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CRIMINAL LAW IN THE CONTEXT OF ENVIRONMENTAL, NATURAL AND CULTURAL HERITAGE CRIMES

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ABSTRACT

The evolution of law follows the evolution of society and the socio-economic relations that generate legal relations. Lately, environmental crimes among which we mention: pollution, contamination with dangerous chemical substances of abiotic environmental factors; wildlife poaching; deforestation in violation of the forestry regime, etc., are frequent, entering a spectrum of everyday normality. At the same time, the poaching of cultural heritage is a new element that has come under the focus of criminal investigation bodies, although the trade in artefacts and priceless heritage values has been consumed for a long time. The Romanian authorities and legal specialists easily pass over existing cases affecting the environment and cultural heritage, as these important paradigms for humanity are not active subjects of law. The correction of some characters whose aim is to enrich themselves through the destruction of abiotic environmental factors and the sale of cultural heritage objects, can only be done in an organized and focused way, including through the development of a criminal code of the environment and cultural and natural heritage. The code will have to capture the existence of crimes in relation to the action or inaction of individuals and in relation to the legal ethical principles of the environment and heritage accepted by the international community, which gives more and more importance to this segment, which is imposed in constitutional law of the signatory countries of international conventions. Our material launches some ideas and puts into scientific debate the possibility of creating a unitary legal framework to prevent the destruction of elements of cultural and natural heritage and to protect the environment.

KEYWORDS: pollution, poaching, deforestation, criminal, law.

INTRODUCTION

The environment, natural and cultural heritage are indisputable values and notions for humanity. It is true that society is not aware of the effects of their deterioration. Regarding the environment, we identify two situations: a situation in which the environment has insufficient resources and reserves compared to the population living in the respective geographical areas. In these situations,we find geographical areas with a dense population and a rather low social standard. These peopledon't know any better and have no voice to be heard in world politics. A second situation is that ofeconomically and socially developed societies which, however, have enough biosphere resources to not feel the effects of global warming and industrialization. In these societies scientists develop theories and present experiments about what humanity and the environment will look like in a projection of 20 to 50 years. Politicians have ignored the messages until now over the last 10 years, when serious negotiations have begun on future strategy for industry, trade, agriculture, and habitable geographies.

We know the fact, which has become a certainty, that coastal areas will be flooded due to the risein the level of the planetary ocean. These coastal areas of the seas and oceans

are inhabited areas with a high population density per unit of land area. It is estimated that in the not-too-distant futurea migration of over one billion inhabitants will occur due to climate reasons. Reality cannot be proved - it can only be presented in mathematical models that give us a gloomy projection. On this pattern we can discuss a global need for regulations through international, regional, and state normative acts of activities that affect the environment and especially the resources for a healthy life.

Regulations exist starting with international conventions, regulations and directives of the European Union implemented in Romanian law through laws, government ordinances, government decisions and subsidiarily ministerial orders.

Normative acts in the field of environment cover a wide range of regulatory objectives. We have specific legislation in the field of water, soil and subsoil resource management, regulations on air quality, regulations on geographical areas with forests, lands intended for agriculture, lands intended for the conservation and protection of habitats and human settlements. At the same time, we have normative acts dedicated to causes that destroy the environment.

Thus, waste management of all categories starting from municipal waste, construction waste, vehicle fleet renewal, biological waste from agro-zootechnical farms and up to hospitals and research laboratories are strictly regulated. Most of the time, the implementation of these regulations represents a real challenge for the state authorities, but also for private entrepreneurs.

The natural desire for profit sets in motion economic and financial mechanisms, which are not related to a judicious and balanced management of environmental resources. The desire for enrichment leads to the corruption of a segment of the state or local public administration so that the law is not applied correctly and on time.

There are situations where the representatives of the authority are overwhelmed by the large number of crimes and the "law" element turns into a purely theoretical notion. Most of the normative acts elaborated punctually in each field also have the part of incriminating contraventional and criminal acts. Criminal liability is imposed on the perpetrators, the deed beingrelated to each normative act with a higher or lower value. Hence the need for a criminal code anda code of criminal procedure in environmental law.

We find liability in environmental law in the bibliography, in international treaties, but we do not find it in the finality of many files instrumented by the Prosecutor's Office regarding environmentalcrimes.

A situation mirrored in environmental law can also be found in natural and cultural heritage law. The phrase "natural heritage" is closely related to environmental law, as it refers to the inventory of geographical areas where natural monuments, biosphere reserves, natural parks, wetlands, biological, geological, or speleological reserves are located. These symbol values held by humanity must be reference systems between the beginnings of life on earth and the everyday.

The more often we refer to these areas of natural heritage, the more we notice the destruction caused by the evolution of society and the economy with everything it entails: industry, trade, intensive agriculture, and others.

Cultural heritage is a notion that offers us a new challenge parallel to environmental

law, as thesenotions are similar. The history of mankind is reflected by the goals achieved in the past. By theseobjectives we understand the way of life of people in different geographical areas, political and military systems of the time and technologies of the past. In this context, the identity of the peoples is found in the artifacts discovered by archaeologists, military fortifications with the engineering of the moment. All these elements must enter the universal heritage and must be protected. In thissequence of cultural heritage, history and the present reflect an impressive casuistry of crimes by poachers trading on a black market „everything old".

This market is exclusive and sometimes protected by the interests of the beneficiaries of the artefact trade, most often influential people capable of powerful pro causa lobbies.

This is the introduction to our research on environmental law, natural and cultural heritage law. We are trying to see what is missing or what is not working in holding the perpetrators accountablefor misdemeanors and crimes that affect this heritage.

NORMATIVE ACTS REGARDING CRIMINAL LAW AT INTERNATIONAL AND NATIONAL LEVEL

The need to protect the environment imposed its own regime of criminal liability through general criminal law. In the special criminal law, there was a need to highlight the crimes regarding the protection of the environment, which over time were categorized as environmental crimes. The Criminal Code rarely identifies environmental crimes. Reality sets in and environmental crimes are in full regulatory process both at the European level, within the European Union, but also at the international level. In 1970, at the level of the United Nations Organization, in the Declaration on the principles governing the bottom of the seas and oceans, a more special notion, but of fundamental importance, is called for: that of the common heritage of humanity.

Over time, the highlighted phrase is used in international law, so that any attack on the environmental resource prevents the declaration of the abiotic environmental element or factor as the common heritage of humanity. Some researchers make an „x-ray" of the evolution of environmental law regulations (Duțu et al., 2015). It is noted, however, that a criminal law of the environment is necessary. At the level of the European Union, the environmental criminal law is imposed by the directive[1] 2008/99/CE by which the states have the obligation to introduce into the domestic law criminal sanctions for actions that generate destruction of environmental factors.

We notice that there is a specialization in law through many normative acts, but there is no unifiedworking basis by which to treat all the acts and facts that harm the environment and natural heritagein a code. An environmental code and a procedural code simplify the work of the authorities that aim to protect the fundamental values that ensure our right to a healthy environment[2].

[1] The directive was published in the "Official Journal of the European Union" and transposed into domestic law by law 101/2011 for the prevention and sanctioning of acts related to environmental degradation, published in the officialmonitor part I, no. 449 of 28.06.2011.

[2] Romanian Constitution, art.35: "(1) The State recognizes the right of any person to a healthy and ecologically balanced environment. (2) The state ensures the legislative framework for the exercise of this right. (3) Natural and legal persons have the duty to protect and improve the environment.

To justify the theoretical elements, we bring to attention seemingly trivial cases or trivialized by the mass media, which by their nature, affect in the long term this constitutional right to a healthyand ecologically balanced environment. We will not go into the details of the cases, as it would mean overloading the content and failing in the synthesis in the conclusions. The pages of the written press, the airwaves of radio stations and the images shown on television are numerous when the Public Ministry through the territorial structures presents us with serious crimes againstthe environment.

In Tulcea county, the prosecutors found that after the capsize of a ship loaded with sheep, their carcasses were simply buried, without respecting any article of the legislation on biological waste.The infection outbreak is a ticking time bomb that will indefinitely affect the water table, air and soil in the area where the criminals falsely claimed to have incinerators.

In Constanța county, "investors" from Italy imported particularly dangerous waste from western Europe, collected in southern Italy, and then unloaded by sea at Năvodari. The garbage mountainreached a height of 95m according to criminal investigations.

In the Crisana area, areas of agricultural land on the edge of some rural towns became warehousesfor particularly dangerous waste whose accompanying documents showed that the waste was in transit to the Republic of Moldova.

Particularly hazardous waste was imported from Great Britain to the city of Strehaia, Mehedinți county. The transport was made by rail from Great Britain to the border of Romania, and from there - by road. This small detail shows that the perpetrators were afraid of the authorities of the states in transit and chose rail transport, and in Romania the law is enforced with tolerance.

In many situations, the parks authorized by the Environment Agency for the dismantling of motor vehicles and the sorting of dismantled components by waste category are in fact waste dumps, sometimes abandoned, and other times, as if by accident, they catch fire spreading extensive fires. Normally, these contractors should have a limited period in which to dismantle and classify the waste by composition and "recycle/reuse/neutralize" destination.

These situations are numerous on the territory of Romania and benefit from an indulgence of the environmental protection and other authorities. Another area where environmental crimes are relevant due to their scale are the acts by which vastareas of forests are cleared, large volumes of gravel and sand are excavated from riverbeds, a factthat leads to a long-term damage to fauna and flora and the landscape.

In terms of cultural heritage, the cases revealed by prosecutors regarding the treasures composed of gold bracelets and Dacian coins, poached from the mountains of Orăștie and sold at large auction houses in the world are an eloquent and brilliant media example. The importance of the cultural heritage is also given by the constructions, fortifications, defense, and transport systems of the past. The most mundane tools or sherds are of great importance in archaeologists' theses regarding the living conditions of the ancestors. To build an identity as a people you need historical and cultural landmarks summarized by the phrase "cultural heritage".

Through the Convention on the Protection of the World Cultural and Natural Heritage[3], the United Nations Educational, Scientific and Cultural Organization, considering that the disappearance of the cultural and natural heritage constitutes a harmful diminution of the heritage of all peoples, and the protection of this heritage, only on a national scale, is ineffective, a common strategy is recommended to the signatory states. Through this strategy, the convention recognizes that the obligation to ensure the identification, protection, conservation, valorization, and transmission to future generations of cultural and natural heritage is a priority. In this context, international cooperation must focus on financial, scientific, and technical aspects, to protect and conserve heritage[4] as effectively as possible.

The presentation above shows us that steps are being taken towards the protection of the natural cultural heritage and the protection of the environment by developing specific sequential legal norms. These actions must be subscribed to a wider action in which the normative acts are centralized, duplicates and contradictory elements of the legislation are eliminated. A cultural heritage code in Romania is in the draft phase and probably, after the public debate, it will be able to be validated by the legislative forum to become a reference law. At the same time, actions for a code of laws regarding environmental law are timid and their coagulation for a greater objective, to create a code of laws from all existing legislation, is at the beginning.

We want to bring to the attention of the scientific community the fact that cultural heritage, natural heritage, and the environment are the most important elements to be regulated in this period. Improving the other branches of law: civil, commercial, constitutional is very important for micro- companies. Legislation on heritage and the environment is much more important in that the object of law is part of the "common heritage of humanity" and the subjects of law have the valence of international law. Pollution cannot be stopped within the borders of a state or union of states. Trade in artefacts and cultural heritage goods would have no value if it were not internationalized. Mineral resources, water, food resources cannot be ignored as they provide huge profits and ensure the life of humans and terrestrial or marine animals. Consequently, life on the planet depends on the quality of these primary resources: air, water, soil, and secondary resources resulting from agricultural products, fruit trees, vines, fisheries, and livestock, whether raised on farms or in their natural environment. Once we realize the importance of these elements necessary for life with an ever-increasing quality, we can demonstrate that the protection of these resources necessary for humanity must be achieved through well-articulated legislation, implemented on an international scale so as not to have regulatory differences. At first the legislation will create discomfort for some who make the profit in the short term, but in the future the profit will be for larger and larger geographical spaces, with the populations living in harmony in these places. An even distribution of public or private economic assets equalizes the standard of living. Standardization of living standards will slow down the desire to emigrate for economic and climatic reasons. Social and economic standardization will allow for more effective globalization, as differences between regions are smaller and easier to manage.

[3] The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Parisfrom October 17 to November 21, 1972

[4] Art. 4, Convention on the protection of the world cultural and natural heritage

CONCLUSIONS

A correctly articulated and precisely implemented legislation ensures a good management of environmental resources (water, air, soil), of mineral resources that enter the technological processes necessary to produce consumer goods.

Consumer goods sooner or later become waste, a big problem for the high standard of living. The tendency of waste management is to be moved from large consuming societies to politically and economically dominated, poorer societies with uneducated populations and corruption in administrative structures. The reviewed cases on imported waste would become simple commercial acts if we were a member state of the Schengen Convention[55] on the Free Movement of Goods and Persons. It is up to the political factor to organize more effectively the structures to control more effectively the „waste trade".

In parallel evolution, the trade in artefacts, which affects the value of heritage, has a dimension of international law. Artifacts from a state are hoarded through a sophisticated trade through dedicated auction houses in developed states. Buyers have enormous financial resources. If the poaching of cultural heritage is presented by the mass media as trivial actions, the losses at the state level are huge. Practically, cultural heritage is based on symbolic values and is not based on an economic and utility value of the moment. In these cases, known from the historical treasures in the mountains of Orăștie, the plates from Troesmis also have the intrinsic value of gold or bronze, but the most important is the symbolic, historical value.

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NEW REGULATION OF DIGITAL ASSETS FOR FUTURE BUSINESS – CASE OF SERBIA

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ABSTRACT

In the past several years Serbia and surrounding countries became attractive environment for crypto currency hubs. Enterprises dealing with digital assets, which are present, dispose already over a 1 billion USD. Firstly, Serbian legislator adopted several regulations on this issue for the purpose of preventing money laundering, organised crime and terrorism. However, very soon it became necessary to create a legal framework for business, finance and attracting foreign investments. Serbia was among the early birds who adopted relatively complete regulation on digital assets in 2021. The purpose of this paper is to bring this very actual topic to the attention of the academic and broader public. The authors will analyse the legal framework in force and the use of digital assets in practice. New legislation represents one big step towards the modern business. Never the less there are some more actions to be done to include digital assets completely into the legal life in Serbia.

KEYWORDS: digital assets, regulation, future business, Serbia.

INTRODUCTION

Created with the purpose to avoid strict rules and to allow free trade and exchange, cryptocurrencies and other digital assets set an important challenge for legislators around the world. The very nature of cryptocurrencies imposes a need for specific legal definition, and the way of their treatment. Among early birds, Serbian legislation recognized the importance of regulating cryptocurrencies. In December 2020, following the recommendations of the Financial Action Task Force (Financial Action Task Force, 2021, p. 45), National Assembly of Serbia adopted the Law on Digital Assets (Law on Digital Assets, 2020) which sets a legal framework for cryptocurrencies and allowed further development of this relatively new and specific market value. The EU Fifth Directive on the Prevention of Money Laundering and Terrorist Financing (EU Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, 2015) was also taken into account. Since its entry into force in June 2021, the first assessment estimated that approximately 200.000 persons in Serbia own some type of digital assets (Politika, 2021). Some of the biggest cryptocurrency projects, such as Polygon, Celsius, Ethereum developer platform and Tenderly are based in Serbian capital of Belgrade and at least 92 million USD was raised by crypto startups in the region in 2021. In July 2021, the National Bank of Serbia adopted amendments and supplements to the Instructions for the Implementation of the

Decision on the Conditions and Manner of Performing International Payment Transactions. New regulation itself represents only a legal framework, but the interpretation of legal issues regarding identification and realization of cryptocurrencies in practice is yet to be provided by the judicial practice. Given the fact that cryptocurrencies very often face the risk of significant price fluctuation the lawmaker clearly considers digital assets to represent a significant challenge for both stakeholders, owners and their creditors. In the civil law theory, digital assets are still not considered as a particular property object. General division of civil law recognizes as object of property rights real estate, movable property and property rights (Stanković & Orlić, 2014). However, digital assets cannot be included in none of these and has to be regarded as specific category. Besides, other property rights regulations in force have to take this new category into account and harmonize the legal framework accordingly.

METHODOLOGY

The research in this paper focuses on normative approach to the national legislation in force and its comparative analysis with the respective rules in the EU and requirements set by international organisations. Since it is relatively new topic, there are only few comparative examples. Many countries still do not regulate digital assets or do not recognize it as personal property or even forbid its use in business operations. For judicial practice, it is completely new and pretty unknown area, which requires knowledge and professional experience for adequate decisions and protection of interested parties.

Firstly, digital assets will be analysed as personal property according to the legislation in force. It will be followed by discussion on the content of the property rights. Further, the use of digital assets in business operations will be considered. Bearing in mind its value, the use of digital assets for claim settlement will be taken into account. Finally, considering its usually dislocated storage, cross border issues relating digital assets will be analysed.

1. DIGITAL ASSETS AS PERSONAL PROPERTY

Since digital assets represent a legal novelty, it is necessary to analyze the legal nature of digital assets in Serbian law. In some countries, digital assets are considered as a type of personal property (Inacio, 2018, p. 12-13), but in others they are not recognized as such (Lyadnova et al., 2018, p. 5). The EU Council formally approved the Proposal of the Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 (MiCA). Now EU Parliament has to adopt the proposal which prescribes a transitional period of 18 months after entry into force (Proposal for a EU Regulation on Markets in Crypto-assets, 2020/0265). Digital assets are defined as identifiable, non-monetary and without physical substance (International Financial Reporting Standards Foundation, 2022, p. 4). They are also characterized as authenticated by cryptography, based on a distributed transaction ledger, decentralized and ruled by consensus (OPUS Business Advisory Group, 2021, p. 3). In order to be identifiable, digital assets have to be detachable and created on the basis of contract or other legal rights transferable/non-transferable and detachable/non-detachable from entity or other rights.

Serbian law regulates digital or virtual assets as the digital value record that can be digitally bought, sold, exchanged or transferred, and that can be used as a medium of exchange or for investment purposes (Art. 2. Para. 1. p. 1. Law on Digital Assets, 2020). This does not include digital currency records that are legal instruments of payment and other financial assets regulated by other laws. This implies that Law on Digital Assets recognizes digital assets the legal position of personal property, since it posses two important features of property, its value and its *iustus titulus*, the same as prescribed for sale of goods in the Law on Contract and Torts (Art. 454. Law on Contracts and Torts, 1979).

Since they are by their nature intangible, digital assets have to be stored on secure digital location called wallet. This may be a software wallet, hardware wallet, hot wallet and cold wallet (OPUS Business Advisory Group, 2021, p. 6). Their digital storing allows the assets to be at disposition of its owner. Digital assets are usually decentralized, until they become a whole by operation of the holder. Any registration by public or licensed private providers of services secures their flow control and protection. In addition, digital assets have their address as a unique identifier of a virtual place that contains data on each specific digital asset. Because of their specific nature, digital assets may have the form of virtual currency (serb. *virtuelna valuta*) and digital token (serb. *digitalni token*). On the one side, virtual currency is considered as a type of digital assets that has not been issued and whose value is not guaranteed by the central bank (National Bank of Serbia) or other public authority (Art. 2. Para. 1. p. 2. Law on Digital Assets, 2020). That is why in Serbia the legislator does not recognize them as a legal instrument of payment and they have no legal status of money or currency. This statement was confirmed by the National Bank of Serbia in 2022 (NBS, Statement on Digital Assets, 2021). Serbian legislation recognizes digital token as a type of digital assets that represent any intangible property right and that may represent one or more other property rights in digital form, including the right of the user of the digital token to be provided with certain services (Art. 2. Para. 1. p. 3. Law on Digital Assets, 2020).

Any acquisition of digital assets by participating in the provision of computer certification of transactions in information systems related to certain digital assets (mining of digital assets) is allowed. The digital assets acquired in this manner may be freely disposed of by their owner. The owner may also use the services of digital asset service providers, in which case the owner is considered as a user of digital asset transaction in the OTC market. An over-the-counter (OTC) market is a decentralized market in which market participants trade stocks, commodities, currencies, or other instruments directly between two parties and without a central exchange or broker. Over-the-counter markets do not have physical locations; instead, trading is conducted electronically (Corporate Finance Institute, Capital Markets, 2022). Digital assets may also have the characteristics of a financial instrument. In this case, all operations on issuing, secondary trading of digital assets and providing related services have to be conducted in accordance with the Law on Capital Market (Art. 7. Para. 1. Law on Digital Assets, 2020).

The new legal framework in Serbia also regulates the stable digital assets. These are special digital assets issued for the purpose of minimizing changes of their value. Their value is bounded to the value of legal instruments of payment or one or more property rights with small value changes, such as the official RSD (NBS, Official middle RSD exchange rate, 2023) exchange rate or foreign exchange rate currency that is relatively stable. Digital assets

are stored in a digital wallet. The wallet may be located in software storage (such as cloud) and hardware storage (external).

1.1.OBJECT OF THE PROPERTY RIGHTS

The Law on Digital Assets differentiates between the holder and the user of digital assets. A user may be a natural person, entrepreneur or legal person that uses or has used any service related to digital assets or has contacted a provider of services related to digital assets for the use of that service (Art. 1. Para. 1. p. 35. Law on Digital Assets, 2020). A holder comprises of both user of digital assets and a person who has acquired digital assets (Art. 1. Para. 1. p. 36. Law on Digital Assets, 2020) as personal property. It may be any person regardless of the business relationship established with the digital asset service provider or transactions made through that provider. Holder of any digital assets has all property rights provided by the Serbian laws. As mentioned above, the holder is authorized to buy, sell, exchange, transmit and store electronically his/her/its digital assets.

The legislator set an obligation for providers of services related to virtual currencies to submit to the National Bank of Serbia all data on legal persons and entrepreneurs who are users of virtual currencies. Holders of virtual currencies based in Serbia, both legal persons and entrepreneurs, who have not used licensed providers' services related to virtual currencies are required to submit reports to the National Bank of Serbia, and are responsible for the accuracy and completeness of these data. The National Bank of Serbia keeps electronic data records on holders of virtual currencies (Art. 85. Para. 4. Law on Digital Assets, 2020). Any information obtained while providing services related to digital assets and to their user, including user's identity, and on transactions with digital asset service provider must be kept as a business secret. The only exempted information is the one made publicly available.

Company, as a legal person, may be the holder of digital assets provided that it respects certain restrictions. Namely, virtual currencies cannot be invested as a monetary investment in the capital of a company. However, they can be converted in cash and paid into a company as a cash investment. Digital tokens may be invested as a non-monetary investment in a company but cannot be related to the provision of services or the work performance. This restriction for digital tokens does not apply to a partnership and limited partnership (Art. 14. Para. 3. Law on Digital Assets, 2020). The list of digital tokens that may be invested is determined by the Securities Commission. In the business books, a company has to record its digital assets as intangible, i.e. a resource controlled as a result of past events and from which the economic income is expected in the future, or as inventories kept for the purpose of sale in regular business or material used in production process or providing of services.

1.2.DIGITAL ASSETS IN BUSINESS OPERATIONS

The holder/owner is authorized to buy, sell, exchange, transmit and store electronically its digital assets. Although not specifically regulated, it is possible that this property may also be subject of a lease agreement. More importantly, Law on Digital Assets regulates the pledging of digital assets. Any acceptance of digital assets in exchange for

goods sold and/or services provided in retail trade may be done exclusively through a licensed provider of services related to digital assets. The provider may accept from the consumer the appropriate value of digital assets corresponding to the price of goods sold and/or services provided to that consumer and place it with the appropriate amount of legal instrument of payment on the trader's account. However, direct acceptance and/or transfer of digital assets from the consumer to the trader is prohibited (Art. 97. Para. 3. Law on Digital Assets, 2020).

Following the Comments of the International Financial Reporting Standards Interpretation Committee (IFRIC) and provisions of the Law on Digital Assets, the Serbian Ministry of Finance issued the Explanation regarding accounting recognition, valuation, and manner of recording digital assets in the business books of taxpayers, which recognizes digital assets as intangible assets and inventories (Art. 7. Para. 1. Law on Digital Assets, 2020).

As personal property, digital assets may also have the characteristics of a financial instrument. In this case, all operations on issuing, secondary trading of digital assets and providing related services have to be conducted in accordance with the Law on Capital Market, determined by the National Bank of Serbia on the day of issuance (Art. 7. Para. 2. p. 3. Law on Digital Assets, 2020). However, capital market regulation does not apply, if digital assets do not have the characteristics of shares or not exchangeable for shares and their total value issued by one issuer during a period of 12 months does not exceed the amount of EUR 3,000,000 in RSD equivalent (Securities Commission of the Republic of Serbia, 2022). As a financial instrument, digital assets may be subject of special financial security agreement and may be held as intangible assets or inventories. When digital assets as financial instruments are issued, a special document called “white paper” is published, which contains information on the issuer of digital assets, digital assets and risks associated with digital assets, allowing investors to make an informed investment decision.

Digital tokens are recognized as especially important form of alternative financing of young and innovative companies (startups). On 27th May 2022 the Securities Commission of the Republic of Serbia approved the publication of the first white paper to one company. Its initial offer was 35,250 tokens, with the nominal value of 1,000 RSD and the total value of the initial offer of 35,250,000 RSD (1 € = 117,33 RSD). By approving this white paper, Serbia gets the first digital token called after its issuer *Finspot factoring token* (*FIN* for short). This will enables investors to make an informed investment decision and assess the risks associated with investing in digital assets (Ministry of Finance of the Republic of Serbia, Opinion regarding accounting recognition, valuation and manner of recording digital assets in the business books of taxpayers, 2022).

Every person who owns digital assets may use them as security for its or someone else's debt. This means that the owner may appear both as debtor and as guarantor. The legal basis for the pledge on the digital assets is the pledge agreement. The pledgor is obligated to provide to the creditor or pledgee collateral for its claim on the pledgor or a third party by establishing the creditor’s right of pledge on pledgor’s digital assets (Art. 98. Para. 1. Law on Digital Assets, 2020). Pledge agreement may be concluded in paper, electronic form or on a permanent data carrier that enables storage and reproduction of original data in unaltered form. A pledge agreement may also be executed using a smart contract.

The new legislation introduced fiduciary agreement as a complete novelty in Serbian civil law. In the same way as pledging, fiduciary of digital assets is based on agreement. It bounds the fiduciary debtor to transfer the ownership of digital assets to the fiduciary creditor for the purpose of securing a claim, and the fiduciary creditor is bound to return the received or equivalent collateral to the fiduciary debtor upon settlement of the secured claim or at the same time (Art. 121. Para. 1. Law on Digital Assets, 2020).

1.3.DIGITAL ASSETS AS THE OBJECT OF A CLAIM SETTLEMENT

Following the principle of legality and uniform legal treatment, the Law on Digital Assets prescribes the general duty for all companies in Serbia in capacity of an enforcement debtor to cooperate with the competent authorities in enforcement proceedings and to provide all information necessary for enforcement settlements on digital assets, including the means by which digital assets are accessed - cryptographic keys (Art. 14. Para. 6. Law on Digital Assets, 2020). If the owner of digital assets is a natural person or entrepreneur, only civil enforcement proceeding is applicable. The proceedings initiated at the request of the creditor are conducted by the public enforcement agent. If the owner of digital assets is a legal person, claim settlement procedure depends on its financial situation (Jovanović & Đurić, 2021, p. 46-55). In case of individual claim settlement where the value of debtor's assets covers the amount of the claim, only civil enforcement proceeding will be carried out. If an insolvency ground is determined, all enforcements on its assets will be conducted in bankruptcy proceedings. Every civil enforcement proceeding for the purpose of claim settlement may be conducted by the public enforcement agent over the digital assets.

Both public enforcement agent and bankruptcy administrator may meet some obstacles in payment collection. A company debtor is bound to cooperate with the competent authorities in enforcement proceedings and provide all information necessary for enforcement settlements on digital assets. This includes the keys by which digital assets are accessed.

However, in bankruptcy after opening of the proceedings, the only person authorised to administrate the assets, including digital assets of insolvency debtor (bankruptcy estate) is the bankruptcy administrator appointed by the court. It also manages the business of and represents the insolvent debtor. If successful in apprehending the digital assets of the insolvency debtor, the bankruptcy administrator strives to achieve the highest possible value to ensure the most favourable collective settlement of bankruptcy creditors (Droege Gagnier & Marlière, 2019, p. 29).

The outcome of bankruptcy proceedings and thus the future of insolvent debtor depends on decision of its creditors. In order to settle their claims, creditors consider the financial aspect of the debtor’s assets. If debtor’s assets including value of the digital assets secure continuation and sustainable business, creditors may vote for its reorganisation.

The valuation of digital currencies is different for digital currency and digital token and depending on whether these are recorded as intangible assets or as inventories. On the one hand, the valuation of digital currencies as intangible assets includes initial and subsequent valuation. Initial valuation involves measuring according to the purchase price. It includes the purchase price and directly attributable transaction costs. Two approaches can be used in the subsequent valuation of digital currencies: the cost model and the revaluation

model. The cost model involves subsequent measurement at cost less depreciation and impairment losses. Due to their specific nature, digital currencies have virtually unlimited time of use. However, if such a limitation exists, depreciation should include the residual value. The revaluation model is only applicable when the fair value of digital currencies can be determined in an active market. If the quoted price does not exist on the market, it would be necessary to apply the cost model. On the other hand, the valuation of digital currencies as inventories is performed by measuring at a lower value between the purchase value and the net realizable value, while increases in value over the initial purchase value are not recorded.

Based on the valuation report, the bankruptcy administrator decides on suitable method of sale of digital assets in insolvency estate. The general rule on sale of assets in enforcement and bankruptcy proceedings prescribes public auction, public collection of offers and a direct agreement as sale methods. However, these sale methods are more suitable for sale of real estate or movables. For digital assets, sale on commodities market (Shawver, 2021, p. 2047) and securities market for financial instruments appears as more suitable. However, the choice of the sale method should be considered and decided in every specific case. Depending on the type of digital assets, the sale may be organized on exchange platforms and over the counter or peer-to-peer sale.

The moment of the sale of digital assets in bankruptcy proceedings is one of the most important both for enforcement and bankruptcy proceedings. In case of drop-off in trading ("crypto winter" or "chilling") (Greifeld & Hajric, 2022), enforcement agent/bankruptcy administrator may not comply with the first objective of proceedings - to ensure the most favourable collective settlement of creditor/s by achieving the highest possible value for the debtor's assets. Therefore, the sale of debtor's digital assets also depends on capacities and experience of the enforcement agent/bankruptcy administrator (De Macedo & Coelho, 2021, p. 17).

2. CROSS-BORDER ASPECTS OF DIGITAL ASSETS

The payment collection proceedings including the total assets of the debtor located in Serbia or abroad follows the principle of universality of proceedings. In the case of insolvency, the bankruptcy estate comprises all assets of the bankruptcy debtor in Serbia and abroad on the day of opening of bankruptcy and all assets acquired by the bankruptcy debtor during the bankruptcy. With regard to digital assets, their location depends on the manner of storing. For digital assets wallet stored on hardware, it does not represent an issue. Identification of hardware allows further conduct of bankruptcy or enforcement proceedings. However, the location of online wallet is difficult to determine. This issue has been discussed in professional circles. Some opinions refer to the company managing online wallets (INSOL International Special Report, 2019, p. 36). Since it might be located anywhere in the world, the biggest challenge for the enforcement agent/bankruptcy administrator is yet to arise. This is particularly the case if the legislation of the country where the company managing online wallet is located does not recognize digital assets as a legal category or does not have bilateral agreement on legal cooperation with Serbia.

In enforcement or bankruptcy proceedings, Serbian courts apply the law of the country where these have been initiated (*lex fori*). Serbian law exclusively applies to assets subject to excluding rights or secured assets located in the territory of Serbia (Knežević &

Pavić, 2017, p. 108). The court in the territory of which the seat and/or the permanent business unit of the bankruptcy debtor is located conducts the procedure of recognition of the foreign proceedings and cooperation with foreign courts and other competent authorities. If the debtor does not have the seat or permanent business unit in Serbia, the court in the territory of which a substantial part of the assets of the bankruptcy debtor is located has the territorial jurisdiction. In case the bankruptcy proceedings have already been conducted in the Republic of Serbia, the court conducting the bankruptcy proceedings shall have the territorial jurisdiction for deciding on recognition and cooperation with foreign courts and other competent authorities. The foreign collection proceedings may be recognized in Serbia under conditions stipulated by the applicable laws.

CONCLUSIONS

Although a relatively new legal institute, digital assets undoubtedly became a part and form of the personal property in Serbian civil law. By its nature intangible, but fungible, digital assets require specific manner of storing in electronic wallets on software storage accessible by keyword or on hardware storage. One of the main features providing the digital assets with legal qualification of a property right is their value. According to the assessments, the value of digital assets in the world reaches dozens billions of USD. That is the reason why such assets may and have to be the pledge for settlement of claims towards their owners. By regulating digital assets, acquiring, sale and other transactions relating to digital assets, Serbian legislator also set the legal framework for protection of creditors. After first digital token issuance has been approved, first white paper was published, which allowed investing in the digital assets. This is an important step for future business of companies and especially for start-ups businesses. As any type of personal property, digital assets may be apprehended from their owners along with other assets and sold in enforcement or bankruptcy proceedings. For the time being, bankruptcy proceedings in Serbia can only be carried out against legal persons. Therefore, creditors of natural persons and entrepreneurs have to rely on civil enforcement proceedings. The purpose of sale of assets is the settlement of creditors' claims by achieving the most favourable value of debtor's assets. However, the value of digital assets often faces the important risk of significant changes in price. Bearing this in mind, treatment of digital assets in payment collection proceedings requires big professional education and experience. First challenge that any legal officer faces is to determine the existence of digital assets in the debtor's property with or without its cooperation. For this purpose, the relevant information may be requested from the National Bank of Serbia, public bodies and licensed providers of services related to digital assets. Once the digital assets are found and apprehended, they have to be cashed accordingly in a due time framework. Before the sale, the value of digital assets has to be carefully assessed. Establishing the valuation report also requires an experienced expert. Even then, the period between the apprehension and the sale of digital assets remains the most delicate part of any proceedings. Hence, this is the second important challenge for legal officer such as enforcement agent or bankruptcy administrator. It also imposes a new approach to the sale methods regulation. Since the decision on destiny of insolvent company relies on creditors, they may decide about the future of the insolvent debtor by voting for its liquidation or its reorganisation. In both cases, the financial aspect of

its assets remains the most decisive factor. If digital and other assets secure sustainable business, insolvency debtor has his second chance in the reorganisation proceedings. The new regulation on digital assets in Serbia represents only the initial framework that requires further development by adopting by-laws and other regulation. In particular, regulation on professional education of judges, enforcement agents, bankruptcy administrators and licensed providers of services related to digital assets and licensed valuation experts should be adopted and implemented. Judicial practice on digital assets is yet to be expected.

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THE EFFECTS OF THE UNCONTESTED RETIREMENT DECISION WITHIN THE LEGAL TERM PROVIDED BY LAW

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ABSTRACT

The principle of contribution is one of the fundamental principles of the public pension system in Romania. It assumes that the social insurance funds are established based on the contributions owed by the persons participating in the public pension system, and the social insurance rights are due based on the social insurance contributions paid.

KEYWORDS: retiremenet, decision, civil, law.

INTRODUCTION

The public pension system in Romania is currently regulated by law 263/2010, but also by some provisions of law 127/2019 which entered into force in 3 days from the date of publication in the Official Gazette of the law, following that the rest of the normative act enter into force starting January 1, 2024.

This is also the case of the issue addressed by us through the present study, regarding art. 139 of law 127/2019 which has already entered into force, since the publication in the Official Gazette of the new law, repealing the regulation contained in art. 149 of law no. 263/2010.

According to this legal text which coincides with the content of the former art. 149 of the old law:

”The decisions issued by the territorial pension houses can be appealed, within 45 days from the communication, to the competent court.

The decisions issued by the territorial pension houses in the interval between the date of entry into force of this article and the date of entry into force of this law are challenged according to the provisions of paragraph (1).

” Uncontested decisions within the term provided for in para. (1) are final.”

The object of this study is the analysis and correct interpretation of this legal text in accordance with the principles of good faith, free access to justice and the principles of contribution, equality and imprescriptibility of the right to pension, principles that support and explain our point of view that follows be further exposed.

CONSIDERATIONS REGARDING RETIREMENT NORMATIVE ACTS IN THE INTERNATIONAL AND NATIONAL LAW

The Constitution of Romania, as we have seen, enshrines, in art. 57, the principle of protecting good faith, exercising rights and freedoms in good faith. Since it is about loyalty in

contractual relations and refraining from infringing the rights and freedoms of others, it is clearly necessary for good faith to exist in the exercise of any rights, be they public or private, which is why good faith, as a principle and condition, it cannot be foreign to any branch of law, by virtue of its constitutional principle.

Free access to justice, like any fundamental right, has a legitimate character only to the extent that it is exercised in good faith, within reasonable limits, with respect for the equally protected rights and interests of other legal subjects, being enshrined both internationally and and in domestic law.

In the absence of this fundamental right, it would be illusory to speak of good justice and a fair trial which consists in the faculty of any person to introduce, at his/her own discretion, a legal action, even if it is unfounded in fact and in law, involving the correlative obligation of the State to rule on this action through the competent court.

According to the Romanian Constitution, human dignity, the rights and freedoms of citizens, the free development of the human personality represent supreme values and are guaranteed by law. The principle of equality between citizens, of the exclusion of privileges and discrimination in the exercise of fundamental rights and freedoms must be respected by any natural or legal person, the law making no distinction in the case of legal persons between their public or private nature.

Regarding the principle of non-prescription, this in turn is at the basis of the pension system in Romania, which enshrines the fact that the beneficiary's right to a pension does not expire, which can be translated into the fact that it is not affected by the passage of time.

The principle of contribution is one of the fundamental principles of the public pension system in Romania. It assumes that the social insurance funds are established on the basis of the contributions owed by the persons participating in the public pension system, and the social insurance rights are due on the basis of the social insurance contributions paid.

Precisely in order to ensure the prevalence of the principle of contribution, the legislator regulated three institutions through which the right to pension of the person in question will be respected, respectively the possibility of recalculating the pension by capitalizing on contributions periods and incomes that were not initially taken into account and the recalculation of the pension by the addition of some periods of contributions made after the retirement date, and on the other hand, the possibility of revising the pension, for the situation where errors occurred during its calculation.

The activation of the institutions mentioned above cannot be prevented by the final nature of the retirement decision, the final nature acquired as a result of not exercising the appeal within the 45-day period provided by law, as it would contravene the very purpose for which these institutions were created by the Romanian legislator, namely the observance of the right to pension.

Based on consistent jurisprudence, the European Court of Human Rights established that pension rights based on the contributions of the insured constitute an asset within the meaning of Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which states that in the situation where "***the domestic law of a State does not recognize a particular interest as a 'right' or even a 'property right' does not necessarily prevent the interest in question from being regarded as a 'good'***, which is why it

does not can admit that the insured person receives a lower pension than the one due in relation to his contributions to the social insurance fund for the reason that he did not file the appeal against the pension decision within the legal term, although this was incorrectly calculated by the pension house and cannot get a fix for these errors.

In other words, it is absolutely natural that the pensioner should not be "sentenced" to bear the effects of making calculation errors or the wrong application of the law by the administrative bodies, for the rest of his life even if these errors or the wrong application of the law were confirmed by a decision that remained final, but which was not subject to judicial control.

In order for the solutions of the courts in the matter of social insurance to respect the principle of contibutivity which is the basis of the entire pension law, the definitive nature of the retirement decision should not constitute a fine for not receiving the request for revision or recalculation of pension rights.

So that the principles derived from the Decision in the Rotaru v. Romania case must also be taken into account, but also those derived from the decisions pronounced in the Buzescu v. Romania and Albina v. Romania cases, in the sense that the settlement of a request addressed to the court involves not only the pronouncement of a solution, but also the effective, real analysis of the claims, the arguments of the parties and the means of defense, to the extent that they are relevant, even if this does not necessarily require the distinct and detailed analysis of all the arguments subsumed under the same reason.

By way of example, we recall that in a case before the courts, with the object of recalculating pension rights, the court rejected the claim of the insured citing the legal provisions provided in art. 149 para. 4 of Law no. 263/2010.

By applying this provision, citing the fact that the insured does not have the right to repeat a request for pension recalculation based on a certificate on which the Pension House would have given a definitive ruling, as this would constitute an impermissible way of evading the mandatory legal provisions regarding the finality of an uncontested pension decision.

In our opinion, by restricting the insured's right to request the recalculation of the pension, a violation of both the provisions of art. 22 para. (1), art. 44 para. (1) and art. 47 para. (2) from the Constitution of Romania, as well as the provisions of art. 1 of Protocol 1 of the ECHR.

CONCLUSIONS

Examining the jurisprudence in this matter, we noticed that some courts consider that the exercise of the insured's right to petition must be qualified as an abuse of right, claims that we consider to be expressed in a gratuitous and tendentious manner, in the conditions in which no we can accept the idea of depriving the insured person of his right to have access to the public service of justice in the examination of the conformity of the pension rights calculated by the Pension House, with the income actually achieved and for which he paid contributions to the State budget.

In another way, if this reasoning of the courts were accepted, it would be equivalent to the "***life sentence***" of the pension beneficiary, who failed to contest an administrative

retirement decision within the legal term and would give a perpetual nature of an administrative decision, which cannot be assimilated to a final judicial decision.

As a consequence, it must be analyzed to what extent the effects of a final administrative decision can extend, in our opinion, this producing effects only until it is reformed by a final judicial decision. Regarding the constitutional right to request a public institution to capitalize on a certificate in order to recalculate pension rights, we consider that this right exists without being considered an abuse of right, as long as the response of the public institution refusing to capitalize on the certificate does not is subject to judicial review and no final decision has been made in the case.

In support of the above arguments, we also mention the jurisprudence of the Timișoara Court of Appeal, which by Decision no. 815 of 03.07.2018 stated the following:

„The Court finds that the plaintiff has formulated a request for review, as he expressly mentioned in the second petition of the action, requesting the defendant Casa Judeteana de Pensii Timis to proceed with the review of pension rights by taking into account the monthly, annual score and the annual average score of the salary monetary rights that he benefited from within the remuneration system in the global design agreement.

In the sense of art. 107 para. (1) and (2) from Law no. 263/2010, the revision constitutes the operation of correcting the amount of the pension, as a result of the discovery of some calculation errors, which are the consequence of either the wrong taking of the data relating to the contribution period and the basis for calculating the social insurance contribution, or the application wrong of the law. Indeed, the pension that is subject to review is established by a final decision, but the final nature of the decision does not constitute a fine for not receiving the request for review, since the institution itself was thought by the legislator as a remedy for respecting the right to pension, even in the conditions where the decisions have remained final and can no longer be contested.

Practically, in matters of revision, but also of recalculation, the definitive character of the decisions is irrelevant, so it does not have to be proven, but it also does not constitute an impediment for the activation of these institutions, which the legislator created precisely to ensure that compliance the right to pension does not essentially depend on the exercise of the appeal provided for in art. 149-151 of Law no. 263/2010

On the other hand, it is absolutely natural that the effects of making some calculation errors or of the wrong application of the law by the administrative bodies should not propagate throughout the exercise of the right to pension, throughout the rest of the pensioner's life, even if these errors or the application wrong of the law were confirmed by a decision that remained final, but which was not the subject of judicial control. *”*

Please note that, examining the constitutionality of art. 107 para. (1) and (2) from Law no. 263/2010, the Constitutional Court found that "*the revision appears as a way of agreeing the amount of the pension with the legal provisions in force at the time the pension is established*." Therefore, we cannot talk about the retroactive impact of a "*right won*" definitively, since, as the Constitutional Court stated in decision no. 874 of June 25, 2010, published in the Official Gazette no. 433 of June 28, 2010, this attribute is enjoyed only by

"*the amount of the pension established according to the principle of contribution*", and not the amount of the pension in payment, but established in violation of the legal provisions.

Lastly, the right to pension, thanks to the patrimonial character of social benefits, was assimilated by the European Court of Human Rights, under certain conditions, to a property right (a process called "*socialization of the notion of assets*"), and, consequently , the protection of the right to pension provided by art. 47 para. 2 of the Constitution, is "*seasoned*" with the protection offered by art. 1 of Protocol 1 of the ECHR."

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APPLICATION OF CUSTOMER LOYALTY PROGRAMS AND ISSUES OF DATA PROTECTION

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ABSTRACT

The business owners, administrators and managers are strongly depended on the internet, to develop their business. This fact is more obvious in cases when applying the loyalty programs and contacts with the customers. Marketers sometimes get lost in their business management and tend to be less focused on the legal issues, keeping their mind in the business growth. In this point, one of the key elements is being on compliance with the national and international legal norms of data protection of the customers. The relevant changes in the domestic law makes it more difficult for the business owners to operate their online marketing business. Nevertheless, it seems that such legal provisions with regard to privacy and data protection are not fully respected and the state institutions should do more about this. This article discusses the application of customer loyalty programs and the issues related to data protection, especially in Albania. It was found out that more efforts are needed to adhere to the EU standards in protecting personal data and certainly a stricter control by the government institutions is required on the way and methods the big companies collect, store and share the personal information of the customers.

KEYWORDS: customer loyalty, online marketing, data protection, legal issues**.**

INTRODUCTION

Customer loyalty programs (CLP), are a widely used marketing strategy that encourages customer retention and enhances sales. These programs offer customers incentives, discounts, and rewards for repeat purchases. While loyalty programs can be beneficial for businesses, they also raise important issues related to data protection.

Market analysis and customer segmentation are carried out by building profiles of individual customers based on their personal information, which customers supply to the vendor during enrolment to the loyalty program, and their purchase records, collected every time customers present their loyalty cards. The profiles thus assembled are used in marketing actions, such as market studies and targeted advertising (Blanco-Justicia, A., and Domingo-Ferrer, J. 2016).

With regard to the Albanian business reality, the issues of data protection, are relevant and remain a concern, despite the modern exiting legal framework that has been established to confront them. One of the most vulnerable points is the data obtained, data storage and data

protection. It seems that the majority of the personal information given willingly or not by the consent of the customers, is circulating form one business to the other or to better paraphrase it, the personal data transfer is a business on its own.

1. BENEFITS OF CUSTOMER LOYALTY PROGRAMS

Customer loyalty programs have several benefits for businesses. One of the main benefits is customer retention. Research has shown that customers who are enrolled in loyalty programs are more likely to make repeat purchases than those who are not (Kumar and Shah, 2019). Loyalty programs also help businesses gain insights into customer preferences and behaviour. By analysing the data collected through loyalty programs, businesses can develop marketing strategies and make informed decisions about inventory (Ramanathan, 2016).

Albania, being relatively new in the market economy after the political transition, has adopted new contemporary marketing strategies, but still there is a lack of experience and research in this field (Maksuti, 2022).

Nevertheless, the customer loyalty programs are becoming a growing trend and more and more companies are approaching customers using social network applications, emails, telephone numbers and other means of communications. This is a much more comfortable and convenient way for the marketers and administrators of the companies than developing some exhausting and "within legal complying" strategies.

1.1.ISSUES RELATED TO DATA PROTECTION

While customer loyalty programs can be beneficial for businesses, they also raise important issues related to data protection. One of the main concerns is the potential for data breaches and misuse of customer information. Loyalty programs require customers to provide personal information, such as their name, address, email, and phone number, as well as information about their purchasing behaviour. This information is typically stored in a central database that can be accessed by employees or third-party vendors, and is vulnerable to cyberattacks and other security threats (Dwivedi et al., 2019).

In addition, businesses may use customer data for purposes beyond the administration of the loyalty program. For example, they may use customer data for targeted advertising or share data with third-party partners. These practices can violate customers' privacy rights and erode trust (Nikou and Bouwman, 2019).

The inter-related growth in loyalty programs (LP) and big data applications increases the importance of the societal consequences that accompany the many benefits of this virtuous circle. While societal concerns would exist even in the absence of an LP, LPs have the potential to exacerbate these issues. Hence, it is important for firms and researchers to take societal concerns into consideration when designing and managing LPs to the benefit of all stakeholders (Stourm, et al., 2020).

Research has shown that data protection issues mostly violate the areas of inequality, privacy and sustainability with regard to customers' personal data.

The violation of inequality comes from the CLP data ability to mark consumers with a good quality of precision. The personal data can be processed to identify which types of customers could be targeted with particular offers or services, but such adapted marketing

schedules can also be easily implemented because the members are very reachable not only in the virtual way of speaking.

Firms are explicitly shifting resources away from non-participating customers in favour of customers who participate in their CLPs, which may lead to accusations of discriminatory customer treatment (Lacey and Sneath, 2006).

One of the main issues of invading on customer privacy is grounded on how personal data are gathered, stored, analysed, and shared. The use of high tech creates a huge database stationed on the companies' servers. Taking into consideration this aspect, CLPs implementation now collect more and data thus chasing customer's behaviour offline and online, including all available devices. Meanwhile sustainability is not strictly connected to the personal data protection it is worthy to mention that using customers' personal preferences of the CLPs succeed on changing consumption patterns. Clearly, individuals' consumption patterns not only change their own physical and mental health, for better or worse, but also affect those around them (Stourm et al., 2020).

1.2.PROTECTING CUSTOMER DATA

To address concerns related to data protection, businesses must take steps to protect customer data and ensure that their loyalty programs are transparent and compliant with relevant regulations. One way to protect customer data is to implement robust data security measures, such as encryption, access controls, and monitoring. Businesses must also provide clear and concise information to customers about how their data will be used and shared (Nguyen and Mutum, 2019).

Is is obvious that such initiatives are not and should not be taken by the companies or business owners. It is a matter of governmental institutions and customers' protection entities which somehow should push for the reinforcement of harsher legal provisions and penalties on case of infringement on privacy and personal data.

1.3.COMPLIANCE WITH APPLICABLE REGULATIONS

Businesses must also comply with applicable data protection laws, such as the General Data Protection Regulation (GDPR) in the European Union. GDPR mandates strict requirements for data collection, processing, and storage. Businesses that operate in the EU or process data of EU residents must comply with GDPR.

Regarding the Albanian case, the Republic of Albania has established a complete legal framework for customer's protection including personal data protection. Concretely, it is the Law 9887/2008 "On protection of personal data" which provides;

1. "Personal data" shall mean any information relating to an identified or identifiable natural person. Elements used to identify a person directly or indirectly are identity numbers or other factors specific to his physical, psychological, economic, social and cultural identity etc.

2. "Sensitive data" shall mean any piece of information related to the natural person in referring to his racial or ethnic origin, political opinions, trade union membership, religious or philosophical beliefs, criminal prosecution, as well as with data concerning his health and sexual life.

Besides this law, personal data protection is enforced by the provisions of the Albanian Criminal Code and the establishment of the institution of the Commissioner for the Right of Information and Protection of Personal Data.

2. DATA PROTECTION ISSUES, ALBANIAN CASES

One of the main problems occurring while using and CLP is the management of the data. In this point there are several issues to be addressed;

a. The sensitive data of the customers such as date of birth, profession, ID card number, phone number, e-mail address, home/work address etc.
b. The provider of the data in case it is not the customer itself but companies specialised in this field.
c. In marketing or application of CLP the frequency of using personal data for advertisements or even notifications.
d. Finally, and most importantly the protection of the personal data.

In a typical Albanian case, the unauthorised use of the personal data is quite a phenomenon that occurs in daily basis. This may happen by phone calls to advertise new products and emails from uncertified addresses.

Despite that fact that a special institution for the protection of personal data has been established namely the Commissioner for the Right of Information and Protection of Personal Data, few measures has been taken to prevent and stop such phenomenon.

It has to be mentioned that as recently reported by the prestigious Albanian Monitor", the Albanian Bureau of Insurance has been fined for providing personal data of people involved in accidents to the benefit of third parties in order to use them for taking financial benefits.

These are rare examples that are plausible and encouraging but in most common cases when customers ask the advertising companies, particularly people who call, "how did you find this number?", the most common answer is "from the large database that we have or from other companies where you have been registered".

Besides breaching the above-mentioned law no. No. 9887 dated 10.03.2008 "On protection of personal data" such disturbance constitutes a misdemeanour namely a criminal offence provided by the the Albanian Criminal Code article 275, "Malevolence use of phone calls", provides that "*Malevolence use of telephone calls made to disturb another's peace constitutes criminal contravention and is punishable by a fine or up to one year of imprisonment*".

In this regard the opinion of the lawyers is divided, some of them think that the unauthorised use of a customer's phone number, by calling him often does not constitute malevolence and could be resolved by a civil litigation, the other part of the scholars insist that if after several warning "not to disturb", the advertising company, keeps on calling, this action is considered as a breach of criminal law. Without entering in details of the legal procedure, let's consider it as a legal violation.

In most cases, it has been noticed that when a customer agrees to join a customer loyalty program, often, no prior contract of formal agreement is signed between parties for the protection of the personal data. While many employees hasten to attract more and more

customers, even the customers hasten to benefit from the offers and other privileges, thus forgetting to establish terms and conditions for the personal data protection.

In other cases, the contact between the company and customer is made through the cashier or via phone calls, the agreement of the customers for the use of the personal data is given not by signing a formal contract.

The biggest problem that is evident in most countries is the personal data provided by specialised companies that administer them mostly in an unknown way. Officially the personal data of people are administered by the state institutions and very big companies of social networks such as Meta (Facebook, WhatsApp, Instagram), email providers (google, outlook etc) where people by voluntarily registering, enter their personal information.

The issue in discussion is how the companies that provide personal data obtain such personal information when in most cases no customer has given them and based on what legal grounds do they offer to the interested companies.

With this regard a stricter control by the state institutions is needed to control the access that companies have on personal information of the customers.

CONCLUSIONS

In conclusion, customer loyalty programs offer a number of benefits to businesses, including increased customer retention and valuable insights into customer behaviour. However, the use of these programs also raises important issues related to data protection and privacy, which must be addressed through the implementation of strong data security measures and compliance with relevant regulations. By balancing the benefits of loyalty programs with the need to protect customer data, businesses can create a valuable marketing strategy that benefits both themselves and their customers.

Simultaneously, government bodies and customer protection entities should strengthen their efforts in applying laws and regulations in order to increase the efficiency of protection of the personal data.

In concrete terms, the designated governmental entities should protect the central databases where the personal information is stored, which can be accessed by employees or third-party vendors, and is vulnerable to cyberattacks and other security threats (Dwivedi et al., 2019).

Understandably a closer cooperation is needed between state and private companies which must also provide clear and concise information to customers and state entities about how their data will be used and shared (Nguyen and Mutum, 2019).

With regard to the Albanian case, more efforts are needed to adhere to the EU standards in protecting personal data and certainly a stricter control by the government institutions is required on the way and methods the big companies collect, store and share the personal information of the customers.

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ADMISSIBILITY OF ELECTRONIC EVIDENCE IN CRIMINAL TRIALS IN NIGERIA AND THE CHALLENGES OF NEW CRIMES

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ABSTRACT

There is no doubt that computers now dominate the world. Little wonder then, the current age has been variously described in like terms as "computer age", "digital age", "electronic age", or "information and communication technology age". The fact remains however, that computer, in its pre-eminence, has not abrogated statutes. We still live in the age of statutes. By their nature, statutes require updates from time to time, to meet up with societal changes and advancements. The Law of Evidence like every other aspect of law is dynamic. Its dynamism goes hand in hand with evolving nature of modern information and communication technology. This work traces the evolutionary trend of electronic evidence in Nigeria. It acknowledges the law on the subject matter as it was in its near zero tolerance for electronic-generated evidence. It celebrates the eventual arrival of the over delayed enactment of the Evidence Act, 2011 and its bold provisions for admissibility of electronic evidence by the courts. The work identifies the challenges new crimes pose to the bold provisions of the Act accepting electronic evidence as part of the body of laws in force in Nigeria. The article concludes with a bold, revolutionary recommendation for the utility and future of electronic evidence in Nigeria.

KEYWORDS: Digital Age, Electronic Evidence, Admissibility, Document, Crimes.

INTRODUCTION

As a threshold point, it is important to clarify that electronic evidence in criminal proceedings presents many of the same issues that arise in civil proceedings understandably, the Evidence Act, 2011, that embodies the extant rules for admissibility of electronic evidence applies to both criminal and civil trials. The opening statements of section 84(1) of the Evidence Act, 2011 elucidates this point as it declares in an unambiguous term: "in any proceeding, a statement contained in a document produced by computer shall be admissible as evidence". The phrase "in any proceedings" indicates clearly that the provisions of the section apply to both criminal and civil proceedings with equal force. Accordingly, we are bound to contend with cases arising from or involving both civil and criminal proceedings in this exercise. The law on electronic evidence has come a long hard way to getting entrenched in Nigeria's body of rules. It is generally held that the legal system does not always keep up with the pace of technological development. This seems to have been very evident in this regard. The judiciary on its own part has not fared better in discharging the duty and responsibility of giving proactive and purposeful interpretation to such laws.

One of the problems confronting Nigeria, regarding her laws, is legislative apathy or indifference to make the laws respond timeously to societal changes. For instance, the old Evidence Act (2004 now repealed) was a colonial legislation passed into law as the Evidence Ordinance in 1943 (Aguda 2007: 43). It is on record that the law did not witness any significant change until 2011. The failure to amend the Evidence Act for many decades rendered many of its provisions obsolete to accommodate changing conditions in the society. At a point, the repealed Evidence Act was aptly described as "anachronistic and not in line with global reality" (Aziken 2009; Erugo, 2020: 22). Pats Acholonu, JCA (as he then was), observed in *Egbue v. Arake* (1996: 710)

> It must be clearly understood that our Evidence Act is now more than 50years old and is completely out of touch and out tune with the present scientific and technological achievements. Most of its sections are archaic and anachronistic and need thorough overhaul to meet the needs of our times. But alas it is with us now like an albatross on our neck (ibid, 710).

In a good number of other jurisdictions, laws and made to respond to societal needs and demands. For instance, in South Africa, the enactment of the Computer Evidence Act, 57 of 1983 was the outcome of a pronouncement made by Holmes, J.A. in *Narlis v. South African Bank of Anthens* (1976: 572) that a computer is not a person. The civil Proceedings Evidence Act, 1965 of South Africa did not provide for admissibility of computer printouts. Specifically, section 34(1) of the Act provided for admissibility of any "any statement made by a person in a document". In *Narlis* case, the issue was admissibility of a computerized bank's statement. It was held that the computerized document could not be admitted in terms of section 34(1) of the Civil Proceedings Act, 1965 since the document has not been made by 'a person' as contemplated under the Act. While holding that computer was not "a person", the court declared:

> it is essential to not that section 34(2) deals only with such a statement as referred to in sub-section(1). And straightaway, one finds that sub-section (1) refers only to any statement made by a person by a person in a document. Well, a computer perhaps, fortunately, is not a person" (ibid, 578).

The Computer Evidence Act 57 of 1983 of South Africa was, therefore, enacted to overcome difficulties encountered in *Narlis v. South African Bank of Anthens* (ibid). And, when the Act was found to be deficient in meeting up with further advancement in technology, the Electronic Communications and Transactions Act, 2002 was enacted. In Nigeria, a period of sixty-eight (86) years (1943-2011) elapsed to get the Evidence Act transformed to what it is today-the Evidence Act, 2011.

1. EMERGENCE OF ELECTRONIC EVIDENCE IN NIGERIA

The advent of electronic evidence into the jurisprudential arena of Nigeria was superstitious. However, in the course of time, electronic evidence assumed a place of prominence. Today, virtually all financial transactions, communication systems, modern automobiles and appliances, etc depend on computers while "our courts are daily inundated with questions relating to admissibility of electronically generated evidence" (Alaba 2018). Prior to Evidence Act, 2011 the issue of whether or not evidence generated from electronic devices was admissible within the framework of the old Evidence Act was highly contentious

in legal circles, as opinions were divided, even amongst the courts. The Supreme Court before which the issue of admissibility of a computer printout first arose embraced it with open arms. In *Esso West Africa Inc. v. T. Oyegbola* (1969: 194) the apex court, in a pronouncement tinged with foresight, stated as follows:

> The law cannot be and is not ignorant of the modern business methods and must not shut its eyes on the mysteries of computer. In modern times reproduction and inscriptions on ledgers or other documents by mechanical process are common place and section 37 cannot therefore only apply to books of account (ibid, 216-217).

The pronouncement of the court that "the law cannot be and is not ignorant of the modern methods of business" and its admonition that the law "must not shut its eyes to the mysteries of computer" contributed a most forward-looking approach commendable liberal stance. The foresight embedded in this pronouncement is best appreciated against the backdrop of the fact that in 1969 (more than 50 years ago), when *Oyegbola's* case was decided, computers were, indeed, like objects of mystery, known to only few individuals. The story is different today. Such is the technological advancement witnessed in the last fifty years that, in the words of the Supreme Court of Nigeria, the law cannot afford to "shut its eyes". It is important to note here, that the pronouncement of the Supreme Court under reference was made obiter. The initial euphoria that followed the Supreme Court's obiter in *Oyegbola's* case was, however, short-lived. In 1976, that is, thirteen years later, the Supreme Court in *Yesufu v. ACB* (1976: 328) in another obiter dictum sounded a note of warning and caution, emphasizing the need for legislative clarification before admitting documents generated from computers. The court said:

> while we agree that for the purpose of sections 96(1)(h) and 37 of the Act, "bankers books" and "books of account" could include "ledgers cards", it would have been much better, particularly with respect to a statement of account contained in document produced by a computer, if the position is clarified beyond doubt by legislation as had been done in England in the Civil Evidence Act (ibid, 524).

As it is well known, under the principle of *stare decisis*, an obiter is not a binding authority. It is a judge's passing remark, which has nothing to do with the live issues for determination in the matter. It is the statement of the judge, by the way (*Alhaji Yesufu v. Egbe*, 1987: 341). It is, however, doubtful if any lower court can afford to treat an obiter of the highest court in the land with levity without reprehension, as it is good law that an obiter of the Supreme Court, could as well, in certain circumstances, assume the status of a *ratio decidendi* (Nwana v. FCDA 1999: 63; Bangboye v. Univ. Ilorin, 1991: 1; Mackans v. Inlaks Ltd 1980). Consequently, these two obiter dicta of the Supreme Court in *Oyegbola's case* and *Yesufu's case*, bestrode the lower courts with prodigious effects. The two pronouncements whereupon formed the yardsticks to which references were often made by the lower courts to determine whether or not a computer printout was admissible. A court that was determined to admit a computer printout readily found solace in *Esso v. Oyegbola* (Anyabosi & Ors v. R.T. Briscoe Nig. Ltd. 1987: 108; Trade Bank v. Chami 2003: 216; FRN v. Femi Fani Kayode 2010: 481) while a court that was determined to reject same took succor in *Yesufu v. ACB* (UBA v. Sani

Abacha Foundation for Peace and Unity (SAFPU) 2004: 516; Numba Commercial Farms Ltd & Anor v. NAL Merchant Bank Ltd & Anor 2001: 661).

1.1 Judicial Decisions in Favour of Admissibility of Electronic Evidence

In *Trade Bank v. Chami* (2003: 158) the provisions of section 38 of the old Evidence Act came up for consideration. By virtue of the provisions of the said section, entries into books of accounts, regularly kept in the course of business, where relevant whenever they referred to a matter into which the court has to inquire, but such statement shall not alone be sufficient evidence to charge any person for liability. Although, the said section did not provide for entries in computers, or computer printouts containing entries of account, the Court of Appeal, applying the Supreme Court dictum in *Oyegbola's case* (supra) held that section 38 of the Evidence Act should be interpreted to cover computer printouts. The court said:

> The section of the Evidence Act…does not require the production of 'books of account' but make entries into such books relevant for admissibility. Exhibit 4 is a mere entry in the computer or book of account. Although, the law does not talk of 'computer' or 'computer printout' it is not oblivious to or ignorant of modern business world and technological advancement of modern jet age. As far back as 1969, the Supreme Court in the case of *Esso West Africa v. T. Oyegbola* envisaged the need to extend the horizon of the section to include or cover computer, which was virtually not in existence or at a very rudimentary stage at that time… On this authority, the provisions of section 38 covers in my respectful opinion, also electronic process such as computer and computer printouts comprised in Exhibit 4 are admissible (ibid, 216).

The spirit of progressivism behind the court's obiter dictum in *Oyegbola's* case was forfeited in 1987 by another decision of the Supreme Court in *Anyaebosi & ors v. R.T. Briscoe Nig. Ltd*. (1987), where the apex court clearly endorsed the admissibility of computer printouts as secondary evidence. The court held that computerized statements of accounts, after all, are not in the class of evidence, which is completely excluded by the Evidence Act. The court, therefore, further held that the computerized statements in issue in that case were rightly admitted as secondary evidence.

The Supreme Court in *Anyaebosi's* case must have proactively taken into consideration electronic evidence and its place in Nigeria within the globalised world. The judgment stands a classical example of how courts can assist in expanding the frontiers of the law by being foresighted in their decisions. We must also not lose sight of the proactive statements of Rhodes Vivour, JCA (as he then was) in the Court of Appeal decision in *Oghonoye v. Oghonoye* (2010) which came in 2010, before the enactment of the Evidence Act, 2011, wherein His Lordship categorically declared that "as the law stands today, computer printout of Bank Statement of Account can be admitted in evidence" (ibid, 23). The significance of this case lies in the assertiveness of His Lordship in declaring the "law as it stands". This depicts a sense of realism about what can be done to move the law forward. It is instructive that *Trade Bank v. Chami* (supra) was cited in that case.

It is also significant to note that the Court of Appeal, in *FRN v. Femi Fani-Kayode* (2010: 481) set aside the interlocutory decision of the Federal High Court, Lagos, in which the said court rejected, as inadmissible, the computer printouts of the accused statement of account,

tendered by the prosecutor in the trial involving a Former Minister of Aviation, Femi Fani-Kayode, on an allegation of laundering ₦4billion. The penultimate court stated that the certified true copy of the computer generated bank statement of account of the respondent domiciled with First Inland Bank at Whalf Road, met all requirements of being admitted as an exhibit at the trial. Applying the decision of the Supreme Court in *Anyaebosi's case* the court held further that the document did not fall within the category of evidence made completely inadmissible by law.

1.2 Electronic Evidence as a Matter of Science

In the course of time, as admissibility of electronic evidence became more contentious and controversial, Nigerian courts become more creative. Nigerian courts took recourse to the application of the principal of judicial notice to admit electronic evidence. Electronic evidence was then treated as a matter of science to which courts were entitled to take judicial notice under section 74 of the repealed Evidence Act. The Court of Appeal, for instance, relied on the concept of judicial notice in admitting a computerized document in *Ojolo v. IMB (Nig) Ltd*. (1995: 304). The court held that it had become a notorious fact that commercial and banking operations in Nigeria had changed in keeping with the computer age such that the court could take judicial notice of them under section 74 of the Old Evidence Act.

1.3 Judicial decisions against Admissibility of Electronic Evidence

In respect to judicial decisions against admissibility of electronic evidence, the decision in *UBA v. Sani Abacha Foundation for Peace and Unity (SAPELU)* (2004: 516) readily comes to mind. Here, the Court of Appeal held that a statement of account contained in a document produced by a computer could not be admitted in evidence under the old Evidence Act until certain sections of the Act were amended. The court, while applying the dictum of the Supreme Court in *Yesufu v. ACB* (supra) stated thus:

> Though the appellant's counsel made reference to the modern day practice of using computer in the day-to-day business of the bank, it is my opinion that the law still remains as it is it has not been amended by the National Assembly, although it is high time they did that and I am bound to apply the law as it is (ibid, 543).

The court then added:

> It is quite unfortunate that in Nigeria no clarification has yet been done by way of amendment or promulgation of an Act to exempt the statement of account contained in a document produced by a computer from conditions stated in section 97 of the Evidence Act 1990. Hence, I will not deviate from my primary function in interpreting the law as made by the legislature to that of law making. I therefore hold that the lower court was in error when it admitted Exhibit D2 in evidence in this case (ibid).

Numba Commercial Farms Ltd & Anor v. NAL Merchant Bank LTd & Anor. (2001: 543) and *Federal Republic of Nigeria v. Femi Fani-Kayode* (supra) were also decided along the same line. *Femi Fani-Kayode's case* was an interlocutory ruling in which the Federal High Court in Lagos rejected, as inadmissible, the computer printouts tendered by the prosecution in

the trial involving a Former Minister of Aviation on an allegation of laundering a sum of N46billion. The computer printouts of the accused's statement of accounts, which the prosecution tendered as evidence, were rejected by the trial court as inadmissible. Applying the Court of Appeal decision in *UBA v. SAPFU* (2001: 510), the court held that the provisions of section 97(1)(b) and (2) (b) of the Evidence Act did not cover the admissibility of computer print outs even if they are duly certified and relevant. The court then concluded thus:

> I must also express the view that there is the urgent need for an amendment of the evidence Ac to cover admissibility of document made by means of computer printout since it is clear that those technological methods of producing document now forms part of day to day business transaction and particularly in banking circle (ibid).

1.4 Electronic Evidence and the Nigerian Courts

The courts are established to serve a very crucial role in the lives of citizens and the society it is create to serve. The society and its population are dynamic. The courts that service the judicial needs of such a society cannot therefore afford to remain static. The courts in Nigeria after initial skirmishes of equivocations have gone on to contend seriously with how best to treat electronically-generated evidence. One way that the contentions had been made is to call for legislative intervention (*FRN v. Femi Fani-Kayode).*

Electronic evidence is fundamentally different from the usual documentary evidence people have been used to over the years. It derives from advancement in technology witnessed in the last few years, which has made the existing rules guiding documentary called for re-examination and improvement. For instance, it is the advancement in technology that brought about the existence of computer discs, which is a storage medium in which information is embedded but which performs, in a different way, the same function as a filing cabinet where hard copy of documents are stored. An essential difference is the fact that it is much easier to change electronic evidence without detection, than it ever was in the hard copy world. The author of the electronic document may not even be aware that changes have been made. The need to update the existing rules of admitting documents in evidence at trials to accommodate the new species introduced by technology, therefore, become inevitable because old rules and laws cannot be made to apply to electronic evidence. In 2010 at the Judges and Khadis refresher course, the following observations were made:

> One thread that has run through most of the cases in which electronically generated documents were rejected is the fact that the Evidence Act does not recognize such documents. But then, one basic fact that we have to accept and which stares us in the face glaringly is that the electronic revolution has reached Nigeria and is inexorably growing as part of the globalization phenomenon. Nigeria can certainly not allow herself to be left behind. Therefore, the need for Nigeria to update the Evidence Act has now become indisputably obvious and imperative (Ajilaye 2010: 25).

The negative effects of retaining the old order under the nation's extant evidence law then were highlighted thus:

> it is imperative to mention here that rejection of such documents portends serious danger for the economy of the nation and the entire administration of justice. For

> instance, if all statements of accounts are to be excluded from proceedings in court on the ground that Evidence Act does not recognize computerized documents, then, a serous clog has been introduced sumptuously into the wheel of legitimate transactions and the administration of justice. This is because, most bank customers will simply take loans from banks and refuse to pay their debts because the computerized statements of account narrating the accumulated debt and interests cannot be tendered in evidence during debt recovery exercises or court proceedings by their banks. Again, those involved in e-crimes would definitely have a field day because various e-mails, faxes and e-documents and other e-messages forwarded to their victims will be inadmissible. Above all, such negative impact may even touch on the integrity of the court, as the court is capable of being perceived, albeit wrongly, by the ordinary man on the street, as shielding away criminals. The list of the negative impact of exclusion of computer generated evidence is endless (ibid, 27).

As an interim measure, the courts were advised to adopt a proactive approach in interpreting provisions of the extant Evidence Act of the time in a way to accommodate the admissibility of electronic evidence (SDV Nigeria v. Ojo, 2016).

2. FORMAL LEGISLATION OF ELECTRONIC EVIDENCE INTO NIGERIAN STATUTE

In 2011, the National Assembly enacted a new Evidence Act, which repealed the old Evidence Act 2004 (s.257). Significantly, the Evidence Act 2011 contains provisions for the admissibility of electronically-generated documents (s.84).

2.1 Conditions for Admissibility of Electronically Generated Documents under the Evidence Act, 2011

Section 84(1) of the Evidence Act 2011 indisputably, has filled the wide gap that existed in the repealed Evidence Act 2004, which made no specific provision for admissibility of electronically generated evidence. Section 84(2)(a)-(d) enumerated four conditions that must be satisfied before such piece of evidence becomes admissible. Section 84(4) requires that a certificate be signed to authenticate the document by a person in relation to any matter mentioned in subsection (2). For ease of reference, the said section 84 is reproduced hereunder:

> (1) In any proceeding a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that the conditions in subsection (2) of this section are satisfied in relation to the statement and computer in question.
>
> (2) The conditions referred to in subsection (1) of this section are-
>
> (a) that the document containing the statement was produced by a computer during a period over which the computer was used regularly to store or process information for the purpose of any activities regularly carried on over that period, whether for profit or not by anybody, whether corporate or not, or by any individual;

(b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived.

(c) that throughout the material part of that period the computer was operating properly or, if not, that in any respect in which it was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its content; and

(d) that the information contained in the statement reproduces or in derived from information supplied to the computer in the ordinary course of those activities.

(3) Where over a period of the function of storing or processing information for the purpose of any activities regularly carried on over that period as mentioned in subsection(2)(a) of this section was regularly performed by computers, whether-

(a) by a combination of computer operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers. All the computers shall be treated for the purpose of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate-

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document, as may be appropriate for the purpose of showing that the document was produced by a computer:

(i) dealing with any of the matters to which the conditions mentioned in subsection (2) above relate, and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities, as the case may be, shall be evidence of the matter stated in the certificate and for the purpose of this subsection, it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purpose of this section-

(a) Information shall be taken to be supplied to a computer if it is supplied to it in any appropriate form and whether it is supplied directly or (with or without human intervention) by means of any appropriate equipment,

(b) Where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purpose of those activities by a computer operated otherwise than in the course of those activities, that information, if only supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) A document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Nigerian courts have faced the challenge and the arduous task of interpreting the provisions of the Evidence Act 2011 since its enactment. A number of issues arising from the provisions of the Act have tested the capacity of the courts at interpretation as well as their malleability. Some of the identified issues are as follows and many more might likely still be considered in future.

2.2 Old Points of Objection to Admissibility of Electronic Evidence Rendered Trifling

Section 84 of the Evidence Act 2011 renders admissible "a statement contained in a document produced by a computer", upon the fulfillment of the conditions stipulated therein. Under the repealed Evidence Act, three main points of objection dominated arguments of counsel whenever attempts were made to tender electronically generated evidence. First, there was always the argument that such evidence was inadmissible on the ground that the repealed Evidence Act did not recognize it. As observed in the cases earlier referred to in Part one of this work, there was no unanimity amongst the courts in Nigeria in their decisions on this point (UBA v. Sani Abacha Foundation for Peace and Unity (SAPFU) (Supra); and Yesufu v. ACB (Supra)).

Electronic Evidence therefore, became difficult to tender, needlessly though. Second, objections were also raised on the point that electronically generated evidence was not original evidence. This is clear, as almost every electronic document will invariably be stored magnetically in a way that the original version of it cannot be examined directly. Third, it was argued that electronic evidence was hearsay and inadmissible. This is however, not completely correct. The fact that a document is produced by a computer does not necessarily mean that it is hearsay (s.41 Evidence 2011). For instance, it had been held that where the computer is used only to perform calculations, its output is not hearsay and may be admitted as a piece of real evidence (*DPP v. Mckeown* 1997: 737). The same is held as true of other devices that produce automatic readouts (Glover & Murphy 2013: 324).

Under section 84 of the Evidence Act 2001, these objections have been rendered trifling and frivolous as the said section appears to have blotted out the stereotyped distinctions between primary, original, secondary or hearsay evidence, in so far as the point in issue relates to admissibility of computer generated evidence under that section. The section does not recognize the existence of any dichotomy in the nature and character of electronically generated documentary evidence as to classify it as primary, original or secondary evidence. It only recognizes "a statement in a document produced by a computer".

In addition, section 84 does not require the production of the original of the electronic document; section 84(1) is clearly in contradiction to section 88 which requires the production of original documents. Furthermore, how a witness came about the document does not appear to be part of any issue for consideration for the court to render electronic document admissible under section 84. Once it is "a statement contained in a document produced by a computer", it has to pass through the hurdles prescribed in section 84(2) and (4) (*Kubor & Anor v. Dickson & ors.* 2013: 534). It is clear too that an objection cannot be sustained under section 83 on the ground that the maker of the electronically generated evidence has not been called as a witness. This is because section 84 already recognizes the computer as the producer of the document. In any event, the Court of Appeal had held that when issues involve admissibility of computer-generated documents, section 83 is excluded (*Brila Energy Limited v. FRN,* 2018).

2.3 Nature of Documents under the Evidence Act

Under the repealed Evidence Act, there was the difficult task of assigning a truly comprehensive meaning to the word 'document'. The word was also narrowly and restrictively interpreted. This limited scope of interpretation of document posed challenges and made admissibility of electronically generated documents needlessly controversial. 'Document' under the repealed Evidence Act was defined thus:

> books, maps, plans, drawings, photographs and also includes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or which may be for the purpose of recording that matter (s.2).

There was consensus of jurists, authors, scholars, writers and legal practitioners that the scope of the definition was inadequate which precipitated agitation for its extension. But then, beyond the limited scope of the definition, the attitude of the Nigerian courts in interpreting the provision of the section was another matter. The main issue involved in interpreting the section was whether or not the definition was wide enough to accommodate computer storage devices or stored representation records such as PDF copies, e-mails, e-mail logs, word processing files on a computer or those records created by computer automatically, such as temporary internet files, cell phone records, computer log in records etc. Under the Act, in interpreting the word 'document', the courts seemed to overlook the expression "and it includes any matter expressed or described upon any substance by means of letters, figures or marks or more than any one of these" contained in the definition, which, it is inferred, covers the enlargement of the word to accommodate other materials besides paper based materials.

The decisions in *Numba Commercial Ltd. v. NAL Merchant Bank* (2001: 510), *FRN v. Abdul* (2007: 228) and *Udora & ors v. Governor of Akwa Ibom State & ors* (2010: 322) represents the attitude of Nigerian courts to the meaning of document under the old Evidence Act. In *Numba,* one of the issues that arose for determination was whether or not the bank's record of transaction between the parties, stored in the computer and reproduced was admissible. The court, while holding such documents inadmissible, stated:

> in the proper interpretation of the statute, the word in the Evidence Act does not contemplate in its ambit the information stored by the respondent to be other than in a book and the appellant cannot be said to have in his possession copies of its contents. More importantly, the contents of such information have never

> been in the possession of the person against whom it was used. It is therefore right to conclude that the information retrieved from the computer being made by the respondent for its own use, is wrong to be used in the trial against the appellant (ibid).

In *Udora,* the Court of Appeal held that the definition of 'documents' in section 2(1) of the repealed Evidence Act was "concise and precise" and did not include a video cassette since a video cassette shows a motion or moving picture or a magnetic tape and not a paper. Clearly, 'document' was meant to be understood under section 2 of the old Evidence Act as 'any matter expressed or described upon any substance by means of letters, figures or marks or more than one of these means, intended to be used or which may be for the purpose of recording that matter'. It is interesting to note that though the Singaporean Evidence Act definition of 'document' is in *pari materia* with the definition of the word under the repealed Evidence Act (s.3(1) Singapore Evidence Act 2007), courts in Singapore interpreted the definition wide enough to accommodate electronically generated documents. Thus, in *Megastar Entertainment Ltd v. Odex Ltd.* (2005: 91) the argument that the definition is broad enough to encompass information recorded in an electronic medium or recording device, such as a hard disk drive installed in a desktop computer or server computer was accepted.

Under the Nigerian Evidence Act 2011, section 258(1) provides that:

> Document" includes-(a) books, maps, plans, graphs, drawings, photographs, and also includes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter;
>
> (b) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it, and
>
> (c) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it, and
>
> (d) any device by means of which information is recorded, stored or retrievable including computer output.

The above definition is in consonance with the true meaning of the word 'document' in contemporary usage. The use of the word 'includes' in the definition yet indicates that the category of 'document' under that section is not exhaustive. In *Ports and Cargo Handling Services Company Ltd & Ors v. Miafor Nigeria Ltd & Anor.* (2012) the Supreme Court explains that when the word 'includes' is used in a statute or written enactment, it is capable of enlarging the scope of the subject matter it qualifies or tends to qualify. The Court of Appeal, in *Holden International Ltd v. Petersville Nigeria Ltd.* (2013) has held that plastic bottles bearing trademark inscriptions are documents. This must be correct. The meaning of the word 'document' should no longer be construed in a narrow way. Tape recordings tendered in *Federal Polytechnic, Ede & Ors v. Oyebanji* (2012) were also accepted by the same court as documents. The same conclusion was reached in *Obatuga & Anor v. Oyebokun & Ors.* (2014) where a video tape was held to quality as a document. The Supreme Court has also affirmed DVD as a 'document' in so far as it is used to record and stored information therein contained

is a statement within the intendment of section 84 of the Evidence Act (Dickson v. Sylva & ors. 2016: 56).

The current position of the Court of Appeal as exemplified in the above-mentioned decisions on the meaning of 'document' is in tandem with the decision of the courts in United Kingdom. In *Hill v. R* (1945: 329), Humphrey J., held that "a document must be something which teaches you something…to constitute a document, the form which it takes seems to me to be immaterial, it may be anything on which the information is written or inscribed, paper, parchment, stone or metal" (ibid, 332). It is hoped that courts in Nigeria will continue to expand the definition of 'document' under the Evidence Act, 2011 to meet the circumstances presented before them as they arise.

3. THE EVIDENCE ACT AND CHALLENGES OF NEW CRIMES

Information and Communication Technology (ICT) continues to play an increasing role in criminal activities, facilitated by the global nature of the internet (Faga & Ole 2011: 212). Criminals have continued to exploit the speed, convenience and anonymity that modern technologies offer in order to commit a diverse range of criminal activities (Faga 2017: 2). It seems that technology driven crimes are advancing faster than technology itself. According to Deepa Mehta:

> In a digital world, there is no state or international border; customs agents do not exist. Bills of information flow effortlessly around the globe, rendering the traditional concept of distance meaningless. In the past, the culprit had to be physically present to commit a crime. Now, cybercrimes can be committed from anywhere in the world as bits are transmitted over wires, by radio waves or over satellite. Similarly, in the past, companies and banks protected their secrets and funds in locked files cabinets and vaults, in building surrounded by electronic fences and armed guards. Now, this information is located in one computer service that is connected to the thousands of other computers round the world. Robbing a bank or an armoured vehicle would pose problems of transportation and storage, whereas, transfer of huge sum of money poses no such problems in the digital world (Mehta 2010: 75).

Further examination of the complexities of the digital world and criminalities arising therein are typified in the illustrated cases hereunder. *FRN v. Ayokunmi* (2017) was a case that came up before the High Court, Kotonkaofe, Kogi State. The allegation against the accused was that, sometimes between April and June 2015, he along with some other persons, held out one Adewale Tinubu as CEO of Oando Oil Company, and in that assumed character swindled Aina Olarinde (PWI) of some millions of naira under the guise of supplying him with four thousand litres of Premium Motor Spirit (PMS) which pretence he knew to be false. The evidence before the court clearly showed that PWI connected with one 'Adewale Tinubu' on Facebook and WhatsApp, who posed as the Chief Executive Officer (CEO) of Oando Company. Second, the social media relationship between PWI and the said 'Adewale Tinubu' led to series of chats between them over time as demonstrated in the Extraction Report (Exhibit P2D). Third, consequent upon the chats, a deal over supply of 40,000 litres of PMS was struck, over which PWI transmitted money from First Bank Plc account to the Fidelity Bank account

of one Fanimokun Azeez, who was supposed to be the Personal Assistant to 'Adewale Tinubu'. In convicting the accused, the following remarks were made:

> It should be borne in mind that this case wears the face of a modern crimes, the commission of which has been facilitated by modern technology. The social media, particularly, WhatsApp platform and internet banking facilities, which provide opportunities for anonymity and factiousness, have been effectively exploited in this case. Under the current technological and internet environments, a person does not need to be physically present to commit any of these common frauds, obtaining money by false pretence or conspiracy to commit same inclusive. Conspirators do not also need to meet physically to perpetrate their nefarious acts (ibid).

The case of *FRN v. Abdul* (2007: 204) underscores the importance of some basic training for judicial officers and practitioners. The accused was arraigned on a two-count charge of being in possession of documents containing false pretences contrary to section 6(8)(b) and 1(3) of the Advance Fee Fraud and other Related Offences Act. The accused was arrested in a cybercafé in Benin City by a group of EFCC operatives, following a petition to the Commission by a citizen alleging the incidence of internet crimes activities in the cybercafé. The accused and other customers of the cybercafé were subjected to a search, at the end of which a handwritten letter and a diary containing several e-mail addresses were recovered from the accused. The e-mails were printed out by an official of EFCC. At the trial, the handwritten letter, diary and printouts were tendered as exhibits by the prosecution. One of the questions that arose for determination by the court was whether or not the printouts which where D, D1 and D2, would be said to be in the possession of the accused, when they were not found physically with him but were printed out of his e-mail box after his arrest. The trial court held:

> The documents said to be in the possession of the accused do not exist in the physical form until they are printed…I have read and construed Exhibits D-D2 clearly. Exhibits D and D1 are letters written with false pretence with intent to defraud. As for Exhibit D2, on its own, it has no meaning. Read along with Exhibits D and D1, it could be regarded as part of a fraudulent scheme. The point about Exhibit D-D1, however, is that they have been sent to the addresses on them. The accused admitted that he sent the letters. Where letters have been written and posted (in the regular and common method of sending mails), could the writer or the person who posted the letter be said to be in possession of the letter. While the writer may be guilty of sending scam letter, certainly he cannot be guilty of being in possession of a letter he has written and posted. Similarly, In this case, with the letters sent to the address as admitted, the accused is no longer in possession of the letters (ibid, 228).

The trial court discharged and acquitted the accused. The result would probably have been otherwise if a good knowledge of the intricacies of modern e-mails had been put to use in determining the outcome of the case. The trial judges rationalization of the failure of the prosecution to utilize the services of an expert witness is pathetically instructive:

> The phenomenon of the e-mail box is a new technology. Evidence about how the phenomenon works must be laid before the court by a witness who may be

> regarded as an expert. The prosecution did not call the said Olaolu Adegbite to tell the court how he managed to do what PW3 said he did. It must be understood that the court is not entitled to employ its own knowledge of this new technology, to complete the case of the prosecution. The problem is that with the new technology, the traditional definitions of possession…seems inadequate, to describe a situation where there are electronic mail boxes, with documents in them floating about in space. There is need to explain this to the court vide the expert witness. This would enable the court determine whether or not the face of a document floating about in space in the mail box of the accused was in his possession (ibid).

Here, while the trial court felt it was "not entitled to employ its own knowledge of this new technology, to complete the case of the prosecution", it found it proper to employ its analogue knowledge to discharge and acquit the accused.

FRN v. Abdul (supra) contrasted with *United States v. Romm* (2006) shows that in the latter case it was held that the defendant "knowingly possessing" illegal pornography by the mere fact that he connected to the internet visited and viewed websites containing images of child pornography, which were automatically saved in the computer's internet cache. The defendant admitted to only having viewed the images for a minute and consciously sought to delete them. Nonetheless, the court held that the defendant, "knowingly possessed" illegal pornography, as he could view the images in the computer' internet cache on the screen, and print them, enlarge them, or copy them to more accessible area of his hard drive and send them by e-mails to others. Thus, the computer's automatic, normal operation led to his conviction of knowingly possessing illegal pornography despite his conscious attempts to avoid pornography by deleting the images. The outcome of the decision in *Romm's* case teaches that emphasis in *FRN v. Abdul* (supra) should not have been placed solely on the physical possession of the printouts of the soft copy of the emails contained in the computer of the accused.

In *Blaise v. FRN* (2017: 90) the court seemed to have taken a more commonsense approach. The case involved the production of a certificate of authentication in respect of a document generated in United Arab Emirate (UAE) that formed the subject matter of a case prosecuted by the Economic and Financial Crimes Commission (EFCC) in Nigeria. The document was said to have been forwarded to EFCC. The word, 'forwarded' used in the judgment of the court, should be understood in its ordinary grammatical sense and not in the digital sense. It is important to stress this distinction because, if the said document had been digitally forwarded, it is to be presumed that it would have been received and printed out from the computer of the Economic and Financial Crime Commission (EFCC). In that wise, it would have been the responsibility of the EFCC to satisfy the conditions in section 84(2) and produce the certificate under section 84(4). One essential foundational evidence of authentication, amongst others, that the EFCC would have established was to prove that what was produced and tendered in court was the same document that was forwarded to it from UAE, without any alteration. The EFCC or any proponent of such a document for that matter would have to mention the process of forwarding and printing so as to prove integrity in the chain of movement of the document.

Accessing data on a device and transmitting the same through forwarding process may make the authenticity of a document suspect and open to challenge. The possibility of altering

or tampering with a document being forwarded is read as the easiest thing to do. But then, authenticity of such a document forwarded and printed out from another computer can be challenged on ground of alteration of its contents. The onus, however, lies on the party who alleges such alteration to prove same. Section 84 of the Evidence Act, 2011, recognizes that the original primary evidence of an electronically generated document cannot be expected to be brought before the court and even if it is, the same being in binary form where everything is stored in strings of zeros and ones, which is the language that computer understands, the same cannot be said to be understood by the court. The net effect of section 84 therefore, is that the output in the form of a printout or CD/DVD etc produced by a computer is rendered admissible under section 84, provided that conditions stipulated therein are fulfilled. This is the essence of section 84 of the Evidence Act, 2011.

It may well be that this fact was not appreciated at the trial court level in *Blaise v. FRN* (supra) hence the needless arguments that surrounded the admissibility of the said documents. In any event, the facts of the case revealed that the documents in contention were not printed from the computer of EFCC. For purposes of emphasis, what section 84(1) requires is not the maker of the document but its producer, which is the computer, hence, the phrase: statement contained in a document produced by a computer.

At the trial of the case, EFCC was unable to produce a certificate of authentication as required under section 84(4) of the Evidence Act, because the document was not printed from its computer. Notwithstanding this fact, the document was admitted by the trial court as Exhibit 'A'. The Court of Appeal affirmed the decision of the trial court. The approach of the Court of Appeal in tackling the issue of non-certification was one of commonsense. Oho, J.C.A. held:

> The mere fact that compliance is demanded as a matter of law with the provisions of section 84 and its sub-provisions on the admissibility of computer generated documents, does not mean that we should as well consign the use of ordinary commonsense required for doing most things to the dustbin. There is no way in the circumstances of the case that the EFCC would be in any position to produce a certificate stating the status of the computer from which the complainant/petitioner generated exhibit 'A' in the UAE. It must be borne in mind that the said exhibit 'A' having been forwarded to the EFCC and not printed from its computers, that by asking the EFCC to produce a certificate in order that there may be compliance with the section is to seek the performance of a feat by the EFCC which is clearly unattainable (*Blaise v. FRN*, (Supra) 132).

One cannot but agree with His Lordship that issues relating to admissibility of evidence should ultimately have elements of commonsense attached to them. Most respectfully however, it has to be noted that any commonsensical framework that will be applied to issues of admissibility of electronic evidence must concur with law and procedural rules. The significance of admissibility of evidence, generally, in the process of attaining justice is immense such that it cannot be left completely to commonsense to determine in all circumstances. Accordingly, it is submitted that courts should go beyond the commonsense approach in addressing these seemingly intractable problems (Adekilekun, Sambo & Ali 2020: 109).

One of the cogent points established in *Brile Energy Limited v. FRN* (2018) is that, where many computers are involved in the production or reproduction of a document, it is the computer that 'produces' or 'reproduces' the document that is before the court that requires certification. The issue in contention in the case was whether or not the trial judge rightly admitted in evidence and relied on the internet printout copy of Lloyds List of Intelligence Report as well as the hearsay testimony of PW9 who tendered same in evidence for the purpose of establishing the truth of prosecution's allegation that the mother vessel, M/T LIMAR was not at the Port of loading and point of trans-shipment. It was held that the authentication of the computer that downloaded and printed out the information was proper. Section 34 of the Evidence Act, 2011, recognizes the possibility of reproduction of electronic documents and therefore, prescribes it as one of the factors to be considered by the court in ascribing weight to such evidence. The fact that a document is reproduced by another computer is not a relevant factor to its admissibility or inadmissibility as the case may be; it only becomes relevant at the point the court ascribes weight to the evidence. What is more, section 84(5)(c) of the Evidence Act 2011 provides that, "a document shall be taken to have been produced by a computer whether it was produced by it already or (with or without human intervention) by means of any appropriate equipment".

The case of *Daudu v. FRN* (2018) raises a very fundamental point and challenges the well-established principle that computer generated documents are only admissible in evidence upon compliance with section 84(2) and (4) of the Evidence Act, 2011. In *Brila Energy Ltd. v. FRN* (2018), Sankey, JCA, emphasized the importance of fulfilling the requirements in section 84 to render electronically generated documents admissible. In that case, it was held that computer-generated documents are only admissible in evidence in compliance with section 84. His Lordship stated thus:

> The provisions of section 84, which state the conditions for admitting in evidence any electronically generated document, are central in admitting a document emanating from a computer.

In *Kubor v Dickson* (2013: 534), the Supreme Court held that the computer-generated documents Exhibits 'D' and 'L' in that case, which did not comply with the pre-conditions laid down in section 84(2) were inadmissible. *Daudu's case* is a complete departure from the standard set in *Kubor v. Dickson.* Significantly, the Supreme Court acknowledged that the documents involved (banks statement of accounts) were computer generated. Learned counsel for the appellant had argued that the documents did not comply with the mandatory provisions of section 84(1),(2) and (4), before they were admitted. From the record of the court, there was, indeed, no oral evidence proffered under section 84(2). There was also no certificate of authentication/trustworthiness tendered at trial in accordance with section 84(4). However, the Supreme Court held the documents to have been properly admitted upon a presumption that, "before the banks surrendered them to the EFCC, they must have certified the contents of the statement of accounts contained therein were correct (*Daudu v. FRN* 2018). There was even no proof that the contents of the document were certified. In the circumstances of *Daudu's case*, the certification would certainly not satisfy the provisions of section 84 even if the documents were so certified.

On the face of it, *Daudu's* case has the effect of whittling down the effect of section 84 of the Evidence Act, 2011. However, attention must be paid to the salient but crucial point that

approval of the documents as admissible evidence by the Supreme Court was not solely based on the fact of certification by the banks. The decision of the apex court was based more on the fact that the appellant himself relied on the same documents of his defence. It was, therefore, held that, "he cannot rely on the documents for his defence and at the same time ask that they be expunged from the records" (ibid). The Supreme Court approved the statement of the trial court that the appellant cannot approbate and reprobate at the same time. This is a most prominent distinguishing feature in the case that may not make it a relevant authority in all circumstances. As a matter of fact, *Daudu's case* was decided on its own peculiar facts and ought not to stand as an authority for a proposition that computer generated statements of accounts need not comply with section 84(1),(2) and (4) of Evidence Act, 2011.

In the case of *Jubril v. FRN* (2018), it was the contention of appellant's counsel that Exhibit P7 was inadmissible on the ground, *inter alia*, that being computer-generated documents, the certificates of authentication required by section 94(4) of the Evidence Act, 2011, was not tendered. It was held that the requirement of section 84(2) and (4) of the said Act can be satisfied by oral evidence of a person familiar with the operation of the computer as to its reliability and functionality. At this point, let us pause and ponder on the following puzzle: what happens if the computer of the proponent of Exhibit P17 did not produce Exhibit P17? Will he be expected to offer oral evidence to establish the reliability and functionality of a computer he is not familiar with?

These are not hypothetical questions. The Court of Appeal was confronted with this type of situation in *Blaise v. FRN* (supra) where the computer that produced the documents in question was in United Arab Emirate and it was impossible for any witness to testify to the functionality and reliability of the computer. To this end, one cannot agree less with the recommendation of the Honourable Justice Alaba Omolaye Ajileye while elucidating on the exceptions to section 84(4) of the Evidence Act 2011, thus:

> The scope of the applicability of section 84(4) should be limited to a proponent whose computer device produced the electronic documents. In other words, production of a certificate as an essential element of process of authentication should be made mandatory where a proponent is in control of the device that produced the document…the law should not be too strict on a party whose computer did not produce the electronic document and it becomes impossible for him to produce same (Alaba, 2016:25).

CONCLUSIONS

So far within the judicial landscape of Nigeria, the journey of electronic evidence has been long-winding and tortuous and can also be described to have been bumpy and chaotic. The real issue right now is to decipher where we currently are in this inquiry. Having discussed some of the contradictory decisions of courts on the issue of admissibility of electronic evidence even after the enactment of the Evidence Act 2011, one may be tempted to conclude that the true position of the law is still hazy. However, it seems that the true position will be made clearer when all impediments in the nature of technicalities are removed on the way of admissibility of such evidence. For instance, one may ask, what is the essence of production of a certificate under section 84(4) by a party whose computer did not produce the document in

contention? In the first place, how is he to certify the functionality of trustworthiness of a computer he is not familiar with? In practical terms, this basically constitutes one of the greatest impediments to admissibility of electronic evidence. A party who is not in possession or control of the device from which the document is produced should not be required to produce certificate under section 84(4). Section 84(4) may have to give way to a simple presumption that mechanical and electronic devices worked well when they produced the affected documents until the contrary is proved. The onus is on the party who holds a contrary view to prove same (Alaba, 2016). The state of Singapore has proceeded on this course by enacting three presumptions, viz

(i) Presumption that mechanical devices were in order when they were used.
(ii) Presumption of authenticity of business records of someone who is not a party to civil or criminal proceedings.
(iii) Presumption of electronic records obtained by a proponent from an adverse party to a civil or criminal proceedings (s.81 Singapore Evidence Act 2007).

These presumptions, which are humbly recommended strongly, are revolutionary steps to liberalize admissibility of electronic evidence in any jurisdiction determined to purposively keep abreast of all the latest developments of computing.

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34. *Numba Commercial Ltd. v. NAL Merchant Bank* (2001) 16 NWLR (Pt. 740) 510.
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36. *Obatuga & Anor v. Oyebokun & Ors.* (2014) LPELR 22344 (CA).
37. *Oghonoye v. Oghonoye* (2010) LPELR 4699 (CA).
38. *Ojolo v. IMB (Nig) Ltd*. (1995) 9 NWLR (Pt. 419) 304.
39. *Ports and Cargo Handling Services Company Ltd & Ors v. Miafor Nigeria Ltd & Anor.* (2012) LPELR-9725 (SC).
40. *SDV/Nigeria Ltd v. Ojo & Anor (*2016) LPELR-40323 (CA).
41. *Trade Bank v. Chami* (2003) 13 NWLR (Pt. 836) 158.
42. *UBA v. Sani Abacha Foundation for Peace and Unity (SAPPU)* (2004) 3 NWLR 12 (Pt.861) 516.
43. *UBA v. SAPFU* (2001)16 NWLR (Pt. 740) 510.
44. *Udora & ors v. Governor of Akwa Ibom State & ors*. (2010) 1 NWLR (Pt. 1205) 322.
45. *United States v. Romm* No. 04-10648 of July 24, 2006.
46. *Yesufu v. ACB* (1976) 1 ANLR (Pt. 1) 328.

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ANALYSIS OF THE NORMATIVE FRAMEWORK AND OF THE DOCTRINE REGARDING THE VERIFICATION OF THE NOTIFICATIONS CONCERNING THE COMMISSION OF THE CRIME AND OF THE PROCEDURE FOR INITIATING THE CRIMINAL INVESTIGATION

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ABSTRACT

The criminal process begins with the registration of the notification regarding the crime and after that procedural actions can be carried out. In the time interval between the registration of the notification regarding the crime and the beginning of the criminal investigation, the criminal investigation body is entitled to carry out procedural actions pursuant to art. 279 of the Code of Criminal Procedure. From the moment of notification or self-notification until the issuance of the ordinance to initiate criminal proceedings, within this period, the finding body and the criminal investigation body may carry out only the procedural actions by which the rights of the parties are not infringed. At the same time, the initiation of the criminal investigation, or the refusal to initiate the criminal investigation, based on the ordinance of the criminal investigation body, will be considered the final limit of the verification phase of the notification regarding the crime. In case of starting the criminal investigation, by issuing the ordinance of the criminal investigation body, the respective procedural stage will determine the final limit of the verification phase of the notification of the criminal investigation body, on the one hand, and the initial limit of the phase - criminal investigation, on the other. Thus, it is not rational for the name of the beginning stage of the process to coincide with the name of the procedural act that allows the initiation of the criminal investigation - the beginning of the criminal investigation.

KEYWORDS: notification, criminal investigation body, start of the trial, beginning of the criminal investigation.

INTRODUCTION

The unitary character of the criminal process is not incompatible with the division of the criminal process into groups of procedural acts and measures which, by their object and by the acting authorities, are distinguished from other groups of procedural acts and measures. The science of criminal procedural law has delimited these groups of procedural acts and measures that form an ensemble with distinct features and has recognized the existence of *phases, periods, procedural stages*[1].

(...) criminal process involves the development of an activity composed of a succession of actions regulated by the criminal procedural law, an activity that requires that

[1] Theodoru Grigore Gr., Tratat de drept procesual penal, Ediția a 3-a, Ed. Hamangiu, 2013, p. 447.

in the discipline of procedural acts to be taken into account their sequence over time[2].

We are in line with the opinion of the doctrinaire Grigore Gr. Theodoru[3], who mentions that the ***procedural phase*** includes all procedural acts and measures, performed in the order and in the forms provided by law, by judicial authorities and parties, fulfilling a limited objective in achieving criminal proceedings. The objective of a procedural phase is the preparation of the next procedural phase, until, through the last phase, the purpose of the criminal process is achieved.

In the literature we find several opinions regarding the phases of the criminal process and their initial limit. For example, Eugen V. Ionășeanu mentions that the criminal process comprises three phases: criminal prosecution, trial and execution of final criminal judgments[4].

The author Gheorghiță Mateuț distinguishes four phases: criminal investigation, preliminary chamber, trial and execution of the criminal decisions. At the same time, the last author mentions that there is also a preliminary phase of the criminal investigation which has as object the investigation or ascertainment of the crime and the discovery of the author[5].

In the view of several authors, the criminal investigation is the first phase of the criminal process, which begins with the notification of the criminal investigation body and ends with the preparation of the indictment and the sending of the criminal case to the court[6].

Another paradigm supported by the authors of this article upholds the existence of a pre-trial phase.

METHODS AND MATERIALS APPLIED

Theoretical, normative and empirical material was used in the elaboration of this publication. Also, the research of that subject was possible by applying several methods of scientific investigation specific to the theory and doctrine of criminal procedure: the logical method, the method of comparative analysis, systemic analysis, etc.

THE PURPOSE OF THE RESEARCH

Examination and analysis of the internal regulatory framework, of the doctrine as well as of the jurisprudence regarding the procedural activities between the notification of the criminal investigation body regarding the commission of the crime and the issuance of a decision regarding the opportunity to continue the process.

RESULTS OBTAINED AND DISCUSSIONS

Title I of the Special Part of the Code of Criminal Procedure of the Republic of Moldova (hereinafter CCP) is entitled "criminal investigation", which includes: notification

[2] DCC no. 9 of 27.01.2020 of inadmissibility of the notification no.197g/2019 regarding the exception of unconstitutionality of some provisions of article 347 paragraph (3) of the Code of Criminal Procedure (point 17).
[3] Theodoru Grigore Gr., *Op. cit.,* p. 447.
[4] Ionășeanu Eugen V., Procedura începerii urmăririi penale, București, Editura Militară, 1979, p. 19-20.
[5] Mateuț Gheorghiță, Procedură penală. Partea Generală, București, Editura Universul Juridic, 2019, p. 27.
[6] Neagu Ion, Mircea Damaschin, Bogdan Micu, Constantin Nedelcu, Drept procesual penal, ediția a II-a, revăzută și adăugită, București, Editura Universul Juridic, 2011, p. 217; Theodoru Grigore Gr., *Op.cit.,* p. 449; Ionășeanu Eugen V., *Op. cit.*, p. 21

of the criminal investigation body, competence of criminal investigation bodies, initiation of criminal investigation, conduct of criminal investigation, etc.

The opinion that the initiation of criminal prosecution is an independent and mandatory segment of the criminal process is quite well established in the legal literature of the Russian Federation and currently does not provoke discussion[7].

However, long before that, some doctrinaires did not recognize the beginning of the prosecution as an independent phase. Some of them considered it as a preliminary part to the criminal investigation phase[8]. There was also a view that the initiation of criminal proceedings consists in issuing a single document[9]. Criticism of the latter argument has led M.S. Strogovich, who was one of the first to propose the concept of the independence of the procedural stage of initiating criminal proceedings[10].

„The initiation of criminal proceedings as a legal institution consists of a set of legal rules governing criminal proceedings, thus covering both the external and internal forms of such relations"[11].

„The beginning of the criminal investigation - it is not only a procedural decision, not only a legal category, but it is first of all, a phase of the process that always exists when the criminal process is initiated"[12].

There may be several contradictory discussions and opinions on this statement, so we come up with the following arguments, which were deduced from the analysis we performed.

According to art. 1 paragraph (1) of the Code of Criminal Procedure, ... *The criminal trial is considered to have started from the moment of notification or self-notification of the competent body about the preparation or commission of a crime.*

The second thesis from paragraph (1) of the art.1 of the Code of Criminal Procedure marks the beginning of the process – the moment of notification or self-notification of the competent body about the preparation or commission of a crime[13].

According to art. 55 paragraph (4) of the Code of Criminal Procedure (…) the *criminal investigation body, simultaneously with the registration of the notification (...), guided by the provisions of the Code of Criminal Procedure carries out criminal prosecution actions.*

The collaborative analysis of art. 1 and art. 274, 279 of the Code of Criminal Procedure allows to distinguish between ***the beginning of the process and the beginning of the criminal investigation***, as acts of initiation of different stages of the process, carried out successively. We agree with Professor Dolea I. when he states that, "There is no separate procedural act that would trigger criminal proceedings. Notification or self-notification serve

[7] To see Строгович М.С., Курс советского уголовного процесса, в 2-х т., т.2, М., 1970. с. 9; Гуляев А.П., Следователь в уголовном процессе, М., 1981, с. 109; Бобров В.К., Стадия возбуждения уголовного дела. Учебное пособие, М., 1997, с. 6-7; Алексеев Н.С., Даев В.Г., Кокорев Л.Д., Очерк развития науки советского уголовного процесса, Воронеж, 1980, с.168.
[8] Артемова Валерия Валерьевна, Возбуждение уголовного дела как уголовно- процессуальный институт. Диссертация на соискание ученой степени кандидата юридических наук, Москва, 2006, с. 40.
[9] Чельцов М.А., Советский уголовный процесс, 4-е изд., М., 1962, с. 231.
[10] Строгович М.С., Уголовный процесс. учебник, М., 1941, с. 151-152.
[11] Артемова Валерия Валерьевна, Возбуждение уголовного дела как уголовно - процессуальный институт. Диссертация на соискание ученой степени кандидата юридических наук, Москва, 2006, с. 53.
[12] Кисеев Н.М., Уголовный процесс. Учебник, К., Изд. Monograf, 2006, p.634.
[13] To see art. 262 of the CPP – modalities of notifying the criminal investigation body and art.art.263-265 – notification procedure.

as a basis for carrying out certain procedural actions"[14].

In art. 273 and art. 279 paragraph (1) Thesis II of the Code of Criminal Procedure, it is indicated which procedural actions are agreed by the legislator to be carried out in the time interval between the beginning of the trial and the beginning of the criminal investigation. Art.279 paragraph (1) Thesis I - of the Code of Criminal Procedure, prohibits the performance of any actions provided by the Code of Criminal Procedure, until *the beginning of the process*[15].

The Constitutional Court notes that *all procedural actions that take place at the stage preceding the criminal investigation have a sui generis character, focused on the purpose of establishing and confirming the existence of reasonable suspicion of committing a crime and is limited to 30 days from the moment of notification or self-notification to the criminal investigation body or to the prosecutor*[16].

Thus, the criminal process begins with the registration of the notification regarding the crime and after that procedural actions can be carried out. In the time interval between the registration of the notification regarding the crime and the beginning of the criminal investigation, the criminal investigation body is entitled to carry out procedural actions pursuant to art. 279 of the Code of Criminal Procedure. At the same time, the initiation of the criminal investigation based on the order of the criminal investigation body will be considered the final limit of the verification phase of the notification regarding the crime.

If we consider that the „criminal investigation" would be the first phase of the criminal process, then how will we assess the situation in which the initiation of the criminal investigation will be refused? On the one hand, the criminal investigation body is obliged to carry out actions aimed at collecting the necessary evidence regarding the existence of the crime, in identifying the perpetrator, in order to ascertain whether or not it is necessary to send the criminal case to court under the law and to establish its liability. Or, definitely these actions form the object of the criminal investigation[17]. On the other hand, the Code of Criminal Procedure[18] prescribes situations in which criminal proceedings cannot be initiated[19]. In such circumstances we cannot speak of the phase of the criminal investigation when its beginning is refused.

So in our view, the refusal to start the criminal investigation will be the final limit of

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[14] Igor Dolea , Codul de procedură penală al Republicii Moldova (Comentariu aplicativ), Chișinău, Ed. Cartea Juridică, 2016, p.29.

[15] CC of the SCJ admitted the lawyer's appeal, with the partial annulment of the Sentence of the Buiucani Court, Chisinau municipality, from 05.09. 2007 and the Decision of the Chisinau Board of Directors of 14.11. 2007, with the acquittal of A.M. under the accusation of committing the crime provided by art. 361 paragraph (2) letter a) of the CP for the following reasons: *contrary to the provisions of art. 118 paragraph (1) of the CCP, at the time of the on-site investigation at the home of A.M. no concrete crime was registered and investigated, so the criminal investigation body had no basis or right to initiate procedural actions because they cannot be exercised before the existence of a concrete crime, without the purpose of investigating and combating it. ... arising from these circumstances, all evidence that was collected and administered during the on-site investigation at the home of A.M. by the criminal investigation body, these being with essential violations of the procedural-criminal legislation, expressed in violation of the constitutional rights and freedoms of the participants in the trial, are illegal and inadmissible, which cannot be based on the sentence according to art. 94 of the CCP* (DCPL SCJ from 01.04. 2008, file no. 1ra –350/08).

[16] DCC no.12 07.02.2017 of inadmissibility of the notification no. 123g/2016 on the exception of unconstitutionality of the article 274 paragraph (7) of the Code of Criminal Procedure of the Republic of Moldova (the beginning of the criminal investigation) (point 26).

[17] To see art. 252 of the Code of Criminal Procedure.

[18] To see provisions of art. 274 paragraph (4) and (5) of the Code of Criminal Procedure

[19] To see provisions of art. 275, 276, 276[1] of the Code of Criminal Procedure.

the verification phase of the notification of the criminal investigation body. In case of starting the criminal investigation, by issuing the ordinance of the criminal investigation body, the respective procedural stage will determine the final limit of the verification phase of the notification of the criminal investigation body, on the one hand, and the initial limit of the phase - criminal investigation, on the other.

From the moment of notification or self-notification until the issuance of the ordinance to initiate criminal proceedings, within this period, the criminal investigation body may carry out only the procedural actions by which the rights of the parties are not infringed. *In fact, the actions that cannot be delayed will be carried out in order to ascertain the reasonable suspicion. In concrete terms, from the moment of the registration of the notification regarding the crime and until the solution of the initiation of the criminal investigation, can be performed the following: b) on-site research; g) technical-scientific and medico-legal observation*[20].

According to ECHR case law, the need to prosecute a person suspected of committing a crime may serve as an initial justification for deprivation of liberty (for example, in case of flagrant detention). This means that the person can be detained until the start of the criminal investigation[21].

As a rule, detention as a procedural measure of coercion is liable to be carried out only after the initiation of criminal proceedings.[22] As an exception, the law allows the detention of the person who has reached the age of 18 and until the registration of the crime in the manner established by law. The registration of the crime is carried out immediately, but not later than 3 hours from the moment of bringing the detained person to the criminal investigation body, and if the deed for which the person was detained is not properly registered, the person is released immediately[23].

The legislator sanctions the practice of the criminal investigation bodies that administered most of the means of evidence before the beginning of the criminal investigation, including the hearing of the perpetrator, without informing the procedural rights, by removing the phase of preliminary acts.

The European Court showed in the case of Argintam v. Romania (ECtHR Decision of 08. 01. 2013, §. 27) that even at the time of carrying out the preliminary acts, according to the Code of Criminal Procedure of Romania of 1968, ECHR guarantees were applicable, even if they were not provided for in domestic law.

The Constitutional Court notes that, *starting from the nature of the purpose of the actions at the stage preceding the criminal investigation, they are limited to the finding of the criminal act (in rem), but not to the formulation of an accusation regarding the person (in personam)*[24].

Another important aspect that we want to mention is the activity of the ascertaining

[20] DCP of the SCJ from 24.12.2019, file no. 1ra-1890/2019, available: jurisprudenta.csj. md/search_col_penal.php?id=15021

[21] CD of the SCJ no. 1 from 15.04.2013 on the application by the courts of certain provisions of the criminal procedure legislation on pre-trial detention and house arrest, available: http://jurisprudenta.csj.md/search_hot_expl.php?id=48. (pct. 3)

[22] To see provisions of art. 279 paragraph (1) of the Code of Criminal Procedure.

[23] To see provisions of art. 166 paragraph (4) of the Code of Criminal Procedure.

[24] DCC no.12 07.02.2017 of inadmissibility of the notification no. 123g/2016 on the exception of unconstitutionality of the article 274 paragraph (7) of the Code of Criminal Procedure of the Republic of Moldova (the beginning of the criminal investigation) (point 27).

bodies, which according to art. 273 paragraph (2) of the Code of Criminal Procedure, have the right to detain the perpetrator, to pick up the criminal bodies, to request the information and documents necessary for the finding of the crime, to summon persons and to obtain statements from them, to order the technical-scientific and medico-legal findings to be made, to assess the damages and carry out any other actions that do not suffer postponement, with the preparation of the minutes, under the conditions provided by art. 260-261 of the Code of Criminal Procedure, recording the actions performed and the circumstances found. "The acts of ascertainment drawn up by these bodies constitute means of proof"[25].

At the same time, it should be noted that Chapter IV of Title I of the Special Part of the Code of Criminal Procedure called ***the initiation of criminal proceedings***, which includes: the initiation of criminal proceedings, the circumstances excluding criminal proceedings, the initiation of criminal proceedings on the basis of the prior complaint and in the case of certain categories of offenses, the obligation to explain rights and obligations, as well as the obligation to examine the requests and approaches, which regulate much wider actions than the initiation of the actual criminal investigation. We are of the opinion that the respective chapter is logical to be entitled ***the verification of the notification of the criminal investigation body***.

As regards the practical aspect, we mention that the criminal investigation body, once it has been notified, mandatory analyzes and verifies the content of the notification, as well as the evidence that is attached to this referral to establish at least a reasonable suspicion that an offense has been committed. In this sense, the criminal investigation body will verify and analyze the minutes drawn up by the finding bodies, the actions that were carried out by these bodies, the technical-scientific findings, the hearings of witnesses and other actions that are required.

At the same time, the criminal investigation body is obliged to verify the notification and the materials attached to it in order to ascertain not only *the reasonable suspicion* regarding the crime, but also the existence of the circumstances that exclude the criminal investigation.

The principle of operativeness of the criminal investigation body constitutes a special role in this phase. The obligation to receive and examine complaints or denunciations regarding crimes, by the criminal investigation bodies, directly characterizes the active role and operability of these bodies. Judicial practice has shown that late presentation at the crime scene often leads to the impossibility of establishing the factual elements (evidence) that serve to establish the existence or non-existence of the crime, to identify the perpetrators and to find their guilt, as well as to establish other important circumstances for the fair settlement of criminal cases.

According to art. 274 of the Code of Criminal Procedure, to order the initiation of criminal proceedings, the following conditions must be met cumulatively:

– Existence of a legal notification;
– Finding reasonable suspicion of committing an offense;

[25] See in this regard Ostavciuc Dinu, Sesizarea organului de urmărire penală. Monografie, Chișinău, Ed. Cartea Militară, 2020, p. 87-169.

– The absence of a case that excludes the initiation of criminal proceedings (indicated in art. 275 of the Code of Criminal Procedure)[26].

In the theory of criminal procedural law, the initiation of criminal prosecution is also understood as a procedural act, i.e. a formalized decision of the criminal prosecution body to initiate criminal prosecution in a concrete case. Consequently, in order for this decision to have legal force, it must be entered in a document, which according to art. 274 paragraph (1) of the Code of Criminal Procedure in conjunction with art. 255 of the Code of Criminal Procedure is the ordinance to initiate criminal proceedings.

The ordinance to initiate criminal proceedings has a legal and social significance, as it consists in the official announcement of the competent state authorities of a timely response and the initiation of proceedings to investigate the circumstances of the crime[27].

The prompt start of the criminal investigation contributes to the fair settlement of the criminal case, especially when it is being investigated on a fresh basis. On the contrary, the delayed reaction of law enforcement agencies to information on the commission of the crime may be followed by the loss of serious evidence during the investigation of the case. The beginning of the criminal investigation constitutes the legal basis for the application of the preventive measures and the performance of the criminal investigation acts.

ECtHR in the case *of Tomac vs. Moldova* (…), *considers that the delay of more than one year and five months before the prosecution initiated the criminal investigation is incompatible with the procedural obligations arising from Article 2 of the Convention*[28].

The importance of initiating criminal prosecution as a procedural act is obvious, as it is precisely this act that triggers the possibility of carrying out criminal prosecution actions that involve significant interference in the sphere of constitutional rights and freedoms of persons, but which have an increased cognitive potential.

The issuance of the ordinance to initiate criminal proceedings marks the initial limit of the criminal investigation phase, it is an important moment for the whole criminal process, because this decision is not a formal one, but one based on the verification of materials obtained in the verification phase of the criminal investigation body.

In other words, the initiation of criminal proceedings grants rights and obligations not only to the criminal investigation body, but also to the parties to the proceedings. However, without the beginning of the criminal investigation, no procedural actions can be carried out that would allow finding out the truth in question, no special measures of investigation and other activities can be taken, and in the end the purpose of the criminal investigation would not be achieved[29].

The provisions of art. 279 paragraph (1) of the Code of Criminal Procedure support this position: (...) *The criminal investigation actions for the performance of which it is necessary to authorize the investigating judge, as well as the procedural coercive measures* ***are liable to be carried out only after the start of the criminal investigation***[30], *unless*

[26] The first two conditions can be called *positive,* and the last – *negative.*
[27] Лазарев В.А., Возбуждение уголовного дела как акт правового реагирования на преступные посягательства. Автореф. Дис.канд. юрид. наук, Саратов, 2001, с. 13.
[28] ECtHR Decision Tomac v. Moldova of 16. 03. 2021, §. 66, available: http://hudoc.echr.coe.int/eng?i=001-208953.
[29] According to art. 252 of the CCP, the purpose of the criminal investigation is to collect the necessary evidence regarding the existence of the crime, to identify the perpetrator, in order to ascertain whether or not it is necessary to send the criminal case to trial under the law and to establish his responsibility.
[30] Art. 274 of the CCP operates with the expression *the beginning of the criminal investigation.*

otherwise provided by law.

At the same time, art. 132/1 paragraph (1) of the Code of Criminal Procedure provides that *the special investigation activity represents the totality of public and / or secret criminal investigation actions carried out by the investigation officers* ***within the criminal investigation*** *only under the conditions and in the manner provided by the* Code of Criminal Procedure.

The beginning of the criminal investigation, based on the aspects invoked *above*, constitutes on the one hand the final limit of the verification phase of the notification of the criminal investigation body, and on the other hand, the initial limit of the criminal investigation phase.

According to the regulations of art. 274 paragraph (1) of the Code of Criminal Procedure, *the criminal investigation body or the prosecutor notified in the manner provided in art. 262 and 273 of the Code of Criminal Procedure orders within 30 days, by ordinance, the initiation of criminal proceedings if, from the content of the act of notification or the acts of finding, results at least a reasonable suspicion that an offense has been committed and there are no circumstances that preclude criminal prosecution, informing the person who filed the complaint or the body concerned*.

Considering the provisions of art. 274 paragraph (1) of the Code of Criminal Procedure, the beginning of the criminal investigation shall be ordered only after the criminal investigation body or the prosecutor has been notified in the manner provided by art. 262 and 273 of the Code of Criminal Procedure. The criminal investigation bodies and the prosecutor in order to exercise their duties regarding the discovery of crimes must be informed of their commission. However, those bodies cannot know in all cases when an offense is committed no matter how well they act in order to ascertain the indices of an offense. This is a natural fact, because crimes are committed in all areas of social life, and criminal prosecution bodies, those of finding, the prosecutor can not a priori know about their existence. On the other hand, it is logical that citizens, once they are part of a society, should not be indifferent and at least contribute to informing the competent bodies so that the latter can react promptly in order to uncover the criminal facts which have been brought to their attention. Therefore, the criminal procedural law provided for several ways of reporting, so as to cover the entire social sphere or to cover the foreseeable possibilities of knowing the crime.

As we know, the criminal investigation body, according to art. 262 paragraph (1) of the Code of Criminal Procedure may be notified by complaint; denunciation; self-denunciation; minutes regarding the finding of the crime, drawn up by the ascertaining bodies provided in art. 273 paragraph (1) of the Code of Criminal Procedure; the direct detection by the criminal investigation body or the prosecutor of the reasonable suspicion regarding the commission of a crime. In accordance with art. 273 of the Code of Criminal Procedure, the ascertaining documents drawn up by the ascertaining bodies, together with the material means of evidence, shall be handed over to the corresponding criminal investigation bodies, as the case may be, to the prosecutor, for the initiation of the criminal investigation.

Therefore, the criminal investigation body or the prosecutor, being notified, orders the initiation of the criminal investigation if, *from the content of the notification act or of the*

ascertainment acts, results at least a reasonable suspicion that an offense has been committed. By the content of the notification act we mean the description of the deed that forms the object of the notification, indicating the place of the alleged crime, the identity data of the perpetrator, the means of proof, the circumstances of the alleged crime, the time when the deed took place, the data of the complainant. By the contents of the ascertaining documents we understand the elaboration by the ascertaining bodies of the minutes in which the actions performed and the ascertained circumstances will be recorded.

By *reasonable suspicion* we mean an assumption or probabilistic reasoning, a preliminary conclusion on the commission of an illegal act. However, the suspicion must always be justified, i.e. the appearance of hypotheses must be preceded by the collection and analysis of evidentiary information about the commission of the crime[31]. In this order of ideas, we find that in the case of the decision to initiate criminal proceedings, the criminal investigation body must emerge from the content of the notification, the acts of finding, the means of evidence attached to the notification, other information that may serve as a basis to justify that a crime has been committed[32].

Article 274 paragraph (1) of the Code of Criminal Procedure indicates that *the initiation of the criminal investigation will be ordered within 30 days*. That period shall be calculated from the time when the offense is notified. Thus, the criminal procedural law grants the right of the criminal investigation body to decide to start the criminal investigation within the respective term. There are situations when there is a risk of losing or destroying evidence, so he must decide to start criminal proceedings immediately.

In another order of ideas, we mention the fact that the legislator provided for an exception at the beginning of the criminal investigation and the verification of the notification regarding the crime. Thus, according to art. 274 paragraph (3/1) of the Code of Criminal Procedure, when from the content of the act of notification or ascertainment results the suspicion of committing an offense provided in art. 166/1 of the Criminal Code, the prosecutor is to decide on it according to art. 274 paragraph (1) of the Code of Criminal Procedure, within a term not exceeding 15 days.

In the case of complaint, denunciation or report regarding the finding of the crime, drawn up by the finding bodies provided in art. 273 paragraph (1) of the Code of Criminal Procedure, the criminal investigation body, analyzing and verifying the content of the notification and the means of evidence attached to these notifications may not find the reasonable suspicion, performing in this respect, pursuant to art. 279 paragraph (1) of the Code of Criminal Procedure, additional procedural (verification) actions for the purpose of

[31]Art. 5 point 1 letter c) ECHR states that the grounds for *reasonable suspicion* must be objectively justified. That is why it is not enough for the criminal investigation bodies to suspect a person. The fact that a subjective suspicion is not enough, according to the requirements of art. 5 pt. 1 letter c) ECHR, implies the need for the existence of factual circumstances that can be objectively analyzed by an independent person, who is not related to the case. For example, in the case of Stepuleac v. Moldova, (Judgment of 06. 11. 2007) the ECtHR reiterates that the existence of a "reasonable suspicion" presupposes the existence of facts or information that would convince an objective observer that the person concerned could have committed the crime (in the case of the decision to initiate criminal proceedings - an objective observer would be persuaded that an offense could have been committed). Available: http://hudoc.echr.coe.int/eng?i=001-112790

[32] For example: the criminal investigation body was notified by the finding body regarding the commission of the crime of medium bodily injury. Analyzing the content of the complaint, the criminal investigation body concludes that there is a *reasonable suspicion* that this crime was committed, because there is a forensic finding on the degree of bodily injury, there are statements of the victim and witnesses. Respectively, following this assessment, the criminal investigation body will start the criminal investigation according to the provisions of art. 152 of the Criminal Code.

finding reasonable suspicion of the commission of the offense. Only after its establishment, the criminal investigation body, within 30 days, will start the criminal investigation. We therefore consider that the initiation of criminal proceedings must be ordered immediately after the finding *of reasonable suspicion* of committing a crime.

In the case of D. v. Moldova (ECtHR judgment 08.12.2020, § 60)[33], it was found that after the applicant *had lodged a formal complaint on 4 May 2009, a criminal investigation into her allegations had not been initiated until after almost two months, id est on July 22, 2009.*

In the event that the criminal investigation body self-reports, it is immediately obliged, at the same time (on the same day or time) to order the initiation of criminal proceedings, because it has found *reasonable suspicion* of the crime and it is not necessary to wait for the 30-day deadline. Thus, according to art. 274 paragraph (2) of the Code of Criminal Procedure, *in case the criminal investigation body or the prosecutor notifies himself regarding the beginning of the criminal investigation, he draws up a report in which he records the findings regarding the detected crime, then, by ordinance, orders the initiation of the criminal investigation*. In these circumstances, the immediate initiation, without delay, of the criminal investigation, without waiting for the expiration of the 30-day period, is envisaged. Respecting these provisions, the criminal investigation body will exactly fulfill the requirements of the principle of operability and that of free access to justice.

By the phrase used in art. 274 paragraph (1) of the Code of Criminal Procedure *does not exist any of the circumstances that exclude criminal prosecution,* we understand the cases that prevent the initiation of criminal prosecution. These circumstances are regulated in art. 275 of the Code of Criminal Procedure, to which we will refer in the context of the exposition of the refusal procedure at the beginning of the criminal investigation. However, we will touch on some issues that are important in our vision.

We consider that not all the circumstances described in art. 275 of the Code of Criminal Procedure can serve as a ground for preventing the decision to initiate criminal proceedings, as there are situations where certain circumstances are required to be demonstrated by evidence that can only be obtained in criminal proceedings, for example, in the absence of the fact of the crime or the lack of elements of the crime. In arguing this position, we also bring the provisions of art. 93 paragraph (1) of the Code of Criminal Procedure, which stipulates that *the evidence is acquired factual elements (...), which serves to establish the existence or non-existence of the offense (...).* Respectively, we note that the finding of non-existence of the crime must be proven, especially when the confrontation must be carried out (of course, people must have a procedural status, some of them obtain that status only in criminal proceedings), when it is necessary to dispose of the expertise, to hear the suspect, when the procedural documents are required in which the results of the special investigative measures and their annexes are recorded, including the transcript, photographs, records and others. Of course, there are such circumstances that may result from the content of the act of notification, of the acts of finding or procedural actions drawn up in the order of art. 279 paragraph (1) of the Code of Criminal Procedure, until the beginning of the criminal

[33] Available: http://agent.gov.md/wp-content/uploads/2021/03/d.-v.-mda-rom.pdf

investigation, for example, if the perpetrator is not old enough to be held criminally liable and this fact is proved by the identity documents.

Another situation is if the statute of limitations or amnesty has intervened; the perpetrator's death occurred; the victim's complaint is missing in cases when the criminal investigation begins, according to art. 276 of the Code of Criminal Procedure, only on the basis of his complaint or the previous complaint was withdrawn; in respect of a person there is a final judgment in connection with the same charge or by which it has been established that it is impossible to prosecute on the same grounds; in respect of a person there is an unannounced decision not to initiate criminal proceedings or to terminate criminal proceedings on the same charges. In case of the existence of such circumstances, having evidence to prove them, the criminal investigation body will not initiate the criminal investigation and will propose to the prosecutor not to initiate the criminal investigation and to close the criminal process.

Therefore, we mention that there are cases when the circumstances that exclude the criminal investigation are obvious and result from the act of notification or the acts of finding, or are found by the acts of finding or the procedural actions performed until the beginning of the criminal investigation. In such situations, the criminal investigation body will not start the criminal investigation and will propose to the prosecutor to refuse to start the criminal investigation. Sometimes, there are cases when evidence could not have been obtained without initiating criminal proceedings in order to establish such circumstances (for example, the lack of an objective side of the offense).

When the criminal prosecution body directly detects or is notified on the commission or preparation for the commission of intellectual property offenses, the criminal procedural law, together with the law on the protection of geographical indications, designations of origin and guaranteed traditional specialties, grants protection to intellectual property, because the right holder or the competent authority may not know about these violations, on the one hand, and the state, through the criminal investigation body, has a positive obligation to investigate these crimes, on the other hand. Thus, the criminal investigation body, although it is notified of committing such crimes, starting the criminal process, is obliged to ask the rights holder and the State Agency for Intellectual Property (SAIP) for the opinion on the initiation of criminal proceedings. In this case, the criminal investigation body grants a period of 15 working days to these units, so that the latter can decide on the fact of filing or not filing a prior complaint. It is natural that, in case of filing this complaint, the criminal investigation body will continue the investigations, starting the prosecution in this respect, and otherwise it will propose to the prosecutor to close the criminal case due to the lack of prior complaint.

"The situation is different when the criminal investigation body directly detects or is notified about the commission or preparation for the commission of the crime provided in art.185/2 paragraph (2^3) and art. 185^3 of the Criminal Code. In this case, no prior complaint is required; the criminal investigation body is not obliged to ask the rights holder and the State Agency for Intellectual Property (SAIP) for an opinion on the initiation of criminal proceedings. The legislator regulated this exception, because in the situation of the mentioned crimes the interests of the state are violated, as well as the principles of the international legal

norms are affected"[34].

From the above we mention that once the criminal prosecution bodies are notified about the commission of a crime, they are obliged to verify the content of the notification, which consists in: establishing the commission of a criminal act, the identity of the perpetrator, the data resulting from the accuracy of the notification (for example, documents proving the commission of the act are attached to the notification: a forged document). Reaching the conclusion, from the notification, that a criminal act has been committed, the act or the perpetrator is confronted with provisions that could have removed or prevented criminal liability (amnesty, prescription, etc.). When it is established that there is no such impediment, the criminal investigation body initiates the criminal investigation.

If the content of the notification does not provide sufficient data for the initiation of the criminal investigation, the procedural actions that may be carried out until the initiation of the criminal investigation shall be carried out (art. 279 paragraph (1) of the Code of Criminal Procedure), for the same purpose, establishing whether: committed in reality and by whom; constitutes a crime; there are none of the cases that prevent the prosecution.

"If these actions are confirmed, the referral is confirmed and there is no reason to prevent it, the criminal investigation body shall proceed with the initiation of the criminal investigation"[35].

From the provisions of art. 274 paragraph (1) of the Code of Criminal Procedure results that when there is at least a *reasonable suspicion* of the commission of the crime and there are no impediments to the initiation of criminal proceedings, the criminal investigation body issues an ordinance to initiate criminal proceedings.

The respective ordinance is a procedural act of disposition and must include the requirements indicated in art. 255 paragraph (2) of the Code of Criminal Procedure, and namely: date and place of drawing up, name, surname and capacity of the person drawing it up, cause to which it relates, object of the action or procedural measure, its legal basis and signature of the person who drew it up. Those conditions are general for making of an ordinance. According to us, the order to initiate criminal proceedings must include not only the date of preparation, but also the time, the minutes, because these aspects are very important, especially when the person is detained until the registration of the offense, and its detention must not exceed 3 hours until the detention report has been drawn up, i.e., the criminal investigation must already have begun. This fact is not expressly regulated in the special norms, therefore we consider that it is necessary to modify and complete the provisions of art. 255 paragraph (2) of the Code of Criminal Procedure in this regard.

According to the provisions of art. 255 paragraph (2) of the Code of Criminal Procedure, the ordinances of the criminal investigation body must be motivated. We are of the opinion that the ordinance initiating the criminal investigation is an exception to that requirement in the part related to the content of the descriptive part.

We consider that the ordinance for initiating the criminal investigation, in addition to the elements mentioned in art. 255 paragraph (2) of the Code of Criminal Procedure must

[34] Ostavciuc Dinu, Sesizarea organului de urmărire penală, Chișinău, Ed. Cartea Militară, 2020, p. 40-42.
[35] Ionășeanu Eugen V., Procedura începerii urmăririi penale, București, Editura Militară, 1979, p. 207.

also contain specific conditions, and namely: the fable of the deed and its circumstances, the identity of the victim and the perpetrator (if known), the place and time of the alleged illegal act, references to some evidence (if applicable, for example, the results of the technical-scientific or medico-legal finding), the juridical-criminal classification of the deed, the legal basis for its preparation and disposal, as well as the actual disposition of the decision to initiate criminal proceedings.

The ordinance initiating the criminal investigation must be motivated only in the aspect of *reasonable suspicion* resulting from the content of the notification documents, to which the finding documents are attached, as well as from the procedural actions carried out by the criminal investigation body in order to establish the *reasonable suspicion* of an act punishable by criminal punishment.

As mentioned above, the ordinance to initiate criminal proceedings must include the legal classification of the deed. This aspect is a very important one, because due to the legal classification of the deed, the criminal investigation body may decline its competence, may apply coercive procedural measures (depending on the seriousness of the crimes), may order the implementation of special investigative measures, etc. Of course, during the criminal investigation the deed can be reclassified.

In this respect, the Court notes that the legal classification of the deed established by the ordinance initiating criminal proceedings is a preliminary version of the criminal investigation body, which may evolve over time, depending on the evidence administered[36].

"The first legal classification of the fact or facts that are the subject of investigations into a criminal case is made in the operative part of the ordinance to initiate criminal proceedings, and this is absolutely necessary, because on this initial qualification depends the spectrum of procedural coercive measures that can be applied to the suspect, as well as the possibility of carrying out special investigative measures"[37] .

"Thus, in most cases, in order to ensure a certain comfort in the criminal investigation process, the criminal investigation officer and the prosecutor are tempted to adapt the reasonable suspicion to a more serious act, even if the evidence accumulated before the criminal investigation indicates the existence of a reasonable suspicion of committing an offense with a lower degree of harm"[38]. „Consequently, in the situation where the suspected person was subsequently removed from criminal prosecution, the term in which the criminal investigation in respect of him may be resumed is determined by that preliminary, discretionary qualification of the criminal investigation body or prosecutor, made at the stage of the beginning of the criminal investigation"[39] .

Regarding the content of the ordinance to initiate criminal proceedings, we mention that there are other essential aspects. The criminal investigation can be initiated ***regarding the person*** (*in personam*), when there are well-founded assumptions, and ***regarding the deed*** (*in rem*), when the identity of the perpetrator is not known at that time by the criminal

[36] DCC no. 50 of 31.05.2018 of inadmissibility of the notification no. 59g/2018 on the exception of unconstitutionality of Article 326 paragraph (11) of the Criminal Code and of some provisions of article 283 paragraph (1) of the Code of Criminal Procedure (point 30).
[37] Valeriu Bodean, Termenul reluării urmăririi penale. In: Culegerea comunicărilor. Conferința științifică națională cu participare internațională: Realități și perspective ale învățământului juridic național, 01-02 octombrie 2019. Vol. II., p. 508, 509.
[38] Valeriu Bodean, *Op. cit.*, p. 508-509.
[39] Valeriu Bodean, *Op. cit.*, p. 509.

investigation body.

Thus, analyzing the provisions of art. 274 of the Code of Criminal Procedure, we can conclude that for the beginning of the criminal investigation no information about the perpetrator or another condition regarding the person is required.

According to art. 252 of the Code of Criminal Procedure, the object of the criminal investigation is to collect the necessary evidence regarding the existence of the crime, *to identify the perpetrator*, in order to ascertain whether or not it is necessary to send the criminal case to court under the law and to establish *his liability*. Thus, once the purpose of the criminal investigation is to collect the evidence to identify the perpetrator, then it is natural that its commencement should be carried out in respect of the person.

It should be noted that the criminal investigation cannot start *in personam* if the identity of the perpetrator does not result from the act of notification or the acts of finding. Therefore, we conclude that the criminal investigation can be initiated *in rem* whenever there is at least a *reasonable suspicion* regarding the commission of a crime, while *in personam* it can be started only if the identity of the perpetrator results from the notification and the documents of finding.

"The practice often demonstrates the express nomination in the ordinance to initiate criminal prosecution in person, of the identity data of the perpetrator. Sometimes, even in the case of initiating criminal prosecution *in rem*, the data of the person in respect of whom the criminal investigation was initiated can be deduced. For example, the initiation of criminal prosecution according to the provisions of art. 324,327,328 of the Criminal Code, when the special subject can be deduced by a simple logical deduction, this being the person empowered exclusively to decide in the situation, the concrete criminal act indicated in the criminal prosecution ordinance, and the criminal investigation body, in order to avoid the expiration of the term of 3 months of maintenance as a suspect of the person, the criminal investigation *in rem* starts in a veiled manner. This situation seriously affects the right to liberty and security of the person enshrined in Article 5 of the ECHR, leaving space for arbitrary and double standards"[40].

The Constitutional Court reiterates that, (...) *in the ordinance for initiating the criminal investigation, only the deed that conditioned its issuance is mentioned (in rem), or, in the event of a reasonable suspicion that a person has committed an offense, the prosecuting authority must provide all the safeguards characteristic of a criminal charge*[41].

In the ECHR Decision of 27.09. 2007 in the case of Reiner and others v. Romania (§. 46), the Court observes that, in criminal matters, the „reasonable term" of art. 6 §. 1 of the Convention begins from the moment a person is „accused"; it may be a date prior to the

[40] "Thus, it is proposed to amend and supplement paragraph (1), the introduction of point 4 paragraph (1) art. 63 of the Code of Criminal Procedure, as follows: art. 63. suspect (1) the suspect is the natural person against whom there is certain evidence leading to the existence of a reasonable suspicion that he has committed an offense until he is charged. The person can be recognized as a suspect by the following procedural acts: ...4) the ordinance to initiate criminal proceedings, when it has been initiated in respect of the specific person or the ordinance contains solid indications regarding the identification of the specific person by the commission of the criminal act." To see: Pântea Andrei, Bănuiala rezonabilă: The national criminal procedural framework and the jurisprudence of the European Court of Human Rights. Doctoral thesis in law, Chisinău, 2018, p. 105-106.

[41] DCC no. 12 07.02.2017 of inadmissibility of the notification no. 123g/2016 on the exception of unconstitutionality of Article 274 paragraph (7) of the Code of Criminal Procedure of the Republic of Moldova (the beginning of the criminal investigation) (point 27).

notification of the court, in particular that of arrest, indictment and initiation of criminal proceedings.

Given that the criminal investigation body may unjustifiably hesitate for a significant period of time to formally notify the suspect, for reasons not attributable to him, of the criminal charges, the ECtHR ruled that a person acquires the status of suspect, which attracts the application of the guarantees provided by art. 6 of the Convention, not from the moment when that quality is brought to his notice, but from the moment when the national authorities had plausible grounds for suspecting him of having committed an offense (Brusco v. France [42], ECHR Decision of 14. 11. 2010, §. 47; ECHR Decision Sobko v. Ukraine[43], of 17.12.2015; §. 53; Bandaletov v. Ukraine[44], ECHR Decision of 31.10.2013, §. 56).

The Court therefore notes that Article 63 paragraph (1) of the Code of Criminal Procedure provides an exhaustive list of procedural documents by which the person can be recognized as a suspect, but, by the exception established by paragraph (1[1]) of the same article, the legislator establishes certain guarantees for the situations in which the criminal prosecution bodies carry out procedural actions that have important consequences for the person, a fact that corresponds to the rigors of the right to a fair trial established by article 20 of the Constitution[45].

(...) the procedural-criminal law strictly determines that the term for maintaining the quality of suspect is calculated starting with the date of issuing the procedural documents, provided in art. 63 paragraph (1) points 1-3 of the Code of Criminal Procedure, and if it is established that there are certain reasonable suspicions about a person, regarding the commission of a crime and in relation to it, certain procedural actions are carried out, which create important repercussions on the person's situation, according to paragraph (11) art. 63 of the Code of Criminal Procedure, the criminal investigation bodies have the obligation to recognize this person as a suspect and to inform about the rights provided in art. 64 of the Code of Criminal Procedure[46].

Some examples from the case law of the Criminal College of the Supreme Court of Justice confirm such approaches. The Supreme Court finds that the initiation of the criminal investigation *in personam* constitutes the procedural act of awarding the quality of suspect and for this reason maintains the Decision of the Court of Appeal on terminating the criminal proceedings, given that the term for maintaining the quality of suspect has expired. (To see, DCC of the SCJ of 06. 06.2017, file no. 1ra-735/2017[47]; DCC of the SCJ of 28. 06.2017, file no. 1ra-880/2017[48]; DCC of the SCJ of 12. 09. 2017, file no. 1ra-886/2017 [49]; DCC of the SCJ of 25. 04. 2008, file no. 1ra-357/08).

Thus, the SCJ of the Republic of Moldova confirmed the viability of finding that the initiation of criminal proceedings „in personam" ***has the validity of an accusation in***

[42] Available: http://hudoc.echr.coe.int/eng?i=001-100969
[43] Available: http://hudoc.echr.coe.int/eng?i=001-159212
[44] Available: http://hudoc.echr.coe.int/eng?i=002-8942
[45] DCC no.25 of 29.03.2018, of inadmissibility of the notification no.20g/2018 on the exception of unconstitutionality of the article 63 paragraph (1) point 1-3 and paragraph (2) point 3) of the Code of Criminal Procedure (recognition of the person's quality of suspicion) (point 36).
[46]Decision of the Plenum of the CC of the SCJ pronounced on 22. 02. 2019 on the appeal in the interest of the law filed by the President of the Union of Lawyers of the Republic of Moldova, Emanoil Ploşniţa, regarding the non-unitary application of the provisions of art. 63 of the Code of Criminal Procedure, file no. 4-1ril-2/2019.
[47] Available: http://jurisprudenta.csj.md/search_col_penal.php?id=9005
[48] Available: http://jurisprudenta.csj.md/search_col_penal.php?id=9150
[49] Available: http://jurisprudenta.csj.md/search_col_penal.php?id=9483

criminal matters [50].

In cases when the criminal investigation has been initiated against a certain person, from that moment it will be considered that this particular person has the quality of suspect, regardless of whether or not the ordinance of recognition as a suspect has been issued.

It is necessary to note that after the issuance of the ordinance to start the criminal investigation, the criminal investigation officer has the obligation, within 24 hours from the date of the start of the criminal investigation, to inform in writing the prosecutor conducting the criminal investigation, at the same time presenting the respective file. When he became aware of the ordinance to initiate criminal proceedings, the prosecutor sets the time limit for the investigation in the case. This obligation derives from the content of art. 274 paragraph (3) of the Code of Criminal Procedure.

After issuing the ordinance to initiate the criminal investigation, the criminal investigation officer will present to the chief prosecutor (for example, the Criuleni district prosecutor or his deputy) the criminal case (all materials based on which the criminal investigation body adopted the decision to initiate the criminal investigation). The Chief Prosecutor will appoint a subordinated prosecutor to conduct the criminal investigation of the case.[51] In his turn, the appointed prosecutor will verify the legality of starting the criminal investigation and will set the term of criminal investigation, taking into account the provisions of art. 20, 259 of the Code of Criminal Procedure. The setting of the criminal investigation term is achieved by issuing an ordinance in this regard.

Regarding the term of notification of the prosecutor about the beginning of the criminal investigation, we mention the fact that it is necessary to modify and complete art. 274 paragraph (3) of the Code of Criminal Procedure, so that, the term of *up to 24 hours* should be indicated. Otherwise, it would be presumed in fact 24 hours from the issuance of the ordinance to start the criminal investigation, which is sometimes impossible to achieve, especially when the criminal investigation is started outside the working hours.

CONCLUSIONS AND RECOMMENDATIONS

We can conclude that the beginning phase of the criminal process starts from the moment when the competent state body is notified (for example: registration in the guard unit of the Police Inspectorate of the complaint regarding the commission of the crime) and ends with the drafting of the ordinance to initiate or refuse the initiation of criminal proceedings.

The tasks of this phase of the criminal process are:

a) verification of the information from the notification act;
b) prevention of crimes in preparation, counteracting those triggered and not consumed;

[50] Sometimes confirmed by the practice of judicial control of the prejudicial procedure - by the Conclusion of the Centru Court, Chisinau municipality of August 12, 2016 (file no. 10-345 / 16) and the Conclusion of the Cahul Court, the headquarters of October 2, 2017 (file no. 10-85/2017; no. 10-87/2017), the investigating judges annulled the indictment ordinances, because the term for the quality of suspect was exceeded, the term of 3 months being calculated from the date of issuing the ordinance to start the criminal investigation. In the latter case, the court retained, as a precedent, the case of T.A. (DCC of the SCJ, file no. 1ra-903/13 of 26.11.2013) and the case of L. and others (DCC of the SCJ, file no. 1ra-357/08 of 25.04.2008).

[51] According to art. 53/1 paragraph (2) letter g) of the Code of Criminal Procedure, *the hierarchically superior prosecutor, in addition to the attributions provided in art. 52 paragaraph (1)* of the Code of Criminal Procedure, *within the criminal investigation, he performs the following attributions for the exercise of the hierarchical control: ...g) ensures the distribution to the prosecutors of the notifications for examination or of the criminal cases for the exercise or, as the case may be, for the conduct of the criminal investigation*.

c) detecting and documenting (fixing) the traces of the crime;
d) establishing the existence or lack of grounds and legal reasons for starting the criminal investigation.

On the one hand, the beginning of the criminal investigation as a separate procedural act marks the final limit of the verification phase of the notification of the criminal investigation body, and on the other hand, it marks the initial limit of the criminal investigation phase.

Thus, it is not rational for the name of this stage to coincide with the name of the procedural act that allows the initiation of the criminal investigation - the beginning of the criminal investigation.

In our view, it would be more correct for the first phase of the criminal process to be called ***the verification of the notification by the criminal investigation body*** and not ***the beginning of the criminal investigation***. First, this phase would comprise the set of acts and procedural measures, carried out in the order provided by the Code of Criminal Procedure, by the criminal investigation body with the involvement of the parties in the process, fulfilling a limited objective in conducting the criminal process and preparing for the next phase, namely of ***the actual criminal investigation***, which is the second phase of the trial.

We are of the opinion that the provisions of art. 274 paragraph (1) of the Code of Criminal Procedure must imperatively provide for the immediate initiation of criminal proceedings in the event of a *reasonable suspicion* of a crime and the absence of circumstances which preclude criminal proceedings. The phrase "*within 30 days*" is not appropriate, as it gives the prosecuting authority the right to initiate criminal proceedings on the last day of the expiry of this period, even if the contents of the notification and the findings show reasonable suspicion of the crime. This provision would undermine the victim's right of free access to justice. At the same time, there is a risk of destruction or loss of essential evidence (for example, urgent collection of biological traces, disposition of expertise, etc.). For this reason, we propose that the phrase in question be replaced by the phrase "*in term of 30 days*". In case of completion and modification of art. 274 paragraph (1) of the Code of Criminal Procedure in that regard, the provision in question would oblige the prosecuting authority to decide to initiate criminal proceedings within a reasonable time, so that it would react promptly to that referral.

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SOME CONSIDERATIONS REGARDING THE INHERITANCE RIGHTS OF THE SURVIVING SPOUSE IN CHINESE LAW

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ABSTRACT

Asia is the largest continent on Earth[1] and due to its vastness, it is difficult to analyze and present the culture and legal reasoning behind the laws of Asian countries. Asian states have suffered, over the centuries, the influences of colonialism from states such as: Great Britain, France, Germany, Holland, Portugal, Spain, Switzerland and the United States of America. The influences of colonialism intersected with Chinese, Buddhist, Hindu, and Islamic legal traditions. However, from a legal point of view, among Asian states, there are commonalities related to religion, similar historical influences and approach to the processes of modernization and industrialization. These aspects common to Asian countries have existed since pre-colonial times.

KEYWORDS: colonialism, inheritance law, China, civil law, intestate succession, history, family law, Asian legal doctrine

INTRODUCTION

Many studies dealing with the transformation of traditional laws in controlled territories show that colonial powers and indigenous elites deliberately manipulated customary laws according to their political and economic interests[2]. For example, in Indonesia, the Dutch colonialists used a custom called adat[3] to stop the religious and political influences of Islam. Cases under the adat indigenous law were heard by a Landraad, a Dutch judge, and an Indonesian official who was often an Islamic preacher. Colonial powers with

[1] The population represents more than 60% of the entire world population, that is, out of about 7 billion inhabitants of the Planet, 4 billion live in Asia, and the population grows every year by 50 million inhabitants. The population of Asia is multi-denominational, from Orthodox Christians, which predominate in the Russian Federation, to Islam, to Judaism in Israel, Orthodox in Armenia and Georgia, Hinduism in India, Buddhism combined with Taoism in China and Korea, and Shintoism in Japan.

[2] M. Chanock, Law, *Custom and Social Order: The Colonial Experience in Malawi and Zambia*, Cambridge University Press, 1985, pp. 12-18; Christian Erni, *The evolution of the concept of indigenous peoples and its application in Asia, tribes, states and colonialism in Asia*, DISCUSSION PAPER 2014, INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS, Copenhagen, Denmark, p. 5.

[3] Adat is a custom specific to Malaysia and Indonesia. Adat was the traditional, unwritten code that governed all aspects of a person's life, from birth to death. Before the 14th century, there were two forms of adat in Malaysia. In the year 1870, the Dutch colonialists wanted to declare the territories unused by the indigenous people as lost lands, in order to earn from renting or leasing them for the benefit of private companies. Professor Cornelis van Vollenhoven, professor of law at the University of Leiden, attacked this policy on the grounds that it was an abuse, the respective territories belonging to the indigenous people. The Dutch colonialists tried in many ways to oppose the professor, going as far as establishing a university based on ideologies contrary to the aforementioned professor, establishing the Faculty of Indology, that is, the Faculty for the Study of Indonesian Law, in Utrecht, where they tried to educate officials who they were to administer the colonies in such a way as to protect the private interests of the companies within those colonies at the expense of the indigenous population.

civil law traditions, such as the Dutch, flirted with the idea of codifying the Indonesians' unwritten laws. Ironically, Professor Cees van Vollenhoven, although a staunch defender of the indigenous population, consistently opposed the creation of a legal code of Indonesia on the grounds that "there is no lawyer's law in native Indonesia"[4]. He published throughout his career, starting in 1880, various works in which he explained the appropriate law, specific to indigenous people[5].

In Britain's Asian colonies, the English applied their own law to all indigenous people in the conquered territories, less so in the area of personal laws, i.e. family and inheritance laws[6]. However, legal aspects related to family law and inheritance law were tried in British courts but with the help of local counselors.

The transformation of traditional laws in Asian states was not only in the interest of the colonial powers. Interestingly, after gaining independence, the young states, led by Western-educated elites eager to develop and modernize them, had an ambivalent view of the rule of law in that they sought to avoid a return to colonial subordination and wanting to compete with the colonialist states. However, the traditions of the place, which represented local interests, proved to be incompatible with the interests of the new central governments, having little relevance in the modern transactions that followed.

CONSIDERATIONS REGARDING THE INHERITANCE IN CHINESE LAW

The People's Republic of China is the most populous country in the world. China's history has been tumultuous and has been marked by many wars, dismemberments, reunifications, and different imperial dynasties, each with a different take on the act of governing and maintaining peace.

Throughout its history, three major legal and philosophical currents have distinguished themselves and make their presence felt even today in the legal system of the People's Republic of China (PRC).

The most important current, whose influences have endured to this day, not only in the PRC, but throughout the Asian continent, is Confucianism. The most important principle of Confucianism is called Li. This principle has two general meanings: firstly, it refers to rituals, that is, to the protocol that all people must follow in social relations, and the second meaning of the principle refers to the obligation of people to respect the social hierarchy, ensuring in this way, social harmony[7].

The second most important principle of Confucianism is Ren[8], by virtue of which family, social and hierarchical relationships must be based on feelings of empathy[9].

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[4] He stated that in Indonesia there is no law of lawyers in native Indonesia, referring to the fact that the Dutch Government was trying to impose its own legal system on Indonesia, eliminating the adat law system.

[5] C. Fasseur, Colonial dilemma – Van Vollenhoven and the Strugle between Adat law and Western Law in Indonesia, in *The Revival of Tradition in Indonesian Politics*, Routledge, London, 2007, p.2.

[6] M. B. Hooker, *A Concise Legal History of South-East Asia*, Clarendon Press, Oxford, 1978, pp. 123-152.

[7] Chenglin Liu, *Confucius and the Chinese Legal Tradition*, Digital Commons at St. Mary,s University, California, 2020, p. 503.

[8] The Ren principle means love and benevolence.

[9] According to this principle, in the relationship between parent and son, the child must be totally obedient, and the parent must give him love and empathy, and these aspects must be reflected in all interpersonal relationships.

The second notable trend is legalism. The main philosophy of legalism was not concern for human welfare or limiting the power of emperors. The main concern of legalism was the desire to impose extremely strict laws, on the grounds that the imposition of strict laws is the most effective tool in creating an invincible political and military apparatus. We note that the notion of law in the legalistic current does not refer to the rights and obligations of citizens, as perceived by us Europeans, but to the immeasurable power of the emperor. It is interesting that the followers of legalism believed in the equality of persons before the law, only that the emperor was above any law[10].

The third notable current is Taoism, which promoted the idea of adopting laws that were not invasive in nature, such as those promoted by the followers of legalism. Taoism does not emphasize the observance of certain protocols and social hierarchies, imposed by Confucianism.

The basic idea of Taoism is the Tao, in essence, promoting the natural balance of things. As such, in the Taoist view, the Government should not intervene in people's lives, except to maintain a minimum of social order, allowing things to run naturally, with no harsh punishments or oppressive social relations[11].

The Constitution of the PRC, at art. 13, recognizes the right of all citizens to own and inherit private property under the law[12].

The Civil Code of the PRC was adopted in 2020 and is the first codification of civil laws and includes regulations on private law, family law, succession law, etc. Until the time of codification in matters of succession, the Inheritance Law of 1985 applied. The regulation of the Civil Code has not undergone any changes, it being effectively identical to the regulation of the Law of Inheritance of 1985.

Chinese succession law recognizes two types of inheritance: legal and testamentary.

At art. 1126 Civil Code of the PRC, the legislature states that "Men and women are equal in their right to inherit".

The Chinese legislature has established two classes of heirs, as follows: 1. The surviving spouse, children[13] and parents of the deceased belong to the first class of heirs; 2. the second class of heirs includes brothers and sisters[14], maternal and paternal grandparents[15].

Interestingly, Chinese law recognizes the right to inheritance for widowed daughters-in-law and widowed sons-in-law, provided they have contributed substantially to the financial well-being of their in-laws. Moreover, they are considered first-class heirs[16].

In principle, the heirs of the same class will equally share the estate of the deceased. But, in the distribution of the patrimony, special financial needs and the inability of some family members to work are taken into account. Also, an heir who contributed substantially

[10] *Ibidem* p. 505.
[11] *Ibidem* p. 513.
[12] Constituția RPC a fost adoptată în prima sesiune a celui de-al XIII- lea Congres Național al Poporului Chinez, în anul 2018.
[13] All children of the deceased are part of the first class of heirs; natural, adopted, out-of-wedlock children, step-children raised by the deceased.
[14] The second class of heirs includes uterine brothers, consanguine, brothers who were adopted and brothers-in-law/sister-in-law, who were supported or financially supported the deceased.
[15] Art. 1127 Civil Code of the PRC.
[16] *Ibidem* art. 1129.

to the financial support of the deceased or actually lived with him may receive a larger share of the inheritance. Per a contrario, in a situation where there is an heir who could have financially supported the deceased, but did not, he will receive a smaller share of the inheritance, or he will not receive it at all[17]. If there are people who do not belong to any class of heirs, but who financially supported the deceased or were supported by him, they will receive a share of the estate[18].

Art. 1132 of the Civil Code of the People's Republic of China states that "any problem arising in relation to inheritance will, in the first instance, be resolved at the level of the family council, in the spirit of amicability, unity, mutual understanding and accommodation". If the family council meeting did not lead to the desired results, the heirs will turn to the People's Mediation Committee or start a court case. In terms of testamentary inheritance, there are several types of wills.

Chinese succession law recognizes audio or video recorded wills as valid, provided two witnesses are present to be recorded for identification. The testator and his witnesses have the obligation to make known the year, month and day of making the audio or video will[19].

In Chinese succession law, the will is revocable. Also, the will shall be void in the following situations: the person who drew it up does not have full legal capacity, or is mentally alienated; the will does not include the real intentions of the testator, the will was made by fraudulent means or violence, the will was falsified and in the situation where the will was modified by another person, (only the modified parts will be invalidated)[20].

Regarding the inheritance reserve, the Chinese legislator considered that it should be for the benefit of persons who do not have the ability to work or have no source of income[21]. A legal heir will acquire the status of reserved heir only if he is unable to work or do not earn any kind of income.

One aspect of Chinese succession law, which is totally different from European law, is that the judges of the courts in which disputes dealing with succession reservation are discussed, the court shall analise the relations that the deceased had during his life with the legal heirs, taking into account both the needs of the heirs as well as the economic relations between the deceased and them[22]. The inheritance reserve model allows judges to redistribute shares and assets of the inheritance for the benefit of heirs who present certain disadvantages or persons to whom certain moral merits are attributed[23].

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[17] *Ibidem* art. 1130
[18] *Ibidem* art. 1131.
[19] *Ibidem* art. 1137.
[20] *Ibidem,* art. 1143.
[21] *Ibidem,* art. 1141.
[22] Andrew Watson Brown, *China and the United States: Yin and Yank Intestacy,* Santa Clara Law Review, vol 59, nr. 1/2019, p. 253.
[23] The case of Mr. Ping's estate. The late Yu Ping died without leaving a will, leaving behind an elderly wife and a son who is grown and financially independent. Mr. Yu learned about the precarious financial situation of an old man in the countryside near his home. He voluntarily decided to donate 10 yen each month. Mr. Yu has donated this amount for more than a decade. After his death, the court decided that the surviving wife should receive a larger share than his son, taking into account her age and needs, and the old man to whom the deceased donated 10 yen monthly, received 500 yen from the estate successor.

As aforementioned, we understand that the surviving spouse is part of the first class of heirs and will enjoy a share equal to that of the other heirs who are in the same class with him. Also, the Chinese judge can, depending on the circumstances of the surviving spouse and other heirs of the deceased, modify as they see fit, both the shares and the persons who will benefit from the estate[24].

Regarding the exercise of the right of succession option, it differs according to the type of inheritance.

If an heir, after the opening of the inheritance, wants to renounce the inheritance, he can do so, provided that the renunciation is expressed in writing, before the patrimony has been divided.

In the case of testamentary inheritance, the heirs (surviving spouse), have a 60-day period to choose whether to accept or renounce the inheritance. If the 60-day period has expired, without the heirs exercising their right of option, it will be considered that they have renounced the inheritance[25].

The relinquishing heir has no responsibility for the estate's debts or related taxes.

After analyzing the legal system of the PRC and how the Chinese legislator thinks about the distribution of a person's inheritance, we notice that it is a flexible system, in the sense that each family member who is also an heir will benefit from the inheritance that it is due, depending on the current needs, the relationships he had during his life with the deceased and, even depending on the moral merits. Moreover, the Chinese legal system also grants the benefit of inheritance to people who have no degree of kinship with the deceased, provided that they were financially dependent on him or, during his life, provided him with financial support.

It is not by chance that I began the analysis of the Chinese legal system, by presenting the great legal and philosophical currents on which the entire existence of Chinese society is based. Their influences can also be found in the way the Chinese legislator understands to regulate the legal relationships of succession law.

Even if the rules of inheritance are clear and stable, there is a lot of leeway for the judge to impose a decision that is fair towards the entirety of the surviving family members but also to people that had a special relation to the defunct.

CONCLUSIONS

The Chinese legislative system has been a melting pot of different social and legal currents that resulted in the current Civil Code of the PRC. In the realm of inheritance law the Chinese lawmaker took into consideration not only the relations ruled by bonds of blood but also the individual relations of every human that has played an important part in the life of

[24] In 1991, Mr. Wang Weifa died of cancer. He is survived by 4 first-class heirs: his surviving wife, their 10-year-old daughter, and his parents. The deceased's parents were infirm and financially dependent on their deceased son. The Court considered the desperate circumstances of the deceased's parents and increased the shares due to the deceased's parents and daughter to the detriment of the surviving wife. The court explained that its decision reflects the basic principle of the Chinese inheritance system, to support the elderly and provide a good upbringing for children.

[25] Art. 1124 Civil Code of the PRC.

the defunct. It focuses as much on supporting the family of the deceased as it focuses on the desire to compensate fairly all the people that are deserving of such rewards coming from the estate. It's a delicate dance between straight forward rules and the liberty of the judge to make decisions towards the goal of reaching fair and just solutions.

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LEGAL PROTECTION AGAINST ANTICOMPETITIVE PRACTICES

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ABSTRACT

Legal protection against anticompetitive practices is based on antitrust laws and regulations, as well as specialized institutions that oversee and enforce these rules. In general, the primary entity responsible for competition protection in most countries is a competition authority or a similar body.

KEYWORDS: *anticompetitive practices, fair competition, antitrust laws, competition authorities.*

INTRODUCTION

Competition is regarded in the specialized literature as „the confrontation between professionals with similar or related activities, exercised in open market domains, for the purpose of gaining and retaining clientele, in order to make their own enterprise profitable" [1].

The legal protection against anticompetitive practices is an important aspect both in Romania and in the European Union (EU). In both Romania and the EU, there is a legal framework that regulates and protects fair competition and discourages anticompetitive practices.

In Romania, legal protection against anticompetitive practices is regulated by Competition Law no. 21/1996[2], with subsequent modifications and amendments. This law was adopted to prevent, restrict, and sanction anticompetitive practices that affect the market. The Competition Council of Romania is the authority responsible for enforcing and monitoring competition law and combating anticompetitive practices. The Competition Council has the power to investigate and sanction companies engaged in anticompetitive practices, such as illegal price-fixing agreements, market sharing, and abuse of dominant position.

Regarding the EU, the main regulations concerning competition are included in the Treaty on the Functioning of the European Union (TFEU)[3] and in Regulation (EU) No. 1/2003 on the implementation of the rules on competition laid down in Articles 101 and 102 of the TFEU[4]. The legal protection system against anticompetitive practices in the EU is based on principles such as the prohibition of anticompetitive agreements, the prohibition of abuse of

[1] G. Boroi, *Dreptul concurenței*, București, 1996, p. 5; O. Căpâțână, *Dreptul concurenței comerciale (concurența onestă)*, Ed. Lumina Lex, București, 1992, p. 86; I. Băcanu, „*Libera concurență în perioada de tranziție spre economia de piață*", în Dreptul, nr.9-12. P. 50;
[2] Legea nr. 21/1996, Legea concurenței, publicată în M. Of. Nr. 88 din 30 aprilie 1996 (republicată în M. Of. Nr. 153 din 29 februarie 2016);
[3] Published in J. Of. nr. C 115/1 din 9.5.2008;
[4] Published in J. Of. nr. L1/1 din 4.1.2003;

dominant position, and the control of economic concentrations. The European Commission, through the Directorate-General for Competition, is the executive body of the EU responsible for enforcing these regulations and has the power to investigate and impose sanctions in cases of anticompetitive practices affecting the internal market of the EU. It can impose substantial fines and order corrective measures to restore fair competition in the market. Additionally, within the EU, there is a system for controlling state aid, ensuring that financial assistance provided by a member state does not distort competition in the internal market of the EU.

Both in Romania and in the EU, anticompetitive practices can be subject to substantial fines. Furthermore, competition authorities have investigatory powers, including inspection and evidence collection, to uncover and prevent anticompetitive practices. Those affected by such practices can file complaints and seek damages in court.

Through antitrust rules[5], the European Commission and national competition authorities in EU member states seek to ensure a healthy and fair competitive environment for companies and consumers.

1. KEY ASPECTS RELATED TO LEGAL PROTECTION AGAINST ANTICOMPETITIVE PRACTICES

Importance of competition: Legal protection against anticompetitive practices aims to ensure fair competition in the market. Competition[6] fosters innovation, efficiency, and consumer welfare, and protects against the negative effects of monopolies or collusive behavior.

Prohibition of anticompetitive practices: Laws and regulations establish clear prohibitions against anticompetitive practices such as cartels, abuse of dominant position, price fixing, bid rigging, and market allocation agreements. These practices distort competition and harm consumers and other market participants.

Enforcement authorities: Competition authorities, typically independent bodies, are responsible for enforcing antitrust laws. They have investigative powers, conduct inquiries, and can impose sanctions on companies engaged in anticompetitive behavior.

Market analysis: Competition authorities analyze market conditions and dynamics to identify potential anticompetitive practices. They assess market structures, entry barriers, market concentration, and competitive behavior to detect and address antitrust violations.

Sanctions and remedies: Competition authorities have the authority to impose sanctions on companies found guilty of anticompetitive practices. These sanctions may include fines, behavioral remedies (e.g., changing business practices), structural remedies (e.g., divestitures), or injunctive relief (e.g., cease and desist orders).

Collaboration and international cooperation: Collaboration between competition authorities at national and international levels enhances the effectiveness of antitrust enforcement. Sharing information, coordinating investigations, and harmonizing approaches contribute to combating global anticompetitive practices.

Judicial review: Decisions and actions of competition authorities are subject to judicial review to ensure fairness and legality. Affected parties can challenge decisions before the courts to seek redress or clarification.

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[5] G. Coman, *Concurența în dreptul intern și european*, Editura Hamangiu, București, 2011, p. 174;

[6] R.D. Vidican, *The importance of analyzing the main anti-competitive practices in view of creating an undistorted competitive environment*, în AGORA International Journal of Juridical Sciences, No. 1 (2022), p. 70;

Public awareness and education: Raising awareness about anticompetitive practices and their detrimental effects is important. Educating businesses, consumers, and the public about the benefits of competition and the importance of reporting antitrust violations promotes a culture of compliance.

Continuous adaptation: Legal frameworks and enforcement mechanisms need to evolve to address emerging challenges in the digital economy and global markets. Regular updates and revisions to competition laws help keep pace with changing market dynamics.

2. ROLE OF THE COMPETITION COUNCIL IN PROTECTING AGAINST ANTICOMPETITIVE PRACTICES

Considering the need to establish a competitive environment, the Constitution provides that the economy of Romania is a market economy based on free initiative and competition. [7] Additionally, the state is obligated to ensure freedom of trade, protection of fair competition, and the creation of a favorable framework for the utilization of all factors of production. [8]

In Romania, legal protection against anticompetitive practices is provided by the Competition Council[9], which is an independent and specialized competition authority responsible for enforcing antitrust laws. The Competition Council has the power to investigate anticompetitive practices, take corrective measures, and impose sanctions.

The key laws governing competition protection in Romania are Law no. 21/1996 on competition[10] and Law no. 11/1991 on unfair competition[11].

The Competition Council has extensive responsibilities[12] in terms of market supervision and antitrust enforcement. Some of these responsibilities include:

- *Investigation of anticompetitive practices*: The Competition Council can initiate investigations to determine whether certain actions or agreements are in violation of competition laws. These investigations can be launched based on complaints received from interested parties or whistleblowers.

- *Merger and acquisition analysis*: The Competition Council examines mergers and acquisitions of companies to ensure that they do not significantly restrict competition in the relevant market.

- *Imposition of sanctions*: In case the Competition Council finds violations of antitrust laws, it can impose sanctions and substantial fines. These fines can be calculated based on the company's turnover and can reach up to 10% of the turnover achieved in the previous financial year.

- *Whistleblower protection*: The competition law provides protection for whistleblowers who provide relevant information regarding antitrust violations. Whistleblowers can request

[7] I. Didea, *Dreptul european al concurenței*, Editura Universul Juridic, București, 2009, p. 5;
[8] Art. 135 din Constituția României, republicată în M. Of. Nr. 767/31.10.2003;
[9] M. M. Dumitru, *Dreptul concurenței*, Ed. Institutul European Iași, Iași, 2011, p. 97;
[10] Legea nr. 21/1996, Legea concurenței, publicată în M. Of. Nr. 88 din 30 aprilie 1996 (republicată în M. Of. Nr. 153 din 29 februarie 2016);
[11] Legea nr. 11/1991 privind combaterea concurenței neloiale, publicată în M. Of. Nr. 24 din 30 ianuarie 1991;
[12] Pentru mai multe detalii, a se vedea Gheorghe Gheorghiu, Manuela Niță, *Dreptul concurenței interne și europene: curs universitar,* Editura Universul Juridic, București, 2011, p. 90 – 94; Titus Prescure, *Curs de dreptul concurenței comerciale,* Editura Rosetti, București, 2004, p. 237.

confidentiality and may benefit from immunity or reduced penalties under certain circumstances.

- *Litigation and remedies*: Decisions of the Competition Council can be challenged in court, and victims of anticompetitive practices can seek compensation for the damages suffered.

By implementing these roles, the Competition Council contributes to ensuring a healthy competitive environment and protecting the interests of consumers, promoting innovation, economic efficiency, and fair opportunities for all companies. [13]

3. MEASURES FOR EFFECTIVE PROTECTION AGAINST ANTI-COMPETITIVE PRACTICES

In general, a strong legal framework, independent and vigilant institutions, effective monitoring and reporting, rigorous evaluation of mergers and acquisitions, and international cooperation can contribute to ensuring fair competition and protection against anticompetitive practices.

There are several measures of protection against anti-competitive practices, among which we will mention the most important ones.

A*ntitrust legislation*: Adopting and implementing strong and up-to-date antitrust legislation is essential to prevent and combat anticompetitive practices. It should prohibit cartels, abuse of dominant position, price fixing, exclusive distribution, and other practices that restrict competition and provide antitrust authorities with adequate tools and powers to investigate and sanction violations.

Independent and empowered competition authorities: Establishing independent and empowered competition authorities is crucial for monitoring and enforcing antitrust law. These authorities should have sufficient resources, technical expertise, and autonomy to investigate anticompetitive practices, impose sanctions, and promote healthy competition in the market.

International cooperation: Collaboration between national and international competition authorities is essential to address anticompetitive practices that may have cross-border impact. Information sharing, coordination of investigations, and cooperation in antitrust enforcement can enhance the effectiveness of combating anticompetitive practices.

Market monitoring and market analysis: Market analysis and ongoing monitoring of market developments and trends can help antitrust authorities identify potential abuses of dominant position, cartels, or other anticompetitive practices. This information can serve as a basis for investigations and preventive actions.

Whistleblower protection: Adequate protection for whistleblowers can encourage the reporting of anticompetitive practices. This may include maintaining the confidentiality of the whistleblower's identity, granting immunity or reduced penalties for whistleblowers, and implementing measures to protect against retaliation.

Appropriate fines and sanctions: Imposing significant fines and sanctions for antitrust violations can deter companies from engaging in anticompetitive practices. The fines should be sufficiently high to discourage violations and have a meaningful impact on companies engaging in such practices.

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[13] R.D. Vidican, R.A. Hepeș, *The impact of anti-competitive cartel agreements on consumers and the economy in general*, în AGORA International Journal of Juridical Sciences, No. 2 (2022), p. 74;

Education and awareness: Educating and raising awareness among companies, consumers, and the public about anticompetitive practices and their negative impact can contribute to prevention. Providing information about the benefits of competition and the consequences of antitrust violations can encourage compliance with the rules and foster fair competition.

It is important for these measures to be implemented consistently and coherently to ensure effective protection against anticompetitive practices.

CONCLUSIONS

Legal protection against anticompetitive practices is essential for ensuring fair and healthy competition in the economy. By implementing antitrust laws and through competition authorities, the aim is to prevent and sanction practices that distort competition and harm the market and consumers.

Antitrust laws establish clear prohibitions on cartels, abuse of dominant position, and other anticompetitive practices, and competition authorities have powers of investigation, sanctioning, and remediation. They ensure market monitoring, analyze market concentration and competitive behavior, and impose appropriate sanctions in case of violations.

Legal protection against anticompetitive practices also involves protecting whistleblowers, who may benefit from confidentiality, immunity, or reduced penalties in exchange for relevant information provided. Victims of anticompetitive practices can seek compensation through the courts and can request the cessation of anticompetitive practices and the restoration of competition.

Collaboration and cooperation between national and international competition authorities are crucial for combating anticompetitive practices on a global level.

Raising awareness and educating about anticompetitive practices is important so that all stakeholders understand the impact of these practices on the economy and are encouraged to report violations.

In conclusion, legal protection against anticompetitive practices is a fundamental pillar for promoting fair competition, innovation, and economic well-being.

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ONLINE INTERNATIONAL LEARNING AT SLOVENE HIGHER EDUCATION INSTITUTIONS

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ABSTRACT

Online learning has become a widely spread form of education, which has expanded even further with the outbreak of the Covid-19 epidemic. In this article, various approaches and definitions of terminology are discussed in the context of online international learning in relation to available information-communication technology (ICT) at Slovene higher education institutions, wherein the article places the online international learning activities in the context of internationalised curriculum. Results of the survey, which was performed just before the outbreak of the Covid-19 epidemic, in which 1,367 academics from all Slovenian higher education institutions, are presented in the article. It was found out that there are statistically significant differences among academics from different Slovene higher education institutions in terms of how often they implement international online learning with foreign institutions and how satisfied are the academics with the adequacy of ICT equipment and support at their home institution for the implementation of such international forms of online learning.

KEYWORDS: online international learning, information-communication technology, Slovene higher education institutions, university pedagogy

INTRODUCTION

With the outbreak of the Covid-19 epidemic, online learning has grown to a widely spread form of education. Consequently, there have been various policy and strategic documents adopted that address an added value of online forms of learning and teaching, as well as their disadvantages and challenges for various educational stakeholders at international, national, and institutional level. The aim of this article is to present different approaches to online international learning in relation to available information-communication technology (ICT) at Slovene higher education institutions in the context of the internationalised curriculum.

Several authors and policy documents have used and discussed terminology related to online collaboration and/or digital education, referring to various definitions, concepts, and implementations in practice (Garrison, 2000; Gibson, 2000; Johnston, 2020; Keegan, 2000; Lynn et al., 2022; Moore, 2000). In this context, online education and distance education, distance teaching, and distance learning or online teaching and learning, e-learning and/or electronic-learning, digital education, etc. are in frequent use. Regardless of the period or time of origin, it is common to all the definitions highlighting the educational process that is supported by computer-based technology in synchronous or asynchronous online/virtual mode (ibid.).

The adoption of digital technologies in education is based on several rationales, like pedagogical and vocational rationales, social and economic motives, as well as the

accessibility, sustainability, quality, and efficiency of the entire pedagogical process (Lynn et al., 2022). In the case of online learning-teaching collaboration, academics highlight positive aspects, like reaching a larger number of students, motivation for using ICT in innovative teaching ways, students', and academics' intellectual challenges, etc. There are intrinsic (e.g. using alternative approaches to online teaching, following exemplary courses, personal development, etc.), as well as extrinsic motives for engaging in online education, like salary, professional pedagogical development, the adequacy of the ICT equipment, responding to needs of untraditional students, etc. (Baran and Correia, 2016). Strategic international, national, and institutional documents also comprise an important extrinsic factor, according to which online international collaboration should be included in university pedagogy.

Pointing out an international level at the European Union (EU) level, a high-performing European digital education ecosystem is promoted with the focus on the development of skills and competences for the digital transition (European Commission, n.d.). In the document 2030 Digital Compass (European Commission, 2021), a digitally skilled population and highly skilled digital professionals are highlighted as one of the priority areas, in addition to other areas that refer to secure and performant sustainable digital infrastructures, digital transformation of businesses, and digitalisation of public services, all the latter in the context of developing digital citizenship. The Digital Education Action Plan 2021–2027 (European Commission, 2020) *inter alia* includes the following guiding principles for making education and training systems fit for the digital age: i) high quality and inclusive digital education, which respects the protection of personal data and ethics, ii) transforming education for the digital age as a key task for the whole society, iii) appropriate investment in connectivity, equipment and organisational capacity and skills to ensure that everybody has access to digital education, iv) pivotal role of digital education in increasing equality and inclusiveness, v) digital competence treated as a core skill for all educators and training staff, vi) key role of education leaders in digital education, vii) digital literacy as being essential for life in a digitalised world, viii) the development of basic and advanced digital skills, etc. The key initiative of the mentioned Action Plan are guidelines for educators on digital literacy (European Commission, 2022) which provide hands-on guidance, practical tips, activity plans, insights and cautionary notes regarding the development of digital literacy.

At Slovene national level, the Resolution on the National Program of Higher Education until 2030 (OG RS, No. 49/2022) includes a separate chapter on the digitalisation in higher education. Strategic goals in the Resolution refer to providing conditions for the implementation of digital transformation, promotion of the active role of higher education in the process of digital transformation, promotion of education in the field of information services and information content, as well as providing the infrastructure for broadband internet connections. In this light, encouraging the developing of digitization in the field of distance learning and teaching and empowering institutions and individuals to use ICT tools appropriately are some of the measures to achieve the strategic digitalisation goals in Slovene higher education system.

I. Digital Education at the Institutional Level: Strategic Documents at Slovene Universities

Following European and national policies and trends, Slovene higher education institutions adopted objectives and measures in their strategic documents referring to digital literacy, digital transformation, and the empowerment of relevant stakeholders. The importance of digital transformation of educational practices at top management level was pointed out by Lindfors, Pettersson and Olofsson (2021) with the aim to develop digitally competent future graduates and teachers, as well as to successfully digitize the education system. In this paragraph, the basic issues from the strategies of four Slovene universities are presented according to strategic documentation that was found on those institutions' websites.

As part of its strategic activities and areas, the largest Slovenian university, the University of Ljubljana, plans to strengthen its educational activities and contents with appropriate digital and professional support, the digital transformation, and digitalisation of various internal processes. The University sees its opportunities in the Slovene and international (learning) environment with digitalisation and the development of new communication channels. The digital knowledge and skills of the teaching and research staff are recognized as highly important and developed (University of Ljubljana, 2022).

The digital transformation is an integral part of the strategy of the University of Maribor, with its focus on digital optimisation for comprehensive information support to all university processes, including pedagogical activities (University of Maribor, 2021). Digital optimisation will increase the institutions' efficiency and will improve the experience of all stakeholders, from employees to students; comprehensive information support plays a crucial role in providing access to effective pedagogical ICT infrastructure and resources.

The University of Primorska highlights the importance of digital support by upgrading its e-education to complement traditional educational practices and by developing its own ICT solutions to support pedagogical activities. It stresses the use of videoconferencing systems and e-classrooms, and the training courses for academics and students to improve their educational ICT skill (University of Primorska, 2020).

One of the youngest Slovenian universities, that of Novo mesto, sees the educational process as generally digitally supported, wherein the need to internationalise and digitize processes to raise the quality of teaching work is also emphasized (University of Novo mesto, n.d.). The technological equipment for implementing pedagogical research with the support of digitization is assured, which will lead to the university's betterment.

To sum up, all evaluated Slovenian universities highlight the importance of the digital technology and appropriate professional support to digitalize their educational activities. All institutions point out the development of digital skills among relevant stakeholders. Only the University of Novo mesto does not directly emphasize the professional development of its teaching staff, which is most prominently highlighted at the University of Primorska. The connection between quality and online distance education is highlighted at the University of Ljubljana and University of Maribor. Only University of Ljubljana directly connects its digitalisation or online opportunities with the international pedagogical context.

I.1. Online International Learning

Various forms of remote online learning are nowadays more easily adopted, not only inside local or national boundaries but also worldwide, in the international online learning environment, as a result of ICT support and also as a consequence of the Covid-19 crisis, which

(temporarily) forced (higher education) institutions to turn to online learning and teaching activities. With inclusion of online international learning activities in the study process, home students, who do not have the opportunity to study abroad, are exposed to international, global, and intercultural perspectives *at home*, which enables them to develop intercultural competence, as well as international and global perspectives without leaving their home country. The relevance of development of global, international and intercultural perspectives among students and graduates emphasize strategic international and national documents (eg. Council of Europe, 2008; EHEA, 2012; European Commision, 2013; European Commission, 2022; UNESCO, 2015; OG RS No. 49/22). In this context, the concept *internationalisation at home* must be highlighted, which is the "purposeful integration of international and intercultural dimensions into the formal and informal curriculum for all students within *domestic learning environments*" (Beelen and Jones, 2015, p. 69). Following the concept internationalisation at home, an *internationalised curriculum* can be achieved as a result or product of the activities performed in the context of internationalisation at home.

According to Beelen and Jones (2015, p. 64) internationalisation at home can be implemented with the inclusion of international guest lecturers or international case studies and comparative international literature in the study process, active cooperation with local international groups and organisations as a part of study process is recommended, purposefully planned cooperation between international and home students at home institution must be encouraged, as well as various options of (online or virtual) international cooperation.

A useful, as well as more and more recognizable pedagogical approach to internationalise the curriculum at home with the support of online or ICT technology is *Collaborative Online International Learning* (COIL). COIL helps students (and educators) to enhance the development of their intercultural competence at home institution – thus, without international mobility, but with their active inclusion in collaborative learning activities through online social interactions with students (and educators) from other countries or cultures. COIL is classified under the social constructivist learning theory, it falls under the virtual exchange, and it requires collaborative learning environment (Guth and Rubin, 2015; Hackett et al., 2023; Rubin, 2017).

In practice, two or more educators from geographically separated institutions are included in COIL, who work together online, to develop joint syllabus (with pre-defined internationalised learning outcomes, group assignments or internationalised learning-teaching activities and content, as well as assessment tasks) for students from all included institutions. Not only is the COIL focused on the subject knowledge, but also on the purposeful development of intercultural competence (Hackett et al., 2023). The joint online group assignments are designed in the way that they cannot be solved without an active international collaborative learning between students from different countries or cultures, but at the same time, students do not need to leave their home institutions to achieve the planned internationalised learning outcomes. The components of effective COIL collaboration are (Suny COIL, n.d.): i) the team building phase with introductions and icebreakers, along with discussions and activities designed to help students get to know each other and feel comfortable working together online and across cultures, ii) comparative discussions and organizing the project that teams of students will be working on, iii) focus on the main activity for the collaboration, in which students apply their knowledge, create something together or have

discussions around the topic of the collaboration, iv) the presentation of work completed, reflection on both the content of the module and the intercultural aspects of the collaboration, and concluding.

I.2. Online International Learning among Slovene Academics – the Scope of this Study

In this article, no COIL objectives were pursued, but rather a wider approach to *online international learning*, which is for the purposes of this article understood as any kind of online international learning-teaching cooperation with geographically distant institutions, in which students are actively included.

Namely, at the time of collecting the data for this survey, COIL was not (and is nowadays still not) widely known among Slovene academics, this is why it can be claimed that Slovene academics were not aware of the importance of purposeful planning of subjects or modules in line with COIL pedagogical approach. As Aškerc Zadravec (2022) found out, almost 70% of Slovene academics were not included in any kind of online international learning cooperation (with active inclusion of students) with geographically distant institutions. One third of academics that were included in online forms of international learning-teaching collaboration, mainly highlighted the following types of tools or approaches of online international learning: interactive video lectures and conferences via Zoom, MS Teams, Skype and other platforms, various international projects, and research activities with active inclusion of students, students' interactive assignments in online classrooms (eg. Moodle), online mentorship, etc. There were no responses regarding COIL pedagogical approach in practices, pointed out from the side of Slovene academics. Besides, only 51.4% of Slovene academics highlighted that they are given the necessary ICT technologies and support to include international and intercultural perspectives into study process (Aškerc Zadravec, 2022). It must be pointed out that the data for the latter survey was collected before the Covid-19 epidemy was declared.

According to previously presented policy and strategic documents in the field of digital education in higher education at international and Slovene national level, as well as at the institutional level of four Slovene universities, as well as according to the theoretical background of various authors and previous surveys, the following research questions were designed with the focus on online international learning activities:

- RQ1: Are there statistically significant differences among academic staff from different Slovene higher education institutions regarding their (non)implementation of online international learning with foreign institutions?
- RQ2: Are there statistically significant differences between academic staff from different Slovene higher education institutions regarding their perceptions of the appropriateness of ICT equipment/support at their home institutions for the implementation of online international learning?

II. Methodology

II.1. Sample and Population

The whole population of academic staff from all Slovene higher education institutions, all academic disciplines and of various academic affiliations was invited to participate in the survey. The final list of mailings included 9,335 email addresses, wherein 1,367 academics

respond to the survey, which is 19.7% of the entire population (AAPOR RR3, 2016). In the latter sample, 30,4% of academics claimed to have participated in online international learning activities with geographically separated institutions, in which students were actively involved. According to the entire population of Slovene academics (SORS – Statistical Office of the Republic of Slovenia, 2022), the sample can be stated as representative of Slovenian academic population.

II.2. Data Collection Process and Methods

The quantitative empirical survey was completed at the beginning of 2020 – thus, just prior to the Covid-19 epidemic was announced. The online questionnaire was designed according to specifics of Slovene higher education system, wherein various questionnaires on developing international/intercultural perspectives in study process were taken into consideration[1]. Selected list of statements (using 5-point Likert scale) from the questionnaire was included in the statistical analyses according to research questions of this article.

The OneClick Survey platform was used as an online data collection tool, in which the online questionnaire was programmed. Univariate and bivariate statistical inference method was used to analyse the collected data ($\chi 2$ test and Mann–Whitney test), using SPSS software program, version 23.

III. Results

The statements in the questionnaire addressed different perspectives of international and intercultural learning in the context of online international learning approach, in which students were actively included. The nonparametric Mann–Whitney U test was used in statistical analyses, since all the statements were not normally distributed (sig. < 0.05). Due to data protection reasons, the analysed data is presented only at an aggregate level.

According to previously presented theoretical background and strategic or policy documents of Slovene universities in the field of digital education, as well as in the context of the findings in the field of online international learning, that were previously gained among Slovene academics (Aškerc Zadravec, 2022), the first research question was formulated regarding (non)implementation of online international learning activities among Slovene academics (RQ1). As presented in Table 1, there are statistically significant differences among academics from different Slovene higher education institutions, according to their practices in online international pedagogical activities with institutions from geographically distant locations.

Table 1. Academics from Slovene higher education institutions in relation to their (non)implementation of online international learning activities with foreign institutions (Chi-square test, sig. < 0.05).

	Implementation of online international learning with foreign institutions		Total	$\chi 2$ (sig.)
	Yes	No		

[1] Questionnaires: QIC1, QIC1 Abridged, and QIC2 in IoC in Action (QIC, n.d.).

Slovene higher education institution	University of Ljubljana	% f_1	51.4%	49.7%	50.2%	13.380 (0.037)
		% f_2	31.1%	68.9%	100%	
	University of Maribor	% f_1	22.9%	17.6%	19.2%	
		% f_2	36.3%	63.7%	100%	
	University of Primorska	% f_1	5.6%	7.3%	6.8%	
		% f_2	25.0%	75.0%	100%	
	University of Nova Gorica	% f_1	5.6%	3.3%	4.0%	
		% f_2	42.1%	57.9%	100%	
	University of Novo Mesto	% f_1	2.1%	1.2%	1.5%	
		% f_2	42.9%	57.1%	100%	
	Independent/private higher education institutions	% f_1	7.6%	18.5%	15.2%	
		% f_2	15.3%	84.7%	100%	
	Other	% f_1	4.9%	2.4%	3.2%	
		% f_2	46.7%	53.3%	100%	
	Total	% f	30,4%	69,6%	100%	

*f_1 shows percentage of staff who (does not) implement online international learning in comparison to *entire evaluated population* (all Slovene academics); f_2 shows percentage of staff who (does not) implement online international learning *within individual institution.*

As expected, in case of entire studied population (section Total), just a little more than 30% of academics performed various forms of online international learning. At the national level, the largest share of academics that were included in any kind of online international learning was at University of Ljubljana (51.4%; see f_1: Yes), which is also by far the largest university of all Slovene higher education institutions. The second largest Slovene institution, the University of Maribor, is next with 22.9% of academics that performed online international learning with active inclusion of students.

However, if we investigate individual institution (see f_2: No), more than 53% or more academics did not implement any online international learning-teaching activities with foreign institutions with active inclusion of students (in case of all evaluated institutions) at institutional level. Within individual higher education institutions, the highest share of academics that did not implement any forms of online international learning was at independent/private higher education institutions (84.7%), followed by University of Primorska (75%) and University of Ljubljana (68,9%). On the contrary, the highest share of academics that implemented online international learning-teaching activities with foreign institutions at institutional level (see f_2: Yes) was at the University of Novo Mesto (42.9%), followed by University of Nova Gorica (42.1%); the section "Other" was not taken into account.

According to the above presented data, there are statistically significant differences in terms of the share of academic staff (non)implementing online international learning depending on which Slovene higher education institutions they come from (the chi-square test is statistically significant; sig. < 0.05), thereby answering the first research question (RQ1).

Following the second research question (RQ2), it was further evaluated if there are statistically significant differences between academic staff from different Slovene higher education institutions regarding their perceptions of the appropriateness of ICT equipment and

support at their home institutions for the implementation of online international learning. A 5-point Likert scale was used to categorize the responses into two groups: satisfied (containing ratings of very satisfied and satisfied) and unsatisfied (containing ratings of very unsatisfied and unsatisfied); in statistical analysis, neutral ratings (neither satisfied nor dissatisfied) were disregarded.

Table 2. Perceptions of academics from Slovene higher education institutions about the efficiency of ICT equipment for implementation of online international learning activities (Chi-square test, sig. < 0.05).

			Perceptions about efficiency of ICT equipment for the implementation of online international learning		Total	$\chi 2$ (sig.)
			Unsatisfied	Satisfied		
Slovene higher education institution	University of Ljubljana	% f_1	65.1%	42.5%	48.5%	30.705 (0.000)
		% f_2	36.0%	64.0%	100.0%	
	University of Maribor	% f_1	20.5%	17.3%	18.1%	
		% f_2	30.4%	69.6%	100.0%	
	University of Primorska	% f_1	6.0%	5.8%	5.8%	
		% f_2	27.8%	72.2%	100.0%	
	University of Nova Gorica	% f_1	0.0%	6.2%	4.5%	
		% f_2	0.0%	100.0%	100.0%	
	University of Novo Mesto	% f_1	1.2%	2.2%	1.9%	
		% f_2	16.7%	83.3%	100.0%	
	Independent/private higher education institutions	% f_1	7.2%	20.8%	17.2%	
		% f_2	11.3%	88.7%	100.0%	
	Other	% f_1	0.0%	5.3%	3.9%	
		% f_2	0.0%	100.0%	100.0%	
	Total	% f	% f	100.0%	100.0%	

*f_1 shows percentage of staff who are (un)satisfied with ICT equipment in comparison to *entire evaluated population* (all Slovene academics); f_2 shows percentage of staff who are (un)satisfied with ICT equipment *within individual institution.*

Table 2 shows that, in the case of the entire Slovene academic population (see: f_1 rows) the highest share of academics that are unsatisfied with the ICT equipment and support that enables online international learning, is at the University of Ljubljana (as much as 65.1%) and at the same time as much as 42.5% of academics from University of Ljubljana are satisfied with the assured ICT equipment. It must be once again highlighted that the latter university is far the largest higher education institution in Slovenia, this is why the share of (un)satisfied academics with the ICT equipment that support online international learning in comparison to other evaluated Slovene institutions was expected.

If we analyse the gained data within individual institutions (see: f_2 rows), it can be noticed

that in case of all institutions, the share of respondents that are satisfied with the ICT equipment which enables the implementation of online international learning is at least 64% or more (the section "Other" was not considered). At the University of Nova Gorica, even all respondents answered that they were satisfied with the offered ICT equipment, followed by independent/private higher education institutions (88.7%) and the University of Novo Mesto (83.3%).

The analyses presented above prove that there are significant differences recognized among respondents from different Slovene higher education institutions (Chi-square test; sig. < 0.05) regarding academics' perceptions of efficiency of ICT equipment for the implementation of online international learning. As it was presented in the Introduction chapter of this article, distinctions in strategic documents that address digital education, the empowerment of various educational stakeholders as well as digital technology needed to implement various forms of online (international) learning at Slovene higher education institutions, were recognised after the systematic analysis of the documents was performed, which will be further interpreted in the Discussion chapter of this article.

CONCLUSIONS

In today's globally, interculturally, and technologically intertwined reality, it is essential to provide students and graduates with global and international perspectives, as well as with digital competencies for their successful life and job careers in an ever-changing world. With Covid-19 epidemy there was a rapid shift towards online learning-teaching approaches, which are on the rise and will continue to be in the future. With increased and extended online pedagogical approaches, international cooperation between students from geographically distant institutions is becoming easier to be implemented within their domestic learning environments.

In the light of current educational trends, diverse strategic and policy documents were adopted at international, national and institutional level that address digital pedagogy (European Commission, 2013, 2020, 2021, 2022, n.d.; OG RS, No. 49/2022, etc.), as well as the importance of development of international, global, and intercultural perspectives among students and educators (eg. Council of Europe, 2008; EHEA, 2012; European Commission, 2013, 2022; UNESCO, 2015; OG RS No. 49/22). An effective blend of both mentioned fields can be performed with (collaborative) international online learning as a contemporary pedagogical approach.

For the purpose of this article, strategic and policy documents of Slovene universities were analysed with the focus on digital pedagogy, wherein it was found out that all universities recognize proper digital technology, effective technical and staff developmental support to digitalize learning-teaching activities of all relevant educational stakeholders as an important driving force to achieve digital transformation (University of Ljubljana, 2022; University of Maribor, 2021; University of Primorska, 2020; University of Novo mesto, n.d.). Although only University of Ljubljana emphasizes the interplay between digital education and internationalisation activities, where academic staff play a crucial role, it was found out with our survey that various statistically significant connections exist between academics' (non)implementation of online international learning with foreign institutions regarding their home higher education institutions (RQ1). Analysing the incidence rate of online international

learning practices within individual Slovene higher education institutions, we observed statistically significantly higher share of academics from University of Novo mesto (42.1%) that in comparison to other institutions implemented any kind of online international learning with foreign institutions. On the contrary, the highest share of academics that did not implement any forms of online international learning was at independent/private higher education institutions (84.7%). It could be assumed that the latter type of higher education institutions (which are usually of smaller size and with shorter tradition in comparison to public universities/institutions) is less involved in various international activities (at home or abroad), including outgoing and incoming international mobilities, international cooperation projects, hosting international guest lecturers or students, etc., and consequently have less opportunities and dispositions to perform online international learning activities with geographically distant institutions. Namely, having established and developed reliable international contacts, which can usually be reached more reliably with internationalisation abroad activities (thus, getting to know colleagues/academics from partner university personally), can mean better dispositions to implement internationalisation activities at home, including online international learning.

Further on, it was figured out that there are statistically significant differences between academics from various Slovene higher education institutions in their perceptions of the appropriateness of ICT equipment/support at their home institutions (whether they are satisfied or unsatisfied with ICT support) for the implementation of online international learning (RQ2). It is interesting that the vast majority of respondents from independent/private institutions are (very) satisfied with the ICT equipment and support offered for online international learning activities, which goes also for the University of Novo mesto. The latter higher education institution is one of the youngest and smallest universities in Slovenia; perhaps this is precisely the advantage of that type of institutions, which enables them to respond quickly to changing trends that require advanced ICT support and internationally oriented (online) pedagogical practices at home. As it was pointed out by King Ramírez (2020), there are various circumstances, such as academic tradition, climate, cultures, infrastructure, and overall broader academic contexts that influence stakeholders' perceptions about the added value of digital international pedagogical activities (at home), more precisely collaborative online international learning.

In the context of presented findings, it must be highlighted that no correlations were detected between the goals and approaches written in the strategic documents that address digital education and/or international learning activities at Slovene universities and the implementation of online international learning in practice. Furthermore, there is the need for additional critical thinking and evaluating the quality and quantity level of concrete learning-teaching practices performed in the context of online international learning at Slovene higher education institutions, and the need to verify ICT equipment and staff development support offered for the implementation of online international learning, which was not addressed and studied in this article.

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ADVANTAGES AND DISADVANTAGES OF WORKING FROM HOME IN PUBLIC ADMINISTRATION

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ABSTRACT

The nature of work has changed significantly in recent years, influenced by digitalization, technological advances (e.g., robotics, automation, artificial intelligence), demographics and diversity. As a result, remote work has steadily increased over the last two decades. The article explores the advantages and disadvantages of working from home in public administration. In the empirical part, we wanted to determine whether employees working from home can coordinate their personal and professional lives and whether their employer has properly organized their work from home and provided them with adequate IT equipment. The research was conducted based on an anonymous questionnaire completed by public administration employees. The statistical analysis results showed that the employees see more advantages than disadvantages in working from home. Based on research and theory, we find that part of the public administration continues to work from home.

KEYWORDS: work from home, public administration, motivation, communication, COVID-19

INTRODUCTION

Remote work is usually divided into work from home, which includes various arrangements regarding the days when an individual works from home and when in the organization, and work from anywhere, which literally means working at any location and anytime remotely. Although this is not a condition, remote work usually involves information and communication technology (ICT).

The emergence of the new SARS-CoV-2 coronavirus has also affected changes in the organization of work in public administration. Many public institutions had to switch to working from home, but not all were prepared to do so. Experts believe that the crisis will force us to skip a few steps in the development of this area (Ius-info, 2020).

The Civil Servants Act stipulates that a worker who performs work from home has the same rights as one who works at the employer's premises. The worker is thus entitled to food allowance and allowance for using his own resources but is not entitled to the cost of transport to work.

I. Working from home

Work from home is a phenomenon whose incidence is increasing due to the development of information and communication technology and the improvement of the work-life balance of employees. It brings positive effects for both workers and companies, such as shorter commuting times, greater autonomy of working hours and thus a better organization of

working hours, better overall work-life balance, higher productivity, lower fluctuation of workers, reduced need for office space and associated costs for companies (Wide, 2019).

The first known example of work from home dates back to 1877, when the director of a bank in Boston set up a telephone line to his home in order to work from there (Gačanovič, 2006).

The father of modern forms of work from home is Jack Nilles, who, under the auspices of the US federal government in the 1970s of the 20th century, successfully carried out several projects to eliminate traffic problems and enable people to work from home or at least closer to home.

In the 1980s and 1990s, however, the promotion of work from home in the European Union mainly aimed to reduce unemployment in marginal areas (Blatnik in Hočevar, 2020).

Research up till now in Slovenia has treated work from home as a new phenomenon. With the COVID-19 pandemic, however, work from home has been gaining ground and widespread acceptance. It can be done in many more jobs than we imagined. According to a Eurofound study (2020), the pandemic will trigger a revolution in the field of working from home and change the way we work in the future permanently.

Work from home is a modern form of work where the worker performs work at home or on the premises of his choice when away from the employer's premises. Working from home, where the worker uses information technology, also includes remote work. Such work must be subject to appropriate consent between the worker and the employer in the form of a specific employment contract (Širok, 2019).

Work from home is regulated in the International Labour Organization Convention No. 177, adopted in 1996. Slovenia ratified the Convention in 2021. Working from home is defined as work performed by an employee away from the employer's premises, i.e., at his or her own home or on premises of his or her choosing. The work is paid and results in a service or product produced by the employee at the employer's request (Home Work Convention, 1996).

Not all jobs are suitable to be done from home. These include a wide range of field and high-tech jobs using large and expensive machinery. Some jobs cannot be done from home because they require physical teamwork, while others are of such a nature that employees can do them without visiting the office (Centa, 2021).

I.1. Advantages and disadvantages of working from home

A key benefit for the employee is the time saved commuting to and from work. When commuting is not in play, we are also less exposed to risks to our safety and health. The employee needs less time for organization before going to work, and if the possibilities allow, he adapts the flexible environment to his needs. When working from home, employees are more autonomous; they have the opportunity to learn new things (Stanković, 2020).

The main disadvantages of working from home are loneliness and lack of contact, leading to poorer transfer of knowledge, opinions and experience. Lack of contact can, over a long period, lead to employees lacking a sense of belonging to a team. Often they do not adhere to the rules governing safety at work (Gartner, 2020).

The purpose of the research is to provide an overview of the experience of working from home in public administration from the employees' point of view. We wanted to get a

broader picture of public employees' attitudes toward working from home to: find out whether they have adequate working conditions, whether their employer has provided them with the right IT equipment for working from home, whether there is communication between colleagues and supervisors, to explore the advantages and disadvantages, and to explore the work-life balance. We hypothesized:

Disadvantages:

- H1: More than half of the employees worked from home outside regular working hours.
- H2: Employees with children found it harder to adapt to working from home than employees without children.
- H3: Employees with more formal education found it easier to adapt to working from home than employees with less formal education.
- H4: Women found it more difficult than men to balance their work and private life when working from home.
- H5: When working from home, employees missed communication between colleagues.

Advantages:

- H6: When working from home, employees were more motivated to work than in the office.
- H7: The employer provided the majority of employees with appropriate IT equipment to perform work from home.
- H8: When working from home, most employees had adequate workplaces.
- H9: When working from home, communication with the superior was smooth.

The research aims to investigate the transition to work from home in public administration during the COVID-19 epidemic. We were interested in how the employees adapted and where they see the advantages and disadvantages of such a way of working.

I.2. Research Results

The survey was conducted based on an anonymous questionnaire completed by public administration employees, which included data on work from home that increased during the COVID-19 epidemic. The survey was conducted in October and November 2022. 136 respondents fully completed the survey questionnaire. The sample of the study is shown in table 1.

Table 1: Claims related to work from home

		Frequency	**Percent**
Gender	Male	14	10,3
	Female	117	86,0
Age	26 to 35 years	17	12,5
	36 to 50 years	67	49,3
	51 to 65 years	47	34,6
Children	Yes	95	69,9

	No	36	26,5
Years of service	up to 5 years	19	14,0
	6 to 10 years	18	13,2
	11 to 20 years	38	27,9
	over 20 years	56	41,2
Education	Secondary education	23	16,9
	Higher education	50	36,7
	University education	40	29,4
	Master's degree or higher	18	13,2

I.3. Analysis and interpretation of the data obtained

We made claims related to working from home. The respondents expressed their agreement based on the Likert scale. They responded with values and their codes 1 – I do not agree at all, and 5 - I completely agree.

Table 2 shows the responses of the respondents related to working from home. From the above results, we can conclude that the respondents have appropriate workplaces and that the employer has provided them with appropriate IT equipment.

Table 2: Claims related to work from home

	N	**Min**	**Max**	**Mean**	**Std. Dev.**
I have adequate working spaces (appropriate temperature, lighting, appropriate chair and desk) when working from home.	135	1	5	3,97	1,152
The employer provided me with the appropriate IT equipment (computer, monitor, phone, etc.) to work from home.	135	1	5	3,83	1,363

Table 3 shows the IT equipment provided by the employer. We note that employers have most frequently provided a laptop, followed by a desktop computer (81%), a work cell phone (72%), small computer equipment (52%), a monitor (51%), a tablet (2%) and a printer (1%). Under the second category, the majority of the respondents (13%) said that their employer did not provide them with IT equipment.

Table 3: IT equipment provided by the employer

	Frequency	**Percent**
Laptop, desktop	110	81
Monitor	70	51
Small computer equipment (keyboard, headphones, camera, etc.)	71	52

Tablet	3	2
Printer	1	1
Work cell phone	98	72
Other	17	13

Furthermore, we were interested in whether the respondents perform work from home during regular business hours. We found that the majority of the respondents perform work from home during regular business hours.

Table 4: Organization of work from home

	N	**Min**	**Max**	**Mean**	**Std. Dev.**
I work from home during regular working hours.	132	1	5	4,22	0,919
I work outside regular working hours.	132	1	5	2,48	1,214
I work from home during and outside regular working hours.	132	1	5	3,11	1,377
I work harder than I would in an organization.	132	1	5	3,52	1,232

Table 5 shows that the respondents were most likely to agree that working from home gives them more time for their private life and least likely to agree that other household members interfere with their work process.

Table 5: Work-life balance

	N	**Min**	**Max**	**Mean**	**Std. Dev.**
I find it difficult to separate work and personal life.	132	1	5	2,50	1,281
Working from home gives me more time for my personal life.	132	1	5	3,52	1,293
Other members of the household are interfering with my work process.	132	1	5	2,27	1,178

Table 6 shows that the respondents agree that working from home is equally efficient and of good quality; more than half of them miss communication between colleagues, and the least agree that working from home has been difficult for them to adapt to.

Table 6: Claims related to work from home

	N	**Min**	**Max**	**Mean**	**Std. Dev.**
I am more motivated when working from home.	131	1	5	3,54	1,139
I have done my work from home with the same quality and efficiency.	131	1	5	4,35	0,894
The employer has properly organized the work from home (instructions, notifications, support of superiors).	131	1	5	4,01	1,011

When I work from home, I miss communication between colleagues.	131	1	5	3,47	1,205
I had a hard time adapting to working from home.	131	1	5	2,04	1,070

The respondents were most likely to agree that working from home is done with the same efficiency and quality and that it is done during regular working hours. Their employer has organized their work from home properly, provided them with the right IT equipment, and they have adequate working space when working from home. Most agreed that working from home allows them more time for their private life, that they are more motivated when working from home, and that they work more than they would in an organization. What they miss is communication between colleagues. Half of the respondents find it difficult to separate work and private life. Fewer than half agreed that other household members interfere with their work process. Most were able to adapt to working from home. Agreeing with the statement that it was difficult to adapt to working from home was the lowest.

Table 7: Communication with the superior when performing work from home

	N	**Min**	**Max**	**Mean**	**Std. Dev.**
I have enough communication with my superior.	131	1	5	4,01	0,941
The superior is available.	131	1	5	4,05	0,947
Meetings run smoothly.	131	1	5	3,94	0,943
Communication occurs in several ways (electronic, telephone, and video conferencing).	131	1	5	4,46	0,611

The respondents agreed (Table 7) that communication with the superior is carried out without problems in several ways (electronic, telephone, and video conferencing). They very much agreed that the superior is accessible and that they communicate enough. Although slightly less, the respondents nevertheless agreed that meetings run smoothly.

Table 8: Advantages of working from home

	Frequency	**Percent**
It makes it easier for me to balance my personal and professional life	82	63
Greater flexibility	73	56
Less time commuting	117	89
Better working efficiency	67	51
Reduced costs	57	44
Greater peace (no co-workers present)	69	53
Other	1	1

The respondents mostly agreed (Table 8) that the greatest advantage of working from home is that they spend less time commuting. They also consider it easier to balance their private and professional life. They agree that working from home allows them more flexibility,

peace of mind, better work efficiency and lower costs.

Table 9: Disadvantages of working from home

	Frequency	**Percent**
Poor organization of time	10	8
Lack of social contact	93	71
Less mentorship and exchange of opinions and experiences	53	40
Less sense of belonging and connection	64	49
Inadequate working conditions	19	15
Presence of family members	29	22
Other	12	9

The main obstacle to working from home is the lack of social contact (Table 9). Less than 50 percent believe they have less sense of belonging and connection as well as less mentoring and exchanging of opinions and experiences. A bit less than a quarter is disturbed by the presence of family members and inadequate working conditions. However, they are least likely to agree that their time is less well organised.

II. Testing the hypotheses

H1: *More than half of the employees worked from home outside regular working hours.*

In the first hypothesis, we were interested in whether more than half of the employees performed work from home also outside their regular working hours. Table 10 shows that 25.7% of the respondents stated that they do not agree with working from home outside regular working hours, 29.4% disagree, and 14.7% neither agree nor disagree. Less than a quarter of the respondents, i.e., 24.3%, agree that work from home is also done outside regular working hours, and 2.9% fully agree.

Table 10: Performing work from home outside regular working hours

Performing work from home outside regular working hours	**Frequency**	**Percent**	**Valid Percent**	**Cumulative Percent**
I do not agree at all	35	25,7	26,5	26,5
I disagree	40	29,4	30,3	56,8
I neither agree nor disagree	20	14,7	15,2	72,0
I agree	33	24,3	25,0	97,0
I strongly agree	4	2,9	3,0	100,0
Total	132	97,1	100,0	

Given that more than half of the respondents (56.8%) do not agree or disagree with the statement that they work from home outside regular working hours, we have rejected our hypothesis that more than half of the employees perform work outside regular working hours, as we have not been able to prove it statistically.

H2: *Employees with children found it harder to adapt to working from home than employees without children.*

Table 11 shows the results of the statement, "I had a hard time adapting to working from home." The table shows that those who have children were most likely to choose the statement "I do not agree at all" (42.1%) and "I disagree" (35.8%). Employees without children most often chose the option "I disagree" (47.2%), followed by the answer "I do not agree at all" (22.2%).

Table 11: Adapting working from home according to children

			Children		Total
			Yes	No	
I had a hard time adapting to working from home.	I do not agree at all	Frequency	40	8	48
		% without children	42,1	22,2	36,6
	I disagree	Frequency	34	17	51
		% without children	35,8	47,2	38,9
	I neither agree nor disagree	Frequency	9	5	14
		% without children	9,5	13,9	10,7
	I agree	Frequency	10	5	15
		% without children	10,5	13,9	11,5
	I strongly agree	Frequency	2	1	3
		% without children	2,1	2,8	2,3
Total		Frequency	95	36	131
		% without children	100,0	100,0	100,0

We also did a Pearson chi-square test and designed Table 12. The table shows that the p-value is 0.345, which means that it is higher than the level of risk or characteristic (0.05). The latter means that we can say with 95% certainty, or a 5% risk level, that employees with children did not find it more difficult to adapt to working from home than employees without children. Our hypothesis can be rejected.

Table 12: Pearson's chi-square

	Value	**df**	**Asymp. Sig. (2-sided)**
Pearson Chi-Square	4,479	4	0,345
Likelihood Ratio	4,710	4	0,318

Linear-by-linear Association	2,490	1	0,115
N of Valid Cases	131		

Based on frequencies, response rates and Pearson's chi-square test, we were not able to demonstrate a difference that employees with children found it more difficult to adjust to working from home than employees without children. We reject the second hypothesis.

Testing H3: *Employees with lower formal education had a harder time adapting to working from home than employees with higher formal education.*

For the following hypothesis, we wanted to know whether the employees with lower formal education had a more difficult time adapting to working from home than employees with higher formal education, so we grouped respondents' education into two groups, i.e., lower and higher education. We grouped primary, vocational, secondary and post-secondary education into lower education. Higher education includes higher education, university and specialization, master's degree or more. The education of the respondents is shown in Table 13. The majority of the respondents have higher education, i.e., 96 respondents (70.6%), and 35 (25.7%) have lower education.

Table 13: Education of the respondents

Education of the respondents	**Frequency**	**Percent**	**Valid Percent**	**Cumulative Percent**
Lower education	35	25,7	26,7	26,7
Higher education	96	70,6	73,3	100,0
Total	131	96,3	100,0	

Table 14 shows that 12 respondents (34.3%) with lower education and 36 respondents (37.5%) with higher education do not agree at all that they had a difficult time adapting to working from home. 15 respondents (42.9%) with lower education and 36 respondents (37.5%) with higher education do not agree that they had a difficult time adapting to working from home. 5.7% and 2.9% of lower-education respondents and 13.5% and 2.1% of higher-education respondents agree and strongly agree that working from home has been difficult for them to adapt to.

Table 14: Adapting to work from home according to education

			Education		
			Lower education	Higer education	Total
I had a hard time adapting to working from home.	I do not agree at all	Frequency	12	36	48
		% without lower - higer education	34,3	37,5	36,6
	I disagree	Frequency	15	36	51

		% without lower - higer education	42,9	37,5	38,9
	I neither agree nor disagree	Frequency	5	9	14
		% without lower - higer education	14,3	9,4	10,7
	I agree	Frequency	2	13	15
		% without lower - higer education	5,7	13,5	11,5
	I strongly agree	Frequency	1	2	3
		% without lower - higer education	2,9	2,1	2,3
Total		Frequency	95	35	96
		% without lower - higer education	100,0	100,0	100,0

From the responses we received, we found that the respondents with lower formal education did not find it more difficult to adapt to working from home than those with higher formal education. Therefore, we reject our third hypothesis and argue that employees with lower formal education did not find it more difficult to adapt to working from home than employees with higher formal education.

The results were confirmed with Pearson's chi-square test. Table 15 shows that the p-value is 0.345, which means that it is higher than the level of risk or characteristic (0.05). The latter means that we can say with 95% certainty, or a 5% risk level, that employees with less formal education did not find it more difficult to adapt to working from home than employees with more formal education.

Table 15: Pearson's chi-square

	Value	**df**	**Asymp. Sig. (2-sided)**
Pearson Chi-Square	2,280	4	0,684
Likelihood Ratio	2,448	4	0,654
Linear-by-linear Association	0,061	1	0,805
N of Valid Cases	131		

Based on frequencies, response rates, and the Pearson chi-square test, we failed to prove the difference that employees with lower formal education had a harder time adapting to working from home than employees with higher formal education. The third hypothesis is rejected.

Testing H4: *Women found it more difficult than men to balance their work and private life when working from home.*

For the fourth hypothesis, we wanted to know whether women found it more difficult than men to balance their working lives when working from home. Table 16 shows that 14 men and 117 women answered this question. The arithmetic mean of agreement with the statement is 2.79 for men and 2.47 for women. For men, it is close to agreeing with level 3 - neither agree nor disagree, while for women, it is closer to agreeing with statement 2 - disagree.

Table 16: Work-life balance by gender

	Gender	**Frequency**	**Min**	**Max**	**Mean**	**Std. Dev.**	**Std. Error Fifference**
I find it difficult to separate work and personal life.	Male	14	1	5	2,79	1,188	0,318
	Female	117	1	5	2,47	1,297	0,120

The one-sample t-test in Table 17 tested whether, on average, women are less likely than men to agree with the statement that it is difficult to separate work and private life, with a p-value of > 0.05, indicating that the answers differ statistically. Therefore, we reject the hypothesis that women find it more difficult than men to balance their work and private lives when working from home.

Table 17: T-test for one sample

	T-test					
					95-% Confidence Interval of the Difference	
	t	df	Sig.	Mean Difference	Lower	Upper
I find it difficult to separate work and personal life.	0,868	129	,387	0,316	–,404	1,035
	0,930	16,932	,366	0,316	–,401	1,032

Using statistical parameter calculations and a one-sample t-test, we could not prove the difference that women found it more difficult than men to balance their work and private life when working from home. This result is also attributed to the fact that only 14 men and 117 women participated in the survey.

Testing H5: *When working from home, employees missed communication between colleagues.*

Table 18 shows that 14 respondents (10.3%) do not agree at all with the statement that they missed communication between colleagues when working from home, 10 respondents (7.4%) disagree, 33 respondents (24.3%) neither agree nor disagree, 48 respondents (35.3%) agree, and 26 respondents (19.1%) strongly agree that they missed communication between colleagues when working from home.

Table 18: Communication between colleagues when working from home

Communication between colleagues when working from home	**Frequency**	**Percent**	**Valid Percent**	**Cumulative Percent**
I do not agree at all	14	10,3	10,7	10,7
I disagree	10	7,4	7,6	18,3
I neither agree nor disagree	33	24,3	25,2	43,5
I agree	48	35,3	36,6	80,2
I strongly agree	26	19,1	19,8	100,0
Total	131	96,3	100,0	

Based on the frequencies and proportions of the responses, we find that more than half (54.4%) of the respondents agree or strongly agree that they miss communication between colleagues when working from home. Hypothesis 5 is confirmed.

Testing H6: *When working from home, employees were more motivated to work than in the office.*

To test the sixth hypothesis, we considered the statement, “I am more motivated when working from home.” Table 19 shows that 25 respondents (18.4%) disagree that they are more motivated when working from home, 29 respondents (21.3%) neither agree nor disagree, and 77 respondents (56.7%) agree or strongly agree that they are more motivated when working from home.

Table 19: Motivation when working from home

Motivation when working from home	**Frequency**	**Percent**	**Valid Percent**	**Cumulative Percent**
I do not agree at all	8	5,9	6,1	6,1
I disagree	17	12,5	13,0	19,1
I neither agree nor disagree	29	21,3	22,1	41,2
I agree	50	36,8	38,2	79,4
I strongly agree	27	19,9	20,6	100,0
Total	131	96,3	100,0	

By calculating all frequencies of responses, we concluded that the respondents mostly agree with the statement that they are more motivated when working from home, as the frequency of agreement with the statement was higher than the frequency of disagreement. Therefore, we confirm our hypothesis: "When working from home, employees were more motivated to work than in the office”.

Testing H7: *The employer has provided the majority of employees with appropriate IT equipment to perform work from home.*

When testing the seventh hypothesis, we were interested in whether the employer provided most employees with appropriate IT equipment for performing work from home. Calculations of all frequencies and percentages of responses are presented in Table 20. 11.8% of respondents do not agree at all, 7.4% disagree that their employer provided them with adequate IT equipment, 8.8% neither agree nor disagree, 29.4% agree, and 41.9% strongly agree that their employer provided them with adequate IT equipment.

Table 20: Suitable IT equipment for performing work from home

Suitable IT equipment for performing work from home	**Frequency**	**Percent**	**Valid Percent**	**Cumulative Percent**
I do not agree at all	16	11,8	11,9	11,9
I disagree	10	7,4	7,4	19,3
I neither agree nor disagree	12	8,8	8,9	28,1
I agree	40	29,4	29,6	57,8
I strongly agree	57	41,9	42,2	100,0
Total	135	99,3	100,0	

The respondents overwhelmingly (71.3%) strongly agree that their employer provided adequate IT equipment. We confirm our hypothesis: "The employer provided most employees with adequate IT equipment for working from home."

Testing H8: *When working from home, most employees had adequate workplaces.*

The eighth hypothesis hypothesized, "When working from home, most employees had appropriate workplaces." Of the 135 respondents, 54 (39.7%) strongly agree, and 50 (36.8) agree they have suitable workplaces for working from home. 10 respondents (7.4%) neither agree nor disagree, 15 respondents (11%) disagree, and six respondents (4.4%) do not agree at all that they had adequate workplaces at home.

Table 21: Appropriate workplaces for working from home

Appropriate workplaces for working from home	**Frequency**	**Percent**	**Valid Percent**	**Cumulative Percent**
I do not agree at all	6	4,4	4,4	4,4
I disagree	15	11,0	11,1	15,6
I neither agree nor disagree	10	7,4	7,4	23,0
I agree	50	36,8	37,0	60,0
I strongly agree	54	39,7	40,0	100,0
Total	135	99,3	100,0	

Based on the frequencies and the proportions of the responses, we concluded that 76.5% of the respondents agree or completely agree that they have adequate workplaces for working from home. Based on this, we can confirm our hypothesis “When working at home, most employees had appropriate workplaces.”

Testing H9: *When working from home, communication with the superior was smooth.*

The last hypothesis we set is, "When working from home, communication with the superior was smooth." Table 22 shows that three respondents (2.2%) do not agree at all with the statement that communication with the superior was smooth when working from home, five respondents (3.7%) disagree, 24 respondents (17.6%) neither agree nor disagree, 55 respondents (40.4%) agree and 44 respondents (32.4%) strongly agree that communication with the superior was smooth when working from home.

Table 22: Communication with the superior when working from home

Communication with the superior when working from home	**Frequency**	**Percent**	**Valid Percent**	**Cumulative Percent**
I do not agree at all	3	2,2	2,3	2,3
I disagree	5	3,7	3,8	6,1
I neither agree nor disagree	24	17,6	18,3	24,4
I agree	55	40,4	42,0	66,4
I strongly agree	44	32,4	33,6	100,0
Total	131	96,3	100,0	

Based on the frequencies and proportions of the responses, more than half (72.8%) of the respondents agree or strongly agree that communication with their supervisor was smooth when working at home. The last hypothesis is confirmed.

CONCLUSIONS

The trends towards the gradual introduction of flexible forms of work, with home-from-work being one of the key forms, received an additional "kick in the pants" with the emergence of the COVID-19 pandemic. Consequently, the topic is receiving increasing attention (Blatnik in Hočevar, 2020). According to the experience of companies, working from home has many advantages, most notably employee satisfaction and, thus, increased productivity. However, it is not suitable for everyone or every job (Bandur, 2014).

This article discusses more broadly the work-from-home of public administration employees during the COVID-19 epidemic. We have explored the advantages, disadvantages and opportunities that this form of work offers. The survey was conducted among public administration employees, with 136 respondents completing the questionnaire in full.

The respondents mostly agreed that they find it easier to balance their private and professional life, but above all, they see the advantage in spending less time on the road. They thus expressed great satisfaction regarding more flexibility that working from home allows them. Also, they estimate that working from home is less stressful and that there are fewer distracting factors because no co-workers are present. As Tavares (2015) notes in his research, those who work from home tend to be more productive than their counterparts in traditional offices because they are subject to fewer interruptions and disruptions and thus make better use of their working time.

The respondents largely agreed that the employer properly organized their work from home, that communication and cooperation with the superior took place without problems, and that it was done in several ways (electronically, by phone, and via video conferencing). They agreed that the employer provided them with appropriate IT equipment, and most respondents agreed that they had appropriate working conditions at home and that the amount and quality of work done at home was comparable to working in an office.

When it comes to possible disadvantages of working from home, the majority of the respondents agreed with the claim that they miss communication between colleagues. The respondents also perceive less sense of belonging and connectedness and less mentoring and exchange of opinions and experiences. Although, as Dermol (2010) states, mentoring is one method of on-the-job training, it can be replaced by using instructions and discussion via videoconferencing.

Among the disadvantages of working at home, less than a quarter are bothered by the presence of family members and inadequate working conditions. At the same time, a few agree with the statement that their time is less well organized. If work permits, working from home can help adapt the working hours to improve work, family and social life. This has made the boundaries between working and non-working hours flexible and adaptable to different needs, such as study time, family or private pursuits. Working from home can be a tool for deciding on working hours and adapting to the employee's needs and the employer's requirements (Tavares, 2015).

Organizations must be aware that quality communication is even more important when working from home due to less frequent physical contact and the inability to "read" non-verbal communication. This will require striking a balance between, on the one hand, constant connectedness, pressures on performance and maximizing economic value, and, on the other hand, people, their mental and physical health, job security and building long-term relationships with colleagues and organizations (Aleksić and Černe, 2022).

Despite possible concerns, however, we believe that working from home, with its positive characteristics and consequences, has a future in the global market and public administration. Higher work efficiency, the possibility of integrating less employable groups of the population, lower costs, lower gender differences in the labor market, lower racial intolerance, and easier coordination of work and family are only some of the positive aspects of remote work (Rogina, 2006).

The survey results suggest that those who work from home find it easier to balance their work and private life. Working from home allows them more flexibility, and they find it less stressful. For the most part, the employer properly organized the work from home and provided them with appropriate IT equipment. The employees consider that communication and cooperation with their supervisor were good in several ways (electronic, telephone, and video conferencing). What the respondents miss most about working from home is social contact and communication between colleagues. Some also perceive less sense of belonging and connection and miss exchanging opinions and experiences.

Trust between the employee and the superior plays a key role when working from home. If the superior trusts the employee, the latter will be able to do the job well. Superiors can establish the manner and frequency of communication and set clear instructions to the employee regarding hours worked, availability and meetings. However, it is important for

employees to organize their time properly and to be able to focus on their work, despite the breaks they take.

Given that work from home in public administration was ordered overnight, there were quite a few challenges in all areas of public administration. Overnight, information systems had to be changed, computer applications updated and digital competences taught to employees. Many have not had the opportunity to prepare for the changes, so there are still some challenges in this area lying ahead. In any case, digital competences, work organization and communication skills will benefit employees and employers, even if the work in public administration returns to the way it was.

The most optimal combination of work is work from home and work at the physical location of organizations. This increases job satisfaction and performance while reducing the chance of burnout. The latter can often result from isolation or too much autonomy when working remotely. On the other hand, work in the office is sometimes too controlled by superiors (Lamovšek et al., 2020).

Combining home- and office-based work will increase social contact, employees will not miss communication between colleagues, and there will be a greater sense of belonging and connectedness. During the mentoring period, the employee should work at the employer's premises. Leaders should also convene in-person meetings, in combination with video conferencing, to ensure more exchange of views and experience.

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METHODOLOGY APPROACH TO STRATEGIC PLAN DEVELOPMENT FOR THE DEPARTMENT OF THE RESEARCH INSTITUTE IN UKRAINE

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ABSTRACT

In the paper it is proposed the methodological toolkit for a strategic plan development of research divisions that is illustrated by the example of the Department of the Ukrainian Research Institute. The result of using the methodology is the development of a roadmap for further development of the research divisions that has determined strategic directions and concrete indicators for monitoring achievement of goals. It is used PESTEL-analysis, Porter's Six Forces of Competitive Position Analysis, ranking method, SWOT-analysis. In the paper it is proposed Internationalization –Application Matrix for research activity analysis and for Department's strategic scenarios development. The main finding of the article is that using the proposed methodology we have revealed the strongest aspects of the Department's activity that are national and international theoretical research, and also national applied research in the field of seaside regions' sustainable development. The further strategy scenario should be aimed at the strengthening of international applied research through such activities as membership in international organizations and editorial boards, publications in media abroad, foreign internships, international grant project implementation

KEYWORDS: methodology, strategy, research institute, department

INTRODUCTION

The development of research institutes and it departments should be based on a strategic plan. The quality of the strategic plan and its further implementation and effectiveness are determined by the reliability of strategizing methodology. Strategies' development at the level of enterprises, regions and countries is a wide spread practice, but for research infrastructures' units it is no so common.

Research institutes as well as business entities are in a competitive environment. Competition is a dynamic process. The conditions of competition are constantly changing depending on market conditions, actions of competitors, means of competitive battle, etc. (Iermakova, Kozak, Shengelia, 2022). Under these circumstances, the management of competitiveness should be a permanent function that will ensure the ability to promptly respond to threats in the market, the ability to develop measures considering the identified threats, as well as the selection of methods and measures for prevention and minimization of adverse effects of the change of operational conditions on research infrastructures' competitiveness.

In this aspect the strategizing of the research institutes and their divisions should be based on the methodology for the research infrastructure units (ESFRI, 2021; Academy of Finland, 2020; University of Turku, 2020). But their qualitative analysis should be added with quantitative analysis, that will permit to determine not only strategic goals, but also key performance indicators for better monitoring.

I. Methodology

Traditionally, the stages of strategizing that are used at an enterprise are the following: preparation for strategizing, analysis, design, implementation, monitoring (Iermakova,Kozak, Shengelia, 2022).

Stage 1 - Preparation

This stage is the initial, there is a formal process of launching strategy, forming a team of developers. It is advisable to involve the heads of all departments and employees in the strategy development process, thus solving two important tasks: the receptivity of the developed strategy and its objectives by all employees of the institution, increasing trust, interaction, and obtaining innovative ideas (crowdsourcing effect) and considering the vision of people who in the future have to work daily to implement the developed strategy.

Stage 2 - Diagnostics

At this stage, it is performed a qualitative and quantitative environment analysis, including the study of factors influencing the competitiveness, assessment of available resources of the institution and its ability to create value for consumers (stakeholders), analysis of the competitive environment at the meso- and macro-level (PESTEL-analysis), assessment of the competitive environment at the industry level from the standpoint of M. Porter's six competitive forces, definition of key competitors, carrying out of quantitative assessment of the institution's competitiveness. Quantitative estimations are based on expert assessments methods and on a comparison principle - or with competitors, or with institute's own results during the previous periods.

For the purpose of generalization of the diagnostic results a SWOT-analysis can be used, which allows to identify strengths and weaknesses, as well as opportunities and threats that affect the research institution's competitiveness. SWOT-analysis allows to find out with what parameters are able outperform or lag behind, and what needs to be done to increase competitiveness.

Stage 3 - Design

At this stage, based on the diagnostics conducted at the previous stage, strategic and operational objectives and tasks, scenarios, target indicators are determined, a strategic map, an action plan is developed – it is defined the mechanisms, tools for achieving objectives, deadlines, funding sources, etc. Robert Kaplan and David Norton in their work (Kaplan, Norton, 1996, 2004) propose the development of a balanced scorecard that aligns strategic objectives with specific target indicators, and strategic maps – a tool designed to clearly describe strategies. Strategic map is an visual illustration of the strategy, provides a systematic approach to the coordination of goals, indicators and appropriate action plan. Each institution can adapt the model of the strategic map to solve its specific tasks.

Stage 4 - Implementation

Ensuring the implementation of strategic objectives is a management task, which

involves organizational management, as well as human and financial resources management.

Stage 5 - Monitoring

This stage is especially important in a turbulent conditions, it should include continuous monitoring, strategy adjustments, reassessment and view of target indicators, action plans, etc. depending on new realities, ensuring interaction of all participants in the development process and strategy implementation, collective decision making.

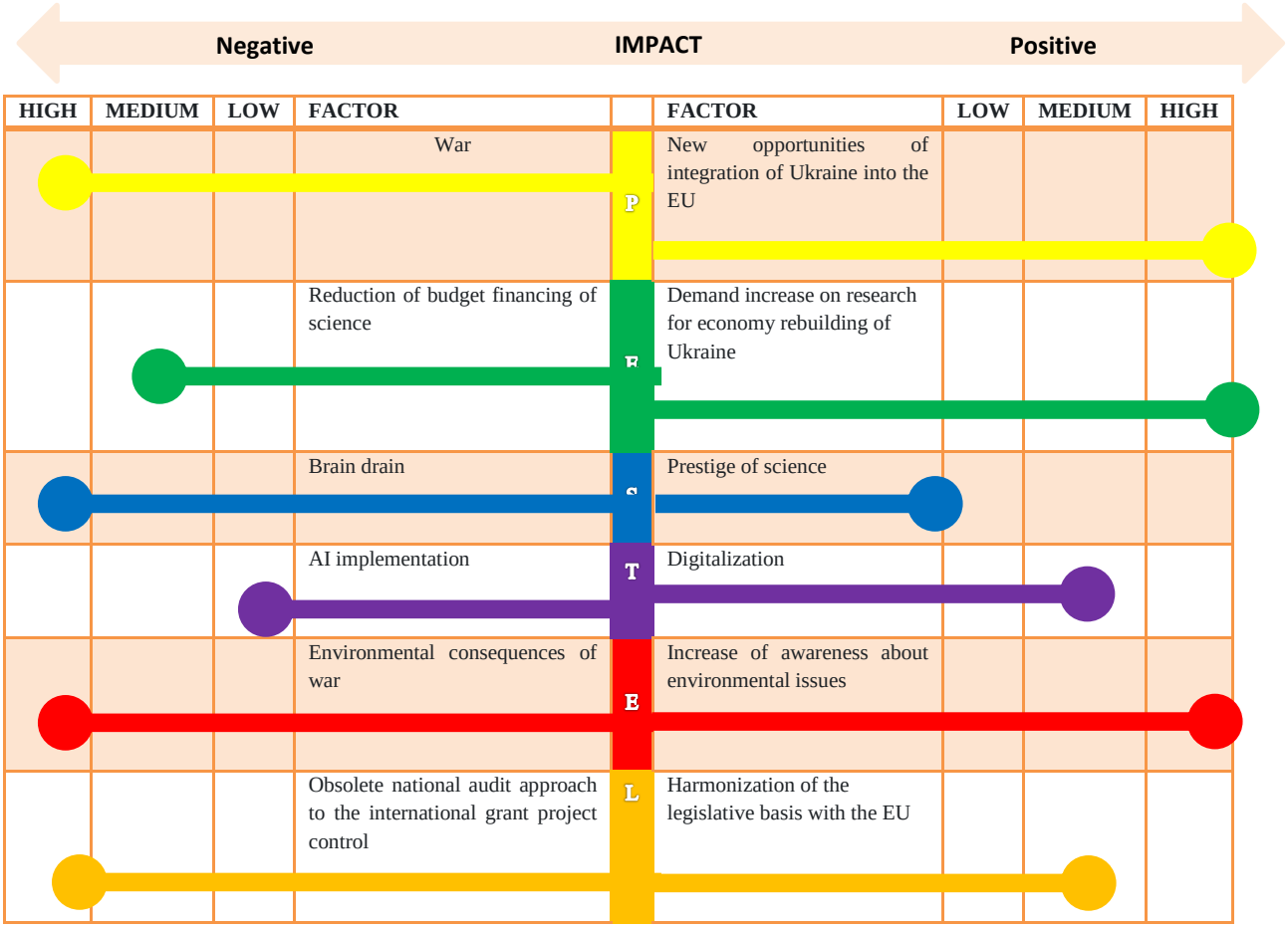
II. Results

The proposed methodology is applied for the Strategic Plan development for the Department of Economic and Ecological Development of Seaside Regions of the State Organization "Institute of Market and Economic&Ecological Researches of the National Academy of Sciences of Ukraine". Department's mission is to provide fundamental and applied research, aimed at deepening the theoretical, methodological and practical issues of seaside regions' sustainable development. Vision - ecologically friendly economic development of seaside regions in Ukraine. Determined values are: professionalism, team work, collaboration with stakeholders, international cooperation.

Environment analysis

The external environment is analysed through 6 PESTEL factors (Figure 1).

Figure 1. PESTEL-analysis of the external environment of the Department's activity



Source: Developed by the author

The results of this and following analysis methods are systematized by SWOT-matrix (table).

Porter's Six Forces of Competitive Position Analysis were developed by Michael Porter (Porter, 1998) as a framework for assessing and evaluating the competitive strength and position of a business organisation. This theory is based on the concept that there are six forces that determine the competitive intensity and attractiveness of a market. Porter's six forces help to identify where power lies in a business situation (Table 1).

Table 1. Six Forces Model Analysis of the scientific research market

Force	Value	Description	Tools for competitiveness increase
Competition	Medium	The market of R&D in Ukraine is a medium competitive, but tends to be high. State research institutes compete with private and nongovernmental ones.	- Increase competences; - Develop the uniqueness of provided research; - Be open for modern demand for research directions, do not be limited with usual research directions.
New Entrants	High	Amount of state research institutes is cutting down because of reforms and budget cuttings. Instead private and nongovernmental institute appeared, with better finance support and less state regulations and limits.	- Expanding the range of stakeholders (market share increase); - Promotion and popularization of scientific research and opportunities (Media, social and professional networks etc.).
End Users / Stakeholders	High	There is a wide range of stakeholders among national and regional authorities, business, local communities, universities.	- Meet the demand of stakeholders; - Implementation of market-oriented thinking among RI managers; - Stakeholders portfolio differentiation; - Providing social responsible activities; - Presence on brokerage platforms for scientific sector and stakeholders.
Suppliers (Inputs)	High	Such inputs as finance and human resources are vital for scientific research.	- Diversification of financing sources, e.g. research providing at the business inquire on the contract basis, international grant applying; - Involvement of young scientists through possibilities for self-development and clear mechanisms of professional trajectories.
Substitutes	Low	Intellectualization of economy influences on demand increase on research, that can't be substituted. The analyzed Department provides research that has no analogues in Ukraine.	- Increase the uniqueness of provided research at the international level.
Complementary Products	Medium	Together with research there is on demand consulting services.	- Provide consulting services, e.g. for authorities of local communities, for business on the contract basis.

Source: Developed by the author

Current situation of the Department

There is the internal methodic for ranking the Institute's departments. Estimation is provided every year, thus it is possible to analyze the dynamics of the indicators' changes (Table 2).

Table 2. Rankings of the Department of Economic and Ecological Development of Coastal Regions in 2021 and 2022

№	Indicator	Score, quantity (total score)		Change, 2022/2021
		2021	2022	
1.	**Research works:**	**440**	**630**	**+43.2%**
1.1	Financed from the state budget	2 (300)	3 (330)	+10%
1.2.	Financed by the private sector			
1.3.	Research grants:			
1.3.1	- national			
1.3.2	- international	4 (120)	6 (180)	50%
1.4.	Grant application:			
1.4.1.	- national project	1 (20)		-100%
1.4.2.	- international project		4 (120)	+100%
2.	**Publications:**	**843,45**	**750,58**	**-11%**
2.1	Articles in SCOPUS / Web of Science	4 (120)	8 (135)	+12.5%
2.2.	Articles in other scientometric bases, including Google Scholar:			
2.2.1	- published abroad in foreign language	1 (25)	1 (25)	=
2.2.2	- published in Ukraine in foreign language	3 (60)	1 (20)	-66.7%
2.2.3	- published in Ukraine in Ukrainian language	10 (150)	7 (85)	-43.3%
2.3.	Articles, published abroad:	1 (15)	1 (15)	=
2.5.	Abstracts in conference materials			
2.5.1	- in foreign language	7 (28)	16 (46,2)	+65.0
2.5.2.	- in Ukrainian language	27 (54)	21 (38,7)	-28.3%
2.6.	Monographs, study books (calculated by printed sheets)			
2.6.1	- published abroad		2,98 p.s. (44,7)	+100%
2.6.2	- published in Ukraine	34,7 p.s (347)	30,64 p.s. (306,4)	-11.7%
2.7.	Other publications (brochures etc.) (calculated by printed sheets)	16,43 p.s (44,45)	4,94 p.s. (34,58)	-22.2%
3.	**Practical implementation of conducted research**	**260**	**325**	**+25%**
3.1	At the level of national authorities:			
3.1.1	*prepared and sent*	5 (100)	5 (100)	=
3.1.2	*implemented (letter of support)*	4 (80)	3 (80)	=
3.2	At the regional level			
3.2.1	*prepared and sent*	6 (60)	9 (90)	+50%
3.2.2	*implemented (letter of support)*	2 (20)	5 (55)	+175%
3.3	At the international level:			
4.	**Presentations at conferences:**	**375**	**488**	**+30.1%**
4.1	abroad	18 (270)	19 (285)	+5.6%
4.2	in Ukraine	15 (105)	29 (203)	+93.3%
5.	**Expert and consulting activities**	**176**	**156**	**-11.4%**
5.1	Membership in international organizations	3 (45)	3 (45)	=
5.2	Membership in national organizations	7 (70)	1 (10)	-85.7%
5.3	Membership in regional organizations	3 (21)	3 (21)	=
5.4	Expert activity within the Institute	3 (15)	3 (15)	=
5.5	Participation in TV and radio programs	5 (25)	5 (25)	=
5.6	Interviews on television and radio			
5.7	Publications in the print media:			
5.7.1	- at the national / international level		4 (40)	+100%
5.7.2	- at the local level			
5.8	Publications about the Department's events and employees			
5.9	Expert materials, published in open sources			
6.	**Publishing and editorial activities**	**176**	**169**	**-4%**
6.1	Scientific editing of monographs	4 (40)	5 (50)	+25%
6.2	Membership in editorial boards:			
6.2.1	- in collections of scientific papers and journals of the Institute	5 (50)	7 (70)	+40%
6.2.2	- in collections of scientific papers and journals in Ukraine	4 (20)	1 (5)	-75%
6.2.3	- in collections of scientific papers and journals abroad	4 (40)	2 (20)	-50%
6.3	Article reviewing	8 (16)	12 (24)	+50%
6.4	Participation in the preparation and publication of journals of the Institution	1 (10)		-100%

7.	**Training of scientific personnel and educational activities**	**575**	**300**	**-47.85**
7.1	Mentorship of postgraduate and postdoctoral students	2 (10)	3 (15)	+50%
7.2	Mentorship of bachelors and masters	7 (21)	5 (15)	-28.6%
7.3	Mentorship of practical trainings of:			
7.3.1	- students		5 (5)	+100%
7.3.2	- teachers and researchers			
7.4	Reviewing bachelor's and master's theses	14 (28)	30 (60)	+114.3%
7.5	Teaching in higher education institutions	7 (35)	3 (15)	-57.1%
7.6	Teaching of postgraduate students	5 (25)	6 (30)	+20%
7.7	Membership in the academic councils beyond the Institute	4 (160)		-100%
7.8	Membership in the Academic Council of the Institute	6 (180)	5 (150)	-16.7%
7.9	Participation in the scientific and methodological seminar of the Institute	6 (12)		-100%
7.10	Chairman / Deputy chairman / Secretary of specialized academic councils	1 (30)		-100%
7.11	Reviewing of theses	14 (70)		-100%
7.12	Membership in State Exam Committee at the higher education institutions	2 (4)	5 (10)	+150%
8.	**Public and organization activity**	**49**	**44**	**-10.2%**
8.1	Participation in organizing committees of scientific events	7 (14)	7 (14)	=
8.2	Organization and public activity on a regular basis	7 (35)	6 (30)	-14.3%
9.	**Improving professional skills**	**290**	**520**	**+79.3%**
9.1	Obtaining of foreign language certificate		1 (10)	+100%
9.2	Internships:			
9.2.1	- abroad	14 (280)	17 (340)	+21.4%
9.2.2	- in Ukraine	1 (10)	17 (170)	↑ 17 times
10.	**Awards**	**15**	**80**	↑ 8 times
10.1	State awards			
10.2	International awards		1 (20)	+100%
10.3	Awards of central authorities and of the National Academy of Sciences of Ukraine		3 (30)	+100%
10.4	Other awards	3 (15)	6 (30)	↑ 2 times
Total		**3199,45**	**3462,58**	**+8.2%**

- points that need increased attention Source: Developed by the author

Figure 2. SWOT-analysis of the Department's activity

STRENGTHS

- Research works, financed from the state budget;
- International research grants;
- Publications;
- Practical implementation of conducted research at the regional and national levels;
- Conferences participation;
- Improving professional skills;
- Educational activities and work with young scientists;
- Membership in international organizations.

WEAKNESSES

- Research works, financed from the private sector;
- Practical implementation of conducted research at the international level;
- Interviews on television and radio;
- Publications in the print media;
- Expert materials, published in open sources;
- Membership in coordinating bodies together with authorities and organizations at the national level.

OPPORTUNITIES

- New opportunities of integration of Ukraine into the EU;
- Demand increase on research for economy rebuilding of Ukraine;
- Digitalization;
- Increase of awareness about environmental issues;
- Increase collaboration with stakeholders
- Consulting services development;
- Diversification of financing sources, e.g. research providing at the business inquire on the contract basis, international grant applying;
- Involvement of young scientists.

THREATS

- War in Ukraine;
- Reduction of budget financing of science;
- Brain drain;
- Environmental consequences of war;
- Obsolete audit approach to the international grant project control;
- Competition with the private and nongovernmental research institutions;
- Uncompetitive salaries in science sector for qualified researchers and young scientists.

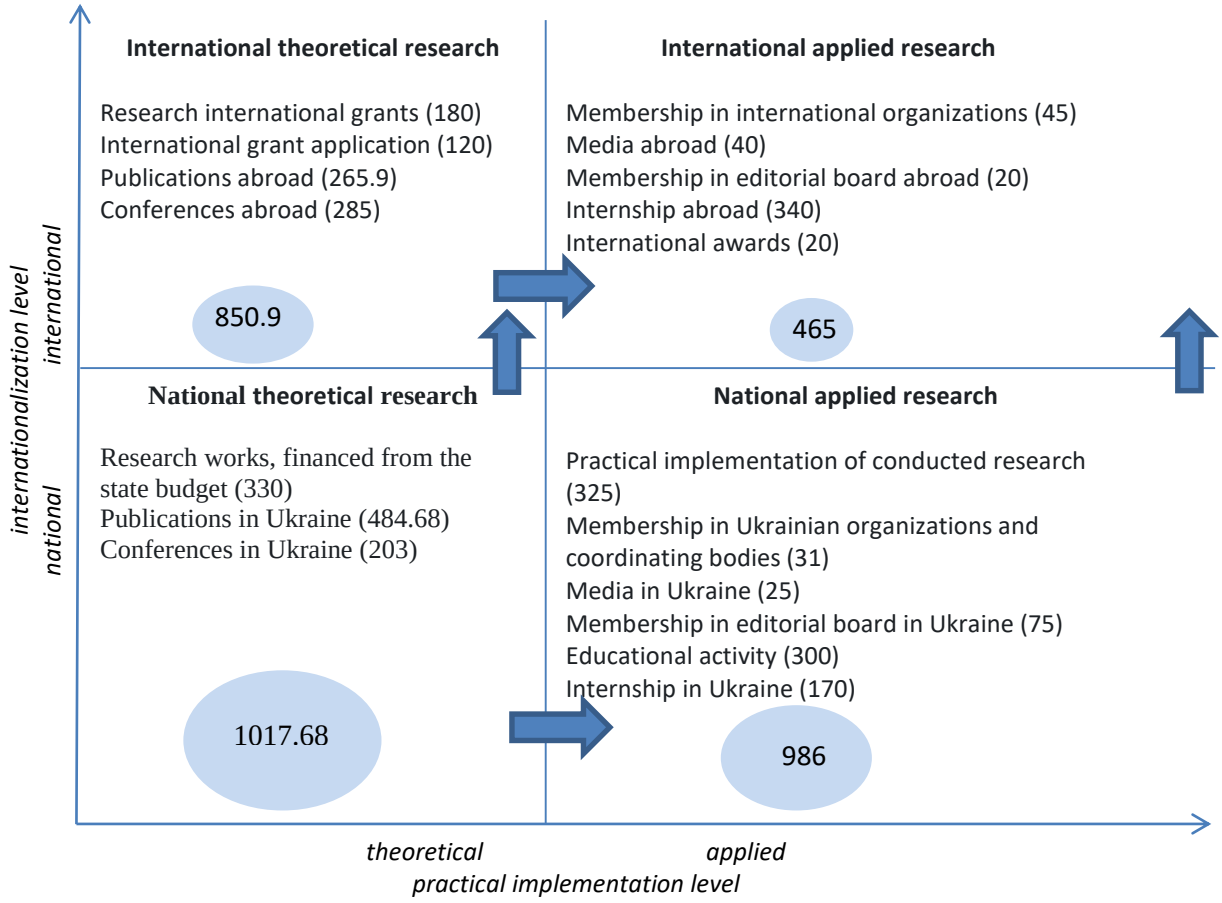
Source: Developed by the author

SWOT-analysis will help to systematize the results of conducted PESTEL-analysis, Six Forces Model Analysis and rankings of the Department of Economic and Ecological Development of Seaside Regions in 2021 and 2022 (Figure 2).

Strategic scenarios for the Department's development

On the basis of provided analysis strategic scenarios should be determined. For this purpose, the author proposes the Internationalization –Application Matrix (Figure 3).

Figure 3. Internationalization –Application Matrix for research activity analysis and for Department's strategic scenarios development



Source: Developed by the author

Key performance indicators

After the strategic scenarios and goals have determined it is necessary to determine indicators for monitoring the achievement of them (Table 3).

Table 3. Key performance indicators for the Department for the 5-yers period

Priority	Scenario	Indicators	Current scores (quantity)	Planned scores for a 5-years period (quantity)
1	**International applied research**	Membership in international organizations	3	6
		Media abroad	4	10
		Membership in editorial board abroad	2	5
		Internship abroad	17	20
		International awards	1	3
		Practical implementation of conducted research at the international level	0	5
2	**International theoretical research**	Research international grants	6	6
		International grant application	4	4
		Publications abroad	28	56
		Conferences abroad	19	20
3	**National applied research**	Practical implementation of conducted research at the national / regional level	8	20
		Membership in Ukrainian organizations and coordinating bodies	4	10
		Media in Ukraine	5	20
		Membership in editorial board in Ukraine	8	10
		Educational activity	62	100
		Internship in Ukraine	17	20
		Ukrainian awards	9	12
		Expert materials, published in open sources	0	5
		Publications about the Department's events and employees	0	3
		Research works, financed from private sector	0	2
4	**National theoretical research**	Research works, financed from the state budget	3	3
		Publications in Ukraine	33	66
		Conferences in Ukraine	29	30

Source: Developed by the author

Thus, using the proposed methodology the management receive a roadmap for further development of their research divisions that has determined strategic directions and concrete indicators for monitoring achievement of goals.

CONCLUSIONS

The research provides the strategizing methodology that is based on qualitative and quantitative analysis, that permits to determine not only strategic goals (ESFRI, 2021; Academy of Finland, 2020; University of Turku, 2020), but also key performance indicators for better monitoring and progress determination. The methodology is adoptable to the institutes' specificity that should be considered.

If the methodology will achieve a widespread usage, it give the basis for comparison among institutions and their divisions and related management decisions.

The proposed methodology doesn't determine scientific directions of the research; it is based on their practical implementation. Usually scientific directions are determined by the Department's specialization, Institute's Development Strategy, national research and innovation priorities, and also by requirements of stakeholders and current challenges. One more aspect for strategy development – types of research, such as applied, fundamental and disruptive research, – that have different key performance indicators. It is an issue for further discussions.

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GLOBALIZATION AND ITS IMPACT ON CULTURE AND MEDIA

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ABSTRACT

Globalization is term that is gaining more and more importance every day, so we are witnesses that it is happening very often through the media. Many of them have heard for this term, but the question is how did everyone understand the meaning of it? Although, there isn't unique definition of this term, a large number of theorists agreed that is about the processes of economic, political and cultural activity which tends to unite the planet. The work is conceived in such way that even someone who is not professionally oriented towards the mentioned topic, to provide satisfactory answers, because there are rare who aren't affected by the situation in which we live. The goal of this work is to provide to the reader as much information as possible about the global connection of people through media. A significant part of work is devoted to the impact of globalization to spread the media and how much the media initiate and support the process of globalization.

KEYWORDS: globalization, media, communication, Internet, development

INTRODUCTION

To the question, "What is time?", Aurelius Augustine said that he knew the answer until he was asked. After a series of research, a similar answer could be given to the question: What is globalization? Or rather, a large number of responses, whether positive that approve it, or negative that are against it, can be classified into one of the theories about globalization applicable in practice. What is certain is that it should not be seen as something for which one should be pro or contra, it is not a process that should be avoided, but should be understood. Understand that it is inevitable. The sooner we understand it and start working in that direction, the sooner we will join the ranks of those who will have a brighter future. The key is the present - to understand and the future - to apply.

The best way to start working on a given topic is to approach the concept of "globalization". A large number of authors have given a significant number of definitions for the same. Here I would like to highlight E. Giddens (British sociologist, declared the most cited author in 2007. He made a great contribution in the field of globalization, modernization, emphasizing the re-examination of the development and trajectory of modernism) and U. Beck

(author of the given book, German sociologist, also one of the most quoted authors in the world. He coined words such as "risky society", "second modern", "thinking modernization"). Giddens says: "Globalization can be defined as the intensification of social relations on the world plane, which connects distant places in such a way that local events are shaped by events that took place miles away and vice versa" (Giddens, 1998, p. 69). Beck gives an even more interesting definition: "Globalization implies a palpable rejection of borders in everyday activities in various dimensions of the economy, information, ecology, technology, transcultural conflicts and civil society, and thus basically something at the same time known and misunderstood, hard to understand, but something that is tangible by force, it fundamentally changes everyday life and forces everyone to adapt and respond. Money, technology, goods, information, poisons "cross" borders, as if they don't exist. Even things, people and ideas that governments would like to keep out of the country (drugs, illegal immigrants, criticism of human rights abuses) find their way in. Globalization understood in this way implies: killing distance; it means that man is often thrown into unwanted and misunderstood transnational forms of life" (Urlih, 2001, p. 50).

In essence, globalization represents a set of all processes that connect human activities and needs, regardless of where they took place, in what period and at what speed. Local, national, regional becomes global, and it gains importance and becomes an inseparable part of human life.

When globalization is viewed from an economic point of view, it will be seen that globalization is conditioned by the universal human desire to acquire and increase wealth, this is supported by the ideas of liberal economy, market expansion, creation of a global market, multinational companies, free flow of goods, capital and labour, etc.

Globalization in the technical sense is conditioned by the development of technology, the Internet and a number of other means of communication. The connection of the most distant parts of the world, the free flow of information and the creation of a global media market have been made possible.

In the cultural sense, globalization is conditioned by the aggressive culture of colonial powers, the imperialist aspirations of Western countries, greater freedom of movement of people, cultural and media content. With the interference of globalization in culture came the emergence of multiculturalism, westernization, hybridization and assimilation.

Globalization has also affected the cultural dimension of human reality, which includes the totality of human knowledge, experience, thoughts and actions. Traditional transmitters of culture are losing their importance because they are under pressure from the mass media, which have assumed the role of social reality. The media have taken over the technique and method of traditional institutions, there has been an appearance of televangelization that transmits, justifies and imposes certain ways of thinking that they consider correct, possible and desirable.

Globalization has established a global media market, which is controlled by transnational media companies, on that market privatization and commercialization of media and their takeover and creation of monopolies have been made possible (Sincov, 2012).

I. Methodology

Problem and object. The research problem is the impact of globalization on culture and media. First of all, it is important to emphasize that globalization is used in everyday life, but there is a problem when it needs to be defined by someone who does not deal with this topic. The question arises as to what is happening with globalization within the media and culture. The media contribute to the spread of information and ideas, they are a force that brings people together while keeping them apart and allows the absent to be presented as if they were actually present.

Globalization has encouraged the intensification of social relations and thinking and awareness of the world as a unity, so that events in one part of the world can affect events in another part of the world. This leads to the conclusion that globalization is a process of tendencies and not of final states (Herman & McChesney, 2004).

"Globalization and its impact on culture and media" is a very extensive topic, it can be observed from different angles, but it is not possible to cover all its segments. It is clear that not all complete information can be given here and it is impossible to cover all the most important elements of this complex topic. It is important to bring globalization closer to someone who is not professionally oriented towards the mentioned topic, and to explain how globalization affects culture and media and vice versa.

The goal of the research. The goal of the research is to clarify the term globalization, to expand the claims that confuse many, because there are a number of theories that support globalization, and no less a number of theories that talk about globalization in a negative sense. This research also aims to provide information about the global connection of people through the media. Part of the work concerns the impact of globalization on the spread of media and how much the media initiate and support the process of globalization. This paper investigates the familiarity of individuals with the term globalization and the use of media. Through all of the above, it is important to see the impact of globalization on culture.

Research hypotheses. When the problem and the subject of the investigation, as well as the goals that are to be achieved by the same, are considered, the main hypothesis is established. Globalization affects all areas of life and dictates a holistic approach to world cultural and media changes.

The main hypothesis set in this way includes auxiliary hypotheses:

1. Globalization is conditioned by greater freedom of movement of people, cultural and media content, and for this reason positive forms of globalization have appeared, such as international cultural collaborations and international exchanges of cultural content.

2. The traditional way of transmitting cultural patterns is losing its importance day by day, and the mass media take over their role and become creators of social reality.

3. Globalization has influenced the culture of the media, tending towards more intensive communication between people, so today it can be said that communication among the younger population takes place through social networks.

4. Globalization of the media has led to the emergence of new professions such as freelancers, influencers, YouTubers who earn money by uploading certain content to different platforms.

Research methods. The methods are adapted to the specifics of the research subject

and meet the basic methodological requirements. In accordance with the topic, the analyzed reference literature in the field of globalization, culture and media was included, using the general scientific method - the modeling method. Special methods: analysis and synthesis, induction and deduction, abstraction, generalization. Research methods: scientific investigation and content analysis. Of the research techniques, a survey was used that was combined, open and closed type. One hundred respondents participated in the research.

Scientific and social justification of research. The primary contribution of this research is scientific and at the level of scientific description, where the notion of globalization and its impact on culture and media is defined on a scientific and theoretical basis. The social contribution of this research is reflected in the results obtained by the aforementioned research on the knowledge of the concept of globalization and its impact on culture and media.

II. Analysis of the impact of globalization on culture and media

Globalization is a change that has affected society as a whole, that is, the economy that has led to the growth of international exchange, culture, art, and media. Globalization should be viewed through all the mentioned aspects, because they affect the life of every individual and dictate a holistic approach to world social, economic, cultural and media changes.

Globalization connects world flows, breaks down barriers, unites society, influences the international economy and the media space. Today, the world is more connected than ever before, the connection between the local and the global is a complete novelty for humanity. This connection has been accelerated in recent years through the development of communication, information technology and transport. The development of means of fast travel meant that goods and people were transported around the world, and worldwide satellite communication allowed people to overcome physical distances.

In addition to all of the above, globalization is also a local phenomenon that affects the life of an individual because it gives him the opportunity to see the world in a global sense, to be in contact with everyone through the Internet, communication systems, social networks, etc. Globalization breaks down borders and the world becomes one place, with cultural and sociological differences, at the same time it is a complex set under the influence of political and economic influences.

II.1. Defining globalization as a term that confuses many

There are many definitions that explain this seemingly complicated concept, here, some will be highlighted:

• Giddens defined globalization as follows: "the strengthening of social relations around the world that connect mutually distant places so that local events are shaped by events that take place at a great distance and vice versa."

• Federston, unlike Giddens, who accuses sociologists of unjustified attachment to the idea that society is a closed system, calls on sociologists to design and conduct systematic research that will explain the process of globalization and, at the same time, the destructive form of social life whose action he called into question. He sees society as a bounded nation-state.

• The Lisbon Group defined globalization as the phase that follows the phases of internationalization and multinationalization, because it heralds the end of the national system as the center of organization of human activities and strategies (Markovic, 2003).

II.2. Misconceptions about globalization

The world market permeates everything, every part of life and is the cause of change. According to Beck, there are ten delusions of the same:

- The metaphysics of the world market, the idea of dependence on the world market is constantly present, and the charm lies in the need for simplicity in order to facilitate the way into an unknown world that has become impenetrable.
- The so-called free world trade, often presented as a way to achieve prosperity and social peace, ignoring the fact that we are far from the model of freedom. This is supported by high unemployment in the so-called Third World and in post-communist countries, which at the same time conditions the aforementioned country's economic policy.
- Economic internationalization, not globalization, where research shows that in the regions of the world market, we still cannot speak of globalization but of internationalization. The strengthening of transnational trade and production ties between certain world regions - America, Asia and Europe - was confirmed.
- The dramaturgy of risk, a variant of the risk society, is what transnational companies derive their power from. It is as if one should not talk about the damage (the complete transfer of jobs to countries with low wages is used more as a threat).
- The absence of politics as a revolution. Globalism is the position that it is not necessary to act economically, but that politics, science, culture must submit to the economy. Those who think that globalization implies the execution of the laws of the world market are being deceived. It is entirely a political project of transnational actors, the STO, multinational concerns.
- The myth of linearity, it is rare that a stereotype is disproved like this one. Globalization everywhere has affected the new meaning of the local. Global culture is certainly something that misleads. There are a large number of international institutions, agencies, groups, movements, which interfere in all possible and impossible issues; the breaking through of a small number of accepted languages as well as many more points to the non-existence of the said myth.
- Criticism of catastrophizing thinking, the goal of society since ancient times has been to remove the yoke of work from its shoulders. When it came to that, that less and less labor force produces more wealth, now it is not known how to deal with it. For most, it is a transition from one form of society to another and not at all a catastrophe that could lead to unwanted consequences. What do most do? They hide, curl up like a hedgehog and stick out their spines.
- Black protectionism, they raise the national state to the sky and at the same time dismantle it with the free market. A double-edged sword. At the same time, it emphasizes the values of the nation (family, religion, community), while on the other hand it gives priority to the fast economy, which undermines and destroys the aforementioned values.

- Green protectionism, they reveal the nation-state as a political living habitat, which is threatened with extinction. It protects ecological standards, so it also needs protection. On the one hand, it contradicts the global nature of the ecological crisis, and on the other hand, it takes away the political leverage of local thinking and global action.
- Red protectionism, utopia. If you want to change something in societies full of inequality, you have to be unfair. Some rights, which were valid and appropriate until that moment, must be abolished, one's own initiative must be promoted and ensured, and another social policy morality must be implemented. There are winners and losers from every reform, but the important thing is to ensure continuity (Urlih, 2001).

III. Responses to globality and globalization

Beck 2001 also offered ten responses to globality and globalization:

- International cooperation, here an attempt is made to explain to the public that globalization does not mean leaving everything to the market, but that globalization also increases the need for international laws, regulations, conventions and institutions that will take care of everything.
- Transnational state or "inclusive sovereignty", transnational states come together as a response to globalization and develop their regional sovereignty and identity beyond the national.
- Co-ownership of capital, here we mean that labor would have to get its share of capital.
- New orientation of education policy, if work is replaced by knowledge and capital, then work must be given a new form through knowledge. This means investing in education and research. Throughout history, it has been proven that the countries that have invested in the same are among the leading economic powers (Sweden, the largest number of Nobel Prize winners and the standard of living among the leading countries).
- Are transnational entrepreneurs a-democratic, anti-democratic? Transnational capitalism that does not pay taxes and abolishes paid work loses its legitimacy. Another modern person certainly wonders if the mentioned entrepreneurs are anti-democrats? One thing is for sure that virtual tax payers must also be regulated and all through international regulations.
- Alliance for civic work, work with old people, handicapped, homeless, AIDS patients, illiterates and many other things that until now were voluntary work, should be made economically visible, therefore paid.
- What comes after Volkswagen - the exporting nation? New cultural - political - economic goals, the concept of a self-exporting nation no longer holds weight because the countries of South-East Asia, and soon China, can produce what used to be a German trademark just as well and cheaper.
- Experimental cultures, market niches and social self-renewal.
- Public entrepreneurs, self-employed, in place of the social figure of the paid worker and employee as an opponent to the capitalist and the employer, the image of the self-employed comes, on the other side, that of the public entrepreneur.
- Social contract against exclusion? In the last 15 years, earnings from labor increased by

two percent in real terms, while earnings from capital in the same period went to 59 percent. The fact is that there is more and more labor, but it is increasingly cheaper. Capital is less and less and more expensive. This deepens the widening gap between the rich and the poor.

The answer to globalization is Europe. What it is and what it should be in all thematic fields, in the labor market, in the field of ecology, welfare state, international migration, political freedoms, basic rights (Milenkovic, 2022).

III.1. Globalization and culture

During life, a person adopts attitudes, values, norms, perceptions, tendencies and behaviors in accordance with family and society. The whole spectrum of living is called culture. Cultural globalization is the meeting of different world cultures and customs.

When culture is viewed through globalization, it can be seen that it contributes to the opening of the borders of local cultures and communities, transforming individual experiences into widespread information around the world (Milenkovic, 2019).

Traditional cultures under the pressure of globalization are doomed to coexistence, divergence and mutual tensions. Mass communications enable the spread of popular culture and the development of the so-called global culture. The importance of the spread of cultural processes is highlighted by UNESCO, emphasizing that there is a threat from global, popular culture, which is reflected in the fact that it weakens cultural diversity in many aspects of life (Mikerevic, 2022).

There are many authors who emphasize that cultural differences are more important than ideological, political and economic ones. Another group of authors points out that globalization has a number of negative impacts, which they call "Americanization" or "Westernization". They believe that Western countries and the US use media and financial power to spread their cultures and influences by undermining the independence of smaller and underdeveloped countries.

On the cultural level, the greatest influence of globalization is felt in language, literature, art, religion and tradition. Researchers of cultural change conclude that cultures are subject to change. It is most often related to beliefs and convictions, that is, to religions and ideologies. Marx Weber concluded while researching world religions that cultures promote change, that there are those who are indifferent to change and those who stop change (Veber, 1997).

III.2. Globalization and the media

Ratanen compared the media and globalization to "a horse and a tortoise", because the connection between them is recognized by many, but studied in a very small percentage. A large number of theoreticians believe that there is no globalization without media and communications. What is ironic about this conclusion is that theorists have not contributed to the debate about the relationship between media and globalization. That is why the role of the media in globalization remained unclear, and they did not create a broader picture of the mentioned topic (Rantanen, 2004).

According to Waters and Held, the media belong to the subgroup of cultural studies, and if they consider that the media is not about culture. Held points out the example of pop star Madonna and technology through hyperglobalism, without mentioning other media and communications. Karan believes that the globalization of communications is unconvincing according to Held, because globalization is transformed through media fiction and music and not through news and analysis. He also points out that most information media are national or local (Curran, 2002).

Thomson believes that the development of media and communication affects the traditional form of social relations. He singles out three interactions, namely: face-to-face, indirect interaction based on sending letters and telephone communication, and indirect quasi-interaction based on social relationships established through the media. With Tomlinson, one can see the difference between global experience and local experience. The difference is in the scope, that is, the scale, which does not have to be decisive because it is possible to create a feeling of belonging to the same community even between a million people who have never met. Then the next difference is in the dispersive nature of the mass mediation of the experience of the global community compared to the local one. And the third difference is the absence of global experience when compared to the experiences of the national and diasporic community (Thompson, 1995).

When you come to the conclusion of the mentioned theorists, you can see that globalization in their theory is pessimistic. Globalization is actually intensification fueled by interconnectedness. The result is distancing and a monological mass-mediated experience. Here we come back to Rantanen's thoughts that the media do not connect but mediate (Rantanen, 2004).

When a number of other researches and theories are taken into account, a simple conclusion is reached that the media in the process of globalization had a great importance in connecting people around the world. Pioneers of the globalization process are considered to be media houses, which connected the planet with their news (Markovic, Vucekovic & Markovic 2021). The relationship between globalization and the media is two-way, because globalization influences the spread of media and the media influence the initiation and support of globalization. The propagation of globalization by the new media, which are the basic weapon in the modern process of globalization, is also of great influence. New media provide the possibility of faster contact, promotions, exchange of ideas and opinions, exchange of knowledge, freedom of expression, etc. (Musurovic & Brankovic, 2016).

We are witnessing that today business is done over the Internet, that science has the possibility of exchanging scientific thought without any boundaries when it comes to distance, while art has gone beyond the framework of frames and has crossed the threshold of galleries. The education system has acquired new dimensions, today distance learning is made possible via the Internet (Herman & Mekčesni, 2004).

Globalization has influenced the culture of the media, which strives for social movements and the aspirations of people to be in contact. Communication among the younger population takes place most often through social networks, as proven by research. While older respondents still resort to traditional methods of communication.

The research came to the conclusion that the media and the audience are connected by an unbreakable bond and are dependent on each other. The public is inclined to trust the media, believing that they inform them truthfully. Due to the obligations of life, the respondents pointed out that they do not have enough time and interest to analyze media information. The media-uneducated public accepts media messages, regardless of the essence of the media message. Media manipulation is precisely one negative form of globalization (Sijakovic, 2022).

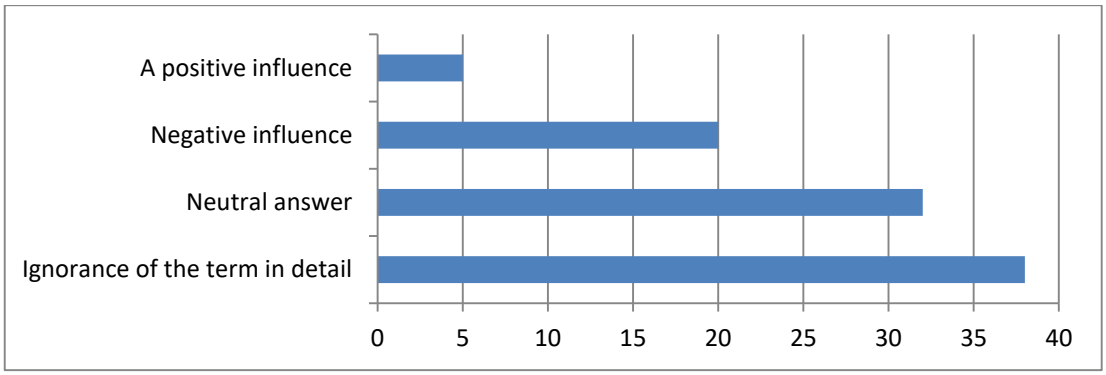
The media has supported globalization, while it has influenced world trends and has been transmitted to a large number of media around the world. In our country, in the Balkans, the marketing of "reality shows" that have the task of attracting people's attention so that they suppress their problems has already occurred years ago. In this particular case, reality is a product of globalization, they first arose in the USA, and then very quickly spread throughout the world. Few people know that the idea of this type of program was given in 1980 by the author of "Animal Farm" Orwell (Stavljanin, 2012). Due to the high viewership of these shows, this research was completed with one question concerning reality shows and respondents were asked why they follow reality shows, it must be pointed out that no one gave an answer that made sense (Lalosevic, 2020).

IV. Results

One hundred respondents, who were randomly selected and are citizens of Montenegro, participated in this research. The questions were sent to them via email, in the form of a survey. The questions were of open and closed type. In this paper, only the most important results concerning this topic are highlighted.

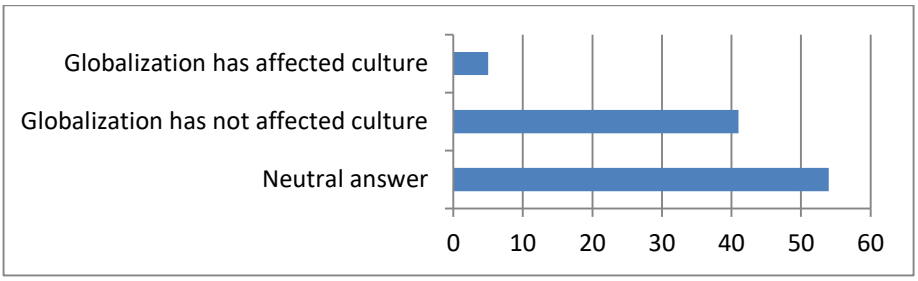
When researching for the purposes of the mentioned topic, respondents were asked whether they think that globalization has a positive or negative effect on their lives. 38% of the respondents answered that globalization has a positive effect on their lives, 32% of them believe that they have felt the negative impact of globalization, 20% of the respondents gave a neutral answer, and 5% of the respondents are not sufficiently familiar with this term.

Figure 1. Knowledge of globalization as a concept and impact



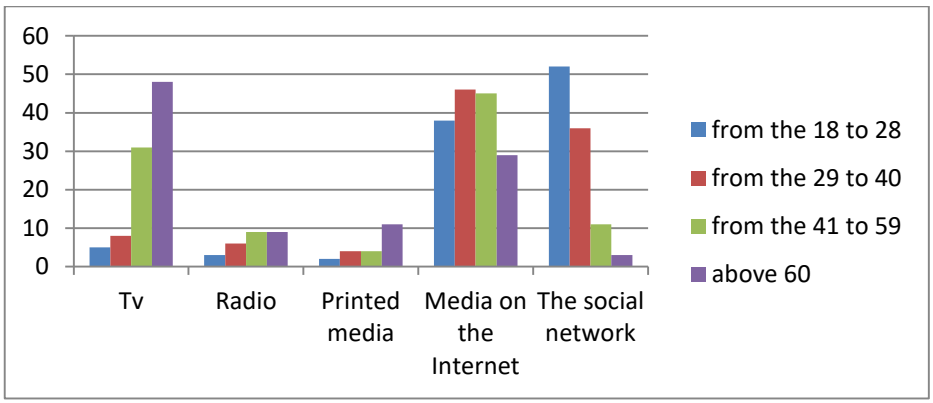
When the respondents were asked whether they think that globalization has affected the culture in their country, the answers were divided. Some respondents, 54% of them, believe that globalization has significantly affected culture, while 41% of them pointed out that globalization has not affected culture, while 5% were neutral.

Figure 2. Impact of globalization on culture



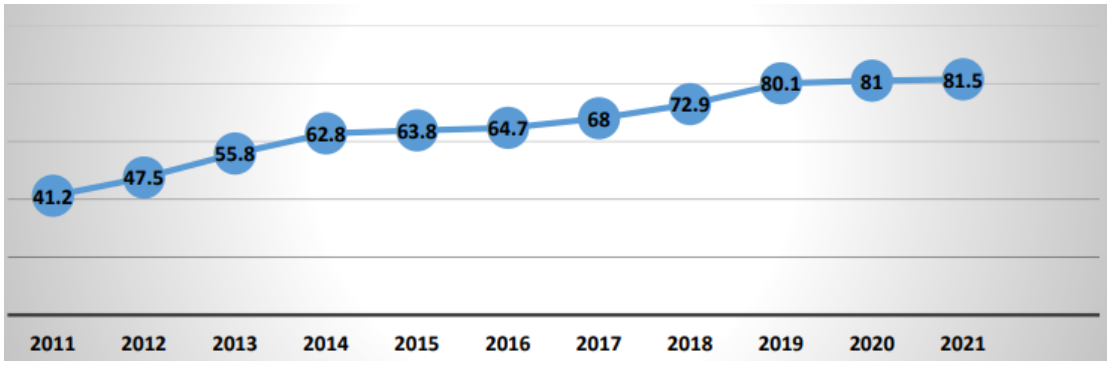
The goal of the research was to find out which media the respondents follow most often, so if you look by age, it comes to the conclusion that social networks are the most popular among the younger population aged 18 to 28, while almost none of the older respondents pointed out that this type of media is their favorite. number one. Young people very rarely follow events via television, only 6% of them, while the opposite is true for the elderly. Media on the Internet is popular with all age groups, while newspapers are popular with a smaller percentage of respondents. The percentage is given in Figure 3.

Figure 3. Media monitoring by age category



If we look into history, we will see that numerous studies pointed out that the beginning of the new millennium will be known for the information society, and that is what happened. Media globalization is reflected in the development and personalization of the Internet as, one can freely say, the largest medium, which affects business and economic development, education, science, etc. (Miokovic-Kapetinic, 2022).

Figure 4. Household access to the Internet



There are a number of causes of globalization of the media, during the research the following were singled out: economic interests, development of information and telecommunication technology, journalistic agencies, media companies that are essentially transnational, media concentration. Certain consequences of globalization of the media were highlighted, namely: commercialization of media, influence on culture and traditional values, influence on media content, etc. (Adzic, Bojevic & Hinic, 2021).

The investigation revealed an interesting fact that young people, through the media and social networks, follow their peers who post content of interest to them on their platforms. So we come to the conclusion that media globalization has given birth to new professions such as influencers and YouTubers who earn money on these platforms. Whether they have a positive or negative effect on them is the subject of various debates.

Table 1. Causes and effects of global media

Global media	
Causes of media globalization	***Conseyuences of media globalization***
Economic interest	Commercialization of media
Development of information and telecommunication technology	Impact on cultural and traditional values
New agencies	Influence on media content
Transnational media companies	Politicization of commercial media
Liberalization and deregulation of the media	Creating a digital divide
Media concentration	Uncotrollable millionaires

Disadvantages of the globalization process. As could be seen from the previous chapters, the advantages of globalization are multiple, but there are also disadvantages that are present. For example, there is information that two billion people are starving, that every fourth inhabitant lives on one dollar a day. Why this example is important, because the media has a great importance in creating certain representations in people, so very few people know about the mentioned data related to poverty and hunger that rule the world (Vukovic, Sukovic, Rasevic, Maksimovic & Goati, 2015). Globalization is considered by some theorists to be illusory, because a significant number of people in the world do not have access to scientific technology. With the globalization of culture, it is a simple process. Young people from developing countries go to more developed countries in order to apply their knowledge, while the countries they came from remain deprived of professional staff that would help the country develop faster.

Theorists, as mentioned at the beginning of the paper, single out the process of "Americanization" or "Westernization" as a flaw of globalization. This refers to the process applied by the most developed countries, such as Western countries, led by the USA, using media and financial power to spread their culture and to influence the way in which the cultural independence of smaller and underdeveloped countries is threatened (Milenkovic, 2022).

CONCLUSIONS

After all the above, it is clear that we live in a globalized world. In a world where information management is used as a primary weapon to achieve projected goals regardless of who the actors are. Each individual is given the power to act on a global scale using modern technology and media platforms to realize legitimate or illegitimate priorities. Maybe we suppress the reality that globalization has brought, maybe we don't want to see something, but what we can't avoid is the fact that the world is more connected than ever before.

The development of globalization confirmed the main hypothesis of the work that globalization affects all areas of life, especially culture and media, which have a strong influence on each individual. Globalization has also achieved greater freedom of movement of people and information, and thus international cultural cooperation and international cultural contents have been born, which has made the world a single entity in which borders do not exist.

As could be seen from this research, the traditional way of transmitting cultural patterns is losing its importance day by day, and the mass media are taking over their role and there are creators of social reality. However, today we all live in a "global village". It is up to each individual to adapt and try to use the positive aspects of it and to minimize the negative influences that are part of the modern age.

The hypothesis that globalization has influenced the culture of the media by tending to more intensive communication between people was also proven, so the investigation confirmed that communication among the younger population takes place through social networks. Related to that is the emergence of new professions such as freelancers, influencers, YouTubers who earn money by publishing their diverse content.

Right now, at this moment, changes are happening that will change us from the roots. At the very end, it is important to point out that the sample for this research was relatively small, considering that it is a current topic. For some subsequent researches, it would be desirable for the sample to be much larger, in order to bring globalization closer to and explain it to those who feel that this topic does not concern them at the moment.

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GLOBALIZATION AS A SUPPORT FOR THE GROWTH AND DEVELOPMENT OF STUDENTS

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ABSTRACT

Globalization is a process that has brought many opportunities to young people who have the greatest access to information ever. The purpose of the paper is to examine the students to what extent globalization has contributed to their growth and development. The main goal is to obtain results that will show whether students are ready to acquire more knowledge, experience and skills due to the availability of information or whether the excessive availability of information has created an aversion to it. The data were obtained using a quantitative method where a questionnaire survey was used to collect data, which were interpreted using the decryption method. The results will give a clear student perception of globalization, along with all the advantages and disadvantages. The research will contribute to the knowledge of the opportunities that globalization has brought to young people and how to use the best that it can give.

KEYWORDS: globalization, students, learning, skills

INTRODUCTION

The purpose of the research is to present theoretical assumptions about globalization and present the data of empirical research on globalization as support for the growth and development of students. Globalization represents processes that unify the world and it is increasingly difficult to stop the phenomena it brings. Access to information and dissemination of knowledge is faster and more accessible than ever before. Knowledge, as one of the foundations for the progress of humanity, is today in the hands of everyone who is interested in researching and improving. Technology is the driving force of globalization and modern human uses it as an everyday component of life.

This paper analyzes how much students use the opportunities that globalization has brought, how much easier it is for them to get information, and whether it really affects the progress of students. The Bologna Declaration (1999) aimed to adapt education to the European market and establish a standardized way of acquiring knowledge with the aim of easier learning and employment outside the borders of the home country. In addition, the opportunities that European Union students have are linked to mobility and inclusiveness for different forms of education. Today's job of the teaching staff is not only teaching, but also directing and upgrading already existent knowledge of young people. Student growth and development is a key part of social inclusion. Education supports the individual to excel in society; what is noteworthy is the creation of an information society which is networked, better at exchanging information and ideas and which participates in a new way of learning, and most importantly,

this "new society" represents the source of productivity in today's world.

The empirical research of this paper presents the results of the attitudes of students of Virovitica University of Applied Sciences on globalization and how it contributes to the creation of knowledge, experience and skills. The research questions are related to the advantages and disadvantages that globalization brings, students' ability to find information, their perspective on knowledge, the changeability of their personality and habits, the development of communication skills, and learning about globalization itself.

The paper is divided into several parts in which the theoretical approach to globalization, information about globalization, and the advantages and disadvantages it brings are presented. After that, the results of empirical research on the topic of globalization as support for the growth and development of students are presented. At the end, in the conclusion of the paper, new information which the research has brought is presented, alongside the suggestions on how this paper can contribute to the further education of students.

I. Theoretical background

Globalization represents "a concept that refers to the contraction of the world and to the strengthening of awareness of the world as a whole" (Robertson, 1992:8). This theory emerged in the eighties of the twentieth century, when people became increasingly networked. The first modern occurrences of processes reminiscent of globalization are visible after the Second World War, after which many states united both for reconstruction and for trade exchange, mutual friendship and attempts to prevent wars. Such associations created the foundations of today's world and institutions (WTO - *World Trade Organization*, UN - *United Nations*, NATO - *The North Atlantic Treaty Organization*, EU - *European Union* and the like).

Globalization can be compared to evolution, which is associated with the process of development from lower to higher form and adaptation to new situations. If one does not invest in knowledge and technology, one can expect a significant lag behind the rest of the world, and from an evolutionary point of view, any living being which did not adapt to changes and its environment has ceased to exist and become extinct. Although this word may sound too harsh, it can indicate the importance of the adaptation that the modern process has brought. Globalization brings with it society's ignorance of it, of what it encompasses, and how it affects mankind, and Giddens (2002) describes that humans know they are in globalization, but do not know what it is. This is confirmed by his statement, "we are the first generation to live in a global society, the contours of which we still barely see. It shakes up our existing ways of life, no matter where we are. Many of us feel in the hands of forces over which we have no control." (Giddens, 2002: 19). Globalization processes are those which clearly and continuously affect people's way of life, but do not have a visible physical form.

Although the exact reason for the emergence of the globalization process is not known, several causes can be cited according to Jovančević (2005)

- rapid development of science and technology (example: longer human lifespan)
- development of information technologies (example: digitized production)
- new locational factors (example: the possibility of moving and dislocating production in other countries)
- multinational companies (example: one product available worldwide)

- transport costs and speed (example: fast delivery of resources or finished products)
- the end of the Cold War (example: expansion of the free market)
- global problems (example: change in climate conditions)
- liberalization (example: removal of restrictions on social life).

As previously stated, globalization can be seen as an evolutionary process. Each of the listed items represents a transition from one situation to another. Of course, it cannot be said that one of the above is exclusively good or bad for the society. Globalization contains several dimensions, which are, according to Bedeković (2010:16), "political, social, ecological, demographic, cultural and economic dimensions." Each of these dimensions affects the individual and the community. In *the economic dimension*, the richest countries in the world, transnational organizations and international institutions represent factors which transform society and participate in the creation of a new world order. The globalization of the economy forms the foundation that entails all forms of globalization (Bedeković, 2010). Global companies influence the course of world economic processes, primarily because they want to fulfill set goals, make a profit, and at the same time integrate the planet (Lončar, 2005). Bedeković (2010) states that *the political dimension* refers to the fact that there are no more policies of just one state, but every decision has consequences which are of global significance. Furthermore, according to Lončar (2005), the political-legal aspect refers to the violated state sovereignty caused by inclusion in international agreements, communities and organizations. Along with the political dimension, there is also *a social dimension* which represents the creation of a global village where a society which functions "at a distance" is being created, and the networking of society is stronger than ever before. Technological and informational development affects society by creating a virtual world brought about by the emergence of the Internet. Bedeković (2010) also emphasizes *the ecological dimension* and its importance, which is today a burning issue of survival. Industrialization has brought with it environmental issues. Sustainable development refers to society's ability to properly and responsibly use resources to meet the needs of contemporary people, but also to think about future generations. According to Križanić-Spudić (2020), it is emphasized that visible changes in the environment and awareness of the consequences of global warming, as well as scientists' predictions about upcoming natural disasters, are a crucial element of the ecological dimension of globalization. In this way, the world begins to think and act globally, and agreements which regulate and limit certain activities are concluded at the global level. It is man and their descendants who represent *the demographic dimension*, where the increase in the birth rate and the extension of human life span are visible. The problem which emerges is the growth of the birth rate in countries which are already affected by poverty. The demographic dimension also brought deregulation of the labor market because people can move freely and change jobs in any country. The phenomenon of the disintegration of the traditional family has also been noticed, where the focus is increasingly on the career. *The cultural dimension* refers to a cosmopolitan society where all nations are equal and where democracy is a part of human life. Culture is made up of languages, traditions, customs and many other factors. The loss of cultural identity is one of the negative aspects of globalization (Bedeković, 2010). A new trend has certainly been noticed, which modern human is witnessing in the cultural sense, and it refers to the increasing preoccupation with "Americanization" and the creation of global culture.

I.1. Information about globalization

According to Friedman (2012), globalization can be best described with the words further, faster, cheaper and deeper. Looking at the mentioned words, it is clear how globalization has contributed to easier access to information and the speed of getting to it without excessive costs. Information and communication technology is a product of globalization, which, according to Matovinović (2021), improves communication, reduces costs, encourages strategic thinking, protects information and cuts cultural barriers. Unfortunately, in addition to the aforementioned advantages, it is also necessary to mention disadvantages such as the lost art of conversation, deterioration of language, enabling rudeness, constant disturbance, lack of privacy and distraction from real life.

Although globalization cannot be presented with an exact definition, its presence can be felt in almost every part of life. The industrial revolution has already proven how much the accelerated production process changes the culture, politics and economy of nations, while every revolution has brought the need for change. People were no longer exclusively a labor force, since the necessity emerged to have educated people who would use their knowledge as a fundamental resource for progress. The already mentioned education changes the foundation of society, countries which have a well-educated population eventually have fewer sociological problems. Toffer (1983) states that society went through three waves of civilization. In the first wave of civilization, education was not the main focus of society and it was only in the second wave that a shift occured where teaching staff were seen as producers and students as raw materials (the second wave refers to the industrial age). It was a form of education where educated people imparted their knowledge to others through lectures and practical advice. What the third wave of civilization brings is the teaching staff who are no longer producers, but education constitutes a community of teaching staff, students, parents and the local community. The goal of education is no longer to impart only basic knowledge, but constant advancement, both of teachers and students. Education represents learning through which an individual can acquire new knowledge or create the ability to perform a job. Education can be seen as formal and informal, where formal education means basic education, which is practiced by most countries through primary and secondary schools, while higher education is being increasingly encouraged. Informal education is related to additional education and training that an individual most often chooses arbitrarily because they need it for their career or are interested in expanding their spectrum of knowledge. Owing to the possibility and availability of lifelong learning, the progress of society can be possible. Education is considered the main driving force of change in society.

I.2. Advantages and disadvantages of globalization

One group of people believes that globalization will destroy the sovereignty of the state, the culture of the people and weaken the market exchange, and as an even greater consequence, they cite the fear of excessive information that young people receive, which can affect their self-confidence and actions that they would not otherwise undertake. Globalization is seen as looking at one's own interests. People with such attitudes are often called radicals, but alongside them there are also sovereigntists who will see any modernization as a step towards progress, whether it be technological or human. They see globalization as an opportunity to expand their knowledge due to the enormous availability of data and open possibilities of travel, getting to

know other cultures, the expansion of international trade, and the like. It is important to note that there is no right or wrong, every phenomenon brings advantages and disadvantages, including globalization. Lazibat and Kolaković (2004) presented several advantages of globalization, which are manifested through easier access to information, cultures and technologies. Alongside technological progress comes economic development, and this development leads to the creation of a free market which enables easier trade and the movement of people and capital. The advantage also appears in erasing the borders of countries, which thus increase friendly relations and strengthen respect between cultures. Employees and young people have the opportunity to develop their own education, which leads to the development of communication skills and better acquaintance with other cultures. Another important advantage is the speed of transactions in countries, which makes business faster, and thus increases the employment of the population. Lazibat and Kolaković (2004) state that there are also disadvantages of globalization, such as the loss of the value of customs and national cultures; people are often presented with "Americanization", which is associated with consumerism and capitalism. It is important to point out that globalization has also led to a large gap between the poor and the rich, where one part of society is getting extremely rich, while the other is getting poorer. Although the possibility of going to work in other countries represents numerous opportunities for young people, it is a problem for countries in transition to have the young workforce leaving. One of the burning topics and the biggest concerns is the impact of globalization on the environment. Mass production, the transition of people and the increase in population have a negative effect on the Earth and there are increasing natural disasters. There are numerous questions which can be asked regarding the advantages and disadvantages of globalization processes, but the only correct way to answer such questions is to educate people about globalization.

Students use all the benefits of today's society; to study any topic it is enough to have a single device which provides information instantaneously, which is much simpler than a few years ago when finding information was only possible through books, which were only available to a certain population. Young people today are better educated because education has reached almost every population, regardless of the purchasing power, race, place of residence or gender. Studying outside the country just a few years ago was an expensive process and almost impossible for most, but owing to various scholarships, institutions and people, students are building and expanding their range of knowledge which also means being exposed to different information for which it is important to know how it should be filtered.

II. Research methodology

II.1. Population and sample

The target group of the research is represented by all students (333 students, including a few who have been excluded) of Virovitica University of Applied Sciences enrolled in undergraduate and graduate study programs. The questionnaire was conducted in the period from March 6 to March 20, 2023. The sample of respondents was based on 150 students who completed the questionnaire. Using this quantitative method will allow descriptive analysis to interpret differences in the sample.

II.2. Data collection method

The purpose of the paper was to investigate what globalization, as a comprehensive and complex process, encompasses and how it affects young people. In this research, emphasis was placed on the students of Virovitica University of Applied Sciences, where the aim was to analyze their perception of globalization. The basic research question refers to the observation and analysis of globalization aspects as support for the growth and development of student skills and knowledge. According to numerous definitions explaining globalization, it can be pointed out that globalization primarily represents the need to establish and expand new spaces in all areas of human activity, but also to maintain a sense of belonging within certain social communities. Based on these foundations, the research tried to determine how globalization enables the development of young people through the availability of information and the retention of their identity through the development of specific skills (acquiring knowledge and experiences in the family and through education, forming attitudes within a certain social community, developing emotional intelligence, intercultural competence and the achievement of set goals through the development of communication skills). The aim of the paper was to highlight how students perceive the concept of globalization, what elements it encompasses, in what ways do students find all the necessary information for their personal growth and professional development, and what the advantages and disadvantages of globalization processes are.

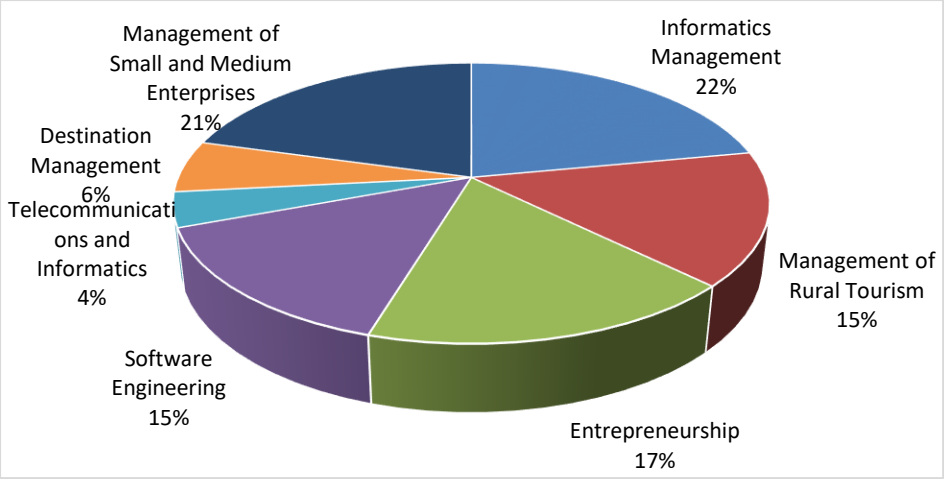
II.3. Research instrument

The research used primary sources of data collected by the survey method. For the purposes of this paper, a questionnaire was constructed to examine students' attitudes as a basic research instrument. The data was collected directly from the students through personal contact, which tried to include as many respondents as possible in the target group of the research. The collected data were processed using a descriptive statistical method and presented in the form of graphs and tables.

III. Results and discussion

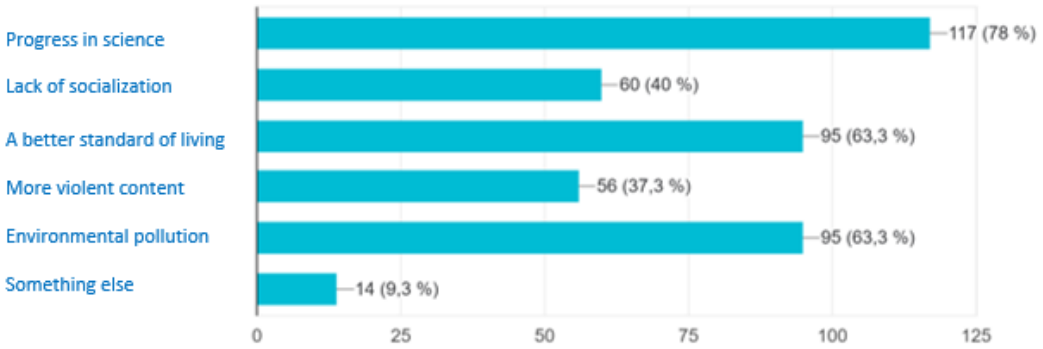
Given that the questionnaire was constructed and divided into five main parts, the research results are presented according to certain characteristics. Socio-demographic data indicated information related to gender, where 58% of females and 42% of males filled out the questionnaire. Furthermore, in order to determine the type of secondary school education of the respondents, the answers received referred to professions such as economist, tourism-hotel salesperson, electrical technician, completed natural science, general and classical high school, hospitality and tourism school, computer technician, administrative clerk, mechanical engineering computer technician, technician for electrical machines with applied computing, technician for mechatronics, beautician, etc. This information was used to gain insight into previously acquired knowledge and skills and the possibility of prior knowledge about globalization. It was also interesting to see which study courses students are currently attending because of the insight into the courses (Intercultural Aspects of Management/Entrepreneurship, Intercultural Components of Tourism, Intercultural Communication...) which they take, which may concern globalization.

Figure 1. Enrolled study course at Virovitica University of Applied Sciences



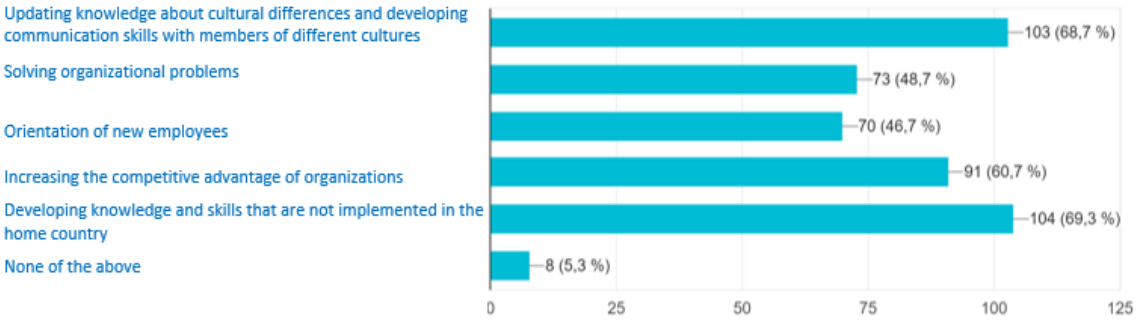
The second group of questions included knowledge about the concept of globalization and what its basic aspects of action are. The research confirmed that the vast majority of respondents declared that they are familiar with the concept of globalization (132/150 respondents), which is also confirmed by the statements made by the respondents about the concept of globalization (the process of connecting the world, changes occurring on a global level, modern progress of humanity, influence on population, economy, development of technology and science, observation of the world in a global sense, creation of a new world order, preservation of the environment, flow of information, no borders, improvement of living conditions, creation of a unique culture, etc.). In order to confirm the students' perception of globalization, certain answers were offered regarding what globalization has brought, the results of which can be seen in the following graph (Figure 2). As is shown, the research results of this paper and the research of Ivić and Šoštarić (2016) are very similar in the sense that students perceive globalization through the benefits it brings, but also through negative implications.

Figure 2. Contribution of globalization processes according to students' perception



Answers were also offered regarding what globalization can bring in the future. Given that respondents had the option of multiple answers, the results of the most frequently chosen ones are shown in the following graph (Figure 3).

Figure 3. Possibilities of globalization processes for the future according to students' perception



Considering the implications of globalization in different areas of human activity, it is important to highlight the basic dimensions of globalization, which, according to Bedeković (2010), are divided into economic, political, cultural, demographic and social dimensions. On this track, by observing separately each dimension of globalization and its elements, it can be highlighted that the respondents gave the following reflections. Regarding the economic dimension of globalization, they point out that they mostly encountered elements such as the increase in trade and investment (68%), the creation of a world global market (66%), the globalization of the financial market (53.3%), increased financial flows (47.3%) and spatial and temporal business continuity (41.3%). In the context of the creation of a global world market, Croatia's entry into the European Union should not be ignored, and in this regard, students' perception is that European funds and Schengen, an increase in the standard of living, better market cooperation with other countries, easier import and export, various investments and security are just some of the benefits that have emerged from that relationship. On the other hand, the disadvantages highlighted by the respondents mainly relate to the loss of tradition and identity, currency changes, rules and laws that are necessary for entry into the EU and limit the entering country, sudden technological progress that not everyone can adapt to, weak protection of domestic producers, rising prices, migration, terrorism, etc. The respondents have a similar way of thinking on what the biggest advantage of globalization is (technological progress, the connectedness of the world, the spread of knowledge, the Internet, the rapid flow of information, the development of society and the quality of life, the exchange of products and services on the market and reduction of prejudices) or what is the negative side of globalization (environmental pollution, loss of sovereignty, black market, lack of socialization and non-tolerance, poverty, terrorism). As for looking at certain dimensions of globalization, it is interesting that the respondents believe that the political (56%), social (83.3%) and cultural (57.3%) dimensions of globalization present a positive direction for the development of society and the area. Regarding the ecological dimension of globalization, students believe that the following elements have the greatest influence: pollution (68.7%), warming of the earth's atmosphere (50.7%), extinction of plant and animal species (44.7%) and toxic waste (32%). When asked about the demographic dimension of globalization, students pointed out that it had the greatest impact on global migration (57.3%), change in cultural identity (38%), increased life expectancy (23.3%), while 28.7% of them pointed out that all elements have a great influence on the development of society and the area.

By measuring students' attitudes and reflections on statements related to globalization

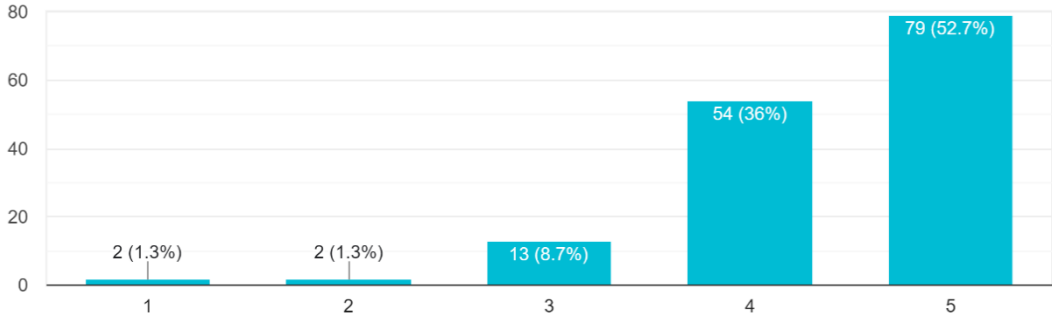
processes using the Likert scale, it can be highlighted that the respondents believe that globalization brings the coexistence of different cultures, opportunities for spreading knowledge, skills and experience, the development of intercultural communication skills, quick access to information and better learning; that technological development has led to the creation of a global culture, but also that globalization has contributed to the destruction of the environment due to the opening of factories in Third World countries. They wholly disagree that they cannot express their cultural identity clearly because of globalization, while they mostly express their indifference to the fact that globalization has brought a lack of socialization, that it destroys the sovereignty of the state, that it encourages the preservation of national cultural heritage, that it encourages understanding of social events at the national level, that it reduces prejudices, encourages intercultural sensitivity, that it results in a drop in health standards, that life in the city is worse for sustainable development, and they are also indecisive about their adaptation to new trends.

The third group of questions was related to how globalization affects the information and education of young people. Since they are young people, the generation of the new modern age imbued with the development of technologies and greater availability of information, the research showed that students (as many as 62.7% of respondents) point out that 80% and more of them use the Internet to gather information. Given that the interviewees are students of Virovitica University of Applied Sciences, it was interesting to see what the channels of information about globalization were. With the option of choosing multiple answers about which channels they use to get information about globalization, students mostly chose the media (78%), followed by universities as educational institutions (60%) and finding information on the Internet (48%). The obtained results are not surprising since it is widely known that electronic means (media, the Internet, social networks...) are the most common and fastest way of sharing information. On the other hand, it is not surprising that there is a high percentage of information about globalization obtained through educational institutions, which have recently increasingly followed contemporary trends on a global level, so it can be said that Virovitica University of Applied Sciences is one of the educational institutions which uses courses (Intercultural Aspects of Management/Entrepreneurship, Intercultural Components of Tourism, Intercultural Communication...) to inform and make the student population aware of globalization processes in its study courses. Students also rated highly (52.7% gave a score of 5, and 36% of respondents gave a score of 4) the impact of technology on learning methods, and they were of the opinion (82.7% of respondents) that today, as a result of globalization processes, there is a higher percentage of educated people. On this track, the research sought to determine the students' perception of the purpose of learning and spreading knowledge.

The results showed that students believe that by learning and expanding knowledge they develop new skills and competences, better information and orientation is enabled, they create their own identity, enrich vocabulary, it is easier to get hired, achieve diversity of thinking, development of the social community, competitiveness and easier adaptation to future changes. Since the economic dimension of globalization also affects students included in the research, it can be pointed out that respondents believe that globalization has made studying and acquiring knowledge financially easier through the great availability of scholarships, the increased number of higher education institutions and study programs through which education

for all people was made possible, the availability of literature, etc. As many as 80% of respondents believe that people's financial literacy is also higher due to the development of globalization. Since globalization encourages the processes of connectedness and interaction of multicultural societies, as Hudolin (2018) states, there is an increasing need for greater knowledge of foreign languages, and language learning is considered part of global politics. On this track, the respondents declared that they mostly use the English language (132/150 respondents speak and write in English), 88/150 respondents understand German within certain limits, and they mostly do not understand other foreign languages. When asked about the contribution of technology to learning, the following graph (Figure 4) shows how students significantly (52.7%) point out that technology has changed their way of learning.

Figure 4. Contribution of technology to the learning process



Considering that one of the aims of this paper is to establish ways of how young people access information, it can be highlighted that students, for example, mostly seek and obtain information about a bank account through mobile applications (84.7%), the Internet (41.3%), which was made easier by development of information and communication technologies on a global level.

The fourth group of research data was related to the role of globalization in the habits of the respondents. The research can confirm that the students' perception is that it is easier and faster to use the Internet (84%) than a book to remember or search for information when solving certain tasks. It can also be pointed out that students believe that too much availability of information can be negative for students precisely because of the large amount of information and contradictory and incorrect information distracting attention. Although globalization has made it possible to better connect people through various technological achievements, it is pleasing to know that students prefer live communication with friends, colleagues and co-workers, and they point out that the development of technology has violated people's privacy (78%) to a large extent.

The last group of questions touched on their educational environment, where respondents showed a positive attitude towards globalization processes and how Virovitica University of Applied Sciences informs and educates them about globalization. The students pointed out that the university adapts learning and teaching methods to a more modern approach to the needs of students, through certain courses it trains them on what globalization is and how it affects the environment, but evaluating these statements with an average rating, it can be concluded that there is room for improvement. It is interesting that the students pointed out that lectures, field teaching, professional practice and the Erasmus program can contribute

the most to education about globalization. As a proposal for improvement, they emphasized the introduction of additional workshops on the impact of globalization and solving certain contemporary issues.

III.1. Limitations of research

Regarding the limitations of the research for the purposes of writing this paper, it can be said that the main disadvantage of this research is precisely the target group, which does not provide a complete picture of young people and the impact of globalization processes on their growth and development. One of the limitations when collecting data was certainly the lack of interest of students of a certain study program in completing the questionnaire. Also, which is one of the characteristics of the questionnaire, is that some respondents tended to give dishonest answers which can lead the assessment of the situation and perception in the wrong direction. Although the research tried to get as much information as possible about the attitudes of the students, a countereffect was achieved with the respondents due to the amount of questions in the questionnaire. Furthermore, it can be pointed out that one of the limitations is the awareness of young people about the presence of globalization processes, as well as the fact that they have heard about globalization, but have not analyzed it, they are not informed and educated about what globalization is, how it affects all spheres of life and what it implies.

III.2. Recommendations for future research

Based on the disadvantage of the research, certain recommendations can be made to improve future analyses. One of them is to expand the group of respondents in order to get a more comprehensive picture of students' perception of the globalization process. It would be interesting to observe the results of young people who are not influenced (in the educational sense) by information about globalization. This could include young people who attend primary and secondary school, who have completed their education and the like. Furthermore, the focus of the analysis and examination of respondents' perception of globalization should be delimited according to certain areas of interest, rather than looking at the global, which points to a lack of attention of the respondents. Also, a recommendation for further research can be the introduction of additional workshops and trainings on globalization and its aspects, and upon the completion of the same, the implementation of an analysis in such a way as to examine the participants of the workshops and trainings. This could confirm their greater awareness of the importance of considering all globalization processes.

CONCLUSIONS

Globalization has brought with it negative and positive effects, many scientists (Lazibat & Kolaković, 2004; Bedeković, 2010; Friedman, 2012; Matovinović, 2021; and others) are trying to comprehend how its negative effects can be reduced and the positive ones increased. With the arrival of globalization comes unlimited amount of information which is available to everyone. The task of educational institutions is to encourage young people through their work and transfer of knowledge to think about the steps to create a community which thinks about its own needs and the needs of future generations (Kadlec & Leko Šimić, 2021). Although today's students can easily get information and find out information about everything, it is

important to encourage discussions to include those who do not think enough about how much one step affects the world. The aim of this paper was to obtain data on the knowledge of students of Virovitica University of Applied Sciences about globalization and its components.

Students' perception of the concept of globalization is that globalization is a process which brings many benefits (Lazibat &Kolaković, 2004) and facilitates a better standard of living and quality of life, as well as progress in science and education. Unfortunately, globalization processes affect all people with increased environmental pollution and a lack of socialization (Lazibat &Kolaković, 2004). The students' perception is not surprising since all spheres of human activity confirm the advantages and disadvantages that globalization brings. It is common knowledge that technological progress (Matovinović, 2021) facilitates the implementation of certain activities and enables a faster and easier flow of information as well as other resources. The research also showed that the opinion of the respondents is that information, literature and facilitated methods of learning and knowledge flow are more accessible to students through digitalization and information and communication achievements, and financial resources are more available for acquiring knowledge and realizing personal projects. This is precisely one of the great advantages of globalization, because through its spectrum it provides support in the growth and development of student skills and knowledge. Higher education institutions are also on this track, for they strive to enable the acquisition of additional knowledge and skills so that young people can be educated, informed and ready to react to changes in the environment. The availability of a large amount of information (Matovinović, 2021) allows students to develop according to their own interests, but also makes it difficult for them to judge good and bad information and broadcast intentions. Given that the students pointed out that over 80% of information is sought on the Internet and social networks, as well as the fact that most young people communicate virtually, it can be said that they are enabled to acquire intercultural competences and communication skills, which can be good if the foundations are laid through education or information within certain social communities.

Based on the obtained data, it can be seen that globalization has greatly influenced the way the teaching process is carried out and the way of obtaining additional knowledge. The data shows how quickly information is obtained and how a student today will rather use technology to get information than any other resource. The respondents pointed out that because of technology, they have changed the way they learn, which is indicative of the need to adjust teaching which will include more technological aids. Also, although globalization has expanded the possibilities of studying outside the home country, students still do not use enough mobility and do not show interest in education at other educational institutions, the reason for this can be assumed to be financial, as well as a consequence of fear of a foreign language.

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THE DOCTRINE OF MANIFEST DESTINY AND IT'S REFLECTION IN THE AMERICAN LEGAL SYSTEM

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ABSTRACT

In our modern age the concept of manifest destiny may seem primitive and outdated. The idea that any nation is chosen by God and ordained to enact genocides in order to further any cause is antithetical to Christian values and modern social sensibilities. Even if the doctrine itself is no longer consciously enacted, it still has a lingering shadow over the military and international policy of the United States of America.

KEYWORDS: American military, constitutional law, congressional power, manifest destiny, genocide, American-Mexican war, the American occupation of Haiti, presidential power.

INTRODUCTION

The concept of `manifest destiny` is an old doctrine by which the American colonies have fully and whole-heartedly believed in the divine cause of conquering all the land of the American continent.

The doctrine in itself has led to the massacre of the Indigenous American population and led to various military operations against states like Haiti and Mexico. Even if the operations themselves had mixed results it was all justified by the notion of manifest destiny

The ideological rigidity of such early doctrines has seeped into the minds of lawmakers and important state apparatuses. There is not a single day in the life of the Iraqi civilian, the Haitian citizen or the average human in which the American war machine has not shaped in some form or shape.

This article sets to scratch the surface of this malignant and pestilent thought pattern that has led to countless deaths and the destabilisation of numerous countries and will attempt to offer a holistic answer as to why such atrocities may occur and to who's benefit they serve.

1.The origin of the doctrine

In the words of philosopher Slavoj Žižek "True, Slobodan Milošević "manipulated" nationalist passions — but it was the poets who delivered him the stuff that lent itself to manipulation. They — the sincere poets, not the corrupted politicians — were at the origin of it all, when, back in the seventies and early eighties, they started to sow the seeds of aggressive nationalism not only in Serbia, but also in other ex-Yugoslav republics."[1]

Further in the article, psychoanalytical concepts are used in order to describe the close link between art and ultra-nationalistic zeal in order to justify atrocities. To this element

[1]https://www.poetryfoundation.org/poetrymagazine/articles/70096/the-poetic-torture-house-of-language.

religion must be added as an elemental catalyst to any genocidal event of history. A cursory look at the Massacre of St. Bartholomew's Day[2], even if there were clear political reasons behind the killing of Huguenots the religious divide was used as a motor for slaughter. Another aspect of the massacre was the permission granted by political leaders, in our specific case Catherine de 'Medici wanted to assert power and help her son, Charlesthe IX, maintain his position both as a catholic leader and as the king of France.

Looking at the aforementioned anecdotes we can observe 3 common elements of any genocidal event in history, the political interest of people who wish to obtain or maintain power, the religious zeal as motor to move the people and the art in order to present what most would call an atrocity as a divine occurrence by which men only enact a divine will, as it was written before even time itself.

When analysing the concept of manifest destiny, we must not only skim through the facts and occurrences in a cold measured way. The context and results of all the factors leading up to the colonisation of the entire continent and the eradication of Native Americans must be taken into consideration in order to grasp not only the final results but also the aftereffect which we experience still. The aforementioned "Litmus test" will be applied in context in order to determine in a decisive manner if the doctrine of manifest destiny was a call to genocide against Indigenous American populations.

1.1. *"The origins of the Manifest Destiny"*

The term itself was coined by journalist **John Louis O'Sullivan** who wrote that "our manifest destiny to overspread and to possess the whole of the continent which Providence has given us for the development of the great experiment of liberty and federated self-government entrusted to us."[3] This is regularly coined by historians as the moment where the previously nebulous, and until the 1830's sporadic but constant conflicts with American Natives, has received a clear name with a clear statement of intention. Prior to the article written by O'Sullivan there were stewing ideological components that have contributed to the final form, primarily, the sermon as given by **John Winthrop**, a group leader aboard the ship ***Arabella***, in which he stated that the "For wee must consider that we shall be as a city upon a hill. The eyes of all people are upon us.[4]" and that the English puritans that were traveling to colonise America have to "Be fruitful, and multiply, and replenish the earth, and subdue it.[5]".

In geopolitical terms, after the American revolution the newly formed American government had to solve the issue of the Indians "occupying" land that could be used by the Americans. As formerly stated, the moto the American colonizers have come to the continent with the explicit intention to create a new society. Before the presidency of Andrew Jackson, he was a general that led military campaigns against Indian tribes, most notably against the Creek Indian Tribe. The result of the battle was ultimately a treaty by which the Creek were

[2] https://www.britannica.com/event/Massacre-of-Saint-Bartholomews-Day.
[3] John O'Sullivan, "Annexation," The United States Magazine and Democratic Review, Volume 17 (New York: 1845), 5-6, 9-10.
[4] https://americanexperience.si.edu/wp-content/uploads/2014/08/Manifest-Destiny-and-U.S-Westward-Expansion__.pdf
[5] https://americanexperience.si.edu/wp-content/uploads/2014/08/Manifest-Destiny-and-U.S-Westward-Expansion__.pdf

forced to surrender 20 million acres of land towards America[6]. This was not an insular occurrrence, it was one of 11 major treaties in which Indians have renounced ancestral land.

We can perceive that even before manifest destiny there was a clear interest and intention to create a new nation and that the cost of lives was not taken into consideration when the purpose was being chased.

Even if there were violent conflicts between Indians and the American government the early governmental apparatus was not keen to fully engage in an all-out war against all the tribes. The initial solution was to offer sums of money to the tribes in order for them to relocate, to that sum of money the promise of "American protection"[7].

After it's incubation, the doctrine in itself in a clearly defined ideal and *modus operandi* incapsulating clear purposes, social support, laws that enforce any necessary action, artistry and journalism to embolden and romanticise any actions taken.

1.2. The political drive:

There is as aforementioned a clear political goal for the removal of the Indians, primarily, to obtain land for the colonisers to inhabit. This initial clear and almost reasonable demand was met with aggression but to a lesser extent. There were wars between the various Indian tribes both before and after the American revolution. After the election of Andrew Jackson as the 7th American president in the year 1829 he championed the eradication of Indians both through legal means that have manifested in the Indian Removal Act of 1830[8] and through fully infringing the law as it suited the American government[9].

Both types of antithetical actions can be observed in the treatment of the Cherokee tribe, they were displaced based on the law and received a "reimbursement". In their fight to remain on the land that they have called home for generations they have made an appeal to the legal system which was initially met with disapproval. In the case of Cherokee Nation v. Georgia from 1831 the Supreme Court of the state of Georgia has denied the sovereign status of the Cherokee nation. Ulterior to that, the decision in the case of Worcester v. Georgia from 1832 the US Supreme Court has decided that the Cherokee tribe is a sovereign and independent nation, hence, no state or federal government does not have the right to infringe upon its territory.

1.3. The religious drive:

The religious element was present since long before the actual start of the colonisation. The puritans, as the first American settlers were called, had a clear purpose. To build a new nation that can allow them to live a life that is pious as they saw fit according to

[6] https://history.state.gov/milestones/1830-1860/indian-treaties

[7] https://history.state.gov/milestones/1830-1860/indian-treaties „From a legal standpoint, the United States Constitution empowered Congress to "regulate commerce with foreign nations, and among the several States, and with the Indian tribes." In early treaties negotiated between the federal government and the Indian tribes, the latter typically acknowledged themselves "to be under the protection of the United States of America, and of no other sovereign whosoever."

[8] https://www.britannica.com/topic/Indian-Removal-Act. Due to the Indian Removal Act the infamous trail of tears occurred, a journey of the Cherokee to their new, chosen by the coloniser, land. During the journey a fourth of the Cherokee tribe has died.

[9] https://www.oregon.gov/ode/students-and-family/equity/NativeAmericanEducation/Documents/SB13%20Curriculum/SC%20Summary%207_Cherokee%20Nation%20v%20Georgia.pdf

protestant values.The propaganda promoted by the earliest American settlers has engrained the narrative of Indians being uncivilised and savage used only as pawns in political games[10].

The religious antagonism has slowly subsided but it still has effects. It took the American government until 1934 to fully instruct the Bureau of Indian Affairs[11] to not mingle with the religious freedom of the Indian tribes. Even if in a post-independence war America the constitution grants all people that are citizens the freedom to exercise any religious practices[12] the US government did interfere in the religious practices of Indians and used the differences between the Christian majority and the mischaracterised Indian population.

1.4. The crimson brush

The last element to this veritable Molotov cocktail is the art, is the propaganda previously presented. By the way of the brush and the pen the genocide is finally no longer an atrocity but a divine call. In the realm of art, we can mainly observe the paintings and sketches of the period, from the divinity invoked by paintings such as *American Progress* by *John Gast* or *The Apotheosis of Washington* by *Constantino Brumidi* sitting next to the malicious and propagandistic paintings of N. Currier or JohnVanderlyn, who both painted the murder of Jane McCrea by Indians at almost half a century from each other.

Such profound declarations in a form of art that is directly influencing to any consumer of it contributes to the creation of a subconscious bias against every person identified as an American Indian.

After this analysis we can satisfyingly conclude that the doctrine of *manifest destiny* is a genocidal call to action. It's an evil and primitive history that fulfils the criteria we have presented: the political interest, the religious zeal and the artistic protection.

2. The direct influence of the doctrine in the adoption of laws.

2.1. The procedural question regarding the powers to start an armed conflict

Now that we have defined what drives a genocidal event and can conclusively declare that the doctrine of *manifest destiny* fits the bill to a sinister perfection, we are left to observe how such a horrendous doctrine can mould the legislator's mind and spirit in such manner that it remains alive in some form or another even after more than 2 centuries.

The closest event that is directly linked to the doctrine of the manifest destiny, except for the wars that have led to the extension of many Indians, was the American-Mexican war that happened from 1846 to1848. The war itself was directly linked to the doctrine as it was a part of the American expansion[13].

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[10] Cole Smith "*Anti-Indian Propaganda's Role in Uniting the Thirteen Colonies and Laying the Groundwork for American Identity Formation" 2022- Digital Release for Minds, University of Wisconsin, page 17*

[11] https://pluralism.org/religious-freedom-for-native-americans

[12] According to the first article of the American Constitution: " Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

[13] https://www.britannica.com/event/Mexican-American-War

The war itself happened due to the annexation of Texas by the United States. Then president James K. Polk has declared war after failed negotiations in regards to the Texan territory and, congress passed a resolution of war[14] in order for the fighting to start.

Here we find one of the long-standing legal conundrum of our journey, the actual state institution that has the power to declare war. Even if the constitution is clear in regards to congress having the power to declare war and to declare resolutions, but, historically from Andrew Jackson to Richard Nixon and George Bush Jr. the president was the person that led the beginning of any such proceedings. It reached to the point where the American Congress had to passthe War Powers Resolution in the year 1973. The act itself states that "Requires that the President shall in every possible instance consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement is clearly indicated by the circumstances.".

This is quite a clear-cut statement which in theory should have offered a direct solution to an issue that resided in the legal system since the inception of the US. However, reality can be a cruel mistress, the act in itself has not stopped all the presidents that led the nation after the year 1937 to start or stop any military action.

This issue in itself is unclear in the eyes of constitutional scholars[15], even if most scholars agree with the originalist perspective of the constitution some tend to disagree and history itself may agree with the later. Even if the status of the president as the Chief in Command of the US military forces grants him some level of military power it does not, technically, grant him free hand to start a war by its own volition. In the infamous case of Rasul v. Bush from 2004 the Supreme Court had to decide the limits of such powers[16]. The response of the presidency as an institution was to permit the formation of military tribunals in order for such cases to be solved.

Even if the court has decided that they do have the power to offer habeas relief in the aforementioned case and in the subsequent case of Hamdan v. Rumsfeld[17] decided that even the solution offered by the presidency is not a fully valid or even functional in a strictly procedural manner the *Detainee Treatment Act* of 2008 was passed. By power of this act no court in the US has the power to accept a writ of habeas corpus from an inmate detained in Guantanamo Bay.

[14] Article I, Section 8, Clause 11 of the U.S. Constitution

[15] https://constitutioncenter.org/the-constitution/articles/article-i/clauses/753

[16] RASUL et al. v. BUSH, PRESIDENT OF THE UNITED STATES, et al. This specific case was brought before the Supreme Court in order for it to solve the issue of *habeas corpus*, more specifically, the issue of detainees from the Afghan region detained in Guantanamo Bay Prison in Cuba. The supreme court overruled the decision taken by the Court of Appeal, deciding that the courts are entitled to solve issues of habeas relief in the case of foreign prisoners.

[17] HAMDAN v. RUMSFELD (No. 05-184) was yet another case regarding the legality of the detentions that occurred in the Guantanamo Bay Prison. The Supreme Court of the United States has decided that the presidency does not have the power to impose the formation of military tribunals in order to resolve issues of human rights or *habeas corpus.* The Court held that it would be virtually impossible and outside of the decisional power of either institution to solve such situations. In his opinion Judge Stevens pointed out the fact that a client could not, for example, be properly represented by the lawyer since it is a military court with specific information that it's not allowed to disclose to civilians.

In the case of Boumediene v. Bush[18] decided in 2008 right after the adoption of the aforementioned act the Supreme Court has still kept the previously expressed position, the prisoners detained in Guantanamo Bay have the right to question the legality of their detainment as they are ultimately under the jurisdiction of the American Constitution.

Again, history has the tendency to repeat itself. Just as Andrew Jackson refused to listen to the Supreme Court, so did George W. Bush. Neither presidents allowed the law to follow its natural reason and chose to go over rules in order to achieve a purpose.

Ultimately, the question of who can start and end a war in the United States administrative apparatus is fundamentally a moot question. Even if the American constitution has a clear answer the point itself was respected by no president. To some degree all presidents that have started a war have in some way, shape or form ignored the power of congress or the decisions of the Supreme Court in order to carry out military actions.

We cannot offer a fully satisfying answer in regards to the power to declare war, no reading of the constitution can offer a solution that both satisfies the written law and the reality as presented by history.

2.2 American expansionism

This is a particularly tricky topic as it is easy to fall into anti-American sentiments and yet it's the logical step forward regarding the manifestation of destiny. Returning to the American-Mexican war from 1846-1848, the result of that war was the exchange of a vast territory in exchange for the sum of 15 million dollars[19]. The war was called "one of the most unjust ever waged by a stronger against a weaker nation" by general Ulysses S. Grant[20]. By the year 1898 the US has mostly settled regarding its territory, all of the American continent was conquered except Canada[21] and Mexico[22], those countries have managed to resist invasion attempts.

Since the territory of America has settled and is now relatively stable the doctrine of manifest destiny should have slowly fizzled out as it served its purpose but in an insidious manner it kept howling as a wolf on its quest to feed. A notable instance where the doctrine has appeared is the American occupation of Haiti. The occupation itself lasted from the year 1915 until 1934[23]. The occupation was justified as a drive to maintain stability and democracy to the nation, realistically it was a matter of geo-political interest. Haiti has gained independence in the year 1804 and since then all major political power had either economic interests or wanted to outright invade the territory[24].

[18] Boumediene v. Bush, 553 U.S. 723 (2008) was the case in which SCOTUS maintained the position that the detainees of Guantanamo Bay have the right to come forward to the US courts in order to question the legality of their detainment

[19] https://coha.org/175-years-of-border-invasions-the-anniversary-of-the-u-s-war-on-mexico-and-the-roots-of-northward-migration/

[20] https://www.britannica.com/event/Mexican-American-War/Invasion-and-war

[21] Canada fought the US during the 1812 war

[22] As previously stated, the American-Mexican war was brutal and according to historical estimates led to Mexico renouncing almost half of all its territory.

[23] https://history.state.gov/milestones/1914-1920/haiti

[24] https://www.nytimes.com/2022/05/20/world/americas/haiti-history-colonized-france.html

The American Navy took 500.000 dollars from the Haitian National Bankand imposed the creation of the Haitian Gendarmerie[25] as an institution to keep a level of control and involvement. In 1917 the Gendarmerie. The national assembly of Haiti was uncooperative in regards to allowing foreign nationals to purchase or obtain land, this was a precaution passed in the constitution of 1805[26] in order to forbid any foreign invader from claiming the land that Haitians had fought for. What the US Navy has done is virtually dissolve the Haitian Parliament in order to allow foreigners to purchase land and intrude on the business of other countries, in the same year the occupation was prolonged for 20 years by modifying the treaty.

The occupation ended in the year 1934 and yet there is a question left, why would the US involve itself in a foreign nation without any express legal basis? The reality is that the doctrine of manifest destiny has mutated from the genocidal, religious quest to eradicate an indigenous population for the settlors to have new land to a purely economic and political action in order to bring a benefit for the US. There was never the intention to eliminate the people of Haiti, but there was a clear interest in economically exploiting the population. Even by the analysis of the Library of Congress the occupation itself failed in implementing democracy[27], it did succeed in stopping other international forces imposing an occupation.

The current poverty plaguing Haiti at the moment can be directly linked to the French involvement in the financial affairs of the country and the American occupation[28]. In the case of the occupation, the effects can be seen by the lack of direction and interest in the native population. Going back to the CBS report on the occupation we observe that even if the US has built infrastructure it did not offer any resources regarding the self-governance or independent organisation of the Haitians. The primary goal was to obtain profit and deter other countries from trying to do the same. After the US Navy became the de facto ruler of Haiti the interest in imposing democratic elections dissipated as any democratic election would have been clearly anti-American[29].

CONCLUSIONS

After analysing the origin, the direct effect and the aftershock of the doctrine of manifest destiny we can observe that what started as a truly genocidal drive has evolved into a drive to expand economic and political influence to all corners of the earth. The article itself stops its analysis at the occupation of Haiti, but, the expansionist drive has continued in a similar fashion. The American expansion is today seen in the recent wars in Afghanistan and Iraq which had similar drives as the occupation of Haiti, in the military bases almost ominously present in many countries and in the eternal justification of bringing or protecting democracy on earth.

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[25] "CRS Report for Congress, The U.S. Occupation of Haiti, 1915-1934"-Richard A. Best, Jr. published in 1994 through the Library of Congress. Page 2

[26] Article 12 of the Haitian Constitution stated that "No whiteman of whatever nation he may be, shall put his foot on this territory with the title of master or proprietor, neither shall he in future acquire any property therein."

[27] "CRS Report for Congress, The U.S. Occupation of Haiti, 1915-1934"-Richard A. Best, Jr. published in 1994 through the Library of Congress. Page 5

[28] https://www.nytimes.com/2022/05/20/world/americas/haiti-history-colonized-france.html

[29] "CRS Report for Congress, The U.S. Occupation of Haiti, 1915-1934"-Richard A. Best, Jr. published in 1994 throughtheLibrary of Congress. Page 5

In the words of president Dwight D. Eisenhower: "This conjunction of an immense military establishment and a large arms industry is new in the American experience. . . .Yet we must not fail to comprehend its grave implications. . . . In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist[30]." The military industrial complex was the child of the manifest destiny doctrine, it was the direct result of the expansionist urge of the early settlers that never has been addressed by the US citizens in a collective capacity, and never fully abandoned the American subconscious.

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INTERVENTION POLICIES PROPOSED BY THE EUROPEAN UNION TO COMBAT EARLY SCHOOL LEAVING AMONG MIGRANT PUPILS

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ABSTRACT

Currently, in Europe, many young people drop out of school or training before completing secondary education. According to findings from some international research, the average dropout rate is twice as high for immigrant pupils as for native students. In fact, on this front, what emerges from the analysis of the educational achievements of pupils of immigrant origin is that, in most European countries, the educational itinerary of these pupils is characterized by a significant incidence of dropouts, dropouts and delays. In this regard, over the past decades, European institutions have drafted several documents aimed at urging member states to promote, through schools and education, the effective school and social integration of the many pupils of immigrant origin living in member countries. Our examination intends to focus on those documents that offer a fairly comprehensive picture of the positions taken by the European Union not only with regard to the school failure of immigrant pupils, but also with respect to the equally fundamental need to create school paths of integration from early childhood; to promote organic and effective forms of interaction between school and family; and to design specific Courses for learning the national language aimed also at the parents of immigrant pupils.

KEYWORDS: European Union; schools; pupils with migrant backgrounds; school dropouts.

1 INTRODUCTION

Among the various problematic issues noted by both European political institutions and member countries, that of early school leaving (dropouts, delays, repetition, evasion, etc.) is undoubtedly one of the most widespread critical issues.

In order to counter this phenomenon and enhance the current level of pupils' knowledge, in June 2022, the European Commission published a *Proposal for a Council Recommendation on Pathways to School Success* (European Commission, 2022).

Essentially, this proposal contains a set of concrete policy actions to combat school dropout and low student achievement in basic skills (reading, math, and science). The primary purpose is to offer responses to the needs of learners, teachers and trainers, schools and education systems. The Proposal also urges that more attention be paid to learners' well-being and educational achievement.

In addition to the problems already known, in recent years, there has also been the problem related to the COVID-19 pandemic, which has caused, in many students, a significant decrease in concentration and learning abilities.

Currently, more than 3.2 million European students, aged 18 to 24, drop out of education and training early, and only 84.3 percent of young people aged 20 to 24 have completed upper secondary education.

In this regard, it is worth noting that although even before the pandemic, one in five students showed poor skills in reading, math or science (OECD, 2019), today, the results are more worrying and the effects of the pandemic will be visible for a long time to come.

The data show that the students most at risk of dropping out of school are those from socioeconomically disadvantaged backgrounds, among them, students from immigrant backgrounds are undoubtedly the most disadvantaged.

In general, decreasing the percentage of underachieving pupils in basic skills and combating early dropout from education and training are the key objectives of European cooperation in education and training.

In this regard, in 2020, the European Commission issued a *Communication on Making a European Education Area a Reality by 2025* that announced the flagship project Pathways to School Success aimed at supporting the inclusive dimension of education and implementing essential measures for recovery and resilience. That communication stated: people-centered policies are more essential than ever. Early childhood education and care, schools, vocational education and training (VET), higher education, research, adult education, and nonformal learning play a key role. Such policies must develop a holistic approach to education and training and recognize its intrinsic value by providing a comprehensive basis for ensuring maximum contribution and participation in society" (European Commission, 2020).

This objective was also shared by the *Conference on the Future of Europe* in its final report of May 2022, in which it called for the creation of an inclusive European educational space, within which all citizens have equal accessibility to quality education. The project on pathways to school success aims to reduce the share of underachievement in basic skills and raise the level of secondary education (Conference on the Future of Europe, 2022).

2 Dimensions and characteristics of the phenomenon of school dropout of immigrant pupils in Europe

According to findings from some international research (Council of Europe, 2022), the disparity in educational achievement between immigrant and native students is due to the fact that the educational attainment of most immigrant pupils tends to be considerably lower than that of their native peers. As a consequence, this results in a higher percentage of dropout cases, lower levels of qualifications and a smaller proportion of young people entering higher education.

In particular, according to the European Commission, "Learners born outside the reporting country are at an even greater risk of dropping out of education and training early (22.4 %), particularly if the country is outside the EU27 (23.2 %). The probability of early dropout from education and training is on average higher for young men born outside the EU27 (25.2 %) than for young women born outside the EU27 (20.9 %)" (European Commission, 2022). Compared to their native peers, moreover, foreign pupils are less schooled in the preschool and upper secondary education segments.

With regard to preschool attendance, it is useful to recall how important it is for all children and especially those from disadvantaged backgrounds to participate in early childhood education and care activities. Specifically, such attendance "Contributes to preventing the formation of early skill gaps and is therefore a key tool for combating inequality and

educational poverty. Early childhood education and care services should be part of an integrated package of rights-based policy measures for children to improve child outcomes and break intergenerational vicious cycles of social disadvantage" (Council of Europe, 2019, p. 1). Undoubtedly, participation in early childhood education and care activities can be an indispensable tool to ensure "educational equity for children from disadvantaged backgrounds, such as certain migrant or minority groups (for example the Rom) and refugee children, children with special educational needs, including disabilities, children in alternative care facilities and street children, children of parents in detention, and children in families at high risk of poverty and social exclusion, such as single-parent or large families." Refugee children, due to their vulnerable situation, need strengthened support because, "Poverty, physical and emotional stressors, trauma, and lack of language skills can hinder their future educational prospects and successful integration into a new society." Preschool attendance can help decrease these risk factors (Council of Europe, 2019, p. 2).

With regard to upper secondary schooling, however, it is worth noting that immigrant students are overrepresented in professional educational institutions, which do not always provide adequate preparation for entering university studies.

Indubitably, there are many factors that contribute to the educational disadvantage of pupils from a migrant background.

Some are related to personal situation: consider, for example, the unfavorable socio-economic context from which they often come; the loss of value of the knowledge they have accumulated in their country of origin ("particularly their mother language, but also knowledge regarding the functioning of institutions"); the lack of or reduced recognition of previously acquired qualifications; the low expectations of families and communities; and, finally, the absence of recognized role models to which they can refer (European Commission, 2008, p. 8). As far as language is concerned, we are well aware of how good knowledge of the language of the host country is an essential factor for effective integration and successful schooling. This, in fact, in addition to representing a valid means of communication in everyday life is characterized as an important resource for the purposes of training and integration into the labor market. Students whose mother language is different from that in which instruction is given should receive appropriate additional support according to their needs, possibly outside school hours and avoiding any kind of separation or segregation. Skills in their mother language should be enhanced and used as a resource for the whole class.

Often, parents also need language support; in this regard, schools could work in partnership, for example with ONG, to ensure, especially for recently arrived migrants, that they learn the language of the host country and other forms of support, both inside and outside the school, in collaboration with local authorities and services (European Commission, 2022).

Fundamental to successful school achievement turn out to be the educational measures and strategies adopted by the various school systems. On this front, in fact, many studies have found that even in situations that are similar from a migratory perspective, the outcomes of immigrant pupils from the same countries of origin vary from one Member State to another. Essentially, then, these findings suggest that "the structure of the education system and the way schools and teachers relate to migrant pupils can have a significant impact on achievement" (European Commission, 2008, p. 9).

In the Report *Education and migration strategies for integrating migrant children in European schools and societies*, submitted to the European Commission by the NESSE network of experts in 2008, it was stated that the school in the host country must first and foremost promote the school integration of these pupils. In this regard, the Report highlighted how the absence or distorted presentation of migrants in school curricula, textbooks, and school life in general can negatively affect the academic success of these pupils, damage their self-image and self-esteem.

Another factor that can seriously undermine school success is the high concentration of immigrant pupils in the same classes or schools. Often, in fact, these are "concentrated in schools that are effectively isolated from the rest of the system and whose quality tends to decline rapidly, as evidenced, for example, by the high rate of teacher turnover." This tendency, present in many European systems, produces forced segregation that, in many cases, leads to lower-than-normal educational achievement and inhibits "the development of social integration, friendships and social bonds between migrant children and their peers" (NESSE network of experts, 2008, p. 8).

On this front, it is worth noting that, often too, "Systems of grouping or targeting (tracking) pupils according to their aptitudes also have the effect of directing a comparatively high proportion of immigrant children toward courses of study that require lower aptitudes, which is also likely to be reflected in lower initial levels of academic achievement and/or language ability" (European Commission, 2008, pp. 9-10). In contrast, however, several studies have found that many foreign pupils perform better when "they are in a class with children who master the host country's language and are highly motivated academically" (European Commission, 2008, p. 10).

School, as the first context of socialization outside the family environment, plays a very important role in the integration of migrant pupils, so that, "if, instead of helping to mitigate the effects of the socioeconomic origin of migrant families, schools reject, discriminate or segregate, the integration process is unlikely to be successful, and the cost of this failure will fall on society as a whole" (European Economic and Social Committee, 2009).

In order to foster the integration process and school success of immigrant pupils, it is necessary, first and foremost, to avoid the segregation of these pupils in schools attended mainly or exclusively by immigrant children. In fact, the school must not become a ghetto, but rather must reflect the social composition of the community and must be mindful that such segregation is usually flanked by or derived from residential segregation.

In the document *Education and Training 2020. School policy A comprehensive and integrated school approach in the fight against school dropout. Strategic Messages* emphasizes the need to make school a place of exchange and comparison for all students, an environment willing to consider diversity as a resource, to maximize their potential and to adapt to their learning needs (European Commission, 2015, p. 12).

In general, with regard to "Student Support", the Working Group that drafted this document argues that "School policy and mission should place a strong emphasis on dropout prevention. At the emergence of learning difficulties and the first symptoms of academic distress, schools should respond quickly with targeted interventions within a support system aimed at the most at-risk pupils". In this regard, school programs should be more engaging and challenging and didactic approaches more adequate to the needs of pupils. In this sense, while

maintaining high expectations for all pupils, programs should provide for personalized forms of teaching and learning and different evaluation styles. Emphasis should be placed on the importance of formative assessment to facilitate the acquisition of knowledge and the development of skills and competencies by bringing out each child's gifts to the fullest while maintaining the quality of curriculum content. Programs should "represent the real life and diversity of society, defending continuity with subsequent education and training cycles or alternative training paths. They should allow for more learner-centered didactic approaches and more collaborative teaching and learning methods. There should also be opportunities for the recognition of nonformal and informal learning".

Regarding teachers, the paper recognizes that in light of new challenges, their role is becoming increasingly complex; therefore, it advocates the need to provide them with new skills and competencies not only in initial training, but also during their professional development. In this sense, we also find an interesting reference to the need to equip teachers with intercultural competencies; in fact, in this regard, it states: "Teachers' knowledge, skills, and abilities in understanding diversity in all its forms, intercultural education, multilingualism, and teaching non-native learners should be part of initial teacher education and reinforced through continuing professional development. The teaching profession should be further promoted, in order to attract a large number of candidates representing the whole society and to be able to select the best, while remaining true to the school's core values and objectives that society and stakeholders share and endorse" (European Commission, 2015, p. 15).

Also in the *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Making a European Area of Education a Reality by 2025*, the need to support teachers in dealing with linguistic and cultural differences is reiterated with the aim of achieving "improved educational outcomes for pupils and young people from a migrant background" (European Commission, 2020, p. 7).

In this regard, from the 2019 OCSE *International Teaching and Learning* Survey found that many teachers express the need to develop their skills to teach students with special needs, to use digital technologies, and to teach in multilingual and multicultural classrooms (OECD, 2019, p. 13).

In its Communication, in order to promote quality didactic approaches aimed at meeting students' needs, the Commission advocated the importance of fostering international mobility of students, teachers and teacher educators (European Commission, 2020, p. 11).

With regard to parental access to information, the paper's drafters propose to ensure that pupils and their parents, especially those from immigrant backgrounds, "the opportunity to access clear information about the country's education system and available educational options; they should also be given the opportunity to understand the implications of these choices for future studies and choices. Clear information about available guidance, support and assistance services should be provided to pupils and their parents". Essentially, to increase trust and promote mutual understanding, school systems should not only make the usual channels of communication between schools and families more effective, but also create new ones. In particular, to foster relations with immigrant families, the paper proposes involving intercultural mediators, migrant associations, ONG and other community-based organizations.

In such a context, "Cultural events, festivals, and activities on the ground can help build cultural bridges to reach parents experiencing marginalized situations and from ethnic minorities" (European Commission, 2015, p. 17).

Indubitably, the biggest strategic challenge at the European level should be to create an inclusive school, aimed at ensuring that all pupils, including those from migrant backgrounds, have the support they need for good academic performance. As for immigrant pupils, the challenge of integration cannot be addressed without investigating their actual existential, social and economic conditions. Students from immigrant backgrounds, face a series of problems that inevitably end up negatively influencing their course of study. In this regard, think of the difficulties related to the migration process (having to leave one's country of origin, the need to quickly learn the language in order to be able to communicate, adapting to the rules and customs of new schools etc.); problems related to the precarious socio-economic conditions of families and often marginalization; and finally, with regard to schools, the lack of adequate supports for their needs, teachers who are not sufficiently prepared to deal with diversity in the classroom and to deal with the families of these students (European Commission/EACEA/Eurydice, 2019, p. 9).

In this sense, the European Union, on different occasions, has urged member states to fulfill their integration commitment to immigrants and to ensure that all children and young people, regardless of their social position, have access to the education system and succeed in school. To this end, the various European countries were urged to adopt a school policy aimed at ensuring access to qualified and free schools for all pupils; respect for ethnic, socio-cultural, economic and gender differences; and the characteristics of individual immigrant communities ("characteristics to be taken into account in the design of programs with the objective of intercultural openness of educational institutions"); continuing teacher formation and support of qualified staff regarding knowledge of the language and culture of the communities in the school; preservation and promotion of multilingualism; and implementation of a tutoring project in which older and more experienced students help pupils who have more difficulty in learning various disciplines; the realization of "a platform for dialogue between immigrant and native children, as a tool capable of eliminating preconceptions and strengthening integration"; the institution of adult education courses aimed at people from a migrant background; the promotion of intercultural competencies and the allocation of scholarships and other financial aid to reduce economic disadvantages; and finally, the revision "of school materials so that immigrants are not presented in a negative light" (European Economic and Social Committee, 2009, p. 85).

In order to promote the effective integration of immigrants in all European countries, member States should adopt the "open method of coordination and, in this context, encourage the implementation of comparative studies and research programs that help to collect and disseminate good practices" and share and support innovative initiatives aimed at highlighting issues emerging at the European level and sometimes difficult to recognize on a solely national scale.

In this regard, one cannot fail to note that despite the innumerable indications offered by European Institutions over the past decades, member States, have not always been able or willing to take up these proposals to transform schools into inclusive places. Even today, in many European countries, national school policies focus mainly on the language skills of newly

arrived immigrants, without looking at the psychological and emotional aspects, despite their effects on school performance.

3 Proposals from European Institutions for combating the phenomenon of migrant pupils dropping out of school

In consideration of the observation that many of the proposals put forward in recent decades by European Institutions regarding the school dropout of immigrant pupils tend to repeat similar concepts or, at any rate, are included within directives that deal with the phenomenon of school failure in Europe at a general level, it was preferred to pay attention to a few directives that make more direct and precise explication of the issues that are the subject of our discussion.

In particular, our examination intends to focus on a number of documents that offer a fairly comprehensive picture of the positions taken by the European Union over the years, not only with respect to the school failure of immigrant pupils, but also with respect to the equally fundamental need to promote, through schools and education, the effective social integration of the many immigrants living in member countries.

Particularly interesting in this regard are the *Council of Europe Conclusions of November 26, 2009 on the education of children from a migrant background.* In that document, the Council of Europe, in addition to emphasizing that "providing children from a migrant background with better opportunities for educational success can reduce marginalization, exclusion and alienation", urged member states to develop specific measures for language learning, since, "mastering the official language (or one of the official languages) of the host country is an essential condition for educational success and is also indispensable for social and professional integration" (Council of Europe, 2009).

The Council of Europe also proposed intervening with targeted actions such as "intensive language instruction for newly immigrant pupils, additional support for those with difficulties, and special courses for all teachers to prepare them to teach children whose native language is different from the language of instruction". In addition, to compensate for educational disadvantage and the negative results of poor integration, the Council of Europe suggested the use of targeted supports, such as providing more educational resources for schools located in disadvantaged areas and more personalized instruction, as well as "providing additional educational support , for example in the form of mentoring and tutoring, guidance to both pupils and their parents about the opportunities available to them within the education system, or study and homework centers organized after school hours in cooperation with parent and community associations of origin".

On this front, moreover, the Council of Europe advocated the need to intervene early and with targeted measures from the arrival of school-age children in the host country, to provide long-term programs to support language learning, and finally to revise teaching methods, teaching materials and curricula to adapt them to the needs of all pupils, regardless of their origin (Council of Europe, 2009, p. 5). It also exhorted member states to identify the main factors leading to school dropout and to observe the characteristics of the phenomenon at the national, regional and local levels so as to lay the groundwork for the adoption of specific and functional, evidence-based measures.

On a more general level – but equally important for the purposes of our examination, since it addressed, among other things, the problem of school segregation of immigrant pupils and emphasized the need to value linguistic and cultural differences, suggesting sound intervention policies to prevent immigrant pupils from dropping out of school – was *the Council of Europe's Recommendation of June 28, 2011 on policies to reduce school dropout*. In this document, member countries were urged to implement comprehensive strategies focusing on "prevention measures, intervention measures and compensation measures, the latter aimed at bringing those who have dropped out of education back to study" (Council of Europe, 2011, p. 3).

The "preventive measures," according to the Council of Europe's assessments, were intended to prevent the risks of school failure or dropout through optimization of educational provision. In essence, the objective was to create a solid foundation that would enable pupils to develop their potential and integrate into school. Concretely, this was to result in: (a) in the enjoyment of "high quality education and care from early childhood"; (b) in the expansion of educational provision, ensuring more education and training opportunities beyond the age of obligatory schooling; (c) in promoting integration policies aimed at combating segregation and supporting schools located in more disadvantaged areas or with many pupils from weaker socio-economic backgrounds; (d) in enhancing linguistic diversity, for example, by helping "children of different mother tongues to improve their knowledge of the language of instruction and, where appropriate, of the mother tongue, and teachers to teach pupils with different levels of language proficiency"; (e) in encouraging parental participation and cooperation regarding school activities; (f) in increasing "the flexibility and permeability of training pathways (for example, by modularizing courses or alternating school and work)"; (g) in finally making vocational training pathways more qualitative, more attractive and more flexible (Council of Europe, 2011, p. 5).

As for "intervention policies," these, as expressed by the Council of Europe, were to combat school dropout by improving the quality of schooling and educational training, addressing problems early, and providing targeted support to students or groups of students at risk of dropping out.

These policies were to cover all levels of education: from kindergarten through the second cycle of secondary education. Essentially, their objective should have been to foster learning, to increase the quality of teaching and pedagogical innovation, to expand teachers' skills through initial formation and continuing education, and to provide them with the necessary tools to deal with cultural diversity and know how to handle difficult situations.
Specifically, these "intervention policies" should have aimed to: a) "transform schools into learning communities based on a vision of school development shared by all stakeholders, utilize everyone's experience and knowledge, and provide an open, stimulating and pleasant environment that encourages young people to pursue further study or training"; (b) to set up verification activities that would enable early detection of pupils at risk and take all necessary measures to prevent possible problems of distress; (c) to create a network of relationships and cooperation with families and out-of-school educational agencies "such as local communities, organizations representing immigrants or minorities, sports and cultural associations, or organizations of employers and civil society". The Council of Europe, moreover, considered particularly useful and important "the action of mediators belonging to the local community,

capable of facilitating communication and reducing distrust" (Council of Europe, 2011, pp. 5-6). The roster of "intervention policies" also included individual support measures designed to provide pupils with some forms of personalized help such as, for example, mentoring (individually) or tutoring (in small groups); as well as guidance and counseling activities to facilitate school or career choices.

With regard to "compensation policies," which were considered essential for those who dropped out of school early and aimed at giving everyone the opportunity to re-approach study, to attend education and training courses and to acquire the qualifications that could not be obtained previously, the Council of Europe proposed to develop "second chance" education programs. Such programs, were to offer specific learning, corresponding to the needs of school dropouts, and were to be adopted with small groups of students, within a personalized, innovative and adequate age-appropriate education, characterized by flexible training paths. Finally, to the extent possible, such programs were to be "easily accessible and free".

Also as part of "compensation policies," it was proposed to establish remedial courses aimed at facilitating reintegration into the general education system and filling the understandable gaps formed by the early interruption of studies; and to provide for measures to recognize and validate previous training, "including skills acquired through non-formal or informal learning, which boost young people's confidence and self-esteem and facilitate their reintegration into the education system". Such strategies could "motivate students to continue their studies and training and help them identify their talents and make better choices for their professional careers" (Council of Europe, 2011, p. 6).

Essentially, the call made to member states in the *Council Recommendation* of June 28, 2011, to adopt targeted and effective policies and implement a comprehensive strategy focusing on "prevention measures, intervention measures and compensation measures" has been taken up by several countries; in fact, all states, albeit in different ways and at different times, have introduced policies and measures aimed at combating early dropout, or have initiated projects to reduce early dropout rates. With regard more specifically to immigrant students and those from ethnic minorities, many countries, in addition to implementing language support measures, have also begun to put into practice projects aimed at promoting the education and integration of these pupils.

Another document that, in our opinion, is worth examining is the *Recommendation of the Committee of Ministers to Member States on the Importance of Skills in the Language(s) of Schooling for Equity and Quality in Education and for Educational Success* (Council of Europe, 2014). In that document, published in 2014, the Committee of Ministers, while not referring exclusively to the language problems of immigrant pupils, offered some very useful suggestions regarding the need to impart adequate skills "in the language(s) of schooling to all learners". In this regard, starting from the assumption that the right to education cannot be fully exercised if those who are to learn "do not master the linguistic norms proper to school and necessary to have access to knowledge", the Committee of Ministers noted how the lack of language skills greatly conditioned school success and created serious conditions of disadvantage and inequality among pupils. To remedy these problems, the drafters of the document advised the heads of school systems, to work to ensure that all learners, acquire, not only the skills necessary for ordinary communication, but also those of the more "academic"

language used in teaching the various disciplines.

Regarding, more specifically, immigrant pupils, the Committee urged schools to provide for increasing their language skills on the one hand and, on the other, to "recognize that all languages contribute to success in school learning, individual growth and development, preparation for active life and the exercise of citizenship" (Council of Europe, 2014, pp. 6-7). In this regard, it considered particularly useful "the comprehensive conception of language learning developed by the Council of Europe under the name of multilingual and intercultural education" and, among other things, it was suggested "not to isolate artificially the different language experiences of learners and to mobilize their diverse cultural and linguistic resources to address the linguistic challenges they encounter in building knowledge in the various school subjects and to foster their personal growth and fulfillment and their preparation for active life and the exercise of democratic citizenship" (Council of Europe, 2014, p. 11).

In general, the committee of ministers called for greater sensitivity on the part of educational staff in "considering the various languages present in the school as a resource to be exploited", and urged teachers and supervisors to assess periodically, especially at the time of transition from one school level to the next the actual abilities of pupils "to master the forms of the language of schooling required at different school levels, so as to adapt the progression of teaching and arrange adequate forms of support that take into account the specific needs and abilities of learners" (Council of Europe, 2014, p. 8).

On this front, moreover, it was noted that, especially for immigrant pupils and those from disadvantaged socio-cultural backgrounds, language difficulties – especially those related to specific subject areas – often stemmed from the lack "in their environment, of regular exposure to discourse that has the characteristics of the so-called 'academic' language used in teaching". For this reason, the school was called upon to take steps to provide, in general for all pupils, quality and equity in education and, particularly for minority or immigrant language pupils, special attention to their needs and actual language abilities. To make such initiatives truly effective, the measures taken had to follow a linear and, above all, non-isolated path, and consistency had to be maintained "in the progression of learning processes and their complementarity at every stage of the schooling process" (Council of Europe, 2014, p. 11).

In this regard, the Committee of ministers recalled some initiatives implemented by the Council of Europe to promote cooperation at the European level, such as: the organization of exchange forums for those responsible for education in the various member states; the collection and presentation – by the Language Policy Unit, on the Council of Europe's website, specifically on the *Platform of Resources and References for Multilingual and Intercultural Education* –, of the results of positive experiences; assistance to member states, with the Language Policy Unit, in the development of school curricula with the aim of clearly specifying the language skills needed to teach and learn all school subjects; agreement with the European Centre for Modern Languages (ECML) to train trainers of teachers and school administrative staff on the linguistic relevance of every teaching and learning process (Council of Europe, 2014, pp. 8-9).

In this context, the preparation of the 2014 Eurydice and Cedefop *Report on Combating Early Dropout from Education and Training in Europe: Strategies, Policies and Measures should also be included*. That document, in fact, aimed to strengthen the commitment in this area of both the European Commission and member states and was concerned with monitoring

developments regarding the design and implementation of comprehensive, evidence-based strategies for combating early dropout and supporting student learning. Essentially, the 2014 *Report* provided a lot of up-to-date data and broad indications about the most recent policies and measures implemented by European countries to promote the reduction of early dropout from education and training (European Commission/EACEA/Eurydice/Cedefop, 2014).

Such initiatives, in our opinion, are very important, since on the one hand they allow, as mentioned above, for the promotion of real comparison and effective collaboration at the European level, and on the other hand they clearly indicate the desire to raise awareness and empower those who, in various roles, occupy an important role in education and education regarding the need to ensure that all pupils in general and immigrant pupils in particular acquire adequate language skills necessary to achieve good school success.

From this perspective, it is easy to understand how, the oft-reiterated need to create equitable conditions for all students, regardless of their socio-economic status, must come to terms with an awareness of the challenge that proficiency in the language of schooling represents for educational success. In this sense, we can say that in many European countries the provision of language support to immigrant students – related not only to learning the language of the host country, but also to maintaining the language of origin – is already very much present in educational pathways.

Since the beginning of the new millennium, progressive awareness of the problems that early school leaving can cause, not only for those directly affected, but also for society, has led the European Union and member States to commit to reducing the percentage of young people leaving education and training early to below 10% by 2020 (Council of the European Union, 2009).

In 2019, in order to further combat early dropout, E.U. education ministers also saw fit to agree on a framework for consistent and evidence-based policies. For this reason, working groups composed of policymakers and practitioners from across Europe were established with the objective of fostering policy development across member states through mutual learning and the identification of good practices (European Commission, 2019). These working groups, in addition to providing a forum for discussion and exchange of best practices among experts in education from across Europe, provide new ideas that support European education policies. In this regard, building on the results achieved by the Working Group on Schools, *the Council Recommendation on the Promotion of Common Values, Inclusive Education, and the European Dimension in Education* offers a number of pointers on ways in which education can help young people understand and adhere to the common values enshrined in Article 2 of the Treaty on European Union. In particular, it seeks to promote quality education for all students and the European dimension of education by raising children's awareness of the social, cultural, and historical unity and diversity of the Union and its member States, as well as, social cohesion and active citizenship (Council of Europe, 2018, p. 2).

Regarding the issues of our interest, the Recommendation states that "education should promote intercultural competencies, democratic values and respect for fundamental rights, prevent and combat all forms of discrimination and racism, and equip children, youth and adults to interact constructively with their peers from different backgrounds" (Council of Europe, 2018, p. 2).

In 2019, an independent evaluation was published on the implementation of the 2011 *Council Recommendation on policies to reduce early school leaving* (European Commission, 2019). The research covered 37 EU and non-EU countries and examined: a) the situation and trends at the European and national levels, as well as existing projects at the national level for monitoring and evaluating early dropout from education and training; (b) the measures implemented at the national level for prevention, intervention and compensation; (c) data on their validity; (d) an analysis of the role and influence of the 2011 recommendation and the policy tools implemented in terms of "relevance, effectiveness, efficiency and sustainability." Specifically, these are tools and projects related to monitoring and reporting mechanisms within the European Semester; mutual learning and cooperation among member states under the strategic framework for European cooperation in education and training (ET 2020); funding, particularly through Erasmus+ and the European Structural and Investment Funds; and investment in the areas of research and communication.

Overall, the independent evaluation noted the extensive work done at the European level over the years and acknowledged that the 2011 Recommendation "has contributed to reducing the percentage of early leavers from education and training (ELETs) at the EU level (from 13.4 percent in 2011 to 9.7 percent in 2021) and has fostered the advent of changes within educational institutions and policies in the education sector". However, in the face of this progress, early school leaving still remains a difficult challenge for Europe and is still particularly prominent in many countries. Indeed, currently, "more than 3.2 million young people in the EU (aged 18-24) drop out of education and training early, and only 84.3 % (aged 20-24) have completed upper secondary education. There are still significant differences between and within countries, and inequalities between specific population groups persist: the rate of early dropout from education and training is on average 3.5 percentage points higher among young men (11.4 %) than among young women (7.9 %), and clear disadvantages are present for young people born abroad and for learners living in certain remote, rural and peripheral areas. In general, the socioeconomic context of learners has a strong impact on early leavers from education and training" (European Commission, 2022).

In this regard, the evaluation identified a number of shortcomings and situations that require greater efforts, in particular, it found that the measures and actions taken "are often project-based and short-term, address only one issue or do not take into account all dimensions of the education sector, and therefore exert limited impact", it therefore becomes necessary to implement "more systemic approaches at both the school and system levels as current approaches are not yet sufficiently developed"; in many countries, the policy measures taken "are not monitored and evaluated adequately"; collaboration between different policy areas (education and training, health, social services, employment, housing, justice, inclusion of migrants, including refugees, anti-discrimination) and different levels of government (national, regional, local), as well as discussion with stakeholders, are still excessively limited and disconnected; despite the consolidation of compensatory measures, in many countries prevention and early intervention actions are not sufficiently evolved or adequately implemented; there is still no adequate response to the needs "of specific groups (such as learners with visible and non-visible disabilities, learners with special educational needs or mental health problems, learners from a migrant background, including refugees, learners belonging to ethnic minorities such as Roma, and victims of bullying), which is particularly

serious for learners with complex needs (such as minors with a parent in prison, victims of domestic violence, minors in foster care, etc.)"; approaches taken to decrease learning difficulties, are not sufficiently integrated "with measures to promote well-being at school and mental health, or to combat bullying"; students, families, and "key stakeholders (including socially excluded parents, migrant communities, and ONG)" in many cases are not adequately involved in policy design, implementation, and evaluation; teachers and school staff in general are often not sufficiently prepared to deal with problems related to poor school performance, early school leaving, "accommodating diversity, offering appropriate support to children in difficulty or at risk, or learners with needs related to well-being and mental health" (European Commission, 2022, pp. 3-4).

In light of these considerations, *the Council Recommendation*, while moving in continuity with the *2011 Recommendation*, proposes to repeal and replace that *Recommendation* and offer new solutions regarding the reduction of early school leaving (Council of Europe, 2022).

Indeed, according to the drafters of the *Proposal*, "Since the adoption of the 2011 Council Recommendation, European countries have faced new situations, challenges, and opportunities that have profoundly affected education and training systems, among them the growing number of school-age migrants from third countries, including refugees, arriving in the EU, as well as the COVID-19 pandemic. Concerns about the deteriorating trend in basic skills achievement (as reflected in the 2018 PISA survey) have been prevalent in the policy dialogue. Education research has provided new insights and policy cooperation at the EU level has highlighted shortcomings and areas for further engagement, making it appropriate to review, update and improve the 2011 Council Recommendation" (European Commission, 2022, pp. 1-2).

The new *Proposal* indubitably presents important new features; in fact, while reaffirming continuity with the 2011 Recommendation, it emphasizes "the need to combine prevention measures, intervention measures, and compensatory measures, but with a greater emphasis on prevention measures, and recognizes that different needs/addressees require different types of action". It also addresses new aspects compared to the 2011 document such as "school management and quality assurance mechanisms, the concept of a whole-school approach and collaboration and partnership within schools and in their settings, the crucial value of social and emotional well-being and education, and the importance of safer, healthier and more supportive learning environments". It points to directions and actions that Member States can implement in order to foster improved educational outcomes for young Europeans, and establishes the European Commission's commitment to supporting and complementing Member States' actions in this context. Finally, it is proposed to: decouple educational attainment and educational attainment from social, economic and cultural status; decrease the proportion of underachieving students and early leavers from education and training in the European Union in order to achieve the "EU-wide 2030 goals of the European Education Area"; encourage inclusive education and training that "encompasses equity, quality, academic achievement, engagement, well-being at school, mental and physical health, and respect for diversity"; increase more, "through mutual learning, a shared understanding of the factors that enable the promotion of educational achievement and well-being, with particular attention to learners from disadvantaged backgrounds" (European Commission, 2022, p. 8).

4 CONCLUSIONS

This quick review of school policies adopted in Europe to contrast the phenomenon of early school leaving shows, indubitably, a clear willingness on the part of both the European Union and individual member states to commit themselves to solving this difficult issue. However, on a concrete level, this phenomenon continues to remain a serious problem for the majority of member States. So far, in fact, although all countries have developed various measures to combat school dropout among immigrant or otherwise at-risk pupils, only a few have developed a specific strategy to combat it, including the desired prevention, intervention and compensation measures.

According to data published in 2020 by the Migrant Integration Policy Index (MIPEX), which monitors policies in support of migrant integration in six continents-including all EU member States (including the United Kingdom), other European countries (Albania, Iceland, North Macedonia, Moldova, Norway, Serbia, Switzerland, Russia, Turkey, and Ukraine), Asian countries (China, India, Indonesia, Israel, Japan, Jordan, Saudi Arabia, South Korea, and the United Arab Emirates), North American countries (Canada, Mexico, and the U.S.), South American countries (Argentina, Brazil, Chile), South African countries, and Australia and New Zealand in Oceania-although instruction is a growing priority for integration, educational systems are slow to respond. (Migrant Integration Policy Index, 2020).

These data show that the education sector continues to show many weaknesses in most countries' integration policies (40/100). There are still many immigrant pupils who do not receive adequate support in choosing the right school or class or to reach the educational levels of their peers. In many countries it is still "the general education system that solves (or exacerbates) cultural problems". MIPEX surveys demonstrate that educational policies are generally more specific in countries with larger numbers of immigrant students. The "Nordic countries, for example, take an individualized, needs-based approach. Australia, Canada and New Zealand have developed strong targeted education policies through multiculturalism, while the United States focuses additional support on vulnerable racial and social groups". In contrast, the school systems of Austria, France, Germany and Luxembourg "are less sensitive to the needs of their relatively large numbers of immigrant pupils". Finally, "new destination countries with small immigrant communities offer inconsistent targeted support (for example, Asia and Central Europe). In new destination countries with large immigrant communities (such as Greece and Ireland), weak targeted education policies have not reached the now considerable number of immigrant pupils. Czechia, Finland and Korea have better developed policies and lower numbers of immigrant pupils" (Migrant Integration Policy Index, 2020).

Overall, the average MIPEX 56 score has improved by +7 points over the past five years, however, there are still many countries that have not made substantial changes in education since 2014. Some countries "have made improvements by opening education to all legal migrants (for example, Bulgaria and Jordan), establishing basic standards for language support (for example, Serbia and Turkey) and promoting diversity within schools (for example, Czechia, Ireland and Korea)". In Malta and Turkey, immigrant pupils have also benefited from major reforms aimed at facilitating access to education and promoting diversity in schools. In contrast, "more restrictive policies have been introduced in Argentina and the United Kingdom. For example, policies in Argentina provide limited access to education for different groups of migrants".

The Migrant Integration Policy Index (MIPEX) assigned a score to each country surveyed based on its efforts to promote the school integration of these learners. Specifically, this score is a result of the policies that central and regional governments have adopted to ensure access to schools for migrant students and takes into consideration the services offered by schools to support young people to improve their school experiences.

Nordic countries scored the highest. Sweden "(93 points, first of the 52 countries surveyed) offers students access to every level of education and provides ad hoc initiatives to accommodate their needs. Among the most appreciated measures are mother language study incentives". As for Finland (88 points), a special attention devoted to multilingualism is noted. Among the non-Nordic countries, those scoring quite high are Belgium (74 points), Portugal (69 points), and Luxembourg (64), these states have already been engaged in the implementation of projects and funds "dedicated to the interculturalisation of schools" for several years. In general, if we exclude the Nordic countries and a few other exceptions, there are still many European countries that have poorly inclusive school systems. Among them, it is the Eastern European countries that have the lowest scores, in particular, Slovakia (with only 7 points) and Hungary (0 points). Both of these "States do not guarantee access to compulsory education for all migrant students and, in addition, do not have policies to foster their integration". Overall, what emerges from the surveys is that while access to school is guaranteed to all migrant students in most European countries, there is still a lack of "a genuinely multicultural environment in which cultural and linguistic differences are an added value and not an issue to be ignored" (Migrant Integration Policy Index, 2020).

Notwithstanding the visible changes made in recent decades, in fact, the integration and educational success of immigrant pupils are still limited by the lack of adequate and long-term projects aimed at providing these pupils with the adequate support to successfully complete their schooling and to be prepared for the career path. In many countries, immigrant pupils still face too many obstacles when accessing higher education. In "most countries (39/56) they receive no tailored support. Only in Australia, Finland and the United States is support available to increase access and successful participation in higher education". In many States, systematic educational guidance and financial resources are not provided to schools with immigrant pupils (Migrant Integration Policy Index, 2020). Among the many problematic nodes we also find teacher training and, in particular, the need to provide teaching staff and all those who in various capacities work in schools with adequate training in intercultural competencies. On this front, in fact, if the European schools want to achieve positive results regarding the challenge posed by the new multiethnic and multicultural reality, they absolutely must provide for increased and more efficient initial and continuing teacher training courses.

Finally, on the operational and school policy level, both the European institutions and individual member States should focus greater attention on the success and failure in the school careers of foreign pupils, through the analysis of data and information on their social, economic and cultural situation and migration path; on the approach to schooling in the host country; on strengthening relationships and guidance to families – particularly on interpersonal and linguistic communication to foster understanding of terms that may be unfamiliar to foreign parents as foreign to their experience –; allocating additional funds for the employment of professionals such as intercultural mediators.

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