine above 1 % of their national population in the period February 24, 2022 - March 23, 2022, the respective percentage is increased to 34 %.”

### **Union legislative provisions regarding economic support measures granted to Ukraine**

The economic facilities are regulated in accordance with the provisions inserted at points (a)-(b)-(c) of paragraph (1) of article 1, of Regulation (EU) 2022/870 thus, in order to liberalize trade with Ukraine, taking into account the current context, the following preferential regimes are introduced:

(a) *preferential customs* duties on imports into the Union of certain industrial products originating in Ukraine, which are subject to a seven-year phase-out in accordance with Annex I-A to the Association Agreement, *are set at zero*;

(b) the entry price system shall be suspended for the respective products to which it applies, as specified in Annex I-A to the Association Agreement. Customs duties are not applied to imports of the respective products;

(c) all tariff contingencies established pursuant to Annex I-A to the Association Agreement are suspended and the products subject to the respective quotas are admitted without customs duties upon import into the European Union;

(d) no anti-dumping duties are charged (Boghirnea 2022, 34-37);

(e) of imports originating in Ukraine carried out during the application of this regulation (by derogation from the applicability of article 14 paragraph (1) first paragraph of Regulation (EU) 2016/1036 of the European Parliament and of the Council of June 8, 2016 on protection

against imports subject to of dumping from countries that are not members of the European Union (OJ L 176, 30.06.2016, p.21; The previously mentioned preferential regimes apply to products that, on June 4, 2022, are either in transit from Ukraine to the European Union, or is under customs control in the Union, subject to the submission of a request to this effect to the competent customs authorities in the Union within six months of that date; see in this regard, Article 7 of Regulation (EU) 2022/870 ).

The preferential regimes provided for in Article 1 paragraph (1) letters (a), (b) and (c) are applicable under the conditions that Ukraine does not introduce new customs duties, taxes with equivalent effect or new quantitative restrictions or measures with effect equivalent on imports originating in the Union. Also, Ukraine undertakes, in applying this regulation, to keep customs duties at current levels and not to introduce discriminatory internal administrative measures, unless their introduction would be clearly justified in the context of the war. (See this meaning, Article 2 of Regulation (EU) 2022/870). However, the European Commission may temporarily suspend, in whole or in part, by means of an implementing act, the preferential arrangements provided for in Article 1(1)(a), (b) and (c) when it finds that there is sufficient evidence of Ukraine's non-compliance with the conditions listed above. We note, in accordance with the provisions of Article 4 of Regulation (EU) 2022/870 that a product originating in Ukraine, if it is imported under conditions that cause or are likely to cause serious difficulties to Union producers of similar or directly competitive products, the taxes customs duties applicable under the Association Agreement on imports of the respective product can be reintroduced at any time (Niță 2006, 210-216). Both the suspension of preferential measures and the activation of the "safeguard clause" apply only after a prior analysis by the European Commission applying the procedure regulated by this regulation.

## Conclusions

Since the start of Russia's military invasion of Ukraine on February 24, 2022, the European Union has provided Ukraine with massive political, financial and humanitarian assistance, with the strong involvement of member states within a "Team Europe" approach. The whole concerted effort of the member states and the Union can be summed up, without making a mistake, in the statement of the President of the European Commission, Ursula von der Leyen "*...Ukraine can count on the EU's full support... We are also ready to take a leading role in international reconstruction efforts to help rebuild a democratic and prosperous Ukraine. This means that investments will be matched with reforms that will support Ukraine in pursuing its European path.*"

## References

- Boghirnea, Iulia. 2022. "Analysis of the French Doctrine Regarding the Normative Power of the Opinions of the Court of Cassation." In *Agora International Journal of Juridical, Sciences*, vol. 16, no 1, pp. 34-37.
- Council Directive 2001/55/EC of July 20, 2001 regarding the minimum standards for granting temporary protection, in the event of a massive influx of displaced persons, and measures to promote a balance between the efforts of the member states to receive these persons and bear the consequences of this receipts (OJ L 212, 07.08.2001, p.12).
- Government of Romania, GEO no. 15/2022 regarding the granting of support and humanitarian assistance by the Romanian state to foreign citizens or stateless persons in special situations, coming from the area of the armed conflict in Ukraine.
- Government of Romania, GEO no. 194/2002 regarding the regime of foreigners in Romania, republished, with subsequent changes and additions
- Government of Romania, GEO no. 20/2022 regarding the modification and completion of some normative acts as well as for the establishment of support measures and humanitarian assistance.
- Government of Romania, GEO no. 25/2014 regarding employment and posting of foreigners on the territory of Romania and for the modification and completion of some normative acts regarding the regime of foreigners in Romania.

- Implementing Decision (EU) 2022/382 of the Council of March 4, 2022 establishing the existence of an influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing a temporary protection.
- Law no. 17/2000 on social assistance for the elderly republished pursuant to the provisions of art. II from Law no. 281/2006 for the amendment and completion of Law no. 17/2000 regarding social assistance for the elderly, published in the Official Gazette of Romania, Part I, no. 600 of July 11, 2006; Chapter II was amended by Point 1, a unique article from Law no. 19 of January 12, 2018, published in the Official Gazette no. 44. from January 17, 2018.
- Militaru, Ioana Nely. 2019. "Protection of Fundamental Rights in the European Union." In *International Conference, "Perspectives of Business law in the Third Millenium" Section III. European Union Law. International Law*, Volume 8, Issue 2, 8 November, ninth edition, Bucharest.
- Niță, Manuela. 2006. "General considerations regarding electronic payment instruments in the EU." In *Annales of the Faculty of Legal Sciences*, no. 2(6).
- Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries that are not members of the European Union (OJ L 176, 30.06.2016, p. 21;
- Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund (OJ L 251, 15.07.2021, p.1).
- Regulation (EU) 2021/836 of the European Parliament and of the Council of 20 May 2021 amending Decision no. 1313/2013/EU on a Union civil protection mechanism (OJ L 185.26.05.2021, p.1).
- Regulation (EU) 2022/613 of the European Parliament and of the Council of April 12, 2022 amending Regulations (EU) no. 1303/2013 and (EU) no. 223/2014 regarding the increase of pre-financing from REACT-EU resources and the establishment of a unit cost.
- Regulation (EU) 2022/870 of the European Parliament and of the Council of 30 May 2022, on temporary trade liberalization measures supplementing the trade concessions applicable to Ukrainian products under the Association Agreement between the European Union and the European Atomic Energy Community and the states their members, on the one hand, and Ukraine, on the other (OJ L 152, 03.06.2022).

# Theoretical and Practical Aspects Regarding the Commission of the Offence of Destruction by Participants in Sports Events

Nicoleta-Elena Hegheș

*Researcher 2<sup>nd</sup> Degree at “Andrei Rădulescu” Legal Research Institute of Romanian Academy, Bucharest, Romania, nicoleta.heghes@icj.ro*

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

**ABSTRACT:** In the present paper, we analyze the crime of destruction - art. 253 of the Romanian Criminal Code, committed by participants in sports events. By criminalizing this act, the legislator wanted to ensure the protection of another's property, viewed from the perspective of his material condition. The participants in sports events, in our case the fans, support their favorite team or favorite athlete, but there are situations when some of them resort to actions of vandalizing stadiums, sports arenas, shops, bars, street furniture, parked cars, etc. There were cases when they used pyrotechnic materials prohibited by the current regulatory framework, threw various objects on the field, including broken seats from the stands, provoked acts of violence towards law enforcement, but also towards supporters of the opposing team, etc.

**KEYWORDS:** destruction, degradation, decommissioning, supporters

## Legal definition

*Art. 253. “(1) The act of destroying, damaging or making unfit for use of an asset belonging to another, or hindering the taking of measures of preservation or rescue for such an asset, as well as removing the measures taken, shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine.*

*(2) The destruction of a deed under private signature, belonging wholly or in part to another and which serves to prove a material right, if resulting in a loss, shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine.*

*(2<sup>1</sup>) The destruction of an electronic surveillance device used for electronic monitoring in judicial or executive criminal proceedings is punishable by imprisonment from 6 months to 3 years or a fine.*

*(3) If the act set out in par. (1) concerns assets forming part of the cultural heritage, it shall be punishable by no less than 1 and no more than 5 years of imprisonment.*

*(4) The act of destroying, damaging or making unfit for use of an asset, committed by arson, explosion or by any such means and, if it endangers human life or other property, shall be punishable by no less than 2 and no more than 7 years of imprisonment.*

*(5) The stipulations of par. (3) and par. (4) apply even if the asset belongs to the perpetrator.*

*(6) For the acts set out in par. (1) and par. (2) criminal action shall be initiated based on a prior complaint filed by the victim.*

*(7) The attempted acts set out in par. (3) and par. (4) shall be punished”.*

## Pre-existing conditions

*The special legal object is made up of social patrimonial relations that concern the security of material existence and their potential use.*

*The material object of the crime can be any movable or immovable property belonging to a natural or legal person in the case of para. (1) and para. (2) or it can even be the*

perpetrator's in the case of para. (3) and para. (4). The artistic, scientific or historical value of the asset constitutes an aggravating circumstance of the crime.

In judicial practice (Călărași Court, Criminal Sentence no. 112 of April 9, 2015) it was argued that the act of the defendants who, the next day, after stealing some goods from the car, went and set it on fire to “delete it”, the possible traces left, meet the constitutive elements of the crime of destruction, prev. of art. 253 para. (1) from the Romanian Criminal Code. In another case, the trial court found that the act of the defendant who, on January 29, 2015, around 04.00, by using fuel, destroyed by fire the access door to the apartment of the injured persons, endangering both people and property from the inside of the building whose door was set on fire, as well as from the inside of the neighboring apartments, meets the constitutive elements of the crime of destruction provided for by art. 253 para. (1) and (4) of Criminal Code (Pitesti Court of Appeal, Criminal Section and for Cases with Minors and Family, Criminal Decision no. 628/A of October 14, 2015).

Goods without economic value cannot be the material object of the crime. Assets devoid of any value, nor those that are not part of someone's patrimony, cannot constitute a material object of the crime of destruction (Dobrinioiu, Pascu, Hotca, Gorunescu, Dobrinioiu, Chiș, Păun, Neagu and Sinescu, 2012, 348).

The offense may also have as its material object a document under a private signature, which belongs in whole or in part to another person and serves to prove a patrimonial right and if damage has been caused by this - para. (2) of art. 253. In accordance with the provisions of para. (3), the goods that belong to the national heritage can constitute the material object of the crime.

*The active subject.* In the simple version of the crime, as well as in the version related to the destruction of documents under private signature provided for in para. (2), the active subject can be any person, except for its owner or holder.

For the variants in para. (3)-(4) of the offence, the active subject can even be the owner of the asset, here the destruction of one's own asset is exceptionally criminalized, provided that the asset is part of the cultural heritage or provided that the deed was committed by arson, explosion or other similar means and if it is likely to endanger other people or property.

*Criminal participation* is possible in all its forms, namely in the form of co-authorship, instigation and complicity.

*The passive subject* is the natural person or legal person, public or private, whose property was destroyed, or the person who had a certain right over the property.

In the situation where the perpetrator is the owner of the asset, the passive subjects of the offence will be the people who have a right to the destroyed, degraded asset or whose assets were destroyed at the same time as the destruction of the asset belonging to the perpetrator.

## **Constitutive content**

### ***The objective side***

*The material element* consists in the performance of one of the following actions provided alternatively: destruction, degradation, rendering unusable, preventing the taking of conservation or rescue measures of an asset, removing the rescue or conservation measures taken. The act of the defendant, from the evening of November 28, 2014, at around 11.30 p.m., in front of the bar managed by the injured person, he hit the rear window of the car with the consequence of its destruction, fulfills the constitutive content of the offence of destruction, provided for and punished by art 253 paragraph 1 of the Romanian Criminal Code. The material element of the offence of destruction is achieved through the defendant's activity of destroying the rear window of the Renault Megane car, the immediate consequence of which is causing damage to the injured

person. The causal link exists, resulting from the commission of the deed, and from the subjective aspect, it is noted that the defendant acted with direct intent (Calafat Court, Criminal Sentence no. 104 of June 19, 2015).

In another case it was held that the act of the defendants, committed on the same night, to break the windows of five windows with axes and to render unusable a number of four double-glazed doors from the home of the injured person, fulfills the constitutive content of the offence of destruction, provided of art. 253 para. (1) of Romanian Criminal Code. The material element of the crime of destruction consists in breaking the windows of five windows and hitting four double-glazed doors with axes, belonging to the injured party (G. Court of Appeal, Criminal Section and for cases with minors, Criminal Decision no. 805/A, June 30 2015).

In the specialized literature (Diaconescu and Duvac 2006, 260) it was shown that, more rarely, the material element of the crime can also consist of an inaction. Destruction is the deed of the person who, through his own physical energy or by appropriate means, causes material damage to an asset belonging to another person, with the consequence of its non-existence or uselessness (Dongoroz et al. 1971, 545). Degradation consists in the partial deterioration of the good as a result of the loss of some of its qualities, which leads to improper use. Making it unusable means that the asset can no longer be used according to its intended purpose, the asset becoming completely unusable.

Preventing the taking of measures to preserve or save an asset is an indirect way of destroying the asset, and this is because the perpetrator does not act directly on the asset to destroy it, but through his action prevents the taking of the necessary measures to protect the asset from the danger of destruction that threatens it (Cristian 2017, 225).

The removal of the rescue or conservation measures taken implies the removal by the perpetrator of the measures that were taken in order to protect the asset from the danger of further destruction. The essential requirement of the material element usually assumes that the good belongs to another person, but in the aggravated variants in para. 3 and 4 the good can also belong to the perpetrator. Any of the actions that represent the material element of the offense provided for in para. 1 and 2 can be carried out in any way or means.

The material element of the aggravated version provided in para. (4) consists of any of the actions that represent the material element of the crime in the first two variants with the difference that they are carried out by certain means, which must meet two cumulative conditions, namely that the means consist of arson, explosion or any other such means and the means used are likely to endanger other people or property (Cristiean 2017, 226).

*The immediate consequence* consists in the negative change in the factual situation of the property, compared to the state it had before the commission of any of the actions that represent the material element of the crime, and thereby in the production of damage to the natural person or legal person, public or private to whom the good belongs.

There must be a *causal link* between the perpetrator's action and the immediate aftermath, a link resulting from the materiality of the deed.

### ***The subjective side***

The act can be committed with *intention* in both its forms, respectively direct intention or indirect intention. If the deed is committed by *culpa*, the legislator has criminalized it distinctly as *Destruction with basic intent* - art. 255 of the Romanian Criminal Code. Motive and purpose are irrelevant to the existence of the crime.

*Forms.* In accordance with the provisions of para. (7), the attempt is punishable only in the case of the aggravated variants described in para. (3) and para. (4).

The consummation of the crime occurs when the action has been completed and the asset has been destroyed, degraded or rendered unusable. The crime can also take on a

continuous form, in which case the crime ends when the last act of the criminal activity is committed.

*Modalities.* In the standard version, the crime presents a series of normative ways, namely, destruction, degradation, bringing to a state of non-use, preventing the taking of conservation or rescue measures of an asset, removing the rescue or conservation measures taken. Each of the normative modalities can correspond to a variety of factual modalities.

Paragraphs (2), (2<sup>1</sup>), (3) and (4) introduce aggravated forms of the crime of destruction, as follows:

- Para. 2: *destruction of a document under a private signature, which belongs in whole or in part to another person and serves to prove a patrimonial right, if damage has been caused by this.*

- Para. 2<sup>1</sup>: *The destruction of an electronic surveillance device used for electronic monitoring in judicial or executive criminal proceedings.*

- Para. 3: *If the deed concerns goods that are part of the cultural heritage.*

- Para. 4: *The destruction, degradation or rendering unusable of an asset, committed by arson, explosion or by any other such means and if it is likely to endanger other persons or assets.*

*Sanctions.* The simple form of the offense provided for in para. (1) of art. 253 is punishable by imprisonment from 3 months to 2 years or a fine.

For the modality provided by para. (2), the penalty is imprisonment from 6 months to 3 years or a fine.

For the more serious method provided by para. (3), the penalty is imprisonment from one to 5 years.

For the even more serious method provided by para. (4), the penalty is imprisonment from 2 to 7 years.

### **Procedural aspects**

In accordance with the provisions of para. (6), for the simple form in para. (1) and for the aggravated form provided for in para. (2), the criminal action is initiated upon the prior complaint of the injured person (see in detail Buneci 2020, 45 et seq.). The lack of prior complaint or its withdrawal removes the criminal liability.

For any of the forms of incrimination, the competence to resolve the case in the first instance rests with the court (see in detail Paraschiv, Teodorescu and Nicolescu 2022, 1-6). For the facts provided in para. (3) and (4), according to the provisions of art. 112<sup>1</sup> of the Romanian Criminal Code, the court will be able to order the security measure of extended confiscation if it finds that the legal conditions are met (Dobrinou, Pascu, Hotca, Gorunescu, Dobrinou, Chiş, Păun, Neagu and Sinescu, 2012, 352).

### **References**

- Buneci, Bogdan. 2020. *Drept procesual penal. Partea general. Curs universitar (Criminal procedural law. The general part. University course)*. Bucharest: Universul Juridic Publishing House.
- Calafat Court, Criminal Sentence no. 104 of June 19, 2015.
- Călărăşi Court, Criminal Sentence no. 112 of April 9, 2015.
- Cristiean, Victoria. 2017. *Drept penal. Partea specială I (Criminal law. Special Part I)*. Bucharest: Universul Juridic Publishing House.
- Diaconescu, Gheorghe and Duvac Constantin. 2006. *Drept penal. Partea special (Criminal law. The special part)*, vol. I. Bucharest: Fundaţiei România de Măine Publishing House.
- Dobrinou, V., Pascu I., Hotca M.A., Gorunescu M., Dobrinou M., Chiş I., Păun C., Neagu N., Sinescu M.C. 2012. *Noul Cod penal comentat, vol. II, Partea special (The New Criminal Code commented, vol. II, Special Part)*. Bucharest. Universul Juridic Publishing House.
- Dongoroz, Vintilă and colab. 1971. *Explicaţii teoretice ale Codului penal român (Theoretical explanations of the Romanian Penal Code)*, vol. III. Bucharest: Academiei Publishing House.

G. Court of Appeal, Criminal Section and for cases with minors, Criminal Decision no. 805/A, June 30 2015.

Paraschiv, Carmen-Silvia (coord.), Teodorescu Maria-Georgiana and Nicolescu Alin Sorin. 2022. *Drept procesual penal. Partea generală. Note de curs (Criminal procedural law. The general part. Course notes)*. 4<sup>th</sup> Edition. Bucharest: Hamangiu Publishing House.

Pitesti Court of Appeal, Criminal Section and for Cases with Minors and Family, Criminal Decision no. 628/A of October 14, 2015.

# Criteria for Appointing an Undercover Investigator to Obtain Evidence and Information in a Criminal Case

**Nadia Zlate**

*National Anticorruption Directorate, Romania, zlate\_nadia@yahoo.com*

**ABSTRACT:** In this article we aimed to expose the traits and qualities that an undercover investigator should have in order to be able to carry out his mission in good conditions, without the risk of uncovering the occult operation and without endangering his own life or physical or mental integrity. The use of undercover investigators may involve interactions with different individuals over a shorter or longer period of time, which may be a single contact or multiple meetings in which a connection is established between the person being investigated and the undercover investigator. They must show special social skills, namely to be able to adapt their behavior depending on the situation in which they are in order to give credibility to the character they portray, but also to relate to the people targeted by the operation in such a way that it can obtain evidence and information relevant to the criminal case in which it is used. Due to the importance of the activity carried out by undercover investigators, the risk to life and physical and mental integrity to which they may be subjected, it is imperative that their election within the framework of undercover operations be carried out with maximum skill and responsibility by persons qualified in this sense.

**KEYWORDS:** undercover investigators, undercover investigator qualities, the role of the undercover investigator, special investigative means

## **Introduction**

The development of technology and globalization have contributed to the diversification of the modes of operation of criminals in such a way that it is increasingly difficult to discover both the crimes and the perpetrators, to the expansion of their area of action and to the amplification of crime, the states having to adapt permanently to the new social realities and to adopt the necessary measures to counteract the criminal phenomenon, which is becoming more and more advanced in terms of the methods used and the hiding of the traces of the perpetrators.

Thus, the evolution of crime has produced a change (in Europe and other parts of the world) in the way of investigating and discovering crimes, with a much greater emphasis on proactive, intelligence-based investigations, with the special use of informants (“sources”), undercover agents and other covert techniques such as environmental surveillance, communications interception and controlled delivery.

The use of undercover investigators, as a special research method, is a modern and effective tool in combating the phenomenon of crime, thus being able to obtain evidence that could be more difficult to fight for the defense since the persons targeted by these criminal investigation measures are not alerted regarding the conduct of a criminal investigation against them so that their behavior during the undercover operation is not extremely cautious.

It was shown in the doctrine that “the emergence of the legal framework that regulates the activity of undercover investigators was unanimously determined by the needs of the fight against atypical forms of crime, which carry out their activity in an organized and “hermetic” manner, so that the activity of proving criminal activities by normal methods becomes particularly difficult, if not impossible” (Petre and Trif 2016, 88).

### **The role of undercover investigators in criminal investigations**

In Romanian law, the purpose of using undercover investigators is to obtain evidence and information during the criminal investigation, all of which are made available to the investigative bodies. The measure is ordered by the prosecutor, *ex officio* or at the request of the criminal investigation body, by ordinance, which must include the indication of the activities that the undercover investigator is authorized to carry out, the period for which the measure was authorized, as well as the identity assigned to the undercover investigator.

Specifically, the undercover investigator will be able to contribute to establishing whether the crime of which a person or an organized criminal group is suspected has been committed, is ongoing or in the preparatory phase, the identification of the members of the criminal group, the identification of accomplices, witnesses, injured persons, identifying the places where the goods from the crimes are hidden, identifying the places where the victims of the crimes are, specifying some favorable moments for carrying out searches, arrests, red-handed arrests, etc.

In order to obtain this information, the undercover investigator must infiltrate the criminal environment, such as within an organized criminal group, come into contact with its members, gain their trust and act apparently in the interests of the group, and, in parallel, to obtain the data and information necessary to identify the members of the group, the organizational structure as well as the discovery of the mode of operation, the facts committed by them, the place where the proceeds of the crime are located, etc.

The use of undercover investigators may involve interactions with different individuals over a shorter or longer period of time, which may be a single contact or multiple meetings in which a connection is established between the person being investigated and the undercover investigator.

Certain contacts may be purely business-related, such as in drug or arms trafficking investigations, where the undercover investigator may pretend to intend to purchase the trafficked goods. They do not involve the formation of an intimate bond between the undercover investigator and the individuals targeted by the operation.

In cases where an undercover agent befriends a suspect in order to obtain information about his involvement in a serious crime (for example, a murder), he must sometimes establish a rather intense personal and emotional connection with the suspect (Kruisbergen 2017, 124).

We can imagine a situation where the murder suspect is in custody and the undercover investigator has to play the role of a cellmate who shares sensitive details about him, such as those related to serious crimes committed, in order to win the trust and friendship of the suspect and motivate him to confess to the committed acts and possibly useful details for the criminal investigation bodies for the further investigation of the murder.

The operations carried out by the undercover investigator can often be accompanied by technical surveillance activities (for example, audio/video recording in the ambient environment of meetings between the agent and the person targeted by the undercover operation, taking photographs in private spaces, placing GPS tracking systems on vehicles, access to a computer system, copying data from an accessed computer system, etc.).

### **The qualities required of the undercover investigator for his assignment in a criminal investigation**

From the nature of the activities that an undercover investigator must perform, it can be noted that, for the occult operation to run smoothly without the risk of its unraveling, the investigator must possess a number of qualities.

They must show special social skills, namely to be able to adapt their behavior depending on the situation in which they are in order to give credibility to the character they

portray, but also to relate to the people targeted by the operation in a such a way that it can obtain evidence and information relevant to the criminal case in which it is used.

Thus, the investigator must first of all be a person with a high level of intelligence, be spontaneous, well oriented in time and space, flexible, sociable, emotionally intelligent, attentive to details, balanced, and proactive.

Although the investigator can empathize to a certain extent with the suspected person, for example, if he has children, he must maintain his objectivity in carrying out the mission he was entrusted with, having a high civic sense to contribute to combating the criminal phenomenon.

At the same time, he must be adequately trained in the use of audio-video recording technical means and have the knowledge required by the specifics of the activities he must carry out. Regarding this last aspect, he justifies himself by the fact that an investigator must give credibility to his character through facts, gestures and the vocabulary used, which must be consistent so that there are no suspicions on the part of the people targeted by the undercover operation, some among them being particularly intelligent and cautious, being able to notice in this way any detail related to the undercover investigator likely to arouse suspicion.

For example, an undercover investigator pretending to be a former drug user must know the slang used for the categories of drugs his character has consumed, as well as the method of administration: oral, inhaled, injected, etc., so that when he negotiates with drug traffickers, he does not raise suspicions that the drugs are not actually being bought for the stated purpose.

It has been indicated in foreign doctrine that any undercover assignment is a stressor regardless of the person and qualifications of the undercover investigator. To reduce the stress of the undercover operation, superiors should not assign investigators who's cultural, ethnic, or geographic background differs substantially from that of the person they are portraying (Band and Sheenan 1999, 3).

The same authors indicated a list of ten traits that an undercover investigator should possess (Band and Sheenan 1999, 4):

- they are seasoned investigators, who volunteer to work undercover because they believe the techniques work, not because they are looking for personal glory. Additionally, these individuals are neither running toward undercover work, believing it is something it is not, nor running away from an unpleasant work assignment or life situation, believing they can find refuge in undercover work;

- they have demonstrated perseverance and resourcefulness in the face of complex matters;

- they are comfortable and capable of acting within their agencies' undercover policies, procedures and guidelines;

- they remain capable of acting on well-rehearsed mental strategies and coping skills for operating in hostile environments while maintaining firm bonds and commitments to the missions of their law enforcement agencies;

- they possess moral and ethical values that dovetail with their undercover missions. Officers operating in other than their true identities must conduct themselves appropriately and lawfully. The lawful use of the undercover investigative technique represents a sacred trust between law enforcement agencies and the people of a free society. If law enforcement agencies violate this trust by engaging in inappropriate undercover conduct, the public could stop supporting the use of this important technique;

- they are highly proficient and comfortable at portraying identified roles;

- they demonstrate high levels of self-confidence and self-perception of effectiveness operating against specific criminal elements;

- they are decisive people, flexible enough to work independently, yet extraordinarily capable of being team players when called upon to do so;
- they are not situationally distracted with personal life stressors and vulnerable to anxiety and depression;
- they have personality attributes to facilitate interaction with suspects.

Due to the importance of the activity carried out by undercover investigators, the risk to life and physical and mental integrity to which they may be subjected, it is imperative that their election within the framework of undercover operations be carried out with maximum skill and responsibility by persons qualified in this sense.

Depending on the specifics of the operation carried out, the person in charge of appointing the undercover investigator must look for an agent who meets as many of the qualities necessary for the specific mission to be carried out so that its purpose is fulfilled as much as possible, and the risks for the person of the undercover investigator to be minimized as much as possible.

For the designation of police officers who will work undercover, thorough recruitment, selection and training measures are necessary, taking into account the degree of professional training, honesty, motivation, negotiation skills, willingness to work in a team, resistance to stress (Buzatu 2012, 294).

We believe that the option of the undercover investigator whether or not he wants to be assigned to that operation should also be taken into account, since his reluctance to carry out the operation, regardless of the reason, could affect his effectiveness in the undercover mission.

## References

- Band, Stephen R. and Sheenan, Donald C. 1999. "Managing Undercover Stress." In *FBI Law Enforcement Bulletin* 68: 3-4.
- Buzatu, Nicoleta-Elena. 2012. "Activitatea sub acoperire." In *Illicit Drug Trafficking and Consumption. Multidisciplinary Aspects*. Bucharest: Universul Juridic Publishing House.
- Kruisbergen, Edwin W. 2017. *Combating Organized Crime: A Study on Undercover Policing and the Follow-the-Money Strategy*, p. 124. Available on [www.vu.research.nl](http://www.vu.research.nl), accessed on 30.03.2020.
- Petre, Adrian and Trif, Valentin. 2016. *The report of corruption crimes*. Bucharest: C.H. Beck Publishing House.

# Theoretical and Practical Study on Value Added Tax at National and Community Level (First part)

Agatador Mihaela Popescu<sup>1</sup>, Mariana Rodica Țîrlea<sup>2</sup>

<sup>1</sup>*“Dimitrie Cantemir” Christian University of Bucharest, The Faculty of Law and Administration Bucharest, Romania, av.agata@yahoo.com*

<sup>2</sup>*“Dimitrie Cantemir” Christian University of Bucharest, The Faculty of Law Cluj-Napoca, Romania, rodicatirlea10@gmail.com*

**ABSTRACT:** Value Added Tax qualifies as an indirect tax. Indirect taxes are applied in the sphere of the circulation of goods or the provision of services and are included in the sale price of goods and services. In terms of taxation, the first interventions of the European Community concerned indirect taxes, motivated by the raising of borders between European states, and implicitly the raising of customs duties. As a result, they led to the development of normative acts regarding the harmonization of national legislation with European requirements in the matter of indirect taxes. The study follows aspects of a theoretical and practical nature regarding the Value Added Tax. The results of the research allowed us to clarify the theoretical conceptual framework regarding the Value Added Tax, and at a practical level, the research of the legislative framework was carried out over an extended period of time 2002-2022, which allowed us to observe, at the national level, the legislative evolution and the changes since its establishment of this type of tax until now and to carry out a comparative analysis of the Value Added Tax practiced by our country and the Community member states.

**KEYWORDS:** Value Added Tax, taxation, tax, indirect tax, technical elements, tax base, standard rate, reduced rates, very reduced rates

## Introduction

The fiscal system is made up of all taxes and fees. One more classification generously group tax according to their nature, in: Direct taxes and Indirect taxes. By “institution,” we mean “any norm (either formal, therefore codified, or informal, therefore uncoded) that has the state as its subject, intended to establish a rule or a coherent system of rules (that is, a procedure) in a certain field of activity or social action” (Dinga 2009, 508). Associated with the concept of institution in fiscal matters, we find the concepts of: taxation, taxes, contributions, taxes, fiscal system, fiscal methods, fiscal rules, and fiscal regimes.

Taxation is defined as a “system of collecting taxes, fees and contributions by public authorities in order to achieve the social and economic functions of the state” (Rotaru and Șaguna 2003, 345). According to the Explanatory Dictionary of the Romanian Language, taxation represents: “The set of laws, regulations and taxation methods” (DEX 2009). According to the DLRM source, taxation refers to a “system of laws, regulations, provisions concerning the fixing and collection of taxes” (DLRM 1958). In another opinion, taxation represents “the relationship between tax and income or the activity carried out by a natural and legal person. Taxation aims to ensure the financial resources necessary to cover public expenses, to influence the distribution of income, on decisions, the degree of taxation and individual consumption and to stimulate the efficiency and dynamics of production” (Voinea, Boariu and Soroceanu 2005, 62).

Taxation involves “a system of levying taxes and fees through a specialized institution of the state on the one hand to establish and calculate the amount of taxes and fees owed to the state by taxpayers and on the other hand to collect the taxes and fees owed by taxpayers” (Tulai 2003, 188). “The sociological legitimacy of the tax resides in the consent to the tax, that is, in its acceptance in principle. It cannot be dissociated from the origin of the tax itself and that is why the economic development of the state led to the emergence of the state and the tax as its financial support” (Tulai 2003, 188).

The specialized literature presents two fundamental theories regarding consent to taxes: exchange (compensation) and solidarity (sacrifice), which are embodied in:

1. The liberal fiscal theory in which the tax is appreciated as a compensation;
2. The communitarian fiscal theory in which the tax is appreciated as a sacrifice.

The middle ground between the “compensation tax (equivalent) and the sacrifice tax is the negative tax” (Tulai 2003, 199-200).

Taxation represents “the relationship between tax and income or the activity carried out by a natural and legal person. Because it aims to ensure the financial resources necessary to cover public expenses, to influence the distribution of incomes, decisions, the level of taxation and individual consumption and to stimulate the efficiency and dynamics of production” (Voinea, Boariu and Soroceanu, 2005, 62).

Taxation includes all taxes, fees and state social contributions. Taxation is achieved through the fiscal policy, which in tandem with the monetary policy, makes an important contribution to the realization of the national economic policy. In our opinion, “taxation represents an economic category that expresses distribution relations of a part of the incomes of taxpayers, natural persons and legal entities, which are mobilized in the form of tax revenues to the consolidated budget of the state and redistributed in the form of budget expenses in which the state ensures control in order to satisfy certain economic policy objectives” (Țirlea 2017, 15).

## 1. Research methodology

The study followed, on the one hand, the evolution over time of the Value Added Tax in Romania and, on the other hand, a comparative analysis with the Value Added Tax practiced by the EU member countries from the perspective of standard rates, reduced rates and very reduced rates. From this perspective, we have applied several methods: legislative research since the appearance of the Value Added Tax in 2002, until now, analysis, synthesis, comparison, induction, deduction, specialized opinions from specialized literature.

## 2. Conceptual theoretical aspects

Taxation includes all taxes, fees and state social contributions. According to their nature, taxes are classified into direct taxes and indirect taxes. The Value Added Tax is part of the category of indirect taxes with a significant weight in the total taxes. The Value Added Tax represents an indirect tax generated as a result of random operations, facts or acts, carried out by individuals and legal entities. The specificity of this type of tax “Value Added Tax” consists in the fact that it is borne by the final consumers and is carried out in several stages. The Value Added Tax is distinguished from direct taxes by the characteristics it presents.

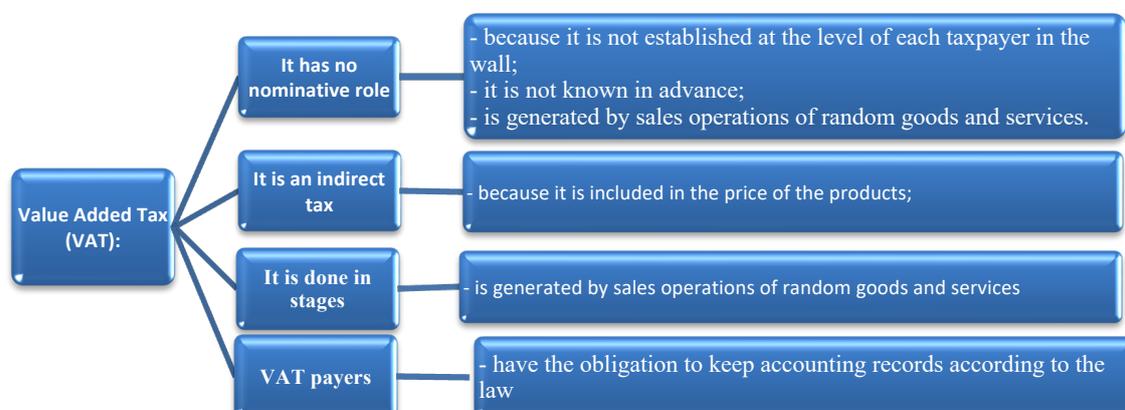


Figure 1. Characteristics of the Value Added Tax

Source: Authors

The current Fiscal Code has established Title VII for Value Added Tax entitled Value Added Tax, the content of which is presented in Table 1.

Table 1. Analytical structure of Title VII - Value Added Tax

Nr.crt.	Title Name	Analytical structure of Title VII - Value Added Tax
1.	Title VII - Value Added Tax	1. Definitions 2. Taxable operations 3. Taxable persons 4. Operations included in the scope of the tax 5. Place of operations included in the scope of the tax 6. The generating fact and the chargeability of the Value Added Tax 7. Tax base 8. Fee rates 9. Tax-exempt transactions 10. The regime of deductions 11. Personnel obliged to pay the fee 12. Special regimes 13. Obligations 14. Common Provisions 15. Transitional Provisions

Source: Fiscal Code, Law no. 227/2015 regarding the Fiscal Code, last update: OG no. 37/2022

Table 2. Definitions

Nr. crt.	Concept	Definitions of concepts
1.	acquisition	represents the goods and services obtained or to be obtained by a taxable person, through the following operations: supplies of goods and/or services, carried out or to be carried out by another person to this taxable person, intra-community purchases and imports of goods;
2.	intra-community acquisition of goods	obtaining the right to dispose, like an owner, of tangible movable goods shipped or transported to the destination indicated by the buyer, by the supplier, or by another person, on behalf of the account of the provider or the buyer, to a member state other than that of departure of the transport or dispatch of the goods.
3.	economical activity	when a person carries out several economic activities, economic activity means all the economic activities carried out by him;
4.	tax base	represents the consideration of a supply of goods or provision of taxable services, a taxable import or a taxable Intra-Community purchase, established according to Chapter VII of this Title;
5.	goods	represents movable and immovable tangible assets. Electric energy, thermal energy, natural gas, refrigerant and others of this nature are considered movable tangible goods;
6.	excisable products	are energy products, alcohol and alcoholic beverages, as well as processed tobacco, as defined in Title VIII, with the exception of gas delivered through a natural gas system located on the territory of the European Union or through any network connected to such a system;
7.	how to register for VAT purposes	represents the code provided for in art. 318 para. (1), assigned by the competent authorities in Romania to persons who have the obligation to register according to art. 316 or 317, or a similar registration code assigned by the competent authorities of another Member State;
8.	NC code	represents the tariff heading, tariff subheading or tariff code, as provided for in Regulation (EEC) no. 2.658/87 of the Council of 23 July 1987 on the Tariff and Statistical Nomenclature and the Common Customs Tariff, as amended by Implementing Regulation (EU) no. 1.101/2014 of the

		Commission of October 16, 2014. Whenever there are changes in the combined nomenclature established by Regulation (EEC) no. 2.658/87, the correspondence between the NC codes provided for in this title and the new NC codes is carried out according to the provisions of the methodological norms;
9.	tax return	represents the statement that is drawn up and submitted according to art. 323;
10.	special return	represents the statement that is drawn up and submitted according to art. 324;
11.		Directive 112 is Council Directive 2006/112/EC of November 28, 2006 on the common system of Value Added Tax, published in the Official Journal of the European Communities (OJCE), series L, no. 347 of December 11, 2006, with subsequent amendments and additions. References from the invoices sent by suppliers/providers from other member states to the articles of the 6th Directive, respectively Council Directive 77/388/EC of 17 May 1977 on the harmonization of the legislation of the member states relating to turnover tax - The common system regarding Value Added Tax: unitary basis of establishment, published in the Official Journal of the European Communities (JOCE), series L, no. 145 of June 3, 1977, will be considered references to the corresponding articles of Directive 112, according to the correlation table in annex XII to this directive;
12.	invoice	represents the document provided for in art. 319;
13.	importer	represents the person in whose name the goods are declared, when the import tax becomes payable, according to art. 285 and which, in the case of taxable imports, is obliged to pay the tax according to art. 309;
14.	intra-community delivery	has the meaning provided for in art. 270 para. (9);
15.	taxable person	has the meaning of art. 269 para. (1) and represents the natural person, the group of persons, the public institution, the legal person, as well as any entity capable of carrying out an economic activity;
16.	ceiling on intra-community purchases	represents the ceiling established according to art. 268 para. (4) lit. b);
17.	ceiling for distance sales	represents the ceiling established according to art. 275 para. (2) lit. a);
18.	tax	means the Value Added Tax applicable under this Title;
19.	collected tax	represents the tax related to the supply of goods and/or taxable services at the time the tax is due, made or to be made by the taxable person, as well as the tax related to the operations for which the beneficiary is obliged to pay the tax, according to art. 307 - 309;
20.	deductible tax	represents the total amount of tax owed or paid by a taxable person for purchases made or to be made;
21.	deducted tax	represents the deductible tax that was actually deducted;
22.	Intra-Community distance sale of goods	means a delivery of goods dispatched or transported by or on behalf of the supplier, including if the supplier intervenes indirectly in the transport or dispatch of the goods, from a member state other than the one in which the dispatch or transport of the goods to the customer ends, if certain conditions are met;
23.	delivery of goods	is carried out for a taxable person or a non-taxable legal entity whose Intra-Community purchases of goods are not considered taxable operations in Romania pursuant to art. 268 para. (4) and para. (8) lit. a) and art. 3151 para. (9) or the correspondent of these articles in the legislation of the destination Member State, if it is other than Romania, or for any other non-taxable person;
24.	the goods delivered	are not new means of transport or goods delivered after assembly or installation, with or without trial operation, by or on behalf of the supplier;

*Source: Fiscal Code, Law no. 227/2015 regarding the Fiscal Code, last update: Government Ordinance no. 37/2022*

In specialized literature, the Tax has the role of an instrument in the service of economic efficiency related to the function of allocation and regularization exercised by the state. It appears as “a means to correct the limits of the market mechanism and as an instrument of macroeconomic policy. The relationship between the allocation function of the state and the tax is generally justified by the existence of external effects and the tutelary will of the state.

As an instrument of macroeconomic policy, the tax contributes to the exercise by the state of the regularization function. It appears as a variable of the budget policy alongside public expenditures” (Negrea 2008, 17).

The use of different methodologies can be random. “The economic-financial diagnosis is a tool available to managers that allows the formulation of qualitative and/or quantitative value judgments regarding the state, dynamics and prospects of an economic agent.

The word diagnosis is of Greek origin and means “able to discern”. It has the same meaning in economics as it does in medicine. Regardless of the field of use, the diagnostic approach requires the complex analysis of the mechanism of formation and modification of specific phenomena.

The financial analysis represents a set of concepts, techniques, tools that ensure the treatment of internal and external information, in order to formulate pertinent assessments regarding the situation of an economic agent, the level and quality of its performances, the degree of risk in an extremely competitive environment dynamic (Niculescu 1997, 21).

“It can be appreciated that the wisest and most prudent fiscal policy promoted by a government is the art of knowing how to ensure the necessary revenues for the state without it being a burden, an injury to the private interests and the individual patrimony of natural and legal persons” (Beju 2002, 55).

The assessment of fiscal policy on economic activity must correctly delimit the concepts of automatic stabilizers and discretionary political action. The automatic stabilizer intervenes to mitigate the effects of the recession and increase demand. Discretionary political action can consist of reducing taxes or state intervention with public spending programs. Fiscal policy should ensure “financial management of the public economy, financing, both from the point of view of budget balance and sources. When the fiscal burden is too high, the size of the value newly created at the microeconomic level or of the economy in general is taken from the state budget without the possibility of expanding the national wealth. Receipts and taxes are found only as budgetary sources and levers to stimulate production, investment and consumption” (Tulai, Tulai and Bizo 2004).

“Fiscal policy, whether it is implemented at the national level by local public authorities, or at the union level by the union executive bodies, includes in itself both legal and economic elements” (Radu & Şaguna 2016, 22-23).

“The fiscal policy starts from the criterion of fiscal efficiency, of its high yield in order to ensure the highest possible revenues for the state budget, encouraging economic activity, investments, simultaneously with promoting equity in everyone’s contribution to the formation of revenues and ensuring social protection. The activity of forming public financial resources is followed by a process of redistribution” (Vel & collaborators 2008, 645).

### **3. Normative acts modifying the rates related to Value Added Tax in Romania. VAT rates applicable in EU member states**

The current rates applied by the Value Added Tax according to art. 291 – The rates provided by the Fiscal Code, (Law no. 227/2015 on the Fiscal Code) are the following:

1). The standard rate applied to the tax base for taxable operations that are not exempt from tax or that are not subject to reduced rates, is: 19% starting from January 1, 2017, and valid until now.

2). The reduced rate of 9% is applied to the tax base for the following provision of services and/or supplies of goods:

- a) delivery of prostheses and their accessories;
- b) delivery of orthopedic products;
- c) delivery of medicines for human and veterinary use;
- e) delivery of the following goods: food, including beverages, except alcoholic beverages, intended for human and animal consumption, live animals and birds of domestic species, seeds, plants and ingredients used in the preparation of food, products used to supplement or replace food, except provided in para. (3) lit. k). Through the methodological norms, the NC codes corresponding to these goods are established;
- g) delivery of water for irrigation in agriculture;
- h) the delivery of fertilizers and pesticides used in agriculture, seeds and other agricultural products intended for sowing or planting, as well as the provision of services of the specific type used in the agricultural sector, provided for by common order;
- i) water supply and sewage services.

3). The reduced rate of 5% is applied to the tax base for the following:

- a) the delivery of school textbooks, books, newspapers and magazines, on physical and/or electronic media, except for those that have, entirely or predominantly, a video content or an audio music content and those intended exclusively or mainly advertising;
- b) the services consisting in allowing access to castles, museums, memorial houses, historical monuments, architectural and archaeological monuments, zoological and botanical gardens, amusement parks and recreational parks whose activities are classified under CAEN codes 9321 and 9329, according CAEN codes;
- c) the delivery of housing as part of the social policy, including the land on which they are built.

Table 3. Normative acts amending the Value Added Tax 2004-2022

Nr.crt.	Title Name
1.	Law no. 227/2015 regarding the Fiscal Code, art. 291
2.	Law no. 227/2015 regarding the Fiscal Code, art. 291
3.	Law no. 571/2003 regarding the Fiscal Code. Through G.E.O. no. 58/2010
4	Law no. 571/2003 regarding the Fiscal Code. Through G.E.O. no. 200/2008
5	Law no. 571/2003 regarding the Fiscal Code, by which: repeals Law no. 345/2002
6	Law no. 345/2002, by which: repeals G.E.O. no. 17/2000
7.	G.E.O. no. 17/2000, repeals G.O.no. 3/1992
8.	G.O. no. 3/1992. Amended by G.E.O. no. 215/1999:
9.	G.O. no. 3/1992. Amended by G.E.O. no. 2/1998
10.	G.O. no. 3/1992. By point 6 of G.E.O. no. 33/1994
11.	G.O. no. 3/1992. By point 6 of G.E.O. no. 33/1994

*Source: Legislative framework of Value Added Tax*

For the period to which we refer, the rates of Value Added Tax practiced in Romania are presented in Table 4:

Table 4. Analytical situation of Value Added Tax quotas in the period 2004-2022

Nr. crt.	Time interval	Legal basis	Cote de TVA
1	01.01.2017- prezent	Law no. 227/2015 regarding the Fiscal Code, art. 291.	19% 9% 5%
2	01.01.2016- 31.12.2016	Law no. 227/2015 regarding the Fiscal Code, art. 291.	20% 9% 5%
3	01.07.2010 - 31.12.2015	Law no. 571/2003 regarding the Fiscal Code. Through O.U.G. no. 58/2010, the standard VAT rate was increased from 19% to 24%.	24% 9% 5%
4	15.12.2008- 30.06.2010	Law no. 571/2003 regarding the Fiscal Code. Through G.E.O. no. 200/2008, the 5% rate was introduced.	19% 9% 5%
5	01.01.2003-30.06.2010	Law no. 571/2003 regarding the Fiscal Code, by which: repeals Law no. 345/2002; the quota of 9% was introduced.	19% 9%
6	01.06.2000-31.12.2003	Law no. 345/2002, by which: <i>repeals</i> G.E.O. no. 17/2000; the notions were introduced: (1) “zero rate; (2) <i>exempt operations without right of deduction</i> ”.	19%
7	15.03.2000-31.05.2000	G.E.O. no. 17/2000: - zero rate; - operations exempt from VAT.	19%
8	01.01.2000-14.03.2000	G.E.O. no. 215/1999: - the 11% rate is eliminated; - the list of products subject to zero quota is modified.	19%
9	01.02.1998-31.12.1999	G.O. no. 2/1998: - the reduced rate changes from 9% to 11%.	22% 11%
10	01.01.1995-31.01.1998	G.O. no. 33/1994: - the reduced rate of 9% was introduced.	18% 9%
11	01.07.1993-31.12.1994	G.O. no. 3/1992	18%

Source: Legislative framework of Value Added Tax

Table 5. Quotas applicable from January 1, 2022 in the EU member states

Nr. crt.	Name of the Member State	Member State Code	Standard VAT rate	Reduced VAT rate	Very low VAT rate
1	Austria	AT	20%	10%, 13%	-
2	Belgium	BE	21%	6%, 12%	-
3	Bulgaria	BG	20%	9%	-
4	Cyprus	CY	19%	5%, 9%	-
5	Croatia	HR	25%	5%, 13%	-
6	Denmark	DK	25%	-	-

7	Estonia	EE	20%	9%	-
8	Finland	FI	24%	10%, 14%	-
9	France	FR	20%	5,5%, 10%	2,1%
10	Germany	DE	19%	7%	-
11	Greece	EL	24%	6%, 13%	-
12	Ireland	IE	23%	9%, 13,5%	4,8%
13	Italy	IT	22%	5%, 10%	4,8%
14	Latvia	LV	21%	5%, 12%	-
15	Lithuania	LT	21%	5%, 9%	-
16	Luxembourg	LU	17%	8%	3%
17	Malta	MT	18%	5%, 7%	-
18	Netherlands	NL	21%	9%	-
19	Poland	PL	23%	5%, 8%	-
20	Portugal	PT	23%	6%, 13%	-
21	UK	UK	20%	5%	-
22	Czech Republic	CZ	21%	10%, 15%	-
23	Romania	RO	19%	5%, 9%	-
24	Slovakia	SK	20%	10%	-
24	Slovenia	SI	22%	5%, 9,5%	-
26	Spain	ES	21%	10%	4%
27	Sweden	SE	25%	6%, 12%	-

Source: European Union, [www.europa.eu](http://www.europa.eu)

The standard rates applicable in the member states are in the percentage range of 17%-27%. The member states respect the lower limits imposed by the European Directive. We note that a number of 5 states also apply very low quotas. Value Added Tax rates practiced in Romania have comparable and reasonable values with other states.

#### 4. The results of the research

In order to fulfill its role and functions, the state must proceed to the mobilization of public financial resources from taxpayers, natural persons and legal persons. The creation of public financial resources is based on the collection of taxes, fees, contributions and non-tax revenues. Thus, the contribution that the Value Added Tax brings to the establishment of state resources has a significant weight both in Romania and in the EU countries. Practically, these sources come to respond to the functions of the state, they are concretized in: the allocation of resources; income redistribution; macroeconomic stabilization; regulating the behavior of society members. VAT was established as an indirect tax, which is applied throughout the economic circuit, up to the final user of the products or services, but only on the added value in each phase of this circuit.

The Romanian legislative framework in terms of Value Added Tax has been in continuous change as evidenced by the different quotas applied in the period 2002-2022. The legislative changes were adapted to the economic conditions of the periods in which they were practiced, but there were many. Frequent changes can generate effects such as: reduced flexibility of the fiscal policy; an unfair fiscal policy; an ineffective fiscal policy; a restrictive fiscal policy; an inefficient tax collection; on aspects of double taxation, reduction of state expenses in unjustified areas, incomplete legislative framework; interpretable legislative framework.

In the states of the European community, the economic mechanism differs from one country to another, being influenced by: economic policy; financial policy; monetary policy; social structure; fiscal policy; financial resources; material resources; dependence on other states; the level of development of the country.

Within the European Union, taxation has two components: 1. direct taxation; 2. indirect taxation. Article 110 of the TFEU is also applied in the matter of VAT, in the matter of other indirect taxation. We find these components at the level of our country as well as in all member states. Direct taxation at the community level is carried out only at the level of recommendations that fall under the exclusive responsibility of the governments of each member state.

Indirect taxation is attributed to the free circulation in the community market of persons, goods, services, goods. Regarding the indirect tax Value Added Tax, minimum quota limits are imposed at the community level, in the sense that for standard quotas the percentage should be at least 15% and for reduced quotas the sum of two reduced quotas should not be less than 5%. We note that the regulations do not refer to an upper limit for the standard rate, the reduced rates and the very reduced rates. The standard quotas applicable in the member states are in the percentage range of 17%-27%. We note that the lower limits imposed by the European directive are respected by all member countries. We note the fact that a number of 5 states also apply very low quotas. An analysis of the Value Added Tax rates applied in Romania, compared to the rates applicable in the other member states, led us to the conclusion that these values are comparable and reasonable.

Summing up, the particularities of the Value Added Tax can be found in the following aspects: it is an indirect tax; it has a universal character; it is included in the price of goods and services; it is a single tax; it is a neutral tax; although it qualifies as an indirect tax, it is called a tax; it presents a fractional payment; it is calculated for each stage of the production process; it is due at each stage of the production process; the transparency of the tax is ensured for all persons physical and legal by the fact that they are informed about the size of the tax.

## References

- Beju, V. 2002. *Meode și tehnici fiscal (Fiscal methods and techniques)*. Dimitrie Cantemir Publishing House.
- DEX 2009 - The Explanatory Dictionary of the Romanian Language.
- Dinga, E. 2009. *Studii de economie (Economic studies)*. Economică Publishing House.
- DLRM 1958 - Dictionary of the Modern Romanian Language.
- European Union. *Your Europe* - European Union. [www.europa.eu](http://www.europa.eu).
- Fiscal Code, Law no. 227/2015 regarding the Fiscal Code, last update: Government Ordinance no. 37/2022. Annotated edition with the methodological norms approved by G.D. no. 1/2016, last update: Government Decision no. 1106 of September 7, 2022.
- G.E.O. no. 17/2000, repeals G.O. no. 3/1992.
- G.O. no. 3/1992. Amended by G.E.O. no. 215/1999.
- G.O. no. 3/1992. Amended by G.O. no. 2/1998.
- G.O. no. 3/1992. By point 6 of G.O. no. 33/1994.
- G.O. no. 3/1992. By point 6 of G.O. no. 33/1994.
- Law no. 227/2015 regarding the Fiscal Code, art. 291.
- Law no. 227/2015 regarding the Fiscal Code, art. 291.
- Law no. 345/2002, by which: repeals G.E.O. no. 17/2000.
- Law no. 571/2003 regarding the Fiscal Code, by which: repeals Law no. 345/2002.
- Law no. 571/2003 regarding the Fiscal Code. Through G.E.O. no. 200/2008.
- Law no. 571/2003 regarding the Fiscal Code. Through G.E.O. no. 58/2010.
- Negrea, G.G. 2008. *Fiscalitatea europeană (European taxation)*. Economică Publishing House.
- Niculescu, M. 1997. *Diagnostic global strategic (Global strategic diagnosis)*, Economică Publishing House.
- Radu, D.I. and Șaguna, D.D. 2016. *Drept fiscal (Tax law)*. Bucharest: C.H. Beck Publishing House.
- Rotaru P. and Șaguna D.D. 2003. *Drept Financiar și Bugetar (Financial and Budgetary Law)*. Bucharest: All Beck Publishing House.
- Țirlea, M.R. 2017. *Fiscalitate – Manual de studiu individual (Taxation - Individual study manual)*, DCCU.
- Tulai C. 2003. *Finanțe publice și fiscalitate (Public finance and taxation)*. Cluj Napoca: Casa Cărții de Știință Publishing House.
- Tulai, C., Tulai, M. and Bizo, D. 2004. *Consumul și fiscalizarea lui (Consumption and its taxation)*. Eurodidact Publishing House.
- Vel, I. and colab. 2008. *Finanțe publice (Public finances)*. Bucharest: Didactică și Pedagogică Publishing House.
- Voinea, G.M., Boariu, A. and Soroceanu, M. 2005. *Concepte și expresii importante pentru aplicarea legislației fiscale din România (Important concepts and expressions for the application of fiscal legislation in Romania)*. Iași: Polirom Publishing House.

ISSN 2578-8574

ISBN 978-1-945298-53-0



**RESEARCH ASSOCIATION FOR INTERDISCIPLINARY STUDIES**